

Richard Eugene Hickock inmate case file

Section 20, Pages 571 - 600

The Kansas State Penitentiary case file on Richard Hickock, inmate number 14746. Hickock and his accomplice, Perry Smith, were convicted of first degree murder for the brutal 1959 killings of Herb and Bonnie Clutter, their daughter, Nancy, and son, Kenyon, in Holcomb, Kansas. The murders inspired the non-fiction novel "In Cold Blood" by Truman Capote. Hickock was executed by hanging on April 14, 1965. Please note that some images have been removed in accordance with K.S.A. 45-221(a)(29) and have been labeled with pages indicating their removal. Additional redactions of personally identifiable information made in accordance with K. S. A. 2005 Supp. 45-221(a)(30).

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Date: 1959 - 1965

Callnumber: State Penitentiary, Inmate Files, Executed Prisoners, Box 2

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13. Counsel appointed for each of the petitioners were general practitioners. They had sufficient and adequate trial experience to undertake the defense of the petitioners and to adequately represent them in their trials. While they did not volunteer to serve as counsel, when requested to act in such capacity by the presiding Judge of the Finney County District Court, they consented to do so and did with loyalty and diligence prepare for the trial and conduct the same in a lawyer-like manner.

14. Neither of the petitioners were persuaded to waive their right to a preliminary hearing without being afforded the benefit of counsel.

15. The District Judge, Honorable Roland Tate who presided at the trial was not a personal friend of the victims of the homicide, and no reasonable basis existed for making an effort to disqualify him for that reason.

16. The jurors and the attorneys for the State and the attorneys for the defendants were not close personal friends of the victims of the homicide.

17. The petitioners were afforded adequate opportunity and sufficient time to prepare their defense and the trial court did not violate any of their constitutional rights by refusing to grant a continuance requested by them.

The provisions of G.S. 1949 of Kan. 62-1405 which provides that no person who believes the punishment fixed by

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law to be too severe for the offense or entertains any opinion that would preclude his finding the defendants guilty shall be sworn as a juror, does not prevent the selection of an actual cross section of residents of a community for a jury.

18. Jurors who had pre-conceived opinions of the petitioners' guilt were not permitted to sit upon the jury.

19. There was no evidence that any statements of the brother of one of the victims of the homicide inflamed or prejudiced the people of Finney County before the trial started.

20. The form of execution imposed upon the petitioner co-wit: "Death by hanging" does not amount to cruel and inhuman punishment.

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CONCLUSIONS OF LAW

The Court concludes that there is no right more sacred to our institutions of government than the right to a public trial by a fair and impartial jury; no wrong more grievous than its denial, and no greater duty is enjoined upon the courts than to preserve that right untarnished and undefiled. The denial of a fair and impartial trial, guaranteed by the Sixth Amendment of the Constitution, is also a denial of due process, demanded by the Fifth and Fourteenth Amendments. (Baker v. Hudspeth, 129 F.2d 781.) But, when one is charged with offenses by a valid information in a court of competent jurisdiction, represented by counsel, before a jury of twelve men, under the superintendence of a judge of that court, which results in conviction, and affirmance thereafter on appeal, it will be presumed in the absence of plain and cogent evidence to the contrary that the persons so charged and convicted were accorded a fair and impartial trial as guaranteed by the Constitution, and that all other rules of due process were observed.

Petitioners here were afforded a hearing before a Commissioner of the Kansas Supreme Court in a Habeas Corpus proceeding initiated before that court. This Court has held a sufficient hearing to make sure that the condemned prisoners, restrained of their liberty, were afforded, in a legal sense, a full and fair hearing of their cases and to the extent that the prisoners were given a full and fair hearing by the Kansas Supreme Court, which resulted in reliable findings on those issues of fact made by that Court, this Court approved and adopted them in this proceeding.

The jurisdiction of Federal Courts to issue a writ of habeas corpus is not unqualified, but must be exerted only in the exercise of sound discretion, according to the special

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circumstances of the case. It should not and cannot be exercised except on definite and narrow grounds. In the absence of exceptional or extraordinary circumstances the Federal Courts will not ordinarily interfere by habeas corpus with the regular course of procedure under state authority and then only when it appears by clear and convincing evidence that the detention of a prisoner by the state authorities violates his fundamental personal rights as guaranteed by the Federal Constitution which was designed to safeguard the individual citizen against oppressive acts of officers of the several states. A proceeding in habeas corpus may not be used as a substitute for appeal to consider trial errors. Where it appears that a person is being restrained of his liberty by virtue of a judgment and sentence of a court having jurisdiction of his person and the offense committed and where the punishment inflicted is within the limits provided by the applicable statute, a writ of habeas corpus will not issue unless it appears from convincing proof that the prisoner has been denied a right or privilege assured him by the supreme law of the land.

In this case the principle question presented and on which the greatest emphasis was placed was the adequacy of counsel appointed to represent the petitioners at their trial before the state court. This issue was one determined by the state habeas corpus proceeding. This Court concludes that the determination made by the State Court on this issue is amply supported by the evidence in the record and that a determination to the contrary would be against the weight of the evidence. In all events the record in this case would not support a conclusion that the representation of petitioners by their court

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appointed counsel made the trial a farce and a mockery of justice, nor does it shock the conscience of this Court.

