

**BEFORE THE
OHIO ADULT PAROLE AUTHORITY**

**IN RE: ROBERT J. VAN HOOK, JR.
Chillicothe Correctional Institution, # A186-347**

Clemency Hearing: May 24, 2018

APPLICATION FOR EXECUTIVE CLEMENCY

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I. INTRODUCTION AND SUMMARY OF ROBERT VAN HOOK'S APPLICATION FOR CLEMENCY

On February 18, 1985, Robert Van Hook, after a day of drinking and doing drugs, went to the Subway Bar in downtown Cincinnati - a gay bar that Robert had previously frequented. While drinking at the Subway Bar, Robert struck up a conversation with David Self while the two of them continued drinking and talking to others in the bar. After a couple of hours, Robert and David Self left the bar together. Robert wanted to continue to another bar to dance, but David wanted to go home. Robert agreed to go with David Self and drove them both to David Self's apartment.

Once at the apartment, Robert - suffering from the long-term effects of untreated childhood mental, physical, and sexual abuse - depressed that his life seemed to be falling apart - and troubled by increasing questions about his own sexual identity - strangled and then mutilated the body of David Self. He then stole some necklaces and a leather coat, retreated to a friend's house, and then fled to Florida.

When first arrested, Robert exercised his rights and declined to be interviewed by the police until he had the opportunity to consult with an attorney. Subsequently, after talking to his mother and after his mother told the Cincinnati police that he now was willing to talk to them, Robert gave a complete confession.

Robert waived a jury and was convicted and sentenced to death by a three-judge panel in Hamilton County, Ohio.

During the appeal process, the United States Court of Appeals for the Sixth Circuit first ordered that Robert be given a new trial, and later that he be given a new sentencing hearing. Both of those decisions were reversed on later appeals. (See Section II discussing the Legal History).

Robert Van Hook suffered a long history of physical, mental, and sexual abuse as a child. His parents were drug and alcohol drug dependent. They physically abused each other and their children. After they separated and later divorced, Robert bounced between his parents and the chaos that surrounded their lives, punctuated by brief stints living in a stable environment with an aunt and uncle – but his parents always pulled him back into their chaotic lives.

When he was fourteen, Robert ran away after a fight with his father and lived on the streets in Florida and New Orleans, panhandling, playing music for money, and selling himself for sex with men. After about a year of living on the streets, he returned to Cincinnati where he was repeatedly sexually abused by the brother of his step-father. (See Section III on Social History).

Robert joined the Army at the age of seventeen. He served honorably for three years in West Germany. After he returned to the United States, and was posted to Fort Hood Texas, his drug and alcohol addictions and his mental illnesses caught up with him. After heavy drinking, fighting, and multiple suicide attempts, Robert was honorably discharged from the Army in 1981. (See Section V, on Military History).

Returning again to Cincinnati, Robert was again caught up in the chaos of his family's life. He resumed drinking and doing drugs with his father. He received little treatment or assistance from the VA and he had trouble finding employment. He again attempted suicide. He wrestled with his sexual identity. Distraught and adrift, he ended up at the Subway Bar on February 18, 1985.

The result of the ongoing physical, mental, and sexual abuse that Robert endured as a child is that Robert suffers from Borderline Personality Disorder and Post-Traumatic Stress Disorder. Robert has never received treatment or consistent and appropriate therapy for these debilitating conditions. The severe psychological problems combined with his emerging concerns about his own sexual identity explain not only his bizarre actions on February 18, 1985, but also his sometimes violent behavior on death row. (See Section IV, Mental Health History).

Despite his background, and despite his mental illnesses, Robert works to improve himself in prison. He has developed his musical and artistic talents and shares those with others. Robert often plays his instruments at religious services on death row. He has sought answers to his life and his problems through a wide range of religious prayers and spiritual readings. He has multiple spiritual advisers who pray with him and are convinced of the sincerity of his beliefs. Robert likewise maintains a close and meaningful relationship with many members of his family who support him and count him as part of their lives today.

Robert takes full responsibility for killing David Self and is deeply remorseful for his actions. He discusses his remorse with family members and his spiritual

advisers. Robert is likewise contrite and remorseful about his sometimes violent behavior on death row. (See Section VI, Spirituality and Remorse).

In making this request for clemency, it is important to clarify that Robert admits that he is guilty of murdering David Self and that he accepts responsibility for what he has done. (See Written Statement of Robert Van Hook, Section I of this Application).

This clemency request is not intended to minimize Robert'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 Robert's traumatic childhood, where he suffered physical, mental, and sexual abuse at the hands of his parents and other adults, and the resulting mental illnesses that have gone untreated, is not an attempt to shirk responsibility or place blame elsewhere. It is an attempt to explain his troubling actions both on the night of February 18, 1985, and while on death row. 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 Governors have similarly

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

recognized that childhood trauma and abuse can mitigate against a sentence of death.²

Robert's service to his country is likewise a factor to be in determining the appropriateness of a sentence of death to be considered in support of clemency.³ Robert's untreated mental illnesses provide a mitigating factor to be considered in favor of clemency as well as providing an explanation for his behavior. And finally, Robert's spirituality and remorse for his actions provide another factor to be considered in favor of clemency.

² *In Re: Joseph Murphy*, September 23, 2011.

³ *Porter v. McCollum*, 558 U.S. 30 (2009).

Statement for Clemency

Robert J. VanHook

To the Honorable Board Members and Governor Kasich, I, Robert J. Van Hook, now present my cause and request for consideration with the hope of receiving mercy and to be granted clemency.

First, I would like to begin by stating how very sorry I am for the crimes I committed against David Self. Not only am I sorry for committing these crimes, but also for causing such unbearable grief, pain and suffering to the family of David Self. I pray that someday they may find in their hearts, the mercy and compassion to forgive me. If not, then I accept their desire not to do so.

Second, to my own family, who have offered their unconditional love and support throughout my long incarceration, I am truly sorry for the great amount of embarrassment and looming shame that I've brought to bear upon their good names.

I am very grateful and offer my sincere thanks to not just my family, but also to the friends, clergy, and lawyers who have worked so hard to help me make this presentation. They have been a great inspiration to me to keep faith and hope alive and they have believed in me. I am very sorry if I have let them down in any way by my failure to control my anger and my sometimes bad behavior while incarcerated.

To the board members, I apologize to you and all of the judges who have had to devote their time to this case over the years. I would also like to say that these people mentioned above, have taught me that by making bad choices, I not only cause harm to others but to myself. When I make bad choices, I realize now that I am not taking into consideration the feelings of those who are trying to help me and I am disrespecting them. Also, I am disrespecting the staff and administration of the institution by not obeying the rules and orders, and putting their lives and the security and operation of the institution at risk. I also offer my apologies to them, as well.

I hereby vow, with disciplined resolve, to make better choices and to work hard for change and to use all the resources available to me, and to seek help from staff and mental health services making a bad decisions that may jeopardize the safety and operations of any institution in which I am incarcerated.

I would like the board members to consider my background and chaotic family life as a reason to consider clemency. My lawyers will explain in more detail the problems I grew up with. My parents fought a lot with each other and punished us kids often severely and with little or no reason. After they divorced when I was five or six, I alternated living with each of them and occasionally with my aunt and uncle – which was always the best times. On top of that, my mother and father both moved a lot. I was always transferring schools. I was always the new kid at school – the one who was picked on and bullied. Because I moved so much I never did well in school and never finished high school. Instead I joined the Army when I was 17.

I would also like the board members to consider my family's longstanding tradition and history of military service to our great nation, as well as my own military service. My paternal grandfather fought and served in WWII in the Pacific theater of operations with the 1st Marine Division. His son, my father, served in Korea with the 3rd Marine Division in defense of United Nations positions. My father's brother served in the U.S. Army in the early 1960's with one deployment to West Germany.

On my mother's side of the family, my second great grandfather served with the Union Forces as a General Escort in a Kentucky volunteer cavalry regiment that fought in several major battles in the Civil War. My grandfather served with a MP Army cavalry unit in the 1920's. My only two maternal uncles both served in the Marines and Army during the Vietnam War. One uncle had a son who served in the Gulf War and was a career Marine. The other uncle had a grandson who was wounded by a landmine in Afghanistan while serving with the 82nd Airborne Division of the U.S.Army. I have one nephew who served in both the Marines and Army and was wounded by the concussion from an

RPG in Iraq. He, as well as my cousin's son, are both now on permanent disability as a result of the wounds they received in combat.

There are many others on both sides of my family tree who I could list who answered the call of their country and tradition.

As for my own service, I always wanted to be an "Army Man." I convinced my father to approve me joining the Army shortly after I turned 17. I served proudly and honorably four and a half years with the U.S. Army, with one extended three year tour in West Germany. I had wanted to go to Airborne training but instead was sent to West Germany where I served as a radio operator. The United States maintained a large presence in West Germany during the Cold War. While in West Germany, I re-enlisted for a full six year term.

After three years in West Germany I was deployed to Fort Hood, Texas. The morale was very low at Fort Hood and there was a lot of drugs and alcohol. I had entered the Army with a substance abuse problem, and at Fort Hood I fell back into those bad habits. These substance abuse problems led to me being asked to leave the Army, shortly after I was promoted to the rank of E-5 Sergeant.

I was given an Honorable Discharge, but I was devastated to leave the Army. I left the Army feeling like I had been let down and just kicked to the curb. The Army was the highlight of my life. If I could, I would go back in the Army and do it again with what I know now.

I am very proud of my family's history of service to our country over several generations and of my own service. I hope that the Board will also consider this tradition of service to be of significance in making your decisions.

When I left the Army I had no place to go but back to the chaotic family life that I had left in Cincinnati. I had a hard time finding a job and I had a hard time finding my way. I tried to get help with the VA, but they did not have much in the way of

programs. I again started drinking and hanging out in bars. I had no direction and kept getting in fights and legal problems.

I would now like to address my prison record which is admittedly pretty bad. I hope you will consider my own recollections about some of the things that have influenced my behavior on death row.

When I came to death row in 1985, I was very naïve about things. Although I had spent a few short stints in county jails and the workhouse, those places were nothing compared to what I was walking into, especially so because of the sensational media coverage of my crimes involving the murder of a young gay man.

Almost as soon as I stepped onto death row at Lucasville, I could sense things were very different. The quietness was very eerie and I felt very alone and scared. No more than a day passed when I smelled a foul stench. It smelled like an open sewer, and then there was some commotion on the other side of the block. I didn't have the slightest notion what was going on until one of the guards told me somebody had been "bombed out" with feces. The atmosphere terrified me.

After that, it seemed like there was someone getting stabbed or killed every week in general population. Then three people were moved onto my range. One guy started bullying me to have sex. A third guy came to me and told me that if I paid him, he could make the second guy stop pressing me to have sex. Wherever I turned someone was bullying me or pressuring me to have sex. I didn't know what to do to survive

Next, they moved four guys on my range who had taken over the seg-block in J-1. They had assaulted a guard and some inmates. One of these guys came to my cell and told me he would teach me how to "be a convict." All I had to do was follow him and do what he said. The first thing he told me was that I had only three choices to make if I wanted to survive in prison, I could stand up to the bullies and "booty bandits" and fight. I could submit to them, and become their sex boy, or I could tell on them and be forever labeled a snitch. He told me that because of my crime, I was

already considered a “faggot” and that if I didn’t start fighting I would forever have to deal with being a target for more sexual abuse. Faced with these choices, I tried to survive as best I could. I began to stand up to them all, as my record shows.

No other inmates ever suggested to me that there was a better way like just following the rules, doing the programs, and doing my time. It took me a long time to figure out that that was the better program. I too often let my temper get the better of me and I lashed out whenever I felt unsafe for any reason.

Instead of finding the better path, I became a follower of these guys, some of the most disruptive inmates on death row at that time and since then. Most of the times that I was sent to the hole during the first 12 or so years, I was sent for fighting and destroying property. Then in 1997 when some guys from the Lucasville riot took over the D-4 block in ManCI, they asked me to help them. I made a very bad decision to join them. I participated in the severe beatings of two inmates and helped in blocking the doors.

Before the block was retaken by the guards, we all went to our cells. One of the guys we had beaten was walking around dazed and confused. I helped him get back to his cell. As I was carrying him up the stairs, he said to me “I’m sorry Bulldog.” My heart seemed to drop into my stomach. I felt so terrible for what I had done to this man. So I told him, “Berry you got to stop telling on people.” Then I took him to his cell. Afterwards I went to a cell and locked myself in with two other guys. The window was broken and rounds of tear gas and a can of mace were shot into the block.

The smoke was so thick I could not see my hand at my nose. Panic and fear set in, I crawled to the shower and tried breathing through the drain hole. Then I got on my knees and began to pray to God. I begged the Lord to not let anybody be killed in this mess. At that very instant I felt a warm and fuzzy sensation, as if Jesus was hugging me. I felt peaceful and just knew everything was going to turn out ok. When they extracted us, many inmates were hurt. I hardly had a scratch on me when it was over.

I am telling you this because this is the one incident that influenced me to change my life.

I have tried, since then, to be better myself and to serve God. There's been some fights and struggles along the way, but there's also been some positive things. I've participated in several community service projects including knitting hats for the homeless. I've got my GED and completed many programs that were offered at OSP. I taught myself how to play guitar and keyboard and have been able to share my talents at religious services. I've been active in religious services, I've helped inmates with physical disabilities get around in their daily lives, I taught one inmate how to read, I've completed correspondence courses, and have been influential in getting the mental health group counseling started at CCI.

I've completed correspondence courses with the Ursuline Nuns of Youngstown. I was baptized and confirmed in the Roman Catholic Church and became a Lay Christian Associate to the Trappist Monks in Kentucky. I've also gained approval from the church to study and practice Buddhist meditation and was honored as a Layman in the Tibetan tradition. I have worked hard to maintain a positive attitude and to work with mental health to adjust my meds. I was doing very well and had long periods of time when I didn't receive any conduct reports or get into any altercations.

I attended the first Kairos at CCI for Death Row. It was one of the best spiritual experiences of my entire incarceration and I really felt God's spirit there. It was moving. I felt a great deal of Christian fellowship with other inmates and the Kairos people. I continued to attend all the retreats and some "prayer share" meetings. Also, I performed with my guitar at those meetings and at Kairos reunions. I have also performed with my guitar at the religious services run by Pastor Ernie Sanders and I was asked to perform with the gospel singing group Eden Light when they performed at CCI. I have convinced my sister Trina and my friend Frances May to attend Kairos meetings.

While at OSP, I was permitted to play my guitar and sing a song I had composed when a group from Frances May's church came to sing Christmas Carols. Everyone seemed to like my music.

But there is always the stress of everyday life in prison to deal with and no matter how hard I try or how well I do, something or somebody always comes along and pulls me off my square. Other times it is an event that causes stress, like when McGuire's execution got botched, I got scared and thought something like that might also happen to me since I also had a date. I didn't handle it very well and fell off the wagon, drank about a gallon of hooch, and fought with the guards that night.

Then while I was in SEG for that, another inmate somehow got in my cell and stole my drum pad. When I got out of SEG, I confronted him about it and we had an altercation. After that, I was moved onto another range. Four years went by, I was ticket free, very active in religious services, attended the first Kairos retreat, and often played my guitar in those religious services.

I kept preparing myself to present my case to the clemency board, or to meet God. Time and again, I was ready, but my dates kept getting pushed back. For some, it seemed like a good thing. However for me, the frequently moving dates were very stressful. Having to deal with the everyday prison setting just made the stress worse. After the last set of reprieves, I had to get back on psych meds and requested one-on-one counseling. I also requested group therapy, which we eventually got.

So I was doing pretty well with the medication and counseling and talking to my legal team. But then I was feeling itchy and the doctor took me off the medication Lamictal. I began feeling anxious and paranoid again. Then after experimenting with a couple other psych meds which didn't work or worked too well so that they knocked me out for long periods of time, I was eventually put on a low dose of Vistaril. I couldn't tell anything different, or that it was working at all. But I also seemed to be doing ok.

The next thing that happened is that about a week after I was put on the Vistaril, this inmate shouts at me in front of several

other inmates and asked me when I was going to pay him for his typewriter. I told him I wasn't paying him. I had just come out of my cell to heat up a pizza on break and was going to go back to my cell to watch weekend videos when this happened.

We had had a dispute about this several years earlier. I thought it was over. When DR moved to CCI, prior to moving, this guy asked me to carry his extra manual typewriter down here for him. I noticed that he had broken the type letter bar and tried to repair it by melting plastic on it. I told him then that I really didn't want to carry it in my property because if it got knocked I didn't want to be responsible for it. He said if it got knocked, then I wouldn't be. So when we got here during intake, they took the contraband typewriter because of the letter bar being altered. I told them to throw it away.

So when I first moved onto the range with this guy he asked me where it was at and I told him that they took it as I knew they would. So he said "oh well." After being on the same range with this bully for four years, all of a sudden he is trying to bully me into paying him for that old contraband typewriter.

After we had words, I just sat at the table waiting to go back to my cell on the next round. I thought it was over, but then this dude goes down to my cell and starts pacing back and forth stalking me in front of my cell while acting like he was talking on the phone. So I got up, went down to my cell, and he said to me "you disrespected me." Well I told him "no, you disrespected me." I wasn't in any mood to stand there and argue with this guy, especially when just a few months prior to this he had flashed a shank at another inmate he was trying to scare. That inmate got moved off the range. He got in a fight with another inmate in order to get moved away from this bully.

I felt like I couldn't just stand there and give him a chance to stab me first, so I pulled my shiv out and shanked him and the shiv broke and we started fighting hand to hand. When the guards broke us up they asked me what happened. When my unit manager, case manager, and sergeant asked me what happened, I told them the whole story and truth of the matter.

I know it's going to be hard for anybody to believe me if I say this sort of thing will never happen again. But you have to try and understand all the stress death row inmates are under. We don't have all the opportunities general population has, we don't have educational, vocational, and the many other types of programs they have. We are confined around the same inmates year after year, decade after decade with little to do with our time and under a great amount of stress with our appeals and execution dates.

I don't know why this guy chose to mess with me that day, but I just wish he hadn't and I'm deeply regretting it now.

I'm a good person. I've really changed a lot since the old days and tried to do my best these last 20 years or so, but you can see how volatile it is in here and how just the slightest thing can cause a person to make a bad choice.

I promise, if this Board and the Governor give me a chance, that I will do everything I possibly can to make better choices. If released to general population, I would hope to be housed with other veterans and have access to the many more programs and opportunities available. I know I can be a productive and model inmate. So I'm begging, please give me that chance.

Thank you for your time and consideration.



Robert J. Van Hook 186-347



Date

II. HISTORY OF LEGAL PROCEEDINGS

A. Introduction.

The constitutional flaws in the prosecution of Robert Van Hook have resulted in a tumultuous legal history in the courts. Two justices of the Supreme Court of Ohio dissented from the decision affirming his conviction and sentence of death. On two different occasions, Robert's conviction or death sentence were vacated, modified and remanded for new proceedings by the federal courts. The United States Court of Appeals for the Sixth Circuit sitting *en banc* reversed a previous ruling by a three judge panel that Robert was entitled to a new trial by a slim 8-7 majority. *Van Hook v. Anderson*, 488 F.3d 411 (6th Cir. 2007).

Following a remand to the original three judge panel to address the remaining issues, the three judge panel ordered a new sentencing hearing based on a different constitutional error. *Van Hook v. Anderson*, 535 F.3d 458 (6th Cir. 2008). This decision was ultimately reversed by the United States Supreme Court in a *per curiam* opinion. *Bobby v. Van Hook*, 550 U.S. 4 (2009).

Eleven individual state and federal judges believed the legal proceedings in Robert's trial were infected with constitutional errors sufficient to require a new trial or a new sentencing hearing. These repeated reversals and strong dissents merit recognition of the problems that impacted Robert's trial – even if ultimately they did not constitutionally require a new trial or a new sentencing hearing.

B. *Edwards v. Arizona* Violation.

Two justices of the Supreme Court of Ohio as well as the original three judge panel of the Sixth Circuit Court of Appeals recognized that law enforcement officials failed to honor Robert's request to speak with an attorney before being interrogated.

Here, Robert was advised of his *Miranda* rights by a Florida detective after he was arrested and taken into custody at a Florida jail. When advised of his rights Robert requested to speak to an attorney before answering additional questions. The Florida detective properly ceased all questioning.

Subsequently, a detective from Cincinnati arrived and explained the extradition procedure to Robert. Robert still had not been provided an attorney to consult with. The Cincinnati detective went on to explain that he had a lot to talk about with Robert. He told Robert that he had been in touch with Robert's mother. At that point Robert told the detective that he had spoken with his mother and she told him to tell the truth. Robert then made a statement in which he confessed to killing David Self. Despite Robert's request to speak with an attorney, no attorney was provided, and then the detective from Cincinnati re-initiated questioning without any request to do so from Robert.

Once a suspect such as Robert invokes his right to consult an attorney, the Constitution prohibits such repeated attempts to question a suspect without the suspect asking to re-initiate the contact. This second round of questioning constitutes a violation of Robert's right to remain silent and to consult an attorney

before submitting to questioning under *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981).

The original three judge panel of the Sixth Circuit concluded that *Edwards* “established a bright-line rule that once a suspect is in custody and invokes the right to counsel, law enforcement may not further interrogate him until counsel has been made available or unless the suspect initiates further conversations or exchanges with the police.” *Van Hook v. Anderson* 444 F.3d 830, 833 (6th Cir. 2006), vacated and reh’g granted by *en banc* court. (State's Clemency Materials Judicial Decisions, p. 162). The Supreme Court has broadly defined interrogation as any exchange between police and a suspect in custody reasonably likely to elicit an incriminating response. *Rhode Island v. Innis*, 446 U.S. 291, 301 n. 7, 302, n. 8, (1980).

1. Supreme Court of Ohio.

A majority of the Supreme Court of Ohio concluded that “the record demonstrates that [Van Hook] himself reinitiated his own interrogation through a third party.” *State v. Van Hook*, 39 Ohio St.3d 256, 259 (1988). (State's Clemency Materials, Judicial Decisions, p. 50). The majority concluded that the police contact with Robert’s mother properly relayed Robert’s desire to talk to the police even though Robert had not asked his mother to relay any request to again talk to the police without an attorney. The majority concluded that Robert’s subsequent statement was not obtained in violation of *Edwards*. *Id.* at 260. (*Id.*)

Justices Craig Wright and Herb Brown dissented. Laying out the testimony of Detective Davis verbatim, Justice Wright demonstrated that there was no

evidence in the record indicating that Robert told his mother that he wanted to talk to the police without consulting an attorney or that he asked his mother to relay that information to the Cincinnati police. Therefore, there was no evidence in the record that Robert had reinitiated contact with the police through his mother or anyone else. *Id.* at 266. The dissent found the only issues in dispute were whether Robert (a) initiated further discussions with the police, and (b) knowingly and intelligently waived his right to consult with an attorney before being interrogated that he had previously invoked. *Id.* at 268. (State's Clemency Materials, Judicial Decisions - Page 61-65).

