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JAN 17 2008
CLERK OF COURT
SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Appellee,

V.

NAWAZ AHMED,

Appellant.

CASE No. 2001-0871

Common Pleas Case: 99-CR-192

THIS IS A DEATH PENALTY CASE

FILED
JAN 17 2008
CLERK OF COURT
SUPREME COURT OF OHIO

APPLICATION FOR REOPENING APPEAL

PURSUANT TO S.CT.PRAC.RULE 11(6)

1. Now comes Appellant Nawaz Ahmed, and moves this Court for an order vacating/Recalling/Rescinding its order of 03/02/2005, the order which was made in lack of Subject-Matter and/or Patent and unambiguous Jurisdiction and requests this honrable Court to show its "Jurisdictio" to create,adopt or make a "Remedial Law" about raising "claims of ineffective-asistance-of-Appellate-Counsel" via its local Rule making Jurisdiction, and then decide upon such claims under "Collatral-PostConviction" Jurisdiction. When only Jurisdiction provided to this Honorable Court by the OH Constitution Article IV(2)(B)(2)(c) and ORC 2953.02 is an Appellate Jurisdiction over the case in which death sentence has been imposed after January 1, 1995. The collatral Postconviction Appellate Jurisdiction is limited to claims filed under ORC 2953.21-23(B) which does not grant any kind of Jurisdiction claimed under S.Ct.Prac.Rule 11(6), which also conflicts with ORC 1.11 Liberal Construction and application to Provide Justice.

2. The matters of lack of Jurisdiction can be raised at any time and S.Ct.Prac.Rule 11(6) proceeding can be used to challange the Jurisdiction of this Honorable Court in creating a remedial law via its Rule making and then exercising Jurisdiction over a subject-matter otherwise not divorced from Direct Appeal i.e. Claims of ineffective-Appellate-Counsel, but wrongly pretending to act in collatral jurisdiction under Rule 11(6).

3. S.Ct.Prac.Rule 11(6) like all other Rules are "Local Rules of Practice" before the OH Supreme Court adopted under ORC 2503.36 and not under any provision of OConstitution. This statute do not grant any collatral Jurisdiction to adopt 'remedial law' outside the original Appellate Jurisdiction of Art.IV(2)(B)(2). Hence, Rule 11(6) is continuation of "Direct Review" and part of Direct-Appeal and do not provide any collatral-Jurisdiction outside the "Appellate Jurisdiction". Wherefore, Appellants have Constitutional Rights to selected private counsels, counsels selected under Vienna Convention Article 36(1),(2) as interpreted by International Court of Justice or appointed counsels for indigents.

> "Statutory limitations on Appellate Jurisdiction of Courts,including Supreme Court, can not be waived and may be raised sue sponte.ORC 2505.03; 2953.02; OHConst.Article I(16),IV; State ex rel. Scruggs v. Sadler, 776 N.E.2d 10, 97 Ohio St.3d 78 (Ohio 2002).

4. This Appellant was denied his liberty interest to use his own funds to employ selected counsels,so he requested court to appoint counsels to file Reopening Application on 8/27/04, two days after his direct appeal had been denied. He also moved for Reconsideration on 9/2/04 thus tolling the effect of Judgment under S.Ct.Prac.Rule 11(2),(4) and U.S. Supreme Ct.Rule 13.3, Federal Stutes 28 U.S.C 1257 and 28 U.S.C. 2101, and caselaw. Court appointed counsels on 9/21/04 but notified the appointment on 9/24/04. Court Ruled on Reconsideration on 10/27/04. Appellant filed a Motion for Supplementary briefing on 4/14/2005 which was denied on 05/03/2005, thus concluding the Ohio part of "Direct Review". Appellant filed for a Writ of Certiorari on 1/21/2005 which was denied on 6/13/2005, thus concluding the "Direct review" and making the Trial Court Judgment as a "Final Judgment". See, In Re Pine, 66 Cal.App.3d 593 (1977,3rd Dist); United States v. Healy (1964), 376 U.S. 75; Hibbs v. Winn,(2004),542 US 88; Contrary to these laws, this court wrongly held that an Application For Reopening filed on 12/21/2004 was "untimely", when the same court held:

> "Reopening begings after direct review (appeal of right) is ended".

Morgan v. Eads, 104 Ohio St.3d 142 (Ohio Nov.22,2004), Id. at P 18-19; Is Reconsideration not part of Appeal? Is Review by Cert. not Appeal ? An obvious conflict with R.11(6)(A).

GOOD CAUSE FOR FILING THIS APPLICATION: It is cruelly unfair to bind defendant to court's or Lawyer's or ODRC officials' errors.

In addition to the above stated reasons to challange Jurisdiction in ruling upon previous Application on 3/02/05 when Direct Appeal Review had not yet ended. See Morgan,Supra P-18-19. All legal papers and property was removed and taken away by MANCI administration due to impending move of deathrow to OSP, Ahmed was denied access to this Amended Application due to state actions. Very recenty legal papers has been returned. Applicant requests that it will be miscarriage of justice if this Application is not accepted and granted, as 'genuine issues' are raised.

PROPOSITION OF LAW NO. 1

MR. AHMED WAS DENIED HIS RIGHT TO COUNSEL OF HIS CHOICE.AND USE OF OWN FUNDS TO PLAN,EXECUTE OWN DEFENSE FREE OF ANY STATE INTERFERENCE.

The trial court deprived Mr. Ahmed of his Constitutional right to self-representation. No Court Rule or Satatute or Constitution authorises Court about non-indigent. *Linton v. Perini*, 656 F.2d 207, 208 (6th Cir. 1981) (citing *Powell v. Alabama*, 287 U.S. 45, 53 (1932)). *Faretta v. California*, 422 U.S. 806, 819-820 (1975). Fuller v. Oregon,417 US 40(1974). cf James v. Strange, 407 U.S.128 (1972).ORC 2935.20;

The trial court also actively engaged in conduct to frustrate Mr. Ahmed's efforts to retain counsel of his choosing. *Faretta v. California*, 422 U.S. 806, 819-820 (1975). No Statute authorises trial Court to take away control of private funds.

This deprived Mr. Ahmed his Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments rights to a fair trial, due process, and a fair and reliable sentencing proceeding. Section 120.01 seq and ORC 2941.51 do not provide any pre-trial recovery.

PROPOSITION OF LAW NO. 2

MR. AHMED WAS DENIED HIS CONSTITUTIONAL AND STATUTORY RIGHT TO A SPEEDY TRIAL.

See Ahmed's Affidavit with documents Proving Public Defenders' representation as "Farce and Sham".

Mr. Ahmed regularly objected to any continuance of his trial and demanded his right to a speedy trial. Contrary to Mr. Ahmed's wishes, the trial court, counsel, and the State repeatedly continued the proceedings. In evaluating whether a constitutional right to a speedy trial has been denied, the Supreme Court has identified four factors that must be considered: the length of the delay, the reason for the delay, the assertion of the right by the accused, and any prejudice accruing to the accused. *Barker v. Wingo*, 407 U.S. 514, 530 (1972). *See also*, *Doggett v. United States*, 505 U.S. 647, 651 (1992). None of these individual factors is determinative of whether the state violated the defendant's

Most of the defense witnesses were new immigrants who change jobs and homes, states, thus delay in Trial to Prejudice defense
DNA tests were not required due to suppression if filed and Lack of Statistical Probability for Asian Population.

constitutional right to a speedy trial. Instead, the courts must consider the four factors collectively. *Barker*, at 533. This deprived Mr. Ahmed his Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments rights to a fair trial, due process, and a fair and reliable sentencing proceeding. Public Defenders had not completed CLEs required by Sup. R. 20 and could not represent a non-indigent defendant as per ORC 120.15(D) and Crim. R. 44. They failed to file suppression Motion of all evidence taken from the house and Travel agent; and from the office of Ahmad;

PROPOSITION OF LAW NO. 3

THE FAILURE TO ALLOW MR. AHMED TO REPRESENT HIMSELF AT TRIAL VIOLATED HIS SIXTH AND FOURTEENTH AMENDMENT RIGHTS.

Throughout pre-trial proceedings Mr. Ahmed attempted to waive his right to counsel and sought to invoke his right to proceed *pro se* during the trial phase of his capital case. Tr. 8-18 (January 2, 2001). The trial court refused to permit or accept Ahmed's waiver without any inquiry. Tr. 18. The refusal to grant Mr. Ahmed his absolute constitutional right to self-representation violated Mr. Ahmed's Sixth and Fourteenth Amendment rights and rendered the subsequent trial constitutionally invalid. *Faretta v. California*, 422 U.S. 806, 819-820 (1975). This deprived Mr. Ahmed his Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments rights to a fair trial, due process, and a fair and reliable sentencing proceeding.

PROPOSITION OF LAW NO. 4

THE JUDGE PRESIDING OVER MR. AHMED'S TRIAL WAS BIASED AGAINST MR. AHMED.

One of the fundamental tenets of our criminal justice system is the right to be tried before a fair and impartial tribunal. *In re Murchison*, 349 U.S. 133 (1955). This right was denied Mr. Ahmed. It is apparent from the entire record that Judge Sargus developed a personal animosity towards Mr. Ahmed. "Due process implies a tribunal both impartial and mentally competent to afford a hearing." *Jordan v. Massachusetts*, 225 U.S. 167, 176 (1912). The judge's activities

and her totally false affidavit to Chief Justice denying she was a witness and her failuer to disclose on record that she was a defendant in the Federal Civil Suit alongwith Trial counsels and Disciplinary complaint, created an "intolerable appearance of unfairness" denying Mr. Ahmed due process and a fair trial. United States v. Meyer, 149 U.S.App.D.C. 212,462 F.2d 827; As the judge was the ultimate sentencer in this matter, her actions must be scrutinized under the Vasquez v. Hillery,474 US 254; Johnson v.Missippi,403 U.S.212; and the highest standards. *Bracy v. Schomig*, 286 F.3d 406, 412 (7th Cir. 2002). This deprived Mr. Ahmed his Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments rights to a fair trial, due process, and a fair and reliable sentencing proceeding.

PROPOSITION OF LAW NO. 5

MR. AHMED WAS DENIED HIS RIGHT TO A PUBLIC TRIAL.

For the first 3 days Trial was relayed to Ney Centre at University Campus, closing court to Public.

The trial court improperly closed various court proceedings to the public. The Sixth Amendment to the Constitution guarantees every criminal defendant a public trial. *In re Oliver*, 333 U.S. 257, 273 (1984); *Waller v. Georgia*, 467 U.S. 39 (1984); *Press Enterprise Co. v. Superior Court of California*, 464 U.S. 501 (1984). The denial of a public trial mandates reversal of this matter and an order for a new, public, trial. This deprived Mr. Ahmed his Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments rights to a fair trial, due process, and a fair and reliable sentencing proceeding. Ahmed was excluded from PreTrial hearing, bench conferences, and formulation of Jury instructions and Trial Judge's conferences, meetings with counsels.

PROPOSITION OF LAW NO. 6

MR. AHMED WAS DENIED HIS RIGHT TO CONFRONT WITNESSES AND DENIED DUE PROCESS IN THE USE OF HEARSAY EVIDENCE.

The admission of hearsay documents through the testimony of Terry Yockey deprived Mr. Ahmed of his right to confront witnesses, *Crawford v. Washington*, 541 U.S. 36 (2004), due process and a fair trial. *Ohio v. Roberts*, 448 U.S. 56 (1980). Terry Yockey testified about a record not discovered and was not created during the routine bussiness activity, allegedly created by MCI Worldcom tracking the ID badge issued to Mr. Ahmed. Ms. Yockey was not qualified to validate this never disclosed and undiscovered record as a business record and therefore the record if existed was inadmissible hearsay. The ID Badge list (Ex. I) has dates in Terry's handwriting as 9/13, 9/16 and 9/16/1999. See State Exhibit No. 64. But see the return of Search Warrant listing 5 items taken from the Ahmed's office, Listing ~~ID Badge list~~ List of Loaner Passes or Sheet (Ex. 2) found in the Ahmed's office on

1-28-99 sworn by detective Griesy (as filed Part 4 Motion to Suppress Papers taken from Ahmed's office on 1-8-2000). So Terry was planting the "List of Loaner Passes or ID Badges", inside Ahmed's office, long after Ahmed was arrested in N.Y on 9/11/99.

~~inadmissible hearsay~~. *St. Paul Fire & Marine Ins. Co., Ohio Fast Freight*, 8 Ohio App.3d 155 (1982). The admissibility of hearsay testimony and planted evidence is an issue of constitutional dimension. *See also Ohio v. Roberts*, 448 U.S. 56, 66 (1980); *Sherley v. Seabold*, 929 F.2d 272 (6th Cir. 1991); *Carter v. Sowders*, 5 F.3d 975 (6th Cir. 1993). This deprived Mr. Ahmed his Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments rights to a fair trial, due process, and a fair and reliable sentencing proceeding. Terry could not generate any report about ID badges usage at her own. Attorney Mooney of OPD was told that no report about ID badges usages was ever created by MCI WorldCom or U.U. Net Security Dept. and none was given to Police or Prosecutor and none exists which could be provided to OPD or to Ahmed or his defense. It never existed.

PROPOSITION OF LAW NO. 7

MR. AHMED'S RIGHTS AGAINST UNREASONABLE SEARCHES AND SEIZURES WAS VIOLATED WHEN THE GOVERNMENT SEARCHED THE HOME WITHOUT A WARRANT.

At no time to the Government ever obtain a warrant to enter and search the home/crime scene. Searches without a warrant are *per se* unreasonable. *Katz v. United States*, 389 U.S. 347 (1967). *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684 (1961); Kirk v. Louisiana, 536 U.S. 635, 122 S.Ct. 2458 (2002). ORC 2106.15 grants Ahmed full right to live in the rental house as advance retainer and lease was on Ahmed's name. See also In re Johnson, 14 OApp.3d 235 (1984). There is no crime scene exception to the warrant requirement. *Muncey v. Arizona*, 437 U.S. 385 (1978); *Flippo v. West Virginia*, 528 U.S. 11 (1999). The failure to obtain a warrant for these searches mandates suppression of all the evidence obtained. *Muncey*; *Flippo*. This requires the suppression of all evidence obtained from the home as the fruits of an illegal search. This deprived Mr. Ahmed his Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments rights to a fair trial, due process, and a fair and reliable sentencing proceeding. **Ahmed had full legal rights to challenge warrantless search and to live in the marital house, as he had the lease and he paid advance deposit and also under ORC 2106.15;**

PROPOSITION OF LAW NO. 8

PROSECUTORIAL MISCONDUCT DENIED MR. AHMED HIS RIGHT TO A FAIR TRIAL.

Prosecutor illicited evidence of 'voluntary manslaughter' from State witnesses, but conspired with Judge to deny defense Jury instruction with voluntary manslaughter as lesser included offense, and to argue so.

thus proving provocation and fit of rage for voluntary manslaughter.

The prosecutor argued that the crime was an "honor killing." Tr. 831. There is absolutely no evidence to support the prosecutor's argument other than pointing to voluntary manslaughter. Arguing purported facts that are not in evidence is improper. *United States v. Leon*, 534 F.2d 667, 679 (6th Cir. 1976).

During the mitigation phase of the trial, the prosecutor argued that the jury must impose a specific "pound" on the mitigating and aggravating factors. Tr. 176 (Mitigation). The prosecutor also argued non-statutory aggravating factor of the manner of death. Tr. 176-180. Consideration of a non-statutory aggravating circumstance renders the sentence invalid. *Barclay v. Florida*, 463 U.S. 939 (1983); *State v. Johnson*, 24 Ohio St.3d 87 (1986).

The prosecutors' misconduct deprived Mr. ~~Holmes~~ Ahmed his right to a fair trial and sentencing proceeding. *Berger v. United States*, 295 U.S. 78, 88 (1935). This deprived Mr. Ahmed his Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments rights to a fair trial, due process, and a fair and reliable sentencing proceeding.

PROPOSITION OF LAW NO. 9

MR. AHMED WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL.

Trial counsel committed numerous errors during Mr. ~~White's~~ Ahmed's trial. These errors were professionally unreasonable and prejudice Mr. ~~White~~ Ahmed and deprived Mr. ~~White~~ Ahmed of his constitutional right to counsel. *Strickland v. Washington*, 466 U.S. 668 (1984).

Counsels' erred by failing to:

1. object to any of the errors raised in Propositions of Law No. 1, 2, 3, 4, 5, 6, 7, and 8, 9, 10, 11, 12, 13, 14 *infra*; and those errors raised on Direct Appeal and Post Conviction Petition.

2. adequately and properly investigate and prepare for the culpability phase of the case;

3. adequately and properly investigate and prepare for the mitigation phase of the case;

4. obtain an expert to explain the Pakistani culture; and Islamic Religion.

5. obtain a proper Urdu language translator for Mr. Ahmed or his mitigation witness; and failing to ensure that translator is sworn before the court on record before translation.

6. properly present the nature and circumstances of the offense as a mitigator and not as an aggravating factor. Argue 'Voluntary manslaughter" and obtain Jury Instruction. Quoting the ABA standards, *Wiggins'* stresses with added emphasis that "investigations into mitigating evidence 'should comprise efforts to discover *all reasonably available* mitigating evidence, including what State presented showing "voluntary manslaughter" rather than murder. ~~evidence~~ and evidence to rebut any aggravating evidence that may be introduced by the prosecutor." *Wiggins v. Smith,* 539 U.S. 510, 524 (2003), *quoting* ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 11.4.(C), p.93 (1989).

Counsels' performance at trial was deficient and Mr. Ahmed was prejudiced by this error. *Wiggins*. This deprived Mr. Ahmed his Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments rights to a fair trial, due process, and a fair and reliable sentencing proceeding.

PROPOSITION OF LAW NO. 10

MR. AHMED WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL.

For the above stated reasons, stated in Propositions 1 to 14 Mr. Ahmed was denied the effective assistance of counsel on appeal. *Strickland v. Washington*, 466 U.S. 668 (1984). Appellate counsel also failed to challenge the deficient performance of trial counsel in failing to object to the above errors. The Court must reopen Mr. Ahmed's direct appeal as of right. This deprived Mr. Ahmed his Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments rights to a fair trial, due process, and a fair and reliable sentencing proceeding.

PROPOSITION OF LAW No.11

AHMED WAS DENIED DUE PROCESS, FAIR TRIAL AND SENTENCING WHEN COURT AND PROSECUTOR DENIED JURY INSTRUCTION ON VOLUNTARY MANSLAUGHTER AS LESSER OFFENSE DESPITE THE EVIDENCE PRESENTED BY STATE.

Attorney Carpino after hearing all the testimony advised Trial Counsels that 'voluntary manslaughter' instruction and arguement is very essential to show that prosecution has failed to prove aggrevated murders as charged and instead presented evidence to show voluntary manslaughter as it claimed. Defense was refused instruction by saying V.M. is not a lesser offense.

US Sup.Ct.found due process violation in precluding jury from finding for a non-capital offense where evidence warranted it. Habeas relief was warranted. Wiggerfall v. Jones (1990, CA11 Ala) 918 F.2d 1544; Armstead v. Frank (2004,CA7 Wis) 383 F.3d 630; Mann v. Gray (1985,ND Ohio) 622 F. Supp. 1225;

PROPOSITION OF LAW No.12

AHMED WAS DENIED FAIR TRIAL, DUE PROCESS AND RELIABLE SENTENCING WHEN P.O. NANNI TESTIFIED AGAINST HIS OWN WRITYTEN SIGNED STATEMENT AND FALSELY ALLEGED THAT AHMED SAID HE CAME FROM ST.CLAIRSVILLE. Trial Tr.470.

The written statements by Nanni repeats often "undersigned officer", or 'undersigned' and do not contain the allegedly coerced self-incriminating statement of Ahmed and is not discovered. Attorney Olivito objected by saying "Judge we should settle this outside of Jury". Judge smiled but kept quite. Transcript is cleaned-out of this objection. Ahmed very strongly protested to this false testimony only then Olivito went and examined Nanni about his signed report. transcript do not include Olivito cross-examining Nanni. Ahmed was denied fair trial,due process,reliable sentencing and 4,5,6,8,9,14 Amendments rights to USCONST.Miranda v. Arizona, Mincy v. Arizona,437 US385 Id at HN7. Brady, Napue, Mooney v. Holohan, 294 US 103; Malloy v. Hogan,378 US 1;

PROPOSITION OF LAW No.13

AHMED DENIED FAIR TRIAL,DUE PROCESS AND RELIABLE SENTENCING WHEN PROSECUTOR DEATH QUALIFIED JURY AND UNCONSTITUTIONAL REMOVED ROSMARY BUSAK.

Ahmed was unconstitutionally prevented from trial by Jury representative of community when after denial of two challanges for cause,Prosecutor used Peremptory challange to remove Rosmary Busak.Vire Dire Tr.245-265 and death qualified other juror. Def.Objection overruled.Tr 482.

Brown v. Rice(1988 WD NC) 693 F.Supp.381; Keeten v. Garrison(1984 WD NC) 578 F.Supp 1164; Gall V. Parker(2000 CA 6 KY) 231 F.3d 265; Darden v. Wainwright(1984 CA 11 Fla) 725 F.2d 1526; Ruiz v. Lockhart,754 F.2d 254;

PROPOSITION OF LAW No.14

AHMED DENIED FAIR TRIAL,DUE PROCESS,RELIABLE SENTENCING DUE TO VERY HEAVY SECURITY INSIDE COURTROOM AND OUTSIDE, DENYING PRESUMPTION OF INNOCENCE.

Ahmed rights under 5,6,8,9,14 Amendments to USConst.were denied when court without any hearing allowed 2 uniform officers to stand infront of Jury,On sat on side table and two behind Ahmed and manyoutside the court. during trial and all hearings, pictures in shakles,handcuffs,chains posted over internet in jail cloths, in papers, TV for 17 months pre-trial. This

denied Ahmed fair trial as it destroyed presumption of innocence. Never any hearing was held or record made of such heavy police guarding, even when picture taking was allowed inside the jail-court room and put on Internet,printed media and TV showing defendant in Jail cloths, cuff, chains. Holbrook v. Flynn,475 U.S. 560(1986); ABA Standards for Criminal Justice 15-3.1 (2ed.1980 at 570-571). Kennedy v. Caldwell, 487 F.2d 101(6th cir. 1973). Ahmed was brought to court in handcuffs,chains,shackled. Estelle v. Williams, 425 U.S. 501,503-504(1976). Court praised 'table' to avoid the issue of two Police uniform officers sitting behind Ahmed, when seating arrangement was objected. All of these extraordinary measurs were objected but denied or unheard.

DEMAND FOR DISCOVERY AND EVIDENTIARY HEARING

Mr. Ahmed requests full discovery and an evidentiary hearing on these claims in order to properly and fully litigate these claims. *Morgan v. Eads*, 2004 Ohio 6110 (2004). In *Morgan* this court overrulled all contrary holdings of the past cases.

CONCLUSION

For the above state reasons, Mr. Ahmed requests this Court grant his application for reopening and reopen his direct appeal to this Court. Further, the Court must permit discovery and conduct an evidentiary hearing on the claims raised in this Application. The computer printed text belongs to attorneys when hand-written and typed text is Corrected!

Respectfully submitted,

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Michael J. Benza & Alan C. Rossman
COUNSEL FOR NAWAZ AHMED

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Application and Nawaz Ahmed's Affidavit No. 1, were forwarded by Regular Mail to Prosecutor Christopher Berhalter, at 147 West Main Street, St. Clairsville, Ohio 43950 on this 14th day of January, 2008.

NAWAZ AHMED
A404-511, OSP.
878 Coitsville-Hubbard Rd.
Youngstown, OH 44505.

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
Appellee,	:	Case No. 2001-0871
v.	:	Common Pleas Case No. 99-CR-192
NAWAZ AHMED,	:	THIS IS A DEATH PENALTY CASE
Appellant.	:	

AFFIDAVIT OF MICHAEL J. BENZA and Nawaz Ahmed IN SUPPORT OF
APPLICATION FOR REOPENING PURSUANT TO S.CT. PRAC.R. XI(5)

State of Ohio :
: ss
Cuyahoga County :

I, Michael J. Benza, being first duly sworn, do depose and say as follows:

1. I am an attorney licensed to practice law in the State of Ohio. I am in private practice in Cleveland, Ohio. My attorney registration number is 0061454.

2. I am appointed to represent Mr. Nawaz Ahmed, in pursuit of his Application for Reopening of his direct appeal pursuant to S.Ct. Prac.R. XI(5).

3. This case arises from Mr. Ahmed's conviction and sentence of death.

4. The following statements are offered in support of Mr. Ahmed's Application for Reopening.

5. Mr. Ahmed was entitled to the effective assistance of counsel on his direct appeals as of right. *Evitts v. Lucey*, 469 U.S. 387 (1985). Mr. Ahmed was denied the effective assistance of appellate counsel as counsel failed to raise meritorious issues. Appellate counsel must act as an advocate and support the cause of his client to the best of his ability. *See for example, Anders v. California*, 386 U.S. 738 (1967); *Penson v. Ohio,* 488 U.S. 75 (1988).

6. While appellate counsel has no constitutional duty to raise every single non-frivolous issue requested by a criminal defendant, counsel must still exercise reasonable professional judgment in presenting the appeal. *See Jones v. Barnes*, 463 U.S. 745, 750 (1983). Appellate counsel may choose which issues to appeal as long as his performance

is "within the range of competence demanded of attorneys in criminal cases and assures that indigent defendant an adequate opportunity to present his claims fairly in the context of the state's appellate process." *Jones*, 463 U.S. at 755 (Blackmun, J., concurring). *See also Alvord v. Wainwright*, 725 F.2d 1282 (11th Cir. 1984); *Sullivan v. Wainwright*, 695 F.2d 1306, 1309 (11th Cir. 1983); *Cunningham v. Henderson*, 725 F.2d 32, 36 (2nd Cir. 1984).

7. The application of *Jones* must be limited by the fact that this is a capital case. The need for winnowing issues is almost non-existent in capital litigation due to the continuing evolution of the law. What is not a winnowing issue today results in automatic relief tomorrow. *See Atkins v. Virginia*, 536 U.S. 304 (2002).

8. The failure to raise meritorious issues, especially when weaker claims are raised, constitutes ineffective assistance of appellate counsel. *Mapes v. Coyle*, 171 F.3d 488, 427-428 (6th Cir. 1999). Furthermore, omitting a "dead-bang winner" from an appeal is not objectively reasonable. *United States v. Cook*, 45 F.3d 388, 395 (10th Cir. 1995). *See also Matire v. Wainwright*, 811 F.2d 1430 (11th Cir. 1987); *People v. Bowen*, 791 F.2d 861 (11th Cir. 1986); *Ragan v. Dugger*, 544 So. 2d 1052 (Fla. Dist. 1 Ct. App. 1989); *Whitt v. Holland*, 342 S.E.2d 292 (W. Va. 1986).

PROPOSITION OF LAW NO. 1

The Sixth Amendment Right to Hire Counsel of One's Choice

Factual Basis

9. On an unknown pre-arraignment date, during a telephonic conference between attorney Shamansky and Judge Sargus, Mr. Shamansky reported that he had been contacted on "numerous occasions" by Mr. Ahmed "who [] indicated a desire to have our office represent him in his currently pending aggravated murder case." (Vol. 1, Ex.1, p.2).

10. Counsel indicated that it was explained that "the court is in possession of funds that are available for disbursement" and indicated that counsel wanted some assurance that the money was available before "sign[ing] on."

11. The Court acknowledged that the monies were "in control of the court" (Id.), and indicated that even though she was not the judge on the conservatorship "no judge is barring [Mr. Ahmed's] use of assets, if they are to be used for the retention of counsel." (Id.). The Court went on to inform that she believed that there was at least $30,000.00, and the conservator "definitely believed that [Mr. Ahmed] had as much as 40 maybe 50 [thousand dollars], that he could put toward his own representation." (Id., p.3).

This statement by Judge is factually false,as Probate Judge never entered any order releasing the funds in conservatorship to Ahmed or to any of the counsels who wanted to represent Ahmed.

At arraignment Ahmed specifically said that he has his own funds and was talking to 3 attorneys to retain them for representation.

12. Subsequently, during his arraignment on 10-13-1999, Mr. Ahmed acknowledged to the court that he was in the process of acquiring his own legal counsel. (Vol. 1, Ex.2, p.4). A public defender was assigned in the interim, because arraignment Judge and Prosecutor knew about the Judge sargus's non-Jurisdictional order on 9-13-99 in abated divorce civil case, restraining Ahmed use of his own funds.

