IN THE

SUPREME COURT OF FLORIDA

No. 70,700

GERALD EUGENE STANO,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, FLORIDA.

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF THE CASE AND STATEMENT OF FACTS

This case is both complex and simple. Complex because it involves a first degree murder conviction and death sentence, which, ipso facto, means that the record should reflect the most sophisticated and complex procedure known to substantive and procedural criminal law. Complex also in that Mr. Stano has many other cases which affect this one, because prior confessions and guilty pleas were used in aggravation of punishment. All previous pleas and convictions are relevant to this proceeding, because Mr. Stano contends, inter alia, that counsel and the State acted unconstitutionally in this case, vis-a-vis the prior convictions. As was pled below, Mr. Stano is a serial confessor. The State believes he is a serial killer. Regardless, both parties agree that Mr. Stano's confessions alone led to all his guilty pleas, including the ones in this case. Complexity arises from the number of cases involved, and from the myriad issues attendant to so many cases.

On the other hand, this case is quite simple. The files and records do not conclusively demonstrate that Mr. Stano is entitled to no relief, so the trial court's summary dismissal was error. Rule 3.850, Florida Rules of Criminal Procedure. Under well established and simple black letter law, this Court should reverse the trial court's order and remand for further

proceedings.

This section of the brief will present the complex part of the case, beginning with a roadmap outline of the cases against Mr. Stano, and ending with the facts in support of most of the arguments presented. The argument section of this brief presents the simple part of the case -- summary dismissal was error, and a remand is necessary.

A. PROCEDURAL HISTORY

The following synopsis of Mr. Stano's cases is offered in order to simplify the Court's task of understanding where this case fits into the overall saga of Mr. Stano's trek to death row. At the conclusion of this section, a chart is reproduced which may prove helpful in understanding the legal context of this appeal.

1. The Volusia County Cases of: Mary Carol Maher (Circuit Court Case Number 80-1046-CC), Toni VanHaddocks (Circuit Court Case Number 80-2489-CC), Nancy Heard (Circuit Court Case Number 81-2508-CC), Ramona Neal (Reference Number E-46531), Linda Hamilton (Reference Number SE-32118), and Jane Doe (Reference Number 80-11 1510)

On September 2, 1981, Mr. Stano appeared in the Circuit Court of the Seventh Judicial Circuit, in and for Volusia County, Florida, before Judge S. James Foxman, in the case of Mary Carol Maher (Circuit Court Case Number 80-1046-CC), Toni

VanHaddocks (Circuit Court Case Number 80-2489-CC), Nancy Heard (Circuit Court Case Number 81-2508-CC), Ramona Neal (Reference Number E-46531), Linda Hamilton (Reference Number SE-32118), and Jane Doe (Reference Number 80-11-1510). Defense attorneys, Donald Jacobson and Howard Pearl had counseled Mr. Stano to plea. He pled guilty to three counts of first degree murder, Judge Foxman imposed three life sentences pursuant to a plea agreement, and the remaining three counts of first degree murder were dismissed. At sentencing in the later case which is the subject of this appeal, and which also occurred before Judge Foxman, the Maher, Van Haddocks, and Heard cases were introduced as statutory aggravation.

On December 1, 1986, the Office of the Capital Collateral Representative (CCR), post-conviction counsel for Mr. Stano, filed a Motion to Vacate Judgment and Sentence pursuant to Fla. R. Crim. P. 3.850, attacking these Volusia County cases. The Rule 3.850 Motion challenged the above life sentences. No order on this motion has been entered by the trial court.

2. The Alachua and Bradford County Cases of: Anne E. Arceneaux (Circuit Court Case Number 82-3951-CF), Janine M. Ligotino (Circuit Court Case Number 82-3951-CF), and Barbara Bauer (Circuit Court Case Number 82-305-CF)

Mr. Stano, accompanied by counsel, Fredrick Replogle, appeared before Judge John J. Crews in the Circuit Court for

Bradford County, in Starke, Florida, on March 8, 1983. Thomas M. Elwell and Kenneth C. Herbert were also present, appearing for the State of Florida. Three cases were before the Court: the case of Anne E. Arceneaux (Circuit Court Case Number 82-3951-CF), Janine M. Ligotino (Circuit Court Case Number 82-3951-CF), and Barbara Bauer (Circuit Court Case Number 82-305-CF). The matters of Arceneaux and Ligotino formed Counts I and II, respectively, of the Alachua County indictment, and had been transferred from Alachua County and consolidated with the Bauer case to be disposed of in one proceeding in Bradford County.

Mr. Stano pled guilty to first degree murder in the above three cases. He received three life sentences. Counts I and II of the Alachua County cases were to be concurrent life sentences. The sentence in the Bradford County case of Barbara Bauer was to run consecutively with the Alachua County sentences. These convictions were introduced in the sentencing hearing in the instant case, before Judge Foxman.

No appeal was taken on these cases. Collateral attack, in the form of a Motion to Vacate Judgment and Sentence, was instituted and a Rule 3.850 Motion was filed with the Bradford County Court on December 1, 1986. On February 11, 1987, Judge Osee R. Fagan denied Mr. Stano's Motion to Vacate.

Following Judge Fagan's denial of Mr. Stano's Motion for Rehearing, a Notice of Appeal was filed in the Circuit Court of

the Eighth Judicial Circuit, Bradford County, on April 6, 1987. On April 21, 1987, this case was officially docketed with the District Court of Appeal, First District, State of Florida (Case Number BT-120), and proceedings are presently pending.

3. The Volusia County Cases: Susan Bickrest (Circuit Court Case Number 83-189-CC) and Mary Kathleen Muldoon (Circuit Court Case Number 83-188-CC)

These are the cases that form the direct basis of this appeal. On June 13, 1983, Mr. Stano once again appeared before the Honorable S. James Foxman, Circuit Court Judge for the Seventh Judicial Circuit, in and for Volusia County. Represented by counsel, Public Defender Howard B. Pearl, who had represented Mr. Stano in the first Volusia County cases, Mr. Stano pled guilty "straight up" or "blind" to charges of first degree murder in the case of Susan Bickrest (Circuit Court Case Number 83-189-CC) and in the case of Mary Kathleen Muldoon (Circuit Court Case Number 83-188-CC). Defense attorney, Howard Pearl, had made no prior agreement with the State Attorney, Lawrence J. Nixon, in exchange for Mr. Stano's pleas of guilty to the two first degree murder charges. Recalling Mr. Stano's prior appearances before the Court, and not constrained by a sentencing agreement, Judge Foxman imposed two death sentences for the deaths of Susan Bickrest and Mary Kathleen Muldoon.

The Office of Public Defender, Seventh Judicial Circuit of

Florida, Appellate Division, was appointed to represent Mr. Stano on direct review. Christopher S. Quarles wrote on behalf of the Appellant, Mr. Stano. Kenneth McLaughlin was the Assistant Attorney General appearing for the State of Florida. On November 1, 1984, this Court issued its opinion affirming Mr. Stano's conviction and sentence of death. Stano v. State, 460 So.2d 890 (Fla. 1984). The United States Supreme Court denied Mr. Stano's petition for a writ of certiorari on May 13, 1985. Stano v. Florida, 105 S.Ct. 2347 (1985).

Mr. Stano did not appear before the Board of Executive Clemency. However, on November 6, 1986, Bob Graham, former Governor of Florida, "denied clemency" and signed a death warrant, though clemency proceedings had not occurred. The warrant was signed for November 26 - December 3, 1986. Mr. Stano's execution was scheduled for December 2, 1986.

CCR, pursuant to its representation of Mr. Stano, instituted post-conviction proceedings in Daytona Beach in the Circuit Court for the Seventh Judicial Circuit in Volusia County. A Motion to Vacate Sentence and Judgment was filed.

Judge Foxman, Circuit Court Judge for the Seventh Judicial Circuit, in and for Volusia County, issued an Order Granting a Stay of Execution and Granting Defendant's Motion for Continuance of the Rule 3.850 Motion and hearing. However, on April 13, 1987, Judge Foxman denied relief.

4. The Brevard County Case of Cathy Scharf (Circuit Court Case Number 83-590-CFA), the Current Warrant

Mr. Stano was afforded his first jury trial in September of 1983, in the first degree murder trial of Cathy Scharf (Circuit Court Case Number 83-590-CFA). The jury was convened in Titusville in the Circuit Court in and for the Eighteenth Judicial Circuit, Brevard County, Florida, the Honorable Gilbert S. Goshorn, Jr., presiding. Representing Mr. Stano were James Russo and Kenneth Friedland. John Dean Moxley and Alan Robinson appeared on behalf of the State of Florida. After days of testimony, the jury was unable to arrive at a verdict, and a mistrial was declared.

State Attorneys Moxley and Robinson reinstituted proceedings against Mr. Stano, and in December of 1983, Mr. Stano again appeared with attorneys Russo and Friedland before Judge Goshorn. A new jury was empaneled to try the case. On December 2, 1983, the jury reached a verdict of guilty of first degree murder. The jury recessed and reconvened on December 5, 1983, and, by a vote of ten to two, recommended a sentence of death. On December 9, 1983, Judge Goshorn sentenced Mr. Stano to death by electrocution.

Direct appeal proceedings to this Court were initiated. Briefs were submitted by Christopher S. Quarles, the Office of Public Defender, Seventh Judicial Circuit of Florida, Appellate

Division, on behalf of Mr. Stano. An answer was submitted by W. Brian Bayly, on behalf of the State of Florida. On July 11, 1985 this Court affirmed Mr. Stano's conviction and sentence of death. Stano v. State, 473 So.2d 1282 (Fla. 1985). The United States Supreme Court denied Mr. Stano's petition for a writ of certiorari on January 21, 1986. Stano v. Florida, 106 U.S. 869 (1986).

Mr. Stano applied for executive clemency. Counsel appeared before the Board of Executive Clemency on March 20, 1986. On May 22, 1986, Bob Graham, former Governor of the State of Florida, denied clemency and signed a death warrant. Mr. Stano was scheduled to be executed on July 2, 1986.

In the course of Mr. Stano's representation, CCR filed a Motion to Vacate Sentence and Judgment in this cause in the Circuit Court in and for the Eighteenth Judicial Circuit in Brevard County. This Rule 3.850 Motion was denied by Judge Goshorn on that same date.

Counsel for Mr. Stano filed a Motion to Treat Motion for Relief from Judgment as Brief on Appeal in the Supreme Court of Florida. On July 2, Appellant also filed a supplemental brief in this Court: A Supplemental Brief of Appellant on Appeal from the Trial Court's Actions Denying a Stay, Denying a Hearing on Appellant's 3.850 Motion, and Denying the Relief Requested Therein and Memorandum in Support of Defendant's Request to this

Court to Enter a Stay of Execution. This Court stayed the execution.

On October 16, 1986, this Court affirmed, by a 4-3 vote, the Circuit Court's denial of relief pursuant to Fla. R. Crim. P. 3.850. Stano v. State, 497 So.2d 1185 (Fla. 1986). CCR filed a Motion for Rehearing in this Court on October 31, 1986. On December 1, 1986, a Petition to Amend Petitioner's Request for Rehearing was filed. Both were denied.

5. Chart of Relevant Cases

The following chart is submitted as a sort of road map for the reader concerning the various cases and actors involved:

CASES DIRECTLY INVOLVED

Victim/ Date of Offense	County	Date of Confession	Defense Attorney	Indictment Date & Case #	Plea	Convictions Used to Aggravate	Judge
Bickrest (12/19/78)	Volusia	8/15/82	Pearl	1/18/83 (83-189-CC)	3/10/83	Arceneaux Ligotino Bauer Maher Van Haddocks Heard	Foxman
Muldoon (11/8 to 11/12/77)	Volusia	10/8/82	Pearl	1/18/83 (83-188-CC)	3/10/83	Same as above	Foxman
Arceneaux (3/21/73)	Alachua (transfered to Bradford)	9/17/82	Replogle	12/1/82 (82-3951-CF)	3/7/83		Crews
Ligotino (3/21/73)	Alachua (transfered to Bradford)	9/17/82	Replogle	12/1/82 (82-3951-CF)	3/7/83		Crews
Bauer (9/6/73)	Bradford	8/23/82	Replogle	10/4/82 (82-305-CF)	3/7/83		Crews
Maher (12/27 to 12/28/80)	Volusia	4/1/80	Pearl/ Jacobsen	4/14/80 (80-1046-CC)	9/2/81		Foxman
Van Haddocks (2/15/80)	Volusia	5/9/80	Pearl/ Jacobsen	8/14/80 (80-2489-CC)	9/2/81		Foxman
Heard (1/3/75)	Volusia	3/12/81	Pearl/ Jacobsen	8/18/81 (81-2508-CC)	9/2/81		Foxman

OTHER RELEVANT "CASES"

Neal (6/15/76)	Volusia	3/12/81	Pearl/ Jacobsen	not prosecuted (E-46531)			Foxman
Hamilton (7/21/75)	Volusia	3/12/81	Pearl/ Jacobsen	not prosecuted (SE-32118)			Foxman
(Jane Doe (uncertain)	Volusia	3/12/81	Pearl/ Jacobsen	not prosecuted (80-11-1510)			Foxman
Scharf (12/14/73)	Brevard	3/6/81 8/11-12/82	Russo/ Friedman	3/4/83 (83-590-CF-A)	12/9/83 (Trial)	Arceneaux Ligotino Bauer Maher Van Haddocks Bickrest Muldoon Heard	Goshorn

B. STATEMENT REGARDING RECORD REFERENCES

In an appeal, one must have a record of the lower court proceedings. Under Rule 9.210(b)(3), "[r]eferences to the appropriate pages of the record or transcript shall be made" in the statement of the case and of the facts. The record in this case is incomplete, and this Court has ordered the lower court to prepare and transmit the entire record to this Court.

On September 24, 1987, Appellant filed "Unopposed Motion to Toll Briefing and to Require Filing of Appellant's Initial Brief Five Days After Receipt of the Complete Record." In that motion, counsel wrote:

> 1. This is an appeal from the trial court's summary denial of Mr. Stano's Motion to Vacate Judgment and Sentence. Mr. Stano is a death-sentenced inmate.
>
> 2. The parties agree that the record on appeal is incomplete, and that supplementation is necessary. By Order entered September 22, 1987, this Court instructed the clerk of the lower court to file the complete record.
>
> 3. The record as supplemented will be voluminous. In order to cite to that in his record brief, Appellant will need to know the proper pagination. In the interest of judicial economy, this Court and the parties should be directed to specific pages in the record in support of whatever arguments are advanced.
>
> 4. Respondent agrees that allowing Appellant five (5) days from the filing of the complete record within which to file his brief is not unreasonable. Today,

> undersigned counsel contacted Ms. Bell Turner, who authorized counsel to represent to this Court that Respondent does not oppose this motion to toll.
>
> WHEREFORE, Appellant respectfully request that this Court enter an Order tolling the time for briefing, and an Order requiring that Appellant's brief be filed within five (5) days after the complete record is filed.

The motion was denied.

This brief thus does not contain record references, and this Court does not have the record. Appellant wishes to raise each and every claim that was raised in the lower court, and does not waive any previously raised claim. Since he cannot know whether or when the record will be complete and/or filed with this Court, this brief of necessity repeats all matters raised below. Consequently, the page-limitation requirement is implicated, a matter which is addressed by separate motion, filed herewith.

C. STATEMENT OF THE FACTS

This section contains most of the facts necessary for resolution of the arguments presented. Other relevant facts will be presented within the individual arguments, infra.

The State's position regarding whether counsel was competent in this case could not be clearer. After the death penalties herein, the State proceeded to prosecution in the Scharf case, the only case in which the State's evidence was tested by jurors. After a mistrial, the prosecutor prepared to use a new witness

for the second trial -- a jailhouse snitch. Contained in the direct appeal record of the Scharf proceeding is a letter from the prosector to Louie L. Wainwright, then Secretary, Department of Corrections, in which the prosecutor outlined why concessions should be made to obtain the testimony of the snitch. The overriding reason was that the State wanted an appeal proof death penalty to be imposed, and, the State argued, the death penalty in this case was defective:

> As there may be some question of why we would try Gerald Eugene Stano and therefore why we would need Mr. Zacke's testimony, I think I should delineate our reasoning in this regard. It is now true that Mr. Stano has six life terms and two death penalties for eight first degree murder. We have serious doubt about the validity of the two Stano death penalties. We do believe Stano should receive one valid appeal proof death penalty. Our case may well be the means to that end. The reason we doubt the valiidity of the two death penalties is that Stano's lawyers competency may be seriously questioned.
>
> In September 1981 Stano pled guilty to three first degree murders and cleared up three more. The sentencing Judge was Circuit Judge Foxman of Volusia County. Only six murders were known at that time. Later after Stano went to prison, he confessed to twenty-one more first degree murders. He thereafter pled to three more first degree murders (two in Alachua County and one in Bradford County). He then appeared before the same Judge Foxman, pled guilty without guarantee on the sentence and waived the jury. He received two death sentences. What reasonable expectation did Stano's lawyer have that Stano would receive life. The circumstances only became worse. There was

> no rational reason to plead guilty or to waive the sentencing jury. That's why we are proceeding on our case.

As was pled below, there was no rational reason for much of what defense counsel did or did not do in this case. The following facts were pled:

1. Confessions were extracted from Mr. Stano through illegal interrogations:

> [T]here is a few people out here that are out to slit your fucking throat. And they're here already.

Interrogation extracting "voluntary" confession from Mr. Stano, App. 5, pp. 17-19.

2. Eight lusterless confessions were used in this case to establish everything: convictions, aggravating circumstances and death sentences. There was no other evidence. Trial counsel did nothing to attack the confessions upon which the two pleas were based. The six "prior" convictions used to aggravate went equally unscathed: trial counsel Pearl had, along with Don Jacobson, represented Mr. Stano on three of them, and, conflict of interest as there was, did not attack those convictions; on the other three prior convictions, counsel Pearl admitted doing absolutely no investigation into the circumstances of the confession and guilty pleas involved. Before Mr. Stano pled guilty in the instant cases and at the guilty plea proceedings, counsel Pearl unabashedly informed the court that no

investigation of the new charges had occurred. The allegations in this paragraph show a complete absence of counsel, not to mention unreasonable omissions by counsel.

3. As the procedural history has demonstrated, Pearl, the primary attorney in the Bickrest/Muldoon case, was also counsel in the Maher, Van Haddocks and Heard cases, which are consequently critically important: as will be shown, the confessions in the earlier cases were illegally obtained, and other occurrences during the pendency of those proceedings led inevitably to additional confessions, including the Bickrest/Muldoon ones. Since Pearl was counsel in the three prior cases and pled Mr. Stano guilty, he had a conflict of interest when it came to attacking those convictions which were used to aggravate in the Bickrest/Muldoon proceedings.

4. The confessions which directly affected these proceedings were illegally and unconstitutionally obtained, in violation of the fifth, sixth, eighth and fourteenth amendments. The guilty pleas in all these cases were unknowingly, involuntarily and unintelligently entered, based, inter alia, on ineffective assistance of counsel. In each case, the State knew and suppressed exculpatory information, including the fact that the "confessions" were unreliable, that the interrogators utilized direct as well as covert threats and promises in order to obtain the confessions, that the "facts" in the confessions

did not match the facts of the offenses, and that the police had settled on other suspects who they believed committed the offenses, before spoonfeeding Mr. Stano his confessions.

5. Counsel in this, the Bickrest/Muldoon case, was ineffective for failing to investigate these and all prior cases used to aggravate. Counsel admitted at the plea herein that he had not investigated the Bickrest/Muldoon cases, and so could not advise Mr. Stano one way or the other about whether a plea of guilty was proper. Counsel was also ineffective for failing to investigate all the prior cases. Had he, he would have discovered the deficiencies therein. Counsel's ineffectiveness led directly to the plea herein, which would not have occurred had counsel acted reasonably.

6. Each prior case directly involved in this proceeding is the subject of separate Rule 3.850 motions. A 3.850 motion was filed in Bradford County, involving the Ligotino/Arceneaux/Bauer cases, and a 3.850 motion was filed in Volusia County involving the Maher/Van Haddocks/Heard cases. In this case, the Bickrest/Muldoon case, counsel Pearl is alleged to have been ineffective for having not investigated the prior six cases, and for failing to either (1) file a 3.850 motion to set those cases aside before sentencing herein, or (2) attack the cases, and explain those cases' infirmities, before this Court in 1982. Pearl was ineffective himself in the Maher/Van Haddocks/Heard

cases, but did not raise the issue here because of a conflict of interest, and because he acted unreasonably here as well.

7. Hereinafter, Appellant will demonstrate (a) that the State suppressed exculpatory evidence, (b) that the confessions and pleas were all unconstitutionally obtained, and (c) that counsel was ineffective for failing to raise these and a host of other constitutional deprivations. These fats are the predicate for Arguments I - III, infra. The most logical development of these facts is a chronological one.

A. MAHER, VAN HADDOCKS, HEARD

The State knew that the confessions in this case were suspect. In a note to Dean Moxley, state attorney, from another state attorney, describing early interrogation of Mr. Stano, the truth emerged:

> Dean --
> Suggest you listen to areas noted -- I don't think any admissions are impressive, they tell him -- he doesn't really tell them.
> Geo.

(Appendix 2, submitted with Rul 3.850 motion, R. _____.) More shocking is what "they" were telling Mr. Stano, in order to get him to adopt "their" version of facts in the Maher and Van Haddocks cases:

> LEHMAN: Is this the same knife that you uh used on Haddocks too, on the black girl? If, if the knife is the type that I am thinkin' of, the blades are real thin, aren't they?
>
> STANO: Uh uh.

LEHMAN: Like stainless?

STANO: Yeah, you can break 'em very easily.

LEHMAN: They snap and break.

STANO: Right. You can take 'em in with your two fingers with your pointer finger and your thumb and just pthet.

LEHMAN: You know, in order to penetrate this area,

(interpose)

STANO: Uh uh.

LEHMAN: . . . Ok, with a blade that thin, it's, it's probably gonna break?

STANO: It should.

LEHMAN: Ok.

STANO: Yeah.

LEHMAN: And I, I know that with the Maher girl, OK, she was stabbed numerous times. The Haddocks girl was stabbed numerous times. Ok. This is the knife that you used or did you have a another type, maybe a knife that you got.

STANO: No.

LEHMAN: From uh work, from Hampton's?

STANO: No, uh-huh, no, no, no, no. Never took anything like that. Because Jack and uh Joan Phillips, the owners, the proprietors, of Hampton's restaurants are very nice people.

LEHMAN: Well I'm not saying you, you, you took the knife from them. But would it have been? See the thing is that report's coming back from the lab, and there's, on the

Haddocks girl some of the knife wounds are showin' signs of serration, it'd be like a serrated blade, you know how your kitchen knives at home with the blades are serrated to make (interpose)

STANO: Oh, one of them numbers? Oh.

LEHMAN: Yeah.

STANO: Yeah.

LEHMAN: Yeah, and uh I was just wonderin' if maybe there was a different knife or maybe you had two knives in your car?

STANO: Never, never, just that one little ratchet.

. . . .

CROW: Gerald, what problems we have here, you confessed to two cases, right? And as your attorneys told you in the beginning and we explained to you last week,

STANO: Uh hum.

LEHMAN: ...either it's gonna have to come up a fourth time or you're either gonna go the insanity route or the normal route, right?

STANO: Uh uh.

CROW: At this point in time, with Don Jacobson and got the situation we got, we haven't got enough to keep you out of the electric chair.

STANO: Uh uh.

CROW: And you know what we talked about in the beginning,

STANO: Uh uh.

CROW: However I feel that you know, you what you just told me just now, I've got a list

of five cases here with your name involved where you shot at 'em, you stabbed 'em, an' you beat 'em an' you choked 'em.

STANO: Uh hum.

CROW: It's on record, you know.

STANO: Only that I have shot at 'em, well . . . .

CROW: It's on record, they said that you did.

LEHMAN: Well, they're making allegations that you, Gerald Stano . . . .

STANO: Uh hum.

LEHMAN: Ok, were there. We're not saying you did it, don't get us wrong. Ok, but it's just like you can make an allegation against me, or against Paul or anybody else that we did something to you.

STANO: Right.

LEHMAN: Ok, there's nothing in this world that prevents the worst prosecutor at all from coming into his station or my station and sayin' I want to file a complaint against Gerald Stano.

STANO: Uh huh.

LEHMAN: He fuckin' shot at me.

