

No. 23-6831

IN THE SUPREME COURT OF THE UNITED STATES

THOMAS EUGENE CREECH,

Applicant,

v.

IDAHO COMMISSION OF PARDONS AND PAROLE and JAN
BENNETTS, ADA COUNTY PROSECUTING ATTORNEY, IN HER
OFFICIAL CAPACITY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE NINTH CIRCUIT COURT OF APPEALS

BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI AND OPPOSITION TO
APPLICATION FOR A STAY OF EXECUTION

EXECUTION SCHEDULED FEBRUARY 28, 2024

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CAPITAL CASE

QUESTIONS PRESENTED

Petitioner Thomas Eugene Creech (“Creech”) has raised the following questions before this Court:

- (1) Does the State’s intentional presentation of false evidence at a clemency hearing violate due process?
- (2) Under what circumstances, if any, does harmless-error analysis apply when constitutional challenges are brought to clemency proceedings?

Respondent Jan M. Bennetts (“Bennetts”) wishes to rephrase the questions as follows:

- (1) Has Creech failed to establish a likelihood of succeeding on the merits when he failed to meet his burden of establishing a due process violation?
- (2) Should the use of the *Chapman* analysis by the Ninth Circuit result in a stay of execution for Creech?

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STATEMENT OF THE CASE

In his Petition for Panel and En Banc Rehearing, Creech states, “At the risk of stating the obvious, we don’t execute people because there is a ‘name written on some sock somewhere.’” [9th Cir. Dkt. 15.1, p. 12] (ACPA App., p.161).

Respondent Bennetts agrees. Creech was sentenced to death and will be executed because he is a convicted serial killer who brutally murdered his victim, David Jensen (“Jensen”), by beating him with a sock full of batteries, and then kicking him in the throat.¹ *Creech v. Richardson*, 59 F.4th 372, 376–77 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 291, 217 L. Ed. 2d 132 (2023).

Creech attacked Jensen by repeatedly hitting him in the head with the sock full of batteries until the plate embedded in Jensen’s skull shattered, causing his skull to cave in and blood to splash on the walls and floor. *Id.* Creech took breaks during the beating, and after the sock broke and the batteries fell out, he kicked Jensen in the throat while Jensen lay sprawled on the floor. *Id.*

As Justice O’Connor explained in 1993:

The facts underlying this case could not be more chilling. Thomas Creech has admitted to killing or participating in the killing of at least 26 people. The bodies of 11 of his victims—who were shot, stabbed, beaten, or strangled to death—have been recovered in seven States. Creech has said repeatedly that, unless he is completely isolated from humanity, he likely will continue killing. And he has identified by name

¹ Jensen, who was in prison for stealing a car, was twenty-three years old at the time of his murder. He suffered from physical and mental disabilities, was partially paralyzed, and a plastic plate had been surgically embedded in his skull. *Creech v. Richardson*, 59 F.4th at 376.

three people outside prison walls he intends to kill if given the opportunity.

Arave v. Creech, 507 U.S. 463, 465–66 (1993).

Creech pled guilty to the Jensen murder, and on January 25, 1982, in a written decision, Idaho’s Fourth Judicial District Judge Robert Newhouse sentenced Creech to death. *Creech v. Richardson*, 59 F.4th at 378. Creech filed multiple appeals which resulted in two resentencings. The final resentencing hearing lasted for five days and was held before Judge Newhouse in March and April of 1995. *Id.* at 379. Judge Newhouse found that, “The protection of society demands that Thomas Eugene Creech receive the death penalty.”² *Id.* at 380.

After receiving decades of due process through the judicial system,³ Creech requested an act of grace from the executive branch whose prerogative is to exercise discretion in granting it. After hearing and considering Creech’s evidence, witnesses, and arguments—including the same arguments about the quality of evidence that he presents to this Court—the Idaho Commission of Pardons and Parole (“Commission”) exercised its discretion and declined to recommend a commutation.

² At the time of the murder, Creech was serving two life sentences for the murders of Edward Thomas Arnold and John Wayne Bradford in 1974 in Valley County, Idaho. He had also been convicted of murdering Vivian Grant Robinson in 1974 in Sacramento, California, and William Joseph Dean in 1974 in Portland, Oregon. [Dkt. 5-3, p. 6, ll. 8-11] (ACPA App., p. 005).

³ Procedurally, Creech’s guilty plea and conviction for the Jensen murder has woven in and out of both state and federal courts for more than forty years. For a detailed discussion of the complex procedural history, please see *Creech v. Richardson*, 59 F.4th at 376, and *Creech v. State*, No. 50336, 2024 WL 510105 (Idaho Feb. 9, 2024).

Mr. Creech’s petition to this Court is yet another last-minute attempt to delay the imposition of the sentence he received decades ago. His eleventh-hour request to delay should be denied.⁴

Creech’s January 19, 2024 Commutation Hearing

On October 18, 2023, the Commission granted Creech’s request for a clemency hearing (“Hearing”) relating to his death sentence for the Jensen murder, and scheduled the Hearing for January 19, 2024. [Dkt. 4-2, Exhibit 1, ¶ 9] (ACPA App., p.190). Ashley Dowell, the Executive Director for the Commission, issued a memo dated November 13, 2023, outlining the Hearing procedures to be followed. [Dkt. 12-2, Exhibit C] (ACPA App., pp. 041-044). Following additional communications between the Ada County Prosecuting Attorney’s Office (“ACPA”) and Creech’s attorneys from the Federal Defenders of Idaho (“FDI”), Ms. Dowell issued another memo on December 20, 2023. [Dkt. 12-2, Exhibit C] (ACPA App., pp. 045-048).

These memos from Ms. Dowell (“Memos”) outlined the exact procedures to be followed by the parties. Importantly, the Memos reminded the ACPA and FDI:

As discussed in the meeting, commutations are a matter of clemency, and the hearing is not an adversarial proceeding. As such, the parties will make presentations to the Commission, with only previously

⁴ Creech has filed multiple appeals regarding his conviction over the last several decades, none of which have resulted in a reduction of his death sentence. Creech has also filed multiple civil actions alleging various constitutional violations by multiple government actors, none of which have been fruitful. This current case and subsequent appeal are additional attempts spanning the last forty-plus years to undo his sentence for the brutal and cold-blooded murder of David Jensen.

identified supporter(s), identified victim(s), and attorneys speaking, and will not be allowed to call witnesses for questioning, cross examine the other party, or object to what is being said during the parties' presentation time.

* * *

Each party will be provided a table in the hearing room and will have the ability to run their own PowerPoint presentation.

* * *

The investigation report and attached documents ("hearing packet") has been sent to the Commission for review on December 20, 2023.

Id.

The Memos do not provide that the ACPA and FDI were to share their respective PowerPoint presentations with the Commission or the other side. At the Hearing, the ACPA presented its PowerPoint presentation in accordance with the Commission's rules, and the FDI also "delivered a lengthy PowerPoint presentation." [Dkt. 4-2, ¶ 39] (ACPA App., p.194). Pursuant to the Commission's Hearing rules, the ACPA did not provide its PowerPoint presentation to the Commission or FDI prior to the Hearing, and the FDI did not provide its PowerPoint to the ACPA prior to the Hearing. [Dkt. 11-1, ¶ 7] (ACPA App., p.010).

Daniel Walker Murder

During the closing arguments section of the ACPA's PowerPoint presentation, Deputy Prosecutor Jill Longhurst ("Longhurst") referred to eleven (11)

murders⁵ in which Creech was convicted of, plead guilty to, or admitted to, including the murder of Daniel Walker. *Id.*, (ACPA App., p.020). In 1975, Creech admitted to killing a man in San Bernadino County, California, which facts mirror the facts involved in the Walker murder. [Dkt. 4-5, pp. 22-29] (ACPA App., pp. 216-223).

The Declaration of Christopher M. Sanchez, counsel for Creech, recognizes as much: “The ACPA [Hearing] exhibits do contain a transcript of an interview [with Creech] that took place on April 28, 1975. At that interview, Creech claimed to have killed a man under circumstances that resemble the facts in the Walker case.” [Dkt. 4-2 ¶ 33] (ACPA App., p.193).

Sock Photograph

In his presentation to the Commission, Creech’s attorney asserted that Creech takes responsibility for his actions:

Mr. Creech also continues to live with the knowledge of what he did, the horrible price that he exacted from the victims of his crimes. Attorney Horwitz believes living with the understanding of the consequences of his actions is punishment itself. Mr. Creech’s wife, LeAnn previously stated that he does not deserve death for things that he did in his 20s, things that he knows he shouldn’t have done and have haunted him ever since. She believes he has suffered for everything he

⁵ Significantly, his murder of at least eleven (11) people has been well established. As Justice O’Connor explained in 1993:

The facts underlying this case could not be more chilling. Thomas Creech has admitted to killing or participating in the killing of at least 26 people. The bodies of 11 of his victims—who were shot, stabbed, beaten, or strangled to death—have been recovered in seven States. Creech has said repeatedly that, unless he is completely isolated from humanity, he likely will continue killing. And he has identified by name three people outside prison walls he intends to kill if given the opportunity. *Arave*, 507 U.S. at 465–66.

did, not only because he is in prison but because of what it did to him as a person, what he has had to come to terms with. She stated that Tom looks back and cannot believe he was ever that person, and he struggles to understand how he got to that point.

[Dkt. 11-1] (ACPA App., pp. 019-020).

In her main presentation, Prosecutor Longhurst addressed Creech's continued blaming of Jensen for his murder:

Ms. Longhurst explained that the biggest lie Thomas Creech ever told was that the brutal beating of [redacted] was self-defense. Mr. Creech wanted to go into isolation, and in order to get what he wanted, he used violence, and it worked. He has always used violence or threats of it to get what he wants.

* * *

Self-defense, Ms. Longhurst said, is part of the lie that Thomas Creech has been trying to tell them. Ms. Longhurst asked how Thomas Creech can claim he is remorseful if he cannot accept any wrongdoing.

Id. (redactions supplied by the Commission) (ACPA App., pp. 020, 024). She also referenced socks that were collected as evidence from the Jensen murder scene:

Ms. Longhurst added that in Thomas Creech's cell, officers discovered a sock that matched the one used with the batteries, and a toothbrush identical to the one attached to a razor blade, pictured in [redacted] cell.

Id. (redactions supplied by the Commission) (ACPA App., p. 024).

Also during the closing arguments section of the ACPA's PowerPoint presentation, Prosecutor Longhurst rebutted Creech's statements to the investigator, and as part of that showed a photo of two of the socks that were collected as evidence from the Jensen murder scene for demonstrative purposes. [Dkt. 5-5] (ACPA App.,

p. 231). As reflected in the Hearing Minutes, Prosecutor Longhurst offered rebuttal as to Creech’s statements to the investigator:

Mr. Creech claims he is remorseful, but just months ago, Creech told Mr. Maddox [the investigator] that he killed [redacted] in self-defense. Creech blamed [redacted] for being murdered. When asked if he believes he deserves the death penalty, Creech said he did not know, because [redacted] attacked him. During his interview with Mr. Maddox, Creech explained that the socks had their names written on them, and the sock that he used as a weapon was labeled “Garza.” Ms. Longhurst displayed a photograph of the matching sock that was found in Creech’s cell. The name on the sock is “Creech.”

[Dkt. 11-1] (redaction supplied by the Commission) (ACPA App., p. 028).

Creech’s Post-Hearing Communications to the Commission

On January 22, 2024, three days after the Hearing concluded and before the Commission made its decision, the FDI sent the Commission a letter asking for it to delay its commutation decision “for at least two months so that further investigation can be done into two significant assertions that were made for the first time by the prosecutor, Jill Longhurst, at last Friday’s hearing.” [Dkt. 12-3, Exhibit H] (ACPA App., pp. 072-073). The letter describes at length the same issues it has presented to this Court—the Daniel Walker murder and the photograph of the sock. *Id.*

On January 25, 2024, the FDI sent a follow-up letter to the Commission, and provided further arguments in support of its request to delay the Commission’s commutation decision while the FDI “further investigates” claims related to Creech’s criminal case. [Dkt. 12-3, Exhibit J] (ACPA App., pp. 077-109).

On January 29, 2024, the FDI sent yet another lengthy letter to the Commission, with even more arguments as to why the need to delay the decision was necessary. [Dkt. 5-10] (ACPA App., pp. 232-235).

On January 22, 2024, the Idaho Attorney General's Office issued its own letter to the Commission, in which it responded to and refuted the post-Hearing claims made by the FDI. [Dkt. 12-3, Exhibit I] (ACPA App., pp. 074-076).

Despite Creech's "further investigation" arguments and request to delay the decision, on January 29, 2024, the Commission denied Creech's petition for clemency. [Dkt. 12-3, Exhibit L] (ACPA App., pp. 113-114).

Creech subsequently filed the underlying civil lawsuit, in which he requested that the district court issue a preliminary injunction which would effectively stay his upcoming execution. This request was denied by the district court, which was upheld by the Ninth Circuit. Creech's Petition for Writ of Certiorari and Application for Stay of Execution followed.

REASONS FOR DENYING THE PETITION

I. Creech Has Failed to Show a Compelling Reason to Grant Certiorari.

A. The Prosecutor did not Lie or Present False Evidence to the Commission, as the ACPA has Consistently Maintained.

The ACPA has consistently denied accusations of lying to the Commission and fabricating evidence. The record shows that Creech's accusations are untrue, and neither the Commission nor any Court has credited them.

1. *The Prosecutor gave a true account of the “matching sock” in the photograph she showed to the Commission.*

At the commutation hearing, Prosecutor Longhurst explained that Creech killed David Jensen in Jensen’s cell, leaving behind “a large pool of blood on the floor, as well as blood covering the entire wall.” [Dkt. 11-1] (ACPA App., p. 024). She explained that a sock matching the one filled with batteries that Creech used to brutally attack Jensen was found in Creech’s cell: “Ms. Longhurst added that in Thomas Creech’s cell, officers discovered a sock that matched the one used with the batteries” *Id.* The matching sock was one of three socks recovered from Creech’s cell. [Dkt. 12-3, Exhibit J] (ACPA App., p. 101).

Later in the commutation hearing, Prosecutor Longhurst sought to confront Creech’s assertion in an interview with the Commission’s investigator that the murder weapon sock was not his. [Dkt. 11-1] (ACPA App., p. 028). To do so, she showed a picture of two of the socks recovered from Creech’s cell, one of which was the sock that “looked, [to the investigating officer], to be the matching sock to the one that was used to carry the batteries.” [Dkt. 12-3, Exhibit J] (ACPA App., p. 101). Prosecutor Longhurst’s slide presentation placed an oval on the matching sock, and

she explained that this matching sock had Creech's name on it.⁶ This is reflected in the minutes:

During his interview with Mr. Maddox, Mr. Creech explained that the socks had their names written on them, and the sock that he used as a weapon was labeled "Garza." Ms. Longhurst displayed a photograph of the matching sock that was found in Mr. Creech's cell. The name on the sock is "Creech."

[Dkt. 11-1] (ACPA App., p. 028). This statement is consistent with the sentencing judge's findings "beyond a reasonable doubt" that "All the weapons which were used in this murder were made by Tom Creech," and that "Jensen approached Creech holding a weapon made up of batteries in a sock. The sock was later determined to be Creech's." Findings of the Court, *State v. Creech*, No. HCR-10252 (4th Jud. D. Idaho Apr. 17, 1995) (ACPA App., pp. 003-004).

Creech disagrees with what the record reflects, but no Parole Commissioner, Governor, District Court Judge, or Ninth Circuit Judge has credited his alternative factual assertions. He raised the same assertions and arguments with the Commission that he raises in this lawsuit, and the Commission determined that they were not meritorious enough to defer the Commission's recommendation to the Governor. [Dkt. 12-3, Exhibit M] (ACPA App., pp. 115-116). Then after the Commission issued no recommendation for clemency to the Governor, Creech communicated to

⁶ Whether or not the sock Creech used to violently beat David Jensen had "Creech," "Garza," or some other name written on it, or no name at all, does not change the cold-blooded nature of the murder.

the Governor the same arguments he makes in this lawsuit. [Dkt. 12-3, Exhibit L] (ACPA App., pp. 113-114). The Governor did not alter his position that Creech would not receive clemency. [Dkt. 11] (ACPA App., p. 237).

When Creech made these same arguments and assertions before the district court below, the ACPA “vehemently denie[d] Creech’s baseless allegations that it fabricated and falsified evidence,” [Dkt. 11] (ACPA App., p. 245), and the district court found that the accusations were inconsistent with the record:

. . . Creech alleges in his complaint that ‘the prosecution reveal[ed] a photo of the murder weapon for the first time’ at the clemency hearing. (Dkt. 1 at § V(C)). The [Hearing] minutes, however, contradict this allegation. Rather than showing the murder weapon—namely the sock containing the batteries—the ACPO apparently showed a photograph of the sock purportedly matching the murder weapon. (Dkt. 11-1 at p. 20 (“[The prosecutor] displayed a photograph of the matching sock that was found in [Creech’s] cell. The name on the sock is ‘Creech.’”))

[Dkt. 18] (ACPA App., p.129). Likewise, the Ninth Circuit panel below found these arguments and assertions to be unfounded:

The question of the authenticity of the sock in the photograph and its probative value arose because Creech contended at the Commission’s hearing that his remorse and rehabilitation favored commutation. In support, he claimed that he had accepted responsibility for his offenses. ACPA responded by pointing to a pre-hearing statement that Creech gave to investigators, where Creech contradicted the sentencing judge’s 1995 factual finding that the murder weapon was his by stating that it belonged to another inmate. ACPA introduced the slide with the labeled sock to refute Creech’s’ pre-hearing assertion that the murder weapon never belonged to him. In a post-hearing declaration provided to the Commission, Creech’s attorney stated that the prosecutor falsely told the Commission during the hearing that the sock bearing Creech’s name was the murder weapon. The detailed notes of the hearing describe no such

statement by the prosecutor. The minutes state, instead, that in her closing argument to the Commission, the prosecutor ‘displayed a photograph of the matching sock that was found in Mr. Creech’s cell. The name on the sock is ‘Creech.’

(Ninth Cir decision, pp. 12-13.) (ACPA App., pp. 145-146). Finally, when Creech sought en banc review of the panel’s decision, raising again the same arguments and factual assertions, not a single judge requested a vote. (order denying en banc) (ACPA App., pp. 148-149).

This Petition does not come to this Court with material facts undisputed. Creech’s arguments run counter to the findings of fact of every court below and counter to ACPA’s stringent denial of the allegation that it deliberately presented false evidence regarding the sock.

2. *The Prosecutor accurately told the Commission that Creech was identified as Walker’s murderer.*

The minutes from the commutation hearing reflect that Prosecutor Longhurst discussed eleven (11) murders attributable to Creech. [Dkt. 11-1] (ACPA App., p. 020). One of Creech’s victims discussed was Daniel Walker. [Dkt. 11-1] (ACPA App., p. 022). After briefly describing the murder, Prosecutor Longhurst stated that it had recently been attributed to Creech:

. . . Daniel Ashton Walker’s family was told that the case went cold, but it was recently reopened, and Thomas Creech was positively identified as the murderer. Ms. Longhurst stated that Thomas Creech committed this murder and confessed to it repeatedly.

. . . Thomas Creech has also gotten away with the murder of Daniel Ashton Walker. . . San Bernadino County sent them a letter stating that they will not try Thomas Creech for the murder, based on what is going on here in Idaho.

Id. This is consistent with the press release issued shortly thereafter by the San Bernadino Sheriff's Department, explaining that in 1974 "an unknown suspect" awakened Walker and shot him, that the "suspect" then fled, and that cold case detectives had recently identified the "suspect" as Creech. [Dkt. 12-3, Exhibit J] (ACPA App., pp. 108-109).

Prosecutor Longhurst's statement was further corroborated by a statement from a District Attorney in San Bernadino that "Creech would not have been named as a suspect without evidence that he believed prosecutors could prove beyond a reasonable doubt," and that Creech would not be charged at this time because "At this point, it's a jurisdictional issue and we are going to let the process play out." [Dkt. 17-2] (ACPA App., p. 257).

Just like with Creech's allegations about the sock, the Commission declined to defer making its recommendation in light of an allegation that the prosecutor lied about the Walker murder. The Ninth Circuit found from the record that the prosecutor's presentation as a whole correctly characterized Creech's responsibility for the Walker murder:

ACPA's slide does unequivocally state that "Thomas Creech Murdered Daniel Walker." Taken alone, that slide might have been misleading by overstating the level of certainty as to Creech's involvement. But it

appears from the hearing minutes that the prosecutor correctly noted that Creech had not been tried for, nor convicted of, Walker's murder, so the prosecutor's statements did not mislead the Commission into assuming that Creech had been found responsible in a formal, legal sense.

(Ninth Circuit decision, p. 9) (ACPA App., p. 142).

It is incorrect to assert that the facts regarding the prosecutor's discussion of the Walker murder are "undisputed." While Creech states that Prosecutor Longhurst lied, the record shows that her statements were based in fact.

B. The Ninth Circuit's Decision was Based on the Facts in the Record, not on a Pure Issue of Law.

The Ninth Circuit relied on the facts in the record in upholding the district court's denial of preliminary injunction, and this makes the case a poor vehicle for determining the legal issues on which Creech seeks review.

Creech asks this Court to determine whether intentional presentation of false evidence at a clemency hearing violates due process. He supports this request by asserting that the facts are not in dispute, but that this question of law governs. However, the Ninth Circuit did not base its ruling against Creech on the legal issue of whether alleging fabricated evidence at a clemency hearing states a claim under the Due Process Clause. Instead, the Ninth Circuit assumed that it could review Creech's false evidence claim. (Ninth Circuit decision p. 8) (ACPA App., p. 141). With that assumption, the Court found that the facts did not support Creech's allegations, ruled against him on factual grounds, then bolstered its analysis by

analyzing harmlessness. (Ninth Circuit decision pp. 8–13) (ACPA App., pp. 141-146).

Thus, this case is a poor vehicle because the facts determined the outcome, not the legal proposition Creech advances.

C. There Is no Circuit Split Regarding the Issues Presented in Creech’s Application.

There is no circuit split regarding whether an allegation of false evidence at a clemency proceeding states a claim under the Due Process Clause. Creech has identified no case in which a Circuit panel has held that a death row inmate states a claim under due process by alleging that evidence presented at a clemency hearing was false or fabricated. The only case on point that Creech cites is *Workman v. Bell*, 245 F.3d 849 (6th Cir. 2001), cert. denied *Workman v. Bell*, 532 U.S. 955, 121 S. Ct. 1431, 149 L. Ed. 2d 369 (2001), which—relying on *Woodard* and caselaw from the Tenth and Fifth Circuits—held that attacking the evidence presented at a clemency proceeding as allegedly erroneous or false is an improper attack on the substantive merits of that proceeding, and that a court is not authorized to review such a substantive attack.

Creech argues that *Anderson v. Davis*, 279 F.3d 674 (9th Cir. 2002) held opposite to *Workman*, but it held nothing at all about whether allegations of false evidence state a claim under due process. The plaintiff in *Anderson* alleged that the Governor of California’s alleged blanket policy to deny all clemency applications

out-of-hand violated his right to due process under the 14th Amendment. *Id.* at 675. The Ninth Circuit dispensed with that argument and resolved the issue presented in one sentence: “Courts have uniformly rejected allegations that due process is violated by a governor who adopts a general policy of not granting clemency in capital cases.” *Id.* at 676.

Then, the Ninth Circuit took it upon itself to “scour[] the record” for the plaintiff “on the assumption that there might be a ground in this matter for the denial of clemency.” *Id.* In its thoroughness, the Ninth Circuit hunted for and found no “coin-flipping or another capricious decisionmaking process” as suggested by Justice O’Connor’s concurrence in *Woodard*, and found no “suggestion that race, religion, political affiliation, gender, nationality, etc. are involved in this case,” nor any allegations “that the Governor’s procedures are ‘infected by bribery, personal or political animosity, or the deliberate fabrication of false evidence.’” *Id.* (quoting *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 290–91, 118 S. Ct. 1244, 1254, 140 L. Ed. 2d 387 (1998) (Stevens, J., concurring and dissenting)).

Because the issue presented to the court was not about any of the potential problems for which the Ninth Circuit was scouring the record *sua sponte*, discussion of these hypothetical sources of a due process violation—which the Ninth Circuit did not find—are dicta. *Cent. Virginia Cmty. Coll. v. Katz*, 546 U.S. 356, 363 (2006) (explaining that courts are not bound to follow dicta in a prior case in which the point

at issue was not fully debated); *Williams v. United States*, 289 U.S. 553, 568 (1933) (explaining that discussion of issues not involved in the question under consideration are “obiter dicta”). Thus, the Ninth Circuit has not yet departed from Justice O’Connor’s concurrence in *Woodard* or with its application in *Workman* forbidding judicial review of the evidence presented in a clemency proceeding.

The other cases Creech cites do not show a split on the question Creech presents this Court for review. They instead deal with other matters for which there is no record in this case to resolve, such as whether a threat to fire an employee for providing information favorable to a clemency applicant violates due process. *See Young v. Hayes*, 218 F.3d 850 (8th Cir. 2000). Unrelated issues like this are best left for another case in which they are at issue.

Creech has failed to show that there is a circuit split on the question of whether an allegation of false or fabricated evidence states a claim under due process—instead, the only case he cites on the issue takes the position that comports with *Woodard*, that only minimal due process applies, and courts do not scrutinize the substantive merits of clemency proceedings.

II. Creech’s Application for Stay of Execution Must be Denied.

Creech’s eleventh-hour attempt to stay his execution must be viewed through the lens prescribed by this Court: “Last-minute stays should be the extreme

exception, not the norm[.]” *Bucklew v. Precythe*, 587 U.S. ---, 139 S.Ct. 1112, 1134 (2019); *see also Barr v. Lee*, 591 S.Ct. ---, 140 S.Ct. 2590, 2591 (2020).

Contrary to this directive, in his Application on p. 1, Creech cites to four factors from *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987), in support of his argument that he should be granted a last-minute stay:

(1) [W]hether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

However, this Court has recognized that because “the traditional stay factors contemplate individualized judgments in each case, the formula cannot be reduced to a set of rigid rules.” *Id.* at 777. Following this notion, in *Nken v. Holder*, 556 U.S. 418 (2009), this Court concluded that, “The first two factors of the traditional standard are the most critical.” *Id.* at 434.

Further addressing those two specific factors, the Court explained, “It is not enough that the chance of success on the merits be better than negligible. . . . By the same token, simply showing some possibility of irreparable injury fails to satisfy the second factor.” *Id.* at 434-435.

A. Creech Cannot Show that He is Likely to Succeed on the Merits.

Creech argues that he is likely to succeed on the merits because there is “a reasonable probability that four Members of the Court would consider the underlying

issue sufficiently meritorious for the grant of certiorari” and cites *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). Application, p. 1. Creech also alleges that at a minimum, his claims are “surely ‘plausib[le].’” *Id.*, p. 3.

As discussed below, the record in this case indicates otherwise.

I. As recognized by the Ninth Circuit, the court’s review of a state commutation hearing is extremely limited.

There is no constitutional or inherent right to commutation of a sentence, and a petition for commutation “is simply a unilateral hope.” *Woodard*, 523 U.S. at 280 (quoting *Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 458, 465 (1981)). Such petitions are the purview of the executive branch, rather than the judicial. *Id.* at 276. Because “pardon and commutation decisions have not traditionally been the business of courts,” the Supreme Court has recognized that “they are rarely, if ever, appropriate subjects for judicial review.” *Dumschat*, 452 U.S. at 464. This was correctly recognized by the Ninth Circuit in its Opinion on February 24, 2024. Dkt. 13.1, p. 5 (ACPA App., p. 138).

Justice O’Connor gave the definitive explanation as to when judicial review of a clemency hearing is appropriate in her concurrence in *Ohio Adult Parole Authority. v. Woodard*, 523 U.S. 272 (1998). The principal opinion in *Woodard*, authored by Chief Justice Rehnquist, recognized the nature of clemency as a “matter of grace” within the “broad discretion” of the “ultimate decisionmaker, the Governor.” *Id.* at 280–81, 282. These principles of executive discretion stand in

contrast to the strictures and procedures of the judicial system that adjudicates the guilt or innocence of a criminal defendant. *Id.* at 284–85. And unlike in the judicial system, Due Process does not require regimented procedural protections regarding commutation proceedings. *Id.* at 285. The Chief Justice and seven other Justices concluded that Ohio’s clemency procedures did not violate due process. *Id.* at 282, 288.

While Justice O’Connor agreed that Ohio’s procedures did not violate due process, she and three other Justices desired to clarify that they did not believe in a complete absence of “constitutional safeguards” in clemency proceedings, but that there must be some kind of “*minimal* procedural safeguards” that apply. *Id.* at 288–89 (O’Connor, J., concurring in part). The only examples this concurrence provided of sufficiently egregious situations to justify judicial intervention were “a scheme whereby a state official flipped a coin to determine whether to grant clemency, or in a case where the State arbitrarily denied a prisoner any access to its clemency process.” *Id.* at 289. Justice O’Connor identified multiple alleged deficiencies that fail to amount to a due process violation, including an allegation that the death row inmate “was precluded from testifying or submitting documentary evidence at the hearing.” *Id.* at 289–90.

Justice Stevens wrote a separate concurrence in which no other Justice joined. He explained that he agreed with Justice O’Connor that there must be some kind of

“minimal, perhaps even barely perceptible, procedural safeguards” regarding clemency proceedings. *Id.* at 290 (Stevens, J., concurring in part and dissenting in part) (internal quotation marks omitted). The opinion that some minimal safeguards must exist was therefore held by five Justices. But Justice Stevens’ suggestion that “procedures infected by bribery, personal or political animosity, or the deliberate fabrication of false evidence” could potentially state a due process violation in the right case, *Id.* at 290–91, was not joined by any other justice.

The district court below correctly cites *Marks v. United States*, 430 US 188, 193 (1977), which states that in fractured opinions, “the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.” Even though Justice Stevens agrees that some minimal due process exists, no other Justice agreed with his concurrence or the specific examples of other instances that might offend due process. As such, Justice Stevens’ extra examples cannot be construed as the narrowest grounds and cannot be construed as the holding of the Court.

Allegations that challenge the evidence presented at a clemency hearing do not state a due process claim and do not authorize judicial review. The Sixth Circuit, relying on Justice O’Connor’s concurrence in *Woodard* and caselaw from the Fifth and Tenth Circuits, rejected the arguments Creech makes here that an allegation of false evidence presented in a clemency proceeding is cognizable under the *minimal*

procedural safeguards applicable to clemency proceedings. *Workman*, 245 F.3d at 852–53. When a death row inmate sought to re-open a petition for writ of habeas corpus, he argued that the state presented fabricated expert testimony during clemency proceedings. *Id.* at 851–52. The Sixth Circuit observed that it does not “sit as [a] super appeals court[] over state commutation proceedings.” *Id.* at 852 (cleaned up). The court relied upon Justice O’Connor’s concurrence in *Woodard* concluding that minimal procedural safeguards apply to clemency proceedings, and it recounted the clarification that “Judicial intervention might, for example, be warranted in the face of a scheme whereby a state official flipped a coin to determine whether to grant clemency, or in a case where the State arbitrarily denied a prisoner any access to its clemency process.” *Id.* (quoting *Woodard*, 523 U.S. at 289). The court found that the allegations failed to meet the *Woodard* standard for minimal due process, explaining,

He attacks the evidence presented at his clemency proceeding by saying that it was erroneous or false. Thus, he attacks the proceedings’ substantive merits. *We are not authorized to review the substantive merits of a clemency proceeding.* Our only review is to see that there are some minimal procedural safeguards. It is not our duty to determine the quality of the evidence considered by the governor or his board.

Id. at 852–53 (6th Cir. 2001) (emphasis added) (cleaned up) (citing *Faulder v. Texas Board of Pardons and Paroles*, 178 F.3d 343, 344 (5th Cir.1999); *Duvall v. Keating*, 162 F.3d 1058, 1061 (10th Cir.1998)). On this basis, the court denied the motion to re-open. *Id.* at 853.

The U.S. District Court for the Middle District of Tennessee and the Sixth Circuit continued to follow this reasoning when denying a temporary restraining order and dismissing the lawsuit Workman subsequently filed—a lawsuit much like Creech’s, seeking to stay his execution until claims such as “the use of false testimony against him” at the clemency hearing could be adjudicated. *Workman v. Summers*, 136 F. Supp. 2d 896, 897 (M.D. Tenn.), *aff’d*, 8 F. App’x 371 (6th Cir. 2001); *Workman v. Summers*, No. 3:01-0290, 2001 WL 1782877, at *4 (M.D. Tenn. Oct. 31, 2001), *aff’d*, 111 F. App’x 369 (6th Cir. 2004).

In this case, the District Court below also followed this same reasoning. It cited *Woodard* and *Workman*, explaining that the reason a federal court is not authorized to review the substantive merits of a clemency proceeding is twofold:

First, *Woodard* at most authorizes only limited judicial review for some minimal procedural due process safeguards. 523 U.S. at 289; *see also* [*Anderson v. Davis*, 279 F.3d 674, 676 (9th Cir. 2002)] (relying on *Woodard*). Second, generally the record of the clemency hearing is inadequate—as in this case—to conduct a substantive judicial review of the merits.

Memorandum Decision and Order Denying Plaintiff’s Motion for Preliminary Injunction, [Dkt. 18] (ACPA App., p. 125).

Creech agrees that a federal court should not review the actions of the Commission as though the Commission is a court making a judicial finding, “because that is not how clemency works.” Appellant’s Petition for Panel and En

Banc Rehearing, p. 20. [9th Cir. Dkt. 15.1] (ACPA App., p. 169). Indeed, clemency proceedings:

are conducted by the executive branch, independent of direct appeal and collateral relief proceedings. [*Greenholtz v. Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1, 7, 99 S. Ct. 2100, 2103–04, 60 L. Ed. 2d 668 (1979).] And they are usually discretionary, unlike the more structured and limited scope of judicial proceedings. While traditionally available to capital defendants as a final and alternative avenue of relief, clemency has not traditionally “been the business of courts.” [*Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 458, 464, 101 S. Ct. 2460, 2464, 69 L. Ed. 2d 158 (1981).]

Woodard, 523 U.S. at 284 (Rehnquist, C.J.).

The substance of a clemency proceeding is not a proper subject for judicial review, and Creech cannot delay his execution by scrutinizing the details of discretionary decision-making by the executive branch. This goes beyond the extremely limited judicial review to which clemency proceedings are subject.⁷

2. *The District Court and Ninth Circuit clearly and concisely ruled against Creech.*

The District Court ruled that “Creech fails to clearly show he is likely to succeed on the merits of his due process claim.” Dkt. 18, p. 10 (ACPA App., p. 126). The

⁷ Creech is attempting to impose the constitutional requirements found in his criminal case onto this civil case, as succinctly summarized by one sentence in his Petition for Panel and En Banc Rehearing: “This is a murder case and the sole question is what was written on the murder weapon.” Dkt. 15.1, p. 12. (ACPA App., p. 161). This is simply not true. This is a civil case filed by Creech challenging the outcome of his clemency hearing before the Commission. The due process requirements relating to a criminal case are much different, and much higher, than a clemency hearing.

District Court spent several pages discussing Creech’s due process arguments, and ultimately found:

In this case, the Court has carefully and thoroughly reviewed the record, considered the procedures for Creech’s clemency hearing, and finds the Commission provided Creech more than minimal due process in conducting the hearing. For example, Creech was granted a commutation hearing. He had notice of that hearing. The Commissioner’s executive director met several times with the parties about the hearing before it occurred. The director provided the parties with information regarding ‘the rules and logistical details for the hearing.’ (Dkt. 1 at ¶¶ 34-38). The Commission required the ACPO to submit materials and provide Creech with copies of those materials before the hearing. (*Id.* at ¶ 41). The Commission allowed Creech to present information at the hearing and gave him an opportunity to speak on his behalf. Finally, the Commission deliberated and issued a written decision explaining the commissioners’ reasoning.

Dkt. 18, p. 11 (ACPA App., p. 127).

The District Court, while recognizing that “[a] federal appellate court . . . is not authorized ‘to review the substantive merits of a clemency proceeding,’ *Id.*, p. 9, did address Creech’s allegations that Prosecutor Longhurst lied at his clemency hearing.

The Court noted:

. . . that Creech alleges in his complaint that ‘the prosecution reveal[ed] a photo of the murder weapon for the first time’ at the clemency hearing. (Dkt. 1 at § V(C)). The [Hearing] minutes, however, contradict this allegation. Rather than showing the murder weapon—namely the sock containing the batteries—the ACPO apparently showed a photograph of the sock purportedly matching the murder weapon. (Dkt. 11-1 at p. 20 (“[The prosecutor] displayed a photograph of the matching sock that was found in [Creech’s] cell. The name on the sock is ‘Creech.’”))

Further, although the ACPO did apparently state during the hearing that ‘Creech was positively identified as [Walker’s] murderer’ (Dkt. 11-1 at

p. 14), the minutes show the ACPO discussed numerous other murders Creech allegedly committed. Creech, however, does not dispute those murders, and it is already an established fact that Creech has committed multiple murders.

* * *

Finally, the Commission's decision does not appear to have been unduly influenced by either the Walker murder or the sock photograph. The Commission did not mention either when explaining its decision.

Dkt. 18, pp. 13-14 (ACPA App., pp. 129-130).

Like the District Court below, the Ninth Circuit also “reject[ed] all of Creech’s due process arguments.” Dkt. 13.1, p. 7 (ACPA App., p. 140). And while the Court correctly did not “review the substantive merits of the Commission’s commutation proceeding,” it did review Creech’s claims that the prosecutor deliberately introduced false evidence at the hearing. *Id.*, p. 8 (ACPA App., p. 141). The Court found that “although Creech may not have known all of the specific evidence that would be presented during his commutation hearing—such as evidence concerning the Daniel Walker murder and the introduction of a picture of a sock labeled ‘Creech,’ . . .—the State satisfied the minimal notice requirements contemplated in *Woodard* and *Wilson*.” *Id.*, p. 8. The Court noted that, “But it appears from the hearing minutes that the prosecutor correctly noted that Creech had not been tried for, nor convicted of, Walker’s murder, so the prosecutor’s statements did not mislead the Commission into assuming that Creech had been found responsible in a formal, legal sense.” *Id.*, p. 9 (ACPA App., p. 142).

The Court also referenced the Hearing minutes when discussing Creech's allegations regarding the sock photograph:

The question of the authenticity of the sock in the photograph and its probative value arose because Creech contended at the Commission's hearing that his remorse and rehabilitation favored commutation. In support, he claimed that he had accepted responsibility for his offenses. ACPA responded by pointing to a pre-hearing statement that Creech gave to investigators, where Creech contradicted the sentencing judge's 1995 factual finding that the murder weapon was his by stating that it belonged to another inmate. ACPA introduced the slide with the labeled sock to refute Creech's pre-hearing assertion that the murder weapon never belonged to him. In a post-hearing declaration provided to the Commission, Creech's attorney stated that the prosecutor falsely told the Commission during the hearing that the sock bearing Creech's name was the murder weapon. The detailed notes of the hearing describe no such statement by the prosecutor. The minutes state, instead, that in her closing argument to the Commission, the prosecutor 'displayed a photograph of the matching sock that was found in Mr. Creech's cell. The name on the sock is 'Creech.'

Id., pp. 12-13 (ACPA App., pp. 145-146).

Finally, the Ninth Circuit's Order regarding Creech's Petition for Panel Rehearing and Rehearing En Banc is extremely telling in regard to whether Creech is likely to succeed on the merits:

On February 25, 2024, Creech filed a petition for panel rehearing and rehearing en banc from the panel's opinion affirming the district court's denial of Creech's request for preliminary injunctive relief. The panel has voted to deny the petition for panel rehearing. **The full court has been advised of the petition for rehearing en banc.** Pursuant to the rules applicable to capital cases in which an execution date has been scheduled, a deadline was set by which any judge could request a vote on whether the panel's February 24, 2024, opinion should be reheard en banc. **No judge requested a vote within the time**

period. Accordingly, the petition for panel rehearing and rehearing en banc is denied.

(Emphasis added) En Banc Order (ACPA App., p. 148).

Creech was unable to convince a single Judge in the Ninth Circuit that his arguments warranted en banc review. He is equally unlikely to convince four Justices of the same.

3. *Under Idaho law, the Governor is the ultimate decisionmaker and he has already explained his decision on clemency.*

An overarching factor concerning Creech's Application is that Idaho law places the final decision regarding death sentence clemency with the Governor.⁸ On Monday, January 29, 2024, following the Commission's decision denying Creech's request for clemency, Idaho Governor Brad Little issued the following statement:

As Governor, my job is to follow the law and ensure that lawful criminal sentences are carried out. Thomas Creech is a convicted serial killer responsible for acts of extreme violence. Our court system convicted Creech, and he was lawfully sentenced to death. As Governor, **I have zero intention of taking any action that would halt or delay Creech's execution.** His lawful and just sentence must be

⁸ "The commission shall have authority to grant commutations and pardons after conviction and judgment for offenses, or conspiracies to commit any offense, for which the maximum punishment allowed by law at the time of sentencing is death or life imprisonment only after first presenting a recommendation to the governor. If the governor approves the commission's recommendation within thirty (30) days of presentment, the commission's pardon or commutation shall issue. If the governor rejects the commission's recommendation within thirty (30) days of presentment or takes no action on the recommendation before the passage of thirty (30) days from presentment, no pardon or commutation shall issue from the commission, and the commission's recommendation shall be of no force or effect." Idaho Code § 20-1016(2).

carried out as ordered by the court. Justice has been delayed long enough.⁹

After receiving decades of due process through the judicial system, Creech requested an act of grace from Idaho’s executive branch, whose prerogative is to exercise discretion in granting it. After hearing and considering Creech’s evidence, witnesses, information, and arguments—including the same arguments about the quality of evidence presented that he forwarded to the District Court, the Ninth Circuit, and now this Court—the Commission exercised its discretion and declined to recommend a commutation. And the final decisionmaker in the executive branch, the Governor, concurs. Regardless of the outcome of Creech’s case, the result will be the same—Governor Little will not commute Creech’s sentence.

B. The Interest of the Parties Involved as well as the Public Lies with the Resolution of this Forty-Year-Old Capital Case.

Creech has not been sitting idly by during the forty-plus years since he brutally murdered David Jensen. Rather, he has been actively engaged in a variety of appeals and other litigation in an effort to overturn his conviction and/or his sentence. Creech sets forth these Related Proceedings in his Petition for Writ of Certiorari. Petition, pp. ii-v. There are twenty-eight (28) separate cases listed in the four pages of Related Proceedings, and these cases have been filed in every possible court multiple times—

⁹ “Gov. Little comments on Creech execution moving forward,” OFFICE OF THE GOVERNOR, January 29, 2024, <https://gov.idaho.gov/pressrelease/gov-little-comments-on-creech-execution-moving-forward/>. (emphasis added).

the Ada County district court, the Idaho Supreme Court, the United States district court (District of Idaho), the Ninth Circuit Court of Appeals, and this Court.

Despite over forty years of litigation, Creech callously states that “a stay will not substantially injure the opposing parties” because he “has been on death row for this offense for more than forty years.” App. p. 4. That fact, however, is precisely why a stay will continue to cause injury to the family and friends of David Jensen.

Creech also asserts that “[a] brief stay of execution to allow the certiorari proceedings to reach their natural conclusion without the artificial pressure of a pending death warrant will do the State no harm.” *Id.*, pp. 4-5. However, in Creech’s world, there will always be a need for a “brief stay” in order to allow the case de jure to “reach its natural conclusion.” It is this continuous kicking of the can that has resulted in Creech being on death row for over forty years. David Jensen’s family and friends deserve better.

CONCLUSION

Respondent Bennetts respectfully requests that this Court deny Creech's Petition for a Writ of Certiorari and Application for a Stay of Execution.

DATED this 27th day of February, 2024.

Respectfully submitted,

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RB

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J. DAVID NAVARRO, Clerk
By *Martha Suley*
DEPUTY

1
2 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
3 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
4

5 THE STATE OF IDAHO,)
6 Plaintiff,) Case No. HCR-10252
7 vs.) FINDINGS OF THE COURT IN
8 THOMAS EUGENE CREECH,) CONSIDERING THE DEATH PENALTY
9 Defendant.) UNDER SECTION 19-2515,
10) IDAHO CODE

11 This matter has been returned from the federal court system.
12 The earlier sentence of this court has been vacated. A new
13 sentencing hearing was held beginning March 13, 1995 with the
14 defendant being given opportunity to present any and all
15 evidence for this court's consideration. Therefore pursuant to
16 I.C. Sec. 19-2515, this court enters its findings.

17
18 FINDINGS OF THE COURT IN CONSIDERING THE DEATH PENALTY
19 UNDER SECTION 19-2515, IDAHO CODE

20 The above defendant entered a plea of guilty to the criminal
21 offense of Murder of the First Degree, which under the law
22 authorizes the imposition of the death penalty. The court
23 ordered an updated presentence investigation of the defendant
24 and thereafter held a sentencing hearing for the purpose of
25 hearing all relevant evidence and argument of counsel in
26 aggravation and mitigation of the offense;

1 NOW, THEREFORE, the Court hereby makes the following
2 findings:

3 1. Conviction. The defendant while represented by court-
4 appointed counsel, Rolf M. Kehne, was found guilty of the
5 offense of Murder of the First Degree pursuant to a plea of
6 guilty entered in open court on August 28, 1981.

7 2. Presentence Report. A presentence report was prepared by
8 the order of the court in 1981. An updated presentence report
9 was prepared and delivered to the defendant or his counsel at
10 least seven (7) days prior to the sentencing hearing pursuant to
11 19-2515, Idaho Code, and the Idaho Criminal Rules.

12 3. Sentencing Hearing. A sentencing hearing was commenced on
13 March 13, 1995, pursuant to notice to counsel for the defendant.
14 At this hearing, in presence of the defendant, the court heard
15 relevant evidence in aggravation and mitigation of the offense
16 and arguments of counsel.

17 4. Facts Found in Mitigation.

18 (a) Thomas Eugene Creech was born on September 9, 1950 and at
19 this time is 44 years old. Most violent acts statistically are
20 committed by males 30 years old and younger.

21 (b) He has completed the 11th grade and has acquired his
22 G.E.D. while serving in the Army.

23 (c) He takes pride in cooperating with law enforcement
24 personnel, although in 1978 he was cited in a disciplinary
25 violation for threatening a guard. For purposes of sentencing

1 this court will accept that the defendant gets along with law
2 enforcement.

3 (d) Tom Creech is creative. He is musical, writes songs and
4 plays guitar. He also writes poetry and prose.

5 (e) He credits his current wife, Sherry, with the reduction
6 in disciplinary citations he has received in the last years.
7 The fact that Tom has been in maximum security since 1989 and
8 has had no opportunity to be alone with another inmate at any
9 time may also play a substantial factor in the reduced
10 disciplinary citations. For the purposes of sentencing, this
11 court will accept that defendant's wife Sherry has contributed
12 positively to defendant's outlook.

13 (f) There may be a biological reason for the defendant to
14 be predisposed to violence. There is no independent factual
15 basis presented for this theory as it relates to this
16 individual. However, for the purpose of sentencing this court
17 will accept that the defendant may be biologically predisposed
18 to violence.

19 5. Facts Found in Aggravation.

20 (a) Thomas Eugene Creech has told different versions to
21 different people regarding what happened on May 13, 1981. After
22 reviewing the investigation which occurred at that time as well
23 as Tom's various statements, this court determines beyond a
24 reasonable doubt that the murder which occurred on "B" tier in
25 the penitentiary was planned and executed by Tom Creech to kill

1 David Jensen. All the weapons which were used in this murder
2 were made by Tom Creech. Jensen was egged on to attack Creech
3 so the justification of self defense could be used. Jensen had
4 earlier suffered a head injury resulting in a plastic plate
5 covering part of his skull and limited coordination. Tom Creech
6 referred to him as "spastic".

7 Creech was the janitor for "B" tier and the only inmate who
8 could be out simultaneously with another inmate. On May 13th,
9 Jensen was released from his cell for his hour of exercise and
10 shower. Jensen approached Creech holding a weapon made up of
11 batteries in a sock. The sock was later determined to be
12 Creech's. Words were exchanged and Jensen swung the weapon at
13 Creech. Creech was not in fear of his life; he merely took the
14 weapon and punched Jensen in the face. Jensen retreated.

15 Creech went to his cell and made a second weapon out of a
16 toothbrush, razor blade and wire. He took this weapon to a
17 second inmate who in turn gave it to Jensen and urged a second
18 attack. Jensen came out of his cell and again swung at Creech
19 causing slight cuts. Creech went to his own cell and brought
20 out a radio, plugged it in near Jensen's cell and turned it on
21 loud. Creech went into Jensen's cell and began beating him with
22 the battery-filled sock.

23 Creech took breaks during the beating. At one time he
24 believed that he had mortally injured Jensen but yet returned to
25 the cell where Jensen lay helpless and sprawled on the floor and

1 proceeded to beat him with his hands, kicking him several times
2 in the throat. Ultimately Jensen died on the operating table.
3 The pathologist report determined that David Jensen's death
4 resulted from the shattering of his skull bone and plate.
5 Thomas Eugene Creech did deliberately and with premeditation
6 form specific intent to kill David Jensen while they were
7 inmates at the Idaho state penitentiary.

8 (b) Thomas Eugene Creech has killed in the past and been
9 convicted. The convictions are for the following murders: John
10 Bradford and Thomas Arnold in Idaho; William Dean in Oregon and
11 Vivian Robinson in California.

12 (c) Thomas Eugene Creech has confessed to killing others in
13 the past. Several bodies have been found based upon information
14 received from the defendant. These murders resulted from either
15 perceived personal affronts or self gain.

16 (d) The defendant indicates an intention to commit further
17 murders if he is ever released. This court finds it probable
18 that Thomas Eugene Creech will kill again if placed in a
19 situation of less than total isolation.

20 (e) The defendant has been previously sentenced to death by a
21 district court of the State of Idaho. Such death sentence was
22 reversed by the Idaho Supreme Court after finding the earlier
23 Idaho death penalty statute unconstitutional.

24 (f) The defendant was 30 years old when he committed this
25 murder. His various violent disciplinary citations involving

1 stabbing, battery or aggravated assault did not decline until
2 he was 38 years old and placed in maximum security. The general
3 statistics regarding aging and declining of violence have not
4 held true for this defendant; he continued to be violent after
5 30 years old. Only isolation has stopped the violence.

6 (g) Tom Creech cannot be rehabilitated.

7 6. Statutory Aggravating Circumstances Found Under Section
8 19-2515(f), Idaho Code.

9 These following aggravating circumstances are all found
10 beyond a reasonable doubt by this court.

11 A. The defendant was previously convicted of another murder,
12 to-wit:

- 13 1. March 25, 1976: Two Counts of Murder of the First
14 Degree. The initial sentence was death, but was
15 reduced to life on each charge by the Idaho
Supreme Court.
- 16 2. April 23, 1979: First Degree Murder. The sentence
imposed was 99 years.
- 17 3. November 4, 1980: First Degree Murder. The sentence
18 imposed was life.

19 B. By the murder, or circumstances surrounding its
20 commission, the defendant exhibited utter disregard for human
21 life. The defendant did not fear the victim; David Jensen was
22 egged on to attack the defendant with weapons made by the
23 defendant to provide a possible justification of self-defense.
24 The defendant returned to Jensen's cell and continued to beat
25

1 him while he lay helpless on the floor. This murder was nothing
2 more than a brutal assassination.

3 C. The murder was one defined as Murder of the First Degree
4 by Section 18-4003, Idaho Code, subsection (c).

5 The defendant was under a sentence of Murder of the First
6 Degree at the time of his actions and with specific intent
7 caused the additional death of David Jensen.

8 D. The murder was one defined as Murder of the First Degree
9 by Section 18-4003, Idaho Code, subsection (e).

10 The defendant with specific intent committed the murder of a
11 fellow inmate while both were incarcerated in the Idaho State
12 Correctional Institution.

13 E. The defendant, by his prior conduct or conduct in the
14 commission of the murder at hand, has exhibited a propensity to
15 commit murder which will probably constitute a continuing threat
16 to society. Anything less than total isolation would give rise
17 to a substantial chance of the defendant killing again. This
18 court is unwilling to assume that future correction officials
19 will continue to recognize the deadliness of this defendant.

20 7. Reasons Why The Death Penalty Was Imposed.

21 Thomas Eugene Creech murdered David Jensen while they were
22 both inmates at the Idaho State Corrections Institute. The
23 arguments presented at the earlier hearing that it was somehow
24 the prison officials' fault for putting Jensen in the tier with
25 killers; that Creech was angry because Jensen spilled syrup on

1 the floor that Creech had just cleaned; or that Jensen was an
2 obnoxious punk who was going to be hurt by someone on that tier
3 do not come close to justifying this murder. Tom Creech kills
4 almost on whims with little regard or interest in the
5 consequences. He may "feel bad" at times about some of these
6 murders, but he has no control or chooses not to exercise
7 control over his actions. The protection of society demands
8 that Thomas Eugene Creech receive the Death Penalty.

9 This court has weighed all the mitigating factors in relation
10 to each aggravating factor as required by the Idaho Supreme
11 Court decision of St. v. Charboneau and finds that all the
12 mitigating factors combined do not outweigh each individual
13 aggravating factor.

14 THEREFORE, this Court finds that the Death Penalty should be
15 imposed upon the defendant, THOMAS EUGENE CREECH, for the
16 capital offense of which he was convicted.

17 Dated this 17th day of April, 1995.

18
19 
20 Robert G. Newhouse
21 District Judge
22
23
24
25

JAN M. BENNETTS
ADA COUNTY PROSECUTING ATTORNEY

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Attorneys for Ada County Prosecutor Jan M. Bennetts

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

THOMAS EUGENE CREECH,

Plaintiff,

vs.

IDAHO COMMISSION OF PARDONS AND
PAROLE; JAN M. BENNETTS, Ada County
Prosecuting Attorney, in her official capacity,

Defendant.

Case No. 1:24-cv-00066-AKB
DECLARATION OF TRACIE SMITH

1. I am over the age of eighteen (18), otherwise competent to testify in this matter, and make this declaration based upon my personal knowledge.

2. I have worked in the Ada County Prosecuting Attorney's Office ("ACPA") since May 2001 and am currently the Office's Chief Administrative Officer.

3. My duties include administrating and overseeing the day-to-day operations of the ACPA.

4. As part of my duties at the ACPA, I have access to and regularly receive legal mail addressed to the Office.


5. A true and correct copy of the December 20, 2023, letter addressed to Deputy Prosecutor Jill Longhurst from the State of Idaho Commission of Pardons and Parole (“Commission”) is attached hereto as Exhibit A.

6. A true and correct copy of the Commission’s Hearing Minutes regarding the January 19, 2024, commutation hearing for Thomas Eugene Creech, redacted by the Commission, and received by the ACPA from the Idaho Attorney General’s Office, is attached hereto as Exhibit B.

7. Pursuant to the Commission’s hearing rules, the ACPA did not provide its PowerPoint presentation to the Commission or the Federal Defenders of Idaho (“FDI”) prior to the hearing, and the FDI did not provide its PowerPoint to the ACPA prior to the hearing.

8. I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 13th day of February, 2024.

By: 
Tracie Smith, Chief Administrative Officer
Ada County Prosecuting Attorney’s Office

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of February, 2024, I filed the foregoing *Declaration of Tracie Smith* electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Christopher Sanchez	christopher_m_sanchez@fd.org
Jonah J. Horwitz	jonah_horwitz@fd.org
Deborah A. Czuba	deborah_a_czuba@fd.org
Mary E. Spears	mary_spears@fd.org
Nicole R. Gabriel	nicole_gabriel@fd.org

FEDERAL DEFENDER SERVICES OF IDAHO

AND I FURTHER CERTIFY that on such date I served the foregoing on the following non-CM/ECF Registered Participants in the manner indicated as follows:

N/A

By: /s/ Chyvonne Tiedemann
Legal Assistant



STATE OF IDAHO

COMMISSION OF PARDONS AND PAROLE

Brad Little
Governor
Ashley Dowell
Executive Director

DATE: December 20, 2023

TO: Jill Longhurst, Deputy Ada County Prosecutor, State of Idaho
Jonah Horwitz and Christopher Sanchez, Federal Defenders of Idaho

CC: Karin Magnelli, Deputy Attorney General, Idaho Commission of Pardons and Parole
LaMont Anderson, Office of the Idaho Attorney General, Capital Unit

FROM: Ashley Dowell, Executive Director, Idaho Commission of Pardons and Parole

SUBJECT: Updated- Commutation Hearing for Thomas Creech

This memo memorializes our discussion from the meeting on November 30, 2023, that was held with the parties above and provides updated logistics and processes for the Commission hearing to consider commutation of Thomas Creech's sentence from death to life without the possibility of parole.

The hearing is scheduled for January 19, 2024, at 8:30am and will be held at the Commission's hearing room at the Commission office. Due to space constraints at the Commission office, the public may view the hearing at the Idaho State Police District 3 Headquarters at 700 S. Stratford Drive Meridian, Idaho 83642.

The parties named above, to include those providing statements on each side's behalf, will be present in the hearing room, along with the Commission, Commission staff, a representative from the Governor's Office and necessary Idaho State Police (ISP) personnel. ISP will provide security for the hearing and no private security, or weapons, will be allowed.

Due to capacity constraints of the hearing room, the parties will provide attendee information from each side to the Executive Director no later than January 2, 2024. The Federal Defenders' office must provide the names of those individuals providing a statement in support of Mr. Creech. The Ada County Prosecutor's office must provide the number of victims attending the hearing in person, the names of any victims who may want to attend the hearing remotely via WebEx, and the names of victim(s) who may want to provide a statement during the hearing. The Commission's victim coordinator will ensure the WebEx link is provided to those victims attending via WebEx. Names of those providing statements will not be given to the parties in advance.

