

**BEFORE THE
OHIO ADULT PAROLE AUTHORITY**

**IN RE: ALVA E. CAMPBELL, JR.
Chillicothe Correctional Institution, # A354-963**

Clemency Hearing: October 12, 2017

APPLICATION FOR EXECUTIVE CLEMENCY

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INTRODUCTION

On April 2, 1997, Alva Campbell was in custody of the Franklin County Sheriff facing several robbery charges. When he was arrested on the robbery charges, Alva had received a glancing bullet wound to the head. As a result of that wound, Alva was able to fake further symptoms of paralysis, leading to a diagnosis by a prison doctor of hysterical paralysis, and resulting in Alva's use of a wheelchair.

Alva was being transported to the Franklin County courthouse for a hearing that morning by a lone female deputy. The deputy did not handcuff nor otherwise restrain him in the wheel chair. Once outside the sheriff's transport van, Alva took advantage of his lack of restraints, and attacked the deputy, took her gun, and fled to the street. There, he forced his way into the pickup truck of Charles Dials and drove away with Mr. Dials as a passenger.

Over the course of the next few hours, Alva drove around Columbus with Mr. Dials. He made several stops to purchase alcohol. Alva took Mr. Dials's wallet and cash, but returned a social security card and other personal items that Mr. Dials indicated he needed. Alva also gave Mr. Dials his jail identification wristband, so he could prove to his friends and family that he was the person seen in the news. It appears from these actions that throughout most of the afternoon, Alva intended to let Mr. Dials go unharmed.

At some point, Alva parked the truck in a K-Mart parking lot. The news on the radio covered the escape and ongoing search. Helicopters began circling overhead. Alva told Mr. Dials to get on the floorboard of the truck. While Mr. Dials

was crouched in the foot well of the truck, Alva shot him – killing him instantly. Alva then abandoned Mr. Dials’ truck, eventually stealing another vehicle in the parking lot.

A Columbus policeman engaged in the search recognized Alva and a car chase ensued. Alva abandoned the car and climbed into a tree, where police surrounded him and he soon surrendered. Taken to the police station, Alva waived his *Miranda* rights and provided a lengthy statement to detectives.

Prior to trial, Alva offered to plead guilty in exchange for a sentence of life without any possibility of parole. The State rejected Alva’s offer. At trial, Alva did not contest his guilt and was properly convicted of all charges.

These key facts surrounding the escape, the kidnapping, and the killing of Charles Dials were not and are not in dispute. There are several other issues in this matter where the State and Alva further do not disagree: Alva does not contest the validity of any of his previous convictions; based on this lengthy criminal record, both parties concur that Alva has forfeited the right to live in a free society. Although Alva does suffer from the effects of a violently abusive childhood and an equally neglected and abusive upbringing as a state-raised-youth, and has been diagnosed as suffering from post-traumatic stress syndrome, he does know right from wrong and his sanity at the time of the crime has never been at issue.

All parties, including Alva Campbell, agree that the killing of Charles Dials was a senseless tragedy. All sympathies properly lie with the friends and family of Mr. Dials. However, a positive clemency recommendation for Alva Campbell does

not diminish the respect and sympathy owed to the family and friends of Mr. Dials. Alva recognizes that he must spend the rest of his life in prison, and that he can never fully atone for the harm he has caused the family of Mr. Dials. He seeks only that his sentence be commuted from death to one of life without the possibility of parole.

There are several factors that lend support to Alva's clemency request. These include:

- The long-term effects of the extreme abuse and neglect Alva was subjected to as a young child weigh in favor of a life sentence. Such an upbringing left Alva destined for disaster. Alva was neglected, severely beaten, sexually assaulted, and tortured by those in positions of trust. This horrific background destroyed Alva and left him unable to properly function in society. Based on this disturbing record, Alva is deserving of clemency.
- Although Alva was removed from the family home at the age of ten and was made a ward of the state, he did not receive any of the intense therapy needed to overcome that effects of his horrific upbringing, and was instead further mistreated and physically and sexually abused as a state-raised-youth. His experiences in state care did not equip him with the tools to become a responsible adult. The effects of the childhood abuse and neglect, combined with the effects of his negative and violent experiences in state care, affected him throughout his life. They provide a basis for recommending clemency.
- Reviewing courts have recognized multiple breakdowns in the legal system, yet failed to correct them. Courts have found that Alva's trial attorneys performed deficiently for failing to present mitigating evidence about his experiences as a state-raised-youth after he was removed from his family. Reviewing courts also found that the trial judge improperly limited the amount of evidence defense counsel were allowed to introduce during the penalty phase. Nevertheless, the reviewing courts failed to order a new sentencing hearing. This clemency proceeding is the last chance to correct these shortcomings.
- There can be no excuse for Alva's escape and subsequent crimes that landed him on death row. However, a review of Alva's prison record

demonstrates that his behavior on April 2, 1997 is not indicative of how he behaves in the custody of DRC. Alva has been described as a “respectful” and “responsible” death row inmate. In almost twenty years on death row, he has received four disciplinary tickets. While not perfect, Alva’s prison record demonstrates that he is an inmate who is not a threat to any inmates or staff.

- From the day of his arrest to his interview with this Board, Alva has always accepted responsibility and shown remorse for his actions.
- Alva is suffering from a variety of chronic diseases and is terminally ill. In recent years, he has had multiple organs surgically removed (including most of one lung, his thyroid, his prostate, and most recently all of his lower colon). He requires an external colostomy bag. He falls without the aid of a walker. He requires the constant use of inhalers and four breathing treatments a day to permit him to breathe. He has lost a significant amount of weight in the last two years. As recently as this summer, Alva was spitting up blood and diagnosed with pneumonia. Because the pneumonia was not cleared up with antibiotic treatment, doctors now believe his lung cancer may have returned. The severity of these combined illnesses have left Alva debilitated and frail. Alva’s abject physical condition further militates in favor of clemency.

In making this request for clemency, it is important to clarify what Alva is arguing and what he is not. Alva is guilty of murdering Charles Dials. During his interview with this Board, Alva repeatedly accepted responsibility and displayed remorse for this crime and others. This clemency request is not intended to minimize Alva’s legal culpability or the validity of his convictions. At issue is the appropriate penalty to be served for the conduct for which he has always accepted responsibility. Life imprisonment with no chance of parole is a serious punishment – the second most significant punishment the State of Ohio can impose.

Likewise, presenting evidence of Alva’s painful childhood and equally troubling adolescence in state care is not an attempt to shirk responsibility or place

blame elsewhere. According to the Supreme Court of the United States, consideration of an offender's disadvantaged life history is an "indispensable part of the process of inflicting the death penalty."¹ This Board and Ohio's Governor have similarly recognized that childhood trauma and abuse can mitigate against a sentence of death.²

Alva's horrific background is especially relevant to this Board's clemency recommendation because of the intensity and duration of the abuse Alva suffered, and because the sentencing jury and trial judge were provided an incomplete and inaccurate picture of this life history. This lapse permitted the prosecution to mislead the jury and sentencing judge about the long-term effect of such an abusive upbringing.

For these reasons, articulated more fully in the application, Alva Campbell respectfully requests that this Board recommend clemency in the form of a commutation to a sentence of life without the possibility of parole.

¹ *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976).

² *IN RE: JOSEPH MURPHY*, September 23, 2011.

REASONS FOR GRANTING CLEMENCY TO ALVA E. CAMPBELL, JR.

I. ALVA'S APPALLING HISTORY OF CHILDHOOD ABUSE AND NEGLECT

The horrific childhood abuses that Alva suffered when in the care of his family were compounded by the abuse, neglect, and absence of therapy while in the care of the state as an adolescent. The long-term effects of this abuse and neglect have affected Alva throughout his life and have contributed to his criminal conduct as an adult.

In deciding whether or not to recommend clemency for Alva Campbell, it is critical for this Board to understand how remarkably abusive and neglected his childhood and adolescence were, and to understand how that abuse and neglect impacted his development and his failures as an adult.

Society has long held the belief that persons who commit criminal acts may be less culpable where their actions can be attributed to disadvantaged backgrounds or to “emotional or mental problems.”³ Likewise, this Board has recognized that “significant psychological, emotional and intellectual deficiencies” can be “manifested from infancy” and leave a victimized child (turned murderer) “destined for disaster.”⁴

Alva Campbell, like Joseph Murphy, was “destined for disaster.” The path that Alva Campbell has traveled from being a childhood victim of extreme abuse and neglect, through an adolescence of institutionalization without adequate care and treatment or protection from the abuse of his peers, fated Campbell for an adult life of violence and dysfunction. Alva Campbell's adult behavior cannot be fathomed without an understanding of the extreme abuse and neglect, and the complete

³ *California v. Brown*, 479 U.S. 538, 545 (1987) (O'Connor J., concurring).

⁴ *IN RE: JOSEPH MURPHY*, September 23, 2011.

failure of the state to protect him and to provide him the intense treatment and therapy needed to overcome his childhood trauma. These factors all combined to ensure that Alva did not have the tools to function as a responsible adult in the world.

A. Alva Campbell grew up in a home that was in “constant chaos,” lacked stability, nurturance, and “was totally inadequate, in every possible way.”

For the first ten years of his life, Alva Campbell lived with his parents and several siblings in various small apartments in the projects in Cleveland, Ohio. The family home – such as it was – can only be characterized as a house of terror. The family was exceptionally dysfunctional. Both parents were severe alcoholics. Alva’s father, Alva E. Campbell Senior, was a tyrant who brutally beat his wife and children virtually every week, who sexually abused Alva’s sisters and Alva.

During these most important developmental years of Alva’s life, when the integral parts of his personality were formed, he was persistently subjected to physical and verbal violence.

B. Alva and his sisters were terrorized by constant physical abuse and violence.

The terror inflicted by the father inside Alva’s home was constant. Alva’s father drank heavily and became intoxicated most nights. On Friday nights, however, he and Alva’s mother began drinking even more heavily. This happened virtually every week. It did not take long before he was “screaming and hollering at everyone.”⁵ Alva’s father was already “angry and erratic when sober,” but he

⁵ Ex. 1, Affidavit of Barbara Brackett, ¶ 4.

became “especially mean and crazy when drunk.”⁶ Anything could set him off, and violence always ensued. One of Alva’s sisters remembered that “one minute” her parents “would be talking and then a big argument would start.”⁷ When drunk, Alva’s father, who was white, became overtly racist and would tell his African-American wife, “I should have never married a nigger.”⁸ The arguments inevitably led to Alva’s father beating his wife – in front of the children.

Alva’s father would “use his fists and punch her in the face like a boxer.”⁹ Alva’s father would “kick her, grab her hair, and throw her across the room like a rag doll.”¹⁰ Alva’s mother was left with black eyes, a bloody face, and was often beaten unconscious.¹¹ At the conclusion of the beatings, Alva’s mother was often thrown outside and forced to sleep in the family car – even on freezing nights.¹² The Campbell children were worried their mother would freeze to death, but they were powerless to do anything about it. Alva and his sisters were threatened by their father that they would be killed if anyone attempted to offer their mother any assistance.¹³

It was not an idle threat. Attempts to save their mother from the beatings always resulted in more violence directed at the children. Gwen Campbell, Alva’s

⁶ *Id.*

⁷ Ex. 2, Affidavit of Gwen Campbell, ¶ 13.

⁸ *Id.*

⁹ *Id.* at ¶ 14.

¹⁰ *Id.*

¹¹ *Id.*

¹² Ex. 1, Affidavit of Barbara Brackett, ¶ 5.

¹³ *Id.*

sister, has recounted Alva throwing a rolled-up newspaper at their father's head while he was on top of their mother punching her in the face. Their father asked who threw the paper. When no one confessed, he chose at random to beat Gwen. Gwen remembers she was around eight years old at the time; Alva was five.¹⁴ Alva's sister Barbara Brackett remembers a similar failed intervention. She threatened to kill her father if he kept punching their mother. In response, Barbara was thrown to the ground and kicked repeatedly until she was bruised and bloodied. "I got the beating of my life," she recalled. Barbara asked her mother to take her to the emergency room "but mom was too scared of getting me help because she knew she would be beaten for it."¹⁵

While their mother was being beaten unconscious inside their small apartment, the Campbell children were "lined up, sitting in the living room to watch. We just sat on the couch crying."¹⁶ After their mother was pummeled and thrown outside, the attention shifted to the kids. "When our father was done with mother, he would turn his attention to myself and the other children. All of the children were called horrible names. My father told all of the children that he hated us and started beating us."¹⁷

The following mornings Alva and his sisters would look after their mother, who lay in bed injured with "black eyes and a bloody face."¹⁸ Alva's sister Gwen

¹⁴ Ex. 2, Affidavit of Gwen Campbell, ¶ 18.

¹⁵ Ex. 1, Affidavit of Barbara Brackett, ¶ 11.

¹⁶ Ex. 2, Affidavit of Gwen Campbell, ¶ 15.

¹⁷ Ex. 1, Affidavit of Barbara Brackett, ¶ 7.

¹⁸ Ex. 2, Affidavit of Gwen Campbell, ¶¶ 14–15.

recalled that she didn't know how their mother (a very small woman) was able to survive such beatings. "Looking back on it, I don't think I could have survived it."¹⁹ Although Alva's mother survived, her pregnancies did not. "My mother lost two babies because of my father beating her. I remember my father kicking her in the stomach when she was pregnant and she had miscarriages shortly after."²⁰

If it was a Saturday morning, the Campbell children knew a repeat of the previous night's madness was only a few hours away. Gwen remembered that "violence like this happened every weekend of the year in our small apartment. I remember dreading the weekends growing up because I knew what was coming."²¹ There was never a weekend off from the violence. "Every single weekend, from Friday through Sunday, my parents drank and there was violence. The same routine also happened on holidays when my father had the day off. Holidays were just an excuse to get drunk and fight."²² Alva's sister Barbara had a similar recollection. "Growing up, weekends were the worst for the family. We all dreaded them and always knew hell was going to break loose. They were chaotic every single weekend. My childhood was a nightmare."²³

Although the violence inside the Campbell home arrived like clockwork on the weekends, there were also random incidents of violence directed at the children during the work week. Alva's father often told the children to clean the house while

¹⁹ *Id.* at ¶ 14.

²⁰ *Id.* at ¶ 17.

²¹ *Id.* at ¶ 16.

²² *Id.*

²³ Ex. 1, Affidavit of Barbara Brackett, ¶ 4.

he was gone. When he came home, he claimed to find something dirty, and began beating his children.²⁴ Alva and his sisters were also regularly woken up while they were sleeping. “Sometimes in the middle of the night my father would walk in and just randomly start punching me in the face while I slept.”²⁵

Alva’s father also enjoyed waking his children up late at night to watch boxing with him. If any of the children started to nod off, he would punch them in the face. Gwen remembered incidents like this happening “regularly” to all of her siblings for the first twelve years of her life.²⁶

The horror Alva suffered did not end with his father’s brutal beatings. He and his sisters were also subjected to sadistic games. One of his father’s favorite games was the “electric game,” where he would remove a light bulb and stick his finger into the socket without turning off the electricity. He would then call his children and they all would join hands and hold onto the kitchen faucet feeling the electricity painfully course through their bodies. All the while, Alva’s father would warn the children that they would be electrocuted if they let go. They were too scared to test him. Gwen remembered “we would just stand there screaming and crying with electricity running through our bodies for long stretches. My father smiled during this and thought it was funny. It was crazy. I thought he was going to kill us because it was so dangerous.”²⁷

²⁴ Ex. 2, Affidavit of Gwen Campbell, ¶ 21.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at ¶ 24.

Alva's father also liked to bring home the severed heads of animals he found on the street. He would gouge out the animal's eyes in front of the children and then chase them around the house with the mutilated head.²⁸

C. Alva Campbell was further terrorized by his father's sexual abuse of Alva and his sisters.

Terror came in many forms in the Campbell home. Alva's father sexually abused two of his daughters, Gwen and Sandra. Gwen remembers that her father had sexual intercourse with Sandra when she was very young. "He raped her as early as elementary school."²⁹ Gwen and Sandra were also forced to perform oral sex on their father. "My father fondled me and forced me to perform oral sex on him, but we never had sexual intercourse. I put up a fight and would be beaten. I preferred being beaten than raped."³⁰ Alva's sister Gwen also believes Alva was sexually abused by their father based on what she saw first-hand. "My father was a very sick individual."³¹

A psychologist who evaluated Alva likewise believed that there was a strong likelihood that Alva was also sexually abused by his father, even though Alva denied being abused.³² Prior to his re-sentencing, Alva did admit that he too was sexually abused by his father along with his sisters. Subsequently, Alva admitted

²⁸ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, May 19, 2017, ¶ 9.

²⁹ Ex. 2, Affidavit of Gwen Campbell, ¶ 25.

³⁰ *Id.*

³¹ *Id.* at ¶ 26.

³² Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 12.

that his father had attempted to penetrate him on at least one occasion and had engaged in other forms of sexual abuse on other occasions.³³

Even though Alva initially denied being sexually abused he later admitted he had been. Such reluctance to admit to sexual abuse is not unusual in male victims of sexual abuse.³⁴ Nevertheless, the long-term psychological damage of being aware of and being exposed to the sexual abuse of his sisters remained:

At the very least, he witnessed traumatic sexual abuse that would have had a severely distorting impact on his own psychological development. Records from Children Services reflect the fact that Alva made statements about witnessing drunken orgies that involved his father, his mother, and his sisters. Children who grow up in the kind of home environment he grew up in often develop a very confused sense of interpersonal boundaries and exhibit a range of other developmental problems that almost always persist into adulthood.³⁵

Alva Campbell's father was a brutal tyrant who not only rained beatings on his wife and children, but also sexually abused them on a regular basis. Living in such terror – in constant fear of beatings and sexual abuse – creates extremely damaged children with warped views of the world, and no responsible adult role model for learning appropriate behavior. This is why every state has stringent laws against such type of abuse and closely monitors home situations to prevent such abuse. The results are devastating to the children's adult development as they were for Alva.