13. On 11-1-1999, in the ~~probate~~ wrongful death case of Thomas A. Hampton, Admrx.[1] v. Nawaz I. Ahmed, ~~Probate~~ Case No. 99-CV-403, the court acknowledged that Mr. Ahmed had requested funds to be used as legal fees. (Vol.1, Ex.3, p.6). Ahmed was immune from service of any civil process during the pendency of criminal case, brought to county to answer criminal charges, but lived in Franklin County, Columbus, Ohio. ORC 2963.23 and 2331.11;

14. On 11-15-1999, during a pre-trial motion hearing, the public defender informed the Court that they believed that Mr. Ahmed was still planning to secure private counsel. (Vol.1, Ex.4, p.2). The Court noted that there was a scheduled hearing "this week" "to address the freeing up of [Mr. Ahmed's] assets." (Id., p.4).

15. On 11-23-1999, in the civil wrongful death case before Judge Solovan II, the issue of a prejudgment attachment of marital assets was discussed. Civil Counsel for Mr. Ahmed indicated that discussions were underway to gather all assets under the jurisdiction of the Ohio court, and to reserve approximately $20,000 for the Estate, but allow for the rest to be available for Mr. Ahmed to consider securing private counsel and experts to prepare for his criminal trial. (Vol.1, Ex.6, pp.8-9). All funds were only of Ahmed and thus not "marital assets", which requires such determination if divorce was granted by court.

16. As civil counsel indicated, Mr. Ahmed, "does want to be assured that that money will be available for him to hire counsel, experts combination investigators, whatever. . ." (Id., p.24). Mr. Ahmed agreed to allow all his assets to be consolidated within the county, and allowed for monies to be set aside to protect the Estate, and asked only enough control such that "I will make sure that those funds are only used by my hired legal counsel." (Id., p.27).

17. Civil ~~counsel~~ court pointed out to Mr. Ahmed that it was not necessary for him first to discharge his public defender prior to hiring private counsel. (Id., p.33). It was a trick to impose county Public Defenders upon a non-indigent.

18. Mr. Ahmed expressed concern that Judge Sargus would not release the remaining funds for his criminal case. (Id., pp. 36-38), and asked for the placement of a 'guardianship' over the funds to allow him to hire his own counsel. (Id.). It proved to be true as evident from court record.

19. Judge Solovan II, having resolved the Estate's concerns in the ~~wrongful death case,~~ civil case 99-CV-457, indicated that beyond his civil cases, it was placing no restraints upon what Mr. Ahmed did relating to his funds. (Id., pp. 38-39). All matters were then stayed pending outcome (For wrongful death, the statute do not click to run before criminal conviction when death was claimed to be murder. So no claim for attachment of funds was filed in case 99-CV-403)

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[1] Mr. Hampton was the administrator of Mr. Ahmed's deceased wife's estate, which had filed a wrongful death action against Mr. Ahmed. (Vol.1, Ex.3, p.3). The Pre-Judgment Attachment was seeked and given in case 99-CV-457 on the faulty ba-sis and sole basis that Ahmed had more funds than his wife. Had divorce been granted, she may have claimed or granted the difference of $ 20,000 from the funds of Ahmed. But such claim could only be valid if assets were divided under family law during the divorce action, which was not. So Estate Administrator dismissed the case and attachment when Judge Solovan could not show his patent and unambiguous jurisdiction to Ahmed's assets.

of the criminal case. (Id., pp. 41-42). The Judge stated "I really don't have any control over what Mr. Ahmed does with his other money at this point." (Id., p.46). See Collins v. Setka, 81 Ohio St.3d 506 about wrongful death due to murder.

20. On 11-29-1999, the prosecutor acknowledged that it was clear from the civil hearing that Mr. Ahmed "is not indigent," and that he has "substantial assets." (Vol.1, Ex.7, p.7). It was indicated that there were "dozens of attorneys available and qualified" to represent Mr. Ahmed. (Id.).

21. The public defender informed the Court that the NGRI issue would be addressed "when private counsel is hired" and sought to preserve the issue for private counsel to deal with. (Id., p.6). The Court asked for information as to the extent of Mr. Ahmed's assets noting that retention of the public defenders was in fact dependent upon the amount of those assets. (Id., p.7).

22. On 12-6-1999, during a discussion of his speedy trial rights, Mr. Ahmed again complained that he still did not have access to his financial resources. (Vol.1, Ex.8, p.4).

23. On 2-7-2000, at a hearing subsequent to the running of his speedy trial time, the Judge asked for an Affidavit as to Mr. Ahmed's financial assets, which had not yet been provided[2], and asked that it be submitted within 7 days. (Id., p.12). The Court indicated to Mr. Ahmed's counsel that "upon receipt of a financial affidavit, we can review where and how the defendant's assets can be spent to compensate the public defender's office. . . ." (Id., p.13). [3]

24. Mr. Ahmed questioned the ruling indicating that he should be permitted to first hire his own lawyer before the Court considered using his monies to pay the public defenders. (Id.). The Court tersely told Mr. Ahmed to "be quiet," and informed him that he hadn't hired anyone to date, told him that he "was fortunate" to have two such experienced defense attorneys, and indicated that "I don't want to hear about how you have a right to hire someone, because I have waited for four months for someone to appear in this case.

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[2] Mr. Ahmed indicated that such an Affidavit had not been submitted because civil Judge Solovon had placed a gag order on all parties as to any discussion about the financial aspects of the wrongful death case and prejudgment attachment. (Vol.1, Ex.9, p.12).

[3] This is confusing given that Doc. No. 55, notes that on 2-16-00 "Lead counsel submitted the defendant's financial affidavit to the court for review."

Judge Solovan lifted his gag order, a copy of which was filed in the crminal case. The Affidavit filed did not show that Ahmed was an "indigent", as also evident from Judge sargus ordering Ahmed on 3/9/00 to Pay $ 10,000 to Public defenders, $ 17,425 for DNA tests on 6/02/2000 When Ahmed saw no reason for retesting the same samples as tests were inadmissible due to lack of Probability Statistics for Asian Population, a majority population of the world and also Ahmed wanted all items, evidence, blood samples taken from home to be supressed as Police entries were without any search warrant. No exception for muder secene.

If you have someone, that's wonderful, but if you don't, we must get on with the litigation." (Id., p.14).

25. Mr. Ahmed suggested to the Court that the order that refused to allow any access to his money until an Affidavit giving an exact accounting of those assets was provided, had been preventing him from securing counsel. "I cannot hire counsel, because I cannot give money to them. I cannot commit it. That's what the order says. " (Id., p.14).

26. The Court countered with the advice that if Mr. Ahmed wanted to hire an attorney he should have the attorney tell the court that "they're coming." (Id., p.15). In response to Mr. Ahmed's previously filed motion to appoint a guardian over the funds to allow him to access the monies to hire a counsel, the Court indicated that the motion had cited a civil ~~case~~ rule, overruled the motion and indicated that "[t]here will be no guardian ad litem." (Id.).

27. Discussing the Affidavit requirement further, Mr. Ahmed told the Court that he did not have access to any of his financial records, and as a result had no specific figures to provide. He indicated that he had sought a guardian ad litem to also help him out in getting that information. (Id., pp. 23-24). Mr. Ahmed told the Court that all the financial information presented in the civil case had not come from him, but rather from ~~court~~ estate Admin personnel. (Id.).

28. When the Court then suggested that a guardian~~ship~~ at litem could be appointed under the ~~criminal~~ ~~Probate~~ court's control, Mr. Ahmed expressed concern about the amount of monies that would be needed to pay for the guardianship, and further expressed concern whether there would be sufficient monies left over to properly compensate counsel of his choice. (Id., pp.25-26). The Court told Mr. Ahmed that "[i]f you're going to have counsel *through this court*, you're going to let me know what you're [sic] finances are." (Id., p.26). Court was adjourned. Ahmed never ever asked Trial Court to appoint any counsel for him. He alway asked for the removal of court imposed counsels as he was non-indigent.

29. On 2-14-2000, Mr. Ahmed's public defender presented the Court with a financial disclosure statement. (Vol.1, Ex.10, p.3). Affidavit also did not Prove "indigency" even though Trial Court laked Patent Jurisdiction to compell a non-indigent to file Affidavit.

30. The Court informed the public defender that they should assume that they would not be replaced by private counsel. (Id., p.16). The Court acknowledged a trial date of the following week. (Id.). Court can not impose Public Defenders to represent a non-indigent who never asked court to appoint any counsels. ORC 120.15(D); 120.05; Crim. R. 44;

31. On 4-19-2000, a hearing was held in the Belmont County Jail to discuss the release of funds in conservatorship of Mr. Ahmed in the case of In the Matter of Conservatorship of Nawaz Ahmed, No. 00 GD 49. (Vol.1, Ex.12). The discussion was about paying the attorney fees of civil counsel. Judge Costine noted that on March 28, 2000, Judge Sargus had ordered that the conservatorship not be terminated "until the happening of certain events." (Id., p.17). Jurisdictional issues are never waived in any stage. Conservatorship was illegal and established without any consent by Ahmed and without any hearing or Notice to Ahmed. Ahmed being non-resident of Belmont County, brought after arrest/extradition was immune from any civil process, including to establish conservatorship. Probate court orders and Judge Sargus orders lackeD Patent and unambiguous jurisdiction to control the funds of Ahmed.

32. Mr. Ahmed indicated that he had written Judge Sargus asking why he was unable to "get funds for anything else." (Id.). Civil Counsel Sustersic for Mr. Ahmed indicated that Mr. Ahmed wanted the conservatorship terminated so that he could have access to his own funds. The Court declined to terminate the conservatorship in order to honor Judge Sargus's order and her stipulation that he "deposit $10,000.00 with the Clerk of Courts, [sic] ~~permitted to use~~ to comply that of his funds for the ~~retention of counsel~~ public defenders, and upon happening of that event or those events then the conservatorship may be terminated." (Id., p.18).

33. Mr. Ahmed questioned how the funds were going to be distributed into his account and noted that if the Court continued to freeze his accounts until the questions he had raised as to the legitimacy of the fees being requested by his civil attorneys, he did not have the money available to hire attorneys to represent him in the criminal case. Moreover, he was concerned that once all the civil attorneys fees and expenses were removed his funds would be further depleted. (Id., p.19).

34. Mr. Ahmed, in an effort to comply with Judge Sargus' order asked that the Court simply release $10,000.00 into his account so it could be given to the Clerk of Courts.

35. But civil counsel Sustersic informed the Court that Judge Solovan had agreed to unfreeze Mr. Ahmed's monies and that he (Sustersic) now had those monies in a separate bank account. Sustersic questioned whether he could legally dispurse any monies to Mr. Ahmed while the conservatorship remained frozen, which could not occur until Judge Sargus' order had been complied. (Id., p.20). This was a classic Catch-22 situation. Conservator was foolishly confusing issues by false statements.

36. Judge Costine told Sustesic that he would have to ask Judge Sargus or Judge Solovan for the answer. (Id., p.21). Probate Judge wanted Ahmed to obey non-Jurisdictional orders when he himself lacked jurisdiction over Ahmed or his funds outside Belmont County.

37. In the course of the hearing the Judge Costine also denied Mr. Ahmed his requested inventory and filing of the financial account because the conservatorship, given that it was not going to be terminated, was continuing and thus subject to change. (Id., p.19).

38. On 4-27-2000, in chambers, Attorney Harry Reinhart informed the Court that he had been contacted by Mr. Ahmed, who was interested in retaining him for representation. (Vol.1, Ex.13, p.3). Mr. Reinhart indicated that Mr. Ahmed had sufficient funds that he would consider accepting representation on a flat rate, but was concerned about the need for additional monies for purpose of costs and expenses necessary for effective capital litigation. (Id.).

39. Judge Sargus indicated that she had received the conservator's statement and believed that if Mr. Ahmed, after retaining Mr. Reinhart, exhausted his assets, "the County will pick up necessary defense services of a reasonable amount." (Id., p.4). The Court indicated that it was not tying up Mr. Ahmed's monies, and that the Court had only told the

NOTE: Common Pleas Court Judges lack jurisdiction in Probate matters and could not order Probate court, conservator or conservatee to do anything regarding funds or how those be spent or not to terminate conservatorship. See ORC 2101.24; 2111.021; Bedo v. McGuire, 767 F.2d 305 (6th Cir. 1985).

conservatorship court to hold onto $10,000.00 for purposes of paying the Belmont Public defender. (Id., p.5). Judge Sargus lacked any and all Jurisdiction over Probate matters, conservator or conservatorship and was acting illegally. ORC 2101-24;

40. On 5-9-2000, Mr. Ahmed filed a *pro se* motion entitled "Sherriff/ Jail Obstructing Hiring of Privat (sic) Counsel, " in which he complained to the Court about the "multiple ways" in which various jail procedures were "obstructing/ hindering in my efforts to hire a private counsel." These included Mr. Ahmed's inability to access Columbus telephone books to contact attorneys, the Jail administration's refusal to assist Mr. Ahmed in returning calls from attorneys and facilitating visits with prospective counsels, and the lack of sufficient visiting time allowed to make attorney visits viable. (See Doc. No. 63). Mr. Ahmed informed the Court that all these problems were delaying his ability to hire an attorney.

41. On 5-24-2000, in a telephonc conference between both Judges Sargus and Solovan II and Attorney Shumacher, it was indicated that Schumacher (and Mr. Riggs) had presented Judge Sargus with a letter indicating their intention to represent Mr. Ahmed in his criminal case. (Vol.1, Ex.14, p.3).

42. Judge Sargus informed Mr. Schumacher that she had appointed Atty. Pete Olivito to represent Mr. Ahmed and had frozen $10,000.00 towards that end. (Id.). The Court informed that Schumacher was to enter a Notice of Appearance before a pretrial conference sheduled for the following morning, the money would be released to him (Schumacher). It was indicated that Schumacher was agreeing to represent Mr. Ahmed for $35,000.00.

Estate could not prove its rights to $20,000 and voluntarily dismissed Pre-Judgment attachment case 99-CV-457 when Judge's lacked Jurisdiction

43. Judge Sargus also informed that beyond the $20,000.00 being kept pursuant to the attachment proceedings on behalf of the Estate, that there was money in the conservatorship and an additional $50,000.00 that had been acknowledged in other accounts, not as yet accounted for. The Court indicated that those monies needed to be expended first before the $20,000.00 would be able to be used by Mr. Ahmed. (Id., pp.4-5). These conditions upon funds funds scared the counsels away.

44. Judge Solovan clarified that he (Judge Solovan) thus had the ability to release some funds to make up Schumacher's retainer, that he needed to confirm the status of the $50,000.00 (verified as to the accounts locations but as yet unaccounted for) but that he was not going to release $20,000.00, which was to be held for the Estate. (Id., p.6). The disonissal of case 99-CV-457 when Judge Solovan failed to show Jurisdiction, proved illegality.

45. Judge Solovan II indicated that he was aware that at least $13,500 of those other monies was readily available as cash. Judge Solovan lacked Patent and unambiguous Jurisdiction over any funds of Ahmed as proven by dismissal of case.

46. Judge Solovan indicated that as of 4-7-2000, he had entered an order on Case No. 99-CV-4574 403 making funds available to Mr. Ahmed's criminal defense and to be paid directly to Mr. Ahmed's criminal attorney upon notice. (Id., p.10).

Judge Solovan lacked patent and unambiguous Jurisdiction to claim that Ahmed's funds were "marital assets" when Judge could not grant divorce, after the death of wife, and dismissed pre-judgment attachment when hewas challanged to show Jurisdiction in case 99-CV-457.

47. Judge Solovan indicated that he believed that the funding institutions of the unaccounted for accounts was occasioned by Mr. Ahmed's failure to give permission to his appointed conservator, Mr. Sustersic, to do so. (Id., p.11). However, it was mentioned that Mr. Ahmed had recently fired Mr. Sustersic because Mr. Ahmed "wasn't satisfied with the way Mr. Sustersic was handling the conservatorship." (Id., p.10).[4]

48. The Judge indicated that with the anticipated appointment of Mr. Olivito, the trial date was now going to be in October. The Judge indicated again that if the "relatively large amount" of money in the three unaccounted for accounts is clarified, then the Court would be willing to release the other monies for hiring counsel." (Id., p.17).

49. Judge Solovan II clarified that he wanted an accounting of the monies available in the other three accounts because "those are the funds that have to be used to pay you guys before I'm going to release the $20,000.00." (Id., p.18). He indicated that he had expected that the conservatorship was going to provide him with this information, but that Mr. Sustersic had not done so. (Id., p.19).

50. On 6-2-2000, the Court indicated that Mr. Olivito and Mr. Nichelson had in fact been *appointed* to represent Mr. Ahmed. (Vol.1, Ex.15, p.3). Olivito informed the Court that Mr. Ahmed had specifically informed him Attorneys Schumacher and Riggs had agreed to represent Mr. Ahmed for a retainer of $35,000.00. Olivito had also received a letter from the attorneys confirming this. (Id., p.5).

51. Mr. Ahmed had also asked Olivito to convey that he wanted the monies in the conservatorship released unconditionally to these attorneys for purposes of their being retained. (Id.).

52. When the Court then informed Olivito and Mr. Ahmed that it had been informed that Attorney Riggs had declined the representation, Mr. Ahmed informed the Court that Mr. Riggs had indicated that he was declining representation because the monies needed to be deposited in the conservatorship and withdrawn piecemeal from that account and not released outright to the attorneys as Mr. Ahmed had requested. (Id., p.6).

53. The Court indicated only that it had been informed that Schumacher and Riggs were not accepting the representation and that the trial was going ahead. (Id., p.7). (This is reflected in Doc. No. 98, dated 6-14-2000).

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[4] In the 4-19-2000 conservatorship hearing Mr. Ahmed had raised serious questions about several billing entries and other proprieties of Mr. Sustersic's expenditures. (See Vol.1, Ex.12). Ahmed had no funds in Belmont County, and was never served by the Probate court and no hearing was held before Probate Judge created the conservatorship, in patent and Unambiguous lack of Jurisdiction, involving funds of non-resident Ahmed, who was brought to Belmont County under arrest and could not be served any civil process before the criminal case ends.

ORC 2963.23 and ORC 2331.11; Compton v. Wilder, 40 OS 130(1883);
Before 4-19-2000 and in that hearing Probate Judge and Conservator were were served a Notice of Termination of Conservatorship under ORC 2111.021;

There is no murder scene exception to warrant requirements and Because Police never obtained any search warrants to take item from the home. Ahmed never asked for or agreed to retesting of any samples for DNA, because DNA evidence was inadmissible due to lack of statistical probability and Ahmed wanted all evidence from home be supressed.

54. Additionally, on the same the Court entered an order directing the Clerk of Court to pay Cellmark Diagnostics, (apparently based upon testing ordered by appointed counsel), the sum of $17,425.00. The entry also ordered Mr. Ahmed to pay that same amount to the Belmont Clerk of Court. (Doc. No.94). This further depleted funds available for the hiring of counsel of choice. All such entries were made without any hearing and without any prior consent of Ahmed for DNA tests.

55. On 6-9-2000, Attorney Nichelson was allowed to withdraw and Attorney Hershey was appointed to replace him. (Doc. No.97). Nicholson was illegally repre-senting a known non-indigent. See RC 120.15(D) and 120.05;

56. On 9-29-2000, the Docket reflects that Mr. Ahmed sought clarification of the Court's previous orders concerning the conservatorship of his accounts. Included in the docket entry is the ruling that 1) the conservatorship could be terminated upon request but only "*with the approval of the Belmont County Probate Court*"; that the proceeds were to be placed into escrow in an amount to be determined "after payment of outstanding fees of the conservatorship"; that those remaining fees could be used to hire counsel but "the costs of appointed counsel will also be a charge upon the balance remaining"; that those remaining funds "will not be released directly to the defendant"; but would only be released by the court "upon verification that [counsel] has been retained." (Doc. No. 105).

57. On 9-28-2000, the Court docketed an entry indicating, in part, that it had been apprised that "the inventory filed by the conservator in this matter *on 4-3-2000* shows funds in the sum of $57, 234.25." (Doc. No. 122). Even though Mr. Ahmed had no access to these monies, the docket entry went on to indicated that "However, the most recent accounting of these funds shows a balance of $18,491.50. (Id.)

58. The docket entry also indicated that there was money in three accounts that Mr. Ahmed would not permit the conservator to have access to which "would total more than what the defendant may need to hire legal counsel." (Id.). However, in Docket No.123, the Court indicated that it had appointed counsel to represent Mr. Ahmed, and that Mr. Ahmed had again notified the Court "of an intention to retain counsel *if funds are released.*" (Doc. No. 123). Remarkably, the entry indicates the Court then ordered that Attorneys Olivito and Hershey "shall represent Defendant in Court proceedings involving the release of funds..." (Id).

59. On 10-23-2000, counsel Hershey argued a motion moving the Court to release the restraining order on Mr. Ahmed's personal funds. He indicated that Judge Solovan II had released his prejudgment attachment, and indicated release of the funds was being sought so that they might be released to Attorney Riggs "who has indicated to this court by previous letter, and I have a *current* letter from him I could submit, also, that he is willing to undertake the defense of Mr. Ahmed." (Vol.1, Ex.17, p.3). It was asked that the monies be released to the escrow account of Mr. Riggs, and Attorney Hershey agreed that

if Mr. Riggs was retained he and Mr. Olivito would do everything they could to bring retained counsel up to speed. (Id., pp.3-4).

60. It was also acknowledged that $~~7500.00~~ 6954.34 in cash and $7500.00 in travellar checks, which had been taken off Mr. Ahmed at the time of his arrest and had been in the custody of the ~~prosecutor~~ sheriff's office was also available for release. (Id., p.4). The Court indicated that upon Mr. Riggs appearing before the Court, she would release the funds. (Id., pp. 4-5). Judge on record promised to release funds but over the phones told Mr. Riggs and Shemaker, that funds were not to be released.

61. Although the record seems unclear as to the status of this anticipated representation, on 11-9-2000, Mr. Ahmed raised numerous complaints about his appointed counsel to Judge Sargus. Included was the complaint that his counsels had misrepresented "the Columbus attorneys," misrepresented his contractual arrangements and otherwise discouraged their representation of Mr. Ahmed. (See Id., pp. 16-21). See Ex. I and 2, letters from Attorney Shoemaker stating difficulties in obtaining funds as sole reason for not representing.

62. Mr. Hershey subsequently indicated that he believed that the Columbus attorneys, Schumacher and Riggs, had agreed to represent Mr. Ahmed upon condition that he sign a speedy trial waiver, which Mr. Ahmed refused to do. (Id., p.46). It was indicated that Mr. Riggs had called Attorney Hershey later on and indicated that they were now not interested in taking the case. (Id., p.47).

63. On the same date, the Court made a docket entry indicating that because prospective counsels Rigg and Schumacher declined representation, "this Court's order barring and restraining defendant from depleting assets to be used in his defense is hereby reinstated." The entry also indicated that Mr. Ahmed "is advised that all assets within court custody will be preserved to defray costs of his defense." (Doc. No. 133). The entry noted that "unless and until" someone other than appointed counsel appeared in the case, Mr. Ahmed's assts would "remain under court monitorship." (Id.).

64. On 11-27-2000, in chambers, attorney Bob Suhr sought verification whether the Court would entertain a 'partial indigency' case in which if he was retained, the Court would provide normal support services as it would in any death penalty case. (Vol.1, Ex.19, p. 3).

65. The Court indicated that first, Mr. Ahmed "would have to pay the two attorneys who had been working on the case since last summer who are appointed to even know [sic] what's left in his asset fund." (Id.). The Court clarified that Mr. Ahmed would first "have to make payment to the [court-appointed] people that have already dedicated six months of service to him." (Id., p.4).

66. Upon hearing that, Attorney Suhr remarked, "Well, then, there's no point in me sticking around." (Id.). The Court also indicated that "[h]e's got close to 50, 60 thousand, so something would have to go to the public defender attorneys, two who have worked in the case for the past six months." (Id.).

67. On 12-8-2000, in chambers without Mr. Ahmed present, Attorney Joe Carpino made inquiry about the availability of funds for the representation of Mr. Ahmed. The Court again informed that although there was "assets in the range of $50,000.00 and up," "the services of the attorneys who have been involved, they have to be paid some of it . . . but if they were to be discharged I will require him to make a partial payment for their services." (Vol1, Ex.20, p.4).

68. The Court noted that "they have done an awful lot of work." (Id.). The Court also indicated that the January 15, 2001 trial date "is a firm trial date." (Id., p.5).

69. On 12-13-2000, the Court docketed an entry that reflected Attorney Carpino's effort to identify himself as either *pro bono* counsel for Mr. Ahmed or *amicus curiae* counsel on behalf of Mr. Ahmed. The Court denied both ruling that Attorney Carpino had no standing to file as an amicus curiae and that he was "without standing to proceed." (Doc. No. 141). The entry ruled that Attorney Carpino must either identify himself as counsel for Mr. Ahmed or file a proper motion for leave to proceed as *amicus curiae*. (Id.)

70. On 12-13-2000 Mr. Ahmed filed a *pro se* motion. (Doc. No. 142), but the Court ruled that in order to have any motion ruled upon, Counsel should file the motion. (Id.).
on 12-21-2000

71. On 12-28-2000 Attorney Carpino did file a motion to appear *amicus curiae*. (Doc. No. 165). The docket entry on 01-04-2001 indicated that Mr. Ahmed had also filed a *pro se* motion to discharge Attorneys Hershey and Olivito, and clarified that Attorney Carpino had filed a motion "to represent Defendant Ahmed in an amicus curiae status, a joint counsel, as 'pro bono' counsel and in any other capacity he has designated himself." (Doc. No. 182).
on 12-21-2000 by a written filing and again

72. On 1-2-2001, Mr. Ahmed indicated to the Court that he and Attorney Carpino *did* sign a contract and that Carpino was retained "as selected counsel from effectively 22nd of December." (Vol.21, p.9).

73. The Court indicated that inasmuch as Mr. Ahmed had filed a motion to disqualify the Court[5], the Court would not presently rule upon whether to accept the representation of Mr. Carpino. (Id., p. 10).

74. The question was raised whether Mr. Ahmed could be considered both *pro se* along with purported represented counsel Carpino, (Id., p.11), to which the Court outright refused. (Id., p.12). Mr. Ahmed later mentioned his *pro se* filing of 10-29-2000 in which he had asked for the removal of Attorney Hershey. (Id., p.14). The Court reminded Mr. Ahmed

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[5] Doc. No. 203 indicated that on 1-16-2001 the Affidavit of Disqualification was denied.

asked

(same Judge was imposing counsels when Ahmed/for self-repre-sentation in mitigation phase. Was not that hybrid representation??).

that it had ruled denying that motion, and reiterated that Ohio does not allow 'hydrid representation' (Id., p.16). This is false statements when many cases show otherwise including State v. Keenan, (State's Exhibit No. 9) and others.

75. Mr. Ahmed, told the Court that he was desirous of "intelligently and knowingly exercis[ing] my option under Rule 44 to not to be represented by the court appointed attorneys, and hereby ~~to~~ discharge them because I retained Attorney Carpino as my selected counsel, and I, I want to be represented by him from this point on." (Id., p.17).

76. The Court again deferred ruling until after Mr. Ahmed's affidavit of prejudice was to be ruled upon by the Supreme Court. (Id., p.18).

77. The Court indicated however, that the trial date "is a firm date." (Id.). When Mr. Ahmed then informed the Court that he wanted his appointed counsels to be aware that he had filed a civil rights lawsuit against them, the Court threatened him with contempt for speaking out of turn. The proceedings were recessed. (Id., p.19).

78. On 01-17-2001 Mr. Ahmed filed a Motion to release his personal possessions to Attorney Carpino or his brother and/or sister-in-law. (Doc. No. 206-A).

79. On 01-18-2001, the Court denied Mr. Ahmed's motion to discharge his appointed counsel. (Doc. No. 209).

80. On 01-19-2001, Mr. Ahmed filed a motion to "waive right to appointed counsel" and the docket entry indicates that Mr. Ahmed advised the Court that he "wished to fire appointed counsel and retain his own counsel." (Doc. No.210). The entry also indicated that Mr. Ahmed could "at any time hire counsel."

81. On 01-31-2001, the Court ordered that "any financial institution of any kind . . .or any other entity which holds money or bonds or Nawaz Ahmed . . . is hereby ordered and commanded to hold such funds until further order of the Court. Such institutions are prohibited from permitting a withdrawal of any kind, in any amount, unless directed by this Court." (Doc. No. 231).

