

MARILYN LEMAK PETITION FOR EXECUTIVE CLEMENCY

This Petition seeks Executive Clemency on the substantive merits of my case. However, it is designated as an **Emergency** Petition for Executive Clemency based on the threat posed by the national and statewide emergency presented by COVID-19. The Petition is submitted to the Prisoner Review Board and the Illinois Governor J. B. Pritzker's Office by Marilyn Lemak [IDOC#R37536] an inmate at Logan Correctional Center. Considering the urgent threat posed to the Petitioner because of the COVID-19 pandemic, I **waive my right** to a public hearing and respectfully ask the Prisoner Review Board and Governor Pritzker consider this as an emergency Petition and therefore expeditiously process this request and grant relief in the form of **commutation to time served**. Alternatively, IF the Prisoner Review Board believes that supervision on release would be appropriate or necessary in my case, I would ask the Board and Governor to modify or commute my sentence from "life without parole" to "life with the possibility of parole," but hopefully to do so with a recommendation for immediate release on parole.

I have been assisted in this filing by attorney Andy Vickery of the Houston, Texas, law firm of VICKERY & SHEPHERD. His address is 10000 Memorial Drive, Houston, Texas, 77024, his office telephone is 713-526-1100, and his email is andy@justiceseekers.com. He has assembled and organized the materials submitted in the notebook in support of this Petition. Please feel free to contact him with any questions, requests for more information, etc.

Although, as the Board and Governor Pritzker will see, there are extenuating circumstances surrounding my conviction for killing my three children, Nicholas, Emily, and Thomas, that might, under the law, be categorized as legal "innocence," I have never denied the fact that on March 4, 1999, I did a horrible thing. I took the life of my three

children and then attempted to take my own. From the moment I realized what I had done to the present, my conduct has appalled me. "Remorse" is quite frankly too weak of a word to describe the emotional torment that my actions have caused me.

For more than 20 years, I have been a model prisoner. I am completely "rehabilitated" and certainly my release for time served or on supervised parole would pose no threat to society as a whole or to any person.

Overview - The Legal Situation

My counsel, Mr. Vickery, is from Texas. I retained him to represent me regarding this Petition because he has special expertise in the arena of antidepressant induced violence towards self or others. Although this Petition has been prepared by me and written in first person, my clemency request is also supported by Mr. Vickery's separate letter brief or memorandum with numerous endnotes and supporting documentation. I ask the Board to consider that document in tandem with this Petition.

At the time of my offense, I was under the influence of 200 mg of an antidepressant drug called Zoloft. At that time, there was nothing on the label of that medication to warn general practitioner Dr. Robert F. Hubbard who prescribed it for me, or me (I am a registered nurse), or my ex-husband, the father of my children (who is also a medical doctor), that this drug could trigger mania or psychosis and/or that it could precipitate irrational, out-of-character violence towards myself or my children. The FDA did not start requiring this until 2004 for children and 2005 for adults. **Today**, a specific "Patient Medication Guide" about these risks must accompany each prescription of this drug. A copy of that Patient Medication Guide is attached as support for this Petition. In plain English and in a readable font it tells patients that:

“ZOLOFT and other antidepressant medicines may cause serious side effects. . . . Call your healthcare provider right away if you have any of the following symptoms, or call 911 if an emergency, especially if they are new, worse, or worry you:

- attempts to commit suicide
- acting aggressive or violent
- acting on dangerous impulses
- thoughts about suicide or dying . . .”

A separate “**BLACK BOX WARNING**” is now distributed to the prescribing physicians, alerting *them* to the risk of “suicidal thoughts and behaviors” and advising them to “**closely monitor all antidepressant-treated patients for clinical worsening, and for emergence of suicidal thoughts and behaviors.**” The warning in section 5.1 of the FDA mandated labeling also advises physicians to “counsel *family members* or caregivers of patients to monitor for change in behavior and to alert the healthcare provider.” I have to believe that, if Dr. Hubbard had been given this advice, and if he had alerted my husband Dr. David Lemak to these side effect risks, that David would have noted the changes in my behavior and taken appropriate action to protect both me and our children.

As my attorney’s submission explains, at the time of my offense in 1999 and my trial in November of 2001, Illinois law did not permit my attorneys to raise “involuntary intoxication” as a defense to a crime of this nature. The statute which provides for this defense only applied if someone tricked you into taking a drug. It did not apply to a situation like mine in which the drug was prescribed by a medical doctor. That changed in 2006 when the Illinois Supreme Court handed down a decision involving a man named “David Hari” who was under the influence of 25 mg of Zoloft when he killed two people. A copy of the court’s opinion is attached in support of this Petition.

