IN THE SUPREME COURT OF FLORIDA

ERIC SCOTT BRANCH APPELLANT VS. THE STATE OF FLORIDA, APPELLEE	ON APPEAL FROM THE CIRCUIT COURT, ESCAMBIA COUNTY, FLORIDA JUDGE E. P. NICKINSON III DIVISION A PRESIDING

RECEIVED 02/06/2018 FLORIDA SUPREME COURT

RECORD ON APPEAL

CIRCUIT COURT CASE NO. 1993 CF 000870

SUPREME COURT DKT NO. 2018 SC 190

CHARMAINE MILLSAPS, ESQUIRE
Assistant Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399-1050

ATTORNEY FOR APPELLEE

STACY BIGGART, ESQUIRE
KATHLEEN PAFFORD, ESQUIRE
Assistant CCRC Northern Region
1004 Desoto Park Drive
Tallahassee, Florida 32301

BILLY H. NOLAS, ESQUIRE
Chief, Capital Habeas Unit
KIMBERLY SHARKEY, ESQUIRE
Attorney, Capital Habeas Unit
Office of the Federal Public Defender
227 N. Bronough Street, Suite 4200
Tallahassee, Florida 32301

ATTORNEY FOR APPELLANT

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PROGRESS DOCKET REPORT

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	DocketDate	DocketText
1	02/23/1993	JUDGE: TARBUCK
2	02/23/1993	INDICTMENT FILED
3	02/23/1993	CAPIAS ISSUED, RET: INSTANTER
4	02/23/1993	NO BOND SET
5	02/23/1993	DATE OFFENSE OCCURRED:01111993
6	02/23/1993	FILE AFFIDAVIT & SEARCH WARRANT
7	06/11/1993	JUDGE: ACKERMAN FOR WILLIAMS
8	06/11/1993	ASSISTANT STATE ATTORNEY: M. PATTERSON
9	06/11/1993	COURT REPORTER: B. CROSS
10	06/11/1993	DEFT MADE APPEARANCE BY VIDEO FROM COUNTY JAIL
11	06/11/1993	INITIAL APPEARANCE FOR: HOMICIDE, SEXUAL BATTERY, GRAND THEFT,
12	06/11/1993	ORIGINAL ARREST DATE: 06101993
13	06/11/1993	PUBLIC DEFENDER APPOINTED: G. SHOEMAKER
14	06/11/1993	PLED NOT GUILTY. SET FOR JURY TRIAL: 7-19-93, DD 7-13-93.
15	06/14/1993	FILE NOTICE OF DEMAND TO NOTIFY COUNSEL
16	06/16/1993	FILE NOTICE OF DISCOVERY
17	06/24/1993	RESPONSE TO NOTICE OF DISCOVERY
18	07/12/1993	FILE MOTION FOR CONTINUANCE
19	07/13/1993	JUDGE: NICKINSON
20	07/13/1993	ASSISTANT STATE ATTORNEY: M. PATTERSON
21	07/13/1993	ASSISTANT PUBLIC DEFENDER: D. LOVELESS
22	07/13/1993	COURT REPORTER: BFS
23	07/13/1993	RESET FOR JURY TRIAL: 10-11-93, DD 10-5-93
24	07/13/1993	FILE ORDER GRANTING CONTINUANCE
25	07/13/1993	FILE MOTION REQUESTING PAYMENT FOR PHOTOGRAPHS
26	07/14/1993	JUDGE: NICKINSON
27	07/14/1993	FILE MOTION AND ORDER GRANTING MOTION TO PAY FOR PHOTOGRAPHS
28	08/06/1993	AMENDED ANSWER TO DISCOVERY FILED
29	09/15/1993	FILE MOTION TO CONTINUE
30	09/15/1993	JUDGE: NICKINSON
31	09/15/1993	ASSISTANT STATE ATTORNEY: M. PATTERSON
32	09/15/1993	ASSISTANT PUBLIC DEFENDER: D. LOVELESS
33	09/15/1993	MOTION FOR CONTINUANCE-GRANTED
34	09/15/1993	RESET FOR JURY TRIAL: 11-8-93, DD. 11-2-93
35	09/15/1993	COURT REPORTER: GBD
36	09/17/1993	JUDGE: NICKINSON
37	09/17/1993	FILE MOTION & ORDER GRANTING CONTINUANCE
38	09/22/1993	RESPONSE TO NOTICE OF DISCOVERY
39	09/22/1993	AMENDED
40	10/11/1993	FILE MOTION TO DECLARE SANCTION 921.141, FL. STATUTES, UNCONS-
41	10/11/1993	TITUTIONAL.
42	10/11/1993	FILE MOTION FOR DISCLOSURE & PRODUCTION OF IDENTIFICATION
43	10/11/1993	MATERIALS.

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	DocketDate	DocketText
44	10/11/1993	FILE MOTION TO PRECLUDE CHALLENGE FOR CAUSE.
45	10/11/1993	FILE MOTION TO VACATE DEATH PENALTY (1).
46	10/11/1993	FILE MOTION TO VACATE DEATH PENALTY (2).
47	10/11/1993	FILE MOTION TO VACATE DEATH PENALTY (3).
48	10/11/1993	FILE MOTION FOR INDIVIDUAL VOIR DIRE & SEQUESTRATION OF JURORS
49	10/11/1993	DURING VOIR DIRE.
50	10/11/1993	FILE MOTION TO DISMISS COUNT ONE OF THE INDICTMENT & DECLARE
51	10/11/1993	775.082(1), FL. STATUTES (1981), UNCONSTITUTIONAL.
52	10/11/1993	FILE MOTION TO DISMISS INDICTMENT OR TO DECLARE THAT DEATH IS
53	10/11/1993	NOT A POSSIBLE PENALTY.
54	10/11/1993	FILE MOTION TO STRIKE AGGRAVATING CIRCUMSTANCES.
55	10/11/1993	FILE MOTION TO DECLARE SECTION 922.10, FL. STATUTES, UNCONSTITU-
56	10/11/1993	TIONAL.
57	10/11/1993	FILE MOTION IN LIMINE.
58	10/11/1993	FILE MOTION TO PRECLUDE CHALLENGE FOR CAUSE.
59	10/11/1993	FILE MOTION TO PRODUCE PHOTOGRAPHS.
60	10/11/1993	FILE MOTION FOR PRODUCTION OF FAVORABLE EVIDENCE.
61	10/11/1993	FILE MOTION TO PRODUCE CRIMINAL RECORDS OF STATES WITNESSES.
62	10/11/1993	FILE MOTION TO DISMISS AGGRAVATING CIRCUMSTANCES AS UNCONS-
63	10/11/1993	TITUTIONAL.
64	10/13/1993	FILE MOTION TO CONTINUE
65	10/13/1993	FILE MOTION TO EXCLUDE EVIDENCE OR ARGUMENT DESIGNED TO CREATE
66	10/13/1993	SYMPATHY FOR THE DECEASED
67	10/18/1993	NOTICE OF HEARING: ON DEFT MOTION FOR CONTINUANCE 10-25-93 10:45
68	10/25/1993	JUDGE: NICKINSON
69	10/25/1993	ASSISTANT STATE ATTORNEY: M. PATTERSON
70	10/25/1993	ASSISTANT PUBLIC DEFENDER: D. LOVELESS (J. ALLBRITTON FOR THIS
71	10/25/1993	APPEARANCE)
72	10/25/1993	DEFENDANT PRESENT
73	10/25/1993	MOTION FOR/TO: CONTINUANCE GRANTED
74	10/25/1993	RESET FOR JURY TRIAL: 1-31-94, DD 1-25-94
75	10/25/1993	COURT REPORTER: CB
76	10/26/1993	FILE TRANSCRIPT OF PROCEEDINGS HELD 10-25-93
77	11/02/1993	FILE MOTION DECLARING DEFENDANT PARTIALLY INDIGENT AND NOTICE OF
78	11/02/1993	HEARING 11/3/93 @ 11:45 A.M.
79	11/03/1993	JUDGE: NICKINSON
80	11/03/1993	FILE ORDER OF PARTIAL INDIGENCY
81	11/22/1993	FILE STIPULATION FOR SUBSTITUTION OF COUNSEL SUBSTITUTING
82	11/22/1993	JOHN LEWIS ALBRITTON AS ATTORNEY FOR DEFT
83	01/10/1994	DEPOSITION FILED: JOSHUA FLAUM
84	01/10/1994	DEPOSITION FILED: MIKE CARROLL
85	01/10/1994	DEPOSITION FILED: LAURA JANE ROUSSEAU
86	01/10/1994	DEPOSITION FILED: EMILY MORING

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	DocketDate	DocketText
87	01/10/1994	DEPOSITION FILED: MARK RIVARD
88	01/10/1994	DEPOSITION FILED: KENNETH SIMMONS
89	01/10/1994	DEPOSITION FILED: EDWIN THOMAS
90	01/10/1994	DEPOSITION FILED: WILLIAM WALLACE
91	01/10/1994	DEPOSITION FILED: JANICE M. JOHNSON
92	01/10/1994	DEPOSITION FILED: MARK JAMES
93	01/10/1994	DEPOSITION FILED: FRANK FILLINGIM
94	01/10/1994	DEPOSITION FILED: KENDRA COOK
95	01/10/1994	DEPOSITION FILED: LISA COLAIZZI
96	01/10/1994	DEPOSITION FILED: MAGDA CLANTON
97	01/10/1994	DEPOSITION FILED: CHARLES GRIFFITH
98	01/10/1994	DEPOSITION FILED: BRUCE FAIRBURN
99	01/10/1994	DEPOSITION FILED: DENNIS NORRED
100	01/10/1994	DEPOSITION FILED: LONNIE GINSBERG
101	01/10/1994	DEPOSITION FILED: G.D.CUMBERLAND, M.D.
102	01/20/1994	FILE NOTICE PURSUANT TO FLORIDA ST. 90.404(2)
103	01/21/1994	FILE MOTION FOR CLOSURE OF PRETRIAL MOTION HEARINGS
104	01/21/1994	FILE NOTICE OF HEARING ON 1-26-94-5:00 (CANCELLED)
105	01/24/1994	JUDGE: NICKINSON
106	01/24/1994	ASSISTANT STATE ATTORNEY: M. PATTERSON
107	01/24/1994	DEFENSE ATTORNEY: J. ALLBRITTON
108	01/24/1994	DEFENDANT PRESENT
109	01/24/1994	COURT REPORTER: SH
110	01/24/1994	FILE MOTION TO CONTINUE. MOTION GRANTED
111	01/24/1994	RESET FOR JURY TRIAL: 2-28-94
112	01/26/1994	FILE AMENDED NOTICE OF HEARING ON 1-31-94-2:00PM
113	01/28/1994	JUDGE: NICKINSON
114	01/28/1994	FILE MOTION & ORDER GRANTING PAYMENT OF PRIVATE PROCESS SERVICE
115	01/28/1994	FILE MOTION TO INTERVENE
116	01/31/1994	JUDGE: NICKINSON
117	01/31/1994	ASSISTANT STATE ATTORNEY: M. PATTERSON
118	01/31/1994	DEFENSE ATTORNEY: J. ALLBRITTON
119	01/31/1994	DEFENDANT PRESENT
120	01/31/1994	COURT REPORTER: CB
121	01/31/1994	MOTION FOR CLOSURE WITHDRAW BY DEFENSE
122	01/31/1994	MR. CLARK, ATTY FOR PENS NEWS JOURNAL PRESENT
123	01/31/1994	M. STEBBINS, ATY FOR WEAR-TV PRESENT
124	02/14/1994	JUDGE: NICKINSON
125	02/14/1994	FILE MOTION & ORDER TO TRANSCRIBE DEPOSITION
126	02/16/1994	JUDGE: NICKINSON
127	02/16/1994	FILE MOTION & ORDER FOR PYMNT OF EXPERT FEES
128	02/18/1994	JUDGE: NICKINSON
129	02/18/1994	FILED MOTION & ORDER FOR PAYMENT OF COSTS

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	DocketDate	DocketText
130	02/24/1994	FILE MOTION FOR DAILY TRANSCRIPTS OF TRIAL
131	02/24/1994	FILE MOTION TO SUPPRESS DEFTS STATEMENTS
132	02/24/1994	FILE MOTION IN LIMINE IN REGARD TO PICTURES
133	02/25/1994	JUDGE: NICKINSON
134	02/25/1994	NOTIFIED BY THE COURT THAT JURY TRIAL HAS BEEN RE-SCHEDULED FOR
135	02/25/1994	3-7-94.
136	02/28/1994	FILE NOTICE OF HEARING MOTION TO CONTINUE 3-1-94 AT 8:15
137	03/01/1994	FILE MOTION TO POSTPONE PHASE II (PENALTY PHASE)
138	03/01/1994	FILE MOTION TO SUPPRESS PHOTOGRAPHS & MODELS OF DEFENDANTS HAND
139	03/01/1994	FILE MOTION FOR CONTINUANCE
140	03/01/1994	JUDGE: NICKINSON
141	03/01/1994	ASSISTANT STATE ATTORNEY: E. KNIGHT FOR M. PATTERSON
142	03/01/1994	COURT APPOINTED ATTORNEY: J. ALLBRITTON
143	03/01/1994	DEFENDANT PRESENT
144	03/01/1994	COURT REPORTER: CB
145	03/01/1994	MOTION FOR CONTINUANCE - DENIED
146	03/01/1994	SET FOR HEARING ON MOTIONS 3-4-94 AT 9:00
147	03/01/1994	JURY TO BE SELECTED 3-7-94
148	03/01/1994	JURY ASSEMBLY NOTIFIED
149	03/03/1994	FILE MOTION FOR STATEMENT OF PARTICULARS AS TO AGG. CIRCUMSTANCES
150	03/03/1994	MOTION FOR INDIVIDUAL VOIR DIRE - GRANTED BUT LIMITED AFTER BOTH
151	03/03/1994	PARTIES STIPULATE TO QUESTIONS TO BE USED AT GENERAL VOIR DIRE.
152	03/03/1994	QUESTIONAIRE SHEET HAS BEEN MADE UP BY THE COURT FOR JURY SELECT-
153	03/03/1994	ION AND TO BE NUMBERED ACCORDING TO THE SEATING CHART.
154	03/03/1994	THE DEFT. WILL BE ALLOWED TO CHANGE CLOTHES HERE IN LIEU OF JAIL
155	03/03/1994	DAILY DURING THE TRIAL, & GRANDFATHER IS TO RETAIN CLOTHING.
156	03/03/1994	FILE NOTICE OF HEARING FOR 3-4-94 AT 8:00 AM
157	03/03/1994	FILE MOTION TO STRIKE STATES NOTICE PURSUANT TO STATUTE 90.404(2)
158	03/03/1994	FILE MOTION TO SUPPRESS DEFENDANTS STATEMENTS TO KERI STAMOS -
159	03/03/1994	TECHNICALLY GRANTED, AS LONG AS ITS TREATED AS MOTION IN LIMINE
160	03/03/1994	DURING THE TRIAL.
161	03/03/1994	MOTION FOR STATEMENT OF PARTICULARS AS TO AGGRAVATING CIRCUM-
162	03/03/1994	STANCES - DENIED.
163	03/04/1994	JUDGE: NICKINSON
164	03/04/1994	ASSISTANT STATE ATTORNEY: M. PATTERSON
165	03/04/1994	COURT APPOINTED ATTORNEY: J. ALLBRITTON
166	03/04/1994	COURT REPORTER: BFS
167	03/04/1994	DEFENDANT PRESENT
168	03/04/1994	HEARING HELD ON MOTIONS PREVIOUSLY FILED
169	03/04/1994	MOTION IN LIMINE IN REGARD TO PICTURES - GRANTED, TO THE EXTENT
170	03/04/1994	THAT BEFORE ANY CAN BE PUBLISHED IT WILL BE HEARD OUT OF JURORS
171	03/04/1994	PRESENCE.
172	03/04/1994	MOTION FOR CHANGE OF VENUE FILED - TAKEN UNDER ADVISEMENT

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	DocketDate	DocketText
173	03/04/1994	MOTION FOR CLOSURE OF PRETRIAL MOTION - HAS BEEN RESOLVED
174	03/04/1994	MOTION FOR DAILY TRANSCRIPTS OF THE TRIAL - DENIED, BUT IN THE
175	03/04/1994	ALTERNATIVE THE COURT WILL ALLOW PORTIONS OF THE TRIAL TO BE
176	03/04/1994	TRANSCRIBED IF NECESSARY.
177	03/04/1994	MOTION IN LIMINE PROHIBITING STATE FROM QUESTIONING PROSPECTIVE
178	03/04/1994	JURORS ON THEIR OPINIONS AS TO THE DEATH PENALTY - DENIED.
179	03/04/1994	MOTION TO PRECLUDE CHALLENGE FOR CAUSE - DENIED
180	03/04/1994	MOTION TO DECLARE 921.141 AS UNCONSTITUTIONAL - DENIED
181	03/04/1994	MOTION TO DISMISS INDICTMENT OR TO DECLARE THAT DEATH IS NOT A
182	03/04/1994	POSSIBLE PENALTY - DENIED.
183	03/04/1994	MOTION TO STRIKE AGGRAVATING CIRCUMSTANCES - DENIED.
184	03/04/1994	MOTION TO DISMISS AGGRAVATING CIRCUMSTANCES AS UNCONSTITUTIONAL
185	03/04/1994	IS DENIED.
186	03/04/1994	MOTION TO VACATE DEATH PENALTY (1) - DENIED.
187	03/04/1994	MOTION TO VACATE DEATH PENALTY (2) - DENIED.
188	03/04/1994	MOTION TO VACATE DEATH PENALTY (3) - DENIED.
189	03/04/1994	MOTION TO DECLARE FLA. STATUTE 782.04(1) UNCONSTITUTIONAL IS
190	03/04/1994	DENIED.
191	03/04/1994	MOTION TO DISMISS CT. 1 OF THE INDICTMENT AND DECLARE 775.082(1)
192	03/04/1994	UNCONSTITUTIONAL - DENIED.
193	03/04/1994	MOTION TO DECLARE FLA. STATUTE 922.10 UNCONSTITUTIONAL - DENIED.
194	03/04/1994	MOTION TO EXCLUDE EVIDENCE OR ARGUMENT DESIGNED TO CREATE
195	03/04/1994	SYMPATHY FOR THE DECEASED - DENIED AT THIS TIME, BUT MAY BE
196	03/04/1994	REVISITED.
197	03/04/1994	MOTION TO PRODUCE PHOTOGRAPHS - RESOLVED.
198	03/04/1994	MOTION FOR DISCLOSURE AND PRODUCTION OF IDENTIFICATION
199	03/04/1994	MATERIALS - RESOLVED.
200	03/04/1994	MOTION FOR PRODUCTION OF FAVORABLE EVIDENCE - RESOLVED.
201	03/04/1994	MOTION FOR PRODUCTION OF CRIMINAL RECORDS OF STATES WITNESSES -
202	03/04/1994	RESOLVED.
203	03/04/1994	MOTION TO SUPPRESS PHOTOS & MODEL OF THE DEFENDANTS HAND IS
204	03/04/1994	MUTE (RESOLVED).
205	03/04/1994	MOTION FOR CONTINUANCE RENEWED - DENIED.
206	03/04/1994	MOTION TO POSTPONE PHASE II - DENIED.
207	03/04/1994	MOTION TO STRIKE THE STATES NOTICE PURSUANT TO FLA. STATUTE
208	03/04/1994	90.404(2) IS DENIED.
209	03/07/1994	JUDGE: NICKINSON CLERK'S TRIAL NOTES
210	03/07/1994	ASSISTANT STATE ATTORNEY: M. PATTERSON
211	03/07/1994	DEFENSE ATTORNEY: J. ALLBRITTON
212	03/07/1994	DEFENDANT PRESENT
213	03/07/1994	COURT REPORTER: BFS
214	03/07/1994	GENERAL QUESTIONS ASKED OF THE WHOLE JURY PANEL BY BOTH THE STATE
215	03/07/1994	AND DEFENSE.

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	DocketDate	DocketText
216	03/07/1994	BOTH ATTORNEYS THEN PROCEEDED WITH INDIVIDUAL VOIR DIRE.
217	03/07/1994	JURORS SELECTED THIS DAY: BUT NOT SWORN
218	03/07/1994	CONTINUED TO: TUES. 3-8-94 AT 9:30 AM
219	03/08/1994	JUDGE: NICKINSON
220	03/08/1994	ASSISTANT STATE ATTORNEY: M. PATTERSON
221	03/08/1994	DEFENSE ATTORNEY: J. ALLBRITTON
222	03/08/1994	COURT REPORTER: CB
223	03/08/1994	DEFENDANT PRESENT
224	03/08/1994	DEFENSE MOTION IN LIMINE (CONCERNING DNA TESTING DURING OPENING
225	03/08/1994	STATEMENT) - GRANTED.
226	03/08/1994	JURY SWORN
227	03/08/1994	JURY TRIAL HELD
228	03/08/1994	JURY TRIAL BEGAN BUT NOT CONCLUDED.
229	03/08/1994	DEFENSE MOTION FOR MISTRIAL (RELATING TO DEFENDANTS ARREST OR
230	03/08/1994	ANY WARRANTS IN PANAMA CITY BEING BROUGHT UP IN OPENING STATE-
231	03/08/1994	MENT) - DENIED.
232	03/08/1994	DEFENSE RESERVED THEIR OPENING STATEMENT UNTIL AFTER STATE RESTS.
233	03/08/1994	DEFENSE MOTION IN LIMINE (CONCERNING PROBABILITIES IN THE DNA
234	03/08/1994	TESTING IN DR. JAMES POLLOCKS TESTIMONY) - DENIED.
235	03/08/1994	JURY DISMISSED AT 4:10 PM
236	03/08/1994	CONTINUED TO: WED. 3-9-94 AT 9:00 AM
237	03/09/1994	JUDGE: NICKINSON
238	03/09/1994	ASSISTANT STATE ATTORNEY: M. PATTERSON
239	03/09/1994	DEFENSE ATTORNEY: J. ALLBRITTON
240	03/09/1994	DEFENDANT PRESENT
241	03/09/1994	COURT REPORTER: CB
242	03/09/1994	JURY TRIAL CONTINUED, BUT NOT CONCLUDED.
243	03/09/1994	STATE CONTINUED ITS CASE.
244	03/09/1994	DEFENSE REQUESTS A MISTRIAL (CLAIMS THE PHOTOS BEING USED DURING
245	03/09/1994	DR. CUMBERLANDS TESTIMONY ARE HIGHLY PREJUDICIAL) - DENIED.
246	03/09/1994	JURY DISMISSED AT 4:20 PM
247	03/09/1994	CONTINUED TO: THURS. 3-10-94 AT 9:00 AM
248	03/10/1994	JUDGE: NICKINSON
249	03/10/1994	ASSISTANT STATE ATTORNEY: M. PATTERSON
250	03/10/1994	DEFENSE ATTORNEY: J. ALLBRITTON
251	03/10/1994	COURT REPORTER: CB
252	03/10/1994	DEFENDANT PRESENT
253	03/10/1994	COURT RECONVENED.
254	03/10/1994	TRIAL RESUMED AND CONCLUDED.
255	03/10/1994	DEFENSE (2) MOTIONS FOR MISTRIAL DENIED.
256	03/10/1994	FOUND GUILTY AS CHARGED
257	03/10/1994	JURORS POLLED
258	03/10/1994	PENALTY PHASE TO BEGIN 3-11-94 AT 10:30.

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	DocketDate	DocketText
259	03/10/1994	FILE CIRCUMSTANTIAL EVIDENCE INSTRUCTION REQUESTED BY DEFENSE
260	03/10/1994	BUT NOT GIVEN.
261	03/10/1994	FILE STATE EXHIBITS
262	03/10/1994	FILE JURY JUDGMENT
263	03/10/1994	FILE JURY VERDICT
264	03/11/1994	JUDGE: NICKINSON
265	03/11/1994	ASSISTANT STATE ATTORNEY: M. PATTERSON
266	03/11/1994	DEFENSE ATTORNEY: J. ALLBRITTON
267	03/11/1994	COURT REPORTER: GBD
268	03/11/1994	DEFENSE MOTION TO POSTPONE PENALTY PHASE DENIED.
269	03/11/1994	PENALTY PHASE OF TRIAL HELD.
270	03/11/1994	DEFENSE MOTION FOR MISTRIAL DENIED.
271	03/11/1994	JURY RECOMMENDS IMPOSITION OF DEATH PENALTY.
272	03/11/1994	JURORS POLLED
273	03/11/1994	FILE AFFIDAVIT OF SAUNDRA J. MORGAN
274	03/11/1994	FILE JURY INSTRUCTION (BEFORE THE EVIDENCE)
275	03/11/1994	FILE JURY INSTRUCTION (AFTER THE EVIDENCE)
276	03/11/1994	FILE PENALTY INSTRUCTION #8,9,11B,12,13,14,16
277	03/11/1994	FILE PENALTY INSTRUCTION ON DEFINITION OF HEINOUS, ATROCIOUS,
278	03/11/1994	CRUEL.
279	03/11/1994	FILE ADVISORY SENTENCE
280	03/11/1994	FILE STATE EXHIBITS
281	03/11/1994	FILE DEFENSE EXHIBIT
282	03/11/1994	HEARING SET FOR 4-26-94 AT 1:30.
283	03/11/1994	SENTENCING SET FOR 5-3-94 AT 2:30.
284	03/21/1994	JUDGE: NICKINSON
285	03/21/1994	FILED MOTION & ORDER FOR PAYMENT OF COSTS
286	03/23/1994	FILED TRANSCRIPT OF PROCEEDINGS HELD ON 3-8-93
287	03/28/1994	JUDGE: NICKINSON
288	03/28/1994	FILED MOTION & ORDER FOR PAYMENT OF COSTS
289	03/28/1994	(PHIL J LEVINE,DDS)
290	03/28/1994	JUDGE: NICKINSON
291	03/28/1994	FILED MOTION & ORDER FOR PAYMENT OF COSTS
292	03/28/1994	JUDGE: NICKINSON
293	03/28/1994	FILED MOTION & ORDER FOR PAYMENT OF COSTS
294	03/28/1994	(DR. G.D.CUMBERLAND)
295	03/30/1994	FILE MOTION FOR PYMNT OF EXPERT WITNESS FEES
296	04/12/1994	JUDGE: NICKINSON
297	04/12/1994	FILE MOTION & ORDER FOR PYMNT OF EXPERT EXXPENSES
298	04/13/1994	FILE AFFIDAVIT OF AFRED BRANCH (GRANDFATHER OF ERIC BRANCH)
299	04/14/1994	JUDGE: EDWARD NICKINSON
300	04/14/1994	ORDER: FOR PAYMNET OF PRIVATE PROCESS SERVICE
301	04/15/1994	JUDGE: EDWARD NICKINSON

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	DocketDate	DocketText
302	04/15/1994	FILE MEMORANDUM FROM THE COURT
303	04/20/1994	FILE MEMORANDUM OF LAW IN SUPPORT OF THE JURY'S RECOMMENDATION
304	04/20/1994	OF DEATH.
305	04/26/1994	JUDGE: NICKINSON
306	04/26/1994	ASSISTANT STATE ATTORNEY: M. PATTERSON
307	04/26/1994	DEFENSE ATTORNEY: J. ALLBRITTON
308	04/26/1994	COURT REPORTER: SJ
309	04/26/1994	DEFENDANT PRESENT
310	04/26/1994	SENTENCING HEARING HELD.
311	04/26/1994	STATE PRESENTED CERTIFIED DOCUMENTS OF DEFENDANTS PRIOR RECORD
312	04/26/1994	FROM INDIANA. DEFENSE OBJECTED.
313	04/26/1994	COURT ADMITTED THESE DOCUMENTS, BUT COURT HAS NOT YET DETER-
314	04/26/1994	MINED WHAT WEIGHT WILL BE GIVEN CONCERNING DEFTS. PRIOR RECORD.
315	04/26/1994	MR. ALLBRITTON CALLED 2 FAMILY MEMBERS AS WITNESSES TO TESTIFY
316	04/26/1994	FOR LENIENCY FOR THE DEFENDANT. ERIC BRANCH TESTIFIED AND
317	04/26/1994	APOLOGIZED TO THE FAMILY OF THE VICTIM.
318	04/26/1994	MR. ALLBRITTON SPOKE TO THE COURT ON BEHALF OF ERIC BRANCH.
319	04/26/1994	COURT IS TO DETERMINE IF A PSI HAS EVER BEEN ORDERED.
320	04/26/1994	DEFENDANT AND DEFENSE ATTORNY WAIVE PSI.
321	04/26/1994	STATE ATTORNEY ALSO WAIVES PSI.
322	04/26/1994	COURT IS TO FIND OUT IF A PSI CAN BE WAIVED IN A CAPITAL CASE.
323	04/26/1994	SENTENCING IS PRESENTLY SET FOR 5-3-94 AT 2:30 PM
324	04/26/1994	FILE SENTENCING HEARING EXH. #1 FOR THE STATE.
325	05/02/1994	FILED TRANSCRIPT OF PROCEEDINGS HELD : 4-26-94.
326	05/03/1994	JUDGE: NICKINSON
327	05/03/1994	ASSISTANT STATE ATTORNEY: M. PATTERSON
328	05/03/1994	DEFENSE ATTORNEY: J. ALLBRITTON
329	05/03/1994	COURT REPORTER: CB
330	05/03/1994	COURT STATED THAT PSI IS OPTIONAL IN CAPITAL CASE.
331	05/03/1994	DEFENSE WAIVED PSI
332	05/03/1994	STATE PRISON: SENTENCED TO DEATH UNDER CT. 1
333	05/03/1994	STATE PRISON: LIFE IMPRISONMENT UNDER CT. 2, CONSECUTIVE TO CT. 1
334	05/03/1994	STATE PRISON: 5 YEARS UNDER CT. 3, CONSECUTIVE TO CT. 1 & 2,
335	05/03/1994	WITH CREDIT FOR 328 DAYS.
336	05/03/1994	DEFENDANT ADVISED OF RIGHT TO APPEAL
337	05/03/1994	MR. ALLBRITTON ALLOWED TO WITHDRAW. PUBLIC DEFENDER APPTD. FOR
338	05/03/1994	APPEAL PURPOSES.
339	05/03/1994	FILE SENTENCING ORDER
340	05/03/1994	JUDGMENT AND SENTENCE FILED
341	05/05/1994	FILE NOTICE OF OBJECTION
342	05/05/1994	FILE NOTICE OF OBJECTION
343	05/06/1994	NOTICE OF HEARING ON OBJECTION ON WITNESS EXPENSES & EXPERT
344	05/06/1994	EXPENSES ON 5-26-94 @ 10:15

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	DocketDate	DocketText
345	05/10/1994	FILE MEMORANDUM IN SUPPORT OF A LIFE SENTENCE
346	05/10/1994	GUIDELINES SCORESHEET FILED
347	05/10/1994	FILE MOTION TO EXCEED GUIDELINES
348	05/10/1994	FILE MOTION FOR NEW TRIAL
349	05/13/1994	JUDGE: NICKINSON
350	05/13/1994	FILED MOTION & ORDER FOR PAYMENT OF COSTS
351	05/13/1994	($618.00)
352	05/13/1994	JUDGE: NICKINSON
353	05/13/1994	FILED MOTION & ORDER FOR PAYMENT OF COSTS
354	05/13/1994	(WITNESS $725.00)
355	05/13/1994	JUDGE: NICKINSON
356	05/13/1994	FILED MOTION & ORDER FOR PAYMENT OF COSTS
357	05/13/1994	(PRIVATE INVESTIGATOR)
358	05/26/1994	JUDGE: NICKINSON
359	05/26/1994	FILED MOTION & ORDER FOR PAYMENT OF COSTS
360	05/26/1994	(WITNESS)
361	06/01/1994	NOTICE OF APPEAL FILED
362	06/01/1994	MOTION FOR/TO: ORDER OF INSOLVENCY
363	06/02/1994	JUDGE: EDWARD NICKINSON
364	06/02/1994	ORDER: OF INSOLVENCY FILED
365	06/02/1994	MOTION FOR/TO: COURT REPORTER TO TRANSCRIBE NOTES
366	06/02/1994	JUDGE: EDWARD NICKINSON
367	06/02/1994	ORDER: DIRECTING COURT REPORTER TO TRANSCRIBE NOTES
368	06/02/1994	JUDGE: EDWARD NICKINSON
369	06/02/1994	ORDER: DESIGNATION OF PUBLIC DEFENDER, FIRST JUDICIAL CIRCUIT,
370	06/02/1994	FOR HANDLING OF APPEAL
371	06/02/1994	NOTICE OF APPEAL AND ORDER OF INSOLVENCY MAILED TO SUPREME COURT
372	06/02/1994	OF FLORIDA AND ATTORNEY GENERAL
373	06/03/1994	STATEMENT OF JUDICIAL ACTS TO BE REVIEWED FILED
374	06/10/1994	FILE NOTICE OF NO OBJECTION
375	06/16/1994	FILE ORDER FROM SUPREME COURT OF FLORIDA EXTENDING TIME TO FILE
376	06/16/1994	TRANSCRIPT OF RECORD ON APPEAL UNTIL 8-15-94
377	06/23/1994	FILE TRANSCRIPT OF PROCEEDINGS HELD 4-26-94
378	06/28/1994	FILE NOTICE OF NO OBJECTION
379	07/14/1994	FILE TRANSCRIPT OF PROCEEDINGS HELD 3-4-94
380	07/18/1994	FILE NOTICE OF NO OBJECTION
381	08/01/1994	FILE TRANSCRIPT OF PROCEEDINGS HELD 3-7-94, 3-8-94, 3-9-94,
382	08/01/1994	3-10-94 & 3-11-94
383	08/10/1994	FILE TRANSCRIPT OF PROCEEDING SHELD 4-26-94
384	08/11/1994	JUDGE: NICKINSON
385	08/11/1994	FILE NOTICE OF NO OBJECTION & ORDER TO PAY EXPERT EXPENSES
386	08/12/1994	JUDGE: NICKINSON
387	08/12/1994	FILED MOTION & ORDER FOR PAYMENT OF COSTS

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	DocketDate	DocketText
388	08/12/1994	(WITNESS EXPENSES) & NOTICE OF NO OBJECTION
389	08/23/1994	FILE TRANSCRIPT OF PROCEEDINGS HELD 5-3-94
390	08/23/1994	TRANSCRIPT OF RECORD ON APPEAL MAILED TO SUPREME COURT, ATTORNEY
391	08/23/1994	GENERAL, AND DELIVERED TO I. BRUCE KORAN, AS DIRECTED BY
392	08/23/1994	J. ALLBRITTON, CAA,
393	08/23/1994	CONSISTING OF VOLUME I, II, III, PAGE 1 THRU 502, AND JURY TRIAL,
394	08/23/1994	VOLUME I, II, III, IV, V & VI, PAGE L THRU 1040 AND INDEX
395	08/23/1994	AND STATE & DEFENSE EXHIBITS MAILED TO SUPREME COURT
396	08/24/1994	FILE DESIGNATION OF PUBLIC DEFENDER, SECOND JUDICIAL CIRCUIT, FOR
397	08/24/1994	HANDLDING OF APPEAL
398	02/11/1997	ALL EXHIBITS RETURNED FROM SUPREME COURT
399	02/19/1997	FILED MANDATE AND CORRECTED OPINION FROM SUPREME COURT AFFIRMING
400	02/19/1997	CONVICTIONS AND SENTENCES OF THIS COURT.
401	02/19/1997	FILED ORDER FROM SUPREME COURT DENYING MOTION FOR REHEARING.
402	05/19/1997	FILED ORDER FROM SUPREME COURT ORDERING DESIGNATION OF COUNSEL
403	05/19/1997	TO BE FILED BY 6-11-97 AND PLEADINGS UNDER 3.850 & 3.851 TO BE
404	05/19/1997	FILED BY 5-12-98.
405	05/07/1998	MOTION FOR POST CONVICTION RELIEF FILED
406	05/07/1998	(FILED AS MOTION TO VACATE JUDGMENT OF CONVICTION AND SENTENCE
407	05/07/1998	WITH SPECIAL REQUEST FOR LEAVE TO AMEND)FILED BY CCR
408	06/10/1998	FILED NOTICE OF FILING ORDER FROM SUPREME CT TOLLING TIME
409	10/14/1998	FILED NOTICE TO STATE ATTORNEY OF AFFIRMANCE OF DEATH PENALTY
410	10/14/1998	FILED NOTICE TO SECRETARY OF DEPARTMENT OF CORRECTIONS OF
411	10/14/1998	AFFIRMANCE OF DEATH PENALTY.
412	10/21/1998	FILED BY SA NOTICE OF AFFIRMANCE OF DEATH PENAL & PROD PUB RECORD
413	10/21/1998	(5 FILED)
414	11/09/1998	FILED NOTICE TO COURT BY ATTY GENERAL
415	11/24/1998	FILED MOTION TO STAY EMERGENCY RULE 3.852 (G)(1) AND FOR
416	11/24/1998	EXTENSION OF TIME AND NOTICE OF HRG 12-2-98 AT 1:15PM BEFORE
417	11/24/1998	JUDGE NICKINSON.
418	12/07/1998	JUDGE: NICKINSON
419	12/07/1998	ORDER: GRANTING MOTION FOR EXTENSION OF TIME FILED-UNTIL 4-26-99
420	12/07/1998	WITHIN WHICH TO COMPLY RE: DEMANDS FOR ADDITIONSL PUBLIC RECORDS
421	12/28/1998	FILED NOTICE OF COMPLIANCE BY SEC OF DEPT OF CORRECTIONS.
422	01/13/1999	FILED NOTICE OF COMPLIANCE BY STATE ATTORNEY (RE: REPOSITORY)
423	01/25/1999	FILED NOTICE OF FILING LETTER FROM R. COFFEY, CHIEF OF POLICE,
424	01/25/1999	UNIV OF WEST FL.
425	04/21/1999	FILED SECOND MOTION TO STAY EMERGENCY RULE 3.852, MOTION FOR
426	04/21/1999	EXTENSION OF TIME AND REQUEST FOR IN CAMERA REVIEW OF SEALED
427	04/21/1999	RECORDS CLAIMED CONFIDENTIAL OR EXEMPT.
428	04/21/1999	JUDGE: NICKINSON
429	04/21/1999	ASSISTANT STATE ATTORNEY: J. SPENCER
430	04/21/1999	COURT APPOINTED ATTORNEY: ANDREW THOMAS, CCRC - BY PHONE

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	DocketDate	DocketText
431	04/21/1999	R. MARTELL, ATT GENERAL OFFICE - BY PHONE, S. DIXON, STAFF
432	04/21/1999	ATTY PRESENT AND L. BERNAU, ATTY TO CLERK PRESENT. HEARING
433	04/21/1999	HELD ON DEFENSE MOTION FOR EXTENSION OF TIME. MOTION GRANTED.
434	04/21/1999	DEFENSE WILL HAVE 30 DAYS AFTER DATE OF ORDER TO PREPARE REQUESTS
435	04/21/1999	DEFENSE TO PREPARE ORDER FOR RECORDS TO BE SENT FROM REPOSITORY
436	04/21/1999	TO COURT FOR IN CAMERA INSPECTION. STAFF ATTY TO PREPARE ORDER
437	04/21/1999	ON EXTENSION OF TIME.
438	05/04/1999	JUDGE: NICKINSON
439	05/04/1999	FILED ORDER REGARDING IN CAMERA REVIEW OF SEALED BOXES OF PUBLIC
440	05/04/1999	RECORDS ON 5-6-99 AT 9:30AM.
441	05/04/1999	AND GRANTING DEFENSE 30 DAYS AFTER REVIEW TO FILE ADDITIONAL
442	05/04/1999	REQUEST FOR RECORDS.
443	05/12/1999	JUDGE: NICKINSON
444	05/12/1999	FILED ORDER RE: IN CAMERA INSPECTION AND DIRECTING CLERK OF
445	05/12/1999	COURT TO REDACT DOCUMENTS.
446	06/07/1999	FILED MOTION TO COMPEL DEFENDANTS TRIAL COUNSEL TO FOLLOW THE
447	06/07/1999	MANDATE OF FL RULE CRIM PROCEDURE 3.852(D)(3).
448	06/07/1999	FILED DEFENDANTS DEMAND FOR ADDITIONAL PUBLIC RECORDS PERTAINING
449	06/07/1999	TO DEFENDANTS CASE (41 REQUEST FILED)
450	06/18/1999	FILED PENSACOLA POLICE DEPARTMENT OBJECTION TO DEFENDANTS DEMAND
451	06/18/1999	FOR ADDITIONAL PUBLIC RECORDS.
452	06/18/1999	FILE STATE'S OBJECTION TO DEFT'S DEMANDS FOR ADDITIONAL PUBLIC
453	06/18/1999	RECORDS DATED JUNE 4, 1999
454	06/22/1999	FILE NOTICE OF HEARING ON STATE'S OBJECTION TO DEFENDANT'S
455	06/22/1999	DEMANDS FOR ADDITIONAL PUBLIC RECORDS ON 7/14/99 AT 10:30 AM
456	06/28/1999	FILED OBJECTION BY FDLE TO DEFENDANTS DEMAND FOR ADDITIONAL
457	06/28/1999	PUBLIC RECORDS AND MOTION FOR PROTECTIVE ORDER.
458	06/28/1999	FILED NOTICE OF HEARING ON PENSACOLA POLICE DEPARTMENTS OBJECTION
459	06/28/1999	TO PRODUCTION ON 7-14-99 AT 10:30AN BEFORE JUDGE NICKINSON.
460	07/07/1999	JUDGE: NICKINSON
461	07/07/1999	FILED ORDER TO SHOW CAUSE RE: J. ALLBRITTON AND NOTICE OF
462	07/07/1999	HEARING ON 8-9-99 AT 9AM.
463	07/14/1999	JUDGE: NICKINSON
464	07/14/1999	ASSISTANT STATE ATTORNEY: J. SPENCER
465	07/14/1999	COURT APPOINTED ATTORNEY: A. THOMAS AND MR. CHESTER, CCRC
466	07/14/1999	BY PHONE. NO COURT REPORTER AND TAPE MACHINE NOT WORKING. DA
467	07/14/1999	W. WELLS, ATTY FOR PENSACOLA POLICE DEPT AND S. DIXON, STAFF
468	07/14/1999	ATTY PRESENT. HEARING HELD ON OBJECTIONS TO DEFENSE DEMAND FOR
469	07/14/1999	PUBLIC RECORDS. OBJECTION BY STATE ATTY- WILL BE REQUIRED TO
470	07/14/1999	DETERMINE FROM THEIR INDEXING SYSTEM ONLY RECORDS THEY MAY HAVE
471	07/14/1999	ON EACH PERSON IN REQUEST AND DISCLOSE IN RESPONSE THE INDEXING
472	07/14/1999	SYSTEM AVAILABLE AND USED FOR SEARCH. ANY RECORDS FOUND TO BE
473	07/14/1999	SENT TO REPOSITORY WITHIN 30 DAYS FROM DATE OF ORDER. STATE

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	DocketDate	DocketText
474	07/14/1999	ATTY PERSONNEL FILES WILL BE PRODUCED AS EXEMPT RECORDS IF NEC.
475	07/14/1999	OBJECTION BY PPD - SUSTAINED AS TO 127 NAMES. DEFENSE TO RE-
476	07/14/1999	SUBMIT WITH AFFIDAVIT AND SOME SHOWING OF CONNECTION TO CASE.
477	07/14/1999	COURT RULES THAT PENSACOLA POLICE DEPT FALLS UNDER 3.850(I).
478	07/14/1999	PERSONNEL FILES ALSO TO BE PRODUCED. RECORDS TO REPOSITORY WITH
479	07/14/1999	IN 30 DAYS FROM DATE OF ORDER.
480	07/14/1999	DEFENSE ORAL MOTION FOR COURT TO FIND F.S. 3.852 AND CHAPTER 119.
481	07/14/1999	UNCONSTITUTIONAL - DENIED. STAFF ATTY TO PREPARE ORDER WITH
482	07/14/1999	STIPULATED ARGUMENT AND COURTS RULINGS.
483	07/20/1999	JUDGE: NICKINSON
484	07/20/1999	FILED ORDER ON HEARING HELD 7-14-99.
485	07/21/1999	FILED NOTICE OF HEARING FOR FDLE OBJECTION TO DEMAND FOR
486	07/21/1999	ADDITIONAL PUBLIC RECORDS ON 8-9-99 AT 11AM-JUDGE NICKINSON.
487	08/03/1999	FILED DEPARTMENT OF CORRECTIONS OBJECTION TO DEFENDANTS DEMAND
488	08/03/1999	FOR ADDITIONAL PUBLIC RECORDS AND MOTION FOR HEARING.
489	08/09/1999	JUDGE: NICKINSON
490	08/09/1999	R. MARTELL, ATTY GENERAL BY PHONE
491	08/09/1999	COURT APPOINTED ATTORNEY: ANDREW THOMAS, CCRC
492	08/09/1999	COURT REPORTER: NONE PRESENT. DEFENDANT NOT PRESENT
493	08/09/1999	S. DIXON, STAFF ATTY PRESENT. ATTY JOHN ALLBRITTON PRESENT
494	08/09/1999	HEARING HELD ON ORDER TO SHOW CAUSE. ATTY ALLBRITTON TO
495	08/09/1999	RELEASE FILE TO DEFENSE ATTORNEY AND CERTIFY AGENCIES INVOLVED
496	08/09/1999	IN CASE. J. SPENCER, STATE ATTY PRESENT FOR FDLE OBJECTION
497	08/09/1999	MR. ROCKENSTEIN, FDLE BY PHONE. HEARING HELD ON OBJECTION TO
498	08/09/1999	ADDITIONAL DEMAND FOR PUBLIC RECORDS. COURT DIRECTS FDLE TO
499	08/09/1999	MAKE AVAILABLE TO DEFENSE PERSONNEL FILES TO REVIEW AND SEND
500	08/09/1999	REQUESTED COPIES TO REPOSITORY. NAMES TO BE RUN BY FDLE AND
501	08/09/1999	'HITS' SUPPLIED TO DEFENSE COUNSEL TO REVIEW.
502	08/09/1999	STATE ATTYS ORAL MOTION TO EXTEND TIME TO COMPLY GRANTED.
503	08/09/1999	STIPULATION TO BE SENT TO THE COURT. STAFF ATTY TO PREPARE ORDER
504	08/12/1999	JUDGE: NICKINSON
505	08/12/1999	FILED ORDER ON HEARING HELD 8-9-99.
506	08/16/1999	FILED NOTICE BY ATTY J. ALLBRITTON.
507	08/18/1999	FILED NOTICE OF AVAILABILITY OF PERSONNEL FILES BY FDLE.
508	08/19/1999	JUDGE: NICKINSON
509	08/19/1999	FILED MOTION AND ORDER FOR EXTENSION OF TIME LIMIT. STATE ATTY
510	08/19/1999	SHALL HAVE UNTIL 8-23-99 TO COMPLY WITH COURTS ORDER OF 7-16-99.
511	08/23/1999	FILED NOTICE OF FILING AFFIDAVIT OF BARRY BROOKE AND RESULT OF
512	08/23/1999	RECORD SEARCH BY OFFICE OF STATE ATTORNEY.
513	09/21/1999	FILED MOTION TO EXTEND TIME FOR FILING AMENDED MOTION FOR
514	09/21/1999	POST CONVICTION RELIEF.
515	09/23/1999	JUDGE: NICKINSON
516	09/23/1999	ORDER: GRANTING DEFENDANTS MOTION TO EXTEND TIME FOR FILING

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	DocketDate	DocketText
517	09/23/1999	AMENDED MOTION FOR POST CONVICTION RELEIF FILED - DEFT GIVEN
518	09/23/1999	60 ADDITIONAL DAYS - UNTIL 11-29-99.
519	11/12/1999	FILED SUPPLEMENTAL MOTION TO EXTEND TIME FOR FILING AMENDED
520	11/12/1999	MOTION FOR POST CONVICTION RELIEF
521	11/15/1999	FILED MOTION FOR RELEASE OF GRAND JURY PROCEEDINGS.
522	11/18/1999	JUDGE: NICKINSON
523	11/18/1999	ASSISTANT STATE ATTORNEY: J. SPENCER
524	11/18/1999	COURT APPOINTED ATTORNEY: A. THOMAS (BY PHONE)
525	11/18/1999	NO COURT REPORTER AND DEFT NOT PRESENT
526	11/18/1999	S. DIXON, STAFF ATTY PRESENT. HEARING HELD ON MOTION FOR
527	11/18/1999	EXTENSION OF TIME TO FILE AMENDED 3.850 MOTION - GRANTED.
528	11/18/1999	TO BE FILED 60 DAUS AFTER COURT RULES COMPLIANCE OF FULL
529	11/18/1999	DISCLOSURE OF PUBLIC RECORDS. DEFENSE TO FILE ANY MOTION TO
530	11/18/1999	COMPEL ON AGENCIES NOT IN COMPLIANCE BY 1-10-2000.
531	11/18/1999	ORDER TO BE PREPARED AND FILED.
532	11/19/1999	JUDGE: NICKINSON
533	11/19/1999	FILED ORDER GRANTING DEFENDANTS SUPPLEMENTAL MOTION TO EXTEND
534	11/19/1999	TIME FOR FILING AMENDED MOTION FOR POST CONVICTION RELEIF.
535	11/19/1999	FILED STATES RESPONSE TO DEFENDANTS DEMAND FOR PUBLIC RECORDS
536	11/23/1999	FILED NOTICE OF HEARING ON 12-14-99 AT 9:00AM.
537	12/07/1999	FILED NOTICE OF FILING AFFIDAVIT OF RICHARD E. SCHODITSCH.
538	12/14/1999	JUDGE: NICKINSON
539	12/14/1999	ASSISTANT STATE ATTORNEY: J. SPENCER
540	12/14/1999	COURT APPOINTED ATTORNEY: A. THOMAS, CCRC BY PHONE
541	12/14/1999	DEFENDANT ABSENT
542	12/14/1999	COURT REPORTER: NONE. R. MARTELL, ATTY GENERAL BY PHONE
543	12/14/1999	S. DIXON, STAFF ATTORNEY PRESENT.
544	12/14/1999	HEARING HELD ON DEFENSE MOTION FOR RELEASE OF GRAND JURY PROCEED-
545	12/14/1999	INGS. STATE ATTY HAS NO RECORDS FROM GRAND JURY PROCEEDINGS
546	12/14/1999	EXCEPT WHAT WAS IN FILE SENT TO REPOSITORY AND PROCEEDINGS WERE
547	12/14/1999	NOT REQUIRED TO BE TAPED IN 1993. DEFENSE REQUEST ACCESS TO ANY
548	12/14/1999	RECORDS THE CLERKS OFFICE MAY HAVE OF THE PROCEEDINGS. COURT
549	12/14/1999	DIRECTED THE CLERKS OFFICE TO VERIFY IF ANY RECORDS STILL EXIST
550	12/14/1999	AND IF SO TO FORWARD RECORDS TO THE JUDGE FOR IN CAMERA
551	12/14/1999	INSPECTION. IF RECORDS HAVE BEEN DESTROYED TO FILE CERTIFICATE
552	12/14/1999	STATING THAT - BY 12-30-99.
553	12/17/1999	JUDGE: NICKINSON
554	12/17/1999	FILED ORDER ON 12-14-99 HEARING.
555	01/07/2000	FILED MOTION TO COMPEL PRODUCTION OF PUBLIC RECORDS AND FOR
556	01/07/2000	INCAMERA INSPECTION.
557	01/14/2000	FILED WITHDRAWAL OF MOTION FOR IN CAMERA INSPECTION.
558	01/19/2000	JUDGE: NICKINSON
559	01/19/2000	FILED ORDER TO SHOW CAUSE ON DEFENSE MOTION TO COMPEL BY

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	DocketDate	DocketText
560	01/19/2000	2-18-2000. EVIDENTIARY HEARING SET FOR 2-25-2000 AT 9:00AM TO
561	01/19/2000	ADDRESS MOTION TO COMPEL.
562	01/25/2000	FILED NOTICE OF FILING AND ANSWER OF THE DEPT OF BUSINESS AND
563	01/25/2000	PROFESSIONAL REGULATION, DIVISION OF ALCOHOLIC BEVERAGES AND
564	01/25/2000	TOBACCO TO THE JUDGE'S ORDER TO SHOW CAUSE.
565	01/26/2000	FILED SHERIFF OF OKALOOSA COUNTY, FLORIDA RESPONSE TO THE DEFTS
566	01/26/2000	MOTION TO COMPEL PRODUCTION.
567	02/03/2000	FILED MOTION TO CONTINUE SHOW CAUSE HEARING ON MOTION TO COMPEL
568	02/07/2000	FILED RESPONSE OF DEPARTMENT OF LAW ENFORCEMENT TO COURT ORDER
569	02/07/2000	DATED 8-12-1999.
570	02/08/2000	FILED NOTICE OF COMPLIANCE BY OFFICE OF MEDICAL EXAMINER
571	02/10/2000	JUDGE: NICKINSON
572	02/10/2000	ORDER: GRANTING MOTION TO CONTINUE SHOW CAUSE HEARING ON MOTION
573	02/10/2000	TO COMPEL- AGENCIES TO RESPOND BY 3-14-2000 AND HEARING RESET TO
574	02/10/2000	3-21-2000 AT 2:00PM TO ADDRESS MOTION TO COMPEL.
575	02/17/2000	FILED DEPARTMENT OF CORRECTIONS RESPONSE TO ORDER TO SHOW CAUSE
576	02/17/2000	AND TO DEFENDANT'S MOTION TO COMPEL PRODUCTION OF PUBLIC RECORDS
577	02/21/2000	FILED LETTER FROM ESCAMBIA SEARCH AND RESCUE STATING THEY HAVE
578	02/21/2000	NO RECORDS ON DEFENDANT.
579	04/16/2002	JUDGE: NICKINSON FILED ORDER SETTING STATUS CONFERENCE ON 5-14-2002 AT 2:30PM
580	04/17/2002	FILED MOTION FOR STATUS CONFERENCE
581	05/14/2002	JUDGE: NICKINSON
582	05/14/2002	ASSISTANT STATE ATTORNEY: J. SPENCER. C. MILLSAP, ATTY GENERAL (BY PHONE). C. GAVIN, STAFF ATTY PRESENT
583	05/14/2002	COURT APPOINTED ATTORNEY: BRET STRAND, CCRC (BY PHONE)
584	05/14/2002	COURT REPORTER: PS
585	05/14/2002	COURT CLERK: LB
586	05/14/2002	STATUS CONFERENCE HELD. 6 AGENCIES HAVE COMPLIED WITH ORDER TO SHOW CAUSE ON MOTION TO COMPEL PUBLIC RECORDS REQUEST. REMAINING AGENCY THAT NEEDS TO COMPLY IS MARY ESTHER PUBLIC SAFETY. DEFENSE TO HAVE UNTIL 5-29-2002 TO NOTIFY COURT STATUS OF PUBLIC RECORDS THAT MAY STILL BE NEEDED. SET FOR UPDATE HEARING ON 5-31-2002 AT 8:00AM.
587	05/22/2002	JUDGE: NICKINSON FILED CASE MANAGEMENT ORDER FROM HEARING HELD 5-14-2002. STATUS CONFERENCE SCHEDULED FOR 5-31-2002 AT 8AM.
588	05/31/2002	JUDGE: NICKINSON
589	05/31/2002	ASSISTANT STATE ATTORNEY: J. SPENCER. C. MILLSAP, ATTY GENERAL BY PHONE
590	05/31/2002	COURT APPOINTED ATTORNEY: B. STRAND, CCRC BY PHONE
591	05/31/2002	COURT CLERK: LB
592	05/31/2002	COURT REPORTER: CB
593	05/31/2002	C. GAVIN AND C. HARDIN, STAFF ATTORNEYS PRESENT.

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	DocketDate	DocketText
594	05/31/2002	STATUS CONFERENCE HELD. DEFENSE AMENDED MOTIO TO COMPEL PRODUCTION OF PUBLIC RECORDS GRANTED AS TO BAY CO SHERIFF AND STATE ATTY, FDLE, FT WALTON BEACH POLICE DEPT., MARY ESTHER POLICE DEPT., PENSACOLA POLICE DEPT., AND UNIV WEST FLORIDA. STATE ATTY, ESC CO: #1- DEFENSE TO COORDINATE WITH STATE TO REVIEW PHOTOS AND HAVE COPIES MADE OF PHOTOS; #2- STATE HAS ALREADY COMPLIED; #3- STATE WILL SUPPLY CLEAN COPIES AS NEEDED. THE ABOVE AGENCIES TO HAVE 21 DAYS TO RESPOND AND INDICATE IF THEY HAVE ANYRECORDS, IF RECORDS HAVE ALREADY BEEN SUPPLIED OR CLAIM EXEMPTION.
595	05/31/2002	DEFENSE TO FILE AMENDED 3.850 MOTION BY 8-30-2002. STATE TO FILE RESPONSE TO MOTION BY 10-30-2002. DEFENSE TO PREPARE ORDERS ON MOTION TO COMPEL
596	05/31/2002	FILED AMENDED MOTION TO COMPEL PRODUCTION OF PUBLIC RECORDS
597	06/06/2002	JUDGE: NICKINSON FILED (8) ORDERS ON PUBLIC RECORDS- TO UNIV WEST FLORIDA, STATE ATTORNEY IN ESC CO, STATE ATTORNEY IN BAY CO, PENSACOLA POLICE DEPT, OKALOOSA CO SHERIFF OFFICE, FT WALTON BEACH POLICE DEPT, FDLE, BAY CO SHERIFF OFFICE.
598	06/12/2002	FILED NOTICE OF COMPLIANCE BY FORT WALTON BEACH POLICE DEPT
599	06/17/2002	FILED RESPONSE BY STATE ATTORNEY, BAY COUNTY, TO ORDER ON PULBIC RECORDS
600	06/21/2002	FILED STATE ATTORNEY'S RESPONSE TO ORDER ON PUBLIC RECORDS AND SEALED ENVELOPE (EXEMPTION CLAIMED)
601	06/21/2002	FILED NOTICE OF COMPLIANCE BY LAW ENFORCEMENT AGENCY- SHERIFF OF OKALOOSA CO, FL
602	06/24/2002	FILED RESPONSE OF PENSACOLA POLICE DEPARTMENT TO ORDER OF PUBLIC RECORDS
603	07/01/2002	FILED NOTICE OF APPEARANCE OF HEIDI BREWER AND MICHAEL REITER, CAPITAL COLLATERAL COUNSEL
604	07/05/2002	FILED RESPONSE OF FLORIDA DEPARTMENT OF LAW ENFORCEMENT TO COURT ORDER DATED 6-5-2002
605	07/08/2002	FILED MOTION TO EXTEND FILING DATE OF AMENDED MOTION FOR POST CONVICTION RELIEF
606	07/08/2002	JUDGE NICKINSON FILED ORDER ON MOTION TO EXTEND FILING DATE OF AMENDED MOTION FOR POST CONVICTION RELIEF - GRANTED AND EXTENDED 120 DAYS TO FILE 3.850 MOTION
607	10/03/2002	JUDGE NICKINSON
608	10/03/2002	FILED ORDER ON PUBLIC RECORDS AND RE-SETTING FILING DATE FOR AMENDED MOTION TO VACATE. ALL PHOTOGRAPHS PREVIOUSLY CLAIMED EXEMPT AND SUBMITTED TO THE CLERK OF COURT ARE TO BE RELEASED TO THE DEFENDANTS ATTORNEY. AMENDED MOTION TO VACATE JUDGMENT UNDER 3.850 TO BE FILED BY 1-28-2003 AND STATES RESPONSE TO BE FILED BY 3-17-2003.
609	01/13/2003	AT THE REQUEST OF CCRC MAILED SEALED ENVELOPE CONTAINING PHOTOS FILED 6-21-2002 BY STATE ATTY (SEE 10-3-2002 ORDER)
610	01/16/2003	NOTICE OF HEARING: FOR 1-17-2003 AT 8:15AM STATUS CONFERENCE
611	01/17/2003	JUDGE NICKINSON
612	01/17/2003	ASSISTANT STATE ATTORNEY: J. SPENCER AND C. MILSAP, ATTY GENERAL (BY PHONE)
613	01/17/2003	COURT APPOINTED ATTORNEY: H. BREWER, CCRC (BY PHONE) C. HARDIN, STAFF ATTY PRESENT

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	DocketDate	DocketText
614	01/17/2003	STATUS CONFERENCE HELD. DEFENSE REQUEST 60 DAY EXTENSION TO FILE AMENDED 3.850 MOTION- GRANTED. AMENDED MOTION TO BE FILED BY 4-1-2003 AND STATES RESPONSE TO BE FILED WITHIN 60 DAYS AFTER MOTION IS FILED. DEFENSE TO PREPARE ORDER.
615	01/17/2003	COURT REPORTER: NONE PRESENT- TAPED
616	01/22/2003	JUDGE NICKINSON
617	01/22/2003	FILED ORDER EXTENDING FILING DATE FOR AMENDED POST CONVICTION RELIEF MOTION AND STATES RESPONSE- AMENDED 3.850 MOTION TO BE FILED BY 4-1-2003 AND STATES RESPONSE WITHIN 60 DAYS AND MOTION
618	03/10/2003	FILED ENTRY OF APPEARANCE BY ASSISTANT ATTY GENERAL CASSANDRA K. DOLGIN
619	04/01/2003	FILED AMENDED MOTION TO VACATE JUDGMENTS OF CONVICTION AND SENTENCE WITH SPECIAL REQUEST FOR LEAVE TO AMEND
620	05/09/2003	FILED STATES RESPONSE TO AMENDED MOTION TO VACATE JUDGMENTS OF CONVICTION AND SENTENCE WITH SPECIAL REQUEST FOR LEAVE TO AMEND.
621	06/11/2003	FILED NOTICE OF HEARING FOR STATUS CONFERENCE ON 6-30-2003 AT 8:00AM BEFORE JUDGE NICKINSON
622	06/20/2003	FILED MOTION FOR APPOINTMENT OF COUNSEL BY ATTY MICHAEL REITER
623	06/30/2003	JUDGE NICKINSON
624	06/30/2003	ASSISTANT STATE ATTORNEY: J. SPENCER. C. DOLGIN, ASST A/G PRESENT BY PHONE
625	06/30/2003	COURT APPOINTED ATTORNEY: H. BREWER, CCRC PRESENT BY PHONE
626	06/30/2003	DEFENDANT PRESENT BY PHONE
627	06/30/2003	COURT REPORTER: NONE PRESENT
628	06/30/2003	COURT CLERK: LB
629	06/30/2003	C. HARDIN, STAFF ATTY PRESENT. STATUS CONFERENCE HELD. DEFENDANT OBJECTS TO APPOINTMENT OF M. REITER AS COUNSEL FOR PENDING 3.850 MOTION. RESET TO 7-14-2003 AT 9:00AM TO DETERMINE APPOINTMENT OF ATTORNEY.
630	07/14/2003	FILED DEFENDANTS PRO SE OBJECTIONS TO AND REQUEST FOR SANCTIONS TO MOTION FOR APPOINTMENT OF COUNSEL
631	07/14/2003	JUDGE NICKINSON
632	07/14/2003	ASSISTANT STATE ATTORNEY: J. SPENCER. C. DOLGIN, A/G- BY PHONE
633	07/14/2003	DEFENSE ATTORNEY: MICHAEL REITER- BY PHONE. C. HARDIN, STAFF ATTY PRESENT. NO CT REPORTER PRESENT
634	07/14/2003	DEFENDANT IN CUSTODY (PRESENT BY PHONE)
635	07/14/2003	HEARING HELD TO DETERMINE ATTORNEY FOR POST CONVICTION PROCEEDINGS. COURT APPOINTS M. REITER AS ATTORNEY. HUFF HEARING TO BE SET AND ATTY GENERAL WITHIN 30 DAYS TO CONTACT COURT TO SET DATE FOR HEARING.
636	07/14/2003	FILED ORDER APPOINTING ATTY M. REITER
637	07/28/2003	FILED NOTICE OF HUFF HEARING ON 10/15/2003 9 AM
638	08/27/2003	FILED MOTION FOR ATTORNEY FEES AND EXPENSES
639	08/27/2003	JUDGE NICKINSON
640	08/27/2003	FILED ORDER FOR ATTORNEY FEES AND EXPENSES
641	09/29/2003	FILED PRO SE WAIVER OF RIGHT TO ATTEND HUFF HEARING
642	10/10/2003	FILED MOTION FOR LEAVE TO AMEND
643	10/10/2003	FILED SECOND AMENDED MOTION TO VACATE JUDGMENTS OF CONVICTION AND SENTENCE WITH SPECIAL REQUEST FOR LEAVE TO AMEND

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	DocketDate	DocketText
644	10/10/2003	FILED STATE'S MOTION TO STRIKE DEFENDANT'S SECOND AMENDED MOTION TO VACATE JUDGMENTS OF CONVICTION AND SENTENCE AND SUGGESTIONS IN OPPOSITION TO MOTION FOR LEAVE TO AMEND
645	10/15/2003	JUDGE NICKINSON
646	10/15/2003	ASSISTANT STATE ATTORNEY: J. SPENCER AND C. DOLGIN, ATTY GENERAL OFFICE PRESENT
647	10/15/2003	COURT APPOINTED ATTORNEY: MICHAEL REITER- PRESENT. B. DAVIE, STAFF ATTY PRESENT
648	10/15/2003	DEFENDANT ABSENT
649	10/15/2003	COURT REPORTER: D. MURDOCK
650	10/15/2003	COURT CLERK: LB
651	10/15/2003	STATES MOTION TO STRIKE DEFENDANTS 2ND AMENDED MOTION TO VACATE JUDGMENT AND SENTENCE- DENIED. DEFENSE MOTION TO AMEND 3.850 MOTION - GRANTED. SECOND AMENDED 3.850 MOTION REPLACES AMENDED MOTION FILED 4-1-2003. DEFENSE TO FILE INDEX INDICATING CHANGES IN 2ND AMENDED MOTION BY 10-22-2003. STATE MAY FILE RESPONSE BY 11-24-2003. HUFF HEARING RESET TO 12-8-2003 AT 1:00PM.
652	10/20/2003	FILED SUMMARY OF CHANGES MADE TO AMENDED 3.850 MOTION FILED 4-1-03
653	10/21/2003	JUDGE NICKINSON
654	10/21/2003	FILED ORDER GRANTING DEFENDANT'S LEAVE TO AMEND , POSTPONING HUFF HEARING AND DIRECTING DEFENSE COUNSEL TO SUBMIT INDEX OF AMENDMENTS
655	11/12/2003	FILED LETTER FROM DEFENDANT WAIVING PRESENCE AT HUFF HEARING
656	11/18/2003	FILED STATES RESPONSE TO SECOND AMENDED MOTION TO VACATE JUDGMENTS OF CONVICTION AND SENTENCE (3.850 MOTION)
657	11/18/2003	FILED MOTION FOR ATTORNEY FEES AND COSTS
658	11/18/2003	JUDGE NICKINSON
659	11/18/2003	FILED ORDER FOR ATTORNEY FEES AND COSTS
660	12/08/2003	JUDGE NICKINSON
661	12/08/2003	ASSISTANT STATE ATTORNEY: J. SPENCER AND S. PETRE. CARBELLA, AG (BY PHONE) NO CT REPORTER
662	12/08/2003	COURT APPOINTED ATTORNEY: M .REITER. B. DAVIE, STAFF ATTORNEY
663	12/08/2003	HUFF HEARING HELD. REQUEST FOR HUFF HEARING ON CLAIMS 4 THRU 13- DENIED. GRANTED AS TO CLAIMS 1 (A1 & B1,C,D,E,F,G & H) AND CLAIM II. CLAIM 14- UNDER ADVISEMENT UNTIL HEARING. PRELIMINARY DEFENSE WITNESS LIST AND EXPERT LIST AND REPORTS TO BE FILED BY 2-6-2003 WITH COMPLETE LIST AND REPORTS FILED BY 3-1-2003. PRELIMINARY STATES WITNESS LIST TO BE FILED BY 3-1-2003 WITH COMPLETE LIST FILED BY 3-22-2003. EXHIBIT LIST OF BOTH STATE AND DEFENSE TO BE FILED BY 3-24-2003. IF DEFENSE FILES A MOTION FOR EXPERTS COSTS AND FEES AND OBJECTION IS MADE HEARING WILL BE HELD 12-29-2003 AT 9:00AM.
664	12/08/2003	EVIDENTIARY HEARING SET FOR 4-26-2003 THRU 4-30-2003 AT 9:00AM TO BE HELD AT JUDICIAL CENTER
665	12/15/2003	JUDGE NICKINSON
666	12/15/2003	FILED ORDER GRANTING EVIDENTIARY HEARING AND SCHEDULING EVIDENTIARY HEARING FOR WEEK OF 4-26-2004 AT 9:00AM, DIRECTING DEFENSE TO PREPARE ORDER TO TRANSPORT AND ESTABLISHING DISCOVERY DEADLINES.
667	12/19/2003	FILED MOTION TO EXCEED STATUTORY CAPS IN SECTION 27.711(H)(6)
668	12/19/2003	FILED MOTION TO TAKE DEPOSITION
669	12/19/2003	FILED NOTICE OF HEARING ON DEFENDANTS MOTIONS FOR 12-29-2003 9:00AM

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	DocketDate	DocketText
670	12/29/2003	FILED MOTION FOR DNA TESTING
671	01/05/2004	JUDGE NICKINSON
672	01/05/2004	FILED ORDER AUTHORIZING CLERK OF COURT TO RELEASE EVIDENCE TO THE OFFICE OF THE STATE ATTORNEY OR FDLE FOR PURPOSE OF DNA ANALYSIS. STATES EXHIBITS C-1, E-5 AND A-17 MAY BE RELEASED TO FDLE FOR TESTING
673	01/07/2004	FILE RECEIPT OF EVIDENCE -- RELEASING STATE EXHIBITS A-17, C-1 & E-5 TO FDLE
674	01/07/2004	STATES EXHIBITIS A-17, C-1 AND E-5 RELEASED TO HEATHER NICHOLLS, FDLE. EXHIBITS A-17 AND E-5 RETURNED AND PLACED IN VAULT ON 6-2-2004. C-1 RETURNED TO VAULT ON 10-27-2004.
675	02/06/2004	FILED DEFENDANT'S PRELIMINARY WITNESS LIST
676	02/12/2004	FILED STATES NOTICE OF OBJECTION TO DEFENDANT'S PRELIMINARY WITNESS LIST AND NOTICE OF PROGRESS
677	03/03/2004	FILED DEFENDANT'S LIST OF EXHIBITS
678	03/03/2004	FILED DEFENDANT'S WITNESS LIST
679	03/03/2004	FILED RE-SUBMISSION OF MOTION TP EXCEED STATUTORY CAPS
680	03/22/2004	FILED STATE'S PRELIMINARY WITNESS LIST OF EVIDENTIARY HEARING ON DEFENDANTS MOTION FOR POST CONVICTION RELIEF
681	03/23/2004	FILED MOTION FOR PAYMENT OF EXPENSES
682	03/23/2004	JUDGE NICKINSON
683	03/23/2004	FILED ORDER ON MOTION FOR PAYMENT OF EXPENSES
684	03/24/2004	FILED STATE'S FINAL WITNESS LIST FOR EVIDENTIARY HEARING ON DEFENDANTS MOTION FOR POST CONVICTION RELIEF
685	04/01/2004	JUDGE NICKINSON
686	04/01/2004	FILED ORDER TO TRANSPORT DEFENDANT
687	04/07/2004	FILED STATES MOTION AND ORDER TO PRODUCE PSYCHOLOGICAL REPORTS AND TO PRODUCE ALL RAW DATA (UNSIGNED ORDER ATTACHED)
688	04/10/2004	FILED MOTION TO TAKE JUDICIAL NOTICE
689	04/14/2004	PETITION FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM FILED.
690	04/14/2004	JUDGE NICKINSON
691	04/14/2004	WRIT OF HABEAS CORPUS AD TESTIFICANDUM FILED.
692	04/19/2004	JUDGE NICKINSON
693	04/19/2004	JUDGE NICKINSON
694	04/19/2004	JUDGE NICKINSON
695	04/19/2004	FILED ORDER TO PRODUCE PSYCHOLOGICAL REPORTS, TEST AND RAW DATA
696	04/19/2004	JUDGE NICKINSON
697	04/19/2004	FILED DEFENDANTS PRO SE WRITTEN OBJECTIONS TO THE DENIAL OF FUNDING FOR DEFENSE EXPERTS
698	04/19/2004	JUDGE NICKINSON
699	04/19/2004	JUDGE NICKINSON
700	04/19/2004	JUDGE NICKINSON
701	04/22/2004	DEPOSITION FILED: DR. HENRY L. DEE
702	04/26/2004	FILED STATES NOTICE OF FILING POST CONVICTION DNA ANALYSIS RESULTS
703	04/26/2004	JUDGE NICKINSON
704	04/26/2004	ASSISTANT STATE ATTORNEY: J. SPENCER AND S. PITRE
705	04/26/2004	ASSISTANT ATTORNEY GENERAL- CASSANDRA DOLGIN PRESENT

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	DocketDate	DocketText
706	04/26/2004	COURT APPOINTED ATTORNEY: MICHAEL REITER. STAFF ATTORNEY BILLY DAVIE PRESENT
707	04/26/2004	DEFENDANT IN CUSTODY (PRESENT IN COURT)
708	04/26/2004	COURT REPORTER: MORNING- AS, AFTERNOON- CB
709	04/26/2004	COURT CLERK: LB CLERKS HEARING NOTES
710	04/26/2004	POST CONVICTION EVIDENTIARY HEARING BEGAN BUT NOT CONCLUDED. RECESSED TO 4-27-2004 AT 9:00AM
711	04/27/2004	JUDGE NICKINSON
712	04/27/2004	ASSISTANT STATE ATTORNEY: J. SPENCER AND S. PITRE. C. DOLGIN, ASST ATTY GENERAL PRESENT
713	04/27/2004	COURT APPOINTED ATTORNEY: M. REITER. STAFF ATTY B. DAVIE PRESENT
714	04/27/2004	DEFENDANT IN CUSTODY (PRESENT IN COURT)
715	04/27/2004	COURT CLERK: LB
716	04/27/2004	COURT REPORTER: MORNING- BFS, AFTERNOON- SH
717	04/27/2004	EVIDENTIARY HEARING RESUMED BUT NOT CONCLUDED. RECESSED TO 4-28-2004 AT 9:00AM.
718	04/27/2004	FILED DEFENDANTS MOTION TO SUPPLEMENT EXHIBITS AND WITNESS LIST
719	04/27/2004	FILED DEFENDANT'S SUPPLEMENTAL WITNESS LIST AND EXHIBITS
720	04/27/2004	FILED NOTICE OT STATE.
721	04/27/2004	DEPOSITION FILED: OF MELISSA COWDEN
722	04/27/2004	FILED COPY OF STATES EXHIBIT H1 FROM PENALTY PHASE OF ORIGINAL TRIAL
723	04/28/2004	JUDGE NICKINSON
724	04/28/2004	ASSISTANT STATE ATTORNEY: J. SPENCER AND S. PITRE. ASST ATTY GENERAL C. DOLGIN PRESENT
725	04/28/2004	COURT APPOINTED ATTORNEY: M. REITER. B. DAVIS, STAFF ATTY PRESENT
726	04/28/2004	DEFENDANT IN CUSTODY (PRESENT IN COURT)
727	04/28/2004	COURT REPORTER: GB
728	04/28/2004	COURT CLERK: LB
729	04/28/2004	EVIDENTIARY HEARING RESUMED AND CONCLUDED. STATE AND DEFENSE WRITTEN CLOSING ARGUMENTS TO BE FILED BY 6-1-2004 AND ANY RESPONSE BY EITHER SIDE TO BE FILED BY 6-16-2004.
730	04/28/2004	DEFENDANT TO BE TRANSPORTED BACK TO STATE PRISON. DEFENSE MOTION TO HOLD HEARING OPEN TO SUPPLY ADDITIONAL INFORMATION- DENIED. COURT ORDERS CT REPORTER TO TRANSCRIBE EVIDENTIARY PROCEEDINGS BY 6-15-2004
731	04/28/2004	FILED STATE AND DEFENSE EXHIBITS (IN FILE)
732	05/06/2004	FILED MOTION FOR PARTIAL EXPERT FEES AND EXPENSES
733	05/06/2004	FILED ORDER FOR PAYMENT OF PARTIAL EXPERT FEES AND EXPENSES ($4746.10)
734	05/14/2004	FILED MOTION FOR PAYMENT OF EXPENSES
735	05/14/2004	JUDGE NICKINSON
736	05/14/2004	FILED ORDER ON MOTION FOR PAYMENT OF EXPENSES
737	06/01/2004	FILED STATE'S POST-HEARING MEMORANDUM IN OPPOSITION TO DEFENDANTS SECOND AMENDED MOTION TO VACATE JUDGMENTS OF CONVICTION AND SENTENCE WITH SPECIAL REQUEST FOR LEAVE TO AMEND
738	06/02/2004	FILED MOTION FOR PAYMENT OF EXPERT FEES AND EXPENSES
739	06/02/2004	JUDGE NICKINSON
740	06/02/2004	FILED ORDER ON PAYMENT OF EXPENSES

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	DocketDate	DocketText
741	06/02/2004	FILED DEFENDANT'S MEMORANDUM IN SUPPORT OF A NEW TRIAL AND/OR NEW PENALTY PHASE
742	06/03/2004	FILED STATE'S REPLY TO DEFENDANT'S MEMORANDUM IN SUPPORT OF A NEW TRIAL AND/OR NEW PENALTY PHASE
743	06/03/2004	FILED STATE'S REPLY TO DEFENDANT'S MOTION TO STRIKE OR PRECLUDE STATE'S FILING OF MEMORANDUM BRIEF
744	06/04/2004	JUDGE NICKINSON
745	06/04/2004	FILED ORDER DENYING DEFENDANT'S MOTION TO STRIKE OR PRECLUDE STATE'S FILING OF MEMORANDUM BRIEF
746	06/04/2004	FILED TRANSCRIPT OF EVIDENTIARY HEARING HELD 4-26-2004 THRU 4-28-2004 (3 VOLUMES)
747	06/07/2004	FILED DEFENDANT'S MOTION TO STRIKE OR PRECLUDE STATE'S FILING OF MEMORANDUM BRIEF
748	06/09/2004	FILED NOTICE OF FILING TRANSCRIPTS
749	06/15/2004	FILED DEFENDANT'S REPLY TO STATE'S MEMORANDUM IN OPPOSITION OF DEFENDANT'S MEMORANDUM
750	06/25/2004	FILED NOTICE OF SUPPLEMENTAL AUTHORITY TO STATE'S POST HEARING MEMORANDUM IN OPPOSITION TO DEFENDANT'S SECOND AMENDED MOTION TO VACATE JUDGEMENTS OF CONVICITION AND SENTENCE
751	07/28/2004	FILED MOTION FOR EXPERT FEES AND EXPENSES
752	07/28/2004	FILED NOTICE OF HEARING FOR 7-14-2004 AT 9:30AM (TELEPHONICALLY)
753	07/28/2004	FILED ORDER ON MOTION FOR PAYMENT OF EXPERT FEES AND EXPENSES IN AMOUNT OF $5.352.68
754	12/06/2004	FILED STATE'S SUPPLEMENT TO 'NOTICE OF SUPPLEMENTAL AUTHORITY'
755	12/23/2004	FILED MOTION FOR FEES
756	12/23/2004	FILED NOTICE OF HEARING FOR 12-23-2004 AT 8:30AM ON MOTION FOR PAYMENT OF FEES
757	12/30/2004	JUDGE NICKINSON
758	12/30/2004	FILED ORDER ON MOTION FOR PAYMENT OF ATTORNEY FEES - GRANTED
759	03/04/2005	FILED ORDER DENYING DEFENDANT'S MOTION TO VACATE JUDGMENT AND SENTENCE
760	03/04/2005	NOTICE OF APPEAL FILED ON 3.850 ORDER DENYING MOTION TO VACATE JUDGEMNT AND SENTENCE BY ATTY M. REITER
761	03/07/2005	NOTICE OF APPEAL MAILED TO SUPREME COURT AND ATTORNEY GENERAL ACKNOWLEDGMENT OF NEW CASE # SC05-433
762	03/11/2005	DIRECTIONS TO THE CLERK FILED
763	05/05/2005	FILED TRANSCRIPT OF PROCEEDINGS HELD 4-26-2004 THRU 4-28-2004 (3 VOLS) - 3 COPIES OF EVIDENTIARY HEARING FOR APPEAL RECORD
764	05/17/2005	FILED TRANSCRIPT OF PROCEEDINGS HELD 7-14-2003 AND 10-15-2003
765	05/19/2005	TRANSCRIPT OF RECORD ON APPEAL AND INDEX MAILED TO SUPREME COURT, ATTY GENERAL AND ATTY M. REITER CONSISTING OF VOLUMES I THRU IX AND EVIDENTIARY HEARING 3 VOLUMES, SUPREME CT # SC05-433
766	09/14/2005	FILED MOTION FOR ATTORNEY FEES AND EXPENSES
767	09/14/2005	JUDGE NICKINSON
768	09/14/2005	FILED ORDER ON MOTION FOR ATTORNEY FEES AND EXPENSES (IN AMT OF $20,342.60)
769	09/21/2006	MOTION FOR ATTORNEY FEES BY ATTY M. REITER
770	09/21/2006	JUDGE NICKINSON
771	09/21/2006	FILED ORDER ON MOTION FOR ATTORNEY FEES (IN AMT ON $4000.00) TO ATTY REITER

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	DocketDate	DocketText
772	03/16/2007	FILED ORDER FROM SUPREME COURT DENYING MOTION FOR REHEARING. SC# 05-433 & 05-1558
773	04/02/2007	FILED MANDATE & OPINION FROM SUPREME COURT AFFIRMING CIRCUIT COURT'S DENIAL OF POST CONVICTION RELIEF AND DENYING PETITION FOR WRIT OF HABEAS CORPUS, SUP CT # SC05-433, 05-1558
774	04/10/2012	ORDER APPOINTING PUBLIC DEFENDER TO POST-CONVICTION CLEMENCY PROCESS FILED
775	06/14/2012	FILE CORRESPONDENCE FROM NELL SIMMONS, PAROLE EXAMINER TO JUDGE NICKINSON AND RESPONSE LETTER FROM THE COURT
776	08/27/2012	STATE ATTORNEY'S RESPONSE TO NELL SIMMONS FLORIDA PAROLE BOARD
777	10/17/2012	ORDER GRANTING DEFENDANTS REQUEST TO PRODUCE OR DISCLOSE EVIDENCE
778	10/22/2012	ORDER TO STAY PENDING HEARING (ORDER ON DEFENDANTS REQUEST TO PRODUCE OR DISCLOSE EVIDENCE)
779	10/23/2012	MOTION TO PRODUCE OR DISCLOSE EVIDENCE
780	10/23/2012	MOTION FOR REHEARING OF ORDER GRANTING DEFENDANTS REQUEST TO PRODUCE OR DISCLOSE EVIDENCE FILED BY: CHARMAINE M. MILLSAPS
781	11/19/2012	ORDER DENYING DEFENDANTS MOTION TO PRODUCE OR DISCLOSE EVIDENCE
782	11/28/2012	ORDER RESCINDING ORDERS ISSUED BY THIS COURT 10/17/2012, 10/19/2012, 11/16/2012
783	12/07/2012	COPY OF DEFENDANTS RULE 3.850/3.853 MOTION FOR POSTCONVICTION DNA TESTING - ORIGINAL FILED WITH FLORIDA PAROLE COMMISSION, CLEMENCY INVESTIGATION
784	12/13/2012	CORRESPONDENCE FROM DEFENDANT TO JUDGE
785	12/13/2012	DEFENDANTS RULE 3.850/3.853 MOTION FOR POST CONVICTION DNA TESTING
786	01/28/2013	MOTION FOR STATUS CONFERENCE
787	02/05/2013	CLERKS COPY OF MOTION FOR STATUS CONFERENCE
788	02/26/2013	NOTICE OF STATUS CONFERENCE TO BE HELD 3/14/2013 @ 8:30 CENTRAL TIME JUVENILE JUSTICE CENTER
789	03/04/2013	DEFENDANTS AMENDMENTS TO RULE 3.853 MOTION FOR POSTCONVICTION DNA TEST
790	03/04/2013	CORRESPONDENCE FROM JUDGE TERRELL TO DEFENDANT FILED
791	03/12/2013	CORRESPONDENCE FROM JUDGE NICKINSON TO COUNSELORS WITH ATTACHED CORRESPONDENCE FROM DEFENDANT
792	03/13/2013	CORRESPONDENCE FROM JUDGE TERRELL TO DEFENDANT
793	03/13/2013	CORRESPONDENCE FROM DEFENDANT TO JUDGE TERRELL
794	03/13/2013	PETITIONERS 1983 CIVIL RIGHTS ACTION, U S CONSTITUTION 14TH AMENDMENT EQUAL PROTECTION AND POST PROCESS ACTION AND SUCCESSIVE RULE 3.850 MOTION FOR POST CONVICTION RELIEF WITH SPECIAL REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
795	03/13/2013	CERTIFICATE OF SERVICE
796	03/13/2013	PETITIONERS MOTION FOR CONSOLIDATION
797	03/13/2013	INDEX TO PETITIONERS EXHIBITS TO 1983 CIVIL RIGHTS ACTION, US CONSTITUTIONAL 14TH AMENDMENT, EQUAL PROTECTION AND POST PROCESS ACTION AND SUCCESSIVE RULE 3.850 MOTION
798	03/14/2013	JUDGE NICKINSON
799	03/14/2013	HEARING HELD ON ATTORNEY STATUS - COURT TO PREPARE ORDER AS TO CLARIFICATION OF COUNSEL. PRO SE MOTION NOT ADDRESSED AT THIS TIME
800	03/14/2013	DEFT IN CUSTODY (NOT PRESENT IN COURT)
801	03/18/2013	MOTION TO DISMISS 19683 ACTION/MOTION TO STRIKE PRO SE SUCCESSIVE 3.851 MOTION FILED BY CHARMAINE M. MILLSAPS AAG

ERIC SCOTT BRANCH **1993 CF 000870 A**

	DocketDate	DocketText
802	03/18/2013	CORRESPONDENCE FROM DEFENDANT TO JUDGE TERRELL
803	03/19/2013	ORDER REQUIRING CLARIFICATION OF COUNSELS STATUS
804	03/28/2013	RESPONSE TO ORDER REQUIRING CLARIFICATION OF COUNSELS STATUS
805	04/03/2013	CORRESPONDENCE FILED FROM DEFENDANT TO JUDGE
806	04/03/2013	PETITIONERS RESPONSE TO THE STATES MOTION TO DISMISS THE PETITIONERS SUCCESSIVE 3.850 MOTION AND 1983 ACTION
807	04/05/2013	ORDER DENYING COUNSELS MOTION TO WITHDRAW AND STRIKING MOTION TO PRODUCE OR DISCLOSE DEFENDANTS RULE 3.850/3.853 MOTION FOR POSTCONVICTION DNA TESTING, DEFENDANTS AMENDMENTS TO RULE 3.853 MOTION FOR POSTCONVICTION DNA TEST, PETITIONERS 1983 CIVIL RIGHTS ACTION U.S. CONSTITUTION 14TH AMENDMENT, EQUAL PROTECTION AND POST PROCESS ACTION, SUCCESSIVE RULE 3.850 MOTION FOR POSTCONVICTION RELIEF WITH SPECIAL REQUESR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF AND MOTION FOR CONSOLIDATION
808	04/18/2013	NOTICE OF APPEAL PRO SE
809	04/19/2013	CORRESPONDENCE FILED TO JUDGE FROM DEFENDANT WITH ATTACHED NOTICE OF APPEAL
810	04/19/2013	PETITIONERS MOTION FOR APPOINTMENT OF CONFLICT COUNSEL TO ARGUE APPEAL IN THE SUPREME COURT MOTF
811	04/23/2013	MAILED TO FLORIDA SUPREME COURT PRO SE NOTICE OF APPEAL
812	05/13/2013	PRO SE PETITIONERS RULE 2.330 MOTION TO DISQUALIFY TRIAL JUDGE
813	05/21/2013	ORDER DENYING PETITIONERS RULE 2.330 MOTION TO DISQUALIFY TRIAL JUDGE
814	06/03/2013	.PETITIONERS MOTION TO DISCHARGE COUNSEL AND INITIATE DISCIPLINARY ACTION
815	06/03/2013	PETITIONERS MOTION FOR APPOINTMENT OF ALTERNATIVE COUNSEL
816	09/09/2013	JUSTICE ADMINISTRATIVE COMMISSIONS NOTICE TO COURT AS REQUIRED BY SECTION 27.710(4), FLORIDA STATUTES
817	09/16/2013	CORRESPONDENCE FROM JUDGE TO CLERK REF: SIGNATURE PAGES ATTACHED
818	09/26/2013	ORDER HOLDING IN ABEYANCE MOTION FOR ALTERNATIVE COUNSEL AND MOTION TO DISCHARGE COUNSEL AND INITIATE DISCIPLINARY ACTION
819	10/01/2013	FILED PETITIONER'S REQUEST FOR COURT TO TAKE NOTICE AND ADOPT FEDERAL COURT ORDER
820	11/15/2013	ORDER FROM SUPREME COURT OF FLORIDA DISMISSING APPEAL SC# 13-945
821	11/26/2013	ORDER HOLDING IN ABEYANCE PETITIONERS MOTION FOR APPOINTMENT OF ALTERNATIVE COUNSEL AND PETITIONERS MOTION TO DISCHARFGE COUNSEL AND INITIATE DISCIPLINARY ACTION AND PETITIONERS REQUEST FOR COURT TO TAKE NOTICE AND ADOPT FEDERAL COURT ORDER - HELD IN ABEYANCE FOR 60 DAYS
822	12/09/2013	ORDER FROM SUPREME COURT OF FLORIDA DISMISSING CASE SC# SC13-945
823	12/27/2013	NOTICE TO COURT REGARDING FEDERAL COUNSEL FILED BY: CHARMAINE M. MILSAPS, ESQUIRE
824	01/24/2014	CORRESPONDENCE FILED TO JUDGE FROM DEFENDANT
825	02/17/2014	NOTICE OF HEARING AND DIRECTIONS TO THE PROSECUTION HEARING TO BE HELD FRIDAY MARCH 14, 2014 @ 1:30 P.M. CENTRAL AND DIRECTING THE OFFICE OF THE STATE ATTORNEY TO ARRANGE FOR DEFT TO APPEAR VIA TELEPHONE
826	02/19/2014	JUDGE NICKINSON, E P III: ASSIGNED
827	02/19/2014	CRIMINAL PLEAS & MOTIONS SET FOR 03/14/2014 AT 1:00 PM IN MC/ , JDG: NICKINSON, E P III
828	03/12/2014	NOTICE OF APPEARANCE OF COUNSEL FILED BY JASON CROMEY, ESQUIRE
829	03/14/2014	JUDGE NICKINSON

ERIC SCOTT BRANCH **1993 CF 000870 A**

	DocketDate	DocketText
830	03/14/2014	HEARING HELD ON PETITIONERS MOTION FOR APPOINTMENT OF ALTERNATIVE COUNSEL AND PETITIONERS MOTION TO DISCHARGE COUNSEL AND INITIATE DISCIPLINARY ACTION - DENIED
831	03/14/2014	JASON CROMEY, ESQUIRE PRESENT, DOUGLAS KNOX, ESQUIRE PRESENT (VIA PHONE) JOHN MOLCHAN, ASA PRESENT, CHARMAINE M. MILLSAPS, AAG PRESENT (VIA PHONE) DEFENDANT - PRESENT (VIA PHONE)
832	03/14/2014	MICHAEL P. REITER, ESQUIRE REQUEST TO WITHDRAW AS ATTORNEY OF RECORD - DENIED
833	03/14/2014	JASON CROMEY, ESQUIRE. REQUEST FOR APPOINTMENT - DENIED, MR. CROMEY AND MR. KNOX MAY BE PRESENT PRO BONO
834	03/14/2014	HEARING WORKSHEET FILED
835	03/17/2014	DEFENSE ATTORNEY: REITER, MICHAEL P ASSIGNED
836	03/17/2014	PETITIONERS WRITTEN ARGUMENTS FOR THE HEARING OF MARCH 14, 2014
837	03/19/2014	ORDER DENYING PETITIONERS MOTION FOR APPOINTMENT OF ALTERNATIVE COUNSEL AND PETITIONERS MOTION TO DISCHARGE COUNSEL AND INITIATE DISCIPLINARY ACTION AND PETITIONERS REQUEST FOR COURT TO TAKE NOTICE AND ADOPT FEDERAL COURT ORDER
838	04/01/2014	NOTICE OF APPEAL
839	04/01/2014	NOTICE OF APPEAL - ATTACHMENTS - MAILED TO FLORIDA SUPREME COURT
840	04/02/2014	NOTICE OF FILING ATTACHED COMPLAINT FOR RELIEF PURSUANT TO 42 U.S.C. 1983 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA BY: JASON CROMEY, ESQUIRE AND S. DOUGLAS KNOX, ESQUIRE
841	04/09/2014	CORRESPONDENCE TO JUDGE NICKINSON AND SUPREME COURT JUSTICES FROM ERIC BRANCH
842	04/09/2014	COPY OF NOTICE OF APPEAL FILED 4/1/2014 ON ORDER DENYING MOTION FOR APPOINTMENT OF COUNSEL
843	04/11/2014	MOTION TO STRIKE MOTION FOR DNA TESTING OR IN THE ALTERNATIVE GRANT MOTION TO DISCHARGE UNDERSIGNED COUNSEL FILED BY: MICHAEL REITER, ESQUIRE
844	04/11/2014	MOTION FOR POST CONVICTION DNA TESTING WITH SPECIAL REQUEST FOR LEAVE TO AMEND FILED BY: S. DOUGLAS KNOX, ESQUIRE
845	04/11/2014	DEFENDANTS MOTION TO APPOINT JASON CROMEY AS CONFLICT COUNSEL AND FOR RELATED RELIEF FILED BY: JASON CROMEY, ESQUIRE AND S. DOUGLAS KNOX, ESQUIRE
846	04/17/2014	AMENDED SWORN MOTION FOR POST CONVICTION DNA TESTING WITH SPECIAL REQUEST FOR LEAVE TO AMEND
847	05/27/2014	ACKNOWLEDGMENT OF NEW CASE PRO SE NOTICE OF APPEAL SC# 14-942
848	06/25/2014	CORRESPONDENCE FROM JUDGE NICKINSON TO S. DOUGLAS SCOTT, ESQUIRE REF: HEARING ON MOTION TO APPOINT CONCLIFT COUNSEL - A HEARING WILL BE SCHEDULED ONCE THE PENDING APPEAL IS RESOLVED IF IT IS STILL APPROPRIATE TO DO SO
849	07/21/2014	ORDER FROM SUPREME COURT OF FLORIDA STRIKING DEFENDANTS PRO SE NOTICE OF APPEAL SC#14-942
850	09/15/2014	CORRESPONDENCE FROM JUDGE NICKINSON TO COUNSELORS AND MR. BRANCH
851	09/18/2014	NOTICE TO THE COURT REGARDING THE QUALIFICATIONS OF COUNSEL
852	10/07/2014	CRIMINAL PLEAS & MOTIONS SET FOR 11/18/2014 AT 9:00 AM IN MC/ , JDG: NICKINSON, E P III
853	10/07/2014	PER JA, SET FOR HEARING FOR RE APPT OF COUNSEL 11/18/2014 @ 9:00 AM
854	10/20/2014	NOTICE OF HEARING 11/18/2014 @ 9:00 AM
855	10/27/2014	OBJECTION TO RESCHEDULING HEARING FILED BY: CHARMAINE MILLSAPS, AAG

ERIC SCOTT BRANCH **1993 CF 000870 A**

	DocketDate	DocketText
856	11/18/2014	STATUS CONFERENCE HELD ON MOTION TO APPOINT MR. CROMEY AND MR. KNOX FILED 9/15/2014 , CCRC WILL BE APPOINTED FOR MR. BRANCH, MR. TITER WILL BE DISCHARGED, NOTICE OF APPEARANCE FOR MR. KNOX AND MR. CROMEY IS TO BE STRIKEN
857	11/18/2014	JUDGE NICKINSON
858	11/21/2014	ORDER STRIKING NOTICE OF APPEARANCE AND ALLOWING REGISTRY COUNSEL MICHAEL REITER TO WITHDRAW AND APPOINTING OFFICE OF THE CAPITAL COLLATERAL REGIONAL COUNSEL WITH DIRECTIONS TO THE OFFICE OF CAPITAL COLLATERAL REGIONAL COUNSEL FILED
859	11/21/2014	DEFENSE ATTORNEY: CRIMINAL, CONFLICT COUNSEL ASSIGNED
860	11/21/2014	MREITER37@COMCAST.NET, DOUGLAS.KNOX@QUARLES.COM, ROBERT.FRIEDMAN@CCRC-NORTH.ORG, JCROMEY@MICHLESBOOTH.COM, LISA.HOPKINS@MYFLORIDALEGAL.COM, STACY.BIGGART@CCRC-NORTH.ORG, CAPAPP@MYFLORIDALEGAL.COM, CHARMAINE.MILLSAPS@MYFLORIDALEGAL.COM
861	12/03/2014	FILE TRANSCRIPT OF PROCEEDINGS HELD: 11/18/2014
862	01/22/2015	MOTION FOR EXTENSION OF TIME TO DETERMINE WHETHER CAPITAL COLLATERAL REGIONAL COUNSEL - NORTH WILL ADOPT THE AMENDED MOTION FOR POSTCONVICTION DNA TESTING WITH SPECIAL REQUEST FOR LEAVE TO AMEND
863	01/26/2015	ORDER ON DEFENDANTS UNOPPOSED MOTION FOR EXTENSION OF TIME TO DETERMINE WHETHER CAPITAL COLLATERAL REGIONAL COUNSEL-NORTH WILL ADOPT THE AMENDED MOTION FOR POSTCONVICTION DNA TESTING WITH SPECIAL REQUEST FOR LEAVE TO AMEND - GRANTED CCRC NOTH SHALL HAVE UP TO AND INCLUDING 3/20/2015 TO RESPOND
864	03/19/2015	CAPITAL COLLATERAL REGIONAL COUNSEL - NORTHS NOTICE OF INTENT TO ADOPT DEFENDANTS AMENDED SWORN MOTION FOR POSTCONVICTION DNA TESTING WITH SPECIAL REQUEST FOR LEAVE TO AMEND
865	03/20/2015	STATES RESPONSE TO MOTION FOR DNA TESTING
866	07/02/2015	ORDER DENYING MOTION FOR DNA TESTING
867	07/22/2015	DEFENSE ATTORNEY: CAPITAL, COLLATERAL REGIONAL COUNSEL - NORTH ASSIGNED
868	07/30/2015	SECOND AMENDED MOTION FOR POST CONVICTION RELIEF FILED BY : ALICE COPEK, ACCRC
869	08/06/2015	NOTICE OF APPEARANCE OF COUNSEL FILED BY: ALICE B COPEK CCRC - NORTH
870	08/17/2015	ORDER DENYING SECOND AMENDED MOTION FOR DNA TESTING
871	08/27/2015	MOTION FOR REHEARING
872	09/08/2015	NOTICE OF STIPULATION FOR SUBSTITUTION OF ATTORNEY GENERAL SUBSTITUTING BERDENE BECKLES
873	09/08/2015	STATE'S RESPONSE TO MOTION FOR REHEARING
874	09/17/2015	ORDER DENYING MOTION FOR REHEARING
875	10/07/2015	NOTICE OF APPEAL
876	10/07/2015	FILED DIRECTIONS TO THE CLERK
877	10/07/2015	STATEMENT OF JUDICIAL ACTS TO BE REVIEWED FILED
878	10/20/2015	SUPREME COURT RECEIPT LETTER FILED, SC # 15-1869 WITH ORDERS ATTACHED
879	10/21/2015	NOTICE OF HEARING - CAPITAL CASE STATUS CONFERENCE WEDNESDAY OCTOBER 28, 2015 @ 9A.M. CENTRAL TIME WITH INSTRUCTIONS TO COURT REPORTERS, THE CLERK OF COURT AND COUNSEL
880	10/22/2015	STATUS CONFERENCE SET FOR 10/28/2015 AT 9:00 AM IN MC/ , JDG: NICKINSON, E P III

ERIC SCOTT BRANCH **1993 CF 000870 A**

	DocketDate	DocketText
881	10/23/2015	FILE TRANSCRIPT OF PROCEEDINGS HELD: 3/14/2013
882	10/26/2015	FILE TRANSCRIPT OF PROCEEDINGS HELD: 3/14/2014
883	10/28/2015	JUDGE NICKINSON
884	10/28/2015	STATUS HEARING HELD PER SUPREME COURT ORDER REF: PREPARATION OF THE RECORD ON APPEAL - ALL TRANSCRIPTS HAVE BEEN PREPARED RECORD WILL BE PREPARED NEXT WEEK - NO FURTHER HEARING NEEDED AT THIS TIME
885	10/28/2015	HEARING WORKSHEET FILED
886	11/03/2015	RECORD ON APPEAL PREPARED AND TRANSMITTED TO FLORIDA SUPREME COURT, MAILED TO ATTORNEY GENERAL AND CCRC-NORTH SC15-1869
887	11/10/2015	STATUS REPORT REGARDING APPELLATE RECORD PREPARATION
888	06/30/2016	DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF PURSUANT TO HURST V. FLORIDA
889	07/20/2016	STATE'S RESPONSE TO BRANCH'S SUCCESSIVE POSTCONVICTION MOTION
890	07/27/2016	DEFENDANT'S REPLY AND MEMORANDUM TO STATES RESPONSE TO BRANCHS SUCCESSIVE POSTCONVICTION MOTION FILED JULY 20, 2016
891	08/02/2016	CRIMINAL PLEAS & MOTIONS SET FOR 08/11/2016 AT 1:30 PM IN MC/ , JDG: NICKINSON, E P III
892	08/02/2016	NOTICE OF HEARING 8/11/16 @ 1:45 PM
893	08/11/2016	HEARING WORKSHEET FILED
894	08/12/2016	ORDER ON CASE MANAGEMENT CONFERENCE HELD AUGUST 11, 2016
895	08/12/2016	SUPREME COURT OF FLORIDA OPINION FILED SC# 15-1869
896	08/16/2016	TRANSCRIPT OF PROCEEDINGS HELD: 8/11/16
897	10/04/2016	STATUS CONFERENCE SET FOR 11/21/2016 AT 9:00 AM IN MC/ , JDG: NICKINSON, E P III
898	11/21/2016	HEARING WORKSHEET FILED
899	11/21/2016	CRIMINAL PLEAS & MOTIONS SET FOR 01/31/2017 AT 9:00 AM IN MC/ , JDG: NICKINSON, E P III
900	12/12/2016	TRANSCRIPT OF PROCEEDINGS HELD: 11/21/2016
901	01/31/2017	JUDGE NICKINSON
902	01/31/2017	HEARING WORKSHEET FILED
903	01/31/2017	STATUS CONFERENCE SET FOR 03/23/2017 AT 2:30 PM IN MC/ , JDG: NICKINSON, E P III
904	02/06/2017	ORDER ON STATUS CONFERENCE HELD JANUARY 31, 2017 AND NOTICE OF STATUS CONFERENCE TO BE HELD 3/23/2017 @ 2:30 P.M. CENTRAL
905	02/24/2017	TRANSCRIPT OF PROCEEDINGS HELD: JANUARY 31, 2017
906	03/23/2017	JUDGE NICKINSON
907	03/23/2017	STATUS CONFERENCE HELD ON 3.851
908	03/23/2017	HEARING WORKSHEET FILED
909	03/28/2017	ORDER ON STAUS CONFERENCE HELD MARCH 23, 2017
910	04/03/2017	MOTION FOR LEAVE TO FILE AMENDED SUCCESSIVE RULE 3.851 MOTION IN LIGHT OF HURST V FLORIDA AND HURST V STATE
911	04/03/2017	DEFENDANTS AMENDED SUCCESSIVE RULE 3.851 MOTION FOR POST CONVICTION RELIEF IN LIGHT OF HURST V FLORIDA AND HURST V STATE
912	04/05/2017	ORDER GRANTING LEAVE TO AMEND
913	04/20/2017	STATE'S RESPONSE TO BRANCH'S AMENDED SUCCESSIVE POSTCONVICTION MOTION
914	05/15/2017	NOTICE OF SUBSTITUTION OF COUNSEL FOR ATTORNEY GENERAL FILED BY LISA A HOPKINS, ESQUIRE

ERIC SCOTT BRANCH **1993 CF 000870 A**

	DocketDate	DocketText
915	05/18/2017	CRIMINAL PLEAS & MOTIONS SET FOR 06/14/2017 AT 1:30 PM IN MC/ , JDG: NICKINSON, E P III (PER JA EMAIL: HUFF HEARING)
916	05/18/2017	NOTICE OF HEARING TO BE HELD 6/14/2017 @ 1:30
917	06/14/2017	HEARING WORKSHEET FILED
918	06/14/2017	DEFENDANTS REPLY TO STATES RESPONSE
919	06/14/2017	COPY OF FLORIDA SUPREME COURT DOCKET LUGO V STATE OF FLORIDA PRESENTED AT HUFF HEARING
920	07/05/2017	TRANSCRIPT OF PROCEEDINGS HELD: 6/14/17
921	07/12/2017	ORDER DENYING AMENDED SUCCESSIVE RULE 3.851 MOTION FOR POST CONVICTION RELIEF
922	08/10/2017	NOTICE OF APPEAL
923	08/10/2017	STATEMENT OF JUDICIAL ACTS TO BE REVIEWED
924	08/10/2017	DIRECTIONS TO THE CLERK
925	08/10/2017	AMENDED NOTICE OF APPEAL
926	08/17/2017	TRANSCRIPT OF PROCEEDINGS HELD: 3/23/17
927	08/24/2017	RECORD ON APPEAL PREPARED AND TRANSMITTED TO SUPREME COURT OF FLORIDA , MAILED TO ATTORNEY GENERAL AND CCRC - NORTH SC# 17 SC 1509
928	01/19/2018	DEATH WARANT BY: GOVERNOR RICK SCOTT
929	01/22/2018	NOTICE OF APPEARANCE AND SUBSTITUTION OF COUNSEL FILED BY STACY R. BIGGART, ESQUIRE CCRC-NORTH
930	01/22/2018	NOTICE OF FILING AND CERTIFIES THAT A COPY OF THE JANUARY 4, 2017 EXECUTION BY LETHAL INJECTION PROCEDURES SIGNED BY THE CURRENT SECRETARY WITH THE ACCOMPANYING CERTIFICATION TO THE GOVENOR HAS BEEN DELIVERED TO THE STATE RECORDS REPOSITORY BY: RYAN PADGETT, SENIOR ATTORENY FLORIDA DOC
931	01/22/2018	NOTICE OF APPEARANCE OF CO- COUNSEL FILED BY CHARMAINE MILLSAPS, AAG
932	01/22/2018	STATE'S MOTION FOR SCHEDULING ORDER
933	01/22/2018	STATUS CONFERENCE SET FOR 01/23/2018 AT 1:30 PM IN MC/ , JDG: NICKINSON, E P III
934	01/22/2018	OPINION FROM FLORIDA SUPREME COURT AFFIRMING THE DENIAL OF BRANCHS MOTION SC#17-1509
935	01/22/2018	DEFENDANT'S RESPONSE TO THE STATE'S MOTION FOR SCHEDULING ORDER
936	01/22/2018	ORDER FROM SUPREME COURT OF FLORIDA DIRECTING ALL FURTHER PROCEEDINGS IN THIS CASE BE EXPEDITED, THE PROCEEDINGS IN THE TRIAL COURT SHALL BE COMPLETED AND ORDERS ENTERED BY 3:00 P.M. MONDAY FEBRUARY 5, 2018
937	01/22/2018	INTERIM SCHEDULING ORDER
938	01/22/2018	CERTIFICATE OF SERVICE
939	01/22/2018	STACY.BIGGART@CCRC-NORTH.ORG, KATHLEEN.PAFFORD@CCRC-NORTH.ORG, JMOLCHAN@SA01.ORG, CAPAPP@MYFLORIDALEGAL.COM, CHARMAINE.MILLSAPS@MYFLORIDALEGAL.COM
940	01/23/2018	OBJ/PUBLIC RECORDS REQUEST SET FOR 01/26/2018 AT 3:00 PM IN CHAMBERS/ , JDG: NICKINSON, E P III PER J.A. E-MAIL
941	01/23/2018	HUFF HEARING SET FOR 01/30/2018 AT 2:00 PM IN CHAMBERS/ , JDG: NICKINSON, E P III PER J.A. E-MAIL
942	01/23/2018	EVIDENTIARY HEARING SET FOR 02/01/2018 AT 9:00 AM IN MC/ , JDG: NICKINSON, E P III PER J.A. E-MAIL
943	01/23/2018	EVIDENTIARY HEARINGS SET FOR 02/02/2018 AT 9:00 AM IN MC/ , JDG: NICKINSON, E P III PER J.A. E-MAIL
944	01/23/2018	HEARING WORKSHEET FILED

ERIC SCOTT BRANCH **1993 CF 000870 A**

	DocketDate	DocketText
945	01/24/2018	DEPARTMENT OF CORRECTIONS NOTICE OF FILING THAT MEDICAL RECORDS WERE PROVIDED TO DEFENSE COUNSEL
946	01/24/2018	NOTICE OF DELIVERY OF EXEMPT PUBLIC RECORDS TO RECORDS REPOSITORY
947	01/24/2018	DEFENDANT'S DEMAND FOR PUBLIC RECORDS FOR FLORIDA DEPARTMENT OF CORRECTIONS
948	01/24/2018	DEFENDANT'S DEMAND FOR PUBLIC RECORDS FOR ESCAMBIA COUNTY SHERIFFS OFFICE
949	01/24/2018	DEFENDANT'S DEMAND FOR PUBLIC RECORDS FLORIDA DEPARTMENT OF LAW ENFORCEMENT
950	01/24/2018	DEFENDANT'S DEMAND FOR PUBLIC RECORDS DISTRICT EIGHT MEDICAL EXAMINER
951	01/24/2018	DEFENDANT'S DEMAND FOR PUBLIC RECORDS STATE ATTORNEYS OFFICE FIRST JUDICIAL CIRCUIT
952	01/24/2018	MISCELLANEOUS DOCUMENTS FROM BAY COUNTY FILED IN ERIC BRANCH CASE FILE IN 1993 REF: SCOTT JOHNSTON
953	01/24/2018	TRANSCRIPT OF PROCEEDINGS HELD: 1/23/2018
954	01/24/2018	THE FLORIDA DEPARTMENT OF LAW ENFORCEMENTS RESPONSE AND OBJECTIONS TO THE DEFENDANTS DEMAND FOR PUBLIC DRECORDS
955	01/25/2018	ORDER ON CASE MANAGEMENT CONFERENCE AND SCHEDULING
956	01/25/2018	CERTIFICATE OF SERVICE
957	01/25/2018	MEDICAL EXMINERS OBJECTIONS TO PUBLIC RECORDS DEMANDS
958	01/25/2018	DEPARTMENT OF CORRECTIONS OBJECTIONS TO DEFENDANTS DEMANDS FOR POST-DEATH WARRANT PUBLIC RECORDS
959	01/25/2018	NOTICE OF COMPLIANCE BY STATE ATTORNEY
960	01/25/2018	NOTICE OF DELIVERY OF EXEMPT PUBLIC RECORDS TO RECORDS REPOSITORY
961	01/26/2018	HEARING WORKSHEET FILED
962	01/29/2018	ORDER SUSTAINING OBJECTIONS AND DENYING DEFEDNATS DEMANDS FOR PUBLIC RECORDS
963	01/29/2018	CERTIFICATE OF SERVICE
964	01/29/2018	APPLICATION FOR STAY OF EXECUTION AND MOTION TO VACATE JUDGMENT AND SENTENCE WITH SPECIAL REQUEST FOR LEAVE TO AMEND
965	01/29/2018	MOTION TO EXCEED PAGE LIMITATION
966	01/29/2018	INDEX TO EXHIBITS
967	01/29/2018	TRANSCRIPT OF PROCEEDINGS HELD: JANUARY 26, 2018
968	01/29/2018	NOTICE OF COMPLIANCE BY LAW ENFORCEMENT AGENCY FILED BY DEBRA LITTLE, GENERAL COUNSEL FOR ESCAMBIA COUNTY SHERIFFS OFFICE
969	01/30/2018	STATE'S ANSWER TO SUCCESSIVE RULE 3.851 MOTION FOR POSTCONVICTION RELIEF
970	01/30/2018	HEARING WORKSHEET FILED
971	01/31/2018	ORDER GRANTING MOTION TO EXCEED PAGE LIMITATION
972	01/31/2018	NOTICE OF FILING DECLARATION OF S. DOUGLAS KNOX
973	01/31/2018	TRANSCRIPT OF PROCEEDINGS HELD: 1/30/2018
974	02/01/2018	ORDER DENYING APPLICATION FOR STAY OF EXECUTION AND MOTION TO VACATE JUDGMENT AND SENTENCE
975	02/01/2018	CERTIFICATE OF SERVICE
976	02/05/2018	DIRECTIONS TO THE CLERK
977	02/05/2018	DESIGNATION TO REPORTER
978	02/05/2018	STATEMENT OF JUDICIAL ACTS TO BE REVIEWED
979	02/05/2018	NOTICE OF APPEAL

RICK SCOTT
GOVERNOR

January 19, 2018

Warden Barry Reddish
Florida State Prison
7819 N.W. 228th Street
Raiford, Florida 32026-1000

Re: Execution Date for Eric Scott Branch, DC#313067

Dear Warden Reddish:

Enclosed is the death warrant to carry out the sentence of Eric Scott Branch, as well as a certified copy of his judgment and sentence. I have designated the week beginning at 12:00 noon on Monday, February 19, 2018, through 12:00 noon on Monday, February 26, 2018, for the execution. I have been advised that you have set the date and time of execution for Thursday, February 22, 2018, at 6:00 p.m.

This letter is incorporated into and made a part of the death warrant identified above.

Sincerely,

Rick Scott
Governor

Enclosures

THE CAPITOL
TALLAHASSEE, FLORIDA 32399 • (850) 717-9249

cc:

Honorable Jorge Labarga
Chief Justice
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399

Honorable Linda L. Nobles
Chief Judge, First Judicial Circuit
M.C. Blanchard Judicial Building
190 Governmental Center
Pensacola, Florida 32502

Secretary Julie Jones
Department of Corrections
501 South Calhoun Street
Tallahassee, Florida 32399-2500

Carolyn Snurkowski
Assistant Deputy Attorney General
Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399-0001

Robert S. Friedman, Esquire
Capital Collateral Regional Counsel - North
1004 DeSoto Park Drive
Tallahassee, Florida 32301

Julia McCall, Coordinator
Office of Executive Clemency
4070 Esplanade Way
Tallahassee, Florida 32399-2450

Eric Scott Branch, DC#313067
Union Correctional Institution
7819 NW 228th Street
Raiford, Florida 32026-4400

PAM BONDI
ATTORNEY GENERAL
STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL
Criminal Appeals & Capital Collateral Appellate Division

Carolyn M. Snurkowski
Associate Deputy Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
Phone (850) 414-3300 Fax (850) 487-0997
Carolyn.Snurkowski@myfloridalegal.com

January 19, 2018

The Honorable Pam Childers
Escambia County Clerk of Court
190 West Government Street, Room 23001
Pensacola, Florida 32501

RE: Eric Branch

Dear Ms. Childers:

Enclosed are photographic reproductions of the death warrant for Eric Branch, as well as a letter from Governor Scott to Warden Reddish. The death warrant is effective from 12:00 noon on Monday, February 19, 2018, through 12:00 noon on Monday, February 26, 2018, and Florida State Prison Warden Barry Reddish has set the execution for Eric Branch for Thursday, February 22, 2018, at 6:00 p.m.

The Assistant Attorney General who will be processing any litigation in this cause is Charmaine Millsaps who can be reached at (850) 414-3584, or cell phone (850) 942-3919. You may also contact Chief-Assistant Attorney General Candance M. Sabella, who can be reached at (813) 287-7100, or cell phone (727) 459-7605. Or you may reach me, Carolyn Snurkowski, at (850) 414-3566 [Fax number (850) 487-0997], at home (850) 562-0290, or cell phone (850) 556-6291; or you may reach my assistant, Karen Riley (850) 414-3587, or cell phone (850) 509-5843. In the future, all inquiries may be directed to either the attorney of record Charmaine Millsaps, Candance M. Sabella, or myself.

Sincerely,

PAM BONDI
ATTORNEY GENERAL

CAROLYN M. SNURKOWSKI
Associate Deputy Attorney General

CMS/ kr

Encl.

DEATH WARRANT
STATE OF FLORIDA

WHEREAS, ERIC SCOTT BRANCH, on or about the 11th day of January, 1993, murdered Susan Morris; and

WHEREAS, ERIC SCOTT BRANCH, on the 10th day of March, 1994, was found guilty of first degree murder, sexual battery, and grand theft, and on the 3rd day of May, 1994, was sentenced to death for the murder of Susan Morris; and

WHEREAS, on the 21st day of November, 1996, the Supreme Court of Florida affirmed the convictions and death sentence of ERIC SCOTT BRANCH; and

WHEREAS, on the 31st day of August, 2006, the Supreme Court of Florida affirmed the trial court order denying ERIC SCOTT BRANCH's Motion for Postconviction Relief, and on the same day also denied his Petition for Writ of Habeas Corpus; and

WHEREAS, on the 30th day of March, 2010, the United States District Court for the Northern District of Florida denied ERIC SCOTT BRANCH's federal Petition for Writ of Habeas Corpus, which denial was affirmed by the United States Court of Appeals for the Eleventh Circuit on the 21st day of April, 2011; and

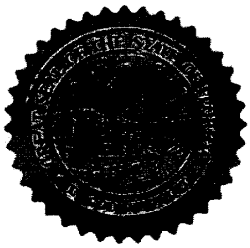
WHEREAS, further postconviction motions and petitions filed by ERIC SCOTT BRANCH have been denied, and affirmed on appeal; and

WHEREAS, executive clemency for ERIC SCOTT BRANCH, as authorized by Article IV, Section 8(a), of the Florida Constitution, was considered pursuant to the Rules of Executive Clemency, and it has been determined that executive clemency is not appropriate; and

WHEREAS, attached hereto is a certified copy of the record of the conviction and sentence pursuant to section 922.052, Florida Statutes.

NOW, THEREFORE, I, RICK SCOTT, as Governor of the State of Florida and pursuant to the authority and responsibility vested in me by the Constitution and Laws of Florida, do hereby issue this warrant, directing the Warden of the Florida State Prison to cause the sentence of death to be executed upon ERIC SCOTT BRANCH, in accord with

the provisions of the Laws of the State of Florida.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed at Tallahassee, the Capital, this 19th day of January, 2018.

GOVERNOR

ATTEST:

SECRETARY OF STATE

Filing # 66815587 E-Filed 01/22/2018 10:04:40 AM

IN THE CIRCUIT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

ERIC SCOTT BRANCH,
Defendant, **CASE NO.: 1993-CF-000870A**

vs.

THE STATE OF FLORIDA.
_____/

NOTICE OF APPEARANCE AND SUBSTITUTION OF COUNSEL

Please take notice that the undersigned, STACY R. BIGGART, Assistant Capital Collateral Regional Counsel, hereby enters her notice of appearance as counsel for Defendant in the above-captioned case and states:

Former Assistant Collateral Regional Counsel Alice Copek resigned her position as of September 30, 2017, and Ms. Biggart assumed representation of Mr. Branch on that date.

WHEREFORE, the undersigned respectfully asks this Court to enter Stacy R. Biggart as counsel for the defendant.

Respectfully submitted,

/s/ Stacy R. Biggart_____
STACY R. BIGGART
Asst. Capital Collateral Regional Counsel-North
Florida Bar Number 0089388
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922 x. 114
Stacy.Biggart@ccrc-north.org

Kathleen Pafford
Asst. Capital Collateral Regional Counsel-North
Florida Bar Number 99527
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922
Kathleen.Pafford@ccrc-north.org

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic service to Charmaine Millsaps, Assistant Attorney General (Charmaine.Millsaps@myfloridalegal.com); Lisa Hopkins, Assistant Attorney General, (lisa.hopkins@myfloridalegal.com); and to Eric Scott Branch, DOC# 313067, Florida State Prison, P.O. Box 800, Raiford, FL 32083; on this date, January 22, 2018.

Respectfully submitted,

/s/ Stacy R. Biggart_____
STACY R. BIGGART
Asst. Capital Collateral Regional Counsel-North
Florida Bar Number 0089388
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922 x. 114
Stacy.Biggart@ccrc-north.org

Kathleen Pafford
Asst. Capital Collateral Regional Counsel-North
Florida Bar Number 99527
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922
Kathleen.Pafford@ccrc-north.org

Filing # 66815078 E-Filed 01/22/2018 09:59:04 AM

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

v. Case No.: 171993CF000870XXXAXX

ERIC SCOTT BRANCH,

Defendant.
_____/

NOTICE OF FILING

Comes now, the Florida Department of Corrections, by and through the undersigned counsel, and hereby gives notice of filing and certifies that a copy of the January 4, 2017, "Execution by Lethal Injection Procedures" signed by the current Secretary with its accompanying certification to the Governor, also dated January 4, 2017, has been delivered to the State Records Repository.

Respectfully submitted,

s/Ryan G. Padgett
RYAN G. PADGETT
Senior Attorney
Florida Bar No.: 13818
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, FL 32399-2500
Tel: (850) 717-3605
Fax: (850) 922-4355
E1: ryan.padgett@fdc.myflorida.com
E2: CourtFilings@fdc.myflorida.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties on this, the 22nd day of January 2018:

Honorable Edward P. Nickinson III
First Judicial Circuit
M.C. Blanchard Judicial Building
190 Government Center
Pensacola, Florida 32502
esc.divA.eserve@flcourts1.gov
judge.nickinson@flcourts1.gov
laurie.jenkins@flcourts1.gov

Lisa Hopkins lisa.hopkins@myfloridalegal.com
Charmaine Milsaps charmaine.millsaps@myfloridalegal.com
capapp@myfloridalegal.com
Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399-0001

Stacy Biggart, Stacy.Biggart@ccrc-north.org,
Kathleen Little, Kathleen.Little@ccrc-north.org,
Kathleen Pafford, Kathleen.Pafford@ccrc-north.org
Capital Collateral Regional Counsel – North
1004 DeSoto Park Drive
Tallahassee, Florida 32301

John Molchan, Assistant State Attorney
Office of the State Attorney
P.O. Box 12726
Pensacola, Florida 32591
jmolchan@sa01.org
Kmurphy@sa01.org

s/Ryan G. Padgett____
RYAN G. PADGETT

Filing # 66824480 E-Filed 01/22/2018 11:31:09 AM

IN THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY,
FLORIDA

EXECUTION SCHEDULED
FOR FEBRUARY 22, 2018, at 6:00 p.m.

STATE OF FLORIDA,

Plaintiff

v.

CASE NO. 1993-CF-870A-"N"
CAPITAL CASE

ERIC SCOTT BRANCH,

Defendant
_____/

NOTICE OF APPEARANCE AS CO-COUNSEL

On January 19, 2018, Governor Scott signed a warrant in this capital case setting Branch's execution for Thursday, February 22, 2018 at 6:00 p.m. Undersigned counsel, Senior Assistant Attorney General Charmaine M. Millsaps, enters this formal notice of appearance as co-counsel of record, in this warrant case.

Accordingly, all pleadings and orders should be served on undersigned counsel.

Respectfully submitted,
PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Charmaine Millsaps
CHARMAINE M. MILLSAPS
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0989134
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL, PL-01
TALLAHASSEE, FL 32399-1050
(850) 414-3300
primary email:
capapp@myfloridalegal.com
secondary email:
charmaine.millsaps@myfloridalegal.com

CO-COUNSEL FOR THE STATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing NOTICE OF APPEARANCE AS CO-COUNSEL has been furnished via the e-portal to STACY R. BIGGART, Assistant Capital Collateral Regional Counsel-North, 1004 DeSoto Park Drive, Tallahassee, FL, 32301; phone: (850) 487-0922 x114; email: Stacy.Biggart@ccrc-north.org and KATHLEEN PAFFORD, Assistant Capital Collateral Regional Counsel-North, 1004 DeSoto Park Drive, Tallahassee, FL, 32301; phone: (850) 487-0922; email: Kathleen.Pafford@ccrc-north.org this 22nd day of January, 2018.

/s/ Charmaine Millsaps
Charmaine M. Millsaps
Attorney for the State of Florida

Filing # 66836908 E-Filed 01/22/2018 01:42:48 PM

IN THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY,
FLORIDA

EXECUTION SCHEDULED
FOR FEBRUARY 22, 2018, at 6:00 p.m.

STATE OF FLORIDA,

Plaintiff

v.

CASE NO. 1993-CF-870A-"N"
CAPITAL CASE

ERIC SCOTT BRANCH,

Defendant
_____/

STATE'S MOTION FOR SCHEDULING ORDER

On January 19, 2018, Governor Scott signed a warrant in this capital case setting Branch's execution for Thursday, February 22, 2018 at 6:00 p.m. On Monday, January 22, 2018, the Florida Supreme Court issued a scheduling order that requires all proceedings in the trial court be final by Monday, February 5, 2018, at 3:00 p.m. *Branch v. State*, (SC8305)(order dated January 22, 2018). In light of the Florida Supreme Court order expediting any proceedings in this Court, the State moves for a scheduling order from this Court. The State proposes a scheduling order for all the steps necessary for the proceedings in this Court to be completed by February 5, 2018, as order by the Florida Supreme Court.

Rules of court governing warrant cases

Florida's rule of criminal procedure contains rules for successive motions in capital cases as well as a rule for additional public records requests. Fla. R. Crim. P. 3.851(h); Fla. R. Crim. P. 3.852 (g).

The rule governing capital cases after a death warrant is signed, rule 3.851(h), provides:

> (1) Judicial Assignment. The chief judge of the circuit shall assign the case to a judge qualified under the Rules of Judicial Administration to conduct capital cases as soon as notification of the death warrant is received.
>
> (2) Calendar Advancement. Proceedings after a death warrant has been issued shall take precedence over all other cases. The assigned judge shall make every effort to resolve scheduling conflicts with other cases including cancellation or rescheduling of hearings or trials and requesting senior judge assistance.
>
> (3) Schedule of Proceedings. The time limitations in this rule shall not apply after a death warrant has been signed. All motions shall be heard expeditiously considering the time limitations set by the date of execution and the time required for appellate review.
>
> (4) Location of Hearings. The location of hearings after a death warrant is signed shall be determined by the trial judge considering the availability of witnesses or evidence, the security problems involved in the case, and any other factor determined by the trial court.
>
> (5) Postconviction Motions. All motions filed after a death warrant is issued shall be considered successive motions and subject to the content requirement of subdivision (e)(2) of this rule.
>
> (6) Case Management Conference. The assigned judge shall schedule a case management conference as soon as reasonably possible after receiving notification that a death warrant has been signed. During the case management conference the court shall set a time for filing a postconviction motion and shall schedule a hearing to determine

whether an evidentiary hearing should be held and hear argument on any purely legal claims not based on disputed facts. If the motion, files, and records in the case conclusively show that the movant is entitled to no relief, the motion may be denied without an evidentiary hearing. If the trial court determines that an evidentiary hearing should be held, the court shall schedule the hearing to be held as soon as reasonably possible considering the time limitations set by the date of execution and the time required for appellate review.

(7) Reporting. The assigned judge shall require the proceedings conducted under death warrant to be reported using the most advanced and accurate technology available in general use at the location of the hearing. The proceedings shall be transcribed expeditiously considering the time limitations set by the execution date.

(8) Procedures After Hearing. The court shall obtain a transcript of all proceedings and shall render its order as soon as possible after the hearing is concluded. A copy of the final order shall be electronically transmitted to the Supreme Court of Florida and to the attorneys of record.

(9) Transmittal of Record. The record shall be immediately delivered to the clerk of the Supreme Court of Florida by the clerk of the trial court or as ordered by the assigned judge. The record shall also be electronically transmitted if the technology is available. A notice of appeal shall not be required to transmit the record.

First case management conference

Under rule 3.851(h)(6), this Court should schedule a case management conference, as soon as possible after the warrant is signed, to set a schedule for the proceedings in the trial court including the date for filing the successive postconviction motion and answer. This Court should scheduled the first case management conference for Tuesday, January 23, 2018, at 9:30 a.m (CST)(10:30 EST). All hearings are required to be transcribed in real time. Fla. R. Crim. P.

3.851(h)(7).

Public records

Rule 3.852(h)(3) governs public records in this warrant case The rule governing additional public records requests envisions updates of prior requests only, not entirely new requests. Branch made public records requests in his original state postconviction proceedings filed in 1998.

The Department of Corrections typically provides updated inmate records. This Court should order DOC to provide those records to counsel.

This Court should order the defendant shall file any additional public records requests by Tuesday, January 23, 2018, at 3:00 p.m. Any objections from the agencies involved in those requests should be filed by Wednesday, January 24, 2018, at 3:00 p.m. This Court should hold a public records hearing, if necessary, on the additional public record requests and any objections from the agency involved on Wednesday, January 24, 2018, at 3:00 p.m. The Court should rule on the public records in writing as well.

Successive 3.851 motion.

Under rule 3.851(h)(6), this Court should set a date for the filing of the successive postconviction motion. The successive motion should be filed by Thursday, January 25, 2018 at 10:00 a.m. The Defendant's successive motion shall not exceed 25 pages. Fla. R. Crim. P. 3.851(e) (2) (providing: "A successive

motion shall not exceed 25 pages, exclusive of attachments, . . .). This Court should order counsel to comply with the page limitations.

State's answer

This Court should order the State's answer to the successive motion to be filed by Friday, January 26, 2018 at 10:00 a.m. The State's answer to the successive motion shall not exceed 25 pages. Fla. R. Crim. P. 3.851(f) (3) (B) (providing: "The answer shall not exceed 25 pages, exclusive of attachments and exhibits").

Second case management hearing

Under rule 3.851(h)(6), the trial court should hold a second case management conference, commonly referred to as a *Huff* hearing, at which the Court will hear the arguments of counsel regarding whether an evidentiary hearing is required on any of the claims. This Court should schedule the *Huff* hearing for Monday, January 29, 2018 at 10:00 a.m. The attorneys should be permitted to appear by phone. The defendant's presence is not required at the *Huff* hearing. Fla. R. Crim. P. 3.851(c)(3) (providing: "The defendant's presence shall not be required at any hearing or conference held under this rule, except at the evidentiary hearing on the merits of any claim and at any hearing involving conflict with or removal of collateral counsel.").

Evidentiary hearing

This Court should issue an order regarding whether an evidentiary hearing will be held and on which particular claims by Monday, January 29, 2018 at 4:00 p.m. This Court should preliminarily schedule any evidentiary hearing, if an evidentiary hearing is required for Wednesday, January 31, 2018 at 10:00 a.m. The defendant's presence is required at any evidentiary hearing. Fla. R. Crim. P. 3.851(c)(3) (providing: "The defendant's presence shall not be required at any hearing or conference held under this rule, ***except at the evidentiary hearing*** on the merits of any claim and at any hearing involving conflict with or removal of collateral counsel."). Any post-evidentiary hearing memorandums of law must be filed simultaneously on Friday, February 2, 2018 at 10:00 a.m.

Final ruling

This Court should issue its final written order on the successive motion by Monday, February 5, at 3:00 p.m., as directed by the Florida Supreme Court.

Clerk of court

This Court should inform the clerk of court of the necessity of completing the entire record on appeal by having the appellate clerk attend the first case management conference. The clerk of court should have the record on appeal, including all warrant filings and complete transcripts of all the hearings, filed in the Florida Supreme Court by Tuesday, February 6, 2018 at 3:00 p.m., as directed

by the Florida Supreme Court. Fla. R. Crim. P. 3.851(h)(9).

Accordingly, this Court should issue a written scheduling order similar to the State's proposed order.

Respectfully submitted,
PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Charmaine Millsaps
CHARMAINE M. MILLSAPS
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0989134
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL, PL-01
TALLAHASSEE, FL 32399-1050
(850) 414-3300
primary email:
capapp@myfloridalegal.com
secondary email:
charmaine.millsaps@myfloridalegal.com
CO-COUNSEL FOR THE STATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing STATE'S MOTION FOR SCHEDULING ORDER has been furnished via the e-portal to STACY R. BIGGART, Assistant Capital Collateral Regional Counsel-North, 1004 DeSoto Park Drive, Tallahassee, FL, 32301; phone: (850) 487-0922 x114; email: Stacy.Biggart@ccrc-north.org and KATHLEEN PAFFORD, Assistant Capital Collateral Regional Counsel-North, 1004 DeSoto Park Drive, Tallahassee, FL, 32301; phone: (850) 487-0922; email: Kathleen.Pafford@ccrc-north.org this 22nd day of January, 2018 this 22nd day of January, 2018.

/s/ Charmaine Millsaps
Charmaine M. Millsaps
Attorney for the State of Florida

Filing # 66852599 E-Filed 01/22/2018 03:41:02 PM

IN THE CIRCUIT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

THE STATE OF FLORIDA,

CASE NO.: 1993-CF-000870A

vs.

ERIC SCOTT BRANCH,
Defendant.
_____/

DEFENDANT'S RESPONSE TO THE STATE'S MOTION FOR SCHEDULNG ORDER

On January 22, 2018, the State filed its Motion for Scheduling Order. Defendant objects to the State's proposed dates for the filing of Defendant's records requests and successive 3.851. Defendant has retained several experts in this matter and counsel will not be prepared to file his successive 3.851 according to the State's proposed schedule. Defendant respectfully proposes the following schedule:

Public Records:

This Court should order all public records requests be filed by Wednesday, January 24, 2018, at 3:00 p.m. Any objections from those agencies involved in those requests should be filed by Thursday, January 25, 2018, by 3:00 p.m. This Court should hold a public records hearing, if necessary, on the additional public records requests and any objections from the agency involved on Friday, January 26, 2018, at 3:00 p.m.

Successive 3.851 Motion:

The successive 3.851 motion should be filed by Tuesday, January 30, 2018 at 10:00 a.m.

State's Answer:

This Court should order the State's answer to the successive 3.851 motion to be filed by Wednesday, January 31, 2018, at 10:00 a.m.

Second Case Management Hearing:

This Court should schedule the *Huff* hearing on Thursday, February 1, 2018, at 10:00 a.m.

Evidentiary Hearing:

This Court should enter an order regarding whether an evidentiary hearing will be held and on which particular claims by Thursday, February 1, 2018, by 3:00 p.m. This Court should preliminarily schedule an evidentiary hearing for Friday, February 2, 2018, at 10:00 a.m. Any post-evidentiary hearing memorandums of law must be filed simultaneously on Monday, February 5, 2018, at 10:00 a.m.

Final Ruling:

This Court should issue its final written order on the successive 3.851 motion by Monday, February 5, 2018, at 3:00 p.m.

WHEREFORE, this Court should issue a written scheduling order in accordance with Defendant's proposed order.

Respectfully submitted,

/s/ Stacy R. Biggart
STACY R. BIGGART
Asst. Capital Collateral Regional Counsel-North
Florida Bar Number 0089388
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922 x. 114
Stacy.Biggart@ccrc-north.org

Kathleen Pafford
Asst. Capital Collateral Regional Counsel-North
Florida Bar Number 99527
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922
Kathleen.Pafford@ccrc-north.org

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic service to Charmaine Millsaps, Assistant Attorney General (Charmaine.Millsaps@myfloridalegal.com); Lisa Hopkins, Assistant Attorney General, (lisa.hopkins@myfloridalegal.com); and to Eric Scott Branch, DOC# 313067, Florida State Prison, P.O. Box 800, Raiford, FL 32083; on this date, January 22, 2018.

Respectfully submitted,

/s/ Stacy R. Biggart_____
STACY R. BIGGART
Asst. Capital Collateral Regional Counsel-North
Florida Bar Number 0089388
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922 x. 114
Stacy.Biggart@ccrc-north.org

Kathleen Pafford
Asst. Capital Collateral Regional Counsel-North
Florida Bar Number 99527
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922
Kathleen.Pafford@ccrc-north.org

Supreme Court of Florida

MONDAY, JANUARY 22, 2018

CASE NO.: SC83805
Lower Tribunal No(s).:
171993CF000870XXXAXX

ERIC SCOTT BRANCH vs. STATE OF FLORIDA

Appellant(s) Appellee(s)

Because the Governor has signed a death warrant for the execution of Eric Scott Branch at 6:00 p.m., Thursday, February 22, 2018, we direct that all further proceedings in this case be expedited.

The proceedings pending in the trial court, if any, shall be completed and orders entered by 3:00 p.m., Monday, February 5, 2018.

We hereby set the following briefing schedule for any proceeding that may come before this Court. The notice of appeal shall be filed by 10:00 a.m., Tuesday, February 6, 2018. The record on appeal shall be filed by 3:00 p.m., Tuesday, February 6, 2018. The initial brief on the merits shall be filed by 3:00 p.m., Thursday, February 8, 2018. The answer brief on the merits shall be filed by 3:00 p.m., Monday, February 12, 2018. The reply brief on the merits shall be filed by 3:00 p.m., Tuesday, February 13, 2018. Oral argument, if necessary, will be scheduled at a later date.

Copies of any pleadings filed by counsel in the trial court and the federal courts shall be sent via email simultaneously with filing in the other courts to the following address: warrant@flcourts.org.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

CASE NO.: SC83805
Page Two

cd
Served:

HON. PAM CHILDERS, CLERK
CHARMAINE M. MILLSAPS
LISA HOPKINS
STACY BIGGART
KATHLEEN PAFFORD
JOHN A. MOLCHAN
HON. EDWARD PHILLIPS NICKINSON III, JUDGE
HON. LINDA LEE NOBLES, CHIEF JUDGE

Filing # 66863462 E-Filed 01/22/2018 04:57:28 PM

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

CAPITAL CASE
DEATH WARRANT SIGNED- EXECUTION SET FOR FEBRUARY 22, 2018, AT 6:00 P.M.

v.

ERIC SCOTT BRANCH,

Defendant.

Case No.: 1993 CF 000870 A
Div.: A
/ S. Ct. No.: SC83805

INTERIM SCHEDULING ORDER

THIS MATTER is before the Court upon the State's Motion for Scheduling Order and Defendant's Response to the State's Motion for Scheduling Order. On Monday January 22, 2018, the Florida Supreme Court issued a scheduling order requiring all proceedings pending in the trial court to be completed and orders entered by 3:00 p.m., Monday, February 5, 2018. Having considered the State's proposal for scheduling and Defendant's response thereto, filing deadlines and hearing dates are initially scheduled as follows:

- The first case management conference has been set for Tuesday, January 23, 2018, at 1:30 p.m., CST. Counsel are permitted to appear by telephone.
- Defendant shall file any additional public records requests by Wednesday, January 24, 2018, at 3:00 p.m., CST, unless otherwise ordered.
- Any objections from agencies affected by the public records requests shall be made by Thursday, January 25, 2018 at 3:00 p.m., CST, unless otherwise ordered.

The scheduling of all other matters to be filed or heard shall be addressed in the first case management conference.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida.

eSigned by CIRCUIT COURT JUDGE E P NICKINSON III
on 01/22/2018 15:55:39 vNDI00eE

EPN/awg

Service of the Interim Scheduling Order shall be made by the Clerk upon:

STACEY R. BIGGART, Assistant Capital Collateral Regional Counsel, North
1004 DeSoto Park Drive, Tallahassee, FL 32301
Stacey.Biggart@ccrc-north.org

KATHLEEN PAFFORD, Assistant Capital Collateral Regional Counsel, North
1004 DeSoto Park Drive, Tallahassee, FL 32301
Kathleen.Pafford@ccrc-north.org

JOHN A. MOLCHAN, Assistant State Attorney
Office of the State Attorney, 190 Governmental Center, Pensacola, FL 32502
JMolchan@sa01.org

CHARMAINE M. MILLSAPS, Assistant Attorney General
Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL 32399
capapp@myfloridalegal.com
Charmaine.Millsaps@myfloridalegal.com

LISA HOPKINS, Assistant Attorney General
Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL 32399
capapp@myfloridalegal.com
Lisa.Hopkins@myfloridalegal.com

S. DOUGLAS KNOX, ESQ.
Quarles & Brady, LLP, 101 East Kennedy Boulevard, Suite 3400, Tampa, FL 33602-5195
doug.knox@quarles.com

ERIC SCOTT BRANCH (DC# 313067)
Florida State Prison
7819 N.W. 228th Street
Raiford, Florida 32026-1000

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,
PLAINTIFF
vs.

ERIC SCOTT BRANCH ,
DEFENDANT

Case No.: **1993 CF 000870 A**
DIV: **A**
DCA NO.:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. Mail (unless otherwise indicated) to:

BRANCH, ERIC SCOTT
DC# 313067
Florida State Prison
7819 N.W. 228th Street
Raiford, Florida 32026

STACEY R. BIGGART, ACCRC
KATHLEEN PAFFORD, ACCRC

JOHN MOLCHAN, ASA

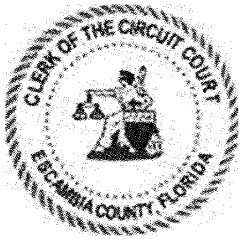
CHARMAINE M. MILLSAPS, AAG
LISA HOPKINS, AAG

S. DOUGLAS KNOX, ESQ.

on January 22, 2018.

PAM CHILDERS, CLERK OF THE CIRCUIT COURT

By: Jessica Everett



Deputy Clerk

Filing # 66942322 E-Filed 01/24/2018 09:16:07 AM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

v.

**CASE NO.: 1993-CF-000870
DEATH WARRANT SIGNED**

ERIC SCOTT BRANCH,

Defendant.
_____/

NOTICE OF FILING

COMES NOW, the Florida Department of Corrections, by and through undersigned counsel, and hereby gives notice of filing and certifies that pursuant to the Death Warrant signed on January 19, 2018, and the medical records release dated December 22, 2014, the medical records of Eric Scott Branch, DC# 313067, were provided directly to counsel. A copy of all medical records was delivered, in accordance with the provisions of Rule 3.852, Fla. R. Crim. Pro., to the Capital Postconviction Records Repository.

Respectfully submitted,

s/Ryan G. Padgett___
RYAN G. PADGETT
ASSISTANT GENERAL COUNSEL
Florida Bar No.: 13818
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, FL 32399-2500
P: (850) 717-3605
F: (850) 922-4355
Email: ryan.padgett@fdc.myflorida.com
Secondary: april.vicary@fdc.myflorida.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed and electronically served on this, the 24th day of January, 2018, to the following:

Honorable Edward P. Nickinson III
First Judicial Circuit
M.C. Blanchard Judicial Building
190 Government Center
Pensacola, Florida 32502
esc.divA.eserve@flcourts1.gov
judge.nickinson@flcourts1.gov
laurie.jenkins@flcourts1.gov

Lisa Hopkins lisa.hopkins@myfloridalegal.com
Charmaine Milsaps charmaine.millsaps@myfloridalegal.com
capapp@myfloridalegal.com
Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399-0001

Stacy Biggart, Stacy.Biggart@ccrc-north.org,
Kathleen Little, Kathleen.Little@ccrc-north.org,
Kathleen Pafford, Kathleen.Pafford@ccrc-north.org
Capital Collateral Regional Counsel – North
1004 DeSoto Park Drive
Tallahassee, Florida 32301

John Molchan, Assistant State Attorney
Office of the State Attorney
P.O. Box 12726
Pensacola, Florida 32591
jmolchan@sa01.org
Kmurphy@sa01.org

s/Ryan G. Padgett____
RYAN G. PADGETT
ASSISTANT GENERAL COUNSEL

Filing # 66942322 E-Filed 01/24/2018 09:16:07 AM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

v.

**Case No. 1993-CF-000870
DEATH WARRANT SIGNED**

ERIC SCOTT BRANCH,

Defendant.
_____/

NOTICE OF DELIVERY OF EXEMPT PUBLIC RECORDS TO RECORDS REPOSITORY

TO: **CAPITAL COLLATERAL POSTCONVICTION RECORDS REPOSITORY**
State Archives of Florida
Attn: CCR Records Archivist
R.A. Gray Building, MS 9-E
500 South Bronough Street
Tallahassee, FL 32399-0250

The undersigned, Ryan Glenn Padgett, hereby gives notice to the Capital Collateral Postconviction Record Repository, that certain delivered records are confidential or exempt from the requirements of section 119.07(1), Florida Statutes. These sealed records are labeled in accordance with Florida Rule of Criminal Procedure 3.852(g). The nature of the public records and the legal bases under which the public records are exempt have been identified.

Additionally, copies of the Defendant's medical records have been placed at the Repository. The Department has designated the un-redacted records placed at the Repository as exempt, under the authority of Florida Rule of Criminal Procedure 3.852 (d) (1)).

Respectfully submitted,

s/Ryan G. Padgett____
RYAN G. PADGETT
ASSISTANT GENERAL COUNSEL
Florida Bar No.: 13818
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, FL 32399-2500
P: (850) 717-3605
F: (850) 922-4355
Email: ryan.padgett@fdc.myflorida.com
Secondary: april.vicary@fdc.myforida.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed and electronically served on this, the 24th day of January, 2018 to the following:

Honorable Edward P. Nickinson III
First Judicial Circuit
M.C. Blanchard Judicial Building
190 Government Center
Pensacola, Florida 32502
esc.divA.eserve@flcourts1.gov
judge.nickinson@flcourts1.gov
laurie.jenkins@flcourts1.gov

Lisa Hopkins lisa.hopkins@myfloridalegal.com
Charmaine Milsaps charmaine.millsaps@myfloridalegal.com
capapp@myfloridalegal.com
Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399-0001

Stacy Biggart, Stacy.Biggart@ccrc-north.org,
Kathleen Little, Kathleen.Little@ccrc-north.org,
Kathleen Pafford, Kathleen.Pafford@ccrc-north.org

Capital Collateral Regional Counsel – North
1004 DeSoto Park Drive
Tallahassee, Florida 32301

John Molchan, Assistant State Attorney
Office of the State Attorney
P.O. Box 12726
Pensacola, Florida 32591
jmolchan@sa01.org
Kmurphy@sa01.org

s/Ryan G. Padgett
RYAN G. PADGETT
ASSISTANT GENERAL COUNSEL

Filing # 66943541 E-Filed 01/24/2018 09:30:55 AM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY, FLORIDA**

STATE OF FLORIDA

CASE NO. 1993-CF-870-A

v.

ERIC SCOTT BRANCH,
Defendant.
_____/

DEFENDANT'S DEMAND FOR PUBLIC RECORDS

The Defendant, **ERIC SCOTT BRANCH**, by and through undersigned counsel, hereby makes demand of the **FLORIDA DEPARTMENT OF CORRECTIONS**, under Florida Rule of Criminal Procedure 3.852(h)(3) for public records pertinent to this case. In support, the Defendant states as follows:

1. Mr. Branch is under sentence of death. A Death Warrant was signed in Mr. Branch's case on January 19, 2017. His execution has been set for February 22, 2018.
2. Undersigned counsel represents that the records specifically described below:
    a. Are relevant to a pending death warrant proceeding
    b. Are not the subject of a previous objection
    c. Have not been previously produced
3. The records requested are as follows:
    a. Mr. Branch's entire medical, psychological, and psychiatric records, written or media (audio, video, and/or images), related to Mr. Branch, made on or between the date of last production to the present.[1]

[1] Undersigned counsel has attached a release signed by Mr. Branch authorizing DOC to release all records to undersigned counsel. See, Attachment A.

b. All public records, including logs or record books regarding the purchase, storage, maintenance, use, distribution, disposal, and expiration dates of etomidate, rocuronium bromide, and potassium acetate that show compliance, or non-compliance, with the Federal Controlled Substances Act and Florida Statutes, Chapters 828, 893, and 465 from September 9, 2013 to January 4, 2017.[2]

c. All public records showing the name of the manufacturer and distributor of the lethal injection drugs including package insert information and/or manufacturer's instructions, the date of manufacture, and the shelf life of etomidate, recuronium bromide, and potassium acetate currently possessed by the DOC.

d. All public records, **including the required logs**, notes, memoranda, letters, electronic mail, and facsimiles, relating to the executions by lethal injection of Mark Asay, Michael Lambrix, and Patrick Hannon.

4. Pursuant to rule 3.852(h)(3), you shall, within 10 days from the date of this request, copy index, and deliver to the records repository any of these additional public records in the possession of your agency that pertain to this case; or file with the trial court and the parties an affidavit stating that no other records exist and that all public records have been produced previously.

WHEREFORE, the Defendant requests an order for the records described above.

[2] Undersigned counsel has attached logs pertaining to the expiration of the drugs in the State's three drug protocol. See, Attachment B. These logs demonstrate that the State's supply of Etomidate expired in September 2017, the State's supply of Rocuronium expires in February 2019, and the State's supply of Potassium Acetate expires next month.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic service to Charmaine Millsaps, Assistant Attorney General (Charmaine.Millsaps@myfloridalegal.com); Lisa Hopkins, Assistant Attorney General (Lisa.Hopkins@myfloridalegal.com); Ryan G. Padgett, Assistant General Counsel (Ryan.Padgett@fdc.myflorida.com); and John Molchan, Assistant State Attorney)jmolchan@sa01.org); and by U.S. mail to Eric Scott Branch, DOC #313067, Florida State Prison, P.O. Box 800, Raiford, FL 32083; on this date, January 22, 2018.

Respectfully submitted,

/s/ Stacy R. Biggart
STACY R. BIGGART
Asst. CCRC-North
Florida Bar No. 0089388
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922 x. 114
Stacy.Biggart@ccrc-north.org

KATHLEEN PAFFORD
Asst. CCRC-North
Florida Bar No. 99527
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922 x. 101
Kathleen.Pafford@ccrc-north.org

ATTACHMENT A

FLORIDA DEPARTMENT OF CORRECTIONS
CONSENT AND AUTHORIZATION FOR USE AND DISCLOSURE INSPECTION AND RELEASE OF CONFIDENTIAL INFORMATION

I, Eric Branch authorize Florida Department of Corrections
(Name, organization or general designation of program making disclosure)

to disclose to Capital Collateral Regional Counsel - North
(Name of person(s) or organization(s) and address to which disclosure is to be made)

Purpose of disclosure authorized herein: Legal

The undersigned hereby authorizes the inspection and release of copies of my medical records indicated below by the above-named health care facility/medical record custodian only to the above-named entity(ies) or persons or their agents. Indicate all of the records authorized to be inspected/released by **initialing** in the appropriate box(es) below:

INITIAL BELOW FOR RELEASE OF INFORMATION	
EB	A. Release of all medical records except: any information relating to HIV testing, AIDS and AIDS-related syndromes; psychiatric and psychological information; or alcohol and substance abuse treatment information related to my condition, care, and confinement **(initial box).**
EB	B. Release of any records regarding HIV testing, AIDS and AIDS-related syndromes relating to my condition, care, and confinement **(initial box).**
EB	C. Release of any records of psychiatric and psychological information (mental health records) other than psychotherapy notes relating to my conditions, care, and confinement **(initial box).**
EB	D. Release of all dental records relating to my condition, care and confinement **(initial box).**
EB	E. Release of any records regarding alcohol and substance abuse treatment relating to my condition, care, and confinement. I understand that my records are protected under the federal regulations governing *Confidentiality of Alcohol and Drug Abuse Patient Records*, 42 C.F.R. Subchapter A, Part 2, and cannot be disclosed without my written consent unless otherwise provided for in the regulations. As to release of alcohol/substance abuse treatment records, please state the specific information to be released as provided by 42 C.F.R., Subchapter A, Part 2 **(initial box):**

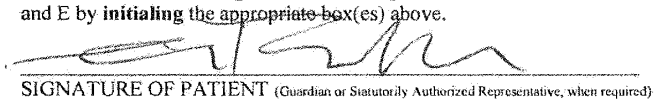
Name of information -- dates of treatment/programs, etc., if possible

NOTE: IF PSYCHOTHERAPY OR SUBSTANCE ABUSE PROGRESS NOTES ARE THE SUBJECT OF THE RELEASE, OTHER RECORDS CANNOT BE THE SUBJECT OF THE SAME AUTHORIZATION. RELEASE OF PSYCHOTHERAPY OR SUBSTANCE ABUSE PROGRESS NOTES IN ADDITION TO THE RECORDS SPECIFIED ABOVE WILL REQUIRE A SEPARATE AUTHORIZATION (SEE BELOW).

I understand that I may refuse to sign this authorization and my refusal to sign will not affect my access to health care treatment, eligibility for benefits or enrollment, or payment for or coverage of services. I also understand that once my protected health information is disclosed pursuant to this authorization, it may be used and/or redisclosed by the recipient unless the recipient is covered by law which prohibits or limits its use and/or disclosure.

I understand that I may revoke this consent and authorization at any time, provided the revocation is in writing, except to the extent that action has been taken in reliance on it, and that in any event, this consent and authorization shall be effective for 90 days unless I specify a different expiration as follows: until the conclusion of CCRC-N's representation of the client in collateral proceedings.
(Specification of the date, event, or condition upon which this consent expires if less than six months or greater than 90 days)

In furtherance of this authorization, I (we) do hereby waive all provisions of law and privileges relating to the disclosures hereby authorized. I acknowledge the extent of my authorization of release as to the records and information denoted in paragraphs A, B, C, D and E by **initialing** the appropriate box(es) above.



SIGNATURE OF PATIENT (Guardian or Statutorily Authorized Representative, when required) 12-22-14 Date

AUTHORIZATION FOR RELEASE OF PSYCHOTHERAPHY OR SUBSTANCE ABUSE PROGRESS NOTES

I, Eric Branch authorize Florida Department of Correction
(Name, organization or general designation of program making disclosure)

to disclose to Capital Collateral Regional Counsel - North
(Name of person(s) or organization(s) and address to which disclosure is to be made)

FLORIDA DEPARTMENT OF CORRECTIONS
CONSENT AND AUTHORIZATION FOR USE AND DISCLOSURE INSPECTION AND RELEASE OF CONFIDENTIAL INFORMATION

Purpose of disclosure authorized herein: Legal

The undersigned hereby authorizes the inspection and release of copies of my psychotherapy progress notes and/or my substance abuse progress notes as indicated below by the above-named health care facility/medical record custodian only to the above-named entity(ies) or persons or their agents. Indicate all of the records authorized to be inspected/released by **initialing** in the appropriate box(es) below:

INITIAL BELOW FOR RELEASE OF INFORMATION	
EB	A. Release psychotherapy progress notes (**initial box**):
EB	B. Release substance abuse progress notes (**initial box**):

Name of information -- dates of treatment/programs, etc., if possible

I understand that I may refuse to sign this authorization and my refusal to sign will not affect my access to health care treatment, eligibility for benefits or enrollment, or payment for or coverage of services. I also understand that once my protected health information is disclosed pursuant to this authorization, it may be used and/or redisclosed by the recipient unless the recipient is covered by law which prohibits or limits its use and/or disclosure.

I understand that I may revoke this consent and authorization at any time, provided the revocation is in writing, except to the extent that action has been taken in reliance on it, and that in any event, this consent and authorization shall be effective for 90 days unless I specify a different expiration as follows: until the conclusion of CCRC-N's representation of the client in collateral proceedings.
(Specification of the date, event, or condition upon which this consent expires if less than six months or greater than 90 days)

In furtherance of this authorization, I (we) do hereby waive all provisions of law and privileges relating to the disclosures hereby authorized. I acknowledge the extent of my authorization of release as to the records and information denoted in paragraphs A and B **initialing** the appropriate box(es) above.

SIGNATURE OF PATIENT (or Next of Kin, Guardian or Authorized Representative, when required) — Date: 12-22-14

COMPLETE NOTARY PORTION ONLY WHEN REQUEST IS NOT FROM CURRENT INMATE/OFFENDER PERSONALLY KNOWN TO WITNESS OR IS FROM SOURCE EXTERNAL TO DEPARTMENT

STATE OF Florida
COUNTY OF Union

Sworn to (or affirmed) and subscribed before me this day of December 22, 2014, by Eric Branch who is personally known to me or who has produced FL DOC No. 313067 as identification.

Notary Public Signature
Print, type, or stamp commissioned name of Notary Public
My Commission Expires:

SEAL

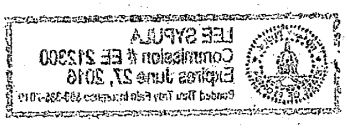
LEE SYPULA
Commission # EE 212300
Expires June 27, 2016
Bonded Thru Troy Fain Insurance 800-385-7019

ACKNOWLEDGEMENT OF RECEIPT OF COPY OF SIGNED AUTHORIZATION(S)

Inmate/Offender Name Eric Branch
DC# 313067
R/S W/M
Date of Birth 02/07/1971
SS# 305-82-0678
Institution/Office Union CI

Witness Name Lee Sypula
Witness Signature
Date: 12/22/14

DC4-711B (English) (Revised 11/27/07) **Incorporated by Reference in Rule 33-601.901, F.A.C.**


LEE SPRUILL
Commission # EE 212200
Expires June 27, 2016

ATTACHMENT B

PAM BONDI
ATTORNEY GENERAL
STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL
Corrections Litigation Bureau

J. Lee Marsh
Chief Assistant Attorney General
PL-01 The Capitol
Tallahassee, FL 32399-1050
Phone (850) 414-3300 Fax (850) 488-4872
http://www.myfloridalegal.com

November 10, 2016 **Via Email and U.S. Mail**

Joshua E. Anderson, Esq.
Sidley Austin LLP
555 West Fifth Street, Suite 4000
Los Angeles, CA 90013

Re: AG# - L16-4-2811 - *First Amendment Coalition, et al. v. Charles L. Ryan, et al.*, U.S. Northern District - Tallahassee – Case #4:16-mc-0025-RH-CAS

Dear Mr. Anderson:

Please see the attached materials that are responsive to your subpoena and that are required to be produced by Court Order of October 24, 2016 (Doc. 11). Of note, the communications with suppliers are highly redacted because the form of the invoices and other correspondence identify the supplier. Furthermore, lot numbers, invoice numbers, customer identification numbers, and similar supplier-assigned identifiers have all been redacted in accordance with statute and the Court's order.

I was just alerted today that the Department has just received back its request for email archives searching for this case. (We have attached emails that were previously identified by participants in the process as in their possession and responsive.) The initial screen returned nearly 71,000 email messages. Due to one expansive search term that had to be used (lethal injection), the return was large and preliminary indicators are that most emails will not be responsive to your request. For example, any news article concerning lethal injection would return in the search but would not be responsive to your subpoena. To date, no additional responsive emails have been identified. If any emails are identified that have not been supplied, we will provide them to you promptly. We expect screening to take approximately 2-3 more weeks.

If you have any questions, please let me know.

Sincerely,

J. Lee Marsh
Chief Assistant Attorney General

Enclosures

Drug Name Etomidate 40mg/20ml 10x20ml SDV

[redacted]

Date	Invoice Number	Received/Used (+ or -)	Balance	
2-14-16	[redacted]	+ 70 (7 boxes)	70	4/17
3/17/16		+ 180 (18 boxes)	250	5/17
7/19/16		+ 80	330	9/17

Drug Name Etomidate 2mg/10ml 10x10cc SDV

[redacted]

Date	Invoice Number	Received/Used (+ or -)	Balance
2-11-16	[redacted]	+ 100 (10 boxes)	100
3/17/16		+ 100 (10 boxes)	200

Drug Name Amidate 40mg/20ml 10x20ml

[redacted]

Date	Invoice Number	Received/Used (+ or -)	Balance
2/11/16	[redacted]	200	200

120 exp-4/16
80 3/16

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Drug Name Amiodate 2mg/ml 10x10ml/ [redacted]

Date	Invoice Number	Received/Used (+ or -)	Balance
4/27/15	[redacted]	+ 10	10
4/29/15		- 2 IVP	8
2/11/16		+ 200	208
3/17/16		+ 200	408
6/15/16		- 8 expired	400

exp 200 - 1/17
200 - 4/17

Drug Name Rocuronium 50mg/5ml

[redacted]

Date	Invoice Number	Received/Used (+ or -)	Balance
3/17/16	[redacted]	+70 (7 boxes)	70

exp 6/17

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Drug Name Rocuronium 100mg/10ml 10ml MDV

[redacted]

Date	Invoice Number	Received/Used (+ or -)	Balance	
2-11-16	[redacted]	+200 (20 boxes)	200	exp: 4/17

Drug Name Hydrocodone 100mg/10ml 10ml MDV [redacted]

Date	Invoice Number	Received/Used (+ or -)	Balance	
2-11-16	[redacted]	+ 80 (8 bxs)	80	
3/17/16		+ 100 (10 bxs)	180	exp: 6/17
7/17/16		+ 80	260	2/19

Drug Name Potassium ACET 2mEq/ml 25X20ml

[redacted]

Date	Invoice Number	Received/Used (+ or -)	Balance
3/21/16	[redacted]	+100 (4 boxes)	100

Drug Name Potassium ACET 2meq/ml 25x50ml [redacted]

Date	Invoice Number	Received/Used (+ or -)	Balance
3/17/16	[redacted]	+100 (4 trays)	100
7/19/16		+50	150

2/18

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Drug Name Potassium Acet 2meq/ml. 25x20ml.

[redacted]

Date	Invoice Number	Received/Used (+ or -)	Balance
4/12/16	[redacted]	3x25 (75)	75
5/2/16		1x25 (25)	100

[redacted]

DATE
4/27/15

[redacted]

1	✓	1	CT	KETAMINE 100MG/ML 10X10ML C3	10MD	3			67.36	6736CT
1	✓	1	CT	AMIDATE 2MG/ML 10X10ML FTV	10SD				54.98	5498CT
		2		TOTAL PIECES SHIPPED						
				---------- S U M M A R Y ----------						
				Total RX			122.34			
				NET AMOUNT			122.34			

[redacted]

[redacted]

DATE
2/11/16

20	20	CT	AMIDATE 2MG/ML 10X20ML FTV	10	SD					59.20	1184	00	CT
20	20	CT	AMIDATE 2MG/ML 10X10ML FTV	10	SD					53.72	1074	40	CT
[redacted]													
20	20	CT	ROCURONIUM 10MG/ML 10X10ML LF	10	MD					62.82	1256	40	CT
This item is split:	4 In Tote 1		4 In Tote 2			4 In Tote 3		4 In Tote 4					
TOTE# 6	4 In Tote 5												
[redacted]													
8	8	CT	ROCURONIUM 10MG/ML 10X10ML LF	10	MD					46.39-	371	12	CT
This item is split:	2 In Tote 6		2 In Tote 7			2 In Tote 8		2 In Tote 9					
TOTE# 10													
[redacted]													
10	10	CT	ETOMIDATE 2MG/ML 10X10ML	10	SD					60.12	601	20	SN
7	7	CT	ETOMIDATE 2MG/ML 10X20ML	10	SD					64.95	454	65	SN
	85		TOTAL PIECES SHIPPED										
			---------- S U M M A R Y ----------										
			Total RX			4941.77							
			NET AMOUNT			4941.77							

[redacted]

[redacted]

DATE
3/17/16

4	4	CT	POTASSIUM ACET 2MEQML 25X50ML	25MD			253.67	101468	CT

4 TOTAL PIECES SHIPPED

---------- S U M M A R Y ----------

Total RX	1014.68
NET AMOUNT	1014.68

---------- DEPARTMENT SUMMARY ----------

[redacted]

[redacted]

DATE
3/17/16

	20	✓20	CT	AMIDATE 2MG/ML 10X10ML FTV	✓10	SD					53.72	107440	CT
[redacted]	7	✓7	CT	ROCURONIUM 10MG/ML 10X5ML LF	✓10	MD					25.13	17591	CT
	10	✓10	CT	ROCURONIUM 10MG/ML 10X10ML LF	✓10	MD					46.39	46390	CT
This item is split:		2 In Tote 2			2 In Tote 3			2 In Tote 4			2 In Tote 5		
		2 In Tote 6											
TOTE# 7													
[redacted]	10	✓10	CT	ETOMIDATE 2MG/ML 10X10ML ✓	10	SD					60.12	60120	SN
	18	✓18	CT	ETOMIDATE 2MG/ML 10X20ML ✓	10	SD					64.95	116910	SN
This item is split:		✓12 in 1 case			✓6 In Tote 7								
		INCLUDES 1 CASES OF 12											
[redacted]	4	3	CT	POTASS ACET 2MEQ/ML25X20ML FTV	25	SD					236.52		CT
	4	3	CT	POTASSIUM ACET 2MEQ/ML 25X20ML	25	SD					82.13		CT
	4	3	CT	POTASSIUM ACET 2MEQML 25X50ML	25	MD					253.67		CT
	65	TOTAL PIECES SHIPPED											
		---------- S U M M A R Y ----------											
		Total RX					3484.51						
		NET AMOUNT					3484.51						

[redacted]

[redacted]

DATE
3/21/16

[redacted]

4	4	CTPOTASS ACET 2MEQ/ML25X20ML FTV	25SD		236.52	94608CT

4 TOTAL PIECES SHIPPED

---------- S U M M A R Y ----------

Total RX 946.08

NET AMOUNT 946.08

---------- DEPARTMENT SUMMARY ----------

[redacted]

[redacted]

DATE
4/21/16

[redacted]

	3	3 CTPOTASSIUM ACET 2MEQ/ML 25X20ML	25SD			82.13	24639CT
This item is split:		2 In Tote 1	1 In Tote	2			
	3	TOTAL PIECES SHIPPED					
		---------- S U M M A R Y ----------					
		Total RX			246.39		
		NET AMOUNT			246.39		
		---------- DEPARTMENT SUMMARY ----------					
					246.39		

[redacted]

[redacted]

DATE
5/02/16

[redacted]

1	1	CT	POTASSIUM ACET 2MEQ/ML 25X20ML	25SD		82.13	8213CT

1 TOTAL PIECES SHIPPED

---------- S U M M A R Y ----------

Total RX	82.13
NET AMOUNT	82.13

---------- DEPARTMENT SUMMARY ----------

82.13

[redacted]

[redacted]

DATE
7/18/16

[redacted]

2	2	CT	POTASSIUM ACET 2MEQML 25X50ML [redacted]	25MD				248.79	49758CT
8	8	CT	ROCURONIUM 10MG/ML 10X10ML LF [redacted]	10MD				45.49	36392CT
2	2	CT	WATER 25X50ML STR INJ [redacted]	25SD				43.01	8602CT
8	8	CT	ETOMIDATE 2MG/ML 10X20ML [redacted]	10SD				53.12	42496CT
1	1	CT	DIAZEPAM 5MGML 10X10ML FTV C4	10MD	4			291.76	29176SN
	21		TOTAL PIECES SHIPPED						

---------- S U M M A R Y ----------

Total RX	1664.24
NET AMOUNT	1664.24

[redacted]

Filing # 66944055 E-Filed 01/24/2018 09:36:24 AM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY, FLORIDA**

STATE OF FLORIDA

CASE NO. 1993-CF-870-A

v.

ERIC SCOTT BRANCH,
Defendant.
_____/

DEFENDANT'S DEMAND FOR PUBLIC RECORDS

The Defendant, **ERIC SCOTT BRANCH**, by and through undersigned counsel, hereby makes demand of the **ESCAMBIA COUNTY SHERIFF'S OFFICE**, under Florida Rule of Criminal Procedure 3.852(h)(3) for public records pertinent to this case. In support, the Defendant states as follows:

1. Mr. Branch is under sentence of death. A Death Warrant was signed in Mr. Branch's case on January 19, 2017. His execution has been set for February 22, 2018.
2. Undersigned counsel represents that the records specifically described below:
    a. Are relevant to a pending death warrant proceeding
    b. Are not the subject of a previous objection
    c. Have not been previously produced
3. The records requested are as follows:
    a. Any files, records, reports, letters, memoranda, notes, drafts, and/or electronic mail in the possession or control of your agency since Mr. Branch's last request[1]; and/or any documents, that were, for any reason, not produced previously.
4. Pursuant to rule 3.852(h)(3), you shall, within 10 days from the date of this request, copy index, and deliver to the records repository any of these additional public records in the

[1] It appears that Mr. Branch made a previous request to the Escambia County Sheriff's Office in 1999.

possession of your agency that pertain to this case; or file with the trial court and the parties an affidavit stating that no other records exist and that all public records have been produced previously.

WHEREFORE, the Defendant requests an order for the records described above.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic service to Charmaine Millsaps, Assistant Attorney General (Charmaine.Millsaps@myfloridalegal.com); Lisa Hopkins, Assistant Attorney General (Lisa.Hopkins@myfloridalegal.com); Custodian of Records, Escambia County Sheriff's Office (publicrecords@escambiaso.com), and John Molchan, Assistant State Attorney (jmolchan@sa01.org); and by U.S. mail to Eric Scott Branch, DOC #313067, Florida State Prison, P.O. Box 800, Raiford, FL 32083; on this date, January 22, 2018.

Respectfully submitted,

/s/ Stacy R. Biggart
STACY R. BIGGART
Asst. CCRC-North
Florida Bar No. 0089388
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922 x. 114
Stacy.Biggart@ccrc-north.org

KATHLEEN PAFFORD
Asst. CCRC-North
Florida Bar No. 99527
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922 x. 101
Kathleen.Pafford@ccrc-north.org

Filing # 66945739 E-Filed 01/24/2018 09:53:22 AM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY, FLORIDA**

STATE OF FLORIDA

CASE NO. 1993-CF-870-A

v.

ERIC SCOTT BRANCH,
Defendant.
_____/

DEFENDANT'S DEMAND FOR PUBLIC RECORDS

The Defendant, **ERIC SCOTT BRANCH**, by and through undersigned counsel, hereby makes demand of the **FLORIDA DEPARTMENT OF LAW ENFORCEMENT**, under Florida Rule of Criminal Procedure 3.852(h)(3) for public records pertinent to this case. In support, the Defendant states as follows:

1. Mr. Branch is under sentence of death. A Death Warrant was signed in Mr. Branch's case on January 19, 2017. His execution has been set for February 22, 2018.
2. Undersigned counsel represents that the records specifically described below:
    a. Are relevant to a pending death warrant proceeding
    b. Are not the subject of a previous objection
    c. Have not been previously produced
3. The records requested are as follows:
    a. All public records, including logs or record books regarding the purchase, storage, maintenance, use, distribution, disposal, and expiration dates of etomidate, rocuronium bromide, and potassium acetate that show compliance, or non-

compliance, with the Federal Controlled Substances Act and Florida Statutes, Chapters 828, 893, and 465 from September 9, 2013 to January 4, 2017.[1]

b. All public records showing the name of the manufacturer and distributor of the lethal injection drugs including package insert information and/or manufacturer's instructions, the date of manufacture, and the shelf life of etomidate, recuronium bromide, and potassium acetate currently possessed by the DOC.

c. All public records, **including the required logs**, notes, memoranda, letters, electronic mail, and facsimiles, relating to the executions by lethal injection of Mark Asay, Michael Lambrix, and Patrick Hannon.

4. Pursuant to rule 3.852(h)(3), you shall, within 10 days from the date of this request, copy index, and deliver to the records repository any of these additional public records in the possession of your agency that pertain to this case; or file with the trial court and the parties an affidavit stating that no other records exist and that all public records have been produced previously.

WHEREFORE, the Defendant requests an order for the records described above.

[1] Undersigned counsel has attached logs pertaining to the expiration of the drugs in the State's three drug protocol. See, Attachment A. These logs demonstrate that the State's supply of Etomidate expired in September 2017, the State's supply of Rocuronium expires in February 2019, and the State's supply of Potassium Acetate expires next month.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic service to Charmaine Millsaps, Assistant Attorney General (Charmaine.Millsaps@myfloridalegal.com); Lisa Hopkins, Assistant Attorney General (Lisa.Hopkins@myfloridalegal.com); Janine Robinson, Assistant General Counsel (janinerobinson@fdle.state.fl.us); and John Molchan, Assistant State Attorney)jmolchan@sa01.org); and by U.S. mail to Eric Scott Branch, DOC #313067, Florida State Prison, P.O. Box 800, Raiford, FL 32083; on this date, January 22, 2018.

Respectfully submitted,

/s/ Stacy R. Biggart
STACY R. BIGGART
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Asst. CCRC-North
Florida Bar No. 99527
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922 x. 101
Kathleen.Pafford@ccrc-north.org

ATTACHMENT A

PAM BONDI
ATTORNEY GENERAL
STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL
Corrections Litigation Bureau

J. Lee Marsh
Chief Assistant Attorney General
PL-01 The Capitol
Tallahassee, FL 32399-1050
Phone (850) 414-3300 Fax (850) 488-4872
http://www.myfloridalegal.com

November 10, 2016

Via Email and U.S. Mail

Joshua E. Anderson, Esq.
Sidley Austin LLP
555 West Fifth Street, Suite 4000
Los Angeles, CA 90013

Re: AG# - L16-4-2811 - *First Amendment Coalition, et al. v. Charles L. Ryan, et al.*, U.S. Northern District - Tallahassee – Case #4:16-mc-0025-RH-CAS

Dear Mr. Anderson:

Please see the attached materials that are responsive to your subpoena and that are required to be produced by Court Order of October 24, 2016 (Doc. 11). Of note, the communications with suppliers are highly redacted because the form of the invoices and other correspondence identify the supplier. Furthermore, lot numbers, invoice numbers, customer identification numbers, and similar supplier-assigned identifiers have all been redacted in accordance with statute and the Court's order.

I was just alerted today that the Department has just received back its request for email archives searching for this case. (We have attached emails that were previously identified by participants in the process as in their possession and responsive.) The initial screen returned nearly 71,000 email messages. Due to one expansive search term that had to be used (lethal injection), the return was large and preliminary indicators are that most emails will not be responsive to your request. For example, any news article concerning lethal injection would return in the search but would not be responsive to your subpoena. To date, no additional responsive emails have been identified. If any emails are identified that have not been supplied, we will provide them to you promptly. We expect screening to take approximately 2-3 more weeks.

If you have any questions, please let me know.

Sincerely,

J. Lee Marsh
Chief Assistant Attorney General

Enclosures

Drug Name Etomidate 40mg/20ml 10x20ml SDV

[redacted]

Date	Invoice Number	Received/Used (+ or -)	Balance	
2-14-16	[redacted]	+ 70 (7 boxes)	70	4/17
3/17/16		+ 180 (18 boxes)	250	5/17
7/19/16		+ 80	330	9/17

Drug Name Etomidate 2Omg/10ml 10x10cc SDV

[redacted]

Date	Invoice Number	Received/Used (+ or -)	Balance
2-11-16	[redacted]	+ 100 (10 boxes)	100
3/17/16		+ 100 (10 boxes)	200

Drug Name Amidate 40mg/20ml 10x20ml

[redacted]

Date	Invoice Number	Received/Used (+ or -)	Balance
2/11/16	[redacted]	200	200

120 exp: 4/16
80 " 3/16

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Drug Name Amiodarone 2mg/ml 10x10ml [redacted]

Date	Invoice Number	Received/Used (+ or -)	Balance
4/27/15	[redacted]	+ 10	10
4/29/15		- 2 IVP	8
2/11/16		+ 200	208
3/17/16		+ 200	408
6/15/16		- 8 expired	400

exp200 - 1/17
200 - 4/17

Drug Name Rocuronium 50mg/5ml

[redacted]

Date	Invoice Number	Received/Used (+ or -)	Balance
3/17/16	[redacted]	+70 (7 boxes)	70

Exp? 6/19

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Drug Name Rocuronium 100mg/10ml 10ml MDV

[redacted]

Date	Invoice Number	Received/Used (+ or -)	Balance
2-11-16	[redacted]	+200 (20 boxes)	200

exp: 4/17

Drug Name Rocuronium 100mg/10ml 10ml MDV [redacted]

Date	Invoice Number	Received/Used (+ or -)	Balance	
2-11-16	[redacted]	+ 80 (8 boxes)	80	
3/17/16		+ 100 (10 boxes)	180	exp: 6/17
7/15/16		+ 80	260	2/19

Drug Name Potassium ACET 2mcq/ml 25X20ml

[redacted]

Date	Invoice Number	Received/Used (+ or -)	Balance
3/21/16	[redacted]	+100 (4 boxes)	100

Drug Name Potassium ACET 2meq/ml 25x50ml [redacted]

Date	Invoice Number	Received/Used (+ or -)	Balance	
3/17/16	[redacted]	+100 (4 trans)	100	
7/19/16		+50	150	2/18

Drug Name Potassium Acet 2meq/ml. 25x20ml.

[redacted]

Date	Invoice Number	Received/Used (+ or -)	Balance
4/12/16	[redacted]	3x25 (75)	75
5/2/16		1x25 (25)	100

[redacted]

DATE
4/27/15

[redacted]

1	✓	1	CT	KETAMINE 100MG/ML 10X10ML C3	10MD	3			67.36	6736CT
1	✓	1	CT	AMIDATE 2MG/ML 10X10ML FTV	10SD				54.98	5498CT
		2		TOTAL PIECES SHIPPED						
				---------- S U M M A R Y ----------						
				Total RX			122.34			
				NET AMOUNT			122.34			

[redacted]

[redacted]

DATE
2/11/16

	20	20	CT	AMIDATE 2MG/ML 10X20ML FTV		10	SD					59.20	1184	00 CT
	20	20	CT	AMIDATE 2MG/ML 10X10ML FTV		10	SD					53.72	1074	40 CT
				[redacted]										
	20	20	CT	ROCURONIUM 10MG/ML 10X10ML LF		10	MD					62.82	1256	40 CT
This item is split:		4 In Tote	1		4 In Tote	2		4 In Tote	3		4 In Tote	4		
		4 In Tote	5											
TOTE# 6				[redacted]										
[redacted]	8	8	CT	ROCURONIUM 10MG/ML 10X10ML LF		10	MD					46.39-	371	12 CT
This item is split:		2 In Tote	6		2 In Tote	7		2 In Tote	8		2 In Tote	9		
TOTE# 10				[redacted]										
[redacted]	10	10	CT	ETOMIDATE 2MG/ML 10X10ML		10	SD					60.12	601	20 SN
	7	7	CT	ETOMIDATE 2MG/ML 10X20ML		10	SD					64.95	454	65 SN
		85		TOTAL PIECES SHIPPED										
				---------- S U M M A R Y ----------										
				Total RX				4941.77						
				NET AMOUNT				4941.77						

[redacted]

[redacted]

DATE
3/17/16

4	4	CT	POTASSIUM ACET 2MEQML 25X50ML	25MD			253.67	101468	CT

4 TOTAL PIECES SHIPPED

---------- S U M M A R Y ----------

Total RX 1014.68

NET AMOUNT 1014.68

---------- DEPARTMENT SUMMARY ----------

[redacted]

[redacted]

DATE
3/17/16

	20	✓20	CT	AMIDATE 2MG/ML 10X10ML FTV	✓10	SD				53.72	107440	CT
[redacted]	7	✓7	CT	ROCURONIUM 10MG/ML 10X5ML LF	✓10	MD				25.13	17591	CT
	10	✓10	CT	ROCURONIUM 10MG/ML 10X10ML LF	✓10	MD				46.39	46390	CT
This item is split:		2 In Tote 2			2 In Tote	3		2 In Tote	4	2 In Tote		5
		2 In Tote 6		[redacted]								
TOTE# 7												
[redacted]	10	✓10	CT	ETOMIDATE 2MG/ML 10X10ML ✓		10	SD			60.12	60120	SN
	18	✓18	CT	ETOMIDATE 2MG/ML 10X20ML ✓		10	SD			64.95	116910	SN
This item is split:		✓12 in 1 case			✓6 In Tote	7						
		INCLUDES 1 CASES OF 12										
[redacted]	4	3	CT	POTASS ACET 2MEQ/ML25X20ML FTV		25	SD			236.52		CT
	4	3	CT	POTASSIUM ACET 2MEQ/ML 25X20ML		25	SD			82.13		CT
	4	3	CT	POTASSIUM ACET 2MEQML 25X50ML		25	MD			253.67		CT
	65	TOTAL PIECES SHIPPED										
		SUMMARY										
		Total RX					3484.51					
		NET AMOUNT					3484.51					

[redacted]

[redacted]

DATE
3/21/16

[redacted]

4	4	CTPOTASS ACET 2MEQ/ML25X20ML FTV 25SD		236.52	94608CT
	4	TOTAL PIECES SHIPPED			
		---------- S U M M A R Y ----------			
		Total RX	946.08		
		NET AMOUNT	946.08		
		---------- DEPARTMENT SUMMARY ----------			

[redacted]

[redacted]

DATE
4/21/16

[redacted]

	3	3	CTPOTASSIUM ACET 2MEQ/ML 25X20ML	25SD		82.13	24639CT
This item is split:		2 In Tote 1	1 In Tote 2				

3 TOTAL PIECES SHIPPED

---------- S U M M A R Y ----------

Total RX	246.39
NET AMOUNT	246.39

---------- DEPARTMENT SUMMARY ----------

246.39

[redacted]

[redacted]

DATE
5/02/16

1	1	CT	POTASSIUM ACET 2MEQ/ML 25X20ML	25SD		82.13	8213CT
	1		TOTAL PIECES SHIPPED				

---------- S U M M A R Y ----------

Total RX	82.13
NET AMOUNT	82.13

---------- DEPARTMENT SUMMARY ----------

82.13

[redacted]

[redacted]

DATE
7/18/16

[redacted]

2	2	CT	POTASSIUM ACET 2MEQML 25X50ML	25MD			248.79	49758	CT
8	8	CT	ROCURONIUM 10MG/ML 10X10ML LF	10MD			45.49	36392	CT
2	2	CT	WATER 25X50ML STR INJ	25SD			43.01	8602	CT
8	8	CT	ETOMIDATE 2MG/ML 10X20ML	10SD			53.12	42496	CT
1	1	CT	DIAZEPAM 5MGML 10X10ML FTV C4	10MD	4		291.76	29176	SN
	21		TOTAL PIECES SHIPPED						

---------- S U M M A R Y ----------

Total RX	1664.24
NET AMOUNT	1664.24

[redacted]

Filing # 66946055 E-Filed 01/24/2018 09:56:06 AM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY, FLORIDA**

STATE OF FLORIDA

CASE NO. 1993-CF-870-A

v.