While the Executive Director will make every attempt to accommodate all attendees from each side, there may be limits to the number of people who can attend as attendees of the parties. If necessary, the



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Executive Director will discuss the number of requested attendees with the respective party, with the Executive Director making the final determination related to attendees.

Mr. Creech will attend the hearing remotely from the Idaho Maximum Security Institution (IMSI) and may be accompanied by his counsel and facility security personnel, per the requirements of the IMSI Warden.

As discussed in the meeting, commutations are a matter of clemency, and the hearing is not an adversarial proceeding. As such, the parties will make presentations to the Commission, with only previously identified supporter(s), identified victim(s), and attorneys speaking, and will not be allowed to call witnesses for questioning, cross examine the other party, or object to what is being said during the parties' presentation time. The parties are responsible for contacting the Executive Director no later than January 2, 2024, for any audio/visual equipment needs.

The Commission will provide snacks, water, and coffee to all parties. The hearing will break for lunch, with the parties responsible for their own lunch. Additional breaks will be scheduled and both parties will have a room available for private discussion during breaks.

Each party will be provided a table in the hearing room and will have the ability to run their own PowerPoint presentation. A podium will be available for parties to use while presenting and for victims and supporters to use while providing their statements.

The hearing order and time allotment for presentations will be as follows:

- Supporter Statement from Mr. Creech's Family- .5 hours maximum
- Federal Defenders' Presentation- 1.75 hours maximum
- Ada County Prosecutor's Presentation- 1.75 hours maximum
- Commission Directs Questions to Mr. Creech
- Federal Defenders' Closing Statements- 15 minutes maximum
- Ada County Prosecutor's Closing Statements- 15 minutes maximum
- Victim of Record Statement- .5 hours maximum

The Executive Director will act as a timekeeper for the proceedings with a clock that is visible to the parties. After the statement from the victim(s) of record has concluded, the Commission will go into executive session to deliberate and all parties other than the Commission and Commission staff will be dismissed and asked to leave the Commission office. The Commission decision will be issued at a later date, to be determined. If the Commission recommends to the Governor that a commutation be granted, the Governor has thirty (30) days after presentment of that recommendation to grant or deny the



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commutation. If no action is taken by the Governor within 30 days, the request is considered denied. If the Commission denies the commutation, the process is then complete, and no further action will be taken.

The media will be allowed to attend the hearing in the hearing room or at Idaho State Police District 3 Headquarters. A media lottery may be created in coordination with the Commission’s public information officer. There will not be remote access and proceedings will not be streamed for members of the public or media. Consistent with Article IV, Section 7, of the Idaho Constitution and the Open Meeting Law, a notice of the hearing will be published in a newspaper of general circulation for four (4) weeks prior to the hearing, to begin December 27, 2023, and a notice of hearing and agenda will be posted on January 12, 2024. In addition, information related to the proceedings will be published on the Commission’s website.

The above plans are subject to change as necessary, and adjustments will be communicated via the Executive Director.

The investigative report and attached documents (“hearing packet”) has been sent to the Commission for review on December 20, 2023.

Each party will get a copy of the entire hearing packet, with all attachments and party submissions, on December 20, 2023. Victim statements have been removed from the investigative packet and will be submitted separately to the Commission. The parties agree to not make or retain any copy of the hearing packet and return their copy of the hearing packet, including all attachments and party submissions, at the conclusion of the hearing. Any further distribution of the hearing packet will be pursuant to the Idaho Public Records Act.

Any concerns, questions, etc. that are not directly related to requests from the investigator for information should be directed to the Executive Director. The table below identifies the deadlines detailed above:

ACTION	RESPONSIBLE PARTY	DEADLINE
Distribution of hearing packet	Commission of Pardons/Parole	December 20, 2023
Submit attendee information	Parties	January 2, 2024
Submit victim names to make statement	Ada County Prosecutor	January 2, 2024
Submit supporter names to make statement	Federal Defenders	January 2, 2024
Submit audio/visual needs	Parties	January 2, 2024
Newspaper Notice of Hearing	Commission of Pardons/Parole	December 27, 2023 January 3, 2024 January 10, 2024 January 17, 2024



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Post Hearing Notice & Agenda	Commission of Pardons/Parole	January 12, 2024
Commutation Hearing	Commission of Pardons/Parole	January 19, 2024

COMMUTATION HEARING MINUTES

State of Idaho
Commission of Pardons & Parole

COMMISSIONERS:	Matthews, Mike; Dressen, Janie; Kirkham, Terry; Parker, Shelly; Ross, Michael; Smith, Scott	EXECUTIVE DIRECTOR:	Dowell, Ashley
OFFENDER:	Creech, Thomas Eugene	IDOC #:	14984
DOC LOCATION:	Idaho Maximum Security Institution	DATE:	1/19/2024

CASES

Case Number	Offense	Sentence Type	Max.	Min.	PED	FTRD
10252	Murder I	Concurrent	DEATH	DEATH	N/A	DEATH
2165	Murder I	Independent	LIFE	LIFE	N/A	LIFE
2165	Murder I	Consecutive	LIFE	LIFE	N/A	LIFE

PRIOR HEARINGS

Date	Type	Decision
10/18/2023	Commutation Review	Schedule Hearing

CURRENT DETAILS

Hearing Started	Executive Session At	Hearing Resumed	Hearing Ended
08:48 AM	02:33 PM	02:39 PM	05:10 PM
	04:25 PM	05:10 PM	

Minutes**Welcome & Introduction**

The Commission welcomed those in attendance at the Commission office, including supporters, victims, Thomas Creech's legal counsel, and Ada County Prosecutors. The Commission greeted Thomas Creech, who is attending this hearing from Idaho Maximum Security Institution, via WebEx. Due to limited space at the Commission office, the public can view this hearing from the Idaho State Police District 3 Headquarters, via WebEx.

Thomas Creech submitted a petition for commutation of his sentence, from death to life without parole. On October 18, 2023, the Commission reviewed Mr. Creech's petition and elected to schedule this commutation hearing. The Commission explained that the purpose of this hearing is not to retry this case, but to consider commuting Mr. Creech's death sentence to a life sentence without the possibility of parole.

If the Commission elects to recommend commutation, the Governor will have thirty days to respond. If the Commission elects to deny commutation, then this process will end today.

The Commission reviewed the order of events for this hearing: supporter testimony, Federal Defenders of Idaho presentation, Ada County Prosecutor presentation, Commissioner questions for Mr. Creech and his responses, Federal Defenders closing, Prosecutor closing, and then victim statements.

Supporter Testimony

Brian Thom – Retired bishop. Mr. Thom stated that he is Mr. Creech's spiritual advisor, and at his request, would be in present in the chamber with him. He believes hope has been achieved in Mr. Creech's incarceration at IMSI. This time has allowed Mr. Creech to amend his attitudes and behaviors, and other residents now look up to him, as a mentor. Clemency will ensure Mr. Creech is held responsible for his crimes for the rest of his life, will ensure public safety, and will allow Mr. Creech to remain the positive and calming influence that he has become.

Gary Hartgrove – Has worked in law enforcement for forty years; he worked for the Idaho Department of Corrections from 2015 to 2020, retiring as Deputy Warden at IMSI. He walked death row regularly, got to know the residents there. He is fully aware of what Mr. Creech has been convicted of. He stated that Mr. Creech always appropriately addressed staff, followed the rules, and never displayed any threatening behavior. Officers and staff, including himself, appreciated Mr. Creech's cooperative attitude.

Mr. Hartgrove was tasked with reestablishing the program that allowed residents to spend time together, in the common area of the tier. Residents initially spent time in pairs, at a table with their legs restrained, and throughout his time at IMSI, the guidelines loosened up significantly, eventually allowing more than two inmates to walk the tier together. Mr. Creech made many suggestions to improve the program and provided input about possible incompatibility issues that the staff greatly appreciated and used to ensure safety.

Mr. Creech was always friendly and upbeat. Even when he was doing poorly, though he looked sick and became withdrawn, he did not cause any problems. In 2019, Mr. Creech was dealing with some serious health issues, and as deputy warden, Mr. Hartgrove ensured Mr. Creech received the medical attention and treatment that he needed. During that time, Mr. Creech told him, "I'm sorry for what I did to that kid," and he asked for a Catholic priest to come to the facility to take his confession. Mr. Hartgrove arranged for Father Evarist Shiyo to come to IMSI and visit Mr. Creech. He stated that no other inmate, in his entire career, had ever made such a request.

Mr. Hartgrove asked the Commission to consider allowing Mr. Creech to spend the rest of his life in prison. He stated that residents in their 60s-70s, like Mr. Creech, are extremely old in prison, compared to the others, and most of them realize life is much less stressful when they do not struggle with authority. He believes Mr. Creech is a minimal threat, and staff would suffer if he were executed.

Kathy Niecko – Director of Nursing at IMSI from 2001 to 2006, and Health Services Administrator of IMSI from 2006 to 2014. Mrs. Niecko stated that she is not some old softy with a bleeding heart for the condemned. She is a military veteran, and she made it through nursing school while raising six children, including one with a disability, who she stills cares for today. She is no pushover. She has tremendous respect for law and order, chain of command, and the justice system. She believes in the death penalty, but she does not believe Thomas Creech should be executed.

Mrs. Niecko explained that she did not always feel that way. Her initial impressions of Mr. Creech were shaped by descriptions of him in the news, in the late 1980s. Her now late husband was a correctional officer at that time, and she was afraid for him. She asked her husband if he ever had to watch Thomas Creech, and he said yes. He quickly reassured her that Mr. Creech is not a problem or a danger but in fact, quite the opposite. She wondered if her husband was only trying to ease her fears, until twenty years later, when she found herself working at IMSI.

Mrs. Niecko was surprised by Mr. Creech's respectful and polite communication. She stated that the inmates did not usually treat her staff nicely. Some inmates threw feces at them. Mr. Creech, on the other hand, was always thankful, and throughout her entire career in IDOC, she watched Mr. Creech treat every other staff member in the same manner. No other inmate, she said, has ever shown her such heartfelt gratitude. Mr. Creech wrote her a letter of thanks, which she has kept to this day.

Mrs. Niecko recalled a situation where Mr. Creech needed to be treated at an outside hospital, but he did not want to go. She brought him into an exam room to speak to him in private, but against her instructions, there was a CO in the room. She told the CO to leave, and he initially refused because he was concerned for her safety. She told the CO that she was absolutely sure, and he did leave the room so that they could have a conversation. Mr. Creech expressed that he did not want to go to the hospital because he was afraid of being outside of the prison. She explained to him that if he went, then she would be able to get the proper medications for him to be more comfortable, and he eventually agreed to go and thanked her again. She stated that he never missed one chance to show his gratefulness to her and her staff.

Mr. Creech was also protective of everyone on Mrs. Niecko's team. Mrs. Niecko recalled a pharmacy technician being harassed by a shot caller of a prison gang. He scared the pharm tech by yelling and making inappropriate comments at her. Mr. Creech yelled at the shot caller to mind his manners and be respectful. The shot caller went silent and later apologized to the tech.

Mrs. Niecko stated that she never had any complaints about Mr. Creech from her staff. On the contrary, most of the staff expressed that they did not want to be around on the day of Mr. Creech's execution; they wanted to call in sick or simply not show up. Mrs. Niecko stated that one staff member told her that she may be the only one that shows up for work that day.

Mrs. Niecko believes in the death penalty if two conditions are met: hard evidence of the crime, and execution being carried out in a reasonable amount of time. She stated that getting to be 70-80 years old when a death warrant is finally issued is cruel and unusual punishment, and an execution at this point in Mr. Creech's life is pointless. She believes this is punishment enough. She stated that Mr. Creech did terrible things, but she truly believes he is not that person anymore. She explained that when the doors were malfunctioning on J Block, where the most dangerous inmates are housed, she told others that if a riot popped off because those doors malfunctioned, she would immediately go to Mr. Creech's cell, because that is where she would be safe.

Mrs. Niecko thanked Mr. Creech for his respect and gratitude toward her and her staff. She thanked the Commission for allowing her to make a statement.

Melissa Hurley – Has been working in death row for six and a half years. She experiences interruptions in her life, schoolwork, social interactions, and every other aspect of her life whenever executions are carried out. It is especially difficult because family, friends, loved ones never understand what she is going through. She knows she is not the only one who is affected in these ways. She stated that even while he faces death every day, Mr. Creech's presence is comfortable; his character is the exact opposite of what you'd expect, and she has never heard one story to contradict her experiences with him. In 2018, she said, Mr. Creech gave her a signed copy of his poem, and she was granted permission from her superiors to keep it and take it home. She commented that something that is usually seen as potential manipulation was deemed genuine because it came from Mr. Creech.

Ms. Hurley believes the day of Mr. Creech's execution will be extremely difficult for everyone in the facility, especially the higher ups who are more involved in the process and have known him for so long. She cannot even begin to understand the suffering dealt at his hands, she does not know who he was before, but she knows he continues to make positive contributions to his community today. She supports commutation to a life sentence without parole.

Federal Defenders of Idaho Presentation

Jonah Horwitz, attorney with the Federal Defenders of Idaho, asked the Commission to show mercy and recommend reducing Thomas Creech's death sentence to life without parole. He believes Mr. Creech's story proves the power of redemption, and that is why he should not be executed. He thanked the Commissioners, Executive Director, and Commission staff.

Mr. Horwitz explained that the entire principal, the heart of the death penalty is that it should be reserved for the worst of the worst, when there is no other option. He asked the Commission whether they believe the Thomas Creech of 2024 is among the worst people of society, because that is who would be executed today.

Mr. Creech committed serious crimes and deserves punishment for them. Mr. Horwitz asked the Commission to keep in mind when those crimes occurred, because the last thirty years tells a different story. In 1998, Mr. Creech married his wife, LeAnn. In 2010, the director of IDOC chose Mr. Creech to serve as ambassador, to meet with a group from the Methodist Church. In 2019, the prosecutor who originally wanted to seek death spoke against it. In 2020, Mr. Creech was observed to be a model inmate for decades. In 2023, the judge who sentenced Mr. Creech to death publicly spoke against his execution. Mr. Creech has excellent disciplinary records and has established real, positive relationships. This is what paints the picture of the Thomas Creech of 2024. This is not about whether Tom of 1981 deserves to die, he said, but whether Tom of 2024 deserves to live.

Mr. Horwitz stated that Thomas Creech was justly convicted and punished for the death of ██████████, but the question is whether this crime requires an execution, and they believe the answer is no. There are many interpretations of what happened on that day. Two officers wrote that they believe there is no way ██████████ initiated the assault, but when Judge Robert Newhouse sentenced Mr. Creech to death in 1982, he noted that Mr. Creech was attacked by the victim without provocation. Judge Newhouse knew more about the case than anyone, reviewed all of the evidence.

9:33 a.m. – BREAK

9:41 a.m. – RESUME HEARING (Federal Defenders of Idaho Presentation)

Mr. Horwitz asked the Commission to compare this case to similar crimes. Santos-Quintero is accused of beating a fellow inmate to death, and prosecutors in his case elected not to pursue the death penalty. The idea that execution is necessary for closure in any situation comes from the prosecutor's decision to seek the death penalty in the first place. When that decision is not made, then victims are able to find closure from life in prison without the possibility of parole, which is what they are asking for today.

Thomas Creech has been described by IDOC staff as a caring, thoughtful, compassionate person. Ronald Gus, who worked for IDOC for twenty-three years, wrote about Mr. Creech, "of all the men upon the row, only you will get a tear to flow." In 2012, when Mr. Gus' wife passed away, Mr. Creech wrote a touching poem for him, to express his condolences. Brandi Barclay, who worked at IMSI until 2004, wrote that Mr. Creech is incredibly talented, and that staff members who kept his poems did so because they truly treasured them.

Mr. Horwitz explained that Mr. Creech has used his poetry skills to comfort, honor, and respect IDOC staff. Regarding his poem "Unsung Heroes," Mr. Creech said he saw what the officers were going through, and many residents were down on them, spitting on them, threatening their families, and he never understood why others were so angry at the guards when the guards are not the ones that put them there. Mr. Creech previously stated that whether people realize it or not, the officers are putting their lives on the line every day.

Mr. Horwitz added that Billy Braseth, who retired from IDOC in 2011, believes Thomas Creech's personality is not compatible with a death sentence. Jeanette Griggs, who worked for IDOC for twenty-seven years, believes in the death penalty but also believes Thomas Creech is entitled to clemency; she believes he already has and continues to receive serious punishment for his crimes.

Mr. Horwitz played clips of interviews with Roger and Donna Boe, Bishop Bob Hoshibata of the United Methodist Church, Thomas Creech's wife, his sister, and his brother-in-law.

During her interview, Donna Boe recalled that she met Thomas Creech with Bishop Hoshibata in 2010. Mrs. Boe stated that Mr. Creech was remarkably relaxed, given his situation, and he answered their questions as best as he could. Bishop Hoshibata explained that he wanted to know what was going through Mr. Creech's mind; he was interested in his history, what brought him to that place, and how he was doing on death row.

When it came time for them to leave, Mrs. Boe said, Mr. Creech held hands with them and allowed Bishop Hoshibata to lead them in prayer. Bishop Hoshibata stated that he felt the presence of God there; he felt a strong spiritual connection, not with someone who was evil but with a human being that God had placed upon this earth. Bishop Hoshibata felt that this person is not someone who should die. Brent Reinke, Director of IDOC at that time, wrote about how thankful he was for that meeting.

Thomas Creech's sister, Virginia Plageman, and her husband, Michael, explained that Tom has a lot of wisdom now, and he has made them stronger, too. She stated that visiting her brother after he was sentenced to death was one of the most difficult times of her life. They are close, and her children love him.

10:05 a.m. – BREAK

10:10 a.m. – RESUME HEARING (Federal Defenders of Idaho Presentation)

Mr. Horwitz told the Commission about Thomas Creech's wife, LeAnn Creech. She is the most important person in Mr. Creech's life, his motivating force on his path to becoming a decent, honorable person. During her interview, Mrs. Creech explained how they met in 1996, when her son was a correctional officer at IMSI. Her son would come home and talk about Tom, about how he liked him and thought he was a good guy. They got married in 1998 and have been best friends ever since.

Mrs. Creech stated that Tom understands and cares so deeply, she does not know how anybody could not love him. She wondered how she could end up married to someone on death row. She explained that Tom is on death row for things that he did when he was young, but that is not who she married. Her family loves him, especially her nieces who are always laughing when they talk to him on the phone; her family has become his family. She stated that Tom touched something in her soul that nobody had ever reached before. She added that Tom's poetry is what truly showed her his heart, because there is no way anybody could write like he does, and not have a good soul and spirit. His sister believes he will be a well-known author one day.

Mr. Horwitz reviewed Mr. Creech's disciplinary record. Starting in 1992, Mr. Creech went twenty-eight years without a single DOR, and he is treated appropriately as no risk by IMSI staff. Mr. Horwitz showed a timeline of Mr. Creech's DORs, and he admitted that there were some serious, inexcusable incidents. He stated that those are from a distant era, many years ago, and they do not describe who he is today.

Thomas Creech received a DOR in 2022. The other resident involved, Azad Abdullah, later explained that it was just a misunderstanding over a card game that unfortunately got heated, but they immediately made amends and have been close ever since. Mr. Abdullah described Mr. Creech as a close friend and brother to him, and he would be devastated if Mr. Creech was executed.

Attorney Horwitz explained this incident a lapse in judgment, and Mr. Creech was appropriately disciplined for it. Mr. Creech lost his temper, but this does not reflect deliberate planning or intention to do harm. Mr. Creech ended up on the floor, unresponsive, as a result of that exchange. He was taken to the emergency room, where doctors [REDACTED], which indicates how frail he has become. Mr. Horwitz stated that Mr. Creech is no longer capable of engaging in such conduct. He added that after this incident, other residents showed great concern for Mr. Creech, proving that he is held in great esteem and remains a model inmate. He noted that prosecutors included a report about drugs being detected on an envelope, but the envelope was tested by Idaho State Police, and it turned out to be a false positive and Mr. Creech did nothing wrong.

Mr. Horwitz reiterated that Judge Newhouse imposed the death penalty because he knew of no other way to protect society at the time, but even he has recognized that Thomas Creech has changed, grown, evolved, and is no longer a threat.

Mr. Horwitz understood that there are different accounts on whether Thomas Creech poses a threat today. Former Senior Deputy District Attorney of Multnomah County, Oregon, Baron Sheldahl wrote that he is sure those advocating for Creech's clemency would not want to spend one minute alone with him in his cell. Mr. Horwitz responded that Mr. Creech is a different person than what Sheldahl believes, and he reiterated that Mrs. Niecko said she would go to Mr. Creech's cell for safety in the event of a disruption in the facility. He added that Mr. Creech was unrestrained during his meeting with [REDACTED], which proves that staff does not perceive him as a threat. He stated that he has spent hundreds of hours alone with him, himself, and he has never felt apprehension, even for a moment.

Some have explained Mr. Creech's exceptional record by pointing out that he has been in lockdown throughout his entire incarceration. Mr. Horwitz reiterated that IDOC started giving death row inmates more time to socialize amongst themselves without restraints in 2018. He stated that they are now allowed eight hours per day, every day, to socialize without restraints for a substantial length of time, and Mr. Creech has only benefitted from that.

Mr. Horwitz stated that Thomas Creech is not a threat, and IDOC is more than capable of doing its job and keeping other residents safe, as they have for the last thirty years. On the contrary, Mr. Creech's execution would deprive other residents of his positive impact for no good reason. Mr. Creech has given sound advice to younger inmates, to help them stay out of trouble, and he encourages them to give up their criminal lifestyles.

Mr. Horwitz believes it is important to consider these statements and think about what Mr. Creech's execution would say to other inmates. It could show them that rehabilitation is impossible, or that it does not matter whether they turn their lives around. He stated that that is the worst possible message that they could send.

Mr. Horwitz explained that Thomas Creech's childhood does not excuse any of his crimes, but it does explain how he got to that point. When Mr. Creech was five years old, he was pushed off of a flight of stairs, onto a cement floor. He was found unconscious and bleeding from his eyes, ears, and mouth. He was being [REDACTED], until his mother pulled him out of the hospital against the doctor's orders. Mr. Creech's siblings have reported that he was different and strange after that, and he has never been the same since.

Mr. Creech's [REDACTED] was compounded by the fact that he grew up in an abusive, neglectful home. His mother essentially abandoned them, and his father was a violent alcoholic. One year, his cousin attempted to shoot his mother on Christmas Day. He experienced trauma throughout his childhood and has spent the vast majority of his adult life in prison. Until 2018, he was isolated for twenty-hour per day, with almost no human contact. That is a serious punishment that he deserved, and he did serve.

Mr. Creech also continues to live with the knowledge of what he did, the horrible price that he exacted from the victims of his crimes. Attorney Horwitz believes living with the understanding of the consequences of his actions is punishment itself. Mr. Creech's wife,

LeAnn previously stated that he does not deserve death for things that he did in his 20s, things that he knows he shouldn't have done and have haunted him ever since. She believes he has suffered for everything he did, not only because he is in prison but because of what it did to him as a person, what he has had to come to terms with. She stated that Tom looks back and cannot believe he was ever that person, and he struggles to understand how he got to that point.

Mr. Horwitz turned the Commission's attention to the allegation that Thomas Creech is the worst serial killer in Idaho history. He believes this is a myth. He explained that there is no denying Mr. Creech committed many serious crimes, and it is important for the Commission to take his convictions into account, but there are other stories about 28 or 32 or 42 murders that are completely false, and it is also important for the Commission to not base their decision on those myths.

Mr. Horwitz explained that the myths started with Bruce Robinson's desire to line his pockets by distorting his client's case. Bruce Robinson has acquired rights to Thomas Creech's life story, which Horwitz called an extremely unethical maneuver for any attorney. Mr. Robinson's goal was to use the trial to create a spectacle and then sell the story to others, which he made clear in his letter to Vince Bugliosi, the author of "Helter Skelter."

Mr. Creech was subject to truth serum interviews and hypnotization, which is where the stories about 42 murders and satanic motorcycle gangs originated. These interviews came from a doctor who also required rights to Mr. Creech's story, which is extremely unethical of a doctor, as well as an attorney. Interviews involving truth serum, or sodium amytal, have since been ruled unconstitutional.

In court, Mr. Robinson explained that his goal of the trial was to realize the existence of God and Satan, and he tried to call Anton LaVey, founder of the Church of Satan, to testify for Mr. Creech's case. Mr. Horwitz stated that one of Robinson's only investigative steps was to travel to Ohio in search of buried money that did not even exist. He concluded that the origins of these stories are clearly not reliable and should not be taken into consideration. He asked the Commission to limit their consideration to the crimes that Thomas Creech has been convicted of.

Mr. Horwitz reiterated that the judge that sentenced Thomas Creech to death, Judge Newhouse, has since spoken against his execution. Judge Newhouse wrote that an execution at this point would only be an act of vengeance, and no other purpose would be served. Mr. Horwitz added that in most states, Mr. Creech would have been sentenced by a jury of his peers, but in Idaho, Judge Newhouse is the solitary man responsible for his death sentence, and that man now believes the death penalty is no longer necessary in this case. Mr. Horwitz said many people feel there is a role for vengeance to play in the justice system, but we have learned and grown as a society, and now, we give the justice system a higher purpose of rehabilitation and redemption, and that is exactly how Thomas Creech has lived his life in prison.

Mr. Horwitz continued the video of Donna Boe's interview, where she reminded everyone that Thomas Creech is not the person that she read about in the news. Mrs. Boe believes every person deserves the right to repent of their sin. In her interview, LeAnn Creech said Thomas Creech knows what he did wrong, and as much as he wishes he could, he cannot change it. She stated that he can only do his best with what life he has left, and he does whatever he can to be there for others, help them, and make them feel good. Virginia Plageman stated that commuting Tom's sentence from death to life in prison is simply the right thing to do, not because Tom is her brother but because he is a different person today. Michael Plageman added that he believes everyone is a little selfish, except Tom, who does not have a selfish bone in his body. Mr. Boe said it would be disastrous to see Tom's life taken away, and he is going to die soon anyway, so to do it this way is pointless.

Attorney Horwitz asked the Commission to vote for life, against more death, and thanked them.

10:49 a.m. – BREAK

11:12 a.m. – RESUME HEARING

Ada County Prosecutor Presentation

Ada County Deputy Prosecutor Jill Longhurst stated that Thomas Creech is a serial killer. In 1981, she said, Thomas Creech said he would kill again, and two months later, he did. Thomas Creech brutally beat and stomped ██████████ to death. Ms. Longhurst stated that Thomas Creech is the most prolific serial killer in Idaho history.

Ms. Longhurst explained that the biggest lie Thomas Creech ever told was that the brutal beating of ██████████ was self-defense. Mr. Creech wanted to go into isolation, and in order to get what he wanted, he used violence, and it worked. He has always used violence or threats of it to get what he wants.

Thomas Creech has been convicted of murder five times, in three states. Two other states have holds on him for other murders. He has confessed to more than fifty murders in at least five states. To put those numbers in perspective, Ms. Longhurst explained that in the case of Jack the Ripper, five bodies were found. Charles Manson was responsible for the murders of seven people. David Berkowitz, also known as the Son of Sam, committed six murders. Ted Bundy was convicted of seven murders and confessed to thirty. The court has ruled that Thomas Creech used excessive violence in the murder of ██████████, he was beyond rehabilitation, and he has a propensity to commit murder. Ms. Longhurst explained that today, they will focus on ten people that Thomas Creech murdered, in addition to ██████████. She stated that there are other victims, but they selected ten particular cases to review for this hearing.

In September of 1974, Thomas Creech met an underaged girl in Fresno, California, who was trying to find a way home to her mother.

Mr. Creech told the girl, Carol Spaulding, that he would take her to her mother in Idaho, but instead, they traveled around the country, hijacked cars, and committed robberies, until they finally ended up in Lewiston, Idaho around Halloween of 1974. Mr. Creech and Ms. Spaulding stayed with her mother for a few days and then began traveling again. While hitchhiking, they were picked up by two men in a Buick, [REDACTED].

The four of them drove until Ms. Spaulding asked to stop to use the restroom. They stopped, Mr. Creech got out of the vehicle, and after Ms. Spaulding got out, Mr. Creech pushed her to the ground, shot [REDACTED] in the face and neck, and shot [REDACTED] in the temple. Mr. Creech and Ms. Spaulding stole the Buick and drove until they ran out of gas. After that, they hitchhiked and committed armed robberies until they got to Glens Ferry, where someone recognized them and called police.

After he was apprehended, Ms. Longhurst said, Mr. Creech could not wait to tell everyone about what he did; he said he killed those two guys and needed help. Ms. Longhurst noted that this was well before Mr. Creech hired Attorney Bruce Robinson. Mr. Creech confessed to numerous murders, was ready to spend the rest of his life in prison for them, and was even flown out to help investigators locate the bodies of his victims.

Thomas Creech's confessions began on November 8, 1974, and he retained Mr. Bruce Robinson in July of 1975.

As Idaho State Police received more and more information from Thomas Creech, they contacted the jurisdictions where numerous other murders occurred. The US Supreme Court previously reported that Thomas Creech has participated in twenty-six murders across seven states, and eleven of the victims' bodies have been located. Due to the way that the Idaho statute was written at the time, the death penalty was the only option. Mr. Creech was placed on death row in IDOC custody, and as a result, the other states struggled to extradite him. Ms. Longhurst added that the statute as written was eventually ruled unconstitutional, and Mr. Creech's two death sentences were commuted. After that, in 1979, Mr. Creech was being extradited to other states to be tried for the murders that he committed under their jurisdictions.

Deputy Prosecutor Longhurst explained that [REDACTED] was an automotive mechanic from Detroit, Michigan, who'd decided to move to Tucson, Arizona for his retirement. When he arrived in Tucson, he rented a room in a hotel downtown, and unfortunately, the man staying next door to him was a serial killer. The man was knocking door to door, trying to get people to give him money, as he was in a bad way. [REDACTED] on the other hand, was well-off. When [REDACTED] answered his door, Thomas Creech forced himself into the room and then used a pair of scissors to slash [REDACTED] throat and stab him multiple times. Mr. Creech pushed the body off to the side, out of view, and then took off in [REDACTED] El Camino.

Ms. Longhurst displayed a photograph of Thomas Creech's signature on a credit card receipt, for a credit card that belonged to [REDACTED]. Investigators knew Mr. Creech was using [REDACTED] credit cards, though he was ultimately acquitted of this crime. Afterwards, he told everyone in the Ada County Jail that he did kill [REDACTED]. One of Mr. Creech's autobiographies detailed [REDACTED] murder. Mr. Creech wrote that he immediately headed for Portland in [REDACTED] El Camino.

While incarcerated in Idaho, Thomas Creech confessed that while in the Oregon State Hospital after a suicide attempt, he earned a weekend pass, murdered someone in Sacramento, and then returned to the treatment center in Portland. Ms. Longhurst stated that this was an outlandish, doubtful story, but it turns out that he really did it. In November 1974, California law enforcement was contacted and notified that Mr. Creech confessed to the murder of [REDACTED]. Mr. Creech provided a diagram, method of murder, and other detailed information about the crime. California law enforcement was not even aware of Mr. Creech's existence until they got the call from Idaho, but they retested fingerprints found at the scene in [REDACTED] home and discovered that they did match Mr. Creech. Investigators also found that shortly after Mr. Creech killed [REDACTED], he called the treatment center from the victim's home telephone, to let them know he would be back a day late. The state of California had to wait for Idaho and other states to try Mr. Creech for his crimes there, but in September 1980, Mr. Creech was finally convicted of the murder of [REDACTED].

In 1974, Thomas Creech got a job at St. Mark's Episcopal Church in Portland. Mr. Creech called his then-girlfriend, Linda, and asked her to come to the church and bring a rifle. Gene Hilby, who Linda lived with at the time, brought his rifle to the church. Mr. Creech came out and retrieved the rifle, went back into the church, came outside again, and told Mr. Hilby that he'd just killed a man and needed help hiding the body then a ride to the bus station.

[REDACTED] was just a kid. He'd recently gotten married, and he was on his way to Alaska to work with his father. Thomas Creech shot [REDACTED] in the chest with a high powered rifle at close range. After Mr. Creech and Mr. Hilby hid [REDACTED] body in the church, they proceeded to the Greyhound bus station to raid [REDACTED] locker.

[REDACTED] body was discovered days later, after staff noticed a foul smell coming from the sexton's quarters. They contacted police, and police contacted Gene Hilby, who admitted that Thomas Creech killed [REDACTED], and he helped him move the body. Mr. Hilby also told police that Mr. Creech told him about another murder, in Salem. Oregon authorities could not locate Mr. Creech until they received a phone call from Idaho. Portland investigators arrived in Idaho to talk to Mr. Creech the next day, and at that time, Thomas Creech confessed to the murder of [REDACTED], as well as the murder of a grocery store clerk in Salem.

Deputy Prosecutor Longhurst stated that these are not myths. This is reality.

After being convicted of the murder of [REDACTED], Thomas Creech wrote to the judge about the horrible conditions that he was facing while incarcerated. He asked for compassion and understanding, and he wrote that his situation was not justice. He was

not concerned about his victims or their families.

Two days after Thomas Creech killed [REDACTED], he entered a Circle K in Salem, where he found a grocery store clerk working, alone. Ms. Longhurst explained that the store clerk's father got her a job, as he was the regional manager, and that should have been a safe place for her, especially in broad daylight. Thomas Creech chased [REDACTED] to the back of the store, shot her in the back, turned her around, shot her through her wrist and into her lungs, and then shot her pointblank in the abdomen, severing her intestines. Mr. Creech stole a whopping \$81.29 from the cash registers. Mr. Creech confessed to this crime on November 9, 1974.

Ms. Longhurst added that Bruce Robinson was not even a figment of Thomas Creech's imagination at this point. She stated that this is not a myth, this is a murder.

Ms. Longhurst explained that the Oregon prosecutor decided another conviction would not serve any justice, as Thomas Creech was already facing multiple life sentences, so the case was dismissed.

Deputy Prosecutor Longhurst stated that Thomas Creech got away with the murder of [REDACTED]. He has devastated families, left holes in their lives. Now, per his interview with the Parole Hearing Investigator, he will not even admit it. He was sentenced to death because he is a serial killer with a propensity to commit murder.

[REDACTED] was on his way to Montana, where he intended to help and care for his mother. Thomas Creech contacted [REDACTED] and asked him for a ride. [REDACTED] did not know he was letting a serial killer into his car, and he never made it home to his mother. His mother had no idea where he was or how to find him. Just a few years after [REDACTED] was murdered, his mother passed away. While in jail, Thomas Creech confessed to this murder, and he told investigators where they would find the body. [REDACTED] body was found, after Mr. Creech told them exactly where it would be, but because he already had multiple holds on him by 1983, he was never prosecuted for this crime.

Deputy Prosecutor Longhurst stated that Thomas Creech got away with the murder of [REDACTED], and that is not a myth.

[REDACTED] had recently arrived home in Baltimore and took a relative's vehicle without their permission, resulting in a warrant on him and the vehicle. While driving the stolen car, [REDACTED] picked up a hitchhiker, that he did not know was a serial killer. Thomas Creech walked [REDACTED] into a ravine and shot him, so that he could take his vehicle and credit cards.

After Thomas Creech confessed to the murder of [REDACTED] in November 1974, Idaho law enforcement contacted authorities in Wyoming, who then attempted to locate [REDACTED] body. They made three attempts before they called Ada County back for help. They flew Thomas Creech out to the area, Thomas Creech told them where the body was, and [REDACTED] body was found within a day.

Ms. Longhurst stated that Mr. Creech did not kill [REDACTED] for some outlaw biker gang; he killed him because he wanted his vehicle and money. Mr. Creech was arrested when someone recognized the vehicle that [REDACTED] stole. Mr. Creech was also found in possession of eighty-eight receipts, which indicated he'd been using [REDACTED] credit cards. Mr. Creech was charged for the murder of [REDACTED], he did three days in a California jail, and then, he got away with another murder. At one point, there was a hold for Mr. Creech to be extradited to Wyoming, but it is unclear what ever happened to it. The vehicle was returned to its rightful owner, and the police held onto the credit card receipts.

[REDACTED] was shot and killed while sleeping in his van at a along Interstate 40. One version of events is that Thomas Creech's then-girlfriend, Carol Spaulding, entered a café for a Coke and a coffee, and when she came out, she told Tom that a man in the store was inappropriate with her. Thomas Creech previously reported that they went on their way, until their vehicle got stuck in the desert. He stated that a truck driver stopped and helped them, but shortly after that, they ran into the man that Carol pointed out at the store, so he decided to rob him. He pulled up behind the victim, pointed his shotgun through his window, and demanded his money. He then shot him with the shotgun three times at pointblank range. Unfortunately, Ms. Longhurst said, [REDACTED] family was told that the case went cold, but it was recently reopened, and Thomas Creech was positively identified as the murderer. Ms. Longhurst stated that Thomas Creech committed this murder and confessed to it repeatedly.

Deputy Prosecutor Longhurst added that Thomas Creech has also gotten away with the murder of [REDACTED]. She stated that San Bernardino County sent them a letter stating that they will not try Thomas Creech for the murder, based on what is going on here in Idaho.

[REDACTED] brother submitted a letter of concern, where he wrote that his 21-year-old brother was robbed of his adventurous life. He never got to build his boat and pursue his dream of sailing the world. He never had a chance to travel with his brother, never got to share a cold beer with him. He added that his brother's murder sent their father into an early grave.

[REDACTED], known by loved ones as [REDACTED], had been in the military as a large equipment operator in Montana, until he disappeared in August 1974. Thomas Creech confessed to killing [REDACTED] and explained details of the crime to a room full of law enforcement officers. He stated that he kidnapped [REDACTED], weighed him down, and threw him into a lake in Washington. He drew diagrams of where [REDACTED] body could be found, but authorities were unable to locate him. [REDACTED] mother, desperate to find her son, wrote letters to Thomas Creech, begging him for the diagrams and any other information that could help her find her son.

██████████ body was never found, and Ms. Longhurst believes Thomas Creech knew his body would never be found when he confessed to this murder. However, Mr. Creech continued to write to ██████████ mother, and ██████████ mother went as far as putting money on Mr. Creech's books. Ms. Longhurst asked what kind of person kills someone's son and then uses the information to get money out of them. She added that, if we believe what Mr. Creech is claiming now, that he did not kill ██████████, then he took credit for the murder and bragged about it to the victim's own mother.

In 1979, Thomas Creech was transferred into Oregon DOC custody to be adjudicated for his crimes there. In 1980, he was moved to California for the same reason. Deputy Prosecutor Longhurst explained that, also in 1980, a huge riot broke out at the Idaho State Penitentiary. It was so big that it made the news, it lasted for days, authorities had to break into the facility. Thomas Creech was not in Idaho when this occurred, but he was convinced that when he returned, there would be another riot, where he would be killed. Inmates were moving from maximum security into general population at that time. He requested to be transferred to wherever he possibly could. He repeatedly told staff and other inmates that he would be killed in a riot if he stayed there.

IDOC did write to Oregon, expressing concerns that they did not have enough security to hold someone as dangerous as Thomas Creech. Oregon DOC did not want to keep him, stating that he was a violent and vengeful individual who showed no remorse, and they sent him back to Idaho after his adjudication. Mr. Creech was placed in general population, rather than where he felt safe on death row.

In January 1981, Mr. Creech repeatedly wrote to staff that he wanted to be put in isolation. He stated that he was not like the other inmates. He attacked a 20-year-old kid, sliced him in the abdomen, neck, and arm in a desperate attempt to be transferred. Mr. Creech got what he wanted, and he was transferred to Ada County Jail while prosecutors decided whether they wanted to prosecute him for the assault on the other inmate. Although there was substantial evidence, prosecutors decided there was not much that they could do, since Mr. Creech was already serving four life sentences anyway.

Ms. Longhurst stated that Thomas Creech assaulted ██████████ because he wanted out, and he got what he wanted. Mr. Creech told a lieutenant where to find the weapon that he used, and later, he bluntly told an officer that he did it because ██████████ was an asshole and he wanted out of the penitentiary because he feared he'd be killed in the next riot.

After prosecutors decided not to pursue charges, Mr. Creech worried about going back to the penitentiary, and in an effort to stay out, he repeatedly said he would kill again. He stated that if Ohio would not take him, then they should put him in a hospital for the criminally insane. He repeatedly wrote letters to every authority that he could think of, begging them not to move him.

Three months before Thomas Creech murdered ██████████, he wrote to Sherriff Palmer, "If I have to go back there, I will kill the first person that messes with me." Shortly after he killed ██████████, he wrote to the Attorney General that he would kill again. He asked for the death penalty, instead of a life sentence, because he wanted to stay in the jail, instead of going back to prison. He wrote that last time, he told them that he would kill again, they didn't listen, and it costed a life.

██████████ grew up with his father and stepbrother. His father was a biologist for Idaho Fish & Game, and his grandfather was the director of Fish & Game. He had a good life and upbringing, but when his mother passed away, it was a big hit on him, and he started getting into some trouble. As a teenager, he and some friends played a game of Russian roulette. He put the gun to his left nostril, pulled the trigger, and shot himself in the face. He was in severely critical condition; he ██████████ and was given a ██████████. After that, he was essentially ██████████, and he was ██████████. When he finally woke up, he was ██████████. He suffered a ██████████, but eventually, he was ██████████. He wore a ██████████, and none of that ever improved.

██████████ underwent countless surgeries, and in 1977, he had a ██████████. ██████████ talked about how difficult it was for him to function in society. He ended up in the ██████████, and he continued to ██████████, as well as ██████████. Staff would tell each other not to approach ██████████ on his right side, because he will not be able to see you. He could not even hold a job as a dishwasher, and he was just marginally making it in society. He got into some more trouble, and he was sent on a 90-day Rider.

Thomas Creech knew that in order to get his way, he needed to do more harm than what he did to ██████████. Mr. Creech persuaded the warden to allow him an opportunity to work as the custodian of maximum security. Unlike others in maximum security who were only let out of their cells for an hour every day, Thomas Creech now had access to every inmate, all day long.

Deputy Prosecutor Longhurst explained that ██████████ was the weakest, most vulnerable person in that facility. She added that although he was put in maximum security, ██████████ was never classified. Staff described him as non-aggressive.

Ms. Longhurst reiterated that Thomas Creech wrote that he would do the same things until they listened to him, and that is exactly what he did. Mr. Creech initially volunteered to plead guilty, but instead, in 1982, he took the stand and claimed self-defense. The state never had a chance to present evidence, but this was absolutely not self-defense, and the story about ██████████ being the aggressor was based solely on Mr. Creech's own testimony.

Deputy Prosecutor Longhurst reviewed different accounts of the murder of ██████████. When ██████████ was given a chance to get out of his cell that day, Thomas Creech initiated a physical altercation and punched him. ██████████ told Mr. Creech that he did not want any trouble, and he went back to his cell. Mr. Creech followed and attacked ██████████.

In assessing whether this was self-defense, Mr. Longhurst said, it should be noted that Mr. Creech not only began attacking [REDACTED] from his back, but Mr. Creech retrieved his radio from his own cell, brought it to [REDACTED] cell, and turned it up to drown out the noise of the beating.

With a sock holding three batteries, Thomas Creech beat [REDACTED] so brutally that the batteries broke through the sock. After that, Mr. Creech began stomping on [REDACTED]. Mr. Creech went back to his cell, cleaned himself up, and then returned to [REDACTED] cell to stomp him some more. Ms. Longhurst stated that Mr. Creech did not have one mark on him, and [REDACTED] was laying, bleeding on the ground. Mr. Creech proceeded to tell everyone who would listen, to tell the officers that [REDACTED] came after him. The other residents were forced to listen to Mr. Creech beating that kid to death, and they could not do anything about it.

Detectives interviewed one resident who discussed the radio, used to mask the sound of what Thomas Creech was doing to [REDACTED]. When he heard Mr. Creech going in again, he remembered thinking to himself, "God damn, he is beating that boy's brains out." Mr. Creech started out of [REDACTED] cell again, he said, but then, he heard the kid let out another groan, and Mr. Creech heard him, turned around, and started stomping him again.

Another young inmate reported that [REDACTED] would never pick a fight. He also talked about Thomas Creech plugging the radio in and turning the volume up. Deputy Prosecutor Longhurst stated that that was premeditated murder, and Thomas Creech still, to this day, lies about it and claims he was attacked.

The other inmates reported that every time [REDACTED] gurgled and groaned, Creech went back into his cell, at least four or five times, to continue beating a kid that had been down from the start.

Ms. Longhurst explained that another inmate, who was housed in protective custody, was in a romantic relationship with Thomas Creech. Ms. Miller stated that when the warden let Tom become custodian, she was scared, because she knew Tom was up to something. Ms. Miller thought Mr. Creech was plotting to kill himself, but then, he started talking about killing a kid. Ms. Miller did not feel she could say anything because she was afraid, but she discussed it with him through writing, days before Mr. Creech attacked [REDACTED]. Mr. Creech wrote that he would cut himself to make it look like self-defense, and that is exactly what he did.

Ms. Longhurst stated that Thomas Creech wanted isolation, and he did whatever he thought he had to do to get there.

Deputy Prosecutor Longhurst showed photographs of [REDACTED] grievous injuries. She noted that Thomas Creech stomped the victim's [REDACTED] causing a [REDACTED], and he continued to stomp him over and over again. [REDACTED] suffered [REDACTED]. Ms. Longhurst stated that she has only seen one other [REDACTED] in her entire career.

Self-defense, Ms. Longhurst said, is part of the lie that Thomas Creech has been trying to tell them. Ms. Longhurst asked how Thomas Creech can claim he is remorseful if he cannot accept any wrongdoing. Mr. Creech did not care about the guards who were forced to come in and handle what he'd done. Mr. Creech stomped on [REDACTED] head with so much force that he [REDACTED]. [REDACTED] suffered [REDACTED], indicating that he was curling up and turning away from the beating.

Ms. Longhurst showed photographs of [REDACTED] cell. There was a razor attached to a toothbrush and a large pool of blood on the floor, as well as blood covering the entire wall. Ms. Longhurst stated that this is what self-defense means for Thomas Creech. [REDACTED] never had a chance of getting away or defending himself. Mr. Creech attacked him from behind. She stated that this is the scene that Mr. Creech left for the COs to clean up; that is how much he really cares about them.

Thomas Creech later stated that [REDACTED] was not much of a fighter to begin with, because he "had a fucked up arm and leg." Mr. Creech detailed "kicking him in the neck, all over." He told detectives that he continued to beat [REDACTED] for 15 to 30 minutes. When asked if he thought [REDACTED] was dead, Mr. Creech said no, "because he was blowing bubbles and shit." Mr. Creech was still more concerned about being transferred. [REDACTED] was worth more than a ticket to isolation for him.

Ms. Longhurst added that in Thomas Creech's cell, officers discovered a sock that matched the one used with the batteries, and a toothbrush identical to the one attached to a razor blade, pictured in [REDACTED] cell.

Deputy Prosecutor Longhurst concluded that Thomas Creech is a serial killer. He murdered [REDACTED] brutally and intentionally. Ms. Longhurst asked the Commission to not commute Thomas Creech's sentence, to let the death penalty stand.

12:58 p.m. – BREAK

2:32 p.m. – RESUME HEARING

2:33 p.m. – EXECUTIVE SESSION

2:39 p.m. – RESUME HEARING

Commissioner Questions

The Commission told Mr. Creech that they have reviewed a lot of material for this hearing, including police reports, criminal history, social history, [REDACTED], institutional disciplinary reports, victim statements, letters of support, and more. The Commission commented that Mr. Creech's criminal history is ugly and concerning, and Mr. Creech agreed. Mr. Creech stated that he

is sorry for everything he's done, and he wishes he could go back and change it. He stated that he is responsible for what he did, he takes the blame, and no one made him do any of it. He added that that was a different person than who he is today.

The Commission asked subject how many murders he has actually committed, and he said he does not know. He stated that he got so mixed up with lying and telling law enforcement that he did things he didn't do. He explained that he started killing people in 1974, and he committed all of his murders in just a matter of months. He confirmed that there are five known victims for sure, for which he has been convicted of.

The Commission reviewed a DOR for violence, from 10/23/2022. The Commission read Mr. Creech's explanation of that situation, and a letter from the other resident involved. The Commission reviewed video footage of the incident. The Commission asked Mr. Creech what he has to say about it. Mr. Creech replied that they were playing Pinocle, and Azad Abdullah became irate because he thought the other two residents were shorting him and giving Mr. Creech better hands. Mr. Creech stated that Mr. Abdullah started coming back and forth, using aggressive language, and then, he threw the cards on the table.

Mr. Creech explained that at that point, he got up and asked Mr. Abdullah what he was so mad about. He believes he swung on Mr. Abdullah first, and then, Mr. Abdullah kicked him. He stated that he hit Abdullah with a shower shoe, Abdullah kicked him in the genitals and then the chest, and then, he fell down and hit his head on the wall, which "kind of knocked me out." Mr. Creech stated that he did not know it at the time, but he was [REDACTED], which is why he was in such bad shape.

Mr. Creech answered that he'd already made the decision to never fight again, so it was especially disappointing when he and Abdullah, who is a friend of his, got into it. He stated that his daughter, Shelly, asked him to change his ways, because she's been waiting for him to come home since she was five years old. He never wanted to be like the other people there, the gang members and violent people who threaten the officers; he did not want to be who he was ever again.

Mr. Creech previously wrote that "I regret killing [REDACTED] more than anything I've done in my life." The Commission asked Mr. Creech if he does not regret the others, and he said no. He stated that he regrets everything. He explained that when he was served with his death warrant, he was taken to the death house, and that experience slapped him in the face with everything he has ever done wrong. He thought back to when he stole candy from the corner store as a child. He stated that it was an old, family owned country store, and they did not have much money. He realized even that hurt people, like the employees of the store. He said that made him want to change who he was.

The Commission read that Mr. Creech has great remorse for the crimes that he has committed. The Commission told Mr. Creech that they hear that word, "remorse" often, and it has almost lost its meaning. The Commission asked him what remorse means to him. Mr. Creech answered that remorse is heartfelt suffering for what you've done, for the people that you've hurt; you genuinely regret doing those things. He stated that he has thought about what he did to [REDACTED] more than anything, because they were friendly before he killed him. He said it is not that he does not care about his other victims, but he and [REDACTED] shared food, coffee, and talks about their daughters. He used to tell [REDACTED] not to waste his life in prison, like he did, by getting wrapped up in all of the madness there.

The Commission asked subject about his physical health. He replied that he still has the [REDACTED], and he had [REDACTED]. He stated that he [REDACTED], and [REDACTED]. He answered that his [REDACTED]. He does take a [REDACTED]. He stated that when he went to the death house and came back, he left a piece of himself in there. He said they would take him down there to practice executing him, and it showed him how precious life really is.

Mr. Creech stated that no one has the right to take anyone's life. He stated that his old self probably did deserve the death penalty, and maybe he still does, but he is asking for mercy today.

The Commission noted that subject murdered [REDACTED] to avoid being transferred. The Commission asked him if he sees a commutation changing his current status. He does not believe it would change much. He stated that the staff has asked him what he would prefer. He explained that at the main yard, he would probably be a target for many people, as a trophy. He is 73 years old, his health is bad, and he does not want to be put in the position where something bad could happen. He reiterated that he will never fight again, so if anything did happen, he would just let it happen. He added that he does think about how much it would hurt his wife, though. He believes he could stay in J Block, or he could move to medium security in G Block, where he could get a job. He stated that he is happy staying where he is now.

The Commission asked Mr. Creech why he believes they should recommend life without parole, instead of leaving the death penalty in place. Mr. Creech replied that he has something to offer to younger inmates, especially kids who are thinking of dropping out of gangs and turning their lives around. He stated that he sat and talked to one youngster just three days before he went back to gen pop. When he got back, he said, the youngster returned to the same gang that broke his leg just months prior, and then, they beat him to death.

The Commission asked Mr. Creech what he would say to those who believe he has shown no grace or mercy to his victims, so it should not be shown to him. Mr. Creech stated that the person he was did not deserve mercy, but that is not who he is anymore, and he has a lot to offer the world. He has built close relationships with staff and officers, and he tried to remind the other residents that the officers are not to blame for them being there, that they need to put that blame on themselves.

The Commission asked Mr. Creech how he has changed. He replied that he is not as impulsive as he used to be. He stated that

impulsivity was one of his main problems when he was younger. He said every time something would happen, he would think, "why me?" but today, he thinks, "why not me?"

The Commission asked Mr. Creech what he would like to say to the [REDACTED] family. Mr. Creech stated that he would get on his hands and knees and pray for forgiveness. He stated that he talked to [REDACTED] girlfriend last night, as she came to the prison to visit him, for closure. He said he told her the same thing. He stated that if he could bring [REDACTED] back and take his place, he would.

The Commission read that during his interview with the Parole Hearing Investigator, in November 2023, Mr. Creech reported that his girlfriend, Ms. White, was brutally attacked by eleven people, and he killed nine of them. Mr. Creech responded that he did go after them but does not remember how many he killed. The Commission replied that that is not what he said in November 2023. Mr. Creech stated that he thinks he did get nine of them. He explained that there were two left; one of them lives in Oregon, and the other lives in Utah. He added that they wrote to him, to beg for his forgiveness, many years ago. He answered that that was probably around 1996. He confirmed that he demanded their addresses after they wrote to him. He stated that he did not mean it as a threat; he just asked for their addresses because they wrote him from a PO Box. The Commission asked him if he would have killed them in 1996, if he could have found them, and he said no.

The Commission asked Mr. Creech if they can settle on at least ten people, that he has killed. He said no. He stated that one of the men included in the prosecutor's presentation, he has never even heard of, and he did not kill [REDACTED]. The Commission replied that he is serving time for five murder convictions, and he just admitted to nine more, so he has killed at least fourteen people. The Commission asked him if fourteen victims is accurate then, and he said no.

The Commission reviewed a PSI, where subject stated, multiple times, that he wanted to die for his crimes, and he planned to advise the court of that when he was sentenced. The Commission asked him if he did advise the court of that, and he said yes. He stated that that is why he pled guilty, because he wanted to die.

The Commission asked Mr. Creech when he began to change his mind about wanting to die. Mr. Creech replied that he changed his mind when his daughter visited him and asked him to fight, not die. The Commission noted that he then chose to live, and now, he is in a fight for his life, and he agreed. The Commission asked him if he believes his victims would have chosen to live, and he said he thinks everyone would choose to live. He stated that that is why he feels so bad. He said his victims could have grown up to be anything, anyone.

Regarding the DOR from 2022, Mr. Creech answered that he did get angry at Mr. Abdullah, and he thinks he hit Mr. Abdullah with a shower shoe, as that is what he has been told. The Commission asked Mr. Creech how he is a positive influence and mentor if he gets angry just because someone threw some cards. Mr. Creech explained that Mr. Abdullah was threatening his family, verbally assaulting the three of them. He confirmed that he hit Mr. Abdullah after the verbal altercation began. The Commission noted that the other two men at that table were setting a better example than him in that situation, and he agreed. He added that after he fell, Mr. Abdullah was helping him and comforting him, and they made up as soon as he got back from the hospital.

Mr. Creech confirmed that he usually prefers being alone. The Commission told Mr. Creech that he may be moved to a larger population if his sentence is commuted, and they asked him how he would handle that. He replied that he wrote a poem, "I Will Fight No More Forever," and that is what he has chosen to live by.

The Commission expressed concern about the DOR from 2022.

The Commission told Mr. Creech that he was extremely fortunate to have this hearing at all. The Commission told him that this is his last chance to speak and asked him if he had anything to add. Mr. Creech thanked them for allowing him to come before them and say what he had to say. He is sorry something that he did brought all of us here today, and made the Commissioners the ones that must decide whether he lives or dies. He stated that he hates to put anyone in such a position, and he believes God Almighty is the only one that should be able to do that. He apologized to everyone in attendance, for bringing them here today.

Mr. Creech recited a poem that he wrote about going back and talking to his younger self, "Old Man and the Boy." "...and if I could go back and talk to the little boy that I was... I would tell him no matter what road you travel, sooner or later, you must pay your dues."

Federal Defenders Closing Statement

Chris Sanchez, attorney with the Federal Defenders of Idaho, stated that it is an honor to be next to Thomas Creech today, asking for their mercy. He added that Executive Director Ashley Dowell told both parties that this would not be a trial or litigation but instead, a hearing for mercy. Without a chance for mercy, he said, the world would be full of blood and cruelty.

Attorney reiterated that Thomas Creech is nothing like the man that he was in 1981. As we heard earlier, Mr. Sanchez said, his wife, LeAnn Creech said, "He is just a very caring, kind-hearted person. I just think he's actually the person that he was meant to be, to begin with. He explained that as a child, Tom had so much potential; Tom was clever, talented at music and writing. Unfortunately, there was violence in his home, he was kicked down a flight of stairs, there was the shooting on Christmas. All of this trauma came together to create the Tom Creech of 1981, which is who the prosecutor focused on today.

Mr. Sanchez stated that Thomas Creech was able to get back on track and begin to fulfill some of that little boy's potential. He is a kindhearted musician and poet, and a mentor and friend to many. He is so much closer to that potential today. He is no longer who

he was in 1981, or even 1991. There is no excuse for the harm that Mr. Creech caused, but he started on a path of redemption in the 1990s. Mr. Sanchez believes the best proof of this is the many amazing relationships that he has. He shows genuine interest in the wellbeing of others. He really listens because he really cares, which was evident when an officer's wife passed away, and Tom wrote a poem to express his condolences. Mr. Sanchez stated that there is a reason Director Reinke knew Tom was the right person to meet with Donna and Roger Boe, and today, Tom cares deeply about them and what is going on in their lives.

