
BEFORE THE TEXAS BOARD OF PARDONS AND PAROLES

In re

MAX ALEXANDER SOFFAR,

Petitioner.

**PETITION FOR A RECOMMENDATION
OF COMMUTATION OF DEATH SENTENCE
(Harris County Case)**

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This case is precisely the type of exceptional case for which clemency should be granted. Max Soffar is an innocent man who has spent thirty-four years in prison or jail, mostly in solitary confinement on death row, for a crime he did not commit. Just a few weeks ago, he learned that he is dying of liver cancer and might have as little as two months to live. As explained in greater detail below and in the expert letters attached to this petition, death will come slowly and painfully and he will require more and more medication and intensive care as the cancer progresses and his life draws to a close.¹ Although he has a federal habeas corpus petition pending in the United States District Court for the Southern District of Texas—a petition that he is asking be decided on an emergency basis—the reality is that the federal court process will likely not be completed before Mr. Soffar dies. The exigency of this situation is the driving force behind what Mr. Soffar admits is an unusual request for clemency at this stage of a capital case.

In stark terms, at this point the Governor of Texas, as advised by the Board, is likely the only public official with the power to review the

¹ While there may not be an imminent execution date that does not make this petition any less urgent in light of Mr. Soffar's imminent "natural" death.

evidence establishing Mr. Soffar's innocence in the time he has remaining. That evidence proves that the police-composed statements Mr. Soffar signed—statements that form the sole basis for Mr. Soffar's conviction—are false confessions. The evidence also proves that another man, Paul Dennis Reid, committed the crime for which Mr. Soffar is sentenced to die. Mr. Soffar is confident that the Governor and the Board will conclude, after reviewing this evidence of innocence, that a grant of clemency is compelled.

Indeed, although this case is one for which a pardon would be most appropriate, Mr. Soffar recognizes that a pardon cannot—for procedural reasons—be granted. He therefore respectfully asks that the Governor grant the maximum relief permitted by law. Under Texas Administrative Code, Section 143.57 (a), the Governor may commute the sentence of death to life which, based on the year of the crime (1980), will make Mr. Soffar immediately eligible for release on parole. That relief is entirely appropriate so that an innocent man may die in peace at home.

The Governor and the Board need not simply take Mr. Soffar's word that he is innocent; multiple state and federal judges have already publicly opined that there is absolutely no credible evidence against him. For

example, in 2004, Judge DeMoss of the United States Court of Appeals for the Fifth Circuit wrote an opinion that is a damning indictment of the prosecution's case:

This is absolutely not a case where there was clear objective evidence of Soffar's guilt. No eyewitness testimony placed . . . Soffar . . . at the crime scene. No fingerprints lifted from the crime scene matched the fingerprints of . . . Soffar Nothing was taken from the crime scene and later found in the possession of . . . Soffar No blood or hair samples were found at the crime scene that matched those of Soffar The gun used to commit this crime was neither found nor introduced into evidence. . . . Soffar . . . [was not] linked to a weapon of the same caliber as the bullets recovered from the crime scene. Nothing Soffar told the police in his statements led the police to discover any evidence they did not already have relating to the bowling alley murders.

Soffar v. Dretke (Soffar I), 368 F.3d 441, 478-79 (5th Cir. 2004).² In an earlier opinion, he had candidly disclosed how he had "laid awake nights agonizing over the enigmas, contradictions, and ambiguities in the record."

Soffar v. Cockrell (Soffar II), 300 F.3d 588, 613 (5th Cir. 2002). And he had remarkably blunt words for his fellow judges who voted to deny habeas relief:

² Mr. Soffar has been tried twice for the crime at issue. His first trial occurred in 1981. In 2004, the United States Court of Appeals for the Fifth Circuit granted him habeas corpus relief. *See Soffar I*, 368 F.3d at 441. Notwithstanding Judge

[M]y colleagues in the en banc majority have shut their eyes to the big picture and have persuaded themselves that piecemeal justice is sufficient in this case. That is, of course, their privilege but I am glad I will not be standing in their shoes, if and when Soffar is executed solely because of the third statement he signed in this case.

Id. at 613-14. Judge DeMoss was joined in his opinion by Judges Parker and Dennis.

Judge Cochran of the Texas Court of Criminal Appeals, joined by Judges Johnson and Alcala, wrote a similar opinion in 2012, drawing the same conclusions based on the retrial evidence. Indeed, Judge Cochran began her opinion by echoing Judge DeMoss's words and stating that she "feel[s] the same way" and believes there is something "very wrong" about this case. *Ex parte Max Alexander Soffar (Soffar III)*, Nos. WR-29980-03, WR-29980-04, 2012 WL 4713562, at *2 (Tex. Crim. App. Oct. 3, 2012). After dissecting the statements Mr. Soffar signed, outlining the inconsistencies between those statements and the objective evidence, and summarizing the expert evidence regarding false confessions, she

DeMoss's opinion, the Harris County District Attorney elected to retry Mr. Soffar and, in 2006, he was once again convicted and sentenced to death. Although Judge DeMoss's opinion relates to Mr. Soffar's 1981 trial, his conclusions apply equally to the 2006 retrial because the state relied on precisely the same evidence and theory as it did in 1981.

concluded that she does not “personally . . . have great confidence in the reliability or accuracy of [Mr. Soffar’s] written statement and hence his culpability for the triple murders.”³ *Id.* at *12.

Judge DeMoss’s and Justice Cochran’s analysis and feelings are spot-on. As set forth below, the evidence establishes that the statements at issue are textbook examples of false confessions. *First*, and foremost, the written statements do not match the facts. As illustrated in Attachment 1, almost every assertion in the August 7, 1980 statement is contradicted by undisputed eyewitness and forensic evidence. The *de minimis* number of assertions that do match the facts had been widely reported in the newspapers or broadcast on television. As such, they did

³ Despite her analysis, Judges Cochran, joined by Judges Johnson and Alcala, nonetheless concurred in the denial of Mr. Soffar’s state habeas petition. *See Soffar III*, 2012 WL 4713562, at *12. But they only did so because they were constrained by the technical rules of habeas corpus and could not afford relief based simply on the powerful evidence of innocence. *See id.* In other words, they did not waiver from their fundamental belief that there is something “very wrong” about this case and that the statements at issue are simply not credible or reliable. *Id.* at *2, *12. It is axiomatic that, unlike the technicalities of habeas corpus practice, the clemency process allows an open-ended inquiry in which the Executive can provide relief on grounds that the courts cannot. As the Supreme Court has explained, the myriad technical restrictions on courts’ authority to grant relief—even on grounds of actual innocence—are legitimate only because “executive clemency has provided the ‘fail safe’ in our criminal justice system.” *Herrera v. Collins*, 506 U.S. 390, 415 (1993).

not contain the type of “secret knowledge” that only the true killer could know.

Second, the circumstances in which Mr. Soffar grew up explain why he signed a statement admitting to something he did not do. He is mentally impaired and has been since birth. Throughout his childhood he was subjected to violent abuse. As a result of parental neglect, he began committing numerous juvenile crimes. These crimes led to him forming what he regarded as “friendships” with police officers. But these “friendships” were illusory and, at the end of the day, it was his closest police officer “friend” who tricked Mr. Soffar into waiving his constitutional rights and subjecting himself to the prolonged interrogation that led to what has become a lethal statement.

Lastly, renowned false confession experts—particularly Dr. Richard Leo—have submitted expert reports explaining why Mr. Soffar’s mental impairments and the circumstances surrounding his interrogation were the very type of perfect storm that leads to a false confession. False confessions are one of the main causes of wrongful convictions (particularly capital murder convictions) in this country. A man should not be convicted, much less sentenced to death, based on a police-composed

statement that is not worth the paper it is written upon, particularly where, as here, the statements were extracted in violation of the most basic principles of justice.

But Mr. Soffar's claim of innocence is not merely based on the utter lack of incriminating evidence. To the contrary: over the past thirty years, Mr. Soffar's counsel has amassed a mountain of evidence establishing that another man—Paul Dennis Reid—committed the crime for which Mr. Soffar was convicted. Although Mr. Soffar has repeatedly asked the Harris county district attorney to look at this evidence, the district attorney has refused to do so, going so far as to fight tooth-and-nail to have it excluded from Mr. Soffar's retrial. When new, powerful evidence against Mr. Reid was uncovered after that retrial, Mr. Soffar wrote to the district attorney several times asking him, and later her, to meet with his lawyers and to consider the evidence. But the district attorney time and again declined to do so. When Mr. Soffar attempted to present the evidence during his state habeas proceeding, the state simply dismissed it out of hand arguing, incorrectly, that it was not credible. It does not matter whether this recalcitrance is borne of the prosecution's inability to come to terms with the reality that it has put an innocent man on death

row for more than thirty years, or whether it speaks to a bad faith unwillingness to address what even the prosecution now understands is a wrongful conviction. What matters is that a dying innocent man is crying out for the relief to which he is entitled—relief which, as a practical matter, only the Governor will be able to afford.

PRIOR AND PENDING PROCEEDINGS

A. Prior Proceedings

On March 31, 1981, Mr. Soffar was convicted of murdering Arden Alane Felsher. He was sentenced to death on April 3, 1981. Twenty three-years later, on April 21, 2004, a three-judge panel of the Fifth Circuit granted Mr. Soffar habeas relief due to his defense counsel's ineffectiveness. *Soffar I*, 368 F.3d at 442.

Mr. Soffar was retried for Ms. Felsher's death and, on February 22, 2006, was convicted once again. He was sentenced to death on March 2, 2006. The Texas Court of Criminal Appeals affirmed his conviction and sentence on November 19, 2009. *Soffar v. State (Soffar IV)*, AP-75363, 2009 WL 3839012 (Tex. Crim. App. Nov. 19, 2009). The United States Supreme Court denied his petition for a writ of certiorari. *Soffar v. Texas*, 130 S. Ct. 3507 (2010).

On February 8, 2008, Mr. Soffar filed an application for a writ of habeas corpus in the state convicting court asserting thirty-eight claims for relief. After receiving amendments and a supplement to the application, the court summarily recommended that relief be denied. *Soffar III*, 2012 WL 4713562, at 2. The Texas Court of Criminal Appeals denied relief on October 3, 2012. *Id.* After an unsuccessful petition for *certiorari* to the United States Supreme Court, Mr. Soffar filed a federal habeas corpus petition on October 2, 2013.

B. Pending Proceedings

The federal habeas corpus petition remains pending in the United States District Court for the Southern District of Texas. The scheduling order in the case anticipated that briefing on the petition would not be completed until [•], and that motion practice and an evidentiary hearing might take place at a later date. Mr. Soffar no longer has that much time to wait. Accordingly, in an effort to expedite proceedings, he has elected to file his papers and motions concurrently with the filing of this petition and has asked the court to rule immediately. Mr. Soffar will, of course, immediately inform the Governor, through the Board, if the court rules on Mr. Soffar's Petition before the Board issues its recommendation.

I. MR. SOFFAR DID NOT COMMIT THE CRIME FOR WHICH HE HAS BEEN UNJUSTLY SENTENCED TO DIE.

The police-composed statements that Mr. Soffar signed are, undeniably, the very type of false confessions that have led to numerous wrongful convictions. They are the product of police officers' desperation to solve a potentially unsolvable case, a brain damaged man prepared to say anything he thought the police wanted to hear, and a prosecutor ignorant then of the grave risks of false confessions, and unable now to recognize the horror of what has occurred. Whatever limits courts may have on providing relief, the Governor has none and the clemency process is designed to put truth that should be at the forefront—especially when—the truth has been ignored and obscured for more than thirty years. Now, with Mr. Soffar facing imminent death, the truth must finally be acknowledged.

C. Factual Background

In order to appreciate why Mr. Soffar's statements are so self-evidently false confessions, it is first necessary to understand what the police knew about the crime at the time of the interrogation. And they knew a lot. Just as significantly, the public knew a lot as well because, contrary to the most basic principles of police work, the investigating

detectives allowed the media almost unfettered access to every piece of information and clue that they gathered.

1. The Bowling Alley Crime.

The police were alerted to the bowling alley robbery sometime in the early hours of July 14, 1980, the crime apparently having occurred at approximately midnight of July 13. They found three men and one woman lying face down on the floor, each of whom had been shot execution-style in the head. The men had been shot in the back of the head and the woman had been shot in the cheek.

Despite having been shot in the head, one of the men, Greg Garner, survived and is still alive today. A few days after the robbery, a neuropsychologist performed a test on Mr. Garner that showed that his memory functioned in the normal range. The next day, doctors declared him well enough to speak with the police, telling them that Mr. Garner had “the ability to remember and . . . if shown a picture of the person responsible . . . would remember this individual and be able to identify him.”

During the course of at least seven different interviews, Mr. Garner provided the police with a detailed description of not only how the robbery

took place, but also of the robber. He explained that the robber had come to the locked front door of the bowling alley shortly after it closed. Only four people—Greg Garner, Stephen Sims, Thomas Temple, and Arleen Felsher—were in the alley at that time. Mr. Sims, the bowling alley's assistant manager, unlocked the door and spoke with the man who claimed that he was having car trouble and needed water. To support his story, the man carried a jug. Apparently taken in by this ruse, Mr. Sims went outside with the man. A few moments later, the same man forced Mr. Sims back into the bowling alley holding a gun to Mr. Sims's side. After telling Mr. Sims to remove the money from the cash register, the robber told the victims to lie face down on the floor in a semi-circle. As a diagram drawn by Mr. Garner shows, the order of the victims, starting nearest to the door, was Ms. Felsher, Mr. Sims, Mr. Garner, then Mr. Temple. (Exhibit A.) The robber then shot each of the victims.

Mr. Garner blacked out. When he came to, he called his mother and also spoke with the assistant manager, explaining that an intruder had entered the bowling alley and people had been shot. After he finished his call, Mr. Garner lay down next to Ms. Flesher. Thus, when the police

arrived, the order of the victims, starting nearest to the door, was Mr. Garner, Ms. Felsher, Mr. Sims, and Mr. Temple.

Mr. Garner was also able to provide the police with a detailed description of the robber. According to his description, the robber—who wore no disguise—was a muscular, clean-shaven, white male, between the ages of twenty-five and thirty years old, approximately 6 feet tall, weighing between 175 and 185 pounds, whose hair fell over his ears but did not touch his collar. Mr. Garner thought he could probably recognize the robber if he saw him again. The police were sufficiently confident in Mr. Garner’s recollection that they released a composite of the robber to the media:



2. Mr. Soffar’s Arrest And Interrogation

Three weeks after the bowling-alley murders, the police still had no viable leads, no suspects, and no prospects of solving the case. With the

media breathing down their necks, it is unsurprising that the police felt compelled to solve the case at all costs. The cost was Mr. Soffar's life.

By his own admission, Mr. Soffar first became caught up in this case through no fault but his own. On August 5, 1980, a patrolman arrested Mr. Soffar riding a stolen motorcycle. A pitiful sight, he was gaunt, disheveled, with long dirty black hair, a full dark beard, and unkempt clothes. His pupils were dilated, his speech slurred, and he rambled incoherently.

But he also presented an opportunity. As the police knew well, Mr. Soffar was a drug-addicted, brain-damaged, highly-suggestible youth who aspired to be a police informant and who labored under the irrational belief that the police were his "friends." Consistent with his altered view of reality, he immediately told the arresting officer that "he wasn't going to no penitentiary over a stolen motorcycle," and that the police should "check Houston for bigger things." He also claimed that he had information about the bowling-alley murders, and that he wanted to speak with Sergeant Bruce Clawson, a police officer who had used Mr. Soffar as an informant.

What followed were three days of oppressive interrogation, nearly all of it unrecorded; three police typewritten statements, none written in Mr. Soffar's own hand; and three signatures of a man who had no conception of what he was doing. The first typewritten statement, which Mr. Soffar signed on August 5, 1980, narrates a story in which Mr. Soffar merely waits in a car while another man, Latt Bloomfield—against whom Mr. Soffar held a deep-seated grudge—shot the victims. The statement also describes Mr. Soffar and Mr. Bloomfield burglarizing the bowling alley the night before. (A claim that the police knew was false because three other men had already been arrested for that crime based on conclusive evidence.)

The second statement, which Mr. Soffar signed on August 6, 1980, narrates a similar story but contains more details about Mr. Bloomfield's supposed actions as the robber. Among other things, in this version, Mr. Bloomfield wears a stocking over his head. But, here again, Mr. Soffar waits outside in the car, watching through the front-door window.

Shortly after Mr. Soffar signed this second statement, Latt Bloomfield was arrested and held briefly by the police. Both Mr. Soffar and Mr. Bloomfield were placed separately in lineups that were viewed by

Mr. Garner. He failed to identify positively either suspect. Fingerprint evidence taken from the crime scene failed to match either Mr. Soffar or Mr. Bloomfield; indeed, their fingerprints were not even similar to those taken from the bowling alley. And despite searching both Mr. Soffar's and Mr. Bloomfield's home and Mr. Bloomfield's car, no weapon or other physical evidence connected with the crime was found. With no evidence against Mr. Bloomfield, he was released. As Judge DeMoss has observed, the "determination that there was no basis to hold Bloomfield obviously undermines the truthfulness of Soffar's statements." *Soffar II*, 300 F.3d at 601.

Mr. Soffar signed the third statement on August 7, 1980. He did so after learning that Mr. Bloomfield had been released, information that infuriated him. The third statement was dramatically different from the others, and serves as the only basis for Mr. Soffar's conviction. This statement tells a tale in which Mr. Soffar and Mr. Bloomfield commit the robbery together. And, this time, Mr. Soffar supposedly shoots two of the victims, one of whom was Ms. Felsher. This third statement, just like the first and second, are false confessions, utterly belied by the actual facts and completely uncorroborated by any other evidence.

D. Mr. Soffar's Statements Are Precisely The Type Of False Confessions That Lead To Wrongful Convictions.

In 1980, little evidence supported the idea that a person could falsely confess to any crime, much less capital murder. But today it is widely known that **25% of all wrongful convictions** proven by DNA evidence involve false confessions. There is no reason to doubt that the same statistic is true in cases that do not involve DNA evidence, such as Mr. Soffar's case. Indeed, as Judge Cochran of the Texas Court of Criminal Appeals noted, the "literature is littered with cases in which innocent people confess to crimes that they have not committed." *Soffar III*, 2012 WL 4713562, at *7. She cited, as examples, the Central Park jogger case, the Norfolk Four, and the case of Christopher Ochoa, who falsely confessed to a murder rape here in Texas.

The fact and expert evidence in this case all point to the conclusion that the statements Mr. Soffar signed are just as false as those in the cases Judge Cochran cited. *First*, the statements are inconsistent with the known evidence. In connection with his state habeas proceedings, Mr. Soffar submitted an affidavit from Dr. Richard Leo, a world-renowned expert in false confessions. (Exhibit B.) As he explained, in addition to considering the mental state of the suspect and the interrogation

techniques employed, the reliability of a confession must also be determined by comparing its contents to the available evidence.

To evaluate the likely reliability of such statements, researchers analyze the fit between the subject's post-admission narrative (the account or story the suspect tells following the "I did it" admission statement) and the crime facts and/or corroborating evidence derived from the confession (e.g., location of the missing murder weapon, loot from a robbery, the victim's missing clothing, etc.).

(*Id.* at ¶ 21.) In this case, the post-narrative narration (*i.e.* the statements Mr. Soffar signed) simply do not "fit" with the "crime facts and/or corroborating evidence." Indeed, in the words of Judge Cochran, the details "were ***largely inconsistent*** with the physical evidence, the forensic evidence, and the recollections of Greg Garner." *Soffar III*, 2012 WL 4713562, at *12. Judge DeMoss similarly observed, "[n]othing Soffar told the police in his statements led the police to discover any evidence they did not already have relating to the bowling alley murders." *Soffar I*, 368 F.3d at 479.

The following table summarizes just the inconsistencies identified by Judge Cochran, which caused her (and Judge DeMoss) to question the safety of Mr. Soffar's conviction:

THIRD STATEMENT	THE ACTUAL FACTS
There were two perpetrators.	There was one perpetrator.
The perpetrators were disguised.	The perpetrators were not disguised.
The front door was unlocked.	The front door was locked.
The perpetrators walked straight into the bowling alley.	The perpetrator used a ruse (car trouble) to gain entry.
No mention of a water jug.	The perpetrator carried a water jug.
Three victims were standing by the snack bar when the perpetrators entered.	No victims were standing by the snack bar when the perpetrator entered.
A perpetrator said: “this is a robbery.”	The perpetrators said no such thing.
The gun was pointed in Mr. Sims’s face.	The gun was pointed at Mr. Sims’s side.
A perpetrator pulled a man by his hair and forced him to the ground.	The perpetrator never touched the victims.
A young woman was kicked.	No one was kicked.
A young woman screamed.	No one screamed.
A warning shot was fired.	No warning shot was fired.

THIRD STATEMENT	THE ACTUAL FACTS
The victims lay in a straight line in this order: male, female, male, and male.	The victims lay in semi-circle in this order: female, male, male, and male.
Money was taken after the shootings.	Money was taken before the shootings.
Money was stolen from the snack bar cash drawer.	No money was stolen from the snack bar cash drawer.
The victims' wallets were taken after they were shot.	The victims' wallets were taken before they were shot.

As Judge Cochran found, the inconsistencies do “not inspire confidence in [the statement’s]; it appears to be a tale told by one who heard about the robbery-murders rather than by one who committed them.” *Ex Parte Max Alexander Soffar*, 2012 WL 4713562, at *2.

Indeed, ***nothing*** in the August 7, 1980 statements was either accurate or already a matter of wide public knowledge. This is amply illustrated in Attachment 1, which is a copy of the August 7 statement with all inaccurate facts scored through in red, all facts that were a matter of public knowledge scored through in blue, and all facts for which the truth or falsity cannot be determined underlined in green. As can be seen, very little remains.

Second, the statements were obtained through improper interrogation tactics. The type of tactics employed are precisely the type of tactics that Dr. Leo explains in his affidavit tend to lead to false confessions. (*Id.*) Mr. Soffar was interrogated for as much as ***twenty-six hours*** spread over the course of ***three days***. Only ***two*** of those twenty-six hours were recorded. The interrogations were conducted by a hard-charging tag-team of law enforcement officials, including homicide detectives with years of experience, a police sergeant, and even an assistant district attorney.

The fact that the police chose to record only a small fraction of their interrogation raises red flags as to why they chose not to record the rest. Moreover, the absence of an electronic recording of his entire interrogation deprives Mr. Soffar of the ability to show all of the ways in which he was manipulated, cajoled, and pressured into signing supposedly incriminating statements. The prejudice caused by that absence is compounded by the police officers' apparent inability to remember key details about the interrogation. When Dr. Leo examined those officer's statements and testimony, he found them to be incomplete:

They do not describe the use of any interrogation techniques at all (other than urging Mr. Soffar to

tell the truth), and they uniformly deny that they made any promises or threats to elicit Mr. Soffar's compliance and incriminating statements. The detectives' accounts do not provide an explanation for what moved Mr. Soffar from denying direct involvement in the triple murders and the robbery to admitting shooting two of the victims, killing at least one of them, and directly participating in the robbery.

Although incomplete, the evidence—including the interrogators' vague recollections and the partial recordings—offer a glimpse into the pressure, threats, and lies that caused Mr. Soffar to sign the statements. For example, in the recorded portion of one of Mr. Soffar's first interrogations—on August 5, 1980—he tells Detective Schultz that he had been threatened with harm by another officer.

Most egregious, however, was the manner in which the police tricked Mr. Soffar into waiving his *Miranda* rights. At some point on August 5, Detective Schultz hit a brick wall because Mr. Soffar had stopped talking. Detective Schultz ordered Sergeant Clawson to persuade Mr. Soffar to start up again. This was blatantly manipulative because Detective Schultz was well aware that Mr. Soffar regarded Sergeant Clawson as a friend. But even more manipulative was the way in which Sergeant Clawson answered several key questions that Mr. Soffar asked:

MR. SOFFAR'S QUESTIONS	SERGEANT CLAWSON'S ANSWERS
Should I get a lawyer or talk to the police?	If you're guilty, talk to the police; if you're innocent, get a lawyer.
How do I get a lawyer?	Can you afford one?
How long does it take to get a court appointed attorney?	I don't know. It could take a day, a week, or a month. I don't know how it works in Harris County.
Am I on my own?	Yes you are.

By his own admission, Sergeant Clawson gave those answers because he knew that his role on August 5, 1980, was to ensure that Mr. Soffar continued to talk.

Having coerced him into talking, the police ignored what he actually had to say and turned a blind eye to the fact that Mr. Soffar did not know key facts about the crime. The August 5, 1980, recording shows, for example, that Mr. Soffar:

- Did not know where in Houston the bowling alley was located.
- Did not know the day of the week the crime took place.
- Did not know the time of night the crime occurred.

- Did not know the caliber of weapon used to commit the crime.
- Did not know the amount of money stolen.
- Did not know whether the bowling alley had a security camera.

The recording also shows that Mr. Soffar had learned information about the bowling alley robbery from media reports (which the jury heard nothing about due to the trial court's error) and that he was determined to see Latt Bloomfield blamed for the robbery because of a dispute they had. This last point is critically important because it explains the motive behind Mr. Soffar's willingness to sign a false confession: In his mentally-disturbed, idiosyncratic way of thinking, Mr. Soffar believed that he could blame Mr. Bloomfield for the crime, claim a \$15,000 reward, have the stolen motorcycle charges dropped, and walk out of the police station a free man. While hopelessly irrational, that was truly what Mr. Soffar believed in August 1980.

Viewing the totality of this evidence, Dr. Leo has opined:

In my professional opinion, the interrogation techniques described by Mr. Soffar, and corroborated by police testimony, are psychologically coercive. They are psychologically coercive for two reasons: first, implicit and explicit threats and promises, commonly referred to as high-end inducements, are regarded as inherently

coercive in both psychology and law; and second, any group or sequence of interrogation techniques that cumulatively cause a person to perceive that he has no choice whether to confess, or that his will is overborne to the point where he cannot resist the interrogators' accusations, is psychologically coercive.

(*Id.*) Dr. Leo's affidavit was submitted in connection with Mr. Soffar's state habeas proceedings. As of today, the state has not offered any expert evidence to contradict it.

Third, Mr. Soffar was particularly vulnerable to the type of improper interrogation tactics employed by the police. Those tactics, in themselves, tend to give rise to false confessions but they are particularly "effective" when employed on an individual who, like Mr. Soffar, suffers from severe mental impairments. Mr. Soffar's impairments—which themselves weigh heavily in favor of clemency—cannot be underestimated. Professor Jonathan Pincus, the Chair Emeritus of Neurology at Georgetown University, evaluated Mr. Soffar and his voluminous records in connection with his state habeas proceedings. (Exhibit C.) As he observed, Mr. Soffar was born with brain damage likely caused by his mother's abuse of drugs and alcohol during pregnancy. When he was an infant, his mother often gave him unprescribed phenobarbital to make him stop crying. That brain

damage was made worse by his years of substance abuse, which began at an extraordinary early age: when he was just *four* he was found passed out next to the car with a gas cap next to him. This abuse was, in Dr. Pincus's opinion, an attempt to self-medicate the effects of bipolar disorder.

As he grew, Mr. Soffar's condition became ever worse. At the age of six, Mr. Soffar saw his first psychiatrist. His fourth grade teacher reported that he was "the most disturbed [child] she had ever encountered." At twelve, he needed to be involuntarily hospitalized, and was later forcibly institutionalized for two years in the notorious Austin State Mental Hospital where he sustained unrelenting abuse. Mr. Soffar literally still bears the scars of that abuse on his back. In 1980—and even today—Mr. Soffar was a man with very low intelligence, bordering on an intellectual disability, with a high degree of suggestibility, and an eagerness to please.

The police knew all about Mr. Soffar's background and his mental conditions. Sergeant Clawson has attested that Mr. Soffar had "fried his brains out" and had the intellectual capacity of a ten- or eleven-year-old. During his August 5, 1980 interrogation, Mr. Soffar told Detective Schultz

that he had not slept for two days, was in drug withdrawal, had spent three years in a mental hospital, and was unable to recall what he did week-to-week. Detective Schultz seemingly did not care about such facts so long as Mr. Soffar signed a statement.

When he was arrested, the effects of Mr. Soffar's organic impairments were compounded by his intoxication. The arresting officer noted that Mr. Soffar's pupils were dilated, he was "very talkative," and some of his statements were "incoherent." He told the police that he was coming down from Quaaludes and had not slept in a couple of days. None of the above information was news to Sergeant Clawson, who knew Mr. Soffar from his attempts to use him as a police informant.