Legal Analysis

82. Attendant in the Sixth Amendment right to counsel is the right to secure counsel of one's choice. *Linton v. Perini*, 656 F.2d 207, 208 (6th Cir. 1981), *cert.* denied, 454 U.S. 1162 (1982) ("It is axiomatic that in all criminal prosecutions the accused enjoys the right to have assistance of counsel for his defense, and implicit in this guarantee is the right to be represented by counsel of one's own choice.") (citing *Powell v. Alabama*, 287 U.S. 45, 53 (1932)). All three Common Pleas Judges lacked Patent and Unambiguous jurisdiction over the private funds of Ahmed, and any civil process was ineffective because Ahmed was a non-resident of county, brought by extradition.ORC 2963.23, 2331.11; Probate Judge lacked Jurisdiction under ORC 2101.24 and 2111.021 and Judge Sargus lacked Jurisdiction over probate matters or under section 120.01 et seq, to demand any Affidavit when Ahmed never claimed indigenct at arraignment and Judge could not prove his jurisdiction over divorce case or civil cases.

"A Trial Judge has no legal duty under any Rule of Court,Statute, or caselaw or Constitution in Ohio to appoint counsel for non-indigent". State Ex.rel. Wells v. Kennessey, 37 Ohio St.2d 37,306 N.E.2d 421;

83. The right to counsel of choice is not absolute, however, and "may not be used to unreasonably delay trial." *Id.*, at 209. The Supreme Court has reiterated this principle on frequent occasions. *See, e. g., Chandler v. Fretag*, 348 U.S. 3, 9 (1954); *Glasser v. United States*, 315 U.S. 60, 70 (1942). Ahmed never asked for delay of delay of Trial and objected to continuances and wanted speedy Trial.

84. There is no evidence in this record that Mr. Ahmed's continued request to hire his own counsel was ever asserted for unreasonably purposes of delaying his trial. As noted, Mr. Ahmed repeatedly asked for a speedy trial and continuously refused to sign any speedy trial waivers.

85. The right to counsel of one's choice stems largely from an appreciation that a primary purpose of the Sixth Amendment is to grant a criminal defendant effective control over the conduct of his defense. As the Court previously has stated, the Sixth Amendment "grants to the accused personally the right to make his defense," because "it is he who suffers the consequences if the defense fails." *Faretta v. California*, 422 U.S. 806, 819-820 (1975).

86. An obviously critical aspect of making a defense is choosing a person to serve as an assistant and representative. In addition, lodging the selection of counsel with the defendant generally will promote the fairness and integrity of criminal trials.

87. The right to counsel of choice is not absolute. When a defendant's selection of counsel, under the particular facts and circumstances of a case, gravely imperils the prospect of a fair trial, a trial court may justifiably refuse to accede to the choice. Thus, a trial court may in certain situations reject a defendant's choice of counsel on the ground of a potential conflict of interest, because a serious conflict may indeed destroy the integrity of the trial process.

88. However, the trial court must recognize a presumption in favor of a defendant's counsel of choice. This presumption means that a trial court may not reject a defendant's chosen counsel, even on the ground of a potential conflict of interest, absent a showing that both the likelihood and the dimensions of the feared conflict are substantial. No such conflict is evidenced in this record.

89. Generally, prejudice need not be demonstrated where a defendant is denied the Sixth Amendment right to counsel of the defendant's choice. See *People v Johnson*, 215 Mich App 658, 547 NW2d 65 (1996) and cases cited therein.

90. A trial court's decision regarding a request for new counsel is governed by an abuse of discretion standard. *State v. McNeill* (1998), 83 Ohio St.3d 438, 452. "The term 'abuse of discretion' connotes more than an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 16 O.O.3d 169, 173, 404 N.E.2d 144, 149.

When all Judges lacked Jurisdiction over the funds of Ahmed, their orders were illegal and unfairly denied Ahmed use of his own funds to plan his defense, and speedy trial. Jurisdictional Issues are never waived and can ne raised at any stage, in any court.

"Common sense as well as the Law compells a conclusion that Trial Judge has no authority to order a party to retain legal counsel."
Svoboda v. City of Brunswick, 6 Ohio St.3d 348(Ohio 1993) at 650.
Trial Judge just imposed appointed counsels upon Ahmed, a non-indigent.

91. The failure of the trial judge to facilitate and honor Mr. Ahmed's repeated requests to hire his own counsel constituted an unconstitutional violation of his Sixth Amendment right and an abuse of discretion. Court may not compell a party to submit to Judicial power not possesed by that Tribual. Moreland, 132 Ohio St. 71;

PROPOSITION OF LAW NO. 2

Violation of Constitutional and Statutory Rights to Speedy Trial

Factual Basis

92. Mr. Ahmed was indicted on 10-07-1999. (Doc. No.1). An arrest warrant was issued and Mr. Ahmed was served with same on 10-08-1999. (Doc. No.2). Trial commenced in January 2001. At no time did Mr. Ahmed either orally or in writing consent to a waiver of his Speedy Trial rights. Mr. Ahmed repeatedly and affirmatively demanded his right to a speedy trial.

93. Mr. Ahmed was extradited to Ohio from New York on October 07, 1999. This started the statute of limitations imposed by O.R.C. c 2963.30 (Article IV(c)). Therefore, Mr. Ahmed had to be tried within 120 days of arriving in Ohio in order to comply with this statute.

94. On 11-29-1999, and anticipating that Mr. Ahmed was going to hire private counsel, Mr. Ahmed's public defender declined to waive Mr. Ahmed's speedy trial right. (Vol.1, Ex.7, pp. 9-10). After discussion, it was agreed by Mr. Ahmed only to a four month delay of the trial. (Id., p.11). (Speedy trial would have stopped running on April 11, 2000, as per Doc. Entry 25.) (But was of no effect as Ahmed withdrew any consent and refused to sign a waiver).

95. Subsequently, on 12-6-1999, it was clearly stated that Mr. Ahmed desired to withdraw his request for even that four month continuance, and counsel indicated to the Court that "he has advised us today that he does not wish to waive, or in writing, [sic], a speedy trial." (Vol.1, Ex.8, p.3). Mr. Ahmed told the Court that he had not previously understood that he was waiving his rights, even for the four month period. (Id., p.4).

96. The Court then acknowledged that she was "going to guard your speedy trial rights and we're going to start your case." (Id., p.5). The date for trial was set for January 3, 2000. (Id.). See also Doc. No. 24, reflecting colloquy and setting trial date.

97. On 12-28-1999, appointed counsel, without consent of Mr. Ahmed, and without consulting Mr. Ahmed on the record, filed a motion to continue the trial date. (Doc. No.39). A hearing was set for 12-30-1999. On 12-30-1999, the Court indicated that because no one had asked for a hearing on the motion that the entry setting the motion for hearing was "for naught." (Doc. No. 41).

See, a seperate Affidavit No.1 by Ahmed with documents Proving that representation by County Public Defender of a non-indigent was "Illegal, Farce and Sham"; thus PD lacked Authority to waive speedy Trial.

98. The Court also granted the request and docketed that "speedy trial time lost as a result of defendant's continuance is charged to the defendant." (Doc. No.43).

99. At no time was Mr. Ahmed ever consulted on the record as to his desire to waive his right to a speedy trial. No written waiver or oral colloquy is reflected in the Docket or record evidencing any waiver of speedy trial rights by Mr. Ahmed.

100. It is generally accepted that waivers of certain constitutional rights should be made in open court. *See e.g., Brady v. United States*, 397 U.S. 742, 748 (1970) (right to trial); *Johnson v. Zerbst* 304 U.S. 458, 465 (1938) (right to counsel).

101. The next hearing of record is 2-7-2000. (Vol.1, Ex.9, p.1). After addressing Mr. Ahmed's concern that his monies were not accessible to him in order to hire counsel, after giving Mr. Ahmed another week to present an Affidavit as to the extent of his assets, after telling the public defender that they should assume that they were going to be Mr. Ahmed's counsel, the Court encouraged defense counsel to ask for a continuance of the trial date. Counsel complied, (Id., Ex.9, pp. 19-20), and the Court granted the motion. (Id., p.22).

102. On 2-14-2000, after Mr. Ahmed's public defender produced a financial disclosure form for the court, the Court, without discussion with Mr. Ahmed, continued the trial date until July 10, 2000, to allow appointed defense counsel more time to prepare. (Vol.1, Ex.10, pp. 4-5).

103. On 5-24-2000, in a telephonic conference between both Judges Sargus and Solovan II and Attorney Shumacher, it was indicated that Mr. Schumacher had presented Judge Sargus with a letter indicate his intention to represent Mr. Ahmed in his criminal case. (Vol.1, Ex.14, p.3). The Judge indicated that he had recently appointment Mr. Olivito to represent Mr. Ahmed and the trial date was now going to be in October. (Id., p.13).

104. Judge Sargus stated that "each time that this case has been continued, Mr. Ahmed has entered both his written and oral objection and cited speedy trial as a problem, over the representations of his counsel." (Id.).

105. Mr. Shumacher indicated that if he was going to accept being retained in the case that he would insist upon a waiver of speedy trial being signed. (Id., p.14). This never occurred.

106. On 6-2-2000, the Court indicated that Mr. Olivito and Mr. Nichelson had in fact been *appointed* to represent Mr. Ahmed. (Vol.1, Ex.15, p.3). Given their recent appointment, Mr. Olivito indicated that his earliest availability for trial would be January 2001. (Id., p.4).

107. On 9-6-2000, Atty. Olivito read a motion from Mr. Ahmed indicating that he had "not been advised by the court or his court appointed counsel, public defender, as to how and

when to raise objections to continuance of the trial date in order to preserve the right of speedy trial. In fact, public defender has been very hostile when I sought that information and asked questions." (Id., p.18).

108. The motion indicated that "defendant was never consulted prior to making such motion for continuance of trial date by his court appointed counsels. Defendant was never advised by the court of these rights and how to preserve them by the court." (Id., p.19). He indicated that he "is not even now clear as to how to preserve his certain rights for not having legal background, or education or training, or training from counsels or the court." (Id., p.20).

109. The Court, indicated that it was "precisely because the defendant is not trained in the field of law, nor is he qualified to try a death penalty case that the court, to protect him, relies upon counsel." (Id.). The Court ignored the speedy trial issue, indicated that "motions *filed by counsel* will be heard by the court," and recessed. (Id.).

110. On 10-23-2000, counsel Hershey argued a motion moving the Court to release the restraining order on Mr. Ahmed's personal funds to hire Attorneys Schumacher and Riggs. He indicated that Judge Solovan II had released his prejudgment attachment, and indicated that release of the funds was being sought so that they might be released to Attorney Riggs "who has indicated to this court by previous letter, and I have a *current* letter from him I could submit, also, that he is willing to undertake the defense of Mr. Ahmed." (Vol.1, Ex.17, p.3).

111. On 11-9-2000, Mr. Ahmed raised numerous complaints about his appointed counsel to Judge Sargus. Mr. Hershey indicated that whereas attorneys Schumacher and Riggs had agreed to represent Mr. Ahmed, it was upon condition that he sign a speedy trial waiver Mr. Ahmed refused to do. (Id., p.46).

112. It was indicated that Mr. Riggs had called Attorney Hershey later on and indicated that they were now not interested in taking the case. (Id., p.47).

113. On 01-18-2001 Mr. Ahmed filed a *pro se* motion entitled "Motion to Remove Attorneys for Fabricated Defense and Not for Truth as Contained in Discovery." (Doc. No. 208). On page 3 of the motion, Mr. Ahmed complained that his appointed counsel had inappropriately waived his speedy trial rights "with full knowledge of the court" and noted that "Court and counsel did not exercise due diligence to bring this defendant to trial within a reasonable time." Mr. Ahmed also complained of the failure of the Court to allow him "leave to enter objections to all waivers, including waiver of <u>speedy trial right waiver by counsel</u> made without the knowledge of this defendant." (Id., p.4) (emphasis in original).

114. Mr. Ahmed also complained about the "Court's failure to advise this defendant of his rights and how to protect them and court appointed counsels failure to do the same." (Id.). He asserted that "[t]his defendant has the constitutional and statutory right to raise objections and assert claim that the speedy trial rights were not affirmatively waived." (Id.).

115. Mr. Ahmed's motion raised the issue of prejudice occasioned by the delay. "If the trial had proceeded on 12/7/1999 as scheduled the outcome of the trial would clearly have been in favor of this defendant. In fact proper action by defense counsel should have been to ask for dismissal for failure to provide discovery as almost nothing was provided/ discovered by prosecution before 12/7/12999. Now its clear that continuances have clearly benefitted to state at the deterement (sic) of defense."

Legal Analysis

116. In evaluating whether a constitutional right to a speedy trial has been denied, the Supreme Court has identified four factors that must be considered: the length of the delay, the reason for the delay, the assertion of the right by the accused, and any prejudice accruing to the accused. *Barker v. Wingo*, 407 U.S. 514, 530 (1972). *See also*, *Doggett v. United States*, 505 U.S. 647, 651 (1992). None of these individual factors is determinative of whether the state violated the defendant's constitutional right to a speedy trial. Instead, the courts must consider the four factors collectively. *Barker*, at 533.

117. However, in order to trigger this analysis, the defendant must allege that the interval between accusation and trial is "presumptively prejudicial." *Doggett*, 505 U.S. at 651-52, citing *Barker*, 407 U.S. at 530-31. The *Doggett* Court also noted that a delay approaching one year becomes "presumptively prejudicial." *Doggett*, 505 U.S. at 652 fn. 1.

118. In Mr. Ahmed's case the delay was in excess of one year and is therefore, presumptively prejudicial. *See also*, *Cain v. Smith*, 686 F.2d 374, 381 (6th Cir. 1982) (noting that the length of the delay acts as a "triggering mechanism."). In *Moore v. Arizona*, 414 U.S. 25 (1973) (*per curiam*), the Court held that under *Barker* a defendant need not, in every case, establish prejudice to his ability to defend on the charges at trial to establish a speedy trial clause violation. Rather, each of the factors must be considered. *Id.*, at 26.

119. In this case, there was a delay of ~~approximately~~ over one year. This was a sufficient length of time to trigger an inquiry into the other factors. *See Cain*, 686 F.2d at 381-2 (eleven and one-half month delay is excessive and is a factor to be counted against the government). A consideration of the other factors leads to the conclusion that Mr. Ahmed' speedy trial rights were violated. The continuances given to Public Defender who illegally pretended to represent a non-indigent, was violative of ORC 120.15(D) and representation provided was "Farce and Sham", rendering any purported waivers ineffective. State v. McBreen, 54 Ohio St. 2d 315 (Ohio 1978) citing Townsend v. — (1975), 15 Cal. 3d 774, 543 P. 2d 619 at 781.

120. It appears from the record that the delay in trial was occasioned by the trial court refusing to facilitate the release of Mr. Ahmed's available funds to permit him to secure counsel of his choice. Secondly, even assigned and appointed counsel informed the Court that Mr. Ahmed wanted to protect his Speedy Trial rights and the trial court stated that it would 'protect' Mr. Ahmed's speedy trial rights. Therefore, the delay was attributable to the government. Thus, the second factor under *Barker*, the reason for the delay, weighs in favor of Mr. Ahmed.

121. The third factor, the assertion of the right by the defendant, also weighs heavily in favor of Mr. Ahmed. Mr. Ahmed repeatedly and consistently asserted his speedy trial right. *Cf. Martin v. Rose*, 744 F.2d 1245 (6th Cir. 1984) (finding no speedy trial clause violation where there was a delay of almost two years, but holding that among the factors influencing the court's decision was the defendant's failure to "demand a speedy trial until five days before his trial." *Id.*, at 1252.).

122. Finally, *Moore* indicates that prejudice to the defendant is not talismanic. In this case, Mr. Ahmed consistently demanded his right to a speedy trial. This right was simply ignored by the Court and court-appointed counsel in spite of the fact that he was assured that the right would be protected. The Immigrant witnesses for defense moved, changed jobs, homes, phones, states, country, or died, as U.S. Sensus data show this population to be most mobile, thus defense was able to locate any witnesses for defense, prejudicing defense.

123. Additionally, Ohio recognizes both a constitutional and statutory right to a speedy trial. See, generally, *State v. King*, 70 Ohio St.3d 158, syllabus (1994). R.C. 2945.71 embodies the statutory right to a speedy trial and states in part, "a person against whom a charge of felony is pending shall be brought to trial within two hundred seventy days after his arrest." R.C. 2945.71(C)(2).

124. Moreover, Section 10, Article I of the Ohio Constitution and the Sixth Amendment to the United States Constitution embody the constitutional right to a speedy trial. *State v. Selvage*, 80 Ohio St.3d 465, 466 (1997). *See, also, Klopfer v. North Carolina*, 386 U.S. 213, 223 (1967) (applying the Sixth Amendment to the states through application of the Fourteenth Amendment).

125. The state must bring a person arrested and charged with a felony to trial within two hundred seventy days. R.C. 2945.71(C)(2). But if the accused remains in jail in lieu of bail solely on the pending charge, the statute mandates that each day count as three days. R.C. 2945.71(E). This is known as the triple-count provision.

126. When computing how much time has run against the state under R.C. 2945.71, the count begins with the date the state initially arrested the accused. R.C. 2945.71(C)(2); *State v. Bauer* (1980), 61 Ohio St.2d 83, 84.

127. Thus, both Mr. Ahmed's statutory and State Constitutional rights to a speedy trial were also violated.

PROPOSITION OF LAW NO. 3

The Sixth Amendment Right to Self-Representation at Trial.

128. Mr. Ahmed waived his right to counsel and attempted to proceed *pro se* during the trial phase of his capital case. Tr. 8-18 (January 2, 2001 pretrial).

129. The trial court refused, without any inquiry, to permit or accept Ahmed's waiver. Tr. 18. "You're not an attorney, Mr. Ahmed, please hold your silence." Tr. 18.

130. The trial court demonstrated that it would never consider Mr. Ahmed's request for self-representation no matter how many times, or in how many different ways, he asked. Tr. 19 (September 6, 2000) ("I appreciate that. It is precisely because the defendant is not trained in the field of law, nor is he qualified to try a death penalty case that the court, to protect him, relies upon counsel. Motions filed by counsel will be heard by this court.")

131. Undeterred by the misconduct of the trial court, Mr. Ahmed again asserted his right to self-representation. Tr. 4 (January 8, 2001).

132. The trial court addressed the issue simply by asking counsel if they were working on Mr. Ahmed's case. Tr. 4.

133. When Mr. Ahmed attempted to explain his situation to the trial court, the judge refused to listen to his statements. Tr. 27 ("You will be quiet now.").

134. Again the trial court denied Mr. Ahmed his Constitutional right to self-representation.

135. On January 19, 2001, Mr. Ahmed filed a pro se motion to

136. In *Faretta v. California*, 422 U.S. 806 (1975), the Court recognized that every criminal defendant enjoys the absolute right to make a knowing and intelligent waiver of the right to an attorney and to represent himself at trial.

137. All that is required is a knowing and intelligent waiver of the right to appointed counsel. *Id.*, 422 U.S. at 835. *See also United States v. Bowker*, 372 F.3d 365, 386 (6th Cir. 2004).

138. Mr. Ahmed clearly and distinctly expressed concern over the performance of every court appointed counsel. He was repeatedly denied access to his funds to secure counsel of his own choosing. *See* Proposition of Law No. 1.

139. After being rebuked by the trial court at every turn, Mr. Ahmed chose to defend himself rather than proceed to trial with attorneys he did not trust.

140. The trial court was Constitutionally obligated to honor this choice.

141. The failure to permit Mr. Ahmed to represent himself renders the subsequent trial Constitutionally invalid. *Id. See also McKaskle v. Wiggins*, 465 U.S. 168, 177 n. 8 (1984).

142. Mr. Ahmed's case demonstrates the fear expressed by the Court of the impact of the denial of self-representation.

143. "To force a lawyer on a defendant can only lead him to believe that the law contrives against him." *Faretta*, 422 U.S. at 835.

144. It is clear from the entire record of the proceedings that Mr. Ahmed operated under the belief that every person and entity involved in the trial was actively operating against him, including the court appointed attorneys.

145. Forcing Mr. Ahmed to proceed to trial and sentencing with appointed attorneys against his wishes only served to strengthen his fears about the fairness of the process.

146. Mr. Ahmed requested the right to self-representation before the selection of the jury, *see Robards v. Rees*, 789 F.2d 379, 383 (6th Cir. 1986). Nor was there a finding that the request was only a tactic designed to delay the proceedings. *Id. See* Proposition of Law No. 2.

147. The failure to permit Mr. Ahmed to defend himself deprived him of his right to conduct his own defense and due process. U.S. Const. Amends. VI, XIV; Ohio Const. Art. I, §§ 10, 16. This is a structural error and requires that this Court vacate Mr. Ahmed's conviction and remand his case for a new trial. *McKaskle*, 465 U.S. at 177-78 n. 8.

PROPOSITION OF LAW NO. 4

The Judge Presiding Over Mr. Ahmed's Trial was Biased Against Mr. Ahmed.

148. It is apparent from the entire record that Judge Sargus developed a personal animosity towards Mr. Ahmed.

149. This animosity deprived Mr. Ahmed of the most fundamental right, the right to an unbiased and impartial tribunal. *In re Murchison*, 349 U.S. 133 (1955).

150. This claim is predicated on that axiom that "due process implies a tribunal both impartial and mentally competent to afford a hearing." *Jordan v. Massachusetts*, 225 U.S. 167, 176 (1912).

151. The judge's activities created an "intolerable appearance of unfairness" denying Mr. Ahmed due process and a fair trial. As the judge was the ultimate sentencer in this matter,

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124. Moreover, Section 10, Article I of the Ohio Constitution and the Sixth Amendment to the United States Constitution embody the constitutional right to a speedy trial. *State v. Selvage*, 80 Ohio St.3d 465, 466 (1997). *See, also, Klopfer v. North Carolina*, 386 U.S. 213, 223 (1967) (applying the Sixth Amendment to the states through application of the Fourteenth Amendment).

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150. This claim is predicated on that axiom that "due process implies a tribunal both impartial and mentally competent to afford a hearing." *Jordan v. Massachusetts*, 225 U.S. 167, 176 (1912).

151. The judge's activities created an "intolerable appearance of unfairness" denying Mr. Ahmed due process and a fair trial. As the judge was the ultimate sentencer in this matter,

her actions must be scrutinized under the highest standards. *Bracy v. Schomig*, 286 F.3d 406, 412 (7th Cir. 2002).

152. Throughout the proceedings Judge Sargus refused to free Mr. Ahmed's assets in order that he could retain counsel of his choice. *See* Proposition of Law No. 1.

153. Despite the fact the Mr. Ahmed respectfully addressed the court, the court repeatedly ordered Mr. Ahmed to "Shut up." Tr. 26 (February 7, 2000). *See also* at 14 (February 7, 2000) ("You will be quiet."); 27 (January 8, 2001) ("You will be quiet now.").

154. Judge Sargus repeatedly threatened to hold Mr. Ahmed in contempt for voicing concerns about the proceedings and counsel. Tr. 23 (February 7, 2000); 30-31 (January 8, 2001); ; 11 (February 1, 2001). Eventually Judge Sargus did hold Mr. Ahmed in contempt and threatened to gag Mr. Ahmed. Tr. 88-89 (January 11, 2001).

155. Eventually Judge Sargus ordered Mr. Ahmed removed from the courtroom. Tr. 89 (January 11, 2001).

156. A review of the record of this exchange between Mr. Ahmed and Judge Sargus reveals that Mr. Ahmed was politely attempting to explain his continued dissatisfaction with counsel. Tr. 84-89 (January 11, 2001).

Ahmed "Your Honor, you may be having personally some grudge against me because I filed affidavit for disqualification for you, but I do have the right under the law to be heard and given fair chance to describe what I want to say. And ORC 2701.03 says particularly that judge who is -- whose affidavit of disqualification is filed should not handle anything which deals with the substantive rights."

Court "Now, if you have testimony we'll hear it. I have listened. I have been heroically patient here this morning."

Ahmed "And I have the right under the law --"

Court "I don't want to hear about your rights. I don't want to hear -- you are not here to expound upon the law of the United States. You are hear to offer testimony."

Ahmed "Your Honor, I --"

Court "Now, you will not -- you will stop at this point until your attorney asks you a question which will require an answer that can be characterized as testimony."

Ahmed"That's correct, Your Honor, but what I'm saying --"

Court "No, I don't need you to tell me what is correct or what you appreciate."

Ahmed"If I can - if I can I just one more --"

Court "Allow the attorney to express his question, please."
Ahmed"Your Honor, there is very important thing here."

Court "No, no. You will allow the attorney to express his questions and you will answer it."
Mr. Pierce, what is your question."

Ahmed"Your Honor --"

Court "No, you will be quiet or you will--"

Ahmed"There is one item --"

Court "You do not understand, and I really do not wish to impose sanctions upon you. But you must be silent. When you are done, your attorney can ask you if there's something you want to say --"

Ahmed"Okay, I want --"

Court "-- I'll allow him to do that. All right. You're in direct contempt of court."

Ahmed"-- I'm just -- Your Honor --"

Court "-- you are in direct contempt of court --"

Ahmed"-- your Honor--"

Court "-- the sanction for that will be taken up --"

Ahmed"-- I just want to hand these papers to attorney Pete Olivito who handed these to me."

Court "I don't care what you're doing. You're in direct contempt of court. I don't want to have to gag you; I don't want to have to impose sanctions --"

Ahmed"-- there's a -- he didn't ask me that question --"

Court "-- but you must -- all right, let's take the defendant back. Let's take the defendant back to his cell."

This removal denied Ahmed an oportunity to raise the planting of ID Badges list in his office on 9/28/99 by Terry and detective Bart Giesy.

"(WHEREUPON, THE DEFENDANT WAS REMOVED FROM THE COURTROOM.)"

157. Judge Sargus was also named a possible witnesses on behalf of Mr. Ahmed. Doc. 129. Judge Sargus was the judge presiding over the divorce case between the Ahmeds and was to give testimony regarding those proceedings. As a witness in the case she should have recused herself from hearing the case. Canon 3(E)(1)(d)(v) of the Code of Judicial Conduct. Judge Sargus submitted her false Affidavit to Chief Justice saying the she was not a declared witness in the case she presides.

158. This exchange demonstrates Judge Sargus's bias against Mr. Ahmed directly impacted her ability to fairly and impartially preside over his trial. *Offut v. United States*, 348 U.S. 11, 17 (1954) ("instead of representing the impersonal authority of law, the trial judge permitted himself to become personally embroiled with the petitioner.")

159. In a capital case, the possibility that a biased judge imposed a death sentence is not an allegation to be dismissed or ignored. *Bracy v. Schomig*.

160. When the trial court demonstrates direct animosity towards a defendant the Constitution mandates that the court not hear the defendant's case. *Murchison*.

161. This error is a structural defect which cannot be overcome. *Tumey v. Ohio*, 273 U.S. 510, 535 (1927). Conducting the trial before Judge Sargus deprived Mr. Ahmed of his Fifth, Sixth, Eighth, Ninth and Fourteenth Amendment and Art. I, Sections 2, 5, 9, 10, 16 and 20 of the Ohio Constitution, rights to trial before a fair and impartial tribunal and to a fair and reliable sentencing determination.

162. The conviction and sentence must be vacated and this matter remanded for a new trial before an impartial judge.

PROPOSITION OF LAW NO. 5

Denial of Public Trial

163. On November 9, 2000, the trial court ordered all spectators to leave the courtroom. Tr. 4 (November 9, 2000).

164. The court simply announced: "Because this is a private hearing, I'm going to ask that all spectators leave." Tr. 4.

165. It also appears that a number of hearings were held in the jail rather than in open court. Tr. 70, 91, 116 (January 8, 2001); 15 (January 11, 2001). There is no evidence that the public could attend these hearings.

166. In fact, it appears that not only was the public unable to attend the hearings but attorneys interested in the case could not attend. Tr. 27 (February 2, 2001).

167. The right to a public trial is set forth in the Sixth Amendment of the Constitution of the United States.

168. This provision applies to the states through the Fourteenth Amendment. *In re Oliver*, 333 U.S. 257, 273 (1984). *See also* Section 10, Article I of the Constitution of the State of Ohio.

169. As explained in *Oliver*, at 268-270, this "guarantee has always been recognized as a safeguard against any attempt to employ our courts as instruments of persecution. The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power."