Thomas Creech has been a positive role model to other inmates. Regarding the altercation with Mr. Abdullah, Mr. Sanchez explained that Mr. Abdullah has a pattern of instigating fights, and he no longer lives on that tier because of it. Mr. Sanchez asked the Commission to refer to the prison's policies. Mr. Creech has been disciplined for the altercation with Abdullah, but he has not been taken away from other residents, because he does not pose a threat to them.

Mr. Sanchez noted the substantial support from IDOC staff. It is well-documented that Mr. Creech has been a model inmate for decades. Mr. Creech also has strong support in extremely unlikely areas, like the judge who sentenced him to death and one of the original prosecutors of this case. They do not believe Mr. Creech should be executed; they believe it would serve absolutely no purpose at this point.

Mr. Sanchez added that the prosecution were incorrect about a few facts of this case, and every fact that they presented was information from before 1981. He stated that the investigators of this case only knew Thomas Creech in the 70s and 80s. He believes the prosecution's request for execution is based on vengeance. He admitted that Mr. Creech's actions were appalling in 1981, but he is concerned about consideration of the myths. He stated that in the 3,000 pages of evidence submitted by the prosecutor, there is not one mention of [REDACTED]. He added that the [REDACTED] case resulted in a solid jury acquittal, and that is not a basis to execute a man.

Attorney Sanchez clarified that they are not claiming self-defense in [REDACTED] case, and they do believe Mr. Creech should be sentenced to life without the possibility of parole. Mr. Sanchez stated that the judge ruled that Creech did not instigate a fight with [REDACTED], but that does not mean it was self-defense.

That day in 1981 was a terrible and unimaginable loss for [REDACTED] family. Mr. Sanchez stressed that they are not making light of that, but the information coming from the prosecution has nothing to do with who Mr. Creech is now. Mr. Creech believes the only path toward forgiveness is seeking redemption and changing your ways. If executed, Mr. Creech would be stopped on his path toward redemption, before he can fully reconcile himself with God. If the Commission grants him mercy, then they will also grant mercy to his family, friends, fellow inmates, and IDOC staff. Mr. Sanchez concluded with a short video clip of Mr. Creech playing guitar and singing "Amazing Grace."

3:32 p.m. – BREAK

3:44 p.m. – RESUME HEARING

Ada County Prosecutor Closing Statement

Deputy Prosecutor Longhurst explained that they know Judge Robert Newhouse well, they like and respect him, and they now understand he does not support the death penalty for Thomas Creech, due to the passage of time. Apparently, Ms. Longhurst said, Judge Newhouse forgot about some of the worst details of this case, and she wishes she could forget about them, too. Ms. Longhurst asked if Mr. Creech's lawyers reminded Judge Newhouse of the violent incident in 2022, or the fact that Mr. Creech pled guilty for the murder of [REDACTED] but then took the stand to claim self-defense.

Ms. Longhurst reiterated that the judge ruled that Thomas Creech exhibited excessive violence, was beyond rehabilitation, kills almost on a whim with little regard of the consequences, and has a propensity for murder. The judge wrote that Thomas Creech's plea and death sentence will stand, that a sentence of death must be followed by an execution.

Prosecutor Jim Harris also supported the death penalty for Thomas Creech. On January 11, 2024, Ms. Longhurst said, they reviewed the same statements from Jim Harris, and they did not pick up on the implication that he no longer supports the death penalty. Ms. Longhurst added that she has been the prosecutor of Ada County for much longer than Mr. Harris was, and she is here in support of the death penalty today.

Deputy Prosecutor Longhurst explained that every time Thomas Creech chose to kill a person, he knew he could get caught and sentenced to life, or even death. He knew he was causing a vicious ripple of pain throughout his victim's families, as well as his own family. He has been convicted of murder five times. He has faced the death penalty before. This was no surprise to him. The only surprise is that it has taken this long to get to this point, but none of us can feel guilty when Thomas Creech is the one who brought us here.

Ms. Longhurst noted that some IDOC staff members reported that Mr. Creech was friendly to them. Ms. Longhurst stated that Mr. Creech may have been friendly to many people, but he still murdered an innocent kid. In 1974, Carol Spaulding told law enforcement that Tom was always nice to everybody that he met; she said he was even nice the guys he killed. Ms. Longhurst stated that Mr. Creech has always been a nice, charming sociopath.

Mr. Creech has professed Christianity for years; Mr. Creech played guitar and wrote letters, songs, and poetry in the 70s, too. Mr. Creech stabbed and injured a handful of other inmates, and he brutally murdered [REDACTED]. None of those positive traits kept

him from violence. He has still repeatedly chosen violence to get what he wants, such as being isolated from other inmates in 1981. He specifically threatened to kill if he did not get what he wanted in 1981. He wrote that he had nothing to lose, that nothing could be done to him because he was already serving four life sentences. He followed through with his threat and got what he wanted.

After he stomped ██████ to death, Thomas Creech was perfectly nice and polite to the guards. Ms. Longhurst stated that Thomas Creech is able to be Dr. Jekyll and Mr. Hyde at the same time. She stated that Thomas Creech was not sentenced to death because he is friendly but because he is a psychopath.

Thomas Creech has been diagnosed with average intelligence and psychopathic traits, such as no remorse, no empathy, and being charming and likable. In 1974, Lieutenant Taylor reported that Thomas Creech was charming, likable, and personable, but without a doubt, one of the deadliest men that he has ever witnessed in his career.

Deputy Prosecutor Longhurst noted that Mr. Creech told PHI Maddox that he is comfortable on death row; Mr. Creech does not want the death sentence but wants to stay in maximum security. Ms. Longhurst stated that we have been in this situation before. Mr. Creech's two death sentences were commuted in 1973, he was put somewhere that he did not want to be, and he killed ██████ because of it.

Mr. Creech claims he is remorseful, but just months ago, Mr. Creech told Mr. Maddox that he killed ██████ in self-defense. Mr. Creech blamed ██████ for being murdered. When asked if he believes he deserves the death penalty, Mr. Creech said he did not know, because ██████ attacked him. During his interview with Mr. Maddox, Mr. Creech explained that the socks had their names written on them, and the sock that he used as a weapon was labeled "Garza." Ms. Longhurst displayed a photograph of the matching sock that was found in Mr. Creech's cell. The name on the sock is "Creech."

Ms. Longhurst stated that Thomas Creech has no remorse. She added that he does not seem to have much for the other murders that he committed, either. She reiterated that he killed ██████ simply because he did not want a roommate, and he got what he wanted. She asked the Commission not to give him what he wants again, and not to let him get away with murder again.

Victim Statements

1. ██████ younger sister – Stated that she was the second child born, just under two years after ██████. ██████ was her best friend, they were inseparable, he was the peanut butter to her jelly. They spent days knee deep in the creek, catching rainbow trout. ██████ was happiest with a rifle or a fighting pole in his hands. He had an accident with a pistol, and he was not supposed to live, let alone walk again. He was left ██████. He ██████; she could knock him over with a feather. He was a ██████ who fell through the cracks of the system. He spent nine months staying with her, prior to his incarceration, and despite his obstacles, he had a productive future that was stolen from him. His daughter, grandson, father, mother, brother, sisters, nieces, and nephews were robbed of precious family events, holidays, births, and natural deaths. There has always been a "what if" lingering in their minds, about what he could have become, what could have been had, what love, laughter, and wisdom this generation missed out on.

Thomas Creech has lived his life on the path of his choosing. ██████ has no such choice; his family did not have a choice. They have waited more than forty years for this, and whatever the Commission's ruling is today, justice will finally be served. ██████ story has finally been told. She thanked Jill and the others, for putting the pieces of this case together. She thanked the Commission for finally letting her, a victim, have her say. She stated that she is not here for vengeance, but for justice.

2. ██████ niece – Stated that the absence of Uncle ██████ beautiful soul, that she never had the privilege to meet, is a constant, aching void that has echoed through every gathering for the last four decades. It is an indescribable pain that lingers like a dark shadow. The absence of the wisdom and guidance that he could have provided is an injustice that echoes through every generation. Her burning desire for justice is not driven by vengeance, but to honor her uncle and his memory, and to ensure his life is not defined by the circumstances of his death. She sees ██████ when she looks into her youngest child's eyes; they have the same smile and nose. ██████ lives on through all of them.

Thomas Creech might have taken him away, but she is here to assert that Thomas Creech will not take away ██████ existence. Like Thomas Creech has haunted their family, she is here to haunt Mr. Creech. Mr. Creech has played guitar written poetry, visited with family, as they have continued to grieve and fight, year after year. Mr. Creech may have forgotten, but they have not. Every generation will continue to fight, until they finally see justice served by the state of Idaho.

3. ██████ niece (statement read by Victim Coordinator, Brittney Thorndyke) – Stated that Uncle ██████ was murdered just four months before her birth, and she has carried the trauma ever since. ██████ murder and the effects of it have haunted and bled throughout their family, her childhood. Her cousin never got to know her father. They have been impacted by ██████ murder for forty years. Four generations, so far, have been burdened by the trauma and pain, and knowing no accountability or justice has ever followed through, they wonder if that day will ever come. Every time there is movement, their wounds are reopened. They have navigated the pain that Creech has created for forty-two years. They have helped each other heal from the fear, heartache, pain, despair, depression, strain, stress, dysfunction, addiction, anger, confusion, sadness, and hopelessness. They continue to grow, but they are very clearly still haunted by Thomas Creech, especially every time their wounds are reopened against in court.

Earlier generations knew ██████ and hoped for a somewhat good life for him, until he was murdered, and they have never been able to lay this long and painful memory to rest. With every family gathering, they maneuver these pains, burdens, and truths about his murder. Many of these moments become sad and complicated, especially when sharing ██████ memory with the younger ones. They ask who Uncle ██████ is, where he is, how he died, what murder is. As they grow into adolescence, the system, the community, themselves, they come back with even more difficult questions. They want to know why things happened, how they

happened, why the system failed, why [REDACTED] murderer is still alive forty-two years after being sentenced to death, why they have continued to carry this trauma for so long. It just continues to unfold. They wish it would just finally be done.

The state of Idaho and Department of Corrections failed her uncle, instead of helping him find the care that he needed. He never should have been put in a maximum security prison, with the most dangerous murderers. He never should have been left alone with a murderer. He deserved so much better. She just wants to lay this horrific situation to rest.

4. [REDACTED] daughter – Stated that [REDACTED] was a handsome, kind, respectful, fun-loving young man. He adored his family and friends, especially his father and grandfather. He enjoyed hiking, fishing, hunting. He loved to feed his family by hunting and was very proud to do so. He was a gentle soul; he could easily get wildlife to eat from his hands. She has had to piece together everything that she knows about him. She was only four years old when he was murdered. Her father never saw her first day of kindergarten, her high school graduation, her wedding, the births of her children.

[REDACTED] was known for playing pranks on his mother and sisters. He was a typical boy who was always smiling in every photo, always willing to lend a helping hand. They are a family of good people—leaders, community board members, blue collar workers, military veterans, contributing members of society who are carrying a tragedy that they have been waiting, for forty-two years, for justice to be served. She has accomplished a lot, but she has always had to explain why she does not have a father. How unfair that Thomas Creech is still here, and her father is not. Her adult and juvenile children are still affected by this crime, and not knowing their grandfather.

Thomas Creech is worried about never writing another poem, worried his last meal won't be prepared to his liking, worried he won't see the sun or rain or snow again. Thomas Creech might miss the chance to interact with people that he cares about. He is worried about his future, that is based entirely on his own actions, that he chose. He wants them to ignore the consequences of his actions that have not only impacted her but multiple generations.

Sociopaths are charming and will mimic emotions and behaviors to gain the trust of people like Kathy Niecko and even his wife, LeAnn. Sociopaths usually come across as likable and pleasant, like Ted Bundy, Jeffrey Dahmer, and Richard Ramirez. The state allowed an inmate to hook up with a guard's mother, and she seems to be the only one thinking that is crazy. This behavior compromises the safety and security of the facility, and all of those who are employed and housed at IDOC. Going to bat for Thomas Creech causes a liability that Idaho cannot afford, and if you are willing to vouch for a man who has taken maybe forty, maybe thirty, or even ten lives, then she questions your sanity and where her tax dollars are going. If he kills again, then their blood will be on his supporters' hands. Thomas Creech clearly stated that if they put him back, then he will kill again, and there is still no doubt about it.

She stated that her family name ended with her father. She told Mr. Creech to stop making excuses for murdering her father and have some respect for him. Accept the justice that [REDACTED] and his family deserve. It is the result of Mr. Creech's own actions and decisions. She thanked the Commission for allowing them to speak on behalf of [REDACTED], their family, and the other victims' families.

EXECUTIVE SESSION: 4:35 p.m.

RESUME HEARING: 5:10 p.m.

The Commission thanked everyone who participated in this hearing. The Commission elected to continue this hearing to January 29, 2024, at 8:30 a.m.

Commissioner Parker motioned to adjourn. Commissioner Kirkham seconded. All voted aye, and this hearing adjourned at 5:10 p.m.

Decision

Continue

Comment

Commission elected to continue this hearing on 1/29/2024.

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Attorneys for Idaho Commission of Pardons and Parole

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

THOMAS EUGENE CREECH,
Plaintiff,

v.

**IDAHO COMMISSION OF PARDONS
AND PAROLE; JAN M. BENNETTS,** Ada
County Prosecuting Attorney, in her official
capacity,

Defendants.

Case No. 1:24-cv-00066-AKB

DECLARATION OF ASHLEY DOWELL

I, Ashley Dowell, declare as follows:

1. I am over the age of eighteen (18) years and competent to testify in the matters herein. I make this declaration based upon my own personal knowledge.

2. I work for the Idaho Commission of Pardons and Parole (“Commission”) as the Executive Director and am appointed by the governor. I have held the position of Executive Director since January 2019 and have worked at the Commission since that time. I do not have authority to vote on matters before the Commission or to appoint commissioners.

3. As the Executive Director my duties and responsibilities include oversight of all agency operations and collaboration with commissioners, who fulfill the agency’s decision-

making functions. This includes hiring and supervision of staff who manage hearing investigators, supervise the violations process, manage business operations, and provide victim services. I have access to agency records and am familiar with the agency's records keeping process. In addition, I schedule meetings and hearings that are identified by state law to be held before the Commission, including commutation hearings.

4. I am familiar with the laws and rules governing the operations of the Commission, including those for hearing procedures, commissioner voting, open meeting requirements, and public records. I am also responsible for promulgating rules in accordance with Idaho Code on behalf of the Commission.

5. The Commission rules require majority decisions of the full Commission to be made by at least four (4) commissioners. *See* IDAPA 50.01.01.200.08. The only exception is for specific parole matters decided by panels of two (2) or three (3) commissioners identified in Idaho Code § 20-1002(2) and (3), which require a unanimous decision of the panel.

6. The Commission meets quarterly as the full Commission to conduct hearings for consideration of commutations, pardons, firearm rights restoration, and parole matters where a unanimous panel decision could not be reached.

7. Commutation proceedings before the Commission are non-adversarial and are not bound by the Idaho Rules of Evidence or the Idaho Administrative Procedures Act

8. I have reviewed the *Complaint for Equitable, Declaratory and Injunctive Relief* and the *Motion for Preliminary Injunction* filed in this matter.

9. On October 13, 2023, the Commission received a Petition for Commutation ("Petition") from Mr. Thomas Eugene Creech requesting his sentence of death be commuted to a sentence of life without parole. In my capacity as Executive Director, I scheduled a meeting with

the full Commission to review the Petition. This meeting was scheduled outside of the quarterly session due to the issuance of a death warrant for Mr. Creech on October 12, 2023.

10. The Petition was reviewed on October 18, 2023, by five (5) commissioners in executive session. One commissioner was absent from the review due to a personal reason and the other commissioner recused himself from the review proceeding. The commissioners voted 4-1 to grant Mr. Creech a commutation hearing. A true and correct copy of the minutes from the petition review is attached hereto as Exhibit A.

11. The Commission's rules allow commissioners to recuse themselves from a matter due to a conflict. On October 13, 2023, Commissioner Patrick McDonald notified me about a conflict related to him being involved in the decision-making in Mr. Creech's case and his related recusal. I accepted Commissioner McDonald's recusal and did not include him in any further commutation proceedings related to Mr. Creech.

12. After the review hearing was completed, I notified the Attorney General's Office, the Ada County Prosecutor, and Mr. Creech's attorney that a hearing had been granted. A true and correct copy of this notification is attached hereto as Exhibit B.

13. I scheduled Mr. Creech's commutation hearing to be held on January 19, 2024, during the next full Commission session.

14. In preparation for the commutation hearing, I met with the parties on three (3) occasions: November 7, 2023, November 30, 2023, and January 3, 2023. I sent letters to the parties on November 13, 2023 and December 20, 2023 to memorialize the respective meetings. A true and correct copy of these letters are attached hereto as Exhibit C.

15. Outside of the three in-person meetings, I received and responded to various emails from the parties with questions about the proceedings, including questions about

deadlines to submit documents, victim participation, hearing attendees, technological and hearing format issues, the Commission's investigative packet, and public and media viewing of the hearing.

16. On December 7, 2023, I received a request from Mr. Creech's counsel to continue the commutation hearing based on a subpoena that had been issued by the Ada County Prosecutor, the need to interview current IDOC staff, the upcoming holidays, and to have a similar amount of time to prepare that was given for a similar commutation request. I denied this request on December 14, 2023. A true and correct copy of Mr. Creech's request to continue the commutation hearing and the denial of the request are attached hereto as Exhibit D.

17. On January 4, 2024, Mr. Creech's counsel submitted another request to continue the commutation hearing based on the need to interview current IDOC staff and time needed to review an IDOC security video. I denied this request on January 9, 2024, and arrangements were made for the parties to view the video on January 11, 2024. A true and correct copy of Mr. Creech's second request to continue the commutation hearing and the denial of the request are attached hereto as Exhibit E.

18. On January 12, 2024, I sent a copy of the commutation hearing agenda to the parties. A true and correct copy of the agenda is attached hereto as Exhibit F.

19. The Commission receives a hearing or investigation packet for all commutation and pardon requests that come before them for a hearing. This investigation packet generally includes risk assessments, criminal history, institutional behavior, mental health evaluations, and victim information, and is exempt from public disclosure under state law. The investigation packet also includes letters of concern from victims or other persons related to the individual's other crimes, alleged or convicted. The investigation packet is generally not provided to parties

involved in a commutation or pardon proceeding. However, an exception is made for commutation requests for a death sentence. The parties were provided a copy of the investigation packet for Mr. Creech on December 20, 2023. The parties were told they would have to return the investigation packet to the Commission after the conclusion of the hearing.

20. The information in the investigation packets given to the parties was the same information received by the commissioners, with the exception of statements provided by the victims in this matter, letters of concern, and letters from the public. The Commission received a letter of concern regarding Mr. Walker on January 18, 2024.

21. The commutation hearing was held on January 19, 2024. The presentation of information to the presiding commissioners concluded that same day and the commissioners began deliberating. A true and correct copy of the hearing minutes is attached hereto as Exhibit G.

22. Deliberations of the Commission are held in executive session with members of the public, parties, and non-essential staff excluded from the deliberations. The Commission is permitted by law to vote while in executive session.

23. During deliberation of Mr. Creech's commutation request and the resulting vote, the only people present were the presiding commissioners and myself. My attendance during deliberations is not to provide input or commentary on the proceeding, or to opine on the Commission's decision. Rather, I attend to document the reasoning behind the decision for the purpose of drafting the Commission's written decision and to answer any procedural questions.

24. The deliberations of Mr. Creech's commutation request concluded on January 19, 2024, and the presiding commissioners voted at the conclusion of deliberations on that same day. The vote was a tie with three (3) commissioners recommending commutation and three (3)

commissioners denying commutation. The hearing session was continued to January 29, 2024, to allow time for the decision to be drafted.

25. Following the conclusion of the commutation hearing on January 19th, Mr. Creech's counsel made a request to postpone the commutation decision. The request and response from the State are summarized below:

a. January 22, 2024, Mr. Creech's counsel requested time to investigate two issues raised by the Ada County Prosecutor during her presentation to the Commission. A true and correct copy of the January 22nd request is attached hereto as Exhibit H.

b. January 22, 2024, the State asked the request by Mr. Creech's counsel be denied. A true and correct copy of the January 22nd response is attached hereto as Exhibit I.

c. January 25, 2024, Mr. Creech's counsel updated its request to include additional concerns that they felt warranted a postponement of the Commission's decision. A true and correct copy of the January 25th updated request is attached hereto as Exhibit J.

d. January 26, 2024, the State again responded to the request to postpone the decision and asked it be denied. A true and correct copy of the January 26th response is attached hereto as Exhibit K.

26. On January 26, 2024, I emailed the parties to confirm I received the requests to postpone the decision and the responses by the State. I also informed the parties that an additional victim statement had been received. The parties were told the commissioners had not received any of the documents and that I would review the information. The additional victim statement was ultimately not provided to the commissioners, as the hearing had already been completed, and was not a victim statement related to the murder of Mr. Walker.

27. The presiding commissioners reconvened Mr. Creech's commutation hearing on January 29, 2024, to finalize its decision from January 19, 2024. I was again present during the executive session. The written decision was reviewed and finalized by the commissioners. A true and correct copy of the Commission's written decision is attached hereto as Exhibit L.

28. After the commutation decision was finalized, the request by Mr. Creech's counsel to postpone the decision was presented to the Commission for consideration, along with the documents listed above in ¶ 25. The commissioners reviewed and considered the request, along with the information provided by the parties. The Commission voted 6-0 to deny the request to postpone the issuance of its decision. A true and correct copy of the minutes related to Mr. Creech's request to postpone the Commission's decision is attached hereto as Exhibit M.

29. The *Declaration of Christopher Sanchez* (Dkt. 4-2, Ex. 1, ¶ 41) references an email sent by Jonah Horwitz to the Parole Commission on January 29, 2024, at approximately 5:00 am. I have reviewed the letter in Dkt. 5-10, Ex. 21 and I have no record of receiving this letter. It appears this letter was sent to provide another update to the Commission as to the concerns previously raised and the information Mr. Creech's counsel had been able to find regarding those issues. It did not present a new concern that was not already before the Commission as part of the January 22nd and January 25th requests to postpone the Commission's decision.

30. If a majority decision by the Commission results in a recommendation for a commutation or pardon, one of my duties as the Executive Director is to provide that recommendation to the governor pursuant to Idaho Code § 20-1016(2). I do not send a commutation or pardon decision to the governor if the majority decision by the Commission is a denial or a majority decision cannot be reached.


31. Mr. Creech's commutation request was effectively denied when the Commission did not reach a majority decision to recommend a commutation and was not sent to the governor.

32. The recusal of a commissioner was public knowledge. I do not recall being asked why the commissioner recused himself by either party. I do not recall any concern being raised by Mr. Creech or his attorneys prior to the commutation hearing about the commutation hearing being held before six (6) commissioners. I was not aware of any concern until the filing of the Complaint in this matter.

33. Distribution of the investigation packet is governed by the Idaho Public Records Act and is exempt from public disclosure. I have not received a request from either party to have access to the investigation packet following the commutation hearing.

Pursuant to 28 U.S.C. § 1746, I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on:

Signed this __13__ day of February, 2024.



Ashley Dowell

CERTIFICATE OF SERVICE

I certify that on February 13, 2024, I caused to be served a true and correct copy of the foregoing via CM/ECF Electronic Notification:

Jonah Horwitz: Jonah_Horwitz@fd.org

Christopher M. Sanchez: Christopher_M_Sanchez@fd.org

Counsel for Plaintiff

Dayton Reed: dreed@adacounty.id.gov

Counsel for Defendant Bennetts

/s/ Karin Magnelli

Karin Magnelli

Deputy Attorney General

COMMUTATION PETITION REVIEW MINUTES

State of Idaho
Commission of Pardons & Parole



COMMISSIONERS:	Matthews, Mike; Dressen, Janie; Kirkham, Terry; Ross, Michael; Smith, Scott	EXECUTIVE DIRECTOR:	Dowell, Ashley
OFFENDER:	Creech, Thomas Eugene	IDOC #:	14984
DOC LOCATION:	Idaho Maximum Security Institution	DATE:	10/18/2023

CASES

Case Number	Offense	Sentence Type	Max.	Min.	PED	FTRD
10252	Murder I	Concurrent	DEATH	DEATH	N/A	DEATH
2165	Murder I	Independent	LIFE	LIFE	N/A	LIFE
2165	Murder I	Consecutive	LIFE	LIFE	N/A	LIFE

PRIOR HEARINGS: NONE

CURRENT DETAILS

Minutes

The Commission reviewed the Commutation Petition in Executive Session. The Commission elected to schedule a Commutation Hearing for 1/2024, when the full Commission is scheduled to meet.

Decision

Schedule Hearing

Next Hearing Date

1/19/2024

Comment

Commission elected to schedule Commutation Hearing for 1/2024.



STATE OF IDAHO

COMMISSION OF PARDONS AND PAROLE

Brad Little
Governor

Ashley Dowell
Executive Director

October 18, 2023

L. LaMont Anderson
Capital Litigation Unit
Idaho Office of the Attorney General

Jonah Horwitz
Assistant Federal Defender
Federal Defenders of Idaho

Jan Bennetts
Elected Prosecutor
Ada County, State of Idaho

Dear Mr. Anderson, Mr. Horwitz, and Ms. Bennetts,

Earlier today, the Commission of Pardons and Parole reviewed a commutation petition for Thomas Eugene Creech and decided to grant a commutation hearing.

The Commission is in the process of determining the date of the commutation hearing, which will be held in compliance with Article IV, Section 7 of the Idaho Constitution.

Please let me know if you have any additional questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ashley Dowell".

Ashley Dowell
Executive Director
Idaho Commission of Pardons and Parole



STATE OF IDAHO
COMMISSION OF PARDONS AND PAROLE

Brad Little
Governor
Ashley Dowell
Executive Director

DATE: November 13, 2023

TO: Jill Longhurst, Deputy Ada County Prosecutor, State of Idaho
Jonah Horwitz and Christopher Sanchez, Federal Defenders of Idaho

CC: Karin Magnelli, Deputy Attorney General, Idaho Commission of Pardons and Parole
LaMont Anderson, Office of the Idaho Attorney General, Capital Unit

FROM: Ashley Dowell, Executive Director, Idaho Commission of Pardons and Parole

SUBJECT: Commutation Hearing for Thomas Creech

This memo memorializes our discussion from the meeting on November 7, 2023, that was held with the parties above. This meeting outlined the details, logistics and processes for the Commission hearing to consider commutation of Thomas Creech's sentence from death to life without the possibility of parole. As discussed in the meeting, the Ada County Prosecutor will be the primary point of contact for the State's case.

The hearing is scheduled for January 19, 2024, at 8:30am and will be held at the Commission's hearing room at the Commission office.

The parties named above will be present in the hearing room, along with the Commission, Commission staff, a representative from the Governor's Office and necessary Idaho State Police (ISP) personnel. Due to capacity constraints of the hearing room, the parties will provide the number of attendees from each side to the Executive Director no later than January 2, 2024. This number should include victims from the Ada County Prosecutor's office and family supporters from the Federal Defenders' office. The parties must also submit by January 2, 2024, the name of the supporter(s) and victim(s) who may want to provide a statement during the hearing. The Ada County Prosecutor should also include the names of any victims who may want to attend the hearing remotely via WebEx. Information about those providing statements will be given to the parties in advance.

While the Executive Director will make every attempt to accommodate all attendees from each side, there may be limits to the number of people who can attend as attendees of the parties to allow for attendance by the public, media, and other interested persons. If necessary, the Executive Director will discuss the number of requested attendees with the respective party, with the Executive Director making the final determination related to attendees.



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Executive Director

Mr. Creech will attend the hearing remotely from the Idaho Maximum Security Institution (IMSI) and may be accompanied by his counsel and facility security personnel, per the requirements of the IMSI Warden.

As discussed, the Deputy Attorney General for the Commission will look into the settlement agreement between the victims and the Idaho Department of Correction and determine whether any prohibition exists related to victim statements.

As discussed in the meeting, commutations are a matter of clemency, and the hearing is not an adversarial proceeding. As such, the parties will make presentations to the Commission, with only identified supporter(s), identified victim(s), and attorneys speaking, and will not be allowed to call witnesses for questioning, cross examine the other party, or object to what is being said during the parties' presentation time. The parties are responsible for contacting the Executive Director no later than January 2, 2024, for any audio/visual equipment needs.

The Commission will provide snacks, water, and coffee to all parties. The hearing will break for lunch, with the parties responsible for their own lunch. Additional breaks will be scheduled and both parties will have a room available for private discussion during breaks.

The hearing order and time allotment for presentations will be as follows:

- Supporter Statement from Mr. Creech's Family- .5 hours maximum
- Federal Defenders' Presentation- 1.75 hours maximum
- Ada County Prosecutor's Presentation- 1.75 hours maximum
- Commission Directs Questions to Mr. Creech
- Federal Defenders' Closing Statements- 15 minutes maximum
- Ada County Prosecutor's Closing Statements- 15 minutes maximum
- Victim of Record Statement- .5 hours maximum

The Executive Director will act as a timekeeper for the proceedings with a clock that is visible to the parties. After the statement from the victim(s) of record has concluded, the Commission will go into executive session to deliberate and all parties other than the Commission and Commission staff will be dismissed and asked to leave the facility. The Commission decision will be issued at a later date, to be determined. If the Commission recommends to the Governor that a commutation be granted, the Governor has thirty (30) days after presentment of that recommendation to grant or deny the commutation. If no action is taken by the Governor within 30 days, the request is considered denied. If the Commission denies the commutation, the process is then complete, and no further action will be taken.



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Executive Director

Members of the public and the media will be allowed to attend the hearing in the hearing room. A media lottery will be created in coordination with the Commission’s public information officer. There will not be remote access and proceedings will not be streamed for members of the public or media. Consistent with Article IV, Section 7, of the Idaho Constitution and the Open Meeting Law, a notice of the hearing will be published in a newspaper of general circulation for four (4) weeks prior to the hearing, to begin December 27, 2023, and a notice of hearing and agenda will be posted on January 12, 2024. In addition, information related to the proceedings will be published on the Commission’s website.

The above plans are subject to change as necessary, and adjustments will be communicated via the Executive Director.

The Commission has assigned two investigators to complete Mr. Creech’s investigative report for the Commission. The investigators completed an in-person interview with Mr. Creech on November 8, 2023, during which the Federal Defenders were present at their request. The investigative report and attached documents (“hearing packet”) will be sent to the Commission for review on December 20, 2023. As such, both parties must submit to the investigators any documents for inclusion in the Commissioners’ hearing packet by December 11, 2023.

Late submissions will only be allowed due to extenuating circumstances and upon the approval of the Executive Director. Documents must be Bates stamped with Federal Defenders’ documents marked numerically, and Ada County Prosecutor’s documents marked alphabetically. If documents have already been submitted, without being Bates stamped, those documents will need to be resubmitted with appropriate stamping. This excludes documents expressly requested by the Commission’s investigators. The previously submitted commutation petition will be included in its entirety and Commission staff will seek permission from the court to allow parties access to the PSI as part of the hearing packet.

As discussed, each party will get a copy of the entire hearing packet, with all attachments and party submissions, on or around the date it is sent to the Commission. The parties agree to not make or retain any copy of the hearing packet and return their copy of the hearing packet, including all attachments and party submissions, at the conclusion of the hearing. Any further distribution of the hearing packet will be pursuant to the Idaho Public Records Act.

Any concerns, questions, etc. that are not directly related to requests from the investigator for information should be directed to the Executive Director. The table below identifies the deadlines detailed above:

ACTION	RESPONSIBLE PARTY	DEADLINE
Submit documentation to investigator	Parties	December 11, 2023
Distribution of hearing packet	Commission of Pardons/Parole	December 20, 2023



STATE OF IDAHO
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Brad Little
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Ashley Dowell
Executive Director

Submit attendee information	Parties	January 2, 2024
Submit victim names to make statement	Ada County Prosecutor	January 2, 2024
Submit supporter names to make statement	Federal Defenders	January 2, 2024
Submit audio/visual needs	Parties	January 2, 2024
Newspaper Notice of Hearing	Commission of Pardons/Parole	December 27, 2023 January 3, 2024 January 10, 2024 January 17, 2024
Post Hearing Notice & Agenda	Commission of Pardons/Parole	January 12, 2024
Commutation Hearing	Commission of Pardons/Parole	January 19, 2024



STATE OF IDAHO
COMMISSION OF PARDONS AND PAROLE

Brad Little
Governor
Ashley Dowell
Executive Director

DATE: December 20, 2023

TO: Jill Longhurst, Deputy Ada County Prosecutor, State of Idaho
Jonah Horwitz and Christopher Sanchez, Federal Defenders of Idaho

CC: Karin Magnelli, Deputy Attorney General, Idaho Commission of Pardons and Parole
LaMont Anderson, Office of the Idaho Attorney General, Capital Unit

FROM: Ashley Dowell, Executive Director, Idaho Commission of Pardons and Parole

SUBJECT: Updated- Commutation Hearing for Thomas Creech

This memo memorializes our discussion from the meeting on November 30, 2023, that was held with the parties above and provides updated logistics and processes for the Commission hearing to consider commutation of Thomas Creech's sentence from death to life without the possibility of parole.

The hearing is scheduled for January 19, 2024, at 8:30am and will be held at the Commission's hearing room at the Commission office. Due to space constraints at the Commission office, the public may view the hearing at the Idaho State Police District 3 Headquarters at 700 S. Stratford Drive Meridian, Idaho 83642.

The parties named above, to include those providing statements on each side's behalf, will be present in the hearing room, along with the Commission, Commission staff, a representative from the Governor's Office and necessary Idaho State Police (ISP) personnel. ISP will provide security for the hearing and no private security, or weapons, will be allowed.

Due to capacity constraints of the hearing room, the parties will provide attendee information from each side to the Executive Director no later than January 2, 2024. The Federal Defenders' office must provide the names of those individuals providing a statement in support of Mr. Creech. The Ada County Prosecutor's office must provide the number of victims attending the hearing in person, the names of any victims who may want to attend the hearing remotely via WebEx, and the names of victim(s) who may want to provide a statement during the hearing. The Commission's victim coordinator will ensure the WebEx link is provided to those victims attending via WebEx. Names of those providing statements will not be given to the parties in advance.

While the Executive Director will make every attempt to accommodate all attendees from each side, there may be limits to the number of people who can attend as attendees of the parties. If necessary, the



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Brad Little
Governor
Ashley Dowell
Executive Director

Executive Director will discuss the number of requested attendees with the respective party, with the Executive Director making the final determination related to attendees.

Mr. Creech will attend the hearing remotely from the Idaho Maximum Security Institution (IMSI) and may be accompanied by his counsel and facility security personnel, per the requirements of the IMSI Warden.

As discussed in the meeting, commutations are a matter of clemency, and the hearing is not an adversarial proceeding. As such, the parties will make presentations to the Commission, with only previously identified supporter(s), identified victim(s), and attorneys speaking, and will not be allowed to call witnesses for questioning, cross examine the other party, or object to what is being said during the parties' presentation time. The parties are responsible for contacting the Executive Director no later than January 2, 2024, for any audio/visual equipment needs.

The Commission will provide snacks, water, and coffee to all parties. The hearing will break for lunch, with the parties responsible for their own lunch. Additional breaks will be scheduled and both parties will have a room available for private discussion during breaks.

Each party will be provided a table in the hearing room and will have the ability to run their own PowerPoint presentation. A podium will be available for parties to use while presenting and for victims and supporters to use while providing their statements.

The hearing order and time allotment for presentations will be as follows:

- Supporter Statement from Mr. Creech's Family- .5 hours maximum
- Federal Defenders' Presentation- 1.75 hours maximum
- Ada County Prosecutor's Presentation- 1.75 hours maximum
- Commission Directs Questions to Mr. Creech
- Federal Defenders' Closing Statements- 15 minutes maximum
- Ada County Prosecutor's Closing Statements- 15 minutes maximum
- Victim of Record Statement- .5 hours maximum

The Executive Director will act as a timekeeper for the proceedings with a clock that is visible to the parties. After the statement from the victim(s) of record has concluded, the Commission will go into executive session to deliberate and all parties other than the Commission and Commission staff will be dismissed and asked to leave the Commission office. The Commission decision will be issued at a later date, to be determined. If the Commission recommends to the Governor that a commutation be granted, the Governor has thirty (30) days after presentment of that recommendation to grant or deny the



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Executive Director

commutation. If no action is taken by the Governor within 30 days, the request is considered denied. If the Commission denies the commutation, the process is then complete, and no further action will be taken.

The media will be allowed to attend the hearing in the hearing room or at Idaho State Police District 3 Headquarters. A media lottery may be created in coordination with the Commission’s public information officer. There will not be remote access and proceedings will not be streamed for members of the public or media. Consistent with Article IV, Section 7, of the Idaho Constitution and the Open Meeting Law, a notice of the hearing will be published in a newspaper of general circulation for four (4) weeks prior to the hearing, to begin December 27, 2023, and a notice of hearing and agenda will be posted on January 12, 2024. In addition, information related to the proceedings will be published on the Commission’s website.

The above plans are subject to change as necessary, and adjustments will be communicated via the Executive Director.

The investigative report and attached documents (“hearing packet”) has been sent to the Commission for review on December 20, 2023.

Each party will get a copy of the entire hearing packet, with all attachments and party submissions, on December 20, 2023. Victim statements have been removed from the investigative packet and will be submitted separately to the Commission. The parties agree to not make or retain any copy of the hearing packet and return their copy of the hearing packet, including all attachments and party submissions, at the conclusion of the hearing. Any further distribution of the hearing packet will be pursuant to the Idaho Public Records Act.

Any concerns, questions, etc. that are not directly related to requests from the investigator for information should be directed to the Executive Director. The table below identifies the deadlines detailed above:

ACTION	RESPONSIBLE PARTY	DEADLINE
Distribution of hearing packet	Commission of Pardons/Parole	December 20, 2023
Submit attendee information	Parties	January 2, 2024
Submit victim names to make statement	Ada County Prosecutor	January 2, 2024
Submit supporter names to make statement	Federal Defenders	January 2, 2024
Submit audio/visual needs	Parties	January 2, 2024
Newspaper Notice of Hearing	Commission of Pardons/Parole	December 27, 2023 January 3, 2024 January 10, 2024 January 17, 2024



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Executive Director

Post Hearing Notice & Agenda	Commission of Pardons/Parole	January 12, 2024
Commutation Hearing	Commission of Pardons/Parole	January 19, 2024

FEDERAL DEFENDER SERVICES OF IDAHO

NICOLE OWENS
FEDERAL DEFENDER

MARK ACKLEY
FIRST ASSISTANT

DEBORAH A. CZUBA
CAPITAL HABEAS UNIT

STEVEN RICHERT
POCATELLO TRIAL UNIT

December 7, 2023

Ashley Dowell
Executive Director
Idaho Commission of Pardons and Parole
3056 W. Elder Street
Boise, ID 83705

Sent via email

Re: Rescheduling Creech commutation hearing

Dear Director Dowell,

For four reasons, I'm writing this letter to respectfully request that Thomas Creech's commutation hearing be rescheduled from January 19 to a later date.

First, it recently came to our attention that the Ada County Prosecuting Attorney's Office (ACPA) has served three subpoenas on the Idaho Department of Correction (IDOC). The subpoenas seek a very large amount of information on Mr. Creech, including forty-nine years' worth of disciplinary reports as well as eight years' worth of phone calls, emails, grievances, and visit logs. My office has filed a motion to quash the subpoenas on the ground that county prosecutors have no subpoena powers in commutation proceedings. We have set the motion for hearing on December 20, 2023, which is the earliest date we could select under the rules. If the ACPA is allowed to pursue its subpoenas, the prosecutors will receive a substantial number of records, and we would revisit our approach to the commutation hearing as a result. Indeed, we do not even know whether the ACPA has already received records from subpoenas served on others.

Additionally, my office has not served any subpoenas in anticipation of the commutation hearing because we read Idaho law as barring prisoners from using such subpoenas. *See Smith v. Idaho Dept. of Corr.*, 918 P.2d 1213, 1217 (Idaho 1996). However, if the ACPA is permitted to utilize subpoenas, we believe in the interest of fairness that we should be as well. We would then almost certainly wish to present some of the responsive records to the Commission, which would be impossible under the current schedule, as it calls for all documentary submissions to be made by December 14. In these various ways, we think it would be most sensible to postpone the January 19 hearing so that both parties can receive

guidance from the court on the proper role for subpoenas to play with enough time for counsel to follow that direction as they prepare for the hearing.

Second, IDOC informed us on December 5, 2023 that its staff will be allowed to participate in the commutation process in support of Mr. Creech. Prior to that conversation, our office had heard from a number of people within the correctional community that IDOC personnel were being discouraged by fellow employees from getting involved and that some staff were under the impression that they were prohibited from publicly expressing their support for Mr. Creech. Prison personnel are critical sources of information for us, since Mr. Creech has been in IDOC custody for nearly five decades. Given the Director's recent decision, we believe it would be appropriate to allow us time to conduct more interviews with current IDOC employees to gather valuable information to present to the Commissioners.

Third, under the current timeline, the Christmas and New Year holidays fall right in the middle of the preparation period for the hearing, when many of our staff (and no doubt yours and the ACPA's as well) are traveling and taking time off to spend with their families. That further exacerbates the concerns above.

Fourth, a postponement of a few months would make the timetable in Mr. Creech's case more consistent with the schedule for Mr. Pizzuto's commutation proceedings, where more than six months passed between the Commission's decision to grant a hearing and the hearing itself. We feel the Pizzuto timeline was reasonable and that it enabled everyone to take sufficient care in a serious and difficult matter.

For those reasons, we are respectfully asking that the Commission reschedule the January 19 hearing to a later date. Please let me know if you have any questions or concerns. Thank you for your time and consideration.

Respectfully,



Jonah Horwitz
Assistant Federal Defender

Cc'd by email:

Karin Magnelli
Lead Deputy Attorney General
Idaho Department of Correction
kmagnell@idoc.idaho.gov



STATE OF IDAHO

COMMISSION OF PARDONS AND PAROLE

Brad Little
Governor

Ashley Dowell
Executive Director

December 14, 2023

Jonah Horwitz and Christopher Sanchez
Assistant Federal Defenders and Counsel for Thomas Creech
Federal Defenders of Idaho

Sent via email

Dear Mr. Horwitz and Mr. Sanchez,

I am in receipt of your letter dated December 7, 2023, requesting a continuance of the commutation proceeding for Thomas Creech to a later date. Your letter outlines several reasons related to the request, and I will address each in my response.

The first reason for your request for continuance is related to the Ada County Prosecuting Attorney serving subpoenas to the Idaho Department of Correction (IDOC) related to Mr. Creech in the underlying criminal case. You note in your letter that you have filed a motion to quash these subpoenas and the matter is set for a hearing on December 20, 2023. I understand from Karin Magnelli, Deputy Attorney General, that to date, IDOC has not provided materials to Ada County as requested in the subpoena and any records that have been released to Ada County has been pursuant to the Idaho Public Records Law. For these reasons, the hearing will not be continued. If the judge's decision regarding your Motion to Quash impacts a party's ability to obtain additional information related to Mr. Creech, either party may submit a request that I reconsider this decision.

The second reason for your request for continuance is related to a decision by IDOC to allow staff to participate in the commutation process in support of Mr. Creech. Your office will have the ability to present information related to this topic at the hearing. I can appreciate that this may change your approach, but respectfully do not believe this information warrants a continuance.

The third and fourth reasons for your request for continuance are noted as the holidays falling in the middle of the preparation period for the hearing and the hearing timetable for Mr. Creech being different than the commutation hearing timeframe for Mr. Gerald Pizzuto. I was aware of both of those issues when Mr. Creech's hearing was scheduled, and thus I do not believe this warrants a continuance.

In summary, at this time I am denying your request for a continuance and the hearing will remain scheduled for January 19, 2024 at 8:30am. Should additional information on the subpoena issue be provided after the hearing on December 20th, a request to reconsider this decision may be made. I appreciate your understanding.

Best,

A handwritten signature in blue ink that reads "Ashley Dowell".

Ashley Dowell
Executive Director



STATE OF IDAHO

COMMISSION OF PARDONS AND PAROLE

Brad Little
Governor

Ashley Dowell
Executive Director

Cc'd by email:

Karin Magnelli
Deputy Attorney General, State of Idaho
Counsel for the Commission of Pardons and Parole

Jill Longhurst
Deputy Ada County Prosecutor

LaMont Anderson
Deputy Attorney General, State of Idaho
Capital Litigation Unit

FEDERAL DEFENDER SERVICES OF IDAHO

NICOLE OWENS
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MARK ACKLEY
FIRST ASSISTANT

DEBORAH A. CZUBA
CAPITAL HABEAS UNIT

STEVEN RICHERT
POCATELLO TRIAL UNIT

January 4, 2024

Ashley Dowell
Executive Director
Idaho Commission of Pardons and Parole
3056 W. Elder Street
Boise, ID 83705

Sent via email

Re: Rescheduling Creech commutation hearing

Dear Director Dowell,

I'm writing this letter to respectfully renew our request that Thomas Creech's commutation hearing be rescheduled from January 19 to a later date at least three months in the future. There are two reasons for our request.

First, IDOC has made it prohibitively difficult for us to seek the support of current correctional employees. As you know, IDOC informed us on December 5, 2023 that Director Tewalt would communicate to all staff members that they are allowed to participate in the commutation process in support of Mr. Creech. However, it doesn't appear any such announcement has been made. Our office continues to hear from IDOC employees that they fear there will be negative consequences for their careers if they publicly speak in favor of clemency. Prison personnel are critical sources of information for us, since Mr. Creech has been in IDOC custody for nearly five decades. Even if Director Tewalt does finally make the promised announcement now, we would have insufficient time to do all the work needed to line up IDOC employees to make statements by the January 19 hearing, especially considering the substantial number of other tasks on our plate.

Second, IDOC is also delaying in providing us with video footage that we need to see to prepare for the hearing. We have requested from IDOC the ability to view the footage of the incident that Mr. Creech had with a fellow death-row inmate in October 2022. This footage is important in part because the Ada County Prosecuting Attorney's Office (ACPA) emphasized the incident as a reason to deny clemency in the package that it submitted to the Commission, which we only received on December 20, 2023. The ACPA described the incident as a violent assault by Mr. Creech. (ACPA Exhibits at p. 387.) We need to watch the video to see if it undermines the ACPA's account, which we believe it will. Our office requested the video from IDOC on December 26, 2023, after reviewing the ACPA's

nearly 3,000-page packet over a roughly week-long period that included the Christmas holiday. In our initial request, our office made it clear that we were seeking the footage not pursuant to the Public Records Act (a request made by us and denied by IDOC more than a year ago), but in connection with our duty to represent Mr. Creech at his commutation proceedings. Nevertheless, IDOC instructed our office on December 28, 2023 to submit a public record request through the agency's online portal. We did so the same day. On January 2, 2024, IDOC indicated that it would respond to the request by January 11, 2024. That is eight days before the hearing. However IDOC responds, this is not enough time to effectively assess this evidence and its potential impact on Mr. Creech's hearing.

Because of this state of affairs, without any postponement of the hearing, it will be impossible to ensure Mr. Creech receives a fair proceeding. We appreciate the steps the Commission has taken until now to preserve Mr. Creech's right to a fair proceeding and hope you will continue to do so and postpone the hearing for at least three months. With that additional time, we can avoid a situation where IDOC (the agency tasked with executing Mr. Creech) deprives us of the tools we need to do our job and deprives the Commission of the complete and balanced record it needs to do its own job. In the process, we would also eliminate the prospect of litigation that we might otherwise have to bring to guarantee that Mr. Creech's due process rights are honored. *See Swarthout v. Cooke*, 562 U.S. 216, 220 (2011) (upholding the constitutionality of a clemency process because the inmates were permitted "to contest the evidence against them" and "were afforded access to their records in advance").

For those reasons, we are respectfully asking that the Commission reschedule the January 19 hearing to a later date, at least three months in the future. Please let me know if you have any questions or concerns. Thank you for your time and consideration.

Respectfully,



Jonah Horwitz
Assistant Federal Defender

Cc'd by email:

Karin Magnelli
Lead Deputy Attorney General, Idaho Department of Correction



STATE OF IDAHO

COMMISSION OF PARDONS AND PAROLE

Brad Little
Governor

Ashley Dowell
Executive Director

January 9, 2024

Jonah Horwitz and Christopher Sanchez
Assistant Federal Defenders and Counsel for Thomas Creech
Federal Defenders of Idaho

Sent via email

Dear Mr. Horwitz and Mr. Sanchez,

I am in receipt of your letter dated January 4, 2024, requesting a continuance of the commutation proceeding for Thomas Creech to a later date at least three months in the future. Your letter outlines two reasons related to the request, and I will address each in my response.

The first reason for your request for continuance is related to the Idaho Department of Correction (IDOC) not announcing to all staff members that they are allowed to participate in the commutation process in support of Mr. Creech. As you know, staff members have a First Amendment right to speak in their personal capacity at Mr. Creech's hearing, which does not change based on Director Tewalt's direction. In addition, IDOC communicated to you via counsel on December 5, 2023 that IDOC would not prohibit staff from testifying, which is roughly six weeks from the date of the commutation hearing. Regardless of the prior conversation, Director Tewalt sent an email to all IDOC staff on January 8, 2024, a copy of which is attached. I also noted in my letter to you dated December 14, 2023 that your office will have the ability to present information related to this topic at the hearing. As such, I respectfully disagree that this warrants a continuance or that your office did not have sufficient time to prepare or line up IDOC staff who may be willing to testify.

The second reason for your request for continuance is related to a perceived delay by IDOC to release video footage of an incident that occurred in October 2022 and a concern that this incident was characterized as a "violent assault" by the Ada County Prosecuting Attorney's (ACPA) office in their submitted materials. I have reviewed page 387 of the documents submitted by ACPA, which is attached, and do not find the verbiage "violent" or "assault" on the page you referenced. Further, IDOC has confirmed that they will not provide the video to you via a public records request as video footage is exempt from public disclosure. However, I have obtained permission from IDOC to show the video to the Commission and attorneys for the parties in executive session at the commutation hearing, so that the Commission can draw their own conclusion about the nature of the incident. This will occur after the parties have presented their cases and before the Commissioners interview Mr. Creech. I believe this approach negates the need for a continuance.

In summary, at this time I am denying your request for a continuance and the hearing will remain scheduled for January 19, 2024 at 8:30am. Thank you for your understanding.



STATE OF IDAHO

COMMISSION OF PARDONS AND PAROLE

Brad Little
Governor

Ashley Dowell
Executive Director

Best

A handwritten signature in blue ink that reads "Ashley Dowell".

Ashley Dowell
Executive Director

Cc'd by email:

Karin Magnelli
Deputy Attorney General, State of Idaho
Counsel for the Commission of Pardons and Parole

Jill Longhurst
Deputy Ada County Prosecutor

LaMont Anderson
Deputy Attorney General, State of Idaho
Capital Litigation Unit



STATE OF IDAHO

COMMISSION OF PARDONS AND PAROLE

Brad Little
Governor
Ashley Dowell
Executive Director

COMMUTATION HEARING- THOMAS E. CREECH

Date and Time: January 19, 2024 8:30 a.m. MT

Public Viewing Location

Idaho State Police District 3 HQ
700 S. Stratford Drive
Meridian, Idaho 83642

Hearing Location (Parties only)

Idaho Commission of Pardons and Parole
3056 W. Elder Street
Boise, Idaho 83705

Commissioners:

Michael Ross	Terry Kirkham
Janie Dressen	Scott Smith
Mike Matthews	Shelly Parker

Executive Director: Ashley Dowell

The Idaho Commission of Pardons and Parole will meet as a board of pardons at 8:30 a.m., on Friday, January 19, 2024, to consider a request for commutation made by Thomas E. Creech. Mr. Creech was sentenced on January 25, 1982, for the felony crime of Murder in the First Degree, Case No. 10252, in the County of Ada.

Due to space concerns at the Commission office, the public can view the hearing at the Idaho State Police District 3 Headquarters at 700 S. Stratford Dr. Meridian, ID 83642. All public seating in the public viewing area will be first come first served, including four seats reserved for media members.

Agenda

Hearing begins at 8:30am*:

1. Welcome/Introduction
2. Supporter Testimony (up to 30 min)
3. Federal Defenders Presentation (up to 1 hr 45 min)
4. Ada County Prosecutor Presentation (up to 1hr 45 min)
5. Executive Session- I.C. 74-206 (1)(d)- To consider records that are exempt from disclosure as provided in chapter 1, title 74, Idaho Code
6. Commissioner Questions (up to 1 hr 15 min)
7. Federal Defender Closing (up to 15 min)
8. Ada County Prosecutor Closing (up to 15 min)
9. Victim Statements (up to 30 minutes)
10. Close of Public Hearing and Adjourn

*Breaks and lunch to be taken based on hearing progress

Hearing may be continued for additional days as needed. Decision to be posted at date to be determined.

COMMUTATION HEARING MINUTES

State of Idaho
Commission of Pardons & Parole

COMMISSIONERS:	Matthews, Mike; Dressen, Janie; Kirkham, Terry; Parker, Shelly; Ross, Michael; Smith, Scott	EXECUTIVE DIRECTOR:	Dowell, Ashley
OFFENDER:	Creech, Thomas Eugene	IDOC #:	14984
DOC LOCATION:	Idaho Maximum Security Institution	DATE:	1/19/2024

CASES

Case Number	Offense	Sentence Type	Max.	Min.	PED	FTRD
10252	Murder I	Concurrent	DEATH	DEATH	N/A	DEATH
2165	Murder I	Independent	LIFE	LIFE	N/A	LIFE
2165	Murder I	Consecutive	LIFE	LIFE	N/A	LIFE

PRIOR HEARINGS

Date	Type	Decision
10/18/2023	Commutation Review	Schedule Hearing

CURRENT DETAILS

Hearing Started	Executive Session At	Hearing Resumed	Hearing Ended
08:48 AM	02:33 PM	02:39 PM	05:10 PM
	04:25 PM	05:10 PM	

Minutes**Welcome & Introduction**

The Commission welcomed those in attendance at the Commission office, including supporters, victims, Thomas Creech's legal counsel, and Ada County Prosecutors. The Commission greeted Thomas Creech, who is attending this hearing from Idaho Maximum Security Institution, via WebEx. Due to limited space at the Commission office, the public can view this hearing from the Idaho State Police District 3 Headquarters, via WebEx.

Thomas Creech submitted a petition for commutation of his sentence, from death to life without parole. On October 18, 2023, the Commission reviewed Mr. Creech's petition and elected to schedule this commutation hearing. The Commission explained that the purpose of this hearing is not to retry this case, but to consider commuting Mr. Creech's death sentence to a life sentence without the possibility of parole.

If the Commission elects to recommend commutation, the Governor will have thirty days to respond. If the Commission elects to deny commutation, then this process will end today.

The Commission reviewed the order of events for this hearing: supporter testimony, Federal Defenders of Idaho presentation, Ada County Prosecutor presentation, Commissioner questions for Mr. Creech and his responses, Federal Defenders closing, Prosecutor closing, and then victim statements.

Supporter Testimony

Brian Thom – Retired bishop. Mr. Thom stated that he is Mr. Creech's spiritual advisor, and at his request, would be in present in the chamber with him. He believes hope has been achieved in Mr. Creech's incarceration at IMSI. This time has allowed Mr. Creech to amend his attitudes and behaviors, and other residents now look up to him, as a mentor. Clemency will ensure Mr. Creech is held responsible for his crimes for the rest of his life, will ensure public safety, and will allow Mr. Creech to remain the positive and calming influence that he has become.

Gary Hartgrove – Has worked in law enforcement for forty years; he worked for the Idaho Department of Corrections from 2015 to 2020, retiring as Deputy Warden at IMSI. He walked death row regularly, got to know the residents there. He is fully aware of what Mr. Creech has been convicted of. He stated that Mr. Creech always appropriately addressed staff, followed the rules, and never displayed any threatening behavior. Officers and staff, including himself, appreciated Mr. Creech's cooperative attitude.

Mr. Hartgrove was tasked with reestablishing the program that allowed residents to spend time together, in the common area of the tier. Residents initially spent time in pairs, at a table with their legs restrained, and throughout his time at IMSI, the guidelines loosened up significantly, eventually allowing more than two inmates to walk the tier together. Mr. Creech made many suggestions to improve the program and provided input about possible incompatibility issues that the staff greatly appreciated and used to ensure safety.

Mr. Creech was always friendly and upbeat. Even when he was doing poorly, though he looked sick and became withdrawn, he did not cause any problems. In 2019, Mr. Creech was dealing with some serious health issues, and as deputy warden, Mr. Hartgrove ensured Mr. Creech received the medical attention and treatment that he needed. During that time, Mr. Creech told him, "I'm sorry for what I did to that kid," and he asked for a Catholic priest to come to the facility to take his confession. Mr. Hartgrove arranged for Father Evarist Shiyo to come to IMSI and visit Mr. Creech. He stated that no other inmate, in his entire career, had ever made such a request.

Mr. Hartgrove asked the Commission to consider allowing Mr. Creech to spend the rest of his life in prison. He stated that residents in their 60s-70s, like Mr. Creech, are extremely old in prison, compared to the others, and most of them realize life is much less stressful when they do not struggle with authority. He believes Mr. Creech is a minimal threat, and staff would suffer if he were executed.

