

1 BY THE COURT: Let the record reflect that the  
2 Court has adjourned to chambers; present are the two defen-  
3 dants, Mrs. Owens and Mr. Porterfield, and their respective  
4 attorneys; Mr. Stein and Mr. Marty for Mrs. Owens; and  
5 Mr. Bailey and Mr. Jones for Mr. Porterfield; and the  
6 Attorney Generals, Mr. Challen and Don Strother.

7 Mr. Marty.

8 BY MR. MARTY: Your Honor, on behalf of Mrs. Owens,  
9 Mr. Stein and I have filed a motion this morning, which  
10 required an in-chambers conference on Friday, January 3rd  
11 of this year, 1985. The State of Tennessee's duly appointed  
12 official, Mr. Strother, offered Mr. Porterfield and Mrs.  
13 Owens the chance for a guilty plea as to either one of the  
14 counts of the indictment; Life Imprisonment.

15 We took this offer to our client, Mrs. Owens, and  
16 a lengthy discussion; not only Friday, but lengthy  
17 discussions prior to that day; concerning the evidence  
18 in this case; the evidence that the State will produce;  
19 the evidence we can produce; the tape recordings of the  
20 confession; the whole gambit of the case; and based on  
21 what we explained to Mrs. Owens, and based on her appearance  
22 in Court and what she knows of this case as of Friday  
23 afternoon, it was her desire to accept the State's offer  
24 of Life Imprisonment; Assesory Before the Fact to Murder.

25 We talked with Miss Owens; showed Miss Owens the  
offer; which she signed at the bottom and dated; and we

1 immediately took this to Mr. Strother. Some time later  
2 that evening I received a call from Mr. Jones indicating  
3 Mr. Porterfield declined the Life offer. This morning,  
4 January 6, 1986, Mr. Stein and I appeared and explained  
5 to Miss Owens, again, the situation surrounding Mr. Porter-  
6 field's rejection of the Life Imprisonment offer, and  
7 then we had another discussion with Mr. Strother. Mr.  
8 Strother with Mr. Stein and myself went to see General  
9 Stanton for the sole purpose of seeing if Miss Owens could,  
10 in fact, plead guilty, take the Life offer, and be severed  
11 from the co-defendant, Porterfield. The General basically  
12 said the same thing as Mr. Strother; that the State would  
13 not sever Miss Owens.

14 Due to the fact this case carries the ultimate  
15 death by electricution, we feel and urge the Court that we  
16 be allowed...on Miss Owens behalf...and on her behalf she  
17 is going to ask the Court in a minute on the record to  
18 be allowed to plead guilty to Accessory Before the Fact  
19 and accept a Life sentence.

20 We have talked to Mr. Strother in great depth,  
21 and Mr. Strother has talked to the family of Miss Owens;  
22 and it is my understanding they want this matter to be  
23 done with and over with; and we can certainly understand  
24 and appreciate that. Miss Owens wants this matter done  
25 with and over with. We simply urge the Court, on behalf

1 of Miss Owens, that if she is forced to go to trial that  
2 she possibly; and she understands this; may receive a  
3 sentence of Death, and she is urging the Court, through  
4 Mr. Stein and myself, to ask the Court to accept her plea  
5 of guilty as charged in the indictment, and to sever her  
6 from the defendant, Porterfield.

7 I state this for the record. This will, in no  
8 way, prejudice the State's case one bit; as a matter of  
9 fact, it may help. They can call Miss Owens as a witness,  
10 which I would imagine they would do. Miss Owens, on the  
11 other hand, can be greatly prejudiced by failure to accept  
12 her guilty plea in that she could receive...very conscion-  
13 ably receive the Death Penalty in this case. We ask the  
14 Court; and urge the Court; and I'm going to ask Miss Owens  
15 to make remarks for the record in a moment; to allow her to  
16 plead guilty and take the recommendation; the Life sentence.

17 Obviously, as counsel for Miss Owens, we have no  
18 control over Mr. Porterfield or his counsel. We simply  
19 state to the Court this is a high-publicity case. It's a  
20 very...a case of wide-spread criticism throughout the  
21 community and has been since it developed. We feel that  
22 in Miss Owen's best interest, and in the Court's best  
23 interest, and the citizens of the State of Tennessee's  
24 best interest, and the family of the deceased's best  
25 interest, that Miss Owens be allowed to plead guilty and

1 take Life Imprisonment.