STANO: Would they be willing to take, oh you're bring out the hostile in me now,

LEHMAN: That's ok, that's ok.

STANO: [Inaudible] don't get the wrong idea.

LEHMAN: No, no, no, that's what we're here.

STANO: But I grant you one thing, I hope they don't walk inside,

LEHMAN: They won't.

STANO: ...but goddamn it, I'll be , I'll be glad to take a goddamn frigging polygraph test against those

LEHMAN: Okay.

STANO: ...five things that you have written down there on the back of that statement.

LEHMAN: Ok, ok.

STANO: Because (hits table) as it stands right now, there's only two cases that I could see and I got to remember directly doing 100% right down to the line.

LEHMAN: Ok, this is why we're trying to get it worked out. All right?

STANO: Yeah.

LEHMAN: And believe me, it's gonna take probably quite a few times of sittin' there going through this 'til everybody's convinced, you know the old saying, beyond and to every exclusion of every reasonable doubt?

STANO: No.

LEHMAN: You never heard that in a court of law, when . . .

STANO: No.

LEHMAN: When the attorney gets up and does final summations to the jury. He says ladies and gentlemen, in order to say that this man or this woman is guilty,

STANO: Uh hum.

LEHMAN: ...the state has to prove beyond and to every exclusion of every reasonable doubt, that he or she committed the crime. And if

we can cast a shadow of doubt in your mind that they didn't do it, then you can't find my client guilty. Well this is what we're telling you, too. Ok,

STANO: Umm.

LEHMAN: ...except we are not puttin' you on trial, we're talking our jury summation, we're trying to answer questions just like those photographs I showed you.

STANO: Uh hum.

LEHMAN: ...1976 June, Cobbs Corner.

STANO: Uh huh.

LEHAMN: Girl was found dead. Missin' 13 days, totally skeleton. Picked up from the Holiday Inn Boardwalk. Okay?

STANO: Uh huh.

LEHMAN: An, you know just like you sit there and you get upset like you were just a few minutes ago, okay, is that when the other Gerald comes out?

You see what Paul and I are talking about, what Don's talking about? You see why it's so important that we get everything out in the "open and, it's like Paul said, "let's make a deal". Ok, this is

STANO: Wait, wait a minute

LEHMAN: ...what we're trying to tell you.

STANO: All right.

LEHMAN: ... We're keeping you, we're tryin' to keep you out of that chair, by finding everything else that the other Gerald did, so that when we make that presentation to the state attorney okay, an' that when we sit there he takes all of his files and I take all my files and here

STANO: Uh hum.

LEHMAN: ...this is it, okay whether it has happened here, in Florida or in Pennsylvania or in New Jersey or in Maryland or Virginia, ok, that there's

STANO: [Inaudible]

LEHMAN: ...nothing in the closet. . . .

STANO: Uh huh.

LEHMAN: That there's nothing in the closet that's gonna come out that that other Gerald did, because if it is, then everything's known fully prior to that.

STANO: Well.

LEHMAN: And we don't want to see you get in that chair. We're keepin', we're tryin to keep your ass out of it.

STANO: Probably.

LEHMAN: ... as hard as we can.

Interrogation by Lehman and Crow, App. 3.

LEHMAN: All right, but we're really concerned just like Paul said and I said. We're going to try every which way we can to see that everything goes down the road the way we talked about. But if there's something up there in that corner that the other Gerald hasn't told about but he's holding himself in, okay, it's gonna be your downfall.

CROW: I'll tell you Gerald, I can't see why these people would fly all the way down from Jersey and Pennsylvania. They have been constantly on the fucking phone with me for about two or three days, three days now?

STANO: Dad know about that?

CROW: Who?

STANO: Dad.

CROW: No.

LEHMAN: We haven't told anybody.

CROW: You're the first we told. See, you're putting us in a hell of a position.

LEHMAN: Just like those blacks and yourself.

CROW: We got rid of most of the damned blacks.

LEHMAN: We're afraid that when this goes to the press all hell's gonna break loose. That's why I haven't charged you yet with Haddocks. I got it signed, sealed and delivered right here in my briefcase, but because of your safety, I don't want to charge you with it.

CROW: Gerald, the more you come across with, we're gonna be able to take you out of this thing and put you in an isolated situation. Get you to . . .

STANO: What do you mean by that?

CROW: Out from the groups.

STANO: No, I don't want no damned single cell.

LEHMAN: You're gonna want, Gerald, believe me.

STANO: No, I don't, don't do that.

LEHMAN: No, we're not gonna do it yet but believe me, okay, we're worried about your safety.

STANO: What do you want to do that for?

LEHMAN: Because there's a few people out here that are out to slit your fucking throat. And they're here already.

STANO: Third floor or what? 304?

LEHMAN: I don't know what room they're in, but they're in the black community. The word is out, partner, and we haven't let it out.

App. 5, pp. 17-19.

. . . .

LEHMAN: [Y]ou ever hear what a blanket party was? [person wrapped in blanket so cannot see others in cell kicking and beating him]

STANO: Ever see a guy that had one?

LEHMAN: That's right.

STANO: Me. Mom and Dad didn't know about that, don't tell them about that.

LEHMAN: I won't.

Id., p. 20.

CROW: Gerald, that's where we are. We got those guys going to fly down this week [from New Jersey and Pennsylvania] and they're bringing a pretty strong case and they got evidence and they put something of you at that scene. That bothers me, okay, cause they're ready to charge you. Now they can take you out of here, take you back up north. They got a strong case. They got four bodies, we got two. [No cases were even presented outside of Florida]

STANO: Oh, great.

CROW: Now they can take you back up there.

LEHMAN: How in the hell can they me up there when I'm living down here?

LEHMAN: It's called a Governor's warrant. They've got four bodies they can tag to, we've got two. All of a sudden we're short, they're long. They've got more clout than we do right now. You ever see a Governor's warrant?

STANO: No.

LEHMAN: I had the occasion when I was working uniform to read it to a few people.

STANO: What does it say?

LEHMAN: It comes through with goddamned ribbons and doilies on it and it's like a goddamned skull. And it says you're gone whether you like it or not.

STANO: Hmmm.

CROW: Now they gonna come marching in here, I know what they're gonna do, they gonna try to avoid it, that's why we might have to try to take you out of here and hide you somewhere. They gonna come marching down here...

STANO: 46 Country Club Drive will be fine, boys. ...

CROW: ...and hit the right people with those notices and you gonna be gone to Ohio, to Pennsylvania.

STANO: Pennsylvania or Jersey?

LEHMAN: Jersey.

STANO: Oh, great, that's all I need. No.

LEHMAN: Jersey State Police. Oh, yeah. A bunch of meat ass Polacks. You know them as well as I know them.

STANO: Sam Scardino.

LEHMAN: I don't know which one...

STANO: Sam Scardino on the Pennsylvania force.

LEHMAN: That's right. He is.

STANO: Put down Sam, too. I hung around with him, too.

LEHMAN: You know, they got a couple of lieutenants who were ready to fly down here Friday afternoon. They talked to Paul and Paul called me and I said, well you know, let's call up and tell them hey look.

CROW: I talked to Larry Nixon in the State Attorney's office. Don Jacobson, everybody. Frankly we're scared. Because they gonna come down and take you.

STANO: You're scared. Shit. I hate to see what my shorts look like when I get back up there.

CROW: Well, this is what you have to expect because they have strong evidence for you.

STANO: Oh that's nice.

CROW: Well, that's why we've been asking these questions today trying to get some answers from you.

CROW: Well that's, back up now, let's come back to here. We gotta get some clout so we can keep you in the state. We got the Haddocks girl and the Maher girl. Like I said we got bodies out here that are very similar to your situation. You best get yourself ready to talk to us some more, okay?

STANO: Yeah.

CROW: And tell the truth about it.

STANO: I just did. And that's it.

CROW: Just those two is the only thing ....

STANO: Just those two.

CROW: You got problems.

STANO: Thanks.

CROW: (long pause) More problems than you think. Because two bodies is not going to make you eligible for insanity. That's just what what's his name was talking about.

STANO: Who?

CROW: Don Jacobson. When he told you about the pattern discussed, you agreed that you would discuss it with us.

STANO: Yeah, that's what I'm telling you.

Id. at 24-25.

As George said to Dean, it gets to where they are telling Mr. Stano:

LEHMAN: Getting back to Toni. Did you stab her in your car?

STANO: Yes.

LEHMAN: How many times did you stab her?

STANO: Oh, a couple.

LEHMAN: Can you show me where?

STANO: Oy Vey. Right around in here first and then I took her outside.

LEHMAN: When you took her outside and stabbed her where'd you do it then?

STANO: Towards the back. In the back.

LEHMAN: Neck?

STANO: No, not the neck that I remember, no.

LEHMAN: Higher?

STANO: No, somewhere around here. In the back or so.

LEHMAN: When you stabbed her in the back and all did you have to go through her clothing?

STANO: No, cause I think she was, I don't remember offhand to be honest with you.

LEHMAN: Was she dressed when you stabbed her?

STANO: She may have been. I, I can't say truthfully.

LEHMAN: How about the head?

STANO: No. I don't think I, no, I didn't go for the head.

LEHMAN: You sure?

STANO: As far as I can recall.

LEHMAN: Ask the other Gerald. I want you. I'm serious. I'm going to prove something to you. Ask the other Gerald. Ask him now. Draw him out. Have him remember. Get the best recall you can and ask him where he stabbed her.

STANO: (long pause) It may have been...

LEHMAN: To the best of both Geralds' recollections, where did you stab her? And approximately how many times?

STANO: Oh, Lord.

LEHMAN: You're not going to hurt anymore, you're not going to hurt your case anymore.

STANO: Yeah, I know, I know, I'm not worried about that. I'm just trying to remember where the devil, where the hell it happened, how many times. I don't know, half a dozen maybe total in the body, I don't know.

LEHMAN: Do you feel that we talked about recall, okay, we talked about trying to remember. I pointed out to you a couple of times here today now about how I think you're not fully aware of what the other Gerald's doing all the time, okay? Remember me saying that?

STANO: Okay.

LEHMAN: I'm not trying to sit here and prove you're wrong, but I want to show you how I think that the other Gerald could have been taking you over and you're not aware of what's going on, okay? This is why I say you're going to have to come to terms with him before Paul and I can come to terms with him, okay?

STANO: Yeah, if I could do it, I would.

LEHMAN: I know, I know, okay? And I'm not saying you're not cause you don't want to, okay? I'm saying that it's probably hard. It's called human responses, alright?

STANO: Whatever that means.

LEHMAN: It means that the other Gerald don't want to come out.

STANO: Thanks.

LEHMAN: Well, it's something that we're going to have to be faced with in the very near future.

STANO: ... three or four days.

LEHMAN: Well, why three or four days?

STANO: I'm worried about Pennsylvania and New Jersey coming down here...

LEHMAN: Well, so are we, okay.

STANO: You are? Hey, it's my tail not yours. (sigh) You guys go home at night, I don't.

CROW: You know what that is?

STANO: No.

LEHMAN: You know what that is?

STANO: Yeah, it's a head.

LEHMAN: So's that.

STANO: Who's is that?

LEHMAN: That's the black girl's head.

STANO: He wouldn't go for the head I grant you that much.

LEHMAN: See all these marks?

STANO: Yeah.

LEHMAN: They're knife marks. See that one there? With the big bruise on there?

STANO: Yeah.

LEHMAN: That's a knife mark. See this big gouge here?

And see it over here? It's the same thing. Do you know how many times it counts?

STANO: No.

LEHMAN: This is going up to Tallahassee to a man, doctor of anthropology who does all this examination. Do you know how many different knife marks I counted on there? Fifty.

STANO: Whooo.

LEHMAN: I'm not lying to you, I'm being honest with you.

STANO: Whooee.

LEHMAN: Well, this is the same black girl. This is her. Okay. See--

CROW: That's what we did.

LEHMAN: This is why I'm trying to sit there and see if you're---(strange noises, recorder is cut off)...

This interview terminated at 12:50 a.m. 5/19/80. End of interview.

Judge Foxman was not told about these problems at plea. There were a few more details not brought to the surface until recently:

When was the last time you talked to Don Jacobson?

STANO: Yesterday afternoon.

CROW: What did Donald have to say? [interfering with attorney-client privilege]

STANO: Not long. It was just about the doctors that's what it was. Mom and Dad were here.

CROW: How're they doing?

. . . .

CROW: Gerald, you want to go ahead and just let it rest on two cases?

STANO: That's all I can do, Paul, cause that's all I know of. If I get fried, I get fried. Depending on what the doggone doctors have to say. I'd like to know what Pennsylvania had to say. You can say to some extent without letting the cat out of the bag.

CROW: They've got a pretty, I shouldn't say a pretty good case, but they, you know we talked at some lengths about, the case they got up there have connected you to it. They connected your good friend to it, mainly. _____ about you.

STANO: Do you know his name?

CROW: Yeah, well I can't tell you that.

STANO: Oh thanks.

CROW: They probably going to be coming down here in the next week or the week after and place formal charges against you.

STANO: (Laughter) That's nice.

CROW: Not really. Don [Jacobson] is really upset about it.

STANO: Does he know about this now? Will you call him this morning?

CROW: I can call him ... see what the hell he's got on his mind. I'm curious. The style's a little bit different.

STANO: In what line?

CROW: Well, they were stabbed to death, too, but there were two girls not just one. One was tied up which was different.

. . . .

LEHMAN: Done a little research into this knife you're talking about, a retractable blade. The bone to the skull on Haddocks and the breast plate on Maher don't jive up with what you're telling us what you used on them. The blade on that knife or retractable blade or whatever you want to call it had been so thin, width-wise, thickness-wise that I could sit there and stab it into this table and break the blade.

STANO: No way we was talking about a retractable blade.

LEHMAN: Well, you know the kind that's got the notches on the blades. The blade looks like, let me see if I can draw it for you.

STANO: Well, I know what you mean. I know what you mean. Right.

LEHMAN: It's got some holes in here for mounting (?). Okay. That blade is so thin and there's no strength to it that if it hit the table and move it like that I'd snap the point off right away.

STANO: Sure.

CROW: Yet you're telling us you stabbed these other girls with it and I don't think you did. It's got to the point where you've know been charged, that portion's all over with. Why you would want to tell us about that little thin blade, I don't know. You had to use a stronger blade that that, Gerald.

LEHMAN: The skull on Haddocks has got around the neck wounds has got serrations on it. Okay.

STANO: That's what you said the last time.

LEHMAN: And we think it's more of a serrated type blade knife and to me it really doesn't really matter whether it was a straight bladed knife or serrated bladed knife or razor knife, but to the State Attorney and all it does [matter] and they feel that for some reason you're not cooperating with us.

STANO: Let them think that.

LEHMAN: We're working with you and we're working for you, right?

STANO: Right.

LEHMAN: Okay. I want to try and show and prove to him that either it's this one or it's not this one but every time I keep getting, telling this is the one that you were using he keeps saying no way. There were no fragments of knife blade found in the skull in Haddocks. There's some pretty deep points in it. Up along here's a real good gauge for I.D. Splitting the breast plate of Maher, okay, takes a good strong blow as you know, and it takes a good sturdy knife.

STANO: That's the only one that I had.

LEHMAN: You didn't carry a folding buck knife with you or anything or a sheep knife you kept underneath the car, too.

STANO: God, no.

CROW: What about one of those kitchen knives from _____?

STANO: No, I never steal from an employer.

CROW: Didn't say you'd stole.

STANO: Never borrowed nothing like that. Everything would be done right in the kitchen.

CROW: It's one of those days. One of those days.

LEHMAN: I know tell me about it. I just can't help but wonder that knowing that either one of these girls weren't tied down and nobody was holding them down, however, the angle that you struck them with it, why that blade didn't break. And part of the way we're going to keep you down here is just like Sergeant Crow said--Pennsylvania and Jersey, man, they're chompin' at the bit.

STANO: They think I did...

LEHMAN: I don't want to see you get the chair. There's a guy coming up to get the chair next week up in Georgia. Potts. And they ain't going to prevent him from going. If they do it's going to be a miracle at this stage of the game. I can't help but think that somewhere along the line you got the answers for us.

STANO: I don't know. I've said everything that I knew.

LEHMAN: Everything that you want us to know.

STANO: Everything that I know.

. . . .

App. 5. These tapes reveal the very type of interrogation that has been long condemned by the courts, and which in this case violated Mr. Stano's fifth, sixth, eighth and fourteenth amendment rights. Not all has been uncovered. However, we know at least the following:

1. The trial court, Honorable S. James Foxman presiding, conducted a plea hearing September 2, 1981, regarding the Mahar,

Van Haddocks and Heard cases. Mr. Stano pled guilty. What the court was told by counsel was untrue. State attorney Nixon told the court that Mr. Stano's "confessions" matched the facts "only the killer could know," and he provided the court copies of those "confessions." These descriptions of Mr. Stano's statements were false, and the "confessions" provided were coached.

2. Mr. Stano was arrested by Detective J. W. Gadberry, Daytona Beach Police Department, April 1, 1980, on a charge of aggravated assault of Donna Hensley in Volusia County. Sgt. Paul Crow of the same police department had been assigned to investigate the death of Mary Carol Mahar, who had been killed sometime shortly before. See Affidavit of J.W. Gadberry, App. 7, and of Lissa Gardner, App. 8. Crow was present when Gadberry came into the station with Mr. Stano.

3. According to statements made to the trial court, Mr. Stano simply confessed to the Mahar killing, and led the officers to where the body had been left. A confession was indeed produced for the Court. See App. 9. In it, Mr. Stano purportedly said that he picked up Ms. Mahar who was hitchhiking alone. What is not revealed is that Mr. Stano did not first say so. According to Crow's own report, Mr. Stano said first that he picked up two women, and let one off. App. 10. Other serious discrepancies exist. Mr. Stano was not, as Nixon told the court, "able to describe the nature of the wounds that would only have been known to a medical examiner and

the investigating officers." App. 6, p. 10. Nor was he "able to take the investigating officers to the exact location." Id. Police reports say so, but it is not true, and this Court was not told the truth.

4. Police reports are strange creatures. Gadberry's, App. 11, and Crow's both seem so matter of fact, certain and nontentative. The reports do not conform with reality, as Gadberry has recently revealed. Just as reflected in "Geo's" note to Dean, Gadberry, the Stano arresting officer, the very person who would have been necessary at a suppression hearing, believed the Stano confession to be police confessing, believed that Mr. Stano was innocent, and knew that the confessions were improperly obtained and were untrue:

> 3. It was my early impression of Gerry Stano that he was like a child, and that he was not likely a killer. While the wounds inflicted on Hensley with a bottle opener were intended to hurt, they were superficial and not intended to kill. However, because there were wounds in the thigh area of both Hensley and Mary Carol Mahar, the victim in an unsolved case assigned to Sgt. Paul Crow of the same department, I mentioned the similarity to Captain Marvin Powers, who was at the lead of the detective bureau.
>
> 4. Sgt. Crow immediately became interested in questioning Gerry, and thereupon began his involvement with Gerry Stano.
>
> 5. Sgt. Crow joined me and we began to question Mr. Stano regarding the Mahar case. I was present for most of the interrogation,

although I had to be in and out of the room during the time. Sgt. Crow did most of the questioning.

6. From the beginning, Gerry Stano enjoyed the attention -- it seemed to puff him up and make him feel important. The Mahar case had received a great deal of local publicity. Mary Carol Mahar's picture had appeared in the newspapers often. One of the first things Sgt. Crow did was to show Gerry Stano a photograph of Ms. Mahar and ask him if he recognized her. At first, Mr. Stano said that he did recognize her, that he had picked her up and given her a ride, but that he had not killed her. Then he changed his story and told us that he stabbed her in his car. Yet, while he then seemed willing to confess, he was very vague about the details of the crime. It seemed as if he wanted to make us drag facts out of him -- as if he wanted to be coaxed into giving any information. When I tried myself to press Gerry on questions about particular matters, including the weapon used, he just didn't seem to know the answers. I gradually withdrew from the questioning of Gerry, but I was present during the phase of the interview in which Gerry stated he had picked up Mary Carol Mahar the night she died. I witnessed the interviewing process and the confession that it led to. Moreover, I was in the patrol car when Sgt. Crow and Gerry visited the place where the body had apparently been found.

7. After Gerry Stano "confessed" to the Mahar murder, we asked Gerry to take us to the place where the body was left. As I recall, we were accompanied by at least one other person, a Detective Azama. Sgt. Crow drove and we started out with the premise that the location was near the airport. As we drove around the area, Crow asked questions such as: "Is this closer to the spot?" "This is closer, isn't it?" Gerry was very hesitant. Again, he did not seem to know the correct answers. It was a slow

process. There was a great deal of coaxing. Afterwards, thinking about it, I could not say who directed who to the spot. I had been a detective for about three years at this point in time, and Gerry Stano had been too vague for my liking. In my professional opinion, Gerry Stano did not know where the body had been found.

8. At this point I discussed my doubts about the truthfulness of Mr. Stano's statement with my superior, Captain Powers, and with Sgt. Crow. But Sgt. Crow was in charge of the Mahar case. A written report of my doubts would not have been considered appropriate. I had no further involvement in the case except that I was asked later in the week to assist Sgt. Crow by taking Gerry's car to FDLE's Sanford Crime Lab.

9. It was upon learning of the results from the Sanford Crime Lab that my doubts about the validity of Gerry Stano's confession deepened to the point that I no longer considered him a suspect in the Mahar case. I was told by the Sanford Crime Lab that there was absolutely no evidence of the crime in the car, and that there would have had to have been some evidence, if he had done what he said he had. The car had perforated vinyl seats that made it impossible to have eliminated the presence of any blood residue from the padding below. According to the confession, the victim was stabbed while in the front seat of the car. As I was told by the experts of the Sanford crime lab, if someone had been stabbed as the confession described, there would have been blood inside the car, especially on the seat. Again, I made no secret of my doubts, but rather made them known to Powers.

10. I came to believe that Gerry Stano was a mentally ill person who had an excessive need for attention and affection that he sought to satisfy through a counter-productive relationship between him and Sgt. Paul Crow. Sgt. Crow intentionally and

calculatedly fed Gerry's need for affection by close personal contact for hours at a time, day after day, while simultaneously depriving him of contact with others. In my opinion, an unnatural bond developed between Paul and Gerry which intensified as time passed -- detectives would make jokes about them "going together." To me it seemed that Gerry and Paul Crow had a "confessor-priest" relationship. In my opinion, Gerry Stano became a good confessor of crimes he didn't commit.

11. Paul Crow used a lot of psychology in dealing with Gerry. A good detective uses psychological devices, and a good detective may ask questions like, "What if I were to tell you that your fingerprints were found on the knife?," even though no knife has been found. There are boundaries as to what may be inferred from answers to leading questions, however, especially when the setting of the interview is psychologically loaded so as to further influence the responses, as it was between Crow and Stano. I believe those boundaries were exceeded in this Mahar case.

12. After learning of the report on the automobile, I told my supervisor, Detective Captain Powers, that I did not believe Gerry was telling the truth, and I expressed to him my belief that close examination of Gerry's statements would bear this out. I also told him I would no longer pursue Gerry as a suspect in the Mahar case.

13. It was policy then that when there was disagreement between detectives on such matters and it was not resolved by Capt. Powers, then he would discuss it with the State Attorney, then Larry Nixon, who would decide whether or not to prosecute. It is my understanding that it was the State Attorney that made the decision in this case.

14. Sgt. Crow has maintained exclusive control of this and subsequent Stano cases,

so that it is not possible for any of the other detectives to openly criticize what he has done. Perhaps Captain Powers is in a position to give information on these matters.

15. Based on my contact with Gerry, the fact that he was not specific in his "confession" on April 1, 1980, and the facts that no murder weapon was found and no blood was found in his car, it is my professional opinion that charges should not have been brought against Gerry Stano in the Mahar case. And it seemed to me that after the Mahar "confession" things just seemed to snowball.

16. I was not personally involved in the case after that first week or so, but I knew as much as anyone else in the department -- that Paul Crow spent a lot of time communicating with Gerry and with Don Jacobson, Gerry's attorney. Don Jacobson was well known around the department because he handled personal matters for a lot of police officers. And Crow mentioned to me several times that someone, in Atlanta as I recall, was interested in writing a book with him about Gerry. I had no knowledge of any charge against Gerry Stano other than in the Mahar case, and did not know about the three life sentences Gerry received in 1981. In September, 1982, I moved to Kentucky, and when I returned to Daytona Beach about a year after that, in June, 1983, I was shocked to learn what had happened in Gerry Stano's case.

