IN THE SUPREME COURT OF FLORIDA

No. 70481

JOHN E. MILLS, JR.,

Petitioner,

vs.

RICHARD L. DUGGER, Secretary,
Department of Corrections, State of Florida,

Respondent.

PETITION FOR EXTRAORDINARY RELIEF, FOR A WRIT OF HABEAS CORPUS, REQUEST FOR STAY OF EXECUTION, AND APPLICATION FOR STAY OF EXECUTION PENDING DISPOSITION OF PETITION FOR WRIT OF CERTIORARI

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IN THE SUPREME COURT OF FLORIDA

JOHN E. MILLS, JR. Petitioner, v. RICHARD L. DUGGER, Secretary, Department of Corrections, State of Florida, Respondent.	EMERGENCY APPLICATION: Capital Case -- Execution Scheduled for Thursday, May 7, 1987.

Petitioner, John E. Mills, Jr., an indigent, death-sentenced prisoner who is scheduled to be executed this Thursday (May 7, 1987), respectfully urges that this Court enter an Order staying the execution to allow judicious and deliberate consideration of the claims presented herein, and, thereafter, that this Court issue its writ of habeas corpus.

I. INTRODUCTION

Mr. Mills is being held under sentence of death in violation of his rights under the First, Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States and under the Constitution and Laws of the State of Florida. Mr. Mills, was wholly denied his Sixth and Eighth Amendment rights in this capital case as a consequence of inexcusable unilateral and deficient acts and omissions by his appointed appellate counsel. Counsel's incomprehensible deficiencies prejudiced Mr. Mills in the gravest of ways: his conviction and sentence of death were upheld because critical, meritorious issues were not fairly and fully reviewed by this Court.

Moreover, in large part due to counsel's ineffectiveness, this Court's independent review of the record, Fla. Stat. Section 921.141, was wholly inadequate. Thus, Mr. Mills' rights under the First, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the Constitution and Laws of Florida were additionally violated by this Court's own review

process. Cf. Proffitt v. Florida, 428 U.S. 242 (1976) (Upholding Florida capital statute, in part, due to independent review function of Florida Supreme Court).

Mr. Mills is therefore entitled to the habeas corpus relief he seeks. At the very least, this Court should stay Mr. Mills' execution to allow judicious and deliberate consideration of the important issues raised. The Court is familiar with the difficulties CCR faces, and why CCR must file when it does. See In Re Rule 3.851, No. 69,931, Comments and Recommendations of the Capital Collateral Representative. In this case, CCR filed a Rule 3.850 motion nine days before execution, and conducted an evidentiary hearing. Today the trial court denied some claims because they should have been included on direct appeal. That is why this petition is filed.

Mr. Mills is entitled to habeas corpus relief as the prima facie showing here demonstrates. A stay should issue to allow Mr. Mills to present properly, and this Court to consider adequately, the issues raised.

II. JURISDICTION

This is an original action under Fla. R. App. P. 9.100(a). This Court has original jurisdiction pursuant to Fla. R. App. P. 9.030(a)(3) and Article V, sec. 3(b)(9), Fla. Const. This petition presents issues of ineffective assistance of appellate counsel, fundamental error, and other constitutional error in the direct appeal, the review of which is this Court's exclusive province.

Since Mr. Mills claim of ineffective assistance of counsel stems from acts and omissions before this Court, this Court has jurisdiction. Knight v. State, 394 So. 2d 997, 999 (Fla. 1981). Although the extraordinary writ of habeas corpus may not be used as a routine vehicle for a second or substitute appeal, this and

other Florida courts have consistently recognized that the writ must issue where the constitutional right of appeal is thwarted on crucial and important points due to the omissions or ineffectiveness of appointed counsel. See, e.g., Wilson v. Wainwright, 474 So. 2d 1163 (Fla. 1985); McCrae v. Wainwright, 439 So. 2d 768 (Fla. 1983); State v. Wooden, 246 So. 2d 755, 756 (Fla. 1971); Baggett v. Wainwright, 229 So. 2d 239, 243 (Fla. 1969); Ross v. State, 287 So. 2d 372, 374-75 (Fla. 2d DCA 1973); Davis v. State, 276 So. 2d 846, 849 (Fla. 2d DCA 1973), aff'd, 290 So. 2d 30 (Fla. 1974). The proper means of securing a hearing on such issues in this Court is a petition for writ of habeas corpus. Baggett, supra, 287 So. 2d at 374-75; Powe v. State, 216 So. 2d 446, 448 (Fla. 1968). Petitioner will demonstrate that the inadequate performance of his appellate counsel was so significant, fundamental, and prejudicial as to require issuance of the writ.

Furthermore, this Court has consistently maintained an especially vigilant control over capital cases. This Court has not hesitated to exercise its inherent jurisdiction to remedy errors which undermine confidence in the fairness and correctness of capital proceedings. Wilson v. Wainwright, 474 So. 2d at 1164-65. This Court must and does have the power to do justice. Fundamental error occurred during Mr. Mills' direct appeal; those errors cannot be allowed to stand uncorrected; and this Court should correct those errors pursuant to its inherent habeas corpus jurisdiction.

Because Mr. Mills through this habeas corpus petition seeks to litigate this Court's own errors when reviewing this case on direct appeal, the instant application appropriately falls with this Court's habeas corpus jurisdiction.

III. STATEMENT REGARDING CITATION

The record on appeal is cited as "R p. ____." All other citations to previous proceedings in this case are self-explanatory or are otherwise explained.

IV. MR. MILLS WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL, AND WAS DEPRIVED OF AN ADEQUATE "INDEPENDENT REVIEW" OF THE RECORD BY THIS COURT.

A. Ineffective Assistance of Appellate Counsel: The Legal Standards

The right to a full and meaningful direct appeal, and to the effective assistance of counsel for purposes of that appeal, is guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, Articles I and V of the Florida Constitution and Florida statutory law. See, e.g., Evitts v. Lucey, 469 U.S. ___, 105 S. Ct. 830, 83 L.Ed.2d 821 (1985); Proffitt v. Florida, 428 U.S. 242, 96 S. Ct. 2960, 49 L.Ed.2d 913 (1976); State v. Dixon, 283 So. 2d 1 (Fla. 1973); Art. V., Section 3(b)(1) Fla. Const.; Section 925.035 et. seq., Fla. Stat. (1985). As this Court has explained, "The basic requirement of due process in our adversarial legal system is that a defendant be represented in court, at every level, by an advocate who represents his client zealously within the bounds of the law." Wilson v. Wainwright, 474 So. 2d 1162, 1164 (Fla. 1985) (emphasis supplied).

In Wilson, this Court explained that the appropriate standard for analyzing a claim of ineffective assistance of appellate counsel is the standard established in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674, reh'g denied, 467 U.S. 1267, 104 S. Ct. 3562 (1984). See, Wilson v.Wainwright, supra, 474 So. 2d at 1163.

Generally, therefore, a petitioner seeking habeas corpus relief on the basis of an attorney's ineffective appellate representation must demonstrate: (i) counsel's performance was

deficient; and (ii) prejudice. As will be discussed below, Mr. Mills undeniably can.

However, as is also discussed below, because counsel's deficiencies in this case resulted in a complete abrogation of his right to counsel, Mr. Mills need not show prejudice, for prejudice must be presumed. See, United States v. Cronic, ___ U.S. ___, 104 S. Ct. 2039, 2047, 2049 (1984); see also, Anders v. California, 386 U.S. 738 (1967); Evitts v. Lucey, supra.

A showing of actual prejudice under Strickland v. Washington is unnecessary whenever "there is an actual or constructive denial of counsel altogether, for whatever reason." Aldrich v. Wainwright, 777 F.2d 630, 633 (11th Cir. 1985), citing Strickland v. Washington, 466 U.S. 668 (emphasis supplied). Likewise, "[p]rejudice can also be presumed if there is a fundamental break down in the adversarial process." Id. at 634; accord Blake v. Kemp, 758 F.2d 523, 533 (11th Cir. 1985). These exceptions to the prejudice requirement follow from the United States Supreme Court's analysis in United States v. Cronic, 466 U.S. 648, 104 S. Ct. 2049, 80 L.Ed.2d 657 (1984).

In Cronic, the Court explained that, although a showing of prejudice is generally required, a defendant need not show specific prejudice when "counsel entirely fails to subject the prosecution's case to meaningful adversarial testing," thereby making the "adversary process itself presumptively unreliable." Id. at 655. This presumption arises because "[t]he very premise of our adversary system of criminal justice is that partisan advocacy on both sides of the case will best promote the ultimate objective that the guilty be convicted and the innocent go free." Id. at 655, quoting Herring v. New York, 422 U.S. 853, 862 95 S. Ct. 2550, 45 L.Ed.2d 593 (1975). No such advocacy has ever existed in this case.

The direct appeal proceedings in this case were wholly devoid of any fair testing of Mr. Mills' conviction and sentence.

Cronic supra; cf. J.L. Smith v. Wainwright, 777 F.2d 609, 620 (11th Cir. 1985). Appellate counsel,

> []entirely fail[ed] to subject the prosecution's case to meaningful adversarial testing . . .

Cronic, supra, 104 S. Ct. at 2057. Consequently, the results of such a proceeding are inherently unreliable and untrustworthy. Id. at 2047, 2049. In short, in this case, there was a "fundamental breakdown in the adversarial process," Aldrich, supra, because Mr. Mills' appellate attorney did not act as effective advocate.