As Dr. Leo opines in his affidavit, Mr. Soffar's sleep deprivation, drug use, drug withdrawal, and organic impairments coupled with the many hours of interrogation by experienced interrogators under pressure to solve an infamous crime are exactly the type of circumstances out of which a false confession is produced. (Exhibit B.) Further, Mr. Soffar is inherently susceptible to being led, eager to please, impulsive, has a short attention span, and has a tendency to tell stories for attention. These inherent personality traits made it virtually impossible for him to withstand the

pressure the police put on him to sign the statements that have led to his conviction, death sentence, and imprisonment these past thirty-four years.

Lastly, it is impossible to be Mr. Soffar's own account of his interrogation. In a letter to his court-appointed lawyer, Joe Cannon, shortly after his arrest, Mr. Soffar proclaimed his innocence and explained what had happened:

This whole thing started when, this detective in Friendswood said he was going to lock me up cause I was a habitual criminal. His name is Mr. Palmary. He's busted me a few times and he does not like me. He told me next time I bust you for something bad I'm going to put you away for the rest of your life. . . .

So I told them that so palmary couldn't put his slimy hands on me. I told my sister when I saw that drawing of the killer, I told her it looked like latt. he stole some silver from my house so I was going to tell the police he did it and get the reward, and get evan. She told me not to do it so I didn't. Then when I got pulled over and I see palmary standing their I decided to say I knew who did it. Next thing I know them homicide detectives had me saying I did it. the truth is I did not kill anyone. There is a lot more to this than I can write. I will tell you the whole thing when I see you so you can check out my side of this to be sure yourself. Them police had me say what they wanted to hear. Did you know I took a polygraph test? I was on acid when I took it.

The night before the robbery, their was a burgurly at this bowling alley. I told the police the night

before the robbery, I broke into the bowling alley. That was what I saw on the t.v. so I said in a statement, me and lat bloomfeild did the burgurly. When I told them I killed some girl, which was another lie, they asked me if I really broke in the night before. I said no. They asked me that quuestion about 100 times. I put in a statement that I did. But after they kept asking me that same question over and over I said no, just to see what he would say. I did not put in a statement that I didn't brake in the bowling alley. I said I did. Then he told me I didn't do the burgurly cause they arrested some kids for it. If I really did this why didn't I say I didn't brake in. Cause that was what I saw on the news. I thought the brake in was done by the same person or persons that did the robbery.

Me and 2 homicide police went out looking at bowling alleys. They wanted me to point out the bowling alley we robbed. They were drinking. We stopped 3 or 4 times for cokes for their mixed drinks! I asked them for some for my nerves and they said no. But they were drinking and that's when they started getting forceful. I made 2 more statements later that day. I will take a polygraph test to prove I'm not lying about the drinking or the force they used. They also told me that greg gardner picked me out so I might as well say I did it and get a life sentence. They also asked me why lat shot the girl in the face before I made the last 2 statements. I said in one of the statements that I did it. In the 3rd statement after they gave me a few details, I said I shot her, to get them off my back. I went thru more quuestions than I thought I would. After I went back to my cell after I gave the second statement I was so tired I just gave in to them. . . .

Soffar I, 368 F.3d at 458-59 (quoting Mr. Soffar's original handwritten letter) (all errors in original). Reviewing this letter, Dr. Leo explains in his affidavit:

[it] is well-documented in the empirical social science research literature that the psychologically coercive interrogation techniques described by Mr. Soffar can, and sometimes do, lead to false confessions. Put differently, these techniques create a risk of eliciting false confessions when misapplied to the innocent. These coercive interrogation techniques are usually the primary explanation for why innocent individuals falsely confessed to crimes they did not commit.

(*Id.*). In sum, the interrogation tactics Mr. Soffar described have a proven track record of causing false confessions.

Here, and as said at the start, the police statements Mr. Soffar signed are false confessions; there is nothing whatsoever to suggest otherwise. Each statement narrates a story that is utterly inconsistent with the facts. He signed those statements only after an extraordinarily lengthy three-day interrogation during which he was subjected to powerful psychological and physical pressure. And the effects of that pressure were pronounced by Mr. Soffar's inherent mental impairments that make him borderline mentally retarded. That the State of Texas has not acknowledged the falsity of the statements is astounding. But even if the

State decides, for whatever reason, that it cannot publicly accept that an innocent man has spent his entire life on death row for a crime he did not commit, the State does have the chance to do something now: it can show Mr. Soffar mercy and allow him to die at home with the medical care that he needs rather than alone in a cell in excruciating pain.

II. PAUL DENNIS REID COMMITTED THE CRIME FOR WHICH MR. SOFFAR HAS BEEN UNJUSTLY SENTENCED TO DIE.

If Max Soffar did not commit the bowling alley murders, then who did? The answer is one that Mr. Soffar's jurors never heard: Paul Dennis Reid. Much of the evidence against Mr. Reid—his confession, his description, his lack of an alibi, and his signature *modus operandi*—were known to trial counsel prior to his retrial. But the piece of the puzzle that retrial counsel did not know, was the testimony of an eye witness—Patrick Pye—who, as explained below, gives the ultimate motive for Mr. Reid's brutal crime.

Paul Dennis Reid was a serial killer who was eventually caught in Tennessee and received seven death sentences for committing robbery-murders in an almost identical fashion to the bowling alley crime. Although Mr. Reid died last year, taking his many secrets to the grave,

before he died he left a treasure trove of evidence conclusively establishing that he committed the bowling alley crime.⁴

The direct evidence against Mr. Reid is conclusive. *First*, Mr. Reid has confessed to the crime. He made his confession to his long-time accomplice, Stewart Cook, with whom he committed thirty-to-forty armed robberies in Houston in the early 1980's. During one of those robberies, Mr. Reid fired a gun and Mr. Cook demanded an explanation. As Mr. Cook has sworn in an affidavit:

Paul [Reid] brushed it off, telling me he'd done much worse during a robbery he had committed before [they had] started working together. Specifically, [Reid] said that ***he once had a 'problem' while he was robbing a bowling alley out on Route 290, and he had shot 'four people.'***"

(Exhibit D.) The bowling-alley murders occurred at a bowling alley on Route 290 during which four people were shot.

Second, Mr. Reid's confession is corroborated by his threat to shoot one of the bowling alley victims in the head only a few days before the crime took place. Patrick Pye, who worked at the bowling alley at the time

⁴ At the time of his death, Mr. Reid remained a suspect in other Texas crimes too. Texas Ranger Jim Hicks continued to investigate Mr. Reid's Texas crimes until only recently learning he had died.

of the murders, has identified Mr. Reid as present at the bowling alley in the days before the murders happened.⁵ (Exhibit E.) As he described him, Mr. Reid was twenty-two or twenty-three years of age, 6'1 or 6'2, with a strong build—which matches precisely Mr. Garner's description of the robber.

Mr. Pye did not merely identify Mr. Reid as being present at the bowling alley; he identified Mr. Reid as the person who threatened to kill Mr. Sims—one of the victims—only days before the murders took place. As he explained in a sworn affidavit: Mr. Pye and Mr. Sims had to physically eject Mr. Reid from the ally one night shortly before the murders when he refused to pay. A few days later, Mr. Reid called the bowling alley and said: “we had better have eyes in the back of our heads, because ***I'm going to blow your heads off.***) (*Id.*) Mr. Reid made good on his promise.

Although Mr. Pye made his identification many years after the killings, he reported the threat to the police the day after the murders. As

⁵ Mr. Pye is not the only person who saw Mr. Reid at the bowling alley in the weeks prior to the murders. Danny Dain testified that he saw Mr. Reid at the bowling alley at least two or three times a week, indicating that he remembered this well because “no one could mistake Paul's eyes, even after all these years.” And Thomas Cadena has also attested to having seen Mr. Reid, or a person matching his description, at the scene of the crime.

reflected in an offense report, he told the police that he could identify the perpetrator:

Pye also wanted to add that he and the #2 compl. Steve Sims, had a 'run in' with an unk WM [unknown white male] and **THEY HAD TO PUT HIM OUT OF THE BOWLING ALLEY FOR THE NIGHT.** Pye stated that he got a phone call from this man who stated 'you better be watching over your shoulder.' ***Pye stated that he felt that he would be able to id this man if he saw him again.***

(Exhibit F (emphasis added).) Mr. Pye has now identified that person: When shown a picture of Mr. Reid (set forth below), he identified him as the person he told the police about in 1980.

[T]he groom in the photograph is in fact the person that threatened me and Steve Sims about a week prior to the shootings at the bowling alley. ***I am sure that the person in the wedding photograph, [Mr. Reid], as well as in a second photograph (Attachment B [to the affidavit]) is the same man we threw out of the bowling alley for not paying.***⁶

(*Id.*) The police failed to follow up on Mr. Pye's statement. Mr. Soffar's trial counsel also failed to do so, a failure that flew in the face of prevailing professional norms and constituted ineffective assistance of counsel.

⁶ The second photograph Mr. Pye refers to in his affidavit is an arrest photograph of Paul Reid, which is attached to his affidavit. (Exhibit F.)

Instead, Mr. Pye's statement lay in storage until discovered approximately thirty years later by habeas counsel.

Trial counsel did, however, have a wealth of circumstantial evidence implicating Mr. Reid. Yet, as a result of egregious federal constitutional errors on the part of the trial court (and trial counsel's ineffectiveness), the jury heard none of it. Had they done so they would have heard, *first*, that Paul Reid matches to a tee the description of the bowling alley killer. The sole surviving victim, Greg Garner, described the killer as a clean-shaven, white man, just over six feet tall, with light brown hair that fell just below his ears but not touching his collar. The man was stronger and heavier than Mr. Garner, a teen who weighed 155 pounds. Paul Reid, who was in Houston at the time of the killings, was twenty-two or twenty-three years of age, 6'1 or 6'2, with a strong build. Mr. Reid also matches the composite image that Mr. Garner created and that was distributed to the media:



The picture of Mr. Reid shown above was taken at his wedding on July 23, 1980, *only ten days after he committed the bowling alley crime*. By contrast Mr. Soffar bore no relation to the composite.



Second, Mr. Reid was in Houston in July 1980. Notably, while he was present for his wedding, he was not with his future-wife on the night the bowling alley robbery took place. Indeed, to the best of counsel's knowledge, no one can account for Mr. Reid's whereabouts on July 13.

Lastly, Mr. Reid—unlike Mr. Soffar—was a serial armed robber who, when he moved to Tennessee, became a serial killer. He moved to Tennessee in 1996 after serving eight of a twenty-year sentence for robbing cash rich establishments, just like the bowling alley, in and around Houston. Having failed to fulfill his dream of becoming a country-western star, he fell back into his pattern of committing robberies using a distinctive *modus operandi*.

Attached as Exhibit G is an affidavit by the Tennessee detective, Patrick Postiglione, who eventually caught Mr. Reid and who became intimately familiar with his horrific body of work. As he explains, Mr. Reid committed his crimes using the same pattern: (1) he gained entry to an establishment on a weekend when it was closed but the employees were still there to let him in, (2) in two instances, he gained entry using a ruse, (3) he did not wear a disguise, and (4) he killed or attempted to kill all of the employees who were present, with a preference for shooting them execution-style in the head as they lay face down. (*Id.*)

Mr. Reid committed the bowling-alley crime in precisely the same way: (1) He gained entry to the bowling alley on a weekend when it was closed but the employees were still there to let him in, (2) he gained entry using a ruse (the need for water for his car), (3) he did not wear a disguise, and (4) he forced all four victims to lie face-down on the floor before executing them with one shot to the head.

That the jurors who were to decide Mr. Soffar's fate were prevented from hearing anything about Paul Reid is just one of the many injustices in this case. They did not hear that Mr. Reid was present in Houston at the relevant crime; they did not hear that Mr. Reid had no alibi; they did

not hear that Mr. Reid—unlike Mr. Soffar—matched the surviving victim’s description; they did not hear that Mr. Reid had committed numerous robbery-murders using the same *modus operandi*; they did not hear that Mr. Reid had confessed to the crime; and, perhaps most shockingly, they did not hear that Mr. Reid had threatened to kill one of the victims only days before the robbery. What may have started out as a mystery is now an airtight case: but it is not a case against Max Soffar; it is a case against Paul Reid. It was unquestionably Mr. Reid who shot the four youths at the bowling alley, killing all but Greg Garner. For Mr. Soffar to die in excruciating pain while incarcerated for a crime that another man committed is an injustice that must be rectified, if nothing else, by a grant of clemency.

II. CLEMENCY MUST BE GRANTED NOW LEST AN INNOCENT MAN DIE A PAINFUL AND INHUMAINE DEATH.

Mr. Soffar is dying of untreatable cancer and has as little as two months to live. He was first told of his condition only a few weeks ago by doctors at John Sealy Hospital in Galveston. His diagnosis and prognosis has now been confirmed by three eminent physicians, each of whom have submitted letters that are attached to this petition. (Exhibits H, I, and J.)

As one of those physicians, Abigail Seigel, the Medical Director of Hepatobiliary Oncology at Columbia University Medical Center, explains:

[Mr. Soffar] has terminal liver cancer that has spread, in the form of an inoperable tumor, to his right portal vein. There appears to be ***no medical question of whether Mr. Soffar will die from this condition, only a question of how long he has to live.***

(Exhibit H.)

Mr. Soffar has battled against liver cancer since at least 2013 when he was first diagnosed with hepatocellular carcinoma, or “HCC.” The relevant portions of his medical records are attached as Exhibit K. In an effort to cure that cancer, he underwent surgery to remove two tumors last December. But, as it turned out, the surgery was unsuccessful. Although one tumor was removed, there was a vessel too close to the other tumor for it to be safely removed. The surgeon decided, instead, to perform a microwave ablation, a surgical method by which the tumor is burnt. (*Id.*)

Although Mr. Soffar recovered well from his surgery, he began, in June 2014, to experience severe abdominal pain. A CT scan showed a blockage (a “thrombi”) in his right portal vein. Doctors suspected that the blockage was caused by a tumor. Their suspicions were confirmed by an MRI scan. The type of tumor that Mr. Soffar has is untreatable,

inoperable, and inevitably fatal. (*Id.*) Recent blood tests confirm that Mr. Soffar's tumor is growing and his cancer is advancing. (*See Exhibit H.*) At this point, Mr. Soffar's cancer is already Stage C, or advanced.

Admittedly, life expectancy is often difficult to estimate and depends on a variety of factors. In this case, perhaps most significant factor is the availability of a drug, Sorafenib, that might potentially prolong Mr. Soffar's life. (*Id.*) It is, however, far from certain that it will do so and it is far from certain whether Mr. Soffar can tolerate the drug, particularly under the extremely restrictive conditions of death row. But even if he can, Sorafenib is merely a way of delaying the inevitability of a painful death; it is not a cure. (*Id.*)

And it comes at a price. The side effects include bleeding problems, nausea, diarrhea, patchy hair loss/thinning, loss of appetite, dry skin, dry mouth, hoarseness, and tiredness. (*Exhibit L.*) Assuming Mr. Soffar is able to cope with those potentially debilitating symptoms—and, given the conditions of his incarceration, it is unlikely that he will be able to do so—studies of patients in the “free world” show that only fifty percent of HCC patients that are able to tolerate the side effects of Sorafenib survived more than just over ten months. (*Exhibit J.*) Of patients who cannot

tolerate those side effects, only fifty percent survived six to seven months. (*Id.*) If Mr. Soffar becomes confined to his bed for more than half of the day or if his liver function continues to deteriorate, he can expect to be dead within three months. (Exhibit H.)

The conditions in which Mr. Soffar is confined will almost certainly hasten his death. He is currently confined in a sixty-square foot cell for up to twenty-three hours per day with limited visitation. (Exhibit M.) As his health deteriorates, it is likely that he will be transferred to a separate part of death row, but with the same size cell and same limitations. Eventually, Mr. Soffar will probably find himself in John Sealy Hospital in Galveston. At this point, his visitation rights will be severely curtailed such that even his wife—the only family member with whom he now has contact and perhaps the only person in this world who loves him unconditionally—will not be able to even visit him, much less hold his hand and provide him with the love and support that all dying people need and deserve at the end of their lives. Mr. Soffar acknowledges the tragedy of the victims, who also were deprived the comfort of loved ones while they died in the bowling alley, and whose family members never had a chance to say goodbye. But it is time for the State to acknowledge that Paul Reid

caused that tragedy, and his crime is no reason to deny Max Soffar justice and mercy as he dies.

Allowing Mr. Soffar to enjoy the love and support of his wife is the merciful and just thing to do. Even for free persons who can count on the physical and emotional support of their close family and loved ones, HCC causes great suffering as death approaches. As the experts, based on their decades of experience, note in their letters, Mr. Soffar can expect that his abdominal pain will become more and more severe. (*See, e.g., Exhibit H.*) Indeed, that pain has already become so severe that Mr. Soffar has been prescribed morphine, a narcotic that doctors reserve to treat only the most severe pain. As that pain becomes ever less manageable, it will inevitably be accompanied by internal bleeding, infections, and neurological deterioration. In all likelihood, Mr. Soffar will become confused and unable to care for himself in any respect. No matter what, he will require intensive medical care in his dying weeks. No rational person can dispute that the palliative care of a dying man—particularly an innocent one—would be better accomplished in the free world.

The days and hours of intense suffering and isolation that Mr. Soffar is forced to face might be only a few weeks away. For that reason, if

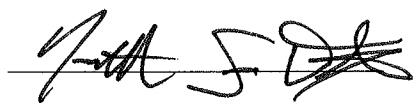
clemency is to be granted—and it should be granted—it must be granted now. Accordingly, Mr. Soffar respectfully submits that the Board and Governor should act immediately lest it becomes too late for justice and mercy to be done.

CONCLUSION

For a man to die a painful death unable, through no fault of his own, to vindicate himself and prove his innocence is something that a just society should not allow. Nor should a dying man be haunted by the specter of a death sentence imposed upon him for a crime he did not commit. But that is the position in which Mr. Soffar finds himself and in all likelihood the Governor and the Board are the only state actors who can do something about it. But time is not on anyone's side. In the next few weeks, Mr. Soffar's condition will inevitably deteriorate and he will become ever more ill and suffer ever more pain. At some point—perhaps in as little as two months—he will be dead and it will be too late for Texas to show him the mercy that he so desperately needs and deserves. Accordingly, and for all of the reasons outlined above, Mr. Soffar respectfully asks that the Governor, at the Board's recommendation,

commute the sentence of death to life which, based on the year of the crime, will make Mr. Soffar immediately eligible for release on parole.

Respectfully submitted



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STATEMENT OF PERSON IN CUSTODY

S-110
53
3-20-81

Date August 7th, 1980

Time 8:37 PM

Statement of Max Alexander Soffar
taken in Harris County, Texas.

Prior to making this statement I have been warned by Detective J.W. Ladd, the person to whom

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this statement is made, that:

- 1) I have the right to remain silent and not make any statement at all and any statement I make may and probably will be used against me at my trial;
- 2) Any statement I make may be used as evidence against me in court;
- 3) I have the right to have a lawyer present to advise me prior to and during any questioning;
- 4) If I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and;
- 5) I have the right to terminate the interview at any time.

Prior to and during the making of this statement I knowingly, intelligently and voluntarily waive the rights set out above and make the following voluntary statement:

My name is Max Soffar. I have been in jail since Tuesday morning for this bowling alley deal. I gave two previous statements, one to detective Schultz and one to detective Ladd. I didn't tell the whole truth in those statements and want to now so that I don't take this whole thing by myself.

~~One thing that I didn't tell the truth was that Lat Bloomfield and I did this thing when we first got to the bowling alley, not like I said about being there in the parking lot for awhile. Lat drove in and we were in his brown thunderbird. Lat pulled right to the front door so that the passenger side was next to the bowling alley. I think that there was a couple of cars in the parking lot when Lat pulled to the door. Lat pulled a stocking over his hair so that his hair would be pulled back. I pulled up my t shirt over my nose and mouth. Lat had his 357 revolver which I think is an R-G model. This gun had about a three inch barrel. He had the gun under his shirt when we walked in a guy asked what we were doing. Lat pulled the revolver and stuck it in this guys face and said, "This is a robbery." Lat pulled this guy by the hair and made him get down on his knees. Three other people were over by the snack bar and they saw the man on his knees and xx walked up. This was two dudes and a girl. Lat told them to get on the floor and if they didn't do what he told them that he would shoot this first guy who was already on the floor. They got down on their knees away from the counter and Lat made them come back closer to the control counter and they did. They were laying from the door so that there was a dude and then a girl and then another dude and then the last dude. The second dude was trying to look up and Lat told him not to be looking and to turn around and lay facing the way all the others were. He then turned around so that they were all facing back towards the snack bar. The second dude kept looking around so Lat fired a warning shot into the floor. The girl screamed and then Lat told her to shut up and she kept screaming. Lat kicked the girl in the back and then the second dude who was the one who kept looking up started to raise up. He was about half way up when Lat shot him in the back of the head. Then Lat just turned around and shot the third dude. This third dude was the first one Lat grabbed and made get on the floor. He shot him the same way as the first one that he shot. Lat threw me the gun and told me to shoot the other two. I hesitated and then he said, "Shoot them now." I aimed the gun and the other guy who was still left who was closest to the door and fired one time. I hit him in the back of the head behind the ear. I walked around the other side of them and hesitated and Lat said, "Shoot her." She had her face down and she just looked up at me and I aimed and turned my head and shot her. I think I hit her in the cheek. I had the gun and ran around and looked in the cash register over by where you get the shoes. I got all the bills and a little of the change and then went to the office but the door was locked. I went over to the cash register by the snack bar and took bills out of it too. I put the money in my pockets. I went back by the office and tried to force the door open but I couldn't get it opened.~~

X Max Soffar
Signature of Person Making Statement

Sybil J. Gorman 8-7-80 9:25 PM
Witness

Stanley D. Hollins 8-7-80 9:25 PM
Witness

STATEMENT OF PERSON IN CUSTODY

Date August 7th, 1980

Time 8:37 PM

Statement of Max Alexander Soffar
taken in Harris County, Texas.

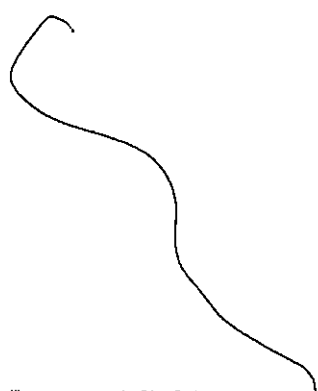
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Prior to making this statement I have been warned by Detective J.W. Ladd, the person to whom this statement is made, that:

- 1) I have the right to remain silent and not make any statement at all and any statement I make may and probably will be used against me at my trial;
- 2) Any statement I make may be used as evidence against me in court;
- 3) I have the right to have a lawyer present to advise me prior to and during any questioning;
- 4) If I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and;
- 5) I have the right to terminate the interview at any time.

Prior to and during the making of this statement I knowingly, intelligently and voluntarily waive the rights set out above and make the following voluntary statement:

MS
~~Lat was looking under the counter for a money bag and I think he got 50 or 60 dollars. He walked over by the office and I told him I thought I saw some headlights. I went outside but I didn't see anyone so when I came back in Lat was rumageing through their pockets and took the wallets out of their pockets. He took the money and I think that he kept the wallets. We looked around to make sure that nobody was looking and we didn't see anybody. I asked him if he wanted to check in the back and he said no. So, we looked in the bathrooms making sure no body was in there. Then we left. I still had the gun. Lat drove and we had the windows down to his car. He made a right on the highway and drove down for a little bit and then turned around and came back past the bowling alley. I asked him why he shot the dudes and he said he shot the dude for raising up and playing hero. He said he made me shoot the other two so that I would be as guilty as him if we got caught. I put the gun under the front seat after I reloaded it and it only had one live bullet in it before reloading. I don't know where the gun is now. The last time I saw the gun was I believe last Saturday night and Lat had it at that time. We went to score some pills and got ~~XXXXXX~~ 24 pills over at the dope house. These were preludins. After the gas and pills I got 95 dollars out of the deal and I think Lat got a lot more. We went to my house and did some preludin and Lat said he was afraid someone had seen his car so he went and took it home. He walked back over to my house that night and we did the rest of the pills. We stayed up all day and went out to the park the next day. I was scared and that is the reason that I did not tell the whole truth before and I feel like shit and feel bad about what happened and ought to take my punishment for it. I think Lat and me both ought to pay for what we did. M.S.~~

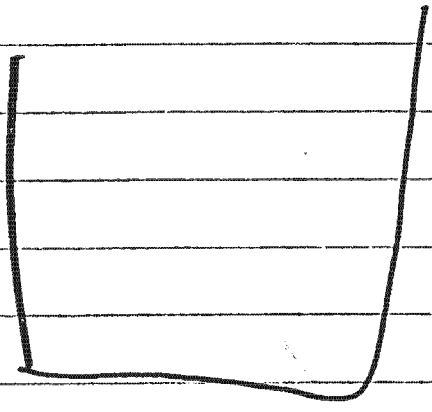


Max Soffar
Signature of Person Making Statement

Sylvia J. Wilson 8-7-80 9:25 PM
Witness

Stanley D. Hollins 8-7-80 9:25 PM
Witness

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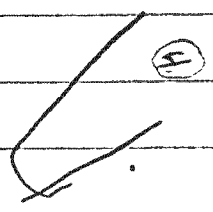
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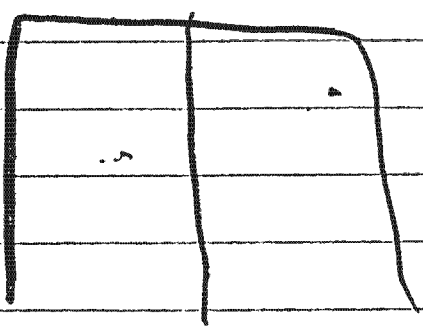
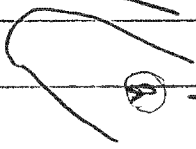
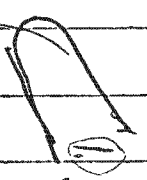


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IN THE COURT OF CRIMINAL
APPEALS OF TEXAS

AND

IN THE 23RD DISTRICT COURT
OF HARRIS COUNTY, TEXAS

EX PARTE

MAX ALEXANDER SOFFAR,

Applicant

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Indictment No. 319724

CCA Writ No. 29,980-03

AFFIDAVIT OF DR. RICHARD A. LEO, PH.D., J.D.

I, Richard A. Leo, hereby declare as follows:

I. Qualifications

1. I am presently employed as an Associate Professor of Law at the University of San Francisco, School of Law. From 1997-2006, I was employed as an Associate Professor of Criminology and an Associate Professor of Psychology at the University of California, Irvine. From 1994-1997, I was employed as an Assistant Professor of Sociology and an Adjunct Professor of Law at the University of Colorado, Boulder.
2. My educational background is as follows: I received a Ph.D. in Jurisprudence and Social Policy (specialization in Criminology and Social Psychology) from the University of California, Berkeley in 1994; a J.D. from the University of California, Berkeley in 1994; a M.A. in Sociology from the University of Chicago in 1989; and a B.A. in Sociology from the University of California, Berkeley in 1985.
3. I am an expert in the area of police interrogation practices, the psychology of police interrogation and suspect decision-making, psychological coercion, false confessions, and wrongful convictions. For almost two decades, I have been conducting empirical research and writing numerous articles and books on the

subjects of police interrogation, psychological coercion, false confession, and wrongful conviction. In this time, I have analyzed more than 2,000 real world interrogations. I am the author of several books, including *Police Interrogation and American Justice* (Harvard University Press, 2008), and more than 50 articles and book chapters, many in leading legal and social science journals. I have won several awards for my publications, and my scholarship has often been featured in the news media and cited by appellate courts. To date, I have consulted with criminal and civil attorneys on more than nine-hundred (900) cases involving disputed interrogations and/or confessions, and I have been qualified as an expert witness one-hundred sixty-eight (168) times in state, federal and military courts in twenty-five (25) states, including the State of Texas, at pre-trial suppressions motions, jury and bench trials, and post-conviction proceedings. I have testified for the defense, for the prosecution, and in civil cases. I have given numerous lectures to judges, defense attorneys, prosecutors, and other criminal justice professionals. I have also taught interrogation training courses and/or given lectures to police departments in America, China, and the Republic of Cypress.

4. I have been retained by Kirkland & Ellis on behalf of Max Soffar in this case. I am charging a reduced rate of \$200/hour for my time. A current copy of my Curriculum Vitae is attached to this Affidavit as Exhibit A.
5. A list of the materials I reviewed for this case is attached to this Affidavit as Exhibit B.

