

**APPLICATION TO THE GEORGIA
BOARD OF PARDONS AND PAROLES
ON BEHALF OF
TRAVIS CLINTON HITTSON**

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**BEFORE THE GEORGIA BOARD
OF PARDONS AND PAROLES**

**Application Of Travis Clinton Hittson
For Stay Of Execution And Commutation
Of His Sentence Of Death**

Undersigned counsel applies to the Board of Pardons and Paroles, pursuant to Article IV, Section II, Par. II(a) and (d) of the Georgia Constitution of 1983, O.C.G.A. sections 42-9-20, 42-9-42(a), and Chapters 475.2.01 (1) and 475.3.10 (2)(b) of the Rules of this Board, for consideration of this application on behalf of Travis Hittson, for a ninety (90) day stay of execution, presently scheduled for February 17, 2016, to permit full consideration of his Application, and for commutation of the sentence of death imposed by the Superior Court of Houston County on March 17, 1993. Undersigned counsel request the opportunity to have a full and fair hearing before the full Board, allowing Mr. Hittson to present witnesses in support of commutation.

Pursuant to Chapter 475.3.10(2)(b), Mr. Hittson bases his plea on the following grounds: (1) The Naval community among which both Mr. Hittson and Conway Utterbeck served do not wish to see Mr. Hittson executed; (2) Mr. Hittson is deeply remorseful for his actions and has worked relentlessly for redemption and rehabilitation, resulting in an exemplary prison record spanning almost twenty-five years; (3) Mr. Hittson's crime was an extreme aberration from the life he had lived before and since; (4) Mr. Hittson's punishment would have been set at life without parole had the sentencing jury had that option; and (5) Mr. Hittson's co-Defendant—the man who orchestrated this crime and manipulated Mr. Hittson into believing his life was in danger from Conway Utterbeck—may one day be paroled.

I. Introduction

The community of men who served alongside both Mr. Hittson and Conway Utterbeck in the Navy believe that Travis Hittson is deserving of mercy, as do others, including jurors who were charged with determining Mr. Hittson's punishment. Neither Mr. Hittson nor those who wish to speak on his behalf have shut their eyes to his guilt. Mr. Hittson committed an appalling act; an act which took the life of Conway Utterbeck and harmed his family in profound and irreparable ways. Those who know Mr. Hittson, however—even law enforcement personnel who knew him only long enough to hear him confess and assist in the investigation of this crime—, are united in their conviction that he is remorseful

and would never have committed this terrible crime absent the deliberate manipulation of his co-Defendant and Naval superior, Edward Vollmer.

Four jurors have written urging this Board to commute Mr. Hittson's sentence because they believe that life without parole is the appropriate punishment. Had life without parole been a sentencing option at Mr. Hittson's trial, these jurors would have opted for it. As one has written, a sentence of life without parole would likely have satisfied the remaining jurors, many of whom were uncomfortable with sentencing Mr. Hittson to die. One declared that he would never have voted for death—**“even if it meant that [the jury] would still be deliberating to this very day”**¹—if life without parole had been an option. Exhibit 2.

This Board now has the power to impose the sentence Mr. Hittson would have received had it been available to the jurors determining his punishment. Additionally, this Board is the one body able to judge Mr. Hittson by his choices both before and after this terrible crime he committed, taking into account Mr. Hittson's intense shame, remorse and subsequent effort to live a life behind bars that honors the values he failed to honor when he took the life of Conway Utterbeck. Mr. Hittson understands acutely the gravity of the harm he caused, to

¹ In Georgia, a death sentence cannot be imposed without the unanimous consent of all twelve jurors.

the Utterbecks and to the servicemen who were affected by this violence against one of their own, and he has spent each day of the past twenty-four years conscientiously working to build the strength of character he deeply regrets not having mustered on the night of the crime.

II. Mr. Hittson's Background Reveals A Guileless And Fundamentally Kind-Hearted Young Man.

Travis had very good manners. He was solid. He was quiet and respectful. I saw in Travis a really strong need to be liked. He was always willing to go with whatever the crowd wanted. He never wanted to rock the boat. I felt it was important to Travis to please me both as a supervisor and as a friend. But Travis was the type of person so eager to please it put him in a vulnerable position, such that he could be swayed to do something he would not normally do on his own. There is not a doubt in my mind that back in the days Travis worked for me, if he was given enough alcohol and time, that I would have been able to talk Travis into jumping off a cliff if I had wanted to. I believe that was partly because he was the type of person who followed orders, and partly because he always wanted to please everyone so he could fit in.

—William Kimberlin, Former Petty Officer
3rd Class, US Navy (Exhibit 7).

Mr. Hittson was the third of four children born to Patti and Eldon Hittson. Both sides of Mr. Hittson's family had a history of alcoholism dating back several generations. Exhibit 52. Mr. Hittson was quiet and meek, often forgotten or ignored by his family:

Travis' mother would completely ignore him when he came home from school, not acknowledge his greetings, and never say a word to him while he was there. . . It appears as if most of the family members

were numb or numbed themselves with alcohol or drugs. . . The only vivid expressions of emotion occurred when [the elder] Mr. Hittson was drunk and emotionally abused Travis.

Exhibit 52 (Mary Schults, M.S.W.)

Mr. Hittson's father, when drinking, would sometimes awaken him in the middle of the night and force him out of bed, often dragging him by the hair, in order to challenge and threaten him to "be a man." (Exhibit 52; 23; 40). A frightened Mr. Hittson—in keeping with his submissive nature—just cried when his father did this to him, enraging his father even further. Mr. Hittson struggled academically and socially and, by the age of fifteen, had developed his own problems with alcohol (as did several of his siblings). Exhibit 52.

