

## Robert Jones – Table of Five-Member Clemency Board Composition

Execution Date	Article Date	Name	No of Board Members	No of Board Members Voting	Vote	Anecdotal Information from Counsel
1997-06-25	1997-06-24	Woratzeck, William, Lyle	5	5	4-1	
1998-01-21	1998-02-05	Ceja, Jose Jesus	5	5	4-1	
1998-04-22	1998-04-22	Villafuerte, Jose	5 5	5 5	4-1 4-1	
1998-04-29	1998-04-25	Ross, Arthur Martin	5	5	4-1	
1998-06-03	1998-06-03	Gretzler, Douglas E.	5	4	4-0	
1999-01-13	1999-01-13	Gillies, Jesse James	5	5	4-1	
1999-02-03	1999-02-08	Gerlaugh, Darrick	no commutation hearing			
1999-02-24	1999-02-24	LaGrand, Karl	5	4	3-1	Board voted against commutation and reprieve.
1999-03-03	1999-03-03	LaGrand, Walter	5			Board voted 2 to 1 for a reprieve; Chairman Belcher abstained.
1999-05-05	1999-05-05	Vickers, Robert	5	5	Unanimous	
1999-06-16	1998-10-20	Poland, Michael	5	5	4-1	
1999-10-27	1999-10-27	Ortiz, Ignacio Alberto	no commutation hearing			Board voted unanimously against reprieve
2000-02-16	2000-02-16	Chaney, Anthony Lee	5	5	Unanimous	
2000-03-15	2000-03-15	Poland, Patrick	5	5	4-1	

## Robert Jones – Table of Five-Member Clemency Board Composition

Execution Date	Article Date	Name	No of Board Members	No of Board Members Voting	Vote	Anecdotal Information from Counsel
2000-11-08	2000-11-08	Miller, Donald	no commutation hearing			Board voted unanimously against reprieve
2007-05-22	2007-05-08	Comer, Robert C.	no commutation hearing			Board voted 3-1 against reprieve
2010-10-26	2010-10-27	Landrigan, Jeffrey	4	4	2-2	One member awaiting confirmation
2011-03-29	2011-03-24	King, Eric	5	5	5-0	
2011-05-25		Beaty, Donald E.	no commutation hearing			
2011-06-30	2011-06-27	Bible, Richard L.	5	5	5-0	
2011-07-19	2011-07-14	West, Thomas	5	5	3-2	
2012-02-29	2012-02-24	Moormann, Robert H.	5	5	4-1	
2012-03-08	2012-03-08	Towery, Robert C.	5	5	5-0	
2012-04-25	2012-05-12	Kemp, Thomas	no commutation hearing			
2012-06-27	2012-06-23	Lopez, Samuel	5	4	4-0	One member absent
2012-08-08	2011-03-31 2012-08-04	Cook, Daniel Wayne	5 5	4 5	4-0 4-1	One member absent
2012-12-05	2012-12-01	Stokley, Richard D.	no commutation hearing	0	0	



United States Court of Appeals, Ninth Circuit.

## **WORATZECK v. ARIZONA BOARD EXECUTIVE CLEMENCY**

**William Lyle WORATZECK, Plaintiff-Appellant, v. ARIZONA BOARD of  
EXECUTIVE CLEMENCY, et al., Defendants-Appellees.**

**No. 97-99015.**

**-- June 24, 1997**

Before: WALLACE, FARRIS, and BOOCHEVER, Circuit Judges.

David J. Burman, Ruth Todd Chattin, Susan Fahringer, Perkins Coie, Seattle, WA, for plaintiff-appellant. Paul J. McMurdie, Chief Counsel, Office of the Attorney General, Criminal Appeals Section, Phoenix, AZ, for defendants-appellees.

Woratzek, an Arizona state prisoner sentenced to death tomorrow morning at 12:05 a.m., appeals from the district court's denial of his motion for a temporary restraining order (TRO) and stay of his execution. Denial of a TRO is normally not a final appealable order. However, since Woratzek faces imminent execution, "the court will not require [Woratzek] to go through the futile act of reapplying for permanent relief and the denial of a TRO may be treated as a de facto denial of a permanent injunction." *Graham v. Teledyne-Continental Motors*, 805 F.2d 1386, 1388 (9th Cir.1986), cert. denied, 484 U.S. 815, 108 S.Ct. 67, 98 L.Ed.2d 31 (1987). Thus, we have jurisdiction to consider Woratzek's appeal of the TRO. We will reverse the district court's order denying this injunctive relief only if it abused its discretion, or based its decision on an erroneous legal standard or clearly erroneous findings of fact. *Does 1-5 v. Chandler*, 83 F.3d 1150, 1152 (9th Cir.1996). We also have jurisdiction over the denial of the stay of execution.

I

Woratzek filed a petition seeking Executive Clemency on June 4, 1997. The five-person Board of Executive Clemency (Board) is responsible to make a recommendation to

the Governor. After a hearing, the Board recommended against clemency by a four to one vote.

Woratzeck brought this action in the district court pursuant to 42 U.S.C. § 1983, contending that his due process rights were violated. He requested, and was denied, a motion for a temporary restraining order, a stay of execution, and a declaratory judgment.

Woratzeck asserts that the involvement of Robert C. Brown, his former counsel on an appeal, and Dwight Callahan, his former counsel in his burglary trial, in the clemency proceedings violated his Due Process rights. Both are now members of the Pinal County Attorney's office, which is the prosecuting authority in Woratzeck's case. According to Woratzeck, Brown prepared the brief submitted to the Board, and helped prepare witnesses and exhibits to oppose Woratzeck's request for clemency at the hearing. Woratzeck also alleges that Callahan assisted Brown in preparation for the hearing. While Woratzeck does not allege that either Brown or Callahan revealed confidential communications to the Board, he asserts that the "presence of conflicted counsel is presumptively prejudicial."

He also asserts a second conflict. The State Attorney General is legal counsel to the Board. Yet, he alleges, the Office of the Attorney General has actively been involved on behalf of the prosecution.

The prosecution offered its own declarations, but no evidentiary hearing was held in the district court. Therefore, we accept the facts as alleged by Woratzeck.

## II

We first must decide whether an action under 42 U.S.C. § 1983 is the proper vehicle for litigating this claim. The Sixth Circuit concluded that it was. *Woodard v. Ohio Adult Parole Authority*, 107 F.3d 1178, 1187 (6th Cir.1997) (*Woodard*), pet. for cert. filed, 65 U.S.L.W. 3756 (May 6, 1997). However, the Supreme Court recently decided in *Edwards v. Balisok*, 520 U.S. 641, ----, 117 S.Ct. 1584, 1589, 137 L.Ed.2d 906 (1997) (*Edwards*), that a "claim for declaratory relief and money damages . that necessarily impl[ies] the invalidity of the punishment imposed is not cognizable under § 1983." We thus must consider whether *Edwards* prohibits Woratzeck from raising this claim under section 1983.

In *Edwards*, *Balisok* alleged that the procedures used in his disciplinary hearing violated his Fourteenth Amendment due process rights. He requested declaratory relief and monetary damages; however, he did not request restoration of his good-time credits. The district court denied his claim, but we reversed and held that a claim challenging only the procedures employed in the disciplinary hearing is available under section 1983. *Id.* at ----, 117 S.Ct. at 1586-87.

The Supreme Court unanimously reversed our decision. It cited *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994) (*Heck*), and stated that our decision

disregarded “the possibility, clearly envisioned by Heck, that the nature of the challenge to the procedures could be such as necessarily to imply the invalidity of the judgment.” Edwards, 520 U.S. at ----, 117 S.Ct. at 1587. The Court then held that:

[t]he principal procedural defect complained of by respondent would, if established, necessarily imply the invalidity of the deprivation of his good-time credits. This is an obvious procedural defect, and state and federal courts have reinstated good-time credits (absent a new hearing) when it is established.

Id. at ----, 117 S.Ct. at 1588. Since Balisok's requested relief would “imply the invalidity of the punishment imposed, [it] is not cognizable under § 1983.” Id. at ----, 117 S.Ct. at 1589.

In our case, Woratzeck argues that the procedural defects in the clemency hearing denied him his Due Process rights. Our question after Edwards is whether the relief that Woratzeck seeks would “necessarily imply the invalidity of the punishment imposed.” Id. While this is a very difficult question, we conclude that Edwards does not prohibit Woratzeck from raising his claim under section 1983. The relief that Woratzeck seeks—a new clemency hearing—would not “demonstrate[ ] the invalidity” of his death sentence. Rather, it would only provide him another clemency hearing. Unlike the requested relief in Edwards, which necessarily implied the invalidity of the revocation of his good-time credits, a second clemency hearing, by itself, would not invalidate his death sentence. Rather, it would merely provide the Board another chance to review his clemency claim. Since Woratzeck's requested relief would not “necessarily imply the invalidity of his conviction or sentence,” Heck, 512 U.S. at 487, 114 S.Ct. at 2372, his suit is cognizable under section 1983.

### III

Woratzeck argues that the district court erred by rejecting his claim that the involvement of his former counsel and the Attorney General in the clemency proceedings violated his procedural due process rights. He asserts that under Arizona law, a clemency hearing must be “a hearing in a substantial sense,” *McGee v. Arizona State Bd. of Pardons*, 92 Ariz. 317, 376 P.2d 779, 781 (1962), and contends that Brown's, Callahan's, and the Attorney General's assistance in preparing for the clemency hearing violated this standard.

In *Olim v. Wakinekona*, 461 U.S. 238, 103 S.Ct. 1741, 75 L.Ed.2d 813 (1983) (*Olim*), the Supreme Court held that when a state's laws “place no substantive limitations on official discretion[, they] create no liberty interest entitled to protection under the Due Process Clause.” Id. at 249, 103 S.Ct. at 1747. Arizona places no substantive limitations on official discretion over the ultimate decision to grant or deny clemency. See A.R.S. § 31-402(A) (“the board of executive clemency shall have exclusive power to pass upon and recommend reprieves, commutations, paroles, and pardons”); A.R.S. § 31-443 (“[t]he governor, subject to any limitations provided by law, may grant reprieves, commutations and pardons, after conviction, for all offenses, except impeachment, upon conditions, restrictions and limitations he deems proper”) (emphasis added); *State ex rel. Arizona*

State Bd. of Pardons & Paroles v. Superior Court of Maricopa County, 12 Ariz.App. 77, 467 P.2d 917, 920 (1970) (“while the Courts can compel to Board to act, the Court cannot compel the Board to act in any particular manner”); see also Woodard, 107 F.3d at 1178 (applying *Olim* to conclude that Ohio's clemency procedure vested “unfettered discretion” in the governor).

While the governor can grant clemency only when the Board makes such a recommendation, see A.R.S. § 31-402(A), neither the Board nor the governor have any “objective and defined” criteria which guides their decision. As the Court said in *Olim*: “If the decisionmaker is not ‘required to base its decisions on objective and defined criteria,’ but instead ‘can deny the requested relief for any constitutionally permissible reason or for no reason at all,’ the State has not created a constitutionally protected liberty interest.” *Olim*, 461 U.S. at 249, 103 S.Ct. at 1747 (quoting *Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 458, 466-67, 101 S.Ct. 2460, 2465-66, 69 L.Ed.2d 158 (1981)) (citation omitted). Since no “objective and defined criteria” guide either the Board or the governor, we conclude that Arizona's clemency laws “create no liberty interest entitled to protection under the Due Process Clause.” *Olim*, 461 U.S. at 249, 103 S.Ct. at 1747. Like the Sixth Circuit in *Woodard*, we do not decide if *Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995), affects *Olim*. If it does, it can only do so to *Woratzeck's* detriment.

#### IV

Even though Arizona's clemency laws do not create a new constitutionally protected liberty interest in clemency procedures, we must also consider whether *Woratzeck's* original interest in life and liberty imposes some constitutional requirements. We believe that *Woodard* is instructive. In *Woodard*, the Sixth Circuit cited the Supreme Court's decision in *Evitts v. Lucey*, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985), to conclude that all proceedings that play an “integral part” in a state's criminal justice procedure must abide by some form of procedural due process, even if the state is not required to provide the proceeding. *Woodard*, 107 F.3d at 1186. *Woodard* then concluded that clemency hearings, the very last stage in most criminal justice procedures, must comport with some form of procedural due process. *Id.* at 1187. However, the court emphasized that federal courts should approach this issue “with great caution and deference.” *Id.* at 1188. “The degree to which each component forms an ‘integral part’ of the overall adjudicative system determines the degree to which due process plays a role. Of course, the more distant the procedure from initial proceedings, the less stringent the requirements must be.” *Id.* at 1186.

Applying *Woodard* to this case, we conclude that the due process that the Constitution requires for a clemency hearing is quite limited. A clemency hearing is far removed from the original judicial proceeding, and is granted only as a matter of executive grace. Although no verbal formulation can capture the requirements of due process precisely, we conclude that a procedural due process violation exists only if the Board's procedures “shock the conscience.” The alleged involvement of Brown, Callahan, and the Attorney General in the preparation of the clemency proceedings is unfortunate and inexcusable.

However, Woratzeck informed the Board of their involvement, and the Board could consider that fact when it made its clemency decision. The Board also allowed Woratzeck, family members, religious groups, and friends to testify as to why he deserved clemency. While Woratzeck's clemency hearing was not perfect, it need not have been. Neither Brown nor Callahan appeared at the hearing. Woratzeck fully exposed their challenged participation to the Board. Woratzeck did not allege that any specific information he provided in confidence was used against him. The fact that Woratzeck had an adequate opportunity to explain why the Board should spare his life leads us to conclude that the hearing did not "shock the conscience," and thus did not violate Woratzeck's procedural due process rights.

AFFIRMED.

I also agree with Judge Moore's analysis of the federal process due in clemency proceedings. See *Woodard v. Ohio Adult Parole Auth.*, 107 F.3d 1178 (6th Cir.1997), petition for cert. filed, 65 U.S.L.W. 3756 (May 6, 1997).

Given this clear recognition by the Court of the integral part played by clemency in every state's death-penalty scheme, we find it only rational to apply *Evitts's* principle in equal measure to clemency procedures. We acknowledge at the same time that the due process at the clemency stage will necessarily be minimal, perhaps even barely perceptible, because of the great distance from the truly fundamental process-the trial, the appeal-and the significant distance from other extremely important process-discretionary appeals and post-conviction petitions.

*Id.* at 1187. The reasoning by which due process places constraints on appeals "logically applies to further proceedings made available by the government, as well," including clemency proceedings. *Id.* at 1186 The process due at a clemency proceeding, however, will necessarily be minimal because of its great distance from the trial and other post-conviction remedies. That federal right in any event may be based on Arizona's holding that, in clemency hearings, "due process of law requires notice and opportunity to be heard, and there must be a hearing in a substantial sense . in accordance with the cherished judicial tradition embodying the basic concepts of fair play." *McGee v. Arizona State Bd. of Pardons & Paroles*, 92 Ariz. 317, 376 P.2d 779, 781 (1962) (quotations and citations omitted). See *State Bd. of Pardons & Paroles v. Superior Court*, 12 Ariz.App. 77, 467 P.2d 917, 920, 922 (1970) (Arizona Superior Court has power to review Board proceedings to determine due process in commutation hearing and may return matter to Board for further proceedings).

I also agree that an action under 42 U.S.C. § 1983 provides an appropriate vehicle for raising this type of due process claim. If ever a case presented a significant likelihood of the type of due process violation cognizable in a clemency proceeding, however, this is one. There is no question but that Woratzeck's former counsel orchestrated the presentation to the clemency board urging denial of clemency.

Under these circumstances, we should grant a temporary restraining order staying the execution and remanding to the district court to determine whether the conflict of interest undermined the fairness of the clemency proceedings.

BOOCHEVER, J., Dissenting and Granting a Temporary Stay of Execution:

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## Curtains for Ceja

**As a teen, Jose Ceja killed two people and was sentenced to die. He spent 23 years on death row as a model prisoner, and then his sentencing judge admitted he'd made a mistake. But the state of Arizona killed him anyway.**

**By Barry Graham**

published: February 05, 1998

This is what Jose Jesus Ceja did to Linda and Randy Leon. I wasn't there.

On June 30, 1974, 18-year-old Ceja went to the Leons' home, planning to steal 70 pounds of pot. He didn't think they'd be at home. When he got there, he found Linda, 22, alone. They struggled in the living room, and he used a .22 handgun to shoot her twice in the chest. Then he dragged her into a bedroom and shot her four times in the head, using a pillow to muffle the gunshots. Ceja's gun was empty when he heard Randy Leon, 24, pull up to the house in his car. Knowing that Randy kept a gun in his den, Ceja went and found it. When Randy entered the house, Ceja shot him once in the chest, once in the back, once in the shoulder and once in the arm.

Ceja was arrested by Eloy Ysasi, a Phoenix homicide detective. Ysasi had some sympathy for Ceja. The detective had worked on nearly 180 homicides--when he retired the following year, his total would be 181--and had come to recognize the signs that differentiate premeditated murders from random, lethal explosions of violence. And, he believed, "The murders of Randy and Linda Leon were the result of a panicked act by a young, immature person."

This was probably a fair description of Ceja. Three years too young to drink alcohol legally, he was drinking beer, smoking pot and sniffing paint. He came from a background of severe poverty. His education had stopped at eighth grade. As a child, he had been abused by his stepfather. He had been depressed since his wife had suffered a miscarriage three months before he killed Linda and Randy Leon.

He had no prior history of violence, and in fact, his record showed only one juvenile referral--for joy-riding.

Of the many murders Ysasi had dealt with, this one didn't stand out. Ysasi believed Ceja should be charged with second-degree murder and sentenced to life in prison. He wasn't. He was charged with and convicted of first-degree murder, and sentenced to death. But--though no one could have known it at the time--before his death sentence, he would serve a life sentence.

Contrary to popular belief, you don't get the death sentence just for murdering someone. The murder has to be "especially heinous, cruel or depraved."

The sentencing court decided that Ceja's crime met these criteria because it was found that he had kicked Randy Leon in the face after killing him. This "finding" seems to have been based on the sole fact that Randy Leon's face was marked, and that Eloy Ysasi recalled Ceja saying that he had kicked him. Ysasi hadn't recorded it in his notes, and had just mentioned it at the preliminary hearing. Ceja denied ever having said it. No evidence to support it was presented in testimony either during the trial or the sentencing hearing. Dr. Heinz Karnitschnig, the county medical examiner who performed

autopsies on Ceja's victims, stated that there was no postmortem abuse of either body. He also opined that the abrasions on Randy Leon's face were "consistent with a fall to the floor."