At their trial in the State Court, the prosecution presented a careful and complete case to which appellants apparently had no answer. Neither vigor nor skill of counsel could overcome truth. Success is not the test of effective assistance of counsel (Rozster v. U.S. 303 F.2d 47.) The voluntariness of the petitioners' statements to officers which was at no time contested or challenged during trial or appeal in State Court, and the truthfulness of which is not questioned now, requires the conclusion that there has been no inadequacy of counsel that would warrant the invalidation of their conviction and sentence.

After hearing the evidence in this matter and after my own independent examination of the entire record of these cases, I must conclude that petitioners have failed to establish, under the rules of law applicable, that their Constitutional rights have been violated. There has been no miscarriage of justice in this case. The petitions for issuance of a writ of habeas corpus must be denied in each case and the order previously issued herein staying the execution of sentences imposed by the State Court will be and now is recalled and set aside.

IT IS SO ORDERED.

The Court wishes to express its commendation to counsel for the petitioners who have worked with vigor and diligence and without possibility or hope of any compensation for their services in this case. Without such assistance, this Court could



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not have fulfilled its obligations which are imposed upon it
by law.

It follows from what has been said that a certificate
of probable cause provided for in 28 U.S.C. §2253 will not issue.

DATED at Topeka, Kansas this 23rd day of October, 1963.

/s/ GEORGE TEMPLAR

UNITED STATES DISTRICT JUDGE

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EXECUTIVE OFFICE
STATE OF KANSAS
TOPEKA

WM. H. AVERY
GOVERNOR

April 3, 1965

Mr. Joseph P. Jenkins
Attorney at Law
Huron Building
Kansas City, Kansas 66101

Re: Richard Eugene Hickock
Application for Reprieve

Dear Mr. Jenkins:

I have given careful and serious consideration to your written application submitted to me on behalf of Richard Eugene Kickock and Perry Edward Smith, who are presently under sentence of death after having been convicted by a jury in Finney County, Kansas on each of four counts of murder in the first degree.

I have also given the same consideration to the oral presentation in support of the application by you and by Mr. Bingham before me on April 1, 1965.

I have concluded that a reprieve should not be granted upon the application and you are hereby notified in writing of my decision denying the application.

Yours very truly,

Wm. H. Avery
Governor

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MEMORANDUM

Re: Richard Eugene Hickock
and Perry Edward Smith
Application for Reprieve

FACTS:

A. PROCEEDINGS

In December 1959, the above referred to subjects were returned from Los Vegas, Nevada, and charged jointly with four counts of first degree murder in the District Court of Finney County, Kansas. The day after their return, they were brought before the Judge of the County Court where they were afforded an opportunity to request and have a preliminary hearing. At the time both defendants waived a preliminary hearing and were bound over for trial to the District Court.

On January 8, 1960, both defendants were brought before the District Court where Harrison Smith and A. M. Flemming were appointed to represent them. Certified copies of the information were furnished to them and their attorneys.

On January 29, 1960, both defendants filed motions requesting the Court to appoint a commission to examine them to determine their mental status under the provision of G.S. 1949, 62-1531, and to determine their sanity at the time of the commission of the crime under G.S. 1949, 62-1532. Both motions were sustained and a commission was appointed consisting of three reputable, qualified, experienced physicians and surgeons of Finney County. This commission examined the defendants and filed separate reports, in which they found each defendant to be sane and able to comprehend his position and make his defense.

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On February 9, 1960, the defendants and their attorneys were before the Court and upon arraignment, each stood mute and pleas of not guilty were entered. It appeared that they desired separate trials and the Court granted the request and set the trial of Perry Edward Smith first.

On March 1, 1960, each defendant filed a motion to quash the jury panel on grounds of alleged errors in the selection of the panel. This motion was sustained and a new panel was selected.

On March 9, Hickock, although previously having requested a separate trial, announced in open court, after consultation with his attorney, that he desired to be tried with Smith, to which Smith agreed. Thereupon, the Court announced that there would be a joint trial commencing March 22, 1960.

Upon the trial of the case to a jury, separate verdicts were returned finding each defendant guilty of murder in the first degree on four counts and fixed the punishment on each at death.

Thereafter, motions for new trials were filed and heard. No affidavits or testimony were offered in support of the motions. The motions were overruled and sentence imposed. Thereafter, the defendants jointly perfected an appeal to the Supreme Court of the State of Kansas.

The case was heard in the Supreme Court and on July 8, 1961, that Court affirmed the judgment and sentences imposed upon the defendants. This case is reported in 188 Kan. 473. Upon appeal in that case, the defendants claimed approximately ten errors, some of which pertain to both defendants, some of which pertain solely to Smith, and some of which pertain solely to Hickock. In the opinion of the Court, each error was meticulously examined by the Court with great care, even though some of them had been raised for the first time upon the appeal.

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Thereafter, a motion for a rehearing was filed. Before that motion was heard, the Court began to receive letters from the petitioners complaining about their counsel and informing them that their counsel had been dismissed. Later the petitioners wrote letters to various legal aid groups including the Chairman of the Legal Aid Committee of the Kansas Bar Association alleging grave injustices. The committee of the Wichita Bar Association also received letters, and thereafter, the Chairman of the two committees suggested that Russell Shultz, of the Wichita Bar, be appointed to investigate the situation. The appointment was made and Mr. Shultz immediately requested the Court for a delay in hearing the motion for rehearing in order that he would have ample time to investigate the case. This delay was granted and Mr. Shultz was requested to file a copy of his report with the Kansas Bar Committee.