Kathy Niecko – Director of Nursing at IMSI from 2001 to 2006, and Health Services Administrator of IMSI from 2006 to 2014. Mrs. Niecko stated that she is not some old softy with a bleeding heart for the condemned. She is a military veteran, and she made it through nursing school while raising six children, including one with a disability, who she stills cares for today. She is no pushover. She has tremendous respect for law and order, chain of command, and the justice system. She believes in the death penalty, but she does not believe Thomas Creech should be executed.

Mrs. Niecko explained that she did not always feel that way. Her initial impressions of Mr. Creech were shaped by descriptions of him in the news, in the late 1980s. Her now late husband was a correctional officer at that time, and she was afraid for him. She asked her husband if he ever had to watch Thomas Creech, and he said yes. He quickly reassured her that Mr. Creech is not a problem or a danger but in fact, quite the opposite. She wondered if her husband was only trying to ease her fears, until twenty years later, when she found herself working at IMSI.

Mrs. Niecko was surprised by Mr. Creech's respectful and polite communication. She stated that the inmates did not usually treat her staff nicely. Some inmates threw feces at them. Mr. Creech, on the other hand, was always thankful, and throughout her entire career in IDOC, she watched Mr. Creech treat every other staff member in the same manner. No other inmate, she said, has ever shown her such heartfelt gratitude. Mr. Creech wrote her a letter of thanks, which she has kept to this day.

Mrs. Niecko recalled a situation where Mr. Creech needed to be treated at an outside hospital, but he did not want to go. She brought him into an exam room to speak to him in private, but against her instructions, there was a CO in the room. She told the CO to leave, and he initially refused because he was concerned for her safety. She told the CO that she was absolutely sure, and he did leave the room so that they could have a conversation. Mr. Creech expressed that he did not want to go to the hospital because he was afraid of being outside of the prison. She explained to him that if he went, then she would be able to get the proper medications for him to be more comfortable, and he eventually agreed to go and thanked her again. She stated that he never missed one chance to show his gratefulness to her and her staff.

Mr. Creech was also protective of everyone on Mrs. Niecko's team. Mrs. Niecko recalled a pharmacy technician being harassed by a shot caller of a prison gang. He scared the pharm tech by yelling and making inappropriate comments at her. Mr. Creech yelled at the shot caller to mind his manners and be respectful. The shot caller went silent and later apologized to the tech.

Mrs. Niecko stated that she never had any complaints about Mr. Creech from her staff. On the contrary, most of the staff expressed that they did not want to be around on the day of Mr. Creech's execution; they wanted to call in sick or simply not show up. Mrs. Niecko stated that one staff member told her that she may be the only one that shows up for work that day.

Mrs. Niecko believes in the death penalty if two conditions are met: hard evidence of the crime, and execution being carried out in a reasonable amount of time. She stated that getting to be 70-80 years old when a death warrant is finally issued is cruel and unusual punishment, and an execution at this point in Mr. Creech's life is pointless. She believes this is punishment enough. She stated that Mr. Creech did terrible things, but she truly believes he is not that person anymore. She explained that when the doors were malfunctioning on J Block, where the most dangerous inmates are housed, she told others that if a riot popped off because those doors malfunctioned, she would immediately go to Mr. Creech's cell, because that is where she would be safe.

Mrs. Niecko thanked Mr. Creech for his respect and gratitude toward her and her staff. She thanked the Commission for allowing her to make a statement.

Melissa Hurley – Has been working in death row for six and a half years. She experiences interruptions in her life, schoolwork, social interactions, and every other aspect of her life whenever executions are carried out. It is especially difficult because family, friends, loved ones never understand what she is going through. She knows she is not the only one who is affected in these ways. She stated that even while he faces death every day, Mr. Creech's presence is comfortable; his character is the exact opposite of what you'd expect, and she has never heard one story to contradict her experiences with him. In 2018, she said, Mr. Creech gave her a signed copy of his poem, and she was granted permission from her superiors to keep it and take it home. She commented that something that is usually seen as potential manipulation was deemed genuine because it came from Mr. Creech.

Ms. Hurley believes the day of Mr. Creech's execution will be extremely difficult for everyone in the facility, especially the higher ups who are more involved in the process and have known him for so long. She cannot even begin to understand the suffering dealt at his hands, she does not know who he was before, but she knows he continues to make positive contributions to his community today. She supports commutation to a life sentence without parole.

Federal Defenders of Idaho Presentation

Jonah Horwitz, attorney with the Federal Defenders of Idaho, asked the Commission to show mercy and recommend reducing Thomas Creech's death sentence to life without parole. He believes Mr. Creech's story proves the power of redemption, and that is why he should not be executed. He thanked the Commissioners, Executive Director, and Commission staff.

Mr. Horwitz explained that the entire principal, the heart of the death penalty is that it should be reserved for the worst of the worst, when there is no other option. He asked the Commission whether they believe the Thomas Creech of 2024 is among the worst people of society, because that is who would be executed today.

Mr. Creech committed serious crimes and deserves punishment for them. Mr. Horwitz asked the Commission to keep in mind when those crimes occurred, because the last thirty years tells a different story. In 1998, Mr. Creech married his wife, LeAnn. In 2010, the director of IDOC chose Mr. Creech to serve as ambassador, to meet with a group from the Methodist Church. In 2019, the prosecutor who originally wanted to seek death spoke against it. In 2020, Mr. Creech was observed to be a model inmate for decades. In 2023, the judge who sentenced Mr. Creech to death publicly spoke against his execution. Mr. Creech has excellent disciplinary records and has established real, positive relationships. This is what paints the picture of the Thomas Creech of 2024. This is not about whether Tom of 1981 deserves to die, he said, but whether Tom of 2024 deserves to live.

Mr. Horwitz stated that Thomas Creech was justly convicted and punished for the death of David Jensen, but the question is whether this crime requires an execution, and they believe the answer is no. There are many interpretations of what happened on that day. Two officers wrote that they believe there is no way Mr. Jensen initiated the assault, but when Judge Robert Newhouse sentenced Mr. Creech to death in 1982, he noted that Mr. Creech was attacked by the victim without provocation. Judge Newhouse knew more about the case than anyone, reviewed all of the evidence.

9:33 a.m. – BREAK

9:41 a.m. – RESUME HEARING (Federal Defenders of Idaho Presentation)

Mr. Horwitz asked the Commission to compare this case to similar crimes. Santos-Quintero is accused of beating a fellow inmate to death, and prosecutors in his case elected not to pursue the death penalty. The idea that execution is necessary for closure in any situation comes from the prosecutor's decision to seek the death penalty in the first place. When that decision is not made, then victims are able to find closure from life in prison without the possibility of parole, which is what they are asking for today.

Thomas Creech has been described by IDOC staff as a caring, thoughtful, compassionate person. Ronald Gus, who worked for IDOC for twenty-three years, wrote about Mr. Creech, "of all the men upon the row, only you will get a tear to flow." In 2012, when Mr. Gus' wife passed away, Mr. Creech wrote a touching poem for him, to express his condolences. Brandi Barclay, who worked at IMSI until 2004, wrote that Mr. Creech is incredibly talented, and that staff members who kept his poems did so because they truly treasured them.

Mr. Horwitz explained that Mr. Creech has used his poetry skills to comfort, honor, and respect IDOC staff. Regarding his poem "Unsung Heroes," Mr. Creech said he saw what the officers were going through, and many residents were down on them, spitting on them, threatening their families, and he never understood why others were so angry at the guards when the guards are not the ones that put them there. Mr. Creech previously stated that whether people realize it or not, the officers are putting their lives on the line every day.

Mr. Horwitz added that Billy Braseth, who retired from IDOC in 2011, believes Thomas Creech's personality is not compatible with a death sentence. Jeanette Griggs, who worked for IDOC for twenty-seven years, believes in the death penalty but also believes Thomas Creech is entitled to clemency; she believes he already has and continues to receive serious punishment for his crimes.

Mr. Horwitz played clips of interviews with Roger and Donna Boe, Bishop Bob Hoshibata of the United Methodist Church, Thomas Creech's wife, his sister, and his brother-in-law.

During her interview, Donna Boe recalled that she met Thomas Creech with Bishop Hoshibata in 2010. Mrs. Boe stated that Mr. Creech was remarkably relaxed, given his situation, and he answered their questions as best as he could. Bishop Hoshibata explained that he wanted to know what was going through Mr. Creech's mind; he was interested in his history, what brought him to that place, and how he was doing on death row.

When it came time for them to leave, Mrs. Boe said, Mr. Creech held hands with them and allowed Bishop Hoshibata to lead them in prayer. Bishop Hoshibata stated that he felt the presence of God there; he felt a strong spiritual connection, not with someone who was evil but with a human being that God had placed upon this earth. Bishop Hoshibata felt that this person is not someone who should die. Brent Reinke, Director of IDOC at that time, wrote about how thankful he was for that meeting.

Thomas Creech's sister, Virginia Plageman, and her husband, Michael, explained that Tom has a lot of wisdom now, and he has made them stronger, too. She stated that visiting her brother after he was sentenced to death was one of the most difficult times of her life. They are close, and her children love him.

10:05 a.m. – BREAK

10:10 a.m. – RESUME HEARING (Federal Defenders of Idaho Presentation)

Mr. Horwitz told the Commission about Thomas Creech's wife, LeAnn Creech. She is the most important person in Mr. Creech's life, his motivating force on his path to becoming a decent, honorable person. During her interview, Mrs. Creech explained how they met in 1996, when her son was a correctional officer at IMSI. Her son would come home and talk about Tom, about how he liked him and thought he was a good guy. They got married in 1998 and have been best friends ever since.

Mrs. Creech stated that Tom understands and cares so deeply, she does not know how anybody could not love him. She wondered how she could end up married to someone on death row. She explained that Tom is on death row for things that he did when he was young, but that is not who she married. Her family loves him, especially her nieces who are always laughing when they talk to him on the phone; her family has become his family. She stated that Tom touched something in her soul that nobody had ever reached before. She added that Tom's poetry is what truly showed her his heart, because there is no way anybody could write like he does, and not have a good soul and spirit. His sister believes he will be a well-known author one day.

Mr. Horwitz reviewed Mr. Creech's disciplinary record. Starting in 1992, Mr. Creech went twenty-eight years without a single DOR, and he is treated appropriately as no risk by IMSI staff. Mr. Horwitz showed a timeline of Mr. Creech's DORs, and he admitted that there were some serious, inexcusable incidents. He stated that those are from a distant era, many years ago, and they do not describe who he is today.

Thomas Creech received a DOR in 2022. The other resident involved, Azad Abdullah, later explained that it was just a misunderstanding over a card game that unfortunately got heated, but they immediately made amends and have been close ever since. Mr. Abdullah described Mr. Creech as a close friend and brother to him, and he would be devastated if Mr. Creech was executed.

Attorney Horwitz explained this incident a lapse in judgment, and Mr. Creech was appropriately disciplined for it. Mr. Creech lost his temper, but this does not reflect deliberate planning or intention to do harm. Mr. Creech ended up on the floor, unresponsive, as a result of that exchange. He was taken to the emergency room, where doctors detected a large abdominal aneurysm that required major surgery, which indicates how frail he has become. Mr. Horwitz stated that Mr. Creech is no longer capable of engaging in such conduct. He added that after this incident, other residents showed great concern for Mr. Creech, proving that he is held in great esteem and remains a model inmate. He noted that prosecutors included a report about drugs being detected on an envelope, but the envelope was tested by Idaho State Police, and it turned out to be a false positive and Mr. Creech did nothing wrong.

Mr. Horwitz reiterated that Judge Newhouse imposed the death penalty because he knew of no other way to protect society at the time, but even he has recognized that Thomas Creech has changed, grown, evolved, and is no longer a threat.

Mr. Horwitz understood that there are different accounts on whether Thomas Creech poses a threat today. Former Senior Deputy District Attorney of Multnomah County, Oregon, Baron Sheldahl wrote that he is sure those advocating for Creech's clemency would not want to spend one minute alone with him in his cell. Mr. Horwitz responded that Mr. Creech is a different person than what Sheldahl believes, and he reiterated that Mrs. Niecko said she would go to Mr. Creech's cell for safety in the event of a disruption in the facility. He added that Mr. Creech was unrestrained during his meeting with Dr. Campbell, which proves that staff does not perceive him as a threat. He stated that he has spent hundreds of hours alone with him, himself, and he has never felt apprehension, even for a moment.

Some have explained Mr. Creech's exceptional record by pointing out that he has been in lockdown throughout his entire incarceration. Mr. Horwitz reiterated that IDOC started giving death row inmates more time to socialize amongst themselves without restraints in 2018. He stated that they are now allowed eight hours per day, every day, to socialize without restraints for a substantial length of time, and Mr. Creech has only benefitted from that.

Mr. Horwitz stated that Thomas Creech is not a threat, and IDOC is more than capable of doing its job and keeping other residents safe, as they have for the last thirty years. On the contrary, Mr. Creech's execution would deprive other residents of his positive impact for no good reason. Mr. Creech has given sound advice to younger inmates, to help them stay out of trouble, and he encourages them to give up their criminal lifestyles.

Mr. Horwitz believes it is important to consider these statements and think about what Mr. Creech's execution would say to other inmates. It could show them that rehabilitation is impossible, or that it does not matter whether they turn their lives around. He stated that that is the worst possible message that they could send.

Mr. Horwitz explained that Thomas Creech's childhood does not excuse any of his crimes, but it does explain how he got to that point. When Mr. Creech was five years old, he was pushed off of a flight of stairs, onto a cement floor. He was found unconscious and bleeding from his eyes, ears, and mouth. He was being treated for a cerebral concussion, until his mother pulled him out of the hospital against the doctor's orders. Mr. Creech's siblings have reported that he was different and strange after that, and he has never been the same since.

Mr. Creech's brain injury was compounded by the fact that he grew up in an abusive, neglectful home. His mother essentially abandoned them, and his father was a violent alcoholic. One year, his cousin attempted to shoot his mother on Christmas Day. He experienced trauma throughout his childhood and has spent the vast majority of his adult life in prison. Until 2018, he was isolated for twenty-hour per day, with almost no human contact. That is a serious punishment that he deserved, and he did serve.

Mr. Creech also continues to live with the knowledge of what he did, the horrible price that he exacted from the victims of his crimes. Attorney Horwitz believes living with the understanding of the consequences of his actions is punishment itself. Mr. Creech's wife,

LeAnn previously stated that he does not deserve death for things that he did in his 20s, things that he knows he shouldn't have done and have haunted him ever since. She believes he has suffered for everything he did, not only because he is in prison but because of what it did to him as a person, what he has had to come to terms with. She stated that Tom looks back and cannot believe he was ever that person, and he struggles to understand how he got to that point.

Mr. Horwitz turned the Commission's attention to the allegation that Thomas Creech is the worst serial killer in Idaho history. He believes this is a myth. He explained that there is no denying Mr. Creech committed many serious crimes, and it is important for the Commission to take his convictions into account, but there are other stories about 28 or 32 or 42 murders that are completely false, and it is also important for the Commission to not base their decision on those myths.

Mr. Horwitz explained that the myths started with Bruce Robinson's desire to line his pockets by distorting his client's case. Bruce Robinson has acquired rights to Thomas Creech's life story, which Horwitz called an extremely unethical maneuver for any attorney. Mr. Robinson's goal was to use the trial to create a spectacle and then sell the story to others, which he made clear in his letter to Vince Bugliosi, the author of "Helter Skelter."

Mr. Creech was subject to truth serum interviews and hypnotization, which is where the stories about 42 murders and satanic motorcycle gangs originated. These interviews came from a doctor who also required rights to Mr. Creech's story, which is extremely unethical of a doctor, as well as an attorney. Interviews involving truth serum, or sodium amytal, have since been ruled unconstitutional.

In court, Mr. Robinson explained that his goal of the trial was to realize the existence of God and Satan, and he tried to call Anton LaVey, founder of the Church of Satan, to testify for Mr. Creech's case. Mr. Horwitz stated that one of Robinson's only investigative steps was to travel to Ohio in search of buried money that did not even exist. He concluded that the origins of these stories are clearly not reliable and should not be taken into consideration. He asked the Commission to limit their consideration to the crimes that Thomas Creech has been convicted of.

Mr. Horwitz reiterated that the judge that sentenced Thomas Creech to death, Judge Newhouse, has since spoken against his execution. Judge Newhouse wrote that an execution at this point would only be an act of vengeance, and no other purpose would be served. Mr. Horwitz added that in most states, Mr. Creech would have been sentenced by a jury of his peers, but in Idaho, Judge Newhouse is the solitary man responsible for his death sentence, and that man now believes the death penalty is no longer necessary in this case. Mr. Horwitz said many people feel there is a role for vengeance to play in the justice system, but we have learned and grown as a society, and now, we give the justice system a higher purpose of rehabilitation and redemption, and that is exactly how Thomas Creech has lived his life in prison.

Mr. Horwitz continued the video of Donna Boe's interview, where she reminded everyone that Thomas Creech is not the person that she read about in the news. Mrs. Boe believes every person deserves the right to repent of their sin. In her interview, LeAnn Creech said Thomas Creech knows what he did wrong, and as much as he wishes he could, he cannot change it. She stated that he can only do his best with what life he has left, and he does whatever he can to be there for others, help them, and make them feel good. Virginia Plageman stated that commuting Tom's sentence from death to life in prison is simply the right thing to do, not because Tom is her brother but because he is a different person today. Michael Plageman added that he believes everyone is a little selfish, except Tom, who does not have a selfish bone in his body. Mr. Boe said it would be disastrous to see Tom's life taken away, and he is going to die soon anyway, so to do it this way is pointless.

Attorney Horwitz asked the Commission to vote for life, against more death, and thanked them.

10:49 a.m. – BREAK

11:12 a.m. – RESUME HEARING

Ada County Prosecutor Presentation

Ada County Deputy Prosecutor Jill Longhurst stated that Thomas Creech is a serial killer. In 1981, she said, Thomas Creech said he would kill again, and two months later, he did. Thomas Creech brutally beat and stomped David Jensen to death. Ms. Longhurst stated that Thomas Creech is the most prolific serial killer in Idaho history.

Ms. Longhurst explained that the biggest lie Thomas Creech ever told was that the brutal beating of David Jensen was self-defense. Mr. Creech wanted to go into isolation, and in order to get what he wanted, he used violence, and it worked. He has always used violence or threats of it to get what he wants.

Thomas Creech has been convicted of murder five times, in three states. Two other states have holds on him for other murders. He has confessed to more than fifty murders in at least five states. To put those numbers in perspective, Ms. Longhurst explained that in the case of Jack the Ripper, five bodies were found. Charles Manson was responsible for the murders of seven people. David Berkowitz, also known as the Son of Sam, committed six murders. Ted Bundy was convicted of seven murders and confessed to thirty. The court has ruled that Thomas Creech used excessive violence in the murder of David Jensen, he was beyond rehabilitation, and he has a propensity to commit murder. Ms. Longhurst explained that today, they will focus on ten people that Thomas Creech murdered, in addition to David Jensen. She stated that there are other victims, but they selected ten particular cases to review for this hearing.

In September of 1974, Thomas Creech met an underaged girl in Fresno, California, who was trying to find a way home to her mother.

Mr. Creech told the girl, Carol Spaulding, that he would take her to her mother in Idaho, but instead, they traveled around the country, hijacked cars, and committed robberies, until they finally ended up in Lewiston, Idaho around Halloween of 1974. Mr. Creech and Ms. Spaulding stayed with her mother for a few days and then began traveling again. While hitchhiking, they were picked up by two men in a Buick, Thomas Arnold and John Bradford.

The four of them drove until Ms. Spaulding asked to stop to use the restroom. They stopped, Mr. Creech got out of the vehicle, and after Ms. Spaulding got out, Mr. Creech pushed her to the ground, shot Thomas Arnold in the face and neck, and shot John Bradford in the temple. Mr. Creech and Ms. Spaulding stole the Buick and drove until they ran out of gas. After that, they hitchhiked and committed armed robberies until they got to Glenns Ferry, where someone recognized them and called police.

After he was apprehended, Ms. Longhurst said, Mr. Creech could not wait to tell everyone about what he did; he said he killed those two guys and needed help. Ms. Longhurst noted that this was well before Mr. Creech hired Attorney Bruce Robinson. Mr. Creech confessed to numerous murders, was ready to spend the rest of his life in prison for them, and was even flown out to help investigators locate the bodies of his victims.

Thomas Creech's confessions began on November 8, 1974, and he retained Mr. Bruce Robinson in July of 1975.

As Idaho State Police received more and more information from Thomas Creech, they contacted the jurisdictions where numerous other murders occurred. The US Supreme Court previously reported that Thomas Creech has participated in twenty-six murders across seven states, and eleven of the victims' bodies have been located. Due to the way that the Idaho statute was written at the time, the death penalty was the only option. Mr. Creech was placed on death row in IDOC custody, and as a result, the other states struggled to extradite him. Ms. Longhurst added that the statute as written was eventually ruled unconstitutional, and Mr. Creech's two death sentences were commuted. After that, in 1979, Mr. Creech was being extradited to other states to be tried for the murders that he committed under their jurisdictions.

Deputy Prosecutor Longhurst explained that Paul Schrader was an automotive mechanic from Detroit, Michigan, who'd decided to move to Tucson, Arizona for his retirement. When he arrived in Tucson, he rented a room in a hotel downtown, and unfortunately, the man staying next door to him was a serial killer. The man was knocking door to door, trying to get people to give him money, as he was in a bad way. Mr. Schrader, on the other hand, was well-off. When Mr. Schrader answered his door, Thomas Creech forced himself into the room and then used a pair of scissors to slash Mr. Schrader's throat and stab him multiple times. Mr. Creech pushed the body off to the side, out of view, and then took off in Mr. Schrader's El Camino.

Ms. Longhurst displayed a photograph of Thomas Creech's signature on a credit card receipt, for a credit card that belonged to Paul Schrader. Investigators knew Mr. Creech was using Mr. Schrader's credit cards, though he was ultimately acquitted of this crime. Afterwards, he told everyone in the Ada County Jail that he did kill Paul Schrader. One of Mr. Creech's autobiographies detailed Mr. Schrader's murder. Mr. Creech wrote that he immediately headed for Portland in Schrader's El Camino.

While incarcerated in Idaho, Thomas Creech confessed that while in the Oregon State Hospital after a suicide attempt, he earned a weekend pass, murdered someone in Sacramento, and then returned to the treatment center in Portland. Ms. Longhurst stated that this was an outlandish, doubtful story, but it turns out that he really did it. In November 1974, California law enforcement was contacted and notified that Mr. Creech confessed to the murder of Vivian Grant Robinson. Mr. Creech provided a diagram, method of murder, and other detailed information about the crime. California law enforcement was not even aware of Mr. Creech's existence until they got the call from Idaho, but they retested fingerprints found at the scene in Mr. Robinson's home and discovered that they did match Mr. Creech. Investigators also found that shortly after Mr. Creech killed Mr. Robinson, he called the treatment center from the victim's home telephone, to let them know he would be back a day late. The state of California had to wait for Idaho and other states to try Mr. Creech for his crimes there, but in September 1980, Mr. Creech was finally convicted of the murder of Vivian Grant Robinson.

In 1974, Thomas Creech got a job at St. Mark's Episcopal Church in Portland. Mr. Creech called his then-girlfriend, Linda, and asked her to come to the church and bring a rifle. Gene Hilby, who Linda lived with at the time, brought his rifle to the church. Mr. Creech came out and retrieved the rifle, went back into the church, came outside again, and told Mr. Hilby that he'd just killed a man and needed help hiding the body then a ride to the bus station.

William Joseph Dean was just a kid. He'd recently gotten married, and he was on his way to Alaska to work with his father. Thomas Creech shot William Joseph Dean in the chest with a high powered rifle at close range. After Mr. Creech and Mr. Hilby hid Mr. Dean's body in the church, they proceeded to the Greyhound bus station to raid Mr. Dean's locker.

William Joseph Dean's body was discovered days later, after staff noticed a foul smell coming from the sexton's quarters. They contacted police, and police contacted Gene Hilby, who admitted that Thomas Creech killed William Joseph Dean, and he helped him move the body. Mr. Hilby also told police that Mr. Creech told him about another murder, in Salem. Oregon authorities could not locate Mr. Creech until they received a phone call from Idaho. Portland investigators arrived in Idaho to talk to Mr. Creech the next day, and at that time, Thomas Creech confessed to the murder of William Joseph Dean, as well as the murder of a grocery store clerk in Salem.

Deputy Prosecutor Longhurst stated that these are not myths. This is reality.

After being convicted of the murder of William Joseph Dean, Thomas Creech wrote to the judge about the horrible conditions that he was facing while incarcerated. He asked for compassion and understanding, and he wrote that his situation was not justice. He was

not concerned about his victims or their families.

Two days after Thomas Creech killed William Joseph Dean, he entered a Circle K in Salem, where he found a grocery store clerk working, alone. Ms. Longhurst explained that the store clerk's father got her a job, as he was the regional manager, and that should have been a safe place for her, especially in broad daylight. Thomas Creech chased Sandra Jane Ramsamooj to the back of the store, shot her in the back, turned her around, shot her through her wrist and into her lungs, and then shot her pointblank in the abdomen, severing her intestines. Mr. Creech stole a whopping \$81.29 from the cash registers. Mr. Creech confessed to this crime on November 9, 1974.

Ms. Longhurst added that Bruce Robinson was not even a figment of Thomas Creech's imagination at this point. She stated that this is not a myth, this is a murder.

Ms. Longhurst explained that the Oregon prosecutor decided another conviction would not serve any justice, as Thomas Creech was already facing multiple life sentences, so the case was dismissed.

Deputy Prosecutor Longhurst stated that Thomas Creech got away with the murder of Sandra Jane Ramsamooj. He has devastated families, left holes in their lives. Now, per his interview with the Parole Hearing Investigator, he will not even admit it. He was sentenced to death because he is a serial killer with a propensity to commit murder.

Gordon Stanton was on his way to Montana, where he intended to help and care for his mother. Thomas Creech contacted Mr. Stanton and asked him for a ride. Mr. Stanton did not know he was letting a serial killer into his car, and he never made it home to his mother. His mother had no idea where he was or how to find him. Just a few years after Gordon Stanton was murdered, his mother passed away. While in jail, Thomas Creech confessed to this murder, and he told investigators where they would find the body. Mr. Stanton's body was found, after Mr. Creech told them exactly where it would be, but because he already had multiple holds on him by 1983, he was never prosecuted for this crime.

Deputy Prosecutor Longhurst stated that Thomas Creech got away with the murder of Gordon Stanton, and that is not a myth.

Rick McKenzie had recently arrived home in Baltimore and took a relative's vehicle without their permission, resulting in a warrant on him and the vehicle. While driving the stolen car, Mr. McKenzie picked up a hitchhiker, that he did not know was a serial killer. Thomas Creech walked Rick McKenzie into a ravine and shot him, so that he could take his vehicle and credit cards.

After Thomas Creech confessed to the murder of Rick McKenzie in November 1974, Idaho law enforcement contacted authorities in Wyoming, who then attempted to locate Mr. McKenzie's body. They made three attempts before they called Ada County back for help. They flew Thomas Creech out to the area, Thomas Creech told them where the body was, and Rick McKenzie's body was found within a day.

Ms. Longhurst stated that Mr. Creech did not kill Mr. McKenzie for some outlaw biker gang; he killed him because he wanted his vehicle and money. Mr. Creech was arrested when someone recognized the vehicle that Mr. McKenzie stole. Mr. Creech was also found in possession of eighty-eight receipts, which indicated he'd been using Mr. McKenzie's credit cards. Mr. Creech was charged for the murder of Mr. McKenzie, he did three days in a California jail, and then, he got away with another murder. At one point, there was a hold for Mr. Creech to be extradited to Wyoming, but it is unclear what ever happened to it. The vehicle was returned to its rightful owner, and the police held onto the credit card receipts.

Daniel Ashton Walker was shot and killed while sleeping in his van at a along Interstate 40. One version of events is that Thomas Creech's then-girlfriend, Carol Spaulding, entered a café for a Coke and a coffee, and when she came out, she told Tom that a man in the store was inappropriate with her. Thomas Creech previously reported that they went on their way, until their vehicle got stuck in the desert. He stated that a truck driver stopped and helped them, but shortly after that, they ran into the man that Carol pointed out at the store, so he decided to rob him. He pulled up behind the victim, pointed his shotgun through his window, and demanded his money. He then shot him with the shotgun three times at pointblank range. Unfortunately, Ms. Longhurst said, Daniel Ashton Walker's family was told that the case went cold, but it was recently reopened, and Thomas Creech was positively identified as the murderer. Ms. Longhurst stated that Thomas Creech committed this murder and confessed to it repeatedly.

Deputy Prosecutor Longhurst added that Thomas Creech has also gotten away with the murder of Daniel Ashton Walker. She stated that San Bernardino County sent them a letter stating that they will not try Thomas Creech for the murder, based on what is going on here in Idaho.

Daniel Ashton Walker's brother submitted a letter of concern, where he wrote that his 21-year-old brother was robbed of his adventurous life. He never got to build his boat and pursue his dream of sailing the world. He never had a chance to travel with his brother, never got to share a cold beer with him. He added that his brother's murder sent their father into an early grave.

Dwayne DiCicco, known by loved ones as Dago, had been in the military as a large equipment operator in Montana, until he disappeared in August 1974. Thomas Creech confessed to killing Dago and explained details of the crime to a room full of law enforcement officers. He stated that he kidnapped Dago, weighed him down, and threw him into a lake in Washington. He drew diagrams of where Mr. DiCicco's body could be found, but authorities were unable to locate him. Mr. DiCicco's mother, desperate to find her son, wrote letters to Thomas Creech, begging him for the diagrams and any other information that could help her find her son.

Dwayne DiCicco's body was never found, and Ms. Longhurst believes Thomas Creech knew his body would never be found when he confessed to this murder. However, Mr. Creech continued to write to Mr. DiCicco's mother, and Mr. DiCicco's mother went as far as putting money on Mr. Creech's books. Ms. Longhurst asked what kind of person kills someone's son and then uses the information to get money out of them. She added that, if we believe what Mr. Creech is claiming now, that he did not kill Dwayne DiCicco, then he took credit for the murder and bragged about it to the victim's own mother.

In 1979, Thomas Creech was transferred into Oregon DOC custody to be adjudicated for his crimes there. In 1980, he was moved to California for the same reason. Deputy Prosecutor Longhurst explained that, also in 1980, a huge riot broke out at the Idaho State Penitentiary. It was so big that it made the news, it lasted for days, authorities had to break into the facility. Thomas Creech was not in Idaho when this occurred, but he was convinced that when he returned, there would be another riot, where he would be killed. Inmates were moving from maximum security into general population at that time. He requested to be transferred to wherever he possibly could. He repeatedly told staff and other inmates that he would be killed in a riot if he stayed there.

IDOC did write to Oregon, expressing concerns that they did not have enough security to hold someone as dangerous as Thomas Creech. Oregon DOC did not want to keep him, stating that he was a violent and vengeful individual who showed no remorse, and they sent him back to Idaho after his adjudication. Mr. Creech was placed in general population, rather than where he felt safe on death row.

In January 1981, Mr. Creech repeatedly wrote to staff that he wanted to be put in isolation. He stated that he was not like the other inmates. He attacked a 20-year-old kid, sliced him in the abdomen, neck, and arm in a desperate attempt to be transferred. Mr. Creech got what he wanted, and he was transferred to Ada County Jail while prosecutors decided whether they wanted to prosecute him for the assault on the other inmate. Although there was substantial evidence, prosecutors decided there was not much that they could do, since Mr. Creech was already serving four life sentences anyway.

Ms. Longhurst stated that Thomas Creech assaulted Terry Downard because he wanted out, and he got what he wanted. Mr. Creech told a lieutenant where to find the weapon that he used, and later, he bluntly told an officer that he did it because Mr. Downard was an asshole and he wanted out of the penitentiary because he feared he'd be killed in the next riot.

After prosecutors decided not to pursue charges, Mr. Creech worried about going back to the penitentiary, and in an effort to stay out, he repeatedly said he would kill again. He stated that if Ohio would not take him, then they should put him in a hospital for the criminally insane. He repeatedly wrote letters to every authority that he could think of, begging them not to move him.

Three months before Thomas Creech murdered David Jensen, he wrote to Sherriff Palmer, "If I have to go back there, I will kill the first person that messes with me." Shortly after he killed David Jensen, he wrote to the Attorney General that he would kill again. He asked for the death penalty, instead of a life sentence, because he wanted to stay in the jail, instead of going back to prison. He wrote that last time, he told them that he would kill again, they didn't listen, and it costed a life.

David Jensen grew up with his father and stepbrother. His father was a biologist for Idaho Fish & Game, and his grandfather was the director of Fish & Game. He had a good life and upbringing, but when his mother passed away, it was a big hit on him, and he started getting into some trouble. As a teenager, he and some friends played a game of Russian roulette. He put the gun to his left nostril, pulled the trigger, and shot himself in the face. He was in severely critical condition; he severed his left optical nerve and was given a craniotomy. After that, he was essentially missing one third of his brain. He was in a coma for a substantial period of time, and he was diagnosed with an organic brain injury. When he finally woke up, he was unable to speak or walk, and he was experiencing grand mal seizures. He suffered a persistent disability to his right side, but eventually, he was able to walk with a cane. He wore a helmet to protect the rest of his brain, struggled with speech, and functioned at the level of a 12 to 14-year-old child, and none of that ever improved.

David Jensen underwent countless surgeries, and in 1977, he had a metal plate put in his skull. David Jensen talked about how difficult it was for him to function in society. He ended up in the state hospital, and he continued to experience seizures, as well as memory loss, vision impairment, a limp, and difficulties using his right arm. Staff would tell each other not to approach Mr. Jensen on his right side, because he will not be able to see you. He could not even hold a job as a dishwasher, and he was just marginally making it in society. He got into some more trouble, and he was sent on a 90-day Rider.

Thomas Creech knew that in order to get his way, he needed to do more harm than what he did to Terry Downard. Mr. Creech persuaded the warden to allow him an opportunity to work as the custodian of maximum security. Unlike others in maximum security who were only let out of their cells for an hour every day, Thomas Creech now had access to every inmate, all day long.

Deputy Prosecutor Longhurst explained that David Jensen was the weakest, most vulnerable person in that facility. She added that although he was put in maximum security, David Jensen was never classified. Staff described him as non-aggressive.

Ms. Longhurst reiterated that Thomas Creech wrote that he would do the same things until they listened to him, and that is exactly what he did. Mr. Creech initially volunteered to plead guilty, but instead, in 1982, he took the stand and claimed self-defense. The state never had a chance to present evidence, but this was absolutely not self-defense, and the story about Mr. Jensen being the aggressor was based solely on Mr. Creech's own testimony.

Deputy Prosecutor Longhurst reviewed different accounts of the murder of David Jensen. When David Jensen was given a chance to get out of his cell that day, Thomas Creech initiated a physical altercation and punched him. Mr. Jensen told Mr. Creech that he did not want any trouble, and he went back to his cell. Mr. Creech followed and attacked Mr. Jensen.

In assessing whether this was self-defense, Mr. Longhurst said, it should be noted that Mr. Creech not only began attacking Mr. Jensen from his back, but Mr. Creech retrieved his radio from his own cell, brought it to Mr. Jensen's cell, and turned it up to drown out the noise of the beating.

With a sock holding three batteries, Thomas Creech beat David Jensen so brutally that the batteries broke through the sock. After that, Mr. Creech began stomping on Mr. Jensen. Mr. Creech went back to his cell, cleaned himself up, and then returned to Mr. Jensen's cell to stomp him some more. Ms. Longhurst stated that Mr. Creech did not have one mark on him, and Mr. Jensen was laying, bleeding on the ground. Mr. Creech proceeded to tell everyone who would listen, to tell the officers that Jensen came after him. The other residents were forced to listen to Mr. Creech beating that kid to death, and they could not do anything about it.

Detectives interviewed one resident who discussed the radio, used to mask the sound of what Thomas Creech was doing to David Jensen. When he heard Mr. Creech going in again, he remembered thinking to himself, "God damn, he is beating that boy's brains out." Mr. Creech started out of Mr. Jensen's cell again, he said, but then, he heard the kid let out another groan, and Mr. Creech heard him, turned around, and started stomping him again.

Another young inmate reported that Jensen would never pick a fight. He also talked about Thomas Creech plugging the radio in and turning the volume up. Deputy Prosecutor Longhurst stated that that was premeditated murder, and Thomas Creech still, to this day, lies about it and claims he was attacked.

The other inmates reported that every time David Jensen gurgled and groaned, Creech went back into his cell, at least four or five times, to continue beating a kid that had been down from the start.

Ms. Longhurst explained that another inmate, who was housed in protective custody, was in a romantic relationship with Thomas Creech. Ms. Miller stated that when the warden let Tom become custodian, she was scared, because she knew Tom was up to something. Ms. Miller thought Mr. Creech was plotting to kill himself, but then, he started talking about killing a kid. Ms. Miller did not feel she could say anything because she was afraid, but she discussed it with him through writing, days before Mr. Creech attacked Mr. Jensen. Mr. Creech wrote that he would cut himself to make it look like self-defense, and that is exactly what he did.

Ms. Longhurst stated that Thomas Creech wanted isolation, and he did whatever he thought he had to do to get there.

Deputy Prosecutor Longhurst showed photographs of David Jensen's grievous injuries. She noted that Thomas Creech stomped the victim's metal plate in, causing a large depression in his head, and he continued to stomp him over and over again. Mr. Jensen suffered contusions, bruising on his brain. Ms. Longhurst stated that she has only seen one other contusion of the brain in her entire career.

Self-defense, Ms. Longhurst said, is part of the lie that Thomas Creech has been trying to tell them. Ms. Longhurst asked how Thomas Creech can claim he is remorseful if he cannot accept any wrongdoing. Mr. Creech did not care about the guards who were forced to come in and handle what he'd done. Mr. Creech stomped on Mr. Jensen's head with so much force that he crushed his skull. Mr. Jensen suffered bruising on the back of his neck, indicating that he was curling up and turning away from the beating.

Ms. Longhurst showed photographs of David Jensen's cell. There was a razor attached to a toothbrush and a large pool of blood on the floor, as well as blood covering the entire wall. Ms. Longhurst stated that this is what self-defense means for Thomas Creech. Mr. Jensen never had a chance of getting away or defending himself. Mr. Creech attacked him from behind. She stated that this is the scene that Mr. Creech left for the COs to clean up; that is how much he really cares about them.

Thomas Creech later stated that David Jensen was not much of a fighter to begin with, because he "had a fucked up arm and leg." Mr. Creech detailed "kicking him in the neck, all over." He told detectives that he continued to beat Mr. Jensen for 15 to 30 minutes. When asked if he thought Mr. Jensen was dead, Mr. Creech said no, "because he was blowing bubbles and shit." Mr. Creech was still more concerned about being transferred. Mr. Jensen was worth more than a ticket to isolation for him.

Ms. Longhurst added that in Thomas Creech's cell, officers discovered a sock that matched the one used with the batteries, and a toothbrush identical to the one attached to a razor blade, pictured in David Jensen's cell.

Deputy Prosecutor Longhurst concluded that Thomas Creech is a serial killer. He murdered David Jensen brutally and intentionally. Ms. Longhurst asked the Commission to not commute Thomas Creech's sentence, to let the death penalty stand.

12:58 p.m. – BREAK

2:32 p.m. – RESUME HEARING

2:33 p.m. – EXECUTIVE SESSION

2:39 p.m. – RESUME HEARING

Commissioner Questions

The Commission told Mr. Creech that they have reviewed a lot of material for this hearing, including police reports, criminal history, social history, psychological reports, institutional disciplinary reports, victim statements, letters of support, and more. The Commission commented that Mr. Creech's criminal history is ugly and concerning, and Mr. Creech agreed. Mr. Creech stated that he

is sorry for everything he's done, and he wishes he could go back and change it. He stated that he is responsible for what he did, he takes the blame, and no one made him do any of it. He added that that was a different person than who he is today.

The Commission asked subject how many murders he has actually committed, and he said he does not know. He stated that he got so mixed up with lying and telling law enforcement that he did things he didn't do. He explained that he started killing people in 1974, and he committed all of his murders in just a matter of months. He confirmed that there are five known victims for sure, for which he has been convicted of.

The Commission reviewed a DOR for violence, from 10/23/2022. The Commission read Mr. Creech's explanation of that situation, and a letter from the other resident involved. The Commission reviewed video footage of the incident. The Commission asked Mr. Creech what he has to say about it. Mr. Creech replied that they were playing Pinocle, and Azad Abdullah became irate because he thought the other two residents were shorting him and giving Mr. Creech better hands. Mr. Creech stated that Mr. Abdullah started coming back and forth, using aggressive language, and then, he threw the cards on the table.

Mr. Creech explained that at that point, he got up and asked Mr. Abdullah what he was so mad about. He believes he swung on Mr. Abdullah first, and then, Mr. Abdullah kicked him. He stated that he hit Abdullah with a shower shoe, Abdullah kicked him in the genitals and then the chest, and then, he fell down and hit his head on the wall, which "kind of knocked me out." Mr. Creech stated that he did not know it at the time, but he was suffering from an aortic abdominal aneurysm, which is why he was in such bad shape.

Mr. Creech answered that he'd already made the decision to never fight again, so it was especially disappointing when he and Abdullah, who is a friend of his, got into it. He stated that his daughter, Shelly, asked him to change his ways, because she's been waiting for him to come home since she was five years old. He never wanted to be like the other people there, the gang members and violent people who threaten the officers; he did not want to be who he was ever again.

Mr. Creech previously wrote that "I regret killing David Jensen more than anything I've done in my life." The Commission asked Mr. Creech if he does not regret the others, and he said no. He stated that he regrets everything. He explained that when he was served with his death warrant, he was taken to the death house, and that experience slapped him in the face with everything he has ever done wrong. He thought back to when he stole candy from the corner store as a child. He stated that it was an old, family owned country store, and they did not have much money. He realized even that hurt people, like the employees of the store. He said that made him want to change who he was.

The Commission read that Mr. Creech has great remorse for the crimes that he has committed. The Commission told Mr. Creech that they hear that word, "remorse" often, and it has almost lost its meaning. The Commission asked him what remorse means to him. Mr. Creech answered that remorse is heartfelt suffering for what you've done, for the people that you've hurt; you genuinely regret doing those things. He stated that he has thought about what he did to David Jensen more than anything, because they were friendly before he killed him. He said it is not that he does not care about his other victims, but he and David Jensen shared food, coffee, and talks about their daughters. He used to tell Mr. Jensen not to waste his life in prison, like he did, by getting wrapped up in all of the madness there.

The Commission asked subject about his physical health. He replied that he still has the aneurysm, and he had stents put on each side of it to keep him from bleeding. He stated that he suffers from arthritis, an umbilical hernia, degenerative bone disease, and bulging discs. He answered that his mental health is not as good as it was. He does take a psychiatric medication, for his depression and bipolar disorder. He stated that when he went to the death house and came back, he left a piece of himself in there. He said they would take him down there to practice executing him, and it showed him how precious life really is.

Mr. Creech stated that no one has the right to take anyone's life. He stated that his old self probably did deserve the death penalty, and maybe he still does, but he is asking for mercy today.

The Commission noted that subject murdered David Jensen to avoid being transferred. The Commission asked him if he sees a commutation changing his current status. He does not believe it would change much. He stated that the staff has asked him what he would prefer. He explained that at the main yard, he would probably be a target for many people, as a trophy. He is 73 years old, his health is bad, and he does not want to be put in the position where something bad could happen. He reiterated that he will never fight again, so if anything did happen, he would just let it happen. He added that he does think about how much it would hurt his wife, though. He believes he could stay in J Block, or he could move to medium security in G Block, where he could get a job. He stated that he is happy staying where he is now.

The Commission asked Mr. Creech why he believes they should recommend life without parole, instead of leaving the death penalty in place. Mr. Creech replied that he has something to offer to younger inmates, especially kids who are thinking of dropping out of gangs and turning their lives around. He stated that he sat and talked to one youngster just three days before he went back to gen pop. When he got back, he said, the youngster returned to the same gang that broke his leg just months prior, and then, they beat him to death.

The Commission asked Mr. Creech what he would say to those who believe he has shown no grace or mercy to his victims, so it should not be shown to him. Mr. Creech stated that the person he was did not deserve mercy, but that is not who he is anymore, and he has a lot to offer the world. He has built close relationships with staff and officers, and he tried to remind the other residents that the officers are not to blame for them being there, that they need to put that blame on themselves.

The Commission asked Mr. Creech how he has changed. He replied that he is not as impulsive as he used to be. He stated that

impulsivity was one of his main problems when he was younger. He said every time something would happen, he would think, "why me?" but today, he thinks, "why not me?"

The Commission asked Mr. Creech what he would like to say to the Jensen family. Mr. Creech stated that he would get on his hands and knees and pray for forgiveness. He stated that he talked to Mr. Jensen's girlfriend last night, as she came to the prison to visit him, for closure. He said he told her the same thing. He stated that if he could bring David back and take his place, he would.

The Commission read that during his interview with the Parole Hearing Investigator, in November 2023, Mr. Creech reported that his girlfriend, Ms. White, was brutally attacked by eleven people, and he killed nine of them. Mr. Creech responded that he did go after them but does not remember how many he killed. The Commission replied that that is not what he said in November 2023. Mr. Creech stated that he thinks he did get nine of them. He explained that there were two left; one of them lives in Oregon, and the other lives in Utah. He added that they wrote to him, to beg for his forgiveness, many years ago. He answered that that was probably around 1996. He confirmed that he demanded their addresses after they wrote to him. He stated that he did not mean it as a threat; he just asked for their addresses because they wrote him from a PO Box. The Commission asked him if he would have killed them in 1996, if he could have found them, and he said no.

The Commission asked Mr. Creech if they can settle on at least ten people, that he has killed. He said no. He stated that one of the men included in the prosecutor's presentation, he has never even heard of, and he did not kill Dago. The Commission replied that he is serving time for five murder convictions, and he just admitted to nine more, so he has killed at least fourteen people. The Commission asked him if fourteen victims is accurate then, and he said no.

The Commission reviewed a PSI, where subject stated, multiple times, that he wanted to die for his crimes, and he planned to advise the court of that when he was sentenced. The Commission asked him if he did advise the court of that, and he said yes. He stated that that is why he pled guilty, because he wanted to die.

The Commission asked Mr. Creech when he began to change his mind about wanting to die. Mr. Creech replied that he changed his mind when his daughter visited him and asked him to fight, not die. The Commission noted that he then chose to live, and now, he is in a fight for his life, and he agreed. The Commission asked him if he believes his victims would have chosen to live, and he said he thinks everyone would choose to live. He stated that that is why he feels so bad. He said his victims could have grown up to be anything, anyone.

Regarding the DOR from 2022, Mr. Creech answered that he did get angry at Mr. Abdullah, and he thinks he hit Mr. Abdullah with a shower shoe, as that is what he has been told. The Commission asked Mr. Creech how he is a positive influence and mentor if he gets angry just because someone threw some cards. Mr. Creech explained that Mr. Abdullah was threatening his family, verbally assaulting the three of them. He confirmed that he hit Mr. Abdullah after the verbal altercation began. The Commission noted that the other two men at that table were setting a better example than him in that situation, and he agreed. He added that after he fell, Mr. Abdullah was helping him and comforting him, and they made up as soon as he got back from the hospital.

Mr. Creech confirmed that he usually prefers being alone. The Commission told Mr. Creech that he may be moved to a larger population if his sentence is commuted, and they asked him how he would handle that. He replied that he wrote a poem, "I Will Fight No More Forever," and that is what he has chosen to live by.

The Commission expressed concern about the DOR from 2022.

The Commission told Mr. Creech that he was extremely fortunate to have this hearing at all. The Commission told him that this is his last chance to speak and asked him if he had anything to add. Mr. Creech thanked them for allowing him to come before them and say what he had to say. He is sorry something that he did brought all of us here today, and made the Commissioners the ones that must decide whether he lives or dies. He stated that he hates to put anyone in such a position, and he believes God Almighty is the only one that should be able to do that. He apologized to everyone in attendance, for bringing them here today.

Mr. Creech recited a poem that he wrote about going back and talking to his younger self, "Old Man and the Boy." "...and if I could go back and talk to the little boy that I was... I would tell him no matter what road you travel, sooner or later, you must pay your dues."

Federal Defenders Closing Statement

Chris Sanchez, attorney with the Federal Defenders of Idaho, stated that it is an honor to be next to Thomas Creech today, asking for their mercy. He added that Executive Director Ashley Dowell told both parties that this would not be a trial or litigation but instead, a hearing for mercy. Without a chance for mercy, he said, the world would be full of blood and cruelty.

Attorney reiterated that Thomas Creech is nothing like the man that he was in 1981. As we heard earlier, Mr. Sanchez said, his wife, LeAnn Creech said, "He is just a very caring, kind-hearted person. I just think he's actually the person that he was meant to be, to begin with. He explained that as a child, Tom had so much potential; Tom was clever, talented at music and writing. Unfortunately, there was violence in his home, he was kicked down a flight of stairs, there was the shooting on Christmas. All of this trauma came together to create the Tom Creech of 1981, which is who the prosecutor focused on today.

Mr. Sanchez stated that Thomas Creech was able to get back on track and begin to fulfill some of that little boy's potential. He is a kindhearted musician and poet, and a mentor and friend to many. He is so much closer to that potential today. He is no longer who

he was in 1981, or even 1991. There is no excuse for the harm that Mr. Creech caused, but he started on a path of redemption in the 1990s. Mr. Sanchez believes the best proof of this is the many amazing relationships that he has. He shows genuine interest in the wellbeing of others. He really listens because he really cares, which was evident when an officer's wife passed away, and Tom wrote a poem to express his condolences. Mr. Sanchez stated that there is a reason Director Reinke knew Tom was the right person to meet with Donna and Roger Boe, and today, Tom cares deeply about them and what is going on in their lives.

Thomas Creech has been a positive role model to other inmates. Regarding the altercation with Mr. Abdullah, Mr. Sanchez explained that Mr. Abdullah has a pattern of instigating fights, and he no longer lives on that tier because of it. Mr. Sanchez asked the Commission to refer to the prison's policies. Mr. Creech has been disciplined for the altercation with Abdullah, but he has not been taken away from other residents, because he does not pose a threat to them.

Mr. Sanchez noted the substantial support from IDOC staff. It is well-documented that Mr. Creech has been a model inmate for decades. Mr. Creech also has strong support in extremely unlikely areas, like the judge who sentenced him to death and one of the original prosecutors of this case. They do not believe Mr. Creech should be executed; they believe it would serve absolutely no purpose at this point.

Mr. Sanchez added that the prosecution were incorrect about a few facts of this case, and every fact that they presented was information from before 1981. He stated that the investigators of this case only knew Thomas Creech in the 70s and 80s. He believes the prosecution's request for execution is based on vengeance. He admitted that Mr. Creech's actions were appalling in 1981, but he is concerned about consideration of the myths. He stated that in the 3,000 pages of evidence submitted by the prosecutor, there is not one mention of Mr. Daniel Ashton Walker. He added that the Schrader case resulted in a solid jury acquittal, and that is not a basis to execute a man.

Attorney Sanchez clarified that they are not claiming self-defense in David Jensen's case, and they do believe Mr. Creech should be sentenced to life without the possibility of parole. Mr. Sanchez stated that the judge ruled that Creech did not instigate a fight with David Jensen, but that does not mean it was self-defense.

That day in 1981 was a terrible and unimaginable loss for David Jensen's family. Mr. Sanchez stressed that they are not making light of that, but the information coming from the prosecution has nothing to do with who Mr. Creech is now. Mr. Creech believes the only path toward forgiveness is seeking redemption and changing your ways. If executed, Mr. Creech would be stopped on his path toward redemption, before he can fully reconcile himself with God. If the Commission grants him mercy, then they will also grant mercy to his family, friends, fellow inmates, and IDOC staff. Mr. Sanchez concluded with a short video clip of Mr. Creech playing guitar and singing "Amazing Grace."

3:32 p.m. – BREAK

3:44 p.m. – RESUME HEARING

Ada County Prosecutor Closing Statement

Deputy Prosecutor Longhurst explained that they know Judge Robert Newhouse well, they like and respect him, and they now understand he does not support the death penalty for Thomas Creech, due to the passage of time. Apparently, Ms. Longhurst said, Judge Newhouse forgot about some of the worst details of this case, and she wishes she could forget about them, too. Ms. Longhurst asked if Mr. Creech's lawyers reminded Judge Newhouse of the violent incident in 2022, or the fact that Mr. Creech pled guilty for the murder of David Jensen but then took the stand to claim self-defense.

Ms. Longhurst reiterated that the judge ruled that Thomas Creech exhibited excessive violence, was beyond rehabilitation, kills almost on a whim with little regard of the consequences, and has a propensity for murder. The judge wrote that Thomas Creech's plea and death sentence will stand, that a sentence of death must be followed by an execution.

Prosecutor Jim Harris also supported the death penalty for Thomas Creech. On January 11, 2024, Ms. Longhurst said, they reviewed the same statements from Jim Harris, and they did not pick up on the implication that he no longer supports the death penalty. Ms. Longhurst added that she has been the prosecutor of Ada County for much longer than Mr. Harris was, and she is here in support of the death penalty today.

Deputy Prosecutor Longhurst explained that every time Thomas Creech chose to kill a person, he knew he could get caught and sentenced to life, or even death. He knew he was causing a vicious ripple of pain throughout his victim's families, as well as his own family. He has been convicted of murder five times. He has faced the death penalty before. This was no surprise to him. The only surprise is that it has taken this long to get to this point, but none of us can feel guilty when Thomas Creech is the one who brought us here.

Ms. Longhurst noted that some IDOC staff members reported that Mr. Creech was friendly to them. Ms. Longhurst stated that Mr. Creech may have been friendly to many people, but he still murdered an innocent kid. In 1974, Carol Spaulding told law enforcement that Tom was always nice to everybody that he met; she said he was even nice the guys he killed. Ms. Longhurst stated that Mr. Creech has always been a nice, charming sociopath.

Mr. Creech has professed Christianity for years; Mr. Creech played guitar and wrote letters, songs, and poetry in the 70s, too. Mr. Creech stabbed and injured a handful of other inmates, and he brutally murdered David Jensen. None of those positive traits kept

him from violence. He has still repeatedly chosen violence to get what he wants, such as being isolated from other inmates in 1981. He specifically threatened to kill if he did not get what he wanted in 1981. He wrote that he had nothing to lose, that nothing could be done to him because he was already serving four life sentences. He followed through with his threat and got what he wanted.

After he stomped David Jensen to death, Thomas Creech was perfectly nice and polite to the guards. Ms. Longhurst stated that Thomas Creech is able to be Dr. Jekyll and Mr. Hyde at the same time. She stated that Thomas Creech was not sentenced to death because he is friendly but because he is a psychopath.

Thomas Creech has been diagnosed with average intelligence and psychopathic traits, such as no remorse, no empathy, and being charming and likable. In 1974, Lieutenant Taylor reported that Thomas Creech was charming, likable, and personable, but without a doubt, one of the deadliest men that he has ever witnessed in his career.

Deputy Prosecutor Longhurst noted that Mr. Creech told PHI Maddox that he is comfortable on death row; Mr. Creech does not want the death sentence but wants to stay in maximum security. Ms. Longhurst stated that we have been in this situation before. Mr. Creech's two death sentences were commuted in 1973, he was put somewhere that he did not want to be, and he killed David Jensen because of it.

Mr. Creech claims he is remorseful, but just months ago, Mr. Creech told Mr. Maddox that he killed David Jensen in self-defense. Mr. Creech blamed Mr. Jensen for being murdered. When asked if he believes he deserves the death penalty, Mr. Creech said he did not know, because Jensen attacked him. During his interview with Mr. Maddox, Mr. Creech explained that the socks had their names written on them, and the sock that he used as a weapon was labeled "Garza." Ms. Longhurst displayed a photograph of the matching sock that was found in Mr. Creech's cell. The name on the sock is "Creech."

Ms. Longhurst stated that Thomas Creech has no remorse. She added that he does not seem to have much for the other murders that he committed, either. She reiterated that he killed David Jensen simply because he did not want a roommate, and he got what he wanted. She asked the Commission not to give him what he wants again, and not to let him get away with murder again.

Victim Statements

1. David Jensen's younger sister – Stated that she was the second child born, just under two years after David. David was her best friend, they were inseparable, he was the peanut butter to her jelly. They spent days knee deep in the creek, catching rainbow trout. David was happiest with a rifle or a fighting pole in his hands. He had an accident with a pistol, and he was not supposed to live, let alone walk again. He was left partially paralyzed with a plate implanted in his skull. He walked with a cane and had no balance; she could knock him over with a feather. He was a mentally and physically disable person who fell through the cracks of the system. He spent nine months staying with her, prior to his incarceration, and despite his obstacles, he had a productive future that was stolen from him. His daughter, grandson, father, mother, brother, sisters, nieces, and nephews were robbed of precious family events, holidays, births, and natural deaths. There has always been a "what if" lingering in their minds, about what he could have become, what could have been had, what love, laughter, and wisdom this generation missed out on.

Thomas Creech has lived his life on the path of his choosing. David has no such choice; his family did not have a choice. They have waited more than forty years for this, and whatever the Commission's ruling is today, justice will finally be served. David's story has finally been told. She thanked Jill and the others, for putting the pieces of this case together. She thanked the Commission for finally letting her, a victim, have her say. She stated that she is not here for vengeance, but for justice.

2. David Jensen's niece – Stated that the absence of Uncle David's beautiful soul, that she never had the privilege to meet, is a constant, aching void that has echoed through every gathering for the last four decades. It is an indescribable pain that lingers like a dark shadow. The absence of the wisdom and guidance that he could have provided is an injustice that echoes through every generation. Her burning desire for justice is not driven by vengeance, but to honor her uncle and his memory, and to ensure his life is not defined by the circumstances of his death. She sees David when she looks into her youngest child's eyes; they have the same smile and nose. David lives on through all of them.

