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Convicted murderer back in Bryan court

By Robert Morris
Staff Writer

The man sentenced to death by lethal injection for the slaying of a Texas A&M student was back in a Brazos County courtroom Friday afternoon for a hearing regarding the "completeness" of a reconstructed transcript needed for his appeal.

Jeff Emery was sentenced to die by local jurors last year for the 1979 rape and slaying of Texas A&M student LaShan Muhlinghaus in the bedroom of her College Station apartment.

Parts of the original court reporter's notes were stolen last October from an Austin storage room. State District Judge Tom McDonald Jr. authorized a reconstructed transcript to be sent to the Texas Court of Criminal Appeals.

Under state law, death sentences

are automatically sent to the criminal appeals court for a decision. However, defense attorneys on Friday repeatedly asked McDonald to grant a new trial because of the lost notes.

Emery's attorneys, Keith Swim of Bryan and Dennis McGill of Lubbock, maintain that the original transcript is an important and necessary part of their appeal.

Swim referred to the document as incomplete and questioned the clarity of the substitute transcript as "not being a complete representation" of previous hearings.

After the hearing, McGill said he felt the transcripts were a necessary part of Emery's appeal.

"Every pretrial hearing in a capital case is important," he said.

The major portion of the hearing centered on the testimony given by Swim and McGill concerning the clarity of the reconstructed docu-

ment and their objections to its use as a valid substitute for the original.

A March 24 hearing, in which the defense says Brazos County Sheriff Ronnie Miller testified, was specifically in question.

Assistant District Attorney E. Hubbard Kennady III insisted that the document was a good representation of the events of the previous hearing.

McDonald also said Miller had been present only to discuss courtroom security for Emery's trial and was never put on the witness stand.

And McDonald repeatedly said the hearing was called to allow the defense to present their objections and that he was not able to call a new trial.

All statements and objections would be recorded and sent to the criminal appeals court, McDonald said, which will decide if there will be a new trial.

Pneumonia claims life of dancer Fred Astaire

LOS ANGELES (AP) — Fred Astaire, who defined Hollywood elegance for 30 years dancing in top hats and tails with Ginger Rogers and other stars, died of pneumonia Monday in his wife's arms. He was 88.

Astaire died at Century City Hospital at 4:25 a.m., his wife, Robyn, reportedly told a jammed news conference.

"I just got in bed with him and put my arms around him and he died in my arms, and that's the way he wanted it," said Mrs. Astaire, the former racehorse jockey Robyn Smith, whom he married in 1980.

"He died holding onto me," she said.

He had been admitted June 12 with a cold that worsened to pneumonia.

President Reagan hailed Astaire as "an American legend."

"Fred was, in every sense of the word, a 'superstar,'" Reagan said in Melbourne, Fla. "... the ultimate dancer — the dancer who made it all look so easy."

Living Berlin, many of whose songs Astaire introduced, recalled the dancer as "one of my oldest friends."

"He was an international star... the purest talent I have ever worked with," Berlin said.

Astaire's debonair style dominated the Hollywood musical genre beginning in the 1930s, when he starred in many song-and-dance films with Ginger Rogers.

"I don't think there's another one like him," said Rogers, who teamed up with Astaire in "Flying Down to Rio" in 1933 and followed with 10 other musical hits. "He'll always have my love and admiration."

Fellow song-and-dance man Gene Kelly said: "Although we have lost one of the greatest dancers who ever lived, Fred Astaire will always be immortal and an inspiration to all dancers who come after us."

Astaire and Rogers captivated depression-era audiences, and the magic continued with succeeding partners, including Cyd Charisse, Rita Hayworth, Judy Garland, Audrey Hepburn.

Ballet choreographer George Balanchine once called him "the greatest dancer in the world," and ballet star Mikhail Baryshnikov praised his "perfection."

But Astaire played down his own talent.

"I never thought a funny-looking guy like me would be suitable for

"Although we have lost one of the greatest dancers who ever lived, Fred Astaire will always be immortal and an inspiration to all dancers who come after us."

— Gene Kelly

pictures," Astaire once said, and a studio executive once dismissed him with the curt words: "Can't act... can't sing... balding... can dance a little."