³³ Ex. 4, Report of Dr. Bob Stinson, Oct. 5, 2017, p. 8.

³⁴ *Id.* at 10.

³⁵ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 13.

D. The virulent racial prejudice of Campbell's father further terrorized Alva and stunted his psychological development, causing long-lasting confusion about his own racial identity.

In addition to being a violent, sadistic alcoholic, Alva Campbell Sr. was a virulent racist who regularly hurled racial epithets at Alva's mother and all of his children. Alva's father was white. His wife, Alva's mother, was African-American. The children were all classified as "negro" by the schools and child welfare institutions. Interracial families were highly unusual in the projects of Cleveland in the 1950's. "[M]y father regularly called my mother a nigger all the time. He talked openly about hating black people. We lived in a housing project that was entirely black. My father would not let any of his children associate with any black children. He also refused to be seen in public with our mother because of her race."³⁶

This aggressive racism from his father combined with Alva's biracial heritage created "a profound problem of racial identity" for Alva.³⁷ This created severe psychological strain and "significantly impeded Alva's social and emotional development."³⁸ "He never felt secure about his own place in society. Conflicts stemming from his biracial identity continued to impact him throughout his adolescence and into his adulthood. They made it even more difficult than it might have been otherwise for him to trust other people and develop relationships with people who could potentially have had a positive impact on his growth and development."³⁹

³⁶ Ex. 2, Affidavit of Gwen Campbell, ¶ 6.

³⁷ Ex. 5, Declaration of Dr. Clemens Bartollas, May 24, 2017, p. 10.

³⁸ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 32.

³⁹ *Id.*

Alva's sister observed the struggle with racial identity and its negative impacts in her brother. "He definitely had a hard time being mixed race. Alva and all of us were called zebras and half-breeds. It was difficult to fit in with anyone at school being mixed race. Both the white and black students wanted nothing to do with us. Alva never had a friend growing up. He was on his own. His only interaction with people was our family, which was very dysfunctional."⁴⁰ Alva's racial identity was likewise the subject of virulence and hatred from his father. Not only did Alva's father verbally abuse his mother with racial epithets, he also used the same racial epithets on the children. This type of verbal abuse continued to negatively affect Alva's psychological development further isolating him from the world around him.

The Campbell children were not accepted at school or in the neighborhood because of their racially mixed parentage. They also witnessed overt societal racism at work. On those rare occasions when the police were called by neighbors because of Alva's father beating his mother, the police never arrested or did anything to their white father, apparently because the mother who had been beaten bloody was black.

E. The only moral guidance Alva received from his father was negative - praise for stealing.

Interactions between Alva and his father that did not involve physical or psychological violence were equally destructive to Alva's psychological development. Rather than providing a moral compass from which Alva would learn to successfully

⁴⁰ Ex. 2, Affidavit of Gwen Campbell, ¶ 8.

navigate the world as a responsible adult, Alva's father only taught him violence and a complete disrespect for the law and the greater values of the community. Alva's father took great pride in his own ability to steal, especially from the beer delivery truck he drove during the week.⁴¹ He often bragged about it to his family and showed off the beer cases or kegs he stole from his truck. He taught Alva it was good to steal.⁴²

The only positive reinforcement Alva ever received from his father came when Alva stole. "The time I remember any of the children receiving praise, was when Alva would come home with stolen cigarettes. I think Alva looked at stealing as a way to try and connect with our father. Alva started stealing at a very young age and would come home with stolen packs of cigarettes. This made our father happy. He was happy and would tell Alva he did a good job. It was the only way he could get positive reinforcement from our father. Alva thought if he acted that way he could get our father's approval and love."⁴³

Being praised by his father for his delinquent behavior simply encouraged young Alva to continue in such delinquent behavior: "By the time Alva was six or seven, he began to steal things primarily for his father. In turn, he was praised by the father. In view of the fact that the father gave so little to his children, this

⁴¹ Ex. 1, Affidavit of Barbara Brackett, ¶ 3.

⁴² Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 8.

⁴³ Ex. 2, Affidavit of Gwen Campbell, ¶ 11.

amount of praise by the father cannot be underestimated in making Alva more prone to delinquency, stealing, and misbehavior.”⁴⁴

The development of any normal sense of right and wrong in Alva was utterly skewed by his father’s physical, verbal, and sexual abuse, and his teaching of and positive affirmations for criminal behavior. The risk factors that often lead to developmental disorders include “parent figures who are physically and emotionally unavailable, parental modeling of inappropriate (and often antisocial) behavior, inconsistent standards of discipline, the absence of rewarding, self-affirming interactions with adult role models in the home setting, and early feelings of despair/hopelessness in the child victim.”⁴⁵

Alva grew up in what amounted to a parallel universe, where rules and norms were turned upside down and normal decision-making was wholly distorted. “It is extremely difficult to meet the standards of mainstream society when you don’t really live in a mainstream society, but rather in a parallel social universe where different rules apply.”⁴⁶ Alva’s inability to adhere to the standards of society and to adapt as a responsible adult is largely a result of the skewed world of abuse, intimidation, and criminal activity in which he was raised as a child.

⁴⁴ Ex. 5, Declaration of Dr. Clemens Bartollas, ¶ 4.

⁴⁵ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 16.

⁴⁶ Dr. James Garbarino, *Listening to Killers*, p. 41, University of California Press (2015) (hereinafter “*Listening to Killers*”).

F. The school system, the neighbors, and the greater community all failed to protect Alva as a child.

The impact of this endless cycle of physical, psychological, and sexual violence inside the Campbell home on Alva's psychological and moral development was made even more perverse because Alva and his siblings were raised in almost complete isolation, closely resembling a "hostage situation" where the children were virtually hidden from the outside world.⁴⁷

No extended family members who could have intervened and stopped the abuse were ever present, since the Campbell children "never met a single relative" of either mother or father.⁴⁸ No friends who could have reported or stopped the abuse were ever present, since Alva and his sisters were banned by their father from having any friends or associating with any children in the neighborhoods where they lived. They also moved frequently from one project to another. The Campbell children appeared and identified as "negro," but their father threatened to kill his children if he ever saw them talking to other black children in the neighborhood – and they always lived in predominantly black neighborhoods.⁴⁹

Alva and his sisters were also forbidden from participating in any extracurricular school activities and were not allowed to play outside with any other children in their neighborhood. Alva's sister recalled that "[w]e had a home and were fed, but that was it. Our family life was more about existing than living. No

⁴⁷ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 16.

⁴⁸ Ex. 2, Affidavit of Gwen Campbell, ¶ 9.

⁴⁹ *Id.* at ¶ 7.

one ever came to visit our house.”⁵⁰ Barbara recalled not wanting to go home, but was helpless because she, and the rest of her siblings, “had nowhere else to go.”⁵¹

The only person Alva was close to was his younger brother Dennis, who was born with serious health problems that left him struggling to breathe throughout his short life.⁵² Alva took care of his sick brother as best he could and viewed himself as Dennis’s protector.⁵³ Dennis died in his crib at the age of three. Alva’s parents sent all of the kids to school on the same day his baby brother was found dead.⁵⁴

In addition to being purposely isolated by their father, Alva and his sisters were ostracized by other students at school because they were biracial. They were constantly “taunted at school” for being mixed race.⁵⁵ In essence, they were seen as outcasts and shunned by white students for being black and shunned by black students for being mixed. This would continue to be a problem for Alva later in life, after he was removed from the home and was institutionalized and again later when incarcerated as an adult.

School officials were similarly unconcerned about the racial taunting and the obvious abuse taking place inside the Campbell home. Alva and his sisters

⁵⁰ *Id.* at ¶ 9.

⁵¹ Ex. 1, Affidavit of Barbara Brackett, ¶ 4.

⁵² Ex. 5, Declaration of Dr. Clemens Bartollas, pp. 2–3.

⁵³ *Id.*

⁵⁴ Ex. 2, Affidavit of Gwen Campbell, ¶ 11.

⁵⁵ *Id.* at ¶ 7.

regularly showed up to school with black eyes, fat lips, and broken glasses. Alva's sister recalled:

We would go to school with bruises and cuts all over our bodies. Back then teachers did not ask questions. I was always afraid to tell anyone what happened for fear of getting beaten more. I also felt hopeless, because my mother did not protect us. Neither did the police when they came to our home. Since no one seemed to care, I did not expect my teachers to either.⁵⁶

As a result of repeated inaction despite severe neglect and abuse, Alva had no place to turn to for help. There were no support systems available to Alva or his sisters. "Everyone in Alva's life failed him – parents, teachers, and community citizens who knew or at least had an idea what was going on at home."⁵⁷

Alva and his sisters were also ignored by the public servants who were in a position to help them. Ideally, the police would have been alerted to the ongoing abuse and shown interest in stopping it. That did not happen, however. The police were rarely called by the family. Over time, fewer efforts were made to call the police because "they would not help and then we would all receive additional beatings."⁵⁸ The police were occasionally called by the neighbors, but those occasions were rare and seldom led to anything positive for the children. When the police did arrive, they did nothing to inquire about or stop the abuse. Alva's sister remembered the police "saying they could not force anyone to leave since they were married and both lived in the house."⁵⁹

⁵⁶ *Id.* at ¶ 23.

⁵⁷ Ex. 5, Declaration of Dr. Clemens Bartollas, p. 5.

⁵⁸ Ex. 1, Affidavit of Barbara Brackett, ¶ 6.

⁵⁹ *Id.*

Other times Alva's father would hide their mother in the bathroom when the police arrived. The police would tell Alva's father to "calm down" and leave without even checking on any of the children or their mother.⁶⁰ During the ten years that Alva lived with his family, there was not a single instance when his father was removed from the home for beating his wife and young children.⁶¹

The Campbell home was abusive and violent and dysfunctional. The chaos went on for years without little if any intervention from neighbors, school officials, child welfare agencies, or the police. The family was isolated because of their mixed racial makeup, because the father was successful in keeping the family inaccessible to friends and neighbors, and because school officials, the police, and other officials failed to do their jobs in protecting the children from the abuse and neglect. As a result of these failures, the Campbell children learned that there was no support system that they could depend on for protection, and in turn, developed a complete lack of respect for police officials and others in authority.

Alva Campbell grew up believing that this violent and dysfunctional home-life was normal. Because they had nothing to compare it to, the Campbell children thought all homes were filled with the horrors of their daily existence, that all fathers beat the mothers and children, raped the children, and kept the households in a constant state of terror. The Campbell children "had no one outside that we could talk to. We had no one that we could compare our lives to theirs."⁶²

⁶⁰ Ex. 2, Affidavit of Gwen Campbell, ¶ 19.

⁶¹ *Id.*

⁶² Trial Transcript, Vol. 13, Mitigation, p. 537.

Alva's sister recalled reading a book in school about a nice family who lived in a nice house: "I used to wish that I could get in that book and be with them people instead of being where I was, but I thought this was all a fairy tale, that this doesn't happen anyway . . ."63

G. Alva Campbell's mother was "irresponsible, habitually deceitful, and either unwilling or unable to provide even basic supervision for her children."

Ultimately, the criminal justice system intervened after Alva's sisters reported their father's sexual abuse. When Alva was ten years old, his father pleaded guilty to incest and the statutory rape of his sister Sandra and was committed to Lima State Hospital for the Criminally Insane.⁶⁴ After his incarceration, Alva and his sisters received letters from their father that blamed their mother for his violence and sexual abuse.

While the beatings may have stopped, conditions did not improve for the Campbell children. Although Alva's mother was less physically violent towards the children, "it was still very tough."⁶⁵ She was now a single mother who was unemployed and had five children to care for. What little money she had she turned to alcohol, which she drank "every day of the week."⁶⁶ Alva's sister remember that "[w]e had no food, electricity, or heat in the house. There was no money for clothes either."⁶⁷

⁶³ *Id.*

⁶⁴ *Id.* at 519.

⁶⁵ Ex. 2, Affidavit of Gwen Campbell, ¶ 31.

⁶⁶ *Id.*

⁶⁷ *Id.*

With his father incarcerated, “Alva had no supervision at all” and was completely on his own.⁶⁸ Alva rarely went to school, spent the majority of his time on the streets, and continued the drinking that his father had taught him to do at the age of eight or nine.⁶⁹ Not surprisingly given the lack of supervision and moral guidance, Alva had multiple encounters with the police and the juvenile justice system.

Reports indicate that Alva’s mother was also complicit in prostituting his sisters.⁷⁰ Older men in their thirties regularly came to the apartment and gave food, money, and alcohol to Alva’s mother. In return they were allowed to sleep with Alva’s sisters, who were in junior high school at the time.⁷¹ Two of the sisters became pregnant by the age of fifteen.⁷² Alva’s mother also arranged for one of her daughters who was pregnant at the time to marry one of the neighbor men when she was fifteen, so the man would not be prosecuted for having sex with a minor.⁷³

Alva’s mother was viewed by children’s services and school officials as a woman who was overcome by her own demons and incapable of single parenthood:

- She was described as “utterly lacking in insight about the role and responsibilities of motherhood.”⁷⁴

⁶⁸ *Id.* at ¶ 32.

⁶⁹ *Id.*

⁷⁰ *See, e.g.*, Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 10; Ex. 5, Declaration of Dr. Clemens Bartollas, p. 4; and Ex. 6, 1963 Cuyahoga County Welfare Department Records, pp. 4, 6, 9.

⁷¹ Ex. 2, Affidavit of Gwen Campbell, ¶ 32.

⁷² *Id.*

⁷³ Ex. 6, 1963 Cuyahoga County Welfare Department Records, p. 4.

⁷⁴ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 10.

- One caseworker summarized that “[i]n all her relationships with social agencies, neighbors, landlords, relatives, and friends, the mother has been quarrelsome, aggressive, deceitful, and is considered a trouble maker.”⁷⁵
- A casework summary concluded: “We see her as a very neurotic, inadequate personality, whose own lack of standards make it impossible for her to give adequate care and supervision to her children, especially her daughters.”⁷⁶
- School and child welfare officials perceived Alva’s mother as “irresponsible, habitually deceitful, and either unwilling or unable to provide even basic supervision for her children.”⁷⁷

The mother’s complete failure to provide care and supervision eventually resulted in state intervention. In February of 1959, ten-year-old Alva and one of his sisters walked into a bar begging for food, telling the patrons that they could not go home because their mother would beat them. Concerned for their wellbeing, the bartender called the police, who then took Alva and his sister into state custody.⁷⁸

Shortly thereafter, child welfare agencies finally intervened. Alva and his sisters were officially removed from their mother’s custody by the Juvenile Court, because it was clear she was incapable of properly caring for him.⁷⁹ Alva then spent the remainder of his childhood and adolescence under the care and custody of the State of Ohio in foster placements, group homes, boys’ schools, and detention facilities.⁸⁰ Alva was sent back to live with his mother on occasion, but she always

⁷⁵ Ex. 6, 1963 Cuyahoga County Welfare Department, p. 7.

⁷⁶ *Id.*

⁷⁷ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 10.

⁷⁸ Trial Transcript, Vol. 13, Mitigation, p. 523.

⁷⁹ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 14.

⁸⁰ *Id.*

failed to control him which resulted in him being returned to the care of the state – either in an institution or a juvenile detention facility. The extreme abuse and neglect had gone unnoticed and uncorrected by the state for over ten years. The damage done to Alva during those first ten years was profound. The state then took custody and with it assumed the responsibility of raising Alva and repairing the damage inflicted during ten years of extreme abuse and neglect.

H. The state failed in its responsibility to help Alva overcome the effects of the extreme abuse and neglect of his family.

After being removed from this horribly dysfunctional home, ten-year old Alva Campbell was committed to the Division of Child Welfare’s care and custody as a neglected child.⁸¹ Alva remained in the care, custody, and supervision of the state for the remainder of his childhood and adolescent years living in foster homes and a series of juvenile institutions.⁸² Whenever he was returned to the supervision of his mother, the results were predictable: Alva would not attend school; Alva would commit delinquent acts; and Alva would be taken back into the custody of the Division of Child Welfare or sentenced to juvenile detention.

It was undoubtedly the intent of the Division of Child Welfare and all of the other institutions involved to provide Alva with much-needed safety, rehabilitation, and therapy. However, having failed to protect Alva from his family for so long, the system again failed Alva by providing him with none of the type of therapeutic

⁸¹ Ex. 5, Declaration of Dr. Clemens Bartollas, pp. 6–7.

⁸² *Id.*

placements and treatment that would have been necessary to enable him to overcome the effects of his nightmarish childhood.

Not surprisingly, after his removal from the family home, Alva was severely damaged psychologically and was displaying behaviors symptomatic of the “extreme material and emotional deprivation” he had been subjected to since the day he was born.⁸³ Records noted that Alva’s “markedly bitten fingernails gave evidence of his underlying anxiety.”⁸⁴ Another report documented that Alva was “bothered by nightmares and has these nightmares frequently.”⁸⁵ Alva frequently “woke up screaming.”⁸⁶ During one severe breakdown, a report noted that Alva “had his eyes closed and even shaking could not induce him to open his eyes.”⁸⁷

“Serious emotional problems,” such as psychosis, helplessness/depression, and confusion of sexual and racial identification, were frequently noted in institutional reports in his early years in state care.⁸⁸ Major sexual identity problems were noted when Alva was 10 to 12 years of age.⁸⁹ At one of Alva’s early placements, he openly talked about killing himself.⁹⁰ Alva also displayed “explosive episodes” and a “volatile behavior pattern.”⁹¹

⁸³ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 12.