Thomas Creech might have taken him away, but she is here to assert that Thomas Creech will not take away David's existence. Like Thomas Creech has haunted their family, she is here to haunt Mr. Creech. Mr. Creech has played guitar written poetry, visited with family, as they have continued to grieve and fight, year after year. Mr. Creech may have forgotten, but they have not. Every generation will continue to fight, until they finally see justice served by the state of Idaho.

3. David Jensen's niece (statement read by Victim Coordinator, Brittney Thorndyke) – Stated that Uncle David was murdered just four months before her birth, and she has carried the trauma ever since. David's murder and the effects of it have haunted and bled throughout their family, her childhood. Her cousin never got to know her father. They have been impacted by David's murder for forty years. Four generations, so far, have been burdened by the trauma and pain, and knowing no accountability or justice has ever followed through, they wonder if that day will ever come. Every time there is movement, their wounds are reopened. They have navigated the pain that Creech has created for forty-two years. They have helped each other heal from the fear, heartache, pain, despair, depression, strain, stress, dysfunction, addiction, anger, confusion, sadness, and hopelessness. They continue to grow, but they are very clearly still haunted by Thomas Creech, especially every time their wounds are reopened against in court.

Earlier generations knew David and hoped for a somewhat food life for him, until he was murdered, and they have never been able to lay this long and painful memory to rest. With every family gathering, they maneuver these pains, burdens, and truths about his murder. Many of these moments become sad and complicated, especially when sharing David's memory with the younger ones. They ask who Uncle David is, where he is, how he died, what murder is. As they grow into adolescence, the system, the community, themselves, they come back with even more difficult questions. They want to know why things happened, how they

happened, why the system failed, why David's murderer is still alive forty-two years after being sentenced to death, why they have continued to carry this trauma for so long. It just continues to unfold. They wish it would just finally be done.

The state of Idaho and Department of Corrections failed her uncle, instead of helping him find the care that he needed. He never should have been put in a maximum security prison, with the most dangerous murderers. He never should have been left alone with a murderer. He deserved so much better. She just wants to lay this horrific situation to rest.

4. David's daughter – Stated that David Dale Jensen was a handsome, kind, respectful, fun-loving young man. He adored his family and friends, especially his father and grandfather. He enjoyed hiking, fishing, hunting. He loved to feed his family by hunting and was very proud to do so. He was a gentle soul; he could easily get wildlife to eat from his hands. She has had to piece together everything that she knows about him. She was only four years old when he was murdered. Her father never saw her first day of kindergarten, her high school graduation, her wedding, the births of her children.

David was known for playing pranks on his mother and sisters. He was a typical boy who was always smiling in every photo, always willing to lend a helping hand. They are a family of good people—leaders, community board members, blue collar workers, military veterans, contributing members of society who are carrying a tragedy that they have been waiting, for forty-two years, for justice to be served. She has accomplished a lot, but she has always had to explain why she does not have a father. How unfair that Thomas Creech is still here, and her father is not. Her adult and juvenile children are still affected by this crime, and not knowing their grandfather.

Thomas Creech is worried about never writing another poem, worried his last meal won't be prepared to his liking, worried he won't see the sun or rain or snow again. Thomas Creech might miss the chance to interact with people that he cares about. He is worried about his future, that is based entirely on his own actions, that he chose. He wants them to ignore the consequences of his actions that have not only impacted her but multiple generations.

Sociopaths are charming and will mimic emotions and behaviors to gain the trust of people like Kathy Niecko and even his wife, LeAnn. Sociopaths usually come across as likable and pleasant, like Ted Bundy, Jeffrey Dahmer, and Richard Ramirez. The state allowed an inmate to hook up with a guard's mother, and she seems to be the only one thinking that is crazy. This behavior compromises the safety and security of the facility, and all of those who are employed and housed at IDOC. Going to bat for Thomas Creech causes a liability that Idaho cannot afford, and if you are willing to vouch for a man who has taken maybe forty, maybe thirty, or even ten lives, then she questions your sanity and where her tax dollars are going. If he kills again, then their blood will be on his supporters' hands. Thomas Creech clearly stated that if they put him back, then he will kill again, and there is still no doubt about it.

She stated that her family name ended with her father. She told Mr. Creech to stop making excuses for murdering her father and have some respect for him. Accept the justice that David and his family deserve. It is the result of Mr. Creech's own actions and decisions. She thanked the Commission for allowing them to speak on behalf of David Jensen, their family, and the other victims' families.

EXECUTIVE SESSION: 4:35 p.m.

RESUME HEARING: 5:10 p.m.

The Commission thanked everyone who participated in this hearing. The Commission elected to continue this hearing to January 29, 2024, at 8:30 a.m.

Commissioner Parker motioned to adjourn. Commissioner Kirkham seconded. All voted aye, and this hearing adjourned at 5:10 p.m.

Decision

Continue

Comment

Commission elected to continue this hearing on 1/29/2024.

FEDERAL DEFENDER SERVICES OF IDAHO

NICOLE OWENS
FEDERAL DEFENDER

MARK ACKLEY
FIRST ASSISTANT

DEBORAH A. CZUBA
CAPITAL HABEAS UNIT

STEVEN RICHERT
POCATELLO TRIAL UNIT

January 22, 2024

Ashley Dowell
Executive Director
Idaho Commission of Pardons and Parole
3056 W. Elder Street
Boise, ID 83705

Sent via email

Re: Postponing commutation decision

Dear Director Dowell,

I'm writing this letter to respectfully request that the Commission defer a decision on Thomas Creech's commutation petition for at least two months so that further investigation can be done into two significant assertions that were made for the first time by the prosecutor, Jill Longhurst, at last Friday's hearing.

First, Ms. Longhurst claimed during her presentation, as we understood her, that the prosecutor's office recently inspected the murder-weapon sock from the David Jensen offense and discovered that it had Mr. Creech's name written on it. The sock at issue has been the subject of substantial interest and discussion for the forty-three years that have elapsed since the crime took place. Many assertions have been made about the sock over that time by prosecutors, law enforcement officials, defense attorneys, inmates, and so forth. The question of where the sock originated is a matter that has been actively debated for decades, since one account has the sock coming from Mr. Creech and another account has it coming from different prisoners. Obviously, the answer to the question is of great importance, since it speaks to whether Mr. Creech planned the murder in advance or whether other inmates set the scheme in motion. During all of those years, so far as we can tell, no one has ever maintained that the sock had Mr. Creech's name written on it. The idea that the prosecutor's office would only now look closely enough at the sock to reach such a conclusion is surprising. It raises concerns about the legitimacy of the prosecutor's statement that call for examination by my office, and perhaps by the Commission as well.

Second, Ms. Longhurst told the Commission on Friday that just last week the authorities in San Bernardino, California solved the 1974 murder of Daniel Walker and that Mr. Creech is guilty of it. Ms. Longhurst also said Mr. Creech was always a suspect in the case. However, Mr. Walker's name doesn't appear in any of the

nearly 3,000 pages of documents that the prosecutor's office provided to the Commission in connection with the commutation hearing. It's also not in the report prepared by the Commission's investigators or in Mr. Creech's presentence investigation report. Indeed, we've electronically searched the hundreds of thousands of pages of documents in our office's Creech file, which we have kept up to date during twenty-plus years of representation, and Mr. Walker's name is nowhere to be found. It is troubling that Ms. Longhurst is asking the Commission to hold against Mr. Creech a murder that her office mentioned for the first time in forty-three years of prosecuting this case in a few moments of in-person commentary at Friday's hearing, with no charges being filed, no paperwork being provided, and no evidence at all apart from a PowerPoint slide.

We know that the Commission shares our interest in making a decision in this life-and-death matter based on the fullest, most accurate information possible. That will not occur if the Commission's ruling is influenced, as it inevitably would be, by serious new accusations revealed by the prosecution during a one-day proceeding with no chance for others to conduct their own due diligence. Such an approach would also raise difficult constitutional worries about the integrity of the process that might require litigation.

For those reasons, we are respectfully asking the Commission to delay its decision for at least two months so that we can undertake our own inquiries into these new revelations by the prosecution. Thank you as always for your time and consideration.

Respectfully,



Jonah Horwitz
Assistant Federal Defender

Cc'd by email:

Karin Magnelli
Idaho Attorney General's Office

Jill Longhurst
Ada County Prosecuting Attorney's Office

L. LaMont Anderson
Idaho Attorney General's Office



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
RAÚL R. LABRADOR

January 22, 2024

Ashley Dowell
Executive Director
Idaho Commissions of Pardons & Parole
30566 W. Elder St.
Boise, ID 83705

RE: Creech's Letter Requesting Postponing Commutation

Dear Director Dowell,

This morning I received the letter from Creech's attorney, Jonah Horwitz, requesting that the Commission defer a decision on Creech's Commutation Petition for "at least two months so that further investigation can be done into two significant assertions" that were made by Ada County Deputy Prosecutor Jill Longhurst at the commutation hearing on January 19, 2024.

To be absolutely clear, on behalf of the State of Idaho, the Idaho Attorney General's Office, the Ada County Prosecutor's Office, and the many victims in this case, both from David Jensen's murder and the numerous other family members of people Creech murdered, we oppose any kind of deferment of the Commission's decision.

Creech and his attorneys have had more than 40 years to complete any kind of "investigation" associated with this case, and yet, predicably, they are now requesting even more time. You may recall that Creech, through his attorneys, twice requested that the commutation hearing be continued, despite the decades his attorneys have had to gather whatever evidence they deemed important for their presentation. Those requests were properly denied. Moreover, exactly what do his attorneys hope to accomplish through additional investigation? There is no provision of which we are aware that permits Creech to have a "do over" or second presentation when he and his attorneys realized that the strategy and delivery in his first presentation was ineffective and factually inaccurate, especially since the hearing is now closed. Additionally, while I have not conducted any kind of extensive research, Mr. Horwitz fails to provide any authority that permits the Commission to defer a decision after all parties have completed their presentations to the Commission. And even if such authority exists, this is nothing more than a blatant attempt to further delay Creech's execution, particularly considering the exceptionally strong case the state presented at the hearing for the Commission to deny commutation.

January 22, 2024

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Further, as all parties were repeatedly advised, there was no requirement that the state's presentation at the hearing be provided to Creech and his attorneys prior to the hearing. Likewise, there was no requirement that Creech provide the state with his presentation prior to the hearing. Both parties were clearly told that they could present any information that was relevant to the issues at hand associated with a commutation hearing, and that is exactly what both parties did. As you repeatedly advised the parties, and as Commissioner Matthews reminded all of us at the commutation hearing on Friday, a commutation is not about guilt or innocence, but "mercy," and that the hearing was to be "non-adversarial." However, based upon the information in Creech's Commutation Petition, it was clear he and his attorneys were contending he acted in "self-defense" when he brutally murdered David, which the state clearly had a right to refute at the hearing, including information regarding the sock with Creech's name on it. Additionally, Creech's statements to the Commission's investigator, Mr. Maddox, that provided yet another lie for his unconscionable violence upon David Jensen, is the only reason that the sock was mentioned by the state. Had Mr. Horwitz made appropriate efforts to prevent his client from further lying in Creech's interview with Mr. Maddox, the state would likely not have felt compelled to show a picture of the sock to debunk Creech's most recent lie to Mr. Maddox and the Commission. Regardless, as Mr. Horwitz concedes, the sock "has been the subject of substantial interest and discussion for the [last] forty-three years," and Creech and his team of attorneys and investigators obviously could have investigated the sock prior to the hearing. The fact that they chose to spend their time and resources elsewhere should not constitute a reason for the Commission to delay announcement of their decision.

While Mr. Horwitz chastises the state for "only now" looking at the sock, he fails to acknowledge that he and his team of attorneys and investigators had the same length of time to examine the sock. We strongly resent the inference regarding the "legitimacy of the prosecutor's statement" regarding the sock. If Mr. Horwitz is going to make accusations against those who represented the state at the commutation hearing, he should provide more than wild accusations, particularly when his team had the same amount of time to examine the sock as the state. We are not going to sit back and have our reputations tarnished by these patently false allegations.

Finally, the state is tired of Mr. Horwitz's threats about ongoing litigation and whether there are "constitutional worries about the integrity of the process." The state has successfully litigated Creech's case for decades, which has involved numerous frivolous attacks challenging his conviction and death sentence. We are certainly not afraid of defending the "integrity of the process" associated with Creech's commutation hearing. Frankly, considering the nature of Mr. Horwitz's threat, the state sincerely hopes the Commission will give greater pause before granting commutation hearings in the future for other death-sentenced murderers because that decision itself appears to spawn additional litigation, as was demonstrated in Gerald Pizzuto's case and is now being threatened in this case. If the Commission and the people of the great State of Idaho want to know why these cases take so long to complete, just look at the history of Creech's case, where Mr. Horwitz's letter should be Exhibit 1.

As each of the victims stated at the hearing last Friday, this case has languished long enough. These extraordinary people have waited decades to have Creech's case completed and, like the people of the State of Idaho, expect the Commission to make a timely decision without any further delay. Simply stated, merely because the state followed the rules and procedures outlined prior to the hearing does not remotely constitute a basis for further delay.

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On behalf of the people of the State of Idaho, especially the victims of the many brutal murders Creech has committed, we strenuously oppose any postponement of the Commission's decision.

Sincerely,

A handwritten signature in black ink, appearing to read 'LaMont Anderson', with a long horizontal flourish extending to the right.

LaMont Anderson
Deputy Attorney General
Chief, Capital Litigation Unit

LLA/cam

cc: Jonah Horowitz
Karin Magnelli
Jill Longhurst

FEDERAL DEFENDER SERVICES OF IDAHO

NICOLE OWENS
FEDERAL DEFENDER

MARK ACKLEY
FIRST ASSISTANT

DEBORAH A. CZUBA
CAPITAL HABEAS UNIT

STEVEN RICHERT
POCATELLO TRIAL UNIT

January 25, 2024

Ashley Dowell
Executive Director
Idaho Commission of Pardons and Parole
3056 W. Elder Street
Boise, ID 83705

Sent via email

Re: Updating request to delay commutation decision

Dear Director Dowell,

I'd like to update the Commission on the latest developments related to our request that the decision on Mr. Creech's commutation petition be deferred for at least two months. I believe these most recent events further underscore the need for more investigative work to be conducted, so that the Commission is able to vote on the basis of a full and accurate set of facts.

First, one of the two reasons we requested a postponement was so that we could undertake further inquiries into the claim Ms. Longhurst made at last Friday's commutation hearing to the effect that the murder-weapon sock from the David Jensen offense had Mr. Creech's name written on it. Today, my office filed a motion in Ada County District Court seeking access to various images of the sock so that we can assess the legitimacy of the photograph presented to the Commission by Ms. Longhurst. The motion and some of the associated supporting material are appended to this letter as Attachment A. We plan to schedule a hearing on the motion at the earliest date allowed by the rules, which is two weeks from now. Under the circumstances, we think it would be appropriate for the Commission to refrain from issuing a decision until—at a minimum—the court determines what evidence if any we will be able to review.

Second, the other reason we previously requested a delay was because Ms. Longhurst told the Commission on Friday that just last week the authorities in San Bernardino, California solved the 1974 murder of Daniel Walker and that Mr. Creech is guilty of it. At the time, Ms. Longhurst indicated that San Bernardino authorities had "closed" the Walker case, i.e., they conclusively attributed the victim's death to Mr. Creech. Since I sent my previous letter, the San Bernardino Sheriff issued a press release on the matter. The press release is appended to this letter as Attachment B. In the release, the sheriff says nothing about the case

being closed, let alone that there is any real evidence against Mr. Creech. Instead, the sheriff relies entirely on unspecified “intimate details” supposedly provided by Mr. Creech a long time ago that are for unexplained reasons just being revealed now, decades later. The press release by the sheriff, which as far we know represents the only official statement by any California agency on the matter, does not come remotely close to justifying Ms. Longhurst’s characterization at the hearing. Thus, we see the Walker case as calling for more information before the Commission is in a position to determine how it factors into Mr. Creech’s commutation proceeding. We have sent out a first round of public record requests relating to the Walker case and do not yet have responses to them. As new facts emerge, we will plan to update the Commission. Nevertheless, it is clear that no true and comprehensive picture of the situation can be drawn now or by the time the Commission reconvenes next week.

Third, Ms. Longhurst argued to the Commission at Friday’s hearing that Mr. Creech should be held responsible for the 1973 murder of Paul Schrader in Arizona even though Mr. Creech was *acquitted* by a jury of that offense. Ms. Longhurst informed the Commission that her office had been unable to obtain a transcript of Mr. Creech’s Arizona trial. I’m not sure what efforts if any the prosecutors undertook to search for the transcript but my own office was informed by the relevant clerk’s office in short order that the necessary materials still exist and that the transcript can be prepared. We agree with the apparent implication of Ms. Longhurst comment at the hearing that it would be helpful for the Commission to review the trial transcript before it reaches a conclusion about whether a unanimous jury verdict can be discounted at the prosecutor’s urging. Of course, we’re happy to give the Commission a copy of the transcript as soon as we have one, and that is yet another reason why it makes sense to slightly delay a decision.

Fourth, I wanted to ask you whether the Commission has any recordings and/or transcripts of the commutation hearing that it would willing to make available. It looked to me like a Commission employee was typing steadily during the hearing, though I don’t know if she was preparing a transcript or just taking notes or performing some other task. I’m also aware that the Commission prohibited others from recording the hearing. However, if the Commission itself created such a recording, we would be more than willing to discuss measures to ensure that our access does not pose any risks to the integrity of the proceeding or to address whatever other concerns the Commission might have. Our desire to review a transcript or recording stems from the fact that certain statements by Ms. Longhurst have raised questions about the truthfulness of the prosecution’s presentation. We feel that a full review of a transcript or recording would allow us and the Commission to fully answer those questions.

Fifth, I wanted to let you know that our office uploaded to our website the full PowerPoint presentation that we delivered on Friday morning. You can access the

PowerPoint at

<https://id.fid.org/sites/id/files/Videos/Tom%20Creech%20Clemency%20Presentation.mp4>. The video clip that we couldn't play on Friday due to technical issues is at 2:32–2:44. In the clip, former elected Ada County Prosecuting Attorney Jim Harris, who originally sought the death penalty against Mr. Creech, states: “I don't believe quite frankly that Tom Creech, at least based on the murder that he committed in the penitentiary, should be executed—and I don't say that easily.”

Sixth and finally, I'd like to take this opportunity to briefly respond to one of the points made in Deputy Attorney General Anderson's January 22, 2024 letter to the Commission. Mr. Anderson wrote there that my office should have conducted the investigation described above at an earlier juncture, rather than waiting until after the commutation hearing. However, we didn't anticipate that Ms. Longhurst would use a clemency hearing as a forum for offering novel characterizations of critical evidence, announcing that a murder from fifty years ago had been solved days earlier and attributed to my client, or encouraging the Commission to disregard the unanimous finding of a jury in the 1970s. It is Ms. Longhurst's unusual and unexpected approach to the hearing that occasioned the need for further investigation now.

Based on the concerns that I expressed in my earlier letter and in this one, we would respectfully reiterate our request that the Commission defer a final decision on Mr. Creech's commutation petition for at least two months. Thank you as always for your consideration.

Sincerely,



Jonah Horwitz
Assistant Federal Defender

Cc'd by email:

Karin Magnelli
Idaho Attorney General's Office

Jill Longhurst
Ada County Prosecuting Attorney's Office

L. LaMont Anderson
Idaho Attorney General's Office

ATTACHMENT A

original digital photograph from which it came, any other photographs of the sock in the State's possession, and all metadata associated with the above, so that counsel can analyze the evidence with the assistance of an expert.

DATED this 25th day of January 2024.

/s/ Jonah J. Horwitz
Jonah J. Horwitz
Attorney for Thomas Eugene Creech

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January 2024, I served the foregoing document on all interested parties, who are set forth below, via iCourt file and serve and/or where necessary email:

Jill Longhurst
Ada County Prosecutor's Office
200 W. Front St., Rm. 3191
Boise, ID 83702
jilll@adacounty.id.gov

/s/ Julie Hill
Julie Hill

any other photographs of the sock in the State's possession, and all metadata associated with the above, so that counsel can analyze the evidence with the assistance of an expert.

I. Background

On January 19, 2024, a hearing was held on Mr. Creech's commutation petition before the Idaho Commission of Pardons and Parole. *See* Ex. 1 at 1. At the hearing, the case against clemency was presented by Jill Longhurst, an attorney from the Ada County Prosecuting Attorney's Office (ACPA). *See id.* For approximately an hour and forty-five minutes that morning, Ms. Longhurst delivered remarks to the Commission accompanied by a PowerPoint presentation. *See id.* at 2. One of the slides displayed by Ms. Longhurst to the Commission contained a photograph of a sock on which Mr. Creech's name was written quite clearly and legibly. *See id.* Ms. Longhurst told the Commission that the sock was the one that was filled with batteries and then used in the murder of the victim. *See id.*

On January 22, 2024, undersigned counsel sent an email to Ms. Longhurst requesting, in part, that she make available the PowerPoint slide with the sock photograph so that Mr. Creech's team could have it reviewed by an expert. *See id.* As of yet, Ms. Longhurst has not responded to the request. *See id.*

II. Argument

When a state creates an avenue for clemency, "the Due Process Clause requires fair procedures for its vindication." *Swarthout v. Cooke*, 562 U.S. 216, 220 (2011). That includes the right for an inmate "to contest the evidence against" him.

Id. As described above, the sock was turned into evidence against Mr. Creech at the commutation hearing by Ms. Longhurst, who presented it as a reason for the Commission to regard the crime as more aggravated, and thus as a reason to deny clemency. It follows that Mr. Creech has a due process right to contest that evidence by determining whether Ms. Longhurst's representations about the sock were true.

There is good cause to suspect they weren't. The sock at issue has been the subject of substantial interest and discussion for the forty-three years that have elapsed since the crime took place. *See Ex. 1 at 3.* Many assertions have been made about the sock over that time by prosecutors, law enforcement officials, defense attorneys, inmates, and so forth. *See id.* The question of where the sock originated is a matter that has been actively litigated for decades, since one account has the sock coming from Mr. Creech and another account has it coming from different prisoners. *See id.* It is a question that was especially critical in the long legal battle over whether Mr. Creech was entitled to withdraw his guilty plea on the ground, in part, that the incident began with an unprovoked attack initiated by the victim and was not orchestrated ahead of time by Mr. Creech. *See, e.g., State v. Creech*, 710 P.2d 502, 502–07 (Idaho 1985).

Obviously, the real story of the sock's original ownership is of great importance, since it speaks to whether Mr. Creech planned the murder in advance or whether other inmates set the scheme in motion. During all of those years, so far as undersigned counsel can tell, no one has ever maintained that the sock had Mr.

Creech's name written on it. *See* Ex. 1 at 3. Rather, until now the State's strategy had been to try to tie the sock to Mr. Creech not by contending that his name was on it, but instead by averring that investigators had found a single unpaired sock matching the murder weapon in his cell. *See, e.g.,* Ex. 2 at 7. That theory was never particularly compelling—inmates all have standard-issue socks, and it is hardly unusual for anyone in the world to have one missing. It would have been far more incriminating for the State to be able to point to Mr. Creech's name on the sock. If prosecutors could have done so over the last forty-three years, they surely would have. There have been two full sentencings in this case and two full post-conviction evidentiary hearings, giving the State ample opportunity and reason to present the alleged sock evidence much earlier. *See Creech v. Richardson*, 59 F.4th 372, 376–80 (9th Cir. 2023) (reciting the procedural history). Since 1981, the ACPA has handled every trial-court proceeding in this case. The idea that the prosecutor's office would only now look closely enough at the sock to reach such a conclusion is surprising. It raises concerns about the legitimacy of the prosecutor's statement that call for further examination.

From undersigned counsel's review, it appears that photographs of the sock were admitted as Exhibits 7 and 8 at the change-of-plea hearing that took place in Mr. Creech's criminal case on August 28, 1981. *See* Exs. 3–5. To determine whether the ACPA altered a photograph or otherwise misrepresented facts to the Commission, undersigned counsel believes it is necessary for him to have an expert review Exhibits 7 and 8 and render an opinion as to whether it is possible that the

sock bears Mr. Creech's name. It is also necessary for undersigned counsel to have access to the PowerPoint slide of the sock used by Ms. Longhurst, the photograph from which it came, all other photographs of the sock, and any metadata associated with the above to further ascertain whether the photograph was doctored.

III. Conclusion

For the reasons stated, Defendant Thomas Eugene Creech respectfully asks for an order allowing undersigned counsel access to Exhibits 7 and 8 from the change-of-plea hearing in the criminal case that took place on August 28, 1981, as well as any other photographs of the sock used in the murder and any related evidence in the Court's possession. Mr. Creech also respectfully asks for an order compelling the State to make available to undersigned counsel the PowerPoint slide in question, the original digital photograph from which it came, any other photographs of the sock in the State's possession, and all metadata associated with the above, so that counsel can analyze the evidence with the assistance of an expert.

DATED this 25th day of January 2024.

/s/ Jonah J. Horwitz
Jonah J. Horwitz
Attorney for Thomas Eugene Creech

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January 2024, I served the foregoing document on all interested parties, who are set forth below, via iCourt file and serve and/or where necessary email:

Jill Longhurst
Ada County Prosecutor's Office
200 W. Front St., Rm. 3191
Boise, ID 83702
jill@adacounty.id.gov

/s/ Julie Hill

Julie Hill

State v. Creech, Case No. CR-FE-0000-10252
Submitted in Support of Memorandum in Support of Motion to Access
Evidence

EXHIBIT 1

(Declaration of Jonah J. Horwitz, dated Jan. 25, 2024)

DECLARATION OF JONAH J. HORWITZ

I, Jonah J. Horwitz, declare as follows:

1. I am an attorney in the Capital Habeas Unit for the Federal Defender Services of Idaho.
2. I have been counsel for Mr. Creech in his federal habeas litigation since February 2016.
3. Currently, I am lead counsel for Mr. Creech in his federal habeas proceedings.
4. I am also lead counsel for Mr. Creech in his commutation proceedings before the Idaho Commission of Pardons and Parole.
5. On January 19, 2024, a hearing was held on Mr. Creech's commutation petition before the Parole Commission.
6. The statements in this declaration about the hearing are true and accurate to the best of my recollection.
7. Six other members of my office watched at least some of the hearing, either at the Commission or remotely.
8. The statements in this declaration about the hearing are consistent with the observations of my colleagues.
9. At the hearing, the case against clemency was presented by Jill Longhurst, a lawyer from the Ada County Prosecuting Attorney's Office (ACPA).

10. For approximately an hour and forty-five minutes that morning, Ms. Longhurst delivered remarks to the Commission accompanied by a PowerPoint presentation.
11. One of the slides displayed by Ms. Longhurst to the Commission contained a photograph of a sock on which Mr. Creech's name was written quite clearly and legibly.
12. Ms. Longhurst told the Commission that the sock was the one that was filled with batteries and then used in the murder of the victim.
13. The Commission prohibited any recordings being made of the commutation hearing.
14. On January 22, 2024, I sent an email to Ms. Longhurst requesting, in part, that she make available the PowerPoint slide with the sock photograph so that I could have it reviewed by an expert.
15. As of the filing of the instant motion for access, I have not received a response from Ms. Longhurst.
16. The ACPA has previously indicated to my office that it considers itself counsel for any state agency in possession of evidence related to our cases and that we should speak to the ACPA about any issues concerning such evidence and not contact the agencies directly.
17. As lead counsel for Mr. Creech in his federal habeas proceedings, I am generally familiar with the voluminous file in his case.

18. The sock at issue has been the subject of substantial interest and discussion for the forty-three years that have elapsed since the crime took place.
19. Many assertions have been made about the sock over that time by prosecutors, law enforcement officials, defense attorneys, inmates, and so forth.
20. The question of where the sock originated is a matter that has been actively litigated for decades, since one account has the sock coming from Mr. Creech and another account has it coming from different prisoners.
21. The ACPA has handled every trial-court proceeding in this case from its inception in 1981 to the present.
22. To my knowledge, until Ms. Longhurst's statement to the Parole Commission on January 19, no one associated with the case had ever maintained that the sock used in the murder had Mr. Creech's name written on it.
23. As of today, the Parole Commission has not yet made a decision on Mr. Creech's commutation petition.
24. To the best of my knowledge, the court documents attached to the motion for access, filed on today's date, are all true and correct copies of the original submissions.

25. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 25th day of January 2024 at Boise, Idaho.

/s/ Jonah J. Horwitz
Jonah J. Horwitz

State v. Creech, Case No. CR-FE-0000-10252
Submitted in Support of Memorandum in Support of Motion to Access Evidence

EXHIBIT 2

(Police Report)

PART I - OFFICIAL INFORMATION

Official Version - That the said defendant, THOMAS EUGENE CREECH, on or about the 13th day of May, 1981, in the County of Ada, State of Idaho, while the said defendant, THOMAS EUGENE CREECH, was, under a sentence for Murder in the First Degree and/or while the said THOMAS EUGENE CREECH was incarcerated in a penal institution, to-wit: the Idaho State Correctional Institution, did commit murder upon an inmate of the said penal institution, to-wit: one David Dale Jensen, by wilfully, unlawfully, deliberately and with malice aforethought, killing and murdering the said David Dale Jensen, a human being, by hitting the said David Dale Jensen in the head with a blunt object and kicking the said David Dale Jensen in the head and neck with his feet, thereby mortally wounding the said David Dale Jensen from which he sickened and died in the County of Ada, State of Idaho, on the 13th day of May, 1981.

Police Report - "At approx 1450 hours on 5/13/81 I received a radio call that directed me to the Idaho State Correctional Institution on Pleasant Valley Rd reference a stabbing.

When I arrived at ISCI I met with Fitzgerald who gave me the following account of the incident. ISCI inmate Thomas Eugene Creech #14984 and ISCI inmate David Dale Jensen #17552 had their cell doors open and were walking the tier together. No other inmates had access to the tier at the time. At approx 1520 hours Dougal went to B tier to distribute mail and noticed Creech standing near his cell #8 holding his side. Dougal told Creech to cell up and Creech shook his head no and walked towards Dougal. When Creech got approx half way up the tier to Dougal he (Dougal) could see blood on Creech's face and shirt. Dougal called for assistance and Sgt Fitzgerald responded. Fitzgerald could see Creech had blood on him and ordered Creech to move to the wall, Creech moved to the wall near his cell and sat down. Creech was holding his side and Fitzgerald asked Creech what had happened and Creech replied "He cut me and I got him good, sir you had better check on him."

Fitzgerald told Creech not to move and went to Jensens cell #5 and found Jensen laying on his back with the top of his head touching the wall and his feet toward the cell door. Jensen was covered with blood and had blood coming from his nose and mouth. Jensen was strangling on his own blood and was unconscience. Fitzgerald requested assistance and Jensen was removed from the tier and transported to St. Alphonsus Hospital.

Police Report (continued)

After Jensen was removed from the tier Fitzgerald back to Jensens cell and found a green prison tooth brush with a razor blade attached. The weapon was found under the toilet to Jensens left side.

Det Spec Dan Douthit responded to ISCI to do the crime scene, take photos and do interviews. Evidence was collected by Douthit.

At the time of the incident two other inmates were locked in their cells which were located between Jensens cell and Creech's cell. Keith Brian George #17514 was in cell #7 and Charles Edwin Canaday #16576 was in cell #6, both George and Canaday were interviewed by Douthit.

Joel Vore, the prison EMT, stated that Creech talked to him about the incident. Douthit requested that all involved prison personal write complete statements and submit to the Sheriff's Office.

At approx 2030 hours on 5/13/81 the corner called ACSO and advised that victim Jensen died in surgery at 1856 hours. See detective supplements and prison reports for additional details."

(R/O - Woodcook, 2221, ACSO)

"This officer was dispatched to St. Alphonsus Hospital to await an injured inmate from ISCI for security purposes.

Inmate David Jenson arrived by prison ambulance clad in white overhalls which were pulled to the waist and tied by the sleeves. Inmate Jenson was bleeding from the mouth and nose, was unconscious and was suffering from an obvious head injury. Jenson's neck on both sides was red and purple as if he had been strangled or choked in some manner. The skull above the eye appeared to be depressed. Jenson's activity seemed to be limited to involuntary muscle spasms.

This officer learned that inmate's Creech and Jenson were in the exercise area of Unite #7 (maximum) security house when the incident occurred. A correctional officer at St. Alphonsus who accompanied Jenson advised that Creech and Jenson were the only inmates out and a blunt instrument was believed to be the weapon that caused the injury.

Jenson was critical at 1640 hrs. and was removed from the Emergency dept. to be prepared for surgical examination by Dr. Havlina."

(R/O - Clough, 2211, ACSO)

Police Report (continued)

"R/O had a prior conversation with the suspect Thomas Creech approximately two months ago, R/O is uncertain of the date and the time. This conversation took place in the Ada County Jail in the privacy of the visiting room when Creech was brought to the jail from the penitentiary for the stabbing of an inmate that had just taken place. R/O has a slight rapport with Creech. R/O was a jailer approximately six or seven years ago when Creech was brought to the jail for various charges, which he is at the penitentiary for at this time.

In talking with Creech, he told R/O that he had stabbed the individual at the penitentiary which was the reason why he was in the penitentiary, and that he did it because he did not like the other inmates out at the penitentiary and he wanted the personnel at the penitentiary to transfer him to another institution out of this state. He told R/O that if he was sent back to the Idaho State Penitentiary, he would do the same thing again and he would continue to do it until they either transferred him or did something else with him. He stated he did not like the inmate population because they were 'chickenshit' and always trying to cause trouble. He stated that he had too much time to do, which R/O believes is a life sentence, and he did not want to stay there with those types of inmates.

On May 13, 1981 at approximately 1700 hours R/O arrived at St. Alphonsus Hospital Emergency Room. This was in reference to the homicide that occurred on this same date. R/O was sent there to take a dying declaration and to gather any kind of evidence I could from the victim. Upon R/O's arrival, the victim was in having head X-rays and the victim was unconscious and unable to speak. R/O talked to an EMT by the name of Compos and a correctional officer by the name of Evans. Both individuals told R/O that the victim was unconscious during the transport to St. Alphonsus Hospital. They stated that they had removed his overalls in the hospital and that they were in the ambulance, which was parked in front of the Emergency Room entrance. R/O received the overalls from Evans. They were covered in blood. R/O turned these over to Sgt Roberts and they were placed in the lab to dry out. R/O was told that there was a blood stained white T-shirt which was taken off the victim. R/O obtained the T-shirt from a security guard at St. Alphonsus Hospital by the name of Harland Hemsley. This was at 1800 hours.

R/O had a conversation with Lt. Mahoney at the penitentiary and he told me that Sgt. Fitzgerald had cut and torn the T-shirt off of the victim at the crime scene at the penitentiary, but Evans and Compos had brought it to the hospital. The bloody T-shirt was also turned over to Sgt Roberts and placed in the same lab room to dry and later be booked.

Police Report (continued)

As stated earlier in this report in reference to the conversation with Creech that took place about two months ago, R/O reported the facts that Creech related to me to Sgt Townley, Sgt. Roberts, Lt. Carr and Sheriff E. C. Palmer."
(R/O - Pfeiffer, 2150, ACSO)

"On 5/13/81 at approximately 1600 hours R/O was contacted by Lt. Carr and advised that there had been a stabbing at the penitentiary involving Thomas Creech and an inmate named Jensen. He advised that I should respond to that location.

R/O arrived at ISCI at approximately 1630 hours and met with Lt. Mahoney, who escorted R/O down to 7 house. He advised he knew very little about the incident himself. Once at 7 house he showed R/O Cell #5, where victim Jensen had been housed and which was the location of the altercation. R/O observed a great deal of blood on the back wall of Cell 5. There was blood smeared all over the floor and some had been tracked in and out of the cell by the medical technicians. Lt. Mahoney advised R/O at that time that suspect Creech had been patched up and brought back to death row, which is connected with B Tier, and was not hurt badly, although victim Jensen was in bad condition and was going to have to be transported to St. Alphonsus Emergency Room.

Photographs were taken of the cell, along with Creech's cell. In Creech's cell a small amount of blood was found in the back portion of the room and a small amount on the stand next to the entranceway. R/O, along with Lt. Mahoney, collected a toothbrush with a razor blade attached to the handle and a white sock with five D cell batteries in it. There was a small amount of blood on the sock.

After collecting the evidence, R/O met with Sgt Woodcook who had been dispatched to take the general report. After speaking with Sgt Woodcook, R/O had the guards bring up suspect Creech and place him in the corridor where R/O, Chief Security Officer Larry Wright and Lt. Mahoney also remained. R/O gave suspect Creech his Miranda warnings in written form and he advised he would rather talk to Sheriff Palmer, although he advised me he would talk off the record. He was still wearing the jail clothing he had worn during the assault and there was a large amount of blood on the shoes and some on the jeans that he was wearing. These were collected for evidence also. Creech advised that he was merely defending himself because victim Jensen had come at him with a weapon. He did not elaborate on the incident at that point. It was feeding time in 7 House and there was too much noise to conduct an interview. It was then decided that we would take suspect to Ada County Sheriff's Office for further questioning."

Police Report (continued)

R/O was advised at that time by Lt. Mahoney that he had received a call and learned that it did not look too good for Jensen and he might expire. At that point R/O contacted Lt. Carr and advised he should send a detective over to St. Alphonsus Hospital in order to get a statement from Jensen if possible. R/O also advised Lt. Carr that we would be bringing suspect Creech to Ada County Sheriff's Office for questioning.

After a brief discussion with suspect Creech, he was taken to a solitary confinement cell and at that point R/O asked the guards to bring up inmate Canaday from Cell #6, which is next to victim's cell. Inmate Canaday advised that Creech was standing in front of his cell just prior to the assault. He advised that victim Jensen lunged out of his cell with something in his hand. He grabbed suspect Creech and swung at him. Canaday advised when Jensen had swung at Creech that blood immediately came to suspect Creech's face, from an apparent cut. Canaday could not describe the type of weapon that was used. Canaday advised that Creech then lunged into Jensen and he heard scuffling going on in Jensen's cell. He could hear thumps coming from the cell, indicating a fight. He did not hear any words being exchanged between the suspect and victim. Canaday described the incident as self defense on Creech's part. R/O asked inmate Canaday if he would take a polygraph in reference to the statement that he just made and he advised that he would. Canaday was then taken back to his cell after a taped interview was conducted.

After all necessary photographs of the cells were taken, the cells were secured by Lt. Mahoney and he was advised that further crime scene investigation would be conducted the following day. He advised that no one would have access to the cells and they would be secured until the following day and other inmates would not be allowed out of their cells until we were finished with the crime scene.

Suspect Creech was then transported by Sgt. Woodcock to Ada County Sheriff's Office. R/O followed Sgt. Woodcock in my vehicle. Once at the sheriff's office, R/O met with Sgt. Roberts and advised him what we knew of the incident at that point and that we were going to attempt to talk to suspect Creech to get a statement from him. In talking briefly with suspect Creech, he advised that he wished to talk with Sheriff Palmer. He was advised that Sheriff Palmer was out of town so he then requested to speak with Captain Taylor. R/O attempted to get a hold of Captain Taylor but found that he would be busy until approximately 2130 hours and the time then was approximately 1930 hours. Sgt. Roberts and R/O agreed that we would attempt to get a statement.

Sgt Roberts advised suspect Creech of his Miranda rights, which he signed and waived. This was witnessed by Sgt. Roberts. We asked Creech to tell us about the incident.

Police Report (continued) - He advised that it had started several days before when victim Jensen started "fucking" with him. Creech advised that he was the janitor on that tier and that victim Jensen deliberately spilled syrup on his clean floor. They had words over this incident but no blows were exchanged. Creech advised that Jensen then threw trash onto the tier floor. Again, Creech felt that Jensen was "screwing" with him and deliberately antagonizing him. Creech advised that on the day of the assault he was standing near Bud Ball's cell, which is Cell #2, when Jensen approached him with a weapon. The weapon consisted of a sock filled with batteries. Jensen took a swing at Creech but missed and Creech stated he then punched Jensen in the eye and took the sock away from him. Jensen then returned to his cell. Creech followed him and threw the sock filled with batteries into Jensen's cell. Creech advised he then stood by inmate Canaday's cell, keeping an eye on the front gate to make sure that inmate Jensen did not go to the guards and squeal. He advised that while he stood there talking to Canaday, Jensen came out of his cell with a weapon in his hand, which Creech described as a toothbrush with a razor blade attached, and took a swing at Creech. Creech advised he does not remember if he was hit or not at that point. Creech stated that he then lunged at Jensen and hit him with his fist. He advised they scuffled into Jensen's cell, where he saw the weapon that was used earlier, the sock filled with batteries, laying on the bunk. He reached over and picked up the weapon and the first time that he hit Jensen with it the blow landed right in the center of Jensen's forehead and drew blood. Creech advised that he kept hitting Jensen with this five or six times until Jensen went to the floor. The sock broke upon and the batteries scattered. Creech then started kicking Jensen with his foot. Creech advised that he could not remember how many times he kicked him but he did kick him several times. Creech advised that Jensen kept trying to get up.

R/O asked suspect Creech at that point what his intentions were and asked him if he intended to kill Jensen then. Creech advised that he probably did intend to kill Jensen. Creech felt that whenever somebody came after you with a knife in the penitentiary it was ? of the law of the yard to kill the other person. Creech advised that after Jensen was out, he returned to his cell to clean up and found that he had been cut a few times. Creech advised that the guard then came to the front gate and noticed the blood on him and entered the tier and found Jensen (see transcript of statement for a more detailed description of the incident.)

Creech did not care to stay at the Sheriff's office and requested to go back to the penitentiary. Sgt. Roberts and R/O transported Creech back to the penitentiary, arriving approximately 2100 hours. After turning Creech back over to the guard, they returned him to Cellhouse 7. R/O and Sgt. Roberts were advised by penitentiary personnel that Jensen

Police Report (continued) - had died. This was the first information that we had received on the death of Jensen.

From the penitentiary, we responded to St. Alphonsus Hospital to view the victim. We found that the victim had died at 6:56 p.m. that date. In checking over the victim, we found several lacerations to the head area. There was a tremendous amount of bruising around the neck of the victim. His eye was swollen shut and his lip was cut. The lacerations on the head were V shaped. R/O, after viewing the cell, felt that perhaps his head had been struck against the corner of the bunk, making that type of laceration. After seeing the victim, R/O and Sgt. Roberts returned to the station and the evidence that was collected was placed in the narcotics safe to be processed later.

On 5/14/81 at approximately 0900 hours R/O arrived at the office and met with Lt. Carr and Sheriff Palmer. Sheriff Palmer advised that he wanted to go out to ISCI. R/O had Det. Bryant go to the autopsy of the victim, which was going to start at 10:00 a.m. that date. R/O contacted the state lab and asked them to meet us at ISCI in order to do a crime scene investigation and take blood samples from the cell. At approximately 1040 hours Sheriff Palmer and R/O arrived at ISCI and met with Richard Craven and Ann Bradley from the state lab. We were escorted down to 7 House, at which point R/O showed Sheriff Palmer the crime scene. R/O showed him the corner of the bunk where I felt the victim's head had struck several times, which did not correlate with the story that Creech was telling us. After viewing the crime scene, Sheriff Palmer asked to speak with suspect Creech. Creech was taken out of death row and brought up to the interview room in the corridor of 7 House. Sheriff Palmer talked to suspect Creech alone first, after advising him of his rights. Sheriff Palmer later came out of the room and asked for a tape recorder. The tape recorder was supplied and Sheriff Palmer, R/O and suspect Creech returned to the room and an interview was started. Because of the amount of noise that was going on in 7 House, it was impractical to conduct an interview. The tape was stopped and sheriff wished to take suspect Creech down to the sheriff's office for further questioning. Prior to our departure, R/O along with Lt. Carr, went in and searched suspect Creech's belongings. We were looking for a matching sock to the one that was used to carry the batteries, since we could not find one in the victim's cell. We came up with three white socks, two matching, one odd. The odd one looked, to this officer, to be the matching sock to the one that was used to carry the batteries. The state lab personnel were briefed thoroughly and were conducting their crime scene investigation collecting blood samples from the cell.

R/O and Sheriff Palmer took suspect Creech to Ada County Sheriff's Office, where we went to Sheriff Palmer's office.

Police Report (continued) - Once in Sheriff Palmer's office, the tape was started over. Suspect Creech was again advised of his rights and asked if he had waived those rights, which he indicated he did. Suspect Creech gave approximately the same story he had given this officer the night before. After telling this version, R/O questioned him about the wounds he had received, about the weapon reference the sock with the batteries, where it came from, and showed suspect Creech that I was not satisfied with his story. At that point Sheriff Palmer advised Creech that he felt that there was a contract out on victim Jensen and it was Sheriff Palmer's experience with suspect Creech that he liked to carry out contracts. The suspect hesitated about talking and asked that the tape be shut off. The tape was shut off while suspect Creech told Sheriff Palmer and R/O a version of a possible 'hit' by victim Jensen on another inmate named Shannon, who suspect Creech was fond of. Suspect Creech advised that he was approached by Bud Balla who advised that Creech's friend Shannon had developed a snitch jacket a couple of years prior by inmate Segelson, in which he had turned some information that had helped in the capture of Segelson when he escaped from the county jail. He was also pegged as a snitch by an inmate by the name of Isaacs when Isaacs was removed from the Farm Dorm for some apparent wrong doings which were related to the guards by Shannon. Balla advised Creech that Jensen had been hired by those inmates to kill Shannon. Creech advised that he had a very hard time believing this since Jensen seemed to be such a nobody. He advised that he had problems walking and his one arm was rather spastic and he had a hard time believing that Jensen could even defend himself. On one particular occasion Shannon was contacted by Creech during exercises and asked to go by and look at Jensen to see if he knew him. Shannon came back saying that he did not know him. Creech went on to say that it was Balla's plan at that point for Creech to get into a fight with Jensen and to go ahead and kill him. This would protect Shannon and Balla agreed to testify against Creech in exchange for a deal with the courts to let him out of jail. Balla's idea was to pay Creech \$150.00 plus supply him with everything he needed until Balla could help Creech escape from jail once Balla was released. Creech advised that he found out later that Balla was also talking to inmate Jensen and egging Jensen on to fight Creech. Balla would tell Jensen that Creech would not fight back.

On 5/13/81 at approximately 1430 hours, which is the time that the guards change, the plan described was put into effect in which inmate Jensen was let out of his cell. Jensen was supplied with a weapon consisting of a sock with five D cell batteries inside of it, which had been given to Balla by Creech. Creech advised that he had put it together at first and turned it over to Balla. Balla did not like the way it looked so he rearranged the batteries and then later gave it to Jensen. He egged Jensen on to fight with Creech. This occurred near Balla's cell. Jensen swung at Creech and Creech reponded by punching Jensen a couple of times in the face. He thought

Police Report (continued) - he had hit him in the eye and on the lip. Jensen then returned to his cell and then went down to take a shower. Creech went to Balla. Creech did not realize that the hit was supposed to have taken place then so Balla suggested that they give him another weapon. Creech went to his room and got the toothbrush and a razor and some wire and took it back to Balla, who put the weapon together. When Jensen came out of the shower Balla stopped him and gave him the weapon. Creech was standing by Canaday's cell when Jensen came down and was supposed to use the weapon on Creech. That is when Creech started hitting Jensen with the sock and batteries, which he had wrapped in his hand with a towel. He said he dropped the towel and started hitting Jensen. He hit Jensen in the forehead first and drew blood. Creech kept hitting Jensen until the batteries broke out of the sock and when Jensen was on the floor Creech started kicking him. Creech said he kicked Jensen several times, knocking his head against the corner of the bunk, which caused the V shaped lacerations to the head. When Creech felt that he had done Jensen in he left the cell and went back to his own and was going to clean up a little bit. Coming out of his cell, he headed for Balla's cell, when a guard came to the front gate. He advised he turned his back to the guard so the guard could not see the blood on him and waved the guard off. At that time apparently the guard had to do something else and left. Creech went to Balla's cell and while they were discussing the incident, they could hear Jensen groaning in his cell. Balla said, "He's not dead," and advised Creech he should go back. Creech advised he hurt him really bad and that he was going to die. Balla advised Creech that he should go back to the cell anyway. Creech went back to the cell and started stomping Jensen's throat, which was evident from the bruises around the victim's throat. Creech advised that after he stomped victim several more times that he left Jensen's cell and went up by Balla's cell and sat across from Balla's cell when the guards saw the blood on Creech and came in and found Jensen.

Creech agreed to put what he had told us on tape and the tape was turned back on and the story was told over again. After we got through with the interview, suspect Creech was taken down to the jail and placed on ISP hold. R/O, in turn, contacted the prosecutor's office and gave them the story. A meeting was set up for the following day, 5/15/81, to meet with the prosecutor. copies of the taped interview, along with letters that the sheriff had received from Creech in January and February 1981 in reference to a stabbing incident involving another inmate and in which Creech told the sheriff that he was afraid he was going to kill if placed into ISCI, were sent to the prosecutor's office.

There will be an additional supplement forthcoming as to further evidence, results of lab tests and further interviews with other inmates at ISCI in reference to this homicide. R/O has no further information at this time."
(R/O - Douthit, 2182, ACSO)

State v. Creech, Case No. CR-FE-0000-10252
Submitted in Support of Memorandum in Support of Motion to Access Evidence

EXHIBIT 3

**(Sock Photos with Exhibit Stamps from *State v. Creech*,
Ada Cnty. Dist. Ct. No. 10252)**



STATE'S EXHIBIT # 5 10252
PENNSYLVANIA, N. J.

STATE'S EXHIBIT # 6 10252
PENNSYLVANIA, N. J.

STATE'S EXHIBIT # 7 10252
PENNSYLVANIA, N. J.

STATE'S EXHIBIT # 8 10252
PENNSYLVANIA, N. J.

ATTACHMENT B

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Full Notification



SBSD - Headquarters

Wednesday January 24th, 2024 :: 01:04 p.m. PST

Advisory

Thomas Creech Identified as the Suspect in the 1974 Murder of Daniel Walker Along Interstate 40

[Submit an anonymous web tip](#)

More Messages

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DATE/TIME: Tuesday, October 1, 1974, 6:00 a.m.

INCIDENT: Murder Investigation

LOCATION: Interstate-40, 62 miles West of Needles, CA

SUSPECT(S): Creech, Thomas Eugene, DOB: September 9, 1950

DECEDENT: Walker, Daniel Ashton, DOB: October 15, 1952

SUMMARY:

On Tuesday, October 1, 1974, at approximately 6:00 am, Daniel Walker parked his van alongside Interstate-40, 62 miles west of Needles so he and his passenger could rest. Daniel was awakened by an unknown suspect and was shot multiple times. The passenger in the van escaped and made it to safety. The passenger flagged down a passing motorist and Daniel was ultimately transported to a local hospital, where he ultimately succumbed to his injuries. The suspect fled and was not located. The San Bernardino County Sheriff's Homicide Detail investigated and exhausted all leads at that time.

Over several years, the San Bernardino County Sheriff's Department Homicide Detail, Cold Case Team, reviewed Daniel's case but were unable to develop any workable leads to solve his murder.

On Wednesday, November 15, 2023, the Cold Case Team resumed the investigation into the murder of Daniel Walker. Cold Case Detectives obtained additional information related to the murder and identified the suspect in the murder of Daniel Walker as Thomas Eugene Creech. Creech was found to be incarcerated in an Idaho prison for several additional murders, where he was found guilty. Creech is currently the longest-serving inmate on death row in Idaho. While working with the Ada County District Attorney's Office in Idaho, Cold Case Detectives were able to corroborate intimate details from statements Creech made regarding Daniel's murder. The San Bernardino County District Attorney's Office reviewed the case and is in consultation with the Ada County District Attorney's Office.

Anyone with additional information is asked to contact Detective Justin Carty, Specialized Investigations Division – Homicide Detail, Cold Case Team, at (909) 890-4904. Callers can remain anonymous and contact We-Tip at 800-78CRIME or www.wetip.com.

Refer: Detective Justin Carty or Sergeant Justin Giles

Station: Specialized Investigations Division – Homicide Detail

Phone No. (909) 890-4904

Case No. DR#321058-20 H#1974-433

SHANNON D. DICUS, Sheriff-Coroner
San Bernardino County Sheriff-Coroner Department

Address/Location

[SBSD - Headquarters](#)
655 E 3rd St
San Bernardino, CA 92408

Contact

Emergency: 9-1-1
Non-emergencies: 909-387-3700

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STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
RAÚL R. LABRADOR

January 26, 2024

Ashley Dowell
Executive Director
Idaho Commissions of Pardons & Parole
30566 W. Elder St.
Boise, ID 83705

RE: Creech's Second Letter Requesting Postponing Commutation

Dear Director Dowell,

Yesterday, at approximately 2:00 pm, I received another letter from Creech's attorney, Jonah Horwitz, providing "an update to the Commission on the latest developments" associated with Creech's request that the Commission defer a decision regarding his Commutation Petition for at least two months. I have hesitated to even respond to Mr. Horwitz's letter because in reality it provides very little, if any, "updates" associated with the original request on January 22, 2024. However, I cannot, and will not, sit idly by and allow Mr. Horwitz to repeatedly besmirch a colleague and fellow team member, and by implication myself, without response.

First, Mr. Horwitz contends they need more time to "assess the legitimacy of the photograph" of "the sock" that was presented in the state's PowerPoint presentation. He further states that a discovery motion has been filed in Creech's criminal case asking the district court to permit access to the sock and require the state to provide a copy of the picture from the state's presentation. What Mr. Horwitz fails to tell you is that his motion has virtually no chance of success because the district court does not have jurisdiction to grant discovery in a criminal case that has been closed for decades; something he obviously knows because he successfully had the state's subpoenas quashed because they were issued under Creech's criminal case. In other words, this is another frivolous motion that is designed only to delay Creech's execution. The Commission's decision should not be delayed based upon the filing of frivolous motions. Additionally, considering Mr. Horwitz's co-counsel, Christopher Sanchez, stated in his closing argument that Creech was no longer asserting self-defense, which was a new revelation to the state, we question why the sock needs to be "investigated" at all.

Second, based upon a single press release, Mr. Horwitz challenges the state's representations regarding the case from San Bernadino. As any attorney with Mr. Horwitz's experience should know, press releases rarely contain all the information surrounding a case. As

January 26, 2024

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demonstrated by Mr. Horwitz's statement that "[a]s new facts emerge, we will plan to update the Commission," it is clear that he wants to continue to drag this out for the rest of Creech's natural life; it is another delay tactic. In any event, we stand by the statements made in our presentation regarding Creech having committed another murder in San Bernadino.

Third, it is dumbfounding that Mr. Horwitz wants to obtain the transcripts associated with Creech having murdered Paul Schrader in Arizona. We clearly stated in our presentation that Creech was acquitted of Paul's murder, but after the acquittal Creech repeatedly stated that, yes indeed, he murdered Paul. Indeed, we even talked about principles associated with double jeopardy and being unable to retry Creech because of his acquittal. Again, this simply demonstrates another delay tactic.

Fourth, Mr. Horwitz inquires about a recording of the hearing. However, as you told both parties several times, there are no recordings of the hearing, only minutes. The real point is Mr. Horwitz's statement "that certain statements by Ms. Longhurst have raised questions about the truthfulness of the prosecution's presentation." In other words, Mr. Horwitz wants to use a transcript of the hearing to challenge unknown statements made by Ms. Longhurst. Of course, Mr. Horwitz fails to mention which "statements" raise questions of "truthfulness." And the obvious reason is that nothing in the state's presentation was untruthful. It is reprehensible that Mr. Horwitz continues to slander Ms. Longhurst without providing a single example of something that was not truthful, and by implication every member of the state's team. There are no "questions" that need answered from a recording or transcript that does not exist. Rather, Mr. Horwitz is merely laying the foundation for additional litigation associated with the commutation hearing.

Fifth, although Mr. Horwitz had some difficulties with the video clip of former Ada County Prosecutor Jim Harris, Mr. Horwitz adequately explained to the Commission what was on the clip.

Sixth, I stand by everything I wrote in my January 22, 2024 letter responding to Creech's first request. There were no "novel characterizations of critical evidence" presented to the Commission; the state merely completed a thorough investigation and presented the results of that investigation to the Commission. Members of the state's team should not be castigated because Mr. Horwitz did not anticipate every aspect of the state's presentation. Forty-plus years is more than enough time for Mr. Horwitz and his extensive team of attorneys and investigators to have gathered all the information they needed for their presentation and respond to the state's presentation.

Finally, you stated on numerous occasions that the hearing was "non-adversarial." Unfortunately, Mr. Horwitz and his team have turned this into a very adversarial proceeding by filing frivolous motions in Creech's criminal case, seeking more time to present additional information to the Commission, etc. I certainly appreciate the zealous representation of criminal defendants, but Mr. Horwitz's unfounded accusations – that are based upon nothing more than wild speculation and are completely unfounded – have gone far beyond the art of zealous advocacy. As I said before, I will no longer tolerate his unwarranted behavior toward the team that represented the people of the great State of Idaho at his client's commutation hearing.

January 26, 2024
Page 3

On behalf of those same individuals, especially the victims, I reassert our opposition to any postponement of the Commissioners' decision.

Sincerely,

A handwritten signature in black ink, appearing to read 'LaMont Anderson', with a long horizontal flourish extending to the right.

LaMont Anderson
Deputy Attorney General
Chief, Capital Litigation Unit

LLA/cam

cc: Jonah Horowitz
Karin Magnelli
Jill Longhurst



STATE OF IDAHO
COMMISSION OF PARDONS AND PAROLE

Brad Little
Governor
Ashley Dowell
Executive Director

IN THE MATTER OF THOMAS EUGENE CREECH
PETITION FOR COMMUTATION
Ada County Case No. CR-FE-0000-10252

This matter came before the Commission on January 19, 2024, to consider the request by Mr. Creech to commute his imposed sentence of death to life without possibility of parole. Mr. Creech was convicted of one (1) count of Murder I in 1982 for the murder of David Dale Jensen.