ERIC SCOTT BRANCH,
Defendant.
_____/

DEFENDANT'S DEMAND FOR PUBLIC RECORDS

The Defendant, **ERIC SCOTT BRANCH**, by and through undersigned counsel, hereby makes demand of the **DISTRICT EIGHT MEDICAL EXAMINER**, under Florida Rule of Criminal Procedure 3.852(h)(3) for public records pertinent to this case. In support, the Defendant states as follows:

1. Mr. Branch is under sentence of death. A Death Warrant was signed in Mr. Branch's case on January 19, 2017. His execution has been set for February 22, 2018.
2. Undersigned counsel represents that the records specifically described below:
    a. Are relevant to a pending death warrant proceeding
    b. Are not the subject of a previous objection
    c. Have not been previously produced
3. The records requested are as follows[1]:
    a. Copies of documents concerning post mortem examinations performed on Mark Asay, Michael Lambrix, and Patrick Hannon, including but not limited to autopsy narrative reports, notes, diagrams, photographs, and toxicology reports.

[1] The provisions of Fla. Stat. § 406.135 providing for the confidentiality of autopsy photographs and video and audio recordings does not apply to criminal proceedings. Fla. Stat. § 406.135(7). In fact, similar documents were provided to other death row inmates following the botched execution of Angel Diaz in 2006.

4. Pursuant to rule 3.852(h)(3), you shall, within 10 days from the date of this request, copy index, and deliver to the records repository any of these additional public records in the possession of your agency that pertain to this case; or file with the trial court and the parties an affidavit stating that no other records exist and that all public records have been produced previously.

WHEREFORE, the Defendant requests an order for the records described above.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic service to Charmaine Millsaps, Assistant Attorney General (Charmaine.Millsaps@myfloridalegal.com); Lisa Hopkins, Assistant Attorney General (Lisa.Hopkins@myfloridalegal.com); and John Molchan, Assistant State Attorney)jmolchan@sa01.org); and by U.S. Mail to Dr. Richard Hamilton, District Eight Medical Examiner, 606 SW 3rd Avenue, Gainesville, FL 32601 and to Eric Scott Branch, DOC #313067, Florida State Prison, P.O. Box 800, Raiford, FL 32083; on this date, January 22, 2018.

Respectfully submitted,

/s/ Stacy R. Biggart
STACY R. BIGGART
Asst. CCRC-North
Florida Bar No. 0089388
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922 x. 114
Stacy.Biggart@ccrc-north.org

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Asst. CCRC-North
Florida Bar No. 99527
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922 x. 101
Kathleen.Pafford@ccrc-north.org

Filing # 66946337 E-Filed 01/24/2018 09:58:49 AM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY, FLORIDA**

STATE OF FLORIDA

CASE NO. 1993-CF-870-A

v.

ERIC SCOTT BRANCH,
Defendant.
_____/

DEFENDANT'S DEMAND FOR PUBLIC RECORDS

The Defendant, **ERIC SCOTT BRANCH**, by and through undersigned counsel, hereby makes demand of the **STATE ATTORNEY'S OFFICE, FIRST JUDICIAL CIRCUIT**, under Florida Rule of Criminal Procedure 3.852(h)(3) for public records pertinent to this case. In support, the Defendant states as follows:

1. Mr. Branch is under sentence of death. A Death Warrant was signed in Mr. Branch's case on January 19, 2017. His execution has been set for February 22, 2018.
2. Undersigned counsel represents that the records specifically described below:
    a. Are relevant to a pending death warrant proceeding
    b. Are not the subject of a previous objection
    c. Have not been previously produced
3. The records requested are as follows:
    a. Any files, records, reports, letters, memoranda, notes, drafts, and/or electronic mail in the possession or control of your agency since Mr. Branch's last request[1]; and/or any documents, that were, for any reason, not produced previously.
4. Pursuant to rule 3.852(h)(3), you shall, within 10 days from the date of this request, copy index, and deliver to the records repository any of these additional public records in the

[1] It appears that Mr. Branch made a previous request to the State Attorney's Office in 1999.

possession of your agency that pertain to this case; or file with the trial court and the parties an affidavit stating that no other records exist and that all public records have been produced previously.

WHEREFORE, the Defendant requests an order for the records described above.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic service to Charmaine Millsaps, Assistant Attorney General (Charmaine.Millsaps@myfloridalegal.com); Lisa Hopkins, Assistant Attorney General (Lisa.Hopkins@myfloridalegal.com); and John Molchan, Assistant State Attorney (jmolchan@sa01.org); and by U.S. mail to Eric Scott Branch, DOC #313067, Florida State Prison, P.O. Box 800, Raiford, FL 32083; on this date, January 22, 2018.

Respectfully submitted,

/s/ Stacy R. Biggart
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Asst. CCRC-North
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(850) 487-0922 x. 101
Kathleen.Pafford@ccrc-north.org

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

vs. CASE NO: 1993-CF-000870 A

ERIC SCOTT BRANCH,

Defendant.

_____/

Proceedings held in the above-styled cause before the Honorable Edward P. Nickinson, III, Circuit Judge, on the 23rd day of January 2018, at the M.C. Blanchard Judicial Building, 190 Governmental Center, Pensacola, Florida 32502.

FILED IN OPEN COURT
ESCAMBIA COUNTY, FLA.
2018 JAN 24 P 2:31
ERNIE LEE MAGAHA
CLERK OF THE CIRCUIT COURT
FILED & RECORDED

SHARON K. McMURRAIN, RPR, RMR
CIRCUIT COURT REPORTER

APPEARANCES:

FOR THE STATE:	JOHN A. MOLCHAN, ESQUIRE Assistant State Attorney 190 Governmental Center Pensacola, Florida 32502
(Via Telephone)	CHARMAINE M. MILLSAPS, ESQUIRE Assistant Attorney General Office of the Attorney General The Capitol, PL-01 Tallahassee, Florida 32399
FOR THE DEFENDANT: (Via Telephone)	STACEY R. BIGGART, ESQUIRE KATHLEEN PAFFORD, ESQUIRE Assistant Capital Collateral Regional Counsel, North 1004 DeSoto Park Drive Tallahassee, Florida 32301
(Via Telephone)	S. DOUGLAS KNOX, ESQUIRE Quarles & Brady, LLP 101 East Kennedy Boulevard Suite 3400 Tampa, Florida 33602
(Via Telephone)	BILLY NOLAS, ESQUIRE Federal Public Defender 227 N. Bronough Street, Suite 4200 Tallahassee, Florida 32301
FOR FDLE: (Via Telephone)	JANINE ROBINSON, ESQUIRE Assistant General Counsel Florida Department of Law Enforcement P.O. Box 1489 Tallahassee, Florida 32301
FOR FDOC: (Via Telephone)	RYAN PADGETT, ESQUIRE Florida Department of Corrections 501 South Calhoun Street Tallahassee, FL 32399
STAFF ATTORNEY:	ADELE W. GIBSON, ESQUIRE Senior Staff Attorney 190 Governmental Center Pensacola, Florida 32502
ALSO PRESENT:	TONYA THIBODEAUX JESSICA EVERETT

P R O C E E D I N G S

MS. MILLSAPS: This is Assistant Attorney General, Charmaine Millsaps.

MS. BIGGART: Your Honor, this is Stacey Biggart, with CCRC North. I'm joined by my counsel, Kathleen Pafford, who is with CCRC North, and I also have Billy Nolas, and he is the Chief of the Capital Habeas Unit at the Federal Public Defender's Office.

THE COURT: Thank you.

MS. ROBINSON: Good afternoon, Your Honor. Janine Robinson on behalf of the Florida Department of Law Enforcement.

MR. PADGETT: Your Honor, this is Ryan Padgett and Phillip (unintelligible), Department of Corrections.

THE COURT: Very good. Let me ask those who are seated at the table here with me to identify themselves for the record.

MS. GIBSON: Adele Gibson, Staff Attorney.

MS. THIBODEAUX: Tonya Thibodeaux, Appeals Clerk.

MS. EVERETT: Jessica Everett, Appeals Clerk.

MR. MOLCHAN: John Molchan, Assistant State Attorney.

THE COURT: All right. I think that's a full

complement.

MR. KNOX: And, Your Honor, one more on the line here. This is Doug Knox for Mr. Branch.

THE COURT: Thank you, Mr. Knox. I wasn't sure whether you were attending this or not. Glad to have you.

We have-- our primary purpose today is scheduling and I have competing motions. I took it upon myself to go ahead and put out something yesterday having to do with deadlines for public records requests and a response thinking we ought to get that on the road. That's negotiable. I think this afternoon was the deadline on that.

And one other thing that we probably ought to establish, because I think all of you except those of us who are in this room where I am, are on Eastern time and we are on Central time, is we ought to at least come to an agreement about whether the times in various orders and motions is going to be Eastern or Central, and we probably should designate that so that there's not any confusion. I don't care which.

(Pause in proceedings)

THE COURT: Well, since nobody is proposing anything, shall we make all times Eastern time, but let's state, "Eastern time"?

If we make it Central time, that may have people with some deadlines after close of business in the Eastern time zone.

All right. The State filed a motion for a scheduling order that would have placed case management conference actually a little earlier than this today, and then would have set public records requests for this afternoon, actually-- but assuming this is Eastern time, about an half an hour from now.

Defendant, I think, has asked for about one extra day in getting started; is that right?

MS. BIGGART: Yes, sir. We have the order you issued yesterday. We are filing our public records request by tomorrow.

THE COURT: Okay.

MR. NOLAS: Your Honor, this is Billy Nolas. Maybe I can send out a thought to try to resolve the scheduling completing filing.

THE COURT: Yes, sir, by all means.

MR. NOLAS: So the way I see it is we have an order from the Florida Supreme Court requiring that the case get to them on February 5th. So between now and that date, the idea is for us to have both parties and the Court get everything done that needs to be done so that it can be up at the Florida Supreme Court,

whichever way Your Honor rules, one way or the other, but so that it can be there in proper fashion.

So my thinking, and Ms. Pafford's thinking, and Ms. Biggart's thinking, and we have been consulting and working on our thoughts over the last several days, is to have the public records request filed tomorrow. We then have a schedule that proposes the Defense filing under Rule 3.851 to be on Tuesday, the 30th.

And I'll give Your Honor a little bit of background why that makes sense. We have had Mr. Branch evaluated. You will ultimately have one and possibly two mental health experts submitting reports in support of the claims, at this point, punitive claims, that Your Honor is going to see next week.

The experts have informed us that one of them will be ready with the report on Sunday the 28th. We told her to expedite. We told her we did not have a schedule from Your Honor at that time or even the filings, but we did have the Florida Supreme Court's order. And so she's going to be working through the week and she will have her report to us on the 28th.

We have an investigator who has been on the road this week developing and looking into some information that we think might be something for the Court to consider. He is out of town and he will be

back on the 27th, and whatever he has available will be provided to the expert, who will complete the report by the 28th. And then the second expert should probably be done by the 29th-- no later than the 29th.

So as a predicate for our filing, Ms. Biggart, Ms. Pafford and I need this information from the experts and from the investigator so that we can file something with Your Honor that is not speculative and that doesn't-- I don't know if Your Honor has seen these kind of pleadings, but they kind of say, oh, well, there's all sorts of stuff we are still gathering, but we are not done.

What we would like to do is gather everything, package it and file it in a pleading so that Your Honor has no additional investigative loose end after we file.

So that's why my thinking is if we can make the Defense filing on the 30th, then Your Honor can schedule a *Huff* hearing on the 1st, which is a Thursday, and the State has that opportunity in between our filing and the *Huff* hearing to make a filing of its own.

Depending on how things go at the *Huff* hearing, and I am hopeful and always confident that we will persuade you to hold an evidentiary hearing. So

assuming that we are persuasive in that regard, Your Honor can hold a hearing on February the 2nd and that would give us the weekend if the hearing takes more than a day, and then Your Honor has all of Monday after the weekend, and the case can be wrapped up and sent to the Florida Supreme Court by the 5th.

So that's essentially the schedule that Ms. Biggart has proposed to you. And my thinking is, given where we are, and what we are trying to do, and the constraints on everybody, there's a logic to following the schedule that Ms. Biggart has suggested.

THE COURT: It strikes me that that doesn't allow the State much time to prepare to respond.

MR. MOLCHAN: Or to have him evaluated.

THE COURT: Or, as Mr. Molchan I think was about to say, get its own evaluation; nor does it allow the Court much time, if I'm supposed to be done by -- I mean, basically you've got me holding a hearing Friday, maybe Saturday, and then by Monday I need to have the order prepared.

MR. NOLAS: Well, Your Honor, in that regard, the State, in its own proposed order, gave themselves 24 hours to respond, which makes sense. Ms. Millsaps and Ms. Hopkins are very experienced and knowledgeable, and they are very good at getting things done quickly.

In terms of the State evaluation, if Mr. Molchan believes that's necessary, that can be done at the hearing itself instead of at the prison.

You will not have objections from the Defense, you know, in terms of things needing to be done on the fly because we are all working on the fly. So it's not going to be the kind of thing where you have to schedule something at the prison, and give us notice and all that kind of stuff. We will all-- if Your Honor agrees to hold the hearing, we will all be there with you at the hearing. Mr. Branch will be there at the hearing and if the State wants to conduct an evaluation while we are all there, we are not going to have an objection in that regard.

THE COURT: Well, I imagine you would-- I want to be sure I understood you correctly.

You've got two experts evaluating Mr. Branch and you want another five or six days for them to get done, but you are proposing that an expert retained by the State would evaluate Mr. Branch at the hearing?

MR. NOLAS: Yes. And the reason I say that is I've done many death forum cases where that was actually the process that was followed. You know, of course-- and I'm being partially facetious-- if the State believes it needs additional time for its

evaluation, we can always agree to a stay or to modify the Florida Supreme Court's schedule.

I can't believe Mr. Molchan is going to do that, however, so I'm just proposing this because it's worked this way in other cases.

The thing, however, is we do not have our expert proffer in hand and we won't have it until Sunday/Monday. And so again, you know, we can file something now, but it's going to be a very speculative pleading and it's not going to move the ball, Your Honor, without --

MS. MILLSAPS: Your Honor, this is the Attorney General's office --

MR. NOLAS: Charmaine, hang on a second.

Without the expert reports from the Defense, you know, you are going to have a speculative pleading, and then you will have the reports filed afterwards and it seems to me to be, you know, not the most wise approach.

THE COURT: Ms. Millsaps.

MS. MILLSAPS: Your Honor, maybe what we could do is we could have him file the motion Monday the 29th, early. I could file my answer early on Tuesday. We can have the *Huff* hearing on the afternoon, but we need to have an evidentiary hearing, you know, Friday.

And no, Your Honor, we do not-- we don't even know what we are talking about. What kind of expert?

THE COURT: I understand that. That's why I was a little taken aback at the idea of your having an expert in something or other and by then-- by the time of the hearing I guess you would know what kind of expert you would need. But the idea of having your expert evaluate somebody at the hearing strikes me as -- but let's back up.

Ms. Millsaps, are you telling me you would be satisfied with the motion to be filed Monday next week, early?

MS. MILLSAPS: Yes, Your Honor. Yes. Their motion early so that-- I do want to grant them some time.

THE COURT: All right.

MS. MILLSAPS: And then my answer due on the 30th, and we hold a *Huff* hearing that afternoon. So we would have --

THE COURT: Monday afternoon?

MS. MILLSAPS: Tuesday afternoon, after my answer.

THE COURT: Tuesday afternoon. That's right. I'm sorry. The 30th is Tuesday.

MS. MILLSAPS: Yes.

So it would be the 29th in the morning for their-- you know, like 10:00 our time-- for their successive motion. My answer within 24 hours, so that would be Tuesday at 10:00. And what we could do is hold a *Huff* hearing in the afternoon obviously by phone.

And I still would -- and, Your Honor, quite frankly, since they are already having these experts examine him, they know what kind of experts they are. I would like Your Honor to have them tell me what kind of expert.

THE COURT: I think the nature of that needs to be disclosed. You shouldn't have to wait until you get the reports.

MS. MILLSAPS: Yes, Your Honor.

THE COURT: I'm assuming we are talking something psychological but --

MS. MILLSAPS: Is it an intellectual disability claim?

Is it a-- you know, "psychological" covers a lot of ground, Your Honor.

THE COURT: Well, I don't know any reason that can't be disclosed within the next couple of days.

MS. MILLSAPS: No. Just-- well --

THE COURT: I'm talking about general. They

don't have to give you what the opinion is.

MR. NOLAS: Your Honor, I mean, again, we are all under constraints. So if what Charmaine is thinking is we can send an email to her in the next couple of days summarizing where we are going with the mental health issue, I'm happy to do that. Ms. Biggart and Ms. Pafford do not have --

THE COURT: That's what really I had in mind was something to at least give them an idea of what flavor of psychological expert they might need.

MR. MOLCHAN: Well, Judge, in looking --

MR. NOLAS: When we do that, we can copy Mr. Molchan as well.

MR. MOLCHAN: Yes.

MR. NOLAS: I don't know that Your Honor should get that because I think you should wait to see the pleading itself instead of these discovery type exchanges between the parties.

THE COURT: I don't particularly care whether I do.

Mr. Molchan.

MR. MOLCHAN: Well, Judge, you know, I think that we do need to know as early as possible where they are going. I mean, in the record already in this case is the testimony of Dr. Dupre-- I think it's Dupree or

something or Lee-- Lee-- Dee or something like that-- where he indicates that Mr. Bryant (sic) has a 115 I.Q overall and some other aspects in a lengthy report.

THE COURT: Branch.

MR. MOLCHAN: Mr. Branch-- I'm sorry-- has a lengthy, you know, report that's already there. So I really would like to know where they are going with this so we can figure out if we need an expert at all. I mean, I think that's what we would like to know as soon as possible in this regard.

MR. NOLAS: So, Your Honor, let me just throw this out. It's Tuesday. We will be conferring with our experts during the week. We can have an email out to Ms. Millsaps and Mr. Molchan on Friday.

THE COURT: Let's make it Friday morning, 10:00 Eastern.

MR. NOLAS: Yes, Your Honor.

THE COURT: All right. So then we are talking motion in by 10:00 a.m. on Monday, which is the 29th, response by Tuesday morning, same time, 10:00, and then a *Huff* hearing Tuesday afternoon.

MS. MILLSAPS: Yes, Your Honor.

THE COURT: 3:00 Eastern; does that work?

MR. NOLAS: That works, Your Honor.

Our inclination, myself, Ms. Biggart and

Ms. Pafford, is to come out in person for the *Huff* hearing.

THE COURT: All right.

MR. NOLAS: Obviously, capital cases are high stakes cases, and our client's life is on the line, and there were victims involved originally, so we always try to attend to these things with the care and the professionalism that they are due. So the three of us will be there in person.

THE COURT: Very good. And then we will look at Friday for the evidentiary hearing, if needed.

MS. MILLSAPS: Well, Your Honor, I think Friday is a mistake, as far as --

THE COURT: Thursday is okay with me.

MS. MILLSAPS: How about -- how about-- how about Thursday, so that if it does run over, we would have Friday to finish it?

THE COURT: I certainly prefer-- yeah. I certainly prefer that to going into Saturday, if, for no other reason, that I've got an order to write that needs to be out on Monday.

MR. NOLAS: So, Your Honor, let me-- let me make this suggestion: Why don't we do Thursday as a tentative date?

And the reason I say that is because we have

not checked with the experts themselves.

Just so Your Honor knows, we are not billing the Court for any of the expert services. But, you know, if the experts were to say, hey, we can be there at 6:00 a.m. Friday morning, but Thursday, you know, there's a medical procedure or something that I don't know about, that's something we would --

THE COURT: Well, let's set it-- let's set it for Thursday and if you need Friday instead, we will cross that bridge when we come to it. We will be holding a hearing or two between now and then. And you have got all this week to talk with them-- all this week and a couple of days next week to talk with them to see whether scheduling is a problem on Thursday. It's just as likely --

MS. MILLSAPS: Your Honor, even if it is, sometimes we can -- they can present their expert by telephone.

THE COURT: I understand. We can probably even do a video hookup if we need to.

MS. MILLSAPS: All right, Your Honor.

THE COURT: I have that capacity here.

Yeah. Thank you, Adele.

Do we have a compliance date set for public records request-- should we?

MS. BIGGART: Yes, Your Honor, I think we have-- ours are due tomorrow. Their response is due on Thursday, and if we need to have a hearing on any objections, we will need to set it for Friday.

I'm sorry. This is Stacey Biggart.

THE COURT: All right. So whatever agencies-- I'm just wondering how do the agencies that you are making a request from know that?

MS. BIGGART: I'm sorry, Your Honor? Know what they are required to do?

THE COURT: Yeah. And how do they know when there will be a hearing, if need be?

Do you put that in your request?

MS. BIGGART: Yes, sir, we will.

There are a few of the agencies on the call right now. Actually, FDLE are on the phone. So they're aware.

And then, also, whenever we serve them, we will also courtesy call those agencies and let them know, and send them a copy of the order, and I'm sure that they will probably contact the State as well.

THE COURT: All right. What else do we need to do today?

MR. NOLAS: I think that's it for today, Your Honor, from the Defense perspective.

The only sort of footnote is with the morning filing on the 29th, if one of the expert reports is not completely done by then, you know, I'll just request now that Your Honor give us leeway and maybe we can file it later that day. We will be able to put the pleading together.

THE COURT: As soon as possible, but your pleading is due that morning.

MR. NOLAS: Right; that's what I'm thinking. We will get the pleading in, and then what we will do if we don't have all the reports in hand, we will get them to you that day. It may not be with the pleading, though.

MS. MILLSAPS: But, Your Honor, it will have to be that day because it's impossible for me to answer something I don't have.

THE COURT: Right.

MS. MILLSAPS: Is the objection on the public records hearing, what time is that going to be on Friday?

THE COURT: What time do you want?

I'm working around your schedule. I actually have a trial scheduled on Friday, but I can work around that.

MS. BIGGART: Your Honor, I believe your order

set it for-- within the scheduling order that you sent out, said that it would be --

THE COURT: I don't have that in front of me. I frankly didn't remember --

MS. BIGGART: I'm sorry, Your Honor. I'm looking, so...

THE COURT: Okay. Here it is. Actually, it doesn't address that. It says that objections have to be made by Thursday at 3:00 p.m. Central Standard Time and it doesn't set a time.

The better thing for me would be to set it at something like, say, 4:00 Eastern time. Is that likely to be a long --

MS. BIGGART: Your Honor, that's what I proposed in my proposed standing order is that we do it, I guess it will be 3:00 Central, but 4:00 Eastern time --

THE COURT: Yeah.

MS. BIGGART: -- on Friday the 26th?

THE COURT: Works for me.

MS. GIBSON: Was that the hearing?

THE COURT: That's the hearing on any objections to-- it's going to be 4:00 Eastern, 3:00 Central.

MS. BIGGART: Okay, Your Honor, thank you very

much.

And we can call in for that hearing?

THE COURT: Yes.

MS. MILLSAPS: And what time would the evidentiary hearing begin on Thursday, Your Honor?

MR. MOLCHAN: Friday-- I think you said Friday.

THE COURT: Sometime Thursday morning --

We are talking about the following Thursday, Mr. Molchan.

MR. MOLCHAN: Okay.

THE COURT: As far as I'm concerned, within reason, as early as possible. I mean, I'm going to be here, obviously. Some of you have to travel.

MR. MOLCHAN: It's really 9:00 Central time.

MS. MILLSAPS: 9:00 your time --

THE COURT: It's okay with me.

MS. MILLSAPS: -- or earlier? I don't know when you start, Your Honor.

THE COURT: For the last four years, twice a week I've had hearings at 7:15 on Tuesdays and Thursdays morning, that's drug court and Veterans Treatment Court. I'm not doing that anymore. So I can start pretty much as early as you want. I don't think we need to start that early. I will be happy to start

either at 8:30 or 9:00 Central time if you want.

MS. MILLSAPS: 9:00 sounds good to us, Your Honor. We will drive on over.

Your Honor, will you be preparing a written order --

THE COURT: Yes.

MS. MILLSAPS: -- detailing all these times?

THE COURT: Yes.

I'm turning to Ms. Gibson sitting next to me who is the staff attorney, and she says, yes, we will.

MS. MILLSAPS: Thank you, Your Honor.

THE COURT: All right. If we have accomplished what we need to today, then we will be adjourned.

MR. PADGETT: Your Honor, this is Ryan Padgett from the Department of Corrections.

THE COURT: Yes, sir.

MR. PADGETT: If I may, we would anticipate, although we haven't received a demand for records, we would anticipate that the defendant will be requesting his medical records.

THE COURT: Yes, sir.

MR. PADGETT: And we will need a medical release form to release those. We already have them in hand. We just need the release from the defendant.

THE COURT: Well, you know where he is. Do you need --

MS. MILLSAPS: We will take care of it, Your Honor.

THE COURT: Do you need approval from his counsel to talk to him about it?

MS. MILLSAPS: We will take care of the release. No problem.

THE COURT: All right.

MS. BIGGART: Thank you.

THE COURT: Very good.

MR. PADGETT: And, Your Honor, the second thing is, we do have the records in hand. We are looking through them right now. Is there a due date for when we need to put those in a repository. Do you anticipate we can have them in by Friday before the hearing?

THE COURT: I would have thought --

MS. PAFFORD: Your Honor, this is Kathleen Pafford. May I interject?

THE COURT: Yes, please.

MS. PAFFORD: We need to get those records to our experts. So if I was to email Mr. Padgett a signed notarized copy of the release for Mr. Branch, if he could email those records directly to me and then place

a copy of in the repository, I think that might be best.

THE COURT: Yeah. I should say talking about it, I mean, obviously both sides-- both the State and the Defense need those not by the time of the evidentiary hearing but well before, and I could see where their experts for either side might want to see them, too.

MS. MILLSAPS: Your Honor, I don't know how big these records are. They are traditionally very big. I'm not sure emailing them-- I do not know-- DOC needs to speak up regarding --

MS. ROBINSON: I would be happy to go to Mr. Padgett's office and pick them up myself.

THE COURT: I was going to say you are all located --

MR. PADGETT: I can just tell you we have received the records. I think there are 3,650 total pages, and that includes the medical classification and central records.

MS. BIGGART: Okay. Mr. Padgett, I will email you and I will arrange a time to come pick those up.

THE COURT: The idea that anybody can do anything useful with that much in the next two weeks is boggling.

MS. GIBSON: Can we clarify?

THE COURT: Ms. Gibson, yes.

MS. GIBSON: To just clarify with regard to the public records request, we are saying objections are due by Thursday at 3:00 and that was-- and then a hearing on any objections? What was the time?

THE COURT: 3:00 our time, 4:00 Central (sic) on Friday of this week.

MS. GIBSON: On Friday. Okay. So Friday, that was Eastern 3:00. Okay. And the 3:00 on Thursday is Eastern time?

THE COURT: That's Central.

MS. GIBSON: Central. Okay.

THE COURT: Yeah, and to be real honest, I think I'll have my jury out by then so I will be able to do it without having to ask somebody else to cover. If I have to ask somebody else to cover my jury trial this Friday, I will do it. This case will take priority, but I may be able to work both in.

MR. NOLAS: Your Honor, this is Billy Nolas again.

THE COURT: Yes, sir.

MR. NOLAS: Listening to your conversation and our own sort of note patching here, maybe we should all just stick to Central time.

THE COURT: All right. That's fine.

MR. NOLAS: That way you're familiar-- it makes life easier. Because if you all keep switching it to Eastern time in your head-- let's just say Central, and we will go Central.

THE COURT: Fine by me.

MR. NOLAS: We will keep it at that.

THE COURT: We will translate all these settings to Central time, and when we have a time, it will mean Central time in anything in writing.

MS. BIGGART: That's so much easier.

THE COURT: It's easier for me. That's the time I'm getting up and going to bed on.

All right. Anything else we need to do today?

MS. BIGGART: Not from the Defense, Your Honor.

THE COURT: Then I thank you all. We will be adjourned. I will look forward to hearing from you and seeing you.

MR. NOLAS: Thank you, Your Honor.

THE COURT: All right. Good afternoon.

(Proceedings concluded)

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF ESCAMBIA

I, SHARON K. MCMURRAIN, RPR, RMR, Official Court Reporter, do hereby certify that the foregoing, being pages numbered 1 through 25, inclusive, is a true and correct transcript of the proceedings held in the case of STATE OF FLORIDA vs. ERIC SCOTT BRANCH, Case No. 1993 CF 000870 A, on the 23rd day of January 2018, before the Honorable Edward P. Nickinson, III, Circuit Judge, at 190 Governmental Center, Pensacola, Florida.

IN WITNESS WHEREOF, I have hereunto set my hand, this the 24th day of January 2018.

Sharon K McMurrain

SHARON K. MCMURRAIN, RPR, RMR
Official Circuit Court Reporter

Filing # 66991366 E-Filed 01/24/2018 04:24:00 PM

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA

vs.

ERIC SCOTT BRANCH,

Defendant.
_____/

CASE NO.: 1993-CF-00870

DEATH WARRANT SIGNED EXECUTION SCHEDULED FOR FEBRUARY 22, 2018

THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT'S RESPONSE AND OBJECTIONS TO THE DEFENDANT'S DEMAND FOR PUBLIC RECORDS

COMES NOW, the Florida Department of Law Enforcement ("FDLE"), by and through undersigned counsel, and submits its Response and Objections to Defendant ERIC SCOTT BRACH'S ("Defendant") Demand for Public Records ("Response").

1. FDLE received the Defendant's Demand for Public Records ("Demand") under Florida Rule of Criminal Procedure 3.852(h)(3) ("Rule 3.852") on January 24, 2018. The Defendant requests "all public records" relating Florida's lethal injection protocol, including but not limited to a) logs or record books regarding the procurement, storage of the drugs used; b) manufacturer, package inserts or shelf lives; and c) records regarding the most recent executions of Mark Asay, Michael Lambrix and Patrick Hannon.

2. FDLE acknowledges receipt of prior demands for additional public records from the Defendant. However, none were related to lethal injection records and the Defendant fails to otherwise meet his burden, comply with Rule 3.852 and well-establish case law, warranting denial of the Demand.

3. Even in postconviction proceedings, Florida's Public Records Act is to be liberally construed in favor of openness and exemptions from disclosure are to be construed narrowly and limited in their designated purpose. *See, Lightbourne v. McCollum*, 969 So.2d 326,

332 (Fla. 2007). However, demands under Rule 3.852 are not limitless. Instead, Rule 3.852 "is a carefully tailored discovery rule for public records production" which is designed to "limit postconviction requests for additional records". *See*, *Sims v. State*, 753 So.2d 66, 69 (Fla. 2000); and *Valle v. State*, 70 So.3d 530, 548 (Fla. 2011).

4. It is clear that under Rule 3.852(h)(3), a capital defendant must "clearly demonstrate how the records were *relevant to a colorable claim*." *Muhammad f/k/a Thomas Knight v. State*, 132 So.3d 176, 201 (Fla. 2013) (emphasis added). Nor, may the demand be "overly broad". *Id.* The Florida Supreme Court has consistently held that "requests for records under rule 3.852(h)(3) may be denied as *far exceeding the scope* of subsection (h)(3) if they are over broad, *of questionable relevance and unlikely to lead to discoverable evidence*." *Correll v. State,* 184 So.3d 478, 490 (Fla. 2015) (emphasis added) (Rule 3.852(h) demand for lethal injection records to FDLE denied), citing, *Muhammad*. *See also*, *Mills v. State*, 786 So.2d 547, 552 (Fla. 2001); and *Rutherford v. State*, 926 So.2d 1100, 1117 (Fla. 2006) (Rule 3.852(h)(3) demand to FDLE denied where records did not relate to a colorable claim for postconviction relief).

5. Regarding requests for records regarding lethal injection, the *Rutherford* Court specifically stated that such requests "are not authorized under rule 3.852(h)(3), which is designed to allow an update of records previously requested [and the records are not related to a colorable claim for relief . . .". *See also*, *Rolling v. State*, 994 So.2d 176, 181 (Fla. 2006). Although the Defendant has made prior requests of FDLE, no lethal injection records were requested or provided. Therefore, no records require updating.

6. To meet his burden, the Defendant "must show *how* the requested records relate to a colorable claim for postconviction relief. . .". *See*, *Mann v. State*, 112 So.3d 1158, 1163

(Fla. 2013); and *Valle*, 70 So.3d *at* 549 (emphasis added). *See also*, *Chavez v. State*, 132 So.3d 826, 829 (Fla. 2014). The Defendant did not state why the records are requested or how they are to be used.

7. Instead, the Defendant merely offered a generic statement that the records "are relevant to a pending death warrant" and attached his Exhibit "A", with nothing more. The Defendant has made no challenge Florida's lethal injection protocol and the Demand is devoid of any argument that the current procedure is very likely to lead to needless suffering or substantial risk of severe pain. *See*, *Correll*, 184 So.3d at 489.

8. FDLE draws this Court's attention to the facts that defendants Asay, Lambrix and Hannon all filed demands for public records regarding lethal injection records of FDLE, post death warrant. All were executed under the revised protocols.

9. In all three (3) cases, the respective trial courts unequivocally *rejected the lethal injection demands* directed to FDLE and sustained its objections. The Florida Supreme Court subsequently upheld those denials, finding no abuse of discretion. See, *Asay v. State*, 224 So.3d 695 (Fla. 2017); and *Hannon v. State*, 228 So.3d 505 (Fla. 2017).[1]

10. Because the Demand is devoid of factual or legal argument, the Defendant's objectives may be presumed to challenge Florida's validated revised protocol and lethal injection method of execution and further delay execution. To this end, the *Hannon* Court recently stated, "[i]n the past, we have not condoned 'eleventh hour attempt[s] to delay execution' with records requests, and we will not begin now." *Hannon*, 228 So.3d at 512.

11. In addition to *Asay* and *Hannon*, the Florida Supreme Court has discussed demands for records relating to lethal injection, which were summarily rejected:

[1]/ The trial court denied Lambrix Rule 3.852(i) request for lethal injection records, but it does not appear that it was challenged on appeal.

a. *Dennis v. State*, 109 So.3d 680, 700 (Fla. 2012) (abuse of discretion to grant FDLE and DOC's objections to request for lethal injection records and deny defendant's claim that he was "deprived of his rights under chapter 119, Florida Statutes and [Rule 3.852]");

b. *Muhammad,* 132 So.3d at 203 (Fla. 2013) (demand for lethal injection records to FDLE and other agencies properly denied, as "voluminous", "overbroad and burdensome" and "would not lead to a colorable claim.");

c. *Pardo*, 108 So.3d at 565-566 ("information concerning the source of the drugs has been held not to present a cognizable lethal injection claim.");

d. *Valle,* 70 So.3d at 549 ("requests related to actions of lethal injection personnel in past executions do not relate to a colorable claim concerning future executions");

e. *Chavez*, 132 So.3d at 829-30 (denial of request for information about acquisition, manufacture, or distribution of drugs used in Florida's lethal injection protocol); and

f. *Walton v. State,* 3 So.3d 1000, 1014 (Fla. 2009) (production of records related to lethal injection is unlikely to lead to a colorable claim for relief).

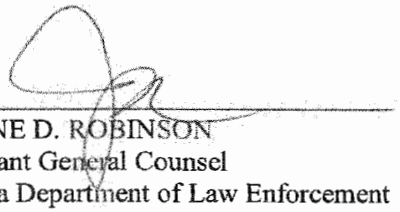
12. The Florida Supreme Court has "long acknowledged that the public records procedure under the [Rule 3.852] is *not intended* to be a procedure authorizing a *fishing expedition* for records *unrelated to a colorable claim for postconviction relief.*" *See, Muhammad*, 132 So.3d at 200, quoting *Valle*, 70 So.3d at 549; *Correll*, 184 So.3d at 490; *Moore v. State*, 820 So.2d 199, 204 (Fla. 2002), and *Glock v. Moore*, 776 So. 2d at 253 (emphasis added). The Defendant made no legally or factually supported argument, nor did he offer any rationale for the lethal injection records. This is precisely the sort of fishing expedition and delay tactic which is expressly disallowed.

13. This Court is granted the discretion to deny the "request for production" where the "voluminous request was overbroad and burdensome, and the possibility relevance to a colorable claim was not established." *Muhammad*, 132 So.3d at 203. The Court may also deny the request where it is of "questionable relevancy and is unlikely to lead to discoverable evidence." *Valle*, 70 So.3d at 548-549. A trial court's denial of a records request will be reversed only upon the Florida Supreme Court's finding of *abuse of discretion. Dennis*, 109 So.2d at 698. This Court's discretion is "abused only when the judicial action is arbitrary, fanciful or unreasonable, which is another way of saying that discretion is abused only where no reasonable person would take the view adopted by the trial court". *See, Banks v. State,* 150 So.3d 797, 802 (Fla. 2014); *Correll*, 184 So.3d at 490*; Muhammad*, 132 So.3d at 200, citing *State v. Coney*, 845 So.2d at 137; and *Dennis*, 109 So.3d at 700.

CONCLUSION

WHEREFORE, the Florida Department of Law Enforcement submits that the Demand fails to establish a colorable claim or appear reasonably calculated to lead to the discovery of admissible evidence and asks this Honorable Court to deny the Defendant's Demand for Public Records, for the reasons set forth above.

Respectfully submitted,



JANINE D. ROBINSON
Assistant General Counsel
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489
Telephone: (850) 410-7676
JanineRobinson@fdle.state.fl.us
Florida Bar No. 865966

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, via the E-Filing portal and electronic mail, this 24 day of January, 2018.

The Honorable Edward P. Nickinson, III
First Circuit, Escambia County, FL
M.C. Blanchard Judicial Building
190 Government Center
Pensacola, Florida 32502
Email: judge.nickinson@flcourts.gov; Laurie.jenkins@flcourts1.gov

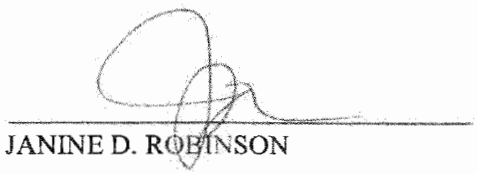
Charmaine Millsaps, Assistant Attorney General
Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
Email: charmaine.millsaps@myfloridalegal.com

Ryan Padgett, Esquire
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, FL 32399
Email: ryan.padgett@fdc.myflorida.com

John Molchan, Assistant State Attorney
Office of the State Attorney, 1st Judicial Circuit
190 Government Center
Pensacola, Florida 32502
Email: JMolchan@sa01.org

Stacy Biggart, Assistant CCRC-North
Kathleen Pafford, Assistant CCRC-North
Capital Collateral Regional Counsel
1004 DeSoto Park Drive
Tallahassee, FL 32301
Email: Stacy.Biggart@ccrc-north.org; kathleen.pafford@ccrc-north.org

S. Douglas Knox, Esquire
Quarles & Brady, LLP
101 East Kennedy Boulevard, Suite 3400
Tampa, FL 33602
Email: doug.knox@quarles.com



JANINE D. ROBINSON

Filing # 67007536 E-Filed 01/25/2018 09:14:00 AM

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

CAPITAL CASE
DEATH WARRANT SIGNED- EXECUTION SET FOR FEBRUARY 22, 2018, AT 6:00 P.M.

v.

ERIC SCOTT BRANCH,

Defendant.

Case No.: 1993 CF 000870 A
Div.: A
/ S. Ct. No.: SC83805

ORDER ON CASE MANAGEMENT CONFERENCE AND SCHEDULING

THIS MATTER came before the Court for a case management conference on January 23, 2018. Present at the hearing was Assistant State Attorney John Molchan. Attending by telephone were Assistant State Attorney Charmaine Millsaps; Assistant Capital Collateral Regional Counsel Stacy Biggart and Kathleen Pafford; Assistant Federal Public Defender Billy Nolas; Douglas Knox, Esq.; Janine Robinson, Records Custodian, Florida Department of Law Enforcement; Ryan G. Padgett, Senior Attorney, Florida Department of Corrections; and Philip Fowler, Assistant General Counsel, Florida Department of Corrections.

On Monday, January 22, 2018, the Court issued an Interim Scheduling Order to address in part the State's Motion for Scheduling Order and Defendant's Response to the State's Motion for Scheduling Order. Having had heard further from the above persons, filing deadlines and hearing dates are scheduled as follows:[1]

[1] All times are Central Standard Time.

- Defendant shall file any additional public records requests by Wednesday, January 24, 2018, at 3:00 p.m.
- Any objections to the public records requests shall be made by Thursday, January 25, 2018, at 3:00 p.m.
- If needed, a hearing on the public records requests and any objections thereto is set for Friday, January 26, 2018, at 3:00 p.m.
- Defendant's successive postconviction motion shall be filed by Monday, January 29, 2018, at 9:00 a.m.
- The State's answer shall be filed by Tuesday, January 30, 2018, at 9:00 a.m.
- A *Huff* hearing shall be held Tuesday, January 30, 2018, at 2:00 p.m. Attorneys may appear by telephone and should advise the judicial assistant if they plan to do so. Defendant need not be present.
- An evidentiary hearing, if required, is set for Thursday, February 1, 2018, at 9:00 a.m., and Friday, February 2, 2018, at 9:00 a.m. Defendant's presence is required.

Also, counsel for Defendant advised they would prepare a summary of the mental health issue to be raised in order to disclose the nature of the experts being consulted in this matter. This summary shall be emailed to attorneys for the State, including a copy to John Molchan, by Friday, January 26, 2018, at 9:00 a.m.

Representatives present of the agencies subject to the public records requests were advised to email the records to Kathleen Pafford and to place copies in the repository. Counsel for Defendant also advised they would take care of any medical release forms and would

courtesy copy the agencies with any filings or orders relevant to compliance with the public records requests.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida.

eSigned by CIRCUIT COURT JUDGE E P NICKINSON III
on 01/25/2018 07:10:51 2hbOCXZg

EPN/awg

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact:

Court Administration, ADA Liaison
Escambia County
190 Governmental Center, 5th Floor
Pensacola, FL 32502
Phone (850) 595-4400 Fax (850) 595-0360

ADA.Escambia@flcourts1.gov

at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."

Service of the Order on Case Management Conference and Scheduling shall be made by the Clerk upon:

STACY R. BIGGART, Assistant Capital Collateral Regional Counsel, North
1004 DeSoto Park Drive, Tallahassee, FL 32301
Stacy.Biggart@ccrc-north.org

KATHLEEN PAFFORD, Assistant Capital Collateral Regional Counsel, North
1004 DeSoto Park Drive, Tallahassee, FL 32301
Kathleen.Pafford@ccrc-north.org

BILLY H. NOLAS, Assistant Federal Public Defender
227 N. Bronough St., Ste. 4200, Tallahassee, FL 32301-1300
Billy_nolas@fd.org

JOHN A. MOLCHAN, Assistant State Attorney
Office of the State Attorney, 190 Governmental Center, Pensacola, FL 32502
JMolchan@sa01.org

CHARMAINE M. MILLSAPS, Assistant Attorney General
Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL 32399
capapp@myfloridalegal.com
Charmaine.Millsaps@myfloridalegal.com

LISA HOPKINS, Assistant Attorney General
Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL 32399
capapp@myfloridalegal.com
Lisa.Hopkins@myfloridalegal.com

S. DOUGLAS KNOX, ESQ.
Quarles & Brady, LLP, 101 East Kennedy Boulevard, Suite 3400, Tampa, FL 33602-5195
doug.knox@quarles.com

ERIC SCOTT BRANCH (DC# 313067)
Florida State Prison
7819 N.W. 228th Street
Raiford, Florida 32026-1000

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,
PLAINTIFF
vs.

ERIC SCOTT BRANCH ,
DEFENDANT

Case No.: **1993 CF 000870 A**
DIV: **A**
DCA NO.:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. Mail (unless otherwise indicated) to:

BRANCH, ERIC SCOTT
DC# 313067
FLORIDA STATE PRISON
7819 N.W. 228TH STREET
RAIFORD, FLORIDA 32026-1000

Office of the State Attorney
First Judicial Circuit
By E-Service
Attn: ASA, Division A

on January 25, 2018.

PAM CHILDERS, CLERK OF THE CIRCUIT COURT

By:

Deputy Clerk

Filing # 67050423 E-Filed 01/25/2018 03:42:02 PM

IN THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY,
FLORIDA

EXECUTION SCHEDULED
FOR FEBRUARY 22, 2018,
6:00 p.m.

STATE OF FLORIDA,

Plaintiff

v.

CASE NO. 1993-CF-870A-"N"
CAPITAL CASE

ERIC SCOTT BRANCH,

Defendant
_____/

MEDICAL EXAMINER'S OBJECTIONS TO PUBLIC RECORDS DEMANDS

On January 24, 2018, Branch, represented by CCRC-North, filed a public record demand on the Office of the Medical Examiner for the Eighth District of the "post mortem examinations" of the executions of Mark Asay, Michael Lambrix, and Patrick Hannon. Branch seeks documents including "autopsy narrative reports, notes, diagrams, and toxicology reports" of these three inmates who were executed under the current lethal injection protocol. The medical examiner objects to these demands because the demands are not proper under the rule and are not related to any colorable claim. The Florida Supreme Court has held the current protocol does not violate the Eighth Amendment. This Court should deny the public records demands.

Improper under the rule

Branch invokes rule 3.852(h)(3), as a basis for his demands but that rule is designed for updates of prior demands, not entirely new demands. Fla. R. Crim Pro. 3.852 (h)(3) (providing that "Within 10 days of the signing of a defendant's death warrant, collateral counsel may request in writing the production of public records from a person or agency from which collateral counsel has previously requested public records."). The rule does not authorize such demands. *Hill v. State*, 921 So. 2d 579, 585 (Fla. 2006) (holding the trial court did not abuse its discretion denying demands on the medical examiner for autopsies of prior executions made pursuant to 3.852(h)(3) because the defendant had failed to make a previous public records request of the medical examiner). While Branch made a prior public records demand on the First District medical examiner's office circa 2000, Branch has not made any prior demands on the Eighth District medical examiner's office. Therefore, Branch is not entitled to the production of any records from this medical examiner's office under Rule 3.852(h).

Not related to a colorable claim

Branch's demands on the medical examiner are not related to a colorable claim. Fla. R. Crim Pro. 3.852 (k)(1) (explaining that production under this rule shall be that the public records sought . . . are either relevant to the subject matter of the proceeding under rule 3.851 or are reasonably calculated to lead to the discovery of admissible evidence). The Florida Supreme Court has stressed

that public records requests are not to be used for fishing expeditions and that defendants bear the burden of proving that the records they request are, in fact, related to a colorable claim for post conviction relief. *Moore v. State*, 820 So. 2d 199, 204 (Fla. 2002); *Glock v. Moore*, 776 So. 2d 243, 253 (Fla. 2001); *Sims v. State*, 753 So. 2d 66, 70 (Fla. 2000). The Florida Supreme Court has also stated that a defendant "must show how the requested records relate to a colorable claim for postconviction relief and good cause as to why the public records request was not made until after the death warrant was signed." *Asay v. State*, 224 So. 3d 695, 700 (Fla. 2017). Branch has not even attempted to establish relevance or good cause.

In *Walton v. State*, 3 So. 3d 1000, 1013-14 (Fla. 2009), the Florida Supreme Court explained that records regarding lethal injection do not lead to a colorable claim once "the challenge to the constitutionality of lethal injection as currently administered in Florida has been fully considered and rejected by the Court." The constitutionality of the current lethal injection protocol was fully considered and rejected by the Florida Supreme Court in *Asay v. State*, 224 So.3d 695, 700-702 (Fla. 2017).

In *Asay*, the Florida Supreme Court held that the use of etomidate as the first drug in Florida's current lethal injection protocol did not create a substantial risk of serious harm and therefore, did not violate the Eighth Amendment. The trial court in *Asay* held an evidentiary hearing at which three experts testified: Dr. Daniel Buffington, a clinical pharmacologist; Dr. Steven Yun, an

anesthesiologist; and Dr. Mark Heath, an anesthesiologist. *Asay*, 224 So.3d at 701. These witnesses "detailed the known effects of etomidate, how it would be used in the protocol, and how it has been used in medical practice." *Id.* The Florida Supreme Court observed that "even the defense expert, Dr. Heath, testified that most patients do not experience pain." *Id.* The Florida Supreme Court found based on the record that there was only "a small risk of mild to moderate pain." *Id.* The Florida Supreme Court in *Asay* relied on the standard announced by the United States Supreme Court in *Glossip v. Gross*, 135 S.Ct. 2726 (2015), which requires the inmate to 1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering; *and* 2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain. *Asay*, 224 So.3d at 701 (citing *Glossip*, 135 S.Ct. at 2737). The Florida Supreme Court noted that Asay had not identified a known and available alternative method of execution that entails a significantly less severe risk of pain and that Asay's alternatives had been previously rejected by the Florida Supreme Court as speculative. *Id.* at 702.

Asay also argued that Florida's use of a three-drug protocol instead of a one-drug protocol violated the evolving standards of decency. The Florida Supreme Court rejected this claim once again. *Asay*, 224 So.3d at 702 (citing *Muhammad v. State*, 132 So.3d 176, 197 (Fla. 2013)). The Florida Supreme Court concluded that the current lethal injection protocol was constitutional.

Furthermore, there have been two executions since the execution of Asay.

Both the Lambrix and Hannon executions proceeded without reported incident. All of the executions under the current protocol have proceeded without any incident.

In light of the controlling precedent of *Asay*, Branch's demands of the medical examiner cannot lead to a colorable claim that the current lethal injection protocol is unconstitutional. *Correll v. State*, 184 So.3d 478, 492 (Fla. 2015) (concluding that the trial court did not abuse its discretion in denying the public records requests of the medical examiner in a warrant case in light of the precedent against the lethal injection claim). Branch's public records demands are not relevant to a colorable claim.

Precedent regarding demands on the Eighth District medical examiner

The Florida Supreme Court has repeatedly affirmed trial court's denials of similar public records demands made on this medical examiner office regarding the autopsies of other inmates' executions during warrant litigation. *Correll v. State*, 184 So.3d 478, 492 (Fla. 2015) (concluding that the public records request on the Eighth District medical examiner for the autopsy records of twenty-one inmates was unlikely to lead to a colorable claim because the records would not establish when the inmates became unconscious or whether they experienced pain during their executions); *Chavez v. State*, 132 So.3d 826, 830 (Fla. 2014) (concluding that the public records request on the Eighth District medical examiner for the autopsy records of two executions was properly denied because

the autopsy records would not establish when the inmates became unconscious or whether they experienced pain during their executions); *Muhammad v. State*, 132 So. 3d 176, 203 (Fla. 2013) (affirming the trial court's denial of public records request on the Eighth District medical examiner for the autopsy records of an execution because the defendant did not "explained how autopsy photographs and reports concerning Happ could disclose at what point Happ was rendered unconscious or whether he experienced pain"). As in *Correll, Chavez,* and *Muhammad*, this demand should be denied.

Opposing counsel invokes the 2006 Diaz execution in a footnote as precedent and a basis for his demand. Demand at n.1. But the Diaz execution involved a mishap under a prior lethal injection protocol, not the current protocol. And, unlike the mishap in the Diaz execution, all three executions under the current protocol have proceeded without any mishap.

Following the Diaz execution, the Department of Corrections conducted an intensive review of its procedures and made substantial revisions to the protocol. The Florida Supreme Court reviewed the new protocol after the Diaz execution which took 34 minutes, which was "substantially longer" than in any previous execution. *Lightbourne v. McCollum*, 969 So. 2d 326, 328–29 (Fla. 2007). The Florida Supreme Court, in an all writs petition filed by several death row inmates, noted that not only had the Court ordered an evidentiary hearing regarding the Diaz execution but that the executive branch created a "Governor's Commission on Administration of Lethal Injection" which "held hearings over four days" and

then made recommendations regarding modification to the protocols and practices. *Lightbourne*, 969 So.2d at 329-30. The Florida Supreme Court also noted that the Secretary of DOC creating a task force to address the Diaz execution and revised the protocol based on the task force's recommendations in 2007. *Id.* at 330. The evidentiary hearing ordered by the Florida Supreme Court on the Diaz execution "lasted thirteen days" involved forty witnesses and resulted in a 6,500-page record. *Id.* And DOC revised its protocol yet again in response to the trial court's concerns. *Id.* at 331. The trial court then found that the revised protocol reduced the risk of similar irregularities happening in the future. The trial court then concluded that the new protocol did not violate the constitutional prohibition against cruel and unusual punishment and the Florida Supreme Court affirmed. *Id.*

It has been over a decade since the Diaz execution and in none of the other numerous executions since that time have any similar mishaps occurred. In light of the extensive revisions to the protocol since the Diaz execution, the Diaz execution is not a basis for any public record demand involving the current protocol.

Accordingly, this Court should deny the demands.

Respectfully submitted,
PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Charmaine Millsaps
CHARMAINE M. MILLSAPS
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0989134
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL, PL-01
TALLAHASSEE, FL 32399-1050
(850) 414-3300
primary email:
capapp@myfloridalegal.com
secondary email:
charmaine.millsaps@myfloridalegal.com

CO-COUNSEL FOR THE STATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing MEDICAL EXAMINER'S OBJECTIONS TO PUBLIC RECORDS DEMANDS has been furnished via the e-portal to STACY R. BIGGART, Assistant Capital Collateral Regional Counsel-North, 1004 DeSoto Park Drive, Tallahassee, FL, 32301; phone: (850) 487-0922 x114; email: Stacy.Biggart@ccrc-north.org and KATHLEEN PAFFORD, Assistant Capital Collateral Regional Counsel-North, 1004 DeSoto Park Drive, Tallahassee, FL, 32301; phone: (850) 487-0922; email: Kathleen.Pafford@ccrc-north.org this 25th day of January, 2018.

/s/ Charmaine Millsaps
Charmaine M. Millsaps
Attorney for the State of Florida

Filing # 67043902 E-Filed 01/25/2018 02:53:33 PM

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

v. **Case No.: 1993-CF-870-A**

ERIC SCOTT BRANCH,
Defendant.
_____/

DEPARTMENT OF CORRECTIONS' OBJECTIONS TO DEFENDANT'S DEMANDS FOR POST-DEATH WARRANT PUBLIC RECORDS

COMES NOW, the Florida Department of Corrections ("FDC"), by and through undersigned counsel, having received Defendant's January 24, 2018 Demand for Production of Public Records pursuant to Florida Rules of Criminal Procedure 3.852(h)(3) and hereby files the following objections to Defendant's demand for additional public records. In support thereof, the Florida Department of Corrections states as follows:

STATEMENT OF RELEVANT FACTS

On January 19, 2018, Governor Scott issued a death warrant directing that the Warden of Florida State Prison to execute the sentence of death upon Defendant on February 22, 2018 at 6:00 P.M.

On January 24, 2018, the Defendant filed with the clerk a demand for additional public records pursuant to Fla. R. Crim. Proc. 3.852(h)(3).

Defendant's demands the Defendant's medical, psychological, and psychiatric records; virtually all records relating to the three drugs specified in the FDC January 4, 2017 lethal injection protocol ("protocol"); and all public records relating to the prior three executions.

Following receipt of the proper medical release, FDC had no objection to providing the Defendant with medical, psychological, and psychiatric records. Defense counsel provided the necessary release on January 23, 2018. FDC compiled the Defendant's medical, psychological, and psychiatric records from 1998 to the present (569 pages) and made appropriate redactions which relate to public records exemptions other than medical. The requested records were provided directly to Defendant's counsel the morning immediately following the initial case management conference; January 24, 2018. FDC likewise sent copies of these records to the repository on January 24, 2018 and filed the accompanying Notice of Filing and Notice of Delivery the same day.

DEPARTMENT OF CORRECTIONS' RESPONSE AND OBJECTIONS

I. Defendant's Improper 3.852(h)(3) Demand

FDC objects to the Defendant's demand at b.,c., and d. which seek virtually all records relating to the drugs specified in the protocol (b. and c.) and all public records relating to the prior three executions (d.). Rule 3.852(h) governs public records production after a death warrant has been signed. *Rutherford v. State*, 926 So. 2d 1100, 1115 (Fla. 2006). Rule 3.852(h) permits a defendant to make a demand for an update of public records previously requested, from an agency to which the defendant has previously requested public records. Id. at 1116, *citing Sims v. State*, 753 So. 2d 66, 70 (Fla. 2000); *accord Mills v. State*, 786 So. 2d 547, 552 (Fla. 2001); *Glock v. Moore*, 776 So. 2d 243, 253 (Fla. 2001).

In *Sims*, the Florida Supreme Court explained that while Rule 3.852(h)(3) indeed provides for the production of public records after the governor has signed a death warrant, "it is equally clear that this discovery tool is not intended to be a procedure authorizing a fishing expedition for records unrelated to a colorable claim for postconviction relief." To prevent "such

a fishing expedition," the Court explained, Rule 3.852(h) "*provide[s] for the production of public records from persons and agencies who were the recipients of a public records request at the time the defendant began his postconviction odyssey.*" The Court pointed out that "[t]he use of the past tense and such words and phrases as 'requested,' 'previously,' 'received,' 'produced,' 'previous request,' and 'produced previously' are not happenstance. *This language was intended to and does convey to the reader the fact that a public records request under [Rule 3.852(h)] is intended as an update of information previously received or requested.*" To hold otherwise, the Court explained, "would foster a procedure in which defendants make only a partial public records request during the initial postconviction proceedings and hold in abeyance other requests until such time as a warrant is signed. Such is neither the spirit nor intent of the public records law." Rule 3.852 is not intended for use by defendants as "'nothing more than an eleventh hour attempt to delay the execution rather than a focused investigation into some legitimate area of inquiry." *Sims* at 70. The Defendant's demand is exactly the type of records request the Florida Supreme Court sought to eliminate in *Sims*.

Apart from the demand for medical records in a., the Defendant's demand is solely focused on records concerning legal injection drugs and information on previous executions. To FDC's knowledge, the Defendant has never sought records from FDC related to either of these subjects. Producing the requested records would not be providing an "update" of previous records, but a flood of entirely new information on completely divergent subjects. Intuitively, it makes sense the narrow time frame between the signing of the warrant and the execution should not be used to explore novel theories of law and inquire into subjects previously ignored by counsel. This Court should deny the Defendant's demand for records in b., c., and d. because it does not comply with the intent of Rule 3.852(h) as interpreted by the Florida Supreme Court.

II. Defendant's Demand Unlikely to Lead to a Colorable Claim

Even if this Court determines the Defendant's demand is technically proper under 3.852(h), the Defendant's demand fails to comply with Rule 3.852(k) which limits the scope of production under Rule 3.852(h). Pursuant to Rule 3.852(k), "[u]nless otherwise limited, the scope of production under [any provision of Rule 3.852] shall be that the public records sought are not privileged or immune from production and are either relevant to the subject matter of the proceeding under [R]ule 3.851 or are reasonably calculated to lead to the discovery of admissible evidence." See Rule 3.852(k), Fla. R. Crim. Pro.

The Florida Supreme Court has repeatedly stressed and long held that collateral post-conviction public records requests are not to be used for fishing expeditions and that the defendant bears the burden of proving that the records he requests are, in fact, related to a colorable claim for post-conviction relief. *See Moore v. State*, 820 So. 2d 199, 204 (Fla. 2002); *Glock*, 776 So. 2d at 253; *Johnson v. State*, 804 So .2d 1218, 1224 (Fla. 2001) (denial of a request for additional public records upheld where the request sought general information to "research and discover" post-conviction claims that defendant had no specific basis for believing); *Valle v. State*, 70 So. 3d 530 (Fla. 2011) (acknowledging the public records procedure under Rule 3.852 "is not intended to be a procedure authorizing a fishing expedition for records unrelated to a colorable claim for postconviction relief").

Furthermore, a trial court may properly deny post-warrant records requests as exceeding the scope of Rule 3.852 records production if the requests are overbroad, of questionable relevance, and unlikely to lead to discoverable evidence. *Muhammad v. State*, 132 So. 3d 176, 176 (Fla. 2013), *cert. denied*, 1324 S. Ct. 984 (2014). *See also Mann v. State*, 112 So. 3d 1158 (Fla. 2013) (a defendant seeking public records post-warrant must show how the requested

records relate to a colorable claim for postconviction relief and show good cause as to why the demand was not made until after the death warrant was signed).

In his demand, the Defendant fails to provide any argument demonstrating the records he seeks are relevant to the subject matter of a Rule 3.851 proceeding or are reasonably calculated to lead to the discovery of admissible evidence as required by Rule 3.852(k). Moreover, Defendant has failed to provide any basis for his demand. Given similar demands which were previously litigated, FDC is assuming the Defendant is seeking these records to challenge the constitutionality of the lethal injection protocol and the drugs specified in the protocol. However, Defense counsel has stated, in front of this Court, a challenge at this stage in the proceeding will be based on the Defendant's mental capacity. Defense counsel has given no indication to this Court that they are challenging the constitutionality of lethal injection. This further demonstrates the records sought by the Defendant are not relevant to the instant case in its current posture and not calculated to lead to the discovery of admissible evidence. Other than the unsupported and conclusory footnote at the bottom of Page 2 of the Defendant's demand (*See* argument at III. below), the demand is made in a vacuum. To that end, absent such a showing from the Defendant, this Court should deny the Defendant's request for production of records other than the Defendant's medical, psychological, and psychiatric records.

III. Lethal Injection Protocol/Drugs

In b. and c., Defendant demands public records which relate to FDC's protocol. The demand encompasses virtually all public records on the drugs specified in the protocol. FDC objects to these demands in their entirety.

As discussed above, the Defendant fails to provide any basis, a constitutional challenge to the lethal injection protocol or otherwise, as to why the requested records should be produced.

Even if the Defendant was seeking to challenge the constitutionality of the protocol, a mere request and assertion of unconstitutionality is not enough. The Defendant would be required to show FDC's protocol is *sure or very likely* to cause serious illness and needless suffering, and gives rise to sufficiently *imminent* dangers; and (2) the availability of an alternative that is 'feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain. See *Glossip v. Gross*, 135 S.Ct. 2726 at 2737-2738. See *Correll v. State*, 184 So.3d 478 (Fla. 2015). The Defendant not only fails to meet the "exceptionally heavy" burden of proof required by the *Correll* court to challenge the method of execution (*Correll* at 488), but fails to allege any facts whatsoever which would allow this Court to make such a determination. Rather, the Defendant's demand is simply a laundry list of records. The Defendant's demand is entirely devoid of ***any*** facts or assertions which would allow this Court to conclude that the requested records are relevant to the instant proceeding or reasonably calculated to lead to the discovery of admissible evidence as required under Rule 3.852(k).

The bulk of the Defendant's demand relates to the lethal injection drugs in the protocol. The Florida Supreme Court has consistently held that information regarding the source, acquisition, manufacture, or distribution of lethal injection drugs does not present a cognizable lethal injection claim. Most recently, in *Hannon v. State*, 228 So.2d. 505 (Fla. 2017), the Florida Supreme Court was presented with the question of which records were required to be produced pursuant to a 3.852(i) demand for additional records (*See* Appendix A). Although the demand in the instant case is made pursuant to Rule 3.852(h), the analysis remains the same.

Defendant's demands in b. and c. are word-for-word identical to two of the demands made in the post-warrant trial court proceedings that were considered by the Florida Supreme Court in

Hannon[1]. In *Hannon*, the Florida Supreme Court cited to its previous holdings related to lethal injection public records production in *Asay v. State* (Asay VI), 224 So. 3d 695, 700-02 (Fla. 2017)[2] and *Muhammad v. State*, 132 So. 3d 176 (Fla. 2013) (requests for records related to lethal injection, including the source of lethal injection drugs, were overbroad and burdensome and *not related to a colorable claim*) (*citing Pardo v. State*, 108 So. 3d 558, 565-66 (Fla. 2012), *cert. denied*, 133 S. Ct. 815 (2012); *Valle*, 70 So. 3d at 549; *Banks*, 150 So. 3d at 802 (rejecting public records requests based upon a general challenge to the lethal injection protocol); *Chavez*, 132 So. 3d at 829-30 (affirming the denial of public records requests that sought information about the acquisition of midazolam and its use in Florida's lethal injection protocol, consultations with experts about midazolam before the current lethal injection protocol was issued, the manufacturer and distributor of the drugs used in the lethal injection protocol, and notes and records prepared by the Department with regard to previous executions).

In a footnote to b., Defendant alleges that he possesses records indicating that FDC's supply of etomidate expired in September 2017 and appears to assert this as the basis for the overbroad demand for all public records relating to the three drugs which are specified in the protocol. Exactly like the language used in b. and c. of the Defendant's demand, this assertion was directly lifted from the demand in *Hannon*[3] and likewise considered, and denied, by the Florida Supreme Court. FDC objects to the disclosure of any such records because the Florida Supreme Court has held that the source of the drugs used in lethal injection, drug lot numbers and expiration dates is of questionable relevance to a colorable Eighth Amendment claim. See

[1] *See* Appendix A, j. and m.
[2] The post-warrant demands for additional public records in *Hannon* and *Asay* relating to lethal injection were identical. (*See* Appendix B).
[3] *See* Appendix A at 4.

Muhammad at 206, citing *Valle*, at 549. "Moreover, [the Florida Supreme] Court will presume that the DOC will act in accordance with its protocol and carry out its duties properly…[and that] DOC will obtain viable versions of the drugs it intends to use and confirm before use that the drugs are still viable, as the protocol requires." *Muhammad* at 206. The protocol adopted and certified by FDC requires that the chemicals have not reached or surpassed their expiration dates:

> Purchase and Maintenance of Lethal Chemicals: A designated execution team member will purchase, and at all times ensure a sufficient supply of, the chemicals to be used in the lethal injection process. The designated team member will ensure that the lethal chemicals have not reached or surpassed their expiration dates. The lethal chemicals will be stored securely at all times as required by state and federal law. The FDLE agent in charge of monitoring the preparation of the chemicals shall confirm that all lethal chemicals are correct and current.

See FDC January 4, 2017 Lethal Injection Protocol, accessible at

http://www.dc.state.fl.us/oth/deathrow/lethal-injection-procedures-as-of_01-04-17.pdf

Because Defendant raises no grounds for obtaining the lethal injection protocol records he seeks that have not already been adjudicated by the Florida Supreme Court, FDC objects to the requested production and requests that the demand be denied.

IV. Defendant's Demand for All Records from the Prior Three Executions

Much like the demand for records relating to drugs used in the lethal injection protocol, the issue of production of records related to prior executions has likewise recently been litigated before three circuit courts and the Florida Supreme Court in 2017. In fact, in *Hannon*, defense counsel requested "…logs, notes, memoranda, letters, electronic mail, and facsimilies" relating to the executions of eight different inmates. Aside from the names of the inmates, the language

used in the *Hannon* demand is identical to that used Defendant's demand 3.d. (*See* Appendix A at 8)[4]. When considering exactly such a request in *Hannon*, the Florida Supreme Court affirmed its prior holding in *Valle* which held records of the last five executions were "not related to a colorable Eighth Amendment claim." *Hannon* at 512. (*See Valle* at 549). The only distinction between the records requested by Hannon and the Defendant are the number of executions for which records were requested. However, the number of executions for which records are being requested is immaterial. Much like demands seeking documents relating to the lethal injection protocol, the Florida Supreme Court denied Hannon access to records from past executions because they were not related to a colorable claim. Given the Florida Supreme Court has previously denied such a demand which used the exact same language, FDC submits the Defendant's demand should be denied.

CONCLUSION

The Florida Department of Corrections quickly responded to Defendant's demand for an update of Defendant's medical and mental health records by collecting, reviewing and producing approximately 569 pages of records dated 1998 to the present. However, with respect to the remainder of Defendant's demands upon FDC, the Florida Supreme Court has repeatedly stressed and long held that collateral postconviction public records requests are not to be used for fishing expeditions and that the defendant bears the burden of proving that the records he requests are, in fact, related to a colorable claim for post-conviction relief. See *Moore v. State*, 820 So. 2d 199, 204 (Fla. 2002); *Glock v. Moore*, 776 So. 2d 243, 253 (Fla. 2001); *Johnson v. State*, 804 So .2d 1218, 1224 (Fla. 2001) (denial of a request for additional public records upheld

[4] Much like the lethal injection demand, the same demand appears verbatim in *Asay*. *See* Appendix B at 11.

where the request sought general information to "research and discover" post-conviction claims that defendant had no specific basis for believing); *Valle v. State*, 70 So. 3d 530 (Fla. 2011) (acknowledging the public records procedure under Rule 3.852 "is not intended to be a procedure authorizing a fishing expedition for records unrelated to a colorable claim for postconviction relief"). A trial court may properly deny post-warrant records requests as far as exceeding the scope of Rule 3.852 records production if the requests are of questionable relevance and/or unlikely to lead to admissible evidence. *See Muhammad.* See also *Mann v. State*, 112 So. 3d 1158 (Fla. 2013) (a defendant seeking public records postwarrant must show how the requested records relate to a colorable claim for postconviction relief and show good cause as to why the demand was not made until after the death warrant was signed), *Asay v. State*, 2017 WL3472836 at *4 (Fla. August 14, 2017), *Hannon* at 13. Here, the Defendant has not only failed to meet his burden, he has not even attempted to meet his burden. The Defendant has not only failed to allege persuasive facts in support of his position, the Defendant has failed to allege any facts whatsoever which would allow this Court to determine whether the records he seeks relate to a colorable claim.

The questions raised in the instant case are settled law. Rarely does a trial judge in Florida have the benefit of considering a question on which the Florida Supreme Court has issued virtually identical rulings, on the same subject, in the same posture, using the exact same language as the Defendant's demand, at least three times within the last six months. In each case, a defendant's request for similar records was denied, with the denials upheld by the Florida Supreme Court.

The Department makes no representation that all of Defendant's requested records exist, but to the extent that they may, it is likely that the records will be of an extraordinarily sensitive nature. As such, the Department is not, at this time, setting forth all potential statutory

exemptions and does not waive the right to claim those exemptions should this Court order it to provide the Defendant with any of the requested records.

WHEREFORE, based on the foregoing arguments and authorities, the Department respectfully requests this Court enter an order denying the Defendant's Demands for Production of Public Records as to b., c., and d. pursuant to the authorities referenced above.

Respectfully submitted,

RYAN G. PADGETT
Florida Bar Number 13818
Senior Attorney
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, Florida 32399-2500
T: (850) 717-3605
F: (850) 922-4355
E: ryan.padgett@fdc.myflorida.com
E2: CourtFilings@fdc.myflorida.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, via the E-Filing portal and electronic mail, this 25th day of January, 2018.

The Honorable Edward P. Nickinson, III
First Circuit, Escambia County, FL
M.C. Blanchard Judicial Building
190 Government Center
Pensacola, Florida 32502
Email: judge.nickinson@flcourts.gov ; Laurie.jenkins@flcourts1.gov

Charmaine Millsaps, Assistant Attorney General
Lisa Hopkins, Assistant Attorney General
Office of the Attorney General

PL-01, The Capitol
Tallahassee, Florida 32399
Email: charmaine.millsaps@myfloridalegal.com ; lisa.hopkins@myflorida.legal.com ; capapp@myflorida.legal.com

John Molchan, Assistant State Attorney
Office of the State Attorney, 1st Judicial Circuit
190 Government Center
Pensacola, Florida 32502
Email: JMolchan@saO1.org

Stacy Biggart, Assistant CCRC-North
Kathleen Pafford, Assistant CCRC-North
Capital Collateral Regional Counsel
1004 DeSoto Park Drive
Tallahassee, FL 32301
Email: Stacy.Biggart@ccrc-north.org ; Kathleen.pafford@ccrc-north.org

S. Douglas Knox, Esquire
Quarles & Brady, LLP
101 East Kennedy Boulevard, Suite 3400
Tampa, FL 33602
Email: doug.knox@quarles.com

Billy Nolas
Federal Public Defender NDFla
227 N Bronough Street, Ste 4200
Tallahassee, FL 32301-1300
Email: billy_nolas@fd.org

RYAN G. PADGETT

APPENDIX A

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

PATRICK HANNON,
Defendant.
_____/

Case No.: 91-CF-001927

EMERGENCY CAPITAL CASE
DEATH WARRANT SIGNED
EXECUTION SCHEDULED FOR
NOVEMBER 8, 2017 AT 6:00 P.M.

TO: Florida Department of Corrections
501 South Calhoun Street
Tallahassee, FL 32399-2500

DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS

The Defendant, **PATRICK CHARLES HANNON**, under the imminent threat of execution, by and through undersigned counsel, hereby makes demand of the **FLORIDA DEPARTMENT OF CORRECTIONS (DOC)**, pursuant to Article I, Section 24, Florida Constitution, Florida Rule of Criminal Procedure 3.852(i), Chapter 119, Florida Statutes, *Brady v. Maryland*, 373 U.S. 83 (1963), *Strickler v. Greene*, 119 S. Ct. 1936 (1999) for additional public records pertinent to this case.

1. Undersigned counsel attests that:

   a. counsel has made a timely and diligent search of the records repository, via a written request, for the records described below; and

   b. the records described below are not at the records repository; and

   c. the records described below have not previously been obtained in discovery or from a previous public records request from the above named agency or any other agency; and

   d. the records described below are either relevant to the subject matter of a postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.

2. Mr. Hannon is an indigent Florida inmate under imminent threat of execution by lethal injection pursuant to Florida Statute § 922.105.

3. On June 29, 2015, the United States Supreme Court issued its opinion in *Glossip v. Gross*, holding that death row inmates seeking to challenge the constitutionality of a state's method-of-execution are required to establish that the method creates a demonstrated risk of severe pain and that the risk is substantial when compared to the known and available alternatives. 135 U.S. 2726, 2738 (2015).

4. Shortages in the drugs utilized to carry out lethal injection protocols throughout various states has been widely publicized since 2010. As result, numerous states have been forced to alter or change entirely their lethal injection protocols to comport with the availability of certain drugs. Specifically, Florida has been forced to do so three times since 2012 in order to continue using its current three drug cocktail. On September 9, 2013 DOC announced a new lethal injection protocol that substituted midazolam, a benzodiazepine, for use as an anesthetic for pentobarbital that was previously called for in the 2012 lethal injection protocol. Use of midazolam as a sedative in lethal injection protocols was at the center of the Court's opinion in *Glossip*. Again, on January 4, 2017, Florida Department of Corrections Secretary, Julie L. Jones, signed into effect a new lethal injection protocol which had never been used before. The protocol substitutes two injections of 100 milligrams of etomidate for use as an anesthetic for the two injections of 250 milligrams of midazolam hydrochloride that was called for in the 2013 lethal injection protocols. Etomidate, which is marketed as "Amidate", is a short-acting drug that induces anesthesia.

5. The protocol also substitutes 500 milligrams of rocuronium bromide for use as a neuromuscular blocking agent for two injections of 50 milligrams of vecuronium bromide that was called for in the 2013 protocols. Rocuronium bromide is extremely painful. Yet, the protocol calls

for a dose that is 10 times higher than the dose called for in the prior protocols and excessively higher than that used in clinical practice.

6. The protocol also substitutes 120 milliequivalents of potassium acetate which also causes cardiac arrest for the two injections of 120 milliequivalents of potassium chloride that was called for in the 2013 protocols. Potassium acetate is rarely used in hospital practices and is more commonly known for deicing runways. Like the two drugs that precede it, potassium acetate is an extremely painful drug that causes a burning sensation.[1]

7. Information related to the source, storage, and expiration date of execution drugs is critical to an assessment of whether a particular drug will present a substantial risk of harm. Improper manufacture, storage, or expiration of drugs may all reduce the effectiveness of the drugs. A federal district court has previously ordered the Florida Department of Corrections to disclose information related to the acquisition of pentobarbital sodium, including information related to the manufacturer, distributor, wholesaler, compounding pharmacy, or any other source. *See Ferguson, v. Palmer et al.*, No. 3:12-cv-01036-MMH-JBT, Doc. 42 (M.D. Fla. July 29, 2013). Such information is necessary to Mr. Hannon's ability to successfully challenge the State's method of execution by identifying a "known and available alternative" that is "feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of pain." *Glossip*, 135 S. Ct. at 2737; citing *Baze v. Rees*, 553 U.S. 35, 52, 61 (2008).

8. Further, Mr. Hannon is in possession of records that were ordered to be disclosed in separate federal litigation, See First Amendment Coalition, et al. v. Charles L. Ryan, et al., U.S.

[1] Potassium acetate was used accidently in the January 2015 execution of Charles Warner in Oklahoma. *Mummified Alive? Oklahoma Pumped Inmate With Wrong Drug During Botched Execution*, Reuters (Oct. 9, 2015). Indeed, Warner complained that "[I]t feels like acid," "My body is on fire" and "No one should have to go through this." *Oklahoma Executes Charles Warner*, Dana Ford, CNN (January 16, 2015)

Northern District- Tallahassee – Case #4:16-mc-0025-RH-CAS which show that the DOC's supply of etomidate expired in September 2017. Whether the DOC has used or intends to use expired etomidate or other drugs to carry out Mr. Hannon's execution by lethal injection is grounds to show that the method creates a demonstrated risk of severe pain and that the risk is substantial when compared to the known and available alternatives. Mr. Hannon is entitled to know how much etomidate, rocuronium bromide and potassium acetate remains, as well as information about the source, storage, and expiration dates of the new drugs.

9. The refusal to provide records from public agencies relevant to the process by which those agencies obtain the drugs utilized in the Florida lethal injection protocol amounts to a violation of Mr. Hannon's procedural and substantive due process rights. Denial of access to such records operates as a significant roadblock in a defendant's ability to satisfy *Glossip's* requirement of establishing a known available alternative. Where the burden is on a defendant to provide evidence of safer alternative, the Florida state court agencies' refusal to provide records that are within their possession related to their lethal injection protocol is a denial of due process.

10. Based on the foregoing, Mr. Hannon attests that the requested records detailed below are reasonably calculated to lead to the discovery of admissible evidence in that such records may contain, or through further investigation may lead to the discovery of, evidence that execution by Florida's lethal injection procedures constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the U.S. Constitution and corresponding provisions of the Florida Constitution. Specifically, the records requested are necessary to establish a known and available alternative method of execution such that Florida's current lethal injection protocol creates a substantial risk of severe pain. *Baze v. Rees*, 553 U.S. 35, 61 (2008).

11. Mr. Hannon has a constitutional right to public records under Article I, section 24 of the Florida Constitution. Florida Rule of Criminal Procedure 3.852 was promulgated to provide capital defendants access to public records as part of their pursuit of postconviction relief. *In re Amendment to Florida Rules of Criminal Procedure-Capital Postconviction Pub. Records Prod.*, 683 So. 2d 475 (Fla. 1996). Here, where Mr. Hannon seeks to challenge the method of execution and has met the minimal requirement of establishing that the records sought are relevant; i.e., that they have something to do with the subject matter of lethal injection, he is entitled to production of the records in question.

12. In light of the Court's opinion in *Glossip* requiring that a defendant seeking to challenge the constitutionality of a state's lethal injection protocol must provide a reasonable, safer alternative, information and records related to the State of Florida's procurement, retention, storage, and use of pentobarbital[2] and its efforts to obtain any alternative drugs for substitution in their three drug cocktail are relevant to a colorable claim for relief. *See, e.g., Arbaugh v. Y & H Corp.*, 546 U.S. 500, 513 n.10 (2006) (a claim is colorable if it is not wholly insubstantial or frivolous); *Davis v. Featherstone*, 97 F.3d 734,-38 (4th Cir. 1996) ("A claim is colorable if it is arguable and nonfrivolous, whether or not it would succeed on the merits."); *Klemm v. Astrue*, 543 F.3d 1139, 1144 (9th Cir. 2008) (noting in § 405(g) context that "[a] constitutional claim is colorable if it is not wholly insubstantial, immaterial, or frivolous") (citations omitted). This is especially true given that following the Court's opinion in *Glossip*, the State has routinely advanced the position that capital defendants are incapable of obtaining relief under the United States Constitution on method-of-execution claims unless they can establish that there is a safe

[2] Eighth Amendment challenges to pentobarbital were rejected because "sodium thiopental and pentobarbital are both classified as barbiturates." *See Pavatt v. Jones*, 627 F.3d 1336, 1337 (10th Cir. 2010); *Powell v. Thomas*, 643 F.3d 1300, 1304 (11th Cir. 2011). Thus it was not a substantial change.

alternative drug that is readily available. *See, Second Supplemental Answer Brief of Appellee* at 24, *Jerry William Correll v. State of Florida*, Case No.: SC15-147. Furthermore, information related to establishing the existence of a known and available alternative method of execution is relevant not only in that it may lead to evidence in support of a claim for relief in a rule 3.851 motion but in that in may also lead to evidence supporting a colorable claim in a 42 U.S.C. § 1983 civil rights action.

13. Mr. Hannon requests that the DOC turn over copies of the following public records relating to lethal injection that have not already been turned over to the Florida State Repository in connection with any other case:

a. Public records concerning the review process which led to the promulgation of the January 4, 2017 lethal injection procedures, including, for example, computer print-outs or copies of research or literature reviewed, emails, faxes, letters, minutes or notes of meetings, telephone call records or notes, including any communications within the Florida DOC, and/or with the Office of the Attorney General, the Office of the Governor, any other outside agencies, experts (medical or other), other states or state departments of corrections, and/or the federal government from January 1, 2015 through the present.

b. Public records relating to any research and/or experiments done by the DOC, or on behalf of DOC, with respect to etomidate.

c. Public records relating to any research and/or experiments done by the DOC, or on behalf of DOC, with respect to rocuronium bromide.

d. Public records relating to any research and/or experiments done by the DOC, or on behalf of DOC, with respect to potassium acetate.

e. Public records relating to any correspondence, from January 1, 2015 to the present, with any federal agency including the Drug Enforcement Administration (DEA), the Food and Drug Administration (FDA), the Federal Bureau of Prisons (BOP), or the Department of Justice (DOJ) relating to Florida's execution procedures, the drugs used for lethal injection, or inquiries and/or efforts to obtain or produce compounded pentobarbital and/or other alternative drugs. This would include, but is not limited to,

application or registration for permits and/or licenses, or permits and/or licenses required by any federal agency in connection with the purchase, storage, use, research, and disposal of pentobarbital, or any other drugs, specifically, but not limited, to any barbiturates or sedatives, sought as alternative resources and etomidate, rocuronium bromide and potassium acetate.

f. Public records relating to any consultation with experts (medical or otherwise) with respect to etomidate, rocuronium bromide and potassium chloride, and/or other alternative drugs including, for example, emails, faxes, letters, minutes or notes of meetings, telephone call records or notes, including any internal communications within DOC and/or staff.

g. Public records relating to execution training exercises, including logs, checklists, and sign-in sheets, from January 1, 2015 to the present.

h. Public records relating to any correspondence with any Florida state agency including the Florida Department of Health, from January 1, 2015 through the present, relating to the acquisition of etomidate, rocuronium bromide and potassium acetate and/or relating to any efforts undertaken by DOC to obtain alternative drugs for use in the current protocol in place of the drugs currently administered or any alternative barbiturates or sedatives.

i. Public records relating to any correspondence or communication with any other department of corrections in any other state regarding lethal injection protocols, from January 1, 2015 to the present.

j. Public records, including logs or record books regarding the purchase, storage, maintenance, use, distribution, and disposal of etomidate, rocuronium bromide and potassium actetate that show compliance (or noncompliance) with the Federal Controlled Substances Act and Florida Statutes, Chapters 828, 893, and 465.

k. Public records relating to how DOC obtained etomidate and/or rocuronium bromide and/or potassium acetate including purchasing orders, prescriptions, contracts, invoices, bills, payments, emails, letters, or any other communication relating to the procurement of the listed drugs.

l. Public records relating to DOC's solicitation of bids for etomidate and/or rocuronium bromide and/or potassium acetate.

m. Public records showing the name of the manufacturer and distributor of the lethal injection drugs including package insert information and/ or manufacturer's instructions, the date of manufacture, and the shelf life of etomidate, rocuronium bromide and potassium acetate currently possessed by the DOC.

n. Public records, including the required logs, notes, memoranda, letters, electronic mail, and facsimiles, relating to the executions by lethal injection of Cary Michael Lambrix, Mark James Asay, Oscar Ray Bolin, Jerry Correll, Johnny Kormondy, Chadwick Banks, Eddie Davis and John Henry.

o. Public records, including notes, memoranda, letters, electronic mail, and facsimiles, that would indicate personnel changes or any formal or informal changes to the unwritten "procedures" or customary practices that were testified to by DOC personnel during the litigation in Lightbourne in 2007.

WHEREFORE, pursuant to rule 3.852(i)(2), the undersigned requests this Court to order the above-named agency to produce the records requested.

AFFIDAVIT OF COLLATERAL COUNSEL

I, SUZANNE KEFFER, having been duly sworn or affirmed, do hereby depose and say that the above statements are true and correct.

SUZANNE KEFFER

Sworn to or affirmed and subscribed before me this 8th day of October 2017, by SUZANNE KEFFER who is personally known to me.

NOTARY PUBLIC, STATE OF FLORIDA SEAL:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copy of the foregoing has been furnished by federal express and/or electronic mail to all counsel of record on this 8th day of October, 2017.

/s/ Suzanne Myers Keffer
SUZANNE MYERS KEFFER
Chief Assistant CCRC
Florida Bar No. 0150177
keffers@ccsr.state.fl.us

SCOTT GAVIN
Staff Attorney
Florida Bar No. 0058651
gavins@ccsr.state.fl.us

Capital Collateral Regional Counsel – South
1 East Broward Boulevard, Suite 444
Fort Lauderdale, Florida 33301
(954) 713-1284

COUNSEL FOR MR. HANNON

Copies furnished to:

Honorable Michelle D. Sisco
Circuit Court Judge
401 N. Jefferson St., Room 102
Tampa, FL 33602

Marilyn Muir Beccue
Assistant Attorney General
Office of the Attorney General
Concourse Center #4
3507 Frontage Road, #200
Tampa, FL 33607

Sarah Macks
Assistant State Attorney
Office of the State Attorney
13th Judicial Circuit
419 N. Pierce St.
Tampa, FL 33602

APPENDIX B

Filing # 58954199 E-Filed 07/13/2017 10:35:23 AM

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO. 87-6876-CF

STATE OF FLORIDA,

Plaintiff,

EMERGENCY MOTION, CAPITAL CASE DEATH WARRANT SIGNED; EXECUTION SET FOR AUGUST 24, 2017

v.

MARK JAMES ASAY,

Defendant.
/

DEFENDANT'S DEMAND FOR PRODUCTION OF ADDITIONAL PUBLIC RECORDS

TO: Julie L. Jones, Secretary
Florida Department of Corrections
501 S. Calhoun St.
Tallahassee, Florida 32399-2500

The Defendant, **MARK JAMES ASAY**, by and through undersigned counsel, hereby makes demand of **JULIE L. JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS**, pursuant to Florida Rule of Criminal Procedure 3.852 (i), Chapter 119, Florida Statutes, and Article I, Section 24 of the Florida Constitution for additional public records pertinent to this case.

1. Mr. Asay is an indigent Florida inmate under sentence of death and subject to execution by lethal injection pursuant to Florida Statute § 922.105.

2. On January 4, 2017, Florida Department of Corrections Secretary, Julie L. Jones, signed into effect a new lethal injection protocol which has never been used before. The protocol

substitutes two injections of 100 milligrams of etomidate for use as an anesthetic for the two injections of 250 milligrams of midazolam hydrochloride that was called for in the 2013 lethal injection protocols. (Att. A). Etomidate, which is marketed as "Amidate", is a short-acting drug that induces anesthesia, but is severely painful upon injection. Etomidate produces a burning feeling. Etomidate wears off quickly as the liver quickly breaks down the drug which is why it is characterized as a drug to induce anesthesia. Etomidate also causes involuntary movements (myocloni), which resemble twitches and sudden jerks; these movements are uncontrolled and uncoordinated. The new protocol calls for two injections of 100 milligrams of etomidate, which is approximately only 4 to 5 times the dose that may be prescribed for a legitimate purpose. The prior protocol called for a dose of midazolam hydrochloride solution that was 25 times the dose that may be prescribed for any legitimate medical purpose.

3. The use of etomidate in this untested dose is experimental in that, according to news sources, it has never been used in an execution of any human being. *Florida May Be Pondering 'Novel' Lethal Injection Change*. Dara Cam, Sun Sentinel (Dec. 5, 2016).

4. The protocol also substitutes two injections of 500 milligrams of rocuronium bromide for use as a neuromuscular blocking agent for the two injections of 50 milligrams of vecuronium bromide that was called for in the 2013 lethal injection protocols. (Att. A). Rocuronium bromide is extremely painful. Yet, the protocol calls for a dose that is 10 times more than the dose called for in the prior protocol and excessively higher than that used in clinical practice.

5. Rocuronium bromide has been used in other lethal injection protocols, but none whether etomidate and potassium acetate are used. *Virginia Adds New Lethal Injection Drug:*

Rocuronium Bromide. CBS/DC AP (July 27, 2012); *Alabama Changes Execution Drug Combination, Seeks to Set Execution Dates for 9 Death Row Inmates*. AL.com (September 12, 2014).

6. The protocol also substitutes two injections of 120 milliequivalents of potassium acetate which is also causes cardiac arrest for the two injections of 120 milliequivalents of potassium chloride that was called for in the 2013 lethal injection protocols. (Att. A). Potassium actetate is rarely used in typical hospital practices and is more commonly known for deicing airport runways. Like the two drugs that precede potassium acetate, it too is an extremely painful drug that causes a burning sensation.

7. Potassium acetate was used accidentally in the January, 2015, execution of Charles Warner in Oklahoma. *Mummified Alive? Oklahoma Pumped Inmate With Wrong Drug During Botched Execution*, Reuters (Oct. 9, 2015). Potassium acetate was not intended to be used in the execution. However, it was not until the execution of Richard Glossip approached, i.e., his execution was imminent, that the Oklahoma Department of Corrections acknowledged the error. Governor Mary Fallin stayed the execution of Richard Glossip in September, 2015, and ordered an investigation. *Oklahoma Governor Halts Richard Glossip Execution at Last Minute*, Tracy Connor, NBC News. Indeed, Warner had complained that "[I]t feels like acid", "My body is on fire" and "Noone should have to go through this". *Oklahoma Executes Charles Warner*, Dana Ford, CNN (January 16, 2015).

8. Thus, each of the new drugs selected for the January 4, 2017, protocol is afflicted with serious deficiencies and exhibits serious risks for use. And, the use of etomidate, individually or in combination with the other drugs, rocuronium bromide, in combination with

the other drugs and potassium acetate, individually or in combination with the other drugs, is unprecedented in the United States. The drugs selected to comprise the latest in Florida's lethal injection experiments are painful upon injection, including the first drug , the entire purpose of which is to prevent pain. In adopting and approving the current protocol, Florida has ensured the risk of substantial harm. The decision to experiment with an untested, painful drug which induces anesthesia instead of a barbiturate or benzodiazepine for the purpose of inducing anesthesia represents a substantial change to the protocol; one that warrants discovery, investigation, and judicial review. Likewise, the choice of a painful drug that is commonly used to deice runways as the third drug which is required to cause cardiac arrest is also a substantial change to the protocol; one that warrants discovery, investigation, and judicial review

9. In 2007, when the Florida Department of Corrections previously promulgated new lethal injection procedures, the Florida Supreme Court took special note of the first drug. The Court recognized that first drug - at that time a barbituate - must induce adequate anesthesia: "it was undisputed that if [the other two drugs,] pancuronium bromide or potassium chloride [ ] are injected into a conscious person, significant pain would result from each of the chemicals." *Lightbourne v. McCollum*, 969 So. 2d 326, 344-4 (Fla. 2007). In other words, the constitutionality of the protocol hinged on the use of a reliable safeguard against the significant pain and suffering that the other two drugs would cause in an inadequately anaesthetized person. Thus, central to the Court's analysis was the adequacy of the first drug; here, the etomidate.

10. In 2010, international pressure against the death penalty resulted in a shortage of the barbituate, sodium thiopental, and the states that employ capital punishment had to scramble for an alternative drug. On June 8, 2011, Florida followed the path of other states when it issued

new lethal injection procedures substituting the barbiturate pentobarbital (Nembutal) for sodium thiopental. Eighth Amendment challenges to the new drug were rejected because "sodium thiopental and pentobarbital are both classified as barbiturates." *See Pavatt v. Jones*, 627 F.3d 1336, 1337 (10th Cir. 2010); *Powell v. Thomas*, 643 F.3d 1300, 1304 (11th Cir. 2011).

11. It wasn't long before Florida and other states had to contend with yet another drug shortage. This time the second drug, the neuromuscular blocking agent pancuronium bromide, was in short supply. To date, it is unknown why DOC insists on using the neuromuscular blocking agent as it appears to serve no purpose but to mask observable signs of another botched execution. As a matter of fact, faced with drug shortages and legal challenges, a number of states (Arizona, Idaho, Ohio, Texas, South Dakota, Washington, Missouri, Georgia and Kentucky[1]) have moved to a one-drug protocol. Six other states have at one point or another announced plans to use a one-drug protocol, but have not carried out such an execution (Arkansas, California, Kentucky, Louisiana, North Carolina, and Tennessee). Nevertheless, instead of considering a more humane method of execution, DOC again changed its procedures on September 4, 2012, substituting vecuronium bromide for the pain-masking neuromuscular blocking agent. Challenges to the new protocol were rejected because the change was not substantial. *Pardo v. State*, 108 So. 3d 558, 565 (Fla. 2012).

12. Unfortunately, the deficiencies that led to the botch in Angel Diaz remain so long as the DOC continues to employ the same type of three-drug protocol: if the first drug—meant to anesthetize the inmate—is not adequate or properly administered, there is a substantial risk that

[1]When the U.S. Supreme Court upheld Kentucky's three drug procedure in *Baze v. Rees*, 128 S. Ct. 1520, 1531-35 (2008), every other state that carried out executions by lethal injection used a similar procedure.

the condemned inmate will either suffocate or experience excruciating pain when the first, second and third drugs are introduced. Information regarding the source, storage, and expiration date of execution drugs is critical to an assessment of whether a particular drug will present a substantial risk of harm. The improper manufacture of drugs, improper storage of drugs, and expiration of drugs may all reduce the effectiveness of the drugs. Although DOC claimed in the past that this information is confidential,[2] a federal district court ordered DOC to disclose "the source from which the Florida Department of Corrections acquired the pentobarbital sodium that it intend[ed] to use . . . including the manufacturer, distributor, wholesaler, compounding pharmacy, or other source, including its name and address." *Ferguson v. Palmer et al.*, No. 3:12-cv-01036-MMH-JBT, Doc. 42 (M.D. Fla. July 29, 2013). Likewise, recently the DOC provided dozens of documents to lawyers in Arizona challenging lethal injection. *Florida May Be Pondering 'Novel' Lethal Injection Change*. Dara Cam, Sun Sentinel (Dec. 5, 2016). Mr. Asay is entitled to know how much etimodate, rocuronium bromide and potassium acetate remains and more information about the source, storage, and expiration dates of the new drugs. Particularly in light of DOC's unique history of deviating from written execution procedures, public records

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[2]During the course of the 2007 litigation in *Lightbourne,* the lower court granted Mr. Lightbourne's request for public records pertaining to lethal injection and DOC represented that it had turned over all the records relating to lethal injection. Yet DOC failed to turn over any records regarding how or from where the drugs were obtained. Moreover, although the FDOC did not submit any records under seal to the Capital Postconviction Records Repository claiming any exemptions, when a reporter for the Orlando Sentinel attempted to obtain the "vendor history" for FDOC's supply of sodium thiopental, FDOC claimed that such records are "confidential." Anthony Colarossi, *Company urged Florida not to use its drug in execution 'cocktail,'* Orlando Sentinel (February 21, 2011). While it is unclear under what statute or rule these records would be confidential, if such an exemption exists, the DOC still has an obligation to produce the records under seal for an in camera review by this court. DOC also failed to turn over interoffice emails in the minutes and hours following the Diaz execution as well as any documents that were produced in the course of reconstructing the entire execution chamber.

reflecting the DOC's adherence to its own procedures, as well as state and federal regulations relating to obtaining, storing, and using the drugs used for lethal injections, are absolutely relevant to Mr. Asay's case.

13. Florida's protocol calls for the execution team warden to conduct a consciousness check prior to the administration of the second and third drugs. The protocol itself does not describe the method of assessing consciousness. However, Team Warden Timothy Cannon previously testified that:

> he would assess consciousness by employing an 'eyelash touch,' calling the inmate's name, and shaking the inmate. . . . [I]f there is a disagreement as to consciousness, the execution will be temporarily suspended-the curtains will close and the medical team members will come out from the chemical room and consult in the assessment of the inmate. When a determination of unconsciousness is made, the curtains will reopen, and the process will continue. **Under the August 2007 procedures, the second and third drugs will not be administered until the inmate is deemed unconscious and the warden orders that the execution proceed.**

Walton v. McCollum, 969 So. 2d 326, 347 (Fla. 2007)(emphasis added).

14. However, after the consciousness check, if Mr. Asay appears unconsciousness, there is no further monitoring or checks, according to the protocol. The glaring flaw in the protocol is the assumption that once an inmate is unconscious he or she remains unconscious until the conclusion of he execution. This is a flawed assumption. Not only can the first drug and wear off, but injecting the painful second and third drugs can also provide a powerful stimuli, i.e., extreme pain, that causes an inmate to become conscious. Furthermore, etimodate causes involuntary movements (myocloni), which resemble twitches and sudden jerks; these movements are uncontrolled and uncoordinated. These types of movements may 1) cause the IV lines to become dislodged or unstable causing the drugs not to reach the inmates bloodstream and

instead seep into tissue, like in the Angel Diaz execution; 2) be mistaken for consciousness and cause a delay in the procedure, when etimodate is an extremely short acting drug; and/or 3) cause the execution team to ignore real movement demonstrating consciousness because team members were told that some movement is expected. As to the first concern, according to reports regarding William Happ's execution, "the official overseeing the execution tugged at Happ's eyelids and grasped his shoulder to check for a response." At that point there was no response. However, "a minute later, Happ's head began moving back and forth...".[3] Had Mr. Happ been properly anesthetized he would have been unable to move; the fact that he was moving suggests that he was not unconscious and that he could feel pain. The Daily Mail reported that appearances suggested that Happ remained "conscious for a greater length of time and made more body movements after losing consciousness than people executed by the old formula which usually kills the prisoner within seven minutes."[4]

15. Mr. Asay has a constitutional right to public records under Article I, section 24 of the Florida Constitution. The Florida Supreme Court promulgated Florida Rule of Criminal Procedure 3.852 to streamline the process for capital defendants in the pursuit of postconviction relief. *In re Amendment to Florida Rules of Criminal Procedure-Capital Postconviction Pub. Records Prod.*, 683 So. 2d 475, 475 (Fla. 1996). At the time the new rule was put into place, Justice Anstead emphasized in his concurring opinion that **"this rule in no way diminishes the**

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[3] *Fla. Executes man for Illinois woman's 1986 murder*, Brendan Farrington, Miami Herald (October 15, 2013).

[4] *Florida murderer who raped and killed woman is left writhing in agony and takes twice as long to die as he is executed using new untried lethal injection drug*, Daily Mail (October 15, 2013); *See also, Fla. Executes man for Illinois woman's 1986 murder*, Brendan Farrington, Miami Herald (October 15, 2013).

right of an individual Florida citizen, including a capital defendant, to access to public records" and that "the State and its agencies have indicated they will essentially follow an 'open file' policy." *In re Amendment to Florida Rules of Criminal Procedure-Capital Postconviction Pub. Records Prod.*, 683 So. 2d 475, 477 (Fla. 1996).

16. Mr. Asay seeks to challenge the method of execution and he has met the minimal requirement of establishing that the records sought are relevant; i.e., that they have something to do with the subject matter of lethal injection.

13. Based on the foregoing, Mr. Asay attests that the requested records detailed below are reasonably calculated to lead to the discovery of admissible evidence in that such records may contain, or through further investigation may lead to the discovery of, evidence that execution by Florida's lethal injection procedures constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the U.S. Constitution and corresponding provisions of the Florida Constitution.

14. Mr. Asay requests that the DOC turn over copies of the following:

a. Public records concerning the review process which led to the promulgation of the January 4, 2017 lethal injection procedures, including, for example, computer print-outs or copies of research or literature reviewed, emails, faxes, letters, minutes or notes of meetings, telephone call records or notes, including any communications within the Florida DOC, and/or with the Office of the Attorney General, the Office of the Governor, any other outside agencies, experts (medical or other), other states or state departments of corrections, and/or the federal government from January 1, 2015 through the present.

b. Public records relating to any research and/or experiments done by the DOC, or on behalf of DOC, with respect to etomidate.

c. Public records relating to any research and/or experiments done by the DOC, or on behalf of DOC, with respect to rocuronium bromide.

d. Public records relating to any research and/or experiments done by the DOC, or on behalf of DOC, with respect to potassium acetate.

e. Public records relating to any correspondence, from January 1, 2015 to the present, with any federal agency including the Drug Enforcement Administration (DEA), the Food and Drug Administration (FDA), the Federal Bureau of Prisons (BOP), or the Department of Justice (DOJ) relating to Florida's execution procedures or the drugs used for lethal injection. This would include, but is not limited to, application or registration for permits and/or licenses, or permits and/or licenses required by any federal agency in connection with the purchase, storage, use, research, and disposal of etomidate, rocuronium bromide and potassium acetate.

f. Public records relating to any consultation with experts (medical or otherwise) with respect to etomidate, rocuronium bromide and potassium chloride, including, for example, emails, faxes, letters, minutes or notes of meetings, telephone call records or notes, including any internal communications within DOC and/or staff.

g. Public records relating to execution training exercises, including logs, checklists, and sign-in sheets, from January 1, 2015 to the present.

h. Public records relating to any correspondence with any Florida state agency including the Florida Department of Health, from January 1, 2015 through the present, relating to the acquisition of etomidate, rocuronium bromide and potassium acetate.

i. Public records relating to any correspondence or communication with any other department of corrections in any other state regarding lethal injection protocols, from January 1, 2015 to the present.

j. Public records, including logs or record books regarding the purchase, storage, maintenance, use, distribution, and disposal of etomidate, rocuronium bromide and potassium actetate that show compliance (or non-compliance) with the Federal Controlled Substances Act and Florida Statutes, Chapters 828, 893, and 465.

k. Public records relating to how DOC obtained etomidate and/or rocuronium bromide and/or potassium acetate including purchasing orders, prescriptions, contracts, invoices, bills, payments, emails, letters, or any other communication relating to the procurement of the listed drugs.

l. Public records relating to DOC's solicitation of bids for etomidate and/or rocuronium bromide and/or potassium acetate.

m. Public records showing the name of the manufacturer and distributor of the lethal injection drugs including package insert information and/ or manufacturer's instructions, the date of manufacture, and the shelf life of etomidate, rocuronium bromide and potassium acetate currently possessed by the DOC.

n. Public records, including the required logs, notes, memoranda, letters, electronic mail, and facsimiles, relating to the executions by lethal injection of Oscar Ray Bolin, Jerry Correll, Johnny Kormondy, Chadwick Banks, Eddie Davis and John Henry.

o. Public records, including notes, memoranda, letters, electronic mail, and facsimiles, that would indicate personnel changes or any formal or informal changes to the unwritten "procedures" or customary practices that were testified to by DOC personnel during the litigation in *Lightbourne* in 2007.

15. Undersigned counsel attests that:

(A) counsel has made a timely and diligent search of the records repository;

(B) counsel has identified with specificity the public records that are not at the records repository;

(C) the records described are either relevant to the subject matter of a postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.

WHEREFORE, pursuant to rule 3.852(i)(2), the undersigned requests this Court to order the above-named agency to produce the records requested.

AFFIDAVIT OF COLLATERAL COUNSEL

I, Linda McDermott, having been duly sworn or affirmed, do hereby depose and say that the above statements are true and correct.

LINDA McDERMOTT
Florida Bar No. 0102957
Attorney for Mr. Asay

Sworn to or affirmed and subscribed before me this 13th day of July, 2017, by LINDA McDERMOTT, who is personally known to me or has shown the following identification:

NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires: 9/10/18

WILLIAM SCOTT BEATY
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF158957
Expires 9/10/2018

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing Defendant's Demand for Additional Public Records have been furnished by electronic transmission to all counsel of record, on this 13th day of July, 2017.

Respectfully submitted,

/s/ Martin J. McClain
MARTIN J. MCCLAIN
Fla. Bar No. 0754773

/s/. Linda McDermott
LINDA MCDERMOTT
Fla. Bar No. 0102857

McClain & McDermott, P.A.
141 N.E. 30th Street
Wilton Manors, FL 33334
(305) 984-8344
martymcclain@earthlink.net

COUNSEL FOR MR. ASAY

Filing # 67063072 E-Filed 01/25/2018 05:28:30 PM

IN THE CIRCUIT COURT
FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA
Plaintiff,

v.

ERIC SCOTT BRANCH,
Defendant.

CAPITAL CASE
DEATH WARRANT SIGNED

CLERK NO.: 1793CF000870

DIVISION: A

NOTICE OF COMPLIANCE BY STATE ATTORNEY

COMES NOW, the Office of the State Attorney for the First Judicial Circuit, by and through the undersigned Assistant State Attorney, and hereby gives notice of compliance by delivery of public records involving this case to the records repository of the Secretary of State. To the best of my knowledge and belief, all public records in my possession that were produced in the investigation or prosecution of the case, except those previously filed in the trial court, have been copied, indexed, and delivered by email to Assistant Capital Collateral Regional Counsel Kathleen Pafford, and to the records repository of the Secretary of State, as required by Florida Rule of Criminal Procedure 3.852 and this Court's Order of January 25, 2018.

Respectfully Submitted,

JOHN A MOLCHAN (jmolchan@sa01.org)
ASSISTANT STATE ATTORNEY
FLORIDA BAR NO: 0747580
PO BOX 12726
PENSACOLA, FL 32591-2726
PHONE: (850) 595-4243
ALT EMAIL: lgrier@sa01.org

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the foregoing has been electronically filed and electronically served on this, the 25th day of January, 2018 to the following:

Honorable Edward P. Nickinson III
First Judicial Circuit
M.C. Blanchard Judicial Building
190 Governmental Center
Pensacola, FL 32502
Esc.divA.eserve@flcourts1.gov
judge.nickinson@flcourts1.gov
laurie.jenkins@flcourts1.gov

Charmaine Millsaps, Charmaine.Millsaps@myfloridalegal.com
Lisa Hopkins, Lisa.Hopkins@myfloridalegal.com
capapp@myfloridalegal.com
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399-0001

Stacy Biggart, Stacy.Biggart@ccrc-north.org
Kathleen Pafford, Kathleen.Pafford@ccrc.north.org
Capital Collateral Regional Counsel - North
1004 DeSoto Park Drive
Tallahassee, FL 32301

JOHN A MOLCHAN (jmolchan@sa01.org)
ASSISTANT STATE ATTORNEY
FLORIDA BAR NO: 0747580
PO BOX 12726
PENSACOLA, FL 32591-2726
PHONE: (850) 595-4243
ALT EMAIL: lgrier@sa01.org

Filing # 67063072 E-Filed 01/25/2018 05:28:30 PM

IN THE CIRCUIT COURT
FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA Plaintiff, v. **ERIC SCOTT BRANCH**, Defendant.	**CAPITAL CASE** **DEATH WARRANT SIGNED** **CLERK NO.:** 1793CF000870 **DIVISION:** A

NOTICE OF DELIVERY OF EXEMPT
PUBLIC RECORDS TO RECORDS REPOSITORY

TO: Capital Collateral Postconviction Records Repository
State Archives of Florida
Attn: CCR Records Archivist
R.A. Gray Building, MS 9-E
500 South Bronough Street
Tallahassee, FL 32399-0250

The undersigned, John A. Molchan, hereby gives notice to the Capital Collateral Postconviction Record Repository of the Secretary of State that certain delivered records are confidential or exempt from the requirements of section 119.07(1), Florida Statutes. These public records have been separately contained without being redacted, sealed, and the nature of the public records and the legal basis under which the public records are exempt has been identified.

Respectfully Submitted,

JOHN A MOLCHAN (jmolchan@sa01.org)
ASSISTANT STATE ATTORNEY
FLORIDA BAR NO: 0747580
PO BOX 12726
PENSACOLA, FL 32591-2726
PHONE: (850) 595-4243
ALT EMAIL: lgrier@sa01.org

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First Judicial Circuit
M.C. Blanchard Judicial Building
190 Governmental Center
Pensacola, FL 32502
Esc.divA.eserve@flcourts1.gov
judge.nickinson@flcourts1.gov
laurie.jenkins@flcourts1.gov

Charmaine Millsaps, Charmaine.Millsaps@myfloridalegal.com
Lisa Hopkins, Lisa.Hopkins@myfloridalegal.com
capapp@myfloridalegal.com
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399-0001

Stacy Biggart, Stacy.Biggart@ccrc-north.org
Kathleen Pafford, Kathleen.Pafford@ccrc.north.org
Capital Collateral Regional Counsel - North
1004 DeSoto Park Drive
Tallahassee, FL 32301

JOHN A MOLCHAN (jmolchan@sa01.org)
ASSISTANT STATE ATTORNEY
FLORIDA BAR NO: 0747580
PO BOX 12726
PENSACOLA, FL 32591-2726
PHONE: (850) 595-4243
ALT EMAIL: lgrier@sa01.org

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

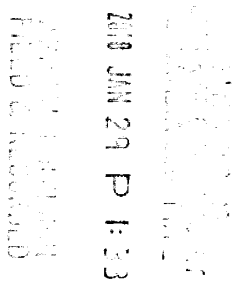
STATE OF FLORIDA,

vs. CASE NO: 1993 CF 870 A

ERIC SCOTT BRANCH,

Defendant
_____/

Proceedings held in the above-styled cause before the Honorable Edward P. Nickinson, III, Circuit Judge, on the 26th day of January 2018, at the M.C. Blanchard Judicial Building, 190 Governmental Center, Pensacola, Florida 32502.



SHARON K. MCMURRAIN, RPR, RMR
OFFICIAL COURT REPORTER

APPEARANCES:

FOR THE STATE:	JOHN A. MOLCHAN, ESQUIRE Assistant State Attorney 190 Governmental Center Pensacola, Florida 32502
(Via Telephone)	CHARMAINE M. MILLSAPS, ESQUIRE Assistant Attorney General Office of the Attorney General The Capitol, PL-01 Tallahassee, Florida 32399
FOR THE DEFENDANT: (Via Telephone)	STACEY R. BIGGART, ESQUIRE KATHLEEN PAFFORD, ESQUIRE Assistant Capital Collateral Regional Counsel, North 1004 DeSoto Park Drive Tallahassee, Florida 32301
(Via Telephone)	BILLY NOLAS, ESQUIRE Federal Public Defender 227 N. Bronough Street, Suite 4200 Tallahassee, Florida 32301
FOR FDLE: (Via Telephone)	JANINE ROBINSON, ESQUIRE Assistant General Counsel Florida Department of Law Enforcement P.O. Box 1489 Tallahassee, Florida 32301
FOR FDOC: (Via Telephone)	RYAN PADGETT, ESQUIRE Florida Department of Corrections 501 South Calhoun Street Tallahassee, FL 32399
STAFF ATTORNEY:	ADELE W. GIBSON, ESQUIRE Senior Staff Attorney 190 Governmental Center Pensacola, Florida 32502
ALSO PRESENT:	TONYA THIBODEAUX JESSICA EVERETT

P R O C E E D I N G S

THE COURT: This is Judge Nickinson in Pensacola.

Who do we have on the line?

MR. PADGETT: Ryan Padgett and (unintelligible) Fowler from the Department of Corrections.

THE COURT: What's the last name of the second person?

MR. PADGETT: (Unintelligible).

THE COURT: Spell it, please. I'm sorry. I interrupted you. Spell it, please.

MR. PADGETT: F, as in fox, F-O-W-L-E-R.

THE COURT: Fowler. Thank you.

MS. ROBINSON: Janine Robinson, with the Florida Department of Law Enforcement.

MS. MILLSAPS: This is Assistant Attorney General Charmaine Millsaps with the Attorney General's office in Tallahassee, Florida.

MS. BIGGART: This is Stacey Biggart with CCRC-North.

MS. PAFFORD: Kathleen Pafford with CCRC-North.

MR. NOLAS: Billy Nolas, Your Honor, I'm co-counsel with Ms. Pafford and Ms. Biggart.

THE COURT: Very good.

And I will ask those who are here in the hearing room with me to state their names for the record so we have it complete.

MS. GIBSON: Adele Gibson, Staff Attorney.

MS. THIBODEAUX: Tonya Thibodeaux, appeals division.

MS. EVERETT: Jessica Everett, appeals clerk.

MR. MOLCHAN: John Molchan, Assistant State Attorney.

THE COURT: Very well. Thank you. That's everybody.

And we are here to talk about public records issues, the demands having gone out. I know there are two objections. Are there three? I'm sorry.

MS. BIGGART: There are three objections, Your Honor.

This is Stacey Biggart.

THE COURT: I had only seen two. I have been in trial today so I may have missed the most recent.

MS. BIGGART: Your Honor, if I may, I can kind of fill you in on what's been filed, what's happened behind the scenes, and what we have to deal with today.

THE COURT: Thank you.

MS. BIGGART: Okay. Great.

Your Honor, we filed five public records requests. We served them on DOC, the Escambia County Sheriff's Office, FDLE, the 8th Circuit Medical Examiner's Office, and the State Attorney's Office.

So we can dispense of a couple of these very quickly. Yesterday I got a phone call from Deborah Little with the General Counsel's Office at Escambia County Sheriff's Office.

THE COURT: Yes.

MS. BIGGART: She represented to me that they did a diligent search of their files and they don't have anything new since the last public records request in 1999. I have no reason not to believe that that's true. She hasn't filed anything with the Court to that effect, but there is nothing there.

THE COURT: I knew that we didn't have a response. The only time I can think of that-- and Ms. Gibson and I were talking about this earlier today-- that Mr. Branch has been here since 1999 would have been for the first Post-Conviction Motion Evidentiary Hearing and that took place, I think, in what, 2003?

MR. MOLCHAN: Yes.

THE COURT: Yeah. Mr. Molchan is helping me with that. I looked it up today, but it's a long

record. That took place in 2003 and he would have been here and how housed at the Escambia County jail in 2003. So I'm a little surprised they don't have something, but it wouldn't be anything other than --

MS. BIGGART: Housing records.

THE COURT: Yes, jail records showing he was here for a few days.

MR. MOLCHAN: Judge, the aspect of it, from what I can tell, is that the Escambia County Sheriff's Office was not the primary investigator of this particular crime that was lodged with the Florida Department of Law Enforcement from what I can tell.

THE COURT: Okay.

MS. BIGGART: I think that was true.

MS. MILLSAPS: And, Your Honor, if it's possible, although I do not know this, that DOC was, in fact, responsible for him while he was there during the evidentiary hearing, so that the Jacksonville-- the Escambia County Sheriff didn't really generate --

THE COURT: He was in DOC custody.

MS. MILLSAPS: Okay.

THE COURT: He came there from prison.

MS. BIGGART: Right. Your Honor, I don't have any reason to believe that she doesn't have anything.

THE COURT: All right. Very good.

MS. BIGGART: I talked to her at length yesterday.

We also got a response from the State Attorney's Office yesterday. They provided anything that they had since 1999 and they filed their Notice of Compliance with the Court.

So we have three demands remaining. There are three objections, but they were also some records produced, as well, and I wanted to put that on the record. So FDLE filed an objection, and then they also provided records to us today that did not fall within their objections.

DOC provided Mr. Branches' medical file and also filed an objection regarding other records. We had a discussion before the hearing. Some of his medical records are redacted. I'm going to send that information to Mr. Fowler, and we are going to-- we're going to-- or Mr. Gambell (phonetic) and we are going to straighten that issue out.

And then the 8th Circuit Medical Examiner also filed an objection. They filed it through the A.G.'s office or the A.G. filed it on their behalf. So we would just ask that Ms. Millsaps please put on the record that she has consulted with the 8th Circuit Medical Examiner's Office and has their consent to file

their objection and proceed on their behalf. So that's where we are today.

THE COURT: Okay.

MS. MILLSAPS: Your Honor, this is Charlene Millsaps with the Attorney General's office.

I consulted with the forensic investigative coordinator of the District 8 Medical Examiner's Office. Her name is Cathy Weldon. I'm going to call her after this hearing is over and tell her the response, how Your Honor rules on the objection. Yes, we have the authority and are doing this with their full knowledge.

Your Honor, normally we don't like to do this, in terms of speak for agencies, but the 8th -- the District 8 Medical Office doesn't have attorneys on staff and they cannot electronically file things. They don't have access to the E-portal. So it just ends up being much easier if we do it, Your Honor.

THE COURT: Makes sense to me.

Shall we start with that one?

MS. MILLSAPS: By all means.

Is my response one of the objections that Your Honor got?

THE COURT: It is. Yeah. I do have that and that's even one of them that I've read.

MS. MILLSAPS: Okay. Good. Well, then, Your Honor, I hate to reread for Your Honor, so I'm not going to do that. But basically I have two main objections, and then controlling case law-- what I believe to be controlling case law from the Florida Supreme Court regarding this issue.

First of all, Rule 3.852(h)(3) is supposed to be update-- according-- now, Your Honor, according to what I looked through of our -- we get copies of public records requests. I went back around 1999 and 2000, and the only public records demand that I could find was on the 1st District Medical Examiner's Office for, you know, the M.E.'s file in this case. So I could not find that there had been any prior record demands on the 8th District Medical Examiner's Office; and therefore, that Rule only provides for updates. So it's not proper under that Rule.

But then really, Your Honor, we do not think, in light of the controlling precedent of *Asay*, the Florida Supreme Court says when there's controlling precedent, then the public records are not related to a colorable claim because the precedent is against the claim.

So, Your Honor, the Florida Supreme Court, after an extensive hearing in which three experts

testified, held that the current protocol, which uses the term of date as its first rung, is constitutional. And there have been two executions since then -- since *Asay*, *Lambrix* and *Hannon*, and it's those three that they want the autopsy files regarding those three executions of the current -- that have proceeded under the current protocol. And so, Your Honor, in light of the controlling precedent, we don't think it's related to a colorable claim.

But also, Your Honor, *Chavez* and-- well, *Hannon*, they often make these requests on the 8th Judicial -- I mean, on the 8th M.E.'s office, and the Florida Supreme Court routinely affirms their denial. So we don't think it's related to any colorable claim regarding lethal injection, Your Honor.

THE COURT: Counsel for the defendant wish to be heard?

MS. BIGGART: Yes, sir. This is Stacy Biggart again.

Your Honor, we have tailored this request to something a little more narrow than what the people have asked for in the past. We haven't asked for-- I think they mentioned in their response in the past people have asked for eight autopsy reports.

First of all, this would not have been filed

in the past because this is Mr. Branches' first death warrant. So this is the first time that we have had an opportunity to ask for these records. If we had asked for them back then, they would have been denied anyway because it wouldn't have been right.

We are not asking this as a challenge to the three-drug protocol. We are asking for this particular-- and I will even narrow it to just Mr. Hannon's autopsy. Per media reports from the AP, in Mr. Hannon's-- there were irregularities with Mr. Hannon's execution. His lips twitched, his chest heaved, and his arms, legs and body appeared to convulse a bit. Now-- and this goes to the request-- and I don't mean to jump to the other people's objections-- the objection about whenever we asked for the expiration dates of the drugs.

Mr. Hannon's execution, the last records that anyone has, and this was from media reports. So the media can get these records, yet Mr. Branch who will be executed with these drugs may not get this information. The etomidate, which is the first drug, is a paralytic, expired September of 2017, which would have been a few months before Mr. Hannon was executed.

Now, his attorney states in the VOP, unless they are incorrect, they didn't turn over this

information and they weren't required to. So as far as it looks, Mr. Hannon was possibly executed with an expired drug, and then there are irregularities with his execution. So that's why we are-- I will tailor it down to just ask for Mr. Hannon.

THE COURT: Ms. Millsaps, would you like to respond to that?

MS. MILLSAPS: Well, yes. Number 1. If it was just Mr. Hannon and that's their real claim, they should have put that in the demand. So, you know, in effect, what she's done is change the demand.

But to respond to it, there's no-- I mean, there's no-- this is the first I've heard about expired-- that there's an allegation that it's been expired. I would really like to look into it and add to it.

But, Your Honor, it's not true that the other demands involved-- yes, one of them involved a whole bunch of records, you know, when they wanted 21 executions, but *Mohammed* and *Chavez* did not. *Chavez*, they only wanted two autopsies, and *Mohammed*, they only wanted one autopsy-- they wanted half, and in the half, they had done much the same thing. They had made some-- some allegations that there were some little minor hiccups. But, in fact, what the Florida Supreme

Court said is it is still not-- autopsies were still not related. And I'm going to quote them because these autopsy photographs and reports would not disclose at what point he was rendered unconscious or whether he experienced any pain.

Well, that's equally true of Hannon, that's-- you know, it's not going to tell us-- and, Your Honor, a lot of what they are calling some minor movement-- the drug is fully effective and you can see this in the *Asay* opinion: Causes some muscle movement, that that is common in-- this drug is used in a hospital setting, Your Honor. And minor muscle movement, as you could see in the *Asay* opinion discussing all of this in detail, it's quite common. It is not an indication of pain. And autopsy reports aren't going to be able to tell them, you know, whether there was pain or not.

So really relying on the same logic of the Florida Supreme Court in *Mohammed*, this sounds very much like a *Mohammed* claim, and they affirmed the denial on this Medical Examiner of the exact same thing. A little lip twitching is the way this drug works, Your Honor, so that's nothing.

THE COURT: Any other discussion on this claim?

MS. BIGGART: Just briefly, Your Honor.

We attached the disclosures that were made to a media outlet to DOC and FDLE's demand. I think Ms. Millsaps was served on those, and that will give her some information on the expiration date issue that we are discussing. Also, the autopsy will show us levels of the drugs, any venous access problems, anything like that. So that's why we want Mr. Hannon's autopsy.

THE COURT: Very good. Thank you.

For the District 8 Medical Examiner, the Court will sustain the objection and deny access to these records.

Which one do you want to address next?

MS. BIGGART: Your Honor, both FDLE and DOC had similar objections. So we can, I guess, probably address those together.

THE COURT: All right. Very good. I will get each of those on top. Go ahead.

MS. BIGGART: Okay. Your Honor, so what we attached-- we have noticed that the etomidate expired in September of 2017, and the potassium acetate, which is the last drug in the protocol-- and we attached this information to both of the demands-- is set to expire in February of 2018, which is the same month that Eric is to be executed, and he is to be executed on the 22nd, towards the end of the month. So we are

concerned that Mr. Branch is going to be executed with expired drugs and could possibly be an 8th Amendment violation for cruel and unusual punishment for using expired drugs and causing him unnecessary pain. So we have-- we have this information. We don't want to know who the distributor is. We are not asking where they got the drugs. We want to see the logs that show that they plan to use unexpired drugs in Mr. Branch's execution.

THE COURT: Ms. Millsaps, are you responding to that, or somebody else, or Mr. Padgett?

MR. PADGETT: Yes, Your Honor, I can respond.

I'm not sure if Your Honor has a copy of our motion, if that's one that you have copies of.

THE COURT: Are you talking about your response?

Yes, I do.

MR. PADGETT: Okay. Your Honor, if you look at page 7 of the response, actually, I think we have something that addresses that issue directly.

THE COURT: I'm sorry, which page? It broke up there --

MS. MILLSAPS: 7.

MR. PADGETT: Page 7, Your Honor.

THE COURT: Well, wait a minute. I've only

got six pages in what I'm looking at. That's why I was asking. It may not be the same.

MR. PADGETT: If Your Honor would like, I can just summarize it.

THE COURT: Okay.

MR. PADGETT: Essentially what they are saying is there may be a chance that the drugs may be expired, and I think this is, again, very similar to something that was raised and denied in the Hannon case. There's a lot of case law out there Your Honor, that says that the Florida Supreme Court will presume that the Department of Corrections will act in accordance with this protocol, and carry out its duties properly, and that they will obtain viable versions of the drugs it intends to use, and confirm before use that the drugs are still viable as the protocol requires. And that's the case we cite extensively, it's the *Mohammed* case. And lethal injection protocol can be accessed online. I think we filed it in the repository. The lethal injection protocol requires that the drugs not be expired. So we think the Supreme Court's holding that gives deference to the Department of Corrections, that it will not, in fact, use expired drugs I think is extremely persuasive.

THE COURT: Ms. Biggart.

MS. BIGGART: Well, Your Honor, I think that the reliance on *Mohammed* is somewhat misplaced. Those requests that were made in *Mohammed* were not tailored to anything specific. They were any and all type demands. They were asking for the identities of previous execution teams. They were very broad. We just want to know that the drugs are not expired.

We understand that the Supreme Court says that they are going to assume that they are not, but we don't want to assume that on behalf of Mr. Branch. And if they are not expired and they are using the proper drugs, I don't really understand the need for the refusal or the secrecy.

MR. PADGETT: Your Honor, if I may?

THE COURT: Yes, sir.

MR. PADGETT: First, the Supreme Court did say that, and I submit that the Supreme Court is the highest court in the state and that's the precedent.

Second, I would also add that in the past executions of Hannon, Lambrix and Asay, counsel has asked for the same exact things in the same language and it's been denied every time by trial courts and the Supreme Court. And again, these are defendants post-warrant, same posture, same demand, and they have been denied each time.

THE COURT: Anyone else want to weigh in?

MS. ROBINSON: Your Honor, Janine Robinson on behalf of FDLE. If we want to do these together, I can offer my comments.

THE COURT: Yes. If you would, please. It sounds like these are similar issues.

MS. ROBINSON: Yes, sir, they are.

I completely echo Mr. Padgett's commentary.

Two things I do want to state, though, if counsel for Mr. Branch is now changing the demand to only requesting expiration dates, I'm confounded at the demand, again, that was nearly identical to that that FDLE received in Mr. Hannon, Mr. Asay, Mr. Lambrix, again, which were all denied and objections sustained.

And then counsel also stated that now they are not asking for the manufacturer or the distributor, but that's precisely on page 2, paragraph B.

So they are changing their tune at the 11th-and-a-half hour, and the courts are real clear, it's not supposed to be a fishing expedition for an 11th-and-a-half hour delay.

So that's all I would add.

MS. BIGGART: Your Honor, I just have a reply.

THE COURT: Yes, ma'am.

MS. BIGGART: I did not ask for the

distributor. I asked for the manufacturer. I did not ask where-- who, they got the drugs from, who they bought the drugs from.

THE COURT: The demand that you filed says manufacturer and distributor.

MS. BIGGART: Oh.

THE COURT: I'm looking at it. I mean, not that I think that's necessarily the difference maker in the decision on this, but --

MS. BIGGART: No. I don't think so either.

But Your Honor, we got their objections and we decided-- we had changed our request. We've limited them. We got their objections so we are trying to tailor them into something that is not overly broad, but something that Your Honor would consider.

THE COURT: Well, I appreciate the opportunity, but as I understand it, the Supreme Court has ruled in previous cases that these are not discoverable under public records requests in death cases. I am hard pressed to say they are wrong, and so for that reason, for both the FDLE and the DOC demand for public records, the objections are sustained and the records are not required to be provided, those covered by the objections.

Anything else we need to address this

afternoon?

MR. PADGETT: Not from corrections, Your Honor.

MS. ROBINSON: Not from FDLE, Your Honor.

Oh, except one thing. We did submit supplemental records to counsel today into the repository. I did not have an opportunity to file our Notice of Compliance. If I can't get that done today, it will be Monday, but Defense counsel does have a copy.

THE COURT: Well, and I had a housekeeping --

MS. BIGGART: Yes, sir, that's what I put on the record before we started discussing the objections, I got those from Ms. Robinson.

THE COURT: That I think was Ms. Biggart.

MS. BIGGART: Yes, that was Ms. Biggart.

THE COURT: I have a housekeeping question.

It's Friday afternoon. How quickly do you need an order from us for today? Will Monday do or do I need to get something out before we go home?

MS. BIGGART: Your Honor, I think Monday will do.

THE COURT: All right. Very good.

MS. MILLSAPS: Your Honor, I do have a suggestion. I mean, I'm going to file-- depending on

what the answer to my question is. Today Billy Nolas emailed me with the two experts and a sort of summary of the claim.

I'm a little confused whether they are raising a standalone-- and we need to know this, Your Honor, to prepare both my answer and our own counter-experts. But I need to know if they are raising a standalone *Hall* Intellectual Disability Claim, because we will need to prepare that and I will need to file a Motion to Compel Discovery from them from some of the records that they have that we will not be able to get in time if an evidentiary hearing is scheduled, but that's only, Your Honor, if they are raising a free standalone Intellectual Disability Claim.

The description of their summary was more *Roper* Emotional Maturity Claim, and I won't need to file anything about that. I guess I'm asking for clarification of the claim.

THE COURT: Ms. Biggart, are you prepared to speak to that?

MR. NOLAS: Yes, Your Honor, this is Billy Nolas.

THE COURT: Mr. Nolas.

MR. NOLAS: So I think the direct answer to Ms. Millsaps' question is it will not be a traditional

Intellectual Disability Claim. Without giving Your Honor the details, because it's a discovery matter, in the email, however, we pointed out that issues relating to Mr. Branch's immaturity, his brain development, and his developmental stages are part of the presentation that we are going to be making, and so that's why that language was included in the exchange. But it will not be a traditional Intellectual Disability Claim with an IQ score and things along that line. Although, again, his cognitive functioning is part of the presentation we are making.

And as I said the other day and as we reiterated in the email, we will have the expert reports finalized by Monday morning along with the supporting documentation and affidavits, and pursuant to Your Honor's schedule, we will make a full submission with the documents attached.

THE COURT: Ms. Millsaps, does that address your concerns?

MS. MILLSAPS: It most certainly does, and I will not be bothering Your Honor this weekend.

THE COURT: I will be here, as it turns out, but if you don't need to, that will be fine.

All right. If there's nothing else we need to do this afternoon, we can adjourn.

MR. NOLAS: Thank you very much, Your Honor.

THE COURT: Thank you all.

MS. BIGGART: Thank you, Your Honor.

(Proceedings concluded)

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF ESCAMBIA

I, SHARON K. MCMURRAIN, RPR, RMR, Official Court Reporter, do hereby certify that the foregoing, being pages numbered 1 through 23, inclusive, is a true and correct transcript of the proceedings held in the case of STATE OF FLORIDA vs. ERIC SCOTT BRANCH, Case No. 1993 CF 870 A, on the 26th day of January 2018, before the Honorable Edward P. Nickinson, III, Circuit Judge, at 190 Governmental Center, Pensacola, Florida.

IN WITNESS WHEREOF, I have hereunto set my hand, this the 29th day of January 2018.

Sharon K. McMurrain

SHARON K. MCMURRAIN, RPR, RMR
Official Circuit Court Reporter

Filing # 67158593 E-Filed 01/29/2018 09:49:23 AM

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

CAPITAL CASE
DEATH WARRANT SIGNED- EXECUTION SET FOR FEBRUARY 22, 2018, AT 6:00 P.M.

v.

ERIC SCOTT BRANCH,

Defendant.

Case No.: 1993 CF 000870 A
Div.: A
/ S. Ct. No.: SC83805

ORDER SUSTAINING OBJECTIONS AND DENYING DEFENDANT'S DEMANDS FOR PUBLIC RECORDS

THIS MATTER came before the Court upon Defendant's filings of January 24, 2018, titled "Defendant's Demand for Public Records" and brought pursuant to Florida Rule of Criminal Procedure 3.852(h)(3); The Florida Department of Law Enforcement's Response and Objections to Defendant's Demand for Public Records, filed January 24, 2018; the Department of Corrections' Objections to Defendant's Demands for Post-Warrant Public Records, filed January 25, 2018; and the Medical Examiner's Objections to Public Records Demands, filed January 25, 2018. A hearing was held on this matter on January 26, 2018. Present at the hearing was Assistant State Attorney John Molchan. Attending by telephone were Assistant Attorney General Charmaine Millsaps; Assistant Capital Collateral Regional Counsel Stacy Biggart and Kathleen Pafford; Assistant Federal Public Defender Billy Nolas; Janine Robinson, Assistant General Counsel, Florida Department of Law Enforcement; Ryan G. Padgett, Senior Attorney, Florida Department of Corrections; and Philip Fowler, Assistant General Counsel, Florida Department of Corrections.

OBJECTIONS OF THE DISTRICT EIGHT MEDICAL EXAMINER[1]

Defendant demanded from the District Eight Medical Examiner copies of documents concerning post mortem examinations performed on Mark Asay, Michael Lambrix, and Patrick Hannon. At the hearing, Defendant narrowed the demand to examination performed on Hannon. Defendant argued there were concerns Hannon had been executed with an expired drug, and there were irregularities, such as lip twitching, during his execution.

While rule 3.852(h)(3) allows a demand for an update of records previously requested from an agency to which Defenant has previously requested public records, Defendant has not made any prior demands for records from the District Eight Medical Examiner's office. Therefore, the request is improper. *See Rutherford v. State*, 926 So. 2d 1100, 1117 (Fla. 2006).

A request for public records may be denied if it is overly broad, of questionable relevance, and unlikely to lead to discoverable evidence. *See Muhammad v. State*, 132 So. 3d 176, 201 (Fla. 2013). Defendant must show the public records he seeks are related to a colorable claim for relief. *See Asay v. State*, 224 So. 3d 695, 700 (Fla. 2017). In *Asay*, the current drug protocol was held constitutional. *Id.* at 700-02. The denial of similar claims for autopsy records from the District Eight Medical Examiner have been upheld by the Florida Supreme Court. *See Chavez v. State*, 132 So. 3d 826, 830 (Fla. 2014); 132 So. 3d at 203. Defendant fails to show the records of the post mortem examination of Hannon are relevant and likely to lead to a colorable claim for relief. Therefore, he is not entitled to any of the records demanded of the District Eight Medical Examiner.

OBJECTIONS OF FDLE AND DOC

[1] The objections were filed on behalf of the District Eight Medical Examiner by Assistant Attorney General Charmaine Millsaps, who advised her office had the authority to do so and had filed the objections with the knowledge of the District Eight Medical Examiner.

In his demand upon the FDLE and in parts 3.b., c., and d. of the demand upon the DOC, Defendant demanded all public records relating to Florida's lethal injection protocol, including information regarding the drugs etomidate, rocuronium bromide, and potassium acetate, and all public records relating to the executions of Mark Asay, Michael Lambrix, and Patrick Hannon. At the hearing, Defendant argued there were concerns the supply of drugs to be used in Defendant's execution could be expired, causing him unnecessary pain. Defendant emphasized his primary concern was with logs showing the drugs to be used would be unexpired.

Denial of requests for records relating to the expiration dates of the State's supply of the drugs to be used for execution have been upheld by the Florida Supreme Court as of questionable relevance to a colorable claim. *See Hannon v. State*, 228 So. 3d 505, 512 (Fla. 2017); 132 So. 3d at 206. It is presumed DOC will follow its lethal injection protocol, which includes the use of viable drugs. *See* 132 So. 3d at 206. Rule 3.852 does not authorize a fishing expedition for records unrelated to a colorable claim for relief. *See* 228 So. 3d at 511; 132 So. 3d at 201. As stated above, the current protocol has been approved in *Asay*. *See* 228 So. 3d at 512. Defendant fails to show any necessity and relevance sufficient to require the records sought and therefore is not entitled to the records demanded of the FDLE and the DOC.

MISCELLANEOUS MATTERS

Defendant also made a demand of the Escambia County Sheriff's Office. At the hearing, counsel for Defendant advised she had contacted the ECSO, which represented that after a diligent search there was nothing new since the last public records request in 1999. Counsel for Defendant further advised she had no reason to believe the ECSO has anything to provide in response to the demand for records. Therefore, the Court deems the demand made upon the ECSO satisfied.

Counsel for Defendant also advised records demanded from the Office of the State Attorney for the First Judicial Circuit have been provided. Also, she advised the FDLE and the DOC have provided records not objected to by those agencies, and she will work out the issue of redacted medical records with counsel for the DOC. Counsel for the FDLE advised its notice of compliance would be filed by Monday, January 29, 2018.

Accordingly, it is

ORDERED AND ADJUDGED the objections made by the District Eight Medical Examiner, the FDLE, and the DOC are SUSTAINED, and Defendant's demands for public records made upon the District Eight Medical Examiner, the FDLE, and the DOC are DENIED.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida.

eSigned by CIRCUIT COURT JUDGE E P NICKINSON III
on 01/29/2018 08:35:01 8wtriT0F

EPN/awg

Service of the Order Sustaining Objections and Denying Defendant's Demands for Public Records shall be made by the Clerk upon:

STACY R. BIGGART, Assistant Capital Collateral Regional Counsel, North
1004 DeSoto Park Drive, Tallahassee, FL 32301
Stacy.Biggart@ccrc-north.org

KATHLEEN PAFFORD, Assistant Capital Collateral Regional Counsel, North
1004 DeSoto Park Drive, Tallahassee, FL 32301
Kathleen.Pafford@ccrc-north.org

BILLY H. NOLAS, Assistant Federal Public Defender
227 N. Bronough St., Ste. 4200, Tallahassee, FL 32301-1300
Billy_nolas@fd.org

JOHN A. MOLCHAN, Assistant State Attorney
Office of the State Attorney, 190 Governmental Center, Pensacola, FL 32502
JMolchan@sa01.org

CHARMAINE M. MILLSAPS, Assistant Attorney General
Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL 32399
capapp@myfloridalegal.com
Charmaine.Millsaps@myfloridalegal.com

LISA HOPKINS, Assistant Attorney General
Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL 32399
capapp@myfloridalegal.com
Lisa.Hopkins@myfloridalegal.com

S. DOUGLAS KNOX, ESQ.
Quarles & Brady, LLP, 101 East Kennedy Boulevard, Suite 3400, Tampa, FL 33602-5195
doug.knox@quarles.com

JANINE ROBINSON, Assistant General Counsel
Florida Department of Law Enforcement, P.O. Box 1489, Tallahassee, FL 32302-1489
janinerobinson@fdle.state.fl.us

RYAN G. PADGETT, Senior Attorney
Florida Department of Corrections, 501South Calhoun St., Tallahassee, FL 32399-2500
Ryan.padgett@fdc.myflorida.com
April.vicary@fdc.myflorida.com

PHILIP FOWLER, Assistant General Counsel
Florida Department of Corrections, 501South Calhoun St., Tallahassee, FL 32399-2500
philip.fowler@fdc.myflorida.com

DEBRA D. LITTLE, General Counsel
Escambia County Sheriff's Office, 1700 West Leonard Street, Pensacola, FL 32501
ddlittle@escambiaso.com

JOHN A. TOMASINO, Clerk of the Court of the Florida Supreme Court
Attn: Death Warrants, Office of the Clerk of the Supreme Court of Florida, 500 S. Duval St., Tallahassee, FL 32399
warrant@flcourts.org

ERIC SCOTT BRANCH (DC# 313067)
Florida State Prison
7819 N.W. 228th Street
Raiford, Florida 32026-1000

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,
PLAINTIFF
vs.

ERIC SCOTT BRANCH ,
DEFENDANT

Case No.: **1993 CF 000870 A**
DIV: **A**
DCA NO.:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. Mail (unless otherwise indicated) to:

BRANCH, ERIC SCOTT
DC# 313067
FLORIDA STATE PRISON
7819 N.W. 228TH STREET
RAIFORD, FLORIDA 32026-10000

Office of the State Attorney
First Judicial Circuit
By E-Service
Attn: ASA, Division A

on January 29, 2018.

PAM CHILDERS, CLERK OF THE CIRCUIT COURT

By:

Deputy Clerk

Filing # 67159730 E-Filed 01/29/2018 10:02:24 AM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY, FLORIDA**

STATE OF FLORIDA

CASE NO. 1993-CF-870-A

v.

ERIC SCOTT BRANCH,
Defendant.
_____/

APPLICATION FOR STAY OF EXECUTION AND MOTION TO VACATE JUDGMENT AND SENTENCE WITH SPECIAL REQUEST FOR LEAVE TO AMEND

Defendant, **ERIC SCOTT BRANCH**, through counsel, moves to vacate his death sentence pursuant to Fla. R. Crim. P. 3.851.

APPLICATION FOR STAY OF EXECUTION

The claims raised herein are unencumbered by legitimate procedural impediments: one is founded on a new scientific consensus that was not available during prior proceedings; the other is a claim that becomes ripe for review only after a death warrant is issued. Both claims implicate the Eighth Amendment's constitutional prohibitions against cruel and unusual punishment.

This case deserves meaningful consideration, and a meaningful evidentiary hearing, without the truncating concerns of a death warrant. This Court is authorized to enter a stay of execution. As this submission demonstrates, the equities of this case make it appropriate for this Court's exercise of its authority to enter a stay.

PROCEDURAL AND FACTUAL HISTORY[1]

Eric Scott Branch was indicted on one count of first degree murder, one count of sexual battery and one count of grand theft auto on February 23, 1993. Trial began on March 7, 1994. Mr.

[1] The judgments and sentences under attack are as follows: Judgment of guilty for Count I (first degree murder), sentence of death; judgment of guilt for Count II (sexual battery), life sentence; judgment of guilty for Count III (grand theft auto), sentence of five years imprisonment.

Branch was convicted as charged on March 10, 1994. The jury recommended death by a vote of 10-2 and the trial court followed its recommendation, sentencing Mr. Branch to death on May 3, 1994. The Florida Supreme Court affirmed Mr. Branch's convictions and death sentence on direct appeal. *Branch v. State*, 685 So. 2d 1250 (Fla. 1996).[2] The United States Supreme Court denied certiorari review on May 12, 1997. *Branch v. Florida*, 520 U.S. 1218 (1997).

On May 7, 1998, Mr. Branch filed a Rule 3.850 motion. It was amended on April 1, 2003 and again on October 10, 2003.[3] After an evidentiary hearing, the circuit court denied relief. On appeal, the Florida Supreme Court affirmed.[4] On August 31, 2005, Mr. Branch filed a petition for

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[2] The following issues were raised on direct appeal: (1) failure to grant a continuance; (2) failure to conduct a *Nelson* hearing; (3) failure to give a requested circumstantial evidence instruction; (4) error in admitting a photograph of the victim; (5) insufficient evidence; (6) improper comment on Mr. Branch's right to remain silent; (7) failure to give a requested jury instruction defining mitigating circumstances; (8) error in admitting evidence of other crimes; and (9) improper victim impact evidence. The Florida Supreme Court denied all of Mr. Branch's claims.

[3] Mr. Branch raised the following issues: (1) Ineffective assistance of counsel at the guilt phase; (2) ineffective assistance of counsel at the penalty phase; (3) newly discovered evidence that the judge and jury considered a non-statutory aggravator; (4) Mr. Branch's rights under *Ake v. Oklahoma* were violated; (5) Mr. Branch was denied his constitutional rights when his lawyer was prevented from interviewing jurors; (6) Mr. Branch's sentencing jury's sense of responsibility was improperly diminished; (7) Florida's capital sentencing scheme is unconstitutional under *Ring v. Arizona*; (8) lethal injection is cruel and unusual punishment; (9) Mr. Branch may be incompetent at the time of execution; (9) the trial court improperly relied on an automatic aggravator; (10) Mr. Branch was denied due process due to omissions in his trial transcripts; (11) agencies improperly withheld public records; (12) Florida's capital sentencing scheme is unconstitutional on its face; and (13) cumulative error.

[4] In his Rule 3.851 appeal, Mr. Branch raised nine issues: (1) The trial court erred in finding that defense counsel was not ineffective for failing to file a motion to suppress; (2) the trial court erred in finding defense counsel was not ineffective for failing to investigate and present mitigation; (3) the trial court erred in finding defense counsel was not ineffective for failing to hire experts; (4) the trial court erred in finding the Indiana conviction amounted to a prior violent felony; (5) the trial court erred in finding defense counsel was not ineffective for failing to object to the Indiana abstract judgment; (6) the trial court erred in finding defense counsel was not ineffective for failing to impeach; (7) the trial court erred in finding Mr. Branch's failure to investigate claim without merit; (8) the trial court erred in finding defense counsel's failure to object reasonable; and (9) the trial court erred in not addressing cumulative errors.

writ of habeas corpus in the Florida Supreme Court. The Florida Supreme Court denied Mr. Branch's petition on August 31, 2006.[5] Rehearing was denied on March 12, 2007.

On March 28, 2007, Mr. Branch filed a federal habeas petition in the Northern District of Florida. Mr. Branch's petition was denied on March 30, 2010, with a Certificate of Appealability granted. The Eleventh Circuit denied Mr. Branch's appeal on April 21, 2011. *Branch v. Sec'y*, 638 F.3d 1353 (2011).

I. Eric Branch's Life History

From running barefoot through a blizzard covered in blood to get away from his abusive father at the age of five, to his anguish-filled decision to give his daughter up for adoption, thereby losing his first chance to have the family he so desperately wanted, to becoming the victim of a gang-rape in prison as a teenager, Eric's traumatic upbringing was riddled with physical and emotional abuse, neglect and abandonment. Eric's short life before ending up on death row can only be described as a series of one tragic day followed by another.

The science of human brain development today "informs that the human brain is not appropriately 'formed' or mature until an individual reaches their mid-twenties." Report of Faye E. Sultan, Ph.D., at 16. "[S]cience now recognizes that the cut-off of 18 years is arbitrary, and not in accord with the current understanding of the scientific community. . . . [T]he current scientific understanding of adolescent brain development was not available during earlier proceedings in

[5] In his federal habeas petition, Mr. Branch raised four issues: (1) Ineffective assistance of appellate counsel for failing to sufficiently argue the State failed to prove the prior violent felony aggravator; (2) ineffective assistance of appellate counsel for failing to raise the issue of the trial court's error in admitting DNA evidence; (3) ineffective assistance of appellate counsel for failing to raise the issue of the trial court's error in denying Mr. Branch access to his attorney; and (4) ineffective assistance of appellate counsel for failing to argue that Florida's *Nelson* inquiry is unconstitutional.

Eric Branch's case." Report of James Garbarino, Ph.D., at 1. Eric Branch was a 21-year-old traumatized, alcohol-addled boy at the time of the offense.

A. Eric Branch was born to teenage parents in an unstable environment and a family with a history of substance abuse

Eric Branch was born on February 7, 1971, in Rockport, Indiana, to Sharon and Neal Branch. When Eric was born, they already had one child, Robert Neal Branch. Sharon was fifteen and Neal was sixteen at the time, and Neal's family, the Branches, felt marriage was the appropriate thing to do. Pryor Dec. at ¶ 5. Sharon had an eighth grade education and grew up in extreme poverty in Appalachian Kentucky. Because she was so young when she married, she had no idea how to be a wife and mother. Barbara Jo Pryor Dec. at ¶ 2. She did not know how to cook, clean, or take care of herself, let alone two children. *Id.* Sharon drank a lot, and she was likely drinking while pregnant with Eric. Pryor Dec. at ¶ 4. Sharon was an alcoholic who "was drunk more often than she was sober." Nosko-Passmore Dec. at ¶ 4. The environment in the home was deplorable and chaotic. Pryor Dec. at ¶ 13. "The kids were neglected terribly." Pryor Dec. at ¶ 10. Sharon would leave Eric lying in his crib unattended for hours. C. Branch Dec. at ¶ 3. She left him for so long that his head flattened. Sharon left the house dirty. The kids were dirty and just ran around in diapers. Pryor Dec. at ¶ 10. On another occasion, when Eric was about 18 months old, his aunt came over to find Robert running around in a diaper and Eric left in a filled sink. Pryor Dec. at ¶ 10. Sharon was passed out in her room. Pryor Dec. at ¶ 10.

Neal was incredibly violent with his wife and children. He had a reputation in the community for being a "raging, violent, alcoholic." D. Branch Dec. at ¶ 3; *see also* Bickel Dec. at ¶ 2; Pryor Dec. at ¶ 7. Neal could not function without being drunk. R. Branch Dec. at ¶ 12. He also used drugs. D. Branch Dec. at ¶ 3. One of Eric's childhood friends described Neal as "the most despicable person [he had] ever met." Bickel Dec. at ¶ 2. Neal beat Sharon during both of

her pregnancies. Dee Eval. at 10. He fought with Sharon often, not caring if they were in front of the children. Robert and Eric were only toddlers, and the fights scared them. The boys would huddle in the corner, terrified. Dee Eval. at 10. When Eric was three, Neal threw Sharon to the ground and stomped on her right in front of him. Dee Eval. at 10. He beat Sharon so badly that she needed to be taken to the hospital on multiple occasions. One time, he punctured her kidney, and she had to have it removed. Pryor Dec. at ¶ 7. Neal Branch would sometimes beat his wife and kids out in the open. Bickel Dec. at ¶ 3.

After a few years, Neal and Sharon divorced. Eric was still a toddler. Dee Eval. at 4. After the divorce, Sharon took the kids to Neal's parents, Alfred and Marcille Branch, and she moved back home with her own parents. Alfred and Marcille took care of the kids while Sharon tried to get back on her feet. Neal moved away to Arizona. While there, he went to prison for beating his new wife. R. Branch Dec. at ¶ 5. One of Eric's first memories of his father is seeing Neal in handcuffs at the courthouse in Phoenix. Dee Eval. at 5. Neal was in prison before returning to Indiana. During that time, "Eric's mother was completely absent from his life. His father was in prison out of state. He had no love or support from either of his parents." Melton Dec. at ¶ 3. One of Eric's childhood friends described this period in Eric's life:

> Eric never stood a chance in life. Eric's father was a real piece of shit. He was a physically abusive alcoholic. Eric's mother for all intents and purposes abandoned him. Eric's grandparents were very nice but completely ill-equipped to take care of him. Their lack of discipline, rules, and consequences proved to be disastrous for him. Eric received no structure, routine, direction, or guidance from anyone.

Greene Dec. at ¶ 2.

When Neal returned to Indiana, he moved onto his parents' property. By the time Eric was in kindergarten, the boys were living with their father. R. Branch Dec. at ¶ 13. Neal was incredibly violent with his children. Neal beat them even when they were toddlers. R. Branch Dec. at ¶ 7. He

would punch Eric and slam him into the concrete when Eric was just a young child. *Id.* Eric would have black eyes, bruises, and busted lips. Bickel Dec. at ¶ 4. Robert explains, "We were whipped in a manner far beyond what any child would ever deserve." R. Branch Dec. at ¶ 7. "[I]t happened all the time." *Id.*

Neal was particularly violent with Eric. "He would grab, beat, and hit Eric with whatever he could get his hands on. He would grab him by the hair, punch him in the face, and slam him to the ground. He beat Eric like he was a full grown man, even when Eric was a small child." R. Branch Dec. at ¶ 8. Eric would sometimes try to run away from the beatings, and Neal would just chase him out into the yard and continue the beatings there. *Id.*

When Eric was only five, he went running to a neighborhood friend for escape. As Jay Bickel describes:

> During the blizzard of 1976, when Eric was about five, he ran to my house barefoot in the snow covered in blood. Neal had beaten him in the face and head severely. Eric's face was totally swollen. He looked like he had been in a boxing match with a prizefighter. He was beat so severely that some of his teeth were loose.

Bickel Dec. at ¶ 7.

In addition to the violence, Neal was negligent toward his children. At six, Robert was in charge of caring for himself and Eric. He had to get both of them up, dressed, and ready for school. R. Branch Dec. at ¶ 7. There was no structure or parental figure. Eventually, the kids went back to stay with their grandparents.

A large part of Neal's ability to get away with this violence and neglect was his family's prominence in the community. Unlike Sharon's family, Neal's family had some money. Neal was "a spoiled brat whose family owned a restaurant, motel, and gas station in town." Declaration of Dixie Davis at ¶ 2. Neal's parents, Marcille and Alfred, had a history of bailing Neal out of situations when he got into trouble. They did so even when he was violent toward them. They

didn't report him when he punched Alfred and stole $5,000 from him. R. Branch Dec. at ¶ 3. Neal did not have to learn accountability. Neal would get arrested for the abuse, but nothing ever came of it. Bickel Dec. at 6. Alfred would pull strings to make the charges go away. *Id.* As a result, Neal was self-centered and never took responsibility for his actions. R. Branch Dec. at ¶ 2. Shortly before Alfred's death a few years ago, Alfred admitted to Eric's brother, Robert that his biggest regret was not making Neal accountable for his actions. R. Branch Dec. at ¶ 3. Alfred would later go on to cover for Eric in much the same way.

B. After Eric Branch's mother remarried, he had difficulty adjusting to the change

Sharon married Doug McMurtry when Eric was still in elementary school. McMurtry Dec. at ¶ 1. Eric and his brother moved out of their grandparents' house and back in with their mom and new stepfather in Lynnville, Indiana. R. Branch Dec. at ¶ 14. The change in environment was drastic. While Alfred and Marcille were financially stable, Doug and Sharon had almost no money and could not meet Eric and Robert's basic needs. They could not even keep the heat on, and the family started using food stamps. R. Branch Dec. at ¶ 18. The four of them lived in a singlewide trailer, and Eric and his brother shared a room. D. Branch Dec. at ¶ 5. Eric had become accustomed to being able to keep up with the latest trends at school, but he was no longer able to do so once he moved back home with his mother. R. Branch Dec. at ¶ 17. From as far back as Robert could remember, his little brother was obsessed with being cool. R. Branch Dec. at ¶ 21. It was much more difficult to do so in Lynnville without any money. Eric was desperate to fit in and be popular, so he started showing off to try and get attention. Eric had such a hard time with the transition that he failed and had to repeat the third grade. R. Branch Dec. at ¶ 19-20; Dee Eval. at 5.

Making matters worse, Eric had a very tense relationship with his stepfather. Life with his grandparents meant almost no discipline. Eric was used to Neal not caring and letting the kids run

wild, so Eric "didn't know how to live with rules and couldn't listen." Davis Dec. at ¶ 5. Doug had a military background and was extremely strict. R. Branch Dec. at ¶ 14. Doug expected the children to earn everything, including their dinner. Eric once reported, "You got the feeling you had to earn your meals even in the 3rd grade." Dee Eval. at 6. Doug took a hard labor approach to discipline, and when the boys misbehaved, Doug would make them do strenuous physical activity for hours on end. Robert had to chop wood for 12 hours straight one night, R. Branch Dec. at ¶ 15, and Eric was left outside all night pulling weeds. Dee Eval. at 11. Robert quickly fell in line to avoid this discipline as much as possible. Eric was unable to control his emotions and actions, so he continued to get in trouble, further worsening his relationship with Doug. Robert tried telling Eric to just do as Doug said, but Eric could not figure out how to stay away from Doug's wrath.

Eric's tense relationship with Doug affected his relationship with his mother and brother. Eric felt that Sharon chose Doug over him. Nosko-Passmore Dec. at ¶ 4. Robert got into trouble less often, so Eric felt that his mother loved Robert more than him. He felt like she favored Robert over him and started to resent his brother for their mother's attention. R. Branch Dec. at ¶ 22. Others could tell by the family's interactions with each other that there was validity to the way Eric felt. Greene Dec. at ¶ 6; McMurtry Dec. at ¶ 5; Nosko-Passmore Dec. at ¶ 4. "Robert was the chosen one. Eric was the black sheep." *Id.* Because of this, Eric developed a low self-esteem. R. Branch Dec. at ¶ 22.

Eric had difficulty controlling his emotions. He would go into fits of rage where he would destroy furniture. He threw tantrums, even when he was far too old to be doing so. R. Branch Dec. at ¶ 23. He did this all the time. *Id.* He would "kick, scream, punch walls, and break things. *Id.* His emotions overwhelmed him, like they do with little kids." *Id.* He could not stand being told no and

would go into rages. McMurtry Dec. at ¶ 3. He could not control his impulses and "acted like a child much younger than his age." *Id.*

Sharon started having difficulties with her emotions too. Around the time that Eric was in 5th grade, his mother had a tubal pregnancy that terminated after a miscarriage. Dee Eval. at 6. Sharon was depressed about losing her baby and started having sudden mood swings. She would seem happy and then suddenly be distant and withdrawn. She would go through weeks of depression at a time.

In seventh grade, Eric started drinking to cope with his feelings. He would skip school and go to the woods to drink beer and whiskey. The family would throw huge parties on the weekends. R. Branch Dec. at ¶ 26; McMurtry Dec. at ¶ 6. There would be a lot of people over, and both Sharon and Doug would get drunk. *Id.* Robert and Eric would steal some of the alcohol and slip off into the woods to drink it. *Id.* The boys started drinking as much as they could, whenever they got the chance. *Id.* As the two boys got older, it got easier for them to find alcohol. *Id.* at 27. They would have "epic drunk fests," where they would drink until they passed out. *Id.* at 27.

Eric and Robert's instantaneous penchant for alcohol was no surprise given the family history. Sharon's grandfather was an alcoholic, and her father was a binge drinker. Phillips Dec. at ¶ 6. Sharon and her sister Dixie struggled with drugs and alcohol. *Id.* Her brothers, Jimmy and Dale, were also alcoholics. *Id.*

Desperate for some kind of attention, Eric started getting increasingly reckless. He would ride his bicycle along a two-story railing with nothing but a mattress on the ground to break his fall. R. Branch Dec. at ¶ 31. He climbed a thirty-foot-high building and jumped off it into piles of sand. *Id.* He had a bad motorcycle accident when he was only thirteen or fourteen. *Id.* at 32. Robert

describes that his brother was "fueled by adrenaline." *Id.* at 32. Between Neal's beatings and Eric's many accidents, his brother thinks Eric had "countless concussions." *Id.* at 34.

Then, Eric's life changed suddenly when he was in middle school and the family took a vacation to Gatlinburg, Tennessee. Eric saw a cassette tape that he wanted and impulsively grabbed it. He changed his mind before leaving the store and put the tape back, but the store security guards had already seen him. They stopped him on the way out, and his family found out what happened. Doug was furious. He said that a thief would not live in his house. As soon as the family got back to Indiana, they dropped Eric off at Neal's house. Doug pulled Eric's clothes out of the suitcase and threw them on the porch. Sharon, Doug, and Robert drove off without him.

To Eric, this was the ultimate act of abandonment by his mother. His brother got to go home with their mother, while he was left with an alcoholic, abusive father. He was hurt that his mother and brother had not even stood up for him. Dee Eval. at 7.

C. In high school, Eric Branch began to self-medicate with alcohol and acted in reckless and impulsive, "childish" ways

When Eric moved back in with Neal, his father had no interest in taking care of him. Neal would leave some money for Eric and then disappear for days at a time. Dee Eval. at 7. After six months, Eric wanted to return home to his mother, but Doug refused. His grandparents lived next door to Neal, so Eric spent most of his time staying there with them. At his grandparents' house, Eric did not have any structure or discipline. D. Branch Dec. at ¶ 6. Instead, his grandfather started making excuses for Eric just as he had with his own son, Neal. *Id.* As a young teenager, this was the time when he needed structure most. However, as his cousin Alex reports, "My grandparents did not give Eric any consequences for his actions. This contributed to Eric's immaturity and inability to develop an understanding of the world. Eric needed direction." *Id.*

By the time Eric was a teenager, he felt completely rejected by his family. He became even more desperate to get attention and acceptance from his peers. He had no emotional support from his family. O'Brien Dec. at ¶ 3. Eric's relationship with his grandparents "was like, here is a bed and here is the fridge, now take care of yourself." *Id.* They were barely even home. *Id.*

Eric's lack of familial support affected his decisions. "The abandonment of his parents and lack of structure in Eric's life largely played into his personality. Eric had the pathological need to be accepted and liked by all." Greene Dec. at ¶ 9. He had to be the center of attention. O'Brien Dec. at ¶ 5. Eric would "act goofy, tell jokes and stories, or take any type of bets or dares to monopolize the attention." *Id.* For Eric, "attention was affection." Greene Dec. at ¶ 13. He started hanging out with a wilder crowd. Around them, Eric felt the need to be the daredevil and try to outdo all of them. Eric also started getting in more trouble at school. Between his father and his grandparents, Eric had no authority figures at home. He was allowed to do whatever he wanted. Melton Dec. at ¶ 4. He kept getting into trouble. Dee Eval. at 7. Some of Eric's childhood friends started distancing themselves from Eric because they did not like the reckless path he was on. Bickel Dec. at ¶ 10.

Eric's recklessness grew more extreme over the years. He felt the need to outdo everyone around him. Greene Dec. at ¶ 12. He played chicken while driving cars and started breaking into buildings. D. Branch Dec. at ¶ 9. Before Eric even had a driver's license, he took his grandparent's car to a rock quarry and drove quickly before locking the car brakes. Melton Dec. at ¶ 7. The car "skidded to a stop just feet from a one hundred foot drop." *Id.* Eric would make "donuts around S curves in the road, drive far too fast, and spin the tires." D. Branch Dec. at ¶ 14. He drove a motorcycle at 150, and even 185, miles per hour. R. Branch Dec. at ¶ 30; Melton Dec. at ¶ 6. During a family trip to the Ozarks, they went on a whitewater rafting trip. Phillips Dec. at ¶ 5. The

family was told not to dive off the cliffs because the water was too shallow. Eric climbed to the tops of the cliffs and jumped off into the water anyway. *Id.* Alex, Eric's cousin, now realizes in retrospect that Eric "felt he was all alone. He felt and acted like he had been abandoned. Eric's attention-seeking behavior, his need to be accepted, and his need to be popular were all things he did to fill a hole in his life." D. Branch Dec. at ¶ 8.

Eric did not always make it through his exploits unscathed. When Eric was 16, he was riding on the back of his Uncle Dean's motorcycle when he fell off and hit his head. Eric was unconscious for at least five minutes, but nobody took him to the hospital. Dee Eval. at 9.

Eric's fits from his youth also extended into his teenage years. D. Branch Dec. at ¶ 15. He acted like a five-year-old when things did not go his way. *Id.* He would get upset easily and "seemed unable to accept perceived losses and move on." O'Brien Dec. at ¶ 7. He had difficulty controlling his emotions in other ways too. He had a hard time taking anything seriously. R. Branch Dec. at ¶ 36. He would laugh at inappropriate times, like when he got in trouble. *Id.*; Greene Dec. at ¶ 16. It was like he could not control it. This would further infuriate anyone trying to discipline him. D. Branch Dec. at ¶ 36; McMurtry Dec. at ¶ 4.

As a teenager, Eric still suffered through extraordinary violence by Neal. Eric lived with his father and grandparents, who lived next door to each other, while his brother Robert was in Lynnville with their mom and stepdad. R. Branch Dec. at ¶ 10. Robert would come to Rockport to see Eric on the weekends. Each time Robert saw Eric, he was still getting beat up by Neal. R. Branch Dec. at ¶ 10. Neal would fluctuate quickly between not caring at all about what Eric was doing and suddenly beating him. R. Branch Dec. at ¶ 11. Robert was around for one particularly violent beating when Eric was 15. R. Branch Dec. at ¶ 9. Neal beat Eric and pulled out a clump of his hair. *Id.* He also broke a lamp over Eric's head. C. Branch Dec. at ¶ 12. When Neal would start

beating Eric, Eric would try to escape and run to his grandparents' house. Neal would follow him outside and continue beating him. R. Branch Dec. at ¶ 9.

Eric struggled with responsibility. He and his cousin got jobs together at a local drive-in theater but Eric could not handle minor responsibility. Alex says, "Eric often wouldn't show up for his shifts. I would end up having to do his job for him." D. Branch Dec. at ¶ 16.

Eric's grandparents failed to hold him accountable at home. Eric and his friends would come back in time for their curfews but go back out again. Greene Dec. at ¶ 7. This led to Eric's inability to understand consequences, whether legal or physical. *Id.* at ¶ 13. Robert Greene, a high school friend, remembers that one time Eric drove a group of them to a high school football game. Greene Dec. at ¶ 15. Eric was pulled over by a state trooper and received a speeding ticket. Before even getting out of eyesight of the trooper, Eric tore up the ticket and threw it out the window. Robert Greene told Eric that he could not do things like that, but Eric did not understand. *See also* Melton Dec. at ¶ 8 (describing how Eric and his friends threw corncobs at a police car and, when caught, the other kids went running away but Eric ran right toward the officer).

Eric continued to drink heavily. He and his friends drank daily if possible. O'Brien Dec. at ¶ 8. Eric would drink cases of beer and whiskey. *Id.* He drank to the point of blacking out multiple times. *Id.* A friend of Eric's says his "goal was to get as fucked up as possible." *Id.* at ¶ 9. Eric would drink Purple Passion, a malt beverage. When it was halfway done, he would fill it with a half pint of Everclear, a pure grain alcohol that is 190 proof. *Id.* Eric also experimented with LSD and Rush, an inhalant. *Id.* at 11.

When Eric was 15, he and a friend went to a fraternity party at Indiana University. Melton Dec. at ¶ 10. Eric got "absolutely smashed drunk." *Id.* Eric vomited in the bathroom before falling down a flight of steps while sitting in a wheeled desk chair. *Id.* at 10, 12. He lay motionless at the

bottom of the steps for quite a while. When Eric got up, he suddenly became overwhelmed by his emotions and broke down crying. He told the fraternity brothers at the party about the abuse he was going through at home and asked them to start beating him. "Some of the fraternity brothers were so disturbed" that they called the police. *Id.* at 11. People from social services were at Eric's house by the time he and his friend made it home. *Id.*

As a young teenager with no support or guidance, Eric started to get into legal trouble. When he was 14, he and some friends got a set of janitor's keys for the school. They did it because they were bored. O'Brien Dec. at ¶ 13. They went in at night to goof around, and a fire started. Eric and the other boys were charged with arson and theft. Eric was sent to the Indiana Boy's School. Upon his release, Eric was withdrawn and depressed. He started drinking heavily and experimenting with marijuana and other drugs. Eric told his mother, "Do you know what happens to boys in here?" His mother believed that Eric had been sexually assaulted. His juvenile probation officer at the time also suspected that Eric had suffered from sexual abuse. Dee Eval. at 11.

When Eric started having legal problems, his grandfather reached out to attorney Verdelski Miller. Verdelski found that Eric was impulsive and lacked any ability to gauge the seriousness of his legal problems. There was no forethought or sinister intent, but Eric would react without thinking and could not understand consequences. Even in his late teens, Verdelski observes, Eric "had the mentality of a twelve year old." Miller Dec. at ¶ 6. Eric was referred for therapy at Southern Hills Counseling Center in 1987. The clinician there noted that he "appear[ed] immature and resistant to assuming responsibility." Southern Hills Counseling Records at 11.

D. A bright spot in Eric Branch's life was his relationship with Leora Nosko-Passmore, and it ended in sadness and loss

Eric finally found some positivity in his life when he started dating Leora Anne Nosko-Passmore (then Leora Nosko or Annie Nosko). To this day, Leora describes Eric as her soulmate.

Nosko-Passmore Dec. at ¶ 1. When the two first started dating, Leora and Eric would talk on the phone for hours. *Id.* at ¶ 3. Eric would tell Leora about how "hurt he felt by not being loved by his family, not fitting in, and not being accepted." *Id.* His "abandonment" was palpable. *Id.* He also told her about Neal's violence over the years. Eric told Leora that Neal only paid him any attention when Neal was beating him; otherwise, "Neal had nothing to do with Eric." *Id.* at ¶ 6. Leora describes that this "had a profound impact on Eric." *Id.*

Leora's father was also physically abusive. *Id.* at ¶ 9. Eric would talk her through the hard times and encourage her to stand up to him. Leora explains, "In many ways Eric liberated me from my father." *Id.* Eric would stand up to Leora's father too. One time, Leora's dad blocked Eric on the road and tried to beat him up. They got into a fight. When Eric got back to Leora that night, he was covered in blood. *Id.*

While Eric was happy about his relationship with Leora, he was still going through a lot in other aspects of his life. Leora's mom, Laura Chubick, allowed Eric to come stay with them for a while. Laura Chubick Dec. at ¶ 2. Laura did not actually like that Eric was dating her daughter, but she allowed it thinking she could keep a better eye on them. Chubick Dec. at ¶ 8. He was overjoyed at being invited to do simple family things, like attend the Easter church service with them. Chubick Dec. at ¶ 7. Eric "loved being included in the family environment. He needed affection and was longing for somewhere to fit in." Chubick Dec. at ¶ 7. While Laura's acquiescence in Eric's relationship with her daughter and later invitation to him to come stay with them was "begrudging," she realizes in hindsight that "Eric's relationship with my family was of utmost importance to him." Chubick Dec. at ¶ 8. Indeed, Eric told Leora that she and her mother "were the only people who ever truly love or cared for him." *Id.* "We were all he had," Leora explained. Nosko-Passmore Dec. at ¶ 8.

Laura tried giving Eric some guidance herself, encouraging him to get a job and giving him the gas money to do so, but Eric was incapable of keeping things together. Chubick Dec. at ¶ 4. Laura remembers, "He was unable to reason the way a person of his age should. He was always just going here and there aimlessly." Chubick Dec. at ¶ 5. Eric was still having problems controlling his actions and getting into trouble. Leora and her mother were going through a difficult time with Leora's own violent father, and they moved with Eric into Leora's grandmother's house. Nosko-Passmore Dec. at ¶ 7. Leora's mom asked Eric to help around the house, but he could not do it. Chubick Dec. at ¶ 6. One night there was a huge snow storm coming, and Eric said he was taking Leora to the next town over. *Id.* Leora's mom asked Eric to have Leora home by a certain time to get home safely before the storm. *Id.* Not only did they not return home on time, but Eric had actually taken Leora to another town about two hours away. *Id.*

Leora noticed Eric's immaturity herself. He was not goal-oriented. Nosko-Passmore Dec. at ¶ 12. He would brag about doing juvenile things like skipping school and encouraged her to do the same. *Id.* Whenever Eric made any money, he would go on shopping sprees and spend it all right away. *Id.* at 14. Once, they went to visit his cousin Alex in Panama City Beach. Nosko-Passmore Dec. at ¶ 13. Leora thought the trip was planned, but she found out once they were there that Eric had not even told Alex they were coming. He just decided to go spur of the moment. *Id.*

Eric was unable to think out the consequences of his actions and acted recklessly around Leora. One time they were in the car with one of her friends when they got into an argument. *Id.* at ¶ 15. The friend was driving down the highway, and Eric, out of anger, reached over and threw the car in reverse without thinking what could happen. *Id.*

When Leora was fifteen, she got pregnant with Eric's child. Nosko-Passmore Dec. at ¶ 2. Eric desperately wanted a family, and now he would have the opportunity to have one of his own.

However, one night when he and Leora were having one of their rough patches, Eric went to a party with some friends. IN Tr. at 21. They met a couple girls. *Id.* Eric thought that one of the girls liked him, so he took her on a moped ride to a more isolated spot. *Id.* at 21-22. He pushed her down and touched her breast before realizing that she did not want to go any further with him. *Id.* at 23. Eric was convicted of sexual battery, a class D felony in Indiana. The judge sentenced him to three years in prison with one year suspended. Eric was sent to Rockport Detention Center, an adult prison.

While incarcerated, Eric kept in touch with Leora about their baby girl, Nicole. They decided they would give her up for adoption but, wanting to stay in touch with her, would try an open adoption. Through the help of a minister, they located a stable family out in Washington to adopt Nicole. Eric wrote Leora from prison encouraging her that this was the best thing for their baby and that they were doing the right thing.

Eric was devastated over the loss of his daughter. Nosko-Passmore Dec. at ¶ 2. He blamed Leora for giving their baby away, even though he had fully supported their decision while she was still pregnant. *Id.* at ¶ 11. Leora describes, "The most angry and emotional I ever knew Eric to become was when I tried to break up with him over the phone after the adoption of our daughter . . . ." *Id.* at ¶ 10. This was an emotional time for Leora, too, but in his own anguish, Eric blamed her rather than supported her. *Id.* at ¶ 11.

In addition to the strain over the adoption of their baby, Leora noticed that Eric was drinking more than he ever had before after his release from jail. He drank "to medicate." *Id.* at ¶ 18. He was also angrier and moodier. Leora wondered what was wrong, and Eric opened up to Leora about his time in R.D.C. Eric was very small for his age, so it was difficult for him to be at an adult prison. *Id.* at 16. While at R.D.C., he had been held down by a group of men and brutally

gang raped. This experience caused Eric to go "to very dark places." *Id.* at 16. While Eric had been impulsive and made stupid decisions before he went to prison, Leora reports, "I had never seen the rage in Eric like he had after getting out of prison." *Id.* at ¶ 17.

Eric decided to leave Indiana and go to Panama City Beach where Alex was attending college. Leora joined Eric for about a week, but she ultimately decided to go back to Indiana. She broke up with Eric one final time. Eric was heartbroken once again. Alex had hoped that, once Eric got to Florida, he would start taking things seriously, get a job, and start attending the same college Alex attended. D. Branch Dec. at ¶ 17. Instead, Eric started going to clubs every night, partying, and drinking. A few weeks later, Eric found himself facing the most severe legal trouble of his short life.

E. In his extended adolescence, Eric Branch was plagued by his immaturity and failed to understand the trouble he faced, even when on trial for his life

When Eric arrived in Florida, he was an immature, child-like boy who struggled to grasp reality. He had been erroneously released from prison in Indiana early but moved to Florida with his cousin by the time anyone realized it. His lawyer, Verdelski Miller, contacted Eric to come back to Indiana to clear things up. The lawyer explained that it was not Eric's fault, so he would not have gotten into any trouble. Eric still did not understand. He told Verdelski that he would deal with it later. He did not grasp the urgency in getting it resolved quickly. Miller Dec. at ¶ 7.

After his crimes in Florida, Verdelski arranged Eric's surrender in Indiana. Once again, Eric did not grasp how much trouble he was in. Even after Eric was in jail in Florida, he did not realize the seriousness of his charges. Verdelski traveled to Florida multiple times with Alfred Branch to visit Eric at the jail. Eric did not understand why Verdelski had not gotten him out on bail already. Miller Dec. at ¶ 11.

Robert, Eric's brother, testified during both phases of the trial. He knew that Eric did not understand the gravity of the situation. R. Branch Dec. at ¶ 40. Eric could not grasp that he was on trial for his life. Burns Dec. at ¶ 4. There were news cameras at the trial, and Eric was distracted by the cameras instead of paying attention to the witnesses. *Id.* He bit his lips a lot and kept fixing his hair. *Id.* When Eric testified, he was completely calm and did not realize how he was coming across. *Id.* at ¶ 6. He did not interact with his attorney or try to assist in his defense. *Id.* at ¶ 5. He was used to his grandfather getting him out of trouble, so Eric thought that would happen again. Observers said, "Given how he was acting at trial, it was so clear that he did not understand the magnitude of what was going on around him." Burns Dec. at ¶ 5; *see also* R. Branch Dec. at ¶ 40.

F. As this submission describes, the mental health professional consensus today recognizes Mr. Branch's lack of development and demonstrates that he should not be subject to capital punishment

Faye E. Sultan, Ph.D., explains that there is a "new mental health professional consensus that brain development continues into the twenties." Sultan Report at 17. According to James E. Garbarino, Ph.D., "our science now recognizes that the cut-off of 18 years is arbitrary, and not in accord with the current understanding of the scientific community." Garbarino Report at 1. "[H]uman brain maturation is ordinarily not complete until the mid-20's . . . ." *Id.* at 2.

> *Today it is established in the medical and scientific literature that brain development does not reach "full maturity" until approximately the period of mid-twenties.* Synaptic pruning, the process by which brain synapses are selectively "pruned" or eliminated continues until this time, allowing for more efficient later brain functioning. The myelination process - the development of the substance which provides insulation for the nerve fibers – continues as well. This allows a mature individual to effectively transmit signals, promoting healthy brain functioning and allowing more complex functions. *This process continues until well-into the individual's twenties. Also continuing until approximately mid-twenties is the increasing connectivity between regions of the brain.* As these connections are strengthened, the brain becomes better able to transmit information between regions and becomes better at planning, dealing with emotions, and problem-solving.

Sultan Report at 21 (emphasis added). Dr. Sultan explains that, "[s]ignificant development of "the pre-frontal cortex area of the brain" also continues "until at least the mid-twenties." This is the region of the brain where "executive functions are developed," meaning that executive functioning skills—the skills to "assess risk, think ahead, set goals, and plan ahead" and "[c]omplex planning, the ability to focus on one thing while ignoring distractions, decision-making, impulse control, logical thinking, risk management, organized thinking—are not fully developed until a person's mid-twenties." *Id.*

"This new mental health professional consensus was not available during previous proceedings in the case of Eric Branch. This new mental health professional consensus has real consequences in the case of Eric Branch." Sultan Report at 16. Dr. Sultan concluded that—based on her assessment of Mr. Branch and on the new scientific information—"Mr. Branch, at age 21, still had an 'underdeveloped brain.'" Sultan Report at 17.

Dr. Sultan and Dr. Garbarino explain that this knowledge about the development of an adolescent brain, like that of Mr. Branch, is new science. Sultan Report at 21-22; Garbarino Report at 2-3. "The new professional mental health consensus about the developing human brain in the case of a twenty-one-year-old, such as Eric Branch, was not available to the experts who assessed this case in the past." *Id. See also* Garbarino Report at 1 ("[T]he current scientific understanding of adolescent brain development was not available during earlier proceedings in Eric Branch's case."). When Dr. Henry Dee assessed Mr. Branch, "the science of brain development had not progressed to the point where [Mr. Branch's psychological] problems could be recognized for what they were: developmental brain immaturity." Garbarino Report at 3.

Mr. Branch's prior counsel, S. Douglas Knox, confirms that the science about Mr. Branch's immature brain was not available to him when he represented Mr. Branch.

> This science did not exist at the time I represented Eric or beforehand. It explains Eric's immature behavior before and at the time of the offense and during the trial, and his subsequent maturation by the time I came to represent him. Eric was 21 at the time of the offense.
>
> Had this new scientific understanding in the mental health professions been available to me during the time I represented Eric, I certainly would have used it. I would have litigated that his death sentence was unconstitutional and that he should not be executed due to the lack of moral culpability related to his immature level of functioning.

Knox Dec. at ¶ 3-4. The instant submission is the first opportunity Mr. Branch has had to challenge the constitutionality of his death sentence based on the medical consensus that at the age of 21, after a lifetime of trauma (including abuse, neglect, and rape) and years of self-medicating with alcohol, his brain was not fully developed; like seventeen-year-olds, he had diminished moral culpability, and his execution would serve no penological purpose. Garbarino Report at 4 ("An individual such as Eric Branch should not be considered eligible for imposition of the death penalty, given his age of 21 and developmental history.").

G. Mr. Branch has matured into a reflective man and an engaged father while incarcerated

Mr. Branch has matured and worked hard to better himself as he grew up while incarcerated. He received a certificate in paralegal studies. *See* Blackstone School of Law, Legal Assistant/Paralegal Certificate, for Eric Branch (March 4, 1996). He spends much of his time helping fellow prisoners. His disciplinary record has been exemplary. Mr. Branch has worked hard to build the familial connections he was unable to have earlier. Mr. Branch has stayed in touch with his daughter, Niki. He sends her letters and artwork regularly. Niki is a talented artist, and Mr. Branch encourages her in her art. He has also maintained relationships with much of his family, including his aunt, cousin, and brother. He has reunited with Leora, and remained an important factor in her life. He cherishes these relationships he has maintained through the years,

at one point telling his cousin "The love and connection I share is what defines me. In my own clumsy way, I have tried to teach Niki this life lesson. The people who love us and who we love – even if they do drive us nutty – it is these relationships that give life meaning." Excerpts from Mr. Branch to Leora Nosko-Passmore; his grandmother; his aunt, Connie Branch; and his cousin, Alex Branch (2008 to 2013) (hereinafter "Branch Excerpts").

II. Mr. Branch's lengthy incarceration on death row and troubling experiences with Florida's capital punishment system

Since Mr. Branch's arrest, the entire history of his representation is a tragic story of the funding shortfalls of state defender agencies, a failed pilot registry attorney program, conflicts of interest, and legal abandonment by those who were supposed to be his advocates. Underlying this history are years of letters Mr. Branch sent to his loved ones documenting the profound stress he was going through during his lengthy incarceration – years waiting to die while on death row.

A. Mr. Branch struggled to find adequate legal representation

Mr. Branch's series of inexcusably inadequate attorneys started at his trial. As discussed previously, in Indiana, the family relied on a local attorney, Verdelski Miller, who had extensive contacts within the community. When they learned of Mr. Branch's charges in Florida, Verdelski and Mr. Branch's grandfather, Alfred, traveled to Pensacola in the hope of finding someone who knew the area, especially the courts.

Having never been involved in a capital trial before, Alfred and Verdelski were unknowingly and woefully underfunded. Alfred offered a flat fee of $15,000 to anyone who would take his grandson's capital case. Alfred hired the one lawyer who agreed to this low-budget defense: John Lewis Allbritton.

Alfred quickly became disillusioned with Mr. Allbritton's performance. He pleaded with Mr. Allbritton to hire experts and a mitigation specialist. It was not until February 2, 1994, a month

before the trial, that Mr. Allbritton hired a mitigation specialist, Saundra Morgan. In February of 1994, approximately one month before the trial was to start, Alfred submitted an affidavit conveying his complaints about Mr. Allbritton's performance, including that Mr. Allbritton had met with Mr. Branch once, for five minutes; that Mr. Albritton had only met with two members of the family, Alfred and Marcille, for just an hour and a half; and that Mr. Branch had been declared partially indigent, so Alfred and Mr. Branch expected the legal team to include an investigator, a second lawyer, a mitigation specialist, and a psychiatrist.

Finally, Alfred became so frustrated that he appeared in court and demanded to speak to the Court himself on March 1, 1994, a week before the start of the trial. He wanted to discuss the affidavit he had submitted about Mr. Allbritton's performance. The Circuit Court told Alfred there was nothing it could do, as Alfred had retained Mr. Allbritton. R. 154-56.

After Alfred's appearance in court, Mr. Allbritton finally went to meet with Mr. Branch. Other than the brief five-minute introduction in October, this was his first meeting with his client.

On February 23, 1994, Ms. Saunders sent Mr. Allbritton an update on her progress in Mr. Branch's case. She informed Mr. Allbritton that her investigation would take at least another five weeks "to prepare a basic social history" to provide to experts. Mr. Allbritton sought a continuance on February 28, 1994, which was denied. About a week later, Mr. Branch was found guilty of first-degree murder. On March 11, 1994, the day the penalty phase was to start, Mr. Allbritton informed this Court he was not ready to proceed and moved for a continuance. The request was denied, prompting Mr. Allbritton to initially waive the penalty phase before hurriedly deciding to present Mr. Branch's brother and grandfather.