17. I have never made a secret of the fact that I do not believe there is adequate proof that Gerry Stano committed the crimes he has been charged with. Perhaps I would feel differently if there was shown to me independent physical evidence that Stano committed any of these murders, but I am not aware of any.

> 18. I was never contacted by any of Gerry's defense attorneys to testify in any matters. If I had been contacted, I would have stated my beliefs as I have done here. Now, with Gerry Stano facing execution, I felt I had to let my knowledge of the case and my opinions be known.

App. 7.

5. As will be discussed in subsequent arguments, this information, known to the police from 1980 until now, was unreasonably and unconstitutionally withheld from counsel for Mr. Stano. It is per se exculpatory information. As Mr. Gadberry has revealed, the cover-up continues:

> [B]efore my meeting with CCR, Sgt. Paul Crow telephoned me and asked me why I had agreed to speak to CCR about the Stano case. Sgt. Crow told me that since the death warrant that had been signed on Mr. Stano was on a case other than the Mahar case, I knew nothing about the matter. He told me I "had better have my facts straight," and seemed to attempt to threaten me by telling me that he "nearly got arrested once for trying to get a person off." I told Sgt. Crow that I was simply going to talk to CCR about my doubts about the truth of Gerry Stano's confessions. As I told Sgt. Crow, I had never made a secret of my doubts, but had often discussed them with him and with others. I assume the telephone call from Sgt. Crow was made while he was on official time.
>
> 5. In addition to the phone call from Sgt. Crow that morning, later on I received a phone call from my Captain, Noel Ouelette, who told me he had been informed that I was about to conduct a "news conference." I responded that it was not a news conference, but that it was a discussion with CCR.

> 6. I then received a phone call from Captain Barry Neall, Sgt. Crow's supervisor, who asked me if I would be in during the day. I told him I was off duty for the day, but would be in on Monday. He asked me to stop by sometime during the week to discuss the matter.
>
> 7. Later on, while talking with CCR, I unplugged my telephone when it continued to ring, as I did not want to be bothered further over my resolve to say what I had on my mind.

App. 12.

6. On the same day as the Mahar charge and "confession," Crow showed Mr. Stano a photograph of another missing woman, Toni Van Haddocks. According to Crow, Mr. Stano denied any knowledge of her. See App. 13. The trial court was not informed of the lengths to which everyone went to get a statement from Mr. Stano regarding Van Haddocks. See Apps. 3, 4 and 5, quoted extensively above. It took forty days to get a confession, and that one obtained was completely unreliable.

7. This is how the confessions were obtained. Upon the arrest of their son, Mr. Stano, Mr. and Mrs. Stano began efforts to obtain legal representation for him. The public defender was appointed on or about April 2, 1980, but Mr. and Mrs. Stano continued efforts to hire private counsel. Mr. Michael Lambert of Daytona Beach was first approached, and, logically enough, filed a motion to suppress the confessions. App. 14. The Stanos ultimately hired Don Jacobson of Daytona Beach to represent

Mr. Stano. Jacobson began representation immediately. Later, Howard Pearl was appointed as co-counsel. App. 76.

8. Don Jacobson, Howard Pearl, and Paul Crow all decided that Mr. Stano was a mass murderer, and they set out to prove it was so. Don Jacobson had worked for the FBI for five years and was an aide to J. Edgar Hoover. In private practice, Jacobson was well known in the police department, handling personal matters for many police officers. App. 7.

9. Don Jacobson immediately hired a person with a background in psychology, Ann McMillan, to purportedly aid in the "defense" of Mr. Stano. In fact, her purpose was, pure and simple, to aid Jacobson and Crow in their quest for more confessions from Mr. Stano. In a statement to CCR personnel, Ann McMillan made the following comments regarding the relationship between herself, Crow, and Jacobson:

> 6. Dr. McMillan said she was called and asked by Mr. Jacobson to work for the defense within a few days of Mr. Stano's arrest in Daytona Beach, Florida, in April, 1980. Mr. Jacobson asked Dr. McMillan to find out if Mr. Stano was a "serial killer" and indicated to her that he was not interested in representing Mr. Stano unless she found that Mr. Stano might be such a killer. Dr. McMillan told Ms. Shubert and me that "Don tried to make everyone a serial killer." Earlier in the 1970's, she had written a profile of serial killers and had given it to Mr. Jacobson. She said she understood that Mr. Jacobson had given a copy of the profile to Sgt. Crow, the chief investigator in the cases against Mr. Stano, after Mr. Stano was arrested.

7. Dr. McMillan said she talked freely with Sgt. Crow about her employment by Mr. Jacobson as an expert for the defense. I expressed shock that she had talked with Sgt. Crow and asked her if Mr. Jacobson had ever told her that her conversations with Mr. Stano were confidential and not to be disclosed to police, prosecutors or the public. She laughed, shrugged her shoulders and said "just the opposite." She said "Don wanted me to talk to Sgt. Crow." She was instructed by Mr. Jacobson to tell Sgt. Crow how best he could interrogate Mr. Stano in order to get confessions from him. At one point, Mr. Jacobson even got Crow to Dr. McMillan's office where Jacobson, Crow and McMillan met with members of Mr. Stano's family.

8. Dr. McMillan said she was never told by Mr. Jacobson to limit her discussions with the police to specific conversations she and Jacobson had had with Mr. Stano or to specific cases against Mr. Stano. She explained, to the contrary, that Mr. Jacobson actively solicited her cooperation and Mr. Stano's family's cooperation with Sgt. Crow. She said she gave Sgt. Crow advice about interrogation methods to use on Mr. Stano. She advised Sgt. Crow to appeal to Mr. Stano's sense of grandiosity. She said she believed Sgt. Crow "smelled a book" and was designated "cop of the year" for his work on the case. Dr. McMillan said that Paul Crow developed quite a rapport with Gerry Stano, and that she was not surprised to learn that long after her involvement in the case ended Crow was able to go back to Gerry Stano and get more "confessions".

9. She said she was initially retained by Mr. Jacobson and paid by Mr. Stano's parents. At some point, however, she was court appointed by Judge Foxman. She submitted a report to Judge Foxman and said she also prepared for Judge Foxman a profile

> of serial killers that compared Mr. Stano to Charles Manson and other "mass murderers".
>
> 10. After preparation of the reports for Judge Foxman, she refused to be involved with Mr. Stano's case. Dr. McMillan said she moved away and was simply not available to answer phone calls from Mr. Stano, his attorneys, or his family. Had she testified, though, she said she would have told the court and jury that Mr. Stano was legally insane, that he was never normal, and that he lacked the capacity to control himself.

App. 15.

10. The partnership between Jacobson and Crow did not go unnoticed. Terrell Ecker, a free lance writer, reports that Jacobson was interested in writing a book about Mr. Stano, as was Crow, who stated to Ecker that "he had the biggest case that he had ever heard of -- he had a serial killer." App. 13. Crow wanted "money, movies, fame and fortune." Id. In a conversation with CCR personnel, Ecker made the following comments about Crow and Jacobson:

> Crow would really do his homework. Donald Jacobson, Stano's lawyer, would help Crow. Donald Jacobson was Gerald Stano's court appointed attorney. Paul Crow told me that he would talk to Donald Jacobson, and that Jacobson would tell Paul Crow what questions he should ask Gerald Stano in order to obtain confessions. Paul Crow would talk to Gerald Stano with Jacobson's permission and with his blessings. With the help of Donald Jacobson, Paul Crow was able to get Gerald Stano to confess to many offenses. In my opinion, these confessions are legally flawed. Something is wrong when the defense lawyer, Donald Jacobson, tells the police, Detective Crow, "Here's what you ought to ask Gerald."

> This is especially true in Gerald Stano's case, where the only evidence against him is his confessions. Jacobson is a former FBI agent and that may have influenced him.
>
> i. I tried calling Howard Pearl, Gerald Stano's other court appointed attorney, to tell him of Jacobson's collusion with Detective Paul Crow. But Howard Pearl would never return my phone calls.

App. 13.

11. These participants were unabashedly public about their mutual admiration:

> "Jacobson praised the professionalism of the man who painstakingly extracted each of Stano's confessions -- Daytona Beach Sgt. Paul R. Crow.
>
> 'Paul is one of the real bright police officers,' said the lawyer."
> --St. Petersburg Times, "Police Name 25 Victims Linked to Convicted Killer," Oct. 5, 1982, sec. B, p. 1.
>
> "There is no provision for the safety of the public from these idiots." -- Don Jacobson
> --Springfield Sun, Nov. 25, 1982, p. 1.
>
> "If he hadn't been taken off the streets when he was, he would have depleted the whole population of the Daytona Beach area by leaps and bounds." -- Don Jacobson
> --St. Petersburg Times, "Death at Random," Dec. 14, 1982, p. ___.
>
> "'I'm stuck with the facts; every defense attorney is,' Jacobson said."
> --Evening Independent, "Mass Murderer-Convicted Killer -- A Total Misfit," according to his former attorney, Oct. 7, 1982, p. ___.

"I think a alot of what he's telling us is the truth," Miss McMillan said of Stano. "That's how he gets his jollies."

--"Stano Is 'Not Human,' Says Psychologist," St. Pete Times, Oct. 9, 1982, sec. B, p. 1.

"Jerry is not able to show any remorse at all. He would snuff out a life like you would break one of my 11-cent pencils here. The difference is, he wouldn't apologize for it." -- Jacobson.

--Philadelphia Inquirer, "Proudly, nonchalantly, he confesses to 39 slayings," Oct. 29, 1982, p. 1.

"These are not just random confessions to get attention or publicity," Jacobson, a former FBI agent said in an interview last week. "They are sealed tight. These really happened. And there are more. There are more."

--Id. (emphasis in original)

"Detective Crow ... said he asked Dr. McMillan to begin working with him in 1980 because he had begun to suspect the Volusia cook was a mass murderer. In addition to the hours Ms. McMillan spent studying Stano, she spent many hours coaching Crow on questions to ask and mannerisms to watch for in questioning Stano about unsolved murders."

--The Ledger, "Psychologist Says Stano Was Made for Murder," Oct. 6, 1982, p. ___.

"Dr. Ann McMillan ... began interviewing and testing Stano in 1980 at the request of the Daytona Beach Police Department."

--Daytona Beach Evening News, "Psychologist Compares Stano with Manson, Son of Sam," Oct. 7, 1982, p. 1.

12. The Van haddocks "confession" resulted from this collusion. After the Mahar April 1 statement, Crow interrogated Mr. Stano on the 5th or 6th of April. Mr. Stano wrote Jacobson

and asked what he should do if Crow "comes around again." See App. 16. The trial court was not told of these fruitless interrogations.

13. On May 3, 1980, an investigator for Jacobson met with Crow at Crow's office. They discussed Crow's suspicions about Mr. Stano's background, and their belief of his probable complicity in various crimes. App. 17.

14. By May 5, 1980, Crow had been back to see Mr. Stano again, and discussed "Pennsylvania and New Jersey coming for me." App. 16. (other alleged killings). Mr. Stano told Don Jacobson in his May 5, 1980, letter that he wanted to be "cured," and wanted to go for "some form of treatment or rehabilitation at the Forensic Hospital in Gainesville." Id. Gerry wrote that he expected to be out of prison by June 15, on a murder charge.

15. Crow, McMillan, Jacobson and the defense investigator all met at Jacobson's office on May 7, 1980, for one hour. Id.

16. On May 8, 1980, Ann McMillan performed some tests on Gerry. One of the testing forms revealed that she knew something Gerry did not know -- she wrote "multiple murderer -- 6 killings documented thus far -- may rise to 15 or more." App. 42. She was, at this point in time, ostensibly a defense consultant. She states that she was testing in order to prove for Jacobson that Gerry was a serial killer, and to learn how to effectively interrogate him. App. 15. Her conclusion was satisfactory to

Jacobson/Crow: she found Gerry to be a "Charlie" MMPI classification, a murderer, comparable to Charles Manson. App. 18. As we can demonstrate, her self-fulfilling conclusion was blatantly incorrect, and resulted from gross misanalysis of the data she took. But her "Comparison of Mr. Stano's Psychological Profile in Comparison With Those of Convicted Mass Murderers," App. 18, provided for Jacobson's and Crow's use, and distributed to the trial judge left Gerry little chance for normal, effective, unfrenzied advocacy.

17. On May 9, 1980, the day after these "evaluations," a series of important incidents occurred:

a. A meeting was held at Don Jacobson's office, attended by Gerry's parents, Paul Crow, Don Jacobson, Jacobson's investigator, and possibly Ann McMillan. App. 17. A discussion was conducted regarding five cases that involved homicides. According to the investigator's notes, the discussion was about victims "Toni Haddocks," "Sheryl Neall," "Mary Maher," and "Michelle Sprague."

b. Don Jacobson officially entered an appearance as counsel of record in the Maher case in Volusia County, and filed a motion requesting payment for the investigator, and the appointment of mental health experts, including Ann McMillan, to determine competency. Drs. Stern and Davis were also requested for this purpose. App. 19.

c. Mr. Stano purportedly confessed to Sgt. Crow regarding Van Haddocks, the second murder victim Mr. Stano had been asked about by Crow on April 1, 1980. App. 20. The whole "defense" team (except Mr. Stano) knew that an interrogation would occur on the 9th, and the meetings with McMillan, Jacobson, Crow and investigators were geared toward that goal. All concerned knew that Mr. Stano was a suspect who had been targeted in the case, and the interrogation effort was, pure and simple, to obtain a confession so as to convict, and/or put more pressure on Mr. Stano to confess to more cases.

18. The "treatment" Mr. Stano wanted was psychiatric treatment, and the "mental health" evaluation conducted by McMillan, in the company of Jacobson's investigator, on May 8, 1980, teased Mr. Stano into being hopeful. He believed he would be "out" by June. App. 16. The scheme developed by Crow, Jacobson and McMillan was without question intended to obtain confessions from Mr. Stano by guaranteeing to Mr. Stano that on those cases for which confessions were obtained, Mr. Stano would either be hospitalized or receive life imprisonment, but he would not receive the electric chair.

19. The Van Haddocks "confession" was presented to the trial court at the September 2, 1981, guilty plea proceeding. App. 6. Larry Nixon, prosecutor in the case, made an incredibly false statement to the court.

> Again, there were very peculiar head injuries that only would have been known to the murderer in this case . . . [which, with other factors] shows the reliability of the confession in the details surrounding the investigation indicating that Mr. Stano is clearly guilty of that offense, also.

Id, p. 11. This was absolute nonsense, as Mr. Nixon knew. Mr. Stano could not and would not say the victim had "peculiar head injuries" -- he had no idea, and would not say so, despite constant hammering by interrogations. Apps. 3, 4 and 5. Nixon knew that the knife Gerry said he used was not possibly the weapon, but Nixon kept it from the Court and counsel.

20. The transcripts of tapes in Appendices 3, 4 and 5, reveal disturbing irregularities. First, defense counsel is not present at any of these, or any of the countless other interrogations. This is unreasonable attorney conduct. It is also a violation of the sixth amendment. Second, the interrogators "explain" to Mr. Stano that he has to confess to more cases because his lawyer says it is necessary to have more confessions in order to win an insanity defense, and to avoid being electrocuted. Mr. Stano is absolutely and steadfastly adamant that there are no other offenses at all, despite the most clear cut example of improperly coercive police interrogation one can imagine. See Apps. 3, 4 and 5.

21. This "more confessions in exchange for insanity" ploy continued for a full year, without success. Mr. Stano was left alone

to stew, except for visits with Crow. He received little to no communication from his attorneys, despite repeated requests for information.

22. On or about March 2, 1981, Mr. Stano's father met with Ann McMillan, Crow, and Jacobson at McMillan's office. The meeting was intended first to convince Mr. Stano that if Mr. Stano confessed to more murders, and thereby established for McMillan a pattern of insanity, Mr. Stano would receive life or institutionalization. Second, the meeting was intended to convince Mr. Stano to convince his adopted son to confess. Mr. Stano had miraculously resisted additional confessions, but after the other actions enlisted the aid of his father, he was helpless. McMillan, Crow, and Jacobson convinced Mr. Stano to convince Mr. Stano to confess to more offenses, and, psychologists that they were, pumped the father with facts about the cases so that it would be easier to get the confessions. App. 21.

23. Mr. Stano did go to visit his son, and performed as requested by the detective and defense lawyer. According to Mr. Stano, he begged Mr. Stano, crying all the while, to confess in order to save Mr. Stano's life. App. 21.

24. On March 3, 1981, Mr. Stano wrote to Jacobson, and told him about 3-4 more murders that he had told his father about (actually vice versa) during the visit. He told his attorney "I was scared to talk about it, but since that talk with Dad Monday,

he is behind me 100%. I will give statements to Sgt. Paul Crow if he wants them. Don, things are sketchy but might be able to be put into place. Please Don, help keep me out of the electric chair...

> Dad is on my side 100% all the way to the mental hospital, because he wants me cured not Electric Cutted. I have a lot going for me with my parents and I can't blow it. Dad was the one who made me finally come to my senses.

App. 16, March 3, 1981, postmark. Mr. Stano then tells Jacobson that he is very sketchy in details. Id. Crow had all the details, almost, and provided them.

25. On March 6, 1981, according to Crow, Mr. Stano provided the first confession relating to the Scharf case, a confession prompted by promises of life, and for which he ultimately received death. According to the proffer made at trial during the Scharf case, Crow and Detective Hudson were interviewing Mr. Stano in the Volusia County Sheriff's Office about various murders when the Scharf confession happened. App. 22. Crow said they were discussing victims Ramona Neal, Susan Bickrest, Nancy Heard, and Linda Hamilton. At first, Crow believed Mr. Stano was "confessing" to the Bickrest case, which they had discussed, until Mr. Stano said it occurred in Titusville, Brevard County. Id. They took the statement nevertheless.

26. On March 6, 1981, Crow met with Mr. Stano and discussed the

Scharf, Heard, Bickrest, and Hamilton cases. He continued to visit and interrogate, getting a court order, agreed to by counsel, allowing Crow to keep Mr. Stano in his custody so he could drive him around the county. App. 23. On March 12, the participants finally got what they wanted -- four "confessions" were obtained: Heard, Hamilton, Neal and Jane Doe. App. 24.

27. Pleas were entered in the Mahar, Van Haddocks, and Heard cases, before Judge Foxman. There was no evidence except confessions. However, due to the State's suppression of evidence and counsel's ineffectiveness, Mr. Stano pled. He would not have, had the above collusion not occurred, and had loyal and effective counsel investigated.

28. These cases were full of other exculpatory information. Officer Jim Gadberry realized from the very beginning that Mr. Stano did not know the details of the Maher murder:

> 6. The Mahar case had received a great deal of local publicity. Mary Carol Mahar's picture had appeared in the newspapers often. One of the first things Sgt. Crow did was to show Gerry Stano a photograph of Ms. Mahar and ask him if he recognized her. At first, Mr. Stano said that he did recognize her, that he had picked her up and given her a ride, but that he had not killed her. Then he changed his story and told us that he stabbed her in his car. Yet, while he then seemed willing to confess, he was very vague about the details of the crime. It seemed as if he wanted to make us drag facts out of him -- as if he wanted to be coaxed into giving any information. When I tried myself to press Gerry on questions about particular matters, including the weapon used, he just

didn't seem to know the answers. I gradually withdrew from the questioning of Gerry, but I was present during the phase of the interview in which Gerry stated he had picked up Mary Carol Mahar the night she died. I witnessed the interviewing process and the confession that it led to. Moreover, I was in the patrol car when Sgt. Crow and Gerry visited the place where the body had apparently been found.

7. After Gerry Stano "confessed" to the Mahar murder, we asked Gerry to take us to the place where the body was left. I recall, we were accompanied by at least one other person, a Detective Azama. Sgt. Crow drove and we started out with the premise that the location was near the airport. As we drove around the area, Crow asked questions such as: "Is this closer to the spot?" "This is closer, isn't it?" Gerry was very hesitant. Again, he did not seem to know the correct answers. It was a slow process. There was a great deal of coaxing. Afterwards, thinking about it, I could not say who directed who to the spot. I had been a detective for about three years at this point in time, and Gerry Stano had been too vague for my liking. In my professional opinion, Gerry Stano did not know where the body had been found.

8. At this point I discussed my doubts about the truthfulness of Mr. Stano's statement with my superior, Captain Powers, and with Sgt. Crow. But Sgt. Crow was in charge of the Mahar case. A written report of my doubts would not have been considered appropriate. I had no further involvement in the case except that I was asked later in the week to assist Sgt. Crow by taking Gerry's car to FDLE's Sanford Crime Lab.

App. 7.

29. Gadberry's doubts were then affirmed when a thorough examination of the car which, according to Mr. Stano's statement,

was .cp3
the scene of a bloody stabbing failed to reveal any trace of the crime:

> 9. It was upon learning of the results from the Sanford Crime Lab that my doubts about the validity of Gerry Stano's confession deepened to the point that I no longer considered him a suspect in the Mahar case. I was told by the Sanford Crime Lab that there was absolutely no evidence of the crime in the car, and that there would have had to have been some evidence, if he had done what he said he had. The car had perforated vinyl seats that made it impossible to have eliminated the presence of any blood residue from the padding below. According to the confession, the victim was stabbed while in the front seat of the car. As I was told by the experts of the Sanford Crime Lab, if someone had been stabbed as the confession described, there would have been blood inside the car, especially on the seat. Again, I made no secret of my doubts, but rather made them known to Powers.

Id.

30. In fact, according to Mr. Stano's statements, both Mary Carol Maher and Toni Van Haddocks' had been stabbed in the front seat of his car, and in both statements Gerry described the presence of blood and blood stains in the car. Rider, App. 9 and 20. Yet, Sanford Regional Crime Laboratory Reports dated April 4 and April 9, 1980 failed to reveal any evidence of the crimes Mr. Stano allegedly described. As stated in the report results:

> The interior of the automobile (Q. 1) was examined for the presence of bloodstaining and none could be found.

> In addition, the items found inside the automobile were examined for bloodstains and none were found.
>
> * * *
>
> Although several articles of clothing are present in the vehicle, the only "feminine" article is a red, white and green knitted cap.
>
> The rear hatch back area has a toolbox full of tools. No sharp knives were found.
>
> We tears of (sic) cuts could be detected in the seats.

App. 45.

31. In a taped conversation with Mr. Stano on May 19, 1980, well after the time of Mr. Stano's April 1 "confession" to Mahar and May 9 "confession" to Van Haddocks', Paul Crow and Steve Lehman, the Volusia County deputy in charge of the Van Haddocks' case, expressed their frustration at the total lack of supporting physical evidence in the car. Gerry readily agreed to allow the car to be "taken apart":

> Crow: You know on several occasions we've attempted to uh search that car and we haven't found hardly anything we were looking for. Okay. Uh would you object if we uh had the car taken apart completely?
>
> Stano: No, but you'd have to get my father's okay on that too, because it is his car. You'd have to get his . . .
>
> Crow: What's What's your feeling about?
>
> Stano: If it would help in the case or uh if um whatever you'd like to do. It's perfectly up to you. If you think it's necessary to

take the car apart.

Crow: Now when I say take it apart, I want you to understand we'll dissect the whole car,

Stano: Uh hmn.

Crow: The fenders will come off, the roof will come off, the engine will come out. Everything will be taken apart on it.

Stano: Uh hmn.

Crow: What do you feel about that?

Stano: Well, (chuckles) just as long as it runs when it goes back together again (chuckles), let's put it that way. And the stereo's still in there. Don't hit the stero. . . watch the wires, because oh man, there's a number of wires underneath that dashboard for that stereo. If it's necessary and it's uh you find it mandatory whatever, to have the car taken apart, that would have to be discussed with my father as I said before. But I have no objections really.

Lehman: Would you be willing to give us written to that?

Stano: Yes.

Lehman: That you have no objections, that you have no objections?

Stano: That I have no objections.

32. This total lack of evidence led the State attorney's office to echo Officer Gadberry's doubts in these notes in the State Attorney's files on the Maher case:

> 1. Question? How could the [defendant] stab Mary Carol Maher five times in the chest, twice in the back, and stab and cut her thigh

> area without blood being all over the seat area of his car (see Sanford Lab Reports).
>
> 2. Further isn't it likely there would be tears or cuts on the seat, but none were found.

