NEW HAMPSHIRE
SUPREME COURT
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STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 2007-0362

Petition of Michael K. Addison

Reply to State's Objection to Petition for Writ of Mandamus to Bar the State from Seeking the Death Penalty, or in the Alternative, to Enjoin All Proceedings Pending the Implementation of Rules to Govern Appellate Review of a Death Sentence

Michael K. Addison replies to the State's objection to his mandamus petition, as follows:

1. In its objection, the State contends that neither the capital punishment statute, nor any constitutional principle, require the Court to adopt rules in relation to its appellate review of a death sentence. Its objection misapprehends Mr. Addison's essential claims, and basic tenets of statutory construction, capital punishment jurisprudence and state constitutional law.

2. Throughout its reply, the State insists that normal rules of criminal and appellate procedure are adequate in a death penalty case. This position contradicts the repeated assertion by the United States Supreme Court that "[d]eath is different." Woodson v. North Carolina, 428 U.S. 280 (1976). It also contradicts this Court's similar pronouncement sixteen years ago:

> When a defendant's life is measured as an appropriate punishment, a court must be particularly sensitive to insure that every safeguard is observed. State v. Frampton, 95 Wash. 2d at 478, 627 P.2d at 926. "There is no question that death as a punishment is unique in its severity and irrevocability." Gregg v. Georgia, 428 U.S. 153, 187 (1976). Accordingly, the legislature must be absolutely certain that its laws clearly implement its intention when legislating a punishment as serious as the death penalty.

State v. Johnson, 134 N.H. 570, 576-77 (1991).

3. The State argues that there is no right to special rules of appellate procedure in death penalty cases. This argument misses the point. It may be that the legislature did not have to

enact legislation specifically governing appellate review. However, this legislature did, presumably, to effectuate the undisputed constitutional mandate that the death penalty not be imposed in an irrational or arbitrary manner. Once the legislature has established such a process, the defense has to know the mechanics of the process if it is to be able to effectively litigate its case and make an appropriate record for the statutorily-prescribed appeal. The mechanics of the process are to be embodied by the rules referred to in Paragraph X of the statute – rules that the legislature left to this Court to adopt, which do not exist.

4. Contrary to the State's assertion, the defense needs to know the rules now. Otherwise, counsel cannot competently and effectively litigate a death penalty case in the trial court, in a manner that maximizes the opportunity for the statutorily-mandated appellate review if Mr. Addison is convicted of capital murder and sentenced to death. Rules after the fact are useless. The State's persistent implication that this case is like any other, and that proportionality and sentencing principles in death cases are like any second degree murder or lesser felony case, ignores decades of capital punishment jurisprudence, and again, reads out of that jurisprudence its most pervasive words, "[d]eath is different."

5. In support of its contention that the legislature did not contemplate rules to govern appeals of death sentences, the State has proffered a flawed statutory construction, and unpersuasive case law from Indiana.

6. The statutory construction is flawed because it ignores both the statute's plain language, and the practical and historical context in which that language was adopted.

7. RSA 630:5, X-XII speak to this Court's appellate review of a death sentence. These provisions were added in 1986. RSA 630:5, X states that "[s]uch review [i.e., appellate review

of a death sentence] by the supreme court shall have priority over all other cases and shall be heard in accordance with rules adopted by said court." (Emphasis added).

8. The State takes the position that the rules to which the statute refers are the same court rules that existed before 1986, and that all litigants in this Court follow today. In other words, the State contends that the legislature did not contemplate that this Court adopt any rules specific to appellate review of a death sentence, in addition to the Supreme Court Rules that already existed.

9. Had this been the legislature's intent, it could have said, in RSA 630:5, X, "shall be heard in accordance with rules governing appellate practice," or, "shall be heard in accordance with supreme court rules." It also could have omitted any reference to "rules adopted by said court." It did none of these things.

10. The legislature contemplated the adoption of new rules by the Court, in the context of the unique and specialized appellate review process it had just enacted. If the legislature did not contemplate that this Court would adopt rules, it would have had no reason to use that phrase. It makes no sense that the legislature was referring to the same rules that the Court had already adopted. Accordingly, the State's argument only works if the Court ignores both the language of the statute, and its nexus to the appellate review process – a process that is not addressed in any existing rule, and therefore, would necessitate the adoption of rules.

11. This Court does not stray from the language of a statute in deriving its intent unless it is necessary to avoid an absurd result. See State v. Warren, 147 N.H. 567, 568 (2002)("[W]e will consider other indicia of legislative intent where the literal reading of a statutory term would compel an absurd result."). As Mr. Addison has shown, by reference to established practice in

many other states, there is nothing absurd about having specialized rules that govern appellate review of death sentences.

12. The State relies heavily on Indiana cases to support its argument. Games v. State, 535 N.E.2d 530 (Ind.), cert. denied, 493 U.S. 874 (1989); Resnover v. State, 460 N.E.2d 922 (Ind.), cert. denied, 469 U.S. 873 (1984). Games essentially relies on Resnover, without engaging in any additional analysis on this issue. These cases are unpersuasive for several reasons.

13. First, these opinions do not reveal that the courts engaged in any rigorous construction of the statutory language, "rules adopted by said court." To the extent the decisions can be deemed to have been the product of statutory construction, that construction is flawed, and, as discussed above, would not be consistent with New Hampshire law.

14. Second, under Indiana law, the supreme court routinely reviews all sentences that are over ten years long, including death sentences. This appellate review is governed by a rule of appellate procedure and a statute. Presumably, appellate sentence review in that state is a familiar practice, and there is a wealth of common law and experience to guide practitioners. There is presumably also a bank of cases the court has previously reviewed, to which both the court and defendants in pending cases can refer in fashioning appellate review arguments. While Mr. Addison does not agree that Games and Resnover are correctly decided, the results make a degree more sense in a jurisdiction in which appellate sentence review is a well-established practice. They make no sense in this State.

15. Third, under Indiana law, the trial judge in a death case must still "submit a record of its findings indicating all aggravating factors justifying the imposition of a death sentence. This

requirement guards against the influence of any improper factors at the trial level and assures that the evils of an arbitrary and capricious application of the death penalty do not attend the sentencing decision." Resnover, 460 N.E.2d at 430. There is no statute, rule, or common law in this State that imposes this requirement.

16. Fourth, Indiana common law makes it clear that the appellate review process is "fully adversarial." Id. RSA 630:5, X-XII state that this Court shall review a death sentence, but do not, by their plain terms, contemplate briefs, arguments, or the presentation of evidence to the Court on the factors enumerated in RSA 630:5, XI. Obviously, "rules adopted" to govern appellate sentence review could address these issues.

17. Finally, there is no detailed constitutional analysis in the Indiana cases, in regard to the issue now before the Court. With regard to the constitution, the State contends, in Footnote 3 of its objection, that the state constitutional provisions on cruel or unusual punishments and proportionality are no more protective than the federal. The Court does not have to reach this question to decide the issue before it. This Court also need not be reminded of how many times, since State v. Ball in 1982, it has deemed the state constitution more protective than the federal, all in situations where sanctions less than death were at issue.

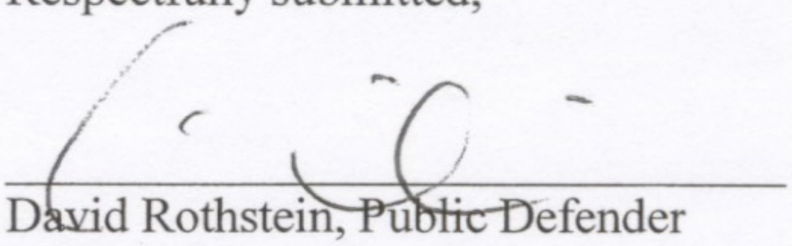
18. The Court should also be aware that Mr. Addison has pending in superior court a number of challenges to the death penalty, including one that is specifically focused on the greater protection the state constitution provides under part I, articles 18 & 33. He attaches that motion to this reply. He also notes that, even if the state constitution does not require rules of appellate procedure, this does not mean that the death penalty does not violate the state constitution in a number of other contexts (e.g., violates contemporary standards of decency in

reference to both the sanction and the method of execution; arbitrary; racially discriminatory; economically and socially discriminatory; disproportionate; death qualification requirement). These challenges will be the subject of evidentiary motions that are due in January of 2008.