⁸⁴ Ex. 7, 1961 Juvenile Diagnostic Center Report, p. 9.

⁸⁵ *Id.* at 10.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Ex. 8, 1959 Cleveland CYS School Report, p. 7.

⁸⁹ *Id.*

⁹⁰ *Id.* at 5.

⁹¹ *Id.* at 4; *see also* Ex. 9, Elwyn Training School Records, p. 1.

Records from Alva's early adolescence in state care demonstrate that his emotional and psychological problems were a direct result of the environment in which he was raised. Yet after taking custody of Alva and recognizing his significant psychological problems and deficits, the State and the various institutions to which he was sent did little if anything to address Alva's issues or to assist him in overcoming them.

During Alva's entire time as a state-raised youth, it does not appear as if any therapeutic treatment plan was ever developed or consistently implemented. Alva literally begged for a father figure and "to be placed somewhere so that he could learn to behave."⁹² Nevertheless, no plan was developed or consistently implemented and Alva was instead shuffled between different homes and institutions all too frequently.

Instead of treating Alva as an abused and neglected child who needed treatment due to the horrors he had been subjected to for so long, the homes and institutions viewed Alva as a "problem" and the solution was to send him elsewhere for care.⁹³ That care and treatment never came – all that came were more placements in different institutions. One of Alva's many placements recognized his need for counseling from a psychologist, but failed to follow through with it. Instead, the officials offered three alternatives: "lock him up in solitary"; "literally

⁹² Ex. 10, 1959 Columbus State School Report, p. 15.

⁹³ Ex. 11, 1961 Fort Wayne Children and Maternity Homes Report, p. 7.

put strings on him and have him followed and watched”; or to simply “get rid of” Alva.⁹⁴

Dr. Clemens Bartollas, a former juvenile corrections counselor in Ohio and elsewhere, and currently a professor of sociology and a prolific author on juvenile development with over forty years of experience as an expert in juvenile corrections and treatment, reviewed Campbell’s history as a state-raised youth and interviewed Campbell extensively. He concluded that during his adolescence in the care and custody of the state:

Alva had significant emotional needs, yet despite all of the placements and diagnostic placements, these emotional needs were not addressed. His emotional problems grew and festered in the often dangerous atmospheres in the foster homes and institutional placements.⁹⁵

Although there were frequent reports of Alva’s psychiatric evaluations, “no mention is found in any of the records” that addressed “treatment goals for Alva and treatment modalities used on Alva.”⁹⁶

The failure to develop and institute a comprehensive therapeutic treatment plan to address Alva’s trauma and psychological problems was a significant blunder on the part of the state agencies that had his care and custody. Without a treatment plan in place and consistently implemented that could attempt to address the brutality, the sexual abuse, the racial identity confusion, the sexual identity

⁹⁴ Ex. 8, 1959 Cleveland CYS School Report, p. 6.

⁹⁵ Ex. 5, Declaration of Dr. Clemens Bartollas, p. 10.

⁹⁶ *Id.*

confusion, Alva “was not provided with the tools with which to overcome the effects of his chaotic early childhood years and become a responsible adult.”⁹⁷

A forensic psychologist who also evaluated Alva agreed with this assessment. “It is abundantly clear from the records which document his many placements that no sustained, continuous, long-term effort was made to provide him with the kind of intensive treatment he so obviously needed. If anything, the many placements had the effect of further stunting his emotional growth.”⁹⁸

In concluding that Alva suffers from Post-Traumatic Stress Disorder, a second psychologist observed: “Alva was physically, sexually, and emotionally abused across settings and over time, by various adults as well as other youth. That is, he experienced traumatic events and witnessed, in person, traumatic events occurring to other people, including close family members. Thus, he experienced repeated and extreme exposure to aversive details of multiple traumatic events.”⁹⁹

Alva was a victim of severe and prolonged maltreatment and neglect at the hands of his family for the first ten years of his life. The destructive consequences of such a chaotic upbringing were particularly damaging in Alva’s case since the abuse was so pervasive and coupled with so many forms of mistreatment (physical, psychological, sexual, and racial) and because the mistreatment went on for so long with no intervention from the community, the schools, or the State.

⁹⁷ *Id.*

⁹⁸ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 10.

⁹⁹ Ex. 4, Report of Dr. Bob Stinson, p. 13.

After being victimized in so many ways, Alva needed a period of assessment, protection, a time and place where he would feel safe, and intensive therapy to help address the toxic influences on his development. After taking custody of Alva, the State documented that his brain and personality were negatively influenced by his traumatic upbringing. Yet despite recognizing these needs, they were left untreated and no psychological intervention ever took place.

I. The chaos of Alva’s life with his family continued after the State took custody of him.

After the State took custody and placed him in foster homes and a series of institutions, Alva was met with violence and neglect similar to what had necessitated his removal from his family home in the first place. This time for Alva was “chaotic to say the least.”¹⁰⁰ Despite being removed from a house of terror, Alva’s new homes “were as bad as or worse than the conditions he’d experienced as a young child. There was sexual abuse at the hands of other residents; plenty of modeling of antisocial behavior among the adolescents with whom he was housed; and constant uncertainty surrounding where he’d be living next.”¹⁰¹

Shortly after his removal from the family home, institutional records note that peer relations were a “disturbed area for Alva because although Negro, and although he has tried to identify most as a Negro, Alva is probably not sure what color he is.”¹⁰² Alva’s confusion regarding his mixed-race led to “incidents at Detention Home of fighting with boys who do not believe he is Negro. He says that

¹⁰⁰ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 28.

¹⁰¹ *Id.*

¹⁰² Ex. 10, 1959 Columbus State School Records, p. 16.

Negro boys would start the fights with him because they wouldn't believe him, and they would think he was making fun of them.”¹⁰³

Alva also reported being the victim of beatings by “a few bigger boys” because of his mixed-race.¹⁰⁴ “When he first told me about it, he said that he was getting beaten up because these kids who were negro, did not believe that he was negro and he asked me ‘why don't they believe that I am negro?’”¹⁰⁵

On top of the racial violence, Alva became a victim of sexual and physical assaults from older and more aggressive youths. When interviewed, “Alva said that he doesn't want to get beaten up so that is why he does what he does.”¹⁰⁶ Another report stated that Alva was not homosexual, he “only performed these actions because of coercion and does not like to do it.”¹⁰⁷ At other institutions, where sexual activity was “prevalent” but not forced upon Alva, he “did not in any way” partake in sexual activity.¹⁰⁸ Based on the early records from when Alva was in custody, it appeared he only engaged in sexual activity under a threat of violence. In other words, only when he was molested by older/bigger boys.

While in state custody, Alva was a “chronic sexual victim” who was seen by other juveniles as a sexual “scapegoat.”¹⁰⁹ Alva was “placed in the bottom of the

¹⁰³ *Id.*

¹⁰⁴ Ex. 8, 1959 Cleveland CYS School, p. 8.

¹⁰⁵ *Id.*

¹⁰⁶ Ex. 12, 1959 Cuyahoga County Child Welfare Board, p. 24.

¹⁰⁷ Ex. 10, 1959 Columbus State School Records, p. 15.

¹⁰⁸ *Id.*

¹⁰⁹ Ex. 5, Declaration of Dr. Clemens Bartollas, p. 9.

caste system in the juvenile system as a result of his status as a scapegoat.”¹¹⁰

Alva’s youth and size at the time he became a ward of the State made him an easy target for the older/bigger boys. Alva was repeatedly referred to as a slightly built boy who was short in “stature” and “very small for his age.”¹¹¹ After more than two years in State custody, at the age of thirteen, Alva was still only in the 10th percentile in height and 25th percentile for weight.¹¹²

Often, sexual victims open themselves up as initiators as well because they do not feel they can protect themselves. Over time, that is exactly what happened with Alva. He began “molesting the other boys almost every opportunity he could.”¹¹³ When confronted by institutional staff, “Alva did not deny what he was doing, he began to cry quite hard and said that he didn’t know why he was doing it.”¹¹⁴ Given the twisted, upside down world Alva was raised in (both in his home and as a ward of the State), his behavior, lack of control, and lack of understanding about sexual boundaries was explainable. As one school record noted,

it is of course not too surprising to find the sexual problem in the boy, coming from such an unstable home with a sexual problem already existing in the home, one for which the father is currently incarcerated in the Lima State Hospital. The boy, because of his various problems, is extremely unstable. He is a boy whose instability reaches the point of near psychosis. This is not to say that he is actually psychotic but that his behavior requires the surveillance and care of one who is that much disturbed.¹¹⁵

¹¹⁰ *Id.*

¹¹¹ Ex. 7, 1961 Juvenile Diagnostic Center, pp. 4, 9.

¹¹² *Id.* at 6.

¹¹³ Ex. 8, Cleveland CYS School, p. 6.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 7.

Dr. James Garbarino, a preeminent psychologist in the long-term effects of childhood abuse, has noted that it is certainly “not surprising” that sexually abused children learn “to seek relationships through sex.”¹¹⁶

Compounding the serious issues of racial violence, sexual abuse, and physical beatings was the fact that Alva was repeatedly shuffled from one institution or group home to another such that it is “difficult to even keep track of the precise chronology of his shuffling progression through foster home after foster home, and from one institutional setting to another.”¹¹⁷

Alva was simply passed around from one institution to another without the development or consistent implementation of a long-term therapeutic treatment plan. Each move would restart a fresh cycle of uncertainty and victimization for Alva. The stress, fear and uncertainty that Alva experienced both at home and as a ward of the State are evidenced by his markedly bitten fingernails, repeated nightmares, psychotic episodes, and sexual and racial identity confusion.

In theory, [the years in state custody] might have been positive for Alva to be separated from his family of origin. However, his teenage years were anything but stable. The pattern of chaos that had characterized his life prior to his removal from the family home continued. Many of his earlier developmental problems continued unabated, in fact were exacerbated by the extreme turbulence and instability of his adolescent experiences. The various institutional placements that he experienced as a teenager actually had the effect of stunting his emotional development even further.¹¹⁸

¹¹⁶ *Listening to Killers*, p. 27.

¹¹⁷ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 14.

¹¹⁸ *Id.*

Dr. Bartollas agreed: “In many ways, his treatment went downhill after he was removed from the family home.”¹¹⁹ As Alva bounced around from one institution to another, his “emotional problems grew and festered in the often dangerous atmospheres in the foster homes and institutional placements.”¹²⁰

Dr. Bob Stinson, Psy. D., likewise observed that Alva had very difficult times in the care of the State: “Upon being removed from his parents’ home at the age of ten and placed in foster care, Alva continued to be raised by alcoholics and he continued to be victimized. He was also inappropriately placed, being sent to residential facilities for youth who were older and had different problems. He continued to be victimized in those placements, as well. He was never properly treated. Records reflect that Alva was small and slight of build making him an easy target for abuse by other boys.”¹²¹ Dr. Stinson also observed that Alva was the victim of additional violence from alcoholic foster parents and his mother when he returned to her care, that he was sexually abused by older and bigger boys and adults in the juvenile institutions and training schools, and that he was abused and isolated because of his mixed racial makeup.¹²²

J. The long term consequences of this horrific childhood in the custody of his family and the State left Alva Campbell without the tools to develop into a responsible adult.

This Board, the Governor, the Courts, the state legislature, and mental health experts across the board have recognized that physical, verbal and especially

¹¹⁹ Ex. 5, Declaration of Dr. Clemens Bartollas, p. 7.

¹²⁰ *Id.* at 10.

¹²¹ Ex. 4, Report of Dr. Bob Stinson, pp. 4–5.

¹²² *Id.* at 5–10.

sexual abuse has an extremely bad effect on the psychological development of children often preventing them from becoming responsible adults. State laws, the courts, and the entire child welfare system are designed to prevent children from being raised in abusive environments because of the damage it does to the child and the child's development. This is not controversial. Abused and neglected children are removed from their homes regularly to protect them from neglectful and abusive environments. What is unusual here is the level of neglect and abuse – physical, verbal, and sexual – that Alva was subjected to and the neglect and abuse he faced in the care of the State. The effects of such neglect and abuse are obvious and lifelong.

Trial attorneys, investigators, and psychologists with years of experience have all noted the extreme level of trauma that Alva was subjected to throughout his childhood:

- **William Mooney (trial attorney)**

I have been practicing law for 42 years, 39 of which have been in criminal defense. Alva's background represents one of, if not, the worst cases of abuse and neglect I have ever seen in a client's background. The depth and depravity of what Alva and his sisters went through on a weekly basis was shocking. This was much more than just one type of abuse over a short period of time or an isolated incident. There were many levels of abuse including physical, sexual, and psychological. The abuse in Alva's case was remarkable for its intensity and duration.¹²³

- **James Crates (mitigation specialist)**

¹²³ Ex. 13, Affidavit of William Mooney, ¶ 6.

The first ten years of Alva's life were truly horrific. There was constant physical abuse, sexual abuse, torture, alcoholism, and neglect. Neither of Alva's parents were equipped to raise a child, let alone five.¹²⁴

- **Dr. Jeffrey Smalldon (psychologist)**

Given the combination of consistent violent beatings, neglect, sexual abuse, psychological abuse, and parental alcoholism, it's not unreasonable to liken the home environment in which Alva was raised to a hostage situation. Clearly, it was a horribly dysfunctional, abusive home.¹²⁵

- **Martha Phillips (investigator/mitigation specialist)**

I expect the clients that I conduct investigations on to come from troubled backgrounds. I have uncovered a lot of abuse and trauma during investigations into clients' backgrounds. But even in my line of work, Alva's case has always stood out. In my seventeen years as an investigator, Alva represented one of the worst cases of abuse and neglect that I have ever worked on. The severity and depravity of the abuse Alva was subjected to, year after year, was one of the worst cases of abuse and neglect that I have worked on.¹²⁶

- **Dr. Clemens Bartollas (Ph.D. in sociology and expert in juvenile justice system)**

The painfulness of Alva's childhood is staggering. In all of the cases I have worked on during the thirty plus years I have been involved in criminology and working on cases of abused children, the abuse and neglect of this family rises to the top. This is the worst case of early childhood abuse I have ever seen. I have never worked on a case as blatantly disturbing as what happened to Alva in his early childhood.¹²⁷

- **Bob Stinson (Psychologist)**

I've evaluated a number of capital defendants, including at the pre-trial phase, the mitigation phase, during post-conviction appeals, and for clemency. While it is not uncommon for these individuals to have sad—even pitiful—histories, I was struck by the frequency, severity, and

¹²⁴ Ex. 16, Declaration of James F. Crates, ¶ 5.

¹²⁵ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 11.

¹²⁶ Ex. 14, Affidavit of Martha Phillips, ¶ 10.

¹²⁷ Ex. 5, Declaration of Dr. Clemens Bartollas, pp. 5–6.

pervasiveness of (and, thus, the psychological damage likely to be caused by) the abuses in Alva's case, especially the physical and sexual abuse that occurred in the home and then across settings as he was placed in foster care and institutional placements.¹²⁸

An enormous body of research provides evidence of the long-term damage caused to child victims of physical, sexual, and emotional abuse. Scientists now know that chronic, unrelenting stress in early childhood caused by neglect and abuse, similar to the environment Alva was raised in, can be toxic to the architecture of the developing brain. These physiological disruptions persist far into adulthood and lead to lifelong mental health impairments including problems with anger and regulating emotions, deficits in executive functioning, and impulsive behaviors. In extreme cases, these deficits are often amplified by addictions to drugs and alcohol. Many adults who were raised in abusive homes show signs of post-traumatic stress disorder (PTSD). Research shows that “experience, not genetics, results in the critical neurobiological factors associated with violence.”¹²⁹ This certainly has been true in Alva's life. “Traumatized brutally at home, with continued brutal traumas in juvenile placement, he became, as all the research would indicate, unable to function in a prosocial way.”¹³⁰

Decisions made by adults reflect more than a person's character; they also reflect the person's executive brain development and function. Alva grew up in a parallel universe where rules and norms were turned upside down. His personality

¹²⁸ Ex. 4, Report of Dr. Bob Stinson, p. 20.

¹²⁹ *Listening to Killers*, p. 85.

¹³⁰ Ex. 5, Declaration of Dr. Clemens Bartollas, p. 11.

disorders and psychological problems are the result of this bizarre and destructive upbringing by his family compounded by the mistreatment and failure of treatment by the state. The trauma associated with Alva's experiences created significant risk factors that predisposed him to troubled social and psychological development. "What we can say is that what happened to Alva when he was growing up clearly destroyed him."¹³¹

Children do not simply "grow out of" or overcome the long-term problems associated with extreme childhood trauma without intense therapeutic treatments.

Many lay people without training in psychology underestimate how difficult it is for a child raised in an environment like Alva was raised in to "grow up" and develop the social and emotional skills necessarily for successful adaptation in the social realm they encounter as adults. When one considers the horrible things Alva experienced throughout his childhood years – and then in the years following his removal from the family home as well – it hardly comes as surprise that he was never able to function effectively or successfully as an adult.¹³²

[Alva's] horrific childhood at home was trumped only by the abuses he suffered outside the home, and the utter lack of therapy to address his traumas and post-traumatic reactions. One cannot simply outgrow the effects of the complex trauma Alva endured. He should have received intensive long-term therapy.¹³³

Alva was repeatedly brutalized by adults who were in positions of responsibility and trust. This traumatic time period of Alva's life "is the portion during which the entire substrate for his adult personality was laid down."¹³⁴ The destructive effects of the extreme childhood trauma does not dissipate with age

¹³¹ *Id.* at 5.