Recognizing that an accused could reinitiate contact with the police through a third party, the dissent found the record “simply does not reflect that [Robert] did so.” *Id.* at 268. Cincinnati Police Detective Davis testified that neither the defendant nor anyone else called him to say that the defendant wanted to initiate further discussion. Thus, when Davis stated that he and Robert “had a lot to talk about” he initiated a generalized discussion about the investigation” with Robert in violation of *Oregon v. Bradshaw*, 462 U.S. 1039, 1045-46 (1983). Davis then followed his comment with his statement that he had been in touch with Robert’s mother. Robert did not initiate the discussion.

2. Sixth Circuit Court of Appeals – Panel.

The original panel of three judges of the Sixth Circuit Court of Appeals agreed with the state court dissent that there had been an *Edwards* violation. The panel reversed the district court opinion that had agreed with the majority of the Supreme Court of Ohio in concluding that there had been no *Edwards* violation,

albeit for a different reason than the dissenting Ohio justices. *Van Hook v. Anderson*, 444 F.3d at 836. (State's Clemency Materials, Judicial Decisions, p. 164). The panel unanimously concluded that the police could not reinitiate a conversation with an accused who had requested to consult with an attorney based on information provided by a third party. Under *Edwards*, the panel found that no one but the suspect himself could reinitiate the conversation. *Id.* The panel concluded that the *Edwards* rule was meant to protect against the inherently compelling pressures of custodial interrogation by creating a presumption against any subsequent waiver of the right to counsel at the behest of the authorities, citing *Arizona v. Roberson*, 448 U.S. 675, 685-86 (1988).

Because Detective Davis told Robert that he, Davis, had spoken with Robert's mother and they needed to talk, Davis had initiated the conversation. Accordingly, the statements should have been suppressed. The panel found that Van Hook's confession was not harmless noting that a confession can be "the most probative and damaging evidence that can be admitted against [a defendant]." *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991).

3. Sixth Circuit Court of Appeals – *En Banc*.

The state appealed the panel decision to the *en banc* Court of Appeals. In a narrow 8-7 decision, the *en banc* Court reversed the panel decision - agreeing with the district court that a third party could reinitiate interrogation on behalf of a suspect and therefore concluding that Robert's statements to the police were not obtained in violation of *Edwards* and therefore no subject to suppression. *Van Hook v. Anderson*, 488 F.3d 411, 423 (6th Cir. 2007) (State's Clemency Materials, Judicial

Decisions, p. 167). The *en banc* majority held that Robert had initiated further discussions with the Cincinnati police through his mother, and accordingly his statement was admissible. *Id.* at 426.

4. Sixth Circuit Court of Appeals – *En Banc* – Dissent.

Seven of the fifteen judges sitting *en banc* dissented from the majority in a forceful opinion explaining why only a suspect or his attorney may initiate discussions with the police once a suspect has invoked his right to counsel. *Id.* at 429-37. (State's Clemency Materials, Judicial Decisions, pp. 180-86). The dissent stressed long standing case law concerning the ease with which third party communications could be misinterpreted or by the police eager to question a suspect, as well as recognizing the pressures on a suspect surrounded by correctional officers eager to reinitiate discussions. The dissent again stressed the need for continued adherence to the bright line rule of *Edwards*. The dissent also concluded – as had the dissent in the Supreme Court of Ohio - that even if third parties are permitted to reinitiate discussions with the police, the record here did not establish that Robert did so through his mother. *Id.* at 436-37.

Judge Cole's primary dissenting opinion was joined by Judges Merritt, Martin, Daughtrey, Moore, Clay and Gilman. Judge Merritt also wrote a second dissenting opinion that was joined by Judges Martin, Daughtrey, Moore, Cole and Clay joining. (State's Clemency Materials, Judicial Decisions, pp. 186-89). Finally, Judge Martin wrote his own dissent as well. (State's Clemency Materials, Judicial Decisions, p. 189). Clearly, there were strong opinions on these issues. But for one

additional vote from the *en banc* court, Robert would have received a new trial where his statements to the police would have been properly suppressed.

C. Penalty Phase – Denial of Effective Assistance of Counsel.

1. Sixth Circuit Court of Appeals – Panel.

After the *en banc* court vacated the panel opinion and affirmed the district court's denial of the habeas petition on the *Edwards* issue, the case was returned to the original three judge panel to analyze and rule on the remaining grounds for relief. Upon remand, the panel concluded that Robert had been denied the effective assistance of counsel at the penalty phase because trial counsel failed to fully investigate and present all available mitigating factors, failed to secure an independent mental health expert to testify that the crime was the product of a mental disease, and mistakenly introduced and failed to object to proscribed evidence that was clearly damaging to Robert's case. *Van Hook v. Anderson*, 535 F.3d 458, 461 (6th Cir. 2008). (State's Clemency Materials, Judicial Decisions, p. 191). Accordingly, the panel reversed the district court and ordered the court to issue a writ unless the State conducted a new penalty phase. In its analysis on these issues, the panel relied on the American Bar Association *Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* (2003).

The State filed another Petition for Rehearing *En Banc* which was subsequently granted. Before the rehearing *en banc*, the panel suggested they would amend the opinion and the case was referred back to the original panel for amendment. The panel subsequently issued a new opinion, still reversing the district court and requiring a new penalty phase, but finding only one ground of

ineffective assistance of counsel: counsel’s failure to fully investigate and present all available mitigating evidence. *Van Hook v. Anderson*, 560 F.3d 523 (6th Cir. 2009), *rev’d Bobby v. Van Hook*, 558 U.S. 4 (2009). (State's Clemency Materials, Judicial Decisions, p. 200). This opinion relied on the 2003 ABA *Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* as establishing the “prevailing professional norms” for determining whether counsel’s performance at the penalty phase had been deficient.

The panel concluded that Robert’s trial attorneys “uncovered a little information about his traumatic childhood experience in their last-minute investigation *but many of the most important details were not discovered and therefore were never presented to the sentencer.*” *Id.* at 528 (emphasis added). The facts that were not investigated or presented included the fact that Robert witnessed his father attempt to kill his mother several times, that his mother was committed to a psychiatric hospital when Robert was between four and five years of age, and that Robert was repeatedly beaten by his parents. The panel also noted that trial counsel failed to interview a step-sister, paternal uncle, two of his paternal aunts, his maternal uncle and the psychiatrist that treated his mother. The panel found this deficit performance to be prejudicial because the three-judge panel that heard Robert’s case was prevented “from learning fully about the two statutory mitigating factors that were the strongest in his case – his traumatic family background and his mental illness.” *Id.* at 529.

2. Supreme Court of the United States.

The State then appealed to the Supreme Court of the United States, asking the Court to reverse because the Sixth Circuit had relied too heavily on the 2003 *ABA Guidelines* instead of the *ABA Guidelines* in effect at the time of trial in 1985. The Court, based on the Petition for Certiorari, Response, and Reply, without full briefing, issued a *per curiam* opinion reversing the panel opinion and remanding the case to the Court of Appeals. The Court concluded in its *per curiam* opinion that trial counsel's investigation was not unreasonable under standards in effect in 1985. *Bobby v. Van Hook*, 558 U.S. 4, 10-12 (2009). (State's Clemency Materials, Judicial Decisions, p. 206). The case was remanded to the Circuit panel to decide the remaining issues.

3. Sixth Circuit Court of Appeals – Panel on Remand.

The panel subsequently concluded that there had been not improper withholding of exculpatory evidence under *Brady v. Maryland*, that Robert had not been denied the effective assistance of counsel, and that Robert had not been denied the effective assistance of appellate counsel. The three judge panel ultimately affirmed the district court's original order denying Robert a writ of habeas corpus and dismissing the petition. *Van Hook v. Bobby*, 661 F. 3d 264 (6th Cir. 2011). (State's Clemency Materials, Judicial Decisions, p. 213). Rehearing *En Banc* was denied. (State's Clemency Materials, Judicial Decisions, p. 218). A Petition for *Certiorari* in the Supreme Court of the United States was denied. (State's Clemency Materials, Judicial Decisions, p. 219).

D. Conclusion.

Although the Supreme Court of the United States concluded that the 2003 *ABA Guidelines* were not applicable to a case tried in 1985, it is important to note how sophisticated capital cases have become and how much more is required of trial counsel in capital cases now than was required at the time of Robert's trial. The development of the 2003 *ABA Guidelines* in conjunction with the development of increased responsibilities of trial counsel in a capital case today make clear that much more investigation and presentation of mitigating evidence would have been required if Robert's case was tried today. This is a fact that the Parole Board can and should consider in making its recommendation.

Although Robert's legal case eventually ended without Robert being granted a new trial or a new sentencing hearing, several legal issues troubled multiple state and federal judges. Both the state and federal courts clearly struggled with these constitutional issues. Even though the courts ultimately denied Robert a new trial or a new sentencing hearing, these issues bear thoughtful consideration by this Board and the Governor as to whether Robert Van Hook is deserving of clemency. This was a close case on the facts and on the law. Nine reviewing state and federal judges found errors of constitutional magnitude. That those opinions did not, at the end of the day, prevail does not minimize the concerns of those judges and should concern the Board and the Governor.

III. SOCIAL HISTORY - ROBERT VAN HOOK⁴

A. Robert “Bobby” Van Hook Was Raised in Chaos.

From the time of his birth until his arrest Robert Van Hook lived in an environment that can only be described as chaos. Violence and substance abuse permeated his family life throughout his childhood and adolescence. Even though Robert was periodically given brief opportunities to live with relatives and escape the chaos, one or the other of his parents always dragged him back to live with them and into the chaos that surrounded their lives. Given the chaos that dominated his childhood and adolescence, there should be no surprise that by the time Robert reached adulthood, he was permanently damaged.

B. Robert’s Mother and Father Were Remarkably Flawed as Parents.

Despite the old adage about not getting to choose one’s parents, if Robert could have known the havoc they would wreak on his development, he certainly would not have chosen Joyce Salyers and Robert Van Hook, Sr., despite his professed love for his parents as an adult.

⁴ The information contained in this narrative comes from multiple sources, including some information presented at trial, some information presented in Van Hook’s state post-conviction proceedings, and a great deal of information obtained through multiple interviews with family members and friends over the course of several years. Some of the narrative is included in the video testimony that will be presented at the clemency hearing. However, because of obvious time restraints at the hearing, not all the information contained in this narrative will appear in the video. Where possible, citations are provided to the trial transcript and to exhibits attached to this Application.

1. Robert's Mother Suffered from Significant Mental Health Issues.

Robert's mother Joyce was one of seven children born to Johnson and Lucille Salyers. Joyce became deeply troubled and depressed when her father became ill and died when she was only fifteen. She became "wild." She developed "bad" friends and frequently stayed out late. Her mother could not control her.

Four of Joyce's paternal uncles and both of her maternal uncles were alcoholics. Joyce's abuse of alcohol and prescription drugs caused her mother at one time to have Joyce hospitalized in Rollman's Psychiatric Hospital in Cincinnati. Joyce continued under psychiatric care throughout much Robert's childhood. (Trial Tr. 621). She was histrionic with depressive features. She verbalized suicidal feelings. Her psychiatrist considered hospitalizing her again for her own protection when Robert was about ten.

2. Joyce Suffered from Serious Addictions Throughout Her Life.

According to all of her family, Joyce had a drug abuse problem. Her job as a "mixologist" - bar tender - only exacerbated her alcohol abuse and dependence. (Trial Tr. 620). While married to Robert's father, Robert, Sr., the two of them regularly took "speed" to get high. Joyce was constantly concerned about her weight and so constantly took diet pills. Joyce also went on drunken binges that lasted two or more weeks.

Keith Johnson, Joyce's nephew and Robert's cousin, remembers "Joyce was always drunk . . . I don't remember her sober a lot. Um, she was a violent drunk. She was a mean drunk." Joyce "had a bar in their basement. And they had every

liquor you could think of down there. She kept, I forget what they are called, but it's a glass container that you would pour alcohol into and it would have a spout and they always had liquor in that but there's tons of pictures of her she's drinking out of that or somebody is pouring that into her mouth.”

Keith remembers that Joyce “had the reputation in Cincinnati that guys were afraid of her, she would drag guys out of the bars and beat them up. When she was her ‘bar technician’ as she would say, and the guys would get to acting up she would literally pull the guys out of the bar and beat the fire out of them. Guys were afraid of Joyce in Cincinnati.” Once when Joyce’s sister Marilyn was giving Joyce a ride home from work, Joyce “slugged” her in her stomach for no apparent reason.

Randy Johnson, another nephew of Joyce’s and Robert’s cousin, remembers that “Joyce was a loose cannon. You never know what was going to come out of her mouth or what she was going to say or how she was going to say anything or if she was sober. Or sometimes you wonder if she was even mentally competent at that time.”

Joyce died suffering from her addictions. In the last twelve years of her life she had a Tupperware cake container that she kept full of prescription drugs, according to Trina. She “doctor shopped” to keep the container full of prescription drugs. According to Keith Johnson, if the doctors refused to give her prescriptions for pills, “she would throw a fit and . . . would find another doctor and she would shop until she found the doctor to give her the pills she wanted.”. She would mix

the prescription drugs with Benadryl. Joyce died in February 2015. “Joyce loved her pills till the day she died.”

3. Joyce Entered One Abusive Relationship After Another.

Given her significant mental health issues and substance abuse and dependence, throughout her life, Joyce entered into multiple relationships with men – many of whom physically and sexually abused her. None of the relationships were long lasting. She married four times. (Trial Tr. 618).

Joyce’s first child, Trina Berends, Robert’s half-sister, was the product of a date rape by Harold Hoeweller when Joyce was only seventeen. Joyce wanted to have an abortion, but her mother forced her to marry Harold. Harold Hoeweller was mean and hateful to Joyce although he later became a responsible father to Trina and Tana. He repeatedly abused Joyce. The marriage lasted long enough for Harold to again rape Joyce which led to the birth of their second child, Tana, ten months after the birth of Trina. Tana was born two months early because of a beating Hoeweller gave Joyce. Joyce attempted to overdose on aspirin to escape the marriage.

After Joyce and Harold Hoeweller separated, Joyce began drinking heavily. She frequently called friends and relatives at all hours of the night to talk and cuss at them when she became annoyed.

On February 14, 1959, Joyce married Robert’s father, Robert Van Hook, Sr. Joyce had met Robert, Sr. in a nightclub. After the two of them began dating, Joyce and Robert, Sr. began to party even more. She went on drinking sprees that often

lasted for a week or more. She apparently continued to drink heavily even while she was pregnant with Robert.

When Joyce and Robert, Sr. drank heavily, they fought with each other. Joyce had a terrible temper and was quick to fight. Both Joyce and Robert, Sr. were extremely jealous of each other. Robert, Sr. once threw Joyce down a set of steps. On a different occasion, he hit her so hard and so often that she had black eyes and bruises. He pulled out her hair. Both Robert, Sr. and Joyce had affairs with others while they were married. They frequently separated and then got back together. Joyce eventually divorced Robert, Sr. in 1970 when Robert was only ten. While their separation should have lessened the daily violence and led to better times for Robert, it did not.

Joyce had been actively seeing other men – even while still married to Robert, Sr. She began seeing Clark Luttrell in 1971 or 1972. She married Clark Luttrell in 1975, divorced him in February 1977, and remarried him in 1978. Luttrell was a neo-Nazi who collected Nazi memorabilia and had a German shepherd named “Adolph.” Clark was vocally homophobic even though he had a brother, Donald Luttrell, who was openly gay. Donald Luttrell “befriended” Robert when Robert was a young teenager, providing Robert with nice clothes and other presents. Joyce remained married to Clark Luttrell until after Robert went to prison. She later divorced Clark Luttrell and was married once more before her death in 2015.

4. Robert Van Hook, Sr. also Suffered from Significant Mental Health Issues.

a. Robert, Sr. Was Raised by an Abusive Father.

Robert, Sr.'s father was all controlling and forcefully dominated Robert, Sr.'s mother. There was little communication between the parents and no outward signs of affection. Robert, Sr. had three younger siblings.

While Robert, Sr.'s father was employed driving a truck for a moving company, he drank heavily and had a mistress while on the road. When Robert, Sr. was still young, his father ruptured a disc in his back, became disabled, and became a severe alcoholic. He began most days by drinking at a local bar early in the morning. Friends and relatives often came to visit and drank heavily to the point of intoxication. When Robert, Sr.'s parents went to a bar, they took their children with them. Robert, Sr.'s own father became confrontational and mean and verbally abusive to family members when he was drinking.

Robert, Sr.'s parents were also very strict. The children were required to come straight home from school, stay at home, and were not allowed to socialize with friends. All of the children were terrified of their father because he was so confrontational, mean, and abusive when he was drinking – which was most of the time.

Robert, Sr. suffered regular beatings at the hands of his father including beatings with a razor strop. Robert, Sr. had scars on his back from the “discipline” he received as a child. Robert, Sr.'s siblings did not receive the same type of discipline. Eventually Robert, Sr. got in trouble, quit school and joined the Marines.

5. Robert, Sr., like His Own Father, Had a Substance Abuse Problem.

Robert, Sr. also had a substance abuse problem. His job as a musician playing in bars offered him countless opportunities to drink and drink to excess. He drank constantly while performing at the bars on a nightly basis. When drinking and playing with his band, Robert, Sr. frequently got in barroom fights which often led to his being arrested. One time he was arrested for firing a pistol in a bar. (Trial Tr. 592). He often went on seven day drunk binges where he did not come home to Joyce and the kids. While married to Joyce, Robert, Sr. had numerous affairs with other women. One time he came home from a week long binge with lipstick on his collar and a pair of women's panties in his pocket.

Robert, Sr. eventually died of cirrhosis of the liver.

6. Robert, Sr., also like His Own Father, Was a Violent Person.

Robert, Sr. was very jealous of Joyce and all the women with whom he had relations whether he was married to them or not. Whenever women came to see him playing, he insisted that they sit at the bar, watch him, and not talk to or socialize with anyone else.

Robert, Sr.'s first marriage was as violent as his later marriage to Joyce became. At one point, Robert, Sr. and his first wife got into a fight while they were drinking in a bar. When the owner intervened to try to break up the physical fight, Robert also punched the owner. The marriage lasted only a couple of years because of the violence and because neither Robert, Sr. nor his wife were faithful to each other.

When separated from Robert, Sr., Joyce at one point lived with her brother Jay Salyers. Robert, Sr. became angry and came to the apartment and started to throw things and tear up the apartment. Robert, Sr. also tried to start a fight with Joyce's brother – all because he was jealous of Joyce.

During his marriage to Joyce, Robert, Sr. had an affair with the woman that would become his third wife. However, after divorcing Joyce and marrying his third wife, he had another affair with Joyce.

Aside from playing music in bars at night, Robert, Sr. had a hard time maintaining steady employment – in part because he played in the bars until early in the morning five or six nights a week. At times, he drove a taxicab during the day. Later he worked in the construction and concrete business. (Trial Tr. at 586).

7. Other Family Members Suffered from Mental Illnesses.

Joyce and Robert, Sr. were not the only members of Robert's family who suffered from mental illnesses. There was a long line of relatives with mental illness. Four of Joyce's paternal uncles and both of her maternal uncles were alcoholics. One of Joyce's great uncles committed suicide because of depression. Joyce's Aunt Carolyn also suffered from acute depression.

C. Robert's Childhood Was Marked by Chaos in Much the Same Way His Parents' Childhoods Had Been.

Given the history of mental illness on both sides of his family, the likelihood of Robert inheriting some form of mental illness was very strong and that likelihood was compounded by a childhood dominated by verbal, mental, physical and sexual abuse.

On January 14, 1960, Robert Van Hook Jr. ("Robert") was born to Robert, Sr. and Joyce in Cincinnati Ohio. (Trial Tr. 618). Joyce was twenty-three years of age. This was her third child. (Trial Tr. 618).

The marriage was not stable, they "just went back and forth, moved back and forth together and bust up, move back, and bust up." (Trial Tr. 593). When the two were not together, Joyce depended on public assistance and survived with the help of her mother and sister, Marilyn Johnson, who gave her and the children food and often a place to live. During the ten years that they were married and lived together off and on, Joyce and Robert, Sr. lived in forty-three different apartments.

When Robert was only three or four, when sleeping with his parents, he woke up and witnessed his parents engaged in aggressive sexual intercourse. This was the first of many times that Robert observed his parents having sex. His father told him to look the other way when he caught Robert watching. Sex between Joyce and Robert, Sr. often involved violence or occurred after Robert, Sr. had beaten Joyce. (Declaration of Tana Waller, Exhibit 1).

1. Joyce and Robert, Sr. Verbally Abused Their Children.

According to Robert's half-sister Trina, life in the Van Hook home resembled life in the barracks at a military boot camp because of the almost constant yelling and cursing. Robert, Sr. was verbally and emotionally abusive to the children. He constantly called Robert and his two step-daughters stupid. He constantly yelled that the children annoyed him. He was hardly ever in a good mood and was easily angered; the smallest action on the part of the children would trigger angry outbursts - especially when he had been drinking - which was most of the time.

When not yelling at Robert, Sr., Joyce also yelled at the children and treated them harshly. Robert's cousin Randy Johnson recognized the negative impact that Joyce had on Robert's life. According to Randy, Joyce was very self-centered; it was all about Joyce all that time. Joyce did not spend a lot of time with Robert when he was a child.

Both Robert, Sr. and Joyce were openly racist and homophobic. (Trial Tr. 604). They both frequently expressed these views to their children and anyone else who would listen. According to Keith Johnson, Joyce and others in her family often called Robert a "faggot" which always made Robert mad.

The verbal abuse in the household was not limited to the children. The parents constantly accused each other of not being faithful – with good reason. They were both terribly jealous of each other which only got worse when one or both of them were intoxicated. These accusations of infidelity often lead to heated arguments and violent physical confrontations. (Declaration of Tana Waller, Exhibit 1).

2. Physical Violence was Common in the Van Hook Home.

a. Joyce and Robert, Sr. Physically Abused Each Other.