My Texas attorney is working with Illinois counsel to file a Petition for Post-Conviction Relief in the form of a new trial. It is supported, among other things, by a comprehensive narrative report (also attached to this Petition) from an internationally renowned neuro-psychopharmacologist, Dr. David Healy, who has published widely on this phenomenon and who explains in his report just how it is that this powerful, psychotropic drug contributed to my actions that day.

Although I understand that the *Hari* decision has been given retrospective effect, and, therefore, that it is likely that I am entitled to a new trial, with all due respect to the efforts of my lawyers, I would much prefer Executive Clemency from the Board and Governor in the form of commutation to “time served,” or, alternatively, a modification of my sentence to “life *with* the possibility of parole.” I have never denied the basic fact that I took my innocent children’s lives. I have always taken, and I now take, my share of the responsibility for my actions.

I have been fully “rehabilitated” and pose no danger whatsoever to society. I am also now 63 years old (and will be 64 by the time this Petition is filed), which puts me arguably in the “danger zone” for a COVID-19 infection. Also, I have chronic health conditions for which I am receiving treatment, including high blood pressure and hereditary high cholesterol which also put me in the COVID high risk category.

My parents have both died while I am in custody, but I do have family support and the support of my dear friend, Janet Lagerloef who lives in Sugar Grove, Illinois. Janet is a journalist. We met in January of 2012 and since then have become extremely close friends. Her book manuscript, *Depression, Love, and Redemption: My Friendship With A Mother Who Killed Her Children*, provides many details about the background of my case. Excerpts from Chapter 3 of that manuscript, plus a letter of support from Janet for

this Petition, are also attached in support. Hopefully, they will help the Board to see what kind of person I was “before” March of 1999.

Hopefully, this short Introduction will help both the PRB and the Governor to understand my request for Executive Clemency. However, on the following pages I am including all of the information that is required for this Petition under the Board’s guidelines.

1. **Personal Information.** My name is Marilyn Lemak, and my prisoner number is R37536. My maiden name was Marilyn Elisabeth Morrissey and I have never gone by any aliases. However, I was known to most people by the nickname “Lynn.” I am incarcerated at the Logan Correctional Center in Lincoln, Illinois. I was born on May 30, 1957, in Evergreen Park, Illinois. My Social Security number is 346-40-6590. I have never served in the United States Military. This is my first request for Executive Clemency.

2. **Conviction at Issue.** I called 911 myself on the morning of March 5th. Because of my self-inflicted injuries, I was taken immediately to the hospital and questioned there. The doctors performed surgery on my right radial artery which I had cut. As soon as I was sufficiently stable from a medical point of view, I was arrested and placed into custody. Because of the continued risk of suicide, I was heavily medicated for some time thereafter.

I was convicted by jury verdict in DuPage County, Illinois, of the murder of my three children and sentenced on April 8, 2002, to life imprisonment **without** the possibility of parole. The Case Number was 99 CF 598-01, 04, and -07. The sentencing judge was Judge George Bakalis. The State’s Attorney at the time was Joseph E. Birkett. I have been incarcerated ever since the time of my arrest.

There was never a dispute about the fact that I had killed my children. I called to report it myself. In all honesty, I had tried to kill myself after killing my children, and I wished at the time that I was dead. For years after this event, I remained heavily medicated with psychoactive medications, and I had no real understanding of why I had done what I had done. However, because of my friendship with Janet Lagerloef, which began in 2012, and because of a scientific article to which I was directed by a fellow inmate, I learned that conduct of this nature could be triggered by Zoloft and began to consider that possibility and explore it. As stated above, at the time of my offense I was on a physician prescribed regimen of 200 mg/day of this drug. This is a very high dose. It is, in fact, 8x the dose that David Hari from the *State v. Hari* case was taking. I now believe that, at minimum, the Zoloft kept me from conforming my conduct to the requirements of the law.

However, from day one I have been totally remorseful for my actions. I have taken full responsibility for my part in those actions and have paid a heavy price, not only in terms of my loss of freedom for the past 20+ years, but also in the deterioration of many friendships and family relationships. At this point in time, I would be extremely grateful for Executive Clemency in the form of commutation of my sentence to “time served,” or, alternatively, “life *with* the possibility of parole,” so that I can hopefully live out the remainder of my life outside of prison.