¹³² Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 17.

¹³³ Ex. 4, Report of Dr. Bob Stinson, p. 20.

¹³⁴ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 24.

according to “the entire body of literature that’s accumulated in the field of developmental psychology.”¹³⁵

Duration of symptoms in PTSD varies, with complete recovery occurring within 3 months occurring in about half of all adults. Some individuals remain symptomatic for longer than 12 months and sometimes for more than 50 years. Symptom recurrence and intensification may recur in response to reminders of the original trauma, ongoing life stressors, or newly experienced traumatic events. Given the severity of Alva’s abuse, remission of symptoms would not be expected without long-term expert treatment.¹³⁶

Although Alva was in his late forties at the time of this offense, he had also been in prison for the majority of his adult years. Because Alva spent over two decades in prison, he would have faced an “adaptive process of institutionalization or prisonization” that left him with “difficult and problematic transitions” as he returned to the free world.¹³⁷ Transitioning back into mainstream society made for a significant challenge for anyone after twenty years in prison. It would be especially difficult for someone such as Alva Campbell, who was still carrying the psychological scars from the trauma he experienced as a child for which he had received little or any therapeutic treatment. Research has shown that psychological damage from abuse and neglect is often “reinforced and amplified” by experiences in prison.¹³⁸

During his twenty-plus years of incarceration, Alva met and married a woman from Columbus. Alva’s ex-wife described Alva as a kind and caring man

¹³⁵ *Id.*

¹³⁶ Ex. 4, Report of Dr. Bob Stinson, p. 14.

¹³⁷ *Listening to Killers*, p. 73.

¹³⁸ *Id.* at 149.

during the ten years she knew and was married to him while he was in prison.¹³⁹ Alva's wife witnessed his immediate inability to cope with life in the free world after being released from prison. Alva could not stay sober; he could not keep a job; he struggled with making and maintaining relationships including with his wife; he could not fit in with anyone or anywhere; and their relationship quickly dissolved and he became homeless.¹⁴⁰ Alva was never able to consummate the marriage: "He hated to even be touched and would literally jump if I touched him when he wasn't expecting it. Alva told me because of the abuse he suffered as a child and all of his time in prison as an adult it made him nervous when people touched him."¹⁴¹ The Alva Campbell his wife came to know while he was in prison was completely different than the one she knew as a free man:

In prison, Alva was kind and compassionate, set personal goals, was determined to succeed, and never wanted to return to prison. Once he was released, all of that came crashing down. I never realized how damaged Alva was until he had to make decisions on his own and deal with life on daily basis. Outside of prison, Alva was a dysfunctional mess and he did not have any life or social skills that would have enabled him to succeed. It was like Jekyll and Hyde.¹⁴²

Not every person who suffers from abuse and neglect as a child struggles to adjust in society and continues the cycle of violence – not even all persons who had the global abuse and neglect that Alva had. Some childhood victims of abuse and neglect are fortunate enough to be placed with caring foster parents; some are

¹³⁹ Ex. 15, Affidavit of Sharol Kelly, ¶ 4.

¹⁴⁰ *Id.* at ¶¶ 8–10, 12.

¹⁴¹ *Id.* at ¶¶ 7–8.

¹⁴² *Id.* at ¶ 13.

adopted into loving homes; others are fortunate enough to be placed with stable relatives; and some such victims are fortunate enough to receive intense therapeutic treatments and counseling while wards of that state that is necessary to attempt to overcome the effects of the earlier abuse. Alva's sisters suffered through delinquency and prostitution and juvenile detention. Eventually, they were fortunate enough to be placed with relatives and foster families who brought some stability, guidance, and caring to their lives.¹⁴³ Nevertheless, they have had difficult adult lives and have never fully recovered from the effects of their horrific childhood any more than Alva has.

As more and more has been learned about the devastating and long term impact that severe abuse and neglect has on childhood victims, more and more resources are now in place to help victims overcome their past and develop into healthy adults. For example, a local organization, The Center for Family Safety and Healing, helps child victims of family violence and sexual abuse.¹⁴⁴ This organization acknowledges the “long-term effects” abuse can have on children and works to put victims on a path to healing with “personalized care” and “assistance with developing the tools to meet the demands of everyday living.”¹⁴⁵ The Family Center has “specialty trained therapists” who “provide interventions aimed at reducing or preventing trauma symptoms that occur as a result of physical or

¹⁴³ Ex. 2, Affidavit of Gwen Campbell, ¶ 28.

¹⁴⁴ See <http://familysafetyandhealing.org/>

¹⁴⁵ *Id.*

sexual abuse, exposure to domestic violence or other family stressors that interfere with a child's safety and healthy development.”¹⁴⁶

This is the type of intervening therapy that Alva should have been, but was never, provided to overcome the devastating effects of his abusive and neglected childhood. Instead, Alva was bounced from institution to institution, from foster home to foster home, and back to his abusive and neglectful mother with no real therapeutic treatment plan developed or implemented. Alva received little to no psychological intervention to assist him in overcoming the effects of his traumatic childhood. This trauma warped Alva's view of the world and essentially destroyed his ability to navigate through a normal society and develop into a responsible adult. Absent the types of therapy like those offered by The Center for Family Safety and Healing, Alva had no chance of succeeding in his adult life.

K. Conclusion

While not an excuse for any of his crimes, the horrors Alva was subjected to help explain how he developed into a violent and troubled adult. Alva's life story is a history of chronic and severe abuse and neglect that impacted his emotional and moral development. While the State intervened and took custody of him at the age of ten, the State failed to provide the treatment and therapy that was necessary to attempt to overcome the devastating effects of the abuse and neglect that was visited upon him by his family. To this day, Alva carries psychological scars from the untreated trauma he experienced. A sentence of life without parole is

¹⁴⁶ *Id.*

appropriate under these circumstances. Alva accepts full responsibility for his actions, and does not blame anyone else for his behavior or the consequences of his behavior. Society has come to understand, however, that his family and the state institutions that cared for him failed him, and are to a degree responsible for creating the adult he became.

As this Board and virtually all courts across the country have come to understand, the long-term effects of extreme childhood abuse and neglect may explain and may mitigate the severity of the sentence to be imposed on a prisoner who has been subject to such abuse and neglect as a child. Such an upbringing leaves individuals “destined for disaster.” Alva Campbell was similarly destined for disaster and is therefore deserving of clemency.

II. SYSTEMIC FAILURES AND INEFFECTIVE ASSISTANCE OF COUNSEL

Reviewing courts have recognized multiple breakdowns in the legal system yet failed to order a new penalty phase. In light of the evidence that Alva was prejudiced by the errors of his attorneys and trial judge, this Board’s recommendation should weigh in favor of a positive clemency recommendation.

A variety of factors combined to undermine the proper functioning of the adversarial process during the penalty phase of Alva Campbell’s trial. Alva Campbell’s trial attorneys failed to present mitigating evidence about a significant developmental period of his life – his adolescent years in the care of the State. The jury and trial judge were misled as a result. Alva’s sentence of death was thus imposed based on an incomplete and inaccurate picture of his upbringing and the long-term effects of such abuse.

The Sixth Circuit Court of Appeals agreed that Alva's trial attorneys were deficient in failing to present this evidence. Further, the court agreed that the prosecution had misled the jury and trial judge, and that the failure to present this evidence of Alva's troubled adolescence was improperly held against him.

Compounding this error, the trial court improperly blocked Alva's attorneys from presenting relevant, admissible evidence. Alva's attorneys further compounded these errors by introducing as exhibits – without any explanation – all of Alva's records from his time in the Franklin County Jail and from his prior incarceration. Counsel made no use of these records, but the prosecution was able to use them as powerful evidence for why Alva should have been sentenced to death.

For these reasons, articulated more fully below, this Board cannot rely on the penalty phase or reviewing state and federal decisions as having produced a just result. Clemency is appropriate under such circumstances.

A. Alva's trial lawyers failed to investigate and present a complete picture of his traumatic childhood and equally traumatic adolescence in the care of the state.

The jury that determined whether Alva Campbell would be sentenced to life or death heard many of the horrors he was subjected to while living in the family home during the first ten years of his life. Yet, because his trial counsel failed to fully investigate Alva's life, the jury never saw a complete picture of Alva's childhood. The jury heard virtually nothing about what happened to Alva after the state found him to be a neglected child and took custody of him. Alva's trial attorneys presented a relatively detailed account of Campbell's life with his parents, but completely failed to present evidence of Alva's troubled adolescent years from

age ten to eighteen in foster care, group homes, training schools, and juvenile detention facilities. In many ways, this stage of Alva's life was as bad as, and in some ways worse than, his life that he suffered through while living with his family.

While it is difficult to read about what happened to Alva at the hands of his parents, it is impossible to imagine what it was like for young Alva to live through that abuse week after week for over a decade, or to fully appreciate the effect such abuse had on the long-term development of a young boy. The Supreme Court of Ohio described this home environment during the first ten years of his life as “an abusive, amoral and unstable environment. The Campbell children received no affection, emotional support, or moral guidance from their parents.”¹⁴⁷ In a later appeal, the United States Court of Appeals for the Sixth Circuit concluded that Alva was raised by his family in “utterly awful conditions,” including “repeated instances of rape, incest, neglect, and physical and emotional abuse.”¹⁴⁸

The jury at Alva's trial heard some evidence about these early years of abuse and neglect, and reviewing courts recognized that Alva's early home life was horrific and to some degree acknowledged that this upbringing would have had a negative effect on his development. The jury did not hear and therefore could not consider the further negative impact on his development caused by the continuing trauma and abuse Alva suffered from age ten to eighteen, while he was in the care of the state as a “state-raised youth.”

¹⁴⁷ *State v. Campbell*, 95 Ohio St. 3d 48, 51-52 (2002).

¹⁴⁸ *Campbell v. Bradshaw*, 674 F. 3d 578, 591 (6th Cir. 2012).

Trial counsel failed to present any evidence of what happened to Alva while in the care of the state. The sentencing jury – and therefore also the subsequent reviewing courts – was not presented with evidence demonstrating that the state failed Alva by denying him the therapy, guidance, and training he needed to give him a chance to overcome the effects of the abuse and neglect of his family.

The failure of the state to provide this assistance in many ways multiplied the negative effects of his earlier upbringing. Alva’s development suffered, and the chances of him becoming a responsible adult withered. Because the jury and reviewing courts never heard about this critical developmental period of his life, they did not have a full picture of who Alva was. As such, they were unable to properly assess whether death was the appropriate sentence.

B. Mental health professionals who have subsequently examined Alva have concluded that Alva’s development was significantly and negatively impacted by his overwhelming negative experiences while in the care of the State of Ohio throughout his adolescence.

- “Alva had significant emotional needs, yet despite all of the placements and diagnostic placements, these emotional needs were not addressed. His emotional problems grew and festered in the often dangerous atmospheres in the foster homes and institutional placements.”¹⁴⁹
- “It’s abundantly clear from the records which document his many placements that no sustained, continuous, long-term effort was made to provide him with the kind of intensive treatment he so obviously needed. If anything, the many placements had the effect of further stunting his emotional growth.”¹⁵⁰

¹⁴⁹ Ex. 5, Declaration of Dr. Clemens Bartollas, p. 10.

¹⁵⁰ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 28.

- “I found it difficult to even keep track of the precise chronology of his shuffling progression through foster home after foster home, and from one institutional setting to another.”¹⁵¹
- “His horrific childhood at home was trumped only by the abuses he suffered outside the home, and the utter lack of therapy to address his traumas and post-traumatic reactions. One cannot simply outgrow the effects of the complex trauma Alva endured. He should have received intensive long-term therapy.”¹⁵²

The failure of the state to address and treat Alva’s emotional needs while it had custody of him throughout his adolescence was compounded by the state’s failure to provide him with a consistently safe environment free from the violence that required his removal from his family home. During his time as a ward of the state, Alva faced many of the same types of abuse as he faced the first ten years of his life. The jury never heard any evidence of the physical and sexual abuse that Alva suffered in his many placements in state custody. This abuse represented yet another destructive experience in his life:

- This time for Alva was “chaotic to say the least.” Alva’s new homes “were as bad as or worse than the conditions he’d experienced as a young child. There was sexual abuse at the hands of other residents; plenty of modeling of antisocial behavior among the adolescents with whom he was housed; and constant uncertainty surrounding where he’d be living next.”¹⁵³
- “His family home had been in chaos. These new homes were equally chaotic. In many ways, his treatment went downhill after he was removed from the family home. The fact that he ran away to return to the chaos of his family home should have signaled the authorities that these placements were not appropriate and that he needed additional help and therapy.”¹⁵⁴

¹⁵¹ *Id.* at ¶ 14.

¹⁵² Ex. 4, Report of Dr. Bob Stinson, p. 20.

¹⁵³ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 28.

¹⁵⁴ Ex. 5, Declaration of Dr. Clemens Bartollas, p. 7.

- “Alva was removed from his parents’ home at the age of ten years and was largely raised by the State of Ohio who largely failed him. In addition to the residential facilities, Alva said he was in 3 or 4 different foster homes. He described abuse occurring in these foster homes.”¹⁵⁵

Records from the state agencies and institutions during this period demonstrate that Alva faced many of the same types of abuse and neglect as he faced during the first ten years of his life. He was attacked by older youths because of his race.¹⁵⁶ Alva was also sexually assaulted. Records document that Alva was forced to partake in sexual acts “because of coercion” and the threat of getting “beaten up.”¹⁵⁷

Trial counsel had obtained many of these records, but failed to present them to the jury or explain the long-term negative effects of the ongoing abuse on Alva’s development or on his ability to develop into a responsible adult. The jury that was deciding between a sentence of life and death was left to believe that Alva’s life improved in state custody. It did not. The jury was left in the dark about the long-term consequences of being raised and abused in state custody.

The jury was not told of the physical and sexual abuse that the small and very young Alva endured while in the care of the State or the long-term effects of such physical and sexual abuse at the hands of other boys.

¹⁵⁵ Ex. 4, Report of Dr. Bob Stinson, p. 5.

¹⁵⁶ Ex. 10, 1959 Columbus State School Records, p. 16.

¹⁵⁷ Ex. 12, 1959 Cuyahoga County Child Welfare Board, pp. 24–25; Ex. 10, 1959 Columbus State School Records, p. 15.

- Due to his mixed race and small size, Alva was an easy target for the older, stronger youths in juvenile custody. Alva was placed “in the bottom of the ‘caste system’ in the juvenile system.”¹⁵⁸
- He was sexually abused and characterized a “sexual scapegoat,” a youth who feels he has no other choice but to provide sexual favors for his peers in the institution. To protect themselves, sexual scapegoats often evolve and become sexual initiators.¹⁵⁹
- “There is evidence to support a finding that sexual victimization within juvenile institutions contributes to high rates of violence following institutionalization.”¹⁶⁰
- “Being a sexual scapegoat has far-reaching and traumatic effects on the child as an adult. One study showed that seven of twelve sexual scapegoats committed violent crimes and were returned to the juvenile justice system and all twelve were eventually involved in serious criminality. The long term negative effects of this abuse cannot be discounted.”¹⁶¹
- After Alva was removed from the home, he spent the majority of his childhood in the custody of the State as a “state raised youth.” There is a correlation between trauma in juvenile placement facilities and a “greater likelihood of violent behavior and continued involvement in criminality across the life course.”¹⁶²
- Alva’s teenage years were anything but stable. “The pattern of chaos that had characterized his life prior to his removal from the family home continued. Many of his earlier developmental problems continued unabated, in fact were exacerbated by the extreme turbulence and instability of his adolescent experiences. The various institutional placements that he experienced as a teenager actually had the effect of stunting his emotional development even further.”¹⁶³
- “Alva was not sure when he was at the Hudson Boy’s Home; he thought it may have been during his middle school years, believing it was some time before high school. Alva told me, ‘That’s the first place I got raped’

¹⁵⁸ Ex. 5, Declaration of Dr. Clemens Bartollas, p. 9.

¹⁵⁹ *Id.* at 8–9.

¹⁶⁰ *Id.* at 9.

¹⁶¹ *Id.*

¹⁶² *Id.* at 6–11.

¹⁶³ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 14.

while in an institution. He said he was raped by another youth. . . . Alva told me that he was raped while he was in the Juvenile Diagnostic Center. He could not remember the exact age he was, but he recalled it being after he was in the Cleveland Detention Home, so he believed it was some time after the age of 10 years. He told me he was physically forced to engage in sex with another juvenile inmate.”¹⁶⁴

William Mooney, one of Alva’s trial attorneys, has conceded that he and his co-counsel failed to present this compelling evidence of what happened to Alva after he was removed from his home to the jury, and has now acknowledged that such evidence should have been presented to the jury: “My co-counsel and I knew this was a mitigation case and hoped Alva’s traumatic background would evoke enough sympathy in the jury for them to reject a death sentence. We were encouraged when the jury appeared interested and showed so much emotion when learning about Alva’s abusive life while living in the family home. We did not present evidence or argue that the abuse continued after Alva was removed from the family home. This was a mistake on our part.”¹⁶⁵

Mooney now believes that if they had investigated and presented information about Alva’s life after he was removed from the home, it would have given them “a wealth of additional mitigation about a period of Alva’s life that the jury never knew about.”¹⁶⁶

¹⁶⁴ Ex. 4, Report of Dr. Bob Stinson, p. 9.

¹⁶⁵ Ex. 13, Affidavit of William Mooney, ¶ 10.