In about sixth or seventh grade, Mr. Hittson became friends with Travis Fletcher, who he met through his school's wrestling team and spent a great deal of time at the Fletcher's house. So much so that he began calling Mrs. Fletcher "mom" and became a part of their family. Exhibit 23. According to the Fetters, Hittson was shunned by other children, had trouble fitting in both at home and at school, and was very lonely. Mrs. Fletcher recalls that Mr. Hittson was often dressed in ill-fitting and dirty clothing and had poor hygiene and body odor:

Travis came to us to advise him on hygiene and clothing so that he would fit in at school. My son taught him about deodorant and cologne and told him that he shouldn't wear his hair in wild styles. We talked to him about not acting silly in public because that was getting the wrong kind of attention. Travis was eager to learn so he

could have friends. He was always kind and polite and didn't get into fights even when he was being teased.

Exhibit 23 (Evelyn Fletcher)

Mrs. Fletcher describes Mr. Hittson as someone who was always searching for approval and who tried very hard to make her and his own family proud. Mrs. Fletcher shuttled him to wrestling matches and other events, and both she and her children counseled him regarding appropriate clothing and hygiene. Mrs. Fletcher found Mr. Hittson to be a loyal friend to her son. Loyal to a fault, in fact. Mr. Hittson took the blame for her son once when Mrs. Fletcher discovered cigarettes outside their home, and took the blame for her nephew who had stolen sunglasses from a store. Mr. Hittson did so because he did not want his friends to get into trouble, but ultimately told the truth. Exhibit 23 (Evelyn Fletcher).

Mr. Hittson did get into some trouble as a teenager. His drinking started early, and he took money from his parents—money that he used to buy things for his peers in an effort to make friends—but he was never “vicious, mean, or violent in any way.” Exhibit 23 (Evelyn Fletcher). He was a troubled, lonely and neglected young man with an alcohol abuse problem. Despite this, the Fletchers truly cared for him. Mrs. Fletcher always knew that he was an essentially good young man who desperately lacked affection from his own family. Exhibit 23 (Evelyn Fletcher).

At the age of 17, Mr. Hittson enlisted with the Navy.² Mr. Hittson's friends and acquaintances in the Navy also found Mr. Hittson to be a kind, awkward, and naïve young man who was always trying to please others. As a friend he was timid and stiff, but also generous, polite and considerate. He rarely had any money for clothes, but when a friend cooked for him, he returned to their home with a bag of groceries. Exhibit 18 (Anita Hunt). When a friend stood him a cigarette, he paid back a carton. Exhibit 17 (Belinda Fairchild). When Mr. Hittson spent the night at the house of friends who had children they would routinely wake up to find him playing with the kids on the living room floor, having already made them breakfast:

Travis quickly became part of our family. On weekends that Travis would come over, he would get up with the kids in the morning and fix them breakfast and play with them. My husband and I would get up in the morning and he would be out in living room with the kids playing on hands and knees or watching cartoons. He would be playing with the trucks/cars with my son or dolls with the girls. It didn't matter to him as long as the kids were having fun. He seemed like he was just one of the kids having a good old time. My kids loved Travis, he was like a big brother to them and if Travis didn't come home with my husband, they would always ask "Where is Travis?" "When is Travis coming over?" Travis would watch the kids for us while my husband I would go out to dinner, movies or shopping. He was very caring and gentle with the kids.

Exhibit 18 (Anita Hunt)

² "Travis joined the navy because that was the branch of service his dad served in. He wanted his approval so bad." Exhibit 23.

When a friend's wife, Belinda Fairchild (formerly Bardroff), went into labor he rushed to the hospital forgetting to put his shoes on or close the front door:

He'd do anything for anyone, and he did his best to make folks happy. When I went into labor, Travis was right behind me and my husband at the hospital. Travis was probably more nervous than I was, and he left the house without putting shoes on and without even closing the door.

Exhibit 17 (Belinda Fairchild). For a time Mr. Hittson stayed with a friend and supervisor, Petty Officer Kimberlin, and, although he was paying half of the rent, Mr. Hittson always treated the apartment as though he was just a visitor, asking permission to use the bathroom and kitchen. (Exhibit 36 at 90; Exhibit 7).

As fellow servicemen described, Mr. Hittson was hardworking and dedicated. According to Chief Hunt, one of his superiors:

Travis always had a good attitude while at work and I never had any problems with him doing his job. He was a quiet young man and would do whatever he needed to please those around him. He was honest and hardworking and would stay after normal working hours to help others even though he wasn't required to do so. On many occasions he would go out and buy pizza and soda for the guys that had to stay on the ship for 24 hours of duty. He would constantly buy people food and soda to make their duty days bearable and he would end up not having enough money for himself to make it until the next payday.

Exhibit 6 (Chief Hunt)

If another sailor had a problem, Mr. Hittson would drop his work and help. Exhibit 39 at 101 (Eric Roy). Petty Officer Kimberlin, testified that, while he had to show Mr. Hittson how to do a job sometimes four or five times, once Mr. Hittson got it “you’d never have to show him again. And he tried harder than any worker I’d had the privilege of being over—in charge of.” (Exhibit 36 at 94; Exhibit 7). Mr. Hittson became Kimberlin’s go to man: “He was the kind of person that if necessary I could wake him up at midnight to go to whatever I needed him to do. He would be glad to do it too. Whereas the others would give me grief.” Exhibit 7. Lieutenant (junior grade) Cornelius Mapp, Mr. Hittson’s division officer, testified that, while Mr. Hittson wouldn’t pick up new tasks as quickly as the average sailor, once he got it he was a “hard charger and he would give it his all.” Exhibit 37 at 189.

