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# Clemons' death sentence 'unheard of'



Reginald Clemons' counsel Andrew Lacy, who introduced into evidence an affidavit by David Keys, confers with Judge Michael Manners during the new evidentiary hearing for Clemons granted by the Missouri Supreme Court. Listening at the bench conference are Steven Hawke and Susan Boresi for the Missouri Attorney General and Josh Levine, Clemons' lead counsel. Pool photo provided by St. Louis Post-Dispatch

## Expert witness testifies to disproportionate sentencing

By Chris King  
Of The St. Louis American

On the second day of the new evidentiary hearing granted for Missouri death row inmate Reginald Clemons by the Missouri Supreme Court (on September 19), Clemons' trial counsel Andrew Lacy introduced into evidence an affidavit by David Keys.

Keys is an assistant professor of criminal justice at New Mexico State University - Las Cruces. In 1994 he consulted on sentencing proportionality studies for the State of Missouri, and he has contributed expert witness testimony and affidavits in capital trials in the U.S. Supreme Court, Missouri Supreme Court and a federal Court of Appeals in New Mexico.

"Part of my research is an ongoing study into the proportionality of the death penalty in Missouri across various variables," Key states in the affidavit. "That study informs the conclusions in this opinion."

In his opinion submitted to the court, Keys concluded that the death penalty for Clemons is disproportionate because of the racial dynamics of the first-degree murders of which he was convicted and - more strikingly - because of four mitigating factors.

Clemons, who is African-American, was convicted of the murders of Julie Kerry and Robin Kerry, who were white. "Research has shown that interracial homicides are the most harshly prosecuted (both as far as the charge levied and the penalty requested)," Keys notes.

Based on his analysis of 591 Missouri first-degree homicide cases from 1978 to 2008, an African-American offender (like Clemons) charged with the first-degree murder of a white victim (like the Kerry sisters) has a 37 percent chance of receiving the death penalty.

By contrast a white offender charged with killing a white victim will receive the death

probability that an African American charged with killing a white victim will receive a death sentence compared to the probabilities when you have white/white defendant/victim pairings or African-American/African-American defendant/victim pairings," Keys notes.

Though issues of race permeate the Clemons case, Keys considers even more persuasive the evidence of disproportionate sentencing based on four mitigating factors: Clemons' youth at the time of the murders (he was 19) and the facts that he was a first-time offender, had no weapon and did not know the victims.

□ **"The probability of Clemons receiving the death penalty in light of these mitigating factors was zero, and his sentence was therefore disproportionate under any definition of the word."**

- David Keys

Defendants who are accused of committing their crimes when under the age of 21 experience a significant reduction, 47.7 percent, in the probability of a death sentence, according to Keys' research. The probability of receiving a death sentence for weaponless crimes is reduced 8.7 percent. For first time offenders, the probability of receiving a death sentence diminishes 46.1 percent. The probability of a death sentence when the victim was a stranger goes down by 5.3 percent.

Based on sentencing patterns, Keys argues, a defendant with these four mitigating factors "would effectively have a zero percent chance of receiving a death sentence." Yet Clemons was sentenced to death. "Out of all of the capital murder cases that I analyzed in Missouri in the 30 years from 1978 to 2008, other than Mr. Clemons, there is no case where a jury has imposed the death penalty when all four factors are present," Keys notes. Other than Clemons, there

was not just exceptional, but unheard of," Keys notes. The death sentence becomes even more disproportionate, Keys argues, when you factor in that Clemons was convicted as an accomplice. Were Clemons to be executed, Keys testified, he would be only the second defendant nationwide and the first in Missouri to receive a death sentence who was accused as an accomplice and had no prior criminal record.

"Clemons met all of the conditions that should have moved 100 percent of juries to impose life imprisonment or another lesser sentence, yet he still received the death penalty," Keys notes.

"In my expert opinion, the numerical probability of Mr. Clemons receiving the death penalty in light of these mitigating factors was zero, and his sentence was therefore disproportionate under any applicable definition of the word."