The State argued at my trial that my actions were a form of seeking revenge against my ex-husband who was having a relationship with another woman a few blocks from our home while we were still married. I was, quite truly, extremely hurt and emotionally devastated by the break-up of my marriage. But I certainly did not kill the children out of spite or revenge. Although my memory of the events is vague at best, it is my belief that I

thought, in a warped frame of mind, that the children and I were all going to a better place together. Indeed, the State's Attorney's sentencing letter of April 16, 2002, reflects that I believed at the time that the children and I were going to a "happy place" together.

3. **Other Cases for Which Clemency is Not Sought.** There are none. Prior to March of 1999 I had had no problems with the law whatsoever. I was a wife, mother, nurse, and school volunteer who seemed to be living the American dream, . . . until my marriage disintegrated.

4. **Personal History.** Chapter 3 of Janet's manuscript, enclosed as support for this Petition, does a good job of chronicling my early childhood and life. The Ph.D. dissertation of Ms. Diana Uchiyama, a lawyer and psychologist whom I have never met personally, also details the nature of my life "before" that horrible day in March of 1999. Excerpts of that dissertation are also attached in support of my Petition.

When I was four years old, my family moved into a new house on a shady street in Palos Heights, Illinois. One of my earliest childhood memories was watching the funeral procession for President Kennedy. I had two younger sisters and one brother. We lived in a loving, supportive home. My mom was a nurse. We always thought of her as a "happy people person." My dad was an accountant. We were a typical American middle-class family.

After graduating from high school in 1974 I went to the local community college, Moraine Valley, from which I obtained an Associate Degree in Applied Science. I then continued there for another year to get an Operating Room Technician Certificate. In 1977 I worked full time as an OR tech and continued to take evening classes at Moraine to fulfill the prerequisite classes for Rush's nursing program.

I started in Rush's BSN program full time in 1982 and continued part time work until I completed the BSN program in 1984. Thus, after some years of education and work, I then became a nurse, like my mother. I met my future husband David Lemak at a Rush party when he was in his fourth year of medical school. When he moved to Ohio for his residency I went with him. We were married about 14 months later in 1985.

In addition to my undergraduate nursing degree, in 1988, I also obtained a Masters' degree in nursing. At about that time, Dave and I moved to Naperville which is in DuPage County, Illinois. Our life there was idyllic until late 1998 when our marriage deteriorated.

For several months during the latter half of 1998, I was under a doctor's care for anxiety and depression relating to the deterioration of my marriage. Dr. Hubbard, who is a family practitioner, put me on the SSRI antidepressant Zoloft in June of 1998. He increased the dosage several times. On January 11, 1999, less than two months before the deaths of my children, he increased me to a daily dose of 200 mg/day.

I now know that this is a very high dose of this medication. I also now know that, since 2004-05, the FDA has required explicit black box warnings to alert physicians to the risks of drug induced violence and suicidality and risk specific "Patient Medication Guides" to alert the patients themselves of these risks. Obviously, given my nursing background, IF I had been aware of those risks at the time, I would not have taken that large of a dose of this medication. Also, as stated above, I believe that, if Dr. Hubbard had alerted David to the dangers of these now established side effects, that he would have taken appropriate action to protect me and the children.

I understand from the Board's guidelines for petitions of this nature that the Board will focus on evidence of my life and behavior "after" my conviction. During my

incarceration, I have availed myself of every opportunity to take classes or training that would make me a better person. From my viewpoint the most satisfying thing that I have done in prison is to participate, first as an apprentice and later as an instructor, in the "Baker Apprentice Program." Copies of the certificates regarding this program, and others that I have taken while incarcerated are attached in support of this Petition. My physical health and mental health today are, all things considered, in reasonably good shape. I have not been on psych meds for many years now and am very glad of that fact.

5. **Reasons for Clemency.** I am now 64 years old. This, as well as my blood pressure and cholesterol issues, puts me in a high-risk category for COVID-19 infections. Of more importance, however, I hope and believe that Executive Clemency is warranted by the sum of all of the facts surrounding my actions on March 4, 1999, and the life I have lived and person that I have become since that time. I live with daily grief and remorse. I am also, to use the prison jargon, fully "rehabilitated."

I also have the emotional and financial support from friends and family who will help me with a new life outside of prison. Numerous different letters of support are attached to this Petition. Each speaks for itself. The bottom line is that I have significant support available to me if/when I get released from prison.

6. **Relief Requested: Commutation of Sentence to "Time Served", or, alternatively to "Life WITH the Possibility of Parole"**. After more than 20 years of incarceration and considering my behavior while in prison, release is appropriate. For the reasons detailed above, I respectfully ask the Board to recommend and the Governor to grant commutation or modification of my sentence.