While the Navy comrades who had gotten to know Mr. Hittson truly valued him, Mr. Hittson never seemed to believe that he was accepted as one of them. He was timid and shy, and remained as socially awkward as in his younger years:

He never quite figured out how to fit in with people, even though he tried. Although we cared about him so much, I think he always felt like he wasn’t as much one of us as we considered him to be. Travis always thought the worst of himself, that he wasn’t good enough. He was so awkward . . .

Exhibit 17 (Belinda Fairchild)

He was often teased for his strange choices in clothing and for his extreme gullibility. Chief Hunt once found him holding “a light bulb to his forehead and the ends of megger leads in his hands” while some of the guys “turned the handle which would send 500 volts through his hands and light bulb.” Exhibit 6. Hunt had to explain to Hittson that he could get hurt by doing that.

Mr. Hittson’s alcohol abuse worsened over these years. He continued to drink while in the Navy, and although it was an environment in which many people drank rather heavily, Mr. Hittson’s drinking problem stood out to some of his peers. Exhibit 36 at 91 (Petty Officer Kimberlin); Exhibit 49 at 116-117 (Seaman Roy). Mr. Hittson was a social drinker, “at first, but it became more than that.” Exhibit 36 at 91. Friends recall an occasion on which Mr. Hittson drank so much that he blacked out and they decided, as a joke on him, to convince him that—while drunk—he had been running around outside without any clothes on. He bought the story hook, line and sinker and worried, for over a day, that he had actually done this. Exhibit 49 at 118 (Seaman Edenfield).

While stationed in Jacksonville, Florida, Mr. Hittson nevertheless had a place among his peers and was safely under the wing of people who looked out for him and knew his limitations. This changed when the ship aboard which he served prepared to move from Jacksonville to Pensacola, Florida, in late 1991. In Jacksonville, Mr. Hittson had become very close to his supervisor, Petty Officer

Kimberlin, as well as fellow shipmates Bryan Hunt and Larry Bardroff and their families. Exhibits 6; 7; 8. Mr. Hittson became “part of [their] family,” and spent a great deal of time with them. He often babysat their children. Exhibits 6; 8; 17; 18.

In Pensacola, the Hunts and the Bardroffs lived far away from base and Mr. Hittson had no car. Exhibit 6. Mr. Kimberlin was on shore duty and did not make the move to Pensacola. It was at this time that Mr. Hittson and Mr. Vollmer, his superior and direct supervisor from the time the ship moved to Pensacola, began to spend a great deal of time together.

Although there was little they could do, given their physical distance from the ship and Mr. Hittson’s transfer to Vollmer’s supervision, the Hunts, Bardroffs and Mr. Kimberlin were troubled by Mr. Vollmer and his burgeoning relationship with Mr. Hittson:

After Travis started working in the cable pulling shop with Ed Vollmer we saw Travis less. Anita was having some problems with post-partum depression and . . . we’d moved to a house in Pensacola that was hard for Travis to get to. . . I believe that Travis was so eager to fit in, he did not recognize when someone was not really his friend or had bad intentions. I believe that maybe with Vollmer being of higher rank, he was more susceptible to him.

Exhibit 6 (Chief Hunt).

I never understood why Travis was hanging out with Vollmer—I think this was another example of Travis trying to fit in, while not having good common sense or street smarts. Also, the Hunts and Larry and I were much farther away, and I guess Travis felt alone. I

think Vollmer sort of took Brian Hunt's place in Travis' life, as Brian became less available and was farther away. Brian had been like a dad or a big brother to Travis, but Brian treated him with kindness and looked out for him. Travis was always so vulnerable. Vollmer had similar influence over Travis, but didn't use it to look out for Travis, he used it to manipulate him.

Exhibit 17 (Anita Hunt).

I did not see Travis in the last couple of months before these crimes happened because I stayed on shore duty and Travis relocated to Pensacola with the ship. I have always felt that if I had been there, Travis might not have gravitated to Ed Vollmer like he did.

Exhibit 7 (Petty Officer Kimberlin).

III. To Make Sense Of Mr. Hittson's Participation In This Terrible Crime, It Is Helpful To Understand The Relationship Between Him And Edward Vollmer, The Man Who Orchestrated³ The Murder of Conway Utterbeck.

Travis, like myself, took his duty in the Navy very seriously. We never broke the chain of command and felt it very important to maintain the chain of command under all circumstances. Bill Kimberlin was the first leader that Travis had and was very close with him. When Bill left Travis took it very hard and really missed his leadership and friendship. This is where Ed Vollmer came into the situation and filled the void where Bill had left. He gravitated towards Ed at this time for both leadership and friendship. Travis was drinking very heavily during this time.

—Steven Nix, Former Electrician's Mate,
USN (Exhibit 9).

³ These are the words of the lead law enforcement investigator from Houston County: "My opinion, that it was orchestrated, directed by Vollmer." Exhibit 54 at 328.

Mr. Hittson's relationship with his co-Defendant, Edward Vollmer, does not excuse or detract from his responsibility for his own actions, but it does explain how Mr. Hittson came to commit an act so wholly at odds with his non-violent and essentially kind and caring nature. As fellow sailors, law enforcement investigators, and even the district attorney agree, this crime simply would never have occurred absent the influence of Ed Vollmer.⁴ Exhibit 1; 6; 7; 8; 9; 10; 11; 12; 13; 53; 54.