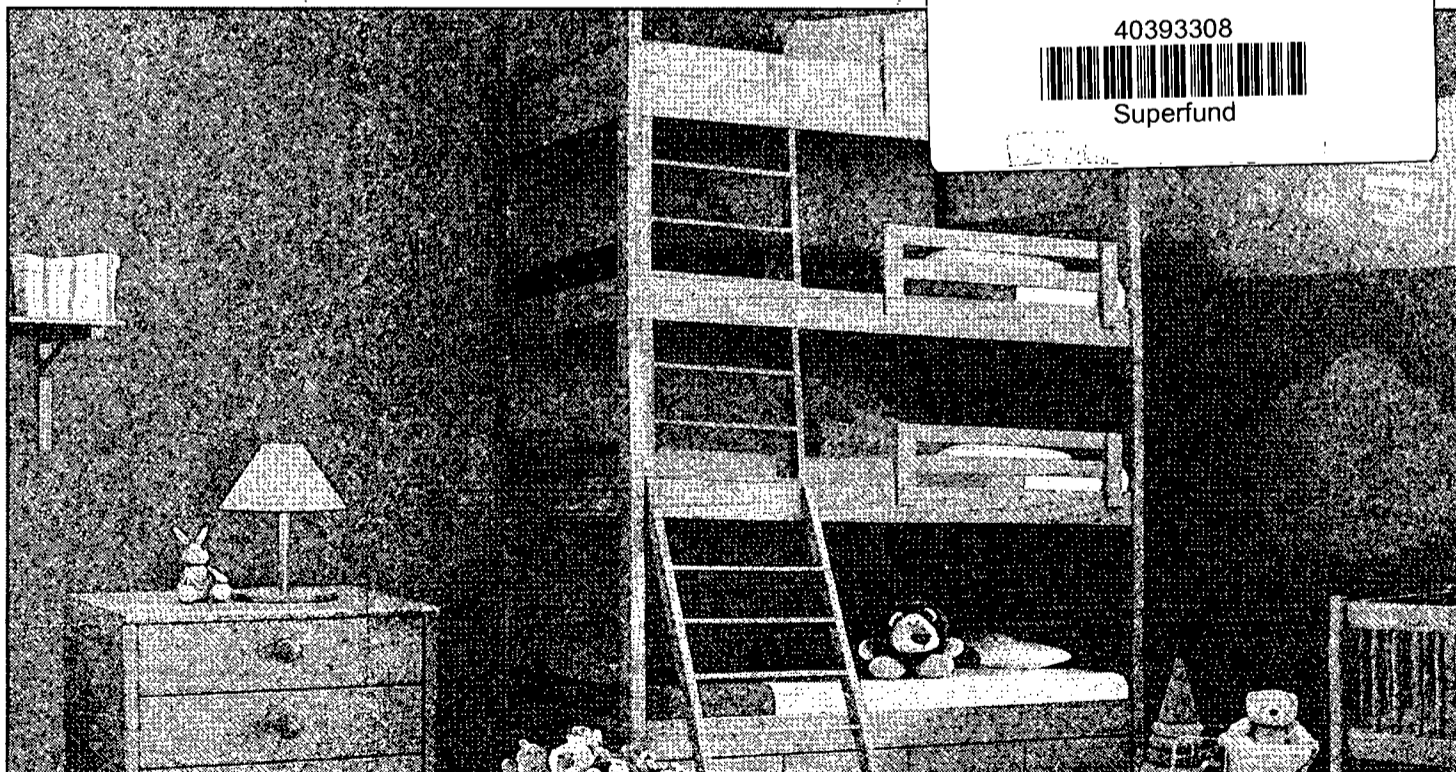
## Public Comment Period for Administrative Settlement Agreement and Order On Consent, Chicago Heights Boulevard Site, St. Louis County, Missouri

The U.S. Environmental Protection Agency, Region 7 gives notice of a 30-day public comment period for a pending Administrative Settlement Agreement and Order on Consent (Order) with PerkinElmer, Inc. regarding the Chicago Heights Boulevard Site. The site is located in an unincorporated area of St. Louis County, Mo. in the Elmwood Park neighborhood. Pursuant to the Order, PerkinElmer will be sampling for volatile organic compounds (VOCs) migrating from PerkinElmer's property located at 9970 Page Blvd. St. Louis County, Mo. These VOCs have been released into the groundwater and the groundwater has migrated into the Elmwood Park neighborhood. PerkinElmer has installed vapor intrusion mitigation systems in certain residences in the neighborhood to respond to these vapors. The Order provides for PerkinElmer to fully characterize the VOC source and groundwater contamination, submit to EPA an evaluation of alternatives for addressing the VOCs, and then implement the alternative approved by EPA.

EPA will receive comments on the Order for thirty (30) days from Oct. 18, 2012 - Nov. 19, 2012. Comments may be submitted by mail, to Belinda Young, U.S. EPA, Office of Public Affairs, 11201 Renner Blvd., Lenexa, Ks. 66219, or by e-mail at [young.belinda@epa.gov](mailto:young.belinda@epa.gov). In order to be considered, all comments on the Order must be received by close of business on Nov. 19, 2012. EPA will also host a public meeting on Thurs. Oct. 25, 2012 from 7:00 - 8:30 p.m., at the First Baptist Church of Elmwood Park, 1452 Dielman Road, St. Louis County, Mo. 63132. An EPA presentation will begin promptly at 7:00 p.m. to discuss the Order and answer questions. Comments may also be provided at the public meeting.

EPA has established an Administrative Record file related to the Order. The Administrative Record file is available for public review during normal business hours at the following locations: St. Louis County Public Library, 1640 S. Lindbergh, St. Louis, Mo. 63131, Mid-County Library, 7821 Maryland Ave., St. Louis, Mo. 63105, Indian Trails Library, 8400 Delport Drive, St. Louis, Mo. 63114, and EPA Records Center, 11201 Renner Blvd., Lenexa, Ks. 66219.

If you have questions or need additional information, please contact Belinda Young, 1-800-223-0425, 913-551-7463, or at [young.belinda@epa.gov](mailto:young.belinda@epa.gov).



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