Joyce and Robert, Sr.'s arguments frequently escalated into violent physical fights between the two. Robert, Sr. testified that "we was [sic] always fighting." (Trial Tr. 588, 641). They threw heavy objects including lamps and ashtrays at each other. When he was drunk, Robert, Sr. frequently tried to kill Joyce by strangling her and holding a knife to her throat. Robert, Trina and Tana witnessed many of these physical fights between Robert, Sr. and Joyce first-hand which

terrified them. (Trial Tr. 588). Marilyn, Joyce's sister, recalled one night in particular when Robert, Sr. came home at about three or four in the morning intoxicated, had another man with him, and they proceeded to get in a brawl with each other while both were naked. Robert was awake and terrified by the crashing of bodies and breaking of bottles. (Trial Tr. 641-42).

Trina and Tana also recall Robert, Sr. pulling a knife on their mother more than once. Tana remembers another terrifying incident where she saw "Bob Sr. hold a meat cleaver up against my mother's throat while threatening to kill her. Bob Sr. was screaming and threatening mom. Bob Sr. shoved her onto a couch and threatened to cut her throat with the meat cleaver. The neighbors heard the fight and eventually called the police who subdued Bob Sr. We were all scared to death." (Declaration of Tana Waller, ¶ 6, Exhibit 1). According to Trina one other time, Joyce threw a large glass ashtray that struck Robert, Sr. in the head. He pressed charges against her and they went to court. Trina, the oldest of the three children living in the home, often felt that she should call the police about the beatings, but was always too afraid of the punishment she would receive for calling the police.

Tana's bedroom was next to her parents. She has vivid memories of the physical fights between Joyce and Robert, Sr.:

I recall my mother coming home drunk some nights and when Bob Sr. also came home drunk, they would have terrible fights. It was always an unfair battle. I remember the sounds of Bob Sr. hitting my mother and the sound of her being thrown out of the bed onto the bedroom floor. I remember how much this scared all of us.

My bedroom was next to my mother and Bob Sr.'s bedroom. They had to go through my bedroom to get to their bedroom. I could hear Bob Sr. striking my mother. I could hear the sound of his fists hitting her flesh, her crying out, and then the sounds of him having sex with her.

(Declaration of Tana Waller, ¶¶ 7-8, Exhibit 1).

b. Joyce and Robert, Sr. Physically Abused Their Children.

Joyce and Robert, Sr. regularly and often physically disciplined their children – often for no apparent reason. These punishments were often severe and always spur of the moment and spontaneous. The punishments were usually an emotional reaction by Joyce or Robert, Sr. to something the children had done or were perceived to have done.

Marilyn Johnson, Joyce's sister, lived with the Van Hooks while Joyce was pregnant with Robert and after his birth. She described Robert's life as a young child, "[h]e had a bad one, one that kids should never have, babies should never have to go through." (Trial Tr. 641). Both Joyce and Robert, Sr. worked at night – generally in bars. They wanted little to do with Robert or the girls when they got off work. If Robert cried, they whipped him rather than comfort him.

Joyce and Robert, Sr. regularly left the children with Marilyn and Earl Johnson and their family who observed that often all three of the children had bruises.

i. Robert, Sr. Physically Abused the Children.

Robert, Sr. was an alcoholic who was frequently intoxicated at home and around the children. When he was drinking, he was easily annoyed by the children.

He disciplined them by hitting them with an open hand or closed fist, striking them with anything he could get his hands on, or kicking them. The beatings were always spontaneous and always occurred in front of the other children or anyone else who happened to be in the room.

Robert, Sr.'s violent outbursts had a severe traumatic effect on all of the children. According to Trina, one morning when the children were alone watching cartoons and there was no food in the house other than a box of cereal, the children ate the cereal straight from the box. When Robert, Sr. came home, he yelled at Trina, the oldest, for not doing a better job getting breakfast for the other kids. Robert, Sr. was so enraged at the seven-year-old Trina that he beat her with a shoe brush in front of the other children – all for eating cereal out of the box because there was no milk or other food in the house.

Because he was the only boy and the only actual child of Robert, Sr., Robert bore the brunt of Robert, Sr.'s most severe punishments. Robert, Sr. started hitting Robert for punishment when Robert was no more than three. If Robert walked in front of the television that Robert, Sr. was watching, his father smacked him in the head. If Robert, Sr. ordered Robert to get him a drink and Robert did not respond fast enough, Robert, Sr. kicked him, hit him, or smacked him in the face.

When Bobby was only a toddler, two or three years old, we got a monkey as a pet. I remember Bob Sr. holding the monkey while Bobby tried to feed it parts of a banana. Bob Sr. criticized Bobby for doing it wrong and began slapping Bobby's head hard and berating him. I saw Bob Sr. hit Bobby on many occasions with his hand or fist most frequently on the head. He hit Bobby for any reason

and often for trivial things. These were not light taps but hard blows to the head and body.

(Declaration of Tana Waller, ¶ 12, 13, Exhibit 1).

Robert, Sr. frequently asked Robert which parent he loved the most.

Regardless of Robert's answer, Robert, Sr. beat him.

Robert, Sr. was not only extremely violent, he was a bigot and a racist.

Robert, Sr. disowned his daughter from another marriage because she dated an African American man. When Robert got into a fight, with another boy who was African American, Robert, Sr. rewarded him. Robert received praise for acting on his father's racism.

Robert, Sr. also hated homosexuals. He voiced his opinion openly and often: "I don't like fags. I think that their minds are warped." (Trial Tr. 604). According to Trina Berends, Robert sometimes displayed gay tendencies as a child or at least Robert, Sr. interpreted his actions that way. Robert, Sr. punished Robert for displaying any gay tendencies or actions.

Despite being beaten and unfairly punished by his father, Robert always tried to please Robert, Sr. When Robert was being verbally or physically abused by his father, he never showed any emotion. According to Randy Johnson, "He knew that he had to stay rough and tough to live up to his dad's image that he had of his dad. And I guess he seen a lot of fighting between his mom and dad, a few bar fights and stuff like that."

ii. Joyce Physically Abused Their Children.

Joyce also harshly disciplined the children. She used a switch. Joyce enjoyed hitting the children with the switch. According to Trina, she always stood still while her mother hit her with a switch and took the beatings stoically. Robert's other half-sister Tana screamed and hollered when Joyce switched her. Joyce mocked her: "well, have you had enough" or "have you learned your lesson?" When he was switched by Joyce, Robert either jumped and tried to get away or used his hands to shield himself from the blows. Joyce called Robert her "little Indian dancer" because he danced around trying to escape Joyce's beatings. Like Robert, Sr., Joyce spanked Robert more frequently than the girls.

3. Both Joyce and Robert, Sr. Abused Alcohol and Drugs.

Joyce and Robert, Sr. were dependent on drugs and alcohol. They spent a lot of time drinking in bars but also abused alcohol and drugs at home in front of their children. They often "drank up" the rent money which not only caused them to move frequently but also caused the children to go without food and other bare necessities. Both Robert, Sr. and Joyce were heavy drinkers. As Robert, Sr. described the first two years of Robert's life: "I was living with his mother and we drank a lot." (Trial Tr. 587). Their drugs of choice were speed and marijuana. (Trial Tr. 588). The family was frequently evicted because the parents spent the rent money on their drinks and drugs. When things got too bad, Robert and his sisters were sent to stay with relatives – usually Earl and Marilyn Johnson. This continued and became more frequent after Joyce and Robert, Sr. separated.

One of the children's "jobs" around the house was to serve alcohol to their parents. Trina and Robert learned to sip from the drinks as they carried them to their parents or their guests. This started Robert started drinking at a very young age. Even when very young there were times he became drunk from sneaking drinks. Trina and Robert, also at very young ages, began to help themselves to Joyce's pills - including the endless supply of amphetamines that Joyce always kept at hand.

Christmas and other holidays involved the same drunken behavior on the part of Joyce and Robert, Sr. Christmas day usually started well with the children receiving presents and then playing with their new toys. As the day progressed, the parents became more and more intoxicated which in turn resulted in them becoming increasingly annoyed with the children. Eventually the parents sent the children to bed and threatened to throw their Christmas presents into the trash.

On other holidays, the family visits would be brief so Joyce and Robert, Sr. could get away from the relatives and go to bars:

On holidays, my mother and Bob Sr. would take us to the homes of relatives. These visits were often brief as my mother and Bob Sr. wanted to and did go drink in taverns. They went to these taverns and left us in the back seat of the car to fend for themselves. Sometimes we would go into the bars to find our parents. I recall playing games on machines in the bars while waiting for my parents to take us home.

(Declaration of Tana Waller, ¶ 11, Exhibit 1).

Robert, Sr. once threw Trina's birthday cake against the wall when he came home drunk and was annoyed by the birthday party decorations. He then made Trina clean up the mess he had made, terrifying the children:

I remember Trina's birthday in 1963. My mother had decorated the house and made a large birthday cake for Trina. We had all gone to bed when Bob Sr. came home drunk. He was in a rage and tore up the house, ripped the shutters from the windows, and smashed Trina's birthday cake against a wall. He ordered Trina and me to clean up the mess. We were crying and scared to death. When we went back to the bedroom I planned to escape through a bedroom window to get away from Bob Sr.

(Declaration of Tana Waller, ¶ 9, Exhibit 1).

a. Joyce's Substance Abuse.

Joyce worked as a "mixologist." She sometimes left Robert with a baby sitter for up to two to three days. During these absences, she went on binges which left her in a state of confusion. (Trial Tr. 621). One time Joyce brought Robert to the bar where Robert, Sr. was playing, and yelled at Robert, Sr.: "Here, motherfucker, this is your child too," and exited the bar leaving a very young and scared Robert behind with Robert, Sr.

Throughout the time Joyce and Robert, Sr. lived together, Joyce's drinking grew worse and worse. She often threw up from drinking too much and Trina would have to clean up the vomit. It was not uncommon for Joyce to wake with a headache from over-indulging the previous day, start drinking early in the day and throughout the day, and be intoxicated by dinner time. If Robert, Sr. was present for dinner or in the evening – which was rare – they would get into violent arguments and physical fights because they were both drunk.

Ironically, despite Joyce's abuse and neglect of Robert as a young child, Robert was always loyal and supportive of his mother as he grew older, according to Keith Johnson: "anything Joyce wanted, Little Bobby was there. Little Bobby would do anything for Joyce." According to Robert's friend Dr. Hoy: "He was very fond of his family, his mother first of all." (Trial Tr. 657).

b. Robert, Sr.'s Substance Abuse.

Because of the constant arguing and physical fights, Joyce and Robert, Sr. repeatedly separated when Robert was very young – ultimately divorcing when Robert was only ten. (Trial Tr. 588). During these separations and after the divorce, Robert often lived with his father. Robert, Sr. left Robert on his own during the day when he was hungover from the previous night or when he was driving a cab during the day. Robert, Sr. related that as often as five or six nights a week, "I'd come home drunk from playing music all night, lay in bed with a hangover every day, didn't give him [Robert] much attention." (Trial Tr. 589). Two or three nights a week, when Robert, Sr. could not find a babysitter for Robert, he took Robert with him to whatever bar he was playing in that night. Robert stayed at the bar until Robert, Sr. finished playing – often not until three to four o'clock in the morning. (Trial Tr. 590). Robert slept in the back room of the bar or in a booth. (Trial Tr. 590).

c. Robert, Sr. Introduced Robert to Alcohol and Drugs.

By Robert, Sr.'s own account, at the age of "around 12, 11," he began sharing his alcohol and drugs with Robert – including speed. He gave his son amphetamines "maybe once a week or something like that, on weekends." (Trial Tr.

591). At the age of eleven, the two started getting “falling down drunk” together. (Trial Tr. 592).

As Tana Waller has observed: “Bobby’s early exposure to drugs and alcohol by his father is also particularly troubling. Bobby did not know another path. Bobby became an addict because he was raised by addicts.” (Declaration of Tana Waller, ¶ 23, Exhibit 1).

Robert, Sr. did instill in young Robert his own love of music. According to all family members, despite his other shortcomings, Robert, Sr. was an accomplished piano player and singer. Robert got his first drum set at the age of two or three. By the age of fifteen, Robert had begun to play in his father’s band in bars around Cincinnati. Robert, Sr. played the piano and sang. Robert played the drums. At one time, the band with Robert, Sr. and Robert recorded a record. The band often played in the bars until two or three o’clock in the morning. These long evenings playing in bars included Robert drinking and doing drugs with his father even though Robert should have but often did not go to school the next day. Not surprisingly, Robert “didn’t have too good of grades.” (Trial Tr. 595-96).

D. Robert was “Groomed” by His Step-Father’s Gay Brother.

After divorcing Robert, Sr. Joyce entered into a relationship with Clark Luttrell - a professed neo-Nazi. Joyce’s relationship with Clark began around 1972 when Robert was only about twelve. Clark, like Robert’s own father, was aggressively homophobic. Clark, like Robert’s own father, also physically abused

Joyce. Clark was jealous of the attention that Joyce gave Robert. Clark was also violent. Robert was afraid of him.

Clark's younger brother, Donald Luttrell, was openly gay. Clark constantly ridiculed Donald and tried to discipline him for his sexual orientation even though Donald was in his thirties. Donald was permitted to watch Robert when he was twelve or thirteen when Joyce and Clark were out of the home. Donald bought Robert clothes, shoes, and other gifts. When Robert was fourteen or fifteen and had returned from Florida (see below) Donald – who was in his thirties – began to have sex with Robert. Robert sometimes skipped school to be with Donald. According to Keith Johnson, one night when they were staying at Donald's he heard Donald and Robert having sex in the bedroom. Trina became so upset about the sexual relations between Donald and Robert that she attempted to alert the police.

E. As a Young Teenager, Robert Lived on the Streets of Florida.

When Robert was fourteen, he and his father moved to Florida. They stayed with a woman friend of his father's. At some point, Robert, Sr. "got drunk and come in [sic] and accused him (Robert) of going to bed with" Robert, Sr.'s girlfriend who they were living with. Robert, Sr. physically assaulted Robert. The next day, Robert ran away, apparently preferring to live on the streets than suffer more beatings from his father. His father did not search for him other than contacting the Key West police who claimed not to have seen him. (Trial Tr. 597-98).

Robert remained on his own on the streets for about a year. He lived in Key West, Fort Lauderdale, New Orleans, and Nashville, Tennessee. He eventually

sought out his half-sister Tana in Arkansas before returning to his mother in Cincinnati. While on the streets, in order to get money, Robert panhandled, performed with his guitar and sang on the streets and at the piers in Key West. Robert, eventually learned to have sex with gay men for money.

F. Robert's Sisters, Trina and Tana, Escaped from the Chaos that Surrounded Joyce's Life.

Trina started trying to get away from her mother at young as the age of four. She stayed with her grandmother until she was about six when Joyce convinced her to return - promising that the home life would be better because she was now married to Robert, Sr. While things were better for a while, according to Trina, "the same old patterns returned. The punishments, the drug and alcohol abuse . . . violence between the adults fighting and just -- it was almost always the same."

Trina remained with Joyce and Robert, Sr. until she was nine years of age when she was hospitalized from a ruptured appendix. The hospital staff could not find Joyce and would not treat her without her mother's consent. Trina almost died while waiting for Joyce to appear at the hospital. Trina stayed in the hospital for a month. When she left the hospital she again resided briefly with her grandmother before returning to live with her mother and Robert, Sr. Conditions eventually got so bad for Trina that she went to live with her biological father in Iowa where she remained until she graduated from high school. She then returned to Cincinnati, married, and started her own family at the age of 18.

Looking back Trina realizes that her grandmother and biological father saved her by providing her with a stable environment - in sharp contrast to the chaos that surrounded life with Joyce and Robert, Sr. Her grandmother loved her unconditionally and provided her a safe and stable home. Her biological father provided a safe and nurturing home for her in her teenage years. Trina also recognized that Robert did not “have that privilege” of living in a stable household and being shown unconditional love. Robert did not have a safe haven to go to. He did not have a loving and stable father to rescue him from the chaos.

Robert’s other half-sister Tana had similar experiences. She also managed to escape the chaos and is now a registered nurse with homes in Oregon and Arkansas. As a small child, Tana had lived some of the time with her father’s parents, the Hoewellers, and at other times with her father Harold Hoeweller. Still, she lived with Joyce and Robert, Sr. for a substantial period of time, which had a traumatic effect on her and makes it difficult to discuss.

Tana and Trina also stayed with the Johnsons at various times both before and after the Johnsons moved to the farm in Morrow. Tana describes her life with the Johnsons and their treatment of her and Trina:

Earl and Marilyn had the biggest hearts. Trina and I were always treated as part of the Johnson family, there was no difference between us and their own children. We were hugged and cuddled by the Johnsons, but hardly ever by my mother and never by Bob, Sr. When we were with the Johnsons, we were always bathed, groomed and clean and never had to worry about meals. We had to cast about for scraps

when living with my mother and Bob, Sr. We always knew we were wanted and what we could do at the Johnsons. They had structure and rules.

(Declaration of Tana Waller, at ¶ 16, Exhibit 1).

In 1968, when Tana was 11, she had had enough of Robert, Sr. and Joyce and simply could not live there anymore. She called her father, Harold Hoeweller, and went to stay with him. Her father always had a home, always had a job, did not drink and was never violent in sharp contrast to Robert, Sr.

Tana also recognized that the influence that Marilyn Johnson and Tana's maternal grandmother had on her: "As a young girl, the influence of my grandmother, Lucille Salyers, was the key factor in me surviving the chaos of my life with my mother and Bob, Sr. and becoming a successful adult. My grandmother and my aunt Marilyn took me to church on a regular basis and I became devout like my grandmother." (Declaration of Tana Waller, ¶ 19, Exhibit 1).

Tana, like Trina, recognized that Robert did not have the same opportunity to benefit from the influence of living with the Johnsons or of escaping the chaos of living with his parents:

I was able to escape to my dad, but Bobby had no dad to escape to. Bob, Sr. was not a good father, not a good husband, and not a good stepfather. He was a truly evil man.

...

Bobby was never loved and nurtured as a child. Had Bobby been loved and nurtured as I was, his life would have been different. But Bobby had no advocates, no social services assistance. Bobby did not have someone

to provide the most basic things, such as meals, a home, and a bed like other children. Bobby is the product of a horrible environment.

(Declaration of Tana Waller, ¶ 22, 24, Exhibit 1).

G. But for His Parents, Robert Could Have Grown Up in a Stable, Loving Household.

When his parents “drank up” the rent money or when they were separated or for many other reasons, Robert and his sisters were usually shipped off to stay with their maternal aunt and uncle, Marilyn and Earl Johnson, and their grandmother, Lucille Salyers, who lived with the Johnsons. The Johnsons were a caring couple. They often took Joyce and her children in as well as members of their church who were experiencing difficult times.

The Johnsons had four children of their own who resided with them, Randy, Sandy, Keith and Tracey. John Baughman, an elementary school teacher at the local school remembered the Johnson children as “very nice kids” from a “very nice family.” He concluded that Marilyn was “a good parent, as far as I could see. Because, based on what I saw of her kids who were great, I had very high regard for her.”

The Johnson home provided an ideal setting for raising children. The Johnsons could have given Robert a great home had Robert been allowed to stay with them. Earl was gainfully employed by Stearns and Foster and later Ford Motor Company and served as an officer of their church.

When Robert was about six, the Johnsons bought a large house on five acres with five bedrooms and farm animals. They always had a spare bedroom

when Robert and or his siblings needed a place to stay. Robert did well with the farm animals especially the horses. According to Earl Johnson, Robert “would spend a lot of time with the horses and he’d take them out for rides and always was outside with these horses.”

1. Joyce and Robert, Sr. Often Left Robert with the Johnsons for Significant Periods.

Because Joyce and Robert, Sr. always worked at night and were often sleeping during the day, Robert was in the care of Marilyn Johnson from a very early age. At one point, when Robert was very young, Joyce picked up Robert, and he got very upset because he did not recognize his mother because he had spent so much time with the Johnsons. (Trial Tr. 645).

Because of the ongoing dysfunction and the ongoing alcohol and drug problems of Joyce and Robert, Sr., Robert continued to spend periods of time staying at the Johnson residence throughout his childhood and early adolescence.

When Marilyn and Earl learned that Joyce was on one of her “drunk rampages,” they went and got Robert and brought him to their farm. Earl Johnson remembers that Joyce “didn’t have time or maybe she didn’t have the money to support Little Bobby, and she would call her sister, Marilyn, up and we would go pick Bobby up and keep him for weeks or days or...”.

Robert first went to stay with the Johnsons when he was only about eighteen months old. Earl remembers “I’ll never forget when we picked Little Bobby up, he was all skin and bone. You know, he just looked like he hadn’t ate

anything for days.” Over the years, Robert stayed with the Johnsons for as long as a few months, up to them two to three times a year. Joyce remembered that when Robert was with the Johnson, she was drinking heavily and she “would [only] see him [Robert] on weekends, you know, or something like that.” (Trial Tr. 622).

Marilyn and Earl repeatedly told Joyce “just let him [Robert] stay here, don’t come get him. Don’t let him go to his dad’s.” However, Joyce ignored their requests. Joyce or Robert, Sr. eventually came out to the farm and took Robert back to live with either Joyce or Robert, Sr. after they separated and divorced. Randy Johnson recalls that Joyce and Robert, Sr. would “pluck Robert up and take him away from us [the Johnsons] and he’d be gone again for a while until they got tired of him or they couldn’t pawn him off on anyone else, then he’d come back to live with us.” When Robert, Sr. came to get Robert, Robert, Sr. was always upset with the Johnsons. (Trial Tr. 646).

After Robert had lived with Robert, Sr. or Joyce for a while, it took the Johnsons a while to “straighten” him out. Robert “was two different boys.” When he returned to the Johnson residence after a stint living with either of his parents, Robert told the Johnsons “[m]y dad said that I don’t have to do anything you tell me to do. You’re just a big phony and you just go to church.” (Trial Tr. 647).

When Robert stayed with the Johnsons, Joyce also resided there on occasion. While the Johnsons did not permit her to drink in the house, the other children remember that Joyce often returned drunk after spending a

night working as a bartender or being out partying. Joyce was so drunk at times, that she ended up rolling down the steps of the Johnson residence and screaming and cussing at everyone on other occasions. Joyce and Marilyn's mother, Lucille Salyers, always tried to calm Joyce. According to Randy Johnson, this would cause Joyce to feel bad for a little while and try to be a mother to Robert, but that would only last for a few days.

2. The Johnsons Treated Robert Like a Son.

During these repeated but generally brief periods when he lived with them, the Johnsons served as Robert's surrogate parents. Marilyn served as Robert's second mother through much of his childhood. (Trial Tr. 640). Earl Johnson reports that even today "Bobby is just like if he's one of my own son." According to Randy Johnson, his parents treated Robert "just like he was one of their own." They tried to teach Robert "respect and how to treat others" in the short times they had him. All of the good influences the Johnsons had on Robert, however, were undone when Robert returned to live with Joyce or Robert, Sr.

