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FILED

SEP 29 1980

SID J. WHITE
CLERK SUPREME COURT
By [illegible]
Chief Deputy Clerk

IN THE

SUPREME COURT OF FLORIDA

CASE NO.

JOSEPH GREEN BROWN, ALVIN BERNARD FORD, JESSE RAY RUTLEDGE, CARL ELSON SHRINER, DANIEL MORRIS THOMAS, AUBREY DENNIS ADAMS, JR., FRED LYMAN BRUMBLEY, DANIEL L. COLER, VERNON RAY COOPER, GREGORY SCOTT ENGLE, DAVID LIVINGSTON FUNCHESS, ROBERT D. HEINEY, MARVIN E. JOHNSON, LESLIE R. JONES, ROBERT F. LEWIS, BOBBY EARL LUSK, THOMAS McCAMPBELL, CHARLES DWIGHT MESSER, FLOYD MORGAN, DONALD PERRY, JAMES LEROY PHIPPEN, JAMES DAVID RAULERSON, JIMMIE LEE SMITH, WILLIAM GILVIN, BRYAN JENNINGS, RICHARD KING, GREGORY MILLS, ROBERT LEWIS BUFORD, WILLIAM CHRISTOPHER, RAYMOND ROBERT CLARK, ROBERT COMBS, RAYMOND L. DRAKE, EARL ENMUND, WILLIAM JENT, AMOS LEE KING, HAROLD GENE LUCAS, ANTHONY RAY PEEK, RALEIGH PORTER, M.C. RUFFIN, DONALD WALSH, JOHNNY PAUL WITT, STEVEN BEATTIE, McARTHUR BREEDLOVE, ALONZO BRYANT, BOBBY MARION FRANCIS, MARVIN FRANCOIS, LENSON HARGRAVE, RONALD JACKSON, ANTONIO MENENDEZ, THOMAS PERRI, WARDELL RILEY, LEON SCOTT, ROY STEWART, MERLE STURDIVAD, GARY TRAWICK, MANUEL VALLE, JAMES ADAMS, LEVIS LEON ALDRIDGE, ALLEN L. ANDERSON, DAVID ROSS DELAP, WILLIAM DUANE ELLEDGE, GEORGE VICTOR FRANKLIN, WILLIAM LANAY HARVARD, JAMES E. HITCHCOCK, MONROE HOLMES, JOHN P. MAGGARD, NOLLIE LEE MARTIN, WINDFORD MINES, ELDRED LONNIE MOODY, JAMES A. MORGAN, TOMMY LEE RANDOLPH, JAMES FRANKLIN ROSE, PAUL WILLIAM SCOTT, WILLIE CLAYTON SIMPSON, TERRY MELVIN SIMS, HENRY PERRY SIRECI, JR., JOSEPH ROBERT SPAZIANO, JESSE JOSEPH TAFERO, SOLOMON WEBB, WILLIAM GLENN WELTY, WILLIAM MELVIN WHITE, GARY ELDON ALVORD, ANTHONY ANTONE, LUIS CARLOS ARANGO, SAMPSON ARMSTRONG, ELLWOOD BARCLAY, RICHARD BLAIR, BERNARD BOLANDER, STEPHEN TODD BOOKER, THEODORE BUNDY, JOHNNY COPELAND, PRESTON CRUM, WILLIE JASPER DARDEN, BENNIE DEMPS, ERNEST JOHN DOBBERT, HOWARD VIRGIL LEE DOUGLAS, JOHN E. FERGUSON, CHARLES KENNETH FOSTER, ARTHUR FREDERICK GOODE, III, FREDDIE LEE HALL, CARL JACKSON, ELIGAAH ARDALLE JACOBS, THOMAS KNIGHT, JOHN WALLACE LeDUC, PAUL EDWARD MAGILL, ROY McKENNON, DOUGLAS RAY MEEKS, MARK MIKENAS, EDDIE ODOM, TIMOTHY PALMES, CHARLES WILLIAM PROFFITT, MICHAEL SALVATORE, FRANK SMITH, CARL RAY SONGER, WALTER STEINHORST, RUFUS STEVENS, RAYMOND R. STONE, RONALD STRAIGHT, ROBERT A. SULLIVAN, WILLIAM LEE THOMPSON, CHARLES VAUGHT, DAVID LEROY WASHINGTON, JAMES BUFORD WHITE,

Petitioners,

-v.-

LOUIE L. WAINWRIGHT, Secretary, Department of Corrections, State of Florida,

Respondent.