2 I would point out that Miss Owens has two small  
3 sons. Their ideas and opinions were taken into account  
4 by Mr. Strother in making this offer. They were talked to,  
5 the father was talked to, the family was talked to, and we  
6 simply state we don't want to put those children through  
7 additional aggravation, remorse, or pain; and we think it  
8 is in everyone's best interest that Miss Owens be allowed  
9 to plead guilty and accept the Life offer.

10 BY THE COURT: State.

11 BY MR. STROTHER: Your Honor, as indicated by  
12 Mr. Marty, I did make Mr. Marty an offer. I made the offer  
13 in writing to Mr. Marty... "This is to verify conversations  
14 of yesterday afternoon in which I notified you, after  
15 conferring with General Stanton and the family of the  
16 deceased,"... which is the family of the deceased... I  
17 talked to the father of the victim. I did not communicate  
18 with the wife, who is also the defendant, nor the children  
19 concerning whether or not they wanted this plea accepted.  
20 I conferred with the family of the deceased... the family  
21 of Ronald Owens.

22 A similar offer was made to Mr. Porterfield, and  
23 the offer was contingent upon each defendant's accep-  
24 tance, because the case is not severable; and it is that  
25 contingency situation we find ourselves in, and we do not  
feel that the case is one in which a severance is granted.

1 And we do feel it would be harmful to proceed against  
2 Mr. Porterfield alone, and for that reason not all the  
3 conditions of the guilty plea have been met, and it is not  
4 a binding agreement between the parties.

5 BY THE COURT: Well, does counsel for Mr. Porter-  
6 field have anything to say?

7 BY MR. JONES: No.

8 BY THE COURT: Mr. Bailey.

9 BY MR. BAILEY: No.

10 BY MR. JONES: We would state we have no objections  
11 to a severance, and we have requested a severance and  
12 filed a motion...

13 BY THE COURT: Well, this situation here almost  
14 places the Court in an untenable position, because as  
15 I understand the law, a guilty plea is arrived at between  
16 the parties; that is the defendant and the State repre-  
17 sentative...representative of the State...and the conditions  
18 of that guilty plea are binding upon the Court if the Court  
19 accepts it. What we are at the point of now is that  
20 you are getting the Court involved in plea bargaining, and  
21 I have absolutely no authority...no authority or juris-  
22 diction to engage in plea bargaining. It appears to me  
23 what is happening here is that you want the Court to say  
24 that, "Yes, I'll accept a Life sentence on behalf of Miss  
25 Owens, and I'll require the State to sever." Well, that

1 wasn't the plea bargain agreement...that's not the agree-  
2 ment. The agreement is a condition based on acceptance  
3 of Mr. Porterfield of the same or similar conditions.  
4 The Court finds itself in a position of...this motion  
5 would put this Court in the position of engaging itself  
6 in the terms of a plea bargain agreement, and I don't  
7 think the Court has any jurisdiction or authority to  
8 become involved.

9 BY MR. MARTY: Your Honor, we would cite the  
10 case of Arrington, State of Tennessee 319, wherein the  
11 Court...Arrington...wherein the Court of Appeals indicated  
12 in absence of any showing that the defendant had been  
13 prejudiced by the Court overruling his motion is without  
14 merit. We point out to the Court that in the Arrington  
15 case...the Arrington case was not a Capital case...this  
16 is a Capital case...

17 BY THE COURT: I understand that, Mr. Marty.

18 BY MR. MARTY: And we feel that...I think we are  
19 duty bound, ethically and professionally...we are duty  
20 bound, on behalf of Miss Owens, where the ultimate punish-  
21 ment in this case is death by electricution, that we  
22 must urge the Court to consider that as a prejudice against  
23 the defendant, Owens, and ask the Court to consider allowing  
24 her to plead guilty and sever her from the defendant,  
25 Porterfield.

1 I might make this comment to the Court: It may  
2 require that at the time of the defendant's proof that  
3 Miss Owens get on the witness stand and pleads guilty  
4 in front of the jury. That will absolutely, in my opinion  
5 prejudice the jury against Mr. Porterfield. We are  
6 simply trying to avoid those problems. We think it is  
7 in the best interest of Miss Owens, the State, and every-  
8 one I have previously said, to allow us to do what the  
9 State has recommended.

10 BY THE COURT: The State hasn't recommended it.

11 BY MR. MARTY: I realize they are asking this  
12 be contingent upon Mr. Porterfield's accepting it. We  
13 don't think Your Honor, in a Capital Case,...I'm not  
14 talking about armed robbery or shoplifting or some other  
15 offense. We don't think that's a viable reason to with-  
16 hold an offer of settlement to one defendant simply because  
17 another doesn't understand...may not understand...doesn't  
18 have whatever facilities to understand or accept it.  
19 I'm just stating to the Court this will not prejudice  
20 the State's case. They can proceed right along without  
21 any hitch.