⁴ Vollmer maintains to this day—despite evidence to the contrary—that he was essentially blameless in the murder of Conway Utterbeck. Vollmer has never, to counsel's knowledge, expressed remorse for planning and directing this killing, or taken responsibility for his horrific post-mortem actions. In fact, Vollmer has expressed only disdain for and indifference to the consequences of his actions, much less the harm he caused:

[S]it down and think long and hard about it. Why? These fuckers couldn't come up with a better motive than "drugs" or "cult religion"? They're the fuckin Keystone Cops. I could sit on the shitter reading the paper and come up with more and better motives. There are a lot of questions left unanswered, and **I'm the only key to the mystery**. They can assume and guess, but only two people actually know what happened and I've never talked to any cops or made a confession, so it looks like the whole world's gonna have to wait till August to hear me speak, and only if I feel like it. . .

It's not like I'm going to be stuck here forever. Sure, I may do two or three more years at the most, but I wouldn't be surprised if I'm cut loose after the trial in August. These fuckers haven't got a clue or a brain in their heads, and they'll be lucky if they keep their jobs after the public finds out how bad they've bungled the investigation and how far out of bounds they've stepped. When this case goes to trial, it'll be a damn three ring circus. They're in my hometown, for christ sakes, with my hand picked judge and my hand picked jury. Everyone who's lived here since '73 are my character witnesses, and there isn't [a] man or woman who doesn't know me, at least in passing. I used to think I didn't have a chance, because of the dirty, underhanded way the investigation was going, but now I know who doesn't have a chance.

Exhibit 61.

Mr. Hittson's lower rank, gullibility, alcoholism and desperation for approval made him peculiarly vulnerable to Edward Vollmer who, by all accounts, exercised an unnatural dominance and control over Mr. Hittson. Vollmer was Mr. Hittson's direct superior in the Navy—an environment in which strict, 24/7 obedience to authority is demanded—and is described by witnesses as manipulative, conniving, threatening,⁵ and casually violent.⁶ Vollmer's

⁵ Vollmer was known by his shipmates to study murder and how to get away with it. He talked about the best way to kill someone and not be discovered (Exhibit 45 at 141-142; Exhibit 43 at 159-60) and he made threats against the life of more than one person on board, including Mr. Utterbeck.

[Vollmer] told me that Utterbeck had made threats to my life, and I said I knew about them. And he said, no, he made more threats to your life. And I said, well, I'd better go tell. And he said, no, don't worry about it; I'll take care of him for you. . . I took him serious about the threats because he had made threats to me before, and Vollmer was like—you'd take him seriously because he could always make you believe—He was like a guy who could make you believe whatever he said.

Exhibit 41 at 161 (Petty Officer Beauxis).

If I remember correctly, Beauxis had had an altercation with Utterbeck. Beauxis was relating that incident to Vollmer, and I believe Vollmer stated to Beauxis, something to the effect of, don't worry about Utterbeck; we're going to take care of him.

Exhibit 36 at 126 (Diane Nelson, Special Agent, NCIS).

In 1991, while still in the Navy, my wife and I had some pretty serious marital problems and we separated. When we got back together in 1992 after I left the Navy, Diana told me that during the time we were separated in 1991, Ed Vollmer had started calling her and telling her he knew how hard it was to go through a divorce since he had gone through one with his wife. Ed rode with my wife into

interpersonal problems on the ship were serious enough that he was referred for a psychological evaluation in 1991 and diagnosed with severe anti-social personality disorder. Exhibit 15. His presence in the Navy was found to be so divisive that the evaluator recommended he be discharged:

This individual has a severe personality disorder that will not improve with counseling and it is apparent that he will continue acting out, causing problems for himself and the Navy. It is recommended that for the good of the Navy an administrative discharge be considered.

Exhibit 59 (Vollmer Psychiatric Report).

According to the men who served with, Vollmer was very intelligent. Exhibit 9; 12; 15. This was evidenced by his acceptance into the Navy's elite nuclear program. Exhibit 45 at 136. Vollmer's intelligence was accompanied by a perverse desire to "play with people's heads" and he was very good at it. Exhibit 45 at 140 (FM Barlow). He liked to keep people off balance, and could pull the wool over someone's eyes very convincingly. Exhibit 45 at 140 (FM Barlow).

town one day and he point blank asked her if she wanted him to get rid of me. He told her he could just push me off the boat when we were at sea and no one would ever notice that I was gone. He also told her the sharks and fish would eat up any of my remains. My wife said Vollmer sounded liked he knew what he was talking about and it was something he had done before.

Exhibit 57 ¶ 13 (Petty Officer Landin).

⁶ These descriptions are borne out by Vollmer's own writings in addition to his behavior. Vollmer's poetry and letters from jail are attached as Exhibits 61 and 62.

Vollmer wanted to be in control, and “would pick on the weakest of the bunch and sought out the person least likely to fight back.” Exhibit 57 ¶ 3 (Petty Officer Landin). Vollmer was “always looking for the person he could control and manipulate.”⁷ Exhibit 55 ¶ 26 (Connie Michelle Vollmer).

In Hittson, Vollmer found someone he could control. Vollmer subjected Mr. Hittson to countless indignities during their relationship, including sexual humiliation and teasing. Vollmer manipulated Mr. Hittson, who had very little money, into buying things for him, and relied on his rank to compel Mr. Hittson to risk his own standing in the Navy:

Vollmer just preyed on Hittson. Vollmer used his rank and his intelligence to make Hittson do things for him. He would force Hittson to do errands for him when we were not supposed to leave the boat, and would make Hittson pay for beer and cigarettes.