When the report was filed, it appeared to have some basis for showing that the defendants had not received a fair trial. The Court thereupon appointed Mr. Shultz as an attorney for petitioners and granted him permission to bring an original proceeding in habeas corpus. Such a proceeding was permitted so that it would be possible to discover matters outside of the record of the trial proceeding. Former Justice Thiele was appointed as a commissioner of the Court to take evidence in the proceeding. Hearings were held in Finney County and at the Penitentiary, and the defendants were given every opportunity to present any matters, either within or without the record, which would have a bearing upon the legality and fairness of their trial.

Thereafter, former Justice Thiele submitted his report consisting of nineteen findings of fact and six conclusions of law, and he thereafter filed an amendment. He found that

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no grounds had been established for the issuance of a writ on the part of either of the defendants, and the Supreme Court after considering the whole record denied the writ. The opinion of the Court included the full report of the commission and is reported in 190 Kan. 224.

This opinion was filed on July 7, 1962.

Thereafter, appeals were perfected to the Supreme Court of the United States, and that Court refused to grant certiorari.

Petitioners then instituted an original proceeding in habeas corpus in the United States District Court in July 1963. The petitions were prepared by Joseph Jenkins and Robert Bingham, who had been appointed counsel for them in September 1962. A pretrial conference was held on August 29, 1963, and thereafter this matter was tried before the Honorable George Templar. The case required five days to try. During the course of the trial, the Court had before it as a part of the evidence the following exhibits:

- (a) Transcript of the testimony of the original trial in the District Court of Finney County, Kansas.
- (b) Transcript of the preliminary hearing in the County Court of Finney County, Kansas.
- (c) Transcript of the proceedings before Walter Thiele appointed of the Supreme Court.
- (d) Transcript of the proceedings in the District Court of Finney County, Kansas, on the hearing for a motion of a new trial.
- (e) Transcript of the testimony of Attorney Russell Schultz who investigated the claim of the petition.
- (f) Five folders containing certified copies of the exhibits which were presented.

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(9) Transcript of the testimony given to the commissioner at Lansing, Kansas.

During the course of this trial the defendants were brought before the Court and were examined in open Court and gave testimony in support of their claims.

Thereafter, the Federal Court made findings of fact and conclusions of law, and denied any relief.

This case was appealed to the Tenth Circuit Court of Appeals, which Court examined all of the evidence and affirmed the action of the District Court. That decision is reported in 334 F2d 95. Appeals were again perfected to the United States Supreme Court, where again a hearing was denied.

During all of these, time appropriate stays of execution were granted by the various courts involved to afford the defendants every opportunity to present their claims and contentions.

On March 1, 1965, the United States Supreme Court again denied their petition for a rehearing. Thereafter, and on March 11, 1965, the Supreme Court of Kansas set the execution date for April 14, 1965.

Petitioners have now requested a reprieve and have pending an application for clemency.

B. THE OFFENSE AND PROOF

There appears to be little dispute as to the commission of the offense. The evidence conclusively shows, and is not contradicted, that Hickock, while serving time in the Kansas State Penitentiary celled with an inmate who had worked for Herbert Clutter, and had the impression that Clutter was a wealthy wheat farmer who kept a safe in his home with large sums of money. Hickock devised a plan whereby he and a friend,

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upon being discharged, would go to the Clutter home, tie them up, rob the safe, and leave no witnesses.

After being released Hickock contacted Smith and together they planned the crime. After gaining entrance to the Clutter home at night, they set out to make Mr. Clutter disclose the whereabouts of the safe, but were told there was no safe. They then put all four members of the family upstairs and searched the house. Clutter was then taken to the basement and tied hand and foot on a mattress carton in the furnace room. The boy was taken to the furnace room and tied to a soil pipe. Mrs. Clutter was tied hand and foot to her bed, and the daughter was tied hand and foot to her bed. Then Mr. Clutter's throat was cut and shot in the head; next the boy was killed, following which the daughter and the mother were killed. All of them were shot with a shotgun, and the defendants picked up the empty shell cases and left. They took with them a portable transistor radio and a pair of binoculars. The details of this crime were admitted by both defendants, and there appears to be no dispute whatsoever as to what occurred.

CONCLUSIONS

Every court that has reviewed the record in this case has held that the defendants received a fair trial; that they were adequately represented; that they were fully advised of their rights; that the admissions and confessions of them were made voluntarily; and that they have been afforded every opportunity to present any defenses they might have. Judge Templar made a finding that the petitioner's counsel "had left no stone unturned" which might possibly bring to light any shred of evidence or fact that would support their claims; that their constitutional rights had not been violated, and that there had been no miscarriage of justice.

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In their application for a reprieve, counsel state that they desire to file a motion under 60-1507 in the District Court of Finney County, Kansas. This statute went into effect on January 1, 1964. That statute provides that a prisoner in custody under sentence claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States or of the State of Kansas, or that the Court was without jurisdiction to impose such sentence, or that the sentence was greater than the maximum authorized by law, or otherwise subject to collateral attack may at ANYTIME move the Court which imposed the sentence to vacate, set aside or correct the same.

The statute further provides that unless the motion and the files and records of the case conclusively shows that the prisoner is entitled to no relief, the Court shall cause notice thereof to be served upon the County Attorney, grant a hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto.

They further say that there are volumes of evidence that our state courts have not seen or passed upon. All of this evidence is conceded to have been seen and examined in the federal court system.

They say new court decisions are not applicable that were not in effect at the time of trial. This fact, if true, was presented to and known by at least the Circuit Court of Appeals and the United States Supreme Court and considered.