B. This Court's Review

Moreover, in part because of counsel's deficiencies, this Court's own "independent review" of the record, Proffit, supra, was inherently flawed. Consequently, critical constitutional claims which called into question the proceedings resulting in Mr. Mills' conviction and sentence of death were ignored.

V. THE UNRAISED, UNRECOGNIZED CLAIMS

A.

> MR. MILLS WAS TRIED FOR PURPORTEDLY BEING A BAD PERSON, FOR BEING A MUSLIM, FOR SUPPOSEDLY HATING WHITES, AND FOR BEING A CRIMINAL, INSTEAD OF FOR FIRST-DEGREE MURDER, AND HIS SENTENCE OF DEATH WAS SIMILARLY TAINTED, IN VIOLATION OF THE FIRST, FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS

Because of limitations of time, Mr. Mills cannot fully detail this claim. However, the record reveals that the state introduced evidence that supposedly showed that Mr. Mills was "a criminal," that he was "a Muslim," that he called white people "caucasians" or "crackers" or "devils," and that he hated white people. The state did not use this evidence for any legitimate purpose, i.e., to show intent, motive, or common scheme or plan. Even if it had, the prejudice from this evidence outweighed any probative value.

The state used this evidence for one reason, and said as

much, in closing argument, to prejudice the jury:

> Major Hines is a terrible witness. He was a terrible witness. He was put on the stand for a very specific reason. I wanted you to see another one of Boone Mills' friends.
>
> You know, there's something real interesting about Major Hines. If you remember his testimony, he said that Boone talked to him. Told me that sometime in the beginning of the year, and then he told Mr. Randolph it might have been June or July, and I think Mr. Harley cleared up when he asked the defendant could he have talked to Major Hines in June or July. And he said, "No, I couldn't have."
>
> "Could you have talked to him any time but in the beginning of the year?"
>
> He said, "No. It had to be in the beginning of the year."
>
> But the reason Major Hines was up there, you saw Major Hines. What did Boone Mills ask him about? He wanted to go do some burglaries, knock off some Caucasians.
>
> You know, picture in your mind Major Hines. Did that word "Caucasian" belong out of that mouth? Does he look like the type of man that is literate enough to know that big a word? You heard the rest of his vocabulary. He couldn't hardly string three words together in a row. That word "Caucasian" is what gives what he said the ring of truth. Because you know where he got that word? Right there, the man that refers to white people as Caucasians. Major Hines couldn't have figured that word out in 20 years.
>
> Think about the rest of his vocabulary. It just wasn't there, ladies and gentlemen. He got that word from one source, Boone Mills.
>
> You shall know them by their friends.
>
> . . . .

(R 1853-54).

> . . . .
>
> Ladies and gentlemen, the Defendant, John Mills, Jr., is consumed with hatred. He is consumed with hatred. And he hates the people who he thinks have been oppressing him. Listen to the testimony of Fawndretta Galimore. She said he called them devils. Major Hines --
>
> MR. RANDOLPH: Your Honor, I have to object. He has gone a long way in his closing argument. The closing statement he

is making now is meant only for to show, to prejudice this jury against my client along those lines.

THE COURT: Just stay with the facts, Counselor.

MR. KIRWIN: Judge, I am staying with the facts, and I have no intention of prejudicing this jury or any other jury.

He is consumed with hatred. He can't help but hate, and one man that he had no reason to hate, no reason to harm, the man that extended him a helping hand, the man that let him use the phone, the man that let him in his house, is dead at the hands of John Mills, Jr., this defendant.

(R 1968).

. . . .

The first witness, of course, was the Defendant, John Mills. And the first thing we found out, of course, is that he has been convicted of four felonies.

You know, for awhile during the course of the trial, it looked like the only convicted felon in the whole thing was Michael Fredrick, with his three felonies and one misdemeanor. But now we know that's not so.

You know, Boone Mills has got the same record as Michael Fredrick, just a little worse. He's got four felonies and Michael Fredrick has got three felonies. Neither one of them are sterling characters. They both are convicted felons.

(R 1891).

As the legal discussion presented in Section VI, infra, of this petition demonstrates, these and other remarks appearing throughout the record rendered the entire trial and penalty phase proceedings fundamentally unfair. Mr. Mills' first, fifth, sixth, eighth, and fourteenth amendment rights were abrogated. The jurors were simply misled and misinformed -- matters which have no place in a capital trial and sentencing were the core of the prosecution's efforts to convict and obtain a sentence of death. Under no construction could it be said that such matters -- such evidence and argument -- had no effect on the outcome of the guilty/innocence and penalty phases. As discussed infra, these proceedings involved more than fundamental error -- Mr. Mills was

convicted and sentenced to death during the course of proceedings which were as egregious as anything imaginable.

B.

THE STATE'S ARGUMENT AT GUILT/INNOCENCE IMPROPERLY INJECTED THE EXPERTISE OF THE PROSECUTOR INTO THE JURY DETERMINATION, WAS IRRELEVANT, INFLAMMATORY, AND PREJUDICIAL, STRESSED IMPROPER AND ILLEGAL INTERPRETATIONS OF THE EVIDENCE, AND WAS DESIGNED TO INFLAME PASSIONS AND RACIAL BIAS, IN VIOLATION OF MR. MILLS' FIRST, FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENT RIGHTS.

As has been shown, the jury had to accept Fawndretta's and Fredrick's testimony in order to convict Mr. Mills and for the court to sentence him to death. There was no connection between Mr. Mills and the offense except through these two conduits. The State, through the prosecutor, purchased and coached these witnesses' testimony, and their credibility was the only issue for resolution. The prosecutor then improperly vouched for "his" witness. In addition, this was a racially charged case even without gratuitous racial epithets. The prosecutor completely abandoned any sense of propriety and decorum, mocking Mr. Mills for his race and choice of religion, exhorting the jury to believe Fredrick because the prosecutor professed belief, dropping to his knees in a plea for mob retribution, and whipping an already prosecution conditioned jury into a vengeance verdict, tossing constitutional proscriptions to the wind.

Simply put, the entire argument by the prosecutors at guilt/innocence and sentencing was as fundamental constitutional error as any imaginable. A nonexhaustive catalogue includes the following:

a. <u>Prosecutor as Expert Detective Witness</u>

The prosecutors in this case were quite literally witnesses, and at the same time, advocates. This is an untenable and unconstitutional dual role. The prosecutors told the jury that they had investigated, that they had interrogated, that they had

cut deals to the "honest" defendants, and that they had left no stone unturned in their independent pursuit for the truth. The jury was told that these exemplary prosecutors through hard work, brains, and perseverance had cracked the case and solved it beyond a reasonable doubt.

The self-lauding was thick, and illegal:

> The shirt, you know, couldn't Mr. Fredrick have had that shirt somewhere else? Ladies and gentlemen, I tried to eliminate every spot I knew of where Michael Fredrick went and lived; and the important thing about that is, that shirt is too small for Michael Fredrick. You saw him. He is huge, he is big. Take that shirt back there and look.
>
> And I asked him, I said, "Michael Fredrick, at my request, have you put that shirt on?"
>
> And he said, "Yes, sir, I have."
>
> And I said, "Does that shirt fit you?"
>
> And he said, "No, sir, it does not."
>
> And Mr. Roosevelt Randolph did not say, "Mr. Fredrick, let's see that shirt on you." You know why? Because he knows that shirt doesn't fit Michael Fredrick, it is too small. The one it fits is seated right there.

(R 1906-07).

. . . .

> That is ludicrous.
>
> Who was there to corroborate this? No one. Was there one single piece of corroboration to Boone Mills' testimony that he left, or Michael Fredrick left him on Kilgore Road, and came back two or three hours later?
>
> Now, as I remember it, the only, absolutely only possible corroboration to anything that he said came from Jessie Ransom. And Jessie Ransom could corroborate it to the extent that he could say, "Sometimes me and my brother and a couple of other people painted the outside of the cafe and the house. I don't know when it was. I just remember something about a school bus."
>
> I couldn't quite figure that one out, but that's all he remembers. That is the only piece of corroboration.
>
> You know, it's a good thing that Michael Fredrick is not on trial and I am trying to

convince a jury that Michael Fredrick is the murderer based on John Mills' story. [I don't have one shred of corroboration for what John Mills told you today. There is not a single shred of it.]

. . . .

(R 1893-94).

One thing is, and I'm sure you noticed, Michael Fredrick said that on the morning of the day that Les Lawhon was murdered, he was picked up at his trailer by Boone Mills; and I'm sure you noticed that Fawndretta Galimore said that on the morning of the day Boone Mills returned with all that property, on that morning of that day, she and Boone had gone up there, had picked Michael up, and gone down to the Wakulla Nursing Center to talk to his mother about getting some dobermans, which were to be payment for that bond. Obviously, one of them is wrong. Both those things couldn't have happened. But, does it necessarily mean that one of them is lying? We didn't know. We weren't sure. So, just like I did here today, we checked with somebody who would know. We went down. Fawndretta Galimore told you that they went down there to talk to Willie Mae Gavin, who is Michael Fredrick's mother; that she saw Willie Mae Gavin there; that they went down there in her green Datsun. And she and Boone and Michael went there; that Michael got out of the car; went and talked to his mother and came back; that she never got out of the car; Boone didn't get out of the car, and that the mother didn't come up to the car. She remembered all that about that day.

So I said to Willie Mae Gavin, I said, "Willie Mae, do you work on Fridays?"

And that is important, ladies and gentlemen. This is very important. March 5, 1982, as all the testimony has shown, was a Friday. "Do you work on Fridays?"

"No, I don't work on Fridays."