As I prepare to watch him die, I imagine being Jose Ceja.

It's not hard to imagine. A panicked act by a young, immature person. In 1984, when I was 18, that would have been a fair description of me. That winter, I was broke and hungry and on the verge of being kicked out of the place where I lived.

One bone-chilling morning, I hadn't eaten and didn't know how I was going to eat that day. I went out, taking with me a screwdriver with a weighted handle. The tool barely fit into the inside pocket of my jacket. I went inside a quiet old bookstore and pretended to look at the books. The owner, an elderly man, looked at me suspiciously, but he wasn't hostile. He sat behind a desk with a heater beside him, and read a newspaper. For more than an hour, I skulked behind shelves. I couldn't see a cash register. A customer came in and bought some books, and I saw where the money was kept--in a desk drawer. When the customer left, I planned what I was going to do--smash the man's head with the screwdriver handle, pocket the money from the drawer and get out of there. I'd toss the screwdriver in the nearby river as I walked home. Business was so slow at his store, there was a good chance that I'd be able to do it and leave without anyone seeing me.

It didn't happen, though it nearly did. I walked toward the old guy, my hand inside my jacket, holding the screwdriver. He had no idea what was about to happen to him--he just thought I was leaving his store. "Bye," he said. And his voice panicked me, and instead of hitting him on the head, I did what he thought I was going to do: I walked out of his store.

I walked down to the river and dropped the screwdriver into the water.

It wasn't my conscience that saved him, though I'd like to believe that it was. The truth is, I chickened out.

I haven't told many people this story. When I do tell people, they always say they'd never do such a thing. I ask them if they've ever been desperate, and they always say no.

I imagine being Jose Ceja.

Ceja grew up on death row. He never had an adult life outside of prison. He was a kid of 19 when they sentenced him, and a man of 43 when they killed him.

Death row isn't like the rest of the prison system. Because of its nature, restrictions are more numerous and more severe than in regular prison life. It's hardly the most conducive environment for personal development.

Even so, in 1981, Ceja got a high school GED. After that, he took classes at college level. Through Arizona Central College, he studied a wide range of subjects, including business, government, crime and justice, sociology and moral choices. He was an excellent student, consistently scoring A or B grades and earning a place on the college's honor roll in spring 1983. In the prison library, he helped other inmates with research.

While educating himself, Ceja also worked throughout his 23 years on death row. He started as a porter in the death-row building. After that, he was allowed to join the maintenance crew, which painted the death-row cellblock in 1989. This job gave him access to power tools that could be put to unpleasant use, an indication of the trust his supervisors had in him.

Then Ceja joined the staff of the prison library, where he worked from 1990 until 1993. An incident involving the removal of materials from a filing cabinet caused him to lose the job for a period, but he returned in 1995 and held the job until the prison transferred all death-row inmates from the main complex at Florence to the Special Management Unit II at the Eyman complex in August 1997.

By the end of 1997, Ceja's appeals had run their course. His death sentence had twice been quashed, and each time had been reinstated when he was sent for resentencing. His execution date was set for January 21, 1998.

Last year, I called Mike Arra, public affairs director for the Arizona Department of Corrections, and asked to be put on the media waiting list to witness an execution. Every journalist supposedly has this right. Arra told me pointblank that no New Times writer would ever be invited. I asked him why, and he referred to a parody of the execution checklist that the paper had recently printed.

"You made jokes about it," he said.

"Yeah, I know. What's wrong with that?"

"We don't think a person's death is any laughing matter."

"Neither do we. But then we don't kill people. If it's making you feel so bad, maybe you should stop."

Arra wasn't amused. Neither was I. I was anxious to see an execution. In a civilized society, the only way you can witness a murder is by accident, by being in the wrong place at the wrong time. Because, in a civilized society, murder is covert and random. Murderers don't announce the time and place of the next murder. But, finding myself living in a society where murderers do just that, because murder is committed by the society itself, I felt bound to go and look at it, see how it operates.

Jose Ceja solved my access problem by inviting me to his execution. I would be there not as a media witness invited by the state, but as an "inmate's witness" invited by the condemned man.

I received a registered letter from the DOC telling me that I was on the list of witnesses and giving me some instructions.

Did you know you can't wear blue jeans to an execution?

Although the date of the execution was Wednesday, January 21, this is misleading. The killing really happened Tuesday night, but it was just after midnight, technically Wednesday morning.

There's a reason they do this. The warrant for a person's execution is dated for only one day, so they like to kill you right at the start of that day, a few minutes after midnight. Because the longer they leave it, the more chance that if your lawyer gets a stay for a few hours, the day will be over and they'll have to apply for a warrant for another day. But if they start trying to kill you right away, it means your lawyer has to find ways to stall for an entire 24 hours.

On January 20, Ceja's clemency hearing is held in the morning. This is just a mandatory part of the pre-execution ritual, and no one has high hopes for it. The Board of Clemency has never granted a commutation since Arizona resumed killing people in 1992.

But if there was ever a case for clemency, it's Ceja's. Not only does Eloy Ysasi speak on his behalf, but so does A. Melvin McDonald, the judge who sentenced Ceja to death.

McDonald testifies that he made a mistake when he passed that sentence. He praises Ceja's successful efforts to educate himself. He says it is cruel and unusual to incarcerate a prisoner on death row for 23 years and then to execute him. He now believes the imposition of the death sentence on Ceja would be morally wrong.

Ceja's wife, Kristie, who married him in prison in 1993, testifies that Ceja talked about his crime without remorse, and threatened to kill her if she repeated what he said. Her friend Nancy Goodman, the girlfriend of another prisoner who introduced her to Ceja, tells the same story. No evidence is produced to support their claims. A couple of days later, Kristie Ceja will threaten to kill anti-death-penalty campaigners Donna and James Hamm.

Meanwhile, the Governor's Office has received a letter from the Vatican pleading for Ceja's life.

Clemency Board chairman Edward Leyva votes for commutation. The four other board members--Duane Belcher, Kathryn Brown, Donna Flanigan and Howard Jarrett--all vote to kill Ceja.

This is what the Arizona Department of Corrections did to Jose Jesus Ceja. I was there.

It took them 23 years, but they finally had him helpless. They couldn't do anything to the barely literate, dysfunctional teenager who'd committed the murders, so they did it to the educated, responsible and productive middle-aged man he'd become.

They led him to a gurney in the execution chamber and strapped him down. Then they put catheters into the veins of his arms. They may or may not have had to dissect an arm--with the inmate fully conscious--in order to find the correct veins. When this is necessary, they call it "cutting down." They left him lying like that for about a half-hour, and then, when they knew there had been no last-minute reprieve, they gave the order to open the curtain that hid him from the view of the witnesses--the inmate's witnesses, state's witnesses and journalists. No "victim's witnesses"--members of the Leons' family--attended.

When the curtain opens, Ceja looks like a man tucked cozily in bed. It's a cosmetic maneuver worthy of an advertising agency. Witnesses weren't allowed to see him being strapped down, or his arms being pierced by needles. Because of the sheet that's tucked around him, and the strategic positioning of the gurney, there's no indication that he has needles in his arms. There's no sign of any tubes or catheters.

I have the best--or worst--view a witness can have. Because I was invited by Ceja, I'm standing right down at the front. Beside me stands one of his attorneys, Charles Van Cott, a solidly built young man with a sandy mustache. Van Cott looks dumfounded. Standing next to him is the Reverend John Fife of Tucson's Southside Presbyterian Church. Ceja had invited the Catholic Bishop of Tucson, Manuel Moreno, but he didn't come. Pastor Fife did. Ceja also invited the Bishop of Phoenix, Thomas J. O'Brien, who didn't show, either. Ceja didn't invite the clergymen for his own spiritual reasons, but because he hoped that seeing what was done to him would encourage the church to take a more active part in opposing the death penalty.

When the order comes to open the curtain, and a guard does it, I almost recoil. I'd imagined there would be some distance, that it would all be far away. But I'm standing so close to Ceja that, if it weren't for the soundproof window, we could hold a conversation without having to raise our voices.

When I see him, I want to walk out of there. I've seen people die before, of cancer and AIDS, but they were so sick that their deaths made sense and in some way were even a relief. Ceja isn't sick. He's a big, robust-looking man, his hair thinning and going gray, quite unlike the sullen, black-haired kid in the press photos. Because he looks so healthy, he has the air of a man lying in bed on a Saturday morning, waiting for someone to bring him a cup of coffee.

When he realizes the curtain has been removed, he raises his head and looks at the witnesses. He smiles and winks at Van Cott, though it's obviously forced. Van Cott does the same in return. I catch Ceja's eye, smile and nod, in a pitiful attempt to offer him some comfort.

Terry Stewart, the DOC's director, enters the death room and stands beside Ceja. An intercom system is turned on, and we hear Stewart ask Ceja if he has anything he wants to say.

"No," Ceja answers, his voice tinged with a Mexican accent.

Stewart asks him if he's waiving his right to say anything.

"That's right," Ceja answers. His manner is calm, his tone of voice flat but not hostile.

Stewart exits. Then Meg Savage, warden of Florence prison, comes in and reads Ceja his death warrant. He lies there impassively as she does. Then she leaves, and Ceja is killed.

We can't see it happen, but he's injected with Pentothal, an ultra-short-acting sedative. Then pancuronium, which paralyzes every voluntary muscle in the body. The purpose of this is to make death look peaceful--even if the inmate is in intense pain, he won't be able to show it. Finally, they inject him with potassium chloride, which stops the heart.

Nothing changes in the death room, except for Ceja. He closes his eyes, and his breathing gets quicker. His face goes into spasm, as though there's an explosion going on just under his skin. His upper lip trembles and then billows out from his face, like a rag flapping in a strong wind. Pastor Fife puts an arm around Charles Van Cott's shoulders. I have an almost uncontrollable urge to shit. After a minute or so--or maybe longer, I don't know--Ceja is just lying there. I look for signs of breathing and don't see any. Then the order comes to close the curtain, and the guard does. There's no announcement that Ceja is dead, just the order to close the curtain.

It takes a while to get out of the prison. On the way in, we had to show identification at what seemed like a multitude of checkpoints, some only about three feet apart. And we have to go through it all again on the way outside. As we walk, Pastor Fife tells Van Cott not to blame himself, that he did everything he could.

This is the first execution the pastor has seen, and he seems to be taking it well.

But it's all front, for other people's sake. I know. I seem to be taking it well, too, and I'm not.

A friend drove me to Florence because he heard me say I didn't think I'd be stable enough to drive myself back to Phoenix. My friend is not allowed to park at the prison, so he's waiting for me down the road, near a candlelight vigil of about 40 or 50 people. While he waits, he gets talking to a man who's also waiting. The man tells my friend he's driven Fife up from Tucson, because he didn't think the clergyman would be in good enough shape to drive himself.

Van Cott offers to drive me to where my friend is waiting. But first he has to make a phone call. I stand outside and watch other witnesses coming out. One of them is Maricopa County Attorney Rick Romley, chatting with officials and laughing all over his face. Perhaps this is how he likes to spend his evenings.

"I guess this whole process must be hard on you guys," I remark to a prison official, a man in his 50s.

"Yeah," is all he says.

A shuttle bus comes up to where Van Cott and I are standing.

"Taxi?!" the driver says with fake brightness.

"That's what we need," I say with equal falseness. He gives us a ride to the parking lot, where Van Cott left his car. Van Cott had planned to take me the quarter-mile or so to where my friend is parked, but my friend has found his way to the prison parking lot and is waiting for me.

My friend and I stop at a Circle K. Pastor Fife is there with his designated driver, looking a lot less hearty than he did earlier.

"We're all diminished by it," he says. "It's barbaric."

Before he leaves, he tells me I have to take care of myself for a while.

"This won't go away quickly," he says, and I already know he's right.

On the drive home to Phoenix, my friend and I talk about everything except the execution. The only real discussion we have about it is when I tell him that I felt a desperate urge to do something to save

Ceja. I would have felt the same if I'd been in the Leons' house that night nearly 24 years ago. And I'd have been killed, too.

It's two in the morning when I get home.

Two hours ago, Jose Ceja was alive and healthy, stomach full of food, a universe inside his head. And now he's nothing. Randy Leon. Linda Leon. Jose Jesus Ceja.

I wake with a raging fever. I have a debilitating virus, and am bedridden for the next few days. The Arizona Republic publishes a special "tough guy" section, stories detailing how its reporters don't mind watching executions. The least stupid piece is by the reporter who watched Ceja die, Christina Leonard, a kid of 22 who had no clue about what she was seeing, who saw only the cosmetic surface gloss. She saw a man undramatically falling asleep, and seemed to miss his facial convulsion as he suffocated.

The day that article appears, I get a letter from another death-row inmate, who didn't know I was one of Ceja's witnesses.

"Last night they executed Joe Ceja, who has been on the row for 23 years," he writes. "It is just such a cruel scenario, to torture us for so long. And the Clemency Board will NEVER give a recommendation to commute. Nor will the governor commit political suicide by granting a commutation."

Ceja's lawyer releases his client's final statement. It ends with the words, "To the superior court judges, the prosecutors and all of the state and federal appellate court judges who reviewed my case and voted to affirm the sentence, I say that to err is human and to forgive divine! I'll be seeing you all sooner or later!"

Contact Barry Graham at his online address: [bgraham@newtimes.com](mailto:bgraham@newtimes.com)



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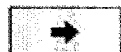
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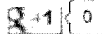


What's your

## TUCSON CITIZEN MORGUE, PART 2 (1993-2009)

### Arizona executes Honduran

by Tucson Citizen on Apr. 22, 1998, under Tucson and Arizona



The Associated Press

- The state proceeds despite international protests and pleas for clemency.

The Associated Press

FLORENCE -- Despite a last-minute plea from Honduras and an unprecedented second clemency hearing, Arizona executed a Honduran man early today for murdering a woman in 1983.

Jose Roberto Villafuerte was sentenced to death for the murder of Amelia Schoville, who suffocated after he left her bound and gagged in his Phoenix trailer. He was pronounced dead at 12:18 a.m.

Honduras said Arizona violated the Vienna Convention, under which Arizona officials should have notified Honduran officials of Villafuerte's arrest.

The U.S. State Department acknowledged that Arizona violated the treaty. But it stopped short of asking that the execution be halted.

Villafuerte's fate appeared to be sealed yesterday afternoon when the clemency board voted 4-1 against recommending commutation of his sentence and the U.S. Supreme Court rejected his final appeals.

But the clemency board suddenly called a second hearing late yesterday, at which it again voted 4-1 against sparing Villafuerte.

The State Department intervened last week in Virginia's execution of the Paraguayan man, Angel Francisco Breard. Breard claimed Virginia authorities failed to notify Paraguay of his arrest under the treaty.

Secretary of State Madeleine Albright urged Virginia Gov. Jim Gilmore to stay the execution for fear the case could jeopardize the safety of Americans arrested in other countries. Virginia executed Breard anyway.

It was the third time in eight months that a foreign government has tried to stop an execution in the United States because of a treaty violation. Virginia also executed Mario Benjamin Murphy last Sept. 17 over objections from Mexico.

Villafuerte was the 10th person executed since Arizona resumed capital punishment in 1992.

This entry was posted on Wednesday, April 22nd, 1998 at 6:08 am and is filed under [Tucson and Arizona](#). Tags for this post: [Arizona](#), [Courts](#), [Criminal Procedure](#), [Death Penalty](#), [Execution](#), [Florence](#), [page 10](#). You can follow any responses to this entry through the [RSS 2.0 feed](#). Both comments and pings are currently closed.

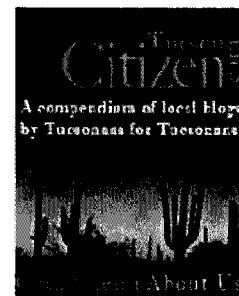
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## **Tucson man's murderer slated to die Wednesday**

1. by Tucson Citizen on Apr. 25, 1998, under Tucson and Arizona

The Associated Press

The Associated Press

PHOENIX – Death row inmate Arthur Martin Ross is scheduled to die Wednesday. Arizona officials say he can stop the execution at will, but Ross doesn't want to.

Ross, 43, is scheduled to die by lethal injection early Wednesday for the 1990 murder of James Ruble, a Tucson real estate agent. Prior to his hearing before the clemency board yesterday, Ross asked board Chairman Edward Leyva not to delay his death.

The board granted his request by a vote of 4-1. Leyva, who often supports inmates' requests for delays or sentence reductions, was the sole opponent.

Ross is the second Arizona death row inmate to face the needle in a week.

Jose Roberto Villafuerte was executed Wednesday after an unprecedented two hearings before the clemency board Tuesday.

The request is Ross' latest move in his campaign to die.

State attorneys say that although Ross has exhausted his appeals in state courts, he could easily prolong his life by at least three years through federal appeals.

"We've agreed if he changes his mind anytime up until the time of execution we will allow him to pursue his appeals and stop the execution," said Assistant Attorney General Joe Maziarz.

Ross has told prison officials that he would rather die than live on death row, said Arizona Department of Corrections spokeswoman Camilla Strongin.

He no longer has a lawyer and has declined requests for interviews, she said.

Maziarz said that while Ross has the right to more appeals, his willingness not to use them will save taxpayer money and resources for the attorney general's office.

Gov. Jane Hull could still reduce Ross' sentence from death if the board reconvenes and votes to recommend that she do so.

At his trial, prosecutors called Ross a career criminal with convictions in Kansas, Tennessee, Missouri, Kentucky and California.

In 1989, he was sentenced to 20 years in a Georgia prison for second-degree burglary. He served eight months before being paroled.

In Tucson, Ross posed as a businessman interested in leasing office space and lured Ruble to a vacant office on April 10, 1990.



Once inside, Ross shot Ruble, 26, twice in the head with a handgun, dragged the body across the floor and hid it behind a counter.

He fled with Ruble's wallet containing a credit card, a bank card and identification.

Ross was arrested in Casa Grande four days after the slaying.

This entry was posted on Saturday, April 25th, 1998 at 6:08 am and is filed under Tucson and Arizona. Tags for this post: Arizona, Courts, Criminal Procedure, Death Penalty, Execution, page-2B, Phoenix. You can follow any responses to this entry through the RSS 2.0 feed. Both comments and pings are currently closed.