An examination of the opinions of our Supreme Court, the Federal District Court, and the opinion of the Circuit Court of Appeals discloses that there is no ground complained of or charge made that the petitioners under this statute could allege that has not already been thoroughly examined, investigated, judicially determined, and a disposition made. Moreover,

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such a motion could have been filed in Finney County at any time since the statute took effect on January 1, 1964.

As to the application for clemency, such application could have been made at any time and particularly after March 1, which was the date of the denial of a rehearing by the Supreme Court of the United States. Moreover, the prisoners are being granted a full and complete opportunity to present anything they may have in support of clemency prior to the date set for their execution.

It is my considered opinion, after weighing all of the facts and hearing all of the arguments and examining the records available, that there are no grounds whatsoever for the granting of a reprieve unless upon receiving the report of the Board of Probation and Parole and other recommendations, it is determined that clemency ought to be granted. In that event, then a reprieve should be granted to allow time for publication and notice to the District Judge and the County Attorney, because of the fact that clemency cannot be granted except upon such notice.

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APPLICATION FOR A REPRIEVE

TO HONORABLE WILLIAM H. AVERY, GOVERNOR OF THE STATE OF KANSAS:

Richard Eugene Hickock and Perry Edward Smith, by and through their court appointed counsel, Joseph P. Jenkins and Robert H. Bingham, respectfully request that a reprieve be granted for a limited time, to-wit: thirty (30) days, pursuant to the provisions contained in G.S. Kansas, 1949, 62-2219.

Petitioners show to his Honor that the Supreme Court of the State of Kansas by order dated March 11, 1965 (received by counsel on March 12, 1965) refixed the date of their executions for Wednesday, April 14, 1965, between the hours of 12:01 o'clock A.M. and 2:00 o'clock A.M.

Counsel have now been advised by Mr. P. A. Townsend, Pardon Attorney, that the Parole Board will hear and consider the application of the petitioners at a hearing at the Kansas State Penitentiary at Lansing, Kansas, on Tuesday, April 6, 1965, and the hearing before the Governor or his Pardon Attorney will be on Monday, April 12, 1965. In the event clemency is denied, execution will follow 38 hours later, thereby giving counsel no time in which to test the interpretation of the Pardon Attorney and the Attorney General to the effect that 62-2216 requires no notice when commutation or pardon is not granted.

Counsel for petitioners, although serving without compensation, have at all times acted with vigor and dispatch in representing their clients, and have not been dilatory in any fashion.

Kansas law, G.S. 1961 Supp., 62-2216, provides that no pardon or commutation of sentence shall be granted by the Governor unless notice of same is published for 30 days in the official county paper of the county where the conviction was had. The application must first be made to the Parole Board which is directed to investigate and make a report. Notice is to be given to the District Judge and County Attorney of the proper county.

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Publication has been construed by the Board to mean five weekly publications, the last being no more than six (6) days before the hearing. Counsel were advised that by custom of long standing, or rule, the Board holds hearings at the Kansas State Penitentiary during the early part of each month, then makes its recommendations to the Governor. Hearings are then held on the last Thursday of each month. In this case, the two dates are March 25, 1965, and April 29, 1965. It was clear to counsel that it was too late to make the March 25 docket, but that if publication were started at the end of March, there would be no problem of making the April 29 docket.

Counsel were never advised that a special hearing could be scheduled until Tuesday, March 30, 1965, after the applications were made by petitioners at the Kansas State Penitentiary, and publication ordered. Publication has been arranged with the Garden City Telegram of Garden City, Kansas, and is as follows:

- 1st - Wednesday, March 31, 1965
- 2nd - Wednesday, April 7, 1965
- 3rd - Wednesday, April 14, 1965
- 4th - Wednesday, April 21, 1965
- 5th - Wednesday, April 28, 1965

It will be noted that the last day of publication falls before the last Thursday of April.

Counsel had no intention of delaying these particular proceedings since they were of the considered opinion that there were still remedies available to them in the state courts.

The attached motion was filed on March 7, 1965, requesting the Supreme Court of the State of Kansas to refix the execution date of Richard Eugene Hickock at a date which would be a minimum of 60 days from the date the motion was filed.

The Supreme Court saw fit to inferentially deny such request by setting the execution date for April 14, 1965. Counsel, not knowing that a special hearing could be had, then proceeded to undertake the necessary legal research and preparation of papers to

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be filed in the appropriate state courts while also taking into consideration that publication must be started during the latter part of March in order to comply with the statute.

There are no statutes or published rules available to counsel to provide a guide with respect to the customs and rules of the Board. There are no published rules of statutes which provide that the final hearing before the Governor or his Pardon Attorney could be held otherwise than on the last Thursday of each month. Counsel depended upon the Records Clerk of the Kansas State Penitentiary for the information concerning hearing dates.

A reprieve is requested to allow counsel to properly prepare for the hearing before the Governor, and for the further reason that petitioners be given an opportunity to prepare, file, and present proceedings permissible under 60-1507 of the Kansas Code of Civil Procedure in the District Court of Finney County, Kansas, and if necessary, in the Supreme Court of the State of Kansas. Section 60-1507 went into effect on January 1, 1964, long after these proceedings were terminated in the appropriate state courts, and are now available to petitioners in order to properly present to the state courts all of the evidence and issues pertaining to whether or not their constitutional rights were violated.

The many legal questions involved in these cases have either not been presented to the state courts, or were inadequately presented. The federal courts have, in effect, been loath to interfere with state processes, so therefore have declined to upset the convictions on constitutional grounds.