App. 46 (emphasis in the original).

33. Other efforts to locate physical evidence tying Mr. Stano to the crimes were equally unsuccessful, despite the full cooperation of Mr. Stano and his family:

> 14. We also told Sgt. Crow, Mr. Jacobson and Ann McMillan of our serious doubts that Gerry did this thing. Norma did all of his laundry, and had never seen any blood or missed any clothing. Gerry ate his meals at home with us. We saw him daily and never noticed bruises, or anything unusual for that matter. We told the three of them these things time and time again.
>
> 15. On one occasion I remember Norma and I being questioned at length about Gerry's car. We met Jacobson and Crow where Gerry's car was being held and searched. They wanted to know when Gerry did such a thorough cleaning of his car. We explained that Gerry was a very neat and clean person. His car was always clean. They seemed frustrated that they had found no blood or other evidence of any kind in the car.
>
> 16. We were completely open with Paul Crow. During the first week following Gerry's arrest Paul Crow told me he wanted to search Gerry's apartment. Gerry lived at the Riviera Hotel, Ormond Beach, when he was arrested. I said find, met Sgt. Crow at the apartment and he and I examined everything -- the apartment itself, Gerry's clothes, and all of his personal things. It was a one room apartment and Gerry's room and the bathroom were spotless. Sgt. Crow looked through everything thoroughly and of course

> found absolutely nothing of interest to his investigation. The only thing he was interested in was a very small, one to one and one half inch pocket knife that he found in Gerry's jewelry box. Sgt. Crow just looked at it and laughed, although I think he may have taken it with him. Sgt. Crow seemed completely satisfied, or perhaps disappointed, that he had found nothing of interest.

App. 21.

34. Nor was Mr. Stano able to produce, lead the police to, or even adequately describe a murder weapon in either the Maher or Van Haddocks case. During taped conversations well after the dates of the two confessions, Paul Crow and Steve Lehman spent considerable time and effort trying to locate a weapon or at least correct Gerry's statements about the knife he claimed to have used in the killings, to no avail. Gerry consistently claimed to have used a knife which was not sturdy enough to have been the murder weapon:

> Crow: Gerald, could you describe to me this particular type of knife that uh you had in your vehicle?
>
> Stano: Yea, uh sort of a half moon shaped uh knife with a little, little blade at the end, a razor blade at the end, uh approximately about 4 to 6 inches long. The blade was about half an inch long. It stayed out 9, let me see, . . .
>
> Crow: Could you come closer?
>
> Stano: Yes. And uh, let's see, you use it mainly for cutting you know cutting open cases, you know, boxes and stuff like that.

Crow: How long was the blade?

Stano: About a half inch, 3/4 quarters of an inch.

Crow: Long?

Stano: That's it. Not long. About long wise, length wise about 1/2 inch to three quarters for the whole blade, but uh, let's see, say about a quarter of an inch to uh, 'tween a quarter of an a 1/2 an inch is where you stick out, depending on how far you put the notches down. An' you got a special blades that go in INAUDIBLE.

Crow: The one that you used, how far did you say it was?

Stano: Say about a quarter of an inch to uh half an inch, somewhere around there.

Crow: You just described to is a half moon.

Stano: Yeah.

Crow: The total length of knife blade you say is only an inch, quarter inch.

Stano: Depending on how far you bring it out. You, you got razor blades that go in there. And you got little notches that look like your finger. Say this is the blade right here and you got about 3 or 4 notches and you've got notches that fit on the on the top part of the knife on the on the inner casings of the knife and you can adjust it so that like one notch would be out, you know, ... or all three of 'em would be out.

Lehman: Its got a blade on either end of it. If you break the one you can flip the blade around it.

Stano: Right. It's an industrial.

Lehman: Right. Ok.

Stano: It's for industrial use.

Lehman: Is this the knife that you carry underneath the front seat of your car?

Stano: Yup. Because I had gotten that from uh Canada Dry, they had uh one sitting over there in the uh, in the uh shop. An' I uh picked it so, I, cause I was opening up uh cases, cause we had to build displays for Christmas and I decided what the heck, what have I got to lose. You know I need it, because I'm gonna be running a full uh full case load.

Lehman: Have you always used just this knife?

Stano: No, no. No, no, no, no. I, got a small pocket knife that I used to carry every now and then. An' that's about it for knives 'cause you see I've got, I have a felony charge on me, that was uh in '75 or '76 uh for uttering a forged instrument, forgery of a check really, and uh I was told that no matter what happens, I can't carry a uh a uh gun uh I couldn't get a gun or anything like that.

Lehman: Is this the same knife that you uh used on Haddocks too, on the black girl? If, if the knife I'm type that I am thinkin' of, the blades are real thin, aren't they?

Stano: Uh uh.

Lehman: Like stainless?

Stano: Yeah, you can break 'em very easily.

Lehman: They snap and break.

Stano: Right. You can take 'em in with your two fingers with your pointer finger and your thumb and just pthet.

Lehman: You know, in order to penetrate this area, (interpose)

Stano: Uh uh.

Lehman: . . . Ok, with a blade that thin, it's, it's probably gonna break?

Stano: It should.

Lehman: Ok.

Stano: Yeah.

Lehman: And I, I know that with the Mahar girl, OK, she was stabbed numerous times. The Haddocks girl was stabbed numerous times. Ok. This is the knife that you used or did you have a another type, maybe a knife that you got.

Stano: No.

Lehman: From uh work, from Hampton's?

Stano: No, uh-huh, no, no, no, no. Never took anything like that. Because Jack and uh Joan Phillips, the owners, the proprietors, of Hampton's restaurants are very nice people.

Lehman: Well I'm not saying you, you, you took the knife from them. But would it have been? See the thing is that report's coming back from the lab, and there's, on the Haddocks girl some of the knife wounds are showin' signs of seration, it'd be like a serated blade, you know how your kitchen knives at home with the blades are serated to make (interpose)

Stano: Oh, one of them numbers? Oh.

Lehman: Yeah.

Stano: Yeah.

Lehman: Yeah, and uh I was just wonderin' if maybe there was a different knife or maybe you had two knives in your car?

Stano: Never, never, just that one little ratchet. INAUDIBLE

Lehman: Do you have any idea where we could find the knife?

Stano: No, no, I don't.

Lehman: Do you still have it?

Stano: No, no, I threw it, when I threw out the uh belongings of the girls I threw them on the, threw that on the road somewhere and I don't remember where I threw it.

App. 3.

35. As Crow, Lehman and the State Attorney knew, the knife Mr. Stano insisted he used simply was not the murder weapon:

Lehman: Done a little research into this knife you're talking about, a retractable blade. The bone to the skull on Haddocks and the breast plate on Maher don't jive up with what you're telling us what you used on them. The blade on that ratchet knife or retractable blade or whatever you want to call it had been so thin, width-wise, thickness-wise that I could sit there and stab it into this table and break the blade.

Stano: No way we was talking about a retractable blade.

Lehman: Well, you know the kind that's got the notches on the blades. The blade looks like, let me see if I can draw it for you.

Stano: Well, I know what you mean. I know what you mean. Right.

Lehman: It's got some holes in here for mounting (?). Okay. That blade is so thin and there's no strength to it that if it hit the table and move it like that I'd snap the

point off right away.

Stano: Sure.

Crow: Yet you're telling us you stabbed these other girls with it and I don't think you did. It's got to the point where you've know been charged, that portion's all over with. Why you would want to tell us about that little thin blade, I don't know. You had to use a stronger blade that that, Gerald.

Lehman: The skull on Haddocks has got around the neck wounds has got serrations on it. Okay.

Stano: That's what you said the last time.

Lehman: And we think it's more of a serrated type blade knife and to me it really doesn't really matter whether it was a straight bladed knife or serrated bladed knife or razor knife, but to the State Attorney and all it does and they feel that for some reason you're not cooperating with us.

Stano: Let them think that.

Lehman: We're working with you and we're working for you, right?

Stano: Right.

Lehman: Okay. I want to try and show and prove to him that either it's this one or it's not this one but every time I keep getting, telling this is the one that you were using he keeps saying no way. There were no fragments of knife blade found in the skull in Haddocks. There's some pretty deep points in it. Up along here's a real good gauge for I.D. Splitting the breast plate of Maher, okay, takes a good strong blow as you know, and it takes a good sturdy knife.

Stano: That's the only one that I had.

Lehman: You didn't carry a folding buck knife with you or anything or a sheep knife you kept underneath the car, too.

Stano: God, no.

Crow: What about one of those kitchen knives from (inaudible)?

Stano: No, I never steal from an employer.

Crow: Didn't say you'd stole.

Stano: Never borrowed nothing like that. Everything would be done right in the kitchen.

Crow: It's one of those days. One of those days.

Lehman: I know tell me about it. I just can't help but wonder that knowing that either one of these girls weren't tied down and nobody was holding them down, however, the angle that you struck them with it, why that blade didn't break. And part of the way we're going to keep you down here is just like Sergeant Crow said--Pennsylvania and Jersey, man, they're chompin' at the bit.

Stano: They think I did...

Lehman: I don't want to see you get the chair. There's a guy coming up to get the chair next week up in Georgia. Potts. And they ain't going to prevent him from going. If they do it's going to be a miracle at this stage of the game. I can't help but think that somewhere along the line you got the answers for us.

Stano: I don't know. I've said everything that I knew.

Lehman: Everything that you want us to know.

Stano: Everything that I <u>know</u>.

App. 5 (emphasis added).

36. Even less believable is the lack of concern over Mr. Stano's inability to describe the extremely unusual nature of the wounds inflected on Toni Van Haddocks. In a memorandum of Investigator Steve Lehman apparently typed on July 28, 1980 and purporting to record events on May 13, 1980, Lehman relates that Gerry Stano signed his "confession" in the Van Haddocks case on that date, admitting in that signed "confession" to "stabbing Miss Haddocks numerous times about the head area." App. 47. This is wrong. The Van Haddocks "confession" signed by Gerry Stano was notarized by Crow on the 13th of May. However, that transcript indicates that the typed statement was taken May 9, 1980, by Crow alone, and in that statement Gerry in fact makes no mention of the location of the alleged stab wounds. App. 20.

37. In the course of a taped conversation with Mr. Stano conducted some ten days later, on the 19th of May, 1980, Lehman and Crow tell Mr. Stano that they have not charged Gerry with the Van Haddocks' murder due to concern that Mr. Stano might then be in danger from black inmates.

> Crow: We got rid of most of the damned blacks.
>
> Hudson: We're afraid that when this goes to the press all hell's gonna break loose. That's why I haven't charged you yet with Haddocks. I got it signed, sealed and delivered right here in my briefcase, but because of your safety, I don't want to charge you with it.

Crow: Gerald, the more you can come across with, we're gonna be able to take you out of this thing and put you in an isolated situation....

App. 4.

38. In fact, as later revealed in that conversation, Mr. Stano clearly did not know the nature or extent of the injuries to Toni Van Haddock. It was finally necessary for Lehman and Crow to show Mr. Stano pictures of the victim in order for Mr. Stano to understand the facts of the crime:

Hudson: Getting back to toni. Did you stab her in your car?

Stano: Yes.

Hudson: How many times did you stab her?

Stano: Oh, a couple.

Hudson: Can you show me where?

Stano: Oy vey. Right around in here first and then I took her outside.

Hudson: When you took her outside and stabbed her where'd you do it then?

Stano: Towards the back. In the back.

Hudson: Neck?

Stano: No, not the neck that I remember, no.

Hudson: Higher?

Stano: No, somewhere around here. In the back or so.

Hudson: When you stabbed her in the back

and all did you have to go through her clothing?

Stano: No, cause I think she was, I don't remember off hand to be honest with you.

Hudson: Was she dressed when you stabbed her?

Stano: She may have been. I, I can't say truthfully.

Hudson: How about the head?

Stano: No. I don't think I, no, I didn't go for the head.

Hudson: You sure?

Stano: As far as I can recall.

Hudson: Ask the other Gerald. I want you. I'm serious. I'm going to prove something to you. Ask the other Gerald. Ask him now. Draw him out. Have him remember. Get the best recall you can and ask him where he stabbed her.

Stano: (long pause) It may have been...

Hudson: To the best of both Geralds' recollection, where did you stab her? And approximately how many times?

Stano: Oh, Lord.

Hudson: You're not going to hurt anymore, you're not going to hurt your case anymore.

Stano: Yeah, I know, I know, I'm not worried about that. I'm just trying to remember where the devil, where the hell it happened, how many times. I don't know, half a dozen maybe total in the body, I don't know.

Hudson: Do you feel that we talked about recall, okay, we talked about trying to

remember. I pointed out to you a couple of times here today now about how I think you're not fully aware of what the other Gerald's doing all the time, okay? Remember me saying that?

Stano: Okay.

Hudson: I'm not trying to sit here and prove you're wrong, but I want to show you how I think that the other Gerald could have been taking you over and you're not aware of what's going on, okay? This is why I say you're going to have to come to terms with him before Paul and I can come to terms with him, okay?

Stano: Yeah, if I could od it, I would.

Hudson: I know, I know, okay? And I'm not saying you're not cause you don't want to, okay? I'm saying that it's probably hard. It's called human responses, alright?

Stano: Whatever that means.

Hudson: It means that the other Gerald don't want to come out.

Stano: Thanks.

Hudson: Well, it's something that we're going to have to be faced with in the very near future.

Stano: ... three or four days.

Hudson: well, why three or four days?

Stano: I'm worried about Pennsylvania and New Jersey coming down here...

Hudson: well, so are we, okay.

Stano: You are? Hey, it's my tail not yours. (sigh) you guys go home at night, I don't.

Crow: You know what that is?

Stano: No.

Hudson: You know what that is?

Stano: yeah, it's a head.

Hudson: So's that.

Stano: Whose is that?

Hudson: That's the black girl's head.

Stano: He wouldn't go for the head I grant you that much.

Hudson: See all these marks?

Stano: Yeah.

Hudson: they're knife marks. See that one there? With the big bruise on there?

Stano: Yeah.

Hudson: That's a knife mark. See this big gouge here? And see it over here? It's the same thing. Do you know how many times it counts?

Stano: No.

Hudson: this is going up to Tallahassee to a man, doctor of anthropology who does all this examination. Do you know how many different knife marks I counted on there? Fifty.

stano: Whoo.

Hudson: I'm not lying to you, I'm being honest with you.

Stano: Whooee.

Hudson: Well, this is the same black girl. This is her. Okay. See--

> Crow: that's what we did.
>
> Hudson: This is why I'm trying to sit there and see if you're---(strange noises, recorder is cut off)... This interview terminated at 12:50 a.m. 5/19/80. End of interview.

App. 4 (emphasis added).

39. As stated in a note attached to the copy of this taped conversation in the Volusia County Sheriff's Office file regarding the Toni Van Haddocks case, "I don't think any admissions are impressive, they tell him -- he doesn't really tell them." App. 2.

40. Mr. Stano himself wrote letters to the State Attorney in October and November of 1980 recanting his "confessions." In a letter of October 19, 1980 to Stephen L. Boyles, State Attorney, Mr. Stano first explained that he was not guilty of the aggravated assault for which he was first arrested on April 1, 1980, and then explains:

> Also, due to this warrant, they have charged me with murder 1, of a young girl whom was assaulted the same way but was killed. If this girl [the aggravated assault complainant] was not to have solid evidence, would these charges be dropped against me? Cause I have not committed these crimes.

App. 48.

Then, in November of 1980, Mr. Stano wrote to Assistant State Attorney Larry Nixon expressing fear for his safety upon release, and again asserting his innocence:

> I Gerald Eugene Stano, come to you know

(sic) at this day and time to ask you a favor.

I am in grave danger upon release from VCCJ [Volusia County Jail] or where ever I go. I have been moved 3 times in 8 months, due to people being arrested and getting locked up in the VCCJ. You see that I have no other previous record except 1 misdemeanor which was 4-5 years ago. I have kept myself clean and out of trouble. <u>This situation that I am in now is a big big total mistake, Because I have not got the power to hurt or kill anyone</u>.

Yes, I agree with people that my car is Red and a Gremlin, but there are more than 1 Red Gremlin running around Daytona and connecting cities. There was only 1 thing different about my car. It had tinted windows all around, and a trailer hitch on the back.

My time was spent as of the 1st of the year of 1980, at the Riveria Hotel. I was helping every night with the renovating of the hotel. About March 28, 1980 my friend was renting "Moon Forest Skateboard Park", located on U.S.1 in Ormond Beach, Florida. My parents were quite aware that I was helping up there, as I borrowed my father's saw and extension cord for building purposes. I was up there on the night of March 25, 1980 when this girl said I had attacked her. My friend Allen F. Houck was with me that night until we left at about 11:00 p.m. We then went to Sambo's for coffee and a bite to eat. This was on U.S.1 Holly Hill, Florida. He used to own Daytona Street Skates too. After that we went back to the hotel and I went to my room for the evening, as I had to be to work the next morning at Hampton's Restaurant at 7:00 a.m.- 2:00 p.m. I was the prep-cook and chicken fryer.

The main reason I am writing this letter, is because of my life being at stake, not to mention my parents and brother and his

family.

Sir, I beg you to look over my back history that you have at this time in front of you and consider the facts and figures of me:

1). Leaving the State of Florida for ever.

2). Give me 6 hours to pack up my car and say good-bye to the family.

3). To have a Deputy or whoever escort me to the border and confirm that I am out of the State for good.

I would appreciate a letter in return to this letter of mine. I am doing this request on my own, not with the help of my lawyer.

App. 49 (emphasis added).

41. Once Mr. Stano "confessed" to the Mahar and Van Haddocks murders, the officers involved focused on Mr. Stano and further investigation ceased. Other leads were not developed, and questions were left unanswered, such as the reluctance of Toni Van Haddocks' mother to give information in the case, requiring investigators to seek the help of Assistant State Attorney Ray Starke in obtaining a subpoenae in order to question her. App. 50.

42. Mr. Stano's "confession" in the Nancy Heard case, taken by Paul Crow about one year following the Mahar and Van Haddocks statements, was so vague that it prompted Crow to ask for more details during the course of the statement:

Crow: You disposed of the body. what do you mean you disposed of the body? Did you kill her in the car? Give me some details. What

> was she wearing when she was in the car? Did you have sex with her in the car? Give me some details.

App. 24.

43. The facts that Mr. Stano did provide were either uncannily correct (prompted) or completely wrong. In this 1981 statement regarding a 1975 homicide, Mr. Stano was able to name the hotel on Ormond Beach where Ms. Heard worked, he was able to give an accurate description of her clothing, including the color of the lining of the jacket she was wearing, and he was able to give the color of the trim on the backpack found with Nancy Heard's body. App. 24. Mr. Stano gave an amazingly accurate account of each detail which had been underscored in red on the copies of case reports undersigned counsel obtained from the files of Paul Crow. App. 52.

44. Mr. Stano incorrectly stated that he had sex with Nancy Heard in his car, choked her in the car, and then dragged her out of the car, leaving her in some thickets on the side of the road. App. 24. The autopsy report on Nancy Heard listed the cause of death as "undetermined." App. 51. The medical examiner was not able to state that Ms. Heard was strangled. The report is clear, however, that "the body was squarely in middle of the road," not in thickets beside the road. The autopsy report was equally clear that the body was left in a position indicating that the victim had been raped in the road and had not been

moved:

> ... The jacket and T-shirt had been pulled up, the bra had been pulled over exposing her breasts. Her pants and underpants had been pulled down about her ankles. The thighs were in the widespread position. The right front pocket of the jacket had been turned inside out. A matchbox bag, the insignia of the Madarin Motel was found in a back pocket. A knapsack containing newspapers and magazines was lying near the body. The body was cold to touch, rigor mortis had set in involving all four extremities, trunk and neck. Lividity was dorsal and corresponded closely to position of the body. It was absent over the buttocks due to pressure and where pressure of the bra was apparent. The ground was covered with dried weeds and twigs with no evidence that these had been disturbed or that the body has been dragged. The sand and weeds near the feet were undisturbed. There was sand on the back of the blue jeans only at the prominence of the buttocks with none of the sand showing signs of having been moved.

Id.

45. Counsel Jacobson and Pearl were ineffective in their investigation in these cases, and the State suppressed exculpatory evidence. No plea would have occurred otherwise. If the attorneys were not ineffective, they were State agents.

46. Howard Pearl did not investigate these cases at all. When he represented Mr. Stano later on the Bickrest and Muldoon cases, he did no investigation into his own ineffectiveness regrding the Mahar, Van Haddocks and Heard cases which were introduced at sentencing herein.

B. ARCENEAUX, LIGOTINO AND BAUER

1. In September, 1981, Mr. Stano began serving the life sentences imposed in the first Volusia County cases. He was not left alone. Crow wrote him, or visited him, and interrogated him regularly. Ostensibly, Mr. Jacobson and Howard Pearl represented Mr. Stano during this time period.

2. The relationship between Crow and Mr. Stano was an unusual one. There was by this time plenty of trust. Crow, Pearl, Jacobson, the psychologist McMillan, Mr. Stano's parents, and Gerry were close, but Gerry was ignorant about the undercurrents, tricks and coercion that had been and would continue to be used against him.

3. Crow had worked with Ann McMillan and Mr. Stano's lawyers to get confessions from Mr. Stano. This made for a bizarre relationship to begin with. Crow readily admitted that the discussions with Mr. Stano were a game in which Crow softened up Mr. Stano with his lawyer, psychologist, and father, and then Crow could win the "toothpulling expedition." Daytona Beach Morning Journal, September 3, 1981, p. 1A. Crow would catch Mr. Stano "in a lot of lies," according to Crow, and then he would have Mr. Stano "into a corner and he couldn't get out." Id. Of course, it could be ignorance as well as lies that forced Mr. Stano into corners, not to mention Mr. Stano's mental condition. According to Crow, "The charade that I used was that I really

liked what he had done." Philadelphia Enquirer, "Proudly, nonchalantly, he confesses to 39 slayings . . .", October 24, 1982, p. 16A.

4. Being such a center of attention was important to Mr. Stano, and Crow pandered. Ann McMillan encouraged Crow to "appeal to Mr. Stano's sense of grandiosity." App. 6. It is strange that after the guilty pleas in Volusia County, Mr. Stano "expressed gratitude" to Crow, who said they would "keep lines of communication open." Daytona Beach Evening News, September 3, 1981, p.1. The press referred to Crow as Mr. Stano's "old friend and confidante." Id.

5. J. W. Gadberry, who witnessed Mr. Stano's first Crow encounter, saw the relationship spark. "From the beginning, Mr. Stano enjoyed the attention -- it seemed to puff him up and make him feel important." He best describes the bond:

> I came to believe that Gerry Stano was a mentally ill person who had an excessive need for attention and affection that he sought to satisfy through a counter-productive relationship between him and Sgt. Paul Crow. Sgt. Crow intentionally and calculatedly fed Gerry's need for affection by close personal contact for hours at a time, day after day, while simultaneously depriving him of contact with others. In my opinion, an unnatural bond developed between Paul and Gerry which intensified as time passed -- detectives would make jokes about them "going together." To me it seemed that Gerry and Paul had a 'confessor-priest' relationship.

App. 7.

6. The relationship is still strange, as is the relationship with Jacobson: In a letter dated May 2, 1985, Jacobson told Mr. Stano that "Paul Crow sends his best to you, as do a host of your friends down here who wish none of this had taken place, and that you were back enjoying life here with your many acquaintances." Their "friendship" and "rivalry" is truly unique, and categorically insane. Crow is still cajoling:

> Get yourself in order Gerald, your born -- life's a bitch and you die. Thats for certain for all of us. I would like to see you before July. I dont no if thats possible; however you know as well as I it probably wont go in July anyway. Have you been able to talk to Bundy. Have him drop me a line. I read in the papers everyone out west wants to talk to Bundy now. Little to late don't you think.
>
> I would like for you to tell me about the little girl from Tampa (Raccoon) case - thought. I would like to clear the air in that one so I can tell the parents. It wouldn't add to what you done Gerald and were you really left the Bazille girl: think about that. I have always been stright with you and appricate what you have told me. You don't no how many parents I've been able to somehow help as a result of your information.
>
> This is something Ive always appricated on your part. I'm well aware of all the little games etc we had to go through to get this far; but we did and made great progress and accomplished alot to say the least. We both realize what the final outcome must be.

App. 25, May 28, 1986 letter from Crow to Stano.