7. **Parole Plan.** Several of my friends have offered me a place to live if I am released. They verify this in the letters of support which are attached to this Petition.

Both of my parents are now deceased, and I have a small inheritance from them. Therefore, I will have adequate support and certainly will not be at risk for returning to prison because I need either money or housing.

8. **Waiver of Mr. Joseph Ruggiero's Participation.** One of the 14 members of the Illinois Prisoner Review Board is Mr. Joseph Ruggiero. Mr. Ruggiero served as one of the prosecutors at my criminal trial and he did an admirable and professional job of seeking justice over my children's deaths. I do not begrudge or resent him for his actions in prosecuting me. Quite the contrary. On March 4, 1999, I was incapable of protecting my children and at the time of my trial I was obviously in no position to speak in their behalf. They needed a zealous advocate and Mr. Ruggiero was one. I have no idea whatsoever as to whether Mr. Ruggiero should participate as a Board member in the consideration of this Petition for Executive Clemency. Rather, I hereby *wave* any objections to his participation and leave the decision as to whether he will or will not participate entirely up to his own conscience and good judgment.

9. **Supporting Materials.** My attorney Mr. Vickery has assembled the various materials submitted in support of this Petition. They include, as noted above, his own separate letter "brief" to the Board and Dr. Healy's extensive report regarding the role of Zoloft in my case. An index of supporting materials has been prepared to facilitate the Board members' review. They are in two different categories. Materials relating to Zoloft and to the person that I was "before" March 4, 1999, are labeled with letters in alphabetical order. Materials documenting the person that I am "after" my conviction, i.e., for the last 20+ years and now, are labeled with sequential numbers. They include certificates of studies that I have undertaken while in prison and letters of support from third parties.

Although I understand that the Board has waived the prior requirement for signature before a notary public, I hereby declare under penalty of perjury that all of the assertions made in this Petition are complete, truthful, and accurate.

July 21, 2021
Date

Marilyn Lemak
Marilyn Lemak


AFFIDAVIT OF ARNOLD ANDERSON VICKERY

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

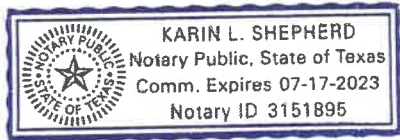
BEFORE ME, the undersigned authority, on this day, personally appeared, Arnold Anderson Vickery, known to me to be the person whose signature is affixed hereto, and after first being duly sworn upon his oath, did solemnly swear as follows:

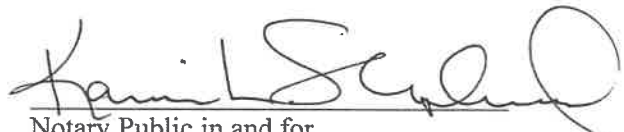
1. My name is Arnold Anderson Vickery. I am over the age of 21 and I am fully competent to make this Affidavit. The facts contained herein are within my personal knowledge and are true and correct.
2. This Affidavit is being submitted pursuant to the Guidelines for Executive Clemency of the Illinois Prisoner Review Board.
3. On July 21, 2021, Marilyn Lemak’s Petition for Executive Clemency and accompanying exhibits were filed via express mail (FedEx) to the Illinois Prisoner Review Board, 319 East Madison, Suite A, Springfield, Illinois 62701.
4. On the same day, true and complete copies of Marilyn Lemak’s Petition for Executive Clemency and accompanying exhibits were sent via express mail (FedEx) to the Hon. Kenneth J. Popejoy, Chief Judge of the 18th Judicial Circuit, and to Robert Berlin, DuPage County State Attorney.

Further, Affiant sayeth not.


Arnold Anderson Vickery

SUBSCRIBED AND SWORN TO before me by Arnold Anderson Vickery on this 21st day of July 2021.




Notary Public in and for
The State of Texas

Index of Supporting Materials

The following documents are attached as support to Marilyn Lemak's Petition for Executive Clemency:

- a. Letter of Overview from my attorney Andy Vickery.
- b. Zoloft "Patient Medication Guide" – required since 2004-06.
- c. Report from Dr. David Healy, with attachments as follows:
 - (1) Appendix 1 – Dr. Healy's forensic experience.
 - (2) Appendix 2 – SSRI Efficacy Data.
 - (3) Appendix 3 – "Healthy Volunteer" Data.
 - (4) Appendix 4 - SSRI Suicide/Homicide Data.
 - (5) Appendix 5 - RxISK Data on SSRI drugs.
 - (6) Appendix 6a - Bizarre Homicide on SSRI Accounts.
 - (7) Appendix 6b - "Beneath the Fog".
 - (8) Appendix 7 - SSRI's and Relationship Breakdowns.
 - (9) Appendix 8 – Women on Antidepressants.
- d. Dr. Healy's "*Lines of Evidence*" article.
- e. Preda, et.al., article "*Antidepressant-Associated Mania and Psychosis*."
- f. *People v. Hari*, Illinois Supreme Court Opinion (2006).
- g. **DRAFT** Petition for Post-Conviction Relief.
- h. Dissertation by Diana Uchiyama, "RISK factors LEADING to MATERNAL FILICIDE: A Case study of the Marilyn Lemak Case".
- i. Excerpts from Chapter Three of Lagerloef manuscript "*Why Did Marilyn Kill Her Children?*"
- j. State of Illinois Disciplinary Card for IDOC # R37536. Two infractions in 20+ years. 1/26/05 "fighting" was a loud verbal argument resulting in 15 days segregation and 14 days commissary restriction; and 12/15/05 was for possession of "unauthorized property" which was an extra extension cord.
- k. Letters of Support:
 - (1) Julie D. Prandi.
 - (2) Linda Cameron Walter.
 - (3) Gayle Kastor.

- (4) Helen G. Wilke.
- (5) Gwen Fox.
- (6) Susan Ludwig.
- (7) Rev. Emmy Lou Belcher.
- (8) Mary E. Hamill.
- (9) Janet Lagerloef.
- (10) Martha Young.
- (11) Mark and Linda Helminiak.
- (12) Rev. Pamela Rumancik
- (13) Jeannette Handling.
- (14) Rev. Allison Farnum
- (15) David Carmichael
- (16) Cheri Bookman
- (17) Wendy Davidson

1. Marilyn Lemak certificates while in prison.

- (1) ServSafe Food Protection Certification (2/7/20).
- (2) US Department of Labor Certificate of Completion of Apprenticeship as “Baker” (5/2/12).
- (3) Article: “*Certified prison baking program prepares offenders for future career*” (10/3/19).
- (4) Memoranda from Illinois Department of Corrections re “Sentence Credits” for completing apprenticeship and serving as an instructor in the Baker Apprentice Program at Local Correctional Center “Phoenix Rising” counsel certificate (9/12/18).
- (5) Illinois Women’s Health Certificate “Life Smart for Women” (10/11/17).
- (6) Certificate of Recognition for 2018 Justice Has a Voice Symposium “Who Am I” Art Show Artist’s Statement re Origami Sculpture
- (7) Drawing and Watercolor Workshop (2017).
- (8) Certificate of Completion: Path of Freedom (6/2/17).
- (9) Law Clerk Training Program (11/21/16).
- (10) Certificate, “Leadership in Life” (/10/18/16).
- (11) Certificate, “Houses of Healing” (Logan Center).
- (12) Certificate, “Lifestyle Redirection” (3/14/16).
- (13) Certificate, Business Plan “Plan of Action for Your Future” (4/20/15)
- (14) Certificate, Problem Solving (3/30/15).
- (15) Certificate of Achievement, “Unconditional Self-Acceptance” (7/24/14)
- (16) Certificate of Achievement, “Healthy Relationships” (12/4/13)
- (17) Lake Land College Certificate, “Helping Paws Dog Training” (Summa Cum Laude)

- (18) Lake Land College Certificate, The President's List (Fall 2012)
 - (19) Certificate of Completion, Pet Care Technician Program (10/15/12)
 - (20) Certificate of Award, "Parental Rights and Responsibilities under Illinois Law" (8/10/06).
 - (21) Transcript of Grades for 53.00 Hours with GPA = 3.943.
 - (22) Listing of Various Jobs and Self-Improvement Vocational Courses since arriving in prison in 2002.
- m. DVD of Lexapro Science Presentation
DVD of Christoph Pittman Presentation

EXHIBIT A



VICKERY & SHEPHERD
TRIAL LAWYERS | JUSTICE SEEKERS

July 21, 2021

Via Federal Express

Hon. J. B. Pritzker
Office of the Governor
207 State House
Springfield, IL 62706

Via Federal Express

Illinois Prisoner Review Board
Jason Sweat, Esq.
Chief Legal Counsel
319 East Madison St., Suite A
Springfield, IL 62701

Re: Petition for Executive Clemency -- Marilyn Lemak

Dear Governor Pritzker and Members of the Board:

This letter is being included with my client Marilyn Lemak's Petition for Executive Clemency. Although it is addressed to you Governor, out of respect for your position and authority on this issue, as you see, a copy is provided to counsel for the Prisoner Review Board, because we understand quite well that you depend on their advice and recommendation regarding executive clemency requests.

