

ORIGINAL

IN THE SUPREME COURT OF TENNESSEE,
AT NASHVILLE

IN RE EDMUND ZAGORSKI

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No. M1996-00110-SC-DPE-DD

2010 AUG 26 PM 12: 29

APPELLATE COURT CLERK
NASHVILLE

**EDMUND ZAGORSKI'S REPLY TO STATE'S REPLY
ON MOTION TO SET EXECUTION DATE**

Counsel for the state asks this Court to wash its hands of the grave injustice done to Edmund Zagorski, thereby denigrating this Court's unquestioned power as the expositor of Tennessee law, and with it, the Constitution itself. This, in an extraordinary case where Zagorski was literally tortured, cooked in a metal box, and then convicted and sentenced to death. Is the law really that cruel? Is this Court really that ineffectual and powerless in the face of such inhumanity? Certainly not. This Court has the power to do justice, and in a death penalty case, both a legal and moral obligation to act.

Justice Haywood of this Court most eloquently refuted the state's argument nearly two centuries ago when this Court refused to allow the unjust execution of a slave: "**Shall it be said that a human being shall be condemned to death by a wrongful sentence, and that there is no power residing in the law to rescue him from it? Does the law delight in cruelty? Will it inflict punishment where it is not deserved? Will it give no power to avoid the unjust sentence? Then where is the justice of the law, and where is its boasted humanity?**" Bob, A Slave v. The State, 10 Tenn. (2 Yer.) 173, 177 (1826). The state asks this Court to be weak, cruel, and inhumane in the face of clear, undisputed evidence that the Constitution has been trampled. This Court should reject such an appeal to cowardice. As Justice Haywood's successors, this Court should act as he would. The Court should grant oral argument, grant Zagorski relief, and refuse to have him executed in violation of law

– lest Zagorski and the law itself suffer a truly cruel fate.¹

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I verify that I have served a copy of the foregoing upon Jennifer Smith, Office of the Attorney General, 425 Fifth Avenue North, Nashville, Tennessee 37243 this 26th day of August, 2010.



¹ The state's request that this Court consider this a motion to recall the direct appeal mandate is clearly mistaken. The state has no power to recharacterize Zagorski's request for relief, and even so, as Zagorski's whole point is that all of the evidence of unconstitutional torture was not in the record on direct appeal, but became part of the record after the direct appeal. It is because no Court has considered all of the available evidence that this Court properly acts here, now that all the evidence presented to the various state courts is now before this Court for review.