The Supreme Court of Kansas has never had an opportunity to review many of the constitutional questions involved in these cases. Other questions were, because of lack of time and funds of then court-appointed counsel, Russell Shultz of Wichita, Kansas, inadequately presented. Mr. Shultz so testified in the federal habeas corpus proceeding at Kansas City, Kansas.

Present counsel have unearthed much evidence which should, in the interest of justice, be presented to the state courts to give such courts the opportunity to rule upon them and establish state

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precedent. The state Supreme Court should make the final determination of these issues.

Matters not presented to the state courts, or presented inadequately because of lack of funds and time to develop such evidence, include the following:

1. The voluntariness of the confessions of both petitioners. *By the state & federal courts considered*
2. The failure of the state to bring petitioners before a magistrate until eight days after their arrest and after Hickock had made an alleged confession. *considered findings*
3. The failure to appoint counsel for petitioners, who were accused of capital offenses, until nine days subsequent to their arrest, and after they had confessed and waived a preliminary hearing. *considered*
4. The conduct of court appointed trial counsel who failed to move for a change of venue when it was evident that a fair trial could not be had in Garden City, Kansas; their failure to demand separate trials; their failure to give any time to investigation and preparation of the cases; their failure to move for a change of venue after a plea in abatement was filed by both counsel in which they point out their clients' fear of mob action in Finney County, Kansas, and that they could not get a fair trial there; admissions of their clients' guilt made by them for newspaper publication prior to the trial; failure to exercise propriety in clear violation of Canon 20 of the Canons of Professional Ethics by posing for newspaper photographers with the trial judge and prosecutor; failing to have the voir dire examination of prospective jurors recorded which made it extremely difficult to prove bias and prejudice on the part of the jurors, although a newspaper reporter did quote many of the jurors in full, which clearly indicated such bias and prejudice; and many other examples of gross inertia and a general state of passiveness. *considered*
5. The trial court's refusal to appoint a psychiatrist to examine the petitioners even though petitioner Hickock had suffered dangerous head injuries some years prior to trial, suffered two attacks at Las Vegas, Nevada, while in custody, and was diagnosed as having traumatic epilepsy by the Las Vegas police physician. Petitioner Smith

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had also suffered horrible and frightening injuries several years before the alleged crime, and had a family background of insanity and suicide which was of extreme importance with respect to ascertaining whether or not he was sane.

6. The question of admissibility of evidence obtained from petitioner's home without a search warrant which is now violative of petitioners' constitutional rights. Mapp v. Ohio, 367 U.S. 643, 6 L. Ed. 2d 1081, 81 S. Ct. 1684.

7. Whether or not the constitutional rights of the petitioners were abridged when jurors who admitted they had opinions and prejudice were permitted to sit on the jury.

8. Whether or not the petitioners' constitutional rights were violated by the unrestrained newspaper publicity unleashed upon the citizens of Garden City, Kansas. Counsel have many exhibits which were never presented to the Kansas Supreme Court.

9. The admission of gruesome exhibits: 14 photographs and four vials of blood, all of which were completely immaterial and raised constitutional questions which were not explored by the Kansas courts.

10. Did the prosecuting attorney violate the rights of the petitioners in holding 24 to 26 press conferences before and after their arrest, posing for photographs with defense counsel and the trial judge, and releasing crucial exhibits to the press for publication prior to the trial?

Furthermore, it was conclusively established and not denied in the federal court habeas corpus hearing that the county attorney had suppressed vital medical reports of the Las Vegas police surgeon concerning petitioner Hickock's physical condition (traumatic epilepsy) from court appointed trial defense counsel and the trial court. The Supreme Court of Kansas may have much to say about this matter if it were ever presented before them, which has not been done as of this time.

11. The totality of the circumstances in this case could impel the conclusion that petitioners have been denied a fair, impartial and constitutional trial.

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Furthermore, because of the complexity of these cases, court appointed counsel ascertained other facts after the Supreme Court of the United States denied certiorari, and which were never brought to the attention of any court, including, of course, the Kansas Supreme Court.

The following matters should be reviewed:

1. It has now come to the attention of counsel that the rubber boots of petitioner Smith, later offered and received in evidence at the joint trial of petitioners, were obtained without a search warrant from their automobile out of their presence, by Kansas Bureau of Investigation agents in cooperation with Las Vegas police officers at least two days after petitioners' arrests. Furthermore, the record is clear that petitioners were arrested in Las Vegas, Nevada, as parole violators only. A warrant charging them for the murders herein involved was not issued by Kansas authorities until January 4, 1960, some six days after their arrest and after the Kansas Bureau of Investigation officers had obtained the boots. No search warrant was ever issued nor could it be said that the search conducted by the officers was incident to a lawful arrest. Petitioner and Smith had been in custody at least two days before the Kansas officers arrived. This conduct is condemned by Preston v. United States, 376 U.S. 364, 11 L. Ed. 2d 777, 84 S. Ct. 1758.

2. It was discovered that petitioners had been questioned after they had waived preliminary hearing and after they were denied counsel, which led to the discovery of incriminating evidence. This procedure is condemned in Escobedo v. Illinois, 378 U.S. 478, 12 L. Ed. 2d 977, 84 S. Ct. 1758.