APPLICATION FOR EXTRAORDINARY RELIEF AND
PETITION FOR WRIT OF HABEAS CORPUS

Petitioners, through their undersigned counsel, apply to this Honorable Court for relief from their unconstitutional sentences of death and further appropriate relief, and, in support thereof, state:

I.

PARTIES

Petitioners are all death-sentenced inmates presently incarcerated at Florida State Prison in Starke, Florida, whose convictions and sentences were affirmed by or whose appeals are currently pending before this Court. (See Appendix A filed herewith).

Respondent, Louie L. Wainwright, is the Secretary of the Department of Corrections in whose custody the petitioners are detained.

II.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to Article V, Section 3(b)(1), (7) and (9) of the Constitution of the State of Florida (1980). See Adams v. State, 380 So2d 421(Fla.1980); Graham v. State, 372 So2d 1363(Fla. 1979); Proffitt v. State, 360 So2d 771(Fla. 1978). Petitioners seek relief in this Court because the issues raised herein involve this Court's appellate review of capital cases and do not involve the proceedings in the trial courts. Petitioners have filed jointly in the interest of judicial economy because of the common issues of law and fact presented. See In Re Baker, 267 So2d 331(Fla.1972).

III.

FACTUAL BASIS FOR RELIEF

This Court, since at least as early as 1975, has engaged in the continuing practice of requesting and receiving information concerning capital appellants which was not presented at trial and not a part of the trial record or record on appeal. The information includes but is not limited to: presentence investigation reports concerning the capital offense under review or prior convictions unrelated to the capital offense; psychiatric evaluations or contact notes; psychological screening reports; recitations of a capital defendant's refusal

to submit to a psychiatric examination from which a report could be prepared; post-sentence investigation reports; probation or parole violation reports; and state prison classification and admissions summaries. Documentation of the practice is provided by the correspondence attached as Appendix B which is merely exemplary. Petitioners also attach in Appendix C newspaper accounts of the practice. While such accounts are admittedly hearsay, they are well-substantiated by the documents in Appendix B.

Except as to some of the presentence investigations pertaining to the offense on appeal the above information was requested and received without notice to the capital appellants or their attorneys.

Upon information and belief, a quantity of the information received by the Court, and of records reflecting the practice of requesting and receiving it as alleged in the preceeding paragraph, has at the Court's direction been destroyed or purged from this Court's files. As a result, it is no longer possible for petitioners to identify all of the cases in which such information was requested or received.

IV.

LEGAL CLAIMS

The request or receipt by this Court of undisclosed information in capital cases, as described above, violates inter alia, petitioners' rights under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 9 of the Constitution of the State of Florida; the right to counsel as guaranteed by the Sixth and Fourteenth Amendments to the Constitution of the United States and Article I, Section 16 of the Constitution of the State of Florida; the Eighth Amendment to the Constitution of the United States and Article I, Section 17 of the Constitution of the State of Florida; the privilege against self-incrimination as guaranteed by the Fifth Amendment to the Constitution of the United States and Article I, Section 9

of the Constitution of the State of Florida; the right to confrontation as guaranteed by the Sixth Amendment and Article I, Section 16 of the Constitution of the State of Florida; and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 2 of the Constitution of the State of Florida.

A. The Due Process Right to Fair Capital Procedures

The practice described above violates Gardner v. Florida, 430 U.S. 349(1977). In Gardner, the United States Supreme Court held unconstitutional the imposition of a death sentence where, in considering what sentence to impose, a Florida circuit court had ordered and relied on a pre-sentence investigation report, portions of which were not disclosed to the parties. The plurality emphasized that, in capital cases,

> it is now clear that the sentencing process as well as the trial iteself, must satisfy the requirements of the Due Process Clause . . . .

Id. at 358 (opinion of Mr. Justice Stevens). It held that due process was denied since "the death sentence was imposed, at least in part, on the basis of information which [petitioner] had no opportunity to deny or explain." Id. at 362. See also Green v. Georgia, 442 U.S. 95, 97(1979) and Presnell v. Georgia, 439 U.S. 14, 16(1978).