19. This Court has rules that govern sentence review of felony cases. It has rules that govern the procedure in cases before the Professional Conduct Committee. It has rather detailed rules governing judicial performance evaluations. It has no rules governing appellate review of death sentences. There is no compelling reason why it should not.

WHEREFORE, Mr. Addison respectfully requests that this Honorable Court bar the imposition of the death penalty, or, stay all cases pending the promulgation of rules governing appellate review of death sentences.

Respectfully submitted,



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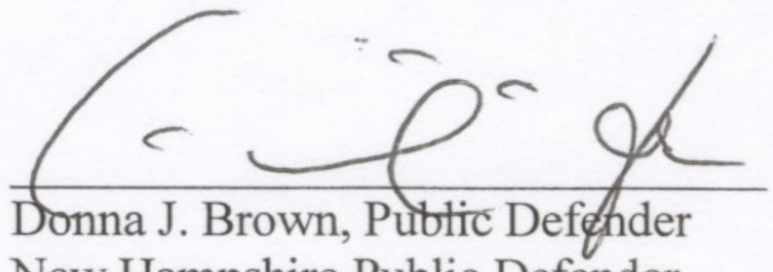

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been forwarded this 2nd day of July, 2007, to the Office of the Attorney General; John Safford, Clerk, Hillsborough (North) County Superior Court; Marshall Buttrick, Clerk, Hillsborough (South) County Superior Court, Marguerite Wageling, Esquire, Hillsborough County Attorney; and the Appellate Defender Program.

David Rothstein

STATE OF NEW HAMPSHIRE

SUPREME COURT

MAY TERM

NO. _____

Michael K. Addison

v.

Kelly A. Ayotte, New Hampshire Attorney General
Marguerite Wageling, Hillsborough County Attorney
John Safford, Clerk, Hillsborough (North) Superior Court
Marshall Buttrick, Clerk, Hillsborough (South) Superior Court

Petition for Writ of Mandamus to Bar the State from Seeking the Death Penalty, or in the Alternative, to Enjoin All Proceedings Pending the Implementation of Rules to Govern Appellate Review of a Death Sentence

Michael K. Addison moves to bar the State from seeking the death penalty.

In the alternative, he moves to enjoin any proceedings against him in the Hillsborough County Superior Court, including prosecutions for capital murder; reckless conduct and felon in possession of a firearm; armed robbery and conspiracy to commit armed robbery; and armed robbery and felon in possession of a dangerous weapon. The injunctive relief must take effect forthwith, and must remain pending this Court's adoption of rules governing the appellate review of a death sentence that satisfy applicable statutory, state and federal constitutional standards.

In the event a jury returns a death verdict against Mr. Addison, he is entitled to specialized appellate review. RSA 630:5, X states that rules shall govern this Court's review of death sentences. The legislature has thus directed this Court to promulgate rules. It has not. The same Attorney General's Office seeking to execute Mr. Addison did not propose any rules

before it sought the death penalty in this case. The Court must fulfill the legislature's mandate. Otherwise, Michael Addison is facing death, without knowing how this Court will determine if the sentence should stand. It would be gravely unjust for this Court, and the society it represents, to permit this case to proceed absent rules that explain the specialized appellate review procedure.

If Mr. Addison is compelled to proceed without knowing what rules govern appellate review of a death sentence, and the jury returns a death verdict, this will violate not only his statutory right to such rules, but his state and federal constitutional rights to due process, effective assistance of counsel, effective appellate review of a death sentence, and against the imposition of cruel or unusual punishments. N.H. Const. pt. I, arts. 15, 18 & 33; U.S. Const. Ams. V, VI, VIII, XIV.

Accordingly, Mr. Addison seeks an immediate stay of all proceedings followed by either an order barring the State from seeking the death penalty, or an injunction against further proceedings until this Court promulgates appropriate rules.

Questions Presented for Review

Whether the absence of rules governing appellate review of a death sentence compels an order from this Court barring the State from seeking the death penalty in this case, or in the alternative, an order staying all proceedings pending the promulgation of appropriate rules?

Relevant Constitutional and Statutory Provisions

RSA 630:1 & 5; RSA 636:1, I(b); RSA 629:3; RSA 159:3, I; N.H. Const. pt. I, arts. 15, 18, 33; U.S. Const. Ams. V, VI, VIII, XIV.

Statement of the Case, Statement Regarding Stage of Proceedings, List of Parties and Counsel

1. Michael K. Addison is an indigent criminal defendant currently being held without bail at the New Hampshire State Prison in Concord. He stands charged in four matters:

-In Hillsborough County (North) Superior Court, he is charged with capital murder. The indictment alleges that, on October 16, 2006, he knowingly killed Manchester Police Officer Michael L. Briggs while Officer Briggs was acting in the line of duty. Trial is scheduled to begin in September of 2008.

-In Hillsborough County (North) Superior Court, he is charged with reckless conduct and being a felon in possession of a firearm. These charges allege that on October 15, 2006, he discharged a firearm at an apartment building in Manchester. Trial is scheduled for October 29, 2007.

-In Hillsborough County (South) Superior Court, he is charged with armed robbery and conspiracy to commit armed robbery. These indictments allege that on October 11, 2006, he robbed a 7-Eleven store in Hudson. Trial is scheduled for December 10, 2007.

-In Hillsborough County (North) Superior Court, he is charged with armed robbery and being a felon in possession of a dangerous weapon. These indictments allege that he robbed a restaurant in Manchester on October 10, 2006. Trial is scheduled for February 19, 2008.

2. The State has filed a notice, pursuant to RSA 630:5, I, to seek the death penalty in the event Mr. Addison is convicted of capital murder. In its notice, it has set forth non-statutory aggravating factors that include the facts underlying the three Hillsborough County felony prosecutions. See RSA 630:5, I(b)(referring to non-statutory aggravating factors). In other words, those cases have implications beyond the scope of any conviction or committed prison sentences that may accompany such convictions.

3. In all of the above cases, Mr. Addison is represented by Donna Brown, Richard Guerriero and David Rothstein of the New Hampshire Public Defender. Attorneys Brown and Guerriero are at 117 N. State Street in Concord. Attorney Rothstein is at the Appellate Defender Program, Franklin Pierce Law Center, 2 White Street, Concord.

4. In the capital murder prosecution, the State is represented by the New Hampshire Attorney General, 33 Capitol Street, Concord. Four members of that office have filed appearances: Attorney General Kelly Ayotte, and Senior Assistants Jeffery Strelzin, N. William Delker, and Karen Huntress.

5. In the felony prosecutions, the State is represented by the Hillsborough County Attorney, Marguerite Wageling, 300 Chestnut Street, Manchester, 03101. Two members of her office have filed appearances: Maureen O'Neil, and Karen Gorham. Senior Assistant Attorney General N. William Delker has filed an appearance on behalf of the Attorney General's Office.

6. John Safford is the Clerk of the Hillsborough County (North) Superior Court, 300 Chestnut Street, Manchester, 03101. Marshall Buttrick is the Clerk of the Hillsborough County (South) Superior Court, 30 Spring Street, P.O. Box 2072, Nashua, 03061-2072.

Mandamus Rule and Jurisdictional Basis for Review

7. This Court has mandamus jurisdiction pursuant to RSA 490:4. Supreme Court Rule 11 governs petitions for original jurisdiction. "Petitions requesting this court to exercise its original jurisdiction shall be granted only when there are special and important reasons for doing so." Sup. Ct. R. 11(1). "It is well settled . . . that we will exercise our original jurisdiction . . . in circumstances where the parties desire, and the public need requires, a speedy determination of the important issues in controversy." Petition of Mone, 143 N.H. 128, 132 (1998) (holding exercise of original jurisdiction, and immediate review, necessary to resolve personnel dispute in court system) ; see also, Appeal of McDonough, 149 N.H. 105, 109-10 (2003)(holding exercise of original jurisdiction necessary to resolve ballot dispute).