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6/3/98 DALLASMN 18A

NewsRoom

Page 1

6/3/98 Dallas Morning News 18A  
1998 WLNK 7456286

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June 3, 1998

Section: NEWS

Execution today for man who said he killed 17: He has spent 22 years on Arizona's death row

FLORENCE, Ariz.

**Douglas Edward Gretzler** admitted killing 17 people during a 21-day rampage in Arizona and California, including two children shot execution-style in their bed.

After nearly 22 years on death row, Mr. **Gretzler** is scheduled to be executed Wednesday for two of those killings.

The Arizona Board of Executive **Clemency** voted 4-0 Tuesday against recommending **clemency** for Mr. **Gretzler**, who is scheduled to die by injection at 3 p.m. Wednesday at the state prison here. It would be Arizona's first scheduled daylight execution and the state's 12th overall since the death penalty was reinstated in 1992.

"**Douglas Gretzler** is responsible for the murders of more people than anyone on death row in Arizona," said Deputy Maricopa County Attorney Juan Martinez. "He showed no mercy, and no mercy should be shown to him."

Mr. **Gretzler**, 47, has refused all interviews and chose to skip his **clemency** hearing. His Tucson-based attorney, Cary Sandman, also didn't appear and declined comment Wednesday.

Mr. Sandman has argued without success for 15 years that Mr. **Gretzler** was **denied** the psychiatric assistance he needed for a proper defense in his 1975 murder trial.

Some experts have previously testified that Mr. **Gretzler** suffered from schizophrenia, and his longtime use of amphetamines and other drugs could have sparked uncontrollable rage.

But other mental health experts who examined Mr. **Gretzler** after his arrest said he had "no conscience" and "appears to have little, if any, remorse."

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6/3/98 DALLASMN 18A

Page 2

Mr. **Gretzler** and his accomplice, Willie Luther Steelman, were sentenced to death in 1976 for the Nov. 3, 1973, slaying of a Tucson couple. Mr. Steelman died in prison of liver disease in 1987.

Mr. **Gretzler**, then 21, had only minor traffic violations on his record when he left his wife and infant daughter in upstate New York the day after Christmas 1972 and drove west.

He hooked up in Denver with Mr. Steelman, a 28-year-old escapee from a mental hospital, and the killing soon started.

On Oct. 19, 1973, authorities said Mr. **Gretzler** and Mr. Steelman stole a car from two Mesa, Ariz., men, drove them to Stanislaus County in California's Central Valley and stabbed them to death.

Two days later, they picked up a hitchhiker in Apache Junction, Ariz., robbed him of \$20 and fatally shot him in the head.

On Oct. 25, they went to a Mesa trailer park looking for a man and woman who might have known about the first two killings. Both were shot to death.

A 19-year-old miner became victim No. 6 on Nov. 2 in Tucson. Mr. **Gretzler** and Mr. Steelman picked him up hitchhiking, robbed him and then shot him through the chest and left eye.

The next day, they spotted Michael Sandberg washing his sports car in the parking lot of his Tucson condominium. They forced the Marine captain into the home where his wife, Patricia, was studying.

They bound the couple, ate their food, then shot them to death and stole their car, wallets and credit cards.

On Nov. 6, Mr. **Gretzler** and Mr. Steelman were back in California. Mr. Steelman, a former Lodi resident, wanted to rob a grocery store owner he knew.

After taking \$4,000 in cash and checks from the store's floor safe, they went to the man's ranch home outside Victor, Calif., and executed everyone inside.

Seven adults were tied together and shot to death in a walk-in closet with the children - a 9-year-old boy and 11-year-old girl - shot through the temples.

Mr. **Gretzler** and Mr. Steelman were arrested Nov. 8 at a hotel near Stockton, Calif. Among their possessions, police found a copy of *In Cold Blood*, Truman Capote's famous book about a mass murder.

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6/3/98 DALLASMN 18A

Page 3

At Tuesday's **clemency** hearing, Mr. Martinez showed graphic video of the Victor crime scene along with blowups of police photos of all 17 murders.

Also played was an audio tape of Mr. **Gretzler** confessing to the crimes, calmly telling authorities how he and Mr. Steelman systematically killed all the victims because "we didn't want any witnesses."

Mr. **Gretzler** and Mr. Steelman each were given nine consecutive life sentences in California for the Victor murders but didn't serve time for the six killings before the Sandberg slayings.

"It's been 25 years of hell. We want to see an end to it," Norman Parkin, the younger brother of the slain store owner, said Tuesday. "We lost so much you can't believe it. We do not oppose the execution. We'd like to have seen it done 20 years ago."

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--- INDEX REFERENCES ---

NEWS SUBJECT: (Violent Crime (1VI27); Crime (1CR87); Social Issues (1SO05))

REGION: (USA (1US73); Americas (1AM92); Arizona (1AR13); North America (1NO39); California (1CA98))

Language: EN

OTHER INDEXING: (ARIZONA; ARIZONA BOARD OF EXECUTIVE; DOUGLAS EDWARD GRETZLER; DOUGLAS GRETZLER; EXECUTION; LODI) (Cary Sandman; Gretzler; Juan Martinez; Martinez; Michael Sandberg; Patricia; Sandberg; Sandman; Steelman; Willie Luther Steelman)

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## TUCSON CITIZEN MORGUE, PART 2 (1993-2009)

### Killer set to die today after clemency denied

by Tucson Citizen on Jan. 13, 1999, under Tucson and Arizona

4-1-0

The Associated Press

The Associated Press

FLORENCE — A clemency board refused to delay the execution of a convicted murderer and rapist after victim rights advocate Fred Goldman implored the panel to remember his prey and carry out the death sentence.

The Arizona Board of Executive Clemency voted 4-1 yesterday against recommending a commutation or reprieve to the governor for Jess James Gillies, who was scheduled to die by lethal injection at 3 p.m. today.

Gillies' attorney, Patrik Griego, filed several last-minute appeals.

Gillies, 38, and another man were convicted of kidnapping, raping and murdering Suzanne Rossetti. She had bought Gillies and Mike Logan a six-pack and had given them a ride as a reward for opening her car after she locked the keys inside at a Phoenix convenience store on Jan. 29, 1981, as she headed for the airport to meet her departing parents.

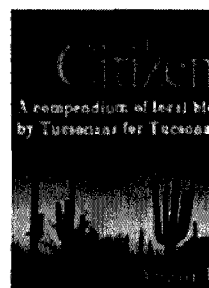
This entry was posted on Wednesday, January 13th, 1999 at 8:49 am and is filed under Tucson and Arizona. Tags for this post: Arizona, Courts, Crime, Criminal Procedure, Death Penalty, Execution, Florence, Homicide, Murder, page-4C. You can follow any responses to this entry through the [RSS 2.0](#) feed. Both comments and pings are currently closed.

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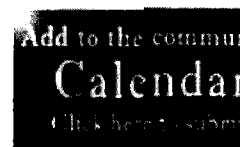
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## **NATIVE NEWS: Sweat "granted" condemned man**

S.I.S.I.S. Mon, 8 Feb 1999 08:47:13 -0500

And now: [EMAIL PROTECTED] (S.I.S.I.S.) writes:

### INDIAN INMATE'S LAST RITES

The Arizona Republic, February 2, 1999 by Kelly Ettenborough

[S.I.S.I.S. note: The following mainstream news article may contain biased or distorted information and may be missing pertinent facts and/or context. It is provided for reference only.]

FLORENCE - Convicted murderer Darrick Gerlaugh spent two hours inside a sweat lodge, praying and purifying himself as he prepared for his impending death.

On Wednesday at 3 p.m., Gerlaugh faces execution by lethal injection for a murder committed in 1980. He will be the first Native American to be executed in Arizona since the death penalty was restored in 1976. On Saturday, he made history by becoming the first Native American with a death warrant to be allowed to have the ancient ceremony as part of his last rites. Gerlaugh will be the sixth Native American to be executed in the United States since 1976, according to the Death Penalty Information Center in Washington, D.C.

The five previous Native Americans requested sweat lodge ceremonies and were denied because of security concerns, said Lenny Foster, Gerlaugh's spiritual adviser and a coordinator for the National Native American Prisoners' Rights Advocacy Coalition. Courts have upheld security as reasons to deny religious access to inmates.

The Arizona Department of Corrections, though, recognized the significance of the ceremony and granted the request, Director Terry L. Stewart said. "If he were a Catholic, we could in essence bring the religious practice to him if he wanted to participate in any of the sacraments," Stewart said. "We cannot bring the sweat lodge to him." Instead, prison officials were able to grant his request without endangering anybody.

"It establishes a precedent throughout the United States," Foster said. "It allows Darrick Gerlaugh to make some peace with himself and allows us to demonstrate to Arizona and prison officials across the country that there were no problems. The Arizona Department of Corrections needs to be commended for their understanding and respect."

Corrections rules prohibited outside witnesses at the ceremony, but Foster, who was with Gerlaugh in the sweat lodge, shared details and spoke on the convict's behalf. Gerlaugh, 38, has declined all interview requests. "There was a sense of peace and serenity and a little sadness," Foster said Saturday. "The sweat lodge ceremony provided him one last opportunity to cleanse his mind and body and purify, to make things right with his Creator. He has made prayers for his family and the victims. He's making

things right for himself so he can be at peace as he goes to the next world."

Gerlaugh grew up away from the Gila River Indian Community in a military family with an Anglo father and a Pima mother. He knew little about traditional Indian practices. He had been involved in drugs and alcohol and already had a prior conviction that was punishable by life in prison before he killed 22-year-old Scott Schwartz.

Gerlaugh and two friends, all Chandler residents, were hitchhiking from Chandler to Phoenix on Jan. 24, 1980, and decided to rob the person who offered them a ride. Schwartz, who wore a leg brace and walked with crutches, picked them up. At gunpoint, they ordered Schwartz to drive to the outskirts of Mesa. The other two men held Schwartz while Gerlaugh, then 19, drove the car over Schwartz several times. The victim did not appear to be dead so Gerlaugh and one man stabbed Schwartz 30 to 40 times in the head, neck and shoulders with a screwdriver.

The men took \$36 and the car. Gerlaugh and Joseph Encinas were convicted of first-degree murder. Encinas received a life sentence. The other man, Matthew Leisure, pleaded guilty and received a life sentence. Gerlaugh received the death penalty in 1981.

"He expressed many times a deep remorse over what he had done," Foster said. "He knew he couldn't change what he did so he chose to pray and ask forgiveness."

Schwartz's family declined to comment on the scheduled execution.

Gerlaugh has been on a spiritual path to discover and practice his culture, tradition and beliefs for most of his 18 years on death row, according to Foster, who is the director of the Navajo Nation Corrections Project based in Window Rock. Gerlaugh has participated in nine previous sweat lodge ceremonies over 15 years, Foster said.

At least 7,000 Native Americans are in U.S. prisons, and about 4 percent of Arizona's 25,829 inmates are Native American.

"The sweat lodge is the most profound therapy for Indians who are incarcerated but it has been denied many, many times," Foster said. "Spiritually, you are moved to take a deep look at your inner self, your shortcomings, your actions, behavior. It allows insight to who you are as a human being. If you're not in harmony with your surroundings and yourself, the sweat lodge is one way to become right with yourself."

Arizona has been more progressive than other states, said Foster, who performed the first sweat lodge ceremony at an Arizona prison in 1981. In 1992, a sweat lodge area was consecrated in one of the Florence prison's two highest security units, which is where Gerlaugh's ceremony was held.

Gerlaugh will have a final pipe ceremony today and be moved to the death house to await execution. Foster will spend today and Wednesday with him, and Gerlaugh has requested his family not be present at the execution. Gerlaugh has withdrawn his request for a clemency board hearing, and his lawyer contends there is almost no chance at a stay of execution. His appeals have been exhausted except for a recent filing citing Gerlaugh's dramatic behavior change, said Marty Lieberman, his court-appointed attorney since 1985. "We see this claim a lot and it never goes anywhere," said Paul McMurdie, the chief counsel in the criminal appeals section at the Arizona Attorney General's Office. "We are punishing him not for the

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## Page 24





2/24/99 ARIZREPUB A1

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Page 1

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February 24, 1999

Section: Front

#### NO REPRIEVE FOR GERMAN KILLER INTERNATIONAL FOCUS ON ARIZ. CASE

February 24, 1999

It was the last thing that renowned German attorney Steffen Ufer expected to **hear** after an arduous flight over the Atlantic to try to save the life of convicted murderer **Karl LaGrand**.

Another member of the legal profession, Arizona prosecutor Ken Peasley, told Ufer during a break that he would like to be the one to release the gas that is scheduled to kill **LaGrand** at 3 p.m. today.

"He said he could do it with no problem," Ufer said incredulously, noting that he had represented about 20 U.S. Army killers through the years in Germany and generally got them sentenced to 10 years or less in German prisons.

Ufer thought for a minute and then huffed, "Americans are violent whether

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2/24/99 ARIZREPUB A1

Page 2

they are at home or abroad."

Despite impassioned pleas by a German ambassador and a prominent member of the country's Parliament, the state Board of Executive Clemency voted 3-1 against a commutation or reprieve for **LaGrand**. The German national was convicted along with his brother, Walter **LaGrand**, in the 1982 stabbing death of Marana bank manager Kenneth Hartsock.

No members of Hartsock's family attended the **hearing**. But his wife and children wrote letters in support of the death penalty for the brothers.

Walter **LaGrand** is scheduled to die, also by poison gas, on March 3.

**Karl LaGrand** attended the morning session of the daylong **hearing**. He didn't return for the afternoon session, which featured a slide show of the life of Hartsock, a former World War II B-17 pilot over Germany, and the emotional testimony of a bank teller whom the **LaGrand** brothers also attacked.

Seated behind glass in a small room that resembles a cage, head shaved, shackled in leg irons and wearing a belt capable of dropping him to the floor with electrical impulses, **LaGrand** apologized to Hartsock's family.

"First of all, I don't think I should ever get out. I should never be in society again," **LaGrand** said. "If by some miracle I did, I would never put

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2/24/99 ARIZREPUB A1

Page 3

myself in a situation like that again."

Life in prison, but no death sentence, also was the drift of repeated

speakers from Germany, where the **LaGrand** case is a cause celebre. About 75

Germans attended the **hearing**, including 25 media members.

One speaker brought boxes containing what he said were about 50,000

messages and petitions seeking **clemency**.

Claudia Roth, a member of the German Parliament who heads its commission on

human rights, said she did not make the trip to Arizona to be the "German

teacher of right and wrong."

"But I come asking for mercy in the name of a lot of people around the

world," said Roth, who comes from the same part of Bavaria where the **LaGrands**

were born.

Roth detailed the horrors of post-World War II Germany, in which the

**LaGrands'** mother was raised, and how the brothers drifted from one family and

institutional home to the next, seldom receiving guidance.

"I ask you this question," Roth said. "Do we honor these victims by

killing again?"

Dawn Lopez, who also was stabbed and bound by the **LaGrands** at the Valley

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2/24/99 ARIZREPUB A1

Page 4

National Bank in Marana, offered no answer to that question.

But in a chilling, 30-minute recounting of that day, Lopez, frequently stopping to dab tears from her eyes, said that the **LaGrands** "brutally and cold-heartedly" said "over and over again that they were going to waste us."

Lopez had been the second person to arrive at the bank that morning in Marana, a town north of Tucson. The two brothers forced her and Hartsock into the bank, ordering them to open the safe. But each of them only knew one half of the safe combination.

So they were bound by electrical tape and seated. Lopez said she **heard** a disturbance behind her and saw **Karl LaGrand** stabbing Hartsock in the face and neck. She said she tried to scream but felt something in the back of her neck.

"I fell to the ground and he (Walter **LaGrand**) kept hitting me, beating me.

There was blood everywhere. I saw **Karl** still beating Ken and all I **heard** over and over was, 'Just make sure he's dead.' "

After Lopez left the lectern, Peasley, the prosecutor, concluded, "Bring some measure of justice for the Hartsock family. They (the **LaGrands**) showed no mercy and they deserve no mercy from this board."

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2/24/99 ARIZREPUB A1

Page 5

Other speakers seeking mercy for **Karl LaGrand** included the Phoenix Catholic Diocese, Amnesty International, the Quakers and a group of Arizona churchwomen.

They agreed with German Ambassador Jurgen Chrobog, who observed that

**LaGrand** has spent the past 17 years in the "constant awareness that his execution may be imminent. This, too, must be seen as part of his atonement."

But not the final part, the **clemency** board concluded.

CAPTION: German ambassador Jurgen Chrobog asked a **clemency** board to spare **Karl**

CAPTION: **LaGrand** the gas chamber, saying **LaGrand** has atoned for his sins.

CAPTION: 1) Claudia Roth, a member of the German Parliament pleading for the life

CAPTION: of **LaGrand** on Tuesday, described the post-war conditions in which **LaGrand** grew

CAPTION: up. 2) **Karl LaGrand**, seated in a caged room at the back of the **clemency**

CAPTION: **hearing**, is scheduled to die today. **LaGrand** and his brother, Walter **LaGrand**,

CAPTION: murdered a banker in Marana.

#### --- INDEX REFERENCES ---

COMPANY: NATIONAL BANK AND TRUST CO OF SYCAMORE ILL; NATIONAL BANK OF ABU DHABI; NATIONAL BANK OF DUBAI PJSC; NATIONAL BANK OF RASAL KHAIMAH; NATIONAL BANK OF OMAN LTD; NATIONAL BANK OF BAHRAIN BSC; NATIONAL BANK OF GATESVILLE; NATIONAL BANK AND TRUST COMPANY THE; NATIONAL BANK; QUAKERS; NATIONAL BANK OF KUWAIT

NEWS SUBJECT: (Social Issues (ISO05); Crime (ICR87); Death Penalty (IDE04))

2/24/99 ARIZREPUB A1

Page 6

REGION: (Central Europe (1CE50); Europe (1EU83); Germany (1GE16); Arizona (1AR13); North America (1NO39); Western Europe (1WE41); Americas (1AM92); USA (1US73))

Language: EN

OTHER INDEXING: (ARMY; CAPTION; GERMAN; GERMAN PARLIAMENT; NATIONAL BANK; QUAKERS; REPRIEVE; PHOENIX CATHOLIC (THE)) (Arizona; Claudia Roth; Dawn Lopez; Diocese, Amnesty International; Germans; Hartsock; Jurgen Chrobog; Karl; Karl LaGrand; Ken; Ken Peasley; Kenneth Hartsock; LaGrand; LaGrands; Lopez; Peasley; Roth; Steffen Ufer; Ufer; Walter LaGrand)

EDITION: Final Chaser

Word Count: 1007

2/24/99 ARIZREPUB A1

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1999 WLNR 8458151  
Loaded Date: 09/22/2009

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March 3, 1999

Section: Front

# DEATH UPHELD FOR 2ND LAGRAN HULL REFUSES TO STAY TODAY'S EXECUTION

March 3, 1999

Defying the German government and state **clemency** board, Gov. Jane Hull said

Tuesday that today's scheduled execution of convicted murderer **Walter LaGrand**

would go forward.