Gardner requires a similar conclusion here. The only real difference between Gardner and these cases is that here the secret information was gathered on appeal rather than at trial. Rather than providing a basis on which to distinguish these cases, this fact aggravates the unfairness to petitioners. The preparation of a pre-sentence report is a relatively normal and expectable occurrence in the trial court, and defense counsel might legitimately be expected to be on notice that such an event may happen, and, before Gardner at least, might engender confidential information. No lawyer familiar with Florida statutes, rules and procedures could be expected to anticipate, however, that without notice to the lawyer or the lawyer's client,

this Court would request or receive information dehors the record. Here, certainly no less than in Gardner, it would be a violation of the Fourteenth Amendment's Due Process Clause "to impose the death sentence on the basis of confidential information which is not disclosed to the defendant or his counsel." Gardner v. Florida, supra, 430 U.S. at 358.

It is a further violation of Due Process for this Court to have consulted "evidential facts not spread upon the record," Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio, 301 U.S. 292,300(1937), so that "even now we do not know the particular or evidential facts of which the [Court]... took judicial notice and on which it rested its conclusion." Id. at 302.

It is also a violation of due process for an appellate court to rely for disposition of an appeal upon factual grounds other than those relied upon by the trial court. Presnell v. Georgia, supra; Eaton v. City of Tulsa, 415 U.S. 697(1974); Cole v. Arkansas, 333 U.S. 196(1948). To the extent that the affirmance of any of petitioners' cases was affected by information outside the trial record, their due process rights were further violated.

The Court's sua sponte consultation of extra-record materials and information in the consideration of capital appeals contravenes petitioners' fundamental rights to due process of law.

B. The Right to the Effective Assistance of Counsel

The guarantee of the effective assistance of counsel is as applicable on appeal as at trial. Anders v. California, 386 U.S. 738(1967); Ross v. State, 287 So2d 372(Fla.2d DCA 1973); Davis v. State, 276 So2d 846(Fla.2d DCA 1973), aff'd 290 So2d 30(Fla.1974). This right is denied not merely by the denial of counsel but by any hampering "restrictions upon the function of counsel in defending a criminal prosecution in accord with

fendant's Confrontation Clause rights are not limited to trial of the case but attach wherever evidence is admitted relevant to the issues to be adjudicated. "A leading principle that pervades the entire law of criminal procedure is that, after indictment found, nothing shall be done in the absence of the prisoner." Lewis v. United States, 146 U.S. 370, 373(1892). A defendant is entitled to confront the witnesses against him in any proceeding "after the case is called for trial which involves his substantial rights." Hopt v. Utah, 110 U.S. 574, 578(1884). See also Rogers v. United States, 422 U.S. 35, 39-40(1975). The evidence which this Court has received has never been tested by the equivalent of cross-examination, cf. Ohio v. Roberts, ___U.S.___ 100 S.Ct. 2531(1980), and is of a notoriously unreliable sort (See ¶ D. infra). While in some limited circumstances, hearsay reports might be admissible if the prosecution makes a solid factual showing of the preparer's "unavailability" as a witness at the time of trial and if, in addition, the report bears adequate "'indicia of reliability'", Mancusi v. Stubbs, 408 U.S. 204, 213(1972), in the present cases, defense counsel

counsel from the process of weighing such information proceeds from the:

> erroneous premise that the participation of counsel is superfluous to the process of evaluating the relevance and significance of aggravating and mitigating facts. Our belief that debate between adversaries is often essential to the truth-seeking function of trials requires us also to recognize the importance of giving counsel an opportunity to comment on facts which may influence the sentencing decision in capital cases.

Gardner v. Florida, supra, 430 U.S. at 360. On the appeal of a capital case, no less than at trial, the Sixth Amendment guarantees "the guiding hand of counsel" to a criminal defendant. Powell v. Alabama, 287 U.S. 45,57(1932).

C. The Right to Confrontation

The Sixth Amendment provides that "[i]n all criminal prosecutions the accused shall enjoy the right . . . to be confronted with the witnesses against him." See generally Pointer v. Texas, 380 U.S. 400(1965); Douglas v. Alabama, 380 U.S. 415(1965).