170. The decision of the trial court to close the hearings to the public violated Mr. Ahmed's Sixth Amendment guarantee of a public trial. *Waller v. Georgia*, 467 U.S. 39 (1984).

171. The right to a public trial extends to pre-trial hearings. *Press Enterprise Co. v. Superior Court of California*, 464 U.S. 501 (1984).

172. In *Waller v. Georgia*, 467 U.S. 39, 48 (1984), the Supreme Court of the United States formulated the standards for courtroom closure into a four-part test:

the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced;

the closure must be no broader than necessary to protect that interest;

the trial court must consider reasonable alternatives to closing the proceeding; and

it must make findings adequate to support the closure.

173. Utilizing the *Waller* test, the record fails to reveal any justification for closing the hearings. There is no showing of any need whatsoever to close the hearings. Rather it appears to be done at the whim of the trial court.

174. A showing of prejudice is not necessary when the right to a public trial is denied. *Id.*, at 49, fn. 9. The denial of a defendant's constitutional right to a public trial cannot be harmless error. *Id.*, at 467 U.S. at 49-50 and fn. 9.

175. This is a structural error and not subject to either "invited error" or harmless error review. *Arizona v. Fulminante,* 499 U.S. 279 (1991).

176. Mr. Ahmed was denied the right to a public trial, as guaranteed under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and the applicable portions of the Ohio Constitution.

PROPOSITION OF LAW NO. 6

Denial of Right of Confrontation and Due Process in the Admission of Hearsay.

177. The Sixth Amendment Confrontation Clause provides that, "In all criminal cases, the accused shall enjoy the right... to be confronted with the witnesses against him." U.S. Const. amend. VI. This guarantee applies to both federal and state prosecutions. *Pointer v. Texas*, 380 U.S. 400, 406 (1965).

178. "If one were to read this language literally," the Confrontation Clause would exclude "any statement made by a declarant not present at trial." *Ohio v. Roberts*, 448 U.S. 56, 63 (1980). However, it has never been taken literally.

179. Instead, prior to the Supreme Court's recent decision in *Crawford v. Washington,* 124 S. Ct. 1354 (2004), the Confrontation Clause was read in conjunction with the hearsay rule and its exceptions. *Roberts*, 448 U.S. at 89. The Confrontation Clause allowed hearsay to be admitted in evidence at trial if it fell within a "firmly rooted hearsay exception" or showed "particularized guarantees of trustworthiness." *Roberts*, 448 U.S. at 66.

180. *Crawford* is a watershed decision that significantly alters Confrontation Clause analysis. Returning to the historical roots of the Sixth Amendment, the Supreme Court has now divorced the Confrontation Clause from evidentiary rules. The relevant question today is not whether an out-of-court statement falls within a hearsay exception or is reliable. The relevant question is whether the statement is "testimonial," roughly defined as something that resembles formalized testimony such as an affidavit, deposition, or confession to the police. Testimonial hearsay only may be admitted if the proponent can prove that the declarant is unavailable and that the opponent had had a prior opportunity to cross-

examine the declarant when he or she made the statement. *Crawford*, 124 S.Ct. at 1374. With respect to nontestimonial hearsay, the Court left open whether *Roberts* would apply, or whether such statements would be "exempted... from Confrontation Clause scrutiny altogether." *Id.*

181. "Where testimonial statements are involved, we do not think the Framers meant to leave the Sixth Amendment's protection to... amorphous notions of 'reliability.'" *Id.*, at 1370. The framework was too unpredictable, the Court complained. *Id.*, at 1371. Even worse, it admitted into evidence "core testimonial statements that the Confrontation Clause plainly meant to exclude," such as accomplice confessions to the police, grand jury testimony, and prior trial testimony where the defendant had not had the opportunity to cross-examine the witness. *Id.*, at 1371-72.

182. *Crawford* therefore overruled *Roberts'* reliability test as applied to testimonial evidence. *Id.*, at 1374. With respect to "nontestimonial hearsay," though, the Court found that "it is wholly consistent with the Framers' design to afford the States flexibility in their development of hearsay law—as does *Roberts*, and as would an approach that exempted such statements from Confrontation Clause scrutiny altogether." *Id.*

183. Even under the old *Roberts* standard, the testimony of Terry Yockey was inadmissible. Her testimony bore no indicia of reliability as she repeatedly stated that she did not create the report, know what the codes meant, and was simply a receptionist at Worldcom.

184. The admission of her testimony deprived Mr. Ahmed of his Constitutional rights to confront witnesses, to a full and fair trial, and due process of law.

PROPOSITION OF LAW NO. 7

Invalid and Unconstitutional Search of the Home.

185. No warrant was ever issued for a search of the Ahmed home. Despite this fact the police, prosecutors, investigators, coroner, and other law enforcement personnel repeatedly entered, searched, and collected material from the home.

186. It is axiomatic that a search conducted without a warrant is per se unreasonable and therefore unconstitutional. *Katz v. United States*, 389 U.S. 347 (1967).

187. The failure to obtain a warrant for these searches mandates suppression of all the evidence obtained. *Muncey v. Arizona*, 437 U.S. 385 (1978); *Flippo v. West Virginia*, 528 U.S. 11 (1999).

Ahmed had standing to object and seek suppression of all evidence brought from the rental-marital-home, under ORC 2106.15 and also because Police brought his property without any search warrant, when Ahmed had the lease on his name and he paid advance retainer/ deposit to rent the home and lived there before. Any order of the abated divorce case was of no effect or force after 3:00 AM on 9/11/99 from the time of death recorded in the death certificate. See State ex rel. Litty, Leskovyansky, 77 Ohio St.3d 97 (1996); and In Re Johnson, 14 OApp.3d 235 (1984); ORC 2106.15;

188. There is no crime scene exception to the warrant requirement. Therefore, in order to enter the home and search and collect material the State needed to obtain a warrant. *Muncey*; *Flippo*.

189. The remedy for this invalid search is to suppress all evidence obtained as a result of the unconstitutional invasion of the home. *Mapp v. Ohio*, 367 U.S. 643 (1961). *See also Weeks v. United States*, 232 U.S. 383 (1914).

190. The searches of the Ahmed home, and the subsequent use of the evidence obtained during the searches, violated Mr. Ahmed's Fourth Amendment right to be free of unreasonable searches and seizures.

PROPOSITION OF LAW NO. 8

Prosecutorial Misconducted Permeated the Trial.

191. A capital defendant is entitled to a determination of his guilt and sentence that is free from prosecutorial misconduct which renders the proceeding fundamentally unfair. *Donnelly v. DeChristoforo*, 416 U.S. 637 (1974). The prosecutor has a special duty and functions as the government's representative, "...whose obligation to govern impartially is as compelling as its obligation to govern at all..." *Berger v. United States*, 295 U.S. 78, 88 (1935). *See also United States v. Bess*, 593 F.2d 749 (6th Cir. 1979). In this case, the prosecutors abandoned their constitutional duty in favor of sensationalism, emotionalism, and extremism solely to gain a conviction and death sentence.

192. The prosecutor argued that this was an "honor killing." Tr. 831. There is absolutely no evidence in the record to support this argument. To the contrary,presented evidence of 'voluntary manslaughter'but misled Jury in claiming aggravated murder.

193. Arguing facts not in evidence is improper. *United States v. Leon*, 534 F.2d 667, 679 (6th Cir. 1976). Prosecutor denied defense a Jury instruction on "voluntary manslaughter"by filing instructions not including it as lesser offense

194. The testimony and evidence challenged in this Proposition of Law are clearly on the record. There is simply no excuse for the failure of appellate counsel to raise this issue on appeal. The failure to raise meritorious issues, especially when weaker claims are raised, constitutes ineffective assistance of appellate counsel. *Mapes*, 171 F.3d at 427-428.

195. Consideration of a non-statutory aggravating circumstance renders the sentence invalid. *Barclay v. Florida*, 463 U.S. 939 (1983); *State v. Johnson*, 24 Ohio St.3d 87 (1986).

196. In *Johnson*, this Court recognized that "the inescapable conclusion is that it was error to submit the non-statutory aggravating factor to the jury for its consideration in the penalty phase of the trial. . . Presenting the jury with specifications not permitted by statute

impermissibly tip the scales in favor of death, and essentially undermines the required reliability in the jury's determination." *Id.*, at 94, citations omitted.

197. The failure of a state to comply with its own rules denies a defendant his due process rights. *Evitts v. Lucey*, 469 U.S. 387 (1985). Once a state determines that evidence should be excluded, the failure to enforce the rules denies a defendant due process and equal protection. *See Ohio v. Roberts*, 448 U.S. 56, 66 (1980); *Sherley v. Seabold*, 929 F.2d 272 (6th Cir. 1991); *Carter v. Sowders*, 5 F.3d 975 (6th Cir. 1993).

198. In this case, it is clear that the non-statutory aggravating circumstance directly resulted in the death sentence. The jury and trial court specifically relied on the manner of death in imposing the death sentence. Tr. 26 (February 2, 2001).

199. Consideration of a non-statutory aggravating circumstance renders the sentence invalid. *Barclay v. Florida*, 463 U.S. 939 (1983); *State v. Johnson*, 24 Ohio St.3d 87 (1986).

200. The testimony and evidence challenged in this Proposition of Law are clearly on the record. There is simply no excuse for the failure of appellate counsel to raise this issue on appeal. The failure to raise meritorious issues, especially when weaker claims are raised, constitutes ineffective assistance of appellate counsel. *Mapes*, 171 F.3d at 427-428.

PROPOSITION OF LAW NO. 9

Ineffective Assistance of Counsel at Trial.

201. Mr. Ahmed was entitled to the effective assistance of counsel at trial and sentencing. *Strickland v. Washington*, 466 U.S. 668 (1984). *Wiggins v. Smith*, 539 U.S. 510, 524 (2003). *See also, Hamblin v. Mitchell*, 354 F.3d 482 (6th Cir. 2003).

202. "Counsel's overall performance is particularly shocking given the fact that this case involves the death penalty. *Strickland* instructed that '[p]revailing norms of practice as reflected in American Bar Association Standards and the like, e.g. ABA Standards for Criminal Justice 4-1.1 to 4-8.6 (2d ed. 1980) ("The Defense Function"), are guides to determining what is reasonable, but they are only guides.' *Strickland*, 466 U.S. at 688, 104 S.Ct. 2052. ABA Standard 4-1.2(c) states that '[s]ince the death penalty differs from other criminal penalties in its finality, defense counsel in a capital case should respond to this difference by making extraordinary efforts on behalf of the accused." ABA Standards for Criminal Justice Prosecution and Defense Function 120 (3d ed. 1993).

203. The Supreme Court recently affirmed that *Strickland* has always stood for the proposition that there can be no "strategic decision" predicated on a total lack of investigation. *Wiggins v. Smith*, 1213 S.Ct. at 2536, 2538-2539, 2541(2003); *Strickland*, 466 U.S. at

690-691. It is clear that counsel did not investigate the mitigation defense evident on the record: Mr. Ahmed's cultural background.

204. Counsel's failure to tap into available resources to properly investigate, prepare, and present a mitigation defense is unreasonable performance. Counsel must conduct an adequate investigation in order to make reasonable strategic decisions. *Wiggins*, 1213 S.Ct. at 2536, 2538-2539, 2541(2003); *Strickland*, 466 U.S. at 690-691.

205. The failure to ensure that mitigation witnesses who spoke Erdu were supported by a translator who spoke and understood Erdu deprived the sentencers of a proper picture of Mr. Ahmed thereby preventing them from considering relevant mitigation evidence. *Lockett v. Ohio*, 438 U.S. 586 (1978); *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

206. During the mitigation phase counsel improperly argued that the nature and circumstances of the offense were strong aggravating factors. Tr. 163 (February 1, 2001). This is clearly improper as the nature and circumstances of the offense are not statutory aggravating circumstances. *State v. Wogenstahl*, 75 Ohio St.3d 344 (1996).

207. Consideration of a non-statutory aggravating circumstance renders the sentence invalid. *Barclay v. Florida*, 463 U.S. 939 (1983); *State v. Johnson*, 24 Ohio St.3d 87 (1986).

208. Even if the above identified errors individually do not warrant relief, the cumulative impact of counsels' deficiencies warrant relief.

209. A hallmark of effective counsel, like an effective doctor, is to do no harm. Counsel failed to investigate and present evidence, solicited extraordinarily prejudicial unproven hearsay allegations of misconduct, failed to correct their errors, and failed to defend Mr. Ahmed. This deficient performance prejudiced Mr. Ahmed and renders his conviction and sentence constitutionally invalid. *Wiggins*.

PROPOSITION OF LAW NO. 10

Denial of the Effective Assistance of Counsel on Appeal of Right

210. For the above stated reasons, Mr. Ahmed was denied the effective assistance of counsel on appeal. *Strickland v. Washington*, 466 U.S. 668 (1984).

211. Counsels' conduct on appeal fell below reasonable standards of professional care and prejudiced Mr. Ahmed.

212. Mr. Ahmed was entitled to the effective assistance of counsel on his direct appeals as of right. *Evitts v. Lucey*, 469 U.S. 387 (1985). Mr. Ahmed was denied the effective assistance of appellate counsel as counsel failed to raise meritorious issues. Appellate counsel must act as an advocate and support the

cause of his client to the best of his ability. *See for example, Anders v. California*, 386 U.S. 738 (1967); *Penson v. Ohio*, 488 U.S. 75 (1988).

213. While appellate counsel has no constitutional duty to raise every single non-frivolous issue requested by a criminal defendant, counsel must still exercise reasonable professional judgment in presenting the appeal. *See Jones v. Barnes*, 463 U.S. 745, 750 (1983).

214. Appellate counsel may choose which issues to appeal as long as his performance is "within the range of competence demanded of attorneys in criminal cases and assures that indigent defendant an adequate opportunity to present his claims fairly in the context of the state's appellate process." *Jones*, 463 U.S. at 755 (Blackmun, J., concurring). *See also Alvord v. Wainwright*, 725 F.2d 1282 (11th Cir. 1984); *Sullivan v. Wainwright*, 695 F.2d 1306, 1309 (11th Cir. 1983); *Cunningham v. Henderson*, 725 F.2d 32, 36 (2nd Cir. 1984).

215. The failure to raise meritorious issues, especially when weaker claims are raised, constitutes ineffective assistance of appellate counsel. *Carpenter v. Mohr*, 163 F.3d 938, 946 (6th Cir. 1998); *Mapes v. Coyle*, 171 F.3d 488, 427-428 ()6th Cir. 1999).

216. Furthermore, omitting a "dead-bang winner" from an appeal is not objectively reasonable. *United States v. Cook*, 45 F.3d 388, 395 (10th Cir. 1995). *See also Matire v. Wainwright*, 811 F.2d 1430 (11th Cir. 1987); *People v. Bowen*, 791 F.2d 861 (11th Cir. 1986); *Ragan v. Dugger*, 544 So. 2d 1052 (Fla. Dist. 1 Ct. App. 1989); *Whitt v. Holland*, 342 S.E.2d 292 (W. Va. 1986).

CONCLUSION

217. Counsel's conduct fell below the acceptable standards of representation as enunciated in *Strickland* and cannot be explained away as sound trial tactics, strategies or reasonable professional judgment. Counsel's errors were so serious that counsel was not functioning as counsel as guaranteed to a defendant by the Sixth Amendment. Counsel simply failed to properly prepare for the appeal of Mr. Ahmed's case.

218. Counsel avers that the issues raised in the Application for Reopening constitute colorable claims of ineffective assistance of counsel.

219. Counsel further avers that Mr. Ahmed was prejudiced by the deficient performance of appellate counsel in that he was deprived of proper appellate review of his case, this Court would have reversed his conviction, and/or this Court would have vacated his death sentence.

220. Counsel further avers that good cause exists to reopen Mr. Ahmed's direct appeal.

Further Affiant Sayeth Not

9/16/99

Badge #	Badge Color	Date Issued	Name	Date Due Back	Co name/Authorized by
1	Blue	DEA'd 4/5/99			
2	Blue	DEA'd 4/5/99			
3	Blue				
4	Blue	DEA'd 4/5/99			
5	Blue	DEA'd 7/8/99			
6 Dea 9/16	Blue	08/02/1999	Srikant Iyer	08/03/1999 - Dea	consultant/Dave Levy
7	Blue	DEA'd 4/5/99			
8	Blue				
9	Blue	09/15/1999	Kelly Helton	09/16/1999	assoc
10	Blue	DEA'd 8/12			
11	Blue	DEA'd 4/5/99			
12	Blue	DEA'd 4/5/99			
13	Blue				
14	Blue	09/15/1999	Jason Hardy	09/17/1999	assoc
15	Blue	09/16/1999	Xerox	09/17/1999	Xerox/mailroom
~~16~~	~~Blue~~	~~09/16/1999~~	~~Greg Schmid~~	~~09/13/1999~~ - email 9/16	~~assoc~~
17	Blue	DEA'd 5/17			
18	Blue	DEA'd 5/25			
19	Blue	08/23/1999	Toumany Sako	08/24/1999 - email 9/16	assoc
20	Blue				
21	Blue				
22	Blue	DEA'd 4/5/99			
23	Blue	DEA'd 5/17			
24	Blue	DEA'd 4/5/99			
25	Blue				
26	Blue	08/31/1999	Mark Vitt	09/01/1999 - email 9/16	assoc
27	Blue	DEA'd 5/25			
28	Blue	DEA'd 5/25			
29	Blue	DEA'd 4/5/99			
30	Blue				
31 Dea 9/13	Yellow	08/17/1999	Nawaz Admed	08/17/1999 - Dea	assoc
32	Yellow				
33	Yellow				
34 Dea 9/13	Yellow	08/23/1999	Nawaz Ahmed	08/24/1999 - Dea	assoc
35	Yellow	09/02/1999	Jamie Knuth	09/03/1999 - email 9/16	assoc
36	Lt. Blue	DEA'd 7/8/99			
37	Lt. Blue	09/10/1999	Mary Jo DiTommaso	09/13/1999 - email 9/16	assoc
38	Lt. Blue				
39	Lt. Blue				
40	Lt. Blue	09/07/1999	Eric Ramsey	09/08/1999 - email 9/16	assoc
41	Orange				
42	Orange				
43	Orange				
44	Orange				
45	Orange				
46	Red				
47	Red				
48	Red	09/16/1999	Mark Spagnolo	09/17/1999	UUNET assoc/Monique Philips
~~49~~	~~Red~~	~~08/31/1999~~	~~Michael O'Gonnell~~	~~09/01/1999~~ - email	~~Mid-Ohio/Bill Crossin~~
50	Red			~~9/16~~	

Ex "1"

51	Red				
52	Red-REI				
53	Red-REI	09/07/1999	Rick Jester	09/08/1999 -email 9/14 O	REI/Todd Kise
54	Red-Pacific P		Pacific Pools		Todd Kise
55	Red-Plantasia		Plantasia		Donna Byrom
100	Blue	DEA'd 4/5/99			
101	Blue	09/02/1999	Dave Elswick	09/03/1999 -email 9/14 O	UUNET assoc/Tom Skinner
102	Blue	DEA'd 7/8/99			
103	Blue	DEA'd 5/25			
104	Blue	DEA'd 7/8/99			
105	Blue	08/04/1999	John Bardos	08/05/1999 -email 9/14	assoc
106	Blue	DEA'd 5/25			
107	Blue	Dea'd 7/21/99			
108	Blue	Dea'd 7/21/99			
109	Blue	DEA'd 4/5/99			
110	Blue	DEA'd 5/25			
111	Blue				
112	Blue	Dea'd 5/17			
113	Blue	DEA'd 4/5/99			
114	Blue	DEA'd 4/5/99			
115	Blue	DEA'd 5/25			
116	Blue	09/02/1999	Andy Wack	09/03/1999-email 9/14 O	UUNET assoc/Tom Skinner
117	Blue	08/12/1999	Linda Desborough	08/13/1999 -email 9/14	assoc
118	Blue				
119	Blue	DEA'd 5/25			
120	Blue	DEA'd 5/25			
121	Blue	08/24/1999	Lynn Thompson	08/25/1999-email 9/14	assoc
122	Blue	08/18/1999	Suzanne Smith	08/23/1999 -email 9/14	temp-Sue Weber O
123	Blue	09/16/1999	Scott Preston	09/17/1999	assoc
? 124 Dea 9/16	Blue	08/06/1999	Neal Shaw	08/09/1999- email 9/14	assoc
125	Blue	09/02/1999	Imogene Johnson	09/03/1999 -email 9/14	assoc -Said she will return 9/17
126	Blue				
127	Blue	08/16/1999	Julie Hines	08/16/1999-email 9/14	assoc - resubmitted request 9/17
128	Blue	08/26/1999	Melanie Vickers	08/30/1999-email 9/14	Temp/Sue Weber O
~~129~~	~~Blue~~	~~09/16/1999~~	~~Larry Stout~~	~~09/17/1999~~	~~Riley Controls/Todd Kise~~
130	Blue	08/03/1999	Wesley Thompson	08/04/1999-email 9/16	temp/Kelly Wickerham O
131	Blue	09/13/1999	Pat Durante	09/18/1999	Petronio Tech/Paul Newkirk
134 Dea 9/16	Blue	07/26/1999	Ralph Hyde	07/30/1999 Dea 9/14	assoc -Said he returned 7/29
200	Yellow	09/16/1999	Robert Brown	09/17/1999	assoc
201	Yellow				
202 Dea 13	Yellow	08/19/1999	Nawaz Ahmed	08/20/1999 -Dea	assoc
203 Dea 9/13	Yellow	09/07/1999	Nawaz Ahmed	09/08/1999 -Dea	assoc
204	Yellow	DEA'd 4/5/99			
300	Lt. Blue	09/16/1999	Doug Haft	09/17/1999	assoc
301	Lt. Blue	DEA'd 5/25			
302	Lt. Blue	08/20/1999	Shawn Wright	08/23/1999 -email 9/17	assoc
303	Lt. Blue				
304	Lt. Blue				
305	Lt. Blue				
306					
500	Red	DEA'd 4/5/99			

RETURN: RECEIPT; INVENTORY OF SEARCH WARRANT

000559

THE STATE OF OHIO
FRANKLIN COUNTY,
CITY OF Hilliard } ss.

I, the officer taking property hereunder, received the attached search warrant September 27, 1999, and executed it as follows: On September 28 1999, at 11:45 o'clock A.M., I searched Nawaz's Office at World Com Advanced Networks 500 Britton Rd (~~the person~~/the premises) Hilliard Ohio

described in the warrant and left a copy of the warrant (with /~~at~~) _____

(name of person) or from whose premises taken (or) at the place of search

together with a copy of this Inventory and Receipt for the items seized. The following is an INVENTORY of the property taken pursuant to the warrant and prepared by Det. Bart Giesey.

(officer taking property)

2-writting tablets, Faxes from Lubaina Bhatti, Documentation from State Medical Board, Documentation about Genital Mutilation & Travel Information, List of leaver passes.

This Inventory was made in the presence of (Circle one) 1. Det. Bart Giesey the applicant for this warrant and John Jamieson the person from whose possession (or) from whose premises the property was taken. 2._____, _____

(name) must be applicant or person from whose...

and _____, acting in the absence of _____.

(name) (applicant or person from whose...)

I swear that this Inventory is a true and detailed account of all property taken by me on the warrant and a copy of this Inventory was deposited with the person or at the premises from which the property was taken as a Receipt of the items taken.

Det. Bart Giesey

Signature of taking Officer

Subscribed and sworn to and returned before me this 28th day of Sept, 1999.

_____

Notary / Clerk / etc.

EX. "2"

Michael J. Benza

Sworn and subscribed before me this 17th day of December, 2004.

Notary Public

HARRY R. REINHART, Attorney at Law
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Sec. 147.03 R.C.

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Appellee,

CASE No. 2001-0871

vs.

COmmon Pleas Case: 99-CR-192

NAWAZ AHMED,

Appellant.

THIS IS A CAPITAL CASE

AFFIDAVIT NO.1 OF NAWAZ AHMED IN SUPPORT OF
APPLICATION FOR REOPENING PURSUANT TO S.CT.PRAC.R.11(6)

STATE OF OHIO)
RICHLAND COUNTY,) SS

I, Nawaz Ahmed, being first duly sworn as per law, do depose and say as follows:

1. I am competent to testify and have personal knowledge of the facts stated herein. I am incarcerated at MANCI since 2-2-2001 on deathrow.

2. This amended Application For reopening was taken away from me alongwith other two boxes of legal papers by the MANCI staff impending move of deathrow from MANCI to OSP,Youngstown,Ohio. I was not allowed access to my legal papers as I was marked for the transfer to OSP. These two boxes of legal papers have recently been provided to me and I am able to obtain this Application and file it now.

3. The first Application filed by counsels was wrongly held to be late when infact it was filed prematurely and before the Direct Appeal had ended as interpreted by the Morgan v. Eads,supra Points 18-19. Court lacked Jurisdiction to rule upon Reopening before the Direct review had ended. I filed a timely Motion for Reconsideration on 9/2/04, and

was denied on 10/27/04. I filed a Motion For Supplimentary Briefing as of Right in continuation of Direct Appeal on 4/14/2005 which was denied on 05/03/2005 in which Court held:

> "This cause is pending before the Court as an Appeal from the Court of Common Pleas for Belmont County..."

State v. Ahmed, 105 Ohio St.3d 1536(Ohio. May 3, 2005). Wherefore, as per the holding of this Court, Appeal of Right had not ended uptil May 3,2005 as per Ohio Law. The Application For reopening starts after the Appeal of Right ends and is finished.Morgan,Supra.

4. Ahmed also filed a timely Petition For Writ of Certiorari as per U.S. Supreme Court Rule 13.3 "allowing tolling of time due to Reconsideration filed in the Ohio Supreme Court". The review by Cert was filed on 1/21/2005 which was denied on 6/13/2005. Appellant had right to seek this "Direct review" under Federal statutes 28 USC 1257 and 2101. Wherefore, my Direct Appeal of Right had not finished or ended uptil and on 6/13/2005.

5. The Ohio Supreme Court lacked subject-matter Jurisdiction and Patent and unambiguous Jurisdiction on 03/02/2005 to Rule upon the prematurely filed Application for Reopening on 12/21/2004. Inspite of the lack of Jurisdiction, this court wrongly held that Application was late and filed out-of-time allowed by S.Ct.Prac.Rule 11(6)(A). This holding or application of "procedural default" was in direct conflict with recently decided case Morgan v. Eads, 104 Ohio St.3d 142 (Ohio. November 22,2004) which held at Point 18-19 that:

> " Reopening begins after Direct review (Appeal of Right) has ended or finished".

Clearly, my Direct Appeal even under Ohio law had not ended or finished

on 12/21/2004 when First Application For Reopening was filed, as evident from "Reconsideration" denied on 10/27/2004. See State v. Ahmed,103 Ohio St.3d 27(Ohio October 27,2004) and State v. Ahmed, 105 Ohio St.3d 1536 (Ohio. May 3, 2005).

6. Court failed to remember what it had very recently said in the Morgan V. Eads, supra in interpreting the App.Rule 26(B)(1), which was used as a mirror to draft the S.Ct.Prac.Rule 11(6)(A), the timing requirement and all other provisions. Its caselaw had always been applicable Rule 11(6) cases in every respect. Application For reopening was due 90 days after the denial of Direct Appeal when the Morgan v. eads was decided on the 89th day of due date. The "New rule" was applicable to Ahmed, even if by any stretch of logic it could be held that" Reconsideration is Not Part of Direct Appeal" When tolling effect of Reconsideration is Encoded at S.Ct.Prac.Rule 11(2), and 11(4), and in the caselaw.

7. The denial of Application on 03/02/2005 was also "Contrary to the Federal Law determined by the U.S. Supreme Court", about the "Reconsideration tolls the time of Judgment of the HighestState Court", Rule 13.3 and 28 USC 2101(c) and caselaw.

> "Sup.Ct.Rule 13.3 provided that period for filing Petition for writ of certiorari commences upon denial of party's Petition for rehearing,... Certiorari petition was timely filed under 28 USC 2101(c) within 90 days of date of Judgment was entered upon denial of rehearing."
>
> Hibbs v. Winn (2004), 542 U.S. 88, 124 S.Ct. 2276.
>
> See also Fogg v. Carroll(2006, DC Del.) 465 F.Supp.2d 336;

8. it appears that Ohio Supreme Court wrongly presumes that its entry of Judgment denying Appeal becomes a "final Judgment" even when a Motion for Reconsideration is pending before it or Appellant files a timely

Petition for writ of Certiorari in the U.S. Supreme Court. Such a holding is wrong both under Ohio and Federal Law which holds:

> " In determining when Judgment became final after conviction, time within which to petition United sates Supreme Court for writ of certiorari under Rule 13 or 13.3 was to be include, since finality of Judgment was defined as that point at which Courts no longer could provide remedy Direct review."