¹⁶⁶ *Id.* at ¶ 15.

C. Trial counsel’s failure to present evidence of Alva’s time as a “state-raised-youth” prevented the jury from understanding the long-term negative effect on Alva’s development.

This gaping hole in the evidence permitted the prosecution to make un rebutted arguments that Alva had been provided opportunities to overcome the horrors of his childhood while in state care, but squandered them. The prosecutor undercut the effects of the horrific abuse Alva was subjected to at home by arguing that, in short, the system had worked: Alva had been removed from the family home at age ten by Children’s Services; he had been provided education and training as well as opportunities for growth and development; and he had failed to take advantage of those opportunities.

Alva’s sister Gwen Campbell testified at length at the trial about the conditions in the Campbell home before the children were removed. On cross-examination, the prosecutor’s questions repeatedly focused on the children’s removal from the home and the subsequent positive placements and opportunities that she had received.¹⁶⁷

The repeated inference was that her life improved after removal from the home, and thus Alva’s must have improved as well. The prosecutor further implied that both were provided the same great opportunities for development. Gwen Campbell repeatedly stated she did not know what happened to Alva after he was removed from the home, as they had little contact. “I don’t know – I wasn’t there. I don’t know what he was provided with.”¹⁶⁸

¹⁶⁷ Trial Transcript, Vol. 13, Mitigation, pp. 543–61.

¹⁶⁸ *Id.* at 545.

Similar arguments were made during the prosecutor’s closing. The prosecution conceded that the first ten years of Alva’s life had been difficult. Yet the prosecutor portrayed Alva as child who had been rescued by children’s services, but who squandered the many opportunities he had been provided to “overcome and adapt to the problems that he had early in his life.”¹⁶⁹ “And for that,” the prosecution concluded, “the mitigating weight should be greatly reduced.”¹⁷⁰

Alva’s attorney recalled that “[b]ecause we ignored this period of Alva’s life, the prosecutor was able to argue inaccurate facts to the jury about an important period of Alva’s life. Ultimately, we presented an incomplete picture of Alva’s life and because of that the prosecution was able to undermine our mitigation with arguments that were not true.”¹⁷¹

After the jury returned a death verdict, the trial judge issued his sentencing opinion. In the five pages dedicated to the mitigating evidence presented about Alva’s history, character, and background, only one sentence addressed the fact that Alva was removed from home at the age of ten.¹⁷² Nothing was written about the conditions of the placements, the physical and sexual abuse Alva was subjected to while there, or the long-term damaging effects of being raised in such environments.

The trial judge acknowledged that Alva had been raised in an extremely abusive home. But he discounted the mitigating value of that upbringing because

¹⁶⁹ *Id.*, Vol. 15, Mitigation, p. 876.

¹⁷⁰ *Id.*

¹⁷¹ Ex. 13, Affidavit of William Mooney, ¶ 14.

¹⁷² Judicial Decisions, Trial Court Sentencing Opinion, Apr. 3, 1998, pp. 7–11.

Alva had been removed from the home at the age of ten and placed in homes that offered, in the trial judge's view, "educational opportunities" and "social progress."¹⁷³ The sentencing opinion's findings echoed the inaccurate arguments made during the cross-examination of Gwen and in closing arguments.

The trial judge's sentencing opinion also gave diminished weight to the horrors of Alva's childhood because the judge incorrectly believed that Alva, unlike his sisters, had never been sexually abused as a youth.¹⁷⁴

Counsel failed to adequately investigate and present a comprehensive explanation of Alva's upbringing, especially the abuses inflicted on him after he was removed from his family. Had the jury (and reviewing courts) heard of this abuse, and the state's failure to therapeutically treat Alva for the problems arising from his childhood, the jury and reviewing courts would have learned that "[m]any of his earlier developmental problems continued unabated, in fact were exacerbated by the extreme turbulence and instability of his adolescent experiences."¹⁷⁵ Alva's time as a juvenile ward of the state was in many ways as bad or worse as the horrific childhood he had endured in the family home. And, contrary to the judge's statement at sentencing, the juvenile records that were never presented did indicate that Alva was sexually assaulted as a child.¹⁷⁶

¹⁷³ *Id.* at 16.

¹⁷⁴ *Id.*

¹⁷⁵ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 14.

¹⁷⁶ *Id.* at ¶ 28; Ex. 5, Declaration of Dr. Clemens Bartollas, p. 8.

Due to the failures of trial counsel the jury and the trial judge were left without critical information and were misled into believing that Alva had opportunities to overcome his bad childhood when the opposite was really true.

D. The Sixth Circuit Court of Appeals recognized that Alva’s trial attorneys’ performance was deficient for failing to present to the jury and the trial court the traumatic conditions Alva faced after he was removed from his home.

The Sixth Circuit acknowledged that Alva had an “undeniably horrible childhood.”¹⁷⁷ The court also determined that Alva’s attorneys were deficient for not presenting the full picture of it. “[W]e agree that Smalldon did not describe the negative conditions that Campbell faced – and the negative reactions that Campbell had to those conditions – in the juvenile facilities. And it does not appear that Campbell’s counsel had any strategic reason to ignore the evidence of Campbell’s juvenile placements, especially because they were aware, through Smalldon’s testimony, that such evidence existed.”¹⁷⁸

The records from his juvenile placement under state care demonstrate that Alva was physically and sexually abused and neglected while in the care of the state, the Sixth Circuit agreed that the placements in these facilities were – contrary to the trial court’s remarks at sentencing – “largely negative” and “[d]isturbing.”¹⁷⁹ The court also noted that “[i]t does appear the prosecution was

¹⁷⁷ *Campbell v. Bradshaw*, 674 F.3d 578, 590 (6th Cir. 2012).

¹⁷⁸ *Id.* at 591.

¹⁷⁹ *Id.*

able to use the lack of evidence about Campbell’s juvenile placements to its advantage.”¹⁸⁰

The Sixth Circuit Court concluded that the performance of Alva’s trial attorneys was deficient. The court also acknowledged that the prosecution was able to use the gap in mitigation to their advantage. This resulted in a mitigation presentation that was both incomplete and inaccurate and misled both the jury and trial judge.

Despite these findings, however, the Sixth Circuit did not order a new sentencing hearing. The Court gave three reasons why Alva’s death sentence should stand despite finding that his attorneys’ performance were deficient. None of these reasons should stand in the way of this Board’s recommendation of clemency.

1. *The evidence of Alva’s juvenile placements was not cumulative to what was presented at trial.*

The Sixth Circuit first concluded that evidence of Alva’s juvenile placements and the long-term effects of being raised in custody was cumulative to what was presented at trial. That conclusion is contrary to the evidence and the conclusions of key players at Alva’s trial:

- **William Mooney, Trial Attorney** – “We did not present evidence or argue that the abuse continued after Alva was removed from the family home. This was a mistake on our part.” Mooney also admitted that there was **not** a strategic reason to ignore that part of Alva’s life, and, when comparing his horrific early home life to his troubled adolescence, he admitted that “we ignored a period of his life that was just as bad or worse.”¹⁸¹

¹⁸⁰ *Id.* at 592.

¹⁸¹ Ex. 13, Affidavit of William Mooney, ¶¶ 10, 12.

- **Jeffrey Smalldon, Forensic Psychologist** – Smalldon has since conceded that he “should have shone a brighter light on the years during which [Alva] was shuttled among numerous different settings, many of them breeding grounds for antisocial attitudes and socially inappropriate behaviors.”¹⁸²
- **Trial Prosecutors** – In closing arguments, the prosecutors took advantage of the failure to present evidence of the trauma inflicted on Alva while in the care of the state by characterizing Alva’s childhood as the only traumatic part of his life and emphasizing (without any evidence to support the argument) that during his teen years in state custody Alva had ample opportunities for development and rehabilitation instead of the opportunities for further abuse and neglect that he actually received.¹⁸³
- **Trial Judge** – The trial judge discounted Alva’s traumatic past because of the prosecution’s arguments that Alva was rescued through intervention of the State.¹⁸⁴ Trial counsel belatedly attempted to argue that his time in the care of the state was not a period of growth and development.¹⁸⁵ The trial judge’s response to trial counsel’s arguments highlights counsel’s complete failure to present this troubling evidence: “We don’t have any evidence one way or the other what went on in the group homes. We just know he went to group homes.”¹⁸⁶

The Sixth Circuit Court of Appeals acknowledged that the overwhelmingly negative history of Alva’s juvenile placements was never presented at trial; that counsel had no strategic reason for failing to present this evidence; and that the prosecutor used the absence of evidence about this period against Alva when arguing in favor of a sentence of death.¹⁸⁷ Nevertheless, the court inconsistently

¹⁸² Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 20.

¹⁸³ Trial Transcript, Vol. 15, Mitigation, pp. 875–77.

¹⁸⁴ Judicial Decisions, Trial Court Sentencing Opinion, p. 16.

¹⁸⁵ Trial Transcript, Vol. 16, Pre-Sentencing, pp. 23–24.

¹⁸⁶ *Id.*

¹⁸⁷ *Campbell v. Bradshaw*, 674 F.3d 578, 591 (6th Cir. 2012).

concluded that this absence of evidence was still cumulative to evidence that actually was presented regarding Alva's early childhood.¹⁸⁸

The federal courts are limited in their ability to consider evidence that was not previously presented to the state courts, and restrained in their ability to grant relief – even if the evidence is fully considered. Because of these restrictions in federal court, not all of the evidence presented to this Board was able to be presented to or considered by the federal courts. Therefore, the Sixth Circuit could not consider the full picture as it is being presented now. Because the Sixth Circuit could not consider the full evidence that this Board has before it, and because its review was limited to a determination of whether the state court ruling was “unreasonable,” this Board’s review for clemency purposes becomes more critical.

2. *The evidence that trial counsel failed to present was not adverse to Alva’s explanation of the long-term effects of the trauma he endured as a child and as an adolescent.*

The Sixth Circuit also reasoned that Campbell “c[ould not] overcome the fact that much of the information contained in the evidence not presented was adverse” and “[h]ad the evidence been presented,” the prosecution “certainly would have seized upon Campbell’s serious behavioral problems that persisted well into his teenage years.”¹⁸⁹

These conclusions by the Sixth Circuit are contradicted by the contents of the juvenile records, and ignore the long-term implications of being raised in such a dysfunctional and violent environment. They also ignore the record that

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 591.

demonstrates that much of Alva’s “misbehavior” as an adolescent was the result of further abuse in the institutional settings.

Alva was severely damaged psychologically by his childhood experiences. He was displaying behaviors symptomatic of extreme material and emotional deprivation. Alva’s “markedly bitten fingernails gave evidence of his underlying anxiety.”¹⁹⁰ Another report documented that eleven-year-old Alva was “bothered by nightmares and has these nightmares frequently.”¹⁹¹ Alva frequently “woke up screaming.”¹⁹² A report noted that Alva “had his eyes closed and even shaking could not induce him to open his eyes.”¹⁹³

“Serious emotional problems” such as psychosis, helplessness/depression, and confusion about sexual and racial identification were frequently noted in the institutional reports about Alva when he was still eleven, twelve, and thirteen years old.¹⁹⁴ Major sexual identity problems were noted.¹⁹⁵ Alva openly talked about killing himself.¹⁹⁶ He also displayed “explosive episodes” and a “volatile behavior pattern.”¹⁹⁷ All of these are indications of an extremely troubled childhood – not indications of intentional misbehavior.

¹⁹⁰ Ex. 7, 1961 Juvenile Diagnostic Center Report, p. 9.

¹⁹¹ *Id.* at 10.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ Ex. 8, 1959 Cleveland CYS School Report, p. 7.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 5.

¹⁹⁷ Ex. 9, Elwyn Training School Records, p. 1.

After taking custody of Alva and recognizing his significant psychological problems and deficits, the state did little if anything to treat these severe psychological problems. The various institutions to which he was sent failed to address these symptoms of trauma or to assist him in overcoming the effects of the long-term trauma he had endured. “Alva had significant emotional needs, yet despite all of the placements and diagnostic placements, these emotional needs were not addressed. His emotional problems grew and festered in the often dangerous atmospheres in the foster homes and institutional placements.”¹⁹⁸

In addition to documenting Alva’s psychological problems and the absence of treatment, the records also provide evidence of the ongoing abuse from his peers in the many institutions where he was placed. Alva was subjected to violence and neglect similar to what had necessitated his removal from his family home in the first place. Despite being removed from a childhood marked by severe abuse, neglect, and terror, Alva’s new homes “were as bad as or worse than the conditions he’d experienced as a young child. There was sexual abuse at the hands of other residents; plenty of modeling of antisocial behavior among the adolescents with whom he was housed; and constant uncertainty surrounding where he’d be living next.”¹⁹⁹ Alva also reported being the victim of beatings by “a few bigger boys” because he was mixed-race, and was repeatedly sexually and physically assaulted by older and more aggressive youths.²⁰⁰ It should not have come as a surprise to

¹⁹⁸ Ex. 5, Declaration of Dr. Clemens Bartollas, p. 10.

¹⁹⁹ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 28.

²⁰⁰ Ex. 8, 1959 Cleveland CYS School, p. 8.

anyone that a child raised in this atmosphere and further abused when in the care of the state would continue to act out. Alva simply knew of no other way to act.

It is difficult to envision how this type of evidence would have been used against Alva at his trial, had it been introduced. The prosecution and trial judge discounted the evidence Alva did present and faulted him for **not** presenting this exact type of evidence in mitigation. The trial judge even gave diminished mitigating weight to Alva's childhood because he believed that Alva had never been sexually abused as his sisters had.²⁰¹ The records from the many institutions he was placed in demonstrate that assumption to be false. Certainly these records would have corrected the prosecution's argument and the trial court's conclusion that Alva's life improved when he was removed from his home, and that he had any real opportunity to overcome his childhood.

Alva did act out and did display behavioral issues (including sexual misconduct) at many of the institutions he was sent to. Yet this evidence would not have undermined the mitigating effect of Alva's childhood experiences; it would have reinforced it. Alva's childhood experiences taught him to act out. His family provided no moral guidance. His family taught him to steal. His family taught him to act violently. His family taught him to be racist. His family provided him no positive role models. It can come as no surprise that he acted in accord with this horrible upbringing when finally removed from the family and placed in state care.

²⁰¹ Judicial Decisions, Trial Court Sentencing Opinion, p. 16.

Even if evidence of his misbehavior as an adolescent in state care is viewed as adverse, the Supreme Court has recognized that “[c]ompetent counsel should have been able to turn some of the adverse evidence into a positive.”²⁰² Rather than simply dumping thousands of pages of records in front of the jury without explanation, trial counsel should have explained how any such adolescent negative behavior was the natural result of his upbringing and the ongoing abuse and neglect in the institutional settings – rather than merely the intentional misbehavior of a delinquent youth.

Due to trial counsel’s failure to present any evidence about this time period, or to provide any explanation about the long-term effects of Alva’s experiences as a state-raised-youth on his development, the jury and trial court were left with the impression that Alva had received compassionate therapy, counseling, and a safe environment to recover from his earlier abuse. The exact opposite was true.

If the prosecution attempted to “seize upon” Alva’s behavioral issues in state custody, those arguments would have been undercut by the juvenile records themselves:

It is of course not too surprising to find the sexual problem in the boy, coming from such an unstable home with a sexual problem already existing in the home, one for which the father is currently incarcerated in the Lima State Hospital. The boy, because of his various problems, is extremely unstable. He is a boy whose instability reaches the point of near psychosis. This is not to say that he is actually psychotic but that his behavior requires the surveillance and care of one who is that much disturbed.²⁰³

²⁰² *Sears v. Upton*, 561 U.S. 945, 951 (2010).

²⁰³ Ex. 8, Cleveland CYS School Report, p. 7.

Alva’s “teenage years were anything but stable. The pattern of chaos that had characterized his life prior to his removal from the family home continued.”²⁰⁴ Because of that, “many of his earlier developmental problems continued unabated, in fact were exacerbated by the extreme turbulence and instability of his adolescent experiences. The various institutional placements that he experienced as a teenager actually had the effect of stunting his emotional development even further.”²⁰⁵

Given the twisted, upside-down world Alva was raised in at home, his behavioral issues in juvenile custody were not only explainable, they were to be expected, given his background and current living conditions. In light of the additional abuse he suffered in state care, and the state’s failure to develop and implement a comprehensive treatment plan, it should have been foreseeable that his behavioral issues would continue throughout his adolescence.

3. Alva’s age at the time of the offense did not reduce the importance of his childhood trauma or reduce the lifelong effects of the trauma of his upbringing.

The Sixth Circuit also noted that at the time of the murder, Alva was in his forties, and had “decades in prison far removed him from the trauma of his teenage years.”²⁰⁶ Similar statements were made in the trial judge’s sentencing opinion. The trial judge concluded that “a large amount of time” had “expired” since Alva was exposed to the toxic environment he was raised in.²⁰⁷

²⁰⁴ Ex. 3, Affidavit of Dr. Smalldon, ¶ 14.

²⁰⁵ *Id.*

²⁰⁶ *Campbell v. Bradshaw*, 674 F.3d 578, 592 (6th Cir. 2012).

²⁰⁷ Judicial Decisions, Trial Court Sentencing Opinion, p. 16.