22 BY MR. STEIN: Before Your Honor rules, I would  
23 quote from the Arrington case found on page 322...listen  
24 to the language, I think Your Honor can consider it. I  
25 think it's a lot broader than Your Honor's first impression

1 about the plea bargaining situation; "Appellant Arrington's  
2 motion to sever based on his desire to accept the State's  
3 offer and plead guilty, absent any evidence showing that  
4 he was prejudiced by the Court overruling his motion, is  
5 without merit."

6 So, I think Your Honor can go a step further.  
7 In fact, Your Honor has correctly stated the law, because  
8 there is a case I showed Mr. Strother...the case of  
9 Seaton vs. State, 472 S.W.2d, 905. It certainly would  
10 support they don't have to sever under this, but it was  
11 a 1981 case, and Arrington comes along with identical  
12 facts concerning a plea of guilty, but doesn't have the  
13 absolute rule as stated in Seaton merely because of the  
14 plea bargain situation, as Your Honor stated in response  
15 to Mr. Marty's motion. But Arrington comes along and says,  
16 "absent any evidence showing that he was prejudiced by  
17 the Court overruling his motion, is without merit."  
18 When Arrington comes along in 1977, it gives the Court  
19 criteria which is the prejudice situation, and I submit  
20 this, respectfully, that under the Arrington case. Your  
21 Honor certainly can go a step further and determine from  
22 what's before Your Honor whether or not there will be any  
23 prejudice if Your Honor denies Miss Owens' motion for  
24 severance. How do you determine prejudice? In the  
25 later cases they don't discuss what is meant by prejudice.



1 The latest authority is Arrington, which is in 1977,  
2 March 28, 1977, which gives Your Honor another criteria  
3 about prejudice. So, what Arrington has done...it has not  
4 given Your Honor any specific guidelines as to what is  
5 meant by prejudice. It boils down to using one's own  
6 common sense. If Your Honor accepts this prejudice  
7 criteria as set out in Arrington, I think Your Honor  
8 has to ask Mr. Strother and Defense counsel, Mr. Marty and  
9 myself, what kind of prejudice will Miss Owens suffer,  
10 and then if Your Honor follows...

11 BY THE COURT: I'll ask you now what kind of  
12 prejudice...

13 BY MR. MARTY: I'll answer.

14 BY THE COURT: I'm talking, I think, to Mr. Stein.  
15 The penalty for the crime charged is what.

16 BY MR. STEIN: Let me put it this way; the  
17 penalty for the crime charged is the same; Life or  
18 Death by electricution, but as Your Honor recalls, Mr.  
19 Marty filed a motion to sever, because, basically, an  
20 antagonistic defense. The point is, when the proof comes  
21 out, because I think the State's theory is that Porterfield  
22 was the principal or actual perpetrator of the murder  
23 or homicide...I think, because the jury may look at it  
24 because he was the actual perpetrator, that Porterfield  
25 may spill over in so far as Miss Owens is concerned.

1 What the proof may or may not be, Your Honor, has to go  
2 into great detail as to what does prejudice mean, and I  
3 would submit that the mere fact they have the same sentence,  
4 I think you have to go further. You have to go into  
5 the facts of the case, keeping in mind we filed a motion  
6 to sever Miss Owens from Mr. Porterfield. It may be  
7 impossible to determine who is prejudiced until you hear  
8 the proof, but the point being, Your Honor can certainly  
9 consider our argument as officers of the Court; and, as  
10 Your Honor knows, under the severance concept Your Honor  
11 can grant a severance if you feel under Arrington Miss  
12 Owens would be prejudiced.

13 I don't know what the proof is going to be.  
14 Maybe Mr. Porterfield will take the stand; maybe his  
15 record will come out; maybe the hideous part of the homicide  
16 would pour over to Miss Owens; but that's the point of  
17 having our...or motion for severance is an on-going  
18 situation, and I would submit, respectfully, and I say  
19 this very respectfully, just saying, because of the  
20 plea bargain situation, as expounded by Seaton, we don't have  
21 to consider the Arrington criteria. I think Your Honor  
22 has to respect the Arrington criteria, and I'm going to  
23 yield to Mr. Marty to further supplement and compliment my  
24 argument as to the prejudice that Your Honor can consider  
25 as to Arrington.