According to Randy Johnson, when Robert "would come to visit us, it was always fun. It was like having another family member there." It was "just like he was my brother. At times, we was [sic] probably closer than my brother."

Robert and Keith Johnson also bonded as if they were brothers. Robert taught Keith, who is approximately four years younger, how to ride horses and how to play baseball and other sports. Robert often took the blame for what Keith had done. On one occasion, when they were very young, Keith and Robert

dressed up as girls. The two young boys were severely ridiculed and punished for this unmanly and allegedly homosexual behavior.

According to Keith Johnson, Robert frequently talked to him about the military, “Bobby loved the military.” Robert always wanted to go into the Special Forces.

3. Robert Did Well When He Stayed with the Johnsons.

Marilyn Johnson ran a very tight household. According to all the children, drinking was not permitted in the house. Family members, including Robert and whoever else was staying there, were required to attend church three times a week. Earl was on the finance board and a trustee at the church.

On one extended visit, Robert was enrolled in the local school for part of the school year which was the “longest he was in one school at one time.” (Trial Tr. 624-25). The Johnsons did not receive any negative reports from the school concerning Robert.

Teacher John Baughman coached Robert on the sixth grade basketball team. Coach Baughman remembers Robert “showed skill at the sport. So yes, I was very, very, very pleased. And he was very cooperative, very easy to work with. A nice boy, as far as I could tell.” Robert “enjoyed playing, being with the kids, the other kids on the team.” Robert eventually quit school at the age of sixteen. He was two years behind in the school at the time. (Trial Tr. 626).

When Robert was with the Johnsons, he attended church and sang in the choir which was composed of forty to fifty young persons. He read the Bible and attempted to do the right thing as the Johnsons taught him. However, after

some period of time, he was always drawn back to live in the chaos that surrounded his mother and father. When he went back to live with Joyce or Robert, Sr., he reverted back to the behaviors his parents taught him. When Robert returned to the Johnson residence after a stint with living with either of his parents, he talked about drinking and smoking and the other ongoing dysfunctional behaviors he had reverted to. According to Keith Johnson “And it was like the cycle would start all over again.” This back and forth in living arrangements and Robert improving and reverting went on for years until Robert was in his mid-teenage years.

4. If Joyce and Robert, Sr. Had Agreed, Robert Could Have Remained with the Johnsons for His Entire Childhood.

Earl and Marilyn always wanted to adopt Robert, but Joyce and Robert, Sr. simply would not permit them to adopt Robert. According to Earl Johnson: “his family always seemed like . . . just wanted to come get him you know. And they would take him for a while.”

Had Joyce and Robert, Sr. agreed to let Robert stay, he would most likely have been as successful as the other Johnson children: a) one daughter, Sandy, has multiple college degrees; b) one son, Keith, resides in Las Vegas, buying and selling real estate, is married, and has an adopted son; c) another daughter, Tracey, earned two college degrees, is married to a doctor, and has three children; and, d) and the other son, Randy, is married and owns his own business.

Earl Johnson has observed “my 2 sons and 2 daughters, they did well. And one more wouldn’t have, would have been, wouldn’t been too many.” Randy

Johnson gives his parents credit for his becoming a successful businessman: “I give all my credit for where I am today to my mom and dad and my wife. My mom and dad for all the ethics, good ethics that they gave me back then for how to work and how to stay with it and how they kept me straight, disciplined.” John Baughman, Robert’s elementary school basketball coach, concurred, if Robert “had been able to stay with the Johnsons, he certainly would have had the same kind of upbringing that they [the Johnson children] had. Which was great, a great family.”

Both of Robert’s half-sisters recognize that they managed to escape to stable and nurturing environments with their biological father and that Robert would have had that same opportunity – had he been adopted and raised by the Johnsons:

Bobby loved being with the Johnsons as much as I did. But Bobby was never allowed to stay for very long. Bob, Sr.’s influence drew Bobby away. Marilyn must have told me a dozen times that she should have taken Bob, Sr. to court to get custody of Bobby. I believe that being adopted by the Johnsons would have saved Bobby and would have given him the opportunity that I got by living with my father.

(Declaration of Tana Waller, ¶ 18, Exhibit 1).

H. Robert Joined the Army to Fulfill a Lifelong Dream.⁵

Ever since he was a little boy, Robert had a fascination with the military, which is not surprising given his family’s military history. (See Section IV of this

⁵ The long military tradition of Robert’s family, Robert’s own military history, and his struggles after he was separated from the military are detailed more fully in Section IV of this Application and in the Report of David Ferrier, Exhibit 64 and Mr. Ferrier’s presentation at the Clemency Hearing.

Application, detailing the family's military history and Robert's military service). As a young boy, when he received an allowance he bought toy soldiers and always talked about the Army. The family watched a lot of war movies. He ran around the house pretending that he was a soldier and wore and slept in army outfits. (Trial Tr. 627).

Shortly after his seventeenth birthday, Robert enlisted in the United States Army after obtaining the necessary permission from his father because of his age. (Trial Tr. 602, 627). He was unable to pass the entrance exam for the Marines but was happy to join the Army instead. According to Keith Johnson, Robert just "loved" the military and was "into all of the military stuff." He remained in the service for four years, most of which was spent stationed in West Germany.

Joyce visited Robert in West Germany. Robert and she drank heavily during the visit. Donald Luttrell, his step-father Clark Luttrell's younger brother, also visited him. (Trial Tr. 604, 620). When Robert was returned to duty in the states, he was sent to Fort Hood Texas, instead of being assigned to the Airborne Infantry School as he had requested. He had little to do at Fort Hood and his old dependency on alcohol and drugs escalated. He got into fights. Robert attempted suicide by cutting his wrists at least once.

Robert received an honorable discharge from the military due to his substance abuse and suicide attempts, even though he had been promoted to the rank of sergeant weeks earlier. (Trial Tr. 630). His separation from the Army upset him. He felt abandoned and adrift. He later attempted to reenlist. He was

not allowed to reenlist because he had been convicted of a felony for passing a bad check for one hundred dollars. (Trial Tr. 630).

I. When Robert Left the Military, His Life Took a Turn for the Worse.

Despite being honorably discharged, Robert continued, as he had since a young child, fantasizing about the military. He continued to wear combat fatigues. He socialized with Vietnam veterans. He watched many films involving the Vietnam war.

1. Robert Lacked Stable Relationships.

When he left the military, Robert lived mostly with his mother. (Trial Tr. 605). Joyce's husband, Clark Luttrell, resented Robert living with them. Robert also spent time with his father, his grandmother, and Donald Luttrell. At one point Clark Luttrell forced Robert to move out. Robert could not live with his father because the woman his father "was married to was jealous of him [Robert]. She did want me to have nothing to do with him [Robert], and she was jealous of his mother." (Trial Tr. 606).

For a short while, Robert again stayed with the Johnsons. There he stayed sober, and drug-free. Earl Johnson gave Robert some money to perform tasks around the farm. Robert also spent at least some time with Donald Luttrell.

In 1982, Robert married Beth Smith. They got their own apartment but were soon evicted because of misbehavior while drunk. Robert and Beth moved to Texas where Beth, with Robert's knowledge, prostituted herself. Three months later

Robert returned to Ohio. In 1984, Robert and Beth officially divorced although they had not been living together since they returned from Texas.

During this time, Robert developed a relationship with Dr. Robert Hoy who he met at Alcoholics Anonymous. Dr. Hoy became his sponsor in AA. They apparently developed a grandfather, grandson relationship. (Trial Tr. 655). Dr. Hoy took Robert to movies and shows and exposed Robert to other cultural events. (Trial Tr. 654-55, 657-58).

Despite the positive influence of Dr. Hoy, Robert's substance abuse got worse. He spent too much time with his father drinking in bars. Robert and his father were both arrested after they got in a bar fight. (Trial Tr. 610). Robert was sentenced to jail and mandatory treatment at the VA. Robert's inpatient stay at the VA for substance dependence lasted only two weeks.

2. Robert Could Not Find Employment.

Robert returned from the service in 1981 during a severe recession in the American economy. Robert had great difficulty finding employment. According to his cousin Randy Johnson: "he really didn't have any good chances . . . it was early 80's and work back then was slow and we were in a recession at that time and he couldn't find work. There wasn't anyone out there to help you find work then, because everyone else was looking for work." Robert, Sr. found him a job driving a concrete mixer where he did well until he got laid off due to lack of work.

According to Randy Johnson, Robert called him a few times looking for work. Randy told Robert that he might be able to get a job where he (Randy) worked but nothing ever worked out. "I told him to come there and I'd say something to my

boss and unfortunately for Bobby, he had the wrong boss that was there whenever he came there, there was two partners. My father-in-law was one partner and his other partner was a mean, unhappy person and he kind of ran Bobby off without giving Bobby a chance.”

3. Robert Repeatedly Tried to Commit Suicide.

On Christmas Eve in 1981, Robert, while at his grandmother’s house, got very drunk with some of his relatives who then left him alone. Later that evening, Robert called his father crying and wanting to see him. Robert, Sr. agreed to see him, but got in a fight with his wife over agreeing to see Robert, which caused him to renege on his promise to see Robert. Later, when his maternal grandmother returned home, she found Robert in the basement barking like a dog. (Trial Tr. 607). He was crawling on the basement floor and yelling, “I gotta get these boys out of the rain and back to the camp.” He had scattered his clothes and duffle bag in the back yard. The following day Robert tried to kill himself by severely cutting his arm. His self-inflicted injury penetrated the muscle under the skin and required over one hundred stiches. (Trial Tr. 607).

Robert attempted to commit suicide at least two other times. (Trial Tr. 635). The second time was four months after the Christmas attempt, this time inflicting the injury on his other arm. (Trial Tr. 636). Another time he tried to walk through plate glass windows at Central Station. (Trial Tr. 636). Two weeks before this incident, Robert overdosed on pain medication that Donald Luttrell had been prescribed for his cancer treatments. Donald kept Robert moving and awake all night so that Robert would not have to seek medical treatment.

J. Even Though They Both Escaped from the Chaos, Robert's Half-Sisters Trina Berends and Tana Waller Still Suffer from the Abuse that Joyce and Robert, Sr. Inflicted.

The abuse – physical and mental – that Trina and Tana suffered as children living for several years under the same chaotic conditions that Robert suffered throughout his childhood and adolescence had a long-term effect on them.

According to Trina, she suffers from addiction and depression; has been very angry throughout her life as a result of her dysfunctional childhood; has been diagnosed with paranoid schizophrenia; and has been on medications for her mental illnesses since 1994.

At one point Trina had a mental breakdown and was ready to commit suicide until a social worker intervened and got her to go the hospital where she was put in the mental health ward where she was diagnosed with paranoid schizophrenia. She has now participated in therapy for thirty-one years.

Trina's son has also suffered from addiction. Trina now recognizes her substance abuse is just like her mother's and Robert, Sr.'s substance abuse.

Trina views her mental health issues as being very similar to Robert's substance abuse issues. They both have anxiety issues. She sees Robert as suffering “from immense depression” and sees “a lot of [her] depression in him.”

Tana Waller, while also escaping the chaos and leading a successful life, has suffered from depression and anxiety and is unable to discuss much of what she suffered through while living with Robert, Sr.

Keith Johnson, Robert's cousin, has faced his own mental health issues. He suffered from an addiction to pills. "You know I fight addiction problems . . . to this day. I done my share of drugs, I wasn't perfect . . . mean you never really overcome addictions...um...I've had a lot of help to get me where I'm at today. . . . Some people are stronger and they don't have that addictive personality. Our family does. You know there is a saying in the Salyers [his mother's] side of the family and its 'you got to beat this demon' - and this demon is drugs, alcohol and sex in our family. I'm just grateful that I was able to get away from it."

K. Conclusion.

The chaos that permeated the childhood and adolescence of Robert Van Hook had profound negative effects on his development as an adult, as is detailed in other sections of this Application. The truly tragic aspect of Robert's childhood and adolescence, however, is that he was frequently exposed to a normal nurturing family life when he was sent to live with the Johnsons. When exposed to this loving and nurturing family, Robert did well. He attended church. He attended school. He played basketball. He learned how to behave and interact with others in a socially acceptable manner. He was not exposed to either drugs or alcohol. He was not abused verbally, physically, or sexually. Had he been left with the Johnsons permanently, Robert Van Hook would have had a much better opportunity to have become a productive adult.

Instead of being left to grow and develop in this healthy environment, his parents would not permit the Johnsons to adopt him and dragged him back to the

chaos of their lives. When with either of his parents or both, Robert was subjected to verbal, physical, and sexual abuse. He did not attend church. He did not attend school regularly. He was exposed to alcohol and drugs and eventually encouraged to abuse both alcohol and drugs by his parents. He spent his nights in bars until early in the morning while his father played in a band. He fought with his father. He ran away and lived on the streets and had sex with men to get money to live on.

Robert was exposed to elements that are recognized by experts and responsible parents to have extreme negative effects on developing children. They had predictably negative effects on Robert. Those negative effects were compounded for Robert because he was also regularly exposed to a normal nurturing family life with the Johnsons. Robert grew to know what a loving family was like and what a normal life was like. Yet every time he settled in at the Johnsons, one or the other of his parents drag him back into the chaos that surrounded the lives of both of his parents. This back and forth had its own negative effects and compounded the negative effects of living in chaos. For Robert Van Hook, the combination of nurturing versus chaos resulted in Robert having little to no chance to develop into a responsible adult.

IV. MENTAL HEALTH HISTORY AND DIAGNOSES

A direct line can be drawn from Robert's mental health history, including the trauma he endured as a child, first as a victim of physical, mental and sexual abuse by his parents and later as a victim of sexual abuse by other adults, to the tragic murder of David Self. In addition to explaining the murder, Robert's sexual victimization as a child, combined with the other severe childhood trauma he endured and the negative attitudes toward gay men imbued in him by his homophobic father and step-father, also explains a great deal of his negative behavior in prison. Records of Robert's mental health history and diagnoses, when considered cumulatively in conjunction with Dr. Mendel's recent evaluation, demonstrate that Robert has many of the classic characteristics of male survivors of child sexual abuse and trauma. Some of the earlier reports recognize the trauma arising from the physical violence that Robert was exposed to as a child, but they fail to fully address Robert's background as a victim of child sexual abuse, especially at the hands of males. Today, the psychological literature and experts such as Dr. Mendel have a much deeper understanding of the long-term effects of childhood sexual abuse, and that understanding is important to have a more accurate picture of Robert and the murder of David Self.

A. Robert's Mental Health History and Diagnoses Prior to Incarceration.

Even before he was incarcerated for killing David Self, Robert had a lengthy history of mental health problems that, in retrospect with a full picture of his childhood, might be expected with a child so victimized at a young age. While he

was in the military, Robert tried to commit suicide on at least two occasions. Months after he separated from the Army, Robert made his third suicide attempt by severely cutting his left forearm on Christmas Eve 1981. (See University of Cincinnati Hospital Admission Record, Dec. 25, 1981, Exhibit 4). The medical staff treating Robert's arm injury ordered a psychiatry consult as well. (*Id.*) Although that psychiatry consult ultimately concluded that Robert was no longer suicidal and could be discharged when medically cleared, the report noted two previous suicide attempts and a history of alcohol and drug abuse. (*Id.*) The report also recommended that Robert receive mental health therapy after his discharge. (*Id.*)

Throughout this period between the suicide attempt at the end of 1981 and his fourth suicide attempt in 1984 and arrest in early 1985, Robert was arrested several times, typically involving intoxication. In some of those instances, a psychiatric referral was made due to Robert's history of attempted suicide and self-destructive behavior involving drugs and alcohol abuse. Those psychiatric referrals involved surface-level evaluations, conducted primarily to assess the level of suicide risk that Robert presented while in custody.

1. Dr. Teresito Alquizola, M.D., Forensic Psychiatrist.

On December 30, 1983, after an arrest for Assault and Resisting Arrest arising from a fight at a bar where Robert had been drinking all day, he was evaluated by Dr. Teresito Alquizola, of the Hamilton County Court Psychiatric Center. The evaluation was ordered to determine the advisability of treatment and his potential as a danger to himself and others.

Dr. Alquizola detailed some of the physical abuse and childhood trauma that Robert had endured, including that Robert had been drinking alcohol since about age 10. (*See* Court Report, Dr. Teresito Alquizola, Dec. 30, 1983, at 1, Exhibit 5). He also noted that Robert’s alcohol and drug consumption escalated around age thirteen, and that Robert ran away from home at age 15 and “worked as a male prostitute in Florida and New Orleans” for a time (*id.* at 1-2), during which time Robert’s drug and alcohol use “remarkably [sic] increased” again (*id.*). Dr. Alquizola also reported each of the three prior suicide attempts that Robert had made at that time. (*Id.* at 2). In addition to that history, Dr. Alquizola referenced that his parents being alcoholics who divorced when Robert was nine, and that Robert had a very itinerant childhood bouncing between various caretakers. (*Id.*)

Dr. Alquizola did not offer any psychiatric diagnosis or note any of the child sexual abuse that Robert endured. He included a single reference to Robert having worked as a male prostitute for a period of time when he was a teenager, but there was no significance given to that, nor any characterization of that as child sexual abuse. But he did make a significant observation: that Robert, due to his traumatic childhood, had “learned a pattern of eliciting caring from people around him by drastic acts,” such as the repeated suicide attempts and excessive drinking of alcohol. (*Id.* at p. 2–3). Dr. Alquizola recommended that Robert be entered into an “in-patient substance abuse treatment program such as available at the Veterans Administration Hospital,” along with additional individual counseling “such as is available at the VA Mental Health Service.” (*Id.*) Dr. Alquizola further observed

that Robert “has a number of characteriological [sic] issues which need to be sorted out with a therapist.” (*Id.* at 2–3). Dr. Alquizola’s assessment reported that Robert’s childhood alcohol and drug consumption escalated around the age 13 and that it escalated still more during the time Robert was surviving alone on the streets in Florida and New Orleans. It appears, however, that Dr. Alquizola did not attempt to make any connection between the childhood physical, emotional, and sexual trauma and child sexual abuse that Robert suffered from early childhood onward and the self-medication with alcohol and drugs, or the cry for help seen in the self-mutilation from the attempted suicides.

On February 12, 1984, Robert was again admitted to the hospital following a fourth suicide attempt, in which he cut his wrist with a piece of metal. (*See* University of Cincinnati Hospital Emergency Record, Feb. 12, 1984, Exhibit 6). Robert had just been arrested on February 11, 1984 for an incident in which he had trespassed into a University of Cincinnati residence hall while under the influence of alcohol and fought with and attempted to flee from security officers. Once again, the treating medical provider ordered a psychiatric referral. (*Id.*) In that report, the treating psychiatrist noted that Robert experienced feelings of depression, worthlessness, and being a burden to his family, especially when he was in legal trouble such as this incident. (*Id.*)

B. Robert's Mental Health History and Diagnoses Produced in Connection with Trial and His Plea of Not-Guilty-By-Reason-of-Insanity.

Robert was arrested on April 1, 1985 and charged with the February 18, 1985 murder of David Self. Following his arrest, Robert was placed under stringent suicide watch.

1. Dr. Hayes, Ph.D.

On or about April 8, 1985, he was examined by a Dr. "B. Hayes, Ph.D." [first name unknown], discussing the results of an MMPI profile conducted on Robert. (See Psychiatric Progress Notes of B. Hayes, 4/8/1985, Exhibit 7). Dr. Hayes suggested that the data from Robert's background suggested a diagnosis of "borderline personality disorder and dysthymic disorder." (*Id.*) (Dysthymic disorder is defined as a "prominent and persistent disturbance of mood" and characterized by "a serious state of chronic depression lasting for at least two years."), Dr. Hayes did not provide a written report regarding Robert's mental illness.

2. Dr. Teresito Alquizola, M.D., Forensic Psychiatrist.

Approximately two months later, on May 29, 1985, Dr. Alquizola, from the Hamilton County Court Psychiatric Center, conducted a second evaluation of Robert, "with regards to his mental state at the time of the alleged offenses pursuant to Ohio Revised Code, Section 2945.39." (See Report of Dr. Alquizola, June 10, 1985, at 1, Exhibit 8). In the formal evaluation report dated June 10, 1985, Dr. Alquizola did not document any mental health diagnosis. Instead, he recounted again some portions of Robert's traumatic childhood history and his history of extensive drug and alcohol abuse beginning at an early age. (See *id.* at 2–

3). He also acknowledged that there was possibly a “momentary fantasy of being ‘in a combat zone’” during the crime. (*Id.* at 3). But Dr. Alquizola ultimately concluded that Robert did not suffer from any “mental disease or defect to impair his thinking as to render him unable to distinguish the rightness and wrongness of his action.” (*Id.* at 3-4).

Because his evaluation was directed solely at the question of Robert’s sanity at the time of the killing, Dr. Alquizola did not revisit Robert’s history of severe childhood trauma for mitigation purposes, or provide any additional analysis to the effects of that trauma. And he did not address Robert’s child sexual abuse history at all, nor draw any connection between that history of child sexual abuse and the crime itself. Rather, Dr. Alquizola seemingly accepted at face value Robert’s story about having previously developed a practice of “rolling gay men” and unquestioningly accepted the story that the crime was an outgrowth of that purported pattern of activity.

Dr. Alquizola eventually testified for the prosecution during Robert’s trial, at which time he offered his opinion that Robert was not suffering from a mental disease or defect that impaired his thinking or ability to distinguish right from wrong at the time of the crime. (*See generally*, Trial Tr. 437–50). On cross-examination, Dr. Alquizola testified that Robert had a “character disorder,” rather than a Borderline Personality Disorder diagnosis. (*Id.* at 461–64).

3. Dr. Nancy Schmidtgoessling, Ph.D., Clinical Psychologist.

On June 25, 1985, Dr. Nancy Schmidtgoessling, Ph.D., Clinical Psychologist, also of the Hamilton County Court Psychiatric Center produced a report that, like

Dr. Alquizola's second report, was to evaluate Robert's mental state at the time of the offense for a plea of Not Guilty By Reason of Insanity. (See Report of Dr. Schmidtgoessling, June 25, 1985, at 1, Exhibit 9). Dr. Schmidtgoessling ultimately found that Robert did not suffer from "impairment by mental disease or defect which affected his sense of right or wrong or his ability to refrain." (*Id.* at 6). The report and conclusions were narrowly confined to answer the precise question of whether Robert satisfied the NGRI standard. Nevertheless, the Schmidtgoessling report contained greater details of Robert's mental health and trauma history that demonstrate the connection between the childhood trauma and the killing of David Self.