II. The Social Scientific Study of Police Interrogation and Confessions

6. There is a well-established field of research in the academic disciplines of psychology, criminology, and sociology on the subject of police interrogation practices, coercive influence techniques, and confessions. This research dates back to 1908; has been the subject of extensive publication (hundreds of articles, books, and book chapters) in peer reviewed journals; is based on generally accepted principles, methods, and findings; is capable of validity testing; and has been generally accepted as valid in the relevant scientific community.
7. The subject of police interrogation and false confessions is beyond common knowledge and something about which the public has misconceptions. Most people do not know that police detectives receive highly specialized training in psychological interrogation techniques, what these techniques are, or how the techniques are designed to work (i.e., move a suspect from denial to admission). In addition, most people also do not know what psychological coercion is, why some techniques are regarded as psychologically coercive, and what their likely effects are. Moreover, most people do not know which interrogation techniques create a risk of eliciting false confessions when applied to innocent suspects or how and why the psychological process of police interrogation can, and sometimes does, lead the innocent to falsely confess. In fact, most people are

skeptical that innocent suspects will give or agree to false confessions to serious crimes in response to purely psychological interrogation techniques in the absence of a suspect's physical torture or mental illness. This is because people view confessing falsely to a crime as an irrational and self-destructive act. Most people have no direct knowledge of, or experience with, psychological police interrogation, and do not believe that they themselves could be made to falsely confess unless tortured. This skepticism and relative ignorance causes most people to assume that virtually all confessions are true and to presume that any defendant who has confessed is therefore likely guilty. Confession evidence (even false confession evidence) is therefore highly prejudicial, and once a confession is introduced into evidence against a suspect at trial, it almost inevitably leads to a suspect's conviction. Underscoring the prejudicial nature of confession evidence is that studies show that individuals who falsely confessed and chose to take their case to trial were convicted by juries 73-81% of the time before having their innocence proven.

III. The Social Psychology of Police Interrogation

8. Once patrol officers receive the rank of detective, they typically receive intensive training in the practice and law of interrogation and thereafter learn to apply, refine, and hone their interrogation skills through extensive case experience, supervision, and/or additional training. Police interrogation is a cumulative, structured, and time-sequenced process in which detectives draw on an arsenal of psychological techniques in order to overcome a suspect's denials to elicit incriminating statements, admissions, and/or confessions. This is the sole purpose of custodial interrogation. To achieve this purpose, interrogators use techniques — all of which are generally legal — that seek to influence, persuade, manipulate, and deceive suspects into believing that their situation is hopeless and that their best interest lies in confessing. Sometimes, however, interrogators cross the line and employ techniques and methods of interrogation that are coercive and thus regarded as legally impermissible.
9. Contemporary American interrogation methods are structured to persuade a rational person who knows he is guilty to rethink his initial decision to deny culpability and instead choose to confess. Police interrogators know that it is not in any suspect's rational self-interest to confess. They expect to encounter resistance and denials to their allegations, and they know that they must apply a certain amount of interpersonal pressure and persuasion to convince a reluctant suspect to confess. As a result, interrogators have, over the years, developed a set of subtle and sophisticated interrogation techniques whose purpose is to alter a suspect's perceptions such that he eventually comes to see the act of confessing as being in his self-interest. Interrogators accomplish this by persuading a suspect to view his immediate situation differently, by focusing his attention on a limited set of choices and alternatives, and by convincing him of the likely consequences that attach to each of these choices. If successful, this process unfolds in two steps: first, the interrogator causes the suspect to view his situation as hopeless; and,

second, the interrogator persuades the suspect that only by confessing will the suspect be able to improve his otherwise hopeless situation.

STEP ONE: *The Hopeless Situation*

10. The first step, or stage, of successful interrogation consists of causing a suspect to view his situation as hopeless. If the interrogator is successful at this stage, he will undermine the suspect's self-confidence and cause the suspect to reason that there is no way for him to escape the interrogation without incriminating himself. To accomplish this, interrogators accuse the suspect of having committed the crime; they attack and try to undermine a suspect's assertion of an alibi or verbalization of innocence (pointing out or inventing logical and factual inconsistencies, implausibilities, and/or impossibilities); they exude unwavering confidence in their assertions of the suspect's guilt; they refuse to accept the possibility of the suspect's denials; and, most importantly, they confront the suspect with incontrovertible evidence of his guilt, whether real or non-existent. Because interrogation is a cumulative and time-sequenced process, interrogators often draw on these techniques repeatedly and/or in succession, building on their earlier accusations and representations at each step in the interrogation process.
11. Through the use of these techniques, the interrogator communicates to the suspect that he has been caught, that there is no way he will escape the interrogation without incriminating himself, and that his future is determined — that regardless the suspect's denials or protestations of innocence, he is going to be arrested, prosecuted, convicted, and eventually incarcerated. The interrogator seeks to convince the suspect that this is a fact that has been established beyond any doubt, and thus that any objective person must necessarily reason to this conclusion. By persuading the suspect that he has been caught, that the existing evidence or case facts objectively prove his guilt, and that it is only a matter of time before he will be prosecuted and convicted, the interrogator seeks to alter the suspect's perceptions such that he comes to view his situation as hopeless and comes to perceive that resisting the interrogator's demands is futile.

STEP TWO: *Inducement Of A Confession*

12. Once the interrogator has caused the suspect to understand that he has been caught and that there is no way out of this predicament, he seeks to convince the suspect that the only way to improve his otherwise hopeless situation is by confessing to the offense(s) of which he is accused. The second step of successful interrogation thus consists of offering the suspect inducements to confess — reasons or scenarios that suggest the suspect will receive some personal, moral, communal, procedural, material, or other benefit if he confesses to some version of the offense. Researchers have classified the types of inducements investigators use during the second step of interrogation into three categories: *low-end* inducements, *systemic* inducements, and *high-end* inducements.

Types of Inducement

13. *Low-end* inducements refer to interpersonal or moral appeals the interrogator uses to convince a suspect that he will feel better if he confesses. For example, an interrogator may tell a suspect that the truth will set him free if he confesses, or that confessing will relieve his anxiety or guilt, or that confessing is the moral or Christian thing to do, or that confessing will improve his standing in the eyes of the victim or the eyes of the community.
14. *Systemic* inducements refer to appeals that the interrogator uses to focus the suspect's attention on the processes and outcomes of the criminal justice system in order to get the suspect to come to the conclusion that his case is likely to be processed more favorably by all actors in the criminal justice system if he confesses. For example, an interrogator may tell a suspect that he is the suspect's ally and will try to help him out — both in his discussions with the prosecutor as well as in his role as a professional witness at trial — but can only do so if the suspect first admits guilt. The interrogator may also ask the suspect how he expects the prosecutor to look favorably on the suspect's case if he does not cooperate with authorities. In a further variation, the interrogator may ask the suspect what a judge and jury are really going to think, and how they are likely to react, if he does not demonstrate remorse and admit his guilt to authorities. Interrogators often couple the use of systemic incentives with the assertion that this is the suspect's one and only chance — now or never — to tell his side of the story; if he passes up this opportunity, all the relevant actors in the system (police, prosecutor, judge, and jury) will no longer be open to the possibility of viewing his actions in their most favorable light. Interrogators rely on *systemic* inducements to persuade the suspect that the justice system naturally confers rewards for those who admit guilt, demonstrate remorse, and cooperate with authorities; whereas it inevitably metes out punishment for those who do not.
15. *High-end* inducements refer to appeals that directly communicate that the suspect will receive less punishment, a lower prison sentence, and/or some form of police, prosecutorial, judicial, or juror leniency if he complies with the interrogator's demand that he confess. If, however, he does not comply with the interrogator's demand that he confess, the suspect will receive a higher sentence or greater punishment. *High-end* inducements may either be implicit or explicit: the important question is whether the interrogation technique communicates the message, or is understood to communicate the message, that the suspect will receive a lower criminal charge and/or lesser punishment if he confesses as opposed to a higher criminal charge and/or greater amount of punishment if he does not. For example, interrogators sometimes try to persuade suspects that their behavior was merely an accident, or a reasonable response to the victim's provocation, or an act of self defense. By portraying the suspect's behavior as an accident or reasonable response to provocation, the interrogator communicates that the suspect did not intend to harm the victim, that the act was therefore not a crime or a significantly lower lever of crime, and that the suspect will therefore

receive little or no punishment if he agrees to the interrogator's version of what happened. By portraying the suspect's behavior as self-defense, the interrogator communicates that no crime at all even occurred and that the suspect will receive no punishment at all if he agrees to this version of what happened (since self-defense is not a crime, but a legally excused response to physical aggression).

16. Sometimes interrogators use more explicit *high-end* incentives, such as telling a suspect that there are several degrees of the alleged offense, each of which carry different amounts of punishment, and asking the suspect which version he would like to confess to. Or the interrogator may explicitly tell the suspect that he will receive a long prison sentence, or perhaps even the death penalty, if he does not confess, and/or may point out what happens to men of his age, or men accused of crime, in prison if he does not confess to the interrogator's minimized account. Sometimes interrogators who rely on *high-end* inducements will present the suspect with a simple two choice situation (good vs. bad): if the suspect agrees to the good choice (a minimized version of the offense, such as involuntary manslaughter or self-defense), he will receive a lower amount of punishment or no punishment at all; but if does not confess, criminal justice offices will impute to him the bad choice (a maximized version of the offense, such as pre-meditated first degree murder), and he will receive a higher level of punishment or perhaps the harshest possible punishment. (This technique is sometimes referred to in the academic literature as the maximization/minimization technique). The point of *high-end* inducements is to communicate to a suspect that it is in his rational self-interest to confess to the minimized or non-incriminating version of the offense that the interrogator suggests. It is in the suspect's rational self-interest to do so because he will receive a lower charge, a lesser amount of punishment, and/or no time in prison. If he fails to confess, however, he will receive a higher charge, a greater amount of punishment, and more time in prison, perhaps even the death penalty (although it is rare that interrogators these days ever threaten a suspect with receiving the death penalty if he does not confess).
17. To evaluate whether a particular interrogation is coercive, experts must determine the facts of the case and then analyze these facts in light of the extensive social science research literature on the social psychology of interrogation and confession. The expert must evaluate whether any of the interrogator's techniques, methods, or strategies were coercive by applying the generally accepted findings of the social science research literature on the subject of interrogation, coercive influence techniques, and false confessions to the specific facts of the case. In particular, the expert must determine whether the interrogator used any techniques that communicated, either implicitly or explicitly, that the suspect would receive a lower sentence, a lesser amount or type of punishment, or perhaps no punishment at all if he complied with the interrogator's demands and/or receive a higher amount or type of punishment — or perhaps the harshest punishment possible — if he did not comply with the interrogator's demands. Social science research has repeatedly demonstrated that some *systemic* inducements (depending on the content of the inducement, how explicitly or

vaguely it is stated, and the message that it communicates) and all *high-end* inducements are coercive because they rely on implicit and/or explicit promises of leniency and threats of harm to induce compliance. Such promises of leniency and threats of harm are not only regarded as coercive in the social science literature because of the messages they convey and their demonstrated impact on the decision-making of individuals, but they are also regarded as legally impermissible by courts. The expert may also evaluate whether the interrogation techniques, either individually or cumulatively, had the effect of causing a suspect to perceive he had no choice but to comply with the demands of the interrogator and thus whether the interrogation, in effect, overbore his will.

IV. Police-Induced False Confessions

18. In addition to evaluating whether an interrogation was coercive and overbore the will or decision-making ability of a custodial suspect, interrogation and confession experts are sometimes also asked to evaluate the factors that can lead to false confessions from the innocent, and to assess the likelihood that a false confession was elicited in a particular case. As mentioned above, social science researchers have demonstrated that, contrary to public misperceptions, false confessions from the innocent occur regularly; that psychological methods of interrogation can and do cause the innocent to sometimes confess falsely; that certain methods of interrogation — particularly methods known or demonstrated to exert a coercive effect — are correlated with the likelihood of a false confession; and that there are established principles with which to evaluate the likely reliability of confessions. In addition, social scientists have identified three different types of false confessions: *voluntary* false confessions (made in response to minimal or no police pressure); *compliant* false confessions (given to terminate the stressful, punishing and/or coercive experience of interrogation by a suspect who privately knows that he is innocent); and *persuaded* false confessions (given by a suspect who comes to doubt the reliability of his memory and comes to believe that he or she may have committed the offense. *Compliant* and *persuaded* false confessions may be either coerced or non-coerced.
19. Although psychological coercion is the primary cause of interrogation-induced false confession, some types of individuals — particularly the mentally handicapped and/or cognitively impaired, juveniles and the mentally ill — are more vulnerable to the pressures of interrogation and therefore less likely to possess or be able to muster the psychological resources or perspective necessary to withstand accusatorial questioning. In particular, the mentally handicapped and impaired possess personality characteristics that increase their risk of interrogation-induced false confession. Because of their cognitive deficits and limited social skills the mentally handicapped and cognitively impaired are slow thinking, easily confused, concrete (as opposed to abstract) thinkers, often lack the ability to appreciate the seriousness of a situation, may not understand the long-term consequences of their actions, and tend to have short attention spans, poor memory and poor impulse control. The mentally handicapped and

cognitively impaired also tend to be highly submissive (especially eager to please authority figures), compliant, suggestible, and responsive to stress and pressure. As a result, the mentally handicapped are disproportionately represented in the reported false confessions cases. Notwithstanding this fact, the vast majority of reported false confessions are from cognitively and intellectually normal individuals.

20. Regretfully, most police interrogators receive no training about the problem and consequences of police-induced false confessions in the American criminal justice system. Most police receive no training in the basics of false confessions (i.e., that normal people can be made to falsely confess in response to contemporary psychological police interrogation methods). Most police are not taught which of their techniques are likely to cause false confessions and why, how to recognize false confessions, or how to prevent false confessions from occurring in the first place. As a result, most police interrogators appear to share the public misconception that false confessions only occur in response to torture or if the suspect is mentally ill, and most police interrogators refuse to acknowledge the possibility that they may have elicited a wholly or partially false incriminating statement, admission and/or confession in one of their cases.

***V. Evaluating the Reliability of Incriminating
Statements, Admissions and Confessions:
The Principles of Post-Admission Narrative Analysis and
Incriminating Statements, Admissions and Confessions***

21. Social science researchers apply well-known, well-established and widely accepted principles of analysis to evaluate the likely reliability or unreliability of an incriminating statement, admission or full confession from a suspect. To evaluate the likely reliability of such statements, researchers analyze the *fit* between the subject's *post-admission narrative* (the account or story the suspect tells following the "I did it" admission statement) and the crime facts and/or corroborating evidence derived from the confession (e.g., location of the missing murder weapon, loot from a robbery, the victim's missing clothing, etc.).
22. The purpose of evaluating the fit between a suspect's post-admission narrative and the underlying crime facts and derivative crime evidence is to test the suspect's actual knowledge of the crime. If the suspect's post-admission narrative corroborates details only the police know (i.e., have not been made public), leads to new or previously undiscovered evidence of guilt, explains apparent crime fact anomalies, and/or is corroborated by independent facts and evidence, then the suspect's post-admission narrative objectively demonstrates that he possesses the actual knowledge that would be known only by the true perpetrator. This unique knowledge is strong evidence of guilt. (This, of course, assumes that the suspect's knowledge of the crime has not been contaminated by the media, community gossip or by the police themselves). If the suspect cannot provide police with the actual details of the crime, fails to accurately describe the crime scene facts,

cannot lead the police to new or derivative crime evidence, and/or provides an account that is full of gross errors and disconfirmed by the independent case evidence, then the suspect's post-admission narrative demonstrates that he fails to possess the actual knowledge that would be known only by the true perpetrator. This lack of knowledge is therefore strongly consistent with a judgment of innocence.

23. The fit between the suspect's post-admission narrative and both the crime scene facts and the derivative crime evidence therefore provides an *objective* basis for evaluating the likely reliability of the suspect's incriminating statements.
24. The well-established and widely accepted social science research principle of using the *fit standard* to evaluate the validity of a confession statement is also a bedrock principle of criminal investigation within law enforcement. Properly trained police detectives realize that an "I did it" statement is not necessarily evidence of guilt and may, instead, turn out to be evidence of innocence. For example, in high profile murder cases, police regularly screen out volunteered confessions by seeing whether or not the person can tell the police details known only to the perpetrator or lead the police to derivative crime evidence that either corroborates, or fails to demonstrate, the person's guilty knowledge. If an element of a crime is particularly heinous or novel, police often keep this fact from the press so that it can be used to demonstrate a confessor's guilty knowledge. Police sometimes deliberately include an error in media releases or allow incorrect statements to go uncorrected so that a true perpetrator will be able to demonstrate his personal knowledge of the crime. In other types of cases, police detectives regularly rely upon the fit standard to identify a true admission that might be mixed in with a collection of volunteered statements.
25. Using the fit standard to evaluate the validity of a suspect's incriminating statements, admissions, or confessions is a bedrock principle of law enforcement because police detectives realize that seeking corroboration during the post-admission phase of interrogation is essential to proper investigative work. It is a fundamental principle of police investigation that true explanations can be supported and false explanations cannot be supported (assuming no contamination has occurred). False explanations will not fit the facts of the crime, lead to derivative evidence, or be corroborated by independent evidence.
26. Moreover, post-admission narrative analysis and the fit standard are central to proper criminal investigation because properly trained detectives realize that the purpose of detective work is not to clear a crime or get a conviction, but to carefully collect evidence in a way that will lead to the arrest, prosecution, and conviction of the guilty. Simultaneously, the post-admission narrative analysis and the fit standard insure that no innocent individual is wrongfully arrested, prosecuted, or convicted.

27. A suspect's post-admission narrative therefore provides a gold mine of potential evidence to the unbiased, properly trained detective who is seeking to ferret out the truth. For if the suspect is guilty, the collection of a detailed post-admission narrative will allow the detective to establish the suspect's guilt beyond question, both by demonstrating the suspect's actual knowledge and by corroborating the suspect's statements with derivative evidence. Properly trained detectives realize that the strongest form of corroboration comes through the development of new evidence using a suspect's post-admission narrative. While it is not possible to verify every post-admission narrative with the crime facts, a skillful interrogator will seek as much verifiable information about the crime as he can elicit. The more verifiable information elicited from a suspect during the post-admission period and the better it fits with the crime facts, the more clearly the suspect demonstrates his responsibility for the crime.
28. If the suspect is innocent, the detective can use the suspect's post-admission narrative to establish his lack of knowledge and thus demonstrate his likely or certain innocence. Whereas a guilty suspect can corroborate his admission because of his actual knowledge of the crime, the innocent suspect cannot. The more information the interrogator seeks, the more frequently and clearly an innocent suspect will demonstrate his ignorance of the crime. His answers will turn out either to be wrong, to defy evaluation, or to be of no value for discriminating between guilt and innocence. Assuming that neither the investigator nor the media have contaminated the suspect by transferring information about the crime facts, or that the extent of contamination is known, the likelihood that his answers will be correct should be no better than chance. The only time an innocent person will contribute correct information is when he makes an unlucky guess. The likelihood of an unlucky guess diminishes as the number of possible answers to an investigator's questions grows large. If, however, his answers about missing evidence are proven wrong, he cannot supply verifiable information that should be known to the perpetrator, and he inaccurately describes verifiable crime facts, then the post-admission narrative provides evidence of innocence.

VI. The Interrogations and Statements of Max Soffar

29. Max Soffar was interrogated on August 5th, 6th, and 7th, 1980 for more than 26 hours by Detective Schultz, Sergeant Clawson, District Attorney Wilson, Detective Kenneth Williamson, and Detective James Ladd. Mr. Soffar signed three police-written incriminating statements — one on each of the three days — regarding his alleged role in the triple murder-robbery of the Fairlanes Windfern Bowling Alley near Houston, Texas in July, 1980. On August 5th, Mr. Soffar signed a police-written statement alleging that he and Latt Bloomfield had burglarized the Bowling Alley the night before the triple murders and that on the night of the triple murders he participated as a lookout in the actual robbery of the Bowling Alley but did not go inside or participate in the murders with Latt Bloomfield. On August 6th, Mr. Soffar signed a police-written statement alleging

again that he participated with Latt Bloomfield in the burglary of the Bowling Alley the night before the triple murders, but that that he refused Latt's request to participate in the robbery or murders of the Bowling Alley on the next night, but merely drove Latt to and from the Bowling Alley that night. On August 7th, Mr. Soffar signed a police-written statement alleging that he participated in the robbery and, at Latt's request, shot two of the four victims in the Bowling Alley that night.

30. Only two hours of the more than twenty-six hours of interrogation during these three days were recorded. But for these two hours, no objective evidence exists of what occurred during these interrogations. Because of the detectives' failure to memorialize almost all of these interrogations, we will never know with certainty what occurred during twenty-four of the twenty-six hours of interrogation, what was said or suggested by whom, and ultimately what in the interrogations led Mr. Soffar to make or agree to his various incriminating, police-written statements.
31. Because the detectives failed to memorialize virtually all of Mr. Soffar's three days of interrogation, the only way we can attempt to reconstruct what occurred during the largely unrecorded portions of the interrogations is through the accounts of the various participants and analyze them in light of what we know from the empirical research literature on police interrogation and confessions. Since the accounts of the detectives are in tension with the account of Mr. Soffar, I will discuss them separately.
32. The various detectives who participated in or were present at the August 5-7 interrogation sessions were never asked to provide a contemporaneous written account of everything they remembered occurring during the August 5-7 interrogations. The only record of their recollections of these interrogations is their responses to the questions posed to them by attorneys in one or more of the following legal proceedings: Mr. Soffar's first trial in 1981, his habeas corpus proceeding in 1994, and/or his second trial in 2006. The detectives' accounts are all highly incomplete. They do not describe the use of any interrogation techniques at all (other than urging Mr. Soffar to tell the truth), and they uniformly deny that they made any promises or threats to elicit Mr. Soffar's compliance and incriminating statements. The detectives' accounts do not provide an explanation for what moved Mr. Soffar from denying direct involvement in the triple murders and the robbery to admitting shooting two of the victims, killing at least one of them, and directly participating in the robbery.

VII. Max Soffar's Susceptibility to Improper Interrogation Techniques

Evidence of Psychologically Coercive Interrogation Techniques

33. Unlike the detectives' various accounts, according to Max Soffar's account (as described in his letter to his counsel following the interrogations), the police used several well-known interrogation techniques: Detective Palmier, the detective

who arrested him, had previously threatened that he was going to lock up Mr. Soffar for life the next time he arrested Mr. Soffar, and implicitly threatened him again when he told Mr. Soffar, "I've got you now punk." According to Mr. Soffar, the interrogating detectives, who interrogated Mr. Soffar for the Bowling Alley murders, used accusation, forceful pressure, repetition, confrontation with false evidence (telling Mr. Soffar falsely that he had been positively identified in a lineup given to the sole surviving victim of the Bowling Alley triple murder-robbery), and threats that Mr. Soffar would get a life sentence if he did not confess to the triple murder-robbery — thus implying a more lenient sentence if he did confess.

34. Mr. Soffar's account of what occurred during the part of the unrecorded portion of his August 5-7 interrogations is corroborated, at least in part, by several sources. *First*, during the taped portion of his August 5th interrogation with Detective Schultz, Mr. Soffar tells Detective Schultz that he was verbally threatened by another officer, presumably Officer Palmier, when he was arrested. *Second*, Sergeant Clawson, who participated in and was present for part of the August 5th interrogation, writes in his affidavit that he told Mr. Soffar that the maximum penalty for the Bowling Alley murders was death, in effect communicating a threat of death if Mr. Soffar was convicted of the capital murder. Sergeant Clawson made this point more explicitly in his testimony, stating that Max should not mess around with the Houston detectives because they were "trying to kill him." *Third*, Detective Schultz in effect communicated the same death penalty threat on August 5th, according to his sworn testimony. Detective Schultz testified that he explained to Mr. Soffar that the Bowling Alley case was a capital murder case and that the penalty for capital murder was death. There is no reason for a police interrogator to tell this to a custodial suspect unless he wishes to let the suspect know that if he does not cooperate he may face execution. *Fourth*, Mr. Soffar's August 7th police-written statement suggests he may have been threatened with harsher punishment, including capital murder, if he did not confess and promised prosecutorial leniency if he did. In that police-written statement, Mr. Soffar suggests that he confessed to capital murder on August 7th because he did not want to "take this whole thing by myself" (i.e., he wanted Latt Bloomfield to share in the punishment for this capital crime). On its face, this explanation makes no sense as a reason for confessing to murdering one or two people unless Mr. Soffar believed, or was led to believe, that the only way to mitigate his punishment (and thus avoid the death penalty) was to shift part of the blame onto another person, in this case Latt Bloomfield.
35. Unlike the Detectives' accounts of the unrecorded portions of Mr. Soffar's August 5-7 interrogations, Mr. Soffar's account, corroborated by police testimony, provides a description of widely-known interrogation techniques and an explanation for why he changed his initial account and confessed to capital murder. In addition to his description of the accusation, pressure, confrontation with false evidence, forceful pressure, promises, and threats, Mr. Soffar states in

the letter to his attorney why he ultimately confessed: "I said I shot her to get them off my back . . . I was so tired I just gave in to them."

36. In my professional opinion, the interrogation techniques described by Mr. Soffar, and corroborated by police testimony, are psychologically coercive. They are psychologically coercive for two reasons: *first*, implicit and explicit threats and promises, commonly referred to as *high-end* inducements, are regarded as inherently coercive in both psychology and law; and *second*, any group or sequence of interrogation techniques that cumulatively cause a person to perceive that he has no choice whether to confess, or that his will is overborne to the point where he cannot resist the interrogators' accusations, is psychologically coercive. If Mr. Soffar's partial description of the unrecorded portions of the interrogations on August 5-7 is accurate, he was subjected to psychologically coercive interrogation techniques. As mentioned above, Mr. Soffar's account was corroborated in part by detectives' Schultz's and Clawson's testimony, Detective Clawson's affidavits, and recorded portions of the interrogations.
37. It is well-documented in the empirical social science research literature that the psychologically coercive interrogation techniques described by Mr. Soffar can, and sometimes do, lead to false confessions. Put differently, these techniques create a risk of eliciting false confessions when misapplied to the innocent. These coercive interrogation techniques are usually the primary explanation for why innocent individuals falsely confessed to crimes they did not commit.

Evidence of Mr. Soffar's Situational Risk Factors

38. In Mr. Soffar's case, several other situational risk factors for false confession were present. *First*, Mr. Soffar's interrogations were unusually long (lengthy interrogation wears down a suspect's resistance by inducing fatigue, increases suggestibility, and compromise mental functioning). *Second*, Mr. Soffar was sleep-deprived, as he mentioned on tape during the recorded portion of his August 5th interrogation (he had not slept in the three days prior to this interrogation). *Third*, Mr. Soffar was, by police accounts as well as his own, coming down from drug use at the time of his initial interrogation. For example, Officer Raymond Willoughby testified that Mr. Soffar was intoxicated (under the influence of alcohol and another type of drug), his speech was slurred, his pupils were dilated and his eyes were bloodshot at the time of his arrest and shortly before his initial interrogation. This is corroborated by Officer Michael Clawson's testimony, as well as Mr. Soffar's own account. *Fourth*, The Bowling Alley triple murder robbery was a high profile crime. Many documented false confessions occur in high profile cases because police are under such public pressure to solve the crime that they apply substantial pressure to suspects to confess, especially when they have no other leads or evidence to link a suspect to a crime, as here. Although the record of what occurred during the unrecorded portions of the interrogation is disputed and highly incomplete, it appears that the detectives applied substantial

pressure to Mr. Soffar to elicit his various police-written confession statements during the 26 hours they questioned him from August 5-7.

Evidence of Mr. Soffar's Personal and Dispositional Risk Factors

39. In addition to the situational risk factors present in these interrogations that put Mr. Soffar at risk for falsely confessing, there are also numerous personal or dispositional risk factors that made Mr. Soffar especially vulnerable to crumbling in the face of police interrogation pressure and falsely confessing. As ample documentation and other expert opinions in the case materials demonstrate, Mr. Soffar is brain damaged, easily led, eager to please, impulsive, has a short attention span, feels overwhelmed, is mentally ill, is unable to foresee consequences, has a tendency to make up stories to get attention, and has a poor grasp of reality. All of these personality traits are associated with an increased likelihood or risk of false confession. Perhaps most notably in this regard, Mr. Soffar is highly suggestible and intellectually low functioning, traits that are correlated and especially likely to put an innocent suspect at risk for falsely confessing in response to police interrogation pressure. Dr. Frumkin administered the Gudjonsson Suggestibility Scales (GSS) to Mr. Soffar and reported that Mr. Soffar is more suggestible than 85% of the population and that "he is higher than average to giving in to misleading information and higher than average to shifting from one response to a different response, under pressure." Dr. Frumkin also tested Mr. Soffar's full scale IQ, which he placed in the low to high 80's, consistent with a low functioning individual.