1           There is only one other case I have seen in my  
2 research...Wheaton (phonetically). I want to say 480...it's a  
3 U.S. Supreme Court decision, and I'll get the exact  
4 citation to the Court....Supreme Court of Massachusetts...  
5 it went up to the Supreme Court of the United States  
6 on exactly the same issue where a co-defendant wanted  
7 to be severed and plead guilty, but the other would not.  
8 But in that case it went up on the issue that there was  
9 question about preemptory challenges wouldn't be fair  
10 and was determined to be, basically, a matter of discretion  
11 of the trial Court. Our Supreme Court of the United  
12 States had an occasion to decide this issue, albeit in  
13 1824 and 1825, and used the language in their decision...  
14 "discretion of the trial Court."

15           BY THE COURT: Well, you still haven't answered  
16 my question, Mr. Stein: What authority does the Court  
17 have to engage in plea bargaining?

18           BY MR. STEIN: Your Honor, you asked me, as an  
19 officer of the Court...I furnished Seaton vs. State,  
20 472 S.W.2d, Your Honor...

21           BY THE COURT: Is that what we have?

22           BY MR. STEIN: That is correct, and I'm saying,  
23 very respectfully, in view of the hearing and the facts,  
24 I would respectfully urge the Court to consider this.

25           Seaton should be read into the record; it states:

1 "The trial Court did not agree with counsel for the  
2 defendant. Neither do we. While plea bargaining is a  
3 valuable tool in expediting the administration of criminal  
4 justice and should be encouraged by the Courts in proper  
5 instances, United States, 397 U.S. 742, 90 S.Ct. 1463,  
6 25 L.Ed.2d 747, neither the State nor the defendant should  
7 be allowed to dictate terms. If an understanding is  
8 reached as to a plea and punishment, it should be submitted  
9 to the Court for approval, and, of course, in some instances  
10 to a jury. But in no instance should the Court enter into the  
11 negotiations on one side or the other. It would not have  
12 been proper for the Court to have granted a severance in  
13 this instance purely as a tactic to attempt to force the  
14 State to agree on settlement of the defendant's case on  
15 his terms."

16 BY THE COURT: I understand that...

17 BY MR. STEIN: And I don't want to belabor the  
18 point, but that would be fine in 1971 if this was the  
19 only authority, but lo and behold, along comes Arrington  
20 a 1977 case, and it doesn't follow the hard and narrow  
21 rule in Seaton I just read.

22 BY THE COURT: Well, now; Arrington deals  
23 with an entirely different subject all together and not  
24 a plea bargaining situation at all. Arrington is refusing  
25 to grant a severance.

BY MR. STEIN: But both involve the same issue

1 where the Court would not grant the severance, because  
2 a co-defendant would not accept the plea...exactly what  
3 we have here.

4 BY THE COURT: Does Arrington under any cir-  
5 cumstances say the Court has jurisdiction to engage itself  
6 in plea bargaining?

7 BY MR. STEIN: Right. Well, of course, as I  
8 have read, the language I read to the Court before, and  
9 the only language in that, respectfully, it gives Your  
10 Honor to look into the prejudice issue. It says, and I'm  
11 not going to repeat what I have just read, but it goes  
12 on to say further that the matter of severance was within  
13 the sound discretion of the Court; so it gives you two  
14 outs. Arrington is much broader in scope than Seaton.  
15 Arrington was in 1977, obviously, and Your Honor can  
16 use common sense, and this particular issue bothered  
17 Judge Dwyer, or why would it be put in there, "absent  
18 prejudice"?

19 BY THE COURT: In regard to this precise issue  
20 that the co-defendant did not desire to accept the guilty  
21 plea in Arrington, and the lawyer filed a motion to sever  
22 and allow him to accept the guilty plea; they don't even  
23 cite Seaton. Arrington, in 1977...

24 BY MR. STEIN: The only point I'm saying is  
25 Arrington has expanded on Seaton and is not a hard and  
fast rule. Seaton seems to say: No. 1, consider the

1 prejudice; and No. 2, once you consider the prejudice,  
2 Your Honor has to use your discretion, and I would  
3 respectfully submit we haven't been given guidelines as to  
4 what is meant by the prejudice issue.

5 Judge Dwyer, in Hoskins vs. State 489 S.W.2d,  
6 1972, he doesn't even cite Seaton for his authority, but  
7 Seaton and Arrington are the exact precise issue, basically,  
8 the conditional offer by the State. And if I just  
9 cited Seaton, Your Honor can't get into the prejudice  
10 issue; but lo and behold, I would respectfully submit,  
11 Arrington gives Your Honor another criteria where the  
12 Court can consider the prejudice criteria and use your  
13 discretion.