B. Mr. Branch's legal woes continued into his state post-conviction when his post-conviction team, while initially competent, was disbanded by the Legislature's defunding of CCRC-North

The mandate in Mr. Branch's case was issued by the Florida Supreme Court on February 7, 1997. PC-R. 213. His conviction became final on May 12, 1997, when the United States Supreme Court denied certiorari review. *Branch v. Florida*, 520 U.S. 1218 (1997).

Although Mr. Branch's post-conviction case fell under the jurisdiction of the Office of the Capital Collateral Counsel for the Northern Region ("CCRC-N"), he was without designated counsel from the date the mandate issued in February 1997 until October 1, 1998. *Id.* On May 7, 1998, CCRC-N filed a "shell" 3.850 pleading in the trial court. PC-R. 137-200. The "shell" motion was filed because CCRC-N was "unable to designate counsel to represent Mr. Branch and prepare and file his Rule 3.850 motion." PC-R. 137. The pleading also stated that "Mr. Branch is being denied his right to counsel, due process and equal protection of the law in pursuing post-conviction remedies." PC-R. 138. CCRC-N also filed the incomplete pleading to toll the time to file his petition for writ of habeas corpus in federal court. PC-R. 139.

Mr. Branch's initial, and incomplete, 3.850 motion details the struggles of CCRC-N to adequately represent death row inmates in North Florida, "[d]ue to the budgetary shortfall CCR experienced in FY 96-97; the retirement, resignations and dismissal of qualified attorneys from the CCRC-N; and the reorganization of the former office of CCR into three separate and independent CCRC offices (as required by chapter 97-113)." PC-R. 140.

Andrew Thomas was designated as Mr. Branch's post-conviction counsel on October 1, 1998. PC-R. 213. Mr. Thomas was immediately confronted with the challenges of the newly-implemented records collection rules in capital post-conviction claims established in Fla. R. Crim. P. 3.852 and the creation of the records repository of the Secretary of State. Mr. Thomas filed a

motion to stay the applicability of the rule and extend the filing deadline established in Fla. R. Crim. P. 3.852(g)(1) that went into effect October 1, 1998. PC-R. 213. The circuit court granted the motion PC.R. 220-221, as well as a second motion to extend the filing deadline for Mr. Branch's records requests filed on April 21, 1999. PC-R. 227-236. Ultimately, this Court extended the filing deadline for Mr. Branch's amended 3.851 motion to April 1, 2003. PC-R. 603.

Mr. Branch was represented by Heidi Brewer and Jennifer Blakeman of CCRC-N from 1999 to 2003. Michael Reiter was the head of the agency and performed a purely administrative role during that period of time. Ms. Brewer filed an amended 3.851 motion with a request for leave to amend on March 31, 2003. PC-R. 601-749.

On May 19, 2003, the Florida Legislature voted to terminate funding of CCRC-N. CCRC-N's representation of Mr. Branch officially ended on July 1, 2003, when CCRC-N was eliminated as an agency. In its place, the Legislature instituted an experimental registry attorney program to represent death row inmates in their post-conviction claims in North Florida. CCRC-South and CCRC-Middle remained open. The registry of death penalty lawyers was a pilot program or experiment in the northern region of Florida that sought to assess whether it was more cost-effective to out-source capital cases to private attorneys on a local registry rather than continue to send death penalty cases to the regional Capital Collateral Regional Counsel offices in the Northern, Middle and Southern regions. *Fla. Stat.* 27.702(4)(b). The registry program allowed payment to only one attorney with no oversight as to their level of post-conviction experience in capital cases or the quality of their representation. A $15,000 cap was allotted for investigation upon approval of the court, the same allotted for expenses, copying costs, and expert witnesses upon approval of the court. Registry counsel had no control over whether the court would approve necessary costs. Registry counsel had to front the money for the costs of travel and experts for an

evidentiary hearing. The JAC, which provided payments, could delay payment, challenge funding requests, or withhold fees. The only time registry counsel could get paid is when certain pleadings were filed, whether or not it was in the client's best interest to file them.

Ms. Brewer declined to represent Mr. Branch as his registry attorney, citing the statutory caps for fees and case expenses. On June 20, 2003, Michael Reiter filed a motion to have himself appointed as Mr. Branch's registry attorney under §§ 27.7001, 27.710 and 27.711. PC-R. 861-864. He represented to the Circuit Court that he had been Mr. Branch's designated counsel at CCRC-N. PC-R. 861. This was not quite accurate. Mr. Reiter also wrote that "[s]ince counsel is familiar with the facts, circumstances and challenges with Mr. Branch's convictions and sentences and has met with Mr. Branch several times to discuss his case, Mr. Branch approves of Mr. Reiter's continued representation." PC-R. 862. Despite Mr. Reiter's representation of Mr. Branch's consent, Mr. Branch in fact objected to Mr. Reiter's appointment and the Circuit Court held a hearing on Mr. Reiter's motion on July 14, 2003. PC-R. 865-876. Assistant Attorney General Cassandra Dolgin appeared on behalf of the State, and she voiced her own concerns about Mr. Reiter representing Mr. Branch as registry counsel. She reported that Mr. Reiter requested that she set up the phone conference "because all he had was a cell phone, and obviously being in private practice, there are going to be some expenditures out of pocket." PC-R. 869. Ms. Dolgin was concerned about Mr. Reiter's ability to front the cost of Mr. Branch's post-conviction case. However, the Circuit Court appointed Michael Reiter to serve as Mr. Branch's registry counsel, over Mr. Branch's objections and the concerns of the assistant attorney general. PC-R. 877.

Ms. Dolgin's concerns were legitimate and foreshadowed of Mr. Branch's struggles over the next several years. If Mr. Branch had been represented by a CCRC office, he would have had access to, at least, two qualified attorneys assigned to his case, one investigator, support staff, a

paralegal and research assistance. CCRC retains the right to hire any expert necessary to defend the case without court approval or disclosure. The agency controls its own budget, including attorney salaries, guaranteeing them a monthly paycheck. Mr. Reiter was a sole practitioner, worked out of his garage, and his practice was limited to appointments from the registry.

Mr. Branch later detailed his conflicts with Mr. Reiter in his *pro se* Motion for Appointment of Conflict Counsel and Leave to Amend Habeas Corpus filed August 2, 2007 in the United States District for the Northern District of Florida, *infra*. As soon as Mr. Reiter was appointed, Mr. Branch requested that Mr. Reiter file a motion to exceed the fee cap in his case. Mr. Branch was aware that the meager fee and litigation expense caps were completely inadequate for the magnitude of investigation and preparation necessary for success in his post-conviction case. Mr. Reiter eventually filed the motion on the eve of Mr. Branch's evidentiary hearing. Although Mr. Branch was never provided an order on the motion, Mr. Reiter told him the Circuit Court had denied the funding. (Undersigned counsel has conducted a diligent review of the post-conviction record on appeal and has been unable to locate record evidence that Mr. Reiter filed such a motion.)

Mr. Reiter also refused Mr. Branch's numerous requests to file a constitutional challenge to the pilot registry program in his 3.850 motion or his subsequent appeal to the Florida Supreme Court. Mr. Reiter depended on the registry program for his livelihood, creating an apparent conflict.

An evidentiary hearing was held the week of April 26, 2004. At the start of the hearing, Mr. Reiter told the Court, "I do want to mention that . . . you have seen the witnesses are quite extensive and for the purposes of the record, . . . [some] we have found and because of financial constraints were not able to appear. Not being CCR anymore, we don't have the money up front." PC-T. 8. Mr. Reiter did not make any other requests following that revelation. The Circuit Court

issued its Order Denying Defendant's Motion to Vacate Judgment and Sentence on March 4, 2005. PC-R. 1591-1616. On August 31, 2006, the Florida Supreme Court affirmed the order and also denied Mr. Branch's petition for writ of habeas corpus. *Branch v. State*, 952 So. 2d 470 (Fla. 2007). Rehearing was denied March on 12, 2007.

C. Mr. Branch's federal court litigation was marred by a years-long search for conflict free counsel

On March 28, 2007, Mr. Reiter moved to represent Mr. Branch in his federal habeas proceedings. *Branch v. McDonough*, N.D. Fla. No. 4:06-cv-486-RH, ECF No. 8. Judge Hinkle of the Northern District of Florida granted the motion. ECF No. 10. In a pre-*Martinez v. Ryan* world, Mr. Branch filed a *pro se* motion for appointment of counsel on limited bases to argue conflict of interest claim. ECF No. 11; *see also Martinez v. Ryan*, 566 U.S. 1 (2012) (holding that "inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial"). The State opposed appointment because "[i]neffective assistance of collateral counsel [was] not a cognizable claim in federal habeas." ECF No. 12. The Northern District of Florida denied Mr. Branch's motion. ECF No. 15. In the meantime, Mr. Reiter filed a motion to adjust the date of his appointment out of concern for not getting reimbursed for some of the hours he had worked. ECF No. 16.

After a delay in getting the court's order denying his request for counsel other than Mr. Reiter, Mr. Branch wrote the court a letter seeking to clarify that he was not asserting ineffective assistance of collateral counsel, but that he wanted conflict-free counsel. ECF No. 23. Alternatively, Mr. Branch stated, "Since there was a state-created bar to raising the issues *pro se* in state court, this court should develop and hear each." *Id.* Mr. Branch explained, "There are some serious issues in play, with life and death implications that must be answered. And while I can

write a neat motion – even quote law if provided time to find it. But I am not a attorney [*sic*] and I cannot be expected to properly argue the issues." *Id.*

On August 2, 2007, Mr. Branch filed another motion for appointment of conflict counsel and leave to amend habeas corpus. ECF No. 21. In that motion, Mr. Branch more clearly laid out the conflict of interest points relating to Mr. Reiter's representation of him in his § 2254 petition. *Id.* His motion was based on his desire to challenge the failed registry system and the problems he had with Mr. Reiter's conflict during his state court proceedings. *Id.* The District Court ultimately would deny the request because of a prohibition on *pro se* filings by a petitioner represented by counsel. ECF No. 22.

Mr. Branch wrote a letter to the clerk asking about the status of his August 2, 2007, motion. ECF No. 24. He also filed a motion to stay habeas corpus proceedings until conflict counsel issue was resolved. ECR No. 27. The district court again declined to review *pro se* pleadings. ECF No. 26. Mr. Branch filed another motion requesting a ruling on the merits. ECF No. 28. Mr. Branch wrote,

> Here, Petitioner would much rather find these issues presented by counsel. Certainly, he never wanted to find himself stuck in a position of having to file *pro se* motions to protect his appeals. But as he has found himself in that position, with all do [*sic*] respect to this court, Petitioner cannot locate a single court ruling supporting the proposition that when faced with representation by counsel practicing under a conflict of interest, a petitioner must first provide that attorney a [*sic*] opportunity to file a claim against his own self-interest.

Id. The district court denied these motions. ECF No. 29.

Mr. Branch continued to be proactive about finding new representation. In January of 2010, he told his aunt that he had spent the last month and a half writing letters to lawyers. Branch Excerpts.

The district court denied relief on Mr. Branch's § 2254 petition on March 30, 2010. *Branch v. McDonough*, 779 F. Supp. 2d 1309 (N.D. Fla. 2010). Mr. Branch panicked. He wrote to his grandmother:

> [T]his basically means, unless I can create something, I have about 7 months, maybe a year of appeals left. After they are gone. Assuming I win nothing than [*sic*] it's up to the governor. It could be a week. It could be 10 yrs after. But he can sign my warrant at any moment after my appeal expires. And given my case, I assume, I will be at or near the top of the list.

Branch Excerpts.

On April 27, 2010, Mr. Branch sent his first letter to the American Bar Association Death Penalty Project begging for help. His letter began: "Sorry to be so blunt but I need an attorney." Letters from Mr. Branch to the American Bar Association Death Penalty Representation Project (hereinafter "Branch Letters to ABA"). His grandmother also reached out to Emily Williams (now Emily Olson-Gault), an attorney with the ABA's Project, sending her a copy of Mr. Branch's pleadings. *See* Petitioner's 1983 Civil Rights Action. This began a years-long struggle by the ABA to find someone to take Mr. Branch's case. *See* ABA Letter.

After receiving the letters from Mr. Branch and his grandmother, Ms. Olson-Gault reached out to her Florida colleagues to get a status on Mr. Branch's case. In a letter describing the ABA's involvement with Mr. Branch, she wrote:

> Through them we confirmed that pro bono assistance was needed and also learned about the troubling history of counsel appointments and turnover in Mr. Branch's case, including the loss of his CCRC-North team during the now-abandoned experiment with relying on a registry counsel system, and the replacement of that team with severely under-resourced counsel."

ABA Letter.

Mr. Branch filed a *pro se* motion to amend or alter the judgment. ECF No. 39. Mr. Branch also filed a motion to hold the notice of appeal in abayance [*sic*] and grant leave to file amended

notice of appeal, ECF No. 38, and for tolling of his deadline to file the certificate of appealability. ECF No. 37. As he is a prisoner with no income, doing so came at a great cost to him. In a letter to his grandmother, Mr. Branch explained, "I had to mail 4 copies to the court. That cost me $10.95 as I had to put it in a priority box. Mail cost is killing me . . . . I refuse to simply give up." Branch Excerpts.

Mr. Branch wrote the Court yet again notifying the Court of his *pro se* status. ECF No. 36. He informed the court that Mr. Reiter was no longer representing him, writing that he was "examining his options" for retaining a lawyer for his Eleventh Circuit appeal. *Id.* Subsequently, the court denied Mr. Branch's post-judgment motions. ECF No. 45. Mr. Branch amended his *pro se* notice of appeal to include the denial of these motions. ECF 47.

After all district court litigation had been completed, Mr. Reiter filed a motion in the Eleventh Circuit to withdraw from Mr. Branch's case, in part because he had a conflict since he was a registry attorney and Mr. Branch was attempting to challenge the registry system. *See* ECF No. 73.

On June 22, 2010, Mr. Branch wrote Ms. Olson-Gault to inform her that Mr. Reiter had requested to withdraw from the case. Branch Letters to ABA. He continued to send her copies of the *pro se* motions he was filing in federal court. *Id.* He wrote, "If you cannot find anyone willing to help, please let me know. Because with a death sentence hanging over my head, I don't want to get stuck with no representation. I'm not a fool." *Id.*

On April 21, 2011, the Eleventh Circuit denied Mr. Branch and Mr. Reiter's attempts to get Mr. Reiter off the case. Mr. Branch continued to write to Ms. Olson-Gault. He wrote, "It's getting dire. I gotta have a [*sic*] attorney or else the 11th Circuit is going to force me to accept

representation from a [*sic*] attorney who informed the court he could not ethically represent me." *Id.*

Mr. Branch doubted Mr. Reiter's dedication to his appeal. In a letter he wrote at that time, Mr. Branch stated:

> My lawyer. He does not want the appeal. He is mad that the court won't let him quit. In return, he is just tossing something in front of the court trying to get it done and over. This frightens the hell out of me. His apathy has already wrecked my appeal. I simply cannot afford more of the same.

Branch Excerpts.

The Eleventh Circuit affirmed the circuit court's denial of relief. *Branch v. Sec'y*, 638 F.3d 1353 (2011). Ms. Olson-Gault and the ABA then shifted their efforts to find someone to represent Mr. Branch in a § 1983 action or file an F.R.C.P. 60(b) motion on his behalf. She explains, "The hope was to obtain extraordinary relief and reopen post-conviction proceedings so that the claims that had been abandoned by prior counsel could be fully investigated and litigated for the first time." ABA Letter.

Completely without representation at this point, Mr. Branch filed a *pro se* certiorari petition in the United States Supreme Court. He sent Ms. Olson-Gault a copy. Mr. Branch's sense of panic was palpable at this point. He told her:

> Once the Court denies [the petition], as inevitably they will, my name will be added to the 'Ready List.' As a [*sic*] attorney, I am sure you know what I mean by that. Once I am on the list, staying there 3 months is normal. Remaining there 3 yrs is extraordinary. Meaning I have up to 3 months but less than 3 yrs to make something happen or die.

Branch Letters to ABA. While Ms. Olson-Gault was aggressively trying to find someone for Mr. Branch, he remained proactive and sent her suggestions of people to contact. *See* ABA Letter. His cousin, Alex Branch, sent emails with copies of Mr. Branch's pleadings to attorneys and organizations all over the country. *See* Emails from Alex Branch to Capital Defense Lawyers.

On March 5, 2012, the United States Supreme Court denied Mr. Branch's certiorari petition. *Branch v. Tucker*, 565 U.S. 1248 (2012). Mr. Branch immediately started bracing himself for execution. Later that month, in a letter to Leora, he wrote:

> In the next 30 to 45 days I will be placed on the 'Ready List' after which the governor can kill me at any time he wants. A scary thought with the sudden rush to execute guys down here. Since last I wrote, they killed a man I called friend . . . . There is no hope of lasting 3 years on the Ready List for the simple fact they will run out of people on the list long before that and have to kill me.

Branch Excerpts. Less than a month later, Mr. Branch received a copy of correspondence to Governor Scott's office notifying Governor Scott that Mr. Branch had exhausted his appeals. Mr. Branch wrote, "Julie McCall . . . inform[ed] Governor Scott that I am ready to be executed. Well, I am not ready but that is of little consequence. They are ready for me." *Id.* Mr. Branch went on to bluntly state, "No escaping it any longer. It is here. Basically, whenever the Governor wants me to die, I will." *Id.*

Mr. Branch's attempts to predict when he would die continued. Shortly after his clemency hearing, he wrote:

> Another concern. It's based on rumor. The governor has a list of 17 men, myself included. They are rushing clemency proceedings, hoping to execute us 17 during his term. I cannot confirm that fact . . . . But this much is clear. My two neighbors appeals were over years ago. Neither of them have had clemency. Whereas I, in 5 months since my last appeal, have had a hearing.

Id.

Left with little to think of except his pending execution, Mr. Branch wrote, "Most days I don't even feel like opening my eyes. I am constantly tired, sad, lonely, hungry, and generally miserable . . . ." *Id.* Mr. Branch, a man who for years had so proactively fought to save his life, finally stated, "Often I think I should disappear, leaving everybody . . . alone as I vanish from

existence. . . . My mind is full of these struggles which lately seem to take up more of my time than legal work." *Id.*

In January 2013, almost a year after the United States Supreme Court had denied certiorari review, Mr. Branch told his cousin, "Way too much damn stress. I feel like somebody has been standing behind me with a gun to my head for a year now. It's fucking exhausting." *Id.* A few months later, Mr. Branch wrote:

> The tough part is that now everyone they are killing has been here with me for 20 years. Its [*sic*] kind of like coming into work and finding every month another person you've worked in the office with for 20 years has been taken out back and killed. Even when it's not you, it's so much stress.

Id.

In the spring of 2013, the "Timely Justice Act" made its way through the Florida legislature. Mr. Branch was certain this meant his execution was imminent. He said to his cousin,

> I am a bit panic-stricken and filled with an overwhelming sense of dread. Honestly, I wish I could but I simply don't know how to break free of it. With each motion and letter to the attorneys, the Florida Bar, the courts, it becomes increasingly clear that I probably am not going to see another year – possibly another winter. Hope is in short-supply and without hope, is it possible to break free and escape the dread?

Id.

The Act made it even harder to obtain representation. On June 12, 2013, Ms. Olson-Gault contacted Alex Branch to make him aware of the Act and its effects on the ABA's efforts. She warned him, "We are continuing to try to recruit someone for Eric's case, but particularly with all the uncertainty regarding the new law, firms are reluctant to get involved." Email from Emily Olson-Gault, American Bar Association, to Alex Branch (June 12, 2013).

Mr. Branch started planning a legal challenge to the registry system. He sent the petition to his family to type. Branch Excerpts. Mr. Branch was still concerned about the three month wait on the "Ready List," and he planned his filings around that time. *Id.*

On June 23, 2013, Mr. Branch filed a 192-page motion for appointment of counsel and supporting memorandum of law. ECF No. 68. The motion noted then-recent Supreme Court decisions *Martinez v. Ryan*, 566 U.S. 1 (2012), and *Trevino v. Thaler*, 569 U.S. 413 (2013). Since exhausting his appeals in federal court, Mr. Branch had returned to state court to file a successive 3.851 motion and also filed a § 1983 action based on those decisions. *Id.* The State opposed appointment of counsel to represent Mr. Branch in those actions. ECF No. 69. It argued that Mr. Branch could have counsel to represent him through warrant litigation and nothing else. *Id.* In his reply, Mr. Branch wrote:

> It must be noted that unlike the majority of petitioners filing claims under *Martinez*, here, the record will reflect that beginning in state court, Petitioner repeatedly attempted to inform the courts about his lawyer and, [*sic*] all the courts, including this one, silenced Petitioner, denying/voiding his pleadings on the State's argument that they were illegal filings or that because he had no constitutional right to counsel, he had no right to effective or conflict free counsel.

ECF No. 70. Mr. Branch went on to argue that because of the registry system, "constitutionally meritorious claims have gone without review or remedy." *Id.* The district court granted Mr. Branch's motion and allowed access to his court file "to any attorney who indicates the attorney is willing to consider accepting an appointment." ECF No. 71.

A month later, the district court ordered Mr. Branch to find his own counsel to be appointed by the Court. ECF No. 73. In that order, the court noted that the Eleventh Circuit had permitted Mr. Reiter to withdraw from Mr. Branch's case. *Id.* The court lamented that it was "no easy task" to find representation for Mr. Branch. *Id.* The court went on, "At my direction, my staff has contacted attorneys to determine their willingness to accept an appointment. None have agreed to do so." *Id.* The court then gave Mr. Branch ninety days to find his own attorney. *Id.*

Following the court's order, Mr. Branch immediately contacted his cousin to suggest more names and firms. Branch Excerpts. Alex Branch reached back out to many of the attorneys he had

previously contacted to let them know the court would ensure payment for their service. *See* Emails from Alex Branch to Capital Defense Lawyers. Mr. Branch updated Ms. Olson-Gault: "I'm hoping the fact the court has agreed to appoint and thus pay whoever I find will be enough to pursuade [*sic*] someone to say yes." Letters from Branch to ABA.

In the fall of 2013, Ms. Olson-Gault was able to find a team of local lawyers to help her find a firm to take on Mr. Branch's case, including Karen Gottlieb and Sonya Rudenstine. Another ABA attorney, Becca Eden, was also assisting Ms. Olson-Gault. With all their contacts, they still struggled to find anyone who could take on Mr. Branch's case by the deadline.

Meanwhile, Mr. Branch grew increasingly concerned when Governor Scott signed a warrant for Mark Kimbrough, who had had his clemency hearing on the same day as Mr. Branch. Branch Excerpts. Mr. Branch told Leora that Governor Scott was going to sign warrants for the 13 men who had had their clemency hearings during his term before moving on to others who had exhausted their appeals. *Id.* The Timely Justice Act had struck a stronger sense of paranoia on death row, and the men wondered to themselves how many warrants would be signed at one time. Mr. Branch described the tense environment:

> Now, every time the door opens, it falls quiet, everybody wondering if he did it . . . signed all our warrants or is he coming after just one of us today . . . . Anybody who survives this will be driven nuts, watching 120 people they know get killed, wondering at each open door – am I next? It's too much.

Id.

Mr. Branch's increasing stress was known to those trying to assist him. On November 7, 2013, Ms. Olson-Gault wrote to Ms. Rudenstine, "[H]e is understandably stressed about the situation." More than a month later, the ABA was still struggling to find representation for Mr. Branch. In an email to Ms. Gottlieb, the ABA wrote, "I want to provide an update that we are still looking for counsel to assist you and Sonya with the case but have had no luck this far." Feeling

they needed more contacts, Ms. Gottlieb reached out to Stephen Harper who runs the capital trial defense law clinic at Florida International University Law School. Even after Ms. Gottlieb recruited Mr. Harper, on December 11, 2013, she told him and Ms. Rudenstine, "[E]very competent capital attorney has been contacted and refused to take Eric's case."

On November 15, 2013, Sylvia Walbolt of Carlton Fields PA offered her assistance and sent a letter to the court requesting more time to find Mr. Branch a lawyer. ECF No. 74. The court extended the deadline. ECF No. 75.

Mr. Branch submitted his own update to the court on December 4, 2013. ECF No. 76. Mr. Branch noted the efforts of the ABA. *Id.* He also mentioned that his cousin and Ken Driggs, a former CCR attorney, were conducting their own search for counsel. *Id.* Mr. Branch promised another update by December 15, 2013. *Id.*

In his status report to the court, Mr. Branch documented his extensive search for representation. ECF No. 77. He included his years-long correspondence with the American Bar Association. *Id.* He noted Alex Branch's exhaustive attempt to find counsel, including a list of the various lawyers and organizations that Alex Branch had contacted. *Id.* The search included local members of the capital defense community, as well as capital defense lawyers, experts, such as Professor Michael L. Radelet, Ph.D., and Supreme Court litigators, such as Seth Waxman. *Id.* Alex Branch also quickly contacted the newly-formed Capital Collateral Regional Counsel – North. *Id.* In his status report, Mr. Branch wrote:

> Petitioner is well aware that in capital cases who lives and who dies is often more the result of quality of counsel than the crime they are accused of committing. As Petitioner's report and appendix demonstrates, he is giving the search for counsel that degree of seriousness, reaching out into the world to every connection he has made the past twenty years . . .

Id. In a 78-page appendix, Mr. Branch included correspondence he and Alex Branch had had with attorneys and organizations across the country in an effort to find a lawyer. *Id.*

After a three and a half year search, Ms. Olson-Gault found counsel for Mr. Branch. On December 23, 2013, Mr. Branch notified the court that the ABA had been able to find a local lawyer, Jason Cromey of Pensacola, and Doug Knox, of Quarles & Brady, to represent Mr. Branch. *Id.* On December 24, 2013, the district court appointed Jason Cromey to represent Mr. Branch in any collateral proceedings under the Criminal Justice Act. ECF No. 79.

In all, the ABA pitched Mr. Branch's case to more than a dozen law firms nationwide. Letter from the ABA Death Penalty Representation Project to Kimberly Newberry (January 25, 2018) (hereinafter "ABA Letter"). His case had been highlighted in emails to over 100 law firm pro bono coordinators and during "recruitment meetings hosted by state and federal judges in several cities." *Id.* Ms. Olson-Gault remembers Mr. Branch's frequent contact in getting updates and sending suggestions through the entire search. Alex Branch also routinely communicated with her. Ms. Olson-Gault writes of Mr. Branch: "He was as diligent and persistent in seeking representation and trying to preserve his claims as any death-sentenced prisoner I have encountered in my many years of working with the Project." *Id.* Indeed, in 60 letters to various family members through the years, Mr. Branch mentioned the problems he was having with is attorneys, strategies for getting a new attorney, or pleadings he was drafting himself due to his dearth of adequate counsel. *See* Branch Excerpts.

Ultimately, by the time the ABA confirmed pro bono counsel for Mr. Branch, it was too late. When Mr. Branch first wrote the ABA, the district court had just denied his § 2254 petition. When James Cromey and Doug Knox filed their notices of appearance, Mr. Branch's Eleventh

Circuit appeal and petition for writ of certiorari were long since denied. As Ms. Olson-Gault describes:

> [I]t is extremely regrettable that it took so much time to secure representation for Mr. Branch, because his case was in a very difficult procedural posture by the time those pro bono lawyers finally took over. We recognize that if we had been able to find a law firm sooner – or if Mr. Branch had received consistent, qualified representation from court-appointed counsel throughout the case – his current legal situation might be different.

ABA Letter.

III. Grounds for Relief

Claim 1: MR. BRANCH'S DEATH SENTENCE IS PRECLUDED BY THE EIGHTH AMENDMENT BECAUSE THERE IS AN EMERGING CONSENSUS THAT BRAIN DEVELOPMENT CONTINUES INTO THE MID-TWENTIES, RENDERING PEOPLE IN THEIR EARLY TWENTIES, SUCH AS MR. BRANCH, COGNITIVELY COMPARABLE TO JUVENILES UNDER THE AGE OF EIGHTEEN

I. This claim satisfies procedural requirements and this Court has the authority to grant a hearing and relief on the merits

A. This claim satisfies the procedural requirements of Fla. R. Crim. P. 3.851(e)(2) and should be decided on the merits

Defendant's claim that his execution would violate the Eighth Amendment due to his cognitive underdevelopment, satisfies the procedural requirements of Fla. R. Crim. P. 3.851(e)(2). Emerging medical science not available during Defendant's prior litigation establishes that human brain development, once thought to be functionally completed by the late teenage years, continues into an individual's mid-twenties, rendering those in their early twenties cognitively comparable to juveniles under the age of eighteen. This emerging science is a valid basis for assessing Defendant's claim on the merits, under the newly-discovered evidence prong of Rule 3.851(e)(2).

Florida's courts have long understood, and recently reaffirmed, that emerging science can constitute newly discovered evidence for purposes of post-conviction litigation. *See, e.g.*, *Duncan*

v. State, No. 2D16-2625, 2017 WL 1422648, at *2 (Fla. 2d DCA Apr. 21, 2017) ("[W]e disagree with the postconviction court's conclusion that scientific evidence in the form of articles and studies cannot constitute newly discovered evidence."); *Clark v. State*, 995 So. 2d 1112, 1113 (Fla. 2d DCA 2008) (holding that new scientific evidence could be considered newly discovered evidence); *Zamarippa v. State*, 100 So. 3d 746, 747 (Fla. 2d DCA 2012) (reversing and remanding for an evidentiary hearing because a scientific organization's new report on comparative bullet-lead analysis could constitute newly discovered evidence); *Murphy v. State*, 24 So.3d 1220, 1222 (Fla. 2d DCA 2009) (same).

The Florida Supreme Court has also consistently held that new scientific evaluations relating to evidence presented in a defendant's prior litigation can qualify as newly-discovered evidence. For example, mental health examinations conducted years after trial can produce newly-discovered evidence. *See State v. Sireci*, 502 So. 2d 1221 (Fla. 1987). Scientific advances also give rise to "newly discovered evidence claims predicated upon new testing methods or technologies that did not exist at the time of trial, but are used to test evidence introduced at the original trial." *Wyatt v. State*, 71 So. 3d 86, 100 (Fla. 2011); *see also Preston v. State*, 970 So. 2d 789, 798 (Fla. 2007) (holding new DNA testing of pubic hair constituted newly discovered evidence); *Hildwin v. State*, 951 So. 2d 784, 788-89 (Fla. 2006) (holding new DNA testing of semen and saliva was newly discovered evidence).

To the extent Florida has not yet grappled with the specific question whether emerging science since *Roper v. Simmons*, 543 U.S. 551 (2005)—establishing that individuals in their early-to-mid-twenties are no more cognitively developed than individuals in their mid-to-late teens—can constitute newly-discovered evidence for purposes of successive post-conviction litigation, this Court should hold that such evidence does satisfy procedural requirements in Florida.

Defendant's claim goes to the fundamental premise of *Roper*'s holding that the Eighth Amendment prohibits the death penalty for juveniles, and suggests that a modification of that premise in Florida, from a rigid cutoff of 18 years old, to a more holistic approach that allows individuals in their twenties to demonstrate that they are the cognitive equivalent of juveniles, is necessary to prevent a miscarriage of justice in this case.

Any uncertainty over whether Defendant's newly presented evidence constitutes newly discovered evidence within the meaning of Rule 3.851(e)(2) should be resolved at an evidentiary hearing. *See Swafford v. State*, 679 So.2d 736 (Fla. 1996) (remanding to the trial court for an evidentiary hearing on whether evidence was newly-discovered for purposes of successive post-conviction litigation). This is especially true in a capital case. *See id.* at 740-41 (Harding, J., concurring) (explaining that, to the extent using newly discovered evidence to attack a judgment is inconsistent with the concept of finality, "it is an inconsistency that comports with fairness in certain circumstances . . . . While finality is important in all legal proceedings, its importance must be tempered by the finality of the death penalty."); *see also Jones v. State*, 678 So. 2d 309, 310 (Fla. 1996) (staying execution and remanding for an evidentiary hearing to determine whether some of the evidence proffered was newly discovered).

As set forth below, Defendant's evidence regarding the emerging science on cognitive brain development, considered cumulatively with all of the evidence in this case, establishes that the Eighth Amendment principle announced in *Roper* applies equally to his case and prohibits his execution based on his age and cognitive brain development at the time of the offense. *See Hildwin v. State*, 141 So. 3d 1178 (Fla. 2014) (explaining that the impact of newly-discovered evidence must be evaluated in combination with the totality of the evidence in the case). In accord with these principles, prior counsel explains that this claim could not have been raised before. Knox

Dec. at □ 3-4 ("This science did not exist at the time I represented Eric or beforehand. . . . Had this new scientific understanding in the mental health professions been available to me during the time I represented Eric, I certainly would have used it.").

B. This Court has the independent authority to grant more expansive constitutional relief

This Court has the authority to grant expansive constitutional relief on Defendant's claim than the minimum standard set forth in *Roper*. The United States Supreme Court has not yet addressed whether *Roper*'s prohibition on the execution of juveniles who were under age 18 at the time of the offense should be expanded to include individuals like Defendant, who was in his early twenties at the time of the offense but was in a medical sense no more cognitively developed than a person in his mid-teens. But this Court need not await a ruling from the United States Supreme Court on that issue before granting relief. While *Roper* sets the minimum standards, or constitutional "floor," the Florida Supreme Court has long recognized that Florida's state courts are empowered to provide defendants greater-than-minimum protections.

The Florida Supreme Court recently reaffirmed the prerogative to grant more expansive relief under the Eighth Amendment, as well as the corresponding provisions of the Florida Constitution, even where the United States Supreme Court had not directly addressed the issue at hand. In *Hurst v. State*, 202 So. 3d 40, 59-60 (Fla. 2016), the Florida Supreme Court held that, despite the United States Supreme Court's decision to address only the Sixth Amendment implications of Florida's prior capital sentencing scheme, the Florida Supreme Court was empowered to rule that the scheme violated the Eighth Amendment and accordingly to grant relief. *Id.* at 50 ("Although the United States Supreme Court has not ruled on whether unanimity is required in the jury's advisory verdict in capital cases, the foundational precept of the Eighth Amendment calls for unanimity in any death recommendation that results in a sentence of death.");

see also id. at 74 (Pariente, J., concurring) (explaining that because the United States Supreme Court had not addressed the relevant Eighth Amendment question, the Florida Supreme Court could properly consider and decide the matter itself for Florida).

As another example, before the United States Supreme Court held that its Eighth Amendment decision barring mandatory life sentences for juveniles must be applied retroactively on collateral review, the Florida Supreme Court had already applied the decision retroactively to all Florida defendants in *Falcon v.* State, 162 So. 3d 954 (Fla. 2015), under its independent authority to expand upon the minimum constitutional standards set by the United States Supreme Court. *See also Danforth v. Minnesota*, 552 U.S. 264, 280 (2008) (noting that states are free to expand protections "as long as they do not infringe on federal constitutional guarantees").

Roper set the floor of constitutional protection for juveniles facing the death penalty. This Court need not await guidance from the United States Supreme Court on whether the Eighth Amendment also protects from execution those like Defendant who were the cognitive, if not numerical, equivalent of juveniles at the time of their defense. This Court has the authority to and should reach Defendant's claim on the merits now, based upon Eighth Amendment's requirements, and create a record upon which the Florida Supreme Court and, if necessary, the United States Supreme Court can exercise their appellate judgment.

II. It is cruel and unusual punishment to impose death sentences on those in their late teens and early twenties, functional adolescents whose culpability is comparable to juveniles under eighteen

Mr. Branch's execution would violate the Eighth Amendment. He was twenty-one years old at the time of the offense. While the United States Supreme Court has already precluded capital punishment for juveniles under the age of eighteen, *see Roper v. Simmons*, 543 U.S. 551 (2005), the evolving standards of decency today show that extended adolescents in their late teens and

early twenties also do not have the requisite culpability to be sentenced to death. Today's newly developed science in the area of adolescent brain development shows that extended adolescents are more comparable to their younger counterparts than they are to people with matured adult brains. While twenty-one-year-olds generally bear these characteristics, Mr. Branch in particular had cognitive delays due to his traumatic childhood and history of adolescent alcohol and substance abuse. Accordingly, Mr. Branch's execution would be a violation of the Eighth Amendment protection against cruel and unusual punishment.

A. The Eighth Amendment prohibits cruel and unusual, as well as excessive, punishment and envisions a fluid concept determined by the evolving standards of decency

The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted" and prohibits "all excessive punishments, as well as cruel and unusual punishments that may or may not be excessive." *Atkins v. Virginia*, 536 U.S. 304, 311 n.7 (2002); *see also Enmund v. Florida*, 458 U.S. 782, 788 (1982). To align with the Eighth Amendment, a punishment must be "graduated and proportionate to [the] offense." *Weems v. United States*, 217 U.S. 349, 367 (1910). Whether a punishment is proportionate is determined by the evolving standards of decency, since "the standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change." *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008) (citing *Furman v. Georgia*, 408 U.S. 238, 382 (1972) (Burger, J., dissenting)). Accordingly, the Eighth Amendment guarantee is not restricted by those punishments deemed unconstitutional during the eighteenth century when the Bill of Rights was originally drafted. *Gregg v. Georgia*, 428 U.S. 153, 171 (1976). The standard is ever-changing as "public opinion becomes enlightened by a humane justice," *Gregg*, 428 U.S. at 171 (citing *Weems*, 217 U.S. at 378), and it is a well-established principle that "[t]he Amendment must draw its

meaning from the evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101 (1958).[6]

The Eighth Amendment places strict limits on how far the government can go in exercising the "power to punish." *Kennedy*, 554 U.S. at 435. It must stay "within the limits of civilized standards." *Trop*, 356 U.S. at 100. The Supreme Court has also stated that "[t]he basic concept underlying the Eighth Amendment is nothing less than the dignity of man." *Id.* The "[e]volving standards of decency must embrace and express respect for the dignity of the person, and the punishment of criminals must conform to that rule." *Kennedy*, 554 U.S. at 420.

The concern over cruel and unusual punishment becomes even more significant when a person's life is at stake. When this happens, "the Court has been particularly sensitive to insure that every safeguard is observed," because "[t]here is no question that death as a punishment is unique in its severity and irrevocability." *Gregg*, 428 U.S. at 187. Accordingly, there are two rules that courts must follow when imposing a sentence: "First, the punishment must not involve the unnecessary and wanton infliction of pain. Second, the punishment must not be grossly out of proportion to the severity of the crime." *Id.* at 173 (internal citations omitted). When applied to the death penalty, a death sentence "is excessive when it is grossly out of proportion to the crime or it does not fulfill the two distinct social purposes served by the death penalty: retribution and deterrence of capital crimes." *Id.* at 183. The sentence must meet both of these conditions, since

[6] "[E]volving standards of decency" necessarily evolve, and what may have been acceptable to the courts and society at large historically may not prove acceptable later in time. *Compare Penry v. Lynaugh*, 492 U.S. 302 (1989) (holding constitutional the execution of intellectually disabled people), *with Atkins*, 536 U.S. at 319 (prohibiting the execution of intellectually disabled people); *compare Stanford v. Kentucky*, 492 U.S. 361, (1989) (holding constitutional the execution of offenders under 18 years), *with Roper*, 436 U.S. at 560 (prohibiting the execution of offenders under 18 years).

"[a] punishment might fail the test on either ground." *Kennedy*, 554 U.S. at 441 (citing *Coker*, 433 U.S. 584, 592 (1977)).

When deciding the proportionality of a death sentence, "the Court [also] insists upon confining the instances in which the punishment can be imposed." *Id.* at 420. The result has been that the death penalty is only proportionate when used for "'a narrow category of the most serious crimes' and on those whose extreme culpability makes them 'the most deserving of execution.'" *Id.* (citing *Roper*, 543 U.S. at 568). Accordingly, when capital punishment was reintroduced in 1976, the trend nationwide was to provide factors to narrow the jury's discretion when deciding who fits into that category. *See, e.g.*, *Roper*, 543 U.S. at 568 (recognizing that the death penalty should be reserved for "the worst of the worst").

At the same time as narrowing the death penalty's use, however, the Court has also emphasized the importance of considering the individual circumstances of each offender and the underlying crime. *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976). "Given that the imposition of death by public authority is so profoundly different from all other penalties, . . . an individualized decision is essential in capital cases." *Lockett v. Ohio*, 438 U.S. 586, 605 (1978). The jury may not be "precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *Id.* at 604. However, because of "the resulting imprecision and the tension between evaluating the individual circumstances and consistency of treatment," courts must "insist upon confining the instances in which capital punishment may be imposed." *Kennedy*, 554 U.S. at 440.

There are times, then, when a death sentence is unconstitutionally excessive. In light of these principles, the Supreme Court has adopted two steps when faced with excessiveness claims

regarding the death penalty. It first looks to "objective indicia of society's standards, as expressed in legislative enactments and state practice with respect to executions." *Roper*, 543 U.S. at 563. To make this assessment the Court generally considers "the historical development of the punishment at issue, legislative judgments, international opinion, and sentencing decisions juries have made . . . ." *Enmund*, 458 U.S. at 788. After the objective indicia, the Court moves to the second step, which considers proportionality in light of the "standards elaborated by controlling precedents and by the Court's own understanding and interpretation of the Eighth Amendment's text, meaning, and purpose." *Kennedy*, 554 U.S. at 421. This second step is the more dominant factor. *Enmund*, 458 U.S. at 797 ("Although the judgments of legislatures, juries, and prosecutors weigh heavily in the balance, it is for us ultimately to judge whether the Eighth Amendment permits imposition of the death penalty."). By using this test, the Supreme Court has found the death penalty unconstitutionally excessive when used against those who have not committed homicide, *see Kennedy*, 554 U.S. at 421; *Enmund*, 458 U.S. at 801; *Coker*, 433 U.S. at 59; those with intellectual disabilities, *see Atkins*, 536 U.S. at 321; and juveniles under eighteen, *see Roper*, 543 U.S. at 578. Such decisions are made in light of the underlying principles of narrowing the death penalty's use and exercising restraint on potential brutality, and in doing so courts must ensure that only those viewed as having the most severe culpability face execution.

As part of the evolving standards of decency, it is important to consider the consensus of the medical community and scientific data in determining where to draw the lines of culpability. For example, in *Hall v. Florida*, 134 S. Ct. 1986 (2014), the Supreme Court relied heavily on the standards the medical community had devised for determining intellectual disability. As the Court explained in *Kennedy*:

> That this Court, state courts, and state legislatures consult and are informed by the work of medical experts in determining intellectual disability is unsurprising. Those

> professionals use their learning and skills to study and consider the consequences of the classification schemes they devise in the diagnosis of persons with mental or psychiatric disorders or disabilities. Society relies upon medical and professional expertise to define and explain how to diagnose the mental condition at issue.

Kennedy, 134 S. Ct. at 1993. In *Hall*, the Supreme Court found that Florida's brightline test precluding anyone with an I.Q. score of over 70 ignored the medical consensus that I.Q. score alone is not conclusive evidence of a person's intellectual capacity, while also disregarding the imprecision of I.Q. testing. *Hall*, 134 S. Ct. at 1995. For this reason, the Court found:

> The death penalty is the gravest sentence our society may impose. Persons facing that most severe sanction must have a fair opportunity to show that the Constitution prohibits their execution. Florida's [brightline cutoff] contravenes our Nation's commitment to dignity and its duty to teach human decency as the mark of a civilized world. The States are laboratories for experimentation, but those experiments may not deny the basic dignity the Constitution protects.

Id. at 2001. Thus, when confronted with medical indicia of a person's culpability, or lack thereof, courts cannot choose to ignore any scientific consensus. *Id.*

B. The evolving standards of decency no longer allow for the imposition of death sentences on people in their late teens and early twenties

The United States Supreme Court prohibited the death sentence for juveniles under eighteen in *Roper*, 543 U.S. at 578. That case was in itself an adjustment to the evolving standards of decency, as it revisited its 1989 decision in *Stanford v. Kentucky*, 492 U.S. 361 (1989), allowing for the imposition of death sentences on sixteen- and seventeen-year-olds. The medical community has now overwhelmingly determined that adolescents in their late teens and early twenties are more comparable to their younger peers than they are to adults in their late-twenties or thirties with fully developed brains. For the same reasons *Roper* extended the categorical bar to all adolescents under eighteen, it is now time for the law to meet science and for *Roper* to extend to those in their early twenties.

1. The Eighth Amendment already treats juveniles under eighteen as a separate category from adults

In *Roper*, the Court explained, "The differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability." *Roper*, 543 U.S. at 572-73.

Relying on scientific studies, the Court observed: "Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders." *Id.* at 569. First, "[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions." *Id.* (citations omitted). The Court next observed:

> [J]uveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982) ("[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage."). This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment.

Id. Finally, the Court explained, "The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed." *Id.* at 570. "These differences render suspect any conclusion that a juvenile falls among the worst offenders." *Id.*

The Court applied this same reasoning ten years later when it held unconstitutional the imposition of mandatory life without parole sentences on individuals who were under eighteen at the time of the offense. *Miller v. Alabama*, 567 U.S. 460 (2012). In explaining its reasoning, the Court stated:

> Our decisions rested not only on common sense—on what any parent knows— but on science and social science as well. In *Roper*, we cited studies showing that only a relatively small proportion of adolescents who engage in illegal activity develop

> entrenched patterns of problem behavior. And in *Graham*, we noted that developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds—for example, in parts of the brain involved in behavior control. We reasoned that those findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child's moral culpability and enhanced the prospect that, as the years go by and neurological development occurs, his deficiencies will be reformed.

Id. at 471-72 (citations omitted) (internal quotation marks omitted).

2. There is now a consensus in the medical community that the brain continues developing through the mid-twenties, meaning that adolescents in their late teens and early twenties are no more culpable for their crimes than those under eighteen

Since the Court's decision in *Roper*, scientific and social-science research has demonstrated that, like sixteen- and seventeen-year-olds, people in their late teens and early twenties do not have fully developed brains, are immature, and are vulnerable to peer pressure and risk-taking behavior. "The age of 18 as a 'bright line' is not in accord with the current findings of research in developmental science. This research reveals that human brain maturation is ordinarily not complete until the mid-20's . . . . This [is a] new understanding . . . ." Garbarino Report at 2.

> Today it is established in the medical and scientific literature that brain development does not reach "full maturity" until approximately the period of mid-twenties. Synaptic pruning, the process by which brain synapses are selectively "pruned" or eliminated continues until this time, allowing for more efficient later brain functioning. The myelination process – the development of the substance which provides insulation for the nerve fibers – continues as well. This allows a mature individual to effectively transmit signals, promoting healthy brain functioning and allowing more complex functions. This process continues until well-into the individual's twenties. Also continuing until approximately mid-twenties is the increasing connectivity between regions of the brain. As these connections are strengthened, the brain becomes better able to transmit information between regions and becomes better at planning, dealing with emotions, and problem-solving.

Sultan Report at 21.

In *Roper*, the first category of traits cited by the Supreme Court as grounds for treating juveniles differently than adults includes immaturity, irresponsibility, and impulsivity. *Roper*, 543

U.S. at 569. "The susceptibility of juveniles to immature and irresponsible behavior means 'their irresponsible conduct is not as morally reprehensible as that of an adult.'" *Id.* at 570 (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988)). As the reports submitted in this proceeding relate:

> The pre-frontal cortex is the area of the brain in which executive functions are developed. This region of the brain makes it possible to assess risk, think ahead, set goals, and plan ahead. Significant development of the pre-frontal region of the brain continues until at least the mid-twenties. Complex planning, the ability to focus on one thing while ignoring distractions, decision-making, impulse control, logical thinking, risk management, organized thinking, and short-term memory are all functions of the pre-frontal cortex.
>
> The normal maturational process of the brain is disrupted by the introduction of alcohol and other substances. The normal maturational process of the brain is also disrupted by trauma.

Sultan Report at 21.

> Adolescent brains are immature—an immaturity that extends into early adulthood. This includes the frontal lobes which play a crucial role in making good decisions, controlling impulses, focusing attention for planning, and managing emotions. Science now understands that the process of maturation involves three components of brain function: "gray matter"- the outer layer of the brain, "white matter connections" - the brain cells serving as the "wiring" between neurons, and activity in the chemicals or "neurotransmitters" that execute messages within the brain. *All three are compromised in an individual in his early 20's.*

Garbarino Report at 2 (emphasis added).

A consequence of their immature brains, adolescents seek risk. Research has shown that "individuals in the young adult period (i.e. ages 18-21)" are at a greater risk to engage in risky behavior than younger adolescents, which indicates "that this period of development is an important transition." Rudolph, M., *At Risk of Being Risky: The Relationship between 'Brain Age' under Emotional States and Risk Preference*, Dev. Cognitive Neurosci. 24:93-106 at 102 (2017). This is because the prefrontal cortex, crucial to executive functioning—which encompasses a

broad array of abilities such as impulse control, risk management, and decision making—continues to develop until "at least the mid-twenties." Sultan Report at 21.

The second category of traits cited by the *Roper* Court as grounds for treating juveniles differently than adults includes vulnerability and susceptibility. *Roper*, 543 U.S. at 569. "Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment." *Id.* at 570. The vulnerabilities of twenty-one year olds are analogous to those of seventeen year olds.

> [T]he hormonal conditions of such youths contribute to impaired brain function (relative to adults) in matters of assessing and taking risks, emotional intensity, and dealing with peers (including social rejection). All of these considerations underlie the current scientific recognition that extended adolescents (people in their early 20's) are a special class. The process of brain maturation is not complete in any person until he/she reaches their mid 20's.

Garbarino Report at 3.

The third category of traits cited by the *Roper* Court as grounds for treating juveniles differently than adults includes transitory personality and unfixed character. *Roper*, 543 U.S. at 570. "The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." *Id.*

This reasoning applies with equal force to those in their early twenties as it does to seventeen year olds. The brain development integral for a person to gain the capacity to achieve a stable identity is not complete until the mid-twenties. *See generally* Garbarino Report at 3-4. And with respect to Mr. Branch:

> Mr. Branch clearly fits the brain development pattern recognized by current science. In his late teens and early 20's he is described as immature, impulsive, often not functional, unable to recognize cause and effect, emotionally labile, acting out, lacking an appropriate understanding of legal proceedings and their consequences, and lacking in self-control. As his history demonstrates, at the time of the offense and trial, his functioning was still that of a child. Later in life and currently, he is thoughtful, mature, considerate of others, and taking steps to assist himself in the legal process.

Id. at 4.

As the United States Supreme Court explained in *Hall*, "The Eighth Amendment 'is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice.'" *Hall*, 134 S. Ct. at 1992 (quoting *Weems*, 217 U.S. at 349). In *Hall*, the Court stated that "it is proper to consider the psychiatric and professional studies that elaborate on the purpose and meaning of IQ scores to determine how the scores relate to the holding of *Atkins*." *Hall*, 134 S. Ct. at 1993. And in *Miller*, the Court discussed that the decisions in *Roper* and *Graham* "rested not only on common sense . . . but on science and social science . . . and 'developments in psychology and brain science.'" *Miller*, 567 U.S. at 471. Similarly, it is appropriate for this Court to consider scientific and social science studies to assess the age and neurological development of defendants in their mid-twenties, like Mr. Branch.

As the aforementioned reports detail, there is no meaningful difference between a person in his mid-twenties and a seventeen-year-old. Both have brains that have not fully developed; both are prone to immaturity, recklessness, and impulsivity. Both are still in the neurological development phase; both are vulnerable, have transitory personality traits, and are searching for a stable, authentic identity.

3. Other objective indicia demonstrate that society as a whole is treating older adolescents in the same way as their younger counterparts

In addition to the emerging consensus of the medical and scientific community, state and local governments, juries, and international governments are increasingly treating extended adolescents in ways similar to younger juveniles.

a. A national consensus reflects that individuals in their early to mid-twenties should not be executed

There is an emerging national consensus that older adolescents should be treated differently than adults and more similarly to juveniles under eighteen. In assessing the existence of national consensus on an issue, the United States Supreme Court has examined laws enacted by the various state legislatures and the decisions of sentencing juries, appellate courts, and governors about whether to execute defendants who belong to a particular category of individuals, such as those under eighteen. *Roper*, 543 U.S. at 563-65; *see also Atkins*, 536 U.S. at 313-17. "Statistics about the number of executions may inform the consideration whether capital punishment . . . is regarded as unacceptable in our society." *Kennedy*, 554 U.S. at 433.

In *Roper*, the Court examined national consensus with respect to the execution of juvenile offenders. According to the Court, "30 States prohibit the juvenile death penalty, comprising 12 that have rejected the death penalty altogether and 18 that maintain it but, by express provision or judicial interpretation, exclude juveniles from its reach." *Roper*, 543 U.S. at 564. The Court also looked to the number of executions for defendants who were sixteen or seventeen at the time of their crimes, finding that "even in the 20 States without a formal prohibition on executing juveniles, the practice [was] infrequent." *Id.* at 564-67. Ultimately, the Court found that "the infrequency of its use even where it remains on the books; and the consistency in the trend toward abolition of the practice—provide sufficient evidence that today our society views juveniles, in the words *Atkins* used respecting the intellectually disabled, as "categorically less culpable than the

average criminal." *Id.*; *see also Hall*, 134 S.Ct. at 1997 ("Consistency of the direction of change is also relevant.").

Here, there is similarly a trend supporting the idea that extended adolescents should not be subjected to the death penalty. First, extended adolescents over seventeen would not be executed for any offense in twenty-three states, the District of Columbia, and the five United States territories. Currently, nineteen states and the District of Columbia have abolished the death penalty as to all crimes. *Facts about the Death Penalty*, Death Penalty Information Center (2018). [7]

Nor is a death sentence likely to be imposed under the laws of any of the five United States Territories. The death penalty is prohibited under the constitutions of Puerto Rico and the Commonwealth for the Northern Mariana Islands. *See* P.R. Const. Art. II § 7; C.N.M.I. Const. Art. I § 4(i). In Guam and the U.S. Virgin Islands, the death penalty is not a possible sentence. *See, e.g.*, 9 G.C.A. § 16.39(b); 14 V.I. C. § 923(a).

And the governors of four states have imposed moratoria on executions: Pennsylvania, Oregon, Washington, and Colorado. In *Hall*, the Court characterized the moratoria states as being on the defendant's "side of the ledger" in the national consensus equation. *Hall*, 134 S. Ct. at 1997.

Put simply, in twenty-three states, the District of Columbia, and the five United States Territories, those just past the *Roper* cut-off would be excluded from eligibility from the death penalty.

Second, a court must look to the states who allow a punishment but do not actually impose it. The *Graham* Court noted:

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[7] The States that have abolished the death penalty (along with the dates of abolition) are Alaska (1957), Connecticut (2012), Hawaii (1957), Illinois (2011), Iowa (1965), Maine (1887), Maryland (2013), Massachusetts (1984), Michigan (1846), Minnesota (1911), New Jersey (2007), New Mexico (2009), New York (2007), North Dakota (1973), Rhode Island (1984), Vermont (1964), West Virginia (1965), and Wisconsin (1853).

> [T]he many States that allow life without parole for juvenile nonhomicide offenders but do not impose the punishment should not be treated as if they have expressed the view that the sentence is appropriate. The sentencing practice now under consideration is exceedingly rare. And "it is fair to say that a national consensus has developed against it."

Graham, 560 U.S. at 67 (citations omitted). The Court's opinion makes clear that actual practice—even among States that appear to authorize a particular punishment—must be considered in determining national consensus.

Here, among states that theoretically authorize the death penalty for extended adolescents over seventeen, seven reveal a trend against using eighteen as the cut-off. They have not executed any offender under the age of twenty-one years in the last fifteen years. Even if those seven states have offenders under twenty-one on their death rows, they have not imposed any new death sentences on offenders in that age group in the last 20 years. This means that 30 States, plus the District of Columbia and the five U.S. Territories, have decided to go beyond age eighteen in banning outright or imposing death sentences for adolescents older than seventeen.[8]

Similarly, states are expanding past the *Roper* cutoff in decreasing the number of executions for those who were younger at the time of their crimes. Even in the remaining states with the death penalty as an authorized punishment for offenders under 21 years, executions occur in a minority of the states. In the last ten years, for example, only 12 states have actually executed offenders who were 21 or younger at the time of their offenses: Texas, Virginia, Oklahoma, Florida, Delaware, Mississippi, Alabama, Ohio, Georgia, South Carolina, Indiana, and South

[8] The most recent example of a state departing from *Roper's* age eighteen cutoff is Kentucky, where a circuit court judge has ruled the death penalty unconstitutional for those under twenty-one in two cases. *See* Vandiver, B., *Trial Delayed, Death Penalty under Review*, University of Kentucky Kentucky Kernel (Oct. 20, 2017), http://www.kykernel.com/news/trial-delayed-death-penalty-under-review/article. Mr. Branch asserts that while this shows that states are willing to go beyond eighteen, this does not go far enough to protect all extended adolescents who have similar cognitive deficiencies.

Dakota. Since 2011, that number has dropped to nine states. Indeed, of the 29 states that have had executions since 2000, 14 states did not execute anyone under 21 years, and four of those states have since repealed the death penalty or imposed a moratorium on executions. Of the remaining states, death sentences are infrequently imposed on defendants under 21 or younger, and actual executions of such individuals are even rarer.

b. State and federal laws reflect the consensus that people in extended adolescence are categorically less mature and less responsible than older people whose brains have reached full maturity

The United States Supreme Court has considered state statutes imposing minimum age requirements to buttress its conclusion that the death penalty was a prohibited punishment for juvenile offenders: "In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent." *Roper*, 543 U.S. at 569.

The same is true for extended adolescents. In the capital sentencing context, while age is not yet a categorical ban, it is a mitigating factor in almost all death penalty states. Since capital punishment is prohibited for those under eighteen, the age mitigating factor clearly goes to those who are in extended adolescence.[9]

[9] Twenty-three of the death penalty states that provide specific mitigating factors in their capital sentencing statutes, including Florida, include age of the offender at the time of the crime. *See* Alabama, Ala. Code § 13A-5-51(7); Arizona, Ariz. Rev. Stat. § 13751(5); Arkansas, Ark. Code. Ann. § 5-4-605(4); California, Cal. Penal Code § 190.3 (i); Colorado, Colo. Rev. Stat. Ann. § 18-1.3.1201(a); Florida, Fla. Stat. Ann. § 921.141 (g); Kansas, Kan. Stat. Ann. § 21-6625(7); Kentucky, Ky. Rev. Stat. Ann. & 532.025(8); Louisiana, La. C.Cr. P. art. 905.5(f); Mississippi, Miss. Code Ann. § 99-19-101(g); Missouri, Mo. Ann. Stat. § 565.032(7); Nebraska, Neb. Rev. Stat. Ann. § 29-2523(d); Nevada, Nev. Rev. Stat. Ann. §200.035(6); New Hampshire, N.H. Rev. Stat. Ann. § 630:5(d); North Carolina, N.C. Gen. Stat. Ann. § 15A-2000(7); Ohio, Ohio Rev. Code Ann. §(4); Pennsylvania, 42 Pa. Stat. § 9711(4); South Carolina, S.C. Code Ann. § 16-3-20(7); Tennessee, Tenn Code Ann. § 39-13-204(7); Utah, Utah Code Ann. § 76-3-207(e); Virginia, Va. Code Ann. § 19.2-264.4(v); Washington, Wash. Rev. Code Ann. § 10.95.070(7); Wyoming, Wyo. Stat. Ann. § 6-2-102(vii).

In determining intellectual disability, one of the prongs is onset during the developmental period. While this is commonly thought of to be age eighteen, three death penalty state have interpreted 'onset in the developmental period' as onset prior to age twenty-two: Indiana, Utah, and Maryland. Ind. Code § 35-36-9-2 (2017); Utah Code § 77-15a-102; Md. Code, Crim Law § 2-202 (2010).

The "onset during the developmental period" factor also arises in civil commitment cases. There, some non-death penalty states have civil commitment statutes which interpret "onset in the developmental period" as onset prior to age twenty-two: Minnesota, New Mexico, and Rhode Island. Minn. Stat. § 253B.02; N.M. Stat § 28-16A-6; N.M. Stat § 43-1-3; R.I. Gen. Laws § 40.1-1-8.1. In Wisconsin's statutes, "intellectual disability" is not individually defined but is encompassed within the definition of "developmental disability." Wis. Stat. § 51.01(5)(a). "Developmental disability" is then defined, in part, as "manifested before the person has attained the age of 22." Wis. Stat. § 51.62(1).

In the criminal justice system more generally, there are many examples of courts and legislatures recognizing that people in their early to mid-20s are not full-fledged adults. For example, in Nebraska, the Douglas County Young Adult Court "is a judicially supervised program that provides a sentencing alternative for youthful offenders up to age 25."[10] There is also a young adult court in Idaho, recognizing that the "18-24 [year-old] brain is unique," due to the

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Two more states include this factor for defendants who are under the age of eighteen, but as that is now a complete bar to a death sentence, presumably they consider evidence of youth for those over the age of eighteen as well. *See* Indiana, Ind. Code Ann. § 35-50-2-9(6); Montana, Mont. Code Ann. § 46-18-304(g).

[10] https://www.dc4dc.com/young-adult-court

"[p]refrontal cortex" being "not fully developed," and that offenders in this age range are at high risk.[11]

In California, a young adult court serves people ages 18 to 25. These courts are based on the growing body of research that "the prefrontal cortex of the brain—responsible for our cognitive processing and impulse control—does not fully develop until the early to mid-20s."[12] The young adult courts acknowledge "are going through this critical developmental phase, many find themselves facing adulthood without supportive family, housing, education, employment and other critical protective factors that can help them navigate this tumultuous period." *Id.* It accommodates these differences because "traditional justice system is not designed to address cases involving these individuals, who are qualitatively different in development, skills, and needs from both children and older adults." *Id.*

In New York, a young adult court serves people ages 16 to 24 in response to "the latest findings on adolescent brain developments."[13]

States are increasingly opening young adult correctional facilities to focus more on rehabilitation and building life resources. They have done this in Connecticut (for 18 to 25 year olds), Maine (for 18 to 26 year olds), and New York (a unit at Rikers Island specifically houses 18 to 21 year olds).

Other, non-legal examples of where society treats extended adolescents differently than adults include rental cars, where rental car companies charge young driver fees to those between

[11] https://www.nadcp.org/sites/default/files/2014/CG-12.pdf

[12] http://www.sfsuperiorcourt.org/divisions/collaborative/yac

[13] https://www.courtinnovation.org/areas-of-focus/youth-programs

eighteen and twenty-four, and healthcare, where young adults are allowed to stay on their parents' health insurance until age twenty-six.

c. International opinion on the death penalty and the treatment of criminal offenders 21 years of age or younger further supports the premise that the death penalty should be categorically prohibited

The *Roper* Court considered the laws of the international community as "instructive for its interpretation of the Eighth Amendment's prohibition of 'cruel and unusual punishments.'" *Roper*, 543 U.S. at 575-76. *See also id.* at 604 (O'Connor, J., dissenting) ("Over the course of nearly half a century, the Court has consistently referred to foreign and international law as relevant to its assessment of evolving standards of decency."). The death penalty is not implemented at all in a majority of other countries, let alone against extended adolescents. Although the number of death sentences handed down globally increased in 2016, the trend towards abolition of the death penalty continues, with 104 countries having abolished the punishment by the end of 2016 as compared to 64 countries which had done so as of 1997. *Death Sentences and Executions 2016*, Amnesty International, at 24 (2017).

Imposition of the death penalty has declined internationally. According to Amnesty International, 37 percent fewer executions occurred worldwide in 2016 than in 2015. *Death Sentences and Executions 2016*, Amnesty International, at 4 (2017). Saudi Arabia, Iran, Iraq and Pakistan accounted for 87 percent of the global number of executions. *Id.* Two countries, Benin and Nauru, abolished the death penalty for all crimes, and one country, Guinea, abolished it for "ordinary crimes." *Death Sentences and Executions 2016*, Amnesty International, at 9 (2017).

Other countries and the United Nations have also recognize that people are not fully adults the moment they turn eighteen years old and that juvenile punishments, rather than adult punishments, are appropriate to those in their extended adolescent years. For example, members

of the international community also recognized the need to treat youthful offenders as juveniles rather than as adults in the criminal context. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) require that "(e)fforts shall also be made to extend the principles embodied in the Rules to young adult offenders," and extend the protection afforded by the Rules to cover proceedings dealing with extended adolescents.[14] The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Rule 3.3 & Commentary to Rule 3.3, adopted by General Assembly resolution 40/33 of 29 November 1985.[15]

European countries' treatment of people in their early 20s in the criminal context is informative on whether the death penalty should be formally abolished for that age group in the United States. In Germany, all young adults ages 18 to 21 fall within the jurisdiction of the juvenile courts, but those courts have the option of sentencing according to the juvenile law or the adult law. The German Supreme Federal court has further developed the law by ruling that a young adult has the maturity of a juvenile if his or her personality is still developing; this logic has been used to argue that juvenile justice options should be available for young adults up to the age of 24 years. In 2014 the Netherlands enacted a law which extends the applicability of juvenile sanctions to young adults aged 18 to 23 years.[16]

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[14] "A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult(.)" Beijing Rules, Rule 2.2(a).

[15] Available at http://www.un.org/documents/ ga/res/40/a40r033.htm.

[16] In other European countries, youth between the ages of 18 to 21 are not subject to the jurisdiction of adult courts. In Austria, for example, youths who commit offenses at 21 are subject to special youth courts. Various provisions of the juvenile code, rather than the adult code, apply to these offenders. Croatia, too, provides that persons ages 18 to 21 will be treated by specialized juvenile courts and fall within the juvenile courts act. There are also reduced penalties for offenders under 21 years. European countries also distinguish extended adolescents at the trial court stage. In

4. The Supreme Court's own jurisprudence calls for the prohibition of imposing death sentences on extended adolescents

As it can be established that the objective indicia treats older adolescents like their younger peers, this Court must move on to the second step: Supreme Court jurisprudence.

As with adolescents under eighteen, death sentences imposed upon extended adolescents have little or no penological purpose. They do not meet any of the three principal rationales of punishment: "rehabilitation, deterrence, and retribution." *Kennedy*, 554 U.S. at 420. "Rehabilitation, it is evident, is not an applicable rationale for the death penalty." *Hall*, 134 S. Ct. at 1992-93 (citation omitted). Thus, "capital punishment is excessive when it is grossly out of proportion to the crime or it does not fulfill the two distinct social purposes served by the death penalty: retribution and deterrence of capital crimes." *Kennedy*, 554 U.S. at 441; *Gregg v. Georgia*, 428 U.S. 153 (1976) (noting that the death penalty should serve these "two principal social purposes").

"Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity." *Roper*, 543 U.S. at 571. Indeed, "[i]f the culpability of the average murderer is insufficient to justify the most extreme sanction available to the State (that is, if the State cannot execute all murderers), the lesser culpability of the mentally retarded offender surely does not merit that form of retribution." *Atkins*, 536 U.S. at 319.

Finland and Sweden there are no specialized juvenile courts; rather, these countries approach punishment of all offenders from a rehabilitative standpoint. Still, offenders under 21 years who are sentenced to prison get released after serving one-third of their time while adults are released after serving one-half or two-thirds of their sentences. In Sweden, imprisonment for youth 21 or younger is a last resort, and such offenders can be subject to the same supervision (called "youth service") as juveniles. As for terms of imprisonment, the maximum term for offenders 21 years old or younger is fourteen years.

The reasoning of *Atkins* also applies here: the culpability and blameworthiness of youthful offenders in extended adolescence are diminished to a substantial degree by their youth and immaturity. American society recognizes the dual need to provide greater protections for this group and to prohibit them from participating in activities where youthful impulsivity and immaturity could put them or others at risk. The law does not grant these youth the same rights and entitlements of adults; and for purposes of punishment, they should not be treated the same as adults. Just as with juveniles under 18 years of age, research suggests that this group can mature and "age out" of the recklessness and impulsiveness that can characterize this group of individuals. The fact that this group can mature—can attain a better understanding of their own humanity—necessarily means that they cannot be the "worst of the worst" so as to justify the ultimate sanction.

As for the rationale of deterrence, "it is unclear whether the death penalty has a significant or even measurable deterrent effect on juveniles." *Roper*, 543 U.S. at 571. "The same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence." *Id.* The *Roper* Court explained that "[t]he likelihood that the teenage offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent." *Id.* Indeed, "to the extent the juvenile death penalty might have residual deterrent effect, it is worth noting that the punishment of life imprisonment without the possibility of parole is itself a severe sanction, in particular for a young person." *Id.*; *see also Atkins*, 536 U.S. at 319-20 (noting that the impairments of intellectually disabled offenders make it less defensible to impose the death penalty as retribution for past crimes and less likely that the death penalty will have a real deterrent effect particularly in that population).

The reasoning about the lack of deterrence applies to individuals in extended adolescence, too. Deterrence as a rationale for punishment necessarily requires a group to reflect upon the consequences of its actions. People in their early to mid-20s suffer from the same impulsivity as younger teenagers. They act rashly, without reflection and full consideration of the consequences of their actions. They do not grow out of this behavior until their brains have fully formed. Like seventeen year olds, adolescents in their early 20s also lack the self-regulation and executive functioning to appreciate the death penalty as a deterrent.

Capital punishment is only lawful if the offender's "consciousness [is] materially more 'depraved' than that of any person guilty of murder." *Godfrey v. Georgia*, 446 U.S. 420, 433 (1980). The characteristics of adolescents—for example, impulsivity and lack of full brain development—so affect their individual responsibility and moral guilt that it categorically precludes such a finding. Thus, their execution is categorically unconstitutional.

C. Mr. Branch's case is especially demonstrative of why *Roper* should be extended, given the effects of his traumatic childhood on his cognitive development and his immature functioning at the time of the offense

In addition to Mr. Branch being only twenty-one at the time of his crime, so that he already lacked a fully matured adult brain in all the ways discussed above, Mr. Branch's traumatic childhood and history of adolescent substance abuse would have delayed his brain development even more. The unique characteristics and experiences of an individual impacts the development of his brain. "Youth who have experienced significant trauma and deprivation are especially prone to developmental delays on these same dimensions of executive function and affective regulation, with their situation being appropriately categorized as 'adolescence squared.'" Garbarino Report at 3. "If trauma occurs repeatedly and for a prolonged time, as it did for Eric Branch, it impedes brain development even further." Report of Dr. Sultan, at 21.

For Mr. Branch, these impactful experiences include the abuse and neglect he suffered, the instability of his home life, and alcohol use. As Faye Sultan, Ph.D., found, these adverse childhood experiences had a devastating effect on the development of Mr. Branch's brain.

> It is the professional opinion of this examiner, stated to a reasonable degree of certainty, that the cognitive and emotional development of Eric Branch, was significantly impaired and delayed by the above-described factors, and most particularly his yet undeveloped brain at the time of the offense, when he was twenty-one years old.

Report of Dr. Sultan, at 21. "In the case of Eric Branch, his social history indicates he is just such an individual - growing up with much adversity, including psychological adversity such as experiences of parental rejection, and physical maltreatment (including physical traumas which may have resulted in insults to his brain)." *Id.*

Dr. Sultan described how the trauma Mr. Branch suffered impacted his brain development:

> Eric Branch was exposed to chronic trauma within his home and within his community. Traumas, and the resulting fear produced by such situations, are now understood to undermine the development of a child's brain. The brain adjusts to patterned-repetitive experiences that are understood through the senses. Trauma impacts brain areas like the amygdala (involved in emotion management) and the hippocampus (involved in memory and memory consolidation).

Report of Dr. Sultan, at 21.

Mr. Branch's neurological development was also impacted by the consumption of alcohol. The relationship between alcohol use and a developing brain is complex. Alcohol use is also related to a young person's brain not being fully formed, and concurrently alcohol use impedes neurological development. Alcohol consumption is both a cause and an effect of the delays in brain development.

According to Dr. Sultan, Mr. Branch's brain development was impaired and delayed due to self-medication with alcohol.

Mr. Branch, like other adults with chronic trauma, demonstrated difficulty with the

> formation and maintenance of intimate relationships. He developed inappropriate ways to deal with the people in his life. He had trouble expressing his emotional needs, and he was distrustful of others to the extreme. In order to cope with his unmet emotional needs, Eric Branch turned to alcohol binging and substance abuse.
>
> * * *
>
> Medical research has demonstrated that adolescent substance abusers show abnormalities on multiple measures of brain functioning which is linked to changes in cognitive ability, decision-making, and the regulation of emotions. Abnormalities have been seen in brain structure volume, white matter quality, and activation to cognitive tasks.

Report of Dr. Sultan, at 20-21. "Deficits in executive functioning, specifically in the areas of abstract reasoning ability and problem-solving ability have also been linked directly to adolescent substance abuse." *Id.* Because of this, "[t]he normal maturational process of the brain is disrupted by the introduction of alcohol and other substances." Report of Dr. Sultan, at 21.

According to Dr. Garbarino, "[w]hile such consumption by a traumatized person like Mr. Branch has a self-medicative component, its significance . . . is that such a history additionally impairs brain development for adolescents and individuals in their early 20's." Garbarino Report at 5. "[G]iven the trauma and social deprivation that he experienced growing up and his immature development, traumatized, impulsive, and socially inexperienced. But more than that, as a twenty one-year-old, he was still years away from the developmental time when brains mature." *Id.*

Based on medical and scientific developments conclusively showing that a person's brain is not fully developed until late in the third decade of life, the national consensus against the execution of people in late adolescence—as shown through laws and practices—and legislation at the local, state, and international level that protects people in their early twenties (and treats them akin to juveniles), it is unconstitutional to execute extended adolescents. There is no meaningful difference between a seventeen year old and someone like Mr. Branch, due to the biological

immaturity of their brains and their compromised functioning. No penological purpose is served by the execution of either.

The execution of Mr. Branch, whose "cognitive and emotional development . . . was significantly impaired and delayed," Report of Dr. Sultan, at 21, would be unconstitutional. His death sentence, excessive and unconstitutional, must be vacated.

Claim 2: The needless suffering and uncertainty Mr. Branch has experienced during his time on death row is in violation of the Eighth Amendment prohibition against cruel and unusual punishment

I. There is no procedural impediment to this claim, which did not become ripe until Defendant's death warrant was signed, and the Court should therefore decide the claim on the merits

There is no procedural impediment to Defendant's Eighth Amendment claim that it would be cruel and unusual to execute him after his particularly anguishing 24 years of confinement on death row, during which his desperate attempts to obtain counsel to assist with his case went repeatedly unanswered. This Court should decide this claim on the merits, and grant relief for the reasons discussed below.

Like a claim of incompetency to be executed, *see Panetti v. Quarterman*, 551 U.S. 930 (2007), or a broad claim that it would be cruel and usual to execute a prisoner who had spent an inordinate number of years on death row, *see Johnson v. Bredesen*, 558 U.S. 1067 (2009) (Stevens, J., statement respecting the denial of certiorari), Defendant's Eighth Amendment claim did not become ripe until his death warrant was signed and an execution became imminent. Because Defendant's claim is not only that his arduous years spent looking for counsel on death row themselves give rise to an Eighth Amendment violation—but rather, that his execution, in light of and on the heels of those years, would violate the Eighth Amendment's prohibition on cruel and unusual punishment—the claim "is measured at the time of execution, not years before then." *Tompkins v. Secretary*, 557 F.3d 1257, 1260 (11th Cir. 2009).

Where a defendant's claim does not become ripe until a death warrant is signed, the claim should not be denied during under-warrant litigation on the ground that it is barred under the procedural requirements for successive post-conviction applications. *See Stewart v. Martinez-Villareal*, 523 U.S. 637, 644-45 (1998). Instead, the newly-ripe claim should receive merits considerations, as it is the defendant's first and only opportunity for such review. As the Florida Supreme Court has observed, a claim that does not ripen until a death warrant is signed cannot be raised in an earlier post-conviction proceeding, and would be subject to immediate dismissal on ripeness grounds. *See Griffen v. State*, 866 So. 2d 1 (Fla. 2003). This makes sense because such claims "mean[] nothing unless the time for execution is drawing nigh." *Tompkins*, 557 F.3d at 1260. But, once a warrant is signed, the defendant should be afforded an opportunity for review of the claim on the merits.

Defendant could not have raised his Eighth Amendment claim in an earlier post-conviction proceeding because it did not become ripe until the eve of this litigation. Under these circumstances, a "literal application" of the successive motion requirements in Fla. R. Crim. P. 3.851(e)(2) would not only work a miscarriage of justice in this case but "would frustrate the purposes" of the successive rules, and promote judicial inefficiency, by leading litigants to inundate the state's courts with unripe and premature claims. *See Stewart v. United States*, 646 F.3d 856 (11th Cir. 2011). As set forth below, Defendant has colorable arguments in support of his constitutional claim that deserve this Court's consideration. This Court should decide the claim on the merits.

II. Mr. Branch has experienced needless uncertainty and suffering during his time on death row

Eric Branch has been on death row for 24 years, and he has spent most of that time fighting for competent legal representation. His days have been filled with uncertainty, never knowing

when he would finally receive a response from one of the many lawyers, law firms, and legal aid organizations to whom he had reached. And his days have been filled with uncertainty whether the governor would sign his death warrant, as he had done to so many of Mr. Branch's friends over the past 24 years. The United States Supreme Court recognized Mr. Branch's predicament over a hundred years ago, observing that "when a prisoner sentenced by a court to death is confined in the penitentiary awaiting the execution of the sentence, one of the most horrible feelings to which he can be subjected during that time is the uncertainty during the whole of it." *In re Medley*, 134 U.S. 160, 172 (1890). As Justice Brennan noted, "The 'fate of ever-increasing fear and distress' to which the expatriate is subjected, *Trop v. Dulles*, 356 U.S. 86, 102, (1958), can only exist to a great degree for a person confined in prison awaiting death." *Furman v. Georgia*, 408 U.S. 238, 289 (1972).

Although the United States Supreme Court has held that capital punishment does not violate the Eighth Amendment, the Court also recognized that "the sanction imposed cannot be so totally without penological justification that it results in the gratuitous infliction of suffering." *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

Rather than speculating about the "ever-increasing fear and distress," *see Trop*, 356 U.S. at 102, Mr. Branch must have felt, he has made the point himself. Years of Mr. Branch's letters and pleadings serve as a remarkable documentation of his inner thoughts throughout his time on death row. For example, when the District Court for the Northern District of Florida denied his § 2254 petition, Mr. Branch speculated that he only had seven months to one year of appeals left. He wrote, "Assuming I win nothing than [*sic*] it's up to the governor. It could be a week. It could be 10 yrs after. But he can sign my warrant at any moment after my appeal expires." Letter

Excerpts from Mr. Branch to Leora Nosko-Passmore; his grandmother; his aunt, Connie Branch; and his cousin, Alex Branch (2008 to 2013) (hereinafter "Branch Letter Excerpts").

Mr. Branch panicked even more when the Eleventh Circuit denied his appeal, causing him to fear that he would imminently end up on the "Ready List" – a list of death row prisoners provided to the governor indicating they have exhausted all appeals and are ready for execution. Mr. Branch explained, "Once I am on the list, staying there 3 months is normal. Remaining there 3 yrs is extraordinary. Meaning I have up to 3 months but less than 3 yrs to make something happen or die." *Id.* Shortly thereafter, Mr. Branch grew even more fearful when the United States Supreme Court denied his petition for writ of certiorari, again writing, "There is no hope of lasting 3 years on the Ready List for the simple fact they will run out of people on the list long before that and have to kill me." *Id.* Sure enough, Mr. Branch received notification that he was on the governor's list less than a month later.

The pressure started to weigh on Mr. Branch. His letters became darker, and he wrote, "Most days I don't even feel like opening my eyes. I am constantly tired, sad, lonely, hungry, and generally miserable . . . ." *Id.* Almost a year after Mr. Branch's certiorari petition had been denied, he told his cousin, "I feel like somebody has been standing behind me with a gun to my head for a year now. It's fucking exhausting." *Id.*

Mr. Branch also described what it felt like to have the men living around him taken away and killed one by one:

> The tough part is that now everyone they are killing has been here with me for 20 years. Its [*sic*] kind of like coming into work and finding every month another person you've worked in the office with for 20 years has been taken out back and killed. Even when it's not you, it's so much stress.

Id.

In 2013, Florida passed the Timely Justice Act. It required the governor to issue a warrant within 30 days of clemency denial, and to schedule an execution within 180 days of the warrant. This caused utter panic on Florida's death row, as the prisoners wondered how quickly their executions would be processed and if there might be mass warrants. Mr. Branch described the fearful atmosphere, writing:

> Now, every time the door opens, it falls quiet, everybody wondering if he did it . . . signed all our warrants or is he coming after just one of us today . . . . Anybody who survives this will be driven nuts, watching 120 people they know get killed, wondering at each open door – am I next? It's too much.

Exacerbating Mr. Branch's anxiety was that most of his time on the row, he was represented by inadequate conflicted counsel. *See* Part III, *supra*. In over sixty letters to his loved ones, Mr. Branch lamented his lack of appropriate representation all through his state and federal review. He reached out to local Florida and notional attorneys and organizations. *See, e.g.*, Letter from Mr. Branch to Michael Radelet. He filed numerous pro se pleadings, most of which were stricken due to the representation by his conflicted counsel. Mr. Branch finally got some assistance when he reached out to the American Bar Association's Death Penalty Project in April of 2010. *See* Letters from Mr. Branch to the ABA. However, it took the ABA more than three years to find counsel for Mr. Branch, and by then his appeals were completely exhausted. Ms. Emily Olson-Gault of the ABA wrote, "We recognize that if we had been able to find a law firm sooner – or if Mr. Branch had received consistent, qualified representation from court-appointed counsel throughout the case – his legal situation might be different." *See* Letter from the ABA Death Penalty Representation Project to Kimberly Newberry (January 25, 2018).

Ms. Olson-Gault said of Mr. Branch:

> During the years we were looking for pro bono counsel, Mr. Branch stayed in frequent contact with the Project, asking about our efforts and urging us to not give up trying to find counsel for him. He provided me with suggestions for lawyers that

> I might try to contact and kept me updated on legal developments in his case. . . . He was as diligent and persistent in seeking representation and trying to preserve his claims as any death-sentenced prisoner I have encountered in my many years of working with the Project.

Id.

As the Supreme Court once stated about the death penalty, "one of the most horrible feelings to which he can be subjected during that time is the uncertainty during the whole of it." *Medley*, 134 U.S. at 172. Mr. Branch's letters put that uncertainty on full display, along with the fear, paranoia, and tension familiar to those living under a death sentence—but exacerbated by Mr. Branch's lack of adequate conflict-free counsel. Executing Mr. Branch after those twenty-four years on death row violates the Eighth Amendment's prohibition against cruel and unusual punishment, not solely because of the length of time he has been on death row, but because of the psychological suffering he endured as he wrote letter after letter complaining about his attorney, drafting pro se motions that would be ignored by the courts, and launching campaigns from death row to find an attorney in the United States that would represent him – the whole time fearing that "whenever the Governor wants me to die, I will." *Id.*

CONCLUSION

For the foregoing reasons, Mr. Branch's death sentence violates the Eighth Amendment. It is unconstitutionally excessive because Mr. Branch's age and under-developed brain at the time of the offense prevented him from having the requisite culpability to be eligible for a death sentence. It is unconstitutional, because Mr. Branch's time on death row, anguishing over when he would be killed and constantly having to seek legal representation, was cruel and unusual punishment.

WHEREFORE, this Court should:

1. Enter a stay of execution;
2. Grant an evidentiary hearing to resolve contested issues of fact;

3. Allow amendment of this submission as may by just and proper;

4. Vacate Mr. Branch's sentence of death and prohibit his execution.

Respectfully submitted,

/s/ Stacy Biggart
Stacy Biggart
Assistant Capital Collateral
Regional Counsel—North
1004 DeSoto Park Drive
Tallahassee, FL 32301
(850) 487-32301
stacy.biggart@ccrc-north.org
Florida Bar No. 89388

/s/ Billy H. Nolas
Billy H. Nolas
Chief, Capital Habeas Unit
Office of the Federal Public Defender
Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301-1300
(850) 942-8818
billy_nolas@fd.org
Florida Bar No. 806821

Kathleen Pafford
Assistant Capital Collateral
Regional Counsel—North
1004 DeSoto Park Drive
Tallahassee, FL 32301
(850) 487-32301
kathleen.pafford@ccrc-north.org
Florida Bar No. 99527

Kimberly Sharkey
Attorney, Capital Habeas Unit
Office of the Federal Public Defender
Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301-1300
(850) 942-8818
kimberly_sharkey@fd.org
Florida Bar No. 505978

Counsel for Eric Branch

CERTIFICATION OF COUNSEL

Pursuant to Fla. R. Crim. P. 3.851(e)(1)(F), undersigned counsel hereby certifies that they have discussed the contents of this motion fully with Defendant Eric Branch and have complied with Rule 4-1.4 of the Rules of Professional Conduct, and that this motion is filed in good faith.

/s/ Billy H. Nolas
Billy H. Nolas

/s/ Stacy Biggart
Stacy Biggart

CERTIFICATE OF SERVICE

I certify that on January 29, 2018, the foregoing was served via the e-portal to Assistant Attorney General Charmaine Millsaps at cappapp@myfloridalegal.com and Assistant State Attorney John Molchan at jmolchan@sa01.org.

/s/ Billy H. Nolas
Billy H. Nolas

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**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY, FLORIDA**

STATE OF FLORIDA

CASE NO. 1993-CF-870-A

v.

ERIC SCOTT BRANCH,
Defendant.
_____/

MOTION TO EXCEED PAGE LIMITATION

Defendant, **ERIC SCOTT BRANCH**, respectfully moves this Court to allow him to exceed the page limitation for his successive Rule 3.851 motion and application for a stay of execution, filed simultaneously with this motion. In support, Mr. Branch submits as follows:

1. Mr. Branch is under sentence of death. A Death Warrant was signed in Mr. Branch's case on January 19, 2018.

2. Pursuant to this Court's scheduling order, Mr. Branch was directed to file his Rule 3.851 motion on January 19, 2018 by 9:00 a.m. CST.

3. Fla. R. Crim. P. 3.851(e)(2) directs that, under ordinary circumstances, "a successive motion shall not exceed 25 pages, exclusive of attachments."

4. Mr. Branch's motion exceeds the regular page limit. His motion sets forth two claims for relief that require complex factual and legal analysis, including a claim based on the plethora of new science related to juvenile brain development and its applicability to Mr. Branch. The procedural, factual and legal aspects of Mr. Branch's motion cannot be adequately pled and meaningfully developed in 25 pages during the constricted timeline of a death warrant.

5. The 25-page limit that is generally applicable to successive Rule 3.851 motions was never intended to impede a prisoner's right to fully present his claims for relief on the eve of an execution, and to do so would violate his rights to due process, equal protection, and access to the

courts. Nationally and in Florida, counsel representing clients under a death warrant are not required to truncate a written motion supporting a stay request and pursuit of substantive relief. That is why Florida courts routinely accept successive Rule 3.851 pleadings in death warrant cases that far exceed 25 pages, and decline to grant motions by the State to strike such pleadings under warrant. *See, e.g.*, *State v. Lambrix*, No. 1983-CF-12 (Glades Cty. June 9, 2017) (granting motion to accept 113-page successive motion under warrant over State's objection); *State v. Asay*, No. 1987-CF-6876 (Duval Cty. Jan. 28, 2016) (granting motion to accept 125-page successive motion under warrant over State's objection); *State v. Banks*, No. 1992-841 (Gadsden Cty. Oct. 20, 2014) (granting motion to accept 64-page successive motion under warrant); *State v. Muhammad*, No. 1980-341 (Bradford Cty. Oct. 29, 2013) (accepting 69-page successive motion under warrant).

6. As Florida Circuit Judge Salvador recently observed in the death warrant litigation of Mark Asay, accepting motions longer than 25 pages under warrant, rather than striking the pleadings and ordering counsel to spend precious time editing claims to fit within the 25-page limit, furthers the interests of judicial economy and promotes compliance with the Florida Supreme Court's death-warrant litigation timeline. *See State v. Asay*, No. 87-CF-6876 (Duval Cty. Jan. 28, 2016) ("Defendant has filed a 125-page rule 3.851 motion contemporaneously with his instant Motion seeking to enlarge the page limitation for successive rule 3.851 motions . . . . In light of the Florida Supreme Court's February 3, 2016 deadline for this Court to conclude Defendant's instant proceedings, and in the interests of judicial economy, this Court has no option but to grant Defendant's Motion to Enlarge Page Limitation.").

WHEREFORE, based on the foregoing, Mr. Branch requests that due to the complex nature of his claims and the extraordinary circumstances presented by the pendency of a death warrant,

this Court allow him to exceed the page limitation set forth in Rule 3.851(e)(2) and accept the Rule 3.851 motion as filed.

Respectfully submitted,

/s/ Stacy Biggart
Stacy Biggart
Assistant Capital Collateral
Regional Counsel—North
1004 DeSoto Park Drive
Tallahassee, FL 32301
(850) 487-32301
stacy.biggart@ccrc-north.org
Florida Bar No. 89388

/s/ Billy H. Nolas
Billy H. Nolas
Chief, Capital Habeas Unit
Office of the Federal Public Defender
Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301-1300
(850) 942-8818
billy_nolas@fd.org
Florida Bar No. 806821

Kathleen Pafford
Assistant Capital Collateral
Regional Counsel—North
1004 DeSoto Park Drive
Tallahassee, FL 32301
(850) 487-32301
kathleen.pafford@ccrc-north.org
Florida Bar No. 99527

Kimberly Sharkey
Attorney, Capital Habeas Unit
Office of the Federal Public Defender
Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301-1300
(850) 942-8818
kimberly_sharkey@fd.org
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/s/ Billy H. Nolas
Billy H. Nolas

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IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT

IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v. **Case No.: 1993-CF-000870-A**

ERIC SCOTT BRANCH,

Defendant.

_____/

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EXHIBIT 42: Rudolph, M., *At Risk of Being Risky: The Relationship between 'Brain Age' under Emotional States and Risk Preference*, Dev. Cognitive Neurosci. 24:93-106 at 102 (2017)

EXHIBIT 43: Henig, R., *Why Are So Many People in Their 20s Taking So Long to Grow Up?*, New York Times (August 18, 2010)

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EXHIBIT 1

Northpoint Psychological Consultants, P.A.
504 Northwest Drive
Davidson, North Carolina 28036
704 737-5003
Faye E. Sultan, Ph.D., Director

Psychological Evaluation Summary
Client: Eric Scott Branch
Date of Birth: February 7, 1971
Date of Psychological Evaluation Summary: January 28, 2018

This psychological evaluation of Eric Scott Branch was conducted at the request the Capital Habeas Unit of the Federal Public Defender's Office in Tallahassee, Florida. The request of these attorneys was that this evaluation address:

1) What factors in Eric Branch's life prior to the January 1993 offenses in Escambia County, Florida would have been psychologically and physically significant for him?

2) According to the current social science and mental health understanding, is there any new understanding about the neurological/behavioral consequences of Eric Branch's youth at the time of the offense and/or his traumatizing life factors? How does any new scientific understanding of maturation and brain development impact the case of Eric Branch?

Procedure

A three-hour forensic interview was conducted with Eric Branch in a private setting at the Union Correctional institution in Raiford, Florida on December 14, 2017. In addition to this forensic interview, a large set of records and documents was provided to this examiner for review. Salient records and documents are listed in this report, and constitute additional bases for the professional opinions expressed here. This examiner reserves the right to modify all professional opinions expressed within this report as additional information becomes available. All opinions are stated to a reasonable degree of certainty.

Records and Documents Reviewed

Eric Branch was convicted and sentenced to death for the January 1993 sexual battery, auto theft, and murder of University of West Florida student, Susan Morris, in Escambia County, Florida. Eric was 21 years of age at the time of the offense.

- **Resume of Psychological Evaluation**, dated February 24, 2004, reporting the results of a neuropsychological evaluation conducted with Eric Scott Branch by **Henry L. Dee, Ph.D**. Within this report are Dr. Dee's observations from his review of available records and collateral sources of information regarding Mr. Branch's history and social/intellectual functioning. Of note, the current professional consensus concerning neurocognitive brain development was not available at the time of Dr. Dee's report.

- **Juvenile Diagnostic and Classification Summary. Indiana Boys School.** This set of records for Eric Branch is dated March 28, 1988. It was noted here that Eric Branch first come to the attention of the Juvenile Court System in July 1985, when he was placed on one-year formal probation for criminal trespass. A charge of theft was referred in August 1986, which resulted in a six-month informal adjustment. On November 23, 1987 Eric Branch was charged with theft, forgery, and with being a runaway, resulting in a six-month informal adjustment. This set of records indicated that Eric was living with his paternal grandparents in Rockport, Indiana at the time of the November 1987 criminal charge, and that his biological father remained his legal guardian.

  It was reported within this set of records that Eric Branch had lived with these grandparents from age four to age seven or eight, and then had lived in the home of his mother until the summer of 1986. Eric Branch then reportedly returned to his grandparents' home, and had some contact with his father, Kerry Neal Branch. Kerry Neal Branch lived in a separate home on the same property. Kerry Neal Branch was reported to be a physically abusive alcoholic who had a prior criminal record. Eric reported within this set of records that he continued to have contact with his mother who resided with her husband, Douglas McMurtry, in Lynnville, Indiana. He was enrolled in the 10th grade at South Spencer High School at the time this summary was prepared.

Mr. Tobin Rice, Behavioral Clinician in the Intake Evaluation Unit and Hugh R. Hanlin, Ph.D., Senior Psychologist rendered their opinions: "*There is a history of marital instability and multiple parental figures. Multiple living situations probably contributed to the weak and inconsistent discipline and his poor response to authority...His faulty judgment and impulse control [are] likely to make him an easy target for manipulative peers. During times of stress and pressure underlying feelings of insecurity and emotional immaturity are likely to be more pronounced.*" It was recommended that Eric Branch remain in the Indiana Boys' School, enrolled in a full day school program.

- **Southern Hills Counseling Center, Inc**. clinical treatment records for Eric Branch. His **Initial Assessment Form** was completed on May 29, 1992, approximately seven months prior to the instant offense. Mr. Branch was noted to have been recently released from serving a jail sentence and was referred to this agency for treatment by his paternal grandfather. Eric reported during this assessment that he was confused about life, concerned about staying out of trouble and experiencing indecision about having given up his newborn daughter for adoption. These records indicate that Eric had recently been incarcerated at the Spencer County Jail. His previous educational and legal history was reported within the set of records.

  Mr. Branch endorsed having difficulties with sleep, extreme worrying, fatigue, headaches, depression, and marital/family problems. He acknowledged feeling irritable and having difficulty concentrating, as well as difficulties about past sexual experiences. Mr. Branch reported that he had difficulty expressing his feelings and emotions, that he was sometimes overwhelmed by thoughts and memories, and that he had difficulty managing his emotions. The treating mental health provider listed within this set of records is Mary Beth Borcherding, M.A., Staff Therapist. It also appears within this set of records that Eric Branch also received treatment from this same mental health provider in late 1987 and early 1988.

- Letter from **Philip A. Hesson**, Enrollment Services Manager, of **Indiana's Technical College**, dated August 20, 1992 congratulating Eric Branch on his acceptance into this academic institution. Provided records for this institution indicate that Mr. Branch began his studies, but did not complete the first quarter of attendance.

- **Indiana Elementary School** Records for Eric Scott Branch. This set of academic records, covering the period from August 1976 to May 1979, indicates that Eric Branch earned grades ranging from B's to F's in all academic areas.

- **Indiana High School** Records for Eric Scott Branch. This set of academic records indicates variable academic performance for Mr. Branch throughout his high school career. It appears from this set of records that Eric's school attendance at Indiana High School stopped in March 1989, during his 11th grade year.

- **South Spencer High School Records** for the Fall and Spring semesters of 1986-87 for Eric Scott Branch. Eric attained average to failing grades during this academic year. There are also records provided here for one additional semester of attendance, Fall 1987-88. Mr. Branch received F's in all of his academic subjects during that semester.

- **Penalty phase testimony** from the 1994 criminal trial of Eric Scott Branch included the testimony of pathologist Gary Dean Cumberland. Also contained within the set of records was the testimony of Robert N. Branch, older brother of Eric Branch. Robert Branch testified about the difficulties in his brother's relationship with their stepfather, Doug McMurtry. He testified about the alcoholism of his biological father and about the physical violence between his biological parents.

  The testimony of Alfred M. Branch, grandfather of Eric Branch, was also included here. He testified about instability in Eric Branch's childhood, and about the frequently shifting households in which Mr. Branch was reared throughout his childhood and adolescence. Alfred testified about the immaturity and young age of his grandson's biological parents, about their inability to provide stability or proper care for him. He testified that both biological parents of his grandson consumed alcohol, the father to a much greater extent.

- **Psychological testing by James D. Larson Ph.D.**, Psychological Associates, P. A. on September 30, 1993, indicated that Eric was functioning

in the average range of intellectual ability. Personality testing appeared to indicate a significant degree of suspiciousness and mood instability.

- **Escambia County Jail Infirmary** records for Eric Scott Branch. This set of records includes assessment by the jail mental health personnel about the psychological and psychiatric state of Mr. Branch during the days immediately following his death sentence. Mr. Branch was described as being "*tearful intermittently, pale, introspective, soft-spoken, sad, and distressed*". Also contained within the set of records are notes written by S.K. Zoss, Ph.D. describing Mr. Branch's participation in B6G Group Therapy. These notes cover the period between August 1993 through May of 1994.

- **Declaration of Richard Jay Bickel**, signed January 24, 2018. Mr. Bickel has known the Branch family since he was a small child. He reported that he was the same age as Eric Branch, growing up in the same housing subdivision. He described his knowledge of the treatment Eric had received as a young child and as an adolescent. "*His father was the most despicable person I have ever met in my life. He was a violent alcoholic... I have never seen a child abused as much as Eric was. The abuse was so horrible it made me lose sleep... Neal Branch beat the shit out of everyone in his family. He would beat them in the open. I would sometimes witness these vicious attacks when I was riding my bicycle around the neighborhood. Eric was as young as five when some of these beatings would occur. I witnessed Neal Branch not only punching Eric in the face but picking him up off of the ground and slamming him onto the concrete.*" Mr. Bickel went on to describe the situation he witnessed in 1976, when he and Eric Branch were approximately five years old. "*He ran to my house in the snow barefoot... Covered in blood... Swollen face... He looked like he had been in a boxing match with the prizefighter. He was beat so severely that some of his teeth were loose.*"

  Mr. Bickel stated, "*For years while Eric was very young, I must have seen him with a busted lip about four or five times, one eye black and about 10 times, in both eyes black and about four times... The beatings to his mother and Neal's two next wives were just as brutal.*" Mr. Bickel went on to report that his father had been an Indiana state trooper who arrested Neal Branch at least a dozen times for his violence, but that Eric's grandfather had rescued his son to prevent any true prosecution for these crimes.

Mr. Bickel went on to describe his knowledge that Eric had been a severely neglected child. He reported within his statement that Eric would often come to his home for food, always hungry, and that his own mother would often feed him. He reported that Eric Branch rarely had shoes on his feet, and that he was often filthy.

Summarizing his views on why he began to avoid contact with Mr. Branch as they grew into adolescence, Mr. Bickel stated, "*Eric was very immature and couldn't act his age... He never learned to keep things together. He was not in control of his actions.*"

- **Declaration of Robert A. Greene**, signed January 22, 2018. Mr. Greene reported that he had known Eric Branch and his family for many years, and that he had become close friends with Eric during their high school years. Describing the family circumstances, Mr. Greene stated, "*Despite his intelligence, Eric never stood a chance in life. Eric's father was a real piece of shit. He was a physically abusive alcoholic. Eric's mother for all intents and purposes abandoned him. Eric's grandparents were very nice but completely ill-equipped to take care of him. Their lack of discipline, rules and consequences proved to be disastrous for him. Eric received no structure, routine, direction-or guidance from anyone.*"

  Mr. Greene recalled being warned by his own father to stay away from Eric's father. He recalled being very "*close*" to Eric's cousin, Alex, and hearing from Alex about the abuse that Eric suffered at the hands of his father. Mr. Greene also recalled that Eric would comment to him about his dad being in a rage. "*This was code for being drunk and violent.*"

  Robert Greene reported that he had earned an M.A. degree in Psychology, spending 10 years as a high school educator and coach. "*... Eric craved the structure he never received. Instead he continuously cycled through a series of abandonment... The abandonment of his parents and lack of structure and Eric's life largely played into his personality. Eric had the pathological need to be accepted and liked by all... Never seem to grasp the concept of consequences, physical or legal... Made many immature impetuous decisions... Was hyperactive.*"

- **Declaration of Douglas McMurtry**, signed January 24, 2018. Mr. McMurtry was the stepfather of Eric Branch. He married Eric's mother when Eric was approximately nine years of age, beginning the third grade.

Mr. McMurtry made the following observations regarding his stepson, "*Eric was very immature. He could never just do what he was told... Would often throw tantrums. He couldn't handle things. He would go into rages when he was told no. I recall Eric kicking over tables, slamming doors, destroying his room, and even destroying his brother Robert's stuff just because he was told no. He had trouble controlling his impulses and just couldn't do it. He saw things and acted like a child much younger than his age.*" Mr. McMurtry also described the ready availability of alcohol to both Eric and his brother, Robert, throughout their childhoods and adolescence.

- **Declaration of Brian S. Melton**, signed January 23, 2018. Mr. Melton was an age peer of Eric Branch. They lived within the same community, attending South Spencer high school together. Mr. Melton reported that he and Eric Branch were good friends in high school until approximately age 16. He reported that his parents were friends of Eric's grandparents.

  Mr. Melton described his knowledge of Eric Branch's family, and the circumstances in which he was reared. "*Eric's grandparents were very prominent members of the community. His grandfather made and lost fortunes a couple of times... Eric's mother was completely absent from his life. His father was in prison out of state. He had no love or support from either of his parents... His grandparents were well intentioned but provided Eric with no discipline or supervision. From the time he was fourteen Eric was allowed to do whatever he wanted. There never seem to be any consequences for his actions.*"

  Mr. Melton described many incidents of reckless, impulsive, and dangerous behavior of Eric Branch during his adolescence, categorizing Mr. Branch's behavior and attitude as "*immature*".

  Of particular interest for the purposes of this evaluation is this description by Mr. Melton: of a situation that occurred when the boys were approximately 15 years old. "*When we were approximately fifteen years old, Eric and I went to visit my sister at Indiana State University. We went to a fraternity party and Eric got absolutely smashed drunk. After vomiting in the bathroom he became overwhelmed by emotion and broke down crying... Eric told some of the fraternity brothers about the physical and emotional abuse he suffered at the hands of his father. Some of the fraternity brothers were so disturbed and shocked by the abuse Eric reported that they notify*

the authorities in our hometown. By the time we got back to town, social services were at Eric's house." Mr. Melton went on to describe a situation, perhaps at the same party, where Eric Branch was either pushed or fell down a flight of stairs while in a wheeled desk chair. He described Eric Branch as being "*...motionless at the bottom of the stairs for quite a while.*"

- **Declaration of Jeffrey L. O'Brien**, signed January 23, 2018. Mr. O'Brien reported in his statements that he and Mr. Branch had spent a great deal of time together between the ages of fourteen and eighteen, although they attended different high schools. He reported that both he and Eric Branch had no adult supervision during their adolescence, and that he, in fact, had his own apartment in Evansville, Indiana, during their high school years, in which he and Mr. Branch often stayed. "*Eric and I were able to do anything we wanted whenever we wanted.*"

  Mr. O'Brien described his recollections about Eric Branch's childhood and adolescent family and living circumstances. "*Eric was living with his grandparents. It was actually more like he boarded with them. There was no emotional support. It was like, here is a bed and here is a fridge, now take care of yourself... Even at home Eric was alone.*" Mr. O'Brien went on to describe the alcoholism of Eric's father. "*Eric's father was a full blown alcoholic. He never held a job. Eric's grandparents were enablers. They supported Eric's father's alcoholism by providing him money to continually drink.*" Mr. O'Brien described his understanding of the abuse and neglect suffered by Eric Branch. "*The physical and mental abuse that Eric suffered at the hands of his father were widely known.*"

  Mr. O'Brien's description of Eric Branch's alcohol and substance abuse is: "*From the time I met Eric, we drank as much is possible, basically daily. I saw Eric drink to the point of blacking out numerous times. I witnessed Eric drink cases of beer and bottles of whiskey. We would drink in the woods, at his grandfather's mobile home manufacturing business, at clubs, or wherever we could find... Eric and I would go off on benders that lasted for 2 to 3 days at a time. We would go on bender after bender. In addition to the mass amounts of alcohol Eric consumed, he also sniffed Rush and inhalant and used LSD....*"

- **Declaration of Barbara Jo Pryor**, signed January 24, 2018. Ms. Pryor is the maternal aunt to Eric Branch. She is the older sister of Eric Branch's mother, Sharon. Ms. Pryor's declaration is filled with details about the

relationship between her sister and Neil Branch, and about the childhood abuse and neglect suffered by Eric Branch.

Ms. Pryor reported that her sister, Sharon, had become pregnant with Eric Branch's older brother, Robert, when she was 14 years old. "*She was not ready for the responsibilities of motherhood... Had no idea how to cook, clean, or even take care of herself... At our house she had absolutely no responsibilities... She was probably drinking when she had both Robert and Eric... She was a drinker and [too] young and dumb to know any better.*"

Ms. Pryor continued, "*My parents allowed Sharon to marry Neil because the Branch family thought it was the right thing to do. My dad thought since Neil's parents were rich people, they knew what was best. When they got married, Neil's parents moved her away from us and onto a property they owned. Sharon was alone in an unfamiliar place.*"

Ms. Pryor described her observations of the behavior of Neil Branch toward her sister, and the child abuse and neglect suffered by the children in the home during their early childhoods. "*Neal was a violent drunk... I would often get calls from my sister hysterically crying. Neal would go on benders for a day or two at a time and come home and beat her. I got a phone call like this from her every week or so...Neal beat and kicked her so badly once that she lost a kidney. She was lucky that he didn't kill her. Eric and his brother had to live with this violence.*"

Ms. Pryor went on to describe Eric Branch and his brother as having been "*neglected terribly.*" She reported that she had observed that the children were often filthy, running around in diapers, living in a filthy home. She recalled one specific incident in which she came into the home and found 18-month-old Eric in a sink full of water, his brother running around the house in a diaper, and her sister "*passed out in the bed.*"

- **Declaration of Leora Ann Nosko-Passmore**, signed January 22, 2018. Ms. Nosko-Passmore had an intimate relationship with Eric Branch for approximately five years, beginning at approximately age fourteen. Ms. Nosko-Passmore became pregnant with Eric Branch's child when she was fifteen years old. This child was given for adoption, and is currently 25 years old.

Ms. Nosko-Passmore recalled aspects of the chaotic and abusive childhood and adolescence which Eric Branch endured. "*He told me many times of the pain and hurt he felt by not being loved by his family, not fitting in, and not being accepted. You could feel the abandonment... Eric's mother was an alcoholic. She was drunk more often than she was sober... She favored his brother Robert over Eric... Eric was the black sheep. This deeply hurt Eric.*" Ms. Nosko-Passmore recalled that Eric Branch lived in the home of her mother, with her, for approximately one year during high school. She recalled that Mr. Branch found it impossible to accept the love and kindness that her mother offered to him.

Ms. Nosko-Passmore went on to describe the violence and physical abuse suffered by Mr. Branch perpetrated by his father. "*Eric told me about the intense violence and beatings he was subjected to while in his father's presence. Neal was a severe alcoholic. Other than beating him up, Neal had nothing to do with Eric.*"

Ms. Nosko-Passmore provided, within her statement, numerous examples of Eric Branch's emotional immaturity, impulsivity, and inability to control his emotions. She reported that he was reckless, had no fear of physical danger or consequences to him, and that he was unable to cope with negative emotional states. She reported, for example, that his response to her many attempts to end their relationship was to threaten suicide, swallow sleeping pills, and cut his wrists. She viewed these behaviors as typical of Eric's inability to cope with, or control, his emotional life.

Leora Nosko-Passmore recalled the sexual assault experienced by Eric Branch during his late adolescence. "*Eric told me he was raped by multiple men while being held down. He went to very dark places after this.*" She recalled that he was incarcerated at a facility called RDC at the time of the sexual assault, and that he was approximately 18 or 19 years old. (This examiner believes that RDC refers to the Reception Diagnostic Center of the Indiana Department of Corrections.) This incident occurred in 1989 or 1990. "*Eric's experience at RDC really changed him. Prior to this incarceration, Eric was impulsive and made stupid decisions, but I had never seen the rage in Eric like he had after getting out of prison. This rage rendered Eric even less able to deal with his emotions... After the rape and being released from prison, Eric's alcohol consumption increased dramatically... When Eric drank, he would usually drink large quantities. It*

was no longer social. He was drinking to medicate. The increased alcohol within fuel his rages."

- **Declaration of David Alexander Branch**, signed January 27, 2018. Alex Branch is a first cousin of Eric Branch. He grew up with Eric. Alex Branch said about his cousin, "*Eric always had it very rough. From the beginning he was doomed. He had the worst upbringing... Eric's dad was a raging, violent, alcoholic... Eric had trouble with self-control, but my grandparents did not give Eric any consequences for his actions. This contributed to Eric's immaturity and inability to develop an understanding of the world. Eric needed direction... Given Eric's familial relationships, he felt he was all alone. He felt and acted like he had been abandoned. Eric's attention-seeking behavior, his need to be accepted, and his need to be popular were all things he did to fill a hole in his life... He wouldn't listen. He would just make bad decision after bad decision like this. He didn't get it. He couldn't think things through. As he got older, his immaturity and poor decision making continued. He got particularly reckless... And Eric started drinking heavily, which we all knew he did to deal with his problems. Eric did not have an off switch. As kids and teenagers, we all engaged in some risky behaviors, but Eric did not know when to pull back. He was especially immature... He had trouble realizing the consequences of his actions before he would do something. He could not think things through... Eric lived with me in Panama City Beach for three or four months prior to his arrest. I could tell that he had not grown up at all.*"

- **Declaration of Robert Neal Branch**, signed January 27, 2018. Robert Branch is Eric Branch's older brother. Mr. Branch said the following about growing up with his brother, "*My father was physically abusive toward Eric and me. I don't remember a time when he was not abusive... He even did this when we were small kids, like three, four, five, and six years old. We were whipped in a manner far beyond what any child would ever deserve. It was straight up abuse, and it happened all the time. As we got older the abuse got worse, especially for Eric. He never had the sense to stay clear of my father. My father was a street fighter. He would do anything to inflict pain. He would beat and hit Eric with whatever he could get his hands on.*" Mr. Branch also discussed how their stepfather, Doug, would not beat them but would work them to death. "*Eric did not take well to Doug. He couldn't handle the work. The two of them could never get along. Eric was too stupid and immature to just do what Doug said.*" According to Mr. Branch, "*Eric had very low self-esteem... He truly in his heart believed he was less loved. I*

think this had a lot to do with his attention-seeking behavior." He described how Eric got overwhelmed by his emotions and how Eric "*started drinking when he was twelve or thirteen... We would drunk until we passed out."* Within a couple of years, he said, *"Eric's drinking had become self-medicating. He was using alcohol to find a space that he was comfortable in. It became his only way of coping. Eric was very immature and impulsive. He never planned ahead or thought things through. He did not know where to draw the line... Eric was fueled by adrenaline. Nothing was ever too fast or too dangerous... I'm positive that Eric has had countless concussions. Between the beatings he took from my father and the accidents he's been in, there is no telling how many head injuries he has suffered...Eric did not take anything seriously. He was the height of immaturity."*

Collateral Interview with Leora Ann Nosko-Passmore

A telephone interview was conducted by this examiner with Leora Ann Nosko-Passmore on January 25, 2018. Ms. Nosko-Passmore reviewed and confirmed the details and factual accounts about Eric Branch's family she had provided within her January 22, 2018 Declaration. Ms. Nosko-Passmore indicated that in recent years, during her occasional visits to Union Correctional Institution, she had been able to confront Mr. Branch face-to-face about his inappropriate behavior and attitude toward her during his periods of intoxication. She reported that Eric is mature today and assumes complete responsibility for his actions and attitudes.

Collateral Interview with Alex Branch

A telephone interview was conducted by this examiner with Mr. Alex Branch on January 26, 2018. Alex is the child of Eric Branch's father's sister, his paternal first cousin. Alex described his relationship with Eric Branch as being "*like a brother*", stating that he had been emotionally close to both Eric and his brother, Robert, during their childhood and adolescent years. Alex reported that Eric had been living with him in Panama City, Florida at the time of the instant offense. Alex Branch had been attending community college at that time, and he reported that he had invited his cousin to join him in Florida. Eric had recently been released from a jail term he had served in Indiana. "*I thought he could start a new life.*"

Alex Branch reported that he was aware of the frequent drunken rages of his uncle, Eric Branch's father. He reported his awareness that Eric was subjected to brutal beatings and violent assaults from his father throughout his childhood and adolescence. He was aware that his grandparents were unable or unwilling to provide the structure and stability that Eric Branch needed, that they provided shelter only, and that Eric was largely left to rear himself. Mr. Branch reported that he was aware that his cousin had developed a drinking problem during their childhoods, and that this abuse of alcohol had worsened during adolescence. It is apparent that at age 21 Eric was immature and child-like.

Collateral Interview with Robert Branch

Robert Branch, older brother of Eric Branch, was interviewed by this examiner by telephone on January 26, 2018.

Robert reported that the father he and Eric shared was a violent alcoholic who was "*never a father figure*". He described Neal Branch as a self-centered man who looked out for only his own needs, unable to behave in a nurturing or supportive manner toward his sons. The only physical touch he could remember from his father was violence. He recalled many such episodes of physical brutality from his father towards his mother, his brother and himself. He recalled a specific incident during which his father punched his grandfather in the face and stole $5000 from him.

Robert Branch recalled the period after his mother fled from the father's home, leaving the boys to be cared for by this violent alcoholic. He recalled running to his grandparents' home frequently for shelter and food. He recalled frequently attempting to escape the brutality of his father. Mr. Branch expressed deep emotional pain while discussing this period of violence and abuse.

It was the view of Robert Branch that his paternal grandfather had never forced his father to take responsibility for any of his actions, "*enabling*" an on-going pattern of irresponsibility and violence on the part of his father. He noted that his grandfather's "*enabling*" behavior continued with his brother, Eric, who had not learned to become responsible for his own actions or to develop a sense of maturity.

Robert Branch described moving back into his mother's home with his brother, Eric. His mother had married a man named Douglas McMurtry. He recalled that his stepfather was "very strict", having the boys do strenuous physical chores "*for hours*" as punishment for any misbehavior. Mr. Branch recalled that the family was quite poor, that the children participated in the free lunch program at school and that the family received food stamps. He recalled that the heat was not always "on" in their trailer, and that this was a startling economic transition from the "*rich*" material life the boys had known with their paternal grandparents.

Robert Branch described his younger brother as "*impulsive*", "*nearly fearless*", "*fueled by adrenaline*". Again, it is apparent that Eric exhibited child-like immature behavior and thinking. Robert also reported that he was aware that Eric was drinking large quantities of alcohol on a routine basis from the time he was a teenager. "*Eric would drink to the point of being drunk... His drinking became self-medicating...It became his only way coping.*"

Robert Branch reported that he remained with his mother and step-father after Eric was sent back to his father's home. Eric was approximately fourteen years old when he was "*dropped off back there*" after a family outing. According to Robert Branch, Eric was not aware that he was being sent back to his paternal family until the moment it occurred. Robert reported that his mother was unhappy and disagreed about Eric leaving, but that his stepfather insisted. It was the view of Robert that his younger brother was unable to adapt to the rules and structure of his stepfather, and that his self-destructive behaviors escalated in that environment. Robert joined the United States Army after his graduation from high school.

Forensic Interview with Eric Scott Branch

A three and one half hour forensic interview was conducted with Eric Scott Branch at the Union Correctional Institution in Raiford, Florida on December 14, 2017. Mr. Branch was cooperative and polite throughout the interview. He was observed to be of average intellectual ability, able to conduct a logical and articulate conversation, exhibiting an appropriate range of affect during discussion of emotionally difficult topics. Mr. Branch evidenced an adequate general fund of knowledge, and he demonstrated adequate attention, concentration, and expressive language ability. Mr. Branch was a generally accurate historian, attempting to answer all questions posed to him.

Eric Branch described his current life as an inmate on the Florida Death Row. He reported that he had spent much of the past twenty-two years, the length of his incarceration since receiving a death sentence, by reading "*about one hundred books per years...in most genres*" and by "*generally educating myself about life and the world.*" He reported that he corresponded regularly with family members and friends, and that he now believed he had matured enough emotionally to appreciate the people in his life.

Mr. Branch demonstrated good understanding about his current legal circumstances, and about the possibility that he could face execution. He is remorseful. He stated that he alone was responsible for his current circumstances, and described his growing recognition within the past ten years that his "*toxic relationship with alcohol*" and the chaos, abuse, and lack of structure during the time of his adolescence/young adulthood had negatively impacted his behavior during those years. He looks back on himself as childish.

Mr. Branch recalled and described the circumstances of his childhood and adolescence. His recollection closely matched the facts/circumstances of his life as they were reported by other sources described within this report, and they will not be repeated here. Mr. Branch acknowledged that he had always been very afraid of the violent nature and actions of his biological father. He reported that both of his paternal grandparents were very afraid of their son, and that he was aware that the parents of his some of his friends had warned their children to stay away from him.

Mr. Branch's recalled that he had abused alcohol, even large quantities of alcohol in "a *binge*". He acknowledged periodic abuse of other substances, such as LSD, cocaine, and "*bathtub crank*", but stated that alcohol had always held the most influence over him and his behavior. He was too young to recognize the consequences of what he was consuming and stated, "*Alcohol poisoned me.*"

Eric Branch reported that he was shifted from the home of his mother to the home of his paternal grandparents on more than one occasion during his childhood. He acknowledged that he was beaten and terrorized by his father on many occasions during the years he spent at his grandparents' home. His father reportedly lived in a house on the same property owned by his grandparents. His father would come into the grandparents' home whenever he pleased, wreaking havoc, causing great violence and fear for all. Eric acknowledged many occasions of physical and verbal abuse that his grandparents were either unwilling or unable to prevent. It was his view that his grandparents were frightened to intervene.

Eric Branch reviewed his juvenile and adult legal history prior to the instant offense. He acknowledged that he had been brutally sexually assaulted by several young men while serving a sentence in the first adult prison in which he had been incarcerated. Eric reported that he was approximately 18 or 19 years old at the time of this assault. He became observably emotionally distraught at the mention of this subject.

Eric Branch reported that he had earned a two-year paralegal certificate while he has been serving his time on death row, indicating that for a period of time Pell grants were available to prisoners. He considered this educational achievement to be significant, indicating that he considered this to be the very first time he had utilized his intrinsic intellectual ability for productive purpose. Eric expressed deep disappointment that he had not as a young person achieved academically.

Eric recalled himself *"...trying to figure out why I kept getting into trouble when I drank. I knew it messed up my relationship with Leora. I kept getting drunk. I ruined it. She was the love of my life."* He recalled feeling helpless and out of control. It is clear that in his late teens and early twenties he exhibited emotional disarray and was not functioning with any degree of maturity.

Conclusions

The mental health professions, including psychology, psychiatry, the neuro-cognitive disciplines, and related social science disciplines, have expanded their research and professional understanding of human brain functions. This is apparent in our understanding of areas such as intellectual disability, mental illness, cerebral dysfunction, substance abuse, and adolescent behavior, brain development and psychology. Within this latter category, the professional consensus today is that there are distinct aspects to human brain development such that adolescent brain formation continues into the period of one's 20's. In other words, the neuroscience of brain development informs that the human brain is not appropriately "formed" or mature until an individual reaches their mid-20's.

This new mental health professional consensus was not available during previous proceedings in the case of Eric Branch. This new mental health professional consensus has real consequences in the case of Eric Branch.

Eric Branch was 21 years old at the time of the offense. In and of itself, his chronological age places him squarely within the grouping of people characterized

as having not-yet fully developed or "matured" brain structures. In other words, his brain structures were still developing and not yet formed at the time of the offense.

The new consensus in the mental health professions is very much apparent in Eric Branch's history. As a late teenager and up until his commission of the offense at age 21 and the trial proceedings shortly thereafter, his "mental functioning" was no better than that of a child. All of the lay and expert information about his functioning is consistent in its describing him as lacking mature adaptive functioning. His thinking and behavior are described as childish, child-like, immature, not in control, unable to grasp consequences, impulsive, thoughtless, lacking social skills, reckless, devoid of practical thinking, and binging on alcohol and other substances without self-modulation. This type of thinking and behavior is consistent with the new mental health professional consensus that brain development continues into the twenties and that an individual such as Eric Branch, at age 21, still has an "undeveloped" brain.

The now-recognized maturation pattern is even more apparent in the context of the Eric Branch I evaluated in December, 2017, and the descriptions about him today. This Eric Branch is thoughtful, remorseful for his earlier behavior, interested in learning, and mature. Consistent with the new professional consensus, his brain functions have matured as compared to Eric Branch at age 21.

Eric spent his childhood and adolescence suffering brutal abuse and neglect. This included paternal threats, beatings, and mistreatment in a dysfunctional family setting, intermittent with neglect, abandonment and being a witness to extensive family violence. Later, he suffered brutal sexual assault while incarcerated during developmental years. Overall, his life lacked structure and was abusive.

The current mental health professional consensus is that suffering such dysfunction and trauma has an additive affect that impedes, and delays, brain development to a greater extent. This diminishing effect is even further compounded by Eric's adolescent and early twenties history of alcohol abuse, binging, and substance abuse.

I will provide a more detailed description of this history of dysfunction and alcohol/substance abuse as it places Eric's condition in context. In other words, this examiner is of the opinion that the new consensus concerning human brain development as it applies to individuals in their twenties should be considered in the specific context of Eric Branch's personal history. Eric and his older brother,

Robert, were born to mid-teenage parents who married and went to live on the father's family property in rural Indiana. Neither parent was prepared to undertake the complex tasks and responsibilities of being self-supporting and of child-rearing. There is considerable evidence that both of these teenage parents were alcoholics, and that the young boys were without supervision, adequate food, or adequate clothing. In addition to the profound neglect experienced by these two young boys, their father, Kerry Neal Branch, was a violent alcoholic who beat and tortured his wife, Sharon, and his sons. Sharon abandoned the marital home when Eric Branch was approximately three years old, leaving her two young sons with their abusive father and his parents.

The violence and terror perpetrated by this man toward his family was known to people in the surrounding community and to local law enforcement. Attempts by local law enforcement to intervene were met with excuses and resistance of the paternal grandfather, Alfred Branch. Alfred Branch was considered to be a wealthy businessman within his community, and he held significant influence over the local police. This pattern of denial and interference with needed consequences prevented the two boys or their mother from gaining safety, exposing them over and over to an abusive and terrifying home life. Once their mother abandoned them, the boys had only the option of running to their grandparents' home, or to their neighbors for safety and food. Eric was observed by neighbors to be running barefoot, bleeding from his face and head, and swollen, always hungry.

Eric Branch's mother eventually re-married. Eric and Robert Branch returned to the care of their mother and this new stepfather when Eric was approximately nine years of age. Doug McMurtry was a rigid, over-controlling stepfather who was unable to offer a constructive degree of structure and nurturing to Eric Branch. By age nine Eric was unable to respond in a positive manner to this new household, growing increasingly rebellious and disobedient. Eric Branch became the neglected child who was "*passed around*" between an alcoholic mother/strict stepfather and his paternal grandparents' home, a place he was offered no structure or discipline of any kind, and where he was routinely abused by his drunk and violent father.

Eric Branch never experienced a true sense of safety or security. He was unable to form secure early attachment with an adult that would have provided the foundation for better emotional development. This early attachment is the essential foundation for emotional regulation, the ability for self-soothing, the development of object constancy as a construct, the ability to experience trust in others, and the development of the concept of self. Children who are reared in unpredictable, violent, and dysfunctional home environments often have psychiatric and

neurological deficiencies. These neuro-behavioral early factors are known to produce long-term psychological damage to children and adolescents. Mr. Branch was forced to cope in a world of unpredictable violence, a circumstance which would have caused significant traumatic response in any child.

It is also important to note that Mr. Branch was likely to have sustained a number of significant closed head injuries and concussions during his childhood and adolescence. These have been reported by various collateral witnesses during the course of this evaluation. There have been reports of numerous blows to the head perpetrated by Eric Branch's father. Eric Branch was observed by a teenage friend to have fallen down a flight of stairs while sitting in a chair, and then remaining motionless for a long period of time at the bottom of the stairs.

Another key source of trauma for Eric Branch is the rape experienced while serving a sentence when he was approximately eighteen/nineteen years old. Eric behaved quite differently following his release after this sexual assault. Ms. Nosko-Passmore reported to this examiner that Eric Branch was "*filled with rage*" and drinking excessively.

There is an additional indication of adolescent sexual abuse found within the above described records, from the psychological evaluation report produced by Dr. Dee. Dr. Dee cited the report of Eric Branch's probation officer, Marilee Ruark. Eric Branch was fourteen years old at the time of this report. Dr. Dee quoted Ms. Ruark as stating "*...he suffered sexual, physical, and emotional abuse, as well as a dysfunctional family dynamic.*" According to the best available research, approximately 20% of inmates in men's institutions are sexually abused at some point during their incarceration. The long-term emotional impact of sexual abuse in detention often includes post-traumatic stress disorder and rape trauma syndrome, unresolved anger, drug addiction, and other self-defeating behaviors.

There has been much research in the neurological/psychiatric/social science fields during the past thirty years to examine the long-term consequences of chronic trauma. Eric Branch was exposed to chronic trauma within his home and within his community. Traumas, and the resulting fear produced by such situations, are now understood to undermine the development of a child's brain. The brain adjusts to patterned-repetitive experiences that are understood through the senses. Trauma impacts brain areas like the amygdala (involved in emotion management) and the hippocampus (involved in memory and memory consolidation). If trauma occurs repeatedly and for a prolonged time, as it did for Eric Branch, it impedes brain development even further.

Mental Health research demonstrates that, simultaneously, Mr. Branch's hippocampus would have shrunken in relative volume within his brain as it was developing, having negative effects on his capacity for memory consolidation. The hippocampus plays a role from early life with the storage of narrative "stories" - memories in the brain. The traumatized individual often evidences a shrunken hippocampus. This storage role is crucial in a child's learning process. Traumatized individuals can be severely debilitated by negative memories.

The amygdala acts as a "switching station", sending incoming information from our environment to the cortex of the brain. Here information is processed and made sense of, allowing us to address and process life events. "Is this situation safe or dangerous?" The amygdala of traumatized people will be overly sensitive, resulting in extreme alertness. Individuals like Mr. Branch may appear to be aggressive, as they may be overly sensitive to perceived threats, or at the same time withdrawn, due to a fear of being close to other people.

Mr. Branch, like other adults with chronic trauma, demonstrated difficulty with the formation and maintenance of intimate relationships. He developed inappropriate ways to deal with the people in his life. He had trouble expressing his emotional needs, and he was distrustful of others to the extreme. In order to cope with his unmet emotional needs, Eric Branch turned to alcohol binging and substance abuse.

Alcohol consumption during adolescence and early twenties has been established in the medical literature to have profound effects on brain structure and function. Drinking during adolescence and early twenties has been shown to affect the neuropsychological performance (e.g. memory functions) of young people and impairs the growth and integrity of certain brain structures. Furthermore, alcohol consumption during adolescence may alter measures of brain functioning, such as blood flow in certain brain regions and electrical brain activities. The brain continues to develop throughout adolescence and into young adulthood (one's twenties), and insults to the brain during this period could have an impact on long-term brain function. Consistent with this understanding, animal studies have demonstrated that alcohol exposure during adolescence and young adulthood can significantly interfere with an animal's normal brain development and function.

Adolescence and the early twenties are uniquely important in neurodevelopment. Medical research has demonstrated that adolescent substance abusers show abnormalities on multiple measures of brain functioning which is linked to changes

in cognitive ability, decision-making, and the regulation of emotions. Abnormalities have been seen in brain structure volume, white matter quality, and activation to cognitive tasks. Alcohol and substance abuse during this critical period of neurological development interrupts the natural course of brain maturation and the key processes of brain development. For an individual in adolescence and his early twenties, it further impedes development of the not-as-yet fully developed human brain.

Today it is established in the medical and scientific literature that brain development does not reach "full maturity" until approximately the period of mid-twenties. Synaptic pruning, the process by which brain synapses are selectively "pruned" or eliminated continues until this time, allowing for more efficient later brain functioning. The myelination process - the development of the substance which provides insulation for the nerve fibers – continues as well. This allows a mature individual to effectively transmit signals, promoting healthy brain functioning and allowing more complex functions. This process continues until well-into the individual's twenties. Also continuing until approximately mid-twenties is the increasing connectivity between regions of the brain. As these connections are strengthened, the brain becomes better able to transmit information between regions and becomes better at planning, dealing with emotions, and problem-solving.

The pre-frontal cortex is the area of the brain in which executive functions are developed. This region of the brain makes it possible to assess risk, think ahead, set goals, and plan ahead. Significant development of the pre-frontal region of the brain continues until at least the mid-twenties. Complex planning, the ability to focus on one thing while ignoring distractions, decision-making, impulse control, logical thinking, risk management, organized thinking, and short-term memory are all functions of the pre-frontal cortex.

The normal maturational process of the brain is disrupted by the introduction of alcohol and other substances. The normal maturational process of the brain is also disrupted by trauma. Both factors are apparent in the personal history of Eric Branch.

It is the professional opinion of this examiner, stated to a reasonable degree of certainty, that the cognitive and emotional development of Eric Branch, was significantly impaired and delayed by the above-described factors, and most particularly his yet undeveloped brain at the time of the offense, when he was twenty-one years old. The new professional mental health consensus about the

developing human brain in the case of a twenty-one-year-old, such as Eric Branch, was not available to the experts who assessed this case in the past. This is Eric Branch's counsel's first opportunity to highlight this new consensus and its relevance to this case.

Faye E. Sultan, Ph.D., Director
Northpoint Psychological Consultants, P.A.
NC Practicing Psychologist #1067

EXHIBIT 2

James Garbarino, Ph.D.

Consulting in Child and Adolescent Development
1333 W. Devon Avenue #414
Chicago IL 60660

RE: Eric Branch DOB: 2/7/71

As requested by counsel, I am offering my analysis of why the case of Eric Branch justifies a better understanding of whether it is inappropriate to impose the death penalty on extended adolescents given the new and current scientific understanding in the mental health professions. The age of 18 years is used in the decisions in Roper v. Simmons, decided in 2005, in the matter of the death penalty; and Miller v. Alabama in the matter of mandatory Life Without Parole sentences, decided in 2012. However, our science now recognizes that the cut-off of 18 years is arbitrary, and not in accord with the current understanding of the scientific community. I note at the onset that the current scientific understanding of adolescent brain development was not available during earlier proceedings in Eric Branch's case. In the Miller decision, the court described a set of principles that justified treating adolescents under 18 as a special class when it comes to severe sentencing:

1. **Immaturity, impetuosity, less capacity to consider future consequences, and related characteristics that impair juveniles' ability to make decisions.**

2. **A family and home environment from which a child cannot extricate himself or herself.**

3. **The circumstances of the offense, and the role the youth played in those circumstances.**

4. **Impaired legal competency that puts juveniles at a disadvantage in dealing with police or participating meaningfully in legal proceedings.**

5. **The youth's potential for rehabilitation.**

The age of 18 as a "bright line" is not in accord with the current findings of research in developmental science. This research reveals that human brain maturation is ordinarily not complete until the mid-20's, approximately age 26. This new understanding is especially significant to a case such as the case of Eric Branch, who was 21 at the time of the offense, demonstrably impulsive and immature, and suffered an abusive developmental history.

Adolescent brains are immature—an immaturity that extends into early adulthood. This includes the frontal lobes which play a crucial role in making good decisions, controlling impulses, focusing attention for planning, and managing emotions. Science now understands that the process of maturation involves three components of brain function: "gray matter"- the outer layer of the brain, "white matter connections" - the brain cells serving as the "wiring" between neurons, and activity in the chemicals or "neurotransmitters" that execute messages within the brain. All three are compromised in an individual in his early 20's. Measures

of brain function and structure employing sophisticated technology support this new scientific recognition.

Of special relevance in understanding properly the behavior and thinking of individuals such as Eric Branch is the fact that social conditions and experience affect the development of "white matter." This speaks to the double whammy experienced by youths such as Eric Branch who are involved in violent crime: they suffer from both the general limitations of unformed brains *and* the disadvantaged functioning that arises from their adverse childhood experiences. What is more, the hormonal conditions of such youths contribute to impaired brain function (relative to adults) in matters of assessing and taking risks, emotional intensity, and dealing with peers (including social rejection). All of these considerations underlie the current scientific recognition that extended adolescents (people in their early 20's) are a special class. The process of brain maturation is not complete in any person until he/she reaches their mid 20's.

This understanding is especially apt in an individual who suffered a deprived childhood, such as Eric Branch. Youth who have experienced significant trauma and deprivation are especially prone to developmental delays on these same dimensions of executive function and affective regulation, with their situation being appropriately categorized as "adolescence squared." In the case of Eric Branch, his social history indicates he is just such an individual - growing up with much adversity, including psychological adversity such as experiences of parental rejection, and physical maltreatment (including physical traumas which may have resulted in insults to his brain). An earlier evaluation conducted by Dr. Henry Dee highlights that Mr. Branch had psychological problems, but the science of brain development had not progressed to the point where

these problems could be recognized for what they were: developmental brain immaturity.

This all supports generally and particularly in the case of Eric Branch for an extension of the developmental principles recognized in both Roper and Miller to extended adolescents that surely includes individuals in their early 20's. By way of example, Legislation passed in California to amend the penal code (sections 3051 and 4801) in 2015, requires that parole boards apply the *Miller* principles up to age twenty-three. An individual such as Eric Branch should not be considered eligible for imposition of the death penalty, given his age of 21 and developmental history. In fact, many witnesses have now provided Declarations highlighting that Mr. Branch clearly fits the brain development pattern recognized by current science. In his late teens and early 20's he is described as immature, impulsive, often not functional, unable to recognize cause and effect, emotionally labile, acting out, lacking an appropriate understanding of legal proceedings and their consequences, and lacking in self-control. As his history demonstrates, at the time of the offense and trial, his functioning was still that of a child. Later in life and currently, he is thoughtful, mature, considerate of others, and taking steps to assist himself in the legal process.

Current science teaches that individuals in their early 20's should not be treated in the same way as "adult" offenders when it comes to capital punishment.

Beyond the general issues affecting *all* youth, there are the special circumstances of Eric Branch's life involving issues that impeded his

movement from adolescence into adulthood. Trauma and family dysfunction are among these issues.

Having reviewed materials concerning Eric Branch, it is clear to me that given the trauma and social deprivation that he experienced growing up and his immature development, traumatized, impulsive, and socially inexperienced. But more than that, as a twenty one-year-old, he was still years away from the developmental time when brains mature.

Mr. Branch's history is also significant for his adolescent and extended adolescent history of alcohol and substance abuse. While such consumption by a traumatized person like Mr. Branch has a self-medicative component, its significance for my assessment is that such a history additionally impairs brain development for adolescents and individuals in their early 20's.

The social history of Eric Branch is replete with examples of childhood adversity and trauma, including both physical and psychological maltreatment. More than one individual who knew him and his family growing up say of Eric, that he "never had a chance." He experienced abuse at the hands of his father. He experienced rejection by his mother. He had little structure. These factors further diminished his already immature, undeveloped brain. To my mind he was a lost boy, not a functioning adult sufficiently morally culpable for the most severe penalty that American law allows.

Professional Background and Credentials:

I am a developmental psychologist who is a member and Fellow of the American Psychological Association. From 1989-1990, I served as president of the Association's Division on Child, Youth and Family Services. I am currently Maude C. Clarke Professor of Psychology at Loyola University Chicago. Prior to this I served as Elizabeth Lee Vincent Professor of Human Development at Cornell University in Ithaca, New York and from 1985 to 1994, as President of the Erikson Institute for Advanced Study in Child Development in Chicago, a graduate school and research center.

I am the author of over 100 scholarly articles and book chapters dealing with family, child, and adolescent development issues, with an emphasis on violence and trauma, and I am the author or editor of 23 books including Listening to Killers: Lessons Learned from My 20 Years as a Psychological Expert Witness in Murder Cases (2015), Lost Boys: Why Our Sons Turn Violent and How We Can Save Them. (1999), Children and the Dark Side of Human Experience (2008), See Jane Hit: Why Girls Are Becoming More Violent and What We Can Do About It (2006), And Words Can Hurt Forever: How to Protect Adolescents from Bullying, Harassment and Emotional Violence (2003), What Children Can Tell Us (1989), The Psychologically Battered Child (1986), Children in Danger: Coping with the Consequences of Community Violence (1992), No Place To Be A Child: Growing Up in a War Zone (1991), Raising Children in a Socially Toxic Environment (1995), Adolescent Development: An Ecological Perspective. (1985), and for children Let's Talk About Living in a World With Violence (1993).

My work with children and youth experiencing severe violence has included communities across the United States and war zones across five continents. I was the first recipient of the C. Henry Kempe Award from the National Conference on Child Abuse and Neglect. In 1989, I received the American Psychological Association's Award for Distinguished Professional Contributions to Public Service, and in 1995, the Dale Richmond Award from the American Academy of Pediatrics, specifically honoring my work in the field of community violence and trauma. I have served as a consultant to a wide range of organizations, including the American Medical Association, the National Committee to Prevent Child Abuse, and the FBI. I have received awards for my empirical research, including in 1992, from the Society for Psychological Study of Social Issues. I have been qualified as an expert in judicial proceedings.

James Garbarino, Ph.D.
Date: January 28, 2018

EXHIBIT 3

February 24, 2004

ERIC SCOTT BRANCH

RESUME OF PSYCHOLOGICAL EVALUATION

Re: Neuropsychological Evaluation
Dates of Evaluation: 6/14/02 and 10/3/02

Test Battery:

Adult History; Wechsler Adult Intelligence Scale - Third Edition; Denman Neuropsychology Memory Scale; 16-PF Test Profile; Minnesota Multiphasic Personality Inventory-2; Wisconsin Card Sorting Test; Benton Visual Retention Test; Booklet Categories Test; Facial Recognition; Visual Form Discrimination; Sentence Completion; Draw-A-Person; Thematic Apperception Test; Clinical Interview and Interpretation

ERIC SCOTT BRANCH

REASON FOR REFERRAL AND BACKGROUND INFORMATION

Eric Scott Branch is a 33-year-old, white, right-handed man referred for evaluation by Capital Collateral Representatives, who represented him at that time. He is currently being represented by Michael P. Reiter, Esq., whom, at the time of the referral, was the Capital Collateral Council for the North Region of Florida.

Eric was seen on two occasions, on 6/14/02 and 10/3/02 for neuropsychological evaluation and follow up - supplementary interviewing.

I reviewed penalty phase testimony of the medical examiner, of Robert Branch, Eric's older brother and Alfred Branch, Eric's paternal grandfather.

Also supplied for review were a psychological testing file from Dr. Larson, medical and group therapy records from the Escambia County Jail, records of contacts with a counselor at Southern Hills Counseling Center, and school records, including records from his elementary school, records from his high school spanning the years 1986 through 1991.

Also supplied were supplementary background materials including news articles, reports and statements, videotape of a news clip of Eric's trial testimony, three audio cassettes of phone calls (recorded by police) made by Eric to a Carrie Stauss, with whom he worked at a Subway sandwich shop at the time of the offense.

The interview notes provide some background material with regard to Sharon McMurtry (Eric's mother), Doug McMurtry (Eric's stepfather), Robert Branch (Eric's older brother), Alfred Branch (Eric's paternal grandfather), Marcille Branch (Eric's paternal grandmother), Connie Branch (Eric's paternal aunt), Alex Branch (Eric's cousin, Connie Branch's son), Matthew Dean Branch (Eric's paternal uncle), Marilee Ruark (Eric's probation officer in Rockport, Indiana). Sheldon Tharp (Eric's hometown Chief of Police), Annie Nosko (Eric's girlfriend of several years and mother of his daughter), Al Logsdon (Eric's high school principal) and Neil Branch (Eric's biological father). Also included in this packet was one page of poetry apparently written by Eric Branch.

On the occasion of my first meeting and testing with him on 14 June 2002, he told me that he had been arrested on 15 January 1993, and subsequently accused and convicted of murder, sexual battery and auto theft.

He told me that he had been convicted of raping a female student at the University of West Florida, and that as a sequel to this alleged rape, she was

killed, it was represented to have been done in a particularly cruel fashion. Further, he told me that the prosecution's theory was that the car that she drove was available, so he took it.

According to Mr. Branch, at the time of the crime, he was staying with a girl on campus, Melissa Cowden. He was at the time the crime occurred, "On the run" and in fact did need a car.

He was running from an accusation of sexual battery in Panama City. According to his representation of the events, he had been in Panama City to check on a cousin, and he went out and drank a great deal at a club. During that evening, he had become acutely intoxicated, and was giving the girl a ride home. He stopped back at his apartment or house, where he made a salad because he was quite hungry. At his home, he was painting a picture of his girlfriend of some years, and the young woman tripped and hit the painting and accidentally kicked it. He reports that he pushed her away and she fell, getting a nick in her lip from his fingernail. He reports that he went to help her, wound up kissing her, and she asked "Do you want my clothing off....?" He reports that in retrospect, it may well have been rape although at the time, he thought what happened was consensual. He now recognizes that the situation may have frightened and intimated the young woman, although he did not realize that at the time.

He had very recently been released from custody on a charge of sexual battery in Evansville, Indiana. The "sexual battery" charge in Indiana is not the same as sexual battery in Florida, since it intends touching or fondling. The rape in Indiana is apparently charged as a separately named crime, and the importance of this is that it is not a capital sexual crime in Indiana. Part of the problem was that he found that after hours of petting with a girl that she was only 15 and had run away three times in the past. He told me that she was the daughter of an FBI agent which seemed to increase the local importance of the case. He got a plea bargain to a "safe house", and was apparently released early from this facility. While he was aware that he was being released prematurely, he did not object and as soon as he was released, went to Florida to stay with a cousin who reportedly had a place on or near the beach in West Florida.

He intended to start at Gulf Coast Community College in Panama City, but after his encounter with the girl he had met in the bar, and was accused of rape. He abruptly left when police arrived to investigate the girl's complaint (ie rape), since he at that time believed that they were checking on his premature release in Indiana.

He told me that he then went to Pensacola, to a club called "The Warehouse." There, he met a young man whom he identified as "Eric St. Pierre," a drummer in the band at the Warehouse. They struck up conversation and St. Pierre invited

him to spend the night on his couch. He did not do this, and stayed at the Red Roof Inn.

The next day, on campus at the university there, he met Melissa Cowden, the girl he earlier said that he was staying with. He had met Melissa in a recreational facility at the University of West Florida while she was playing pool. They played for a time, went back to the Warehouse after having sex at his motel. They hit a couple of spots later and she stayed with him that night. She invited him to stay with her because she didn't have a roommate.

Later, at the Rathskellar, he ran into Eric St. Pierre again. They began to talk about the fact that he needed a car and St. Pierre reportedly told him that he knew how to hot wire a car. They kept drinking and talking about this, and eventually their talk led to a plan to attempt to steal a car. St. Pierre said he knew of a nice car in a distant parking lot, but before they could get it open and started, the owner of the car appeared, the victim, Susan Morris.

He reports that Eric St. Pierre hit her on the side of the head and they moved her after she fell. According to Eric Branch, his acquaintance was going to tie her with her shoe strings. During this however, she apparently made some noise and St. Pierre hit her again. He withdrew at that point, not wanting to have anything to do with the violence that he was witnessing. St. Pierre reportedly told him that he would take care of her and tie her up and for Eric to drive the car around to the other side of a small wooded area, and he did, and they reportedly left.

When I asked about how much he had to drink, he told me that he was not certain, but he did recall that the bartender had stopped him from drinking further after 12-15 beers.

I believe this is essentially the same story that he told his attorneys at the time of his trial.

Eric told me that he was the son of Kerry Neil Branch, approximately 50 and Sharon McMurtry, 48. His father was a body mechanic and at the time I saw him, he believed him to be living in Ellensboro, Kentucky. His brother was running a video store in Lynnville, Indiana. He told me that he had one brother, Robert, two years older than he. His parents had divorced when he was 3 or 4.

Eric lived with his grandparents, Alfred and Marcella Branch (76 and 72, respectively). He grew up with them from a fairly early age and this is consistent with the information given by other family members. Mr. Alfred Branch had owned a restaurant and hotel, and later had a mobile home sales business.

Around the time of 3rd grade, he went to live with his mother and stepfather, and apparently this was at his mother's bidding. His grandparents apparently thought

that his mother and father were too young for the responsibility of birth, since his mother conceived Robert when she was 15 and Eric when she was 17. He had been living with his grandparents in Rockport, Indiana and attended Rockport Elementary through the 2nd grade, and then attended Lynnville Elementary in Lynnville, Indiana when he moved to his mother's home. He repeated the 3rd grade after the move, and he says that he assumes that he did this basically because he didn't do the work. When I looked at his school record, I noted that he did not listen very attentively, and did not work quietly by himself. He spontaneously commented during the first interview that he had been hyperactive as a child, and this seems to be consistent with the reports I note in the school and the report of relatives. He was not however, recognized as hyperactive by his parents; in any case, he was never treated for this.

During the approximately five years he had been away from his mother, he and Robert had lived with his grandparents and, his mother had remarried. He reports that this was during the summer between the 2nd and 3rd grade. He went to live with his mother and stepfather, Sharon and Doug McMurtry.

According to Eric Branch, he had real problems with his stepfather. His grandparents had not been particularly structured, but Doug turned out to be a strong disciplinarian. He reports that Robert was much more acquiescent than he, and was skillful at getting his way, not getting in trouble, and doing what he wanted behind the back of his mother and stepfather.

Eric was both younger and more resistant to this control by his stepfather, and he now in adulthood believes that there were other reasons. He was hyperactive, and in his words, "Marched to the beat of my own drum." Also, according to Eric, his interests and perhaps temperament were not consistent with Doug's since he liked things like art and Doug saw little value in those pursuits.

He experienced Doug's punishments as "harsh." He told me that there was a lot of friction in the home, saying it was the type of home in which "people were grounded for life." As he grew older, he reports that the punishments became even harsher and very physical (including fists) when his grades were not what his stepfather wanted and when he was during childhood caught shoplifting or lying.

He reports that everything seemed different about his new home. He had been very close to his grandfather who took a lot of time with him, and he describes his grandmother as a "sweet lady." He reports that he gathers that his stepfather and perhaps his mother got the impression that they were spoiled at the grandparents'

home, but he reports that in reality they were not and the grandparents actually provided few toys and playthings.

He said in an aside here that he had little real contact with his father during his early childhood. His first recall of his father was meeting him in a courthouse in Phoenix, Arizona, where his father was in jail. His first recall of his father is seeing him in handcuffs, and he believes he was there on assault and battery charges. He reports that his father (as best as he can remember) did perhaps three years in a prison in Arizona.

He reports that his father came home "I think illegally. He was in a Bronco, and it had bullet holes in it. He slept on the pull-out couch at my grandparents for a couple of days."

The emotional climate in the home with his mother and stepfather apparently grew worse and worse and by the time he was 13 or 14, he would occasionally be openly defiant and try to fight back with his fists, which was of course unsuccessful.

He reports that Doug was so demanding at home that "You got the feeling you had to earn your meals even in the 3rd grade. I remember Robert and I cooking. Mom worked and Doug worked in the mines (strip mining) and mom worked in an aunts restaurant -
Aunt Barbara." He and his brother were therefore would start dinner or completely cook it before their parents got home.

He told me that he had felt that he had a "pleasant" relationship with his mother. She apparently had no further children since while he lived with her she had a tubal pregnancy that was of course terminated with a miscarriage. He thinks he was in approximately the 5th grade and his mother suddenly was in the hospital and had to have extensive surgery.

"They both changed after that. Mom's moods swung much more - like she was manic depressive. She would have weeks of depression (I realize in retrospect). Other times, she seemed happy. She became more distant from everyone, more withdrawn."

At this point, he interjected that Doug, in his own younger life, had been something of a "hell raiser," liking to drink whiskey, smoke marijuana, etc. He had cookouts at their home, and bands came by to play (from his past in the 60's). When Eric's mother became ill, Doug stopped drinking, "...completely I think." He

became more serious about his work, made himself head of the house. His mother didn't work at all for quite a while after this.

"I remember seeing mom in the hospital. She had always been loving in her childish way. She still seems rather childlike. Mom didn't have much education - when you drop out of school in the 8th or 9th grade, society is against you."

He reports that his mother's affection was always like that of a little sister. He reports that even now "...when talking to her, it's a lot like talking to a kid; she has no sense of the world other than her little four corners of Lynnville."

Eric told me that over the last many years he and Doug's relationship has improved a great deal. He told me that Doug somewhat blames himself for Eric being where he is, perhaps "...because of the iron discipline he used. He is more loving now, more fatherly now."

At approximately 14 years of age, i.e. during the summer of his 14th year, his family abruptly dropped him at his father's home in Rockport, Indiana "just over the Fourth of July weekend. We had been to Gatlinburg...." According to Eric, they had been in a mall in Gatlinburg and he picked up (shoplifted) an audiotape, but apparently thought better of what he was doing and dropped in another barrel on his way out of the store. The store clerks stopped him at the exits from the mall but he had nothing on him. "That was just too much for Doug." He reports that they spent two more days in Gatlinburg, and then most of the time he was confined to the motel room.

When they caught me, I didn't have the tape on me, so they couldn't book me, but the police came and took me to the station. Mom and Doug and Robert came, I shed a few tears and we went back to the motel. I had no idea I was going to be dropped off - I was shocked. I was hurt and angry because Mom and Robert hadn't spoken up."

He reports that when they got to Rockport to drop him off, his mother was crying. Doug pulled up by his father's, put his clothing on the porch and simply left. He reports that his father didn't show up for a day or two.

He reports that after he was left in this way at this father's, his father was completely negligent as a parent. He would leave him money and then would leave, sometimes for days at a time. "At the time this seemed great, but now it seemed the beginning of my real trouble." In the 9th grade, he returned to the home of his grandparents. He said that he had been hanging out with a wild group of kids. If anyone got caught, he'd take the blame or the rap, even if he

didn't do it, because he didn't really get disciplined and was in addition, a juvenile. This too is consistent the reports of his grandparents.

While living with his grandparents then, he began to work for his grandfather while he was in high school, setting up mobile homes. He earned ample money to keep him bankrolled during this time.

He returned a couple of times during this discussion to his feelings after being essentially abandoned at his father's home. He describes himself as having been upset and angry "at being abandoned." He interrupted his story at this point to tell me that he had a half-sister, Elizabeth, who is 14 years younger than he. This had been the result of his father living with a woman named Debbie in California, but that relationship did not endure either. He commented at that point that even before he knew his father, he knew "about my dad." He told me that the girls at the pizza place in Rockport would talk about him, since his father was apparently a lady's man and quite a rascal in his younger days. This apparently was changed, since he has been married to his current wife, Gail for some 15 years now.

He went back to school in Rockport, at South Spencer High School. Later, while in detention, he attended Tecumseh High School for a year and a half.

By the time he was in the 11th grade, he met Anne "Annie" Noska, now 26, who became the mother of his daughter and the only woman he has apparently ever loved. He met her when she was approximately 14 in the 8th grade, although he thought she was older. He was in the 11th and had been interested in a close friend of hers, and the he ran into this girl at a pool; Annie was her companion and was staying with her at that time. He reports that he was fairly popular in high school, partly because he had a car and could drive and had some money from his job. She was apparently quite impressed with him and he describes her as having been quite naive and they developed a very affectionate relationship. She lived in a nearby small town or suburb, and would come to stay with Stephanie at times. She would call Eric and basically made herself available to him.

Unlike many of other girls that he knew in his own high school, Annie was not willing to trade sex to be in a with a popular group. They dated for more than year before they became intimate and his relationship with her actually sounds rather nurturing and kind. He felt that she needed someone to hold her up and protect her as well as to encourage her interests in the arts. This relationship was reciprocal however, since "We looked after each other..." He speaks about Annie with surprising and genuine warmth and tenderness.

Similarly, he spoke about his best friend of many years, Jimmy Sheehan. They met in the 8th grade and were competing for the same girl. He reports that they talked about this and many other things in the course of their competition, but eventually decided they liked each other better than the girl and became friends instead of rivals.

Somewhere around New Year's Eve in the 10th or 11th grade (it is not clear to me which) he found keys to the school that the janitor had dropped near his door. He soon realized that these were master keys for all the schools in the county and he and his friends used them to get into the school pool and other facilities. On New Year's Eve, they had partied (swimming, etc.) in the school and on the way out, they were smoking cigars and he cast it aside, which eventually resulted in the school catching fire and a charge of arson. Eventually, he was caught as having participated in this, and was sent to the reformatory for boys, where he apparently spent a year or a year and a half.

He apparently earned a GED while there and upon his release, attended the University of Southern Indiana in Evansville for one semester.

Past medical history was significant for a motor vehicle accident at age 6. He was a passenger on a motorcycle and it crashed, and he was knocked out. Unfortunately, I have no records regarding this hospitalization, and he seems to have recovered adequately.

He had surgery in his early years, specifically a T&A, from which he recovered without incident. He denies a history of other hospitalizations. He reports no allergies.

He believes that he is in fairly good health at 5 feet 6 inches and 150 pounds with brown hair and brown eyes.

He reports that he began to drink alcohol in the 8th grade and eventually was drinking up to a case of beer daily. He tried various drugs such as cocaine, LSD, etc., but none of them were very compelling or interesting to him. Alcohol remained his drug of choice and he did drink very heavily from what he tells me.

During my second visit with him in October, he did tell me that his grades in elementary school had been good until the 3rd grade, when they abruptly declined after his move. From then on in Jr. High and Sr. High School, he reports that he got basically C's and D's, but in his junior year, his grades increased to A's and B's and his school records seem to bear this out.

Sometime around the time of his more serious legal troubles began, Annie became pregnant. She had to go to Louisiana to have the baby and went to the place that set up the adoption of their child. Eric reports that he basically set this up; his grandfather had given him the name of Jess and Lauren Goldberg, who are the adoptive parents of their daughter Nicole. She was born May 26, 1992. They send him pictures and letters regarding the daughter.

After Annie had the child, she came to stay with him for a week in Panama City. After this week, she basically said goodbye to him and one suspects that this was in part based on the adoption, although this is not completely clear.

Much of the information gained in the interviews from which I have notes, is material that fleshes out much that Eric knows and some that he does know.

In an interview with Eric's mother, Sharon McMurtry indicates that she as 15 when she and Neil conceived Robert. She reported that they never did consider abortion.
Soon after they moved in together, Neil proved to be an alcoholic, drinking every day, and physically and sexually abusive. She reports having been beaten during both pregnancies. According to her report, she was treated for a broken jaw, punctured kidney in 1973 or 1974 and taken to the hospital in another town, basically to cover the story of the violence from her husband.

Neil was never financially supportive of the children and did abuse her in front of the children. She reports that when Eric was 3, he witnessed his father throw her to the ground and stomp on her. She reports that during the episodes of abuse, the children were terrified and huddled in a corner.

She adds that when she came home from the hospital, they Branches simply took over taking care of Robert and later, Eric.

Sharon McMurtry married Doug in 1978 and the children came back to live with them at that time. She describes it as "pure hell" at first and agrees that Robert adjusted fairly well. Eric was another story. He was resistant, would throw fits and destroyed Robert=s property.

Kerry "Neil" Branch, Eric's father seemed to be fairly forthcoming and blunt in his interviews. He confessed to being an alcoholic "by all standards...." He reported even that he had a child by Sharon's brother's wife. He confessed to have been unfaithful, to have drunk too much and to have been abusive to his wife in the presence of the children. He reports that he did not contest the divorce, but there is no explanation from him or anyone why the children remained with Neil's parents. He indicates that Robert was always "Sharon's baby" which tends to

confirms Eric's comments that his brother was preferred. He details a number of alcohol-related incidents that got him in trouble and detailed his imprisonment in Arizona for battery.

In an interview with Doug McMurtry, Eric's stepfather, much of the same information was given that was given by Eric, although he is the first to mention (confirmed by a number of other witnesses) that Neil Branch was assaultive towards his father as well as other family members.

Robert, Eric's older brother, places most of the blame for Eric's difficulties in growing up with his father. He describes his father as "worthless" and remembers being with his father for a couple of years when he was very young. He describes his father as "...either very tolerant (don't give a damn) or the extreme 'beat the hell out of us with closed fists.'"

Robert describes Eric's problems with Doug in much the same way that Eric had. He described Doug as having been brash and harsh, but also consistent and firm. He described the relationship between Doug and Eric as a "war." Like Eric, he reported that Eric was in fact envious of his ability to get along with and negotiate problems with Doug and his mother.

He described the Gatlinburg incident in which Eric was abandoned in much the same way as did Eric, although he seems to recall that after some six months, Eric was given the option to return to his home, but because he had no rules (and no badgering) with his father, he declined. Interestingly, Robert (as well as Eric) describes some of Doug's discipline as "creative." This is apparently a euphemism for fairly severe punishments when he became angry. One example was that Eric once had to be outside all night pulling weeds as a disciplinary measure.

Marilee Ruark, Eric's probation officer (in Indiana) supervised him beginning at age 14, at which time he had been charged with retail theft for a cassette tape and somewhat later, for stealing money from his grandparents. He was also reported to be a runaway at some point during this period. He was sent to the county youth shelter. Later, he was sent to the Indiana Boy's School in Plainfield, Indiana, apparently from March of '88 through January of '89.

Suspicions were at that time (according to his probation officer) that he suffered, sexual, physical and emotional abuse, as well as a dysfunctional family dynamic (grandparents being over-protective, disbelieving, enabling, and the parents rejecting him and being unavailable).

Annie Nosko, Eric's girlfriend and the mother of their child, was reported to have been interviewed. Her story about their relationship is basically the same as Eric's. She did indicate that alcohol was a "trigger" for Eric to become violent. She also reported, as did Eric, that he once sliced his wrists after she went out with a male friend; Eric had been drinking that night.

She observed that Eric had changed after going to the detention center (the boys' school). She reports that after that he "really had something wrong with him." She says that he related something about being abused to her when he was at the boy's school. After she gave birth to Nicole and she had stayed with Eric in Florida, she essentially terminated the relationship. According to her report, she met someone else she really liked and had told Eric that she was essentially terminating their relationship and they got into a "gigantic" argument on the telephone. This was said to have been close in time to his legal problems. He is reported to have been enraged and to "screaming like crazy." He called her compulsively for a time after that leaving numerous messages for her.

FINDINGS

WECHSLER ADULT INTELLIGENCE SCALE - THIRD EDITION

Verbal Subtests	**Percentile and Rating**	
Information:	95	High
Digit Span:	63	Average
Vocabulary:	91	High
Arithmetic:	63	Average
Comprehension:	84	High
Similarities:	63	Average

Performance Subtests	**Percentile and Rating**	
Picture Completion:	95	High
Picture Arrangement:	63	Average
Block Design:	75	High Average
Matrix Reasoning:	84	High
Digit Symbol:	37	Average

Verbal:	IQ 115; 84th Percentile
Performance:	IQ 113; 81st Percentile
Full Scale:	IQ 115; 84th Percentile

As can be seen from the above, Eric's performance on the Wechsler Adult Intelligence Scale - Third Edition falls into the bright normal range, with a full

scale IQ of 115, which is at the 8r4th percentile. There was no significant difference between verbal and nonverbal abilities.

Eric seems to have performed in a relatively high level in terms of his general fund of information and in terms of his vocabulary development. He seems to well understand the reasons underlying social rules and social mores.

His ability to take the important, as opposed to the unimportant aspects of a practical situation is quite high. Nonverbal reasoning is high, and his understanding of practical social behavior seems within the average range.

His performance on the Denman Neuropsychology Memory Scale, a clinical assessment of immediate recall, short-term memory, long-term memory was as follows:

DENMAN NEUROPSYCHOLOGY MEMORY SCALE

Verbal Memory Subtests	**Percentile and Rating**	
Immediate Recall of Story:	37	Average
Paired Associate Learning:	63	Average
Memory for Digit Span:	63	Average
Remote Verbal Information:	63	Average
Delayed Paired Associates:	63	Average
Delayed Recall of a Story:	25	Low Average

Nonverbal Memory Subtests	**Percentile and Rating**	
Immediate Recall of a Figure:	84	High
Musical Tones & Melodies:	63	Average
Memory for Human Faces:	50	Average
Remote Nonverbal Information:	84	High
Delayed Recall of a Figure:	91	High

Verbal:	Memory Quotient 99; 47th Percentile
Nonverbal:	Memory Quotient 113; 81st Percentile
Full Scale:	Memory Quotient 106; 66th Percentile

As can be seen from the above, his full scale memory quotient is 106, which is at the 66th percentile, is marginally below that of his full scale intelligence quotient. Typically a difference of 10 or 11 points is considered to be reliable statistically and of practical significance. In the absence of other findings, however, a discrepancy of this magnitude cannot be said by itself to indicate cerebral dysfunctioning (see below).

His performance on the Wisconsin Card Sorting Test was intact, as was his performance on the Categories Test. These two tests were developed to detect the presence of frontal lobe damage and cognitive impairment as a result of cerebral damage generally. His performances were within normal range.

Similarly, Eric's performance no the Benton Visual Retention Test, as well as his performance on the tests of Facial Recognition and Visual Form Discrimination were normal.

Eric Branch had taken the MMPI when he was previously tested in 1993 and this profile was used as it seemed closer in time to the matters at hand. The second structured personality test, the 16-PF was administered by me on the occasion of our second meeting on 10/3/02.

His performance on the personality tests indicate long-standing problems with impulse control, which is certainly consistent with and abundantly demonstrated by the histories given by him and others. He often would act without sufficient thought or deliberation, showing a certain lack of social conformity and self-control and a persistent tendency to get into scrapes.

Consistent with this, his performance on the later test indicates a high level of impulsivity, enthusiasm and spontaneity, which would make him fun to be around and well liked as a companion, although it also points to problems with self-control and has the same implications as does the previous test in this regard. He is relatively bold, adventurous and expresses his feelings openly with little in the way of restraint.

He seems most of the time to be a person of adequate emotional stability, facing reality with adequate calm, although in times of stress, his impulsivity is likely to come to the fore and provide a real problem for him.

Eric's performance on these tests, when combined with his history and the corroborative testimony of other people, indicate that his upbringing and personality developed in such a way that he has always been impulsive; as a consequence it is hardly surprising that he has longstanding authority problems, i.e. resisting control and not accepting authority figures. This seems to be over-determined by his life experiences, since his father provided little in the way of a role model, and his mother appears to have been a particularly weak figure growing up. His father was, to such a young child (and perhaps to anyone), a figure that was terrifying and unpredictably violent. He witnessed the savage and dangerous beatings his father visited upon his mother. She did not or could not protect Eric from the chaos in and exposure to the violence of the home he was born into, in part because she was so young, in part because she literally could not protect herself from the alcoholic rages of her husband and Eric's father. All

she could do apparently was to flee for her life, and in so doing had to or felt she had to abandon her children to the custody of the man she so feared. However she experienced this, and despite her very realistic fears, this was of course experienced by Eric (and Robert) as abandonment His father, despite taking custody of his children, made no attempt to nurture or even to provide care for them, turning them over to his parents. These events are remembered bitterly by both lads; they came to realize that their father taking them was not an act of love or concern about them, but was in fact another act of cruelty directed toward their mother. They were merely the latest weapon wielded by a frighteningly powerful father figure whose disregard of their worth was now manifest in his abandonment of them to their grandparents.

When Eric's mother re-entered his life, *i.e* when she brought him once again into her (new) home and altered family structure, she was once again unable to protect him from the wrath of the (new) father figure (his stepfather) or to mitigate against the pain he felt at being wrenched from his grandparents life and home. Eric by now appears to have become sharply aware that even in this new family structure, his mother seemed to prefer his brother Robert, and helps explain why, when Eric expressed his resentment in rage and vandalism, it was not only his stepfather's property he tried to destroy, but also his brother's.

The only enduring authority figures in his life were his stepfather, who seemed to this already insecure boy unpredictably punitive and rejecting, and his grandfather, who was overly permissive and indulgent and, as his probation officer observed, something of an enabler of his mischievous behavior. He seems to have had no way of gaining consistent direction, on the one hand, from his grandfather who seemed to indulge him and to ignore his misbehavior and even to get him out of scrapes. He felt his stepfather was so rejecting that, as he said, he felt that he had even to earn his meals in the 3rd grade. He was not adequately protected from what he felt was his stepfather's wrath and regulations when he was with his mother, and never saw her as a basic source of emotional support because of her passivity and her own weaknesses. (This is even apparent in his comments about her "childishness" even today). His stepfather appears to have been experienced by him as a child as punitive and rejecting and he felt at an early age that the only way to deal with him was to fight back or leave the field because of his powerlessness. In some obvious ways, it was a repetition of the powerlessness and lack of love he felt when he had lived with his father.

He certainly felt totally abandoned by his mother and his stepfather by age 14 or so, when he was left, quite literally abandoned, at the home of his father. His pain at being so abandoned and so unloved as to be left with the very man she fled in fear of her own life is still apparent in him today, and was underscored at the time, in his mind, by the fact that this time, Robert remained with their mother, and neither voiced an objection. It confirmed his fears about the difference in the way

she felt about him and Robert.

While with his father this time, there was a period of negligence with a combination of financial indulgence which he certainly exploited, but left him with no direction, no consistent with model for moral development and indeed seems to have undermined his feelings towards any kind of authority figure and structure. Oddly, it was in important ways much the way he felt he was treated by his grandfather. He certainly could have not felt that he was an important love object of his mother, and perhaps not by anyone else, growing up in the situation and unstable life situation that he did.

Henry L. Dee, Ph.D.,P.A.

HLD/mkg

EXHIBIT 4

DECLARATION OF ROBERT NEAL BRANCH

PURSUANT TO 28 U.S.C § 1746

1. My name is Robert Neal Branch. Eric Branch is my brother.
2. My father Neal was never a father to us. He was a violent and alcoholic, a real asshole. He was totally self- centered. Everything was always about him. He never took responsibility for any of his actions.
3. For some reason my grandfather always bailed him out of trouble. My grandfather even bailed him out after he punched my grandfather in the face and stole $5000.00 from him. I just didn't get it. Before my grandfather died, he told me that the biggest mistake he made in life was not making Neal accountable for his actions.
4. I remember seeing my father's car riddled with bullet holes. He had beat up a police officer, and they fired at him while he was fleeing.
5. Before Eric and I moved in with my mother and Doug, my father remarried. My father was locked up for a time in Arizona for beating his wife. I remember being in the courtroom in Arizona when my father was convicted. It was the first time my grandfather was unable to get him out of trouble.
6. I know that my father beat my mother. I was young, but I was still there when it happened. As I got older, my mom would tell me stories about all of the horrific times my father had beat her.
7. My father was physically abusive toward Eric and me. I don't remember a time when he was not abusive. My father would get drunk and haul off and beat and whip us for no reason. We were just kids. He even did this when we were small kids, like three, four, five,

and six years old. We were whipped in a manner far beyond what any child would ever deserve. It was straight up abuse, and it happened all the time.

8. As we got older the abuse just got worse, especially for Eric. He never had the sense to stay clear of my father. My father was a street fighter. He would do anything to inflict pain. He would beat and hit Eric with whatever he could get his hands on. He would grab him by the hair, punch him in the face, and slam him to the ground. He beat Eric like he was a full grown man, even when Eric was a small child. Sometimes these altercations would spill into the yard when Eric tried to run away from the beatings. Eric would often be left bruised and bleeding.
9. I recall a particularly violent beating that Eric took when he was about fifteen years old. My father was beating Eric and pulled out a chunk of his hair. I tried to break up the fight because Eric was getting really hurt. When I got in my father's way, he picked me up off of the ground in a chokehold.
10. There was a period when Eric and I were separated. He was in high school in Rockport, and I was living with my mother and Doug in Lynnville. I would still see Eric often, pretty much every weekend. Each time I saw Eric, he was still getting beat up by our father.
11. My father would go from not caring at all about what Eric was doing to flat out beating him. There was no in-between. There would be little to no warning when his mood shifted.
12. My father was an alcoholic. It was nothing for him to drink two, three, or even four six-packs of beer before noon. The man could not work or function without being drunk.
13. Eric and I were living with my father when I was in kindergarten and first grade. At five or six years old, I was responsible for not only taking care of myself but also Eric. I was in

charge of getting us up, getting us fed and getting us to school. This lasted until my grandmother figured out what was going on.

14. We later moved to Lynnville, IN to live with my mother and her new husband Doug. Doug was a military man. He was very strict. Things were going to be his way. It could not have been more different than the lack of supervision and chaos that was living with my father.
15. Doug wouldn't punish you by beating you. He would work you death. For example, one time when I came home hungover and passed out on the lawn, Doug got me up and made me chop wood for twelve hours straight. Doug loved manual labor, like chopping wood, pulling weeds, and cutting the grass. This was not something like doing chores, like other kids have to do. Doug would make us do it for hours at a time. It was real work. He was a no nonsense man. He did not tolerate foolishness.
16. Eric did not take well to Doug. He couldn't handle the work. The two of them could never get along. Eric was too stupid and immature to just do what Doug said. I would beg him to just let things go and do as Doug wanted. He couldn't.
17. The transition to living with mom and Doug was especially tough on Eric. Our worlds could not have been any more different. My grandparents were wealthy and prominent in the community they lived in. Materially, we had the best of everything. Everybody knew who we were. When we moved in with Doug, it was just the opposite. Doug was dirt poor.
18. We moved into a singlewide trailer. When we got there, Doug didn't even have enough money to keep the heat on. We went from being wealthy kids to being on food stamps and free school lunches.

19. The transition to the new school was also difficult. Our identities had been stripped from us. I did a much better job navigating this change than Eric. Eric was immature and volatile. He craved the attention. Eric began getting into trouble.
20. Eric adjusted so poorly the first year we were in Lynnville that he was held back a grade.
21. From as early as I can remember, Eric was obsessed with being cool. It was so childish. It was the only thing he cared about. He talked about it constantly. Eric would do anything to impress his friends and be the "guy." Everything he did was to prop up the bad boy image he created for himself. It was a façade, though. He was really just an immature, insecure kid.
22. Eric had very low self-esteem. He constantly complained about me being the favorite child. He truly in his heart believed he was less loved. I think this had a lot to do with his attention-seeking behavior.
23. Eric could not handle things when he didn't get his way. He never could. Even when he was much too old to be throwing tantrums, he threw them all the time. He would kick, scream, punch walls, and break things. His emotions overwhelmed him, like they do with little kids.
24. The only time I recall Doug being violent or physical with Eric was during one of these tantrums. Eric kicked over and broke a coffee table that was special to Doug. Doug grabbed Eric by the neck. I had to break it up. Eric was in junior high at the time. He just couldn't control his emotions.
25. Eric started drinking when he was twelve or thirteen. We would drink whenever we could. At first it was mostly whiskey we would steal off of Doug.

26. While living at Doug's, there were a lot of family BBQ's and get togethers. There were copious amounts of beer and liquor at these events. In the summer, these were weekly. Everyone, including my mother, would get their party on. It was very easy to pick up a bottle and disappear into the woods with it. We would drink to get drunk.
27. As we got older, around fourteen, fifteen, and sixteen, it became easier to get alcohol. We would pool our resources and have epic drunk fests. We would drink until we passed out.
28. I joined the Army directly out of high school. I went to war and then was stationed overseas. I lost track of Eric and his drinking at that point. Eric would have been sixteen or seventeen at the time. Even before I left, Eric's drinking had become self-medicating. He was using alcohol to find a space that he was comfortable in. It became his only way of coping.
29. Eric was very immature and impulsive. He never planned ahead or thought things through. He did not know where to draw the line. When I was around Eric, I would draw the line for him. Eric never realized how much I protected him.
30. Eric was fueled by adrenaline. Nothing was ever too fast or too dangerous. It was nothing for Eric to drive a motorcycle at 150 mph. To him it was the faster, the better.
31. When Eric was younger, he would ride his bicycle along a two story rail with nothing more than a mattress on the ground to catch him if he fell. I once saw Eric fall out of a thirty foot tall tree. Eric also used to jump off thirty-foot-high building tops into six foot piles of sand.
32. When Eric was thirteen or fourteen he rolled his motorcycle down a hill. He was riding too fast and lost control. Not even this phased him. He just got right back up and on the bike.
33. Eric once wrecked our grandfather's Ford Ltd into a cornfield. He buried it so deep in the cornfield that it required a wrecker to pull out.

34. I'm positive that Eric has had countless concussions. Between the beatings he took from my father and the accidents he's been in, there is no telling how many head injuries he has suffered.

35. Eric's immaturity often put me in bad spots. One year my grandfather gave Eric money to buy a Christmas tree. I went with Eric and my girlfriend to get this tree. Eric told me he had arranged to get a tree off of a friend's property. While we were cutting the tree down, we were approached by a man holding a cocked shotgun. Eric had lied about having permission to cut the tree down. Neither I nor the gentleman whose property we were on were pleased. This was vintage Eric. His behavior was silly and childish.

36. Eric did not take anything seriously. He was the height of immaturity. He would laugh at inappropriate times. Even when getting in trouble at school or at home, he would have a silly grin on his face. This would just anger the person trying to discipline him.

37. Eric bounced around a lot as a teenager. Doug kicked him out of his house. I stayed with Doug and my mom. Eric primarily stayed with my grandparents. My grandfather enabled Eric the same way he had enabled my father. This was the worst thing for him. Eric needed structure. Instead, he just did whatever he wanted with no accountability.

38. The biggest regret my mother ever had was allowing Eric to live with my grandparents during high school. She always wished she did things differently for Eric.

39. I testified twice at Eric's trial. The State called me during the guilt phase, and then Eric's lawyer called me in the penalty phase. His lawyer did not give me any preparation at all.

40. While I was testifying, I was able to observe Eric. It was so obvious he didn't understand the gravity of what was going on around him. He didn't understand this was something he

was not getting out of. I don't think the realization finally set in until years later as he became older.

41. I talked to someone representing Eric briefly in 2002. Nothing ever came of that. It wasn't until I recently met with Federal Investigator Daniel Ashton that I was asked to provide the above listed details and information. I would have gladly provided it at any point.

42. I am aware of the struggles that my brother has endured over the years in trying to get adequate counsel and trying to get the courts to listen to his struggles. He and my family did everything we could to try to get help on his case.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.

Robert Neal Branch
January 27, 2018

EXHIBIT 5

DECLARATION OF DAVID ALEXANDER BRANCH

PURSUANT TO 28 U.S.C § 1746

1. My name is Alex Branch. Eric Branch and I are first cousins on his father's side. I am about ten months younger than Eric. I am an only child. We all grew up together.
2. Eric has always had it very rough. From the beginning he was doomed. He had the worst upbringing. His mother Sharon came from a dirt poor, uneducated family from an impoverished Appalachian Mountain area of Kentucky. She herself had less than an eighth grade education.
3. My uncle Neal, Eric's dad, was a raging, violent, alcoholic. He was also a known drug abuser. He was extremely violent with everyone in the family including Eric and our grandfather Alfred. Neal enjoyed fighting and hurting people. He was good at it. He was a very frightening man. I know Neal served some time for beating one of his wives. He routinely stole money from my grandparents, sometimes by force. He was very bad to Eric.
4. Eric's stepfather, Doug McMurtry, is also an uneducated man. He worked in the coalmines for a period. Doug and Eric's mother had a very different mindset than other families. He was strict and made Eric and Robert work hard. Eric was not together enough to stay focused on the jobs he was given, and this got him into trouble.
5. Doug and Sharon, Eric's mother, were poor. They lived very simply in a small singlewide modular home. Eric and Robert shared a room.
6. My grandparents were well intentioned but also failed Eric. While Eric was living with my grandparents, he had no discipline, guidance, or structure. Worse, as he did with his son Neal, my grandfather would make excuses for Eric. Eric had trouble with self-control, but my grandparents did not give Eric any consequences for his actions. This contributed to Eric's immaturity and inability to develop an understanding of the world. Eric needed direction.

7. Eric was very much the black sheep of the family, and he felt that way. In contrast, his brother, Robert, was the chosen one.
8. Given Eric's familial relationships, he felt he was all alone. He felt and acted like he had been abandoned. Eric's attention-seeking behavior, his need to be accepted, and his need to be popular were all things he did to fill a hole in his life.
9. Eric began acting out and doing silly things like stealing when he went to live with his mother and Doug. He was in second grade at the time. When I found out, I told Eric he was being stupid. He didn't listen.
10. I recall being at the mall with Eric and my grandmother when he was about twelve. Eric wanted a cassette tape, and he impulsively took it. I told him he was being stupid and that grandma would probably buy it for him. He wouldn't listen. He would just make bad decision after bad decision like this. He didn't get it. He couldn't think things through.
11. As he got older, his immaturity and poor decision making continued. He got particularly reckless when he started hanging around a group of other troubled youth. To compound the problem, Eric did not want to be outdone.
12. These reckless actions and poor decisions included playing chicken while driving cars and breaking into buildings. And Eric started drinking heavily, which we all knew he did to deal with his problems.
13. Eric did not have an off switch. As kids and teenagers, we all engaged in some risky behaviors, but Eric did not know when to pull back. He was especially immature.
14. When Eric drove you had to hang on. He would do donuts around S curves in the road, drive far too fast, and spin the tires. It's a miracle that he survived.
15. Eric acted like a five year old when things didn't go his way. He had trouble realizing the consequences of his actions before he would do something. He could not think things through.

16. Eric was a creative guy, but still he did not have goals or responsibilities. I never saw him take anything seriously. When we lived in the Reo area as teens, we both worked at the drive-in theatre. Eric often wouldn't show up for his shifts. I would end up having to do his job for him.
17. When Eric came to live with me in Panama City Beach, FL in 1992, the hope was that he was finally going to mature and get on track. The plan was for him to get a job and get into the college I was attending. Unfortunately, that never happened.
18. Instead Eric went to clubs every night and was seriously drinking. Eric lived with me in Panama City Beach for three or four months prior to his arrest. I could tell that he had not grown up at all.
19. I testified for the state at Eric's murder trial. I was not spoken to or asked to testify for Eric during the penalty phase of his trial.
20. Over the years I have spent countless hours and resources attempting to help Eric obtain legal counsel. Eric asked me to help him because he was so desperate to have a lawyer who would actually work on his case. When he did have one, they would barely visit or talk to him about his case. Only a few members of my family have been contacted by any of his legal teams until recently, so they did not know very much about Eric and his background. He has been panicking about this for years now. I have kept in regular contact with Eric over the years of his incarceration, and many of his letters were about how desperate he was to find a lawyer.
21. Eric would send me suggestions of lawyers and law firms to contact. He would send letters begging for help himself, but he also knew that I had access to more resources from out here. We reached out to local Florida lawyers that Eric found out about, but we also contacted nationally renowned capital defense lawyers, like John Blume, and official organizations, like the American Bar Association. Eric and I wanted to do everything we could to find someone to take

his case. I have made more phone calls, sent more emails, and have spoken with more people about representing my cousin than I could ever possibly calculate.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.

David Alexander Branch
January 27, 2018

EXHIBIT 6

DECLARATION OF RICHARD JAY BICKEL

PURSUANT TO 28 U.S.C § 1746

1. My name is Jay Bickel. I reside in the Rockport, Indiana area. I have known the Branch family since I was a small child. I am the same age as Eric Branch. We grew up in the same subdivision.
2. Eric never had a chance in life. He got fucked. His father was the most despicable person I have ever met in my life. He was a violent alcoholic. The day that man died was a great day. I rejoiced. I have never seen a child abused as much as Eric was. The abuse was so horrible it made me lose sleep.
3. Neal Branch beat the shit out of everyone in his family. He would beat them in the open. I would sometimes witness these vicious attacks when I was riding my bicycle around the neighborhood. Eric was as young as five when some of these beatings would occur. I witnessed Neal Branch not only punching Eric in the face but picking him up off of the ground and slamming him onto the concrete.
4. For years while Eric was very young, I must have seen him with a busted lip about four or five times, one eye blackened about ten times, and both eyes blackened at least four times.
5. The beatings his mother and Neal's two next wives took were just as brutal. He would beat Eric's mom in front of the kids.
6. My father was an Indiana State Trooper from 1964 – 1984. My father must have arrested Neal Branch more than a dozen times for this type of violence. Nothing ever happened to him. His father, Eric's grandfather Alfred, would always pull strings to make it go away. My father had countless other run-ins with Neal. Eventually he just gave up arresting him.

7. During the blizzard of 1976, when Eric was about five, he ran to my house barefoot in the snow covered in blood. Neal had beaten him in the face and head severely. Eric's face was totally swollen. He looked like he had been in a boxing match with a prizefighter. He was beat so severely that some of his teeth were loose. My mother called my father at work, and he came home to see Eric. My father became so enraged that not only would Neal do this to a child, but that Neal was never held accountable for his actions, that he drove his police car over the Neal's house and beat the shit out of him. Somebody had to try to do something to stop this. My father almost lost his job over it.
8. Eric was also severely neglected. He came over to my house hungry on many occasions, almost daily in the summer. My mother was always feeding him. I remember even as child thinking, hey this is not right. Eric would scarf down food like a hungry hyena. He was always filthy, and the boy rarely had a pair of shoes on.
9. Eric was always desperate for attention. My friend, John Winkler, lived close to Eric. He had a play fort that faced Eric's house. In the winter, we would call over to Eric's house and tell him to come over and play. Eric would run out of the house with no shoes on and run over in the snow. We would then pretend we weren't there. Eric would go back home and then we would call him again and ask where he was. He would run out of his house and we would do the same thing again. He would fall for this three or four times in a row. Looking back, I'm ashamed we did this to Eric, but we were just kids ourselves.
10. Eric was very immature and couldn't act his age. But he was still a very likeable kid and had all sorts of friends. Unfortunately, he was also trouble. He never learned to keep things together. He was not in control of his actions. As we got older, I steered clear of Eric.

11. I am all about accountability. I am the last person that would show any type of mercy to a person convicted of killing another. However, if anyone can say they were an abused child, it's Eric Branch.

12. Federal Investigator Daniel Ashton is the first person representing Eric Branch that has ever contacted me. We spoke for the first time yesterday. If contacted by prior defense counsel, I would have provided the same information.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.