In re Pine (1977), 3rd Dist.) 66 Cal. App.3d 593, 136 Cal Rptr 718;

9. The Ohio Law about Reconsideration states that:

> " Rule governing Reconsideration of Appellate Court's Decision provides mechanism by which party may prevent miscarriage of Justice that could arise when Appellate Court makes obvious error of law or fact or renders unsupportable decision under the law."

State v. Owens (Ohio App. 11 Dist., 07-01-1996), 112 Ohio App.3d 334!

It is obvious that "Reconsideration" is part of Direct Appeal of Right, even under the Ohio Law.

10. From all of the above it is clear that Ohio Supreme Court lacked Jurisdiction to find that Application For Reopening filed on 12/21/2004, only 55 days after the denial of Reconsideration was not timely under S.Ct.Prac.Rule 11(6)(A) or it was "untimely filed".

See also State v. Gumm, 103 Ohio St.3d 162, Justice PFEIFER J, concurring:

> " I would suspend the 90-days time limit until a defendant has released his allegedly deficient appellate counsel, or until the defendant has hired additional counsel."

The Motion For Reconsideration was filed by the Appellate Counsels on 9/3/04 and they were on the case until Court ruled on their Motion on 10/27/2004. DR 2-110 requires Attorneys to RETURN FILES when their Representation has ended and they are no longer representing the client. Wherefore, Court can not even expect that Appellate counsels will return

the files, records before their Representation has ended. In many cases same Appellate Attorneys would file a "Motion For Reconsideration" and also the "Petition for writ of Certiorari" in the U.S. Supreme Court. Wherfore, the Federal Law makes more sense in determining when the "Direct review" has ended, and start the "Reopening Clock" from that date. It will remove all confusing interpretations of S.Ct.Prac.R.11(6) and App.Rule 26(B) as to "timing of filing" Reopening.

It is hard to understand that "review by US Sup.Ct." is not part of Direct review or Direct Appeal of Right? Why the Rule-making Staff or Committe do not under-stand this simple fact? The Morgan v. Eads, has pointed to the same direction by use of language", Reopening does not begin until after defendant's Appeal of Right has ended". Id., at P18-19;

11. The "good cause" existed to file the Application For Reopening even under the literal language of the Rule 11(6)(A):

(a) Appellate counsels were still on the case as they filed Motion for Reconsideration on 9/3/04, which Court Ruled on 10/27/04. Thus setting the clock for 90 days from 10-27-04.

(b) Motion For reconsideration is part of Direct Appeal and tolls the effective daye of Entry of Judgment under Rule 11(4) uptil 10/27/04.

The ORC 1.11 requires that "remedial Laws" be liberally construed and liberally applied to ensure "Justice". The Rule 11(6) is a Remedial Law. So court must have "hightesned tollerance" for counting 90 days or in determining what constitutes "good cause" for filing late. State v.Gumm.

The appointment of counsels can not serve as a determining factor because Rule 11(6) as written do not create a sure right or any specific date when the counsels would be appointed for filing Reopening.

12. The honorable Court should vacate, recall, r-escind order of 03/02/2005 as it is wrong on every ground and is also factually wrong as it failed to count the 90 days from the denial of Reconsideration under Morgan v. Eads, supra.

After vacating the order of 03/02/2005, Court should Rule upon the same Application and this Application as it amends various Propositions of law and factual basis for those claims by correcting some.

13. The "Good cause" also existed because being non-indigent, Applicant had right to representation by counsel by use of huis funds, in addition to VCCR right to counsel under VCCR Art.36(1),(2). because Courts had restrained Appellant use of his own funds to timely employ counsels, any delay in appointing counsels was direct result of Court's failure to appoint counsels when requested within two days of decision on Appeal.

The 21 days delay was not unreasonable when counsels were:

(a) Not notified of appointment for 24 days from Decision on Direct Appeal.

(b) Motion For Reconsideration tolled time to file Reopening,

(c) Court did not provide its Appellate file until after the appointment, thus a month later,

(d) The delay in appointment cause the scheduling conflicts among deadlines in other cases.

(e) All the claims, errors, Propositions of Law presented were new and had not been afforded " one appeal of right to hear those claims on Appeal".

(f) The "genuine issues" raised required excuse of defaut as per Reopening Jurisprudence and Rule 11(6)(E).

"In the interest of Justice,defendant is not required to comply with 90 days filing bar, when "genuine issues" are raised."
City of Toledo v. Eissa, No. L-02-1008, 2002-Ohio-5909, WL 31420099'

(g) Court has accepted filings by counsels when appointed late, and provided counsels full 90 days after they were notified of their appointments, in various Reopening Cases cited as "good Cause" in the original Application.
In this case counsels were notified of appointment on 9/24/04 and they filed on 12/21/04, within the 90 days.
(h) The purported delay was not caused by Ahmed.

14. PROPOSITION OF LAW NO. 2

Violatiuon of Constitutional and statutory Rights To Speedy Trial

15. The Belmont County Public defenders has submitted documents about all Felony cases in which Mr. James Nicholson and/or Eric Costine acted as Counsels from 7/09/1998 to 09/12/2005. See Exhibits "A","B","C","D","E","F","G","H","I","J","K","L". to this Affidavit. This show that during these Six Years there has been absolutely NO felony Jury trial. All cases were ultimately decied due to various Pleas, resulting in "SENTENCING HEARING". All pled guilty, thus eliminating the need for any Jury Trial. With such record, it is resoanble to conclude that Prosecutor and Judges and Sheriff wanted to see the same result in the case 99-CR-192 filed on 10-07-99 against this Appellant(defendant). That is the "county strategy" to control costs and provide quick resolution to the criminal felony cases. The County Public Defender had no scheduling conflicts due to any other Trail. He has never ever before ordered or argued DNA results or case before the Jury. Infact, only other capital case involving death penalty in which Mr. Nicholson represented was also decided on guilty plea. Wherefor, Jury trials are unheard-off and very rarity in Belmont County. Ahmed insisted upon Jury trial. Due to this insistance, the entire

County Criminal Justiuce system worked to force Ahmed to enter a Plea of guilty or not guilty by reason of insanity. Ahmed refuse. Prosecutor and trial Judge used Divorce case to deny Ahmed use of his own funds so that Ahmed cannot employ private counsels from the time of arrest, even when divorce cases abates due to death of any party to divorce. The divorce judge has no Jurisdiction except to dismiss the divorce case by reason of death. See Sate Ex rel Litty v. Leskovyansky, 77 Ohio St.3d 97(Ohio 1996).

16. When defendant Ahmed came to know about such illegal order,not served upon him, he write to trial Judge Sargus, by a letter as to why she made any such order preventing him the use of his own funds. See Document filed on .

17. Rather than dismissing the case, Judge sargus transferred the divorce case to Judge Solovan II, when both Judge lacked Patent and unambiguous jurisdiction to transfer or make any other orders in the divorce case 99-DR-40 after 9/11/99. The defendant again complaint to the Trial Judge at the hearing on about the denial of use of his own funds to employ private counsels. Rather than responding pos-tively, Judge asked Attorney Costine "lets dismiss that case". Costine had nothing to do with the dismissal when it only needed a Court order vacating illegal non-Jurisdictional order of 9/13/99 and its service upon all banks, financial institutions.

18. Trial Judge asked Prosecutor to submit another order for restraining the defendant from using the same funds already restrained via the divorce case. Judge Sargus on 11/15/99 in the absence of defendant asked public defender," Is there any hearing scheduled to address the freeing of assets of defendant". So Judge knew it what she had done in the divorc-e case on 9/13/99 but pretending not to know it to avoid creating record in the criminal case.

19. Another order prohibiting Ahmed from using his own funds was made on 11/24/99 in the criminal case by Judge Sargus, after knowing from Judge Solovan II that civil cases 99-CV-457, 99-CV-403 no longer prohibited Ahmed from using his own funds (11/1/99 Tr in 99-CV-403), see 11/29/99 Tr 8; A non-indigent defendant is not required by any law to submit his "financial disclouser" in camera or otherwise. See generally, ORC 120.01 et seq and ORC 120.15 and 120.05 specifically. These tactics were to further delay the employment of private counsel and to delay the trial.

20. Prosecutor on 11/29/99 informed the court that "this defendnt is not an indigent; has available to him substantial assets..." (11/29/99 Tr. 7).

ORC 120.15(D) and 120.05 requires the Court to discharge the County public defender upon learning of non-indigency. The Public defender must withdrw from representation of a non-indigent because system is for representation of indigents.

21. It is not for the Trial Judge to arrange or appoint Counsels for a non-indigent.

" trial Judge has no legal duty under any Rule of Court, statte, or Caselaw (Constitution), in Ohio to appoint counsel for a non-indigent".
State ex rel. Wells v. kennessey, 37 Ohio St.2d 37;

"Common sense as well as the Law compells a conclusion that Trial Judge has no Authority to order a party to retain legal counsel."

When trial Judge had known all along from the time of arrest that Ahmed had his own funds and was not an-indigent as evident from the order of 9/13/99 made in abated divorce case 99-DR-40 (Ex. " ") and from the arraignment hearing on 10/13/99 where Ahmed stated:

ARRAIGNMENT JUDGE: Mr. Ahmed have you attempted to contact or retain private legal counsel in this case?

DEFENDANT: Yes, Your Honor. I talked to about three Attoreys.

ARRAIGNMENT JUDGE: All right. So you are in the process of perhaps acquiring your own legal counsel.

DEFENDANT: That is True.

There was no need to appoiint public defenders even for the arrignment because Criminal Rule 10(C)(1) requires that arraignment be postponed or continued to give time for retaining slected counsels.

Actually, transcript is cleaned out. Ahmed had also said that I have my own funds to pay for the private counsels.

When trial Judge has neither a "legal Duty" nor any "Authority" to require a non-indigent to retain counsel. The appointment of Public defenders was illegal, and Ahmed should not be held responsible for actions or inaction to delay the trial.

" Court may not compell a party to submit to exercise of Judicial power not possesed by that tribunal."

State ex rel. Talaba v. Moreland, 132 Ohio St. 71, 5 N.E.2d 159;

22. Moreover, why appoint public defenders when Law prohibits that Public defenders should be appointed to represent non-indigent defendants. See ORC 120.01 et seq, the entire Public defender system is created to represent 'indigents" only. ORC 120.05(C) and 120.15(D) requires that public defenders withdraw from representation of a non-indigent.

23. The monthly reports filed by the County Public defender James Nicholson with the Belmont County Board of Commissioners and with OH Public defender Commission under ORC 120.15(D) show that there were no Felony Jury Trails held in Belmont County from July 1999 to December 2000. See EX."M","N","O","P","Q","R","S","T","U", "V", "W","X","Y","Z", "AA", "BB", "CC", "DD".

Wherfore, neither the Prosecutors were very busy for any reason to delay discovery or delay the DNA tests or delaying the Trial.

Nor the Trial Judge had any scheduling conflicts due to other Trials in the Common Pleas court that delay of Ahmed's Trial was necessary. The only reason in the record extracted from the Public defenrs' written and oral motions or comments for delaying Trial of Ahmed are:

(a) We are not his counsel as we were appointed provisionally.

(b) Private Counsel could be hired at any time.

(c) The BCI DNA tests are not available even to State.

(Prosecutor confirmed that BCI has assured that tests will be done and results available by december 7, 1999. See Hearing of 11/22/99 Tr. 10).

(d) Public defender without seeing the DNA test results decided to hold-on to defense doing its own retesting, so that trial can be delayed (See his written Motion filed on 12/30/99). However, orally on 12/6/99 and by Motion in writing filed on 11/29/99 and on 11/30/99 Public defender gave the reasons "no discovery provided by Prosecution" so Trial should be continued.

(e) It was on 2/7/2000 past the 90 days required for Speedy Trial that Court fed to Public defender to say that he needed more time to prepare for the trial. The hearing of 2/7/2000 was held on the Complaint of defendant, that Court is granting continuances without monitoring the work of Public defender. It was written "objection" to the continuance granted without any hearing on 12/30/99. The hearing scheduled was cancelled by the Trial Judge sue sponte, perhaps to avoid another objection from defendant against continuation of Trial, After Judge had Promised at 12/6/99 hearing" we are going to set your case for trial within the speedy trial time".

24. When Public defender had not even seen the DNA test results and had not hired any investigator even when authorized on 11/15/99, and nothing from the Discovery was ever used by the defense at trial. No defense witness was called to testify at the trial of guilt determination and defense never used any DNA evidence nor called any DNA expert to testify on behalf of defense. It all show that Public defender had no justifiable reason to seek continuation of the Trial on 12/28/99. What reason the Public defender had to presume that State DNA tests were wrong and defense needed its own tests results??

25. When it was obvious by reading the DNA tests done by the State that it lacked "Statistical Probability analysis for Asians", a competent Attorneys would have moved to prohibit Sate from using its DNA test results because:

The State of delaware evidence rules are same or similar to Ohio and uses federal standard under Daubert V. Merrell..., 61 U.S. 4805. The delaware Supreme Court held in Nelson v. Delaware, 628 A.2d 69, 1993 Del.LEXIS 306 that:

> " DNA matching evidence is inadmissible in the absence of a Statistical interpretation of the signification of the match. Accordingly, admission of only one of these components without the other renders all of the DNA evidence inadmissible."

Public defender or other appointed Attorneys never filed any such Motion in Lemine to exclude defective DNA test results, even when trial Judge required them by an entry to raise any objections about DNA tests. So seeking delay of trial based upon such flimsy and foolish reason to spend $ 18,000.000 of Defendant's personal funds for getting the similarly deficient test results which also did not have any statics about the Asians could not be considered any valid trial strategy or "preparation for trial". When admissibility of State tests results

could have been effectively challanged on 12/28/99 by a Motion in Limine or at an evidentiary hearing, without any defense tests.

25. The DNA blood samples and control samples were collected from the marital house by the Sate or BCI representatives alongwith the the other evidence, without any search warrants. See Proposition of Law No.7. The Public defenders and other appointed Counsels both failed to file "Motion To Supress All Evidence taken from The House", when such Motion would have prevented Sate from introducing any DNA Test Results because from a blood, no one can tell, whose blood it is even if the had any exception to the warrant requirement. When there is none in this case. So there can not be any plainView exception to the Blood. Failuer to do this duty of effective representation, it is established that any representation provided by the Public defender was "farce and Sham".

26. Public Defender never visited the house to even know the crime scene, and never saw any evidence in the custody of Police, never discussed the case with defendant, as he never met Defendant in person during the seven months Public defender was kept on the case. He never dtermined that an investigator was needed as he never filed any witness list on behalf of the defense even when asked by the Trial Judge. There is absolutely nothing which Public defender did to "preparepare for the trial". Wherefore, his seeking continuations of Trial despite the onjections of defendant were a "farce and Sham " representation, as he was otherwise not to be representing a non-indigent.

The Ohio Supreme Court has held that:

> " It follows that except where representation by sounsel is so ineffective that it can be described as a "Sham and a farce" ... an attorney may ordinarily waive his client's rights ...."

State v. McBreen, 54 Ohio St.2d 315, 376 N.E.2d 593. Id at 596. citing Townsend, (1975). 15 Cal. 3d 774, 543 P.2d 619.

27. The Assistant Public defender Eric Costine had told the defendant Ahmed that Costine do not want to be on the criminal case and does not want to represwent Ahmed at all, and will withdraw soon. His soon took six Months as he withdrew on the false pretext that he is a witness on behalf of defense. When Public defener filed the motion for his withdrawl without ever filing any witness list with Eric Costine listed as a witness. Mr. Costine never testified at trial and could not tell what fact he could testify to on behalf of defendant? Court was required to hold a hearing and question Costine to know if he could testify while still representing Ahmed or to establish if his testimony is legal without Ahmed waiving the attorney-client privillege. Public defender never asked Ahmed, what testimony Eric Costine could give or asked Costine what testimony he could give without the waiver of attorney-client privillege? The withdrawl of Eric Costine was also "sham and Farc" just as his appointment was "sham and farc".

So by making the Eric Costine withdraw, Public defender was again creating a false justification for delay in the trial. A trial he had actually no experience to conduct as evident from the Years of Record from the OPD and from Mr. Nicholson, that he does not believe in any Trials but steer the defendants to plead guilty and accept the sentences. The record of Belmont County speeks for itself. Prosecutor also has not been able to confirm even a one case during the 1999-2005 in which Mr. James Nicholson and/or Erci Costine represented any defendant in a Felony Jurry trial. See EX." EE".

28. The representation provided by Nicholson and Costine was ineffective and prejudiced the defendant, as most of his new immigrant witnesses became unavailable due to change of jobs, homes, cities, states, countries and could not be reached at the time of trial. The U.S. Sensus data publi-

shed in 2007 and before concludes that "New immigrants" are the most mobile segment of the US Population. Public defenders failed to take any step to discover the defense witnesses, investigate the case and arrange depositions or establsih any contacts for defending Ahmed by visiting any place of employment where Ahmed worked or any Mosque or community center where Ahmed attended any religious or social events. The Public defender never even asked if any of the relatives Ahmed had who could be possible mitigation witnesses and where they lived?

Public defender never contacted the Pakistani Embassy or filed any Motion that Ahmed be advised his rights under VCCR Article 36(1) as he and Eric Costine from divorce proceedings knew that Ahmed was a Pakistani citizen. Similarly, other appointed counsels also never contacted The Pakistan Embassy or advised Ahmed his rights under Vienna convention. These attorneys even do not know what Vienna Convention is about?

29. PROPOSITION OF LAW NO.6

Attorney Moony of OPD informed Ahmed that he has confirned from the security Department of MCIWorldCom/UUNetworks that there never any "ID Badge Usages" report generated. No such report was given to anyone including the Prosecutor and Police. Ass such Terry falsely testified about any such report from which she could know when any perticular ID Badge was used by Ahmed. the fact that she could not tell about the time of usages of other two ID Badges also prove that "usages reports are not regularly generated and routine bussiness record made in the course of bussiness activity" at the MCIWorldCom. So her testimony/fails on many accounts even to qualify as "Bussiness record". Evid.Rule 803(6). Terry also participated in directly in planting the Spreadsheet or list of ID Badges or Loaner passes as it is refered to in the record. The purported list has dates on 9/13, 9/16, 9/16/99 written

on it in the handwriting of Terry as per her testimony at trial. The retun filed in the Court by detective Bart Giesy listing items taken from the Office of Nawaz Ahmed on 9/28/99 includes this purported list of passes or loaner passes or ID Badges, and the return is sworn by Detective Giesy. Ahmed was arrested on 9/11/99 and was not in his office at MANCIWorldCom after 9/11/99. The planting of evidence by Terry violated due process rights of Ahmed, denied fair trial and reliable sentencing. The purported ID Badge Lists or any purported report of usages of ID Badge which is not discovered and not made during the daily or regularly kept in the course of regularly conducted bussiness activity under regular practice. He testimony lacked any indica of trustworthiness, as Terry could not testify to the "circumstances of preparation or generation of ID usages report", or who prepared it and why she did not have it with her to show.

30. PROPOSITION OF LAW NO.11

The defense counsels were told by Attorney carpino who actually talked to the Police and Prosecutor's office and knew what evidence could be presented by the Prosecution as Carpino had also read the whole discovery that his watching of the Trial Testimony establishes that Prosecution has failed to prove the aggrevated murders as charged. In a zeal to obtain conviction Prosector has claimed honor killing which by its nature involve that "provocation occured due to infielity" and "enraged" the relative, who's honor was dishonored. This perticular crime always entail "rage and provocation" by the acts of the women. Carpino advised counsels to argue that Prosecutor have instead presented evidence of voluntary manslaughter not charged in the indictment and advise the Jury about the elements of voluntary manslaughter. Before the final Jury instruction Attorney Olivito went to the Prosecutor and the trial judge to ask for such jury instructions. However, Olivitto

came to the ~~to the~~ holding cell as the defendant was not in the Courtroom and told Ahmed:

> "They say that Voluntary manslaughter is not the lesser included offense to aggrevated murders and Murder is the lesser included offense, so Jury instructions will include murder as lesser included offense".

As such defense attorneys themselves failed to ensure that correct law was being used and applied and then insist that correct jury instruction be given. Trial Judge had independant Duty to instrucvt the Jury on the voluntary manslaughter, especially when Prosecution witnesses testified:

> Divorce was contested and situation kept escalating.
> It was hoistile divorce. She was adament about having full custody of the childern. One of the accusation was she had an affair. A birthday party was arranged for the younger son but Lubaina refused to bring the childern at 6 PM (which was routine before that day as per notes in day planner of Ahmed discovered and as per the Tapes discovered).
>
> Divorce is the most stressful event.
>
> Both husband and wife were on Major depression and extreme stress medications during the pendency of divorce.
>
> A phone call in the evening at work involving an argument occured allegedly between the husband and wife.
> Ahmed was injured at right thumb and a sctratch on fore-arm and swollen hands (Carpino would explain to the Jury that it could have been result of attack by many people).
> There was only one key to the house and that key was with the wife. So door was opened by her or was left open or unlocked (Tapes contain Lubaina telling the elder son that daddy will bring you to home and you will remain at home when we both go to the court; There was a letter to her also Ahmed saying I will leave the childern at home when coming from on 4th of July weekend and notes of day planner with dates show the childern were left at the huse by Ahmed, discovered).

BCCI DNA experts and investigators testified that Ahmed's blood was found in the kitchen area, towards the right-hand-side of the entry into the kitchen from ouitside, and injured thumb was also on rigt-hand, as per P/O Nanni. Prosecutor observed that defendant was right-handed. Coronor testified and wrote on the death certificates that there was a marital dispute, leading to deaths of four people.The Hospital Nurses testified to the argumentative call between the husband and wife, late in the work day. Prosecutor remarked that this call mas the basis of decision of the defendant to kill as many family members as possible. The defendant's blood in the kitchen, and swollen hands and scratch on fore-arm(could be dfensive woonds as per carpino's counter to Prosecutor's theory, thus arguing that Prosecutor has infact claimed Voluntary Manslaughter without saying it). As per Coronor the marital dispute led the people into the basement, where deaths occured within few hours of phone call.

While Ahmed has never testified or claimed any thing. The various Attorneys representing Ahmed have remarked that instruction on Vountary Manslaughter were essential in light of the evidence and Prosecutor's theory of honor killings, which by their nature are due to extreme procation, rage and with an element of infidelity. See State v. Shane, 63 OS.3d 630 and 19 Ohio Northern Law Review 977 (1993)," Confessions of infidelity as reasonable provocation for Voluntary Manslaughter" The Appellate counsels could not understand, what constitute basis for honor killings as they foolishly cited Internet URLs in the Brief, but utterly failed to read what Prosecutor and sate witnesses had said to claim a Voluntary Manslaughter without saying it(Carpino's remarks after reading the Appellate Briefs, and Prosecutor's arguments).

Prosecutor claimed "her family members came to her aid" Tr.779; So he killed her and any representative of the family that he could get his hand on". So Prosecutor himself appear to invoke ORC 2111.08 "Parents are natural guardians of their childern and charged to protect, care, fight for their childern without respect to the age of childern".

Prosecutor's purported time-line also points to that he failed to prove Aggravated Murders but struggled to hide elements of Voluntary manslaughter (Attorney Carpino and other attorneys analysis of closing by State).

See also Robertson v. hanks (1998, CA7 Ind) 140 F.3d 707 and Lattimore v. Dubios (2001,DC Mass) 152 F.Supp.2d 67;

> "... Failuer ofState Trial Judge to instruct Jury on lesser included offense... may be considered by Federal court in context of habeas corpus proceeding to determine whether denial of instruction rises to level of Constitutional ~~vvvv~~ violation."
>
> Mann v. Gray (1985, ND Ohio) 622 F.Supp 1225;

Appellant was prejudiced by trial counsel's failuers to understand Law and argue the available evidence already presented by the Prosecution about Voluntary Manslaughter. Appellant was also prejudiced by counsel's failuer to pursue lesser included offense claim on appeal. Both counsels were ineffective.

The telephone conversation could be provoking, as Prosecutor himself commented that defendant made a decision just after the call. So Prose4cutor infact argued in various ways (a) Honor killing" and (b) Phone call being sufficiently provoking, that voluntary manslghter occured.(see Prosecutor's closing and opening remarks).

The Ohio Supreme Court has held that:

> " Where, in a prosecution for aggravated murder, the defendant elicits some evidence of the mitigating circumstances of extreme emotional stress (pre 1982 version of ORC 2903.03), the question of his having committed the lesser included offense of voluntary manslaughter <u>must be submitted to the Jury under proper instruction from the court."</u>
>
> State v. Muscatello, 55 OS.2d 201 (1978).

> " the refusal of a trial court to charge upon such a required lesser included offense is error prejudicial to the rights of the defendant."
>
> State v. Jones, 47 OApp.2d 8 (1975).

> "The confession of infidality are reasonable provocation for voluntary manslaughter."
>
> State v. Shane, 63 OS.3d 630 (Ohio 1992).

Here the Prosecutor claimed and elicited all elements of voluntary manslaughter and defendant need not present any evidence to prove it.

" Where defendant was convicted under former statute found by U.S. Supreme Court to violate capital murder defendant's due process rights because it precluded Jury from finding defendant guilty of lesser-included non-Capital offense, and where evidence warranted instruction to Jury on lesser-included non-capital offense; Habeas relief was Warranted."

Wiggerfall v. Jones (1990, CA 11 Ala), 918 F.2d 1544;

"... ommission of instruction regarding particular offense may effectively result in Directed Verdict, thereby implicating Sixth and Fourteenth amendments rights."... "or the ommission was inconsistent with standards of fair Procedure."

Armstead v. Frank (2004, CA7 Wis), 383 F.3d 630;

31. PROPOSITION OF LAW NO.12

The signed statements of Police Officer Nanni as attached at EX." "FF" clearly show that he fasely testified at the trial about two statements allegedly attributed to defendant because signed written statement do not contain any of these statements, and none of the statement is discovered as required by law. P.O.Nanni may have been serving the urgings of the Belmont County Sheriff or investigator or of the Prosecutor in adding these alleged statements, but his own written signed statements should control. The prevailing law is that when an arrestin officer testifies contrary to his signed statement at trial, it is an automatic reversal. P.O.Nanni testified that:

1. "Ahmed upon foreceful questioning prior to Miranda advisement said that he came from Ohio, and when further urged, where in Ohio, he said, from St.Clairsville."
2. Ahmed asked for Attorney.

At trial Nanni testified that after this the Mirinda warnings were given by him and questioning stopped. His signed statement also contradict this that"questioning stopped". There were over 10 other people standing within few feets inside the PIA office where arrest occured. They would have different recollections but no one have gone to ask them in 8 years.

Ahmed strongly protested when he heard this false testimony. Attorney Olivitto went to Nanni and questioned him further about his own signed statements and Nanni disowned his own signed statement. Olivitto said to the Trial Judge "weshould settle this outside the jury". The trial Judge smiled and kept quite. The transcript is cleaned out as it only say that Hershy cross-examined Nanni. However, cassette Tapes of the Court Reporter may have recorded on them the cross-emainination by Olivitto and a TV camera was recording entire trial. Those resouces has not been asked by the Appellate counsels or Postconviction Consels to establish truth of this very prejuducial matter.

Even then the signed statements of arresting officer is enoughto establish the truth in this matter.

32. PROPOSITION OF LAW No.13

The Voire Dire Transcript pages attached as Ex." GG " (Tr.245-263) show that Prosecutor" death qualified the Jury". He asked specific question from every Juror if they agree with death penalty and removed all those who he thought may be little reluctant at first but willing to follow the instructions, law and evidence. See transcript of Voire Dire, about the 12 who actually sat as Jurors. However, Prosecutor also removed all potential jurors who showed any reluctance but were willing to follow the instructions, law and evidence. The Rosmary Busack was challanged for cause twice by Prosecutor and Judge denied those challanges. Then Prosecutor removed her by use of Peremptory challange, thus making the Jury unrepresentative of community, and biased toward death.

An objection was made but denied. See Tr 482.

" Improper exclusion of even one venireperson based on Juror's objection to death penalty is sufficient basis for granting Habeas relief."