Evidence of Mr. Soffar's False Confession

40. Turning from the issue of what explains why Mr. Soffar would falsely confessed to what evidence there is that Mr. Soffar falsely confessed, post admission narrative analysis reveals numerous inconsistencies and errors that are, in effect, indicia of his statement's potential unreliability. The selectively recorded portions of Mr. Soffar's August 5-7 interrogations and the accompanying police-written statements unequivocally reveal that Mr. Soffar did not possess unique knowledge of non-public crime facts absent contamination and suggestion. Mr. Soffar, for example, could not lead police to new, missing or derivative case information; he could not explain anomalies; and his statements were not corroborated by physical, medical, eyewitness or other credible evidence. I will develop these points more specifically below.

Mr. Soffar's Statements Contradict Eyewitness Evidence

41. Mr. Soffar's police-written statements are contradicted by the eyewitness evidence in this case. Gregory Garner, the sole surviving witness of the Bowling Alley murders, was interviewed by police at least seven times about what occurred and provided police with a detailed description of the murder-robbery as well of the murderer-robber. Mr. Soffar's account contradicts Mr. Garner's

eyewitness account in numerous aspects. For example, Mr. Soffar says he committed the crime with an accomplice, but according to Mr. Garner the murderer-robber acted alone. According to Mr. Soffar, he wore a disguise, but Mr. Garner states that the murderer-robber wore no disguise. Further, Mr. Soffar states that he entered the Bowling Alley through an open door, but according to Mr. Garner the doors were locked. Mr. Soffar also states that he took money from two cash registers, but according to Mr. Garner the murderer-robber ordered the manager to take money from only one cash register. Mr. Garner also could not positively identify Mr. Soffar in a line-up, perhaps not surprisingly since Mr. Soffar does not match the description of the robber given by Mr. Garner at the time of the crime.

42. Mr. Soffar's police-written statements are contradicted not only by the eyewitness evidence, but also by the physical and forensic evidence. For example, in Mr. Soffar's first police-written statement on August 5th, he states that he burglarized the Bowling Alley the night before the triple murder-robbery, but it has been established that the burglary was committed by two youths, not Mr. Soffar. In Mr. Soffar's August 5th police-written statement, Mr. Soffar said that he found money in a cash register, but the cash register drawers were locked up in the Bowling Alley manager's office. Mr. Soffar also states that during the robbery inside the Bowling Alley, Latt Bloomfield moved the victims around after he fired two shots, but we know that the victims did not move between shots. Finally, Mr. Soffar indicated in his August 5th police-written statement that he also did a robbery of a U Totem store in Galveston the same night that he and Latt Bloomfield allegedly committed the triple-murder robbery at the Bowling Alley, yet police established that no U Totem store in Galveston had been robbed that night.

Mr. Soffar's Statements Contradict Physical Evidence

43. Mr. Soffar's police-written statement on August 6th also contains significant discrepancies and errors with the physical evidence. For example, Mr. Soffar indicated in this August 6th statement that before he broke into the Bowling Alley, he looked through windows to see who was inside. The Bowling Alley, however, did not have any windows. Mr. Soffar also indicated in his August 6th police-written statement that Mr. Bloomfield wore a lady's stocking over his head, yet we know that the triple murderer-robber did not wear a disguise. In addition, Mr. Soffar indicated that in his August 6th police-written statement that the door to the Bowling Alley door was open when Mr. Bloomfield allegedly came in, but, in fact, the door of the Bowling Alley was locked at the time, and one of the victims had to unlock the door to let the triple murderer-robber in. Finally, Mr. Soffar indicated in his August 6th police-written statement that Mr. Bloomfield fired a shot while one of the victims was still standing, but we know that all the shots fired by the triple-murderer were done when every victim was laying down on the floor.

44. Mr. Soffar's police-written statement on August 7th also contains numerous errors and discrepancies with the physical evidence. For example, Mr. Soffar indicated in this statement that he and Latt Bloomfield went into the Bowling Alley together, but there was only one robber. Mr. Soffar indicated that Latt Bloomfield announced, "This is a robbery," and fired a warning shot into the floor. The robber neither announced that a robbery was to occur nor fired a warning shot. Mr. Soffar indicated in his August 7th statement that Latt Bloomfield pulled one of the male victims by his hair and forced him to his knees, but the robber did not physically touch any of the victims. Mr. Soffar indicated in his August 7th statement that the victims were lying in a straight line, but in fact they were lying in a semi-circle. Mr. Soffar indicated that he shot two of the victims and Latt Bloomfield shot two of the victims, but the robber shot all four victims. Mr. Soffar indicated that he and Latt Bloomfield shot all the victims from a distance, but one of the victims was shot a point blank range. Mr. Soffar indicated in his August 7th statement that after shooting the victims Latt Bloomfield took money out of their pockets, but the victims had all handed the robber their wallets before they were shot. These are merely some of the errors in Mr. Soffar's August 7th police-written statements and discrepancies between this statement and the physical evidence. There are many more.
45. In addition to the errors and discrepancies in all three of Mr. Soffar's August 5-7 police-written statements, and the lack of any forensic evidence linking him to the triple murder-robbery at the Bowling Alley, Mr. Soffar demonstrably lacked knowledge of any unique non-public details of the crime. In 26 hours of interrogation, Mr. Soffar could not provide Houston detectives with a single true fact that was not already publicly reported by Houston newspapers and/or publicly reported in Houston television news reports. In other words, over the course of these lengthy interrogations, Mr. Soffar did not provide Houston detectives with any crime details that they did not already know. However, much of the information included in Mr. Soffar's police-written statements could have been provided to him by the media or was provided to him by police, who, remarkably, took him to view the crime scene during the course of the three-day interrogation.
46. One of the most stark illustrations of Mr. Soffar's lack of "inside" knowledge is illustrated by his inability to describe the location of the Bowling Alley to Detective Schultz on August 5th. When attempting to draw the location of the Bowling Alley, Mr. Soffar placed the Bowling Alley on the wrong side of the road and along the wrong highway route, and he could not draw or describe the entrance to the Bowling Alley's parking lot or control booth. On August 6th, Detective Williamson actually drew a detailed map of the Bowling Alley for Mr. Soffar, but Mr. Soffar still could not identify the location of the Bowling Alley, the parking lot to it or the entrance, again revealing his complete ignorance of the kind of crime scene details that the true perpetrator would, of course, know.

47. The fact that Mr. Soffar's police-written statements on August 5th, 6th and 7th are highly detailed does not provide indicia of reliability. Many documented proven false confessions are highly detailed. Indeed, Mr. Soffar's confession to the burglary of the Bowling Alley on the night before the triple murder robbery was both highly detailed and, as was subsequently learned, demonstrably false. There is ample evidence in the records I reviewed that Mr. Soffer was capable of recounting in great details crimes that we know he did not commit, such as the non-existent U-Totem store robbery in Galveston and the robbery of a Weingarten's store in LaMarque.

VII. A False Confession Expert Could Have Been Useful During Max Soffar's Trial

48. In my opinion, an expert in the psychology of police interrogation practices and false confessions could have been helpful at trial. Such an expert could have provided both general and case-specific testimony that would have aided and assisted the jury with its difficult task of deciding what weight to put on Mr. Soffar's August 5-7 police-written statements. Generally, such an expert could have testified about police interrogation training and techniques; how interrogation is designed to work as a psychological process; which interrogation techniques are psychologically coercive and why; how and why certain interrogation techniques can, and sometimes do, lead to false confessions from the innocent; situational and personal risk factors for false confession; and how both experts and law enforcement use the post-admission narrative analysis and standard of fit to evaluate whether confessions statements are likely reliable. More specifically, such an expert could have commented on what techniques were present (or absent) in the various accounts of what occurred during the 24 hours of unrecorded interrogation on August 5-7 and the potential significance, in light of the empirical social science research literature, of what both sides described as occurring. Although such an expert would not, of course, have provided an opinion about whether Mr. Soffar's three police-written statements on August 5-7 were ultimately true or false—that is a task solely within the jury's province—the expert could have educated the court as to the different factors and facts that should have been considered. In my professional opinion, the fact that Mr. Soffar's defense counsel did not call an expert witness meant that he was not able to effectively present to the jury a coherent analysis of the psychological dynamics of police interrogation, how they could have led to a false confession, or the significance of the many errors in Mr. Soffar's post-admission narratives and their lack of fit with the physical and eyewitness evidence.
49. In 2006, at the time of Mr. Soffar's second trial, there were numerous police interrogation and false confession experts who could have testified had the defense chosen to offer evidence of a false confession or improper police interrogation. These experts include: myself, Richard Ofshe, Elliott Aronson, Lawrence Wrightsman, Christian Meissner, Gisli Gudjonsson, Saul Kassin, Mark Costanzo, Deborah Davis, Daniel Lassiter, Allison Redlich, and Lawrence White, among others.

50. In conclusion:

1) Because detectives failed to record twenty-four of Mr. Soffar's twenty-six hours of interrogations on August 5-7, over ninety percent of the total interrogation time, we will never know with certainty what occurred during all of the interrogation. We will never know exactly what was said or suggested by whom, and ultimately what in the interrogations led Mr. Soffar to make or agree to his various incriminating police-written statements. The only way to reconstruct what occurred during the unrecorded portions of the interrogation is by analyzing the highly incomplete accounts of the various participants in light of what we know from the empirical research literature on police interrogation and confessions.

2) The detectives' accounts are highly incomplete. They do not describe the use of any interrogation techniques (other than urging Mr. Soffar to tell the truth), and they fail to provide an explanation for what moved Mr. Soffar from denying direct involvement in the triple murders and the robbery to admitting shooting two of the victims, killing at least one victim, and directly participating in the robbery. By contrast, Mr. Soffar's account describes several well-known interrogation techniques (accusation, forceful pressure, repetition, confrontation with false evidence, and implicit and explicit threats and promises) that are consistent with what we know about how interrogation occurs in America and provide an explanation for how they elicited his compliance and confession.

3) The interrogation techniques described by Mr. Soffar, corroborated in part by police testimony, are psychologically coercive. Mr. Soffar describes the use of interrogation techniques that are regarded as inherently coercive in both psychology and law. Further, Mr. Soffar's account illustrates how the cumulative effect of these interrogation techniques caused him to perceive that he had no choice but to comply with the interrogators' demands, thereby overbearing his will.

4) The psychologically coercive interrogation techniques created the risk of eliciting a false confession. Several other situational risk factors for false confession were also present during Mr. Soffar's interrogation: Mr. Soffar's interrogations were unusually lengthy, Mr. Soffar was sleep-deprived, Mr. Soffar was coming down from drug use at the time of his initial interrogation, and the Bowling Alley triple murder robbery was a high profile crime, the kind of case police feel enormous institutional and social pressure to solve and in which they sometimes exert substantial pressure on suspects to confess, especially when they have few meaningful suspects or leads.

5) In addition to situational risk factors, there are numerous personal or dispositional risk factors that made Mr. Soffar especially susceptible to making or agreeing to a false confession. These include the amply documented observations

that Mr. Soffar is highly suggestible, easily led and manipulated, eager to please, submissive, brain damaged, mentally ill, impulsive, unable to foresee consequences, easily overwhelmed, and intellectually low functioning, traits that are especially likely to put an innocent person at risk for falsely confessing.

6) The selectively recorded portions of Mr. Soffar's August 5-7 interrogations and the accompanying police-written statements reveal unequivocally that Mr. Soffar did not possess unique knowledge of non-public crime facts of the Bowling Alley triple murder robbery absent contamination and suggestion. In the more than twenty-six hours of interrogation, Mr. Soffar could not provide Houston detectives with a single true fact that was not already publicly reported by the Houston media. However, much of the information included in Mr. Soffar's police-written statements could have been provided to him by the media or was provided to him by police. Moreover, Mr. Soffar could not lead police to new, missing or derivative case information; he could not explain anomalies; and his statements were not corroborated by physical, medical, forensic, eyewitness, or other credible evidence.

7) Mr. Soffar's police-written statements on August 5th, 6th, and 7th are each replete with numerous errors and discrepancies that contradict the physical, medical, and eyewitness evidence in the Bowling Alley triple murder robbery case. Many, but not all, of the errors and discrepancies in Mr. Soffar's post-admission narrative have been documented in this report. These errors and discrepancies indicate that Mr. Soffar's post-admission narratives on August 5th-7th do not fit with the existing evidence and therefore contain strong indicia of unreliability. The fact that Mr. Soffar's police-written statements on August 5th, 6th, and 7th are highly detailed does not provide indicia of reliability. Many documented proven false confessions are highly detailed. Indeed, Mr. Soffar's proven false confession to the burglary of the Bowling Alley on the night before the triple murder robbery was both highly detailed and, as was subsequently determined, demonstrably false. There is ample evidence in the records I reviewed that Mr. Soffar recounted in great details crimes he did not commit, such as the non-existent U-Totem store robbery in Galveston and the robbery of a Weingarten's store in LaMarque.

8) In my professional opinion, Mr. Soffar's defense counsel would have benefitted by calling a police interrogation/false confession expert in his 2006 trial. Many experts were available at the time. Such an expert could have provided both general and case-specific testimony on the subjects described above, without invading the province of the jury or rendering any ultimate opinions. Such expert testimony would have aided and assisted the jury with its difficult task of deciding what weight to put on Mr. Soffar's detailed, but contradictory and ultimately unsupported, incriminating statements of August 5th, 6th, and 7th. In my professional opinion, the fact that Mr. Soffar's defense counsel did not call an expert witness ultimately meant that he was not able to effectively present to the jury a coherent or cogent analysis of the psychological

dynamics of police interrogation; how the interrogation could have led to a false confession in Mr. Soffar's case, the situational and dispositional risk factors for false confession present in Mr. Soffar's case, and the significance of the many errors in Mr. Soffar's post-admission narratives on August 5-7, which do not fit with the physical, medical, forensic, and eyewitness evidence.

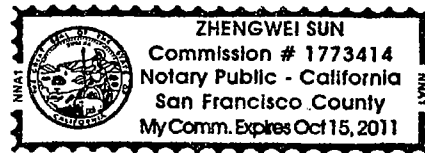
9) Because confession evidence is almost universally regarded as the most self-evidently powerful and conclusive evidence of guilt the state can bring in a criminal case, most jurors presume a defendant's guilt when they learn that he or she confessed. In other words, once a jury learns that a defendant has "confessed," there is no longer a meaningful presumption of innocence (not surprisingly, studies have shown the overwhelming majority of false confessors who take their case to trial are convicted by juries). In effect, once a confession is introduced into evidence at trial, the burden of proof shifts to the defendant. In my professional opinion, it is therefore extremely difficult to put on an effective false confession defense without the assistance of a police interrogation/false confession expert, especially in a case as factually complicated as Mr. Soffar's case.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 13th day of August, 2008.

Richard A. Leo

Dr. Richard A. Leo, Ph.D., J.D.

State of CALIFORNIA
County of SAN FRANCISCO
Subscribed and sworn to (or affirmed) before me on
this 13 day of Aug, 2008 by
Richard A. Leo, personally known to me or
proved to me on the basis of satisfactory evidence to
be the person(s) who appeared before me.
[Signature]
(Notary signature)



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

AND

IN THE 232ND DISTRICT COURT OF HARRIS COUNTY, TEXAS

EX PARTE

MAX ALEXANDER SOFFAR,

Applicant

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Indictment No. 319724

CCA Writ No. 29,980 03

AFFIDAVIT OF PROFESSOR JONATHAN H. PINCUS

I, Professor Jonathan H. Pincus, being duly sworn, deposes and says:

INTRODUCTION

1. I am presently Professor and Chairman Emeritus of Neurology at Georgetown University, Washington, D.C. I am also the Chief of Neurology at the Veterans Administration Medical Center in Washington, D.C.

2. I have substantial and nationally recognized expertise in the diagnosis of behavioral neurological disorders and in determining whether violent behavior is attributable to those abnormalities. I have been qualified to testify and have testified as an expert on those issues in many state and federal courts. A copy of my curriculum vitae is attached to this Affidavit.

3. I have been retained by counsel to review medical history and to perform a neurological examination of Max Alexander Soffar (thereafter "Mr. Soffar"), the defendant in the above-entitled and numbered criminal action.

BACKGROUND

4. I am a licensed medical doctor, having received an M.D. degree from Columbia College of Physicians and Surgeons in 1960 and completed a residency in neurology at the Yale University School of Medicine in 1964. I have been a Diplomate of the American Board of Psychiatry and Neurology since 1968 and have received a specialty certification in child neurology from the same board in 1969.

5. I have served on the editorial boards of *Annals of Neurology* (1991 - 1997) and *Journal of Nervous and Mental Disease* (1989 - 1995). I have served as an ad-hoc reviewer on the editorial boards of many other journals, including *Neurology*, *New England Journal of Medicine*, and *American Journal of Psychiatry*. I am an author of the book Base Instincts: What Makes Killers Kill (Norton Press 2001) and a co-author of the book Behavioral Neurology (4th ed., Oxford University Press 2002).

6. The opinions expressed in this affidavit are based upon my training and experience. In forming my opinions, I have reviewed Mr. Soffar's medical records, various hospital records, as well as affidavits and testimony of medical experts retained during previous proceedings. I have further reviewed psychological and neuropsychological test results obtained by Bruce Frumkin, Ph.D. and Michael Gelbort, Ph.D., during assessments on October 18, 2007 and December 6-7, 2007, respectively. These records and affidavits were provided to me by counsel. Such sources of information are customarily relied upon by experts in neurology.

7. The opinions set forth below are based on my analysis to date. I reserve the right to revise or supplement my opinions and conclusions based upon any additional information that becomes available to me. In addition, I reserve the right to

supplement the opinions in this report to respond to or address any report or testimony provided by any expert for the defendant.

8. I am being compensated at my standard rate of \$600 per hour.

SUMMARY OF OPINIONS

Mr. Soffar's Family History

9. Mr. Soffar was born on December 15, 1955. He has been on death row for 33 years for a crime he may well have not committed. He was adopted at three days of age. Nothing is known of his biological family except that his sister who is about a year younger was said to have been born to the same biological mother. When Mr. Soffar was a year-and-a-half old, it was quite clear that there was something wrong with him. He had terrible temper tantrums that persisted no matter what his parents did. As he grew older, he was spanked with a belt on his arms and on his butt through clothing, but the beatings, spankings, threats, scoldings were all ineffectual. When he was only four years old, he began to huff gasoline and glue from materials that had some constructive purpose, and he drank. Mr. Soffar's use of drugs at that time (age 4) was pretty much limited to inhalants, but his interest expanded to alcohol that he found at home, marijuana that he obtained from peers, and, most especially, methadrine, which became his drug of choice.

10. All the drugs tended to dull unpleasant feelings especially the sense of being entrapped that he had frequently and instead made him feel empowered. Mr. Soffar had no concern for consequences. He was not sad or depressed under the influence of methedrine. He could sit, reflect, and think of bad things without having bad feelings overwhelming him.

11. Many of those who use stimulants like methedrine, cocaine and other amphetamines/stimulants induce periods that are like manic episodes. Patients with bipolar mood disorder can prolong mania and ward off incipient depression with them, but not entirely at all times. When off these drugs a sudden depression can develop which is called the "crash." Indeed, on one occasion, Mr. Soffar tried to kill himself with an overdose of pills and alcohol, but his mother found him and he was saved.

12. There were many trips to the emergency room to have his stomach pumped for having taken medications when Mr. Soffar was a child and many intoxications over the course of the years of his freedom, which ended when he was about 22.

13. There are many bits and picces of Mr. Soffar's history that point toward bipolar disease. He would have depressions for days at a time and would go for two or three days without sleeping. At the end of such a period he would sleep for 24 hours. Mr. Soffar was angry at himself when depressed and he feels depressed now. In his mind, angry thoughts focus on people who allowed his frame up and long prison term to happen. He is angry at vindictive prosecutors, damaged defense lawyers, and ineffective doctors--who failed to treat him successfully when he was young.

14. Mr. Soffar now feels worthless, hopeless, helpless, and guilty for the devastating effects that his behavior has had on his family. To this day, he has depressions at least three or four days a week and sometimes continuously with exacerbations three or four times a week. During times of depression, he is quiet and does not initiate conversations and stays to himself. These symptoms are supported by the terms of his incarceration. He is essentially in solitary confinement

15. When Mr. Soffar was a child, his temper tantrums were violent. He broke windows, pulled the telephone from the wall, threw things into the walls to break them, though sometimes he didn't even know the extent of damage that he wreaked on his parents' home. His temper was explosive. From his early twenties to the forties, he lost his temper easily and explosively and reacted with anger before he could evaluate a situation. He physically attacked his mother, father, sister, the principal of his school, and police officers. He was hospitalized in Boston for an evaluation and was under the care of many different psychiatrists who tried many different forms of therapy. The diagnosis of schizophrenia was considered. Bipolar disorder was probably considered and attention deficit disorder was the main diagnosis. He was treated with Ritalin briefly without much or any beneficial effect apparently.

16. Mr. Soffar argued with his sister and in the course of the argument grabbed a butcher knife from the kitchen and threatened her with it. This led to his mother getting rid of all the knives from their home. Some incidents of fighting with his sister she recalls, but he does not. He once pushed down his mother in a parking lot, scraping her hands and knees, in order to take her car. He threatened his father with killing him in his sleep if his father were to beat him, and later in life, he struck his father in the eye. When his father fell down bleeding from his eye, it broke his (Mr. Soffar's) heart. It was a memory and experience he had to live with. It has frequently come back to him over the course of the years in prison in dreams and in his thoughts. He said, "I failed everyone." Mr. Soffar married briefly for two years and had no children but did have one child with a girlfriend.

17. To escape the turmoil that he felt pervaded his life, Mr. Soffar had a place to go. It was a creek, where he went for peace and solitude and to be away from people. He had no friends.

18. Mr. Soffar was also cruel to animals beating horses that were tied up with a chain, and he had set fires in his house in the bed while on leave from Boston State. Setting fire to bed in their home is an act that children who have been sexually abused commit.

19. Most of the physical and sexual abuse that Mr. Soffar experienced was in custody. There, he was raped and beaten. He was beaten by his principal with a paddle, a canoe paddle, which the principal held in both hands and hit against his legs with all his might. After the second blow, Mr. Soffar lost his temper, pulled the paddle away from the principal, and trashed the principal's office.

20. Mr. Soffar's mood changes are very swift. He goes from feeling all right in a matter of seconds to being sorry for himself with anger and bitterness. He has had no headaches that are associated with the mood shifts and he is not suicidal when he gets depressed but tired. The headache can awaken him out of a deep sleep.

II. RESULTS OF PHYSICAL EXAMINATION

21. I saw Mr. Soffar on December 10, 2007. During the physical neurological examination of Mr. Soffar, I found evidence of right cerebral damage and frontal dysfunction. It is my opinion that these neurological abnormalities have likely affected Mr. Soffar's behavior at the time of crime.

22. Mr. Soffar's blood pressure standing in the left arm was 170/110. Pulse was 72. He weighs 228 and is 5 feet 11 inches tall. His head circumference was 57

cm (normal). The left palpebral fissure is slightly larger than the right though the pupils are equal. The fundus is normal and there is no retinopathy or vasculopathy.

23. Conjugate gaze is normal and he is able to look upwards. Visual tracking is normal and there is no impersistence of gaze. There is no drift of his outstretched arms and muscle strength as tested quantitatively with grip is 45 on the right and 40 on the left. He is right handed. Muscle tone is normal bilaterally. There are no abnormal movements and no synkinesis. He is right handed, right footed, and right eyed. He is able to hop on either foot. He is able to balance on either foot and he is able to skip. Rapid alternating movements are done well with palm strikes, finger taps, and foot taps though there is some apraxia with foot taps. He does 10 hand openings on the right in 3.06 seconds (normal) and on the left in 2.92 seconds. Although the time is normal, there was some apraxia when he used his left hand, indicating problems in the right anterior brain.

24. Sensory examination of primary and cortical modalities was intact. Deep tendon reflexes were slightly more active on the left than the right; 3+ at the left triceps, 3+ at the left biceps. Plantar response was neither up nor down on the left but was clearly down on the right. The radial reflex was 3+ on the left, 2 on the right. There was a left Wartenberg. The hyperactive reflexes on his left and the left Wartenberg also point toward the right hemisphere as abnormal.

25. Positive frontal signs (4) included persistent glabellar, abnormal Luria two-step, abnormal Facc/Hand test, and failure to suppress antisaccades on 3/5 tries. Normal were visual tracking, suck, grasp, snout, lack of paratonia of arms and legs, nucocephalic, word fluency.

26. Cerebellar testing revealed a lumbering gait, decreased arm swing on the left, slight unsteadiness on heel-knee-shin especially when putting the heel on the knee. There was unsteady tandem gait, especially evident when he had to balance on the left leg. The abnormalities of the left side pointed more to right cerebral dysfunction than cerebellar difficulties.

27. Formal Mini-Mental Status Exam was done and depending on whether one uses "world" spelled backwards or serial seven subtractions, he got either 26 or 27/30. Mr. Soffar was oriented, named three of the last four presidents, crossed the midline, named five cities in America, remembered seven numbers forward but not more than four numbers backwards. To record three words, he needed one repeat. He reversed "o" and "r" with "world" backwards and made two mistakes on serial sevens (He said "93 minus 7 equals 74" and "79 minus 7 equals 71"). He did well with similarities and proverbs. He read with complete comprehension at a ninth grade level but could not go on to a tenth grade level. His aphasia screen was completely normal except that he could not subtract 27 from 85, correctly. He named 16 words beginning with the letter "f" in one minute.

28. Mr. Soffar's judgment was poor. He said that he would "look at it" when asked what he would do with a stamped, addressed envelope he found in the street, and when asked what he would do if there were a fire in a crowded movie house, he said "Run. Tell people that there was a fire."

29. During my examination, I observed that Mr. Soffar has some of the facial stigmata of fetal alcohol effect with a more or less effaced philtrum and a very thin vermilion border of his upper lip especially on the left side.

30. My examination of Mr. Soffar further revealed many scars on his body that bespeak a violent past and abuse. More specifically, there is a large scar on his forehead where he ran into a fireplace. His arms are scarred purposely, self sustained scratch marks, and marks which he did to get himself moved from solitary when there was a mattress fire in an institution in which he was incarcerated. His back has terrible scars on it. There are three on the left shoulder and one large one which may be a burn about two inches long and a half-inch wide. There are many round, small, deeply pitted which could be cigarette burns in the middle of his back. There is a narrow one-inch scar that looks like a beating scar, and many small ones. One is similar to the large burn on the left shoulder. On the right shoulder, there are narrow, horizontal scars one inch long and a burn below the right shoulder blade. Mr. Soffar has no idea how he sustained any of these on his back.

31. I have also reviewed results of the Single Photon Emission Computed Tomography (SPECT) Scan which was administered to Mr. Soffar at the University of Texas Medical Branch, Galveston on March 10, 1992. SPECT Scan provides a very sensitive picture of blood flow in the brain. As such, it reflects neurophysiology of the brain. Mr. Soffar's SPECT Scan was read as abnormal.

32. Mr. Soffar suffers from terrible migraine headaches that he treats effectively with coffee and ibuprofen. He takes so much ibuprofen for these headaches that it injured his stomach. During the headache, he needs to recline in a dark room. He has never been tried on Midrin or Imitrex, but he was treated with phenobarbital in the free world without much success.

33. The headaches occur once a week, lasting for about an hour to a half-day in duration. He has not had hallucinations--auditory or visual--except under the influence of drugs. He had enuresis until his twenties when he was put in prison for murder.

34. The Beck-Depression Scale gave a score of 18 (moderately depressed). Mr. Soffar is now said to have hypertension and diabetes as well.

III. DIAGNOSES

35. Mr. Soffar suffers from migraine, hypertension, diabetes, and bipolar disease. It is possible that Mr. Soffar suffers from diabetic neuropathy, as his ankle jerks are only 1+.

36. Mr. Soffar had experienced severe abuse as a child - physical as well as sexual. Posttraumatic injuries, of which there have been many, have caused him to lose consciousness.

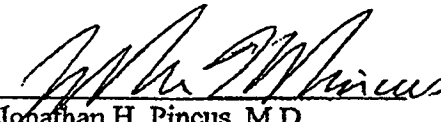
37. During the physical neurological examination of Mr. Soffar, I found evidence of brain damage. In my professional opinion, and to a reasonable degree of medical certainty, Mr. Soffar suffers from frontal lobe damage. The abnormalities of his brain are centered in the right hemisphere and involve the frontal portions. What does this mean, functionally? Lesions in this region would make him impulsive, less likely to see the outcome of certain plans, actions, statements. Such lesions would also make him less likely to be able to read the intentions of others from their facial expression and body language and to care about what he saw. This would diminish his capacity to learn from his own experience and his mistakes.