Hull reached her decision after a hectic afternoon in which she met with

Germany's U.S. Ambassador Jurgen Chrobog and Dawn Lopez, a Marana bank teller

who survived a 1982 knife attack by LaGrand and his brother, Karl, which

killed bank manager Kenneth Hartsock.

"In the interest of justice and with the victims in mind, I have decided

to allow this execution to go forward as scheduled," Hull said in a prepared

statement.

Earlier Tuesday, Germany asked the International Court in The Hague,

Netherlands, to intervene in LaGrand's case, saying that the U.S. violated international law by not notifying the Germans of the LaGrands' arrest. German officials said last week that they did not appeal to the court in their unsuccessful attempt to save Karl LaGrand's life for fears of embarrassing the United States.

The board of executive **clemency** voted 2-1 Tuesday to give LaGrand a reprieve of 60 days. Edward Leyva, board chairman, and Kathryn Brown voted for it while Edith Richardson voted against. Duane Belcher Sr. did not vote.

Leyva said the board was swayed by arguments by the German ambassadors who said they were going to present LaGrand's case to the International Court. The board decided LaGrand should get every legal consideration, Leyva said.

"But it's a moot issue now that (Hull) has denied the request," Leyva said. "We've got our job. The governor has hers."

Attorney General Janet Napolitano said Hull made the right call. Napolitano said she spoke extensively with the State Department on Tuesday about the case.

"Their view was that unless there was a final ruling in the World Court . . . we should move forward," Napolitano said, adding that such a ruling by



the international body could take months.

"One of my concerns in this case is that every time there is a claim of foreign nationality do you have to stop what you are doing? Our answer is no," Napolitano said.

The World Court has no enforcement powers.

Hull and Napolitano also said that they expected **Walter LaGrand's** execution to be carried out in the gas chamber at the Arizona State Prison at Florence. He had been given the chance up until Monday to have lethal injection but opted for the more brutal form of death.

Karl LaGrand also had selected gas but that was seen as solely a legal maneuver to delay his execution. The 9th U.S. 9th Circuit Court of Appeals stayed the execution on grounds of cruel and unusual punishment last week, but the U.S. Supreme Court vacated that ruling without comment on an 8-1 vote.

Karl LaGrand changed his mind in the hour before his scheduled execution and was put to death by lethal injection.

In an emotional, 45-minute appearance before the **clemency** board Tuesday morning, **Walter LaGrand** again rejected the state's offer to die by injection.

"Wednesday, I'll be ready at 3 o'clock. Governor Hull doesn't have to

worry about delaying, because I was killed when y'all killed my brother,"

LaGrand said.

LaGrand then lashed out at the death penalty.

"No one, me, Karl, anyone, has the right to take another life and that

includes the state of Arizona and the United States of America," he said.

Afterward, Leyva, the board chairman, said cases like the LaGrands are the most difficult to deal with.

"You can say, 'Oh yeah, an eye for an eye, a tooth for a tooth,' but

voting on these, man, it really weighs on you," Leyva said.

The LaGrands were sentenced to death after a bungled robbery attempt at a

Valley National Bank in Marana, a town on Interstate 10 north of Tucson. After

binding Hartsock and Lopez with electrical tape, the LaGrands demanded the combination to the bank safe, but the employees knew only half of the secret code.

Hartsock, fearing that Karl LaGrand was about to attack Lopez, kicked him

in the shins and precipitated an orgy of violence in which the bank manager

was stabbed 23 times and had his throat slashed. Lopez survived despite seven

knife wounds.

---- INDEX REFERENCES ----

COMPANY: VALLEY NATIONAL CORP; VALLEY NATIONAL BANK; STATE DEPARTMENT

NEWS SUBJECT: (Social Issues (1SO05); Criminal Law (1CR79); Legal (1LE33); Death Penalty (1DE04); Judicial (1JU36); Crime (1CR87))

REGION: (Central Europe (1CE50); North America (1NO39); USA (1US73); Americas (1AM92); Germany (1GE16); Europe (1EU83); Arizona (1AR13); Western Europe (1WE41); Netherlands (1NE54))

Language: EN

OTHER INDEXING: (ARIZONA; ARIZONA STATE PRISON; CIRCUIT COURT OF APPEALS; EXECUTION; INTERNATIONAL COURT; MARANA; STATE DEPARTMENT; US SUPREME COURT; VALLEY NATIONAL BANK; WORLD COURT) (Attorney; Dawn Lopez; DEATH UPHELD; Duane Belcher Sr.; Earlier Tuesday; Edward Leyva; Hartsock; Hull; Jane Hull; Janet Napolitano; Jurgen Chrobog; Karl; Karl LaGrand; Kathryn Brown; Kenneth Hartsock; LaGrand; LaGrands; Leyva; Lopez; Napolitano; Walter LaGrand)

EDITION: Final Chaser

Word Count: 805

3/3/99 ARIZREPUB A1

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ures and drawing parts from each of them, would give new rights to parents regarding their children's participation in bilingual program.

### Clemency rejected for death row inmate

FLORENCE (AP) — After 20 years on death row, one of Arizona's most notorious criminals may finally be executed.

A state board cleared the way Tuesday for Robert Wayne Vickers to be executed by injection at 3 p.m. today. Vickers had virtually exhausted his appeals, although he had an appeal pending before the U.S. Supreme Court.

The clemency board voted unanimously against recommending a reprieve or sentence commutation for Vickers, who killed two fellow inmates as well as having stabbed and threatened numerous prisoners and corrections officers during his 20 years behind bars.

### Arizona teen wins national award

TUCSON (AP) — A student who started a program to combat crimes and

PHOENIX  
authorities  
keters who  
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Operation  
two-month  
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10/20/98 LVRJ 5B

NewsRoom

Page 1

10/20/98 Las Vegas Rev.-J. 5B  
1998 WLNR 522845

Las Vegas Review-Journal (NV)  
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October 20, 1998

Section: Local

Guards' killer denied stay of execution

Associated Press

FLORENCE, Ariz. -- **Michael Poland** is too insane to be executed today, his lawyer told a state **clemency** board Monday.

But the Arizona Board of Executive **Clemency** rejected **Poland's** request for **clemency** on a 4-1 vote. Board Chairman Ed Leyva, who often votes in favor of **clemency**, was the sole supporter of **clemency**.

**Poland** is scheduled to die this afternoon for the 1977 murders of two armored truck guards.

Meanwhile Monday, the Arizona Supreme Court **denied** a second request by **Poland** to block the execution. **Poland's** lawyers on Monday filed another request that remained pending, and he also had another appeal pending in a federal appeals court.

**Michael** and his brother Patrick pulled off a daring daylight robbery of a Purolator Inc. armored truck and escaped with almost \$300,000 in May 1977. The next day they drove to Lake Mead to dump the guards, Cecil Newkirk, 52, and Russell Dempsey, 57, to their watery deaths.

Poland, 58, and his brother have been on death row for 15 years, after a state court convicted them in 1983 on murder charges. They were also convicted in federal court in 1979 on robbery and kidnapping charges.

No execution date has been set for Patrick **Poland**, 48, who has an appeal pending.

At Monday's one-hour hearing, **Michael Poland's** attorney argued that **Poland** is mentally incapable of being executed today. He said the execution should be blocked to give the Pinal County Superior Court time to give **Poland** a competency exam.

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10/20/98 LVRJ 5B

Page 2

**Poland** was given a psychological exam Friday and found to be suffering from a delusional disorder, said Dale Baich, assistant federal public defender. Two weeks earlier he was given a similar exam and determined to be competent.

Yavapai County Deputy Attorney Arthur Markham said **Poland's** alleged mental disorder was the latest in a string of escape schemes.

"Here is Mr. **Poland** planning an escape again," Markham said. "The late discovery of mental illness is something he has been planning for some time."

Markham described **Poland** as a "bright man" who meticulously planned for months in advance the robbery and murders, several daring escape plans and now his mental illness.

"I wouldn't be surprised if he has read a few mental health treatises to help the process," Markham said after the hearing.

A Department of Corrections investigator testified that last year **Poland** planned to escape from the state prison during a visit to a Tucson hospital for eye surgery.

Russell Brodeur, a Department of Corrections criminal investigator supervisor, told the board that on June 23, 1997, a guard reported that **Poland** had offered him \$2 million to assist him in escaping from the prison.

He said a search of **Poland's** cell later uncovered a map of the hospital and letter from another inmate detailing the prison guard's planned whereabouts during the visit.

--- INDEX REFERENCES ---

NEWS SUBJECT: (Violent Crime (1VI27); Crime (1CR87); Property Crime (1PR85); Legal (1LE33); Judicial (1JU36); Social Issues (1SO05); Criminal Law (1CR79); Prisons (1PR87))

REGION: (Europe (1EU83); Central Europe (1CE50); USA (1US73); Americas (1AM92); Arizona (1AR13); Poland (1PO03); Eastern Europe (1EA48); North America (1NO39))

Language: EN

OTHER INDEXING: (ARIZONA BOARD OF EXECUTIVE CLEMENCY; ARIZONA SUPREME COURT; BOARD; DEPARTMENT OF CORRECTIONS; PINAL COUNTY SUPERIOR COURT; PUROLATOR INC; YAVAPAI COUNTY) (Arthur Markham; Cecil Newkirk; Dale Baich; Ed Leyva; Markham; Michael; Michael Poland; Patrick Poland; Poland; Russell Brodeur; Russell Dempsey)

EDITION: Final

Word Count: 563

10/20/98 LVRJ 5B

Page 3

10/20/98 LVRJ 5B  
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"We grew up fearing this man," said Patricia McCormack Ramirez, now 28. "Once that execution (takes place), we can live without that fear."

Ramirez added that she wished she and her siblings "had that opportunity 10 to 20 years ago instead of having to do that now."

Because neither Ortiz nor his attorneys chose to participate, the clemency board did not consider recommending that his death sentence be commuted to life in prison, Chairman Edward Leyva said.

The board's actions left Gov. Jane Hull with nothing to decide and put Ortiz's fate in the hands of state and federal courts hearing last-minute appeals.

Ortiz attorney Sean Bruner told Leyva in a letter that the process was a sham.

"I cannot in good conscience recommend to him that he participate in the process which is designed to give him a hope that his many years of unblemished compliance with the stringent prison environment will win him a commutation of his barbarous sentence, only to see that hope cruelly dashed in the spectacle of the hearing," Bruner said.

The McCormack children had a different explanation for Ortiz's absence.

"He can't face us because he knows that we know," said the victim's son, Charles McCormack III.

According to trial testimony, Ortiz had had a romantic involvement with Mrs. McCormack while she was estranged from her husband.

The killing occurred after the

nesses after executions.

Steve Elliott, AP's bureau chief in Phoenix, said the names of those invited are public information and that the state has no right under Arizona's open records law to keep them secret until an execution.

In a letter faxed to AP, Corrections Director Terry L. Stewart said courts have ruled the state isn't required to produce public records "when the interests of privacy, confidentiality or the best interest of the state outweigh the general policy of open access."

Stewart said keeping the list secret protects those invited from harassment prior to an execution and allows them to make an informed decision on whether to attend.

'He can't face us because he knows that we know.'

**- Charles McCormack III**  
referring to why  
**Ignacio Ortiz**  
was absent from  
**Tuesday's hearing.**

she still has physical discomfort from her wounds and the life-saving surgery.

Five opponents of capital punishment said they sympathized with the victim's family but nonetheless urged leniency for Ortiz.

"We, you, you and I are morally

federal courts hearing last-minute appeals.

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"I cannot in good conscience recommend to him that he participate in the process which is designed to give him a hope that his many years of unblemished compliance with the stringent prison environment will win him a commutation of his barbarous sentence, only to see that hope cruelly dashed in the spectacle of the hearing," Bruner said.

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"He can't face us because he knows that we know," said the victim's son, Charles McCormack III.

According to trial testimony, Ortiz had had a romantic involvement with Mrs. McCormack while she was estranged from her husband.

The killing occurred after the McCormacks reconciled and Mrs. McCormack told Ortiz she did not want to see him anymore.

Testimony indicated that Ortiz fatally stabbed Mrs. McCormack at the family home and then stabbed the two daughters, ages 8 and 9.

The children fled the house after Ortiz sloshed gasoline on and around their mother's body and set it afire.

Patricia Ramirez nearly died from her stab wounds. She testified

informed decision on whether to attend.

'He can't face us because he knows that we know.'

— **Charles McCormack III**  
referring to why  
**Ignacio Ortiz**  
was absent from  
**Tuesday's hearing.**

she still has physical discomfort from her wounds and the life-saving surgery.

Five opponents of capital punishment said they sympathized with the victim's family but nonetheless urged leniency for Ortiz.

"We, you, you and I are morally compelled not to kill him regardless of his crime," said Katherine Nordgard, an elder at Southside Presbyterian Church in Tucson.

Kenneth Peasley, chief criminal deputy for the Pima County attorney and Ortiz's prosecutor in 1979, said the calls for leniency for Ortiz were misplaced, especially considering that he twice tried to kill the McCormack children.

"He simply doesn't deserve it," Peasley said.

not based on fact conduct themselves shamelessly and dishonor the victim by their policy of encouraging their clients not to take full responsibility for their crimes. Furthermore, criminals who cry wolf make it harder for truly innocent people to get their convictions overturned. Anthony Chaney missed one of his last opportunities for redemption and forgiveness when he allowed his lawyers to make that appeal, and that is a shame.

#### ABOLISH Archives

#### 02-16-00 - ARIZONAEXECUTION:

A man who shot a reserve sheriff's deputy more than 30 times with a semiautomatic assault rifle was executed by injection today. As he lay on a gurney, Anthony Lee Chaney glanced at friends, pursed his lips and shook his head. He declined to say anything when asked if he wanted to offer any last words. "No," he said emphatically and then gave a thumbs up to his friends. As the drugs began flowing at 3:07 p.m., he closed his eyes and let out a sigh. His chest heaved once and then he stopped moving. He was pronounced dead at 3:10 p.m.

Chaney, 45, killed Coconino County reserve Deputy John B. Jamison on Sept. 6, 1982. Jamison had been responding to a report that a fellow deputy had stopped a stolen truck in the woods outside Flagstaff and wasn't answering radio calls. Chaney opened fire as soon as Jamison pulled up. The officer never had a chance to draw his gun.

Coconino County Sheriff Joe Richards, who had said Jamison's death had a profound effect on the Flagstaff community, said the execution brought back the emotions he felt after the shooting. Jamison was also a doctor in Flagstaff. "I am really glad that it is over," said Richards. Another witness, state Rep. John Verkamp, who helped prosecute Chaney, noted Chaney refused to offer any apology, even at the end. "He was one of the coldest people I have seen in my life," Verkamp said.

Defense attorneys had tried to save Chaney's life earlier in the week by arguing he suffered from a mental disorder that caused him to react violently when Jamison arrived in his patrol car. The attorneys complained Chaney was not given enough time to be properly tested for the mental disorder during his criminal trial. Prosecutors said Chaney's attorneys were given adequate time to examine the possible mental disorder, noting that six experts and five days of the trial were devoted to Chaney's mental status.

The day of the killing, Chaney was driving a stolen truck and was being sought for burglaries in New Mexico and Texas and had already pulled a gun on Deputy Bob Cline, handcuffing him to a tree. Jamison had been called to check on Cline when he was shot to death. Chaney and a female companion were arrested later after stealing another truck. Deanna Jo Saunders-Coleman pleaded guilty and provided key testimony against Chaney. She was sentenced to 21 years in prison, but only served 14.

Chaney becomes the 1st condemned inmate to be put to death this year in Arizona and the 20th overall since the state resumed capital punishment in 1992. Chaney becomes the 14th condemned inmate to be put to death this year in the USA and the 612th overall since America resumed executions on Jan. 17, 1977.

(Sources: Arizona Daily Star and Rick Halperin)

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Cop killer Anthony Lee Chaney, his 17-year run of appeals almost exhausted and a commutation denied, is set to die this afternoon by lethal injection. His estranged wife, meanwhile, is battling to gain control of his personal possessions, including nude photographs of her.

Diane Chaney filed an injunction Tuesday to stop her husband's possessions from being given to an Arizona

State University sociology professor who has befriended the 45-year-old death row inmate. "I have a lot of personal things in his property that I certainly don't want (Professor Ann Nichols) to get ahold of," Chaney said.

Her husband is set to be executed at 3 p.m. today for the murder of Dr. John Jamison, 40, a Flagstaff physician and Coconino County reserve sheriff's deputy, on Labor Day 1982. Diane Chaney said she sought the injunction after learning her husband of seven years made arrangements with prison officials to have his personal effects turned over to Nichols.

Nichols, who was barred from visiting Anthony at the state prison in Florence after she was accused of bringing in contraband, has declined to comment. She has said she plans to cremate his body and bury his remains after a private service in Green Valley. Diane, 43, an Australian native, said she has not had contact with her husband in about four years because she objected to Nichols' visits.

Although she will not witness her husband's execution, Diane plans to be outside the prison gates when her husband dies. Nichols said she's angry with Anthony but doesn't want to see him die.

Meanwhile, the Arizona Board of Executive Clemency unanimously denied a reprieve or commutation for Anthony. At that hearing, Coconino County Sheriff Joseph Richards recounted in chilling detail how Chaney opened fire before Jamison could even get out of his cruiser. "John is the prey and he is the hunter," said Richards, choking with emotion as he described how the killer closed in on Jamison, shooting him three times. "This officer was pinned down, unable to unbuckle his seat belt, unable to disengage his weapon," he said.

Robert Cline, a sheriff's deputy who was handcuffed to a tree by Chaney and heard the shots that killed Jamison, said the murder has tormented him for years. Cline, who now works for the Flagstaff Police Department, told clemency board members that he suffered post-traumatic stress disorder and felt tremendous guilt knowing that his call for help ended in Jamison's death. "I cannot begin to describe the fear I felt at that moment," he said of his run-in with Chaney. Cline asked the board to deny clemency, saying, "I need closure."