But we wanted to be sure. We said, "Now, Ms. Gavin, how would you know if you worked a particular Friday?" Just like Mr. Randolph asked her, "Don't you come in on emergencies?" That's the first thing that occurred to us.

We said, "Is there any way we can find out if you ever came in on that Friday?"

And she said, "Yes, I get paid when I come in, and if I come in on any day, they mark off the hours that I'm there on my pay sheet."

And I said-, "Ms. Gavin, have you looked at

your pay sheet for that day, March 5, 1982?"

"Yes, I have. I did not work that day. But I remember a day, and it was a Saturday, and I remember a day when Michael Fredrick, my son, came to me to borrow some money."

"How did he get there," I asked her.

She said, "He came with Fawndretta Galimore and Boone Mills."

"What did they come up in?"

"A little green car."

"Did you go to the car?"

"No, I stayed inside."

"Did they come in?"

"Michael came in."

Fawndretta Galimore is not lying, did not lie under oath. She is mistaken about the day. There is only one day like that. Both she said that and Willie Mae Gavin said that. She is mistaken about the day. She is mistaken about that morning. But what does she remember about that afternoon? She remembers them leaving and coming back a long time later. She thought it was two or three hours. They left about 1:00; came back maybe three hours later. She said that Boone grabbed the shotgun, or a gun, or a long gun, and said he was going hunting and went out the door. Michael Fredrick was in the truck. And it was another three hours later when Boone came back with all the property.

And I asked her what time it was when he came back, and she said it was about 6:00 o'clock. Well, ladies and gentlemen, if you subtract one from six you get five, not three and three, but five. And I'm sure that Mr. Randolph is going to say if they left at 1:00 and came back at 3:00, and then left again and grabbed that gun and said they were going hunting, and left then, that had to be at least 4:00 o'clock. And it seems highly improbable, he'll say, that between 4:00 o'clock and 4:30, when the fire was reported, that they got to the house, they went and took Les lawhon, drove him the seven miles, killed him, and drove back and took all the property out of the house and started the fire. And I will agree with him that would be unlikely. But I asked her, "Were you watching the clock?"

"No."

"How do you know how much time passed?"

"Well, it felt like three hours; it seemed

like three hours."

"You know when they came back or when Boone came back?"

"Yes, he came back at 6:00 or around 6:00."

Well, ladies and gentlemen, what I'm suggesting to you is, again, I don't think she is lying, I think she is telling it as best she can remember. She's not good with times.

(R 1880-84).

. . . .

I said, "Now, the way you knew that was because the Reverend Lawhon had told you his son was working there, and after he had told you his son was working there, you saw his son working there. Isn't that right?"

"Yes, that's it."

"Well, would you be interested in knowing that Reverend Lawhon didn't even start selling insurance until some six months after his son left that job?"

He said, "Yeah, I would be."

And that's why I had to bring Reverend Lawhon back in here again, just like I have had to drag him through a couple of other times, and that's why I had to bring Mr. Pigott in here again, just to show you that Greg Rosier does not deserve your belief.

Ladies and gentlemen, you saw him lie right there in front of you. You saw him lie. He didn't know what he was talking about. He started off with Mr. Randolph, one of those conversations was in late March or early April. And I said, "When was that?"

"Well, maybe it was middle March, late March, or early April."

I said, "Wait a minute. You said late March." And it is important.

He said, "Well, no, you know, I think it could have been early March. Maybe late February. Maybe March, the end of March."

I said, "Wait a minute, Mr. Rosier."

He said, "Okay. I'm going to stick with late March. I'm going to stick with late March." And he said, "Now, I have trouble with dates, but I remember this one because I sold a car in the last part of December; and so, therefore, I remember this conversation in the middle of March."

Ladies and gentlemen, if that makes sense to anyone on this panel, it doesn't make sense to me.

Now, what he said, he said, "Well, there was this man Lawhon, "and Michael said," I want to make a hit on Lawhon." And he thought he wanted to borrow money. And so I asked him how he knew which Lawhon he was talking to, and that's when we got into this whole thing.

"Oh, I've seen them there together."

I said, "Didn't you tell me once you had never seen them?"

"Yes, but I have seen them once." And then he said, "No, you know, come to think of it, I have seen them at least a couple of times."

I said, "You told me before it was just once, and you told me before that it was no times."

"Well, I thought about it some more now."

I think you all know why I put Sheriff Harvey back on the stand. I asked him about a press release that he made, and it was an important press release, important for the testimony of Greg Rosier, because it explains how Greg Rosier got this Pigott's connection, because, ladies and gentlemen, it is not possible any other way.

If you remember, Michael Fredrick said that he hadn't been to Piggot's since he had first gotten in trouble as a youth a long, long time ago. He just hadn't been there.

And Reverend Lawhon didn't sell insurance to Greg Rosier until after Les Lawhon had left Pigott's. There is no way in the world, in the world, that what Greg Rosier told you is true.

Mr. Randolph is saying, "Well, you know, couldn't it be they were there and just met there and were talking there?" But, you know, there is an important part of Greg Rosier's testimony. I asked him specifically because I was worried about that, "Now, when you saw him there, that was after his father told you he worked there? Isn't that true?"

"Yes, it's true." Two things. And I said one of them already:

Mr. Lawhon, Reverend Lawhon, never sold insurance until six months after Les had left Pigott's.

(R 1903-05).

. . . .

"I thought he was talking about all this stuff that John Mills had brought to the house after he and Michael Fredrick had left together."

Well, I think that was reasonable for her to assume that. It was very reasonable for her to assume that because John Mills never told her about the shotgun and John Mills never told her about the money. John Mills was keeping that for himself, the money that Michael Frederick was paying back.

(R 1889).

Ladies and gentlemen, the evidence in this case, I think, is more than just beyond a reasonable doubt. I think the evidence in this case is overwhelming. I suggest to you that each and every one of you can fulfill your solemn oath and return a verdict that speaks the truth. Find John Mills, Jr. guilty of murder in the first degree, premeditated murder, and I think you can do it with a clear conscience.

(R 1909).

. . . .

Ladies and gentlemen, for the last two and a half days Mr. Harley and I have put on 40 witnesses, 40 witnesses. I didn't want John Mills, Jr. to prove a single thing. I put 40 witnesses in that chair and we introduced 43 pieces of evidence. I took the burden of proof and I put facts on through that witness stand and through those exhibits which destroy that presumption of innocence that he's talking about.

(R 1968).

. . . .

But let me suggest something to you. If you disbelieve everything or anything or a majority of what Boone Mills told you, you have got to take another step, because then you have got to say why; why did he lie. Why did he lie to Al Gandy? Why did he lie to me?

That's not shifting the burden of proof. I don't want to shift the burden of proof. That's why we spent three days in this trial putting on witnesses, 40 of them.

(R 1970).

. . . .

Ladies and gentlemen, the point of what I'm saying is, his story is ludicrous. I'm not saying that he had a duty to get up and tell you anything. But what I am saying is, when he took an oath to tell the truth and sat there and told you the story that was

perfectly ludicrous, you have the right to say two things: Number one, Boone Mills, that story is perfectly ludicrous. And then, number two, why would you lie to me if you didn't have something to hide? The same reason he lied to Al Gandy, because he did have something to hide.

Ladies and gentlemen, I think most everything has been said. Mr. Randolph said Michael Fredrick was coached. Michael says, I think is the name that he said, is coached, well-coached. He said he was a well-coached witness. But, you know, you remember that he had reference to two previous statements made by Michael Fredrick. He had them in his hand, Mr. Randolph did, when he was cross examining Michael Fredrick. Two previous statements.

Michael Fredrick stood up for an hour of cross examination. Was there anything in what he said that struck any of you as being ludicrous? When you look, as Mr. Randolph has asked you to do, what John Mills, Jr. told you and what Michael Fredrick told you and compare the two, listen to the ring of truth in what they said. Did any of what John Mills, Jr. said strike any of you as the truth? Any of it, one part of it. No.

Standing out in the rain looking at his woods. It's been a long trial, it's been a long day. Ladies and gentlemen, when you go back and you deliberate, and you think about this, take with you not only your memory of the words that were spoken, take with you your memory of the witnesses as they spoke from the stand. Take with you the way Michael Fredrick testified.

You know, coaching doesn't help a person be stronger. Coaching doesn't help a story ring true. Only truth, only truth.

(R 1972-73).

. . . .

Michael Fredrick has no reason to lie about Boone Mills. If he wanted to tell us about who was involved to keep himself out of the electric chair, how about this mystery person that's in the truck? How about this other black male that is supposedly driving the truck? He could have told us about him. And, ladies and gentlemen, Michael Fredrick did tell us about him, he certainly did, and he told us who that man was, and that man is seated right there, John Mills, Jr. He's guilty of murder of Les Lawhon, premeditated murder of the worst sort. I don't apologize for getting down on my knees. I needed to illustrate a point.

(R 1975).

b. Prosecutor Has to Do Some Bad Things Sometimes to Get At the Truth.

A prosecutor cannot vouch for the veracity of witnesses.

The prosecutors herein bent over backwards to violate this rule:

> Why, I'm sure you ask, why should the State of Florida be even connected with a criminal like Michael Fredrick? Why? Ladies and gentlemen, the answer is that man seated right there, Boone Mills, holding that shotgun to Les Lawhon's face and blowing his skull apart. That's why the State of Florida needs to deal with people like Michael Fredrick.
>
> I'm not proud of Michael Fredrick, not proud of him at all. I'm not proud of what I was forced to do. Michael Fredrick was a liar. But, you know, he lied terribly, and I mean that in two ways: Number one, he lied a lot. As Mr. Randolph pointed out, he told at least ten different stories. And recall, if you would, the stories that he told.