The Commission received an investigation packet completed by Commission staff prior to the hearing. The investigation packet included an interview with Mr. Creech, the presentence investigation report, psychological and risk assessments, information related to Mr. Creech’s behavior while in prison, victim statements, and information submitted by the attorneys for Mr. Creech and by the Ada County Prosecutor’s office. During the hearing, the Commission listened to in-person statements from four (4) supporters of Mr. Creech and five (5) representatives of the victim’s family. Mr. Creech’s attorneys and attorneys with the Ada County Prosecutor’s also presented in support of or against commutation.

DECISION TO DENY COMMUTATION

At the conclusion of the hearing, the Commissioners deliberated in executive session. On January 19, 2024, the Commissioners voted three (3) for commutation and three (3) against commutation. The commutation petition of Thomas Eugene Creech is hereby denied.

VOTES TO RECOMMEND COMMUTATION

Three Commissioners voted to recommend Governor Little grant the commutation of Thomas Eugene Creech’s death sentence in Ada County Case No. CR-FE-0000-10252 to life in prison without the possibility of parole. This decision was not based on any doubt or question about Mr. Creech’s guilt or the horrific nature of his crime. The Commissioners do not believe Mr. Creech is worthy of mercy, but that the discretion of the Commission allows for grace to be given even when undeserved. While the Commissioners noted a possibility that Mr. Creech has changed in the years since his crime and considered his current age and health, this decision was not based on the actions and conduct of Mr. Creech. The Commissioner’s decision to recommend a commutation was based on the time that has elapsed since Mr. Creech committed this horrific crime. In addition, the Commissioners were influenced by commentary from Judge Newhouse, the sentencing judge, and former Ada County deputy prosecutor Mr. Jim Harris, who no longer believe that a sentence of death is appropriate for Mr. Creech’s conviction. Finally, the change in law requiring that a death sentence be decided by a jury rather than a judge also influenced the recommendation to commute Mr. Creech’s sentence to life in prison without parole. The Commissioners expressed concern for the family of David Dale Jensen and their continued pain from this crime.

COMMISSIONER

January 29, 2024

DATE

COMMISSIONER

January 29, 2024

DATE

COMMISSIONER

January 29, 2024

DATE

Commutation Decision of Mr. Creech
Page 2

VOTES TO DENY COMMUTATION

Three members of the Commission voted to deny the commutation of Thomas Eugene Creech’s death sentence in Ada County Case No. 10252 to life in prison without the possibility of parole. We do not believe Mr. Creech is worthy of grace or mercy. This decision was based on the coldblooded nature of David Dale Jensen’s murder and the sheer number of victims that Mr. Creech has created over his lifetime, which shows that he does not place value on human life, other than his own. Mr. Creech was not interested in telling the truth about his additional crimes and violent history and was reluctant and unwilling to completely disclose the number of people he has killed. Further, the Commission believes that Mr. Creech is not capable of true remorse and would take another life if it benefitted him. He has shown he can still manipulate others to get what he wants. The Commission believes that the Jensen family would not receive justice if Mr. Creech received clemency, and above all else that they deserve closure in this case. If the Commission cannot uphold the death penalty in this case, then the death penalty means nothing in the state of Idaho.

[Redacted Signature]

COMMISSIONER

January 29, 2024

DATE

[Redacted Signature]

COMMISSIONER

January 29, 2024

DATE

[Redacted Signature]

COMMISSIONER

January 29, 2024

DATE

COMMUTATION HEARING MINUTES

State of Idaho
Commission of Pardons & Parole



COMMISSIONERS:	Matthews, Mike; Dressen, Janie; Kirkham, Terry; Parker, Shelly; Ross, Michael; Smith, Scott	EXECUTIVE DIRECTOR:	Dowell, Ashley
OFFENDER:	Creech, Thomas Eugene	IDOC #:	14984
DOC LOCATION:	Idaho Maximum Security Institution	DATE:	1/29/2024

CASES

Case Number	Offense	Sentence Type	Max.	Min.	PED	FTRD
10252	Murder I	Concurrent	DEATH	DEATH	N/A	DEATH
2165	Murder I	Independent	LIFE	LIFE	N/A	LIFE
2165	Murder I	Consecutive	LIFE	LIFE	N/A	LIFE

PRIOR HEARINGS

Date	Type	Decision
10/18/2023	Commutation Review	Schedule Hearing
1/19/2024	Commutation Hearing	Continue

CURRENT DETAILS

Hearing Started	Executive Session At	Hearing Resumed	Hearing Ended
08:38 AM	08:38 AM	09:17 AM	09:20 AM

Minutes

Commissioner Kirkham motioned to go into Executive Session. Commissioner Parker seconded. All voted aye and the Commission went into Executive Session at 8:38 a.m.

The Commission returned to the public hearing at 9:17 a.m.

The Commission received a request on January 22, 2024, from Mr. Creech to defer its decision for two months, which was supplemented on January 25, 2024. The request was based upon the following: (1) statements made by the Ada County Prosecutor during the commutation hearing regarding the ownership of the sock used during killing of Mr. Jensen; (2) the prosecutor's reference to an unsolved murder in California that has recently been linked to Mr. Creech; (3) the prosecutor's reference to a murder Mr. Creech was acquitted of; (4) the need to review any transcript or recording of the hearing to investigate the truthfulness of the prosecutor's presentation; (5) notification that Mr. Creech's attorneys uploaded their presentation to the internet and it includes the video of Mr. Harris that was unable to be played during the hearing due to technical difficulties; and (6) the use of novel characterizations of critical evidence by the prosecutor during the hearing. Mr. Creech's counsel is seeking additional time to investigate these matters.

The Commission also received a response on January 22, 2024, from the State asking the decision not be deferred, which was supplemented on January 26, 2024.

The Commission received and reviewed both requests from Mr. Creech and both responses from the State.

The Commission voted to deny the request from Mr. Creech to defer the commutation decision for two months. This matter is now closed.

The Commission's decision on the commutation petition will be released by the Executive Director separately at a later time.

Commissioner Kirkham motioned to adjourn and close the hearing. Commissioner Smith seconded. All voted aye and the hearing ended at 9:20 a.m.

Decision

The Commission denied the request from Mr. Creech to defer the commutation decision for two months. This matter is now closed.

Comment

The Commission's decision on the commutation petition will be released by the Executive Director separately at a later time.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

THOMAS EUGENE CREECH,

Plaintiff,

v.

IDAHO COMMISSION OF PARDONS
AND PAROLE and JAN BENNETTS, Ada
County Prosecuting Attorney, in her
official capacity,

Defendants.

Case No. 1:24-cv-00066-AKB

**MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

FOR IMMEDIATE FILING

Plaintiff Thomas Eugene Creech is a death-row inmate in the custody of the Idaho Department of Correction (IDOC). In 1995, Creech was sentenced to death for beating another inmate to death with a sock filled with batteries. On October 16, 2023, a state district court issued a death warrant for Creech's execution. That court subsequently stayed the warrant pending the Idaho Commission of Pardons and Parole's consideration of Creech's petition for clemency. The Commission held a hearing on that petition on January 19, 2024, and on January 29, it issued a decision denying commutation. The next day, January 30, the state district court again issued a death warrant for Creech's execution. That execution is presently scheduled for February 28.

On February 5, 2024, Creech filed this action under 42 U.S.C. § 1983, alleging the Commission and the Ada County Prosecutor's Office (ACPO) violated his due process rights during his clemency hearing. Creech requests this Court enjoin his execution during this case's pendency. Specifically, pending before the Court in this case are Creech's Motion for Preliminary Injunction (Dkt. 4), his Motion to Expedite Discovery (Dkt. 10), and Plaintiff's Motion for Leave to Submit Notice of Factual Development. (Dkt. 17).

In support of his preliminary injunction motion, Creech presents the Declaration of Christopher M. Sanchez, counsel for Creech, discussing the absence of certain evidence in Creech's litigation case files. (Dkt. 4-2). The remaining information Creech offers, including numerous newspaper articles, is not accompanied by an affidavit either authenticating or describing the information. Rather, the information is simply attached as "exhibits" to Creech's memorandum in support of his preliminary injunction motion. *See K-2 Ski Co. v. Head Ski Co.*, 467 F.2d 1087, 1088 (9th Cir. 1972) (noting basis for preliminary injunction should be supported by affidavits or verified complaint); 11A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2949 (3d ed. 2023) (noting preliminary injunction request should be supported by affidavits).

The Court finds oral argument will not significantly aid its decision-making process and decides the motions on the parties' briefing. Dist. Idaho Loc. Civ. R. 7.1(d)(1)(B). *See also* Fed. R. Civ. P. 78(b) ("By rule or order, the court may provide for submitting and determining motions on briefs, without oral hearings."). For the reasons discussed, the Court denies Creech's motions for discovery and a preliminary injunction. Although Creech will suffer irreparable harm in the absence of a preliminary injunction, he has not clearly shown a likelihood of success on the merits of his due process claim. Further, the balance of equities and the public interest weigh against granting an injunction.

BACKGROUND

In October 2023, the Commission granted Creech a clemency hearing to decide whether to recommend that Idaho's Governor commute Creech's death sentence to a sentence of fixed life imprisonment. The Commission is generally comprised of seven commissioners. In October,

however, one of the commissioners recused himself from participating in the hearing. (Dkt. 12-1 at ¶ 10).

The ACPO was designated to present on the State's behalf at the clemency hearing. Before the hearing, the Commission's executive director met with the parties several times and sent the parties at least two memoranda discussing in detail the procedures and process for the hearing. (Dkt. 12-2 at p. 3 (November 13, 2023 memo); Dkt. 12-2 at p. 7 (December 20, 2023 memo)). For example, these memoranda stated that:

[C]ommutations are a matter of clemency, and the hearing is not an adversarial proceeding. As such, the parties will make presentations to the Commission, with only identified supporter(s), identified victim(s), and attorneys speaking, and will not be allowed to call witnesses for questioning, cross examine the other party, or object to what is being said during the parties' presentation time.

(Dkt. 12-2 at pp. 4, 8). Further, another memorandum stated:

Each party will get a copy of the entire hearing packet, with all attachments and party submissions, on December 20, 2023. Victim statements have been removed from the investigative packet and will be submitted separately to the Commission. The parties agree to not make or retain any copy of the hearing packet and return their copy of the hearing packet, including all attachments and party submissions, at the conclusion of the hearing. Any further distribution of the hearing packet will be pursuant to the Idaho Public Records Act.

(*Id.* at p. 9). The record does not reflect that Creech objected to these or any of the Commission's proposed procedures or processes, including proceeding to hearing with only six commissioners.

(Dkt. 12-1 at p. 10).

Per the Commission's outlined procedures, Creech, the State, and the Commission's investigators all presented materials for the Commission to consider at the hearing. On December 20, 2023, the Commission provided those materials to both parties in a "hearing packet." According to Creech, the State's materials consisted of 2,952 pages of documents, although the first twenty-seven pages were removed with the notation that they were "victim

related documents.” (Dkt. 1 at ¶¶ 41-43). Nothing in the record indicates Creech objected to not receiving these redacted materials.

The State’s materials, which Creech did receive, did not contain any reference to Daniel Walker, a 1974 murder victim in San Bernardino County, California. (*Id.* at ¶¶ 47-48). At the hearing, however, the ACPO—as part of its argument against clemency—claimed that San Bernardino authorities had “solved” Walker’s murder; Creech was responsible for it; and the case was “closed.” (*Id.* at ¶ 52, 60). Also, on the day of the hearing, the ACPO issued a press release informing the public that Creech had murdered Walker. (*Id.* at ¶ 63). The San Bernardino Sheriff’s Department also issued a press release stating Creech had been “identified as the *suspect*” in Walker’s murder. (*Id.* at ¶ 66).

Creech alleges, however, that the ACPO had never publicly accused Creech of the San Bernardino murder. (*Id.* at ¶¶ 58, 121-24). Further, Creech alleges the ACPO’s statements to the Commission and its press release claiming Walker’s murder had been “solved” after a “thorough investigation” were false. (*Id.* at ¶¶ 64-70). It appears, however, that Creech was at least a suspect in the crime. In 1975, Creech confessed to a murder with significant similarities to Walker’s murder. (*Id.* at ¶ 82-87).

Additionally, Creech alleges the ACPO revealed for the first time at the clemency hearing a photograph of a sock with Creech’s name written on it in marker. This photograph was not contained in the materials provided to Creech before the hearing. (*Id.* at ¶ 49). According to Creech, there are “discrepancies” between the image of the sock presented to the Commission and the images of the crime scene. (*Id.* at ¶ 172). He suggests the photograph was compromised or fabricated. (*Id.* at ¶¶ 172-75). After the commutation hearing, Creech’s counsel “made several

requests that the Commission postpone its decision” until Creech could investigate the Walker murder and the sock photograph. (*Id.* at ¶ 126). The Commission denied these requests, however.

On January 29, 2024, the Commission issued its decision denying Creech’s clemency petition and declining to recommend that the Governor commute his death-sentence. The vote was split: three commissioners voted to deny clemency, and three voted to grant clemency. Because Idaho law requires a majority of the commissioners to recommend commutations, the Commission did not recommend that the Governor commute Creech’s sentence.¹

The Commission articulated the reasoning for its decision in writing. The three Commissioners who voted in favor of a clemency recommendation explained:

This decision was not based on any doubt or question about Mr. Creech’s guilt or the horrific nature of his crime. The Commissioners do not believe Mr. Creech is worthy of mercy, but that the discretion of the Commission allows for grace to be given even when undeserved. While the Commissioners noted a possibility that Mr. Creech has changed in the years since his crime and considered his current age and health, this decision was not based on the actions and conduct of Mr. Creech. The Commissioner’s decision to recommend a commutation was based on the time that has elapsed since Mr. Creech committed this horrific crime. In addition, the Commissioners were influenced by commentary from Judge Newhouse, the sentencing judge, and former Ada County deputy prosecutor Mr. Jim Harris, who no longer believe that a sentence of death is appropriate for Mr. Creech’s conviction. Finally, the change in law requiring that a death sentence be decided by a jury rather than a judge also influenced the recommendation to commute Mr. Creech’s sentence to life in prison without parole.

(Dkt. 12-3 at p. 42).

Meanwhile, the three Commissioners who voted against clemency reasoned:

We do not believe Mr. Creech is worthy of grace or mercy. This decision was based on the coldblooded nature of David Dale Jensen’s murder and the sheer number of

¹ The Idaho Constitution grants a majority of the Commission the “power to remit fines and forfeitures, and, only as provided by statute, to grant commutations and pardons after conviction and judgment.” Idaho Const., Art. IV, § 7. In cases like Creech’s, where the maximum sentence is death (or life imprisonment), the Commission’s decision on a clemency petition is not final; rather, a majority vote for commutation constitutes only a recommendation to the Governor, who then makes the final clemency decision. Idaho Code § 20-1016(2).

victims that Mr. Creech has created over his lifetime, which shows that he does not place value on human life, other than his own. Mr. Creech was not interested in telling the truth about his additional crimes and violent history and was reluctant and unwilling to completely disclose the number of people he has killed. Further, the Commission believes that Mr. Creech is not capable of true remorse and would take another life if it benefitted [sic] him. He has shown he can still manipulate others to get what he wants. The Commission believes that the Jensen family would not receive justice if Mr. Creech received clemency, and above all else that they deserve closure in this case. If the Commission cannot uphold the death penalty in this case, then the death penalty means nothing in the state of Idaho.

(*Id.* at p. 43).

Following the Commission's denial of clemency, Creech filed this action alleging a single claim of relief for violation of his due process rights. Specifically, Creech alleges the Commission and ACPO violated his due process rights by:

(1) failing to give him adequate notice of the allegations and evidence the prosecution would present; (2) presenting false evidence against him regarding the murder of Daniel Walker and the status of San Bernardino's investigation into the crime; (3) presenting potentially tampered with evidence in the form of an image of a sock with Mr. Creech's name written on it; (4) failing to give notice that the prosecution would be using the image of the sock in its presentation and failing to make examination of the sock available to Mr. Creech prior to the hearing; (5) failing to allow Mr. Creech the chance to contest the evidence against him once he had informed the Commission of the issues with the prosecution's presentation; and (6) denying Mr. Creech's petition on the basis of a tie vote when he had a reasonable expectation that each side would be required to persuade the same name of Commissioners to secure a favorable outcome.

(Dkt. 1 at ¶ 180).

Creech requests a preliminary injunction prohibiting his execution "while the instant case is being litigated." (Dkt. 4 at p. 1). Ultimately, Creech seeks a new clemency hearing in which "(1) the [State] is forbidden from using false evidence against him; (2) [he] is given notice of what the [Commission] will consider in its decision; (3) he is given notice of the evidence to be used against him by the [State], and (4) he is given a reasonable amount of time to investigate the [State's] new claims raised for the first time at his clemency hearing." (Dkt. 1 at ¶ 2).

LEGAL STANDARD

Under Rule 65 of the Federal Rules of Civil Procedure, a party may obtain injunctive relief before final judgment in certain limited circumstances. “A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008). A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits; he is likely to suffer irreparable harm in the absence of preliminary relief; the balance of equities tips in his favor; and an injunction is in the public interest.” *Id.* at 20. The movant must carry his burden “by a clear showing.” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). “In each case, courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” *Winter*, 555 U.S. at 24.

“Under the ‘serious questions’ version of the test, a preliminary injunction is appropriate when a plaintiff demonstrates that ‘serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff’s favor.’” *Towery v. Brewer*, 672 F.3d 650, 657 (9th Cir. 2012) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir.2011)). “This approach requires that the elements of the preliminary injunction test be balanced, so that a stronger showing of one element may offset a weaker showing of another.” *Id.* “Serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Id.* (brackets and quotations omitted).

“[T]hese principles apply even in the context of an impending execution.” *Lopez*, 680 F.3d at 1072. In applying them, the Court considers the facts in the light most favorable to Creech,

unless a fact is “blatantly contradicted by the record[] so that no reasonable jury could believe it.”
See Scott v. Harris, 550 U.S. 372, 380 (2007) (summary judgment context).

ANALYSIS

1. Clemency and Due Process

Death row inmates have no constitutional right to clemency proceedings. *See Herrera v. Collins*, 506 U.S. 390, 414 (1993). The Supreme Court has held that “pardon and commutation decisions have not traditionally been the business of courts; as such, they are rarely, if ever, appropriate subjects for judicial review.” *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272, 276 (1998) (plurality) (quoting *Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 458, 464 (1981)). Because commutations are matters within the authority of a state’s executive branch, clemency proceedings “are rarely, if ever, appropriate for judicial review.” *Id.*; *see also Dumschat*, 452 U.S. at 464 (“A decision whether to commute a long-term sentence generally depends not simply on objective factfinding, but also on purely subjective evaluations and on predictions of future behavior by those entrusted with the decision.”). In *Woodard*, the Court addressed the due process rights to which death-row inmates are entitled in a clemency proceeding. *Woodard*, however, is a plurality decision. Chief Justice Rehnquist wrote the primary decision and concluded death-row inmates have no due process rights in a clemency hearing because they received all the process to which they were entitled during trial and sentencing. *Id.* at 281 (plurality).

Justice O’Connor, however, wrote a concurring opinion rejecting the notion that “the Due Process Clause provides no constitutional safeguards” in clemency proceedings. *Id.* at 288. Rather, she concluded “some *minimal* procedural safeguards apply to clemency proceedings.” *Id.* at 289. By way of example, she stated that “judicial intervention might . . . be warranted in the face of a scheme whereby a state official flipped a coin to determine whether to grant clemency, or in a case

where the State arbitrarily denied a prisoner any access to his clemency process.” *Id.* at 289. By contrast, she rejected Woodard’s claim that his due process rights were violated because he did not have adequate notice; he did not have a meaningful opportunity to prepare his petition; his counsel was improperly excluded from an interview and the clemency hearing; and he was precluded from testifying or submitting documentary evidence at the hearing. *Id.* at 289-90.

Three other Justices joined in Justice O’Connor’s concurrence, and another Justice agreed with her rejection of Chief Justice Rehnquist’s conclusion that an inmate has no due process rights in a clemency hearing. *Id.* at 288 (noting Justices Souter, Ginsburg, and Breyer joining); *id.* at 291 (noting Justice Stevens writing separately and rejecting conclusion that no due process rights exist in clemency hearing). Accordingly, Justice O’Connor’s concurring opinion concluding some minimal procedural safeguards apply in clemency proceedings is the controlling law. *See Marks v. United States*, 430 U.S. 188, 193 (1977) (noting in fractured opinions “the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds”) (internal quotation marks omitted); *see also Anderson v. Davis*, 279 F.3d 674, 676 (9th Cir. 2002) (ruling inmate failed to demonstrate substantial likelihood of success on merits in challenging Governor’s blanket denial of clemency applications).

A federal appellate court, however, is not authorized “to review the substantive merits of a clemency proceeding.” *Workman v. Bell*, 245 F.3d 849, 852 (6th Cir. 2001). The reason for this rule is twofold. First, *Woodard* at most authorizes only limited judicial review for some minimal procedural due process safeguards. 523 U.S. at 289; *see also Anderson*, 279 F.3d at 676 (relying on *Woodard*). Second, generally the record of the clemency hearing is inadequate—as in this case—to conduct a substantive judicial review of the merits. For example, in this case, the parties’ written submissions to the Commission are not in the record, and their oral presentations were not

recorded and officially transcribed. Rather, apparently only “minutes” were recorded. (Dkt. 11-1 at pp. 8-21).

In resolving Creech’s preliminary injunction motion, the Court relies on Justice O’Connor’s decision in *Woodard* and considers whether Creech has clearly shown a substantial likelihood of success of demonstrating Defendants violated his due process rights because they deprived him of minimal due process safeguards. The Court declines, however, to address Creech’s allegations regarding the substantive merits of the proceeding, including the validity of the evidence. A review of the merits is beyond this Court’s authority.

2. Likelihood of Success on the Merits

Creech fails to clearly show he is likely to succeed on the merits of his due process claim. Due process is a flexible concept, and the determination of what procedural protections are required in any given situation depends on the nature of the proceeding. *Wolff v. McDonnell*, 418 U.S. 539, 560 (1974). For example, the Due Process Clause requires fewer procedural protections for a parole hearing versus a criminal trial. *See Morrissey v. Brewer*, 408 U.S. 471, 480 (1972) (“[T]he revocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations.”).

By the same token, a parolee has a right to more procedural due process in a revocation hearing than a clemency petitioner has in a clemency proceeding. *Compare id.* at 488-89 (“[T]he minimum requirements of due process [in a parole revocation proceeding] include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a neutral and detached hearing

body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.”) (internal quotation marks omitted), *with Woodard*, 523 U.S. at 289 (O’Connor, J., concurring) (concluding that only “*minimal*” due process protections are required in the clemency context).

In this case, the Court has carefully and thoroughly reviewed the record, considered the procedures for Creech’s clemency hearing, and finds the Commission provided Creech more than minimal due process in conducting the hearing. For example, Creech was granted a commutation hearing. He had notice of that hearing. The Commissioner’s executive director met several times with the parties about the hearing before it occurred. The director provided the parties with information regarding “the rules and logistical details for the hearing.” (Dkt. 1 at ¶¶ 34-38). The Commission required the ACPO to submit materials and provided Creech with copies of those materials before the hearing. (*Id.* ¶ 41). The Commission allowed Creech to present information at the hearing and gave him an opportunity to speak on his behalf. Finally, the Commission deliberated and issued a written decision explaining the commissioners’ reasoning.

Creech challenges these procedures by eliding the distinction between the amount and type of due process afforded parolees and inmates seeking parole versus clemency petitioners. He relies on *Swarthout v. Cooke*, 562 U.S. 216, 220 (2011) (per curiam), for the proposition that “[a]t a minimum, due process in clemency proceedings requires advance notice and a chance to contest evidence that will be presented against a petitioner.” (Dkt. at ¶ 179). *Swarthout* addresses the due process requirement in the context of parole hearing, however. *Swarthout*, 562 U.S. at 216-17. It does not establish that this same due process is required in a clemency hearing. Moreover, the procedures the Commission provided Creech during the clemency hearing likely would have

satisfied the due process requirements even for a parole hearing. *See id.* at 220 (noting prisoner subject to parole statute “received adequate process when he was allowed an opportunity to be heard and was provided a statement of reasons why parole was denied.”).

Creech’s reliance on *Lankford v. Idaho*, 500 U.S. 110 (1991), and *Wilson v. U.S. Dist. Court*, 161 F.3d 1185 (9th Cir. 1998), to argue that he had a right to notice of the ACPO’s intention to refer to Walker’s murder and show the sock photograph is also misplaced. *Lankford* is distinguishable because it did not involve a clemency proceeding; rather, in that case the defendant challenged the prosecution’s failure to notify him that it intended to seek the death penalty. *Id.* at 500 U.S. at 119. A defendant’s due process rights in that context are greater than in a clemency proceeding.

Similarly, *Wilson* is distinguishable, even though it involved a clemency proceeding. In *Wilson*, the governor informed the petitioner that the governor would not consider exculpatory evidence but then denied clemency specifically because the petitioner failed to present exculpatory evidence. *Wilson*, 161 F.3d at 1186-87. Based on this fact, the Ninth Circuit concluded the petitioner had stated “a claim of a violation of due process.” *Id.* Contrary to *Wilson*, Creech does not allege the decisionmaker in his case—the Commission—misled him in any respect.

Creech has cited no authority that the ACPO was required to provide him with notice of *all* the information it intended to show or discuss during the clemency hearing. That the Commission permitted the parties to view most of the information before the hearing did not create a protectable interest in a right to receive the ACPO’s presentation in its entirety before the hearing. Further, because Creech does not have a constitutional right to a clemency hearing, it necessarily follows he does not have a due process right to post-hearing proceedings including, for example, discovery regarding the clemency proceeding.

Creech also does not cite any authority in support of his assertion that the Commission violated his due process rights by proceeding to the clemency hearing with only six commissioners. Creech does not contend he was surprised by this fact; he was on notice that Idaho law required a majority vote of the Commission for a recommendation of clemency; and he, notably, did not object to the lack of a seventh commissioner.

As Creech acknowledges, “[t]he Commission went to a great deal of trouble and expense to organize a lengthy and complex commutation hearing in a capital case, after months of preparation and logistics involving a large number of people.” (Dkt. 15 at p. 8). Based on a review of the procedures the Commission provided Creech, the Court finds Creech fails to show a substantial likelihood of success on the merits of his claim that his due process rights were violated. The record shows Creech received more than the constitutionally required minimum procedural protections.

Finally, although the Court declines to review the merits of Creech’s claim, it notes that Creech alleges in his complaint that “the prosecution reveal[ed] a photo of the murder weapon for the first time” at the clemency hearing. (Dkt. 1 at § V(C)). The minutes, however, contradict this allegation. Rather than showing the murder weapon—namely the sock containing batteries—the ACPO apparently showed a photograph of the sock purportedly matching the murder weapon. (Dkt. 11-1 at p. 20 (“[The prosecutor] displayed a photograph of the matching sock that was found in [Creech’s] cell. The name on the sock is ‘Creech.’”).

Further, although the ACPO did apparently state during the hearing that “Creech was positively identified as [Walker’s] murderer” (Dkt. 11-1 at p. 14), the minutes show the ACPO discussed numerous other murders Creech allegedly committed. Creech, however, does not dispute

those murders, and it is already an established fact that Creech has committed multiple murders.

As Justice O'Connor stated:

The facts underlying this case could not be more chilling. Thomas Creech has admitted to killing or participating in the killing of at least 26 people. The bodies of 11 of his victims—who were shot, stabbed, beaten, or strangled to death—have been recovered in seven States. Creech has said repeatedly that, unless he is completely isolated from humanity, he likely will continue killing. And he has identified by name three people outside prison walls he intends to kill if given the opportunity.

Arave v. Creech, 507 U.S. 463, 465-66 (1993). Finally, the Commission's decision does not appear to have been unduly influenced by either the Walker murder or the sock photograph. The Commission did not mention either when explaining its decision.

3. Irreparable Harm

The Commission argues Creech will not suffer irreparable injury if denied injunctive relief, citing *Powell v. Thomas*, 784 F. Supp. 2d 1070 (M.D. Ala. 2011). In that case, the court ruled the petitioner failed to show irreparable harm because he failed to establish a substantial likelihood of success on the merits of his claim. *Id.* at 1283. *Powell*, however, is contrary to Ninth Circuit law. The Ninth Circuit has recognized that “every § 1983 plaintiff in an injunction appeal involving an upcoming execution” demonstrates irreparable harm. *Towery*, 672 F.3d at 661. Moreover, this Court has previously rejected the argument that irreparable harm requires something more than the plaintiff's death and the inability to continue litigation. *Rhoades v. Reinke*, 830 F. Supp. 2d 1046, 1070-71 (D. Idaho) (“[T]he harm in this instance is Rhoades's death [from execution] and his inability to continue with the litigation, and . . . this harm is irreparable if a stay is not granted.”), *aff'd*, 671 F.3d 856 (9th Cir. 2011). Accordingly, the Court concludes Creech has made a clear showing he will likely suffer irreparable harm in the absence of preliminary relief if IDOC proceeds with the execution.

4. Balance of Equities and Public Interest

As noted above, “[u]nder the ‘serious questions’ version of the test, a preliminary injunction is appropriate when a plaintiff demonstrates that ‘serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff’s favor.’” *Id.* at 657. Creech, however, has failed to demonstrate “serious questions going to the merits” because he fails to clearly show a likelihood of success on the merits of his claim. Moreover, the balance of equities and public interest do not weigh sharply in Creech’s favor.

The Supreme Court has stated a State has a “strong interest in enforcing its criminal judgments without undue interference from federal courts.” *Hill v. McDonough*, 547 U.S. 573, 584 (2006). Likewise, crime victims “have an important interest in the timely enforcement of a sentence.” *Id.* These interests are especially strong in cases in which the legal proceedings have continued for many years. *Bible v. Schriro*, 651 F.3d 1060, 1066 (9th Cir.2011) (“[T]he further delay from a stay [of execution] would cause hardship and prejudice to the State and victims, given that the appellate process in this case has already spanned more than two decades.”). Further, the Supreme Court has held a State has a compelling interest in finality and is entitled to the assurance of finality after years of lengthy proceedings have run their course and once a mandate has issued denying habeas relief. *Calderon v. Thompson*, 523 U.S. 538, 556 (1998). “Only with real finality can the victims of crime move forward” *Id.* “To unsettle these expectations is to inflict a profound injury to the powerful and legitimate interest in punishing the guilty.” *Id.* (quotation omitted).

The history of Creech’s federal proceedings is too long and complicated to recount here. In brief, Creech has sought relief from his death sentence in the federal courts since the reimposition of his death penalty in 1995—almost thirty years of litigation. Recently, the Supreme

Court denied Creech's petition for certiorari challenging the Ninth Circuit's denial of his second amended habeas petition. *Creech v. Richardson*, 59 F.4th 372 (9th Cir. 2023) *cert. denied* 114 S. Ct. 291 (Oct. 10, 2023). A few days later, on October 13, 2023, Creech filed his third federal habeas petition alleging that evolving standards of decency render his death sentence unconstitutional. *Creech v. Richardson*, No. 1:23-cv-00463-AKB. This Court concluded it lacked jurisdiction over Creech's unauthorized successive petition under 28 U.S.C. § 2244(b), and that decision is now on emergency appeal. *Creech*, No. 1:23-cv-00463-AKB at Dkts. 15, 17.

A few days after Creech filed his third federal habeas petition, the Ninth Circuit issued the mandate on its decision remanding another of Creech's civil rights cases to this Court, in which Creech has attempted under § 1983 to challenge the State's execution protocol since March 2020. *See Creech v. Tewalt*, 84 F.4th 777, 783 (9th Cir. 2023). Although the Court allowed Creech to amend his complaint—for a third time—to attempt to allege viable claims, his less than clear showing in support of his preliminary injunction motion demonstrates he is unlikely to succeed on the merits of any of his claims. Finally, Creech filed this action on February 5, 2024, challenging the Commission's denial of his clemency petition. This litigation history demonstrates an instance in which the State's and the victims' interests in finality are especially strong given the lengthy legal proceedings that have delayed the State's timely enforcement of Creech's sentence. Accordingly, the Court concludes the balance of equities and public interest are not in Creech's favor.

Because Creech fails to make a clear showing of a likelihood of success on the merits of claim that the Commission and ACPO violated his due process rights and because the balance of equities and the public interest weigh against granting a preliminary injunction, the Court denies Creech's request for an injunction, even though he will suffer irreparable harm as a result.

5. Evidentiary Hearing

The Court disagrees it must hold an evidentiary hearing before denying Creech's request for injunctive relief, as Creech asserts. The Ninth Circuit has ruled that a court does not need to have a hearing on a motion for a preliminary injunction where the essential facts are not in dispute. *Charlton v. Est. of Charlton*, 841 F.2d 988, 989 (9th Cir. 1988). Further, a hearing is unnecessary when "the movant has not presented a colorable factual basis to support the claim on the merits or the contention of irreparable harm." *Bradley v. Pittsburgh Bd. of Educ.*, 910 F.2d 1172, 1176 (3rd Cir. 1990). The Court finds that in this case, Creech has failed to present a colorable factual basis to support his claim that the clemency hearing violated his due process rights.

Further, the Court declines to grant Creech's Motion to Expedite Discovery. As stated above, Creech has no constitutional right to a clemency hearing; he likewise has no constitutional right to conduct discovery to challenge that hearing. The Court concludes Creech has failed to show good cause to conduct discovery.

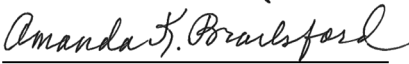
ORDER

IT IS ORDERED:

1. Plaintiff's Motion for Preliminary Injunction (Dkt. 4) is **DENIED**.
2. Plaintiff's Motion to Expedite Discovery (Dkt. 10) is **DENIED**.
3. Plaintiff's Motion for Leave to Submit Notice of Factual Development (Dkt. 17) is **GRANTED**.



DATED: February 23, 2024


Amanda K. Brailsford
U.S. District Court Judge

FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 24 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

THOMAS EUGENE CREECH,

Plaintiff - Appellant,

v.

IDAHO COMMISSION OF PARDONS
AND PAROLE and JAN M BENNETTS,
Ada County Prosecuting Attorney, in her
official capacity,

Defendants - Appellees.

No. 24-1000

D.C. No.

1:24-cv-00066-AKB

District of Idaho,

Boise

OPINION

Appeal from the United States District Court
for the District of Idaho
Amanda K. Brailsford, District Judge, Presiding

Argued and Submitted February 24, 2024
San Francisco, California

Before: William A. Fletcher, Jay S. Bybee, and Morgan Christen, Circuit Judges.

PER CURIAM:

Plaintiff-Appellant Thomas Eugene Creech is on death row for the 1981 murder of David Dale Jensen. In 2023, the State of Idaho granted Creech a commutation hearing before the Commission of Pardons and Parole (the “Commission”), which was held in early 2024. The Commission ultimately denied

the petition for commutation, and Creech's execution is now scheduled for February 28, 2024. Creech filed a § 1983 action in federal court, alleging various due process violations over the course of the commutation proceedings and seeking a preliminary injunction. The district court denied his motion, and we affirm.

I. BACKGROUND

Because we have described elsewhere the factual and procedural history of this case, *see Creech v. Richardson*, 59 F.4th 372, 376–82 (9th Cir. 2023), we recite only those facts most relevant to Creech's commutation-related arguments now before us. In 1981, while serving two life sentences for murders committed in Idaho, and following convictions for additional murders committed in California and Oregon, Creech killed fellow inmate David Dale Jensen, who was disabled. *See id.* at 376–77; *Arave v. Creech* (“*Creech IV*”), 507 U.S. 463, 466 (1993). In relevant part, Jensen attacked Creech with a battery-filled sock. *State v. Creech* (“*Creech V*”), 966 P.2d 1, 5 (Idaho 1998). Creech took the weapon from Jensen. Jensen later returned, wielding a toothbrush with a razor blade fastened to it. Creech beat Jensen with the sock, ultimately killing him. *Id.* Creech pleaded guilty. At his initial sentencing in 1982, Creech testified that, “through an intermediary, [he] provided Jensen with makeshift weapons and then arranged for Jensen to attack him, in order to create an excuse for the killing.” *Creech IV*, 507 U.S. at 466. Although the judge at Creech's original sentencing concluded that “Creech did not instigate the fight

with the victim,” *id.* at 467, the same judge later determined at a resentencing in 1995 that the murder was “planned and executed by Creech,” *Creech V*, 966 P.2d at 7. On October 16, 2023, an Idaho state court issued a death warrant for Creech’s execution, but the warrant was stayed pending Creech’s petition for commutation to life without parole.

The Idaho Commission of Pardons and Parole possesses the exclusive power to grant commutations and pardons, but “only as provided by statute” Idaho Const. art. IV, § 7. The Commission is comprised of seven Commissioners. *See* Idaho Code § 20-1002(1). Except in certain cases not relevant here, “[a]ny decision of the full Commission requires a majority vote of four (4) Commissioners.” IDAPA § 50.01.01.200.08.a. Idaho law further requires recusal in certain cases, *see id.* § 50.01.01.200.07, but it does not supply a tie-breaking method or mechanisms for the appointment of an interim Commissioner in the event of a recusal.

In the case of capital offenses, the Commission may issue a pardon or commutation “only after first presenting a recommendation to the governor.” Idaho Code § 20-1016(2). If the Governor approves the recommendation within thirty days, “the commission’s pardon or commutation shall issue.” *Id.* If the Governor rejects the recommendation or fails to act upon it within thirty days, “no pardon or commutation shall issue from the commission, and the commission’s recommendation shall be of no force or effect.” *Id.*

The Commission ultimately denied Creech’s commutation petition in a 3-3 vote, with one commissioner recused. Creech filed an action under 42 U.S.C. § 1983, alleging various violations of due process by the Commission and the Ada County Prosecuting Attorney’s Office (“ACPA”). The district court denied Creech’s motion for a preliminary injunction. Creech timely appealed.

II. JURISDICTION AND STANDARD OF REVIEW

We have appellate jurisdiction to review the denial of a preliminary injunction under 28 U.S.C. § 1292(a)(1). We review the denial of a preliminary injunction for abuse of discretion, but we review *de novo* the underlying issues of law. *Cal. Chamber of Com. v. Council for Educ. & Rsch. on Toxics*, 29 F.4th 468, 475 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 1749 (2023).

“The appropriate legal standard to analyze a preliminary injunction motion requires a district court to determine whether a movant has established that (1) he is likely to succeed on the merits of his claim, (2) he is likely to suffer irreparable harm absent the preliminary injunction, (3) the balance of equities tips in his favor, and (4) a preliminary injunction is in the public interest.” *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023); *see Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). We focus here on the “likelihood of success” element, which is the most important factor. *See Edge v. City of Everett*, 929 F.3d 657, 663 (9th Cir. 2019).

III. ANALYSIS

Our review of state commutation proceedings is limited. *See Wilson v. U.S. Dist. Ct. for N. Dist. of Cal.*, 161 F.3d 1185, 1186 (9th Cir. 1998). “[P]risoners have no liberty interest in clemency proceedings because the decision to grant or deny clemency rests wholly in the discretion of the executive.” *Burnsworth v. Gunderson*, 179 F.3d 771, 775 (9th Cir. 1999). If a state provides a commutation proceeding, the Due Process Clause of the Fourteenth Amendment requires only “*minimal* procedural safeguards” *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) (O’Connor, J., concurring in part and concurring in the judgment);¹ *see also id.* at 292 (Stevens, J., concurring in part and dissenting in part) (“There are valid reasons for concluding that even if due process is required in clemency proceedings, only the most basic elements of fair procedure are required.”); *Woratzek v. Ariz. Bd. of Exec. Clemency*, 117 F.3d 400, 404 (9th Cir. 1997) (“[T]he due process that the Constitution requires for a clemency hearing is quite limited.”).

The precise contours of our review of a commutation proceeding are unclear. At the least, a procedural due process violation exists if “the clemency proceeding’s outcome is wholly arbitrary” *Schad v. Brewer*, 732 F.3d 946, 947 (9th Cir. 2013)

¹ Justice O’Connor’s concurring opinion, joined by a plurality of justices, constitutes the Court’s holding in light of Justice Stevens’ partial concurrence. *See Marks v. United States*, 430 U.S. 188, 193 (1977); *see also, e.g., Barwick v. Governor of Fla.*, 66 F.4th 896, 902 (11th Cir.) (per curiam) (“Justice O’Connor’s concurring opinion provides the holding in *Woodard*.”), *cert. denied sub nom. Barwick v. Desantis*, 143 S. Ct. 2452 (2023).

(per curiam). “Judicial intervention might, for example, be warranted in the face of a scheme whereby a state official flipped a coin to determine whether to grant clemency, or in a case where the State arbitrarily denied a prisoner any access to its clemency process.” *Woodard*, 523 U.S. at 289 (O’Connor, J., concurring in part and concurring in the judgment). We have assumed without deciding that “bribery, personal or political animosity, or the deliberate fabrication of false evidence” may give rise to a commutation-related due process claim. *Anderson v. Davis*, 279 F.3d 674, 676 (9th Cir. 2002) (citation omitted). In the absence of such arbitrariness or invidious misconduct, “notice of the hearing,” *Woodard*, 523 U.S. at 290 (O’Connor, J., concurring in part and concurring in the judgment), “notice of the issues to be considered,” *Wilson*, 161 F.3d at 1187, and “an opportunity to participate in a[] [pre-hearing] interview,” *Woodard*, 523 U.S. at 290 (O’Connor, J., concurring in part and concurring in the judgment), generally satisfy the demands of the Due Process Clause.

Further, even if we found an irregularity, there is some uncertainty as to the proper harmless standard to apply in review of state commutation proceedings. *Cf. Washington v. Recuenco*, 548 U.S. 212, 218 (2006) (noting the general presumption that harmless-error analysis applies to constitutional violations). But we will afford Creech the benefit of *Chapman v. California*’s generous standard, and we therefore assume without deciding that the State bears the burden of

demonstrating that any error is “harmless beyond a reasonable doubt.” 386 U.S. 18, 24 (1967).

Applying these standards, we reject all of Creech’s due process arguments.

1. We first consider Creech’s argument that he was not given adequate notice of the issues to be considered by the Commission and the evidence to be presented at the commutation hearing. Neither we nor the Supreme Court have read the Due Process Clause to require advance notice of the evidence to be presented at a commutation hearing, and Idaho law does not confer a right to receive such notice. Creech received notice of the hearing itself. *See Woodard*, 523 U.S. at 290 (O’Connor, J., concurring in part and concurring in the judgment). And Creech was not misled as to the issues that would be considered by the Commission. *See Wilson*, 161 F.3d at 1187. The State gave Creech considerable information about the logistics and substance of his hearing well in advance thereof. The Commission’s Executive Director met with Creech’s counsel three times before the hearing to discuss the agenda and types of evidence that would be presented. More than three weeks before the hearing, Creech received from the State a copy of the investigation packet that the Commission would be reviewing. Although Creech may not have known all of the specific evidence that would be presented during his commutation hearing—such as evidence concerning the Daniel Walker murder and the introduction of a

picture of a sock labeled “Creech,” which are discussed below—the State satisfied the minimal notice requirements contemplated in *Woodard* and *Wilson*.

2. We next reject Creech’s contention that the Due Process Clause entitled him to the appointment of a replacement commissioner when one Commissioner recused himself. Idaho law does not expressly authorize the appointment of a replacement commissioner in the event of a recusal. This is far from “wholly arbitrary,” *Schad*, 732 F.3d at 947, and Creech has received more than the minimum process he was due under the U.S. Constitution, *see Woodard*, 523 U.S. at 290 (O’Connor, J., concurring in part and concurring in the judgment), so he has failed to make a cognizable procedural due process claim. And we decline to speculate that the presence of an additional commissioner would have changed the outcome. *Cf. Brown v. Davenport*, 596 U.S. 118, 133 (2022) (explaining that “set[ting] aside a conviction based on nothing more than speculation that the defendant was prejudiced . . . would be to give short shrift to the State’s sovereign interes[t] in its final judgment” (citation and quotation marks omitted) (final alteration in original)).

3. We disagree that ACPA violated Creech’s due process rights by suggesting to the Commission that Creech “committed the murder [of Daniel Walker] and got away with it.” Although we will not review the substantive merits of the Commission’s commutation proceeding, we will assume that we may review Creech’s claim that fabricated evidence was deliberately introduced by ACPA. *See*

Anderson, 279 F.3d at 676. The prosecutor’s statements that Creech had been identified as Walker’s killer are not entirely consistent with the San Bernardino Sheriff’s Office press release about the Walker investigation released on January 24, 2024, shortly after the commutation proceeding. It appears² that the prosecutor told the Commission that Creech had been “positively identified as the murderer,” although the press release identified Creech as only a “suspect.” The press release also stated, however, that “[d]etectives were able to corroborate intimate details from statements Creech made regarding Daniel’s murder.”

ACPA’s slide does unequivocally state that “Thomas Creech Murdered Daniel Walker.” Taken alone, that slide might have been misleading by overstating the level of certainty as to Creech’s involvement. But it appears from the hearing minutes that the prosecutor correctly noted that Creech had not been tried for, nor convicted of, Walker’s murder, so the prosecutor’s statements did not mislead the Commission into assuming that Creech had been found responsible in a formal, legal sense.

We are also persuaded that correcting any purported violation would not change the Commission’s vote to deny Creech commutation. Creech’s alleged violations do not call into doubt the stated rationales for the Commissioners’ votes. The Commissioners who voted to deny commutation reasoned that Creech is not

² Because there is no transcript or recording of the hearing, we rely primarily on the meeting minutes attached as an exhibit to the parties’ filings.

“worthy of grace or mercy” for several reasons, including “the coldblooded nature of David Dale Jensen’s murder,” as well as Creech’s “unwilling[ness] to completely disclose the number of people he has killed.” The Commissioners further opined “that the Jensen family would not receive justice if Mr. Creech received clemency, and above all else that they deserve closure in this case.” Overwhelming evidence supports those conclusions.

It is true that the Commissioners who voted against commutation noted “the sheer number of victims that Mr. Creech has created over his lifetime” and that “Mr. Creech was not interested in telling the truth about his additional crimes.” But even taking Daniel Walker’s murder out of the equation would not materially change the record’s support for both of those observations. The prosecutor alleged at the hearing that Creech had killed eleven people, including Walker. Creech agreed that he had killed at least nine people, but he claimed that he had never heard of one of the names and did not kill Dwayne DiCicco. The Commission then asked if Creech could settle “on at least ten people[] that he killed,” to which Creech replied, “no.” *Contra Creech IV*, 507 U.S. at 465 (“Creech has admitted to killing or participating in the killing of at least 26 people. The bodies of 11 of his victims—who were shot, stabbed, beaten, or strangled to death—have been recovered in seven States.”).

Even if the Commission had not been presented with any information regarding the status of the Walker investigation, it would have still had ample

evidence that Creech had killed many people, been implicated or suspected in other deaths, and been dishonest about his involvement in the death of DiCicco. Creech had previously confessed to killing DiCicco, even going so far as contact DiCicco's mother several times.

4. We also reject Creech's argument that ACPA violated his due process rights by introducing misleading or fabricated evidence when it displayed a slide of a sock labeled with Creech's name. In 1995, the sentencing judge found "beyond a reasonable doubt . . . [that] [a]ll the weapons which were used in this murder were made by Tom Creech. Jensen was egged on to attack Creech so the justification of self defense could be used. . . . Jensen approached Creech holding a weapon made up of batteries in a sock. *The sock was later determined to be Creech's.*" Findings of the Court in Considering the Death Penalty Under Section 19-2515, Idaho Code, at 3–4, *State v. Creech*, No. HCR-10252 (Idaho Dist. Ct. Apr. 17, 1995) (emphasis added).³ The question of the authenticity of the sock in the photograph and its probative value arose because Creech contended at the Commission's hearing that his remorse and rehabilitation favored commutation. In support, he claimed that he had accepted responsibility for his offenses. ACPA responded by pointing to a pre-hearing statement that Creech gave to investigators, where Creech contradicted the

³ The state trial court's findings are available as an exhibit at Second Petition for Writ of Habeas Corpus, *Creech v. Pasket*, No. 99-CV-00224 (D. Idaho Mar. 24, 2005), ECF No. 131-1.

sentencing judge's 1995 factual finding that the murder weapon was his by stating that it belonged to another inmate. ACPA introduced the slide with the labeled sock to refute Creech's pre-hearing assertion that the murder weapon never belonged to him. In a post-hearing declaration provided to the Commission, Creech's attorney stated that the prosecutor falsely told the Commission during the hearing that the sock bearing Creech's name was the murder weapon. The detailed notes of the hearing describe no such statement by the prosecutor. The minutes state, instead, that in her closing argument to the Commission, the prosecutor "displayed a photograph of the matching sock that was found in Mr. Creech's cell. The name on the sock is 'Creech.'" Creech did not address at the hearing the sentencing judge's 1995 factual finding that the murder weapon was his.

Even if we credit Creech's attorney's post-hearing declaration that the prosecutor falsely told the Commission that the sock bearing Creech's name was the murder weapon, there are other reasons why any such due process violation was harmless beyond a reasonable doubt. The Commissioners who voted to deny commutation did not mention the sock, nor did they even discuss Creech's unwillingness to accept the 1995 factual findings that the murder weapon belonged to him. As explained above, the Commissioners who voted to deny commutation focused on the reprehensible nature of Jensen's murder without reference to whether Creech had provoked Jensen's initial attack. The Commissioners were also

concerned with both Creech's lack of candor about the number of people he had murdered and justice for Jensen's family. Overwhelming evidence supports those reasons.

Bolstering our conclusion as to harmlessness, the Commissioners were unanimous that Creech's conduct—including any evidence of his post-offense rehabilitation—would not entitle him to mercy. The three Commissioners who voted to recommend commutation were explicit that their “decision was not based on any doubt or question about Mr. Creech's guilt or the horrific nature of his crime.” Indeed, their reasoning was not “based on the actions and conduct of Mr. Creech” at all. Instead, their vote reflected “the time that had elapsed since Mr. Creech committed this horrific crime,” and that the sentencing judge and former Ada County deputy prosecutor “no longer believe that a sentence of death is appropriate” It strains credulity to suppose that the reference to the matching sock made the difference in the Commission's denial of commutation.

5. Finally, we disagree with Creech's argument that the Commission violated his due process rights when it failed to pause the proceedings after the hearing based on his complaints of unfairness. Creech raised both the Walker and sock issues to the Commission after the hearing. The Commissioners unanimously rejected Creech's request to defer proceedings pending further factfinding, suggesting that the Commissioners did not consider either issue relevant to the denial

of commutation. The Commission had no obligation to consider Creech's request (which it did), let alone grant it.

IV. CONCLUSION

Creech has failed to establish a likelihood of success on the merits, and we find no legal or clear factual error in the district court's evaluation of the remaining preliminary injunction factors. *See Cal. Chamber of Com.*, 29 F.4th at 475. We dismiss as moot Creech's motion for a stay pending appeal.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 25 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

THOMAS EUGENE CREECH,

Plaintiff - Appellant,

v.

IDAHO COMMISSION OF PARDONS
AND PAROLE and JAN M BENNETTS,
Ada County Prosecuting Attorney, in her
official capacity,

Defendants - Appellees.

No. 24-1000

D.C. No.

1:24-cv-00066-AKB

District of Idaho,

Boise

ORDER

Before: MURGUIA, Chief Judge.

On February 25, 2024, Creech filed a petition for panel rehearing and rehearing en banc from the panel's opinion affirming the district court's denial of Creech's request for preliminary injunctive relief. The panel has voted to deny the petition for panel rehearing. The full court has been advised of the petition for rehearing en banc. Pursuant to the rules applicable to capital cases in which an execution date has been scheduled, a deadline was set by which any judge could request a vote on whether the panel's February 24, 2024, opinion should be reheard en banc. No judge requested a vote within the time period. Accordingly, the petition for panel rehearing and rehearing en banc is denied. En banc proceedings

with respect to the panel's opinion in Appeal No. 24-1000 are concluded.

Creech's Preemptive Objection to Rehearing Process (Docket Entry No. 16), received on February 25, 2024, has been filed and circulated to the full court. The objection is construed as a supplement to Creech's petition for panel rehearing and rehearing en banc and is denied.

The mandate shall issue forthwith in Appeal No. 24-1000.

No. 24-1000

**In the United States Court of Appeals
for the Ninth Circuit**

THOMAS EUGENE CREECH,

Plaintiff–Appellant,

v.

IDAHO COMMISSION OF PARDONS AND PAROLE
AND JAN M. BENNETTS, Ada County Prosecuting Attorney
Defendants–Appellees.

On Appeal from the United States District Court for the
District of Idaho in Case No. 1:24-cv-00066-AKB,
The Honorable Amanda K. Brailsford

**APPELLANT’S PETITION FOR PANEL AND EN BANC
REHEARING**

CAPITAL CASE

EXECUTION SCHEDULED FOR FEBRUARY 28, 2024 AT 10 AM

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Thomas Creech respectfully requests panel or en banc rehearing because the Court’s opinion whitewashes an execution based on prosecutorial lies in conflict with *Anderson v. Davis*, 279 F.3d 674 (9th Cir. 2002), and applies a harmless-error analysis in conflict with *Wilson v. U.S. Dist. Court*, 161 F.3d 1185, 1187 (9th Cir. 1998) and *Chapman v. California*, 386 U.S. 18 (1967). See Fed. R. App. P. 35, 40.

I. Due process forbids false evidence in clemency.

The panel described the Ninth Circuit as having “assumed without deciding” that it violates due process for a government actor to present false evidence in a clemency proceeding, Dkt. 13.1 at 6, but that is not the status of the precedent. In *Anderson*, the Court listed the kinds of events in a clemency proceeding “that would offend the Constitution” and included there “the deliberate fabrication of false evidence.” 279 F.3d at 676. The *Anderson* Court did not suggest that this text was based on any “assumption”—it characterized it as the law.

Anderson’s approach flows directly from controlling Supreme Court precedent. As the panel here recognized, Justice O’Connor’s concurrence in *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272 (1998) “constitutes the Court’s holding.” Dkt. 13.1 at 5 n.1. Justice O’Connor

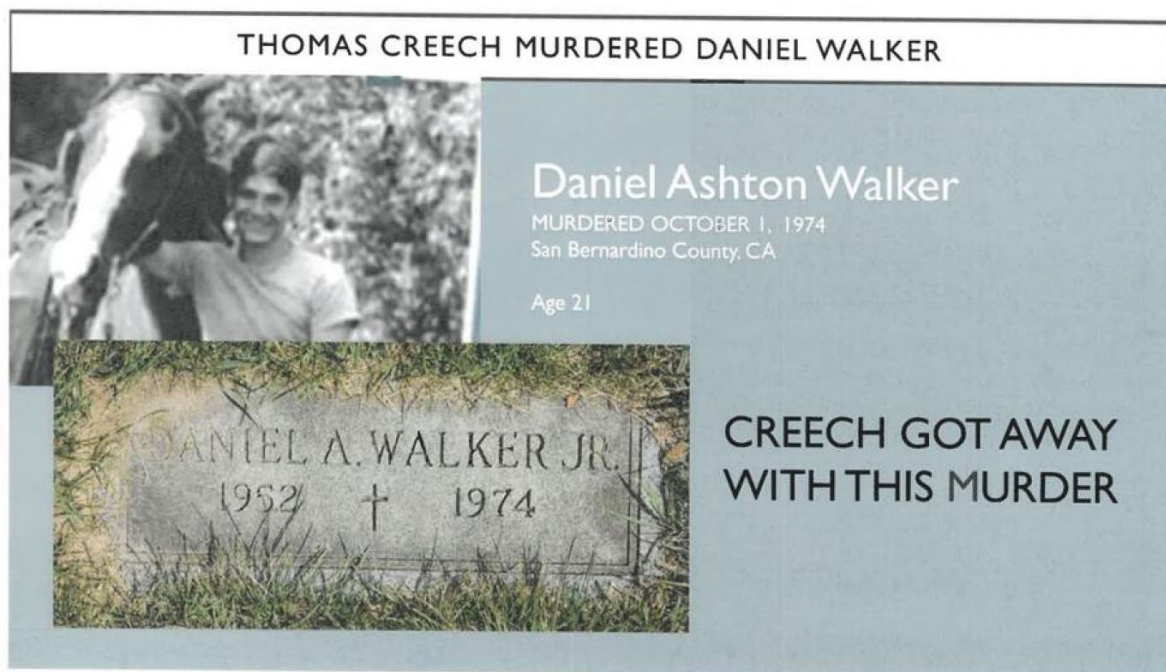
cited approvingly to two pages from Justice Stevens’ writing in the case that contained the statement that “the deliberate fabrication of false evidence would [not] be constitutionally acceptable” at a clemency proceeding. *Woodard*, 523 U.S. at 289, 291. Justice Stevens explained that his view in that regard was shared by Justice O’Connor, and she did not disagree with the assessment. *See id.* at 291. Thus, Justice Stevens’ stance on the presentation of false evidence in clemency was incorporated into Justice O’Connor’s controlling writing there and it became the law, as the Ninth Circuit acknowledged in *Anderson*. None of the above involves any “assumptions.” That is the state of binding precedent, and as explained below the panel disregarded it by sanitizing the egregious prosecutorial misconduct that occurred at Mr. Creech’s commutation hearing.