8. The standard is satisfied here. Michael Addison cannot defend himself against a death sentence, and assure himself of the benefit of appellate review in that event, without knowing what rules will govern that review by this Court, how he is to make an appropriate record for review in the trial court, and how he is to make critical strategic decisions in not only the capital case, but the felony cases upon which the State will rely to seek his death. Since the death penalty statute mandates the enactment of rules to govern appellate review, and this Court has exclusive rulemaking authority, only this Court can determine what consequences that attach to the fact that there are no such rules. Moreover, as is explained below, the lack of rules

implicates constitutional rights, and "[i]t is the role of this court in our co-equal, tripartite form of government to interpret the Constitution and to resolve disputes arising under it." Monier v. Gallen, 122 N.H. 474, 476 (1982)(exercising original jurisdiction regarding redistricting dispute).

9. The question of how this Court will review a death sentence raises issues of singular importance. Mr. Addison seeks to invoke this Court's original jurisdiction and its inherent power to immediately review the issues he raises. For the reasons that follow, he seeks an order that no death penalty prosecution can proceed, because rules governing appellate review have not been promulgated. In the alternative, he seeks an injunction against further proceedings in any of the four cases outlined in Paragraph One, pending implementation of clear and constitutionally-adequate rules.[1]

Mr. Addison Cannot Defend Himself in Any Pending Case Without Knowing What Rules Will Govern Appellate Review of a Death Sentence

10. RSA 630:5 sets forth the process in capital murder prosecutions. Essentially, the trial court proceedings have two phases: a guilt/innocence phase, and then, in the event the jury returns a verdict of guilty on capital murder, a sentencing phase before the same jury. At the sentencing phase, the jury weighs aggravating and mitigating factors, and returns a sentence of life without parole or death. See generally, RSA 630:1 (capital murder statute); RSA 630:5, II(a), III-IX (sentencing trial procedure).

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[1]Mr. Addison reserves his right to challenge the adequacy and sufficiency of any rules this Court may adopt, and to challenge the procedures by which those rules are adopted.

11. In common practice, there is a seamless transition from a guilty finding to the sentencing phase of the trial. Thus, as a practical matter, while Mr. Addison maintains his innocence of all charges, and intends to fully challenge each element of each offense, he is simultaneously preparing to ask the jury to spare his life. To say that this is an exceptionally work-intensive endeavor would grossly understate the magnitude of the task. Counsel need to investigate every facet of his life, review thousands of pages of documents in addition to the thousands of pages of discovery, speak to countless witnesses, and determine how to best present a case for life. In so doing, counsel may seek independent evaluations of Mr. Addison, will read reams of literature and statistical studies on the death penalty, and will determine what information is most likely to persuade a jury not to kill him.

12. At the same time he is preparing his factual defenses, and his case for mitigation, Mr. Addison is also mounting dozens of legal challenges to the death penalty, the New Hampshire capital murder statutes, the grand jury, and the capital murder indictment. Currently, the court presiding over the capital case (McGuire, J.) has set three deadlines for the filing of major challenges. Motions challenging the death penalty or the statute that do not require an evidentiary hearing are due on July 9, 2007, with a hearing to follow on August 15. Motions challenging the grand jury or indictment are due September 3, 2007, with a hearing to follow on October 11. Motions challenging the death penalty which require an evidentiary hearing are due on January 4 , 2008, with a hearing to follow on February 7, 2008.

13. The defense represents that among these motions will be challenges to the death penalty on grounds that it is arbitrarily enforced and discriminatorily imposed, especially in New

Hampshire, and especially in the case of African-American males such as Michael Addison. The defense will assert that the death qualification standard produces petit juries that are inherently unfair and biased markedly in favor of the State. It will assert that the death penalty violates the proportionality standard of the state constitution, and more particularly, that a sentence of death against Mr. Addison is disproportionate as applied to the facts of his case, and to him. In addition, the defense will challenge the legal sufficiency of the aggravating and mitigating factors in the New Hampshire statute both facially, and as those factors apply to this case.[2]

14. Under the New Hampshire statute, there is mandatory appellate review of a death sentence. RSA 630:5, X-XII. Thus, in addition to formulating a factual defense to the charges, making innumerable strategic decisions regarding how to defend all of the charges, and building the case for Mr. Addison's life, counsel must prepare for not only normal appellate review, but this specialized review, which has no analog in New Hampshire law. This is especially critical since only this Court can overturn a death verdict, RSA 630:5, V, and there is no pre-sentence investigation or report. RSA 630:5, III.[3]

15. RSA 630:5, X states that there are rules governing this specialized, mandatory, and extremely critical appellate review. This Court has not promulgated any rules. The Attorney General's Office has not proposed any rules as far as the defense is aware. As is made clear

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[2]There are many other motions. However, the ones described in this paragraph seem to relate most closely to the specialized appellate review that is the subject of this petition.

[3]The defense will challenge these aspects of the statute in a separate pleading, that will, in the first instance, be filed in superior court.

below, other death penalty states have sophisticated rules that require the trial judge to make factual findings, and explain precisely how appellate review, especially in regard to proportionality, will occur. For the reasons that follow, without rules, this case cannot go forward.

Arguments in Support of Barring Death Penalty, or Enjoining Proceedings Pending Promulgation of Rules to Effectuate RSA 630:5, X - XII

16. RSA 630:5, X- XII provide that this Court will automatically review a sentence of death. Under RSA 630:5, X, "[s]uch review . . . shall be heard in accordance with rules adopted by [this] court." In conducting the review, the Court determines whether the death sentence was "(a) . . . imposed under the influence of passion, prejudice or any other arbitrary factor; and . . . (b) [w]hether the evidence supports the jury's finding of an aggravating circumstance, as authorized by law; and . . . (c) [w]hether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant." RSA 630:5, XI As a result of the review, the Court has the authority to "[s]et the [death] sentence aside and remand the case for resentencing." RSA 630:5, XII.

Other Death Penalty Jurisdictions Have Extensive Rules

17. A survey of other death penalty jurisdictions indicates that many have specific and often elaborate rules or statutes, or requirements that trial judges complete detailed reports, to facilitate appellate review of a death sentence. See, e.g., Ala. Code §13A-5-53(b); Conn. R. App. Proc. 67-6(b); Del. Code Ann. tit. 11, §4209(g); Fla. R. App. Proc. 9.142(a)(6); Ga. Code Ann. §17-10-35; Idaho Code §19-2827; Ky. Rev. Stat. Ann. 532.075; La. Sup. Ct. R. XXVIII;

Md. R. § 4-343; Miss. Code Ann. § 9-19-105; Mo. Rev. Stat. § 565.035.1; N.Y. R. Ct. App. Capital Cases §510.18; N.J. Sup. Ct. R. 2:9-12; Okla R. Crim. Ct. App. §XIII, Form 13.12; S. C. Code Ann. §16-3-25; S.D. Codified Laws Ann. §23A-27A; Tenn. Sup. Ct. R. 12; Va. Code Ann. §17.1-313; Wash. Rev. Code Ann. §10.95.120 & 130; Wyo. Stat. Ann. §6-2-103. In general, these rules or statutes either explain the nature and scope of appellate review, establish procedures and standards to govern proportionality review in particular, or require the trial judge to complete a comprehensive, case-specific report that is intended to facilitate appellate review of a death sentence. It is imperative that this Court address the rules issue in this state before this case proceeds further.

Practical Considerations Support Need for Rules

18. A number of practical considerations support the need for special rules governing appellate review of a death sentence.

19. First, under the death penalty statute, only this Court can overturn a death sentence based on insufficient evidence of an aggravating circumstance, or the influence of other factors indicating the jury did not act lawfully and rationally in imposing the sentence. RSA 630:5, XI. This procedure is quite opposite the norm, where this Court affords extreme deference to the fact-finder's determination. The statute does not set forth an applicable standard of appellate review, nor provide any information as to what factors this Court will consider in conducting its review. Cf. Ala. Code §13A-5-53(b)(2)(rule expressly requires court to independently weigh aggravating and mitigating factors); Del. Code Ann. tit. 11, §4209(g)(2)(court considers totality of evidence and character and propensity of offender).