Born Frederick Austerlitz on May 10, 1899, to an Omaha, Neb., beer

salesman, he was enrolled by his mother in dancing school. She took him, with his older sister, Adele, to New York for professional training in 1906, and the youngsters soon were touring vaudeville under their new name, Astaire.

A Paramount executive who viewed Astaire's 1930 screen test dismissed him, but RKO signed him and loaned him to MGM for his debut with Joan Crawford in the 1933 "Dancing Lady."

After RKO's "Flying Down to Rio" with Rogers, the duo appeared in such hits as "The Gay Divorcee," "Roberta," "Top Hat," "Follow the Fleet," "Swing Time," "Shall We Dance," "Carefree" and "The Story of Vernon and Irene Castle."

The team parted in 1939 except for a 1949 reunion in "The Barkleys of Broadway."

Astaire continued in a string of successful musicals with various dance partners, including "Holiday Inn," "Easter Parade," "Royal Wedding," "Daddy Long Legs," "Funny Face" and "Silk Stockings."

His only Oscar, in 1949, was honorary but he won nine Emmys for TV specials in the '50s and '60s.

Astaire's first wife, New York socialite Phyllis Baker Potter, died of cancer in 1954 after 21 years of marriage and two children — Fred Jr., born in 1936, and Ava, born in 1942. The family also included Peter Hoffer, Phyllis Astaire's son from a previous marriage.

He remained vital and physically active long into his 80s. He broke his arm at 80 showing off on a skateboard for his grandchildren. On June 28, 1980, he married the 35-year-old Smith.



It's A Breeze

Charles Jackson, 28, works on the drive shaft of one of the massive fan units inside a cooling tower

of the Physical Plant. Jackson is a contract millwright from Alvin, Texas.

Photo by Robert W. Rizzo

Helicopter crash kills 10 during military exercises

FORT HOOD (AP) — A military helicopter flying at low altitude crashed in rugged terrain Monday during training exercises, killing 10 people, authorities said.

One of the victims died at Darnall Army Community Hospital about an hour after the crash at about 9:45 a.m., base spokesman Maj. George Creach said.

Reports on the number of victims have been revised, base spokesman Jeanie Kitchens said, because of earlier discrepancies when officials were not at the scene.

Most of the victims were apparently Army reservists, Creach said. He said names of the dead were not released pending notification of next-of-kin.

The UH-1 "Huey" helicopter belonged to the Army Reserve's 353rd Engineer Group, Creach said. But most of those aboard were part of the 489th Engineer Battalion based in Little Rock, Ark., part of the Oklahoma City-based 353rd Engineer Group, Creach said.

Investigators could not immediately determine the cause of the crash, and there was no inclement weather at the time, he said.

The aircraft was part of a military training exercise called Starburst '87, the Texas National Guard 49th Armored Division's annual two-week training exercise,

Kitchens said. About 18,000 people take part in the exercise, Creach said.

The helicopter crashed in rugged terrain about two miles from the western boundary of Fort Hood, which is in Central Texas, authorities said.

"It's a utility-type helicopter," Creach said. "It's usually used to carry cargo. It usually has a crew of three, and it can carry up to eight passengers."

Investigators have been called in from Fort Rucker to investigate the crash, Kitchens said.

"We don't know the cause but the Army will investigate," Army Capt. Mike Monnett said.

He said the helicopter was on an orientation flight with a crew of at least three and was flying at low altitude.

"It is obvious there was a fire" involved in the crash, said Monnett, adding he did not know when the blaze erupted.

Creach said he did not know how many people a Huey normally carries.

"It all depends on a number of things," he said, "on the air, the weather and stuff like that. But normally, it has a crew of three, and eight passengers."

Testimony opens trial in Bryan

The prosecution began presenting its case Monday to open the trial of David Michael Clark, a Bryan resident who is one of four people charged in the Feb. 19 double homicide of a Bryan couple.

Tracy Penuel of Waco, a co-defendant in the case, testified on the trial's opening day.

She will be cross-examined today.

Neither Brazos County District Attorney Bill Turner nor defense attorneys John Quinn and Robert Orozco could comment on the case because the trial has been placed under a gag order by Judge John Delaney of the 272nd District Court.

Beverly Benninghoff, 25, and Charles Gears, 21, were found dead in the living room of their house at 408 Foch in Bryan. Benninghoff had been shot five times and Gears had been shot twice.

Police say the killings appear to be drug-related.