That same message was echoed in letters from Jamison's sister and mother. His daughter, Jobeth, who was 10 when her father was killed, attended the hearing but did not testify. Anthony Chaney did not appear at the hearing. Others, however, argued against execution. "Tony Chaney has had almost 18 years to contemplate the wrong he's done, almost 18 years of conscience," said Carol Korich, with Sanctity of Life, People Against Execution. "Life in prison along with his conscience should be all justice requires." Clemency board members also received a joint letter from the bishops of Phoenix, Tucson and Gallup, N.M., objecting to the execution.

Attorneys for the condemned man had argued that Chaney suffers from a mental dysfunction that caused him to turn violent when he encountered Jamison. Attorney Ken Murray said the state failed to pay for medical tests or expert witnesses for his client, which could have proved that contention. Defense attorneys used that same argument in a failed bid to win a U.S. Supreme Court review of the case. Murray said a 2nd appeal is still pending with the high court. In addition, he said, an attorney for another death row inmate has filed an appeal with the state to stop the execution on the grounds that Chaney is a witness in a pending assault case.

(Source: The Arizona Republic)



3/15/00 ARIZDLST 2

NewsRoom

Page 1

3/15/00 Ariz. Daily Star 2  
2000 WLNR 4155460

ARIZONA DAILY STAR (AZ)  
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March 15, 2000

Metro briefs

## BRIEFS

### **Poland denied clemency** FLORENCE (AP)

The Arizona Board of Executive **Clemency** voted yesterday against blocking the execution of a man convicted of murdering two armored truck drivers more than 20 years ago.

After seven hours of testimony, the board voted 4-1 to recommend against commutation of **Patrick Poland's** death sentence to two consecutive life terms. **Poland** is scheduled to die by injection at the state prison in Florence today.

The board's decision came after **Poland's** tearful apology for his participation in the crime, saying he didn't know the drivers were going to be killed.

A prosecutor and an FBI agent who helped put **Poland** on death row said his life should be spared. "There's degrees of culpability. It's clear **Patrick's** was less," said retired FBI agent Frank Mowrey.

Former U.S. Attorney A. Melvin McDonald said: "There's a place for justice and a place for mercy. Justice was carried out last year. Mercy should be carried out today."

**Poland's** attorney said he would immediately file a last-minute appeal with the U.S. Supreme Court.

**Poland** was convicted of helping his older brother, Michael, rob a Purolator armored van and kill its guards in May 1977.

Michael was executed for the crime in June.

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3/15/00 ARIZDLST 2

Page 2

Gorman said **Patrick** was manipulated by Michael **Poland**, the brother with whom he lived after running away from an abusive father at age 17.

Arthur Markham of the Yavapai County Attorney's Office, said: "**Patrick Poland** was 27 years old. He was an adult. He was in it as much as his brother."

2 motorcyclists still critical TUCSON

Tucson police say two motorcyclists and a 10-year-old passenger seriously injured in a northside collision Monday night flew over the car they broadsided, landing several feet away on the pavement.

The crash occurred at 6:45 p.m. at North Mountain Avenue and East Copper Street when the northbound motorcycles, traveling side by side along Mountain, hit a Dodge Stratus headed west on Copper.

One of the motorcyclists - 37-year-old Willard Troy Morrison - remained in critical condition at University Medical Center last night.

The boy, whose name was not available, was in serious but stable condition, also at UMC.

The other motorcyclist, 33-year-old Joseph Nicholson, was in serious but stable condition at Tucson Medical Center yesterday . All three are Tucson residents, police said.

Tucson Police Sgt. Judy Altieri said last night that police found two helmets at the scene, but it was unclear if any of the three motorcycle riders was wearing a helmet.

Occupants of the Dodge Stratus - driver Jacob Greene, 18, and passenger Manuel Nunez-Figeroa, 22, both of Tucson - were not injured.

Police believe the motorcycles were speeding when the crash occurred. No citations have been issued, and the incident remains under investigation.

2 prescribed burns in Cochise SIERRA VISTA

The first of two prescribed burns by the Bureau of Land Management will begin today in the San Pedro Riparian National Conservation Area.

Motorists who use either Hereford Road or Charleston Road are advised to use caution and to watch for smoke drifting over the highway and for firefighters and equipment.

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3/15/00 ARIZDLST 2

Page 3

The first fire will be set near a stretch of the river that lies north of Hereford Road. It is intended to mimic the role natural fires play in maintaining the ecosystem by reducing the amount of invading brush species and aiding in the recovery of native grasses.

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--- INDEX REFERENCES ---

REGION: (Europe (1EU83); Central Europe (1CE50); USA (1US73); Americas (1AM92); Arizona (1AR13); Poland (1PO03); Eastern Europe (1EA48); North America (1NO39))

Language: EN

OTHER INDEXING: (ARIZONA BOARD OF EXECUTIVE CLEMENCY; ARIZONA DAILY STAR; BUREAU OF LAND MANAGEMENT; DODGE STRATUS; FBI; US ATTORNEY A; US SUPREME COURT; UMC; UNIVERSITY MEDICAL; WILLARD TROY MORRISON; YAVAPAI COUNTY ATTORNEY) (Arthur Markham; Frank Mowrey; Gorman; Jacob Greene; Joseph Nicholson; Judy Altieri; Manuel Nunez-Figeroa; Melvin McDonald; Metro; Michael; Motorists)

Word Count: 692  
3/15/00 ARIZDLST 2  
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English ▼

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Previous Article 9 of 13 Next

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**Board votes unanimously not to block execution**

The Arizona Daily Star - Wednesday, November 8, 2000

Author: M. Scot Skinner

After hearing emotional testimony from the mother and father of Donald Miller's victim, the Arizona Board of Executive Clemency voted unanimously yesterday not to stand in the way of today's scheduled execution.

"I wish he would have given Jenny a reprieve," said Ron Geuder, whose daughter, Jennifer, was shot five times in the head by Miller in June 1992.

"With all due respect to this committee, this is a no-brainer. Don't give him a reprieve. He can do that for himself today or tomorrow."

Miller has waived his federal appeals, and he said he wants to die by injection at 3 p.m. today. But because he has not exhausted the appeals available to him, he can change his mind even after his last meal of guacamole tostados, shredded beef tacos, lemon meringue pie and Dr Pepper.

Geuder plans to witness the execution, along with his son, Matthew, who was 13 when his 18-year-old sister was murdered.

Matthew Geuder, 21, said his support for the execution is not about revenge.

"I have no ill feelings toward Mr. Miller," he said. "I have forgiveness for him, but God says that we must follow the laws of the land and he was sentenced to death."

Miller, 36, did not attend yesterday's meeting of the Board of Executive Clemency. In accordance with state law, Gov. Jane Hull can stop an execution only if the board recommends she do so, which it has never done. The five-member board is appointed by the governor.

Ron Geuder's comments came after several death-penalty opponents addressed the board.

"I wish the hell I wasn't here this morning," Geuder began. "I've heard a lot of people talk about human rights, but let me tell you something: Jenny doesn't have human rights anymore."

Sandi Geuder, Jennifer's mother, showed board members a photo of her daughter as she urged them to let the execution proceed.

"Don Miller took from us our firstborn," she said. "He's lived for 36 years, twice as long as Jennifer got to live."

Miller made many choices in his life, and now he's chosen to die, she concluded. "If that's what he wants, he should be afforded it."

Other speakers, however, said the execution should be put on hold at least until Attorney

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General Janet Napolitano finishes her study of the death penalty.

Over the summer, Napolitano formed a commission to look at how capital punishment is administered in Arizona.

Several speakers, including Ann Nichols of the Coalition of Arizonans to Abolish the Death Penalty, said it would be a travesty to go forward with an execution while the commission's work is ongoing.

"The death penalty affirms violence and perpetuates a cycle of violence," she added.

Claudia Ellquist, a member of Church Women United, asked board members, "What would Jesus do?"

"Taking his life does not equal Jennifer's life," said Ell-quist, a frequent speaker at clemency hearings.

But Gail Leland, founder of Homicide Survivors, said "justice should not be halted."

"I'd like to think that all of us are here on the side of justice and fairness," she said. "And even Miller knows what the right side is."

\* Contact M. Scot Skinner at 573-4240 or at via e-mail at

skinner@azstarnet.com.

**Caption:** Photo: Donald Miller

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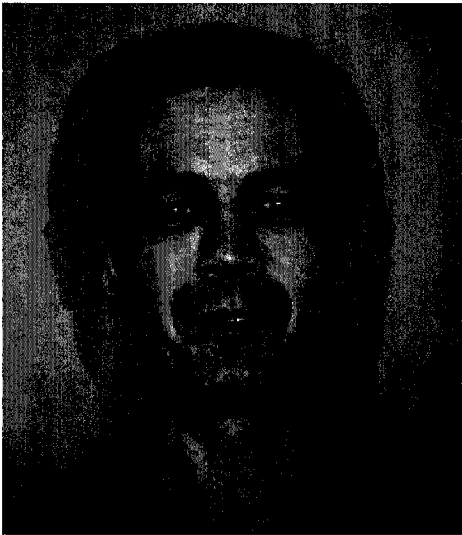
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## Board Clears Way for Arizona's First Execution Since 2000

Source: Associated Press

Updated May 8, 2007 - 3:38 pm



PHOENIX - A clemency board ruled Tuesday that Arizona's first execution in nearly seven years should take place as scheduled.

In a 3-1 decision, the Arizona Board of Executive Clemency said that Robert Charles Comer shouldn't be given a life sentence in lieu of the death penalty and shouldn't be granted a temporary reprieve.

The board has the option to reconvene and reconsider its decision up until Comer's scheduled execution by lethal injection on May 22, said Duane Belcher, chairman and executive director of the clemency board.

Olivia Meza, the sole board member to vote for clemency, declined to comment.

The board's decision is a welcome one for Comer, who didn't attend the hearing because he wants to die, said Michael Kimerer, Comer's attorney.

"He would see this as a victory," Kimerer said. "He feels there is a death penalty, that he certainly committed a horrific crime, he was responsible for it, he felt remorseful about it, and he felt that the proper thing to do was to proceed with the execution and suffer the consequences."

Comer, 50, was convicted in 1988 of robbing and killing an Apache Lake camper and then subjecting a young Chicago couple to a night of terror during a drive through wilderness areas in which he raped the woman several times.

Comer has been fighting to die since 2000, when he asked the 9th Circuit Court of Appeals in San Francisco to end all appeals and allow the execution to proceed. After seven years of court battles and mental competency hearings, the 9th Circuit granted Comer's request in March. The Arizona Supreme Court issued an execution warrant for him in April.

Representatives from the Coalition of Arizonans to Abolish the Death Penalty and the Arizona Capital Representation Project spoke at the clemency hearing against Comer's execution.

Jennifer Bedier, an attorney with the representation project, argued that too much is unknown about lethal injection and the pain it may cause. The method has recently come under scrutiny in several states, including Florida, where executions were suspended in December after an inmate required a second dose of lethal chemicals and took twice as long as usual to die.

"This is a matter of life and death," Bedier told board members. "You may believe Robert Comer is the monster that the prosecution

argued he was. You may agree with state that this crime is heinous and that it involved gratuitous violence, but we need not become monsters ourselves by allowing the state of Arizona to inflict gratuitous violence on one of its citizens."

Kimerer said he personally has concerns about lethal injection, but Comer doesn't. "I talked to him about the issue (possible pain) and he did not change his mind," Kimerer said.

Besides the first-degree murder and armed robbery conviction for the shooting death of Larry Pritchard, Comer also was convicted in Maricopa County Superior Court of sexual assault, armed robbery, kidnapping and aggravated assault for the attacks on the female camper and her boyfriend.

Comer's girlfriend was with him at the time of the crimes and pleaded guilty to kidnapping and testified against Comer. Juneva Willis served nearly six years in prison before her 1994 release.

Arizona hasn't executed anyone since November 2000, when Tucson resident Donald Miller died of lethal injection for helping to murder an 18-year-old woman after she asked Miller's friend for child support.



10/27/10 ATCON (No Page)

NewsRoom

Page 1

10/27/10 NPR All Things Considered (Pg. Unavail. Online)  
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October 27, 2010

### Supreme Court OKs Foreign Lethal Injection Drug

MICHELE NORRIS, host:

Now to a Supreme Court decision involving an execution in Arizona. The court has, for now, cleared the way for states to obtain lethal-injection drugs from foreign sources.

NPR legal affairs correspondent Nina Totenberg explains.

NINA TOTENBERG: Although the Supreme Court has upheld death by lethal injection, the regimen it has approved includes injection with a dose of FDA- approved sodium thiopental to render the prisoner unconscious so he doesn't feel pain. But in recent months, Hospira Incorporated, the only U.S. manufacturer of the drug, has been unable to meet demand, citing unspecified problems with its raw-material suppliers. And the shortage has left death- penalty states scrambling to find alternatives.

Enter Arizona, and the case of Jeffrey **Landrigan**. His lawyers sought to block his execution because state officials wouldn't say where they were getting the drug for the execution, and defense lawyers contended there was no way to evaluate the safety of the drug without knowing where it came from. Pressed by a federal judge, the state admitted it was using a drug from a foreign country, but wouldn't specify which one.

A frustrated federal judge Roslyn Silver then granted a temporary stay of execution, telling prosecutors she'd never seen a case in which one side claimed to have evidence that would rebut the other side's claims, but would not produce that evidence. State officials never did tell the judge where they got the drug, but they did tell the Arizona Republic newspaper it came from a British manufacturer. The state appealed all the way to the Supreme Court and late yesterday, the justices, by a 5-to-4 vote, lifted the stay of execution, allowing **Landrigan** to be put to death last night.

The five-justice court majority said there is no evidence in the record to suggest that the drug obtained from a foreign source is unsafe.

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10/27/10 ATCON (No Page)

Page 2

Last night's execution, the state's first since 2007, puts an end to a case that is remarkable in many respects. The Supreme Court ruled three years ago that **Landrigan** was not entitled to any further hearings on his case because, as Justice Clarence Thomas put it for a 5-to-4 majority, there was no evidence that would change the outcome of his case.

Since then, however, DNA evidence not tested at the time of trial seems to exclude **Landrigan** from the bloody fight that ended in the victim's death, though **Landrigan** does not dispute that he was there. And the judge who sentenced **Landrigan** to death has testified she would not have imposed the death penalty had **Landrigan's** lawyer presented doctors' reports and evaluations that showed at the time of trial in 1990, that **Landrigan** suffered from fetal alcohol syndrome and brain injuries.

Also this week, an Arizona **clemency** board considered the **Landrigan** case. Board chairman Duane Belcher(ph), an 18-year veteran, said **Landrigan** 's case was not among the worst of the worst, and that the board indeed had considered parole for some criminals whose crimes were worse.

Mr. DUANE BELCHER (Chairman, Arizona **Clemency** Board) I don't, at this point, see this as being a death-penalty case.

TOTENBERG: The board, however, deadlocked 2-2 on **clemency** for **Landrigan**, and a tie meant the execution went forward.

Nina Totenberg, NPR News, Washington.

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## NEWS

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### Arizona clemency board won't stop execution

by Amanda Lee Myers - Mar. 24, 2011 11:55 AM  
Associated Press

Arizona's clemency board has turned down a death-row inmate's request that his sentence be commuted to life in prison or that his scheduled execution be delayed.

The five-member board voted unanimously Thursday against the requests of Eric John King after emotional testimony from his son and victims' family members.

The hearing was held at the Arizona State Prison in Florence, and King attended. He was kept in a locked metal area in the hearing room.

"I'm ecstatic," said Linda Isanovic, daughter of victim Richard Butts.

"I don't want my dad to die," said Eric Harrison, the 20-year-old son of King. "I'm just angry that people would want to kill someone without all the details. That's not justice."

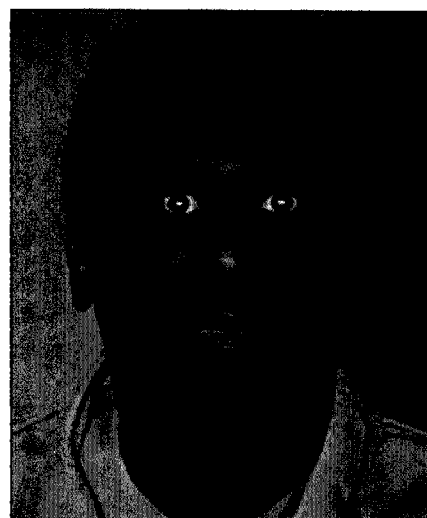
King, 47, is set to be executed by lethal injection on Tuesday. He was convicted of murdering a convenience store clerk and a security guard in a 1989 robbery that netted \$72, and is making a last-ditch effort to escape the death penalty. He has maintained his innocence since

his arrest.

The Arizona Supreme Court denied two motions by King seeking to put his execution on hold last week, and it rejected a petition to review his case. One additional request for reconsideration is pending at the trial court.

Attorney Michael Burke argues that the two key witnesses who testified against King at his 1989 trial have changed their stories, that no physical evidence exists, and that surveillance video used at trial was of extremely poor quality.

King was convicted of two counts of first-degree murder in the shooting deaths of a clerk and security guard at the Short Stop Market in Phoenix.



Arizona Department of Corrections

Eric John King

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**Arizona clemency board denies reprieve for death-row inmate**

Jun. 27, 2011 01:30 PM  
Associated Press

PHOENIX -- Arizona's clemency board on Monday declined to recommend that an inmate's death sentence be delayed or lessened to a term of life in prison after a long, emotional hearing during which lawyers for both sides cried and the 9-year-old victim's family wept.

The decision marks one of the last steps until death-row inmate Richard Lynn Bible can be executed on Thursday at the state prison in Florence.

Bible has been on death row since 1990 after being convicted of kidnapping, molesting and fatally bludgeoning 9-year-old Jennifer Wilson of Yuma while she was on vacation with her family in Flagstaff. Her naked, decomposing body was found by hikers three weeks after she went missing, hands tied behind her back with her own shoelace, and her underwear in a nearby tree.

The clemency board could have recommended that Gov. Jan Brewer delay or stop the execution. But its five board members voted against either action after hearing arguments from Bible's attorney, prosecutors, those who investigated the crime, and Jennifer's parents and one of her younger brothers.