(R 1843).

. . . .

> Michael Fredrick was a stupid liar. He is a bad liar. He can't lie convincingly. He can't do it. He tried for three days and he could never support one of his lies. He could never convince one of the officers. And they just kept asking him questions. And finally, finally, he got painted into a corner, and the only way out of that corner, ladies and gentlemen, was the truth. That's the only way.

. . . .

(R 1844).

> And I think Michael Fredrick finally learned a lesson that most people in society learn as little children at their parents' knees.
>
> You can't tell one lie, you have got to tell 100 lies to cover up for your first lie. And you can't be convincing when you tell a lie because you have got to think of what your next lie is going to be and what your last lie was. How can you be convincing? You can't. There is only one way to be convincing. There is only one way to be strong. There is only one way to be sure. It is to tell the truth. Then you don't have to do anything but remember what happened. You don't have to fabricate, you don't have to plan ahead, you don't have to watch out for the pitfalls behind. You just tell what happened as you remember it. And that's the beauty of truth. And that's the lesson that most children learn early in life, and that is the lesson that Michael Fredrick didn't

learn until after his arrest. And I'm afraid it is a lesson that Boone Mills hasn't learned to this day.

(R 1849-50).

c. Prosecutor Mocking Religion, and Promoting Racial Hysteria.

The prosecutor, after getting an all-white jury to try a young black man for allegedly killing a white man, mocked the black man's religion, and repeatedly urged the jury to condemn this black man by purporting to quote what a plea-bargained co-defendant said the defendant said. The prosecutor turned the case into a race war.

> And she is Ans Serene's girlfriend. She is his queen; he is the king.

(R. 1880).

> No, he didn't say that, ladies and gentlemen. Like a thief in the night, he came up to her and he whispered in her ear so no one else could hear it: "Make sure you get rid of the stuff. Look under the bed. It's under there. Get rid of it. Move it. Take it."
>
> And what does she do? Just like the king ordered. She goes to the house.

(R 1897) [Muslim male is "King", girlfriend is "Queen"].

. . . .

> Major Hines is a terrible witness. He was a terrible witness. He was put on the stand for a very specific reason. I wanted you to see another one of Boone Mills friends.
>
> You know, there's something real interesting about Major Hines. If you remember his testimony, he said that Boone talked to him. Told me that sometime in the beginning of the year, and then he told Mr. Randolph it might have been June or July, and I think Mr. Harley cleared up when he asked the defendant could he have talked to Major Hines in June or July. And he said, "No, I couldn't have."
>
> "Could you have talked to him any time but in the beginning of the year?"
>
> He said, "No. It had to be in the beginning of the year."
>
> But the reason Major Hines was up there, you saw Major Hines. What did Boone Mills ask him about? He wanted to go do some

burglaries, knock off some Caucasians.

You know, picture in your mind Major Hines. Did that word "Caucasian" belong out of that mouth? Does he look like the type of man that is literate enough to know that big a word? You heard the rest of his vocabulary. He couldn't hardly string three words together in a row. That word "Caucasian" is what gives what he said the ring of truth. Because you know where he got that word? Right there, the man that refers to white people as Caucasians. Major Hines couldn't have figured that word out in 20 years.

Think about the rest of his vocabulary. It just wasn't there, ladies and gentlemen. He got that word from one source, Boone Mills.

You shall know them by their friends.

. . . .

(R 1853-54) [illiterate, ignorant black male not knowing word caucasian?].

. . . .

Ladies and gentlemen, the Defendant, John Mills, Jr., is consumed with hatred. He is consumed with hatred. And he hates the people who he thinks have been oppressing him. Listen to the testimony of Fawndretta Galimore. She said he called them devils. Major Hines --

MR. RANDOLPH: Your Honor, I have to object. He has gone a long way in his closing argument. The closing statement he is making now is meant only for to show, to prejudice this jury against my client along those lines.

THE COURT: Just stay with the facts, Counselor.

MR. KIRWIN: Judge, I am staying with the facts, and I have no intention of prejudicing this jury or any other jury.

He is consumed with hatred. He can't help but hate, and one man that he had no reason to hate, no reason to harm, the man that extended him a helping hand, the man that let him use the phone, the man that let him in his house, is dead at the hands of John Mills, Jr., this defendant.

(R 1968). The prosecutor repeatedly snapped off "cracker," "caucasian," and "I'm going to do to you what your forefathers did to my forefathers" (R 1867, 1865, 1880, 1860). Mocking religion, suggesting that any adult black person, regardless of

intellect, would not know what a caucasian is, and otherwise inciting racial bias is base, ignorant, and unconstitutional.

d. Prosecutor Telling Jury to Have Sympathy And Be Scared.

Scaring jurors into a guilty verdict is singularly unimpressive, and seriously unconstitutional. This prosecutor played sympathy, emotion and fear to the hilt:

> The crime that is charged here tonight is the worst crime known to man. And the way this crime, this particular murder was carried out is worse than most. It was done in a cold-blooded fashion. I know that is a tired phrase. But search your minds to see if you can find a phrase that is more apt. When a man whose hands are tied behind his back, who's already been knocked to the ground with a tire iron, is chased some 50, 60, 70, or 80 feet by a man with a double-barrel shotgun, who has already told him, "I'm going to do to you what your forefathers did to me." I don't envy you the job of laying sympathy aside in this case.

(R 1830).

. . . .

> [T]he States alleges it is that person right there, took a shotgun, double-barrel, .12 gauge shotgun, and stuck it within inches of Les Lawhon's face and literally blew his skull apart. Premeditated murder of the worst sort.

(R 1839).

. . . .

> The question that was posed to you from the very beginning of the testimony was who. Let's look at the actors. You know, often we find ourselves so interested in protecting the defendant's constitutional rights, that we lose sight of the true purpose of the judicial system.
>
> The true purpose of the judicial system is to punish those who do wrong, protect innocent people from those who do wrong, and to keep those wrongdoers from doing so again.
>
> Les Lawhon was a sickly man, disabled, young, early thirties. His wife was working full-time to help take care of him because he can't work. His family, all these are victims. All these are the people that we all too often lose sight of. Let's not lose sight of them tonight.
>
> We're going to talk about the defendant,

we're going to talk about the State's witnesses. But let's all keep just a little piece of our vision on the victims, the people who suffered as a result of this man.

(R 1840).

. . . .

And you know what else he did? He left Les Lawhon's body out there on that airstrip as the family and friends were looking for it, when a simple anonymous phone call could have put a lot of anguish to end. And why did he do that? Because he wanted to make sure that there was no evidence he had left at that scene, because he was the man that went back there. He was the man that killed Les Lawhon.

(R 1879).

. . . .

Ladies and gentlemen, that is nothing but a rabbit trail to divert you. Don't let you think about Boone Mills blowing Les Lawhon's face off. Think about a bandana with some unidentified white female; a rabbit trail.

. . . .

(R 1877).

It's a long seven miles for Les Lawhon. You can count on that. You can count on that. And they get to the airstrip, and I think there is probably a picture of the airstrip over there on the back of that blackboard and you'll be able to take that exhibit with you and take a look at that road. And you know that when Les Lawhon saw them turn down that road, you know what was going through his mind, and you know how we know that? Because he said at that time, "What are you going to do with me? What are you going to do with me?"

And Boone Mills: "I'm going to do with you what your forefathers did to my forefathers."

This is the same Boone Mills who told in a letter to Fawndretta Galimore, "I have told you time and time again about those Caucasians, what they'll do to you."

"I'm going to do to you what you did to me, what your forefathers did to my forefathers."

What do you think Les Lawhon was thinking then?

I asked Fredrick: "Did you look at him?"

"He was trembling even worse than

before."

(R 1887).

e. Prosecutor Telling Jury that Mr. Mills Is A Criminal.

Criminal convictions impeach, they do not prove character for criminality. The prosecutor blatantly ignored this basic tenet of evidentiary and constitutional law:

> The first witness, of course, was the Defendant, John Mills. And the first thing we found out, of course, is that he has been convicted of four felonies.
>
> You know, for awhile during the course of the trial, it looked like the only convicted felon in the whole thing was Michael Fredrick, with his three felonies and one misdemeanor. But now we know that's not so.
>
> You know, Boone Mills has got the same record as Michael Fredrick, just a little worse. He's got four felonies and Michael Fredrick has got three felonies. Neither one of them are sterling characters. They both are convicted felons.

(R 1891).

f. The Prosecutor Says His Witness Is More Polished Than Mr. Mills.

Throughout his closing arguments, the prosecutor emphasized that Mr. Fredrick was never shaken under cross-examination, and that his testimony had the "ring of truth" (R 1802, 1851-52). We now know why Fredrick was polished: the prosecutor had been rehearsing him. see Motion to Vacate (pursuant to Fla. R. Crim. P. 3.850).

But the prosecutor argued that Mr. Fredrick was to be believed because he had not been coached in testimony -- truth is just discernible, says the prosecutor, especially when one does not break under cross-examination. Jurors with no experience in listening to testimony were instructed by an "expert" regarding who to believe, based upon the prosecutor-created indicia of credibility. This was blatantly unconstitutional. The argument about coaching was error.

As the nonexhaustive catalogue presented immediately above

demonstrates, the prosecutor's arguments were fundamentally unfair. They violated the first, fifth, sixth, eighth and fourteenth amendments. This case boiled down to a credibility contest, and into that battle was injected a person whose credibility was lent to the victor. At the very least, there is a reasonable probability that but for the misconduct of the prosecutor, the result of the proceedings would have been different.

