



exceptional and irrevocable nature of the death penalty, "extraordinary measures" are required by the Eighth and Fourteenth Amendments to ensure the reliability of decisions regarding both guilt and punishment in a capital trial. Eddings v. Oklahoma, 455 U.S. 104, 118 (1982) (O'Connor, J., concurring). See also Beck v. Alabama, 447 U.S. 625, 637-38 (1980); Lockett v. Ohio, 438 U.S. 586, 604 (1978); Gardner v. Florida, 430 U.S. 349, 357-58 (1977); and Woodson v. North Carolina, 428 U.S. 280, 305 (1976).

3. There is no statutory speedy trial demand pending in this matter, nor has Mr. Jones raised a constitutional speedy trial demand.

4. At a hearing on July 18, 2005, Judge Nelson announced that all future court dates in this matter would begin at 8:30AM and continue until at least 8 o'clock or 8:30 PM. Judge Nelson also scheduled several court dates on Saturdays, and attempted to schedule court on Veteran's Day, a state holiday, relenting only when he was informed that Ms. Drake had made plans to be out of town that weekend to celebrate her birthday.

5. Counsel for Mr. Jones hereby objects to the schedule of this litigation.

6. This Court's decision to hold extended court hours for motions hearings has serious consequences for the budget of Georgia Capital Defender and the Georgia Public Defender Standards Council more broadly. While there is some flexibility built into the budget of the Georgia Capital Defender office, there is no budget provision for employees covered under the Fair Labor Standards Act (investigators, paralegals, clerks) to be compensated for the additional hours they will spend assisting the attorneys in court at these hearing. While such budgetary provisions have been made with respect to foreseeable extended hours (mid-trial or other emergency proceedings), this agency has not budgeted for court hours to be extended for routine motions hearings.

7. The defense further objects to any attribution by the Court of the slow pace of litigation to the defense. The Court has made numerous comments both on and off the record indicating that the Court's perception is that the amount of time used to litigate defense motions has been excessive. Any commentary from the Court regarding the fact that the District Attorney has delayed this case by withholding the death notice has been notably absent. Moreover, the Court seems completely oblivious to the fact that by not scheduling an arraignment until after the death notice was filed, and by not appointing death qualified counsel on this matter until a month after the death notice was filed, this Court enabled and tacitly approved of the District Attorney's lackadaisical attitude toward this matter.

8. It is a fair inference that both the District Attorney's actions and the Court's actions were informed by the fact that if the death notice was withheld until after January 1, 2005, Gordon County would not have to bear the costs of the defense attorneys or any expert witnesses in this matter.

9. The Court's sudden desire to speed up the progress of this case is highly suspect in light of the Court's complete and utter disregard for the pace of the litigation of this matter for the past year and a half. Yet suddenly, after less than two days of in court hearings, the Court has decided that the litigation surrounding this case was taking too long and that the extended Court hours were necessary to provide hearings for all of the motions defense counsel has filed.

10. The defense contests the Court's assessment that the case is moving too slowly.

11. The Court's decision that extended court hours and weekend court are necessary for the litigation of this matter also appears unfounded. There is no indication that regular weekday court hours are unavailable for hearings on pre-trial motions, or that the available regular court dates are somehow unsuitable for hearing defense motions. If the court's schedule

is clogged, it is also unclear why Mr. Jones alone should have his case scheduled for extended hours and weekend hearings. Scheduling decisions should be made equitably; to force Mr. Jones and his attorneys to bear the weight of a clogged judicial system alone is unfair and smacks of being punitive.

12. Canon 3(B)(4) of the Georgia Code of Judicial Conduct requires that “Judges shall be patient, dignified, and courteous...” The commentary to this Canon states that “the duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court.” Upon information and belief, this case is the only case in which Judge Nelson has ever scheduled extended or Saturday court in advance. It is also the only case in Georgia where weekend/extended court hours have been scheduled in advance for the hearing of routine motions. Counsel questions the necessity of extended court hours for Mr. Jones’s case alone. Surely, if there are not enough regular court hours in which to conduct the business of the court, all litigants should be treated equally. It is neither the fault of Mr. Jones or his attorneys if the Court does not have adequate time in which to conduct its business.