Richard Jay Bickel
January 24, 2018

EXHIBIT 7

DECLARATION OF CONNIE LEE BRANCH

PURSUANT TO 28 U.S.C § 1746

1. My name is Connie Branch. Eric Branch is my nephew. His father Neal is my younger brother.
2. Neal and Eric's mother Sharon got married very young, too young, when Sharon got pregnant with Eric's brother Robert. They were just kids themselves. Neither were even sixteen. Sharon was very immature.
3. They were ill equipped to take care of each other let alone two children. As an infant, Eric was left alone in his crib for such long durations that the back of his head became flat.
4. My brother Neal always had problems with alcohol. He drank constantly. He would start drinking first thing in the morning. He was such a chronic alcoholic that he needed to be drunk to work.
5. My brother painted cars for a living. I often wondered if the fumes he inhaled while working also injured his brain.
6. Eric had a very hard time when he moved to Lynnville to live with Doug and Sharon. Doug always fought with Eric. Doug had his own very strict rules. To me they were cruel. For example, Eric and Robert were not allowed any food after school until Doug came home from work and was ready to eat.
7. Doug and Sharon always favored Robert. Robert was the golden child. This hurt Eric. Eric and Robert always fought over this and other issues. They couldn't get along.
8. Eric was always very immature. He was always the class clown. His behavior was very attention seeking. He very much wanted to be the cool kid.
9. As a teenager he would do childish things such a jumping on beds.

10. Eric did not like to be told no. He did not display age appropriate behavior. When he was told no he would stomp around and slam doors. When told to do things his common refrain was you can't make me. Eric would do only what he wanted to do.
11. My father enabled Eric very much the same way he enable my brother Neal. He would buy their way out of whatever trouble they got in. Because there were never any consequences Eric very often took the blame for things he didn't do. He knew that he wouldn't get into any trouble from my parents and if he got into trouble with anyone else my father would take care of it.
12. Neal was violent with Eric. He would hit Eric with anything he could get his hands on. He once broke a lamp over Eric's head. Eric would run from Neal. He was terrified of him.
13. From the time Eric was a small child riding a big-wheel he was a daredevil risk taker. He was fearless. He would dare people to bet him to do things and then would do them.
14. I attended Eric's trial. He did not have a good grasp of what was happening. He truly believed he could get on the stand to testify and everything would be okay.
15. I have remained in contact with Eric throughout his incarceration. I am all too aware of the issues he has with his lawyers in the past. I also have firsthand knowledge of how hard he worked with my son Alex's assistance to try to obtain adequate counsel.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.

Connie Lee Branch

Connie Lee Branch
January 27, 2018

EXHIBIT 8

DECLARATION OF MICHAEL A. BURNS

PURSUANT TO 28 U.S.C § 1746

1. My name is Michael A. Burns. I am currently an attorney with Mostyn Law. Since becoming a member of the Florida Bar, I have worked as a state prosecutor, criminal defense attorney, and civil plaintiff's lawyer. I also served as special assistant and counsel for former Florida Governor Charlie Crist, and as Deputy Attorney General under Governor Crist. I was General Counsel and District Representative for former United States Congressman Joe Scarborough.
2. In 1994, at the time of Eric Branch's trial, I had just started working as a prosecutor for the Office of the State Attorney for the First Judicial Circuit. Michael Patterson was the lead prosecutor on Eric's case. I took the opportunity to go and observe much of Eric's case.
3. When I first saw Eric, I thought that he was very small. I later learned he was in his early twenties, but he looked very small and young and like he might still be in his teens.
4. Eric did not just look very young, but he acted very young and immature as well. Throughout the trial, it didn't seem like Eric really understood the gravity of the situation. It was so obvious to me that he did not realize that he was on trial for his life. There were local news stations there, and Eric was fascinated by the cameras. In fact, he was more attentive to the cameras than the trial. He behaved very young. He bit his lips a lot and kept fixing his hair. He seemed to lack focus.
5. In my experience as a defense attorney, my clients usually pass me notes or nudge me throughout the trial. They react to what the witnesses are saying. Eric did not seem aware of the witnesses. I do not remember seeing him interact to this extent with his lawyer, John Allbritton. Given how he was acting during the trial, it was so clear that he did not understand the magnitude of what was going on around him.
6. I remember Eric testifying on his own behalf because of how bizarre I thought his testimony was. When he testified, he really appeared like a young guy who did not realize how he came across.
7. In 2012, I was appointed as Eric's clemency counsel. The budget for a clemency petition is only $3,000. I live on Pensacola Beach, so a lot of that money had to be used to cover my hotel and

travel out to the Union Correctional Institute in Raiford, Florida. Given the tight budget, I was not able to do any investigation in Eric's case. I also informed Eric that my representation would not cover any further proceedings. By this time, Eric was desperately looking for legal assistance.

8. When I represented Eric during clemency proceedings, he was a completely different person than the boy I had seen at trial. Eric had grown up. He was no longer a clueless, distracted kid. He was mature and invested in what was going on. He was able to connect with me about his case and understand the gravity of the situation. Seeing the man that Eric has become now makes it even more apparent just how immature he really was back during his trial.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.

Michael A. Burns
January 26, 2018

EXHIBIT 9

DECLARATION OF LAURA CHUBICK

PURSUANT TO 28 U.S.C § 1746

1. My name is Laura Chubick. Leora Nosko-Passmore is my daughter. I met Eric Branch when he was dating my daughter.
2. My daughter was head-over-heels in love with Eric. She was totally infatuated with him. I didn't think that Eric was right for her. Though he was older than she was, he was wildly immature and behaved like a young, crazy kid. He was going nowhere fast.
3. Eric had very little guidance. I recall learning that he received very little support from his mother or father. Any financial support that he had came from his grandparents.
4. I did my best to provide guidance to Eric. I would encourage him to get a job and even provided him with gas money at times so he could work. Unfortunately, he could never keep it together.
5. He could not keep things on track. He was unable to reason the way a person of his age should. He was always just going here and there aimlessly.
6. Even though Eric was staying with us at my mother's house, he could not even do the simple things that I asked of him. For example, I once told Eric and Leora to be home by a certain time because a snow storm was coming. They were supposed to just be going to a neighboring town. Instead of being home when they were told, Eric brought Leora to Louisville almost two hours away. He just didn't get it.
7. Eric very much looked up to me like a mother figure. Eric was desperate to belong. He leaned on us a lot. He craved the love of our family. I recall bringing Eric to the Easter church service with us and then to an aunt's house. He loved being included in this family environment. He needed affection and was longing for somewhere to fit in.

8. In hindsight, it's ironic. I did not want Eric dating my daughter and begrudgingly allowed it thinking I could keep a better eye on things that way, yet Eric's relationship with my family was of utmost importance to him.
9. I have remained in steady contact with Eric over the years. He is still very attached to me and our family. He has watched my grandchildren grow up through the mail.
10. Eric has kept me updated on his case. I don't much understand it, but I know he has been fighting for himself.
11. Federal Investigator Daniel Ashton is the first person representing Eric Branch that has ever contacted me. If contacted by prior defense counsel, I would have provided this same information.
12. I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.

Laura Chubick

Laura Chubick
January 24, 2018

EXHIBIT 10

DECLARATION OF DIXIE DAVIDS
PURSUANT TO 28 U.S.C § 1746

1. My name is Dixie Davids. I am the seventh of ten children, and my sister, Sharon, was a year older than me. Sharon is Eric Branch's mother.

2. Sharon never got to be a kid. She was pregnant when she was 14. Sharon married Neal Branch, a spoiled brat whose family owned a restaurant, motel and gas station in town. Neal got everything handed to him until the family sold the businesses and he didn't have money any more. Then he became an alcoholic. He was abusive to Sharon and the kids, Robert and Eric.

3. Eric had a chip on his shoulder from his Dad being such an asshole. Eric was reckless and immature. He didn't have a chance. His father deliberately taught him bad habits.

4. When Sharon divorced Neal, she was 21 or 22. She left the kids with Neal because she had no job and no way to support them. She moved back home with our parents. I also had my first child at 15. My mother cried when she found out I was pregnant. At the same time, Mom got pregnant at 40. Mom and I were pregnant at the same time.

5. Sharon eventually married Doug, who helped her fight to get the kids back. Eric thought Sharon preferred Doug over him. Sharon said that Eric was drinking a lot but he had an alcoholic Dad. She'd say what do you expect?

6. Neal had a lot of influence over Eric. Eric drank like Neal. He had no rules or structure. He saw how Neal beat Sharon and treated other people.

7. While Neal was still married to Sharon, he got my sister in law, Donna, pregnant.

8. I know what Sharon and Eric went through with Neal. Dad wanted to kill Neal after finding out about the beatings Neal gave Sharon and the children. We all knew

Eric was messed up by his father. I can't see Eric being malicious. But he was very immature.

9. No one from Eric's defense team called or wrote to me at the time of his trial, or at any time in the past, although I would have been willing to help in any way including testifying in court. I would have made myself available to testify. I would have provided the same information to them that I've given to Terri Backhus from the Federal Public Defender's Office when she spoke to me in January, 2018.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.

Dixie Davids

Dixie Davids
111 Oak Street
Lynnville, IN 47619

Dated: January 26, 2018

EXHIBIT 11

DECLARATION OF ROBERT A. GREENE

PURSUANT TO 28 U.S.C § 1746

1. My name is Robert A. Greene. I grew up in Rockport, IN. I have known Eric Branch and his family for many years. Though I knew Eric when we were children, we became close friends in high school.
2. Despite his intelligence, Eric never stood a chance in life. Eric's father was a real piece of shit. He was a physically abusive alcoholic. Eric's mother for all intents and purposes abandoned him. Eric's grandparents were very nice but completely ill-equipped to take care of him. Their lack of discipline, rules and consequences proved to be disastrous for him. Eric received no structure, routine, direction or guidance from anyone.
3. Rockport was a very small community. Everybody knew everything about everybody. Eric's grandparents were prominent members of the community. I recall vividly my parents warning me to stay away from Eric's father. My father, who was very mild mannered and rarely spoke ill of anyone, always pitied Eric's grandfather for having a son like Eric's father Neal.
4. I was very close with Eric's cousin Alex. Alex often told me about the physical abuse Eric suffered at the hands of his father. Eric himself would often make comments about his father being on another rage. This was code for being drunk and violent. Eric was terrified of his father. Though Eric lived with his grandparents his father also stayed on the property.

5. I know Eric's brother Robert. I always thought it was unusual that they did not live together. Robert lived with their mother in another town. I never really questioned it at the time, though, because I knew the family had a lot of problems.
6. From what I saw, Eric and Robert didn't have a traditional brotherly bond. It was clear that Eric was the black sheep of the family. Robert was seemingly good at everything he tried and was well liked in his own regard. It clearly upset Eric that he was not accepted by his family like Robert was.
7. Eric never had a curfew or any responsibilities. He would often stay out all night. I remember dropping Eric off at his grandparent's house so I could get home in time for my curfew. Eric would turn around and just head right back out.
8. I have a Master's level degree in psychology and spent ten years as a high school educator and coach. I have a lot of experience with teenagers. In hindsight, Eric craved the structure he never received. Instead he continuously cycled through a series of abandonment.
9. The abandonment of his parents and lack of structure in Eric's life largely played into his personality. Eric had the pathological need to be accepted and liked by all.
10. No matter the group he was with, Eric needed to be the center of attention. Eric had a set of friends who were very unsavory characters. When Eric would get with these guys everybody knew that at any time something terrible could and likely would happen. Like Eric, these guys had no rules they had to abide by.
11. When Eric would hang around this crowd he would dress and act like them. This behavior was in stark contrast to the way he behaved and acted around my friends.

12. Eric was unable to back down from any challenge and they took advantage of that weakness. Eric refused to be bested or outdone. If someone bet Eric he couldn't drive a car 75mph down the street he would try to do 100mph. That was who he was.
13. Eric never seemed to grasp the concept of consequences, physical or legal. Eric was always taking the rap for others. It was like he was transferring an inner struggle. It also brought him praise and admiration from these supposed friends which he thrived on. To him, attention was affection.
14. Eric made many immature impetuous decisions. If he did something and he liked it, he was going to do it again. From juvenile things like skipping school and getting drunk to more serious things like theft, if it brought him pleasure he was going to do it. He never thought things through. He would just act.
15. For example, Eric drove a group of us to the high school state championship football game out of town. After the game Eric got pulled over for speeding by a state trooper. After receiving a speeding ticket, Eric pulled back out onto the road. Before he got out of the eyesight of the trooper, he tore the speeding ticket up and threw it out the window. I told Eric he couldn't do things like that. He just didn't get it.
16. Eric would often act inappropriately even when he didn't mean to. He would laugh at teachers when they were trying to chastise him. He would make inappropriate comments to classmates and then apologize to them later in the day after realizing he offended them. These moments were very awkward.
17. Eric was always hyperactive. He was ADD for sure. In class he could not sit still. He would roam the class disturbing the teacher and the other students constantly. He would do

silly things like closing other student's books or make an act out of sharpening his pencil. Interestingly, he still acts the same way now.

18. Until recently, I lived in Jacksonville, FL. For a period of years I would visit Eric at Union Correctional Institution in Raiford, FL. Over the years, Eric and I spoke often about the difficulties he was having with his attorney and obtaining proper competent legal counsel. He seemed to be doing much of his legal work himself. He was always trying to get help.

19. No lawyer or investigator working on Eric Branch's case contacted me before Federal Investigator Daniel Ashton recently visited me to ask about Eric. I have learned that Eric sought help for years and reached out to lawyers and organizations seeking help but that he couldn't get help with his case. I would have been willing to discuss the information I provided to Mr. Ashton had I been contacted in the past.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.

Robert A. Greene
January 22, 2018

EXHIBIT 12

RM Robert

DECLARATION OF DOUGLAS MCMURTRY

PURSUANT TO 28 U.S.C § 1746

1. My name is Doug McMurtry. Eric Branch is my stepson. I married Eric's mother when he was approximately nine years old. Eric and his brother Robert moved in with Sharon and me prior to Eric starting third grade.
2. Eric and Robert moved from the Rockport area to where I lived in Lynnville, IN.
3. Eric was very immature. He could never just do as he was told. Eric would often throw tantrums. He couldn't handle things. He would go into rages when he was told no. I recall Eric kicking over tables, slamming doors, destroying his room, and even destroying his brother Robert's stuff just because he was told no. He had trouble controlling his impulses and just couldn't do it. He saw things and acted like a little child much younger than his age. It was all part of his immature nature.
4. I was once told that he would often inappropriately laugh when being disciplined by authority figures. He did this with me as well.
5. Eric was jealous of Robert. Robert was popular and good at everything including sports. Robert was easier to get along with, which affected how people interacted with him. Eric believed that Robert was treated better than he was.
6. Almost every weekend, Sharon's father would have a big party with a lot of alcohol and drinking happening. Eric and his brother Robert would have had ample opportunity to drink or collect alcohol to later drink in the woods.

7. Someone working on Eric's case contacted me briefly in 2002. I never heard from anyone else until Federal Investigator Daniel Ashton recently contacted me. I would have been willing to provide the above listed information at any point.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.

Robert D McMurtry

Robert D McMurtry
January 24, 2018

EXHIBIT 13

DECLARATION OF BRIAN S. MELTON

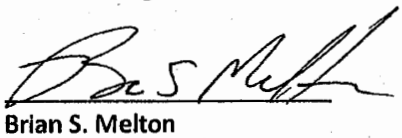
PURSUANT TO 28 U.S.C § 1746

1. My name is Brian Melton. I currently reside in Perry County, IN. I went to South Spencer High School with Eric Branch. We lived in the same ~~subdivision~~ area B.M. Eric and I were good friends. I'm a couple of months older than Eric. I hung out with him until I was about sixteen.
2. Eric lived with his grandparents. My parents were friends of theirs. Eric's grandparents were very prominent members of the community. His grandfather made and lost fortunes a couple of times. His grandfather's business built Rio Heights, the subdivision we lived in.
3. Eric's mother was completely absent from his life. His father was in prison out of state. He had no love or support from either of his parents.
4. His grandparents were well-intentioned people but provided Eric with no discipline or supervision. From the time he was fourteen, Eric was allowed to do whatever he wanted. There never seemed to be any consequences for his actions.
5. I wanted to be friends with Eric because he seemed to be everything I wasn't. He was fearless and reckless. He backed down from no one. In hindsight, things seem much different.
6. When we were about fifteen years of age, Eric and I went to a football game in a neighboring county. We took a motorcycle to get there. Eric drove, and I was on the back. At one point, I looked down at the speedometer and we were traveling at 185mph.

7. On another occasion, I was with Eric when he took his grandparent's car to a rock quarry. At the quarry, Eric was operating the vehicle in a very fast and reckless manner. At one point he locked up the car breaks and skidded to a stop just feet from a one hundred foot drop. He didn't even have a license at the time.
8. As teenagers we did a lot of stupid things. One of the things we did was throw corncobs at cars. On one occasion Eric threw a corncob at a cop car. The cop turned on his flashing lights. Myself and some of the other kids we were with immediately retreated into the fields where we thought we were least likely to get caught. Eric, on the other hand, ran right towards the police car and then in front of it. He then crossed the street and ran back into the neighborhood. When I next saw Eric I asked him what he was thinking running in front of the police car. I told him he was nuts. He responded that the cop wouldn't have been able to catch him. He then asked what the cop was going to do to him anyway. Eric had no fear of being caught. He just didn't get it.
9. Eric was very immature. He often skipped school. When he did attend class, he would do things like nail his classmate's books to their desks. Everything was always a joke to him. He often broke into the high school to swim. He threw parties at his grandfather's trailer manufacturing business and watched and participated in the destruction of his grandfather's property.
10. When we were approximately fifteen years old, Eric and I went to visit my sister at Indiana University. We went to a fraternity party and Eric got absolutely smashed drunk. After vomiting in the bathroom he became overwhelmed by emotion and broke down crying.

11. Eric told the fraternity brothers about the physical and emotional abuse he suffered at the hands of his father. Some of the fraternity brothers were so disturbed and shocked by the abuse Eric reported that they notified the authorities in our hometown. By the time we got back to town, social services were at Eric's house.
12. During that same party Eric was either pushed or fell down a flight of stairs while on a wheeled desk chair. He laid motionless at the bottom of the stairs for quite a while.
13. Eric is a really nice guy. His biggest downfall was that he tried too hard to have everybody like him. It was clear that he craved attention and acceptance. Because he craved this attention so much there was nothing he wouldn't do or try to be the center of attention. I always assumed he was this way because no one ever paid attention to him at home.
14. No lawyer or investigator working on Eric Branch's case contacted me before Federal Investigator Daniel Ashton recently visited me to ask me about Eric. I have learned that Eric sought help for years and reached out to lawyers and organizations seeking help but that he couldn't get help with his case. I would have been willing to discuss the information I provided to Mr. Ashton had I been contacted in the past.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.



Brian S. Melton
January 23, 2018

EXHIBIT 14

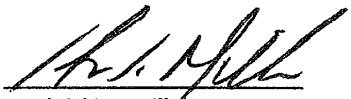
DECLARATION OF VERDELSKI V. MILLER

PURSUANT TO 28 U.S.C § 1746

1. My name is Verdelski Miller. I am an attorney licensed to practice law in the State of Indiana.
2. From 1989 through mid-1991 I was a deputy prosecutor for the Vanderburgh County Prosecuting Attorney's Office.
3. I met Eric Branch through his grandfather Alfred. I represented Eric in his 1991 sexual battery case as well as some other minor incidents. I got to know Eric very well.
4. Following Eric's conviction in Indiana, he wanted to continue taking college courses. To do so, he needed to modify his sentence and get into a work release program. The court ordered Eric to be transferred from Warrick County Jail to Vanderburgh County so that he could serve the balance of his sentence at the substance abuse facility of Evansville, otherwise known as S.A.F.E. House.
5. Eric's conviction was not for a violent sex crime. To be admitted to S.A.F.E. House, a person could not have convictions for a violent sex crime.
6. Eric was always very immature and never understood the seriousness of any situation. He was impulsive. If Eric should have been charged with anything in Indiana it should have been stupidity. He had the mentality of a twelve year old. There was never any forethought or sinister scheme in Eric's actions. He just reacted without thinking. He never understood consequences.
7. For example, prior to Eric getting to Florida and while he was in Florida, I urged him to come back to Indiana to clear up the issue that arose when he was accidentally released from custody early. It would have been so simple to take care of and would have cost him very little additional time, if any, in custody. He couldn't understand the urgency. He told me we could will deal with that later. It was just stupid, but that was Eric's mentality, his thinking was like a child.
8. I arranged Eric's surrender to law enforcement in Indiana for the Florida authorities.

9. Against my strenuous advice, Eric insisted on being taken into to custody at South Spencer High School. Like a little kid, he wanted the attention. There was no malice in his intent, he just didn't understand the gravity of the situation.
10. Even after Eric was in custody in Florida he still didn't get what was going on. I traveled to Florida with his grandfather numerous times to see Eric at different stages during the pretrial process. Eric for the life of him could not understand why I couldn't get him released on his own recognizance or bail. It was like he thought I had a magic wand. He kept repeating that I should get him out. I kept trying to warn him how serious his case was, but he just didn't understand the serious nature of the charges.
11. I was unable to attend Eric's trial. I had a pending issue in one of my Indiana cases that the judge would not allow me to continue. I saw and told Eric this both before and after his trial. Eric was still upset with me for not being there. He wasn't mad at me for not being there to help with his case. He was mad at me because I was his buddy and he wanted his buddy at his side.
12. I understand Eric unsuccessfully sought legal help with his case in the past. I would have been willing to provide this information had I been contacted.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.



Verdelski V. Miller
January 27, 2018

EXHIBIT 15

DECLARATION OF LEORA ANNE NOSKO - PASSMORE

PURSUANT TO 28 U.S.C. § 1746

1. My name is Leora Anne Nosko - Passmore. Eric Branch and I dated for approximately five years. I met Eric when he was living with his mother and stepfather Doug in Lynnville, IN. Eric is my soulmate. I fell in love with him because of his intelligence, creativeness, and kindness. Eric wanted to be a good a person and do the right things.
2. Eric is also the father of my child. I got pregnant when I was fifteen. We had a daughter, Nicole, who we put up for adoption. This was a very tough decision for us. It absolutely crushed Eric.
3. When Eric and I first started dating, we would speak for hours at a time on the phone. I could feel that Eric was wounded. He told me many times of the pain and hurt he felt by not being loved by his family, not fitting in, and not being accepted. You could feel the abandonment.
4. Eric's mother was an alcoholic. She was drunk more often than she was sober. Eric and his stepfather Doug never got along. His mother chose Doug over Eric. She and Doug also clearly favored Eric's brother, Robert, over him. You could see this in the family's interactions with each other. Robert was the chosen one. Eric was the black sheep. This deeply hurt Eric.
5. Eric's mother refused to take any responsibility for any of Eric's problems. Instead, she just chose to ignore them and in turn ignored Eric.
6. Though I never witnessed any violence between Eric and his biological father Neal, Eric told me about the intense violence and beatings he was subjected to while in his father's

presence. Neal was a severe alcoholic. Other than beating him up, Neal had nothing to do with Eric. This, of course, also had a profound impact on Eric.

7. My mother got to know Eric very well. She loves him. My mother saw the humanity in Eric; she saw the hurt in him. Since Eric was discarded by his parents and had nowhere else to go, my mother allowed Eric to live with us. In fact, we all stayed with my maternal grandmother because my mother was fleeing my abusive father. Eric lived with us for approximately one year.
8. It was very hard for Eric to accept that he could be unconditionally loved. He often stated that my mother and I were the only people who ever truly loved or cared for him. We were all he had.
9. Eric gave me the confidence to stand up to my extremely abusive father. In many ways Eric liberated me from my father. My father was an extremely frightening man. Eric never gave him an inch. On one occasion, my father blocked Eric in on a road. He then tried to beat Eric up. There was a fight. When Eric returned to me, he had blood all over him.
10. While Eric helped me through my hard times, he was also a combination of emotional immaturity, insecurity, and fearlessness. Outwardly, Eric presented as being in control. He projected the image of being a pillar of strength. Inwardly he was anything but. Over the years, I tried to break up with Eric a number of times. He couldn't deal with it. Once, when I told him I was going on a date with another guy, he cut his wrists. Another time, after I told him I was breaking up with him, he swallowed a bunch of sleeping pills. The most angry and emotional I ever knew Eric to become was when I tried to break up with

him over the phone after the adoption of our daughter while he was living in Panama City. He just melted down.

11. As previously mentioned, Eric was also very immature. He did not handle our pregnancy well. He was actually locked up at the time. Though Eric supported, encouraged, and arranged for the adoption of our daughter, he did not deal with the prospect of his daughter being adopted well at all. At the time I needed him the most emotionally, he blamed me for it. He just wasn't able to get control of his own upset emotions.
12. Eric made many immature decisions despite his intelligence. He was not at all goal-oriented. He would brag about doing stupid juvenile things such as skipping school. He would then encourage me to do the same. He never saw the bigger picture. He only lived in the now.
13. Eric was impulsive. There was never any planning. He would decide he wanted to do something and then just do it. He would worry about the details afterwards. Once, he decided we should go to Panama City, FL to visit his cousin Alex. I assumed that he called Alex and told him we were coming. He hadn't. Eric never once thought, what happens if he is not there? What happens if it's not convenient for him? What happens if we don't have enough money for food or gas?
14. When Eric had any money in his pocket, he was going to blow it. Every last penny. As soon as he got any money we would go on shopping sprees. It never once occurred to him that maybe he should save some in case of emergency.
15. Eric was reckless. He had no fear of physical danger or consequence. Once Eric and I were arguing while a friend of mine was driving down the highway. Eric was in the passenger seat. Eric was so mad at me that he just threw the car into reverse not thinking

or worrying about what would happen. On another occasion we were arguing while Eric was driving. His driving became progressively erratic. He just kept driving faster and faster. Eric was hitting speeds of over ninety miles per hour on winding roads that were meant to be driven at half that speed. He gave no thought to the consequences if we crashed.

16. I began dating Eric after he got out of juvenile detention. Eric told me that bad things happened in juvenile but did not elaborate. I was also with Eric when he went to prison for stealing a watch, another stupid decision. Eric was at a facility called RDC. This was in 1989 or 1990, when Eric was 18 or 19. Eric was pretty small for his age, and this was an adult prison. Eric told me that he was raped by multiple men while being held down. He went to very dark places after this.

17. Eric's experience at RDC really changed him. Prior to this incarceration, Eric was impulsive and made stupid decisions, but I had never seen the rage in Eric like he had after getting out of prison. This rage rendered Eric even less able to deal with his emotions.

18. After the rape and being released from prison, Eric's alcohol consumption increased dramatically. When Eric drank, he would usually drink large quantities. It was no longer social. He was drinking to medicate. The increased alcohol would then fuel his rages.

19. I have kept in touch with Eric while he's been in prison down in Florida. He writes to me on a very consistent basis. I've kept every letter he's ever sent me. Since the beginning, Eric has voiced concern about his lawyers at almost every level. For years now, Eric has been stressed out about the lack of quality representation on his case. There were years

when he did not have any lawyer at all. Eric worked constantly to try and find a competent lawyer to take his case.

20. No lawyer or investigator working on Eric's case contacted me before the trial. I talked to someone briefly around 2002 but had not heard anything more until Federal Investigator Dan Ashton recently visited me to ask about Eric. I had more extensive conversations about Eric's background with Mr. Ashton. I would have been willing to discuss the information I provided to Mr. Ashton to anyone who contacted me in the past.

I hereby certify that the facts set forth above are true and correct to the best of my knowledge, information, and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.

Leora Anne Nosko - Passmore

January 22, 2018

EXHIBIT 16

DECLARATION OF JEFFREY L. O'BRIEN

PURSUANT TO 28 U.S.C § 1746

1. My name is Jeffrey O'Brien. I reside in Tell City, IN. Eric Branch and I were friends as teenagers. We are the same age. Though we went to different schools, Eric and I spent a lot of time together between the ages of fourteen and eighteen.
2. Like Eric, as a teenager I had no adult supervision. In fact, I had my own apartment in Evansville, IN while attending high school. Eric and I were able to do anything we wanted whenever we wanted.
3. Eric was living with his grandparents. It was actually more like he boarded with them. There was no emotional support. It was like, here is a bed and here is the fridge, now take care of yourself. I went to Eric's grandparent's house many times over the years. I only recall seeing them three or four times. Even at home Eric was alone.
4. Eric's father was a full blown alcoholic. He never held a job. Eric's grandparents were enablers. They supported Eric's father's alcoholism by providing him money to continually drink.
5. Eric was always emotionally immature. He cried out for the attention he was clearly not getting at home. The way he conducted himself was a clear sign of his insecurity. Eric tried to act larger than life. He craved the attention of everyone. He tried to meet and befriend pretty much every person he met. In a group he had to be the center of attention. He would act goofy, tell jokes and stories, or take any type of bets or dares to monopolize the attention.
6. Eric was always trying to sell an image. Eric would tell tales of the life he wished he had as opposed to the life he did have. The physical and mental abuse that Eric suffered at the hands of his father were widely known. Eric never wanted anyone to know the bad stuff. Eric's stories of his life and actions were often overinflated. He told people what he thought they wanted to hear. Eric never let anyone know of his hurt or who he truly was.

7. Eric never took responsibility for his actions. He did not understand that he would eventually be held responsible for them. This was a part of his immaturity and impulsiveness. Eric would get very upset when things did not go his way. He seemed unable to accept perceived losses and move on. He would obsess and try to regain control of situations.
8. From the time I met Eric, we drank as much as possible, basically daily. I saw Eric drink to the point of blacking out numerous times. I witnessed Eric drink cases of beer and bottles of whiskey. We would drink in the woods, at his grandfather's mobile home manufacturing business, at clubs, or wherever we could find.
9. The goal was always to get as fucked up as possible. Eric would drink Purple Passion, a malt beverage. After the bottle was halfway done, he would fill it with half pints of Everclear, a pure grain alcohol that is 190 proof.
10. Eric and I would go off on benders that lasted for two to three days at a time. We would go on bender after bender.
11. In addition to the mass amounts of alcohol Eric consumed, he also sniffed Rush and inhalant and used LSD.
12. When Eric was drunk or high he would do all sorts of reckless things. He would always drive around drunk. Multiple times he would damage or allow others to damage his grandfather's fabricated homes at his business by running through the walls while partying.
13. Eric was very immature. He would do anything he was told or dared to do. He couldn't help himself. From knocking off a strangers ball cap to racing at dangerous speeds, if challenged, Eric would do it. For example, I was with Eric and others when we broke into his high school. We did it because we were bored. Eric was sent to juvenile because of it.

14. Eric changed after juvenile detention. He became more reckless in his drinking and behavior. I felt the need to pull back from Eric because it became apparent he was never going to mature or change. Going to school, having a family, or getting a job just didn't seem likely for him.

15. No lawyer or investigator working on Eric Branch's case contacted me before Federal Investigator Daniel Ashton recently visited me to ask me about Eric. I have learned that Eric sought help for years and reached out to lawyers and organizations seeking help but that he couldn't get help with his case. I would have been willing to discuss the information I provided to Mr. Ashton had I been contacted in the past.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.

Jeffrey L. O'Brien
January 23, 2018

EXHIBIT 17

DECLARATION OF CHEYENNE PHILLIPS PURSUANT TO 28 U.S.C § 1746

1. My name is Cheyenne Phillips. Even though Eric Branch is my nephew, I am only a year older than he is. I am the youngest of ten children, and Sharon, Eric's mother, and Dixie Davids are my older sisters.

2. I knew Eric from going to my sister Sharon's house every weekend with my parents. I saw Eric every time he was there, but he spent a lot of time with his father, Neal Branch, whom Sharon had divorced. He also spent a lot of time with his father's parents in Rockport. They did not give Eric any boundaries or discipline. I knew Eric grew up in a mentally and physically abusive environment. Neal beat Sharon within inches of her life. Eric was raised in that environment and I think he struggled not to become the environment he was raised in.

3. I don't know why Sharon put up with Neal's abuse. She was very young when she had Robert and Eric. She just didn't know how to be a Mom at 14. I remember Sharon telling me about the mental and physical abuse from Neal. He was known in the community to be an arrogant asshole. I didn't understand why she would live in the situation where a man would say he loved you one minute and then beat you the next. It could have been her substance abuse problem that kept her there.

4. There is a history of alcoholism in my family. My Grandfather Willy was an alcoholic. My father was a binge drinker. My sisters, Sharon and Dixie, struggled with drugs and alcohol addictions. My brothers Jimmy and Dale also were alcoholics.

5. During the time I knew him, Eric was an immature risk taker. If someone told him not to do something, he would do it. We went to the Ozarks once on vacation and were rafting down a river. There were high bluffs on the side of the river. Eric climbed up and jumped off the top of the cliffs even though he'd been told the water was too shallow. If he was told not to eat something, he would eat it. If he

and out of control.

6. Eric was a conflicted person. He would give you the shirt off his back, but then get upset with you without reason. Eric did not like his father because he was so abusive, but he loved him as well and would not criticize his father. I wonder if Eric's actions stem back to his conflicted feelings about his father.

7. I remember Eric's trial and seeing the arrest on television. I knew that Eric's grandfather paid a lot of money for Eric's lawyers but they didn't do much. No investigators or lawyers ever contacted me at any time. I would have been available and willing to help in any way. Eric tried to get legal help over the years. I would have provided any of his lawyers the same information I've given to Terri Backhus from the Federal Public Defender's Office this January.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.

Cheyenne Phillips
1008 Nicholas Drive
Boonville, IN 47601

Dated: January 26, 2018

EXHIBIT 18

DECLARATION OF BARBARA JO PRYOR

PURSUANT TO 28 U.S.C § 1746

1. My name is Barbara Jo Pryor. Eric Branch is my nephew. His mother, Sharon, was my younger sister.
2. My sister Sharon was only fourteen when she got pregnant with Eric's brother, Robert. She was nowhere near ready to be married, let alone have a child at that age. At our house she had had absolutely no responsibilities. She had no idea how to cook, clean, or even take care of herself.
3. When Sharon met Neal, she was running around partying, even though she was so young. I have no idea why my parents let her get away with the things that she did.
4. She was probably drinking when she had both Robert and Eric. She was a drinker and too young and dumb to know any better.
5. My parents allowed Sharon to marry Neal because the Branch family thought it was the right thing to do. My dad thought since Neal's parents were rich people, they knew what was best.
6. When they got married, Neal's parents moved her away from us and onto a property they owned. Sharon was alone in an unfamiliar place. Though they provided her with the materials she needed to be a wife and mother, no one taught her how to do either. Everybody just expected her to know.
7. Neal was a violent drunk. He was always an awful person. He treated everyone with disrespect. I would often get calls from my sister hysterically crying. Neal would go on benders for a day or two at a time and then come home and beat her. I got a phone call like this from her every week or so.
8. Neal beat and kicked her so badly once that she lost a kidney. She was lucky that he didn't kill her. Eric and his brother had to live with this violence.
9. My sister was with Neal for four or five years until Neal got tired of her.

10. Eric and Robert were neglected terribly. Since my sister didn't know how to cook, she would just get food from Neal's parents' restaurant and eat it at home. When I would go over and visit her, I would find the dishes they used to eat off sitting on the stove. Sharon didn't do the dishes. The house was filthy. The kids ran around dirty in only their diapers.
11. I recall going over to their house once when Eric was about eighteen months old. When I got there, Robert was running around in a diaper and Eric was in a sink that was full of water. My sister was passed out in the bed.
12. Neal was all about himself. He never spent any time with the kids. When we would come over he was never there.
13. Eric and Robert suffered. The environment they were raised in was deplorable. There was no routine or structure just chaos. My sister was in way over her head and just didn't know what to do. My parents just ignored the whole thing.
14. I have remained in contact with Eric since he has been incarcerated. Eric has always voiced concerns about his case and the lawyers who were working on it. I know that for a long period of time he was trying to find a lawyer to work on his case.
15. No lawyer or investigator working on Eric's case has ever contacted me before I met with Federal Investigator Daniel Ashton yesterday. I would have been willing to share the information I provided to Mr. Ashton if contacted.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.

Barbara Jo Pryor
January 24, 2018

EXHIBIT 19

DECLARATION OF S. DOUGLAS KNOX

PURSUANT TO 28 U.S.C § 1746

1. My name is S. Douglas Knox. I am an attorney licensed to practice law in the State of Florida. I am a partner with Quarles & Brady LLP in Tampa.
2. I represented Eric Branch beginning in 2014. The District Court had difficulty finding an attorney who could represent Eric, and eventually my law firm became involved. I later entered an appearance in the state circuit court.
3. I have reviewed the reports of James Garbarino, Ph.D., and Faye Sultan, Ph.D., on recent scientific research regarding brain development and the significance of this science to Eric's case. This science did not exist at the time I represented Eric or beforehand. It explains Eric's immature behavior before and at the time of the offense and during the trial, and his subsequent maturation by the time I came to represent him. Eric was 21 at the time of the offense.
4. Had this new scientific understanding in the mental health professions been available to me during the time I represented Eric, I certainly would have used it. I would have litigated that his death sentence was unconstitutional and that he should not be executed due to the lack of moral culpability related to his immature level of functioning.
5. At the time of the offense and trial, Eric was immature. But, by the time of my representation of Eric, he was more mature and responsible. The new scientific understanding relating to human brain development makes perfect sense in his situation. At the time of the offense and trial, he really was no different than a child or disabled individual. From a moral culpability perspective, he should be afforded the same protections the *Roper* and *Miller* cases afford "juveniles" and cases like *Hall* afford the intellectually disabled. I certainly would have made these arguments

had this scientific understanding been available to me. I would have actively relied on the information outlined by Dr. Sultan and Dr. Garbarino.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.

/s/ S. Douglas Knox

S. Doug Knox
January 28, 2018

EXHIBIT 20

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ABA Death Penalty Representation Project
1050 Connecticut Avenue NW, Suite 400
Washington, DC 20036
Email: deathpenaltyproject@americanbar.org
Phone: 202.662.1738

Staff Members
Emily Olson-Gault, Director & Chief Counsel
Christina Mathieson Hughes, Staff Attorney
Laura Schaefer, Staff Attorney
Sylvia Krohn, Project Associate

January 25, 2018

Kimberly Newberry
Attorney - Capital Habeas Unit
Federal Public Defender's Office
227 N. Bronough Street - Suite 4200
Tallahassee, FL 32301-1300

Re: Eric Branch Recruitment Efforts

Dear Ms. Newberry:

My name is Emily Olson-Gault, and I am Director & Chief Counsel for the American Bar Association's Death Penalty Representation Project ("the Project"), where I have worked since 2008. The Project works to ensure that all individuals facing the death penalty have access to qualified, adequately resourced counsel at every stage of a capital case. As part of our work to fulfill this mission, we recruit civil litigators from private law firms to provide pro bono representation to prisoners in need of representation. This letter summarizes the Project's interactions with your client, Eric Branch, and our several years of work to find counsel to represent him. I was the point person for Mr. Branch's case at the Project and was responsible for the large majority of the communications and recruitment efforts described below.

Mr. Branch first contacted the Project in a letter dated April 27, 2010. He explained in that letter that he was on death row in Florida, unrepresented, and needed our assistance finding a pro bono lawyer to help him. Around that same time, we also received several emails from Mr. Branch's grandmother making the same requests on his behalf. A few months later, we received a forwarded letter from one of our pro bono attorneys, Jerry Hartman, who had also received a letter from Mr. Branch seeking help. In that letter, Mr. Branch asked the lawyer to assist either by directly representing him or by finding another lawyer who could do so. Unfortunately, that lawyer did not have the

capacity at the time to take on Mr. Branch's case and he sent the letter on to us in the hopes that we could find someone to help.

After receiving the initial messages from Mr. Branch and his family, we reached out to colleagues in Florida to gather information about his case and assess whether we could help. Through them we confirmed that pro bono assistance was needed and also learned about the troubling history of counsel appointments and turnover in Mr. Branch's case, including the loss of his CCRC-North team during the now-abandoned experiment with relying on a registry counsel system, and the replacement of that team with severely under-resourced counsel. We agreed to try to help and began contacting law firms, seeking someone that could assist with Mr. Branch's ongoing habeas proceedings in the Eleventh Circuit.

For several years we struggled to find someone who was available to take on Mr. Branch's case. While we were still searching for someone to take over federal habeas representation, the Eleventh Circuit denied his habeas appeal. At that point we shifted our approach and started looking for someone who could bring a claim for relief under FRCP 60(b) or 42 U.S.C. § 1983, challenging the failures of Mr. Branch's state post-conviction and federal habeas counsel. The hope was to obtain extraordinary relief and reopen post-conviction proceedings so that the claims that had been abandoned by prior counsel could be fully investigated and litigated for the first time.

All together we pitched the case directly to more than a dozen law firms around the country. We also highlighted Mr. Branch's case several times in our monthly emails sent to more than 100 law firm pro bono coordinators each time, and we featured the case at recruitment meetings hosted by state and federal judges in several cities. Even by the challenging standards of our recruitment work, this was an unusually long and extensive effort. In mid-December 2013, more than three and a half years after starting to look for counsel, we finally recruited Quarles & Brady LLP to provide pro bono representation to Mr. Branch in a § 1983 action.

During the years we were looking for pro bono counsel, Mr. Branch stayed in frequent contact with the Project, asking about our efforts and urging us to not give up trying to find counsel for him. He provided me with suggestions for lawyers that I might try to contact and kept me updated on legal developments in his case. In addition to our direct written communication, I also routinely corresponded with Mr. Branch's cousin, Alex. Via Alex, Mr. Branch provided extensive background information about his case, ideas for possible claims that law firms might raise, and ideas for where to look for counsel. He was as diligent and persistent in seeking representation and trying to preserve his claims as any death-sentenced prisoner I have encountered in my many years of working with the Project.

We are very thankful to Quarles & Brady for taking on this matter, but it is extremely regrettable that it took so much time to secure representation for Mr. Branch, because his case was in a very difficult procedural posture by the time those pro bono lawyers finally took over.

We recognize that if we had been able to find a law firm sooner—or if Mr. Branch had received consistent, qualified representation from court-appointed counsel throughout the case—his current legal situation might be very different. But it is clear to me from my years of work on this matter that wherever the blame lies for these unfortunate circumstances, it is certainly not at the feet of Mr. Branch, and the consequences ought not to fall there either.

Sincerely,

Emily Olson-Gault
Director & Chief Counsel
ABA Death Penalty Representation Project

EXHIBIT 21

15 DEC 2008

Leora.

I've written a shitload of attorneys trying to get them to represent me. but no attorney is looking to take a death penalty case. A lot of work and terrible pay. Plus the politics, no attorney wants that headache. So WHEN THIS court rules. I dont know what I am going to do

16 SEPT 2009 / 9107

DEAR GRANDMA.

AND SUNDAY NIGHT I SENT RANDALL TSERG A PACKAGE OF LEGAL DOCUMENTS AT FLORIDA JUSTICE INSTITUTION.

15 JAN 10

Dear Connie,

As I said, The majority of time the past month and 1/2, I've spent writing letters to lawyers. Hoping that I can find one to assist me. Soon I will lose my current attorney, and basically, with no appeal of right remaining. I dont want to have a replacement left up to chance or dumbluck. I need someone who will fight, not simply waste my appeal going through the motion. I've developed a strategy which hopefully will help me get a decent attorney interested, Most have no desire to jump into a Death Penalty case at all. So I am offering to hire a attorney to basically, re-work and develop my arguments to file pro se. I know my issues better than any attorney. However, I do not have the resources, nor the legal training to adequately form each legal claim into a well supported crisp argument.

29 March 2010

Dear Grandma,

4 SUPERLAWYERS.COM

SEND ME A COPY OF THEIR MAIN PAGE DIRECTORY. SEE IF THEY LIST 'PRO BONO' COUNSEL, OR IF IT'S PUT INTO SOME OTHER TYPE OF INDIVIDUAL LEGAL CATEGORIES

1 ATTORNEY / LAW PROFESSOR

STEVEN S. GENSLER

I DO NOT KNOW WHICH LAW SCHOOL HE TEACHES CLASSES BUT HE IS ALSO A MEMBER OF:

THE CIVIL RULES ADVISORY COMMITTEE

I'M SURE YOU'LL BE ABLE TO FIND HIM AT ONE OF THE LAW DIRECTORIES YOU'VE PREVIOUSLY USED; IF NOT GOOGLE - THE CIVIL RULES ADVISORY COMMITTEE

2 WWW.PROBOND.NET

ON THE MAIN PAGE IT SAYS: "NATIONAL PRACTICE AREAS" SEND ME INFORMATION ON THESE TITLES:

- LAW FIRM FELLOWS
- PRISONERS' RIGHTS
- SCHOOL TO PRISON
- SELF-HELP SUPPORT
- CORPORATE COUNSEL

LAST TIME YOU ONLY SENT THE INFORMATION FROM THE "DEATH PENALTY" PAGE TITLE. BUT I MAY BE ABLE TO GET USEFUL CONTACTS FROM THEM AS WELL.

3 KYLE E. GALSTER

TRY ATTORNEYS IN INDIANA. 3 YRS AGO SHE WAS A FACULTY ASSISTANT @ IUPUI LAW SCHOOL. SO I ASSUME SHE WAS A LAW STUDENT.

14 APRIL 2010

DEAR GRANDMA.

NOW THE BAD NEWS:
MARCH 31 THE FEDERAL JUDGE DENIED MY HABEAS PETITION.
THE OPINION ITSELF IS OUTRAGOUS AND BARELY LITTLE RESEMBLENCE TO THE ACTUAL FACTS. THE JUDGE SAID ALLSBRITTON DID A HELL OF A JOB - TRAVELED TO INDIANA TO MEET FRIENDS & FAMILY; HE DID NOT. THE JUDGE SAID HE SPOKE TO ME OFTEN - HE DID NOT; NOT UNTIL 13 DAYS BEFORE TRIAL WHEN GRANDPA & I TRIED TO FIRE HIM. SAID HE HIRED A MITIGATION EXPERT WHO COULD NOT FIND ANY RELEVANT EVIDENCE - NOT TRUE, SHE WAS NOT HELPFUL BECAUSE ALLSBRITTON HIRED HER 3 WKS BEFORE TRIAL COULD NOT GET A DELAY, SO SHE WITHDREW HAVING DONE

SO, I DONT HAVE TIME TO GO INTO THIS MUCH NOW, BUT THIS BASICALLY MEANS, UNLESS I CAN CREATE SOMETHING. I HAVE ABOUT 7 MONTHS, MAYBE A YEAR OF APPEALS LEFT. AFTER THEY ARE GONE. ASSUMING I WIN NOTHING, THAN ITS UP TO THE GOVERNOR. IT COULD BE A WEEK. IT COULD BE 10 YRS AFTER. BUT HE CAN SIGN MY WARRANT AT ANY MOMENT. AFTER MY APPEAL EXPIRES, AND GIVEN MY CASE, I ASSUME I WILL BE AT OR NEAR THE TOP OF THE LIST.

15 APRIL 2010

DEAR GRANDMA.

NOW, OFF TO LEARN THE LAWS TOOLS I JUST GOT. I'VE GOT TO LEARN PROCEDURE, DON'T WANT TO MESS ANYTHING UP OR MISS ANY FILING DEADLINES.

28 APRIL 2010

DEAR GRANDMA.

I ASKED THE ATSA: DEATH PENALTY REPRESENTATION PROJECT TO HELP ME FIND A ATTORNEY. HOPEFULLY THEY WILL HELP

18 MAY 2010

DEAR GRANDMA.

HERE,

WELL TO BEGIN, YOU KNOW REITER IS NOT LICENSED TO PRACTICE IN THE 11TH CIRCUIT. HE MOVED TO WITHDRAW, STATING AS MUCH SO AND INFORMING THE COURT, A CONFLICT EXISTED THAT DISQUALIFIED HIM FROM CONTINUING TO REPRESENT ME.

IN RESPONSE, THE COURT STATED: "UNETHICAL AND UNPROFESSIONAL REPRESENTATION BY COUNSEL IS NOT GROUNDS TO ALLOW COUNSEL TO DISCHARGE HIMSELF", I WAS LIKE: WHAT! YOU GOTTA BE KIDDING ME!?!

HOWEVER, UNDER FLORIDA LAW, ONCE A ATTORNEY NOTIFIES THE CLURT THAT A CONFLICT EXIST, THE ATTORNEY WILL BE DISBARRED AND FACE CIVIL LIABILITY IF THEY CONTINUE TO ACT AS ATTORNEY IN THAT CASE. THE ONLY EXCEPTION IS IF THE CLIENT (ME) WAIVES THE CONFLICT.

MY RESPONSE TO THE COURT WAS THAT I WOULD FILE TO HAVE REITER DISBARRED, AND SUE FOR CIVIL MALPRACTICE IF HE FILED ANYTHING ELSE IN MY CASE.... THAT IS TO SAY, I DO NOT WAIVE THE CONFLICT

SPEAKING OF THAT. I NEED VERDESKI MILLERS ADDRESS BADLY. HE MAY NOT KNOW IT, BUT HE HAS THE POWER TO HELP ME GET A NEW RESENTENCING HEARING. SO I WANT TO MAIL HIM SOME DOCUMENTS AND FIND OUT IF HE WILLING TO HELP.

SO I HOPE TO FILE MY APPLICATION FOR C.O.A BY JUNE 15TH, AND RESOLVE THE ATTORNEY ISSUE WHILE THAT MOTION IS UNDER REVIEW. A LOT OF WORK. A LOT OF READING, AND THATS ONLY ABOUT ½ OF THE WORK I AM DOING.

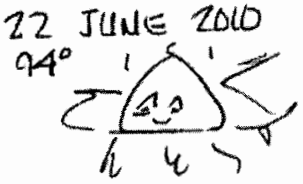
DEAR CONNIE. 6 JUNE 2010

NATURALLY I AM BUSY WITH LEGAL STUFF. MR REITER IS FIGHTING WITH THE 11TH CIR. HE TOLD THEM HE'S NOT LICENSED TO PRACTICE IN 11TH CIR OR QUALIFIED, AND MOVED TO CONFLIC OFF. THE 11TH CIRCUIT SAID TOO BAD! HE WROTE A SECOND MOTION TELLING THEM THAT CONTINUE REPRESENTATION WOULD VIOLATE BOTH STATE LAW AND HIS ETHICAL OBLIGATIONS TO THE FLA BAR. AGAIN THEY SAID -TOO BAD! THEY SAID UNETHICAL AND UNLAWFUL REPRESENTATION ARE NOT SUFFICIENT GROUNDS TO WITHDRAW!

THIS DOESNT BOLD WELL FOR ME.

WHILE HE'S DOING THAT, I AM FILING MY OWN MOTIONS, MAINLY TRYING TO TOLL FILING DEADLINES.

22 JUNE 2010



DEAR GRANDMA,

D'KAY. IM HOPING THE ABA: DEATH PENALTY REPRESENTATION PROJECT WILL HELP ME FIND A ATTORNEY. OR A LARGE

I HAD TO MAIL 4 COPIES TO THE COURT. THAT COST ME $10.98 AS I HAD TO PUT IT IN A PRIORITY BOX.
MAIL COST IS KILLING ME. I HAVE ANOTHER MOTION GOING OUT TOMORROW. ITS A MOTION CONCERNING REITER AND WHETHER HE CAN LEGALLY CONTINUE TO REPRESENT ME. I IMAGINE THE CLERK OF THE COURT IS GOING TO KILL ME, BUT I DONT CARE. I REFUSE TO SIMPLY GIVE UP.

15 JULY 2010
94°

GRANOMA,

HEY.
I READ THE ARTICLE ABOUT THE PRO BONO ATT YOU SENT. DO YOU THINK YOU CAN GET ME THEIR ADDRESS?

JERRY HARTMAN, @
DRINKER, BIDDLE, & REATH
WASHINGTON, D.C. (AREA)?

HELL, IF YOU CANNOT FIND HIM AT THE LAW FIRM, I WILL WRITE HIM AT HOME.
MAYBE I CAN GET HIM TO HELP ME, OR IF NOTHING ELSE, HE PROBABLY KNOWS SOMEONE WHO CAN HELP. SO GET ME HIS ADDRESS, AND I WILL WRITE IMMEDIATELY.

4 AUGUST 2010
96°

DEAR LEORA,

I'm sure I probably already told you a few years back, State lawmakers closed the office of C.C.R. in the Northern District of Florida. C.C.R. were responsible for all death penalty appeals state wide. They left open the offices in the South & Middle District. A 'registry' of attorneys were supposed to pick up the cases in the North. And initially, I was assigned a registry attorney but since that appointment, they have conflicted off my case, leaving me on my own.

I wrote the ABA in Washington requesting their help but death penalty appeals are increasingly unpopular. They might find someone, though, I seriously doubt it.

10 Aug 2010
96°

Dear Grandma,

I heard from the ABA Death Penalty Representation project last night. They indicated they are requesting large firms take my appeal but have yet to find anyone.

15 August 2010
96°

Dear Grandma.

DID YOU RECEIVE THE APPLICATION FOR COA I WROTE? I IMAGINE BY NOW IT HAS ARRIVED. BUT I JUST WANT TO BE CERTAIN.

IM GOING TO WRITE THE CHIEF JUDGE NEXT WEEK EXPLAINING MY SITUATION, ASKING FOR HELP. IT WONT DO ANY GOOD, BUT ANOTHER ITEM STUCK IN THE RECORD FOR MY LATER MOTIONS.

10 OCT/10

DEAR GRANDMA

YOURE PROBABLY RIGHT ABOUT THE COURTS NOT DOING ANYTHING BUT STILL, I MUST TRY.

LEGALLY IT MAKES NO SENSE. I HAVE 4 ISSUES THAT HAVE GOT GUYS NEW TRIALS NEARLY EVERY TIME THE ERROR OCCURES. YET. THE COURT SEEMS TO APPLY ITS OWN FACTS AND LAW TO MY CASE.

I WONT GIVE UP THOUGH. HOPEFULLY A JUDGE WILL FINALLY TAKE A STAND... SOON!

18 MAY 2011

LEDRA,

TIMEWISE, I FILED A MOTION FOR RECONSIDERATION BUT ASSUME IT'S ALREADY BEEN DENIED. FROM THAT POINT, I HAVE 90 DAYS TO FILE BACK IN THE U.S.S.CT. I CAN THEN REQUEST A ADDITIONAL 60 DAYS FOR 'GOOD CAUSE', NOT HAVING A ATTORNEY USUALLY QUALIFIES. THAT MEANS, MID OCTOBER MY APPEALS WILL BE COMPLETE. OF COURSE, THE U.S.S.CT COULD HEAR MY APPEAL, BUT THEY ACCEPT SUCH A EXTREMELY SMALL NUMBER OF CASES I HAVE TROUBLE BELIEVING THEY'LL HEAR MINE. SO MY HOPE IS THAT I CAN CONVINCE THEM TO SEND MY CASE BACK TO THE 11TH CIRCUIT WITH INSTRUCTIONS TO CONDUCT A EVIDENTIARY HEARING AND ISSUE A RULING ON THE MERITS. THAT COULD GIVE ME ANOTHER 1½ YEARS, BUT AT THIS POINT, THIS TOO IS A LONG SHOT, ONLY NOT AS LONG AS GETTING THE S.CT TO TAKE MY CASE. BUT I DON'T RECOMMEND YOU PUT MONEY ON EITHER.

14 JULY 2011

DEAR GRANDMA

THANK YOU, I COULD USE SOME .44¢ TOO THOUGH. I'VE BEEN BURNING THROUGH THEM WRITING TO LAWYERS - WHO NEVER ANSWER, NOT EVEN TO SAY 'SORRY - CANNOT HELP'

8 SEPT 2011

LEORA -

ANYWAY. IN THE TIME BETWEEN, MY LEGAL WORK HAS BEEN FINISHED. IT IS IN THE MAIL TO BE TYPED, RETURNED AND THEN FILED OCTOBER 22ND. MY MIND - THE EMOTIONAL SIDE PULLED ME TO WRITE SOONER BUT FINISHING MY LEGAL WORK WAS A WEE-BIT MORE IMPORTANT. BESIDES, I DID NOT WANT TO RISK MIXING THE LEGAL STUFF UP IN MY MIND WITH NIKI & YOU...

YOU ASKED ABOUT THE COST OF A ATTORNEY: 50 TO 100 K BUT AS I TOLD YOU, I DONT KNOW IF IT WOULD MATTER. MY CHANCES MIGHT GO FROM 0% TO 30% WITH A ATTORNEY. MAINLY THOUGH, THEY COULD PROBABLY USE PROCEDURE MOVES TO KEEP ME ALIVE, HOPING SOMETHING BREAKS IN MY FAVOR BUT TO GAMBLE 50/100 K ON THAT. STILL LOOKING

2 OCTOBER 2011

DEAR GRANDMA:

GUY ON YARD THURSDAY TELLING ME 2 YRS AGO HE WAS OUT OF APPEALS BUT HE FOUND A ATTORNEY TO FILE SOMETHING. AT FIRST THE COURT DID NOT ACCEPT IT, BUT NOW ON APPEAL. HE HAS A HEARING SCHEDULED ON THE ISSUE AND WITH THAT, THE GOVERNOR CANNOT KILL HIM. I GUESS SOMEHOW, I GOTTA FIND A ATTORNEY TO REPRESENT ME. GET SOMETHING BACK IN THE LOWER COURT. You STILL PLAYING THE LOTTERY!?!

PLACE STAMP HERE

16 Oct 2011

DEAR GRANDMA

AFTER THAT, I TRY TO FIGURE OUT NEW THINGS TO FILE. I HAVE SOME IDEAS BUT REALLY NEED A ATTORNEY.

31 Oct 2011

LEORA

ASKED HER IF ANYONE IN HER FIRM WAS QUALIFIED OR IF SHE KNEW ANYONE IN THE LEGAL COMMUNITY THAT MIGHT HELP.

ALSO I WROTE EMILY WILLIAMS @ THE ABA DEATH PENALTY REPRESENTATION PROJECT IN DC. THEY HAVE ISSUED NUMEROUS REPORTS CRITIZING FLORIDA'S DEATH PENALTY PROCEDURES, ESPECIALLY THE ATTORNEYS.

I FILED MY PETITION WITH JUSTICE THOMAS 13 DAYS AGO. I AM ON PENS & NEEDLES, LOGICALLY, I KNOW NORMALLY IT TAKES 30 DAYS TO GET A RESPONSE. STILL, EVERY TIME LEGAL MAIL MAN COMES AROUND THIS WEEK, I HOLD MY BREATH, JUST KNOWING FOR CERTAIN, THEY WERE GOING TO STOP AT MY CELL.

25 NOV 2011

LEDRA.

WROTE YOU ABOUT APPROACHING DOUG ABOUT $ FOR A ATTORNEY, HE ASKED YOUR THOUGHTS. I DIDN'T KNOW SO HE SAID IT WE VISIT, YOU GUYS CAN DISCUSS THAT.

OH RECALL LAST LETTER, I SAID THAT DESPITE 13 DAYS PASSING FROM FILING MY BRIEF IN THE U.S. CT., EVERY TIME I HEAR LEGAL MAIL, I HOLD MY BREATH EXPECTING A DENIAL. WELL THAT SAME DAY THE LETTER LEFT FOR YOU, I HEAR FROM THE S.Ct. [See attached]; I NEARLY DIED. IT WAS NOT A DENIAL THOUGH, INSTEAD THE CLERK ASKED ME TO APPENDIX TWO ADDITIONAL DOCUMENTS, AND RETURN TO THEM BY DEC 16TH.

10 MARCH 2012

DEAR GRANDMA.

As I told you before, The key now is getting something in the courts that they'll accept for review. If the court accepts anything for review that will again stop my clock / remove me from the list.

Mr Pitts.: I write on behalf of a man on death row, He is preparing a action challenging the constitutionality of Fla's Registry System for appointing counsel in capital cases, and a successide 3.850 motion. He is pro se, and is interested in hiring you to type and edit both petitions, Not advise which we understand is illegal under Fla law. If interested, contact him at the following address to discuss a fee agreement: Eric Branch, 313067, Union Corr Inst. P-309, 7819 NW 228 St. Raiford, FL 32026-4430.

16 March 2012

Ledra

I heard from the U.S.S.C. yesterday, As predicted they denied review of my certiorari petition. Good Ole Justice Thomas. With that my appeals are over, In the next 30 to 45 days I will be placed on the 'Ready List' afterwhich, the Governor can kill me at any time he wants, A really scary thought with the sudden rush to execute guys down here, Since last I wrote, they killed a man I called friend and immediately signed up another man. Some how, after years of doing on average 4 to 6 each year, we've become Texas - one right after another. Im not sure how that affects my previous outline I gave you. But at this rate, there is no hope of lasting 3 years on the Ready List for the simple fact they will run out of people on the list long before that. And have to kill me.

The key is to get something in the Court that they will atleast grant review on. As if the Court accepts a petition, I

WILL BE REMOVED FROM THE READY LIST. I HAVE A GOOD ISSUE AND A DECENT PLAN. THE PETITION I HAVE WROTE, I NEED TO GET IT DRAFTED NEAT / EDITED / TYPED, THAN SHOP IT AROUND TO SOME ATTORNEYS, HOPING I CAN FIGURE OUT HOW TO HIRE ONE, WITH OR WITHOUT A ATTORNEY THOUGH. I WILL FILE IT IN JULY, AS I FEEL SURE I WONT BE KILLED THAT QUICKLY, BUT THAN AGAIN THINGS HAVE CHANGED.

7 April 2012

LEDRA -

WELL, TUESDAY A COPY OF A LETTER ARRIVED FROM JULIE McCALL, A GOVERNMENT OFFICIAL WHOSE JOB IT IS EVIDENTLY TO TRACK THESE MATTERS, INFORMING GOVERNOR SCOTT THAT I AM READY TO BE EXECUTED. WELL, I AM NOT READY BUT THAT IS OF LITTLE CONSEQUANCE, AS THEY ARE READY FOR ME.

SO THERE IT IS. YOURE ALMOST DONE WITH ME. I DO NOT HAVE A ATTORNEY, I DO NOT HAVE A APPEAL IN THE COURT AND I AM NOW OFFICIALLY ON THE 'READY LIST'. SO CONSERVATIVELY SPEAKING, THERE IS A 100% CHANCE THEY WILL BE KILLING ME, AND WHILE IT MAY BE 3 YEARS, IT JUST AS LIKELY MIGHT BE 3 MONTHS OR 3 WEEKS BUT NO ESCAPING IT ANY LONGER. IT IS HERE. BASICALLY, WHENEVER THE GOVERNOR WANTS ME TO DIE, I WILL.

AS BEFORE THOUGH, I AM NOT GIVING UP, I WILL STILL FILE SOMETHING BUT LEDRA, REALISTICALLY, EVEN ASSUMING I CAN GET YOU / ALEX TO APPROACH DOUG IN JULY, WITH NO ONE ELSE HELPING ME, IT'S ALL BUT OVER. NUMEROUS GUYS HAVE SURVIVED, EVEN BEEN EXONERATED AT THIS LATE STAGE AND LATER BUT THEY ALL HAD SOMETHING IN COMMON - SOMEONE OUT THERE FIGHTING TO SAVE THEM. CERTAINLY PEOPLE HAVE SHOWN ME KINDNESS - WELL, 5 PEOPLE - THESE PAST 20 YRS, AND OTHERS HAVE DROPPED IN AND OUT BUT HELP, THAT IS THE ONE THING I NEVER RECEIVED. I HAVE STRUGGLED TO DO EVERYTHING ON MY OWN. AND NOW, IN THESE FINAL HOURS.

10 MAY 2012
91°

DEAR GRANDMA.

HEY.
I HOPE YOU ARE READY, SUNDAY NIGHT I WILL SEND YOU THE REST OF THE PETITION - 136 PAGES.

A LOT TO TYPE. SO AGAIN, IF YOU CANNOT HANDLE IN A FEW WEEKS TIME, PLEASE, TAKE A COUPLE HUNDRED (200 TO 500) AND SEE ABOUT HIRING RICK'S SECRETARY, OR SOMEONE ELSE.

WHEN FINISHED, HAVE RICK MAIL ME A COMPLETE COPY, AND GIVE A COPY TO ALEX.

13 MAY 2012

LOVE -

MY PETITION IS COMPLETE - WELL IN A MANNER OF SPEAKING. AS I STILL HAVE TO ADD FOOTNOTES + APPENDIX. ITS ONE BIG MOTHER 138 PAGES, HANDWRITTEN. ALEX HAS BEEN SENT A COPY, I IMAGINE IT WILL TAKE TWO WEEK MINIMUM TO HAVE IT TYPED, AFTER WHICH, HE'LL BEGIN TO MAIL/E-MAIL IT OUT TO ATTORNEYS FOR COMMENTS + COST ESTIMATES. IF I WERE AT THE BEGINNING OF MY APPEALS, I THINK COST EST WOULD RANGE FROM 100K TO 150K, BUT I HAVE NO APPEAL OF RIGHT LEFT, IM ON THE READY LIST, SO I WILL BE INTERESTED TO SEE WHAT TYPE OF QUOTES THE ATTORNEYS GIVE.

I DONT KNOW IF YOU WANT TO READ THE PETITION, OR FEEL ANY NEED TO READ IT, IF YOU WANT TO READ IT, LET ALEX KNOW TO E-MAIL YOU A COPY ONCE ITS TYPED. EITHERWAY, AT THE VISIT, I WILL ATTEMPT TO EXPLAIN ALL THE PROCEDURE + LEGAL MATTERS TO YOU. AND I WILL ANSWER ANY QUESTION YOU HAVE. BASICALLY, AT THIS STAGE CONVINCING A COURT TO GRANT REVIEW IS AS IMPORTANT AS THE ACTUAL OUTCOME OF THE REVIEW. OF COURSE, WINNING IS BETTER THAN LOSING BUT IF YOU CANNOT GAIN REVIEW, THAT DOESN'T MATTER. AND AS I TOLD YOU BEFORE, ON SUCCESSIVE PETITION, THE STANDARD OF REVIEW IS VERY HIGH, I'LL EXPLAIN WHY AT THE VISIT. MY TARGET DATE FOR FILING IS LATE JULY, AS THAT WILL PUT ME RIGHT AT THE 3/4 MONTH DATE ON THE READY LIST. THE WAY I WROTE THE PETITION, IT IS A EITHER A WORK OF BRILLANCY OR A WORK OF SHEER LUNCY. ITS A NEVER BEFORE ATTEMPTED CHALLENGE THAT COULD CHANGE DEATH PENALTY JURISPRUDENCE, OR IT COULD GET ME KILLED. THATS WHY I AM REALLY ANXIOUS TO HEAR WHAT THE ATTORNEYS THINK ABOUT MY LEGAL CLAIMS. I THINK THEY'LL BE SPLIT TOO, BETWEEN BRILLIANT/LUNACY.

NATURALLY, I AM A BIT BIAS ON THE MATTER BUT I BELIEVE, IF WHAT I WROTE, WITH ALEX/YOUR HELP, CAN PULL A GOOD ATTORNEY

INTO THE FIGHT, THEY CAN NOT ONLY GET A COURT TO GRANT REVIEW BUT THE ATTORNEY SHOULD BE ABLE TO LOOK IT UP IN THE COURTS FOR YEARS AND PROBABLY — MAYBE — SAVE MY LIFE. THOUGH, THERE ARE MANY DAYS THAT I LOOK AROUND AT THESE FOUR WALLS, AND FEEL THE ISOLATION AND COMPLETE SENSE OF ALONENESS, WONDERING IF BEING ALIVE IS REALLY A GOOD THING.

11 JUNE 2012

LEORA —

NOW, HE HAS VERDELSKI MILLER REVIEWING MY PETITION THIS WEEK. HE WILL ALSO SEND OUT TYPED COPIES TO 10 ATTORNEYS

DEAR GRANDMA, 14 JUNE 2012

SO - WHAT DID YOU THINK OF NIKI? ISN'T SHE ABSOLUTELY THE BEST. SERIOUSLY GRANDMA, YOU CAN TELL ME, SHE IS YOUR FAVORITE GREAT-GRANDCHILD, ISN'T SHE!?!

OUR VISIT WAS SPECTACULAR. IT WAS ALL A BUNCH OF NERVES LAST TIME. BUT NOT THIS VISIT. WE HIT IT OFF GREAT. TALKING NEARLY TWO STRAIGHT DAYS. AND SHE KEPT HUGGING ME AND TELLING ME "I LOVE YOU DAD" AND JUST A MOMENT, I FELT HUMAN. AND WAS ABLE TO FORGET WHERE I AM AT.

I TELL YOU WHAT GRANDMA. THE LOVE I HAVE FOR THAT GIRL. I SIMPLY CANNOT UNDERSTAND HOW A PARENT CAN EVER TURN THEIR BACK ON THEIR CHILD. EVEN WITH THE ADOPTION. SHE HAS NEVER BEEN LEFT TO DOUBT WHETHER OR NOT ANNE + I LOVED HER.

I THINK ABOUT DOUG. HE CAN SAVE MY LIFE WITHOUT ANY FINANCIAL DISCOMFORT TO HIMSELF. HE WILL STILL DIE WITH MORE MONEY THAN HE CAN SPEND. SO HOW CAN THERE EVER BE A QUESTION OF NOT SAVING MY LIFE.... HOW DO YOU LET A SON DIE WHEN YOU CAN SAVE THEM. I COULD NEVER DO THAT. I WOULD SALE MY SOUL TO KEEP NIKI SAFE

NIKI + ALEX ARE VISITING IN 6 WEEK PERIOD. I FEEL GOOD, ATLEAST IN SPIRITS. I MEAN LEGALLY, I FEEL FRUSTRATED AND SCARED.

I DO HOLD OUT SOME HOPE.

17 JUNE 2012
9:10

HEY

ALSO, LIKE ABOUT MADE ME TO TEARS. ABOUT 1/2 THROUGH OUR TIME SUNDAY, WE HAD SHARED A DEEP CONVERSATION, GOT UP TO THE MACHINE FOR A SNACK AND BEVERAGE, I TURNED AND SHE RIGHT NEXT TO ME, LOOKING UP WITH BEAUTY & TENDERNESS IN HER EYES. A LITTLE GIRL SHE JUST SPONTANEOUSLY JUMPED UP IN MY ARMS WRAPPING HER ARMS AROUND ME IN A GIANT HUG. SHE KISSED ME, WHISPERING IN MY EAR, "DAD I LOVE YOU SO MUCH" OH, MY WORLD STOPPED. IT WAS AMAZING. BUT IT WAS ALSO AGAINST THE RULES. STILL, I TOOK IT IN FOR A MINUTE, HUGGING HER BACK LETTING OUT A SIGH, BEFORE DISLODGING HER.

AND IN THAT MOMENT, DO I FULLY REALIZE EXACTLY HOW BAD I FUCKED UP. I TRULY AM A SACK OF SHIT.

28 AUG 2012
9:20

DEAR CONNIE,

HERE IS A COPY OF THE JUDGE'S WRITTEN ORDER. ITS QUITE EXTRAORDINARY - WAY OUTSIDE NORMAL PRACTICE - DESPITE HIS COMMENTS. IT MAKES ME WONDER IF HE SEES SOMETHING IN MY PETITION THAT BOTHERS HIM. AFTERALL, AS THE COURT RECORD REFLECTS, I WENT TO HIM 10 YEARS AGO, WHILE MY STUFF WAS STILL IN STATE COURT, WITH A COMPLAINT ABOUT REITER & REGISTRY SYSTEM. REQUESTING HE APPOINT NEW COUNSEL ONCE MY STUFF REACHED FEDERAL COURT. HE WOULD NOT. HE DID NOT.

02 Oct 2012
SE°

Dear Alex,

TO HEAR IF HE HAD THE DISC, TO DO A FINAL EDIT, AND TO BE HONEST, THE LAST FEW WEEKS, MY MIND HAS BEEN DEAD. I DUNNO. IT'S SUCH A UNDERTAKING AND THERE IS SO MUCH SHIT ON MY MIND. MOST DAYS I DON'T EVEN FEEL LIKE OPENNING MY EYES. I AM CONSTANTLY TIRED, SAD, LONELY, HUNGRY AND GENERALLY MISERABLE, WHICH I FIGURE NO ONE WANTS TO HEAR, SO I SIT HERE LOOKING AT THE WALLS WHILE NOTHING GETS DONE. PATHETIC I KNOW. AND IF I AM TO DIE SOON, THIS IS NOT HOW I WANT TO SPEND MY LAST MONTHS. BUT I AM UNSURE HOW TO BREAK OUT OF IT. OFTEN, I THINK I SHOULD DISAPPEAR, LEAVING EVERYBODY - YOU, LEONA, DAD, GRANDPARENTS, THE FEW OTHERS THAT LOVE & SUPPORT ME ALONE AS I VANISH FROM EXISTENCE, BUT HONESTLY, I AM TO SCARED TO DIE ALONE, STILL, MY MIND IS FULL OF THESE STRUGGLES WHICH LATELY SEEM TO TAKE UP MORE OF MY TIME THAN LEGAL WORK.

DEAR GRANDMA,

9 OCT 2012

EMILY @ THE ABA TOLD US SHE NEEDS 60-90 DAYS TO TRY TO FIND ME A ATTORNEY, SHE HAS A FIRM IN MIND BUT THEY ARE TIED UP THROUGH THE END OF THE YEAR. SHE WANTED TO GET HOLLAND & KNIGHT BUT THEY ARE NOT DOING DEATH PENALTY WORK.

11 OCT 2012

DEAR GRANDMA,

IT ALL SEEMS TOO MUCH. TO HAVE A DEATH SENTENCE

20 AUG 2012

DEAR GRANDMA,

I DID HEAR FROM EMILY WILLIAMS AT THE ABA DEATH PENALTY REP. PROJECT. ALEX SENT HER A COPY OF MY PETITION. SHE ASKED, "WHO WROTE IT" SAID SHE'D LIKE TO SPEAK TO SOME ATTORNEYS ABOUT THE REGISTRY SYSTEM. BASICALLY TO CONFIRM MY ALLEGATIONS.

I WROTE HER BACK, EXPLAINING I WROTE IT ALONE. BUT I GAVE HER THE NAME OF 4 ATTORNEYS WHO I THOUGHT WOULD CONFIRM MY ALLEGATION. AFTER TALKING TO THEM, HOPEFULLY SHE'LL JOIN THE HUNT TO FIND ME A ATTORNEY.

02 Oct 2012
SC

Dear Alex

Also, The members only convene 4 times a year for Executive Clemency proceedings. So if Mike can push beyond December, I think that would give us to March. When they meet again. Unless he can agree to have them withhold my petition pending the DNA result. Which might be 3 months, maybe 6 yrs.

Now. All that said - The Governor makes the rules, so technically, if they wanted to execute me, He can convene the Clemency Board Simply to vote down my clemency and release them, signing my warrant the same day. At which point my criminal attorney - which I don't have now - would have to move the Court for a stay, which may or may not be granted.

11 Oct 2012

Dear Granoma.

IT ALL SEEMS TOO MUCH. TO HAVE A DEATH SENTENCE AND NO ATTORNEY, THEN TO HAVE GOOD LEGAL ISSUES AND STILL NOT BE ABLE TO FIND A ATTORNEY. NOT EVEN WITH ALEX + EMILY AT THE ABA HELPING IN THE SEARCH. IT JUST SEEMS UNREAL TO ME.

THEN MY MIND STARTS THINKING, IF ATTORNEYS DONT CARE, IF MOST OF THE FAMILY DONT CARE, IF DOUG WHO HAS THE MONEY DOES NOT CARE, THEN WHY SHOULD I CARE. YOU KNOW, WHEN MY MIND STARTS THINKING THIS WAY. IT IS DIFFICULT TO GET MOTIVATED. STILL, I KNOW I HAVE TO GET MY BUTT IN GEAR OR SOON I WILL BE DEAD.

27 OCT 2012

DEAR GRANDMA.

EMILY WROTE THAT ATTORNEY/FIRM 'SERIOUS' ABOUT HELPING BUT CANNOT MAKE COMMITMENT TIL NEW YEARS, IF THEY CLOSE OUT CURRENT CASE. I WROTE MIKE BURNS, ASKED HIM TO TRY TO GET EMILY TIME TO GET A SOLID ANSWER FROM THE ATTORNEY. LETS HOPE. OTHERWISE, I THINK IT WILL BE ME ALONE

06 Dec 2012
81°

Hot !

Alex --

I RE-FILED THE RULE 3.853 MOTION FOR DNA TESTING. IT WAS 39 PAGES W/ EXHIBITS. YOU MIGHT TEXT MIKE & LET HIM KNOW. I DIDN'T SEND HIM A COPY BUT WILL IF HE WANTS TO REVIEW IT. I'M NOT SURE HOW THE COURT WILL REACT. PROBABLY ACCORDING TO HOW THE STATE RESPONDS. I FIXED MIKE'S MISTAKES, AND ADDED THE INFORMATION ON UNMATCHED FINGERPRINTS AND SHOE PRINT IMPRESSION, TO HELP BOLSTER THE POSITION. Hell. You figure one of those have to match Eric, The state have 30 day to respond. Maybe by then Emily will have some good News But honestly, I am not optimistic.

Assuming January arrives without an attorney willing to take my case, I cannot wait much longer. I have to file my petition otherwise I begin to risk the court dismissing it because I was not 'diligent'. Between being pro se and searching for counsel, I can justify some delay but not years worth. So, according to what Emily says in Jan. I will probably file the other petition too. And ask the court to merge it with the 3.853 motion for DNA testing.

If alone, That means I am going to need you (legal)

Le Jan 2013

DEAR GRANDMA.

NO, I HAVE NOT GIVEN UP ON LEGAL STUFF. I'D LIKE TO BUT WITHOUT A ATTORNEY, THAT WOULD BE GIVING UP ON LIFE AND I AM NOT QUITE THAT MISERABLE YET.

31 JAN 2015
76

DEAR ALEX,

AH! WHY TOO MUCH DAMN STRESS. I FEEL LIKE SOMEBODY HAS BEEN STANDING BEHIND ME WITH A GUN TO MY HEAD FOR A YEAR NOW. IT'S FUCKING EXHAUSTING.

24 FEB 2013
76°

ALEX -

THE PETITION ARRIVED LATE FRIDAY. THE PRISON SIGNED FOR IT AT 11:24 A.M. ON THE 19TH. YEP, IT TOOK THEM AN EXTRA FOUR DAYS TO GET IT FROM THE MAILROOM BACK HERE TO ME. THEN THE WOMAN THAT DELIVERED IT TOLD ME "HE SHOULD HAVE SENT IT MEDIA MAIL RATE... YOU WOULD HAVE GOTTEN IT JUST AS QUICKLY AND AT ABOUT ½RD THE COST". AS IF THEY WERE COMPLETELY BLAMELESS IN THE DELAY.

ANYWAY, YOU DID A GREAT JOB. THE PETITION AND ACCOMPANYING DOCUMENTS LOOK REALLY GOOD.

TRY TO STAY ON V.M. TO SIGN & RETURN A COPY OF MY AFFIDAVIT. IT'S A MATTER OF CREATING A INITIAL LEVEL OF PROOF. I WILL SWEAR TO THE TRUTHFUL NATURE OF THE ALLEGATIONS IN MY PETITION. EVEN SO, I AM A PRISONER. MY CREDIBILITY WILL ALWAYS BE QUESTIONED. V.M. INITIALLY SWEARING TO THE TRUTHFULNESS OF THE SAME FACTS ADDS CREDIBILITY, REQUIRING THE STATE & COURT TO THINK DIFFERENTLY ABOUT HOW TO RESPOND.

AS I WROTE LAST WEEK, I WILL COPY THE PETITION THURSDAY OR FRIDAY. THAN MAIL IT OFF THE FOLLOWING TUESDAY. NO DOUBT THE LAW LIBRARY AND PROPERTY ROOM ARE LOOKING TO LOVE ME, WITH APPENDIX, IT WILL BE ABOUT 4000 PAGES, THAN THE PROPERTY ROOM WILL HAVE TO COORDINATE TO GET IT STAMPED, NOTARIZED, RETURN SERVICE, AND LOGGED TO LEGAL MAIL ALL AT THE SAME TIME. 4 DIFFERENT PEOPLE DO MORE THINGS

D? March 26 3
54°
Lunch

DEAR CONNIE,

HELLO!
JUST A BRIEF UPDATE AND REQUEST FOR STAMPS.
I SPENT ½ OF FRIDAY IN THE LAW LIBRARY GETTING EVERYTHING COPIED - 3000 TOTAL COPIES, WELL - ACTUALLY 2947 TOTAL @.15 ¢ EACH OR APPROXIMATELY $450 BUT LUCKILY GRANDMA HAD ALREADY COVERED THAT COST.
NOW I WILL SPEND TODAY + TOMORROW SIGNING EACH DOCUMENT AND BOXING THEM UP. I AM SCHEDULED FOR WRIT ROOM + PROPERTY ROOM EARLY TUESDAY MORNING. THEY WILL NOTARIZE, STAMP, WEIGH AND SEAL EVERYTHING. I ALSO HAVE TO GET CERTIFIED / RETURN SENDER / WHATEVER THAT IS EXACTLY. I'M NOT CERTAIN THE PROPERTY ROOM KNOWS EITHER. HE CAME UP FRIDAY TO SEE EXACTLY WHAT I NEED AND DROP OFF BOXES. HE TOLD ME THE MAILROOM DOES NOT DO ANY 'SPECIAL SERVICES' BUT IT IS REQUIRED UNDER LAW, SO THEY WILL HAVE TO PROVIDE IT.
MY ROUGH ESTIMATE ON POSTAGE IS $40.00 TOTAL, WHICH WILL COMPLETELY WIPE ME OUT WITH STAMPS. I MAY HAVE TO EVEN BORROW SO IF YOU CAN, AND IF YOU'LL LET GRANDMA KNOW.

AS WELL, IN THE NEXT FEW WEEKS, I APPRECIATE IF YOU GUYS CAN SEND STAMPS 46¢, $1.00 AND ABOUT 4 LARGE PRIORITY STAMPS $5.15 (?)

THE TOUGH PART IS THAT NOW EVERYONE THEY ARE KILLING HAS BEEN HERE WITH ME FOR 20 YEARS. ITS KIND OF LIKE COMING INTO WORK AND FINDING EVERY MONTH ANOTHER PERSON YOU'VE WORKED IN THE OFFICE WITH FOR 20 YEARS HAS BEEN TAKEN OUT BACK AND KILLED. EVEN WHEN ITS NOT YOU, ITS SO MUCH STRESS.

APRIL 27, 2015
83°

DEAR GRANDMA,

ON THAT, I THINK YOU MISUNDERSTOOD ABOUT REITER.

YES, IN HIS RESPONSE TO THE COURT, HE STATED HE WAS DISQUALIFIED ON A CONFLICT MOTION, AND THAT HE HAD NOT SPOKE TO ME IN 2 YEARS. ALSO, THAT HE WAS AN ADVERSE PARTY, AND COULD NOT REPRESENT ME.

NOW, ONCE MY WARRANT IS SIGNED I WILL NOT GET CONTACT VISIT ANYMORE. SO IN BASICALLY 60 DAYS. AND WHILE IT MAY TAKE A COUPLE WEEKS - 30 DAYS TO GET THE NEW LAW UP AND RUNNING. AS OF RIGHT NOW, THESE NEXT 60 DAYS ARE ALL THAT ARE GUARANTEED.

OBVIOUSLY, NIKI IS MY PRIORITY, I'VE SENT ANNE A LETTER ASKING THAT SHE EXPLAIN THIS TO NIKI AND SCHEDULE A VISIT.

16 MAY 2013
89°

DEAR GRANDMA.

LEGALLY, MR REITER IS THE ATTORNEY THAT QUIT 2 YEARS AGO. HE USED UP THE MONEY AND THAN CONFLICTED OFF THE CASE. HOWEVER, NOW AFTER THE CLEMENCY ATTORNEY FILED DNA MOTION, AND I FILE MY PETITION. JUDGE NICKINSON, INSTEAD, OF APPOINTED A ATTORNEY, HE STATES THAT 'TECHNICALLY' I STILL HAD COUNSEL, BECAUSE MR. REITER HAD BEEN RELEASED BY FEDERAL COURT, NOT THE STATE.

SO DESPITE QUITING AND 2 YEARS OF ABSENCE. EVIDENTLY, MR REITER IS STILL MY ATTORNEY.

PROBLEM IS THAT MR REITER HAS INFORMED THE COURT THAT A CONFLICT EXIST, AND THAT HE IS NOT GOING TO DO ANYTHING FOR ME.

THAT MEANS. RIGHT NOW, FACING IMMINENT EXECUTION, I HAVE ATTORNEY IN NAME ONLY.

IN 10 DAYS, I WILL FILE A MOTION ASKING THE TRIAL JUDGE TO APPOINT CCR-NORTH BACK ON MY CASE. IF DENIED, I WILL THEN SEE ABOUT GETTING A ATTORNEY TO ARGUE THE ISSUE TO THE FLORIDA SUPREME COURT. IT MIGHT COST A COUPLE THOUSAND DOLLARS. BUT WILL BE BETTER THAN BEING DEAD.

JUNE 1ST 2015
86

ALEX

I AM IN KNOT

PANIC-STRICKEN AND FILLED WITH AN OVERWHELMING SENSE OF DREAD. HONESTLY, I WISH I COULD TELL I SIMPLY DON'T KNOW HOW TO BREAK FREE OF IT. WITH EACH MOTION AND LETTER TO THE ATTORNEYS, THE FLORIDA BAR, THE COURTS IT BECOMES INCREASING CLEAR THAT I PROBABLY AM NOT GOING TO SEE ANOTHER YEAR - POSSIBLY ANOTHER WINTER. HOPE IS IN SHORT SUPPLY AND WITHOUT HOPE, HOW IS IT POSSIBLE TO BREAK FREE AND ESCAPE THE DREAD.

LAST TUESDAY I FILED A MOTION ASKING THE COURT TO APPOINT 'ALTERNATIVE COUNSEL'. I'LL ENCLOSE A COPY. AS YOU CAN SEE, I FOLDED THE MOTION ROBERT TYPED INTO A LARGER MOTION. THE LAW IS SOLID, THE COURT, IN THESE CIRCUMSTANCES IS REQUIRED TO APPOINT COUNSEL. HOWEVER, AS WE'VE SEEN THE COURTS ARE NOT SO CONCERNED WITH WHAT THEY ARE REQUIRED. HENCE THE REFUSAL TO APPLY BAR RULES AND ETHICAL OBLIGATION TO ATTORNEYS IN DEATH PENALTY CASES.

I ALSO FILED A SECOND MOTION TO DISQUALIFY MR. REITER. I ARGUED THAT HIS LETTER CONSTITUTED A NOTICE OF ATTORNEY ABANDONMENT. GIVEN THAT MR REITER MADE IT CLEAR THAT HE DID NOT INTEND TO DO ANYTHING ELSE. AND "ZEALOUS" 10.73 CREATED AN UNWAIVABLE CONFLICT. IN THAT IF I RAISE A SINGLE CLAIM CONCERNING MR REITER IN MY 1993 / 3.850

MOTION 118 1073 WOULD BAR MR REITER FROM FURTHER REPRESENTING DEATH PENALTY POST-CONVICTION CLIENTS. WHICH IS MR REITERS SOLE SOURCE OF INCOME. IT IS IMPOSSIBLE FOR A ATTORNEY TO VIGOROUSLY REPRESENT A CLIENT WHERE THAT CLIENT HAS BROUGHT CHARGES AGAINST THEM THAT COULD END THEIR EMPLOYEMENT.

23 JUNE 2013
92°

DEAR GRANDMA.

MR. KEITER WROTE ME A COUPLE WEEKS AGO TO BASICALLY TELL ME. JUST BECAUSE THE COURT SAYS HE IS MY ATTORNEY. HE BELIEVES A CONFLICT EXIST, AND WONT BE DOING ANYTHING TO REPRESENT ME. MEANING, I HAVE ATTORNEY IN NAME ONLY.

I SENT A COPY TO JUDGE NICKINSON, ASKING HOW HE CAN CONTINUE TO ALLOW THIS FARCE. TELLING HIM I NEEDED 'ALTERNATIVE COUNSEL' APPOINTED.

I ALSO FILED A MOTION IN FEDERAL COURT WHERE MR REITER WAS ORIGINALLY KICKED OFF THE CASE,

I ASKED THEM TO APPOINT COUNSEL UNDER FEDERAL STATUTE. WE'LL SEE WHAT HAPPENS. TO ME, IT

28 JULY 2013
92°

DEAR GRANDMA.

DID I TELL YOU, I HEARD FROM US JUSTICE DEPARTMENT. EVIDENTLY, A 'EXPERT' IN MY CASE WAS NOT QUALIFIED. THEY WROTE THAT I SHOULD HAVE ALREADY BEEN INFORMED BY PROSECUTOR IN MY CASE - I HAVENT BEEN - BUT SINCE I DID NOT HAVE A ATTORNEY THEY WANTED TO NOTIFY ME TOO.

I HAVE TO WRITE FOR DOCUMENTS SPECIFIC TO MY CASE. BUT THE FACT THE PROSECUTOR DID NOT INFORM IS A LEGAL VIOLATION. THIS WEEK, I WILL WRITE THE CLEMENCY BOARD WITH THE INFORMATION. AND WRITE UP MOTION TO SUPPLEMENT REQUEST FOR APPOINTMENT OF COUNSEL.

NATURALLY, MY PRIORITY IS NIKI, BUT IF THE END IS NEAR, I'D LIKE TO SPEND TIME WITH EVERYONE I LOVE AND HOLD DEAR.

Unknown Date/ recipient

Death row inmates are forced to spend all their time, including mealtime, cramped in spartan, solitary confinement cells, with no job opportunities, no access to further education or other programs.

8 Sept 2013

Alex,

Hey. I know between work, travel & family responsibilities you have a lot on your plate. I'll try not to add too much of my legal stuff to concerns. Let me fill you in on where I stand.

If you have not read it yet, I sent your mom a copy of the written order from the Federal Court granting appointment of counsel and providing me opportunity to get any attorney I want to represent me. I disagree with the Judge's comments that 'maybe this what I planned' as if I tricked everyone. When I actually approached the Courts 10+ years ago telling them that Reiter was abandoning claims and essentially begging them for help. They ignored me then so they cannot blame me now. Still. Despite the comments. It is an extraordinary ruling. I've never seen a Judge say go find ANY attorney and he's yours.

Legally fee + cost are worked out between Court + Attorney, but the order guarantees Attorneys a minimum of $125 per hour + cost. That is min. set by statute.

Technically, the Judge could have stated he found no conflict and appointed some state yahoo to kill my claims. Makes me think the Judge is concerned about the issues presented in my motions. He seen something that bothered him.

But he could not come out and say that in his order. After all, he is the Judge that ruled Obama Care unconstitutional. Gotta image to keep.

EXHIBIT 22

Eric S. Branch 313067
Union Correctional Institute
Building P, Room 3218
7819 N. W. 228th Street
Raiford, Florida 32026-4430

Mr. Terence Lenamon,
100 N. Biscayne Blvd. Suite 3070
Miami, Florida 33132

Dear Mr. Lenamon,

I write from Florida's Death Row. Currently I am without counsel and hope that you might assist me, either agreeing to represent me or relying on your connections in the legal community to locate an attorney / firm to represent me on appeal.

To assist you the following documents are enclosed:

Outline of appellate position.
Mixed petition Rule 3.850 motion / 1983 equal protection action.
Rule 3.853 motion for DNA test with amendments and exhibits.
Letter: Dept. of Justice (this may be a significant issue).
Court order stating Court will appoint whoever I select as counsel.

On the equal protection claim. Immediately after I filed my claim lawmakers introduced a bill, heard testimony and voted to close down the Registry Program. The petition needs to be amended to include lawmaker's findings that Registry Counsel were typically unmotivated and unqualified, providing representation unequal to CCR offices. Lawmakers reopened CCR Northern District, however, they forced every capital appellant currently with Registry Counsel to keep them until they are executed.

In my case the Court order (enclosed) conflicts off all State provided counsel. However, it also guarantees whoever accepts appointment will be paid their fee.

A lot of my claims can be brought under Martinez and Travens, but many other claims cannot. To those, the equal protection claim is my only source of relief, activating the "State impediment" jurisdictional provision, allowing an attorney to fix the errors caused by the impediment.

The equal protection claim is real and entirely winnable under the facts of my case. It also affects 100 plus other capital appellants, many who now sit on Pam Bondi and Governor Scott's "kill list". I could be wrong but given the damaging nature of an adverse

judgment, I'll bet in my case, the State concede the rule 3.850 claims, hoping that moots the equal protection action. Still either way, I need a good attorney / firm to give force to my claims ready to push for a settlement or judgment.

Anyway, read everything and determine if your Firm can help as counsel or providing names of attorneys who might help. If you like, contact Alex Branch (alexbranch@hotmail.com). He will E-mail you copies of everything I have enclosed, allowing you to forward them to attorneys / firms you think might help.

Either way, whether you can or cannot help, write me. That way, in sixty (60) days if I have not found an attorney, I can return to the Court with proof of my efforts.

I appreciate your time and any assistance you my provide.

Sincerely,

Eric S. Branch

EXHIBIT 23

Eric S. Branch 313067
Union Correctional Inst. P-3218
7819 N. W. 228th Street
Raidford, Fl 32026-4430

Mr. Jenny Greenburg
1109 Spottswood Drive
Tallahassee, FL 32308

Dear Ms Greenburg,

Hello, I realize its been many years . I trust all is well with you? While I wish this was simply a social call, sadly, it is not. I need some help. if at all possible. The Court has ordered me to find an attorney. I have 60 days and honestly, I am at a loss as to where I should turn. I realize you no longer handle Capital appeals (you don't, do you?)but at one time you were the best and I imagine you still know a lot of Attorneys / Firms that might be able to help me.

To assist you, the following documents are enclosed:

Outline of the appellate position
Mixed petition rule 3.850 motion /1983 equal petition action
Rule 3.853 motion for DNA test, with amendment and exhibits
Letter - Dept. of Justice. (this may be a significant issue)
Court order stating Court will appoint whoever I select as counsel.

On the equal protection claim. Immediately after I filed my claim, Lawmakers introduced a bill, heard testimony and voted to close down the Registry Program. The petition needs to be amended to include Lawmakers findings that Registry Counsel were typically unmotivated and unqualified - providing representation unequal to CCR. Also in spite of their findings Lawmakers forced everyone with Registry Counsel to keep them until executed.

In my case the Court order (enclosed) conflicts off all State provided counsel, including people like Marty, and Mark Olive who are registry attorneys. However, it also guarantees payment of cost and fee to whoever accepts my case.

A lot of the claims can be brought under Martinez and Trovend, but many others can not. On those the equal protection claim is my only source of relief. It actuates the 'State impediment and miscarriage of justice' jurisdiction provisions, allowing an attorney to fix the errors caused by the impediment.
The equal protection claim is real and entirely winnable. However, it could affect 100 plus Capital appellants, many currently on Pam Bondi and Governor Scott's kill list. I could be wrong but given the possible adverse affect, I don't think the State will risk a judgment against them. Instead they will concede the rule 3.850 claim, mooting the equal protection action. Still, I need a really good attorney / Firm to give force to the claim and if I'm wrong , fight for judgment.

Anyway, I don't know if you can, but if able, hopefully you will help me, providing me some names or if you like contact Alex Branch, my cousin, (Alex Branch @hotmail. Com) He will e-mail you copies of everything I've enclosed, allowing you to forward them to attorney / firms you think might help.

Either way, if you can or can not help write me. That way in 60 days, if I have not found an attorney, I can return to the Court with proof of my efforts.

I appreciate your time and consideration of this matter.

Sincerely,

EXHIBIT 24

Eric Branch313067
Union Corr. Inst. P-3218
7819 N. W. 228th Street
Raiford, FL 32026-4430
October 14, 2013

Mr. Michael Radelet,
Institute of Behavior
University of Colorado-Boulder
Ketchum Room 219
Boulder, Co 80309

Dear Mr. Radelet,

I realize it has been awhile but I trust all is well in Colorado. While I wish this was simply a social call, sadly it is not. I need some help if at all possible. The Court has ordered me to find an attorney. I have 60 days and honestly, I am at a loss as to where to turn. I realize you cannot represent me, but as an expert in the field, you know a lot of law firms that might help me.

Outline of appellate position
Mixed petition Rule 3.850 motion / 1983
Equal protection action
Rule 3.853 motion for DNA test, with amendment and exhibits
Letter Dept. of Justice. This may be a significant issue
Court Order stating Court was will appoint whoever I select as Counsel

On the 14th amendment, equal protection claim, it will need to be amended to reflect additional facts since I filed the claim - testimony presented to Lawmakers. The Lawmakers findings that Registry counsel was typically unmotivated and unqualified, providing unequal representation to CCR and the action taken, closing the Registry program and re-opining CCR in the northern district, specifically noting that in spite of these facts, Lawmakers forced everyone with Registry counsel to keep them until executed.

In my case the Court order (enclosed) conflicts of all state provided counsel and it guarantees whoever accepts my case is paid their cost and fee.

A lot of my claims can be brought under Martinez and Travens, but there are many others that can not. On those the equal protection claim is my only source of relief. It activates

the 'State impediment and miscarriage of justice' jurisdictional provisions, allowing an attorney to fix the errors caused by the impediment.

The equal protection claim is real and entirely winnable but, personally, as it could affect 100 plus Capital appellants, many currently on Pam Bondi and Governor Scott's kill list, I don't think the State will risk a judgment against them. Instead they will concede my 3.850 claims mooting any equal protection claim. Still I need a really good attorney / firm to give force to my claims and if required push them to judgment.

You probably know more about the death penalty than anyone in the Unite States . I know you have a lot of connections around the Country. I hope after reading everything, you will recommend some attorney / firm

EXHIBIT 25

06 JUNE 2011

ERIC BRANCH 513067
DEATH ROW UNIT P-3223
7819 NW 228 St.
RAIFORD, FL 32026-4430

RECEIVED
JUN 14 2011
FLORIDA JUSTICE INSTITUTE, INC.

RANDALL C. BERG, JR.
FLORIDA JUSTICE INSTITUTE, INC.
4320 BANK OF AMERICA TOWER
100 S.E. SECOND STREET
MIAMI, FLORIDA 33131

DEAR MR. BERG,

I'M SURE YOU HAVE RECEIVED LETTERS CONCERNING THIS MATTER, BUT STILL, I HOPE YOU WILL TAKE A MOMENT TO REVIEW MY POSITION, AND PROVIDE ME YOUR OPINION.

IF YOU REMEMBER, 4 YRS. BACK WE DISCUSSED CANTEEN PRICES. YOU REVIEWED THE ISSUE AND DETERMINED THAT THE F.D.O.C HAS SET CANTEEN PRICES BY STATUTE AT "FAIR MARKET VALUE", LEAVING NO GROUNDS FOR LEGAL ACTION. HOWEVER, SINCE THEN, I BELIEVE CONDITIONS HAVE CHANGED. CANTEEN PRICES HAVE INCREASED SEVEN (07) TIMES SINCE YOU FIRST REVIEWED THIS ISSUE, IN, I BELIEVE, 2008. ALLOW ME TO BRIEF OVER OUR LEGAL POSITION FOR YOU.

FIRST POINT:

CONDUCTING OUR OWN RESEARCH, IN COMPARING THREE MAJOR GROCERY CHAINS AND THE PRISON CANTEENS FROM 22 DIFFERENT STATES WITH FLORIDAS CANTEEN PRICES, THE PRICES IN FLORIDA ARE ON AVERAGE 300 TO 1200 % HIGHER. [CALCULATION BASED ON A PER OUNCE PRICE. FOR EXAMPLE, INDIANA & CALIFORNIA SALE CHIPS

IN 12 OZ. BAGS @ 1.23. GROCERY STORES BETWEEN .99 AND 1.29 $. FLORIDA OFFERS 1.5 OZ BAG @ .75, PLACING FLORIDA 600% HIGHER ON A PER OUNCES BASES].

CLEARLY, THE F.D.O.C & KEEFE ARE NOT ESTABLISHING ITEMS FOR PURCHASE AT FAIR MARKET VALUE.

SECOND POINT:

THE GREATER WEIGHT OF EVIDENCE SUGGEST THAT FLORIDA & KEEFE CORPORATION ARE USING THE BUILT IN MONOPLY OVER THE PRISON CANTEEN SERVICES TO ILLEGALLY PRICE FIX THE PRICE OF ITEMS SOLD ON CANTEEN ABOVE FAIR MARKET VALUE BY PLACING SEVERE RESTRICTIONS ON THE ITEMS SELLING THE SMALLEST OUNCES AND LOWER QUALITY ITEMS ONLY, FURTHER LIMITING COMPETITION WITHIN A ALREADY FIXED MARKET

FOR EXAMPLE. COUNTING THE NUMBER OF FOOD AND BEVERAGE ITEMS SOLD CALIFORNIA OFFERS 376 ITEMS, INDIANA 237, OREGON 210, MASS. 245. FLORIDA HAS A TOTAL OF 81 DIFFERENT ITEMS. SOLD ON THE PRISON CANTEEN.

THE F.D.O.C AND KEEFE RESTRICT THE NUMBER OF ITEMS SOLD ON CANTEEN TO A SINGLE LOW QUALITY / LOW COST PRODUCT. OFFERING IT FOR SALE AT INFLATED PRICE COMPARABLE TO THE HIGH QUALITY / COST PRODUCT, WHICH ISN'T OFFERED. WHEREAS, OTHER STATES OFFER A WIDE SELECTION OF PRODUCTS IN BOTH QUALITY AND COST. ESTABLISHING COMPETITION AMOUNG THE PRODUCTS WITHIN THE CLOSED MARKET, PUSHING DOWN THE AVERAGE PER OUNCE UNIT PRICE.

UNDER FLORIDAS SCHEME, PROVIDING NO SELECTION OF PRODUCTS, FLORIDA IS ABLE TO FORCE INMATES DESPERATE FOR SUPPLIES TO PURCHASE INFERIOR PRODUCT AT A PRICE WELL ABOVE ITS VALUE AND FAIR MARKET PRICING.

THIRD POINT:

THE F.D.O.C. AND KEEFE ROUTINELY BREAK OPEN BOXES, THAT ARE MARKED 'NOT FOR INDIVIDUAL SALE', OFFERING A SINGLE ITEM FROM THE BOX FOR RE-SALE. FOR EXAMPLE... SWISS ROLLS ARE PACKAGED IN BOXES OF SIX (6) PACKS. [TWO ROLLS PER PK, 12 TOTAL OZ.]. IN OTHER STATES, THEY SALE THE ENTIRE BOX. MASS. IT'S $1.60, IN OREGON $1.59, INDIANA $1.49. WHEREAS, IN FLORIDA, THEY SALE ONLY SINGLE PACKS WITH TWO ROLLS @.50 EACH [OR 3.00 PER BOX];

IT IS OUR CONTENTION THAT THE RE-SALE OF ITEMS IN THIS MANNER VIOLATES 15 U.S.C. 41 OF THE FEDERAL TRADE COMM. ACT. AND IF NOTHING ELSE IT'S ANOTHER FORM OF MANIPULATING THE CLOSED MARKET TO INFLATE THE PER OUNCE UNIT PRICE ABOVE FAIR MARKET VALUE.

FOURTH POINT:

BY CONTRACT, KEEFE IS REQUIRED TO PAY FLORIDA A PER DIEM OF 99¢ DAILY PER INMATE. OR ABOUT 34 MILLION A YEAR. THIS PAYMENT AMOUNTS TO LITTLE MORE THAN A 'PAY TO PLAY' SCHEME, AND IF CORRECT, IT IS ILLEGAL. FLORIDA STATUTE AUTHORIZES THE F.D.O.C. TO ESTABLISH A CRITERIA FOR PRICING PRODUCTS SOLD ON CANTEEN AT 'FAIR MARKET VALUE'. NOTHING IN THE STATUTE AUTHORIZES THE F.D.O.C TO CHARGE KEEFE AN ADDITIONAL 34 MILLION DOLLARS YEARLY SIMPLY TO GAIN ACCESS TO FLORIDAS PRISON CANTEEN MONOPLY.

PRIOR TO THE FAIR MARKET STATUTE, STATE LAW RESTRICTED CANTEEN OPERATIONS IN TWO WAYS, *1* INDIVIDUAL PRISONS WERE REQUIRED TO OFFER CANTEEN CONTRACTS TO LOCAL VENDORS, AND *2* PRICES COULD NOT EXCEED 33 1/2% OF COST. [ALSO ALL PROFITS WERE DEPOSITED IN 'INMATE WELFARE TRUST FUND' FOR THE BENEFIT

OF INMATES].

ONE OF MICHAEL MOORE'S FIRST ACTS AS SECRETARY WAS TO LOBBY STATE LAW MAKERS TO CHANGE THOSE RESTRICTIONS, IMPLEMENTING THE FAIR-MARKET STATUTE. MR MOORE ARGUED THAT THE F.D.O.C. COULD LOWER THE COST OF OPERATING THE PRISON CANTEENS AND INCREASES PROFITS, WHILE AT THE SAME TIME LOWER THE OVERALL PRICE ON CANTEEN PRODUCTS BY CONSOLIDATING THE PRISON CANTEENS THROUGH-OUT THE STATE INTO A SINGLE STATE-WIDE CONTRACT, AWARDED TO A SINGLE DISTRIBUTER. HE CALLED IT THE 'WAL-MART MODEL'. THE F.D.O.C. AND CONTRACTOR WOULD SPLIT ALL PROFITS ABOVE COST AT A NEGOTIATED RATE.

NOW, OTHER THAN INCREASING STATE REVENUE, NONE OF THAT CAME TRUE. PROBABLY BECAUSE WAL-MART HAS COMPETITION IN THE MARKET FROM FIVE OR SIX DIFFERENT STORES. ANYWAY, IT IS OUR CONTENTION THAT NOT ONLY IS IT NOT AUTHORIZED BY STATUTE AND THUS ILLEGAL, BUT THE 34 MIL DOLLARS KEEFE PAYS THE F.D.O.C. IS A LARGE REASON WHY CANTEEN PRICES ARE SET SO HIGH. INSTEAD OF THE CRITERIA FOR ESTABLISHING FAIR-MARKET VALUE STARTING AT ZERO DOLLARS, IT STARTS AT 34 MILLION DOLLARS, A NUMBER THAT EXPLAINS THE 300 TO 1200 % DIFFERENCE IN PRICE

FIFTH POINT:

THE PRISON CANTEEN OPERATIONS IS A CLOSED MARKET. IN CONTRACTING WITH A PRIVATE CORPORATION TO EXCLUSIVELY CONDUCT COMMERCE IN THE CLOSED MARKET. SUPREME COURT PRECEDENT REQUIRES THE STATE TO IMPLEMENT GREATER OVERSITE REGULATIONS AND PROTECTIONS FOR THE CONSUMER TO OFF-SET THE LACK OF COMPETITION WITHIN THE MARKET. AFTER ALL, THE PRIVATE COMPANY IS GUARANTEED EXCLUSIVE RIGHTS [MONOPLY] OVER THE CONSUMER IN A ARTIFICALLY

CREATED MARKET.

IT IS OUR CONTENTION THAT THE TERM 'FAIR MARKET VALUE' IS TO VAGUE AND OVERBROAD TO PROVIDE ADEQUATE PROTECTION FOR THE CONSUMERS WITHIN THE PRISON WHO ARE FORCED, OUT OF DESPERATION TO PURCHASE ALL FOOD, BEVERAGE, HYGIENE AND WRITING SUPPLIES AT WHATEVER PRICE THE F.D.O.C AND KEEFE DEEM APPROPRIATE.

WE BELIEVE THE FACTS ESTABLISH SUFFICIENT GROUNDS TO BRING LEGAL ACTION AGAINST THE F.D.O.C AND KEEFE AND INTEND TO FILE A ACTION WHEN OUR GRIEVANCES OUR COMPLETE, SO IF YOU DISAGREE, EXPLAIN WHY, AS THE LAST THING WE WANT TO DO IS FILE A SUIT THAT PROVIDES A BAD RULING CREATING WORSE CONDITIONS.

ON A SEPERATE MATTER, WHAT IS THE STATUS OF THE ACTION CHALLENGING THE STATUTE PROHIBITING ADVERTISING FOR PEN PALS?
I HOPE MY RECORDS HAVE PROVEN USEFUL TO YOU.

I APPRECIATE YOU GIVING OUR POINTS CONSIDERATION AND SHARING YOUR THOUGHTS.

TAKE CARE

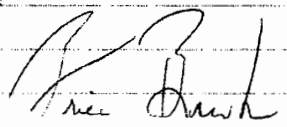


EXHIBIT 26

Dear Mr. Blume,

November 4, 2013

Several months ago, I approached you about representing my cousin, Eric Branch, who is on Florida's Death Row. I return now, hoping I can change your mind or get you to provide contact information of any other firm/attorney you believe might be willing and able to help.

In Eric's case, he has no attorney, but the court order conflicts all state-provided counsel off his case. As a result, the court has given Eric until November 26th to find an attorney. The court order guarantees the attorney payment of cost and fees (a minimum of $125/hr).

Since I last contacted you, a lot has changed in Florida. Immediately after Eric filed his Pro Se Post-Conviction petition and 1983 Equal Protection Action, lawmakers quickly introduced a bill, heard testimony and voted to shut down the Registry program and re-open the CCR Northern District. In committee and on the floor, lawmakers repeatedly condemned the Registry program for providing unmotivated and unqualified attorneys, finding them unequal to CCR offices.

The lawmakers actions substantiate the claims Eric presented in his Pro Se Equal Protection Action (attached). However, in a cruel twist, despite re-opening the Northern CCR, lawmakers left all Capital appellants with Registry counsel until executed.

I think you will agree, based on the facts raised in the petition and lawmakers actions since, that Eric's Equal Protection claim is real and entirely winnable under the facts of his case. Importantly, it also affects 100 plus other Capital appellants, many who now sit on Pam Bondi and Governor Scott's Kill List (the most recent count had 136 on the Kill List). I could be wrong, but given the damage an adverse judgment would cause, I bet in Eric's case, they will try to concede the Post-Conviction claims, hoping they will moot the Equal Protection claim either way. Eric needs a good attorney/firm to give force to his claims, ready to push them to a settlement or a judgment.

In addition to the previous document I sent, I have enclosed the following documents:

- Form letter outlining the case
- Mixed petition Rule 3.850 Motion/1983 Equal Protection Action
- Rule 3.853 Motion for DNA Test with exhibit and amendment
- Letter from the Department of Justice (possibly a significant issue)
- Court Order granting Eric appointment of any counsel Eric can find

I realize this is a lot to read but given the nature of what we are discussing, I hope you will read it all before making a decision and then, if you remain unable to accept his case, please provide contact information of firms/attorneys you think may be able to help him. I await your reply.

Thank you,
Alex Branch

EXHIBIT 27

Alex Branch
1121 Parke Ridge Court
Evansville, IN 47715
alexbranch@hotmail.com

khuggins@sidley.com

Dear Ms. Huggins,

I am writing on behalf of my cousin, Eric Branch, who is on Florida's Death Row. I hope after reading the attached documents, you will help by either agreeing to represent Eric or by providing contact information of any attorney/firm you think might be willing to help.

Eric has no attorney. The attached court order makes clear that all state-provided counsel is conflicted off his appeal. The court has given Eric until November 26th to locate counsel who will accept appointment to his case. The court order provides for fees and costs to be paid (at a minimum of $125/hr). He has no phone access to contact attorneys and no access to a computer and mail turnaround time is very slow, so it has been nearly impossible for him to find someone to represent him.

Eric filed several Pro Se motions that I believe were disregarded because he officially had representation despite a ruling two years ago to the contrary.

I have attached several documents:

- The mixed petition rule 3.850 motion/1983 Equal Protection Action
- The Rule 3.853 Motion for DNA test with exhibits and amendments
- A letter from the department of Justice regarding issues with expert testimony
- The court order granting appointment and payment to any attorney Eric can find.

There are also three letters in the file of documents at the beginning that you may disregard.

Immediately after Eric filed his Pro Se Post-Conviction petition and Equal Protection 1983 Action, lawmakers quickly introduced a bill and subsequently re-opened the CCR Northern District. In Committee and on the floor, lawmakers repeatedly condemned the Registry Program for providing unmotivated and unqualified attorneys, finding them unequal to CCR offices.

The lawmakers' actions substantiate the claims Eric presented in his Pro Se Equal Protection Action. However, in a cruel twist, despite reopening CCR in the Northern District, lawmakers forced all Capital Appellants currently represented by Registry Counsel to keep them until executed.

I think you will agree, based on the facts raised in the petition and the lawmakers' actions, that Eric's Equal Protection Claim is real and winnable. While a lot of the claims can be brought under Martinez and Travino, many more cannot. On those the Equal Protection claim is the only source of relief, activating the 'State Impediment" and 'Miscarriage of Justice' jurisdictional provisions.

Personally, given the damage an adverse judgment would cause the State, I don't believe they will let it get far. I think in Eric's case they will try to concede post-conviction claims, hoping that will moot the Equal Protection claim. However, I do not believe that will happen without a good attorney/firm pushing the claims towards a judgment.

I know this is a lot to read, but given the serious nature of what we're discussing, I hope you will read it all before you decide. If you don't think you can accept Eric's case, please provide contact information for any attorneys or firms that you think might help.

Thank you for your time and consideration. I await your response.

Sincerely,

Alex Branch

EXHIBIT 28

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Lawyer/Organization Contacted	Date	Contact	Type of Contact	Response
Ken Driggs	Multiple contacts; specific dates unknown	Eric Branch	Letter	Mr. Driggs corresponded fairly regularly with Mr. Branch and tried to help him find a lawyer.
Stephen Hanlon, Holland & Knight	July 8, 2012	Alex Branch	E-mail	
Roy Black, Roy Black Law	July 8, 2012	Alex Branch	Email	Email response recommending that Alex find a New York law firm to take the case pro bono
Emily Williams, American Bar Association	Repeated contact	Alex Branch	Email	Extensive search to find a lawyer for Mr. Branch; ultimately connected him with James Cromey and Quarles & Brady
Marty McClain	July 8, 2012	Alex Branch	Email	
Linda McDermott	July 8, 2012	Alex Branch	Email	
Randall Berg, Florida Justice Institute	July 8, 2012	Alex Branch	Email	Declined to get involved, but forwarded email to others
Jerry Hartman, Drinker, Biddle, & Reath LLP	August 10, 2010; July 8, 2012	Eric Branch; Alex Branch	Letter; Email	

John Blume, Cornell Law School Death Penalty Project	July 8, 2012	Alex Branch	Email	
Mark Olive	July 8, 2012	Alex Branch	Email	
Lonnie Rosenwald	July 8, 2012	Alex Branch	Phone and email	Mr. Branch's daughter, Nicole Goldberg, is Ms. Rosenwald's adopted daughter. She discussed Mr. Branch's case with Alex Branch several times.
Clive Stafford Smith, Reprieve	August 10, 2012	Alex Branch	Email	
Terence Lenamon	Undated	Eric Branch	Letter	
Jenny Greenberg	Undated	Eric Branch	Letter	
Professor Michael Radelet	October 14, 2013	Eric Branch	Letter	
Buddy Schulz, Holland & Knight	November 4, 2013	Alex Branch	Email	
Marcia Silvers	November 4, 2013	Alex Branch	Email	
Kelly Huggins, Sidley Austin	Undated	Alex Branch	Email	
Sonya Rudenstine	Repeated contact			
Karen Gottlieb	November 6, 2013	Sonya Rudenstine	Email	
Stephen Harper	December 11, 2013	Karen Gottlieb	Email	

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

EXHIBIT 29

Attached find a draft copy of a legal petition written by Eric Branch that challenges Florida's Capital Appellate System, as well as Eric's own conviction and sentence. Eric is currently in Florida under sentence of death. He has no attorney, nor does he have any appeals remaining in the court. However, as the attached demonstrates, Eric has legally meritorious claims that can and should be raised. To summarize those claims:

At the trial stage, indicted on Capital Murder charges, Eric met his attorney only 13 days prior to the trial to discuss a defense. Since the trail, the attorney admitted that in preparing for the trial, he did not interview witnesses. He did not conduct any investigation. He did not consult or hire any experts. He did not secure records from Eric's childhood. He did not investigate possible mitigation. He did not research the nature of Eric's out of state conviction. According to the attorney, he prepared solely by reading the file provided by the Prosecutor and a "few articles". After less than three hours, Eric was convicted and subsequently sentenced to death. Despite the trial attorney admitting these facts at the evidentiary hearing, post-conviction counsel never attempted to make them the central focus of appeal.

The sentence and conviction were upheld on direct appeal, after which the state appointed Eric attorneys from the office of Capital Collateral Representation (CCR), the state agency responsible for providing effective representation to all Capital post-conviction appellants. Originally, CCR operated as a single office located in Tallahassee, Florida. However, as part of an effort to alleviate a backlog of conflict cases in 1997, CCR was split into three separate regional offices: Northern, Middle and Southern. Eric's appeal remained in the Northern region, where a full defense team was assigned to his appeal consisting of two attorneys, two investigators with support staff and in-house experts. However, due to the massive backlog of appeals, administrative budget issues, and shortages of attorneys, Eric's appeal sat almost dormant until 2002.

In July 2003 further changes were made to CCR in a move that appears to rest purely on politics. Law makers amended Sections 27.7002, 27.710 and 27.711 F.S. to establish a pilot program which had the effect of closing down the CCR office in the Northern Region. The Capital appellants in that region, including Eric, were forced to switch to a private attorney from a registry of attorneys the state approved to represent Capital appellants. To qualify for placement on the registry list, attorneys must agree to sign a contract with the state dictating the terms of representation counsel can provide and caps the fees they receive. The pilot program did not affect the CCR office in the Southern and Middle regions, they remain operational. Only the Northern region was closed down.

At the time that the CCR Northern region was closed, Eric had a full defense team and access to an office full of attorneys, support staff and in-house experts. In 2002, the defense team was in the early stages of preparing Eric's appeal for the evidentiary hearing and full briefing. As a result of the lawmakers' decision, Eric was forced to switch to the registry program, where Eric was appointed a single attorney who did not even have a law office, actually working out of his garage. Initially, the attorney told Eric that he intended to adopt the CCR defense. However, at the evidentiary hearing, the attorney failed to present evidence to support most lines of defense that CCR had intended to raise. Eric confronted the attorney, who told him that as a result of the fee caps, he did not have the funding in State court to present the CCR defense, but "don't worry", he assured Eric, things will be different in the Federal court

where the fee caps and contractual restrictions did not apply. He would raise everything under State Impediment.

Despite those assurances, when the attorney filed Eric's Federal appeal, none of the claims were included. Acting pro se, Eric immediately informed the court that he wanted to dismiss the attorney and amend his petition. When the court did not respond, Eric filed a fifty-plus page conflict of counsel motion, again asking that counsel be dismissed and he be allowed to amend the petition. The court denied the motion stating Eric had no right to effective assistance of counsel, and thus, no right to conflict-free counsel. After that, under pressure, Eric had counsel move to withdraw. While acting pro se, Eric filed in support of the motion, stating he would precede pro se. The court denied the attorney's request. Upon receiving that news, Eric informed both the court and the attorney that he was fired. Eric moved to proceed pro se and the attorney filed a second motion to withdraw. That motion was denied and Eric's motions were returned, stating that since he had counsel, they were "illegal filings". Acting pro se, Eric filed approximately thirty motions to correct and strike the attorney's filings. All were returned as "illegal filings". It was only after the 11th Circuit refused to hear the appeal on his third motion, that the attorney was allowed to withdraw. For two years since then, Eric has been without an attorney, filing Certiorari to the Supreme Court on his own.

As demonstrated in the attached, Eric has meritorious claims to raise. Eric drafted the complaint, a mixed petition, presenting a Section 1983 action and a successive Rule 3.850 State Post-conviction challenge to the State's Capital Private Attorney Registry Program using the facts of his case to establish systematic failures and grossly disparate quality of representation in Florida's Capital Registry System compared to CCR offices.

Eric alleges that this created two distinct and different forms of representation for post- conviction appellants. CCR gives clients a full defense team with support staff and expert analysis. They have no fee caps and don't sign contracts with the State. The Registry assigns one attorney and restricts that one attorney by fee caps and forces them to sign a contract with the State. Given that no valid reason exists for lawmakers to treat Capital appellants in the Northern region differently than those in the Southern and Middle regions, the State of Florida is applying Sections 27.7002, 27.710 and 27.711 F.S. in a manner that violates his (and all similarly situated appellant's) rights to be treated equally under the law, contrary to the State and Federal Constitutions.

Moreover, as the petition demonstrates, the forced switch to Registry counsel has been devastating, not only to Eric, but a majority of the Capital appellants from the Northern region as well, who have suffered procedural and time bars. In linking the constitutional nature of his own conviction and sentence to the greater failings of the Capital appellant system, Eric demonstrates the extent to which he and others have suffered severe and unprecedented prejudice, making this action one that not only could save Eric's life, but save the lives of many other Capital appellants and change Florida's appellate system. However, given the magnitude of what Eric intends to argue, this challenge will require an attorney who is not afraid to mix it up and take on an entire state. If interested, please read the attached.

We appreciate your time and consideration of this matter.

EXHIBIT 30

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

ERIC SCOTT BRANCH,

Petitioner,

v. CASE NO. 4:06cv486-RH

JAMES R. McDONOUGH, et al.,

Respondents.

_____/

ORDER REQUIRING THE PETITIONER TO FILE A NOTICE OF ATTORNEYS WILLING TO ACCEPT AN APPOINTMENT[1]

The petitioner Eric Scott Branch was convicted and sentenced to death in Florida state court. His petition in this court challenging the conviction and sentence under 28 U.S.C. § 2254 was denied. He appealed. The United States Court of Appeals for the Eleventh Circuit affirmed.

Mr. Branch was represented in this court and in the Eleventh Circuit by attorney Michael Paul Reiter. After the Eleventh Circuit's ruling, Mr. Reiter

[1] This order is identical to an order entered yesterday—on August 20, 2013—except that the title has been corrected. This order supersedes that order in its entirety.

moved in that court for leave to withdraw, based on Mr. Branch's repeated attacks on Mr. Reiter's representation and Mr. Branch's allegation that Mr. Reiter, as an attorney on the Florida registry of death-penalty attorneys, had a conflict of interest. The Eleventh Circuit allowed Mr. Reiter to withdraw but did not appoint a new attorney.

On June 24, 2013, Mr. Branch, acting *pro se*, filed in this court a motion to appoint an attorney. ECF No. 68. In response, the state has agreed that an attorney should be appointed, though only for purposes of any collateral proceedings, not for purposes of any civil action of the kind Mr. Branch apparently envisions filing to challenge Florida procedures generally.

No order of this court has granted Mr. Reiter leave to withdraw, but the Eleventh Circuit's order makes clear that Mr. Reiter cannot continue. The Eleventh Circuit's order either grants leave to withdraw from representing Mr. Branch in this court as well as in the Eleventh Circuit, or the order at least constitutes a ruling of the Eleventh Circuit that under the circumstances Mr. Reiter is entitled to withdraw—a ruling that is either binding or that I should follow. In short, the Eleventh Circuit has settled the issue of whether Mr. Reiter can continue.

The Eleventh Circuit did not, however, appoint a new attorney. So it falls to me to do so. It is no easy task. Florida attorneys who are competent and willing to accept death-penalty collateral cases ordinarily are listed on a registry established

under state law. Mr. Branch's position, though, is that all registry lawyers have a conflict of interest, in light of his challenge to the registry system. It was that position that led to Mr. Reiter's motion to withdraw—the motion the Eleventh Circuit granted. So now Mr. Branch has no attorney, and there is no obvious source of attorneys who are competent and willing to accept an appointment to represent him. Perhaps that has been Mr. Branch's goal all along.

At my direction, my staff has contacted attorneys to determine their willingness to accept an appointment. None have agreed to do so. Although a party seeking an appointed attorney ordinarily is not allowed to choose an attorney, in this instance Mr. Branch will be given an opportunity to do so. Accordingly,

IT IS ORDERED:

Mr. Branch must file within 90 days a notice of one or more attorneys who are willing to accept an appointment to represent him and who Mr. Branch does not contend have disqualifying conflicts of interest.

SO ORDERED on August 21, 2013.

s/Robert L. Hinkle
United States District Judge

EXHIBIT 31

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

ERIC SCOTT BRANCH,

Petitioner,

v. CASE NO. 4:06cv486-RH

JAMES R. McDONOUGH, et al.,

Respondents.

_____/

ORDER GRANTING THE MOTION TO APPOINT AN ATTORNEY AND PROVIDING ACCESS TO THE FILE

The petitioner Eric Scott Branch's unopposed motion to appoint an attorney, ECF No. 68, is GRANTED. An attorney will be appointed. Until an attorney is appointed, the clerk must provide access to the electronic case file without charge to any attorney who indicates the attorney is willing to consider accepting an appointment.

SO ORDERED on July 30, 2013.

s/Robert L. Hinkle
United States District Judge

EXHIBIT 32

U.S. Department of Justice

Criminal Division

Office of Enforcement Operations

Washington, D.C. 20530

JUL 16 2013

Eric Scott Branch
Union CI – Inmate Mail
P.6114
7819 NW 228th ST
Raiford, FL 32026-4000

Mr. Branch:

As you may be aware, in 1996, following allegations of improper practices by certain FBI Laboratory examiners, the United States Department of Justice established a Task Force to ensure that no defendant's right to a fair trial was jeopardized by the questioned performance of a criticized FBI Laboratory examiner. A subsequent Office of Inspector General Report (OIG Report), issued in 1997,[1] specifically identified 13 examiners whose work may have failed to meet professional standards.[2]

The work of one or more of the 13 criticized examiners is believed to have been involved in the criminal prosecution against you, in the case(s) identified in the attachment. It is possible that you or your counsel previously received notice of the OIG Report from the prosecutor's office responsible for the prosecution at issue, or that you or your counsel otherwise became aware of the criticisms, as they were widely known and the subject of many media reports. However, in an abundance of caution, we are bringing the OIG Report directly to your attention, as we have no information suggesting that you are currently represented by counsel. If you have any questions about the implications of the report for the prosecution at issue, you (or your counsel, if you are represented) should direct your inquiries to the prosecutor's office responsible for prosecuting your case. Any inquiries to my office should be addressed in writing to: Rena Kim, 1301 New York Avenue, N.W., Washington, D.C. 20005.

Sincerely,

Monique Perez Roth
Director

[1] "The FBI Laboratory: An Investigation into Laboratory Practices and Alleged Misconduct in Explosives-Related and Other Cases" (April 1997). The report can be found online, at http://www.justice.gov/oig/special/9704a/.
[2] The criticized examiners were Richard HAHN, Robert HECKMAN, Wallace HIGGINS, Alan JORDAN, Lynn LASWELL, Michael MALONE, Roger MARTZ, J. Christopher RONAY, Terry RUDOLPH, James Thomas THURMAN, Robert WEBB, Frederic W. WHITEHURST, and David WILLIAMS.

EXHIBIT 33

27 April 2010

ERIC BRANCH #313067
UCI 6114
7819 NW 228TH ST
RAIFORD FL 32026-2601

ASA Death Penalty Rep. Project.
740 15th Street, NW
Washington, DC 20005

Dear Ms Hughes.

Sorry to be so blunt. But I need a attorney.

I am under sentence of death. My habeas petition was denied 31 March 2010 in the Northern District Florida, District Court. My appeal will be in the 11th Circuit.

Currently, I do not have a attorney. Registry counsel in Florida conflicted off my case last week. Since than, I've filed a timely Rule 59 (e) motion, and Notice of Appeal, pro se.

I've enclosed a copy of my pro se filings.

The Rule 59 (e) motion will lay out the issues I need presented in Application for COA and hope to appeal to the 11th Circuit.

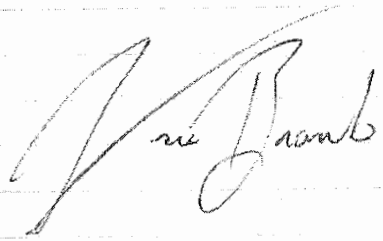
I imagine the Dist. Ct. Judge will quickly dispose of the Rule 59 (e) motion, so time is a issue.

If needed, you can set up a phone call with me by contacting the prison.

I REALLY HOPE YOU CAN HELP ME LOCATE SOMEONE TO REPRESENT ME. OR ATLEAST SOMEONE WHO CAN HELP WITH COA AND THEN, ASK THE 11TH CIRCUIT TO HELP FIND A ATTORNEY FOR APPOINTMENT.

I AWAIT YOUR RESPONSE.

SINCERELY



29 April 2010

Eric Branch #513067
Union Corr. Inst. P-6114
7819 NW 228 St
Raiford, Fl 32026-4460

Ms. Emily Williams
740 15th Street NW
Washington, DC 20005

Ms Williams:

My Grandma forwarded copies of your email to me. I was not aware she was contacting you. Just yesterday, by regular mail, I sent Ms Katie Hubbies in your office a package of all the motions I've filed pro se since being denied on Habeas Petition in the Dist. Ct. N.D. Fla., asking for help in finding a good attorney

Counsel for the state Registry system conflicted off, leaving me without counsel. He wasn't a bad guy, but doesn't practice in the 11th Circuit anyway, so he figured I might be able to use the conflict claims, or atleast new counsel might find them useful.

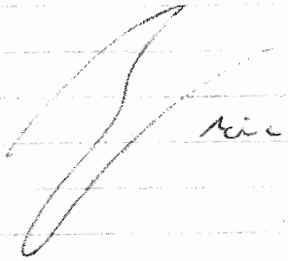
That leaves the state unable to appoint new counsel. Not that I want the State to throw someone off on me who is just going to go through the motions, I don't. The Registry system is scary, time-barring nearly 30 guys now. Procedurally barring far more issues of their clients. It's a bad situation.

So hopefully you can help find me a lawyer/ law firm, that will fight for me. Review the material I sent Ms Hubbies.

I THINK I HAVE A FEW GOOD ISSUES. HOPEFULLY YOU'LL AGREE AND WILL HELP FIND SOMEONE WHO WILL VIGOROUSLY PURSUE RELIEF ON THE CLAIMS.

WRITE OR SET UP A PHONE CALL IF YOU HAVE ANY THOUGHTS OR QUESTIONS.

THANK YOU FOR YOUR TIME AND ASSISTANCE.
TRULY.



22 JUNE 2010

Eric Branch 313067
U.C.I. Bldg, P-6114
7819 N. W. 228th Street
Raiford, FL 32026-4460

MS. EMILY M. WILLIAMS
ABA DEATH PENALTY REPRESENTATION PROJECT
740 15TH STREET, NW
WASHINGTON, DC 20005-1022

DEAR MS. WILLIAMS,

I WANT TO ASK IF YOU HAVE MADE ANY PROGRESS IN LOCATING A ATTORNEY/LAW FIRM TO REPRESENT ME ON APPEAL TO THE 11TH CIRCUIT AND BEYOND?

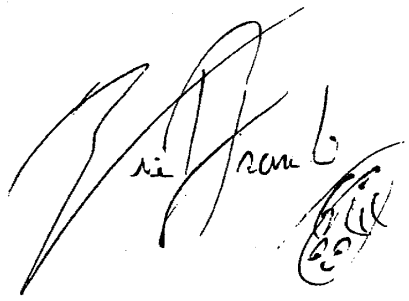
I MAILED YOU SOME LEGAL DOCUMENTS. DID YOU RECEIVE THEM? THE RULE 59(e) MOTION HAS SINCE BEEN DENIED BY THE DIST CT. N.D. FLORIDA.
ALSO, I FILED A PRO SE APPLICATION FOR CERTIFICATE OF APPEALABILITY ON THE 15TH JUNE 2010.
AND, STATE-APPOINTED REGISTRY ATTORNEY HAS FILED TO WITHDRAW. INFORMING THE COURT THAT IT WOULD BE UNETHICAL AND BREAK STATE LAW TO CONTINUE THE REPRESENTATION. THE CONFLICT WOULD BAR RE-APPOINTMENT OF STATE-APPOINTED ATTORNEY FROM THE REGISTRY SYSTEM.

IN A MOTION SUPPORTING THE ATTORNEYS MOTION TO CONFLICT OFF THE APPEAL, I INSTRUCTED THE 11TH CIRCUIT THAT I CONTACTED YOU FOR HELP IN LOCATING REPLACEMENT COUNSEL TO HANDLE

MY APPEAL IN THE 11TH CIRCUIT AND BEYOND.
HAVE YOU HAD ANY LUCK LOCATING SOMEONE? DO YOU REQUIRE MORE LEGAL DOCUMENTS? DO YOU ACTUALLY INTEND TO HELP ME LOCATE A LAW FIRM OR ATTORNEY?

WHATEVER THE SITUATION. PLEASE GET BACK TO ME AS I DO NOT WANT TO BE SEEN BY THE 11TH CIRCUIT AS HAVING MISLEAD THE COURT.
SHOULD I HAVE THE COURT CONTACT YOU? POSSIBLE MY FORMER ATTORNEY? LET ME KNOW.

THANK YOU



24 JUNE 2010

ERIC BRANCH 313067
UNION CORR. INST. T-6114
7819 NW 228 ST.
RAIFORD, FL 32026-4460

EMILY M. WILLIAMS
740 15TH STREET, NW
WASHINGTON, DC 20005-1022

DEAR MR. WILLIAMS.

ENCLOSED. FIND A COPY OF: APPLICATION FOR CERTIFICATE APPEALABILITY, APPENDIX AND MOTION TO EXCEED 30 PAGE LIMIT.

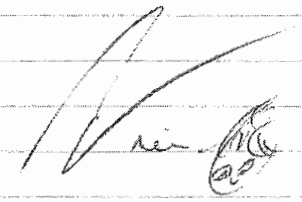
THE COURT REJECTED EACH STATING I CAN NOT FILE ANYTHING PRO SE. HOWEVER, COUNSEL HAS FILED TO WITHDRAW, AFTERWHICH, BASED ON THE ALLEGATIONS IN HIS CONFLICT MOTION, I FIRED HIM. HE TOLD THE COURT THAT HE WOULD NOT BE FILING ANYTHING ELSE ON MY BEHALF, AND TO DATE, HE HASN'T.

AS I WROTE EARLIER THIS WEEK, I HAVE INFORMED THE COURT THAT MY FAMILY AND I HAVE CONTACTED YOU. IN HOPES OF LOCATING SUBSTITUTE CONFLICT COUNSEL. MAYBE A REVIEW OF MY APPLICATION FOR COA. WILL HELP, AS ANY PROSPECTIVE LAWYER OR LAW FIRM CAN GET A IDEA OF MY ISSUES

IF YOU CANNOT FIND ANYONE WILLING TO HELP, PLEASE LET ME KNOW, BECAUSE WITH A DEATH SENTENCE HANGING

OVER MY HEAD. I DONT WANT TO GET STUCK WITH NO REPRESENTATION. I'M NOT A FOOL.

I APPRECIATE YOUR TIME AND CONSIDERATION OF THIS MATTER.
THANK YOU



-2-

25 JULY 2010

Eric Branch 313067
U.C.I. Bldg, P-6114
7819 N. W. 228th Street
Raiford, FL 32026-4460

EMILY M. WILLIAMS
ABA DEATH PENALTY REPRESENTATION PROJECT.
740 15TH STREET, NW
WASHINGTON, DC 20005-1022

Ms WILLIAMS.

I HOPE ALL IS WELL? I HAVE NOT HEARD ANYTHING IN RETURN TO MY INQUIRIES CONCERNING COUNSEL, HAVE YOU HAD ANY LUCK IN FINDING A LAW FIRM/ATTORNEY INTERESTED IN REPRESENTING ME?

PLEASE LET ME KNOW SOMETHING.

AS I INDICATED LAST LETTER, THE 11TH CIRCUIT HAS REFUSED TO ALLOW MY PRIOR ATTORNEY TO WITHDRAW, AS HE REQUESTED IN HIS CONFLICT MOTION, UNLESS SUBST-ITUTE COUNSEL IS AVAILABLE TO TAKE OVER REPRESENTATION. SINCE THEN, THEY VE ALSO REFUSED MY REQUEST TO PROCEED PRO SE. OR LEAVE TO SUPPLEMENT THE ATTORNEYS PLEADINGS TO REFLECT MY WISHES FOR THE DEFENSE.

ITS GETTING DIRE, I GOTTA HAVE A ATTORNEY OR ELSE THE 11TH CIRCUIT IS GOING TO FORCE ME TO ACCEPT REPRESE-NTATION FROM A ATTORNEY WHO INFORMED THE COURT, HE COULD NOT ETHICALLY REPRESENT ME.

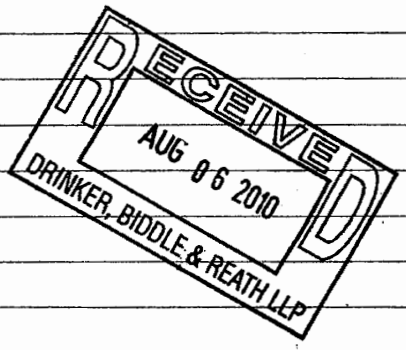
I APPRECIATE ANY HELP YOU MIGHT PROVIDE.
THANK YOU.

ERIC

29 JULY 2010

Eric Branch 313067
U.C.I. Bldg, P-6114
7819 N. W. 228th Street
Raiford, FL 32026-4460

JERRY HARTMAN
DRINKER, BIDDLE & REATH, LLP
1500 K STREET, N.W.
WASHINGTON, D.C. 20005-1209



DEAR MR HARTMAN.

I AM IN URGENT NEED OF YOUR HELP. I'M IN FLORIDA ON DEATH ROW. MY APPEAL IS CURRENTLY IN THE 11TH CIRCUIT.

MY LAWYER BY MOTION TO THE COURT, INFORMED THEM THAT ETHICALLY, HE COULD NOT CONTINUE TO REPRESENT ME. HE ASKED TO CONFLICT OFF THE APPEAL.

IMMEDIATELY, I FILED A PRO SE APPLICATION FOR C.O.A. AND BEGUN WRITING ATTORNEYS ASKING FOR HELP [SO FAR, NONE HAVE ANSWERED MY PLEA]. THE COURT REFUSED TO ACCEPT IT.

THE COURT TOLD THE LAWYER HE COULD NOT WITHDRAW; "THE POSSIBILITY THAT CONTINUED REPRESENTATION WOULD BE UNETHICAL OR POSSIBLY VIOLATE STATE LAW" DID NOT CONSTITUTE GOOD CAUSE TO WITHDRAW.

I FILED TO PROCEED PRO SE. THE COURT WOULD NOT ACCEPT THE NOTICE DECLARING MYSELF PRO SE BECAUSE I HAD A LAWYER.

I MOVED TO HAVE SUBSTITUTE COUNSEL APPOINTED, WHICH AGAIN WAS REJECTED BY THE COURT AS A ILLEGAL PRO SE FILING.

THE ATTORNEY HAS SINCE FILED A APPLICATION FOR C.O.A. IT WAS FILED WITHOUT CONSULTING AND IN OPPOSITION TO MY

DIRECT ORDERS. I TOLD THE LAWYER TO FILE FOR A STAY, AND FILE A WRIT OF CERT. TO THE U.S. S.C.E. CHALLENGING THE DENIAL OF HIS MOTION TO WITHDRAW, AND DENIAL OF RIGHT TO PROCEED PRO SE.

I MOVED TO STRICK AND/OR SUPPLEMENT THE LAWYERS COA WITH MY PRO SE APPLICATION FOR COA, NOTIFYING THE COURT THAT THE ATTORNEYS APPLICATION DID NOT REFLECT MY WISHES. AGAIN, THE COURT REJECTED THE PRO SE MOTION.

NOW, IN LIGHT OF HOLLAND, I'VE FILED A MOTION ASKING THE COURT TO RECONSIDER [COPY ENCLOSED]:

EVIDENTLY, THE 11TH CIRCUIT WILL NOT ALLOW A ATTORNEY WITHDRAW UNLESS THEY HAVE ANOTHER LAWYER WILLING TO TAKE OVER.

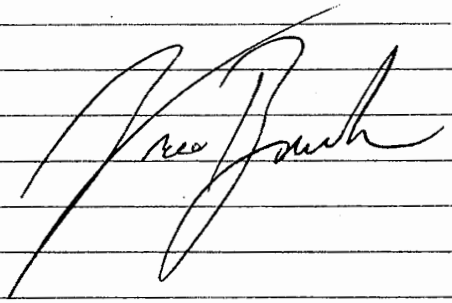
MY LAWYER, HE DOES NOT WANT THE APPEAL, HE IS MAD THAT THE COURT WONT LET HIM QUIT. IN RETURN, HE IS JUST TOSSING SOMETHING IN FRONT OF THE COURT, TRYING TO GET IT DONE AND OVER. THIS FRIGHTENS THE HELL OUT OF ME. HIS APATHY HAS ALREADY WRECKED MY APPEAL. I SIMPLY CANNOT AFFORD MORE OF THE SAME.

THE ENCLOSED PRO SE COA DEMONSTRATES THE FOUNDATION OF MY CLAIMS. I HAVE SOME GOOD ISSUE. I JUST NEED A LAWYER WHO IS WILLING TO FIGHT FOR ME.

PLEASE HELP. IF NOT DIRECTLY, THAN INDIRECTLY HELPING ME FIND A ATTORNEY.

TIME IS A ISSUE

I APPRECIATE ANYTHING YOU CAN DO TO HELP.
THANK YOU. SINCERELY



-3-

1 APRIL 2011

ERIC BRANCH 313067
UNION CORRECTION INSTITUTION
BUILDING P-RM 3223
7819 NW 228 St.
RAIFORD, FL 32026-4430

EMILY M. WILLIAMS
ABA & DEATH PENALTY REPRESENTATION PROJ.
740 15th Street, NW
WASHINGTON, DC 20005-1022

Ms. WILLIAMS,

I THOUGHT YOU SHOULD KNOW, LAST WEEK I FILED A PRO SE PETITION FOR CERTIORARI REVIEW IN THE SUPREME COURT. I MAILED YOU A FULL COPY WITH APPENDIX. IF IT HASN'T ARRIVED, IT SHOULD SOON.

AS YOU'LL SEE, WITHIN THE PLEADINGS IS A REQUEST FOR APPOINTMENT OF COUNSEL, LISTING YOU [YOUR ORGANIZATION], AS ONE OF THREE ATTORNEYS I WOULD ACCEPT. OF COURSE, I UNDERSTAND YOU'D PROBABLY FIND ME COUNSEL INSTEAD OF HANDLING IT YOURSELF. STILL YOU CAN DECLINE.

WHATEVER YOUR THOUGHTS ON REPRESENTATION. AFTER YOU READ THE PETITION, I WOULD LIKE TO HEAR ANY FEEDBACK YOU OR ANYONE IN YOUR OFFICE MIGHT WISH TO OFFER.

ON A SEPERATE MATTER. I GAVE THE ATTORNEY I'M TRYING TO FIRE ALL THE INFORMATION YOU PROVIDED AND TOLD HIM TO CONTACT YOU. HAS HE CONTACTED YOU? THE 11th CIRCUIT HAS MY APPEAL HE FILED - OVER MY OBJECTIONS AND FIRING HIM - IF THEY DENY IT, I NEED COUNSEL TO PURSUE APPEAL TO THE U.S. SUPREME COURT. MY ATTORNEY WAS SUPPOSE TO CONTACT YOU ABOUT FINDING A NEW ATTORNEY TO HANDLE THIS MATTER. LET ME KNOW IF HE

DIDN'T. HE DOESN'T TELL ME ANYTHING. I'VE MADE NUMEROUS INQUIRIES ABOUT THE STATUS OF MY CASE, WITH NO RESPONSES. AND AS YOU CAN SEE FROM THE MATERIAL IN MY CERTIORARI PETITIONS THE 11TH CIRCUIT RETURNS ANYTHING I SEND THEM. EVEN LETTERS INQUIRING ABOUT THE STATUS OF MY APPEAL. SO I AM TOTALLY IN THE DARK.

IF YOU HAVE ANY ADDITIONAL THOUGHTS OR QUESTIONS, WRITE ME.

THANKS FOR EVERYTHING. SINCERELY

Eric Branch

Eric S. Branch 313067
Union Correctional Inst.
7819 N. W. 228th Street
Raiford, Florida 32026

1 JUNE 2011
96°

MS. EMILY WILLIAMS
ABA DEATH PENALTY REPRESENTATION PROJECT
740 FIFTEENTH STREET, N.W.
WASHINGTON, D.C. 20005

DEAR MS. WILLIAMS,

I MAILED A PRIORITY BOX CONTAINING A BRIEF AND FULL APPENDIX TO YOU LAST MONTH, WHICH I HAD FILED IN THE U.S. SUPREME AS A INTERLOCTORY APPEAL. SINCE THEN, THE COURT HAS REJECTED IT AS UNTIMELY, STATING I HAD TO WAIT UNTIL THE 11TH CIRCUIT RELEASED JURISDICTION, WHICH HAPPENED IN THE 11TH CIRCUIT MAY 24TH. THAT MEANS I HAVE UNTIL AUGUST 26 TO FILE CERTIORARI, PLUS A 60 DAY EXTENSION FOR 'GOOD CAUSE', I THINK THE ISSUE SURROUNDING MY SEARCH FOR COUNSEL QUALIFIES. SETTING MY DEAD-LINE FOR OCTOBER 20TH.

DID YOU READ THE BRIEF OR REVIEW THE APPENDIX? I HAVE COMPLETED THE MAJORITY OF THE WORK, STILL, I DESPERATELY NEED A ATTORNEY TO REVIEW WHAT I'VE DONE, TREATING IT AS A DRAFT COPY, ADDING SUBSTANCE TO THE ARGUMENTS, AND EDITING OUT ANY MISTAKES. ALSO, I IMAGINE THEY'D WANT TO REVIEW WHAT WAS FILED IN THE 11TH CIRCUIT, TO DETERMINE IF ANY OTHER ISSUE DESERVES EQUAL CONSIDERATION, IN ALL, A WEEK, MAYBE TEN DAYS WORK FOR THE LAWYER.

PLEASE HELP ME FIND A ATTORNEY, YOU SEE BETWEEN HOLLAND VS FLORIDA AND WHAT I'VE WRITTEN WHAT IS HAPPENING HERE IN

FLORIDA, WITH THE SYSTEM FOR PROVIDING COUNSEL IN DEATH PENALTY CASES SINCE SWITCHING THE NORTHERN PART OF THE STATE TO THE REGISTRY SYSTEM. SURELY THERE IS ONE MEMBER OF THE ABA THAT WOULD LIKE TO TRY TO BRING ATTENTION TO THE DETERIORATING CONDITIONS IN PROVIDING QUALITY COUNSEL BEFORE THE STATE DECIDES TO PROVIDE NO COUNSEL AT ALL. MY CASE PROVIDES THAT OPPORTUNITY.

I HAVE PROVIDED TWO FLORIDA ATTORNEYS NAMES HERE, MAYBE YOU CAN PURSUADE THEM TO HELP. HELL, AT THIS POINT, I'D ACCEPT ALMOST ANY ATTORNEY YOU CAN FIND FOR ME. IT'S BETTER THAN GOING IT ALONE.

I IMAGINE YOU STAY BUSY BUT TIME IS A ISSUE HERE. IF YOU HAVE ANY THOUGHTS OR QUESTION, WRITE ME OR CALL THE PRISON. THANK YOU FOR YOUR TIME AND EFFORT.

I AWAIT YOUR RESPONSE.

Eric Branch

25 OCT 2011

ERIC BRANCH 313067
UNION CORR. INST. P-3104
7819 NW 228 ST.
RAIFORD, FL 32026-4430

MS. EMILY M. WILLIAMS
ABA DEATH PENALTY REP. PROS.
740 FIFTEENTH ST., N.W.
WASHINGTON, D.C. 20005

DEAR MS WILLIAMS.

ENCLOSED, FIND A COPY OF MY PETITION FOR WRIT OF CERTIORARI FILED PRO SE AND A ORDER GRANTING MY ATTORNEYS THIRD MOTION TO WITHDRAW.

ONCE THE COURT DENIES IT, AS INEVITABLY THEY WILL, MY NAME WILL BE ADDED TO THE 'READY LIST'. AS A ATTORNEY, I AM SURE YOU KNOW WHAT I MEAN BY THAT. ONCE I AM ON THE LIST, STAYING THERE 3 MONTHS IS NORMAL, REMAINING THERE 3 YRS IS EXTRAORDINARY. MEANING I HAVE UP TO 3 MONTHS BUT LESS THAN 3 YRS TO MAKE SOMETHING HAPPEN OR DIE.

I BELIEVE, IN STATE COURT, RAISING THE CONSTITUTIONALITY OF THE REGISTRY SYSTEM AS THE EXCLUSIVE MEANS OF APPOINTING COUNSEL IN THE NORTHERN DISTRICT FLORIDA ON DUE PROCESS / EQUAL PROTECTION AND FIRST AMENDMENT GROUNDS. IS MY BEST ROUTE TO BACKDOOR IN A CLAIM ON THE INDIANA CONVICTION

IN A MIXED 1983/ SUCESSIVE 3.850 MOTION, RELYING ON THE CONSTITUTIONAL ISSUE AS A STATE CREATED IMPEDIMENT.

THE ABA ISSUED A REPORT ON FLORIDA'S SYSTEM FOR PROVIDING APPELLATE COUNSEL IN DEATH PENALTY CASES A FEW YEARS AGO. SO YOU GUYS SHOULD BE AWARE OF THE CONSTITUTIONAL ISSUE CONCERNING REGISTRY COUNSEL. IT'S NOT A MATTER OF INEFFECTIVE COUNSEL, IT'S THAT THE MIDDLE AND SOUTHERN DISTRICTS HAVE C.C.R. OFFICES, THAT ACCORDING TO THE AUDITOR GENERALS REPORT PROVIDES A FAR HIGHER QUALITY OF COUNSEL THAN THE REGISTRY SYSTEM PROVIDES IN THE NORTHERN DISTRICT. IT'S RIPE FOR A EQUAL PROTECTION CHALLENGE.

NEVERMIND, I HAVE NO ATTORNEY, A FLORIDA ATTORNEY. ESPECIALLY ONE WHO MAKES A LIVING OFF REGISTRY APPOINTMENTS, ARE GOING TO FILE THIS TYPE OF CLAIM.

I HAVE ASKED BEFORE, I ASK AGAIN. IF YOU KNOW ANY ATTORNEY/ LAW FIRM THAT WILL HELP ME WITH THIS ISSUE OR ANY LEGAL CLAIM - THERE HAS TO BE ONE BRAVE ATTORNEY OUT THERE WILLING TO CHALLENGE THE SYSTEM AND POSSIBLY SAVE MY LIFE IN THE PROCESS.— PLEASE PROVIDE THEM MY INFORMATION.

AT THIS POINT, I WILL ACCEPT HELP FROM A PARALEGAL, OR ATTORNEY. WHOSE JUST WILLING TO BE THE FACE OF MY APPEAL. I'LL DO MOST OF THE WORK.

ANYWAY, THAT'S MY PLEA TO YOU. IF YOU CAN ANSWER IT, I CERTAINLY APPRECIATE IT. THANK YOU FOR YOUR TIME.

SINCERELY

19 AUGUST 2012

ERIC BRANCH 313067
UNION CORR. INST. P-3109
7819 NW 228 ST.
RAIFORD, FL 32026-4430

MS. EMILY M. WILLIAMS
ATBA DEATH PENALTY REPRESENTATION PROJECT
740 FIFTEENTH STREET NW, 8TH FLOOR
WASHINGTON, D.C. 20005

DEAR MS. WILLIAMS,

RESPONDING TO YOU CORRESPONDENCE. THE PETITION MY COUSIN, ALEX, SENT YOU, I WROTE IT MYSELF - NO HELP. A LABORIOUS TASK, GIVEN MY CONDITIONS OF CONFINEMENT, BUT NOT DIFFICULT, INDEED, THE PROBLEM I FACE IS NOT COMPREHENDING AND WRITING, ITS ARGUING THE ISSUE BEFORE THE COURT. I CAN DO THAT, BUT THE ISSUE, AS PRESENTED IN THE PETITION, HAS THE POTENTIAL TO AFFECT EVERYONE IN FLORIDA'S CAPITAL SYSTEM. MY ARGUMENT AND FACTS ARE SOLID, BUT WITH SO MUCH ON THE LINE, POSSIBLY MANY LIVES, I WOULD FEEL MORE COMFORTABLE HAVING A ATTORNEY ARGUE THE PETITION.

DID YOU GET A EDITED COPY OF THE PETITION; FOOT-NOTES AND QOUTES PROPERLY SET? IF NOT, E-MAIL ALEX FOR A EDITED COPY TO SHOW ANY POTENTIAL ATTORNEYS.

AS TO ATTORNEYS YOU MIGHT SPEAK WITH ABOUT THE

REGISTRY SYSTEM. BEYOND ALL OTHERS, I RECOMMEND JOHN MILLS, TYPICALLY, HE DOES NOT REPRESENT CAPITAL APPELLANTS BUT A WHILE BACK, THE FEDERAL COURT HAD HIM WORK AS CONFLICT COUNSEL IN THREE TIME-BAR HEARINGS. HIS WRITINGS ON THE REGISTRY SYSTEM HELPED ME A LOT. I IMAGINE, IF CONTACTED, HE'LL ANSWER QUESTIONS.

ALSO, YOU CAN TRY MARTY McCLAIN, LINDA McDERMOTT AND MARK OLIVE. THEY CANNOT HELP ME BUT EACH HAVE EXTENSIVE HISTORY DEALING WITH THE REGISTRY SYSTEM. AND DESPITE BEING PART OF THAT SYSTEM, I HAVE, WHERE POSSIBLE, FOUGHT AGAINST IT.

AS TO LOCATING COUNSEL, I APPRECIATE THE EFFORTS YOU ARE MAKING ON MY BEHALF. ALEX, I THINK, INTENDS TO FLY OVER TO ENGLAND, HOPING TO MEET A ATTORNEY, CLIVE STAFFORD SMITH. ARE YOU FAMILIAR WITH HIM? ALEX BELIEVES THAT BASED ON HIS REPUTATION, HE IS THE RIGHT ATTORNEY TO WAGE THIS BATTLE. HOWEVER, SINCE HE HAS RELOCATED TO ENGLAND. I DOUBT HE'LL HELP.

WHATEVER HAPPENS. I HAVE CLEMANCY HEARING IN SEPT., SO I CANNOT SIT ON THE PETITION MUCH LONGER, POSSIBLY OCTOBER. IN THE END, I WILL ACCEPT HELP, BEYOND A ATTORNEY, FROM ANYONE WILLING TO PROVIDE IT: TYPING, RESEARCH, INVESTIGATION, EXPERT, LEGAL ASSISTANT, ETC., IN MY POSITION, ANYTHING HELPS.

IF EVER YOU NEED TO DISCUSS ANYTHING. SET UP A PHONE CALL, WRITE, OR CONTACT ALEX. I HOPE THE ATTORNEYS I LIST CAN ANSWER YOUR QUESTIONS.

THANK YOU.

-2-

JOHN MILLS:
850-765-0897
JMILLS@MILLS-APPEALS.COM

LINDA MCDERMOTT:
850-322-2172
lindamcdermott@msn.com

MARTY J. MCCLAIN:
305-984-8344
martymcclain@earthlink.net

MARK OLIVE
320 W. JEFFERSON Street
TALLAHASSEE, FL 32301

11 SEPT 2017

ERIC BRANCH 313061?
UNION CORR. INST. RM-3218
7819 NW 228 St.
RAIFORD, FL 32026

MS. EMILY WILLIAMS
ABA DEATH PENALTY REP. PROJ.
740 FIFTEENTH ST. NW, 8TH FL.
WASHINGTON, DC 20005

DEAR EMILY,

I AM SURE YOU HAVE SPOKEN TO MIKE BURNS. THE CLEMENCY HEARING WENT BETTER THAN I EXPECTED. MIKE CONVINCED THEM TO HOLD OPEN THE HEARING SIXTY DAYS, WHILE HE PURSUED THE BLOOD EVIDENCE, WHICH, I BELIEVE ACCOMPLISHED WHAT YOU WANTED - TIME. WHEN CONFRONTED WITH UNIDENTIFIED BLOOD, FINGERPRINTS AND SHOE PRINT, THAT HAVE NEVER BEEN LINKED TO A PERSON, AND A APPELLATE SYSTEM THAT COMPLETELY FAILED ME. THE BOARD MEMBERS, VISIBLY, SEEM RELIEVED TO HEAR MIKE SUGGEST THAT THEY HOLD OPEN THE HEARING, ALLOWING HIM, OR SOMEONE ELSE, TIME TO PURSUE THE MATTER.

I GUESS THE QUESTION NOW, HOW TO PROCEED FROM HERE?

MY CONCERN I DON'T WANT TO FREAK UP MY PETITION, THE 14TH AMENDMENT CLAIM IS IMPORTANT TO MANY GUYS HERE. SO I CANNOT CONSIDER ONLY MYSELF IN THE MATTER. THE CONSTITUTIONAL CHALLENGE TO FLORIDA'S REGISTRY SYSTEM MUST BE MADE. NOW, IN A LARGER SENSE, ALL THE EVIDENCE - BLOOD, FINGERPRINTS SHOE PRINT - IS LINKED TO THE 14TH AMENDMENT ARGUMENT, AS PART OF THE LARGER FAILINGS OF FLORIDA'S APPELLATE SYSTEM, IN THE FORCED SWITCH TO REGISTRY COUNSEL.

So, Let me ask, What is my move? Do I prepare to file my petition in Nov. Reporting to the Clemenly Board, that everything is in front of the Court, requesting the Board indefinitely suspend Clemency proceedings, while the Court settles the questions, which, wrapped in the 14th Amendment claim, might take a couple years? Obviously, The Board is never going to grant Clemency, Still, It's wise to stay in their good graces, I think, come November, if we demonstrate efforts are being made to pursue the matter, we accomplish that.

Another Concern, It's based on rumor, The Governor has a list of 17 men, myself included, they are rushing Clemency proceedings, hoping to execute us 17 during his term. I cannot confirm that fact, Maybe Mike can, But this much is clear, My two neighbors appeals were over years ago, Neither of them have had Clemency, Whereas, I, in 5 months since my last appeal, have had a Hearing. So, whether rumor or not, It's best to get something in the Courts, and make every effort to hold off Clemenly during that time.

I would note, That traditionally, where there is a Petition properly before the Court, the Governor will not sign a warrant.

As to your efforts, would you agree that if Counsel cannot be located in 60 days, you are probably not going to be able to find Counsel? I'd hope after that, even if I file alone, you wont quit looking for help. However, I also realize, you are asking a attorney to take on Florida's Capital Appellate System, The pool of firms capable of mounting the challenge is going to be small, even smaller if you confine it to only Florida Firms, Holland & Knight is the only Florida Firm I know that's suited for the challenge, still, I agree with you, I definitely

-2-

DO NOT WANT TO HAVE TO FILE IT MYSELF.

I THINK YOU KNOW, MY COUSIN ALEX. HE WILL HELP HOWEVER HE CAN. LEDRA (MY DAUGHTER'S MOM) AS WELL. IF YOU NEED ANYTHING, DONT HESITATE TO CONTACT EITHER OF THEM.

IN THE MEAN, I AM GOING TO CONTINUE TO PREPARE AS IF I WILL BE FILING THE PETITION MYSELF. THAT WAY, COME NOVEMBER, I DONT GET CAUGHT UNPREPARED. HOPEFULLY THOUGH, THE 60 DAYS MIKE GOT YOU IS ENOUGH TIME TO FIND HELP.

OBVIOUSLY, SO THAT WE DONT TRUMP HEADS, ITS IMPORTANT THAT MIKE, ALEX, YOU + I, ALL KEEP EACHOTHER IN THE LOOP, EVEN IF ITS TO REPORT NO PROGRESS. TRY TO WRITE IN THREE OR FOUR WEEKS, AND IF ANYTHING IMPORTANT ARISES, CALL ME.

THANK YOU EMILY, I REALLY APPRECIATE ALL YOUR EFFORTS.
TAKE CARE

Eric

04 October 2012

Eric Branch 317067
Union Corr. Inst. P-3218
7819 NW 228 Street
Raiford, Fl 32026-4430

Ms. Emily M. Williams
740 15th Street, NW
Washington, D.C 20005-1022

Dear Emily,

Alex wrote me, providing a copy of your 9/27/12 e-mail with his letter.

It's a shame Holland & Knight wont handle the suit. I heard they were no longer doing death penalty work. Your comments seem to confirm that fact.

The firm whose schedule you write is "unfortunately extremely busy for the next few months". Let me ask. Do they mean 2 or 3 months? Moreover, Is it just a blow off or do you get the sense they are interested but truly busy? Assuming it's only a few months and they are interested, but only after the first of the year. On the Clemency matter, I imagine Mike can swing that by showing he is pursuing the DNA matter, asking for another 60 days. I can hold off as well, knowing I will have counsel take over soon.

If nothing else. Even if I/ they file it Nov or Dec. with response and discovery, it could be going before the action gets busy. Allowing the firm time to close out whatever they are doing now.

LET ME ASK. AM I GRASPING AT STRAWS? AS CONSTITUTIONAL MATTERS GO, I BELIEVE I PRESENT A GREAT OPORTUNITY TO BRING CHANGE TO FLORIDA'S APPELLATE SYSTEM, MAYBE EVEN CAUSE ENOUGH UPHEVAL AND BAD PUBLICITY - FLORIDA'S SYSTEM PICKING WINNER + LOSERS - IN THESE ECONOMIC TIMES, TO GIVE FLORIDA A REASON TO RECONSIDER ITS POSITION ON CAPITAL PUNISHMENT. DO ATTORNEYS SEE IT DIFFERENTLY? AM I MISSING SOMETHING HERE OR IS IT THAT THEY JUST DONT CARE?

WHAT PART DOES MONEY PLAY?

ANYWAY, OTHER THAN CONTINUE TO PREPARE, IS THERE ANYTHING ALEX AND/OR I CAN DO TO HELP YOU? DONT HESITATE TO ASK. WRITE OR CALL WITH ANY NEWS.

THANKS

9 JAN 2013
80°

ERIC BRANCH # 513067
UNION CORR. INST. P-321K
7819 NW 228 STREET
RAIFORD, FL 32026

EMILY WILLIAMS
ABA DEATH PENALTY REP. PROJECT
740 FIFTEENTH STREET NW 8TH FLOOR
WASHINGTON, DC 20005

DEAR MS. WILLIAMS.

I HOPE YOU HAD A NICE HOLIDAY?
LAST I HEARD, YOU INDICATED THE ATTNY/LAW FIRM WOULD BE ABLE TO COMMIT AFTER THE FIRST OF THE YEAR. HAVE YOU HEARD ANYTHING YET?

I AM PREPARING TO FILE ALONE. THE IDEA CAUSE ME A SUBSTANTIAL AMOUNT OF FEAR BUT I SIMPLY CANNOT WAIT LONGER. THE WORD IS MY NAME, AND TWO OTHERS SIT ATOP THE ATTORNEY GENERAL'S LIST OF NAMES TO SIGN WARRANTS AND KILL. I CANNOT TAKE THE CHANCE OF IT BEING ME.

I'M PREPARING A FINAL EDIT, AND ACCOMPANYING DOCUMENTS. IN A MONTH OR SO, I WILL FILE EVERYTHING, SO IF YOU HAVE ANY OPTIONS FOR ME, LET ME KNOW.

CONTACT ME OR ALEX WITH ANY INFORMATION.
BEST WISHES

Eric

26 March 2013.

ERIC BRANCH 313067
UNION CORR. INST P-3218
7819 NW 228 ST.
RAIFORD, FL 32026-4430

MS EMILY M. WILLIAMS
ABA DEATH PENALTY REPRESENTATION PROJECT
740 FIFTEENTH STREET. NW. 8TH FLOOR
WASHINGTON, DC 20005

DEAR EMILY,

MARCH 14TH I FILED THE SUCCESSIVE 3.850/1983 ACTION. THE STATE IMMEDIATELY MOVED TO DISMISS THE COMPLAINT, ARGUING THAT: *1* IT IS A ILLEGAL PRO SE FILING. ACCORDING TO THEM I MUST ACCEPT REGISTRY COUNSEL

2 FAILURE TO STATE A CAUSE FOR WHICH RELIEF CAN BE GRANT.

THE JUDGE ISSUED A ORDER REQUIRING ME AND FORMER REGISTRY COUNSEL TO FILE WRITTEN RESPONSE. I ARGUED THAT BOTH FORMER COUNSEL AND THE REGISTRY WERE ADVERSE PARTIES IN THE 3.850 AND 1983 ACTIONS, PROHIBITING THEIR PARTICIPATION. FORMER COUNSEL, MR REITER ARGUED THE SAME.

I ALSO ASKED THE JUDGE TO ALLOW 30 DAYS TO FIND COUNSEL TO MAKE APPEARANCE ON MY BEHALF, OR TO FILE FOR APPOINTMENT OF COUNSEL

WHERE DO YOU STAND ON COUNSEL? IF I CANNOT FIND SOMEONE, THE JUDGE IS PROBABLY GOING TO GIVE THE STATE THEIR WAY, APPOINTING A ATTORNEY FROM THE REGISTRY, WHO BY LAW - CH. 27.711(4) CANNOT LITIGATE A SUCCESSIVE PETITION OR 1983 - FORCING, AS THE STATE WANTS. DISMISSAL OF MY ACTION. I'VE SEEN THEM DO THIS TIME AND AGAIN, TO PRO SE LITIGANTS. THAT IS WHY IT IS SO IMPORTANT TO HAVE COUNSEL AT THE TIME OF FILING.

ANYWAY, IF I CAN GET THE JUDGE TO ISSUE A PRELIMINARY ORDER OF PAYMENT OF COST & FEE TO YOU AT THE ATBA FOR THE PURPOSE OF LOCATING ATTORNEY/LAW FIRM. WOULD THAT HELP IN LOCKING IN A ATTORNEY? I GOTTA COME UP WITH COUNSEL OR THE COURT IS GOING TO KILL THIS ACTION, AND PROBABLY VERY SOON AFTERWARDS, ME AS WELL.

I APPRECIATE ANY PUSH YOU CAN MAKE TO FIND SOMEONE. I HATE TO THINK SUCH A WORTHY CHALLENGE TO THE REGISTRY SYSTEM DOWN HERE IS WASTED.

LET ME, OR ALEX KNOW SOMETHING.
THANKS

15 April 2013

ERIC BRANCH 313067
UNION CORR INST. T-3218
7819 NW 228 ST.
RAIFORD, FL 32026-4430

EMILY WILLIAMS
ATTN: DEATH PENALTY REPRESENTATION PROJECT
740 FIFTEENTH STREET NW, 8TH FLOOR
WASHINGTON, DC 20005

DEAR EMILY,

I AM SURE ALEX HAS INFORMED YOU, THE COURT, ON THE STATE'S MOTION, DISMISSED ALL MY PLEADINGS UNDER THE THEORY I STILL HAD COUNSEL 'IN THE STATE COURT', MAKING ALL MY FILINGS ILLEGAL (SEE ATTACHED)

PRIOR TO THE ORDER, THE COURT HAD BEEN INFORMED THAT THE 11TH CIRCUIT HAD ALREADY DISQUALIFIED COUNSEL ON HIS OWN CONFLICT MOTION AND IN THE LAST TWO YEARS, HE + I HAD NO CONTACT YET. THE COURT DETERMINED THAT THE STATE COURT HAD NOT RELEASED COUNSEL, THEREFORE, TECHNICALLY, AT THE TIME I FILED ALL MY PLEADINGS, I WAS, AND I CONTINUE TO BE REPRESENTED BY COUNSEL. IN LIGHT OF THAT, HE STRUCK AS VOID AND DISMISSED EVERY-THING I FILED.

THE INTERESTING PART OF THE COURT'S ORDER IS WHERE THE JUDGE STATES THAT THE 1983 / RULE 3.850 PETITION CAN BE REFILED BY 'ALTERNATIVE COUNSEL'

THIS MEANS, THE COURT FOUND THAT, AS BOTH MR REITER AND I ARGUED, MR REITER IS A ADVERSE PARTY IN THESE LEGAL PROCEEDINGS AND THAT A CONFLICT DOES EXIST. YET, MR REITER WAS NOT DISMISSED. WHICH OBVIOUSLY IS A PLOY BY THE COURT TO KEEP ME FROM PURSUING MY LEGAL ACTIONS.

THE RULING RAISES 3 POINTS FOR APPEAL.

1.) IN DETERMINING THE RULE 3.850 + 1983 ACTION HAD TO BE RE-FILED BY 'ALTERNATIVE COUNSEL', IT HAS FOUND MR REITER TO BE A ADVERSE PARTY. AS AN ADVERSE PARTY MR REITER/REGISTRY ARE DISQUALIFIED FROM REPRESENTING ME IN ANY LEGAL MATTER.

2.) IN RESTRICTING THE RE-FILING OF MY RULE 3.850/1983 TO 'ALTERNATIVE COUNSEL', THE COURT HAS DEPRIVED ME ACCESS THE COURTS, VIOLATED MY DUE PROCESS + EQUAL PROTECTION RIGHTS, BASED ON MY FINANCIAL STATUS - THE FACT I AM POOR. WHICH IS AGAINST LONG STANDING COURT PRECEDENT.

3.) WHETHER THE COURT CAN FORCE COUNSEL TO MAINTAIN REPRESENTATION OF A CLIENT WHERE COUNSEL HAS PREVIOUSLY BEEN FOUND TO BE IN CONFLICT WITH THE CLIENT AND DISQUALIFIED FROM REPRESENTING IN ANOTHER COURT, AND WHERE THE ATTORNEY/CLIENT HAVE HAD NO CONTACT FOR TWO YEARS AND WHERE BOTH COUNSEL + CLIENT INFORM THE COURT, THE COUNSEL

-2-

IS A ADVERSE PARTY IN THE PROCEEDINGS.

THOSE ARE THE IMMEDIATE ISSUES THAT JUMP OUT AT ME. THE APPEAL GOES TO THE FLORIDA SUPREME COURT. PROBLEM IS, THE FLORIDA SUPREME COURT, WILL NOT ALLOW ME TO GO BEFORE THEM PRO SE, SO EVEN IF IT IS ONLY TO ARGUE THE APPEAL TO THE F.S.C.T. I COULD USE A ATTORNEY.

IN THE END, I AM OF THE FIRM BELIEF THAT AS LONG AS I ATTEMPT THIS ON MY OWN, THE STATE/COURTS WILL FIND WAYS TO FRUSTRATE AND THWART MY EFFORTS. OF COURSE, IN THE SAME TONE, JUST GETTING AN ATTORNEY FOR ATTORNEY'S SAKE WOULD SERVE ME WORSE. AS IN A WAY, I AGREE NOT HAVE THAT IN REITER

ANYWAY, I KNOW YOU UNDERSTAND THIS AND THAT YOU CONTINUE YOUR SEARCH FOR A FIGHTER TO HELP ME. STILL, IT'S DIFFICULT TO NOT GET FRUSTRATED WHEN A JUDGE MAKES A RULING SO FAR OUTSIDE THE BOUNDS OF REASON AND LAW.

THE NATURE OF APPEAL, YOU MIGHT CONTACT THE FLORIDA BAR. THEY MIGHT WANT TO ARGUE IT, AS IT COULD AFFECT OTHER ATTORNEYS IN THE FUTURE.

SORRY IT'S ALWAYS BAD NEWS.

WRITE OR PHONE ME IF YOU HAVE ANY THOUGHTS OR CONCERNS.

SINCERELY

ERIC

-3-

APPOINTMENT OF COUNSEL BECAUSE THE FLORIDA SUPREME COURT WILL NOT ACCEPT APPEALS FILED PRO SE. IF NO ONE WANTS TO HANDLE MY CASE, MAYBE YOU HAVE SOMEONE AVAILABLE TO THAT WILL ARGUE APPEAL TO THE F.L.S.Ct. ON MY BEHALF. THE BASIC OUTLINE OF THE ARGUMENT IS PRESENTED IN THE MOTION TO DISQUALIFY. THEY'D SIMPLY HAVE TO DRESS IT UP AS A MOTION FOR EXTRAORDINARY RELIEF, HAVING IT FILED IN THE FLORIDA S. Ct.

ON THE 1983 CIVIL RIGHTS COMPLAINT, ALLEGING THE REGISTRY PROGRAM IS UNCONSTITUTIONAL. THE LAW MAKERS ACTIONS HELP IT. THEY HEARD A MONTH OF TESTIMONY IN COMMITTEE ABOUT HOW TERRIBLE THE REGISTRY ATTORNEY ARE COMPARED TO CCR OFFICE. THE LAW MAKERS FOUND IT WAS SO BAD THAT THEY VOTED TO SHUT THE REGISTRY PROGRAM DOWN, HOWEVER, THEY DID THIS WITH A PROVISION THAT BASICALLY STATES, THE REGISTRY ATTORNEY SHALL REMAIN UNTIL THEIR CLIENT IS KILLED, AFTER-WHICH, THE NEWLY RECONSTITUTED CCR NORTH WILL TAKE NEW APPEALS. SO REGISTRY ATTORNEY PROGRAM IS NOT GOOD ENOUGH TO EXIST ANY LONGER BUT THEY ARE GOOD ENOUGH TO STAY IN PLACE UNTIL WE ARE KILLED.

THIS PLAYS RIGHT INTO THE CLAIMS I MADE IN MY 1983 CIVIL RIGHTS ACTION.

ANYWAY, I HAVE CLAIMS IN MY PETITIONS FOR WHICH RELIEF CAN BE GRANTED. CERTAINLY A NEW SENTENCE BUT POSSIBLY A NEW TRIAL AS WELL BUT IT DOESN'T SEEM TO MATTER, BECAUSE UNLESS I CAN GET COUNSEL TO REPLACE THIS GUY THE COURT CLAIMS STILL REPRESENTS ME. THEY ARE GOING TO KILL ME WITHOUT ANY COURT EVER HEARING THE CLAIMS.

As I said, Even if you cannot locate a attorney to represent me out-right, I need a attorney to file a challenge to the Courts order on counsel, asking that it be reversed and that, the newly reconstituted CCR office Northern District be assigned as 'conflict counsel' The outline of the appeal argument is laid out in my Motion to Disqualify trial judge.

I know youre trying to help, so forgive me, It is just with the legislators talk of possibly 93 warrants being signed. Im really stressed. I mean, I have good issues but what does it matter if I cannot get pass the hurdles the court, and now my own attorney put in front of me.

If nothing else, hopefully you'll have someone to help file appeal. Write with your thoughts or to add anything you think might help.

Respectfully

4 July 2013

Eric Branch 513067
Union Corr. Inst. P-321R
7819 NW 228 St.
Raiford, Fl 32026

Ms Emily Williams
ABA Death Penalty Rep. Proj.
1050 Connecticut Ave. NW. Suite 400
Washington, DC 20036

Dear Emily,

I received your letter. To respond.

The Timely Justice Act did re-open CCR offices in the North. In sub-committee, state law makers heard testimony that Registry system was completely broken. It only had 3 or 4 good attorneys. The remainder were unqualified and incompetent. Providing unequal representation. Basically, everything I argued in the 1983 equal protection portion of my petition.

However. Here is the kicker. In making that determination and reinstating CCR North, lawmakers, decided that the 170 men currently with Registry counsel, would be forced to keep them until they are executed. CCR North will only represent new post-conviction appeals.

I MAY BE WRONG, BUT DOESN'T THE LAW MAKER'S ACTIONS ONLY ENHANCE MY LEGAL CLAIM? WHICH I ARGUE AS STATE IMPEDIMENT FOR THE PURPOSE OF PURSUING A SECOND FULL + FAIR POST CONVICTION REVIEW.

IN TRYING TO SELL MY CASE TO A LAW FIRM, THIS SHOULD BE A HIGH POINT BECAUSE, NOT ONLY CAN THE PETITION SAVE MY LIFE ON THE INDIVIDUAL CLAIMS, BUT IT COULD EQUALLY BENEFIT THE 70+ OTHER MEN STUCK WITH REGISTRY COUNSEL

ON THE INDIVIDUAL CLAIMS FOR RELIEF, I BELIEVE IN ATTACHING COMPETENT COUNSEL TO MY CLAIMS. THE STATE WILL CONCEDE RELIEF (NEW TRIAL) OR OFFER A DEAL, SIMPLY TO KEEP THE 1983 EQUAL PROTECTION CLAIM FROM GOING FORWARD.

AS TO COUNSEL, MR REITER, NEVER WROTE 'I AM NOT DOING A, B OR C', HOWEVER, IN THE HABEAS PETITION, TO COVER HIS ASS, HE DID PLACE A 2 PAGE CLAIM STATING THAT HE HAD TO BYPASS SEVERAL DEFENSE FUNCTIONS BECAUSE REGISTRY STATUTES KEPT HIM FROM PURSUING THEM. THOUGH, HE DID NOT ARGUE HOW OR WHAT FUNCTIONS. NOR DID HE LAY OUT A FOUNDATION FOR EACH TO ESTABLISH PREJUDICE.

SPECIFICALLY, WHAT WAS NOT DONE? ALEX EMAILED YOU A COMPLETED COPY OF THE PETITION, DIDN'T HE? IT'S EASIER TO READ PARAGRAPH #107 THAN #202.

AND, I WOULD NOTE, THESE ARE NOT THINGS I WANTED AND HE DISAGREED WITH ME. THEY ALL COME FROM CCR ATTORNEYS WHO WERE FORCED OFF THE CASE WHEN CCR NORTH WAS CLOSED.

THE CLAIMS RANGE FROM FAILURE TO IMPEACH TRIAL ATTORNEY WITH AVAILABLE DOCUMENTS / WITNESSES, TO STATE TRIAL COUNSEL NEVER MET ME UNTIL 13 DAYS BEFORE MY CAPITAL MURDER TRIAL, TO FAILING TO CORRECT FACTUAL ERRORS IN THE RECORD (ERRORS THE COURT RELIED ON TO DENY RELIEF), TO NEVER TRAVELING TO INDIANA TO CONDUCT A MITIGATION INVESTIGATION, OR COLLECT RECORDS FROM INDIANA CONVICTION TO ESTABLISH IT WAS A MISDEMEANOR AND MUST BE STRICKEN AS AN AGGRAVATING FACTOR (TO DATE - BEFORE TRIAL OR SINCE, NOT A SINGLE ATTORNEY HAS TRAVELLED TO INDIANA FOR THIS PURPOSE) TO FAILING TO PROPERLY PURSUE DNA TEST ON IDENTIFIED BLOOD SAMPLES, TO NEVER SENDING ANYONE TO MAINE TO QUESTION ERIC St. PIERRE, TO TRY TO GET A CONFESSION (HE TOLD THE COURT ON RECORD, HE WAS GOING TO DO THAT). ETC.

THERE IS ENOUGH THERE FOR A NEW TRIAL. A NEW SENTENCE ON THE INDIANA INFORMATION ALONE.

CURRENTLY, I HAVE A MOTION FOR APPOINTMENT OF ALTERNATIVE COUNSEL, W/ SUPPLEMENTAL IN THE TRIAL COURT. HOWEVER, IT APPEARS, THEY ARE NOT GOING TO ISSUE A RULING ON IT.

I WOULD APPEAL TO THE FLORIDA SUPREME COURT BUT I NEED A ATTORNEY TO DO THAT AS WELL.

IF YOU DO NOT HAVE A COPY OF THE PETITION, EMAIL ALEX FOR A COPY. IT HAS TO BE AMENDED TO REFLECT THE LAW MAKERS RECENT ACTIONS.

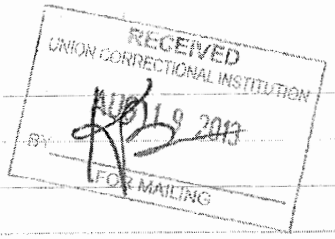
LET ME KNOW IF YOU NEED ANYTHING ELSE FROM ME. I HOLD OUT HOPE THAT EVENTUALLY SOMEONE WILL SEE THIS AS A UNIQUE OPPORTUNITY TO CHALLENGE PART OF FLORIDA'S CAPITAL APPELLATE SYSTEM, HELPING MANY MEN BEYOND ME.

OF COURSE, I'D TAKE SOMEONE WHO JUST WANTS TO USE THAT TO FORCE A SETTLEMENT IN MY CASE. I MEAN, I AM AT A POINT WHERE ANYTHING IS BETTER THAN NOTHING.

HOPE THIS HAS BEEN SOME HELP. KEEP ME INFORMED. I APPRECIATE YOUR CONTINUED EFFORTS.

TAKE CARE.

18 Aug 2013



Eric S. Branch 313067
Union Corr. Inst. Bldg P-3218
7819 NW 228 St.
Raiford, Fl 32026-4430

Ms. Emily Williams
ABA Death Penalty Representation Proj.
1050 Connecticut Ave NW Suite 400
Washington DC 20036

Dear Emily,

Enclosed, find a order from the Federal Court, approving 'appointment' of counsel.
The Court DID NOT appoint specific counsel, leaving that up to us. However, this order guarantees payment of fee + cost to any attny/law firm willing to take the case. It is my understanding the Court will appoint whoever we move to have appointed.
Hopefully, this guarantee of payment + cost will help you find a good attny/firm to handle my case.

Also, Enclosed is an article on Terry Hartman e Drinker Biddle, are you familiar with him? They pursue litigation to remedy systemic problems. While my action against the Registry Counsel program is brought individually, My case be used as a stepping stone, to bring class action.
As you are aware this challenge is more important

NOW IN LIGHT OF LAW MAKERS ACTIONS IN RE-OPENNING CCR NORTHERN DISTRICT, BUT FORCING EVERYONE WITH UNQUALIFIED AND UNMOTIVATED REGISTRY COUNSEL (THATS THEIR OWN FINDINGS) TO KEEP THEM THROUGH THEIR EXECUTION.

MR HARTMAN, OR ANY ATTORNEY COULD USE MY CASE TO LEAD A CLASS ACTION WHICH COULD HALT THE EXECUTIONS OF UP TO 70 MEN, FORCING THE STATE TO PROVIDE EACH COMPETENT/QUALIFIED COUNSEL, AND OPENNING THE DOOR FOR RELIEF THROUGH MARTINEZ

IF YOU HAVE NOT, OR EVEN IF YOU HAVE, WOULD YOU DISCUSS THIS WITH MR HARTMAN. SHOW HIM HOW MY APPEAL IS ABOUT MORE THAN JUST ME.

FINALLY. DO YOU KNOW A EXPERT IN PROCEDURES FOR PRESENTING EVIDENCE IN COURT. I HAVE COME ACROSS SOMETHING INTERESTING IN MY CASE. I THINK IT COULD BE HUGE BUT NEED TO ASK SOMEONE WITH KNOWLDS RULES + PROCEDURES FOR EVIDENCE. DO YOU KNOW ANYONE WHO CAN ANSWER MY QUESTION?