C.

THE PROSECUTOR'S CLOSING ARGUMENT AT SENTENCING AND AT GUILT/INNOCENCE INFECTED THE SENTENCING PROCESS BY IMPERMISSIBLY INJECTING RACE, FEAR, AND THE FORBIDDEN GOLDEN RULE ARGUMENT INTO THE CRITICAL JURY DECISION MAKING PROCESS, VIOLATING MR. MILLS' FIRST, FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS.

All previous allegations in this petition are incorporated into this claim by specific reference. Beyond these allegations (cited above), Mr. Mills submits the following:

This was a tense trial for the defense, but it was a cake-walk for the State. Purported black-on-white killing, all-white jury, racial epithets, smears on the accused's religion and a freewheeling free rein prejudicial closing argument -- the prosecutor overstepped <u>any</u> legitimate bounds:

> Then one of the social judgments that John Mills, Jr., made that day was to say, "Shut up, cracker."

(R 2307).

* * * *

> What was he thinking? What was he going through? They put him in the truck, ladies and gentlemen. He is seated in the truck in the front seat. There is a shotgun pressed against his head. For seven long miles on a dark, rainy day, Les Lawhon is driven to his death. They turn onto a desolate air strip where there is nobody else. There are no cars in sight. It is heavily wooded. It is not well traveled. There are no houses in sight. It is a desolate area. What is Les Lawhon thinking now? We don't have to imagine what he was thinking, ladies and gentlemen, because we know, number one, he was terrified. He

was shaking, and he was trembling during the entire ride. As they turned onto that desolate strip, we know he was apprehensive about what was going to happen to him because he asked the question: What are you all going to do with me? John Mills, Jr., makes another social judgment and says, "I'm going to do to you what your forefathers did to my forefathers."

(R 2308-09).

. . . .

You know, when you heard today and you are going to be asked to show some mercy and show some compassion and show some pity, think to yourself what pity did he show to Les Lawhon? What pity did he show him when he hit him in the back of the head with a tire iron? What pity did he show him when he tacked him through the woods? What pity did he show him when he fired the shotgun inches from his face? Is there remorse in John Mills, Jr.? Is there pity? There's none.

(R 1311).

. . . .

The Defendant acted under extreme duress and substantial domination of another person. Well, we talked to everyone we knew in the community, everyone who knew anything about the two of them, Fawndretta Galimore, who was that man's girlfriend; Ron Wilson, who was Michael Fredricks' roommate. They both said that that man is the leader. Even on cross examination, the Defendant said he tried to be the leader. He wasn't under anybody else's substantial domination. He wasn't acting under extreme duress. Michael Fredricks didn't make him do a blessed thing. They were in Boone Mills' truck.

(R 2317).

. . . .

The real scary thing about this -- and I've alluded to this before -- is Les Lawhon is totally innocent in this case. Sometimes, you have murders that occur when there is an argument between two people that don't know each other or an argument between two spouses or father and son or people on the job or people that have come into contact in a store or in a car accident or some connection where you can look at the victim and say: Well, listen. He didn't deserve to die, but he's not exactly a shining rose. Les Lawhon's only crime in this whole matter is being a compassionate human being who, when asked for help, allowed people into his home to use his phone and to help them find out the information they needed. That is the only thing that he did wrong was to be compassionate and to help his fellow human beings. For that, he received a death

sentence from John Mills, Jr., a death sentence.

You know, I sure wish that when they took that drive out there and they got on that air strip, that Les could have said: Wait a minute. Wait a minute. Let's get my family doctor. He'll tell you that I'm sick and he'll tell you that I can be better. Something better can be done for me. Let's get my doctor and let him tell you about this. I wish he could have said: Let's go get my lawyer. Lord knows, my lawyer can give a good reason for me to be alive. My lawyer can tell you I can be productive in society; that I can help; that I'm not beyond redemption. My lawyer will do a good job. Please, John Mills. Let's go get my lawyer. Or he could have said: Let my family be here. Let them be here, and let them argue for me, please. Let's get a jury from 12 people from Wakulla County and see if I deserve to die like this. See if I deserve to be treated like a mad dog. Please. Let's get that jury. I don't want to die.

But John Mills, Jr., made another one of those social judgments. He became the jury, the judge, the lawyers, the bailiffs, and the executioner. Les Lawhon asked for his life. He asked for it. He hadn't been convicted. He hadn't done a thing wrong. He had been a compassionate human being. Judge Mills decides to pass a sentence of death. No appeal. No revisit. No rules of evidence. No cross examination. Judge Mills declares death.

When Mr. Randolph gets up here and tells you: Don't be swayed by emotion. Don't be. But when he gets up here and he tells you why John Mills, Jr., should not be condemned to death, Les Lawhon is right there. Every time he says to you that John Mills should not be condemned to death because he could be rehabilitated, think to yourself: Could Les Lawhon be rehabilitated? Did Les Lawhon deserve to die? Did he deserve to die in the way that he died?

Ladies and gentlemen, if this case does not cry out for the death penalty; if this case does not scream out to you that John Mills, Jr., deserves to die in the electric chair because of his conduct and because of his cruel, atrocious, his heinous conduct towards Les Lawhon in depriving Les Lawhon of the only thing he valued, that is his life; if this case does not call for that death penalty, no case does. I urge you to consider all the facts. Take that seven-mile ride out there with Les Lawhon. Put yourselves in the driver's seat of that truck -- passenger's seat. Excuse me - with that shotgun to your head. Take that seven-mile drive and kneel down on that ground just like

> he did with your hands tied behind you back. Run down through that ravine and up that bank and watch that shotgun come at your face. If that doesn't call out to you for the death penalty, nothing ever will.

(R 2321-24).

These arguments were flatly improper. They violated Mr. Mills' first, fifth, sixth, eighth, and fourteenth amendment rights. It cannot be said that the arguments had no effect on sentencing and, in fact, the entire sentencing process was rendered fundamentally unfair.

D.

JOHN MILLS WAS DENIED HIS FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS BECAUSE THE EVIDENCE PRESENTED BY THE STATE WAS INSUFFICIENT AND INCREDIBLE.

John Mills was convicted and sentenced to death primarily on the word of one person -- Michael Frederick. The inculpatory evidence can be briefly summarized as follows:

a. Michael Frederick was familiar with the details of these crimes: he said he had actively participated in the burglary of the Lawhon home which resulted in the abduction and killing of Lesley Lawhon.

b. Frederick was linked to this crime by the possession of property (a ring) taken from the Lawhon residence.

c. Frederick subsequently confessed to active involvement in all of these crimes, except arson.

d. Frederick implicated John Mills, Jr., in the crimes.

The record reveals that Frederick frantically searched for a story which would explain how he obtained the ring which was taken from the Lawhon residence without putting himself in the electric chair. Some of his tales follow:

a. I got the ring from Frances Corbett.

> Q: ...when you were picked up on this case, you told the officers . . . that you got this ring from Ms. Frances Corbett. Is that right?
>
> A: Yes, sir, I did.
>
> Q: And that was a lie, wasn't it?

A: Yes, sir, it was.

(R 1289).

b. I got the ring from Fawndretta Galimore's car.

Q: You also told those officers on May 7, that you got the ring out of Ms. Fawndretta Galimore's car, didn't you?

A: Yes, sir, I did.

Q: And that was a lie also, wasn't it?

A: Yes, sir, it was.

(R 1289-90).

c. I stole the ring from John Mills' truck when he came to my house with a truck full of stuff.

Q: You then told the officers on May 7, that Mr. Mills came over to your house with a truckload of property and you took the ring from the truck, didn't you?

A: Yes, sir, I did.

Q: And that was a lie also, wasn't it?

A: Yes, sir, it was.

(R 1290).

d. I got the ring from an abandoned house [trailer].

Q: [You] told Investigator Gandy that you got this property from an abandoned house. Is that correct?

A: I could have but I think I told him we had been to an abandoned house.

Q: And you took the property out of an abandoned house?

A: I don't think I said from the abandoned house, but I could have.

. . .

Q: Yes. Did you tell him that you had gotten -- Investigator Gandy, that this property had come out of an abandoned home which was like the one that Les Lawhon lived in?

A: I could have but I don't remember.

(R 1290-91).

Subsequent investigation revealed each story to be a lie. Frederick continued his search for a story that would help him, a

story the police could not disprove.

e. I really wasn't involved, but John Mills took me to where Lesley Lawhon was tied to a tree and asked me to guard him.

> Q: Isn't it a fact that right before you went out to the scene you told him [Investigator Gandy] that, "I'm taking you to a place that Mills has a body tied up to a agree and asked me to guard the place."
>
> A: I could have. Yes, sir, I did.
>
> Q: Did you say that to Investigator Gandy?
>
> A: Yes, sir, I did.
>
> Q: And that was a lie too, wasn't it?
>
> A: Yes, sir, it was.

(R. 1290).

Finally, Frederick claims that he changed his ways and told the truth after he "found himself unable to win."

> Q: (By Mr. Kirwin) Why did you lie to the police officers?
>
> A: Because I was scared of the consequences that would attach to me.
>
> Q: What you told them was a lie?
>
> A: Yes, sir, it was.
>
> Q: When did you decide to stop lying and start telling the truth?
>
> A: I found myself unable to win. They had me caught up in it. There wasn't any way out.
>
> Q: And you began to tell them the truth?
>
> A: Yes, sir.