Jennifer's family spoke to the board amid tears, asking for Bible's execution to move forward so they can have closure.

"I know that if Jennifer had the opportunity to choose life or death, she would have chosen to live," said her mother, Nancy Wilson. "We're here today because that evil creature abducted, brutally raped and brutally murdered our precious 9-year-old daughter Jennifer. He should not be allowed to breathe beyond 11 o'clock Thursday morning."

Jennifer's brother, Adam Wilson, 29, asked the board to "do what's right" and allow the execution to proceed.

"It's been right for the last 23 years," he said. "If you allow people like this to live, why should I have kids some day?"

Daniel Maynard, Bible's attorney, told the board that hairs found on Jennifer's T-shirt have never been tested, and that the execution shouldn't move forward until that happens.

"Mr. Bible has always contended that he was innocent," Maynard said. "This evidence needs to be tested."

He also insinuated that items including vodka bottles and cigars found with Jennifer's body, which matched items in Bible's car, could have been planted by police, saying that hundreds of people searching for her over a three-week period likely would have seen them if they had been there the whole time.

He also argued against the death penalty in general, saying that most of the world does not practice it, and that the other countries still using it are China, Iran, Iraq and Saudi Arabia.

"This is the company we want to keep?" he said. "The rest of the world that we believe is civilized looks at us and finds that what we do in executions is barbaric."

Prosecutors focused their arguments Monday on the evidence in the case and Bible's criminal history.

"The evidence is abundant and overwhelming," Coconino County Attorney David Rozema said. "We wanted to remind you of the fact that the inmate is a very dangerous, depraved and sick individual ... (and) once again put some emphasis on the extent of the suffering endured by Jennifer Marie Wilson as a 9-year-old innocent child. The crime was especially cruel because of the extent of her suffering at the hands of the inmate."

Under questioning by Rozema, a detective who investigated Jennifer's murder said Bible was released from prison on rape charges less than a year before the murder. Bible was convicted of binding up his 17-year-old cousin's hands, stripping her, repeatedly raping her and torturing her in 1981. That crime occurred less than 3 miles from where Jennifer was killed, said Gerry Blair of the Coconino County Sheriff's Office.

Blair also said that when Bible was booked into jail in Jennifer's case on the day of the murder, blood found on his shirt matched the girl's. The blood was in a pattern that indicated it was caused by bludgeoning someone else, Blair said.

Additionally, Blair said that hair found at the crime scene and on Bible's jacket, in his wallet and in his vehicle were matches. He said it was cut in a unique way that a forensic analyst could not duplicate on separate hair samples until he used a pocket knife that Bible had when he was arrested.

He said investigators at the time didn't feel that DNA testing of the hair would further the case.

"There's just so many pieces of this puzzle, and the only story they tell is that indeed Richard Bible killed Jennifer Wilson," Blair said

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# Arizona Death Row Inmate's Clemency Plea Rejected

Published July 14, 2011 / Associated Press

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Arizona's clemency board narrowly turned down a death row inmate's pleas for mercy on Thursday, five days before his scheduled execution for beating another man to death in 1987.

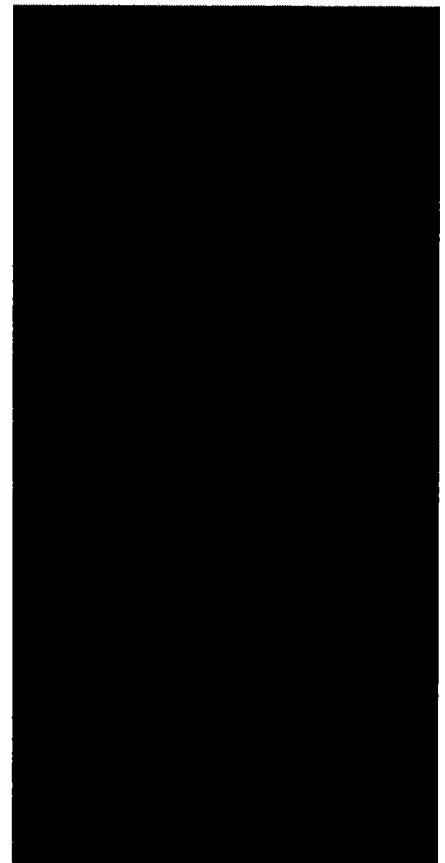
Thomas Paul West, 52, his attorneys and two psychologists argued at Thursday's hearing that sexual abuse as a child by three different men forever changed him and led to post-traumatic stress disorder.

The Arizona Board of Executive Clemency could have recommended that Gov. [Jan Brewer](#) lessen his sentence to life in prison, but they voted 3-2 to allow it to proceed. Board member John LaSota argued strongly to recommend reducing West's sentence to life, saying that he didn't deserve to be executed.

"It isn't the sort of cold, calculated murder that is the worst of the worst," LaSota said. "As this man sits here and as this crime occurred, he is not the sort of person the death penalty should be imposed upon."

But the majority disagreed without comment, voting against West and bringing him another step closer to his execution, set for Tuesday. If it proceeds, West will be killed almost exactly 24 years after he beat Donald Bortle to death while robbing his home just outside Tucson. Bortle's decomposing body was found in a closet on July 17, 1987, covered in blood and his hands tied behind his back.

West fled Arizona but was arrested in Hodgkins, Ill., during a traffic stop soon after the crime. He had four boxes of Bortle's belongings, mostly electronic equipment.



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ARIZONA CAPITOL TIMES > LATEST NEWS > BOARD DENIES CLEMENCY FOR ARIZONA DEATH-ROW INMATE

## Board denies clemency for Arizona death-row inmate

By Amanda Lee Meyers, Associated Press

Published: February 24, 2012 at 1:07 pm

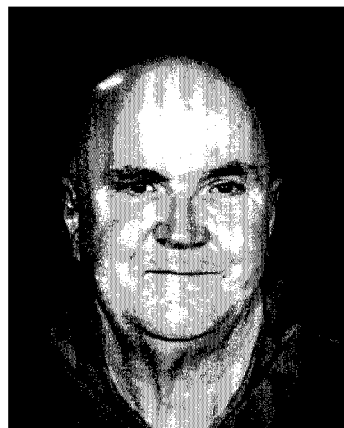


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This undated photo provided by the Arizona Department of Corrections shows death-row inmate Robert Henry Moormann. A federal judge on Thursday, Feb. 23, 2012 declined to delay the upcoming executions of Moorman and a second Arizona death-row inmate, Robert Charles Towery, over arguments that a new execution protocol violates their constitutional rights. Moormann, 63, is set to be executed Wednesday, Feb. 29, 2012 for the brutal killing and dismemberment of his adoptive mother in 1984. (AP Photo/Arizona Department of Corrections)

A longtime Arizona death-row inmate set to be executed next week told a state clemency board Friday that he remembers some sexual activity with his adoptive mother on the night he killed her but can't remember strangling, stabbing, suffocating or dismembering her.

The Arizona Board of Executive Clemency voted 4-1 against recommending that Gov. Jan Brewer reduce Robert Henry Moormann's death sentence to life in prison. They voted unanimously against recommending any delay in his execution scheduled for Wednesday.

Later Friday, the Arizona Supreme Court denied a stay for Moormann and said there were no court orders at the time that would stop the scheduled execution.

Lawyers for Moormann had filed a 21-page motion Tuesday with the state's high court saying he was diagnosed in early childhood as being mentally retarded and therefore can't be legally executed.

At a five-hour hearing Friday at the state prison in Florence, Moormann, 63, answered questions at length about his recollection of the night of Jan. 13, 1984, while he was on a "compassionate furlough" from prison to visit his 74-year-old adoptive mother, Roberta Moormann, at a nearby motel.

His case prompted the state to change its furlough policy.

"It was me playing with her breasts, and that is the only part I remember," Robert Moormann said. "I carried her in the bathtub and I knew something was wrong, so I put her in bed. I do not remember cutting her up. Sorry."

Moormann, whom several psychologists have diagnosed as mentally impaired, addressed the board from inside a steel cage. He sometimes spoke in rambling sentences, wrung his hands, and appeared overwhelmed when board members asked him about the sexual abuse he experienced at Roberta Moormann's hands.

Psychologists said there was overwhelming evidence that Roberta Moormann sexually abused her son throughout his childhood.

"There's things I don't like to talk about," he said, appearing nervous. "Because I know that things that happened were wrong. Nobody wanted to believe me."

He told the board that he wasn't sure why he can't remember the details of the

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killing but wondered aloud if it might be because of a stroke he had in prison in 2007.

"I accept responsibility for what happened that night," he said. "The only two people in that room were her and me. I know I'm guilty of the crime. I wish I could go back and undo it, but I can't."

Moormann was serving nine years to life in prison in 1984 for kidnapping and molesting an 8-year-old girl when the state let him out on the three-day compassionate furlough.

Moormann beat, stabbed and suffocated his mother before cutting off her head, legs and arms, halving her torso, and flushing all her fingers down the toilet. He then went to various businesses asking if he could dispose of spoiled meat and animal guts before he threw most of her remains in trash bins and sewers.

He was captured after he asked a corrections employee to dispose of what he said were dog bones.

During the hearing, psychologists said Moormann was born to a 15-year-old prostitute who died when she was 17. He was bounced around six foster homes before being adopted in Flagstaff when he was 5.

The doctors, including one who often testifies against inmates, said Moormann was "absolutely" mentally disabled, which would make it illegal for the state to execute him.

Other doctors have estimated that Moormann's intellectual capacity is just above that of someone who is legally considered mentally disabled.

Dr. Jack Potts, a forensic psychologist who has testified on behalf the defense and prosecution in various death-penalty cases, told the clemency board Friday that he believes Moormann was subjected to years of sexual abuse. As a boy, Moormann drooled, walked funny, and looked different from others, causing him to be ostracized among his peers and completely dependent on his mother.

"This man was born condemned," Potts said. "When he was born, his chance of living a normal life was zero."

Moormann has told varying stories of his sexual abuse, at one time saying that Roberta forced him to engage in "rough sex," according to his attorney. On Friday, Moormann told board members that he and his mother did "only things from the belly button up."

His attorney, Julie Hall, told the clemency board the state has never executed a person who killed their abuser.

"Robert Moormann would be the first, and that is unconscionable," she said.

Prosecutor Greg Bizzozero told the board that Moormann did not meet Arizona's legal standard to be considered mentally disabled and the evidence is overwhelming that Moormann planned his mother's death, and beat and stabbed her before he killed her.

"Robert Moormann murdered the only woman who we've heard ever really loved him," Bizzozero said.

On Thursday, a federal judge also declined to delay Moormann's execution and that of another death-row inmate, Robert Charles Towery, who is set to be executed March 8. The ruling has been appealed to the 9th U.S. Circuit Court of Appeals.

Of the 130 inmates on Arizona's death row, only six have been there longer than Moormann, who has had a slew of health problems over the years and most recently was hospitalized last week.

The last inmate to be executed in Arizona was Thomas Paul West, who was put to death July 19 for the beating death of another man in a 1987 robbery.



## Arizona kills man for '91 murder in 2nd execution in 9 days

by Michael Kiefer - Mar. 8, 2012 06:42 PM

The Republic | azcentral.com

Arizona death-row inmate Robert Towery was executed by lethal injection Thursday for the 1991 murder of a Paradise Valley philanthropist during a robbery.

Towery, 38, was pronounced dead at 11:26 a.m., nine minutes after the lethal-injection procedure began at the Arizona State Prison Complex-Florence.

Executed inmate's diary details final weeks

Arizona executes man who killed, dismembered mother

Towery's execution came just eight days after Arizona executed another inmate, Robert Moormann, for killing and dismembering his mother 28 years ago.

Wednesday night, Towery was served a last meal of porterhouse steak, baked potato with sour cream, asparagus, mushrooms, clam chowder, milk, Pepsi and apple pie a la mode.

Towery met with his attorneys Thursday before the execution began. The execution was scheduled to start at 10 a.m., but his attorney's visit ran long and the executioner discovered he had to insert a catheter in the femoral artery, suggesting that they could not raise a vein in his arm.

Witnesses were not led into Housing Unit 9, where executions are carried out, until a few minutes after 11 a.m.

The execution began at 11:17 a.m. Towery looked to his family and attorneys. In his last words, he apologized to his family and to the victims. He talked about bad choices he had made. Then he said, as he appeared to be crying, "I love my family. Potato, potato, potato."

His reference to potatoes was a message to a nephew who witnessed the execution, and referred to the sound made by a Harley-Davidson motorcycle. Towery's attorney, Dale Baich, said it was Towery's way of telling his nephew that everything was OK.

But Baich said there were other messages buried in other of Towery's last words -- which puzzled journalists witnessing the execution -- including a suggestion that Towery had asked to call his attorney before his execution and was not allowed.

Once the injection was administered, he took several hard breaths, one witness said, and then slipped into unconsciousness.

Towery was sentenced to death for killing Mark Jones during an armed robbery at Jones' home.

Towery was Jones' mechanic, and Jones had even lent him money on two occasions. On Sept. 4, 1991, Towery and an accomplice went to his house, pretending they needed to use the phone to make a call because their car broke down. They held Jones, 68, at gunpoint and ransacked his

house. Then Towery strangled him with zip ties. The accomplice testified that Towery also injected Jones with battery acid from a syringe. Then the two made off in one of Jones' cars with a television set, cash and credit cards.

In exchange for his testimony, the accomplice served only 10 years in prison and was released.

At Towery's clemency hearing last week, Towery claimed no memory of any syringe and said he could not understand why he took Jones' life.

His attorneys and doctors described at that hearing Towery's horrific childhood and his severe addiction to methamphetamine. The clemency board did not feel that those circumstances outweighed the seriousness of the crime, and it refused to grant him a commutation or a reprieve.

Late Wednesday, the Arizona and U.S. Supreme Courts denied Towery's last-minute requests for a stay of execution.

## Arizona prisoners rarely granted clemency **Governor seldom uses sentencing 'safety valve'**

by Bob Ortega - May. 12, 2012 11:03 PM

The Republic | azcentral.com

By his 14th birthday, Tommy Londo was addicted to crack cocaine. With both parents in prison, he grew up on the streets of Phoenix, homeless and uneducated. He spent his teens in and out of mental hospitals and shelters.

After he was arrested in 2004 for selling a \$20 lump of crack to an undercover police officer, prosecutor Eric Rothblum described him as "a clear societal liability." Londo was sentenced to 15 years and nine months in prison.

Seven years later, in 2011, Arizona's Board of Executive Clemency unanimously agreed that Londo had turned his life around. He was working on his GED, was drug-free and had earned a certificate for good behavior in prison.

The board recommended commuting Londo's sentence to five years, stating in a letter to Gov. Jan Brewer that Londo was someone who "has made outstanding progress." The board noted, too, that the judge who sentenced Londo had called the prison term required by Arizona's mandatory-sentencing laws "excessively harsh" given the situation.

Brewer denied Londo clemency without comment last June.

Londo has plenty of company. Statistically, if you are convicted of a felony in Arizona, you are more likely to be struck by lightning than granted clemency by the governor. Excluding the cases of inmates nearing the end of a terminal illness, Brewer is on track to grant the fewest clemency cases in more than two decades -- even when a judge and unanimous board recommend a shorter sentence.

Recent board members interviewed by The Arizona Republic believe clemency will be granted even less frequently in the future.

Indeed, Brewer's decision to replace three of the five clemency-board members at once last month has led to legal and political turmoil: Departing board members say they were ousted for voting to grant clemency; and attorneys for an inmate scheduled to be executed Wednesday will be in Maricopa County Superior Court on Monday, seeking a court order to nullify the appointments, arguing that they violated state laws. If the court agrees, it would invalidate dozens of board decisions from the past three weeks and could stall the clemency process.

Clemency is a way to correct an injustice, reduce an unfair sentence or give a second chance to someone who merits it. Sometimes called the criminal-justice system's "safety valve," it can take the form of a commutation, which reduces a sentence, or a pardon, which absolves a felon of the legal consequences of his or her conviction. But as Arizona adopted increasingly inflexible mandatory sentences over the last 30 years, a period that has seen the state's prison population soar eight-fold, governors' use of that safety valve steadily decreased.

Budget cuts have reduced the number of clemency cases the board can hear to one-fourth as many as three years ago, creating a nearly two-year, 900-case backlog.

This withering of clemency brings both personal fallout, in ruined lives and separated families, and a financial cost to taxpayers, who pay to house and feed inmates who could otherwise be working and paying taxes. In Londo's case, it will cost taxpayers at least \$200,000, based on Department of Corrections per-inmate prison-cost estimates of \$22,166 a year.

"It's very worrisome because we have a system now in which almost nobody has discretion to fix an injustice," says Rachel Barkow, a professor at the New York University School of Law who has written extensively on clemency. "With mandatory sentencing, the judge can't do anything; the jury isn't told what the sentence will be. The only check on the system, the only safety valve, is clemency."

From 1913, when Arizona established a board of pardons and paroles, until 1993, fewer than 60 inmates a year applied for commutation, on average. In 1993, the state adopted so-called "truth in sentencing" laws, which effectively abolished parole. The new code requires offenders to serve at least 85 percent of their sentence before becoming eligible for community supervision; for many felonies, 100 percent of the sentence must be served. The laws, along with mandatory minimums that took discretion in sentencing out of the hands of judges, left commutation as the only avenue for most offenders to seek a reduced sentence. By 2005, commutation applications soared to more than 1,200 a year.

The clemency board can recommend commutations, pardons, reprieves to temporarily delay a punishment, and the release of terminally ill inmates. Any inmate facing execution is automatically offered a clemency hearing. The board's recommendations are forwarded to the governor.

Brewer is the first governor in at least 34 years who has not issued a single pardon. She has denied each of the clemency board's 13 recommendations. By comparison, Janet Napolitano issued 22 pardons over six years, Jane Dee Hull issued seven over 5.3 years, Fife Symington issued 13 over 6.5 years, and Rose Mofford granted 13 over three years.

Neither Brewer nor her four predecessors commuted a death sentence. In the 31 executions since 1992, the board has never recommended a commutation.

Citing "the futility of the process," Thomas Kemp, 63, didn't ask for a hearing before his execution on April 25 for a 1992 murder. In a letter written a week before his execution, the unrepentant Kemp said a hearing would merely bring "public humiliation of the prisoner without any chance" of his death penalty being reduced to a life term.