8. This "old friend and confidant" indeed did keep communications open with Mr. Stano after the Volusia County

pleas. Crow, for instance, arranged for other law enforcement officers to interrogate Mr. Stano at Florida State Prison. Crow was attempting to get Mr. Stano to confess to a host of unsolved murders around the state, but Mr. Stano would not. Crow focused on Mr. Stano exclusively as the culprit in all these cases and set about to get confessions.

9. Mr. Stano had written to Jacobson off and on since going to F.S.P., and on June 24, 1982, he wrote to get advice about why some officers had come to F.S.P. and taken some clothes from him. On June 6, 1982, Mr. Stano had written to Paul Crow. Mr. Stano did not know about the cases Crow was acting him about. However, because of their relationship, he agreed to clear up cases for Crow. The following letter tells the story:

> Paul Crow -
>
> Hello.
>
> I want to write you at this time to tell you that <u>when ever you want me to take that drug, (truth drug) you can do it</u>. But it must be done in the County Jail. <u>Also, my parents are to be left out of this and also my brother and his family</u>.
>
> I would expect the following:
>
> (1) 1 man cell at VCJ.
>
> (2) Legal counsel from a Public Defender (Howard Pearl).
>
> (3) Notarized papers stating what will be done and that it will be done at thhe Volusia County Jail.

(4) Phone calls to the family when I arrive at the County Jail.

(5) Paul Crow will escort me to the Volusia County Jail or the Volusia County Sherrif's Department.

Paul, this must be kept out of the papers. While this is taken place, you may have the other man you said was up to see me there also.

Please get back in touch with me as soon as possible about this. Because I would like to clear up your files for you.

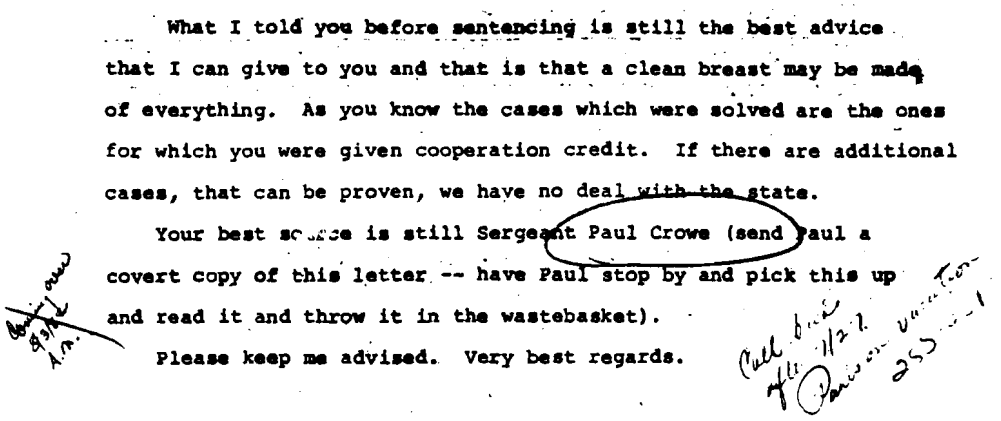
Paul, please realize where I am coming from. I want to help. But I can't do it up here. I will help you, if you help me. By that I mean, by telling you what you want to know about anything. I have had time to think about things up here. Please Paul, listen to me this time as you have done before.

I will be waiting for a reply to my letter as soon as possible. But, I must have legal counsel (Public Defender) (Howard Pearl), and my parents are to be left out of this.

Respectfully

App. 26.

10. On July 12, 1982, counsel for Mr. Stano told him to talk to Crow, but did not tell Mr. Stano that Crow was being told this also, which he was -- covertly, Jacobson sent Mr. Stano an incredibly duplicative letter. In a rough draft of a letter to Mr. Stano, Don Jacobson included a chilling instruction to his secretary, for the benefit of Detective Crow:



What I told you before sentencing is still the best advice that I can give to you and that is that a clean breast may be made of everything. As you know the cases which were solved are the ones for which you were given cooperation credit. If there are additional cases, that can be proven, we have no deal with the state.

Your best source is still Sergeant Paul Crowe (send Paul a covert copy of this letter -- have Paul stop by and pick this up and read it and throw it in the wastebasket).

Please keep me advised. Very best regards.

See App. 1 for full text of Jacobson's rough draft. This covert message to Crow was elided from Mr. Stano's letter, and Crow, "the best source" was primed for more confessions.

11. On August 5, 1982, Judge Foxman, Volusia County, entered an order transferring Mr. Stano from F.S.P. to Paul Crow, in Volusia County, "until the said prisoner, Mr. Stano, has completed his cooperation in said pending investigation," and then Mr. Stano was to be returned to F.S.P. App. 27.

12. Mr. Stano was greeted with isolation, and was left with Crow having complete control over him. He had requested counsel (Pearl), who never appeared. Mr. Stano was completely controlled, as a jail memorandum ordered:

> Under "No" circumstances is this inmate to talk to ANY DETECTIVE-POLICE OFFICER-FEDERAL AGENT-STATE ATTORNEY OFFICE OR ANY ATTORNEY. All appointments for this inmate to speak to ANY person will be arranged and handled by Sergeant Paul Crow, "ONLY" . . . [Stano] will have NO contact with anyone, except jail

personnel. . . .

App. 28.

13. On August 12, 1982, Crow started in purportedly obtaining confessions in the Scharf case.

14. On August 14, 1982, Mr. Stano was hypnotized by Cal Eden, who took Mr. Stano "back to age six." This was part of Mr. Stano's effort to help. App. 29. Hypnosis is such an inherently destructive procedure that its use for obtaining confessions, or attempting to obtain confessions, should be grounds for suppressing the statement obtained. It rendered all subsequent statements involuntary and inadmissible. It has long been recognized that hypnosis creates in the subject a desire to please the hypnotist and suggestibility to even the slightest hypnotist nuances. The most terrifying symptom of hypnosis is "confabulation," the invention of details to supply unremembered (or unexperienced) events. See "The Effect of Hypnosis on Long Range Recall," J. Gen. Psych. 429 (1932). After this hypnosis session came a slew of Crow "confessions."

15. A F.D.L.E. task force was formed to investigate the wealth of confessions anticipated by Crow's recapturing of Mr. Stano. The idea was to determine open cases and to get Mr. Stano to confess to them.

16. The Bickrest "confession" came the day after the hypnosis, August 15, 1982. App. 30. The Bauer confession

purportedly occurred August 23, 1982. App. 31. The Arceneaux/Ligotino confession purportedly occurred September 17, 1982. App. 32. See Chart, supra.

17. These confessions were involuntarily given, and were taken in violation of the fifth, sixth, and fourteenth amendments. Counsel in these cases, Mr. Replogle, literally conducted no investigation in the Arceneaux/Ligotino cases -- he was appointed to represent Mr. Stano the very day Mr. Stano pled guilt to the cases. He conducted no, or grossly inadequate, investigation in the Bauer case. The state suppressed not only the long history between Crow and Mr. Stano, which demonstrated the unconstitutionality of the statements, but also failed to reveal the very real exculpatory material showing that these three statements were unconstitutionally obtained independent of that history. Because of the state's failure to disclose, and defense counsel's ineffective assistance and consequent wrong advice, Mr. Stano pled guilty to these cases, which were later used to obtain a death sentence in the Bickrest and Muldoon case. See Chart, supra. But for the state's suppression and Replogle's ineffectiveness, the Bauer/Arceneaux/Ligotino pleas would not have occurred, and, had the cases gone to trial, Mr. Stano would have been acquitted.

18. Attorney Replogle's ineffectiveness cries out from the transcript of plea in these cases, and from even a cursory

investigation of the facts. There were actually three statements by Mr. Stano involving Bauer, not the one the court was told about. First, on August 23, 1982, Mr. Stano gave a statement to Bradford County prosecutors. App. 31. It detailed how he and another person, Eddie Hoehn, committed the murder together. On October 4, 1982, Mr. Stano was indicted for the crime, in Bradford County, case number 82-305-CF. However, on October 13, 1982, Mr. Stano gave Crow a different "confession" about the case, changing the facts of the crime altogether, and deleting Hoehne from the incident. App. 33. Crow argued with Mr. Stano for quite a while before he rewrote the statement the way Crow wanted it. App. 59.

19. The third "confession" on Bauer provides a typical vignette regarding Mr. Stano's complete abandonment by counsel. At a deposition of Mr. Stano taken by Hoehn's attorney and an assistant state attorney, attended by Crow, a vivid illustration of Mr. Stano's essentially pro se status emerges:

> Q. Okay. Mr. Stano, you're presently represented by a Public Defender for the Eighth Judicial Circuit, who is unable to be here at this time. As I understand it, a local attorney by the name of Donald Jacobson is going to substitute as your counsel in this case. Is this true?
>
> A. Yes, sir.
>
> Q. Okay. Now, Mr. Jacobson is also unable to be here at this time. Have you consulted with Mr. Jacobson prior to the taking of this deposition?
>
> A. Yes, I have.

App. 34, p. 3. The deposition continued, with Mr. Stano in Crow's presence, withdrawing the implication of Hoehn by Mr. Stano. Crow knew that Hoehn had bragged to a group of inmates about the killing, but sat silent during the deposition. App. 35. The Bradford County court never heard about all this, and this fact was completely lost on counsel Replogle.

20. These three intensely inconsistent statements were the state's case. The Bauer case could not have been proved without some confession, but counsel Reploge did nothing to learn that these statements were false and unconstitutionally coerced.

21. The plea colloquy revealed how long and often Mr. Stano had to be interrogated before providing any Bauer details, but did not reveal that the interrogations produced three inconsistent statements:

> Now, months of occasional interviews went on without success. Then in August, August the 23rd, 1982, Mr. Stano was brought before the State Attorney's Office and after being fully advised of all of his constitutional rights, under the Miranda decision, on August the 23rd, 1982, before me, gave a twenty-eight page confession,... indicating how she was dressed, how he killed her, and where he left her body.
>
> Now, those facts compute with the established facts of the investigation.
>
> . . . .
>
> As late as October the 13th, 1982, in the Daytona area before Detective Paul Crow, the Defendant further, again for the second

time confessed.

App. 36, p. 12. Nothing was introduced to demonstrate a factual basis of the plea.

22. Had counsel Replogle conducted a reasonable investigation into the facts of the Bauer case, and had he advised Mr. Stano accordingly, no plea would have been entered, and no conviction would have resulted. Counsel was ineffective not only for failing to know the illegal factors producing the confessions, but also for failing to investigate the facts of the offense. The state suppressed exculpatory evidence which likewise would have changed the result of the Bauer proceeding.

23. The initial, detailed statement taken on August 23, 1982 in the Bauer case, App. 31, was recanted in its entirety on October 13, 1982, when Mr. Stano stated that the alleged co-defendant in the case, Eddie Hoehn, was not involved. That 35-page statement was superseded by the three-page written statement, ending with a paragraph clearing Hoehn in which "Crow told him what to write." App. 59.

24. This statement of October 13, 1982, is consistent with Paul Crow's notes on the case, App. 53, but it is incorrect in several crucial details, and it is not consistent with police reports.

25. Mr. Stano states that he "choked" the victim to death. However, while the autopsy report does not conclusively state the

cause of death due to the advanced state of decomposition, the report states that "two avoid compression fractures on the left side of the skull probably were associated with the case, i.e., brain damage produced when the skull was fractured. . . ." App. 60. No evidence of strangulation is reported.

26. The records in the case in fact raise doubt as to the correct identity of the body. The medical examiner reports that "certainly I would feel the age is not under 20 years as far as the average age of fusion for these bones." App. 61. Bauer was 17 years old.

27. Mr. Stano was living with his parents in Pennsylvania on September 6, 1973, the date of the Bauer homicide. He was not working, and would enter the Navy on September 18th. According to Mr. Stano's "confession" he was in Daytona Beach on the date of Bauer's disappearance because he traveled to Florida to vacation alone. In fact, Mr. Stano's parents will testify that Mr. Stano never traveled from Pennsylvania to Florida alone, in September 1973 or otherwise, that he was living with them at the time, that they saw him daily, as they always did, and would certainly have been aware of such a trip, that he was regularly dating a young lady and would not have made such a trip alone, and that he had no money of his own and would not have had the means to make such a trip. They would have told this to and testified for Replogel.

28. Mr. Stano "confessed" that he left Barbara Bauer's car in Valdosta, Georgia, at about midnight. In fact, police records show that a man bearing no resemblance to Mr. Stano was observed by two witnesses abandoning the victim's car in the parking lot of a Valdosta motel at about 8 A.M. As stated in the reports, "[s]ubject was described as in early forties, reddish brown hair with grey streaks and short grey sideburns, thin face, clean shaven and appeared to be 6 to 6'2", 165 to 185 lbs. . . . App. 62. Composite drawings identified separately by the two witnesses resembled each other, but not Mr. Stano. App. 63.

29. The Arceneaux and Ligotino convictions represent a low point for the legal profession and the criminal justice system. These "confessions" came September 17, 1982, and Mr. Stano was indicted in Alachua County in case number 82-3951-CF December 1, 1982. Bauer was a Bradford County case. Replogle was appointed counsel in the Bradford Bauer case, but no one was appointed in the Arceneaux/Ligotino cases, from contiguous Alachua. See Chart, supra. Nobody, that is, until the day a plea was entered:

> MR. ELWELL: Mr. Stano is before the Court represented by Assistant Public Defender Rick Replogle and I understand that they are ready to proceed at this time, Your Honor, with the change of plea and disposition as well.
>
> THE COURT: Very well.
>
> MR. REPLOGLE: Your Honor, before the Court is Gerald Stano. In Case Number 82-305-CF, the Bradford County case, he had

previously entered a plea of not guilty to the charge and is now before the Court at this time and would enter his petition to plead guilty to that charge in Case Number 82-305-CF, Bradford County.

In addition, Your Honor, the Public Defender's Office has apparently been appointed to represent Mr. Stano in Alachua County Case Number 82-3951-CF for two counts of first degree murder in that county and I am not sure at this time whether a plea of not guilty was enttered in that case or not.

MR. HERBERT: Your Honor, I can speak to that. It has not been entered because the Defendant has yet to be arraigned on the charges out of Alachua County and I would assume that we would accomplish both here today.

MR. REPLOGLE: Your Honor, I --

MR. HERBERT: I would ask for the appointment of the Public Defender for that purpose be ratified, confirmed, or made public at this time as to the Alachua County case.

THE COURT: Well, I will appoint the Public Defender of the Eighth Judicial Circuit as it has already been determined that the Defendant is insolvent, within the meaning of our Statute.

MR. REPLOGLE: Yes, Your Honor.

Your Honor, in regards to the Alachua County case, Your Honor, we would waive the formal reading of the indictment and Mr. Stano would petition the Court to allow him to enter a plea of guilty to both counts of that indictment.

There has been an agreement entered between Mr. Stano and the State Attorney's Office, in regard to the Alachua County case, wherein he will be sentenced to a concurrent

> sentence in each count in Alachua County. Now, of course, that does not affect the case in Bradford County which we are asking the Court to allow us to enter a plea to at this time, also.

App. 36, pp. 3-5. The plea forms in the case were hastily interlineated in handwriting to include two more counts of first degree murder. App. 37. Guilty pleas were accepted. The petition for entry of plea recites that Mr. Stano withdrew his not guilty plea in the Bauer case, which was true. It also recites that he withdrew his not guilty plea in the Alachua cases, which he did not -- he had never pled, been arraigned, or had counsel. According to the record, he negotiated the plea, and the record of this negotiation was not preserved as required by Rule 3.171, Florida Rules of Criminal Procedure. The entire process on the Alachua County cases was and is void as not being conducted in conformity with Rules 3.160-3.172, Florida Rules of Criminal Procedure.

30. The "confession" supporting the Ligotino/Arceneaux convictions were typical for Stano cases, but the infirmities in the plea were not known to counsel or court. According to the state, and accepted at face value by Replogle who knew no better, the confession in the case was given to Detective Dennis Stinson. App. 36, p. 15. According to the prosecutor, Mr. Stano just told Stinson what happened, and it matched up with the facts. Neither happened.

31. In fact, the "confession" in Arceneaux and Ligotino had nothing to do with a Dennis Stinson. The confession was obtained exclusively and predicably under the controlling arm of Paul Crow. According to Crow, Mr. Stano told him after the covert Jacobson letter that he had killed two women in Gainesville. On September 14, 1982, Crow telephoned the Gainesville Police Department and told them Mr. Stano was in custody and that he "very possibly committed our murders in 1973." App. 38. Detective Blitch went to Daytona Beach three days later, met with Crow, and "filled him in on the case and what we had on it up to this point." Crow met the detectives at 1:30 p.m., and said he would get Mr. Stano up to the interview room and see if he would talk to him. At 2:45 p.m., the detectives were allowed to interview Mr. Stano, after they had revealed the facts of the case to Crow, and after Crow was alone with Mr. Stano.

32. The confession was involuntary, was a sham, and was concealed from the trial court. Counsel had no idea. With proper investigation, no plea would have occurred, and no conviction at all could have been had.

33. Mr. Stano simply was not in Gainesville when these victims were killed in 1973. As reported in an October 5, 1982 article in the Gainesville Sun, at the time of his "confession" law enforcement officials were under the mistaken impression that Mr. Stano had travelled to Gainesville in March of 1982 to visit

his future sister-in-law:

> In a statement given to GPD Detective Sgt. Jesse Blitch Sept. 17, Stano said he had come to Gainesville two days before the murder to visit with his brother's future wife. . .

App. 64.

34. In Mr. Stano's "confession" he correctly stated that he lived in Pennsylvania in 1973. He also correctly stated that he had visited his future sister-in-law in Gainesville when she lived there. Mr. Stano explained that he had decided to "take a couple of days off" and "just go to Florida" sometime in the middle of March or April of 1973. He then went on to give a number of unverifiable details of the offenses. Mr. Stano's father reveals the confession's errors:

> In March of 1973 Gerry was living in Flourtown, Pennsylvania and working at a full time job at Burroughs Corporation in Paoli, Pennsylvania. I have checked a 1973 calendar and know for a fact that March 21 was Wednesday, a work day. Gerry simply did not visit Florida in March of 1973, much less Gainesville, where he knew no one. I understand that in the course of this statement the policement questioning Gerry asked him if he traveled to Gainesville periodically to visit Jan Ottilini, the ex-wife of our other adoptive son, Roger, prior to Roger and Jan's marriage. Gerry apparently responded that he did visit Jan in Gainesville, and the interviewers seemed to be under the mistaken impression that Gerry might have been there for that purpose in 1973, at the time of the death of these two women. But in fact neither Gerry nor Roger knew Jan at that time. Roger met Jan in 1975. And Jan did not even live in

> Gainesville in 1973. Jan lived in Gainesville only one year, from 1975 to 1976.
>
> 26. In any event, it would have been impossible for Gerry to travel from Pennsylvania to Florida and back during that time, as he apparently said he did, without my knowledge. I was in daily contact with Gerry, as I have always been. I would have known it had Gerry been out of town and away from his job for a long enough period of travel from Pennsylvania to Florida and back.
>
> 27. I certainly do not understand the legal implications of all of this, but I am certain that Gerry could not have committed the murder of these two women. He was not in Florida on March 21, 1973. If anyone had asked me, I would have told them, and I would have testified.

App. 21.

35. Roland Desilets, Mr. Stano's supervisor at the Burroughs Corporation in March of 1973, has confirmed that all unexplained absences from work were recorded, and that, although some absences were recorded for Mr. Stano in January and May of 1973, none appear in his records for March of that year. App. 65.

36. Other discrepancies in Mr. Stano's statement remain unexplained. Mr. Stano notes in his "statement" that tire tracks found at the scene should reveal the fact that his car at the time had oversized tires on the rear. App. 32. However, police reports indicate that at least one possible suspect was not pursued because the tires on his car were too wide. App. 66.

37. There were numerous suspects and leads in the case, and

eventually there was one prime suspect, Barry Garten, the man Janine Ligotino was staying with at the time of her death. Police records show that both women had been at Garten's house until about 11 p.m. on the night of their deaths. App. 69. The Gainesville Police Department's files on Barry Garten show that he had an extensive history of mental illness, including a psychotic breakdown in 1967 involving the threat of "impending violence," and at least one evaluation indicating that his "relationship with females is especially disturbed,... being very sadistic in nature." App. 67.

38. Two acquaintances of Mr. Garten approached the Gainesville Police Department to report that he had on several occasions talked at great length about the incident, App. 69, and a polygraph examination administered to Garter showed deception in answers relating to the deaths of Arceneaux and Ligotino, including his answer to the question whether he had helped to kill the women. App. 68.

39. Police reports indicate that further investigation of Barry Garten was made impossible when Mr. Garten refused to cooperate. A psychiatrist who had previously treated Garten warned that he might become psychotic or violent if hypnosis or sodium pentathol was used. App. 69. The Garten family attorney intervened, and the records indicate that Mr. Garten left Florida soon thereafter, in 1974, apparently to attend school in Boston,

Massachusetts. Id.

40. Mr. Stano confessed to the authorities in 1982.

41. The Bauer/Arceneaux/Ligotino convictions were obtained in violation of the fifth, sixth, eighth, and fourteenth amendments. Counsel did no investigation, and the state hid matters which would have prevented a guilty verdict.

C. BICKREST AND MULDOON -- THE INSTANT APPEAL

1. Howard Pearl provided ineffective assistance of counsel at guilt/innocence and sentencing herein by completely failing to investigate. An investigation would have prevented entry of guilty pleas, suppressed the "confessions" in these cases, and would have prevented the introduction into evidence of the six convictions outlined in Sections A and B, supra.

2. Bickrest and Muldoon are simply two other case closing "confessions" Crow extracted from Mr. Stano. They were the result of the same fifth, sixth, eighth and fourteenth amendment violations outlined above, and have no basis in fact. There was no investigation by counsel, however, and the state failed to disclose the exculpatory evidence that was extant. Consequently, this Court knew no better.

3. The proceedings in these two cases paralleled proceedings in the Bauer/Arceneaux/Ligotino cases pled in nearby Bradford. See Chart, supra. The Bradford/Alachua

guilt/innocence "confessions", and the Volusia Bickrest/Muldoon "confessions", all resulted from the interrogations occurring after Mr. Stano was removed from F.S.P. and held in total isolation by Crow. Counsel in both sets of cases acted unreasonably by not monitoring the other set of cases: Bradford/Alachua counsel should have known that those cases could be introduced as aggravation at capital sentencing in Volusia County, and Volusia County counsel should have known and addressed that problem as well. Both counsel were prejudicially ineffective for not doing so.

4. The Bradford County Bauer indictment was on October 4, 1982, and the Alachua County Arceneaux/Ligotino indictment was on December 1, 1982. The Bickrest/Muldoon indictments in Volusia County occurred January 18, 1983. Guilty pleas, judgments and sentences were entered in Bradford/Alachua March 8, 1982. Four days later, guilty pleas were entered in the Volusia Bickrest/Muldoon cases. See Chart, supra.

5. Counsel Pearl had no idea whether there was a factual basis for the Volusia guilty pleas (Bickrest/Muldoon), much less whether there were any matters of defense. Pleas were entered, but not voluntarily, intelligently, and knowingly, and due to Pearl's ineffectiveness. Had Pearl investigated and advised his client accordingly, no pleas or death sentence would have occurred.

6. Pearl made it plain: at the beginning of the "plea" he informed the court that he was "not prepared to say that I know all of the substantive facts." R.289. He continued:

> I am not fully prepared to advise him as to whether the State has sufficient evidence to convict him or not. He is convinced that they do.
>
> [Mr. Nixon] assures me that the State can independently establish the corpus delecti in both of these cases. And Mr. Stano tells me that that is so.
>
> I have asked him about the admissions or confessions that he has made to Detective Paul Crow. And he assures me that those statements were made voluntarily, they were made competently, and intelligently after warning of his rights and that, therefore, there does not exist a good possibility that either of his admissions could be suppresed on a hearing.
>
> He feels that he wants to go forward and enter this plea rather than go through a trial or even a delay at this time.
>
> I have agreed that certainly he has the right to do so, but that he should know, and it should be on the record, that I am not fully prepared at this time as his attorney to advise him with respect to the advisability of a trial or not.