(R 1250-51). The facts belie this statement.

Even after he had shown the police the body of Lesley Lawhon, Frederick continued to be "scared of the consequences that would attach" to him. He continued to lie.

f. Well, I was there but John Mills, Jr. killed Les Lawhon. I just watched. (See, R 1207-1225).

> Q: When did you start telling the truth in this case?
>
> A: In the point where I got caught up and

it wasn't no way out.

Q: When did you get caught up in this case?

A: Right after maybe -- I don't know the time.

Q: Was it May 6 or May 8, when did you get caught up in it and start telling the truth?

A: It was after I had went back to the scene.

Q: Was this after you went out there and showed the police officers where the body was? Is that when you started telling the truth?

A: Yes, sir.

Q: And at that point you sat down and gave Officer Gandy a recorded statement telling what had happened. Is that right?

A: I lied some there, yes, sir.

Q: . . . Did you tell the police officers at that time that, "Well, I actually saw him shoot him. I saw John Mills shoot Les Lawhon?"

A: Did I tell them that?

Q: Yes.

A: No, sir, I did not.

Q: Are you sure about that? That recorded statement which you took on May 8, 1982, before Officer Gandy, Investigator Ray Frederick?

A: I could have.

Q: Well, do you remember or not?

A: I could have.

Q: If you said it, were you telling the truth?

A: About me seeing him shoot him?

Q: Yes.

A: No, sir, I was not.

(R 1255-56).

All told, Frederick presented police with at least ten fabricated stories in this case (R 1292), before his taped, May 8, 1982, statement.

Florida Department of Law Enforcement crime scene

technicians, fingerprint, blood, hair, ballistics and fiber analysts and an arson investigator investigated this case and testified at trial. There is absolutely no physical evidence which proves or tends to prove that John Mills, Jr. was at the scene of the burglary, grand theft, kidnapping and arson (the trailer) or at the scene of the killing (the abandoned airstrip at Shell Point). On the other hand, Mr. Mills consistently and adamantly maintained his innocence of these crimes.

The property found the the house of Fawndretta Galimore was, where Mr. Mills had not been for two months, according to Mr. Mills, given to him by Frederick to pay a debt. John Mills, Jr. was not tried solely for the murder and other crimes alleged. He was on trial for being a black man of the Muslim faith who allegedly killed the white son of one of the most prominent members of Wakulla County society -- Baptist Minister Glenn Lawhon.

The atmosphere in the courtroom was charged with animosity toward the accused. The first few rows of seats behind defense counsel were cleared of spectators for the safety of the defense and throughout the trial defense counsel was provided with an armed escort for his protection while in Wakulla County.

In sum, Mr. Mills was tried in a volatile, hostile atmosphere on the word of one witness whose story was inherently incredible. No rational finder of fact should have found guilt beyond a reasonable doubt.

VI. THE UNRAISED, LAW SUPPORTING THE CLAIMS

The substantial errors presented above were not discussed by Mr. Mills' assigned counsel or by this Court on direct appeal. See Mills v. State, 462 So. 2d 1075 (Fla. 1985). They deserved discussion, because they demonstrate that the proceedings resulting in Mr. Mills' conviction and sentence of death were a

stark violation of a capital defendant's most fundamental rights. Counsel was wholly ineffective for not presenting these claims. See Wilson v. Wainwright, supra, 474 So. 2d 1163; Evitts v. Lucey, supra; see also, Matire v. Wainwright, No. 84-5705 (11th Cir. March 9, 1987). This Court failed in its duty fully to review for error the record resulting in a capital conviction and sentence of death. The issues presented herein do not involve merely the "hindsight" efforts of post-conviction counsel -- they demonstrate an abrogation of rights of the grossest sort.

Counsel's omissions are simply inexcusable. Mr. Mills was prejudiced in the gravest of ways -- a wholly unconstitutional conviction and sentence of death were allowed to stand. These failings should now be corrected, because the proceedings before the trial court were not reliable -- the errors discussed herein "precluded the development of true facts," and "serve[d] to pervert the jury's deliberations concerning the ultimate question[s] whether in fact [John Mills was guilty of capital murder and deserving of a sentence of death]." Smith v. Murray, 106 S. Ct. 2661, 2668 (1986).

Immediately below, Mr. Mills will present some of the legal analysis demonstrating why relief was and is warranted. The exigencies of a death warrant, however, make it impossible for Mr. Mills to discuss his claims adequately. (In this regard, Mr. Mills respectfully urges that this Court grant a stay and permit supplemental briefing). However, the discussion presented below does show that substantial, fundamental errors infected the proceedings resulting in this conviction and sentence.

INTRODUCTION

Claims A, B, and C, have many common threads. One such thread should be discussed at the outset, because it involves the violation of what is possibly the most fundamental of all rights -- the right of a citizen to practice his religion and to not be

punished for the "free exercise" of his religious beliefs.

> [T]he fullest realization of true religious liberty requires that government...effect no favoritism among sects...and that it work deterrence of no religious belief.

Larson v. Valente, 456 U.S. 228, 246 (1982), quoting Abington School District v. Schempp, 374 U.S. 203 (1963). This is the essence of the First Amendment's protections. However, as the facts presented in Sections II(A), (B), and (C) of this petition demonstrate, John Mills received no such protection during the course of his capital trial -- the prosecutor sought to obtain a conviction and sentence of death because the accused was a black man of the Muslim faith. John Mills was tried, in large part, on his religious beliefs. This was flatly unconstitutional. See Braunfeld v. Brown, 366 U.S. 599, 606 (1961) ("Abhorrence of religious persecution and intolerance is a basic part of our heritage."); Torcaso v. Watkins, 367 U.S. 488, 493 (1961) ("No person can be punished for entertaining or professing religious beliefs...") quoting Everson v. Board of Education, 330 U.S. 1, at 15 and 16. The State sought to have John Mills sentenced to death because of his religious beliefs. This also was wholly unconstitutional. See Zant v. Stephens, 462 U.S. 862, 885 (1983), citing Herndon v. Lowry, 301 U.S. 242 (1937).

There can be no doubt, given the record of the proceedings at Mr. Mills' trial and sentencing, that his religion was used against him by the prosecution. The "government" (i.e., the State Attorney) sought a conviction and death sentence from an inflamed group of white jurors against a black Muslim defendant who was on trial for the murder of the son of a white, Baptist minister. Mr. Mills' religious beliefs were central to the State's efforts to obtain a conviction and death sentence. Such practices simply cannot be allowed to stand. See Fowler v. State of Rhode Island, 345 U.S. 67 (1953).

The State repeatedly mocked the religion, referring to Mr. Mills as the "King" and his girlfriend as the "Queen," at least

three times.

John Mills' most fundamental First Amendment rights were abrogated. And there was more:

A

> MR. MILLS WAS TRIED FOR PURPORTEDLY BEING A BAD PERSON, FOR BEING A MUSLIM, FOR SUPPOSEDLY HATING WHITES, AND FOR BEING A CRIMINAL, INSTEAD OF FOR FIRST-DEGREE MURDER, AND HIS SENTENCE OF DEATH WAS SIMILARLY TAINTED, IN VIOLATION OF THE FIRST, FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS.
>
> "You should know them by their friends."

(R. 1854) (prosecutor's closing argument).

Mr. Mills was prosecuted for having friend Major Hines, who the State said was an ignorant black man who did not understand the word "Caucasian." Mr. Mills was convicted for being a Muslim, who called white people "caucasians" or "crackers" or "devils," and for purportedly hating white people. Mr. Mills was tried for being a "criminal," and for purportedly hating. This "evidence" fell into a diatribe of an argument, which rendered the proceedings fundamentally unfair, in violation of due process. Furthermore, it cannot be said that this misconduct had no effect on the sentence, a clear violation of the eighth amendment requirement of reliability in capital proceedings.

Florida evidence law is (and was at the time of trial) precise with regard to the admissibility of evidence of the accused's criminal "character" or commission of criminal acts other than those charged:

> (1) Character Evidence Generally. Evidence of a person's character or a trait of his character is inadmissible to prove that he acted in conformity with it on a particular occasion, except:
>
> (a) Character of accused. Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the trait.
>
> . . . .
>
> (2) Other Crimes, Wrongs, or Acts.

> (a) Similar fact evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact in issue, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity.
>
> (b) 1. When the state in a criminal action intends to offer evidence of other criminal offenses under paragraph (a), no fewer than 10 days before trial, the state shall furnish to the accused a written statement of the acts or offenses it intends to offer, describing them with the particularity required of an indictment or information. No notice is required for evidence of offenses used for impeachment or on rebuttal.
>
> 2. When the evidence is admitted, the court shall, if requested, charge the jury on the limited purpose for which the evidence is received and is to be considered. After the close of the evidence, the jury shall be instructed on the limited purpose for which the evidence was received and that the defendant cannot be convicted for a charge not included in the indictment or information.

Sec. 90.404, Florida Evidence Code.

This is a statement of the rule of Williams v. State, 110 So. 2d 654 (Fla. 1959). Before evidence of a defendant's extraneous bad or criminal acts may be introduced, the following should occur:

a. There must be a demonstrated connection between the defendant and the collateral occurrences; and

b. The probative value of the evidence must be weighed against its prejudicial effect. Section 90.403. If the evidence is deemed admissible after this analysis, the jury should be given a cautionary instruction at the time the evidence is introduced, and in final jury instructions, if requested.