Dr. Schmidtgoessling's report describes Robert's general demeanor as "very flat" with one notable exception: the "one exception to this [very flat affect] was the marked anxiety observed (averted eye contact, verbal stammering, excessive feet shufflings) when discussing his history of homosexual behavior." (*Id.* at 2). She also recounted that Robert described his experience during the crime as "[i]t was like watching somebody else do it." (*Id.* at 3). The doctor described Robert's exposure to sexual matters at a very young age, including that Robert "was subjected to terrifying instances of observing sexual violence" between his parents, (*id.* at 3), and that Robert engaged in sexual activity from a young age, including with men while he was still a teenager (*id.* at 4). She accepted at face value Robert's boasts of sexual prowess with females. (*Id.* at 4). The report recounted that Robert had experience with "homosexual contact with several men," in which

he described himself as “only a passive participant to oral sex acts” for money. (*Id.*) The report also documented that Robert felt the need to self-medicate with drugs or alcohol before engaging in any homosexual activities (*id.*) without assigning any significance of that revelation. Furthermore, although the report notes Robert’s account of sexual activities with “women” and “men”—that is, with adults—it failed to give much significance to the fact that many of Robert’s sexual experiences with adults—including with adult men—began while he was still a child.

Dr. Schmidtgoessling’s report also includes additional confirmation of the violent chaos in which Robert grew up, surrounded by drugs, alcohol, and domestic violence, including terrifying sexual violence between his parents as Robert lay in the same bed. (*Id.* at 3). She did not, however, properly identify that as covert incestuous child sexual abuse; rather, the focus was on the violence to which Robert was exposed. “Throughout his developmental years,” the report explained, “the family suffered major physical stressors beyond just violence by the father.” (*Id.* at 4). These included inadequate care of Robert and numerous physical moves, which resulted in Robert bouncing back and forth between caregivers. (*Id.*) The report also reiterated Robert’s history of suicide attempts and other self-destructive behavior. (*Id.* at 4-5).

The report concluded by explaining that Robert was “the product of a bizarre, chaotic, violent background in which he observed a variety of antisocial, inadequate and inappropriate behaviors.” (*Id.* at 5). Dr. Schmidtgoessling concluded that Robert “suffers chronic feelings of insecurity, anger, emptiness and unworthiness,”

and that he “has demonstrated many of the behaviors modeled in his environment.” (*Id.*). She also concluded that Robert “has developed interpersonal, emotional, identity and behavioral impairments.” (*Id.*). She further noted in her conclusion that a “unique combination of several factors” was involved in the crime. The factors she identified included: Robert’s excessive substance use; his need for money; his “lack of empathy and his manipulative characteristics” which lead to him “approach[ing] a vulnerable victim”; his “identity disorder” which, in her view, “may have led him to be willing to engage in a bona fide homosexual behavior even as his fear of homosexuality may have caused fear and disgust in him and the assault on the victim”; and his “fantasies of being competent, in command and ‘being a hero.’” (*Id.* at 5–6).

Dr. Schmidtgoessling also produced a “Treatment Addendum” dated the same day as her evaluation report, in which she identified several formal diagnoses alluded to in the report. Those formal diagnoses included “Alcohol dependence, continuous,” “History of heroin abuse,” “Marijuana abuse,” “Amphetamine abuse,” “Conduct disorder, undersocialized, aggressive type,” and “Borderline personality” disorder. (*See* Treatment Addendum of Dr. Schmidtgoessling, July 25, 1985, Exhibit 10).

4. Dr. Emmett Cooper, M.D.

On July 3, 1985, Dr. Emmett G. Cooper produced another evaluation report regarding Robert’s “mental status at the time of” the crime, based on an examination conducted on June 5, 1985. (*See* Report of Dr. Cooper, July 3, 1985, at 1, Exhibit 11). Dr. Cooper’s report recounted primarily a narrative of the events on

the night of the crime, addressing Robert’s background only cursorily as involving “a very chaotic childhood, which has been described in other courts,” and an “extensive psychiatric history including inpatient and outpatient treatment,” as well as “an extensive drug history having abused alcohol, marijuana, PCP, LSD and a variety of pills.” (*Id.* at 2). Dr. Cooper noted the “numerous large scars from self-inflicted wounds” as a result of Robert’s suicide attempts. (*Id.*) He also noted that Robert was “very depressed” and “there was suicidal ideation.” (*Id.*) Dr. Cooper then gave a short summary of his conclusions, including his opinion that Robert “suffers from a borderline personality disorder” and that he believed Robert “experienced a transient drug-induced psychotic episode” at the time of the crime, during which Robert “appears to have been unable to distinguish right from wrong” as a “result of a combination of drugs interacting with a borderline personality structure.” (*Id.*) Dr. Cooper’s report did not contain any mention of Robert’s child sexual abuse victimization, nor did it contain any analysis on whether Robert’s suicidality and his depression were linked to that traumatic background.

C. Robert’s Mental Health History and Diagnoses Produced for His Mitigation Case at Sentencing.

After the three-judge panel found Robert guilty of aggravated murder and a statutory aggravating circumstance on July 24, 1985, other mental health experts provided opinions prepared for mitigation purposes.

1. Dr. Donna Winter, Ph.D.

Dr. Donna E. Winter—a clinical psychologist, not a forensic psychologist—conducted a psychological evaluation of Robert on July 30, 1985. Unlike the

previous evaluations, which were done for the purposes of Robert’s defense of Not Guilty By Reason of Insanity, Dr. Winter examined Robert “with regard to mitigation of the death penalty, pursuant to Ohio Revised Code 2947.06.” (Report of Dr. Winter, at 1, Exhibit 12). Dr. Winter identified “the following characteristics of [Robert’s] current and long-term functioning: Substance abuse, manipulation or consistent use of others for his own ends, intense anger, physically self-damaging acts such as suicidal gestures and self-mutilation, chronic depression and disturbances in identity (e.g., gender identity).” (*Id.* at 1). Dr. Winter concluded that these “characteristics are hallmarks of what is referred to as a borderline personality disorder.” (*Id.* at 1–2). According to Dr. Winter, the “most salient aspect of borderline personality disorder is the presence of intense anger which can be discharged in a diffuse, primitive rage, resulting in bizarre acts of aggression and violence.” (*Id.* at 2). That notion, Dr. Winter suggested, “is consonant with [Robert’s] behavior in the murder of David Self.” (*Id.*)

Dr. Winter further explained her understanding—reflecting the state of mental health care at that time, thirty-plus years ago—that “[d]evelopment of a borderline personality disorder has its roots in events which occur before the age of three.”⁶ (*Id.*) She then provided a lengthy discussion of the trauma to which Robert was exposed before the age of three. That included a “history of chaotic, violent and

⁶ The current version of the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, DSM-5 does not contain this age limitation on the development of Borderline Personality Disorder.

unstable family relationships.” (*Id.*) Dr. Winter described a home situation that Robert was born into that included extreme domestic violence, heavy drug and alcohol use, neglect, and abandonment. She recounted times when Robert, Sr. would grab Robert’s mother “by her hair and swing her around the room, hold her at gun point, hold her at knife point, etc.” (*Id.*) Dr. Winter also referenced, without further elaboration, that Robert “observed sexual violence when both his parents were drunk” because Robert slept in his parents’ bed as a young child. (*Id.*) She further described Robert as having possibly witnessed “other inappropriate sexual activity” involving his mother and other men she dated.

In sum, Dr. Winter described Robert’s early childhood years as “very much like a ‘combat zone.’” (*Id.*) His “early years [were] characterized by a mother who could not offer stability or adequate care-taking because she was either drunk, embroiled in a pathological relationship with her husband or running around with other men. Robert’s father also offered no stability since he was not there regularly and, when he was in the home, he was either drunk or ‘high’ on drugs, behaving in a manner which would be terrifying to a youngster.” (*Id.*) Dr. Winter explained that Robert “is the product of an unstable, non-nurturant, violent, and chaotic background,” whose “early years were characterized by inadequate parental care due to absence and/or unavailability of the mother because of drinking, repeated abandonment by her, exposure to physical and sexual violence, and exposure to substance abuse. (*Id.*) These factors preclude development of a healthy, normal

personality. Instead, [Robert] developed a serious personality disorder, i.e., borderline personality disorder.” (*Id.* at 5).

Dr. Winter ultimately concluded that Robert’s “bizarre and violent attack on David Self was an expression of diffuse, primitive rage. It was a generalized discharge of his own underlying hate and aggression.” (*Id.* at 4). She concluded that what “set off the blitz attack remains unclear,” and that it may have been Robert’s rage at supposedly discovering David Self had no money for Robert to take. (*Id.*) Or, Dr. Winter surmised, it “may be that the client found himself interested in, and tempted to have a sexual relationship with Mr. Self, when the victim approached him” to engage in sexual activity. (*Id.* at 4–5). Under that theory, Dr. Winter opined, the context “may have precipitated a homosexual panic, together with an enraged and murderous response to having these ‘disgraceful’ feelings arise in him.” (*Id.* at 5). Regardless of the motivation, Dr. Winter concluded “that [Robert’s] chronic, intense anger, exhibited previously in assaultive behavior of varying severity, exploded into senseless and bizarre brutality. His murderous acts were carried out while immersed in long-standing fantasies of being a military hero.” (*Id.*)

Dr. Winter’s analysis did not focus on, or even identify by name, the child sexual abuse that Robert endured throughout his childhood in several different forms. Her analysis also did not focus on the trauma Robert suffered after the age of three, consistent with her understanding that the borderline personality disorder that she had identified in Robert was based on her trauma-related analysis of the

first three years of Robert's life. She also did not reference any treatment options. Today, it is apparent that a person with Borderline Personality Disorder can be aided with evidence-based, specialized treatment plans that include Cognitive Behavioral Therapy ("CBT").

Dr. Winter's narrow analysis provided an incomplete psychological picture of Robert. Because she focused on the first three years of Robert's life, Dr. Winter did not connect Robert's extensive use of alcohol and drugs starting around the age of nine to Robert's subsequent brain functioning and the associated behaviors in which Robert has engaged. Dr. Winter did identify Robert's continued, heavy use of drugs and alcohol throughout his teen years and during his time in the military, and Robert's repeated attempts to harm himself. But, Dr. Winter did not attempt to connect that self-medicating, self-destructive behavior to the sexual abuse Robert suffered as a child, or to his mental illness.

Further, Dr. Winter did not consider the full scope of the child sexual abuse to which Robert was subjected. She did not properly identify the covert incestuous child sexual abuse to which Robert was subjected every time he observed his parents engaged in sex acts, whether drunken, violent, or otherwise. Nor did she identify as covert incestuous child sexual abuse the instances on which Robert observed his mother engaged in sexual activities with different partners while separated from Robert's father. Dr. Winter was apparently unaware of and therefore did not consider the overt incestuous child sexual abuse Robert endured from his Uncle Donald Luttrell, when he was a young teenager.

Additionally, Dr. Winter's report did not consider the larger context in which Robert endured child sexual abuse by adult men while living in Florida and New Orleans. Although her report noted Robert worked "as a prostitute to earn money," and that "he felt 'disgraced' by this activity and saw himself as an inferior and worthless person" (*id.* at 3–4), Dr. Winter's report did not simultaneously explain that Robert was living on the streets, at the age of fourteen, trying to survive, including by engaging in sexual activities with adult men. He could not legally consent to being sold for sex with adults, whether men or women, but he was forced by his circumstances to endure it nonetheless.

D. Robert's Mental Health History and Diagnoses Produced During Post-Conviction Proceedings.

1. Dr. James Eisenberg, Ph.D.

Dr. James Eisenberg, a forensic psychologist with extensive forensic experience and the Court Psychologist for the Lake County Court of Common Pleas, examined Robert on September 29, 1989, and produced a sworn affidavit dated December 19, 1989, which recounted his assessment and findings. (Affidavit of Dr. James Eisenberg, ¶ 4, Exhibit 13). Dr. Eisenberg's examination and evaluation of Robert included administering some psychological tests and consideration of other psychological testing done around the time of trial in 1985. (*Id.* at ¶ 15). He also reviewed the social history materials prepared by two mitigation specialists, which included interviews with family members, other relatives, and friends. (*Id.*)

Dr. Eisenberg's affidavit recounted some of the severe physical abuse Robert suffered or witnessed from birth; the sexual violence to which Robert was exposed;

and the pervasive drug and alcohol abuse displayed by and encouraged by his parents. (*Id.* at ¶ 18). The affidavit discussed an “atmosphere of violence, alcohol, drugs, and infidelity,” which made it “no wonder that young Robert grew up with overwhelming feelings of sexual identity confusion, anger, ambivalence, and fear.” (*Id.*) The affidavit also specifically noted that Robert’s father modeled behavior focused on drug- and alcohol-fueled violence; Robert began drinking alcohol at the age of two, “though not seriously until his father encouraged him to be a drinking companion by age nine,” after which father and son “had a long history . . . of drinking together, going to bars and getting in fights.” (*Id.*) Dr. Eisenberg also placed into context the significance of the family’s physical instability: constantly moving “had a great effect on Robert’s schooling having never attended the same school for more than one year. Therefore, Robert was unable to develop[] normal childhood relationships which are essential building blocks for developing normal adult relationships.” (*Id.*)

In addition to explaining Robert’s history of pervasive childhood trauma, Dr. Eisenberg also examined Robert’s sexual development in more detail than had been done previously. He recounted that Robert’s sexual development “began by the age of five,” and that Robert had early memories of witnessing sexual activities between his mother and various partners including, but not limited to, Robert’s father. (*Id.*) Dr. Eisenberg identified that “Robert was exposed directly to his parents['] sexual conduct having observed the ‘primal scene’ including sexual violence while sleeping in their bed.” (*Id.*) He also explained that Robert had “both heterosexual and

homosexual relationships throughout his adolescent years.” (*Id.*) He noted that Robert’s “first homosexual encounter was at age 14 followed shortly after by a homosexual relationship with his Uncle Donald.” (*Id.*) He further noted that Robert’s homosexual contacts were numerous,” and that they were transactional—“passive experiences in which he would exchange sexual acts for friendship and places to stay.” (*Id.*) Dr. Eisenberg recounted that Robert worked as a gay prostitute but felt “disgraced” by that activity, that he would “roll” gay men for money while under the influence of drugs and alcohol, and that Robert believed himself to be “worthless and inferior when engaging in homosexual behavior.” (*Id.*)

While Dr. Eisenberg properly identified Robert’s exposure to his parents’ sexual activities as “psychological and sexual abuse he suffered from his parents” (*id.*), he did not further elaborate on the significance of that child sexual abuse. Nor did he identify that it was incestuous sexual abuse. He also did not note the instances in which Robert’s father subjected him to covert incestuous sexual abuse by encouraging him to have sex with adult women in Robert, Sr.’s presence. And Dr. Eisenberg did not identify that many, if not all, of Robert’s homosexual activities while he was a minor involved male partners who were adults. Likewise, Dr. Eisenberg did not place any further significance on Robert’s sexual molestation at the hands of his family members, including Uncle Donald; he did not identify the abuse at Donald’s hands for what it was—overt incestuous child sexual abuse at the hands of an older male family member.

Consistent with other evaluations, Dr. Eisenberg concluded that Robert's psychological testing indicated he "continues to have difficulties handling stress and tolerating anxiety," and that "his profile is consistent with individuals diagnosed as borderline personality disorders. He is sensitive, feels easily threatened, and shows continuing signs of sexual identity problems." (*Id.*) Dr. Eisenberg diagnosed Robert as suffering from Ego-dystonic Homosexuality, Alcohol dependence (in remission), Polysubstance abuse (in remission), and Borderline Personality Disorder. (*Id.*) He summarized the previous psychological evaluations of Robert as showing "general agreement" that Robert suffers from Borderline Personality Disorder and from alcohol and drug problems. (*Id.*) Dr. Eisenberg likewise noted that Robert had several features of Borderline Personality Disorder. (*Id.*)

Dr. Eisenberg's evaluation also addressed the significance of his diagnosis of "Ego-dystonic Homosexuality." He described that disorder as one by which a person recognizes his or her homosexuality or being aroused by homosexual activity as unacceptable and undesirable, causing "persistent and marked distress over one's sexual behavior." (*Id.*) Dr. Eisenberg stated that Robert's "ego-dystonic homosexuality is clearly an element of the crime and of his personality development." (*Id.*) He also opined that "Robert's borderline personality disorder, alcohol dependence, drug use, and sexual confusion was a direct result of his chaotic home environment and the psychological and sexual abuse he suffered from his parents. The chaos that he experienced on the outside was internalized in a maze of conflicting emotional and sexual feelings." (*Id.*) "Robert attempted to deny his

homosexual impulses, project blame unto others, and then take on the opposite external affect. Under the influence of drugs and alcohol, his confusion and anger became eroticized during homosexual encounters.” (*Id.*)

Dr. Eisenberg’s focus on “ego-dystonic homosexuality” did not consider the significance of Robert’s childhood sexual molestation at the hands of his parents, his Uncle Donald, and a host of other adults, male and female. And Dr. Eisenberg failed to mention, let alone place any significance, on the fact that Robert’s father and step-father were both extremely and vocally homophobic. Dr. Eisenberg’s evaluation confirmed that Robert had not been drinking “for several months” before that night, but the stress of Clark’s return drove Robert to self-medicate again. (*Id.*)

Dr. Eisenberg summarized his findings and conclusions by explaining that Robert “is the product of an unstable, chaotic, abusive family characterized by little or no nurturing, lack of supervision, repeated exposure as a young child to explicit sexual behavior and substance abuse. He was continually placed in ‘double-bind’ situations in which he was forced to choose between the lesser of two evils—his mother or his father. Whatever he chose, he was beaten anyway.” (*Id.*) Dr. Eisenberg continued: “Given all of the dynamics of his family life, it would not have been possible to develop a healthy, normal personality. In fact, as most of the mental health experts agree, Robert developed a serious personality disorder (Borderline Personality Disorder) and, in my opinion, a serious sexual disorder, ego-dystonic homosexuality. He also has a serious underlying alcohol and drug addiction. He attempted to cope with these problems through a rich fantasy life

involving military themes of violence and aggression and by using alcohol and drugs.” (*Id.*)

Dr. Eisenberg opined that Robert’s “actions at the time of the crime were the result of a culmination of experiences that produced a transient psychotic episode typical of borderline individuals.” (*Id.*) He explained that the “bizarre” violence involved in the crime was the result of “Robert’s borderline personality disorder and resulting ego-dystonic homosexuality. [Robert] experienced a brief psychotic episode induced by feelings of homosexual panic.” (*Id.*) Later, Dr. Eisenberg softened that statement somewhat, concluding that the crime was “a brief psychotic episode accompanied by an uncontrolled rage,” which “may have been caused by homosexual panic combined with the alcohol and drugs.” (*Id.*) The “special forces style murder,” Dr. Eisenberg concluded, “was part of Robert’s overall defense mechanism which includes identification with [the] military, hero figures, and projection,” and the “use of alcohol and drugs would lower his threshold for such aggressive behavior.” (*Id.*) Once again, although Dr. Eisenberg superficially touched on Robert’s background as being exposed to sexual violence and abuse, the full scope and breadth of Robert’s victimization was overlooked and left unconnected to the crime.

E. Robert’s Mental Health History and Diagnoses Produced After Post-Conviction Proceedings.

1. Dr. William W. Gilbert, Ph.D.

On May 31, 1991, Dr. William W. Gilbert, the psychology supervisor at Southern Ohio Correctional Facility, produced a one-page report of his assessment

of Robert's expressed concerns that he was not receiving the mental health services that he needed. Dr. Gilbert reiterated that Robert had previously been diagnosed as suffering from Borderline Personality Disorder and Ego-dystonic Homosexuality. In his report, Dr. Gilbert recounted Robert's concerns that he was feeling "a build-up of anger" and getting into fights with other inmates. (Dr. Gilbert Memorandum, May 31, 1991, at 1, Exhibit 14). Dr. Gilbert also noted that Robert "has had outbursts of acting out behavior throughout his nearly six year stay on death row." (*Id.*) Dr. Gilbert reported that Robert was aware of the diagnostic statements rendered in the past, but that Robert "does not have a clear understanding . . . of the meanings of these terms or the behavioral indications of either the borderline personality or ego-dystonic acts of homosexuality." (*Id.*) Dr. Gilbert's report contained nothing more of substance. And, although it corroborates the struggles that Robert had during his early years on death row, the report did not attempt to make any psychological conclusions, nor did it identify Robert's background of being a victim of child sexual abuse.

2. Dr. Robert L. Smith, Ph.D.

Dr. Robert L. Smith interviewed Robert on September 16, 1993, primarily to conduct a chemical dependency assessment. He administered a few assessment tools that reconfirmed Robert's severe alcohol and drug dependency. For instance, on the Michigan Alcoholism Screening Test (MAST), a score above five is indicative of a diagnosis of alcohol abuse; Robert scored a 41. (*See Report of Dr. Robert L. Smith, at 3, Exhibit 15*). On the Drug Abuse Screening Test (DAST), a score of five is also considered the cut-off for determining alcohol abuse; Robert scored a 22. (*Id.*)

Dr. Smith's report also detailed a long and wide familial history of drug and alcohol use extending back at least two generations on both sides of Robert's family.

The report also contained additional illuminating anecdotes. Dr. Smith recounted the circumstances under which Robert began drinking alcohol at age two. "His father would provide him with alcohol and then laugh as he would become intoxicated. As this pattern continued, [Robert] reportedly learned to sneak drinks from his parents or from their friends." (*Id.* at 3). Dr. Smith's report also relayed the depths of Robert's alcohol use, recounting that he first willingly became intoxicated to the point of blacking out at age eleven and that those substance-fueled blackouts had become simply an accepted part of his everyday life by adulthood. (*Id.* at 4–5). Finally, Dr. Smith's report also recounted Robert's use of amyl nitrate before or during the crime, and he noted that Robert's use of that drug, and other substances, that day would have "significantly influenced" Robert's "behavior and judgment." (*Id.* at 6).

Although it was not the focus of his report, Dr. Smith also noted some other factors that are relevant to an understanding of Robert. Dr. Smith reconfirmed the fact that Robert had slept in his parents' bed as a child, and "regularly observed them engaging in sexual behavior." (*Id.* at 2). Thus, Dr. Smith explained, "he was extremely knowledgeable about sexuality at a young age." (*Id.*) Dr. Smith also noted that Robert, at age 15, "partied together" with his father, which "included engaging in sexual activity with the women they met in the bars" where their band played on the weekends. (*Id.* at 4).