3. The question of whether or not the petitioners had agreed to a joint trial was a troublesome and vexing issue in this case. The petitioners denied at all times that they had agreed to a joint trial. The right to a severance is, of course, an extremely important constitutional right. United States v. Handy, 351 U.S. 454, 100 L. Ed. 1331, 76 S. Ct. 965. At that time it was not known to counsel that Mrs. Betty Hooper, and her mother, a Mrs. Stanton, both

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of Hutchinson, Kansas, not related in any fashion to the petitioners, and not known to them, had been observers at the trial. Mrs. Hooper somehow managed to converse with Mr. Hickock and ascertained that he was violently opposed to the joint trial and had been completely unaware that the trial was going to be a joint trial until the morning it began. Later, she and her mother were interviewed by newspaper reporters at their home in Hutchinson, and photographs were taken. We have a letter in our file which states that she was deluged with so many threatening letters and calls, that because of her three children, and her husband being out of town much of the time, she was compelled to obtain police protection.

4. Also, there are a number of witnesses, who were observers at the trial, including one newspaper reporter, who can testify of the shock and horror of petitioners when they ascertained they were being tried jointly, and, who can testify to the bias, prejudice and bitter feelings in the community against both petitioners.

5. The attitude of the Bench and Bar is well reflected by the report of Mr. Russell Shultz of Wichita, Kansas, a competent criminal lawyer, who was appointed by the Bar Association of the State of Kansas to investigate the circumstances surrounding the trial of petitioners. In his official report to the Legal Aid and Referral Services Committee, he stated:

"I may add that during the period of this trial the Ford County Bar Association discussed this matter, and their general feeling was reported to me as being doubtful that the appellants (Smith and Hickock) could or would obtain any semblance of a fair trial at that particular time in Finney County."

He added:

"All of these matters, as well as the questions which I point out above, are for the most part directly related to inability or negligence of counsel, and in my opinion, coupled with the definite prejudice which I believe was existent in Finney County at the time of the trial, constituted a definite denial of due process of law, which is guaranteed both by the Constitutions of the State of Kansas and the United States."

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Mr. Shultz continued:

"I do not believe that the State of Kansas would be either greatly or for long harmed by the death of either of the appellants, but I do not believe that it could ever recover from the death of due process."

This report is available to the Governor and will be submitted to you at the clemency hearing. The report, however, further emphasizes the unalterable fact that the Kansas courts should be given another opportunity to look at this case. And furthermore, that the Governor should not hesitate to grant a reprieve so he himself can look into the circumstances surrounding the trial of these two young men.

Lastly, G.S. Kansas, 1949, 62-2406 and 2407, provide for procedures when it is claimed that a person destined for execution is insane. The statute provides for the appointment of the heads of various mental institutions throughout the state, and allows them an examination and 10 days in which to make their report. This means that petitioners may be given an adequate and effectual psychiatric examination, which they have never had, although doubts have been raised as to their sanity. Dr. Modlin, Menninger Clinic Psychiatrist, testified in the habeas corpus proceedings in the federal court that neither petitioner has been properly examined with reference to their mental condition.

Good cause exists for the invoking of the statutes since petitioner Hickock had suffered a severe head injury and has a diagnosed condition of traumatic epilepsy, and petitioner Smith had suffered extremely severe injuries on two occasions a short time before he was first confined to the penitentiary.

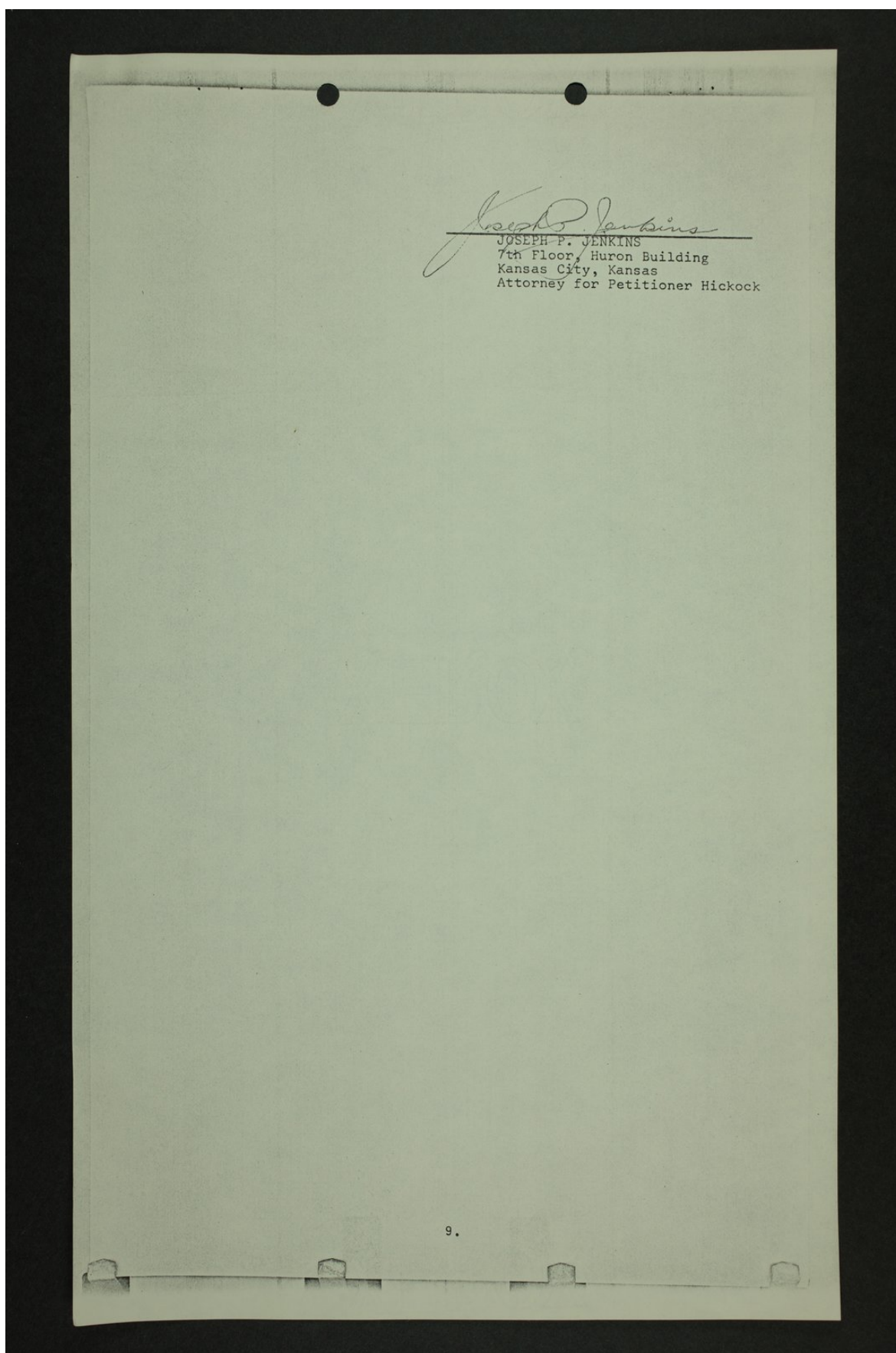
Counsel will need time to file an application for such examination, and further time will be necessary for the appointment of the psychiatrists to conduct examination and to make their reports.