20. Second, there is no pre-sentence investigation before sentencing. RSA 630:5, III. A pre-sentence investigation is invaluable because it condenses critical facts in a manner that facilitates an objective appellate sentence review of the trial judge's sentence by the Superior Court's Sentence Review Division. A number of states have appellate rules that require the trial judge to complete a detailed questionnaire and submit it so the reviewing court can, at a glance, learn basic information about the case, the defendant, and the reasons underlying the sentence of death before examining a voluminous record. See, e.g., Ga. Code Ann. §17-10-35(a); Idaho Code Ann. §19-2827(a); Ky. Rev. Stat. Ann. 532.075; La. Sup. Ct. R. XXVIII, §3 and App. B; Md. R. § 4-343(k); Mo. Rev. Stat. § 565.035.1; N.Y. R. Ct. App. Capital Cases §510.18 ("data report"); Okla. R. Crim. Ct. App. §XIII, Form 13.12; S.C. Code Ann. §16-3-25(A); Tenn. Sup. Ct. R. 12; Wash. Rev. Code Ann. §10.95.120; Wyo. Stat. Ann. §6-2-103(b). Some of these questionnaires are attached to this petition.

21. The questionnaires not only make review less cumbersome, by compiling basic information about the case, but allow the Court to learn highly specific information about the defendant's mental status, see La. Sup. Ct. R. XXVIII (defendant's intelligence level); Tenn. Sup. Ct. R. 12 (evaluations of defendant) ; Wash. Rev. Code Ann. §10.95.120 (character and behavioral disorders); allow the Court to discern the racial composition of the jury and the county in which the defendant stood trial, see La. Sup. Ct. R. XXVIII; Okla. R. Crim. Ct. App. §XIII, Form 13.12; Tenn. Sup. Ct. R. 12; Wash. Rev. Code Ann. §10.95.120; guide the Court's determination with regard to sentences in similar cases, see La. Sup. Ct. R. XXVIII; Tenn. Sup. Ct. R. 12; Wash. Rev. Code Ann. §10.95.120; and allow the Court to gauge whether pretrial publicity may have influenced the jury, see La. Sup. Ct. R. XXVIII; Okla. R. Crim. Ct. App.

§XIII, Form 13.12 (pretrial publicity); Tenn. Sup. Ct. R. 12 (whether defendant asked for change of venue); Wash. Rev. Code Ann. §10.95.120 (publicity). One report even asks the trial judge, as "thirteenth juror," whether she agreed that the State proved its case beyond a reasonable doubt. Tenn. Sup. Ct. R. 12. Such a report would, thus, not only inform appellate review, but would guide the parties, and the trial court, in providing this Court a comprehensive record.

22. Third, rules would permit Mr. Addison to understand the scope and nature of the Court's proportionality review. States have taken different approaches in this regard. Some, like Arizona, Arkansas, California, Colorado, Idaho, Kansas, and Pennsylvania do not mandate proportionality review. Others, like Alabama, Florida, North Carolina and Oregon, do, but have no apparent rules.

23. Other states either have rules that direct the court, or other official, to compile information for purposes of comparison to the case on appeal, or further define the proper class of "similar cases" for proportionality review. See, e.g., Conn. R. App. Proc. §67-6(b)(defining class of cases for review); Del Code Ann. tit. 11, §4209(g)("similar cases arising under this section "); La. Sup. Ct. R. XXVIII (proportionality review and Uniform Capital Sentencing Reports); Mo. Rev. Stat. § 565.035.6 ("assistant" to the court compiles data on all death and life without parole sentences from 1977 forward); N.Y. R. Ct. App. Capital Cases §510.18 (data reports from all cases compiled); N.J. Sup. Ct. R. 2:9-12 (designating special master who gathers data for proportionality review); S.C. Code Ann. §16-3-25(E)(court must include in its proportionality analysis reference to similar cases it considered); S.D. Codified Laws §23A-27A-8 ("The Supreme Court shall accumulate the records of all capital felony cases that the court deems appropriate. The court may employ an appropriate staff and such methods to compile the

data as are deemed by the Chief Justice to be appropriate and relevant to the statutory questions concerning the validity of the sentence."); Va. Code Ann. §17.1-313(E)(court may accumulate records to determine whether sentence excessive and shall consider available records); Wash. Rev. Code §10.95.130(2)(b)(defines "similar cases").

24. The New Hampshire death penalty statute does not provide any guidance on the nature of the proportionality review this Court will undertake. It does not indicate what types of cases the Court will look at, e.g., only other capital cases; only other capital cases in which the defendant has killed a law enforcement officer; or a broader class of cases, like those cases in which the State could have, but did not, charge the defendant with capital murder. If Mr. Addison does not know the scope and nature of this Court's proportionality review, he cannot fashion appropriate motions, or ensure that the Court has all of the appropriate factual and statistical information, to perform this review.

Statutory Language Compels Adoption of Rules

25. The Court construes the words of a statute according to their plain language and ordinary meaning. Cui v. Town of Barrington, No. 2006-430, slip op. at 2 (N.H. May 15, 2007). This Court gives effect to all words in a statute, and does not presume that the legislature has included statutory language that is merely superfluous. In re Albert, No. 2006-139, slip op. at 3 (N.H. April 18, 2007).

26. RSA 630:5, X states that rules shall govern this Court's review of death sentences. The legislature has thus directed this Court to promulgate such rules. It has not. It must fulfill the legislature's mandate. Otherwise, Michael Addison is facing death, without knowing how

this Court will determine if the sentence should stand. It would be gravely unjust for this Court, and the society it represents, to permit this case to proceed absent rules that explain the specialized appellate review procedure.

Constitutional Arguments in Support of Petition

Constitutional Argument #1: Rules Effectuate Constitutionally-Mandated Review of Death Sentences

27. Beyond the statutory requirement of appellate review, the United States Constitution requires appellate review of any death sentence imposed pursuant New Hampshire's capital sentencing law. The United States Supreme Court "has repeatedly said that under the Eighth Amendment 'the qualitative difference of death from all other punishments requires a correspondingly greater degree of scrutiny of the capital sentencing determination.'" Caldwell v. Mississippi, 472 U.S. 320, 329(1985) (quoting California v. Ramos, 463 U.S. 992, 998-99 (1983)). Meaningful appellate review plays a crucial role in ensuring that the death penalty is not imposed arbitrarily or irrationally.

> If a State has determined that death should be an available penalty for certain crimes, then it must administer that penalty in a way that can rationally distinguish between those individuals for whom death is an appropriate sanction and those for whom it is not." Spaziano v. Florida, 468 U.S. 447, 460, 82 L. Ed. 2d 340, 104 S. Ct. 3154 (1984). The Constitution prohibits the arbitrary or irrational imposition of the death penalty. Id., at 466-467. We have emphasized repeatedly the crucial role of meaningful appellate review in ensuring that the death penalty is not imposed arbitrarily or irrationally. See, e. g., Clemons, supra, at 749 (citing cases); Gregg v. Georgia, 428 U.S. 153, 49 L. Ed. 2d 859, 96 S. Ct. 2909 (1976). . . . It cannot be gainsaid that meaningful appellate review requires that the appellate court consider the defendant's actual record. "What is important . . . is an individualized determination on the basis of the character of the individual and the circumstances of the crime." Zant v. Stephens, 462 U.S. 862, 879 (1983).

Parker v. Dugger, 498 U.S. 308, 320-321(1991) (reversing because Florida Supreme Court failed to conduct an independent review of mitigating evidence in the record).

28. The capital sentencing procedure adopted by our legislature specifically requires that the New Hampshire Supreme Court play a critical role in "ensuring that the death penalty is not imposed arbitrarily or irrationally." RSA 630:5, X-XII; Parker, supra. The Court is required to review the sentence not only regarding arbitrariness and rationality, but also regarding proportionality and sufficiency of the evidence for aggravating factors. RSA 630:5, XI.

29. Meaningful appellate review by this Court, as required by Part I, Articles 18 & 33 of the New Hampshire Constitution,[4] and the Eighth Amendment, is simply not possible if the defense must present its case in the trial court without knowing specifically how the Court will review the case and what factors this Court will consider.

30. Rules that make clear how appellate review will occur in the event Mr. Addison is sentenced to death also help to ensure Mr. Addison's rights to due process in sentencing. N.H. Const. pt. I, art. 15; U.S. Const. Ams. V, VI, XIV. A defendant who is sentenced to a year and a day in prison knows what rules will govern the appellate review of his sentence by the Superior Court Sentence Review Division. Super. Ct. Sentence Review Div. R. 15-20. It follows that an accused potentially facing death should know what rules will govern review of his sentence by this Court.