R. 290-91. The state meekly asserted that the absence of defense preparation had nothing to do with Bickrest/Muldoon, but with "similar fact" evidence, R. 290-92, but Pearl aptly demonstrated otherwise. He had seen no lab experts in Bickrest/Muldoon, R. 292, had not seen the autopsies and medical reports, R. 301, could not recall if he had ever seen the complaint affidavit in the cases, R. 305, did not know whether death certificates had been issued, R. 314, and had not seen the "confessions." Mr. Stano was in effect without counsel at a critical stage -- entry of two guilty pleas, without a plea agreement, in a capital case.

7. This is difficult to fathom, but true: Mr. Stano pled "blind," waived a sentencing recommendation by a jury, and determined that the court would impose sentence, in two first-degree murder cases, without advice by counsel who stood by and said he could not advise Mr. Stano one way or the other about the entry of a plea of guilty, waiver of sentencing jury, and all the other protected constitutional rights. Mr. Stano was proceeding pro se, at a critical stage, without there having been any inquiry with regard to waiving the right to counsel. This is a patent violation of the sixth amendment.

8. All counsel did at the guilty plea was prejudice his client as much as possible. First, counsel told the Court that Mr. Stano was competent. R.294. While the state was attempting to establish a factual basis for the plea, defense counsel

refused to allow admission of a rights waiver and statement until he was sure it is proper: he asked his client in open court if the signatures were authentic, and then he said "no objection." R.311. Counsel revealed his total abdication of responsibility when he asked his own client if he has seen certain photographs, and then told the court:

> "I'm authorized to say three of the photographs have previously been examined by and identified by Mr. Stano <u>in connection with his consultations</u> with Detective Crow."

R. 314. Consultations? Clearly Mr. Stano was operating pro se, and all involved let it happen. Then Pearl asked Mr. Stano in open court if he had voluntarily confessed, and upon a yes response, had no objection to the confessions being introduced. R.316-17. For some reason, the trial court found both pleas to have been made after the advice of competent counsel, R.312,318, even though counsel admitted giving <u>no</u> advice. The entire plea process was defective, and counsel's "absence" and ineffectiveness violated the sixth, eighth, and fourteenth amendments. Among other things, Mr. Stano was acting pro se at a critical stage of these proceedings, without a waiver of counsel, requiring vacation of the convictions.

9. Upon reasonably competent investigation by and advice of counsel, no plea would have been entered. The confessions in Bickrest and Muldoon were suppressible: they were taken without effective fifth and sixth amendment waivers, and were

involuntarily, unknowingly, and unintelligently given, in violation of the fifth, sixth, eighth, and fourteenth amendments. The state suppressed this exculpatory confession evidence, and no conviction would have occurred if the evidence had been revealed.

Muldoon

10. The "confessions" do not match the known facts, and the real killers were pretty well known to the police. Counsel should have known. From the beginning of the Muldoon investigation, the New Smyrna Beach Police Deparmtent had a definite suspect. As his probation records indicate, Ms. Muldoon's landlord, Ben Taylor, had long been known in the area for his involvement in providing drugs to young people and soliciting young girls for pornographic films. App. 73. Mr. Taylor is currently on probation for solicitation of minors participating in harmful motion pictures, under supervision of a sex offenders specialist. Id.

11. A memorandum included in New Smryna Beach Police Department records summarized the cause for suspicion of Mr. Taylor's involvement. App. 70. See also App. 58.

> 2. In the course of my work, I counseled and became friends with Mary Kathleen Muldoon, who was a Daytona Beach Community College student from 1976 until her death in November of 1977. Katy was not receiving regular counseling, but I would see her from time to time and we spoke when we met on campus. I considered Katy a friend.

3. The Thursday afternoon or Friday morning before the day I understand Katy was last seen alive, I passed Katy as I was going into my office on campus. She told me she had waited and had hoped to speak with me, but was in a hurry to get to work and had to leave. Katy told me that it was important that she talk to me. This was unusual for Katy, so I asked when she could come in. She said that she had to move again, and as quickly as possible, and so she would be busy for a few days trying to find a new place. In fact, she asked whether I would be willing to take her puppy for a little while, if necessary, if she had to take a temporary place that would not allow the dog. I knew that Katy had moved only about a month before. She had rented a room in a house owned by a man named Taylor. She and another woman had planned to move into the house, but the other woman had backed out and Katy moved in alone. Katy did not have time to tell me more, but since she seemed anxious to talk I agreed to make an appointment for her for the next week. I never saw Katy again.

4. The news of Katy's death was extremely shocking, and I of course wanted to find out what had happened. I learned of the discovery of her body in the newspaper and, when I read there that needle marks had been found on her body - under her breasts and on her feet or legs, as I recall - I felt I should talk to the police so they would not be misled. I was, and still am, sure that Katy was not involved in that sort of thing. She was a vegetarian, worked part-time at the local food co-op, and lived a healthy lifestyle. I was also concerned about my last conversation with Katy, and the fact that I understood that another student in Katy's woodworking class at the community college, a young boy who Katy knew, had been found dead in South Daytona of an overdose only a short time before.

5. Katy was, in my opinion, a trusting and naive person. She was an unsuspecting

person who readily accepted people and might not have looked under the surface of a situation. I thought that Katy might have found out something that she should not have known, and not even put two and two together until it was too late.

6. When I went to the New Smyrna Beach Police Department to make a statement, they listened to what I had to say and then were concerned that I not go to the house where Katy had rented a room. When I told the New Smyrna Police that I wanted to go to to the house to check on the dog Katy had cared so much for, they sent me to the Ormond Beach Police Department for an escort.

7. I and my daughter went to the house escorted by an Ormond Beach police officer who left us there. I collected the dog, which I have to this day, and began to talk to Mr. Taylor, Katy's landlord, about the murder and my concerns. Mr. Taylor, a man of about 50 or so, listened to me and asked me a number of questions, such as who I suspected. We sat on the back steps as I told him that I feared Katy had gotten involved in something she couldn't handle and that I felt that Katy may have learned something she should not have known about the drug scene in Daytona. At that point, I looked up and saw a young woman standing behind Mr. Taylor, in the kitchen of the house, shaking her head "no." I was startled, and the conversation ended. Shortly afterward, when Mr. Taylor went inside, the girl asked my daughter and I to meet her around the corner when we left.

8. We met the young girl, as she asked, and drove with her down to the beach. She told us that she had volunteered to work with the Sheriff's Office to obtain information about Mr. Taylor after a friend of hers overdosed following a party organized by Taylor. She said she thought Taylor was a very dangerous man. She suggested that I had said too much. I asked her why she was not afraid, and she explained that she was very

angry over what happened to her friend, who was now brain damaged from the overdose.

9. I did not know what to do, but a few days later, a representative of the Volusia County Sheriff's Office asked to come by to speak with me. The Sheriff's Office explained that Ben Taylor was known to be involved in providing drugs to young people and in the production of pornographic films featuring young girls. The Sheriff's Office confirmed that the young lady I met at Mr. Taylor's was assisting them.

10. When I told the Sheriff's Office what I had said to Ben Taylor, they sent me to the house a second time, again with an officer. This time the officer waited around the corner for me. They wanted me to try to convince Mr. Taylor that I had overreacted and actually had no basis for my concerns.

11. The Sheriff's Office told me that they thought Ben Taylor was involved in Katy Muldoon's death, and that they would wait and hope that he would eventually "crack." I do not know what , if anything, was done to pursue Mr. Taylor. I went back to the Sheriff's Office about six months later, but they knew nothing more. I understand that Taylor eventually left Ormond Beach.

12. I was quite surprised when I read that Gerald Stano confessed to Katy Muldoon's murder. I suppose i am still troubled by the questions raised by Mr. Taylor's activities and Katy's statement that it was important that she talk to me.

13. I cared very much for the well-being of Katy Muldoon, and I simply am concerned that the question of what happened to Katy be more completely explored and satisfactorily resolved.

App. 58.

12. Mr. Stano's vague 2-page statement provides no explanation for the fact that Katy Muldoon was last seen on a warm day wearing shorts, but was found in warm clothing. Nor does the statement provide any explanation for the presence of the stained white towel apparently brought from Muldoon's room, or the fact that the bag that she habitually carried was found in her room. Apps. 72, 77.

13. More importantly, according to Mr. Stano's written "confession" to the Muldoon murder, he stopped into the Silver Bucket, the bar where Ms. Muldoon worked, where he met Muldoon wearing a "jacket and pants combination" and took her for a ride. This is simply wrong. As police reports clearly indicate, Kathy Muldoon was never seen at work in the warm clothing she was wearing when her body was found. App. 72.

14. These discrepancies were never explored. According to New Smyrna Beach Police Department records, in 1982 they were contacted by the FDLE provided information on the homicide to Sgt. Paul Crow, "who would then because of his close rapport with Stano, discuss the case with him." App. 71. After Crow obtained the written statement from Mr. Stano on Muldoon, these records note that "Sgt. Crow had advised [New Smyrna Beach officers] against recording any statement or taking any notes with Stano as this might tend to upset him and possibly cause him not to cooperate." Id.

Bickrest

15. Mr. Stano's "confession" in Bickrest similarly failed to answer significant questions raised by the investigation of the case. The Bickrest investigation had centered particularly on a Holly Hill police officer by the name of Dick Curley. Review of police records and investigation has revealed significant evidence linking Curley to Bickrest's death, while revealing no physical or other corroborating evidence of any kind implicating Mr. Stano other than his "confession." See App. 57.

16. The relationship between Curley and Susan Bickrest is further confirmed by personal photographs of Curley apparently obtained from Bickrest's personal effects, which current counsel reviewed among the files of the state attorney. App. 54.

17. Counsel also have information indicating the existence of a transcribed statement linking Curley to Bickrest's death, as the affidavit of Lois Pride states. App. 56.

While the above outline is primarily one of facts, the legal claims delineated are asserted in this brief as grounds for relief. Thus, this section might well be labeled "argument" as well as statement of facts. The "facts" are virtually verbatim those pled in the court below, and required representation here because no evidentiary hearing was allowed.

ARGUMENT I

THE TRIAL COURT ERRED IN DENYING APPELLANT'S RULE 3.850 MOTION WITHOUT AN EVIDENTIARY HEARING

The Statement of Facts, incorporated into this argument by specific reference, demonstrates ineffective assistance of counsel and State withholding of exculpatory evidence. No evidentiary hearing was allowed on any of the facts pled. This was error.

Mr. Stano's verified Rule 3.850 Motion alleged facts in support of claims which have traditionally been raised by sworn allegations in post-conviction petitions, and tested through an evidentiary hearing. Regardless of whether Mr. Stano would ultimately prove and win his claims, he is entitled to an evidentiary hearing with respect to them, unless the files and records in the case conclusively show that he will necessarily lose the claims. In that instance, the judge must attach "a copy of that portion of the files and records which conclusively shows that the prisoner is entitled to no relief. . ." Fla. R. Crim. P. 3.850. Otherwise, an evidentiary hearing is proper.

In O'Callaghan v. State, 461 So.2d 1354, 1355-56 (Fla. 1984), this Court recognized that a hearing was required because facts necessary to the disposition of an ineffective assistance claim were not "of record." See also Vaught v. State, 442 So.2d 217, 219 (Fla. 1983). Indeed, this Court has stated that it

> ...encourage[s] trial judges to conduct evidentiary hearings when faced with this type of proceeding in view of the relatively recent decision in the United States Supreme court in Sumner v. Mata, 449 U.S. 539 (1981). It is important for the trial courts of this state to recognize that, if they hold an evidentiary hearing on this type of issue, under the Sumner decision their finding of fact has a presumption of correctness in the United States district courts.
>
> * * *
>
> When a state court does not hold an evidentiary hearing, the United States district courts believe they are mandated to hold an evidentiary hearing because of the provisions of subparagraphs (2), (3), (6), (7), and (8) of section 2254 (d) unless they can find that the petition is totally frivolous. the practical effect of the state court's denial of an evidentiary hearing on an ineffective-assistance-of-counsel claim is to leave the factual finding of this issue to the federal courts. It is for this reason that we suggest, even when not legally required, that trial courts conduct, in most instances, evidentiary hearings on this type of issue.

Jones v. State, 446 So.2d 1056, 1062-63 (Fla. 1984).

Thus, this Court has not hesitated to remand Rule 3.850 cases for required evidentiary hearings. See, e.g., Zeigler v. State, 452 So.2d 537 (1984); Vaught, supra; Smith v. State, 461 So.2d 1354 (Fla. 1985); Morgan v. State, 461 So.2d 1534 (Fla. 1985); Meeks v. State, 382 So.2d 673 (Fla. 1980); McCrae v. State, 437 So.2d 1388 (Fla. 1983); LeDuc v. State, 415 So.2d 721 (Fla. 1982); Demps v. State, 416 So.2d 808 (Fla. 1982); Arango v. State, 437 So.2d 1099 (Fla. 1983). These cases control.

ARGUMENT II (CLAIMS I, III, AND VIII)

MR. STANO WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL COMPLETELY FAILED TO INVESTIGATE AND TO ASSIST AT ALL AT THE CRITICAL GUILTY PLEA STAGE OF THESE PROCEEDINGS, AND BY COUNSEL'S UNREASONABLE FAILURE TO INVESTIGATE AND PREPARE FOR SENTENCING, IN VIOLATION OF MR. STANO'S SIXTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS, AND MR. STANO WAS DENIED DUE PROCESS BY THE STATE'S SUPPRESSION OF EXCULPATORY EVIDENCE, IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS

The trial judge's decision denying relief in post-conviction relies heavily upon the following incorrect statement of the law:

> In essence the Defendant waived his rights to later complain. . . .
>
> This Court finds that the Defendant waived his right to assert this ground. He entered his plea of guilty.
>
> . . . .
>
> Once the Defendant enters a plea of guilty before this Court, and assures the Court under oath that the plea is voluntary, the Court will not go behind the plea. The plea cuts off inquiry into all that precedes it. The Defendant is barred from contesting events happening before the plea.

Order Denying 3.850 Relief, pp. 4, 7, 8 (R. _____). In fact, Rule 3.850 allows "going behind the plea" to examine voluntariness, state misconduct, and attorney ineffectiveness error, even in the case of guilty pleas, and the trial court's

incorrect analysis should be rejected.

All allegations and examples of ineffective assistance of counsel contained in the Statement of Facts, supra, are incorporated herein by specific reference. The following legal discussion, when applied to those facts, illustrates that reversal is necessary.

A. Standards for Determining Ineffective Assistance of Counsel.

1. General

Counsel's role is to "assure that the adversarial testing process works to procure a just result under the standards governing decisions." Strickland v. Washington, 104 S. Ct. 2052, 2064 (1984). When confronted "with both the intricacies of the law and the advocacy of the public prosecutor," United States v. Ash, 413 U.S. 300, 303 (1970), a defendant is entitled to counsel who will "bring to bear such skill and knowledge as will render the trial a reliable testing process." Strickland, 104 S. Ct. at 2065. The constitutional right is violated when the "counsel's performance as a whole," United States v. Cronic, 104 S. Ct. 2039, 1046 n.20, or through individual errors, Strickland, 104 S. Ct. 2064, falls below an objective standard of reasonableness and when "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 2062. Petitioner must plead and prove

1) unreasonable attorney conduct, and 2) prejudice. Mr. Stano has.

Investigation is the sine qua non of effective assistance of counsel. Goodwin v. Balkcom, 684 F.2d 794, 805 (11th Cir. 1982). As detailed in the ABA Standards for Criminal Justice, the Defense Function, Standard 4-4.1, the duty to investigate exists regardless of a client's admissions:

> The lawyer's duty to investigate is not discharged by the accused's admission of a guilt to the lawyer or by the accused's stated desire to enter a guilty plea. The accused's belief that he or she is guilty in fact may not often coincide with the elements that must be proved in order to establish guilt by law.... The accused may not be aware of the significance of facts relevant to intent in determining criminal responsibility. Similarly, a well-founded basis for suppression of evidence may lead to a disposition favorable to the client. The basis for evaluation of these possibilities will be determined by the lawyer's factual investigation, for which the accused's own conclusions are not a substitute.

Commentary. Here, counsel did no investigation before allowing Mr. Stano to plead guilty. He offered no advice. He was just there.

There were very well founded reasons for suppressing confessions, and for attacking the prior convictions. Counsel did not investigate, and so did neither. This is prejudicial. Had counsel reasonably investigated, no plea would have occurred, and, if it had, no death sentence would have resulted.

The United States Supreme Court has recently explained that for a plea to survive an ineffective assistance of counsel attack, counsel must have provided reasonably competent advice. Hill v. Lockhart, 106 S.Ct. 366 (1985). No advice was given here, and, as pled, upon proper advice after investigation, "there is a reasonable probability that ... he would not have pleaded guilty and would have insisted on going to trial." Id. at 370.

2. Sleeping Counsel

No prejudice need be shown to obtain relief when counsel does nothing. The sixth amendment guarantees the assistance, not the presence, of counsel. "In certain Sixth Amendment contexts, prejudice is presumed. Actual or constructive denial of the assistance of counsel is legally presumed to result in prejudice." Strickland v. Washington, 104 S.Ct. 2052, 2067 (1984). Counsel was constructively denied. Counsel did not do anything at a critical stage: a guilty plea to two capital offenses without any agreement on sentence. Counsel gave no advice, because counsel did not know about the cases. No prejudice showing is necessary.

The State has virtually stipulated ineffectiveness, as a letter from the State indicates:

> The reason we doubt the validity of the two death penalties is that Stano's lawyer's competency may be seriously questioned.

> In September 1981 Stano pled guilty to three first degree murders and cleared up three more. The sentencing Judge was Circuit Judge Foxman of Volusia County. Only six murders were known at that time. Later after Stano went to prison, he confessed to twenty-one more first degree murders. He thereafter pled to three more first degree murders (two in Alachua County and one in Bradford County). He then appeared before the same Judge Foxman, pled guilty without guarantee on the sentence and waived the jury. He received two death sentences. What reasonable expectation did Stano's lawyer have that Stano would receive life. The circumstances only became worse. There was no rational reason to plead guilty or to waive the sentencing jury. That's why we are proceeding on our case.

Counsel was also effectively equally absent at sentencing. He did nothing to attack confessions which were readily suppressible and he did not attack prior convictions, basically because he provided three of them through the same non-performance, and three others he did not bother to look at.

3. Conflict of Interest

When counsel operates under a conflict of interest, there is a lower than normal requirement of prejudice for relief. Petitioner must show an actual conflict affecting counsel's performance.

Conflicts are not restricted to co-defendant representation situations. A conflict exists whenever counsel has interests other than his or her proper "function as assistant to the defendant... [and] the overarching duty to advocate the

defendant's cause...." Strickland, 104 S.Ct. at 2065. Conflicts are myriad:

> While the obligation to disclose a conflicting interest is most apparent when the lawyer has other loyalties that might cause a diminution in zeal of representation, there is a more suitable type of conflict that must also be avoided. Counsel may see in a criminal case an opportunity to further personal or general social interests that are not those of the client. The lawyer who takes a criminal case because of anticipated publicity is in danger of taking action that furthers the interest of the lawyer's publicity at the expense of reaching a quieter disposition more favorable to the client.

Defense Function, 4-3.5, commentary.

When an actual conflict exists, petitioner "must show that another defense strategy that could have been employed by another lawyer would have benefited his defense." Porter v. Wainwright, No. 85-3832, November 17, 1986 (11th Cir. 1986). Petitioner has shown the conflict of interest in his petition, and that reasonable counsel would have produced a different result.

B. Counsel Was Ineffective For Not Attacking Confessions And Convictions

The government has the burden of proving by a preponderance of the evidence that the defendant's confession is voluntary. See Lego v. Twomey, 404 U.S. 477 (1972). The test for voluntariness is whether the confession is "the product of an

essentially free and unconstrained choice by its maker." Columbe v. Connecticut, 367 U.S. 568, 602 (1961). See also Schneckloth v. Bustamonte, 412 U.S. 218, 225-26 (1973).

A court examining the voluntariness of a confession "must take into account a defendant's mental limitations, to determine whether through susceptibility to surrounding pressures or inability to comprehend the circumstances, the confession was not a product of his own free will." Jurek v. Estelle, 623 F.2d at 929, 937 (en banc). It is "settled that statements made during a time of mental incapacity or insanity are involuntary and, consequently, inadmissible..." Sullivan v. Alabama, 666 F.2d 478, 482. One fundamental concern is a mentally deficient accused's vulnerability to suggestion. Henry v. Dees, 658 F.2d 406 (5th Cir. 1981). See also Sims v. Georgia, 389 U.S. 404, 407 (1967); Columbe v. Connecticut, 367 U.S. at 568, 624-25 (1961); Townsend v. Sain, 372 U.S. 293 (1963); Blackburn v. Alabama, 361 U.S. 194, 207 (1960); Fikes v. Alabama, 352 U.S. 191, 196 (1957).

In proving waiver of fifth or sixth amendment rights, the burden is on the state to demonstrate an "intentional relinquishment or abadonment of a known right or privilege." Brewer v. Williams, 430 U.S. at 404 (quoting Johnson v. Zerbst, 304 U.S. 458, 464 (1938)); Tinsley v. Purvis, 731 F.2d 791, 793 (11th Cir. 1984). The Constitution places a "heavy burden" on the government to demonstrate that the defendant voluntarily,

knowingly and intelligently waived his right to counsel. Brewer v. Williams, 430 U.S. at 404. "The courts must presume that a defendant did not waive his rights; the prosecution's burden is great." North Carolina v. Butler, 441 U.S. 369, 373 (1979). The Court has emphasized that this is not a standard of proof to be taken lightly: courts must "indulge in every reasonable presumption against waiver." Brewer v. Williams, 430 U.S. at 404. See also Brookhart v. Janis, 384 U.S. 1, 4 (1966); Glasser v. United States, 315 U.S. 60, 70 (1942); Tinsley v. Purvis, 731 F.2d 791, 794 (11th Cir. 1984). This "strict standard applies equally to an alleged waiver of the right to counsel whether at trial or at a critical stage of the proceedings." Brewer v. Williams, 430 U.S. at 405.

There is "some question whether an accused, acting on his own without assistance or consent of counsel, may ever waive the right to have counsel present at police interrogations conducted after the commencement of adversary proceedings." Jurek v. Estelle, 623 F.2d at 953 n.28 (Johnson, J., concurring). The Supreme Court left this issue open in Brewer by expressly declining to hold "under the circumstances of [that] case Williams could not, without notice to counsel, have waived his rights under the Sixth and Fourteenth Amendments. [The Court of Appeals] only held, as do we, that he did not." 430 U.S. at 404. But see id. at 413 (Powell, J., concurring) (contending that the

Court did decide the issue). Several courts have held that no interrogation may be conducted where an accused's counsel has not been notified and given an opportunity to attend. See Taylor v. Elliot, 458 F.2d 979 (5th Cir. 1972), cert. denied 409 U.S. 884 (1973). The law of the eleventh circuit, however, is that a defendant may waive the sixth amendment right to counsel in the absence of an attorney, but only if sufficient indicia of waiver are found. Tinsley v. Purvis, 731 F.2d 791, 793 (11th Cir. 1984).

The suppression issues raised here were not raised by trial counsel, due to unreasonable attorney conduct and omissions. Counsel's role is to "assure that the adversarial testing process works to procure a just result under the standards governing decisions." Strickland v. Washington, 104 S. Ct. 2052, 2064 (1984). As detailed in the ABA Standards for Criminal Justice, the Defense Function, Standard 4-4.1, the duty to investigate exists regardless of a client's admissions:

> The lawyer's duty to investigate is not discharged by the accused's admission of a guilt to the lawyer or by the accused's stated desire to enter a guilty plea. The accused's belief that he or she is guilty in fact may not often coincide with the elements that must be proved in order to establish guilt by law.... The accused may not be aware of the significance of facts relevant to intent in determining criminal responsibility. Similarly, a well-founded basis for suppression of evidence may lead to a disposition favorable to the client. The basis for evaluation of these

> possibilities will be determined by the lawyer's factual investigation, for which the accused's own conclusions are not a substitute.

Id. Here, counsel did no or grossly inadequate investigation, and so could offer no advice.