38. The cause of these brain abnormalities is not known. My review of results of the Magnetic Resonance Imaging (MRI), administered at the University of Texas Medical Branch, Galveston on March 10, 1992, leaves me to believe that these brain abnormalities were sustained at birth or during the perinatal period. I suspect that they are related to maternal drinking and possible drug use during pregnancy. To this end, my examination also revealed that Mr. Soffar likely suffers from probable fetal alcohol effect.

39. Mr. Soffar's behavioral abnormality dated to very early in his life, to one and a half years of age. There were some head injuries that could have produced brain damage that occurred as the result of concussion or direct or contre-coup injury that was sustained at a relatively early age. Then there is the possible deleterious effect on brain development of toxins ingested through huffing gasoline that could have damaged his brain. I believe that his exposure to alcohol and/or other toxins *in utero* because of his biological mother's indulgences further contributed to his brain damage.

40. Whatever the cause, it was clear to his parents at an early age that Mr. Soffar was damaged. When his parents realized that nothing they had done and nothing they could do would shield him from the catastrophic effects of his unmodulated behavior, including imprisonment, they may have given up, trying to live some semblance of a normal life by ignoring and distancing themselves from him.

41. I state under penalty of perjury that the foregoing is true and accurate to the best of my knowledge.


Jonathan H. Pincus, M.D.
Professor of Neurology, Chair Emeritus of

Neurology, Georgetown University
Washington, D.C.
Chief of Neurology at the Veterans
Administration Medical Center in
Washington, D.C.

Sworn to before me this 7th day of Feb., 2008.

Alice Faye McClarin
Notary public

ALICE FAYE McCLARIN
Notary Public of District of Columbia
My commission expires on: My Commission Expires April 30, 2008



IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-20385

MAX ALEXANDER SOFFAR,
Petitioner-Appellant,

v.

GARY JOHNSON, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION,
Respondent-Appellee.

AFFIDAVIT OF STEWART COOK

1. My name is Stewart Cook. I am 41 years old and I currently reside in Harris County, Texas.
2. I first met Paul Dennis Reid in approximately 1971, when I was eleven years old and in the sixth grade and Paul was in the seventh grade. We were both students in South Houston Intermediate School in South Houston. At the time, I was small for my age and I was being picked on by a class bully. Paul, who was taller, larger and stronger than most of other kids in school,

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came to my rescue, by stuffing the bully into a garbage can. After that, we became friends, and that friendship became closer as we grew older.

3. Although Paul and I went to different high schools, we stayed in touch with each other during that time. After high school, however, we lost touch for a while. Then, during the summer of 1980, I was at Astroworld and ran into him again. After that meeting, we started hanging around together. Paul didn't have a job at that time, so I introduced him to my employer and he began working for him, too. As a result, we saw quite a bit of each other.
4. My first criminal act and my first criminal involvement with Paul occurred in approximately 1981 when he called me one night and asked me to help him load merchandise he was stealing from an electronics store. I eventually pleaded guilty to charges arising from this incident and was put on probation.
5. Some time after that, we committed our first robbery together. We approached a store after it had closed, while the employees were taking inventory. Paul knocked on the front door, which was locked. When the manager came to the door and asked Paul what he wanted, Paul pretended that he could not hear what the manager was saying. When the manager finally opened the door, Paul pulled a gun on him and forced his way into the store. I followed behind. he had the manager use the store intercom to instruct all of the employees to stay calm and to lay down on the floor. Paul then fired a warning shot into the ceiling. At some point, Paul told me to put my hand inside my shirt and pretend that I had a gun, too, so that I wouldn't be jumped by the employees. We escaped with approximately \$25,000.

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6. After our first robbery, there were others, and soon they became more frequent. Overall, we may have committed 30 to 40 robberies from 1981 to mid-1982, when we were both finally arrested. Paul often had some particular goal or reason for committing the robbery; he was always going to use the money to buy something he couldn't afford, like a car. Once, I remember he called me on a Friday and said he wanted to raise \$5,000 so he could buy equipment to grow watermelons. By Sunday, we had committed a string of robberies and had collected approximately \$10,000. Paul used his share of the money to purchase a tractor.
7. Paul's typical approach was to rob businesses on weekends, when they were likely to have more cash on hand. We would usually time the robberies to occur around closing time, when the business would be emptying out. We would park our car a short distance away, so it would not be seen directly in front of the establishment we were robbing. Often, we would approach the business after it had been locked, but while there were still employees inside. Paul was good at talking his way into places after closing by acting friendly and convincing an employee to open the door for him. He was always very well-mannered and polite. Sometimes he would say he was looking for a job, and ask for the company's application papers. Once, he said his car wouldn't start and he needed to call someone.
8. Once we got in, and had checked out how many people were around, we would pull our guns out, tell everyone it was a robbery, gather everyone together in one place and then rob the place. We always knew where the safe was, and we would force the store manager to open it for us. Before we left the scene, we would usually like to get everyone into the cooler room (if there was one), or would force them to lay down on the floor, and tell them

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stay there for fifteen minutes. We told them that we would kill them if they came out or got up before then. Then we took off.

9. When I was committing robberies with Paul, we would never rob individuals because I was concerned that if we tried to take wallets, jewelry or other personal belongings, someone would do something stupid to protect their belongings, and it would result in them getting hurt. Paul didn't agree with me on this, and told me that when he committed robberies on his own, he would take personal belongings.
10. Paul was always obsessed about whether the victims we had robbed had gotten a good look at us and would be able to describe us to the police. On several occasions, he even called the place we had robbed and pretended to be a police officer, convincing the person who answered the phone to tell him if the victims had been able to describe the robbers.
11. During the robberies, Paul generally carried several handguns on him at all times, often keeping extra clips of ammunition and one gun in a leg holster. At different times, Paul had a number of different guns which he acquired in a number of different ways, sometimes having people buy them for him. Usually, these were revolvers -- .25 calibers, .32 calibers, .38 calibers and 9 mm's.
12. Although Paul sometimes fired his gun during the robberies, during most of the robberies we committed together, he never shot anyone (often because I persuaded him not to). However, all this changed after one particular robbery, when Paul used his pistol. I did not understand why Paul had used his gun and asked him why he did it. Paul brushed it off, telling me he'd done much worse during a robbery he had committed before we started

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working together. Specifically, he said that he once had a "problem" while he was robbing a bowling alley out on Route 290, and he had shot "four people." I asked him what happened to them; he just said they were "okay now." At the time, I didn't know what he meant by this. I now realize that he was talking about the Fairlanes Bowling Alley murders that occurred in 1980.

13. There were other times, unconnected to our robberies, when Paul shot at people. For example, he once got mad at a utility worker who had messed up some flowers Paul had planted in his yard. Paul yelled at him and told him to fix them. When the man said no, Paul pulled out his gun and shot in his direction. The man changed his mind and fixed the flowers.
14. Soon after Paul told me about the bowling alley shootings, I started to have strong misgivings about what we were doing and stopped committing robberies with him.
15. In about June 1982, Paul was finally arrested (for a robbery in which I was not involved). Later, I was also arrested. I pleaded guilty to four robberies and was sentenced to 18 years. I was paroled in June 1988. My parole was revoked in early 1997. I was released again in March of this year. Paul tried to plead insanity after his arrest, but he was later found sane and then pleaded guilty. He got a 20 year sentence and was paroled in 1990. I have not seen Paul since we were arrested, but over the years, Paul has written to me from time to time, and he has sent me his most recent letters from death row in Tennessee, where he is now imprisoned.
16. I have followed some of the press accounts of Paul Reid's robbery-murders in Tennessee. I can see many telling similarities with the types of crimes he

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committed in Texas. In most instances in Tennessee, he was committing robberies of businesses on the weekends, and committing them while the establishment was not open for business.

17. Shortly before my recent release from prison, I learned indirectly, from a visitor to another prisoner, about Max Soffar. I was told that Max Soffar is on death row for murders at a bowling alley located outside Houston on the "Northwest Freeway." Although, I did not make the connection at first, I eventually realized that the Northwest Freeway is the same as Highway 290. As I learned more about the murders involved in Soffar's case, I began to realize that the robbery and shootings Paul Reid told me about many years ago occurred at the same bowling alley as the one involved in Soffar's case, and that there was too much similarity between what Paul told me and the details of Soffar's case to be just a coincidence.
18. Soffar's attorneys have shown me the 1980 police sketch of the person who was supposed to have committed the bowling alley murders, based on a description given by the surviving eyewitness. The sketch is incredibly similar to the way Paul Reid looked in the summer of 1980, when I met him at Astroworld. Paul is large, and over 6-feet tall; the description and drawing describe a man 6'2" and 185 pounds. Paul had dark brown hair which he generally wore long and combed straight back. Paul was sensitive about a deformity of one of his ears and he always wore his hair long to conceal the deformed ear; later, he had plastic surgery to fix the ear. Paul did not wear a beard or mustache at this time. The description says the murderer was 25 years old; at the time, Paul would have been about 23, and he looked and acted older than his age.

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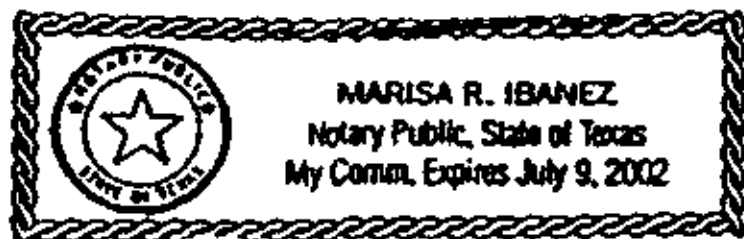
19. It is my belief that when Paul Reid told me about a bowling alley robbery out on Route 290 in which he shot four people, he was referring to the Fairlanes bowling alley in which three people were killed in 1980. He had this discussion with me slightly less than two years after the Fairlanes robbery occurred; I don't think he would have remembered such an incident just from reading about it in the news, if he hadn't done it or been involved in it himself. At the time Paul made these comments to me, I had no doubt in my mind he was telling me about an actual robbery he had done; Paul was always very talkative, at least with me, and he often told me about such things as his robberies and other exploits. The description of the robbery I've seen in old newspaper accounts make me believe that it is exactly the type of job Paul would have done during this period, prior to the time I met up with him at Astroworld, when he was working alone. Although I never saw Paul Reid kill anyone, I long ago came to the conclusion, based on what I did see when we were doing robberies together, that Paul is a person who is unpredictable, subject to sudden murderous rages and more than capable of killing helpless unarmed people in cold blood. He has no conscience and no remorse, and never did have. If he decides he wants something, he will hurt whomever and do whatever it takes to get it. If he believes killing people will help him, he would not hesitate to do it.

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20. I am providing this information to Mr. Soffar's attorneys because I believe he is innocent of the bowling alley murders and is wrongfully incarcerated. I am also remorseful about the fact that I did not make an earlier effort to turn Paul into the authorities before he committed the Tennessee murders, and want to make amends.

Sworn to and subscribed before me
this 1 day of APRIL, 2000

Marisa R. Ibanez
NOTARY PUBLIC



Stewart Cook
Stewart Cook

**IN THE COURT OF CRIMINAL
APPEALS OF TEXAS**

AND

**IN THE 232ND DISTRICT COURT
OF HARRIS COUNTY, TEXAS**

EX PARTE

MAX ALEXANDER SOFFAR,

Applicant

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§
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§

Indictment No. 319724

CCA Writ No. 29,980 03

AFFIDAVIT OF PATRICK PYE

I, Patrick Pye, having been duly sworn according to the law, state under penalty of perjury as follows:

1. My name is Patrick Pye. I live at 14911 Tilley Street, Houston, Texas 77084.

I am not being paid to give this statement, and this statement is entirely voluntary.

2. I was a part-time employee of the Fairlanes Windfern Bowling Center on Route 290 near Houston. I was an employee in the summer of 1980, including the time when there was a shooting on the evening of July 13, 1980. The bowling alley was my second job, and I only worked there nights and weekends.

3. I was at the bowling alley on the night of the shooting in July 1980, but had already left for the evening when it happened. I exited the bowling alley with the last of the customers, and Steve Sims, the assistant manager, locked the door behind us as we left.

4. Shortly after the shooting, I remember telling a member of the Houston Police Department that about a week prior to the event, I was working at the bowling alley and recall a verbal altercation involving Steve Sims and a white male customer. The customer had refused to produce what is called a "play sheet," which was used back then to track the number of bowling games a customer would play so that the bowling alley could calculate their bill. This customer, who was about 22 or 23 years of age, 6'1" or 6'2", with a strong build, told Steve Sims that he never received the play sheet and refused to pay. Steve and I had to remove him from the bowling alley. Later, we found the customer's play sheet on top of a trash can. At some point after the shooting, I remember asking our home office in Baltimore to send us the sheet so that I could turn it over to the police. It stood out because there was strange text on the sheet where the customer was asked to write his name.

5. The customer called and threatened us after we removed him from the bowling alley, saying we should both be looking over our shoulders because he would be getting even. Shortly after we threw him out of the alley, I received a phone call from the customer demanding to know the names of the people who removed him from the bowling alley. The man on the phone said that we had better have eyes in the back of our heads, because "I am going to blow your heads off." I told the police about the altercation shortly after the shooting occurred.

6. About a week after the shooting, I was working at the bowling alley and received a call from a guy saying he was the one who did the shooting, and that he was going to come back and get me. At that point, I told a female friend of mine that we should leave the bowling alley. I walked her to her car. As she was driving out of the parking lot, I noticed a man in a car jump up and immediately leave in pursuit of my friend. I got in my car, caught up to the man down the road, and began flashing my lights to scare him away from my friend's car.

I also was able to take down his license plate number. I have no way of knowing whether the man in the car was associated with the caller, but the timing of the events suggested that he might have been. The following day, I went to the police station and reported the incident to a detective assigned to the case of the shootings at the bowling alley.

7. I was shown several photographs of a white male from the early 1980's. The first photograph that struck me was one of a wedding party (Attachment A). The groom in the photograph is in fact the person that threatened me and Steve Sims about a week prior to the shootings at the bowling alley. I am sure that the person in the wedding photograph, as well as in a second photograph (Attachment B), is the same man that we threw out of the bowling alley for not paying.

8. I was not contacted by an attorney for Max Soffar at any point prior to May 2008. I would have spoken with Mr. Soffar's attorneys and would have testified to the facts and circumstances set forth in this affidavit if I had been given the opportunity to do so.

Attachment A

Paul Dennis Reid at his wedding in July 1980



Attachment B

Arrest Photograph of Paul Reid (undated)



HOUSTON POLICE DEPARTMENT — OFFENSE REPORT SUPPLEMENT

INCIDENT NO. 8-55443

OFFENSE Car Murder (3 cases) 1st murder (1) LOCATION 1441 Northwest Frey
 COMPLAINANT(S) Gray Lee Terrie DATE OF OFFENSE 7-13-90
 DATE SUPPLEMENT MADE 7-14-90

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION	SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED
DATE & TIME	DATE & TIME	DATE & TIME

RECOVERED STOLEN VEHICLE: YEAR..... MAKE..... MODEL..... LIC.YR.STATE&NO.....
 CONDITION OF VEHICLE: DAMAGED WRECKED BURNED AMOUNT OF DAMAGE \$.....
 STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)
 VEH. RELEASED TO:..... TOWED TO:..... BY:.....

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC.:

age three
 there was a white male sitting in the van and this man looked to be in his 20's, med. build
 had a drk beard and mustache, wearing a drk t-shirt and cap... (this man may be the man that
 came into the bowling alley with the bottle of beer and became angry when he was told he
 couldn't come in with the bottle. — and therefore would be the man that bowls in the Sixty
 Eight League)
 Dets talked with Patrick Pye, wa 22, 8000 W. Tidwell #404, wk phone 466-8012, employee of
 the bowling lanes who stated that he noticed a wm that had his wife or girlfriend bowling
 on lane two. The white male did not bowl and left around 9:30 pm. Pye stated that this white
 male was rather strange looking and this was what brought him to Pye's attention. Pye said
 that this man was wearing a crk green shirt, blue jeans, hair messed up, 5'9", med build,
 170 lbs, beard.
 Pye also wanted to add that he and the # 2 compl., Steve Sims, had a "run-in" with ~~Steve~~
~~James~~ at the bowling alley and THEY HAD TO PUT HIM OUT OF THE BOWLING ALLEY FOR THE NIGHT.
 Pye stated that he got a phone call from this man who stated "you better be watching your
 shoulder". Pye stated that he felt that he would be able to id this man if he saw him
 again.
 Dets then went to 6941 Satsuma, Jersey Village, and talked with Bruce Krichmeyer, 466-2153.
 He stated that he wanted to tell Dets about an incident that he had with Jerrall Rappe at
 the bowling alley about two weeks ago. Krichmeyer stated that he had been sitting in the
 when Rappe came in and looked as if he had been drinking too much. Rappe has a foul mouth
 according to Krichmeyer and is not liked by very many people that Krichmeyer knows. It was
 during this night that Krichmeyer told Rappe that there was something the matter with him
 and he better get out and leave Krichmeyer alone. Krichmeyer stated that Rappe then left
 the bowling lane and went outside and returned with a pistol wrapped in a towel. Krichmeyer
 stated that Rappe never pulled the pistol out but made it known that he did have one. ~~Some~~
 Rappe who works at the bowling alley took the pistol from her husband and put it behind
 counter. Rappe never said anything more about this to Krichmeyer.
 While Dets were interviewing Betty Rappe they learned that the bowling alley has a
 TIME CONTROL SHEET on which is placed the lanes by number and the number of games played
 on that lane. This sheet shows that the most last lane assigned was lane 30 and there were
 6 games played on it. — this sheet also shows that there were 11 "specials" played during
 the time period of 9:30 pm to 11:30 pm. — these specials would mean that there would
 could be 11 lanes in use until closing at 11:30 pm. The pool tables are closed at 11:30
 also and their record shows that table 2 was closed at 11:15 pm and table 1 was opened
 10:40 pm with no closing time being placed on the card. There is a charge of \$1.75 for
 table and since the charge is \$2.50 an hour this table was closed somewhere between 11
 and 11:40 pm. Betty Rappe states that the bar and snack bar are always closed first.

SUPPLEMENT COMPLETE CONTINUED

OFFICER(S) MAKING REPORT: 7-388 STATUS: OPEN CLEARED INACTIVE UNFOUNDED
 EMP. NO. UCR DISPOSITION:
 EMP. NO. S.R. OFFICER EMP. NO.

IN THE 232nd JUDICIAL DISTRICT COURT
OF HARRIS COUNTY, TEXAS

THE STATE OF TEXAS	§	
	§	
	§	
-VS-	§	Indictment No. 319724
	§	
MAX ALEXANDER SOFFAR	§	
	§	

STATE OF TENNESSEE }
 }
 COUNTY OF DAVIDSON }

Affidavit of Patrick Postiglione

Patrick Postiglione, being duly sworn, deposes and says upon penalty of perjury thereof:

1. My name is Patrick Postiglione. I am over the age of 18 and I am competent to make this affidavit.
2. I have 25 years of service as a police officer with the Nashville Metropolitan Police Department, and currently hold the rank of Sergeant. I started with the Nashville Police in 1980, and transferred to the homicide unit on September 1, 1987. On September 1, 1998 I was transferred to a specialized unit called the "murder squad," which concentrates on homicides where there are no known suspects. In 2001, I was promoted to the rank of Sergeant, and am currently the Sergeant over the homicide cold case unit..
3. I served as the lead investigator of the murder/robbery committed at the Captain D's restaurant in Donelson, Tennessee, on February 16, 1997. Paul Dennis Reid was convicted of the murder/robbery on April 14, 1999. I was named the Metropolitan

Police Department's Investigator of the Year for 1999 in connection with the investigation of the Captain D's murder/robbery.

4. I also played a role in the investigation of two other murder/robberies: the robbery/murder of a McDonald's restaurant in Hermitage, Tennessee on March 23, 1997, and the robbery/murder of a Baskin-Robbins ice cream shop in Clarksville, Tennessee in April of 1997. I went to the scenes of both of these crimes.
5. These crimes shared several characteristics:
 - a. Each involved the robbery of a business, where entry was gained during a time when the business was closed, but employees were still present.
 - b. In the McDonald's and Captain D's robbery/murders, Mr. Reid did not force his way into the business; rather, he employed a ruse in each case to gain access.
 - c. The McDonald's and Captain D's were robbed on a weekend, when there was likely to be more cash in the till.
 - d. In the McDonald's and Captain D's robberies, Mr. Reid did not attempt to conceal his appearance by means of a mask or stocking pulled over his face. We also have no indication that Reid attempted to conceal his appearance in the Baskin-Robbins murder/robbery.
 - e. In each case, Mr. Reid either killed or left for dead all who were unfortunate enough to be present at the time of the robbery.

6. The Captain D's murder/robbery

- a. I served as the lead investigator of the Captain D's murder/robbery,

supervising a team of several detectives. Points b through f below were determined during this investigation.

- b. Early on the morning of Sunday, February 16, 1997, Mr. Reid robbed a Captain D's restaurant in Donelson, Tennessee, and killed the two employees, Steve Hampton and Sarah Jackson, who were present at that time.
- c. There were no signs of forced entry into the restaurant, which had not yet opened for business. Rather, our investigation showed that Mr. Reid tricked Ms. Jackson and Mr. Hampton, who were preparing to open the restaurant, into letting him in by pretending to seek employment.
- d. During the investigation of the Captain D's restaurant robbery/murder, I determined that employees working at the restaurant the night before recall Mr. Reid stopping by shortly before closing, picking up a job application, and asking if anyone would be at the restaurant on Sunday morning. A witness driving past the restaurant on Sunday morning recalled seeing a man who fit Mr. Reid's physical description standing inside the doorway of the restaurant, showing a white piece of paper to Mr. Hampton.
- e. Once Mr. Reid gained access to the Captain D's restaurant, he stole \$7,140 in cash, as well as Mr. Hampton's wallet.
- f. To gain access to the cash, Mr. Reid would have needed to access a safe – the only way to access that safe would have been for Steve Hampton, the manager, to open the safe.
- g. The contents of Mr. Hampton's wallet, including a movie rental card, were

found on February 17, 1997, strewn along the highway between the restaurant and Mr. Reid's home. A fingerprint was taken from the movie rental card; in early June of 1997 I had this fingerprint compared to fingerprints I obtained from Mr. Reid while he was in custody in the Cheatham County jail on a different charge – the fingerprints matched.

- h. Mr. Reid then forced Ms. Jackson and Mr. Hampton into a walk-in refrigerator, where he forced each of them to lie, face-down, on the floor. He then shot each of them in the head, execution style, with a handgun. Each victim died as a result of these injuries.
- i. On April 14, 1999, Mr. Reid was convicted of the Captain D's robbery and murders. On April 20, 1999, the jury imposed two death sentences.

7. The McDonald's robbery/murder

- a. I participated in the investigation of the McDonald's robbery/murders, assisting the lead investigator, Mike Roland. Points b through h were determined during the course of this investigation.
- b. Late in the evening on Sunday, March 23, 1997, Mr. Reid robbed a closed McDonald's restaurant in Hermitage, Tennessee. Of the four employees present, Mr. Reid killed three, including Ronald Santiago, Andrea Brown, and Robert Sewell. The fourth employee, Jose Gonzales, survived his near-fatal wounds, and eventually identified Mr. Reid as the murderer.
- c. There were no indications, such as a damaged door or lock, of forced entry into the McDonald's. Rather, Mr. Reid gained access to the McDonald's after it

had closed for the night by approaching Mr. Sewell and Mr. Gonzales as they left the restaurant after closing. Mr. Reid showed the two men a handgun, and ordered them to let him into the restaurant.

- d. After Mr. Reid gained access inside the restaurant, he forced Mr. Santiago to retrieve money from the safe – approximately \$2,358.57 was taken. After Mr. Santiago gave Mr. Reid the money in the safe, Mr. Reid then forced the four employees into a storeroom where each was to lie down, face-down, on the floor.
- e. Mr. Reid then shot Mr. Santiago, Ms. Brown, and Mr. Sewell in the back of the head, execution-style. Mr. Reid attempted to kill Mr. Gonzales the same way, but the handgun would not fire. Mr. Reid then pulled a knife and attacked Mr. Gonzales, stabbing him seventeen times and leaving him for dead.
- f. Mr. Gonzalez survived his wounds, and worked with me to identify the killer. Based on Mr. Gonzales's description of the killer as a white man, 6'2" or taller, with a light to medium build, a Nashville police artist drew a composite sketch of the McDonalds's killer.
- g. In early June of 1997, police officials at the Cheatham County jail, where Mr. Reid was being held on unrelated charges, alerted me to some similarities between Mr. Reid and the McDonald's composite sketch. I then obtained Mr. Reid's fingerprints (which, as noted above, were a match to the print found on the movie rental card stolen from Steve Hampton during the Captain D's robbery/murder) as well as a photograph of Mr. Reid.

- h. I used the photograph of Mr. Reid as part of a six-photo spread I showed to Mr. Gonzales on June 2, 1997. The other five photos in the line-up were of individuals who I felt resembled Mr. Reid. Mr. Gonzales identified Mr. Reid from the six-photo spread as the man who committed the McDonald's murder/robbery.
- i. On May 25, 2000, Mr. Reid was convicted of aggravated robbery, three counts of felony murder, and one count of attempted murder. Mr. Reid was sentenced to death on May 27, 2000.

8. The Baskin-Robbins robbery/murder

- a. I participated in the investigation of the Baskin-Robbins robbery/murders, including executing a search warrant on Mr. Reid's home and sharing evidence and communicating with the lead detective, Robert Miller, on a regular basis. Points b through e were determined during the course of this investigation.
- b. On the evening of Wednesday, April 23, 1997, sometime just after closing at 10:00 pm, Mr. Reid robbed a Baskin-Robbins in Clarksville, Tennessee. Mr. Reid killed the two employees who had working been working at the Baskin-Robbins after closing, Michelle Mace and Angela Holmes.
- c. The investigation indicated the likelihood that Mr. Reid had gained access to the Baskin-Robbins by convincing the employees to unlock the front door and let him in through the front door, for Mr. Reid did not force his way into the ice cream shop through either the front or side doors, and witnesses who left the Baskin-Robbins immediately before its close at 10:00 pm recalled Ms.

Mace and Ms. Holmes locking the front door as the last customers left.

- d. The investigation determined that approximately \$1,565.58 would have been in the cash register and safe of the Baskin-Robbins after it concluded business that day. This money was missing from the crime scene.
 - e. The bodies of Ms. Mace and Ms. Holmes were later found in a state park, with multiple stab wounds -- Ms. Mace had 14 stab wounds.
 - f. On September 18, 1999, Mr. Reid was convicted of these murders. Mr. Reid was sentenced to death on September 22, 1999.
9. As part of my work in the investigation of the robbery-murders at Captain D's, McDonald's, and Baskin-Robbins, I investigated the personal history of Paul Reid, including a trip to Texas, where I interviewed Mr. Reid's friends and coworkers and gathered records related to Mr. Reid. I also interviewed Mr. Reid's mother by phone.
10. During my investigation of Mr. Reid's personal history and preparation for trial, I learned the following points:
- a. Mr. Reid was born in Houston on November 12, 1957, and lived there until 1990, except for the periods during which he was imprisoned or institutionalized.
 - b. Mr. Reid's mother abandoned him at an early age; he was raised first by his grandmother, and then his alcoholic father.
 - c. At age 8, Mr. Reid was sent to a boys' home, due to his disruptive behavior. In 1977, Mr. Reid was expelled from Dobie High School for truancy.
 - d. In December of 1977, Mr. Reid was arrested for aggravated robbery in

Houston. However, he was found incompetent to stand trial, and was committed to Rusk State Hospital, where he stayed until early 1979.