Darden v. Wainwright(1984, CA 11 Fla) 725 F.2d 694;

"Indivisual sentenced to death is entitled to habeas relief on ground that he was tried before jury from which all persons who refused to consider death penalty had been excluded."

Woodard v. Sargent (1985 CA8 Ark) 753 F.2d 694;

" Habeas relief was warranted for State Court's exclusion from Capital muder trial of venire person who was uncertain about his views on death penalty, since his discomfort with death penalty did not appear to prevent or substantially impair performance of his duties as Juror in accordance with his instructions and his oath; Venire person informed counsel and Judge on several occasions that he could very possibly feel death penalty would be appropriate in certain factual scenarios. He told Judge he would follow as instructed, and he never stated that his views would prevent him from serving as impartial Juror."

Gall v. Oarker (2000,CA6 KY) 231 F.3d 265, 2000 FED App.379p.

See also Szhon v. Lehman (2001,CA3 Pa) 273 F.3d 299 saying that," "practice of excusing Jurors reluctant to impose death was unreasonable application of clearly established U.S. Supreme Court precedence."

See also Keeten v. Garrison (1984,WD NC) 578 F.Supp 1164; Brown v. Rice, (1988, WD NC) 693 F.Supp 381 .

33. PROPOSITION OF LAW No.14

The two uniform officers of Belmont County Sheriff department sat immidiately behind this Appellant during his Trial, seperated by small wooden poles marking the division between Court and the visitor area. One one them was deputy Alar. Both guarded Ahmed on all days during the trial while comming into and going out of the Court on all occasions as well.

Another Uniform deputy Bart Giest sat few feets to the right of defendant-Appellant at the Prosecutor's table, joined with Juror box. Two more Uniform deputues stood close to the front wall between the Jury and the witness stand. Outside the court-room very heavy guard was posted dressed in fully armed special duty taskforce. The parking lot of Jail was closed to Public and even for Jurors. The Jurors were instructed to park a mile away at the Eastern Ohio State University campus and were brought to Jail-Court-room in Sheriff's Vans and taken back to their parked cars in

Sherrif's vans for Lunch and back at the conclusion of the Trial Day. For first three days Court-room was closed to the Public and no Pblic public was allowed in the court-room. The trial was relayed via TV link to a room at the Ney Center at University Campus.

The defense counsels and investigator were issued special Identity badges with writing "defense Attorney" etc.etc for all times to wear inside and outside the Court-room. The link Road from University campus to Jail was blocked with long heavy concrete barriers, with a narrow one vehicle opening for the "approved vehicles".

All of these "security arrangements" were implemented by Sheriff and without any court-hearing or any approval from the Trial Judge "on the Record". Judge herself announced in the Court that Trial proceedings will be relayed to University Campus wher arrangements are made for the public to sit and watch if the like. however, transcript to the surprise of defendant is either cleaned-out or reporter was instructed not to record such remarks and announcements of the Court.

The defendant mad ean Objection to the "seating arrangment" right infront off the two Uniform guards wearing weapons. The trial Judge rather than address the concern, avoided it by "praising table on which defendant sat" and no more.

The U.S. Supreme Court in Holbrook v. Flynn, 475 U.S.560 held that such practices are so inherently prejudicial that they must be justified by an "essential state" policy or interest. See also Williams V. Taylor, 529 U.S. 362 and Williams, at 505 ,96 S.Ct.1691. Pp653-654.
Every one including Sheriff, Judge knew that Defendant has no relatives in the USA and no friend came to visit defendant during the 17 months pre-trial period. No relative or Friend of defendant contacted Sherrif

for attending court proceedings any where. Wherefore, heavy arrangements of security served no purpose other than to Prejudice the Jurors and remove any presumption of innicence if it existed.

Defendant-Appellant was brought to attend criminal case hearings in hand-cuffs, shakles, chains and Jail uniform during the 17 months pre-trial delay, alongwith at all civil cases hearings in 7 civil cases. Media was allowed to take pictures and such pictures of defendant were posted on the Internet and published in local Newspapers and shown on TV frequently.

The only time any record was made was during the crime scene visit by defendant. The objection to Trial Judge fell on deffears, who said "I will leave such matters to the Sheriff".

One wonder, why Sherrif and Prosecutor who were both elected unopposed in the 2000 election were defeated by Voters at the hand of relatively young and unknown oponents in 2004 elections? Even when whole Ohio Supreme Court praised the Prosecutor in July 2004 at the Oral arguments. Even then such praises did not work for the Proseutor who considered himself 'invincible' and was always elected unopposed before 2004. May be Voters saw which Court did not see in the case records. Voters never see any trial because this was the only captal case which went to Trial in the history of Belmont County. Public defender ensures that all detainees plead guilty and he file "sentencing hearings" as trials in his monthly reports to OPD and County Commissioners. F-rom 1999 to 2005 Public defender has not been able to provide even a single case in which a felont Jury trial was held, when asked for Public Records. When asked by this defendant, why he refuses to visit him at the county jail. Public defender said," I have never visited any detainee at jail and I intend to keep that record". He never came.

Affidavit of Nawaz Ahmed Cont'd.

Affiant Sayth No Further.

NAWAZ AHMED

878 Coitsville-Hubbard Road,

Youngstown, Ohio 44505.

Sworn to and Subscribed in my presence on this 7th day of January 2008 by the said Nawaz Ahmed.

NOTARY PUBLIC

Scott Nowak

Expires March 27, 2010

Cases

12/11/2007

Casetype:	C
Open:	07/09/19 98
Close:	11/01/19 98
Casenum:	98-CR-101
Last:	GASTON
First:	JAMES R.
Ssn:	[redacted]
Clientid:	
Charge:	RAPE (2907.02)-2 CTS.
Attorney:	NICHELSON, JAMES L.
Prosecutor:	FLANAGAN
Judge:	SOLOVAN
Hearing:	SENTENCING
Courtroom:	COMMON PLEAS COURT
Courtdate:	10/26/19 98
Courttime:	09:00 AM
Motion:	
Research:	
Dispo:	Trial-Guilty/Le
Stgeclsd:	
Invest:	
Finance:	
Objection:	
Affcode:	
Injail:	
Dismiss:	
Source:	

EX "A"

Cases

12/11/2007

Casetype:	C
Open:	07/09/19 98
Close:	03/01/19 99
Casenum:	98-CR-096
Last:	HARRIS
First:	RONALD
Ssn:	[redacted]
Clientid:	
Charge:	HARASSMENT BY INMATE (2921.38)
Attorney:	NICHELSON, JAMES L.
Prosecutor:	YONAK
Judge:	SARGUS
Hearing:	SENTENCING
Courtroom:	COMMON PLEAS COURT
Courtdate:	03/01/19 99
Courttime:	08:20 AM
Motion:	
Research:	
Dispo:	Trial-Guilty/Al
Stgeclsd:	
Invest:	
Finance:	
Objection:	
Affcode:	
Injail:	
Dismiss:	
Source:	
Summons:	

EX "B"

Cases

12/11/2007

Casetype:	C
Open:	12/10/19 98
Close:	03/29/19 99
Casenum:	98-CR-177
Last:	LINDE
First:	RICK A.
Ssn:	[redacted]
Clientid:	
Charge:	ASSAULT (2903.13)
Attorney:	COSTINE, ERIC
Prosecutor:	FLANAGAN
Judge:	SOLOVAN
Hearing:	SENTENCING
Courtroom:	COMMON PLEAS COURT
Courtdate:	03/29/19 99
Courttime:	09:00 AM
Motion:	
Research:	
Dispo:	Trial-Guilty/Al
Stgeclsd:	
Invest:	
Finance:	
Objection:	
Affcode:	
Injail:	
Dismiss:	
Source:	

EX "C"

Cases

12/11/2007

Casetype:	C
Open:	02/11/19 99
Close:	03/29/19 99
Casenum:	99-CR-008
Last:	LINDE
First:	RICK A.
Ssn:	[redacted]
Clientid:	
Charge:	ASSAULT (2903.13)
Attorney:	COSTINE, ERIC
Prosecutor:	FLANAGAN
Judge:	SOLOVAN
Hearing:	SENTENCING
Courtroom:	COMMON PLEAS COURT
Courtdate:	03/29/19 99
Courttime:	09:00 AM
Motion:	
Research:	
Dispo:	Trial-Guilty/Al
Stgeclsd:	
Invest:	
Finance:	
Objection:	
Affcode:	
Injail:	
Dismiss:	
Source:	
Supwork:	

EX "D"

Cases

12/11/2007

Casetype:	C
Open:	03/11/19 99
Close:	06/07/19 99
Casenum:	99-CR-031
Last:	RUNNER
First:	ROGER A.
Ssn:	[redacted]
Clientid:	
Charge:	DUI (4511.19)
Attorney:	NICHELSON, JAMES L.
Prosecutor:	FLANAGAN
Judge:	SARGUS
Hearing:	SENTENCING
Courtroom:	COMMON PLEAS COURT
Courtdate:	06/07/19 99
Courttime:	08:20 AM
Motion:	
Research:	
Dispo:	Trial-Guilty/Al
Stgeclsd:	
Invest:	
Finance:	
Objection:	
Affcode:	
Injail:	
Dismiss:	
Source:	
Swwork:	

Ex. "E"

Cases

12/11/2007

Casetype:	C
Open:	07/13/20 00
Close:	01/01/20 01
Casenum:	00-CR-128
Last:	ECKLES
First:	RODNEY A.
Ssn:	[redacted]
Clientid:	
Charge:	FEL. ASSAULT (2903.11)
Attorney:	NICHELSON, JAMES L.
Prosecutor:	FLANAGAN
Judge:	SOLOVAN
Hearing:	SENTENCING
Courtroom:	COMMON PLEAS COURT
Courtdate:	10/27/20 00
Courttime:	08:30 AM
Motion:	
Research:	
Dispo:	Trial-Guilty/Al
Stgeclsd:	
Invest:	
Finance:	
Objection:	
Affcode:	
Injail:	
Dismiss:	
Source:	
Swwork:	

Ex. "F"

Cases

12/11/2007

Casetype:	C
Open:	03/15/20 01
Close:	02/26/20 02
Casenum:	00-CR-044
Last:	HOWARD
First:	ROBERT E.
Ssn:	[redacted]
Clientid:	
Charge:	TRAFFICKING IN DRUGS (2925.03)
Attorney:	COSTINE, ERIC
Prosecutor:	FLANAGAN
Judge:	SARGUS
Hearing:	SENTENCING
Courtroom:	COMMON PLEAS COURT
Courtdate:	01/22/20 02
Courttime:	09:00 AM
Motion:	
Research:	
Dispo:	Trial-Guilty/Le
Stgeclsd:	
Invest:	
Finance:	
Objection:	
Affcode:	
Injail:	
Dismiss:	
Source:	
Swwork:	

EX. "G"

Cases

12/11/2007

Casetype:	C
Open:	04/11/20 02
Close:	10/16/20 02
Casenum:	02-CR-057
Last:	BURTON
First:	HENRY R.
Ssn:	[redacted]
Clientid:	
Charge:	TRAFFICKING IN DRUGS (2925.03)
Attorney:	NICHELSON, JAMES L.
Prosecutor:	FRY
Judge:	SOLOVAN
Hearing:	SENTENCING
Courtroom:	COMMON PLEAS COURT
Courtdate:	10/16/20 02
Courttime:	01:00 PM
Motion:	
Research:	
Dispo:	Trial-Guilty/Le
Stgeclsd:	
Invest:	
Finance:	
Objection:	
Affcode:	
Injail:	
Dismiss:	
Source:	
Swwork:	

EX. "H"

Cases

12/11/2007

Casetype:	C
Open:	04/12/20 01
Close:	08/24/20 01
Casenum:	01-CR-056
Last:	PATRONE
First:	BILLIE JO
Ssn:	[redacted]
Clientid:	
Charge:	TRAFFICKING IN DRUGS (2925.03)
Attorney:	COSTINE, ERIC
Prosecutor:	FLANAGAN
Judge:	SOLOVAN
Hearing:	SENTENCING
Courtroom:	COMMON PLEAS COURT
Courtdate:	08/24/20 01
Courttime:	08:30 AM
Motion:	
Research:	
Dispo:	Trial-Guilty/A1
Stgeclsd:	
Invest:	
Finance:	
Objection:	
Affcode:	
Injail:	
Dismiss:	
Source:	
Swwork:	

Ex. "I"

Cases

12/11/2007

Casetype:	C
Open:	01/20/20 05
Close:	12/01/20 05
Casenum:	04-CR-329
Last:	NOTTINGHAM
First:	GREGORY S.
Ssn:	[redacted]
Clientid:	
Charge:	FAIL/COMPLY W/POLICE (2921.331)
Attorney:	NICHELSON, JAMES L.
Prosecutor:	FRY
Judge:	SARGUS
Hearing:	SENTENCING
Courtroom:	COMMON PLEAS COURT
Courtdate:	11/21/20 05
Courttime:	09:00 AM
Motion:	
Research:	
Dispo:	Trial-Guilty/Al
Stgeclsd:	
Invest:	
Finance:	
Objection:	
Affcode:	
Injail:	
Dismiss:	
Source:	
Swwork:	

EX. "J"

Cases

12/11/2007

Casetype:	C
Open:	04/14/2005
Close:	08/01/2005
Casenum:	05-CR-096
Last:	GREINER
First:	ANTHONY R.
Ssn:	[redacted]
Clientid:	
Charge:	DRUG TRAFFICKING (2925.03)
Attorney:	NICHELSON, JAMES L.
Prosecutor:	FRY
Judge:	SARGUS
Hearing:	SENTENCING
Courtroom:	COMMON PLEAS COURT
Courtdate:	08/01/2005
Courttime:	09:00 AM
Motion:	
Research:	
Dispo:	Trial-Guilty/Al
Stgeclsd:	
Invest:	
Finance:	
Objection:	
Affcode:	
Injail:	
Dismiss:	
Source:	
Swwork:	

EX. "K"

Cases

12/11/2007

Casetype:	C
Open:	04/14/20 05
Close:	09/12/20 05
Casenum:	05-CR-101
Last:	SIMMONS
First:	LISA R.
Ssn:	[redacted]
Clientid:	
Charge:	DRUG POSSESSION (2925.11)
Attorney:	NICHELSON, JAMES L.
Prosecutor:	FRY
Judge:	SARGUS
Hearing:	SENTENCING
Courtroom:	COMMON PLEAS COURT
Courtdate:	09/12/20 05
Courttime:	09:00 AM
Motion:	
Research:	
Dispo:	Trial-Guilty/Al
Stgeclsd:	
Invest:	
Finance:	
Objection:	
Affcode:	
Injail:	
Dismiss:	
Source:	
Swwork:	

EX "L"

OHIO PUBLIC DEFENDER COMMISSION

Public Defender Expense/Caseload Report

for Jan 1997 through Jan 2001
for Counties Belmont through Belmont

July 1999

EXPENSE INFORMATION

Salaries:	$7,983.76	CostAllocation:	$450.33	
Fringes:	$0.00	Other:	$1,989.58	
Supplies:	$0.00	Transcripts:	$0.00	
Equipment:	$0.00	Federal Funds:	$0.00	
Contract Services:	$431.87	Other Funds:	$0.00	
Rentals:	$350.00	Total Expenses:	$11,205.54	
Contract Repairs:	$0.00			
Travel:	$0.00	Reimbursement:	$5,154.55	(46.00%)

CASELOAD INFORMATION

	Felonies	Misdemeanors
Trials:	0	0
Pleas:	14	44
Dismissals:	2	28
Other Dispositions:	4	6
Total:	20	78
Pending:	77	226

	Juvenile	Domestic Relations
Delinquency, Unruliness:	10	N/A
Custody, Dependency, Neglect:	7	N/A
Parentage:	0	0
Non-Support Contempt:	0	3
Other:	5	14
Total:	22	17
Pending:	68	0

	Closed	Pending
Appeals:	0	0
Post-Conviction Motions:	4	0
Parole Revocations:	10	0
Habeas Corpus:	0	0
Extraditions:	0	0
Miscellaneous:	0	0

Total Closed Cases:	151
Total Pending Cases:	371
Preliminary Hearings:	2
Not Indigent or Arraignment Only:	0

EX "M",

OHIO PUBLIC DEFENDER COMMISSION

Public Defender Expense/Caseload Report

for Jan 1997 through Jan 2001
for Counties Belmont through Belmont

August 1999

EXPENSE INFORMATION

Salaries:	$7,983.76	CostAllocation:	$450.33	
Fringes:	$0.00	Other:	$4,565.97	
Supplies:	$287.00	Transcripts:	$0.00	
Equipment:	$0.00	Federal Funds:	$0.00	
Contract Services:	$1,143.61	Other Funds:	$0.00	
Rentals:	$350.00	Total Expenses:	$14,780.67	
Contract Repairs:	$0.00			
Travel:	$0.00	Reimbursement:	$6,799.11	(46.00%)

CASELOAD INFORMATION

	Felonies	Misdemeanors
Trials:	0	0
Pleas:	13	38
Dismissals:	3	16
Other Dispositions:	5	9
Total:	21	63
Pending:	88	232

	Juvenile	Domestic Relations
Delinquency, Unruliness:	10	N/A
Custody, Dependency, Neglect:	3	N/A
Parentage:	0	0
Non-Support Contempt:	0	3
Other:	2	15
Total:	15	18
Pending:	75	0

	Closed	Pending
Appeals:	1	0
Post-Conviction Motions:	5	0
Parole Revocations:	13	0
Habeas Corpus:	0	0
Extraditions:	1	0
Miscellaneous:	3	0

Total Closed Cases:	140
Total Pending Cases:	395
Preliminary Hearings:	3
Not Indigent or Arraignment Only:	0

EX. "N"

OHIO PUBLIC DEFENDER COMMISSION

Public Defender Expense/Caseload Report

for Jan 1997 through Jan 2001
for Counties Belmont through Belmont

September 1999

EXPENSE INFORMATION

Salaries:	$7,983.76	CostAllocation:	$450.33	
Fringes:	$3,245.36	Other:	$1,306.06	
Supplies:	$294.17	Transcripts:	$0.00	
Equipment:	$0.00	Federal Funds:	$0.00	
Contract Services:	$408.26	Other Funds:	$0.00	
Rentals:	$350.00	Total Expenses:	$14,037.94	
Contract Repairs:	$0.00			
Travel:	$0.00	Reimbursement:	$6,457.45	(46.00%)

CASELOAD INFORMATION

	Felonies	Misdemeanors
Trials:	0	2
Pleas:	9	33
Dismissals:	7	27
Other Dispositions:	3	3
Total:	19	65
Pending:	79	245

	Juvenile	Domestic Relations
Delinquency, Unruliness:	2	N/A
Custody, Dependency, Neglect:	3	N/A
Parentage:	0	0
Non-Support Contempt:	0	0
Other:	3	14
Total:	8	14
Pending:	83	0

	Closed	Pending
Appeals:	1	0
Post-Conviction Motions:	13	0
Parole Revocations:	5	0
Habeas Corpus:	0	0
Extraditions:	0	0
Miscellaneous:	0	0

Total Closed Cases:	125
Total Pending Cases:	407
Preliminary Hearings:	5
Not Indigent or Arraignment Only:	1

EX: "O"

OHIO PUBLIC DEFENDER COMMISSION

Public Defender Expense/Caseload Report

for Jan 1997 through Jan 2001
for Counties Belmont through Belmont

October 1999

EXPENSE INFORMATION

Salaries:	$12,290.64	CostAllocation:	$450.33	
Fringes:	$0.00	Other:	$4,855.70	
Supplies:	$75.65	Transcripts:	$0.00	
Equipment:	$0.00	Federal Funds:	$0.00	
Contract Services:	$711.97	Other Funds:	$0.00	
Rentals:	$350.00	Total Expenses:	$18,734.29	
Contract Repairs:	$0.00			
Travel:	$0.00	Reimbursement:	$9,179.80	(49.00%)

CASELOAD INFORMATION

	Felonies	Misdemeanors
Trials:	0	3
Pleas:	8	33
Dismissals:	5	29
Other Dispositions:	8	10
Total:	21	75
Pending:	72	251

	Juvenile	Domestic Relations
Delinquency, Unruliness:	11	N/A
Custody, Dependency, Neglect:	9	N/A
Parentage:	0	0
Non-Support Contempt:	1	1
Other:	4	24
Total:	25	25
Pending:	87	0

	Closed	Pending
Appeals:	1	0
Post-Conviction Motions:	6	0
Parole Revocations:	8	0
Habeas Corpus:	0	0
Extraditions:	1	0
Miscellaneous:	0	0

Total Closed Cases:	162
Total Pending Cases:	410
Preliminary Hearings:	7
Not Indigent or Arraignment Only:	0

Ex "P"

OHIO PUBLIC DEFENDER COMMISSION

Public Defender Expense/Caseload Report

for Jan 1997 through Jan 2001
for Counties Belmont through Belmont

November 1999

EXPENSE INFORMATION

Salaries:	$8,403.76	CostAllocation:	$450.33	
Fringes:	$0.00	Other:	$1,256.00	
Supplies:	$0.00	Transcripts:	$0.00	
Equipment:	$0.00	Federal Funds:	$0.00	
Contract Services:	$315.61	Other Funds:	$0.00	
Rentals:	$350.00	Total Expenses:	$10,775.70	
Contract Repairs:	$0.00			
Travel:	$0.00	Reimbursement:	$5,387.85	(50.00%)

CASELOAD INFORMATION

	Felonies	Misdemeanors
Trials:	0	3
Pleas:	12	36
Dismissals:	3	24
Other Dispositions:	2	5
Total:	17	68
Pending:	65	254

	Juvenile	Domestic Relations
Delinquency, Unruliness:	12	N/A
Custody, Dependency, Neglect:	4	N/A
Parentage:	0	0
Non-Support Contempt:	1	12
Other:	3	0
Total:	20	12
Pending:	92	0

	Closed	Pending
Appeals:	0	0
Post-Conviction Motions:	6	0
Parole Revocations:	3	0
Habeas Corpus:	0	0
Extraditions:	0	0
Miscellaneous:	0	0

Total Closed Cases:	126
Total Pending Cases:	411
Preliminary Hearings:	3
Not Indigent or Arraignment Only:	0

EX. "Q"

OHIO PUBLIC DEFENDER COMMISSION

Public Defender Expense/Caseload Report

for Jan 1997 through Jan 2001
for Counties Belmont through Belmont

December 1999

EXPENSE INFORMATION

Salaries:	$8,403.76	CostAllocation:	$450.33	
Fringes:	$3,786.26	Other:	$4,474.88	
Supplies:	$440.35	Transcripts:	$0.00	
Equipment:	$0.00	Federal Funds:	$0.00	
Contract Services:	$329.56	Other Funds:	$0.00	
Rentals:	$350.00	Total Expenses:	$18,321.94	
Contract Repairs:	$0.00			
Travel:	$86.80	Reimbursement:	$9,160.97	(50.00%)

CASELOAD INFORMATION

	Felonies	Misdemeanors
Trials:	0	3
Pleas:	6	37
Dismissals:	14	33
Other Dispositions:	8	6
Total:	28	79
Pending:	80	232

	Juvenile	Domestic Relations
Delinquency, Unruliness:	20	N/A
Custody, Dependency, Neglect:	0	N/A
Parentage:	6	0
Non-Support Contempt:	0	2
Other:	4	15
Total:	30	17
Pending:	81	0

	Closed	Pending
Appeals:	1	0
Post-Conviction Motions:	9	0
Parole Revocations:	6	0
Habeas Corpus:	0	0
Extraditions:	0	0
Miscellaneous:	0	0

Total Closed Cases:	170
Total Pending Cases:	393
Preliminary Hearings:	21
Not Indigent or Arraignment Only:	1

EX. "R"

OHIO PUBLIC DEFENDER COMMISSION

Public Defender Expense/Caseload Report

for Jan 1997 through Jan 2001
for Counties Belmont through Belmont

January 2000

EXPENSE INFORMATION

Salaries:	$8,739.90	CostAllocation:	$661.25	
Fringes:	$0.00	Other:	$1,038.00	
Supplies:	$184.50	Transcripts:	$0.00	
Equipment:	$0.00	Federal Funds:	$0.00	
Contract Services:	$320.76	Other Funds:	$0.00	
Rentals:	$350.00	Total Expenses:	$11,294.41	
Contract Repairs:	$0.00			
Travel:	$0.00	Reimbursement:	$5,647.21	(50.00%)

CASELOAD INFORMATION

	Felonies	Misdemeanors
Trials:	0	3
Pleas:	3	39
Dismissals:	3	17
Other Dispositions:	11	4
Total:	17	63
Pending:	82	244

	Juvenile	Domestic Relations
Delinquency, Unruliness:	19	N/A
Custody, Dependency, Neglect:	3	N/A
Parentage:	0	0
Non-Support Contempt:	2	1
Other:	5	9
Total:	29	10
Pending:	86	0

	Closed	Pending
Appeals:	2	0
Post-Conviction Motions:	12	0
Parole Revocations:	7	0
Habeas Corpus:	0	0
Extraditions:	0	0
Miscellaneous:	0	0

Total Closed Cases:	140
Total Pending Cases:	412
Preliminary Hearings:	16
Not Indigent or Arraignment Only:	2

EX."S"

OHIO PUBLIC DEFENDER COMMISSION

Public Defender Expense/Caseload Report

for Jan 1997 through Jan 2001
for Counties Belmont through Belmont

February 2000

EXPENSE INFORMATION

Salaries:	$8,739.90	CostAllocation:	$661.25	
Fringes:	$0.00	Other:	$4,301.07	
Supplies:	$171.58	Transcripts:	$0.00	
Equipment:	$0.00	Federal Funds:	$0.00	
Contract Services:	$1,179.83	Other Funds:	$0.00	
Rentals:	$350.00	Total Expenses:	$15,403.63	
Contract Repairs:	$0.00			
Travel:	$0.00	Reimbursement:	$7,701.82	(50.00%)

CASELOAD INFORMATION

	Felonies	Misdemeanors
Trials:	0	5
Pleas:	7	41
Dismissals:	2	18
Other Dispositions:	10	5
Total:	19	69
Pending:	105	237

	Juvenile	Domestic Relations
Delinquency, Unruliness:	15	N/A
Custody, Dependency, Neglect:	2	N/A
Parentage:	1	0
Non-Support Contempt:	3	1
Other:	0	18
Total:	21	19
Pending:	102	0

	Closed	Pending
Appeals:	0	0
Post-Conviction Motions:	11	0
Parole Revocations:	9	0
Habeas Corpus:	0	0
Extraditions:	0	0
Miscellaneous:	0	0

Total Closed Cases:	148
Total Pending Cases:	444
Preliminary Hearings:	10
Not Indigent or Arraignment Only:	2

EX "T"

OHIO PUBLIC DEFENDER COMMISSION

Public Defender Expense/Caseload Report

for Jan 1997 through Jan 2001
for Counties Belmont through Belmont

March 2000

EXPENSE INFORMATION

Salaries:	$13,109.85	CostAllocation:	$661.25	
Fringes:	$3,401.87	Other:	$1,141.20	
Supplies:	$319.36	Transcripts:	$0.00	
Equipment:	$0.00	Federal Funds:	$0.00	
Contract Services:	$379.31	Other Funds:	$0.00	
Rentals:	$350.00	Total Expenses:	$19,362.84	
Contract Repairs:	$0.00			
Travel:	$0.00	Reimbursement:	$9,681.42	(50.00%)

CASELOAD INFORMATION

	Felonies	Misdemeanors
Trials:	0	2
Pleas:	12	47
Dismissals:	5	23
Other Dispositions:	13	27
Total:	30	99
Pending:	94	214

	Juvenile	Domestic Relations
Delinquency, Unruliness:	12	N/A
Custody, Dependency, Neglect:	2	N/A
Parentage:	0	0
Non-Support Contempt:	3	2
Other:	2	24
Total:	19	26
Pending:	103	0

	Closed	Pending
Appeals:	1	0
Post-Conviction Motions:	13	0
Parole Revocations:	7	0
Habeas Corpus:	0	0
Extraditions:	0	0
Miscellaneous:	0	0

Total Closed Cases:	195
Total Pending Cases:	411
Preliminary Hearings:	16
Not Indigent or Arraignment Only:	4

EX. "U"