There was very well founded reasons for suppressing confessions and statements, but none was pursued because no investigation occurred:

> Viewing counsel's failure to conduct any discovery from his perspective at the time he decided to forego that stage of pretrial preparation and applying a "heavy measure of deference," ibid., to his judgment, we find counsel's decision unreasonable, that is, contrary to prevailing professional norms. The justifications Morrison's attorney offered for his omission betray a startling ignorance of the law--or a weak attempt to shift blame for inadequate preparation. "[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Ibid. Respondent's lawyer neither investigated, nor made a reasonable decision not to investigate, the State's case through discovery. Such a complete lack of pretrial preparation puts at risk both the defendant's right to an "'ample opportunity to meet the case of the prosecution,'" id., at 685, 104S. Ct., at 2063 (quoting Adams, supra, 317 U.S., at 275, 63 S. Ct., at 240) and the reliability of the adversarial testing process. See 466 U.S., at 688, 104 S. Ct., at 2065.
>
> . . . .
>
> At the time Morrison's lawyer decided not to request any discovery, he did not--and, because he did not ask, could not--know what the State's case would be. While the

> relative importance of witness credibility vis-a-vis the bed sheet and related expert testimony is pertinent to the determination whether respondent was prejudiced by his attorney's incompetence, it sheds no light on the reasonableness of counsel's decision not to request any discovery. We therefore agree with the District Court and the Court of Appeals that the assistance rendered respondent by his trial counsel was constitutionally deficient.

Kimnelman v. Morrison, 106 S. Ct. 2574, 2588-89 (1986).

While courts should not question informed strategic and tactical choices made by counsel, "when counsel's choices are uninformed because of inadequate preparation, a defendant is denied the effective assistance of counsel." DeCoster, 487 F.2d at 1201.

As discussed by the Fifth Circuit in Gaines v. Hopper, 575 F.2d 1147 (5th Cir. 1978), trial counsel's view of a symbiotic relationship between police and defense counsel has no place in our adversarial system:

> [T]rial counsel did not fully consider the possibilities of his client's case and could not have done so because he had not set about to learn the facts from witnesses. As a result, he was in no better position than his jailed client to evaluate the legal and factual realities of the case. . . . [P]etitioner's counsel made no effort to assist his client by finding out what really happened other than by talking to the prosecuting attorney and [one] law enforcement official[.]

575 F.2d at 1149, quoting, 430 F. Supp. at 1179. The district court in Gaines noted that counsel could not fully develop his

client's case by "relying completely on the prosecuting attorney and law enforcement officers -- who understandably are not going to investigate a case for the defense or from the defendant's viewpoint. . . ." 430 F. Supp. at 1177.

Finally, counsel's duty to investigate attaches regardless of a client's statement to the lawyer of facts constituting guilt; the lawyer is the professional, and his or her investigation will determine whether and how the State (not the client) is able to prove every element of the offense charged beyond a reasonable doubt.

Furthermore, the most common and easiest defense to "ineffective assistance of counsel" claims is to counter with an allegation that the client lied to counsel, or was uncooperative, or controlled the litigation by dictating who could and could not testify. Counsel's duties should produce actions pretermitting such a question. Court's do not allow attorneys to "dodge" their failings by pointing to their clients. Effective counsel is not "a mere lackey or mouthpiece," but is in charge and has the responsibility for the conduct of the trial, including the selection of witnesses to be called. Decisions on whether to cross-examine a witness, and what avenues of investigation to pursue are not decisions for the client, but for the professional, who exists to advise, not mimic, the client. See United States v. Goodwin, 531 F.2d 347, 351 (6th Cir. 1976)("This

appears to be a case of counsel relying on his client for legal advice. This is hardly reasonable representation."); see also Defense Function, Standard 4-4.1, Commentary, page 4.54; Standard 4-1.1, Commentary 4.9 (The lawyer is the client's advisor and representative, "not the accused's alter ego.")

It would never be appropriate to accede to the demands of a client when the client has not had the benefit of adequate advice, dependant on independent investigation. "[C]ounsel's investigation . . . [can] enable him [or her] to discuss with [defendant] prior to trial the implication of[the client's] position." Gaines v. Hopper, 575 F.2d 1147, 1149 (5th Cir. 1978). Advice requires investigation, and a client's decisions must be made after proper counsel. "Uncounseled jailhouse bravado, without more, should not deprive a defendant of his right to counsel's better informed advice." Martin v. Maggio, 711 F.2d 1273, 1280 (5th Cir. 1983). "After informing himself fully on the facts and the law, the lawyer should advise the accused . . .", Defense Function, 5.1(a), and decisions made by clients without advice based on independent investigation are decisions made without "the guiding hand of counsel." Powell v. Alabama, 287 U.S. 45 (1932).

And no attorney can hide behind the decisions of a client whose competency to decide legal questions is a matter of conjecture. "Under any professional standard, it is improper for

counsel to blindly rely on the statement of a criminal client whose reasoning abilities are highly suspect." Brennan v. Blankenship, 472 F.Supp. 149, 156 (D.C. W.D. Va. 1979).

C. Standard For Policing State Misconduct

The prosecution's suppression of evidence favorable to the accused violates due process. Brady v. Maryland, 373 U.S. 83 (1967); Agurs v. United States, 427 U.S. 97 (1976); U.S. v. Bagley, 105 S.Ct 3375 (1985). This claim is clearly cognizable in a motion for post-conviction relief in Florida. Arango v. State, 467 So.2d 692 (Fla. 1985); Ashley v. State, 433 So.2d 1263 (Fla. 1st DCA 1983).

The most recent opinion of the United States Supreme Court addressing the standards to be applied when so-called Brady evidence is suppressed, Bagley, supra, held that reversal is warranted only if: 1) the prosecution failed to disclose evidence "favorable to the accused," and 2) there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different.

As to the first inquiry, whether the evidence is favorable to the accused, it has been firmly established that any evidence relevant to the credibility of a key government witness is every bit as relevant as exculpatory evidence directly related to a substantive issue. Bagley, supra; Napue v. Illinois, 360 U.S. 264

(1959); Giglio v. United States, 405 U.S. 150 (1972). "such evidence is 'evidence favorable to the accused,' so that, if disclosed and used effectively, it may make the difference between conviction and acquittal." Bagely at ___ (citations omitted). As the Napue Court held, "[t]he jurys estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend." Id. at 269; see also Giglio, 405 U.S. at 154.

A prosecutor also has the constitutional duty to alert the defense when one of his witnesses gives false testimony. Mooney v. Holohan, 294 U.S. 103 (1935); Napue v. Illinois, 360 U.S. 264 (1959). As long as fifty years ago the United States Supreme Court established the principle that the prosecutor's deliberate use of false testimony violates the defendant's due process rights and denies him a fair trial. Mooney, supra. In Alcorta v. Texas, 355 U.S. 28 (1957), the Court broadened this principle to encompass not only a prosecutor's active and deliberate solicitation of false testimony, but also his failure to correct false testimony. Enlarging the Mooney principle still further, the Napue Court, supra, held that the prosecutor's knowing failure to correct false testimony relating solely to the witness's credibility, rather than to a substantive issue as in

Alcorta, supra, and the instant case, also violated due process. Moreover, Napue's conviction was reversed even though the jury was apprised of other grounds for believing that the falsely testifying witness may have had an interest in testifying against him. Such evidence, held the Court, could not turn "what was otherwise a tainted trial into a fair one." 360 U.S. at 270.

Elaborating this principle further yet in Giglio v. United States, 405 U.S. 150 (1972), the Court held that a prosecutor can violate due process by allowing false testimony to be given even if he does not know that the testimony is false. In Giglio, a principal government witness testified falsely that he had received no promises of favorable treatment from the prosecutor prior to his testimony. In fact, a promise of immunity had been made by the government prosecutor who presented the case to the grand jury, but the trial prosecutor was unaware of this promise. The Court held that the prosecutor's actual unawareness was irrelevant; he "should have known" about the promise: "[t]he prosecutor's office is an entity and as such it is the spokesman for the government. A promise made by one attorney must be attributed, for these purposes, to the government." 450 U.S. at 154.

The prosecution's use of false testimony naturally involves the suppression of evidence favorable to the accused, but the fundamental unfairness and denial of due process engendered

thereby stems more from the false testimony itself than from the unavailability to the defense of the evidence which would show that testimony to be false. It is the "deliberate deception of a court and jurors by presentation of known false evidence [that] is incompatible with the rudimentary demands of justice," Giglio, supra, that deprives the accused of due process, rather than the mere failure to comply with discovery requests. The deliberate use of false testimony had been condemned long before Brady v. Maryland, 373 U.S. 83 (1967), established the principle that suppression by the prosecution of evidence favorable to the accused could violate due process. See Mooney, supra.

The standard for reversal of convictions obtained through the use of false testimony likewise predates Brady, and has survived Brady and its progeny: a new trial is required if the false testimony could in any reasonable likelihood have affected the judgment of the jury. Napue; Giglio, supra; U.S. v. Agurs, 427 U.S. 97, 102 (1976). Unlike those cases wherein the denial of due process stems solely from the suppression of favorable evidence, in cases involving the use of false testimony "the Court has applied a strict standard. . . not just because they involve prosecutorial misconduct, but more importantly because they involve a corruption of the truth-seeking process." Agurs, supra, at 104.

Although the Agurs Court modified the standard established

by Brady for determining when the prosecution's suppression of favorable evidence mandates reversal, it left untouched the standard to be applied when the prosecution knowingly uses false testimony. Recently, in U.S. v. Bagley, the Supreme Court again visited the issue, and, although arguably modifying the Brady/Agur materiality standard for reversal when favorable evidence is suppressed by the prosecution, left untouched the standard to be applied when false testimony is used. Quoting with approval the "well established rule that 'a conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have effected the judgment of the jury,'" Id. at ___, quoting Agurs, 427 U.S. at 103 (footnote omitted), the Court reasoned that "this rule may as easily be stated as a materiality standard under which the fact that testimony is perjured is considered material unless failure to disclose it would be harmless beyond a reasonable doubt." Bagley at ___.

Everything about the state's revelation and presentation of the facts herein was intended to restrict court and defense knowledge of the truth. An evidentiary hearing was necessary.

D. The Lower Court Erred

This claim was denied solely because Mr. Stano entered a

plea of guilty. The court found the plea colloquy to be "[o]f utmost importance," Order Denying 3.850 Relief, p. 2, (R. _____), wherein "[i]n essence the Defendant waived his rights to later complain about those matters." Id., p.4. From the colloguy, the court also decided that counsel was simply doing what the client requested. Id. This is no bar to the claim. If Mr. Stano was proceeding pro se, which he effectively was, a proper waiver of counsel colloguy should have occurred.

ARGUMENT III (CLAIM II)

GERRY STANO DID NOT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVE THE RIGHT TO JURY TRIAL ON THE QUESTION OF GUILT/INNOCENCE

If nothing else, this case is about waivers and their invalidity. The above argument heading is not properly a description of this section, but it will be included in the discussion. Mr. Stano purportedly waived his fifth amendment rights, and waived counsel's advice at the plea hearing. The standards for determining all of these waivers is a constant one, regardless of the context. As argued, counsel was ineffective for failing to move to suppress the illegal fruits of all the previous invalid waivers. Kimmelman v. Morrison, 106 S.Ct. 2574 (1986). All facts from the Statement of Fact section, supra, is incorporated into this argument by specific reference.

The sixth and fourteenth amendments guarantee Mr. Stano the

right to be represented by counsel at trial, Argersinger v. Hamlin, 407 U.S. 25 (1972), and at pre-trial "critical stages" where the government confronts the accused, United States v. Wade, 388 U.S. 218, 224 (1967), "at or after the initiation of adversary judicial criminal proceedings." Moore v. Illinois, 434 U.S. 220, 228 (1977). While the right can be waived, an effective waiver at trial first requires a "penetrating and comprehensive examination" of the defendant, Van Moltke v. Gillies, 332 U.S. 708, 723-24 (1948) to ensure, inter alia, that he or she is "aware of the dangers and disadvantages of self-representation." Faretta v. California, 422 U.S. 806, 835 (1975). The strict standard for waiver "applies equally to an alleged waiver of the right to counsel whether at trial or at a critical stage of pre-trial proceedings." Brewer v. Williams, 430 U.S. 387, 404 (1977); See also Massiah v. United States, 377 U.S. 201, 204-05 (1964).

The right was never waived here: not during interrogation, not during plea. The procedure for the plea entered here did not meet the requirements of federal or state law.

Mr. Stano pled guilty to two counts of capital murder, and had no plea agreement. This is before a judge who in the first three Volusia County cases informed Mr. Stano at sentencing:

> Mr. Stano, before I sentence you, I want you to know my thoughts in your particular case.

> Mr. Stano, the information I have before me, these three cases, lead me to believe that the death penalty may very well have been appropriate in any of these cases. Perhaps all of them. I reluctantly agreed not to sentence you to death, to eliminate the possibility of the death penalty.... My conscience bothers me. I think that in these three cases, the death sentence would be probably appropriate. In essence, you profitted simply because of the large number of murders you have committed.

App. 6, pp. 13-14.

Mr. Stano also purportedly waived a sentencing recommendation by a jury, a procedure to which he is entitled under Florida law. Mr. Stano did not, and the record is insufficient to demonstrate that he did, knowingly, voluntarily, and intelligently waive his right to jury trial and a jury sentencing recommendation.

First, counsel knew nothing about the two cases to which Mr. Stano pled guilty, and told the trial court as much, several times, during the plea colloquy. Counsel told the court that the plea was Mr. Stano's idea, that counsel could not advise him about it one way or the other, and would not. Mr. Stano, at the critical stage of plea, did not have the advice of counsel, the record demonstrates it, the court knew it, and there was absolutely no inquiry to determine whether Mr. Stano was waiving counsel -- he specifically was not.

Counsel did not know what to do, and so looked to Mr. Stano,

who did not even know how many prior convictions he had. Neither did counsel:

> [THE COURT] Anything in bar on preclusion of adjudication.
>
> MR. PEARL: The only thing that crosses my mind, Your Honor, which is not really in bar or preclusion of sentence, is that Mr. Stano has very recently been indicted in Brevard County for one charge of first-degree murder as to which the death penalty is very much in issue. I don't know whether an adjudication at this time would further aggravate any defenses or any sentencing considerations which may arise in that county. However, I believe there were --
>
> (Discussion off the record between Mr. Pearl and the defendant.)
>
> MR. PEARL: He's already been adjudicated guilty on something like ten. I'm not at all sure that this would actually act as prejudicial to him and, therefore, Your Honor, I see no reason why he can't now be adjudicated and represent to the Court that there is nothing in bar or preclusion of adjudication at this time.

R. 322. Mr. Stano had not been adjudicated on "something like ten"; he had been adjudicated on six, three of which had occurred four days before, and three of which Pearl himself was responsible for. This plea was given by an individual who did not even know how many times he had pled before, despite the fact that it had happened only twice -- once before this very judge, and once four days before the above discussion occurred.

Mr. Stano pled guilty in both cases before the court made any inquiry regarding waiver. R. 298, 299. It must be

underlined that Mr. Stano had pled in only two previous proceedings, having received ineffective assistance of counsel in both of them. In both cases, a life sentence was agreed upon. In the Alachua case, counsel was appointed the day of the plea, and knew nothing about the case. Pearl presented Mr. Stano with the same scenario. Mr. Stano was all along the manipulated artist of his own destruction. Every plea came from his confessions, without any other factual support whatsoever. He confessed; he pled guilty. He had no concept that the state was required to prove guilt beyond a reasonable doubt: he was to prove his own guilt.

The court never told him that the state had the burden of proof, that proof had to be beyond a reasonable doubt, and that crimes have "elements," each of which must be proven beyond a reasonable doubt. After Mr. Stano pled guilty, the court conducted only the following colloquy:

> You don't have to plead guilty if you don't want to.
>
> By pleading guilty, you're waiving your right to a jury trial as to guilt or innocence; at that trial, to be represented by a counsel; the right to confront witnesses against you; your right to compel the attendance of those who will testify on your behalf.
>
> Once you plead guilty, you waive any defenses you might have. You severely restrict and limit your ability to appeal.

Is anybody forcing you to do this or twisting your arm? No, Sir.

R. 299-300. Proof beyond a reasonable doubt would be an interesting concept in those cases in which the state categorically could not carry that burden, but Mr. Stano was not told about that standard. He was not even told that he could not be compelled to testify against himself at trial.

The record is insufficient to show a voluntary, knowing, and intelligent waiver of rights. The "waiver" was not so, and the plea must be set aside, as taken in violation of the fifth, sixth, eighth, and fourteenth amendments.

The plea colloquy is full of irregularities:

a) Documents purportedly showing the factual basis of the plea (police reports, complaints, etc.) were not made a part of the record in this capital sentencing proceeding which required review of the entire record by this Court.

b) Competency to plea was established by "judicial notice" of prior proceedings, and by the court saying "as best as I can tell, you're competent to stand trial and probably were not insane at the time of the offense." R. 294.

c) The defense attorney in open court quizzed Mr. Stano, without warning him of his rights, making totally gratuitous concessions:

Mr. Pearl [to his client]: Did you sign it voluntarily?

The Defendant: Yes, sir.

R. 317.

d. Since Mr. Stano was not acting upon the advice of counsel, his plea was the result of plea negotiations with the state conducted between Crow and Mr. Stano. No attorneys ever attended these sessions. Crow was the state attorney's agent, and kept no record of these negotiations. The plea was taken in violation of Rule 3.171, Fla. R. Crim. P.

e. The state attorney is required to "apprise the trial judge of all material facts known to him regarding the offense and the defendant's background." Rule 3.171(b)(2). Had he revealed all the known exculpatory information, the court could not have found a factual basis for the plea, and no plea would have been entered. Rule 3.170. This is a fourteenth amendment violation.

f. The plea was taken in chambers -- more secrecy in state dealing with Mr. Stano. All pleas are required to be in open court. Rule 3.170(a), 3.172(b).

These plea proceedings violated the fifth, sixth, and fourteenth amendments, and were unreliable, in violation of the eighth amendment.

ARGUMENT IV (Claim III)

MR. STANO'S FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS WERE VIOLATED WHEN THE STATE INTRODUCED IN CHIEF AT

SENTENCING THE UNRELIABLE OPINIONS OF MENTAL HEALTH EXPERTS TO REBUT STATUTORY MITIGATION, WHEN THE OPINIONS OF THOSE EXPERTS WAS PREMISED ON THE UNCONSTITUTIONALLY OBTAINED STATEMENTS OF GERALD STANO

In the Volusia County Mahar cases, Mr. Stano was ordered by the court to be evaluated for competency and sanity. The court and the state received directly the results of evaluations by Stern, Davis, Cerrarra, and Barnard. All the doctors limited their examinations to sanity and competency. Mr. Stano was not warned that his statements to the psychiatrists could be used against him.

The judge who received and read the reports was the same judge who later presided over this Bickrest/Muldoon cases. After pleas were entered in Bickrest/Muldoon on March 11, 1983, May 18, 1983 was set as the date for a capital sentencing proceeding. On May 13, 1983, counsel Pearl requested and received a continuance, because he had just received the P.S.I., and had just received discovery (two months after he let his client plead guilty). On June 8, the sentencing hearing occurred.

Three months had passed since the plea. Suddenly the court, the state, and defense counsel were all trying to work out new psychiatric testing for Mr. Stano. It actually occurred <u>during</u> the hearing, and Mr. Stano was not warned at all that his statements would be used against him.

The collective attempt to interview Mr. Stano is reflected in

the following proceedings:

[THE STATE]

> We have psychiatrists scheduled to interview Mr. Stano both this afternoon, that being Dr. Davis and Dr. Stern as well as Dr. Carrerra coming from Gainesville to interview Mr. Stano in the morning to update their findings. And its the intent to present their psychiatric testimony during most of the morning.

R. 6. Of course their earlier findings were regarding sanity and competency, neither one of which was relevant to this capital sentencing proceeding. Mr. Stano had never been interviewed by them on the Bickrest/Muldoon cases. No "update" was possible, and the state had no right to the results of any such "update."

[THE COURT]

> Of course, you both put me on notice that the Defendant would be examined by the psychiatrists.

R. 7. No such notice, motion, request, or pleading is in the record. The court proceeded to have the court's office contact the doctors directly and arrange for the interviews. R. 7.

[THE COURT]

> I think, since we have two psychiatric interviews this afternoon scheduled two hours apaart and we don't want to hurry the psychiatrists, but I think that at roughly 12:00 we should stop, reconvene tomorrow morning at what time, gentlemen? 9:00?
>
> MR. NIXON: 9:00.
>
> THE COURT: We have another psychiatric

exam in the morning, do we not, Carrera and Barnard coming down?

MR. NIXON: Yes, Your Honor.

Mr. Stano is to be transported over there at approximately 8:00 a.m. Both psychiatrists have indicated they would need approximately an hour. So, the 9:00 starting time is at this point an estimate. It would be on or about that time. If they needed extra time and --

THE COURT: We'll say tentatively 9:00, depending on that psychiatric exam, all right, tomorrow morning.

We'll conclude at 12:00 today.

THE COURT: Gentlemen, what I'd like to do is this: We did get word that the psychiatrists will come here and examine Mr. Stano back there in the jury room. They will be here at 12:30 and 2:30. We have one other expert witness, Dr. Botting, Medical Examiner.

Do you want to try and fit him in between now and 12:30?

MR. PEARL: Yes, sir.

. . . .

[THE COURT]

We have the two Gainesville psychiatrists coming down, going to examine him from 8:00 to, hopefully, no later than 9:00. And I guess we're going to want to get the psychiatrists out of here and back to Gainesville. So, what's that do to the other witnesses? What do you expect as far as scheduling tomorrow, is my question.

MR. NIXON: Your Honor, I would probably suggest that -- my understanding, unless Mr. Pearl is indicating that he has some other

use for the psychiatrists, there had been a letter forwarded by Mr. Pearl dealing specifically with the two mitigating mental-state factors he enumerated in his opening statement, and the psychiatrists basically will be answering those questions and explaining their answers. I assume their testimony would be generally brief.

I don't anticipate any long dialogue unless there is some other mitigating circumstances that he is going to use the psychiatrists for if not the statutory. In that case, I don't know.

. . . .

THE COURT: Well, let's try and do the psychiatrists in the morning. I can see conceivably us having a hard time finishing that. Maybe not. I don't know.

Let's try and get all the evidence in tomorrow, if possible.

MR. NIXON: Well, we have the four psychiatrists. The only remaining evidence that we have remaining are the two officers that will provide additional information regarding where the bodies were located and identified by some additional photographs to assist the Court. And other than that, there will be testimony of Paul Crow where we will then, you know, play the circumstances or one of the confessions, and that's really all the non-professional testimony we're going to have.

THE COURT: Unfortunately, my experience, the psychiatric testimony is longer than we normally anticipate.

So, we have four psychiatrists, possibly three officers. Let's lead off with the psychiatrists in the morning, try and finish that, and then get into the officers in the afternoon.

The state and court had no right to the results of such interviews at all, and for all intents, purposes, and appearances, Mr. Stano had no option -- he had to speak with the mental health individuals. He was not informed of his constitutional rights and did not waive them.

He was interviewed, the doctors testified, and the court adopted the testimony of these experts. This spirit of cooperation was violative of the Constitution, and counsel was ineffective for allowing the violation of Mr. Stano's fifth, sixth, eighth, and fourteenth amendment rights.

[THE COURT]

> All right. Now, we have three expert witnesses here.
>
> Counsel, as to the Rule being invoked as to them. The Rule is in effect.
>
> Is there an exception to the three psychiatrists, Dr. Barnard, Carrera, Dr. Stern?
>
> MR. PEARL: Yes, Your Honor, as to Drs. Barnard, Carrera, and Stern, the Rule is waived by the defendant, and they may remain in the courtroom while any one of them shall testify.
>
> THE COURT: All right.
>
> State agreed?
>
> MR. NIXON: Yes, Your Honor.
>
> THE COURT: All right.
>
> Then, the three doctors stand, and

administer the oaths.

THE CLERK: Raise your right hands.

(WHEREUPON, Dr. Barnard, Carrera, and Stern were sworn by the Clerk.)

THE COURT: Thank you.

Unless Dr. Stern has some pressing engagement, I want to get the other two doctors back to Gainesville.

MR. PEARL: Fine.

THE COURT: Let's call Drs. Barnard and Carrera.

Whose witnesses will they be?

MR. NIXON: Your Honor, I assume, in view of our taking of informal depositions, they will be, the State would be calling them, all of the psychiatrists that we will be dealing with in the sense, having been Court appointed, the State is calling them in support of its contentions.

THE COURT: All right.

First witness, Mr. Nixon?

MR. NIXON: State would call Dr. Carrera.

THE COURT: Before we start with Dr. Carrera, let me ask both Counsel a question.

