

**PETITION FOR EXECUTIVE CLEMENCY IN A CAPITAL CASE
GEORGE TREPAL, DEFENDANT**

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Gov. Rick Scott and members of the Florida Executive Clemency Board:

This petition for clemency is prepared on behalf of inmate George Trepal.

When I was appointed to represent George Trepal in these proceedings, I hadn't heard of him or of his case. Over the past few months, I've read all the coverage I could find. I read the book – the book that the undercover operative wrote about the investigation. I have also watched several documentaries produced over the years. Additionally, I have reviewed Mr. Trepal's file maintained by the Capital Collateral Counsel, along with filings in state and federal postconviction proceedings, which were drafted after extensive discovery and factual development, including two separate postconviction proceedings in Florida courts. I have discussed the case at length with Todd Scherr, who has represented Mr. Trepal for twenty years.

Mr. Scherr's investigation was commendably thorough, and my own investigator was not able to add anything useful to it. I know that this petition comes to you along with other materials prepared by the Office of Offender Review, who demonstrated excellent familiarity with the record in this case which I trust they will impart to you. The task for you is not having information, but making sense of it all, and understanding what the jury didn't hear and why. I think you should have serious doubts about Mr. Trepal's guilt, the fairness of his trial, and the appropriateness of executing him.

Mr. Trepal was convicted in January 1991 of first-degree murder of his neighbor Peggy Carr, attempted murder (multiple counts) of other family members, poisoning food or water, and tampering with a consumer product. In February 1991, the jury recommended a death sentence by a vote of 9-3. The judge accepted the jury's recommendation. On direct appeal, two justices on the Florida Supreme Court did not think the state had proved its case – they wrote that “One can easily conclude that his intent was to scare or cause sickness or discomfort in an effort to get the Carrs to move away. The evidence is insufficient to conclusively find that Trepal had a clear and conscious intent to effect the death of anyone.”

The dissenters were correct, and I urge you to consider their position with extreme care. Particularly important is the fact that although Mr. Trepal was alleged to be an extremely sophisticated student of poisons, none of the bottles contained a dose expected to be lethal. But the real dispute here is whether the evidence establishes Mr. Trepal's guilt with sufficient certainty for the Board to allow the State of Florida to kill him.

Mr. Trepal's sentence has been delayed because two full rounds of postconviction review were necessary in state court before federal habeas proceedings could begin. The second round started after Roger Martz, the expert who testified about the poison used, was investigated for misconduct. The

postconviction court found that “there is no doubt that the data available at the time of trial did not support the opinion Martz offered and that he knew it.” The court also observed that the lies were relevant to residual doubt: “If counsel had successfully impeached Martz, then the only direct evidence in the case would have been greatly weakened. Since the vote for death was 9-3, under a broad view, there is a reasonable probability that the outcome would have been different.” Nevertheless, the postconviction court found that Florida did not permit it to consider how the trial would have gone if he had been caught in his lie. “Although satisfied with the legal correctness,” the court noted its discomfort “with the outcome which the current law requires” and urged the Supreme Court “to carefully review the law in this area.”

I’ve been struck by the contrast between the popular portrayals, which focus on what sort of depraved character he would have to be to do such a thing, and the evidence in the record, which leave a reasonable observer with a serious doubt about Mr. Trepal’s guilt. I have been less surprised that the fairness of his trial is usually omitted from these accounts, but no less troubled.

This is a circumstantial evidence case that started with nothing more than a hunch and limped along for a year before the State, in suspicious circumstances, found something they felt they could use to charge him with. The first officers thought George was acting suspicious, fidgeting and clucking his tongue. Mr.

Trepal suffers from a speech impediment known as dysarthria, secondary to problems in his neuromuscular system, which causes him to “make noise with the tongue” Dysarthria is neurologically-based, and differs from garden-variety stuttering. This renders him physically clumsy.