OHIO PUBLIC DEFENDER COMMISSION

Public Defender Expense/Caseload Report

for Jan 1997 through Jan 2001
for Counties Belmont through Belmont

April 2000

EXPENSE INFORMATION

Salaries:	$8,739.90	CostAllocation:	$661.25	
Fringes:	$0.00	Other:	$3,741.20	
Supplies:	$75.65	Transcripts:	$0.00	
Equipment:	$0.00	Federal Funds:	$0.00	
Contract Services:	$803.90	Other Funds:	$0.00	
Rentals:	$350.00	Total Expenses:	$14,371.90	
Contract Repairs:	$0.00			
Travel:	$0.00	Reimbursement:	$6,754.79	(47.00%)

CASELOAD INFORMATION

	Felonies	Misdemeanors
Trials:	1 (Error: No Trial occurred)	1
Pleas:	12	27
Dismissals:	7	10
Other Dispositions:	10	3
Total:	30	41
Pending:	84	228

	Juvenile	Domestic Relations
Delinquency, Unruliness:	8	N/A
Custody, Dependency, Neglect:	6	N/A
Parentage:	1	0
Non-Support Contempt:	6	1
Other:	0	10
Total:	21	11
Pending:	103	0

	Closed	Pending
Appeals:	1	0
Post-Conviction Motions:	6	0
Parole Revocations:	7	0
Habeas Corpus:	0	0
Extraditions:	0	0
Miscellaneous:	0	0

Total Closed Cases:	117
Total Pending Cases:	415
Preliminary Hearings:	13
Not Indigent or Arraignment Only:	1

Ex. "V"

OHIO PUBLIC DEFENDER COMMISSION

Public Defender Expense/Caseload Report

for Jan 1997 through Jan 2001
for Counties Belmont through Belmont

May 2000

EXPENSE INFORMATION

Salaries:	$8,739.89	CostAllocation:	$661.25	
Fringes:	$392.81	Other:	$1,284.00	
Supplies:	$232.06	Transcripts:	$0.00	
Equipment:	$0.00	Federal Funds:	$0.00	
Contract Services:	$537.96	Other Funds:	$0.00	
Rentals:	$350.00	Total Expenses:	$12,197.97	
Contract Repairs:	$0.00			
Travel:	$0.00	Reimbursement:	$6,098.99	(50.00%)

CASELOAD INFORMATION

	Felonies	Misdemeanors
Trials:	0	4
Pleas:	12	39
Dismissals:	6	25
Other Dispositions:	5	5
Total:	23	73
Pending:	77	224

	Juvenile	Domestic Relations
Delinquency, Unruliness:	16	N/A
Custody, Dependency, Neglect:	3	N/A
Parentage:	0	0
Non-Support Contempt:	4	1
Other:	4	27
Total:	27	28
Pending:	104	0

	Closed	Pending
Appeals:	0	0
Post-Conviction Motions:	5	0
Parole Revocations:	16	0
Habeas Corpus:	0	0
Extraditions:	1	0
Miscellaneous:	0	0

Total Closed Cases:	173
Total Pending Cases:	405
Preliminary Hearings:	14
Not Indigent or Arraignment Only:	4

Ex. "W"

OHIO PUBLIC DEFENDER COMMISSION

Public Defender Expense/Caseload Report

for Jan 1997 through Jan 2001
for Counties Belmont through Belmont

June 2000

EXPENSE INFORMATION

Salaries:	$8,739.90	CostAllocation:	$661.25	
Fringes:	$4,144.90	Other:	$95.00	
Supplies:	$0.00	Transcripts:	$0.00	
Equipment:	$0.00	Federal Funds:	$0.00	
Contract Services:	$615.13	Other Funds:	$0.00	
Rentals:	$350.00	Total Expenses:	$14,606.18	
Contract Repairs:	$0.00			
Travel:	$0.00	Reimbursement:	$7,303.09	(50.00%)

CASELOAD INFORMATION

	Felonies	Misdemeanors
Trials:	0	3
Pleas:	12	45
Dismissals:	5	23
Other Dispositions:	14	10
Total:	31	81
Pending:	89	212

	Juvenile	Domestic Relations
Delinquency, Unruliness:	29	N/A
Custody, Dependency, Neglect:	4	N/A
Parentage:	1	0
Non-Support Contempt:	5	1
Other:	0	20
Total:	39	21
Pending:	83	0

	Closed	Pending
Appeals:	1	0
Post-Conviction Motions:	10	14
Parole Revocations:	0	0
Habeas Corpus:	0	0
Extraditions:	0	0
Miscellaneous:	0	0

Total Closed Cases:	183
Total Pending Cases:	398
Preliminary Hearings:	19
Not Indigent or Arraignment Only:	3

Ex. "X"

OHIO PUBLIC DEFENDER COMMISSION

Public Defender Expense/Caseload Report

for Jan 1997 through Jan 2001
for Counties Belmont through Belmont

July 2000

EXPENSE INFORMATION

Salaries:	$8,739.90	CostAllocation:	$661.25	
Fringes:	$5,064.77	Other:	$0.00	
Supplies:	$219.29	Transcripts:	$0.00	
Equipment:	$0.00	Federal Funds:	$0.00	
Contract Services:	$320.62	Other Funds:	$0.00	
Rentals:	$350.00	Total Expenses:	$15,355.83	
Contract Repairs:	$0.00			
Travel:	$0.00	Reimbursement:	$7,677.92	(50.00%)

CASELOAD INFORMATION

	Felonies	Misdemeanors
Trials:	0	3
Pleas:	9	32
Dismissals:	1	15
Other Dispositions:	7	3
Total:	17	53
Pending:	81	283

	Juvenile	Domestic Relations
Delinquency, Unruliness:	8	N/A
Custody, Dependency, Neglect:	5	N/A
Parentage:	0	0
Non-Support Contempt:	2	1
Other:	2	11
Total:	17	12
Pending:	83	0

	Closed	Pending
Appeals:	1	0
Post-Conviction Motions:	9	0
Parole Revocations:	6	0
Habeas Corpus:	0	0
Extraditions:	0	0
Miscellaneous:	0	0

Total Closed Cases:	115
Total Pending Cases:	447
Preliminary Hearings:	18
Not Indigent or Arraignment Only:	1

EX. "Y"

OHIO PUBLIC DEFENDER COMMISSION

Public Defender Expense/Caseload Report

for Jan 1997 through Jan 2001
for Counties Belmont through Belmont

August 2000

EXPENSE INFORMATION

Salaries:	$9,180.95	CostAllocation:	$661.25	
Fringes:	$4,401.94	Other:	$1,275.41	
Supplies:	$15.00	Transcripts:	$0.00	
Equipment:	$0.00	Federal Funds:	$0.00	
Contract Services:	$619.21	Other Funds:	$0.00	
Rentals:	$350.00	Total Expenses:	$16,503.76	
Contract Repairs:	$0.00			
Travel:	$0.00	Reimbursement:	$7,921.80	(48.00%)

CASELOAD INFORMATION

	Felonies	Misdemeanors
Trials:	0	1
Pleas:	8	53
Dismissals:	6	33
Other Dispositions:	5	6
Total:	19	93
Pending:	68	244

	Juvenile	Domestic Relations
Delinquency, Unruliness:	21	N/A
Custody, Dependency, Neglect:	7	N/A
Parentage:	0	0
Non-Support Contempt:	1	0
Other:	3	20
Total:	32	20
Pending:	74	0

	Closed	Pending
Appeals:	0	0
Post-Conviction Motions:	9	0
Parole Revocations:	10	0
Habeas Corpus:	0	0
Extraditions:	0	0
Miscellaneous:	0	0

Total Closed Cases:	183
Total Pending Cases:	386
Preliminary Hearings:	17
Not Indigent or Arraignment Only:	1

Ex. "Z."

OHIO PUBLIC DEFENDER COMMISSION

Public Defender Expense/Caseload Report

for Jan 1997 through Jan 2001
for Counties Belmont through Belmont

September 2000

EXPENSE INFORMATION

Salaries:	$13,055.25	CostAllocation:	$661.25	
Fringes:	$3,552.77	Other:	$1,024.70	
Supplies:	$895.25	Transcripts:	$0.00	
Equipment:	$0.00	Federal Funds:	$0.00	
Contract Services:	$558.27	Other Funds:	$0.00	
Rentals:	$350.00	Total Expenses:	$20,097.49	
Contract Repairs:	$0.00			
Travel:	$0.00	Reimbursement:	$9,445.82	(47.00%)

CASELOAD INFORMATION

	Felonies	Misdemeanors
Trials:	0	7
Pleas:	14	29
Dismissals:	5	30
Other Dispositions:	9	6
Total:	28	72
Pending:	72	266

	Juvenile	Domestic Relations
Delinquency, Unruliness:	13	N/A
Custody, Dependency, Neglect:	3	N/A
Parentage:	4	0
Non-Support Contempt:	5	0
Other:	0	16
Total:	25	16
Pending:	63	0

	Closed	Pending
Appeals:	3	0
Post-Conviction Motions:	2	0
Parole Revocations:	8	0
Habeas Corpus:	0	0
Extraditions:	0	0
Miscellaneous:	0	0

Total Closed Cases:	154
Total Pending Cases:	401
Preliminary Hearings:	13
Not Indigent or Arraignment Only:	5

Ex. "AA"

OHIO PUBLIC DEFENDER COMMISSION

Public Defender Expense/Caseload Report

for Jan 1997 through Jan 2001
for Counties Belmont through Belmont

October 2000

EXPENSE INFORMATION

Salaries:	$9,353.10	CostAllocation:	$661.25	
Fringes:	$4,338.94	Other:	$37.50	
Supplies:	$0.00	Transcripts:	$142.50	
Equipment:	$0.00	Federal Funds:	$0.00	
Contract Services:	$586.68	Other Funds:	$0.00	
Rentals:	$350.00	Total Expenses:	$15,469.97	
Contract Repairs:	$0.00			
Travel:	$0.00	Reimbursement:	$7,270.89	(47.00%)

CASELOAD INFORMATION

	Felonies	Misdemeanors
Trials:	0	4
Pleas:	5	66
Dismissals:	2	20
Other Dispositions:	8	2
Total:	15	92
Pending:	76	255

	Juvenile	Domestic Relations
Delinquency, Unruliness:	10	N/A
Custody, Dependency, Neglect:	3	N/A
Parentage:	0	0
Non-Support Contempt:	0	0
Other:	3	11
Total:	16	11
Pending:	72	0

	Closed	Pending
Appeals:	1	0
Post-Conviction Motions:	7	0
Parole Revocations:	8	0
Habeas Corpus:	0	0
Extraditions:	0	0
Miscellaneous:	0	0

Total Closed Cases:	150
Total Pending Cases:	403
Preliminary Hearings:	12
Not Indigent or Arraignment Only:	3

Ex. "BB"

OHIO PUBLIC DEFENDER COMMISSION

Public Defender Expense/Caseload Report

for Jan 1997 through Jan 2001
for Counties Belmont through Belmont

November 2000

EXPENSE INFORMATION

Salaries:	$9,353.11	CostAllocation:	$661.25	
Fringes:	$1,416.87	Other:	$0.00	
Supplies:	$0.00	Transcripts:	$0.00	
Equipment:	$0.00	Federal Funds:	$0.00	
Contract Services:	$492.17	Other Funds:	$0.00	
Rentals:	$350.00	Total Expenses:	$12,273.40	
Contract Repairs:	$0.00			
Travel:	$0.00	Reimbursement:	$5,768.50	(47.00%)

CASELOAD INFORMATION

	Felonies	Misdemeanors
Trials:	0	4
Pleas:	13	65
Dismissals:	5	22
Other Dispositions:	8	6
Total:	26	97
Pending:	59	208

	Juvenile	Domestic Relations
Delinquency, Unruliness:	8	N/A
Custody, Dependency, Neglect:	2	N/A
Parentage:	0	0
Non-Support Contempt:	2	0
Other:	2	31
Total:	14	31
Pending:	70	0

	Closed	Pending
Appeals:	0	0
Post-Conviction Motions:	4	0
Parole Revocations:	11	0
Habeas Corpus:	0	0
Extraditions:	0	0
Miscellaneous:	0	0

Total Closed Cases:	183
Total Pending Cases:	337
Preliminary Hearings:	15
Not Indigent or Arraignment Only:	0

Ex. "CC"

OHIO PUBLIC DEFENDER COMMISSION

Public Defender Expense/Caseload Report

for Jan 1997 through Jan 2001
for Counties Belmont through Belmont

December 2000

EXPENSE INFORMATION

Salaries:	$9,353.09	CostAllocation:	$661.25	
Fringes:	$2,518.46	Other:	$8,470.40	
Supplies:	$4,162.61	Transcripts:	$0.00	
Equipment:	$4,700.00	Federal Funds:	$0.00	
Contract Services:	$754.50	Other Funds:	$0.00	
Rentals:	$395.98	Total Expenses:	$31,016.29	
Contract Repairs:	$0.00			
Travel:	$0.00	Reimbursement:	$14,577.66	(47.00%)

CASELOAD INFORMATION

	Felonies	Misdemeanors
Trials:	0	0
Pleas:	8	50
Dismissals:	7	24
Other Dispositions:	7	11
Total:	22	85
Pending:	70	173

	Juvenile	Domestic Relations
Delinquency, Unruliness:	18	N/A
Custody, Dependency, Neglect:	5	N/A
Parentage:	1	0
Non-Support Contempt:	4	1
Other:	0	14
Total:	28	15
Pending:	53	0

	Closed	Pending
Appeals:	1	0
Post-Conviction Motions:	6	0
Parole Revocations:	4	0
Habeas Corpus:	0	0
Extraditions:	0	0
Miscellaneous:	0	0

Total Closed Cases:	161
Total Pending Cases:	296
Preliminary Hearings:	12
Not Indigent or Arraignment Only:	1

EX. "DD"

CHRIS BERHALTER

BELMONT COUNTY PROSECUTING ATTORNEY

Courthouse Annex No. 1, 147-A West Main Street, St. Clairsville, Ohio 43950
(740) 699-2771 • Fax: (740) 695-4412 • www.bcprosatty.com

Daniel P. Fry
Robert W. Quirk
Helen Yonak
Megan Banker
Scott A. Lloyd
David K. Liberati

December 19, 2007

Nawaz Ahmed
A404-511, OSP
878 Coitsville-Hubbard Road
Youngstown, Ohio 44505

RE: Public Records Request

Dear Mr. Ahmed:

I am in receipt of your Public Records Request dated December 9, 2007. Unfortunately, the information you seek in Paragraphs 1(a), 1(b), and 1(c) of your letter are not records regularly kept by this office in its regular course of business. In other words, we do not keep a record of the number of trials in which Defense Attorneys participate, so we would not have a record of the number of trials that Mr. Nicholson or Mr. Costine has participated in.

With respect to Paragraph 2 of your letter, the information requested is not contained in any record in this office, and specifically, is not contained in any report this office would file with the County Commissioner, or the Court of Common Pleas.

Our office does not represent the Belmont County Public Defender, and therefore, does not have control over any records that the Belmont County public Defender may have. We, therefore, could not produce such records.

With respect to Paragraph 2 of your letter, we do not keep track of trials by date, so we cannot point to any record in our office that would identify information relating to a trial in April, 2000.

The mailing address for the Belmont County Board of Commissioners is 101 Main Street, St. Clairsville, OH 43950. The mailing address for the Belmont County Public Defender Commission is 100 West Main Street, St. Clairsville, OH 43950.

Very truly yours,

David K. Liberati
Assistant Prosecuting Attorney

EX. "EE"

DKL/ksp

PA 2113
05-99

THE PORT AUTHORITY OF NY & NJ
One Path Plaza, Jersey City, NJ, 07306
POLICE CRIMINAL COMPLAINT REPORT

TEL. EXT. (201) 216-6800

INSTRUCTIONS FOR SPECIFIC ITEMS *Item No. 13, Time occurred: Indicate time span. E.G. Auto theft – time vehicle parked to time theft discovered; Burglary – time premises secure to time burglary discovered. *Item Nos. 22, 30, 38 and 45, Race: Indicate W (White), B (Black), H (Hispanic), Y (Yellow), and R (Red). *Item No. 55, Describe weapon: Indicate type, model, caliber, make and serial number. *Item No. 56, Distinctive words used by suspect (Modus Operandi): Record any unusual features of the crime, especially verbal statements that might connect this offense with others committed by the same offender. *Item No. 72, If crime was burglary – point of entry: Specify, E.G. Door, window, roof, ceiling. *Item No. 73, Burglary: Method used to effect entry, Ex. Was window broken, alarm deactivated, door jimmied, etc?

UF 61 Number	Agency	1. Facility	2. County of Offense	3. CCR Number
	03	JFK	Queens	18034

	4. Complaint	5. Law/Sect	6. Crime Code	7. Date Occurred	8. P.A. Location Code
1	Fugitive From Justice	CPL 570.34	33B	09-11-99	C04 ☒ NY ☐ NJ
2	9. Complaint	10. Law/Sect	11. Crime Code	12. Day Occurred	13. Time Occurred (From-To)
				Saturday	2030

14. Date Reported	15. Time Reported	16. How Complaint Received	17. Post Assigned
9/11/99	2030	☒ In Person ☐ Telephone ☐ U.S. Mail ☐ FAX	OHP

18. Place of Occurrence (Address): Term 4 West - PIA Departure Ticket Office ☒ Inside ☐ Outside
19. Type of Location: ☐ Store ☐ Bank ☐ Cargo Bldg. ☐ Office Bldg. ☒ Air Terminal Bldg. ☐ Pkg Lot ☐ Gas Station ☐ Other

20. Complainant's Name (Last, First, Initial)	21. Sex	22. Race	23. Age	24. Area Cd - Bus. Tele.
People of the State Of New York	☐ M ☐ F			

25. Complainant's Address	26. Complainant-Suspect Relationship	27. Area Cd. - Home Tele.
	☐ Rel ☐ Sign ☐ Friend ☐ Other	

28. Reporting Person's Name (Last, First, Initial)	29. Sex	30. Race	31. Age	32. Area Cd - Bus. Tele.
	☐ M ☐ F			

33. Reporting Person's Address	34. Complainant Advised To Report Incident To Pct.	35. Area Cd. - Home Tele.
	☐ Yes ☒ No	

36. Witness Name	37. Sex	38. Race	39. Age	40. Area Cd - Bus. Tele.
	☐ M ☐ F			

41. Witness Address	42. Area Cd - Home Tele.

	43. Suspect's Name (Last, First, Initial) ☒ Arrested ☐ Interviewed	44. Sex	45. Race	46. D.O.B.	Age	47. Area Cd - Tele
1	Ahmed, Nawaz	☒ M ☐ F	W	10/25/54	44	641-899-9678

48. Suspect's Address	49. Hgt	50. Wgt	51. Hair	52. Eyes	53. Soc. Sec. Number
67590 Graham Rd St Clairsville Ohio 43950	5'8	200	Blk	Br	318-78-7491

54. Complexion – Scars, Marks, Clothing, Alias	55. Describe Weapon ☐ Used ☐ Possessed
Dark Skinned	Unk

56. Distinctive Words Used By Suspect	57. P.A. Arrest No.	58. B. Number
I want to talk to my lawyer	934-99	

59. Pct of Occurrence	60. Pct Voucher No.	61. Wanted Person Alarm No.	62. Docket Number	63. Court Date	64. Court
113	H809380-1-2-3	99-5170-7			Belmont

65. Magistrate	66. Disposition	67. Case Closed	68. Case Open	69. Records Section Only
		☐ By Arrest ☒ By Other ☐ Unfounded	☐ Inactive ☐ Active	☐ Master Log ☐ MNI File

70. Details of Complaint: Include Additional Suspects, Complainants, Witnesses. Summarize Detail of Complaint. Use Reverse Side if Additional Space is Required.

At T/P/O, the undersigned responded to PIA Departures on information supplied by the Belmont County Sherriff's Office St Clairsville Ohio that suspect #1 may be attempting to flee the country and depart from JFK via PIA. Suspect #1 has an active arrest warrant for FOUR counts of AGGRAVATED MURDER, all are in violation of ORC 2903.01A of the Ohio Penal Code. The undersigned Officer along with Sgt Caroleo and

71. Vehicle and Plate Information ☐ Stolen ☐ Recovery ☐ Used in Crime

Body Style	Make	Model	Year	Color
4 door	Toyota	Corolla	1994	Green
VIN No. 2T1AE09B4RC089133	Plate No. AQJ2741	Type Pass	Yr. Exp. 10-99	State Ohio

Insurance Policy No. | Code Number | Value
If Vehicle Stolen, Where ☐ Pkg. Lot ☐ Street ☐ Garage ☐ Other | Vehicle Impounded ☒ Yes ☐ No Location 269
Alarm No. | Identifying Marks:

72. If Crime was Burglary – Point of Entry	73. Burglary – Method Used To Effect Entry

74. Stolen Property – Itemized	75. Property Summarized

Quantity	Article Description- Serial and Model Nos.	Item Value	Type of Property	Value Stolen	Value Recovered
			01-Motor Veh.		
			04-Currency		
			05-Jewelry		
			06-Furs, Clothing		
			07-Firearms		
			08-Office Equipment		
			09-TV, Radios, Cameras		
			10-Household Goods		
			11-Consumable Goods		
			12-Miscellaneous		

76. Arresting Officer	Shield Number	77. Tax Registry Number
PO Robert Nanni	1794	036778

78. Tour Commander	79. Date	80. Facility Commanding Officer	81. Date
H. Ronald A. Willoughby #126	9/12/99		

Ex."FF"

82. Additional Suspect Information:

CCR Number 18034

2	Suspect's Name (Last, First, Initial) ☐ Arrested ☐ Interviewed	Sex ☐M ☐F	Race	D.O.B.	Age	Area Cd - Tele
Suspect's Address		Hgt	Wgt	Hair	Eyes	Soc. Sec. Number
Complexion – Scars, Marks, Clothing, Alias				Describe Weapon ☐ Used ☐ Possessed		
Distinctive Words Used By Suspect				P.A. Arrest No.	B. Number	

3	Suspect's Name (Last, First, Initial) ☐ Arrested ☐ Interviewed	Sex ☐M ☐F	Race	D.O.B.	Age	Area Cd - Tele
Suspect's Address		Hgt	Wgt	Hair	Eyes	Soc. Sec. Number
Complexion – Scars, Marks, Clothing, Alias				Describe Weapon ☐ Used ☐ Possessed		
Distinctive Words Used By Suspect				P.A. Arrest No.	B. Number	

83. Additional Details of Complaint Including Suspects, Witnesses, Complainants and Other Pertinent Information Regarding Incident.

PO Russo responded to PIA Departures ticket office. Suspect #1 had checked in for flight #764. Suspect #1 was asked by PIA personnel to step into the ticket office at which time, suspect #1 was positively identified by the undersigned PO as to his pedigree, social security #, Pakistan and US Passports. Suspect #1 was then placed under arrest and given his miranda rights by the undersigned PO. Suspect #1 did state that he was in the jurisdiction and had driven all day to New York. US Customs Agent Mark Mather #10740 responded and conducted a search of suspect #1's checked in luggage with negative results. Suspect #1 at time of arrest had a laceration to the Right Thumb. Suspect #1 stated that the Laceration occurred while opening a can. Suspect # 1 was transported to PAPD Precinct bldg 269 for processing. Detective Sergeant Jack Mathieson and Detective George Dorner #106 responded for further investigation. Detective Mary Graham of the Belmont Sheriffs Office did confirm the warrant and extradition request. Further investigation revealed that Suspect #1 did drive from Ohio to 8400 Shorefront Parkway, Far Rockaway NY and did leave his 2 sons, Ahsan Ahmed (4 yrs old) and Ibtisam Ahmed (6 yrs old) with Mr. Majeed Malik of the above address. Suspect # 1 stated to Mr Malik to please watch his children in that his father is ill in Pakistan and his wife Lubaina Bhatti-Ahmed would be coming to pick up the kids shortly. Mr Malik at approx 1930 dropped off suspect #1 at the PIA terminal and Suspect #1 did leave his vehicle described in box 71 at the home of Mr Malik. PO's K White, RJ White and R. Morris did respond to Mr Malik's residence and secured the 2 boys listed above. Suspect #1's vehicle was also located at that location and was removed by Mystique (Ralph) to bldg 269 for safeguarding as a crime scene under impound #638-99. The 2 boys were also returned to 269. NYC BCW was notified and Case #20776172 was assigned. Mr Hyde of NYC BCW was assigned the case and was advised to the facts surrounding the children. Belmont Sheriffs Office did advise that the 2 children were possible eyewitnesses to the mulitple homicide. Neither children exhibited any signs of injury or abuse and denied any medical complaints and a juvenile report was prepared by PO Darmanie. EMT-P Eric Cardemone of the Kennedy Medical Office did respond to 269 and did treat the laceration and a prisoner treatment form was prepared. Photos of the injury and surrounding area were taken both with a polaroid and a 35 mm camera by the A/O and vouchered. Suspect #1's clothing was removed and vouchered for evidence and a tyvek suit was issued to suspect #1. Though a strip search was not perfomred, the removal of the clothing was noted in the strip search log, approved by Lt Willoughby. The Belmont Sherriffs office advised that their personnel and prosecutor would arrive the morning of 9-12-99 for further investigaiton. ADA Brian Kohm of the Queens DA's Homicide Bureau was notified and as per him, this case will go live and he will respond upon the arrival of the personnel fom Ohio. Airline Tickets and Passports (US and Pakistan) from Suspect #1 were also vouchered. Suspect #1's vehicle was not opened and if necessary a warrant will be issued to search said vehicle for any possible evidence removed from the scene. PO Glazer did assist with the arrest processing, vouchers and the impound.

(Def Mary)

~~I have the [illegible] (See #1601 page 425) [illegible]~~

Case Status - Closed/other

The custom officer took the brief case and they searched that as well. The PIA manager went to check-in counter and brought the ticket and suitcase to the managers office where I arrest occured.

time of arrest when I was still taking out all things from pockets and putting them in a plastic shipping bag. The 3 arresting officers searched and ~~and~~ Witnessed entering the items and money on a pre-printed form asking Mr Malik ~~[illegible]~~ as to how much should be put.