The procedure above was not followed in this case. Severely prejudicial and nonprobative evidence was introduced by the State in-chief without objection, without defense counsel requesting cautionary instructions, and without any court weighing of "probative vs. prejudice." Mr. Mills was deprived of his most

fundamental federal rights. See, e.g., Boykins v. Wainwright, 737 F.2d 1539 (11th Cir. 1984).

This Court has recently reaffirmed the strength and validity of the Williams rule:

> The trial court properly ruled that this incident was not Williams rule evidence and was, therefore, inadmissible. There is no doubt that this 1973 incident was devoid of the requisite similarities which would have made the evidence relevant, thus fitting it within one of the exceptions to the rule of exclusion set forth in Williams. See Drake v. State, 400 So. 2d 1217 (Fla. 1981). When such irrelevant evidence is admitted it is "presumed harmful error because of the danger that a jury will take the bad character or propensity to crime thus demonstrated as evidence of guilt of the crime charged." Straight v. State, 397 So. 2d 903, 904 (Fla.., cert. denied, 454 U.S. 1022 (1981). As we explained over a half a century ago:
>
> > Evidence that the defendant has committed a similar crime, or one equally heinous, will frequently prompt a more ready belief by the jury that he might have committed the one with which he is charged, thereby predisposing the mind of the juror to believe the prisoner guilty.
>
> Nickels v. State, 90 Fla. 659, 685, 106 So. 479, 488 (1925).
>
> . . . .
>
> The properly admitted evidence produced at trial against Keen was sufficient to support a jury verdict of guilty. However, it would be legedermain to characterize the evidence as overwhelming; the real jury issue presented in this trial centered on the credibility of Shapiro versus the credibility of Keen. While an improper question by a prosecutor may, in light of the overwhelming evidence of guilt and the nature of the question, be considered a harmless error, see, e.g., Straight, 397 So. 2d at 909, the focus of harmless error analysis must be the effect of the error on the trier of fact:
>
> > Application of the [harmless error] test requires not only a close examination of the permissible evidence on which the jury could have legitimately relied, but an even closer examination of the impermissible evidence which might have possibly influenced the jury verdict. . . . The question is whether there is a reasonable possibility that the error affected the verdict. The burden to

> show the error was harmless must remain on the state. If the appellate court cannot say beyond a reasonable doubt that the error did not affect the verdict, then the error is by definition harmful.
>
> State v. DiGuilio, 491 So. 2d 1129, 1138-39 (Fla. 1986).
>
> . . . .
>
> Recently, in Robinson v. State, 487 So. 2d 1040 (Fla. 1986), we were faced with a situation similar to the one sub judice. During the penalty phase proceedings, the prosecutor was allowed to ask various defense witnesses questions concerning crimes that Robinson had allegedly committed subsequent to the offense at issue and that Robinson had never been charged with. In finding this so prejudicial as to require resentencing before a new jury, we stated: "Hearing about other alleged crimes could damn a defendant in the jury's eyes and be excessively prejudicial. We find the state went too far in this case as well. It is noteworthy that the improper questions at issue in Robinson were asked during the penalty phase, wherein a character analysis of the defendant is contemplated and the rules of evidence are related. In contrast, the prosecutor's question sub judice was posed during the guilt phase of Keen's trial, where proof of the particular crime charged is the standard that the law requires.
>
> Because the prosecutor improperly placed prejudicial information before the jury which had no relevance except to show Keen's bad character and propensity for violence, Keen's right to a fair trial was compromised. In our system of criminal justice, one of the primary functions of the judiciary generally, and of this Court in capital cases specifically, is to ensure that the rights of the individual are protected. Harmful and prejudicial error having occurred below, we reverse and remand for a new trial.

Mr. Mills' rights to due process and fair trial were violated. Appellate counsel unreasonably sat silent. It cannot be said beyond a reasonable doubt that the impermissible evidence did not taint the verdict and sentence. Mr. Mills was denied his first, fifth, sixth, eighth and fourteenth amendment rights.

B.

THE STATE'S ARGUMENT AT GUILT/INNOCENCE IMPROPERLY INJECTED THE EXPERTISE OF THE PROSECUTOR INTO THE JURY DETERMINATION, WAS

IRRELEVANT, INFLAMMATORY AND PREJUDICIAL, STRESSED IMPROPER AND ILLEGAL INTERPRETATIONS OF THE EVIDENCE, AND WAS DESIGNED TO INFLAME PASSIONS AND RACIAL BIAS, IN VIOLATION OF MR. MILLS' FIRST, FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENT RIGHTS.

The prosecutor's arguments in this case violated fundamental fairness. Donnelly v. DeChristoforo, 416 U.S. 637 (1974). A defendant in a capital case is entitled to an impartial dispassionate jury and a decision based upon the evidence developed at the trial. Irvin v. Dowd, 366 U.S. 717 (1961). A prosecutor may not express personal opinions, inject himself as a witness into the proceeding, argue inflammatory, irrelevant and prejudicial matters, or turn to nonrecord material to support the propositions he or she is advancing. These rules are of longstanding:

a. "A lawyer shall not . . . state a personal opinion as to . . . the credibility [of] a witness or the guilt or innocence of the accused." Model Rules of Professional Conduct, Rule 3.4(e). Here, the prosecutor said unequivocally that Fredrick was telling the truth, Galimore was mistaken, and Mr. Mills was lying. This was known because of the tremendous job of investigation the State had done, and how all leads had been followed. Mr. Kirwin himself was the investigator, said so, said he was diligent in his search, said he believed Fredrick because he had grown up and decided to be honest, accompanied by "the ring of truth." The motion outlines all the improprieties.

b. "The prosecutor should refrain from argument which would divert the jury from its duty to decide the case on the evidence, by injecting issues broader than the guilt or innocence of the accused under the controlling law, or by making predictions of the consequences of the jury's verdict." ABA Standards for Criminal Justice: The Prosecution Function, Standard 3-5.88(d); cf. Model Rules of Professional Conduct, Rule 3.4(e); Code of Professional Responsibility, DR 7-106(C)(7); ABA

Standards for Criminal Justice: The Prosecution Function, Standard 3-6.1(c). The prosecutor argued race, religion, habitual criminality, sympathy for the victim and the victim's family, fear for personal safety, and anything else "calculated to influence the prejudice of the jury." Id., Standard 3-5.8(c). Counsel unreasonably failed to present this issue, one involving the most fundamental of errors. See Drake v. Kemp, 762 F.2d 1449 (11th Cir. 1985) (en banc); Wilson v. Kemp, 777 F.2d 621 (11th Cir. 1985).

C.

THE PROSECUTOR'S CLOSING ARGUMENT AT SENTENCING AND AT GUILT/INNOCENCE INFECTED THE SENTENCING PROCESS BY IMPERMISSIBLY INJECTING RACE, FEAR, AND THE FORBIDDEN GOLDEN RULE ARGUMENT INTO THE CRITICAL JURY DECISION MAKING PROCESS, VIOLATING MR. MILLS' FIRST, FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS.

Different concerns are implicated when the improper argument occurs at the sentencing phase of a capital trial. Fundamental Eighth Amendment jurisprudence dictates that "the qualitative difference of death from all other punishments requires a correspondingly greater degree of scrutiny of the capital sentencing determination," California v. Ramos, 463 U.S. 992, 998-99 (1983), and this United States Supreme Court therefore demands heightened reliability of the process by which defendants are sentenced to death. See, e.g., Woodson v. North Carolina, 428 U.S. 280 (1976); Gardner v. Florida, 430 U.S. 349 (1977); Lockett v. Ohio, 435 U.S. 586 (1978); Eddings v. Oklahoma, 455 U.S. 104 (1982). See also Godfrey v. Georgia, 446 U.S. 420, 443 (1980) (Burger, CJ., dissenting) ("in capital cases we must see to it that the jury has rendered its decision with meticulous care"); Barefoot v. Estelle, 463 U.S. 880, 924 (1983) (Blackmun, J., dissenting) (Woodson's concern for assuring heightened reliability in the capital sentencing determination "is as firmly established as any in our Eighth Amendment jurisprudence.").

In accordance with the Eighth Amendment's requirement of heightened reliability in capital sentencing proceedings, the Court, in Caldwell v. Mississippi, 105 S.Ct 2633 (1985), announced a different standard of review for determining the constitutional effect of certain types of improper prosecutorial argument which occur at the sentencing phase of capital trials. Those prosecutorial arguments which lead the sentencer "to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere," Id. at 2639, or which are "inaccurate and misleading in a manner that diminishes the jury's sense of responsibility," id. at 2646 (O'Connor, J., concurring), violate the Eighth Amendment unless it can be shown that such argument "had no effect on the sentencing decision." Caldwell, 105 S.Ct. at 2646 (emphasis added). Under this standard, it is clearly the state that must convince the court that the improper argument "had no effect." This is a markedly different standard than that applied to improper arguments which occur at the guilt/innocence phase of trial. Cf. Darden, supra; DeChristoforo, supra.

The United States Court of Appeals for the Tenth Circuit has clearly and unequivocally found Caldwell the applicable authority for gauging the Eighth Amendment constitutionality of improper prosecutorial argument made during the sentencing stage of a capital trial:

> The standard governing appellate review of closing arguments during the sentencing stage of capital cases is whether the comments might have affected the sentencing decision. See Caldwell v. Mississippi, 472 U.S. 320, ___, 105 S.Ct 2633, 2644, 86 L.Ed.2d 231 (1985) ("Because we cannot say that this effort [improper argument] had no effect on the sentencing decision, that decision does not meet the standard of reliability that the Eighth Amendment requires.")