For the reasons above given, it is respectfully requested that this application for a reprieve be granted.

Respectfully submitted,

ROBERT H. BINGHAM
Home State Bank Building
Kansas City, Kansas
Attorney for Petitioner Smith

Richard Eugene Hickock inmate case file



Richard Eugene Hickock inmate case file

IN THE SUPREME COURT OF THE STATE OF KANSAS

STATE OF KANSAS,)	
)	
vs.)	No. 42,068
)	
RICHARD EUGENE HICKOCK)	
and)	
PERRY EDWARD SMITH,)	
)	
Appellants.)	

M O T I O N

Comes now appellant, Richard Eugene Hickock, and respectfully requests the Court, when it refixes his date of execution, to refix said date a minimum of sixty (60) days from the date hereof so that this appellant will have an opportunity to prepare and file proceedings permissible under 60-1507 of the Kansas Code of Civil Procedure in the District Court of Finney County, Kansas.

Appellant shows to the Court that there are a number of questions which were not adequately presented to the state court, and which were not explored in the federal court proceedings for the reason that the federal court followed the state courts' decisions and rulings on such matters. Court appointed counsel for appellant and his co-appellant Smith have unearthed a great deal of evidence which should be presented to the state courts in order to give such courts an opportunity to rule upon them.

If this Court refixes appellant's date of execution for a date earlier than the requested sixty (60) days, it may be impossible for appellant to exhaust his remedies under said 60-1507. Appellant shows to the Court that 60-1507 was enacted subsequent to the initiation of the proceedings in the federal courts.

Respectfully submitted,

RICHARD EUGENE HICKOCK, Appellant

By Joseph P. Jenkins
Joseph P. Jenkins
7th Floor, Huron Building
Kansas City, Kansas

Court appointed counsel

Richard Eugene Hickock inmate case file

Copy mailed this 6th day of March,
1965, to the Office of the Attorney
General, State Capitol Building,
Topeka, Kansas.

James E. Hickock



Richard Eugene Hickock inmate case file

KSP No. 177-C

SPECIAL CASE

KANSAS STATE PENITENTIARY
Lansing, Kansas

SPECIAL CASE

CLEMENCY PROGRESS REPORT

Name: HICKOCK, Richard Eugene Reg. No. 14746 APRIL 196 5 CLEMENCY BOARD

OFFENSE: MURDER 1st. DEGREE 4-COUNTS CONCURRENT

TERM: HANG PLACE: Finney County Kansas

DATE SENTENCED: APRIL 4, 1960 DATE RECEIVED: APRIL 5, 1960

TIME; - MIN: HANG Max: HANG CR (or NET MAX): HANG

TIME SERVED: - 5 YEARS, 0 MONTHS AND 25 DAYS

PRIOR CLEMENCY APPLICATIONS: 2nd. Application for Executive Clemency

LAST DENIED - JULY 28, 1960

NOTE: Subject has advertised in the GARDEN CITY TELEGRAM

NOTE: No other reports are submitted due to the subjects DEATH ROW STATUS

DATE PREPARED:
March 30, 1965

PREPARED BY:
William R. Barker
WILLIAM R. BARKER, Record Clerk

WRB:cek

*Clemency
served
April 13, 1965
Executed April 14, 1965
12:19 A.M.
at Kansas State
Prison*

Richard Eugene Hickock inmate case file

KSP 179

t/d
4-18-60

KANSAS STATE PENITENTIARY
Lansing, Kansas

ADMISSION CLASSIFICATION SUMMARY

Committed Name:	HICKCOCK, Richard Eugene	Register Number	14746
True Name:	(As Committed)	Age:	28
Alias:	None	Color:	White
Place of Birth:	Kansas City, Kansas	Birthdate:	6-6-31