There is an exception to Brewer's aversion to clemency: She has granted 19 requests to release inmates medically judged to have only days or weeks to live and who weren't considered a public-safety threat. Otherwise, in her three years and four months in office, she has routinely denied unanimous board recommendations for clemency, leaving scores of prisoners serving longer sentences than the board found they deserved.

Brewer declined requests for an interview. Her spokesman, Matthew Benson, issued a statement saying that every case is reviewed and that Brewer "fulfills this solemn responsibility with the seriousness owed, and always mindful of the victims harmed by these crimes."

The effect: Arizona's justice system has no safety valve, says Henry J. Florence, a Phoenix defense attorney for more than 40 years. More than 76,000 felony criminal cases a year are filed across the state. Nearly 96 percent are settled by plea bargains, according to state court statistics. Those plea-bargain sentences are driven by the long mandatory minimums in state law, Florence says. And, he notes, when cases do go to trial, the law bars jurors from being told how long a sentence a charge will carry.

#### Sentences defended

Prosecutors fiercely defend mandatory sentencing. Maricopa County Attorney Bill Montgomery, who says his prosecutorial policy is not much different from those of predecessors Andrew Thomas and Rick Romley, rejects defense-attorney accusations that his office uses the long mandatory sentences to compel tough plea bargains. "It's never the ace card," he says, adding that since a defendant must agree to the length of sentence in any plea bargain, "we're not going to agree it's unduly harsh, or we wouldn't have pushed for it in the first place."

But those being offered the plea bargains -- and sometimes the judges imposing the sentences -- see it differently.

Evaluating whether a sentence merits clemency can be thorny. Consider Christopher Lindquist's case. On Oct. 11, 2009, Lindquist, then 22, drove home drunk from a friend's birthday party. Speeding and weaving, he ignored the sirens and lights of a policeman on a motorcycle until he pulled into his parents' carport. He got out of the car holding a knife with metal spikes along a brass-knuckle-type handle. Officer Eric Thrower, standing behind his motorcycle at the foot of the driveway, drew his gun and ordered Lindquist to drop the knife. Lindquist stepped forward, out of the carport, and following the officer's second command to drop the weapon, threw the knife into some bushes and ran into the house. His parents brought him back outside, where he was arrested.

"Why he had the knife in his hand, I couldn't tell you," said his father, Steven Lindquist. "He couldn't tell me."

He said the prosecutor's only offer was a sentence of 71/2 years.

The Lindquists chose to go to trial. Christopher Lindquist was convicted and given the mandatory 101/2 years for aggravated assault.

"The jury didn't know he was going to get 101/2 years, or I think they would have voted for a lesser charge," says Steven Lindquist.

In a written order, Maricopa County Superior Court Judge Pendleton Gaines called the sentence "clearly excessive and disproportionately harsh" for "a one-time incident of defendant's



intoxication and an assault, consisting of the display of a knife, in which there was no physical injury." Noting Lindquist's consistent remorse, unclear evidence over whether the incident amounted to an assault, a lack of prior criminal history and other factors, Gaines issued an order at sentencing allowing Lindquist to expedite his case to the clemency board within 90 days.

In his petition to the board, Christopher Lindquist wrote that his behavior that night was "completely out of character for me. ... I would like the board and Governor to know how sincerely remorseful I am. I want to apologize to my family, friends, co-workers and especially to Officer Thrower. Not a day has passed that I haven't thought about the events that I caused that night."

He had one prior conviction, for driving under the influence. He promised never to drink again.

In November 2010, the board unanimously recommended that his sentence be reduced to three years. The governor denied commutation in March 2011.

"We had a lot of hope," said Steven Lindquist. "To see the governor deny him, and then to see her boasting on TV that she never grants such things, what's the point?"

#### Immediate clemency rare

Despite defense attorneys and judges' frequent complaints about the harshness of mandatory sentencing, they rarely push for immediate clemency, says Donna Hamm, who with her husband runs Middle Ground Prison Reform, a prisoner-advocacy organization. Even when they consider a sentence grossly disproportionate, few judges regularly issue what are called 603(L) orders. Named for the statute they fall under, such orders allow the defendant to petition the clemency board within 90 days for a commutation. Otherwise, inmates must wait two years.

It is rare for judges to issue 603(L) orders, and few of those granted ever reach the governor. Arizona judges have issued only 49 in the last three years, and of those 19 made it to Brewer's desk. She has granted only two and has denied all 14 that have been submitted since October 2009. By comparison, Hull granted one in three such cases and Napolitano granted one in six.

Among those denials is Shannon Connely, a 42-year-old real-estate agent who had no prior arrests or convictions before a run-in with police on May 7, 2009. He was asleep, at home, when a police officer looking for a missing child pulled up in front of his house. Awakened by squealing tires and barking dogs, and worried because of a recent attempted burglary, Connely said, he grabbed his holstered handgun and ran out the front door. The officer drew his weapon and ordered Connely to drop the gun. Instead, according to witnesses, Connely cursed at the officer, pointed out that his gun was holstered, and ordered him off the property. The officer shouted at him again to drop the gun and lie on the ground. Connely did so; the officer shot him with a Taser and then arrested him.

Offered probation if he pleaded guilty to a felony, Connely opted to go to trial. He was convicted of aggravated assault and given the mandatory 10 1/2-year sentence.

Montgomery defends the sentence as appropriate. "We ask police officers to put their lives on the line every day and to make difficult decisions. When someone threatens them, we sanction that with a severe sentence," he said. "I will say that if this individual had dropped the weapon at the first command, it would have been a very different case, if it had been a case at all."

At the August 2010 sentencing, Superior Court Commissioner Steven Lynch noted that Connely had never removed his gun from the holster or pointed it at the officer. He said the sentence "is clearly excessive" and issued a 603(L) order.

At his clemency hearing, Connely acknowledged the seriousness of his mistake, apologized and expressed remorse. Among many other letters, his daughter Danielle, 16, wrote to the board describing how the family lost its home because of what happened. "I have had to move away from my school and friends I have had since 3rd grade," she wrote. She said she needs her dad's help and advice, ending by writing, "I NEED MY FATHER!"

In April 2011, the board unanimously recommended Connely's sentence be commuted to the seven months already served, that he be put under community supervision and complete an anger-management program.

"We were ecstatic," recalls Joy Ardolino, his sister-in-law. "It was a unanimous decision; they saw what the case was and agreed that the sentence was outrageous."

Brewer denied the commutation last October.

"Why have a clemency board if you aren't going to follow their recommendations?" asks Ardolino. "The governor was in the middle of a campaign and it's a police issue, so she's going to say no. I think it's atrocious."

#### Independent decision

Hamm, the reform advocate and a former state judge, said she understands the frustration that prisoners' families feel. But, she says, "Executive clemency is an act of grace -- to correct a manifest injustice, to recognize a special case in which there has been extraordinary movement towards rehabilitation or some other extraordinary circumstance. ... It seems logical you should have a good chance if you get five votes from the board, but the governor is well within her authority to do her own investigation and make a completely independent decision." Hamm's husband, James, had his murder sentence commuted by Mofford and went on to graduate from Arizona State University's law school.

Perhaps the most-debated commutation rejected by Brewer is the case of William Macumber, who was convicted in 1975 of a 1962 double homicide and sentenced to life in prison. In a unanimous recommendation three years ago, the board said he had served excessive time in prison and had a record of behavior showing he is not a threat to society. Most importantly, the board called his conviction a miscarriage of justice, saying that "the evidence that now exists certainly casts serious doubt on Mr. Macumber's conviction."

Former state Judge Thomas O'Toole told the board that another man confessed to committing the murders to him in 1967, but attorney-client privilege required him to remain silent about the confession until after his client died.

Montgomery's office strenuously opposed Macumber's clemency petition, calling his petition misleading.

Brewer denied commutation in November 2009, sparking critical national-media coverage. In October 2010, Brewer fled her own televised news conference after Macumber's son asked the governor about her decision.

"The parole board says he's innocent, yet she still won't do anything," says P.S. Ruckman Jr., an Illinois political-science professor who publishes a blog on clemency, [pardonpower.com](http://pardonpower.com). He is highly critical of Brewer and other governors who he says don't appear to take their pardon powers seriously. "Sometimes the law has a disproportionate impact and may be too rigid. That's what the pardon power is for," he says. "Brewer has the power and discretion to have a larger sense of justice and to do something about it. That's her duty."

Governors avoid it

Brewer's reluctance to grant clemency isn't unique. Before the advent of mandatory-sentencing and "truth in sentencing" laws in recent decades, roughly one in four or five clemency applications would be approved, according to a 2010 Duke Law School study. But increasingly, governors around the country avoid it, says NYU Law School professor Barkow.

"It's common among Democrats and Republicans alike," Barkow said, noting that President Barack Obama's clemency rates also are at historic lows.

Officials fear the potential political nightmare of releasing from prison someone who goes on to commit a violent crime, she said. She noted the 2000 commutation in Arkansas by then-Gov. Mike Huckabee of an inmate, subsequently granted parole, who gunned down four police officers in Parkland, Wash., in 2009 before he was shot to death. Though the inmate had been in and out of prison and jail in Washington state and was out on bail, the media focused on the commutation by Huckabee, who had been a candidate for the 2008 Republican presidential nomination.

"Every time something like that happens, every politician takes note," said Barkow, adding that, politically, the potential downside can far outweigh the fact that some commutations are warranted in the interests of fairness and justice.

Since taking office, Brewer has granted five commutations, aside from those for inmates at death's door. Four of these reduced sentences by less than 2 1/2 years. The biggest reduction was for Christopher E. Patten, who was sentenced to seven years for manslaughter as the driver of a vehicle in a 2005 drive-by shooting in Phoenix. The judge noted that Patten was forced at gunpoint to drive the vehicle, turned himself in to police and testified against the shooters at the risk of his life. He served just under two years before the governor granted a commutation in October 2009. Aside from those granted to dying inmates, Brewer hasn't granted any

commutations in the last 17 months and has rejected 39 recommended by the board, out of 1,180 applications, according to board records. That does not include the nearly 900 cases in the backlog.

#### Effects of budget cuts

Budget woes brought on by the recession have reduced the board's ability to handle commutation requests. Two years ago, as part of broader cuts, Arizona's Legislature made four of the five board positions part-time instead of full-time, and slashed the board's budget.

Duane Belcher, who was until recently the board's chairman and executive director, says the cuts forced him to reduce the number of commutation hearings to 25 a month from 100. That led to the two-year backlog and to a plunge in applications to 346 last year, less than half as many as two years ago, Belcher said.

Brewer recently replaced Belcher, who served as chairman for 20 years, and two other board members: 2010 Brewer appointee Marilyn Wilkens and 2007 Napolitano appointee Ellen Stenson. The ousted board members expressed shock at being pushed out all at once. Board members' terms are staggered, and typically one new member is appointed each year.

Belcher and Stenson attributed their departures to the governor's displeasure with their votes to grant clemency in the Macumber case; Wilkens said the governor's aides grilled her over her vote in another case.

The manner in which Brewer replaced the three also has ignited a legal fight. Attorneys for Samuel Lopez, who is scheduled to be executed Wednesday for a brutal 1986 murder, will argue in court Monday that the appointments of three new board members, Bill Livingston, Melvin Thomas and the new chairman, Jesse Hernandez, should be declared null and void. In court filings last week, the attorneys argued that the committee that recommended the appointments violated the state Open Meeting Law and other statutes. They included a statement from Wilkens declaring that her interview by the committee, conducted in executive session, didn't comply with state statutes.

Stenson said Friday that she hadn't spoken with Lopez's attorney but that she, too, wasn't told in advance that she would be interviewed in executive session, and wasn't told she could object to the closed-door venue.

"It doesn't make any sense" to replace three board members at once, said Stenson, adding that it makes it difficult for new members "to learn the procedures before their vote is needed. This makes it hard on the new members and the old members, and it's unfair to the inmates, the families or to anyone."

Lopez's attorneys also are seeking a stay of his execution until the court determines whether the board is legally constituted. A spokesman for the governor said the appointments complied with state law.

If Superior Court Judge Joseph Kreamer were to nullify the appointments, Brewer's office would have to begin the process from scratch, potentially leaving the two remaining board members to handle cases on their own for days or weeks. Then, because state law specified that only the chairman can declare a quorum of two, Brewer either would have to make one of the existing members the chair, or leave the board unable to hear cases until a new round of appointments was complete.

In any event, Belcher, the former chairman, said last week that it's clear to him that the governor wishes to see fewer clemency cases land on her desk.

Commutations and pardons:

Gov. Rose Mofford (April 4, 1988 to March 6, 1991): 13 pardons, 2 commutations.

Gov. Fife Symington III (March 6, 1991 to Sept. 5, 1997): 13 pardons, 16 commutations.

Gov. Jane Dee Hull (Sept. 5, 1997 to Jan 6, 2003): 7 pardons, 28 commutations.

Gov. Janet Napolitano (Jan. 6, 2003 to Jan. 21, 2009): 22 pardons, 34 commutations (including 9 "imminent danger of death" cases).

Gov. Jan Brewer (since Jan. 21, 2009): 0 pardons, 24 commutations (including 19 "imminent danger of death" cases).

Except for "imminent danger of death" cases, Brewer has not granted a commutation since Dec. 15, 2010.

Three types of clemency hearings

Arizona's Board of Executive Clemency conducts three types of clemency hearings: commutations, pardons and reprieves. If a majority of the board approves a clemency request, its recommendation is sent to the governor, who makes the final decision. In Arizona, the governor can't grant clemency without a board recommendation.

A commutation reduces a sentence. Inmates facing imminent execution automatically are granted a commutation hearing. Other inmates can apply for commutation after they have been in prison two years and have at least one more year to serve. A judge who considers a mandatory sentence too harsh in a particular case can issue a 603(L) order, which allows an inmate to request a commutation hearing within 90 days. Terminally ill inmates also can request a commutation if they can submit medical documentation that they're expected to die in less than six months.

A pardon absolves a convicted felon of the legal consequences of the crime and conviction. Pardons most often are granted to people who already have completed their sentence and who are seeking to have their civil rights, such as the right to bear arms, restored.

A reprieve is a delay or temporary suspension of the carrying out of a sentence.

The board also can act on its own authority to grant absolute discharges or parole for people convicted under sentencing laws in effect before Jan. 1, 1994. An absolute discharge can grant release from imprisonment; but it is more often used, on the recommendation of the Community Corrections division, to end parole early for someone who has shown exceptional performance while under supervision.



6/23/12 ARIZREPUB B3

NewsRoom

Page 1

6/23/12 Arizona Republic (Phoenix, Ariz.) B3  
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June 23, 2012

Section: VALLEY & State

**Clemency** request, stay of execution denied

June 23, 2012

Arizona's Board of Executive **Clemency** voted 4-0 Friday not to recommend **clemency** or a reprieve for convicted murderer **Samuel Lopez**, who is scheduled to be executed Wednesday.

Also on Friday, Arizona's Supreme Court denied a request by **Lopez's** attorneys for a stay of execution, leaving a pending appeal to the U.S. Supreme Court as his last chance for a reprieve.

Phoenix Phoenix

**Lopez** was sentenced to death for the brutal murder of Estefana Holmes in central Phoenix in 1986. After a "terrible and prolonged struggle," **Lopez** raped and sodomized her, stabbed her more than 23 times in the chest and head, and slashed her throat, according to court records.

The board's vote followed impassioned pleas both for and against his execution.

"He didn't just murder Essie, he murdered our family," said Denise Evans, Holmes's daughter-in-law, saying that her devastated husband drank himself to death after her killing.

More than a dozen members of Holmes' family testified, most describing how the murders continue to affect them, and saying the execution would bring them closure.

"Why should he be allowed more time on this earth than our sister?" asked Sarah Arguijo Bryant.

Assistant Federal Public Defender Kelley Henry expressed her condolences, but told the board that because of poor lawyering, no court had **heard** the full story of **Lopez's** poor and brutal upbringing, or of how his childhood abuse of various substances, as an escape, had left him mentally impaired. Neuropsychiatrist George

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6/23/12 ARIZREPUB B3

Page 2

Wood, describing that upbringing in clinical detail, said **Lopez** and his siblings essentially were brought up as "feral children." He noted that two of **Lopez's** brothers also faced the death penalty for their own crimes.

That background and impairment should have mitigated his sentence to life without parole, Henry said. Inevitably, when the death penalty is imposed "it's not for the worst crime, it's for the worst lawyer," she said.

State prosecutors had provided the board members with color photos of Holmes and the murder scene. Board member Mel Thomas said he reviewed them closely before the **hearing**.

"I tell you now, when I did this at home, I cried," he said.

**Lopez**, who is being held at the Eyman state prison, did not take part in the **hearing**. He previously had been scheduled for execution May 15, but won a delay after the Arizona Supreme Court agreed that three new members of the **clemency** board hadn't had adequate training when they first considered his bid for **clemency** last month. When Gov. Jan Brewer replaced three of the five board members, including the chairman, in April, the departing members said they had been ousted because she was unhappy with their votes to recommend **clemency** in certain cases.

Henry had sought another stay, arguing that the new members couldn't give **Lopez** a fair **hearing** because they were improperly appointed and biased against him; but Friday, the state Supreme Court denied her motion without comment. The U.S. Supreme Court had not acted Friday on a separate request for a stay filed by **Lopez's** attorneys.

---- INDEX REFERENCES ----

NEWS SUBJECT: (Criminal Law (1CR79); Death Penalty (1DE04); Legal (1LE33); Violent Crime (1VI27); Crime (1CR87); Social Issues (1SO05); Murder & Manslaughter (1MU48); Judicial Cases & Rulings (1JU36))

REGION: (North America (1NO39); Americas (1AM92); Arizona (1AR13); USA (1US73); U.S. Southwest Region (1SO89))

Language: EN

OTHER INDEXING: (Clemency; Kelley Henry; Denise Evans; Stefana Holmes; Samuel Lopez; Sarah Arguijo Bryant; Mel Thomas)

EDITION: Final Chaser

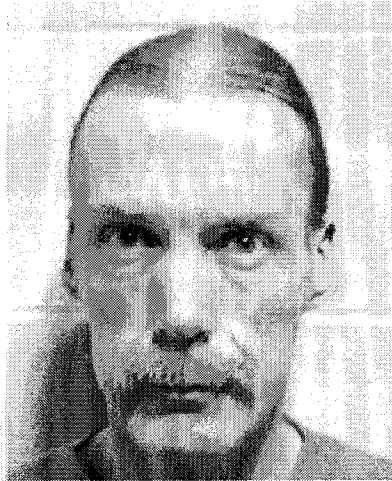
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6/23/12 ARIZREPUB B3

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## Arizona death-row inmate's clemency request denied

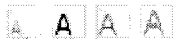


Daniel Wayne Cook (Arizona Dept. of Corrections)

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Posted: 03/31/2011



By: Associated Press

PHOENIX - A clemency board voted Thursday against recommending to stop or delay the execution of a death-row inmate convicted of killing two men after raping and torturing them for hours in Lake Havasu City in 1987.