Dr. Smith noted Robert's "frequent bouts of tearfulness" throughout his interview, as well as Robert's struggles with rage, violence, and frequent thoughts of self-mutilation and suicide, symptomology that "was indicative of a borderline personality disorder." (*Id.* at 6–7). Dr. Smith did not, however, correctly identify the sexual behavior by or involving his parents to which Robert was exposed while still a child as covert incestuous child sexual abuse, or attempt to make any connection between that abuse and his assessment of Robert's "tearfulness" and mental health struggles.

3. Dr. Margarette B. Rogler, M.D.

When Robert was incarcerated at Mansfield Correctional Institution, Dr. Margarette B. Rogler examined him and produced a psychiatric evaluation dated January 23, 1996. That evaluation recounted many of the same anecdotes noted in previous evaluations, and included details about Robert having witnessed the gang rape of his mother when he was quite young. (Examination Report of Dr. Rogler, January 23, 1996, at 1, Exhibit 16). Robert also divulged to Dr. Rogler that he remembered feeling "as though he was standing outside his body watching his body commit the" killing of David Self. (*Id.* at 2). Dr. Rogler diagnosed Robert as suffering from Oppositional Defiant Disorder, Poly-Substance Dependence, Alcohol Dependence, Impulse Control Disorder, and Schizo Typal Personality Disorder. There was no discussion in Dr. Rogler's report about Robert's child sexual abuse or its effects, nor any suggestion of the appropriate therapy necessary to treat such abuse (i.e., Trauma-Informed Therapy) or Borderline Personality Disorder that

developed from that abuse (i.e., Cognitive Behavioral Therapy). The recommended treatment plan was only a low dosage of Depakote. (*Id.* at 3).

4. Dr. Martin T. Ryan, M.D.

Dr. Martin Ryan evaluated Robert during his federal habeas corpus proceedings and produced an affidavit dated June 20, 2001. Dr. Ryan explained that the previous reports that characterized Borderline Personality Disorder as “deficiencies of personality,” personality characteristics,” or “personality defects” were misleading. (Affidavit of Martin Ryan, M.D., at ¶ 5.e, Exhibit 17). Dr. Ryan explained that Borderline Personality Disorder is a serious mental illness, not a personality defect or deficiency, nor a “personality characteristic.” (*Id.*) He also noted that all four previous experts agreed that Robert suffers from Borderline Personality Disorder, with “consistent observations that [Robert’s] symptoms of mental disease (namely, his impulsivity in areas that were self-damaging, his pattern of unstable and intense interpersonal relationships, marked sudden shifts of attitude, inappropriate intense anger, disturbance of identity, instability of mood, suicide attempts, and frantic efforts to avoid abandonment) meet and exceed the required criteria for the diagnosis of Borderline Personality Disorder.” (*Id.* at ¶ 10). Dr. Ryan also found support for Dr. Schmidtgoessling’s conclusion that Robert “assaulted David Self as the result of homophobic panic.” (*Id.* at ¶ 6).

Notably, Dr. Ryan’s affidavit did not contain any detailed discussion of Robert’s history of severe childhood trauma, or that he was a victim of extensive and chronic sexual molestation and abuse as a child. And, like all the other reports

discussed here, the affidavit did not contain any discussion of the nexus between those aspects of Robert's background and the killing of David Self.

5. Additional ODRC Mental Health Service Providers.

As referenced in Dr. Gilbert's 1991 memorandum, Robert has received mental health services at times since he arrived on Death Row. But at no point in his life, including his thirty-plus years on Death Row, has Robert ever been able to receive the Trauma-Informed Treatment that is so critical to allow victims of child sexual abuse—especially victims who were abused as boys by men—to articulate their stories aloud and thus begin to heal.

Additionally, whether the treatment that Robert has received while on Death Row has been the type of treatment specific to treat Borderline Personality Disorder has been inconsistent. For a period of time between early 2014 and late 2016, Robert received the behavioral therapy that has proven to be one of the few types of effective treatment for those who suffer from Borderline Personality Disorder, called Cognitive Behavioral Therapy ("CBT"). In particular, behavioral therapy treatment under the direction of Licensed Independent Social Worker Kevin Littler was generally fruitful, at least as to helping Robert's symptomology. Treatment notes portray Robert's ongoing efforts at self-improvement. For CBT to be effective, it must be consistent and the patient must develop a bond of trust with the therapist. The nature of Borderline Personality Disorder is such that those who suffer from it often find it difficult to maintain a comfortable and trusting bond with a therapist. Robert developed such a trusting bond with Littler. (*See, e.g.*, Aug. 26, 2014 Interdisciplinary Progress Note by ODRC CCI Psychiatrist John Davis, noting that

Robert “[s]ays he is better for the fact that Kevin Littler has been working with him.” Exhibit 18).

Littler began working with Robert shortly after a severe instance of Robert becoming suicidal and acting out in the wake of the troubling execution of his good friend Dennis McGuire, who was executed on January 16, 2014. In a March 18, 2014 treatment record, Littler noted that Robert recently had an argument with a friend. (Progress Note, Mar. 18, 2014, Exhibit 19). Approximately one month later, Robert was involved in a fight with inmate Hughbanks. Thereafter, Robert worked closely with Mr. Littler until Littler left CCI in late 2016.

Littler’s records from the start of their work together paint a bleak picture of Robert—*see, e.g.*, May 16, 2014 Interdisciplinary Progress Report, noting Robert’s feelings of hopelessness and depression “especially as his scheduled date for execution draws near,” as well as Robert’s “cycle of anger and worry.” (Interdisciplinary Progress Note, May 16, 2014, Exhibit 20). The records, however, also document the consistent behavioral therapy treatment that Littler provided to Robert after diagnosing him with Borderline Personality Disorder and starting a treatment plan that included Cognitive Behavioral Therapy. The records also document the steady direction of Robert’s improvement over that time.

On July 7, 2014, Littler formally diagnosed Robert as suffering from Borderline Personality Disorder (*see* Mental Health Caseload Classification, July 7, 2014, at 1, Exhibit 21), and prepared a treatment plan specific to that illness (*see* Mental Health Treatment Plan, July 7, 2014, at 1–2, Exhibit 2). In an

accompanying document, Littler explained that the “consistent diagnostic picture” from Robert’s time on death row “is that of Borderline Personality Disorder which includes chronic feelings of emptiness that are manifested in depression.” (Mental Health Status Exam and Summary, July 7, 2014, Exhibit 23). Littler noted that this diagnosis was based on, among other things, Robert’s “historical pattern of relational instability and impulsive behavior,” and his “history of suicidal attempts and ideations,” that were “further complicated by periodic episodes of depression and anxiety.” (*Id.*) Littler noted that “[t]aken as a whole [Robert] needs to be maintained on the Mental Health Case Load despite a recent period of stability.” (*Id.*)

The Mental Health Treatment Plan that Littler prepared on July 7, 2014 outlines the broad strokes of CBT, even though it did not use that acronym. On July 8, 2014, Littler documented that Robert “was able to review his past 2 weeks and reported success in the area of taking his own personal inventory and engaging a stay and think perspective when dealing with others. He reported two situations in which he would have responded with anger and violence but was able to stop and reflect upon what he wanted and how he needed to be in control of himself to control the outcome.” (Treatment Notes, at 1, Exhibit 24). Littler also noted that Robert was “[s]table and progressing,” and that he continued “to encourage his sense of identity and reflection, pro-social skills.” (*Id.*)

On August 19, 2014, Littler reported: “[Robert] reports he is doing well and that he has not had any significant episodes of anxiety or depression. Nor has he

experienced any episodes of significant anger or aggression. He states that he has stayed chiefly to himself and usually only comes out for recreation and visits.” (See Interdisciplinary Progress Notes, Aug. 19, 2014, Exhibit 25). Littler described Robert as being “focused during the session and maintained appropriate eye contact, looking away only to gather his thoughts. Stable at this time.” Littler concluded by stating Robert “was complimented on the progress he has made to which he smiled and expressed his appreciation for the help. We agreed to meet monthly and as needed.” (*Id.*)

On August 26, 2014, Dr. Davis reported that “he [Robert] is better for the fact that Kevin Littler has been working with him.” (See Exhibit 18).

On September 17, 2014, Littler again reported: “Mr. Vanhook reports that he is doing well and that this month has been without incident. At first he attributed this to several inmates being removed from his range. But he was reminded that he has worked hard on self-improvement and that his coping skills have risen to the challenge of the more negative people in his area. He admitted that he continues to use the tools that he learned in previous sessions and that these have helped him. He stated he still does a daily reflection and is generally satisfied with himself. Success was explored with the need to be vigilant in maintain[ing] what he has gained.” (Interdisciplinary Progress Notes, Sept. 17, 2014, Exhibit 26). Littler described Robert’s demeanor as “calm and reflective.” (*Id.*) “There was no indication of acute anxiety or difficulty with emotional control.” (*Id.*) Robert, he noted, “appears to be continuing to progress well and is reaping some of the benefits

of his work. He appears to [be] developing a sense of identity that he can be satisfied with and is goal oriented in his desire to have successes he can present in clemency as well as better coping with his current environment.” (*Id.*) Littler concluded by stating the treatment plan for Robert as follows: “Continue on a monthly basis, and encourage his development of a healthy self-image and use of REBT (Rational Emotive Behavior Therapy) skills.” (*Id.*)

On November 19, 2014, Littler reported: Robert “state[d] he was feeling down due to Christmas season and he just wanted to ‘talk.’ He spoke of the craft projects he was working on for presents, especially one he was making for his priest. He also spoke of preparing music for a coming church service. He expressed some fear that he would not do a good job. He was encouraged to practice and do the best he could. He was assured his best effort would not be rejected.” (Progress Note, Nov. 19, 2014, Exhibit 27).

A few months later, following the death of his mother, Robert had another therapy session with Littler: “Inmate seen at his request. Inmate stated that he had a rough time earlier this month due to the death of his mother. He admitted that he and his mother were not close as he grew older, but felt the loss nonetheless. He also reminisced about the loss of his sister and that he is losing family members. On the positive side he reported being able to get a new guitar and that he was able to play for DR Chapel Services.” (Interdisciplinary Progress Notes, Feb. 27, 2015, Exhibit 28). Littler noted that Robert “was commended on his ability to cope with multiple stressors without ‘acting out’ or giving up. He presents as emotionally

stable. He requested that I meet with him again so he will be scheduled for two weeks from today.” (*Id.*)

The difference between Robert’s reaction to the death of his friend Dennis McGuire and his reaction to the death of his mother approximately one year later is stark, and due to his finally receiving the appropriate, consistent, and effective Cognitive Behavior Therapy to treat his Borderline Personality Disorder.

Despite this noted progress, a Treatment Plan Update of April 6, 2015, by a different care provider “due to MHL (Littler)’s absence” concluded that less therapy was needed, and that Robert did not truly suffer from a serious mental illness: “consideration should be given to keeping an inmate on the caseload for only a personality disorder. Consider discontinuing from caseload due to no serious mental illness, no meds needed, no current distress aside from long standing personality disorder. Consider discontinuing from caseload” (*See Exhibit 28*).

In early July, 2015, however, Littler maintained Robert’s diagnoses as suffering from Borderline Personality Disorder. (*See Mental Health Treatment Plan, July, 2015, Exhibit 29*). He also continued Robert’s treatment plan for that mental illness. (*Id.*) Progress is documented in reports prepared later in 2015 and into 2016 until the time when Littler departed his service at CCI. For example, on February 12, 2016, Littler noted: “Inmate seen as per routine MHL [Mental Health Liaison] contact and monthly individual therapy contact. The inmate reported that he has felt irritated lately with the behavior of his fellow inmates. Minor insults have . . . irritated him and that he had felt like ‘going off.’ This has been a change

from his usual demeanor.” (Progress Note, Feb. 12, 2016, at 1, Exhibit 30). And yet, Littler characterized Robert as “[c]alm and in no acute distress. There was no indication of a disturbance of thought or mood.” (*Id.*) Littler also recorded that “[t]he issues regarding his fellow inmates were discussed and processed using CBT. There was no changes in situation or events that could be considered significant.” (*Id.*)

On March 10, 2016, Littler documented a group therapy session in which Robert participated, noting that the group “focused on the basic elements of CBT and began to work through thinking errors.” (Progress Note, Mar. 10, 2016, at 1, Exhibit 31). Robert’s behavior was “appropriate,” and his participation in the therapy session was “active.” (*Id.*)

On March 28, 2016, Littler noted that Robert “has been compliant with his treatment plan including medications. There have been no significant issues or concerns voiced by the inmate or staff. The inmate has begun to participate in MH Group when invited.” (Progress Note, Mar. 28, 2016, at 3, Exhibit 32). Notably, Littler recorded that the behavioral psychotherapy “[t]reatment plan has been effective in addressing the inmate’s mental health needs.” (*Id.*) The very next day Littler also documented Robert’s participation in another group therapy session, in which the “focus was on basic CBT and the ‘ABC’ model of emotional management.” (Progress Note, Mar. 29, 2016, at 1, Exhibit 33). He described Robert’s behavior as “appropriate,” and his participation as “active.” (*Id.*)

Robert's active and "motivated" participation in therapy sessions implementing CBT principles, individual and group, continued through reports dated March 30, 2016; April 7, 2016; and April 12, 2016. (See Progress Notes, Exhibit 34). Although there was a period of time in late April and early May of 2016, when Robert's active participation in therapy waned a bit, he rejoined the group sessions in late May, and was an "appropriate" and "active" participant with Littler on May 19, 2016. (Progress Note, May 19, 2016, at 1, Exhibit 35).

During therapy on June 7, 2016, Littler continued to work with Robert in a group session in which the focus was on "scenarios in CBT/ABC" and Robert was an "active" participant once again. (Progress Note, June 7, 2016, at 1, Exhibit 36).

On June 21, 2016, Littler lead group therapy discussing "12 irrational assumptions." (Progress Note, June 21, 2016, at 1, Exhibit 37).

On June 28, 2016, Littler documented another Mental Health Treatment Plan, which expressly identified that treatment would "utilize[e] a cognitive behavioral approach," noting that the treatment plan (which had already been using a CBT approach) "has been effective in addressing the inmate's mental health needs." (Progress Note, June 28, 2016, at 3-4, Exhibit 38).

On July 5, 2016, the therapy session Littler lead involved "a review of CBT and a discussion of disputing irrational thinking." (Progress Note, July 5, 2016, at 1, Exhibit 39).

The session on July 26, 2016 focused on "disputation of irrational thoughts (CBT)." (Progress Note, July 26, 2016, at 1, Exhibit 40). As with every other group

session, Littler described Robert's behavior as "appropriate," and his participation as "active." (*Id.*) Robert participated in a similarly focused session led by Littler on August 9, 2016 (*see* Progress Note, Aug. 9, 2016, at 1, Exhibit 41), and again on August 16, 2016 (Progress Note, Aug. 16, 2016, at 1, Exhibit 42). On August 19, 2016, Littler documented another Mental Health Treatment Plan that once again included CBT as part of the plan, noting that the treatment plan "has been effective in addressing the inmate's mental health needs." (Progress Note, Aug. 19, 2016, at 3, Exhibit 43).

But at some point in the months that followed, Littler was transferred away from CCI, and Robert was no longer able to continue his CBT therapy, even though it was expressly contemplated in his Mental Health Treatment Plan dated November 9, 2016 and signed by Psychology Supervisor Jennifer Kutys. (*See* Progress Note, Nov. 9, 2016, at 3, Exhibit 44). Indeed, that very treatment plan suggested that at least some believed Robert should no longer be provided mental health treatment: "Inmate maintained on [mental health] caseload solely due to the fact that he is prescribed medications and, per policy, cannot be an 'N' with medications prescribed." (*Id.*)

In a record dated November 22, 2016, Ms. Teresa Gray, a behavioral healthcare program worker, documented that Robert stopped her and "asked in the mental health groups were going to be restarted because 'I was enjoying learning about Rational Emotive Therapy and all that from Mr. Littler.'" (Progress Note, Nov. 22, 2016, at 1, Exhibit 45).

Over the course of the next twelve months, Robert was provided with occasional mental health treatment that included mindfulness training and meditation, as his medication was tapered off because of the side-effects Robert experienced. (See Progress Notes, Aug. 30, 2017, and September 15, 2017, Exhibit 46; Progress Note, Oct. 5, 2017, Exhibit 47; Progress Note, Oct. 19, 2017, Exhibit 48). But, with Littler gone and a different type of treatment being offered, Robert was no longer able to actively engage in CBT with a trusted therapist. In fact, the Mental Health Treatment Plan adopted on October 24, 2017, removed any reference to Robert needing or receiving CBT. (See Progress Note, Oct. 24, 2017, Exhibit 49 (reducing the identified “Problems” to two, and omitting “Problem 4” in the previous plans, which identified CBT as the appropriate treatment)).

As the foregoing account makes clear, there is a direct correlation between the period of time when Robert was receiving the specific psychotherapy targeted to his specific disorder from a trusted therapist and when his prison behavior was stellar. From the time that Robert began CBT therapy with Kevin Littler until approximately one year after Littler left, Robert had no misconduct charges.

Robert’s disciplinary record when *not* receiving CBT from a trusted therapist has been less than stellar, but it is clear that such behavior is the result of a severe mental illness that was not being treated in the way that was necessary to have a chance for favorable results. Indeed, ODRC records reveal an internal inconsistent understanding of whether Robert’s Borderline Personality Disorder is a “serious

mental illness” or a “non-serious mental illness,” or even if he needed to be on the mental health caseload.

The inconsistent institutional assessment and treatment of Robert’s mental health needs extends back to the early years of Robert’s incarceration. For example, as noted in Dr. Gilbert’s report dated May 31, 1991, Robert was actively asking for treatment specific to Borderline Personality Disorder while incarcerated at SOCF. (See Exhibit 14). But SOCF psychological staff supervisor Dr. Ted Strickland, in Interdisciplinary Progress Notes dated the day before, had declined to offer counseling to Robert based on Strickland’s interpretation of Robert’s mental illness diagnoses. (See Interdisciplinary Progress Notes, May 30, 1991, Exhibit 50). On August 1, 1991, Dr. Vermuelen, staff psychiatrist, noted that Robert was seeking psychological treatment from someone in whom he could trust, a self-assessment with which Dr. Vermuelen agreed: “He does seem to have a genuine need for some contact with a trusted person.” (Interdisciplinary Progress Notes, Aug. 1, 1991 (also contained in Exhibit 50)). Dr. Vermuelen argued that Robert should be provided mental health counseling by staff psychologists at SOCF. (*Id.*) A month later, a very distressed Dr. Vermuelen said he would provide counseling to Robert through psychiatric services to Robert if no one else would. (*Id.*) Based on available records, it does not appear that Robert received the psychological counseling he wanted and needed when he was at SOCF. Instead, the SOCF Supervising psychologist concluded: “I determined that there were no indications of serious mental illness and no need for individual therapeutic intervention from us or from OPSC. If, as he

states, he is an individual with a borderline personality disorder, the recommended treatment would be a firm and predictable program of experiencing appropriate consequences for his behavior.” (Memorandum from Psychology Supervisor Dr. Gilbert to SOCF Warden Tate, June 7, 1991, Exhibit 51).

By that time, it was well-established that Robert suffers from Borderline Personality Disorder. There had been a consensus that he suffered from Borderline Personality Disorder by numerous examining mental health experts, before and after trial. Likewise, “a firm and predictable program of experiencing appropriate consequences for his behavior” is not the “recommended treatment” for those who suffer from Borderline—CBT or other similar psychotherapy is.

At other times during Robert’s incarceration, it appears that attempts have been made to engage in CBT. (*See, e.g.*, Treatment Plan and Contract for Individual Therapy, April 22, 1996, Exhibit 52, noting that CBT should be used for Robert’s treatment, at a time when he was incarcerated at Mansfield Correctional Institution). But, for CBT or similar treatment to be truly effective with one who suffers from Borderline Personality Disorder, there must be the trusting bond between therapist and patient, and there must be consistent treatment. That trusted bond was elusive until Robert worked with Littler. Prior to and after that time, his access to CBT psychotherapy has been inconsistent. In fact, in 2005, when he was taken to Oakwood psychiatric hospital after a suicide attempt, the discharge documents (which recognized that Robert had been previously diagnosed as suffering from Borderline Personality Disorder) stated in several places that Robert

had “received intermittent mental health treatment” and “intermittent involvement with mental health” since his incarceration, and that he had “only come to mental health’s attention on May 5, 2005” after an attempted suicide. (See Discharge Documents from the Psychiatric Hospital Unit of the Oakwood Correctional Facility, at 1, 2, & 4, Exhibit 53). That record also noted that Robert “would benefit from ongoing mental health follow up,” and that he “would benefit from increased mental health liaisons and/or individual therapy sessions.” (*Id.* at 7). But other than the period when Robert was able to work with Littler, the treatment given to Robert while incarcerated has indeed been intermittent and inconsistent.

At times, Robert has been treated with medication, but medication alone is an incomplete treatment plan for someone with Borderline Personality Disorder (and certainly for a child sexual abuse victim). And typically the medication was only targeted at relieving Robert’s depression or his anxiety. That is, the medication treated the *symptoms* of his mental illness, but did not address the *root cause* of those symptoms.

Whether Robert was receiving inappropriate treatment for what is often considered one of the most severe mental illnesses, or incomplete treatment, or no treatment at all, there is a connection between those periods of time and Robert’s times of unacceptable behavior in prison.

For example, notations in his mental health file regarding the January 21, 2014 incident in which Robert became intoxicated and combative reflect Robert’s depression and highly emotional state at that time. (See, *e.g.*, Referral to Mental

Health Services, Jan. 21, 2014, at 1–2, Exhibit 54, noting that Robert was referred “after being intoxicated on an unknown substance. He threaten[ed] to harm himself and was stating he wanted his life to end.”). He was not receiving CBT with Mr. Littler at the time, however. Moreover, that absence of any therapy at that time takes on even greater significance in light the difficult execution of Robert’s friend Dennis McGuire on January 16, 2014. The other inmates on death row, including Robert, learned of the horrific execution, and Robert—knowing about the fate of his good friend and facing an impending execution date of his own at that time but not receiving any CBT therapy at the time—went into a tailspin involving alcohol. Those stressors, combined with the alcohol-clouded judgment, lead directly to Robert violently acting out. His behavior is properly placed in context of the records that show ODRC staff considered him a severe suicide risk in the immediate aftermath of the event. For example, the Referral to Mental Health Services on January 21, 2014 prepared by Captain Branham recounts that Robert was considering suicide. (*Id.*)

The recent incident with Romell Broom on November 10, 2017, also becomes clearer when placed within the broader context of Robert’s mental health treatment ebbs and flows. The incident happened approximately one year after he could no longer engage in CBT with Littler, and when there was another execution scheduled for the following Wednesday (the scheduled execution of Alva Campbell, Jr., on November 15, 2017).