These conclusions “ignore[] the reality of [Alva’s] history and the findings of researchers in the field of developmental psychology.”²⁰⁸ Countless studies have shown that people raised in circumstances such as Alva was raised in have lifelong deficits in executive functioning, are far more impulsive decision makers, struggle more with relationships, and are more prone to suffer from drug and alcohol addictions throughout their lives. They are also more likely to develop patterns of aggressive behavior and have problems with emotional regulation. These same studies have shown that without intervention and rehabilitation, victims such as Alva grow into adults with alterations in their personality and dysfunctional patterns of behavior.²⁰⁹

The research generated from these long-term studies directly contradict the courts’ conclusions that the passage of time would have “removed” Alva from the symptoms of his earlier trauma or somehow cured him of the effects of that abusive childhood. “Many – probably most – adults who are products of severely abusive/neglectful childhoods find that it’s a lifelong struggle to try to adapt to and overcome the deeply-rooted emotional problems that have roots in their early developmental experiences.”²¹⁰

As an adult, Alva continued to suffer from the effects of his abusive childhood and display many such symptoms, in addition to a severe addiction to alcohol. Alva’s ex-wife recalled that after he was paroled from prison in 1992, he was

²⁰⁸ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 28.

²⁰⁹ *Id.* at ¶¶ 17, 24, 26–27, 29–30, 32.

²¹⁰ *Id.* at ¶ 27.

paranoid, nervous, struggled with relationships, drank every day, and he would “literally jump if I touched him when he wasn’t expecting it.”²¹¹ Time does not heal all wounds, especially psychological ones:

Many lay people without training in psychology underestimate how difficult it is for a child raised in an environment like Alva was raised in to “grow up” and develop the social and emotional skills necessarily for successful adaptation in the social realm they encounter as adults. When one considers the horrible things Alva experienced throughout his childhood years – and then in the years following his removal from the family home as well – it hardly comes as surprise that he was never able to function effectively or successfully as an adult.²¹²

While Alva was indeed years removed from his traumatic childhood, the lifelong effects of that traumatic childhood had not dissipated and not been effectively treated. Alva had **not** somehow recovered from those traumas simply because he had grown older. The traumatic effects of his childhood were not treated while under the care of the state, and were in many ways made worse by the mistreatment and abuse in the homes and institutions to which he was assigned. Alva then spent most of his adult life in prison, where the effects of his traumatic upbringing were again not treated. He was not taught the skills he would need to be a responsible adult in the free world. That people do not simply outgrow the effects of childhood trauma is “the most fundamental, most widely accepted finding[] that fill[s] the voluminous developmental psychology literature.”²¹³

²¹¹ Ex. 15, Affidavit of Sharol Kelly, ¶ 8.

²¹² Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 17.

²¹³ *Id.* at ¶ 35.

E. Counsel Submitted Prison Records Demonstrating Alva's Extensive Record Without Explanation and Without Illuminating Why They Might Be Mitigating.

From the first day of voir dire, trial counsel told the jury that Alva's case was only about his penalty, and that counsel's only goal was to save Alva's life. But when the jury finally reached the issue of punishment, trial counsels' mitigation case did more harm than good. Rather than making a case for life, trial counsels' presentation served to inflame the jury's emotions – and it provided the State with avenues to present damaging rebuttal points that would not have been available to it but for trial counsels' deficient performance.

At the penalty phase of trial, Alva's trial counsel introduced extensive records from Alva's pretrial incarceration at the Franklin County Corrections Center, and his twenty-plus years of incarceration with the Ohio Department of Rehabilitation and Corrections.²¹⁴ Critically, and to Alva's grave detriment, trial counsel merely introduced these records as exhibits in front of the jury. Counsel did not use them or explain them in any way to make a coherent argument – or any argument – as to why the jury should not impose death. The State, however, used them as an effective sword against Alva, which it otherwise would not have been able to do.

1. The Prosecutor's Use of the Records to Make the Case for Death

The prosecutor first used these records, which would otherwise have been inadmissible, on cross-examination to elicit testimony that Alva had been a disruptive prisoner at the Franklin County Jail even after the escape and murder

²¹⁴ Trial Transcript, Vol. 14, Mitigation, p. 624.

that was the subject of the trial.²¹⁵ The prosecutor also elicited testimony and argued details about Alva's prior murder conviction.²¹⁶ The prosecutor likewise used these records to argue that the poems Alva had composed while in prison cheered for an escaped prisoner²¹⁷; that Alva had made a number of visits to outside medical facilities while incarcerated²¹⁸; that Alva was already serving a life sentence²¹⁹; that Alva was a continuing safety threat²²⁰; that Alva had contraband in his cell prior to trial²²¹; that Alva had made an escape attempt subsequent to this incident²²²; and that Alva believed that he would get the death penalty in this trial.²²³

The prosecutor based his argument for imposing a sentence of death on the information contained in the jail and prison records that defense counsel introduced – records that defense counsel neither explained nor used in any positive manner. The state would otherwise not have been able to introduce this evidence of future dangerousness, since future dangerousness is not a statutory aggravating circumstance under Ohio law. *See* Ohio Rev. Code § 2929.04(A)

2. Counsel Made No Use of the Jail Records

At the same time, counsel did not attempt to turn any of the adverse evidence contained in the jail and prison records into a positive – into a reason why the jury

²¹⁵ *Id.*, Vol. 13, Mitigation, pp. 468, 471–73.

²¹⁶ *Id.*, Vol. 15, Mitigation, pp. 740, 742, 769–73, 778, 780–81.

²¹⁷ *Id.* at 783.

²¹⁸ *Id.* at 785.

²¹⁹ *Id.* at 793.

²²⁰ *Id.*, Vol. 13, Mitigation, pp. 471–72.

²²¹ *Id.* at 468, 473.

²²² *Id.* at 463–64, 467–69, 473; *id.*, Vol. 15, Mitigation, p. 798.

²²³ *Id.*, Vol. 13, Mitigation, p. 472.

should not impose a sentence of death. In fact, counsel did not even attempt to explain the records, much less to use them in any constructive manner.

Counsel presented no evidence – either expert or lay – that relied on or even referenced these extensive records. Counsel made no argument that there was anything humanizing or mitigating in the Franklin County Jail records. Counsel presented no positive testimony about the jail records and made no argument that anything contained in the jail records was mitigating, other than attempting to demonstrate that Alva had been a model prisoner during his prior incarceration. Any bit of mitigation that might have been found in evidence was not highlighted by trial counsel. Any evidence argued by trial counsel likely would have paled in comparison to the aggravating factors argued by the prosecutor as arising from Alva’s behavior in the Franklin County Correctional Center.

Counsel introduced the records without explanation, without guidance as to how these records should be considered, and without any explanation as to why they were mitigating or how they explained Alva’s behavior. This was not a reasonable approach: “it hardly constitutes a reasonable investigation and mitigation strategy simply to obtain [jail] records from the State, then dump the whole file in front of the jury without organizing the files, reading them, eliminating irrelevant files or explaining to the jury how or why they are relevant.”²²⁴ Providing the jury with a stack of jail and prison records to review, with no guidance or argument as to how to review the records or any explanation as to why they were

²²⁴ *Johnson v. Bagley*, 544 F. 3d 592, 601 (6th Cir. 2008).

relevant to the jury's consideration of aggravating circumstances and mitigating factors, was not a strategic, or even a logical approach. These documents provided the prosecutor with considerable ammunition for cross-examination and with which to argue that Alva would continue to be a danger to himself, to other inmates, and to guards if only incarcerated for life.

The introduction of these records without explanation and without attempting to use them to demonstrate or reinforce any positive mitigation theme was pointless. It undercut their efforts to emphasize those positive mitigation themes that they did have. It also permitted the prosecution to argue that, regardless of any of the terrible things in his past, Alva was a dangerous man. The state was able to argue this based on facts that would not otherwise have been admitted before the jury. Trial counsel's introduction of these records completely undercut all of their other efforts at obtaining a life sentence recommendation from the jury.

F. Compounding trial counsel's errors, the trial court improperly precluded Alva from pursuing and presenting important mitigating evidence regarding his impaired state of mind at the time of the murder. The federal courts recognized Alva's constitutional rights were violated but failed to grant relief.

A fundamental tenet of capital punishment is a requirement that a sentencing scheme provide for an "individualized assessment of the appropriateness of the death penalty."²²⁵ This individualized assessment is achieved only by allowing the sentencer "to consider and give effect to any mitigating evidence

²²⁵ *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989).

relevant to a defendant's background, character, or the circumstances of the crime."²²⁶ The requirement that a sentencing jury consider "the character and record of the individual and the circumstances of the particular offense" is a "constitutionally indispensable part of the process of inflicting the death penalty."²²⁷

Despite this constitutional mandate, the trial court refused to allow Alva's trial counsel to present and argue relevant mitigating evidence during the penalty phase. Campbell's intoxication at the time of the offense was well-established. Trial phase testimony established that Alva, who had a history of alcohol dependence, drank at least one forty-ounce beer prior to shooting Charles Dials.²²⁸ The police also discovered at least three other empty beer bottles in Dials' truck and the other car Alva used during the escape. The Supreme Court of Ohio properly concluded that Alva had a "substantial amount of alcohol in his system."²²⁹

The trial judge's decision to bar counsel from raising and arguing as mitigating evidence that Alva's judgment was impaired by the consumption of this large amount of alcohol precluded the jury from having a full picture of Alva and his state of mind at the time he shot Mr. Dials.

Alva raised this issue in state court on direct appeal. The Supreme Court of Ohio disagreed with the trial court's reasoning in barring this evidence during the penalty phase, but never ruled on the merits of the claim.²³⁰ In federal court, both

²²⁶ *Id.* at 327.

²²⁷ *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976).

²²⁸ State's Trial Ex. 24E, pp. 9–10.

²²⁹ *State v. Campbell*, 90 Ohio St.3d 320, 329 (2000).

²³⁰ *Id.*

the district court and the Sixth Circuit agreed that the state trial court violated Alva's constitutional rights by precluding evidence that Alva drank "a substantial amount" of beer prior to the shooting.²³¹ Yet both courts concluded that the error did not cast "gave doubt" on the jury's death verdict, since voluntary intoxication is not traditionally viewed as a strong mitigating factor.²³²

Yet "harmless" constitutional error is appropriate only in the rarest of cases. The district court and court of appeals mistakenly concluded that this was such a case. Based on Alva's history and background, as well as the circumstances of the murder, Alva's intoxication was critical mitigating evidence, which should have been presented and argued to, and been considered by, the jury. The trial court's decision to block Alva's trial attorneys from presenting this relevant mitigating evidence played an important role in the jury's decision to impose a sentence of death. This is especially the case in light of Alva's explanation that he just panicked at the time of the shooting.

Alva has suffered from alcohol abuse and dependence since he was a child. His father introduced him to alcohol before he was ten years old. Alva's ex-wife described Alva, in prison and sober, as "very sweet and kind" when she met and married him.²³³ After his release from prison, however, as a free man, Alva was "remarkably different" and was "always irritable and moody."²³⁴ The stark

²³¹ *Campbell v. Bradshaw*, 674 F.3d 578, 595 (6th Cir. 2012).

²³² *Id.* at 596–98.

²³³ Ex. 15, Affidavit of Sharol Kelly, ¶ 4.

²³⁴ *Id.* at ¶¶ 10, 13.

differences and changes in Alva’s personality were driven – at least in part – by his inability to handle alcohol. As a free man, Alva was incapable of staying sober and drank alcohol every day. Addiction was like fuel to fire on Alva’s already impaired thought process. The difference between his behavior in prison and as a free man “was like Jekyll and Hyde.”²³⁵

Alva’s personality development was profoundly impacted by his violent, dysfunctional upbringing. The long-term consequences of such an upbringing include problems regulating emotions, impulsive behavior, and an increased likelihood of resolving disputes with violence and aggression. Even when Alva is sober, his thought processes are warped by his tragic past. The crippling effects of this upbringing are magnified when under the influence of alcohol. Under its effects, his thought processes become even more impulsive.

Alva’s trial attorneys certainly recognized this connection. They were prepared to present and argue this mitigating evidence to the jury. As his trial attorney has noted, “Alva grew up in a house where alcohol and violence were constant. As Alva grew older, he developed his own struggles with addiction and behavior. I believe alcohol played an important role impacting Alva’s already impulsive and disjointed thought process.”²³⁶

Had trial counsel been permitted to introduce evidence of Alva’s intoxicated state at the penalty phase, they could have made a compelling argument about the

²³⁵ *Id.* at ¶ 13.

²³⁶ Ex. 13, Affidavit of William Mooney, ¶ 18.

tragic consequences of combining a “substantial amount of alcohol” with a man who was still carrying psychological scars from untreated childhood trauma of the worst kind, and a lifetime in prison.

Even if the jurors disagreed about the mitigating value of Alva’s traumatic upbringing, they could have considered Alva’s intoxicated state on its own. An expert is unnecessary to present evidence that alcohol consumption can lead to profoundly bad decisions, as happened here. Counsel could have fashioned a powerful argument in favor of a life sentence based on this evidence.

Alva had planned to escape from jail if given the opportunity. But after jumping in Mr. Dials’ truck and driving away, it does not appear that Alva had any initial plans to kill him. The two drove aimlessly around Columbus for several hours, swapped clothes, purchased alcohol, and spent extended stretches alone together in isolated parts of town. Alva acted as if he planned to release Mr. Dials, giving him a souvenir and allowing him to keep his driver’s license and other papers. Columbus Police Detective Ronald Jester, who interviewed Alva after his arrest, concluded that “he didn’t seem as if he had any plan.”²³⁷

Given these facts, defense counsel could have introduced the role Alva’s intoxication played in his shooting of Mr. Dials after spending several hours with him. William Mooney strongly believed this evidence would have bolstered their arguments in support of a life sentence:

²³⁷ Born to Be Bad, Columbus Monthly, December 1997, p. 61.

Alva drove around in the truck with Mr. Dials for several hours and could have easily killed him much earlier in a more secluded location. He only shot Mr. Dials after consuming a forty-ounce bottle of beer and several other twelve ounce bottles of beer. If the jury knew this information, the crime could have been tied back to Alva's upbringing, which heavily influenced his addiction and impulsive thinking. We could have also argued that the crime was the result of an impulsive decision clouded by alcohol, not a well thought out murder.²³⁸

When a sentencing jury is unable to give "independent mitigating weight to aspects of the defendant's character and record and to circumstances of the offense proffered in mitigation, [it] creates the risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty."²³⁹ This logic is especially true in a case such as Alva's, where guilt was not at issue and the only real issue before the jury was whether Alva should be sentenced to life without parole or sentenced to death.

Alva's sentencing jury was not given a full picture of the man they were being asked to sentence. Multiple courts reviewing Alva's sentence recognized the constitutional error inherent in preventing the jury from hearing this mitigating evidence. Yet all failed to correct the error. In such a case, clemency is appropriate.

G. Conclusion

The late Chief Justice William Rehnquist wrote that the U.S. criminal justice system, "like the human beings who administer it," will always be "fallible."²⁴⁰ This case represents such an example. The process of sorting out who is most deserving of society's ultimate punishment does not work when the most fundamental

²³⁸ Ex. 13, Affidavit of William Mooney, ¶ 18.

²³⁹ *Lockett v. Ohio*, 438 U.S. 586, 605 (1978).

²⁴⁰ *Herrera v. Collins*, 506 U.S. 390, 415 (1993).

component of the adversary system, effective representation by counsel, is missing. Nor does it work when those in charge of making the decision of who should live or die are given an incomplete and inaccurate portrayal of the man they are asked to judge.

In cases like this, where the courts have recognized constitutional error but failed to correct it, clemency is appropriate.

III. ALVA HAS A POSITIVE INSTITUTIONAL RECORD

A. Alva's early experiences with trauma resulted in delinquent behavior, but such behavior ceased when Alva adjusted to the stresses of confinement.

Alva was in and out of prison as a juvenile and young adult, beginning as early as 1963 when he was merely fifteen. Initially, Alva faced difficulties adjusting to prison life. These difficulties are explained in a 1965 medical report at the Juvenile Diagnostic Center, which noted "it would seem that because of his mixed parentage, the disorganized familial setting, coupled with his low intellectual functioning, Alva has acted out delinquently."²⁴¹ There were frequent reports of Alva acting out in early conduct reports, but as he grew accustomed to the stresses of confinement, Alva's conduct significantly improved, as his records demonstrate: "Alva has made significant personality and behavioral growth over the past three years. His institutional adjustment has been quite good and he has shown mature and responsible behavior during his three months incarceration period at the Center and his adjustments at OSR."²⁴²

²⁴¹ Ex. 90, 1965 Juvenile Diagnostic Center report, p. 2.

²⁴² Ex. 17, Junction City Treatment Center records, Nov. 7, 1971, p. 3.

Later during his incarceration as an adult, his conduct improved. Alva became more trusted. Eventually classified as a Minimum I risk, Alva took forty trips out into the community for speaking engagements and recreational sport activities, such as refereeing little league football.²⁴³ The families of the children in the football league expressed deep appreciation for Alva's service and wrote a letter detailing how Alva was "truly a credit" to the prison and expressed their hope of helping Alva get released "so his talents can be used to an ever greater depth."²⁴⁴ Alva was so trusted he was issued a driver's license to drive the prison ambulance.²⁴⁵

Alva lived in the Honor Dormitory for many years. Later, Alva achieved Merit Status in 1989 by being "reliable, dependable, cooperative, and dedicated to his job responsibilities."²⁴⁶ The recommendation applauded Alva on his "good judgment," "unlimited" potential, and his ability to be "a positive person for others."²⁴⁷ He continued his good behavior, was recognized for "excellent" institutional adjustment, and was an Honor Inmate up until he was granted parole.²⁴⁸

Alva participated in many volunteer activities and programs while incarcerated, and earned many accolades. Alva's volunteer efforts frequently

²⁴³ Ex. 18, Chillicothe Treatment and Research Center records.