- e. After his release from Rusk State Hospital, Mr. Reid worked as security guard until April of 1980. From the summer of 1980 through mid-1982, including the weekend of July 12-13, 1980, Mr. Reid lived in Houston while holding various jobs.
- f. From 1981 until mid-1982, Mr. Reid worked with Stewart Cook to commit armed robberies. Generally, Messrs. Reid and Cook would target restaurants, which they would enter on some pretext. The employees would then be herded into a specific area, and forced to lie on the floor.
- g. In June of 1982, Messrs. Reid and Cook were arrested. Mr. Reid was once again found incompetent to stand trial, and was sent back to Rusk State Hospital, where he stayed until June of 1983, when he was deemed competent to stand trial by the hospital staff.
- h. In 1984, Mr. Reid was sentenced to 20 years in prison in connection with several of the robberies that he and Mr. Cook committed in the Houston area.
- i. Mr. Reid was released from jail early in 1990, and relocated to Fort Worth. In 1993, Mr. Reid relocated to Oklahoma City. He then moved to Nashville in 1995.
- j. Mr. Reid moved back to Fort Worth briefly, from March through December of 1996. Later, during a trial pertaining to a murder committed in Fort Worth during the time that Mr. Reid lived there, I testified as to the nature of the

robbery/murders that Mr. Reid had committed in Nashville in 1997.

k. At the end of 1996, Mr. Reid returned to the Nashville area. Soon afterward, in February of 1997, Mr. Reid committed the robbery/murder at the Captain D's – the first of the three Tennessee crimes that Mr. Reid has been convicted of.

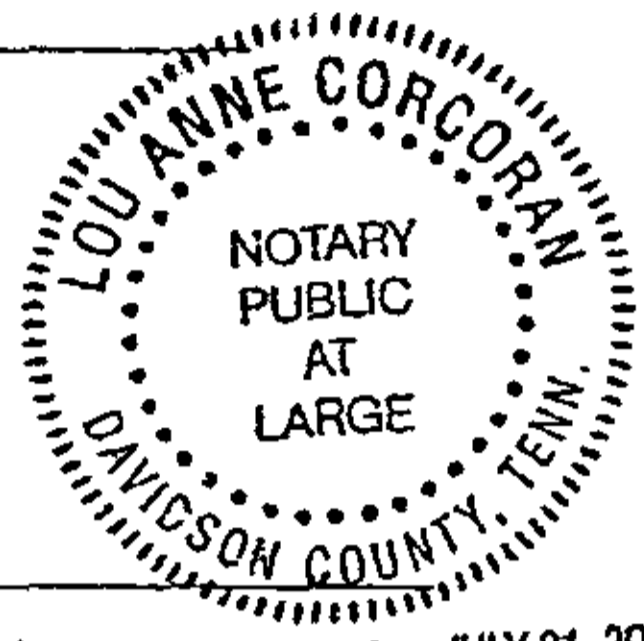
11. I interviewed Mr. Reid in early June of 1997. During this interview, Mr. Reid acted erratically. He referred to government agents watching him, spoke of himself in the third person, and was often incoherent. When I asked Mr. Reid how his fingerprint got on Mr. Hampton's movie rental card, Mr. Reid responded that it was possible that the print could have gotten on the card without his ever touching the card.

12. Mr. Reid displayed a distinctive modus operandi in his crimes in Tennessee – he would gain entry to an establishing at a time when the establishment was closed but employees were still present, by causing the employees to let him in. Mr. Reid would steal cash and coins, often having an employee access the register or safe. Mr. Reid would then kill or attempt to kill all employees present at the time of the robbery, with a preference for forcing the employees to lie on the floor, face down, and then shooting them execution style, with a gun shot to the head.

FURTHER, AFFIANT SAYETH NOT.

Patrick Postiglione
Patrick Postiglione

Sworn to before me this 7th day of December 2005.



Lou Corcoran
NOTARY PUBLIC - TENNESSEE
My Commission Expires: 7/21/07 My Commission Expires JULY 21, 2007

August 4, 2014

Dear Texas Board of Pardons and Paroles,

I am Dr. Abby Siegel, Medical Director of Hepatobiliary Oncology, Assistant Professor and Attending Physician at the New York Presbyterian-Columbia University Medical Center (NYP-CUMC) in Manhattan. I care exclusively for patients with gastrointestinal cancers, with an emphasis on liver, biliary, and colon cancers. I am extensively involved in research, especially in studies looking at new biologic agents for liver cancers, and novel treatment strategies. I also conduct research in treatment outcomes for liver cancers, and teach on the solid tumor service at NYP-CUMC. I serve on the NCI Task Force for Hepatobiliary Malignancies, and am the Co-Chair of the SWOG hepatobiliary subcommittee.

I have been asked to provide an independent medical opinion regarding Max Alexander Soffar based on available medical records. I have worked on this letter together with my Oncology Fellow, Dr. Josh Strauss, and personally reviewed the data provided.

While we set forth the scientific details and history of this case below, we recognize that this body may not have medical training and so provide first this layperson's description of Mr. Soffar's condition: he has terminal liver cancer that has spread, in the form of an inoperable tumor, to his right portal vein. There appears to be no medical question of whether Mr. Soffar will die from this condition, only a question of how long he has to live.

Mr. Soffar was diagnosed with a 2.8 cm hepatocellular carcinoma (HCC) or cancer of the liver, in 2013 based on a triple phase CT scan. HCC is a common complication of hepatitis C viral infection which Mr. Soffar has had. On 12/12/2013 he underwent surgery in an attempt to resect the tumor, but there was a 5 mm vessel coursing close to the posterior aspect of the tumor so it was decided to perform a microwave ablation of the tumor instead of a resection. He recovered well from surgery. In 6/2014 he developed abdominal pain and on 6/24/14 he had a CT scan which demonstrated interval development of enhancing thrombi within the right portal vein, suspicious for tumor thrombi. His pain was severe enough to require escalation of his pain medications and the administration narcotics.

Subsequent MRI testing confirmed the presence of the tumor thrombus. His AFP blood test rose to 861 and serves to further confirm the growth of his HCC. He was seen by an oncologist who recommended treatment with sorafenib, the only medical treatment available for advanced HCC. If successful, this treatment would prolong Mr. Soffar's life in general by about 3 months, but would not cure his cancer.

The most widely accepted staging system for HCC is the Barcelona Clinic Liver Cancer (BCLC) staging system. Based on the presence of tumor thrombus in the portal vein, a Child Pugh score of A (based on otherwise well preserved liver function) and a reasonable performance status, Mr. Soffar would be considered Stage C, or advanced stage. At this stage the cancer is not curable. His life expectancy can be estimated at less than 50% at 1 year if he takes sorafenib, and less if he does not. His treatment could include sorafenib, which may prolong his life by 2-3 months, or other less-proven therapies such as Y90, or external beam radiation. It is not clear if patients live longer with these approaches than with sorafenib. The date from which his life expectancy should be measured is the date of the June scan.

If he becomes only capable of limited self-care or if he is confined to his bed for more than half of his waking hours, that would be significant sign of disease progression and his prognosis would worsen to less than 3 months. It would also worsen if his liver function deteriorates.

The dying process from liver cancer can be very difficult. As the cancer progresses through the liver and the liver function becomes impaired, abdominal pain symptoms become severe, systemic bleeding can become a major problem, frequent infections are common and neurologic deterioration with confusion is likely. As his cancer progresses Mr. Soffar will require intensive monitoring to make certain he is comfortable during his final months.

Please feel free to contact us for any additional information.

Sincerely,

A handwritten signature in black ink, appearing to be 'Abby Siegel', with a long horizontal flourish extending to the right.

Abby Siegel M.D
Medical Director of Hepatobiliary Oncology
Columbia University Medical Center

August 4, 2014

To Whom It May Concern:

I am a medical oncologist and Associate Professor at Duke Cancer Institute and Duke University Medical Center. I treat solely gastrointestinal cancers. I conduct research in improving cancer care delivery and am also involved in clinical research focused on developing new treatments for gastrointestinal cancers. I am a member of and serve on committees for the American Society of Clinical Oncology and the Alliance for Clinical Trials in Oncology.

I have reviewed the letter of my colleagues at the Columbia University Medical Center, and agree completely with their prognosis of Max Soffar's condition, including their conclusion, in lay-person's terms, that "he has terminal liver cancer that has spread, in the form of an inoperable tumor, to his right portal vein."

Sincerely,



S. Yousuf Zafar, MD, MHS
Associate Professor of Medicine
Duke Cancer Institute

Texas Board of Pardons and Paroles

8/01/2014

Clemency Section

8610 Shoal Creek Boulevard

Austin, Texas 78757

Re: Max Alexander Soffar (TDJ# 685 - MRN 091035P – DOB 12/15/1955)

To Whom it May Concern,

I have been asked by Brian W. Stull to provide an independent medical opinion regarding Mr. Soffar. To that end I have reviewed 162 pages of his medical records from October of 2013 thru 7/17/2014.

I am a Board Certified Medical Oncologist currently on the faculty of Emory University School of Medicine. I did my oncology fellowship at Stanford University (1970 – 1972) and after 2 years in the Army joined the Emory faculty in 1974. After 21 years at Emory I left academic medicine for private practice in Atlanta (Georgia Cancer Specialists 1995 – 2007). I returned to Emory in 2007 where I supervise 2 teaching clinics in Oncology each week supervising 6-8 fellows and residents, seeing about 50 patients per week.

The key elements of Mr. Soffar's medical history are as follows:

Diagnosis of hepatocellular carcinoma by hepatic wedge biopsy 12/12/2013 with cholecystectomy and open microwave ablation of a 2.9 cm mass in the right lobe of the liver also on 12/12/2013.

Follow up CT scan of abd/pelvis 2/6/2014 with thrombosis of a tributary of right portal vein suggesting tumor progression.

CT of abd/pelvis 6/24/2014 showing enhancing thrombi in the right portal system confirmed by MRI of the liver on 7/16/2014 confirming tumor progression. His AFP (a blood marker for hepatocellular cancer) was markedly elevated at 861 on 7/16/2014. He was presented to the GI tumor conference on 7/16/2014 and was deemed unresectable and palliative therapy with Sorafenib, an oral anti-cancer agent, was recommended.

Mr. Soffar's disease is not curable. The best estimate of his median survival is 10.2 months based on the outcome of Sorafenib treatment in 550 patients reported by Cheng et al in 2013 (Sunitinib versus Sorafenib in Advanced Hepatocellular Cancer: Results of a Randomized Phase III Trial. *Journal of Clinical Oncology*, 2013:4067-4075). He was admitted to the hospital for abdominal pain in July 2014. He is likely to experience progressive pain and deterioration of liver function during the coming months. The majority of patients with unresectable liver cancer die of liver failure causing swelling (fluid in the

abdomen), loss of muscle mass, weakness, confusion and pain. Patients not receiving Sorafenib have a median survival of 6-7 months.

Sincerely Yours,

A handwritten signature in black ink, appearing to read 'M. Moore', written in a cursive style.

Melvin R. Moore, MD

Visiting Professor Oncology

Emory University School of Medicine

1668 Dyson Drive

Atlanta, GA 30307

Texas Board of Pardons and Paroles

8/01/2014

Clemency Section

8610 Shoal Creek Boulevard

Austin, Texas 78757

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Sincerely Yours,

A handwritten signature in black ink, appearing to read 'M. Moore', written in a cursive style.

Melvin R. Moore, MD

Visiting Professor Oncology

Emory University School of Medicine

1668 Dyson Drive

Atlanta, GA 30307

Melvin R. Moore, MD
1668 Dyson Drive
Atlanta, GA 30307

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Justice
FOREVER

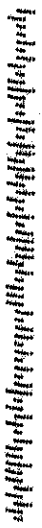
RECEIVED

AUG - 5 2014

201 W. Main Street
Suite 402
Durham, NC 27701

Brian W. Stull
ACLU Capital Punishment Project
201 West Main Street, Suite 402
Durham, NC 27707

27701322802



**CORRECTIONAL MANAGED CARE
CLINIC NOTES**

Patient Name: SOFFAR, MAX A **TDCJ#:** 685 **Date:** 07/22/2014 16:19 **Facility:** POLUNSKY (TL)

Age: 58 year **Race:** W **Sex:** male

Most recent vitals from 7/15/2014: BP: 144 / 72 (Sitting) ; Wt: 205 Lbs.; Height: 71 In.; Pulse: 80 (Sitting) ; Resp: 16 / min; Temp: 97.4 (Oral) BMI: 29

Cell side

Allergies: PENICILLINS

Patient Language: ENGLISH Name of interpreter, if required:

Current Medications:

<u>ACETAMINOPHEN 325MG TABLET</u> 2 TABS ORAL 3 TIMES DAILY for 5 Days KOP	ORDERING FACILITY: POLUNSKY (TL) ORDERING PROVIDER: NGUYEN, CO	LAST DATE GIVEN KOP: REFILLS: 0 / 0 EXPIRATION DATE: 7/25/2014 01:01:00AM
<u>ASPIRIN EC 81MG TABLET</u> 1 TABS ORAL DAILY for 10 Days X 6 MONTHS !!! HG !!! gutierrez, a.	ORDERING FACILITY: HOSP.GALVESTON ORDERING PROVIDER: HG, PROVIDER X	COMPLIANCE: 83.33 % REFILLS: 0 / 0 EXPIRATION DATE: 7/27/2014 02:05:00PM
<u>DILTIAZEM XR 240MG CAPSULE</u> 1 CAPS ORAL TWICE DAILY for 30 Days KOP	ORDERING FACILITY: POLUNSKY (TL) ORDERING PROVIDER: JACKSON, DIANE E	LAST DATE GIVEN KOP: 07/11/2014 10:55:59PM REFILLS: 5 / 5 EXPIRATION DATE: 8/13/2014 12:59:00PM
<u>hydroCHLOROthiazide 25MG TAB</u> 1 TABS ORAL DAILY for 30 Days KOP	ORDERING FACILITY: POLUNSKY (TL) ORDERING PROVIDER: JACKSON, DIANE E	LAST DATE GIVEN KOP: 07/11/2014 10:55:59PM REFILLS: 5 / 5 EXPIRATION DATE: 8/13/2014 01:00:00PM
<u>LISINAPRIL 40MG TABLET</u> 1 TABS ORAL DAILY for 30 Days KOP	ORDERING FACILITY: POLUNSKY (TL) ORDERING PROVIDER: JACKSON, DIANE E	LAST DATE GIVEN KOP: 07/11/2014 10:55:59PM REFILLS: 5 / 11 EXPIRATION DATE: 2/09/2015 12:07:00PM
<u>METOPROLOL 100MG TABLET</u> 1 TABS ORAL TWICE DAILY for 30 Days KOP	ORDERING FACILITY: POLUNSKY (TL) ORDERING PROVIDER: JACKSON, DIANE E	LAST DATE GIVEN KOP: 07/11/2014 10:55:59PM REFILLS: 5 / 5 EXPIRATION DATE: 8/13/2014 01:01:00PM

Today's Problem: f/u after hosp admit
07/22/2014 16:19

S:

Hepatocellular cancer with resection
Portal vein thrombus by triple phase CT
Last week was sent to HG due to pain
He was told that he is terminal and not a candidate for IR or surgery
Recommendation was for chemo and pain control
Discussed with Dr. Nguyen today, can reorder ibuprofen and T3 for breakthrough
Today he c/o pain 5/10, but says he only needs ibuprofen
Sometimes pain gets much worse

O:

NAD
Abdom as before- no increase in size but still with bulge on right side

A/P:

1. Hepatocellular CA with portal vein thrombus:
 - Restart ibuprofen
 - T3 for breakthrough pain

**CORRECTIONAL MANAGED CARE
CLINIC NOTES**

Patient Name: SOFFAR, MAX A **TDCJ#:** 685 **Date:** 07/15/2014 12:25 **Facility:** POLUNSKY (TL)

Age: 58 year **Race:** W **Sex:** male

Most recent vitals from 7/15/2014: BP: 130 / 81 (Sitting) ; Wt: 205 Lbs.; Height: 71 In.; Pulse: 63 (Sitting) ; Resp: 20 / min; Temp: 97 (Oral) BMI: 29

Allergies: PENICILLINS

Patient Language: ENGLISH Name of interpreter, if required:

Current Medications:

DILTIAZEM XR 240MG CAPSULE

1 CAPS ORAL TWICE DAILY for 30 Days KOP

ORDERING FACILITY: POLUNSKY (TL)
ORDERING PROVIDER: JACKSON, DIANE E

LAST DATE GIVEN KOP: 07/11/2014 10:55:59PM
REFILLS: 5 / 5
EXPIRATION DATE: 8/13/2014 12:59:00PM

hydroCHLOROthiazide 25MG TAB

1 TABS ORAL DAILY for 30 Days KOP

ORDERING FACILITY: POLUNSKY (TL)
ORDERING PROVIDER: JACKSON, DIANE E

LAST DATE GIVEN KOP: 07/11/2014 10:55:59PM
REFILLS: 5 / 5
EXPIRATION DATE: 8/13/2014 01:00:00PM

IBUPROFEN 600MG TABLET

1 TABS ORAL TWICE DAILY for 30 Days KOP
As Needed (PRN)

ORDERING FACILITY: POLUNSKY (TL)
ORDERING PROVIDER: NGUYEN, CO

LAST DATE GIVEN KOP: 06/21/2014 05:28:34AM
REFILLS: 1 / 2

EXPIRATION DATE: 8/21/2014 10:26:00AM

LISINAPRIL 40MG TABLET

1 TABS ORAL DAILY for 30 Days KOP

ORDERING FACILITY: POLUNSKY (TL)
ORDERING PROVIDER: JACKSON, DIANE E

LAST DATE GIVEN KOP: 07/11/2014 10:55:59PM
REFILLS: 5 / 11
EXPIRATION DATE: 2/09/2015 12:07:00PM

METOPROLOL 100MG TABLET

1 TABS ORAL TWICE DAILY for 30 Days KOP

ORDERING FACILITY: POLUNSKY (TL)
ORDERING PROVIDER: JACKSON, DIANE E

LAST DATE GIVEN KOP: 07/11/2014 10:55:59PM
REFILLS: 5 / 5
EXPIRATION DATE: 8/13/2014 01:01:00PM

Today's Problem: pain in right side
07/15/2014 12:25

S:

Severe pain in right side since last night at 4 pm

Last BM this AM- no blood

Denies NVDC

General Surgery Progress Note

I am seeing Max Alexander Soffar to discuss the results of a CT abdomen/pelvis done on 6/24/14. Mr. Soffar is s/p a Segment V microwave ablation done on 12/12/13. He is doing well - eating normally, normal bowel function and he denies abdominal pain, or hematemesis. His only complaint is increased tiredness.

A/P: Max Alexander Soffar is a 58 year old male s/p Segment V microwave ablation of a liver lesion. The CT scan revealed an enhancing thrombi within the right hepatic portal vein that is concerning for tumor thrombi. An MRI abdomen/pelvis with liver protocol will be ordered along with an AFP. A follow

**CORRECTIONAL MANAGED CARE
CLINIC NOTES**

Patient Name: SOFFAR, MAX A **TDCJ#:** 685 **Date:** 07/15/2014 12:25 **Facility:** POLUNSKY (TL)
up Telemed appointment will be scheduled to discuss the results of the MRI and any treatment options needed

O:

Appears in moderate distress

HRRR

LCTAB

right side- liver enlarged and palpable/painful to touch

No leg edema

Pedal pulses 2+

Skin blanches <3 sec

A/P:

1. Hepatocellular carcinoma, 8 months post-op, now with portal vein thrombus:
 - Consult with Dr. C. Nguyen
 - Called UR and requested bed for direct admit to surgical oncology at HG
 - Report called to Dr. S. Modi who accepted admit
 - T3 2 tabs po now
 - IV started one stick 20 gauge left wrist NS 75/hour

Procedures Ordered:

Date Time	Description	Diagnosis	Comments	Special Instructions
7/15/2014 01:43PM	PROVIDER2-INTERMEDIATE OFFICE VISIT (F)	malignant neoplasm of liver, not specified as primary or secondary, portal vein thrombosis		

CORRECTIONAL MANAGED CARE CLINIC NOTES

Patient Name: SOFFAR, MAX A **TDCJ#:** 685 **Date:** 12/18/2013 14:59 **Facility:** POLUNSKY (TL)
Age: 58 year **Race:** W **Sex:** male
Most recent vitals from 7/10/2013: BP: 164 / 75 (Sitting) ; Wt: 220 Lbs.; Height: 71 In.; Pulse: 60 (Sitting) ; Resp: 16 / min; Temp: 97.8 (Oral) BMI: 31

Allergies: PENICILLINS

Patient Language: ENGLISH **Name of interpreter, if required:**

Current Medications:

APAP 300MG/CODEINE 30MG TAB 1
 2 TABS ORAL TWICE DAILY for 3 Days As Needed (PRN)

ORDERING FACILITY: POLUNSKY (TL)
 ORDERING PROVIDER: JACKSON, DIANE E

COMPLIANCE: 0.00 %
 REFILLS: 0 / 0

EXPIRATION DATE: 12/21/2013 12:40:00PM

DILTIAZEM XR 240MG CAPSULE
 1 CAPS ORAL TWICE DAILY for 30 Days KOP

ORDERING FACILITY: POLUNSKY (TL)
 ORDERING PROVIDER: JACKSON, DIANE E

LAST DATE GIVEN KOP: 12/11/2013 08:12:10PM
 REFILLS: 10 / 11

EXPIRATION DATE: 2/11/2014 11:18:00AM

DOCUSATE SODIUM 100MG CAPSULE
 1 CAPS ORAL TWICE DAILY for 30 Days KOP

ORDERING FACILITY: POLUNSKY (TL)
 ORDERING PROVIDER: JACKSON, DIANE E

LAST DATE GIVEN KOP:
 REFILLS: 0 / 2

EXPIRATION DATE: 3/18/2014 12:39:00PM

hydroCHLOROthiazide 25MG TAB
 1 TABS ORAL DAILY for 30 Days KOP

ORDERING FACILITY: POLUNSKY (TL)
 ORDERING PROVIDER: JACKSON, DIANE E

LAST DATE GIVEN KOP: 12/11/2013 08:12:10PM
 REFILLS: 10 / 11

EXPIRATION DATE: 2/11/2014 11:19:00AM

LISINAPRIL 40MG TABLET
 1 TABS ORAL DAILY for 30 Days

ORDERING FACILITY: POLUNSKY (TL)
 ORDERING PROVIDER: JACKSON, DIANE E

COMPLIANCE: 0.00 %
 REFILLS: 0 / 2

EXPIRATION DATE: 3/18/2014 12:41:00PM

METOPROLOL 100MG TABLET
 1 TABS ORAL TWICE DAILY for 30 Days KOP

ORDERING FACILITY: POLUNSKY (TL)
 ORDERING PROVIDER: JACKSON, DIANE E

LAST DATE GIVEN KOP: 12/11/2013 08:12:10PM
 REFILLS: 10 / 11

EXPIRATION DATE: 2/11/2014 11:19:00AM

Today's Problem: f/u general surgery
 12/18/2013 14:59

S:
 Patient returned today from general surgery after having chole and ablation of liver tumor mass
 The tumor mass and GB had proximity to the tumor which had grown from 1.7 to 2.8 cm over the interval while he was considering surgery
 There was a 5mm vessel coursing close to the posterior aspect of the tumor so it was decided to ablate instead of resect
 The removal of the GB was to prevent tissue injury from laser
 The EBL was 40
 Patient had difficult post-op pain control despite the MS PCA.
 At one point he desaturated and Narcan was given IV and patient was placed on O2 per mask.
 He was not deep breathing and subsequently developed pneumonia
 Was treated with IV Vanco and Zosyn
 On d/c his K+ was slightly elevated but renal function intact
 H/H was stable- had dropped to 10s/30s and was up to 11s/32s
 He was maintained with heparin prophylaxis while hospitalized
 Since d/c he has not received anti-platelet therapy

1 of 4

**CORRECTIONAL MANAGED CARE
CLINIC NOTES**

Patient Name: SOFFAR, MAX A **TDCJ#:** 685 **Date:** 12/18/2013 14:59 **Facility:** POLUNSKY (TL)

Noted him in bed on arrival

All items from chain in were all over the floor and had not been put away

He rose quickly and walked over to the toilet where he sat down

During visit at times he seemed a little SOB but no circumoral cyanosis

After about 5-10 minutes of discussion about post-op care on his end, he appeared a little pale and glistening of skin noted- diaphoretic

He was told narcotics for three more days to facilitate his deep breathing, then he will be weaned to ibuprofen

He must deep breathe and cough – he understands

Also instructed to pump feet 10x every hour while awake – he received heparin inpatient for DVT prophylaxis- and to walk to the toilet and back multiple times a day and each time bend over and put one item away

Nurse Burnett was with me at the cell side in order to follow through on these orders and share with other nurses in report

O:

Some minor SOB

Mild laryngitis likely a result of ET or LMA during surgery- instructed to gargle with salt water daily

Pale and diaphoretic with increased movement- needs to build strength

Negative Homans as instructed through window at cell

Able to ambulate and although he has a large subcostal incision, he stands fairly upright without splinting

The staples are clean and open to air

The blood multiple draw sites and the IV sites were without infection and band-aids from hospital remained on some- instructed to remove when he showers and wash and run water over them

On deep inspiration, no wheezing was noted from the door

A/P:

1. S/P cholecystectomy with laser ablation of liver tumor- 6 days- pneumonia while in hospital, PE ruled out:
 - Walk daily- instructions given to patient
 - Have patient moved to another pod where there is a handicapped shower for one week only, then no housing restrictions
 - If stable on feet and BP not low, may shower and wash over the staples open to air (multiple uninterrupted layers of sutures underneath)
 - BP checks and temp once a day x 3 days, report if BP <100/50 or HR <50 or >100
 - Pump feet 10x qH while in bed- return demonstration with provider
 - Ted hose knee high TODAY with medical pass- use while in bed
 - Obtain walker for use for one week if available (PT at hospital had instructed him on this)
 - T3 with colace for three days (order already written), then change to NSAIDs (ibuprofen 600 tid with food only if needed for pain >5/10 after resting)
 - Incentive spirometer if available- I instructed him on the importance of deep breathing and the complications of post-op surgery
 - MOM 60 cc now- states he has not had a genuine complete BM since surgery although passing gas

Results CT ABDOMEN/PELVIS W & W/O CONTRAST (Accession#6661383) (Order 72803053)**Collection Information**

Collection Date and Time
2/6/2014 0925

685

Entry Date

2/6/2014

Result Narrative

*****FINAL*****
CT ABD PEL WITH AND WO CONTRAST-TDC PATIENTS

HISTORY: 58 years Male s/p microwave ablation of liver mass, please perform triple phase

Comparison: CT triple phase on 12/11/2013. MR abdomen with contrast on 8/21/2013.

Technique: Contiguous slices were obtained from the lung bases to the pubic symphysis before and after noncomplicated administration 150 cc Omnipaque intravenous contrast. Arterial, portal and delayed phases acquired as per cirrhosis protocol.

Comparison:

Chest bases:

The lungs bases do not show nodules or masses. There is no pleural or pericardial effusions. The heart is normal in size.

Abdomen.

Changes of ablation are noted in liver segments V/VIII with multiple hypodensities, the largest one measuring 2.9 x 2.4 cm (3a, image 46) at the site of the previously noted lesion that remains but remains hypodense in all phases. A tributary of the main portal vein appears thrombosed towards this treated lesion. Soft tissue is noted at the liver capsule adjacent to the treated lesion, attention on followup. Geographical enhancement within the right hepatic lobe is likely due to thrombosis of the above-mentioned portal vein tributary.

The previously noted 1 cm arterial enhancement in the dome of the liver (3a, image 18) remains stable in size and without evidence of washout. This may represent an area of perfusion abnormality versus dysplastic nodule.

The liver does not show other enhancing nodules or masses on venous and arterial phases.

Anatomical changes of hepatic cirrhosis are noted. The hepatic and portal veins are patent. There is no intra or extra hepatic bile duct dilation. The gallbladder is contracted but does not show calcified stones.

The 2.7 cm hypodensity, compatible with a splenic cyst, remains stable in size. The pancreas, spleen, kidneys and adrenals otherwise enhance normally. There is no pelviectasis.

The prominent celiac, portacaval, and porta hepatis lymph nodes are

grossly stable and predominantly under 1 cm but with two portacaval lymph nodes measuring 9 mm (series 3B, image 109) and 1 cm (series 3B, image 113). Otherwise, lymph nodes seen within the retroperitoneal and mesenteric areas are not enlarged by CT size criteria.

The evaluation of the small bowel and colon is limited due to the lack of oral contrast. No evidence of obstruction. Diverticulosis affects the sigmoid colon without evidence of diverticulitis. The appendix is normal.

Atherosclerotic disease affects the abdominal aorta and iliac arteries

Fat stranding is evident in the soft tissue of the right anterior abdominal wall, likely postprocedural changes.

No lytic or blastic bone lesions are seen.

There is mild degenerative disease of the spine.

Pelvis:

Lymph nodes are seen within the iliac areas, not enlarged by CT size criteria.

The urinary bladder is well distended and unremarkable.