II. The prosecutor lied about the Walker case.

The first falsehood at issue concerns the prosecution’s attempt to execute Mr. Creech by declaring him guilty at the commutation hearing of a 1974 murder based on new evidence that doesn’t exist along with outlandish stale evidence that was rejected fifty years ago, publicizing

the lie to great effect, and then refusing to defend the claims in any court.

At the commutation hearing, the prosecutor—Jill Longhurst—unequivocally and falsely told the Commission that Mr. Creech had been conclusively determined by authorities to have murdered Daniel Walker. *See* Dist. Ct. Dkt. 11-1 at 14. She used this highly effective slide:



On the day of the hearing, Ms. Longhurst’s office—the Ada County Prosecuting Attorney (ACPA)—put out a press release trumpeting the even more baldly false claim that the Walker case had been “solved”

after a “thorough investigation” by the San Bernardino authorities.

Dist. Ct. Dkt. 4-3.

That was all a lie: nothing had been solved and there was no thorough investigation. Instead, Ms. Longhurst dusted off an outlandish “confession” given and rejected by law enforcement fifty years ago in which Mr. Creech took credit for various demonstrably fictitious murders, and she repacked it as a smoking gun. *See generally* Dist. Ct. Dkt. 4-1 at 9–13; Dist. Ct. Dkt. 15 at 19–23.

The panel does not defend Ms. Longhurst’s misrepresentations. Instead, it downplays their gravity by misconstruing the record. The panel suggests that Ms. Longhurst’s lie about the Walker case being solved was softened by the fact “the prosecutor correctly noted that Creech had not been tried for, nor convicted of, Walker’s murder, so the prosecutor’s statements did not mislead the Commission into assuming that Creech had been found responsible in a formal, legal sense.” Dkt. 13.1 at 9. That passage profoundly misunderstands the purpose of Ms. Longhurst’s comments. She spun the absence of formal charges not as any reason to doubt Mr. Creech’s guilt for the Walker murder, as the panel seems to presume, but as a powerful reason to put him to death.

As she explicitly said in her slide, the significance of the lack of process in San Bernardino was that it allowed Mr. Creech to “g[e]t away with this murder.” In other words, the lack of any “formal, legal” finding, *id.*, was precisely why Ms. Longhurst wanted the Commission to send Mr. Creech to his death: so that his execution would serve as the punishment for the crime that she had just announced and convicted him of on the basis of a PowerPoint slide. Contrary to the panel’s view, that hardly rehabilitates the lie. Indeed, it is difficult to imagine how a prosecutor can more egregiously use a lie than to facilitate an execution.

The panel also elides any meaningful consideration of the dubious evidentiary foundation for Ms. Longhurst’s lie. It observes with extreme understatement that the “prosecutor’s statements that Creech had been identified as Walker’s killer are not entirely consistent with” statements on the matter from the San Bernardino authorities, but implies that the discrepancy is potentially less problematic because “[d]etectives were able to corroborate intimate details from statements Creech made” about the murder. *Id.* at 9. What the panel declines to engage with is the utterly fanciful nature of those “statements.” In the sole interview for which there is any record, Mr. Creech took credit for

killing two people who are still alive today and for dumping a number of bodies sacrificed by a vegetarian cult at a ranch where an extensive later search discovered a single cow bone. *See* Dist. Ct. Dkt. 15 at 19–21. No doubt the preposterousness of this “confession” is why law enforcement clearly excluded Mr. Creech as the culprit after the very interview the ACPA is now using to justify a brand-new murder accusation and an execution to go along with it. Apart from this farfetched “confession,” the only information Ms. Longhurst pointed to as support for having “solved” the case is a letter to the Commission from a former law enforcement officer advocating for an execution and suddenly remembering details about Mr. Creech’s statements regarding the Walker case that were apparently never memorialized in any way. *See* Dist. Ct. Dkt. 4-1 at 13.

None of these facts have been disputed by the appellees and they show beyond any legitimate question that Ms. Longhurst’s claims that the Walker case had been “solved” based on a “thorough investigation” were entirely untrue. The panel’s tolerance for Ms. Longhurst’s lie about the Walker case is therefore inconsistent with *Anderson* and *Woodard* and en banc review is warranted.

III. The prosecutor lied about the murder weapon.

Ms. Longhurst's other lie to the Parole Commissioners was to tell them that she was showing them a photograph of the murder weapon—a sock that had been filled with batteries—bearing Mr. Creech's name on it when in fact, as her colleagues now admit, she was showing them something completely different. Although the panel pays it little mind, and never quotes the language on it or describes the objects within it, the key evidence here is the following PowerPoint slide, which Ms. Longhurst displayed to the Commission:



The unmistakable message of this slide was that the murder weapon bore Mr. Creech's name. There is only one conceivable purpose to the juxtaposition between the quote and the circled sock—to suggest that Mr. Creech was lying to the investigators, and that the weapon was in fact not labeled Garza but instead had the name Creech written on it. Throughout a month of constant debate and litigation, no one has offered any other remotely plausible explanation for what this slide was meant to convey apart from the obvious truth that anyone looking at it can see.

The panel credits an alternative account of the slide based on the Commission's minutes from the commutation hearing: "the prosecutor displayed a photograph of the *matching* sock that was found in Mr. Creech's cell." Dkt. 13.1 at 12. It was the sock, that is, that matched the murder weapon. That is also what the ACPA asserted to the district court. *See* Dist. Ct. Dkt. 11 at 12 n.6. The ACPA's statements in that vein were evidently crafted to accord with the fact that an unpaired sock matching the weapon was found in Mr. Creech's cell. *See* Dist. Ct. Dkt. 5-4 at 8.

However, and unnoted by the panel opinion, the prosecutor’s office itself expressly disclaimed that very narrative less than twenty-four hours ago at oral argument. At oral argument, the prosecutor represented to the Commission that the slide portrayed “a picture of *matching socks* taken from Mr. Creech’s cell.” Oral Arg. at 27:29–27:37 (available at <https://www.youtube.com/watch?v=ukwrRqbAZIc>). The prosecutor’s latest story, then, is that the slide shows a pair of matching socks both found in Mr. Creech’s cell. That would mean that the circled sock is not in fact “the matching sock” to the murder weapon at all—contrary to the account the prosecutor gave to the district court. And it would also mean that the slide as a whole is completely meaningless. What possible significance could a picture of two matching socks have when there is no connection the prosecution is even attempting to draw between them and the murder weapon, other than that they are all socks? The prosecutor’s response to that key question reads like a parody on bureaucratic incoherence: Ms. Longhurst was simply “showing that the sock that matches the sock that was taken or was one of the matching socks taken from the cell displayed Creech on it.” *Id.* at 29:20–29:30. Stringing together an incomprehensible sentence and

occasionally inserting the word “sock” in it doesn’t justify the patent lie that took place at the hearing. There is nothing ambiguous about the visual itself, which is the only undisputed evidence there is. *See Jules Epstein, The ‘Ohlbaum Paper,’ and Advocacy Scholarship—Why Now?*, 88 Temp. L. Rev. 507, 511 n.24 (2016) (reporting on how most people “are visual learners who rely on their sense of sight to understand and process information”).

The prosecutor’s farcical attempt to address this gaping hole in the State’s position sums it up better than Mr. Creech could: “the point” of the slide “was to refute the allegation that there was some kind of other person’s name *written on some sock somewhere.*” *Id.* at 28:54–29:03. At the risk of stating the obvious, we don’t execute people because there is a “name written on some sock somewhere.” It is not a capital crime for a prisoner to write his name on his socks. This is a murder case and the sole question is what was written on the murder weapon. The prosecutor’s abrupt reversal yesterday on what was in the slide followed by his new admission that the slide in fact has nothing whatsoever to do with the murder weapon confirms beyond any serious question the lie that took place at the hearing.

Perhaps the prosecutor's most notable statement yesterday was that his office does in fact have access to the murder weapon, *see* Oral Arg. at 28:33–28:42, yet has apparently chosen throughout all of these events not to present a photograph of *that*, electing instead to prove that Mr. Creech had a pair of matching socks in his cell with his own name on them. It is troubling that the panel would allow Mr. Creech to go to his death without the minimal judicial review entailed by the prosecution simply supplying the actual evidence to counsel and the courts so they can make up their own minds through the kind of discovery that was denied below. *See* Dist. Ct. Dkt. 10-1; Dist. Ct. Dkt. 18 at 17. If there is a real connection between the slide and the murder weapon, let the prosecutors show it rather than burying the truth behind an evolving series of obfuscations and non-denials on the eve of an execution in a tremendously accelerated appeal.

The panel's uncritical reliance on the Commission's minutes does not change the result. This is a document prepared by an unknown person using unknown methods of questionable accuracy, *see* Dist. Ct. Dkt. 15-2, that does not purport to be a transcript and was produced by a party after it was sued, *see* Dkt. 15-5, that is now advocating for Mr.

Creech's execution. It certainly does not stand in for something the prosecutors have conspicuously failed to provide: a sworn statement by the person in the best position to recall what was said about the sock—the prosecutor who said it, Jill Longhurst. Undersigned counsel have been forthcoming with the Court about what they heard—the same cannot be said of the prosecutors. They strategically chose to use lawyers at yesterday's argument who were not at the commutation hearing, and have blocked every effort at getting to the truth.

If there is any doubt about the final point, Mr. Creech urges the en banc panel to watch the entirety of the prosecutor's presentation to the Court at yesterday's argument and ask whether it looks like the advocacy of a party acting in good faith, or instead one laser-focused on mooting the appeal by executing the appellant and avoiding any judicial scrutiny of its misconduct. *See, e.g.*, Oral Arg. at 31:10–32:10 (responding to a question about the sock by almost immediately returning to prepared remarks regarding why due process allows for false evidence at clemency); *see also* Dkt. 12.1 (taking the position that Mr. Creech was not entitled to file a single document in a capital

appeal, which the undersigned do not believe any circuit court in the country has ever done).

In sum, the prosecutor lied about the murder weapon at the commutation hearing, and by excusing it the panel deviated from *Anderson and Woodard*.

IV. The panel's prejudice requirement merits en banc review.

In a straightforward deviation from binding Ninth Circuit law, the panel invoked the harmless-error doctrine to assess prejudice. *See* Dkt. 13.1 at 6. While the panel framed its approach as an accommodation to Mr. Creech, *see id.*, it was not. Mr. Creech has consistently contended that the harmless-error test cannot be employed here because there is an insufficient record to allow for the standard to be meaningfully applied. *See* Dkt. 11 at 11–12; Dist. Ct. Dkt. 15 at 28–29. His perspective has been embraced by Ninth Circuit caselaw. In *Wilson*, the Ninth Circuit denied a mandamus petition that challenged a district court's decision to stay an execution on the basis of a due process challenge to clemency proceedings. *See* 161 F.3d at 1188. The *Wilson* Court didn't suggest that any showing of prejudice from the inmate was required in connection with his claim. *See id.* at 1187–88.

Wilson is harmonious with Eighth Circuit precedent. In *Young v. Hayes*, 218 F.3d 850, 852–54 (8th Cir. 2000), the Eighth Circuit granted a stay of execution on a due process challenge to a clemency proceeding. Like *Wilson*, the *Young* court called for no inquiry into harmlessness. Harmlessness would have been a real problem for the inmate there, since the government had arguably halted the allegedly unlawful activity. *See id.* at 852. Even so, the only question that was pertinent to the Eighth Circuit as it weighed the stay motion was whether “conduct on the part of a state official [was] fundamentally unfair.” *Id.* at 853.

The panel’s rejection of Mr. Creech’s argument with respect to harmlessness also gives rise to conflict between its opinion and more general legal principles. Harmless-error analysis depends upon a reasonably comprehensive record so that the parties and the court can intelligently assess how the violation might have played into the outcome. *See United States v. Samaniego*, 187 F.3d 1222, 1225 (10th Cir. 1999) (calling a record “abysmally inadequate for a harmless-error review” because a number of documents were missing, even though a transcript and several exhibits were available). There is no such record

here. The Parole Commission produced no transcript, forbade recordings, *see* Dist. Ct. Dkt. 15-2 at 2, barred objections, *see* Dist. Ct. Dkt. 5-7 at 3, and as a general matter imposed no rules whatsoever apart from those designed to ensure the absence of any meaningful evidence of what transpired—all of which contributed in large measure to the resulting due process violations at issue now.

V. The panel’s use of harmless error merits en banc review.

If the harmless error test does apply, though, the panel completely inverted the standard. The panel purported to deploy the harmless test from *Chapman*, *see* Dkt. 13.1 at 6–7, but it effectively did the opposite. Under *Chapman*, the burden is on “the State to prove that the defendant was not prejudiced by the error.” *Kimmelman v. Morrison*, 477 U.S. 365, 382 n.7 (1986). The test uses the highest possible standard: “beyond a reasonable doubt.” *Chapman*, 386 U.S. at 24. At nearly every juncture, the panel switched the burden to Mr. Creech.

Perhaps nowhere is that more evident than in its statement that the sock did not make “the difference in the Commission’s denial of commutation.” Dkt. 13.1 at 13; *accord id.* at 9 (“Creech’s alleged violations do not call into doubt the stated rationales for the

Commissioners' votes.”). That is nearly a perfect formulation of how the main *alternative* to *Chapman* works: the prejudice test from *Brecht v. Abrahamson*, 507 U.S. 619 (1993), under which the burden is on the prisoner. *See, e.g., Yarborough v. Keane*, 101 F.3d 894, 899 (2d Cir. 1996) (denying relief with reference to *Brecht* because “[i]t would have made no difference whether” the error occurred or not).

The panel’s more specific discussion of prejudice likewise strayed from *Chapman*.

First, the panel emphasized that the three Commissioners who opposed commutation in the tie vote “did not mention the sock.” Dkt. 13.1 at 12. But such silence at best creates a doubt. In a *Chapman* analysis, any doubts “must be resolved in favor of the” *inmate*. *McNeil v. Cuyler*, 782 F.2d 443, 447 (3d Cir. 1986).

Second, it was misleading for the panel to rest on the fact that the Commissioners voting against life “did not mention the sock.” Dkt. 13.1 at 12. The very first reason these Commissioners gave for their vote was “the coldblooded nature of” the offense. Dist. Ct. Dkt. 12-3 at 43. That is precisely why the sock photograph was so significant. The relevance of the sock to the prosecutors was that it supposedly proved

that Mr. Creech was part of the scheme to induce the victim, David Jensen, to start the fight and then kill him. *See* Dist. Ct. Dkt. 4-1 at 16; *see also* Dist. Ct. Dkt. 11-1 at 15 (summarizing the ACPA as telling the Commission that the account of Mr. Jensen “being the aggressor” was untrue). Using the sock, Ms. Longhurst convinced the Commission that Mr. Creech was the instigator and that the murder was “coldblooded” rather than an excessive reaction to an unprovoked attack. At a minimum, since this general aspect of the case plainly did feature into the Commissioner’s determination, the burden is on the appellees to prove the sock in particular was *irrelevant*. Faulting Mr. Creech for the omission of this precise word from a one-paragraph statement by the Commission is not a faithful application of *Chapman*.

Relatedly, the panel believed that Mr. Creech would only be entitled to relief if the Commissioners had “discuss[ed] Creech’s unwillingness to accept the 1995 factual findings that the murder weapon belonged to him.” Dkt. 13.1 at 12. Under Idaho law, the Parole Commission can recommend commutation for any reason it regards as appropriate. *See generally* Idaho Const., Art. IV, § 7; Idaho Code § 20-1016. The Commission was in no way bound by Judge Newhouse’s 1995

findings. It could have accepted them had it chose, but it was equally free to instead endorse the much different findings that Judge Newhouse made in 1982, when he wrote that Mr. Creech “did not instigate the fight with the victim, but the victim, without provocation, attacked him.” Dkt. 4-1 at 25. The panel effectively treated the Commission like a court, asking whether it had sufficient evidence to disturb a particular judicial finding. That framework is doubly inapposite. Once because that is not how clemency works. And twice because, under *Chapman*, it would be the appellees’ burden to prove that for some reason the 1995 findings are the only ones that would have mattered to the Commission—something they haven’t even attempted to do.

The panel’s handling of the Walker issue on harmlessness was also irreconcilable with *Chapman*. It again treated the matter as though Mr. Creech is challenging the sufficiency of the evidence in a criminal appeal, asking what would happen if the false evidence were removed from “the equation,” Dkt. 13.1 at 10, rather than whether the appellees had proven by the highest possible standard that these bombshell allegations did *not* contribute to the result.

The panel’s discounting of the false Walker evidence also overlooks the manner in which Ms. Longhurst herself used the allegations. Although the panel paints Mr. Walker as just one in a list of victims, that was not the ACPA’s own strategy. The ACPA was so shrewdly focused on spreading the Walker disinformation that it mentioned only two victims’ names in its press release: Mr. Jensen, whose murder led to the death sentence, and Mr. Walker. *See* Dist. Ct. Dkt. 4-3. As intended, the ACPA’s sensationalistic accusations generated headlines from around the country conveying to the public—which includes the Parole Commission—that Mr. Creech’s guilt in the Walker case was now settled. *See* Dist. Ct. Dkt. 15-13 (sampling nearly fifty pages of damning media coverage). None of that could be said about any crime other than Walker.

The panel also drifted from Ninth Circuit precedent when it conducted the harmless-error inquiry by isolating each of Ms. Longhurst’s falsehoods and weighing them in a vacuum without considering their cumulative impact. *See* Dkt. 13.1 at 10–13. Ninth Circuit law establishes that in a harmless inquiry the Court “must consider whether a *combination* of misconduct and error so infected the

entire proceeding as to destroy its fairness.” *Karis v. Calderon*, 283 F.3d 1117, 1129 (9th Cir. 2002). The panel did not do so.

If it had, a different outcome becomes inevitable. Ms. Longhurst’s presentation to the Commission stressed at great length two aggravating features about Mr. Creech’s case, to the virtual exclusion of all else: the brutality of the Jensen offense, and the prior murders. *See* Dist. Ct. Dkt. 11-1 at 12–16. The lies here significantly impacted both of those areas. They provided a false foundation to find the crime more coldblooded and they provided a false foundation to execute Mr. Creech as the only means to punish him for a murder that he would otherwise get away with. Contrary to the panel, those are not trivial consequences but go to the heart of the proceedings.

The Walker point is an especially ironic one, for while the prosecutors here have loudly anointed themselves the representatives of all the victims, Mr. Walker’s brother Doug has made it poignantly clear that his interest is in knowing the truth. *See* Dist. Ct. Dkt. 25 at 25. If rehearing is denied, Ms. Longhurst will have successfully managed to charge, convict, sentence, and execute Mr. Creech on the basis of a single PowerPoint slide and a one-page press release. Had this been

about the truth, Mr. Creech would have been charged and stood trial, or at least limited discovery below would have occurred. This was about a prosecutor's desire to put Mr. Creech to death at any cost and without regard for the truth.

Finally, Mr. Creech asks the Court to consider what message it will send to prosecutors if these lies are deemed harmless. At oral argument multiple judges expressed concern about the palpable prospect of false evidence having been presented at the commutation hearing. *See, e.g.*, Oral Arg. at 27:03–27:22 (reflecting Judge Bybee inquiring of the prosecutor whether he was “telling” the court that “it doesn’t matter if the prosecutor presented false evidence”). Those concerns are not in the panel’s opinion, which is how the case will influence actors within the circuit in years to come. The takeaway from the opinion for prosecutors will be that they can get away with lying by creating just a sliver of ambiguity and then rushing the process to the execution chamber to escape any real judicial review and any accountability. If there was significant aggravating evidence in the case, as there unquestionably was, then the prosecutor should have used it—rather than fabricating more.

CONCLUSION

Mr. Creech stands to be executed in four days and the denial of rehearing will not only sanction the egregious prosecutorial misconduct that led us there—it will reward that misconduct and place the Ninth Circuit’s imprimatur upon it. To avoid that miscarriage of justice, Mr. Creech requests panel or en banc rehearing

DATED this 25th day of February 2024.

/s/ Jonah J. Horwitz _____
Jonah J. Horwitz

Attorney for Petitioner/Appellant
THOMAS EUGENE CREECH

CERTIFICATE OF COMPLIANCE

I am the attorney or self-represented party. I certify that pursuant to Circuit Rule 35-4 or 40-1, the attached petition for rehearing en banc has been prepared in a format, typeface, and type that complies with Fed. R. App. P. 32(a)(4)-(6) and **contains 4,169 words.**

DATED this 25th day of February 2024.

/s/ Jonah J. Horwitz

Jonah J. Horwitz

Attorney for Petitioner/Appellant
THOMAS EUGENE CREECH

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February 2024, I electronically filed the foregoing Appellant's Petition for Rehearing En Banc with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate ACMS/ECF system.

I certify that all participants in the case are registered ACMS/ECF users, and that service will be accomplished by the appellate ACMS/ECF system.

/s/ L. Hollis Ruggieri
L. Hollis Ruggieri

FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 24 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

THOMAS EUGENE CREECH,

Plaintiff - Appellant,

v.

IDAHO COMMISSION OF PARDONS
AND PAROLE and JAN M BENNETTS,
Ada County Prosecuting Attorney, in her
official capacity,

Defendants - Appellees.

No. 24-1000

D.C. No.

1:24-cv-00066-AKB

District of Idaho,

Boise

OPINION

Appeal from the United States District Court
for the District of Idaho
Amanda K. Brailsford, District Judge, Presiding

Argued and Submitted February 24, 2024
San Francisco, California

Before: William A. Fletcher, Jay S. Bybee, and Morgan Christen, Circuit Judges.

PER CURIAM:

Plaintiff-Appellant Thomas Eugene Creech is on death row for the 1981 murder of David Dale Jensen. In 2023, the State of Idaho granted Creech a commutation hearing before the Commission of Pardons and Parole (the “Commission”), which was held in early 2024. The Commission ultimately denied

the petition for commutation, and Creech's execution is now scheduled for February 28, 2024. Creech filed a § 1983 action in federal court, alleging various due process violations over the course of the commutation proceedings and seeking a preliminary injunction. The district court denied his motion, and we affirm.

I. BACKGROUND

Because we have described elsewhere the factual and procedural history of this case, *see Creech v. Richardson*, 59 F.4th 372, 376–82 (9th Cir. 2023), we recite only those facts most relevant to Creech's commutation-related arguments now before us. In 1981, while serving two life sentences for murders committed in Idaho, and following convictions for additional murders committed in California and Oregon, Creech killed fellow inmate David Dale Jensen, who was disabled. *See id.* at 376–77; *Arave v. Creech* (“*Creech IV*”), 507 U.S. 463, 466 (1993). In relevant part, Jensen attacked Creech with a battery-filled sock. *State v. Creech* (“*Creech V*”), 966 P.2d 1, 5 (Idaho 1998). Creech took the weapon from Jensen. Jensen later returned, wielding a toothbrush with a razor blade fastened to it. Creech beat Jensen with the sock, ultimately killing him. *Id.* Creech pleaded guilty. At his initial sentencing in 1982, Creech testified that, “through an intermediary, [he] provided Jensen with makeshift weapons and then arranged for Jensen to attack him, in order to create an excuse for the killing.” *Creech IV*, 507 U.S. at 466. Although the judge at Creech's original sentencing concluded that “Creech did not instigate the fight

with the victim,” *id.* at 467, the same judge later determined at a resentencing in 1995 that the murder was “planned and executed by Creech,” *Creech V*, 966 P.2d at 7. On October 16, 2023, an Idaho state court issued a death warrant for Creech’s execution, but the warrant was stayed pending Creech’s petition for commutation to life without parole.

The Idaho Commission of Pardons and Parole possesses the exclusive power to grant commutations and pardons, but “only as provided by statute” Idaho Const. art. IV, § 7. The Commission is comprised of seven Commissioners. *See* Idaho Code § 20-1002(1). Except in certain cases not relevant here, “[a]ny decision of the full Commission requires a majority vote of four (4) Commissioners.” IDAPA § 50.01.01.200.08.a. Idaho law further requires recusal in certain cases, *see id.* § 50.01.01.200.07, but it does not supply a tie-breaking method or mechanisms for the appointment of an interim Commissioner in the event of a recusal.

In the case of capital offenses, the Commission may issue a pardon or commutation “only after first presenting a recommendation to the governor.” Idaho Code § 20-1016(2). If the Governor approves the recommendation within thirty days, “the commission’s pardon or commutation shall issue.” *Id.* If the Governor rejects the recommendation or fails to act upon it within thirty days, “no pardon or commutation shall issue from the commission, and the commission’s recommendation shall be of no force or effect.” *Id.*

The Commission ultimately denied Creech’s commutation petition in a 3-3 vote, with one commissioner recused. Creech filed an action under 42 U.S.C. § 1983, alleging various violations of due process by the Commission and the Ada County Prosecuting Attorney’s Office (“ACPA”). The district court denied Creech’s motion for a preliminary injunction. Creech timely appealed.

II. JURISDICTION AND STANDARD OF REVIEW

We have appellate jurisdiction to review the denial of a preliminary injunction under 28 U.S.C. § 1292(a)(1). We review the denial of a preliminary injunction for abuse of discretion, but we review *de novo* the underlying issues of law. *Cal. Chamber of Com. v. Council for Educ. & Rsch. on Toxics*, 29 F.4th 468, 475 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 1749 (2023).

“The appropriate legal standard to analyze a preliminary injunction motion requires a district court to determine whether a movant has established that (1) he is likely to succeed on the merits of his claim, (2) he is likely to suffer irreparable harm absent the preliminary injunction, (3) the balance of equities tips in his favor, and (4) a preliminary injunction is in the public interest.” *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023); *see Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). We focus here on the “likelihood of success” element, which is the most important factor. *See Edge v. City of Everett*, 929 F.3d 657, 663 (9th Cir. 2019).

III. ANALYSIS

Our review of state commutation proceedings is limited. *See Wilson v. U.S. Dist. Ct. for N. Dist. of Cal.*, 161 F.3d 1185, 1186 (9th Cir. 1998). “[P]risoners have no liberty interest in clemency proceedings because the decision to grant or deny clemency rests wholly in the discretion of the executive.” *Burnsworth v. Gunderson*, 179 F.3d 771, 775 (9th Cir. 1999). If a state provides a commutation proceeding, the Due Process Clause of the Fourteenth Amendment requires only “*minimal* procedural safeguards” *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) (O’Connor, J., concurring in part and concurring in the judgment);¹ *see also id.* at 292 (Stevens, J., concurring in part and dissenting in part) (“There are valid reasons for concluding that even if due process is required in clemency proceedings, only the most basic elements of fair procedure are required.”); *Woratzek v. Ariz. Bd. of Exec. Clemency*, 117 F.3d 400, 404 (9th Cir. 1997) (“[T]he due process that the Constitution requires for a clemency hearing is quite limited.”).

The precise contours of our review of a commutation proceeding are unclear. At the least, a procedural due process violation exists if “the clemency proceeding’s outcome is wholly arbitrary” *Schad v. Brewer*, 732 F.3d 946, 947 (9th Cir. 2013)

¹ Justice O’Connor’s concurring opinion, joined by a plurality of justices, constitutes the Court’s holding in light of Justice Stevens’ partial concurrence. *See Marks v. United States*, 430 U.S. 188, 193 (1977); *see also, e.g., Barwick v. Governor of Fla.*, 66 F.4th 896, 902 (11th Cir.) (per curiam) (“Justice O’Connor’s concurring opinion provides the holding in *Woodard*.”), *cert. denied sub nom. Barwick v. Desantis*, 143 S. Ct. 2452 (2023).

(per curiam). “Judicial intervention might, for example, be warranted in the face of a scheme whereby a state official flipped a coin to determine whether to grant clemency, or in a case where the State arbitrarily denied a prisoner any access to its clemency process.” *Woodard*, 523 U.S. at 289 (O’Connor, J., concurring in part and concurring in the judgment). We have assumed without deciding that “bribery, personal or political animosity, or the deliberate fabrication of false evidence” may give rise to a commutation-related due process claim. *Anderson v. Davis*, 279 F.3d 674, 676 (9th Cir. 2002) (citation omitted). In the absence of such arbitrariness or invidious misconduct, “notice of the hearing,” *Woodard*, 523 U.S. at 290 (O’Connor, J., concurring in part and concurring in the judgment), “notice of the issues to be considered,” *Wilson*, 161 F.3d at 1187, and “an opportunity to participate in a[] [pre-hearing] interview,” *Woodard*, 523 U.S. at 290 (O’Connor, J., concurring in part and concurring in the judgment), generally satisfy the demands of the Due Process Clause.

Further, even if we found an irregularity, there is some uncertainty as to the proper harmless standard to apply in review of state commutation proceedings. *Cf. Washington v. Recuenco*, 548 U.S. 212, 218 (2006) (noting the general presumption that harmless-error analysis applies to constitutional violations). But we will afford Creech the benefit of *Chapman v. California*’s generous standard, and we therefore assume without deciding that the State bears the burden of

demonstrating that any error is “harmless beyond a reasonable doubt.” 386 U.S. 18, 24 (1967).

Applying these standards, we reject all of Creech’s due process arguments.

1. We first consider Creech’s argument that he was not given adequate notice of the issues to be considered by the Commission and the evidence to be presented at the commutation hearing. Neither we nor the Supreme Court have read the Due Process Clause to require advance notice of the evidence to be presented at a commutation hearing, and Idaho law does not confer a right to receive such notice. Creech received notice of the hearing itself. *See Woodard*, 523 U.S. at 290 (O’Connor, J., concurring in part and concurring in the judgment). And Creech was not misled as to the issues that would be considered by the Commission. *See Wilson*, 161 F.3d at 1187. The State gave Creech considerable information about the logistics and substance of his hearing well in advance thereof. The Commission’s Executive Director met with Creech’s counsel three times before the hearing to discuss the agenda and types of evidence that would be presented. More than three weeks before the hearing, Creech received from the State a copy of the investigation packet that the Commission would be reviewing. Although Creech may not have known all of the specific evidence that would be presented during his commutation hearing—such as evidence concerning the Daniel Walker murder and the introduction of a

picture of a sock labeled “Creech,” which are discussed below—the State satisfied the minimal notice requirements contemplated in *Woodard* and *Wilson*.

2. We next reject Creech’s contention that the Due Process Clause entitled him to the appointment of a replacement commissioner when one Commissioner recused himself. Idaho law does not expressly authorize the appointment of a replacement commissioner in the event of a recusal. This is far from “wholly arbitrary,” *Schad*, 732 F.3d at 947, and Creech has received more than the minimum process he was due under the U.S. Constitution, *see Woodard*, 523 U.S. at 290 (O’Connor, J., concurring in part and concurring in the judgment), so he has failed to make a cognizable procedural due process claim. And we decline to speculate that the presence of an additional commissioner would have changed the outcome. *Cf. Brown v. Davenport*, 596 U.S. 118, 133 (2022) (explaining that “set[ting] aside a conviction based on nothing more than speculation that the defendant was prejudiced . . . would be to give short shrift to the State’s sovereign interes[t] in its final judgment” (citation and quotation marks omitted) (final alteration in original)).

3. We disagree that ACPA violated Creech’s due process rights by suggesting to the Commission that Creech “committed the murder [of Daniel Walker] and got away with it.” Although we will not review the substantive merits of the Commission’s commutation proceeding, we will assume that we may review Creech’s claim that fabricated evidence was deliberately introduced by ACPA. *See*

Anderson, 279 F.3d at 676. The prosecutor’s statements that Creech had been identified as Walker’s killer are not entirely consistent with the San Bernardino Sheriff’s Office press release about the Walker investigation released on January 24, 2024, shortly after the commutation proceeding. It appears² that the prosecutor told the Commission that Creech had been “positively identified as the murderer,” although the press release identified Creech as only a “suspect.” The press release also stated, however, that “[d]etectives were able to corroborate intimate details from statements Creech made regarding Daniel’s murder.”

ACPA’s slide does unequivocally state that “Thomas Creech Murdered Daniel Walker.” Taken alone, that slide might have been misleading by overstating the level of certainty as to Creech’s involvement. But it appears from the hearing minutes that the prosecutor correctly noted that Creech had not been tried for, nor convicted of, Walker’s murder, so the prosecutor’s statements did not mislead the Commission into assuming that Creech had been found responsible in a formal, legal sense.

We are also persuaded that correcting any purported violation would not change the Commission’s vote to deny Creech commutation. Creech’s alleged violations do not call into doubt the stated rationales for the Commissioners’ votes. The Commissioners who voted to deny commutation reasoned that Creech is not

² Because there is no transcript or recording of the hearing, we rely primarily on the meeting minutes attached as an exhibit to the parties’ filings.

“worthy of grace or mercy” for several reasons, including “the coldblooded nature of David Dale Jensen’s murder,” as well as Creech’s “unwilling[ness] to completely disclose the number of people he has killed.” The Commissioners further opined “that the Jensen family would not receive justice if Mr. Creech received clemency, and above all else that they deserve closure in this case.” Overwhelming evidence supports those conclusions.

It is true that the Commissioners who voted against commutation noted “the sheer number of victims that Mr. Creech has created over his lifetime” and that “Mr. Creech was not interested in telling the truth about his additional crimes.” But even taking Daniel Walker’s murder out of the equation would not materially change the record’s support for both of those observations. The prosecutor alleged at the hearing that Creech had killed eleven people, including Walker. Creech agreed that he had killed at least nine people, but he claimed that he had never heard of one of the names and did not kill Dwayne DiCicco. The Commission then asked if Creech could settle “on at least ten people[] that he killed,” to which Creech replied, “no.” *Contra Creech IV*, 507 U.S. at 465 (“Creech has admitted to killing or participating in the killing of at least 26 people. The bodies of 11 of his victims—who were shot, stabbed, beaten, or strangled to death—have been recovered in seven States.”).

Even if the Commission had not been presented with any information regarding the status of the Walker investigation, it would have still had ample

evidence that Creech had killed many people, been implicated or suspected in other deaths, and been dishonest about his involvement in the death of DiCicco. Creech had previously confessed to killing DiCicco, even going so far as contact DiCicco's mother several times.

4. We also reject Creech's argument that ACPA violated his due process rights by introducing misleading or fabricated evidence when it displayed a slide of a sock labeled with Creech's name. In 1995, the sentencing judge found "beyond a reasonable doubt . . . [that] [a]ll the weapons which were used in this murder were made by Tom Creech. Jensen was egged on to attack Creech so the justification of self defense could be used. . . . Jensen approached Creech holding a weapon made up of batteries in a sock. *The sock was later determined to be Creech's.*" Findings of the Court in Considering the Death Penalty Under Section 19-2515, Idaho Code, at 3–4, *State v. Creech*, No. HCR-10252 (Idaho Dist. Ct. Apr. 17, 1995) (emphasis added).³ The question of the authenticity of the sock in the photograph and its probative value arose because Creech contended at the Commission's hearing that his remorse and rehabilitation favored commutation. In support, he claimed that he had accepted responsibility for his offenses. ACPA responded by pointing to a pre-hearing statement that Creech gave to investigators, where Creech contradicted the

³ The state trial court's findings are available as an exhibit at Second Petition for Writ of Habeas Corpus, *Creech v. Pasket*, No. 99-CV-00224 (D. Idaho Mar. 24, 2005), ECF No. 131-1.

sentencing judge's 1995 factual finding that the murder weapon was his by stating that it belonged to another inmate. ACPA introduced the slide with the labeled sock to refute Creech's pre-hearing assertion that the murder weapon never belonged to him. In a post-hearing declaration provided to the Commission, Creech's attorney stated that the prosecutor falsely told the Commission during the hearing that the sock bearing Creech's name was the murder weapon. The detailed notes of the hearing describe no such statement by the prosecutor. The minutes state, instead, that in her closing argument to the Commission, the prosecutor "displayed a photograph of the matching sock that was found in Mr. Creech's cell. The name on the sock is 'Creech.'" Creech did not address at the hearing the sentencing judge's 1995 factual finding that the murder weapon was his.

Even if we credit Creech's attorney's post-hearing declaration that the prosecutor falsely told the Commission that the sock bearing Creech's name was the murder weapon, there are other reasons why any such due process violation was harmless beyond a reasonable doubt. The Commissioners who voted to deny commutation did not mention the sock, nor did they even discuss Creech's unwillingness to accept the 1995 factual findings that the murder weapon belonged to him. As explained above, the Commissioners who voted to deny commutation focused on the reprehensible nature of Jensen's murder without reference to whether Creech had provoked Jensen's initial attack. The Commissioners were also

concerned with both Creech's lack of candor about the number of people he had murdered and justice for Jensen's family. Overwhelming evidence supports those reasons.

Bolstering our conclusion as to harmlessness, the Commissioners were unanimous that Creech's conduct—including any evidence of his post-offense rehabilitation—would not entitle him to mercy. The three Commissioners who voted to recommend commutation were explicit that their “decision was not based on any doubt or question about Mr. Creech's guilt or the horrific nature of his crime.” Indeed, their reasoning was not “based on the actions and conduct of Mr. Creech” at all. Instead, their vote reflected “the time that had elapsed since Mr. Creech committed this horrific crime,” and that the sentencing judge and former Ada County deputy prosecutor “no longer believe that a sentence of death is appropriate” It strains credulity to suppose that the reference to the matching sock made the difference in the Commission's denial of commutation.

5. Finally, we disagree with Creech's argument that the Commission violated his due process rights when it failed to pause the proceedings after the hearing based on his complaints of unfairness. Creech raised both the Walker and sock issues to the Commission after the hearing. The Commissioners unanimously rejected Creech's request to defer proceedings pending further factfinding, suggesting that the Commissioners did not consider either issue relevant to the denial

of commutation. The Commission had no obligation to consider Creech's request (which it did), let alone grant it.

IV. CONCLUSION

Creech has failed to establish a likelihood of success on the merits, and we find no legal or clear factual error in the district court's evaluation of the remaining preliminary injunction factors. *See Cal. Chamber of Com.*, 29 F.4th at 475. We dismiss as moot Creech's motion for a stay pending appeal.

AFFIRMED.

DECLARATION OF CHRISTOPHER M. SANCHEZ

I, Christopher M. Sanchez, mindful of the penalties of perjury, declare as follows:

1. I am a person over eighteen (18) years of age and competent to testify.
2. I represent Plaintiff Thomas Eugene Creech in this action.
3. I am an attorney with the Capital Habeas Unit for Federal Defender Services of Idaho (“CHU”).
4. The CHU has represented Mr. Creech in his federal habeas proceedings since 1999.
5. As in all of its cases, the CHU maintains an exhaustive file for Mr. Creech’s representation, which includes all documents received by prior counsel, all materials compiled in the office’s own investigation, all responses to public record requests, and so forth.
6. The CHU has searched its file extensively and has found no references in it by name to Daniel Walker.
7. I was one of the two attorneys who represented Mr. Creech at his commutation proceedings before the Idaho Commission of Pardons and Parole (“the Commission”).
8. The other CHU attorney on Mr. Creech’s commutation proceedings with me was Jonah Horwitz.
9. On October 18, 2023, the Commission decided to hold a hearing on Mr. Creech’s petition to have his death sentence commuted to life in prison without the possibility of parole. The hearing was scheduled for January 19, 2024.
10. On November 8, 2023, the Commission Investigators W. Lee Maddox and Karli Karlson interviewed Mr. Creech. Both Mr. Horwitz and I were present for the interview.
11. During the commutation proceedings, the case for death and against clemency was primarily made by the Ada County Prosecuting Attorney’s Office (“ACPA”).

12. The ACPA was assisted in its efforts by the Idaho Attorney General's Office ("AG"). The lawyer from the AG most involved in supporting the ACPA's advocacy against clemency was L. LaMont Anderson, who leads the office's capital litigation unit.
13. As the parties prepared for the commutation hearing, the Executive Director of the Commission directed counsel for both sides not to "make or retain any copy of the hearing packet and return their copy of the hearing packet, including all attachments and party submissions, at the conclusion of the hearing." The Executive Director added that all "further distribution of the hearing packet" would be "pursuant to the Idaho Public Records Act."
14. The hearing packet was partly comprised of documentary submissions made by the parties to the Commission in December 2023. The Commission, in turn, made all the materials available to the parties on December 20, 2023. I will refer to the prosecutor's submissions here as "the ACPA exhibits."
15. The ACPA exhibits consisted of 2,952 pages of documents in a single PDF. The first twenty-seven pages of the PDF were blank and were introduced with the following text: "THIS PAGE REMOVED DUE TO EXTRACTION OF VICTIM RELATED DOCUMENTS." The CHU has never seen these first twenty-seven pages.
16. During the commutation hearing, the prosecutor referred to a letter to the Commission from Doug Walker, the man whose brother Daniel Walker had been killed in San Bernardino, California in 1974.
17. One document in the ACPA exhibits is a declaration signed by Mr. Anderson describing the procedural history of the litigation in the Jensen case.
18. On January 31, 2024, Mr. Horwitz filed a motion for a stay of execution in a post-conviction appeal at the Idaho Supreme Court. Mr. Horwitz attached to the motion Mr. Anderson's declaration to support a point about how delays in carrying out the execution were caused by extensions sought by both sides and not just Mr. Creech.
19. After Mr. Horwitz filed this declaration, and also on January 31, 2024, Mr. Anderson contacted the Executive Director of the Commission to express his view that it was improper for the CHU to use materials from the hearing packet for any purpose other than the commutation proceedings.

20. One minute after Mr. Anderson's email, Mr. Horwitz replied to the group to indicate that he had no objection to the declaration being placed under seal if the State wished.
21. Mr. Anderson responded that sealing the declaration was "not the issue" and that his concern was instead the use of the document in court.
22. As of today's date, the State has not moved to seal the declaration, which remains publicly available.
23. In further correspondence with the Executive Director, the ACPA referred to Mr. Horwitz's filing of the declaration as an "intentional violation of the Commission's rules" and asked what actions would be taken in response.
24. When Mr. Anderson responded to the motion for stay of execution at the Idaho Supreme Court, he indicated that he would, "should time permit," seek sanctions against Mr. Horwitz for filing the declaration.
25. I have inferred from the facts set forth above that the AG's and the ACPA's position is that any documents that were in the hearing packet should not be filed in any court, even under seal.
26. To address the AG's and the ACPA's concerns, the CHU has not provided as exhibits to its motion for a preliminary injunction any of the documents that were in the hearing packet unless they were already part of the public record through other avenues, such as transcripts that are included in the lodgings in Mr. Creech's federal habeas proceedings.
27. That accommodation to the AG and the ACPA has impeded the CHU's ability to fully present the motion for a preliminary injunction, since there are several documents in the hearing packet that are of obvious relevance to the claim we are raising.
28. If the AG and the ACPA were to consent to these documents being provided to the Court, either under seal or otherwise, the CHU would promptly submit them.
29. Until that occurs, I will summarize the documents below.
30. One document in the ACPA exhibits is a letter to the Commission from Dan Douthit and Garry Carr, two former employees of the Ada County Sheriff's Office. In their letters, Messrs. Douthit and Carr describe themselves as having "served as the primary investigators involved in the" Jensen case.

They further state that Mr. Creech “provided the sock and batteries used in the initial violent attack,” which was proven—to their minds—by the fact that “[t]he spare sock was found in Creech’s possessions.” Messrs. Douthit and Carr “urge[d] the Commission not to grant commutation.”

31. Another document in the ACPA exhibits is a letter to the Commission from Tom Taylor, a former employee of the Ada County Sheriff’s Office. The letter, dated December 14, 2023, claims that Mr. Taylor was present for interviews with Mr. Creech where Mr. Creech described killing a man in a van in the Barstow, California area who had a diamond ring. Mr. Taylor also informed the Commission in his letter that he believed Mr. Creech should be executed.
32. The ACPA exhibits did not contain the names 1974 murder victim Daniel Walker or his brother Doug Walker.
33. The ACPA exhibits do contain a transcript of an interview that took place on April 28, 1975. At that interview, Mr. Creech claimed to have killed a man under circumstances that resemble the facts in the Walker case. However, Mr. Creech also told his interviewers at the same time that he was involved in the murder of a couple named Jerry and Donna Sage, which he described as also taking place in the Barstow area. My office has investigated the couple that Mr. Creech called the Sages. We believe the names were aliases. The people who seem to have used these aliases appear to still be alive based on information corresponding with their pseudonyms, ages, marriages, places of birth, and so on.
34. Sheriff Eldon “Chuck” Palmer, the law enforcement officer who took Mr. Creech to San Bernardino, California in May of 1975 had a history of providing Mr. Creech with candy and beer in exchange for information about people Mr. Creech claimed to have killed. *See, e.g., Creech v. Ramirez*, No. 1:99-cv-224, Dkt. 9, I-39 at 106.
35. The hearing packet also included the report of Commission Investigators Maddox and Karlson dated December 19, 2023, as well as Mr. Creech’s 1994 presentence investigation report.
36. No other materials in the hearing packet contained Daniel or Doug Walker’s names either, including the Commission investigators’ report and the 1994 presentencing report.
37. At the commutation hearing, I participated in the hearing remotely from the Idaho Maximum Security Institution (“IMSI”). From IMSI, I could see on a

screen all of the PowerPoint slides that were shown by the parties to the Commission.

38. Six Commissioners participated in the hearing. A seventh recused himself for reasons that were never conveyed to Mr. Creech or his counsel.
39. The hearing began with statements from several supporters of Mr. Creech. After that, Mr. Horwitz delivered a lengthy PowerPoint presentation. In that presentation, after several introductory slides, the first substantive section dealt with the Jensen offense. There, Mr. Horwitz displayed a slide contrasting the statement of Messrs. Carr and Douthit that there was “no way that Jensen initiated an assault” with the finding by Judge Newhouse, who imposed the death sentence in 1982, that Mr. Creech “did not instigate the fight with the victim, but the victim, without provocation, attacked him.”
40. After the ACPA released its press release on January 19, 2024, numerous news outlets covered the alleged tie between Mr. Creech and the Walker murder, including sources in Idaho, California, and nationally.
41. The letter from Mr. Horwitz to the Parole Commission that was sent on January 29, 2024 was emailed around 5 a.m. that morning. According to correspondence we received from the Parol Commission, it was continuing its deliberations on Mr. Creech’s commutation petition beginning at 8:30 a.m. that day.
42. After the Commission split three-three and denied clemency, my office sent a letter to the Governor on January 31, 2024. We requested that he grant a reprieve and postpone the execution until the Commission’s next session so that some arrangement could be made to install another Commissioner to vote in Mr. Creech’s case in order for him to receive the process Idaho law envisions for any death-row inmate. On February 7, 2024, through counsel, the Governor denied our request for a reprieve in a four-sentence email.
43. My office also represents Gerald Ross Pizzuto, Jr., another death-row inmate in Idaho. Mr. Pizzuto had a commutation hearing before the Commission in November 2021. The Commission released its decision approximately four weeks after the hearing.
44. On February 2, 2024, I spoke on the phone with Rolf Kehne, the attorney who represented Mr. Creech in connection with his guilty-plea proceedings as well as at his 1995 resentencing and in other related litigation. Mr. Kehne informed me that he had never seen a photograph of the sock used in the

Jensen offense that bore Mr. Creech's name, and he found the revelation of such a photograph highly suspicious.

45. On February 5, 2024, I spoke on the phone with August Cahill, the attorney who represented Mr. Creech in connection with the post-conviction proceedings that took place shortly after the 1995 resentencing and in other related litigation. Mr. Cahill advised me that he had never seen a photograph of the sock used in the Jensen offense that bore Mr. Creech's name.
46. The CHU has conducted an extensive search in its own file and has not located a photograph of the sock that bears Mr. Creech's name, a report suggesting that it did, or a single piece of evidence corroborating the image displayed by the ACPA at the hearing.
47. The ACPA exhibits do not include a photograph of the sock bearing Mr. Creech's name, a report suggesting that it did, or a single piece of evidence corroborating the image displayed by the ACPA at the hearing.
48. I declare under penalty of perjury that the foregoing is true and correct. Executed on this 8th day of February 2024, at Boise, Idaho.

/s/ Christopher M. Sanchez

Christopher M. Sanchez

Today's date is April 28, 1975. I am presently in Ada County, in the State of Idaho, and doing an interview with Thomas Eugene Creech. Present during the interview will be Sheriff Palmer, of Ada County, and Detective Dykes of San Bernadino County Sheriff's Office. What time do you have Sheriff? I know we have a time differential here. We have twenty minutes till eleven a.m.

DYKES: Tom, we talked to you a little bit yesterday. Now we're laying honest today. Today we want to try to get back in better perspective and group it up a little better if we can. Once again, I will advise you of your rights and then we will talk about it again, is that okay with you? So if you would just speak right up so we can get it on the mike. You have the absolute right of silence. Anything you say will be used as evidence against you in court. You have the right to consult with an attorney and to have an attorney present any time you are being questioned. If you cannot afford an attorney, the courts will appoint one for you, free of charge to represent you if you so desire before any questions are asked. Do you understand those rights?

CREECH: Yes.

DYKES: With those rights in mind are you willing to discuss with Sheriff Palmer and myself, some incidents that took place in San Bernadino County in California? Some bodies that might be in a mine shaft and things like this.

CREECH: Yes.

PALMER: Tom, I just want to expand on that a little bit, now you do have an attorney here in Idaho, Ward Howard, and do you want him here while we're talking to you?

CREECH: No.

DYKES: You don't want him here?

CREECH: No, I don't.

DYKES: Otherwise, you are willing to waive your attorney that you have and talk to us about cases in California?

CREECH: Yes.

DYKES: You understand that I'm not going to talk to you about any cases that you have pending in Idaho?

CREECH: Yes.

DYKES: I'm not going to discuss any of those, fair enough?

CREECH: Fine.

-1-

EXHIBIT A

26
21773

THOMAS EUGENE CREECH - tape transcript
4-28-75

DYKES: Now, we have a young couple that you talked to us about and you referred to them as Jerry and Donna and the last name of Sage.

CREECH: Yes.

DYKES: Are you familiar with them?

CREECH: Yes.

DYKES: Where did you first meet them at?

CREECH: In Missoula, Montana.

DYKES: In Montana?

CREECH: Yes.

DYKES: Did you leave Missoula, Montana, with them?

CREECH: I'm not sure, the last time we went there, they were with us or we met them somewhere else. I think we met with them at Fresno.

DYKES: You met with them at Fresno. Were they driving a car?

CREECH: A pontiac.

DYKES: What kind of a Pontiac are we talking about?

CREECH: A '65 or '66 red Pontiac convertible.

DYKES: Does it have Montana license on it?

CREECH: No, I think it has California plates on it.

DYKES: California. Okay, sometime during your travels with Jerry and Donna Sage, did you get into the desert area around Barstow and Calico Mines?

CREECH: Yes.

DYKES: When you got into that area did you and Carol do any talking about what you were going to do with them?

CREECH: Well, Carol wanted me to waste them. She thought that I was balling Donna.

DYKES: Had you?

CREECH: No.

DYKES: It don't make any difference.

PALMER: Tom, on that, had there been any prior orders come down from the top as far as Bandidos or any motorcycle group was concerned, or was this just Carol and your idea or was it Carol's idea?

CREECH: They were orders to come down and try to find the dope that they had ripped off, that really didn't have that much to do with it.

26 21774

Thomas E. Creech - tape transcript
4-28-75

PALMER: Was there dope supposedly in the Calico Mine area somewhere?

CREECH: Somewhere.

PALMER: Had Jerry told you that this was out there and that's what you were going to look for?

CREECH: Right.

PALMER: Now, as I understand it, Carol was a little put out at Donna because you were balling her or making out or whatever and so she wanted you to more or less get rid of her, okay.

DYKES: Then you did it sometime, get into the area near the mines of Calico?

CREECH: Right.

DYKES: Now correct me if I'm wrong, you say that when you went in, you drove up a dirt road and at some point in there, the road Y's.

CREECH: Right.

DYKES: Now, did you take the wrong road in?

CREECH: I'm pretty sure we did go the wrong way.

DYKES: In otherwise, you probably most likely had taken the road to the left then?

CREECH: Right.

DYKES: Do you know how far up there you went?

CREECH: Just until where a cave starts at.

DYKES: Right where the caves start at? It would be the first cave you could see on your left hand side as your driving up?

CREECH: No, it wouldn't be the first one.

DYKES: It would be close to that?

CREECH: Yes.

DYKES: This mine you are describing it as being higher than the road bed?

CREECH: Right.

DYKES: Did you stop right on the road or did you pull into a draw or something?

CREECH: Sort of like a little pull-off on a bunch of rocks, kind of flat and you can pull right up in there.

DYKES: What took place after you pulled in there?

Thomas E. Creech - tape transcript
4-28-75

CREECH: Then we started walking up towards the mines and we had our guns with us and we were going to do some shooting up there.

DYKES: What guns did you have at that time?

CREECH: 30-30 rifle and 32 automatic.

DYKES: Who had the guns?

CREECH: Carol was carrying the 30-30, I had the 32 and Jerry had a .25, I think, I'm not sure about that, I think he had one though.

DYKES: What happened as you walked up towards the mine?

CREECH: Well, Carol and Donna got into an argument and they said a few words back and forth to each other and right when we got to the mine, Carol grabbed her and called her a bitch and then shot her.

DYKES: Shot her with the 30-30? Where did she shoot her at?

CREECH: I think the first shot hit her in the stomach. She grabbed her belly.

DYKES: Where did the next one hit her?

CREECH: Two or three times hit her in the chest.

DYKES: Carol shot her with a 30-30.

CREECH: Yes.

DYKES: Did you ever shoot her?

CREECH: No.

DYKES: What happened then?

CREECH: Jerry asked what the fuck was happening and I shot him in the leg first. First shot hit him in the leg.

DYKES: In the right leg?

CREECH: Right. The second shot either hit him in the shoulder or went under his shoulder and he fell on the ground and that's when the .25 automatic fell out and he dropped it and then he asked me not to kill him and I shot him in the head.

DYKES: You shot him in the head, okay. What did you do with the bodies then?

CREECH: We had to drag them back to the part of the mine where the shaft goes straight down.

DYKES: Did you do that right then?

CREECH: After I took (garbled, could not understand)

26 21776

Thomas E. Creech - tape transcript
4-28-75

DYKES: Now, this we are referring to as probably in September of 1974.

CREECH: Somewhere in there.

DYKES: Somewhere in that area. Now this mine shaft, again you were up kind of high. It would be sort of a hard climb to get up to it, how did you get the bodies up there?

CREECH: Shirt and everything and my belt.

DYKES: You were dragging them up there, did Carol help you get them up there?

CREECH: She pushed.

DYKES: She pushed. Okay. When you go in that mine entrance, do you walk straight into it?

CREECH: No, when you go into it you got to, well you do walk straight into it but you have to jump down, it's about six (6) feet drop.

DYKES: About a six feet drop.

CREECH: You've got to drop down in there and if you go to the left you go back about 30 or 40 feet and there's another mine shaft that goes straight down, it's all crumbly - you can't walk too far into there.

DYKES: You go straight.

CREECH: You go to the right and there's a little dip that goes down and then there's another part that goes up, and you have to climb up that and as soon as you get up there you drop back down again and you follow that right back straight to the mine.

DYKES: Did you have to use a flashlight to see back in there then? You had a flashlight with you.

CREECH: Yes.

DYKES: Do you know how back in there you went?

CREECH: Well, that particular spot there deadends with the shaft.

DYKES: You go back to the dead end and then there's a mine shaft that goes straight down and you dropped both bodies down in there. You described Jerry Sage as having on probably blue levis, white t-shirt and a black vest, did he have a full beard?

CREECH: Yes.

26
21777

Thomas E. Creech - tape transcript
4-28-75

DYKES: Okay.

PALMER: I think there was some writing on that vest Tom, do you remember what that said?

CREECH: It said "Free Sex Instructions".

PALMER: On the back of it?

CREECH: On the back of it.

DYKES: Free Sex Instructions.

CREECH: It was a fringed vest.

DYKES: Fringed. You said that Donna was dressed in blue levis that were open at the seams and laced with rawhide and that she had on a flowered halter-type on the top that had just a string that went around the neck and then went around the back, just underneath the breast and open at the back.

CREECH: Yes. It didn't have no string in the back.

PALMER: Just the string around her neck and then dropped down under her arms and tied in the back.

CREECH: Yeah, I think it was tied down way down to her waist.

DYKES: Okay. You also mentioned that she may have had on small gold earrings like a flat piece of gold and twisted into about a 3/4" diameter or something like that in her ears.

CREECH: Yes.

DYKES: Now, their I.D. you took. You didn't leave no I. D. with them.

CREECH: No.

DYKES: And they're both in that same mine shaft. After you dropped them in there, did you do anything to try to see if you could see the bodies at the bottom?

CREECH: Left some papers and rags and dropped down in there.

DYKES: Could you see the bodies?

CREECH: Yeah, but not very good, we threw rocks down on top of them.

DYKES: How many rocks did you throw down there?

CREECH: Quite a few. It didn't completely cover them up.

DYKES: You don't think you covered them up?

26 21778

Thomas E. Creech - tape transcript
4-28-75

CREECH: No.

DYKES: When you left out of the mine did you take their car with you?

CREECH: Yeah.

DYKES: What did you do with it?

CREECH: Took it to Escondido Retreat.

DYKES: Escondido Retreat. Is this the one you referred to as McCoy Ranch
or Paradise something or other?

CREECH: No. Paradise Retreat.

DYKES: Paradise Retreat, is that around Malibu?

CREECH: Right.

DYKES: And the car you left it there? To your knowledge is the car still there?

CREECH: As far as I know.

DYKES: You mentioned something about a knife that he left there at that place,
can you tell me where that is?

CREECH: Well, it's right there in a shack right by where the car is at, right
across from the playground.

DYKES: Kind of a bamboo shack?

CREECH: Yeah, it's down in the bottom of that canyon.

DYKES: It's on the McCoy Ranch?

CREECH: Right.

DYKES: Is the knife outside the house?

CREECH: It's inside in the dirt.