14 I would ask the Court to allow Mr. Marty  
15 to address Your Honor on how he feels Miss Owens would be  
16 prejudiced, and after you hear the full argument, Your  
17 Honor would have to use your discretion. And I respectfully  
18 submit, if Your Honor does consider the prejudice issue  
19 and follow the language of Arrington...

20 BY THE COURT: Arrington doesn't say the trial  
21 Judge has any jurisdiction or authority to involve itself  
22 in a plea bargaining agreement in any way, shape, form,  
23 or fashion. It doesn't say that. It's on a question of  
24 severance. It doesn't say anything about a plea bargain.  
25 The Court has no authority even under Arrington to engage  
itself in plea bargaining on one side or another. And

1 if the plea bargaining, as set out in this paper writing,  
2 is conditional upon Mr. Porterfield accepting the same or a  
3 similar agreement, this Court does not have the authority  
4 and will not exercise its authority under any circumstances  
5 to engage itself in plea bargaining. The motion is over-  
6 ruled.

7 BY MR. STEIN: We respectfully note our objection.

8 BY MR. MARTY: I would like for the record, since  
9 we are here, I stated my understanding prior to coming into  
10 chambers that it was Mr. Porterfield's desire not to accept  
11 the State's offer.

12 BY THE COURT: He has the perfect right to do it.

13 BY MR. MARTY: In any...correct...on that assump-  
14 tion, I want to ask for the record...I have no idea...I  
15 want his lawyers to state for the record...

16 BY MR. BAILEY: Mr. Porterfield enters a plea of  
17 not guilty.

18 BY MR. JONES: We would state, after hearing the  
19 statements of Mr. Marty, if the severance is denied, it's a  
20 possibility Miss Owens would take the stand and plead  
21 guilty before the jury. This is something we did not know  
22 when we argued the motion for severance on behalf of Mr.  
23 Porterfield, and this will have definite prejudicial  
24 effects on Mr. Porterfield's trial to Mr. Porterfield,  
25 and we would ask we be allowed to amend our motion for  
severance and add as grounds why Mr. Porterfield would be

1 denied a fair trial if we go to trial with Miss Owens.

2 BY MR. STROTHER: I think we have an identical  
3 situation the Court faced recently in the HOPLER (phone-  
4 tically) case in which Mr. Hopler's co-defendant did  
5 plead guilty...admitted to guilt during the facts, and  
6 was reviewed by appellate courts and no error found.

7 There was a similar motion for severance which the  
8 Court denied, and I think we are on safe ground for denial  
9 here.

10 BY THE COURT: Mr. Jones, you may file a written  
11 supplemental motion to that effect, and the Court overrules  
12 the motion at this time.

13 BY MR. STEIN: In view of Your Honor's ruling,  
14 Mr. Marty stated Miss Owens was going to testify. Basically,  
15 by her acceptance of the State's proposed guilty plea,  
16 which was outlined in Mr. Marty's written motion, in view  
17 of Your Honor's ruling, we will not put Miss Owens on the  
18 witness stand; is that right, Mr. Marty?

19 BY THE COURT: The Court has nothing to do with  
20 that.

21 BY MR. MARTY: Miss Owens is present at this hearing,  
22 and was furnished a copy of the motion we filed this morn-  
23 ing, which she has read, and it's her...she expressed  
24 to me that is still what she wishes to do.

25 BY THE COURT: I understand and appreciate that,



1 Mr. Marty, but the Court cannot engage itself in plea  
2 bargaining.

3 The record has been made. Let's not make it  
4 four or five times.

5 BY MR. MARTY: I want to...not just her lawyer,  
6 but Miss Owens wanted to say, and I said on her behalf...

7 BY THE COURT: I assumed you were speaking for  
8 your client from the very beginning, Mr. Marty.

9 BY MR. MARTY: I am, Your Honor.

10 BY THE COURT: Anything else?

11 BY MR. MARTY: No.

12 BY THE COURT: All right. We'll go back into  
13 Court, and I'll ajourn until 1:30.

14 BY MR. STROTHER: I believe there is one more motion  
15 filed.

16 BY THE COURT: We'll hold that in Open Court.

17 (Whereupon counsel, the defendants, Judge  
18 McCartie, and the court reporter returned to  
19 Open Court, where the following proceedings  
20 were recorded.)

21 BY MR. STEIN: Your Honor, this morning I filed  
22 a motion for continuance, along with my affidavit in  
23 support of a Motion for Continuance. I alleged, and I  
24 set it out in four separate paragraphs as the reasons why I  
25 was seeking a continuance.