31. Mr. Addison's rights in this regard under the state constitution are greater than those guaranteed by the federal constitution, since the state constitution affords enhanced due process

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[4]Mr. Addison argues in Paragraphs 35 & 36, infra, that the New Hampshire Constitution affords greater protection than the Eighth Amendment.

protections in many other areas. See, e.g., State v. Fleetwood, 149 N.H. 396, 405 (2003)(New Hampshire Constitution "provides greater protection to a criminal defendant with respect to confessions than does the Federal Constitution.")(citation omitted); State v. Roache, 148 N.H. 45, 49 (2002)("The relevant text of Part I, Article 15 is broader than the Fifth Amendment."); State v. Laurie, 139 N.H. 325, 330 (1995)("We hold that the New Hampshire constitutional right to present all proofs favorable affords greater protection [than the federal constitution] to a criminal defendant."). In fact, the Court has extended increased due process protections to convicted sex offenders facing life without parole. State v. McLellan, 146 N.H. 108, 115 (2001)("the Due Process Clause of the New Hampshire Constitution requires proof beyond a reasonable doubt of prior convictions used to enhance a defendant's sentence to life without parole under the provisions of RSA 632-A:10-a, III."). Given the long-standing tradition of affording more process to those charged with crimes, it would be anomalous for this Court to deviate from that tradition in the case of a man who has been sentenced to death.

Constitutional Argument #2: Effective Assistance of Counsel

32. If there is any doubt as to why rules are so critical, one need only examine the imprecise language of RSA 630:5, XI. Based on the statutory language, it is unclear what standard of review this Court will employ with regard to any of the factors. It is unclear what the terms "passion," "prejudice," or "arbitrary factor" mean. It is unclear to what the phrase, "as authorized by law," refers in subsection (b). Finally, it is totally unclear how this Court will undertake proportionality review, and to what cases the Court will compare Mr. Addison's.

33. These deficiencies demonstrate why the legislature contemplated rules to explain,

with more precision, how appellate review will occur. The deficiencies also impair counsels' ability to fulfill their constitutionally-compelled mandate of providing effective assistance counsel at trial and on appeal. N.H. Const. pt. I, art. 15; U.S. Const. Am. VI. Without more specific guidance as to appellate review of a death sentence, counsel cannot effectively make strategic decisions either in the capital proceeding, or in the felony trials that, by virtue of the State's death penalty notice, are in integral part of that proceeding. If this Court adopts a questionnaire along the lines of those referred to in this petition, counsel need to know its contents, so it can provide the maximum amount of pertinent information for appellate review. Depending on the factors this Court will consider, counsel may want to explore particular avenues with regard to factual investigation of Mr. Addison's life circumstances, or may want to have him evaluated by particular medical or psychological professionals. Additionally, it is conceivable that the rules governing this Court's appellate review of a death sentence may influence counsels' decisions with regard to challenging evidence the State seeks to introduce, or having Mr. Addison exercise his right of allocution, in advance of the capital proceeding, in the event he is convicted of any of the felony charges he faces.

34. Moreover, this Court's rules of preservation of issues for appellate review are exacting. The Court will not consider, on appellate review, legal arguments that were not developed below, or arguments that rely on facts that were not presented to the trial court. See, e.g., Petition of the State of New Hampshire (State v. San Giovanni), No. 2005-040, slip op. at 6 (N.H. January 17, 2007)(argument not raised in superior court was not preserved for appellate review); Appeal of Kaplan, 153 N.H. 296, 301 (2006)(citing importance of developing sufficient factual record for appeal). Accordingly, without knowing, right now, and before conducting any

further litigation in any of the cases listed in Paragraph One of this petition, what rules and standards govern appellate review of a death sentence, counsel cannot know whether they are making a full and appropriate record – one that gives Mr. Addison the best chance of arguing that the Court must set aside a death sentence.

Constitutional Argument #3: Cruel or Unusual Punishment and Proportionality

35. Both the federal and state constitutions protect an accused criminal defendant against cruel and unusual punishments. N.H. Const. pt. I, arts. 18, 33; U.S. Const. Am. VIII. These provisions encompass the right to be protected against a disproportionate sentence, at least insofar as the defendant faces the death penalty. Harmelin v. Michigan, 501 U.S. 957 (1991); State v. Stearns, 130 N.H. 475 (1986). Since the text of Part I, Article 18 is far more expansive than anything in the federal constitution, and this Court has held that the goal of rehabilitation has "constitutional imprimatur," State v. Evans, 127 N.H. 501, 505 (1985), this Court should follow the lead of other states and hold that the state constitution provides greater protection than the federal in regard to both the imposition of cruel or unusual punishments, and more specifically, disproportionate punishments. See State v. Whitfield, 134 P.3d 1203 (Wash. App. 2006); People v. Carmony, 127 Cal. App. 4th 1066 (Cal. App. 3 Dist. 2005); State v. Pedersen, 679 N.W. 2d 368 (Minn. App. 2004); State v. Smith, 48 S.W.2d 159 (Tenn. App. 2000); Ratliff v. Cohn, 693 N.E.2d 530 (Ind. 1998); People v. Bullock, 485 N.W.2d 866 (Mich. 1992); State v. Brogdon, 457 So.2d 616 (La. 1984).

36. Michael Addison is facing the death penalty, in a state in which the sanction is rarely sought, and has not been imposed in nearly 70 years. Of all the processes and procedures in the

death penalty statute, those that govern this Court's review of a death sentence are among the most critical, as only this Court can address issues of improper influence on the jury, legal sufficiency of aggravating factor evidence, and proportionality. Without any rules to govern appellate review, counsel cannot prepare for this review and cannot make an adequate record for this review. Any process under which trial counsel cannot adequately safeguard the rights of a defendant sentenced to die exposes that defendant to punishment that not only offends due process and the right to effective assistance of counsel, but the right against the imposition of cruel or unusual punishments. Moreover, where the state constitution mandates that all punishments be proportionate, and condemns "sanguinary laws," but the death penalty statute provides no correlative procedures to implement these guarantees, the statute fails to adequately protect Mr. Addison's rights under Part I, Article 18.

WHEREFORE, Mr. Addison respectfully requests that this Honorable Court:

a. Stay all proceedings listed in Paragraph One of this petition pending resolution of the issues raised by the petition;

b. Issue an order barring the imposition of the death penalty in this case; or, in the alternative,

c. Adopt appropriate and constitutionally adequate rules governing this Court's appellate review of a death sentence.

Respectfully submitted this 30th day of May 2007 by Public Defenders for Michael Addison,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition was forwarded on this 30th day of May, 2007, to the Kelly Ayotte, New Hampshire Attorney General; Marguerite Wageling, Hillsborough County Attorney; John Safford, Clerk, Hillsborough County Superior Court – North, and; Marshall Buttrick, Clerk Hillsborough County Superior Court – South.

David Rothstein

APPENDIX

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NH RSA 630:1 & 5

630:1 Capital Murder. –

I. A person is guilty of capital murder if he knowingly causes the death of:

(a) A law enforcement officer or a judicial officer acting in the line of duty or when the death is caused as a consequence of or in retaliation for such person's actions in the line of duty;

(b) Another before, after, while engaged in the commission of, or while attempting to commit kidnapping as that offense is defined in RSA 633:1;

(c) Another by criminally soliciting a person to cause said death or after having been criminally solicited by another for his personal pecuniary gain;

(d) Another after being sentenced to life imprisonment without parole pursuant to RSA 630:1-a, III;

(e) Another before, after, while engaged in the commission of, or while attempting to commit aggravated felonious sexual assault as defined in RSA 632-A:2;

(f) Another before, after, while engaged in the commission of, or while attempting to commit an offense punishable under RSA 318-B:26, I(a) or (b).

II. As used in this section, a "law enforcement officer" is a sheriff or deputy sheriff of any county, a state police officer, a constable or police officer of any city or town, an official or employee of any prison, jail or corrections institution, a probation-parole officer, or a conservation officer.