LAL, ANJALI, MD Personally interpreted by. KAZAN TANNUS, JOAO F, MD /Signed/
KAZAN TANNUS, JOAO F, MD

Result Impression

Impression:

Anatomical changes of hepatic cirrhosis, now with changes of ablation affecting liver segment V and VIII. Tributary of the main portal vein shows thrombosis, possibly secondary to the ablation with geographical enhancement of the liver. Soft tissue there is noted abutting the liver capsule near to the site of the intervention, attention on followup.

Unchanged subcentimeter enhancing lesion within the dome of the liver.

No CT evidence of new hypervascular liver lesions.

Stable celiac axis, portacaval, porta hepatis lymph nodes.

Diverticulosis without evidence of diverticulitis

I, Dr. Joao F Kazan Tannus have personally reviewed the images and agree with the resident's interpretation and all modifications listed above.

Result History

CT ABDOMEN/PELVIS W & W/O CONTRAST (Order#72803053) on 2/6/14 - Order Result History Report

Result Information

Result Date and Time	Status
2/6/2014 1010	Final result

**RADIOLOGY
REQUEST**

**CT ABDOMEN/PELVIS W & W/O CONTRAST [RAD000125] (Order
72803053)**

Patient Information

Patient Name Max Alexander Soffar MRN 091935P Sex Male DOB (age) 12/15/1955 (58 year old)

Hospital Account

Payor CMC Plan TDCJ

Problem List

Date Reviewed 12/14/2013

Codes	Priority	Class	Noted - Resolved
276 7			12/15/2013 - Present
793 19			12/14/2013 - Present
799 02			12/14/2013 - Present
070 70			10/21/2013 - Present
155 0			10/21/2013 - Present
427 31			10/21/2013 - Present

Allergies as of 2/6/2014

Reviewed On 12/16/2013 By Layba, Cathline J, MD

Noted	Type	Reactions
7/1/2006		Rash

Order Information

Date and Time	Released By	Authorizing	Department
2/6/2014 9 28 AM	Utmb, Results Intf User	Riall, Taylor Sohn, MD	Radiology Registration

Ordering Provider Info

Ordering provider	Pager number	Office number
RIALL, TAYLOR SOHN [0008669]	221116	

Provider Information

Ordering User	Ordering Provider	Authorizing Provider
Utmb, Results Intf User	Riall, Taylor Sohn, MD	Riall, Taylor Sohn, MD
Attending Provider(s) Radiology	PCP Correction, Texas Dept Of	

Order Details	Frequency	Duration	Priority	Order Class
	ONCE	1 occurrence	Routine	Normal

Last Resulted Components

Date/Time	Result Component	Value	Flag	Lab Status
12/15/13 0420	CREAT	0.83	-	Final result

Last Resulted Components

Date/Time	Result Component	Value	Flag	Lab Status
12/15/13 0420	BUN	10	-	Final result

Last Resulted Components

Date: 06/30/2014 14:10
From: DIANE JACKSON FNP
Facility: POLUNSKY (TL)

To: JUANITA ESCAMILLA C;
Subject: are you able to draw an AFP asap for the ESLD clinic? thanks
Re: MAX SOFFAR - MRN: 685

HOSPITAL GALVESTON CLINIC NOTE

Patient: SOFFAR, MAX TDCJ#: 685

Facility: HOSP.GALVESTON

Age:58 Race: W Sex: male DOI: 6/12/1981

Patient Language: ENGLISH Name of interpreter, if required:

Most recent vitals from 7/15/2014: BP: 144 / 72 (Sitting) ; Wt: 205 Lbs.; Height: 71 In.; Pulse: 80 (Sitting) ; Resp: 16 / min; Temp: 97.4 (Oral) BMI: 29

Allergies: PENICILLINS

Current Medications:

<u>ACETAMINOPHEN 325MG TABLET</u> 2 TABS ORAL 3 TIMES DAILY for 5 Days KOP	ORDERING FACILITY: POLUNSKY (TL) ORDERING PROVIDER: NGUYEN, CO	LAST DATE GIVEN KOP: REFILLS: 0 / 0 EXPIRATION DATE: 7/25/2014 01:01:00AM
<u>ASPIRIN EC 81MG TABLET</u> 1 TABS ORAL DAILY for 10 Days X 6 MONTHS !!! HG !!! gutierrez, a.	ORDERING FACILITY: HOSP.GALVESTON ORDERING PROVIDER: HG, PROVIDER X	COMPLIANCE: 83.33 % REFILLS: 0 / 0 EXPIRATION DATE: 7/27/2014 02:05:00PM
<u>DILTIAZEM XR 240MG CAPSULE</u> 1 CAPS ORAL TWICE DAILY for 30 Days KOP	ORDERING FACILITY: POLUNSKY (TL) ORDERING PROVIDER: JACKSON, DIANE E	LAST DATE GIVEN KOP: 07/11/2014 10:5: REFILLS: 5 / 5 EXPIRATION DATE: 8/13/2014 12:59:00PM
<u>hydroCHLOROthiazide 25MG TAB</u> 1 TABS ORAL DAILY for 30 Days KOP	ORDERING FACILITY: POLUNSKY (TL) ORDERING PROVIDER: JACKSON, DIANE E	LAST DATE GIVEN KOP: 07/11/2014 10:5: REFILLS: 5 / 5 EXPIRATION DATE: 8/13/2014 01:00:00PM
<u>LISINAPRIL 40MG TABLET</u> 1 TABS ORAL DAILY for 30 Days KOP	ORDERING FACILITY: POLUNSKY (TL) ORDERING PROVIDER: JACKSON, DIANE E	LAST DATE GIVEN KOP: 07/11/2014 10:5: REFILLS: 5 / 11 EXPIRATION DATE: 2/09/2015 12:07:00PM
<u>METOPROLOL 100MG TABLET</u> 1 TABS ORAL TWICE DAILY for 30 Days KOP	ORDERING FACILITY: POLUNSKY (TL) ORDERING PROVIDER: JACKSON, DIANE E	LAST DATE GIVEN KOP: 07/11/2014 10:5: REFILLS: 5 / 5 EXPIRATION DATE: 8/13/2014 01:01:00PM

Patient was discussed at GI tumor board on 7/16/14. Recommendations are as followed. Referrals are made for medical oncology.

Max Soffar 091935P (TDC 685) previously presented: 9/11/13, 10/29/13

Diagnosis: HCC

HPI: 57 year old male with 2.8cm Segment V lesion. He underwent open microwave ablation on 12/12/13. He is doing fine, normal appetite, bowel function. He complains of increasing tiredness. Follow up CT shows thrombus in right Portal Vein that is concerning for tumor.

SMPH: HCV, Cirrhosis, HTN, Atrial Fibrillation

**Labs: 7/2/14 WBC 4.7 H/H 40.6/13.8 PLT 196 TBili 0.5 ALT 60 AST 50
Alk Phos 146 AFP 799 (341 2/14/14) INR 0.9**

Topics for discussion:

- 1.) Review Imaging
- 2.) Discuss Treatment Options

Presented by: Dr. Brown

Discussion and recommendations included

1. MRI 7/16/14 notes evidence of previous ablation treatment. New right portal vein filling defect is identified representing portal vein thrombosis. Findings consistent with disease progression.
2. Pt is not a candidate for surgical or IR interventions
3. Refer to medical oncology for sorafenib therapy

HOSPITAL GALVESTON CLINIC NOTE

Patient: SOFFAR, MAX TDCJ#: 685

Electronically Signed by RICHARD, DORA F. R.N. on 07/22/2014.
Electronically Signed by DUKE, SHERRY E. R.N. on 07/22/2014.
Electronically Signed by JACKSON, DIANE E. FNP on 07/22/2014.
Electronically Signed by NGUYEN, CO M.D. on 07/23/2014.
##And No Others##

Results CT ABDOMEN/PELVIS W & W/O CONTRAST (Accession#6782896) (Order 77632313)

Collection Information

Collection Date and Time
6/24/2014 1043

Entry Date

6/24/2014

000685

Result Narrative

*****FINAL*****
 CT ABD PEL WITH AND WO CONTRAST-TDC PATIENTS

History 58 years Male with HEPATOCELLULAR CARCINOMA

Technique: Contiguous slices were obtained from the lung bases to the pubic symphysis triple phase liver mass protocol.

Comparison: Multiple prior CTs.

Abdomen:

The lung bases are clear The heart is normal in size.

Since the previous examination multiple tubular hypodensities on precontrast are noted within the right liver lobe and appear to extend into the right portal vein. The density of the hypodense lesion noted within the right portal vein on precontrast is about 30 Hounsfield units and shows enhancement on arterial phase measuring 67 Hounsfield units. This hypodensity is also noted on delayed images with density of 52 Hounsfield units.

Ill-defined arterial enhancement is noted in segment VII without definite corresponding washout. Subtle area of hyperenhancement is noted within the liver segment VII (image 122 series 3B); this is not appear to exhibit definitive washout on delayed images and is new in comparison to the previous examination. Previously noted hyperenhancing lesion within the dome of the liver is not clearly visualized on this examination.

The previously noted soft tissue density adjacent to the ablation site is less conspicuous in comparison to previous examination (image 171 series 3B)

Again noted are foci of hypo-density within the right liver lobe near the ablation site with the largest within segment V extending into the subcapsular region and appear stable in comparison to the previous examination.

The liver is mildly nodular in contour. The spleen is enlarged. A hypodensity is again noted within the anterior aspect of the spleen measuring 1.8 x 2.5 cm (AP X. transverse) and appear to be stable in comparison to previous examination with density consistent with fluid.

Prominent lymph nodes are noted in the gastrohepatic region (image 172 series 3B), stable. No other prominent lymph nodes are noted within the mesentery or retroperitoneum.

The pancreas, kidneys and adrenals enhance normally.

The bowel loops without any evidence of obstruction or dilation. The

appendix is normal in caliber.

No aggressive bony lesion.

Pelvis

Lymph nodes are seen within the iliac areas, not enlarged by CT size criteria.

The urinary bladder is decompressed and otherwise unremarkable.

ELDAYA, RAMI , MD Personally interpreted by: WOLFE, GREGORY W, MD /Signed/
 WOLFE, GREGORY W, MD

Result Impression

Impression:

Interval development of enhancing thrombi within the right hepatic portal vein concerning for tumor thrombi. However, no definitive new arterial enhancing lesions are seen. MRI may be useful for further evaluation.

Changes of ablation are again noted, grossly stable.

Stable prominent gastrohepatic lymph nodes.

Anatomic changes of hepatic cirrhosis.

I, Dr. Gregory W Wolfe have personally reviewed the images and agree with the resident's interpretation and all modifications listed above.

Result History

CT ABDOMEN/PELVIS W & W/O CONTRAST (Order #77632313) on 6/24/14 - Order Result History Report

Result Information

Result Date and Time	Status
6/24/2014 1328	Final result

**RADIOLOGY
REQUEST**

CT ABDOMEN/PELVIS W & W/O CONTRAST [RAD000125] (Order 77632313)

Patient Information

Patient Name	MRN	Sex	DOB (age)
Max Alexander Soffar	091935P	Male	12/15/1955 (58 year old)

Hospital Account

Payor	Plan
CMC	TDCJ

Problem List

Problem	ICD-9-CM	Priority	Class	Date Reviewed	12/14/2013
Hyperkalemia	276 7			Noted - Resolved 12/15/2013 - Present	
Pulmonary infiltrate in right lung on CXR	793 19			12/14/2013 - Present	
Hypoxia	799 02			12/14/2013 - Present	
Hepatitis C	070 70			10/21/2013 - Present	
Hepatocellular carcinoma	155 0			10/21/2013 - Present	

Atrial fibrillation

427 31

Present
 10/21/2013 -
 Present

Reviewed On 12/16/2013 By Layba,
 Cathline J, MD

Allergies as of 6/24/2014

Allergen	Noted	Type	Reactions
Pcn (Penicillins)	07/01/2006		Rash

Order Information

Date and Time	Department	Released By	Authorizing
6/24/2014 11 34 AM	UTMB Health Radiology Procedure Registration- McCullough	Auto-released	Gramm, Pamela A, FNP

Ordering Provider Info

Ordering provider	Pager number	Office number
GRAMM, PAMELA A [0011394]	242337	

Provider Information

Ordering User	Ordering Provider	Authorizing Provider
Utmb, Results Intf User	Gramm, Pamela A, FNP	Gramm, Pamela A, FNP
Attending Provider(s)	PCP	
Radiology	Correction, Texas Dept Of	

Order Details

Frequency	Duration	Priority	Order Class
ONCE	1 occurrence	Routine	Normal

Last Resulted Components

Date/Time	Result Component	Value	Flag	Lab Status
12/15/13 0420	CREAT	0.83	-	Final result

Last Resulted Components

Date/Time	Result Component	Value	Flag	Lab Status
12/15/13 0420	BUN	10	-	Final result

Last Resulted Components

Date/Time	Result Component	Value	Flag	Lab Status
12/17/13 0630	WBC	7.2	-	Edited

Last Resulted Components

Date/Time	Result Component	Value	Flag	Lab Status
12/17/13 0630	RBC	3.77	Low	Edited

Last Resulted Components

Date/Time	Result Component	Value	Flag	Lab Status
12/17/13 0630	HCT	33.7	Low	Edited

Last Resulted Components

Date/Time	Result Component	Value	Flag	Lab Status
12/17/13 0630	HGB	11.5	Low	Edited

Last Resulted Components

Date/Time	Result Component	Value	Flag	Lab Status
12/17/13 0630	PLT	210	-	Edited

Last Resulted Components

Date/Time	Result Component	Value	Flag	Lab Status
12/11/13 2030	PTPAT	13.6	-	Final result

Last Resulted Components

Date/Time	Result Component	Value	Flag	Lab Status
12/11/13 2030	PTINR	1 0	-	Final result

Last Resulted Components**Patient IDs**

ID Type	ID #
ENTERPRISE ID NUMBER	E459678
UTMB INVISION PRK	000000470844
UTMB MEDICAL RECORD NUMBER	091935P
UTMB TDCJ NUMBER	000000685
UTMB STATE IDENTIFICATION NUMBER	00001987050

PATIENT ID:**TIME OUT:**

Patient Name: SOFFAR,MAX A

Patient DOB: 12/15/1955

Patient ID: 1394160 Service Date: 07/16/2014 04:42:00

Lab data imported from UTMB - Galveston; Performed by UTMB Laboratories
Galveston, Tx 77555-0743 Telephone Number 800-LAB-2266

Patient Name : SOFFAR, MAX ALEXANDER,
Patient Id : 685
Patient Phone :
Date of Birth : 12/15/1955
SS# : 457-82-1243 Sex : Male

Ordering
Physician : CAMARENA, JULIEANNA (11182)
Facility : BYRD (DU)
21 FM 247
HUNTSVILLE TX 77320

Test Name	Result	ABN Flag	Unit	Reference Range
-----------	--------	-------------	------	-----------------

Accession: 0001419700452 Requisition: E78396486
Drawn:07/16/14 04:42 Received:07/16/14 10:44 Reported: 07/16/14 11:59

Procedure: LFP				
BILIRUBIN TOTAL	1.3	H	MG/DL	0.1-1.1
BILIRUBIN UNCONJUGATED	0.5		MG/DL	0.1-1.1
BILIRUBIN CONJUGATED	0.0		MG/DL	0.0-0.3
PROTEIN TOTAL SERUM	6.9		G/DL	6.3-8.2
ALBUMIN, SERUM	3.6		G/DL	3.5-5.0
ALKALINE PHOSPHATASE, TOTAL	139	H	U/L	34-122
ALANINE AMINO TRANSFERASE (SGPT)	92	H	U/L	9-51
SGOT) ASPARATE AMINO TRANSFER	117	H	U/L	13-40

L Low, H High, C Critical, * Abnormal Alpha

Patient Name: SOFFAR,MAX A

Patient DOB: 12/15/1955

Patient ID: 1394160 Service Date: 07/16/2014 04:42:00

Print Date: 07/16/2014 12:08

Page: 1/1

Labs ordered by UTMB Hospital Galveston provider with implied review in UTMB HG medical records. Electronic signature not required.

IMPORTANT SAFETY INFORMATION

Do not take NEXAVAR if you have a specific type of lung cancer (squamous cell) and receive carboplatin and paclitaxel or if you are allergic to sorafenib or any of the other ingredients in NEXAVAR. Before starting NEXAVAR, tell your doctor if you have: allergies, heart problems (including a problem called “congenital long QT syndrome”) or chest pain, bleeding or bruising problems, high blood pressure, any planned surgical procedures, lung cancer or are being treated for lung cancer, kidney problems in addition to kidney cancer, or liver problems in addition to liver cancer. Tell your doctor if you are pregnant or plan to become pregnant and if you are breast-feeding or plan to breast-feed. It is not known if NEXAVAR passes into your breast milk. You and your doctor should decide if you will take NEXAVAR or breast-feed. You should not do both.

[continue reading below »](#)



NEXAVAR & Unresectable Liver Cancer

While a diagnosis of liver cancer can be overwhelming, it may help to know that there are several treatment options available to treat [unresectable](#), or inoperable, [HCC](#).

It is important to work with your health care team and determine the best treatment plan. While developing your treatment plan, your health care team will consider many factors, such as how well your liver is working, the size and position of your tumor(s), and your overall health.

NEXAVAR may play an important role in your treatment plan. It may be the first treatment you receive or it may be included later in the course of treatment. When you speak with your health care team remember to ask how NEXAVAR might fit into your course of treatment.

Read more about:

[The stages of liver cancer »](#)

[Treatment options for patients with liver cancer »](#)

[Working with your health care team »](#)

[Increased survival in patients taking NEXAVAR »](#)

Indications

NEXAVAR is an anticancer medicine used to treat a certain type of liver, kidney or thyroid cancer called:

Hepatocellular carcinoma (HCC, a type of liver cancer), when it cannot be treated with surgery

Renal cell carcinoma (RCC, a type of kidney cancer)

Differentiated thyroid carcinoma (DTC, a type of thyroid cancer) that can no longer be treated with radioactive iodine and is progressing

Important Safety Information

Do not take NEXAVAR if you have a specific type of lung cancer (squamous cell) and receive carboplatin and paclitaxel or if you are allergic to sorafenib or any of the other ingredients in NEXAVAR.

Before starting NEXAVAR, tell your doctor if you have: allergies, heart problems (including a problem called “congenital long QT syndrome”) or chest pain, bleeding or bruising problems, high blood pressure, any planned surgical procedures, lung cancer or are being treated for lung cancer, kidney problems in addition to kidney cancer, or liver problems in addition to liver cancer.

Tell your doctor if you are pregnant or plan to become pregnant and if you are breast-feeding or plan to breast-feed. It is not known if NEXAVAR passes into your breast milk. You and your doctor should decide if you will take NEXAVAR or breast-feed. You should not do both.

NEXAVAR may interact with certain other medicines and cause serious side effects so tell your doctor about all medicines you take including prescription and over-the-counter (OTC) medicines, vitamins, or herbal supplements. Especially tell your doctor if you are taking the following medicines: **warfarin (Coumadin, Jantoven®), neomycin, St. Johns Wort, dexamethasone, phenytoin (Fosphenytoin sodium, Dilantin, Phenytek), carbamazepine (Carbatrol, Equetro, Tegretol, Teril, Epitol), rifampin (Rifater, Rifamate, Rifadin, Rimactane), rifabutin (Mycobutin), phenobarbital.**

NEXAVAR may cause **serious** side effects, including:

decreased blood flow to the heart and heart attack. Get emergency help right away and call your doctor if you have chest pain, shortness of breath, feel lightheaded or faint, have nausea or vomiting, or you are sweating a lot.

bleeding problems. Bleeding is a common side effect of NEXAVAR that can be serious and sometimes lead to death. Tell your doctor if you have any bleeding or easy bruising while taking NEXAVAR.

high blood pressure. High blood pressure is a common side effect of NEXAVAR and can be serious. Your blood pressure should be checked every week during the first 6 weeks of starting therapy and then regularly, thereafter. If your blood pressure is high, it should be treated.

a skin problem called hand-foot skin reaction. This causes redness, pain, swelling, or blisters on the palms of your hands and soles of your feet. Your doctor may change your dose or stop treatment for a while.

serious skin and mouth reactions. NEXAVAR can cause serious skin and mouth reactions which can be life-threatening. Tell your doctor if you have skin rash, blistering and peeling of the skin, blistering and peeling on the inside of your mouth.

an opening in the wall of your stomach or intestines (perforation of the bowel). Tell your doctor right away if you get high fever, nausea, vomiting or abdominal (stomach) pain.

wound healing problems. If you have a surgical or dental procedure, tell your doctor you are taking NEXAVAR. Your treatment may be stopped until after your surgery or until your wound heals.

changes in the electrical activity of your heart called QT prolongation. QT prolongation can cause irregular heartbeats that can be life-threatening. Your doctor may do tests during your treatment with NEXAVAR to check the levels of potassium, magnesium, and calcium in your blood, and check the electrical activity of your heart with an ECG. Tell your doctor right away if you feel faint, lightheaded, dizzy, or feel your heart beating irregularly or fast while taking NEXAVAR.

inflammation of your liver (drug-induced hepatitis). NEXAVAR may cause liver problems that may lead to liver failure and death. Your doctor may stop your treatment with NEXAVAR if you develop changes in certain liver function tests. Call your doctor right away if you develop yellowing of the skin or white part of your eyes (jaundice), dark “tea-colored” urine, light-colored bowel movements (stools), worsening nausea, worsening vomiting, abdominal pain.

birth defects or death of an unborn baby. Avoid becoming pregnant while taking NEXAVAR and for at least 2 weeks after stopping your treatment. Men and women should use birth control during and at least 2 weeks after NEXAVAR therapy. Talk with your doctor about effective birth control methods. Call your doctor right away if you become pregnant.

change in thyroid hormone levels. If you have differentiated thyroid carcinoma, your doctor should monitor thyroid hormone levels every month and may need to increase your dose of thyroid medicine.

The most common side effects with NEXAVAR include: diarrhea (frequent or loose bowel movements); tiredness; infection; hair thinning or patchy hair loss; rash; weight loss; loss of appetite; nausea; stomach (abdominal) pain; low blood

calcium levels in people with differentiated thyroid cancer.

Tell your doctor if you have any side effects that bother you or do not go away. These are not all the possible side effects of NEXAVAR. Ask your doctor or pharmacist for more information.

You are encouraged to report negative side effects of prescription drugs to the FDA. Visit www.fda.gov/medwatch, or call 1.800.FDA.1088. For important risk and use information, please see the [patient prescribing information](#).



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TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Correctional Institutions Division



DEATH ROW PLAN

October 2004

ADOPTION OF DEATH ROW PLAN

In my duties as Division Director of the Correctional Institutions Division, I hereby adopt the attached *Death Row Plan* for use in the operation of the Texas Department of Criminal Justice Death Row housing units and perimeter functions. This *Plan* is in compliance with Texas Board of Criminal Justice Rule §152.51; §§492.013(a), 493.004, Texas Government Code, and Article 43.14 – 43.20, Code of Criminal Procedure.

Doug Dretke
Director, Correctional Institutions Division

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DEATH ROW PLAN

The purpose of the *Death Row Plan* is to provide uniform rules and regulations in managing Death-Sentenced offenders. Although the terms “his” or “he” are used throughout the *Death Row Plan*, the contents refer to male and female Death Row offenders, except where specifically limited (i.e., due to facility structural differences).

DEFINITIONS

- I. Death Row Segregation - A death-sentenced offender who refuses to or is not allowed to work. Death Row Segregation offenders may be assigned to Levels I, II, or III. Offenders assigned to Levels II or III require more intensive supervision due to poor institutional behavior.
- II. Death Row Work Capable - A death-sentenced offender assigned to and required to work at a meaningful prison job, if available.
- III. Death Row Classification Committee (DRCC) – The Warden shall be responsible for appointing the members of the DRCC which shall be comprised of the following staff:
 - A. Warden or designee (Captain or above),
 - B. Lieutenant or above,
 - C. Security representative (Sergeant or Correctional Officers assigned to Death Row area, and
 - D. Representative from the Health Services Division (medical or psychiatric) shall be used as a member of the committee who would function in a consulting capacity for issues impacting the physical and mental well being of the offender. The representative will be a voting member along with the other members of the committee.

PROCEDURES:

The classification process for death-sentenced offenders shall be governed by the following:

I. CLASSIFICATION PROCESS

- A. Intake and Orientation for Newly Received Death Row Offenders
 1. Initial Intake at Byrd/Woodman Units
 - a. Offender arrives from county.
 - b. Byrd/Woodman staff completes:
 - (1) Offender photographs (a set shall be sent to the housing unit)

- (2) Offender Identification Card (not sent to housing unit until 2 – 4 weeks later)
- (3) Fingerprints (2 sets) for the Correctional Institutions (CI) Division, FBI, and DPS (original is faxed to DPS and maintained by Classification). If the offender was not born in the U.S., a third set of fingerprints is made for the Immigration and Naturalization Service (INS).
- (4) cursory review of offender property for dangerous contraband
- (5) Form CO2.1 – Biography and Information Sheet
- (6) Offender Consolidated Report Form, Residence and Family Page
- (5) Short information sheet containing:
 - (a) Full name;
 - (b) Date received;
 - (c) Death Row number;
 - (d) County of conviction;
 - (e) Cause Number;
 - (f) Date of birth; and
 - (g) Race.

c. The offender is then transported to the unit of assignment.

2. Intake and Orientation at Unit of Assignment

- a. Housing Unit receives offender, offender property and sealed envelope with initial intake and orientation information as well as photographs.
- b. Death Row supervisors conduct an interview with the offender and complete several forms and information sheets (information is self-reported by the offender).
 - (1) Basic Unit Orientation (rules, property, commissary and other daily activities)
 - (a) I-60 process explained
 - (b) Contact with supervisors explained
 - (c) Medical access explained
 - (d) Law Library access (Access to Courts) explained
 - (e) Recreation explained
 - (f) Custody Levels and review process explained
 - (g) Visiting List explained and blank form given to offender to complete
 - (h) Forms for above processes given to offender as well as:

- (i) *Offender Orientation Handbook*
 - (ii) *Disciplinary Rulebook*
 - (iii) *Legal-3*
 - (iv) *Physical Fitness: An In-Cell Exercise Program*
 - (v) Copy of Offender Property Policy (AD-03.72, "Offender Property")
- (2) Offender strip-searched and issued jumpsuit
 - (3) Tattoos (photos taken of each and list made)
 - (4) Property receipt and registration completed
 - (5) Keep-on-person (KOP) medications brought from county taken from offender for review by medical staff (may be reissued back as KOP)
 - (6) Check from county signed, thumbprinted, and deposit slip completed
 - (7) Information sheet completed (self-reported)
 - (a) Criminal history
 - (b) Escape history
 - (c) Summary of current offense (offender's version – include information pertaining to drugs, alcohol, or sex-related incidents if involved in offense);
 - (d) Scars (list and photograph as necessary)
 - (e) STG affiliation
 - (f) Known enemies
 - (g) Fall partners
 - (h) Schools
 - (i) Occupations
 - (j) Family and friends incarcerated
 - (k) Others incarcerated they intend to correspond with
 - (l) Current attorney (name, address, phone number)
 - (m) New attorney for appeal (if applicable)
 - (n) Religious preference
 - (8) Offender escorted to medical and psychiatric evaluation (KOP medications given to medical staff).

B. DRCC Review

Newly received Death Row offenders shall be reviewed by the DRCC within 48 hours of arrival for their initial leveling. New arrivals shall generally be classified as Level I.

C. Admission Summary

The Sociology Department shall complete an Admission Summary that will be used to create the Travel Card.

D. Work Capable Review

The Work Capable program for male offenders is suspended pending further decision by the Texas Board of Criminal Justice. The female Work Capable program is functional. Therefore, the review procedures apply only to female offenders at this time.

A Death-sentenced offender shall undergo a ninety (90) day diagnostic process. The offender shall be reviewed by the DRCC for Work Capable status as indicated below.

1. When assigning offenders to Work Capable, it is the policy of the TDCJ-ID to assign offenders to a meaningful prison job when available.

2. Work Capable Criteria

When reviewing an offender for Work Capable status, the committee shall consider the following:

- a. History of serious destruction of State property;
- b. History of Security Precaution Designator (escape [ES], staff assault [SA], hostage [HS]);
- c. History of prior convictions involving assaultive behavior;
- d. History of Security Threat Group (STG) affiliation or involvement;
- e. History of offender misconduct resulting in the application of serious institutional disciplinary proceedings, as follows:
 - i. Assaults on staff or offenders;
 - ii. Possession of deadly or dangerous weapons;
 - iii. Involvement in smuggling or trafficking in contraband;
 - iv. Inciting or participating in a disturbance of a violent disruptive nature; or

- v. Committing major disciplinary infractions or multiple minor disciplinary infractions.
- f. History of below average performance in work;
- g. History of medical (which would limit ability to work) or psychiatric conditions;
- h. Presence within the unit of personal enemies or possibility of retaliation (e.g., former police officer or hate crime perpetrator);
- i. Incapable of or refusal to work in available prison jobs;
- j. Not psychologically cleared by unit Psychiatric Team; and
- k. Refusal to participate during classification process.