F. Conclusion.

Mental health evaluations from the time leading up to Robert's arrest for the murder of David Self, and after, paint a picture of a man struggling to cope with mental illness rooted in pervasive childhood trauma including child sexual abuse in several different forms. The psychological evaluations done at the time of Robert's trial and for subsequent legal proceedings identified many of the core issues behind Robert's mental health history, including exposure to violence in the home, and unstable and addicted parents, such that his childhood home life was generously described as a combat zone. Some of the evaluations observed that Robert had been involved in sexual activity with adults starting at a very young age, but these evaluations did not recognize this as childhood sexual abuse or recognize the deep-seated trauma caused by this sexual abuse. None of them identified the full scope and depth of the child sexual abuse Robert suffered or recognized its effect on Robert's development. All of these earlier evaluations failed to connect the dots between the childhood sexual abuse and the murder of David Self, although the nexus has been demonstrated recently by Dr. Mendel.

None of those previous evaluations, unlike the evaluation by Dr. Mendel, connected Robert's mental health struggles as a victim of child sexual abuse, including by adult males, with his Borderline Personality Disorder diagnosis, nor connected the untreated abuse and mental illness with Robert's actions on the night he killed David Self. Finally, Robert's prison record can only be accurately understood when viewed through the same lens of untreated child sexual abuse and

its effects, including the seriousness of Robert's Borderline Personality Disorder.

The record demonstrates that: when he was receiving consistent Cognitive Behavioral Therapy from a trusted therapist in the form of Mr. Littler, Robert was able to function somewhat normally on Death Row. But when he has not been provided such therapy, he has struggled to control his behavior on Death Row.

With the proper therapy and activities, Robert is able to function within the bounds of life in prison.

V. VAN HOOK MILITARY HISTORY

A. Introduction.

Robert Van Hook had a lifelong goal to be a soldier in the United States military. As a child and adolescent, Robert was always proud of, and wanted to be part of, his family's long tradition of military service. Several generations on both sides of his family had served their country dating back to the American Civil War, serving in times of war and peace. When Robert enlisted in the United States Army at age seventeen, he aspired to follow in these footsteps and he hoped to be a ranger or serve in some combat role. Robert's service, however, occurred at a time when no active wars occurred, but when maintaining security during the Cold War was every bit as critical, if far less heroic, than fighting wars.

The United States faced off with the Soviet Union in the Cold War from the end of World War II in 1945 until the breakup of the Soviet Union in 1991. The goal of the United States was to maintain security – especially in Western Europe while at the same time avoiding nuclear war. The Cold War only turned hot in the Korea and Vietnam and other minor conflicts. Because soldiers who served in the Cold War army seldom went into battle they were not given the glory or honors of previous generations of soldiers – especially after the Vietnam War.

Nonetheless, Robert Van Hook is a proud Cold War veteran. His service, like that of all Cold War veterans, was critically important in the United States' struggle to keep the peace while facing down a Soviet Union armed with nuclear weapons. Robert's Cold War service reflects his lifelong ambition to fulfill the long

tradition of military service of his family. For Robert, it was a disappointment that he was unable to serve in a combat as many of his family had before him.

B. Family Service in the United States Military.

Robert's maternal great-great grandfather, Thomas Salyers, served in the Union Army's 3rd Regiment during the Civil War. He was recognized for his good conduct during the Battle of Stones River, Tennessee in 1862.

Robert's maternal grandfather, Johnson Salyers, served in the United States Army's First Division in a military police company from 1920 through 1923.

Robert Wilbert Sellers Van Hook, Robert's paternal grandfather, served in the United States Marine Corps in the Pacific Theater of Operations during World War II.

Robert Jesse Van Hook, Sr., Robert's father, served with the First Marine Division in Korea. He was awarded the UN Service Medal, the Korean Service Medal and the National Defense Medal.

Robert's maternal uncle, Earl Johnson, served in the United States Army and was stationed in Germany from 1957-1960 and was honorably discharged.

Robert's paternal uncle, William Van Hook, served in the United States Army during the Vietnam War and was honorably discharged.

Robert's maternal uncle, Robert Salyers, served in the United States Army during the Vietnam War and was honorably discharged.

Robert's maternal uncle, Jay Salyers, served in the United States Marine Corps during the Korean War era and was honorably discharged.

The family service has continued after Robert's service. Robert's nephew, Daniel Berends, served in the United States Marine Corps for five years and was honorably discharged. Daniel then enlisted in the Army where he served for another eight years. Daniel was injured in an IED explosion while serving in Iraq, suffering a traumatic brain injury and has been diagnosed with PTSD. He is currently on disability as a result. Two of the children of Robert's cousin, Tracey Weigand, have also served in the armed forces.

C. Robert Van Hook, Jr.'s Military Service.

Robert always wanted to follow in the footsteps of his family and serve in the military. Shortly after he turned seventeen and became eligible to enlist, Robert obtained the permission of his father that the Army required and voluntarily enlisted in the Army.

However, because of the trauma endured in his childhood and adolescence, Robert carried with him psychological and physical deficits that prevented him from achieving long term success as a soldier. Specifically, Robert had developed drug and alcohol dependence largely because of his upbringing by alcohol and drug dependent parents. Their addictions had become Robert's addictions. His father, Robert Van Hook, Sr., was an angry, cruel and violent man who physically abused his wife and children. The abuse and violence Robert was subjected to as a child and adolescent left him with significant mental health issues. In combination, these factors led to unfortunate consequences for him during his military service and after his discharge.

1. Robert's Tours of Duty.

Because he was only seventeen, Robert's initial enlistment was limited to three years. His stated enlistment preference was the 82nd Airborne Division. However, he was counseled to enter a communications specialty in the Signal Corps. (Exhibit 55, Enlistment Form).

Robert believed he could now realize his dream of belonging to an elite military organization:

I couldn't wait to get old enough to go into the service, this had been my dream for as long as I could remember. I tried for the Marines first but couldn't pass a written test and they wouldn't take me. My next choice was the Army because I wanted to be a paratrooper in the 82nd Airborne just like in the movies. I had some difficulties with testing there too but I passed and got to go in. I felt if I picked the toughest job I could start all over again and clean myself up. Nobody would know about my past or my family or my arrests and I could become a good soldier like the others in my family had done.

(Exhibit 64, Report of David Ferrier, at 4).

Robert enlisted in 1977 - only two years after the end of the Vietnam War. Because of the years of protest over the Vietnam War, military service had become viewed as something to avoid. The army that Robert joined was at a low point for morale. It had become an all-volunteer army and funding for training had been greatly reduced. According to Professor Mark Grimsley of Ohio State University: "The esprit de corps within the Army was relatively low and Robert's experience in the Army would have reflected this." (Exhibit 65, Report of Mark Grimsley, at 4). In order to meet recruitment quotas, the military inducted thousands of recruits

who lacked education and skills with plans was to train and professionalize these recruits. However, the necessary and promised remedial programs within the military did not materialize. As such, the military provided little assistance to these recruits. (Exhibit 64, Ferrier Report at 6).

But Robert, hindered by a lack of formal education and training, persevered. He received his basic infantry combat training at Fort Gordon, Georgia. He was awarded an expert qualification badge and a marksman badge. According to his half-sister Trina, Robert was highly motivated by his experiences in basic training.

During basic training, Robert received a “Letter of Commendation:

Pvt. Vanhook (sic) has exhibited a consistently positive attitude toward the Chapel Choir Program of the 1st Battalion, 1st Signal Training Brigade. His participation and enthusiasm has been greatly appreciated by myself and my staff. He has displayed qualities that have demonstrated his outstanding ability as a comrade and soldier. He has taken the extra effort above others in the choir to make the chapel program a success and I am extremely grateful for his loyalty and dedication.

(Exhibit 56, Letter of Commendation).

Robert also received a final “secret clearance” regarding access to classified military information and, significantly for Robert, a diploma for his successful completion of the Multichannel Communications Equipment Operator Course:

I had never graduated from anything before. I got lots of help from my instructors because I didn't have much schooling before joining and wasn't so good at math and such. I was clean and sober, too for the first time I could ever remember. I felt good about myself and when I learned I was being sent overseas to Germany I was very excited. We were told we would be on the front lines watching the Russians and I wanted to be ready for anything.

(Exhibit 64, Ferrier Report, at 5).

Following basic training, while still seventeen, Robert was posted to Frankfort, Germany:

I couldn't believe when I got to the replacement center and all there was around the base was strip clubs and whorehouses and barrooms. There was lots of drugs around too and black bars and white bars, lots of fights. This was everything I went to the Army to get away from. I couldn't wait to get sent out to my duty assignment in the field and away from all of that stuff.

(Exhibit 64, Ferrier Report at 5).

Robert was next posted to Darmstadt, West Germany, a rear echelon staging area, as his primary base of duty for the remainder of his tour in West Germany.

Unfortunately, the conditions in Darmstadt again were less than ideal for Robert to maintain his sobriety and to advance his career:

Further, peacetime service in a country in which Robert, Jr., had no ability to speak German would have meant that he spent most of his time on post, with limited opportunities for recreation and consequently a high degree of boredom. From my personal knowledge of soldiers who served in that period, this was a typical experience. The limited off-post activity usually consisted with interaction with prostitutes and heavy drinking at local beer halls. The combination of boredom and heavy off post drinking would have exacerbated Robert, Jr.'s penchant for excessive alcohol consumption. During this period Robert, Jr., abused recreational drugs, as indicated by his visit to the U.S. Army's hospital in Frankfort, Germany. He was also diagnosed with hepatitis B, a viral infection that affects the liver. Because of this there is a higher risk of cirrhosis of the liver. Consequently, persons with Hepatitis B are strongly discouraged from drinking alcohol, an injunction Robert, Jr., is unlikely to have heeded, given his pre-disposition for alcohol abuse and the heavy drinking culture in his environment. Put simply, the Army environment placed Robert, Jr., in a position

with strong potential for serious damage to his physical health.”

(Exhibit 65, Grimsley Report, at 4).

To make matters worse, Robert also found that that military discipline was lax at Darmstadt. Robert recalls an incident that negatively affected his morale:

When I first got there we had an alert one night. They woke us all up and told us to get ready. I put on every piece of field gear I had been issued. I even painted my face with green and black coloring they gave us for night duty. When I was all prepared I fell out in front of the barracks and I was the only one there. The rest of the guys stayed in bed. They laughed at me and told me this stuff went on all the time and nobody any attention to it. I did because I thought that was what we were there for. I found out I was wrong.

(Exhibit 64, Ferrier Report at 6).

After this incident, Robert’s section chief filled him in on the rules of conduct. Duty tours were four days on and three days off. Off duty hours were unsupervised with no structure. The men in Robert’s unit spent their time in local bars where alcohol was cheap and plentiful. Alternatively, they remained in the barracks and smoked hashish:

My platoon was divided into dopers and drunks. Nobody seemed to care what we did when we were off duty as long as we showed up for formations. I tried to stay away from the drugs at first because I had been clean ever since I came to the Army and felt good about that. The problem was if you didn’t smoke a pipe with the others they got to thinking you might be an undercover MP. The way to get trusted by the others was to go along, which I did and everything started getting worse from there.

I was getting really depressed, drinking a lot and smoking hash with the guys in my unit. I asked for a transfer to Airborne School but couldn’t get anybody to help me. I

started my GED but couldn't understand the math and stopped going. The only time I felt like a real soldier was when we went to the field relay station and lived in tents out in the country.

(Exhibit 64, Ferrier Report, at 6).

Robert, nevertheless, continued his efforts to be a good soldier and achieved many accomplishments that garnered notice and praise from his superiors. In October 1978, Robert's assessment of his as a radio communications operator concluded:

During the time you have spent with me so far, as my assigned operator you have been doing an excellent job. You are performing your duties in an outstanding manner. Given a task you have worked on it till completion. But you need a little work so you can become an outstanding radio operator, overall you are doing an outstanding job. I am recommending you for a promotion to Private First Class.

(Exhibit 57, Record of Informal Counseling; Exhibit 64, Ferrier Report, at 7).

In December 1978, Robert was awarded a Certificate of Achievement:

For his heroic actions in helping extinguish the fire in Company A's supply room on the night of 12 January 1978. On the night of 12 January 1978, Private Vanhook was on shift in TAA. (Technical Assistance Area) When he heard of the fire he immediately rendered his assistance in extinguishing the flames. His quick and decisive action helped prevent a major fire from occurring. Private Vanhook's actions and devotion to duty is a credit to himself, his unit, and the United States Army.

(Exhibit 58, Certificate of Achievement; Exhibit 64, Ferrier Report, at 7).

In March 1979, Robert reenlisted for an additional six years while still at Darmstadt. In October 1979, he was promoted to the rank of Specialist 4. (e.g. corporal). In February 1980, Robert was awarded a Department of the Army

“Certificate of Training” certifying that Robert had “successfully completed the medium capacity TDM/PCM (radio systems) one week trouble shooting course.” (Exhibit 59, Certificate of Training). In June 1980, Robert was awarded a “Certificate of Achievement” for “successfully completing the Basic Leadership Course.” (Exhibit 60, Certificate of Achievement).

Having successfully completed his three-year tour of duty in West Germany, Robert again volunteered for the Army’s Airborne Training School. But no action was taken on his request. Instead, in August 1980, Robert was posted to Fort Hood, Texas and assigned to the motor pool. This amounted to garrison duty with no specific purpose and no specific job. Robert was extremely disappointed:

I couldn’t understand why I was being sent to Texas when I kept asking for Airborne School but figured I could go and try to get transferred once I got there. I went back to Ohio before I went to Texas and everything was the same as when I left, lots of drinking and drugs and fighting. I left as soon as I could because I figured the Army was my real home now.

(Exhibit 64, Ferrier Report, at 8).

Following this posting to Fort Hood, Robert’s military career began to fully unravel. Robert was assigned to the motor pool, not to his specialty of Multi-Channel Equipment Operator that he had trained for and excelled in. His fellow soldiers in the motor pool were unmotivated as none of them had any real duties. This was precisely the type of environment that Robert had tried to avoid by volunteering for the Army’s airborne brigades.

Disappointed and bored by these assignments, Robert increasingly engaged in negative behaviors involving alcohol and/or drugs and fighting when drunk. He

was reduced in rank and grade for various infractions. In December 1980, it was reported that Robert - highly intoxicated - physically attacked fellow soldiers in the barracks. Robert's behavior was "not surprising because there was a culture of excessive drinking in the United States Army" at this time. (Exhibit 66, Report of Carl Shipp, at 3).

In an isolated environment, such as Fort Hood, "Off-post opportunities for recreation were limited, which once again made heavy drinking at local bars one of the few available activities. Indeed, military posts are typically surrounded by bars that cater to the penchant of soldiers for heavy drinking." (Exhibit 65, Grimsley Report, at 5).

In the military, alcohol use signified something more important than a source of enjoyment or a refuge from boredom or personal problems. It indicated belonging. It was perceived as an important contributor to the esprit de corps. And among males in the military, hard drinking was considered assign of masculinity.

With regard to belonging, alcohol consumption was a prominent feature of initiations into elite units such as the Airborne or SEALs and even into ordinary soldiering. When the present writer [Professor Grimsley] completed Army initial Active Duty Training (Basic Combat training and Advanced Individual training) in December 1983, for example, platoon sergeants smuggled two kegs of beer into the barracks explicitly as a way to show that they now considered their trainees to be full-fledged soldiers. A retired Army colonel who served in 1983-2013—after Van Hook's term of service and at a time when the Army intensified its effort to combat problem drinking— informed the author: 'Alcohol use was encouraged by chains of command up to general/officer installation command level. On-post clubs were booming. Many commanders had mandatory club calls on Fridays, which encouraged drinking. Events at clubs included happy hours, strippers, etc. Made you want to stay and drink.'

Unit indoctrination ceremonies were steeped in tradition including guzzling drinks, mixing alcohol, heavy grog, etc. If you didn't do it, you were not accepted'."

(Exhibit 65, Grimsley Report, at 9).

The Army recognized the problems associated with this excessive drinking, but had not developed a good plan for addressing the problem. Professor Grimsley refers to the U.S. Army Research Institute for the Social Behavioral Sciences report issued in February 1975 to explain:

The [*Handbook for Alcohol and Drug Control Officers – 1975*] informed readers that alcohol abuse was a common and 'very complex social and individual phenomenon' that 'was extremely difficult to handle' and a 'puzzle which has defeated many of those who have tried to solve it.' Estimates of problem drinking among Army personnel indicated that 'it is a real and serious problem for the Army as it is for the rest of society'.

The handbook supplied statistics on Army personnel characterized as 'problem drinkers'; that is to say, someone 'whose drinking has caused adverse consequences in his personal life (problems with family or others, job difficulty, accidents, arrests, etc.) one or more times within a period of three years.' By this criterion, a survey of alcohol use within the Army indicated that 44 percent of junior enlisted men, 27 percent of senior enlisted men, 18 percent of junior officers, and 13 percent of senior officers were problem drinkers. (Van Hook would have fallen into the first category.) Another survey showed that in 1972-1973, 28 percent of junior enlisted men had *increased* their consumption of alcohol after entering the Army. Only 21 percent decreased it. (emphasis in the original).

(Exhibit 65, Grimsley Report, at 8).

The Army ultimately recognized that its culture "glamorized" alcohol consumption and adopted strictures geared at the "de-glamorization" of alcohol. At

the time of Robert's discharge, however, the Army "was only tentatively beginning to acknowledge this influence. Thus, during the entire period of Van Hook's enlistment, he was immersed in a military culture that took extensive alcohol use as a given." (Exhibit 65, Grimsley Report, at 9). Robert's immersion in a military culture that promoted alcohol use, combined with his pre-existing alcohol and drug dependence propelled him toward failure as a soldier. His last best hope for redemption lay with the Army's drug and alcohol treatment services. But these services were primitive and wholly insufficient to meet Robert's needs.

The army diagnosed Robert with "Alcoholism-Alcohol Addiction" and entered an Alcohol/Drug Abuse Prevention and Control Program ("ADAPCP"). Such treatment was of little value:

The Army's solution to Robert's alcohol abuse was for medical staff to prescribe Antabuse, an emetic that causes a person to vomit when he drinks. There was no counseling by trained addiction therapists. Instead, Army medical personnel, fellow soldiers and officers advised him to stop drinking and to attend AA meetings. Given Robert's history and the nature of Robert's alcohol addiction, these measures were simply inadequate.

(Exhibit 66, Shipp Report, at 3).

In February 1981, Robert was temporarily assigned to Fort Irwin, California. Things did not improve. After a fight, he slashed his wrist with a razor and was taken to a hospital for treatment.

Robert returned to Fort Hood and continued in ADAPCP and was given sixty days to "get straight." Robert joined and was active in a local AA chapter. Robert participated in an active rehabilitation program that included intense counseling.

His commanding officer observed that Robert's efficiency was good but that his conduct was unsatisfactory. Robert's counselor only measured Robert's progress as fair. Subsequently, Robert was declared a rehabilitation failure and as such was to be processed for separation from the service.

Before being separated from the service, however, on April 27, 1981, Robert was promoted to the rank of Sergeant.

The Secretary of the Army has reposed special trust and confidence in the patriotism, valor, fidelity and professional excellence of Robert Van Hook. In view of these qualities and his demonstrated leadership potential and dedicated service to the US Army, he is, therefore, promoted from Sp4 to Sgt. in MOS 31M20 (Military Occupational Specialty, Radio Relay Communication. Promotion).

(Exhibit 61, Promotion Orders).

On April 29, 1981, the Army informed Robert that he would be discharged due to his alcohol dependence and abuse, but that he would be recommended for a fully honorable discharge. In 1981, more than ten thousand soldiers were court martialled by the US Army and given less than honorable discharges. The fact that Robert was not subjected to a court martial proceeding and was given an honorable discharge demonstrates that the Army valued Robert and his accomplishments as a soldier, despite his substance abuse problems. (Exhibit 64, Ferrier Report, at 11).

In a May 1981 letter, Robert accepted responsibility for his actions and his separation from the service; acknowledged his alcoholism; acknowledged his love for the US Army; acknowledged that his separation was for the good of the service; and

gave his thanks to his First Sergeant and company commander. This letter reflects his attempt to leave his Army “home” with some measure of grace.

Robert, however, was truly devastated by his separation from the Army:

With all the bad places I'd been in my life and all the bad things that happened to me I never felt as bad as the day I had to leave the Army. I know it was my fault, I got drunk and I missed my duty and all the other things they charged me with but I would have given anything for another chance.

(Exhibit 64, Ferrier Report, at 11).

On June 17, 1981, Robert officially received an Honorable Discharge from the United States Army. (Exhibit 62, Honorable Discharge). Robert was also awarded a Good Conduct Medal, an Expert Badge with Grenade Bar, and a Marksman Badge with a Rifle Bar. Subsequent to his discharge Robert received a Certificate of Recognition for his service during the Cold War. (Exhibit 63, National Personnel Records Center Letter). Such awards are not routine nor given gratuitously. They indicate Robert's accomplishments as a soldier and overall positive service in the Army:

As a military veteran of the Cold War, which by definition involved no combat, I often wondered what my modest military service added up to. While visiting a professor at the U.S. Army War College I asked a colonel about this. The colonel, a veteran of several tours of duty in the Iraq war, a conflict with an ambiguous outcome at best, replied, 'Well, you won your war.' Simply by dint of being part of the U.S. armed forces that did their duty, soldiers like Sergeant Robert Van Hook, Jr. helped to place a continuous military pressure on the Soviet Union that eventually destroyed it.

Robert, Jr. paid no price in blood for his service to the United States. But this did not mean that he suffered no

injury from that service. Given his prior history of drinking, the military environments of his service surely exacerbated it.

(Exhibit 65, Grimsley Report, at 6).

Robert thus left the United States Army at the age of twenty-one with utterly no prospects for a better life and few marketable skills. His underlying mental health issues, and thus addiction to alcohol and drugs remained untreated and thus uncontrolled. Having nowhere else to go, he returned to Cincinnati, Ohio where he would once again find the same problems: “lots of drinking and drugs and fighting.”

Robert’s words proved prophetic as his downward spiral continued when he returned to Cincinnati. In 1983-1984 he was arrested on four separate assault charges while intoxicated. In 1984 he was ordered into treatment and counseling at the Cincinnati Veteran’s Administration facility. At that time there was a three month inpatient treatment program for substance abuse/dependence patients at the Cincinnati VA, which included emergency room treatment, detoxification, as well as group therapy and individual therapy. However, Robert’s treatment at the VA was limited to two weeks of outpatient counseling. This was wholly insufficient. Robert would have been best served by inclusion in the three month program. However, the deficiency of Robert, Jr.’s treatment at the Cincinnati VA “was not unusual.”