DYKES: Inside in the dirt. Near the back wall?

CREECH: Yes.

DYKES: Does the knife have any identifying marks on it or the sheath?

CREECH: The sheath has our initials on the back of it, TEC and CMS.

DYKES: TEC and CMS. Okay, you also mentioned in the same area where this
mine shaft is that you have dumped another body, this is a guy you know
as John or maybe by the name of John.

CREECH: Right.

DYKES: Do you remember where you met him at?

Thomas E. Creech - tape transcript
4-28-75

CREECH: I think Fresno.

DYKES: Fresno. Did you travel down to the area with him?

CREECH: Yes.

DYKES: Did you have a car or did he have a car?

CREECH: I'm not sure whose car we had at that time.

DYKES: Now, this is still in September or October, 1974, you went back to
the same area in the Calico Mines?

CREECH: Right. This was in October.

DYKES: You described John as being about 24 or 25, how tall was he?

CREECH: 5'--about the same as I am.

DYKES: About 5'11", weighs about the same, 150-160 lbs. Did he have
long hair or short hair?

CREECH: Fairly long, just to the shoulder.

DYKES: Did he have a beard or mustache?

CREECH: Mustache.

DYKES: How about, did he have any earrings?

CREECH: No.

DYKES: Did you notice any tatoos or anything like that?

CREECH: Yeah, some tatoos but I don't know what they were.

DYKES: Do you remember how he was dressed?

CREECH: Levis, cut off jacket.

DYKES: Cut off levi jacket? Like he were a bike rider?

CREECH: Yes.

DYKES: Was there any markes on it?

CREECH: Patches and a big "P" on the back.

DYKES: A big "P" on the back. What color was it?

CREECH: Red.

DYKES: When you arrived there, was Carol with you on this one?

CREECH: Yes.

DYKES: Had there been any planning on what you were going to do with this
guy?

CREECH: No. He was a prospect.

26 21780

Thomas E. Creech-tape transcript
4-28-75

DYKES: Prospect for a motorcycle gang?

CREECH: Right.

DYKES: When you got into the area, what happened then?

CREECH: Carol stabbed him in the shoulder.

DYKES: From the back.

PALMER: Where was she at when she stabbed him, was she in the car or out of the car or what?

CREECH: I think we was out of the car.

PALMER: How did she come to stab him, what brought that on?

CREECH: He was messing with her. She stabbed him with a knife in the back of the car.

PALMER: You indicated three (3) inches.

CREECH: Uh-huh.

DYKES: This would be the left shoulder from the back. After she stabbed him what happened?

CREECH: I shot him.

PALMER: What, uh, you say he was messing with her tom, was she giving him any encouragement or anything like this to mess with her at all or what caused him to try and put the make on her, try to seduce her, or something like this, waht happened there?

CREECH: She probably encouraged him, now that I know.

PALMER. She encouraged him a little bit to kind of give him the come-on and after he had done that she stuck him with a knife and did she say anything to you as far as killing him or do you remember any conversation about that time?

CREECH: She just said like she said quite a few other times 'if you want to prove you love me, kill them'.

PALMER. She said that to you in those words?

CREECH: Yeah.

DYKES: And then you took out your...what? .32 automatic again and was John lying on the ground or what?

CREECH: No. After I first shot him he was on the ground.

26 21781

Thomas E. Creech - tape transcript
4-28-75

DYKES: Where did you shoot him at the first time?

CREECH: I think sort of in the neck or in the collar bone.

DYKES: In the neck. And then you shot him again?

CREECH: I shot him two more times. Second time I hit him in the chest and the third shot hit him in the head.

DYKES: Did you put him in the mine shaft also.

CREECH: Yeah.

DYKES: Okay. Can you tell me about the mine shaft?

CREECH: It's right on the right of the other mine shaft where Jerry and Donna is at.

DYKES: Okay, if you were standing facing the mine shaft that Jerry and Donna are in, that mine shaft that you put him in would be on the right?

CREECH: Yeah.

DYKES: Okay. Now is there a little draw or revere kind of like that between the two mines?

CREECH: No.

DYKES: Is this mine also up high? Do you have to crawl up to it?

CREECH: Uh-huh.

DYKES: When you went in there, how far back or is this another shaft that you can walk straight into?

CREECH: You can walk into this one, but you've got to...it veers off, there is a different little trails.

DYKES: Okay, there is other mine shafts going off from both sides of the main mine shaft, did you go back to the main mine shaft?

CREECH: No.

DYKES: How far?

CREECH: Three or four exits down.

DYKES: Three or four exits down. And then you dropped him down a straight shaft off to the left or the the right?

CREECH: Left.

DYKES: On your left. Did you have a flashlight with you then?

CREECH: I think we did.

26 21782

Thomas E. Creech - tape transcript
4-28-75

DYKES: Could you look down that mine shaft and see John?

CREECH: Yeah.

DYKES: Did you kick any rocks around him?

CREECH: Yeah.

DYKES: Was he covered?

CREECH: No.

DYKES: You could still see him down there?

CREECH: Yeah.

DYKES: The knife that we mentioned earlier, the one down in Malibu, is that the knife you had the sheath and knife there that Carol stabbed him with?

CREECH: Yes.

DYKES: Okay. That's 1, 2, and 3, let's go to number 4 now. This is the guy that you are talking about over in Victorville that you buried or not really buried but threw him up against a bush and threw a lot of dirt and stuff on him.

CREECH: Uh-huh.

DYKES: Do you remember about when that one was? Was this before Jerry and Donna or afterwards?

CREECH: Oh, it was either a little before or a little after.

DYKES: Okay, who was this guy?

CREECH: Some guy I got in a hassle with.

DYKES: You mentioned that you and Carol were traveling then do you remember what car you had or were you hitchhiking?

CREECH: Uh, I don't know what kind of car we had, I think at first we were hitchhiking.

DYKES: But you were out in the desert area, do you recall whether you were between Victorville and Barstow or were you between Victorville and San Bernadino?

CREECH: Between Victorville and San Bernadino.

DYKES: You mentioned a trailer park out there that you had been there to visit someone.

CREECH: Yeah, some church people.

Thomas E. Creech - tape transcript
4-28-75

DYKES: Do you remember what their names are?

CREECH: No. But I have their address or Carol's got it at home.

DYKES: They lived in a trailer park, now do you recall two trailer parks being out there?

CREECH: No, but it's possible though, I know they have speed bumps. I remember that. That's what I was thinking.

DYKES: They have speed bumps, okay. How did you and Carol come to meet this guy?

CREECH: Uh, we were over in the bushes and he walked in on us and said he wanted seconds.

DYKES: You and Carol were having sex and you were balling there by the bush, were you close by the freeway when this happened?

CREECH: Yeah. Just right off the freeway over by some bushes.

DYKES: Okay, and he just walked up to you. As far as you know, he was just a hitchhiker?

CREECH: Right.

DYKES: And he wanted seconds and what happened?

CREECH: Well, I'll tell you about it, I was thinking about it last night. First we met him before earlier, he was across the street and we drank a couple of quarts of beer with him and we talked and then he came back over there after me and Carol were over there balling and he walked in on us and asked for seconds and I told him to get the hell out of there, so he didn't want to go so I started putting on my clothes and he took off across the street and I followed him over across the street and I got in just a little fight with him and then I cut his stomach open. It wasn't a bad cut.

DYKES: What kind of a knife?

CREECH: I don't know, that bowie knife.

DYKES: That same knife?

CREECH: Yes.

DYKES: That's between Victorville and San Bernadino then. After you cut him what happened?

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CREECH: I went back across the street to Carol.

DYKES: Did you see him again after that?

CREECH: Later on we picked up a car, I think we hot wired the car, because we got stranded there and we picked him up later on on the highway.

DYKES: You were still between Victorville and San Bernadino.

CREECH: Yes.

DYKES: What did you do with him when you picked him up?

CREECH: Took him out to the desert.

DYKES: Do you know about where that was where you took him out to the desert?

CREECH: By that trailer court.

DYKES: Right by the trailer court?

CREECH: Yes.

DYKES: What happened then?

CREECH: I shot him.

DYKES: In the car or out of the car?

CREECH: Out of the car.

DYKES: Where did you shoot him?

CREECH: In the head.

DYKES: Just once?

CREECH: No, I shot him in the head and in the body three (3) times.

DYKES: Then what did you do with his body?

CREECH: Put it out under the bushes.

DYKES: Did you dig grave on it?

CREECH: No. Just kicked some dirt and sand and bushes on him.

DYKES: You just kicked some dirt and sand, do you remember how he was dressed?

CREECH: No. I think we made him take his clothes off. I don't think he had any clothes on.

DYKES: You don't think he had anything on. You mentioned this trailer park there. Is that body between the trailer park and freeway?

CREECH: Yes.

DYKES: Is it closer to the freeway or is it closer to the trailer park?

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CREECH: It's about the same distance from both.

DYKES: Its an open type field?

CREECH: Yes.

DYKES: Motor bike tracks going across it?

CREECH: Yes.

DYKES: He's about in the middle between the freeway and the trailer park just up against a bush. And you threw a lot of dirt on him. Did you have a shovel or anything to do this with or did you use your hands?

CREECH: Used our hands.

DYKES: Any idea about how much dirt you got on him?

CREECH: No, not a whole lot though. Just enough to barely cover him.

DYKES: He may still be there, we don't know. Okay Tom, we was talking about the one body in Victorville, this is the that Carol stabbed him in the back and then you shot him three times with your .32 automatic and pushed him underneath a bush and kicked dirt on him. Okay, the same knife that Carol used there is the same knife that she used on the one body in Calico?

CREECH: Right.

DYKES: That's the knife thats on the McCoy Ranch in Malibu?

CREECH: Right.

DYKES: Also Jerry and Donna Sage, their vehicle, the red Pontiac, is on the McCoy Ranch in Malibu?

CREECH: Right.

DYKES: Okay, that has covered four. Now you mentioned another one, the fifth one. You possibly have met him in San Bernadion? Do you remember what this guy looks like?

CREECH: I think he was a little fat guy a little chubby guy.

DYKES: A little chubby guy. Do you remember the kind of vehicle he was driving?

CREECH: No.

DYKES: You don't recall it?

CREECH: No.

DYKES: When he picked you up, were you and Carol hitchhiking in that area?

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CREECH: Yes.

DYKES: When he picked you up at Orange Show Road, did anything happen there?

CREECH: Yeah. I'm not sure, I think we got the motel room on that road there.

DYKES: Do you remember who rented the motel room?

CREECH: He did.

DYKES: He rented it himself?

PALMER: Would that have been in his name, Tom, or now would that have been in your name?

CREECH: No, it was in his name, he rented it.

DYKES: Did he just rent it for one night or afternoon or what?

CREECH: The afternoon.

DYKES: Okay, did all three of you go to the motel room?

CREECH: Yes, then Carol stayed there and we went to go get some beer.

PALMER: Do you remember what kind of beer that was?

CREECH: It was Budweiser, it's the only kind I drink.

PALMER: Bud is the only kind you drink?

DYKES: How much beer did you buy?

CREECH: I don't know. A six pack.

PALMER: Was this cans or bottles?

CREECH: Cans.

DYKES: After you bought the beer, what did you do?

CREECH: Well, he said something about taking a drive somewhere and we took off driving and went out in the country, I think it was by...I think there were a few fields and they had some workers on it, because I remember that.

DYKES: Did you ever go up on the desert?

CREECH: Yes.

DYKES: This was on the same drive? During this driving around did he mention anything about the movies.

CREECH: He said he was getting people for...if we were interested in making some movies.

DYKES: What kind of movies are you referring to?

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CREECH: Pornographic movies.

DYKES: Pornographic movies. Did he drive you to the location on the desert where you were going to shoot these movies?

CREECH: Yeah.

DYKES: Did he ever show you any literature?

CREECH: Showed me a magazine.

DYKES: What kind of magazine?

CREECH: Pornographic magazine.

PALMER: Tom, what kind of a movie were you going to shoot out there on the desert, him and you? Was he going to set the thing up and....

CREECH: No, I think it was for a man (garbled).....

PALMER: You were just looking for location then you and Carol were going to come back....

CREECH: Right.

DYKES: Do you remember what the area looked like when you stopped out there on the desert?

CREECH: No.

DYKES: Do you remember what type of roads or anything around there?

CREECH: Dirt roads.

DYKES: Did you pull off of the paved road?

CREECH: On to a dirt road.

DYKES: On to a dirt road. Do you remember what type of shrubs or bushes or trees were around there?

CREECH: No. There were some around but I don't know what they were.

DYKES: Do you remember any power lines or anything like this?

CREECH: I think, but I'm not sure.

DYKES: Can you pin point the area on the desert? Are you familiar with Cajon Pass?

CREECH: Right.

DYKES: How you go up the top and go on down Cajon pass and your going towards Victorville. Do you recall how far down that road you went before you turned off the freeway?

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CREECH: No.

DYKES: When you pulled off, which way did you pull off the freeway? To your right or to your left?

CREECH: I think we went to the right and then back to the left.

DYKES: In other words you pulled off to the right and back across the freeway?

CREECH: Right.

DYKES: Then out into the desert in that direction. Okay, at this location in the desert there came a time when you, when the guy did something that made you mad.

CREECH: Yeah.

DYKES: What did he do?

CREECH: He was wanting to suck me.

DYKES: In other words the guy was a fagot? A queer?

CREECH: Yes.

DYKES: What happened when this came about?

CREECH: I shot him.

DYKES: In the car?

CREECH: Yes.

DYKES: How many times did you shoot him?

CREECH: I'm not sure. Quite a few times.

DYKES: What weapon did you use?

CREECH: The .32.

DYKES: The .32 automatic. Did you shoot him all the time in the car or did you shoot him some when you took him out of the car?

CREECH: I think I might have shot him again.

DYKES: When you took him out. Did you take things out of his car and throw it out on the ground area and things like that?

CREECH: I'm not sure.

DYKES: Okay, before he made the advances on you, did the two of you sit there and drink the beer?

CREECH: We drank some of it.

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DYKES: You drank some of it. Then you shot him several times before he got out of the car. Were you both sitting in the front seat when this happened?

CREECH: Yes.

DYKES: Did you get out and open his door and pull him out or did he get out of the car?

CREECH: I think I pulled him out.

DYKES: Then you shot him once in the head. Did you wipe up any of the blood in the car or was there any?

CREECH: There was blood all over the car. A whole stream of it.

DYKES: And you just left him laying there, did you take his car?

CREECH: Yes.

DYKES: Did you go back to San Bernadino and get Carol?

CREECH: Yes.

DYKES: Did you stay in the motel a night?

CREECH: I think we stayed there for a little while, I'm not sure, I think he had some credit cards on him. We took those credit cards and we...there was a restaurant that took a...I think mastercharge card and we took those cards for some food(garbled)....

DYKES: Near Orange Show Road in San Bernadino?

CREECH: Right.

PALMER: Do you remember what restaurant that was by any chance, or what kind of a place it was? How far was it from the motel, can you remember that?

CREECH: I think it was pretty close.

DYKES: Could it have been Sandy's?

CREECH: Possibly, I don't know.

DYKES: When you left that area, where did you go to?

CREECH: I think we went to New Mexico and Arizona.

DYKES: Where about in Arizona did you go?

CREECH: All over.

DYKES: Do you remember where you left the car at?

CREECH: I'm not sure about that.

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DYKES: When you left the car what did you do? How did you get around?

CREECH: By bus.

DYKES: Do you remember anything unusual about his car?

CREECH: No.

DYKES: Do you recall if it had more than one antennae on it?

CREECH: No, I don't.

DYKES: Do you recall seeing anything like a phone or a radio mike in the car?

CREECH: No.

DYKES: You don't recall seeing any of that?

CREECH: No.

DYKES: Did you pick up your brass after you shot him? The brass that would have come out of your automatic inside the car?

CREECH: I don't think so...(garbled)

PALMER: You were sitting in the car beside him when you shot him. Was he the driver or were you? Where were you at in the seat of that car?

CREECH: On the right.

PALMER: You were on the rider's side and you probably shot him on the right side?

CREECH: Yeah.

DYKES: Okay, Tom, we've fairly well covered number five, this is the guy that you are referring to as the homosexual. He picked you and Carol up in San Bernadino and you went for a ride with him by yourself and eventually you wound up on the desert, somewhere up at top of Cajon Pass and the area there. Now, you did shoot the man several times in the car and when he was removed you shot him once in the head and you took his car and did considerable traveling and you think you went into New Mexico and wound up in Arizona somewhere. Can you recall now what town or area you wound up in in Arizona?

CREECH: No. I'm not positive.

DYKES: Do you remember if it was Southern or Northern Arizona?

CREECH: I'm not sure.

DYKES: You don't recall when you're in the desert or not?

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PALMER: Tom, you said that you took a bus out of there, would you have left this car at a bus station or down town or would you have walked to the bus station or can you recall after you took a bus out of there, now on different occasions you've talked about dropping a car off here or there and taking a bus out. Do you remember at this particular one if you can think back now? Does this jog your memory or anything like this as to where you may have left this automobile?

CREECH: No.

PALMER O.K.

DYKES: Do you remember when this would have been? Would this have been, I think we talked about this a little bit yesterday, would this have been before Jerry and Donna?

CREECH: Yes.

DYKES: Would this be a month or several months before that?

CREECH: I think it was a few months before.

DYKES: A few months before. You don't know how many months?

CREECH: No.

DYKES: Was that in the spring of the year?

CREECH: It was later.

PALMER: More like the Summer or the Fall or what?

CREECH: Well, late Spring.

PALMER: Late Spring. June, I guess, that would be considered late spring.

DYKES: Was it April, May, or somewhere along in there or last of February or March?

CREECH: Not February or March.

DYKES: Okay, could it have been April or May?

CREECH: Could have been the last part of April.

DYKES: Okay, is there anything about that that you can recall that you want to tell us about?

CREECH: Just that lamp I told you about.

DYKES: Was it a lamp of some type in the car? What happened to that lamp?

CREECH: It was an antique but I think that's what we left at the bus station. We

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went back there to get it. You know where you put your quarters in in the bus station in those lockers and after 48 hours if you don't come back and pick up your stuff, they put a plug in the locker then you lose it. . . .

DYKES: So you didn't get the lamp back.

CREECH: We didn't get that back or some baggage.

PALMER: Can you describe that lamp a little better than just an anitque?

CREECH: It was a marble base, the whole thing was marble.

DYKES: White marble?

CREECH: No, greyish color.

DYKES: Greyish color. Did it have a shade on it?

CREECH: No. It didn't have no shade on it.

DYKES: Was it shaped like a vase or like a figurine or something or somebody?

CREECH: It was just cut out rough.

DYKES: Just cut out rough. What kind of luggage did you leave in there with it?

CREECH: Just some baggage and suitcases.

DYKES: Well, did any of the baggage have your name in it, your's or Carol's?

CREECH: I don't think so.

PALMER: Was it his luggage?

CREECH: I think it was his luggage.

DYKES: Also yesterday, you went on to tell me about number six. Can you give me a time element about when this one was taking place in relation to say another one between Jerry and Donna and the Queer? Sometime in that area?

CREECH: Between there.

DYKES: Between there. Where did this one take place at? In Daggott or on the Freeway?

CREECH: On the freeway. Around there.

DYKES: Where did you meet this guy at?

CREECH: At a restaurant, I think.

DYKES: Was that restaurant in Daggott?

CREECH: Yes.

DYKES: Was he driving a vehicle?

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CREECH: Yeah.

DYKES: What kind of vehicle was he driving?

CREECH: A van.

DYKES: Yesterday you couldn't recall what the make of the van was. Have you had some time to think on that? Do you recall what it was?

CREECH: No.

DYKES: What color was it?

CREECH: I think it was an old dodge. I'm not sure.

dykes; You were driving a vehicle at that time were you not?

CREECH: Yes.

DYKES: What kind of a vehicle was that?

CREECH: A van.

DYKES: What color?

CREECH: A goldish color.

DYKES: Do you remember if it was a Chevy, Ford or Dodge?

CREECH: No.

DYKES: Do you remember what year it was?

CREECH: No. I don't remember.

PALMER: Tom, do you remember on that particular van, did it have a hood on or was it a straight off? Do you know what a cab over is?

CREECH: On a van, are you talking about a truck with a camper on it?

PALMER: No. I mean did the van, did it have a nose on it? The engine up front or was it a cab over with the engine back in the vehicle or the back of the car or the front of the car? You know some vans have the motor up front and some of them have got them in the back, do you recall in that particular one?

CREECH: I don't know what it was. I thought it was all in the trunk.

DYKES: This is on the van that the guy was driving?

CREECH: I don't know.

DYKES: How about the van that you were driving?

CREECH: I don't know. I always thought they were in the front.

DYKES: Do you remember the box being along side your leg there as you are driving? The compartment there?

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CREECH: I think so.

DYKES: Okay, the gold colored van that you were driving was it kind of a late model van?

CREECH: Yes.

DYKES: You mentioned you borrowed that from a friend. Who was that?

CREECH: Some people.

DYKES: Is that a guy by the name of Craig do you think?

CREECH: I think so.

DYKES: And where is he from?

CREECH: He's from California. Fresno.

DYKES: Fresno or Tulare?

CREECH: Tulare.

DYKES: Does he work there?

CREECH: He makes swimming pools.

DYKES: He makes swimming pools. Installs swimming pools such as that? Is there more than one business in that area?

CREECH: No. It's the only one in Tulare.

DYKES: Where did you borrow that vehicle at?

CREECH: That lake. You said it yesterday.

DYKES: Lake Mojave. They were there boating or something. You and Carol borrowed it. Where did you go to when you left Lake Mojave?

CREECH: We went to California.

DYKES: Were you on your return trip when you met this guy?

CREECH: I'm not sure if it was going back or if it was going.

DYKES: Do you remember how you come in to California? From Lake Mojave did you go over Interstate 15 or to Interstate 40?

CREECH: I think Interstate 40.

DYKES: You say you met this guy in a cafe near Daggott. Now was there any problem there?

CREECH: Well, there was the old woman who runs the place and her daughter, I guess, give us some religious material and then I stayed in the truck and Carol was getting coffee and the guy started hassling her.

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DYKES: Started hassling her there. Did she come out and tell you this?

CREECH: Yes.

DYKES: You didn't see the hassle or anything. Carol just came out and told you this?

CREECH: Yes.

DYKES: Okay. Now this van did it leave? And sometime after that you left?

CREECH: Right.

DYKES: Sometime after you left, did you and Carol pull off the road to do anything?

CREECH: Yeah. We stopped and got stuck.

DYKES: You stopped and got stuck? Did you fire any weapons around there?

CREECH: A shotgun.

DYKES: You had a shotgun. What kind of a shotgun was that?

CREECH: It could have been a reminton. I was thinking last night.

DYKES: What gauge was it?

CREECH: It's a 12 gauge shotgun.

DYKES: Automatic or pump?

CREECH: Pump.

DYKES: Did you have that gun loaded?

CREECH: Yes.

DYKES: You mentioned that you got stuck. How did you get out of there?

CREECH: Well, we were shooting first, shooting at bushes getting them up out of the dirt and then a truck stopped and pulled us out and I don't know if it was a pepsi cola truck or not.

DYKES: You don't recall what kind of a truck it was?

CREECH: No.

DYKES: After he pulled you out was the shotgun still loaded?

CREECH: Yes.

DYKES: Did you travel down the road after he pulled you out?

CREECH: Yes.

DYKES: Do you remember about what time of the day this was?

CREECH: I think it was dark. Pretty close to dark.

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DYKES: Was it early in the evening or early in the morning just before day light?

CREECH: I'm not sure which one it was. But it was still dark. It was getting darker.

PALMER: You were using the shotgun to shoot the bushes up with? I can't....

CREECH: Yeah. You can't grab them. Those things they stick you.

PALMER: Oh, I see.

CREECH: It was a bristly type bush.

PALMER: I see. You were using a shotgun to blast them out of the ground with then you were going to use them to put under your tires so you could get out.

CREECH: Yeah. Well, I kicked them and I got a bunch of those things in my foot, the first time I kicked them.

PALMER: So that's why all the shooting.

CREECH: Yeah.

PALMER: I see.

DYKES: Did you pick up your shotgun shells?

CREECH: I'm not sure if I did.

DYKES: Sometime after you left there, driving down the road, did you see this guy get in his van again?

CREECH: Yes.

DYKES: Can you tell me what that guy looks like?

CREECH: No.

DYKES: Was he young, old?

CREECH: I'm not really sure.

PALMER: Tom, you never even met this guy at the restaurant or the stop where you and Carol stopped. You said she went in to get some root beer and coffee and so forth. Did she always go in and get this kind of stuff when you would make a stop?

CREECH: Yeah. She always ordered. When we got something, she would get root beer and coffee and milk. Everything together.

PALMER: You got everything mixed together? You mixed all that together for a drink?

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CREECH: No. She would order all of those.

PALMER: Okay. And then after you bought this stuff and she came out to you and you didn't see this guy in the building, then at all. Is that right? In the restaurant?

CREECH: I don't think so.

PALMER: Then she came back out and told you that he had hassled her and had he put the make on her, what do you mean hassled.

CREECH: I think at first he was making fun of her for getting all of that stuff.

PALMER: Oh, I see.

CREECH: Then I guess he flirted with her.

PALMER: And this made her mad and so she came out, how would that make somebody mad? Is she kind of tempermental does this tip her off, something like this make her mad?

CREECH: She's got a high temper.

PALMER: She's got a high temper. And this one made her mad and what did she say to you when you come back.

CREECH: Just asked me if I was going to do anything about it. She wanted me to go in and kick his ass.

PALMER: Oh, she wanted you to go in the place and kick his ass right there huh? You refused?

CREECH: I just told her we would get him later.

PALMER: That you would get him later and then you did start thinking about getting him later at that time. Did you actually plan to kill him later or did you just plan or were you just passifying her or what?

CREECH: I didn't really plan on killing him. I didn't plan on ever seeing him again or even running on to him.

PALMER: But to satisfy her though and to try and cool her off though, you said we would get him later and then you went on down the road and then you run up across this individual later parked?

DYKES: Did you ever see anybody else with this guy at the cafe?

CREECH: Not at the cafe.

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DYKES: Okay. You dot down the road and you spotted the van again. Did you pull up behind it?

CREECH: Along the side of it. Sort of like. Well not really along side of it, the front end of ours was right at the back end of theirs.

DYKES: I shot the guy through the window.

DYKES: Through the window. Did you have the shotgun?

CREECH: Yes.

DYKES: Okay. You shot him. Did you have any conversation with him before you shot him?

CREECH: I think I did. I think I asked him for some money. I'm not sure if I asked him for it then or if I asked him....no, I think it was before I shot him.

DYKES: Okay. What were you doing when you pulled up there and walked up there along side of him? Was he sitting or laying down?

CREECH: Sort of laying down.

DYKES: Laying down in the front of the seat of it?

PALMER: Was he asleep or something like that?

CREECH: I think he was trying to go to sleep.

DYKES: You asked him for his money. Did he give you any money?

CREECH: A couple of travelers checks and a few bucks.

DYKES: Then you shot him?

CREECH: Yeah.

DYKES: After you shot him did he say anything?

CREECH: Did he say anything? No, I'm not sure.

DYKES: How many times do you think you shot him?

CREECH: Three or four times.

DYKES: Three or four time. Do you remember if you picked up your shotgun shells or not?

CREECH: I'm not sure.

DYKES: Did you see anyone else in the van then?

CREECH: After that, I pulled out in front of the truck and I was going to go through the truck and see what he had in it and the lights came on in the truck.

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DYKES: What do you mean the lights? The headlights or dome lights or....

CREECH: The headlights

DYKES: The headlights came on?

CREECH: Yeah. They came on and some guy jumped out and took out running down the road and scared the shit out of me so I took off.

DYKES: What did you do after you took off?

CREECH: Went back.

DYKES: Lake Mojave? What did you do with those travelers checks?

CREECH: I think I cashed one of them at a gas station.

DYKES: Do you know about where that was?

CREECH: Just before you get to the Arizona Line.

DYKES: Then you went back to Lake Mojave and you picked up your friends there and then did you go back to Tulare with them?

CREECH: Well, I'm not sure if I went on all the way back with them. I think we went and got a different car.

DYKES: Steal one?

CREECH: Yes.

DYKES: Okay. At the time though, you had the 30-30 and a .32 automatic and a .12 shotgun.

CREECH: And I think I had a .270.

DYKES: A .270?

CREECH: Yeah. We had about 7 or 8 guns.

PALMER: Where did you get those guns, Tom?

CREECH: Ripped them off from farm houses.

PALMER: Ripped them off from farm houses. All in California or where at?

CREECH: All over the states.

DYKES: We've been talking about these weapons off and on. The .32 mainly and the 30-30 and this shotgun. Do you know where those weapons are now?

CREECH: The shotguns and rifles are at Lewiston. Possibly the .32. But I think I sold the .32 to a guy at Grant's Truck Stop.

DYKES: Do you remember if you sold a .32 to a guy at Grant's Truck Stop or was it the .44?

CREECH: Well, I had two .44 Magnums. One of them I sold in Arkansas and the other one...I don't know what the hell I did with it.

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DYKES: Is there the possibility that the .32 automatic is here in Lewiston or in Boise?

CREECH: In Boise.

PALMER: You think that might have been a truck driver here in Boise? The .32 that you used on those people down there then?

CREECH: Yeah. The guy that wears the earring in his ear. He's got an earring.

PALMER: A truck driver does?

CREECH: Yeah. With a Nazi Swatz sticker.

DYKES: Who does he drive for-do you know what company he drives for?

CREECH: He's co-driver. He's not a driver. I can't think of the name of the truck company. Jim Marsh used to drive for the same company.

PALMER: I see.

CREECH: I think...is it Hiram Truck Company.

PALMER: I don't know, Tom, I can't recall.

CREECH: He has his own private truck, I hear. He got in trouble for stealing CB radios and they bused him, once, I think.

PALMER: There is a possibility that we may be able to trace that gun back.

DYKES: Tom, that goes through six. Is there any more in the San Bernadino County on that desert anywhere that you know of? That you are involved in?

CREECH: El Cajon.

DYKES: El Cajon is not in our county.

CREECH: Yeah. There's one there.

DYKES: There is one in El Cajon?

CREECH: Yeah.

DYKES: Do you know who that is?

CREECH: Jo Jo.

DYKES: That's Jo Jo. Is Jo Jo a black man?

CREECH: No.

DYKES: Who is Jo Jo?

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CREECH: He is a biker for the Mongols.
DYKES: He was a biker for the Mongols. Did you kill him?
CREECH: Yes.
DYKES: How did you do that?
CREECH: Shot him.
DYKES: What with?
CREECH: I had my .32, I think.
DYKES: You had the .32, and what did you do with his body?
CREECH: I'm not sure, but I think they found him.
PALMER: Do you remember where they found him?
CREECH: At a club somewhere, some kind of bar.
DYKES: Is that where you shot him at?
CREECH: Outside.
DYKES: Any body see you do that?
CREECH: Just a few of the bikers.
DYKES: They knew you were going to kill him?
CREECH: Yes.
DYKES: Was there a contract on him?
CREECH: Yes.
DYKES: Who put the contract on him.
CREECH: The Council.
DYKES: Who?
CREECH: The Council come down.
DYKES: The Council come down. The Council from the same motorcycle club?
CREECH: No. The Pacheros (spelling?).
DYKES: The who?
CREECH: The Pacheros.
DYKES: Where are they at?
CREECH: All over. They have a chapter in Smith River, Crescent City.
DYKES: Crescent City, California. Smith River Oregon.
CREECH: Oregon. And it's right on the border.

-30-

26 21802

Thomas E. Creech - tape transcript
4-28-75

PALMER: Where's Freddy, what outfit is he with again?

CREECH: That's the Outlaws.

PALMER That's the Outlaws.

CREECH: He used to be President of those - the national President now of
the Pacheros and Satan's Death Angels.

PALMER: He's out of Ohio now, isn't he?

CREECH: Yeah.

DYKES: Okay, now talking about the six bodies that we have in the San
Bernardino now, are you willing to come down to California with
Sheriff Palmer here and point out the places where those bodies are?

CREECH: Yes.

DYKES: When you get into California, will you be willing to take a polygraph
examination to the truthfulness of what you have told us today?

CREECH: Yes.

DYKES: Okay, have I or the Sheriff made any promises of immunity or a reward
to you to get you to make this statement?

CREECH: No.

DYKES: Have I threatened you in any matter to make this statement?

CREECH: No.

DYKES: Nobody has threatened you?

CREECH: Nobody has threatened me.

DYKES: You are giving this free and voluntarily on your own?

CREECH: Free and voluntarily.

PALMER: Tom, you know you are being taped, you know there are pictures being
taken of this - video?

CREECH: Yes.

PALMER: Okay.

DYKES: You are willing to clean up all of the deaths you are involved in?

CREECH: As much as I can.

DYKES: You will help us point out and find the bodies in the event that we
can't do it?

Thomas E. Creech - tape transcript
4-28-75

CREECH: Yes.

DYKES: Now, to get off the beaten track just a little bit, we are just a little curious about a mine shaft that we have talked about and we don't know if it's in California or Nevada, but you have mentioned that there are several bodies in there. Maybe as many as 20 or 24 bodies and that you're possibly responsible for 4 or 5 of those. Is that right?

CREECH: Yes.

DYKES: Do you know where that mine is located?

CREECH: Up by the Blue Diamond Mine.

DYKES: Up by the Blue Diamond Mine? That's in Nevada then?

CREECH: Right.

DYKES: How far from Good Springs would this be?

CREECH: Well, I think it's just right behind their bar, I'm confused on that, really. At first I thought it was behind the Pop's Oasis.

DYKES: Do you think you could find this place?

CREECH: If I was there, I could.

DYKES: The bar you are referring to, this is the one in Good Springs?

CREECH: Yes.

DYKES: And that's run and owned by people by the name of Hendricks?

CREECH: Yes.

DYKES: Did Hendricks ever belong to a motorcycle club?

CREECH: Yes.

DYKES: What one?

CREECH: I'm not sure.

DYKES: If I put a name out, do you think you could recognize it by giving it a name?

CREECH: Yes.

DYKES: How about the "Lords"?

CREECH: Yes.

Thomas E. Creech - tape transcript
4-28-75

DYKES: And that would be the club he belonged to?

CREECH: Yes.

DYKES: Now this Hendricks responsible for any bodies in that mine shaft?

CREECH: Some of them, so is Peter Simons.

DYKES: Peter Simons is also. Okay. The bodies that you are responsible for now...do you know who they are?

CREECH: No.

DYKES: You don't know any of them?

CREECH: No. I don't.

DYKES: One other thing I want to talk to you about is that McCoy Ranch in Malibu down there. Is there something strange or odd about that Ranch?

CREECH: He's a Satanic Priest.

DYKES: He's a Satanic Priest.

CREECH: It's a vegetarian farm. He grows all vegetables there and he runs an ad in the newspaper that if a hitchhiker will come and help him with his gardens, that he'll give them a place to stay and food to eat and then he'll use them for sacrifices.

DYKES: He actually kills them and uses them for sacrifices?

CREECH: Yes.

DYKES: How does he kill them?

CREECH: By stabbing them and cutting their heads off.

PALMER: Is there any bodies around there, Tom?

CREECH: Yeah. He has a burial ground right there.

DYKES: Do you know where it is located at down there?

CREECH: Yes. It's right there by his garden.

DYKES: Right by his garden?

CREECH: Right down in the canyon. That's a big place, it's hard to explain. It goes all over a lot of acres.

DYKES: Does he bury them there or just dump them?

CREECH: He buries them.

DYKES: Buries them. Is that a big common grave that he just keeps adding to?

Thomas E. Creech - tape transcript
4-28-75

CREECH: Just follow where that playground is at, and that building I was telling you about, you come back up this way a little and there is a path way that goes all the way through there and right where his tomato garden, where he grows these little tiny tomatoes, and right off to your right is the burial grounds.

DYKES: Do you have any idea how many bodies might be there?

CREECH: I wouldn't want to try to guess, quite a few.

DYKES: Were you ever there when he killed someone?

CREECH: Yes.

DYKES: Have you ever watched him kill someone there?

CREECH: Yes.

DYKES: How many?

CREECH: 3 or 4 different times.

PALMER: What is his name?

CREECH: McKoy.

PALMER: McKoy. How old a man is he?

CREECH: He is an old man. 70 or 75.

PALMER: Did he actually kill them himself?

CREECH: Yes.

PALMER: What method did he use?

CREECH: He would stab them.

PALMER: He would stab them. Is there a particular ritual or something that he goes through? If this is a sacrifice, is there a sacrificial ground in there or does he just snap them up any time?

CREECH: I think he just snaps them up. He's really off his rocker. His wife died and they were really religious people. But in his house he has got the chalis and all of that and I was telling you about that Mytheseta Waltz.

PALMER: Say that again?

CREECH: The Mytheseta Waltz. It's the devil dance.

PALMER: Oh, I see. He goes through this?

Thomas E. Creech - tape transcript
4-28-75

CREECH: Yes. He has a big stereo. He chants. He's got thousands of chants, different chants.

PALMER: Now, being that there is bodies - several of them down there - what is the intent of this when he killed somebody? Why do they do this?

CREECH: Why does he do this?

PALMER: Yes.

CREECH: I think he does it just because he is crazy.

PALMER: Well, the cult, they do it for reasons; they're not all crazy?

CREECH: Yes.

PALMER: Well, I can probably agree with you there.

DYKES: He kills these people and stabs them and cuts off their heads. Does he catch the blood or anything like that? What does he do with that?

CREECH: Yes.

DYKES: What does he do with that?

CREECH: The Priest will take a drink.

DYKES: Will anybody else drink it?

CREECH: Well, they might. It's a regular ritual, I guess, and everybody takes blood and wipes it on their foreheads and then they get blood all over them and then get blood all over them and turns them to crimson.

PALMER: It's really wierd.

DYKES: My tape is about to run out. Do you have anything you want to add, to say, referring to the six bodies on the desert there?

CREECH: No.

PALMER: Is there anything that you would like to add to this, or that we haven't asked you?

CREECH: Yeah, there's other bodies dumped in California, but I don't know where they are at. I remember doing them, but I don't remember where.

DYKES: Do you think once you are in California, you can point out more bodies to us?

CREECH: Possibly. There's Oakland and Kerry. There's Kerry, in Oakland.

PALMER: Gary?

Mr. Creech said, “There were names on all the socks...the weapon was labeled ‘Garza.’”

page 23



FEDERAL DEFENDER SERVICES OF IDAHO

NICOLE OWENS
FEDERAL DEFENDER

MARK ACKLEY
FIRST ASSISTANT

DEBORAH A. CZUBA
CAPITAL HABEAS UNIT

STEVEN RICHERT
POCATELLO TRIAL UNIT

January 29, 2024

Ashley Dowell
Executive Director
Idaho Commission of Pardons and Parole
3056 W. Elder Street
Boise, ID 83705

Sent via email

Re: Second update to request to delay commutation decision

Dear Director Dowell,

I'm writing to ensure the Commission has the benefit of our most recent discoveries as it meets today to continue deliberations.

First, I'll address the Ada County Prosecuting Attorney's (ACPA's) claim to the Commission that Daniel Walker's death has been conclusively tied to Mr. Creech. It presently appears to us from our ongoing investigation that the ACPA's claim is based entirely on information that has been fully known by law enforcement for forty-nine years, and is now being repackaged to justify the prosecutor's attempt to generate publicity with a sensationalistic accusation.

The only document that we are aware of containing any details provided by Mr. Creech that suggest his involvement in the Walker murder is a transcript of an interview conducted on April 28, 1975 by Ada County Sheriff Palmer and Detective Dykes of the San Bernardino County Sheriff's Office. I've appended the transcript to this letter as Attachment A for your convenience, and I would also note that it is in the packet of materials provided by the ACPA to the Commission, beginning on page 1699. In this interview, Mr. Creech is extensively questioned about the murder of a man in San Bernardino and talks about how the victim was killed with a shotgun and how he was in possession of travelers' checks—there is also a description of a gold-colored van. *See* Att. A at 1716, 1720. These same details were all well-known and heavily publicized by San Bernardino law enforcement well before the April 1975 interview. For example, all of them appear in the October 9, 1974 article from the San Bernardino Report that I've appended hereto as Attachment B. Since Detective Dykes was plainly interviewing Mr. Creech in part to investigate Mr. Walker's death, and since no charges were filed, it is fair to assume that Mr. Creech was *ruled out* as the perpetrator at that time.

In other words, to the extent that any details can be verified, the ACPA is asserting that it has proven Mr. Creech guilty of a murder based entirely on information that was looked into by authorities from both San Bernardino and Ada County nearly fifty years ago. The only thing that seems to have changed during that time is that the ACPA now wishes to lob splashy allegations to further its execution efforts.

Mr. Anderson stated in his January 26 letter that there is additional information linking Mr. Creech to the Walker murder, unknown by my office. If accurate, the statement only confirms the need for more inquiries by Mr. Creech's counsel and by the Commission. Assuming there is more evidence tying Mr. Creech to the crime, the ACPA should tell everyone what it is, so that the Commission can make up its own mind.

Instead, intent on convicting Mr. Creech in the court of public opinion to rationalize his execution, the ACPA has publicly declared that the Walker case was "solved." The press release in which the ACPA made that declaration is appended to this letter as Attachment C. As the ACPA desired, this proclamation in its news release generated headlines around the country, from all of the major Idaho outlets to papers in San Bernardino, along with national sources like CBS, NBC, and so forth. *See, e.g.*, Att. D. Having chosen to pursue Mr. Creech's execution by publicly deeming the Walker case "solved," the ACPA cannot now hide behind the assurance that some set of secret facts known only to the prosecutors supports its conclusion. Let us all look at those facts before the Commission makes its decision and it is too late.

Even at this early stage of my office's inquiry, it is clear that certain avenues need to be explored. For instance, the transcript of the April 28, 1975 interview with Sheriff Palmer and Detective Dykes refers to a discussion taking place between the same people the day before. *See* Att. A at 1699. My office has not been able to locate a transcript of that interview or a report summarizing it. Before reaching a judgment about how strongly the April 28 interview links Mr. Creech to the crime, it would obviously be necessary to consider whether he was fed any of the relevant details the day before. That is especially so considering that the interviews took place during a time period in which law enforcement officers from around the country were eagerly endeavoring to clear out all their unsolved murders and hang them around Mr. Creech's neck. For example, the bodies Mr. Creech describes hiding in San Bernardino in that same transcript turned out to be fantasy. *See* Att. E.

Relatedly, retired Ada County Deputy Sheriff Tom Taylor maintains in his letter to the Commission that he was present for interviews in which Mr. Creech supplied facts that tied him to the Walker murder. *See* Att. F at 2. Some of those facts are not in the April 28 transcript, such as the victim possessing a diamond ring. *See* Att. A. Our Creech file contains no reports by Mr. Taylor reflecting interviews with

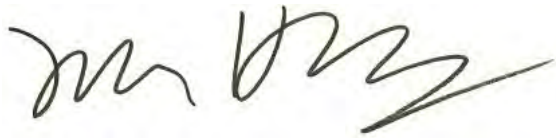
these details, nor any transcripts of the same. What are these statements by Mr. Taylor in his 2023 letter based on? His recollection fifty years after the fact? If there were reports, where are they now? These are just some of the questions that should be answered before the Commission makes an irrevocable life-and-death decision that is inevitably going to be influenced by the prosecutors' provocative public statements about the Walker case.

Second, I'll speak briefly to the question of the sock evidence. On January 26, the ACPA kindly emailed me a PDF of the slide used in Ms. Longhurst's PowerPoint. The PDF is appended to this letter as Attachment G. Although I appreciate the ACPA's accommodation, the PDF raises as many questions as it answers. The photographs of the crime scene in which the sock is visible, albeit of low quality, seem to reflect that there was blood on it. I have appended the crime-scene photographs as Attachment H. There are brown stains on the PowerPoint photograph on the heel and in the ball/toe area, but those stains do not seem consistent with the discoloration caused by the blood in the crime-scene photograph. Moreover, the rip in the sock in the crime-scene photo appears more frayed toward the heel than the PowerPoint image does. It also appears to us that the sock in the PowerPoint slide is crew length while the crime-scene looks more like calf length.

Because of these discrepancies, we have requested that the ACPA provide us additional information about the matter, including the native file of the PowerPoint photograph, all metadata, films/negatives of the evidence prints, the relevant evidence logs, the identity of individuals involved in making the PowerPoint photograph, and so forth. We hope the ACPA continues to share information with us. If it doesn't, the pending motion for access will give the judge the final say. Either way, there's no reason to rush the process and reach a final commutation decision before the ACPA's novel characterization of the sock at the clemency hearing can be fully vetted.

Third, I'll close with a word about the Schrader transcript. It is true, as Mr. Anderson observes, that Mr. Creech claimed decades ago to have committed that crime. And it is also true, as we established at the hearing, that Mr. Creech during the same timeframe "confessed" to killing various people who were found in good health or who never seem to have existed to begin with, along with plotting the assassination of a U.S. Senator and two Governors who were supposedly members of a satanic drug-trafficking motorcycle gang. Simply put, the statements Mr. Creech made fifty years ago are hardly a solid foundation for this Commission to now send him to his death. Such a decision should be grounded in concrete facts and sources, like the transcript the ACPA seems to have not searched for, and that is why we are again respectfully asking the Commission to defer its ruling until the prosecution's serious claims can be fully and fairly investigated.

Sincerely,



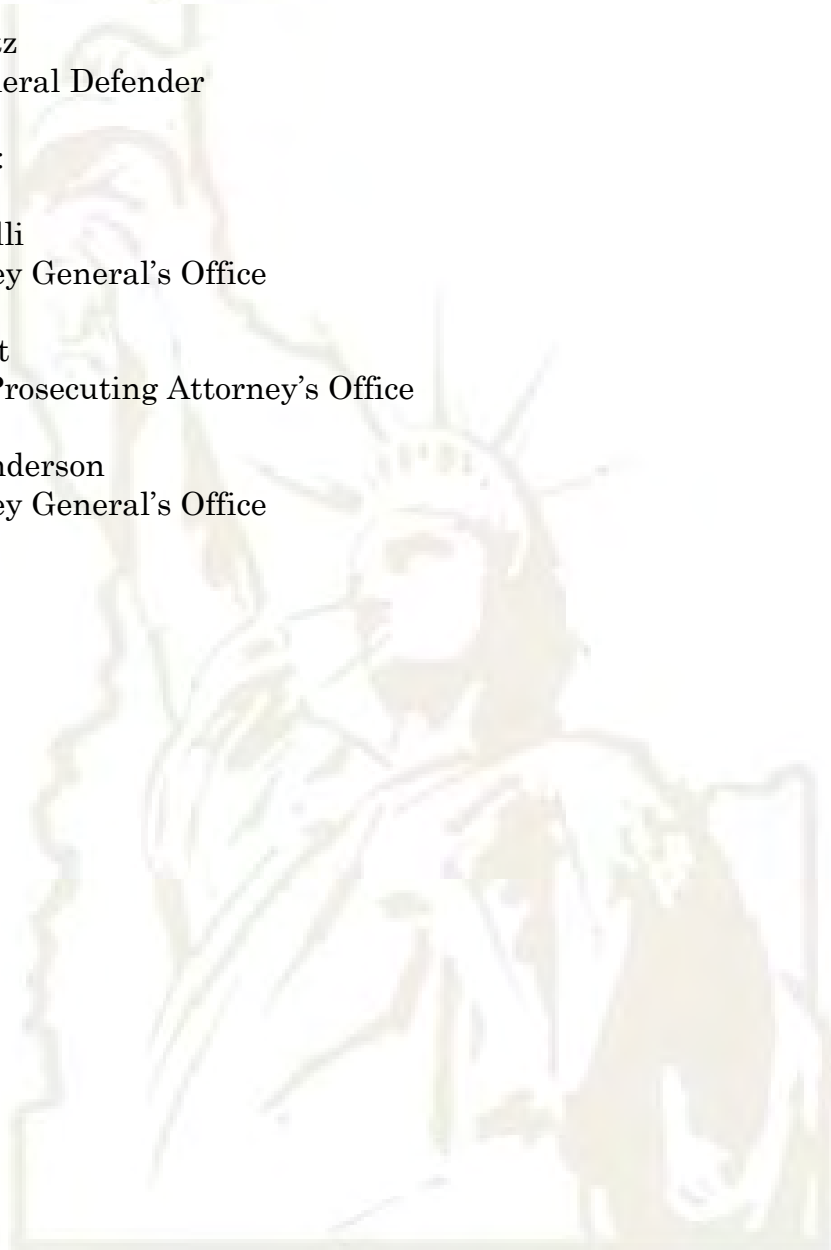
Jonah Horwitz
Assistant Federal Defender

Cc'd by email:

Karin Magnelli
Idaho Attorney General's Office

Jill Longhurst
Ada County Prosecuting Attorney's Office

L. LaMont Anderson
Idaho Attorney General's Office



JAN M. BENNETTS

DAYTON P. REED
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SHERRY A. MORGAN

Attorneys for Ada County Prosecutor Jan M. Bennetts

Case No. 1:24-cv-066-AKB

**PROSECUTOR BENNETTS’
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION
[DKT. 4]**

**I have zero intention of taking any action that
would halt or delay Creech's execution**

-

I. FACTS & PROCEDURAL HISTORY

A. David Jensen Murder

Creech v. Richardson

cert. denied,

Id

Id

Id

Id

Id

Creech v. Richardson

Arave v. Creech

Creech v. Richardson

Creech v. State

B. January 19, 2024 Commutation Hearing

Id

1. Daniel Walker Murder

Id

2. Rebuttal of Creech's False Statements

Id.

Id.

C. Creech's Post-Hearing Communications to the Commission

Id

II. STANDARD

Univ. of Tex. v. Camenisch

Mazurek v. Armstrong

Nat. Res. Def. Council, Inc.

Winter v.

Garcia v. Google, Inc.

Winter

BigRentz, Inc. v. KGM Enterprises

III. ARGUMENT

A. Judicial review of clemency hearings is rarely, if ever, appropriate and only minimal due process is applicable to these discretionary, executive decisions.

Ohio Adult Parole Auth. v. Woodard

Connecticut Bd. of Pardons v. Dumschat

Id.

Dumschat

Ohio Adult Parole Authority. v. Woodard

Woodard

Id.

Id.

Id.

Id.

minimal

Id.

Id.

Id.

Id.

Id.

B. The 14th Amendment Due Process Clause does not allow Creech to challenge the substance of information presented at his clemency hearing.

Woodard

Workman v. Bell

Id.

Woodard

Id. *Woodard*

Woodard

*We are not
authorized to review the substantive merits of a clemency proceeding.*

Id.

Faulder v. Texas Board of

Pardons and Paroles

Duvall v. Keating

Id.

Workman v. Summers

Id.

Woodard

Id. *Woodard*

Id.

Workman

Workman v. Summers

Woodard *Young v. Hayes*

Id.

Id.

Id.

C. Creech has no due process right to preview the information to be presented at his clemency hearing.

Wilson v. U.S. District Court for Northern District of California

Wilson

Wilson

Wilson

Id.

Id.

Wilson

See

Woodard

Id.

D. The ACPA did not deprive Creech of due process because he was able to present his concerns to the Commission post-Hearing, which did not find the concerns sufficient to defer deciding on the commutation petition.

Chaudhry v.

Aragon

Id. *Harper v. City of Los Angeles*

Van Ort v. Est. of Stanewich

State v. Pizzuto

minimal

IV. CONCLUSION

minimal

DATED

JAN M. BENNETTS

/s/ Dayton P. Reed _____

CERTIFICATE OF SERVICE

Prosecutor Bennetts' Opposition to Motion for Preliminary Injunction [Dkt.

4]



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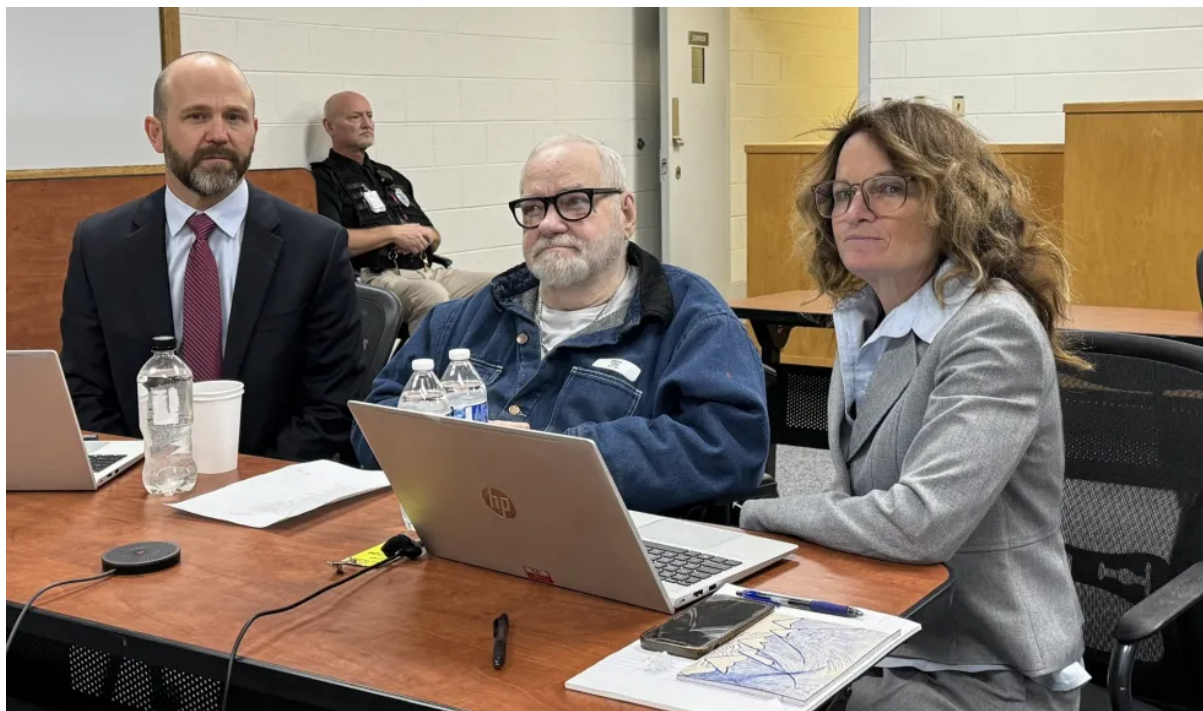
Suspect in 1974 California slaying, on death row, won't be prosecuted

Brian Rokos

PUBLISHED: February 22, 2024 at 4:42 a.m. | UPDATED: February 22, 2024 at 4:44 a.m.

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Serial killer Thomas Creech, center, is seated with attorney Chris Sanchez, left, and investigator Christine Hanley from the Federal Defender Services of Idaho at a commutation hearing on Jan. 19, 2024. Creech, a suspect in a 1974 slaying in San Bernardino County, is scheduled to be executed on Feb. 28. (Courtesy of Idaho Department of Correction)



Idaho death row inmate Thomas Creech, who is scheduled to be executed on Feb. 28, will not be prosecuted in San Bernardino County for a 1974 slaying that the Sheriff's Department said last month it had linked to the 73-year-old serial killer.

“At this point, it’s a jurisdictional issue and we are going to let the process play out,” District Attorney Jason Anderson said Tuesday, Feb. 20.

Creech has been convicted of five murders: three in Idaho, one in California and one in Oregon. But he has confessed to perhaps dozens of killings that his attorneys believe he did not commit.



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On Oct. 1, 1974, Daniel Ashton Walker, 21, parked his Volkswagen van alongside the 40 Freeway some 60 miles west of Needles so his passenger, hitchhiker Ken Robinson, 18, could rest. Someone showed up and fired on Walker several times as he begged for his life, inflicting fatal injuries. Robinson, who was asleep in the back of the van, apparently escaped notice and was able to flee.

Robinson provided investigators with a description of the shooter and his car, but they were never located.



Daniel Walker is shown on a playground in an undated photo provided by his brother, Doug Walker. Daniel, 21, was shot to death on Oct. 1, 1974, along the 40 Freeway in the San Bernardino County desert. Convicted serial killer Thomas Creech, on death row in Idaho, will not be prosecuted in California, San Bernardino County District Attorney Jason Anderson said. (Courtesy of Tom Wiznerowicz)

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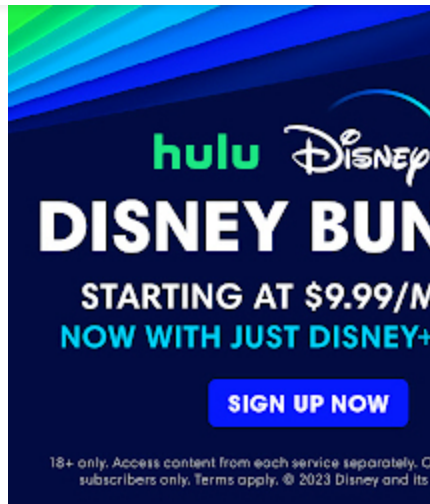
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Cold case detectives pulled the case file in 2010 when Walker's brother, Doug Walker, came to the Inland Empire and retraced his brother's steps, but they made no headway. Then in November 2023, the cold case team resumed the investigation. The Sheriff's Department did not say what prompted the new interest, other than it "obtained additional information."

The Sheriff's Department said that while working with the Ada County District Attorney's Office in Idaho, cold case detectives corroborated "intimate details from statements Creech made regarding Daniel's murder."

Deborah A. Czuba, an attorney with the nonprofit Federal Defender Services of Idaho, said that San Bernardino County's announcement in January that Walker's slaying had been solved lacks "any real evidence" against Creech.

Anderson said Creech would not have been named as a suspect without evidence that he believed prosecutors could prove beyond a reasonable doubt.



Doug Walker on Wednesday declined to comment on the decision of the District Attorney's Office.



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