II-a. As used in this section, a "judicial officer" is a judge of a district, probate, superior or supreme court; an attorney employed by the department of justice or a municipal prosecutor's office; or a county attorney; or attorney employed by the county attorney.

III. A person convicted of a capital murder may be punished by death.

IV. As used in this section and RSA 630:1-a, 1-b, 2, 3 and 4, the meaning of "another" does not include a foetus.

V. In no event shall any person under the age of 18 years at the time the offense was committed be culpable of a capital murder.

630:5 Procedure in Capital Murder. –

I. Whenever the state intends to seek the sentence of death for the offense of capital murder, the attorney for the state, before trial or acceptance by the court of a plea of guilty, shall file with the court and serve upon the defendant, a notice:

(a) That the state in the event of conviction will seek the sentence of death; and

(b) Setting forth the aggravating factors enumerated in paragraph VII of this section and any other aggravating factors which the state will seek to prove as the basis for the death penalty.

The court may permit the attorney for the state to amend this notice for good cause shown. Any such amended notice shall be served upon the defendant as provided in this section.

II. When the attorney for the state has filed a notice as required under paragraph I and the defendant is found guilty of or pleads guilty to the offense of capital murder, the judge who presided at the trial or before whom the guilty plea was entered, or any other judge if the judge who presided at the trial or before whom the guilty plea was entered is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted:

(a) Before the jury which determined the defendant's guilt;

(b) Before a jury impaneled for the purpose of the hearing if:

(1) the defendant was convicted upon a plea of guilty; or

(2) the jury which determined the defendant's guilt has been discharged for good cause; or

(3) after initial imposition of a sentence under this section, redetermination of the sentence under this section is necessary.

A jury impaneled under subparagraph (b) shall consist of 12 members, unless at any time before the conclusion of the hearing, the parties stipulate with the approval of the court that it shall consist of any number less than 12.

III. When a defendant is found guilty of or pleads guilty to the offense of capital murder, no presentence report shall be prepared. In the sentencing hearing, information may be presented as to matters relating to any of the aggravating or mitigating factors set forth in paragraphs VI and VII, or any other mitigating factor or any other aggravating factor for which notice has been provided under subparagraph I(b). Where information is presented relating to any of the

aggravating factors set forth in paragraph VII, information may be presented relating to any other aggravating factor for which notice has been provided under subparagraph I(b). Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial, or at the trial judge's discretion. Any other information relevant to such mitigating or aggravating factors may be presented by either the state or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The state and the defendant shall be permitted to rebut any information received at the hearing and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the aggravating or mitigating factors and as to appropriateness in that case of imposing a sentence of death. The state shall open and the defendant shall conclude the argument to the jury. The burden of establishing the existence of any aggravating factor is on the state, and is not satisfied unless established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless established by a preponderance of the evidence.

IV. The jury shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factors set forth in paragraph VII, which are found to exist. If one of the aggravating factors set forth in subparagraph VII(a) and another of the aggravating factors set forth in subparagraphs VII(b)-(j) is found to exist, a special finding identifying any other aggravating factor for which notice has been provided under subparagraph I(b) may be returned. A finding with respect to a mitigating factor may be made by one or more

of the members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such a factor established for purposes of this section, regardless of the number of jurors who concur that the factor has been established. A finding with respect to any aggravating factor must be unanimous. If an aggravating factor set forth in subparagraph VII(a) is not found to exist or an aggravating factor set forth in subparagraph VII(a) is found to exist but no other aggravating factor set forth in paragraph VII is found to exist, the court shall impose a sentence of life imprisonment without possibility of parole. If an aggravating factor set forth in subparagraph VII(a) and one or more of the aggravating factors set forth in subparagraph VII (b)-(j) are found to exist, the jury shall then consider whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death. Based upon this consideration, if the jury concludes that the aggravating factors outweigh the mitigating factors or that the aggravating factors, in the absence of any mitigating factors, are themselves sufficient to justify a death sentence, the jury, by unanimous vote only, may recommend that a sentence of death be imposed rather than a sentence of life imprisonment without possibility of parole. The jury, regardless of its findings with respect to aggravating and mitigating factors, is never required to impose a death sentence and the jury shall be so instructed.

V. Upon the recommendation that the sentence of death be imposed, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence of life imprisonment without possibility of parole.

VI. In determining whether a sentence of death is to be imposed upon a defendant, the jury

shall consider mitigating factors, including the following:

(a) The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

(b) The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

(c) The defendant is punishable as an accomplice (as defined in RSA 626:8) in the offense, which was committed by another, but the defendant's participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

(d) The defendant was youthful, although not under the age of 18.

(e) The defendant did not have a significant prior criminal record.

(f) The defendant committed the offense under severe mental or emotional disturbance.

(g) Another defendant or defendants, equally culpable in the crime, will not be punished by death.

(h) The victim consented to the criminal conduct that resulted in the victim's death.

(i) Other factors in the defendant's background or character mitigate against imposition of the death sentence.

VII. If the defendant is found guilty of or pleads guilty to the offense of capital murder, the following aggravating factors are the only aggravating factors that shall be considered, unless notice of additional aggravating factors is provided under subparagraph I(b):

(a) The defendant:

(1) purposely killed the victim;

(2) purposely inflicted serious bodily injury which resulted in the death of the victim;

(3) purposely engaged in conduct which:

(A) the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense; and

(B) resulted in the death of the victim.

(b) The defendant has been convicted of another state or federal offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by law.

(c) The defendant has previously been convicted of 2 or more state or federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person.

(d) The defendant has previously been convicted of 2 or more state or federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance.

(e) In the commission of the offense of capital murder, the defendant knowingly created a grave risk of death to one or more persons in addition to the victims of the offense.

(f) The defendant committed the offense after substantial planning and premeditation.

(g) The victim was particularly vulnerable due to old age, youth, or infirmity.

(h) The defendant committed the offense in an especially heinous, cruel or depraved manner in that it involved torture or serious physical abuse to the victim.

(i) The murder was committed for pecuniary gain.

(j) The murder was committed for the purpose of avoiding or preventing a lawful arrest or

effecting an escape from lawful custody.

VIII. If a person is convicted of the offense of capital murder and the court does not impose the penalty of death, the court shall impose a sentence of life imprisonment without possibility of parole.

IX. If the jury cannot agree on the punishment within a reasonable time, the judge shall impose the sentence of life imprisonment without possibility of parole. If the case is reversed on appeal because of error only in the presentence hearing, the new trial which may be ordered shall apply only to the issue of punishment.

X. In all cases of capital murder where the death penalty is imposed, the judgment of conviction and the sentence of death shall be subject to automatic review by the supreme court within 60 days after certification by the sentencing court of the entire record unless time is extended for an additional period not to exceed 30 days by the supreme court for good cause shown. Such review by the supreme court shall have priority over all other cases and shall be heard in accordance with rules adopted by said court.

XI. With regard to the sentence the supreme court shall determine:

(a) Whether the sentence of death was imposed under the influence of passion, prejudice or any other arbitrary factor; and

(b) Whether the evidence supports the jury's finding of an aggravating circumstance, as authorized by law; and

(c) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

XII. In addition to its authority regarding correction of errors, the court, with regard to review

of death sentences, shall be authorized to:

(a) Affirm the sentence of death; or

(b) Set the sentence aside and remand the case for resentencing.

XIII. When the penalty of death is imposed, the sentence shall be that the defendant be imprisoned in the state prison at Concord until the day appointed for his execution, which shall not be within one year from the day sentence is passed. The punishment of death shall be inflicted by continuous, intravenous administration of a lethal quantity of an ultrashort-acting barbiturate in combination with a chemical paralytic agent until death is pronounced by a licensed physician according to accepted standards of medical practice.

XIV. The commissioner of corrections or his designee shall determine the substance or substances to be used and the procedures to be used in any execution, provided, however, that if for any reason the commissioner finds it to be impractical to carry out the punishment of death by administration of the required lethal substance or substances, the sentence of death may be carried out by hanging under the provisions of law for the death penalty by hanging in effect on December 31, 1986.

XV. An execution carried out by lethal injection shall be performed by a person selected by the commissioner of the department of corrections and trained to administer the injection. The person administering the injection need not be a physician, registered nurse, or licensed practical nurse, licensed or registered under the laws of this or any other state.