(Exhibit 66, Shipp Report, at 3).

According to Carl Shipp, Robert’s outpatient counselor at the VA the two week outpatient treatment Robert received was far from adequate:

An appropriate treatment plan for Robert would have allowed me the time as his VA counselor to truly get to know him. Successful therapy occurs when the client truly

engages in the treatment process. In my experience, only when I can spend adequate time with a client can I gain the client's trust. Two weeks is not adequate time to engender the trust necessary to engage in proper therapy.

(Exhibit 66, Shipp Report, at 3).

Robert's status as a Cold War veteran rather than a Vietnam veteran likewise further reduced the likelihood of receiving the necessary treatment at the VA. After the war in Vietnam, the United States military was disfavored and funding for the care and development of veterans was restricted. Resources were spread thin among the veterans needing treatment. Robert had not seen combat. Other veterans, especially those who saw combat in Vietnam, were given priority. (Exhibit 66, Shipp Report, at 3).

Further, a veteran such as Robert with severe addiction issues, a holistic approach to treatment was required. The primary component of such a holistic approach is the availability of long term therapy by trained and credentialed substance abuse/dependence counselors. Robert would also have needed a strong support network of family and friends pledging to help him maintain his sobriety as an important adjunct to the counseling environment. When the home and social environments of veteran with addiction issues do not support or even undermine the veteran's attempt at sobriety, then the likelihood of failure is dramatically increased. (*Id.*)

The absence of any family support was a key factor in Robert's failure to overcome his addiction when he mustered out of the Army. Robert's parents were still alcohol and drug dependent themselves. When he returned to Cincinnati, the

family environment encouraged his drinking and drugging and fighting. He often accompanied his violent, alcoholic father to bars where they engaged in drunken brawls, one of which caused them both to be arrested.

Robert also left the Army with no marketable skills and no likelihood of obtaining them. He entered a job market in 1981 that was in the grips of a powerful recession. In contrast to World War II veterans, who came home to full employment in a robust economy, Cold War veterans coming home in 1981 faced many obstacles in obtaining meaningful employment. Cold War veterans, such as Robert, would have benefitted from vocational training and assistance from the VA. In the early eighties, when Robert came home from the Army, there were no job fairs or vocational training programs through the VA for returning veterans as there would be today. Today, veterans have access to programs such as the VA's Vocational Rehabilitation and Employment Program which permits veterans to receive job training, employment accommodations, resume development and personalized job counseling. None of this was available to Robert in 1981 and thereafter:

Robert was one of those 'lost ones'. He would come to see me often, most always dressed in combat fatigues, in and out of work, sometimes sober but more often not. I came to learn of his dreadful background and his bleak present life. There was just so little we could do for him then. The VA had no meaningful vocational programs, the inpatient programs were overcrowded and underfunded and Robert had no family or social support. There is so much I would have done differently then if I had the training and experience I have today. The one aspect of his life Robert spoke of with pride was his time in the military. His most crushing disappointment was his

failure to stay in the Army and make it his career. I really feel the military failed Robert in several ways. The lack of structure he encountered, the low morale, widespread drinking and drugging were the exact opposite of what Robert went in the Army to give his life to.”

Based on my forty one years in the mental health field and my long tenure with the VA, I believe Robert van Hook was failed in dealing with his alcohol addiction first by the US Army and then by the VA. The consequences of those failures have been tragic for Robert and those harmed by his addictions.

(Exhibit 66, Shipp Report, at 4-5).

D. Conclusion.

Robert Van Hook, without hesitation and with great enthusiasm, volunteered to serve his country as soon as he turned seventeen and became eligible. He joined at a time when the United States military was in decline and disfavor. This did not deter him. With little formal education and as the product of a dysfunctional family, Robert nonetheless persevered and tried as hard as he could to accomplish his goal to be a good soldier and serve his country as generations of his family had before him.

Many factors militated against Robert’s lofty goals and prevented him from being the good soldier he aspired to be and thwarted his hopes for a successful army career. Robert had untreated mental health issues when he entered the service - including PTSD arising from a home environment that has been described as a war zone. His alcohol addiction—an addiction that effectively ended his military career—had its roots in his parents’ addictions and his early childhood experiences where his father encouraged him to drink and use drugs at an early age. Robert

attempted to escape the chaos of his family environment by joining the military. Unfortunately, Robert's entry into the military found a military culture that celebrated alcohol and drug use – all of which undermined his attempts to avoid drugs and alcohol. The failed and flawed treatment he received from the Army for his addiction ensured his separation from his Army home.

Much of Robert's military service was positive and deserving of credit as was recognized by the Army throughout his career. His promotion to Sergeant, his commendations and decorations, and his honorable discharge demonstrate that the Army recognized his worth and value as a person and as a soldier. The Army, however, was unable to cure Robert of his addictions or his mental health problems.

Robert Van Hook's service to his country must weigh in his favor in considering clemency. Indeed, his military service sets him apart from the many who seek executive clemency. Sparing his life would be an acknowledgement that service to the country had value.

VI. ROBERT VAN HOOK HAS DEVELOPED SPIRITUALLY AND SHOWS REMORSE FOR HIS ACTIONS.

A. Robert is the Product of His Background.

Robert Van Hook had little chance to succeed in life. As has been documented throughout this application, Robert was raised in a combat zone by irresponsible, alcoholic, and drug-dependent parents who visited violence on each other, Robert, and his siblings. His parents encouraged him to drink and take drugs when he was very young which led to his own lifetime of alcohol and drug dependence. This childhood trauma also led to serious mental health problems.

Compounding the effects of their own bad parenting, Robert's parents regularly sent him to stay with the Johnsons where he was exposed to a loving and nurturing family that did not drink, who were hard-working, and who went to church and attempted to instill their own values in Robert when he was with them. Whatever good effect the Johnsons had on Robert was soon undone when his parents insisted on getting him back. While with the Johnsons, Robert learned to treat people with respect and to live a normal life. But when he came back to the Johnsons after a stint with either of his parents he was a different boy – talking about drinking, doing drugs, and having sexual encounters with women and girls.

At the age of fourteen, after moving to Florida with his father and running away after a fight with his father, he lived on the streets for a year. There he engaged in sexual acts with men for money. Upon his return, he was “groomed” and sexually abused by his step-father's brother, who was twenty years older than him, – apparently with the knowledge of some family members.

Robert attempted to escape the chaos by joining the Army, but the long-term psychological effects of the abuse at the hands of his parents, the chaos of his early childhood years, the brief tastes of normal life with the Johnsons, and extensive child sexual abuse, resulted in the development of Borderline Personality Disorder, Post-Traumatic Stress Disorder, and a dependence on drugs and alcohol that eventually short-circuited his army career despite Robert having some success as a soldier.

After separating from the Army, Robert struggled with mental health issues, alcohol and drugs, unemployment, personal relations, and a lack of assistance from the Veterans Administration. Robert attempted suicide. Robert struggled with overcoming his alcohol and drug dependence. Robert struggled with his sexual identity. Robert did not receive the type of therapy designed to address his history of sexual abuse as a child or to address his Borderline Personality Disorder or his Post-Traumatic Stress Disorder. Instead, Robert drifted and attempted to deal with his mental illnesses with drugs and alcohol. The effects of his past went untreated. His inability to overcome these multiple issues resulted in Robert killing David Self. These same problems have also resulted in his many difficulties on Death Row.

B. Robert Van Hook Today.

Despite his troubled past and inability to obtain treatment and therapy to effectively overcome his childhood trauma and abuse, Robert retains hope. Despite all that Robert has been through, and despite the many times his family and the community in general ignored his needs and abandoned him, and despite the many

years he has spent in prison and the many legal setbacks he has had, he continues to have hope and he continues to nurture and develop deep, caring, and spiritual relationships with his family and members of the community in general.

1. Robert's Spiritual Journey on Death Row is a Reflection of His Remorse for Having Killed David Self.

First, I would like to begin by stating how very sorry I am for the crimes I committed against David Self. Not only am I sorry for committing these crimes, but also for causing such unbearable grief, pain and suffering to the family of David Self. I pray that someday they may find in their hearts, the mercy and compassion to forgive me. If not, then I accept their desire not to do so.

(Statement of Robert Van Hook to the Parole Board, at 1).

Robert has also expressed his deep remorse for the death of David Self to his cousin Keith Johnson: "I've heard him sit and cry and bawl his eyes out about it and wish that he could take things back - meaning what happened with David."

(Declaration of Keith Johnson, Exhibit 68, at ¶ 4). "Bobby lives every day with what he did. It's hard on him. To sit in his cell and think and visualize every day what he has done – that is punishment enough." (*Id.* at ¶10).

Robert has continued his spiritual journey that he started as a child with the Johnsons through prayer and study with available religious advisers on Death Row. Robert developed a spiritual relationship with the Ursuline Nun Sister Therese Rich while at the Ohio State Penitentiary ("OSP") in Youngstown. Sister Therese visited and prayed with Robert for several years while he was at Youngstown. They continue to correspond by letter. Sister Therese discussed Robert's search for spiritual guidance through the Catholic Church, through the teachings of the

Buddha, and other religions. With her guidance, Robert sought entrance into the Catholic Church and has become a Lay Cistercian of the Monks of Gethsemane and has attempted a life of prayer, contemplation and service. (See Declaration of Sister Therese Rich, Exhibit 71).

Sister Therese believes that Robert embraces his remorse and carries it with him every day – even attempting to reach out to David Self’s family to express his remorse personally. According to Sister Therese, Robert demonstrates his remorse through his prayer, through his religious studies, through his music and his service providing music at religious services, and through his daily actions. Sister Therese believes that Robert’s writings and actions reveal his spiritual transformation. (See Declaration of Sister Therese Rich, Exhibit 71).

Robert also developed a now seventeen-year relationship with lay visitor Frances May from the Youngstown area. Mrs. May was encouraged to start a pen-pal relationship with prisoners at the newly opened Ohio State Penitentiary by the pastor of her church who also served as the Catholic Chaplain at OSP. After writing several times, Mrs. May and her husband David May began to visit Robert (as well as several other death row inmates) at OSP. They have continued a regular correspondence and Mrs. May and her husband still travel from the Youngstown area to Chillicothe four times a year to visit Robert and other death row inmates. Mrs. May prays with Robert and discusses religious as well as personal topics. They have discussed family matters and Robert’s family history.

Based on her many years of visiting with Robert and her own devout spirituality, Mrs. May is convinced of the sincerity of Robert's remorse for the death of David Self as well as the sincerity of Robert's religious beliefs. She believes that Robert is trying hard to overcome his past, to develop his spiritual side, and to become a productive person – even in the limited world of the prison. Mrs. May recognizes that Robert's path to improvement in spirituality and behavior has not always been a straight road, but she believes that Robert sincerely strives to better himself and his world. (See Declaration of Frances May, Exhibit 78; see also Frances May's Video Testimony).

In addition to his spiritual development with the Catholic Church through Sister Therese Rich and Frances May and his participation in Catholic and Protestant services at both OSP and Chillicothe, Robert has also searched for other spiritual foundations and development. Robert has counseled with and prayed through Eric Weinberg, a regular death row Buddhist spiritual adviser; Catholic Priest Father Neil Kookoothe; Pastor Ernie Sanders; DRC's own religious advisers; as well as the pastor and deacon at St. Mary's Catholic Church in Chillicothe. Other members of the religious community all report that his spirituality and remorse for the death of David Self appear to be sincere and that Robert is always honest and straightforward when discussing his remorse with them.

Robert Van Hook has lost some battles in his attempts to overcome his past, but he continues to try to improve himself and find his spiritual calling even on death row – which deserves to be recognized.

Robert continues to try to develop as a person. He has done paintings and made crafts for his friends on death row, his family, and supporters in the free world. He has developed his skills as a drummer. He has taught himself to play the guitar and keyboard - with the help of Frances May and her husband. He shares his musical talents with those who attend religious services on Death Row. Robert Van Hook has continuing worth to society.

He regularly attends religious services on death row and provides music and song for the services when permitted. He participated in the first Kairos program on death row and attends many Kairos reunions. Robert is respected in the religious community that counsels and prays with him. "While at OSP, I was permitted to play my guitar and sing a song I had composed when a group from Frances May's church came to sing Christmas Carols. Everyone seemed to like my music." (Statement of Robert Van Hook, Section I of this Application at p. 7). Robert expresses and demonstrates the depth and sincerity of his spirituality to those who pray with him. (*Id.*).

2. Family Relations Since Robert's Incarceration.

Shortly before Robert's conviction and death sentence, Robert's father Robert Van Hook Sr., spent thirty days at a VA hospital and attempted to overcome his struggles with alcoholism, and at that late date attempted to become a better father to his son. During the penalty phase of trial he testified on Robert's behalf. (Trial Tr. 586-614). After the trial, he frequently travelled to visit Robert in prison during the early years of Robert's incarceration. Robert Van Hook, Sr., however, died of cirrhosis of the liver in 1988.

Despite their rocky and unstable relationship, Robert and his mother continued to communicate frequently by telephone and letter until Joyce's death in 2015. Joyce kept a scrapbook of all the correspondence with her son, kept and protected the artwork that Robert sent, as well as the pictures of Robert and others taken on prison visits, and maintained Robert's collection of military records, pictures, and medals.

As Robert was moved to different prisons, Joyce's visits became less frequent because of the distance from Cincinnati. For several years at the OSP in Youngstown, the only visits Robert received were from religious supporters such as Sister Therese Rich and Frances May from the Youngstown area. At Chillicothe, however, Joyce renewed her visitations until she moved to Las Vegas. She later died in 2015. After her death, care of the correspondence, the pictures, and the military records fell to Robert's half-sister Trina Berends.

3. Support from Extended Family.

After the move to Chillicothe, Robert was also able to renew his relationship with his half-sister Trina Berends and her family, who lived in the Cincinnati area. Robert had continued to correspond with Trina throughout his incarceration, but Trina was unable to travel to Youngstown to visit. Trina's sons Daniel and Donald Berends both have visited their uncle Robert at Chillicothe. (Declaration of Daniel Berends, Exhibit 69).

Robert was able to share his military experiences with Daniel – who served in Iraq and Afghanistan with both the Army and Marines. Daniel suffered a traumatic brain injury from an IED explosion in Iraq and has been diagnosed with

PTSD. Robert is very proud that his nephew had carried on the family military tradition. And like Robert, Daniel is very proud of his family's military tradition. Similarly, Daniel is proud of Robert's service to his country. Robert and Daniel are able to discuss their varying military experiences through correspondence and visits. Although, because of his health, Daniel is unable to visit very often. Daniel also recognizes the tragic effects of alcohol and drug addiction to members of his family including Robert. (*Id.*).

Trina Berends has recently moved to Las Vegas but continues her written and telephone correspondence with Robert. She is devoted to supporting Robert in all ways that she is able. Trina Berends will appear at the clemency hearing by video to explain her ongoing relationship with Robert as well as her relationship with Robert today.

Robert's extended family also remains supportive and frequently writes and visits. As was the case in his early life, the Johnson family provides Robert his primary support today. Earl Johnson, his son Randy Johnson, and daughter Tracey Weigand have all visited with Robert at Chillicothe and continue to write him and support him whenever they can. (See Declaration of Tracey Weigand, Exhibit 72). Robert's Aunt Marilyn Johnson passed away several years ago but also corresponded with Robert prior to her death.

Robert's cousin Keith Johnson lives in Las Vegas. Keith has visited Robert on his family visits to Ohio. Keith and Robert also correspond by email, mail, and by telephone. (Declaration of Keith Johnson, Exhibit 68). The Johnson family

follows developments in Robert's case and frequently discuss these matter in letters with Robert. Earl, Randy, and Keith Johnson will appear at the clemency hearing on video to explain their ongoing relationships with Robert and their view of Robert's childhood and adolescence. Tracy Weigand will appear live at the clemency hearing.

Keith Johnson and Robert have become close through their correspondence, telephone calls, and emails. "Little Bobby brings a lot to my life. . . . He makes me appreciate life." (Declaration of Keith Johnson, Exhibit 68, at ¶ 5). Keith Johnson also recognizes the difficult family life that Robert endured and that Robert was unable to overcome that childhood:

7. The reality of his home life is something that few individuals would have believed unless they saw it first-hand. He was badly neglected by Joyce, whose sole focus was her own overindulgence and her own vices. Joyce never stopped long enough to see the damage that the anger and the neglect and the violent lifestyle had on Bobby even though those effects were plain to see to everyone else. It was just something more horrible.

8. For Bobby, this must have truly felt like - coming and going at all hours of the night, yelling, beating, smoking, and drinking - how everyone normal lived. But the lines between right and wrong were clearly blurred. At best the accumulation of circumstances, including alcohol and drugs would have been far more that an individual with a healthy psyche could overcome – and Bobby had no help in overcoming these circumstances.

9. I'm going to end this by asking that the governor and the parole board spare my brother Bobby's life. He really didn't have a say on how he was raised. He didn't know how to get out of it. All he knew was what was around him the majority of his life. His parents introduced him to drugs and I know drugs is probably not an excuse but drugs does have a part to do with it.

(*Id.* at ¶¶ 7-9.).

Robert was shuffled between his mother and his father and his aunt and uncle and their family. Like his sisters, Robert thrived when living with his aunt and uncle in a calmer and more nurturing environment. Unlike his sisters, however, his time with his aunt and uncle was limited whereas both of his half-sisters were able to escape permanently to live stable lives with other relatives. The difference in their adult lives is striking.

As Robert's half-sister Tana Waller has summarized the terror they all lived through with Robert, Sr. and Joyce and the effect of escaping to a more stable environment had on her and her sister.

21. I would like for the parole board and the governor to understand that Bobby never had a chance. The abuse and neglect Bobby suffered is nothing that any child should have to deal with. Bobby's problems are primarily the fault of his father. If they could have seen Bobby being hit by his father and seen his father terrorizing Joyce in front of Bobby, they would have a better understanding of what Bobby went through.

22. I was able to escape to my dad, but Bobby had no dad to escape to. Bob, Sr. was not a good father, not a good husband, and not a good stepfather. He was a truly evil man.

23. Bobby's early exposure to drugs and alcohol by his father is also particularly troubling. Bobby did not know another path. Bobby became an addict because he was raised by addicts.

24. Bobby was never loved and nurtured as a child. Had Bobby been loved and nurtured as I was, his life would have been different. But Bobby had no advocates, no social services assistance. Bobby did not have someone to provide the most basic things, such as meals, a home, and a bed like other children. Bobby is the product of a horrible environment. For all of this he deserves mercy.

(Declaration of Tana Waller, Exhibit 1, at ¶¶ 21-24). (Ms. Waller lives in Oregon and is unable to attend the clemency hearing).

4. The Life of Robert Van Hook Continues to Have Value.

Despite his disciplinary record on death row, Robert Van Hook has changed significantly since his incarceration in 1985. While Robert has not been a model prisoner, he has taken strides to improve and to find the right category of medications and counseling to help him control himself and keep himself out of trouble. When he has had the right combination of therapy and medications, he has stayed out of trouble for significant periods of time. (See Mental Health History and explanations at Section IV of this Application.)

Robert has searched through many types of religions seeking the best spiritual answers for his life. He has participated in charitable activities when available and has requested to be able to participate in additional charitable programs and counseling programs. He has tried to revive a Veterans Program on Death Row. He has engaged in extensive religious studies primarily in the Catholic Church. He has joined the Catholic Church and become a lay monk.

The expressions of love and support by Robert Van Hook's family and the testimonials that Robert has become a man of faith with sincere spirituality and remorse are worthy of consideration by this Board and by the Governor when deciding whether to grant clemency.

C. Robert Van Hook is Deserving of Clemency.

Robert Van Hook has had few choices in life. He was born to violent, alcoholic, and irresponsible parents. He was verbally, physically, and sexually abused as a young child and adolescent. When he was exposed to a better lifestyle with his aunt and uncle's family, he flourished. But after a short period of time one

of his parents would always drag him back to the chaos surrounding their lives. Robert's parents taught him to drink and use drugs. His mother openly had sex with Robert, Sr. and other men in front of Robert. Robert had no escape – no safe haven to move to – as did his half-sisters. The abuse resulted in serious untreated mental health issues. Robert's treatment in the family, and the impact of such abuse, is worthy of consideration in deciding whether to grant clemency.

When Robert ran away from his father in Florida, he did not find a safe environment, as had his sisters. Instead, Robert ended up living on the streets panhandling, playing guitar for change, and selling his body for sex with gay men. When he returned from Florida, he was “groomed” and drawn into sexual acts with the brother of his step-father. Robert never received any treatment or therapy for this child sexual abuse or the effect that this ongoing and repeated child sexual abuse would have had on his development as a young adolescent male or on his sexual identity. Robert's sexual abuse as a child and the failure to treat the effects of this abuse are factors to consider deciding whether to grant clemency.

The result of life with his parents and the child sexual abuse was a hypersexualized young man, with alcohol and drug dependency, suffering from Borderline Personality Disorder and PTSD. Robert's attempt make a career in the Army was jeopardized from the beginning by his lack of formal education, his alcohol and drug dependence, and his untreated Borderline Personality Disorder and PTSD. While he had some success in the Army, his abuse history, his addictions, and his mental illnesses caught up with him; he attempted suicide,

lapsed into heavy drinking and fighting, and was eventually separated from the Army with an honorable discharge. Despite his struggles, Robert's service in the Army is a consideration in deciding whether to grant clemency.

Back in Cincinnati, Robert continued to struggle with his past, struggle with his dependencies, struggle with his Borderline Personality Disorder and PTSD, and struggle with his sexual identity. He received little support or treatment from the VA. He could not find steady work. Robert was lost. Robert had little support from his immediate family or professionals at the VA or elsewhere. Robert eventually gave into the drugs and alcohol and recognized his own sexual confusion. The sad result was a chance encounter with David Self at the Subway Bar. Robert went home with David and tragically killed him in a haze of mental breakdown and sexual confusion fueled by alcohol and drugs.

Robert has not had a good record on Death Row. However, when he received the correct combination of medications and therapy, he has controlled his behavior. Robert has also developed his spirituality, he has worked on projects and charities when given an opportunity, and he has maintained and developed his relations with his family – who all support him and his application for clemency. He continues to be an integral part of their lives.

The combination of all of these factors provide an explanation for this terrible crime and reasons for this Board and the Governor to consider in deciding whether to grant clemency to life in prison without the possibility of parole.

Respectfully submitted,

/s/ David C. Stebbins

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CERTIFICATE OF SERVICE

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

Clemency was electronically delivered to the following:

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on this 17th day of May, 2018.

/s/ David C. Stebbins _____

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