ANYWAY. HOPEFULLY THE COURT ORDER WILL HELP. AS ALWAYS, THANK YOU FOR EVERYTHING.

SINCERELY

ERB

26 Aug 2013

Eric Branch 313067
Union Corr. Inst. P-3218
7819 NW 228 St.
Raiford, Fl 32026-4430

Emily M. Williams
ABA Death Penalty Rep. Proj.
1050 Connecticut Ave. NW. Suite 400
Washington, DC 20036

Dear Emily,

Enclosed, Find the Judge's order Authoring us to find our own counsel. I have never seen a order like this one. It makes me wonder if the Judge believes, within my petition, I have some good claims.

Do you have a copy of my petition after Alex cleaned it up? In his order, The Judge indicates this might have been my goal. However, If you read my petition, 10 years ago, before I was in federal court. I went to the Federal Judge - explaining the situation with Reiter t the Registry, asking the Judge to replace Reiter When my stuff came to the federal court. He did not.

Anyway The Judge gave us 90 days. However, I assume that can be extended. As at this juncture, its important to get it right.

ALEX IS IN CHINA FOR 2 MORE WEEKS. I WILL MAIL HIM A COPY TOO, AND HAVE HIM CONTACT YOU WHEN HE RETURNS. WITH FUNDS AVAILABLE, HE MIGHT RETURN TO SOME OF THE ATTORNEYS / FIRMS HE PREVIOUSLY APPROACHED.

IF YOU NEED TO TALK TO ME. OR IF ANY ATTORNEYS WISH TO TALK TO ME, WRITE OR SET UP A CALL.

THANKS.
SINCERELY

-2-

7 Oct 2013

Eric S Branch 513067
Union Corr. Inst. F-3218
7819 NW 228 St.
Raiford, Fl 32026-4430

Ms. Emily Williams
ABA Death Penalty Representation Project
1650 Connecticut Ave. NW. Suite 400
Washington, DC 20003-6

Dear Emily

I imagine you've heard Friday the 4th. The Florida Supreme Court sent Governor Scott their (so called) 'Kill List' with 152 names on it.

The Governor now has 30 days to sign the warrants of everyone whose went through Clemency. There are 57 guys that had Clemency prior to his election and 13+ since. So nearly 1/2 face warrant and execution in 30 days. Now that said. Signing 70 warrants would be a mass killing and thus, political suicide. It's only my opinion but I dont believe the Governor will risk that. Instead he'll sign one or two every few weeks, gradually picking up the pace as he goes. This will numb the media and public, allowing him come the first of the year to really start signing warrants.

Again, Thats only my opinion, but if I was advising the Governor, That's what I'd tell him to do. In a year, he'd execute 70+ men. Many like me, with appeals and claims remaining. Yet,

SILENCED FOREVER.

NOW I AM ON THE KILL LIST BUT I DO NOT HAVE A ATTORNEY. AND LAST WEEK. THE TRIAL JUDGE HELD MY CASE IN ABEYANCE UNTIL DEC. HOWEVER. THE KILL STATUTE STILL REQUIRES THE GOVERNOR TO SIGN THE WARRANT. THEN IT IS UP TO THE COURTS, IF THEY WANT TO GRANT A STAY. OR NOT! ITS INSANE AND MANY PEOPLE WHO SHOULDNT BE EXECUTED. WILL BE BECAUSE OF IT.

SO. ON YOUR END. ANY NEWS?
GIVEN THAT MY APPEAL / CHALLENGE OF THE REGISTRY COUNSEL PROGRAM COULD HALT MANY OF THE COMING EXECUTIONS. I CANNOT BELIEVE SOMEONE - A LARGE FIRM - WOULD NOT SEIZE THE OPPORTUNITY. JUST FIGHTING THE EQUAL PROTECTION CLAIM INDIVIDUALLY ON CASE AS A STATE 'IMPEDIMENT', WOULD ALLOW ALL SIMILIARLY SITUATED PERSONS TO STAY THEIR PROCEEDINGS UNTIL THE ISSUE IS RESOLVED IN ANY CASE.
I KNOW ITS A HUGE CHALLENGE BUT I DONT KNOW. IT SEEMS ON PRINCIPLE ALONE SOME ATTORNEY OR FIRM WOULD TAKE UP THIS FIGHT. AM I MISSING SOMETHING?

ANYWAY. I'VE BEEN BUSY SENDING OUT A STACK OF PACKAGES TO SEVERAL ATTORNEYS / FIRMS. AND ALEX HAS E-MAILED MANY OTHERS. I'M HOPING THE FACT THE COURT HAS AGREED TO APPOINT AND THUS PAY WHOEVER / FIND WILL BE ENOUGH TO PURSUADE SOMEONE TO SAY YES.

I APPRECIATE AN UPDATE FROM YOUR END. DO YOU BELIEVE ITS COMPLETELY USELESS? DO I STAND A CHANCE OF FINDING ANYONE WHO WILL FIGHT FOR ME? OUTSIDE THE EQUAL PROTECTION CLAIM. I HAVE

ISSUE THAT COULD SAVE MY LIFE. DOES THAT NOT MATTER? I KNOW YOU ARE TRYING, JUST LET ME KNOW WHERE I STAND.

I APPRECIATE YOUR CONTINUED EFFORT. TAKE CARE.

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24 Oct 2013

Eric S. Branch 313067
Union Corr. Inst. P-3218
7819 NW 228 St.
Raiford, Fl 32026

Ms. Emily Williams
Death Penalty Representation Project
1050 Connecticut Ave. NW Ste 400
Washington, DC 20036.

Dear Emily,

Your 16 Oct 2013 letter arrived. I appreciate the update and continued effort. I am frustrated and discouraged, not in you, more the entire process. It seems to be weighed so heavily against the accused. Its hard not to feel completely overwhelmed. Especially when you have politicians trying to eliminate all secondary - successive appeals. Not by repeal, but in having us killed before we can access them. You'd know better than I, but it seems Florida is the only state that is trying to decrease the appellate review. Since Apprendi/Ring the national trend has been towards further restricting the class of people eligible for death/execution, except Florida. They are handing them out and upholding more than ever. And now removing appeals, not by repeal but by killing us. When they have the ability to re-set the goal post with the signature of a pen, its difficult to maintain faith and hope that someone

WILL STEP UP AND TRY TO REBALANCE THE SCALES. SO YEAH, I'M DISCOURAGED AND FRUSTRATED BUT I AM NOT GIVING UP AND I AM HAPPY TO HEAR YOU WON'T EITHER.

THE NEWS SOUNDS ENCOURAGING. HAVING FLORIDA COUNSEL ONBOARD. HOPEFULLY THE NEW YORK FIRM WILL AGREE TO TAKE IT.

BASED ON WHAT I RAISED, I'M NOT SURE THE FIGHT WILL BE THAT BIG. I MEAN, IT'S PRETTY CLEAR A 14TH AMEND EQUAL PROTECTION CLAIM EXIST. THEY MAY, BUT I HAVE TROUBLE SEEING THE STATE LET IT PROCEED TO JUDGMENT. I THINK ONCE THEY SEE A BIG FIRM IS READY TO FIGHT FOR A WIN THE STATE WILL CONCEDE MY CASE ON THE I.A.C TYPE CLAIM, TRYING TO MOOT THE LARGER QUESTION OF EQUAL PROTECTION. ATLEAST, THAT WOULD BE THE WISE MOVE. BUT I THINK WE'D BOTH AGREE, THE STATE OFTEN DOES NOT DO THAT WHICH SEEMS WISE TO US.

WHEN WILL YOU SPEAK TO THEM AGAIN? I AM SUPPOSE TO REPORT TO THE FEDERAL JUDGE BY NOV 26TH. THE STATE COLLAT PROCEEDINGS ARE HELD IN ABEYANCE UNTIL MID DECEMBER.

IF THEY WON'T HAVE AN ANSWER BY THEN, I MIGHT NEED YOU TO WRITE / CALL THE JUDGE, PROVIDING A STATUS AND ASKING FOR DEC. TO TRY TO BRING THEM ABOARD. SO LET ME KNOW SOMETHING AROUND THE MIDDLE OF NOV.

DO YOU KNOW KEN DRIGGS? I SPOKE WITH HIM LAST WEEK. HE TOLD ME HE WOULD SPEAK TO PROF. BLUME UP AT CORNELL, TO FIND OUT IF HE KNOW OF A LAWYER OR FIRM THAT MIGHT BE INTERESTED IN

THE CHALLENGE.

I LIKE KEN. SADLY HE IS RETIRED. BEYOND PROF. BLUME. I ASKED HIM IF HE'D CONSIDER HELPING ALEX GET DOCUMENTS AND LETTERS OUT TO LAW FIRMS. ALEX IS SO BUSY. AND THE LAST WEEK, HE'S BEEN SICK. HE IS HAVING TROUBLE KEEPING ON TOP OF IT. I'LL LET YOU KNOW WHAT KEN TELLS ME.

OF COURSE, WE ALSO HAVE, OUT THERE, THE POSSIBLITY THAT GOV. SCOTT MIGHT READ THE NEW WARRANT STATUTE STRICTLY, AND SIGN 70 WARRANTS BY YEARS END. I THINK DOING SO WOULD BE POLITICAL SUICIDE. AND I IMAGINE HIS ADVISOR HAVE TOLD HIM THE SAME. BUT WHO CAN SAY FOR CERTAIN, AFTERALL, HE DID SIGN THE BILL INTO LAW.

I BELIEVE, I HAVE RECEIVED ALL YOUR LETTERS. AS TO YOUR INQUIRY OF THE NEW CLAIMS. THERE ARE TWO. ONE I'M NOT SURE IF ITS SUPPORT BY THE FACTS YET, SO I WON'T GET INTO THAT ONE NOW. AS TO THE OTHER:

LEGAL CLAIM #2 (FOR REFERENCE)

TRIAL RECORD REFLECTS 18 DAYS PRIOR TO TRIAL, HAVING NEVER MET MY ATTORNEY. I WROTE THE TRIAL JUDGE, AS DID AL BRANCH (GRANDPA) OUTLINING OUR FEARS AND ASKING FOR A HEARING [LETTERS IN COURT RECORD].

13 DAYS BEFORE TRIAL, DURING A SCHEDULED PRE-TRIAL HEARING, WHEN THIS JUDGE FAILED TO ADDRESS OUR LETTERS/CONCERNS. AL STOOD, ASKING THE COURT FOR HELP. THE JUDGE TOLD US, IT WAS NOT HIS CONCERN, THAT WAS BETWEEN US AND THE ATTORNEY. AL INFORMED THE COURT WE WANTED TO FIRE THE ATTORNEY (HE WAS HIRED

BY GRANDPA). THE JUDGE CUT HIM OFF. TOLD HIM THAT WAS NOT HIS PROBLEM.
AFTER THE HEARING AL, WITH VERDELSKI MILLER, OUR INDIANA ATTORNEY. TOLD THE ATTORNEY HE WAS FIRED LATER THAT DAY. THE ATTORNEY CAME TO THE JAIL FOR THE FIRST TIME TO MEET ME. I WAS THERE WITH VERDELSKI. I ALSO TOLD THE ATTORNEY HE WAS FIRED. SO THE RECORD IS CLEAR, WE FIRED HIM, THE ATTORNEY DOMITED AS MUCH AT THE EVIDENTIARY HEARING.
HOWEVER THE ATTORNEY RETURNED THE NEXT DAY, AFTER BEING FIRED, SAID THE JUDGE WOULD NOT LET HIM LEAVE, UNLESS I WAS WILLING TO REPRESENT MYSELF.
SINCE THEN, I'VE LOOKED, THERE EXIST NO RECORD OF THE ATTORNEY MEETING THE JUDGE. LITTLE DOUBT HE MADE IT UP, AND ON POST-CONVICTION, THIS IS NOT A ISSUE COUNSEL WOULD PURSUE/ARGUE.
QUESTION:
READING AGENCY LAW, AND CASE LAW, IT SUGGEST WHEN YOU FIRE AN ATTORNEY, ANYTHING THEY DO BEYOND THAT POINT IS ILLEGAL AND THUS VOIDABLE, I CANNOT BE HELD RESPONSIBLE FOR THOSE ACTS.
POST-CONVICTION COUNSEL REFUSED TO RAISE IT, STATING THAT ONLY APPLIED TO 'CIVIL' ATTORNEY. BUT NOTHING I'VE READ STATES THAT.
I WANT TO RAISE THE CLAIM THAT I WAS DEPRIVED COUNSEL AT TRIAL WHERE COUNSEL REFUSED TO LEAVE AFTER BEING FIRED AND WHERE COUNSEL INDUCED HIS CLIENT TO BELIEVE THE JUDGE SUPPORTED

COUNSELS CONTINUED REPRESENTATION THROUGH LIES AND THREAT.

SO EMILY, IS THAT A LEGAL CLAIM. I CANNOT FIND ANY SUPPORT FOR IT BUT I CANNOT FIND ANYTHING TO CAUSE ME TO BELIEVE IT ISN'T EITHER. CERTAINLY NOTHING TO SUPPORT POST-CONVICTION COUNSELS CLAIM THAT IT ONLY APPLIES TO CIVIL ATTORNEY, WHICH CONFUSES THE ENTIRE CLAIM.

IF YOU KNOW SOME EXPERT IN AGENCY LAW, OR LEGAL ETHICS, CONSULT THEM, SEE WHAT THEY TELL YOU. MAYBE THE BIG N.Y. FIRM HAS AN ANSWER?

O'KAY. GET BACK TO ME BY THE 15, GIVE ME AN UP DATE, SEE IF WE NEED WRITE / CALL THE JUDGE, OR GIVE ME SOME RESPONSE TO TAKE TO HIM.

I APPRECIATE IT EMILY. I REALLY DO.
TAKE CARE.

ZEKE

27 Oct 2013

ERIC BRANCH 313067
UNION CORR INST P-3218
7819 NW 228 ST
RAIFORD, FL 32026

Ms EMILY WILLIAMS
1050 CONNECTICUT AVE. NW Ste 400
WASHINGTON, DC 20036

DEAR EMILY,

ENCLOSED, FIND A PETITION FOR WRIT OF QUO WARRANTO I FILED FRIDAY. THE FLA S. CT. HAS A STRICT PROHIBITION ON PRO SE FILING AND MAY REJECT IT FROM THE START, BUT IN THE END, THE GOVERNOR WILL HAVE BEEN SERVED A COPY AND NOTICE OF MY CIRCUMSTANCE, WHICH HOPEFULLY WILL KEEP HIM FROM BOTHERING ME. YES, HOPEFULLY.

MY FEAR IS THAT LOOKING AT THE POSSIBLE OUTCOME OF MY LEGAL ACTION, THEY WILL SIGN MY WARRANT, FORCE SOME NO NAME NOBODY ATTORNEY ON MY CASE, TO SIMPLY GIVE THE 'APPEARANCE' OF REPRESENTATION, SO THEY CAN EXECUTE ME BEFORE THE LEGAL ACTION CAN GET ANY MOVEMENT IN THE COURTS. AFTERALL, THIS IS FLORIDA

I DONT KNOW WHETHER WE'LL NEED TO PICK-UP IN STATE INVESTIGATORS, OR WHETHER THE NY FIRM (ANY FIRM) WILL HAVE THEIR OWN. IF REQUIRED. ROSALIE BOLIN WILL ACCEPT THE POSITION. THE FEE IS COVERED BY BOTH STATE AND FEDERAL

STATUTES. I THINK IT IS JUST A MATTER OF THE COURT APPROVING THEIR APPOINTMENT.

AGAIN, AS I WROTE LAST WEEK. LET ME KNOW SOMETHING BY THE 15TH OF NOV. SO I CAN NOTIFY THE JUDGE, THAT WE ARE THERE OR THAT WE NEED A BIT MORE TIME. EVEN IF THEY CANNOT START TO JAN 1ST. IF SOMEONE COMMITS NOW LET ME KNOW.

I'LL LET YOU KNOW WHAT THE COURT DOES WITH THE WRIT. THANK YOU AND TAKE CARE.

ERIC

-2-

12 Nov 2013

ERIC BRANCH 313067
UNION CORR. INST. P-3218
7819 NW 228 ST.
RAIFORD, FL 32026-4430

MS. EMILY WILLIAMS
ABA DEATH PENALTY REP. PROJ.
1050 CONNECTICUT AVE. NW, SUITE 400
WASHINGTON, DC 20036

DEAR EMILY,

I RECEIVED YOUR LETTER OF NOV. 07. HAPPY TO HEAR YOU MADE PROGRESS IN THE SEARCH. YOU WRITE THAT EVERYONE IS AWARE OF THE COURT'S DEADLINE. IF ANY OF THEM CANNOT START THAT QUICKLY, I WOULD OFFER THAT THE ATTORNEYS / FIRM CAN PROBABLY GET AWAY WITH MAKING NOTICE OF APPEARANCE IN STATE + FEDERAL COURT, AT THE SAME TIME INFORMING THEM THAT THEY ARE CLOSING OUT OTHER MATTERS, THEY WON'T BEGIN UNTIL FIRST WEEK OF JANUARY, ASKING UNTIL ATLEAST FEB 1ST TO READ THE FILES / CONDUCT A CURSORY INVESTIGATION AND FILE AMENDED PLEADINGS.

WHILE THE FEDERAL COURTS 90 DAY DEADLINE IS NOV 26TH, THE STATE COURT PROCEEDINGS ARE INDEFINITELY HELD IN ABEYANCE BUT WE HAVE A STATUS HEARING MID-DECEMBER. WITH NO COUNSEL AVAILABLE ELSEWHERE, I DONT IMAGINE EITHER COURT WOULD DENY THEM APPROPRIATE TIME TO CLOSE OUT OTHER MATTERS, AND REVIEW THE FILES BEFORE FILING ANYTHING NEW / ESPECIALLY WITH THE HOLIDAYS

FALLING INBETWEEN NOW AND THEN, AS NO DOUBT MANY JUDGES AND ATTORNEYS WILL TAKE OFF OVER THE HOLIDAYS.

ANYWAY. JUST A THOUGHT, BUT IT MIGHT HELP CONVINCE A ATTORNEY ON THE FENCE TO GO AHEAD AND COMMIT, KNOWING THEY'LL HAVE ATLEAST A FEW MONTHS TO PREPARE.

IF I DONT HEAR ANYTHING ELSE BY NOV 22nd, I'll SEND THE JUDGE A LETTER, WITH YOURS ATTACHED, ASKING HIM TO ALLOW ME TO UPDATE HIM DEC 15TH, AND LETTING HIM KNOW HE CAN CONTACT YOU DIRECTLY TO REQUEST AN UPDATE, OR CONFIRM MY INFORMATION.

IF ANYTHING NEEDS TO BE DISCUSSED IMMEDIATELY, YOU, OR ANY POTENTIAL ATTORNEY / FIRM CAN CALL THE PRISON TO SET UP A PHONE CALL. OTHERWISE, JUST KEEP ME INFORMED BY LETTER.

HAVE A GOOD THANKSGIVING.
AGAIN, THANK YOU. I APPRECIATE EVERYTHING.

SINCERELY

24 Nov 2013

Eric Branch 315067
Union Corr. Inst. P-3217
7819 NW 228 Street
Raiford, Fl 32026

Ms Emily Williams
ABA Death Penalty Rep. Proj.
1050 Connecticut Ave NW, Suite 400
Washington, DC 20036

Dear Emily,

I wrote both Judges, State and Federal Court, this past Friday. Informing them that we recognize the deadline, asking them to give us their patience. You thought Counsel were interested. You could not promise or guarantee it, just you felt you were close.

I asked them to allow me til Dec 15th to make a showing one way or another. The State Court already planned a status hearing. So hopefully, By the 15th, you can work some magic.

Also, I suggest that if Counsel committed. They'd make appearance before Jan 1st. And need atleast til Feb 1st to review the record and file amended pleadings.

If no one commits by the 15th, I dunno, My fear obviously is that they'll wait no longer, forcing some

BOTTOM-FEEDER WHO WONT EVEN ADOPT MY PLEADINGS TO REPRESENT ME.

ITS ALSO POSSIBLE, COME THE 15TH, I STILL DO NOT HAVE COUNSEL. THE COURT MIGHT WANT TO TALK TO YOU PERSONALLY. SEE IF A LITTLE MORE TIME, OR ANYTHING ELSE MIGHT HELP. IF THEY DO CALL, I HOPE YOULL MAKE YOURSELF AVAILABLE.

WITH LUCK THOUGH, BY THE 15TH, THE ATTORNEYS/FIRM WILL GIVE A SOLID YES.

ANYWAY, I JUST WANTED TO LET YOU KNOW WHAT I TOLD THE COURT AND ABOUT THE STATUS DUE THE 15TH OF DEC.

HOPE YOU HAD A NICE THANKSGIVING. SADLY, JUST ANOTHER DAY HERE. THANKS A MILLION FOR EVERYTHING

SINCERELY

-2-

EXHIBIT 34

Fwd: Florida Death Penalty Case - Eric Branch
Daniel Ashton to: Kimberly Newberry 01/21/2018 09:03 PM

History: This message has been forwarded.

2 attachments

Eric Branch Petition.rtf Executive Summary - Eric Branch Petition.docx

Sent from my iPhone
Please excuse any typos.

Daniel J. Ashton
Investigator Supervisor- CHU
Federal Public Defender- Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
850-942-8818

Begin forwarded message:

From: "alex branch" <alexbranch@hotmail.com>
Date: January 21, 2018 at 5:35:02 PM CST
To: "daniel_ashton@fd.org" <daniel_ashton@fd.org>
Subject: Fw: Florida Death Penalty Case - Eric Branch

From: alex branch <alexbranch@hotmail.com>
Sent: Sunday, July 8, 2012 5:50 PM
To: stephen.hanlon@hklaw.com
Subject: Florida Death Penalty Case - Eric Branch

Mr. Hanlon,

Hello. Eric Branch, my cousin, has requested that I contact you. Eric is currently on death row in Florida and has exhausted all of his appeals. He does not have an attorney at the time and is looking for an attorney that will take his case on a pro-bono basis or with limited funding.

Eric has prepared a petition, see above, which presents a major challenge to the death penalty

in Florida. Having been involved to a limited degree with his case, I can say that there are many issues that are raised in the petition that are valid and we believe worthy of your attention.

If you would please review the petition and let us know your thoughts that would be greatly appreciated. We look forward to hearing from you soon.

Regards,

Alex Branch
1121 Parke Ridge Court
Evansville, IN 47715
812-893-0320

Fwd: Florida Death Penalty Case - Eric Branch
Daniel Ashton to: Kimberly Newberry 01/21/2018 09:03 PM

History: This message has been forwarded.

2 attachments

Eric Branch Petition.rtf Executive Summary - Eric Branch Petition.docx

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Please excuse any typos.

Daniel J. Ashton
Investigator Supervisor- CHU
Federal Public Defender- Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
850-942-8818

Begin forwarded message:

From: "alex branch" <alexbranch@hotmail.com>
Date: January 21, 2018 at 5:35:50 PM CST
To: "daniel_ashton@fd.org" <daniel_ashton@fd.org>
Subject: Fw: Florida Death Penalty Case - Eric Branch

From: alex branch <alexbranch@hotmail.com>
Sent: Sunday, July 8, 2012 5:56 PM
To: rblack@royblack.com
Subject: Florida Death Penalty Case - Eric Branch

Mr. Black,

Hello. Eric Branch, my cousin, has requested that I contact you. Eric is currently on death row in Florida and has exhausted all of his appeals. He does not have an attorney at the time and is looking for an attorney that will take his case on a pro-bono basis or with limited funding.

Eric has prepared a petition, see above, which presents a major challenge to the death penalty

in Florida. Having been involved to a limited degree with his case, I can say that there are many issues that are raised in the petition that are valid and we believe worthy of your attention.

If you would please review the petition and let us know your thoughts that would be greatly appreciated. We look forward to hearing from you soon.

Regards,

Alex Branch
1121 Parke Ridge Court
Evansville, IN 47715
812-893-0320

Fwd: Florida Death Penalty Case - Eric Branch
Daniel Ashton to: Kimberly Newberry 01/21/2018 09:04 PM

History: This message has been forwarded.

2 attachments

Eric Branch Petition.rtf Executive Summary - Eric Branch Petition.docx

Sent from my iPhone
Please excuse any typos.

Daniel J. Ashton
Investigator Supervisor- CHU
Federal Public Defender- Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
850-942-8818

Begin forwarded message:

From: "alex branch" <alexbranch@hotmail.com>
Date: January 21, 2018 at 5:36:59 PM CST
To: "daniel_ashton@fd.org" <daniel_ashton@fd.org>
Subject: Fw: Florida Death Penalty Case - Eric Branch

From: alex branch <alexbranch@hotmail.com>
Sent: Sunday, July 8, 2012 6:03 PM
To: emily.williams@americanbar.org
Subject: Florida Death Penalty Case - Eric Branch

Ms. Williams,

Hello. Eric Branch, my cousin, has requested that I contact you. Eric is currently on death row in Florida and has exhausted all of his appeals. He does not have an attorney at the time and is looking for an attorney that will take his case on a pro-bono basis or with limited funding.

Eric has prepared a petition, see above, which presents a major challenge to the death penalty

in Florida. Having been involved to a limited degree with his case, I can say that there are many issues that are raised in the petition that are valid and we believe worthy of your attention.

If you would please review the petition and let us know your thoughts that would be greatly appreciated. We look forward to hearing from you soon.

Regards,

Alex Branch
1121 Parke Ridge Court
Evansville, IN 47715
812-893-0320

Fwd: Florida Death Penalty Case - Eric Branch
Daniel Ashton to: Kimberly Newberry 01/21/2018 09:04 PM

History: This message has been forwarded.

2 attachments

Eric Branch Petition.rtf Executive Summary - Eric Branch Petition.docx

Sent from my iPhone
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Daniel J. Ashton
Investigator Supervisor- CHU
Federal Public Defender- Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
850-942-8818

Begin forwarded message:

From: "alex branch" <alexbranch@hotmail.com>
Date: January 21, 2018 at 5:37:56 PM CST
To: "daniel_ashton@fd.org" <daniel_ashton@fd.org>
Subject: Fw: Florida Death Penalty Case - Eric Branch

From: alex branch <alexbranch@hotmail.com>
Sent: Sunday, July 8, 2012 6:16 PM
To: martymcclain@earthlink.net; lindamcdermott@msn.com
Subject: Florida Death Penalty Case - Eric Branch

Mr. McClain / Ms. McDermott,

Hello. Eric Branch, my cousin, has requested that I contact you. Eric is currently on death row in Florida and has exhausted all of his appeals. He does not have an attorney at the time and is looking for an attorney that will take his case on a pro-bono basis or with limited funding.

Eric has prepared a petition, see above, which presents a major challenge to the death penalty

in Florida. Having been involved to a limited degree with his case, I can say that there are many issues that are raised in the petition that are valid and we believe worthy of your attention.

If you would please review the petition and let us know your thoughts that would be greatly appreciated. We look forward to hearing from you soon.

Regards,

Alex Branch
1121 Parke Ridge Court
Evansville, IN 47715
812-893-0320

Fwd: Florida Death Penalty Case - Eric Branch
Daniel Ashton to: Kimberly Newberry 01/21/2018 09:05 PM

History: This message has been forwarded.

2 attachments

Eric Branch Petition.rtf Executive Summary - Eric Branch Petition.docx

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Please excuse any typos.

Daniel J. Ashton
Investigator Supervisor- CHU
Federal Public Defender- Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
850-942-8818

Begin forwarded message:

From: "alex branch" <alexbranch@hotmail.com>
Date: January 21, 2018 at 5:38:38 PM CST
To: "daniel_ashton@fd.org" <daniel_ashton@fd.org>
Subject: Fw: Florida Death Penalty Case - Eric Branch

From: alex branch <alexbranch@hotmail.com>
Sent: Sunday, July 8, 2012 6:21 PM
To: rberg@floridajusticeinstitute.org
Subject: Florida Death Penalty Case - Eric Branch

Mr. Berg,

Hello. Eric Branch, my cousin, has requested that I contact you. Eric is currently on death row in Florida and has exhausted all of his appeals. He does not have an attorney at the time and is looking for an attorney that will take his case on a pro-bono basis or with limited funding.

Eric has prepared a petition, see above, which presents a major challenge to the death penalty

in Florida. Having been involved to a limited degree with his case, I can say that there are many issues that are raised in the petition that are valid and we believe worthy of your attention.

If you would please review the petition and let us know your thoughts that would be greatly appreciated. We look forward to hearing from you soon.

Regards,

Alex Branch
1121 Parke Ridge Court
Evansville, IN 47715
812-893-0320

Fwd: Florida Death Penalty Case - Eric Branch
Daniel Ashton to: Kimberly Newberry 01/21/2018 09:06 PM

History: This message has been forwarded.

2 attachments

Eric Branch Petition.rtf Executive Summary - Eric Branch Petition.docx

Sent from my iPhone
Please excuse any typos.

Daniel J. Ashton
Investigator Supervisor- CHU
Federal Public Defender- Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
850-942-8818

Begin forwarded message:

From: "alex branch" <alexbranch@hotmail.com>
Date: January 21, 2018 at 5:39:17 PM CST
To: "daniel_ashton@fd.org" <daniel_ashton@fd.org>
Subject: Fw: Florida Death Penalty Case - Eric Branch

From: alex branch <alexbranch@hotmail.com>
Sent: Sunday, July 8, 2012 6:25 PM
To: jerry.hartman@dbr.com
Subject: Florida Death Penalty Case - Eric Branch

Mr. Hartman,

Hello. Eric Branch, my cousin, has requested that I contact you. Eric is currently on death row in Florida and has exhausted all of his appeals. He does not have an attorney at the time and is looking for an attorney that will take his case on a pro-bono basis or with limited funding.

Eric has prepared a petition, see above, which presents a major challenge to the death penalty

in Florida. Having been involved to a limited degree with his case, I can say that there are many issues that are raised in the petition that are valid and we believe worthy of your attention.

If you would please review the petition and let us know your thoughts that would be greatly appreciated. We look forward to hearing from you soon.

Regards,

Alex Branch
1121 Parke Ridge Court
Evansville, IN 47715
812-893-0320

Fwd: Florida Death Penalty Case - Eric Branch
Daniel Ashton to: Kimberly Newberry 01/21/2018 09:06 PM

History: This message has been forwarded.

2 attachments

Eric Branch Petition.rtf Executive Summary - Eric Branch Petition.docx

Sent from my iPhone
Please excuse any typos.

Daniel J. Ashton
Investigator Supervisor- CHU
Federal Public Defender- Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
850-942-8818

Begin forwarded message:

From: "alex branch" <alexbranch@hotmail.com>
Date: January 21, 2018 at 5:40:02 PM CST
To: "daniel_ashton@fd.org" <daniel_ashton@fd.org>
Subject: Fw: Florida Death Penalty Case - Eric Branch

From: alex branch <alexbranch@hotmail.com>
Sent: Sunday, July 8, 2012 6:32 PM
To: jb94@cornell.edu
Subject: Florida Death Penalty Case - Eric Branch

Mr. Blume,

Hello. Eric Branch, my cousin, has requested that I contact you. Eric is currently on death row in Florida and has exhausted all of his appeals. He does not have an attorney at the time and is looking for an attorney that will take his case on a pro-bono basis or with limited funding.

Eric has prepared a petition, see above, which presents a major challenge to the death penalty

in Florida. Having been involved to a limited degree with his case, I can say that there are many issues that are raised in the petition that are valid and we believe worthy of your attention.

If you would please review the petition and let us know your thoughts that would be greatly appreciated. We look forward to hearing from you soon.

Regards,

Alex Branch
1121 Parke Ridge Court
Evansville, IN 47715
812-893-0320

Fwd: Florida Death Penalty Case - Eric Branch
Daniel Ashton to: Kimberly Newberry 01/21/2018 09:07 PM

History: This message has been forwarded.

2 attachments

Eric Branch Petition.rtf Executive Summary - Eric Branch Petition.docx

Sent from my iPhone
Please excuse any typos.

Daniel J. Ashton
Investigator Supervisor- CHU
Federal Public Defender- Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
850-942-8818

Begin forwarded message:

From: "alex branch" <alexbranch@hotmail.com>
Date: January 21, 2018 at 5:40:05 PM CST
To: "daniel_ashton@fd.org" <daniel_ashton@fd.org>
Subject: Fw: Florida Death Penalty Case - Eric Branch

From: alex branch <alexbranch@hotmail.com>
Sent: Sunday, July 8, 2012 6:37 PM
To: meolive@aol.com
Subject: Florida Death Penalty Case - Eric Branch

Mr. Olive,

Hello. Eric Branch, my cousin, has requested that I contact you. Eric is currently on death row in Florida and has exhausted all of his appeals. He does not have an attorney at the time and is looking for an attorney that will take his case on a pro-bono basis or with limited funding.

Eric has prepared a petition, see above, which presents a major challenge to the death penalty

in Florida. Having been involved to a limited degree with his case, I can say that there are many issues that are raised in the petition that are valid and we believe worthy of your attention.

If you would please review the petition and let us know your thoughts that would be greatly appreciated. We look forward to hearing from you soon.

Regards,

Alex Branch
1121 Parke Ridge Court
Evansville, IN 47715
812-893-0320

Fwd: Florida Death Penalty Case - Eric Branch
Daniel Ashton to: Kimberly Newberry 01/21/2018 09:08 PM

History: This message has been forwarded.

2 attachments

Executive Summary - Eric Branch Petition.docx Eric Branch Petition.rtf

Sent from my iPhone
Please excuse any typos.

Daniel J. Ashton
Investigator Supervisor- CHU
Federal Public Defender- Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
850-942-8818

Begin forwarded message:

From: "alex branch" <alexbranch@hotmail.com>
Date: January 21, 2018 at 5:42:51 PM CST
To: "daniel_ashton@fd.org" <daniel_ashton@fd.org>
Subject: Fw: Florida Death Penalty Case - Eric Branch

FYI-Response from Roy Black that I forwarded to Lonnie Rosenwald, Nicole's mother in Seattle. I forwarded to her because she is an attorney and she has several relatives in NY that I've heard are attorneys.

From: alex branch <alexbranch@hotmail.com>
Sent: Saturday, July 21, 2012 10:39 PM
To: lonnie.rosenwald@comcast.net
Subject: FW: Florida Death Penalty Case - Eric Branch

Lonnie,

I appreciate the time that you spent discussing Eric's case and look forward to any assistance that you may be able to provide in the future. Please see Eric's petition and an executive

summary of Eric's petition above. I look forward to hearing from you soon.

Regards,
Alex
812-893-0320

From: RBlack@royblack.com
To: alexbranch@hotmail.com
Subject: Re: Florida Death Penalty Case - Eric Branch
Date: Sun, 8 Jul 2012 22:01:29 +0000

Alex: thank you for your inquiry. Death cases are very time intensive to work on. I wrote about this in a chapter of my book Black's Law. At one time I did a number of these cases pro bono but no more. I can't afford to spend a year working for free. You need to find a big law firm that can afford to assign lawyers to a pro bono case. Many new york firms do this. Good luck.

From: alex branch [mailto:alexbranch@hotmail.com]
Sent: Sunday, July 08, 2012 05:56 PM
To: Roy Black
Subject: Florida Death Penalty Case - Eric Branch

Mr. Black,

Hello. Eric Branch, my cousin, has requested that I contact you. Eric is currently on death row in Florida and has exhausted all of his appeals. He does not have an attorney at the time and is looking for an attorney that will take his case on a pro-bono basis or with limited funding.

Eric has prepared a petition, see above, which presents a major challenge to the death penalty in Florida. Having been involved to a limited degree with his case, I can say that there are many issues that are raised in the petition that are valid and we believe worthy of your attention.

If you would please review the petition and let us know your thoughts that would be greatly appreciated. We look forward to hearing from you soon.

Regards,

Alex Branch
1121 Parke Ridge Court
Evansville, IN 47715
812-893-0320

Fwd: Florida Death Penalty Case - Eric Branch
Daniel Ashton to: Kimberly Newberry 01/21/2018 09:08 PM

History: This message has been forwarded.

2 attachments

Eric Branch Petition.rtf Executive Summary - Eric Branch Petition.docx

Sent from my iPhone
Please excuse any typos.

Daniel J. Ashton
Investigator Supervisor- CHU
Federal Public Defender- Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
850-942-8818

Begin forwarded message:

From: "alex branch" <alexbranch@hotmail.com>
Date: January 21, 2018 at 5:44:06 PM CST
To: "daniel_ashton@fd.org" <daniel_ashton@fd.org>
Subject: Fw: Florida Death Penalty Case - Eric Branch

From: alex branch <alexbranch@hotmail.com>
Sent: Friday, August 10, 2012 9:54 PM
To: clive@reprieve.org.uk
Subject: Florida Death Penalty Case - Eric Branch

Clive,

Hello, if I may introduce myself. My name is Alex Branch and I am writing in hope that you will be able to assist my cousin, Eric Branch, who is currently on death row in Florida. I was introduced to your work by Verdelski Miller, an attorney from Evansville, Indiana, who said he worked with you on a death penalty case in Mississippi in the 90's while with the NAACP. Eric has exhausted all of his appeals. He does not have an attorney at the time and is looking for an

attorney that will take his case on a pro-bono basis or with limited funding.

Eric has prepared a petition, see above, which presents a major challenge to the death penalty in Florida. Having been involved to a limited degree with his case, I can say that there are many issues that are raised in the petition that are valid and we believe worthy of your attention.

If you would please review the petition and let us know your thoughts that would be greatly appreciated. We look forward to hearing from you soon.

Regards,
Alex

Fwd: Florida Death Penalty Case - Eric Branch
Daniel Ashton to: Kimberly Newberry 01/21/2018 09:09 PM

History: This message has been forwarded.

3 attachments

Letter to Attorney.docx Eric Branch Petition - Updated Feb. 10, 2013.rtf Documents For Eric Branch.pdf

Sent from my iPhone
Please excuse any typos.

Daniel J. Ashton
Investigator Supervisor- CHU
Federal Public Defender- Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
850-942-8818

Begin forwarded message:

From: "alex branch" <alexbranch@hotmail.com>
To: "daniel_ashton@fd.org" <daniel_ashton@fd.org>
Subject: Fw: Florida Death Penalty Case - Eric Branch

From: alex branch <alexbranch@hotmail.com>
Sent: Monday, November 4, 2013 1:06 PM
To: Roy Black
Subject: RE: Florida Death Penalty Case - Eric Branch

Mr. Black - Please see attachments above. The court has granted Eric the right to an attorney at a min. $125/hour, but he must respond by Nov. 26th. Please let me know it you are interested or know of anyone that may be interested.

Thanks,
Alex

From: RBlack@royblack.com
To: alexbranch@hotmail.com
Subject: Re: Florida Death Penalty Case - Eric Branch
Date: Sun, 8 Jul 2012 22:01:29 +0000

Alex: thank you for your inquiry. Death cases are very time intensive to work on. I wrote about this in a chapter of my book Black's Law. At one time I did a number of these cases pro bono but no more. I can't afford to spend a year working for free. You need to find a big law firm that can afford to assign lawyers to a pro bono case. Many new york firms do this. Good luck.

From: alex branch [mailto:alexbranch@hotmail.com]
Sent: Sunday, July 08, 2012 05:56 PM
To: Roy Black
Subject: Florida Death Penalty Case - Eric Branch

Mr. Black,

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Regards,

Alex Branch
1121 Parke Ridge Court
Evansville, IN 47715
812-893-0320

Fwd: Florida Death Penalty Case - Eric Branch
Daniel Ashton to: Kimberly Newberry 01/21/2018 09:10 PM

History: This message has been forwarded.

3 attachments

Letter to Attorney.docx Eric Branch Petition - Updated Feb. 10, 2013.rtf Documents For Eric Branch.pdf

Sent from my iPhone
Please excuse any typos.

Daniel J. Ashton
Investigator Supervisor- CHU
Federal Public Defender- Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
850-942-8818

Begin forwarded message:

From: "alex branch" <alexbranch@hotmail.com>
To: "daniel_ashton@fd.org" <daniel_ashton@fd.org>
Subject: Fw: Florida Death Penalty Case - Eric Branch

From: alex branch <alexbranch@hotmail.com>
Sent: Monday, November 4, 2013 1:10 PM
To: Randall Berg
Subject: RE: Florida Death Penalty Case - Eric Branch

Mr. Berg - Please see attachments above. The court has granted Eric the right to an attorney at $125/hr. min., but he must respond by Nov. 26th. Please let me know if you are interested or know of anyone that may be. I look forward to hearing from you.

Regards,
Alex

From: rberg@floridajusticeinstitute.org

To: alexbranch@hotmail.com
Date: Thu, 19 Jul 2012 12:57:05 -0700
Subject: RE: Florida Death Penalty Case - Eric Branch

Dear Mr. Branch:

I have briefly reviewed your cousin's petition. I am not prepared to offer any guidance or assistance in either filing it or representing your cousin, nor as to whether there is any merit to his claims. Our office has only 3 attorneys, including me. We are not funded, nor do we have the time, to file a major challenge to the death penalty in Florida.

I am sorry this does not have better news. I wish you and your cousin my best.

Randy Berg

Randall C. Berg, Jr.

Executive Director

Firm Website

Please consider the environment before printing this e-mail.

NOTICE: This electronic mail transmission from the law firm of the Florida Justice Institute may constitute an attorney-client communication that is privileged at law. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this electronic mail transmission in error, please delete it from your system without copying it, and notify the sender by reply e-mail, so that our address record can be corrected.

From: alex branch [mailto:alexbranch@hotmail.com]
Sent: Sunday, July 08, 2012 6:21 PM
To: Randall Berg
Subject: Florida Death Penalty Case - Eric Branch

Mr. Berg,

Hello. Eric Branch, my cousin, has requested that I contact you. Eric is currently on death row in Florida and has exhausted all of his appeals. He does not have an attorney at the time and is looking for an attorney that will take his case on a pro-bono basis or with limited funding.

Eric has prepared a petition, see above, which presents a major challenge to the death penalty in Florida. Having been involved to a limited degree with his case, I can say that there are many issues that are raised in the petition that are valid and we believe worthy of your attention.

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Regards,

Alex Branch

1121 Parke Ridge Court

Evansville, IN 47715

812-893-0320

Fwd: Florida Death Penalty Case - Eric Branch
Daniel Ashton to: Kimberly Newberry 01/21/2018 09:11 PM

History: This message has been forwarded.

5 attachments

Eric Branch Petition.rtf Executive Summary - Eric Branch Petition.docx Letter to Attorney.docx

Eric Branch Petition - Updated Feb. 10, 2013.rtf Documents For Eric Branch.pdf

Sent from my iPhone
Please excuse any typos.

Daniel J. Ashton
Investigator Supervisor- CHU
Federal Public Defender- Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
850-942-8818

Begin forwarded message:

From: "alex branch" <alexbranch@hotmail.com>
To: "daniel_ashton@fd.org" <daniel_ashton@fd.org>
Subject: Fw: Florida Death Penalty Case - Eric Branch

From: alex branch <alexbranch@hotmail.com>
Sent: Monday, November 4, 2013 1:16 PM
To: jerry.hartman@dbr.com
Subject: FW: Florida Death Penalty Case - Eric Branch

Mr. Hartman - Please see attachments above. The courts have granted Eric the right to an attorney at $125/hr. min., however, he must respond by Nov. 26th. Please let me know if you are interested or know of anyone that may be. I look forward to hearing from you.

Regards,
Alex

From: alexbranch@hotmail.com
To: jerry.hartman@dbr.com
Subject: Florida Death Penalty Case - Eric Branch
Date: Sun, 8 Jul 2012 18:25:01 -0400

Mr. Hartman,

Hello. Eric Branch, my cousin, has requested that I contact you. Eric is currently on death row in Florida and has exhausted all of his appeals. He does not have an attorney at the time and is looking for an attorney that will take his case on a pro-bono basis or with limited funding.

Eric has prepared a petition, see above, which presents a major challenge to the death penalty in Florida. Having been involved to a limited degree with his case, I can say that there are many issues that are raised in the petition that are valid and we believe worthy of your attention.

If you would please review the petition and let us know your thoughts that would be greatly appreciated. We look forward to hearing from you soon.

Regards,

Alex Branch
1121 Parke Ridge Court
Evansville, IN 47715
812-893-0320

Fwd: Florida Death Penalty Case - Eric Branch
Daniel Ashton to: Kimberly Newberry 01/21/2018 09:12 PM

History: This message has been forwarded.

5 attachments

Eric Branch Petition.rtf Executive Summary - Eric Branch Petition.docx Letter to Attorney.docx

Eric Branch Petition - Updated Feb. 10, 2013.rtf Documents For Eric Branch.pdf

Sent from my iPhone
Please excuse any typos.

Daniel J. Ashton
Investigator Supervisor- CHU
Federal Public Defender- Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
850-942-8818

Begin forwarded message:

From: "alex branch" <alexbranch@hotmail.com>
To: "daniel_ashton@fd.org" <daniel_ashton@fd.org>
Subject: Fw: Florida Death Penalty Case - Eric Branch

From: alex branch <alexbranch@hotmail.com>
Sent: Monday, November 4, 2013 1:20 PM
To: jb94@cornell.edu
Subject: FW: Florida Death Penalty Case - Eric Branch

Mr. Blume - Please attachments. The courts have granted Eric the right to an attorney at $125/hr. min., however, he must respond by Nov. 26th. Please let me know if you are aware of anyone that may be interested. I look forward to hearing from you.

Regards,
Alex

From: alexbranch@hotmail.com
To: jb94@cornell.edu
Subject: Florida Death Penalty Case - Eric Branch
Date: Sun, 8 Jul 2012 18:32:07 -0400

Mr. Blume,

Hello. Eric Branch, my cousin, has requested that I contact you. Eric is currently on death row in Florida and has exhausted all of his appeals. He does not have an attorney at the time and is looking for an attorney that will take his case on a pro-bono basis or with limited funding.

Eric has prepared a petition, see above, which presents a major challenge to the death penalty in Florida. Having been involved to a limited degree with his case, I can say that there are many issues that are raised in the petition that are valid and we believe worthy of your attention.

If you would please review the petition and let us know your thoughts that would be greatly appreciated. We look forward to hearing from you soon.

Regards,

Alex Branch
1121 Parke Ridge Court
Evansville, IN 47715
812-893-0320

Fwd: Florida Death Penalty Case - Eric Branch
Daniel Ashton to: Kimberly Newberry 01/21/2018 09:12 PM

History: This message has been forwarded.

5 attachments

Eric Branch Petition.rtf Executive Summary - Eric Branch Petition.docx Letter to Attorney.docx

Eric Branch Petition - Updated Feb. 10, 2013.rtf Documents For Eric Branch.pdf

Sent from my iPhone
Please excuse any typos.

Daniel J. Ashton
Investigator Supervisor- CHU
Federal Public Defender- Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
850-942-8818

Begin forwarded message:

From: "alex branch" <alexbranch@hotmail.com>
To: "daniel_ashton@fd.org" <daniel_ashton@fd.org>
Subject: Fw: Florida Death Penalty Case - Eric Branch

From: alex branch <alexbranch@hotmail.com>
Sent: Monday, November 4, 2013 1:23 PM
To: meolive@aol.com
Subject: FW: Florida Death Penalty Case - Eric Branch

Mr. Olive - Please see attachments above. The courts have granted Eric the right to an attorney at $125/hr. min., however, he must respond by Nov. 26th. Please let me know if are aware of anyone that may be interested. I look forward to hearing from you.

Regards,

Alex

From: alexbranch@hotmail.com
To: meolive@aol.com
Subject: Florida Death Penalty Case - Eric Branch
Date: Sun, 8 Jul 2012 18:37:18 -0400

Mr. Olive,

Hello. Eric Branch, my cousin, has requested that I contact you. Eric is currently on death row in Florida and has exhausted all of his appeals. He does not have an attorney at the time and is looking for an attorney that will take his case on a pro-bono basis or with limited funding.

Eric has prepared a petition, see above, which presents a major challenge to the death penalty in Florida. Having been involved to a limited degree with his case, I can say that there are many issues that are raised in the petition that are valid and we believe worthy of your attention.

If you would please review the petition and let us know your thoughts that would be greatly appreciated. We look forward to hearing from you soon.

Regards,

Alex Branch
1121 Parke Ridge Court
Evansville, IN 47715
812-893-0320

Fwd: Florida Death Row - Eric Branch
Daniel Ashton to: Kimberly Newberry 01/21/2018 09:13 PM

History: This message has been forwarded.

3 attachments

Letter to Attorney.docx Eric Branch Petition - Updated Feb. 10, 2013.rtf Documents For Eric Branch.pdf

Sent from my iPhone
Please excuse any typos.

Daniel J. Ashton
Investigator Supervisor- CHU
Federal Public Defender- Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
850-942-8818

Begin forwarded message:

From: "alex branch" <alexbranch@hotmail.com>
To: "daniel_ashton@fd.org" <daniel_ashton@fd.org>
Subject: Fw: Florida Death Row - Eric Branch

From: alex branch <alexbranch@hotmail.com>
Sent: Monday, November 4, 2013 1:31 PM
To: Buddy.Schulz@hklaw.com
Subject: RE: Florida Death Row - Eric Branch

Mr. Schulz - Please see attachments above. The courts have granted Eric the right to an attorney at $125/hr. min., however, he must respond by Nov. 26th. Please let me know if your firm is interested or you are aware of anyone else that may be interested. I look forward to hearing from you.

Regards,
Alex

From: Buddy.Schulz@hklaw.com
To: alexbranch@hotmail.com
Subject: RE: Florida Death Row - Eric Branch
Date: Mon, 10 Jun 2013 12:43:54 +0000

I hope you understand, but holland & knight is currently at capacity in handling death penalty appeals. this is a very specialized area of the law, and we have only a few people with expertise in this area. they are currently in several cases that have been pending for a considerable period of time, and they are quite active in preparation for further proceedings. so we are unable to assist mr branch.

and I really do not have any knowledge concerning the challenge you describe below.

again, I hope you understand our position.

buddy

Buddy Schulz | Holland & Knight
Partner
50 North Laura Street, Suite 3900 | Jacksonville FL 32202
Phone 904.798.5462 | Fax 904.358.1872 | Cell.904.629.2462
buddy.schulz@hklaw.com | www.hklaw.com

Add to address book | View professional biography

From: alex branch [mailto:alexbranch@hotmail.com]
Sent: Sunday, June 09, 2013 9:49 PM
To: Schulz, Buddy (JAX - X25462)
Subject: Florida Death Row - Eric Branch

Dear Mr. Schulz

Hello, I am writing on behalf of my cousin, Eric Branch, who is on death row in Florida. Several months ago he requested that I reach out to Stephen Hanlon to see if Holland & Knight would be able to provide Pro Bono assistance regarding his case. Mr. Hanlon stated that he was

leaving the firm, but wished us luck. I am now writing to see if Holland & Knight has resources to assist with Eric's case on a Pro Bono basis. If so, please contact me to discuss.

In addition, Eric and fellow death row inmates hold the belief that CCR attorneys are not going to challenge HB1073 because CCR attorneys are going to let the "big hitters" challenge the bill, i.e., Holland & Knight. To the best of your knowledge do you know of any plans that Holland & Knight has to challenge HB1073?

I/we greatly appreciate any insight or assistance that you may be able to provide.

Regards,
Alex Branch

****IRS CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, WE INFORM YOU THAT ANY TAX ADVICE CONTAINED IN THIS COMMUNICATION (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN BY HOLLAND & KNIGHT LLP TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (I) AVOIDING TAX-RELATED PENALTIES UNDER THE INTERNAL REVENUE CODE, OR (II) PROMOTING, MARKETING, OR RECOMMENDING TO ANOTHER PARTY ANY TAX-RELATED MATTER HEREIN.****

NOTE: This e-mail is from a law firm, Holland & Knight LLP ("H&K"), and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose it to anyone else. If you are not an existing client of H&K, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to H&K in reply that you expect it to hold in confidence. If you properly received this e-mail as a client, co-counsel or retained expert of H&K, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

Fwd: Florida Death Penalty Case - Eric Branch
Daniel Ashton to: Kimberly Newberry 01/21/2018 09:14 PM

History: This message has been forwarded.

3 attachments

Letter to Attorney -Marcia Silvers.docx Eric Branch Petition - Updated Feb. 10, 2013.rtf

Documents For Eric Branch.pdf

Sent from my iPhone
Please excuse any typos.

Daniel J. Ashton
Investigator Supervisor- CHU
Federal Public Defender- Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
850-942-8818

Begin forwarded message:

From: "alex branch" <alexbranch@hotmail.com>
To: "daniel_ashton@fd.org" <daniel_ashton@fd.org>
Subject: Fw: Florida Death Penalty Case - Eric Branch

From: alex branch <alexbranch@hotmail.com>
Sent: Monday, November 4, 2013 6:28 PM
To: marcia@marciasilvers.com
Subject: FW: Florida Death Penalty Case - Eric Branch

Marcia - Hello, I am writing on behalf of my cousin who is on death row in Florida. Please see string of e-mails below and attachments above regarding Eric's case. FYI - The court appointed rate is not $125/hr., but a min. of $125/hour which I would anticipate could be significantly increased by the courts. I look forward to hearing from you.

Thanks,

Alex

From: RBlack@royblack.com
To: alexbranch@hotmail.com
Subject: RE: Florida Death Penalty Case - Eric Branch
Date: Mon, 4 Nov 2013 23:11:30 +0000

I am afraid we can't do it for that rate. I suggest you call marcia silvers who specializes in these cases.

From: alex branch [mailto:alexbranch@hotmail.com]
Sent: Monday, November 04, 2013 1:06 PM
To: Roy Black
Subject: RE: Florida Death Penalty Case - Eric Branch

Mr. Black - Please see attachments above. The court has granted Eric the right to an attorney at a min. $125/hour, but he must respond by Nov. 26th. Please let me know it you are interested or know of anyone that may be interested.

Thanks,
Alex

From: RBlack@royblack.com
To: alexbranch@hotmail.com
Subject: Re: Florida Death Penalty Case - Eric Branch
Date: Sun, 8 Jul 2012 22:01:29 +0000

Alex: thank you for your inquiry. Death cases are very time intensive to work on. I wrote about this in a chapter of my book Black's Law. At one time I did a number of these cases pro bono but no more. I can't afford to spend a year working for free. You need to find a big law firm that can afford to assign lawyers to a pro bono case. Many new york firms do this. Good luck.

From: alex branch [mailto:alexbranch@hotmail.com]
Sent: Sunday, July 08, 2012 05:56 PM
To: Roy Black
Subject: Florida Death Penalty Case - Eric Branch

Mr. Black,

Hello. Eric Branch, my cousin, has requested that I contact you. Eric is currently on death row in Florida and has exhausted all of his appeals. He does not have an attorney at the time and is looking for an attorney that will take his case on a pro-bono basis or with limited funding.

Eric has prepared a petition, see above, which presents a major challenge to the death penalty in Florida. Having been involved to a limited degree with his case, I can say that there are many issues that are raised in the petition that are valid and we believe worthy of your attention.

If you would please review the petition and let us know your thoughts that would be greatly appreciated. We look forward to hearing from you soon.

Regards,

Alex Branch

1121 Parke Ridge Court

Evansville, IN 47715

812-893-0320

EXHIBIT 35

Fwd: Florida Death Penalty Case - Eric Branch
Daniel Ashton to: Kimberly Newberry 01/21/2018 09:14 PM

History: This message has been forwarded.

4 attachments

Supreme Court Trevino remands.pdf Trevino v. Thaler.pdf Gray v. Pearson.pdf

2013 Florida House Bill No 7083 Florida One Hundred Fifteenth Regular Session.pdf

Sent from my iPhone
Please excuse any typos.

Daniel J. Ashton
Investigator Supervisor- CHU
Federal Public Defender- Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
850-942-8818

Begin forwarded message:

From: "alex branch" <alexbranch@hotmail.com>
Date: January 21, 2018 at 5:57:48 PM CST
To: "daniel_ashton@fd.org" <daniel_ashton@fd.org>
Subject: Fw: Florida Death Penalty Case - Eric Branch

From: Williams, Emily <Emily.Williams@americanbar.org>
Sent: Wednesday, June 12, 2013 4:36 PM
To: alex branch
Subject: RE: Florida Death Penalty Case - Eric Branch

Hi Alex,

We are keeping a close eye on the situation in Florida, and you are right that there are bad things going on there (even more than usual). I know that the governor recently signed several warrants, but my understanding is that Eric's was not one of them. However we are concerned that he *could* be subject to the new procedures in the "Timely Justice Act" (HB 7083) which has been passed by the Florida legislature. The governor has not signed it into law yet, but we expect he will be taking action very soon. Here is an article about it:

http://standdown.typepad.com/weblog/2013/05/timely-justice-act-still-on-florida-governors-desk.html

We are continuing to try to recruit someone for Eric's case, but particularly with all the uncertainty regarding the new law, firms are reluctant to get involved. Maybe when we know what we will be facing they will be more willing to jump in.

I also want to make sure that you and Eric know about a couple cases that have been decided in the past few weeks that touch on some of the issues he is dealing with. As always, I'm not allowed to advise you about how or if these decisions might impact Eric's case, but since he has been filing pro se motions I wanted to make sure he at least has access to the opinions.

If I learn anything new about the bill I will let you know, and we'll keep pushing Eric's case with potential volunteer attorneys.

Emily

Emily M. Williams
Staff Attorney
ABA Death Penalty Representation Project
1050 Connecticut Ave. NW, Suite 400
Washington, DC 20036
Phone: 202 662 1735
Fax: 202 662 8649
Emily.Williams@americanbar.org

http://www.americanbar.org/deathpenalty
http://www.probono.net/deathpenalty

From: alex branch [mailto:alexbranch@hotmail.com]
Sent: Sunday, June 09, 2013 8:57 PM
To: Williams, Emily
Subject: RE: Florida Death Penalty Case - Eric Branch

Emily - Hello, I hope all is well. Just checking back to see if you'd had any luck. It seems things are really getting crazy in Florida and I think that Eric is scared to death that he is going to be the next to get his warrant signed. Do you have any idea what is going on in Florida? Have you gotten any feedback from Mike Burns? As always, I/we greatly appreciate any insight or help that you can provide. Have a good day.

Regards,
Alex

Subject: RE: Florida Death Penalty Case - Eric Branch
Date: Thu, 25 Apr 2013 16:34:10 -0500
From: Emily.Williams@americanbar.org
To: alexbranch@hotmail.com

Alex,

I haven't been able to reach Mike Burns yet, but I wanted to let you know that we are working on a formal pitch of Eric's case to a law firm that has expressed interest in handling a significant pro bono project. I don't want to get your hopes up unrealistically because I know this firm is going to get lots of other proposals from other organizations as well, but we are going to do our best to convince them to help Eric. Of course we're continuing to pursue other avenues as well.

I received a letter from Eric a few days ago explaining what had happened with the courts, and I've taken a look at all the documents he sent along. If you speak to him, please let him know that I understand the situation (and am very sorry that this is happening on top of everything else), and I am trying to figure out if there is anything we can do to help while we continue to try to find permanent pro bono counsel.

I'll be in touch with any updates.

Emily

Emily M. Williams
Staff Attorney
ABA Death Penalty Representation Project
740 15th Street, NW
Washington, DC 20005-1022
Phone: 202 662 1735
Fax: 202 662 8649
Emily.Williams@americanbar.org

http://www.americanbar.org/deathpenalty
http://www.probono.net/deathpenalty

From: alex branch [mailto:alexbranch@hotmail.com]
Sent: Wednesday, April 17, 2013 12:03 AM
To: Williams, Emily
Subject: RE: Florida Death Penalty Case - Eric Branch

Emily - Hello, anything on your end? I got a letter from Eric yesterday that stated his petition to the courts was denied because Reiter was his attorney and he couldn't file himself, but Reiter should have. I'm not a lawyer, but I'm well educated and the judicial system seems to be such a joke. Anyway, Eric would like to appeal the courts decision and needs a lawyer to just provide face time in the court as he will prepare the appeal. Is there anyone that you know that may be able to do this?

Thanks for all of your assistance,
Alex

Subject: RE: Florida Death Penalty Case - Eric Branch

Date: Mon, 11 Feb 2013 19:51:27 -0600
From: Emily.Williams@americanbar.org
To: alexbranch@hotmail.com

Thanks for the update. That is encouraging news all around from Mike. I'll still try to come up with the information we talked about on the phone and get that to you, just so you have it if you need it. And of course we will keep trying to locate a pro bono attorney for Eric, and I'll keep you updated on our progress. If there are any major developments on that end (e.g. if Eric files his petition or if a lawyer is appointed), I'd really appreciate if you would let me know.

Thanks,
Emily

Emily M. Williams
Staff Attorney
ABA Death Penalty Representation Project
740 15th Street, NW
Washington, DC 20005-1022
Phone: 202 662 1735
Fax: 202 662 8649
emily.williams@americanbar.org

http://www.americanbar.org/deathpenalty
http://www.probono.net/deathpenalty

-----Original Message-----
From: alex branch [mailto:alexbranch@hotmail.com]
Sent: Mon 2/11/2013 8:13 PM
To: Williams, Emily
Subject: RE: Florida Death Penalty Case - Eric Branch

Emily - I just spoke with Mike Burns, Eric's attorney for DNA petition Rule 3.853, and he said that he is starting a lobbying firm with another person and they are going to try and get someone from the Florida Innocence Project to take Eric's case. Mike is very close to the last governor, Gov. Christ. I think he was the Governor's general counsel or asst. general counsel. Also, he told Eric that Gov. Christ, he was a republican but just switched to democratic party, is going to run for governor again in two years. We'll see what happens.

Also, Mike said the court called him and said that the DNA issue has to go back to the trial court judge, Judge Nickinson, and he has to appoint an attorney for motion 3.853. Mike said he has no idea when this will happen and he thought it was a good thing if it never happened and just ended up hung up in the courts.

Last, the National Innocence project in NY only takes cases via regular mail, so when I get home on Friday I'll send them Eric's petition along with information that I have regarding the Rule 3.853 for DNA testing.

Thanks,
Alex

Subject: RE: Florida Death Penalty Case - Eric Branch
Date: Mon, 11 Feb 2013 08:47:44 -0600
From: Emily.Williams@americanbar.org
To: alexbranch@hotmail.com

Alex,

I will try to take a look at this today, but please remember that I am prohibited from providing any sort of legal advice to you or Eric. I am in meetings for most of the morning, so if you want to talk today, later in the afternoon would be better.

Thanks,
Emily

Emily M. Williams
Staff Attorney
ABA Death Penalty Representation Project
740 15th Street, NW
Washington, DC 20005-1022
Phone: 202 662 1735
Fax: 202 662 8649
Emily.Williams@americanbar.org
http://www.americanbar.org/deathpenalty
http://www.probono.net/deathpenalty

From: alex branch [mailto:alexbranch@hotmail.com]
Sent: Sunday, February 10, 2013 9:59 PM
To: Williams, Emily
Subject: RE: Florida Death Penalty Case - Eric Branch

Emily - I made some more changes to his petition. Please ignore the previous petition.

Thanks,
Alex

Subject: RE: Florida Death Penalty Case - Eric Branch
Date: Mon, 28 Jan 2013 10:42:09 -0600
From: Emily.Williams@americanbar.org
To: alexbranch@hotmail.com

Hi Alex,

Thanks so much for the photo - that is exactly the sort of thing I was looking for. I did get a letter from Eric that he is going to be filing his petition soon, and I will be responding today. I don't have a commitment from the attorney yet, but I'm still working on it. Unfortunately this process tends to be drawn out, even when the case is very urgent like Eric's. We have been in touch with a number of other firms as well in case this attorney doesn't work out.

I'll let you know as soon as I have an update. Thanks again for the photo.

Emily

Emily M. Williams
Staff Attorney
ABA Death Penalty Representation Project
740 15th Street, NW
Washington, DC 20005-1022
Phone: 202 662 1735
Fax: 202 662 8649
emily.williams@americanbar.org

http://www.americanbar.org/deathpenalty
http://www.probono.net/deathpenalty

-----Original Message-----
From: alex branch [mailto:alexbranch@hotmail.com]
Sent: Sat 1/26/2013 6:32 PM
To: Williams, Emily
Subject: RE: Florida Death Penalty Case - Eric Branch

Emily, Hello. Sorry, I totally forgot about the request for a photo. I ask my mother if she had one, but never followed-up with her. Anyway, her is a photo of Eric, Nikki (his daughter that was adopted at birth by parents that live in Seattle) and Leora (His girlfriend at the time and mother of Nikki. Leora is actually married now to another man.). The photo was taken June 2012 at the prison. Have you had any luck with getting a committment from an attorney? Eric said he is going to file the petition sometime between the middle of Feb. and late Feb. if he hasn't found an attorney by then, as he seems to think it's important that the petition be filed soon. I look forward to hearing from you. Thanks,Alex
Subject: RE: Florida Death Penalty Case - Eric Branch
Date: Tue, 18 Dec 2012 12:35:42 -0600
From: Emily.Williams@americanbar.org
To: alexbranch@hotmail.com

Hi Alex, No news to report at the moment, but December is often a particularly difficult month for recruitment with people traveling for the holidays. I did receive a copy of Eric's motion late last week. Do you have any good photos of Eric that you could share with me for recruitment purposes? Often the only pictures we have are mug shots, which for obvious reasons aren't usually the best photos, but we have found that including pictures of the clients is often helpful for getting people interested in a case. I know that any photos you have may be pretty outdated, but that is fine. Let me know if you have any questions. Thanks,Emily Emily M. Williams
Staff Attorney

ABA Death Penalty Representation Project
740 15th Street, NW
Washington, DC 20005-1022
Phone: 202 662 1735
Fax: 202 662 8649
Emily.Williams@americanbar.org
http://www.americanbar.org/deathpenalty
http://www.probono.net/deathpenaltyFrom: alex branch [mailto:alexbranch@hotmail.com]
Sent: Saturday, December 15, 2012 1:38 PM
To: Williams, Emily
Subject: RE: Florida Death Penalty Case - Eric Branch Emily - Hello, just checking back to see if you've had any luck with finding an attorney? Also, Eric just wrote me and said that he re-filed the rule 3.853 motion for DNA testing.

Thanks,
Alex
Subject: RE: Florida Death Penalty Case - Eric Branch
Date: Thu, 27 Sep 2012 14:17:34 -0500
From: Emily.Williams@americanbar.org
To: alexbranch@hotmail.comHi Alex, Thanks for checking in. I haven't talked to Mike but I did receive a letter from Eric about the hearing. I am doing everything in my power to find a lawyer for him, but so far I haven't had any real success. I did find a lawyer who is very interested but whose schedule is unfortunately extremely busy for the next few months. I'm working to see what we can do, if anything, to get the case pushed back a little further and give him time to get on board. In the meantime, I'll continue to search for someone who can jump in right now. Eric mentioned Holland & Knight in his last letter, and I wanted to let you both know that I have done everything possible to get them to take this case, but they just aren't in a position to take on any death penalty work right now. I'm planning to respond to Eric's letter soon (I was holding off for a few days to see if I would have any news to share), and I'll let him know that as well. I'll definitely keep you posted on any developments or if there is anything here that we need to help the process. Thanks,Emily Emily M. Williams
Staff Attorney
ABA Death Penalty Representation Project
740 15th Street, NW
Washington, DC 20005-1022
Phone: 202 662 1735
Fax: 202 662 8649
Emily.Williams@americanbar.org
http://www.americanbar.org/deathpenalty
http://www.probono.net/deathpenalty From: alex branch [mailto:alexbranch@hotmail.com]
Sent: Thursday, September 27, 2012 3:06 PM
To: Williams, Emily
Subject: RE: Florida Death Penalty Case - Eric Branch Emily,
Hello, just checking back to see if you'd had any luck findind a lawyer for Eric? I don't know if you've had a chance to speak with Mike Burns about the clemency hearing, but from all accounts it appears to have gone well. Mike introduced photos of the other Eric to the board and also stated that the other Eric (Eric St. Pierre) was convicted of felony sexual assualt in New Hampshire. Mike then stated that he wanted 60 days to investigate and obtain his DNA to see if it matched the unidentified blood on a towel at the crime scene.

Let me know if you hear anything or if I can provide assistance.

Thanks,
Alex
Subject: RE: Florida Death Penalty Case - Eric Branch
Date: Wed, 8 Aug 2012 13:37:52 -0500
From: Emily.Williams@americanbar.org

To: alexbranch@hotmail.comDear Alex, We have taken a preliminary look at this petition, and we are going to talk with our colleagues in Florida and see if there is a way for us to help. This will likely not be a quick process, but I will do my best to keep you updated. One question my director had - do you know if Eric had assistance preparing the petition and summary you attached? I understand that he isn't formally represented right now, but it would be helpful for us to have the name of the attorney who has been helping him (if any). Thanks,Emily Emily M. Williams
Staff Attorney
ABA Death Penalty Representation Project
740 15th Street, NW
Washington, DC 20005-1022
Phone: 202 662 1735
Fax: 202 662 8649
Emily.Williams@americanbar.org
http://www.americanbar.org/deathpenalty
http://www.probono.net/deathpenaltyJoin us on August 3rd in Chicago for our 2012 Volunteer Death Penalty Awards Event!! www.ambar.org/2012awards From: alex branch [mailto:alexbranch@hotmail.com]
Sent: Sunday, July 08, 2012 6:03 PM
To: Williams, Emily
Subject: Florida Death Penalty Case - Eric Branch Ms. Williams,
Hello. Eric Branch, my cousin, has requested that I contact you. Eric is currently on death row in Florida and has exhausted all of his appeals. He does not have an attorney at the time and is looking for an attorney that will take his case on a pro-bono basis or with limited funding. Eric has prepared a petition, see above, which presents a major challenge to the death penalty in Florida. Having been involved to a limited degree with his case, I can say that there are many issues that are raised in the petition that are valid and we believe worthy of your attention. If you would please review the petition and let us know your thoughts that would be greatly appreciated. We look forward to hearing from you soon. Regards,
Alex Branch1121 Parke Ridge CourtEvansville, IN 47715812-893-0320

EXHIBIT 36

IN THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

VS.

ERIC S. BRANCH, pro se,
Defendant.

CASE NO.: 1793CF000870A
DIVISION: N

DEFENDANT'S AMENDMENTS TO RULE 3.853 MOTION FOR POST-CONVICTION DNA TEST

DEFENDANT, ERIC S. BRANCH, pro se MOVES TO AMEND: DEFENDANT'S RULE 3.850/3.853 MOTION FOR DNA TESTING, FILED 4TH DECEMBER 2012 (BY REGULAR US MAIL SERVICE); DEFENDANT MOVES TO AMEND IN THE FOLLOWING MANNER:

1. IN THE ORIGINAL MOTION, MR BRANCH, SOUGHT DNA TESTING ON THE BLOODSTAINED TOWEL COMPARED TO THE DNA OF ERIC St. Pierre, THE SAME INDIVIDUAL, WHO IN 1994 WAS NAMED BY MR. BRANCH, AS THE MURDERER (see APPENDIX A ATTACHED). MR BRANCH AMENDS THAT MOTION TO INCLUDE FIVE (05) ADDITIONAL ITEMS FOR DNA TESTING AND COMPARISON TO THE DNA OF ERIC

St. Pierre.

2. MR BRANCH WILL REFER TO THE DNA ITEMS IN HIS ORIGINAL MOTION AS: TEST SUBJECT #1, THE ADDITIONAL ITEMS FOR DNA TESTING ARE.

b.) **TEST SUBJECT # 2:** NYLON/COTTON FIBER STOCKING, USED AS A LIGATURE TO CHOKE THE VICTIM, SUSAN MORRIS. THE LIGATURE ORIGINALLY MARKED FDLE EXHIBIT C'S OF SUBMISSION 2, [1] AND SHOULD BE IN THE POSSESSION OF THE STATE.

DNA TYPING AND DNA TESTING OF EPITHELIAL CELLS LOCATED ON THE ITEM.

c.) **TEST SUBJECT #3:** THE SHOES AND PARTICULARY, THE SHOE STRINGS FROM THE VICTIM SUSAN MORRIS' SHOES. THE SHOES, AND SHOE STRINGS WERE COLLECTED BY THE FDLE FROM THE CRIME SCENE AREA, AND SHOULD STILL BE IN THE POSSESSION OF THE STATE.

DNA TYPING AND DNA TESTING OF EPITHE

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1. ALL EVIDENCE SEIZED BY LAW ENFORCEMENT HAVE EITHER A SEIZURE NUMBER, AND/OR FDLE CRIME LAB NUMBER, DESPITE NUMEROUS REQUEST ASKING FORMER ATTORNEY, MICHAEL REITER, FOR COPIES OF THE CASE FILES. MR REITER HAS REFUSED TO PROVIDE THEM, SO MR BRANCH WILL DO THE BEST HE CAN TO IDENTIFY EACH ITEM, RELYING ON HIS NOTES.

EPITHELIAL CELLS LOCATED ON THE ITEM.

d. **TEST SUBJECT #4**: THE BROCHURE (HAND FLYER) THAT BELONG TO ERIC St. Pierre, THAT WAS LOCATED AND SEIZED FROM THE PONTIAC DRIVEN BY MR BRANCH, THAT WAS PARKED AT THE PENSACOLA AIRPORT. THE BROCHURE WAS MARKED AS ITEM D19, FDLE LAB NO. 93Z001 44, SUBMISSION 003 WHEN COLLECTED BY Ms. LAURA ROUSSEAU, FDLE CRIME LAB ANALYST. ON MARCH 1ST 1993, AND SHOULD STILL BE IN THE POSSESSION OF THE STATE.

DNA TYPING AND DNA TESTING OF EPITHELIAL CELLS LOCATED ON THE ITEM 2./

e. **TEST SUBJECT #5**: THE BILLFOLD / WALLET BELONGING TO SUSAN MORRIS, THE WALLET WAS FOUND ON PENSACOLA BEACH, AND TURNED OVER TO THE FDLE CRIME LAB. ANALYSIST OF THE WALLET DISCOVERED FINGERPRINTS THAT NEITHER MATCHED THE VICTIM NOR MR BRANCH. THE WALLET SHOULD STILL BE IN THE POSSESSION OF THE STATE.

DNA TYPING AND DNA TESTING OF EPITHELIAL

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2. THIS ITEM SHOULD ALSO BE SUBJECTED TO FINGER-PRINT ANALYSIS.

CELLS LOCATED ON THE ITEM, AND THE CONTENTS WITHIN IT.

f. **TEST SUBJECT #6:** HAIR SAMPLES THAT WERE COLLECTED FROM THE PONTIAC DRIVEN BY MR BRANCH, THAT WAS PARKED AT THE PENSACOLA AIRPORT. THE HAIR IS MARKED AS D29 THRU D34. FDLE LAB NO. 93200144, SUBMISSION 003, COLLECTED BY FDLE CRIME LAB ANALYST, LAURA ROUSSEAU, ON MARCH 1ST 1993. AND SHOULD STILL BE IN THE POSSESSION OF THE STATE.

DNA TYPING AND MICROSCOPIC ANALYSIS OF THE ITEM.

3. MR BRANCH SEEKS TO HAVE NEWLY ADVANCED DNA TYPING PROCEDURES AND DNA TESTING OF EPITHELIAL CELLS (SKIN CELLS), ON ITEMS #1 THRU #5, IN COMPARISON TO THE DNA OF ERIC St. Pierre. SINCE THE TIME OF TRIAL, THE SCIENCE OF DNA HAS ADVANCED TO ALLOW THE LOCATION AND TYPING OF SKIN CELL DNA.

4. MR BRANCH SEEKS TO HAVE NEWLY ADVANCED DNA TYPING PROCEDURES, AND MICROSCOPIC ANALYSIS CONDUCTED ON ITEM #6, IN COMPARISON TO THE HAIR AND DNA OF ERIC St Pierre.

5. AS ALLEGED IN MR BRANCH'S RULE 3.853 MOTION OF 4 DECEMBER 2012, TESTING THE ITEMS WILL REVEL

THE DNA OF THE MURDERER, AND NOT MR BRANCH, MOREOVER, IT WILL ESTABLISH THAT CONTRARY TO THE STATE'S ARGUMENT TO THE JURY, AS OUTLINE IN THE ORIGINAL MOTION, ERIC St. PIERRE WAS NOT FABRICATED OR INVENTED (see: APPENDIX A). IT IS DIFFICULT TO IMAGINE THAT THE EXISTENCE OF ANOTHER PERSONS DNA - THE PERSON MR BRANCH IDENTIFIED IN 1994 AS THE MURDERER - ON THE MURDER WEAPON AND CRIME SCENE EVIDENCE, WOULD NOT CREATE AT LEAST SOME REASONABLE DOUBT IN THE MINDS OF THE JURORS.

6. MR BRANCH REALLEGES EACH AND EVERY FACT AND ALLEGATION PRESENTED IN HIS ORIGINAL RULE 3.853 MOTION, APPENDIX A AND JOINS THE FACTS AND ALLEGATIONS PRESENTED HEREIN WITH THAT MOTION.

7. THE FLORIDA RULES OF CIVIL PROCEDURE ALLOW FOR THE INCLUSION OF AMENDMENTS TO THE ORIGINALLY FILED MOTION UP UNTIL THE COURT ISSUES A RULING ON THAT MOTION. MOREOVER, RULE 3.853, DOESNT SET A LIMIT ON THE NUMBER OF MOTION FOR DNA TESTING A PARTY CAN FILE. MEANING, MR BRANCH, COULD HAVE FILED THIS MOTION AS A INDIVIDUAL CLAIM, HOWEVER, FOR THE PURPOSE OF JUDICIAL TIME AND RESOURCES, HE HAS DECIDED TO JOIN THE OTHER MOTION FOR DNA TESTING, PLACING THEM ALL IN ONE JUDICIAL FORUM.

8. EACH REQUESTED TEST SUBJECT CORRESPONDS

WITH LOCATIONS THAT WILL CONTAIN THE DNA OF ERIC ST. PIERRE, BASED ON THE 1994 TRIAL TESTIMONY OF ERIC BRANCH.

WHEREFORE, BASED ON THE FOREGOING, DEFENDANT BRANCH, PRAYS THIS HONORABLE COURT WILL GRANT THE MOTION AS FOLLOWED:

a. REQUEST FOR PRE-HEARING DISCOVERY TO DETERMINE THE TYPE AND AMOUNT OF DNA AVAILABLE ON EACH REQUESTED TEST SUBJECT. #1 THRU #6.

b. A EVIDENTIARY HEARING ON EACH CLAIM, IF NECESSARY.

c. A ORDER, AND SUBPEONA FOR THE BLOOD OF ERIC ST. PIERRE, OF: 16 DEANE STREET. APT. 11. ELLSWORTH, MAINE. 04605. (AS ALLEGED IN THE FIRST RULE 3.853 MOTION, MR. ST. PIERRE IS ON THE LIFE-TIME SEXUAL OFFENDERS LIST IN NEW HAMPSHIRE. IF HE REFUSES TO COOPERATE. DEFENDANT SHOULD BE ABLE TO RELY ON LOCAL OFFICIALS TO SECURE THE BLOOD WITH THE COURT ORDER AND SUBPEONA).

d. A ORDER REQUIRING THE STATE TO CONDUCT THE REQUESTED DNA TYPING AND TEST. AND/OR, REQUIRING SAMPLES OF THE SAME BE PROVIDED TO DEFENDANT BRANCH FOR INDEPENDANT ANALYSIS.

e. A ORDER TO FORMER ATTORNEY, MIKE REITER

4 MULLIGAN COURT, OCALA, FL 34472, TO TURN OVER TO MR BRANCH, THE CASE FILES (SO DEFENDANT CAN REVIEW THE FILES TO DETERMINE IF ANY ADDITIONAL EVIDENCE WAS COLLECTED WITH THE DNA OF ERIC St. Pierre ON IT).

f. ANY OTHER RELIEF THIS COURT JUST, REASONABLE OR NECESSARY FOR THE INTEREST OF JUSTICE.

DATE 19 Dec 2013

RESPECTFULLY SUBMITTED;
/S/
ERIC S BRANCH 313067
pro se

UNION Corr. INST. P-3218
7819 NW 228 St.
Raiford, FL 32026-4430

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, THAT A TRUE COPY OF THIS AMENDMENT TO RULE 3.853 MOTION HAS BEEN PROVIDED BY REGULAR U.S. MAIL TO: ERIC St Pierre, PAM BONDI, MR GREG MARCILLE, AND MICHELLE WHITWORTH AT THE ADDRESS LISTED IN DEFENDANTS FIRST RULE 3.853 MOTION, ON THIS 19 DAY OF FEBRUARY, 2013.

/S/
ERIC S. BRANCH. 313067.

NOTARY PUBLIC CERTIFICATE

STATE OF FLORIDA
COUNTY OF UNION SS:

BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, PERSONALLY APPEARED, ERIC S. BRANCH, THE DEFENDANT HEREIN, WHO BY ME, BEING SWORN UNDER OATH, DEPOSES AND STATES THAT THE FOREGOING FACTS CONTAINED HEREIN ARE, TO THE BEST OF HIS KNOWLEDGE, TRUE AND CORRECT. SWORN TO AND WITNESSED ON THIS ____ DAY OF FEBRUARY 2013

_____
NOTARY PUBLIC, STATE OF FLORIDA

MY COMMISSION EXPIRES _____

EXHIBIT 37

IN THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

VS.

CASE NO.: 1793CF000870A
DIVISION: N

ERIC S. BRANCH, pro se,
Defendant.
_____/

DEFENDANT'S RULE 3.850/3.853 MOTION FOR POST-CONVICTION DNA TESTING

COMES NOW, THE DEFENDANT, ERIC S. BRANCH, pro se, AND HEREBY RESPECTFULLY MOVIES THIS HONORABLE COURT TO ISSUE A ORDER, PURSUANT TO RULE 3.853 AND §925.11 FLORIDA STATUTE, GRANTING DNA TESTING IN THE MANNER AND ON THE ITEMS DESCRIBED BELOW:

1. THE ITEMS THAT REQUIRE DNA TESTING ARE A BLOODSTAINED TOWEL, AND THE BLOOD OF ERIC St.Pierre.

2. THE TOWEL WAS ORIGINALLY COLLECTED AS PART OF THE INVESTIGATION BY THE F.D.L.E IN 1993, CURRENTLY, THE BLOODY TOWEL IS IN THE STATE OF FLORIDA CUSTODY, HELD IN STORAGE.

3. ERIC St. Pierre IS FORMALLY A RESIDENT OF THE

60 (5)
~~5~~
1 pg

[redacted]

STATE OF FLORIDA. WHILE HE NOW RESIDES IN ELLSWORTH, MAINE, MR FRED WIMBERLY, A DETECTIVE, TESTIFIED AT A EVIDENTIARY HEARING, THAT ERIC St. Pierre, WAS LIVING IN FLORIDA IN 1993 (see: APPENDIX A) AND AS PART OF HIS INVESTIGATION, MR WIMBERLY STATED HE TOOK PHOTOS OF ERIC St. Pierre (see: APPENDIX B). SOONAFTER MR WIMBERLY CONTACTED HIM. MR. St Pierre MOVED AWAY FROM PENSACOLA.

4. AFTER THE BLOODSTAINED TOILET WAS COLLECTED, IT WAS SENT TO THE STATE CRIME LAB, WHERE TEST WERE CONDUCTED TO DETERMINE THE BLOOD'S TYPE. WHEN THE BLOOD TYPING EXCLUDED BOTH ERIC BRANCH, AND Ms. SUSAN MORRIS, AS POSSIBLE DONERS, THE CRIME LAB DID NOT CONDUCT ANY FURTHER TEST, MEANING THAT THE BLOOD HAS NEVER BEEN SUBJECTED TO DNA PROFILING TO LOCATE A MATCH.

5. THE DNA EVIDENCE WILL EXONERATE ERIC BRANCH, OR ALTERNATIVELY MITIGATE THE SENTENCE OF DEATH.

AT TRIAL, ERIC BRANCH TESTIFIED THAT HE AND ERIC St. Pierre AGREED TO STEAL A CAR. HOWEVER, MR. BRANCH TESTIFIED THAT AFTER Ms MORRIS WALKED UP ON THEM WHILE IN THE PROCESS OF STEALING THE CAR, AND THEY INITIALLY SECURED Ms. MORRIS, HE LEFT IN THE CAR WHEN MR St. Pierre HIT HER, AND IT WAS AFTER HE LEFT THAT Ms MORRIS WAS KILLED. IT IS THE STATE'S RESPONSE AT TRIAL THAT SPEAKS TO THE IMPORTANT NEED OF DNA TESTING. IN THAT, WHEN CONFRONTED

WITH MR. BRANCH'S TESTIMONY, THE STATE NEVER ATTEMPTED TO CHALLENGE IT WITH EVIDENCE. INSTEAD THE STATE PERSONALLY ATTACKED MR BRANCH, CLAIMING THE TESTIMONY AND MOREOVER, ERIC ST PIERRE WERE COMPLETE FABRICATIONS; CALLING HIM: 'IMAGINARY' AND 'MYSTICAL'.

Q: YOU HELP THIS MYSTICAL ERIC ..... WHILE THIS MYSTICAL ERIC HITS HER. (T- 843)

Q: AND THIS MYSTICAL ERIC THAT YOU CAME UP WITH TODAY NEVER EXISTED (T-843)

Q: ....IS A FIGMENT OF YOUR IMAGINATION (T-849)

CLOSING ARGUMENTS:

"THE DEFENDANT, AFTER CAREFULLY REVIEWING THE POLICE REPORTS AND THE STATEMENT OF THE WITNESSES, AFTER CAREFULLY LISTENING TO ALL TESTIMONY AND EXHIBITS THAT THE STATE PRESENTED HE HAS CONCOCTED A STORY FOR YOU AND NOW ... DURING TRIAL BEFORE WE HAD THIS FIRST TIME REVELATION ABOUT ERIC" (T- 886)

"FOR THE FIRST TIME, AN IMAGINARY FIGURE HAS APPEARED, ANOTHER ERIC (T-888)

"BECAUSE HE WANTS TO TAILOR HIS FACTS TO FIT THIS WILD AND CRAZY STORY" (T-892)

"THE STORY THAT THE DEFENDANT CONCOCTED TODAY IS ABSURD" (T-896)

"SO IF YOU WILL BELIEVE THE STORY OF ANOTHER ERIC WE HEAR FOR THE FIRST TIME TODAY" (T-897)

THE PROSECUTOR'S COMMENTS WERE REPEATED AND

CONTINUED THROUGHOUT CROSS-EXAMINATION AND THE CLOSING ARGUMENTS, THE PROSECUTOR RIDICULED AND PARADED MR. BRANCH'S TESTIMONY WITH SARCASTIC OVER-TONES, ARGUING TO THE JURY THE TESTIMONY WAS FABRICATED, AND THAT ERIC St. Pierre DID NOT EXIST. THE STATE DID NOT CONTRADICT THE TESTIMONY WITH ANY EVIDENCE.

THE NARRATIVE CREATED BY THE STATE, AND ARGUED TO THE JURY IS NOT THAT, IF TRUTHFUL, MR BRANCH WAS STILL GUILTY OF THE CRIME. THE STATE CLAIMED ERIC St Pierre DOES NOT EXIST, IN THEIR WORDS, HE IS 'MYSTICAL', A COMPLETE FABRACATION.

6. MOREOVER, AS THE RECORD REFLECTS, MR BRANCH DID NOT MEET HIS TRIAL COUNSEL UNTIL 13 DAYS BEFORE THE START OF HIS CAPITAL MURDER TRIAL (T-335, T-338, T-353-354, T-355, T-357), AND PRIOR TO TRIAL, THE ATTORNEY DID NOT CONSULT ANY EXPERTS, HE QUESTIONED NO WITNESSES, RELYING SOLELY ON THE FILES PROVIDED BY THE PROSCUTOR, AS PART OF DISCOVERY, TO PREPARE FOR TRIAL (EH-114-289), MAKING MR BRANCH'S TESTIMONY AND CREDIBILITY THE ENTIRE FOCUS OF THE DEFENSE.

THE JURY NEVER HEARD THAT DETECTIVE WIMBERLY HAD LOCATED ERIC St. Pierre, OR ANYTHING TO SHOW HE WAS NOT 'MYSTICAL' OR 'FABRACTED'.

7. FURTHERMORE, DURING THE INITIAL INVESTIGATION THE CRIME LAB LOCATED FINGER-PRINTS INSIDE THE WALLET BELONGING TO MS. MORRIS. THE PRINTS DO NO MATCH MS. MORRIS OR MR BRANCH. ALSO, THE CRIME LAB DISCOVERED A SHOE PRINT ON MS MORRIS' BACK WHICH DID NOT MATCH

MR BRANCH'S BOOTS. BOTH OF THESE ITEMS SUGGEST A THIRD PARTY, BUT NEITHER WERE PRESENTED TO THE JURY, AND SINCE TRIAL, NO EFFORT HAS BEEN MADE BY LAW ENFORCEMENT TO FIND A MATCH.

8. UNDOUBTABLY, MATCHING THE DNA WOULD CHANGE THE OUTCOME. IN THE IMMEDIATE, IT MAY NOT GO AS FAR AS OUTRIGHT EXONERATING MR BRANCH,[1.] BUT IT WOULD REQUIRE THE COURT GRANT MR BRANCH A NEW TRIAL, WHERE HE'D HAVE THE BENEFIT OF THE DNA MATCH, THE FINGERPRINTS ON THE WALLET, AND INSIDE BRANCH'S CAR, AS WELL AS THE SHOE PRINT. ALSO, MR BRANCH WOULD CHALLENGE THE UNDERLYING FELONY CHARGES. AND IF NEED BE, PRESENT MITIGATION EVIDENCE.

9. UNDER THOSE FACTS, IT IS REASONABLE TO BELIEVE, MR. BRANCH MIGHT BE CONVICTED ON ACCESSORY CHARGES, POSSIBLE 3RD DEGREE MURDER, IT IS EQUALLY REASONABLE TO BELIEVE HE'D BE EXONERATED OF 1ST DEGREE MURDER AND OTHER CHARGES FOR WHICH HE IS CURRENTLY SENTENCED TO DEATH.

10. EQUALLY RELEVENT TO THIS MOTION. AFTER ERIC ST. PIERRE LEFT FLORIDA - HE WAS CONVICTED IN NEW

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1. HOWEVER, ITS NOT UNREASONABLE, THAT ERIC ST. PIERRE FACED WITH A DNA MATCH WOULD GIVE A CONFESSION EXONERATING MR BRANCH OF THE ACTS AND CRIMES HE COMMITTED. (EVEN IF ITS DOUBTFUL THE STATE WOULD EVER PROSECUTE MR ST. PIERRE)

HAMPSHIRE OF AGGRAVATED SEXUAL ASSUALT ON A CHILD AND IS A REGISTERED LIFETIME SEXUAL OFFENDER (SEE APPENDIX C).

11. WHILE MR BRANCH IS COGNIZANT THAT THE LAW REQUIRES THE SAME COMPLIANCE WITH RULES FOR PRO SE LITIGANTS, AS THOSE LITIGANTS REPRESENTED BY COUNSEL, WHEN REVIEW THIS PETITION, THE COURT IS REQUIRED TO SHOW PRO SE LITIGANTS, LIKE MR BRANCH, A DEGREE OF DEFERENCE, HOLDING HIM TO "A LESS STRINGENT STANDARD THAN FORMAL PLEADINGS DRAFTED BY A LAWYER" HAINES V KERNER, 404 U.S. 519, 92 S.Ct. 594 (1974), IN RE: KENNETH H. MEAD 20 F.L.WKLY FED B553 (11TH CIR 2007) ("PRO SE LITIGANTS ARE TO BE TREATED WITH SPECIAL CARE BECAUSE THEY OCCUPY A POSITION SIGNIFICANTLY DIFFERENT FROM LITIGANTS REPRESENTED BY COUNSEL" quoting: JOHNSON V PULLMAN 845 F.2d 911 (11TH CIR 1987). see also: FLA APP PRACT. § 16.3 2006) (" COURTS HAVE SHOWN MORE TOLERANCE FOR VIOLATIONS OF REQUIREMENTS OF FORM WHEN A [MOTION] HAS BEEN FILED BY A PRO SE LITIGANT").

12. WHILE MR MIKE BURNS ORIGINATED THESE PROCEEDINGS AS PART OF THE CLEMENCY PROCEEDINGS, FOR WHICH HE WAS APPOINTED TO REPRESENT MR BRANCH, THAT APPOINTMENT HAS EXPIRED AND THE STATE OF FLORIDA MOVED TO DISMISS PLEADINGS FILED BY MR BURNS. REQUIRING MR BRANCH TO TAKE UP THE MATTER PRO SE. (MR BRANCH HOPES TO HAVE PRIVATE COUNSEL TAKE OVER AFTER JAN 1ST).

13. MOREOVER, FLORIDA HAS CONSISTENTLY RECOGNIZED

THAT "DEATH IS DIFFERENT" AND THAT THERE IS A CONSTITUTIONAL OBLIGATION TO PROVIDE "EXTRAORDINARY SAFEGUARDS TO ENSURE THAT ONLY THOSE WHOSE GUILT IS CERTAIN ... ARE ULTIMATELY PUT TO DEATH" AMENDMENTS TO FLA R. CRIM PROC. 3.851 / 3.852 AND 3.853, 797 So2d 1213, 1224 (FLA 2000), STATE V BOYLES, 520 So2d 562 (FLA 1988)(PLACING ON FLORIDA COURTS AN OBLIGATION TO SET ASIDE TECHNICALITIES AND SERVE THE INTEREST OF JUSTICE). ANGLIN V MAYS, 88 So2d 918 (FLA 1956) ("IT IS THE RESPONSIBILITY OF THE COURT TO BRUSH ASIDE FORMAL TECHNICALITIES AND ISSUE SUCH APPROPRIATE ORDERS AS WILL DO JUSTICE").

WHEREFORE, BASED ON THE FOREGOING, PETITIONER RESPECTFULLY REQUEST THIS HONORABLE COURT GRANT THIS REQUEST, ISSUING A ORDER FOR DNA TESTING

DATE: 4 Dec 2012

RESPECTFULLY SUBMITTED,

/s/

ERIC S. BRANCH 313067
pro se

UNION CORR. INST. P-3218
7819 NW 228 ST.
Raiford, FL 32026

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE COPY OF THE FOREGOING HAS BEEN DELIVERED BY REGULAR U.S. MAIL. TO: ERIC

St. Pierre, 6 Deane Street, apt. 11, Ellsworth, ME 04605, Attorney General Pam Bondi, PL-01 The Capitol, Tallahassee, FL 32399, MR Greg Marcille, Asst. State Atty. 190 Governmental Center, Pensacola, Fl 32502, Ms. S. Michelle Whitworth, Florida Parole Commission, 4070 Esplanada Way, Tallahassee, Fl 32399-2450. On this 4 day of December 2012

/s/ E R 318067
Eric Branch 318067

NOTARY PUBLIC CERTIFICATE

STATE OF FLORIDA
COUNTY OF UNION SS:

Before me, the undersigned Notary Public, personally appeared, the petitioner herein, Eric S. Branch, who by me being sworn under oath, deposes and states that the foregoing facts contained herein are true and correct on the _____ day of December 2012.

_____
Notary Public, State of Florida

My commission expires: _____

APPENDIX

1:15 do?

MR. PITRE: 1:15 is fine.

THE COURT: All right.

(Recess)

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(April 27, 2004.)

THE COURT: We are going to reconvene. As soon as Mr. Wimberly is here, we can begin our afternoon.

Mr. Pitre, Mr. Reiter, let me see you up here at the bench.

(Bench conference off the record.)

THE COURT: This is in the Eric Branch case. Mr. Wimberly has joined us. Would you raise your right hand, please.

(Witness sworn.)

THE COURT: Thank you. Be seated, please. Mr. Reiter, you may inquire.

MR. REITER: Thank you.

WHEREUPON, FRED T. WIMBERLY,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. REITER:

Q. Good afternoon, Mr. Wimberly.

A. Yes, sir.

Q. Would you please state your name for the record.

A. Fred T. Wimberly.

Q. Where are you presently residing?

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A. Tomoka, Daytona Beach, Florida, Tomoka Correctional Institution.

Q. Where were you residing in 1993 and 1994?

A. Pensacola.

Q. How were you employed back then?

A. I was self-employed as a private investigator.

Q. Were you hired by Mr. Allbritton in the Eric Branch case?

A. Yes, I was.

Q. Do you recollect what the date was you were hired?

A. Somewhere around March of '94.

Q. Okay. Would it refresh your recollection or help you to see the billing that you provided?

A. Of course.

MR. REITER: May I approach, Your Honor?

THE COURT: You may.

THE WITNESS: Okay.

Q. (By Mr. Reiter) Is that, in fact, your bill?

A. Yes, it is.

Q. Did you create that bill?

A. Yes, I did.

Q. Did you submit it to Mr. Allbritton for payment?

A. Yes.

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Q. What does it indicate with regard to your date of hire?

A. Well, in the case, the work that I did on the case for Eric Scott Branch.

Q. Okay. Do you remember what your records indicate from your billing, what date was the first date that you began working on the case?

A. March 1, '94.

Q. Okay. Regarding that bill, does it indicate what functions you performed?

A. Yes, it does.

Q. Tell me what those were.

A. I had a conference with Mr. Allbritton at his office, and I went from there to the Chappy James Building, to the alcohol beverage commission office, to Dollarhide and Harris Music Company.

Q. Speak a little louder, please.

A. Yes, sir. Do you want me to start over?

Q. No, that's okay.

A. I spoke with a person by the name of Chris Jackson, I spoke with a person by the name of Mr. Nall at Pensacola Beach, and also a young lady by the name of Nicole at the Sidelines Bar on Pensacola Beach. I spoke with a Mr. Eric St. Pierre. Went to his residence twice. I took some pictures at his residence. I delivered those pictures

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to Mr. Allbritton on March the 3rd. I went to the Escambia County courthouse on March the 7th. I went back to Mr. St. Pierre's residence on March the 7th. Then back to the courthouse on March the 7th to speak to Mr. Allbritton. And also on March the 7th, I spoke with a Mr. Brian Johnson, Panama City, Florida.

Q. Okay. You indicated that you took photographs --

A. Yes.

Q. -- at one point; is that correct?

A. Yes.

MR. REITER: May I approach, Your Honor?

THE COURT: You may.

Q. (By Mr. Reiter) I'm showing you what's been marked as Defendant's Exhibit E. Can you identify what that is?

A. That's the photograph that I took.

Q. That's a Xerox photograph, correct?

A. That's a copy of the photograph.

Q. But does that Xerox accurately depict the photograph that you took of the people?

A. I believe it does.

MR. REITER: At this time, Your Honor, I would like to admit this photograph into evidence.

THE COURT: Any objection?

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MR. PITRE: No objection.

THE COURT: Without objection, that's Exhibit No. E --

MR. REITER: E.

THE COURT: -- or letter E will be admitted without objection.

Q. (By Mr. Reiter) Did you take -- I believe you said three photographs; is that right?

A. I don't recall how many I took.

Q. Did you take more than one?

A. Probably.

Q. Do you know whether or not you took a photograph of each of those individuals individually?

A. I may have. I don't recall.

Q. Okay.

A. But I may have.

Q. Now, at the time that that photograph was taken, did you speak to those individuals?

A. Yes.

Q. At that point in time, were you aware that one of those individuals was described to you or knowledge of being Eric St. Pierre?

A. Yes, that's correct.

Q. What were some of the conversations that took place? Let me rephrase that. Did Mr. Eric St. Pierre, the

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person you believed to be at that time, indicate that he knew Eric Branch?

MR. PITRE: Objection. It calls for hearsay.

THE COURT: Overruled.

THE WITNESS: I believe he -- I don't recall. I don't recall what he said.

Q. (By Mr. Reiter) Okay. Did you get the impression that he knew Eric Branch?

A. I believe he knew him, but I'm not positive.

Q. Okay. Did you then -- well, how did you find out about the address where to find this individual? Where did you get that information?

A. From a girl named Nicole at the Sidelines Bar on Pensacola Beach.

Q. How did you know to go to Nicole?

A. Eric, Eric Branch told me to go to the Sidelines Bar.

Q. Okay. What type of facility was this address?

A. It's a bar, restaurant.

Q. I apologize. My question wasn't clear.

When you found the individual you believed to be Eric St. Pierre, what type of facility was he at, the address?

A. It's an apartment complex on Nine Mile Road. Eden Crossing, I believe it is, on Nine Mile Road.

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Q. Okay. You say in your report you went back and spoke to Mr. Allbritton on the 7th; is that correct?
A. From Mr. St. Pierre's residence?
Q. Uh-huh (indicating affirmatively).
A. I went back on the -- I spoke to him, Mr. St. Pierre, on the telephone at first. And then I went to his residence on the 2nd of March.
Q. Okay. You took the photographs when?
A. On the 2nd of March.
Q. And when did you -- and then at some point in time after that, did you speak to Mr. Allbritton?
A. Yes.
Q. Did you show Mr. Allbritton the photograph?
A. Yes.
Q. Did you tell him that you had found Eric St. Pierre?
A. Yes.
Q. Did you indicate to Mr. Allbritton who that person was in the photograph?
A. Yes.
Q. I'm just writing down the questions here.
Now, at that particular period of time, you were working for Mr. Allbritton?
A. Correct.
Q. And you intended to get paid for your work,

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did you not?

A. Yes, sir.

Q. Mr. Allbritton has indicated that he has either no recollection or denies you ever telling him that one of those individuals in that photograph was, in fact, Eric St. Pierre.

MR. PITRE: Objection to the form.

THE COURT: Sustained.

Q. (By Mr. Reiter) Would Mr. Allbritton be correct if he testified that you, in fact, did not tell him that one of the individuals in the photograph was Eric St. Pierre?

A. He would not be correct.

Q. Would you have any reason to lie to him about that?

A. Would I have a reason to lie to you about that?

Q. No, to Mr. Allbritton.

A. No.

Q. Would you have any reason to hold back any information from Mr. Allbritton?

A. No.

Q. Did you hold back any information from Mr. Allbritton?

A. No.

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Q. Did he ask you to do anything further on the case?
A. Yes.
Q. What?
A. To contact a Mr. Brian Johnson in Panama City.
Q. Okay. Do you have any recollection of Mr. Allbritton asking you to issue a subpoena for Mr. St. Pierre?
A. No, I don't have any recollection of that at all.
MR. REITER: I don't have anything further.
THE COURT: Thank you. Mr. Pitre.

CROSS-EXAMINATION

BY MR. PITRE:
Q. Mr. Wimberly, prior to your working this case, how long had you been an investigator?
A. Since 1980 -- I think '86, maybe '85, I'm not sure.
Q. During that time, had you had the opportunity to create your own files and your own notes?
A. Yes, I did.
Q. Okay. Prior to today, had you had an opportunity to look at any of your notes?
A. No.
Q. The event that you're testifying about today,

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is that just based on your own independent recollection?
A. Yes, sir.
Q. Did anybody contact you about your testimony today?
A. Yes, sir.
Q. Who did?
A. The attorney for Mr. Branch.
Q. You are referring to Michael Reiter, for the record. Anybody else, any of his investigators?
A. Yes.
Q. Who was that?
A. It was a woman from the capital collateral bureau in Tallahassee.
Q. Is that Heidi Brewer?
A. Who?
Q. Do you remember her name?
A. Not right offhand. I have her business card, but I don't recall her name.
Q. What was the substance of that conversation?
A. Basically what we just discussed, the investigation that I did on Mr. Branch's case.
Q. Prior to you appearing in court today, did they show you that picture that you identified?
A. I saw it yesterday.
Q. What time yesterday did you see it?

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A. Right around lunchtime, I think.
Q. Was that while you were in the courthouse or was that while you were at the jail?
A. I was in the courthouse.
Q. Who showed you that photograph?
A. The attorney for Mr. Branch.
Q. Now, if I understand, you said that when you met with this person, Eric St. Pierre, that you didn't have any specific recollection of what he told you; isn't that correct?
A. Correct.
Q. Isn't that what you said on direct?
A. Yes.
Q. To this day, you don't have any specific recollection of what that Eric told you; isn't that true?
A. Which Eric?
Q. Even to this day, you don't have any specific recollection of what this other Eric informed you about?
A. No, I don't.
Q. You were asked to find an Eric, were you not?
A. I was.
Q. You were asked to find an Eric by Mr. Allbritton, correct?
A. Correct.
Q. You took the information you got from the

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defendant or from Mr. Allbritton to locate that person, did you not?

A. He and Mr. Branch.

Q. Did you find anybody else who you suspected would be this other Eric, other than that one person who you found?

A. No.

Q. So that's the only person you are dealing with in terms of your investigation. You didn't find any other Eric?

A. No, I didn't find any other Eric, correct.

Q. Now, after you developed this photograph, you presented it to John Allbritton, correct?

A. Yes, sir.

Q. Did you have any other work to deal with in terms of contacting this other Eric after submitting that photograph?

A. No.

Q. Have you ever been convicted of a felony before?

A. Yes.

Q. Okay. How many times?

A. Once.

Q. One conviction?

A. I had two cases in one.

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Q. How long had you served in the state prison system?

A. I've been in the state prison system for five years and one month.

Q. Which law enforcement agency prosecuted you?

A. The Santa Rosa County Sheriff's Department.

Q. Who was the prosecuting authority? In other words, was it the U. S. Attorney's Office?

A. No, state's attorney.

Q. State Attorney's Office?

A. Right.

Q. Was that the same agency that was prosecuting the case in Eric Branch?

A. No, I don't think so.

Q. You are aware the State Attorney's Office for the First Judicial Circuit covers not only Escambia, but Santa Rosa County; isn't that correct?

A. Oh, okay. Okay. In that case, it was the same State Attorney's Office.

Q. Okay. Now, this case got a lot of publicity, did it not?

A. It did.

Q. Weren't there a lot of news reports on this case?

A. Yes.

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Q. Wasn't the defendant's photograph published in the newspaper at various times?

A. You are speaking of Mr. Branch, aren't you?

Q. Yes.

A. I guess it was. I don't recall how many times.

Q. Okay. I'm not asking how many times, I'm asking whether you have any recollection of whether the defendant's photo appeared in any of the publications, news journal, or otherwise?

A. I believe it did.

Q. What about on television, news broadcasts?

A. I'm certain of that, too.

Q. You got the impression that this other Eric knew of the defendant, isn't that what you testified to?

A. I believe he knew him or knew of him.

Q. What was this belief based on?

A. I don't know.

Q. Would you, yourself, be able to testify whether the person depicted in that photograph was the person or was a person who was present at the time the murder was committed in this case?

A. Say that again.

Q. In other words, by you looking at that photograph, could you testify -- did you have the ability to

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testify whether the person who was in the photograph was a person who was present when Susan Morris was killed?

A. No.

Q. That's because you weren't at the scene of the crime; isn't that correct?

A. That's correct.

Q. Do you still have a copy of that bill in front of you?

A. No.

MR. PITRE: Thank you, Mr. Reiter.

Q. (By Mr. Pitre) Other than looking at the statement, which you gave some testimony on, do you recall what you did in this case?

A. Yes.

Q. Okay. You spoke with Brian Johnson?

A. Yes. Yes, I did.

Q. What did he tell you?

A. He said he did not know Mr. Branch.

Q. Why did you put that -- or this bill that you submitted, this is something that you typed out?

A. No, I did not type it.

Q. Did you direct somebody to type it out for you?

A. Yes.

Q. Did you direct someone to type it out for you

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based on the information you provided?

A. Yes.

Q. So whoever types this out would type out what you told them to say; isn't that correct?

A. Yes.

Q. And as is noted for Brian Johnson, it indicates a substance of the conversation, didn't know Eric Scott Branch or E.S.B.; isn't that correct?

A. Yes.

Q. So you directed that with regard to that note, you put in the content of some portion of the conversation.

A. No, I don't recall that.

Q. Well, wouldn't the fact that this witness, Brian Johnson, doesn't know Eric Scott Branch seem to indicate that you had a conversation with Mr. Johnson and that Mr. Johnson said he did not know Eric Scott Branch?

THE COURT: I believe the witness just testified to that. You are looking at the bill, he is not. That may be part of the problem.

MR. PITRE: If I may approach.

THE COURT: Please.

THE WITNESS: Okay.

Q. (By Mr. Pitre) That indicates, does it not, some type of conversation or information that Mr. Johnson had?

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A. Yes.
Q. Now, as it relates to a March 2, '94, date, March 7, '94, date, this would reflect some contact that you submitted you had with Eric St. Pierre.
A. Yes.
Q. And you only use one form of the last name on there; isn't that correct? In other words, you just have Eric St. Pierre on there?
A. Correct.
Q. Okay. Did you get any indication that this person had any other last names?
A. No.
Q. The substance of conversation between you and this other Eric is not contained on that bill, is it?
A. Correct.
MR. PITRE: No other questions.
THE COURT: Thank you. Mr. Reiter, any redirect?
MR. REITER: Yes, Your Honor. Just one moment.

REDIRECT EXAMINATION

BY MR. REITER:
Q. What is the date on the bill showing, sir?
A. Beg your pardon?
Q. What is the date showing on the bill that you

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have?

A. For what instance?

THE COURT: The date that the bill was prepared or sent.

THE WITNESS: I don't --

MR. REITER: May I approach, Your Honor?

THE WITNESS: I don't have it on here.

MR. REITER: Here it is, the date the bill was prepared. Well, it's March of '94.

Q. (By Mr. Reiter) Okay. Did you get paid in this case?

A. Yes, sir.

Q. Okay. I'm going to show you a document, motion and order for payment of part of the investigation expenses that was filed in this case.

What was the date that it was filed with the court by Mr. Allbritton? You might find it on the next page.

A. 13th of May?

Q. What year?

A. 1994.

Q. Now, how many times does the name Eric St. Pierre appear on your bill?

A. Four.

Q. Okay. Now, you've testified earlier that you,

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in fact, interviewed an individual you believed to be and identified himself as Eric St. Pierre, correct?

A. Yes.

Q. Can you think of any reason in the world why you would put the name Eric St. Pierre on that bill if you meant somebody else?

A. No.

Q. Now, you don't remember, as you testified, the exact words of the conversation with Eric St. Pierre, correct?

A. That's correct, I do not.

Q. But you have a sense of what the tone of the conversation was. What is it that makes you think that Eric St. Pierre knew --

MR. PITRE: Objection. Asked and answered.

THE COURT: You did ask him that once before, and the answer was he couldn't say.

MR. REITER: Okay.

THE COURT: So the objection is sustained.

Q. (By Mr. Reiter) When were you convicted of the two felonies?

A. March 19, 1999.

Q. Do you know if you were convicted at the time in 1994?

A. No.

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Q. Were you ever requested by Mr. Allbritton to write a report as to the conversation that took place from your investigation?

A. No.

Q. Did he ask you to take a tape recorder with you?

A. No.

Q. Did you take one?

A. Not to my knowledge.

Q. What was the time lapse between your conversation or your last conversation between Mr. Eric St. Pierre and then your conference with Mr. Allbritton?

A. The time delay?

Q. Right.

A. No more than one day.

Q. Have you ever suffered from any short term memory loss or diagnosed with short term memory loss?

A. No, I've not been diagnosed for that.

Q. Do you have any problem with short term -- or in 1994, did you have any problem with short term memory loss?

A. I don't think so.

MR. REITER: If I may have that back. Nothing further, Judge.

THE COURT: Thank you. Thank you, Mr.

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Wimberly.

THE WITNESS: Yes, sir.

THE COURT: Call your next witness, Mr. Reiter.

MR. REITER: Is Dr. --

THE COURT: Dr. Cleveland is here.

MR. REITER: Okay. Dr. Cumberland is here?

THE COURT: Cumberland, I'm sorry.

MR. REITER: I'll call Dr. Daniel, please.

(Witness sworn.)

MR. SPENCER: Your Honor, it has been the practice of the Court -- do you want to let Dr. Cumberland --

THE COURT: That's fine. Yeah. Dr. Cumberland, if you would like to come up. Thank you.

Mr. Reiter, you may inquire.

WHEREUPON, JACK DANIEL, M.D., having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. REITER:

Q. Please state your name for the record.

A. Jack Daniel, M.D.

Q. Where do you reside, sir?

A. Richmond, Virginia.

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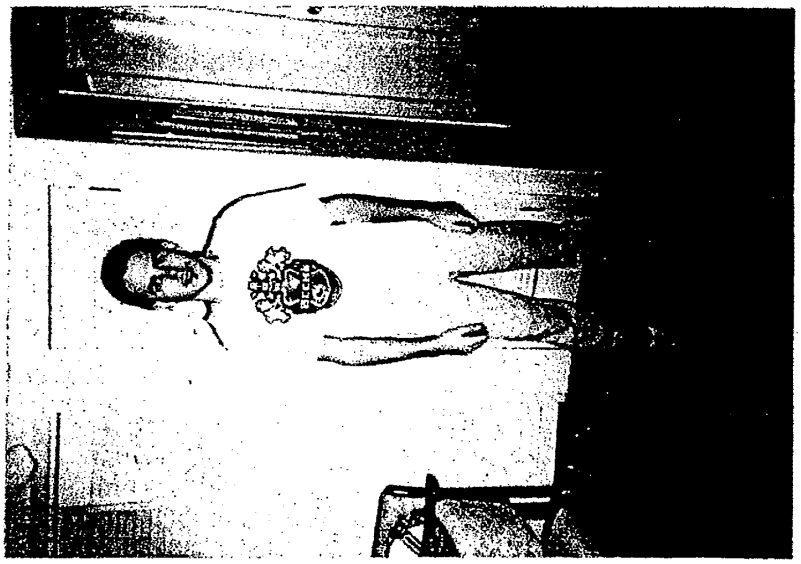
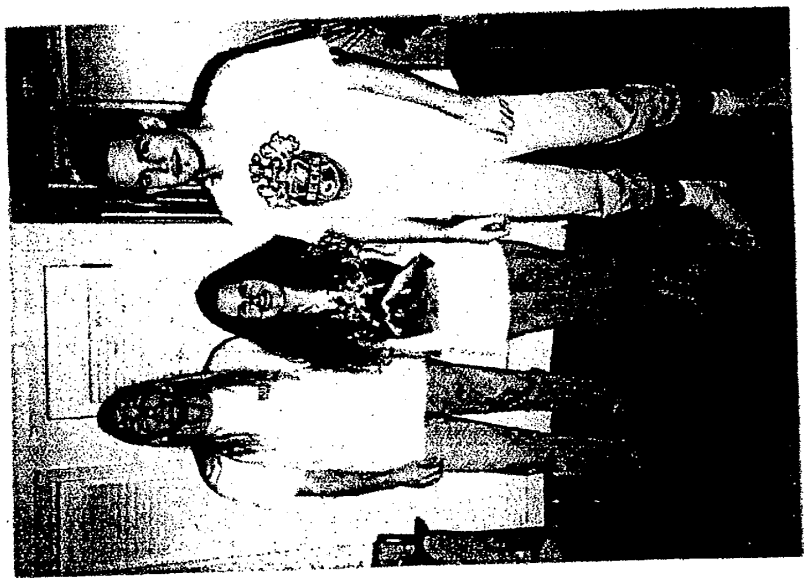
APPENDIX





APPENDIX

DEPARTMENT OF PUBLIC SAFETY
Maine State Police

Maine Sex Offender Registry

ONLINE SEARCH SERVICE

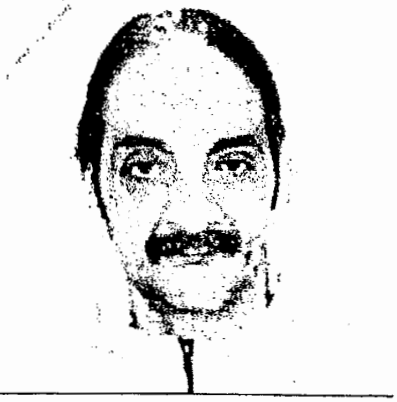
Individual Profile

Database lasted updated on: 10/16/2012

You may request further information **on this individual.**

Individual Profile

Eric E St pierre
Date of Birth: 07/26/1963



Residence: Ellsworth ME, 04605

Address last verified on: 08/07/2012

SORA #: 2500

Registrant Type: LIFETIME REGISTRANT
Out of State Sentencing

Statute: Aggravated Felonious Sexual Assault
Court: Nh
Docket #: 95-S-1713

More Information

You can search for greater detail about current statutes, you can go to http://janus.state.me.us/legis/statutes/search.asp. For information about repealed statutes, you can contact the Maine State Law & Legislative Reference Library at http://www.maine.gov/legis/lawlib/homepage.htm

You may request further information on this registrant (free). The online request allows you to obtain more details immediately.

You may conduct a Criminal History Check online (fee required) to find out if this registrant has any conviction and adjudication information for crimes committed in Maine other than those already listed on the Sex Offender Registry site.

Request More Info | Return to Results | New Search

Comments about this online service? Complete our feedback form.
Questions about this Service? Contact the office at: (207) 624-7270 or Email: maine.SOR.info@maine.gov

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EXHIBIT 38

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT

IN AND FOR ESCAMBIA COUNTY, FLORIDA

ERIC S. BRANCH, pro se PLAINTIFF / PETITIONER	)	
Vs.	)	CASE NO:_____
	)	93-870F(Trial Court)
SECRETARY, DEPARTMENT OF CORRECTIONS RESPONDENT,	)	83-805 (FL. S. Ct.) 4:06 cv-486-RH (U.S. Dist. Ct. ND FL) 10-11840 P (11th Cir.) 11-8117(U.S. S. Ct.)
And,	)	
ALTON COLVIN, JR. as DIRECTOR OF JUSTICE ADMINISTRATION COMMISSION and, JEFF ATWATER, As CHIEF FINANCIAL OFFICER, in their Official capacity and in their Personal capacity Defendant,	)	

PETITIONER'S 1983 CIVIL RIGHTS ACTION, U.S. CONSTITUTION 14TH AMENDMENT, EQUAL PROTECTION AND POST PROCESS ACTION, AND SUCCESSIVE RULE 3.850 MOTION FOR POST CONVICTION RELIEF WITH SPECIAL REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

COMES NOW, Petitioner herein, Eric S. Branch, pro se, and respectfully request that this honorable court grant relief pursuant to Florida Rule 3.850 and/or 3.851, and under 42 U.S.C. 1983, in the following manner.

STATEMENT OF THE COMPLAINT

This is a mixed petition presenting a 1983 Civil Rights Civil rights action and successive Rule 3.850/3.851 motion. Petitioner alleges systemic failing and grossly disparate quality of

representation provided by the State of Florida Registry Counsel comparable to that provided by CCRC Counsel, violates his (and all other similarly situated persons), Equal Protection and Due Process guarantee, and as result of these persistent, ongoing and/or systematic statutory and constitutional violations, Petitioner was denied his state created right to full and fair post-conviction process in state court and his Constitutional Right to State and Federal Habeas Corpus Review. Furthermore, Petitioner was denied his state created right to effective and/or conflict free counsel and, he was deprived access to the Court's violations of Article I. s 2, s 9, s 13, s17, and s 21, and Article II, s 3 of the Florida Constitution and 1st, 5th, 6th, 8th, and 14th Amendments to the United States Constitution.

VENUE

Venue properly lies in this Court in that Petitioner's conviction and sentence of death were imposed by this Court.

JURISDICTION

Primary Jurisdiction of this Court rest in Article V, Section 5 (b) Florida Constitution. This Court has subject matter jurisdiction over a 1983 Claims Pursuant to 28 U.S.C.A. s 1343 (3), in that Petitioner alleges violations of the State and Federal Constitutions. **see: Civil Rights and Civil Liberties Litigation** 4th ed. (2009) by *Sheldom H. Nahmod. Voll s 1.56: Section 19083* Claims in State Courts ("Federal Jurisdiction over s 1983 claims pursuant to 28 U.S.C. s 1342 (3) is not exclusive...especially persuasive where there are state crested claims enforceable in state court which are analogous to s 1983 claim" at 1-131) see also: *Maine v Thibotout 449 U.S.I., 100*

S. Ct. 2502 (1980).

Moreover, the successive post-conviction motion is properly before this Court pursuant to Rule 3.850 (b)(5), Rule 3.850(f) and 28 U.S.C. s 2244(2)(b)(ii) and (4)(d)(i)(8).

PARTIES

Petitioner: Eric S. Branch #313067, Union Correctional Institute, Building P-3109, 7819 N.W. 223th Street, Raiford, Florida 32026-4430

Respondent: Secretary, Florida Department of Corrections, 501 S. Calhoun Street, Tallahassee, Florida 32399-2500

Defendant: Jeff Atwater, Chief Financial Officer, 200 E. Gaines Street, Tallahassee, Florida 32399-0306

Defendant: Alton L. Colvin, Jr. Executive Director Justice Administration Commission, 227 N. Bronough Street, Suite 2100, Tallahassee, Florida 32301.

PROCEDURAL HISTORY

Branch's direct appeal in the State Court was denied October 1996, *Branch v State, 685 So 2nd 1250 (Fla 1996).* Petition for writ of certiorari to the Supreme Court of the United States was denied May 12, 1997, see *Branch v Florida, 520 U.S. 1218 (1997*). Capital Collateral Counsel (CCR) Andrew Thomas filed a timely shell motion for post-conviction relief on May 7th 1998 in order to toll one year time limit for filing Federal Habeas Corpus (Shell Briefs are no

longer allowed, the State Courts accepted them for a short period when the AEDPA one year deadline was being litigated) On April 1, 2003, CCR counsel, Heidi Brewer, filed an amended 3.850 motion for post-conviction relief. Soon after that, CCR Northern District was shut down, and Michael Reiter was appointed attorney under Florida's newly created pilot registry program. Mr. Reiter filed a new 3.850 motion and conducted evidentiary hearing. The Trial Court issued an order denying Branch's post-conviction motion to vacate judgment and conviction on March 4, 2005. Appeal was filed and denied by the Florida Supreme Court, *Branch v. State, 952 So2d, 470 (Fla 2006).*

Branch filed a Federal Petition for Habeas Corpus March 28, 2007. The District Court denied Federal Habeas Corpus relief *Branch v McDonough, No. 4:06 cv 486-RH (N.D. Fla.March 30, 2010)* (Order denying petition). Appeal to the Eleventh Circuit was filed and denied see: *Branch v Secretary, Fla Dept. of Corrs. 638 F. 3d. 1353 (11th Cir. 2011*), at that time, Mr. Reiter filed a third motion to withdraw which was granted. After that, acting pro se, Branch filed petition for writ of Certiorari to the United States Supreme Court. The Court, on March 5, 2012, denied review, see *Branch v Tucker, No.: 11-8117 (2012).*

STATEMENT OF THE FACTS

I. PARTIES:

1. Plaintiff/Petitioner, Eric S. Branch, is currently a State prisoner as defined by Ch. 944 F.S., incarcerated at Union Correctional Institution under sentence of death, imposed in Escambia County, Florida. Petitioner has a constitutional and statutory right to challenge the

judgment and sentence of death and he has attempted to do so.

2. Respondent, Secretary of the Department of Correction, at all times relevant to this action, holds Branch in his care, custody and control. Moreover, Secretary of the F.D.O.C., is responsible for carrying out the sentence of death on behalf of the State of Florida.

3. Defendant, Jeff Atwater, is the Chief Financial Officer for the State of Florida. Mr. Atwater's duties include, but are not limited to, enforcing provisions of Chapter 27 Florida Statute, for appointment, monitoring and payment of cost to hire registry attorney to represent Capital appellants during State and Federal post-conviction review. Chapter 27 F.S. requires Mr. Atwater to develop the form of contract, to enter into contract, as well as enforce the performance terms and conditions of the contract. Additionally, it is Mr. Atwater's duty to monitor the attorney and notify the Court when it appears the attorney has acted in violation of their legal and/or contractual obligations. Also, Mr. Atwater is authorized to challenge and withhold payments to the attorneys contracted under the Registry Statute, and permanently remove counsel from the list of approved attorneys for appointment. In short, Mr. Atwater has control over the attorneys who wish to be appointed to represent capital appellants under Florida's Registry Statutes 27, 7002, 27, 710, and 27, 711 F.S.

4. Mr. Atwater, as Chief Financial Officer for the State of Florida, is an arm of the Executive Branch of Government.

5. Mr. Atwater, as Chief Financial Officer, is being sued in his Official capacity and in his personal individual capacity.

6. Defendant, Alton Colvin, Jr., is the Executive Director of the Justice Administration Commission. As such, Mr. Colvin has a duty under Chapter 27, Florida Statute, to monitor and

supervise the attorneys appointed to represent capital appellants on post-conviction review. Those duties include, but are not limited to, advertising and hiring attorneys, certifying that each attorney seeking appointment under Chapter 27, F.S. is qualified to be appointed in a Capital case, maintaining a list of attorneys that are available for appointment. Moreover, Mr. Colvin has a corresponding duty to oversee the attorneys where it appears the attorney has committed a violation or legal obligations or terms of contract. He has a duty to report the attorney to the Florida Bar, and the Court, and remove the name of the attorney from the registry list, denying the attorney employment under Ch. 27 F.S.

7. Mr. Colvin, as Executive Director of the Justice Administration Commission, is being sued in the official capacity and in his personal individual capacity.

II FLORIDA POST CONVICTION PROCESS:

8. Florida, by statutory enactment, guarantees any person convicted and sentenced to death, the right to post conviction review in Florida Courts pursuant to Rule 3.850 and 3.851 Fl R. Crim. Pro.

9. Article I, Section 12, Florida Constitution guarantee any person convicted and sentenced to death "full and fair exercise of the right to Habeas Corpus review", Rule 3.850 is the procedural vehicle for obtaining Habeas relief, **see**: *State v Boyler, 520, So2nd 562 at 563 (Fla 1988).*

10. Under Article I, Section 24, Florida Constitution, all people are entitled access to records to provide orderly procedures to the procedures of considering public records request in the context of Capital Post Conviction Proceedings, Florida Rules of Criminal Procedure 3.852

was promulgated on October 31, 1996, making discovery request for public records ancillary to Rule 3.850 and 3.851. In re: Amendment to Florida Rules of Crim Proc..683 So 2d, 475 (Fl.1996).

11. All persons convicted and sentenced to death are guaranteed the right to petition for executive clemency pursuant to Cit. 940 F.S.

12. Florida's contemporary system of post-conviction review was created to simplify a criminal defendant's ability to seek collateral review allowing the Courts to correct convictions and sentences on any ground which subject them to collateral attack, *Roy v Wainwright, 151 So2d.825, 828* ("The rule is intended to provide complete and efficacious post-conviction remedy to correct convictions on any ground subject to collateral review").

13. Florida Courts have found that Due Process Rights attach to Capital Post Conviction proceedings, recognizing that the right to pursue post-conviction relief encompasses a right that the process under which remedy is sought be "fairly administered" without needless complication or impediment see: *State ex tel Butterworth v Kenny 714, So 2d 404, 408, (Fla 1998)* ("What is required in post-conviction proceedings, whether capital or non-capital, is that the defendant have meaningful access to the Judicial Process") *Jones v State, 740, So 2d, 523, (Fla 1999)* quoting: *Skull v State, 569, So 2d 1251, 1252-53 (Fla 1990)* ("recognizing that" due process in context or capital post-conviction processing embodies a fundamental conception of fairness that derives ultimately from natural rights of all individuals").

14. Moreover, Florida Courts have recognized they have a "Constitutional obligation" to protect "procedural fairness and integrity" of the capital post-conviction proceeding. In *Arbaleaz v Butterworth, 738 So 2d, 326, 331 (Fla 1999)* relying on: *Morgan v California, 524,*

U.S., 721, 118, S. Ct. 2246 (1998) and, State v Dixon, 283, So 2d, 1 (Fla 1973). The Court stated:

> "Our adversarial system of criminal justice depends entirely upon procedural fairness and integrity of process. This Court and the United States Supreme Court have held the integrity of the process in unique and special concern in cases where the State seeks to take the life of a defendant".

15. Florida Courts have also recognized that undue obstruction or impediments to post conviction are unconstitutional, *State v Boyles, 520, So 2d, 562, (Fla 1988*), placing on Florida Courts an obligation to set aside technicalities and serve the interest of justice, *Manyard v Singletary, 733, So 2d 1020, (Fla 1999),* and *Anglin v Mays, 88, So 2d 918 (Fla 1956*) ("If it appears to a Court of competent jurisdiction that a man is illegally restrained of his ability, it is the responsibility of the Court to brush aside formal technicalities and issue such appropriate orders as will do justice") see also, *Miteral v Buchanan, 192 So 2d. (Fla 3 DCA 1966)* ("The niceties of the procedures are not anywhere near as important as the determination of the ultimate question as to legality of the restraint").

16. Moreover, Florida has consistently recognized that "Death is different" and that there is a constitutional obligation to provide "extraordinary safeguards to ensure that only those whose guilt is certain...are ultimately put to death". Amendments to Florida Rules Criminal Procedure 3.851, 3.852 and 3.853, 797 So 2d 1213, 1224, (Fla 2000) (concurring opinions by Justices Anstead, Pariente and Shaw).

> "We must never lose sight of the important values of being balanced in death penalty cases. On one hand society has invoked the ultimate sanctions of death because an innocent life has been taken by the defendant under especially egregious circumstances. On the other hand death is different and that extraordinary safeguards must be taken to ensure that only those whose guilt is certain and who are truly deserving of the forfeiture of life are ultimately put to

death".

17. Most substantial constitutional claims that truly test the Constitutional validity of a conviction and sentence of death can only be raised in Post-Conviction Proceedings e.g.; *Strickland v Washington, 466 U.S. 668 (1984)* (ineffective counsel claims), *Brad v Maryland, 373 U.S., 83 (1965), Giglio v United States, 405, U.S. 150 (1972)* (failure to disclose exculpatory evidence), *House v Beu, 126 S. Ct 2064 (2006) and Schulp v Deld, 513 U.S. 298 (1995*) (actual innocence/miscarriage of justice), *Adkins v Virginia, 537 U.S. 304 (2992*) (mentally incompetent to be executed), *Ford v Wainwright, 477 U.S. 399 (1986*) (insanity), *U.S. v Tucker, 404 U.S. 443* (1972) (illegal sentence based on assumptions concerning criminal record which are materially untrue*), Johnson v Mississippi, 486 U.S. 578 (1998*) (use of invalid aggravator).

18. Furthermore, in expressing its constitutional obligation to ensure that the death penalty is administered in a fair, consistent and reliable manner. Florida's Supreme Court has found that:

> "In our attempt to efficiently regulate a system for addressing post- conviction claims, we must constantly keep in mind that we are dealing with the Great Writ of Habeas Corpus, the Great Writ which is expressly set out in Florida's Constitution. The Writ is enshrined in our Constitution to be used as a means to correct manifest injustices and its availability for use when all other remedies have been exhausted and has served our society well over many centuries. This Court will, of course, remain alert to claims of manifest injustice as will all of Florida's Courts, as we reaffirmed in *Havard v Singletary, 733 So 2d 1020, 1024 (Fla 1999*) we will continue to be vigilant that no fundamental injustice occur".

quoting: *Baker v State, 878 So2d at 1446 (Fla 2004)*

19. State prisoners have a right guaranteed under Section 9, Clause 2, Constitution of the United States to petition relief in Federal Court pursuant to 28 U.S.C.2254 Writ of Habeas Corpus, however, Federal Law requires that petitioners fully exhaust all Constitutional claims in

State Court prior to raising them in Federal Court.

20. Florida Post Conviction statutes and Procedures are an intricate part of Florida's Appellate process without which, not only would the wrongly convicted, indeed innocent, be subject to execution but exhaustion of Constitutional claims would not be possible. Florida's Constitutions, Statutes and Court procedures grant an absolute right to Direct Appeal, Post-Conviction and Habeas Corpus review of conviction and sentence of death. Moreover, Florida has had these guarantees in place for over forty years, creating a liberty interest that they be administered with full protection of due process and equal protection under the law.

III. RIGHT TO POST-CONVICTION COUNSEL:

21. Chapter 27, Part IV, Florida Statute guarantees all persons convicted and sentenced to death in Florida are provided legal representation throughout the Post-Conviction stages of the Appellate Process.

22. Originally, State Law provided that capital appellants were represented exclusively by Capital Collateral Representation (CCR), which operated out of a single office located in Tallahassee. However, pursuant to Chapter 97-313, s 13 Laws of Florida, State law makers split C.C.R. into three separate offices of C.C.R. representing the Northern, Middle and Southern Regions of the State.

23. On July 1, 2003, further changes were made pursuant to Chapter 2003-399 Laws of Florida, Section 27, 701, (2) was amended to establish a "Pilot Program" transferring the duties of C.C.R. attorneys representing clients in the Northern Region to a "Registry" of private attorneys.

24. The State Legislators did not fund, and closed only the office of C.C.R. in the Northern Region. C.C.R. Middle and Southern Regions remain fully funded and operational providing representation to Capital appellants in those Regions.

25. Together Florida Law Makers and the Florida Courts through Statute, Procedure and Precedent, have established the right for all persons convicted and sentenced to death to be appointed legal counsel that is effective and conflict free throughout the Appellate Post Conviction Process, *Hoffman v Haddock, 695 So2d 682, 684, (Fla 1997)* ("In absence of funding for Capital Habeas Counsel, cases could not proceed to evidentiary hearing"), *Spalding v Dugger, 526 So2d, Fl, 71, 72 (Fla 1998), Minerva v Singletary, 830 F. Supp. 1426 (Fla M.D. 1993), Peede v State, 748 So2d 253 (Fla 1999)* (The Court removed counsel after it determined he was providing ineffective assistance). When the Florida Supreme issued decision in *Smith v State, 998 So2d 516, 530 (Fla.2008)* Justice Anstead wrote:

> "I would strike the appellate briefs, discharge counsel, and direct the trial Court to appoint new appellate counsel for the appellant. Capital cases represent the most serious category of case reviewed by this Court and **such cases require diligent and competent advocacy by Counsel.** While this Court has inherent responsibility to assure such representation, the Florida Legislature has explicitly called upon the Courts to take responsibility for assuring such representation in Capital Litigation" (Emphasis added)..

26. The requirement for appointment of effective Conflict Free Counsel to Capital Appellants extends to Executive Clemency Proceedings. In *Remeta v State, 559 So2d 1132 (Fla* 1990) the Supreme Court of Florida held "if the legislature provided a right to counsel in proceedings not constitutionally mandated, the statutory right carried with it the right to have effective assistance of counsel".

27. Federal Courts must accept a State Court's interpretation of its Statutes and its

Rule of Practice, *Ohio v Johnson, 467 U.S. 293, 104 S. Ct. at 254 ( ).* *Missouri v Hunter, 459 U.S. 359, 103 S. Ct. 673 (1983),* *Tarpley v Dugger, 841 F 2d 359, 364 (11th Cir.) (1988),* *McCoud v Deppisch, 409 F 3d. 869, 875, (7th Cir 2005),* *Israfil v Russel, 276 F. 3d, 768, 771 (6th Cir. 2001)*

The difference between representation by C.C.R. and the Registry Counsel as demonstrated by this chart, is dramatic, not only in degree, but in kind:

C.C.R.	REGISTRY
Two attorneys assigned to each case	Payment available for only one attorney
One investigator assigned with full support team	$15,000 maximum payment allotted for investigatory upon approval by the Court
Employee support staff, paralegal and criminologist, plus research assistants	$15,000, maximum payment allotted for misc. expenses, copying cost, and expert witness upon approval by the Court
Retain the right to hire any expert they need to defend their clients	See above
Control their own budgets; attorneys salaries range from $45,000 to $55,000 per year	Chapter 27, F11 (13) Fee and payment schedule is the exclusive means of compensation
Salaries are guaranteed	Fees can be withheld and challenged by Chief Financial Officer and Attorney can be removed from Registry list for exceeding Fee schedule

29. The Chart above, paragraph #28, merely highlights the disparity in representation at the top end, with two (2) counsel, one (1) investigator, and additional support staff which C.C.R. **guarantee** to each of their Capital Appellant Clients. However, this chart only displays half of the picture, as it is the working application of the Statute for Appointment of C.C.R. and

Registry Counsel that draws attention to the actual degree to which a disparity in representation exist between the two different types of attorneys the State of Florida provide to Capital Appellants.

30. As noted, CCR automatically appoint at minimum two (2) attorneys and one (1) lead investigator to represent each appellant. However, CCR is structured in a way so that the defense is provided additional help from fellow staff within the office: research assistants, criminologist, investigators and other attorneys who help to write legal briefs, investigate leads, conduct record searches, maintain deadlines, or anything else that is asked of them. CCR offices employee at minimum thirty (30) staff attorneys and have control over three million dollars (3.3 million Southern District, and 3.9 million middle district), having control over their own budget. CCR offices are not restricted by fee caps, in how much money they spend per appeal. If an appeal requires 50 thousand dollars or 1 million dollars, CCR is permitted to spend whatever is required to adequately present each appeal without fear of losing their job. Undoubtedly, when faced with a difficult legal issue or impending deadline, CCR can throw enormous, if not unmatched expertise and resources at a project.

31. In contrast, unfortunately for those Capital Appellants that receive death sentences in the former Northern Region of Florida, as highlighted, they are guaranteed appointment of exactly one (1) attorney, nothing else, as under Chapter 27, 710 (6) only one Registry Attorney may be appointed and compensated at any one time, **see also**: *Florida Department Financial Services v. Freeman 921 So2d 598 (Fla 2006)* "only one registry attorney, often a solo practitioner is assigned to each case").

32. Now, while Registry statutes allow for payment of only one attorney, the statute

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does permit the attorney to hire a second attorney. However, the statute is clear, if they do that, the Registry Attorney is responsible for paying the second attorney's fee.

33. Likewise, while registry attorney is authorized to retain the services of investigators and experts, not only are the expert and investigators entitled payment only "upon the approval of the Trial Court" Ch. 27, 711 (5) and (6), but the statute also cap fees at $15,000, and in the case of expert witnesses, the $15,000 must also pay cost of transcripts, copying of documents and miscellaneous administrative expenses. Moreover, payment can be opposed or denied by the Chief Financial Officer in that Chapter 27, 7002 F.S. prohibits the "use of State funds for compensation of Registry Counsel... above the amounts set forth in s 27.711", authorizing the Chief Financial Officer, pursuant to 27.711 (13) to challenge the attorneys "intended billing" before the Court, The Statute also gives the Director of the Justice Administration Commission the extraordinary power to "permanently remove from the Registry of Attorneys...**any attorney who seeks compensation for services above the statutory maximum,** or who notifies any Court, Judge, State Attorney or Attorney General that they cannot provide adequate or proper representation under the terms of (fee schedule) Chapter 27.7002 (5) and (6) F.S."[1]

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[1] Until recently when law makers amended the Registry Statutes, these duties and obligations were carried out by the Comptroller and Director of Commission on Capital Crime to the Chief Financial Officer's contract manager who has standing to file pleadings and appear before the Court to contest any motion for order approving payment (Ch 27.11 (13) F.S.). In other words, an Officer of the Executive Branch of Government dictates the terms of defense counsel representation, has custody and control over the expenditure of funds of the case, is required to be provided confidential information regarding the case and can argue against counsel being compensated while the case is in process.

34. Attorneys employed at CCR offices are not restricted in their representation by any fee caps or threats on their employment or removal from the list of approved attorneys. CCR can and do hire experts, pay investigators and incur other cost associated with litigation of Capital Post Conviction Appeal above those fees assigned and capped for Registry Attorneys and they do so without consequence of non-payment.

35. The funding of Registry Attorney is further complicated by the statutory requirement that they enter into a third party agreement with the Office of the Chief Financial Officer, who is an Officer of the Executive Branch of Florida's Government, Chapter 27.710 and 27.711 F.S. highlights the inherent conflict created by this arraignment, by (1) making the Chief Financial Officer responsible for the form of contract, (2) appropriating moneys for compensation directly to the Chief Financial Officer, rather than the Justice Administration Commission, and (3) providing that all request for compensation be first presented.

36. CCR attorneys do not practice under these restrictions.

37. Additionally, the Registry Statute contains prohibitions on lawyers doing things or being compensated for things that CCR attorneys may do and which may be necessary and appropriate in Capital Litigation.

38. Registry attorney may not file repetitive or frivolous pleadings that are not supported by law of fact.[2]

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[2] The rules regulating the Florida Bar allow Attorneys to make good faith argument for expansion, modification or reversal of existing law. Rule Reg. Fla Bar 4-3-1. Moreover, the Court has specifically authorized pleading in anticipation of factual development, Vemtira v State, 673 So 2d 479 (Fla 1996) the appointment was made.

39. Registry attorney may not represent a Capital Defendant during retrial, resentence proceedings or in a proceeding.

40. Registry attorney may not represent a Capital Appellant in a proceeding challenging a conviction or sentence other than the conviction and sentence of death for which the appointment was made.

41. Registry may not represent Capital Appellants in any civil litigation other than Habeas Corpus Proceeding.

42. In contrast, CCR attorneys may, and have, represented their clients on retrial and resentencing. CCR attorney may, and have, challenged convictions or sentences other than the conviction and sentence of death pursuing challenges to death sentences based on *Johnson v Mississippi* see: *Armstrong v State, 862 So2d 705 (Fla 2003*). And CCR attorney may, and have, represented death sentence defendants in civil litigation. For example, suing for access to clients, juvenile or other records, suing for death sentence defendants to challenge the constitutionality of appellate rules and procedures see*: Assay v Butterworth (Fla 2000)(Case* No.:_____), or more recently, after botched executions, filing writs of prohibition for their clients challenging the constitutionality of the method of execution *Diaz v State 945 So2d 1136 (Fla 2006), Hill vs McDonough 126 S.Ct. 2096 (206).*

43. Additionally, although Registry statutes require lawyers to remain on the case until the sentence is carried out, Ch. 27.7002 and 27.711 F.S. prohibit Registry attorneys from being compensated for repetitive or successive collateral challenge to a conviction and sentence of death which is affirmed by the Supreme Court and undisturbed by collateral litigation. At this point, Registry attorneys are prohibited from conducting research, continuing to investigate

leads or file any motion on behalf of their clients. The attorney's role is to simply sit back and watch while their client faces execution. Whereas, CCR has resources to, at least partially, fund continued and successive litigation. After all, very significant percentages of capital convictions and death sentences have been set aside in such proceedings (Juan Melendez was exonerated in the course of his third motion for post-conviction relief). Also, CCR has the ability to perform such essential attorney responsibilities as monitoring the status of mentally ill client who may be incompetent to be executed see *Ford v Wrinwright, 477 U.S. 399 (1986)*

44. Inherent in the Registry statute itself, payment to Registry counsel is a fee set and capped at each stage of the appeal by statute. The fee arrangement is structured in such a way to actually disincentive the attorneys from spending money to develop and litigate the post-conviction appeal. For example, if a stage of appeal pays twenty- thousand dollars, the more expenditures the attorney has in developing the appeal, the less money remains for them to collect as a fee. In other words, the fewer dollars of the flat fee the attorney spends on the actual defense, the greater the profit they make for themselves. And since enactment of the Registry statutes, law makers have not increased the fee schedule.

45. In comparing the two different types of representation the state provides capital post-conviction appellants, it is clear Ch. 27.7002, 27.710 and 27.711 set forth unprecedented and extortionate threats of sanctions against Registry counsel, which do not apply to CCR attorneys. As the above outline demonstrates, paragraph #21 thru #44, supra, representation by CCR and Registry are different, not only in degree, but also in kind, and particularly in result. Moreover, no valid basis existed for law makers to legislate this distinction between CCR and Registry attorneys and the consequences of these legal distinctions has been that for Registry

clients, meritorious constitutional claims often go without review or remedy, in that, even when experienced and competent Registry attorneys are available, they are often unable to render adequate service due to restrictions placed on them by statute and imposed by contract with the executive branch of government. And, as a result, increasingly, the decision about who will die and who will live now turn not on the nature of the defense, but rather on the nature of legal representation the state provide capital post-conviction appellants, allowing those prisoners to be executed under circumstances that are inconsistent with the Supreme Court's mandate articulated in Furman and Gregg, that the death penalty is fairly and justly administered.

46. Florida capital post-conviction appellants in the Northern Region are also further prejudiced by the fact that under Ch. 27 F.S. Registry attorney is automatically appointed. Once direct appeal is final, the case is transferred to Ch. 27 F.S. with appointment of counsel made in the appropriate region through CCR or the Registry. The prisoner has no say in the matter.

47. In Florida, given that appointment is automatic, the matter is further complicated for those capital appellants who try to protect their rights by the fact the Florida Supreme Court and Eleventh Circuit prohibit capital appellants from proceeding pro se before the courts. see *Logan v State, 2003 WL 1883612 (Fla April 17, 2003) (Fla L. Wkly. S325a) Thompson v State, 615 So2d 737, 741 (Fla 1 DCA 1993). Sams v State, 849 So2d 1172 (Fla 3 DC 2003) In State v Gordon. (case No. SC-10-541) (October 6, 2011):* The Florida Supreme Court reaffirmed this position, stating:

"For the same reasons expressed in Davis, and raised on the same authorities. We

conclude that death-sentenced appellants do not have a Federal or State constitutional right to proceed pro se in appeals from post-conviction proceedings. "We also exercise our sound discretion and make explicit our holding that Gordon and other death sentenced appellants may not appear pro se in any post-conviction appeals (emphasis added)".

48. As result of the Courts prohibition on capital appellants proceeding pro se, the Court generally strikes void pleadings filed by appellants, including pleadings filed against Registry counsel by their clients, or pleadings filed to protect the appellant's claims from procedural bar.

49. Legally, prisoners sentenced to death at the post-conviction stage that try, cannot even fire their court appointed Registry counsel. Under Ch. 27. F.S. only the court can fire counsel, and even the court cannot permit the attorney to withdraw without first finding "sufficient good cause" exists.

50. In fact, Petitioner Branch did file complaint against Registry attorney, Michael Reiter, alleging that he deliberately lied about the status of the appeal and law. The attorney deliberately sabotaged and abandoned Petitioner's appeal and that attorney Reiter committed numerous ethical violations. Petitioner also tried to fire Registry attorney, and acting pro se, Petitioner attempted to protect his appellate rights and correct the damage caused by Registry attorney, filing numerous pleadings. Despite the affirmative duty placed on the Court and State of Florida pursuant to Chapter 27 711 (8), (12) and (13), to protect capital appellants. Petitioner's allegations were contested by the state, and denied, dismissed or simply ignored by the court. Moreover, while the attorney filed three separate motions to withdraw, the court denied the motions until after the end of that appeal stage, when the damage was complete (<u>see</u> Section IV, paragraph #67 thru #114).

51. Two reports of great significance to the constitutional violations alleged herein have been published. Since CCR Northern Region was defunded and lawmakers instituted pilot Registry attorney program in that Region: (1) Audit of Capital Collateral Counsel System. By Auditor General (hereinafter Auditor General Report), and (2) Evaluating Fairness and Accuracy in State Death Penalty System: The Florida Death Penalty Assessments Report published by the American Bar Association (hereinafter: ABA Report). The reports further demonstrate the disparity in representation provided by the Registry compared to CCR.

52. Report Number 2007-092 issued January 2007, performance review of capital collateral Regional counsel pilot program. Authored by the Florida Auditor General demonstrates that the state is systematically and chronically providing death row prisoners representation by Registry attorneys in North Florida (as opposed to those represented in other parts of the State by Capital Collateral Regional Counsel) who are unable to provide even minimally adequate representation particularly with regards to preserving their condemned client's due process rights to full and fair state collateral and Federal Habeas review. The findings that are relevant to this proceeding include the following.

a. The audit determined the percentage of cases in which a federal habeas corpus petition was "timely filed without extension." (Report at 12 & Table 8.) In 2004-05, CCRC counsel timely filed 93% of the time, while registry counsel timely filed only 73% of the time. (Report at 12 & Table 8). The audit does not explain how an "extension" could be granted in a federal habeas case.

b. The audit confirmed certain information that had been provided in an amicus brief to the Supreme Court of the United States about cases in which death row inmates were

time-barred from seeking any federal habeas review. (Report at 14.) As of the time of that brief (*June 2006), eight Florida death row inmates had lost their right to federal review, and seven of them were represented by registry attorneys. (Report at 14.) The Government was arguing that eight more Florida death row inmates with pending petitions were time barred, and all eight were represented by registry counsel. (Report at 14.)

c. CCRC attorneys identify and interview significantly more witnesses and use significantly more experts per case. (Report at 7 & Table 4) (noting in 2004-05, CCRC interviewed an average of 31.7 witnesses and used 2.4 experts per case, while registry counsel interviewed just 13.4 witnesses and used 1.6 experts per case).

d. CCRC attorneys spend significantly more time per case than do registry counsel. (Report at 1, Finding 1) (noting that CCRC attorneys spend "nearly five times as many investigative hours per case than the registry attorneys" and demonstrating that in 2004-05, CCRC attorneys spent an average of 355 hours in filing collateral challenges, conducting evidentiary hearings and handling state appeals compared to just 196 hours by registry attorneys).

e. Between 2004 and 2006, CCRC attorneys obtained relief from their clients in 14 cases, while registry attorneys were successful only 5 times. (Report at 15.) Despite this difference, registry counsel had only slightly fewer active cases in that time period. (Report at 7 Table 4) (CCRC attorneys had 166 active cases in 2004-05 and 169 in 2005-06, while registry attorneys had 149 and 153, respectively).

f. In evaluating the quality of performance of the attorneys, the audit determined the

number of fact issues raised in collateral proceedings and the percentage of fact issues on which an evidentiary hearing was granted. (Report at 16). Between 2004 and 2006, CCRC attorneys raised significantly more factual issues per case - 10.3 by CCRC attorneys compared to 6.9 by registry attorneys. (Report at 17 Table 10). CCRC attorneys had substantially more success in obtaining an evidentiary hearing, receiving a hearing on an average of 6.0 factual issues per case (58% of the fact issues they raised) compared to an average of only 3.6 per case (52% of the issues raised) by registry attorneys. (Report at 17 Table 10.) (see: Appendix 1).[3]

53. Shortly after the report was issued, the Chief Justice of the Supreme Court of Florida wrote a letter on behalf of the entire court to Florida Senator Victor D. Crist, chair of the Senate Criminal and Civil Justice Appropriations Committee. The letter supported Senator Crist's efforts to have CCRC - North reinstated. The letter reflects the unanimous view of the Justices of the State Supreme Court that the private attorney registry system in place in the North Florida has been a failure and that the CCRC representation provided elsewhere is far superior in terms of "the effort of counsel", "the types of investigations and issues developed," and the "results obtained".

54. Based on the Auditor General report and the recommendation made by Florida's Supreme Court, the Governor Charlie Crist, and other lawmakers. Spring 2007 Legislative Session proposed Senate Bill SD 1081(e) (see: Appendix 2). The purpose of the Bill

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[3] The Auditor General Report is also available at:

www.myflorida.com/audgen/pages/pdf_files/2007-092.pdf

was to restore to the Northern Region an office of CCR. Petitioner understands that the Bill passed the Senate with support from prominent lawmakers, but died in the State House committee, where no action was taken on the proposed change, meaning for now, only the Judicial Branch can ensure that the death penalty scheme in Florida, as applied to condemned defendants in the North Region of the State, is made constitutionally whole again.

55. These views of the unanimous court echo more biting criticisms by individual justices. See Jan Pudlow, Justice Rips Shoddy Work of Private Capital Case Lawyers, The Florida Bar News (March 1, 2005) (quoting Justice Raoul Cantero's testimony to the legislature that registry counsel provide capital defendants with "some of the worst lawyering" he has ever seen); Gary Blankenship, Registry Lawyers Defendant at Committee Meeting, Florida Bar News (April 1, 2005) (quoting then Chief Justice Barbara Pariente's endorsement of "the need for increased standard for registry counsel, as well as a continuing system of screening and monitoring to ensure minimum levels of competence").

56. On September 16th, 2006, the American Bar Association (ABA) Florida Death Penalty Assessment Team, issued its comprehensive report of Florida's death penalty system (i.e. ABA Report); the report is the result of an exhaustive study of Florida's entire capital punishment scheme. But for the purpose of this legal action, Petitioner directs attention to three substantive parts of the report:

a. First, by way of background, Chapter One provides a helpful and thorough overview of capital punishment in Florida, including a detailed tracing of the evolution of the Florida death penalty scheme and the procedures in a death penalty case from arrest through execution.

b. Second, and more importantly, Chapter Six addresses the capital bar in Florida and sums up the panel's finding as follows: "although anecdotes about inadequate defense long have been part of the trial court lore, a comprehensive 2000 study shows definitely that poor representation has been a major cause of serious errors in capital cases. As well as a major factor in wrongful convictions and sentencing to death of innocent defendant." (Report at 135.) This supports the Petitioner's argument that "death is different", and that the state's decision to create two distinctly different types of representation for condemned defendants on post-conviction appeal is subject to more rigorous scrutiny when reviewing the constitutionality of the Registry statute.

c. Third, Chapter Eight addresses several demonstrated deficiencies in Florida's post-conviction procedures that - when viewed in conjunction with the findings from Chapter Six and especially the circumstances in this case - provide further support to Petitioner's legal action in this case. The report specifically decries the quality not only of post-conviction procedures, but also, of post-conviction counsel in Florida (Report at 235-40). Furthermore, the report concludes that Florida suffers from a lack of qualified and properly monitored Registry attorneys to handle cases outside CCR Regions and that the State provides grossly inadequate compensation to attract high quality lawyers to the Registry. In the average capital case, Registry counsel can expect to be paid about $25 an hour (see: Appendix 3).[4]

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[4] ABA report is also available at:
www.abanet.org/moratorium/assessmentsproject/florida/report.pdf.

57. In *Thomas v McConough, 452 F.Supp2d 1203(M.D. Fla 2006)*. Finding the petition untimely and equitable tolling did not apply. The Court detailed the Court from hearing claims regardless of their merit. The Court expressed deep concern over what it seen as Florida's Registry system failing to provide qualified attorney "in the very situation where the stakes could not be higher" order at 4. The Court, in its opinion, makes clear that Florida's system of providing representation through the Registry is so seriously flawed and broken that it does not meet constitutional requisite of providing fair, reliable or accurate results.

58. However, following that order, in Thomas, the Court granted rehearing and withdraw the opinion. Determining that recently issued opinions out of the Eleventh Circuit required it to conduct further investigation. On December 17th, 2007, during a hearing, responding to the Court's questions concerning lack of competent Registry attorney, Ms. Millsaps, responding for the state, had the following conversation:

> **Ms. Millsaps**: "Yes there is. Remember, a great of the core of registry was former CCR North, okay? Jeff Hazen, Marty McClain, Lind McDermott".
>
> **The Court:** "Okay. And so you're saying if I don't see those names on the petition or Motion for Appointment of counsel - I should -- I should deny it? Or should the State oppose it and say, you know, you really shouldn't appoint this person, because we've had a lot of trouble with him or her before, and you really ought to wait -- you ought to get Mr. McClain or Mr. Hazen, because, otherwise, we're going to be -- we're going to have problems down the road? I don't see anything like that from the State, right?"
>
> **Ms. Millsap:** "No, your Honor...."

(see: Appendix 4) (see also: *Thomas v McDonough, Case No. 3:03-CV-23-5-52.* Motion hearing United States District Court, Judge Corrigan, Dec. 27, 2007, 1:30 DM Ct.Rm.10B).

59. After the hearing, attempting to head off the Court conducting an investigation into the quality of Florida Registry counsel system at the scheduled evidentiary hearing, Ms. Millsap filed Motion to Limit Evidentiary Hearing, wherein, the State stipulate that Registry counsel, Ms. Bonner, had time-barred six of seven of her condemned clients assigned through Florida's Registry (see: Appendix 5).

60. The Court in Thomas, conducted an evidentiary hearing, during which, the State argued that Ms. Bonner had intentionally filed the petition late. In reversing the Court's prior order in Thomas supra, the Court ultimately made findings of fact establishing that counsel appointed by the Registry was at fault, and her actions were likely intentional:

> "If, as the state argues, Ms. Bonner missed the statute of limitations deadline on purpose, there is no evidence that she did so with the approval of her client. Indeed, ultimately, it would be the client who would suffer from the missed deadline because his case would not be heard on the merits (however unlikely it is that the state thinks that he will ultimately prevail on the merits). Thus, even if the state proved to be correct about Ms. Bonner's motivations, its argument would prove too much because the Eleventh Circuit in Holland lists "divided loyalty" as one of the criteria which would justify equitable tolling based upon egregious attorney misconduct. If, as the state suggests, Ms. Bonner, with calculation, but without consulting her client, chose to miss the

statute of limitations deadline on purpose, she has rendered disloyal service to her client, not be mention to this Court, which appointed her to represent Petitioner at her urgent request." (see: *Thomas v McNeil, et al Case No.: 3:03-CV-237-5-32 Order dated 10th Feb 2009 M.D. Fla).*

61. Despite the above findings by the Court, and the allegations made by the State against Registry attorney. The State, who has an affirmative duty under 27.7002 and 27.711 (12) to report attorney misconduct, never moved to have disciplinary action taken against Ms. Bonner, indeed, just the opposite has occurred, Ms. Bonner remains available for appointment as Registry attorney in capital cases.

62. In fact, the issue of attorney discipline came up in *Holland v Florida, U.S. 130, S.Ct. 2549,* (2010). During oral argument held Monday, March 1, 2010 at 11:02 a.m. the following exchange took place:

> **Justice Kennedy:** "and also, just in the course of your argument, How -- how often do these deadlines missed a. capital case, and B in AEDPA cases? Do you have any statistics on that, or can you tell us from your own experience?"
>
> **Mr. Maker:** "I can tell you anecdotally the attorneys who handle this case in Florida, that equitable tolling issue comes up with some regularity."

(see Appendix 6) (Transcripts Supreme Court, Oral Argument at 26 ln. 20 thru page 27, ln.1)

63. At the time the Auditor General issued their report, they found 15 condemned appellants faced loss of appeal (see Appendix 1 at 4). In Thomas supra, the Court determined at least 19 appellants faced loss of appeal. However, at the time Holland was argued in front of the Supreme Court. The following capital appellants in Florida were time barred or faced time bar. All of which, but two, were directly attributed to Registry counsel: Robert Gorby,

Michael Bell, Albert Holland, Ronnie Johnson, Robert Gorden, Floyd Damren, Mark Kimbrough, Earnest Downs, Melvin Trotter, William Thomas, Mark Assay, Michael Zack, Chadwick Backs, Wayne Thompkins, Anthony LaMarca, Noel Doorbal, Albert Hollingsworth, Jose Jimenez, James Ford, Earnest Whitfield, Charles Finney, Dan Petarka, Eddie Grossman, Danny Lugo, Paul Howell, Ethel Jackson, Michael Lambrix, Earl Sweet, Geroge Brown, Charles Foster, and Gary Lawrence.[5]

64. On the subject of disciplining these attorneys, further along during the oral argument in Holland v Florida, the Supreme Court Justices stated:

Justice Breyer: "And we have a problem with the bar, don't we, if -- if -- if the -- if."

Mr. Makar: "Well, there has been no bar discipline, to my knowledge, for missing a deadline."

Justice Kennedy: "I -- I -- I -- didn't hear, you say there has been discipline or there –"

Mr. Makar: "To my knowledge, there has not been for missing a deadline".

(see: Appendix 6) (Transcripts Supreme Court, oral argument at 31-5 to through 15).

65. Petitioner is unaware of a single instance where the Registry attorney was disciplined by the Bar for breach of duty and/or otherwise violating their ethical obligations, in a capital post-conviction proceedings.

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[5] Petitioner does not have statistical data on how many appellants had their appeals restored after Holland, nor is data available on how often Registry counsel fail to raise constitutional meritorious claims, triggering procedural bar on those claims.

66. The above cited and appendixed Auditor General Report, Area Report, Court findings, as well as the outlined statutory applications, and statements made by the State and Judiciary, paragraph, 8 thru 64, supra, support Petitioner's allegations and cause of action presented herein, that the State of Florida knowingly and deliberately, with callous disregard for the rights and lives of Petitioner and all similar situated persons, has implemented laws creating and distinctly different types of representation for appellants in capital cases at the post-conviction stage of appeal, which arbitrarily single out those capital appellants, particularly in the Northern Region (but also, those cases subject to conflict appointment); providing them Registry attorney that is constitutionally unequm, not only in kind, but also in relief obtained (e.g. release, new trial, new sentencing, or other relief) compares to that CCR representation provide those same capital appellants on post-conviction in the Southern and Middle Regions.

IV: <u>Petitioners post-conviction representation, abandonment, conflict and fundamentally unfair practices</u>

67. At the start of the post-conviction proceeding, Petitioner was originally assigned to CCR, which, at the time, was still a single office located in Tallahassee. When CCR was split into 3 individual Regional offices, Petitioner remained in this Northern Region, where he was assigned two attorneys: Heidi Brewer and Jennifer Blackman, and two investigators: Elizabeth Craig and Lavern Nelson.

68. When lawmakers decided to defund and close the Northern office of CCR, Petitioner's attorneys/investigators had only just begun the initial process of familiarizing

themselves with the record, conducting interviews and developing claims to present at an evidentiary hearing.

69. When the CCR office of the Northern Region was closed, Ms. Heidi Brewer, who intended to go into private practice, was provided the opportunity to retain the clients she represented at CCR, including Petitioner, under the newly amended Ch. 27.7002-27.710 and 27.711F.S pilot Registry program. In fact, Ms. Brewer did retain several of the clients transferred out of the CCR office. However, she declines to accept appointment on Petitioner's case.

70. In declining to accept Petitioner's appeal under the Registry Statutes, Ms. Brewer told Petitioner that she had declined to take the case because, in her opinion, the caps placed on the fees she was allowed to spend on the defense under Ch. 27.711 ( ) were insufficient to cover the cost of providing an adequate defense. According to Ms. Brewer, the defense she and Ms. Blackman were preparing while at CCR required substantial investigative hours and expert opinions, whose fees, as well as travel expenses to Indiana, would far exceed the fee permitted under Ch. 27, Registry Statutes, and while Ms. Brewer thought she would be permitted to file a request to exceed the cap, in her experience, she knew the Court rarely granted those requests, and even so, if the Court did grant it, the State, through the Chief Financial officer, would challenge the Court order, possibly even having her removed permanently from the list of approved attorneys available on the Registry. Ms. Brewer told Petitioner that for her, the risk were simply too big that she'd be stuck paying all the cost of my appeal out of her own pocket and possibly be removed from future appointments.

71. On June 19, 2003, Mr. Michael Reiter filed a Motion to Be Appointed to Represent

Petitioner under Ch. 27, F.S. Pilot Registry program. In his motion to the Court, Mr. Reiter declared:

"Mr. Reiter... Has been Mr. Branch's designated counsel as the assigned CCRC-N Counsel, Mr. Reiter has and will continue to represent Mr. Branch"

"Since counsel is familiar with the facts, circumstances and challenges to Mr. Branch's conviction and sentence **and has met with Mr. Branch several times to discuss his case. Mr. Branch approves of Mr. Reiter's continued representation"** (emphasis added). (see: Appendix 7); These claims to the Court were a lie. Prior to filing this Motion for Appointment, Petitioner had never met Mr. Reiter. Indeed, as stated, Ms. Brewer and Blackman represented Petitioner. Mr. Reiter was the Director of CCR Northern District, an administrative position, and, despite the claims in the motion, Petitioner never spoke to Mr. Reiter, nor did he ask Mr. Reiter to represent him.

72. In reply to this motion, on June 25, 2003, Petitioner filed a motion in the trial court, objecting, not only to Mr. Reiter's motion, but also, the appointment under the Registry statute. Petitioner argued that Ms. Brewer had explained that the Registry statutes did not provide sufficient funds to provide an adequate defense to Petitioner, and besides, Mr. Reiter had already lied to the Court, and Petitioner did not trust an attorney who would lie on a Motion for Appointment. (see: Appendix 8).

73. In response to Mr. Reiter's motion and Petitioner's objections, Judge Nickinson conducted a telephonic hearing with Mr. Reiter, Ms. Brewer and Petitioner. At the hearing, Petitioner explains what Ms. Brewer had told him concerning the fee caps under the Registry statutes, asking that his appeal be transferred to the other CCR offices. Also, Petitioner

instructed the Court on how Mr. Reiter had tried to mislead the Court to believe that it was Petitioner's desire to have him appointed, lying about meeting and representing Petitioner prior to that.

During the conversation on the issue, Judge Nickinson indicated that he was sympathetic to the position Petitioner was raising, but, unfortunately, he was bound by Ch. 27 F.S. to appoint an attorney from the Registry, and since Mr. Reiter was the only attorney to step forward to request appointment, the Court would appoint Mr. Reiter.

74. On July 14th, 2003, the trial Court appointed Mr. Reiter under 27 Registry Statute. At the time of the appointment, addressing Petitioner's concerns over the restrictions placed on him under the Registry Statutes, Mr. Reiter told Petitioner that while he was aware of the disparity in the funding available to Registry clients, compared to the funds he had previously approved as Director of CCR Northern Region. He felt the circumstances in Petitioner's case were so unique with CCR being defunded while Petitioner's appeal was in the process of being developed, that the Court would waive the fee cap. After all, according to Mr. Reiter, it would be impossible for the Court to deny Petitioner the full defense CCR had started to prepare before they were closed. [6]

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[6]Mr. Reiter, at the time the lawmakers closed CCR Northern Region, was the Executive Director of that office, and as such, he was responsible for approval and distribution of funds to the defense teams.

75. Immediately after Mr. Reiter was appointed, Petitioner instructed him to begin to compile an outline the defense CC was prepared to present. Put it in motion form, and begin to challenge the fee caps imposed under Ch. 27 F.S. Petitioner explained to Mr. Reiter, that prevailing law required him to make a detailed explanation of why the defense required additional funds beyond that Ch. 27 provided, proffering the type of experts required, their cost, and what the defense hopes to establish with the experts.

76. Despite Petitioner's order, Mr. Reiter took no immediate action on the Motion to Exceed the Cap. Petitioner continued to push Mr. Reiter on the issue of fee caps, requesting that he provide a list of experts and fee arrangements that CCR had developed, Petitioner would then file the motion himself pro se.

77. In response to Petitioner's threats to act pro se, filing a challenge to exceed the caps several weeks before a schedule evidentiary hearing. Mr. Reiter provided a copy of a motion titled Motion to Exceed Statutory Caps in Section 27.71 (h)(6). (see Appendix 9).

78. However, the motion is not signed and in the time since to present date, an on-line record search of the Court file, has been unable to locate a copy of this motion. Likewise, Petitioner was never provided a copy of the Court's ruling or been able to locate a copy of the ruling. Mr. Reiter states that it was denied, but gave no additional details.

79. Petitioner has only Mr. Reiter's word that the motion was filed and denied. Even so, a review of the Motion to Exceed the Cap that Mr. Reiter provided demonstrates that, on its face, the motion does not sufficiently meet the requirements of law, in that Mr. Reiter did not provide to the Court an "explicit detailed showing as to why the requested services were necessary to an adequate defense, and what the defense expected to find". Moreover, Mr.

Reiter did not address how he spent the funds provided under the cap, triggering the need for additional funding. (*Olive v Maas, 811 So2d 644 (Fla 2002). Fla. Dept. of Fin. Serv. v Freeman, 921 So2d 548 (Fla 2006).* In short, assuming Mr. Reiter was being honest when he told Petitioner the motion had been filed and denied, the motion itself, did not meet the standards required of such a motion.

80. After Mr. Reiter verbally informed Petitioner that the Court denied the Motion to Exceed the Cap, Petitioner instructed Mr. Reiter to amend the 3.850 motion for post-conviction relief, to include a section 1983 claim, challenging the constitutionality of the Registry Pilot Program as a violation of Petitioner's due process and equal protection rights. Also, Petitioner instructed Mr. Reiter to file an interlocutory appeal to the Florida Supreme Court, of the Court's order denying the Motion to Exceed the Cap. Wherein Petitioner instructed Mr. Reiter to provide a comprehensive outline of the disparity in representation Petitioner received while at CCR compared to that Mr. Reiter was able to provide under the Registry Statute. Petitioner told Mr. Reiter to list in detail each defense function CCR intended to pursue, but which Mr. Reiter had to drop as a result of the Ch. 27.711 fee caps. And to detail how the denial of similar funding harmed Petitioner.

81. In response, Mr. Reiter told Petitioner that Chapter 27 F.S. prohibited him from filing a Section 1983 action to challenge the constitutionality of the Registry program, or any type of interlocutory appeal on the Court order denying Motion to Exceed the Cap.

82. Also, because of Florida's strict prohibition on pro se motions being filed by anyone represented by counsel, see: paragraph 46 thru 49 supra, Mr. Reiter told Petitioner that the Court would not accept any motion he filed pro se.

83. Despite Mr. Reiter's warnings, acting pro se, Petitioner filed a Motion Objecting to the Fee Cap. In that motion, to the best ability at the time, Petitioner outlined to the Court exactly why the funding was necessary to the defense. Again outlining what Ms. Brewer, petitioner's former CCR attorney, intended to present at the evidentiary hearing, as well as her explanation for declining to accept Petitioner's appeal under Ch. 27 F.S. Additionally, Petitioner argued that the Registry statute violated his constitutional right to due process and equal protection. (see Appendix 10).

84. Petitioner has not received a ruling on the motion, arguing the Registry statute was unconstitutional. And a letter to the Court inquiring to the status of the motion went unanswered. Eventually Petitioner had his grandfather, Al Branch, call the Clerk of Court, to learn what happened to the motion. According to the Clerk, no action was taken on Petitioner's motion. The Clerk further stated that since Petitioner had counsel, it was likely the Court sent the motion to Mr. Reiter for resolution.

85. The trial court then issued an order denying Petitioner's post- conviction motion. In reading the order, Petitioner determined that the courts written order contained numerous factual errors which were not supported by the record. Indeed, they were plain wrong. Attributing testimony and conclusions to witnesses that were never presented in any court proceeding.

86. Petitioner told Mr. Reiter to immediately file a Motion For Reconsideration and to correct the record and move for rehearing on the corrected motion.

87. Mr. Reiter never filed the Motion as instructed. Instead, he filed a Notice of Appeal to the Florida Supreme Court.

88. Prior to the Court issuing the order denying Petitioner's Post-conviction motion, Mr. Reiter told Petitioner that he needed the Court to issue a ruling, complaining that he could not get paid for his work until the Court issued an order. Mr. Reiter stated that he had contacted the Trial Court inquiring as to when the Court might issue a ruling, explaining the financial implications of further delay. Based on Mr. Reiter's statements and action, it is clear that Mr. Reiter did not file a corrective motion in the Trial Court because once the Trial Court issued its order, the fee schedule under Chapter 27. F.S. did not pay him to file any additional motions. The next pot of gold could only be obtained by moving to the next appellate level. In other words, Mr. Reiter put his financial interest above the interest of his client.

89. On appeal to the Florida Supreme Court, Petitioner again instructed Mr. Reiter to fully argue the funding issue to the Court. He was told by Petitioner to raise a challenge to the Registry Pilot Program as being unconstitutional under the First, Fifth and Fourteenth amendments. However, when Mr. Reiter filed Petitioner's 3.851 appeal and State Habeas Petition in the Florida Supreme Court. He did not present this argument, or anything concerning CCR's defense, or the fee caps.

90. When Petitioner demanded Mr. Reiter explain his actions, at first, Mr. Reiter declined to provide an explanation beyond stating the claim was a 'Federal Issue' to be raised in the Federal Court on Habeas Corpus.

91. Not completely satisfied with Mr. Reiter's response, Petitioner tried to inquire how to file the claims on his own (pro se). However, Petitioner was informed by the law clerk that the Supreme Court would not accept motions filed pro se when the appellant was represented by counsel. The matter would be referred to counsel for resolution.

92. During the time that Petitioner's appeal was pending before Florida's Supreme Court, Petitioner engaged Mr. Reiter in several conversations concerning the fee caps and the defense Mr. Brewer and Ms. Blackman intended to present, including what Mr. Reiter meant by it being a 'Federal Issue'. According to Mr. Reiter, he based his decision not to raise a challenge to the fee caps, or challenge the constitutionality of the Registry program in the State Court on the belief that Ch. 27 F.S. prohibited him from filing this type of challenge. Mr. Reiter further expressed apprehension, stating that even if they were permitted under law, if he tried to pursue the challenge in state Court, it would open the door for the executive director of the Commission on Capital Crime (now the Justice Administrative Commission), to permanently remove his name from the list of approved attorneys on the Registry list. Mr. Reiter's sole means of income comes from appointments under CH 27.710 and 27.711 F.S. as a Registry attorney in capital post-conviction cases. Mr. Reiter had no other practice of law outside these appointments. And, according to Mr. Reiter, he was in his fifties, basically working out of his garage, trying to hold on to his state employment and benefits until his retirement kicks in. As he stated, "I am too old to start my own practice or look elsewhere for clients". In fact, Mr. Reiter expressed hope that CCR Northern Region would be re-funded by lawmakers, so he could return to his former position as Executive Director.

93. Furthermore, it was during these discussions that Mr. Reiter begun to create the narrative that any claim against the Registry program, whether it be on funding or the constitutionality, were federal claims that would be raised in the Federal Court. According to Mr. Reiter, the State cannot create a system which works as an impediment to deprive Petitioners from presenting a full defense on appeal, then benefit from that impediment by

denying Petitioners the right to argue the claims. Mr. Reiter stated that the Registry statute and contractual restrictions were to blame for all the defense functions the CCR counsel intended to carry out, but which he did not pursue in State Court. But, as a result, he would be allowed to raise them all in Federal Court as a 'state impediment'. Mr. Reiter also assured Petitioner that under the circumstances, the Federal Court would appoint an investigator, and experts, and, if required, conduct an evidentiary hearing on the claims.

94. Despite Mr. Reiter's repeated assurances that Petitioner should not worry, while petitioner's appeal was still pending on review in the Florida Supreme Court, Petitioner took steps to protect his legal claims. On October 02, 2006, filing: Motion for Leave to Amend in a To-Be-Filed Federal Habeas Corpus Proceeding in a Capital Case. In the Federal District Court of Appeals, Petitioner acted pro se, notifying the Court about concerns over a potential conflict of interest between himself and Mr. Reiter. (see Appendix 11).

In the motion, Petitioner explained to the Court that when the State Court issued their opinion, only five (05) days remained on the one year clock, hardly time to properly raise conflict claim, have new counsel appointed, and file his Habeas Petition. As a result, Petitioner requested the Court "grant leave to file a fully amended petition within 120 days" from the time petition is filed, including "fully amended arguments, motion for appointment of counsel/co-counsel and/or conflict counsel, and expert or investigative assistance, an evidentiary hearing, and any other justifiable amendments" (see Appendix 11 at 15).

95. The Federal Court did not issue a ruling on the motion. However, according to Mr. Reiter, the Judge's assistant contacted him, but only to confirm that he intended to file a timely Habeas petition.

96. On March 26, 2007, Florida's Supreme Court issued a mandate ending State Court jurisdiction. That same day Mr. Reiter filed a Petition for Writ of Habeas Corpus in Petitioner's name.

97. When Petitioner received and read the petition, it was immediately apparent to Petitioner that Mr. Reiter had repeatedly lied. He did not attempt to present evidence, he did not request expert/investigative assistance. He did not seek an evidentiary hearing, moreover, he did not challenge the constitutionality of the Registry program. Instead, in what can only be seen as a face saving maneuver, the final two pages of the Habeas Petition contained a claim wherein Mr. Reiter states that he was denied adequate funding in the State Court. But he did not offer any supporting evidence or affidavits on the claim, nor did he request funding or attempt to explain what prejudice Petitioner suffered as a result of the switch from CCR to Registry counsel. In fact, the two pages appear to be little more than a way Mr. Reiter could claim 'technically' he raised the impediment issue. Whatever the case, it was clear that Mr. Reiter had deliberately and intentionally sabotaged and abandoned a large portion of Petitioner's appeal. Mainly the evidentiary basis which cost the most money to develop, placing his own financial interest above the interest of his client-Petitioner.

98. Petitioner immediately informed the Court of the situation with counsel, explaining that with a death sentence, he was housed in around-the-clock confinement in a single man cell, with limited access to the record, legal authority and corroborating documentation, not to mention legal education, all of which severely restricted Petitioner's ability to prove his allegations, rid himself of Mr. Reiter and fix the damage done to his appeal. As a result, Petitioner asked the Court to appoint an attorney who initially would have the sole

duty to present the conflict issue to the Court (see: Appendix 12).

99. The State challenged Petitioner's motion, arguing that Petitioner had no right to effective counsel, let alone conflict-free counsel (see: Appendix 13). The Court adopted the State's position, denying Petitioner's motion (see: Appendix 14).

100. Despite the Court denying Petitioner's request for assistance in presenting the conflict claim, on July 21, 2007, Petitioner filed a Motion for Appointment of Conflict Counsel, a 54 page motion, presenting two legal claims: (1) Conflict, outlining Mr. Reiter's lies and the types of legal claims, including a summary of witnesses, experts, and documents that CCR attorneys intended to present, which Mr. Reiter was instructed by Petitioner to present, but he had abandoned; and, (2) A due process and equal protection challenge to the constitutionality of Florida's Registry system as the exclusive means of appointing representation to capital appellants in the Northern Region.[7] (see: Appendix 15).

101. The Court never issued a ruling on that motion.

102. After that, Petitioner filed several more motions addressing the issue of counsel; requesting the Court conduct a hearing, and issue a ruling on Petitioner's conflict allegation (see: Appendix 16). The Court never issued any finding concerning the conflict. Instead, in its order, the Court stated that because Petitioner had counsel, he was prohibited from filing anything pro se, including against his attorney (see: Appendix 17).

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[7]With limited access to the record, Petitioner was not certain how much of counsel's behavior was attributed directly to Mr. Reiter and how much of the behavior resulted from the Registry statute or contract restrictions, so Petitioner presented both claims.

103. In the end, despite Petitioner's repeated efforts, the Federal District Court Judge never made even a cursory inquiry into the conflict allegations, nor did he produce a single finding of fact.

104. In response to Petitioner's repeated charges of conflict, Mr. Reiter stated that he would withdraw (see Appendix 18). However, not until April 24, 2010, that Mr. Reiter actually filed a motion stating "the relationship between the attorney and client had become hostile, adversarial and irreconcilably broken" and that he believed "continued representation would be unethical and unproductive" (see: Appendix 19).

105. At that time, Petitioner immediately took over his own appeal. Acting pro se, Petitioner simultaneously filed a Rule 59(e) motion, a Notice of Appeal, Motion to Hold in Abeyance, Motion to Toll Filing of Application for COA, and a Notice of Pro Se Status (see: Appendix 20). However, the Court blocked those motions, denying Mr. Reiter's Motion to Withdraw, and returning Petitioner's motions he filed pro se, stating they were unauthorized filings since Petitioner had counsel.

106. In response to Mr. Reiter's Motion to Withdraw, and the Court's order denying the Motion, Petitioner fired Mr. Reiter.

107. Having been fired, Mr. Reiter filed a second Motion to Withdraw, informing the Court that he had been fired (see: Appendix 21). Petitioner joined Mr. Reiter, filing a separate motion, wherein Petitioner presented an outline of the conflict, and presented a demand to proceed pro se. Alternatively, Petitioner informed the Court that he would agree to accept pro bono counsel which had been offered by the ABA Death Penalty Representation Project, but under all circumstances Mr. Reiter was fired (see: Appendix 22).

108. Again the court denied the motions without ever addressing the allegations Petitioner made against Mr. Reiter, including conflict, sabotage, abandonment, as well as numerous bar violations (see: Appendix 23).

109. In all, Petitioner filed approximately thirty (30) pro se motions alleging conflict with Mr. Reiter, sabotage and abandonment of claims, demanding to proceed pro se, trying to correct Mr. Reiter's mistakes, and firing Mr. Reiter. (see: Appendix 11 thru 24).

110. The Court either ignored or returned all of Petitioner's pro se motions. It never made a single finding of fact on the conflict allegations (see: Appendix 25).

111. Mr. Reiter then filed a third Motion to Withdraw that was similar to the previous motions. However, this time as soon as the Court finished with Petitioner's appeal, denying relief, it granted Mr. Reiter's third motion (see: Appendix 26 and 27).

112. Acting pro se, Petitioner filed a timely petition for Writ of Certiorari in the Supreme Court, United States.

113. On March 5, 2012, the U.S. Supreme Court issued an order denying review bringing to a close Petitioner's guaranteed appeals.

114. Despite Petitioner's repeated efforts, including, but not limited to, giving Mr. Reiter explicit instructions, which he disobeyed, and filing approximately 30 pro se motions, which included motions to fire Mr. Reiter, and correct the damage to the appeal that Petitioner suffered as a result of the forced switch to Registry representation, the Court never made a ruling or produced a single finding of fact on the specific allegations of conflict and sabotage. Instead, Petitioner's motions were returned as illegal filings or simply ignored by the Court, and as a result, Petitioner suffered irreparable harm to his appeal, and was, in fact, denied State

guaranteed right to full and fair post-conviction review and his constitutional right to State and Federal Habeas Corpus Review.

V. Evidence, Defense Functions, Legal Claims and Lines of Defense abandoned or sabotaged as a Result of Forced Switch to Registry and/or Registry Counsel

115. CCR counsel, Ms. Brewer and Ms. Blackman, intended to consult and hire experts, particularly an Arborist and/or structural engineer to examine, conduct test, and provide testimony on a small twig lodged in the victims vagina, along with other leafy debris, in attempt to mount a vigorous challenge against the evidence and the underlying felony murder theory the State had argued to the jury.

116. Factually, the underlying felony charge was based on discovery of a small twig located in the vagina vault which was approximately 4.5 cm in length, and 1.1 cm in height, Chart A (see: Appendix 28).

117. While CCR counsel thought the experts testimony would nullify the conviction. Initially, hiring these experts were recommended by Doctors, Pierson and Wilson. Immediately after Petitioner was convicted, the Branch family consulted a friend, Dr. Pierson, who is a surgeon, specializing in brain and spinal surgery, to look over the depositions, autopsy report/video, trial testimony and record. After reviewing everything, Dr. Pierson stated that, in his opinion, the State's theory on causation was flawed, and in many instances, completely unrealistic. Dr. Pierson had concluded that the twig had lodged either while being pulled by the feet, approximately 88 feet, or accidently while being buried beneath twigs and foliage of similar size and type. He explained the foundation of this opinion, but thought a second

opinion on the matter would be beneficial.