Daniel Wayne Cook, 49, is scheduled to be executed Tuesday, although his lawyers still have appeals outstanding in two courts.

The Arizona Board of Executive Clemency voted 4-1 after some members voiced concerns over Cook's death penalty and a controversial execution drug.

Cook's lawyers argued that their client should be given a life term, saying that he suffered from extreme physical and sexual abuse during childhood, and only recently was diagnosed with post-traumatic stress disorder and brain dysfunction.

Cook attended the hearing by phone, apologizing for the murders and asking the board to show him mercy.

"For nearly 24 years there has not been a day that's gone by that I have not thought of (the victims) and their families," Cook said from a state prison in Florence. "I do know, however, that no matter how agonizing this might have been to me, it must pale in comparison to the suffering I've caused. ... I've never been more sorry in my life than I am for this."

Mohave County Attorney Matt Smith argued that Cook should be executed, and said the only reason Superior Court Judge Steven Conn didn't know about the extent of the abuse Cook experienced was because he chose to represent himself at trial and chose not to discuss the abuse.

He also argued that Cook's crime is the "worst of the worst."

"What you have is a horrendous, absolutely horrendous crimes, and two innocent victims who did absolutely nothing in this case," Smith said.

Cook was convicted of two counts of first-degree murder in the gruesome July 19, 1987, killings of Kevin Swaney, 16, and Carlos Cruz-Ramos, 26.

Court documents say that Cook and his roommate and co-worker, John Matzke, were drunk and high on methamphetamine when they decided to rob Cruz-Ramos, who lived with the men and worked with them at Bob's Big Boy Restaurant in Lake Havasu City.

The two got \$97 from the Guatemalan immigrant, then overpowered, gagged and tied Cruz-Ramos to a chair. Over the next six hours, Cruz-Ramos was cut with a knife, sodomized by Cook, burned with cigarettes on his stomach and genitals, and beaten with fists, a metal pipe, and a wooden stick, according to court documents.

Later, Matzke tried to strangle Cruz-Ramos with a sheet. When that didn't work, Cook and Matzke both pressed down on his throat with a pipe until Matzke stood on it, finally killing Cruz-Ramos, according to court documents.

Swaney, a runaway and occasional guest at the apartment who also worked at the Big Boy, showed up about two hours later.

Cook and Matzke then tied Swaney to a chair and gagged him. Matzke then said he wouldn't participate in the teen's torture and fell asleep. He awoke to see the teen crying, and Cook told him that he had sodomized Swaney and that they had to kill him, according to court records.

The two tried to strangle the boy with a sheet, and when that failed, Cook said, "This one's mine," and strangled him by hand, Matzke said. They put Swaney's body in the closet on top of

Cruz-Ramos.

Cook was arrested after Matzke went to police. Matzke later testified against Cook to get a lighter sentence; he was released July 16, 2007, three days before the 20-year anniversary of the killings.

When questioned, Cook told police that "we got to partying, things got out of hand. Now two people are dead," and immediately admitted that he killed Swaney and that Matzke killed Cruz-Ramos.

At Cook's sentencing, the judge said he didn't believe that there was a connection between Cook's mental problems and the murders, although he didn't know about the abuse at the time.

"I almost relish giving you the death penalty because I believe that what you did was so awful," Conn told Cook. "Society should take your life away from you just as an expression of its revulsion toward the conduct that you have engaged in."

Cook's execution is expected to be Arizona's last use of a controversial three-drug lethal injection method.

Corrections officials have said Arizona will switch to using just one drug in an effort to allay any "perceived concerns" that sodium thiopental is ineffective, but not until after Cook is put to death.

The drug is part of the three-drug lethal injection method used by nearly all 34 death penalty states, but it became scarce last year after the sole U.S. manufacturer stopped making it. Some states started obtaining sodium thiopental overseas, and lawyers have argued that potentially adulterated, counterfeit or ineffective doses could subject prisoners to extreme pain.

Cook's attorneys are fighting the use of the drug, even though similar arguments failed to stop or delay the execution in Florence on Tuesday of Eric John King.

Kevin Swaney's adoptive father, James Swaney, sent a statement to the clemency board saying that Cook will

Read more: [http://www.abc15.com/dpp/news/region\\_phoenix\\_metro/central\\_phoenix/arizona-death-row-inmate's-clemency-request-denied#ixzz2ecHprguD](http://www.abc15.com/dpp/news/region_phoenix_metro/central_phoenix/arizona-death-row-inmate's-clemency-request-denied#ixzz2ecHprguD)



8/4/12 ARIZREPUB B4

NewsRoom

Page 1

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Section: VALLEY & State

Murderer's execution stands

August 4, 2012

The Arizona Board of Executive **Clemency** on Friday refused to recommend a life sentence for death-row prisoner **Daniel Cook**, who is scheduled to be executed Wednesday.

The four members of the board who were present voted unanimously to deny commutation or reprieve in the 25-year-old case. The **clemency** board has five members and makes recommendations to the governor, who in turn can decide whether or not to grant **clemency**.

Phoenix Phoenix

**Cook**, 50, was sentenced to death for the 1987 murders of Carlos Cruz Ramos, 26, and Kevin Swaney, 16, in Lake Havasu City. Both men were tortured and sodomized before being strangled by **Cook** and an accomplice, John Matzke. All four worked together in the same restaurant.

When **Cook** entered the **hearing**, he was clean-shaven and his blond hair was shorn and balding — in prison photos, he has long hair and a bushy mustache. He rocked nervously inside the cage that prisoners sit in during **clemency hearings**.

Under questioning from his attorney, Robin Konrad, **Cook** spoke frankly about the physical and sexual abuse he suffered at the hands of his mother and an employee of a California home for boys, and about his penchant for drugs and alcohol.

**Cook** used "anything that was available that would slow my brain down," he said.

Konrad asked him a direct question: "Dan, do you want to live?"

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8/4/12 ARIZREPUB B4

Page 2

"I do," **Cook** answered.

A psychiatrist testified that **Cook** had mild brain damage, substance-abuse problems and post-traumatic stress disorder brought on by his childhood. The crimes, the psychiatrist said, were committed during a binge after **Cook** broke up with his girlfriend and quit his job. **Cook** claimed to have taken 15 hits of crystal meth and some Valium over a three-day period. Matzke had claimed they also smoked seven marijuana cigarettes, and drank more than 40 beers and a bottle of vodka.

The case against **Cook** was based largely on Matzke's description of what happened. Matzke was sentenced to 20 years in prison in exchange for his testimony against **Cook**. He was released from prison four years ago.

When asked for his version of events, **Cook** answered, "You're probably not going to like this answer, but I don't remember much from during the murders."

He only remembered "pictures," he said, and only became aware of the murders when Matzke woke him up and told him he had killed two people.

"At first I didn't believe him, because when John got to drinking and smoking, he made stuff up," he said.

Friday's **hearing** was testy at times. New board members Brian Livingston and Melvin Thomas aggressively challenged the psychiatrist, an attorney who testified on **Cook's** behalf and **Cook** himself.

"He knew what he was doing," Livingston said of assertions by **Cook** and the psychiatrist that **Cook** was seriously impaired when the murders were committed.

Then, turning to **Cook**, Livingston said, "The other thing I don't understand is why the other guy got (20) years; he should be sitting next to you in the cage."

---- INDEX REFERENCES ----

COMPANY: THOMAS COOK GROUP PLC

NEWS SUBJECT: (Smoking (ISM71); Violent Crime (1VI27); Murder & Manslaughter (1MU48); Health & Family (1HE30); Social Issues (ISO05); Alcohol Abuse (1AL63); Crime (1CR87); Drug Addiction (1DR84))

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## 1 of 2 men in '91 killings set to die

Disparate sentences called into question

by Michael Kiefer - Dec. 1, 2012 09:45 PM

The Republic | azcentral.com

In July 1991, Richard Stokley and Randy Brazeal took two 13-year-old girls from a local fair in Elfrida in southeastern Arizona, raped, strangled, stabbed and stomped on them, then threw their naked bodies into a flooded mineshaft.

Brazeal, now 41, recently married and is living as a free man in Arkansas.

Stokley, 60, will be executed Wednesday in Florence, barring an unlikely last-minute reprieve from the U.S. Supreme Court.

It will be the third time this year that a murderer is executed in Arizona when his co-defendant and accomplice in murder is out of prison.

Brazeal got a plea deal, ostensibly because the Cochise County attorney said that the constitutional time limit for a speedy trial would run out before DNA results could be finalized.

"They presented (the plea deal) as if there wasn't much alternative," said Matthew Borowiec, the judge in both men's cases, who is now retired from the Cochise County Superior Court bench. "I didn't have a feeling that one was less culpable than the other."

Brazeal said Stokley raped and killed both girls, but by the time Stokley went to trial in 1992, the DNA and other physical evidence had been finalized and clearly showed that the two men participated equally in the crime. Stokley confessed. Brazeal refused to testify at Stokley's trial.

"Everything that Richard Stokley told (police) that night was the truth, and everything Randy Brazeal said was a lie," said Patty Hancock, the mother of one of the murdered girls. "To this day, they have more evidence on Randy Brazeal than they ever had on Richard Stokley."

When reached by phone at his home in Arkansas and asked to comment on Stokley's imminent execution, Brazeal said, "I have no comment. Good riddance to him."

### Brutal slayings

In 1991, folks in Elfrida, a tiny agricultural town about 24 miles northwest of Douglas, called Richard Stokley "Bigfoot" because he was a hulking, bearded man with a cold and surly attitude.

He had suffered numerous head injuries that stemmed from a history of bar fights and domestic violence. Once, he hit his head on pavement after trying to jump on the hood of his wife's car in the middle of a fight; a second wife hit him over the head with an iron skillet. He'd had his skull fractured once by a beer mug and another time by a tire iron. He still has a visible dent in his head.

According to media accounts, Stokley worked as a bouncer and a ranch hand. Brazeal's father, Glenn, who owned a local bar and restaurant in Elfrida, and his business partner would pay Stokley to mow the grass and cut weeds. Then Stokley would drink at the bar.

Randy Brazeal, then 19, had only been in town for about six weeks. He was a skinny, baby-faced kid who had gotten in enough adolescent trouble while living with his mother in Arkansas that she sent him to Arizona with the hope that his father could straighten him out. Glenn Brazeal put him to work in the restaurant.

On July 7, 1991, there was a local fair behind the town's gas station. Stokley and a friend had come to participate in an Old West re-enactment for a fundraising skit, and the two of them were camped out in the field.

Patty Hancock was the cook at Glenn Brazeal's restaurant. She was at work that evening when her 13-year-old daughter, Mandy Meyers, dark-eyed and dark-haired with a tomboyish pixie cut, came in to ask if she could spend the night with her good friend Mary Snyder, also 13. Hancock said yes, without realizing that the girls planned to camp at the fair with another friend. Stokley was sitting at the bar when Meyers came in.

Late in the evening, Randy Brazeal came to the restaurant, and he and Hancock talked about what time he would be at work the next morning. Hancock gave Brazeal a money bag filled with the evening's cash and receipts to take to his father, which Brazeal put in the trunk of his dad's Ford LTD.

According to court records, Brazeal had been seen visiting the tent where the girls were camping, and Stokley may even have pulled him out of it at one point. Witnesses told police and the media that Brazeal and Stokley were seen sharing a bottle of whiskey, despite the unlikely companions' nearly 20-year difference in age. And though Stokley's and Brazeal's accounts of later events differed, they agreed that Brazeal took the two girls along when he drove Stokley into the desert near Tombstone so that Stokley could bathe in a livestock watering tank.

Hancock insists the girls were taken forcibly: Snyder's glasses were left in the tent, along with Meyers' shoes, necessary items they would have taken with them, she thinks. Besides, Hancock said, Meyers was afraid of Stokley. But the court record suggests they went willingly. Meyers already knew Brazeal because he had gone to parties with her older sister.

Glenn Brazeal felt that Randy had been led astray by Stokley.

"Personally, I think he was out drinking when he got hooked up with this guy."

But over 20 years, Glenn Brazeal said, his son has never spoken to him about what happened.

During Randy Brazeal's plea-agreement hearing in October 1991, his defense attorney, Perry Hicks, told the court that "while Richard Stokley was taking a bath, Randy engaged in a course of conduct that, when Richard Stokley came upon that course of conduct, Richard Stokley was sexually aroused, did rape and murder the girls."

Brazeal's only part in the crimes, according to Hicks' statements during the plea hearing, was getting Stokley drunk and then bringing the girls on the car ride, where they eventually met up with Stokley.

According to court records, Stokley claimed that when he came back from his bath, Brazeal was raping one of the girls. Then, Stokley raped Mandy Meyers while Brazeal raped Mary Snyder. Brazeal suggested they kill the girls because they would tell on them, so Stokley strangled Meyers, while Brazeal strangled Snyder. When they wouldn't die, the men stomped on their bodies and Stokley stabbed them both in the right eye. Then, they carried the naked bodies to a deep, vertical mineshaft within yards of the stock tank, a gaping hole in the ground barely covered by railroad ties, and threw them in. Meyers was probably still alive when she hit the water 60 feet below, judging from the water found in her lungs during her autopsy.

Both men fled. Brazeal dropped Stokley in Tucson and then drove to Chandler, where he surrendered to police at Glenn Brazeal's suggestion. Stokley hitchhiked to Benson, where he was arrested. They led police to the mineshaft where they had thrown the bodies.

#### DNA-test complications

"CSI"-style TV programs make it look like crime-scene technicians can perform DNA testing right at the scene of the crime. They can't, and less so in 1991, when it was an almost experimental procedure in which the analysis took months.

Brazeal's trial was set for Oct. 22, 1991, but the DNA was not expected back from the laboratory until late November. Stokley's attorney waived the constitutional time limit set for a speedy trial, and although Brazeal's attorney filed a motion for a continuance to wait for DNA results, for reasons unknown, no such continuance was granted. Chris Roll, the deputy Cochise County attorney who was supposed to try the case, believes that it was withdrawn.

"We were going to have to go ahead without the DNA evidence," said Roll, who now works at the Pinal County Attorney's Office. "We were confident we had a sufficient quantity of evidence to go forward, though it's hard to tell what the outcome would be."

On Oct. 17, 1991, Brazeal entered into a plea agreement to two counts of second-degree murder, resulting in concurrent 20-year sentences.

The Cochise County attorney at the time, Alan Polley, negotiated the plea agreement with Hicks, and Roll was not privy to the negotiations. Hicks, who is still in practice in Sierra Vista, did not return phone calls. Polley died in 1999.

During the plea hearing, Polley told Judge Borowiec, "In reference to DNA, the status of the law is in some question as to whether the DNA evidence would be admissible as a matter of law."

"Complete DNA testing will ... not be available and admissible at the trial of this case due to the current posture of the case," Polley said.



Polley also said that there was "significant risk" that a jury would discard the "circumstantial" evidence against Brazeal and acquit him, making the plea deal necessary.

However, that was not the story the next year when Stokley went to trial.

"Once we got the DNA evidence, our case became better against both men," Roll said.

Stokley's and Brazeal's semen was found in Mandy Meyers; Mary Snyder had sunk in the water of the mineshaft, so DNA testing was futile. Trial evidence showed Brazeal's semen and handprints on the hood of the car, alongside the imprint of buttocks and thighs, and his semen was also found on the car's backseat, suggesting he had sex with both girls. Mandy's blood was found in his underpants.

Stokley's sneaker tread was imprinted on Mandy's chest, Brazeal's footprint was found on Mary's neck, and forensic examination showed that the girls had been strangled by different people. Stokley's account of the murders held up.

The murders were horrendous, and after the jury pronounced Stokley guilty of murder, kidnapping and sexual conduct with a minor, Borowiec sentenced him to death. The packed courtroom burst into applause.

At his sentencing in July 1992, Stokley spoke to the court.

"I would like to say it is very clever the way I have been used as a scapegoat," he said. "There was no premeditation on my part. The only thing I am guilty of is being irresponsible and living in a fantasy world."

The conviction and sentence held on appeals in state and federal court, and Stokley is scheduled to die Wednesday.

Two different fates

Stokley's most recent legal claims have focused on allegations that his initial appeals-court attorney abandoned him, but so far, the U.S. District Court and the 9th U.S. Circuit Court of Appeals have ruled that case law about abandonment does not apply to Stokley. He filed a petition for appeal in the U.S. Supreme Court on those grounds Thursday. On Friday, he filed a second petition with the Supreme Court to protest the disproportionate sentences the two murderers received. Generally, disparate sentences are given when the level of participation in the crime is different.

Stokley will be the third person executed in Arizona this year whose co-defendant received a lesser sentence and is already out of prison.

Robert Towery was executed in March for a 1991 murder during a home invasion and robbery in Paradise Valley. His co-defendant, who testified against him, served 10 years in prison.

Daniel Cook was executed in August for a 1987 double murder in Lake Havasu City. His co-defendant, who testified against him, served 20 years in prison and is a free man.

Randy Brazeal was released from prison in July 2011 and moved to Arkansas. Asked how he could say that Stokley's execution would be "good riddance" when he was involved in the same incident, he said, "No, I wasn't."

Stokley confessed to the rapes and murders, and despite his appeals, expects to die.

On Nov. 13, he wrote a letter to the Arizona Board of Executive Clemency saying he did not intend to ask them for a commuted sentence or a reprieve. He told the board members that they were not interested in clemency or mercy, and it was not worth the bother.

"And I am also sorry I was mixed up in those awful events that brought me to this," he wrote. "I have been sorry for the victims and the victims' families. But no one wants to hear of my miserable sorrow, they just want for me to get dead, which is vengeance. They think it will bring 'closure.' But there is no healing in that. Ever.

"I have decided to decline a clemency hearing. I don't want to put anyone through that, especially since I'm convinced that, as things stand now, it's pointless. I reckon I know how to die, and if it's my time, I'll go without fanfare. And if it ain't, I won't. God's will be done."