Relief Requested

Our principal request is that, on recommendation from the Board, you commute her sentence to "**time served.**" Hopefully, this letter and the other materials filed in support of Marilyn's personal Petition will provide you with information that is worthy of your consideration regarding this request. However, as an alternative, we ask the Prisoner Review Board and you to consider modifying her sentence to "Life **With** the Possibility of Parole."

A Sui Generis Petition

Marilyn Lemak's Petition is unique among similar petitions for two reasons, both of which revolve around the fact that, on the date of her crime, she was on a massive dose of a mind-altering prescription medication. The first

reason relates to the Prisoner Review Board's understandable focus on "before/after" facts relating to the prisoner and her offense. The indisputable evidence is that, except for her bizarre, "egodystonic" behavior on March 4, 1999, Marilyn Lemak has lived an exceptionally respectable and respectful life **both** before and after her offense.

The second reason, explained in some detail below, is that, under the law, there is a compelling case for Marilyn to have a new trial. However, this 64-year-old woman has been guilt ridden since that horrible day in 1999 when she took the life of her three children and attempted to take her own, she has now been incarcerated for more than 22 years, and there is frankly no logical reason for either the "People" of Illinois or Ms. Lemak, or any of the other witnesses, especially including her former husband Dr. Lemak, to have to endure the trauma of another trial. Therefore, executive clemency as requested herein would appear to be the most just and reasonable outcome at this point in time.

Waiver of the Hearing

Finally, before getting into the facts and justification for this clemency request, I have an observation and request. Because of the COVID pandemic (and, frankly, also because of the extraordinary notoriety of this case), we are submitting this Petition on an "Emergency" basis and waiving a public hearing. IF the Board has questions, we are, of course, amenable to whatever format the Board would choose to obtain that information, but would prefer a "non-public" hearing, via Zoom if possible, for that purpose. But formally, Petitioner is *waiving* any right to a public hearing.

Like most trial lawyers, I would, in most circumstances, like to have the opportunity to "plead my case" at an open hearing. But in this case, it makes sense to proceed in the requested manner without such a hearing. However, because of that, I am attaching two DVDs for consideration. The first is a minute presentation that I made to the presiding judge in the "Lexapro Suicide MDL Cases" on February 27, 2007. It provides a lawyer's perspective on the scientific bases for establishing that SSRI drugs, like the 200 mg of Zoloft that Marilyn was taking at the time of her offense, can trigger violence towards self or others. In the world of pharmaceutical litigation, we call that "General Causation." The judge in that case found it to be very helpful (as his opinion rejecting a "Daubert" challenge to Dr. Healy's opinion testimony demonstrates) and I hope that the Prisoner Review Board will as well.

The second DVD runs approximately 15 minutes. It is a presentation that I made on April 14, 2011, at the "Justice and Peace" Council meeting at my church, Christ Church Cathedral (Episcopal) in Houston, Texas. It focuses on several individual cases, including the tragic *pro bono* trial I handled for Christopher Pittman, as 12-year-old tried as an adult in South Carolina for the murder of his grandparents. Like David Hari (discussed below) and Marilyn Lemak, Chris Pittman was under the influence of Zoloft at the time of his offense.

The materials in this DVD hopefully will help understand, from both the lawyer's and layman's perspective, how a powerful, psychotropic drug like Zoloft can trigger a **specific** individual to act in this manner.

Guilt, Legal "Innocence" and Palpable Remorse

On March 4, 1999, Marilyn Lemak did the unthinkable. She killed her three young children, and then attempted suicide. She was subsequently convicted by jury verdict and sentenced to life *without* the possibility of parole. Her only available defense at the time was "insanity" which, as you might imagine, is a heavy burden. The Illinois insanity statute, like many in the United States in the wake of the 1982 Hinkley acquittal for shooting President Reagan, puts the burden *on the defendant* to prove "by clear and convincing evidence" that the person meets the statutory definition of insanity.

Petitioner Lemak is now serving her life sentence at the Logan Correctional Center in Lincoln. Ms. Lemak never disputed the fact that she had done this horrible thing. Indeed, to the contrary, she has been overcome with grief and remorse since she realized just what she had done that day. As the Petition and its enclosures will show you, she has also been a "model prisoner." She is completely "rehabilitated" and poses no danger whatsoever to society. Marilyn Lemak turned 64 years old in May of this year. There is no purpose to be served by her continued incarceration.