XVI. The infliction of the punishment of death by administration of the required lethal substance or substances in the manner required by this section shall not be construed to be the practice of medicine, and any pharmacist or pharmaceutical supplier is authorized to dispense

drugs to the commissioner of corrections or his designee, without prescription, for carrying out the provisions of this section, notwithstanding any other provision of law.

XVII. The governor and council or their designee shall determine the time of performing such execution and shall be responsible for providing facilities for the implementation thereof. In no event shall a sentence of death be carried out upon a pregnant woman or a person for an offense committed while a minor.

RSA 636:1, I(b)

636:1 Robbery. –

I. A person commits the offense of robbery if, in the course of committing a theft, he:

(a) Uses physical force on the person of another and such person is aware of such force; or

(b) Threatens another with or purposely puts him in fear of immediate use of physical force.

II. An act shall be deemed ""in the course of committing a theft" if it occurs in an attempt to commit theft, in an effort to retain the stolen property immediately after its taking, or in immediate flight after the attempt or commission.

III. Robbery is a class B felony, except that if the defendant:

(a) Was actually armed with a deadly weapon; or

(b) Reasonably appeared to the victim to be armed with a deadly weapon; or

(c) Inflicted or attempted to inflict death or serious injury on the person of another, the offense is a class A felony, except that if the defendant was actually armed with a deadly weapon, and the deadly weapon was a firearm, he shall be sentenced in accordance with RSA 651:2, II-g.

RSA 629:3

629:3 Conspiracy. –

I. A person is guilty of conspiracy if, with a purpose that a crime defined by statute be committed, he agrees with one or more persons to commit or cause the commission of such crime, and an overt act is committed by one of the conspirators in furtherance of the conspiracy.

II. For purposes of paragraph I, ""one or more persons" includes, but is not limited to, persons who are immune from criminal liability by virtue of irresponsibility, incapacity or exemption.

III. It is an affirmative defense to prosecution under this statute that the actor renounces his criminal purpose by giving timely notice to a law enforcement official of the conspiracy and of the actor's part in it, or by conduct designed to prevent commission of the crime agreed upon.

IV. The penalty for conspiracy is the same as that authorized for the crime that was the object of the conspiracy, except that in the case of a conspiracy to commit murder the punishment shall be imprisonment for a term of not more than 30 years.

RSA 159:3, I

159:3 Convicted Felons. –

I. A person is guilty of a class B felony if he:

(a) Owns or has in his possession or under his control, a pistol, revolver, or other firearm, or slungshot, metallic knuckles, billies, stiletto, switchblade knife, sword cane, pistol cane, blackjack, dagger, dirk-knife, or other deadly weapon as defined in RSA 625:11, V; and

(b) Has been convicted in either a state or federal court in this or any other state, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United

States of:

(1) A felony against the person or property of another; or

(2) A felony under RSA 318-B; or

(3) A felony violation of the laws of any other state, the District of Columbia, the United States, the Commonwealth of Puerto Rico or any territory or possession of the United States relating to controlled drugs as defined in RSA 318-B.

I-a. A person is guilty of a class B felony if such person completes and signs an application for purchase of a firearm and the person is a convicted felon under the provisions of paragraph I.

II. The state shall confiscate to the use of the state the weapon or weapons of persons convicted under this section.

III. It is an affirmative defense to a charge under this section that a felony of which a defendant has been convicted in another jurisdiction would not have constituted a felony in the state of New Hampshire at the time such felony was committed.

N.H. Const. pt. I, arts. 15, 18, 33

[Art.] 15. [Right of Accused.] No subject shall be held to answer for any crime, or offense, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse or furnish evidence against himself. Every subject shall have a right to produce all proofs that may be favorable to himself; to meet the witnesses against him face to face, and to be fully heard in his defense, by himself, and counsel. No subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law

of the land; provided that, in any proceeding to commit a person acquitted of a criminal charge by reason of insanity, due process shall require that clear and convincing evidence that the person is potentially dangerous to himself or to others and that the person suffers from a mental disorder must be established. Every person held to answer in any crime or offense punishable by deprivation of liberty shall have the right to counsel at the expense of the state if need is shown; this right he is at liberty to waive, but only after the matter has been thoroughly explained by the court.

[Art.] 18. [Penalties to be Proportioned to Offenses; True Design of Punishment.] All penalties ought to be proportioned to the nature of the offense. No wise legislature will affix the same punishment to the crimes of theft, forgery , and the like, which they do to those of murder and treason. Where the same undistinguishing severity is exerted against all offenses, the people are led to forget the real distinction in the crimes themselves, and to commit the most flagrant with as little compunction as they do the lightest offenses. For the same reason a multitude of sanguinary laws is both impolitic and unjust. The true design of all punishments being to reform, not to exterminate mankind.

[Art.] 33. [Excessive Bail, Fines, and Punishments Prohibited.] No magistrate, or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

U.S. Const. Ams. V, VI, VIII, XIV.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV.

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

RULES OF SUPREME COURT OF LOUISIANA
APPENDIX "B"
UNIFORM CAPITAL SENTENCE REPORT
(to be completed by Trial Judge)

A. DATA CONCERNING DEFENDANT

1. Name:
2. Date of Birth:
3. Race:
4. Sex: M ( ) F ( )
5. Marital Status: Never Married
( ) Married ( ) Date____
Divorced ( ) Date____
Spouse Deceased ( ) Date____
6. Children
(a) Number of children _____
(b) Ages of children _____
(c) Was he contributing to the support of any of these children at the time of the offense
_____
7. Other Dependents
(a) Number _____ (b) Relationship _____ (c) Ages _____
8. Father living: Yes ( ) No ( ) If deceased, give date of death
_____
9. Mother living: Yes ( ) No ( ) If deceased, give date of death
_____
10. Number of children born to parents _____
11. Education_____ Highest Grade Completed _____
12. Intelligence Level:
(IQ below 70) Low ( )
(IQ 70 to 100) Medium ( )
(IQ above 100) High ( )
13. Psychiatric Evaluation Performed? Yes ( ) No ( )
If performed, is defendant:
(a) Able to distinguish right from wrong? Yes ( ) No ( )
(b) Able to adhere to the right? Yes ( ) No ( )
(c) Able to cooperate intelligently in his own defense? Yes ( ) No ( )
14. If examined, were character or behavior disorders found? Yes ( ) No ( )
(If answer is yes, please elaborate) _____
_____
_____
15. What other pertinent psychiatric (psychological) information was revealed?
_____
_____
16. Does the defendant's physical or mental condition call for special consideration?
Yes ( ) No ( )
17. Prior Work Record of Defendant:

Type Job Dates Held Reason for Termination
(a) _____
(b) _____
(c) _____
(d) _____
(e) _____
18. Does the defendant have a record of prior convictions? Yes ( ) No ( )
19. If answer is yes, list offenses, the dates of the offenses and the sentences imposed:
Offense Date of Offense Sentence Imposed
(a) _____
(b) _____
(c) _____
(d) _____
20. Was there evidence that the defendant was under the influence of narcotics or dangerous drugs at the time of the offense?
Yes ( ) No ( )
21. Was the defendant a local resident or a transient in the community?
Resident ( )
Transient ( )

B. DATA CONCERNING OFFENSE

1. Were other offenses tried in same trial? Yes ( ) No ( )
If yes, list the other offenses:
2. Which of the following statutory aggravating circumstances were specifically argued, which were found?
Argued Found
a. The offender was engaged in the perpetration or attempted perpetration of aggravated rape, aggravated kidnapping, aggravated burglary, or armed robbery; _____
b. The victim was a fireman or peace officer engaged in his lawful duties; _____
c. The offender was previously convicted of an unrelated murder, aggravated rape, or aggravated kidnapping; _____
d. The offender knowingly created a risk of death or great bodily harm to more than one person; _____
e. The offender offered or has been offered or has given or received anything of value for the commission of the offense: _____
f. The offender at the time of the commission of the offense was imprisoned after sentence for the commission of an unrelated forcible felony; _____
g. The offense was committed in an especially heinous, atrocious or cruel manner. _____
3. Which of the following mitigating circumstances were argued?
a. The offender has no significant prior history of criminal activity; _____
b. The offense was committed while the offender was under the influence of extreme mental or emotional disturbance; _____
c. The offense was committed while the offender was under the influence or under the domination of another person; _____
d. The offense was committed under circumstances which the offender reasonably believed to provide a moral justification or extenuation for his conduct; _____

e. At the time of the offense the capacity of the offender to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication;_____
f. The youth of the offender at the time of the offense; _____
g. The offender was a principal whose participation was relatively minor._____
4. What was the age of the victim? _____
5. What was the race of the victim? _____
6. Was the victim physically harmed or tortured prior to the murder?
Yes ( ) No ( )
If yes, state nature of harm or torture, as reflected by the record.