Exhibit 57 ¶ 8 (Petty Officer Landin).

Vollmer’s ex-wife, Connie Michelle Vollmer, had firsthand experience with being under Vollmer’s thumb, as she and others fully believed Mr. Hittson was. In order to understand how Mr. Hittson could allow himself to be subjected to

⁷ Hittson was not the only person Vollmer attempted to dominate:

Ed was also the type to take charge of a situation and liked having the guys follow him and take his orders. From what I saw, most of the guys went along with him. For a while, Ed tried to get Christopher to be his little puppy. There was a period of time when Christopher was hanging out with Ed that he just got to acting really wild and out of control.

Exhibit 56 ¶ 2. (Diana McCarty)

Vollmer's cruelty and manipulation, one need only look to Connie Michelle Vollmer's descriptions of how Vollmer eroded her self-confidence until she was unable to challenge him:

Ed never pulled out the hunting knife he was carrying, but when we left he asked me what I would have done if he had cut Carrie's throat. I told him I would have called the police, and he said, "No, you wouldn't' have done anything." When he looked at me and said that he was as sure of himself as the sun rising the next day. He knew I was too insecure and would not have called the police on him.

Exhibit 55 ¶ 4 (Connie Michelle Vollmer).

Vollmer repeatedly and over many years physically abused, threatened and belittled her.⁸ Mrs. Vollmer tried to leave him but, as she phrased it in her letter to this Board, "he wanted complete control and always got me back." Exhibit 14.

In late September or early October 1989, we got into a fight one night because he would not turn the TV down when the baby was trying to sleep. I told him I just could not do this any more and wanted a divorce. I also told him I was moving back to Warner Robins. For one of the first times in our relationship, I was absolutely serious and certain that I would leave him. I had started to realize that I did not

⁸ Mrs. Vollmer describes an incident during which Vollmer was enraged because she had called the base and learned he was not on duty although he said he was going to work:

He got furious with me and told me to stay off his fucking back and out of his fucking business. He knew I had caught him in a lie and he was furious about it. . . [H]e shoved the car door into me with both of his hands. The door slammed hard against me and I fell down. As soon as I fell on the ground Ed jumped out of the car and started punching me in the face . . . with both fists, saying "You stupid fucking bitch, stay out of my business."

Exhibit 55 ¶ 9 (Connie Michelle Vollmer).

have to subject myself to Ed's behavior. Ed reacted violently to my confidence. He grabbed me and drug me into the bedroom. He ripped off my gown and said I was his fucking wife and this relationship was not over.

Exhibit 55 ¶ 12 (Connie Michelle Vollmer). It was not until she fled to another state and covered her tracks so that no one—not even her closest friends—would know where to find her that she was able to escape.

Like Mrs. Vollmer, Mr. Hittson had tried to stand up to Vollmer, but Vollmer was not only his Naval superior and direct supervisor, he was vindictive. On one occasion, Vollmer had actually locked Mr. Hittson in the shop's cage on ship for hours after Mr. Hittson had tried to stand up to him. Exhibit 57 ¶ 9 (Petty Officer Landin).

On April 3, 1992, Vollmer invited Hittson and another sailor, Conway Utterbeck, to spend the weekend with him at his parents' empty home in Warner Robins, GA. The Eleventh Circuit Court of Appeals summarized what happened next:

Apparently neither Hittson nor Utterbeck was aware that the other had also been invited until shortly before they left Pensacola. The three men arrived at Vollmer's parents' house late Friday evening, but they did not have a key, so they spent the night in a storage shed behind the house. On Saturday, April 4, a friend of Vollmer's parents came by to check on the house; finding Vollmer and the two others there, he gave them a key. The three sailors spent most of the day of Saturday hanging around the house, but sometimes Saturday evening, Hittson and Vollmer went out drinking. They left Utterbeck at the house.

Early in the morning of Sunday, April 5, after several hours of drinking, Hittson and Vollmer headed back to the Vollmer residence. According to the statement later given by Hittson to law enforcement, he was very drunk by that time. On the drive back, Vollmer worked Hittson up by telling him that Utterbeck was “going to get us”—that Utterbeck was plotting to kill the two of them—so “we’ve got to get him” by killing him first. At some point—though it is not clear when—Vollmer told Hittson that Utterbeck had a hit list with Hittson’s and Vollmer’s names on it. When they pulled into the driveway, Vollmer put on a bulletproof vest and a long trench coat and grabbed a sawed-off shotgun and a .22 caliber handgun from his car. He gave Hittson an aluminum bat that was also in the car and told Hittson that Utterbeck was waiting for them inside the house and was planning to shoot them. Vollmer instructed Hittson to go in first and “get him” and then “get him in the kitchen”—so they would not make a mess on the carpet.

Exhibit 63 (*Hittson v. GDCP Warden*, at 6-7).

A severely intoxicated Mr. Hittson did as his Naval superior instructed. Vollmer then directed him to perform additional acts that appear to have been intended to preclude identification of Mr. Utterbeck’s body and conceal evidence of the crime. Mr. Hittson partially complied, but became ill and could not complete Vollmer’s directions.⁹ Vollmer then took over.