Offenders assigned to Level II and Level III will be ineligible for Work Capable status.

3. Offender Appearance at DRCC

The offender shall be given an opportunity to appear before the DRCC and be provided with a written record of the reasons for the committee decision upon conclusion of the review. An offender who is present at the DRCC shall be verbally advised of the committee's recommendation to the SCC. An offender who refuses to attend committee proceedings shall automatically be denied Work Capable status and shall be notified in writing by use of the I204 (Management Level Review/Determination) form.

4. Appeal of DRCC Decision

The offender may appeal the decision of the DRCC through the Offender Grievance procedures.

5. Scheduling and Documentation of Hearing

- a. A Death Row Segregation offender shall appear before the Death Row Classification Committee no less than six (6) months and not more than one (1) year after completing the intake process. The DRCC shall use the same time frames for subsequent Work Capable reviews.
- b. Offenders shall be notified no less than 24-hours prior to a DRCC review for Work Capable status.

- c. Each unit should utilize the Countroom Management System (R050 program) to issue a lay-in. These will be printed by the unit countroom and issued to offenders by segregation security staff.
 - d. All decisions by the DRCC shall be noted on the docket with the next scheduled review entered in the UC00 program screen 01, option A. A review code of "09" Death Row Review will be used for Work Capable status reviews.
6. Review of DRCC Recommendation by SCC
- a. Assignment of a Death Row offender to Work Capable status requires both a recommendation by the DRCC and an approval of the DRCC decision by the State Classification Committee (SCC).
 - b. Following a DRCC review of a Death Row offender for Work Capable status, the DRCC will submit a recommendation to the SCC for each Death Row offender recommended for Work Capable status. Recommendations concerning Work Capable status may be forwarded to the SCC by electronic mail (e-mail). The recommendation shall include the offender's name, TDCJ #, current unit of assignment, current custody status, date of DRCC review, appropriate reasoning for the DRCC recommendation and the name of the DRCC chairperson.
 - c. The SCC shall review the recommendation and notify the DRCC or Unit Administration by E-mail of the approval or denial for Work Capable status of each Death Row offender submitted by the DRCC.
7. Death Row offenders shall not be assigned to Work Capable status (i.e., they will remain in Death Row Segregation status) until approval for Work Capable status is received from the SCC.
8. Once a Death Row offender has been assigned to Work Capable status, housing and job assignments shall be made by a Death Row Supervisor based on the DRCC's decision. The offender shall then be required to work. Should a job assignment not be available, the offender's name shall be placed on a waiting list.

E. Death Row Segregation

- 1. Level I - Offenders assigned to Level I shall be reviewed for Work Capable status no less than six (6) months and not more than one (1) year after completing the initial intake process or no less than six (6) months

and not more than one (1) year from their last Work Capable status review.

2. Level II – Within 90 days of the initial hearing, the offenders assigned to Level II status shall be reviewed by the DRCC. If a Level II offender has had a clear disciplinary record for the 90-day period he shall be promoted to Level I status. Subsequent review hearings shall be held within 90 days of the previous DRCC hearing. These 90-day hearings shall be documented on the I-204 form.
3. Level III – Within 30 days of the initial hearing, the offenders assigned to Level III status shall be reviewed and promoted to Level II status by the DRCC provided the offender has not had any major disciplinary infractions. If the offender remains in Level III status after any 30-day hearing due to a major disciplinary infraction, written justification shall be required and included on the I-204 form. Subsequent review hearings shall be held within 30 days of the previous DRCC hearing. These 30-day hearings shall be documented on the I-204 form.

F. Subsequent Reviews

1. The following Death Row offenders may be reconsidered every six (6) months for Work Capable if no security concerns exist which would preclude the offender from participating:
 - a. Death Row Segregation offenders who refuse or elect not to participate in the Work Capable program during the Death Row classification process and
 - b. Offenders denied participation not based on Work Capable eligibility criteria (e.g., participates in program, withdraws from program, and wants back in two months later).
2. The Warden or designee shall be responsible for scheduling systematic reviews by the DRCC of offenders assigned to Death Row Segregation to include:
 - a. 30/90 day unit reviews for possible change in level designation
 - b. Paper gown/paper mask restriction
 - c. Property restriction
 - d. Food loaf restriction
 - e. Work Capable Reviews
3. The offender need not be present at the 30/90 day review hearings unless it is deemed appropriate by the DRCC. If the offender is on any type of restriction (i.e., property restriction, paper gown restriction, paper mask

restriction, or food loaf restriction) the DRCC shall also review the offender for continuation or removal of these restrictions. Offenders will be notified in writing of DRCC decisions by use of the I-204 (Management Level Review/Determination form). Offenders assigned to Level II or Level III will be ineligible for Work Capable status.

DRCC REVIEW CODES

- 01 Assignment to Unit
- 09 Death Row Review (Work Capable Status)
- 10 Death Row Custody Change/No Committee Action
- 21 30-day Review
- 23 90-day Review
- 28 Administrative Segregation Restriction

G. Removal or Temporary Transfer of a Death Row Offender from Work Capable Status.

Death Row Work Capable offenders shall not be transferred, as a matter of routine, to Death Row segregation status for isolated, minor offenses due to the policy of TDCJ to process these infractions without the offender's removal. The transfer to Death Row Segregation may occur due to specific security concerns or as a result of a conviction of a disciplinary infraction.

1. The removal of an offender from Work Capable status shall be accomplished through the unit classification process. In determining whether to remove a Death Row offender from Work Capable status the DRCC shall review the characteristics for Work Capable and any other additional and relevant factors.
2. The DRCC shall conduct a review within five (5) working days of the events requiring that committee's attention.
3. Upon receipt of official notification that an offender classified Work Capable has received an execution date, he shall be scheduled for the DRCC to review his status within 24-hours. A Work Capable offender shall be given an opportunity to remain on the Work Program if security concerns are not apparent or the offender does not request his removal. An offender who remains Work Capable shall automatically be moved to Death Row Segregation thirty (30) days prior to his scheduled execution date. A Death Row offender shall be reviewed by the DRCC upon official notification of a stay of execution, or if the State is seeking vacatur of a stay or upon final denial of the State's motion to vacate. Official notification of a stay must be received from the CI Division Director's Office, Warden's Office, Classification and Records Office in Huntsville,

or the Attorney General's Office. **** Staff must not accept a stay of execution from the offender's attorney.**

4. Offender Request: An offender may request to be removed from the Work Capable program. If requested, the offender shall be placed in segregation status and scheduled for review by the DRCC within five (5) working days.
5. An offender's refusal to participate in the classification process shall automatically result in reclassification to Death Row Segregation.
6. The DRCC shall notify the SCC concerning each offender removed from the Work Capable program. Such notice shall include the date and the reason the DRCC removed the Work Capable status.
7. The transfer of a Death Row Work Capable offender to Death Row Segregation Housing may be made for disciplinary or security reasons by the Warden or designee, pending review by the DRCC within five (5) days, for the following reasons:
 - a. The offender is a current escape risk.
 - b. The offender's presence in the Work Capable population would create a threat to the physical safety of other offenders or staff.
 - c. It is necessary to maintain the integrity of an investigation, i.e., to preserve the integrity of information either in the offender's possession or another offender's possession.
 - d. Offenders charged with a Level I, II, or III offense shall be brought before the Disciplinary Hearing Officer (DHO), as appropriate, within the applicable time frames set forth in TDCJ disciplinary procedures.
 - i. If found guilty by the DHO, the offender shall have his Work Capable status reviewed by the DRCC within five (5) working days of the disciplinary hearing.
 - ii. A finding of "not guilty" may result in the offender's reassignment to Work Capable housing unless other factors, excluding disciplinary reasons, prevent the DRCC from returning the offender to Death Row Work Capable status.

H. Record Keeping

1. One (1) unit file shall be maintained on each Death Row offender to include Work Capable/Segregation records and all pertinent information. The Death Row Supervisor shall be responsible for ensuring that each file contains the following information:
 - a. I-203/I-204 forms
 - b. Disciplinary reports (major and minor)
2. The offender shall be reviewed by the DRCC and be provided with a written record of the reason for the committee's decision upon conclusion of the committee.

I. Appeal Process

The offender shall have the right to appeal the decisions of the DRCC as outlined in the *Offender Grievance Procedures*.

In the event that the Warden wishes to appeal a decision made by the DRCC or SCC, the appeal shall be made to the Departmental Review Board (DRB).

II. GENERAL PROVISIONS

A. Visiting: Security cubicles shall be utilized in the unit visiting room for Death Row Segregation offenders. Death Row Work Capable offenders shall be allowed to utilize the General Population non-contact visitation area. Death Row offenders are not allowed contact visits. Visitation shall be held in conformance with the rules established by the *TDCJ Offender Visitation Plan*.

1. Number of Visits

Death Row offenders are allowed visits based on the schedule below. Generally, visits shall be two (2) hours in length (except where noted in the *Visitation Plan*). Special security procedures may be utilized during visitation periods to ensure the safety and security of all offenders, offender visitors, staff and the security of the institution.

<u>Custody Level</u>	<u># of General Visits Allowed</u>
Work Capable & Level I	1 per week
Level II	2 per month
Level III	1 per month

2. Visiting Hours

Visitation shall be held on the following days (except on State-approved holidays):

<u>Mountain View</u>	<u>Polunsky</u>
Monday (8 - 5)	Monday (8 - 5)
Tuesday (8 - 12)	Tuesday (8 - 5)
Wednesday (8 - 5)	Wednesday (8 - 12)
Thursday (8 - 5)	Thursday (8 - 5)
Friday (8 - 5)	Friday (8 - 5)
Saturday (5:30 - 9:30)	Saturday (5:30 - 10:00)

Death Row Visitation may be held by appointment during high-traffic times or due to physical configuration of the unit Visitation Room. Scheduling will only be used to ensure the minimum amount of waiting time for visitors and most efficient use of Visitation Room facilities. Visitation at the Mountain View Unit shall be scheduled with the Warden's office in advance for all visits. Visitation at the Polunsky Unit shall be held on a first-come, first-serve basis, except for Saturday evenings, which will be scheduled by appointment.

Any time a State-approved holiday falls on a weekday, Death Row visitation will not be conducted. However, any time a State-approved holiday falls on a Saturday, Death Row visitation will be conducted.

3. Media

Press interviews of condemned prisoners shall be scheduled by the Public Information Office and conducted at the Polunsky Unit each Wednesday between the hours of 1:00 - 3:00 p.m. and on the Mountain View Unit on each Tuesday between the hours of 1:00 - 3:00 p.m.

4. Death Row Ministerial/Spiritual Advisor Visitation Guidelines

a. Outside ministerial/spiritual advisor visits are permitted on a case-by-case basis at the discretion of the Warden or designee. Permission for visits with spiritual advisors who are not listed on the offender's approved Visitors List may be obtained from the Warden. Spiritual advisors must satisfactorily identify themselves as such in order to obtain permission to visit.

i. Each Death Row offender may not have more than one (1) outside ministerial/spiritual advisor visit per week, until thirty (30) days before the offender's execution date.

- (a) Special exceptions regarding spiritual advisor visitation shall be extended to Death Row offenders who are within thirty (30) days of their execution date.
 - (b) Death Row offenders may visit with their spiritual advisors at a prearranged time, for two (2) hours, on a regular Death Row visiting day.
 - (c) A Death Row offender may have a spiritual advisor visit and a regular visit on the same day. However, the spiritual advisor may not have a special visit and a regular visit with the same offender on the same day.
 - (d) A spiritual advisor visit shall not count against a Death Row offender's regular visits.
- ii. Designating the Spiritual Advisor
 - (a) Each Death Row offender may designate in writing one (1) outside spiritual advisor for witnessing purposes.
 - (b) The designated spiritual advisor may be changed at the request of the Death Row offender, if adequate prior notice is given.
 - (c) Spiritual advisors must satisfactorily identify themselves as such in order to obtain permission to visit (i.e., religious credentials such as ordination papers).
- b. In responding to requests for such visits, priority shall be given to offenders who have not recently had outside ministerial/spiritual advisor visits, and to their spiritual advisors who must travel great distances in order to visit.
 - i. Spiritual advisors requesting visits must contact the Mountain View Unit or Polunsky Unit Offender Records weekdays between 8:00 a.m. and 5:00 p.m. by calling (254) 865-7226 (Mountain View) or (936) 967-8082 (Polunsky), to schedule the visit.
 - ii. No more than three (3) outside spiritual advisor visits on Death Row shall be scheduled on any single visiting day.

iii. Visitation shall depend upon availability of time, space and staff.

B. Access to General Library: Each unit shall develop procedures to provide Death Row offenders access to general library books. The rules and procedures for Death Row offenders' access to general library books should closely resemble the unit's procedures for general population offenders' access to library books. Death Row Offenders shall not be allowed to go to the unit's general library (i.e., library books shall be delivered to offenders on Death Row).

C. Access to Law Library: A Death Row offender's access to law library books is governed by procedures established in the *Access to Courts Rules* and the *Access to Courts Procedures Manual*.

D. In-Cell Programs

Death Row Work Capable and Segregation Level I offenders may have access to in-cell programs that are consistent with security requirements. Only supplies available through the commissary may be used by male Death Row Offenders. Items available may be limited by the Warden if abused by an offender and property may be limited by the disciplinary process. These programs may be in the area of education as well as arts and crafts pursuant to AD-14.59 "Offender Piddling and Crafts Sales" with the exception of in-cell art programs. The Warden, Assistant Warden or designee may, on a case-by-case basis, suspend an in-cell program when an offender has abused that privilege. Offenders assigned to Level II or Level III are ineligible for In-Cell Programs.

E. Security Measures

Death Row security procedures shall be handled in accordance with the appropriate post orders.

1. Prior to and after each use, the shower areas, dayrooms, inside recreational areas and outside recreation areas are to be thoroughly searched.
2. Offenders shall be thoroughly strip-searched before and after recreation or leaving or returning to the assigned cellblock.
3. Frequent, thorough searches of cells, cell runs, shower areas and other locations within the housing area shall be conducted. Each cell shall be thoroughly searched prior to assigning an offender to the cell.
4. Support service inmates (SSIs) assigned to Death Row shall be strip-searched each time they enter or leave the Death Row area. While in the Death Row area, SSIs are to be kept under constant, direct supervision.

5. At any time that a problem develops with a particular offender in Death Row, the Death Row supervisor shall ensure that the problem is identified and addressed as soon as possible. Unresolved problems are not to be left to escalate into larger problems.

III. MANAGEMENT OF DEATH ROW WORK CAPABLE

A. Confinement Procedures

TDCJ-ID shall single cell all Work Capable Death Row offenders.

B. Recreation

Each Death Row Work Capable offender shall be allowed two (2) hours of recreation per day (either dayroom or recreation yard) with at least two (2) days outside, weather permitting. Four (4) offenders may exercise at one time in the dayroom, which shall be equipped with a table for tabletop games as well as a television. Therefore, an offender may have the option to forgo outside recreation and choose dayroom recreation. Female offenders may recreate in groups of four (4) outside as well.

C. Visitation

Visitation hours for Work Capable offenders shall be scheduled according to the *TDCJ Offender Visitation Plan*. Each Work Capable offender shall be allowed one (1) two (2) hour visit per week. Ministerial/Spiritual Advisor visits shall be conducted according to AD-07.30, "Procedures for Religious Programming," the *TDCJ Offender Visitation Plan*, and the *Death Row Plan*.

D. Meals: Work Capable Feeding Procedures

Work Capable offenders shall receive the same food tray as general population and Level I Death Row Segregation offenders. Work Capable offenders shall eat their meals in their cells or at their work site, as the Warden or designee deem appropriate.

E. Commissary

1. Work Capable offenders have the same access to commissary items as minimum custody general population offenders.
2. Work Capable offenders shall have their purchases delivered to their cells.

F. Property

Work Capable offenders are required to maintain their property as outlined in AD-03.72, "Offender Property."

G. Showering

Offenders in Death Row Work Capable shall be provided the opportunity to take a shower seven (7) days per week. Death Row Work Capable offenders will be furnished and are expected to wear clean clothes as outlined in AD-09.26, "Allocation of Necessities." They must also adhere to grooming standards as outlined in AD-03.83, "TDCJ Offenders Who Refuse to Comply With Grooming Standards." Items allowed during showering are the same as general population offenders.

H. Correspondence

Death Row Work Capable offenders shall be provided with writing instruments, stationery and postage either from their Inmate Trust Fund account or through the provisions for Indigent Supplies.

I. Escort Procedures for Work Capable Offenders

Within the building, Work Capable offenders are normally escorted unrestrained by one (1) officer. Outside of the building, the offender shall be handcuffed and escorted by two (2) officers. In the housing area, Work Capable offenders shall be allowed to walk unescorted to recreate and shower. During necessity turnout, all riot gates shall be shut to prevent unauthorized movement in the hallway or contact with general population SSI offenders.

J. Work

Female offenders shall be employed doing special projects, to include sewing.

K. Religious Services

Religious services shall be held in the dayroom areas by placing chairs in the dayroom. Space should allow for up to 20 offenders to be seated at a time.

IV. MANAGEMENT OF DEATH ROW SEGREGATION

A. Confinement Procedures

A Death Row Segregation offender may be assigned to Level I, Level II, or Level III, based upon his behavior. The Death Row Classification Committee (DRCC)

shall have the authority to change the level to which an offender is assigned. Regardless of level, Death Row Segregation offenders shall be single-celled.

1. Level I - Offenders assigned to Level I are generally maintaining good behavior but for one or more reasons (see Work Capable review) are not eligible for Work Capable.
2. Level II - Offenders assigned to Level II:
 - a. May be chronic rule violators but do not show a recent (within the last three [3] months) history of in-prison assaultive or aggressive behavior.
 - b. The offender may have been assigned to Level III but due to a positive change in behavior and attitude, the DRCC has reviewed his status and reclassified the offender to Level II.
 - c. The offender may have been involved in an incident or have received a disciplinary case that warrants placement in a more restrictive level.
3. Level III - Offenders assigned to Level III are chronic rule violators and are assaultive or aggressive in nature (i.e., history of institutional violence, offender assaults with weapons, history of weapons possession, assaults or attempted assault on offenders or staff, fighting with or without a weapon). The offender may be:
 - a. A current escape risk (escape or escape attempt was assaultive in nature or it was determined on the basis of the circumstances surrounding the escape or escape attempt that the offender had a high potential for assaultiveness);
 - b. A threat to the order and security of the institution as evidenced by repeated serious disciplinary violations (assaultive in nature); or
 - c. A threat to the physical safety of other offenders or staff due to assaultive behavior that includes assaultive offenders identified and confirmed as being members of an STG.

B. Special Conditions/Restrictions

1. The DRCC may also determine any special conditions or restrictions, which should be imposed on Death Row Segregation offenders for security purposes. These special conditions include:
 - a. Level of segregation;

- b. Personal Property restrictions;
- c. Known assault risks;
- d. Known enemies (by name and TDCJ-ID number);
- e. STG (gang) affiliations;
- f. Restraint requirements (for movement);
- g. Physical health conditions;
- h. Mental health conditions;
- i. Special diet requirements (medical and/or religious);
- j. Medication requirements; and
- k. Any other special circumstances related to the offender's segregation.

- 2. A Death Row Segregation offender shall be advised of the criteria for Work Capable status, which will be considered at subsequent review hearings. The offender shall have the right to appeal the decision of the committee through the offender grievance procedure.

C. Recreation Schedule

- 1. Offenders in any category of Death Row Segregation shall be allowed physical recreation out of their cells in conformity with the level to which they have been assigned.
- 2. Level I offenders shall be allowed out-of-cell recreation in accordance with one of the three following schedules at the discretion of the Warden or designee:
 - a. Seven (7) days per week with one (1) hour of out-of-cell physical recreation each day; two (2) hours of the weekly out-of-cell recreation shall be outdoors, weather permitting; or
 - b. Five (5) days per week with two (2) hours of out-of-cell physical recreation each of the five (5) days; two (2) hours of the weekly out-of-cell recreation shall be outdoors, weather permitting; or
 - c. Four (4) days per week with three (3) hours out-of-cell physical recreation each of the four (4) days; three (3) hours of the weekly out-of-cell recreation shall be outdoors, weather permitting.
- 3. Level II - Offenders assigned to this level shall be allowed out-of-cell recreation four (4) days per week with one (1) hour out-of-cell physical recreation each of the four (4) days; one (1) hour of the weekly out-of-cell recreation shall be outdoors, weather permitting.
- 4. Level III - Offenders assigned to this level shall be allowed out-of-cell recreation three (3) days per week with one (1) hour out-of-cell physical

recreation each of the three (3) days; one (1) hour of the weekly out-of-cell recreation shall be outdoors, weather permitting.

D. Visitation

1. Death Row Segregation offenders shall be allowed visitation privileges according to the level to which they have been assigned:
 - a. Level I - one (1) general visit per week.
 - b. Level II - two (2) general visits per month.
 - c. Level III - one (1) general visit per month.
2. Visitation hours for segregation offenders shall be scheduled according to the *TDCJ Offender Visitation Plan*. Ministerial/Spiritual Advisor and Execution visitation shall be scheduled in accordance with AD-07.30 and the *TDCJ Offender Visitation Plan*.

E. Meals

Death Row Segregation offenders shall have access to nutritionally adequate meals. Specific dietary requirements shall be met for those offenders whose religious, medical or dental condition requires dietary management. The Death Row Segregation Supervisor and the Food Service Manager will need to coordinate the number and type of food trays to be delivered to Death Row Segregation offenders.

F. Commissary

Death Row Segregation offenders shall have access to commissary in accordance with the level to which they have been assigned:

1. Level I - same access to commissary as minimum custody general population offenders (\$75.00 every two [2] weeks) to include approved TDCJ electrical appliances (i.e., fan, typewriter, radio, and other similar items).
2. Level II - purchase of one (1) item each of personal hygiene items and correspondence supplies (correspondence supplies not to exceed \$10.00) every two (2) weeks. The \$10.00 refers to correspondence supplies only. Additional correspondence supplies may be purchased upon submission of a special purchase request by the offender and approval by the Warden.
3. Level III – purchase of one (1) item each of personal hygiene items and correspondence supplies (correspondence supplies not to exceed \$10.00) every two (2) weeks. The \$10.00 refers to correspondence supplies only.

Additional correspondence supplies may be purchased upon submission of a special purchase request by the offender and approval by the Warden.

Specific limitations may be placed on an offender's property by the DRCC for documented reasons. Commissary items shall be delivered to Death Row Segregation offenders.

G. Property

Death Row Segregation offenders shall retain personal property allowed in accordance to the level to which they have been assigned. Note: The DRCC may restrict any property of Death Row Segregation offenders that presents a danger to the security of staff, the offender, other offenders, or a danger of escape.

1. Death Row Segregation offenders in Level I, Level II, and Level III are allowed the following basic personal property items:
 - a. Legal materials/legal research materials (no metal fasteners/paper clips);
 - b. Approved religious book or articles necessary for the practice of the offender's religion that does not violate the security of the institution;
 - c. TDCJ approved publications in accordance with correspondence rules;
 - d. Photographs;
 - e. Letters;
 - f. Correspondence supplies;
 - g. "Keep-on-Person" medications per Health Service Policy (until 30 days prior to date of execution);
 - h. Health care devices and supplies prescribed for the offender by Health Services;
 - i. One (1) small comb or brush;
 - j. One (1) bar of State-issued soap;
 - k. One (1) pair of shower slides;
 - l. One (1) pair of TDCJ-ID authorized or issued shoes (non-steel toe);
 - m. One (1) roll of toilet tissue;
 - n. One (1) toothbrush;
 - o. One (1) tube of toothpaste/tooth powder;
 - p. All offenders shall be provided with a daily change of socks, underwear, a clean towel, and a change of State-issued clothes not less than three (3) times per week. There is a weekly change of cell towel, set of sheets, pillowcase and gown. All necessity items are to be furnished at shower time and exchanged on a one-for-one basis per AD-09.26, "Allocation of Necessities." Units allowing offenders to keep a shower towel in their possession are not

- required to issue cell towels. The exchange of necessity items shall be completed even if the offender refuses to shower;
- q. Personal jewelry items in accordance with AD-03.72, "Offender Property;"
 - r. Gender-related items to include bras, panties, sanitary napkin belt, sanitary napkins, tampons, douche items;
 - s. Small amount of cleaning supplies as the administration deems appropriate; and
 - t. Mattress and pillow.
2. The following additional property is allowed according to the level to which a Death Row Segregation offender is assigned:
- a. Level I -
 - (1) Items purchased through the Commissary to include approved TDCJ-ID electrical appliances (fan, typewriter, and other similar items);
 - (2) General library books;
 - (3) In-cell arts and crafts (piddling) items in accordance with AD-14.59, "Offender Piddling and Crafts Sales";
 - (4) Gender-related items in accordance with AD-03.72, "Offender Property."
 - b. Level II - approved personal hygiene items purchased through the Commissary.
 - c. Level III - approved personal hygiene items purchased through the Commissary.

Note: The DRCC may restrict any property of Death Row Segregation offenders that presents a danger to the security of staff, the offender or other offenders or a danger of escape.

H. Showering

Offenders in Death Row Segregation shall be provided the opportunity to take a shower seven (7) days per week. Death Row Segregation offenders shall be furnished and are expected to wear clean clothes as outlined in AD-09.26, "Allocation of Necessities." They must also adhere to grooming standards as outlined in AD-03.83, "TDCJ Offenders Who Refuse To Comply With Grooming Standards." Security staff shall issue the offender a disposable razor to be replaced every week and for female offenders to be replaced every month. Razors shall be issued to Level I offenders each week/month to be maintained in their personal property unless the Warden deems such possession to be a security risk. A razor shall be issued to a Level II or III offender after he enters the shower. The razor shall be returned to the security staff by the offender before he returns to his cell. Security staff shall store the razor in such a manner as to ensure each

offender receives his own razor. Items allowed in an offender's possession during showering are as follows:

1. Level I - soap, shampoo/conditioner, towel, shower slides, razor.
2. Level II – soap, shampoo/conditioner, towel, shower slides, razor.
3. Level III – soap, shampoo/conditioner, towel, shower slides, razor.
4. Female offenders may take undergarments and feminine hygiene products (as necessary) to the shower.

Thirty (30) days prior to an execution date, razors shall be issued to Level I offenders in the same manner as Level II and Level III offenders.

I. Correspondence

Death Row Segregation offenders shall be provided with writing instruments, stationery and postage either from their Inmate Trust Fund account or through the provisions for Indigent Supplies.

J. Management Procedures

The following are guidelines, in addition to those previously noted, related to the management of segregation areas. Each Warden is responsible for ensuring that these procedures are followed.

1. Death Row Segregation Housing Practices:

- a. Each unit shall ensure that categories and levels of Death Row Segregation can be identified by the cell number or row of the segregation housing area. Offenders in Level I, Level II, and Level III should be housed in separate physical locations (e.g., different rows, or with partitions between the groups). If this separation of levels cannot be accomplished in this manner, every effort shall be made to maintain an empty cell between the levels. It is recommended that whenever it is necessary to designate cells on a single row to house different levels of Death Row Segregation offenders (e.g., 10 cells for Level III and 15 cells for Level II with an empty cell between the groups), the first group of cells on the row should be designated for Level II offenders and the last group of cells should be designated for Level III offenders. The rows or group of cells designated for specific levels of Death Row Segregation offenders should remain constant to the extent possible (i.e., only under special circumstances such as lack of bed space for another level of Death Row Segregation shall the designation of rows or cells change in the Administration Segregation housing area).

- b. Offenders in Death Row Segregation shall be assigned to housing areas that are specifically designated for their custody requirements. The housing recommendations of treatment professionals, as noted in each offender's Health Summary for Classification form, shall be followed by classification committees, classification and security staff.

2. Segregation Security Measures:

Each Warden shall immediately take all necessary steps to assure that the safety and security of offenders and staff in segregation area is maximized, in accordance with the applicable post orders and the *Administrative Segregation Plan*.

3. Offender Restrictions

Offender restrictions (i.e., property, food loaf, paper mask, paper gown restrictions) shall be handled in accordance with the Security Memorandum, "Offender Restrictions."

4. Death Row Segregation Escort Procedures:

Death Row Segregation offenders shall be strip-searched and placed in restraints before exiting their cells. Death Row Segregation offenders will be escorted according to procedures outlined in the Death Row Cellblock Officer post orders.