Coleman v. Brown, 802 F.2d 1227, 1238 (10th Cir. 1986); see also Dutton v. Brown, 812 F.2d 593 (10th Cir. 1987) (en banc). The Tenth Circuit makes no distinction regarding the specific type of

improper argument, but rather applies the Caldwell standard "across the board" to all improper arguments advanced during the sentencing phase of capital trials. The Eleventh Circuit itself has recognized that when a prosecutor has engaged in such misconduct, he will be accorded no deference:

> Arguments delivered while wrapped in the cloak of state authority have a heightened impact on the jury. For this reason, misconduct by the prosecutor, normally an elected public official, must be scrutinized carefully.

Drake v. Kemp, 762 F.2d 1449, 1459 (11th Cir. 1985) (en banc). See also Wilson v. Kemp, supra, 777 F.2d at 621. This is so because of the unique position of the public prosecutor in our system of justice, a position which transcends the role of mere advocate:

> The [state prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.... He may prosecute with earnestness and vigor--indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

The combination of the prosecutor telling the jury at guilt/innocence that he had had to deal with the co-defendant in order to get the true culprit who deserved death left the jury with the unmistakable impression that this expert had determined death was proper for Mr. Mills.

The Eleventh Circuit recognized the impropriety and the potential for prejudice of the argument advanced:

> By suggesting that [the prosecutor's] office had already carefully selected Johnson as one who was particularly deserving of the death penalty, the prosecutor tended to undermine the jury's perception that it had unfettered discretion to decline or impose the death penalty.

Johnson v Wainwright, 778 F.2d at 631; See also Brooks v. Kemp, 762 F.2d 1383, 1410 (similar argument improper because it "implied to the jury that the prosecutor's office had already made the careful judgment that this case, above most other murder cases, warranted the death penalty."). Moreover, that court has repeatedly recognized the enhanced potential for prejudice when the argument in question invokes the authority of the prosecutor's elected office. See, e.g., Drake v. Kemp, 762 F.2d 1449, 1459 (11th Cir. 1985) ("Arguments delivered while wrapped in the cloak of state authority have a heightened impact on the jury. For this reason, misconduct by the prosecutor, normally an elected public official, must be scrutinized carefully."). See also Berger v. United States, 295 U.S. 78 (1935).

But the prosecutor did much more, as outlined in this petition. The most egregious impropriety was the delivery of a classic "golden rule" argument, perhaps the worst (or best) such argument ever made:

> Ladies and gentlemen, if this case does not cry out for the death penalty; if this case does not scream out to you that John Mills, Jr., deserves to die in the electric chair because of his conduct and because of his cruel, atrocious, his heinous conduct towards Les Lawhon in depriving Les Lawhon of the only thing he valued, that is his life; if this case does not call for that death penalty, no case does. I urge you to ride out there with Les Lawhon. Put yourselves in the driver's seat. Excuse me - with that shotgun to your head. Take that seven-mile drive and kneel down on that ground just like he did with your hands tied behind you back. Run down through that ravine and up that bank and watch that shotgun come at your face. If that doesn't call out to you for the death penalty, nothing ever will.

(R 2321-24). No type of argument has been as long and consistently condemned as this. Adams v. State, 192 So. 2d 762 (Fla. 1966); Pait v. State, 112 So. 2d 380 (Fla. 1969). It is so inflammatory and so prejudicial that it is strictly forbidden.

This claim is cognizable because it invokes new law. Witt v. State. Further, appellate counsel was grossly ineffective

for not presenting this claim.

D.

JOHN MILLS WAS DENIED HIS FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS BECAUSE THE EVIDENCE PRESENTED BY THE STATE WAS INSUFFICIENT, AND INCREDIBLE.

Mr. Mills submits that the evidence adduced against him was legally insufficient to support a conviction and sentence of death, see Jackson v. Virginia, 443 U.S. 307 (1979), that counsel was ineffective for not presenting the claim, and that this Court's independent review was inadequate in failing to reverse this conviction and sentence. More importantly, counsel was flatly ineffective and this Court substantially erred because the record in this case warranted reversal since the conviction and sentence of death were wholly contrary to the weight of the evidence. See Tibbs v. Florida, 457 U.S. 31 (1982); see also, Riley v. State, 366 So. 2d 19, 22 (Boyd, J., dissenting).

This Court has inherent authority to reverse a conviction and sentence obtained from proceedings whose results are unreliable. This Court should have exercised that power, given the circumstances of this trial, and the inherent weaknesses of the prosecution's bargained - for accomplice testimony. See Phelps v. United States, 252 F.2d 49 (5th Cir. 1958); United States v. Curry, 471 F.2d 419 (5th Cir. 1973); Turner v. State, 452 A.2d 416 (Md. 1982); Thompson v. State, 374 So. 2d 338 (Ala. 1979); Bendle v. State, 583 P.2d 840 (Alaska 1978); State v. Howard 400 P.2d 332 (Ariz. 1965); Redman v. State, 668 S.W. 2d 541 (Ark. 1984); Castell v. State, 301 S.E. 2d 234 (Ga. 1983); State v. Evans, 631 P.2d 1220 (Idaho 1981); State v. Hutchison, 341 N.W.2d 33 (Iowa 1983); State v. Harmons, 664 P.2d 922 (Mont. 1983); State v. Morse, 318 N.W. 2d 889 (Neb. 1982); Sheriff, Clark County, Nevada v. Hamilton, 646 P.2d 122 (Nev. 1982); People v. Lipsky, 443 N.E. 2d 925 (N.Y. 1982); State v. Lind, 322 N.W. 2d 826 (N.D. 1982); Oregon v. Hall, 595 P.2d 1240 (Or. 1979); Mathis

v. State, 590 S.W. 449 (Tenn. 1979); Paulus v. State, 633 S.W. 2d 827 (Tex. App. 1981).

The proceedings resulting in Mr. Mills' conviction and sentence warranted reversal. Tibbs v. Florida; Riley v. State (Boyd, J., dissenting), supra. Counsel was grossly ineffective for not presenting this claim. Mr. Mills respectfully submits that corrective action should now be taken.

VII

MR. MILLS FUNDAMENTAL FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS WERE ABROGATED WHEN THE TRIAL COURT ALLOWED THE VICTIM'S FATHER TO TESTIFY.

This issue was raised on direct appeal, and was decided by this Court. At the time of the direct appeal, this Court denied relief on this claim. See Mills v. State, supra, 462 So. 2d at 1079-80.

Mr. Mills respectfully submits that the Court fundamentally erred in its disposition of this issue on direct appeal. This Court failed to see that the essential purpose of the testimony of the victim's father (a Baptist minister) was to present the jurors with a "comparable worth" argument. What the prosecution sought, and what it received when it presented the victim's father to the jurors, was an encouragement to the jurors that they should base their decision at trial and sentencing on a comparison of the characters of the victim and his family to that of Mr. Mills (the black, Muslim vilified defendant accused of capital murder). In a capital case, such procedures are simply intolerable. See Moore v. Kemp, 809 F.2d 702, 733-34 (11th Cir. 1987) (en banc); see also id. at 747-50 (Johnson, J., concurring in part and dissenting in part); Vela v. Estelle, 708 F.2d 954 (5th Cir. 1983). This Court failed to see the inherent fifth, sixth, eighth, and fourteenth amendment violations in this type of procedure. The presentation of such "comparable worth" evidence invariably will misinform and mislead a jury charged

with deciding whether a man should live or die. Cf. Caldwell v. Mississippi, 105 S. Ct. 2633 (1985). Given the prosecutor's efforts to inflame this jury through the use of, inter alia, religious and racial bigotry, it simply cannot be said that the victim's father's testimony, and its subsequent use by the State, did not result in a substantial deprivation of Mr. Mills' fundamental rights.

Mr. Mills respectfully urges the Court to reconsider.

VIII

REQUEST FOR HEARING

The ineffective assistance of counsel allegations presented herein cannot be adequately addressed without an evidentiary hearing. Mr. Mills submits that the ineffective errors and omissions of counsel were due to no tactic, but, rather, were due to counsel's apparent, inexcusable ignorance of the law. Prejudice is apparent. See, supra, Sections V and VI. Accordingly, Mr. Mills respectfully urges that the Court direct that an evidentiary hearing on the issue of ineffective assistance of appellate counsel be held.

CONCLUSION

In isolation and in their entirety, counsel's omissions resulted in grave prejudice to Mr. Mills. This Court's independent review cannot undo the hard caused by an ineffective appellate attorney. It is the responsibility of effective appellate counsel to present all issues of arguable merit to the appellate court. In this case, counsel failed to fulfill that responsibility. Where the points omitted or improperly and inadequately presented are of indisputable merit -- such as those set forth herein -- and where the difference is between life and death, a case cries out for judicial intervention.

Mr. Mills therefore requests this Court to issue its writ of

habeas corpus and to direct that Petitioner receive a new trial; alternatively, that this Court allow full briefing of the issues presented herein and grant petitioner belated appellate review from his conviction and sentence. Petitioner also respectfully requests that this Court grant a stay of execution in order to assure the thoughtful and full briefing and analysis that the meritorious claims raised herein deserve. Finally, Petitioner, John E. Mills, Jr., respectfully urges that this Court assign this case to an appropriate tribunal for a full and proper development of the non-record facts supporting the claims presented herein.

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BY 
Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to Mr. Mark C. Menser, Assistant Attorney General, Department of Legal Affairs, The Elliot Building, 401 South Monroe Street, Tallahassee, FL 32399-1050, this 4th day of May, 1987.