1 know Nawaz Ahmed?
2 MS. BUSACK: I do not.
3 THE COURT: And did you know his deceased wife,
4 Doctor Bhatti?
5 MS. BUSACK: I did not.
6 THE COURT: Okay, now, there have been stories
7 in the media; that's exactly what they were. They were
8 stories. None of it was tested for reliability. It was all
9 based on tips, leads, and everything that you have read is
10 hearsay. What you will hear in this courtroom will be
11 evidence. It will be tested under certain threshold criteria
12 of reliability or it wouldn't be admitted into our record.
13 Can you put outside your mind anything that you have gleaned
14 from the media and decide the case solely on the evidence
15 present in this court of law?
16 MS. BUSACK: I could.
17 THE COURT: That's great.
18 Now, the second thing I need to address with you
19 is, the law provides in certain very limited cases, that a
20 jury can recommend the death penalty as a punishment. For
21 very limited cases. If you believe the facts warranted it,
22 and the law permitted it, could you recommend imposition of a
23 death penalty?
24 MS. BUSACK: I'm not certain.
25 THE COURT: Okay. Now, we would -- in a

1 sense, I've jumped the gun here, because every jury has to
2 reach the verdict-- a conviction or an acquittal before you
3 ever get there. I am not-- I'm just asking that question
4 because to serve on the jury, you have to be able to say it's
5 something you could consider; that you don't have principles
6 so strong that you would absolutely refuse to consider the
7 death penalty.
8 MS. BUSACK: Theoretically, I believe in the
9 death penalty. I have never had to put that into action. So
10 I cannot be absolutely certain.
11 THE COURT: Okay. But it's not as if you're
12 saying under no circumstances could I ever do it?
13 MS. BUSACK: No.
14 THE COURT: Okay. Mr. Pierce.
15 MR. PIERCE: Your Honor, shall I just do the
16 whole thing general and...
17 THE COURT: Yeah. Just do your.
18 MR. PIERCE: Thank you.
19 Good morning, Mrs. Busack.
20 MS. BUSACK: Hello.
21 MR. PIERCE: Let me ask, first are you related
22 in any way to Pete Busack who used to be a deputy out here?
23 MS. BUSACK: I am related by marriage.
24 MR. PIERCE: Okay. Do you have any other
25 connections with law enforcement, other than having been

1 related or being related to Pete by marriage?
2 MS. BUSACK: I do not, accept for a deputy
3 sheriff by marriage. Deputy sheriff Zusack by marriage, a
4 cousin.
5 MR. PIERCE: Okay. And have you ever discussed
6 the case with any of those guys, with Zusack or Busack?
7 MS. BUSACK: I have not.
8 MR. PIERCE: What do you teach down at
9 Switzerland?
10 MS. BUSACK: I teach social studies, history,
11 citizenship.
12 MR. PIERCE: And that's in the high school.
13 MS. BUSACK: Junior high.
14 MR. PIERCE: Junior high. Okay. And I suppose
15 as part of your curriculum, does the court system or the jury
16 system or the justice system ever come up as a topic?
17 MS. BUSACK: Definitely.
18 MR. PIERCE: And do you -- do you have any
19 general opinions about it? I mean, are you -- let me put it
20 this way: Are you in a general way or as a matter of
21 principle satisfied with our system of criminal justice?
22 MS. BUSACK: Generally, I am.
23 MR. PIERCE: Obviously, it's not perfect and
24 there are defects.
25 MS. BUSACK: (Juror moves head in an

1 affirmative response.)
2 MR. PIERCE: But in general, you are satisfied?
3 MS. BUSACK: Generally.
4 MR. PIERCE: Okay.
5 When you hesitate and you say generally, what kind
6 of specifics bother you? Do you think too many guilty people
7 get away, too many innocent people are convicted; penalties
8 are too lenient, penalties are too harsh, marijuana should be
9 legalized? I mean, can you give me any guidance at all about
10 the specifics of your feelings?
11 MS. BUSACK: I'm probably a law and order
12 person, of course, with a fair trial.
13 MR. PIERCE: Have you yourself -- and the
14 questionnaires that we have are pretty limited, and then from
15 those questionnaires, I have a staff person dilute it down
16 even further. So I apologize if some of the questions are
17 repetitive.
18 MS. BUSACK: That's fine.
19 MR. PIERCE: But have you yourself ever been
20 on a jury before?
21 MS. BUSACK: I have not.
22 MR. PIERCE: How about experienced? Any kind
23 of litigation?
24 MS. BUSACK: I have not.
25 MR. PIERCE: As a witness or anything, even an

Ex. "GG"

1 arbitration thing with the school district? Nothing at all?
2 MS. BUSACK: I have not.
3 MR. PIERCE: And no close friend or family
4 member has ever been the victim of a crime?
5 MS. BUSACK: They have not.
6 MR. PIERCE: Or accused of a serious offense?
7 I mean, something, not-- I mean, something above like
8 speeding or shop lifting or something like that. Okay.
9 MS. BUSACK: (Juror moves head in a negative
10 response.)
11 MR. PIERCE: But I take it that you, from your
12 answers, I get the feeling or the impression that you would
13 feel that serving as a juror is a reasonable obligation of
14 citizenship?
15 MS. BUSACK: I do believe it is.
16 MR. PIERCE: And the fact that we could be here
17 for some time -- and we've used all kind of estimates -- and
18 I'm afraid to use an estimate, but let's just say two to four
19 weeks. Two weeks being the minimum; four weeks being the
20 maximum, and that's big ballpark, you're going to be away
21 from your kids for awhile at school. They'll have a
22 substitute.
23 THE COURT: They won't like it, but they'll
24 make due, won't they?
25 MS. BUSACK: It could be a problem, because

1 they have a hard time getting substitutes. They would
2 definitely suffer. I mean, they would be getting different
3 people in each day that wouldn't really be doing.
4 THE COURT: But I mean, you do understand how
5 valuable it is for us to have a cross-section of the
6 community. It's very hard to have a representative jury of
7 all retired people or all people who don't work.
8 MS. BUSACK: I realize that.
9 MR. PIERCE: Do you understand?
10 MS. BUSACK: Yes.
11 MR. PIERCE: And so we try very hard to get a
12 cross-section that represents the whole community. And it
13 may be a valuable thing that you could talk to your kids with
14 afterwards. Let me ask you this: You did show somewhat I
15 would call sincere -- let's put it this way: You said that
16 you have no disagreement with the death penalty in the
17 abstract.
18 MS. BUSACK: Correct.
19 MR. PIERCE: But you have some misgivings or
20 some hesitancy about whether you would have the personal
21 commitment to actually say, you know, I will sign my name to
22 a verdict that recommended death.
23 MS. BUSACK: I have thought about this a lot.
24 And since I've never been in that position, I can't say
25 absolutely.

1 MR. PIERCE: You can't fast forward and sort of
2 fantasize what would be going through your mind at that
3 moment and has that's hard to do. And we don't expect you to
4 do that. All we expect you to do is make a commitment that
5 when the judge gives you the instructions that you will do
6 your best to follow them consciousnessly. And if we get to
7 that second stage, and the instructions include the
8 possibility of choosing the death penalty, that as much as
9 humanly possible you set aside any emotional baggage and go
10 strictly by the law. It will be-- it will be much more
11 structured and much more formal than just simply saying,
12 yeah, I kind of think he deserves death, or I kind of think
13 he deserves life. There's a whole big structure to it that
14 will hopefully guide you through the process. Do you
15 understand? Would you be willing to accept it on those
16 terms?
17 MS. BUSACK: I'm not sure.
18 MR. PIERCE: Okay. In other words, are you
19 saying that your views or your feelings about capital
20 punishment could prevent or substantially impair you in the
21 performance of your duties as a juror?
22 MS. BUSACK: It's possible.
23 MR. PIERCE: And you understand how important
24 it is that as a nation of law that we follow the law. I
25 mean, I used the example earlier of the marijuana thing. A

1 lot of people think marijuana should be legalized. It's an
2 issue.
3 MS. BUSACK: I do no.
4 MR. PIERCE: Okay, but I mean, it's an issue
5 that very decent people can disagree on and still be good
6 citizens.
7 THE COURT: You know, the way we set this up,
8 I think we probably confused you. There's a whole range of
9 penalties, including life without parole; life with parole
10 after 30 years, and one of those penalties is a death
11 penalty. All that I'm asking is -- all that we need to know,
12 really, is: Can you consider all of them or would you simply
13 say under no circumstances can I do the death penalty?
14 MS. BUSACK: I would not say that.
15 THE COURT: All right.
16 MR. PIERCE: You feel that you would take it
17 seriously and you'd do it with great-- and I don't want to
18 minimize the gravity of the task; that's all. Nobody is
19 asking you to make a flip decision. I would not.
20 MS. BUSACK: I just would be worried that that
21 would bother me afterwards.
22 MR. PIERCE: That it would be something that
23 you would think about?
24 MS. BUSACK: Yes.
25 MR. PIERCE: That you participated in a

process, even though you were just one small participant, and there were 11 others sharing and a whole legal structure, both before and after that decision, participating, but even with your role, you think it would bother you afterwards?

MS. BUSACK: I think it might.

MR. PIERCE: You might have some sleepless nights or some pangs of conscience?

MS. BUSACK: Yes.

MR. PIERCE: Your Honor, under those terms, I believe the juror would be substantially impaired in her duties and I would challenge for cause.

THE COURT: Can you consider the death penalty, or are you going to automatically rule it out on morale grounds.

MS. BUSACK: I would consider it.

THE COURT: I'm going to overrule your challenge for cause.

MR. OLIVITO: Good morning. It's Mrs. Busack?

MS. BUSACK: Yes. TR.254-262 TRY TO RID OF JUROR

MR. OLIVITO: Okay. I am Pete Olivito. That's Adrian Hershey, seated at counsel table with our defendant, Nawaz Ahmed. Attorney Hershey and I are court-appointed counsel for Nawaz and he stands here accused of killing his 78-year-old father-in-law; his 39-year-old wife; 35-year-old sister-in-law, and a two-year-old niece. And have you heard

about this through any news media?

MS. BUSACK: I have.

MR. OLIVITO: Have you paid any particular attention to it, as perhaps maybe a social studies teacher would?

MS. BUSACK: I have not in school.

MR. OLIVITO: Not in school; at home.

MS. BUSACK: I have heard about it. I've read about it; I've paid attention to it.

MR. OLIVITO: Have you talked about it with anybody?

MS. BUSACK: I have.

MR. OLIVITO: And with whom have you spoken?

MS. BUSACK: Relatives, friends.

MR. OLIVITO: Now, it's human, even in the defense counsel's family, to discuss these things that you see in the paper or see on television and read the paper. Have you expressed an opinion somewhere along the line either as to the guilt or as to the -- what should occur to the defendant.

MS. BUSACK: I have not.

MR. OLIVITO: So, there has been no expression of guilt or innocence at this time, as far as you're concerned?

MS. BUSACK: I have heard opinions quite

frequently. I have not expressed them.

MR. OLIVITO: Okay. Would these people that you have heard these opinions from have any influence in your decision if you should be chosen to sit as a juror?

MS. BUSACK: It would not.

MR. OLIVITO: Would you be able to go back to them, if your decision was adverse to what they've been expressing, would you be able to live with that comfortably?

MS. BUSACK: Yes.

MR. OLIVITO: Now, some of the people that have given news media sound bites, the sheriff of this county, Tom McCort, have you heard any of those?

MS. BUSACK: Not particularly.

MR. OLIVITO: How about Nawaz's wife's attorney? She had an attorney by the name of Grace Hoffman. Have you heard any of her press conferences or heard her discussions with the media?

MS. BUSACK: I have not.

MR. OLIVITO: Do you know her?

MS. BUSACK: I do not.

MR. OLIVITO: Okay. Have you heard anything that the prosecutor may have given to the press?

MS. BUSACK: I have not.

MR. OLIVITO: Okay. Now, do you know many members of the law enforcement agencies here in Belmont

County?

MS. BUSACK: I have two cousins by marriage in law enforcement in Belmont County. I'm acquainted with Judge Sargus; I know various attorneys and judges.

MR. OLIVITO: Okay. Would the fact that you know these people and perhaps you do socialize with some of them --

MS. BUSACK: Yes.

MR. OLIVITO: -- would that affect your thinking in this case in any way?

MS. BUSACK: No.

MR. OLIVITO: How about do you know the members of the prosecutor's staff?

MS. BUSACK: I do not.

MR. OLIVITO: How about other members who are not here, like Robert Quirk? Do you know him?

MS. BUSACK: I do not know him.

MR. OLIVITO: Okay. Have you in your experiences as a teacher, have you ever taught any children of the Pakistani group?

MS. BUSACK: I have not.

MR. OLIVITO: Do you have any feelings one way or another about people of the Pakistani origin?

MS. BUSACK: I do not.

MR. OLIVITO: Have you ever had any experience

with psychologists or psychiatrists?

MS. BUSACK: I have.

MR. OLIVITO: Do you have any opinions about whether they constitute a valid practice of that type? In other words, are they valid? Do you believe in them or do you think that whatever they do is kind of just magical psychobabble?

MS. BUSACK: No, I believe what they do is valid. Of course, I do not believe every decision or opinion one makes or gives.

MR. OLIVITO: Would the fact that perhaps at some stage in these proceedings, the defendant would present some psychological testimony and evidence, would that be something that you would be able to consider?

MS. BUSACK: I would have to take that individually. Just because a psychiatrist said something, I would definitely not take that as law.

MR. OLIVITO: Okay. That's fine. Now, we've been talking to you a lot, and the judge alluded to it. We've kind of put the cart before the horse in this case. We started talking about guilt and we started talking about penalties. You understand that this would be a two phase proceeding. I don't know whether you understand that or not, but there would be one phase where we would try to present evidence and that the State would have to establish beyond a

reasonable doubt that the defendant is guilty of the crimes charged before he could be found guilty.

MS. BUSACK: Right.

MR. OLIVITO: And then once we get past that stage, if he were found not to be guilty, we would stop the proceedings, and if he were found to be guilty, we would proceed to a second phase, which is called mitigation. And in that phase, it would be attempting to show that there are mitigating factors that outweigh the aggravating circumstances of these acts. And in that instance, you could then be given the alternative of assigning a penalty of life imprisonment; the second one would be a possibility would be life imprisonment without parole until 30 years have been served; and the third alternative would be life imprisonment with no possibility of parole until 25 years have been served. If the defendant were found guilty by you as a juror, would you be able to also consider those other three penalties and not just automatically think about the death penalty?

MS. BUSACK: I could.

MR. OLIVITO: Now, if in your opinion, one of those other three penalties was the appropriate one, would you be able to maintain that thought and maintain that conviction, even though other members of the jury might be putting pressure on you to go to the ultimate penalty of

death?

MS. BUSACK: I'm not sure.

MR. OLIVITO: You're not sure in your own ability to stand by your convictions, even though the majority would go the other way?

MS. BUSACK: I guess I'm not sure I would be that definite on it.

MR. OLIVITO: Okay. Well, if you, in your ordinary course of living, have a conviction that you believe to be valid, do you stand by that conviction in your ordinary life or do you let others sway you to go there?

MS. BUSACK: I stand by my convictions, but what I've been trying to say, I'm a little reserved about the death penalty. I think it could pose a problem.

MR. OLIVITO: And that's fair. There are no right or wrong answers in this room. You know, it's exactly how you feel and that's what I want to hear from you.

THE COURT: All we are asking is that you not surrender your own honest convictions simply to be congenial.

MS. BUSACK: I would not.

THE COURT: All right.

MR. OLIVITO: So you could follow the law given to you by the court and apply to it the facts and still come to some conclusion that you feel is correct in your own heart and in your own mind?

MS. BUSACK: I could.

MR. OLIVITO: You understand that as the defendant sits here today, without any evidence being presented, and until the last witness testifies, that he is presumed to be innocent?

MS. BUSACK: I do.

MR. OLIVITO: And you subscribe to that principle that the defendant is innocent and presumed innocent until proven guilty beyond a reasonable doubt?

MS. BUSACK: I do.

MR. OLIVITO: Now, you had some discussions with Frank Pierce about you have some general concerns with the application of the law or the legal system?

MS. BUSACK: Yes. I mean, I think everyone does.

MR. OLIVITO: But nobody asked you what those general concerns were, and I'm going to ask you: What are your general concerns?

MS. BUSACK: I mean, I think basically, I believe that probably too many people get off that should be convicted. That's a probably the direction I go, generally. Or I probably believe that if it's a murder case, maybe people don't stay in jail long enough.

MR. OLIVITO: Okay.

THE COURT: Do you understand, though, that

each of us has a right to our own trial and that opinions you may have formed about other people's trials should not enter into your assessment of the evidence in this case.

MS. BUSACK: Definitely.

THE COURT: All right.

MR. OLIVITO: Those very things that you're concerned about, this is a murder case. This would be, for lack after better term, kind of a mass murder case. So with that fact that there are four people who died as a result of someone's act, with that effect you even more so in your thought that too many people get away or too many people don't serve enough time?

MS. BUSACK: No.

MR. OLIVITO: Thank you, very much.

THE COURT: Gentlemen, do you pass for cause?

MR. PIERCE: Your Honor, the State renews its challenge for cause. And we have authority to cite, if the court wants to hear it outside, or if the court wants to rule.

THE COURT: No. Your challenge for cause is overruled. Do you challenge for cause, Mr. Olivito?

MR. OLIVITO: No, Your Honor.

MR. HERSHEY: We'll pass.

THE COURT: Does the State wish to exercise a preemptory challenge?

MR. PIERCE: We do.

THE COURT: Do you wish to excuse this juror?

MR. PIERCE: Yes, we do.

THE COURT: I appreciate the time. I especially appreciate your honesty and you are excused.

MR. THOMPSON: This is David Oleska, Your Honor.

THE COURT: Good morning, Mr. Oleska.

MR. OLESKA: Good morning.

THE COURT: Are you 18 years of age or older?

MR. OLESKA: Yes, I am.

THE COURT: Okay. And are you a resident of Belmont County?

MR. OLESKA: Yes, ma'am.

THE COURT: And I'm required by law to ask if you are dependent on drugs or alcohol?

MR. OLESKA: No, ma'am.

THE COURT: And I'm required by law to ask if you are a convicted felon?

MR. OLESKA: No, ma'am.

THE COURT: I didn't think so. Now, do you know any of the attorneys in this case, Mr. Flanagan, Mr. Pierce, Mr. Olivito or Mr. Hershey?

MR. OLESKA: Not personally, no.

THE COURT: Okay. Can you put outside your

mind any familiarity you might have with them with whatever source and just decide the case based on the evidence and the law?

MR. OLESKA: Yes, ma'am.

THE COURT: Okay, now, do you know Mr. Nawaz Ahmed?

MR. OLESKA: No, I don't.

THE COURT: And did you know his deceased wife, Doctor Bhatti?

MR. OLESKA: No, ma'am.

THE COURT: There has been in this case some coverage in the media. I think it's been in the newspaper two or three times, on TV. Whatever the reporters have published has been a story. It's been based on tips and leads. None of it has been tested for reliability. What you will hear from this witness stand will all be tested under certain threshold requirements of reliability known as our rules of evidence. Can you put outside your mind anything you may have picked up from the newspaper and instead decide, "I'm going to decide this case based on the evidence presented in this court of law and the law as the court instructs you upon it?"

MR. OLESKA: I feel I can, yes.

THE COURT: Very good. Now, the law also provides this certain very limited cases a jury can recommend

the death penalty. Of course, before you ever get to any consideration of punishment, would you consider whether or not the defendant would be convicted or acquitted. That would be the first stage of the trial. If by chance, we reach that second stage, we would, one of the penalties, just one of them is the death penalty. If you decided the facts warranted it and the law permitted it, could you consider recommending imposition of the death penalty?

MR. OLESKA: Yes, ma'am.

THE COURT: All right. Mr. Pierce?

MR. PIERCE: Thank you, Your Honor. May it please the court, counsel. Good morning, Mr. Oleska.

MR. OLESKA: Good morning.

MR. PIERCE: I had a chance to look at your questionnaire, and so I really don't have very many questions or follow-up. I notice you have two adult children.

MR. OLESKA: Yes, I do.

MR. PIERCE: What do they do for a living?

MR. OLESKA: Well, one daughter works for DeFelice Brothers and the other one is a student.

MR. PIERCE: Okay. Where does he or she go to school?

MR. OLESKA: My daughter goes to West Liberty.

MR. PIERCE: And do you know what she's studying yet?

PA 2113
05-99

THE PORT AUTHORITY OF NY & NJ
One Path Plaza, Jersey City, NJ, 07306
POLICE CRIMINAL COMPLAINT REPORT

TEL. EXT. (201) 216-8600

INSTRUCTIONS FOR SPECIFIC ITEMS *Item No. 13, Time occurred: Indicate time span. E.G. Auto theft – time vehicle parked to time theft discovered; Burglary – time premises secure to time burglary discovered. *Item Nos. 22, 30, 38 and 45, Race: Indicate W (White), B (Black), H (Hispanic), Y (Yellow), and R (Red). *Item No. 55, Describe weapon: Indicate type, model, caliber, make and serial number. *Item No. 56, Distinctive words used by suspect (Modus Operandi): Record any unusual features of the crime, especially verbal statements that might connect this offense with others committed by the same offender. *Item No. 72, If crime was burglary – point of entry: Specify, E.G. Door, window, roof, ceiling. *Item No. 73, Burglary: Method used to effect entry, Ex. Was window broken, alarm deactivated, door jimmied, etc?

UF 61 Number	Agency	1. Facility	2. County of Offense	3. CCR Number
	03	JFK	Queens	18034

	4. Complaint	5. Law/Sect	6. Crime Code	7. Date Occurred	8. P.A. Location Code
1	Fugitive From Justice	CPL 570.34	33B	09-11-99	C04 ☒ NY ☐ NJ
2	9. Complaint	10. Law/Sect	11. Crime Code	12. Day Occurred	13. Time Occurred (From-To)
				Saturday	2030

14. Date Reported	15. Time Reported	16. How Complaint Received	17. Post Assigned
9/11/99	2030	☒ In Person ☐ Telephone ☐ U.S. Mail ☐ FAX	OHP

18. Place of Occurrence (Address): Term 4 West - PIA Departure Ticket Office ☒ Inside ☐ Outside

19. Type of Location: ☐ Store ☐ Bank ☐ Cargo Bldg. ☐ Office Bldg. ☒ Air Terminal Bldg. ☐ Pkg Lot ☐ Gas Station ☐ Other

20. Complainant's Name (Last, First, Initial)	21. Sex	22. Race	23. Age	24. Area Cd - Bus. Tele.
People of the State Of New York	☐ M ☐ F			

25. Complainant's Address	26. Complainant-Suspect Relationship	27. Area Cd. - Home Tele.
	☐ Rel ☐ Sigr ☐ Friend ☐ Other	

28. Reporting Person's Name (Last, First, Initial)	29. Sex	30. Race	31. Age	32. Area Cd - Bus. Tele.
	☐ M ☐ F			

33. Reporting Person's Address	34. Complainant Advised To Report Incident To Pct.	35. Area Cd. - Home Tele.
	☐ Yes ☒ No	

36. Witness Name	37. Sex	38. Race	39. Age	40. Area Cd - Bus. Tele.
	☐ M ☐ F			

41. Witness Address	42. Area Cd - Home Tele.

	43. Suspect's Name (Last, First, Initial) ☒ Arrested ☐ Interviewed	44. Sex	45. Race	46. D.O.B.	Age	47. Area Cd - Tele
1	Ahmed, Nawaz	☒ M ☐ F	W	10/25/54	44	641-899-9678

48. Suspect's Address	49. Hgt	50. Wgt	51. Hair	52. Eyes	53. Soc. Sec. Number
67590 Graham Rd St Clairsville Ohio 43950	5'8	200	Blk	Br	318-78-7491

54. Complexion – Scars, Marks, Clothing, Alias	55. Describe Weapon ☐ Used ☐ Possessed
Dark Skinned	Unk

56. Distinctive Words Used By Suspect	57. P.A. Arrest No.	58. B. Number
I want to talk to my lawyer	934-99	

59. Pct of Occurrence	60. Pct Voucher No.	61. Wanted Person Alarm No.	62. Docket Number	63. Court Date	64. Court
113	H809380-1-2-3	99-5170-7			Belmont

65. Magistrate	66. Disposition	67. Case Closed ☐ By Arrest ☒ By Other ☐ Unfounded	68. Case Open ☐ Inactive ☐ Active	69. Records Section Only ☐ Master Log ☐ MNI File

70. Details of Complaint: Include Additional Suspects, Complainants, Witnesses. Summarize Detail of Complaint. Use Reverse Side If Additional Space is Required.

At T/P/O, the undersigned responded to PIA Departures on information supplied by the Belmont County Sherriff's Office St Clairsville Ohio that suspect #1 may be attempting to flee the country and depart from JFK via PIA. Suspect #1 has an active arrest warrant for FOUR counts of AGGRAVATED MURDER, all are in violation of ORC 2903.01A of the Ohio Penal Code. The undersigned Officer along with Sgt Caroleo and

71. Vehicle and Plate Information ☐ Stolen ☐ Recovery ☐ Used in Crime

Body Style	Make	Model	Year	Color
4 door	Toyota	Corolla	1994	Green
VIN No.	**Plate No.**	**Type**	**Yr. Exp.**	**State**
2T1AE09B4RC089133	AQJ2741	Pass	10-99	Ohio

Insurance Policy No. | Code Number | Value

If Vehicle Stolen, Where ☐ Pkg. Lot ☐ Street ☐ Garage ☐ Other | Vehicle Impounded ☒ Yes ☐ No Location 269

Alarm No. | Identifying Marks:

72. If Crime was Burglary – Point of Entry | 73. Burglary – Method Used To Effect Entry

74. Stolen Property – Itemized | 75. Property Summarized

Quantity	Article Description- Serial and Model Nos.	Item Value	Type of Property	Value Stolen	Value Recovered
			01-Motor Veh.		
			04-Currency		
			05-Jewelry		
			06-Furs, Clothing		
			07-Firearms		
			08-Office Equipment		
			09-TV, Radios, Cameras		
			10-Household Goods		
			11-Consumable Goods		
			12-Miscellaneous		

76. Arresting/Investigating Officer	Shield Number	77. Tax Registry Number
PO Robert Nanni	1794	036778

78. Tour Commander	79. Date	80. Facility Commanding Officer	81. Date
H. Ronald A. Willoughby #126	9/12/99		

82. Additional Suspect Information:

CCR Number 18034

2	Suspect's Name (Last, First, Initial) ☐ Arrested ☐ Interviewed	Sex ☐M ☐F	Race	D.O.B.	Age	Area Cd - Tele
Suspect's Address	Hgt	Wgt	Hair	Eyes	Soc. Sec. Number	
Complexion – Scars, Marks, Clothing, Alias			Describe Weapon ☐ Used ☐ Possessed			
Distinctive Words Used By Suspect				P.A. Arrest No.	B. Number	

3	Suspect's Name (Last, First, Initial) ☐ Arrested ☐ Interviewed	Sex ☐M ☐F	Race	D.O.B.	Age	Area Cd - Tele
Suspect's Address	Hgt	Wgt	Hair	Eyes	Soc. Sec. Number	
Complexion – Scars, Marks, Clothing, Alias			Describe Weapon ☐ Used ☐ Possessed			
Distinctive Words Used By Suspect				P.A. Arrest No.	B. Number	

83. Additional Details of Complaint Including Suspects, Witnesses, Complainants and Other Pertinent Information Regarding Incident.

PO Russo responded to PIA Departures ticket office. Suspect #1 had checked in for flight #764. Suspect #1 was asked by PIA personnel to step into the ticket office at which time, suspect #1 was positively identified by the undersigned PO as to his pedigree, social security #, Pakistan and US Passports. Suspect #1 was then placed under arrest and given his miranda rights by the undersigned PO. Suspect #1 did state that he was in the jurisdiction and had driven all day to New York. US Customs Agent Mark Mather #10740 responded and conducted a search of suspect #1's checked in luggage with negative results. Suspect #1 at time of arrest had a laceration to the Right Thumb. Suspect #1 stated that the Laceration occurred while opening a can. Suspect # 1 was transported to PAPD Precinct bldg 269 for processing. Detective Sergeant Jack Mathieson and Detective George Dorner #106 responded for further investigation. Detective Mary Graham of the Belmont Sheriffs Office did confirm the warrant and extradition request. Further investigation revealed that Suspect #1 did drive from Ohio to 8400 Shorefront Parkway, Far Rockaway NY and did leave his 2 sons, Ahsan Ahmed (4 yrs old) and Ibtisam Ahmed (6 yrs old) with Mr. Majeed Malik of the above address. Suspect # 1 stated to Mr Malik to please watch his children in that his father is ill in Pakistan and his wife Lubaina Bhatti-Ahmed would be coming to pick up the kids shortly. Mr Malik at approx 1930 dropped off suspect #1 at the PIA terminal and Suspect #1 did leave his vehicle described in box 71 at the home of Mr Malik. PO's K White, RJ White and R. Morris did respond to Mr Malik's residence and secured the 2 boys listed above. Suspect #1's vehicle was also located at that location and was removed by Mystique (Ralph) to bldg 269 for safeguarding as a crime scene under impound #638-99. The 2 boys were also returned to 269. NYC BCW was notified and Case #20776172 was assigned. Mr Hyde of NYC BCW was assigned the case and was advised to the facts surrounding the children. Belmont Sheriffs Office did advise that the 2 children were possible eyewitnesses to the mulitple homicide. Neither children exhibited any signs of injury or abuse and denied any medical complaints and a juvenile report was prepared by PO Darmanie. EMT-P Eric Cardemone of the Kennedy Medical Office did respond to 269 and did treat the laceration and a prisoner treatment form was prepared. Photos of the injury and surrounding area were taken both with a polaroid and a 35 mm camera by the A/O and vouchered. Suspect #1's clothing was removed and vouchered for evidence and a tyvek suit was issued to suspect #1. Though a strip search was not perfomred, the removal of the clothing was noted in the strip search log, approved by Lt Willoughby. The Belmont Sherriffs office advised that their personnel and prosecutor would arrive the morning of 9-12-99 for further investigaiton. ADA Brian Kohm of the Queens DA's Homicide Bureau was notified and as per him, this case will go live and he will respond upon the arrival of the personnel fom Ohio. Airline Tickets and Passports (US and Pakistan) from Suspect #1 were also vouchered. Suspect #1's vehicle was not opened and if necessary a warrant will be issued to search said vehicle for any possible evidence removed from the scene. PO Glazer did assist with the arrest processing, vouchers and the impound.

(Def [illegible])

~~[illegible]~~ (See #1 [illegible] 292425)

Case Status - Closed/other

The custom Officer took the brief case and they searched that as well. The PIA manager want to check-in counter and brought the ticket and suitcase to the managers office where I arrest occured.

time of arrest when I was still taking out all things from Pockets and putting them in a Plastic shopping bag. All the 3 arresting officers searched and ~~and they~~ printed entering the items and money on the ~~[illegible]~~ form asking Mr [illegible] as to how much should he put.