²⁴⁴ Ex. 19, Letter of Appreciation, October 1970.

²⁴⁵ Ex. 20, DRC Inter-Office Communication, Nov. 7, 1971.

²⁴⁶ Ex. 21, DRC Inter-Office Communication, Sept. 25, 1989.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

earned him recognition from prison authorities. One supervisor wrote in a letter that Alva “has been a devoted member of the project . . . and has been very helpful to me,” and further described Alva as “a willing worker . . . always ready to give of himself for the sake of others, especially kids.”²⁴⁹ Alva had goals to help children and committed himself to efforts that advanced those goals. In a service report, a supervisor spoke highly of Alva regarding how he “gave of himself and his free time and money, to help deter youthful offenders, from a further life of crime.”²⁵⁰

Alva completed various programs leading up to his parole at age 44, including an American Heart Association course in CPR²⁵¹, a Stress Management Program²⁵², and college coursework in accounting, business, business law, communications, and math.²⁵³ He was also a member of the Chillicothe Jaycees, a national spiritual development group, and earned countless diplomas for the range of programs they offered.²⁵⁴ In addition, Alva earned himself individual recognition “for giving service to his club, actively participating to the fullest of his ability, and for being properly oriented as to the intent and purpose of the Jaycee Organization.”²⁵⁵ His dedication to the Jaycees was unparalleled, leading up to Alva earning a “Spiritual Development Award of Honor.”²⁵⁶

²⁴⁹ Ex. 22, Letter from Richard Leary, May 7, 1987.

²⁵⁰ Ex. 23, Exceptional Service Report, May 6, 1987.

²⁵¹ Ex. 24, DRC Inter-Office Communication, July 13, 1990.

²⁵² Ex. 25, DRC Certificate of Training, Aug. 30, 1990.

²⁵³ Ex. 26, Portsmouth Interstate Business College records.

²⁵⁴ Ex. 27, Letter from William Adams, Feb. 10, 1983.

²⁵⁵ *Id.*

²⁵⁶ *Id.*

Alva even risked his own safety to help others. In 1990, a maximum security inmate attacked another inmate while being escorted through the prison. When two female corrections officers intervened, the inmate tried to attack them. One of the officers praised Alva for his subsequent actions: “At personal bodily risk to himself, inmate Campbell #135-471, without fore-thought to physical harm, grabbed this inmate pinning his arms to his sides and he pushed this inmate against the wall, holding him there until help did arrive.”²⁵⁷ The correctional officer applauded Alva’s efforts: “Inmate Campbell should be commended for his quick action in not only saving (2) two female officers from physical harm, but also for jeopardizing his own personal safety in order to suppress an otherwise harmful situation. It is my opinion that inmate Campbell prevented a hostage situation from occurring, and prevented two (2) staff members from physical harm.”²⁵⁸

A review of Alva’s institutional records while he was incarcerated two different times between 1968 and 1992 indicate that Alva made an exceptional adjustment to prison:

At the time of my testimony [1998], Alva had spent approximately twenty-five years of his life in prison. For the vast majority of the 9000-plus days that he spent incarcerated, he behaved well. His prison records from the late 1960’s up through the early-1990’s clearly document his ability to manage a reasonably positive adjustment to institutional settings, sustained over a long period of time. He was typically perceived by the prison staff as an excellent worker; he was always on the outlook for new opportunities; and he participated in a wide range of activities within the prison setting.²⁵⁹

²⁵⁷ Ex. 28, Letter from Sgt. Frances Fletcher, April 6, 1990.

²⁵⁸ *Id.*

²⁵⁹ Ex. 3, Affidavit of Dr. Jeffrey Smalldon, ¶ 19.

B. Alva’s long-term incarceration after years of childhood trauma made his chances at successful re-entry into the outside community extremely difficult.

Alva’s excellent adjustment to prison life allowed him to be granted parole from his life sentence in 1992. Prior to being paroled, it appeared as if Alva could have a “successful adjustment” to life on the outside, but concerns remained about his ability to adjust to the outside world because “he has been in prison for about twenty-two years of his adult life” and he would “have many adjustments to make.”²⁶⁰ Social workers at the prison noted Alva as “an individual who has many talents and resources,” but did not ignore how he was “hampered by strong emotional and mental conflicts.”²⁶¹

While incarcerated, Alva demonstrated potential for success with the help of prison programming and consistent structure, but he never dealt with the underlying trauma from his childhood and adolescence. Once on his own, Alva did not have access to the resources necessary to cope. Alva’s ex-wife lived through this experience once he was released from prison:

The Alva Campbell I knew in prison was remarkably different from Alva Campbell as a free man. For over ten years he cared about me and my children. In prison, Alva was kind and compassionate, set personal goals, was determined to succeed, and never wanted to return to prison. Once he was released, all of that came crashing down. I never realized how damaged Alva was until he had to make decisions on his own and deal with life on [a] daily basis. Outside of prison, Alva was a dysfunctional mess and he did not have any life or social skills that would have enabled him to succeed. It was like Jekyll and Hyde.²⁶²

²⁶⁰ Ex. 29, DRC Memo, Office of Psychological Services.

²⁶¹ Ex. 17, Junction City Treatment Center records, Nov. 7, 1971.

²⁶² Ex. 15, Affidavit of Sharol Kelly, ¶ 13.

During his first adult incarceration, an examining psychologist recognized that when Alva is “confronted by stress he is likely to react and resort to poor judgment and ineffectual behavior.”²⁶³ This poor adjustment to stress stemmed from trauma brought on by Alva’s childhood, young adult, and confinement experiences.

Alva in prison had structure, guidance, and access to programming. Once out on his own in the real world, Alva struggled with incomprehensible trauma brought on from his troubled family life and negative experiences as a state-raised-youth, compounded by over twenty years of incarceration.

Although Alva earned a grant of parole, he apparently had not received the training or therapy to enable him to deal with life outside of prison. Even though Alva participated in programming designed to improve himself and prepare him for life on the outside, he could not or did not access continuing resources once he left prison, Alva’s attempt to adjust to the outside world “came crashing down.”²⁶⁴

C. Alva has continued his good conduct while on death row.

During his first ten years on death row, Alva did not receive a single disciplinary or conduct report, with the exception of one citation for having an extra pillow in his cell.²⁶⁵ In this instance, Alva was given the pillow after a trip to the hospital, yet was still reprimanded for having it.

²⁶³ Ex. 30, Ohio State Reformatory, Initial Psychological Survey.

²⁶⁴ Ex. 15, Affidavit of Sharol Kelly, ¶ 13.

²⁶⁵ Ex. 31, DRC Conduct Report, Oct. 21, 2000.

In the years since the citation for the extra pillow, Alva's conduct record has remained relatively clear. In 2014, after sixteen years on death row, Alva received his first genuine disciplinary violation: A guard suspected that Alva had been drinking and he confirmed this to be true. Since this incident, Alva has been punished for one subsequent alcohol violation.

Alva has also been cited once for fighting. While the record reflects that Alva was involved in a "fight" with another inmate, the reality is that Alva was attacked by another inmate. At the time Alva was a sixty-eight year old man who could not move about inside the prison without the aid of a walker and inhalers. Alva was tackled from behind by a younger and larger inmate while on a walker, leading to a broken hip. The recent injury and hip replacement surgery only added to Alva's extensive list of crippling health concerns and relegated him to using a walker the rest of his life.

As a whole, Alva has a very good institutional record, limited to a few non-violent minor violations. His early behavioral issues as a juvenile and young adult occurred prior to his maturing institutional adjustment. A former corrections officer on death row recounts that during his time on the job, "Mr. Campbell did not receive any discipline write-ups. Write-ups are very easy to get – even good inmates have at least one. Mr. Campbell is the only inmate on death row with such a record."²⁶⁶ He also noted that Alva "got along with every corrections officer," which is "unusual," in the sense that "most inmates have problems with at least one

²⁶⁶ Ex. 32, Affidavit of Forilan Ochoha, ¶ 7.

officer.”²⁶⁷ To the contrary, “Mr. Campbell treated every inmate and officer respectfully,” and in his “seventeen years of experience, Mr. Campbell is one of the best inmates that [the officer] ha[d] dealt with.”²⁶⁸ In fact, Alva’s impression was so positive that the officer “convinced the other officers to make Mr. Campbell our food porter, a position he held for over a year.”²⁶⁹ Alva “did a great job and treated all inmates equally” in this capacity, and left the corrections officer wishing that Alva could be a porter in the segregated unit.²⁷⁰ These positive experiences show how Alva is now “a very mature, intelligent, and responsible inmate.”²⁷¹

D. Alva leaves positive impressions on members of the community.

Although unable to do much physically because of his serious health problems, Alva maintains positive relationships with members of the outside community. Sister Pat Monahan has been writing Alva for years, describing him as “a compassionate listener . . . a repentant man, a faith-filled man,” and “a person who has taken great interest in my life and all that I do for others.”²⁷² Sister Pat finds Alva to be “profoundly remorseful for the crimes he has committed,” and believes “he has changed for the better.”²⁷³ In his conversations with Sister Pat, Alva has expressed a desire to “apologize to the families in person,” and actively prays for his victims, as well as their families and friends.²⁷⁴

²⁶⁷ *Id.* at ¶ 8.

²⁶⁸ *Id.* at ¶¶ 9, 10.

²⁶⁹ *Id.* at ¶ 5.

²⁷⁰ *Id.* at ¶ 5.

²⁷¹ *Id.* at ¶ 4.

²⁷² Ex. 33, Declaration of Patricia Monahan, ¶¶ 7, 12.

²⁷³ *Id.* at ¶ 9.

²⁷⁴ *Id.* at ¶ 9.

Alva has likewise maintained a long-term friendship with Dorothy Johnson of Columbus. Alva cares for her so much that he affectionately calls her his “adoptive mom.”²⁷⁵ Ms. Johnson considers Alva “family,” as well as “a very good listener . . . [and] a person who is kind and caring.”²⁷⁶ Alva often creates works of art for Ms. Johnson and asks about her health and her family. Ms. Johnson is moved by how Alva always calls to check on her and how he is more concerned for her well-being than his own. Alva has fostered such a positive impression and deep emotional connection with Ms. Johnson that she decided to pay for his funeral and burial plot so that he will be buried a free man.²⁷⁷

E. Conclusion

Alva Campbell has accepted the fact that prison is the only appropriate place for him and has adjusted well to life on death row. He has stayed out of trouble for the most part. He has shown respect to guards and other inmates, He has maintained positive relationships with people outside the prison. Alva is now aged, ill, and fragile. He is not a threat to anyone in the prison. Because of his positive adjustments in all of his years in prison, Alva would adjust well to a general population setting, if his sentence were to be commuted to life in prison without parole.

²⁷⁵ Ex. 34, Declaration of Dorothy Johnson, ¶ 4.

²⁷⁶ *Id.* at ¶ 11.

²⁷⁷ *Id.* at ¶ 12.

IV. ALVA'S SINCERE REMORSE AND ACCEPTANCE OF RESPONSIBILITY

Alva Campbell is deeply sorry for the mistakes he has made in his life, and the pain he has caused – not just to Charles Dials and his family, but to all the other victims who have suffered because of his actions. Although Alva has lived an immensely tragic and painful life, none of the experiences of his childhood trauma, his adolescent neglect, or his adult incarceration diminish for him the fact that it is he, and he alone, who bears full responsibility for his actions. He recognizes it; he has acknowledged it from the moment of his arrest; he reaffirmed it in his interview with the Parole Board; and he reaffirms it now.

When Alva was interviewed by Columbus Police Detective Ronald Jester on April 2, 1997, the day of this crime, he immediately expressed his remorse and accepted complete responsibility for his actions. He cooperated with police, and from the start of the interview, stated that he “take[s] full responsibility for . . . what [he] did.”²⁷⁸ He waived his *Miranda* rights and agreed to be interviewed and help the police with their investigation.²⁷⁹ He inquired whether the sheriff’s deputy he assaulted would be alright, recognizing the egregious mistake he made in attacking her and escaping.²⁸⁰

When discussing his crime specifically, Alva displayed not cold indifference but deep, emotional remorse. He was unable to maintain his composure several

²⁷⁸ State’s Clemency Exhibits, Campbell Interview Transcript, p. 4.

²⁷⁹ *Id.* at 6, 10–11.

²⁸⁰ *Id.* at 6, 12.

times during his interview, and described what had happened as “the worst you can get.”²⁸¹ Alva recognized the full severity of what he had done:

Yeah, but it still don't make no difference. It ain't going to take the fact away [that] I took a life of an 18 year old kid. I lied to him. I told him I wasn't going to hurt him. . . . It really does [bother me]. That kid had a whole life ahead of him. A whole life. . . . He was living with his mom and now his mom is going to be without her son. Yeah it bothers me. It'll bother me now until the day I die.²⁸²

During pretrial interviews with a psychologist, Alva again took full responsibility for his actions. When asked if this crime had been triggered by something from his background that brought about a “rage reaction,” Alva refused to place blame on anyone but himself. “I’m not even going to go down that road with you because if I answer that question it’s going to sound like I’m saying someone other than me is responsible for what I did and no one else is.”²⁸³

Alva’s recognition of, and remorse for, the gravity of his actions was further apparent at his resentencing, on April 20, 2001. Asked if he would like to speak in mitigation, Alva’s first words addressed the family of Charles Dials:

I live with this fact every day, that I took this young man’s life. And believe me, three or four times a week I see his face my in dreams. I wake up. It’s a nightmare, and I got to deal with this the rest of my life. I can’t get away from it. I’m sorry it happened. I wish to god there was some way I could reverse the situation. I can’t, no more than I can reverse this situation. But I’m asking you, please don’t hate me even if you can’t forgive me, please.²⁸⁴

²⁸¹ *See id.* at 19, 24–26

²⁸² *Id.* at 30.

²⁸³ Trial Transcript, Vol. 15, Mitigation, p. 650.

²⁸⁴ Trial Transcript, Motion Hearing (Re-sentencing), Apr. 20, 2001, pp. 10–11.

Others who have known and worked with Alva agree that his remorse is genuine and heartfelt. Clemens Bartollas first interviewed Alva in 1998, and has communicated off and on with him in the nearly twenty years since that first meeting. “As the years went by in our communication,” he has noted, “it became apparent to me that there was an increased sorrow and regret and feeling of remorse for the actions [Alva] had committed.”²⁸⁵

Another psychologist also recently noted Alva’s deep remorse and acceptance of responsibility for his crimes: “It is also noteworthy that Alva accepts responsibility for his actions, acknowledging what he has done, the wrongfulness of what he has done, and the pain he has inflicted on others because of what he has done. He is able to show feelings toward others, and he has and continues to.”²⁸⁶

Dorothy Johnson, a friend who has known Alva since the 1980’s, similarly deems that Alva “deeply regrets the pain he has caused in taking two lives.” She feels that Alva “has always been honest with [her],” and, in so doing, has “talked about the horrible decisions he has made.” He has made clear to her that he “regret[s] his past actions, [and] wish[es] he could take them back”; that he is “working to be a good person who can help others in any small way he can.”²⁸⁷

Sister Patricia Monahan, who has known Alva for almost five years, believes that Alva is “profoundly remorseful for the crimes he has committed,” and that he “acknowledges his wrongdoings and accepts the consequences for his crimes against

²⁸⁵ Ex. 5, Declaration of Dr. Clemens Bartollas, p. 1.

²⁸⁶ Ex. 4, Report of Dr. Bob Stinson, p. 16.

²⁸⁷ Ex. 34, Declaration of Dorothy Johnson, ¶ 10.

society.” Although Alva “used to be angry, resentful, and distrustful,” he has now “changed for the better.” Together, Sister Pat and Alva “have prayed [] for [Alva’s] victims and their family and friends,” and Sister Pat has seen that, “[o]n several occasions, Alva has talked to [her] about how he wishes he could apologize to the families in person,” but believes that, due to “prison rules,” he is “not allowed to reach out to the victims.”²⁸⁸

Most recently, in his interview with the Board in September 2017, Alva clearly and unequivocally expressed his acceptance of responsibility and his deep and genuine remorse for the crimes he has committed and the pain he has caused:

I would like to begin by expressing my condolences to the families and friends of Charles Dials, and everyone else who has suffered as a result of all the other crimes I have committed throughout my life. I do not deny that I am guilty. Everything the State says that I am guilty of is true. I want to make clear that I accept responsibility for all of my actions and am deeply sorry for having committed them.²⁸⁹

In response to questions from the Board, Alva repeatedly expressed regret and sorrow for his actions, apologizing and emphasizing his desire to accept full responsibility for his actions. Several times he stopped to cry and compose himself.

Undoubtedly, Alva’s sorrow cannot compare to the sorrow experienced by the family and friends of Mr. Dials. But Alva’s remorse is no less real because of that fact, and his penitence no less genuine. Alva has understood, and understands even more now, that although “deep in his heart . . . if [he] could take it back, [he] would,” his terrible crime can never be undone, the pain he has caused can never be

²⁸⁸ Ex. 33, Declaration of Patricia Monahan, ¶ 9.

²⁸⁹ Ex. 35, Alva Campbell Clemency Interview, Sept. 13, 2017.

erased. He asks only that the members of this Board see that he has changed tremendously, and that he be allowed to live out what time he has left in prison.²⁹⁰

Alva Campbell has expressed deep regret and sorrow from his first statements to police, and his genuine remorse and acceptance of his mistakes has grown and deepened throughout his time in prison. Alva's sorrow, recognition of guilt, and sincere repentance is a factor that this Board should consider in deciding on a favorable recommendation for clemency.