The two sailors returned to the ship without Mr. Utterbeck and claimed that they had dropped Mr. Utterbeck off at a bar in Pensacola. During the time between

⁹ The entirety of the facts of the crime are described in the Eleventh Circuit Court of Appeals opinion attached as Exhibit 63.

the crime and Mr. Hittson's confession to law enforcement, some of his Navy friends noticed a change in him:

In the last month or so before he was arrested he did have a severe personality change that at the time didn't seem to glare at us we just noticed he become more withdrawn, and that he was starting to drink a lot more. . . He definitely seemed troubled and bothered.

Exhibit 11 (Petty Officer Belisario)

By the end of May of 1992 Travis was drinking more heavily than ever before. I didn't really think that much about it at the time, but now that I know what happened, I think it was because he couldn't cope with what he had done and couldn't continue to keep it a secret. There was a lot of anger and tension between Travis and Ed and that was the only time I ever saw Travis get angry at any one while we were in the Navy. Seemed like the next day Travis was arrested and answers started flying from every direction about what had happened.

Exhibit 9 (EM Nix)

Well, it just seemed—it just seemed like Hittson become more, you know, just he deteriorated, it seemed like . . . [Vollmer was just the same old guy]

Exhibit 45 at 138-39 (FM Barlow)

Mr. Hittson confessed to a friend of his, while they were drinking together, who simply did not believe him. Exhibit 47 at 168. Shortly thereafter, in pursuing leads, investigators interviewed Mr. Hittson on June 25th. He initially maintained the story, but the investigator from Escambia County, FL, testified that he saw from Mr. Hittson's demeanor that Mr. Hittson "had possibly been involved in something that he was not extremely proud of, something that he had been a part of

that he might not have necessarily been the instigator of; and that there was a possibility that he had been at the wrong place at the wrong time; and that this was something that [he] wasn't sure that [Hittson] could . . . live with. Exhibit 33 at 3-4. Mr. Hittson then confessed and, knowing what punishment he was likely to face, led investigators to Mr. Utterbeck's body and other crime scene evidence. Exhibits 54 at 313-14; 1.

Given Vollmer's behavior and well-known fixation on murder, the community of people who knew both him and Mr. Hittson, while shocked by the crime, was not enormously surprised at Vollmer's involvement. In fact, several individuals who knew Vollmer contacted investigators and the prosecutor when they learned of the crime in order to ensure that they knew about Vollmer's character and past threats. Exhibits 57 ¶ 15; 58 ¶ 8; 56 ¶ 22-23. That Mr. Hittson had been involved in a crime like this shocked everyone, and the community of men they served closely with remain united in their conviction that Mr. Hittson could never have participated in this act absent Vollmer's influence and manipulation:

Bill told me that Ed and Travis had been arrested for killing another crew member. . . Bill and I talked about how the police had the wrong idea if they thought Travis had instigated the crime or even had the same level of responsibility as Ed did. We had all seen the way Ed treated people, especially Travis. . . When I got on the phone with the district attorney, I immediately told [him] that Travis was a good kid and there was no way he could have ever done anything like this without coercion or manipulation.

Exhibit 57 ¶ 15 (Petty Officer Landin)

Everyone was shocked that Travis was involved and could not believe that he was involved. Travis had basically confessed to me one night while we were drinking but I just could not believe him. On the other hand, it wasn't any stretch of the imagination that Ed was involved. . . I don't want to excuse Travis' actions and I know he needs to be punished by spending his life in prison for what he did. I am just trying to convey that nothing like this was in Travis' character to do, and that it never would have happened but for Ed deciding to make it happen. In the Navy you are at the mercy of who you are under. If somebody else had been in charge of us, I don't think anything like this could ever have happened.

Exhibit 9 (EM Nix)

IV. Mr. Hittson's Sincere Remorse and Exemplary Prison Record Make Him A Deserving Recipient Of Mercy And Further Demonstrate That This Crime Was A Thorough Departure From Mr. Hittson's True Character.

While nothing can excuse Mr. Hittson's crime, he is deeply sorry for what he has done. Mr. Hittson knows that only he made the choice to do what he did. He has known this since the time of his confession. As the court appointed psychologist who evaluated Mr. Hittson prior to trial found: "He is guilt ridden" and "introspective" and it is his tendency to attribute his problems "to his personal inadequacies." Exhibit 51 (Hittson Pre-trial Psychological Evaluation).

Mr. Hittson has confronted his actions and recognized his failings. As he has told counsel on many occasions, it has been his goal to achieve, over the years and with the God's help, the insight necessary to navigate this world with integrity

and courage. Through faith and hard work, he has accomplished this. In the words of Emma Stitt, a friend who began visiting with Mr. Hittson through her church ministry:

Travis [] is earnest and purposeful in his faith. His crime weighs heavily on him, and central to his theology, to his acceptance of Jesus Christ, is the obligation to grow into a different person from the one who participated in the murder of Conway Utterbeck. He takes this very seriously. I know what Travis' crime was and I take very seriously his sin, however, in Travis I recognize a person who is sincerely trying to live a good and faithful life to the best of his abilities in his circumstances.

Exhibit 20 (Emma Stitt).

While in prison, Mr. Hittson has focused all of his energy on faith and spiritual development. He has remained alcohol free. Exhibit 28. Mr. Hittson's administrative correspondence reveals that he treats staff with respect, deference and gratitude.¹⁰ According to counselor notes, Mr. Hittson spends the majority of his time reading faith-based materials and participating in religious activities, is cooperative with guards and inmates, and does not complain or make many requests:

10/21/94 "No disciplinary issues. Maintains quiet, unobtrusive existence."

¹⁰ A few of the more substantive letters are attached as Exhibit 30. All of Mr. Hittson's letters to staff can be found in his official Department of Corrections file.