118. Dr. Pierson consulted a pathologist, Dr. Wilson, who reached the same conclusion. However, Dr. Wilson was able to explain in greater detail the flaw in the State's argument and provide valuable insight as to mounting a challenge. It was Dr. Wilson and Dr. Pierson who instructed Petitioner to hire an arborist and/or structural engineer, explaining that they could make the following examinations and determinations on the evidence that would benefit the defense:

a. The expert would first be required to determine the type of wood. All wood is composed of cellulose, lignin, hemrellolous and minor amounts (5% to 10%) of extraneous material, contained in the cellular structure. Variations in the characteristics and volume of the components and differences in cellular structure make wood heavy or light, stiff or flexible and hard or soft.

b. Determination of the type of wood and whether it is hard or soft, flexible or stiff, would allow the experts to establish the likelihood of injury and degree of injury expected if, as argued by the State, the tree limb was "rammed" into the vagina and "broken off up inside her" (T-894). In that, as displayed in Chart B, (see Appendix 29) the degree of injury expected would be directly proportionate to the type and hardness of the wood.

c. Moreover, determining the type of wood, the expert could calculate the elastic properties and structural properties of the wood to determine the tensile strength perpendicular and parallel to the grain, the shear strength parallel to the grain, and the compression stress perpendicular to the grain. Based on this

structural analysis, the expert can formulate the exact amount of force, as the State argued, that would be required to cause the limb to break leaving only a 4.5 cm in length twig in the vagina. According to Dr. Pierson and Dr. Wilson the greater amount of force that would be required to actually break a limb, leaving only the twig, the less likely the State's argument proves, in that, as displayed in Chart B (see: Appendix 29), the amount of force required equals the degree of injury.[8]

d. The experts would examine at a microscopic level, each of the three separate breaks on the twig (fracture points A, B and C, see: paragraph 116 supra.) to determine if they display any signs of water damage, weathering, or both, which would be consistent to exposure to the outdoor elements: wind, rain, dirt, erosion.

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[8] According to both doctors, these experts would be expected to work with a forensic pathologist, allowing them to show the impossibility of the State's argument.

e. Moreover, the microscopic examination of each of the three fracture points would help the experts determine if there is any loose or compacted soil/debris on the twigs fracture points. At trial, the State argued that the 1.1 cm x 4.5 cm twig was actually the remains of a tree limb broken off while inside the vagina. However, if correct, that would mean that the experts analysis would not find any compacted debris on soil fracture point B, facing out of the vagina, nor would it display any signs of weathering.

f. The three fracture points on the twig each display perpendicular breaks, or straight up and down. According to the State's argument at trial, the tree limb was "broken off up inside her" leaving the twig[9]. The experts would have testified that the evidence contradicts the State's argument, in that fracture point B would display a jagged break, or an off-set angular break, not the perpendicular break it has. To break a tree limb off, as the State argued, the expert would demonstrate, as displayed in Chart C (see: Appendix 29). It would require an increased amount of upward force on the limb, which would cause the pelvic bone at the top of the vaginal mouth and the interior bottom wall of the vaginal vault to act as pivot and base until finally the limb would break off at a jagged/angular axis, not straight up and down, leaving the twig.

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[9]Despite collecting all the broken limbs laying on the ground, the F.D.L.E. could not match the twig to any tree limb.

g. Additionally, the expert would conduct a microscopic examination of the cellulose, lognin and hemkellulous of the fracture points to determine if they display any evidence of bending or tearing which are commonly found in stress related fractures.

h. According to the doctors, the experts would further assist the defense's forensic pathologist in establishing that the facts simply do not support a sexual battery conviction, and, that indeed, the twig was lodged accidently, either while being pulled 88 feet, or during burial, underneath similar sized twigs and 'leafy debris'.[10]

119. Based on this information, CCR counsel, Ms. Brewer and Ms. Blackman, intended to consult and hire this type of expert to help mount a full attack on the underlying felony the State relied upon to argue felony murder.

120. Petitioner and CCR counsel, Ms. Blackman, compiled a listing of potential experts who were qualified to conduct the required test and testify. The list is as follows:

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[10] They also stated, on its face, the State's trial theory did not pass the 'logic test', in that, the State's felony murder theory required you to believe that Petitioner pulled the victim in the woods for the purpose of sexually assaulting her with a limb, killing her in the process of that felony. After all, the State did not argue or present any evidence that Petitioner himself had sex with the victim.

David McLain
Civil Engineering Dept.
Washington State University
Pullman, Wash.

Eugene Wengert
Department of Forestry
University of Wisconsin
Madison, Wisconsin

R. Bruce Hoadley
Forest Department
University of Mass.
Amherst, Mass.

David Howe
Dept. of Forest Resources
Clemson University
Clemson, South Carolina

Michael Milota
Oregon State University
Corvallis, Oregon

Lisa Johnson
Southern Pine Inspection Bureau
Pensacola, Fla

Jeffery Morrell
Dept. of Forest Products
Oregon State University
Corvallis, Oregon

Darrel Nicholas
Forest Products Laboratory
Mississippi State University
Mississippi State, Miss

121. Despite Petitioner's efforts and repeated instructions to Mr. Reiter to pursue this line of defense, challenging the underlying felony, and despite the fact that CCR counsel intended to pursue it, Mr. Reiter, to the best of Petitioner's knowledge, never even consulted the above experts, Paragraph #120 supra, or any other expert in this field. Instead, when confronted by Petitioner, Mr. Reiter claimed the Registry statute/contractual restrictions, prohibited him from pursuing the challenge by denying him adequate funds to hire the experts, and lied to Petitioner when he did not raise the claim in the Federal Court under the 'State impediment' exception to exhaustion, which Mr. Reiter promised he would do.

122. CCR counsel intended to hire and present testimony of experts in fingerprint analysis. The expert was intricate to the defense to establish the truthfulness of Petitioner's trial testimony by examining and matching unidentified fingerprints in Petitioner's Pontiac and Ms. Morris' billfold. The fact that the fingerprint did not match either the Petitioner or Ms.

Morris, and that, if correct, they would substantiate Petitioner's testimony, made matching the points of great importance to the defense.

123. Incorporated into the motion to exceed the cap which Mr. Reiter claimed was filed and denied, was a request for a fingerprint expert (see: Appendix 9). However, as alleged, paragraph #70 thru #80, not only is the motion not signed or dated, but also, assuming the motion was filed and denied, on its face, the motion is legally insufficient to merit consideration as a legitimate request to exceed the cap.

124. Furthermore, the motion is so deficient that on its face, it substantiates that Mr. Reiter either is not competent to practice law, let alone, handle capital appeals or that he deliberately sabotaged the motion in belief that requesting additional funds 'above the cap' would violate Florida Registry statute and the contract he signed with the State, resulting in his removal from the State's approved list of Registry counsel.

125. Immediately prior to lawmakers closing CCR, Ms. Craig, while inventorying the boxes of public records, compiled in Petitioner's appeal, discovered a crime report, a small sketch, and photographs, which demonstrated the victim, at the crime scene, lying on her stomach, had been found to have a bruise in the pattern of a shoe print, which was clearly visible in the photograph (see: Appendix 30).

126. Looking into the matter, CCR counsel, Ms. Brewer, could not find any additional report in the Ch. 119 material from State Labs where they attempted to examine or match the shoe print to a specific type of shoe. However, Ms. Brewer was struck by the trial testimony of Kenneth Allen Simmons, a canine officer that helped conduct the search for Ms. Morris. The trial testimony is only five pages, and, on its own, adds nothing to the proceedings (T –

420). However, after locating the photos and reports, according to Ms. Brewer, a central fact jumped out at her. Mr. Simmons testified that while conducting the search, he had stepped on and accidentally tripped over the victim (T – 420). Ms. Brewer opined that the State knew the print did not match Petitioner's boots, and anticipating that trial attorney, Mr. Allbritton, would discover the bruise pattern, the State placed Mr. Simmons on the Stand to preempt trial counsel, providing the State rebuttal that the shoe print belonged to Mr. Simmons.

127. Petitioner's defense team at CCR determined that beyond that, Mr. Simmons testimony was not relevant to the State's case, and, since the shoe print on the victim's back was not a simple dirt mark left by Mr. Simmons boot, it was a bruise or abrasion. Ms. Craig and Ms. Brewer were confident that an expert could match the shoe pattern to a specific brand and type of shoe and that further investigation would determine if the match belonged to shoes Eric St. Pierre had been known to wear.

128. Ms. Brewer had begun the process, making inquiries to locate an expert to conduct the search to determine the size, style and name brand of the shoe. However, right at that time CCR was closed, and Petitioner's appeal was transferred to Registry counsel, Mr. Reiter, who told Petitioner he did not have the manpower or funds to continue the line of defense in State Court, but he would pick it back up in Federal Court as part of the 'State impediment' argument.

129. In preparing their outline of how the defense intended to conduct the evidentiary hearing, Petitioner and his defense team agreed that the central focus had to start with the fact trial attorney, Mr. Allbritton never met with Petitioner until 13 days before the start of the capital murder trial. However, in making that the focus, Petitioner and Ms. Brewer knew that

when faced with the charge; Mr. Allbritton would lie, no doubt claiming numerous pre-trial consultations between him and Petitioner. In order to rebut any such claim, and prove Mr. Allbritton was a liar, Ms. Brewer intended to use the following court documents filed before trial, and testimony, at the evidentiary hearing:

a. In the pre-trial record, a letter sent by the Petitioner to Judge Nickinson, dated February 17, 1994, 19 days before trial stating:

> "As of 2-17-94, I have only been visited by Mr. Allbritton once, which was Friday, October 29th, 1993 (the day he was hired); The visit lasted 5 short minutes.....it is beyond me how a lawyer expects to fight for my life when he has never asked me the first question concerning the charge at hand" (see: Appendix 31) (T -355)

Charged with capital murder, nineteen days before trial, Petitioner sent this letter to the Judge, informing him that he had never met his attorney to discuss a defense.

b. Also, by letter mailed 17 February 1994 to Judge Nickinson, Al Branch (Petitioner's grandfather), who hired Mr. Allbritton, stated that not only had Mr. Allbritton failed to meet Petitioner, but also, despite numerous attempts and efforts made by Petitioner's family to participate in the defense "driving down from Indiana 7 or 8 separate trips over a 4 month period and even offering to hire a second attorney" Mr. Allbritton did little more than blow them off (see: Appendix 32), (T – 338). This letter supports claims Petitioner raised in the letter above.

c. Furthermore, a copy of the trial transcripts establish that on February 22,

1994, with 13 days left before the capital murder trial, Al Branch stood in open court, addressing the trial Judge. Mr. Branch told the Judge that Petitioner wanted to fire Mr. Allbritton. However, Mr. Branch's plea for help was ignored. Judge Nickinson stated "That's not something with which I can be concerned" (see: Appendix 33) (T – 355-354).

d. Additionally, Dr. Suzanne Zoss, PhD, a forensic psychologist employed by Escambia County, as coordinator of adult forensic services program, at the jail. Petitioner attended weekly group therapy sessions with Dr. Zoss. Within her files dated 23 February 1994, Dr. Zoss stated:

> "Affect was appropriate (Branch) **Finally** saw his attorney
> Yesterday x 2 hr"

(see: Appendix 34). Ms. Brewer intended to use the files and notes, having Dr. Zoss testify that Petitioner expressed anxiety and fear concerning Mr. Allbritton, mainly the fact he had not met with Petitioner.

e. Ms. Brewer intended to secure copies of three sets of log books kept by the Escambia County Jail: 1) Housing Unit Log Books, 2) Security/Transportation Log Books, and 3) Visitation Log Books to show exactly when Petitioner was removed from his cell, and where he was taken and who visited (in civil litigation Petitioner was able to secure this visitation log which showed when Mr. Allbritton first visited 13 days before trial (see: Appendix 35).

f. Larry Robertson and Steve Irish were assigned to be Petitioner's roommates while in County jail. Both men also attended Dr. Zoss' weekly group therapy

sessions with Petitioner. They were willing to provide testimony concerning the fear and anxiety Petitioner suffered concerning his attorney, Mr. Allbritton (see: Appendix 36).

g. By motion filed immediately after trial, the Petitioner, acting pro se, filed a motion for new trial, stating:

> "Defendant charges ineffective representation of counsel, to wit: John Allbritton...for reasons stated herein: (7) The after said attorney did not establish personal contact with the defendant **until 13 days before defendant's first degree murder trial"**

(see: Appendix 37).

h. Between February 22, 1994, the day Al Branch stood announcing to the court that Petitioner wanted to fire Mr. Allbritton, and March 10, 1994, the beginning of the penalty phase, Mr. Allbritton made four requests of the court for a continuance (T – 158) (T – 162), (T – 942) and (T – 985) to consult experts and travel to Indiana to interview potential mitigation evidence.

130. As outlined by Ms. Brewer, relying on documents a,b,c,d,e,f,g and h Paragraph #124 above, she would allow Mr. Allbritton to testify that he had met with and consulted Petitioner numerous times on the defense. Then, using each document, she would "close the circle" around Mr. Allbritton, establishing that he had lied, by showing he had not met Petitioner until 13 days before trial. [11]

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[11] Ms. Brewer also stated that using the pre-trial record added weight to the claim since petitioner made the allegations of incompetence before he was found guilty.

131. When the appeal was transferred to Registry counsel, Petitioner instructed Mr. Reiter to adopt this strategy. Mr. Reiter stated that he intended to. However, at the evidentiary hearing he allowed Mr. Allbritton to offer testimony that he and Petitioner consulted numerous times, without offering a single document above paragraph #129 and #130 to show Mr. Allbritton was lying.

132. The fact that Mr. Reiter would fail to do a task as simple as having trial record available to use as rebuttal, further substantiates that Mr. Reiter either is not competent to practice law, let alone, handle capital appeals, or that he deliberately sabotaged the cross-examination of Mr. Allbritton, and this Petitioner's appeal.

133. Ms. Brewer had intended to put Petitioner on the stand to testify at the evidentiary hearing to, among other things, explain to the court the problems Petitioner and his family had with Mr. Allbritton prior to trial. Particularly, Ms. Brewer was interested in following up Al Branch's statement made in Court, paragraph #129 above. Petitioner intended to testify that as Al Branch indicated, Petitioner did, in fact, tell Mr. Allbritton that he was fired, and that he was to turn the case over to Mr. Loveless at the public defender's office, but that Mr. Allbritton refused to leave, stating the trial Judge refused to allow him to withdraw "this close to trial".

134. Under basic agency law, Ms. Brewer stated that when a client fires an attorney, any action the attorney takes after that in the client's name, is void. Ms. Brewer intended to make a showing that Mr. Allbritton had been fired thirteen days before trial resulting in all his actions after that point being illegal and thus void, requiring this court to grant a new trial.

135. Despite Ms. Brewer's plan for the defense and Petitioner's demand to testify at

the evidentiary hearing, Mr. Reiter failed to even pursue the line of defense on appeal. He also refused to allow Petitioner to testify, claiming that a doctor's report indicated that Petitioner might have been subject to sexual molestation as a child. But since Petitioner denied that he was sexually molested, Mr. Reiter stated that he could not put Petitioner on the stand because it possibly would open the door to the subject on cross examination, where Petitioner would deny it, and the defense would lose it as mitigation.

136. Mr. Reiter's excuse for not pursuing the line of defense had nothing to do with fear over losing molestation as a possible mitigator. After all, he never pursued it as a mitigating factor. Also, while testifying at the evidentiary hearing, Mr. Allbritton admitted that the Petitioner tried to fire him, so evidence was available to pursue the line of defense.

137. CCR attorneys and the investigators had just begun the process of running a computer and telephonic search for Eric St. Pierre. However, about that same time, CCR was shut down. Their initial searches indicated that Mr. St. Pierre had moved from Pensacola to Orlando, and then to Maine. Ms. Craig, along with another CCR investigator planned to travel to Pensacola and Orlando to meet Mr. St. Pierre's former friends, and girlfriend, to determine if Mr. St. Pierre had ever made incriminating statements concerning the crime. After that, the investigative team intended to travel to Maine, to identify Mr. St. Pierre and they hoped, to interview him. According to Ms. Brewer, conducting an interview with him as top priority because, in her experience, Ms. Brewer said many times the interview will lead to a confession.

138. This type of investigation requires substantial man hours and funds. CCR, in narrowing down the location on Mr. St. Pierre, were preparing to throw several investigators behind the task. However, after the forced switch to Registry counsel, other than a computer

search, Mr. Reiter dropped this line of investigation/defense. At the evidentiary hearing, Mr. Reiter, in a conversation with Judge Nickinson, explained that he dropped it because there simply was not enough money provided under Ch. 27 Registry statute for him to continue CCR's investigation. (EH._____) (see: Appendix 38).

139. CCR counsel and investigators also intended to locate and interview patrons of The Wharehouse, a nightclub/bar where Petitioner first met Mr. St. Pierre. CCR investigators had spoken to the former bartender at The Wharehouse, who told them the name of one female patron who was a regular, routinely filming the bands that played there. Mr. St. Pierre was in one of those bands. The investigators intended to try locating the girl to question her and get the videos she filmed. They hoped it would lead them to several other patrons who could link Petitioner and Mr. St. Pierre, or that the video would actually show Petitioner and Mr. St. Pierre together.

140. Mr. Reiter, working under the Registry statute, completely abandoned the investigation and line of defense.

141. CCR counsel had spoken over the phone to the former manager of the eatery on the University of West Florida campus called the Ratskeller (aka: The Rat). Petitioner and Mr. St. Pierre drank and played pool at the Rat immediately prior to deciding to join in a car theft. The manager informed CCR that during the time in question, the Rat had video surveillance and maintained tapes from the surveillance feed. However, the videos from the night, and week in question, were not known. According to the Manager, it was possible that the police had seized them when they interviewed the workers. The first thing CCR intended to do was try to determine if law enforcement took possession of the videos. Also, at the evidentiary hearing,

CCR attorneys intended to call the manager and possibly employees from the Rat to establish that the video surveillance existed, and that Mr. Allbritton never contacted anyone at the Rat to attempt to secure the videos, which would have shown Petitioner and Mr. St. Pierre drinking and leaving together. Nor did he question any of the workers or other patrons to put Petitioner and St. Pierre together.

142. Mr. Reiter, working under the Registry statute, never followed up on CCR's initial interviews, nor did he search for the videos. He also did not call the manager or any other witness to the stand to establish the availability of the video to Mr. Allbritton before trial. Mr. Reiter completely abandoned the investigation and line of defense.

143. CCR counsel and investigators had also begun to collect evidence to demonstrate that when Mr. Allbritton went to trial in 1994, the Pensacola airport had security cameras in several areas of the ground and terminals which could have established Petitioner and Mr. St. Pierre were together at the airport. Ms. Brewer stated that their investigators had determined 3 possible ways that Mr. St. Pierre might have left the airport: 1.) by taxi; 2.) called someone to pick him up; or 3.) he walked. However, of those three possibilities, they thought a taxi was most likely. So the investigators intended to take the photos that Mr. Fred Wimberly took of Mr. St. Pierre; show them to all of the taxi drivers. Ms. Brewer was also convinced that, based on the initial description Mr. Wallace, a taxi driver, provided to police, fit Mr. St. Pierre, and was not Petitioner, and when shown a photo, Mr. Wallace would identify Mr. St. Pierre as the person he drove from the airport. Ms. Brewer also intended to secure the records from the airport to establish whether Mr. St. Pierre made any calls while at the airport. Ms. Brewer stated that, even if the airport video footage and phone records were

since destroyed, she intended to call airport staff to establish at the evidentiary hearing that both of them were available to Mr. Allbritton at the time of Petitioner's trial, but that Mr. Allbritton had done nothing to secure them.

144. Mr. Reiter, working under the Registry statutes, abandoned most of this line of investigation. However, when pushed by Petitioner, Mr. Reiter stated that he did call the phone company and was informed that they were not certain if the records existed or had been destroyed. But, according to the phone company, both were available at the time of Petitioner's trial in 1994. Beyond the telephone call, Mr. Reiter claimed not to have funds to pursue the line of investigation to determine if the video footage existed, or question the taxi drivers. He also did not call anyone to testify at the evidentiary hearing to substantiate they were available to Mr. Allbritton.

145. CCR counsel plan to call on Mr. Verdelski Miller, a lawyer from Indiana, to testify at the evidentiary hearing. Mr. Miller represented Petitioner in Indiana, and he had been retained by the Branch family to act as second chair in the capital case. When hired, Mr. Allbritton agreed to have the Court appoint Mr. Miller pro hac vice as co-counsel. Mr. Miller intended to testify at the evidentiary hearing as follows:

a. Despite travelling from Indiana to Florida seven times between October, 1993, and March, 1994, Mr. Allbritton refused to grant him access to the case files so he could begin to prepare the defense. In fact, Mr. Allbritton never even attempted to have Mr. Miller appointed co-counsel until Friday, March 4, 1994, two and a half days prior to trial (T294) (see also: Appendix 39). However, Mr. Miller declined, stating he had no knowledge of the record and could not prepare in two days.

b. In the weeks immediately prior to trial, Petitioner and Al Branch contacted Mr. Miller several times, expressing concern about the representation Petitioner was receiving from Mr. Allbritton, complaining that he had never met with Petitioner and that the best Petitioner could tell, Mr. Allbritton had done nothing to prepare a defense for trial.

c. On at least two (possibly three) trips to Florida, Mr. Miller had traveled with Ms. Saundra Morgan, a mitigation specialist from Indiana Capital Defense Organization, whom Petitioner was instructing Mr. Allbritton to assign to the case. However, Ms. Morgan instructed Petitioner, Mr. Miller and Mr. Allbritton, that she would only accept appointment to the defense if Mr. Allbritton secured a continuance of six months. Ms. Morgan had stated from her experience that was the minimum amount of time she required to adequately prepare a mitigation defense in a capital case. During their trips together to Florida, Ms. Morgan told Mr. Miller that she was having difficulty with Mr. Allbritton, that he would not allow her to access the case files. Furthermore, she felt, based on conversations she had with Mr. Allbritton, which had been limited to about 30 minutes, she told Mr. Miller that it was her opinion that Mr. Allbritton was not prepared to take the case to trial. He could not answer a single question about defense strategy. Mr. Miller would further testify, that 18 days after she had agreed to help, Ms. Morgan withdrew her offer when Mr. Allbritton could not secure a continuance, placing an affidavit addressing her concerns in the record (T 335).[12]

[12] Ms. Morgan was recommended by Mr. Miller specifically because she was from Indiana, since Petitioner was also from Indiana, the majority of the mitigation investigation would take place there. Also, Ms. Morgan was experienced and was living in Indiana at the time, so it would save time and money.

d. Mr. Miller would testify that he had approached Mr. Allbritton at least three times instructing him that experts had to be consulted and hired, that process was time consuming and Mr. Allbritton needed to get started, or that he provide Mr. Miller the documents so that could start the search. Mr. Miller even went as far as to provide Mr. Allbritton several form motions to help him prepare request for expert assistance (see: Appendix 40).

e. Mr. Miller would further testify that he and Ms. Morgan were concerned with Mr. Allbritton's behavior; withholding access to case files and refusing to appoint Mr. Miller and that their concern was such that both of them told Petitioner and Al Branch to write the trial Judge, laying out their concerns and that they request a hearing with the Court to find out what, if anything, Mr. Allbritton had done to prepare a defense.

f. When Petitioner and Al Branch told Mr. Miller that the trial Court had not responded to their request for a hearing, Mr. Miller would further testify that he instructed Petitioner that he had two options: 1.) They could fire Mr. Allbritton, allowing the P.D. Office, Mr. Loveless to resume representation, or, 2.) He could go to the trial with Mr. Allbritton.

Additionally, Mr. Miller would testify that he was in Florida with Al Branch, at the pre-trial hearing where Mr. Branch stood and addressed the Court concerning Mr. Allbritton paragraph #174 supra (T 354-55) and that, after the hearing, outside the Courtroom, Mr. Al Branch had fired Mr. Allbritton instructing him to withdraw from the case and let the P.D.'s office take over. Mr. Allbritton, in turn, stated he would talk to the Judge (later that same day Mr. Allbritton visited Petitioner in county jail paragraph #133, refusing to leave, even though both Petitioner and Al Branch had fired him).

g. Mr. Miller would testify that he had represented Petitioner on the Indiana charge of

sexual battery, which the State used as a prior 'violent felony' aggravator to impose a sentence of death, and that prior to trial, and even after Petitioner was convicted, he tried to tell Mr. Allbritton that the Indiana **conviction** did not qualify as a prior violent **felony**. Mr. Miller offered to provide whatever assistance he required, including travelling to Florida to testify.

h. Furthermore, Mr. Miller would testify that he has successfully filed a motion in Indiana to modify the conviction to a class A misdemeanor (see: Appendix 41), which allowed Petitioner to transfer to the work release program. Mr. Miller would testify that the modification was necessary because Indiana did not allow persons convicted of a 'felony' sex crime to be assigned to work release. So in order for Petitioner to qualify, a hearing/meeting was held in chambers of Judge Richard Young, who dropped the conviction from a Class D Felony, to a Class A Misdemeanor. However, the length of the sentence remained the same. After that, Petitioner was transferred from jail to the work release program. Mr. Miller would testify that despite offering to make this information available, Mr. Allbritton never asked him to testify, nor did he consult Mr. Miller on the matter.

i. Mr. Miller would testify that while attending a pre-trial hearing in 1994, two and one-half days before trial, Mr. Allbritton attempted to move to have him appointed as co-counsel. However Mr. Miller would testify that he had to decline, as he felt that he could not participate in a trial without adequate time to prepare and up until that point, Mr. Allbritton had refused to give him access to the case files, or discuss any type of defense strategy.

j. CCR attorney, Ms. Brewer and investigator, Ms. Nelson, had contacted Mr. Miller by phone. Mr. Miller would testify that he told them all the above facts, and that from their

discussions, Ms. Brewer made clear that they needed him to testify at the evidentiary hearing and that once a date was set, they would contact him.

k. Mr. Miller would testify that after the phone conversation with Ms. Brewer and Ms. Nelson, he has not been contacted by any member of Petitioner's defense team.

146. Undoubtedly, CCR attorneys understood the importance of Mr. Miller's testimony. It went to the heart of the defense in that Mr. Miller had contact and conversations with Petitioner, Mr. Allbritton, Ms. Morgan and the Branch family in the months and days before trial. Moreover, he was Petitioner's attorney on the Indiana conviction that the State intended to use in Florida. As such, Mr. Miller could corroborate and expand on Petitioner's allegation made in Court and letters to the Judge. As Ms. Brewer stated to the Petitioner, as attorney, Mr. Miller's observations and insight would be invaluable. However, after lawmakers closed CCR, Mr. Reiter told Petitioner that while he could not afford to travel to Indiana, he would call Mr. Miller to discuss testifying at the evidentiary hearing and in fact, later Mr. Reiter told Petitioner he did call. However, according to Mr. Miller, other than the Branch family, he does not recall anyone contacting him after his discussions with Ms. Brewer. In fact, the appeal record contains no mention of Mr. Miller, except in those motions filed by Petitioner himself.

147. Based on the information Mr. Miller would have provided the Court, the fact that Mr. Reiter completely abandoned this line of defense, further calls into question, not only Mr. Reiter's ability to handle capital appeals, but also his ability to practice law.

148. CCR attorneys intended to call Ms. Saundra Morgan, the mitigation specialist from Indiana, to testify at the evidentiary hearing. However, CCR investigator, Ms. Nelson, discovered that Ms. Morgan had died. Still, CCR intended to retrieve all of her files, as in their experience, they believed her notes would contain information expressing the difficulty she had in trying to work with Mr. Allbritton, including her thoughts on whether she thought he was adequately prepared for trial. Ms. Nelson had discovered that Ms. Morgan's legal files and records were kept by her daughter who lived in Seattle. CCR investigators planned to travel to Seattle to personally secure the files, or have them shipped to CCR offices (there was a question as to what the law required, whether they had to personally take possession of the files).

149. Mr. Reiter, working under the Registry, never attempted to contact Ms. Morgan's daughter or otherwise, retrieve the files. In fact, other than documents filed by Ms. Morgan (T 355) and Petitioner, acting pro se, the appellate record contains no mention of Ms. Morgan.

150. Ms. Brewer intended to travel to Indiana with the investigative team to conduct interviews and develop mitigation. Since Petitioner was from Indiana, the defense team planned to work with Al Branch, and Alex Branch, to interview all of Petitioner's family, friends, teachers, employers, etc. In anticipation of the defense teams trip to Indiana, Petitioner provided Ms. Brewer and Ms. Nelson a list of names as follows:

FAMILY:

Doug McMurtry (step-dad)
Sharon McMurtry (mother)
Robert Branch (brother)
Elizabeth Branch (sister)
Neil Branch (Father)
Gail Branch (step-mom)
Debbie Payne (step-mom)

Al Branch (grandfather)
Marcella Branch (grandmother)
JoAnn Carter (grandmother
Cheyenne Carter (Aunt)
Dixie Carter (Aunt)
Jimmy Carter (Uncle)
Brenda Carter (Aunt)

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Richard Pryor (Uncle)	Dale Carter (Uncle)
Barbara Pryor (Aunt)	Brad Branch (Uncle)
Tom Benton (Uncle)	Dean Branch (Uncle)
Richard Davis (Cousin)	Connie Branch (Aunt)
Alex Branch (Cousin)	Julie Benton (Aunt)
Clover Carter (Cousin)	Brandon Pryor (Cousin)
Matt Benton (Cousin)	Michelle Carter (Cousin)
Ryan McMurtry (Cousin)	Neal McMurtry (Cousin)
Zack Carter (Cousin)	Crimson Carter (Cousin)

FRIENDS:

Keno Mottler	Amy Hargis	Eric Schultise	Brian Melton
JoAnn Harris	Cathy Webb	Jon Stallings	Angela French
Doug Duncan	Robbie Greene	Johnny Reisz	Tony Aldridge
Terry Rogier	Amy Reisz	Jenny Webb	Brian Burns
Tara Patmore	Rachel Wieshit	Jimmy Shehan	Rod Patmore
Jeff Phillips	Steve Frakes	Jeff O'Brian	Grant Eilort
Donnie Nurhing	Roger Hopper	Teresa Reed	Darci Himmelheber
Patty Reed	Jeff Smith	Jenna Ashby	Jennifer Wilson
Eric May	Jill May	Brian Arnold	Amy Horn
Mark Kennedy	Brian Englehardt	Beth Englehardt	

Petitioner went to school, played sports and grew up with these individuals.

TEACHERS:

Ms. Corn	Ms. Servaties	Ms. Ingram
Mr. Hoff	Ms. McMurtry	Mr. Cochenour
Mr. Knight	Mr. Johnson	Mr. Ostsorn
Mr. Butcher	Mr. Gregory	Mr. Sitzman
Mr. Emmit	Mr. Guth	Mr. Logsdon
Mr. Hodges		

EMPLOYMENT/EMPLOYER:

Santa Claus Land (Holiday World)	Will Koch
Jeremiah's Restaurant	Charlie Gunn
Subway Sandwich Shop	Charlie Stauss
Grandy's Homestyle Restaurant	B&R
Sam's Wholesale Club	Wal-Mart
Reo Mobile Homes	Les Bear

GIRLFRIENDS:

Leora Anne Nosko (share a daughter together: Nicole)
Jennifer Cryner

SEXUAL PARTNERS: [13]

151. After providing the above list to his defense team, Petitioner spent time going over the names, along with additional information with Ms. Brewer and Ms. Nelson, helping them organize for their trip to Indiana. However, before they could travel to Indiana, lawmakers closed down the CCR office.

152. After the forced switch to Registry counsel, Petitioner provided Mr. Reiter a copy of the information CCR received. Paragraph #150 supra. Moreover, Al Branch drove to Florida to meet Mr. Reiter, during which, according to Mr. Branch, it was made clear to Mr. Reiter that the Branch family would help in any manner asked of them, including helping him conduct mitigation interviews.

153. Despite Petitioner putting a copy of the list for potential mitigation witnesses in Mr. Reiter's hand at their first visit, and despite Al Branch driving from Indiana to Florida to meet Mr. Reiter, telling him the family would help, Mr. Reiter, working under the Registry, never pursued any of this mitigation. He never travelled to Indiana, nor did he even attempt to interview the potential witnesses over the phone. Instead, Mr. Reiter put on a psychologist previously hired by CCR as the sole means of mitigation. And, while the expert did offer possible mitigation on childhood abuse, alcoholism and serious brain trauma, Petitioner

[13] Petitioner provided those names, but will not make them part of public record unless they agreed to give testimony.

repeatedly told Mr. Reiter that the courts typically do not care about a single doctor's report of abusive/difficult childhood. That, without testimony from friends, family, teacher, etc., the expert's evaluation failed to bring context and the appropriate weight to those claims.

154. Mr. Reiter, working under the Registry statute, failed, not only to put on available mitigation testimony, but he outright failed to even conduct a search for mitigation. When confronted by Petitioner after the evidentiary hearing, demanding he explain his actions as to why he had not put on a mitigation presentation, Mr. Reiter claimed that he did not have funds available and that it all would be made a part of the Federal claim, which, as stated herein, Supra, turned out to be a lie.

155. By his own comments, Mr. Reiter abandoned the potential mitigation for financial reasons, deciding to put his own financial interest above the interest of his client-Petitioner. This further substantiates that Mr. Reiter either is not competent to practice law, let alone, handle capital appeals, and/or that he deliberately sabotaged the motion in belief that requesting additional funds 'above the cap' would violate Florida Registry statute, resulting in his removal from the State's approved list of Registry counsel.

156. Despite having gone through trial, direct appeal process, post-conviction proceedings, and Federal Habeas Corpus, Petitioner has not had a single attorney or member of his defense travel to Indiana, and/or take any concrete action to collect mitigation, conduct mitigation interviews, or put on a mitigation presentation on Petitioner's behalf. [14]

157. Additionally, when the CCR defense team went to Indiana, they intended to retrieve complete copies of the court record from the Indiana conviction that Florida used as a 'prior violent **felony**' aggravator to impose a sentence of death. They also planned to talk to Verdelski Miller about possibly mounting a challenge to the Indiana conviction on the ground that Petitioner had been assured at the time he agreed to accept the plea bargain, that the conviction would not be used against him at a later date.

158. After the forced switch to Registry, Petitioner repeatedly instructed Mr. Reiter that he needed to travel to Indiana to secure copies of the transcripts and the modification documents. Petitioner told Mr. Reiter that the trial judge had determined that the Indiana **conviction** was a conviction of 'forcible rape' (see: Appendix 42). A finding that was not only wrong, but also not supported by the record. Petitioner told Mr. Reiter that the transcripts would establish Petitioner's conviction was for grabbing a girl's breast and the court record would show the conviction was a misdemeanor, meaning that the Indiana conviction did not qualify as a prior violent felony aggravator for imposing a sentence of death.

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[14] As alleged herein, supra, contrary to court findings, Dr. Larson, by his own testimony, had nothing to do with mitigation, and attorney Loveless did not travel to Indiana to 'collect mitigation evidence'. Moreover, CCR can be forgiven, seeing that lawmakers closed their office and, at least, they had developed a plan to present mitigation.

159. Frustrated with Mr. Reiter's refusal to travel to Indiana to retrieve the transcripts and court record, Petitioner had his grandfather, Al Branch, who was in his 70's, drive the forty miles into the neighboring county to secure copies of the documents from Vanderburgh County, Indiana. The entire process took Mr. Branch a day, and cost a bit under two hundred dollars. Mr. Branch also stopped by Mr. Miller's office to discuss the matter of the modification process. At that meeting Mr. Miller again stated his willingness to help, but noted, that since being contacted by a female attorney {i.e. CCR}, no one had ever got back to him.

160. After retrieving the records from Indiana, Petitioner provided copies to Mr. Reiter, instructing Mr. Reiter exactly how to raise a challenge to the Indiana aggravator, drafting the following arguments with orders to file them:

UNCONSTITUTIONAL USE OF A PRIOR INDIANA CONVICTION AS AN AGGRAVATING FACTOR

The use of Petitioner Branch's conviction in Indiana as an aggravating factor in imposing a sentence of death presents three (03) separate, but intrinsically intertwined issues:

a. The court imposed a sentence of death on evidence of crimes {forcible rape}. Petitioner was never convicted.

Branch was convicted of Sexual Battery under Indiana Statute 35-42-4-8 which can be classified as either a felony or misdemeanor. The factual basis of the conviction states Branch 'touched' Ms. Pierce (see: Appendix43) (T 361); specifically, the record reflects that Branch grabbed Ms. Pierce on the breast.

Defendant: Yeah, we parked back there and I grabbed her.

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The Court: Okay, and did you force her to the ground?

Defendant: Yes, sir

The Court: Did you tell her not to scream?

Defendant: Yes.

The Court: Was she screaming?

Defendant: No.

The Court: She wasn't screaming? Where did you touch her?

Defendant: I grabbed her right there.

The Court: Grabbed her where?

Defendant: Her breast.

The Court: Her breast? You grabbed her breast?

Defendant: Yeah.

The Court: Alright, the court finds factual basis.

(see: Appendix 44 at 22)

The State: I don't know if the victim is in the courtroom or if there is anything they want to add. Do you want to say anything?

The Court: Tiffany Pierce in the Courtroom?

Tiffany Pierce: Yes

The Court: Do you have anything you want to add mam?

Tiffany Pierce: No.

The Court: Excuse me?

Tiffany Pierce: No.

(see: Appendix 44 at 8).

Based on the Indiana Court findings, Branch was **convicted** of "touching" with special intent "to arouse" i.e. Sexual Battery.

On this point, the record doesn't appear to provide any confusion as to what crime Branch was convicted of in Indiana. Yet, in making a written finding in support of the imposition of the death penalty, the trial judge made the following pronouncement:

> "The certified copies of the record from the Circuit Court for the County of Vanderburgh, Indiana, demonstrates that the Defendant's **conviction** was, in fact, a **conviction** of **forcible rape**".

(see Appendix 42) (T 450).

The divide separating the true conviction for 'touching' and the trial courts' pronouncement that the conviction was 'forcible rape' cannot be more extreme. However, how the court committed itself to this course of thought is no mystery. The judge explained in his sentencing order how the error occurred:

> "The court has considered only the record of the conviction and the Information (i.e. The Charging Documents)." (see: Appendix 42) (T 449).

A review of those "charging documents" find crimes Branch was once charged in Indiana, but not crimes that resulted in convictions. The charges were: Rape, Child Molestation, Criminal Deviate Conduct, Battery. (T 359-362). However, those charges were dismissed, after which Branch pled guilty to Sexual Battery (see: Appendix 44 at 18). Apparently, the trial judge failed to recognize the difference between an arrest and a conviction for the purpose of the sentencing hearing in imposing a sentence of death.

Supreme Court precedent provides that a defendant may not be sentenced "on the basis of assumptions concerning this criminal record, which are materially untrue" *Townsend v Burke 334 U.S. 736, 741, 68 S.Ct. 1252, 1255 (1948): U.S. v Tucker, 404 U.S. 443, 92 S.Ct. 589* (1972). In particular, the court may not base its' sentence on evidence of crimes for which the defendant has not been convicted *United States v Johnson, 655 F.2d 1176,1179 (7th Cir. 198).* The record here shows that the jury and sentencing judge gave specific consideration to charges for crimes that were dismissed.

In differing degrees of abstraction up and down the ladder of Townsend and Tucker, the Supreme Court in *Johnson v Mississippi 486 U.S. 578, 108 S.Ct. 1981 (1998)* completed the circle of interpretation, setting forth what the constitution demands in this situation:

> "More importantly...here, the error extended beyond the mere invalidation of an aggravating circumstances support by evidence that was otherwise admissible. Here, the jury was allowed to consider evidence that has been revealed to be materially inaccurate".

The through-line that emerges from these Supreme Court decisions demonstrates that the constitution cannot sustain a sentence enhanced on evidence of crimes for which the defendant has not been convicted, or a sentence based on evidence that has been shown to be materially inaccurate. Here, both grounds are in play.

Aware of the fundamental difference between putting a person to death, and all other forms of punishment. The Supreme Court has consistently recognized that there is "a corresponding difference in need for reliability in determining that death is the appropriate punishment in a specific case". *Eddings v Oklahoma 455 U.S. 104, 117-18, 102 S.Ct. 869,*

877-79 (1982). Fair to say, assigning criminal convictions to Branch for which he was never convicted runs afoul of the constitution. Particularly, in light of the gravity of the erroneous findings, never mind the elements and facts, the psychology of stating Branch 'forcibly raped' someone, as opposed to: " Branch grabbed someone's breast" is radically different. The words 'forcibly raped' incite a physical reaction – a physical reaction that, no doubt, strongly contributed to the imposition of death.

b. The Indiana conviction originally classified as a Class D Felony {in Indiana} was modified and dropped to a Class A Misdemeanor

Furthermore, Branch's Indiana conviction was inadmissible in its own right. In 1992 Branch moved the Indiana Court to modify the conviction (see: Appendix 41). In those proceedings, the Court dropped the classification down to a Class A Misdemeanor. Under Indiana law, the judge has the discretion to impose a sentence for a Sexual Battery conviction as either a felony or a misdemeanor, depending on the plea arrangement.

"Sexual Battery in Count V, a Class D Felony..... Alternatively, you could
Be convicted and sentenced as a Class A Misdemeanor in Count V."

(see: Appendix 44 at 26). Originally, Branch was convicted of a Class D Felony. However, in order to qualify for placement in Indiana's work release program, where Branch would be permitted to continue attending college, Branch filed a motion to modify sentence dated 3 August 1992 (see: Appendix 41).

Judge Young granted the motion to modify, dropping the classification from a Class D Felony to a Class A Misdemeanor. However, Judge Young did not modify the actual length of the sentence. Branch was granted placement in the work release program and attended

college in the Fall of 1992.

The Indiana conviction having been dropped to a Misdemeanor automatically invalidates use of the Sexual Battery conviction as a prior violent Felony aggravator for imposition of a sentence of death. As the Florida Supreme Court noted in *Carpenter v State 785 So2d 1182 (Fla 2001),* a case of first impression, Florida's statutory scheme for imposing a sentence is much different than the statutory scheme discussed in Dautel and Forehand.

> "The present case, however, the legislature has not provided for any type of comparison and has specifically provided that only a 'felony involving the use or threat of violence to the person' may establish an aggravating factor under 921.141(5)(b)...strictly construing this statutory language in favor of the defendant {citation omitted}; we determine that an out-of-state conviction that does not constitute a 'felony' in that state does not amount to a felony in Florida as a matter of law for the purchase of establishing the prior violent felony aggravating circumstance" at 1205."

As it stands, Branch's prior Indiana conviction is classified as a misdemeanor. As a matter of law, it cannot qualify as a felony for the purpose of establishing the prior violent felony aggravator in Florida. Where a state moves to impose a sentence of death, in *Johnson,* the Supreme Court "made it clear that such decisions cannot be predicted on mere 'caprice' or 'factors that are constitutionally impermissible or totally irrelevant to the sentence process'" quoting: *Zant v Stephens, 462 U.S. 862, 884-85, 103 S.Ct. 2733, 2747 (1983).* Here, the Florida Supreme Court has clearly expressed that this information is 'totally irrelevant to sentencing process, in that Florida Statute 921.141(5)(b) prohibits the Trial courts consideration of an

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out-of-state **misdemeanor conviction** for imposing a sentence of death.

c. The Indiana conviction of sexual battery as originally pronounced is equivalent to simple misdemeanor battery in Florida and doesn't qualify as 'prior felony' aggravator

The crime of 'sexual battery' as defined by Indiana Statute 35-42-4-8 is not a lesser included offense of rape in Indiana. Rape and its lesser offenses are defined by separate statute (see: Appendix 45); Indiana rape statute requires penetration or intercourse. Whereas, the Indiana offense of sexual battery contains only elements of touching, like Florida's simple battery statute. In Florida, "a person commits battery if he actually or intentionally 'touches' another person against the will of the other". The only difference in sexual battery in Indiana and simple battery in Florida, the Indiana crime also requires the special intent 'to arouse'.

Where a state attempts to rely on an out-of-state conviction to aggravate a sentence above the statutory maximum, due process and equal protection considerations require the court to conduct "an element by element analysis to determine the equivalent Florida crime "*Forehand v State 537 So2d 103, 104 (FLA 1989), Daural v State, 658 So2d 88, 91 (FLA 1995).* Federal law holds the courts to the same standard.

> "State law character of a crime are not binding on Federal Courts. It is {our} responsibility to evaluate an offense as a matter of Federal Law" *US v Cameron 814 F.2d 403 (7th Cir 1987)* citing: J. Weinstein & M. Berger, 3 Weinsteins Evidence section 609 [04] at 71 (1988).

In order to determine how to characterize a state law offense, Federal law requires "the

court must look at the state law to identify the elements of the crime" see: Fed. R. Evid. 609 (b) advisory notes (1988).

Here, the inquiry is whether the elements of the subject conviction, i.e. sexual battery, not the stated degree or the sentence received control in determining whether there is a Florida statute analogous to the out-of-state conviction. In a non-related review, the District Court of Appeal, First District in Florida, conducted an analysis of elements of Indiana's sexual battery statute for the purpose of determining if it qualified as a "prior violent felony" supporting an enhanced sentence under the violent felony habitual offenders act (see: Appendix 46).

The first DCA concluded that the elements of sexual battery in Indiana did not qualify as a prior violent felony conviction under Florida law. Instead the Indiana statute was analogous to simple misdemeanor battery in Florida (see: Appendix46), as that determination translates to the instant case. Logically, if the elements of the Indiana statute do not qualify as a prior felony conviction in Florida to impose an enhanced sentence under the violent felony habitual offender act. It cannot qualify as a prior violent felony aggravator under F.S. 921.141 (5) (b) to impose a sentence of death.

The Supreme Court upheld the constitutionality of Florida's capital punishment statute in *Proffitt v Florida 428 U.S. 242 (1976).* In doing so, the court relied primarily on two Florida court cases, *State v Dixon, 283 So2d 1 (1973) and Tedder v State, 322 So2d 908 (1975)* quoting Dixon, the Court stated:

> "That [new] legislation provides that after a person is convicted of first degree murder, there shall be an informed, focused, guided and objective inquiry into the question as to whether he should be sentenced to death...this

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> system serves to assure the sentence of death will not be 'wantonly' or freakishly' imposed" 428 U.S. 242.

As that applies here, the 'informed, focused, guided and objective inquiry' requires the court to examine the Indiana statute against Florida's statute to determine if, in fact, as the first DCA determined, sexual battery in Indiana is analogous to simple misdemeanor battery in Florida, and that failure to conduct such an inquiry would deprive Petitioner of the constitutionality mandated proportionality review described by the supreme court in *Proffitt.*

161. Despite Petitioners efforts, providing copies of the Indiana record to Mr. Reiter, along with an argument as outlined above and instructing him to call Mr. Miller to testify, not only did Mr. Reiter fail to file Petitioner's argument, but at the evidentiary hearing he did not present copies of the Indiana transcripts, or modification order, nor did he call Mr. Miller to testify. In fact, Mr. Reiter did not present any evidence on the Indiana conviction. Afterwards, when questioned about it, Mr. Reiter told Petitioner that the trial court had denied his request for funds to travel to Indiana prior to the evidentiary hearing, but "don't worry" the claim will be presented, in full, to the Federal Court as party of the 'state impediment' claim.

162. When the Florida Supreme Court denied Petitioner relief on post-conviction appeal without conducting any review on the factual basis of the Indiana conviction, or determining if it was analogous to simple misdemeanor battery, Petitioner instructed Mr. Reiter to file a motion to supplement the record, and motion for rehearing. Mr. Reiter refused to do it, again stating 'don't worry', he had it all ready to go in the Federal Court.

163. However, as previously alleged, paragraph #97 Supra, Mr. Reiter did not raise the state impediment claim as promised, and as to the Indiana conviction, he argued the use of the

Indiana conviction was 'impermissible hearsay' and that it did not qualify as a felony under Florida statute. But he took no steps to explain how the lower court erred in determining the conviction was a crime of violence.

164. As part of the numerous pro se filings Petitioner made to the courts, Petitioner attempted to amend the claim. However, as alleged herein Supra, Petitioner's motions filed pro se were either returned or ignored by the Court.

165. As a direct result of Mr. Reiter's actions, failing to present any evidence/testimony, or even trying to explain how the trial court erred in determining the Indiana conviction was for 'forcible rape' (see: Appendix 42) (T 450). The Federal District Court, for its part, was able to further perpetuate the material inaccuracy of Petitioner's Indiana conviction, stating: "Mr. Branch was not convicted of having sex with such a person [mentally disabled] he **was convicted** of forcing a non-consenting 14 year old to have sex" (see: Appendix 47). However, as demonstrated herein, Petitioner was convicted of 'touching' the breast (T361) (see: Appendix 44). He was not convicted of having sex with anyone. Clearly, the Federal Court's findings did not dispel any rational belief that this error caused Petitioner substantial harm.

166. Petitioner ordered Mr. Reiter to file a corrective motion with evidence supplementing the record to demonstrate to the court that its ruling is based on evidence which is known to be materially inaccurate. Mr. Reiter refused. He did not file any motion for rehearing or any corrective motion.

167. As a direct result of Mr. Reiter's refusal and the Court's prohibition on pro se filings, denying Petitioner the right to present evidence/testimony demonstrating this material

inaccuracy of the court findings. Petitioner's appeal has been able to travel all the way through the appellate process with a finding of a conviction for 'forcible rape' (T. 450) which does not exist, but which was used to impose a sentence of death and therefore, given its prejudicial nature, if corrected, it would require the court to grant a new sentencing hearing.

168. Moreover, CCR attorneys intended to present evidence/testimony to establish, not only the material inaccuracy of the court's findings, but also show Mr. Allbritton did not conduct any mitigation investigation prior to trial. As a direct result of the forced switch to Registry counsel, this line of defense was also abandoned. The Florida Supreme Court has specified that:

> "Investigations into mitigation evidence should comprise efforts to discover **all reasonable available** mitigation evidence **and** evidence to rebut any aggravating evidence that may be introduced by the prosecutor" *Blackwood v State, 946 So2d 960, 974 (Fla 2006)* [quoting: *Wiggins v Smith, 539 U.S. 510, 524 (2003*) The Court has also specifically noted that both *Wiggins (539 U.S. at 524)* and the ABA guidelines for appointment and performance of counsel in death penalty case 10.11 (rev.ed.2003) on counsel's duties **mandate** mitigation investigation and preparation *Henry v State, 437 So2d 563,573 (Fla 2006).*

Clearly, as a direct result of the forced switch to Registry counsel, Petitioner was deprived of his right to present mitigation and rebut the aggravating evidence.

169. In developing a challenge to law enforcement's seizure of Petitioner's car from the long-term parking lot at the airport **without a warrant**. CCR attorneys planned to secure copies of the audio recordings from radio communications from F.D.L.E. agent, Dennis Norreo

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and Agent Dyle, who were at the airport, and Larry Smith, their supervisor, who instructed them over the radio to open and search the trunk and take photographs of all the items throughout the trunk and the car's interior. Despite these efforts, no evidence of a crime or criminal activity was located. Still, when finished, Larry Smith instructed them, over the radio, to seize the car **without a warrant** as a 'tool of a crime'. CCR attorneys intended to subpoena those radio communications to establish that probable cause did not exist to seize the car.

170. CCR attorneys also intended to present a photo array and/or video display to establish that the car was seized without a warrant from a gated and guarded lot, which further demonstrated a lack of justification for law enforcement to seize the car without a warrant.

171. Furthermore, CCR attorneys had contacted the Pensacola News Journal inquiring about how to obtain copies of the rolls of photographs taken by photo journalist, Dean Saito, at the airport, which show F.D.L.E agents and police searching Petitioner's car without a warrant, prior to seizing it. One of the photographs was printed in the Pensacola News Journal. (see: Appendix 48). Ms. Brewer planned to use the photograph to help identify all the officers present when the car was searched and seized so she could depose them prior to the evidentiary hearing. Also, Ms. Brewer planned to have Mr. Saito testify as to the police activities he witnessed beyond that shown in his photographs.

172. According to Ms. Brewer, the presentation of these witnesses and evidence would establish that the F.D.L.E. agents lacked any probable cause to seize the car without a warrant. And, that later, when seeking to obtain a warrant to search the car, the agents lied, under oath, stating after opening the trunk, it was apparent Ms. Morris was not there, so they immediately shut the trunk. After all, the newspaper photos show a thorough search was

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conducted before the vehicle was seized. Additionally, in attacking the warrant to search the vehicle, Ms. Brewer planned to introduce evidence to show that contrary to the affidavit, Petitioner was sought in Indiana for failure to report to work release, not rape and child molestation (see: Appendix 49). Also, the Panama City/Bay County Sheriff's department had searched the car the week prior to the agents seizing it from the airport. Ms. Brewer stated that information was put in the affidavits to 'muddy the water', or distract from the fact the warrant failed to establish a nexus between the vehicle and any crime.

173. Mr. Reiter, working under the Registry, did not contact the Journal or Mr. Saito. He did not subpoena the audio records of F.D.L.E. agents radio communications. He did not identify or depose any of the other law enforcement agents that were present at the airport when the car was searched and seized without a warrant. Nor did Mr. Reiter adopt any other aspect of CCR defense strategy. Instead, at the evidentiary hearing, Mr. Reiter attempted to question F.D.L.E. Agent, Bruce Fairburn, about the seizure of the vehicle and subsequent warrant to search it. Despite the fact Mr. Fairburn was not present when the vehicle was seized and Agent Griffith issued the affidavit for the search warrant. After the evidentiary hearing, when Petitioner demanded to know why Mr. Reiter had not adopted CCR defense strategy, and presentation challenging the seizure, Mr. Reiter simply stated "I can only do so much", further inferring a lack of resources and manpower.

174. After the court issued an order denying post-conviction relief, reading the order, Petitioner notes that the court failed to establish how probable cause existed to seize the vehicle without a warrant or how the affidavit for the search contained probable cause to issue the warrant. Petitioner immediately wrote to Mr. Reiter, ordering him to file a motion for

rehearing. Petitioner drafted out an outline of the argument as follows:

a. Petitioner's Pontiac was seized from the long-term section of the airport parking lot, a gated and guarded lot. The vehicle was seized without a warrant. At the time, police were conducting a missing person search. The Police broke open the trunk of the car. While open, the Police thoroughly searched the trunk. (see: Appendix 48); They found no evidence of a crime. Police also had unrestricted views into the car's seating area. They took several rolls of photos through the car windows. Afterwards, the officers on the scene were informed to seize the car by Larry Smith, who radioed them the orders.

When the officers seized the car, they lacked the minimal detail of information that would point to any arguably particularized suspicion of criminal activity or that the car was carrying any contraband. *(Carrol v U.S. 67U.S. 132, 45. S. Ct. 280)1925*). Moreover, in cases where seizure is impossible except without a warrant, the seizing officer acts unlawfully and at his peril unless he can show the court probable cause existed. *U.S. v Kaplan D.C. 286 F.2d 963.*

b. As proof that no probable cause exists, several days after the car was seized, the police sought a warrant for the contents in the car. Reviewing the affidavits, the facts within the four corners do not provide any information to believe the Pontiac contained evidence of a crime (*Illinois v Gates, 462 U.S. 213, 103 S. Ct. 2317 (1985)*, in that the affidavit failed to site a nexus between the car and a crime. In fact, the four corners of the warrant negate probable cause. Branch was last seen driving the Pontiac 36 hours before the victim disappears. And Mr. Wallace, the taxi driver reported brining Branch from the airport to the college several hours before Ms. Morris vanished. Factually the four corners of the warrant place the Pontiac at the airport during the crime, and nothing in the warrant suggests Branch ever returned to

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the airport after Mr. Wallace took him to campus.

175. Mr. Reiter did not file any motion for rehearing, on this issue or any other issue.

176. During the State's cross examination of Branch at trial, the Prosecutor asked him "What have you done to help catch the other Eric?" (T.829). Branch's counsel immediately objected to the question as an infringement of Branch's Fifth Amendment Right to remain silent. The Court sustained Branch's objection (T.829-30).

At trial, Branch testified that he only stood mute after being advised to do so by counsel. The Prosecutor implied that because Branch had followed his lawyer's advice to remain silent at the time of arrest, his testimony was not worthy of belief.

The Prosecutor asked:

Q: And the other person that did it ought to be caught, shouldn't he?
A. I hope they will be.
Q. What have you done to help catch the other Eric?

Mr. Allbritton:

Your honor, I'm going to object to this line of questions as infringement on Branch's Fifth Amendment Right to remain silent.

The court sustained the objection (T-824-30), however, the Prosecutor quickly directed the questions back to Branch's pre-trial silence.

Q: You help this mystical Eric...you hold her while this mystical Eric hits her but you did not kill her?
A. No, I did not
Q: Okay
A: And he is not mystical, I hope he will be found in the next few days.
Q: Oh! You do?
A: Yes, I do.
Q: I see, and you would help in that effort right?
A: Yes, I will
Q: As you have in the past right?
A: I was advised by attorney not to speak to law enforcement
Q: **Because of that**, you haven't said anything about this Eric to anybody, have you?
A: That is what my attorney advised me
Q: But that is right, you haven't said a word to anybody about this Eric have you?
A: Other than my attorney, No!

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Q: **Other than right now?**
A: Yes
Q: And this mystical Eric **that you have come up with today** never existed (T-843) Is a figment of your imagination (T-849)

Alone, these statement elicited during cross-examination reach a level where Doyle requires reversal, *United States v Shue 766 F2d 1122, 1132 (7th Cir. 1985)* ("The government violated [Shue's] right to due process by using his post-arrest silence in an obvious reach beyond fair limits to impeach his explanatory story as a recent fabrication") Yet, not finished, the Prosecutor continued to comment on Branch's silence to attack his credibility throughout closing arguments:

CLOSING ARGUMENTS

"The defendant**, after** carefully reviewing the Police reports and the statement of witnesses, after carefully listening to all testimony and exhibits that the State presented he has concocted a story for you and now**...during trial before we had this first revelation about another Eric"**

Mr. Allbritton: Your Honor objection. (T-806)

Counsel moved for mistrial. The Court denied the motion warning the Prosecutor, "I think you are treading on very thin ice," (T-887). Yet again, the Prosecutor was undeterred by the Judge's warning, immediately returning to attacking Branch's credibility based solely on his silence:

"**For the first time**, an imaginary figure has appeared, another Eric (T-888)

"Because he wants to tailor his facts to fit this wild and crazy story" (T-892)

"The story that the defendant **concocted today** is absurd" (T-896)

"So if you will believe the story of another Eric **we hear for the first time today**.."(T-897)

It is clear, as Doyle violations go, these comments rank near the top, the Prosecutor's

comments were repeated and continued throughout the closing arguments. The Prosecutor ridiculed and paraded Branch's testimony with sarcastic overtones which told the jury that Branch's testimony was not believable because he had never told his version of events prior to testifying at trial. A clear violation of Branch's constitutional right to remain silent.

Prejudice that was further enhanced by trial counsel's incompetence as the record reflects, Branch did not meet his attorney until 13 days before the start of his capital murder trial, and prior to trial, the attorney consulted no experts, he questioned no witnesses, reviewing only the files provided by Prosecutor to prepare for trial, repeatedly moving the court for continuance, claiming to be in the middle of a major drug case and a second capital murder defense, making Branch's testimony **and** credibility the entire focus of the defense.

On the stand, Branch presented a reasonable explanation (relative to his circumstances at the time of the crime) for his action. Branch's testimony was consistent with the evidence presented and it was not contradicted by any evidence offered by the State. However, because of the Prosecutor's improper conduct, repeatedly highlighting the fact Branch remained silent "until today". The Prosecutor's argument directly linked the credibility of Branch's exculpatory story to his obstinacy inconsistent act of remaining silent depriving Branch of the "fundamental fairness" which is the keystone of due process.

177. The comments on Petitioner's silence i.e. Doyle violation was raised on direct appeal and denied without opinion.[15] The Florida Supreme Court citing *Fletcher v Weir 445 U.S. 603,102 S. Ct. 1309 (1982).* CCR attorney, Ms. Brewer, intended to handle the issue in

[15] *Doyle v Ohio, 426 U.S. 610, 96 S. Ct. 2240(1976).*

post-conviction proceedings four different ways: 1) Providing testimony at the evidentiary hearing from Mr. Verdelski Miller, who would testify that he accompanied Petitioner when he turned himself over to police in Indiana. At that time, he advised Petitioner to remain silent, and that Sheriff, Sheldon Thorpe, read Petitioner his Miranda warnings. 2.) Calling Petitioner to testify that Sheriff Thorpe read him Miranda warnings and that Mr. Miller advised him to remain silent, which he did. 3.) Calling Sheriff Thorpe to testify that he read Petitioner his Miranda warnings and Petitioner exercised his right to remain silent; and 4.) CCR intended to file a State Habeas Corpus alleging ineffective assistance of Appellate Counsel on direct appeal for not challenging the comments on Petitioner's right to remain silent under the State constitution which offers greater protection. The Court in Fletcher left open to the State the right to decide differently on the question of Miranda as long as the State procedures, as a whole, remains consistent with the due process of law. In Florida Supreme Court, they determined that under Article I, Section 9, of Florida's Constitution, it does not matter whether warnings are read at all at the time of arrest. According to the Florida Supreme Court, if an arrestee smartly chooses to remain silent his post-arrest, pre Miranda silence cannot be used against him:

> "The absences of such warning does not add or detract from an individual's right to remain silent..."""We avoid treating different defendants who are aware of their Miranda Rights and those who are not. Moreover, we do not provide Police Officers with incentive to delay the giving of Miranda Warnings".

***State v Hoggins**, 718 So 2d 761 at (Fla 1998).* Several other states have adopted the same position as Florida, relying on their own evidentiary rules and State constitutions.

178. Working under the Registry, Mr. Reiter abandoned the entire line of defense CCR

was preparing. He did not call Mr. Miller to testify, nor Mr. Thorpe or Petitioner. Mr. Reiter also did not raise the claim on State Habeas Corpus. And, as a result, the claim was denied stating **nothing in the record** indicated when, or if, Petitioner received Miranda warnings (see: Appendix 50), which is exactly why Ms. Brewer intended to put on the testimony at the evidentiary hearing.

179. Comparing the comments on Petitioner's post-arrest/pre-trial silence to other cases decided by the Florida Supreme Court and Federal Court, it was apparent to CCR attorneys that the comments required reversal. However, they also understood that if the court denied the claim on State habeas Corpus, the standard in Federal Court required that the record reflect when Miranda warnings were given to Petitioner. Knowing what the court expects of them, CCR attorneys developed the defense strategy as outline paragraph #177-178 above. However the CCR office was shut down before the evidentiary hearing. As a direct result of CCR being shut down, and the forced switch to Registry, the line of defense CCR had developed was abandoned, and the issue was sabotaged by the abandonment of that line of defense.

180. Reading the court orders denying the post-conviction motions, Petitioner repeatedly instructed Mr. Reiter to file motion for rehearing or a corrective motion. Petitioner told Mr. Reiter that he needed to attach the portions of the court records that established that Mr. Allbritton provided effective representation which was based on a premise that is either incorrect or on inferences that were not supported by the record.

181. When Mr. Reiter continued to refuse to file any type of motion to correct the record. Petitioner drafted out a motion, as follows, ordering Mr. Reiter to file it:

a. Trial attorney first met Petitioner to discuss a defense 13 days prior to start of trial

In questions involving trial counsel performance, the review must start at the beginning of their representation, not at the end of it. And it must entail a review of the entire record. That means that in this case any review must acknowledge first off, that the record conclusively established that Mr. Allbritton never met Petitioner to begin preparing a defense until the 13th day before the start of trial.

The pre-trial record shows February 17, 1994, only 19 days before trial, Branch wrote the trial judge stating:

> "As of 2-17-94 I have only been visited by Mr. Allbritton once, which was Friday the 29 October 1993 [The day he was hired]; The visit lasted 5 Short minutes".....
> "It is beyond me how a lawyer expects to fight for my life when he has Never asked me the first question concerning the charges at hand" [Appendix 31] (T. 355)

Charged with capital murder, 19 days before trial, Mr. Allbritton had not met his client, Branch, to discuss a defense.

Furthermore, by letter dated 17 February 1994 mailed to the trial judge, Al Branch, Petitioner's Grandfather, who had hired Mr. Allbritton, stated that, not only had Mr. Allbritton failed to meet Petitioner, but also, despite numerous attempts by Branch's family to participate, "driving down from Indiana 7 or 8 separate trips over a 4 month period" and even offering to hire a second attorney, Mr. Allbritton did little more than blow them off (see: Appendix 32) (T 338).

Also, February 22, 1994, only 13 days before trial, having received no reply from the trial court, Branch's Grandfather stood, asking the court for help. Al Branch instructed the Judge

that Petitioner wanted to fire Mr. Allbritton. The pleas for help were ignored, the Judge stating "that's not something with which I can be concerned" (T 353-354).

Additional pre-trial records support the fact Mr. Allbritton did not meet Branch until 13 days before trial, Dr. Zoss, a forensic psychologist employed by the Escambia County Jail as coordinator of Adult Forensic Services Program. Branch attended weekly group therapy session with Dr.Zoss. Within Dr. Zoss' medical files dated 23 February 1994, she wrote:

"affect was appropriate [Branch], finally saw his attorney yesterday x 2 hrs."

(see: Appendix 34), County jail visitation log books corroborate this statement showing Mr. Allbritton signed in to visit Branch on February 22, 1994 (see: Appendix 35).

The trial court itself weighed in on the subject. Immediately prior to trial, Mr. Allbritton requested a continuance to allow him to investigate evidence. Denying that request, the trial judge stated:

> "I want to make it clear on the record what the situation is, the court has denied those continuance request because I believe the defense simply waited and waited and waited...before beginning to seek that information" (T-985).

Clearly, the record reflects that even the trial court thought Mr. Allbritton was acting in bad faith. Het, the record does not end there. By motion filed immediately after trial, a pro se motion for new trial, Branch stated:

"Defendant charges ineffective representation of counsel, to-wit: John Allbritton....for reasons stated herein: The aforesaid attorney did not establish personal contact with the defendant until 13 days before defendant's first degree murder trial" (see: Appendix 37) (T-353-54).

The pre and immediate post-trial records establish that Mr. Allbritton did not initiate contact with Branch until February 22, 1994, or 13 days before trial. These facts are firmly fixed within

the record. Yet, the lower courts completely ignore this point and the vast implications it presents.

That said, Branch concedes this fact alone is not dispositive in proving Mr. Allbritton was ineffective or that any defense was not part of a calculated trial strategy. However, in the same tone, the court cannot property review counsel's representation without looking at Mr. Allbritton's actions in light of Mr. Allbritton's failure to establish contact with his client until 13 days before trial and its possible outcome. After all, the question becomes: What exactly did Mr. Allbritton do to prepare a defense in those 13 days?

b. Reliance on work done by Public Defender

In attempting to justify Mr. Allbritton's failure to investigate or interview witnesses or generally prepare for trial, which he admitted at the evidentiary hearing. The Lower Courts try to assign work of the Public defender, Earl Loveless to Mr. Allbritton.

Basically, the court found that Mr. Allbritton did not have to do any work because Mr. Loveless had already done everything to prepare. However, that is not supported by the record. Mr. Lovelace testified at the evidentiary hearing that he had only begun to collect the discovery material. He was, at the beginning, not the end of the process. At the time Mr. Allbritton took over the case, October, 1993, Mr. Loveless had only worked on the case for a little over 3 months.

According to both Mr. Loveless and Mr. Allbritton, the attorneys met one time when Mr. Allbritton came to get the files. Neither attorney could remember discussing the merits of the case. Mr. Lovelace thought he told Mr. Allbritton where the case set in the discovery process, but that is it.

Moreover, contrary to the court's suggestion, Mr. Loveless did not travel to Indiana to speak with family and friends "in search of mitigation". Yes, Mr. Loveless did travel to Indiana, but the characterization of the trip is not correct. As a graduate of Indiana University School of Law, Mr. Loveless travelled to Indiana for an Alumni event. While in Bloomington, he took advantage of the proximity to Branch's childhood home – a one hour drive- to introduce and familiarize himself with the Branch family. Mr. Loveless did not record the conversation or take any notes. According to Mr. Loveless, the point of the visits was to make introductions, gauge the family members and begin to foster trust in anticipation of collecting mitigation.

Carrying that forward to Mr. Allbritton, there was no testimony nor exhibits introduced at the evidentiary hearing indicating that Mr. Lovelace's files contained any information about the trip to Indiana, or that Mr. Allbritton even knew about the trip to Indiana. In fact, Mr. Allbritton contradicts the court's findings. Repeatedly, Mr. Allbritton requested the trial court grant a continuance, a theme of those requests, as shown in the 24 January 1994 motion was the claim. Mr. Allbritton needs to travel to Indiana: "to speak with potential witnesses in order to prepare for a potential penalty phase" (T 115-116). Certainly, if the Court's characterization of Mr. Loveless' trip was correct, there would not be any reason for Mr. Allbritton to travel to Indiana as well.

The record shows that the only thing Mr. Loveless did on the case that benefited Mr. Allbritton was to begin the discovery process. After all, review of those files was the extent of Mr. Allbritton's pre-trial preparation.

c.Family Members Interviewed:

The Lower Courts stated that numerous family members were interviewed – What

family members and who were they interviewed by?

At the evidentiary hearing, Mr. Allbritton testified, other than Alfred Branch (grandfather) he did not speak to members of the Branch family until the week of trial (EH-216); a fact supported by Al Branch's pre-trial letter to the Court (see: Appendix 32) (T-338).

Connie Branch, who as Director of Child Services in her Indiana District, has routinely testified on behalf of the State in child protection actions, testified at the evidentiary hearing that 10 family member attended the trial. She further testified that Mr. Allbritton failed to discuss what to expect – what kind of information would be of help – what questions the Prosecutor might ask – what answers would be appropriate. Nor were they instructed that the jury would assess their demeanor (EH-462-463).

Initially, at the close of the State's penalty phase presentation, Mr. Allbritton renewed the need for a continuance to prepare mitigation, and closed, informing the Court he had nothing to offer. The trial court questioned Mr. Allbritton's decision, expressing harsh opinion of his reasoning (T-985). After the exchange Mr. Allbritton informed the court he would present witnesses. The Judge recessed for 'lunch' to allow Mr. Allbritton to prepare family members to testify. (T-978).

According to Connie and Alfred Branch, the 'lunch break' was the first time Mr. Albritton spoke with any family about mitigation and that the extent of his advice was largely that family members should say the worse things they could think about Branch. Mr. Allbritton's logic was that it would be easier to get a reversal of a death sentence, than a life sentence (EH 463).

After lunch, Mr. Allbritton called Robert and Alfred Branch to give testimony. Without exception, it was an unmitigated disaster. Mr. Allbritton did not attempt to call anyone else

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to testify (EH 464).

Mr. Allbritton did not recall telling the family to "say the worse things about Eric", but otherwise, he did not contest the record or the testimony of Connie and Al Branch.

Clearly the record shows that Mr. Allbritton's decisions as to the presentation of mitigation had nothing to do with conducting an investigation and deciding "it was not helpful". Mr. Allbritton got stuck, he thought the Judge would grant him a continuance. When the Judge denied that request, Mr. Allbritton had nothing prepared to offer as a defense.

d. Hired an Investigator 7 days before trial.

Private Investigator, Fred Wimberly, testified he was hired by Mr. Allbritton 7 days before trial. The sole purpose of hiring Mr. Wimberly was to locate Eric St. Pierre, the real murderer according to Branch's trial testimony (EH-155-156). Mr. Wimberly testified that he met Branch who told him how to find Eric St. Pierre (EH-225) Mr. Wimberly also stated in 7 days' time he found Eric St. Pierre and took his picture. Mr. Wimberly shared the picture with Mr. Allbritton (EH 326-328). The photograph was entered into evidence at the evidentiary hearing. Despite the photograph and no evidence that Mr. Wimberly had reason to lie, Mr. Allbritton denied Mr. Wimberly's testimony.

According to Mr. Wimberly, after finding Eric St. Pierre and showing the photos to Mr. Allbritton, he was never asked to conduct any follow up investigation or provide testimony. In fact, from the record, we know, in spite of this knowledge, Mr. Allbritton put Branch on the stand to testify, allowing the State to repeatedly attack his credibility, mocking Branch's testimony as "made up" and Eric St. Pierre as "this mystery person",

painting it as a complete fabrication.

e. Failure to consult or hire mitigation experts.

The Court denying relief, states that Mr. Allbritton relied on a "confidential mitigation specialist" hired by prior counsel, whose conclusions "did not help" finding that "this is not a case where the defense did not adequately look for evidence", yet, in fact, the record demonstrates that that is exactly the case.

To begin, the conclusion is incorrect. It relies exclusively on the Florida Supreme Court opinion, on page 11, the court states "Loveless also arranged for Dr. Larson to act as a confidential mitigation consultant...Dr. Larson's evaluation was not helpful to the defense". However, as the record established, Mr. Loveless testified the Public Defender's office routinely hires Dr. Larson in death penalty cases to conduct preliminary sanity and competency examination. Not Mitigation! (EH 295) Dr. Larson testified "my evaluation was simply very preliminary; I don't think I ever consulted the Public Defender's office after I did the initial evaluation". (E-113).

Further neither Mr. Loveless (EH-305) nor Mr. Allbritton (EH 142-143) recall speaking to Dr. Larson after he conducted his two hour competency exam. Clearly, whatever belief the Lower Court had that Dr. Larson's examination foreclosed any duty Mr. Allbritton had to hire, or, at least, consult mitigation experts, is wrong. After all, Mr. Lovelace, Mr. Allbritton and Dr. Larson testified that he had nothing to do with mitigation in this case. How the Lower Court found otherwise, is an open mystery.

f. Mr. Allbritton's failure to consult or hire forensic experts.

In a case that relied heavily on forensics, Mr. Allbritton testified that he did not hire, or

even consult any experts, prior to trial. He provided two reasons: 1.) he felt that he would be able to effectively cross-examine the state experts, allowing him to maintain final closing argument at trial, and 2) he was concerned that if he hired experts, if the opinion was favorable to the state, the state would call that expert against Mr. Branch;

> "However, he's been declared partially indigent, for cost, whether I want to call that person as a witness or note, the state now knows because I've got to file a motion to have that person paid, they now know who that expert witness is. And if I get an expert witness that's going to come back and say something that doesn't fit my client's testimony, now I've helped, I've assisted the state in their case". (EH 230-231).

Mr. Allbritton's explanation clearly shows his ignorance of the law regarding confidential experts.

As to whatever extent retaining final argument can be called a 'strategy', the Supreme Court has made it clear that they will not consider any strategy reasonable unless the attorney can show that their decision to pursue that strategy was reached after they "conducted an investigation and careful consideration of the facts". *Wiggins v Smith; 123 S. Ct. 2527 (2003), Strickland v Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984) Elledge v Dugger, 823 F.2d 1439 (11th Cir. 1987) Magill v Dugger, 824 F.1d 879 (11th Cir. 1987).* In *Wiggins*, trial counsel waited until the last minute to obtain an expert. However, at least, he eventually hired an expert. This case is far more egregious. Not only did Mr. Allbritton not hire any experts, he admitted that he did not even consult any experts.

Retrospectively, Mr. Allbritton blames his behavior on ignorance of the law concerning discovery requirements for experts (EH 230-231). Perhaps that is partially true, but as it relates to any 'strategy', the record displays a far more simple explanation. Based on his

request, Mr. Allbritton expected the court to grant a continuance. After all, this was his first death penalty case. He was trying to prepare a second death penalty case for trial, and a major drug case. At the time of trial, Mr. Allbritton had only been counsel of record for four months, over which, the court had only granted one prior continuance (T-115); (The case went to trial in eight months from when Branch was charged).

When the court denied Mr. Allbritton continuance, he had 13 days left to form an attorney/client relationship with Branch, which left no time to conduct any reasonable investigation or make any reasonable decisions as to calling the idea of retaining final closing argument a 'strategy'. Here, it is clear that it had nothing to do with 'strategy' in that Supreme Court precedent firmly established that strategy is formed through interviews, consulting experts, and researching the law. Mr. Allbritton admitted to not doing any of these things. During final closing arguments, Mr. Allbritton does so only to the extent that it could be called a default strategy based in Mr. Allbritton's admitted ignorance of the law and his failure to obtain a continuance, leaving only 13 days to prepare for trial.

In the Lower Courts, Mr. Allbritton was given a pass for not consulting or hiring any experts. According to the Court, he was justified because, in their opinion, the experts that testified on Branch's behalf at the evidentiary hearing did not identify any substantial factual mistake, only differing opinions. However, not only is that factually wrong, but also, legally, it's incorrect.

Branch won't highlight every factual mistake or inaccuracy established by the experts, still, a brief review is warranted.

Branch was charged with sexual battery, which was the basis for the felony murder

charge. Factually, the charge was based on discovery of a small twig located during the autopsy in the vaginal vault. The twig was approximately 1.1 x 4.5 cm (see: Appendix 28). The trial evidence suggested the nude victim was pulled approximately 88 feet through the underbrush, where she was buried beneath a pile of similarly sized and shaped twigs and leafy vegetation off the forest floor, that had trees pushed up tightly and compacted around the body.

At the evidentiary hearing, Dr. Jack Daniel, a forensic pathologist, hired by Branch, testified that, based on a review of the evidence, he thought it was likely that the twig penetrated the vagina incidental to having debris pushed onto the body during the burial. Particularly, Dr. Daniel pointed to the fact that the body was completely covered in similar debris, to the point where police, while still conducting their search, stepped on the body without knowing it. The vagina, as "Dr. Cumberland admitted at trial, contained other loose wood fragments (T-751) [16] and there was no indication of internal lacerations or bruising. Also, while not direct evidence, the size of the twig, 1.1 x 4.5 cm., in relation to Branch's hand show the twig is far too small to grab or hold, as the state argued happened, while it was "forcibly rammed" and "broken off in the vagina like a broomstick" (T 844).

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[16] Dr. Cumberland testified at trial on behalf of the State. He is a forensic pathologist.

Additionally, Dr. Daniel testified that Dr. Cumberland made a critical error in not conducting microscopic tissue examinations that would allow him to conclusively determine if the twig was inserted pre-mortem or post-mortem; "so before you can ascertain whether or not an area of discoloration is, in fact, blood that's free in the tissue, you really need to take a piece of that and examine it under a microscope" (EH 344-372). Dr. Cumberland did not conduct a microscopic examination of the tissue and he agreed with Dr. Daniel. "He is correct in that microscopically is the best way to document a timetable" (EH 399). This is critical, because at trial, the only fact the jury was provided to consider, was the opinion it happened pre-mortem.

Also, at the evidentiary hearing, Dr. Cumberland conceded that the testimony Dr. Daniel provided that the twig was inserted accidently or incidentally during burial, was as reasonable as his own opinion. And Dr. Daniel was correct, he could not state conclusively the twig lodged in the vagina pre-mortem or post-mortem (EH 379). Contrary to the Lower Court's determination, Dr. Cumberland's admissions was a drastic departure from testimony the trial jury heard. Dr. Cumberland explained the difference between his trial and evidentiary hearing testimony, stating that he did not clarify his statements at trial that there were other explanations that supported how and when the twig lodged in the vagina because Mr. Allbritton did not ask him the right questions. (EH 382)

The point is important because it goes directly to the sexual battery and the felony murder charge. The idea that Mr. Allbritton had a belief he would be able to elicit testimony from the state's experts, which would allow him to negate the underlying felony sexual battery charge without the assistance of independent experts, even if just as an advisor, is beyond

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unreasonable, it defies logic. The state expert admits that the facts supported the defense position, but that Mr. Allbritton did not ask him the right questions, incompetence that left the jury being told that the twig was inserted purposely and pre-mortem.

The Supreme Court in Wiggins reiterated "counsel's duty to make reasonable investigation or to make reasonable decisions that make particular investigation unnecessary". On the issue of experts, the 11th Circuit in *Moore v Kemp 809 F.2d 702 (11th Cir. 1987)* held that

> "an expert can assist a criminal defendant in marshaling his defense in two essential ways. First, he can gather facts, inspect tangible evidence or conduct tests or examinations that may aid defense counsel in confronting the Prosecutor's witnesses, including its expert witnesses or in fashioning a theory of defense. Second, the witness can provide opinion testimony to rebut prosecution evidence"
>
> "...The assistance of an expert can be so important to the defense that without it, an innocent defendant could be convicted".

Here, in order to secure a not guilty verdict on the charge of first degree murder, Mr. Allbritton had to subject the sexual battery charge to vigorous challenge. After all, it's possible the jury could find the twig was lodged accidentally or incidental to being buried, or post-mortem, thereby negating the underlying felony. Unfortunately, they were never provided that option.

The lack of expert assistance is further compounded by the fact the defense rested primarily on the jury's assessment of Branch's credibility, instead of hiring experts to offer alternate theories, building a foundation to support Branch's explanation of events. Mr. Allbritton allowed the State and their witnesses to repeatedly, often sarcastically, dismiss

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Branch's testimony as being unreasonable or even fabricated, when, in fact, the testimony given at the evidentiary hearing, even from the State's experts, find Branch's testimony of events was entirely reasonable.

g. Applying Strickland to the actual true facts:

Constitutional touchstone for these claims is, of course, *Strickland v Washington 466 U.S. 688, 123 S.Ct. 2535 (1984);* which requires a petitioner to demonstrate both that counsel's performance was deficiency prejudice the defense. The Court notes that "strategic choices made after thorough investigation of law and facts relevant plausible options are virtually unchallengeable" at 690. The Court however, went on to say that "strategic choices made after less than complete investigation are reasonable professional judgments that support the limitations on investigation. In other words, counsel has a duty to reasonable investigation or to make a reasonable decision that makes particular investigations unnecessary" at 490-91.

In *Wiggins*, the Supreme Court set out to determine whether the attorneys in the underlying capital murder trial exercised "reasonable professional judgment" in their investigation and presentation of mitigating evidence during the penalty phase of trial at 2535 (quoting Strickland). In doing so, the Court focused, not on whether defense counsel should have presented a mitigation case during sentencing, but rather on whether "the investigation supporting counsel's decision not to introduce mitigating was itself reasonable". The Court concluded that defense "Counsels abandoned their investigation of petitioner's background, after only acquiring rudimentary knowledge of his history from a narrow set of source".

Applying the framework established in *Strickland* and *Wiggins*, the deficiencies identified in the performance of Branch's defense counsel are made more apparent. *Wiggins'*

counsel at least had arranged for an expert to examine him, and he reviewed state records and the pre-sentence investigation report. In contrast, Mr. Allbritton admitted that, other than reviewing the State's files that Mr. Lovelace had begun to compile, he couldn't establish anything else he had done. He did claim to read some text as research, but was unable to identify that research material.

As it relates to strategy, the record shows Mr. Allbritton made the decision to set aside preparing Branch's case for trial, for that matter, even meeting Branch, to concentrate on two other clients trial dates, calculating that the Court would grant him a continuance. When it did not, Mr. Allbritton found he was completely out of time to do any type of investigation, locate and interview witnesses, consult and hire experts, or conduct any meaningful legal research. Clearly, as Branch has shown, a strategy by time-default is not a strategy in anything more than name alone. And if debate ability is the standard for this petition, based on Court precedent, it's certainly debatable whether Mr. Allbritton's behavior was reasonable. After all, there is no evidence that Mr. Allbritton's decision to forego investigation was reasoned at all. According to precedent, far from reasonable, Mr. Allbritton's failure to investigate was not part of a calculated trial strategy, but is likely the result of either indolence or incompetence. *Strickland – Wiggins – Williams – v Taylor, 529 U.S. 362, 120 S. Ct. 1495 (2000). Anderson v Johnson, 338 F3d 382 (5th Cir. 2003). Smith v Dugger, 840 F.2d 787, (11th Cir. 1988). Smith v Dretke, 422 F.3d 269 (5th Cir 2005). Armstrong v Dugger, 833 F.2d 1430(11th Cir. 1987). Barnard v lane, 819 F.2d 798 (7th Cir. 1987). Riley v Payne 353 F.St. 1313 (9th Cir. 2003).*

Inasmuch as the Lower Courts have incorrectly applied the law in this case, as well as making faulty assumptions, not supported by the record, Branch was prejudiced by counsel's

failure to form an attorney/client relationship until 13 days before trial, counsel's failure to investigate, failure to interview witnesses, consult forensic and mental health experts, his failure to review Branch's prior conviction, or move to suppress evidence.

The Court should accept rehearing this issue.

h. Court's findings reviewing the failure to grant continuance

The Grand Jury indicted Petitioner in February, 1993 (T-1) but, despite being held in county jail in February, 1993, the State did not serve the indictment until June, 1993 (R-142). The Public Defender's office was appointed in June. They assigned the case to Earl Lovelace in July, 1993. Except for general discovery demands, there is little evidence of activity until late October, 1993.

On or about November 1, 1993, Mr. Allbritton took over as counsel (R-109). The trial of this case began on March 7, 1994. Mr. Allbritton had four months and one week to prepare. This was Mr. Allbritton's first death, and he tried the case solo. At the time Mr. Allbritton assumed representation of Mr. Branch, the trial court scheduled the case for a few weeks later in November, a postponement was issued and new trial date set.

On or about January 24, 1994, Mr. Allbritton filed motions for continuance (R-115) alleging four reasons: 1) when he became Branch's lawyer, he had "very little, if any knowledge of the facts of the case"; 2) he was conducting discovery for a major drug case at the same time; 3) he was involved in another capital case that was scheduled for trial in February, and 4) he needed to travel to Indiana to speak with potential witnesses in order to prepare for a potential penalty phase (R 115-116). The Court granted continuance on this motion.

Trial counsel filed a continuance on February 22, 1994. He filed another motion for

continuance (R-158), and motion to postpone penalty phase on March 1, 1994 (R-162). In that motion he stated that he was not prepared:

> "In the event of a conviction, the defendant intends to offer mitigation testimony from witnesses of which the majority would be brought from out of state".
>
> "In the event of a conviction for first degree murder, counsel for the defense would be moving for a psychiatric examination of the defendant prior to proceeding to the penalty phase."

This motion was denied.

Immediately before the penalty phase began, counsel renewed his request for continuance. Mr. Allbritton indicated he needed to retain a mental health expert to conduct an examination (R-942).

The court denied the request and responded:

> The Court: I want to make it clear on the record what the situation is...I believe the defense simply waited and waited and waited through a number of continuances before beginning to seek that information (R-985).

Mr. Albritton had only been counsel on the case for a total of four months, over which only his January 24, 1994 motion for continuance had been granted. As the record indicates, almost all his requests for continuances came within two weeks of the start of trial. And those were denied.

The 11th Circuit Court of Appeals has stated the guidelines when evaluating whether a

court has abused its discretion in denying a continuance in *U.S. v Baker 432 F3d 1189 (11th Cir. 2005).*

> There is no mechanical test for deciding when a denial of continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case. Particularly in the reasons presented to trial judge at the time the request is denied...when deciding whether a denial of a continuance impinged on the defendant's "fair and reasonable opportunity" to choose counsel, reviewing courts should consider a number of factors: (1) The length of the delay; (2) whether the counsel who becomes unavailable for trial has associates prepared to try the case; (3) whether other continuances have been requested and granted; (4) the inconvenience to all involved in the trial; (5) whether the requested continuance is for a legitimate reason; and (6) any unique factors. *Bowe 221 F.3d at 1190.* It is of no relevance that substitute counsel has not been shown to have performed incompetently or ineptly. The claimed deprivation is an arbitrary encroachment on the right to counsel of choice, not a claim of ineffective assistance rendered in the performance by substitute counsel. Gandy 569 F.2d at 1326.

The Lower courts failed to ever consider the following factors the 11th Circuit expressed in Baker: Mr. Allbritton requested only a 4 week delay; (2) He was a sole practitioner; (3) The court had only granted Mr. Allbritton one previous continuance; (4) Trial counsel had represented Branch for only four months; (5) This was his first death penalty case; (6) He was appointed as conflict counsel in another death case – as well as a major drug case; (7) This case

was unique because the client was on trial for his life; (8) Branch's family members were fairly distant in Indiana; (9) Saundra Morgan had agreed to help Mr. Allbritton, if he could secure a continuance; (Ms. Morgan was a mitigation consultant) and (10) No prejudice to the state was established if a continuance was granted.

Clearly, as shown in herein Supra, the denial of continuance affected Mr. Allbritton's ability to perform numerous tasks that could have helped Branch's case. However, the judge's refusal to grant even a short delay, becomes more troubling when viewed in light of the letters/affidavit Branch and his grandfather sent the judge two weeks before trial (see Appendix 31) (T-355). Stating Mr. Allbritton never came to the jail to meet with him and Al Branch, standing in court, informing the Court that Branch wanted to fire Mr. Albritton (T-353-354). The Court had a client 13 days before trial pleading that he required the court's help, as he had never met his attorney to begin a defense, a grandpa standing in court, telling the judge they were trying to fire Mr. Allbritton, and an attorney making a slew of requests for continuance. This should have set off all kinds of alarms for the judge, if, as the 11th Circuit states in *Baker,* "the answer must be found in the circumstances present in every case". Here, based on the facts, the trial judge's denial of continuance was so arbitrary as to violate due process.

181. Despite writing out the outline of corrective motion and giving a copy to Mr. Reiter with orders to file motion for rehearing and/or a corrective motion, Mr. Reiter repeatedly refused to file it. Petitioner became so frustrated with Mr. Reiter, telling him that the court wishes to kill him, they should at least be forced to explain how an attorney not meeting his client until 13 days before the start of trial; nor interviewing witnesses; nor

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conducting any investigation; nor consulting or hiring any experts; not preparing any mitigation; nor putting on any defense, can be considered to have provided competent representation under any standard of law. However, instead of taking any action to have the court correct the record, Mr. Reiter indicated that money was not available under the Registry for these motions, and that the next court would conduct its own evaluation of the facts.

182. Finally, Petitioner filed his own motion under Rule 59(e) in the Federal Court. Of course, given the prohibition on pro se filings, that motion was returned to Petitioner as an illegal pro se filing.

183. In the forced switch to Registry representation, even where Mr. Reiter adopted the line of argument that CCR attorneys were developing, he turned around to sabotage the argument in not presenting the evidentiary basis to support those claims at the evidentiary hearing. Petitioner alleges that Mr. Reiter abandoned and sabotaged Petitioner's post-conviction review claims as a direct result of the Registry statute, which promises attorneys a set fee at each stage of appeal, and forces an attorney to determine how much of that fee should be spent on the defense, and how much should go to their fee. In other words, it forces them to put their financial interest above the interest of their client.

184. Petitioner has presented the factual basis to this claim from documents he has read and conversations. However, Petitioner does not have a complete copy of his records. When those documents are obtained, Petitioner would reserve the right to amend this legal action.

LEGAL CLAIMS

185. Petitioner alleges that, as described herein, paragraph #1 thru 184, above, Mr. Reiter, working as Registry counsel, did wantonly and willfully disregard his client's best interest by not adding key and essential preparation. That counsel did abandon and/or sabotage Petitioner's post-conviction appeal, and that Mr. Reiter's actions/inactions were a direct result of restrictions placed on him by contract with the State of Florida, and/or the Registry statute. Ch. 27 F.S....Moreover, as a direct result of Mr. Reiter's negligence and incompetence and dereliction of his legal duties, Petitioner has suffered and continues to suffer severe legal prejudice to this criminal case, to suffer substantial loss, and to suffer extreme mental and emotional distress and anguish.

186. Petitioner alleges that, as described herein, paragraph 1 thru 185 above Chapter 27.710 and DC Chapter 27.711 F.S. are unconstitutional on their face in that said statutory provision have and continue to violate Petitioner [and all other similarly situated appellants] right to access the court guarantee under the first amendment to the United States constitution and/or Article I section 21, Florida Constitution.

187. Petitioner alleges that, as described herein, paragraph 1 thru 186 above, Chapter 27.710 and/or 27.711 F.S. are unconstitutional on their face in that said statutory provisions have and continue to violate Petitioner [and all other similarly situated appellants] rights to due process under the law guaranteed under the fifth amendment to the United States Constitution and/or Article I section 9 of the Florida Constitution.

188. Petitioner alleges that as described herein, paragraph 1 thru 187 above, Chapter 27.710 and 27.711 F.S. are unconstitutional on their face in that said statutory provisions have

and continue to violate Petitioner [and all other similarly situated appellants] right to effective and/or conflict free representation, guaranteed under the sixth amendment to the United States constitution and/or Article I section 9 of the Florida constitution.

189. Petitioner alleges that as described herein, paragraph 1 thru 188 above, Chapter 27.710 and 27.711 F.S. are unconstitutional on their face in that said statutory provisions have and continue to violate Petitioner [and all other similarly situated appellants] to equal protection under the 14th amendment of the United States Constitution, and/or Article I section 2 of the Florida Constitution.

190. Petitioner alleges that as described herein, paragraph 1 thru 189 above, Chapter 27.710 and 27.711 F.S. are unconstitutional on their face and/or as they are being applied in that said statutory provisions have and continue to violate Petitioner [and all other similarly situated appellants] constitutional right by exposing [t]him, to cruel or unusual punishment under the 8th amendment of the United States Constitution and/or Article I section 17 of the Florida constitution.

191. Petitioner alleges that as described herein, paragraph 1 thru 190 above, Chapter 27.710 and 27.711 F.S. are unconstitutional on their face and/or as they are being applied in that said statutory provisions have and continue to violate Petitioner [and all other similarly situated appellants] right to full and fair Habeas Corpus review guaranteed under Article I, section 13 of the Florida Constitution, and/or the right to petition for habeas Corpus review pursuant to 78 U.S.C. 2254 in the Federal Court, guaranteed under Section 9, Clause 2 of the united States Constitution.

192. Petitioner alleges that as described herein, paragraph 1 thru 191 above, Chapter

27.710 and 27.711 F.S. are unconstitutional as they are being applied in that said statutory provisions have and continue to violate Petitioner [and all other similarly situated appellants] in violation of the First amendment to the United States Constitution and/or Article I, Section 17 Florida Constitution.

193. Petitioner alleges that as described herein, paragraph 1 thru 192 above, Chapter 27.710 and 27.711 F.S. are unconstitutional as they are being applied in that said statutory provisions have and continue to violate Petitioner [and all other similarly situated appellants] in violation of the Fifth amendment due process right guaranteed under the United States Constitution and/or Article I, Section 9, Florida Constitution.

194. Petitioner alleges that as described herein, paragraph 1 thru 193 above, Chapter 27.710 and 27.711 F.S. are being applied in an unconstitutional manner in violation of Petitioner [and all other similarly situated appellants] right to effective and/or conflict free representation, guaranteed under the Sixth amendment to the United States Constitution, and/or Article I, Section 9 of the Florida Constitution.

195. Petitioner alleges that as described herein, paragraph 1 thru 194 above, Chapter 27.710 and 27.711 F.S. are being applied in an unconstitutional manner in violation of Petitioner [and all other similarly situated appellants] right to be treated equally under the 14th amendment to the United States Constitution, and/or Article I, Section 2, Florida Constitution. Specifically, Petitioner alleges that he and all other similar situated capital appellants located in the former Northern District CCR office, or with a conflict in the other two CCR Districts, that are or have been appointed Registry counsel under 27.710 and 27.711 F.S. have and continue to be denied a similar or equal level of quality representation in that, as alleged herein, Ch

27.7002, Ch 27.710 and Ch 27.711 F.S. set forth unprecedented and/or extortionate threats of sanctions against Registry counsel, which do not apply to CCR attorneys. Furthermore, as alleged herein, representation by CCR and the Registry are different, not only in degree, but also in kind, and particularly in result. Moreover, no valid basis existed for law makers to legislate this distinction between CCR and Registry counsel, and that the consequences of these legal distinctions have been that for Registry clients, meritorious constitutional claims often go without review or remedy, in that, even when experienced and competent Registry attorneys are available, they are often unable to render adequate service due to restrictions placed on them by statute and imposed by contract with the executive branch of government. And, as a result, increasingly, the decision about who will die and who will live, now turn, not on the nature of the offense, but rather on the nature of legal representation the state provide indigent capital post-conviction appellants in violation of the equal protection clause of the 14th amendment and Article I, Section 2 of the Florida Constitution.

196. Petitioner alleges that, as described herein, paragraph 1 thru 195 above, defendant, Jeff Atwater, as Chief Financial Officer, knew and that he does know that Ch. 27.7002, Ch. 27.710, and Ch. 27.711 F.S. have, and they continue to be applied to Petitioner and all other similar situated capital appellants, in an unconstitutional manner, as described herein. Moreover, Petitioner alleges that, despite that knowledge, Mr. Atwater, as part of his duties as Chief Financial Officer, continues to maintain and enforce the unconstitutional and discriminatory policies of Ch. 27.7002, Ch. 27.710 and Ch. 27.711 F.S.

197. Petitioner alleges that as described herein, paragraph 1 thru 196 above, defendant, Alton Colvin, Jr., as Director of Justice Administration Commission, knew, and that

he does know, that Ch. 27.7002 Ch. 27.710, and Ch. 27.711 F.S. have, and they continue to be applied to Petitioner and all other similar situated capital appellants, in an unconstitutional manner, as described herein. Moreover, Petitioner alleges that, despite that knowledge, Mr. Colvin, as part of his duties as Director of Justice Administration Commission, continues to maintain and enforce the unconstitutional and discriminatory policies of Ch. 27.7002, Ch. 27.710 and Ch. 27.711 F.S.

198. Petitioner alleges that as a result of the actions and/or inactions of defendant, Atwater, and defendant, Colvin, in enforcing the unconstitutional and discriminatory policies of Ch. 27.7002, Ch. 27.710, and Ch. 27.711 F.S. as described herein, paragraph 1 thru 197. Petitioner, and all other similar situated capital appellants, will be put to death by the state of Florida in violation of the 8th amendment of the United States constitution, and/or Article I Section 17, Florida Constitution.

199. Petition alleges that the practices, policies and statutory provision of Ch. 27.7002, Ch. 27.710 and Ch. 27.711 F.S., as described herein above, which provide Petitioner and all other similar situated capital appellants, constitutionally unequal post-conviction representation, and/or which deny full and fair post-conviction appellant review, are based on arbitrary and capricious whims. Moreover, Petitioner alleges that, as described herein, they have no rational basis or justification.

200. Petitioner alleges that the actions and/or inactions of each named and unnamed defendants in enforcing, overseeing and maintaining the unconstitutional practices and policies of Ch. 27.7002, Ch. 27.710 and Ch. 27.711 F.S. as described herein above, was done arbitrarily and capriciously, and/or knowingly and intentionally in deliberate accord to deprive Petitioner

and all other similar situated capital appellants, their state created constitutional right to post-conviction review and/or their constitutional right to state and federal review on petition for Habeas Corpus of their conviction and/or sentence of death.

201. Petitioner alleges that as described herein, paragraph 1 thru 200, Chapter 27.7002, Ch. 27.710, and Ch. 27.711 as they are being applied to Petitioner and all other similar situated capital appellants, have and continue to impermissibly interfere with the function of the judiciary, which constitutes a violation of Florida's Doctrine of Separation of Powers, under Article II, Section 3 Florida Constitution.

202. Petitioner alleges that as described herein, paragraph 1 thru 201, as direct result of the actions and/or inactions of each named and unnamed defendants, and/or the unconstitutional statutory provisions of Ch. 27.7002, Ch. 27.710 and Ch. 27.711 F.S. and as a direct result of the forced switch to Registry counsel, Petitioner was denied constitutionally adequate, full and fair post-conviction review of his conviction and/or sentence of death.

COUNT I

203. Petitioner submits that as set forth and contained in paragraph 1 thru 202, defendant, Atwater, did violate Petitioner [and all other similar situated capital appellants], first and/or fifth and/or sixth and/or eighth and/or fourteenth amendments to the united States Constitution and/or Article I Section 2, and/or Section 9, and/or Section 17, and/or Section 21 and/or Article I Section 13, and/or Article II, Section 3 Florida Constitution.

COUNT II

204. Petitioner submits that as set forth and contained in paragraph 1 thru 202, defendant, Colvin, did violate Petitioner [and all other similar situated capital appellants]. First

and/or fifth and/or sixth and/or eighth and/or fourteenth amendments to the united States Constitution and/or Article I, Section 2 and/or Section 9, and/or Section 13 and/or Section 17 and/or Section 21 and/or Article II, Section 3 Florida Constitution.

COUNT III

205. Petitioner submits that as set forth and contained in paragraph 1 thru 204, herein, Chapter 27.7002, Ch. 27.710 and Ch. 27.711 Florida statute are unconstitutional as they are reapplied to Petitioner [and all other similar situated capital appellants] in violation of the first and/or fifth and/or sixth and/or eighth and/or fourteenth amendments under the United States Constitution and/or Article I, Section 2 and/or Section 9 and/or Section 13 and/or Section 17 and/or Section 21 and/or Article II, Section 3, Florida Constitution.

COUNT IV

206. Petitioner submits that as set forth and contained in paragraph 1 thru 205 herein, statutory provisions Ch. 27.7002, Ch. 27.710 and Ch. 27.711 Florida statute are on their face, unconstitutional, in violation of Petitioner [and all other similar situated capital appellants] first, and/or fifth, and/or sixth, and/or eighth, and/or fourteenth amendments to the United States Constitution and/or Article I, Section 2 and/or Section 9, and/or Section 13, and/or Section 17, and/or Section 21 and/or Article II Section 3 Florida Constitution.

COUNT V

207. Petitioner submits that as set forth and contained in paragraph 1 thru 205 herein, statutory provisions Ch. 27.7002, Ch. 27.710 and Ch. 27.711 Florida statute are being applied in an unconstitutionally discriminatory manner in violation of Petitioners [and all other similar

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situated capital appellants] rights guaranteed under equal protection clause of the fourteenth amendment to the United States Constitution and/or Article I Section 7 Florida Constitution.

DAMAGES

208. Petitioner does not seek monetary damages.

RELIEF

a. 1983 action

209. Petitioner demands a trial by jury on each and every constitutional violation alleged herein.

210. Petitioner seeks declaratory judgment finding that Chapter 27.7002 and/or Ch. 27.710 and/or 27.711 Florida statute is unconstitutional on its face.

211. Petitioner seeks declaratory judgment finding that Chapter 27.7002 and/or Ch. 27.710 and/or 27.711 Florida statute is unconstitutional as it is being applied to Petitioner and/or all other similar situated capital post-conviction appellants.

212. Injunctive relief in the form of enjoining order which orders the defendants to rescind and void all contracts made pursuant to Chapter 27.7002 or Chapter 27.710 or Chapter 27.711 Florida statute with attorney on the 'Registry list' or any other attorney in the future that wishes to represent capital appellants.

213. Injunctive relief in the form of enjoining order which orders the named and unnamed defendants to reconstitute and fund CCR Northern District and/or provide Petitioner [and all other similar situated capital appellants] legal representation that is equal in funding, resources, material/human support and/or that otherwise are without any restrictions throughout the capital appellate post-conviction process, to that appointed counsel which is

equal in all manners to that of CCR representation in the Southern and Middle Districts, Florida.

b. Post-conviction motion:

214. An order granting Petitioner leave to proceed on successive 3.850 petitioner, where he shall be permitted the right to present evidence at an evidentiary hearing and/or otherwise fully present each legal claim and supporting evidence on those legal claims that were abandoned and/or sabotaged as result of the forced switch to Registry representation as supported by Martinez v Ryan 22 Fla L. Wkly S175 U.S. S. Ct. March 2012).

215. The right to file amendments.

216. The court grant new trial, reversing the conviction and sentence.

217. The court grant new sentence, overturning the sentence of death.

218. Any other relief the court feels is reasonable and just.

219. An award of all cost and fees pursuant to Florida Federal Statutes.

Dated:_____

_____

Eric S. Branch 313067 pro se
Union Corr. Inst. P-3109
7819 NW 228 St.
Raiford, Fl 32026-4430

NOTARY PUBLIC CERTIFICATE

STATE OF FLORIDA)
)SS:
COUNTY OF UNION

Before me, the undersigned Notary Public, personally appeared the Petitioner herein, Eric S. Branch, who by me being sworn oath, deposes and states that all the foregoing facts contained herein are true and correct on the ___ day of _____, 2013.

_____
Notary Public, State of Florida

My commission expires:_____

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EXHIBIT 39

Supreme Court of Florida
Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

THOMAS D. HALL
CLERK
SUSAN DAVIS MORLEY
CHIEF DEPUTY CLERK
KRYS GODWIN
STAFF ATTORNEY

PHONE NUMBER: (850) 488-0125
www.floridasupremecourt.org

October 4, 2013

Honorable Rick Scott, Governor
The Capitol
Tallahassee, Florida 32399

HAND DELIVERED

Re: Certification Required Pursuant to "Timely Justice Act of 2013"

Dear Governor Scott:

The recently enacted Death Penalty Reform Act specifies that as Clerk of Court of the Supreme Court of Florida I am to certify[1] in writing to you "that a person convicted and sentenced to death before or after the effective date of the act," has:

1. Completed such person's direct appeal and initial postconviction proceeding in state court and habeas corpus proceeding and appeal there-from in federal court; [2] or

---

1. Contrary to some published reports, the certification is by the Clerk of Court and not the Supreme Court of Florida. "The Clerk of the Florida Supreme Court shall inform the Governor in writing certifying ..." 2013 Fla. Laws 216. The Supreme Court of Florida has made no determination of whether the individuals on these lists meet the statutory standard.

2. The statute does not specify, whether, if a prisoner under sentence of death seeks timely certiorari review in the United States Supreme Court after the

2. Allowed the time permitted[3] for filing a habeas petition in federal court to expire.

Based on the records I have available to me,[4] as of October 1, 2013, the following individuals[5] under sentence of death[6] have, as defined in the statute, completed the direct appeal and initial postconviction proceeding in state court and the habeas proceeding and appeal there-from in federal court:

Allen, Lloyd Chase	Atwater, Jeffrey Lee
Alston, Presssly	Beasley, Curtis W.
Anderson, Richard Harold	Belcher, James
Archer, Robin Lee	Bell, Michael Bernard

---

federal appeal, during that review, the prisoner would not qualify as eligible to be "certified" in accordance with the Act. Admittedly the word "appeal" is used and under state law is a term of art and would not include any discretionary review. Because such review is in federal court and would require an interpretation of federal law, I have assumed that such certiorari review in the United States Supreme Court, although discretionary, would mean that review would not be complete and to the extent there may be individuals under sentence of death in that posture, they are not included on the list.

3. I am not sure what legal effect the words "allowed the time permitted" to expire has compared to "the time has expired." I have included on this list those persons where the time has, in my opinion, expired. I do not know if the individuals "allowed" it to expire.

4. The majority of this information comes from sources other than Florida Supreme Court case files. I believe the information is accurate but cannot say it is not subject to dispute. It also involved a number of judgments in which reasonable people could reach different results.

5. The list is in alphabetical order by last name.

6. The statute uses the phrase "convicted and sentenced to death.". I have not included individuals on this list who have been convicted and sentenced to death and who have also completed the initial rounds of review but who are not currently under a sentence of death because they have been granted a new trial or new sentencing hearing but that new proceeding has not yet been completed.

Blanco, Omar
Booker, Stephen Todd
Bowles, Gary Ray
Branch, Eric Scott
Brown, Paul Alfred
Card, James Armando
Cave, Alphonso
Chavez, Juan Carlos
Cole, Loran
Connor, Seburt
Consalvo, Robert
Cox, Allen Ward
Cumming-El, Frederick W.
Dailey, James Milton
Darling, Dolan Carlton
Davis, Adam William
Davis, Eddie Wayne
Dessaure, Kenneth
Dillbeck, Donald David
Doorbal, Noel
Doyle, Daniel Lee
Duckett, James Aren
Evans, Steven Maurice
Evans, Wydell Jody
Fennie, Alfred Lewis
Finney, Charles William
Ford, James D.
Foster, Charles
Foster, Jermaine A.
Fotopoulos, Konstantios X.
Franqui, Leonardo [7]
Freeman, John D.
Gamble, Guy R.
Gaskin, Louis B.
Gonzalez, Ricardo
Gordon, Robert
Griffin, Michael Allen
Gudinas, Thomas Lee
Haliburton, Jerry Leon
Hamilton, Richard Eugene
Happ, William*
Hannon, Patrick
Harvey, Harold Lee Jr.
Hendrix, Robert Eugene
Henry, John Ruthell[8]
Henry, Robert L.
Herring, Ted
Hertz, Guerry Wayne
Hodges, George Michael
Howell, Paul Augustus*
Hunter, James Eugene
Hutchinson, Jeffrey Glenn
Israel, Connie Ray
Jackson, Etheria Verdel

*Existing death warrant

---

7. Mr. Franqui has two death cases both from Miami-Dade County. One sentence meets the qualification for certification; the other does not.

8. Mr. Henry has two death sentences; one from Hillsborough County and one from Pasco County.

Jennings, Bryan Fredrick
Jimenez, Jose Antonio
Johnson, Ronnie
Jones, David Wyatt
Jones, Randall Scott
Jones, Victor Tony
Kelley, William Harold
Kimbrough, Darius Mark
Knight, Thomas [9]
Kokal, Gregory
Kormondy, Johnny Shane
Lamarca, Anthony
Lambrix, Cary Michael
Lawrence, Gary
Lawrence, Jonathan Huey
Lightbourne, Ian Deco
Looney, Jason
Lott, Ken Eldon
Lucas, Harold
Mansfield, Scott
Marquard, John Christopher
Marshall, Matthew
McDonald, Meryl S.
Morris, Robert D.
Morton, Alvin Leroy
Nelson, Micah
Oats, Sonny Boy, Jr.
Occhicone, Dominick A.
Owen, Duane
Pace, Bruce Douglas
Pagan, Alex
Patton, Robert
Peterka, Daniel Jon
Philmore, Lenard James
Pietri, Noberto
Ponticelli, Anthony John
Quince, Kenneth Darcell
Randolph, Richard Barry
Reed, Grover B.
Reese, John Loveman
Rhodes, Richard Wallace
Robinson, Michael Lee
Rogers, Glen Edward
Rose, Milo A.
San Martin, Pablo
Scott, Paul William
Shere, Richard Earl Jr.
Sireci, Henry
Sliney, Jack R.
Smithers, Samuel L.
Sochor, Dennis
Spann, Anthony A.
Spencer, Dusty Ray
Stephens, Jason Demetrius
Stewart, Kenneth Allen
Suggs, Ernest
Swafford, Clifton Roy
Sweet, William Earl

9. Mr. Knight has two death sentences. One from Bradford County and another from Miami-Dade. A federal court recently granted Mr. Knight a new trial on the Miami-Dade case.

Thompson, William Lee
Trepal, George
Trotter, Melvin
Turner, William Thaddeus
Vining, John
Wainwright, Anthony Floyd
Walls, Frank A.
Walton, Jason Dirk
Washington, Anthony Neal
Windom, Curtis
Zakrzewski, Edward J., II
Zeigler, William Thomas, Jr.

In addition to the individuals listed above, the following individuals under a sentence of death have completed the initial post conviction proceedings in state court but do not appear to have timely filed a federal habeas corpus petition within the time frame allowed.

Jones, Marvin Burnett
Krawczuk, Anton J.
Miller, David Jr.
Rose, James Franklin

Finally, the following individuals are without a complete first state postconviction process and a first federal habeas corpus but they have no current case activity in any court. Some listed in this section have filed pursuant to Rule 3.851(i) of the Florida Rules of Criminal Procedure and their postconviction proceedings were dismissed and collateral counsel was discharged. Others appear to have waived their right to further litigation.

Gill, Ricardo I.
James, Edward T.
Jefferies, Sonny
Muehleman, Jeffrey
Rodgers, Jeremiah M.

Many of the individuals on these lists may have so called "successive" postconviction matters pending relating to their death sentence at some level in either state or federal court. Those individuals are not specifically identified here because it appears those pending matters are irrelevant to the determination of whether they should be included on the certification list.

The statute also provides that within 30 days after receiving the letter of certification the Governor shall issue a warrant for execution for those on the certification list "if the clemency process has concluded." As Clerk, I have no records involving clemency.

The Act does not provide for when the certification must be made. In the future the plan is to provide an updated certification list, which shall include only changes to the list, once a quarter during each calendar year.

If you have any questions, please do not hesitate to contact me.

Most cordially,

Thomas D. Hall

TDH/TW/vbv

EXHIBIT 40

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Names of local death row inmates sent to governor (DOCUMENT)

COMMENTS
SHARE
EMAIL
PRINT
REPRINTS
ENLARGE TEXT
Recommend 45
Tweet 2

Walls

Zakrzewski

Hutchinson

By TOM McLAUGHLIN / Daily News
Published: Monday, October 7, 2013 at 17:11 PM.

The clerk of Florida's Supreme Court has provided Gov. Rick Scott a long list of names of death row inmates, including six convicted in Northwest Florida, who appear to have exhausted all or most of their appeals.

Frank Walls, on death row since 1988 for brutally murdering two people in Okaloosa County, is among those on the list.

There is evidence Scott's office has launched an investigation into Walls' case to justify signing a death warrant.

Supreme Court Clerk Thomas Hall sent Scott a list Friday to "certify" 132 death row inmates had or were close to exhausting state and federal appeals.

See the list of death row inmates who have completed the appeals process. >>

He sent the certification letter to comply with the Timely Justice Act of 2013, sponsored in the Florida House by state Rep. Matt Gaetz.

Gaetz, R-Fort Walton Beach, said the legislation would streamline an appeals process that can take decades, and it is his hope the list will give the governor leverage he needs to begin signing death warrants.

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Names of local death row inmates sent to governor (DOCUMENT)

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Jon Bell · Top Commenter
Sign away Gov. Matter of fact after 25 years of appeals, lets install an express lane.
Reply · 3 · Like · 16 hours ago

Grunttgh Ogrearm · Top Commenter · Shalimar, Florida
I have no sympathy for the devil. Kill them all today.
Reply · 1 · Like · 12 hours ago

Tyson Fricker · Top Commenter
Assuming Ms. Bondi doesn't have another fundraiser to attend.
Reply · 1 · Like · 10 hours ago

Kimberly Fremming · UWF
There are 405 Death Row inmates in Florida. Of which some go all the way back to 1978. I think that enough time has past to justify the EXPRESS Lane. Enough is enough. If a person is found guilty of such a horrific crime to justify the death penalty, they should get two appeals within a curtain time period and then executed. As it is now, some of these criminals have been living on our tax payers dimes.
Reply · 3 · Like · 7 hours ago

Kimberly Fremming · UWF
And living well in a comfortable environment. That is not justice for the lives they took.
Reply · Like · 7 hours ago

Cathy Hoover · Claims Department at PFSweb
Here are my thoughts on this.....Forensic science in 1978 was next to non-existence and there was still a lot of racial discrimination and back door court politics going on back then. There should be a way inmates with cases older than 15-20 years could get a re-examination of the evidence to ensure the person is guilty "beyond a reasonable doubt".

The ones that are... let's put in the express lane! Texas has one and it seem to be working out ok.
Reply · Like · 7 hours ago

Kimberly Fremming · UWF
Cathy Hoover Actually there is an organization that is just for that purpose. They are going back and running all cases that were tried before DNA came out and if the DNA doesnt match they are going through proper channels and being released with compensation in some cases. All Death row inmates get what is called an clemency investigation where a panel investigates if there is any reason for that persons sentence to be changed to life instead of death row. If a deathrow inmate uses up all the appeals that they are allowed and some cases they are given new trials, and all evidence has been accounted. Then they should have to pay for what they crime. I do believe however that a time limit should be put on how long they get to appeal the sentence. Some of these inmates have had way to long. I agree that Texas has the right idea.
Reply · Like · 6 hours ago

Alan Valides · Top Commenter · Valparaiso, Florida
didn't know that Hutchinson was Oliver North's twin brother!
Reply · 1 · Like · 7 hours ago

Dan Spatoskey · Top Commenter
Thou shall not kill except??????
Reply · Like · 3 hours ago

Grunttgh Ogrearm · Top Commenter · Shalimar, Florida
It is thou shalt not murder.
Reply · Like · about an hour ago

Jean Morgan
Hope they can speed this up so my friend Tommie Lou and her family finally have some peace.
Reply · 1 · Like · about an hour ago

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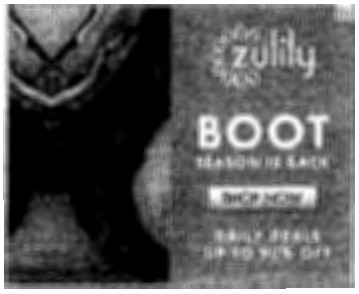

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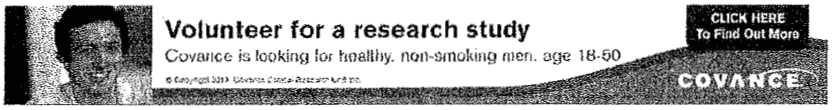

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EXHIBIT 41

Medical Management of Vulnerable and Underserved Patients: Principles, Practice, and Populations, 2e >

Chapter 21: Vulnerabilities of Adolescence and Young Adulthood

Erica Monasterio; Ellen M. Scarr; Naomi Schoenfeld; William B. Shore

OBJECTIVES

Recognize the relationship between adolescent development and vulnerability to poor health outcomes.

Identify characteristics of uniquely vulnerable adolescent subpopulations.

Describe variations in adolescent morbidity and mortality in vulnerable subpopulations.

Review behavioral risk factors that contribute to adolescent vulnerability.

Describe interventions to decrease risks.

Identify individual, family, and community protective factors supporting adolescent health and well-being.

INTRODUCTION

Rosa is a 15-year-old girl who comes into the community health clinic with her mother. She has vague abdominal complaints but denies nausea, vomiting, or diarrhea. Her mother shares that they have not come in for regular health care because of concerns about cost and not having legal residency in the United States. They came to the United States from Mexico when Rosa was 7 and live in a small apartment in the inner city with Rosa's aunt and her family. Rosa's father lives in Mexico.

Adolescence is the transition from being a dependent child to an independent adult. Extending from the onset of puberty until the completion of brain development (roughly between the ages of 10 and 26), it is a time of great vulnerability and opportunity. The health-related behaviors and conditions of most noncommunicable diseases—tobacco and alcohol use, diet and exercise habits, and increased weight—often begin in adolescence. In addition, sexually transmitted diseases; human immunodeficiency virus (HIV); and other health issues, for example, those related to early maternity or to exposure to violence, also have serious impacts on the health and development of adolescents, their future adult selves, and future generations. With over 1 billion adolescents worldwide, the importance of this stage of life cannot be overstated. Homelessness, recent immigration, minority status, or Lesbian, Gay, Bisexual or Transgender (LGBT) identification further increase the vulnerabilities of this already vulnerable developmental life stage. This chapter focuses on how health-care providers can identify potential problems, support the maturation process and the development of a positive self-image, and address behaviors that may put youth at risk for poor health outcomes.

ADOLESCENT DEVELOPMENTAL TASKS

In the last two decades, neurobiological research, aided by magnetic resonance imaging, has demonstrated the profound brain growth that occurs during adolescence.[1] The cells of the brain respond to hormonal changes (estrogen, progesterone, testosterone), and are likely influenced by environmental factors such as nutrition, education, infection, and parenting. The limbic structures of the brain, associated with socioemotional development, are among the first to experience changes accompanying the onset of puberty, although full maturation does not occur until later in adolescence.[1] The neural connections of the prefrontal cortex, responsible for cognitive development and impulse control, develop more slowly.[1] It is this "asynchronous" development of the brain that may lead to emotional liability, risk taking, and behavioral control issues.

The overall task for the adolescent is to become an autonomous functioning "other" adult, individuated from his or her family. Adolescent psychosocial development generally is described in three stages: early adolescence (10–13 years), middle adolescence (14–17 years), and late adolescence (17–21 years). More recently, late adolescence has been combined with or followed by a fourth stage, young adulthood (18 or 21–26), which is an increasingly studied and referenced developmental stage. Developmental tasks of adolescence include acceptance of sexuality (which does not necessitate being sexually active), developing future life plans, beginning to develop life philosophies, and transitioning to adult roles and responsibilities in young adulthood.

The principal task confronting the family with adolescents is to strike a changing balance between freedom and personal responsibility as adolescents mature and individuate. Although most adolescents are able to navigate these developmental tasks successfully and without lasting social and emotional consequences, for those who do not, the adverse effects can persist well into adulthood (Table 21-1).

Table 21-1.
Developmental Vulnerabilities and Risks at Different Stages of Adolescence

Stage	Developmental Vulnerabilities	Risks
Early adolescence: (10–13)	Concrete thinking with increasingly independent decision making	Limited ability to consider consequences. Asynchrony between brain and body, i.e., early sexual debut
Middle adolescence: (14–17)	"Hot cognition" executive function/thinking highly colored by emotion	Height of experimentation, risk taking
Late adolescence: (17–21)	Executive function still maturing, difficulties with prioritization	Increasing autonomy, legal responsibility may result in legal or financial risks
Young adult: (21–26)	Executive function not fully mature until 26+ Expected to function effectively in the adult world	Have moved out of supportive child/adolescent systems into adult systems that may not be well suited to their needs

EPIDEMIOLOGY AND RISK-TAKING BEHAVIORS

The leading causes of adolescent mortality globally are road injuries, HIV/AIDS, and self-harm. Mortality is higher in boys than in girls and higher in older adolescents than in younger adolescents. These deaths are closely related to adolescent risk taking. Risk-taking behaviors are defined as those potentially harmful to the initiator or others that exceed normal behavior for that developmental phase.

The Youth Risk Behavior Surveillance (YRBS) System monitors six categories of priority health-risk behaviors among youth and young adults in the United States (http://www.cdc.gov.proxy.lib.fsu.edu/HealthyYouth/yrbs/index.htm).[2] Although high-risk behaviors among high school students have decreased since 1991, the 2013 YRBS report indicates that adolescents continue to engage in behaviors that place them at risk for the leading causes of morbidity and mortality. Seventy-two percent of all deaths in 2011 among persons aged 10–24 in the United States continue to be related to behaviors that contribute to unintentional injuries and violence: motor vehicle accidents (26%), other unintentional injuries (17%), homicide (16%), and suicide (13%).[3]

For example, in the United States, vehicular accidents remain the leading cause of mortality and morbidity among young people. The 2013 YRBS data indicate that teens engaged in high-risk behaviors that are associated with motor vehicle accidents: 41% of adolescents texted or e-mailed while driving, while 35% had consumed alcohol in the past month (10% drank prior to or while driving and 21% rode with a driver who had been drinking) and 23% had used marijuana in the past month.

Risk-taking behaviors for suicide and sexually transmitted diseases are also common in adolescents. Alcohol and substance use along with access to a weapon are significantly associated with both homicide and suicide. In 2013, 30% of teens reported feeling sad or hopeless at a level consistent with clinical depression. Seventeen percent seriously considered suicide, with 14% making a plan and 8% actually attempting suicide in the past 12 months.[3] In the same year, 18% of high school students had carried a weapon in the past month, with 6% reporting carrying a gun. Among sexually active high school students in the United States, the 2013 YRBS survey found that 15% of adolescents had had intercourse with four or more partners and 59% had used condoms during their previous intercourse. World Health Organization (WHO) data indicate that globally, at least half of 15-year-olds who are sexually active report using condoms the last time that they had sex.[3]

FRAMEWORK FOR DEFINING VULNERABLE ADOLESCENT SUBPOPULATIONS

After Rosa shares that she is very concerned about her school performance, she is happy to hear that she can be referred to a teen case manager. The case manager can work with Rosa to enroll her in a tutoring program to improve her English skills.

Although any adolescent may engage in behaviors that can compromise their health, certain individual, family, and community characteristics can result in greater vulnerability in adolescence. Contextual factors such as the physical environment, the social environment, and the availability and access to health and social services have been proposed as a framework for assessing urban adolescent vulnerability worldwide.[4]

Physical environments associated with a higher prevalence of adolescent pregnancy and sexually transmitted infections include communities or neighborhoods with high levels disorganization, physical disorder (run-down buildings, broken windows, trash, and graffiti) and poverty. In addition, exposure to adults who have lower levels of education, lower income, and higher unemployment is more likely in these neighborhoods.[5] Lack of recreational facilities, youth-oriented

organizations, and positive alternatives for activities during out-of-school time are correlated with poorer reproductive and sexual health outcomes for girls and young women and involvement in alcohol and drug use and violence for boys and young men.[6]

Social environments include the home and family as well as the broader social environments of school and community.[7] Unstable households where there is a lack of parental engagement and monitoring, limited parental presence in the home (whether due to the need to work long hours or multiple jobs to support the family, incarceration, parental drug or alcohol use, or other issues that limit parental presence and engagement), poor communication patterns, and domestic violence or abuse are associated with increased risk behaviors and poorer health outcomes in youth. Family rejection and lack of familial and social support for youth who are gay, lesbian, bisexual, or transgender (sexual minority youth) are associated with higher sexual risk, mental health, and substance use problems.[8] Lack of academic goals and low levels of school engagement are associated with earlier sexual debut, early childbearing, and substance involvement.[9] Family norms and expectations, perceived peer norms, and community norms all influence adolescent decision making when it comes to risky behaviors.

Problems in school are problems in themselves, jeopardizing an adolescent's future employment possibilities, for example. School phobias, truancy, academic failure, fights, poor concentration, learning disabilities, and school dropout or suspension may be indications of other underlying troubles. Early identification and intervention of school problems may prevent progression to other adolescent risk behaviors.[10]

ACCESS TO CARE AND CONFIDENTIALITY

As a whole, adolescents are among the most underserved populations worldwide. Routine checkups for adolescents are rare in both developed and developing countries alike.[11,12] While some youth may be reached in traditional health clinic settings, nearly half of those surveyed by the WHO global consultation indicated a preference for school-based health centers. Any facility-based care may not reach the most vulnerable adolescents, including homeless, runaway, and immigrant/migrant youth.[13]

Lack of confidentiality, real and perceived, can be a major barrier to care.[14] Even with symptoms, a significant number of adolescents forego health care because of concerns over confidentiality. Studies indicate that if mandatory reporting for reproductive health services were instituted, 60% of adolescents would delay or discontinue seeking reproductive health-care services. Low-income and uninsured adolescents are even less likely to get confidential care.[15]

Key tasks for health-care providers working with adolescents lie in navigating the legal and political landscapes in which privacy and confidential care are not protected. Accessible, convenient care across a spectrum of settings from school-based health centers and community clinics to urgent care and emergency rooms may be venues for adolescents seeking care. Regardless of the setting, it is incumbent on those working with adolescents to address the social and behavioral factors that contribute most significantly to their health status.[16]

Although laws vary, federal and most state regulations in the United States carry exceptions to the requirement for parental consent prior to providing care to an adolescent for reproductive health, mental health, substance abuse, and emergency situations. Adolescents may consent for their own care if they are pregnant, parenting (in some, but not all, states), married, or emancipated minors.[14]

SPECIFIC SUBPOPULATIONS OF AT-RISK YOUTH

Specific subpopulations of youth are at risk for experiencing greater challenges and are more vulnerable to poorer outcomes as they move through adolescence and into adulthood. Particularly vulnerable youth populations include immigrant, poor rural and urban, educationally disadvantaged, homeless, runaway, and sexual, racial, and ethnic minority youth.

Youth of Color: Racism as a Source of Vulnerability

Youth of color, particularly African-American and Latino adolescents, face additional vulnerabilities owing to structural inequities and institutionalized racism. They are likely to be over-criminalized, over-policed, and consequently over-represented in incarceration systems.[17] Experiences of racism and discrimination result in lowered self-esteem, increased rates of depression, and poorer educational outcomes.[18,19] Institutionalized racism occurs even in clinical settings, as African-American and Latino youth are disproportionally diagnosed with Conduct Disorder.[20] Fifty plus years after the Civil Rights act, African-American youth are still likely to live in segregated neighborhoods and are more likely to attend segregated public schools now than they were 40 years ago.[21,22]

Immigrant Youth

Immigrant youth are vulnerable to discrimination, and if they struggle with English proficiency they may be educationally and vocationally vulnerable as well. Immigrant youth are often faced with conflicting pressures of acculturation versus maintenance of a sense of ethnic and cultural heritage. Data are conflicting in the directionality of risk and acculturation. Immigrant youth and children of immigrants are most vulnerable when they or their parents lack legal residency. In most states, they lack access to jobs, financial aid for school, and may face difficulties obtaining health-care coverage. They are at risk for multiple vulnerabilities including neglect, foster system placement, or homelessness if their parents are deported.

Youth in the Foster Care System

There are approximately 500,000 children in the foster care system in the United States, with adolescents making up approximately 45% of the foster care population. About half of these children and youth are in nonrelative foster home, 28% are fostered by relatives (kinship care), and 15% live in institutions and group homes.[23] Children and youth in foster care have higher rates of physical, developmental, dental, and behavioral health problems than any other group of American youth. The heightened vulnerability of youth in foster care is attributable to the familial, social, and environmental contexts that resulted in their removal from their home (abuse, neglect, and family dysfunction) and their experiences once in a system that often provides suboptimal environments in terms of safety, stability, consistency, and support-essential assets for developing adolescents.

The instability, impermanence, and fragmentation of home, community, school, and health care for youth in foster care creates an environment that mediates against healthy adolescent growth and development.[24,25] A meta-analysis of research evaluating the impact of intervention programs for foster-care families on the health and mental health outcomes of foster youth showed that effective programs had some common characteristics, including (1) a focus on enhancing individual strengths and reducing specific risk behaviors, (2) a developmentally sensitive and appropriate approach, and (3) a base in the mediating effect of parenting on the impact of adversity on outcomes. The only adolescent-focused intervention found to be effective was a multicomponent program placing foster youth in an individual home where foster caregivers were intensively trained, supervised, and supported to provide mentoring,

supervision, and consistent limit setting.[25] The issues of permanence, monitoring and support for both youth and foster caregivers, and continued support for foster youth into young adulthood have emerged as key policy concerns.

The role of health-care providers in reducing the vulnerability of foster youth includes (1) provision of a medical home for youth in foster care, (2) collaboration with child welfare workers to ensure adequate, ongoing health and mental health care, (3) a working knowledge of state programs to provide health coverage to youth and young adults in and aging out of the foster-care system, (4) an understanding of the health needs of and resources for foster youth, and (5) engagement in transition planning for the ongoing care of youth as they age out of the foster-care system.[26] (See Healthy Foster Care America Web site: http://www.aap.org/fostercare for tools and resources.)

Incarcerated Youth

While the rate of juvenile detention has declined over the past 15 years, over 54,000 young people were detained in residential facilities in 2013,[27] and up to an additional 10,000 adolescents are housed in adult jails and prisons on any given night.[28] Young men and youth of color, particularly African-American adolescents and young adults (AYA), are over-represented in the juvenile justice system. African-American, Latino, and Native-American youth are more likely to be detained, to spend more time in detention, to be adjudicated to out-of-home placement, and to be committed to an adult facility than are White youth.[29]

The impact of juvenile incarceration is profound. Recidivism rates are high, and up to one-third of incarcerated youth will return to jail or prison in young adulthood. Rates of reoffending vary by the nature of the crime, with individuals who were charged with property offences the least likely to reoffend and those with violent and drug offences the most likely.[30] Incarceration compounds the vulnerability of these already vulnerable youth, resulting in a significant impact on income for up to 10 years post-release, which, in turn, affects their mental well-being, physical health, social attachments, and life expectancy.[31] Preventing youth incarceration or recidivism is important for public and individual health (see Chapter 27).

Early identification and linkage into evidence-based family interventions such as Functional Family Therapy (see http://www.childtrends.org/?programs=functional-family-therapy) and Multisystemic Therapy (see http://www.childtrends.org/?programs=multisystemic-therapy) and/or individual interventions such as Insiders Juvenile Crime Prevention (see http://www.childtrends.org/?programs=the-insiders-juvenile-crime-prevention-program), a "Scared Straight"-style program, exposing youth to the realities of life in prison and Multidimensional Treatment Foster Care (see http://www.childtrends.org/?programs=multidimensional-treatment-foster-care-mtfc) have been shown to have an impact on recidivism and the reincarceration of juvenile offenders in young adulthood.

Gang-Involved Youth

Gang violence accounted for 20% of homicides in the United States from 2002 to 2008.[32] History of incarcerated relatives, acquaintances, and neighborhood exposure to drugs and crime may represent risk factors for gang involvement.[33] Participation in gang activity and living in gang "war zones" put youth at exceptionally high risk for violent injury and death. In addition to death and injury, gang involvement puts youth at high risk of criminal acts, incarceration, substance abuse, and early sexual debut. Gang involvement is further associated with economic hardship and family problems in adulthood. Youth with high coping skills and more parental monitoring have been shown to have lower rates of gang involvement.

The ability and willingness of AYA to leave a gang depends on the length of time of their involvement and the strength of the gang in their area.[34] Successful interventions mitigate the economic and social pushes and pulls of the gang lifestyle. Such interventions include motivational interviewing, referrals to employment assistance, vocational training, remedial/alternative education assistance, counseling, substance abuse services, and mentoring. Evidence-based gang and violence programs such as Gang Resistance Education and Training (G.R.E.A.T.) are available through national partner organizations such as Boys and Girls Clubs of America.[35] Because past or present gang affiliation is often readily identifiable through tattoos on the face, neck, forearms, hands, and other easily viewed parts of the body, tattoo-removal services have emerged in recent years as an important intervention to help youth escape gang involvement.[36]

Youth with Chronic Conditions and Disabilities

Obesity

The prevalence of obesity in US children and adolescents in 2010 was 16.9%, with the prevalence of overweight at 31.8%, both of which were unchanged from 2007 to 2009 levels.[37] There are significant differences in obesity prevalence by race/ethnicity with increased obesity in Hispanic and non-Hispanic black children and adolescents compared with non-Hispanic white children and adolescents. The lifelong risk factors for overweight and obese children and adolescents are well known and include cardiovascular risks, increased health-care costs, and premature death. Extremely obese children and adolescents are also likely to be obese during adulthood; obese adults are at increased risk for stroke and many chronic diseases, including coronary heart disease, hypertension, type 2 diabetes, and certain types of cancer.[38]

Reports from the Centers for Disease Control and Prevention (CDC)'s National Center for Health Statistics (NCHS) indicate that socioeconomic status is relevant to obesity in adolescents.[39] Although most obese children and adolescents are not low income (below 130% of the poverty level), low-income children and adolescents are more likely to be obese than their higher-income counterparts. Children and adolescents in households where the head of the household had a college degree are also less likely to be obese compared with those living in households where the household head has less education, but the relationship is not consistent across race and ethnicity groups.

Adolescents who experience food insecurity, that is, lack of resources to obtain adequate nutritional intake, often maintain a substantial portion of their dietary intake on "junk" (high caloric) foods that can lead to obesity, for example, excessive soda beverages, foods high in carbohydrates, fried foods, and snacks, with minimal intake of recommended portions of protein, fruits, and vegetables. Clinicians working with adolescents need to obtain dietary histories on all patients as well as body mass index measurements.[40] Questions about usual sources of food and identifying food insecurity can be included in the modified HEEADSSS screen (see "Core Competency"). When food insecurity and/or obesity are identified, clinicians should attempt to engage the adolescent in teen-friendly weight management programs as well as programs that can provide adequate resources to address food insecurity and weight management.[41,42] Community-based programs such as Boys and Girls Clubs are excellent resources to address these issues and engage the teens in creative nutritional education programs.

There are few public health and dietary education reports that address disparate health needs of specific populations. One study reported that the diets of Hispanic children, regardless of the level of acculturation and food insecurity, were less nutritious than the national average for children in the United States, and do not contain adequate quantities of healthful foods such as fruits and vegetables, suggesting a need for qualitative research into the underlying communication and acculturation processes and how these affect diet and nutrition.[43] Another study on food insecurity found that interventions to improve food-insecure adolescents' eating behaviors may benefit from supporting mothers' use of health-promoting parenting practices.[44]

Adolescents with disabilities

Youth with developmental and/or intellectual disabilities encounter challenges that may increase their vulnerabilities and impair their access to health care during adolescence. The Americans with Disabilities Act requires health-care professionals to ensure access to health care (Developmental Disabilities Assistance and Bill of Rights Act of 2000 http://www.acl.gov/Programs/AIDD/DDA_BOR_ACT_2000/Index.aspx). These adolescents and their families or caregivers have special needs that require, among other skills, particular knowledge and skills for examination room etiquette, effective communication, knowledge of resources, and skills with working in interdisciplinary teams (see Chapter 42).[45]

Adolescents with disabilities also need access to sexuality education and medical care that addresses their sexual health needs. As with all adolescents, these teens need to be able to have confidential and private discussions with providers that address their gender and sexual identity, sexuality, prevention of sexually transmitted infections, and pregnancy. The Office of Developmental Primary Care (http://odpc.ucsf.edu.) offers many resources for the care of adolescents with disabilities. Of particular concern for parents and caregivers of youth with disabilities is their increased risk of vulnerability to physical and sexual violence, neglect, and emotional abuse. Vulnerability to abuse is increased for those youth whose disability leads to heightened dependency on others, particularly those with intellectual disability, and for those with communication difficulties. With mild developmental impairments, victimization can be related to the need to "fit in" and be like their peers. Although families frequently express concerns about the risks of stranger abuse, family and caregivers more frequently perpetrate abuse. Although findings related to the prevalence and risk of abuse varies between studies, a recent meta-analysis of international data shows a consistent finding of a higher prevalence and risk for abuse among youth with disabilities than for their peers without disabilities.[46]

Chronic conditions

Management of chronic conditions, for example, asthma and diabetes, can be especially challenging for vulnerable youth with minimal resources and/or family supports. Throughout earlier childhood, parents and caregivers regularly make treatment decisions. During the transitions through adolescence, youth need to become more involved in taking control of their chronic illness management. However, there have been few studies that look at how these decisions are made during the childhood years.[47]

VULNERABILITIES IN SEXUAL HEALTH OUTCOMES

After reviewing confidentiality with an interpreter, Rosa's mother goes to the waiting room. Rosa reveals that she has had both one male sexual partner and one female partner. Her last menstrual period was 2 months ago.

Development of one's sexual identity is a normative and expected process that occurs during adolescence and young adulthood. The abilities to engage in romantic relationships and experience intimacy are positive aspects of sexual identity. However, there are risks associated with sexual behaviors, including sexually transmitted infection and unintended pregnancy. These risks are often intensified during adolescence and young adulthood when sexual activity is often initiated without an accurate understanding of reproduction, contraception, or the transmission of infection.[48]

In the United States, early sexual debut (sexual activity prior to the age of 14) is uncommon. Fewer than 8% of adolescents have had sex by their 14th birthday. However, the percentage of adolescents who have had sex increases after the age of 15, and by 12th grade 49% of youth have been sexually active in the past 3 months.[3] By the age of 20, 74% of adolescents, both male and female, have initiated sexual activity.[49]

The percentage of young adolescents, ages 13–15 years, who have had sex varies greatly by specific country, from approximately 70% (males in Samoa and females in Greenland) to less than 1% (both males and females in Indonesia).[2]

However, the overall rate of sexual activity among adolescents is similar in most high-income countries, and not dissimilar to those living in low- and middle-income countries (LMICs): by the age of 18, 60% of females in the United States and sub-Saharan Africa have had sex.[49,50] In LMICs, sexual activity usually occurs within the context of marriage, with early sexual debut associated with early marriage. Globally, 34% of girls are married before the age of 18 years, and 11% are married before the age of 15.[51] In many LMICs, however, the decreasing age of puberty and the increasing age of marriage are resulting in an increase in premarital sexual activity among adolescents.[52]

Sexual coercion and exploitation are common in adolescents. In the United States, about 7% of adolescents, 11% of girls, and 4% of boys report sexual exploitation.[3] Sexual coercion is more likely among younger adolescents, with 50% of US girls who had sex by the age of 11 and 23% of those who had sex by the age of 12 reporting that their first sexual experience was not consensual.[49] Perpetrators of sexual coercion include partners (dating violence), family members (incest), and strangers. Sexual coercion is common in other countries as well. In Malawi, 14% of females aged 15–19 reported their first sexual encounter was forced.[53] A study of Chinese high school students found that 41% of females and 30% of males had experienced sexual coercion.[54]

SEXUALLY TRANSMITTED INFECTIONS

Sexually transmitted infections (STIs) challenge public health systems in the United States and worldwide, cause significant morbidity and economic burden, and disproportionately affect AYA. The estimated annual incidence of STIs in the United States is nearly 20 million, with 50% occurring in youth ages 15–24, although they comprise only 25% of the sexually active population.[55] The most prevalent STI is human papilloma virus (HPV), followed by chlamydia and trichomoniasis.[55] While condoms remain the most commonly used method of contraception among US AYA and provide the most effective protection against STIs, 41% of sexually active adolescents reported not using a condom at last intercourse in 2013.[3]

HUMAN IMMUNODEFICIENCY VIRUS

Of particular concern is infection with the HIV. HIV is now the second leading cause of mortality among the world's adolescents.[2] Ninety percent of these deaths occur in sub-Saharan Africa, where one out of every six adolescent deaths is due to HIV.[2] Among AYA ages 15–24, the global HIV prevalence is 0.4% (about half that of total global prevalence) or more than 2 million AYA living with HIV.[2] Countries in sub-Saharan Africa have been particularly devastated by the HIV epidemic, and again, youth are disproportionately affected. For example, the HIV prevalence rate among AYA is 11% in Lesotho and Swaziland, and 9% in South Africa.[51] In much of the world, women are equally, and in some countries more, affected than men. Globally, girls and women aged 15–24 have twice the HIV infection rates as their male counterparts.[56]

In 2010, 26% of new HIV infections in the United States occurred in youth ages 13–24, although they represented only 17% of the population.[57] At particular risk are AYA males who have sex with other males and minority youth.[57] An estimated 39,000 youth are living with HIV in the United States as of 2010. About 28,000 of those infected are AYA boys/men who acquired the infection from sex with other men; 13% were infected perinatally. Approximately 11,000 AYA girls are HIV infected, 56% as a result of heterosexual contact, and the remainder perinatally infected.[57]

PREGNANCY AND CONTRACEPTION

Pregnancy in adolescents, both married and single, is common throughout the world, particularly in LMICs. An estimated 16 million girls aged 15–19 give birth each year, accounting for 11% of all births. Approximately 95% of these births occur in the poorest countries.[58] Most adolescent pregnancies occur within the context of marriage, with nearly 100% of pregnant adolescents married in Asia and Northern Africa, yet only 70% of pregnant adolescents are married in sub-Saharan Africa.[59]

In the United States, teen pregnancies have been declining, but still remain higher than the rates found in other developed countries. In addition, significant disparities in teen pregnancy rates exist among poor and minority AYA. Black, Hispanic/Latino, American-Indian/Alaska Native and socioeconomically disadvantaged youth, particularly those in foster care and with histories of exposure to the juvenile delinquent system, experience the highest rates of teen pregnancy and childbirth.

Adolescent pregnancies can have a number of deleterious effects on both the mother and her child. Very young mothers are at high risk of perinatal complications, from preterm birth to preeclampsia. In low-resource countries, where a lack of health-care facilities and providers and a high prevalence of anemia and malaria infection confer additional risks for adverse perinatal outcomes, studies document an increased risk of perinatal complications including an increased risk of preterm labor, preterm delivery, and neonatal deaths among pregnant adolescents.[60,61] According to research conducted by the WHO's *Making Pregnancy Safer* program, pregnant young adolescents (younger than 16 years) have a four times higher risk of maternal death than older women, and a 50% higher death rate among their infants.[62] The health consequences for adolescents and their children are less severe in developed countries with a lower prevalence of infectious diseases and higher access to medical care.

In addition to the risk of poor health outcomes, adolescent pregnancy has a negative impact on social and economic status of mothers and their children. Adolescent mothers are more likely to drop out of school while pregnant and not return; unmarried pregnant adolescents also risk rejection by their family and partner, and, lacking education, have difficulty obtaining or maintaining employment. The children of teenage mothers bear the largest burden of teenage pregnancy. They are at higher risk for long-term problems in many major areas of life, including school failure, incarceration poverty, child abuse, physical or mental illness, and becoming teen mothers themselves.

Rosa was relieved to hear that her pregnancy test and the STI screening tests were negative. She decides to have an Intrauterine Device (IUD), a long-acting reversible contraceptive method, placed as long as her mother is not informed about this. She will ask Juan to use condoms and she is pleased to hear that her boyfriend can also be seen in a teen-friendly clinic.

Source: See http://www.acog.org/About-ACOG/ACOG-Departments/Long-Acting-Reversible-Contraception/LARC-Clinical-Resources

CONTRACEPTION

Prevention of early pregnancies and of STIs is important for teens themselves, their futures, and their children. Use of contraceptives, especially condoms, is a potent preventative strategy. Contraceptive use in LMICs is low compared to developed countries. Sub-Saharan Africa has the lowest contraceptive prevalence rate among the major regions of the world, and contraceptive uptake among youth 15–19 years of age is poor. Even among married adolescent girls in sub-Saharan Africa who wish to avoid a pregnancy within the next 2 years, 67% are using no contraception and 12% are using a traditional method (e.g., periodic abstinence, withdrawal, herbal remedies).[63] Contraceptive use by AYA has increased

in recent years in the United States, and among older adolescents, the use of long-acting reversible contraceptive (LARC) methods has increased threefold.[64] Use of these more reliable forms of contraception and increased use of contraception in adolescents in general underlie the dramatically declining rates of adolescent pregnancies in the United States. Nevertheless, many AYA do not use contraception or use it inconsistently. Among the reasons for non-use of contraception by AYA worldwide are the belief that one "cannot" get pregnant, lack of access to and education about reliable methods, or desiring ("not minding") if pregnancy occurs.[65]

An unintended pregnancy in AYA may result in therapeutic abortion. In LMICs, access to abortion is often limited or illegal, leading to an epidemic of unsafe abortion. Of the 21.6 million unsafe abortions that occur each year in the world and in Africa, 15% and 22%, respectively, are in adolescent females ages 15–19.[66] Lack of access to modern contraceptive methods and safe abortion further increase the vulnerability of AYA in LMICs. Recent data indicate that the adolescent abortion rate in the United States is the lowest it has been because abortions were legalized, again, secondary to increased contraceptive use.[67]

VIOLENCE

Rosa also reveals that her current boyfriend, Juan, age 17, has pressured her to have intercourse. She is also concerned because she thinks he is in a gang and worried that information about her relationship with him could result in her family being deported back to Mexico.

Whether violence at the hands of romantic partners, gangs, family, or war, it remains a significant and disproportionate cause of both morbidity and mortality in adolescence, particularly for minority youth. Homicide is the second leading cause of adolescent mortality in the United States and the fifth most common reason worldwide. In the United States, homicide disproportionately affects minority youth and is the leading cause of death for adolescent African Americans.

Identified risks for violent behaviors include substance use and abuse, aggression, delinquency, academic failure, poverty, family conflict, gang membership, and living in a neighborhood with a high prevalence of crime and drug use.[68] Violence-related behaviors in US adolescents tracked by the YRBS include weapon carrying, physical fighting, experiencing threats, injuries, feeling unsafe at school, bullying, and dating violence, including coercive sexual activity and sexual assault.

Dating violence is also a significant problem for adolescents (see Chapter 35). Nationwide, 10.3% of high school students reported being hit, slapped, or physically injured by an intimate partner. Girls were significantly more likely to have been forced to have intercourse than boys; 10.5% versus 4.2%, respectively.[3] Unhealthy and abusive relationships during adolescence predict abusive relationships in adulthood as well: one in five women and one in seven men who ever experienced intimate partner violence first experienced these partner dynamics between 11 and 17 years old.[69]

The teen case manager will talk to Rosa about strategies and resources to keep her safe and effectively address issues of bullying and dating violence.

Resources: Break the Cycle: Empowering Youth to End Domestic Violence: http://www.breakthecycle.org

VULNERABILITIES OF SEXUAL MINORITY YOUTH

Jared is a 15-year-old homeless boy who comes into clinic complaining of a sore throat. Jared ran away from home after his parents discovered he was having sex with men. He has been living on the street. He is exchanging sex with men for

drugs and money and is currently being treated for rectal gonorrhea. His syphilis screen was negative, and he declines HIV serology despite counseling regarding his risk. He has been smoking marijuana daily since he has been on the street, smokes a half pack of cigarettes daily, and states that he has "tried just about everything else you can get high on, but no needles … they scare me!"

Over the past two decades, the development of a same-sex sexual orientation and self-identification as lesbian, gay, or bisexual has become a developmental process of adolescence.[70] For many of these youth, this is a time of great turmoil, not wanting to be "different," or fearing rejection by parents, friends, and peers. The adolescent may experiment with opposite-sex sexual activity as well as exploring their sexuality with same-sex partners. Gay and lesbian youth have a 50% chance of being rejected by their families and often are ejected from their homes, making up 42% of homeless youth and 28% of school dropouts.[71] These youth are frequent targets for verbal harassment and physical abuse, both in school and on the streets.[71] Because of social isolation, familial rejection, and dysfunctional coping mechanisms, they are at significant risk for substance abuse, STIs (including HIV), depression, and suicide.[72]

MENTAL HEALTH

When asked about his mood or thoughts of harming himself, Jared admits that he has had some thoughts of suicide, but does not have a definite plan. This is confirmed by the PHQ-A:
http://www.uacap.org/uploads/3/2/5/0/3250432/phq-a.pdf; Scoring instructions:
http://www.cappcny.org/home/documents/phq 9 teens scoring.pdf.

Although mood swings, particularly among early adolescents, may be normative, depression is a common and often under-recognized health problem. Depression is the greatest cause of illness and disability in adolescents, with suicide the third most common cause of death of youth worldwide.[2] The 2013 YRBS found that 16% of high school students in the United States had considered suicide in the past year and 13% of high school students seriously considered making a suicide attempt, with 8% actually making an attempt.[73] Suicidal ideation is reported at more than twice the above rate for sexual minority youth.[71] Firearms account for 81% of suicide deaths among adolescents ages 15–19. There are significant increases in suicide rates in families with a history of suicide, affective disorders, alcohol and drug abuse, physical or sexual abuse, and adolescents with prior attempts. Girls make more suicide attempts, and boys complete more suicides. Clues to impending suicide attempts include giving away valued possessions, saying good-bye, accident proneness, poor self-image, deterioration of personal hygiene, increased isolation, and talk about attempting suicide. Studies indicate that nearly 90% of suicidal youth had primary care visits during the prior 12 months of a suicide attempt, often for vague somatic complaints.[74]

Although the clinical presentation of depression in adolescents may be similar to that of adults, there are some differences that can be attributed to the physical, cognitive, social, and emotional developmental stages adolescence. There are more eating and sleep disorders, aggressive behaviors, delinquency, difficulties concentrating, school problems, sexual partners, daredevil behaviors, pregnancies, and issues with alcohol and drug use. Parents often need assistance in differentiating these behaviors from normal adolescent behavior and mood swings. Adolescent depression frequently results from changes or personal loss including breakup with a partner, recent moves or a change in schools, and family dysfunctions or breakup. Depression and a past history of alcohol use are predictors of suicidal ideation and attempts.[75]

In addition to depression and suicide, other mental illnesses begin to become evident during adolescence. Worldwide, schizophrenia will affect 1 out of 100 people. The onset is usually during the adolescent and young adult years. It is

unusual to identify a new diagnosis of schizophrenia in those younger than 12 years or older than 40 years.[76] One percent to 3% of adolescents may be affected with bipolar disorder (BD) and may begin to have symptoms of mood dysfunction, particularly in adolescents with a family history of BD.[77]

SUBSTANCE USE AND ABUSE

Initiation of alcohol and tobacco use often begins in adolescence. Indeed, adults who develop addiction usually began using during adolescence and the earlier age of use predicts greater severity and morbidity. Three-fourths of adolescents surveyed in US high schools report having used addictive substances including tobacco, alcohol, and marijuana, and close to half report being current users of these substances.[78] Factors that increase the risk of progression from experimentation to a substance use problem are multifaceted and dynamic. They include a family history of alcoholism, authoritarian or permissive parenting, lack of supervision, family conflict, easy availability of drugs and alcohol, cultural or religious sanction or acceptance of use, aggressive temperament, low self-esteem, substance using peer group, poor academic performance, and lack of connectedness with school or learning.[79] In addition to being the "gateway" to adult use and abuse, adolescents with substance use problems are at significantly increased risk for depression, academic failure, impaired family and peer relationships, and ongoing cognitive and psychological impairment. Substance use also is a significant contributor to the leading cause of death for adolescents worldwide and in the United States: motor vehicle accidents.

HOMELESS AND STREET YOUTH

While estimates vary according to inclusion criteria, between 1.7 and 2 million youth have run away or are homeless in the United States, with a median age of 14–16 years for both boys and girls.[80] Globally, approximately 150 million youth are considered street children.[81] Homeless youth include those living on the street, shelters, in foster care, or other nonfamily environments. Causes of homelessness among youth in the United States tend to fall into three categories: family problems, economic problems, and residential instability. The majority of youth who leave home report significant family stress and disruption; physical, sexual, and emotional abuse; and neglect. Most homeless youth report that they were either being told by their families to leave or that their families knew they were leaving and did not care.[82] In LMIC, additional factors contributing to youth homelessness include poverty, war, and violence.[81] Youth in foster care and LGBTQ youth are more likely to be homeless.[83] Approximately 10% of street and shelter female youth are currently pregnant.[84]

An estimated 17 million children and adolescents have lost one or both parents to AIDS since the beginning of the HIV epidemic; the vast majority (90%) of these children live in sub-Saharan Africa.[85] HIV orphans are particularly vulnerable to poverty, malnutrition, property loss, and interrupted education. Many become heads of household for younger siblings, while others are forced onto the streets. Female orphans are more likely to initiate sexual activity early and, if not already perinatally infected with HIV from their mothers, are at higher risk than nonorphans for HIV acquisition.[86]

Medical problems of homeless youth are both a cause and consequence of their homelessness. Homeless youth are at high risk for injuries, physical abuse, sexual exploitation, suicide, and homicide.[83] They have higher rates of substance use and mental illness. A staggering 23–67% of homeless teens report having attempted suicide once.[83] Survival sex and prostitution, with subsequent high rates of STIs; unintended pregnancy; HIV infection; and substance use are common in homeless youth of both genders. Accessing health care is difficult for homeless youth. Some studies indicate that as

many as 50% of street youth do not have a regular source of health care, 25% reported serious health problems, and many use emergency departments to meet their health-care needs. Care is often not integrated among agencies, and homeless teens often feel isolated and have fears with regard to receiving health care.[83]

After meeting with an outreach worker from a multiservice homeless teen center, Jared agrees to go to the center for housing and other resources.

(Sample Resource Larkin Street Youth Services: http://www.larkinstreetyouth.org.)

SOLUTIONS AND INTERVENTIONS

THE PSYCHOSOCIAL ASSESSMENT

Psychosocial assessment is crucial to any adolescent intervention. There are several well-established approaches for conducting adolescent psychosocial assessments. Asking open-ended questions at health maintenance visits pertinent to each area can identify red flags requiring further assessment, as well as referral for care if necessary. It is important to use a strength-based approach in conducting psychosocial assessments (see sample HEADSSS and SSHADESS assessments: http://www.modernmedicine.com/tag/heeadsss-30-and-sshadess). Every adolescent health visit is an opportunity to update a psychosocial assessment.

Because school is the "work" of adolescence, school failure can be an important early indicator of adolescent risks. Therefore, it is particularly important to assess school performance at every regular health maintenance visit. The school physical is an opportunity for a complete and comprehensive physical examination as well as family and psychosocial histories. Providers should be aware of resources in the schools and assistance for children with developmental, mental, and learning disabilities.

SUPPORT FOR PARENTS

Parenting adolescents can be stressful for many families, and health-care providers can offer anticipatory guidance to facilitate healthy outcomes. Prior to the onset of puberty, providers must clearly lay the groundwork for visits during the adolescent years. Clinicians must inform parents and children that issues will be discussed individually and confidentially, except in life-threatening situations, and that adolescents may be examined without the parents present.[87] Providing parents with written patient education materials can be helpful (see CDC Positive Parenting Practices: http://www.cdc.gov.proxy.lib.fsu.edu/healthyyouth/protective/positiveparenting/index.htm). Assessing for family conflict and addressing family difficulties play an important role in the prevention of high-risk behaviors. Several studies confirm that the following can be "protective" factors for adolescents, regardless of race, class, or gender: an authoritative parenting style with consistent limit setting (versus authoritarian or permissive styles); a sense of connectedness with one caring adult; involvement with parents; a positive body image; participation in extracurricular supervised activities; non-substance using peer group; and strong school affiliation.[88]

LGBTQ FAMILY ACCEPTANCE

In contrast to the high levels of depression, suicide, and risky behaviors of LGBTQ youth facing familial rejection, high levels of familial acceptance result in higher self-esteem and improved health.[8] Health-care providers can use several existing screening tools and culturally appropriate workbooks to help promote acceptance, reunite families, and reduce long-term negative consequences (see Family Acceptance Project Providers Guide:

http://familyproject.sfsu.edu/assessment; SAMHSA A Practitioner's Resource Guide: Helping Families to Support Their LGBT Children: http://store.samhsa.gov/shin/content//PEP14-LGBTKIDS/PEP14-LGBTKIDS.pdf).[56]

CONNECTING WITH COMMUNITY RESOURCES

For the many adolescents living without their families, health-care providers can offer a different set of solutions. Connecting AYAs with available local resources including outreach workers, case managers, social workers, youth--oriented school and work programs, and AYA-specific health-care services provides opportunities to form supportive healthy relationships with adults, successfully navigate social and educational challenges, and can mitigate risk taking.

ADDRESSING AYA SEXUAL ACTIVITY

Risks of early-onset sexual behavior should be objectively discussed, with assurances of confidentiality, during late childhood and early adolescent visits. Risk reduction and sexual health are areas to focus on throughout adolescence and young adulthood. Providers should initiate discussions with the goals to support AYA in making responsible decisions about their sexual behaviors, give accurate information, normalize their feelings about sexuality and attractions, and reduce risks. Young adulthood intensifies sexual risk and although more mature than adolescents, young adults still benefit from approaches targeted to their age and developmental stage.

Pregnancy Prevention and Counseling

For sexually active AYA, providers should support and facilitate the use of reliable contraceptive methods, particularly those that are long acting and reversible (e.g., intrauterine devices, implants) and offer condoms regularly for STI risk reduction. The American College of Obstetrics and Gynecology (ACOG) now recommends LARC as first-line methods for AYA, as they provide more than 99% efficacy and continuation rates of 80 to 90% when compared with other methods.[89]

Barriers to LARC initiation, which include misconceptions on safety and appropriate LARC candidate selection, should be addressed by evidence-based information for both patients and providers. After counseling an AYA seeking contraception, the chosen method should be initiated at that same visit, or a same day referral to a family planning clinic should be scheduled. Delays in provision of contraception, which are not uncommon with LARC (untrained providers, waiting for STI results), can result in unintended pregnancy.

A negative pregnancy test visit is an opportunity to initiate contraception and providers should follow up with AYA on contraceptives frequently. Emergency contraceptive pills should be prescribed or dispensed to all AYA who are not currently using a long-acting contraceptive method. The copper IUD provides an alternate form of emergency contraception that also serves as a long-acting reversible method, ideal for an AYA who has had unprotected sex and desires a long-acting method.

School-based clinics and family planning clinics have been successful in providing confidential contraceptive counseling and services, although a number of school-based clinics are not allowed to provide contraception to adolescents. In addition, state regulations vary as to whether an adolescent can access contraceptive services without parental consent: only 21 states and the District of Columbia allow all minors to consent for these services. Another 25 states allow minors to consent under various circumstances (e.g., prior pregnancy, married).[90] Providers need to familiarize themselves with state regulations and discuss potential barriers and solutions with their adolescent patients.

For pregnant youth, an open, frank discussion about options is essential. Provide a neutral context for the adolescent to express her feelings, consider alternatives, and envision her future using a shared decision-making model.[91,92] (See

https://cahps-ahrq-gov.proxy.lib.fsu.edu/quality-improvement/improvement-guide/browse-interventions/Communication/Shared-Decision-Making/index.html.) Provide support for her interactions with parents and others she involves in her decision. The goal is to provide guidance and tools for the youth to make the best decision for herself.[93] The options of continuing or terminating the pregnancy should be introduced in a nonjudgmental manner and a facilitated referral to follow up prenatal or pregnancy termination care should be provided.

Sexually Transmitted Infections

Discuss the risks of various STIs along with prevention and common presenting symptoms and signs. Preventive strategies include the consistent use of condoms, abstinence, being monogamous, or limiting the number of sexual partners. In addition, AYA should be offered the HPV vaccine (e.g., Gardasil® or Cervarix®), which can be given to both girls and boys aged 11–26 years.[94] The ideal time for the HPV vaccine is before the onset of sexual activity. The use of handouts with age- and language-appropriate information is essential. Treatment should be medically appropriate and include information on how the infection is transmitted, symptoms of the possible complications of the infection, and how to notify recent partners.

The CDC recommends annual chlamydia screening for all sexually active girls aged 25 years and younger.[55] All AYA should be tested for HIV at least once and rescreened as needed. AYA engaged in high-risk behaviors should be rescreened more frequently; guidelines for rescreening vary according to regional prevalence and access to resources.[95] Yearly screening for gonorrhea is recommended for at-risk sexually active AYA (e.g., those with a new partner or multiple partners, those who live in areas with a high incidence of gonorrhea). Pregnant AYA should be tested for chlamydia, gonorrhea, syphilis, HIV, and hepatitis B. AYA males who have sex with men should be tested at least annually for chlamydia, gonorrhea, syphilis, and HIV, with more frequent testing recommended for those who have sex with multiple partners, anonymous partners, or have sex under the influence of illicit drugs.[55]

HIV testing in LMICs is increasingly available, with an emphasis on provider-initiated testing. Most countries offer HIV testing to all pregnant females in an effort to decrease pediatric HIV infections from vertical transmission. However, there are no guidelines for routine HIV testing among AYA males or nonpregnant females, and the rate of HIV testing by AYA is significantly lower than among adults.[95] The WHO recommends increasing HIV testing and counseling services for AYA through the development of services that are age-appropriately sensitive to this population.[95]

VIOLENCE

The American Academy of Pediatrics Task Force on Violence recommends violence-related assessment including the following: family and individual history of mental illness; domestic, school, or neighborhood violence; gang involvement; substance abuse; family stressors; parental disciplinary attitudes and practices; access to firearms in the home and community; history of fighting; anger threshold; dating violence; and peer involvement in violence-related activities.[96,97] Anticipatory guidance for parents should include discussion of risks of weapons in the home and their removal or safe storage, use of nonviolent disciplinary action, importance of parental involvement and support, and counseling about youth access to media violence. Interventions with youth should focus on teaching strategies for weapon avoidance, nonviolent conflict resolution, and anger management, and encouraging involvement in productive and safe extracurricular activities (see the National Youth Violence Preventions Resource Center: http://www.safeyouth.org). Universal education about healthy relationships and screening for sexual and reproductive coercion and relationship violence are essential approaches to adolescent relationship abuse prevention and intervention. Linkages with domestic

violence and sexual assault advocacy organizations facilitate timely and appropriate responses such as safety planning and harm reduction for youth in unhealthy or abusive relationships.[98]

Adolescents who have been victims of or exposed to violence including war or civil conflict may need prompt referral for additional support services; providers must be familiar with local referrals for counseling, antigang/violence and prevention programs. Perpetrators may also suffer depression or posttraumatic stress disorder and need referral for counseling and violence prevention resources.

Substance Use and Abuse

To assess risks for substance use disorders, providers should routinely ask questions with a validated adolescent screening tool (e.g., CRAFFT: http://www.ceasar-boston.org/clinicians/crafft.php). Substance abuse by the immediate peer group and close friends strongly increases the likelihood of initiation in youth. Ask all adolescent patients about their personal as well as their peers' substance use, including tobacco, alcohol, and marijuana. It is critical to assess family substance use and abuse history, as well as parental attitudes toward use, and availability of licit and illicit substances in the home environment.

Discuss the addictive potential of nicotine and offer smoking cessation interventions to adolescents who currently smoke. Given their developmental stage, many adolescents do not respond to warnings about the long-term adverse health outcomes of tobacco use (e.g., lung disease, cancer), but may relate to other adverse effects, such as halitosis, wrinkling, and possible effects on erectile function. In addition to discussing health-related alcohol risks, providers should routinely discuss accident prevention related to alcohol and other drugs, including zero tolerance for driving while intoxicated, designated drivers, and a "no-consequences" alternative for parents when the adolescents may need a ride home.

AYA with identified substance use disorders need prompt referral for treatment to programs and resources that specifically work with AYA. Research-based interventions include pharmacotherapy, cognitive-behavioral therapy, family interventions, and motivational enhancement therapy, and are most successful when they are multidisciplinary and integrated in approach.[99]

Mental Health

Evaluation of mental health must include a comprehensive and thorough history, screening for depression and suicidal ideation, with further inquiries into any family history of depression or suicide. When diagnosing clinical depression, early referral of the adolescent and family for evaluation and therapy is critical. Providers should have a low threshold for referring AYA with psychotic symptoms including delusions and hallucinations. A first episode of hallucinations or delusions may be triggered by substance use. Substance use has been associated with earlier presentation of some psychotic disorders.[77] Early identification and treatment of AYA with potential psychotic symptoms have been shown to improve outcomes.[77]

Evaluate the risk of imminent suicide by determining the extent of suicidal ideation, if the adolescent has formulated a plan, and if there has been a recent attempt. Suicidal ideation and any attempts must be taken seriously and responded to with support and clarity. Hospitalize the patient if there are any concerns about an imminent attempt. This is a life-threatening situation in which parents must be notified regardless of the breach of confidentiality with the adolescent. Be familiar with community resources such as suicide "hotlines" and suicide prevention programs (see "Resources" section). If the youth is followed up as an outpatient, there must be strong follow-up with close monitoring of any

increases in suicidal ideation, plans, or attempts (see Adolescent Health Working Group—the Adolescent Providers Behavioral Health Toolkit: http://www.ahwg.net/resources-for-providers.html).

Homeless Youth

Few interventions with homeless youth have been systematically evaluated, and reviews of the literature have thus far not revealed clearly effective interventions.[100,101] In general, accessible, comprehensive medical services for homeless youth are oriented to the context in which homeless youth live. There is some support for comprehensive, intensive case management as well as bundling services with basic needs.[102] Younger homeless youth accessing runaway shelters are more likely to return home and may benefit from family-focused interventions.[101] Youth who have faced significant abuse, on the other hand, may be unable or unwilling to return home and would be better served by intensive case management and housing assistance.[101]

Youth homelessness may be prevented by primary care providers through early identification of families with a history of significant conflict, sexual or physical abuse, or families unsupportive of their adolescent's sexual orientation or gender identity. These families should be offered support, counseling, and resources including social and behavioral health services. Extension of support and services into young adulthood has been shown to prevent homelessness and improve academic, economic, and social outcomes for foster youth. Providers should be aware of community resources that target this population. Globally, engagement of governmental and nongovernmental organizations and social services and placement of HIV orphans with extended family members can mitigate future risks for this vulnerable population.[103]

Interventions to Improve Success in Chronic Conditions

A study of video-recorded clinic visits found that decision making related to self-management of a chronic condition was an iterative process occurring in three distinct patterns, slow evolution, step-wise, and abrupt decision making. Understanding these decision-making patterns is an essential step toward developing interventions that are appropriate to any given setting and that capitalize on the skills families develop as they gain experience with a chronic condition. Treatment adherence for adolescents with asthma, as with other chronic illnesses, is often poor, and asthma control in adolescent patients is often poorer than younger children with this condition. Interventions to improve asthma adherence can be considered as an exemplar for approaches that engender the needed shift in locus of control from parent to youth in chronic disease management. One report on an innovative program demonstrated improved outcomes of underserved adolescents with asthma.[104] Using the Chronic Care model and guidelines, this program established a special primary care clinic for teens identified with asthma, convened a Teen Asthma Advisory Board, implemented a redesign of the care delivery system, developed systems to improve communication between youth and providers, and developed community linkages and decision support guidelines. With the implementation of this program, the proportion of adolescents with well-controlled asthma increased by 30%, a gain that was maintained over time. The authors concluded that implementing interventions which focused on evidence-based care, self-management support, active outreach, and linkage to community resources can improve care and asthma control in adolescents. These kinds of programs, with intensive home, community-based family outreach, and multidisciplinary teams can be used as models for management of other chronic conditions in underserved adolescent patents.[105]

Using Technology and Social Media

Technology and social media may represent future tools to improve management of chronic conditions, as well as other youth-related issues. Studies indicate that 95% of American teens are online at least sometimes, and this connectivity increasingly moves with them on the rapidly developing variety of mobile devices.[106] The use of technology with teens is

a growing area of research and has great potential for the management of chronic conditions in teens.[107,108] Recent reports indicate that (1) teens prefer to receive text messages rather than e-mail, (2) computer-based screenings are acceptable to teens, (3) Web sites that address specific domains of teen health should be easy to use, and (4) social media can play a role in teen health and chronic disease management. Furthermore, the resources or sites need to be connected to the teen's personal experience with a group or organization that focuses on the teen's specific condition and confidentiality must be assured.[106]

CONCLUSION

Reducing vulnerability in adolescence and young adulthood requires a multidisciplinary approach that views AYA in the context of their personal characteristics, family, peer group, school environment, and community. Successful care is based on respect for the emerging autonomy of the adolescent and young adult, while providing for adequate assessment of family and social support, and intervening when necessary. National guidelines exist that extensively outline recommendations for routine preventive services. (See the American Academy of Pediatrics' Bright Futures Guidelines: https://brightfutures.aap.org/pdfs/Guidelines_PDF/18-Adolescence.pdf). The art of working with AYA lies in identifying those who are at increased risk for preventable morbidity and mortality and working with interdisciplinary collaborative teams to intervene with appropriate resources. Providers should become familiar with community-based organizations that promote prevention and positive youth development and can help AYA negotiate risky environments and behaviors. Clinics that serve AYA exclusively, providing youth-friendly and appropriate services, can be a valuable resource to community providers. Early and effective intervention with AYA can impact health and social outcomes throughout adolescence and adulthood.

KEY CONCEPTS

Care of Adolescents and Young Adults (AYA)

Develop youth-friendly systems of care.

Treat patients with respect.

Do not trivialize concerns.

Identify positive adult role model in patient's life.

Work collaboratively both in health delivery systems (clinicians, social workers), schools (teachers, administrators, school nurse), and community-based organizations (case managers, mentors).

Do not be a parent or a peer.

Assure confidentiality of services.

Assess school performance.

Support parents and identify stresses of parenting adolescents.

Express concern and compassion for healthy outcomes for AYA.

Become familiar with local resources for behaviors that put youth at risk: substance abuse, violence prevention and gang task force programs, mental health services, sexual and reproductive health services, homelessness, immigration.

Be nonjudgmental.

Normalize sexual feelings and attractions.

Respect and acknowledge maturation while continuing to provide appropriate supports.

Use every clinical encounter to update psychosocial assessment to identify risks.

CORE COMPETENCY

The Psychosocial History Addressing Key Domains Affecting Youth

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H	**Home** Who lives with you? Where do you live? Can you talk to anyone at home about stress? (Who?) What are relationships like at home? Have you or your family ever been homeless or lived in a shelter?
E	**Education/Employment** Are you currently in school? Tell me about your school? Is it a safe place? Have you been bullied? Do you feel connected to your school? Do you feel like you belong? What language do you speak at home? (i.e., What is your first language?) Do you have problems understanding your teachers or reading? How are your relationships with teachers and classmates (or coworkers if employed)? Have you ever failed a grade or dropped out of school? Are there adults at school you feel you could talk to about something important? Which? Are you working? Where? How much?
E	**Eating** Does your weight or body shape cause you any stress? Have you had any recent changes in your weight? Do you (or your family) have enough food for regular meals? Have you dieted in the last year: How? How often?
A	**Activities** What do you do with your friends or family for fun? What activities (sports, clubs, groups, religious, or spiritual) do you participate in? How many hours do you usually spend daily in front of a screen, such as computer, TV, or phone? What are your favorite hobbies, books, music, and so on?
D	**Drugs** Have you or your friends ever tried cigarettes or electronic cigarettes, alcohol, or other drugs? What have you tried? Do you observe (see/or observe) drug use near your home or school? How often have you used them, and how much at one time? Do you ever drive or ride in a car when you have been using alcohol or drugs?

	Does anyone at home use tobacco, alcohol, or other drugs? (Use CRAFFT screen)
S	**Sexuality** Have you ever been in a romantic relationship with anyone? With boys, girls, or both? How many partners have you had? Have you ever been pregnant or had a sexually transmitted infection? (For males)—Have you ever had any children or impregnated a partner? Have you used anything to prevent pregnancy or sexually transmitted infections? Have you ever been forced to have sex against your will?
S	**Suicide and Depression** What do you do when you are feeling sad, angry, or hurt? (PHQ-A screen) Have you ever felt so sad, angry, or hurt that you have wanted to hurt or kill yourself? Have you had any trouble with sleeping, or sleeping too much? Have you had any changes in appetite or concerns about eating?
S	**Safety** Do you feel safe at home and school? In your neighborhood? Are there guns or other weapons in your home? Do you or any of your friends have a gun? Have you ever been arrested or sent to a juvenile detention center? Have you or any of your friends ever been injured as a result of an attack with a weapon (gun or knife)? How often do you wear a seatbelt when in a car? When was the last time you sent a text message while driving? Tell me about a time when you have ridden with a driver who was drunk or high? When? How often? Have you ever met in person (or plan to meet with) anyone whom you first encountered online?

Adapted from Klein DA, Goldenring JM, Adelman WP. HEEADSSS 3.0: The Psychosocial interview for adolescents updated for a new century fueled by media. *Contemporary Pediatrics* 2014:16-28.

Note: Consider an alternate screening tool which begins with a focus on strengths: SSHADESS: Strengths, School, Home, Activities, Drugs/substance use, Emotions/depression, Sexuality, Safety.

DISCUSSION QUESTIONS

1. Compare the difference in approach you would use in risk reduction counseling between a 13-year-old and 17-year-old patient.
2. In addition to the risk of pregnancy, identify areas of concern for Rosa (consider developmental, legal, and cultural). How would you prioritize interventions for her?
3. Describe the characteristics of youth-friendly services.
4. Describe the ideal multidisciplinary team that would best meet the needs for Jared, the homeless youth.

RESOURCES

Global youth data and perspectives:

The 2014 WHO report, *Health for the World's Adolescents: A Second Chance in the Second Decade,* presents a global overview of adolescents' health and health-related behaviors, including the latest data and trends, and discusses the determinants that influence their health and behaviors—http://apps.who.int.proxy.lib.fsu.edu/adolescent/second-decade/.

General provider resources:

Adolescence guidance from Bright Futures: https://brightfutures.aap.org/pdfs/Guidelines_PDF/18-Adolescence.pdf.

Adolescent Health Working Group Provider Toolkits (Adolescent Health Basics, Understanding Minor Consent and Confidentiality, Behavioral Health, Body Basics, Sexual Health, Trauma and Resilience): http://www.ahwg.net/resources-for-providers.html.

Community-driven partnerships with resources to develop protective factors and best practices for teens: http://www.allaboutkids.umn.edu/konopka/.

Family Acceptance Project (materials to use with families with LGBTQ children): http://familyproject.sfsu.edu/publications.

Society for Adolescent Health and Medicine: http://www.adolescenthealth.org.

Psychosocial screening tools:

Psychosocial History Resource Center (HEEADSSS 3.0, SHADES, video instructions, articles, etc.): http://contemporarypediatrics.modernmedicine.com/resource-center/heeadsss3-0.

Ginsburg KR. Viewing our adolescent patients through a positive lens. *Contemp Pediatr* 2007:24(1):65-76.

Klein D, Goldenring J, Adelman W. HEEADSSS 3.0: The psychosocial interview for adolescents updated for a new century fueled by media. *Contemp Pediatr* 2014:16-28.

Depression Screening Tool PHQ-A:

http://www.uacap.org/uploads/3/2/5/0/3250432/phq-a.pdf. Scoring instructions: http://www.cappcny.org/home/documents/phq 9 teens scoring.pdf.

PHQ-A: Johnson JG, Harris ES, Spitzer RL, Williams JBW. The Patient Health Questionnaire for Adolescents: Validation of an instrument for the assessment of mental disorders among adolescent primary care patients. *J Adol Health* 2002;30:196-204.

Substance use screen: CRAFFT: http://www.ceasar-boston.org/clinicians/crafft.php.

Adolescent legal resources:

National Center for Youth Law: http://www.teenhealthlaw.org/

Guttmacher Institute. State policies in brief: an overview of minors' consent laws. 2014. Available at: https://www-guttmacher-org.proxy.lib.fsu.edu/statecenter/spibs/spib_OMCL.pdf. Accessed January 7, 2014.

Foster youth resources:

FosterClub is a national organization whose mission is to lead the efforts of young people in and from foster care to become connected, educated, inspired and represented so they can realize their personal potential and contribute to a better life for their peers. These youth activists have created a Transitions Toolkit: https://www.fosterclub.com/_transition/article/transition-toolkit

Homeless youth resources:

Transitional Living Program for Homeless Youth: http://www.benefits.gov/benefits/benefit-details/619.

National Association for the Education of Homeless Children and Youth: http://www.naehcy.org/educational-resources/youth.

Youth Drop in Centers: http://homeless.samhsa.gov/channel/youth-drop-in-centers-508.aspx.

Educational resources:

Thread engages underperforming high school students confronting significant barriers outside of the classroom by providing each one with a family of committed volunteers and increased access to community resources in Baltimore, MD: www.Thread.org.

Healthy Relationships and Relationship Abuse Resources:

Break the Cycle: Empowering Youth to End Domestic Violence: http://www.breakthecycle.org.

Stop Bullying Now: http://www.stopbullyingnow.com/index.htm.

Love is Respect: http://www/.loveisrespect.org/.

Pregnancy prevention resources:

CDC Teen Pregnancy Prevention, containing resources for parents, providers and teens: http://www.cdc.gov.proxy.lib.fsu.edu/teenpregnancy/aboutteenpreg.htm—Disparities.

National Campaign to Prevent Teen and Unplanned Pregnancy, Counting It Up: The Public Costs of Teen Childbearing: http://thenationalcampaign.org/why-it-matters/public-cost. Accessed February 5, 2015.

Sexual and reproductive health resources:

Advocates for Youth (sex education curriculum and policy advocacy tools): http://www.advocatesforyouth.org/for-professionals/sex-education-resource-center.

The National Campaign to Prevent Teen and Unplanned Pregnancy provides data and relevant publications at http://thenationalcampaign.org/.

ACOG Committee Opinion #539, "Adolescents and Long-Acting Reversible Contraception: Implants and Intrauterine Devices" provides clinical information and a slide set for providers. http://www.acog.org/About-ACOG/ACOG-Departments/Long-Acting-Reversible-Contraception/LARC-Clinical-Resources.

CDC Teen Pregnancy Prevention: resources for parents, providers and teens. http://www.cdc.gov.proxy.lib.fsu.edu/teenpregnancy/aboutteenpreg.htm#Disparities.

"Let's put birth control back on the agenda." TED talk by Melinda Gates. https://www.ted.com/talks/melinda_gates_let_s_put_birth_control_back_on_the_agenda.

Vernacchio Al. *For Goodness Sex: Changing the Way We Talk to Teens About Sexuality, Values, and Health.* 1st ed., New York: Harper Collins Publishers; 2014. A novel look at sex education by a high school sexuality teacher.

CDC's Teen Friendly Health Visit outlines the components of a teen-friendly clinic visit for sexual and reproductive health services. http://www.cdc.gov.proxy.lib.fsu.edu/teenpregnancy/health-care-providers/teen-friendly-health-visit.htm#elements.

Bedsider for Providers links to free information, resources, patients materials and interactive tools for providers of sexual and reproductive healthcare for AYA. http://providers.bedsider.org/.

Adolescent pregnancy and parenting resources:

The National Crittenton Foundation provides counseling, education and support for young mothers through a family of agencies located across the US. http://www.nationalcrittenton.org/who-we-are/.

The National Fatherhood Initiative provides resources for fathers, including new young fathers. http://www.fatherhood.org/.

The Healthy Teen Network has links to resources for working with pregnant and parenting teens. http://www.healthyteennetwork.org/working-pregnant-parenting-teens.

"Working with Pregnant and Parenting Teens Tip Sheet" provides information and resources for providers. http://www.acf.hhs.gov.proxy.lib.fsu.edu/sites/default/files/assets/preg.

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At risk of being risky: The relationship between "brain age" under emotional states and risk preference

Marc D. Rudolph[a], Oscar Miranda-Domínguez[a], Alexandra O. Cohen[b], Kaitlyn Breiner[c], Laurence Steinberg[d], Richard J. Bonnie[e], Elizabeth S. Scott[f], Kim Taylor-Thompson[g], Jason Chein[d], Karla C. Fettich[d], Jennifer A. Richeson[h,i], Danielle V. Dellarco[b], Adriana Galván[c], B.J. Casey[b,i], Damien A. Fair[a,*]

[a] Department of Behavioral Neuroscience, Department of Psychiatry, Advanced Imaging Research Center, Oregon Health & Science University, Portland, OR, United States
[b] Sackler Institute for Developmental Psychobiology, Department of Psychiatry, Weill Cornell Medical College, New York, NY, United States
[c] Department of Psychology, University of California, Los Angeles, CA, United States
[d] Department of Psychology, Temple University, Philadelphia, PA, United States
[e] University of Virginia School of Law, Charlottesville, VA, United States
[f] Columbia Law School, New York, NY, United States
[g] New York University School of Law, New York, NY, United States
[h] Department of Psychology and Institute for Policy Research, Northwestern University, Evanston, IL, United States
[i] Department of Psychology, Yale University, New Haven CT, United States

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ABSTRACT

Developmental differences regarding decision making are often reported in the absence of emotional stimuli and without context, failing to explain why some individuals are more likely to have a greater inclination toward risk. The current study (N = 212; 10–25y) examined the influence of emotional context on underlying functional brain connectivity over development and its impact on risk preference. Using functional imaging data in a neutral brain-state we first identify the "brain age" of a given individual then validate it with an independent measure of cortical thickness. We then show, *on average*, that "brain age" across the group during the teen years has the propensity to look younger in emotional contexts. Further, we show this phenotype (i.e. a younger brain age in emotional contexts) relates to a group mean difference in risk perception – a pattern exemplified greatest in young-adults (ages 18–21). The results are suggestive of a specified functional brain phenotype that relates to being at "risk to be risky."

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1. Introduction

Even before the earliest conceptions of a juvenile justice system, adolescents and young adults have presented unique challenges to policy-makers (Steinberg, 2009). Higher incidents of criminal activity, substance use disorders, and the emergence of psychopathologies are often reported during this sensitive time period amongst a range of potentially comorbid factors (Bava and Tapert, 2010; Cohen and Casey, 2014). Prominent aspects include an increase in risky behaviors, higher degrees of sensation seeking and impulsivity, greater sensitivity to rewards, and heightened reactivity to threat and punishment (Benthin et al., 1993; Brown et al., 2015; Dreyfuss et al., 2014).