> The primary object of the constitutional provision in question was to prevent depositions or ex parte affidavits, such as were sometimes admitted in civil cases, being used against the prisoner in lieu of a personal examination and cross-examination of the witness, in which the accused has an opportunity, not only of testing the recollection and sifting the conscience of the witness, but of compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief.

Mattox v. United States, 156 U.S. 237, 242-243(1895). A defendant's Confrontation Clause rights are not limited to trial of the case but attach wherever evidence is admitted relevant to the issues to be adjudicated. "A leading principle that pervades the entire law of criminal procedure is that, after indictment found, nothing shall be done in the absence of the prisoner." Lewis v. United States, 146 U.S. 370, 373(1892). A defendant is entitled to confront the witnesses against him in any proceeding "after the case is called for trial which involves his substantial rights." Hopt v. Utah, 110 U.S. 574, 578(1884). See also Rogers v. United States, 422 U.S. 35, 39-40(1975). The evidence which this Court has received has never been tested by the equivalent of cross-examination, cf. Ohio v. Roberts, ___U.S.___ 100 S.Ct. 2531(1980), and is of a notoriously unreliable sort (See ¶ D. infra). While in some limited circumstances, hearsay reports might be admissible if the prosecution makes a solid factual showing of the preparer's "unavailability" as a witness at the time of trial and if, in addition, the report bears adequate "'indicia of reliability'", Mancusi v. Stubbs, 408 U.S. 204, 213(1972), in the present cases, defense counsel

> a similar result to that reached under similar circumstances in another case.... in light of the other decisions and determine whether or not the punishment is too great'. State v. Dixon, 283 So2d 1, 10(1973).

let alone the preparers of the reports.

D. The Eighth Amendment Right to Reliability in Capital Sentencing

In Woodson v. North Carolina, 428 U.S. 280, 305(1976) the Supreme Court recognized that, under the Eighth Amendment "death is a punishment different from all other sanctions in kind rather than in degree." "[T]his qualitative difference between death and other penalities calls for a greater degree of reliability when the death sentence is imposed." Lockett v. Ohio, 438 U.S. 586, 604(1978). Accordingly,

> [t]o insure that the death penalty is indeed imposed on the basis of 'reason rather than caprice or emotion,' we have invalidated procedural rules that tended to diminish the reliability of the sentencing determination. The same reasoning must apply to rules that diminish the reliability of the guilt determination. (Footnote omitted). Beck v. Alabama, ___ U.S. ___, 100 S.Ct. 2382, 2389-90 (1980).

It is hard to conceive of evidence more fraught with danger when considered ex parte than the subjective psychiatric/psychological/correctional reports received by this Court, unsubjected to professional explanation and adversarial cross-examination. Addington v. Texas, 441 U.S. 418(1979); Smith v. Estelle, 602 F.2d 694(5th Cir.1979), cert. granted, 100 S.Ct. 1311(1980). See generally, Ennis & Litwack, Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom, 62 Calif. L. Rev. 693(1974). As the Supreme Court of the United States stated in Kent v. United States, 383 U.S. 541, 563(1966):

> [T]here is no irrebutable presumption of accuracy attached to staff reports. If a decision on [the sentence of life or death] . . . is 'critically important' it is equally of 'critical importance' that the material submitted to the judge . . . be subjected, within reasonable

> limits . . . to examination, criticism and refutation.

The risk that an appellant may be the victim of inaccurate information is precisely the same here as in Gardner. In a case where a mistake may send an appellant to his electrocution, the risk is simply not a constitutionally acceptable one:

> From the point of view of the defendant [the penalty of death] is different in both its severity and its finality. From the point of view of society, the action of the sovereign in taking the life of one of its citizens also differs dramatically from any other legitimate state action. It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion.

Id. at 357-358. See also Godfrey v. Georgia, ___U.S.___, 64 L.Ed. 2d 398, 409(1980). In the words of Mr. Justice Overton, "often secrecy is considered the opposite of credibility," Forbes v. Earle, 298 So2d 1, 4(Fla. 1974).