- 11/23/94 "Hittson keeps a low profile. He seems to get along well with other inmates in his cell block."
- 9/18/95 "Continues involvement w/ education and worship services."
- 8/12/96 "Inmate spends his time at bible study, yard call, some weave craft activities, and church services."
- 6/5/97 "sent a donation to a religious organization & seems to be taking a real interest in matters of faith."
- 1/13/98 "Quiet, unassuming, still cooperative."
- 7/13/99 "He is never mentioned as a troublemaker by any of the other inmates, nor by staff. He orders a lot of religious books, and when finances permit, participates in the crochet program. He receives no visits; has cooperative attitude & behavior."
- 8/20/99 "He ordered a lot of religious material & appears to keep ** constructively occupied in yard call. The only visits he receives in are pastoral visits. He appears to have no enemies in G-House, minds his own business & keeps a low profile."
- 1/13/00 "Keeps himself constructively occupied by participating in crochet program & doing a lot of reading; causes no management problems."
- 3/24/00 "Hittson continues to keep a low profile & rarely makes request of staff. He keeps himself constructively occupied by participating in G- house recreation, the crochet program when finances permit & reading (mostly religious material)."
- 10/12/00 "Officers state Hittson causes no behavioral nor management problems."

- 4/11/01 “His cellhouse behavior is described as cooperative, follow[s] verbal instructions, maintains low profile. Has no request or complaints.”
- 05/28/02 “Hittson remains in #327. No new requests. Remains DR [disciplinary report] free and has proper attitude towards staff.”
- 02/25/03 “Has not made any recent requests. Said he was “okay” during last visit. Attitude seems appropriate.”
- 12/17/04 “Inmate attitude, demeanor and mood good.”¹¹

Exhibit 29 (Performance Recording Sheets).

In the almost twenty-five years Mr. Hittson has been incarcerated he has had only one disciplinary report. Mr. Hittson was asked by a prison nurse to provide a DNA sample. Exhibit 26. He understood it as a request, rather than an order, based upon the way the request was phrased and his attorney’s advice. Exhibit 22.¹² Mr. Hittson declined because he hates needles (he believed DNA sampling required giving blood). After he understood that the DNA sampling was indeed mandatory, he willingly complied. Exhibit 26. Outside of this one infraction, Mr. Hittson’s incarceration record has been perfect.

¹¹ The counselor notes received by counsel as part of Mr. Hittson’s Department of Corrections File discontinue in May of 2005. The Department of Corrections appears to have ended the practice of making handwritten counselor notations.

¹² Compulsory DNA sampling of incarcerated inmates was being challenged in federal court at the time. *See Padgett v. Donald*, 401 F.3d 1273 (2005).

As this Board is certainly aware, prisons can be pressure cookers. For more than twenty years Mr. Hittson has doggedly avoided engaging in any conflict, even when provoked. Mr. Hittson keeps his head down and steers clear of the many tensions and squabbles that grow wherever men live in close quarters. This is not because he is never faced with provocation or the temptation to err, but because—where he once sought the approval of his peers—he now takes guidance from and seeks only the approval of God.

On one occasion, shortly after Mr. Hittson was incarcerated, another inmate kicked and struck Mr. Hittson in the face during a basketball game on the yard, causing Mr. Hittson to need stitches. Mr. Hittson did not incite this attack and, according to the officer's report of the incident, did not lose his composure and did not retaliate. Exhibit 27 (Housel DR). Just recently, Mr. Hittson was again faced with a challenging set of circumstances. Racial tensions are common on death row, and one of his African-American Bible study companions was struggling with harassment from inmates who were angry that his appointment on sanitation detail had skewed the racial balance of individuals receiving this privilege and responsibility. Mr. Hittson, after attempts to resolve the issue with the assistance of prison guards were unsuccessful, confronted one of the inmates engaging in harassment and asked him to stop. A fight nearly broke out when the inmate

became angry and struck Mr. Hittson. Again, Mr. Hittson walked away from conflict without engaging in any violence or retaliation.¹³

As Ms. Stitt writes:

He tries to respond to people's anger with kindness. He has learned not to take their outbursts personally, which shows maturity. He works to forgive the inmate who continually floods the cellblock with sewage. He understands that this inmate is struggling with mental health issues. . . In the visitation room, Travis greets the other inmates and many of the guards as friends. . . He just wants everyone around him to enjoy themselves.

Even now on death watch, he chooses to watch television shows he thinks the guards will like. . .

Travis is a good friend to me, too. He often sends a thank you letter after a visit.

Exhibit 20 (Emma Stitt).

Due to Mr. Hittson's laudable demeanor and behavior in prison, a former Department of Corrections staff member has taken the extraordinary step of writing to this Board regarding her experience of Mr. Hittson as an inmate. Exhibit 19. She is certain, because of Mr. Hittson's behavior and her interactions with him, that he will continue to be a model inmate. She urges this Board to have no concerns regarding his ability to successfully navigate a life behind bars, and to commute Mr. Hittson's sentence.

¹³ This incident was not written up.

V. Executing Mr. Hittson Would Be An Injustice In Light Of His Co-Defendant's Undeservedly Lenient Sentence.

The judge presiding over Mr. Hittson's trial found the following mitigating factors to have been established in Mr. Hittson's case: That Mr. Hittson had no significant history of criminal activity; that the murder was committed while Mr. Hittson was under the influence of extreme mental or emotional disturbance; that the murder was committed under circumstances which Mr. Hittson believed to provide a moral justification or extenuation for his conduct; that Mr. Hittson acted under duress or under domination of another person; that Mr. Hittson's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was impaired; and that Mr. Hittson's youthfulness was mitigating.¹⁴ Exhibit 31 (Trial Judge Report).