Clark, 27, was arrested Feb. 20, with Mary Gober Copeland and Gary Allen Penuel, also residents of Bryan. Penuel was arrested in March.

No trial dates have been set for the co-defendants.

Bryan Council votes to keep option on landfill site near B-CS water wells

By Yvonne DeGraw
Staff Writer

Before allowing any of those who packed its chambers to oppose a proposed site for a new city landfill, the Bryan City Council agreed to spend \$59,472 to keep a purchase option on the site.

The 236-acre site, at the southeast corner of Old Spanish and Sandy Point roads, would cost \$580,560 if the city decides to purchase it.

LaDona Hudson, whose ranch is on Old Spanish Road, organized a citizen's group to protest the site. The group says a landfill on this site would pollute the water supplies of Bryan, College Station and Texas A&M.

Only after the council voted on the agenda items with little or no discussion, two representatives of the group — Hudson and Dr. Kirk Brown, A&M professor of soil and crops sciences — were allowed to speak for a limited time.

The group attended the council's workshop session at 4 p.m., but Hudson said they were not allowed to speak there.

Hudson made a formal objection to not being allowed to speak before the motion was passed.

"I assume we have already spent \$60,000 of the taxpayers'

money," she said, "but I would hope the council could reconsider."

The group met first on Sunday and listed four objections:

Brown, who has been called to testify as a landfill siting expert in New York, Illinois and California, says the proposed landfill would jeopardize the water supplies of both cities and A&M.

"Normally, I wouldn't speak up on a local issue," he said. "You

Bryan's wells are located about 3½ miles to the east of the land."

Jack Cornish, manager of the city's solid waste division, has said that the land has a layer of clay at least 40 feet thick.

Clay is considered good protection against seepage, but Brown said clays are not impermeable. Suction from the well pumps in the area and holes in the clay layer from abandoned wells

"It's estimated that each person generates one gallon of hazardous waste per year," he said, quoting a study by the New Jersey Institute of Technology.

The landfill would be hazardous even if it met state standards, he said.

"Do people really want to drink water that has been leached through garbage, especially their garbage?" he asked after the meeting.

The group says the price, almost \$2,500 per acre, is too high. Hudson claimed the cost will rise to over \$1 million "before the first Coke can be buried."

Old Spanish Road is the oldest road in Texas and dates back to the conquistadors, Hudson said. She said she lives there because of its historical significance.

The road leads to Bryan Utility Lake, the only recreational water facility in the area.

Hudson said this would put dump trucks on the same narrow road traveled by family campers.

Despite her frustration at the vote, Hudson is determined to fight city hall.

"In one day we got 400 signatures," she said. "We will have 4,000 if necessary. We will have 40,000 if the citizens of Brazos County realize their water is in jeopardy."

have to be more than 100 miles from home to be an expert, but this is the water my children will drink."

Brown displayed a map showing the plot of land the city is considering and the major water wells in the area. College Station has three wells about one mile east of the site. One well is within one-quarter of a mile. There are plans for a fourth well nearby.

Texas A&M gets its water from three wells about one mile west of the site.

would allow hazardous wastes into the water supply, he said.

Brown said there is no limit saying how far wells should be from landfills. Georgia law says landfills cannot be placed within two miles of a city water well.

Although hazardous wastes are supposed to be dumped in special landfills regulated by the Environmental Protection Agency, Brown said ordinary substances like battery acid and antifreeze can pollute the water supply.

Lawmaker: Clements should be impeached

AUSTIN (AP) — A member of the Texas House of Representatives said Monday he is studying the possibility of impeachment proceedings against Gov. Bill Clements in the wake of the Methodist bishops' report on the Southern Methodist University football scandal.

"I think that report that came out from the bishops can't be defended by the governor," Rep. Paul Moreno, D-El Paso, said.

A report issued by four United Methodist bishops said Clements, as chairman of the SMU Board of Governors, knew improper payments were being made to football players and allowed them to continue even though the school already was on NCAA probation.

The bishops said Clements and several other members of the board of governors participated in an elaborate scheme to keep Clements' involvement a secret.

"It seems to me that a person of that background does not belong in the office of governor of the state of Texas," said Moreno, who first began studying impeachment last March when Clements admitted knowing about the scandal.

Clements refused Monday a request for an interview about the SMU report.