In addition to all of the normal reasons for Executive Clemency, which you undoubtedly see in many cases, there are some extremely compelling, unique circumstances in this case that we hope you will find to be persuasive. At the time of the offense, Ms. Lemak was under a doctor's care for anxiety and depression relating to her impending divorce. Her doctor prescribed a 200 mg/day dose of Zoloft for her. At that time, there was no warning on the label of this drug to alert either the prescribing doctor or the patient to the risk of antidepressant induced violence towards self or others. That changed in 2004, in part because of a 2001 jury verdict in Wyoming in a case that I handled. The jury in that 2001 wrongful death case against the drug's manufacturer found that Paxil (a first cousin drug to Zoloft) "can cause some people to commit homicide and/or suicide." As a result, today there are FDA-mandated specific warnings about these very risks.

Moreover, in 2001-2002, when Ms. Lemak was tried for these crimes, the law in Illinois was that "involuntary intoxication" with a prescription medication was only a defense if someone tricked you into taking the drug. As a result, although she was represented by competent counsel who did the best that they could under the circumstances, there was no opportunity to assert this legislatively mandated, statutory defense. That changed with the 2006 decision of the Illinois Supreme Court in *People v. Hari*, 218 Ill. 2d 275, 278, 843 N.E.2d 349, 352 (2006). Mr. Hari killed two people while under the influence of 25

mg/day of Zoloft. Ms. Lemak was, once again, taking 200 mg of this same powerful psychoactive medication.

In Illinois, the statutory “involuntary intoxication” defense is now established if the prescription drug “deprives him [her] of substantial capacity **either** to appreciate the criminality of his conduct **OR** to conform his [her] conduct to the requirements of law.” 720 Ill. Comp. Stat. Ann. 5/6-3. (Emphasis added). I believe both circumstances are present in this case.

I also believe that Ms. Lemak is entitled to a new trial so she can assert this legitimate defense which was not available to her in 2001. I personally have represented more than 100 families in civil lawsuits who have experienced similar tragedies – usually suicide – while taking these SSRI drugs, and I have handled two *pro bono* murder cases involving the “involuntary intoxication” defense. IF a new trial is required, I have committed to serve as lead trial counsel for Ms. Lemak.

BUT, with great humility and respect, we hope that the Board and the Governor will conclude that no such new trial is necessary. It would be expensive. It would be highly publicized. And it would open old emotional wounds for all concerned.

The Scientific Basis for an Involuntary Intoxication Defense

In addition to my own letter of support, Ms. Lemak’s Petition for Executive Clemency is supported by a comprehensive report by Dr. David Healy, who is a world renowned, widely published neuro-psychopharmacologist. His peer-reviewed paper, *Lines of Evidence* lays out the scientific support or explanation for three different pathways by which drugs like Zoloft trigger violent behavior, and his exhaustive report in this case shows how the facts of Ms. Lemak’s case fit within those “lines.”

Ms. Lemak’s Petition is also supported by excerpts from the Ph.D. dissertation of Ms. Diana Uchiyama, a lawyer and psychologist who is well known in DuPage County and who now works for the Supreme Court. To maintain scientific integrity, she purposefully avoided meeting Ms. Lemak until her research and writing were completed. But she did review the entire trial transcript and she personally interviewed all of the experts involved. She found no evidence of any latent personality disorder and nothing whatsoever to explain this bizarre behavior.

Dr. Lyle Rossiter’s Perspectives

Sadly, Dr. Lyle Rossiter is now deceased. He was an Illinois licensed psychiatrist who examined Marilyn Lemak 12 different times in the DuPage County Jail in the immediate wake of her children’s deaths, and, thus, who had important insight into her mental state.

Fortunately, however, his contemporaneous notes of those visits, his trial testimony in her behalf, and, perhaps even more importantly, his May 24, 2016, letter to me, attached as an Exhibit in Support of the Petition, survive for the Board's consideration. Two things jump out from these documents. First, Dr. Rossiter documented at the time that Marilyn was psychotic and, thus, had an "impaired capacity for reality testing." Significantly, during the first nine of these visits the jail medical staff had her on a dose of two other SSRI medications like Zoloft. Dr. Rossiter was urging them to put her on an **anti**-psychotic medication. They did put her on Haldol, which is an anti-psychotic, and her observed and documented an abatement of the psychosis.

Second, Dr. Rossiter's documents focus on the prosecution theory that Marilyn had killed her children to somehow punish her husband for having an affair with another woman. He explains how that simply does not make sense, because the evidence compellingly demonstrated that Marilyn "snapped" and was in "delusional fantasy in which, like a child, she imagined herself and her children living happily ever after."