In stark contrast to Mr. Hittson, Edward Vollmer had a history and pattern of sociopathic violence. Vollmer was Mr. Hittson's superior in the hierarchy of Naval command, had far superior intelligence, was known by all to be a master manipulator of vulnerable young people like Mr. Hittson, and had a well-documented and well-known obsession with killing. He casually discussed and studied how best to murder and dispose of a body and he threatened the lives of

¹⁴ Many of the jurors also were persuaded of these mitigating factors, but simply did not have the option of sentencing Mr. Hittson to life without the possibility of parole. Exhibits 2-5; 32.

shipmates. (Exhibits 34 at 148-49; 43 at 157-58; 16). Vollmer had even threatened Mr. Utterbeck's life prior to the night of the crime. (Exhibits 41 at 131; 43 at 161). There is no doubt in the minds of the law enforcement investigators involved that Vollmer had deliberately and cold-bloodedly planned this killing and the horrific subsequent treatment of Mr. Utterbeck's body. Exhibits 1; 54.

The lead Houston County investigator of this crime previously testified that the evidence demonstrated Vollmer had orchestrated the killing, Vollmer had planned the subsequent treatment of Mr. Utterbeck's body, and Vollmer had convinced Mr. Hittson to become involved:

- Q You looked at all the evidence in the case?
A Yes, sir.
Q You worked hard on this case?
A A lot of people did, yes, sir.
Q You believe you did a thorough and good investigation of this case?
A Yes, I believe so.
Q Based upon your investigation did you come to any conclusion about who was the instigator, the murderer of Mr. Utterbeck?
A I had my opinion about that, yes, sir.
Q What is that, sir?
A My opinion, that it was orchestrated, directed by Vollmer.
Q Directed by him?
A Yes sir.
Q Do you believe that he convinced Mr. Hittson to become involved in that?
A Yes, I believe so.
Q Do you believe that the manner of disposing of the body was Vollmer's idea?
A Yes, I believe so.

Exhibit 54 at 328.

The state prosecutor has submitted a letter to this Board in connection with Vollmer's parole file stating that, while Mr. Vollmer had the "lesser sentence, it is evident from the information received in the investigation that Vollmer was the instigator in the murder, that he convinced Hittson to do it, that the manner of disposing the body was Vollmer's idea, and that Vollmer is, in a word, EVIL!" Exhibit 53. The prosecutor also found Vollmer to have no capacity for remorse, to be incorrigible, and to be extremely dangerous if ever released back into society.

Nevertheless, Vollmer is serving a life sentence while Mr. Hittson faces imminent execution. Not a sentence of life without parole, but a sentence which allows him to one day be released. Vollmer is serving this sentence in a facility that provides opportunities for education, vocational training, work details, therapy and rehabilitative support.

This disparity in punishment is troubling and profoundly unfair, given the overwhelming agreement—among not only those who knew Mr. Hittson as a friend but also among those naval and law enforcement officials who investigated the crime—that Mr. Hittson would never have committed an act like this if he had not met Edward Vollmer.

The jurors who decided Mr. Hittson's punishment were torn between the sentencing options available to them. As evidenced by multiple questions during deliberations regarding Mr. Hittson's eligibility for parole, and the letters written

recently by jurors, many of the jurors were seriously contemplating a life sentence but were concerned by the possibility that Mr. Hittson would be paroled from prison.¹⁵ Exhibits 2-5; 32. Had Mr. Hittson been tried one year later, life without the possibility of parole would have been a sentencing option. Mr. Hittson would, according to the testimony and letters from jurors, have received this sentence.

VI. Conclusion

The inflexible rules that govern legal proceedings are necessary to protect against the bias and arbitrariness that would result from an entirely discretionary system. Yet they are not intended to account for every possible set of circumstances. Nor can they take into consideration later events that bear on the determination of what is just. Inevitably there will be instances in which the fixed rules governing the legal process yield a result that does not accommodate fairness. It is in those instances where this Board is called upon to exercise mercy. This is just such a case.

This Board is empowered to spare life precisely because society has determined that it is justice—not a departure from justice—for mercy to be employed as the standard for final judgment.

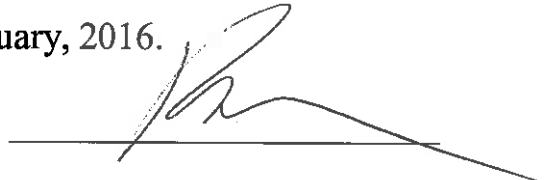
¹⁵ At the time of Mr. Hittson's trial parole eligibility for a life sentence was set at merely seven years.

Mr. Hittson and those who stand with him before you to plea for mercy ask that you consider the totality of Mr. Hittson's character and behavior, the assembled voices of the Naval community requesting that he not be given a greater punishment than the man who orchestrated this crime, and the inability of the jurors to sentence Mr. Hittson to the punishment many of them felt was most fitting, and to please spare Mr. Hittson.

For all the reasons contained in this application and appendices, and for the reasons found in the evidence and argument presented at the hearing on this application, we ask that this Board: (1) grant a stay of execution for (90) days to permit the Board to review and deliberate the evidence on Mr. Hittson's behalf; and (2) exercise its power to grant mercy and commute his death sentence.

Respectfully submitted this 10th day of February, 2016.

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