V. ALVA'S PROFOUND MEDICAL AILMENTS

Alva Campbell suffers from a host of debilitating and likely fatal diseases that have rendered him frail, feeble, and not a threat to anyone or anything.

Alva was born into a severely dysfunctional family full of abuse and neglect. The trauma associated with such an upbringing has not only been linked to troubled development socially and psychologically, but also to serious physical health issues throughout life. A child's inability to cope with such a toxic childhood has lasting effects on the child's health and well-being. Persistent fear and anxiety results in toxic stress, which can lead to damaged, weakened bodily systems with life-long repercussions. Specifically, extreme long-lasting stress leads to elevated blood pressure and increased levels of inflammation. These symptoms in the early developing years have long-term consequences for physical health and have been associated with various chronic diseases.

²⁹⁰ *Id.*

As is discussed in detail in other sections of this Application for Executive Clemency, Alva was raised in a home described as “inadequate in every possible way.” Because of the constant violence Alva witnessed and was subjected to, he grew up suffering mentally and physically. Records indicate that Alva’s stress levels were so high that at a young age he was chewing off his finger nails and engaging in other abnormal behaviors driven by high anxiety levels. Compounding these issues even further for Alva is the fact that his developing bodily systems were likely under attack even before he left his mother's womb. Alva’s mother was a severe alcoholic and described as “irresponsible, habitually deceitful, and either unwilling or unable to provide even basic supervision for her children.” Alva’s oldest sister Dorothy was born with significant mental deficits. His younger brother Dennis was chronically ill with pulmonary issues and died in his sleep at the age of three. Alva’s mother also had two miscarriages after being violently beaten.

The severity of the various diseases Alva suffers from today – which include chronic pulmonary and cardiovascular issues – can be traced back to the dysfunctional, chaotic environment in which he was raised.

Alva Campbell first experienced sudden and severe chest pains in 1975 when he was only 27 years old. Over the next four decades, Alva has frequently experienced these sudden and severe chest pains accompanied by the sensation of dying, through a long progression of lung, heart, lower gastrointestinal, and thyroid conditions. He has suffered through countless hospital stays, continuous medications, and numerous invasive surgical procedures. He lives every day with

the anticipation of the next episode of respiratory distress that will leave him gasping for air.

Alva suffered through breathing difficulties and asthmatic symptoms since his early childhood.²⁹¹ Alva did not receive an official diagnosis of Bronchial Asthma until 1971, at the age of twenty-three.²⁹² In December of 1975, during an extended hospital stay, Alva had three days of chest pain building to an overwhelmingly severe pain in the left side of his chest.²⁹³ Several days later Alva began to have difficulty breathing. A chest x-ray revealed that both lungs had developed abnormalities.²⁹⁴ Shortly after that, Alva began to experience regular frequent asthma attacks requiring increased medications and breathing treatments.²⁹⁵

In 1979, Alva spent two months in the hospital at the Ohio State University Medical Center (“OSU”) for a severe left leg abscess that led to a life threatening pulmonary embolism.²⁹⁶ In 1984, Alva was admitted to OSU for left side weakness and chest pain. He was diagnosed with a significant mitral valve prolapse and carotid vascular disease.²⁹⁷ It was also discovered that he had also suffered a stroke that was likely the result of another pulmonary embolism.²⁹⁸

²⁹¹ Ex. 36, DA 1 & 2 & PC, Client Interview 1998, p. 335.

²⁹² Ex. 37, OSU & CMC Records, 2012.09 Update, p.437.

²⁹³ Ex. 38, DRC Combined Records, 2011.04 Update, p. 816.

²⁹⁴ Ex. 39, DRC Combined Records, 2011.04 Update, p. 837.

²⁹⁵ Ex. 40, DRC Combined Records, 2011.04 Update, p. 921.

²⁹⁶ Ex. 41, DRC Combined Records, 2011.04 Update, p. 378.

²⁹⁷ Ex. 42, DRC Combined Records, 2011.04 Update, p. 774.

²⁹⁸ Ex. 43, DRC Combined Records, 2011.04 Update, p. 777.

In 1986, Alva collapsed with sudden severe chest pain. A month earlier he had been diagnosed with symptoms from his mitral valve prolapse, mini strokes, and early signs of congestive heart failure.²⁹⁹ During his hospital stay, it was determined that he had suffered from another stroke, which was causing the weakness in his left side.³⁰⁰ An x-ray revealed a further increase in density at the base of his left lung, causing a chronic loss of volume in that lung.³⁰¹ Over the next several years, Alva continued to be hospitalized for severe unexplainable chest pain which, in addition to being a cardiac symptom, is also a common warning sign of advancing lung disease.³⁰²

In December of 1996, while out of prison, Alva awoke from a nap unable to breathe. Due to his severe respiratory distress, he could not tell medics his medical history. The medics were unable to insert a tube to assist with his breathing.³⁰³

When Alva reached the emergency department, he was unable to speak in more than a whisper.³⁰⁴ Due to this life threatening respiratory failure, Alva was intubated, placed on a ventilator, and admitted to the ICU.³⁰⁵ Tests revealed hyperinflation of the lungs and a diagnosis of Chronic Obstructive Pulmonary Disease (COPD).³⁰⁶ COPD is an inflammatory lung disease that results in

²⁹⁹ Ex. 44, DRC Combined Records, 2011.04 Update, p. 76.

³⁰⁰ Ex. 45, DRC Combined Records, 2011.04 Update, p. 271.

³⁰¹ Ex. 46, OSU Records, 2012.07 Update, p. 878.

³⁰² Ex. 47, "Warning Signs of Lung Disease," *American Lung Association*, www.lung.org/lung-health-and-diseases/warning-signs-of-lung-disease/.

³⁰³ Ex. 48, Doctor's Hospital West Records, 2016.12.08 Update, p. 7.

³⁰⁴ Ex. 49, Doctor's Hospital West Records, 2016.12.08 Update, p. 7.

³⁰⁵ Ex. 50, Doctor's Hospital West Records, 2016.12.08 Update, p. 8.

³⁰⁶ Ex. 51, Doctor's Hospital West Records, 2016.12.08 Update, p. 31.

obstructed airflow from the lungs. Common symptoms include difficulty breathing, combined with frequent coughing and wheezing. According to the American Lung Association, COPD is the third-leading cause of death in the United States.³⁰⁷

In late 1997, pain in the right side of his back led to the discovery of irregularities in Alva's right lung, including nodules and scarring known as apical fibrosis.³⁰⁸ He also began to suffer from traumatic COPD exacerbations which often included, and continue to include, respiratory failure and hospitalization.³⁰⁹ In 1999 a diagnosis of centrilobular emphysema was added to the list of chronic breathing conditions.³¹⁰ Over the course of the next two years, Alva's condition steadily declined. He experienced severe pain in his upper right side when breathing, and eventually when moving, and developed a frequent bloody productive cough.³¹¹

In late 2000, a CT scan revealed a growing irregularly shaped mass in his upper right lung along with a new nodule in that area. It also showed more nodules in the left lung and scarring in the upper left lung.³¹² Alva struggled to move air in and out of his lungs, particularly on the exhalation when he felt as if the air was trapped and suffocating him. His emphysema was also preventing his lungs from

³⁰⁷ Ex. 52, <http://www.lung.org/lung-health-and-diseases/lung-disease-lookup/copd/>.

³⁰⁸ Ex. 53, DRC Combined Records, 2011.04 Update, p. 1455.

³⁰⁹ Ex. 54, OSU & CMC Records, 2012.09 Update, p. 598.

³¹⁰ Ex. 55, OSU Records, 2012.07 Update, p. 1728.

³¹¹ Ex. 56, OSU Records, 2012.07 Update, p. 679.

³¹² Ex. 57, OSU Records, 2012.07 Update, p. 1721.

properly processing oxygen which, over time, causes the sufferer to begin to desperately crave it and to suffer air hunger.

Finally, in January of 2001, Alva was diagnosed with necrotizing granulomas in his upper right lung.³¹³ This decaying mass of dead tissue was surgically removed.³¹⁴ He was left on a cocktail of inhalers and breathing medications that he has depended on, in some variation, ever since.³¹⁵

Around the same time that Alva was recovering from the removal of part of his lung, doctors also discovered that he had a complex mass with a well-defined cyst on the lower left side of his thyroid.³¹⁶ In March of 2002, he had a left thyroidectomy to remove the mass.³¹⁷ He continues to take medication to manage the hypothyroidism caused by the surgery.³¹⁸

In 2003, Alva again began to experience unexplained chest pain resulting in a diagnosis of pulmonary hypertension.³¹⁹ This condition causes shortness of breath, dizziness and fatigue, among other symptoms,³²⁰ which has only added to the breathing difficulties.

³¹³ Ex. 58, OSU Records, 2012.07 Update, p. 1413.

³¹⁴ Ex. 59, DRC Combined Records, 2011.04 Update, p. 2145.

³¹⁵ Ex. 60, DRC Combined Records, 2011.04 Update, p. 2113.

³¹⁶ Ex. 61, DRC Combined Records, 2011.04 Update, p. 1443.

³¹⁷ Ex. 62, DRC Combined Records, 2011.04 Update, p. 2143.

³¹⁸ Ex. 63, DRC Records, 2016.10 Update, p. 4.

³¹⁹ Ex. 64, DRC Combined Records, 2011.04 Update, p. 2135.

³²⁰ Ex. 65, "Symptoms of Pulmonary Hypertension," *Symptoms of Pulmonary Hypertension – Pulmonary Hypertension Association*, Pulmonary Hypertension Association, 2017, www.phassociation.org/Patients/PHSymptoms.

In 2005 it was necessary for Alva to request DRC medical reclassification so that he could have continuous access to oxygen.³²¹ In April of 2006, Alva's COPD and Emphysema were classified as "end stage."³²² In July 2006, an x-ray showed a collapsed lung³²³, and was admitted to OSU with respiratory failure; he was unable to breath on his own and was intubated to assist in breathing.³²⁴ During the hospital stay he developed pneumonia and a possible new mass in his lungs was discovered.³²⁵

Alva experienced a severe COPD exacerbation in December 2006 and was again admitted to OSU. His condition had become so severe that, during his hospitalization, doctors and nurses spoke with him about his code status and creating a living will. One doctor noted that, "in the long term, this patient does have a high risk of recurrent respiratory failure and recurrent need for intubation. He should consider what his wishes are." Alva's final discharge papers listed his complete diagnosis:

- COPD
- Sarcoidosis
- Coronary Artery Disease
- Atrial fibrillation
- Hypertension
- History of Deep Vein Thrombosis and Pulmonary Embolism.³²⁶

³²¹ Ex. 66, OSU & CMC Records, 2012.09 Update, p. 876.

³²² Ex. 67, DRC Combined Records, 2011.04 Update, p. 3446.

³²³ Ex. 68, OSU Records, 2012.07 Update, p. 435.

³²⁴ Ex. 69, OSU Records, 2012.07 Update, pp. 1278 & 324.

³²⁵ Ex. 70, OSU Records, 2012.07 Update, pp. 1674 & 1322.

³²⁶ Ex. 71, OSU Records, 2012.07 Update, p. 1303.

Alva has continued to struggle through frequent COPD exacerbations requiring hospitalization. In early December 2012, he was already in the hospital when his condition deteriorated into hypoxemic respiratory failure, meaning his body was starving for oxygen because his lungs weren't processing the exchange of oxygen and carbon dioxide properly. He required intubation to continue breathing and was put in the ICU.

During that stay, tests revealed that he had Histoplasmosis.³²⁷ Individuals get histoplasmosis from breathing in spores carrying the fungus. Most people will not become sick from the spores, but in someone with a weakened immune system and prior lung conditions such as Alva, the infection can become severe, even deadly.³²⁸ Alva was on medication to treat the infection for over six months and he was discharged with another order for continual oxygen access.³²⁹

During this same hospitalization, Alva developed atrial fibrillation with "RVR" (rapid and out of rhythm heart beats). Doctors had no success in stopping the atrial fibrillation.³³⁰

Alva's COPD exacerbations were unrelenting. In January of 2014, his severe breathing difficulties intensified and tests revealed two new large nodules in his upper right lung.³³¹ Alva's shortness of breath, wheezing, and chest pain became

³²⁷ Ex. 72, OSU Records, 2017.02 Update, p. 324.

³²⁸ Ex. 73, "Histoplasmosis," *Centers for Disease Control and Prevention*, Centers for Disease Control and Prevention, 21 Nov. 2015, www.cdc.gov/fungal/diseases/histoplasmosis/.

³²⁹ Ex. 74, DRC Records, 2013.03 Update, p.179.

³³⁰ Ex. 75, OSU Records, 2017.02 Update, p. 344.

³³¹ Ex. 76, DRC Records, 2014.02 Update, p. 40.

progressively worse, and his cough began producing green sputum and blood. A report on February 12, 2014 at OSU indicated that Alva had the most severe form of COPD.³³² Later, in October of 2014, a CT scan revealed that the emphysema that had previously only been in Alva's upper lungs was now visible in both lower lungs, along with a partial collapse in both lungs.³³³ At the same time, doctors discovered that Alva also had an aortic aneurysm.³³⁴ An aortic aneurysm is a bulge in a section of the aorta, the body's main artery that can burst at any time leading to immediate death.³³⁵

In January of 2015, Alva was diagnosed with an aggressive prostate cancer.³³⁶ He underwent a radical prostatectomy on March 11, 2015 again at OSU hospital. He spent five days in the hospital.³³⁷

On May 16, 2015, Alva suffered a spontaneous collapsed lung and required an emergency life-flight to OSU hospital.³³⁸ A chest tube was inserted to allow him to breathe.³³⁹ He soon developed a fever while in the hospital and drifted in and out of consciousness. He had developed MRSA (Methicillin-resistant Staphylococcus

³³² Ex. 77, DRC Records, 2014.02 Update, p. 100.

³³³ Ex. 78, DRC Records, 2014.12 Update, p. 147.

³³⁴ Ex. 79, DRC Records, 2014.12 Update, p. 83.

³³⁵ Ex. 80, <http://www.webmd.com/heart-disease/tc/aortic-aneurysm-overview#1>;
<http://www.news-medical.net/health/Abdominal-Aortic-Aneurysm-Prognosis.aspx>.

³³⁶ Ex. 81, DRC Records, 2015.04 Update, p. 102.

³³⁷ Ex. 82, DRC Records, 2015.09 Update, p. 499.

³³⁸ Ex. 83, OSU Records, 2017.02 Update, p. 3416.

³³⁹ Ex. 84, DRC Records, 2015.09 Update, p. 195.

aureus) pneumonia – an often deadly condition because it is so difficult to treat, especially for those with weakened immune systems such as Alva.³⁴⁰

In the summer of 2016, Alva had three more major surgeries. First, he was pushed down by another inmate at CCI and shattered his right hip. He had to undergo hip replacement surgery.³⁴¹ Then, he was diagnosed with a colon obstruction and doctors discovered that a section of his colon was gangrenous.³⁴² Alva endured two separate surgeries on two consecutive days to remove his entire lower intestine. He is now permanently dependent on an external colostomy bag.³⁴³ His weight also plummeted from 172 pounds on June 9, 2016, to only 140.6 pounds on October 3, 2016.

In July 2017, Alva was again taken to OSU hospital because he was coughing up of blood. He was diagnosed with another case of pneumonia and kept at OSU and FMC for over a week before being returned to CCI on July 24, 2017.³⁴⁴ Subsequently, the medical staff at CCI has discovered that the antibiotics that were prescribed for the pneumonia had not cured the pneumonia or stopped the accumulation of fluids in his lungs. The medical staff suspects that Alva's lung cancer has returned. Tests have been ordered to determine if that is true.

Alva Campbell is now 69 years old with a host of debilitating illnesses. He is frail and gaunt. He moves slowly because he is reliant on a walker and is always

³⁴⁰ Ex. 85, DRC Records, 2015.09 Update, p. 256.

³⁴¹ Ex. 86, OSU Records, 2017.02 Update, p. 3162.

³⁴² Ex. 87, DRC Records, 2016.10 Update, p. 102.

³⁴³ Ex. 88, DRC Records, 2016.10 Update, p.100.

³⁴⁴ Ex. 89, OSU Records, 2017.08 Update, p. 7.

short of breath. Alva is dependent on four different inhalers and is required to take breathing treatments four times a day. Alva is also constantly accompanied by his external colostomy bag. The severity of these combined illnesses have left Alva debilitated and fragile. Alva's deteriorating physical condition further militates in favor of clemency.

THE GOVERNOR SHOULD GRANT CLEMENCY

The Governor should grant clemency to Alva Campbell, and his sentence should be reduced to life in prison with no possibility of parole. Alva has suffered through a shocking, disastrously abusive childhood, followed by an equally damaging adolescence demarcated only by further abuse and neglect. Although Alva accepts that he, and he alone, is ultimately responsible for the terrible events which took place on April 2, 1997, the Governor and this Board should recognize that the systemic protections intended to shield and support someone in Alva's position thoroughly failed him, from his childhood abuse, to his adolescent abandonment, through to his appointed counsel at trial and the courts that have reviewed his case. In the time since his crime, Alva has changed significantly: not only has he grown in self-reflection and understanding, but his physical self has inversely withered. He suffers from numerous, compounding ailments, and he neither wishes, nor is able, to pose any threat to anyone.

Nothing can undo the pain and destruction that Alva has caused, and no collection of systemic failures and medical infirmities can excuse the deaths caused by Alva, no matter how much he himself wish it were so. But these factors do provide powerful reasons to show mercy on Alva Campbell. The Governor should

grant clemency and commute Alva's sentence to life in prison with no possibility of release.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Application for Executive**

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