We have attached to the PSI, Pre-Sentence report document, is it your intention, Counsel, that that will come into evidence?

MR. PEARL: Yes, Your Honor. I think what Mr. Nixon and I planned to do is to present to the Court copies of all the psychiatric reports at one time, one copy of each for each of the two files, and that we

> will stipulate that all of them may be admitted into evidence at one time rather than putting them in separately at various times.
>
> THE COURT: Fair enough.
>
> Okay. In other words, we'll have something to underlie Dr. McMillan's testimony here, will we not?
>
> MR. NIXON: Oh, yes, Your Honor. She wrote a very extensive report, and a separate report will be filed as to each of these homicides and will be considered by the Court as to each of the homicides.
>
> MR. PEARL: And the same will be true as to the previous written reports made by the other psychiatrists including Dr. Carrera, Dr. Barnard, and Dr. Stern, which were made back in 1981. And we intend to stipulate to their introduction into evidence as well.
>
> We just thought we would do it at one time in one package.

Counsel allowed all prior reports of psychiatrists to be introduced, even though the requests resulted from unwarned statements, and had nothing to do with capital sentencing.

Carrera testified that he examined Mr. Stano that morning. He stated that Mr. Stano was not under severe emotional distress at the time of the killings. Carrera was not a defense witness, and had no business being on the stand. Pearl tried to get him to concede to the presence of mental mitigation, but he would not. R. 129. Barnard testified to having interviewed Mr. Stano that morning, that he was not under severe emotional distress at the time of the offenses, and that he was not substantially

impaired in his ability to conform his behavior.

The doctors conceded that their opinions were based entirely on Mr. Stano's unwarned statements to them: "all the information you have comes from Gerry Stano himself." R. 139.

The court believed this unwarned evidence was critical:

> 2. F. S. 921.141(6)(b): Evidence was presented pertaining to this circumstance. Much of it was conflicting. After carefully considering all the testimony, reports, other evidence, and hearing argument of counsel, the Court finds the Defendant was not under the influence of extreme mental or emotional disturbance when the crime was committed. The Court adopts and accepts the sentence hearing testimony of Doctors Carrera and Barnard regarding this criteria.
>
> . . . .
>
> 6. F. S. 921.141(6)(f): Evidence was presented pertaining to this circumstance. Much of the evidence was conflicting. After carefully considering all the testimony, all the psychiatrists reports, the PSI, and having heard argument of counsel, this Court finds this criteria has not been established. The Court adopts and approves the sentence hearing testimony of Doctors Carrera and Barnard concerning this criteria.

Apps. 39, 40.

The state may not anticipatorily rebut mitigating circumstances. The court cannot use unwarned statements to punish petitioner and find the absence of mitigation, especially in light of conflicting evidence on the claims. The use violated the fifth, sixth, eighth, and fourteenth amendments, and counsel

ineffectively protected his client, to Mr. Stano's prejudice.

Mr. Stano was interviewed by psychiatrists without receiving Miranda warnings. The responses he gave were used to rebut mitigation and the psychiatrists' testimony was specifically adapted as the court's findings supporting imposition of death. This violates the fifth, sixth, eighth and fourteenth amendments, Estelle v. Smith, 451 U.S. 472 (1981). Counsel ineffectively and prejudically let it happen.

ARGUMENT V (Claim IV)

COUNSEL WAS INEFFECTIVE FOR ALLOWING THE COURT TO CONSIDER THE PSI IN THIS CASE, IN VIOLATION OF MR. STANO'S FIFITH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENT RIGHTS.

As outlined in the sentencing findings,

> A presentence investigation (hereinafter referred to as PSI) was done prior to the hearing, and it was admitted into evidence at the hearing with one important limitation. It was agreed that the Court could not use anything in the PSI to establish aggravating factors. Proof of aggravating factors would have to come from sources other than the PSI. The Court could, however, use the PSI to establish or negate mitigating factors.

Apps. 39, 40.

Actually, it was never quite clear for what purpose the PSI could be used:

> [PEARL]: Mr. Seltzer, having been assigned to the presentencing investigation, and for the purpose of preparing and furnishing his

report, conferred on several occasions with Mr. Stano.

His interviews were conducted without any Miranda warnings. Mr. Stano was given no indication that he has the right to refuse to answer any of the questions or furnish any of the information which Mr. Seltzer wanted.

Moreover, Counsel was not advised of the fact that these interviews would take place so that counsel could either be present or confer with Mr. Stano ahead of time in order to prepare him for those interviews.

As a result of those interviews, additional information was obtained by Mr. Seltzer and incorporated in his presentence investigation report which, in my view, is highly incriminating and may provide the only proof available to the state to establish one or more aggravating circumstances that otherwise, in my view, cannot be established.

* * *

Further, the results of his investigation, and a summary of those statements, are included in the PSI report. and I have moved, secondly, with respect to the use of the PSI report to restrict its use; that is to say, not only should nothing that Mr. Seltzer put in his report, which is a summary of or is a report of statements made by Mr. Stano under the circumstances alleged, shouldn't be used by the Court, but also that the PSI report itself should not, must not, be used for the establishment of any aggravating circumstances; that the establishing of aggravating circumstances, pursuant to the provisions of Section 921.141, subsection 5, must be done by adequate and admissible proof adduced by the State during these heaarings and in no other way. therefore, the PSI report should not in any way be used to aid the state in that regard.

* * *

At this time, however, I feel that the testimony of Mr./ Seltzer and the use of the

PSI report should be suppressed and not used by this Court for any purposes involving proof of aggravating circumstances under the Statute.

THE COURT: What about the proof of mitigating circumstances?

MR. PEARL: In my Motion, I said that the PSI report should not be used for establishins either aggravating or mitigating circumstances. I don't feel that I'm entitled to take unfair advantage of the State any more that the State is entitled to take unfair advantage of me.

However, I feel that the court is entitiled, after the hearing, to consider the PSI report in general to aid it in weighing the aggravating and mitigating circumstances. And I feel that the contents of the PSI report, which were not obtained by Mr. Seltzer in violation of Mr. Stano's constitutional rights may be considered if they establish an aggravating circumstance.

THE COURT: I'm a little confused. I can use it for some purposes and not for others?

MR. PEARL: Your Honor, at this time, I think the clearest way to handle that, simplest way, so that none of us is confused by it, would be to have a pre-hearing order or ruling that the PSI report is not to be used for any purpose in this hearing as evidence of any fact.

THE COURT: What about after the hearing when the Court deliberates?

MR. PEARL: Once again, Your Honor, as long as it is not used by the Court as evidence of or in aid of the establishment and finding of an aggravating circumstance, I feel that the Court can use it as sort of a general background of the defendant to aid it in the Court's deliberations, but not as evidence.

THE COURT: That's a difficult concept for me to grasp.

MR. PEARL: Well, it's a little tough for me. That's why I was trying to simplify it and say let's just not use the PSI report at all.

THE COURT: But then, why have the PSI? why does the State have a statute that says, PSI, and the defendants agree to the PSI, the State agrees to it, I agree to it. We get a lengthy PSI, and then can't use it at all?

MR. PEARL: Yes, sir, I agreed to it at the hearing on the plea. I agreed that a PSI could be made. I did not agree to what use it could be put.

As a matter of fact, the PSI report in a capital case is anamolous because a PSI report generally is used by the trial court in determining what its sentence shall be when it has a wide range of sentencing alternatives.

In a capital case, the Court, upon a plea of guilty, has only two alternatives. and those alternatives under the Statute 921.141 arte to be established by the proof by the way set forth in the statute and under the limitations set forth therein. And, therefore, I don't know to what extent the PSI report could help you at all.

THE COURT: Okay. Thank you, Counsel. I'm going to get back to you in a little bit.

MR. PEARL: Yes sir.

THE COURT: Mr. Nixon, for the State?

* * *

THE COURT: Okay. Thanks.

Mr. Pearl, I'm trying to narrow this down again, I'm trying to understand what it can and can't be used for.

What about negating mitigating circumstances?

MR. PEARL: Your Honor, it is my intention-- As I unserstand it, Counsel will be making brief opening statements outlining the positions with respect to this hearing.

I will announce that, insofar as mitigating circumstances, there is nothing in the PSI which would be helpful in that regard. I intend to try to establish only two statutory mitigating circumstances which the PSI might very well assist in doing, but would in no way negate.

Now, as to the remaining statutory mitigating circumstances, the PSI might negate them, but I am not claiming them.

THE COURT: Okay.

* * *

THE COURT: ... Mr. Seltzer's testimony will not be used for the purposes of this hearing, specifically will not be used either live or in the PSI establishing aggravating factors for purposes of this sentencing hearing.

The presentence investigation will not be used by this Court to establish, for the purposes of this sentence hearing, any aggravarting circumstances.

I do believe that I can consult with it generally and apparently counsel agree with me, whatever "generally" means.

And, Counsel, along that vein, I would like to make the presentence investigation part of the Court file. Any Objection?

MR. PEARL: None, Your Honr.

MR. NIXON: None.

THE COURT: Sir?

MR. NIXON: None by the State, Your Honor.

THE COURT: All right.

(R.14-23) (emphasis added).

THE COURT: Are the psychiatric reports attached to the PSI, the ones that you're referring to?

MR. NIXON: Yes, Your Honr.

MR. PEARL: Yes, Your Honor. they all are.

THE COURT: You want to admit the PSI into evidence without the limitation that we talked about; in other words, it can't be used to establish any of the aggravating circumstances?

MR. PEARL: Yes, sir. I think this PSI report should become part of the record with the understanding, as has heretofore been expressed by the Court and agreed to by Counsel.

THE COURT: Now, I can use it for mitigation purposes, both positive and negative. Is that correct, gentlemen?

MR. PEARL: Yes, Your Honor.

MR. NIXON: Yes, Your Honor.

THE COURT: Then, let's admit the original PSI, which I have personally in front of me, in as a Court's exhibit, admit it into evidence, and we'll make a copy and put the original in one and a copy in the other.
Gentlemen, okay on that?

MR. PEARL: And that includes the attached report.

THE COURT: Yes.
Agreed, Mr. Nixon?

MR. NIXON: Yes, Your Honor, we would enter into that stipulation.

(R.221-22).

Thus, the Court could consult "generally" with the PSI, and could use it as evidence in support of or as proof of the absence of mitigating circumstances. It included the psychiatric reports.

There is no dispute but that the PSI was prepared almost exclusively from interviews with the Petitioner in absence of counsel and without warnings that the responses could be used against him. Consequently, any use violated Mr. Stano's fifth, sixth, eighth and fourteenth amendment rights, and the right to confront witnesses against him. Of special note is his complete inability to refute the doctors' reports.

The court stated specifically that mental mitigation was rejected "[a]fter carefully considering all the testimony, reports," and other evidence. The "reports" were from the first pleas, had nothing to do with sentencing, resulted from unwarned statements, and were totally unconfrontable.

The PSI was an incredibly damaging document which took as a given that Mr. Stano was a mass killer, and listed all his confessions and crimes, including those upon which there had been no conviction. The police version of the facts of the previous crimes was detailed, pending charges with unsubstantiated facts were chronicled, including 18 murders in Florida upon which there is still no convictions, two murders in New Jersey upon which no convictions had been had, the same for four in Pennsylvania, and four Jane Doe homicides in Florida. Paul Crow was the source.

Mr. Stano's purported family background, education, and character was chronicled, and the psychiatric reports were attached and discussed. Statements from victims and police officers were included. See Booth v. Maryland, ___ U.S. __ (1987). The psychiatric reports stress the lack of remorse.

Counsel was ineffective for failing to preclude any consideration of the PSI. Counsel, upon reasoable investigation, could have readily demonstrated that his client was coerced into giving the confessions, contained therein, in violation of his fifth, sixth, eighth, and fourteenth amendment rights. The psychiatric reports were blatantly irrefutable, but were relied upon, as was the rest of the PSI.

The Court's primary concern and impetus for imposing the death penalty was "the large number of prior murder convictions." App. 40, 41. Counsel did not attack three of them, because of a conflict of interest, and the other three because of an unreasonable failure to investigate. The use of the PSI was prejudicial.

ARGUMENT VI (Claim V)

THE TRIAL JUDGE SHOULD HAVE RECUSED HIMSELF, AND HIS ACTIONS IN THIS CASE VIOLATED MR. STANO'S FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENT RIGHTS, AS HE PUNISHED MR. STANO FOR PLEA BARGAINING, AND FOR EXERCISING HIS FIFTH AMENDMENT RIGHTS.

Mr. Stano, according to accounts provided the trial court, plead guilty in the Maher/Von Haddocks/Heard cases in return for a life sentence in each case. According to accounts in this record, including psychiatric reports, Mr. Stano's confessions pre-Maher plea would not result in a death sentence. Petitioner contends that it was always the agreement that he would not receive death if he confessed to any case, and that his confessions in this case were premised on just such promises, making his confession involuntary, unknowing, and unintelligent.

Judge Foxman did not like this arrangement, according to the record, and told Mr. Stano at sentencing in Maher that he believed that the death penalty was proper in those three cases. It "bothered his conscience" to sentence Mr. Stano to life, but he did it anyway, troubled as he was by it. The record at the Bickrest/Muldoon sentencing hearing refers obliquely to this judge predisposition. The judge who wanted to give Mr. Stano death before, now had the unrestrained opportunity to do so.

Just as every participant before him had done, the judge had Mr. Stano say that he waived any objection to him presiding.

Judge Foxman simply knew too much, and was on the record as being too predisposed, for there to be any sense of reliability in his decision at sentencing.

First, Judge Foxman knew what another judge would not have known, and what no judge should consider for any reason-- he was aware of statements made between the state and the defendant in conducting plea negotiations. The judge directly asked about these negotiations on the record herein. Such evidence is totally inadmissible:

> [A]n offer to plead guilty... is inadmissible in any... proceeding. Evidence of statements made in connection with any of the pleas or offers is inadmissible...

Fla. Stat. Section 90.410. The record of the Maher cases did not reveal the discussions that Mr. Stano would receive life for all pre-Maher plea confessions, and the judge by soliciting that information at the Bickrest/Muldoon sentencing was in conflict with Florida law. It is also a violation of the fifth, sixth, eighth and fourtenth amendments in this case.

Judge Foxman wanted to sentence Mr. Stano to death. Getting an uniformed defendant to let him is not the solution. The record must reliably demonstrate that the decision to impose The death sentence is free of considerations such as the following:

a.) it is improper to sentence someone to death because a plea agreement prevented such a sentence in an earlier case;

b.) it is improper to sentence someone to death based upon

that person's exercise of his fifth and sixth amendment rights, and failure to confess early enough.

If Mr. Stano had confessed to Bickrest/Muldoon prior to the Maher plea, he would have received life. Since he did not, and only because he did not, he received death. It is apparent that the court, which had agreed to the earlier plea bargain, held Mr. Stano's refusal to confess earlier against him at sentencing in Bickrest/Muldoon.

The court stressed in Bickrest what it had wanted to stress in Maher:

> In this case the large number of prior murder convictions is the dominant factor. This criteria is entitled to great weight. By itself it would outweigh the mitigating factors...

Apps. 39, 40 - Bickrest, Muldoon.

> I reluctantly agree not to sentence you to death... My conscience bothers me. I think that in these three cases, the death sentence would be probably appropriate. In essence, you profitted simply becasue of the large number of murders you have committed.

App. 6, pp. 13-14 - Maher.

A judge whose conscience bothers him because he wanted to sentence a defendant to death before must not be allowed to consider such penalty later. A sentencing judge should come to a sentencing hearing with no bias, ill will, or predisposition. This one did not, and he violated Mr. Stano's fifth, sixth,

eighth, and fourteenth amendment rights. A new sentencing hearing is therefore necessary.

ARGUMENT VII (Claim VI)

MR. STANO'S COUNSEL PROVIDED INEFFECTIVE ASSISTANCE VIS A VIS MENTAL HEALTH EXPERTS, IN VIOLATION OF THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS

Counsel Pearl made no request for the appointment of mental health experts to assist in preparing for a defense. He pled his client guilty without any analysis of whether his client's statements were coerced, or entered without full and knowing waivers. This was an unreasonable ommission.

Counsel allowed mental health experts to examine Mr. Stano during the sentencing proceedings, and allowed their unconstitutionally obtained testimony to be introduced. This was an unreasonable omission.

The confessions in this case and others were produced by attorney, psychologist, detective, and parent pressure. Mr. Pearl was a part of that process. He helped produce the bevy of psychiatric and psychological reports that led to the resolution of the Maher, Van Haddocks, and Heard convictions. A different strategy in this case was hampered by Pearl's inherent conflict of interests. Since he was counsel with Jacobson in the Mahar/Van Haddocks/Heard cases, his defense was set: he could

hardly say now that his client did not voluntarily confess, since he claimed he had done so in Maher/Van Haddocks/Heard. He could not say his client was not a serial killer, since he had already said he was. Thus, the plea and sentencing procedure herein was foreclosed before it began: Pearl was forced to maintain the stance he had taken earlier, and this unduly hampered his performance, violating Mr. Stano's right to effective counsel.

Proper analysis by competent mental health experts reveal that Mr. Stano is not a serial killer. Anne McMillan, Pearl's expert in Mahar, had said otherwise. She was wrong, but Pearl was stuck with it. McMillan found Mr. Stano to be a homicidal villan and spread her diagnosis over the news wires with dedicated zeal. Florida was blanketed with her face, voice, words and ineptitude.

McMillan simply could not count. Her premise was fundamentally deficient because her interpretation of the MMPI testing was simply wrong:

> At your request I have reviewed the materials you sent me regarding Mr. Gerald Stano. The materials you provided me with were the reports and some test profiles that were provided by A. Ann McMillan, Ed.D. As you requested, I paid particular attention to the Minnesota Multiphasic Personality Inventory (MMPI), a widely used test inventory.
>
> I have worked with the MMPI for a number of years in various ways. I am also very familiar with the Megargee MMPI typology to which McMillan refers in her report. I use the MMPI in my practice, teach a graduate

level course in the use of the MMPI (and other tests), and have published articles on both the MMPI and the Megargee MMPI typology. In addition, I have been the recipient of two grants from the National Institute of Justice, both of which involved extensive use of the MMPI. The most recent grant (on which I am co-principal investigator) is specifically a study of the generalizability of the MMPI typology to an older psychiatric prisoner population, as the original study involved only "youthful" offenders.

Although the report entitled "Comparison of Gerald Stano's Psychological Profile in Comparison with Those of Convicted Mass Murders(sic)" refers to an Elevin Megargee and a McGure, I will assume that the author of the report meant to refer to Edwin Megargee and J. McGuire. The report states that the Megargee "subtyping" has proven to be an extremely accurate system which classifies criminal offenders into ten subtypes." While this statement is in essence true, what follows in that same paragraph indicates a misunderstanding of how the typology was derived and how it is to be used. The report states that the "Charlie" profile represents "criminals who 'commit the senseless crimes', generally murder and/or mutilation; ritualistic murders." This is a very inappropriate statement as the Megargee system is <u>not</u> an offense based system. In fact, the Megargee book cited at the beginning of the McMillan report specifically points out the inappropriateness of offender based typologies and points out that there are statistically significant differences among individuals convicted of the same offense (p. 32). Murderers are specifically mentioned, noting that not all murderers are alike. The MMPI typology is an empirically derived system, that was derived in part because of the inadequacies of other classification systems, notably offense based systems. In addition, there were no mass murderers nor were there any mutilation/ritualistic murderers in the

original sample on which the system is based. There is, in fact, nothing in the description of the original Group Charlie that even mentions murder.

The report goes on to classify Mr. Stano's profile into one of the ten types, a "Charlie." This is, quite simply, wrong. It is a misclassification. In order to better understand I will briefly explain the system. MMPI profiles are classified into each of the ten types by following a series of rules. Even if a profile meets the rules for a particular type, the examiner must still compare the profile to the other nine types, as a profile might meet the criteria for another group at an even higher level. There is a point chart accompanying each set of rules to help the examiner determine which is the best "fit." A common error is to simply use the first classification into which the profile fits without searching further to see if there is a better fit. In this case, the error is even more blatant. The first rule for Group Charlie is that the top scores on the profile must be greater than or equal to 80T and less than or equal to 110T. Mr. Stano's profile has two scales whose scores are over 110T. Therefore, his profile cannot even be considered as being in Group Charlie. The profile does meet the criteria for Group How, which is not even mentioned in McMillan's report. In fact, the profile meets all of the primary and secondary rules for Group How. The characteristics of Group How as described in Megargee's book indicate that these inmates were withdrawn, introverted and passive, and likely to be rejected by other inmates as "mental cases." They were the group seen as most likely to need mental health intervention. They were typically placed in a dormitory for those inmates most likely to be exploited, manipulated or abused by their fellow inmates. Although they spent a large number of days in the cell house and were classified in a "violence prone group," Megargee surmises that this is because they were

> involved in two or more violent incidents, but as the victim rather than the perpetrator.
>
> In summary, the blatant misclassification calls into question the reliability of the conclusions. They are, in fact, based on an erroneous classification.

App. 43. The trial court, because counsel could do nothing else, was left with the wrong information. This incompetent assistance by couunsel and mental health experts violated the sixth and fourteenth amendments.

The State psychiatrists who testified against Mr. Stano at sentencing conducted absolutely no examination regarding his susceptibility to falsely confession. McMillan did, gave it to Pearl and Jacobson, and they got confessions. Pearl could hardly say now that they were involuntary. Mr. Stano is indeed susceptible:

> 2. Mr. Stano derives from extreme early infantile deprivation. This deprivation was very physical and emotional and basically shaped the remainder of Mr. Stano's life. In this regard, he is an individual who is extremely sensitive to rejection and prone to distort reality because of his own feelings of inadequacy. Although he reports a positive perception of his adoptive mother, Mr. Stano, as noted above, has always tended to relate to women who he can view as inferior in some way. However, when under extreme pressure such as a police interrogation, he is likely to decompensate and possibly deteriorate into full-blown psychosis, rendering him unable to separate reality from fantasy.
>
> 3. An equally strong facet of Mr. Stano's organic personality syndrome is impaired judgment. This fact, taken with his

suffered an inability to appreciate the consequences of his statements to law enforcement officials.

4. Mr. Stano suffers from delusions of grandiosity. Although Mr. Stano views himself as an inadequate individual, his need to compensate for these feelings leads him to project an image of himself which could draw an inordinate amount of attention. In this regard, this evaluation finds that Mr. Stano would likely confess to committing crimes, such as the alleged murders, in order to gain attention despite the adverse legal consequences. He would be particularly susceptible to strong authority figures who rely on manipulation and who appeal to his need to be better or smarter than others.

In conclusion, this evaluation suggests that Mr. Stano's behavior throughout his childhood, adolescence and adulthood cannot be understood without an appreciation of his extraordinarily adverse history as an infant. He was the product of a pregnancy complicated by his mother's alcoholism and unstable lifestyle. After his delivery, he was extremely deprived and subsequently suffered from malnourishment and neglect. As noted above, he suffered from Fetal Alcohol Syndrome and was also obsessively in need of oral gratification. This evaluation further shows that Mr. Stano's confession to violent behaviors can be seen, at least in part, as a function of his early childhood deprivation and rejection, his extreme sensitivity to female rejection and his overwhelming and apparent need for recognition. Consequently, although it is likely that he knew the wrongfulness of the acts to which he confessed, he was unable to, during stressful interrogation, separate reality from the myth of his being an important and powerful person capable of committing a series of perplexing offenses.

App. 44.

Pearl and Jacobson knew this and used it:

> Paul [Crow] probably should have a doctorate in psychology. He's good at it. He understands how to use it. He knows what he's doing. He utilizes every forensic science available to him.

St. Petersburg Times, December 15, 1982, Jacobson speaking.

Mr. Stano was deprived of counsel who could present an unfettered defense, because counsel had helped produce his confession. This violates the fifth, sixth, eighth and fourteenth amendments.

CONCLUSION

For the foregoing reasons, Mr. Stano respectfully requests that this Honorable Court vacate the conviction and sentence of death or, in the alternative, remand the cause for an evidentiary hearing and findings of fact.

Respectfully submitted,

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BY: _____
ATTORNEY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true copy of the foregoing has been delivered by U.S. Mail, first class, postage prepaid, to Belle Turner, Assistant Attorney General, Department of Legal Affairs, 125 North Ridgewood, Beck's Building, 4th Floor, Daytona Beach, FL 32014, this 25th day of September, 1987.