The authorities convicted Mr. Trepal the first time they met with him. As Officer Goreck writes in her account of the investigation, George was not a suspect until he made the mistake of giving an answer to the officer’s question – “Why would somebody want to poison the Carr family?” He replied, “to get them to move.” This reminded the police of a threatening note the Carr family had received the month before, a note that was never matched to George in any way. Moreover, the note was never matched to the poisoning in any way. But that answer was the nail in George’s coffin. Ms. Goreck, who appears to have access to everyone involved, describes the officers at the scene giving each other high-fives, and saying “He did it. Now all we have to do is prove it.”

This led to a year-long investigation by the Polk County police. Susan Goreck went undercover, pretending to befriend George and inventing an abusive ex husband she hoped George would volunteer to kill. That didn’t happen; the investigation revealed that George was a smart, friendly guy. He supported her, but would not confront her husband, and certainly didn’t advise her to kill him, or

tell her how. He simply asked a friend how she could disappear into a new identity that her husband couldn't find.

As the investigation unfolded, it became clear that the case would make a great movie. But they never had enough to make a case, just a compelling story based on an unusual man who made a good character in a plot that they liked. Eccentric, outsider, deviant on the edge of society, passive snake in the grass, mastermind bent on demonstrating his power over a county full of simple honest rural folk – these characterizations could be made to fit George once you “knew” he did it. The story practically writes itself. In fact, in an article written after Mr. Trepal was convicted and sentenced to death, one of the jurors confessed that “that odd club of his called Mensa -- scared her from the very beginning. [The juror] said she believes Mensa has ‘voodoo ceremonies’ during meetings.” Mike McLeod, “Murder, He Wrote,” FLORIDA MAGAZINE, May 12, 1991, at 17.

All you had to do to have this story was ignore his gentle, helpful nature, along with every other fact that didn't fit. The mastermind, who carefully watched the house next door, retrieved an eight-pack of coke and replaced it poisoned during two thirty-minute windows where the house was empty, left the evidence for police to find while the house was emptied after the poisoning. The expert poisoner, who used an agent that was written about in popular accounts and well-known enough for the treating doctor to suspect. The murderer, who was

committed to a nonviolent philosophy. If you had to consider the whole messy truth, it didn't fit so well, but a few lies and you're in movie of the week territory.

In fact, Polk County was able to option the rights to Burt Reynolds' production company immediately after the trial.

And we know that Polk County was willing to lie to make its case against George. We know that because they lied to the judge when they got a warrant for the tracer they put on his car and the wiretap, and they lied to the postal inspector when they got a mail cover on his address. They said it was a drug investigation.

George and his eventually wife moved from their house, and because Susan had pretended to need help, they let her move in. That's when Polk County police discovered the most important evidence: a bottle in the garage containing Thallium. And so now we have the psychopath, killing to demonstrate his power, who left his "trophy" behind for anyone to find. Never mind that the bottle was literally in a rat's nest, in a workbench that had come with the house, in a garage that was kept unlocked.

Nowhere in this version of events is there any account of the arsenic poisoning that the doctors discovered. Peggy and the boys were also poisoned with arsenic, which the body processes and eliminates. Unlike Thallium, it does not stay in the system. In postconviction proceedings, Dr. Marland Dulaney would

testify that the elevated levels of arsenic in their blood after two weeks of hospitalization indicated exposure to arsenic while they were hospitalized.

What separates this case from most capital cases is the element of uncertainty as to the culprit. An event like the murder of Peggy Carr evokes a powerful demand for justice in any decent human being. As people, we want to make stories of our experiences, and we want to make them make sense. When we administer a criminal justice system, we must be vigilant against this urge toward a powerful narrative and keep our eyes on the facts. The truth is that we cannot know how or why Ms. Carr was murdered with absolute certainty. We can only “try out” various theories, and pick the one we like.

The first part of this petition focused on the ways that Mr. Trepal falls short as a suspect. The second suggests a few theories that are at least equally plausible, and how the jury was deprived of a chance to try them out.