A particular locus of concern pertains to the functional neuroanatomy of adolescent development and autonomy in decision-making from young, to full adulthood, particularly within and amongst socio-affective environments known to have a profound impact on cognition and behavior. Impeded decision-making abilities have been reported in response to emotionally charged-situations, peer influence, and paradigms assessing the salient nature of rewards and punishment (Brown et al., 2012a; Dreyfuss et al., 2014; Gardner and Steinberg, 2005; Ladouceur, 2012; Mueller, 2011; Somerville and Casey, 2010). Indeed, these matters are currently being debated at the intersection of law and neuroscience, where legal decisions regarding the criminal culpability of juveniles remain in flux (Cohen and Casey, 2014; Jones et al., 2014;

* Corresponding author at: Oregon Health and Science University, Behavioral Neuroscience and Psychiatry, 3181 SW Sam Jackson Park Road L470, Portland, Oregon 97239, United States.
E-mail address: faird@ohsu.edu (D.A.Fair).

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Steinberg, 2008). Legal issues concerning the *age of majority* beg the question – *when should an adolescent be considered an adult* (Cohen et al., 2016)?

In all aspects of development, a great deal of heterogeneity exists amongst typically and non-typically developing populations (Fair et al., 2012b). Particular characteristics may predispose certain subgroups of individuals more than others with a greater inclination toward risk. Some of these characteristics may normalize over time, in part due to structural and functional brain maturation; but regardless of age, there is much uncertainty regarding which individuals are most at-risk. Simply stated, while on average the increased prevalence of risky behavior and irrational decision-making across the adolescent and young adult periods have been shown repeatedly, not all adolescents fit this behavioral profile (Steinberg, 2008).

This variation across individuals may explain why general hypotheses concerning mismatches in brain development (e.g. dual-process models, grey matter vs. white matter, subcortical vs cortical regions), cognitive control and emotional regulation (hot/cold, top-down/bottom-up, BIS/BAS, etc.) have difficulty accounting for the myriad of behaviors and heterogeneity reported in this timeframe (Cohen and Casey, 2014; Mills et al., 2014). Importantly, developmental differences are often reported in the absence of emotional stimuli and without context. A key advancement in the study of development with respect to atypical behavior lies in exploring these relationships while taking into consideration the "brain state" in which a decision is made.

1.1. Task-based & task-free imaging paradigms

Neuroimaging studies combining data from resting-state (rs-fcMRI; task-free) and task-based (fMRI; event-related) paradigms have mapped developmental changes in network dynamics, formation, and development (Fair et al., 2009, 2007a; Power et al., 2010). These studies and their antecedents have documented shared functional properties at both the regional and systems level (Fair et al., 2007b; Fox et al., 2006; Fox and Raichle, 2007). In essence, they cite a universality of intrinsically organized neural coherence; an underlying organization of functional brain connectivity that appears to be closely related to task-evoked neural responses (Cole et al., 2014; Fox et al., 2007). However, the nature of the intrinsic brain connectivity that lies beneath event-related task-activity is not static. Alterations in intrinsic activity under various conditions may yield important insights into the nature of decision making independent of the task evoked activity (Fair et al., 2007b).

1.2. Model-Based science, neuroimaging & prediction

With this framework in mind – recognizing the brain as a dynamic and complex biological system – a key direction for cognitive and behavioral neuroscience research is the acquisition and examination of large datasets employing multivariate analytical solutions and robust statistical validation procedures (Power et al., 2010). Such approaches applied to the study of brain and behavior in typically and atypically developing cohorts across the lifespan has already begun to show great promise and translational potential (Betzel et al., 2016, 2014; Cao et al., 2014; Chan et al., 2014; Dosenbach et al., 2010; Fair et al., 2012b; Helfinstein et al., 2014).

1.3. Purpose & goals

The current research examines the influence of sustained emotional contexts (neutral, negative, and positive) on residual patterns of functional connectivity (pseudo-resting state, RS)(Fair et al., 2007b). We test whether an individual's predicted functional "brain age" deviates under emotional influence (emotional brain age) and whether or not this deviation from one's true age in a given context is related to a propensity toward, or aversion to risk regardless of biological age.

2. Methods

2.1. Participants

As part of a large, ongoing study, 212 healthy right-handed 10–25 year olds (118 Females) with no history of mental illness, neurologic disorders, or use of psychotropic medications was recruited and included in the current report. Participants come from a diverse community sample in New York City (NY; N = 119) and Los Angeles (LA; N = 98) (all participants—M = 19.05, SD = 3.91; 11 children—6 female, ages 10–12 years, M = 11.55, SD = 0.89; 80 teens—45 female, ages 13–17 years, M = 15.77, SD = 1.44; 58 young adults—33 females, ages 18–21 years, M = 19.86, 1.11; 63 adults—34 females, ages 22–25 years, M = 23.7, SD = 1.03) self-identified as African American (23.6%), Asian (14.6%), Caucasian (34.4%), Hispanic (22.6%), or Other (4.7%), completed the Cognitive Control Under Emotion (CCUE) fMRI task (Cohen et al., 2016) and the Benthin Risk Assessment (Benthin et al., 1993; Steinberg, 2008). Nineteen participants were excluded for motion as described in more detail below. All participants provided informed written consent approved by the Institutional Review Boards at each site (see Supplemental Table S6 for more detail). A smaller subset of these data (N = 85; see discussion) has been used in previously published analyses cited within the current report (Cohen et al., 2016).

2.2. Behavioral risk assessment

As part of a larger behavioral (non-imaging) battery, participants completed a modified version of the Benthin Risk Perception Measure (BRPM)(Benthin et al., 1993; Gardner and Steinberg, 2005; Steinberg and Chein, 2015) to assess perception of, and preference for risk taking through self-report. Variables of interest used in the present report were graded on a 4-point scale and included risk perception (how risky is an activity), risk seriousness (how serious are the consequences for engaging in a risky behavior), risk cost (how much do costs outweigh the benefits), and risk preference (how much do the benefits outweigh the costs). A composite "risk assessment" index provided an overall measure of risk reflecting the mean score across risk perception, cost and seriousness. Except for risk preference, lower scores indicate less overall awareness and preference for risk.

2.3. fMRI task design & presentation

Participants completed a rapid event-related emotional go/nogo impulse control task to transient social cues under sustained negative (threat: anticipation of an aversive noise), positive (excitement: anticipation of a reward), and neutral (no anticipation of an aversive noise or reward) emotional contexts. The task featured a pseudo-random design with variable inter-stimulus time intervals for presentation of sustained emotional contexts and six transient social cue trial type pairings (fear/calm, calm/fear, fear/happy, happy/fear, calm/happy, and happy calm). During each emotional context, a participant was presented with the full-range of emotional and non-emotional faces and transient cue pairings. The potential for an emotional versus neutral event occurring was indicated by a colored background (Supplemental Fig. S4). A more detailed description of the novel CCUE task used in the present report, including effects concerning altered decision-making under the sustained emotional contexts can be found in previous reports (Cohen et al., 2016, 2015). Data were acquired during six 8-min and 2-s runs (for a total of 48 min and 12 s), allowing each emotional

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expression (calm, fear, happy) to be used as a go or a nogo stimulus within runs counterbalanced for emotional context. For each trial, a face appeared for 500 ms, followed by a jittered intertrial interval (2–7 s). A total of 114 trials were presented in each run in a pseudorandomized order (84 go, 30 nogo across all cue types). In total, 60 nogo and 168 go trials, across all three cue types, were acquired for each emotional state. A portion of the participants (85 of 212) underwent a peer condition where a theoretical peer was present during task administration. Assessing individuals with and without peer influence separately produced results consistent with the primary findings described in the results section (see Supplemental Text). In brief, this manipulation *did not* have any statistically significant effects on the current findings.

2.4. Data acquisition

Whole brain fMRI data were acquired using Siemens Magnetom Trio 3.0 T scanners located at the Citigroup Biomedical Imaging Center at Weill Cornell Medical College (WCMC) or at the Staglin Center for Cognitive Neuroscience at the University of California, Los Angeles (UCLA). Scanning parameters were identical across data collection sites and each site acquired imaging data across the range of ages included in the current sample. A high resolution, T1 weighted magnetization-prepared rapid-acquisition gradient echo (MPRAGE) sequence scan was acquired using BIRN optimized sequences (repetition time [TR] of 2170 ms, echo time [TE] of 4.33 ms, 256-mm field of view [FOV], 160 slices x 1.2-mm sagittal slices). Functional images were acquired using T2*-sensitive echo planar pulse sequences covering the full brain. Thirty-eight 4-mm thick axial slices were acquired per 2500 ms TR (TE = 30 ms; FOV = 200-mm; Flip angle = 90°, 3.1 × 3.1 × 4.0 mm voxels).

2.5. Data pre-processing

Preprocessing of functional data, including preparation of fMRI data for connectivity analyses, was performed in-house at the Oregon Health & Science University (OHSU) using methods described previously to reduce artifacts, register subjects to a target atlas and resample data (Miezin et al., 2000). Steps included: (1) removal of a central spike caused by MR signal offset, (2) correction of odd vs. even slice intensity differences attributable to interleaved acquisition without gaps (differences in acquisition time), (3) correction for head movement within and across runs (Power et al., 2012) and (4) within-run intensity normalization to every voxel using a whole brain mode value of 1000. Atlas transformation of the functional data was computed for each individual via the MPRAGE scan. Each run then was resampled in atlas space (Talairach and Tournoux, 1988), using a target T1-weighted template (711-2B), on an isotropic 3 mm grid, combining movement correction and atlas transformation in one interpolation (Lancaster et al., 1995). All subsequent operations were performed on the atlas-transformed volumetric time series (Fair et al., 2012b).

2.6. Pseudo-resting state (pseudo-RS)

To examine functional connectivity under emotional influence independent of task performance and deterministic task-related events, task-related BOLD responses were modeled using the general linear model (GLM) and removed by regression prior to functional connectivity preprocessing on a voxel-by-voxel basis (Fair et al., 2007b; Fox et al., 2007, 2006; Miezin et al., 2000). Similar to Fair et al., 2007a,b; the GLM design included time as a seven level factor (7 frames following stimulus presentation) and the BOLD response was modeled over a period of ~17.5 s (7 frames, 2.5 s per MR frame), including two additional regressors coded in the GLM for baseline signal and linear drift. Importantly, given issues with parameter estimation across brain regions and timescales, a canonical hemodynamic impulse response function/shape was not assumed (Boynton et al., 2012; Fair et al., 2007b).

2.7. Connectivity pre-processing

Additional preprocessing steps were employed to reduce spurious variance stemming from non-neuronal activity (Fox et al., 2005; Fox and Raichle, 2007). Steps included: 1) regression of six parameters (head re-alignment estimates) obtained by rigid body head motion correction, 2) regression of the whole brain signal (Power et al., 2014a; Power et al., 2014b; See limitaions within the discussion), 3) regression of ventricular signal averaged from ventricular regions-of-interest (ROI), 4) regression of white matter signal averaged from white matter ROI, 5) regression of first order derivative terms for whole brain, ventricular, and white matter signals (to account for variance between regressors), and 6) temporal bandpass filtering ($0.009\,\text{Hz} < f < 0.08\,\text{Hz}$)(Fair et al., 2012b, 2009, 2008, 2007b). As described in the steps above, nuisance regression was applied prior to bandpass filtering to circumvent the potential for reintroducing unfiltered noise (i.e. previously filtered frequencies) back into the data (Hallquist et al., 2013). In addition, and in light of research demonstrating the profound impacts of in-scanner movement on connectivity estimates, motion was censored on a frame-by-frame basis via framewise displacement (FD)(Fair et al., 2012b; Power et al., 2012). Frames (or volumes), including adjacent frames (1 prior to and 2 following a censored frame) associated with greater than 0.3 mm displacement (translation and rotation) were removed from a time series prior to analyses (Minutes remaining: M = 33.94 min, SD = 10.08; Percent Frames Remaining: M = 71.78%, SD = 21.23). Nineteen participants were excluded from analyses for having less than 10 min or 20% of frames remaining across all runs (Laumann et al., 2015; Van Dijk et al., 2010).

2.8. Pseudo-RS connectivity pre-processing & ROI definition

To assess the discrete effects of sustained emotional contexts on underlying connectivity, all analyses were performed on motion-corrected residual timeseries (after removal of modeled task-specific effects as described in the previous section) for a given emotional context. This step is accomplished on a subject by condition basis whereby a binary vector representing the total number of frames (accounting for excluded frames due to motion) is further modified in order to ensure successful separation of adjacent epochs of fMRI data. Specifically, the aim is to eliminate any interaction between emotional conditions and to remove potential confounds induced by hemodynamic delay and response patterns (Fair et al., 2007b; Logothetis and Wandell, 2004). Supplemental Fig. S5 depicts a generalization of this process: steady-state is assumed after the first four frames, then the two frames preceding a block of sustained emotional valence (neutral, negative, and positive) are removed and six frames after a contextual block are included to account for the delay in the hemodynamic response. Frames removed are censored by setting the values of those frames to zero, whereas frames included are set to one.

From there, for each participant, blocks specific to a given emotional context are concatenated together, providing 3 vectors (neutral context, negative context, and positive context). Connection matrices were generated for each emotional context by taking the pairwise cross-correlation of valid time points between a set of 264 regions of interest (ROIs; 10 mm spheres) derived from a prior meta-analyses of task fMRI data and resting-state activity mapped onto a cortical surface (Dosenbach et al., 2010; Power et al., 2011, 2010). This process results in a 264 × 264 × 212 correlation matrix comprising 34,716 unique connections for a given context.

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2.9. Partial least squares regression (PLSR)

Given the high-dimensional space (number of features) and covariance structure in the connectivity data, we chose to use PLSR to assess a participant's predicted age. PLSR is a multivariate technique similar to Principle Components Analysis (PCA) that models a response by reducing a large set of correlated features into orthogonal (uncorrelated) components. However, unlike PCA which focuses solely on the input (x; the independent variables, or predictors), PLSR takes the output (y; dependent variable) into consideration by limiting the relationship (amount of covariance) between the predictor variables and maximizing covariance (prediction) between x and y via singular-value decomposition (SVD)(Abdi and Williams, 2013). For further details and insightful schematics depicting this process we refer the reader to (Krishnan et al., 2011).

2.9.1. Applying PLSR to residual connectivity matrices

Here, (x) represents a 212 (participant) x 34,716 (connection) two-dimensional input matrix for a given context and (y), a 212 × 1 vector containing ages for each participant. We used 10-fold cross-validation on the entire sample in the neutral (baseline) context to identify the optimal number of components used to predict age. Cross-validation is an iterative process whereby a sample dataset is randomly partitioned in order to train and test sets used to assess a model's robustness, prevent overfitting, and increase generalizability to unseen data (Abdi and Williams, 2013; Fair et al., 2012b; Gabrieli et al., 2015; Krishnan et al., 2011). This approach identified four components capable of providing the best overall fit while simultaneously reducing the mean-squared error (MSE) and explaining the greatest variance in y (Fig. 1).

2.10. Predicting age

Counter to traditional correlation-based methods utilizing known outcomes/relationships, prediction is herein formalized as a model-based approach to predicting some outcome/response variable in a subset of unseen data from parameters generated within a larger dataset (Gabrieli et al., 2015).

2.10.1. Constructing the model

In order to avoid selection bias and maximize generalizability within our dataset, (using a fixed *number of four components* as described above) PLSR models are generated and tested on randomly selected groups using a cross-validation process repeated over 4000 iterations. Specifically, on each round of cross-validation, participants were randomly partitioned using a 30% holdout procedure resulting in 70% training (148) and 30% test (64) sets. Training of a model is based exclusively on functional connectivity data (in a Training set) from the neutral condition given no external stimulus was present. That is to say, participants are presented with the range of cues and faces across all contexts (neutral, negative and positive), however only the neutral context is absent of external manipulation (presentation/anticipation of noise or reward), and therefore serves as a baseline condition to derive predicted "brain ages". From here, in order to assess differences in connectivity under emotional influence (across contexts) within subject, we identified a test case with the best out-of-sample (test) fit between true and predicted ages in the neutral condition. As described below, this approach also allows us to test hypotheses regarding the association between alterations in functional connectivity under emotional influence and risk.

2.10.2. Applying the model

Here, we use the established 'optimal' model to predict a participant's age within the test case under varying emotional contexts by re-applying the model parameters (beta weights) generated exclusively from the training set in the neutral context to connectivity data from the test case for the negative and positive contexts.

2.11. Emotional brain age & group comparisons on risk

In order to assess the relationship between altered intrinsic functional connectivity in an emotional context and risk, we generated an adjusted emotional brain age for participants within the test case. Emotional brain age is herein defined as the difference between an individual participant's predicted age in the neutral context, from their predicted ages in the negative and positive emotional contexts (see Methods). This approach provides a zero-mean index such that those predicted to be younger in emotional contexts relative to the neutral condition fall below zero, and above zero if predicted to be older. Predicted emotional brain age within a given emotional context was used to split the test set into participants predicted as younger or older, and to test for group differences on risk metrics using standard univariate analyses (Fig. 2). Seven participants could not be included due to missing data on risk metrics. Additional independent *t*-tests were used to ensure predicted group status, and differences observed on risk metrics, were not due to a variety of factors including movement as discussed further below.

Data smoothing procedures (Fair et al., 2012b, 2007a, 2006) were applied to the predicted emotional brain ages using locally weighted sum of squares (loess). Such tests require no assumptions regarding the structure of data, and help zero in on appropriate model fits (Cleveland et al., 1988). Polynomial functions were also fit to the data permitting a qualitative comparison between a participant's biological and predicted emotional brain age (Fig. 2). Additional tests were performed to assess group differences within and between predicted groups by gender and peer group status (see Supplementary Material).

2.12. Structural data

Cortical thickness measurements, extracted from 244 cortical nodes mapped to the cortical surface (Gordon et al., 2014) within the 264 ROI set were used to generate a new PLSR model to predict age within the cross-validated training and test sets (Note: subcortical regions from the 264 region set were not used for the validation as they cannot be mapped for cortical thickness measurements). This procedure permitted additional validation of predicted ages derived from functional activation within the baseline neutral context. Thirteen participants within the training set and three within the test set could not be included in the current analysis. Two-participants were excluded due to bad image segmentations and 11 had not completed proper quality assurance at the time of the analysis, leaving 127 of 148 training participants and 61 of 64 test participants. Cortical reconstruction and volumetric segmentation was performed with the Freesurfer image analysis suite, which is documented and freely available for download online (http://surfer.nmr.mgh.harvard.edu).

2.13. Predictive features

Correlation matrices for the neutral, negative, and positive conditions represented 34,716 unique functional connections between 264 ROIs used as features in the PLSR model to predict age. The beta weights obtained, signifying the importance of a particular connection between ROIs in the model, were ranked and summed by their absolute values. ROIs were then plotted on a standardized brain surface using Caret 5 (University of Washington, St. Louis) scaled proportionally by their absolute beta weights.

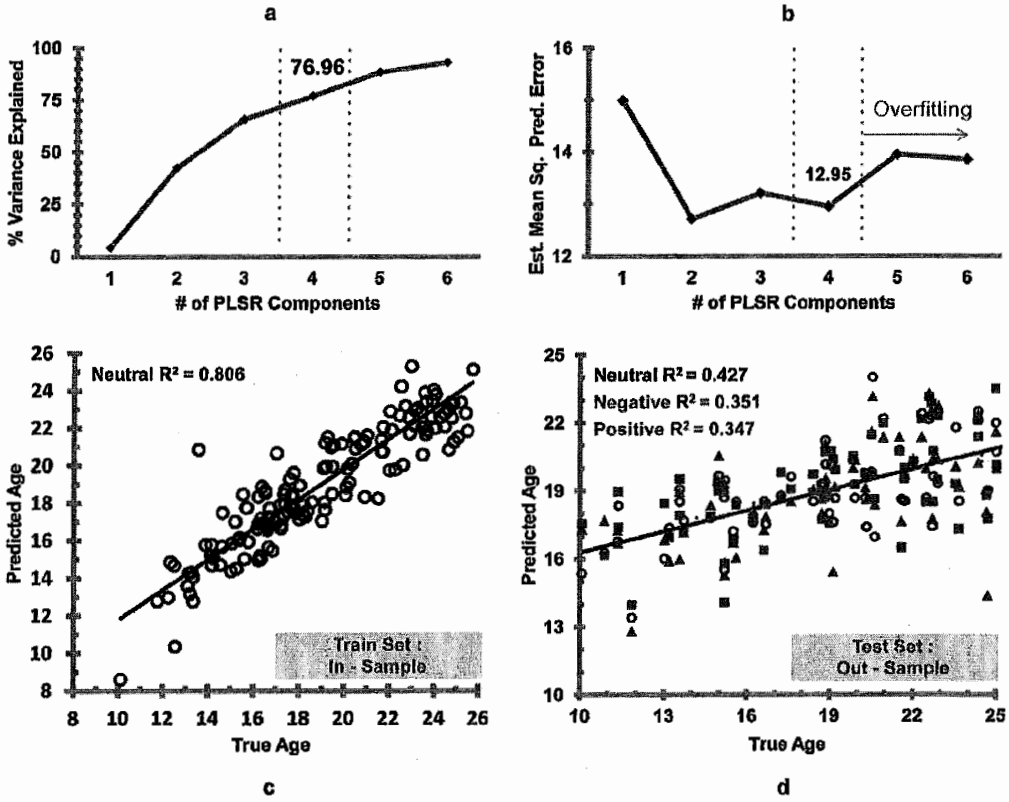

Fig. 1. Partial least squares regression (PLSR) & age prediction. 10-fold cross-validation identifies the optimal number of components able to predict age in the current sample. Four components were selected (a) minimizing the mean-squared prediction error and (b) maximizing the amount of explained variance in the predicted variable (age). Linear fits illustrate the predictive quality for age (exact age at scan) in the (c) training group for 148 randomly selected participants (70% Holdout; 83 Females, 65 Males) and (d) testing sets (64 Participants; 35 Females, 29 Males) in the NEUTRAL training condition after 4000 repetitions.

3. Results

3.1. Age prediction

We begin by examining the ability for our models to predict age in a given individual within a neutral baseline condition (see Methods). Age prediction was highly accurate over each round of cross-validation (Mean $r = 0.3846$; $SD = 0.0988$; $p <= 0.00001$). The optimal model was also highly significant (Fig. 1), and importantly well matched in demographic characteristics between train and test sets. The strength of prediction for the training set for this model is high as expected, as these data are used to generate the model itself (see Methods). However, the model significantly predicted age in the novel test sample with high accuracy as well (Fig. 1; Train r^2 0.810, $r^{2-adjusted}$ 0.808, *RMSE* 1.503; Test r^2 0.421, $r^{2-adjusted}$ 0.412, *RMSE* 1.591). In sum, these findings are consistent with prior work using alternative models with resting-state functional connectivity (Dosenbach et al., 2010; Fair et al., 2012b).

3.2. Predicted ages with structural connectivity

Generating a model within the training and test sets using an independent brain measure (i.e., structural, as opposed to functional data) provided an additional layer of support for predicted ages derived from pseudo-RS connectivity data in the neutral condition, despite predicting the same outcome measure (i.e. age). Cortical thickness measurements from 244 cortical nodes used for the functional predictions (see Methods) significantly predicted age (Fig. 2), consistent with prior work (Brown et al., 2012b). Importantly, predicted ages derived from cortical thickness estimates and pseudo-RS data in the neutral context were highly correlated and not significantly different. A paired samples *t*-test was used to test for differences between the predicted ages ($t_{(60)} = -1.211$, $p = 0.2667$). Panel c (Fig. 2) displays the significant relationship between both sets of predicted ages. For the current report we define "brain age" as ones predicted age based on brain measurements relative to their true age. Along with the functional data in the neutral state, these data provide evidence for a baseline "brain age" for a given individual (see Methods).

3.3. Predicted emotional brain age & risk

Given the ability of the models to predict age within the neutral context for both the training and test sets, and validation of predicted ages using structural data, we sought to assess the impact of sustained emotional context on connectivity and predict age under emotional influence in the negative and positive contexts relative to the neutral condition (*a comparison, of note, that cannot be conducted with anatomical data alone*). Applying the validated model (derived from the neutral baseline context in the training

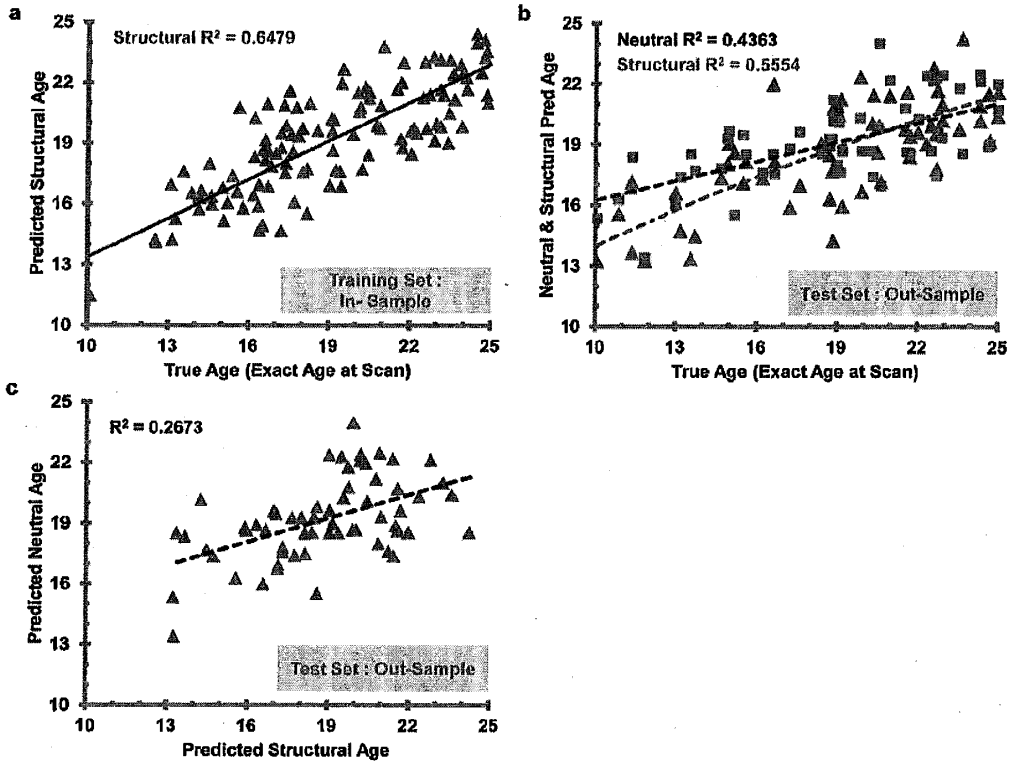

Fig. 2. PLSR-structural & age prediction. Using cortical thickness measurements from 244 nodes within the 264 node set, PLSR significantly predicted age in both the (a) in-sample (train; N = 127) and (b) out-of-sample (test; N = 61) data. Structural x Neutral predicted ages (c) were not significantly different and correlated at $r = 0.517$.

set exclusively) to connectivity data from the test sample in both the negative and positive emotional contexts yielded significant age predictions (Fig. 1; Negative r^2 0.349, $r^{2-adjusted}$ 0.338, *RMSE* 1.688, Positive r^2 0.333, $r^{2-adjusted}$ 0.323, *RMSE* 1.708). Although the slopes of these predictions were not statistically different (neutral vs. negative: p = 0.589; neutral vs. positive: p = 0.518), we next tested for any non-systematic differences within participants in predicted age between emotional contexts relative to neutral.

Predicted emotional brain ages (i.e. the difference between an individual's age predicted in the neutral baseline condition versus a given emotional condition) were plotted against a participant's true age and fit with LOESS curves (Fig. 3) to identify trends within the data. In sum, this analysis highlighted participants who tended to be predicted as relatively younger or older in an emotional context when compared to the neutral context. Adolescents (teens) showed a greater inflection overall toward being predicted younger on average (this particular result was further explored using a 3° polynomial for the negative and positive contexts, see Fig. 3; Negative $r^2 = 0.089$, *norm-R* = 10.139, $p = 0.131$; Positive $r^2 = 0.205$, *norm-R* = 0.897, $p = 0.003$). However, across all ages there were many participants who were predicted as being "older" in the emotional contexts as opposed to others who were predicted as "younger." Further, we acknowledge and discuss some potential limitations with regard to over-interpreting the adolescent specific results (see Discussion). The predicted ages between the negative and positive contexts were highly correlated (r = 0.823, r2 = 0.677, p = 0.000) and 15 of 64 (23.43%) participants switched predicted groups amongst the emotional contexts. In other words, for most participants, but not all, the phenotype (i.e. predicted younger vs. predicted older) cut across both emotional conditions.

We then set out to determine whether this phenotype (i.e. predicted "older" or "younger" under emotional contexts) related to differences on risk preference and risk perception across these groups of participants (regardless of various developmental and environmental factors). Within the final test set of 64 participants, 7 did not have risk data resulting in 57 participants used in all subsequent analyses assessing the relationship between predicted emotional brain age and risk.

Differences on risk metrics were assessed between predicted phenotypes (i.e. two levels: predicted younger versus predicted older) using a multivariate analysis of variance (MANOVA) for risk perception, cost, and seriousness for a given context (i.e. negative and positive). Results were just above significance at trend level in the negative context ($F_{(3,53)} = 2.684$, $p = 0.056$, $\eta p^2 = 0.132$) and significant in the positive context ($F_{(3,53)} = 3.433$, $p = 0.023$, $\eta p^2 = 0.163$). A univariate ANOVA was run separately for risk assessment (given it is a composite score of risk perception, risk cost, and risk seriousness; see Methods), and was significant in both the negative ($F_{(1,55)} = 4.000$, $p = 0.051$) and positive ($F_{(1,55)} = 8.020$, $p = 0.006$) context. Risk preference was assessed separately (different scale; see Methods) using an independent *t*-test and was significant at $p <= 0.05$ in the negative context ($t_{(55)} = 2.31$, $p = 0.024$) with the predicted younger group having a greater preference for risk. Differences on risk preference was trend level at $p <= 0.10$ in the positive context ($t_{(55)} = 1.72$, $p = 0.092$), again with the predicted younger group having a greater preference for risk.

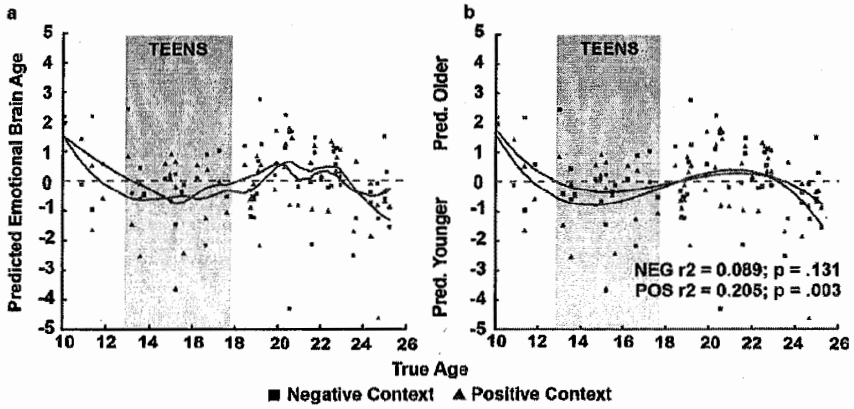

Fig. 3. Smoothing curves (LOESS) & Polynomial Fits. Qualitative visualization of trends present within predicted emotional brain age groups for negative (Younger N = 33; Older N = 31) and positive (Younger N = 33; Older N = 31) emotional contexts. Data (true age x predicted emotional brain age) is fit with a) LOESS curves sensitive to outliers (40% of the data). The sharpest inflection occurs about mid-adolescent to young-adult range. The decline occurs around mid-adolescence stabilizing somewhat by the late young-adulthood. In panel b) a polynomial fit is used (Negative $r^2 = 0.089$, *norm-R* = 10.139, $p = 0.131$; Positive $r^2 = 0.205$, *norm-R* = 0.897, $p = 0.003$).

Post-hoc independent *t*-tests in the positive context were significant for risk perception and risk seriousness at $p <= 0.05$, and trend level for risk cost at $p <= 0.10$ in that the predicted younger phenotype showed a decreased risk perception and greater inclination toward risk (see Fig. 4; Supplemental Table S2). Post-hoc independent *t*-tests for the negative context were significant for all but one measure (Fig. 4; Supplemental Table S2).

We note several important considerations here: 1) Although adolescents tended to show a greater overall trend toward being predicted as younger during emotional contexts, there were no differences in the predicted ages between the contexts (see Methods), 2) the predicted groups (i.e., predicted 'older' versus 'younger') did not differ on measures of pubertal development, site of scan acquisition, IQ, socioeconomic status (SES), race, task performance, or movement (percent frames remaining or remaining mean FD; Supplemental Table S1), this was true for both the negative and positive contexts. Motion is discussed further within the supplemental material in relation to age, predicted outcomes and metrics assessed here.

Overall, the results suggest that regardless of context, age, or gender (in addition to the additional post-hoc group comparisons described above), the phenotype of being predicted younger in emotional contexts is associated with greater risk preference and lower risk perception (Fig. 4; Supplemental Table S2, although see caveats in Supplemental Table S2). Importantly, a participant's predicted "brain age" in an emotional context (as opposed to the predicted emotional brain age defined as the difference of 'brain age' in neutral and emotional contexts) did not predict scores on risk metrics (Supplemental Fig. S1). Further, simply taking the difference between predicted ages in the neutral context and a participants true age, does not result in observed differences between predicted groups on any of the risk metrics assessed; risk perception ($t(55) = -1.531$, $p = 0.132$), risk cost ($t(55) = -0.778$, $p = 0.440$), risk seriousness ($t(55) = 0.550$, $p = 0.585$), risk assessment ($t(55) = -0.768$, $p = 0.446$), risk preference ($t(55) = -0.778$, $p = 0.440$). This result further supports the relationship between predicted emotional brain age as defined in the current study and the risky behavioral phenotype. Small, but significant relationships

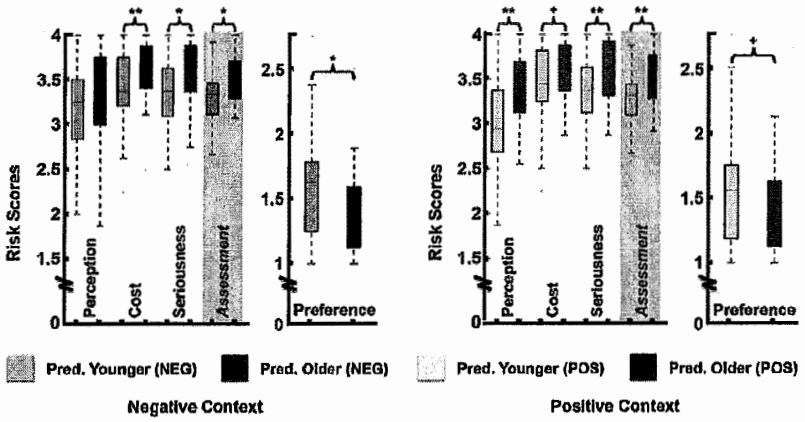

Fig. 4. Predicted emotional brain age group comparisons on risk metrics. Post-hoc independent *t*-tests were performed between individuals predicted as younger or older in both the negative (Younger N = 29; Older N = 28) and positive (Younger N = 28; Older N = 29) emotional contexts relative to the neutral condition on metrics assessing awareness of and preference for risky behavior. * $p <= 0.05$, ** $p <= 0.01$, + trend at $p <= 0.10$.

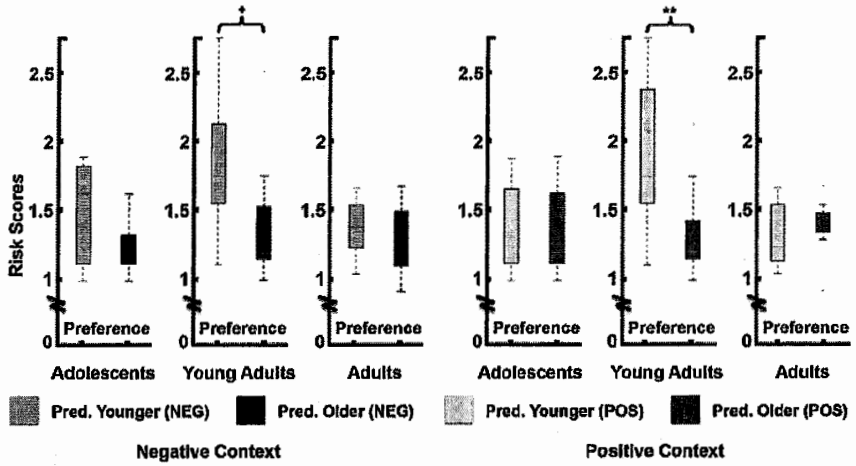

Fig. 5. Predicted emotional brain age & risk preference by age cohort. Significant differences were observed for risk preference only in young adults. No significant differences were observed for adolescents or adults on risk preference in the negative or positive context. *p <= 0.05, ** p <= 0.01, + trend at p <= 0.10. See supplementary material for predicted emotional brain age and other risk measures as a function of age cohort.

with risk metrics were observed for a participant's biological age, predicted age in the neutral context (Supplemental Fig. S1), and predicted emotional "brain ages" for both emotional contexts.

3.4. Age group comparisons

The results demonstrate that regardless of biological age, emotional situations influence underlying physiology and relate to "risky" phenotypes. However, to test whether the strength of this effect is dependent on age or more prominent within a particular age range we ran additional analyses. That is, to assess the differential effects of emotional context on a particular age range and risk phenotype, we re-ran analyses, and examined differences between and within predicted emotional age groups in three of the four predefined age-cohorts (Adolescents 13–17; Young Adults 18–21; Adults 22+). Children were excluded from these analyses given that only 5 of 7 children in the test sample had risk data, as well as concerns with validity and reliability of self-reporting on the risk assessment (also see Supplemental Text). Importantly, the primary analyses testing for differences on risk metrics between predicted age groups on this subsample showed that the initial results survived largely unaltered (Supplemental Fig. S2, Supplemental Table S3).

Results from a two-way analysis of variance (ANOVA) using predicted emotional group (i.e. two levels: predicted younger versus older) and age cohort (i.e. three levels: teens, young adults, and adults) as factors revealed both significant and trend-level interaction effects within in the positive context. An age x group interaction was identified for risk cost ($F_{(2,52)} = 4.365, p = 0.018$), and risk preference ($F_{(2,52)} = 4.365, p = 0.018$). Post hoc analyses showed this finding was largely driven by decreased risk cost and increased risk preference for those predicted younger within the young-adult cohort (risk cost ($t_{(19)} = -2.798$, $p = 0.0115$) and risk preference ($t_{(19)} = 2.798$, $p = 0.0112$); Fig. 5, Supplemental Fig. S3, and Supplemental Table S4). This finding demonstrates a decreased awareness of and a greater preference for risk respectively for those predicted younger within the young-adult cohort. An age x group interaction for risk seriousness ($F_{(2,52)} = 2.714$, $p = 0.077$) and risk assessment ($F_{(2,52)} = 3.084$, $p = 0.055$) were trend-level at p <= 0.10. Results were again driven by decreased risk seriousness ($t_{(19)} = -2.434$, $p = 0.0250$) and risk assessment ($t_{(19)} = -2.921$, $p = 0.009$) for those predicted younger within the young-adult cohort (Supplemental Fig. S3, and Supplemental Table S4), likely representing a decreased awareness of risk.

Importantly, the overall trend for being predicted younger and at greater risk was evident across age groups and context, but not necessarily for all measures, as direct comparisons failed to reach significance in the negative context. This result is of particular interest as it suggests that although teens may be slightly more likely to have the younger "brain age" phenotype in emotional contexts, the tendency for this phenotype (relative to the older "brain age" phenotype) to elicit increased risk preference and decreased risk perception is greater during the young-adult period.

3.5. Supplementary material

Though not a primary aim of the current paper, we explored the relationship between gender and risk, as well as the potential influence of peer presence amongst predicted brain age groups and risk. No significant effects were found with regard to peer influence. While not significant, trends were identified within the gender comparisons. In addition, we assessed whether or not puberty, scan site, race, and task performance had any influence on predicted brain age groups (i.e. predicted younger vs. older) and risk. No effects were found for scan site, puberty or race. For task performance, no differences were found between groups on the number of false-alarms (FA; go-nogo errors) in either context. However trend-level mean-differences were found in the positive context for FA, though these results had no effect on differences found between predicted groups on the risk metrics assessed. Results and discussion are provided within the supplemental information.

3.6. Functional neuroanatomy associated with the age prediction models

Correlation matrices for the neutral, negative and positive conditions represented 34,716 unique pseudo-RS functional connections between 264 ROIs used as features in the PLSR model to predict age. The beta weights obtained, signifying the importance of a particular connection between ROIs in the model, were

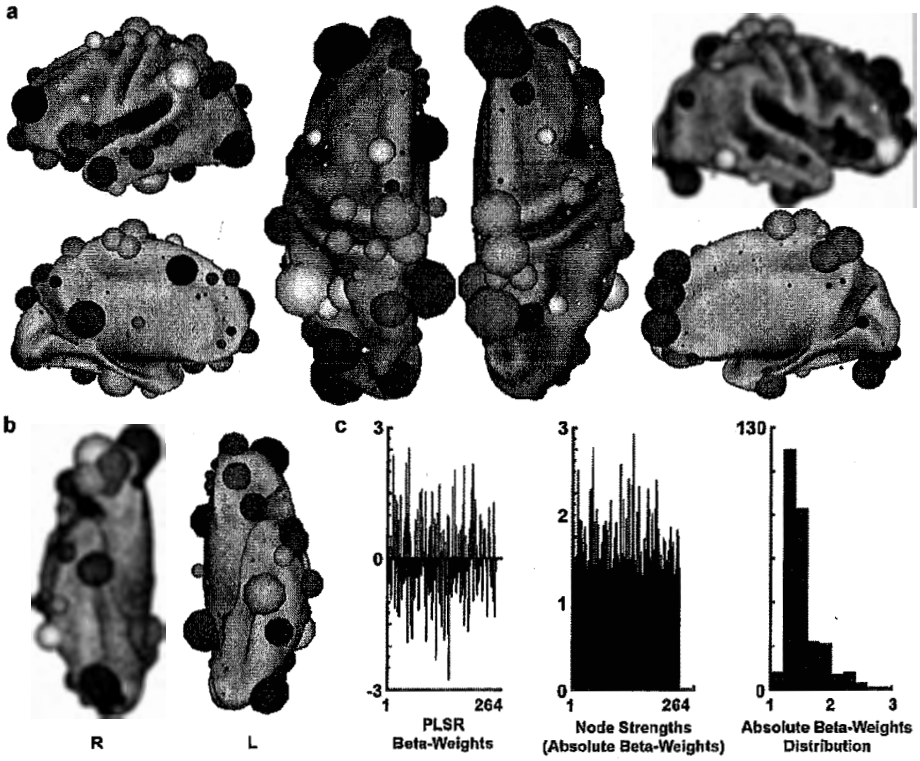

Fig. 6. Predictive features. 264 regions of interest visualized on a standardized brain surface representing pre-established networks (Default Mode (Red), Dorsal Attention (Green), Frontoparietal (Yellow), Salience (Black), Cingulo-opercular (Purple), Visual (Blue), Subcortical (Orange), Ventral Attention (Teal), etc.) as described in Power et al., 2011. Nodes are scaled proportionally according to their degree of importance (sum of absolute beta weights for each connection to an ROI) in predicting age using PLSR. Panel a) provides dorsal, lateral and medial views of the brain, while panel b) shows the ventral surface. Panel c) depicts the relative (left-most graph) and absolute beta-weight distributions for all 264 regions. (For interpretation of the references to colour in this figure legend, the reader is referred to the web version of this article.)

ranked and summed by their absolute values for each ROI (Fair et al., 2012a). ROIs were then plotted on a standardized brain surface using Caret 5 (University of Washington, St. Louis) scaled proportionally by their absolute beta weights (Fig. 6). The histogram in Fig. 6 shows a distribution of weights for each ROI. Of the 264 nodes used in the current study, 27 represent the top 10% (90th percentile), 14 the top 5%, and 4 ROIs in total had beta weights greater than 2.5. Interestingly, the top 5% included key nodes consisting of developmentally important hubs within large-scale networks identified in rs-fcMRI studies and regions cited throughout the fMRI literature as important for the integration of affective stimuli and socioemotional processing (Fig. 6, Supplemental Table S5a). For example, important cognitive control hubs included regions within the default mode (DFM; posterior cingulate [PCC]), dorsal attention (DAN; superior parietal [sPAR]), frontoparietal (FP; inferior lateral parietal [IPL], ventrolateral prefrontal [vlPFC]) and salience (SAL; dorsal anterior cingulate [dACC]) networks. Regions within large-scale networks with task-specific functional properties included three medial prefrontal areas (ventral [vmPFC], medial [mPFC], dorsal [dmPFC]) within the DFM, a primary visual node (V1) and the dorsomedial thalamic nuclei (dmTHAL) as part of a subcortical network. The remaining nodes within the top 5% consisted of two inferior temporal regions (ventral anterior [vaTEMP], ventral medial [vmTEMP]) and one within the orbitofrontal (OFC) region. Although all 34,716 connections are considered within the model, we have provided the top 20 pairwise connections between ROIs (Supplemental Table 5b). We have also included the full list of ROIs used as a supplementary document. Additionally, in order to highlight topology related to the predictive features (connections) we have provided the absolute beta weights in matrix format sorted by network (Fig. 7).

4. Discussion

4.1. Functional connectivity under emotional contexts and risk

The dimensional data-driven approach taken in the present study permitted the mutual investigation into both similarities and differences in brain connectivity across development based on affective states within an individual and across groups. Utilizing a robust multivariate methodology and two distinct MRI measurements (i.e. function and structure) we replicate, and add to, previous findings that highlight the ability to identify a "brain age" in individuals (Brown et al., 2012b; Dosenbach et al., 2010). Adding to previous work, based on pseudo rs-fcMRI, we demonstrate the ability to predict age across emotional contexts in a sizeable training set using cross-validation (as we have previously shown)(Dosenbach et al., 2010; Fair et al., 2012b) as well as in a completely separate test set (which understandably had slightly lower fit statistics (Combrisson and Jerbi, 2015)). We further show

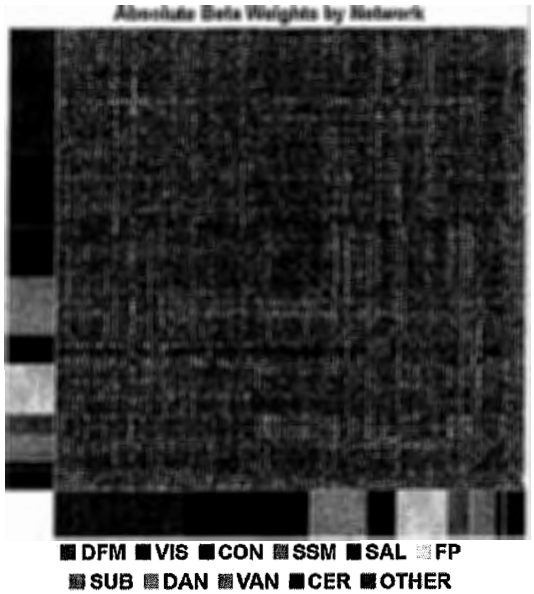

Fig. 7. Absolute beta weights sorted by network. 264 regions of interest visualized as a matrix and sorted according to the pre-established networks (Default Mode (Red), Visual (Blue), Cingulo-opercular (Purple), Sensorimotor (Cyan), Salience (Black), Frontoparietal (Yellow), Subcortical (Orange), Dorsal Attention (Green), Ventral Attention (Teal), Cerebellum (Dark Blue), and nodes not part of a large-scale network (Grey) as described in Power et al., 2011). (For interpretation of the references to colour in this figure legend, the reader is referred to the web version of this article.)

that both positive and negative contexts can alter an individual's "brain age" based on changes in functional connectivity patterns. This finding is not to say there are no differences in functional neuroanatomy between contexts (e.g., see Cohen et al., 2016) — rather similar patterns are identified with pseudo rs-fcMRI. Importantly, two distinct phenotypes (i.e., a subgroup of participants whose emotional brain age was predicted 'older' versus a subgroup whose was predicted 'younger') were related to risk perception and preference.

As noted above, across the range of ages examined in the present study, we identified a subgroup of participants who had a phenotype whereby their brain organization was predicted as younger in an emotional context, while another subgroup had a phenotype whereby they were predicted as being older. *While not all participants that were predicted as being younger had a more "risky" phenotype (i.e. lower risk perception and higher risk preference), on average they did.* In essence, based on alterations in functional connectivity in an emotional context, our data suggest that the subgroup of participants whose functional brain patterns reverted back to patterns of a younger age in an emotional context were at "risk for being risky." That is, the predicted age under emotional (negative or positive) contexts, relative to the neutral context, was related to increased risk preference and lower risk perception as measured via the Benthin Risk Perception Measure. Importantly, we do not argue that these phenotypes are predicting future behaviors, which by necessity would require a longitudinal design. Rather, we are highlighting that these phenotypes relate to current risk perception and preference of the participants.

Of note, while on average all participants who had the "predicted younger" phenotype regardless of biological age, were at "risk to be risky," the propensity to be "predicted younger" was slightly more evident during the adolescent time period (see Fig. 3 and 1). Specifically, this trend occurs around mid-adolescence and stabilized somewhat by the late young adult period. This finding is consistent with the literature that shows that adolescence and early young-adulthood is a particularly vulnerable period for higher incidence of risky behaviors, higher degrees of sensation seeking and impulsivity, greater sensitivity to rewards, heightened reactivity to threat and punishment, increased criminal activity and substance use disorders, as well as, the emergence of psychopathologies (Bava and Tapert, 2010; Benthin et al., 1993; Brown et al., 2015; Dreyfuss et al., 2014; Steinberg, 2009; Sweeten et al., 2013) — a vulnerability that may not be captured in controlled research settings per se. While we did not observe a difference in pubertal status in those predicted younger or older during emotional contexts, this "dip" during adolescence and early young-adulthood might be related to pubertal development, which we plan to explore further (also see Supplemental Text).

Interestingly, while the adolescent period was the period of time that individuals were more likely to have the "predicted younger" phenotype on average, it was individuals in the young adult period (i.e. ages 18–21) who were at the greatest *risk to be risky* for the "predicted younger" versus "predicted older" phenotype. In other words, the results suggest that this period of development is an important transition where one might be less likely to be "predicted as younger" relative to the adolescent period, but if they are, they are even more inclined to be risky relative to the "predictive older" phenotype. Post hoc comparisons within the young adult cohort (predicted younger vs. predicted older; Fig. 4 and Supplemental Fig. S3) were trend-level in the negative context, while all comparisons were significant or trend level within the positive context, a result not seen within any of the other age group comparisons. By adulthood (ages 22+), many of these findings were reduced or limited, but present to a degree. Such results support and extend previous studies assessing young adults (within the age-range defined here), documenting developmental and behavioral differences aligning their behavior more closely to adolescents than fully matured adults (Cohen et al., 2016). Previous studies examining age-dependent differences on risk taking and risky behavior through measures of self-report are consistent with our overall findings (Steinberg, 2009, 2008). Such studies posit that adolescents and young adults are not less capable of making proper or logical decisions, per se, from their adult counterparts, but rather inconsistencies in behavior emanate from a variety of environmental, psychological, sociological and biological factors. In our case, a charged emotional context *may* change state physiology (i.e. functional connectivity) in *some individuals*, such that decisions are made more impulsively relative to what the individual is capable of doing outside of that context. Such hypotheses are likely to be an important area of investigation in future work.

The idea that not all adolescents or young adults are poor executive decision-makers is not a new concept. As indicated by Gardner and Steinberg (2005), such findings lend support to concepts like group polarization theory. The general idea is that those with risky predispositions, especially during adolescence and young-adulthood, are more likely to make risky-decisions and engage in risky behavior under emotionally salient situations and/or in response to the influence of peers. With that said, it is important to note that, while to a lesser extent than adolescents and young adulthood, even individuals in the adult cohort that were "predicted younger" were slightly more at *risk to be risky* for some measures (e.g. decreased risk perception, etc.) — suggesting that while on average adults are not known to be risky, the phenotype (predicted as younger in emotional contexts) in subpopulations of

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adults might lead to impulsive, risky decisions (who are often in a position of authority) as well.

4.2. Documenting developmental differences

Results described above, stemming from differences in pseudo-resting state connectivity, may extend and bridge prior research utilizing task-free and task-based studies alike to document developmental differences during this sensitive time period. Specifically, in a related study, Cohen et al. found that under negative emotional contexts young adults (18–21) appeared to perform more like their younger (teen) than older (adult) counterparts both in measures assessing task performance and task-related neural activation (within a subset of the participants used here; see Methods). Both teens and young adults show decreased task performance and activity (percent signal change) in cognitive control regions such as the dorsolateral prefrontal cortex (dlPFC) and dorsal anterior cingulate (dACC) in response to emotional stimuli, particularly fearful cues. In parallel, greater activity was recorded with decreasing performance in the ventromedial prefrontal cortex (vmPFC), a region implicated in affective processing. The authors suggest this imbalance between top-down and bottom-up control, as previously reported in adolescents (Galvan et al., 2007; Somerville and Casey, 2010) is present within young adults when emotional context is taken into account. However, the authors point out that more studies are needed in order to assess the differential impact emotional states may have on cognitive control across individuals. Our results lend further support and suggest considering developmental differences regarding decision making under salient conditions, particularly during adolescence and young-adulthood, an important direction for future research. We add to this prior work showing that while teens may on average be affected greater than older cohorts, both young adults and adults are susceptible to large-scale alterations in FC under emotional contexts. Importantly, our results are also distinct, in that we are considering the overall affect emotional context has on underlying functional topology and demonstrate that such properties are capable of distinguishing and predicting individuals more likely to be at risk across the age spectrum, particularly in young adults.

4.3. Comparison across studies

As previously stated (see methods), a portion of the total participants (N = 85; 32 with a hypothetical peer) used in the Cohen et al. study were included in our analyses. Of these participants, 66 (28 with a hypothetical peer) belonged to the final training set, and 19 (4 with a hypothetical peer) within the final test set. Differences between samples and methodologies make comparing results between these and other studies complex, and interpretations are likely not straightforward. Task activations in response to an external stimulus are not the same as changes in intrinsic connectivity during emotional states. While limitations are discussed further below, and caution is warranted, we hope our findings A) highlight this complex interaction between intrinsic and task evoked activity that is in need for further study, and B) highlight the importance of considering individual differences and heterogeneity across development in both typical and atypical populations (Fair et al., 2012a; Gates et al., 2014; Karalunas et al., 2014).

Across studies, differences in brain maturation (Casey and Jones, 2010; Shaw et al., 2008; Somerville and Casey, 2010), functional network development and organization (Fair et al., 2007a; Power et al., 2010), differences in socio-emotional development (Dreyfuss et al., 2014; Somerville and Casey, 2010), and other such developmental factors may all have implications for why some teens and young adults are more likely than others to engage is risky behaviors. Such correspondence across investigations may infer the existence of a biological phenotype further aiding to explain such behavior. While the speed at which neuroscience is being used in the courtroom to adjudicate law may be premature (e.g., see limitations below)(Cohen and Casey, 2014; Jones et al., 2013) (Roper v. Simmons, 2005; Graham v. Florida, 2010; Miller v. Alabama and Jackson v. Hobbs, 2012), future advances that consider brain development and contextual information may provide additional insight into these complex decisions.

4.4. Limitations & considerations

4.4.1. Regarding developmental trajectories

Several limitations within the present study should be taken into consideration and are discussed here and within the provided supplemental information. While care was taken in the current cohort to obtain a nationally representative sample, as a cross-sectional study, inferences cannot be made at the individual or group level as to whether patterns regarding individual predicted ages and the relation to risky decision making reported are developmental or purely situational in nature. Longitudinal samples will be needed in order to assess the true developmental characteristics of the identified risk brain phenotypes. With regard to the age cohorts used, age distribution was lower at both tails. Specifically, the number of children in the study was negligible, and concerns regarding comprehension within the risk assessment cannot be eliminated. However, excluding children from post-hoc analyses had no significant effect on differences in risk between groups predicted as younger or older. In addition, the adult age-range is constrained at 22–25 years of age and may not give an adequate representation of the population at a biological and or psychological level.

4.4.2. Regarding risk assessment

Given current and/or past propensities toward and experiences with risk, differing contingencies amongst age groups present another potential concern with respect to validity of the self-report measure used in general. Presumably, without such limitations the ability to discern between the predicted groups would only improve. Further, how risk is defined, operationalized, and assessed in clinical and behavioral studies may deserve attention. Methodological differences and interpretations may account for inconsistencies noted elsewhere regarding perception and preference at any age. While in the present report, we were simply interested in the existence of a relationship between risk and connectivity under emotional influence, studies in the future will likely benefit from refined methodologies to tease apart developmental differences.

4.4.3. Regarding the fMRI paradigm

The novel CCUE task designed to assess the effects of emotional context on cognitive capacity and brain activity is a positive step forward for developmental science. However, the paradigm does not likely mimic real-world situations and therefore direct extrapolations to legal matters are unwarranted at this time. Further the task design may present a few methodological challenges. Most obvious, is the ability to discern effects attributed solely to cues presented from trial-to-trial and in relation to a particular sustained emotional context in which the cues are presented (Ollinger et al., 2001). Further, whether or not an individual is experiencing or feeling a change in overall mood versus simply being emotionally excited during anticipation of reward and/or punishment is unknown. Though several recommended steps were taken to enhance the detectability of discrete neural events from trial-to-trial (Fair et al., 2007b; Fox et al., 2007; Huettel, 2012), and ensure no overlap between emotional contexts existed (Supplemental Fig. S5), the complexity and lack of any true rest periods between a given emotional context may pose an issue with such detection

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and interpretation (Petersen and Dubis, 2012). In the present report we tested the influence of emotional context on task-residual activation in an attempt to circumvent such concerns, and in light of research citing the complex interplay between intrinsic resting-state fluctuations and task-induced BOLD activity (Fox et al., 2006, 2005; Mennes et al., 2010). In the future, studies assessing the influence of contextual information may benefit from the use of more advanced methods to design task fMRI paradigms (Kao et al., 2009; Wager and Nichols, 2003).

4.4.4. Regarding motion artifact

As outlined in the methods section (and discussed further within the supplementary material), we have attempted to robustly correct for motion related confounds to the best of our abilities guided by the most recent literature. Of note, global signal regression (GSR) is used within the current analyses following several insightful reports noting its merits in reducing global artifacts and robustly dealing with in-scanner movement especially when used in combination with motion scrubbing (i.e. framewise displacement) (Burgess et al., 2016; Power et al., 2012, 2014a,b; Power et al., 2016, 2015; Satterthwaite et al., 2013, 2012; Siegel et al., 2016, 2014). As discussed elsewhere, while GSR has been criticized for inducing negative correlations (by shifting the distribution of r values for observed connections) and causing distortions in the data (Saad et al., 2012), motion has been shown to skew the distribution in the opposite direction and quite remarkably so (Burgess et al., 2016; Power et al., 2015, 2012; Satterthwaite et al., 2012; Siegel et al., 2016, 2014) – distortions that GSR correct. As shown in the cited literature, these confounds correlate highly with behavioral results and often lead to false-positives across studies (Burgess et al., 2016; Siegel et al., 2016). Thus, while individual studies need to take their own data into account, we feel in the context of the current study the use of GSR is important. In addendum, though we feel confident in our approach toward ameliorating such confounds using this approach; we acknowledge more work is warranted in order to identify the optimal solutions to remove artifacts biasing developmental findings.

4.5. Conclusions

In the present study we demonstrate the ability to predict age derived from pseudo-RS connectivity in emotional contexts and categorize individuals into predicted emotional brain age groups. Further, we show that differences in individuals predicted age under such influence related to certain metrics assessing awareness of and preference for risky behavior. Results suggest that regardless of biological age contextual settings have an impact on underlying functional neurophysiology, in this case an individual's "predicted emotional brain age," and that some individuals are more at-risk than others, particularly from the teen years through the transitional period of young-adulthood (as defined within the present study), but also within some adults depending on how risk is assessed.

Author contributions

M. D. Rudolph and D. A. Fair drafted the manuscript and designed analyses. M. D. Rudolph managed data and performed data analysis under supervision of D. A. Fair and O. Miranda-Dominguez. B. J. Casey, A. Galván, and L. Steinberg developed the study concept for collection of behavioral and task fmri data. A. O. Cohen, K. Breiner, and D. V. Dellarco collected and distributed the data. J. Chein and K.C. Fettich provided measurements of cortical thickness. L. Steinberg, R.J. Bonnie, E.S. Scott, K. Taylor-Thompson and J.A. Richeson provided legal interpretations. All authors provided critical revisions and approved the final version of the manuscript for submission.

Competing financial interests

Network members (Casey & Steinberg) acknowledge receipt of consulting fees and research funding from the MacArthur Foundation. No other competing financial interests are reported.

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Appendix A. Supplementary data

Supplementary data associated with this article can be found, in the online version, at http://dx.doi.org/10.1016/j.dcn.2017.01.010.

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EXHIBIT 43

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What Is It About 20-Somethings?

By ROBIN MARANTZ HENIG

Why are so many people in their 20s taking so long to grow up?

This question pops up everywhere, underlying concerns about "failure to launch" and "boomerang kids." Two new sitcoms feature grown children moving back in with their parents — "$#*! My Dad Says," starring William Shatner as a divorced curmudgeon whose 20-something son can't make it on his own as a blogger, and "Big Lake," in which a financial whiz kid loses his Wall Street job and moves back home to rural Pennsylvania. A cover of The New Yorker last spring picked up on the zeitgeist: a young man hangs up his new Ph.D. in his boyhood bedroom, the cardboard box at his feet signaling his plans to move back home now that he's officially overqualified for a job. In the doorway stand his parents, their expressions a mix of resignation, worry, annoyance and perplexity: how exactly did this happen?

It's happening all over, in all sorts of families, not just young people moving back home but also young people taking longer to reach adulthood overall. It's a development that predates the current economic doldrums, and no one knows yet what the impact will be — on the prospects of the young men and women; on the parents on whom so many of them depend; on society, built on the expectation of an orderly progression in which kids finish school, grow up, start careers, make a family and eventually retire to live on pensions supported by the next crop of kids who finish school, grow up, start careers, make a family and on and on. The traditional cycle seems to have gone off course, as young people remain untethered to romantic partners or to permanent homes, going back to school for lack of better options, traveling, avoiding commitments, competing ferociously for unpaid internships or temporary (and often grueling) Teach for America jobs, forestalling the beginning of adult life.

The 20s are a black box, and there is a lot of churning in there. One-third of people in their 20s move to a new residence every year. Forty percent move back home with their parents at least once. They go through an average of seven jobs in their 20s, more job changes than in any other stretch. Two-thirds spend at least some time living with a romantic partner without being married. And marriage occurs later than ever. The median age at first marriage in the early 1970s, when the baby boomers were young, was 21 for women and 23 for men; by 2009 it had climbed to 26 for women and 28 for men, five years in a little more than a generation.

We're in the thick of what one sociologist calls "the changing timetable for adulthood." Sociologists traditionally define the "transition to adulthood" as marked by five milestones: completing school,

leaving home, becoming financially independent, marrying and having a child. In 1960, 77 percent of women and 65 percent of men had, by the time they reached 30, passed all five milestones. Among 30-year-olds in 2000, according to data from the United States Census Bureau, fewer than half of the women and one-third of the men had done so. A Canadian study reported that a typical 30-year-old in 2001 had completed the same number of milestones as a 25-year-old in the early '70s.

The whole idea of milestones, of course, is something of an anachronism; it implies a lockstep march toward adulthood that is rare these days. Kids don't shuffle along in unison on the road to maturity. They slouch toward adulthood at an uneven, highly individual pace. Some never achieve all five milestones, including those who are single or childless by choice, or unable to marry even if they wanted to because they're gay. Others reach the milestones completely out of order, advancing professionally before committing to a monogamous relationship, having children young and marrying later, leaving school to go to work and returning to school long after becoming financially secure.

Even if some traditional milestones are never reached, one thing is clear: Getting to what we would generally call adulthood is happening later than ever. But why? That's the subject of lively debate among policy makers and academics. To some, what we're seeing is a transient epiphenomenon, the byproduct of cultural and economic forces. To others, the longer road to adulthood signifies something deep, durable and maybe better-suited to our neurological hard-wiring. What we're seeing, they insist, is the dawning of a new life stage — a stage that all of us need to adjust to.

JEFFREY JENSEN ARNETT, a psychology professor at Clark University in Worcester, Mass., is leading the movement to view the 20s as a distinct life stage, which he calls "emerging adulthood." He says what is happening now is analogous to what happened a century ago, when social and economic changes helped create adolescence — a stage we take for granted but one that had to be recognized by psychologists, accepted by society and accommodated by institutions that served the young. Similar changes at the turn of the 21st century have laid the groundwork for another new stage, Arnett says, between the age of 18 and the late 20s. Among the cultural changes he points to that have led to "emerging adulthood" are the need for more education to survive in an information-based economy; fewer entry-level jobs even after all that schooling; young people feeling less rush to marry because of the general acceptance of premarital sex, cohabitation and birth control; and young women feeling less rush to have babies given their wide range of career options and their access to assisted reproductive technology if they delay pregnancy beyond their most fertile years.

Just as adolescence has its particular psychological profile, Arnett says, so does emerging adulthood: identity exploration, instability, self-focus, feeling in-between and a rather poetic characteristic he calls "a sense of possibilities." A few of these, especially identity exploration, are part of adolescence too, but they take on new depth and urgency in the 20s. The stakes are higher when people are approaching the age when options tend to close off and lifelong commitments must be made. Arnett calls it "the age 30 deadline."

The issue of whether emerging adulthood is a new stage is being debated most forcefully among scholars, in particular psychologists and sociologists. But its resolution has broader implications. Just look at what happened for teenagers. It took some effort, a century ago, for psychologists to make the case that adolescence was a new developmental stage. Once that happened, social institutions were forced to adapt: education, health care, social services and the law all changed to address the particular needs of 12- to 18-year-olds. An understanding of the developmental profile of adolescence led, for instance, to the creation of junior high schools in the early 1900s, separating seventh and eighth graders from the younger children in what used to be called primary school. And it led to the recognition that teenagers between 14 and 18, even though they were legally minors, were mature enough to make their own choice of legal guardian in the event of their parents' deaths. If emerging adulthood is an analogous stage, analogous changes are in the wings.

But what would it look like to extend some of the special status of adolescents to young people in their 20s? Our uncertainty about this question is reflected in our scattershot approach to markers of adulthood. People can vote at 18, but in some states they don't age out of foster care until 21. They can join the military at 18, but they can't drink until 21. They can drive at 16, but they can't rent a car until 25 without some hefty surcharges. If they are full-time students, the Internal Revenue Service considers them dependents until 24; those without health insurance will soon be able to stay on their parents' plans even if they're not in school until age 26, or up to 30 in some states. Parents have no access to their child's college records if the child is over 18, but parents' income is taken into account when the child applies for financial aid up to age 24. We seem unable to agree when someone is old enough to take on adult responsibilities. But we're pretty sure it's not simply a matter of age.

If society decides to protect these young people or treat them differently from fully grown adults, how can we do this without becoming all the things that grown children resist — controlling, moralizing, paternalistic? Young people spend their lives lumped into age-related clusters — that's the basis of K-12 schooling — but as they move through their 20s, they diverge. Some 25-year-olds are married homeowners with good jobs and a couple of kids; others are still living with their parents and working at transient jobs, or not working at all. Does that mean we extend some of the protections and special status of adolescence to all people in their 20s? To some of them? Which ones? Decisions like this matter, because failing to protect and support vulnerable young people can lead them down the wrong path at a critical moment, the one that can determine all subsequent paths. But overprotecting and oversupporting them can sometimes make matters worse, turning the "changing timetable of adulthood" into a self-fulfilling prophecy.

The more profound question behind the scholarly intrigue is the one that really captivates parents: whether the prolongation of this unsettled time of life is a good thing or a bad thing. With life spans stretching into the ninth decade, is it better for young people to experiment in their 20s before making choices they'll have to live with for more than half a century? Or is adulthood now so malleable, with marriage and employment options constantly being reassessed, that young people would be better off just getting started on something, or else they'll never catch up, consigned to

remain always a few steps behind the early bloomers? Is emerging adulthood a rich and varied period for self-discovery, as Arnett says it is? Or is it just another term for self-indulgence?

THE DISCOVERY OF adolescence is generally dated to 1904, with the publication of the massive study "Adolescence," by G. Stanley Hall, a prominent psychologist and first president of the American Psychological Association. Hall attributed the new stage to social changes at the turn of the 20th century. Child-labor laws kept children under 16 out of the work force, and universal education laws kept them in secondary school, thus prolonging the period of dependence — a dependence that allowed them to address psychological tasks they might have ignored when they took on adult roles straight out of childhood. Hall, the first president of Clark University — the same place, interestingly enough, where Arnett now teaches — described adolescence as a time of "storm and stress," filled with emotional upheaval, sorrow and rebelliousness. He cited the "curve of despondency" that "starts at 11, rises steadily and rapidly till 15 . . . then falls steadily till 23," and described other characteristics of adolescence, including an increase in sensation seeking, greater susceptibility to media influences (which in 1904 mostly meant "flash literature" and "penny dreadfuls") and overreliance on peer relationships. Hall's book was flawed, but it marked the beginning of the scientific study of adolescence and helped lead to its eventual acceptance as a distinct stage with its own challenges, behaviors and biological profile.

In the 1990s, Arnett began to suspect that something similar was taking place with young people in their late teens and early 20s. He was teaching human development and family studies at the University of Missouri, studying college-age students, both at the university and in the community around Columbia, Mo. He asked them questions about their lives and their expectations like, "Do you feel you have reached adulthood?"

"I was in my early- to mid-30s myself, and I remember thinking, They're not a thing like me," Arnett told me when we met last spring in Worcester. "I realized that there was something special going on." The young people he spoke to weren't experiencing the upending physical changes that accompany adolescence, but as an age cohort they did seem to have a psychological makeup different from that of people just a little bit younger or a little bit older. This was not how most psychologists were thinking about development at the time, when the eight-stage model of the psychologist Erik Erikson was in vogue. Erikson, one of the first to focus on psychological development past childhood, divided adulthood into three stages — young (roughly ages 20 to 45), middle (about ages 45 to 65) and late (all the rest) — and defined them by the challenges that individuals in a particular stage encounter and must resolve before moving on to the next stage. In young adulthood, according to his model, the primary psychological challenge is "intimacy versus isolation," by which Erikson meant deciding whether to commit to a lifelong intimate relationship and choosing the person to commit to.

But Arnett said "young adulthood" was too broad a term to apply to a 25-year span that included both him and his college students. The 20s are something different from the 30s and 40s, he remembered thinking. And while he agreed that the struggle for intimacy was one task of this period, he said there were other critical tasks as well.

Arnett and I were discussing the evolution of his thinking over lunch at BABA Sushi, a quiet restaurant near his office where he goes so often he knows the sushi chefs by name. He is 53, very tall and wiry, with clipped steel-gray hair and ice-blue eyes, an intense, serious man. He describes himself as a late bloomer, a onetime emerging adult before anyone had given it a name. After graduating from Michigan State University in 1980, he spent two years playing guitar in bars and restaurants and experimented with girlfriends, drugs and general recklessness before going for his doctorate in developmental psychology at the University of Virginia. By 1986 he had his first academic job at Oglethorpe University, a small college in Atlanta. There he met his wife, Lene Jensen, the school's smartest psych major, who stunned Arnett when she came to his office one day in 1989, shortly after she graduated, and asked him out on a date. Jensen earned a doctorate in psychology, too, and she also teaches at Clark. She and Arnett have 10-year-old twins, a boy and a girl.

Arnett spent time at Northwestern University and the University of Chicago before moving to the University of Missouri in 1992, beginning his study of young men and women in the college town of Columbia, gradually broadening his sample to include New Orleans, Los Angeles and San Francisco. He deliberately included working-class young people as well as those who were well off, those who had never gone to college as well as those who were still in school, those who were supporting themselves as well as those whose bills were being paid by their parents. A little more than half of his sample was white, 18 percent African-American, 16 percent Asian-American and 14 percent Latino.

More than 300 interviews and 250 survey responses persuaded Arnett that he was onto something new. This was the era of the Gen X slacker, but Arnett felt that his findings applied beyond one generation. He wrote them up in 2000 in American Psychologist, the first time he laid out his theory of "emerging adulthood." According to Google Scholar, which keeps track of such things, the article has been cited in professional books and journals roughly 1,700 times. This makes it, in the world of academia, practically viral. At the very least, the citations indicate that Arnett had come up with a useful term for describing a particular cohort; at best, that he offered a whole new way of thinking about them.

DURING THE PERIOD he calls emerging adulthood, Arnett says that young men and women are more self-focused than at any other time of life, less certain about the future and yet also more optimistic, no matter what their economic background. This is where the "sense of possibilities" comes in, he says; they have not yet tempered their idealistic visions of what awaits. "The dreary, dead-end jobs, the bitter divorces, the disappointing and disrespectful children . . . none of them imagine that this is what the future holds for them," he wrote. Ask them if they agree with the statement "I am very sure that someday I will get to where I want to be in life," and 96 percent of them will say yes. But despite elements that are exciting, even exhilarating, about being this age, there is a downside, too: dread, frustration, uncertainty, a sense of not quite understanding the rules of the game. More than positive or negative feelings, what Arnett heard most often was ambivalence — beginning with his finding that 60 percent of his subjects told him they felt like both grown-ups and not-quite-grown-ups.

Some scientists would argue that this ambivalence reflects what is going on in the brain, which is also both grown-up and not-quite-grown-up. Neuroscientists once thought the brain stops growing shortly after puberty, but now they know it keeps maturing well into the 20s. This new understanding comes largely from a longitudinal study of brain development sponsored by the National Institute of Mental Health, which started following nearly 5,000 children at ages 3 to 16 (the average age at enrollment was about 10). The scientists found the children's brains were not fully mature until at least 25. "In retrospect I wouldn't call it shocking, but it was at the time," Jay Giedd, the director of the study, told me. "The only people who got this right were the car-rental companies."

When the N.I.M.H. study began in 1991, Giedd said he and his colleagues expected to stop when the subjects turned 16. "We figured that by 16 their bodies were pretty big physically," he said. But every time the children returned, their brains were found still to be changing. The scientists extended the end date of the study to age 18, then 20, then 22. The subjects' brains were still changing even then. Tellingly, the most significant changes took place in the prefrontal cortex and cerebellum, the regions involved in emotional control and higher-order cognitive function.

As the brain matures, one thing that happens is the pruning of the synapses. Synaptic pruning does not occur willy-nilly; it depends largely on how any one brain pathway is used. By cutting off unused pathways, the brain eventually settles into a structure that's most efficient for the owner of that brain, creating well-worn grooves for the pathways that person uses most. Synaptic pruning intensifies after rapid brain-cell proliferation during childhood and again in the period that encompasses adolescence and the 20s. It is the mechanism of "use it or lose it": the brains we have are shaped largely in response to the demands made of them.

We have come to accept the idea that environmental influences in the first three years of life have long-term consequences for cognition, emotional control, attention and the like. Is it time to place a similar emphasis, with hopes for a similar outcome, on enriching the cognitive environment of people in their 20s?

N.I.M.H. scientists also found a time lag between the growth of the limbic system, where emotions originate, and of the prefrontal cortex, which manages those emotions. The limbic system explodes during puberty, but the prefrontal cortex keeps maturing for another 10 years. Giedd said it is logical to suppose — and for now, neuroscientists have to make a lot of logical suppositions — that when the limbic system is fully active but the cortex is still being built, emotions might outweigh rationality. "The prefrontal part is the part that allows you to control your impulses, come up with a long-range strategy, answer the question 'What am I going to do with my life?' " he told me. "That weighing of the future keeps changing into the 20s and 30s."

Among study subjects who enrolled as children, M.R.I. scans have been done so far only to age 25, so scientists have to make another logical supposition about what happens to the brain in the late 20s, the 30s and beyond. Is it possible that the brain just keeps changing and pruning, for years and years? "Guessing from the shape of the growth curves we have," Giedd's colleague Philip Shaw wrote in an e-

mail message, "it does seem that much of the gray matter," where synaptic pruning takes place, "seems to have completed its most dramatic structural change" by age 25. For white matter, where insulation that helps impulses travel faster continues to form, "it does look as if the curves are still going up, suggesting continued growth" after age 25, he wrote, though at a slower rate than before.

None of this is new, of course; the brains of young people have always been works in progress, even when we didn't have sophisticated scanning machinery to chart it precisely. Why, then, is the youthful brain only now arising as an explanation for why people in their 20s are seeming a bit unfinished? Maybe there's an analogy to be found in the hierarchy of needs, a theory put forth in the 1940s by the psychologist Abraham Maslow. According to Maslow, people can pursue more elevated goals only after their basic needs of food, shelter and sex have been met. What if the brain has its own hierarchy of needs? When people are forced to adopt adult responsibilities early, maybe they just do what they have to do, whether or not their brains are ready. Maybe it's only now, when young people are allowed to forestall adult obligations without fear of public censure, that the rate of societal maturation can finally fall into better sync with the maturation of the brain.

Cultural expectations might also reinforce the delay. The "changing timetable for adulthood" has, in many ways, become internalized by 20-somethings and their parents alike. Today young people don't expect to marry until their late 20s, don't expect to start a family until their 30s, don't expect to be on track for a rewarding career until much later than their parents were. So they make decisions about their futures that reflect this wider time horizon. Many of them would not be ready to take on the trappings of adulthood any earlier even if the opportunity arose; they haven't braced themselves for it.

Nor do parents expect their children to grow up right away — and they might not even want them to. Parents might regret having themselves jumped into marriage or a career and hope for more considered choices for their children. Or they might want to hold on to a reassuring connection with their children as the kids leave home. If they were "helicopter parents" — a term that describes heavily invested parents who hover over their children, swooping down to take charge and solve problems at a moment's notice — they might keep hovering and problem-solving long past the time when their children should be solving problems on their own. This might, in a strange way, be part of what keeps their grown children in the limbo between adolescence and adulthood. It can be hard sometimes to tease out to what extent a child doesn't quite want to grow up and to what extent a parent doesn't quite want to let go.

IT IS A BIG DEAL IN developmental psychology to declare the existence of a new stage of life, and Arnett has devoted the past 10 years to making his case. Shortly after his American Psychologist article appeared in 2000, he and Jennifer Lynn Tanner, a developmental psychologist at Rutgers University, convened the first conference of what they later called the Society for the Study of Emerging Adulthood. It was held in 2003 at Harvard with an attendance of 75; there have been three more since then, and last year's conference, in Atlanta, had more than 270 attendees. In 2004 Arnett published a book, "Emerging Adulthood: The Winding Road From the Late Teens Through the

Twenties," which is still in print and selling well. In 2006 he and Tanner published an edited volume, "Emerging Adults in America: Coming of Age in the 21st Century," aimed at professionals and academics. Arnett's college textbook, "Adolescence and Emerging Adulthood: A Cultural Approach," has been in print since 2000 and is now in its fourth edition. Next year he says he hopes to publish another book, this one for the parents of 20-somethings.

If all Arnett's talk about emerging adulthood sounds vaguely familiar . . . well, it should. Forty years ago, an article appeared in The American Scholar that declared "a new stage of life" for the period between adolescence and young adulthood. This was 1970, when the oldest members of the baby boom generation — the parents of today's 20-somethings — were 24. Young people of the day "can't seem to 'settle down,' " wrote the Yale psychologist Kenneth Keniston. He called the new stage of life "youth."

Keniston's description of "youth" presages Arnett's description of "emerging adulthood" a generation later. In the late '60s, Keniston wrote that there was "a growing minority of post-adolescents [who] have not settled the questions whose answers once defined adulthood: questions of relationship to the existing society, questions of vocation, questions of social role and lifestyle." Whereas once, such aimlessness was seen only in the "unusually creative or unusually disturbed," he wrote, it was becoming more common and more ordinary in the baby boomers of 1970. Among the salient characteristics of "youth," Keniston wrote, were "pervasive ambivalence toward self and society," "the feeling of absolute freedom, of living in a world of pure possibilities" and "the enormous value placed upon change, transformation and movement" — all characteristics that Arnett now ascribes to "emerging adults."

Arnett readily acknowledges his debt to Keniston; he mentions him in almost everything he has written about emerging adulthood. But he considers the '60s a unique moment, when young people were rebellious and alienated in a way they've never been before or since. And Keniston's views never quite took off, Arnett says, because "youth" wasn't a very good name for it. He has called the label "ambiguous and confusing," not nearly as catchy as his own "emerging adulthood."

For whatever reason Keniston's terminology faded away, it's revealing to read his old article and hear echoes of what's going on with kids today. He was describing the parents of today's young people when they themselves were young — and amazingly, they weren't all that different from their own children now. Keniston's article seems a lovely demonstration of the eternal cycle of life, the perennial conflict between the generations, the gradual resolution of those conflicts. It's reassuring, actually, to think of it as recursive, to imagine that there must always be a cohort of 20-somethings who take their time settling down, just as there must always be a cohort of 50-somethings who worry about it.

KENISTON CALLED IT youth, Arnett calls it emerging adulthood; whatever it's called, the delayed transition has been observed for years. But it can be in fullest flower only when the young person has some other, nontraditional means of support — which would seem to make the delay something of a luxury item. That's the impression you get reading Arnett's case histories in his books and articles, or

the essays in "20 Something Manifesto," an anthology edited by a Los Angeles writer named Christine Hassler. "It's somewhat terrifying," writes a 25-year-old named Jennifer, "to think about all the things I'm supposed to be doing in order to 'get somewhere' successful: 'Follow your passions, live your dreams, take risks, network with the right people, find mentors, be financially responsible, volunteer, work, think about or go to grad school, fall in love and maintain personal well-being, mental health and nutrition.' When is there time to just be and enjoy?" Adds a 24-year-old from Virginia: "There is pressure to make decisions that will form the foundation for the rest of your life in your 20s. It's almost as if having a range of limited options would be easier."

While the complaints of these young people are heartfelt, they are also the complaints of the privileged. Julie, a 23-year-old New Yorker and contributor to "20 Something Manifesto," is apparently aware of this. She was coddled her whole life, treated to French horn lessons and summer camp, told she could do anything. "It is a double-edged sword," she writes, "because on the one hand I am so blessed with my experiences and endless options, but on the other hand, I still feel like a child. I feel like my job isn't real because I am not where my parents were at my age. Walking home, in the shoes my father bought me, I still feel I have yet to grow up."

Despite these impressions, Arnett insists that emerging adulthood is not limited to young persons of privilege and that it is not simply a period of self-indulgence. He takes pains in "Emerging Adulthood" to describe some case histories of young men and women from hard-luck backgrounds who use the self-focus and identity exploration of their 20s to transform their lives.

One of these is the case history of Nicole, a 25-year-old African-American who grew up in a housing project in Oakland, Calif. At age 6, Nicole, the eldest, was forced to take control of the household after her mother's mental collapse. By 8, she was sweeping stores and baby-sitting for money to help keep her three siblings fed and housed. "I made a couple bucks and helped my mother out, helped my family out," she told Arnett. She managed to graduate from high school, but with low grades, and got a job as a receptionist at a dermatology clinic. She moved into her own apartment, took night classes at community college and started to excel. "I needed to experience living out of my mother's home in order to study," she said.

In his book, Arnett presents Nicole as a symbol of all the young people from impoverished backgrounds for whom "emerging adulthood represents an opportunity — maybe a last opportunity — to turn one's life around." This is the stage where someone like Nicole can escape an abusive or dysfunctional family and finally pursue her own dreams. Nicole's dreams are powerful — one course away from an associate degree, she plans to go on for a bachelor's and then a Ph.D. in psychology — but she has not really left her family behind; few people do. She is still supporting her mother and siblings, which is why she works full time even though her progress through school would be quicker if she found a part-time job. Is it only a grim pessimist like me who sees how many roadblocks there will be on the way to achieving those dreams and who wonders what kind of freewheeling emerging adulthood she is supposed to be having?

Of course, Nicole's case is not representative of society as a whole. And many parents — including those who can't really afford it — continue to help their kids financially long past the time they expected to. Two years ago Karen Fingerman, a developmental psychologist at Purdue University, asked parents of grown children whether they provided significant assistance to their sons or daughters. Assistance included giving their children money or help with everyday tasks (practical assistance) as well as advice, companionship and an attentive ear. Eighty-six percent said they had provided advice in the previous month; less than half had done so in 1988. Two out of three parents had given a son or daughter practical assistance in the previous month; in 1988, only one in three had.

Fingerman took solace in her findings; she said it showed that parents stay connected to their grown children, and she suspects that both parties get something out of it. The survey questions, after all, referred not only to dispensing money but also to offering advice, comfort and friendship. And another of Fingerman's studies suggests that parents' sense of well-being depends largely on how close they are to their grown children and how their children are faring — objective support for the adage that you're only as happy as your unhappiest child. But the expectation that young men and women won't quite be able to make ends meet on their own, and that parents should be the ones to help bridge the gap, places a terrible burden on parents who might be worrying about their own job security, trying to care for their aging parents or grieving as their retirement plans become more and more of a pipe dream.

This dependence on Mom and Dad also means that during the 20s the rift between rich and poor becomes entrenched. According to data gathered by the Network on Transitions to Adulthood, a research consortium supported by the John D. and Catherine T. MacArthur Foundation, American parents give an average of 10 percent of their income to their 18- to 21-year-old children. This percentage is basically the same no matter the family's total income, meaning that upper-class kids tend to get more than working-class ones. And wealthier kids have other, less obvious, advantages. When they go to four-year colleges or universities, they get supervised dormitory housing, health care and alumni networks not available at community colleges. And they often get a leg up on their careers by using parents' contacts to help land an entry-level job — or by using parents as a financial backup when they want to take an interesting internship that doesn't pay.

"You get on a pathway, and pathways have momentum," Jennifer Lynn Tanner of Rutgers told me. "In emerging adulthood, if you spend this time exploring and you get yourself on a pathway that really fits you, then there's going to be this snowball effect of finding the right fit, the right partner, the right job, the right place to live. The less you have at first, the less you're going to get this positive effect compounded over time. You're not going to have the same acceleration."

EVEN ARNETT ADMITS that not every young person goes through a period of "emerging adulthood." It's rare in the developing world, he says, where people have to grow up fast, and it's often skipped in the industrialized world by the people who marry early, by teenage mothers forced to grow up, by young men or women who go straight from high school to whatever job is available

without a chance to dabble until they find the perfect fit. Indeed, the majority of humankind would seem to not go through it at all. The fact that emerging adulthood is not universal is one of the strongest arguments against Arnett's claim that it is a new developmental stage. If emerging adulthood is so important, why is it even possible to skip it?

"The core idea of classical stage theory is that all people — underscore 'all' — pass through a series of qualitatively different periods in an invariant and universal sequence in stages that can't be skipped or reordered," Richard Lerner, Bergstrom chairman in applied developmental science at Tufts University, told me. Lerner is a close personal friend of Arnett's; he and his wife, Jacqueline, who is also a psychologist, live 20 miles from Worcester, and they have dinner with Arnett and his wife on a regular basis.

"I think the world of Jeff Arnett," Lerner said. "I think he is a smart, passionate person who is doing great work — not only a smart and productive scholar, but one of the nicest people I ever met in my life."

No matter how much he likes and admires Arnett, however, Lerner says his friend has ignored some of the basic tenets of developmental psychology. According to classical stage theory, he told me, "you must develop what you're supposed to develop when you're supposed to develop it or you'll never adequately develop it."

When I asked Arnett what happens to people who don't have an emerging adulthood, he said it wasn't necessarily a big deal. They might face its developmental tasks — identity exploration, self-focus, experimentation in love, work and worldview — at a later time, maybe as a midlife crisis, or they might never face them at all, he said. It depends partly on why they missed emerging adulthood in the first place, whether it was by circumstance or by choice.

No, said Lerner, that's not the way it works. To qualify as a developmental stage, emerging adulthood must be both universal and essential. "If you don't develop a skill at the right stage, you'll be working the rest of your life to develop it when you should be moving on," he said. "The rest of your development will be unfavorably altered." The fact that Arnett can be so casual about the heterogeneity of emerging adulthood and its existence in some cultures but not in others — indeed, even in some people but not in their neighbors or friends — is what undermines, for many scholars, his insistence that it's a new life stage.

Why does it matter? Because if the delay in achieving adulthood is just a temporary aberration caused by passing social mores and economic gloom, it's something to struggle through for now, maybe feeling a little sorry for the young people who had the misfortune to come of age in a recession. But if it's a true life stage, we need to start rethinking our definition of normal development and to create systems of education, health care and social supports that take the new stage into account.

The Network on Transitions to Adulthood has been issuing reports about young people since it was formed in 1999 and often ends up recommending more support for 20-somethings. But more of what,

exactly? There aren't institutions set up to serve people in this specific age range; social services from a developmental perspective tend to disappear after adolescence. But it's possible to envision some that might address the restlessness and mobility that Arnett says are typical at this stage and that might make the experimentation of "emerging adulthood" available to more young people. How about expanding programs like City Year, in which 17- to 24-year-olds from diverse backgrounds spend a year mentoring inner-city children in exchange for a stipend, health insurance, child care, cellphone service and a $5,350 education award? Or a federal program in which a government-sponsored savings account is created for every newborn, to be cashed in at age 21 to support a year's worth of travel, education or volunteer work — a version of the "baby bonds" program that Hillary Clinton mentioned during her 2008 primary campaign? Maybe we can encourage a kind of socially sanctioned "rumspringa," the temporary moratorium from social responsibilities some Amish offer their young people to allow them to experiment before settling down. It requires only a bit of ingenuity — as well as some societal forbearance and financial commitment — to think of ways to expand some of the programs that now work so well for the elite, like the Fulbright fellowship or the Peace Corps, to make the chance for temporary service and self-examination available to a wider range of young people.

A century ago, it was helpful to start thinking of adolescents as engaged in the work of growing up rather than as merely lazy or rebellious. Only then could society recognize that the educational, medical, mental-health and social-service needs of this group were unique and that investing in them would have a payoff in the future. Twenty-somethings are engaged in work, too, even if it looks as if they are aimless or failing to pull their weight, Arnett says. But it's a reflection of our collective attitude toward this period that we devote so few resources to keeping them solvent and granting them some measure of security.

THE KIND OF SERVICES that might be created if emerging adulthood is accepted as a life stage can be seen during a visit to Yellowbrick, a residential program in Evanston, Ill., that calls itself the only psychiatric treatment facility for emerging adults. "Emerging adults really do have unique developmental tasks to focus on," said Jesse Viner, Yellowbrick's executive medical director. Viner started Yellowbrick in 2005, when he was working in a group psychiatric practice in Chicago and saw the need for a different way to treat this cohort. He is a soft-spoken man who looks like an accountant and sounds like a New Age prophet, peppering his conversation with phrases like "helping to empower their agency."

"Agency" is a tricky concept when parents are paying the full cost of Yellowbrick's comprehensive residential program, which comes to $21,000 a month and is not always covered by insurance. Staff members are aware of the paradox of encouraging a child to separate from Mommy and Daddy when it's on their dime. They address it with a concept they call connected autonomy, which they define as knowing when to stand alone and when to accept help.

Patients come to Yellowbrick with a variety of problems: substance abuse, eating disorders, depression, anxiety or one of the more severe mental illnesses, like schizophrenia or bipolar disorder,

that tend to appear in the late teens or early 20s. The demands of imminent independence can worsen mental-health problems or can create new ones for people who have managed up to that point to perform all the expected roles — son or daughter, boyfriend or girlfriend, student, teammate, friend — but get lost when schooling ends and expected roles disappear. That's what happened to one patient who had done well at a top Ivy League college until the last class of the last semester of his last year, when he finished his final paper and could not bring himself to turn it in.

The Yellowbrick philosophy is that young people must meet these challenges without coddling or rescue. Up to 16 patients at a time are housed in the Yellowbrick residence, a four-story apartment building Viner owns. They live in the apartments — which are large, sunny and lavishly furnished — in groups of three or four, with staff members always on hand to teach the basics of shopping, cooking, cleaning, scheduling, making commitments and showing up.

Viner let me sit in on daily clinical rounds, scheduled that day for C., a young woman who had been at Yellowbrick for three months. Rounds are like the world's most grueling job interview: the patient sits in front alongside her clinician "advocate," and a dozen or so staff members are arrayed on couches and armchairs around the room, firing questions. C. seemed nervous but pleased with herself, frequently flashing a huge white smile. She is 22, tall and skinny, and she wore tiny denim shorts and a big T-shirt and vest. She started to fall apart during her junior year at college, plagued by binge drinking and anorexia, and in her first weeks at Yellowbrick her alcohol abuse continued. Most psychiatric facilities would have kicked her out after the first relapse, said Dale Monroe-Cook, Yellowbrick's vice president of clinical operations. "We're doing the opposite: we want the behavior to unfold, and we want to be there in that critical moment, to work with that behavior and help the emerging adult transition to greater independence."

The Yellowbrick staff let C. face her demons and decide how to deal with them. After five relapses, C. asked the staff to take away her ID so she couldn't buy alcohol. Eventually she decided to start going to meetings of Alcoholics Anonymous.

At her rounds in June, C. was able to report that she had been alcohol-free for 30 days. Jesse Viner's wife, Laura Viner, who is a psychologist on staff, started to clap for her, but no one else joined in. "We're on eggshells here," Gary Zurawski, a clinical social worker specializing in substance abuse, confessed to C. "We don't know if we should congratulate you too much." The staff was sensitive about taking away the young woman's motivation to improve her life for her own sake, not for the sake of getting praise from someone else.

C. took the discussion about the applause in stride and told the staff she had more good news: in two days she was going to graduate. On time.

THE 20S ARE LIKE the stem cell of human development, the pluripotent moment when any of several outcomes is possible. Decisions and actions during this time have lasting ramifications. The 20s are when most people accumulate almost all of their formal education; when most people meet

their future spouses and the friends they will keep; when most people start on the careers that they will stay with for many years. This is when adventures, experiments, travels, relationships are embarked on with an abandon that probably will not happen again.

Does that mean it's a good thing to let 20-somethings meander — or even to encourage them to meander — before they settle down? That's the question that plagues so many of their parents. It's easy to see the advantages to the delay. There is time enough for adulthood and its attendant obligations; maybe if kids take longer to choose their mates and their careers, they'll make fewer mistakes and live happier lives. But it's just as easy to see the drawbacks. As the settling-down sputters along for the "emerging adults," things can get precarious for the rest of us. Parents are helping pay bills they never counted on paying, and social institutions are missing out on young people contributing to productivity and growth. Of course, the recession complicates things, and even if every 20-something were ready to skip the "emerging" moratorium and act like a grown-up, there wouldn't necessarily be jobs for them all. So we're caught in a weird moment, unsure whether to allow young people to keep exploring and questioning or to cut them off and tell them just to find something, anything, to put food on the table and get on with their lives.

Arnett would like to see us choose a middle course. "To be a young American today is to experience both excitement and uncertainty, wide-open possibility and confusion, new freedoms and new fears," he writes in "Emerging Adulthood." During the timeout they are granted from nonstop, often tedious and dispiriting responsibilities, "emerging adults develop skills for daily living, gain a better understanding of who they are and what they want from life and begin to build a foundation for their adult lives." If it really works that way, if this longer road to adulthood really leads to more insight and better choices, then Arnett's vision of an insightful, sensitive, thoughtful, content, well-honed, self-actualizing crop of grown-ups would indeed be something worth waiting for.

Robin Marantz Henig is a contributing writer. Her last article for the magazine was about anxiety.

EXHIBIT 44

Magazine

Is 25 the new cut-off point for adulthood?

By Lucy Wallis
BBC News
23 September 2013

New guidance for psychologists will acknowledge that adolescence now effectively runs up until the age of 25 for the purposes of treating young people. So is this the new cut-off point for adulthood?

"The idea that suddenly at 18 you're an adult just doesn't quite ring true," says child psychologist Laverne Antrobus, who works at London's Tavistock Clinic.

"My experience of young people is that they still need quite a considerable amount of support and help beyond that age."

Child psychologists are being given a new directive which is that the age range they work with is increasing from 0-18 to 0-25.

"We are becoming much more aware and appreciating development beyond [the age of 18] and I think it's a really good initiative," says Antrobus, who believes we often rush through childhood, wanting our youngsters to achieve key milestones very quickly.

The new guidance is to help ensure that when young people reach the age of 18 they do not fall through the gaps in the health and education system. The change follows developments in our understanding of emotional maturity, hormonal development and particularly brain activity.

"Neuroscience has made these massive advances where we now don't think that things just stop at a certain age, that actually there's evidence of brain development well into early twenties and that actually the time at which things stop is much later than we first thought," says Antrobus.

There are three stages of adolescence - early adolescence from 12-14 years, middle adolescence from 15-17 years and late adolescence from 18 years and over.

Neuroscience has shown that a young person's cognitive development continues into this later stage and that their emotional maturity, self-image and judgement will be affected until the prefrontal cortex of the brain has fully developed.

Alongside brain development, hormonal activity is also continuing well into the early twenties says Antrobus.

"A number of children and young people I encounter between the age of 16 and 18, the flurry of hormonal activity in them is so great that to imagine that's going to settle down by the time they get to 18 really is a misconception," says Antrobus.

She says that some adolescents may want to stay longer with their families because they need more support during these formative years and that it is important for parents to realise that all young people do not develop at the same pace.

But is there any danger we could be breeding a nation of young people reluctant to leave adolescence behind?

TV sitcoms are littered with such comic stereotypes of juvenile adults, such as Smithy from Gavin and Stacey or Private Pike in Dad's Army.

Then there are those characters who want to break away from their overbearing or protective parents or guardians and reach adulthood, but struggle to cut the family ties.

Frank Furedi, professor of sociology at the University of Kent, says we have infantilised young people and this has led to a growing number of young men and women in their late 20s still living at home.

"Often it's claimed it's for economic reasons, but actually it's not really for that," says Furedi. "There is a loss of the aspiration for independence and striking out on your own. When I went to university it would have been a social death to have been seen with your parents, whereas now it's the norm.

"So you have this kind of cultural shift which basically means that adolescence extends into your late twenties and that can hamper you in all kinds of ways, and I think what psychology does is it inadvertently reinforces that kind of passivity and powerlessness and immaturity and normalises that."

Furedi says that this infantilised culture has intensified a sense of "passive dependence" which can lead to difficulties in conducting mature adult relationships. There's evidence of this culture even in our viewing preferences.

"There's an increasing number of adults who are watching children's movies in the cinema," says Furedi. "If you look at children's TV channels in America, 25% of the viewers are adults rather than children."

He does not agree that the modern world is far more difficult for young people to navigate.

"I think that what it is, is not that the world has become crueller, it's just that we hold our children back from a very early age. When they're 11, 12, 13 we don't let them out on their own. When they're 14, 15, we hover all over them and insulate them from real-life experience. We treat university students the way we used to treat school pupils, so I think it's that type of cumulative effect of infantilisation which is responsible for this."

But should parents really be encouraging adolescents to make their own way in the world more? The TV series Girls - with central character Hannah Horvath struggling with adulthood - has captured the zeitgeist. Hannah's parents have cut her off financially and she has to live away and navigate her 20s making her own mistakes.

One of the traditional rites of passage for adulthood was always leaving home, but TV property expert Sarah Beeny says that adolescents do not have to move out of the parental house in order to learn how to be independent and there are huge advantages to multi-generational living.

"The solution to not having useless 25 [and] 30-year-olds living at home is not sending them out of the home, it's making them do their own washing, pay their own way, pay towards the rent, pay towards the bills, to take responsibility for cleaning up their bedroom and not waiting on them hand and foot," says Beeny.

She says that parents should play a part in teaching adolescents key skills and that young people in return can keep their parents current.

"I know it sounds like a utopian dream but it's probably where we should be aiming. To me that's the holy grail… not everybody living in their own individual pods by themselves thinking, brilliant I'm paying a mortgage."

The idea of parental responsibility to adolescents should also extend to another external symbol of maturity says motoring expert Quentin Willson - the car. He says it has become a "talisman" for young people to feel more mature.

Willson says statistics show that at the age of 18 the vast majority of accidents caused by young drivers are down to bad judgement and decision making, and that behind the wheel "adult maturity isn't fully formed until you get past 25 for most cases of people".

But rather than raise the minimum age for driving, Willson believes parents and teachers should impart safe driving skills before the effects of adolescence really kick in.

"If you teach these children when their mindsets are pure and before they've been corrupted by things like Grand Theft Auto 5 and Top Gear and all these corrosive social pressures, then you get the road safety message in much earlier," says Willson.

"The government should look at this very carefully and put driving on the GCSE syllabus. So you teach kids to drive in terms of theory at school and all the right messages at 13, 14, 15, because when you get to 17 the testosterone is raging, all those corrosive influences are embedded."

With such racing hormonal activity and adolescence taking much longer than we previously thought, how will we know when we actually do reach adulthood?

For Antrobus it is when independence "feels like something that you both want and can acquire".

But for the eternal adolescents among us, perhaps Beeny's definition is apt.

"For me adulthood is realising that there are no grown-ups and everyone else is winging it," says Beeny.

Adolescent brain development

Sarah Helps, consultant clinical psychologist:

We used to think that the brain was fully developed by very early teenagerhood and we now realise that the brain doesn't stop developing until mid-20s or even early 30s. There's a lot more information and evidence to suggest that actually brain development in various forms goes on throughout the life span.

Over the course of adolescence the way in which information is processed is dramatically changing, and what new scanning techniques have shown has enabled us to demonstrate what the neurological changes are.

This is particularly important in terms of social reasoning, planning, problem solving and understanding. So the brain is reorganising itself, which then means that different thinking strategies are used as your brain becomes more like an adult brain.

The prefrontal cortex is the key area that has the most interesting changes in adolescence, so if you do functional MRI studies with children and adolescents and adults, you see differences in the way that they process information.

EXHIBIT 45

Pioneers in Young Adult Justice

10 Initiatives and Programs Improving Criminal Justice for Young Adults

Yotam Zeira and Molly Baldwin

February 2016

Roca
LESS JAIL.
MORE FUTURE.

Pioneers in Young Adult Justice

10 Initiatives and Programs Improving Criminal Justice for Young Adults

Yotam Zeira and Molly Baldwin[1]

New research in psychology, criminology and neuroscience makes it clear: young adults at the ages of 17-25 are a distinct population, overrepresented in crime and in the justice system. Criminal behaviors, arrests, prison population and recidivism rates all peak in this age group, yet the justice system offers very little in response. Criminal justice policies rarely have distinct responses to young adults, and targeted interventions for people in their transition from adolescence to adulthood are still scarce. ***Pioneers in Young Adult Justice*** recognizes those who already work to promote young adult justice on the ground: initiatives, programs and services that work towards producing better outcomes for young people involved in crime.

Foreword

Young people can change. At Roca, we have learned that change is possible time after time, even with the highest risk young men in our communities. We know the ones who transformed their lives by name – Dwayne, Kelord, D'Quime, Sabir, Donnie, and many more – but after 28 years of work across various communities, we know that such success is not anecdotal.

In the past decade we have witnessed the scientific community and key policy makers reach a similar conclusion. We followed with great excitement brain scientists, criminologists, and sociologists documenting young people's unique challenges, as well as this group's potential to change. With even greater excitement we have recently watched criminal justice systems rethink their policies, and redesign them to better serve young adults.

We dedicate this report to these programs and initiatives, which are true pioneers. Confident that change is possible, we are optimistic that more justice systems – including the ones we have directly worked with – will be inspired by these pioneers.

Molly Baldwin,
Founder & CEO, Roca, Inc.

Contemporary research sheds light on the causes of young adult criminal behaviors. As young people's brains continue to mature well into their mid-twenties, they tend to be greater risk takers, more impulsive and less future-oriented in their decision making process – factors that increase engagement in crime. Social science highlights young adults' social reality: they have aged out of school and most youth services, they are susceptible to pressure by their peers, they are rarely fully engaged in the job market, and usually have not established a family of their own yet. The fact that young adults are more represented in the justice system than both juveniles and older adults is therefore not surprising. To be sure, most of these offenders will find their way out of crime as they age out of this transition period. The offenders at higher risk of staying in the justice system can also redirect their lives and desist from crime, but they won't be able to do so without age-responsive policies and interventions.

The past two years have been a turning point in young adult justice. Policymakers started to translate the new science to policy innovations, and new programs for young adults have been established across the country. Recent reports by the Transition from Juvenile Delinquency to Adult Crime Study

Group at the National Institute of Justice, the Harvard Kennedy School Executive Session on Community Corrections, the Council of State Governments Justice Center and MassINC have called for distinctive criminal justice policies for young adults, offering an array of possible reforms.[2] Similar policy reports and reforms were lately published abroad, notably in the U.K., Germany, the Netherlands and Ireland.[3]

Pioneers in Young Adult Justice **is an invitation to draw inspiration from policies and programs which identify the unique risks and needs of justice-involved young adults and work to address them. These national and international pioneers not only provide hope, but also show that change is possible – that justice systems can and should adopt innovative, thoughtful and evidence-based policies and interventions for young adults.**

The Key Ideas in a Glance

1. Young Adult Court	Specialty court handles exclusively cases of 18-25 year olds in various risk levels.
2. Specialized Court Sessions for Lower-Risk Young Offenders	Judicial and probation-led intensive supervision program for nonviolent young offenders.
3. Prosecutorial/Judicial Choice between Criminal and Juvenile Law	Judges or prosecutors ascertain early in the process whether juvenile or adult law should apply.
4. Immaturity as a Factor in Sentencing	Including offender maturity level in sentencing guidelines and legislation.
5. Specialized Young Adult Probation Caseload	Assigned probation officers specialize in young adults and provide age-responsive services.
6. Young Adult Correctional Facility	Separate prisons for young adults with emphasis on rehabilitation and future employment.
7. "Through the Gate" Young Adult Mentoring	Mentoring for young adults prior to, during and after release.
8. Confidentiality of Young Adult Offenses	"Second chance" legislation that avoids conviction, expunges or seals criminal records.
9. Improved Transition Protocols between Systems and Services	Hand-over protocols between systems handling young adults that improve communication.
10. Data-Driven Young Adult Programs and State Reports	Rigorous evaluation of young adult programs, outcome-based funding (Pay for Success) and accessible data on the criminal justice system.

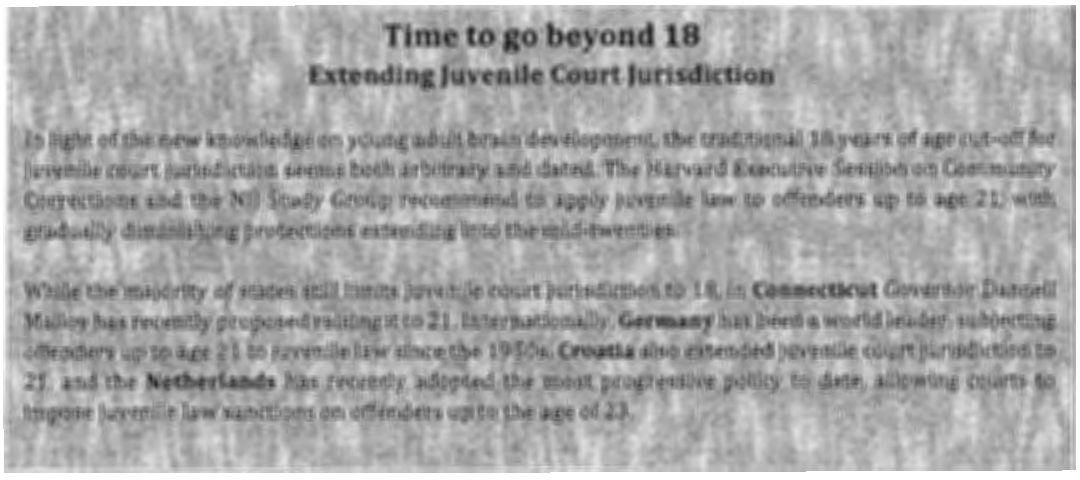
1. Young Adult Court

California Young Adult Court, San Francisco

While specialty courts are already common in drug and mental health cases, a similar problem-solving approach can be adopted for young adults. Specialty court allows court staff to develop deeper understanding of the underlying problems that contribute to criminal behaviors in this age group, and work towards effective individual solutions. Collaboration with community-based organizations that provide opportunities in education, employment, housing, and counseling services for young adults, as well as supportive prosecution, are key factors for the success of such model.

In **San Francisco**, a young adult court for 18-25 year olds was established in summer 2015. The court is an expanded version of a former District Attorney-led program called *Back on Track*, and it operates in collaboration between the court system, the DA's office, public defense, probation, youth services, public health services, and the police. The current pilot stage serves 60-80 clients a year, charged with violent and non-violent misdemeanors and felonies (felonies are prioritized). More severe offenses may be eligible for the court only upon a grant of probation or deferred entry of judgment (DEJ). Other restrictions include offenders with more than two open felony cases, active involvement in an organized street gang, and offenses that caused serious bodily injury, though these restrictions may be waived by the DA.

Successful completion of the Young Adult Court program may lead to various results, including case dismissal, sealing of arrests, reduction from felony plea to misdemeanor conviction, shortened probation terms and dismissal of fees and fines.[4]



Time to go beyond 18

Extending Juvenile Court Jurisdiction

In light of the new knowledge on young adult brain development, the traditional 18 years of age cut-off for juvenile court jurisdiction seems both arbitrary and dated. The Harvard Executive Session on Community Corrections and the MJJ Study Group recommend to apply juvenile law to offenders up to age 21, with gradually diminishing protections extending into the mid-twenties.

While the majority of states still limits juvenile court jurisdiction to 18, in **Connecticut** Governor Dannell Malloy has recently proposed raising it to 21. Internationally, **Germany** has been a world leader, subjecting offenders up to age 21 to juvenile law since the 1950s. **Croatia** also extended juvenile court jurisdiction to 21, and the **Netherlands** has recently adopted the most progressive policy to date, allowing courts to impose juvenile law sanctions on offenders up to the age of 23.

2. Specialized Court for Lower-Risk Young Offenders

Douglas County Young Adult Court, Nebraska
United States District Court for the Eastern District of New York
Roxbury CHOICE Program, Boston, Massachusetts
Dallas Attorney General initiative, Texas

A more wide-spread version of young adult courts is a specific session within the traditional adult court, dedicated to young adults who have committed nonviolent offenses or are first time offenders. Typically such programs offer intensive supervision by assigned probation officers, along with periodic case reviews by the presiding judge, as an alternative to incarceration. Probationers who demonstrate progress and stay away from crime may be rewarded with steps like removal of their conditions of probation, reduced charges, and dismissal of their cases.

In **Douglas County, Nebraska**, a young adult court (age limit 22) for individuals charged with nonviolent felonies has operated since 2004. The court is a collaboration between the county and state's district attorney, probation, county corrections, and reentry services. Cases are transferred to the court at the request of defense attorneys, after a Young Adult Coordinator interviews the clients and completes a suitability report, and the DA approves. Participants need to plead guilty and then complete three stages: In Stage 1 (Stabilization, 60-180 days) participants attend a daily program that includes a drug and mental health evaluation, reentry consultation, job readiness classes, and GED if needed. In Stage 2 (Transition, 120-240 days) attendance drops to once or twice a week, and the program includes self-help groups like AA, continuing education and vocational training, and connecting with community-based services. In Stage 3 (360-720 days) the felony conviction is reduced to a misdemeanor, the youth is put on probation, and attendance requirements are reduced to monthly reporting. Violation of program rules – dirty drug tests, new charges, missing classes, treatments or sessions – result in sanctions ranging from additional restrictions (curfew, etc.) to community service and jail time. After successful completion, the presiding judge holds a graduation ceremony for participants.[5]

Another program for young adults charged with nonviolent crimes runs at the **United States District Court for the Eastern District of New York.** The Special Options Services program started in 2000 and is designed for 18-25 year olds at the pretrial stage. Participants are intensively supervised by pretrial officers, individual educational and vocational goals are set, and each participant is connected with relevant community-based counseling services.[6] The program was reconstructed in 2013, and it now involves also magistrate judges, holding monthly sessions in order to extend further support and encourage meaningful change. The magistrate judges provide the assigned district judge reports regarding participants' progress and compliance, which inform sentencing and other judicial decisions. The U.S. Attorney considers defense's requests for reduced charges or dismissal on a case-by-case basis. Where sentencing includes a probation period, participants have the opportunity to continue in the program under the supervision of a specialized probation officer.[7]

The **Roxbury Department of Boston Municipal Court** runs an intensive post-trial supervision program for young adults, called **Roxbury CHOICE,** which is similar in concept to young adult court.

The 18-month long program is led by two judges and one probation officer, and includes a cohort of up to 25 probationers who meet once a month for a few hour court session. Attendance is mandatory, and probationers who demonstrate positive change – remain drug free, actively seek jobs, complete GED and refrain from picking up new charges – can have some of their conditions of probation (GPS bracelet, curfew) changed or removed. The program prides itself on assisting dozens of young people to make positive choices and reduce reoffending.[8]

The **Dallas Attorney General** has also announced a program to establish a young adult court for lower-risk offenses.[9] The court, which started operating in January 2016, accepts 18-25 year olds who are first-time delinquents of less serious crimes (gun cases, for instance, are excluded). A specific judge is assigned to this court, and participants are required to complete GED and parenting and life skills classes over six months to a year. Successful completion of the program results in expunging the participant's case. The court started with a cohort of 50 participants, but it is estimated that thousands of cases in Dallas could qualify.[10]

The **U.K.** has also seen success in a low-risk young adult court model. In **Greater Manchester** offenders who would otherwise be sentenced for up to 12 months in prison are offered a probation-led Intensive Community Order (ICO).[11] The court issuing a supervision order can customize it to the specific needs of the offender, with emphasis on mentoring, employment issues, and family counseling. The ICO program collaborates with other state agencies, nonprofits, and private sector organizations, offering a wide range of services.[12] Evaluation of the program shows that reoffending among participants has dropped, successful completion rate of supervision orders is as high as 80%, and a quarter of unemployed participants have found full-time jobs. The pilot project is now being replicated.[13]

3. Prosecutorial and Judicial Choice between Criminal and Juvenile Law

Criminal justice reform, The Netherlands

As young adults vary in their level of maturity, some jurisdictions allow the public prosecutor to take a stand on whether juvenile or adult law should apply. This case-by-case approach is typically based on a probation report regarding the young person's emotional, cognitive and social maturity. By doing so, the prosecution puts charges in the right context, and enables judges to make an informed decision regarding the law that will apply.

The clearest example of flexibility in applicable law is the **Netherlands**: according to a 2014 policy, a probation report is prepared for every defendant under age 23, and prosecutors need to ascertain early in the process whether to recommend that juvenile or adult procedures should apply. The court renders the final decision on which procedures and sanctions will apply.[14]

4. Immaturity as a Factor in Sentencing

Juvenile Justice Act, Germany
Criminal Code, Austria

Revising sentencing guidelines and legislation to include the factor of offender's maturity level at the time of offense is another possible response to the unique situation of young adults in criminal justice. This can be done through either a flexible, case-by-case approach, or through a general mitigating factor regarding offenders in their earlier years of adulthood.

The flexible approach was adopted in **Germany**, where courts apply juvenile law if "a global examination of the offender's personality and of his social environment indicates that, at the time of committing the crime, the young adult in his moral and psychological development was like a juvenile".[15] In practice, two thirds of offenders under 25 in Germany are sentenced according to juvenile law.[16]

In **Austria**, youthfulness is a general mitigating factor. Austrian law prescribes lowered sentences for offenders under age 21: life sentences are inapplicable for this age group, and all minimum sentences are dramatically reduced.[17] In **Sweden** and **Finland**, two jurisdictions that do not rely heavily on incarceration, being under age 21 is a mitigating factor in sentencing, and in the latter offenders under age 21 serve shorter time than adults before being released on parole.[18]

5. Specialized Young Adult Probation Caseload

Transitional Age Youth (TAY) Unit, Adult Probation, San Francisco
New York City Department of Probation Young Adult Supervision Model

Probation officers play a key role in many criminally-involved young adult's lives, and with sophisticated interventions, this interaction can be more productive for young adults. To build capacity in probation departments to effectively supervise young adults, specialized caseloads have been experimented with. Specialized caseloads allow assigned officers to receive training on cutting-edge techniques in working with this age group, develop broad understanding of relevant community-based services, and improve professional skills in helping young adults redirect their lives.

The **Transitional Age Youth (TAY) Unit in San Francisco Adult Probation** provides a leading example. The unit, which supervises 500 probationers ages 18-25 per year, has seven probation officers who are selected based on their demonstrated commitment to working with this age group. Officers are trained in *Thinking for Change (*a rigorous behavior-change program) and cultural competency, and are familiar with services available for young adults in San Francisco. The unit regularly assesses probationers' risk level, develops an Individualized Treatment and Rehabilitation Plan (ITRP) for each probationer, and sets personalized goals. Collaboration with other services allows probationers access to GED programs, employment opportunities, and city-wide initiatives.

New York City is also experimenting with specialized young adult probation caseload. The **New York City Department of Probation (DOP)** has recently launched a new evidence-based adolescent and young adult supervision model for moderate- to high-risk young people ages 16-24, expected to serve over 2,000 youth annually citywide. The program's staff undergo extensive training in Positive Youth Development, adolescent brain development, motivational interviewing, *Stages of Change*, and implementation of individual and group cognitive-behavior interventions. Each probationer is assigned to a team of two probation officers – one newly hired for this model and the other a self-selected agency veteran – and will move through three phases of intervention. In the first phase, the youth participates in an age-appropriate, validated risk assessment (YLS or LSI-R), which enables relationship building and development of an individualized case plan. This plan is built in collaboration between the probation officer team, the probationer, and anyone identified as part of the youth's "circle of care." In the next phase, probation officers use cognitive-behavioral techniques, aimed at each individual's areas of highest risk, and according to their Stage of Change with respect to each area. In the third phase, clients participate in programming aimed at promoting community connections that sustain long-lasting change and growth. Probationers are also connected to individual mentors or group mentoring programs, and to anti-violence initiatives.[19]

Specialized probation caseloads also exist in **Multnomah County, Oregon**, and at the **Youthful Offender Supervision program in Connecticut.**[20]

6. Young Adult Correctional Facility

Young Adult Offender Program, Pine Grove State Correctional Institute, Pennsylvania
Young Adult Offender Program, Mountain View Youth Development Center, Maine

If incarceration is to be imposed on young adults, an important question is whether they should be held together with older inmates. Juveniles have long been held in separate facilities, and it may be the case that the same rationale that applies in juvenile cases – protecting young people from deeper engagement in crime – should be adopted for 17-24 year olds. While adult prisons rarely have adequate programs for this age group, specialized young adult prisons can put more emphasis on rehabilitation. Young adult correctional facilities with better staffing and extended programs focusing on life skills, education and future employment, promise a better path for successful reentry.

Pennsylvania, which had expected high numbers of young inmates following 1990s "tough on crime" legislation, opened in 2001 Pine Grove correctional facility. Pine Grove's Young Adult Offender Program is focused on 15-20 year olds, and is operated as a therapeutic community with emphasis on rehabilitation.[21] **Maine** started in 2014 a Young Adult Offender Program based in an existing juvenile facility. The program specifically targets 18-25 year old inmates, with an individualized rehabilitative approach. An individual case plan is created for each prisoner, including GED completion, Aggression Replacement Therapy and Thinking for a Change programming, vocational training, and classes on parenting skills and domestic violence prevention. The emphasis in this program is on post-release employment, and inmates are encouraged to proceed to lower risk facilities, participate in work-release programs, and apply for Supervised Community Confinement.[22] **New York City** has recently announced a plan to open a separate facility for 18-21 year olds also.[23]

Internationally, there is no shortage of examples: young adult prisons have been established in the **U.K.,** the **Netherlands** and **Switzerland**, with age limits of 21, 23 and 25 respectively.[24] Even **Turkey**, a country that otherwise has no special treatment for young adults, has established a separate young adult jail.[25] In other countries juvenile prison jurisdiction is extended to include young adults: **Germany** holds all inmates up to age 21 and most 21-25 year old inmates in juvenile prisons;[26] **Austria** admits to juvenile prisons offenders up to age 22, and allows them to stay in juvenile facilities up to age 27;[27] and **Israel** holds in juvenile prison inmates up to age 25.[28]

7. "Through the Gate" Young Adult Mentoring

London T2A Project, St Giles Trust, U.K.

Young offenders released from jail often return to the same social environment they left before they got locked up: same neighborhood, same gangs, and the same employment and education barriers. As housing is often an issue for this age group, they have few options aside from coming back to their families or friends' homes. U.K. officials maintain that, at this juncture, mentors who took a similar path can be a game changer, especially if they are present on the day of release and the following critical days.[29]

In **London**, young adults serving gang-related sentences are matched before their release with ex-offender mentors with similar backgrounds. Offering both emotional and practical support in the reentry process, these mentors work with the newly-released young person before, during and after discharge. On the day of their release, the mentor waits at the gate, continues the relationship built behind bars, and offers support in the crucial first days back in the community. The mentor's support is gradually reduced until the young person is stabilized and matched with community-based services.[30]

"Through the gate" mentoring is combined with other disciplines in other **U.K.** projects: in **Staffordshire**, three prisons participate in a mentorship program that identifies pre-release young adults and works with them and with their families prior to and after release.[31] In **Birmingham**, in-jail mentorship is combined with expansive pre-release programming that involves released ex-offenders.[32] In **South Yorkshire**, 3-6 month mentorship is offered to young adults through collaboration between nonprofits and the police, combining restorative practices such as mediation and family conferencing.[33]

8. Confidentiality of Young Adult Offenses

Holmes Youthful Trainee Act, Michigan
Youthful Offender Act, New York

Criminal records are a heavy burden on young adults' rehabilitation. Their chances to find jobs, gain post-secondary education, apply for public benefits and housing, and build successful and stable lives, drop dramatically if their past cases stand in their way time after time. "Second chance" laws can limit these collateral consequences by avoiding convictions that will damage young people's records, shortening record sealing periods, and allowing case expungement for young adults.

In **Michigan**, the Holmes Youthful Trainee Act allows people who committed crimes between ages 17-23 to apply to a Youthful Trainee status. Courts may grant this status to offenders who plead guilty to their criminal charges (except for capital cases, sex offenses, and major drug and trafficking charges), without entering a judgment of conviction. Youthful Trainees are put on probation, after

successful completion of which the court dismisses all their charges and their records are sealed. With sealed records, they are allowed to answer "no record" to inquiries regarding their cases, and apply to any job and public benefit that requires clean record.[34]

In **New York**, the Youthful Offender Act allows judges to determine upon sentencing of 16, 17 and 18 year olds that the defendant is a Youthful Offender. Such adjudication is not considered a criminal conviction, and it leaves the criminal record clean. All procedures related to youthful offenders are closed to the public, and official records related to the case are confidential.

9. Improved Transition Protocols between Systems and Services

Transfer Protocol, Birmingham, U.K
Cardiff Integrated Offender Management Y2A Service, U.K.

The transition from adolescence to adulthood is confusing not only for young people, but also for the various institutions and systems handling their cases. The lack of transfer procedures and information exchange protocols leads to loss of critical information, so young offenders often fall through the cracks and miss services that could have helped them desist from crime.

In **Birmingham, U.K.**, it was identified that youth offending teams and probation departments lack transfer procedures, a situation that was both confusing and time consuming for these agencies and the young people they serve. A hand-over protocol was thus put in place, according to which specialized caseworkers meet with the young person to discuss the transfer, professionals' meeting is organized between youth services, probation, and any other relevant agency (e.g., mental health services), and as a final stage a three-way meeting with both transferring agencies and the young person is held. This improved protocol has increased cooperation between both departments, created a continuum of care, and improved compliance rates with conditions of probation.[35]

Similarly, in **Cardiff, U.K.**, special attention was drawn to a continuum of services around offenders' 18th birthday. A dedicated caseworker works with supervised young adult 3-6 months before and 4 months after they turn 18, adapting the time of transition from youth services to adult probation to the young person's needs, and improving communication between both agencies.[36]

Better communication channels and improved information sharing procedures can be further developed between other institutions involved in lives of young offenders: between juvenile and adult probation, between correctional facilities and reentry services, and between various community-based organizations serving the same young person. Care should be taken in designing such hand-off procedures not to violate confidentiality protections for youth adjudicated in family court.

10. Data-Driven Young Adult Programs and State Reports

Massachusetts Juvenile Justice Pay for Success Project
Center for Employment Opportunities (CEO), New York
MassINC Report: New approaches to reducing young adult recidivism in Massachusetts

Data on young adults in the justice system are often inadequate, and few programs track the outcomes of their work with this age group. Although rigorous evaluation of programs is increasing, most programs offering tailored services for young adults have yet to publish clear data on the effectiveness of their models. The lack of data is present also in a system-wide level, nationally and in each state: national reports on the justice system fail to provide numbers of young adult crime, cases, incarceration and recidivism rates, and state-level open access to information is scarce. Effective change in the justice system for this age group requires more program evaluation and more accessible data on young adults. Clear data also invites innovative public funding schemes like **Pay for Success**, which allow solutions that were developed in the nonprofit sector to evolve into a viable systemic change model.

Massachusetts Juvenile Justice Pay for Success Project is a clear example of how rigorous data collection and program evaluation can serve justice-involved young adults. **Roca**, the service provider in Massachusetts' project, has an intervention model for high-risk men at the ages of 17-25, which is highly data-driven (see boxed text). According to the project's Pay for Success scheme, Massachusetts pays for Roca's services only if recidivism reduction goals are met, while in the interim Roca is funded by private investors, who will receive their return on investment only once the goals are achieved and the Commonwealth pays. Such outcome-based approach attracts growing

Roca

Intervention Model for high-risk young adults

Roca works to disrupt the cycle of incarceration and poverty by helping young people transform their lives. Over two decades of working with high-risk people at the ages of 17-25 has led Roca to develop a 4-year evidence-based Intervention Model, effectively reaching society's highest risk young men: the shooters, the drug dealers, the gang leaders. This population is not ready, willing or able to participate in any type of programming, and is severely disconnected from education and employment. Roca firmly believes that change is possible for each one of these young people.

Roca's Intervention Model works with high-risk young people through relentless outreach: meeting the young men where they are, and building transformational relationships between the young men and Youth Workers. These talented Youth Workers have to be relentless – a young person will often tell them to get lost dozens of times before returning their calls – but it is the relentlessness that builds trust and enables change. Once engaged in the program, participants are involved in stage-based programming, which helps them complete their HiSET/GED, gain pre-vocational trainings (such as custodial maintenance and culinary classes and certificates), work on life skills through a specialized Cognitive-Behavioral Technique (CBT) curriculum, and take part in Transitional Employment Program that models real-life work environment. As high-risk young people are tightly connected to multiple institutions – courts, police, state agencies and others – engaging these institutions in the change process is an inseparable part of the model.

In FY15 Roca served 659 young men across 21 communities in Massachusetts. 80% of whom were retained in the Model 24 months or longer by the end of the fiscal year. 98% of participants weren't re-incarcerated, 93% had no new arrests, 89% had no new technical violations, and 92% retained employment for at least 90 days.

attention, and is now applied also to assist ex-offender obtain jobs despite their criminal records. The **Center for Employment Opportunities in New York** runs a program of this kind with a Pay for Success funding model, serving individuals in a range of ages, one-third of whom are young adults.

State-level data on young adults in the justice system has recently become more publicly accessible in **Massachusetts**, where a 2015 MassINC report documents young adult engagement in crime and their representation in the state's prison population.[37] Data-driven young adult criminal justice reforms were successful internationally in countries like **Germany** and the **Netherlands**, [38] and **Ireland** has recently documented the poor results of the criminal justice system with young adults, calling for various policy changes.[39] The **U.K.** sets a high standard in this front, initiating pilot projects especially for generating data on young adult criminal justice reform (see boxed text).[40]

Coalition, Pilots, Framework
Transition to Adulthood (T2A), U.K.

Transition to Adulthood (T2A) is a coalition of organizations in the U.K. exploring effective ways of working with young adults at all stages of the criminal justice system. The coalition works to produce data on new approaches to young adult justice, and has run 3 pilot projects to test such approaches in 2009-13 with over 1,000 participants. The evidence collected through these projects led to the development of the T2A Pathway, a framework for adapting all parts of the justice system to the particular needs of young adults, which is now further tested in 6 additional pilots.

The T2A Pathway framework includes police trainings, developing pre-trial diversion programs, applying restorative justice practices, considering level of maturity in criminal proceedings, improving probation services, expanding community sentences, reducing young adult incarceration rates, improving transfer protocols, implementing individualized reentry plans, and promoting collaborations between justice systems and education, employment, and housing services.

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[1] Yotam Zeira is Roca's Director of External Affairs; Molly Baldwin is the founder and CEO of Roca. The authors would like to thank Vincent Schiraldi and Ben Forman for their thoughtful comments, and Harvard Law School's Public Service Venture Fund for its generous support.

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EXHIBIT 46

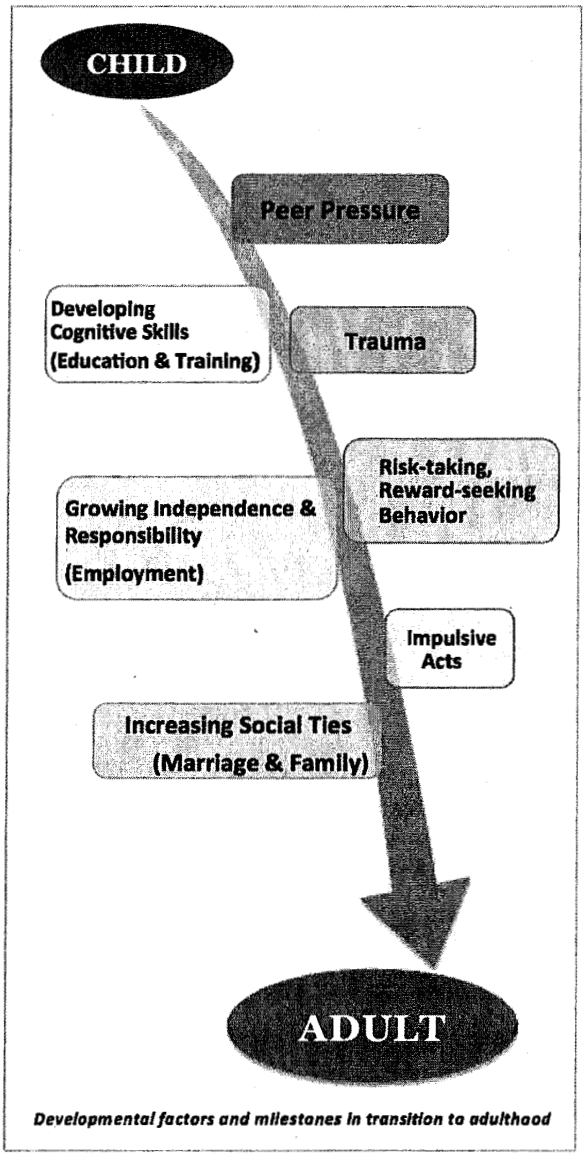
MALCOLM WIENER CENTER

Emerging Adult Justice in Massachusetts

June 2017

Emerging Adults: A distinct population that calls for an age-appropriate approach by the justice system

Selen Siringil Perker and Lael Chester*



Developmental factors and milestones in transition to adulthood

Who are emerging adults?

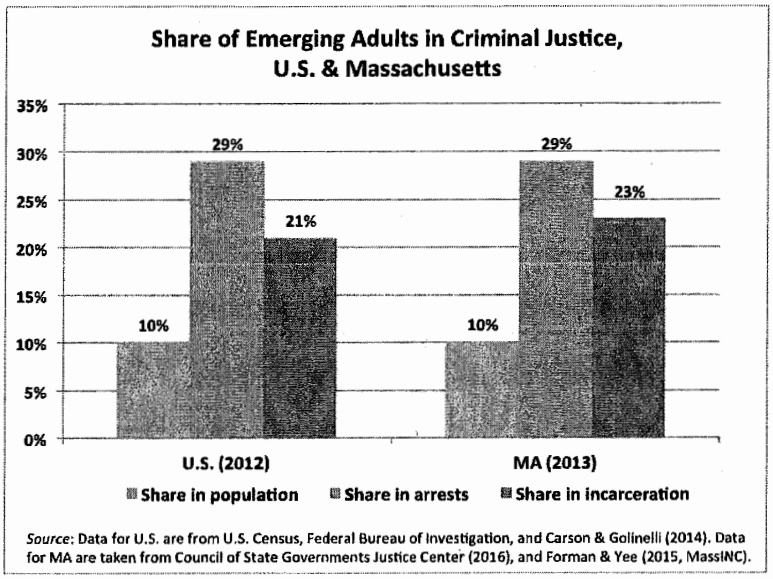
Our justice system acknowledges that children and adults are different, and they should be treated as such when they are suspected of committing a criminal offense. As with most states, Massachusetts sets the legal marker between childhood and adulthood at age 18 for criminal law purposes. [1] Consequently, justice-involved young people are automatically treated as adults once they turn 18, and cannot benefit from a separate system of justice with separate facilities, confidentiality protections, and individualized treatment with a network of rehabilitative programming—all of which are part of the juvenile justice systems that most juveniles under 18 are entitled to. *Yet the age of 18 is not a fixed point when adolescents become fully mature adults.* [2] Recent research in neurobiology and psychology suggests that cognitive skills and emotional intelligence continue to develop into a person's mid-20s, and even beyond. [3] Sociological research also reveals that key milestones bridging youth to adulthood, such as completing education, employment and marriage, come later in an individual's life course compared to previous generations.[4]

The term "emerging adults," first coined in 2000 by psychologist Jeffrey Arnett, aptly invokes this critical developmental period: the transition from a child who is dependent on parents or guardians for supervision and guidance (as well as emotional and financial support) into a fully mature, independent adult who engages as a productive and healthy member of society.[5] While there is no universal definition of "emerging adults," in the context of criminal justice we define it as individuals transitioning from childhood to adulthood, from the age of 18 to 25.[6]

Why should the criminal justice system focus on and distinguish emerging adults?

Emerging adults drive a disproportionately large share of criminal justice activity.

Emerging adults[7] make up 10 percent of the U.S. population but comprised 29 percent of arrests,[8] and 21 percent of people admitted into adult prisons in 2012 across the country.[9] The trend holds in Massachusetts: In 2013, emerging adults comprised 10 percent of the population, yet accounted for 29 percent of all arrests,[10] 20 percent of individuals sentenced to incarceration in state prisons, and 23 percent of individuals sentenced to incarceration in county Houses of Correction (HOC). [11] Furthermore, the rate of incarceration in Massachusetts state prisons and county jails for emerging adults was 540 per 100,000, more than double the incarceration (admission) rate for residents over age of 25 (251 per 100,000).[12]



Source: Data for U.S. are from U.S. Census, Federal Bureau of Investigation, and Carson & Golinelli (2014). Data for MA are taken from Council of State Governments Justice Center (2016), and Forman & Yee (2015, MassINC).

The persistent, large, and disproportionate share of emerging adults in our criminal justice system hinders efforts to effectively reduce the workload and expense of the criminal justice system, and to curb incarceration rates.

Age-appropriate responses to justice-involved emerging adults will decrease crime and improve public safety.

Emerging adults are not only more likely to be incarcerated, but also more likely to recidivate when they leave a correctional facility. A national study of 30 states revealed that 75.9 percent of those under 24 released in 2005 were rearrested within three years, compared to 69.7 percent of those 25 to 29 and 60.3 percent of those 40 and older.[13] This pattern continued to hold at the 5-year mark after release.

The higher recidivism rates among emerging adults hold true in Massachusetts. Among 2011 HOC releases, 18- to 24- year-olds had higher rates than all other age groups in three measures of recidivism (re-arraignment, re-conviction and re-incarceration) at the 3-year mark. Notably, 76 percent of 18- to 24-year-olds released from county jails and state prisons in 2011 were re-arraigned within three years of release.[14]

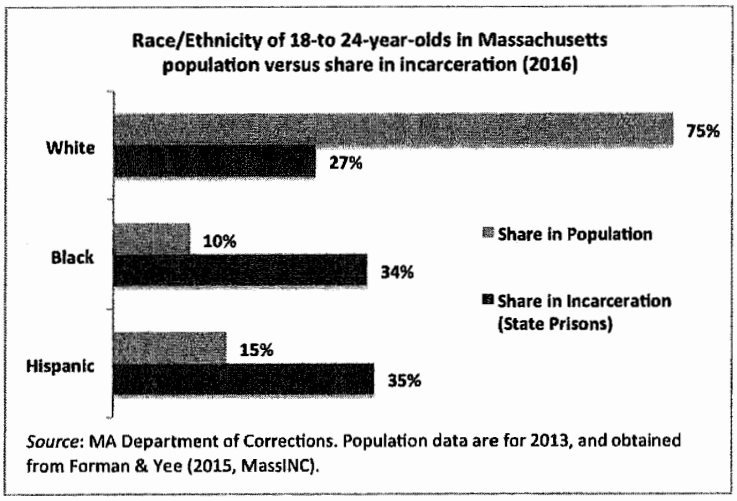
Higher recidivism rates among emerging adults are not surprising. Justice-involved emerging adults have been victims of violent crime and have experienced emotional and physical trauma at a higher rate than any other population.[15] Exposure to toxic environments such as adult jails and prisons further traumatizes justice-involved emerging adults, making them more vulnerable to negative influence, and as a result, increases recidivism among this group. Tailoring the justice system's response to emerging adults' developmental needs can reverse this cycle of crime and improve public safety.

Age-appropriate response to justice-involved emerging adults is the most effective and humane way to hold youth accountable and correct problematic behavior.

Research shows that the brain continues to develop well into a person's 20s.[16] When emerging adults find themselves in an emotionally charged situation, especially around their peers, they cannot always keep their actions in line with what they know to be the appropriate course of action.[17] They are overly motivated by reward seeking behavior, more susceptible to peer pressure, and more prone to risk-taking and impulsive behavior.[18] All these factors can contribute to their involvement in criminal activity. Furthermore, a higher likelihood of prior victimization among emerging adults has also been shown to amplify the effects of such factors.[19] Problematic behavior of emerging adults is, thus, often fundamentally different than mature adults' criminal behavior in both cause and nature, and necessitates a tailored approach.

Despite its challenges, this transitional period is also a time of opportunity. Most emerging adults will mature normally through this stage between childhood and adulthood, and naturally age out of crime as their cognitive skills develop, responsibility and independence grow, and social ties are strengthened through key milestones such as stable employment and marriage. Research again shows that few youths who are involved in delinquent behavior actually continue into adult criminal behavior.[20] Emerging adults are also more malleable to rehabilitation and appropriate interventions that promote growth during this critical period. Evidence-based interventions targeted specifically at the needs of emerging adults have proven effective in positively changing behavior. For example, two model programs that specifically focus on justice-involved emerging adults in Massachusetts have produced long-lasting, positive outcomes: The 2016 program evaluation of Roca's Intervention Model in Massachusetts found that 87 percent of emerging adult participants involved with Roca's 24-month intensive support program had no new arrests, and 88 percent retained employment for six months or more.[21] Similarly, 83 percent of youth who completed UTEC programming in 2014 had no new arrests within two years after leaving UTEC, and 82 percent remained employed.[22] By recognizing the unique needs of emerging adults and applying more developmentally appropriate responses, policies and practices can effectively help them reach their true potential, and become productive members of their communities.

Age-appropriate responses to justice-involved emerging adults can reduce racial and ethnic disparities, and enhance social cohesion and economic development.



Source: MA Department of Corrections. Population data are for 2013, and obtained from Forman & Yee (2015, MassINC).

Black male emerging adults comprised nearly 40 percent of all emerging adults admitted to state and federal prisons in the U.S. in 2012, and they are 7 to 9 times more likely to end up in prison compared to their white peers.[23]

In Massachusetts, while racial disparities narrowed slightly over the past decade, black and Hispanic emerging adult incarceration rates are still remarkably higher compared to their white peers. For example, in 2013, relative to their white peers, the annual rate of imprisonment for emerging adults was 1.7 and 3.2 times higher for Latinos and African-Americans respectively.[24]

Black and Hispanic emerging adults have an especially disproportionate share of incarceration in state prisons. In 2016, African-Americans and Hispanics had a combined share of almost 70 percent of all emerging adults incarcerated in state prisons (34 percent and 35 percent respectively), while they made up 52 percent of the incarcerated individuals that were 25 years old and over, and 25 percent of the general state population.[25] Racial disparities persist in county jails too, and are especially alarming among younger cohorts. For instance, in the Suffolk County House of Corrections, African-Americans and Hispanics made up 83 percent of the 18-to 24-year-old incarcerated population (52 percent and 31 percent, respectively), while their combined share was over 90 percent among 18-to 19-year-old cohort in 2015.[26]

A criminal record can severely interfere with emerging adults' abilities to join the workforce, pursue higher education and secure housing. Because the criminal justice system impacts emerging adults in minority communities at higher rates, the decrease in opportunity for socio-economic development hits these communities hardest. Age-appropriate responses to justice-involved emerging adults will reduce racial and ethnic disparities, enhance social cohesion and create new opportunities for economic development.

Why is now an opportune time for emerging adult justice reform in Massachusetts?

Growing recognition of the need for improvements in emerging adult justice is reflected in numerous ways in Massachusetts as recently as this year. Over the past year, Sheriffs in Essex, Middlesex and Suffolk Counties have launched or announced plans to launch specialized living units for young adults in their Houses of Correction. At a criminal justice conference in May 2017, Chief Justice of the Supreme Judicial Court Ralph D. Gants announced plans to create special Young Adult Court sessions in the Boston Municipal and District Courts to serve this specific age group.

Further, numerous bills have been filed, many for the first time in 2017-2018 session of the Massachusetts legislature, that focus specifically on justice-involved emerging adults. These include four major bills that propose to raise the age of juvenile justice jurisdiction and extend the legal protections and dedicated services for juveniles to emerging adults.[27] Specifically, these proposed bills aim to gradually raise the upper age of juvenile jurisdiction to include 18, 19 and 20-year- olds, while simultaneously raising the lower age of juvenile jurisdiction from seven to 12 to allow very young children to be served in more appropriate ways and to ensure the juvenile justice system can more effectively focus on adolescents and emerging adults. The proposed legislation also seeks improvements for the sealing of juvenile court records and limited expungement, as well as the expansion of available rehabilitation services and effective alternatives to incarceration for emerging adults.

These proposals are particularly fitting for Massachusetts. Massachusetts successfully raised the age of juvenile jurisdiction to 18 in 2013, and the Department of Youth Services jurisdiction already extends to age 21 for a category of juvenile cases (youthful offenders). Furthermore, two of the most renowned national models with expertise and success in working with this population are in Massachusetts – ROCA and UTEC.[28] Massachusetts has both the experience and capacity to improve the way its justice system handles emerging adults while reducing crime and enhancing socio-economic outcomes.

Endnotes

*Selen Siringil Perker and Lael Chester are Research Fellows at the Program in Criminal Justice Policy and Management (PCJ), John F. Kennedy School of Government, Harvard University. PCJ wishes to thank the Open Philanthropy Project and the Gardiner Howland Shaw Foundation for supporting PCJ's research on Emerging Adult Justice.

[1] The Massachusetts legislature raised the upper age of juvenile jurisdiction from 17 to 18 in September 2013.

[2] Massachusetts already recognizes emerging adults as a distinct population that requires dedicated services in areas of public health and education for successful transition to adulthood.

[3] Giedd, J.N., Blumenthal, J., Jeffries, N.O., Castellanos, F.X., Liu, H., Zijdenbos, A., Paus, T., Evans A.C., and Rapoport, J.L. (1999). "Brain Development During Childhood and Adolescence: A Longitudinal MRI Study." *Nature Neuroscience* 2: 861-863; Howell, J.C., B.C. Feld, D.P. Farrington, R. Loeber and D. Petechuk (2013). "Bulletin 5: Young Offenders and an Effective Response in the Juvenile and Adult Justice Systems: What Happens, What Should Happen, and What We Need to Know." Study Group on the Transitions Between Juvenile Delinquency and Adult Crime. Final report to National Institute of Justice (grant number 2008-IJ-CX-K402).

[4] Berlin, G., Furstenberg, F. F., and Waters, M.C. (Eds.) (Spring 2010). "Transition to Adulthood." Special Issue. *The Future of Children* 20(1); Schiraldi, V., Western, B., and Bradner, K. (2015). "Community-Based Responses to Justice-Involved Young Adults." New Thinking in Community Corrections Bulletin. Washington, D.C.: U.S. Department of Justice, National Institute of Justice. NCJ 248900.

[5] This population is also often described as "young adults" or "transition-age youth".

[6] We acknowledge that each emerging adult matures at a different rate, and many variables affect the developmental process. Thus, we consider the age 18 to 25 range for emerging adults flexible enabling application of dedicated policy and programming to youths a year or two outside of this age range.

[7] Data cited for emerging adults in this paper include 18-to 24-year-olds (including 24).

[8] United States Department of Justice, Federal Bureau of Investigation (October 2013). "Crime in the United States, 2012." Data retrieved on 19 April 2017, from https://ucr.fbi.gov/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/resource-pages/download-printable-files.

[9] Carson, E.A., and Golinelli, D. (2014). "Prisoners in 2012: Trends in Admissions and Releases, 1991-2012." U.S. Department of Justice, Office of Justice Programs Bureau of Justice Statistics. The Bureau of Justice Statistics stopped publishing "admission" statistics by age in 2013, and now publishes only yearend (December 31) population of correctional facilities by age. 2012 is, thus, the most recent year data is available for comparison of admission rates by age.

[10] Council of State Governments Justice Center (December 2016). "Justice Reinvestment in Massachusetts: Key Findings and Policy Options." Available at https://csgjusticecenter.org/wp-content/uploads/2016/12/JR-in-Massachusetts_Key-Findings-and-Policy-Options.pdf.

[11] Forman B. and Yee S. (December 2015). "Viewing Justice Reinvestment Through a Developmental Lens: New Approaches to Reducing Young Adult Recidivism in Massachusetts." MassINC Policy Brief, available at http://massinc.org/research/viewing-justice-reinvestment-through-a-developmental-lens/.

[12] *Ibid.*, at endnote 1.

[13] Durose, M.R., Cooper A. D., and Snyder H. N. (2014). "Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010." Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics. NCJ 244205. p. 12.

[14] Council of State Governments Justice Center (February, 2017). "Justice Reinvestment in Massachusetts: Policy Framework." Available at https://csgjusticecenter.org/jr/massachusetts/publications/justice-reinvestment-in-massachusetts-policy-framework/.

[15] Emerging adults aged 18-20 experience violent victimization at more than twice the rate of the general population, and those with a history of foster care are 10 times more likely to report being arrested when they were 18 or 19. *See,* Velazquez, T. (May 2013). "Young Adult Justice: A New Frontier Worth Exploring." *The Chronicle of Social Change*, available at http://chronicleofsocialchange.org/wp-content/uploads/2013/05/Young-Adult-Justice-FINAL-revised.pdf.

[16] Giedd, J.N., Blumenthal, J., Jeffries, N.O., Castellanos, F.X., Liu, H., Zijdenbos, A., Paus, T., Evans A.C., and Rapoport, J.L. (1999). "Brain Development During Childhood and Adolescence: A Longitudinal MRI Study." *Nature Neuroscience* 2: 861-863; Sowell, E.R., Thompson, P. M., Holmes C.J., Jernigan T. L., and Toga A.W. (1999). "In Vivo Evidence for Post-Adolescent Brain Maturation in Frontal and Striatal Regions." *Nature Neuroscience* 2(10): 859-861; Sowell, E.R., Thompson, P.M., Tessner K.D., and Toga A.W. (2011). "Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships During Post-Adolescent Brain Maturation." *Journal of Neuroscience* 21: 8819-8829.

[17] Moffitt, T.E. (1993). "Adolescence-Limited and Life-Course-Persistent Antisocial Behavior." *Psychological Review* 100(4): 674-701; Galambos, N. L., Barker E. T., and Tilton-Weaver L. C. (2003). "Who Gets Caught at Maturity Gap? A Study of Pseudomature, Immature, and Mature Adolescents." *International Journal of Behavioral Development* 27(3):253-263.

[18] Monahan, K.C., Steinberg, L., Caufman E. and Mulvey E.P. (2009). "Trajectories of Antisocial Behavior and Psychosocial Maturity from Adolescence to Young Adulthood." *Developmental Psychology* 45(6) 1654-1668; Bryan-

Hancock, C. and Casey, S. (2010). "Pyschological Maturity of At-Risk Juveniles, Young Adults and Adults: Implications for the Justice System." *Psychiatry, Psychology, and Law* 17.1.

[19] Adams, E. J. (July 2010). "Healing Invisible Wounds: Why Investing in Trauma-Informed Care for Children Makes Sense." Justice Policy Institute. Available at http://www.justicepolicy.org/images/upload/10-07_REP_HealingInvisibleWounds_JJ-PS.pdf.

[20] Mulvey, E. P. (2011). "Highlights from Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders." Washington, DC: Office of Juvenile Justice and Delinquency Prevention, at https://www.ncjrs.gov/pdffiles1/ojjdp/230971.pdf.

[21] Roca, Inc. (2016), "Fiscal Year 2016 High Risk Young Men Performance Benchmark and Outcomes Report."

[22] UTEC (2016). "Fiscal Year 2016 Outcomes & Impact Report."

[23] Carson, E.A., and Golinelli, D. (2014). "Prisoners in 2012: Trends in Admissions and Releases, 1991-2012." U.S. Department of Justice, Office of Justice Programs Bureau of Justice Statistics.

[24] Forman, B. and Yee, S. (December 2015). "Viewing Justice Reinvestment Through a Developmental Lens: New Approaches to Reducing Young Adult Recidivism in Massachusetts." MassINC Policy Brief, at 4.

[25] Massachusetts Department of Corrections data. Population data are for 2013, and taken from Forman & Yee (2015, MassINC), *supra*..

[26] Suffolk County Sheriff's Department data.

[27] *An Act promoting transparency, best practices, and better outcomes for children and communities*, **S. 947**, 190th Gen. Court (Mass. 2017); *An Act to promote better outcomes for young people in the Commonwealth*, **H. 3037**, 190th Gen. Court (Mass. 2017); *An Act to promote better public safety and better outcomes for young adults*, **H. 3078**, 190th Gen. Court (Mass. 2017); *An Act expanding juvenile court jurisdiction and district court diversion*, **S. 816**, 190th Gen. Court (Mass. 2017).

[28] ROCA and UTEC were highlighted as national models in National Institute of Justice's *Environmental Scan of Developmentally Appropriate Criminal Justice Responses to Justice-Involved Young Adults* (June 2016) for their innovative, community-based approaches to working with emerging adults. Both programs include a social enterprise component, work with high-risk populations, and engage in innovative outreach strategies. Visit their website at http://rocainc.org; and https://www.utec-lowell.org.

EXHIBIT 47

An Evaluation of San Francisco's Young Adult Court (YAC)

Findings on Planning and Early Implementation

Authors:
Jennifer Henderson-Frakes
Sengsouvanh (Sukey) Leshnick
Hannah Diaz

May 2017

SPR SOCIAL POLICY RESEARCH ASSOCIATES

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I. Introduction

San Francisco's **Young Adult Court** (YAC) is a groundbreaking model for rethinking how the developmental characteristics of transitional age youth (TAY) should inform the criminal justice system's response to this population. As described in *The New York Times*, San Francisco's YAC is "tailored to the biology and circumstances" of young adults age 18-25. Eligible young adults may participate in the YAC program instead of the regular criminal court process, with the aim of supporting positive life outcomes and avoiding recidivism.

The YAC is part of a larger movement to recognize young adults as a distinct group in the justice system. The unique nature of San Francisco's model is due not only to its deep roots in neuroscience—which indicates that critical portions of the brain regulating risk-taking and impulsive behavior are still developing substantially until the mid-twenties—but also in its acceptance and prioritization of participants who have committed serious felony offenses. In this way, San Francisco is demonstrating a commitment to altering the composition of San Francisco's in-custody population where TAY are overrepresented, as well as the life trajectory of young adults with serious crimes and barriers.

San Francisco's YAC draws on the city's particularly rich experience developing and implementing alternative "problem-solving" courts, its identification of transitional age youth as a citywide priority group, and its track record of tailoring services to this specific population, including among criminal justice agencies.

As of early spring 2017, the YAC has been operational for just over 1.5 years and enjoyed national media attention from *The Economist*, *Newsweek*, and *The New York Times*. This evaluation report on the YAC's planning process, program components, and early implementation yields important insights that can inform the future of San Francisco's promising model, as well as the efforts of other interested local areas.

Disconnected youth in San Francisco ages 16-24—also called transitional age youth (TAY)—are one of the most vulnerable populations in the City. Roughly 8,000 TAY are at risk of not transitioning successfully into adulthood, or reaching adulthood at all.[1] They face significant challenges, such as chronic unemployment, homelessness, involvement with the justice system, and lack basic academic and work readiness skills to prepare for the world of work.

Further, the TAY age group is disproportionately represented in San Francisco's local adult criminal justice system and nationally. Recent estimates[2] show that approximately 25% of San Francisco adult arrests were young men and women age 18 to 24, and that young adults under age 25 comprised 20% of the jail population, 25% of criminal court cases, and 21% of adult probation's

[1] http://www.taysf.org/wp-content/uploads/2014/03/TAYSF_PolicyPrioritiesdoc.pdf. Downloaded on 3/5/17.

[2] This data is from January 2012 to March 2014; San Francisco Department of Children, Youth and Their Families (DCYF) proposal to California Board of State and Community Corrections (CBSCC).

active caseload. **Young adults in the justice system are also overwhelmingly and disproportionately minorities.** Approximately 60% of adult probation's young adult caseload is African American, while African Americans comprise only 6% of San Francisco's population. The recidivism rate for individuals (adults and young adults) returning from prison is 76%.[3]

It is in this context that the City of San Francisco established the Young Adult Court (YAC) model, an alternative court program designed for TAY ages 18-25. Reflecting brain development research and needs specific to young adults, and recognizing the importance of providing these young adults an opportunity to change their life trajectory and exit the cycle of recidivism, California's Board of State and Community Corrections (CBSCC) awarded San Francisco's Department of Children, Youth and their Families (DCYF) a three-year Justice Assistance Grant (JAG) to implement two programs designed to reduce recidivism of young adults and decrease the school-to-prison pipeline. These programs— Juvenile Alternatives to Suspension (JASP) and Young Adult Court (YAC)—aim to address the needs of San Francisco's vulnerable young adults by providing participants with access to wraparound services, job referrals, case management services and other supports.

In the spring of 2015, DCYF contracted with Social Policy Research Associates (SPR) to conduct a three-year evaluation of the programs funded by the JAG grant. The goal of the evaluation is to document the planning and implementation of the program models, how they evolve over time, and outcomes at the participant- and system-levels. Due to delays to implementing the JASP program, the evaluation is focusing on the planning, implementation, and outcomes of the YAC program.

This YAC report—which weaves together information from multiple data sources to provide a snapshot of the planning and early implementation phases—sets the stage for the final YAC outcomes report due in December 2017.

The Young Adult Court Program (YAC)

San Francisco's Young Adult Court is a collaborative, "problem-solving" court for young adults ages 18-25 arrested in San Francisco, "who have legal and social service needs, and are given the opportunity to participate in YAC instead of the regular criminal court process."[4] The YAC program in San Francisco represents a significant effort to support positive outcomes and reduce recidivism for approximately 80 disconnected transitional age youth (TAY) per year.

The YAC program also represents a significant leap forward compared to other young adult court models. The YAC's unique nature is based not only on its grounding in research on young adults'

[3] San Francisco Department of Children, Youth and Their Families (DCYF) proposal to California Board of State and Community Corrections (CBSCC). Note that this rate applies to the county at large, not only young adults.

[4] Zeira, Y. and M. Baldwin, 2016.

brain development, but also in its acceptance and indeed its prioritization of young adults who have committed serious felony offenses. A 2016 scan of national and international innovative young adult justice initiatives highlighted San Francisco's Young Adult Court as the only court model that accepts a range of risk levels, including violent and non-violent misdemeanors and felonies.[5] By comparison, at least four of the other five young adult courts in the United States only accept misdemeanors and/or low-level, first time felonies.[6] The prioritization of young adults with felony offenses, as codified in the YAC's formal eligibility criteria, demonstrates not only "a leap of faith," but also a commitment to "moving the needle" on the nature of San Francisco's in-custody population where TAY are overrepresented.

In the course of preliminary research on other YAC models in the U.S., SPR was able to interview two other YAC programs: Douglas County Young Adult Court and Kalamazoo County Young Adult Diversion Court.* Capsule summaries of these two YAC programs can be found in Appendix E. The YAC program in San Francisco is similar to these two models in terms of: the goals of reducing sentencing/improving justice outcomes, the use of service phases, and a system of sanctions and incentives, a focus on intensive case management support, and the frequency of monitoring participant progress. However, both the Douglas and Kalamazoo County programs differ from San Francisco in that young adults must be on probation in order to be eligible. By contrast, San Francisco has deliberately designed a program where young adults can participate without having to be sentenced to probation, even for relatively serious offenses.

* SPR reached out to five Young Adult Court programs in the U.S. to conduct phone interviews, and these were the only programs that responded to our request.

Key Partners

The JAG grant to San Francisco County—totaling $1,045,625 for three years—provides funding to six City partner agencies to expand their capacity and coordination efforts to connect YAC participants to critical resources in the areas of mental services, housing, and employment. The partners are expected to work together in ways that would significantly expand the level of services provided to participants and enhance coordination of these services in San Francisco. Partners hired or designated staff to deliver services under the grant, dedicating between .20 FTE to .85 FTE to support this effort.

Key YAC team members and partners include the YAC Judge and Superior Court, San Francisco District Attorney's Office, San Francisco Public Defender's Office, Adult Probation Department, Community Assessment and Services Center (CASC), Felton Institute/Family Service Agency (FSA), Goodwill Industries, treatment providers, San Francisco Department of Children, Youth, and their Families (DCYF), and the San Francisco Sheriff's Department. These partners and their roles are displayed in the YAC Organizational Chart (see Appendix A), though some modifications have been made.

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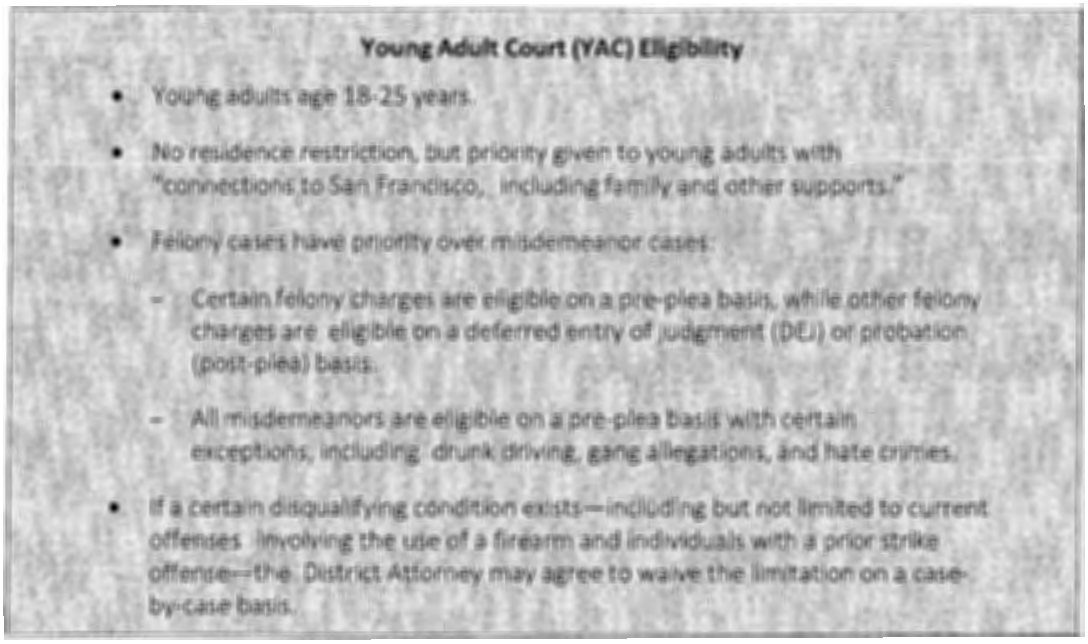
[5] Zeira, Y. and M. Baldwin, 2016.

[6] Based on available information on the six young adult courts identified in the National Institute of Justice *Environmental Scan of Developmentally Appropriate Criminal Justice Responses to Justice-Involved Young Adults* (2016). Beyond SPR's interviews with the Douglas and Kalamazoo County programs, information on the other three non-San Francisco courts included in the scan is based on publicly available documents.

Summary of YAC Model

Below is a summary of the YAC model, including eligibility guidelines, phases of participation, and expected outcomes.[7]



Young adults may be referred to YAC by the Public Defender's Office, District Attorney, or the Adult Probation Department. The District Attorney's Office reviews all cases referred to YAC. Potential participants undergo an assessment process conducted by FSA over multiple sessions. The process consists of an initial conversation to put the young adult at ease and address any concerns (e.g., about confidentiality), and then the administration of nationally-recognized assessment tools, including but not limited to the Primary Care Post-Traumatic Stress Disorder (PC-PTSD) Screen, the PCL-C (a standardized self-reported rating scale for PTSD), the Beck Depression Inventory, and the TCU Drug Screen V.

After assessment, FSA staff makes a recommendation on whether the young adult is suitable for YAC and the attorneys determine whether there is an agreeable legal resolution. **Once young adults are accepted into YAC, they receive services organized into four distinct phases:**

- Phase 1: Engagement and Assessment
- Phase 2: Stability and Accountability
- Phase 3: Wellness and Community Connection

[7] For the full eligibility guidelines, phases of participation (YAC Participant Handbook), and expected outcomes (logic model), please see Appendices B, C, and D respectively.

- Phase 4: Program Transition (and graduation day)

Each phase comprises various activities and milestones. As participants reach their milestones, they progress to the next phase. How long participants remain in a phase depends on how well they progress toward goals in their Wellness Care Plan, described below. Participants complete the program when they graduate and exit from Phase 4. On average, the timeframe for completing the four phases of service provision is between 10 to 18 months.

Key services and components of YAC include the following:

- **Orientation.** After young adults are accepted into the YAC, FSA provides an orientation to the program by introducing the YAC Participant Handbook—which participants are asked to sign—and showing an orientation video.[8] The video introduces participants to the YAC's collaborative environment and to the different agency partners at the table. This has helped ease YAC participants' early reservations and promote buy-in, and allowed them to see criminal justice partners in a new light. Orientation can occur in a small group format, but it typically happens on a one-on-one basis between the case manager and YAC participant, sometimes in the jail setting.

- **Wellness Care Plan**. Upon enrolling in the YAC program, the case managers develop a Wellness Care Plan jointly with the participants. This plan details the goals for each YAC participant based on individually-identified goals by the participant and their YAC case manager. The plan may include some or all of the following components: (1) case management and therapeutic services;[9] (2) dialectical behavioral therapy (DBT) and Life Skills;[10] (3) meeting with probation officer, if applicable; (4) substance abuse counseling, as applicable; and (5) housing, education, employment and family/parenting support.[11] The plan is to be reviewed, monitored, and updated on an ongoing basis.

- **Case management services.** Participants receive intensive case management support from FSA or the CASC. Clients not on probation receive case management support from FSA while clients on probation receive this support from a TAY case manager at the CASC.[12] Case

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[8] FSA and the Superior Court initiated and shepherded the idea of a video after several months of YAC implementation. The video was produced pro bono by San Francisco Academy of Arts.

[9] Case management in and of itself is considered therapy as FSA staff are caring adults trained in motivational interviewing.

[10] All YAC participants receive DBT and Life Skills instruction (which covers 25 different topics) but depending on the readiness of each young adult, DBT and Life Skills may be delivered individually before moving to a group setting. The frequency of therapeutic contact depends on the individual's situation and assessment results, generally ranging from 1-3 times per week. A site visit to Roca—an evidence-based intervention model in Massachusetts designed to serve high-risk young people—has informed ongoing efforts to determine how to use cognitive behavioral therapy and interweave it more in the YAC program.

[11] Meeting with a mentor is another planned component of the Wellness Care Plan. However, the addition of this component was purposefully delayed until the YAC model was further along and achieved greater consistency in implementation.

[12] These case managers at the CASC are employees of LCA.

managers provide referrals for housing, substance abuse treatment, and other supportive services. Primary workforce development support is provided by Goodwill Industries. In the case of FSA, case managers are also licensed therapists (clinical case managers). Probation case managers can refer their clients to FSA for therapeutic services, as appropriate. Case managers meet with participants on a regular basis, ranging in frequency from weekly, to bi-weekly, to monthly, depending on each participant's phase and level of engagement.

- **Drug testing.** Participants are required to take a baseline drug test during Phase 1 of the program. Additional, random drug testing can be administered while participants are in YAC if substance abuse is suspected.

- **Case conferencing and court appearances.** Participants are expected to make court appearances before the YAC Judge on a regular basis, the frequency of which is determined by progress realized toward their goals in the Wellness Care Plan. For the first several months, participants typically come to court every week. As participants show progress in meeting goals, court appearances are required less frequently. Prior to each court hearing, YAC team members hold case conferencing sessions to discuss individual YAC participants' status along various dimensions—including rated motivation level and stage of change—to develop a unified message and next steps for each participant, and to determine the order in which cases will be called.

- **Rewards and responses.** The YAC Participant Handbook outlines the specific behaviors that can trigger either a reward or a response. At the discretion of the YAC team, special rewards such as gift cards may be given during court appearances for behaviors such as arriving on time for court hearings and engaging in the Wellness Care Plan. Other, non-monetary rewards include public acknowledgement/"shout-outs" by the Judge and other YAC team members for good behavior, as well as a reduction in required court appearances. Responses or consequences are for behaviors such as continued substance abuse, missed appointments with probation, and failure to appear in court. The consequences for these responses range from increased mandated court appearances to termination from YAC.

Evaluation of YAC

The evaluation is designed to assess how well the YAC program achieves its goals of reducing recidivism among YAC participants while connecting them to a critical network of resources and supports to realize positive life outcomes. This evaluation also seeks to understand the lessons that YAC partners learned from planning and implementing the program, and the sustainable system-level effects of these efforts. To accomplish these goals, the evaluation consists of an implementation study and an outcomes study that will address the expected outcomes at the

participant- and system-level listed below.[13] This report focuses on the early implementation of the YAC program. The Final Report, to be submitted at the end of 2017, will cover YAC outcomes.

Participant-Level Outcomes	Broader Program Outcomes
• Reduction in recidivism • Employment acquisition and retention • Reduced substance abuse • Development of "life skills" • Increased awareness and utilization of community resources • Wellness outcomes • Legal outcomes • Housing status	• Improved coordination between YAC partners via assessments, service planning, and treatment • Adult probation and court access to accurate risk assessment tools • Use of collaborative case conferences

Key research questions that guide the implementation study specifically are as follows:

YAC Implementation Study Research Questions

- What contextual factors are important for understanding the planning, design, implementation, and outcomes of the YAC program?
- What was the process of designing and planning YAC? What were the successes and challenges of different partner agencies coming together?
- What is the nature of the YAC service design and decisions behind its specific components?
- How are the key characteristics and experiences of YAC participants so far informing YAC implementation?
- What is the level and nature of ongoing YAC partner coordination and communication?
- What have been the main successes, challenges, and surprises of program planning and implementation? How have they informed further development of YAC?
- Given implementation thus far, what outcomes at the participant and system level can be reasonably expected to result from YAC?

[13] These were identified and agreed to by YAC partners as part of a logic model process in fall 2015. YAC partners also identified long-term outcomes: permanent reduction in recidivism/criminal justice involvement; lasting connections to the educational system and/or the labor market; and sustained focus on addressing structural barriers to success among young adults of color. Please see Appendix D for the YAC logic model.

The implementation study examines the YAC partnership model employed in planning and delivering services, the participants served so far, the service delivery components and strategies used, and the successes and challenges encountered in implementing the program. The implementation study's most immediate purpose will be to inform continuous improvement of YAC, and provide valuable, explanatory context for the evaluation's final outcomes report. Another purpose will be to share implementation lessons with a broader audience that is interested in successful practices for establishing a young adult court.

Data Sources and Methods

To address the implementation study evaluation questions, this report relies on a number of data sources:

Exhibit I-1: Data Sources

Data Sources	Description
In-person and telephone interviews	SPR conducted interviews with 17 individuals involved with the YAC program. Interviews focused on YAC planning and implementation, service delivery mechanisms, partner coordination and communication, and successes and challenges in running the YAC program. We conducted four in-person interviews and 13 telephone interviews in late summer 2016. The decision to interview respondents in-person or by phone was influenced by the availability of respondents. Interviewees included a mix of the following groups of respondents: • *Criminal justice system stakeholders* (8), including the Public Defender and the District Attorney's office, as well as staff from Adult Probation, the Sheriff's Department, and the Police Department. • *Superior court staff* (2), including the YAC Judge and court staff. • *Case managers* (5), from LCA and FSA. • *DCYF staff* (2), Data and Evaluation Analyst and Older Youth Programs & Planning Manager. Additionally, SPR conducted interviews with program staff from two other young adult courts. Interviews focused on program structures and lessons learned. Interview findings are included in Appendix E. SPR interviews with staff from the following court models: • Douglas County Young Adult Court in Douglas County, Nebraska • Kalamazoo County Young Adult Diversion Court in Kalamazoo County, Michigan
Young adult focus groups	SPR conducted two young adult focus groups with participants enrolled in the YAC program in the fall 2016 and winter 2017. Young adults were invited to the focus groups but participation was voluntary and some invitees did not attend. Ultimately a total of 11 young adults participated in the two focus groups. The young adults were not representative of the larger participant populations. Questions addressed participants' backgrounds and experience with the YAC program, including the services they received, their perception of the quality of services and supports available to them, and program strengths and weaknesses.

Data Sources	Description
Observations	SPR staff conducted two observations of YAC's case conferencing sessions and formal court sessions held in San Francisco's Hall of Justice. The observations provided the evaluation team an opportunity to learn first-hand about participant characteristics and their interactions with the diverse array of partners involved with YAC, including the Judge, case managers, probation officers, and staff from the Public Defender and District Attorney's office. SPR took copious notes during the observations in order to capture the exchanges between young adults and the partners involved in the program.
YAC Database (extract)	YAC Database extracts were provided by Superior Court staff. These extracts contained data on YAC referrals and on YAC participants' characteristics (including race and ethnicity, living situation, education level, and probation status). In the YAC Evaluation Final Report, participant outcome data from the YAC Database will be reported more fully.
YAC program documents	SPR conducted a review of relevant program documents such as the YAC grant proposal to California BSCC, the YAC Participant Handbook, YAC eligibility guidelines, and a National Institute of Justice environmental scan of similar court models for young adults. We reviewed these documents to prepare for data collection and to examine more closely the policies and practices discussed by interview respondents.

These data sources provide useful information about the YAC model during early implementation. We incorporate quotes from interview respondents throughout the report. The quotes—which are embedded in phrases and in sidebars—are intended to add richness to our analysis.

Remainder of the Report

The remainder of this report presents the key findings from the planning and early implementation of the YAC model. Chapter II presents an overview of the planning process for the YAC program, summarizing how partners came together to design and deliver services.

Chapter III examines in-depth the successes and challenges of early YAC implementation, and briefly reviews some early program participation outcomes. Finally, Chapter IV summarizes key findings and their implications for moving forward with YAC implementation.

II. Planning Phase

While the newness and complexity of the YAC required careful deliberation and planning for YAC program design, the partners were also able to capitalize on important contextual factors and rich experience designing other collaborative court models. This allowed for a relatively rapid YAC rollout and the capacity to move forward with implementation while still adjusting important components of program design. As one partner shared, "We were building the train while hurtling down the track. Like our young people, [the YAC] is very much in development." The planning process required that partners grapple with several critical questions and issues, including program eligibility and an appropriate system of rewards and responses.

> *"The motivation for us was finding an alternative for youth involved in the criminal justice process. To get them the skills and resources they need not only to get out of the criminal justice system, but to stay out. Give them the skills they need to get productive and stay productive. And to take those skills back to the neighborhoods they're from and be examples for the kids there."*
> – YAC Partner

Context and Motivation for the YAC

The planning for YAC was facilitated by four significant contextual factors: (1) data on young adults in San Francisco's justice system, (2) emerging brain development research, (3) the Superior Court's significant experience with collaborative court models, and (4) the City's commitment to TAY services.

> *"There was an environment of: we're not doing a good job for these young people. We are not looking at their special needs and limitations, like their maturity level. We need to look at them differently."*
> – YAC Partner

First, data demonstrated that young adults overall, and young adults of color specifically, were disproportionately represented in San Francisco's local adult criminal justice system (e.g., adult arrests, jail population, criminal court cases, probation caseload). These data lent an urgency to the recognition that "we're not doing a good job with TAY" and "we needed to do something different." The data also served as additional motivation for finding new solutions for the young adult population.

Second, emerging research on brain development among young adults underscored why this population required alternative interventions apart from the adult criminal justice system. At the same time that local criminal justice data were underscoring the critical need for an alternative approach with TAY, the San Francisco District Attorney, then-Chief Probation Officer, and Chief of Alternative Programs and Initiatives (District Attorney's Office) attended an Executive Session on Community Corrections at Harvard Kennedy School in March 2014 that covered young adult brain development research and community-based responses to justice-

involved young adults.[14] The research indicated that brain development is still unfolding in critical ways for the TAY population, thus requiring different approaches for engagement and reducing recidivism than those used for older adults or juveniles. This presented research sparked the initial idea for establishing a YAC.

Third, YAC planning was able to capitalize on the Superior Court's exceptional level of experience with alternative courts. After attending the Harvard Kennedy School session above, the District Attorney's Office and Adult Probation took their idea for the YAC and the BSCC grant opportunity to the Superior Court, which held significant expertise and experience in designing and implementing specialized, collaborative courts (often called "problem-solving courts") designed to improve justice outcomes for the City's most vulnerable populations. These collaborative courts include Behavioral Health Court, Community Justice Center, Family Treatment Court, Adult Drug Court, Intensive Supervision Court, Juvenile Reentry Court, Truancy Court and Veterans Justice Court. As will be discussed below, the Director of San Francisco's Collaborative Courts and the Superior Court served as the administrative lead of YAC planning, responsible for a number of key development tasks.

Fourth, the City was able to leverage its pre-existing commitment to TAY services—for example the Adult Probation Department's TAY Unit. This was part of a larger, shared understanding among city leaders that TAY required specialized supports and sanctions that were age-appropriate. It is for this reason that in 2012, San Francisco Mayor Ed Lee identified disconnected TAY as a priority group across city departments, and established DCYF as the city agency coordinating TAY services. Soon thereafter, the renewal of the Children's Fund in 2015 included, for the first time, funding for TAY ages 18-24. This funding would ensure that the TAY population receives age-appropriate services and supports citywide.

Finally, YAC program planning process was facilitated by a rich history of partnership among city agencies and community-based organizations, many of which had worked together on previous collaborative courts. These alternative courts involve close collaboration between the court staff, Judges, attorneys, and probation and service providers to provide intensive services and frequent court hearings to monitor participants' progress. Interviewees remarked that these courts were "revolutionary" in their efforts to seek alternative sentences to incarceration.

Partners had also collaborated on past city-wide efforts and all of the criminal justice partners had deep experience working with community based organizations to provide ancillary services. For example, San Francisco's District Attorney's Office and Goodwill Industries (the employment services partner for YAC) partnered on Back on Track, a deferred entry of judgment (DEJ) program for first-time participants between the ages of 18-30, charged with low-level felony offenses.

As a result of the confluence of all these contextual factors—as well as the simple fact that YAC partners "genuinely liked each other"—the City was ripe for YAC planning and launch.

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[14] This session was led by Vincent Schiraldi, Bruce Western, and Kendra Bradner.

Coming Together

Interview respondents were especially excited that "the right people were at the table" to move the YAC planning process along. These included the Judge, whose commitment and passion for this program was described as exceptional, and critical partner staff from the Superior Court, the District Attorney's Office, the Public Defender's Office, Adult Probation, and FSA. Partners came to the table with open minds, a willingness to work together, a similar philosophy of rehabilitation, and a shared goal of reducing recidivism among the TAY population. As one interviewee said, "We were all in pursuit of the same goals—just better outcomes for this population."

> *"We had this perfect group of people. Who is at the table from each of these agencies makes a huge difference. Even if they have different perspectives, they were very open to listening to each other."* – YAC Partner

That said, when partners came to the table, they differed in their initial level of buy-in to the YAC, and their confidence about the specific roles and working relationships required. While some partners were excited about the prospect of a new court, with a few emphasizing that they "do a really good job of working together," a small number of others were cautiously optimistic.

Some partners felt they needed clarification on their expected roles and responsibilities. Thus, during the planning phase, the partners engaged in a learning process—including two half-day strategic planning retreats—to ensure a common understanding of program goals and outcomes, as well as roles. One partner reflected, "This has been a journey in [and of] itself. Learning roles, learning what we all want from participants... has been a process since planning."

Finally, some were uncertain about how partners would work together, suggesting that the YAC program would require fostering trust and a shared vision among partners of fundamentally different orientations. For example, some partners —such as the District Attorney and Public Defender—traditionally differ in their view of how to best resolve cases involving young adults in the criminal justice system. While some partners focused their conversation on holding young adults "accountable" for their actions, others focused more on providing sufficient wraparound services to reduce the likelihood of offending.

> *"I'm sure everybody had an agenda coming to the table. Everyone had our poker faces on at first. How serious should we take ourselves, and take each other? We don't want to step on each other's toes." –YAC Partner*

Despite some initial reservations, partners remained committed to the YAC program, and to collaboration. As one respondent remarked, "We're going to be partners, full partners all the way through. We have a vested interest [in seeing the program succeed]."

The Planning Process

After representatives from San Francisco's District Attorney's Office and Adult Probation Department attended the Harvard Kennedy School session on young adult brain development in March 2014, the planning process included the following milestones:

- **Summer 2014.** The Chief of Alternative Programs and Initiatives, District Attorney's Office authors a paper proposing a YAC in San Francisco, and approaches the Superior Court and other stakeholders about the possibility.
- **August 6, 2014.** The San Francisco Sentencing Commission—a legislatively established local body of justice stakeholders that works to make recommendations for system and sentencing reforms that advance public safety and rely on best practices in criminal justice—formally endorses the Young Adult Court Workgroup,[15] and the proposal for a Young Adult Court,[16] after holding the first of two meetings in August 2014 focused on neuroscience and young adult brain development featuring experts in the field.
- **Fall 2014.** San Francisco submits the grant proposal for YAC.
- **Winter 2015.** San Francisco is notified of and awarded grant funding for the YAC.
- **April 2, 2015.** The first YAC planning meeting is held, marking the official beginning of the planning period, though a good amount of thinking and work had been done prior to this date.
  - As part of the planning phase, two major YAC strategic planning sessions are held. One of these, organized by the Director of Collaborative Courts, Superior Court featured Dr. Hetty Eisenberg, then the Medical Director of TAY population at the Department of Public Health, who provided a training to all YAC partners on young adult brain development and trauma. This training—entitled "TAY and Complex Trauma: Neurobiology and Psychosocial Approaches"[17]—informs all aspects of the YAC design, including core program elements and the specific language used with and about young adults. Another, facilitated by the Chief of Alternative Programs and Initiatives, District Attorney's Office, centers on eligibility guidelines and an initial pool of clients.
  - With partner and expert input, the Director of Collaborative Courts and Superior Court leads efforts on key aspects of program design, including drafting documents

[15] The Young Adult Court Workgroup, comprised of the partners who designed the YAC model, reports back to the Sentencing Commission on implementation progress.

[16] The 2014 Annual Report of the Sentencing Commission specifically recommended the creation of a young adult court.

[17] Key training topics included neurobiology, the TAY brain and trauma, psychosocial stages of development, and complex trauma.

on the YAC phases of participation and on sanctions and incentives (rewards and responses), as well as the YAC Participant Handbook.

- The District Attorney's Office leads efforts to draft YAC eligibility guidelines.
- Felton Institute/Family Service Agency (FSA) leads the design of the Life Skills and dialectical behavioral therapy (DBT) components. DBT in particular reflects the effort to ensure that the YAC model is developmentally aligned with its target population. As one respondent noted, "DBT is a format of [cognitive behavioral therapy] CBT that is developmentally appropriate for a population with little insight into emotional regulation."

Critical Decision Points

The planning process required that partners grapple with several critical questions and issues, including what program advancement and completion would look like, and the specific language and approach used to engage young adult participants.[18] However, **interview respondents particularly highlighted program eligibility and a system of rewards and responses as the issues requiring extensive negotiation and discussion during the planning process.**

The critical issues that required extensive negotiation and discussion during the planning process were (1) program eligibility and (2) a system of sanctions and incentives. These are discussed below.

Eligibility. The YAC program planners wanted to "start fresh" on eligibility for the YAC program, rather than modify eligibility criteria used in other collaborative courts in San Francisco. For this and other reasons, determining the program eligibility criteria was perhaps the most challenging element for program planners due, in part, to differences in perspectives between the District Attorney's and Public Defender's offices about who should be allowed in the program. The challenge for partners was to agree on not only *who* was eligible, but also the terms of eligibility (i.e., what charges were acceptable and not acceptable, when participants would be required to enter a plea or be sentenced, and what the legal benefits would be for different types of offenses). After months of planning, the partners agreed on preliminary eligibility criteria, with the expectation that the YAC program would be a pilot project and that eligibility would be reviewed as the program evolved over time. As one respondent said, "We called it a pilot in case we needed to abandon this idea if people were [committing] more, serious crimes and this became a public safety disaster." Other questions that came up during these discussions included: "What were we willing to be more open minded about?" "Do we keep them [young adults], do we let them go to traditional court? We just can't hold them if they're committing new crimes." The multiple planning meetings and back and forth negotiations between the District Attorney's and Public Defender's offices resulted in the

[18] For example, partners deliberately settled on the word "engagement" instead of "compliance," as the former connotes a level of agency on the young adult participant's part.

program's most significant milestone—program eligibility that were acceptable to diverse partners, and were ultimately used across multiple collaborative courts in San Francisco.[19]

Rewards and Responses (sanctions and incentives). Included in the discussion about program eligibility was a system of sanctions and incentives, otherwise referred to as responses and rewards – a key component of collaborative court models. During the planning phase, partners noted that the system of sanctions was not clearly defined. Key decisions about when participants would be terminated and on what grounds required ongoing discussions among the partners and—as will be seen in the next chapter—continued to be a point of tension during early implementation.