E. The Eighth Amendment Right to Proportionality in Capital Sentencing

The Eighth Amendment requires that the death penalty be applied in accordance with a rational and regular sentencing procedure which takes into account both the nature of the crime and the culpability of the individual offender. Woodson v. North Carolina, 428 U.S. 280, 303(1976). The constitutionality of Florida's capital punishment statute was upheld in 1976 on the explicit assumption that review in this Court would be satisfactory to guard against capricious and disproportionate infliction of the death penalty:

> [M]eaningful appellate review of each . . . [death] sentence is made possible, and the Supreme Court of Florida . . . considers its function to be to '[guarantee] that the [aggravating and mitigating] reasons present in one case will reach a similar result to that reached under similar circumstances in another case.... in light of the other decisions and determine whether or not the punishment is too great'. State v. Dixon, 283 So2d 1, 10(1973).

Proffitt v. Florida, 428 U.S. 242, 251(1976). The secret use of sentencing evidence by this Court "creates the risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty. When the choice is between life and death, that risk is unacceptable and incompatible with the commands of the Eighth and Fourteenth Amendments." Lockett v. Ohio, 438 U.S. 586, 605(1978). Accord: Beck v. Alabama, ___U.S.___, 100 S.Ct. 2382, 2389(1980).

The sua sponte request and receipt of evidence by this Court makes it impossible to assure either that the Court's general appellate function or the Court's role as the third step in the "trifurcated" sentencing process will not result in the capricious or disproportionate imposition of the death penalty. The formal record on the basis of which the death sentence is imposed will necessarily be incomplete, with parts of it invisible to counsel, to the trial courts, to the federal courts, and to this Court itself as Justices change over time. This is a constitutional defect, for the handling and treatment of confidential sentencing information in a death case is not simply a matter of this Court's discretion. In Gardner v. Florida, supra, the State argued that "trial judges can be trusted to exercise their discretion in a responsible manner, even though they may base their decisions on secret information." 430 U.S. at 360. The Court expressly rejected this argument as "clearly foreclosed," ibid., by Furman v. Georgia, 408 U.S. 238(1972) and "inconsistent with the basis upon which the Florida capital-sentencing procedure was upheld, Proffitt v. Florida, 428 U.S. at 254," id. at 360 n. 11. The Court recognized an Eighth Amendment right to a full and complete record in order to insure that the death penalty is applied proportionately and non-arbitrarily:

> Since the State must administer its capital sentencing procedures with an even hand, see Proffitt v. Florida, 428 U.S. at 250, it is important that the record on appeal disclose to the reviewing court the considerations

> which motivated the death sentence in every case in which it is imposed. Without full disclosure of the basis for the death sentence, the Florida capital-sentencing procedure would be subject to the defects which resulted in the holding of unconstitutionality in Furman v. Georgia. Gardner v. Florida, supra, 430 U.S. at 361 (footnote omitted).

Further, where this Court opens itself to a major category or kind of information in some cases, but not others, proportionality is precluded.

Where neither the trial records nor this Court's decisions reflect accurately all of the information before the court in deciding capital cases, trial and appellate counsel, trial judges, and federal courts on review are deprived of the necessary basis on which to compare cases and insure that consistent standards are being applied in capital sentencing.

The receipt by this Court of different information in different cases -- information which was not before the trial jury or judge -- has eviscerated the system of checks and balances the trifurcated Florida death penalty structure was designed to guarantee. See Proffitt v. Florida, supra; Miller v. State, 332 So2d 65(Fla. 1976); Messer v. State, 330 So2d 137 (Fla. 1976). It has destroyed the statewide "consistency, fairness, and rationality in the evenhanded operation of the state law" which the Supreme Court of the United States believed to be guaranteed by the Florida capital sentencing procedure when it found that procedure facially constitutional in Proffitt v. Florida, supra, 428 U.S. at 260. The Court's practice thus has prejudiced all capital appellants, both those for whom information may have been received and those for whom it was not.