Offense:	Murder 1st, 4 cts Conc.	Sentenced:	4-4-60
Term:	Hang	Received:	4-5-60
County:	Finney	Minimum:	XXXXXX
Parole Eligibility:		Maximum:	5-13-60
G. T. Release Date:			

Place	Name & Number	Offense	Disposition
	F.B.I. Report Number 859 273 A		
9-13-49, SO, Olathe, Kansas	Richard E. Hickock # 303	Inv.	Pending
8-4-51, Marine	Richard Eugene Hickock #1110337	Enlisted	
8-30-57, SO, Olathe, Kansas	Richard Eugene Hickock # 303	Burglary & Grand Larceny	
8-29-57, SO, Olathe, Kansas	Richard Eugene Hickock # 303	Cheat & Defraud	Rel to Deputy 8-29-57
1-18-58, SO, Golden, Colorado	Richard Eugene Hickock # 2004	Outside Warr. (Kans) For GL	
2-6-58, SO, Fort Collins, Colorado	Richard Eugene Hickock # 8220	Hold for Sheriff Miami, Okla.,	
2-10-58, USM, Denver, Colorado	Richard Eugene Hickock # 5451	Viol Dyer Act	
2-10-58, PD, Denver, Colorado	Richard Eugene Hickock # 68109	Hold for US Marshall	2-12-58 rel to SO, Golden, Colorado
2-26-58, SO, Olathe, Kansas	Richard Eugene Hickock # 303	Burglary & Grand Larceny	5 yrs in Lansing 3-15-58
3-15-58, SP, Lansing, Kansas	Richard Eugene Hickock # 13651	Grand Larceny	0 to 5 years: <i>Parole</i> Par 8-13-59:
4-30-58, USM, Topeka, Kansas	Richard E. Hickock # 58-71	WHC Ad Pros Dyer C. Act.	1 yr 1 day 6-20-58 on chg of Dyer Act
8-13-59, SO, Kansas City, Kans	Richard E. Hickock # 34200	Cheat & Defraud & Bad Checks	



Richard Eugene Hickock inmate case file

KSP No. 264
4-18-60

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KANSAS STATE PENITENTIARY
Lansing, Kansas

CLASSIFICATION STUDY
HICKOCK, Richard Eugene

14746

Committed Name: _____

Register No. _____

12-30-59, PD,
Las Vegas, Nev.,

Richard Eugene
Hickock # M-31877

Fugitive from
Justice (Kansas)
Inv. Murder, Kansas

1-11-60, PD,
Garden City,
Kansas

Richard Eugene
Hickock # P-11728
19719

4 ota 1st deg murder

4-5-60, SP,
Lansing, Kansas

Richard Eugene
Hickock # 14746

Murder 1st Degree Hang
4 counts conc. ☒

Hearing. 4-6-60 - Michael present: Counsel Juries present.
Board present: Prob. Atty present.

4 counts, Murder: Finney County
Hickock, Ray.

Meier - understaff at jail
Copple - writes
Dewey - FBI agent
Jain Asst. for the Chaplain
Lloyd action -



Richard Eugene Hickock inmate case file

KSP No. 264

t/d
4-12-60

Page _____

KANSAS STATE PENITENTIARY
Lansing, Kansas

CLASSIFICATION STUDY

Committed Name: HICKOCK, Richard Eugene Register No. 14746

DETAINERS: None

CO-DEFENDANTS: # 14747, Perry Edward Smith

PRIOR INSTITUTIONAL RECORD: # 13651, Kansas State Penitentiary, Lansing, Kansas:

ESCAPES: None

CIRCUMSTANCES OF OFFENSE: Case No: 2322
Judge: Roland H. Tate
County Attorney: Duane E. West
Defense Attorney: Harrison Smith

Count I "..... On or about the 15th day of November, 1959, in said County of Finney, and the State of Kansas, one Richard Eugene Hickock, and one Perry Edward Smith, then and there being, did then and there unlawfully, feloniously, willfully and with deliberation and premeditation, and while being engaged in the perpetration of a felony, kill and take the life of Herbert W. Clutter: Contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the State of Kansas."

Count II "..... On or about the 15th day of November, 1959, in said County of Finney, and the State of Kansas, one Richard Eugene Hickock, and one Perry Edward Smith, then and there being, did then and there unlawfully, feloniously, and willfully, and with deliberation and premeditation, and while being engaged in the perpetration of a felony, kill and take the life of Bonnie Mae Clutter: Contrary to the form of the Statutes in such cases made and provided, and against the peace and dignity of the State of Kansas."

Count III "..... On or about the 15th day of November, 1959, in said County of Finney, and the State of Kansas, one Richard Eugene Hickock, and one Perry Edward Smith, then and there being, did then and there unlawfully, feloniously, and willfully, and with deliberation and premeditation, and while being engaged in the perpetration of a felony, kill and take the life of Nancy Mae Clutter: Contrary to the form of the Statutes in such cases, and against the peace and dignity of the State of Kansas."

Count IV "..... On or about the 15th day of November, 1959, in said County of Finney, and the State of Kansas, one Richard Eugene Hickock, and one Perry Edward Smith, then and there being, did then and there unlawfully, feloniously, and willfully, and with deliberation and premeditation, and while being engaged in the perpetration of a felony, kill and take the life of Kenyon Neal Clutter: Contrary to the form of the Statutes in such cases made and provided, and against the peace and dignity of the State of Kansas."