

OFFICE OF STATE ATTORNEY
TENTH JUDICIAL CIRCUIT, FLORIDA
Polk, Highlands, and Hardee Counties

Drawer SA, P.O. Box 9000
Bartow, FL 33831-9000 (941) 534-4800



Jerry Hill
State Attorney

a.A. 8-29-95

Lakeland Branch Office
109N. Kentucky Avenue, Suite 7
Lakeland, FL 33801 (941) 499-2596

Winter Haven Branch Office
150 4th Street, N.W.
Winter Haven, FL 33881 (941) 291-5742

October 23, 1996

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CLERK SUPREME COURT
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The Honorable Gerald Kogan
Chief Justice
The Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399-1925

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85,801

Dear Justice Kogan:

I am writing in response to the Court's request for comments concerning the proposed amendment to Florida Rule of Criminal Procedure 3.220 (p). This amendment which deals with the disclosure of possible aggravating and mitigating factors in death penalty cases was announced in the Court's opinion in In Re: Amendment to Florida Rule of Crimi Procedure 3.220(h) and Florida Rule of Juvenile Procedure 8.060(d), Nos. 85,585 & 85,801 (Fla. Sept. 12, 1996).

This office is opposed to the amendment. In the first place, we believe it to be unnecessary. **The number** of aggravating and mitigating circumstances are so limited that it is not presently an undue burden on either aide to prepare to meet them. Moreover given Florida's open and extensive discovery process, both parties are easily able to identify the issues with which **they** must deal.

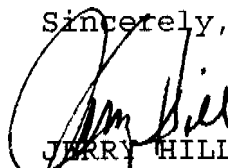
We also believe that this proposal will be inherently unfair to the prosecution. For example, if the defendant's testimony at trial were for the first time to disclose an aggravating factor, the state would arguably be unable to use it. On the other hand, it is hard to see what could be an effective sanction for the defense's failure to disclose a mitigator. **Surely** a court would be loathe to prohibit a defendant from introducing any mitigating evidence in a death penalty case.

For well more than a decade, the Supreme Court has refused to require disclosure of aggravating factors. Vini v. State, 637 So. 2d 921 (Fla. 1994); Johnson v. State, 438 So. 2d 774 (Fla. 1983); Hitchcock v. State, 413 So. 2d 741 (Fla. 1982). We would

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urge the Court to stay the course and reject the proposed amendment..

Sincerely,



JERRY HILL
State Attorney

JH:ct

pc: The Honorable Ben F. Overton
The Honorable Leander J. Shaw, Jr.
The Honorable Stephen H. Grimes
The Honorable Major B. Harding
The Honorable Charles T. Wells
The Honorable Harry Lee Anstead