F. The Right Against Self-Incrimination and the Right of the Assistance of Counsel in Deciding Whether to Exercise that Right

An interview with correctional employees or mental health professionals who are obtaining information from an inmate is fundamentally unlike a court-ordered psychiatric examination after a defendant has himself put his sanity in issue. In the

latter case, the defendant may be deemed to have waived the right to object to such an interview. In the former case, however, the Fifth Circuit has recently held that the State may not interview an inmate without notice and waiver of his rights, when the interview will subsequently be admitted in a capital sentencing proceeding, because the inmate has a Fifth Amendment right to refuse to participate in the interview and a Sixth Amendment right to consult with his counsel concerning whether to be interviewed. Smith v. Estelle, 602 F.2d 694(5th Cir. 1979), cert. granted, 100 S.Ct. 1311(1980).

It appears clear that in the present cases, as in Smith, the death row prisoners were not told that the information derived from interviews conducted by correctional employees or mental health professionals would be forwarded to this Court, nor were they told that they had a right to refuse to participate in the interviews. See Smith v. Estelle, supra at 602 F.2d 707-708. If, under the Fifth Amendment, "a defendant may not be compelled to speak to a psychiatrist who can use his statements against him at the sentencing phase of a capital trial." Smith v. Estelle, supra, 602 F.2d at 708, then that right was completely negated here.

Furthermore, petitioners were denied the advice of counsel at a critical stage of the sentencing proceedings in their cases. For, while an attorney may have no right to be present with an inmate during an interview by a psychiatrist, see United States v. Cohen, 530 F.2d 43(5th Cir.1976), the attorney has a highly important role in assisting the inmate to decide whether the inmate should waive his Fifth Amendment rights:

> This is a vitally important decision, literally a life or death matter. It is a difficult decision even for an attorney; it requires a knowledge of what other evidence is available, of the particular psychiatrist's biases and predilections, of possible alternative strategies at the sentencing hearing. For a lay defendant, who is likely to have no idea of the vagaries of expert testimony and its possible role in a capital trial, and who may well find it difficult to understand, even if he is told, whether a psychiatrist is examining his competence, his sanity, his long-term

> dangerousness for purposes of sentencing, his short-term dangerousness for purposes of civil commitment, his mental health for purposes of treatment, or some other thing, it is a hopelessly difficult decision. There is no reason to force the defendant to make it without 'the guiding hand of counsel' Powell v. Alabama, 287 U.S. 45, 57, 53 S.Ct. 55, 77 L.Ed. 158(1933).

Smith v. Estelle, supra, 602 F.2d at 708-709. See also Brewer v. Williams, 430 U.S. 387, 398(1977). These petitioners have been deprived of the advice of counsel as to their decisions whether to put their lives in the hands of prison personnel or other agents of the State. "The guiding hand of counsel is needed lest the unwary concede that which only bewilderment or ignorance could justify or pay a penalty which is greater than the law of the State exacts for the offense which they in fact and in law committed." Tomkins v. Missouri, 323 U.S. 485,489 (1945). Just as "a prisoner is not 'to be made the deluded instrument of his own conviction,' 2 Hawkins, Pleas of the Crown(8th ed. 1824),595," Culombe v. Connecticut, 367 U.S. 568, 581(1961)(opinion of Mr. Justice Frankfurter), neither may he be made the deluded instrument of his own execution.

G. Conclusion

The practice of this Court of requesting or receiving undisclosed information in capital cases has infected and prejudicially skewed its review of every death sentence. Under the Florida death penalty scheme, the ultimate safeguard for insuring that the process of imposing death sentences is fair, reliable and even-handed is the appellate review required to be provided by this Court. All capital appellants have suffered from this Court's practice of securing secret information. The capital sentencing process in Florida has been distorted from the form in which it was approved by the Supreme Court of the United States, and has become tainted at its highest and most important judicial level.

When the Court's decision is one involving the

ultimate penalty of death, the Constitution cannot tolerate anything short of full notice and disclosure of any and all facts being fed into the life and death equation. One of the tripartite pillars of the trifurcated sentencing process of Florida has become cracked.

V.

PRAYER FOR RELIEF

Based upon the foregoing, petitioners respectfully request their unconstitutional sentences of death be vacated and that the Court grant such other relief as may be deemed proper.

Respectfully submitted,

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I DO HEREBY CERTIFY that a copy hereof has been furnished to the Honorable Jim Smith, Attorney General, The Capitol, Tallahassee, Florida 32304 by hand delivery this 29th day of September, 1980.

Samuel S. Jacobson

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