_____

_____

7. Was the victim related by blood or marriage to defendant? Yes ( ) No ( )
8. If answer is yes, what was the relationship? _____

_____

_____

9. Was the victim an employer or employee of defendant?
No ( ) Employer ( ) Employee ( )
10. Was the victim acquainted with the defendant?
No ( ) Casual Acquaintance ( ) Friend ( )
11. Was the victim a local resident or transient in the community?
Resident ( ) Transient ( )
12. Was the victim the same sex as the defendant? Yes ( ) No ( )
13. Was the victim held hostage during the crime?
No ( ) Yes-Less than an hour ( ) Yes-More than an hour ( )
14. Was the victim's reputation in the community:
Good ( ) Bad ( ) Unknown ( )
15. If a weapon was used in commission of the crime, what was it? _____

_____

16. Although the evidence suffices to sustain the verdict, does it foreclose all doubt respecting the defendant's guilt? Yes ( ) No ( )
C. REPRESENTATION OF DEFENDANT
1. Date counsel secured _____
2. How was counsel secured?
a. Retained by defendant ( )
b. Appointed by Court ( )
3. If counsel was appointed by court, was it because
a. Defendant unable to afford counsel? ( )
b. Defendant refused to secure counsel? ( )
c. Other (explain) _____

_____

4. How many years has counsel practiced law?
a. 0 to 5 ( )
b. 5 to 10 ( )
c. over 10 ( )
5. What is the nature of counsel's practice:

a. Mostly civil ( )
b. General ( )
c. Mostly criminal ( )
6. Did the same counsel serve throughout the trial? Yes ( ) No ( )
7. If not, explain in detail. _____
_____
_____
(If more than one counsel served, answer the above questions as to each counsel and attach to this report.)

D. GENERAL CONSIDERATIONS (Please answer on separate sheet and attach to this report.)

1. Are there any relevant mitigating or aggravating circumstances other than those above indicated? Specify.
2. Was race raised by the defense as an issue in the trial?
3. Were members of defendant's race represented on the jury?
4. If not, was there any evidence they were systematically excluded from the jury? If yes, explain. (reference may be made to the evidence or arguments of counsel)
5. Was there extensive publicity in the community concerning this case? If yes, explain. (reference may be made to the evidence or arguments of counsel)
6. Was there any indication that the jury was influenced by passion, prejudice, or any other arbitrary factor when imposing sentence? If yes, what was it? (reference may be made to the evidence or arguments of counsel)
7. Is this sentence disproportionate to the punishment imposed in similar cases? Explain. (Compare the sentence of this defendant and the aggravating and/or mitigating factors to the sentences of other convicted offenders with similar aggravating and/or mitigating factors of which you have knowledge.)
8. General comments of the trial judge concerning the appropriateness of the sentence imposed in
this case. (optional)

E. SENTENCE INVESTIGATION REPORT

A sentence investigation report is attached.

F. OPPOSITION TO THIS REPORT

This report was submitted to the defense counsel and the district attorney for written opposition to its factual accuracy.

1. No opposition was filed ( )
2. Opposition(s) attached ( )
3. Opposition(s) and transcript of opposition hearing filed ( )

Thus submitted this _____ day of _____, 20___.

_____
District Judge

Maryland

MARYLAND RULES. TITLE 4. CRIMINAL CAUSES.
CHAPTER 300. TRIAL AND SENTENCING

Rule 4-343. Sentencing -- Procedure in capital cases.

(a) Applicability. This Rule applies whenever a sentence of death is sought under Code, Criminal Law Article, § 2-303.

Md. Rule 4-343
(j) Advice of the judge. At the time of imposing a sentence of death, the judge shall advise the defendant that the determination of guilt and the sentence will be reviewed automatically by the Court of Appeals, and that the sentence will be stayed pending that review. At the time of imposing a sentence of imprisonment for life, the court shall cause the defendant to be advised in accordance with Rule 4-342 (i).

(k) Report of judge. After sentence is imposed, the judge promptly shall prepare and send to the parties a report in the following form:

(CAPTION)

REPORT OF TRIAL JUDGE

I. Data Concerning Defendant

A. Date of Birth

B. Sex

C. Race

D. Address

E. Length of Time in Community

F. Reputation in Community

G. Family Situation and Background

1. Situation at time of offense (describe defendant's living situation including marital status and number and age of children)

2. 2. Family history (describe family history including pertinent data about parents and siblings).

H. Education

I. Work Record

J. Prior Criminal Record and Institutional History (list any prior convictions, disposition, and periods of incarceration)

K. Military History

L. Pertinent Physical or Mental Characteristics or History

M. Other Significant Data About Defendant

II. Data Concerning Offense

A. Briefly describe facts of offense (include time, place, and manner of death; weapon, if any; other participants and nature of participation)

B. Was there any evidence that the defendant was impaired by alcohol or drugs at the time of the offense? If so describe.

C. Did the defendant know the victim prior to the offense?

Yes ..... No .....

1. If so, describe relationship.

2. Did the prior relationship in any way precipitate the offense? If so, explain.

D. Did the victim's behavior in any way provoke the offense? If so, explain.

E. Data Concerning Victim

1. Name

2. Date of Birth

3. Sex

4. Race

5. Length of time in community

6. Reputation in community

F. Any Other Significant Data About Offense

III. A. Plea Entered by Defendant:

Not guilty .....; guilty .....; not criminally responsible ....

B. Mode of Trial:

Court .....Jury ....

If there was a jury trial, did defendant challenge the jury selection or composition? If so, explain.

C. Counsel

1. Name

2. Address

3. Appointed or retained

(If more than one attorney represented defendant, provide data on each and include stage of proceeding at which the representation was furnished.)

D. Pre-Trial Publicity -- Did defendant request a mistrial or a change of venue on the basis of publicity? If so, explain. Attach copies of any motions made and exhibits filed.

E. Was defendant charged with other offenses arising out of the same incident? If so, list charges; state whether they were tried at same proceeding, and give disposition.

IV. Data Concerning Sentencing Proceeding

A. List aggravating circumstance(s) upon which State relied in the pretrial notice.

B. Was the proceeding conducted

before same judge as trial? .....

before same jury? .....

If the sentencing proceeding was conducted before a jury other than the trial jury, did the defendant challenge the selection or composition of the jury? If so, explain.

C. Counsel -- If counsel at sentencing was different from trial counsel, give information requested in III C above.

D. Which aggravating and mitigating circumstances were raised by the evidence?

E. On which aggravating and mitigating circumstances were the jury instructed?

F. Sentence imposed: Imprisonment for life

Death

Imprisonment for life without the possibility of parole

V. Chronology

Date of Offense

Arrest

Charge

Notification of intention to seek penalty of death

Trial (guilt/innocence) -- began and ended

Post-trial Motions Disposed of

Sentencing Proceeding -- began and ended

Sentence Imposed

VI. Recommendation of Trial Court As To Whether Imposition of Sentence of Death is Justified.

VII. A copy of the Findings and Sentencing Determination made in this action is attached to and made a part of this report.

.....

Judge

CERTIFICATION

I certify that on the .....day of ....., ..., I sent copies of this

(month) (year)

report to counsel for the parties for comment and have attached any comments made by them to this report.

.....

Judge

Within five days after receipt of the report, the parties may submit to the judge written comments concerning the factual accuracy of the report. The judge promptly shall file with the clerk of the

trial court and with the Clerk of the Court of Appeals the report in final form, noting any changes made, together with any comments of the parties.