Paraearyl “Pye” Carr was absent when the poisoning occurred. He had gone to South Carolina for a hunting trip on October 17, 1988. He and Peggy were having problems, and Peggy had written him a note telling him that if he didn’t want her, she would leave him. Peggy’s son Allen, in the navy in Tennessee, would testify that they developed a password system so that she could tell him when she was coming, without Pye knowing. Peggy was afraid, and she was planning her escape. But the jury never knew this, just like they never heard about

Peggy's best friend Rita Thacker's statement to the police, where she told police that Peggy said she was leaving Pye Carr for good because he treated the children unfairly, worked late hours, had a girlfriend and drank too much.

In interviews with the police, his ex-girlfriend described him as an "unstable" man who spoke of suicide. A friend, Troy Bell, agreed. Another individual, Thomas Blair, described him as capable of poisoning someone.

The theory at trial was that George had synthesized the Thallium. Where could Pye have gotten it? From under the sink. Officials found a low level of Thallium under the sink in an apartment on Pye's land. Although Thallium has been banned for years, it was used as a depilatory and rodenticide as late as the 60's. There could have been a leak from an old can.

Or, Pye could have gotten it from Silver City phosphate mine, where he worked. Again according to Larry, when Margaret Carr, Pye's ex wife, suggested this in front of police, - "they've got two chemist labs out there, do you know anything about this - - the kids got into" – he told her to shut her goddamn mouth. Contrast this with how investigators reacted during their first encounter with Mr. Trepal.

Wherever he got it, Pye's guilt would explain why Carolyn Dixon was able to tell Laura Ervin, Pye's ex-girlfriend, that Peggy had been poisoned with "very rare" poison "like thallium or fallum" three days before the hospital announced it.

And Laura would have testified that shortly after Pye and Peggy got married, Pye told Laura he'd made a mistake and he wanted her back. At the time of trial, Pye had already moved in with another girlfriend, Joyce Crabbs.

Larry Dubberly, Peggy's ex-husband and father of Duane, had more to say about Pye. He described Pye as trembling and too nervous to talk after his interview with police. He also heard Travis, Pye's son, screaming "They are trying to kill me!" in the hospital. According to Larry, a doctor asked him whether someone could be poisoning the children while they were in the hospital. Pye and his sister, Carolyn Dixon, had been bringing in food for the children. Carolyn, a nurse, was bringing in food for boys that were dying of an orally administered poison, whose arsenic levels would later indicate exposure after they were admitted.

When you examine this case, you see that between the two of them, Diana fit the profile of a motivated killer better than George does, at least with respect to anger. She had a temper. She was arrested for assaulting a police officer; apparently she didn't like being searched. She also faced a civil suit for assaulting a woman at a hotel for playing her music too loud. The shelves full of murder mysteries – including "The White Horse," describing thallium poisoning – belonged to her. Unsurprisingly, given that she was paying the lawyers and related to one of them, this theory was not developed at trial. She did testify at

trial, with immunity granted by the prosecutor. However, that did not extend to questioning from the defense. Therefore, the jury never heard that Diana wrote the plots for the murder mystery weekends. They also didn't hear from her that George drank bottled water, a key issue because George and the Carr family were sharing a well and the prosecutor scored points by implying that George drank well water when the community was afraid it was poisoned. "If you next door neighbor is lying in the hospital,... about to die, aren't you going to unhook the damn hose?"

Aside from these two alternative suspects, one can only wonder how to tie everything together. No known theory accounts for the evidence in this case. Right now, no act the State can take could truly satisfy our thirst for justice for the murder of Peggy Carr. There are too many questions unanswered.

If you kill George Trepal, the answers to those questions may come too late. When you review his case, you should have at least a lingering doubt as to whether he's really the culprit. If you have no doubt at all that he is guilty, you should question whether he put a nonlethal dose in each bottle with the intent to kill. Either way, Mr. Trepal should not be executed. The ultimate punishment should be reserved for the worst of the worst, and only when guilt is beyond all doubt. There are too many problems with the facts and the trial to be confident that executing Mr. Trepal serves the interests of justice. Those uncertainties will be

your legacy if you kill him instead of simply letting him die in prison. If you can't pardon him, just don't sign his death warrant.

Respectfully Submitted,

/s/Gray Proctor