The Elephant in the Room

There are fourteen members of the Illinois Prisoner Review Board. One of them, Joseph Ruggiero, Esq., was one of the prosecutors at Marilyn Lemak's criminal trial. He was a zealous advocate for his client, and, frankly, sought justice for the death of the Lemak children at a point in time in which their mother was totally incapable of doing so. Marilyn Lemak does not resent his role in so doing. To the contrary, she herself was very reluctant, for literally years, to consider the role of Zoloft *vis-à-vis* her conduct on March 4, 1999, because she somehow believed that by doing so it would be disrespectful to her children and their memory.

Marilyn Lemak takes no position, one way or the other, as to whether Mr. Ruggiero should recuse himself for this case or take part in the Board's consideration and deliberations. That is a matter for him to decide based on his own conscience. Her written Petition has a place for her specific initials waiving any objection to his participation if he decides to do so. However, prior to finalizing and filing our Petition, I have been advised by Mr. Sweat that the internal rules of the Board will probably exclude Mr. Ruggiero. Nonetheless, we prepared this Petition with the waiver in mind, and stand by it.

Frankly, from my own perspectives as Marilyn's lawyer, I can see two sides of this coin. Certainly, Mr. Ruggiero has personal knowledge of this very high-profile case. For example, he can corroborate for his fellow Board members that, apart from the events of March 4, 1999, Marilyn Lemak lived an exemplary life up until that point in time. Indeed, he will know that, even the children's father, Dr. David Lemak – the one person who had every justification to be hurt and embittered – acknowledged that Marilyn had always been a very good mother to her children.

As a 30-year veteran prosecutor, Mr. Ruggiero was also acutely aware of the fact that, before the *Hari* case was decided by the Illinois Supreme Court in 2006, the involuntary intoxication defense was simply unavailable to a person like Marilyn who was under the influence of a physician prescribed psychotropic drug at the time of his/her offense.

On the other hand, Mr. Ruggiero zealously represented his client, as every advocate is bound to do, and, given the horrendous nature of the fact that a loving mother killed her own three children, he may simply not be able to participate objectively in the Board's consideration of this Petition, even IF the Board assigned him on the panel to hear this case.

Consequently, bottom line: like my client Marilyn Lemak I will trust Mr. Ruggiero to make his own decision regarding his role in the Board's consideration of this case.

Concluding Observations and Request

The death of innocent children is totally repugnant to all decent people. Death at the hands of their parents even more so. Ms. Uchiyama made a point in her dissertation of noting that "[e]ven her manner of killing them was loving and kind; sedating them with medicine, placing their favorite toys and blankets next to them, and singing them their favorite lullabies." And, yet Ms. Uchiyama then ended her exhaustive dissertation on this case with the observation that "the public sentiment in a case like this, where three innocent children die at the hands of their mother, is difficult to overcome and makes it much more difficult to allow a defendant to walk away with little punishment. It appears that even among the first responders, friends, medical professionals, and psychological and psychiatric experts, this was an emotionally charged case that many people had a difficult time comprehending and understanding. As a result, they felt that Marilyn Lemak needed to be punished for these horrific crimes, despite her mental health history and evidence that she loved her children without fail, even while she killed them."

After representing more than 100 families during the course of 20+ years, all of whom endured unimaginable tragedies as a result of SSRI-induced violence and suicidality, I have no qualms about urging the Board and the Governor to give serious consideration to this good woman's plea for clemency. Shakespeare's Portia said it well:

*The quality of mercy is not strained;
It droppeth as the gentle rain from heaven
Upon the place beneath. It is twice blest;
It blesseth him that gives and him that takes:*

* * *

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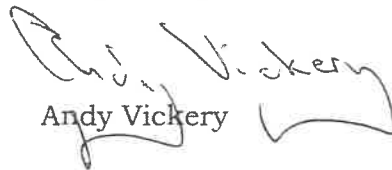
*And earthly power doth then show likest God's
When mercy seasons justice.*

* * *

*Though justice be thy plea, consider this,
That, in the course of justice, none of us
Should see salvation: we do pray for mercy;
And that same prayer doth teach us all to render
The deeds of mercy.*

If there was ever a case that deserved a dispensation of mercy via executive clemency, this is surely it. Therefore, we respectfully implore the Board to recommend and the Governor to grant a commutation of Ms. Lemak's sentence to "time served," or, if the Board truly believes that this 64-year-old woman should only be released under condition of a parole officer's supervision, with a commutation/modification of the sentence to "life with the possibility of parole" and a concomitant recommendation for an immediate release on parole. Thank you.

Respectfully submitted,


Andy Vickery

AAV/kl
Enclosures