13. While this Court has certainly held extended hours on a spontaneous basis-- in order to conclude a hearing or in order to avoid inconveniencing jurors-- the Court’s decision to schedule extended court hours, months in advance, is unprecedented. Counsel for Mr. Jones, with a combined fifteen years of litigation experience, has never known any court, in this or any other jurisdiction, to schedule court in this fashion.

14. The uniqueness of this situation is not lost on Mr. Jones or his counsel, and it certainly creates the perception that Mr. Jones is being treated differently than similarly situated defendants for no apparent reason. Given that Mr. Jones is the only defendant in the entire State being placed in the position of having extended court hours and weekend court for motions

hearings, he cannot help but feel that he is being railroaded by the Court.

15. The schedule the Court has imposed on the litigation of this matter does not comport with the general pace of death penalty trials in Georgia. It also seriously compromises counsel's understanding of the responsibilities of counsel with respect to filing leaves of absence in this court. Surely, it is not the Court's understanding that counsel will be available for court on a twenty-four hour a day, seven day per week basis. Both counsel for Mr. Jones schedule their personal, private lives, based on the assumption that they will not be called into court on weekends and State Holidays. If this perception is incorrect, counsel ought to have already been informed of this fact. The court's schedule seriously affects both counsel's private and professional lives.

16. Both Mr. Adams and Ms. Drake routinely work in excess of seventy hours per week. The Court's scheduling of motions hearings in this case adds additional worktime to an already heavy load, and takes time away from Mr. Adams and Ms. Drake's other clients, thereby depriving them of their right to effective assistance of counsel, and also imposing delay in their cases. Cases are staffed at the Capital Defender Office based on the assumption that they will be litigated during normal court hours. If this Court persists in scheduling this case in this manner, the staffing requirements for the office as a whole will change dramatically.

17. These extended hours are unnecessary and punitive in nature. They are only being applied to Mr. Jones and bear no rational relationship to any reasonable notion of judicial economy.

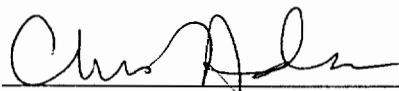
18. Moreover, twelve hour court days are unacceptable at any stage in the litigation of a capital case. Throughout the pre-trial motion hearings and the actual trial, counsel must continue to work each evening after the court recesses for the day in order to prepare to present

evidence and cross examine witnesses the next day. Counsel must consult with Mr. Jones concerning each day's developments, the strategy to be pursued on the next day and the general investigation of the case. Counsel must research legal questions which arise in the trial and hearings, make arrangements for witnesses' travel and confer with them prior to their testimony. The Court's proposed work schedule would prohibit Mr. Jones from receiving effective representation.

19. In addition to the need for time to consult with his attorneys and to prepare for the next day's presentation, Mr. Jones needs time to rest, in order to properly concentrate on the proceedings. Rest or relaxation at the jail is mythical; yet, Mr. Jones must still be given the opportunity to try to revitalize each day in light of the gravity of the charges and the nature of these proceedings.

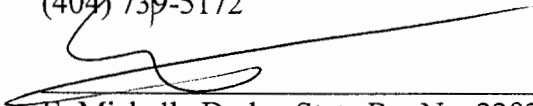
20. WHEREFORE Counsel requests that this Court reschedule all upcoming court dates to run no longer than nine hours and to be during the regular Monday-Friday work week and not on State holidays.

Respectfully Submitted,



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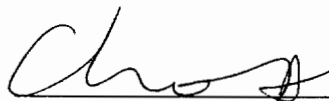
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing motion has been ~~mailed to~~ <sup>served by hand on</sup> The Office of the District Attorney for Gordon County via first-class United States Postal Service this 11 day of August, 2005.



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