[19] Please see Appendix B for YAC eligibility guidelines.

III. Early Implementation of YAC Services

The Young Adult Court began accepting participants on August 7, 2015, with a plan to serve approximately 80 young adults per year, depending on the duration of services provided to participants. The average timeframe of service provision was expected to be one year, but with a range of anywhere between 10-18 months. By the end of 2015, 63 young adults had been accepted. **By March 1, 2017, the Young Adult Court had accepted a total of 123 individuals, which represented almost 85% of the total number referred since inception (146).**[20]

Who is Being Served?

Of the 123 YAC participants served by March 1, 2017, **64% are African American, and males comprise the large majority (75%). One-third of participants (41) are residents of San Francisco,** while just over half (55%) have residences that are "not listed." In terms of education and living status at the time of entry into the YAC program, 35% of participants were high school graduates and 37% were living in a home with family member(s). The full YAC participant characteristics are shown in Exhibit III-1.

> *"When you know a person's story, it changes how you think about their crime."*
> – YAC Partner

For the most part, the characteristics of YAC participants so far have not surprised YAC partners, particularly in terms of racial breakdown. A number of interview respondents noted that while the racial disparity is troubling, YAC participants reflect the larger jail population and criminal justice system of San Francisco. As one YAC partner observed, "I'm not surprised because that's the system I work in, but I'm disappointed and reminded of how important this court is to the address the underlying problems...and the systemic injustice we have."

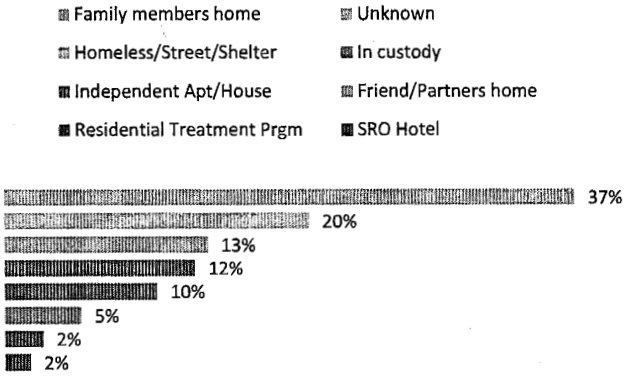
> *"For low-income, justice-involved youth, the hallmark of life is a lack of stable, healthy relationships."*
> – YAC Partner
>
> *"These kids...are taking the biggest risk of their lives. They're learning to learn, and bringing their bags of trauma and poverty to the table."*
> – YAC Partner

Similarly, while also not surprising, many YAC partners remarked on the level and common sources of personal trauma that characterize YAC participants' lives. As one interviewee noted, "The youth are exactly what I expected. A lot have trauma and housing issues, little to no family support, pushed along in the system.

[20] Young adults who are referred to YAC may not be eligible to participate following 1) the District Attorney's Office review of the case or 2) the assessment conducted by FSA. For more information on the referral process, see a broad description on page 4 or Appendix B for YAC eligibility criteria.

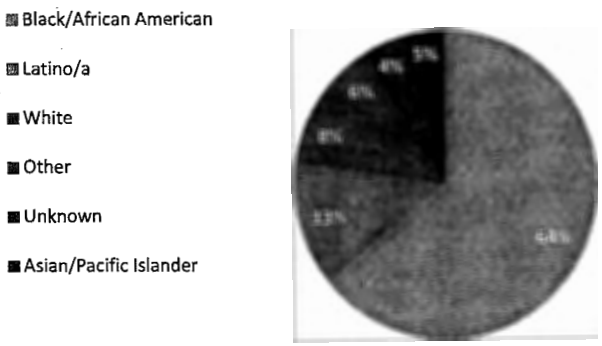
Exhibit III-1: YAC Participant Characteristics
N=123[21]

LIVING SITUATION

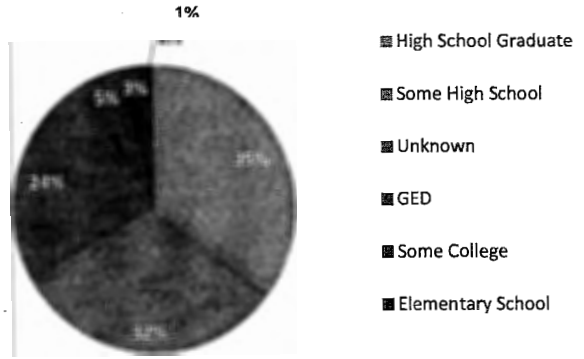


YAC Participant City of Residence	
San Francisco	59
Oakland	11
Daly City	5
Vallejo	3
Antioch	1
Emeryville	1
Fremont	1
Kingston	1
Richmond	1
San Leandro	1
Not Listed	39

YAC PARTICIPANT RACE/ETHNICITY



YAC PARTICIPANT EDUCATION

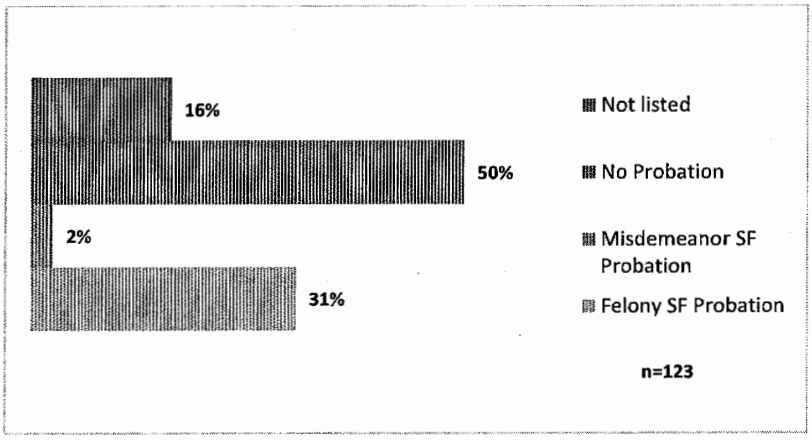


[21] YAC participant data is through March 1, 2017.

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

The YAC participant characteristics that have stood out to multiple partners have been the number of homeless young adults, young adults from outside San Francisco County, and non-probation versus probation young adults. With regard to homelessness, while 16 YAC participants (13%) were homeless at time of program entry, 39 (32%) at the time of assessment indicated that they had experienced homelessness at some point. The number of YAC participants who reside outside San Francisco County (see table above) has been noted as a challenge to consistent program engagement. Finally, a couple of respondents remarked on their expectations of seeing more probation clients in the YAC program. As can be seen in Exhibit III-2, at least 34 YAC participants (28%) are on probation, though 26 (21%) are not listed.

Exhibit III-2: Probation at Entry



Early YAC Implementation Successes

As discussed earlier in the report, the planning phase of the Young Adult Court drew on a political climate highly receptive to addressing the unique challenges and needs of transitional age youth (TAY) in San Francisco, and critical previous experience and expertise with collaborative court models.

Against this backdrop, YAC was able to hit the ground running, and began early implementation with Back on Track[22] participants. A number of interviewees described YAC starting and developing simultaneously, without some YAC policies and

"What is going well is that we have set up a functioning alternative collaborative court for the hardest-to- reach population in a city where this population directly needs it. It is so hard to push against the traditional criminal justice system...the fact that this exists and is an opportunity for young people to get their lives together is amazing." – YAC Partner

[22] The Back on Track program is discussed in Ch. II, page 11 of this report.

procedures in place. For example, a few YAC respondents observed that YAC implementation began without the benefit of the Participant Handbook (which outlines expectations and phases of program participation), or established policies on topics such as marijuana use and drug testing. (The Director of Collaborative Courts, Superior Court is currently leading the finalization of a YAC policies and procedures document.)

While some respondents noted the lack of pre-set policies as a challenge, and perhaps something that would have benefited the early implementation phase, a larger perspective expressed was that **YAC is a young court, still "on a learning curve," and experiencing some amount of "growing pains" that are to be expected with any collaborative court getting up and running and realizing its originally anticipated vision.** A couple of respondents also expressed that the ability to rapidly launch—without all policies in place—was a testament to past experience with collaborative courts, and reflective of an intended pilot and learning phase of YAC.

Part of YAC's learning and adjustment process has been what a few interviewees described as the blending of criminal justice and clinical worlds, with "social workers learning to be a little more like probation officers, and probation officers learning to be a little bit more like social workers." Likewise, another YAC partner reflected that, "It has been important for the Public Defender to be more firm with clients and the District Attorney to be more empathetic."

Overall, the very fact that YAC has been established and is providing a critical opportunity for the TAY population, is seen as a significant accomplishment in and of itself. That said, YAC partners highlighted specific successes and challenges of the Young Adult Court implementation so far. **A few respondents pointed to the popularity of YAC—the demand and sheer number of young adults being served—as a key success of early implementation. However, partners cited two other factors most frequently as indicators of success: the quality of the people and partner organizations at the table; and the Judge presiding over the Young Adult Court.**

Partner Perspectives on YAC Partnerships

"The biggest success is how well everyone works together in getting to the goal. All the partners have been very accommodating in changing the old ways they've done things in the past to make things easier for this population. The way the different parties came together, that was a real highlight."

"The successes have been the strength of the partners. Their amazing knowledge and values that they each individually bring to the table. I think their commitment to the success of the model has also been a huge success."

"I think it's really tremendous and amazing, the coordination...I've never seen it. People are on it, they're responsive, individual people talk in person if needed. Everyone rallies and comes to the table."

"Communication between collaborative members has improved to cover as many gap areas as have been discovered. Wherever there is an issue that arises, the team effort in remedying the issue is amazing."

As described earlier in the report, the partners involved in YAC are drawing on strong pre-existing relationships and past collaborative efforts, and the buy-in of critical criminal justice stakeholders for this alternative court model. Interviewed partners praised the strength of individual partner expertise brought to the table, their working relationships with one another, and the level of dedication and ongoing coordination for YAC. As one respondent observed, the strength of the YAC model is very much tied to the individuals "occupying the model." This includes a District Attorney and Public Defender with "a great working relationship," and case managers "that go above and beyond."

YAC partners also largely praised the vehicles for ongoing coordination—including the monthly policy meetings, the strategic planning meetings (once or twice per year), and particularly the case conferencing that occurs before each YAC court session. The case conferencing meetings have allowed partners to get to know each other better, as well as the YAC participants, and to craft appropriate responses for each young adult from a shared "place of care." However, a few respondents feel that the case conferences require more time to discuss clients more thoroughly given the number of participants on the agenda, as well as perhaps a different, additional type of case conferencing meeting altogether—focused less on individual participant updates, and more on brainstorming potential strategies, implementation plans, and sharing lessons and best practices from clients who have been successful. On the other hand, a couple of respondents also described what they see as a tradeoff between spending more time providing services than attending meetings.

Interview respondents offered unanimous praise for the YAC Judge in recognition of his leadership as a key factor of implementation success so far. Partners specifically highlighted his personal interest, caring, and dedication to the young adult participants—shown by gestures such as attending graduations, organizing donated books for participants' children, and expressing deep interest in a participant's music video online. Respondents also praised his willingness to learn, and his serious consideration and respect of partner perspectives and recommendations. One partner reflected, "You couldn't ask for a more dedicated, open-minded Judge to take this on, a Judge who is so vested in the individual participants." Two interviewees also highlighted the fact that many of the young adult participants see him as a parental figure—one they do not want to disappoint.

Young Adult Perspectives on the YAC Judge

"The Judge is a nice man. He's more caring than I thought he would be. He's strict too. If you're not doing what you're supposed to, [he] isn't taking your mess."

"He always gives you a chance."

"He's more like a mentor. He's somebody for guidance more than a judge."

"In order to be in this program, he has to have some kind of heart."

Early YAC Implementation Challenges

The perceived challenges of YAC implementation so far can be clustered into five categories: (1) suitability; (2) engagement; (3) knowing when to "let go"; (4) differing case management models; and (5) and inter-phase progression.

Suitability

As discussed in the previous chapter, identifying eligibility guidelines was one of the most intensive, time-consuming tasks of the YAC design phase, though approached with a "collaborative spirit." **During early implementation, partners continued to grapple some with eligibility issues (e.g., consistently vetting potential new participants, what charges should or should not be accepted) but also with questions of *fit*.** As four partners reflected, in the beginning, nearly all young adults who were assessed were recommended for YAC, without sufficient consideration of readiness or suitability. As one stated, "So far we're accepting people that are not ready. We're either missing the signs they demonstrate to show they're not ready, or we're ignoring the signs." In some cases, this has resulted in terminations due to serious new crimes being committed, which demonstrated that the young adults—in the words of another partner— "weren't ready to engage in the really intensive support and growth that's required by the program." Two interviewees described clear warning signs that could have been better heeded, such as clients with a history of not engaging and thus not being appropriate. Another interviewee emphasized the need for cultural competency in assessing young adult suitability—specifically, being grounded in, and able to understand the young adult (e.g., where they are coming from and what they are dealing with) or otherwise risk being "snowed" by young adults not well- suited for YAC.

Engagement

Several YAC partners commented on the interrelated challenges of: (1) engagement (sometimes using the word "accountability"), and (2) consistency in terms of rewards and responses for YAC participants. Partners recognized the inherent challenge of engaging and requiring accountability among young adults in general, let alone among young adults with significant barriers and setbacks. It can be a long-term endeavor; as one YAC partner reflected, "It takes many months to engage. This is not a failure but a process."

> *"We need to do a better job at institutionalizing rewards and responses; [there is] no regularity and consistency in the application of these things."*
> – YAC Partner

At the same time, partners recognized the need for effective, timely, and consistent responses to participants meeting, and especially not meeting, program expectations. As one partner noted, "Sometimes the rules are too loose for some clients and the court may be sending the wrong message.... We need to develop sanctions and rewards. I understand that each client is unique but we need to send the same message."

"Letting Go"

> *"The biggest surprise has been how difficult it is to get rid of people who need to go. I thought there was going to be a lot of accountability and I think we're struggling with that."*
> – YAC Partner

Partners continue to grapple with when to "let go" of participants who are ready to graduate, as well as participants who are not meeting the expectations of the Young Adult Court. In the first case, the question remains as to how many, and which program milestones a participant should reach before proving they are on the right path and are ready for YAC graduation. For YAC specifically, and for other young adult justice system interventions generally, answering this question has been challenging with the realization that "not all boxes will be checked" and that a young adult's path will inevitably be marked by both progress and setbacks.

In the second case, several respondents felt that early implementation had raised the need to determine when, exactly, struggling young adults can be kept in the YAC and for how long, and when they should be terminated. For the most part, this has been determined on a case by case basis. YAC partners are also still deciding when young adults might be better served with transfers to drug or behavioral health courts.

Different Case Management Models

One revision made to the YAC model during early implementation was the delineation of FSA's assessment, therapy, and case management duties. Given the caseload involved, FSA now handles case management only for non-probation clients, while case management for clients on probation is provided by the dedicated TAY case manager at the CASC. However, FSA is responsible for all client assessments regardless of probation status, and provides therapy (DBT) and Life Skills to all.

The early implementation of YAC is essentially piloting two models of case management provision to YAC participants. The first model, provided by FSA to non-probation clients, is characterized by staff who serve as both therapists and case managers (the clinical-case management model). The second model has probation clients receiving case management, probation, and therapeutic services from distinct staff members (case managers at CASC, probation officers, and potentially FSA or other therapists, if needed).

Interviewees pointed out some advantages, particularly of the second model, in that young adults have a clear separation of roles between a therapist and "an enforcement/supervision person," and also have access to more, and different types of caring, invested adult figures.

> *"Figuring out how to hold kids accountable in the same way, so that one kid isn't getting more of a break or less of a break, because of who they're interacting with, that's definitely been difficult."*
> – YAC Partner

In addition to determining the relative advantages and disadvantages of the two approaches, YAC partners described the challenge of ensuring consistency of expectations and experiences between probation and non-probation clients. A couple of respondents questioned whether non-probation young adults interacting only with FSA, which is primarily a therapy organization, might have less stringent expectations and responses to their negative behavior than young adult participants on probation. There may also need to be more consistency in program elements, such as the content of case plans of probation versus non-probation clients, the frequency of contacts between case managers and probation/non-probation young adults, and standardization of monitoring and reporting on clients. To some extent, the YAC database is expected to help identify and address areas of inconsistency in the YAC experience between young adults on probation and those not on probation.[23]

Inter-Phase Progression

Though cited much less often, clarity on inter-phase progression was described as an area for improvement by both YAC partner interviewees and young adult focus group participants. More specifically, though young adult respondents clearly knew which phase they were currently in, they wished to know more about how they move from one phase to the next. One young adult also recommended, "They could be more specific with the graduation process."

While YAC partners pointed to the YAC Participant Handbook that lays out Phase 1 to 4, a couple felt that triggers for progression, and the implications of "stepping back," could be made clearer. Specifically, partners initially mentioned that it would be useful to have clarity on what happens when participants regress and whether that means moving back to the previous phase. As the program matured, partners agreed that participants would stay in their current phase longer, rather than go back to a previous phase.

Priority Needs

Early implementation has allowed partners to see where there are heightened areas of need among young adults participating in the YAC. Housing is undoubtedly the most critical of these, a need that must be addressed immediately before all others, and a challenge that is particularly acute in the city of San Francisco. Young adult participants in SPR's focus groups confirmed housing as their top priority need. In response, FSA has already increased its capacity by "getting really good, really fast at finding housing options" and identifying opportunities to contract with an organization for beds. (A couple of partner interviewees also identified

[23] These differences may also be due to participants on probation likely being in the program for more serious criminal behavior.

residential, developmentally-appropriate substance abuse treatment centers as an important service gap.)

In addition to housing, the priority need identified most often by YAC partners was mentoring. In addition to expanding participants' menu of adults that they can reach out to, mentors serve as important role models that many young adult participants simply do not have in their lives. As one YAC partner reflected, "One of the things we're seeing is young people really need mentors. They need someone that looks like them that has been successful." Two partner interviewees specifically emphasized the need for peer mentors, particularly YAC alumni or those who have successfully reached Phase IV. In place of formal peer mentors, successful YAC participants model positive behavior and outcomes in court when receiving recognition for accomplishments. In contrast to partner interviewees, YAC participants did not mention mentoring as a priority need.

"Housing is a primary need. It's hard...to expect the client to show up, do what they need to do, get a job and all those things, when they're constantly worried about their safety."
– YAC Partner

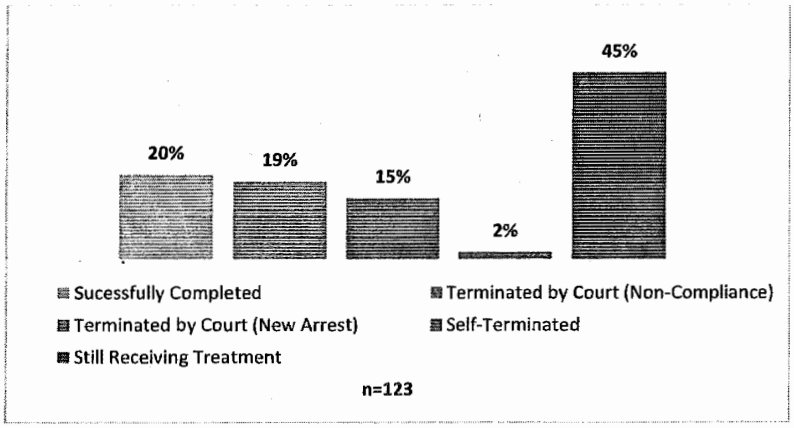
"The home situations are unhealthy, harmful, or don't exist... so much stems from not having a place to stay."
– YAC Partner

"People our age need jobs and housing first."
– Young Adult

IV. Initial YAC Outcomes and Data

As discussed earlier, this implementation study report focuses squarely on YAC planning and early implementation. YAC outcomes will be the explicit focus of the final evaluation report in December 2017. **However, on a program participation level, young adult outcomes from YAC inception (August 7, 2015) until March 1, 2017, can be seen below in Exhibit IV-1.** The completion rate is 20% (25 young adults), while 45% (55 young adults) are still actively participating in the program—which translates to an overall retention rate of 65%. 15% of young adults (18 young adults) have been terminated by the court for new arrests, and 19% (23 young adults) have been terminated for not complying with YAC rules or expectations. Only two young adults (2%) have self-terminated.

Exhibit IV-1: YAC Participant Outcomes



While these numbers provide important insight into YAC program outcomes, as described in the introduction, YAC has a number of expected partner- and program-level outcomes that go beyond participation and service receipt (see Appendix D).

Although some of these expected outcomes can be addressed by the evaluation's qualitative data collection (particularly the larger program-level outcomes[24]), SPR will need to access the YAC database,[25] as well as obtain arrest and incarceration data from the Sheriff's Department in

[24] In particular, this chapter has discussed the perceived level of coordination among YAC partners and the use of collaborative case conferences.

[25] SPR reviewed the draft architecture/layout of the YAC Database in-person at the Superior Court in fall 2016, but has not accessed the (finalized) database since this time. The YAC database was fully populated in early 2017.

SPR is still working to finalize a data-use agreement with the Superior Court for access to the YAC database, as well as with the San Francisco Sheriff's Department to obtain arrest and incarceration data for YAC participants.

order to: (1) determine whether all YAC's expected outcomes are currently being measured, and (2) report on these outcomes in the final evaluation report. Additional items of interest include average length of service receipt, and characteristics of graduates versus non-graduates in terms of criminal history, education, and types of services received.

Reflecting on the implementation of YAC thus far, some partners discussed how what they have observed has informed their understanding of expected outcomes or definitions of success, particularly at the young adult level. One partner wondered whether the expected outcomes are realistic and whether they "reflect the population we're working with?" If they are indeed the developmentally and situationally appropriate expected outcomes, to what extent should these be more explicitly informing the assessment process so young adults can be screened for their capabilities in these outcome areas?

> *"Who's successful? Those that are able to trust—that are able to identify at least one person they can trust."* – YAC Partner
>
> *"Find somebody some housing, you have a shot at helping them become successful. Find somebody employment in addition to that, and their probability shoots up by 50% or more. Let those two things not happen, and we're going to have a problem."* – YAC Partner

Two respondents described how early implementation has affected how YAC is defining success. While both agreed that desired outcomes, at minimum, are achieving a level of personal stability (e.g., in terms of housing and employment) and having no additional involvement with the criminal justice system, the remaining **definition of success is "becoming significantly more individualized based on case plans" and goals that young adults have identified for themselves** – an intentional approach consistent with young adult development. Young adults in the YAC participant focus groups stressed employment, housing, and clearing their criminal records as their top goals and priorities.

Finally, three additional respondents reflected on the challenges of moving beyond counting units of service provided and being able to discern whether the court is truly making a difference with the young adult participants. Here they underscored the importance of non-quantifiable young adult outcomes that may not be realized within the timeframe of YAC involvement, but have clearly been facilitated by it. As one YAC partner questioned, "How do you know that something you've done today doesn't take root six months from now? How have you been successful in giving that person some technique or strategy?"

> *"When I think of the change behavior that everybody wants to see, it might not be part of this court. Maybe it's down the road [but] the seeds have been planted in Young Adult Court."* – YAC Partner

Factors of Young Adult Success

Clearly a question of interest is whether early YAC implementation has revealed anything preliminarily about commonalities among successful young adults, and whether such

characteristics can be identified from the onset. Respondents were diverse in their perspectives on this topic, with relatively more successful young adults anecdotally being identified as older and/or more mature TAY, Latino young adults who have been charged with drug dealing, and young adults on probation. The following perspectives on participants' success are anecdotal, reflecting the opinions of interview respondents during early implementation. The Final Report will use outcome data to further explore the factors that predict and support participants' success.

A number of interviewees could not discern a common characteristic of successful young adults, and observed that it was often a "surprise" (and sometimes a matter of "luck") who has ended up succeeding and who has not, though case managers were sometimes seen as being in the best position to predict success. Young adults in the participant focus groups clearly saw success as dependent on level of individual initiative, with a number of young adults indicating that "it's all on you," or "they're [staff are] not here to give you a jail-free card, they give you the opportunity."

The level of a young adult's outside support, as well as level of personal readiness, were both described as important ingredients for young adult success and avoiding recidivism. While YAC provides young adult participants with caring, invested adult figures, several respondents underscored the importance of additional outside support—whether that be family members or at least one adult they can trust—to boosting chances of young adult success.

Describing individual readiness (as a factor of success) was less straightforward, except in the most extreme cases. According to some interviewees, the young adult participants who are *least* ready—and struggle the most—often have severe chemical addiction and/or mental health issues. (YAC continues to grapple with how best to manage these clients, in some cases transferring them to drug or behavioral health court.) Aside from this group, there exists a wide range of readiness/engagement levels and appropriate approaches or responses from YAC partners.

> *"Sometimes participants get it right away and sometimes it takes them a little while. You have to meet them where they're at. You have to push and motivate them accordingly. Even though there's a difference in their readiness, that's the point of the program...this program gives us the flexibility to be more engaged and try new things."* – YAC Partner

Respondents described readiness as a function of different dimensions, including: maturity (not necessarily age); past experience (particularly any prior involvement with the criminal justice system and related ability to fully appreciate the impact of charges on their lives); willingness to embrace the YAC model and support; a strong intention to change a way of life and be successful; and stage of change[26] an individual currently occupies (e.g., pre-contemplative, contemplative, etc.). It is this last dimension of readiness in particular that

[26] The stages of change model (also known as the Transtheoretical Model) includes six phases for changing behavior: pre-contemplation, contemplation, preparation, action, maintenance, and termination. This model is used to explain the phases of changing addictive behaviors (Prochaska, J.O., DiClemente, C.C., and Norcross, J.C., 1992).

makes it important to use a flexible, tailored approach to working with individual young adults. As one YAC partner described, "Sometimes it takes kids a while to get ready—a little extra support and oversight. Some kids are ready from day one. It depends on their stage as an individual and readiness to embrace the YAC model." Another partner echoed this perspective by recognizing the extremes of young adults who are either "closed" or "completely open," but underlining the need in all cases for "time and consistency to motivate toward positive change, as building trust takes time."

Structure for Success

Ultimately YAC partners agreed that the Young Adult Court is "a good model," "on the right track," "off to a healthy start," and in general set up to support participants' success—though recognizing that ultimately a one-year program is limited in its ability to address "18 years of trauma." Following are some of the core characteristics that respondents highlighted as strengths of the overall YAC structure in facilitating young adult success:

- **A compassionate, diverse court.** The Young Adult Court conveys compassion and caring to its young adult participants. As one respondent described, "There's a real message around the table that we want the young people to succeed." For some of the young adult participants, YAC is the first time they've had a sense of support and received praise for their accomplishments. One partner observed, "They went from having no one in their corner to have many [in their corner]," including parties traditionally not trusted by young adults (i.e., representatives of the criminal justice system). Two respondents described the role that YAC partners play as surrogate parents. YAC is represented by highly diverse and dedicated individuals, including African American lawyers and an Asian American Judge. Respondents described this as important for personal relatability, potential role models, and an effective YAC.

> *"It didn't feel like court, it felt like a support system. They were asking where you were at, making sure you're going where you want to go."*
> – Young Adult

- **A court grounded in research on TAY brain development.** The very establishment of the court is based on neuroscience that indicates the brains of young adults are fundamentally different from those of adults in terms of processing information and making decisions—thus requiring different strategies for avoiding recidivism, promoting engagement, and facilitating positive outcomes. The court is using strategies and even language to reflect this premise. For example, one respondent

> *"There's a lot of interest in this...it shows that the criminal justice system is really paying attention to the brain development of transitional age youth and impulsive behaviors."*
> – YAC Partner
>
> *"Having brain development as a touchstone is really important."*
> – YAC Partner

described the conscious decision to revise the language of sanctions to responses: "How do we use words and language to affect behavior changes? Science tells us this is the way."

- **An opportunity for young adult voice and self-advocacy.** The Young Adult Court affords young adult participants a primary voice in their own Wellness Care Plan, as well as in the court setting (in their interactions with the YAC Judge). One respondent noted that the court is a "platform to seek and advocate for their own case, they've never had that empowerment before." One of the young adult participants concurred, noting that "in regular court, you have to tell your lawyer if you want to talk for yourself."

> *"The platform they're provided with to speak and advocate for their own case, they've never had that empowerment before...a lot of the clients love that about Young Adult Court."*
> – YAC Partner

- **Effective service-flow components and opportunities**. Respondents were positive about core components and opportunities of the YAC service flow, including the YAC Handbook's phases of young adult participation, court appearances as an element of young adult accountability, engagement with clinical case managers, using degree of engagement to help determine frequency of court appearances, and dialectical behavior therapy (DBT)[27] groups. YAC participation also affords young adults a number of support opportunities through their interaction with FSA or CASC, including transportation and assistance with identifying housing. One partner said, "We have more resources in this program to help a young person struggling and get their life together than any other program I know, if a young person is ready."

> *"My case manager is genuine. I could see the care. I can feel when she wants me to do better."*
> – Young Adult
>
> *"I think the assessment process is a good part of the program. It assesses what the person is going through. It prevents you from going back down the wrong road."*
> – Young Adult

[27] Dialectical behavioral therapy "combines standard cognitive behavioral methodology to help regulate emotions and reality-testing with concepts of distress tolerance, acceptance, and mindfulness awareness practices which are derived from Buddhist meditation disciplines" (Felton Institute, 2017).

V. Summary and Implications

The Young Adult Court established in San Francisco has realized tremendous progress in its planning and early implementation phases.

During the critical planning period, program planners: (1) acted on local data indicating the overrepresentation of TAY in the justice system and emerging brain research focused on young adults; (2) capitalized on exceptional experience with collaborative court models and a local commitment to funding TAY services; (3) mobilized the commitment of diverse stakeholders from the criminal justice system and beyond; (4) defined eligibility criteria; and (5) designed the core elements that would allow for rapid rollout of the YAC program.

The early implementation phase has been successful in terms of a full launch of a collaborative court model for young adults, a healthy demand for its services, and what is unanimously described as an ideal set of individuals "occupying" the model and serving young adults with dedication and care.

As was expected, YAC has also confronted a number of challenges that emerged during early implementation—particularly those related to young adult suitability and engagement—and ongoing learning on topics such as differing case management models, priority needs for young adults, and knowing when to "let go" of both successful and struggling young adults.

Moving forward, the most prominent areas of ongoing development for YAC are:

- **Continuing to address the balance and implications of clinical and criminal justice worlds being brought together in YAC.** This touches on various dimensions of implementation, including: continuing to negotiate eligibility exceptions; agreeing on appropriate responses to disengaged young adults not meeting YAC expectations; and even taking steps to make young adults more comfortable in their interactions with criminal justice system representatives who—in the YAC context—are more focused on ensuring young adult success. YAC has taken steps in this regard—for instance, with social gatherings for YAC participants and partners. (One young adult described the YAC orientation and dinner, and their interaction with a criminal justice system representative who, in another court setting, might not be as attentive to building a relationship with young adults: "I'm sitting here and he wants me in jail... it did some [*profanity*] to my mind.")

- **Assessing the strength of the blended clinical-case manager model.** The YAC model will provide important data on the relative strength of two different case management models for young adults on probation and not on probation. In particular, a continued area of focus should be on whether the same staff can effectively provide both clinical and case management services, or whether young adults are better served by a separation of function. To this end, a comparison of experiences of probation and non-probation young adults will be of interest—though differences in the severity of the offense that *brought* them to YAC must be considered in the effect on both YAC experience and outcomes.

- **Screening for suitability and motivation.** How is FSA applying partner lessons and insights from early YAC implementation to its assessment procedures? In particular, how are any common characteristics (e.g., signs of readiness) of successful YAC participants being used to inform whether potential participants are indeed suitable and likely to succeed in YAC? Likewise, how are any common characteristics or experiences of terminated YAC participants being used to inform the assessment process for potential YAC participants?

- **Emphasizing consistency in rewards and responses.** YAC partners provided strong feedback on the need for more consistency in rewards and responses to YAC participant behavior, whether positive or negative. To what extent have YAC partners—perhaps through a strategic planning meeting—devoted time to detailing rewards and responses (and their associated behaviors) and documenting them in a revised YAC Participant Handbook? Similarly, YAC partners identified the need for specific and consistent guidelines on when it is time to let go of both successful and struggling YAC participants—including when cases would be better served by other collaborative courts (e.g., mental health, adult drug court) and when young people are ready to graduate or move beyond the justice system.

- **Addressing key service gaps.** Clearly housing and mentoring emerged as the most frequently mentioned service gaps for YAC participants, with residential and developmentally-appropriate substance abuse also being cited. YAC partners, particularly FSA, have already taken steps to address the former. However, adding critical components such as mentoring will require not only the consideration of funding constraints, but also of whether the basic operating structure of YAC is strong enough to "add on." Peer mentoring opportunities, in particular, could hold particular potential as YAC participants see examples of success among those from similar circumstances who have graduated from YAC or reached the last phase of program participation. Peer mentors could also be rewarded for their mentorship of other YAC participants.

While the above points represent the strongest areas of feedback, other areas of potential focus emerged from our discussion with YAC respondents and SPR's own viewpoint:

- **Coordinating larger community resources for young adults.** While community-based organizations have the opportunity to make presentations about their services at regular YAC partner meetings, it is unclear how these larger community resources (beyond YAC partners) are being fully leveraged and coordinated on behalf of YAC participants. As one respondent observed, "It continues to be difficult to figure out who to work with outside our small group of people sitting at the table.... there are all these really amazing programs all over the city. How do you determine where to send [young adults]?"

- **Addressing overlap among YAC- and system-level partners.** A couple of respondents noted that some degree of potential or actual overlap and duplication still exists between YAC partners (e.g., in terms of case management and employment services between FSA, CASC, and Goodwill). Documenting partner-specific job descriptions and

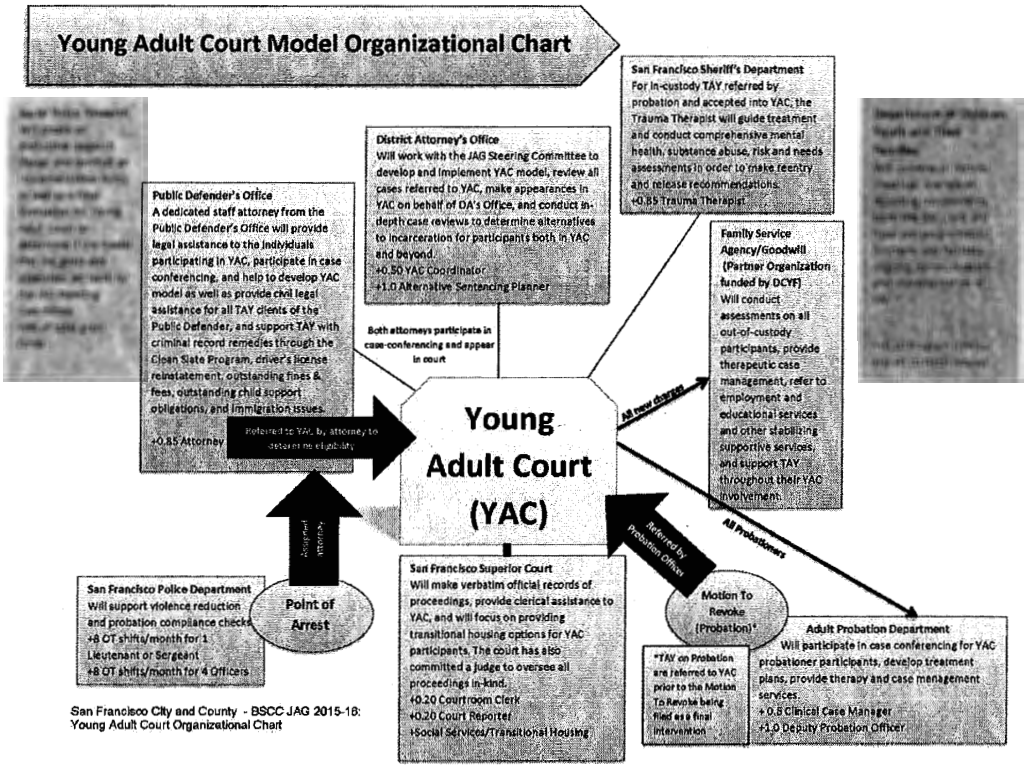
expectations—perhaps through an updated, shared memorandum of understanding (MOU) based on early implementation experiences—could help address this issue. Furthermore, a couple of respondents described the overlap between YAC and non-YAC partners, and the difficulty of expecting YAC participants to navigate and meet the appointments and expectations of multiple, system-level partners—for example, case managers in the foster care and criminal justice systems.

- **Addressing confidentiality issues.** A couple of YAC partner interviewees raised the issue of client confidentiality, particularly between YAC participants and their case managers—which points to the need for striking a balance between preserving trust and confidential information, while simultaneously providing the larger YAC team with consistent data on young adults' level of engagement in YAC.

- **Realizing additional potential with some YAC partners.** To some extent, there have been unanticipated partners, as well as partners that could possibly play a larger role in YAC. For example, private defense attorneys were one group of YAC stakeholders that were not strongly considered during YAC planning. As one respondent described, "They [private counsel] don't necessarily understand what Young Adult Court is or how, as the attorney, you start to become a part of team around your client's plan of care." However, steps have been taken to orient private counsel to YAC. Other partners, including the San Francisco Police Department, are willing but potentially underutilized YAC partners. Some of this may be attributable to lack of clarity on specific partner expectations and limited capacity to engage, rather than to lack of interest in YAC. However, given the lessons of YAC implementation thus far, YAC partners might revisit how best to harness the potential of law enforcement partners, and to build in more opportunities for YAC participants to reconsider their preconceptions of law enforcement representatives.

SPR looks forward to discussing this initial set of implications with YAC partners, particularly in light of more recent developments and adjustments made to the implementation of San Francisco's Young Adult Court.

Appendix A: YAC Organizational Chart



Appendix B: YAC Eligibility Criteria

I. Residence Eligibility

No residence restriction; however, given YAC'S limited capacity, priority will be given to individuals with connections to San Francisco, including family and other supports.

II. Age Requirement

18-25 years

III. Referral Process

The SFDA will require its ADAs to obtain approval from their Managing Attorneys to refer cases in the following situations:

- Any case that cannot be referred as an open matter (e.g. not eligible on a pre-plea or DEJ basis) per YAC eligibility guidelines;
- Any case with disqualifying conditions per YAC eligibility guidelines;
- Any case referred post-preliminary hearing involving a charge with an identifiable named victim.

IV. Legal Eligibility

Given YAC's limited capacity, felony cases will be prioritized over misdemeanor cases.

A. Misdemeanor Offenses

1. All misdemeanors are eligible on a pre-plea basis, except the following:

   (1) drunk driving or other driving offenses, (2) gang allegations, (3) hate crimes, (4) domestic violence, (5) demonstration cases, (6) elder abuse, (7) crimes involving children, and (8) gun cases, (9) offenses with potential sex offender registration requirements, including PC 243.4, 290, 314.1 and 647.6, (10) cases that have been reduced to a misdemeanor pursuant to 17(b).

2. The above-enumerated misdemeanor offenses are eligible following a grant of probation only. The District Attorney may offer a deferred entry of judgment (DEJ) disposition on a case-by-case basis.

3. An individual charged with 3 or more pre-plea cases will be eligible for Young Adult Court following a grant of probation only.

B. Felony Offenses

1. The following felony charges are eligible on a pre-plea basis, providing that the individual does not have any disqualifications listed below:

i. Sale or Possession for Sale Offenses, including Health & Safety Code sections 11351, 11351.5, 11352, 11359, 11378, 11378.5, or 11379 involving less than 5 grams of controlled substances (or less than 2 ounces of marijuana).

ii. Felony Theft Offenses, including Penal Code sections 459 2nd, 475, 487(a)&(c), 496, or 666, where the restitution amount is under $2000.

iii. Felony Auto Offenses, including Penal Code section 459 2nd and Vehicle Code section 10851 where the restitution amount is under $2000.

iv. Vandalism Offenses, including Penal Code section 594, where the restitution amount is under $2000.

2. The following felony charges are eligible on a DEJ basis, providing that the individual does not have any disqualifications listed below:

   i. Sale or Possession for Sale, including Health & Safety Code sections 11351, 11351.5, 11352, 11359, 11378, 11378.5, or 11379 involving between 5 and 20 grams of controlled substances (or between 2 and 5 ounces of marijuana).

   ii. Felony Theft, including Penal Code sections 459 2nd, 475, 487(a)&(c), 496, or 666, where the restitution amount is between $2000 and $4000.

   iii. Felony Auto Offenses, including Penal Code section 459 2nd and Vehicle Code section 10851 where the restitution amount is between $2000 and $4000.

   iv. Vandalism offenses, including Penal Code section 594, where the restitution amount is between $2000 and $4000.

   v. Assault (245)(a)(4).

   vi. Robbery (211 2nd) with no weapon or injury.

3. All other felonies with a probationary disposition are eligible for referral to YAC following the grant of probation. The District Attorney may offer a DEJ disposition on a case-by-case basis.

4. Individuals with two or more open eligible cases * may be referred to YAC court only following a grant of probation. The District Attorney may offer a DEJ disposition on a case-by-case basis.

   * Cases involving multiple events will be considered as separate cases.

5. Unless waived by the District Attorney, all co-defendant cases, regardless of the charge, require guilty pleas with a DEJ prior to the admission into YAC for all "eligible" case-types. For situations in which one defendant is YAC eligible and the other is not, the qualifying co-defendant will not be admitted into YAC unless the District Attorney handling the matter agrees to the severance that would result from the co-defendant's admission into YAC.

6. Motions to Revoke Probation, Mandatory Supervision, and PRCS:

i. If a defendant is on probation for an offense that is ineligible for YAC, the individual is presumptively not eligible to participate in YAC

ii. For all supervision cases, the defendant shall make an admission to the violation upon entry to YAC. If the defendant does not complete the YAC program, the defendant will be subject to all potential consequences of revocation.

C. Disqualifying Conditions.

If a disqualifying condition exists, the District Attorney may agree to waive the limitation on a case-by-case basis. Disqualifying conditions include the following:

1. Current offenses involving the use of a firearm.
2. Individuals with more than two open felony cases*.
3. Prior successful completion of Young Adult Court.
4. Prior conviction of or sustained petition for a "strike" (serious or violent felony pursuant to Penal Code section 667.S(c) and 1192.7(c) offense) within eight years of the current offense.
5. Active membership in an organized street gang, as determined by the District Attorney with input from defense counsel.
6. Current offenses in which great or serious bodily injury is alleged (with the exception of 245(a)(4)).

D. Plea/Probation Reductions

Negotiated benefits of successful completion of Young Adult Court may include the following:

1. For pre-plea cases:

- Dismissal of a case pursuant to PC 1001.7 and sealing of arrest pursuant 851.90 shall occur unless there is a negotiated disposition to the contrary;

2. For post-plea cases:

- The reduction of a felony plea to a misdemeanor conviction;
- The withdrawal of a plea to a strike offense in lieu of additional terms agreed to by the parties;
- The withdrawal of a plea and dismissal pursuant to PC 1001.7 and sealing of arrest pursuant to PC 851.90; and

3. For probation cases:

- Reduction of length of probation term and dismissal of fines, fees and conviction pursuant to PC 1203.4;
- The reduction of a felony plea to a misdemeanor conviction.

E. Restitution Requirement

For any case involving loss of or damage to property, restitution will be ordered.

V. Confidentiality

A statement or any information procured from statements made by the defendant to any Probation Officer, Young Adult Court staff, program case manager, or any member of the YAC team, that is made during the course of referral to or participation in YAC, shall not be admissible in any subsequent action or criminal proceeding.

Appendix C: YAC Participant Handbook

EXHIBIT 48

BROOKLYN
JUSTICE
INITIATIVES

A Project of the
Center for Court Innovation

120 Schermerhorn Street, Room #313
Brooklyn, NY 11201
P. 347.404.9960 courtinnovation.org

Brooklyn Justice Initiatives

Brooklyn Justice Initiatives seeks to forge a new response to misdemeanor and non-violent felony defendants in Brooklyn, New York. By providing meaningful pre-trial supervised release and post-plea sentencing options, Brooklyn Justice Initiatives seeks to use an arrest as a window of opportunity to change the direction of a defendant's life and avoid the harmful effects of incarceration.

Caseload

In 2015, Brooklyn Justice Initiatives handled almost 800 cases. The most frequent charges were assault, theft, and prostitution. Social workers at Brooklyn Justice Initiatives made almost 700 referrals to voluntary services, including drug treatment, job training, and counseling in 2015. Brooklyn Justice Initiatives has four principal program components.

Reducing the Use of Jail

Brooklyn Justice Initiatives seeks to reduce judges' reliance on bail and pre-trial detention by offering meaningful supervised release options for eligible defendants. The supervised release program is designed to ensure public safety while minimizing the harmful impact of Rikers Island. Participants receive rigorous monitoring and reminders to ensure that they attend their court appearances.

An evaluation found that Brooklyn Justice Initiatives significantly reduced pre-trial detention. Program participants were far more likely than a comparison group to remain in the community before trial (77 percent for participants compared to 12 percent for the comparison group). Participants were almost twice as likely to avoid a criminal conviction and three times as likely to avoid jail time.

The supervised release program at Brooklyn Justice Initiatives was launched in 2013 as a pilot program for misdemeanor defendants. With support from the New York City Mayor's Office of Criminal Justice, Brooklyn Justice Initiatives in March 2016 expanded to include eligible non-violent felony offenses.

Helping Young Adults

In addition to providing alternatives to bail, Brooklyn Justice Initiatives provides special alternatives to incarceration for misdemeanor defendants ages 16-24. Participants receive a range of alternative sanctions, including onsite counseling and referrals to community-based services such as drug treatment, GED classes, and job training. The goal is to improve case outcomes and reduce the use of incarceration for young adults.

In 2015, Brooklyn Justice Initiatives served over 500 young adults, with 94 percent of participants successfully completing their court mandates.

Addressing Human Trafficking

Brooklyn Justice Initiatives seeks to break the cycle of exploitation and arrest for victims of trafficking. The goal is to link participants with services, including mental health counseling and drug treatment. Typically, charges will be dismissed following completion of services. In 2015, Brooklyn Justice Initiatives handled 176 cases involving victims of trafficking.

Improving Mental Health

Brooklyn Justice Initiatives offers judges a range of alternatives for defendants with mental illness, both pre- and post-plea. The program seeks to divert participants from jail by providing them with onsite services such as mental health and substance use assessment, treatment plan development, case management, and psychiatric care, as well as referrals to community-based mental health treatment. Program participants receive community supervision while awaiting trial or as an alternative sentence.

Further Reading

Hahn, Josephine. 2016. An Experiment in Bail Reform: Examining the Impact of the Brooklyn Supervised Release Program. New York, NY: Center for Court Innovation.

For More Information

Visit: *courtinnovation.org/project/brooklyn-justice-initiatives*
Email: *aigreene@nycourts.gov*

Center for Court Innovation

Youth Programs

We provide young people with meaningful alternatives to the formal justice system and engage youth voices to improve justice for all.

We operate a range of programs to improve outcomes for justice-involved young people. Our youth courts adopt a restorative approach to low-level offenses while training young people to handle real-life cases involving their peers. Founded in partnership with the Brooklyn District Attorney's Office, our Brooklyn Young Adult Court incorporates the latest findings on adolescent brain development to forge a new response to low-level offending by 16- to 24-year-olds. We're also implementing restorative justice programs in five New York City schools and evaluating their effectiveness versus traditional forms of discipline. And our community justice centers offer alternative-to-incarceration and diversion programs for young people along with initiatives designed around mentoring and expanding educational and employment opportunities.

In tandem with these efforts, we focus on fostering youth leadership with initiatives such as police-teen dialogues and programs such as the Youth Justice Board and Neighborhood Youth Justice Councils that help young people research and propose solutions to the policy issues most affecting them.

Engaging Communities

Community Justice

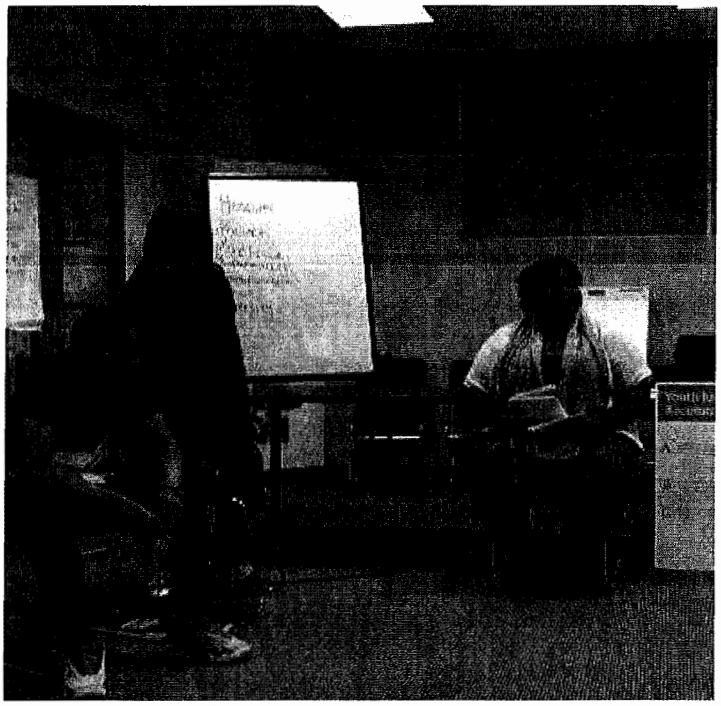
Restorative Justice

Youth Programs

Initiatives

Brooklyn Young Adult Court

The Brooklyn Young Adult Court seeks to provide meaningful alternatives to conventional prosecution for young people, ages 16 to 24, charged with misdemeanors.



Community Asset Mapping

Asset mapping—a strength-based approach to community development—is a core feature of the Youth Justice Board curriculum, providing Youth Justice Board members with new tools to u

Harlem Justice Corps

The Harlem Justice Corps is an intensive career and life development program for justice-involved young men and women.

EXHIBIT 49

Young Adult Court

The Douglas County Young Adult Court is a judicially supervised program that provides a sentencing alternative for youthful offenders up to age 25 who are charged with a felony to participate in a program of selective assessment and rehabilitative services administered by multidisciplinary agencies. Judge Shelly R. Stratman presides over the program.

In addition to Judge Stratman, the Young Adult Court is staffed by Nebraska State Probation Officer/Young Adult Court Coordinator Bob Blanchard, Problem Solving Court Officer Keirna Ostwald, Douglas County Attorney Katie Benson and Douglas County Corrections Reentry Assistance Program staff.

Potential candidates for YAC are identified by their defense attorney who requests the County Attorney to review the case for possible screening by the YAC Team. If the County Attorney believes that the individual is a potential candidate, the defense attorney is notified and is asked to have the offender contact the YAC Coordinator for an interview. A Level of Service, Case Management Inventory (LS/CMI) interview is conducted and scored. A suitability report is then submitted by the YAC Coordinator to County Attorney Donald Kleine for approval or disapproval.

If the potential candidate is approved for YAC the first requirement for entrance into the Young Adult Court is that the offender must appear before Judge Stratman and enter a plea of guilty to their felony charge or charges. Judge Stratman then places the offender in the three phase program which includes the following key components:

Phase I - STABILIZATION - 60 to 180 days involving Reentry Assistance Program and Day Reporting Center classes such as Pre-Treatment, Reactive Behavior, Job Readiness and Reasoning and Rehabilitation. Chemical dependency evaluations, mental health screenings and counseling can also begin in this phase. Those needing a GED may start this process in Phase I. Douglas County Correction assists with a House Arrest option.

Phase II - TRANSITION – 120 to 240 days may involve participation in self-help groups such as Alcoholics Anonymous. Participants will attend MRT classes, further their education, become employed, and may seek transitional living such as ¾ or ½ way houses. Victim offender mediation is an important piece of this phase.

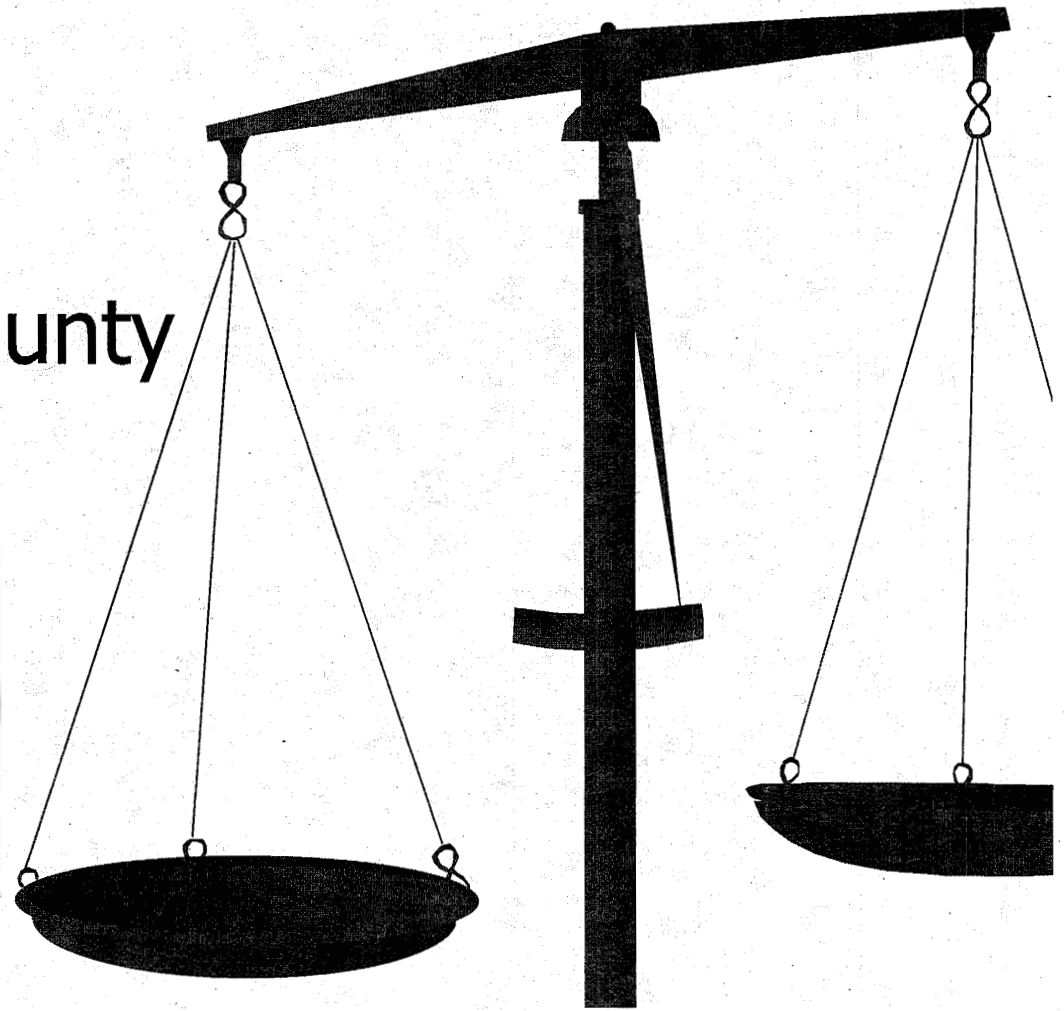
Phase III - PROBATION - 12 to 24 months begins with the felony conviction withdrawn and reduced to a class I misdemeanor. Upon completion of Phase III a Graduation Ceremony is held and the individual is awarded a certificate of completion along with an order signed by Judge Stratman satisfactorily releasing them from probation.

Douglas County District Court
1701 Farnam Street, Room 600
Omaha, NE 68183
(402) 444-7004

EXHIBIT 50

Welcome
Young Adult Court

Bonneville County
Idaho



Agenda

- Introductions
- Why we started Young Adult Court (YAC)
- Young Adult Court & Progression
- Judicial Perspective
- Treatment Modality
- Supervision Strategies
- Q&A

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Introductions

- Daniel Clark
  - Bonneville County Prosecuting Attorney
- Aimee Austin
  - Bonneville County Drug Court Coordinator
- Judge Steven Gardner
  - Bonneville County Magistrate Judge
- Amanda Jensen
  - Young Adult Court Counselor
- Ross Tocheri
  - Bonneville County Probation Officer

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Why we started Young Adult Court

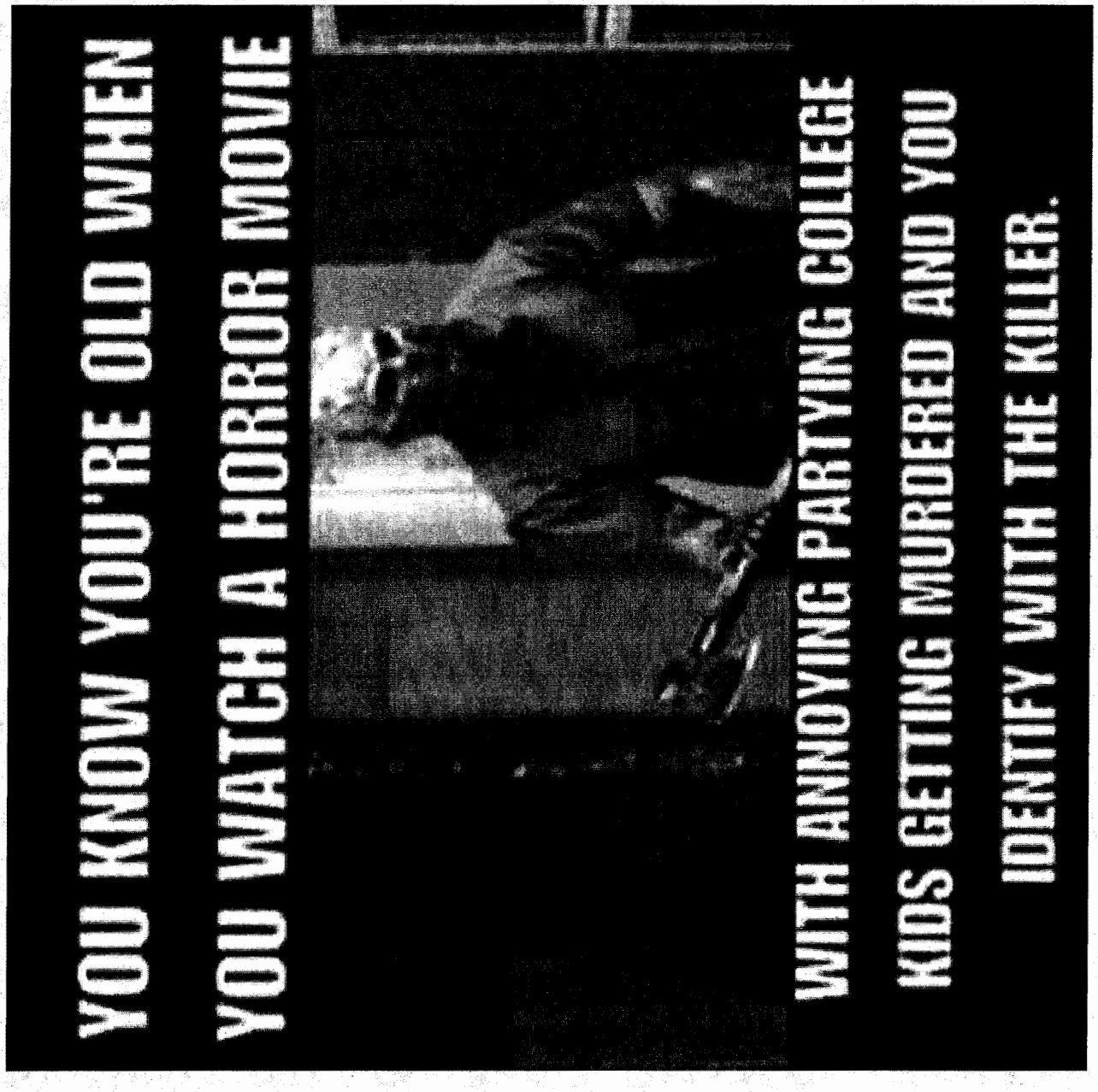
- 10 year study conducted on Drug Courts in Bonneville County
- 18-24 year old population was failing at a higher rate than any other age group
- If they did graduate they had a lower recidivism rate
- Gave us hope that if they graduate they will have long term success

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Why is this Age Group Challenging?

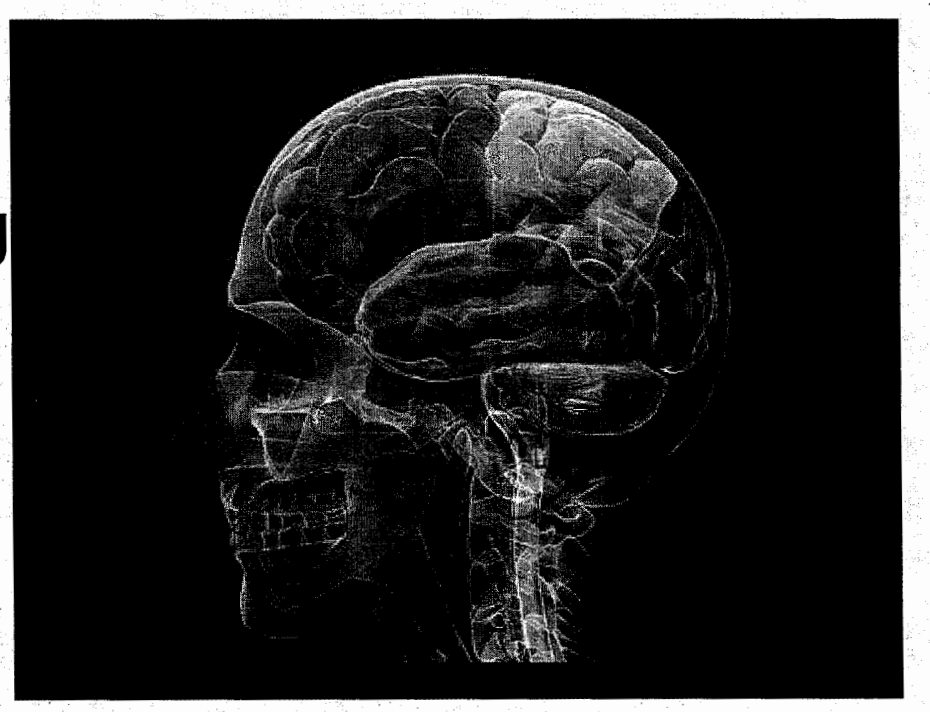
- They do not like or trust authority
- They are time consuming and frustrating
  - They lack basic life skills and minimal resources to address this
  - Impulsivity
  - Absconding
  - Dealing

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:


YOU KNOW YOU'RE OLD WHEN
YOU WATCH A HORROR MOVIE
WITH ANNOYING PARTYING COLLEGE
KIDS GETTING MURDERED AND YOU
IDENTIFY WITH THE KILLER.

The 18-24 yr old brain is unique

- Prefrontal cortex is not fully developed
- This effects
  - Thinking
  - Decision making
  - Impulse control



ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Young Adult Court Program

- Criteria
  - 18-24 years
  - High Risk & High Need
    - LSI
    - Gain Assesment

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Young Adult Court

- Hybrid Court
  - 4 probation departments involved
    - Felony
    - 2 Misdemeanor departments
      - Bonneville County
      - Jefferson County
    - Juvenile

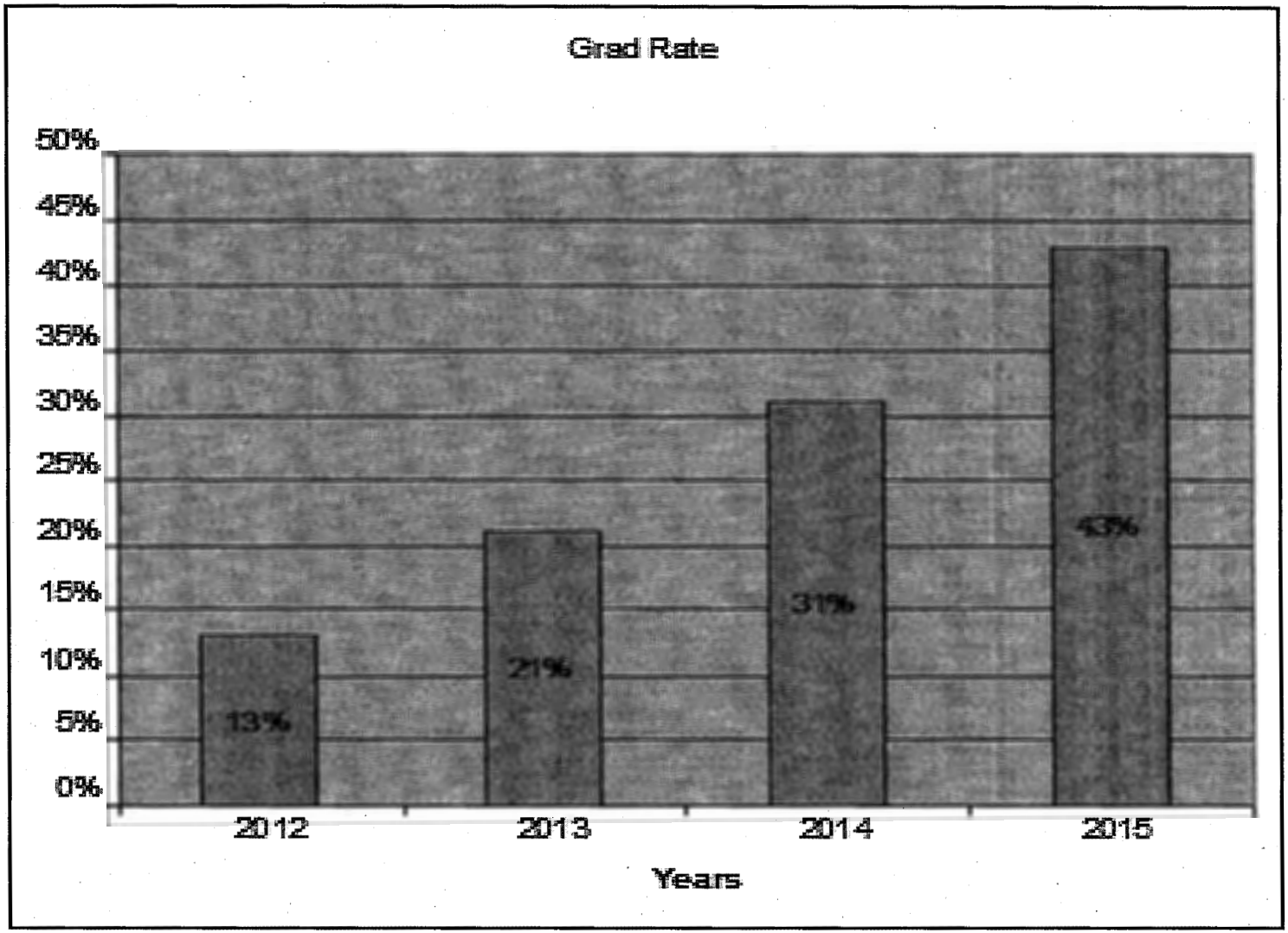
ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Young Adult Court

- Program 4 Phases
  - Each phase is a Minimum of 12 weeks
  - 12-18 month program

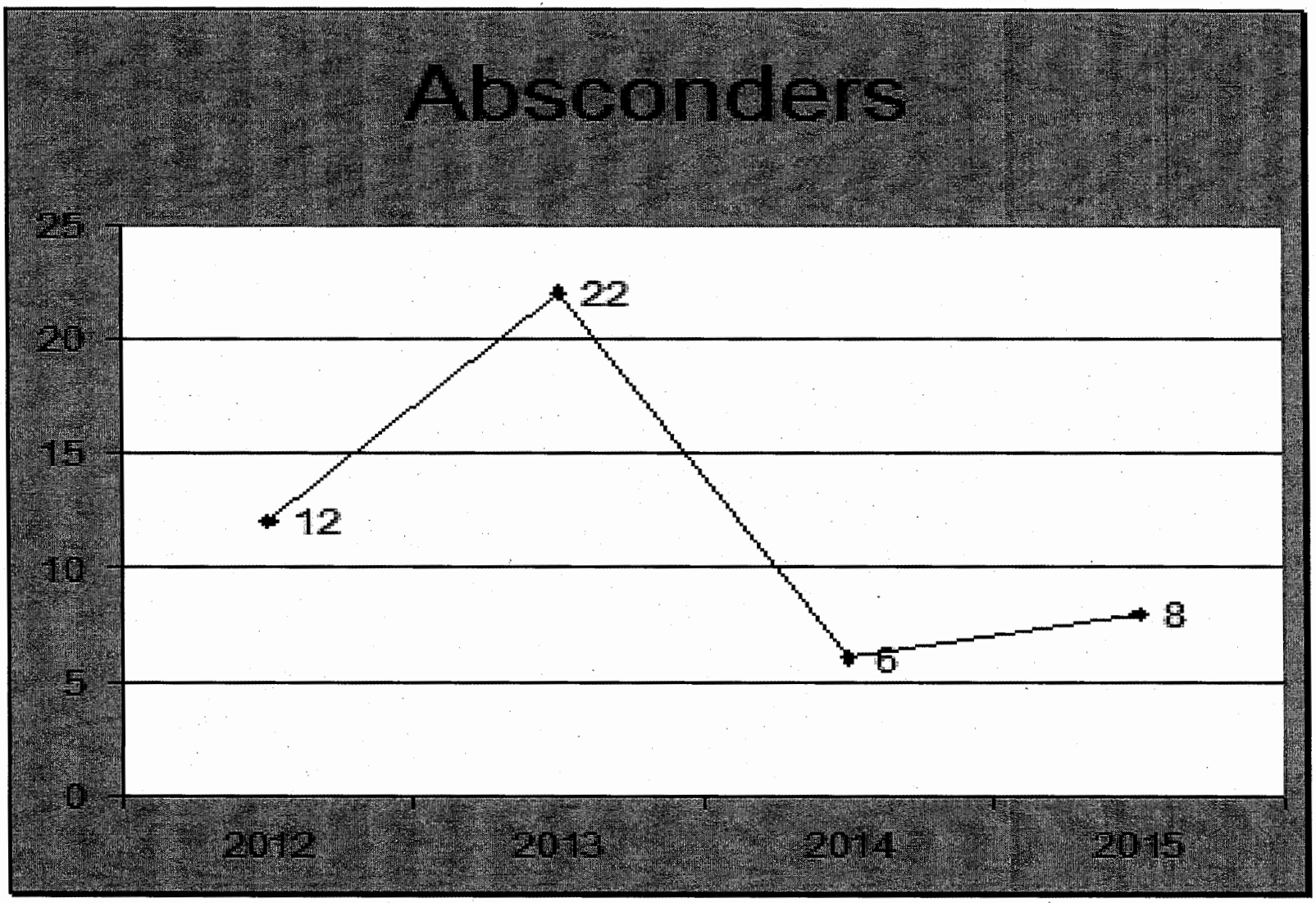
ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Graduation Rates



ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Reduction in Absconding



ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Young Adults from a Judicial Perspective

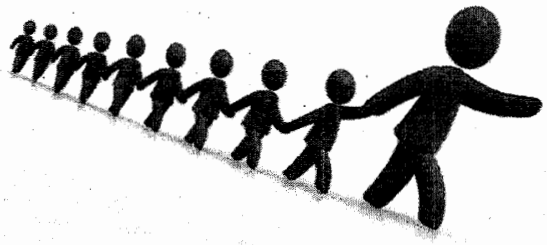
- Judge Steven Gardner
  - Young Adult Court Judge
    - 2012-present

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

MAD RUSH TO ABSTINENCE

Bad news…..

- The four F's
  - Faker
  - Fleer
  - Fighter
  - Follower



ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Treatment Modality

- 7 challenges
  - Decision making model that builds empowerment.
  - Creates & enhances decision making skills. Teaches how to make thoughtful decisions.
  - Applicable to substance abuse, recovery, & life decisions.
  - Builds motivation & empowerment in the client.

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

1 We decided to open up and talk honestly about ourselves and about alcohol and other drugs.

2 We looked at what we liked about alcohol and other drugs, and why we were using them.

3 We looked at our use of alcohol and other drugs to see if it had caused harm, or could cause harm.

4 We looked at our responsibility and the responsibility of others for our problems.

5 We thought about where we seemed to be headed, where we wanted to go, and what we wanted to accomplish.

6 We made thoughtful decisions about our lives and about our use of alcohol and other drugs.

7 We followed through on our decisions about our lives and drug use. If we saw problems, we went back to earlier challenges and mastered them.

Establish Therapeutic Rapport

- Engagement
  - Trust and Honesty
    - Be genuine & knowledgeable
    - Coach & Teach
    - Validate & Advocate
    - Know when to push and when to stop
    - Model honesty
      - Let honesty be their decision
    - Challenge them

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Recovery Coaching

- Beneficial for engagement & retention in the program.
- Teaches them how to build a positive peer relationship .
  - Builds Trust in the program.
  - Gives them hope they can do it.
  - Motivates change.
  - Assists them in accessing the Recovery Community and discovery their pathway to recovery.
- Attends recovery or skill building activities.

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Recovery Coaching

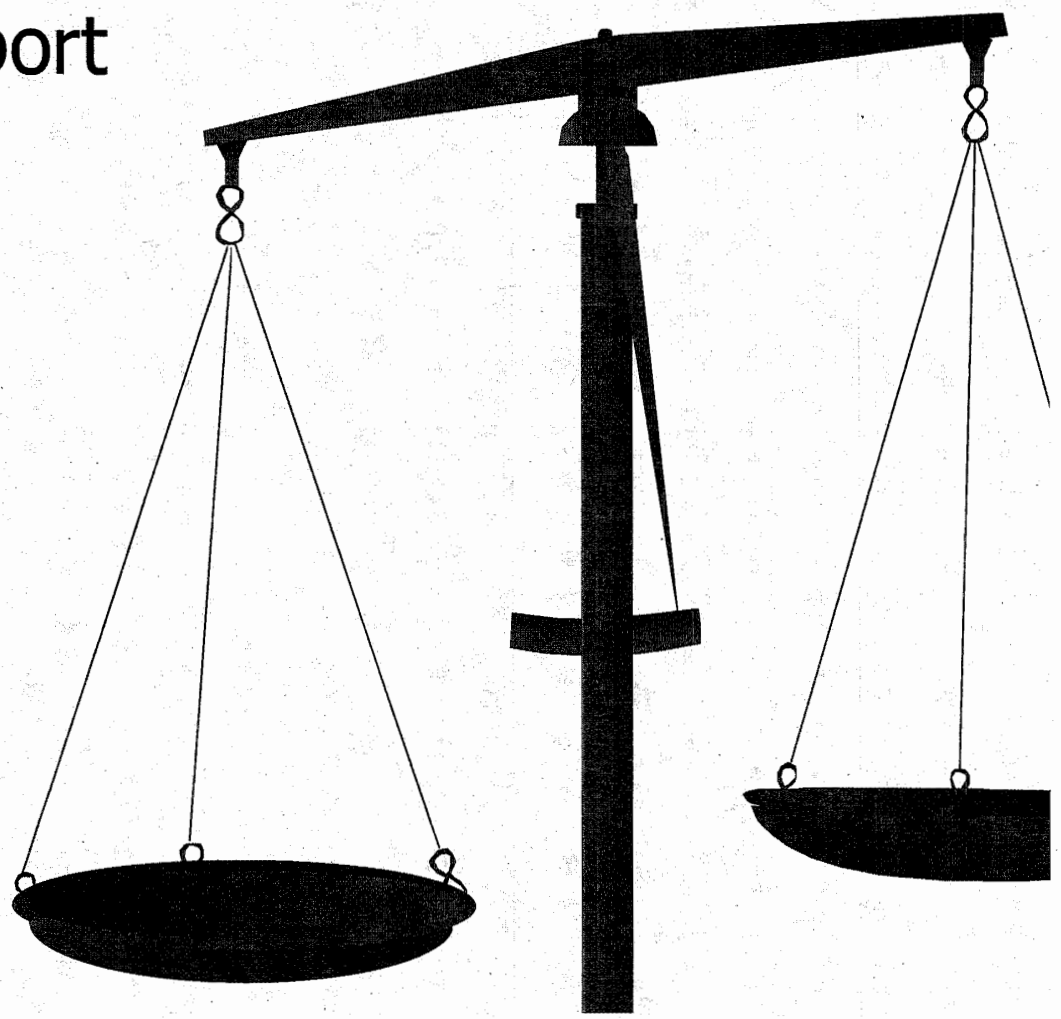
- We offer Training for Recovery Coaching when they are in Phase IV of the program.

- Our current Recovery Coach is in recovery and is a graduate of our Young Adult Court program.

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Supervision Strategies

- Building a Rapport
- Accountability
- Support



Graduate Quote

- *"I always dreamt of having an easy/soft P.O. My dream did not come true with Ross. I am glad he pushed me. I needed it."*

- They are capable and they can meet the expectations.

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Building a rapport

- Engaging the Client
  - Engage them early
    - Thorough intake
    - Start educating them about the program when they apply.
    - Attend and observe court before they start
    - Coaching them
    - Be accessible & available
    - Support & encourage their strengths and interests.

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Coaching the Participant

- Communication
  - Speak their Language – texting
  - Willingness to repeat instructions and objectives
  - Expectations – be clear about what you want from them
    - Don't assume they have the skills refer them to appropriate resources.
  - Verify they understand what you are asking

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Don’t give up, even when they do!

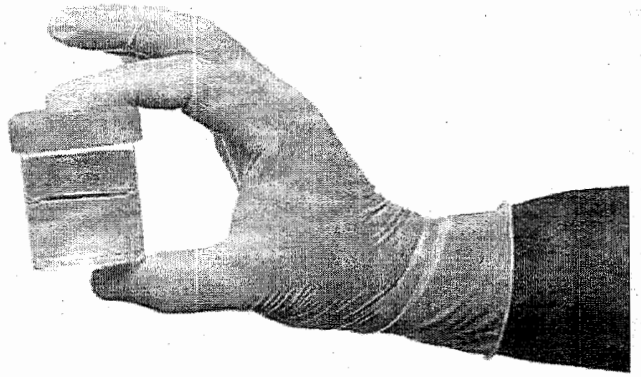
Accountability

- The basics
  - Check-ins
  - Home visits
  - Employment and School checks
  - Timely and consistent follow up
  - Drug testing
    - Learn how they manipulate drug testing

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

How they manipulate drug testing

- Failing to report for testing
- Diluting their sample
- Using Undetectables
  - Synthetic Drugs
  - Huffing
  - Cold Medicines
  - Other
- Attempting to derail the collection process



ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Support

Case Management

Linking clients to resources and skill building

- Housing – YAC House
- Food & Clothing
- Education & Employment
  - GED
  - Resume building & interview skills
- Budgeting
- Mental Health Services
- Medical & Dental Services
- Time Management

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

Bonneville County YAC

- Daniel Clark
  - dclark@co.bonneville.id.us
- Aimee Austin
  - aaustin@co.bonneville.id.us
- Steven Gardner
  - sgardner@co.bonneville.id.us
- Amanda Jensen
  - ajensen@co.bonneville.id.us
- Ross Tocheri
  - rtocheri@co.bonneville.id.us

ERIC SCOTT BRANCH vs. STATE OF FLORIDA
LT. CASE NO: 1993 CF 000870 A
HT. CASE NO:

EXHIBIT 51

ENTERED
ATTEST. VINCENT RIGGS. CLERK
AUG 01 2017
FAYETTE CIRCUIT CLERK
BY DEPUTY

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
SEVENTH DIVISION
CASE NO. 14-CR-161

COMMONWEALTH OF KENTUCKY — PLAINTIFF

v.

TRAVIS BREDHOLD — DEFENDANT

ORDER DECLARING KENTUCKY'S DEATH PENALTY STATUTE AS UNCONSTITUTIONAL

This matter comes before the Court on Defendant Travis Bredhold's Motion to declare the Kentucky death penalty statute unconstitutional insofar as it permits capital punishment for those under twenty-one (21) years of age at the time of their offense. Mr. Bredhold argues that the death penalty would be cruel and unusual punishment, in violation of the Eighth Amendment, for an offender under twenty-one (21) at the time of the offense. The defense claims that recent scientific research shows that individuals under twenty-one (21) are psychologically immature in the same way that individuals under the age of eighteen (18) were deemed immature, and therefore ineligible for the death penalty, in *Roper v. Simmons*, 543 U.S. 551 (2005). The Commonwealth in turn argues that Kentucky's death penalty statute is constitutional and that there is no national consensus with respect to offenders under twenty-one (21). Having the benefit of memoranda of law, expert testimony, and the arguments of counsel, and being otherwise sufficiently advised, the Court sustains the Defendant's motion.

14CR161

FINDINGS OF FACT

Travis Bredhold was indicted on the charges of Murder, First Degree Robbery, Theft by Unlawful Taking $10,000 or More, and three Class A Misdemeanors for events which occurred on December 9, 2013, when Mr. Bredhold was eighteen (18) years and five (5) months old.

On July 17, 2017, the Court heard testimony from Dr. Laurence Steinberg in the case of Commonwealth v. Diaz, et al., No. 15-CR-584.[1] Dr. Steinberg, an expert in adolescent development, testified to the maturational differences between adolescents (individuals ten (10) to twenty-one (21) years of age) and adults (twenty one (21) and over). The most significant of these differences being that adolescents are more impulsive, more likely to misperceive risk, less able to regulate behavior, more easily emotionally aroused, and, importantly, more capable of change. Additionally, Dr. Steinberg explained how these differences are exacerbated in the presence of peers and under emotionally stressful situations, whereas there is no such effect with adults. Dr. Steinberg related these differences to an individual's culpability and capacity for rehabilitation and concluded that, "if a different version of *Roper* were heard today, knowing what we know now, one could've made the very same arguments about eighteen (18), nineteen (19), and twenty (20) year olds that were made about sixteen (16) and seventeen (17) year olds in *Roper*."[2] Dr. Steinberg supplemented his testimony with a report further detailing the structural and functional changes responsible for these differences between adolescents and adults, as will be discussed later in this opinion.[3]

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[1] See Order Supplementing the Record. Com. v. Diaz is also a Seventh Division case. The Commonwealth was represented by Commonwealth Attorney Lou Anna Red Corn, and her assistants in both cases, 14-CR-161 & 15-CR-584. Dr. Steinberg was aptly cross-examined by the Commonwealth Attorney.
[2] Hearing July 17, 2017 at 9:02:31.
[3] Defendant's Supplement to Testimony of Laurence Steinberg, July 19, 2017.

14 CR 161

On May 25th and 26th, 2016, an individual assessment of Mr. Bredhold was conducted by Dr. Kenneth Benedict, a clinical psychologist and neuropsychologist. A final report was provided to the Defendant's counsel and the Commonwealth and has been filed under seal. After reviewing the record, administering multiple tests, and conducting interviews with Mr. Bredhold, members of his family, and former teachers, Dr. Benedict found that Mr. Bredhold was about four years behind his peer group in multiple capacities. These include: the development of a consistent identity or "sense of self," the capacity to regulate his emotions and behaviors, the ability to respond efficiently to natural environmental consequences in order to adjust and guide his behavior, and his capacity to develop mutually gratifying social relationships.[4] Additionally, he found that Mr. Bredhold had weaknesses in executive functions, such as attention, impulse control, and mental flexibility.[5] Based on his findings, Dr. Benedict diagnosed Mr. Bredhold with a number of mental disorders, not the least being Attention Deficit Hyperactivity Disorder (ADHD), learning disabilities in reading and writing, and Post Traumatic Stress Disorder (PTSD).[6]

CONCLUSIONS OF LAW

The Eighth Amendment to the United States Constitution states, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S.C.A. Const. Amend. VIII. This provision is applicable to the states through the Fourteenth Amendment. The protection flows from the basic "precept of justice that punishment for crime should be graduated and proportioned to [the] offense." *Atkins v. Virginia*, 536 U.S. 304, 311 (2002) (quoting *Weems v. United States*, 217 U.S. 349, 367 (1910)). Eighth Amendment jurisprudence has seen the consistent reference to "the evolving standards of decency that mark the progress of a maturing

[4] *Id* at 6.
[5] *Id* at 3.
[6] *Id* at 5.

society" to determine which punishments are so disproportionate as to be "cruel and unusual." *Trop v. Dulles*, 356 U.S. 86, 100-101 (1958). The two prongs of the "evolving standards of decency" test are: (1) objective indicia of national consensus, and (2) the Court's own determination in the exercise of independent judgment. *Stanford v. Kentucky*, 492 U.S. 361 (1989); *Atkins*, 536 U.S. 304; *Roper v. Simmons*, 543 U.S. 551 (2005).

I. Objective Indicia of National Consensus Against Execution of Offenders Younger than 21

Since *Roper*, six (6) states[7] have abolished the death penalty, making a total of nineteen (19) states and the District of Columbia without a death penalty statute. Additionally, the governors of four (4) states[8] have imposed moratoria on executions in the last five (5) years. Of the states that do have a death penalty statute and no governor-imposed moratoria, seven[9] (7) have *de facto* prohibitions on the execution of offenders under twenty-one (21) years of age, including Kentucky. Taken together, there are currently thirty states in which a defendant who was under the age of twenty-one (21) at the time of their offense would not be executed – ten (10) of which have made their prohibition on the death penalty official since the decision in *Roper* in 2005.

Of the thirty-one (31) states with a death penalty statute, only nine (9) executed defendants who were under the age of twenty-one (21) at the time of their offense between 2011 and 2016.[10]

[7] The states that have abolished the death penalty since *Roper* and year of abolition: Connecticut (2012), Illinois (2011), Maryland (2013), New Jersey (2007), New Mexico (2009), and New York (2007).
[8] The governors of Pennsylvania and Washington imposed moratoria on the death penalty in 2015 and 2014, respectively. The governor of Oregon extended a previously imposed moratorium in 2015. The governor of Colorado granted an indefinite stay of execution to a death row inmate in 2013.
[9] Kansas and New Hampshire have not executed anyone since 1977. Montana and Wyoming have never executed anyone who was under twenty-one (21) years of age at the time of their offenses, and they currently have no such offenders on death row. Utah has not executed anyone who was under twenty-one (21) years of age at the time of their offense in the last fifteen (15) years, and no such offender is currently on Utah's death row. Idaho and Kentucky have not executed anyone who was under twenty-one (21) years old at the time of their offense in the last fifteen (15) years.
[10] Chart of Number of People Executed Who Were Aged 18, 19, or 20 at Offense from 2000 to Present, By State [current as of February 29, 2016]

14 CR 161

Those nine (9) states have executed a total of thirty-three (33) defendants under the age of twenty-one (21) since 2011 – nineteen (19) of which have been in Texas alone.[11] Considering Texas an outlier, there have only been fourteen (14) executions of defendants under the age of twenty-one (21) between 2011 and 2016, compared to twenty-nine (29) executions in the years 2006 to 2011, and twenty-seven (27) executions in the years 2001 to 2006 (again, excluding Texas).[12] In short, the number of executions of defendants under twenty-one (21) in the last five (5) years has been cut in half from the two (2) previous five- (5) year periods.

Looking at the death penalty as practically applied to all defendants, since 1999 there has been a distinct downward trend in death sentences and executions. In 1999, 279 offenders nationwide were sentenced to death, compared to just thirty (30) in 2016 – just about eleven (11) percent of the number sentenced in 1999.[13] Similarly, the number of defendants actually executed spiked in 1999 at ninety-eight (98), and then gradually decreased to just twenty (20) in 2016 – only two of which were between the ages of eighteen (18) and twenty (20).

Contrary to the Commonwealth's assertion, it appears there is a very clear national consensus trending toward restricting the death penalty, especially in the case where defendants are eighteen (18) to twenty-one (21) years of age. Not only have six more states abolished the death penalty since *Roper* in 2005, four more have imposed moratoria on executions, and seven more have *de facto* prohibitions on the execution of defendants eighteen (18) to twenty-one (21). In addition to the recent legislative opposition to the death penalty, since 1999 courts have also shown a reluctance to impose death sentences on offenders, especially those eighteen (18) to

[11] *Id.*
[12] *Id.*
[13] Death Penalty Information Center, Facts About the Death Penalty (Updated May 12, 2017), downloaded from https://deathpenaltyinfo.org/documents/FactSheet.pdf.

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twenty-one (21. "[T]he objective indicia of consensus in this case – the rejection of the juvenile death penalty in the majority of States; the infrequency of its use even where it remains on the books; and the consistency in the trend toward abolition of the practice – provide sufficient evidence that today our society views juveniles … as 'categorically less culpable than the average criminal.'" *Roper*, 543 U.S. at 567 (quoting *Atkins*, 536 U.S. at 316). Given this consistent direction of change, this Court thinks it clear that the national consensus is growing more and more opposed to the death penalty, as applied to defendants eighteen (18) to twenty-one (21).

2. The Death Penalty is a Disproportionate Punishment for Offenders Younger than 21

As the Supreme Court in *Roper* heavily relied on scientific studies to come to its conclusion, so will this Court. On July 17, 2017, in the case of Commonwealth of Kentucky v. Diaz, this Court heard expert testimony on this topic. Dr. Laurence Steinberg testified and was also allowed to supplement his testimony with a written report. The report cited multiple recent studies supporting the conclusion that individuals under twenty-one (21) years of age are categorically less culpable in the same ways that the Court in *Roper* decided individuals under eighteen (18) were less culpable. It is based on those studies that this Court has come to the conclusion that the death penalty should be excluded for defendants who were under the age of twenty-one (21) at the time of their offense.

If the science in 2005 mandated the ruling in *Roper*, the science in 2017 mandates this ruling.

Through the use of functional Magnetic Resonance Imaging (fMRI), scientists of the late 1990s and early 2000s discovered that key brain systems and structures, especially those involved in self-regulation and higher-order cognition, continue to mature through an individual's late

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teens.[14] Further study of brain development conducted in the past ten (10) years has shown that these key brain systems and structures actually continue to mature well into the mid-twenties (20s); this notion is now widely accepted among neuroscientists.[15]

Recent psychological research indicates that individuals in their late teens and early twenties (20s) are less mature than their older counterparts in several important ways.[16] First, these individuals are more likely than adults to underestimate the number, seriousness, and likelihood of risks involved in a given situation.[17] Second, they are more likely to engage in "sensation-seeking," the pursuit of arousing, rewarding, exciting, or novel experiences. This tendency is especially pronounced among individuals between the ages of eighteen (18) and twenty-one (21).[18] Third, individuals in their late teens and early twenties (20s) are less able than older individuals to control their impulses and consider the future consequences of their actions and decisions because gains in impulse control continue to occur during the early twenties (20s).[19] Fourth, basic cognitive abilities, such as memory and logical reasoning, mature before emotional abilities, including the

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[14] B. J. Casey, et al., *Imaging the Developing Brain: What Have We Learned About Cognitive Development?*, 9 TRENDS IN COGNITIVE SCI. 104-110 (2005).
[15] N. Dosenbach, et al., *Prediction of Individual Brain Maturity Using fMRI*, 329 SCI. 1358-1361 (2011); D. Fair, et al., *Functional Brain Networks Develop From a "Local to Distributed" Organization*, 5 PLOS COMPUTATIONAL BIOLOGY 1-14 (2009); A. Hedman, et al., *Human Brain Changes Across the Life Span: A Review of 56 Longitudinal Magnetic Resonance Imaging Studies*, 33 HUM. BRAIN MAPPING 1987-2002 (2012); A. Pfefferbaum, et al., *Variation in Longitudinal Trajectories of Regional Brain Volumes of Healthy Men and Women (Ages 10 to 85 Years) Measures with Atlas-Based Parcellation of MRI*, 65 NEUROIMAGE 176-193 (2013); D. Simmonds, et al., *Developmental Stages and Sex Differences of White Matter and Behavioral Development Through Adolescence: A Longitudinal Diffusion Tensor Imaging (DTI) Study*. 92 NEUROIMAGE 356-368 (2014); L. Somerville, et al., *A Time of Change: Behavioral and Neural Correlates of Adolescent Sensitivity to Appetitive and Aversive Environmental Cues*, 72 BRAIN & COGNITION 124-133 (2010).
[16] For a recent review of this research, see: LAURENCE STEINBERG, AGE OF OPPORTUNITY: LESSONS FROM THE NEW SCIENCE OF ADOLESCENCE (2014).
[17] T. Grisso, et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 333-363 (2003).
[18] E. Cauffman, et al., *Age Differences in Affective Decision Making as Indexed by Performance on the Iowa Gambling Task*, 46 DEV. PSYCHOL. 193-207 (2010); L. Steinberg, et al., *Around the World, Adolescence is a Time of Heightened Sensation Seeking and Immature Self-Regulation*, DEV. SCI. Advance online publication. doi: 10.1111/desc.12532. (2017).
[19] L. Steinberg, et al., *Age Difference in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28-44 (2009); D. Albert, et al., *Age Difference in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model*, 44 DEV. PSYCHOL. 1764-1778 (2008).

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ability to exercise self-control, to properly consider the risks and rewards of alternative courses of action, and to resist coercive pressure from others. Thus, one may be intellectually mature but also socially and emotionally immature.[20] As a consequence of this gap between intellectual and emotional maturity, these differences are exacerbated when adolescents and young adults are making decisions in situations that are emotionally arousing, including those that generate negative emotions, such as fear, threat, anger, or anxiety.[21] The presence of peers also amplifies these differences because this activates the brain's "reward center" in individuals in their late teens and early twenties (20s). Importantly, the presence of peers has no such effect on adults.[22] In recent experimental studies, the peak age for risky decision-making was determined to be between nineteen (19) and twenty-one (21).[23]

Recent neurobiological research parallels the above psychological conclusions. This research has shown that the main cause for psychological immaturity during adolescence and the early twenties (20s) is the difference in timing of the maturation of two important brain systems. The system that is responsible for the increase in sensation-seeking and reward-seeking—sometimes referred to as the "socio-emotional system"—undergoes dramatic changes around the time of puberty, and stays highly active through the late teen years and into the early twenties (20s). However, the system that is responsible for self-control, regulating impulses, thinking ahead,

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[20] L. Steinberg, et al., *Are Adolescents Less Mature Than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip-Flop,"* 64 AM. PSYCHOLOGIST 583-594 (2009).
[21] A. Cohen, et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-Emotional Contexts*, 4 PSYCHOLOGICAL SCIENCE 549-562 (2016); L. Steinberg, et al., *Are Adolescents Less Mature Than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip-Flop,"* 64 AM. PSYCHOLOGIST 583-594 (2009).
[22] D. Albert, et al., *The Teenage Brain: Peer Influences on Adolescent Decision-Making*, 22 CURRENT DIRECTIONS IN PSYCHOL. SCI. 114-120 (2013).
[23] B. Braams, et al., *Longitudinal Changes in Adolescent Risk-Taking: A Comprehensive Study of Neural Responses to Rewards, Pubertal Development and Risk Taking Behavior*, 35 J. OF NEUROSCIENCE 7226-7238 (2015); E. Shulman & E. Cauffman, *Deciding in the Dark: Age Differences in Intuitive Risk Judgment*, 50 DEV. PSYCHOL. 167-177 (2014).

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evaluating the risks and rewards of an action, and resisting peer pressure—referred to as the "cognitive control system"—is still undergoing significant development well into the mid-twenties (20s).[24] Thus, during middle and late adolescence there is a "maturational imbalance" between the socio-emotional system and the cognitive control system that inclines adolescents toward sensation-seeking and impulsivity. As the cognitive control system catches up during an individual's twenties (20s), one is more capable of controlling impulses, resisting peer pressure, and thinking ahead.[25]

There are considerable structural changes and improvements in connectivity across regions of the brain which allow for this development. These structural changes are mainly the result of two processes: synaptic pruning (the elimination of unnecessary connections between neurons, allowing for more efficient transmission of information) and myelination (insulation of neuronal connections, allowing the brain to transmit information more quickly). While synaptic pruning is mostly complete by age sixteen (16), myelination continues through the twenties (20s).[26] Thus, while the development of the prefrontal cortex (logical reasoning, planning, personality) is largely finished by the late teens, the maturation of connections between the prefrontal cortex and regions which govern self-regulation and emotions continues into the mid-twenties (20s).[27] This supports the psychological findings spelled out above which conclude that even intellectual young adults

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[24] B. J. Casey, et al., *The Storm and Stress of Adolescence: Insights from Human Imaging and Mouse Genetics*, 52 DEV. PSYCHOL. 225-235 (2010); L. Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 DEV. REV. 78-106 (2008); L. Van Leijenhorst, et al., *Adolescent Risky Decision-making: Neurocognitive Development of Reward and Control Regions*, 51 NEUROIMAGE 345-355 (2010).
[25] D. Albert & L. Steinberg, *Judgment and Decision Making in Adolescence*, 21 J. OF RES. ON ADOLESCENCE 211-224 (2011); S-J Blakemore & T. Robbins, *Decision-Making in the Adolescent Brain*, 15 NAT. NEUROSCIENCE 1184-1191 (2012).
[26] S-J, Blakemore, *Imaging Brain Development: The Adolescent Brain*, 61 NEUROIMAGE 397-406 (2012); R. Engle, *The Teen Brain*, 22(2) CURRENT DIRECTIONS IN PSYCHOL. SCI. (whole issue) (2013); M. Luciana (Ed.), *Adolescent Brain Development: Current Themes and Future Directions*, 72(2) BRAIN & COGNITION (whole issue) (2010).
[27] L. Steinberg, *The Influence of Neuroscience on U.S. Supreme Court Decisions Involving Adolescents' Criminal Culpability*, 14 NAT. REV. NEUROSCIENCE 513-518 (2013).

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may have trouble controlling impulses and emotions, especially in the presence of peers and in emotionally arousing situations.

Perhaps one of the most germane studies to this opinion illustrated this development gap by asking teenagers, young adults (18-21), and mid-twenties adults to demonstrate impulse control under both emotionally neutral and emotionally arousing conditions.[28] Under emotionally neutral conditions, individuals between eighteen (18) and twenty-one (21) were able to control their impulses just as well as those in their mid-twenties (20s). However, under emotionally arousing conditions, eighteen– (18) to twenty-one– (21) year–olds demonstrated levels of impulsive behavior and patterns of brain activity comparable to those in their mid-teens.[29] Put simply, under feelings of stress, anger, fear, threat, etc., the brain of a twenty– (20) year–old functions similarly to a sixteen– (16) or seventeen– (17) year–old.

In addition to this maturational imbalance, one of the hallmarks of neurobiological development during adolescence is the heightened plasticity—the ability to change in response to experience—of the brain. One of the periods of the most marked neuroplasticity is during an individual's late teens and early twenties (20s), indicating that this group has strong potential for behavioral change.[30] Given adolescents' ongoing development and heightened plasticity, it is difficult to predict future criminality or delinquent behavior from antisocial behavior during the teen years, even among teenagers accused of committing violent crimes.[31] In fact, many

[28] A. Cohen, et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-Emotional Contexts*, 4 PSYCHOL. SCI. 549-562 (2016).
[29] *Id.*
[30] LAURENCE STEINBERG, AGE OF OPPORTUNITY: LESSONS FROM THE NEW SCIENCE OF ADOLESCENCE (2014).
[31] T. Moffitt, *Life-Course Persistent Versus Adolescent-Limited Antisocial Behavior*, 3(2) DEV. & PSYCHOPATHOLOGY (2016).

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researchers have conducted studies finding that approximately ninety (90) percent of serious juvenile offenders age out of crime and do not continue criminal behavior into adulthood.[32]

Travis Bredhold was eighteen (18) years and five (5) months old at the time of the alleged crime. According to recent scientific studies, Mr. Bredhold fits right into the group experiencing the "maturational imbalance," during which his system for sensation-seeking, impulsivity, and susceptibility to peer pressure was fully developed, while his system for planning and impulse control lagged behind, unable to override those impulses. He also fit into the group described in the study above which was found to act essentially like a sixteen– (16) to seventeen– (17) year–old under emotionally arousing conditions, such as, for example, robbing a store. Most importantly, this research shows that eighteen– (18) to twenty-one– (21) year–olds are categorically less culpable for the same three reasons that the Supreme Court in *Roper* found teenagers under eighteen (18) to be: (1) they lack maturity to control their impulses and fully consider both the risks and rewards of an action, making them unlikely to be deterred by knowledge of likelihood and severity of punishment; (2) they are susceptible to peer pressure and emotional influence, which exacerbates their existing immaturity when in groups or under stressful conditions; and (3) their character is not yet well formed due to the neuroplasticity of the young brain, meaning that they have a much better chance at rehabilitation than do adults.[33]

Further, the Supreme Court has declared several times that "capital punishment must be limited to those offenders who commit 'a narrow category of the most serious crimes' and whose extreme culpability makes them 'the most deserving of execution.'" *Roper*, 543 U.S. at 568

[32] K. Monahan, et al., *Psychosocial (im)maturity from Adolescence to Early Adulthood: Distinguishing Between Adolescence-Limited and Persistent Antisocial Behavior*, 25 DEV. & PSYCHOPATHOLOGY 1093-1105 (2013); E. Mulvey, et al., *Trajectories of Desistance and Continuity in Antisocial Behavior Following Court Adjudication Among Serious Adolescent Offenders*, 22 DEV. & PSYCHOPATHOLOGY 453-475 (2010).
[33] *Roper*, 543 U.S. at 569-70.

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(quoting *Atkins*, 536 U.S. at 319); *Kennedy v. Louisiana*, 554 U.S. 407 (2008) (holding that the Eighth Amendment prohibits the death penalty for the rape of a child where the crime did not result, and was not intended to result, in the death of the victim); *Kansas v. Marsh*, 548 U.S. 163, 206 (2006) (Souter, J., dissenting) ("the death penalty must be reserved for 'the worst of the worst'"). Given Mr. Bredhold's young age and development, it is difficult to see how he and others his age could be classified as "the most deserving of execution."

Given the national trend toward restricting the use of the death penalty for young offenders, and given the recent studies by the scientific community, the death penalty would be an unconstitutionally disproportionate punishment for crimes committed by individuals under twenty-one (21) years of age. Accordingly, Kentucky's death penalty statute is unconstitutional insofar as it permits capital punishment for offenders under twenty-one (21) at the time of their offense.

It is important to note that, even though this Court is adhering to a bright–line rule as promoted by *Roper* and not individual assessment or a "mental age" determination, the conclusions drawn by Dr. Kenneth Benedict in his individual evaluation of Mr. Bredhold are still relevant. This evaluation substantiates that what research has shown to be true of adolescents and young adults as a class is particularly true of Mr. Bredhold. Dr. Benedict's findings are that Mr. Bredhold operates at a level at least four years below that of his peers. These findings further support the exclusion of the death penalty for this Defendant.

So ORDERED this the 1 day of August, 2017.

JUDGE ERNESTO SCORSONE
FAYETTE CIRCUIT COURT

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CERTIFICATE OF SERVICE

The following is to certify that the foregoing was served this the 1st day of August, 2017, by mailing same first class copy, postage prepaid, to the following:

Lou Anna Red Corn
Commonwealth Attorney
116 North Upper Street, Suite 300
Lexington, KY 40507

Joanne Lynch
Assistant Public Advocate
487 Frankfort Road, Suite 2
Shelbyville, KY 40065

Audrey Woosnam
Assistant Public Advocate
487 Frankfort Road, Suite 2
Shelbyville, KY 40065

By: MKuller D.C.

A TRUE COPY
ATTEST: VINCENT RIGGS, CLERK
FAYETTE CIRCUIT COURT
BY MKuller DEPUTY

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EXHIBIT 52

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
SEVENTH DIVISION
CASE NO. 15-CR-584-001

COMMONWEALTH OF KENTUCKY — PLAINTIFF

v.

EFRAIN DIAZ — DEFENDANT

ORDER DECLARING KENTUCKY'S DEATH PENALTY STATUTE AS UNCONSTITUTIONAL

This matter comes before the Court on Defendant Efrain Diaz's Motion to declare the Kentucky death penalty statute unconstitutional insofar as it permits capital punishment for those under twenty-one (21) years of age at the time of their offense. Mr. Diaz argues that the death penalty would be cruel and unusual punishment, in violation of the Eighth Amendment, for an offender under twenty-one (21) at the time of the offense. The defense claims that recent scientific research shows that individuals under twenty-one (21) are psychologically immature in the same way that individuals under the age of eighteen (18) were deemed immature, and therefore ineligible for the death penalty, in *Roper v. Simmons*, 543 U.S. 551 (2005). The Commonwealth in turn argues that Kentucky's death penalty statute is constitutional and that there is no national consensus with respect to offenders under twenty-one (21). Having the benefit of memoranda of law, expert testimony, and the arguments of counsel, and being otherwise sufficiently advised, the Court sustains the Defendant's motion.

FINDINGS OF FACT

Efrain Diaz was indicted on the charges of Murder, First Degree Robbery, Theft by Unlawful Taking $10,000 or More, and three Class A Misdemeanors for events which occurred on April 17, 2015, when Mr. Diaz was eighteen (18) years and seven (7) months old.

On July 17, 2017, the Court heard testimony from Dr. Laurence Steinberg, an expert in adolescent development, testified to the maturational differences between adolescents (individuals ten (10) to twenty-one (21) years of age) and adults (twenty-one (21) and over). The most significant of these differences being that adolescents are more impulsive, more likely to misperceive risk, less able to regulate behavior, more easily emotionally aroused, and, importantly, more capable of change. Additionally, Dr. Steinberg explained how these differences are exacerbated in the presence of peers and under emotionally stressful situations, whereas there is no such effect with adults. Dr. Steinberg related these differences to an individual's culpability and capacity for rehabilitation and concluded that, "if a different version of *Roper* were heard today, knowing what we know now, one could've made the very same arguments about eighteen (18), nineteen (19), and twenty (20) year olds that were made about sixteen (16) and seventeen (17) year olds in *Roper*."[1] Dr. Steinberg supplemented his testimony with a report further detailing the structural and functional changes responsible for these differences between adolescents and adults, as will be discussed later in this opinion.[2]

CONCLUSIONS OF LAW

The Eighth Amendment to the United States Constitution states, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S.C.A.

[1] Hearing July 17, 2017 at 9:02:31.
[2] Affidavit of Kenneth B. Benedict, July 14, 2017.

Const. amend. VIII. This provision is applicable to the states through the Fourteenth Amendment. The protection flows from the basic "precept of justice that punishment for crime should be graduated and proportioned to [the] offense." *Atkins v. Virginia*, 536 U.S. 304, 311 (2002) (quoting *Weems v. United States*, 217 U.S. 349, 367 (1910)). Eighth Amendment jurisprudence has seen the consistent reference to "the evolving standards of decency that mark the progress of a maturing society" to determine which punishments are so disproportionate as to be "cruel and unusual." *Trop v. Dulles*, 356 U.S. 86, 100-101 (1958). The two prongs of the "evolving standards of decency" test are: (1) objective indicia of national consensus, and (2) the Court's own determination in the exercise of independent judgment. *Stanford v. Kentucky*, 492 U.S. 361 (1989); *Atkins*, 536 U.S. 304; *Roper*, 543 U.S. 551 (2005).

I. Objective Indicia of National Consensus Against Execution of Offenders Younger than 21

Since *Roper*, six (6) states[3] have abolished the death penalty, making a total of nineteen (19) states and the District of Columbia without a death penalty statute. Additionally, the governors of four (4) states[4] have imposed moratoria on executions in the last five (5) years. Of the states that do have a death penalty statute and no governor-imposed moratoria, seven[5] (7) have *de facto* prohibitions on the execution of offenders under twenty-one (21) years of age, including Kentucky. Taken together, there are currently thirty states in which a defendant who was under the age of

[3] The states that have abolished the death penalty since *Roper* and year of abolition: Connecticut (2012), Illinois (2011), Maryland (2013), New Jersey (2007), New Mexico (2009), and New York (2007).
[4] The governors of Pennsylvania and Washington imposed moratoria on the death penalty in 2015 and 2014, respectively. The governor of Oregon extended a previously imposed moratorium in 2015. The governor of Colorado granted an indefinite stay of execution to a death row inmate in 2013.
[5] Kansas and New Hampshire have not executed anyone since 1977. Montana and Wyoming have never executed anyone who was under twenty-one (21) years of age at the time of their offenses, and they currently have no such offenders on death row. Utah has not executed anyone who was under twenty-one (21) years of age at the time of their offense in the last fifteen (15) years, and no such offender is currently on Utah's death row. Idaho and Kentucky have not executed anyone who was under twenty-one (21) years old at the time of their offense in the last fifteen (15) years.

twenty-one (21) at the time of their offense would not be executed – ten (10) of which have made their prohibition on the death penalty official since the decision in *Roper* in 2005.

Of the thirty-one (31) states with a death penalty statute, only nine (9) executed defendants who were under the age of twenty-one (21) at the time of their offense between 2011 and 2016.[6] Those nine (9) states have executed a total of thirty-three (33) defendants under the age of twenty-one (21) since 2011 – nineteen (19) of which have been in Texas alone.[7] Considering Texas an outlier, there have only been fourteen (14) executions of defendants under the age of twenty-one (21) between 2011 and 2016, compared to twenty-nine (29) executions in the years 2006 to 2011, and twenty-seven (27) executions in the years 2001 to 2006 (again, excluding Texas).[8] In short, the number of executions of defendants under twenty-one (21) in the last five (5) years has been cut in half from the two (2) previous five- (5) year periods.

Looking at the death penalty as practically applied to all defendants, since 1999 there has been a distinct downward trend in death sentences and executions. In 1999, 279 offenders nationwide were sentenced to death, compared to just thirty (30) in 2016 – just about eleven (11) percent of the number sentenced in 1999.[9] Similarly, the number of defendants actually executed spiked in 1999 at ninety-eight (98), and then gradually decreased to just twenty (20) in 2016 – only two of which were between the ages of eighteen (18) and twenty (20).

Contrary to the Commonwealth's assertion, it appears there is a very clear national consensus trending toward restricting the death penalty, especially in the case where defendants

[6] Chart of Number of People Executed Who Were Aged 18, 19, or 20 at Offense from 2000 to Present, By State [current as of February 29, 2016]
[7] *Id.*
[8] *Id.*
[9] Death Penalty Information Center, Facts About the Death Penalty (Updated May 12, 2017), downloaded from https://deathpenaltyinfo.org/documents/FactSheet.pdf.

are eighteen (18) to twenty-one (21) years of age. Not only have six more states abolished the death penalty since *Roper* in 2005, four more have imposed moratoria on executions, and seven more have *de facto* prohibitions on the execution of defendants eighteen (18) to twenty-one (21). In addition to the recent legislative opposition to the death penalty, since 1999 courts have also shown a reluctance to impose death sentences on offenders, especially those eighteen (18) to twenty-one (21. "[T]he objective indicia of consensus in this case – the rejection of the juvenile death penalty in the majority of States; the infrequency of its use even where it remains on the books; and the consistency in the trend toward abolition of the practice – provide sufficient evidence that today our society views juveniles ... as 'categorically less culpable than the average criminal.'" *Roper*, 543 U.S. at 567 (quoting *Atkins*, 536 U.S. at 316). Given this consistent direction of change, this Court thinks it clear that the national consensus is growing more and more opposed to the death penalty, as applied to defendants eighteen (18) to twenty-one (21).

2. The Court's Independent Judgment

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If the science in 2005 mandated the ruling in *Roper*, the science in 2017 mandates this ruling.

Through the use of functional Magnetic Resonance Imaging (fMRI), scientists of the late 1990s and early 2000s discovered that key brain systems and structures, especially those involved in self-regulation and higher-order cognition, continue to mature through an individual's late teens.[10] Further study of brain development conducted in the past ten (10) years has shown that these key brain systems and structures actually continue to mature well into the mid-twenties (20s); this notion is now widely accepted among neuroscientists.[11]

Recent psychological research indicates that individuals in their late teens and early twenties (20s) are less mature than their older counterparts in several important ways.[12] First, these individuals are more likely than adults to underestimate the number, seriousness, and likelihood of risks involved in a given situation.[13] Second, they are more likely to engage in "sensation-seeking," the pursuit of arousing, rewarding, exciting, or novel experiences. This tendency is especially pronounced among individuals between the ages of eighteen (18) and twenty-one (21).[14] Third, individuals in their late teens and early twenties (20s) are less able than older individuals to control their impulses and consider the future consequences of their actions and decisions because

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[11] N. Dosenbach, et al., *Prediction of Individual Brain Maturity Using fMRI*, 329 SCI. 1358-1361 (2011); D. Fair, et al., *Functional Brain Networks Develop From a "Local to Distributed" Organization*, 5 PLOS COMPUTATIONAL BIOLOGY 1-14 (2009); A. Hedman, et al., *Human Brain Changes Across the Life Span: A Review of 56 Longitudinal Magnetic Resonance Imaging Studies*, 33 HUM. BRAIN MAPPING 1987-2002 (2012); A. Pfefferbaum, et al., *Variation in Longitudinal Trajectories of Regional Brain Volumes of Healthy Men and Women (Ages 10 to 85 Years) Measures with Atlas-Based Parcellation of MRI*, 65 NEUROIMAGE 176-193 (2013); D. Simmonds, et al., *Developmental Stages and Sex Differences of White Matter and Behavioral Development Through Adolescence: A Longitudinal Diffusion Tensor Imaging (DTI) Study*. 92 NEUROIMAGE 356-368 (2014); L. Somerville, et al., *A Time of Change: Behavioral and Neural Correlates of Adolescent Sensitivity to Appetitive and Aversive Environmental Cues*, 72 BRAIN & COGNITION 124-133 (2010).
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[14] E. Cauffman, et al., *Age Differences in Affective Decision Making as Indexed by Performance on the Iowa Gambling Task*, 46 DEV. PSYCHOL. 193-207 (2010); L. Steinberg, et al., *Around the World, Adolescence is a Time of Heightened Sensation Seeking and Immature Self-Regulation*, DEV. SCI. Advance online publication. doi: 10.1111/desc.12532. (2017).

gains in impulse control continue to occur during the early twenties (20s).[15] Fourth, basic cognitive abilities, such as memory and logical reasoning, mature before emotional abilities, including the ability to exercise self-control, to properly consider the risks and rewards of alternative courses of action, and to resist coercive pressure from others. Thus, one may be intellectually mature but also socially and emotionally immature.[16] As a consequence of this gap between intellectual and emotional maturity, these differences are exacerbated when adolescents and young adults are making decisions in situations that are emotionally arousing, including those that generate negative emotions, such as fear, threat, anger, or anxiety.[17] The presence of peers also amplifies these differences because this activates the brain's "reward center" in individuals in their late teens and early twenties (20s). Importantly, the presence of peers has no such effect on adults.[18] In recent experimental studies, the peak age for risky decision-making was determined to be between nineteen (19) and twenty-one (21).[19]

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[15] L. Steinberg, et al., *Age Difference in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28-44 (2009); D. Albert, et al., *Age Difference in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model*, 44 DEV. PSYCHOL. 1764-1778 (2008).

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[17] A. Cohen, et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-Emotional Contexts*, 4 PSYCHOLOGICAL SCIENCE 549-562 (2016); L. Steinberg, et al., *Are Adolescents Less Mature Than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip-Flop,"* 64 AM. PSYCHOLOGIST 583-594 (2009).

[18] D. Albert, et al., *The Teenage Brain: Peer Influences on Adolescent Decision-Making*, 22 CURRENT DIRECTIONS IN PSYCHOL. SCI. 114-120 (2013).

[19] B. Braams, et al., *Longitudinal Changes in Adolescent Risk-Taking: A Comprehensive Study of Neural Responses to Rewards, Pubertal Development and Risk Taking Behavior*, 35 J. OF NEUROSCIENCE 7226-7238 (2015); E. Shulman & E. Cauffman, *Deciding in the Dark: Age Differences in Intuitive Risk Judgment*, 50 DEV. PSYCHOL. 167-177 (2014).

sometimes referred to as the "socio-emotional system"—undergoes dramatic changes around the time of puberty, and stays highly active through the late teen years and into the early twenties (20s). However, the system that is responsible for self-control, regulating impulses, thinking ahead, evaluating the risks and rewards of an action, and resisting peer pressure—referred to as the "cognitive control system"—is still undergoing significant development well into the mid-twenties (20s).[20] Thus, during middle and late adolescence there is a "maturational imbalance" between the socio-emotional system and the cognitive control system that inclines adolescents toward sensation-seeking and impulsivity. As the cognitive control system catches up during an individual's twenties (20s), one is more capable of controlling impulses, resisting peer pressure, and thinking ahead.[21]

There are considerable structural changes and improvements in connectivity across regions of the brain which allow for this development. These structural changes are mainly the result of two processes: synaptic pruning (the elimination of unnecessary connections between neurons, allowing for more efficient transmission of information) and myelination (insulation of neuronal connections, allowing the brain to transmit information more quickly). While synaptic pruning is mostly complete by age sixteen (16), myelination continues through the twenties (20s).[22] Thus, while the development of the prefrontal cortex (logical reasoning, planning, personality) is largely finished by the late teens, the maturation of connections between the prefrontal cortex and regions

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[20] B. J. Casey, et al., *The Storm and Stress of Adolescence: Insights from Human Imaging and Mouse Genetics*, 52 DEV. PSYCHOL. 225-235 (2010); L. Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 DEV. REV. 78-106 (2008); L. Van Leijenhorst, et al., *Adolescent Risky Decision-making: Neurocognitive Development of Reward and Control Regions*, 51 NEUROIMAGE 345-355 (2010).

[21] D. Albert & L. Steinberg, *Judgment and Decision Making in Adolescence*, 21 J. OF RES. ON ADOLESCENCE 211-224 (2011); S-J Blakemore & T. Robbins, *Decision-Making in the Adolescent Brain*, 15 NAT. NEUROSCIENCE 1184-1191 (2012).

[22] S-J, Blakemore, *Imaging Brain Development: The Adolescent Brain*, 61 NEUROIMAGE 397-406 (2012); R. Engle, *The Teen Brain*, 22(2) CURRENT DIRECTIONS IN PSYCHOL. SCI. (whole issue) (2013); M. Luciana (Ed.), *Adolescent Brain Development: Current Themes and Future Directions*, 72(2) BRAIN & COGNITION (whole issue) (2010).

which govern self-regulation and emotions continues into the mid-twenties (20s).[23] This supports the psychological findings spelled out above which conclude that even intellectual young adults may have trouble controlling impulses and emotions, especially in the presence of peers and in emotionally arousing situations.

Perhaps one of the most germane studies to this opinion illustrated this development gap by asking teenagers, young adults (18-21), and mid-twenties adults to demonstrate impulse control under both emotionally neutral and emotionally arousing conditions.[24] Under emotionally neutral conditions, individuals between eighteen (18) and twenty-one (21) were able to control their impulses just as well as those in their mid-twenties (20s). However, under emotionally arousing conditions, eighteen– (18) to twenty-one– (21) year–olds demonstrated levels of impulsive behavior and patterns of brain activity comparable to those in their mid-teens.[25] Put simply, under feelings of stress, anger, fear, threat, etc., the brain of a twenty– (20) year–old functions similarly to a sixteen– (16) or seventeen– (17) year–old.

In addition to this maturational imbalance, one of the hallmarks of neurobiological development during adolescence is the heightened plasticity—the ability to change in response to experience—of the brain. One of the periods of the most marked neuroplasticity is during an individual's late teens and early twenties (20s), indicating that this group has strong potential for behavioral change.[26] Given adolescents' ongoing development and heightened plasticity, it is difficult to predict future criminality or delinquent behavior from antisocial behavior during the

[23] L. Steinberg, *The Influence of Neuroscience on U.S. Supreme Court Decisions Involving Adolescents' Criminal Culpability*, 14 NAT. REV. NEUROSCIENCE 513-518 (2013).
[24] A. Cohen, et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-Emotional Contexts*, 4 PSYCHOL. SCI. 549-562 (2016).
[25] *Id.*
[26] LAURENCE STEINBERG, AGE OF OPPORTUNITY: LESSONS FROM THE NEW SCIENCE OF ADOLESCENCE (2014).

teen years, even among teenagers accused of committing violent crimes.[27] In fact, many researchers have conducted studies finding that approximately ninety (90) percent of serious juvenile offenders age out of crime and do not continue criminal behavior into adulthood.[28]

Justin Diaz was eighteen (18) years and seven (7) months old at the time of the alleged crime. According to recent scientific studies, Mr. Diaz fits into the group experiencing the "maturational imbalance," during which his system for sensation-seeking, impulsivity, and susceptibility to peer pressure was fully developed, while his system for planning and impulse control lagged behind, unable to override those impulses. He also fits into the group described in the study above which was found to act essentially like a sixteen– (16) to seventeen– (17) year–old under emotionally arousing conditions, such as, for example, robbing a store. Most importantly, this research shows that eighteen– (18) to twenty-one– (21) year–olds are categorically less culpable for the same three reasons that the Supreme Court in *Roper* found teenagers under eighteen (18) to be: (1) they lack maturity to control their impulses and fully consider both the risks and rewards of an action, making them unlikely to be deterred by knowledge of likelihood and severity of punishment; (2) they are susceptible to peer pressure and emotional influence, which exacerbates their existing immaturity when in groups or under stressful conditions; and (3) their character is not yet well formed due to the neuroplasticity of the young brain, meaning that they have a much better chance at rehabilitation than do adults.[29]

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[27] T. Moffitt, *Life-Course Persistent Versus Adolescent-Limited Antisocial Behavior*, 3(2) DEV. & PSYCHOPATHOLOGY (2016).
[28] K. Monahan, et al., *Psychosocial (im)maturity from Adolescence to Early Adulthood: Distinguishing Between Adolescence-Limited and Persistent Antisocial Behavior*, 25 DEV. & PSYCHOPATHOLOGY 1093-1105 (2013); E. Mulvey, et al., *Trajectories of Desistance and Continuity in Antisocial Behavior Following Court Adjudication Among Serious Adolescent Offenders*, 22 DEV. & PSYCHOPATHOLOGY 453-475 (2010).
[29] *Roper*, 543 U.S. at 569-70.

Further, the Supreme Court has declared several times that "capital punishment must be limited to those offenders who commit 'a narrow category of the most serious crimes' and whose extreme culpability makes them 'the most deserving of execution.'" *Roper*, 543 U.S. at 568 (quoting *Atkins*, 536 U.S. at 319); *Kennedy v. Louisiana*, 554 U.S. 407 (2008) (holding that the Eighth Amendment prohibits the death penalty for the rape of a child where the crime did not result, and was not intended to result, in the death of the victim); *Kansas v. Marsh*, 548 U.S. 163, 206 (2006) (Souter, J., dissenting) ("the death penalty must be reserved for 'the worst of the worst'"). Given Mr. Diaz's young age and development, it is difficult to see how he and others his age could be classified as "the most deserving of execution."

Given the national trend toward restricting the use of the death penalty for individuals under the age of twenty-one (21), and given the recent findings by the scientific community, the death penalty would be an unconstitutionally disproportionate punishment for crimes committed by individuals under twenty-one (21) years of age. Accordingly, Kentucky's death penalty statute is unconstitutional insofar as it permits capital punishment for offenders under twenty-one (21) at the time of their offense.

So ORDERED this the 6 day of September, 2017.

JUDGE ERNESTO SCORSONE
FAYETTE CIRCUIT COURT

CERTIFICATE OF SERVICE

The following is to certify that the foregoing was served this the 7th day of September 2017, by mailing same first class copy, postage prepaid, to the following:

Andrea Mattingly Williams
Commonwealth Attorney
116 North Upper Street, Suite 300
Lexington, KY 40507

Michael J. Bufkin
Assistant Public Advocate
487 Frankfort Road, Suite 2
Shelbyville, KY 40065

Brent Cox
Cox Attorney PLLC
107 Church Street
P.O. Box 1077
Lexington, KY 40588

EXHIBIT 53

STATE OF FLORIDA

UNIFORM COMMITMENT TO CUSTODY OF DEPARTMENT OF CORRECTIONS

The Circuit Court of ESCAMBIA County in the WINTER Term, 19 94, in the case of

State of Florida

vs

ERIC SCOTT BRANCH	93-870CFA3-01
Defendant	CASE NUMBER

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA, TO THE SHERIFF OF SAID COUNTY AND THE DEPARTMENT OF CORRECTIONS OF SAID STATE, GREETING:

The above named defendant having been duly charged with the offense specified herein in the above styled Court, and he/she having been duly convicted and adjudged guilty of and sentenced for said offense by said Court, as appears from the attached certified copies of Indictment/Information, Judgment and Sentence, and Felony Disposition which are hereby made parts hereof;

Now therefore, this is to command you, the said Sheriff, to take and keep and, within a reasonable time after receiving this commitment, safely deliver the said defendant, together with any pertinent Investigation Report prepared in this case, into the custody of the Department of Corrections of the State of Florida; and this is to command you, the said Department of Corrections, by and through your Secretary, Regional Directors, Superintendents, and other officials, to keep and safely imprison the said defendant for the term of said sentence in the institution in the state correctional system to which you, the said Department of Corrections, may cause the said defendant to be conveyed or thereafter transferred. And these presents shall be your authority for the same. Herein fail not.

WITNESS the Honorable EDWARD P. NICKINSON
Judge of said Court, as also ERNIE LEE MAGAHA
Clerk, and the Seal thereof, this the 3rd day of
MAY, 19 94
(Month)
ERNIE LEE MAGAHA, CLERK
BY: Marcia Schaefer

Bran

_____ Probation Violator

_____ Community Control Violator

_____ Retrial

_____ Resentence

MAY 3 2 49 PM '94

In the Circuit Court, FIRST Judicial Circui

in and for ESCAMBIA County, Florid

Division F

Case Number 93-870CFA3-01

ate of Florida

ERIC SCOTT BRANCH

efendant

OR Bk3583 Pg0982
INSTRUMENT 00131430

JUDGMENT

The defendant, ERIC SCOTT BRANCH, being personally before this cou
presented by J. Allbritton, the attorney of record, and the sta
presented by M. Patterson, and having

X been tried and found guilty by jury ~~by court~~ of the following crime(s)

___ entered a plea of guilty to the following crime(s)

___ entered a plea of nolo contendere to the following crime(s)

Count	Crime	Offense Statute Number(s)	Degree of Crime	Case Number	OBTS Numbe
1	FIRST DEGREE MURDER	782.04	CF		
2	SEXUAL BATTERY	794.011(3)	LF		
3	GRAND THEFT AUTO	812.014(2)(c)(4)	F3		

X and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT defendant is hereby ADJUDICATED GUILTY of the above crime(s).

X and pursuant to section 943.325, Florida Statutes, having been convicted of attempts or offenses relating sexual battery (ch. 794) or lewd and lascivious conduct (ch. 800) the defendant shall be required to subm blood specimens.

___ and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

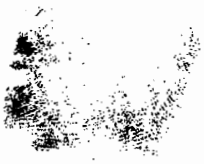
te of Florida

OR Bk3583 Pg0983
INSTRUMENT 00131430

RIC SCOTT BRANCH
fendant

Case Number 93-870

FINGERPRINTS OF DEFENDANT

Right Thumb	2. Right Index	3. Right Middle	4. Right Ring	5. Right Little
. Left Thumb	7. Left Index	8. Left Middle	9. Left Ring	10. Left Little
				

Fingerprints taken by: Deb. Alameda #258 — Name
Deputy Sheriff — Title

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant, ERIC SCOTT BRANCH, and that they were placed thereon by the defe in my presence in open court this date.

DONE AND ORDERED in open court in ESCAMBIA County, Flori this 3rd day of MAY, 19 94.

Judge

fendant ERIC SCOTT BRANCH Case # 93-870 OBTS #_____

SENTENCE

OR Bk3583 Pg0984
INSTRUMENT 00131430

(As to Count 1)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, _____ _____, and having been adjudicated guilty herein, and the court having given the defendant opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should no sentenced as provided by law, and no cause being shown

(Check one if applicable.)

___ and the Court having on _____ (date) deferred imposition of sentence until this date

___ and the Court having previously entered a judgement in this case on _____ (date) now resentences the defendant

___ and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

Is The Sentence Of The Court that:

_ The defendant pay a fine of $_____, pursuant to section 775.083, Florida Statutes, plus $_____ as the 5% surcharge required by section 960.25, Florida Statutes.

(The defendant is hereby committed to the custody of the Department of Corrections.

_ The defendant is hereby committed to the custody of the Sheriff of Escambia County, Florida.

_ The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

o Be Imprisoned (Check one; unmarked sections are inapplicable.):

_ For a term of natural life.

(For a term of DEATH PENALTY IMPOSED

_ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

"split" sentence, complete the appropriate paragraph.

_ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order enter herein.

_ However, after serving a period of _____ imprisonment in _____, the balanc of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period _____ under supervision of the Department of Corrections according the terms and conditions of probation/community control set forth in a separate order entered herein.

n the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied befo ne defendant begins service of supervision terms.

fendant ERIC SCOTT BRANCH Case # 93-870 OBTS #_____

SENTENCE

OR BK3583 Pg0985
INSTRUMENT 00131430

(As to Count 2)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, _____ _____, and having been adjudicated guilty herein, and the court having given the defendant opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should no sentenced as provided by law, and no cause being shown

(Check one if applicable.)

___ and the Court having on _____ deferred imposition of sentence until this date
(date)

___ and the Court having previously entered a judgement in this case on _____ now resentences the defendant
(date)

___ and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

Is The Sentence Of The Court that:

_ The defendant pay a fine of $_____, pursuant to section 775.083, Florida Statutes, plus $_____ as the 5% surcharge required by section 960.25, Florida Statutes.

_ The defendant is hereby committed to the custody of the Department of Corrections.

_ The defendant is hereby committed to the custody of the Sheriff of Escambia County, Florida.

_ The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

o Be Imprisoned (Check one; unmarked sections are inapplicable.):

_ For a term of natural life.

For a term of LIFE IMPRISONMENT CONSECUTIVE TO CT. 1

_ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

"split" sentence, complete the appropriate paragraph.

_ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order enter herein.

_ However, after serving a period of _____ imprisonment in _____, the balanc of the sentence shall be suspended and the defendant shall be placed on probation/community control for a perioc _____ under supervision of the Department of Corrections according the terms and conditions of probation/community control set forth in a separate order entered herein.

n the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied befo he defendant begins service of supervision terms.

Defendant ERIC SCOTT BRANCH Case # 93-870 OBTS #

OR Bk3583 Pg0986
INSTRUMENT 00131430

SENTENCE

(As to Count 3)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, _____ _____, and having been adjudicated guilty herein, and the court having given the defendant opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not sentenced as provided by law, and no cause being shown

(Check one if applicable.)

___ and the Court having on _____ (date) deferred imposition of sentence until this date

___ and the Court having previously entered a judgement in this case on _____ (date) now resentences the defendant

___ and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

Is The Sentence Of The Court that:

_ The defendant pay a fine of $_____, pursuant to section 775.083, Florida Statutes, plus $_____ as the 5% surcharge required by section 960.25, Florida Statutes.

X The defendant is hereby committed to the custody of the Department of Corrections.

_ The defendant is hereby committed to the custody of the Sheriff of Escambia County, Florida.

_ The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

o Be Imprisoned (Check one; unmarked sections are inapplicable.):

_ For a term of natural life.

X For a term of 5 years, consecutive to Ct. 2

_ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

"split" sentence, complete the appropriate paragraph.

_ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order enter herein.

_ However, after serving a period of _____ imprisonment in _____, the balanc of the sentence shall be suspended and the defendant shall be placed on probation/community control for a perioc _____ under supervision of the Department of Corrections according the terms and conditions of probation/community control set forth in a separate order entered herein.

n the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied befo he defendant begins service of supervision terms.

'endant ERIC SCOTT BRANCH Case Number 93-87

SPECIAL PROVISIONS

OR Bk3583 Pg0987
INSTRUMENT 00131430

(As to Count 3)

appropriate notation, the following provisions apply to the sentence imposed:

andatory/Minimum Provisions:

'earm	___	It is further ordered that the 3-year minimum imprisonment provisions of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.
'ug Trafficking	___	It is further ordered that the _____ mandatory minimum imprisonmen provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.
)ntrolled Substance ithin 1,000 Feet of School	___	It is further ordered that the 3-year minimum imprisonment provisions of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in thi count.
abitual Felony Offender	___	The defendant is adjudicated a habitual felony offender and has been sentenced tc extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or sta on the record in open court.
.abitual Violent elony Offender	___	The defendant is adjudicated a habitual violent felony offender and has been sent to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served pri to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.
.aw Enforcement 'rotection Act	___	It is further ordered that the defendant shall serve a minimum of _____ years befc release in accordance with section 775.0823, Florida Statutes.
:apital Offense	___	It is further ordered that the defendant shall serve no less than 25 years in accord with the provisions of section 775.082(1), Florida Statutes.
;hort-Barreled Rifle, ;hotgun, Machine Gun	___	It is further ordered that the 5-year minimum provisions of section 790.221(2), F Statutes, are hereby imposed for the sentence specified in this count.
:ontinuing :riminal Enterprise	___	It is further ordered that the 25-year minimum sentence provisions of section 89 Florida Statutes, are hereby imposed for the sentence specified in this count.

Other Provisions:

Retention of Jurisdiction	___	The court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983).
Jail Credit	X	It is further ordered that the defendant shall be allowed a total of 328 as credit for time incarcerated before imposition of this sentence.
Prison Credit	___	It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.

Defendant ERIC SCOTT BRA Case Number 93-8 OR Bk3583 Pg0988 INSTRUMENT 00131430

Other Provisions, continued:

Consecutive/Concurrent As To Other Counts ___ It is further ordered that the sentence imposed for this count shall run (check one) ____ consecutive to ____ concurrent with the sentence set forth in count _____ of this case.

Consecutive/Concurrent As To Other Convictions ___ It is further ordered that the composite term of all sentences imposed for the cou specified in this order shall run (check one) ____ consecutive to ____ concurrent with the following: (check one)

___ any active sentence being served.

___ specific sentences: _____

In the event the above sentence is to the Department of Corrections, the Sheriff of ESCAMBIA County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facilit designated by the department together with a copy of this judgment and sentence and any other documents specified b Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal w 30 days from this date with the clerk of this court and the defendant's right to the assistance of counsel in taking the a at the expense of the State on showing of indigency.

In imposing the above sentence, the court further recommends _____

DONE AND ORDERED in open court at ESCAMBIA County, Flo this 3rd day of MAY, 19 94.

Judge

Instrument 00131430
Filed and recorded in the public records
MAY 27, 1994
at 02:58 P.M.
in Book and Page noted above or hereon
and record verified
JOE A. FLOWERS, COMPTROLLER
Escambia County, Florida

EXHIBIT 54

Under strict embargo until 00:01 BST (07.01 HKT/ 23:01 GMT) 11 April 2017

AMNESTY INTERNATIONAL GLOBAL REPORT

DEATH SENTENCES AND EXECUTIONS 2016

AMNESTY INTERNATIONAL

Under strict embargo until 00:01 BST (07.01 HKT/ 23:01 GMT) 11 April 2017

Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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AMNESTY INTERNATIONAL

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Insert: Secret executions in Viet Nam
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Under strict embargo until 00:01 BST (07.01 HKT/ 23:01 GMT) 11 April 2017

Note on Amnesty International's figures on the use of the death penalty

This report covers the judicial use of the death penalty for the period January to December 2016. As in previous years, information is collected from a variety of sources, including: official figures; information from individuals sentenced to death and their families and representatives; reporting by other civil society organizations; and media reports. Amnesty International reports only on executions, death sentences and other aspects of the use of the death penalty, such as commutations and exonerations, where there is reasonable confirmation. In many countries governments do not publish information on their use of the death penalty. In Belarus, China and Viet Nam, data on the use of the death penalty is classified as a state secret. During 2016 little or no information was available on some countries – in particular Laos, North Korea (the Democratic People's Republic of Korea), Syria and Yemen – due to restrictive state practice and/or armed conflict.

Therefore, with only a few exceptions, Amnesty International's figures on the use of the death penalty are minimum figures. The true figures are likely to be higher. Where the organization obtains fuller information on a specific country in a given year this is noted in the report.

In 2009 Amnesty International stopped publishing its estimated figures on the use of the death penalty in China. Amnesty International always made clear that the figures it was able to publish on China were significantly lower than the reality, because of the restrictions on access to information. Amnesty International's decision to stop publishing data reflected concerns about how the Chinese authorities misrepresented Amnesty International's numbers. Since 2009 the organization challenged China to publish information on the use of the death penalty. China has yet to publish any figures on the death penalty. However, available information indicates that thousands of people are executed and sentenced to death in China each year.

Where Amnesty International receives and is able to verify new information after publication of this report, it updates its figures online at www.amnesty.org/deathpenalty

In tables and lists, where "+" appears after a figure next to the name of a country – for instance, Afghanistan (4+) – it means that Amnesty International confirmed 4 executions, death sentences or persons under sentence of death in Afghanistan but believes that there were more than 4. Where "+" appears after a country name without a figure – for instance, Iran (+) – it means that Amnesty International has corroborated executions, death sentences or persons under sentence of death (more than one) in that country but had insufficient information to provide a credible minimum figure. When calculating global and regional totals, "+" has been counted as 2, including for China.

Amnesty International opposes the death penalty in all cases without exception regardless of the nature or circumstances of the crime; guilt, innocence or other characteristics of the individual; or the method used by the state to carry out the execution. The organization campaigns for total abolition of capital punishment.

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THE USE OF THE DEATH PENALTY IN 2016

"Revenge must never be confused with justice, and the death penalty only serves to compound injustice"

Zeid Ra'ad Al Hussein, UN High Commissioner for Human Rights, 9 August 2016[1]

GLOBAL FIGURES

Amnesty International's global monitoring of the use of the death penalty points to an overall decrease in states' resort to this punishment in 2016.

The total number of executions decreased from the historical high figure reported in 2015. The number of countries that imposed death sentences and the number of countries that carried out executions– were also noticeably lower. However, the figure of recorded new death sentences increased compared to the previous year, exceeding the previous highest total recorded in 2014.

Two countries abolished the death penalty for all crimes and one country abolished it for ordinary crimes only. Several others took steps to restrict their use of this punishment, confirming that, despite regressive moves in some countries, the global trend remained towards the abolition of the death penalty as the ultimate cruel, inhuman and degrading punishment.

---

[1] "Zeid urges Maldives to retain long-standing moratorium on death penalty", Office of the UN High Commissioner for Human Rights, 9 August 2016, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20353&LangID=E#sthash.vC3qeUDV.dpuf

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EXECUTIONS

Amnesty International recorded a 37% decrease in the number of executions carried out globally in 2016 as against the previous year. At least 1,032 people were executed – 602 fewer than in 2015 when the organization recorded the highest number of executions in a single year since 1989.[2] Despite the significant decrease, the overall number of executions in 2016 remained higher than the average recorded for the previous decade. These numbers do not include the thousands of executions carried out in China, where data on the use of the death penalty remained classified as a state secret.[3]

Iran alone accounted for 55% of all recorded executions. Together with Saudi Arabia, Iraq and Pakistan it carried out 87% of the global total. Iraq more than tripled its executions and Egypt and Bangladesh doubled theirs. New information about the number of executions carried out in Malaysia and particularly in Viet Nam provided an insight into the magnitude and true extent of their use of the death penalty.

The overall number of executions carried out in Iran, however, dropped by 42% (from at least 977 to at least 567) compared to the previous year. A significant decrease in the implementation of death sentences was also recorded in Pakistan, by 73%. Executions also noticeably fell in Indonesia, Somalia and the USA. For the first time since 2006, the USA did not feature among the world's top five executioners, due partly to litigation and challenges in sourcing chemicals used in lethal injection procedures.

Amnesty International recorded executions in 23 countries, two fewer than in 2015. Belarus and authorities within the State of Palestine resumed executions in 2016 after a year's hiatus, while Botswana and Nigeria carried out their first executions since 2013. In 2016, Amnesty International did not record executions in six countries – Chad, India, Jordan, Oman, United Arab Emirates and Yemen – that carried out executions in 2015. The organization was unable to confirm whether judicial executions took place in Libya, Syria and Yemen.

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[2] Until 2015, Amnesty International presented in its annual reports on the global use of the death penalty two figures for executions in Iran: the figure of officially announced executions, which the organization used as its main figure in infographics and short text; and the figure relating to those executions that were not officially announced. From 2016 onward, Amnesty International has been using the sum of officially announced and non-officially announced executions as its main figure.

[3] In 2009 Amnesty International stopped publishing its estimated figures on the use of the death penalty in China, where data on capital punishment is considered a state secret. Instead, the organization has challenged the Chinese authorities to prove their claims that they are achieving their goal of reducing the application of the death penalty by publishing the figures themselves. (See page 19 in this report and Amnesty International's report "China's deadly secrets" (ASA 17/5849/2017), April 2017).

EXECUTIONS RECORDED GLOBALLY IN 2016

Afghanistan (6), Bangladesh (10), Belarus (4+), Botswana (1), China (+), Egypt (44+), Indonesia (4), Iran (567+), Iraq (88+), Japan (3), Malaysia (9), Nigeria (3), North Korea (+), Pakistan (87+), Palestine (State of) (3: Hamas authorities, Gaza), Saudi Arabia (154+), Singapore (4), Somalia (14: Puntland 1, Somaliland 6, Federal Government of Somalia 7), South Sudan (+), Sudan (2), Taiwan (1), USA (20), Viet Nam (+).

The following methods of execution were used: beheading (Saudi Arabia); hanging (Afghanistan, Bangladesh, Botswana, Egypt, Iran, Iraq, Japan, Malaysia, Nigeria, Pakistan, Palestine (State of), Singapore, South Sudan, Sudan); lethal injection (China, USA, Viet Nam); and shooting (Belarus, China, Indonesia, North Korea (the Democratic People's Republic of Korea), Palestine (State of), Saudi Arabia, Somalia, Taiwan). In line with previous years, Amnesty International did not receive any reports of judicial executions by stoning.

DEATH SENTENCES

Amnesty International recorded that 3,117 people were sentenced to death in 55 countries for 2016. The overall number of death sentences constitutes a significant increase on the total for 2015 (1,998) and exceeds the record-high total that the organization reported in 2014 (2,466).

Amnesty International recorded significantly higher numbers of death sentences imposed in Bangladesh, Cameroon, Democratic Republic of the Congo, India, Indonesia, Iraq, Lebanon, Nigeria, Pakistan, Somalia, Thailand and Zambia than in the previous year; however, decreases were particularly noticeable in Egypt and the USA. For some of these countries, such as Thailand, the increase is due to the fact that the authorities provided Amnesty International with detailed information on their use of the death penalty in 2016. Amnesty International's own ability to obtain credible data on some other countries may have also partly contributed to a higher overall figure.

The number of countries imposing death sentences decreased from 61 in 2015 to 55 in 2016, the same as in 2014.

DEATH SENTENCES RECORDED GLOBALLY IN 2016

Afghanistan (4+), Algeria (50), Bangladesh (245+), Barbados (3), Belarus (4), Cameroon (160+), China (+), Democratic Republic of the Congo (93+), Egypt (237+), Ethiopia (2), Ghana (17), Guyana (1), India (136), Indonesia (60+), Iran (+), Iraq (145+), Japan (3), Jordan (13), Kazakhstan (1), Kenya (24+), Kuwait (49), Laos (3+), Lebanon (126), Liberia (5+), Libya (1+), Malawi (1), Malaysia (36+), Maldives (2), Mali (30), Morocco/Western Sahara (6), Myanmar (3+), Niger (11), Nigeria (527), North Korea (+), Pakistan (360+), Palestine (State of) (21: Hamas authorities, Gaza), Papua New Guinea (1), Qatar (4), Saudi Arabia (40+), Sierra Leone (5), Singapore (7+), Somalia (60: Puntland 45; Somaliland 8; Federal Government of Somalia 7), South Sudan (+), Sri Lanka (79+), Sudan (21+), Taiwan (2), Tanzania (19), Thailand (216), Trinidad and Tobago (2), Tunisia (44), United Arab Emirates (26), USA (32), Viet Nam (63+), Zambia (101), Zimbabwe (8).

Death sentences were imposed in Barbados, Guyana, Kazakhstan, Liberia, Papua New Guinea – countries where Amnesty International did not record any in 2015. There was no record of death sentences in 2016 in countries that imposed them in 2015 – Bahrain, Botswana, Brunei Darussalam, Burkina Faso, Chad, Gambia, Mauritania, Mongolia, Syria, Uganda and Yemen.

At least 18,848 people were known to be under sentence of death worldwide at the end of 2016.

COMMUTATIONS, PARDONS AND EXONERATIONS

Amnesty International recorded commutations or pardons of death sentences in 28 countries: Afghanistan, Antigua and Barbuda, Bahamas, Bangladesh, China, Egypt, Ghana, India, Indonesia, Kenya, Kuwait, Malaysia, Mauritania, Morocco/Western Sahara, Myanmar, Niger, Nigeria, Pakistan, Qatar, Saudi Arabia, Singapore, Sri Lanka, Sudan, Taiwan, Thailand, United Arab Emirates, Viet Nam and Zimbabwe.[4]

Amnesty International recorded 60 exonerations of prisoners under sentence of death in 9 countries: Bangladesh (4), China (5), Ghana (1), Kuwait (5), Mauritania (1), Nigeria (32), Sudan (9), Taiwan (1) and Viet Nam (2).[5]

HOW THE DEATH PENALTY WAS USED IN 2016

Public executions were carried out in Iran (at least 33) and North Korea.

Amnesty International received reports indicating that at least two people in Iran were executed for crimes committed when they were **under 18 years of age**. Iran also sentenced other juvenile offenders to death in 2016. Amnesty International believed that juvenile offenders convicted in previous years remained on death row in Bangladesh, Indonesia, Iran, Maldives, Nigeria, Pakistan and Papua New Guinea. The imposition and execution of the

[4] Commutation is the process by which a death sentence is exchanged for a less severe sentence such as terms of imprisonment, often by the judiciary on appeal, but sometimes also by the executive. A pardon is granted when the convicted individual is completely exempted from further punishment.

[5] Exoneration is the process whereby, after sentencing and the conclusion of the appeals process, the convicted person is later cleared from blame or acquitted of the criminal charge, and therefore is regarded as innocent in the eyes of the law.

death penalty against people who were aged under 18 when the crime was committed is a violation of international law. Often the actual age of the offender is in dispute because no clear proof of age, such as a certificate of registration at birth, exists.[6]

People with **mental or intellectual disabilities** were executed or remained under sentence of death in several countries including Indonesia, Japan, Maldives, Pakistan and the USA.

In the majority of countries where people were sentenced to death or executed, the death penalty was imposed after proceedings that **did not meet international fair trial standards.** In 2016 Amnesty International raised particular concerns in relation to court proceedings in Bangladesh, Belarus, China, Egypt, Indonesia, Iran, Iraq, North Korea, Pakistan, Saudi Arabia and Viet Nam. In several countries – including Bahrain, China, Iran, Iraq, North Korea and Saudi Arabia – some convictions and death sentences were based on "confessions" that may have been extracted through **torture or other ill-treatment.** In Iran and Iraq some of these "confessions" were broadcast on television before the trial took place, further breaching the defendant's right to presumption of innocence.

Mandatory death sentences continued to be imposed in Barbados, Ghana, Iran, Jordan, Malaysia, Maldives, Myanmar, Nigeria, Pakistan, Saudi Arabia, Singapore and Trinidad and Tobago. Mandatory death sentences are inconsistent with human rights protections because they do not allow "any possibility of taking into account the defendant's personal circumstances or the circumstances of the particular offence".[7]

Military courts sentenced civilians to death in Cameroon, Democratic Republic of the Congo, Egypt and Pakistan. Special courts whose proceedings did not meet international fair trial standards imposed death sentences in Bangladesh.

People continued to be sentenced to death or executed for **crimes that did not involve intentional killing**, and therefore did not meet the threshold of "most serious crimes", as prescribed by Article 6 of the International Covenant on Civil and Political Rights. The death penalty was imposed or implemented for drug-related offences in a number of countries, including China, India, Indonesia, Iran, Kuwait, Laos, Malaysia, Saudi Arabia, Singapore, Sri Lanka, Thailand, United Arab Emirates and Viet Nam.

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[6] Governments should apply a full range of appropriate criteria in cases where age is in dispute. Good practice in assessing age includes drawing on knowledge of physical, psychological and social development. Each of these criteria should be applied in a way that gives the benefit of the doubt in disputed cases so that the individual is treated as a juvenile offender, and accordingly should ensure that the death penalty is not applied. Such an approach is consistent with the principle that the best interests of the child shall be a primary consideration in all actions concerning children, as required by Article 3(1) of the UN Convention on the Rights of the Child.

[7] UN Human Rights Committee, *Pagdayawon Rolando v Philippines*, Views of the Human Rights Committee, Communication No. 1110/2002, UN doc. CCPR/C/82/D/1110/2002, 8 December 2004, para.5.2

Other capital crimes which did not meet the standard of "most serious crimes" but for which the death penalty was imposed or executions carried out in 2016 included: spying (Saudi Arabia); kidnapping (Saudi Arabia); rape (Saudi Arabia); and "blasphemy" or "insulting the prophet of Islam"(Iran, Pakistan).

Finally, different forms of "treason", "acts against national security", "collaboration" with a foreign entity, "espionage", "questioning the leader's policies", participation in "insurrectional movement and terrorism" and other "**crimes against the state**", whether or not they led to a loss of life, were punished with death sentences in China, Iran, Lebanon, North Korea, Pakistan, Palestine (State of) (in Gaza), and Saudi Arabia.

THE DEATH PENALTY AND INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS IN 2016

Of the 35 member states of the Organization of American States, only the USA carried out executions.

Of the 57 member states of the Organization for Security and Co-operation in Europe, only Belarus and the USA carried out executions.

Six of the 54 member states of the African Union carried out executions: Botswana, Egypt, Nigeria, Somalia, South Sudan and Sudan.

Six of the 21 member states of the League of Arab States were known to have carried out executions: Egypt, Iraq, Palestine, Saudi Arabia, Somalia and Sudan.[8]

Four of the 10 member states of the Association of Southeast Asian Nations carried out executions: Indonesia, Malaysia, Singapore and Viet Nam.

Six of the 53 member states of the Commonwealth were known to have carried out executions: Bangladesh, Botswana, Malaysia, Nigeria, Pakistan and Singapore.

Three of the member and observer states of the Organisation Internationale de la Francophonie were known to have carried out executions: Chad, Egypt and Viet Nam.

Japan and the USA were the only countries in the G8 to carry out executions.

172 (89%) of the 193 member states of the UN were execution-free in 2016.

Calls for the resumption of executions as a crime control measure were recorded in all regions of the world, despite the lack of convincing evidence that the death penalty has a unique deterrent effect. In particular, the governments of the Philippines and Turkey pledged to reintroduce the death penalty as a measure to tackle crime and threats to national security,

[8] Syria's membership to the League of Arab States was suspended because of the violence used to suppress uprisings. Due to the ongoing conflict, Amnesty International could not confirm any information it received on the use of the death penalty in Syria in 2016.

with the House of Representatives of the Philippines beginning its consideration of a bill to that effect in November. The move would set both countries against their obligations as states parties to treaties on the abolition of the death penalty. Maldives also took steps to resume executions after more than six decades without carrying out any.

Against international standards, Bangladesh expanded the scope of the death penalty to make some offences relating to mutiny punishable by death; India amended its laws to introduce the death penalty for hijacking when it results into death; South Korea (the Republic of Korea) made the death penalty a possible punishment for some terrorism-related offences.

POSITIVE DEVELOPMENTS

Two more countries abolished the death penalty for all crimes in 2016. The Constitutional Court of Benin declared the death penalty unconstitutional on 21 January. A revised Criminal Code which does not include the death penalty among permissible punishments came into force in Nauru on 12 May. Furthermore, on 26 October the President of Guinea promulgated the revised Criminal Code which abolished the death penalty for ordinary crimes only.

Significant steps towards abolition were also taken in Chad and Guatemala. In December the National Assembly of Chad adopted the revised Penal Code which abolished the death penalty except for "terrorism". The Constitutional Court of Guatemala found on 22 March that provisions in the Penal Code requiring the imposition of the death penalty for certain circumstances of aggravated murder were unconstitutional. Similarly, in the USA the Delaware Supreme Court ruled that capital sentencing statute in the state was unconstitutional, abolishing the death penalty.

On 14 and 21 September, respectively, Togo and the Dominican Republic acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

The Congress of Guatemala considered a bill to abolish the death penalty. Myanmar abolished the death penalty under the 1950 Emergency Provisions Act and Thailand abolished the mandatory death penalty for selling drugs.

Two countries in the Americas region – Antigua and Barbuda and Bahamas – commuted the death sentences of the last remaining people on death row.

On 19 December the UN General Assembly adopted its sixth resolution on a moratorium on the use of the death penalty, with strong cross-regional support.[9] The resolution, which was proposed by 89 UN member states led by Argentina and Mongolia, carries considerable political weight and unequivocally frames the death penalty as a global human rights

[9] UN General Assembly, https://www.un.org/press/en/2016/ga11879.doc.htm, Moratorium on the use of the death penalty, Resolution adopted by the General Assembly on 19 December 2016, UN doc. A/RES/71/187. More information appears in Annex IV in this report. The text of the resolution is available from this link: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/187

concern. In addition to its central call on the establishment of a moratorium on executions with a view to abolishing the death penalty, the instrument also makes other strong calls on countries that still use the death penalty, for example to reduce the number of offences for which this punishment can be imposed and to increase the transparency in its use, including by making publicly available information on any scheduled executions and by following fair and transparent clemency procedures.

A total of 117 of the 193 UN member states voted in favour of the proposal, while only 40 voted against it and 31 abstained. Positive changes in the voting came from Guinea, Malawi, Namibia, Solomon Islands, Sri Lanka and Swaziland, which all voted in favour of the resolution. As a further positive sign, Zimbabwe moved from opposition to abstention. Regrettably, Equatorial Guinea, Niger, Philippines and Seychelles went from a vote in favour to abstention, while Burundi and South Sudan moved from vote in favour to vote against. Maldives moved from abstention to vote against.

Under strict embargo until 00:01 BST (07.01 HKT/ 23:01 GMT) 11 April 2017

REGIONAL OVERVIEWS

AMERICAS

REGIONAL TRENDS

- The USA remained the only country to carry out executions in the Americas region, for the 8th consecutive year.
- No new death sentence was imposed and no one was under sentence of death in eight out of 15 countries that still retain the death penalty in the region in 2016.
- The number of executions and death sentences in the USA continued to decrease. For the first time since 2006, it did not feature among the top five global executioners.
- The US state of Delaware abolished the death penalty in August; the electorate of the state of Nebraska voted to keep it in November.

COUNTRY	2016 RECORDED EXECUTIONS	2016 RECORDED DEATH SENTENCES	PEOPLE KNOWN TO BE UNDER SENTENCE OF DEATH AT THE END OF 2016
Antigua and Barbuda	0	0	0
Bahamas	0	0	0
Barbados	0	3	13
Belize	0	0	0
Cuba	0	0	0
Dominica	0	0	0
Grenada	0	0	1
Guatemala	0	0	0
Guyana	0	1	23
Jamaica	0	0	0
Saint Kitts and Nevis	0	0	1
Saint Lucia	0	0	0

Saint Vincent and the Grenadines	0	0	1
Trinidad and Tobago	0	2	33
USA[10]	20 in five states: Alabama (2) Florida (1) Georgia (9) Missouri(1) Texas (7)	32 in 13 states: Alabama (3) Arizona (1) Arkansas (1) California (9) Florida (4) Kansas (1) Nevada (1) North Carolina (1) Ohio (4) Oklahoma (1) Oregon (1) Pennsylvania (1) Texas (4)	2,832, including 748 in California 383 in Florida 242 in Texas 183 in Alabama 174 in Pennsylvania

The number of executions (20) and death sentences (32) recorded in the USA in 2016 continued to decline, reaching the lowest number recorded in any year since 1991 and 1973, respectively.

Executions declined by 8 (29%) compared to 2015. The number of states implementing death sentences in 2016 also decreased by one compared to the previous year. The decrease in both figures was in part linked to legal challenges that resulted in the revision of lethal injection protocols or problems faced by states in obtaining lethal injection chemicals.[11]

The number of executions carried out in Georgia almost doubled compared to 2015 (from 5 to 9), while the figure was almost halved in Texas (from 13 to 7). Together these two states were responsible for the 80% of all executions in the USA during the year.

The number of death sentences imposed during the year in the USA drastically fell from 52 in 2015 to 32 in 2016 (38% decrease).

[10] Figures based on information published by Departments of Corrections, courts and media in different US states. More information is also available from the Death Penalty Information Center at www.deathpenaltyinfo.org/

[11] Executions in Oklahoma and Ohio remained on hold throughout 2016 pending litigation on the state's lethal injection protocol.

THE DEATH PENALTY IN THE USA

A total of 19 states have abolished the death penalty, including six states that have abolished it since 2007. Currently, the death penalty is retained in 31 states. Of these, 12 states – Arkansas, California, Colorado, Kansas, Montana, Nebraska, Nevada, New Hampshire, North Carolina, Oregon, Pennsylvania and Wyoming – have not carried out executions for at least 10 years. The governors of Colorado, Oregon, Pennsylvania and Washington states have established official moratoriums on executions. The federal authorities have not carried out any executions since 2003 and the military authorities since 1961.

Elsewhere in the Americas region, there was significant progress. The death penalty for aggravated murder was found unconstitutional in Guatemala, while a draft law to fully abolish this punishment advanced at Congress. Two more countries in the Caribbean – Antigua and Barbuda and Bahamas – were not holding anyone on death row at the end of the year for the first time.

Only three countries imposed death sentences during the year, all for murder: Barbados, Guyana and Trinidad and Tobago. A total of 72 people remained under sentence of death in six countries, almost half of them in Trinidad and Tobago.

In a judgment with implications for several of those under sentence to death in the Caribbean, the UK Supreme Court held jointly with the Judicial Committee of the Privy Council in February that, in order for a secondary participant to be guilty of murder in so-called "joint enterprise" cases, it must be proved that they *intended* the killing or grievous harm to happen in the course of an offence and not simply that they foresaw this possibility.[12]

NOTABLE COUNTRY DEVELOPMENTS

The Eastern Caribbean Court reviewed the cases of all prisoners under sentence of death in **Antigua and Barbuda** in November, resentencing the prisoners to terms of imprisonment.

The last remaining death sentence in the **Bahamas** was quashed and the case sent for retrial in October, after the Supreme Court found that the defendant's right to a fair trial could have been undermined by adverse pre-trial publicity and misconduct in the jury and by his defence lawyer.

[12] Supreme Court and Judicial Committee of the Privy Council, *R v Jogee and Ruddock v The Queen* (Jamaica), [2016] UKSC 8 and [2016 UKPC 7, delivered on 18 February 2016

The courts of **Barbados** imposed three new mandatory death sentences for murder. Draft legislation, which the government had introduced in Parliament in November 2014 to abolish the mandatory death penalty and require psychiatric evaluations for all those charged with murder, remained pending at the end of the year.[13]

On 22 March the Constitutional Court of **Guatemala** declared that provisions in Article 132 of the Penal Code, which provides for the mandatory death penalty for certain circumstances of aggravated murder, were unconstitutional.[14]

Meanwhile, two draft laws relating to the death penalty were introduced in the Guatemalan Congress during the year. Draft law 5038, introduced in April, aimed at facilitating the resumption of execution, while draft law 5100 was introduced in July to abolish the death penalty and received joint approval by three key parliamentary committees. Both draft laws were pending before Congress at the end of the year.

One new death sentence was imposed in **Guyana**; 23 people remained on death row at the end of the year. The issue of the abolition of the death penalty was repeatedly debated during the year; President David Granger told the media that he had "no intention of executing anyone".[15]

Two new mandatory death sentences were imposed for murder in **Trinidad and Tobago**, where 33 people remained on death row at the end of 2016. Faced with continuously high murder rates, the government continued to support calls for the resumption of executions. It suggested that it was tracking appeals in capital cases to implement the death sentences once finalized.[16]

A number of very notable court decisions helped to shape the use of the death penalty in the **USA** in 2016. On 12 January, in *Hurst v. Florida*, the US Supreme Court found that Florida's capital sentencing statute was unconstitutional because it gave juries only an advisory say in which defendants should be sentenced to death.[17] The *Hurst* decision put a halt to executions, as well as to many capital trials, in Florida while its scope and effect were litigated. In December, the state Supreme Court issued a decision that indicated that the

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[13] Criminal Procedure (Amendment) Bill, 2014; Offences Against the Person (Amendment) Bill, 2014; and Constitution (Amendment) Bill, 2014. Of these Bills, only the Offences Against the Person (Amendment) Bill, 2014, advanced to the second reading stage at the House of Assembly on 27 January 2015.

[14] Constitutional Court of Guatemala, judgment 1097-2015, delivered on 22 March 2016

[15] Guyana Times, "'I have no intention of executing anyone' – President Granger", 20 June 2016, available at http://guyanatimesgy.com/i-have-no-intention-of-executing-anyone-president-granger/

[16] *Trinidad Express*, "32 on death row, but none can hang", 13 December 2016, available at www.trinidadexpress.com/20161213/news/32-on-death-row-but-no-one-can-hang

[17] *Hurst v. Florida*, Certiorari to the Supreme Court of Florida, No. 14–7505, 577 U.S. (2016), decided on 12 January 2016

Hurst ruling would apply retroactively to more than 200 death row prisoners.

The *Hurst* ruling then impacted Delaware, where on 2 August the state Supreme Court ruled that the state sentencing law was unconstitutional, as laid out in the *Hurst* judgment.[18] In December, the Court ruled that its decision applied retroactively, and indicated that the 13 prisoners on death row should be resentenced to life imprisonment.[19]

On 12 December 2016, the Supreme Court of California issued a stay in the implementation of Proposition 66, which aims at lessening the time between death sentencing and execution in the state and which was adopted in a November referendum by a narrow margin. On 28 December the state's Office of Administrative Law put on hold the Department of Corrections and Rehabilitation's new one-drug lethal injection protocol, which could have allowed for the resumption of executions in the state. The last execution in California was carried out in 2006; 748 people remained on death row.

Other ballot initiatives were also decided in favour of the death penalty at the November US election. By a margin of 61 to 39%, Nebraska voters opted in favour of Proposal 426 to retain the death penalty.[20] Meanwhile, a referendum measure adopted in Oklahoma amended the state Constitution to authorize any execution method not prohibited under the US Constitution and to prevent state courts from ruling the death penalty "cruel or unusual" punishment.[21]

On 3 May the Governor of Mississippi signed into law a Bill which conceals the identity of those involved in executions as well as the supplier of chemicals used in lethal injection procedures.[22]

Concerns over mental and intellectual disabilities and racial discrimination continued to mark the use of the death penalty in 2016. Among other cases, Kenneth Fults, an African American man, was executed in Georgia for the 1996 murder of a white woman. One of the jurors from the sentencing had signed a sworn statement saying: "I don't know if he ever killed anybody, but that nigger got just what should have happened." A state court rejected the claim that Kenneth Fults had an intellectual disability that would render his execution unconstitutional. Georgia uses the "beyond a reasonable doubt" standard for determining intellectual disability in this context.

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[18] *Benjamin Rauf v. State of Delaware*, No.39, 2016, issued on 2 August 2016

[19] *Derrick Powell v. State of Delaware*, No.310, 2016, issued on 15 December 2016

[20] In 2015, the state legislature voted to abolish the death penalty, overriding Governor Pete Ricketts' veto. However, repeal was put on hold following a successful effort to have the issue put to the popular vote.

[21] State Question 776

[22] State Bill 2237

John Wayne Conner was executed in Georgia on 15 July after 34 years on death row. Represented at trial by an inexperienced attorney, his jury heard nothing about childhood abuse or his possible intellectual disability.

Pre-trial proceedings against six detainees at the US naval base at Guantánamo Bay, Cuba, continued in 2016. Five men were charged with plotting the attacks of 11 September 2001, while Abd al-Rahim al-Nashiri was charged with masterminding an attack on US warship *USS Cole* in 2000. The US government has stated that they intend to seek the death penalty for all six men if they are convicted. Proceedings before the military commission do not meet international fair trial standards, and accordingly the imposition of the death penalty in their cases would constitute arbitrary deprivation of life.

Ammar al Baluchi faces the death penalty in connection with his trial before a military commission at Guantánamo. He was charged with wiring money to men later involved in the hijackings of the planes on 11 September 2001. Ammar al Baluchi was held in secret CIA custody from 2003 to 2006 and was subjected to enforced disappearance and to torture and other ill-treatment. The locations where he was held during his three and a half years in CIA custody and the full range of his treatment during that time remains classified top secret.

Ammar al Baluchi and his co-defendants were first charged on 5 June 2008 under the Military Commissions Act of 2006 for trial by a military commission. In 2012 the Convening Authority for military commissions, which heads the work of the military commissions, authorized the prosecution to seek the death penalty against all five defendants. The trial has yet to begin.

According to his lawyers, Ammar al Baluchi displays symptoms of post-traumatic stress disorder and traumatic brain injury as a result of torture and other ill-treatment to which he was subjected in CIA custody. Following multiple formal requests, in October the military judge and Convening Authority granted Ammar al-Baluchi a full medical assessment with a view to treatment. The assessment had yet to be carried out at the end of the year. His lawyers maintain that owing to his physical and psychological injuries and related apparent mental disability, his capacity to assist them in preparing his defence and to meaningfully participate in pre-trial hearings is substantially impaired.

ASIA PACIFIC

REGIONAL TRENDS

- China was once again the world's leading executioner; however, figures remained classified as state secret.
- The number of known executions decreased in the Asia Pacific region; this is mainly due to a significant reduction in Pakistan. The number of recorded death sentences rose in the region.
- Partial information released by the authorities of China, Malaysia and Viet Nam painted an alarming picture of the use of the death penalty in these countries.
- The Philippines and Maldives took regressive steps to reintroduce and apply the death penalty, respectively.

COUNTRY	2016 RECORDED EXECUTIONS	2016 RECORDED DEATH SENTENCES	PEOPLE KNOWN TO BE UNDER SENTENCE OF DEATH AT THE END OF 2016
Afghanistan	6	4+	600+
Bangladesh	10	245+	1,645+
Brunei Darussalam	0	0	+
China	+	+	+
India	0	136	400+
Indonesia	4	60+	215+
Japan	3	3	141
Laos	0	3+	+
Malaysia	9 (as of 30 September)	36+	1,042 (as of 30 April)
Maldives	0	2	18
Mongolia	0	0	0
Myanmar	0	3+	+
North Korea	+	+	+
Pakistan	87+	360+	6,000+
Papua New Guinea	0	1	14
Singapore	4	7+	38+

South Korea	0	0	61 with sentences finalized
Sri Lanka	0	79+	1,004 (as of April)
Taiwan	1	2	42
Thailand	0	216	427
Viet Nam	+	63+	681+

At least 130 executions were known to have been carried out in 11 countries of the region. The number of executions does not include the thousands that Amnesty International believed were carried out in China, making it once again this year the world's leading executioner.

While the overall number of recorded executions in 2016 fell significantly compared to 2015 when 367 executions were reported, this reduction was mainly due to Pakistan, where executions decreased by 239 in 2016. Recorded executions also fell in Indonesia, from 14 in 2015 to 4 in 2016. An alarming increase took place in Bangladesh where the number of executions, from 4 to 10, more than doubled compared to 2015. India did not carry out any executions in 2016, while it did so in 2015.

Across the region, at least 1,224 death sentences were imposed in 18 countries in 2016, a significant rise from at least 661 in 2015. This rise is explained by considerable increases in Bangladesh, India, Indonesia, Pakistan and in particular Thailand, as the authorities provided Amnesty International with a full figure of 216 death sentences in 2016 for the first time in recent years. No new death sentences were recorded in Brunei Darussalam and Mongolia in 2016, while some were reported in 2015.

The lack of transparency on the use of the death penalty continued to be a concern throughout the region. Figures on the use of the death penalty in China and Viet Nam remained classified as state secrets and only limited information was available for Laos, Malaysia, North Korea and Singapore. Where new information about the use of the death penalty was made available – for example in Malaysia and particularly in Viet Nam – it provided an insight into the magnitude and true extent of the use of the death penalty.

The death penalty was repeatedly used in contravention of international law and standards across the region. Amnesty International received credible information indicating that Bangladesh, Indonesia, Maldives, Pakistan and Papua New Guinea held people on death row who were below 18 years of age at the time of the crime for which they were convicted. The death penalty was extensively used for offences that did not meet the threshold of the "most serious crimes" to which the use of the death penalty must be restricted under international law. Violations of the right to a fair trial remained ongoing concerns involving cases from across the region.

Maldives took regressive steps towards resuming executions after more than six decades, while the Philippines made moves to reintroduce the death penalty.

Several cases of exonerations and acquittals triggered new debates on the ever present risk of executing the innocent in China, Taiwan and Viet Nam.

NOTABLE COUNTRY DEVELOPMENTS

Six men convicted of terrorism-related offences were all executed on 8 May in **Afghanistan**. At least four new death sentences were imposed, including one for murder and two for kidnapping. At least 600 people were under sentence of death at the end of the year.

There were 10 executions in **Bangladesh** during the year. Eight of those executed had been convicted of murder, and two – Motiur Rahman Nizami and Mir Quasem Ali – had been convicted and sentenced to death by the International Crimes Tribunal (Bangladesh) set up to investigate mass scale human rights violations committed during Bangladesh's 1971 War of Independence. The proceedings of the Tribunal violated international fair trial standards.

At least 245 death sentences were imposed in Bangladesh during the year, including 13 by the Tribunal. Four people were exonerated from death row and at least 1,645 people were under sentence of death at the end of the year, including some who were below 18 years of age when the crime was committed.

On 29 February the Parliament adopted the Bangladesh Coast Guard Act, which allows for the imposition of the death penalty on those found guilty of inciting, taking part, or remaining silent in a mutiny.[23]

Figures on the use of the death penalty in **China** remained classified as state secrets. Amnesty International continued its monitoring of executions carried out and death sentences imposed in the country throughout the year. The organization believes that – once again – these figures continued to be in the thousands and that China remained the world's top executioner, executing more people than the rest of the world combined.

It was likely that the number of executions carried out in China in recent years decreased following the review of all death penalty cases by the Supreme People's Court and other ongoing reforms. In late 2016, Chen Guangzhong, a professor emeritus at China University of Political Science and Law, said, "from what I understand, in the last 10 years, the overall number of death sentences (with immediate execution) has gone from a figure above 10,000 to a four-digit number".[24] It remains impossible to verify or quantify this reduction. Amnesty

[23] bnews24.com "Parliament passes coast guard bill with death sentence for mutiny", 29 February 2016, available at http://bdnews24.com/bangladesh/2016/02/29/parliament-passes-coast-guard-bill-with-death-sentence-for-mutiny

[24] Shan Yuxiao, Wang Yiyin, Li Rongde. Caixin, "Problems Remain in China's Death-Penalty System Even

International therefore reiterates its challenge to the Chinese authorities to be transparent and make such information publicly available.[25]

With 46 offences still punishable by death, the Chinese authorities continued to use the death penalty for a wide range of offences, including some non-violent offences that do not meet the threshold of the "most serious crimes" under international law, such as drug-related crimes.

The Chinese authorities also continued to resort to the death penalty as a tool to send political messages. The government launched a social media campaign highlighting the use of the death penalty in cases where people had killed hospital employees.[26] Meanwhile, the government used heavy censorship to quell a social media campaign that attempted to spare the life of Jia Jinglong – a man sentenced to death and eventually executed in November for the murder of a village official. His case drew national and international attention to the implementation of the authorities' self-imposed policy of "killing fewer, killing cautiously". Critics of the authorities' treatment of Jia Jinglong's case argued that mitigating factors – such as the demolition of his home and his alleged attempt to surrender – could have been taken into consideration by the courts when sentencing him, which might have spared his life.[27]

Amnesty International believes that China has been significantly reducing its use of the death penalty for economic crimes. Chinese state media ran several articles stating that since 2013 none of the 50 or more high-ranking officials taken down in the anti-corruption drive had been sentenced to death, apart from Zhao Liping, an official who was found guilty of intentional homicide as well as bribery.[28] Amnesty International did not document any executions or death sentences for economic crimes during the year apart from the case of Zhao Liping. More cases of exonerations were recorded during the year, triggering new debates on the administration of the death penalty in the country and the ever present risk of executing the innocent. Nie Shubin, who was executed in 1995, had his conviction overturned by the Supreme People's Court on 2 December 2016. A further four men, who received death sentences with the possibility of commutation after two years, were also acquitted and released in 2016.

After Reforms", 3 January 2017

[25] See also Amnesty International, "China's deadly secrets" (ASA 17/5849/2017), April 2017.

[26] Sina (The Communist Youth League's Central Committee's Publication: There will be zero tolerance for violence against hospital staff), 7 October 2016, available at: http://news.sina.com.cn/c/nd/2016-10-07/doc-ifxwrhpm2495664.shtml

[27] *Asia Times*, William Nee, "How censorship aids China's execution machine", 15 December 2016, available at: www.atimes.com/censorship-aids-chinas-execution-machine/

[28] Hua Xuan (Southern Weekend), "New Year's Special Publication: How much room is there to reduce the use of the death penalty?", 3 January 2017, available at http://www.infzm.com/content/121884

Two international conferences on organ transplants in Hong Kong and in the capital Beijing threw the spotlight on concerns about the sourcing of organs from executed prisoners. Despite the 2013 announcement by the then Vice-Minister of Health that organs would only be sourced from voluntary donation schemes as of mid-2014, the *New York Times* reported that the website of the China Organ Transplantation Development Foundation indicated that prisoners were still allowed to donate organs.[29] Amnesty International urges the authorities to immediately end this practice which is not compatible with international standards requiring the free and informed consent of the donor.

According to the National Law University, Delhi, the courts of **India** imposed 136 new death sentences, the majority of which involving murder.[30] Six of these were imposed by special courts. More than 400 people were believed to be under sentence of death at the end of the year. In May, the National Law University, Delhi, published an extensive study showing that most prisoners on death row were from economically vulnerable and socially disadvantaged groups.[31] Five prisoners had their executions scheduled during the year, only to have them stayed by the courts, in some cases only days earlier. Sachin K. Singhraha received a stay of execution in March; Javed Khan in June; B.A. Umesh, Vikram Singh and Jasvir Singh (also known as Jassa), received their stays in October. The Supreme Court agreed to hear the petition of Sonu Sardar. President Pranab Mukherjee rejected the mercy petitions of Mofil Khan, Mobarak Khan, Shabnam, Jasvir Singh and Vikram Singh, and accepted the mercy petition of Jeetendra Gehlot.

On 29 July **Indonesia** executed three Nigerian men and one Indonesian man, all convicted of drug-related offences. Two of them had their clemency application pending when the executions were carried out. The authorities had selected a further 10 people for execution on 29 July, but granted them a stay of execution at the last minute to allow for a review of their cases to ensure that there was "no judicial and non-judicial error".[32] However, no independent and impartial body was mandated to review existing death sentences at the end of the year.

At least 60 new death sentences were imposed in 2016, including 46 for drug-related

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[29] *New York Times*, Debate Flares on China's Use of Prisoners' Organs as Experts Meet in Hong Kong, 17 August 2016, available at https://www.nytimes.com/2016/08/18/world/asia/debate-flares-on-chinas-use-of-prisoners-organs-as-experts-meet-in-hong-kong.html?_r=0

[30] National Law University, Death penalty in India, Annual Statistics 2016, March 2017, available at http://www.deathpenaltyindia.com/wp-content/uploads/2016/12/Annual-Statistics-Report-2016.pdf

[31] National Law University, Death Penalty India Report, May 2016, available at www.deathpenaltyindia.com/wp-content/uploads/2016/05/Death-Penalty-India-Report-Volume-1.pdf and http://www.deathpenaltyindia.com/wp-content/uploads/2016/05/Death-Penalty-India-Report-Volume-2.pdf

[32] Wio News, "Relief for Indian national as Indonesia suspends execution of 10 convicts", 29 July 2016, available at www.wionews.com/world/relief-for-indiannational-as-indonesia-suspends-execution-of-10-convicts-3532

offences and 14 for murder. At least 215 people were under sentence of death. Proposed amendments to the Indonesian Criminal Code, which include some proposals to move away from the death penalty, and to the Law on Counter-Terrorism (No. 15/2003), which would expand the scope of the death penalty, remained pending before Parliament. President Joko Widodo stated on 5 November that Indonesia wants to move towards abolition.[33]

Three people were executed in **Japan** in 2016: a man and a woman in March and a man in November. Three new death sentences were imposed and 141 people remained under sentence of death at the end of the year. Of these, 129 had their death sentence finalized.

On 7 September the High Court of Tokyo, the capital, upheld the conviction and sentence of the last defendant charged in relation to the 1995 deadly sarin gas attack in Tokyo, putting 13 Aum Shinrikyo cult members at imminent risk of execution. They were convicted and sentenced to death in separate trials between 2006 and 2011 for their respective roles in orchestrating and carrying out the gas attack. For the first time, on 7 October the Japanese Federation of Bar Associations issued a declaration stating its opposition to the death penalty and calling on the authorities to abolish this punishment by 2020.[34]

The secrecy around the use of the death penalty in **Malaysia** was very slightly lifted in 2016, when the authorities had to respond to Parliament. The government told Parliament that, since 2010, 12 people had been executed and 829 sentenced to death and that 95 others had received either a pardon or had their death sentences commuted. The government also stated that, as of 30 April 2016, 1,042 people – 629 Malaysian and 413 foreign nationals – were under sentence of death for murder, drug trafficking, firearms trafficking or kidnapping. Of these, 649 prisoners had legal appeals pending, while 393 were seeking a pardon.[35]

In October the government provided Parliament, for the first time, with figures for executions disaggregated by year, stating that six executions were carried out in 2014, one in 2015, and nine in 2016 up until the end of September. The number of executions carried out in 2016 appears to represent a considerable increase compared to previous years. At least 36 new mandatory death sentences were imposed, including 17 for drug trafficking. Of these death sentences, seven involved foreign nationals.

Draft legislation to reform Malaysia's death penalty law, announced in November 2015, had yet to be introduced in Parliament by the end of 2016.

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[33] SBS, Indonesia moving towards abolishing death penalty: Widodo, 5 November 2016, available at www.sbs.com.au/news/article/2016/11/05/indonesia-movingtowards-abolishing-death-penalty-widodo

[34] Japan Federation of Bar Associations, "Declaration Calling for Reform of the Penal System Including Abolition of the Death Penalty", 7 October 2016, available at www.nichibenren.or.jp/en/document/statements/year/2016/161007.html

[35] Written parliamentary replies to Puchong MP Gobind Singh Deo, 30 March 2016; Ramkarpal Singh, 17 May 2016; and Kashturi Patto, 20 May 2016

Following campaigning by Amnesty International, the death sentences of two prisoners in Malaysia were commuted in 2016.

In August King Abdul Halim Mu'adzam Shah commuted the death sentence of Nigerian national **Osariakhi Ernest Obayangbon**, whose execution had been scheduled for the early hours of 14 March 2014. He was sentenced to the mandatory death penalty for murder in 2000. He was diagnosed with schizophrenia before his appeal in 2007 and received treatment since then.

First-time offender **Shahrul Izani Bin Suparman** had his death sentence commuted in December. He was found in possession of 622g of cannabis and arrested in 2003. The charges were confirmed in December 2004. Six years later, on 28 December 2009, the Shah Alam High Court sentenced Shahrul Izani Bin Suparman to the mandatory death penalty. The Court of Appeal heard and dismissed his appeal on 12 October 2011, and on 26 June 2012 the Federal Court similarly heard and dismissed his appeal in one day. In 2014, Shahrul Izani Bin Suparman appealed for clemency before the Pardon Board of Selangor state. The appeal was awaiting consideration at 2016.

After more than 60 years without any executions, **Maldives** took steps towards resuming the implementation of the death penalty. The authorities changed the method of execution back to hanging, to overcome challenges in the sourcing of chemicals needed in lethal injection procedures; government officials pledged that executions should happen within 30 days of confirmation of guilty verdicts by the Supreme Court. Three men, convicted in separate cases and whose death sentences for murder were confirmed by the Supreme Court in June and July, were at imminent risk of execution. Pardon mediations with the families of the victims of crimes, which are required under recent regulations, were yet to begin at the end of the year.

Two new death sentences were imposed for murder; 18 people were under sentence of death at the end of the year. These included five people who were sentenced to death for crimes committed when they were below 18 years of age at the time of the commission of the crime.

The coming into force of the revised Criminal Code in **Mongolia**, abolishing the death penalty for all crimes, was postponed to July 2017. No one was on death row at the end of 2016.

In January the authorities of **Myanmar** commuted 77 death sentences to life imprisonment.[36] At least three other death sentences were imposed during the year. In October, Parliament repealed the 1950 Emergency Provisions Act which allowed for the death penalty. The death penalty remained under other laws.

During 2016 Amnesty International was not able to access nor verify sufficient information on **North Korea** (the Democratic People's Republic of Korea) to make an accurate assessment

[36] *Myanmar Times*, "52 political prisoners released in amnesty", 22 January 2016, available at www.mmtimes.com/index.php/national-news/18625-52-political-prisoners-released-in-surprise-amnesty.html

of the use of the death penalty in the country. Reports received during the year suggested that executions continued to be routinely carried out, including in public, for a wide range of crimes or acts including some that should have not even been classified as crimes, or that were not codified under national legislation. News reports circulating throughout the year suggested that the death penalty continued to be used against high-level officials as well as those who supported others to leave the country.[37] Reports also indicated that the highest authorities issued instructions in December to halt public executions and public trials.[38]

The pace of executions carried out in **Pakistan** decreased significantly from 2015, when 326 executions were reported. With at least 87 executions carried out in 2016, however, Pakistan remained among the world's top executioners. At least four of those executed included prisoners convicted by the military courts established in January 2015 to try civilians suspected of terrorism-related offences for a period of two years.[39] At least 133 people were sentenced to death by these courts during the year. Proceedings under these military courts did not meet international fair trial standards.

Figures from the NGO Human Rights Commission of Pakistan indicated that a further 277 death sentences were imposed by civilian courts during the year, including 193 by ordinary courts and 31 by Anti-Terrorism Courts – special courts established under the Anti-Terrorism

Act of 1997 – which the authorities have used to try defendants charged with offences under the Penal Code. At least 360 people were sentenced to death during 2016; at least 6,000 people remained on death row.

The death penalty was used in contravention of international law and standards, including on people with mental disabilities, for crimes that did not meet the threshold of the "most serious crimes" to which the use of the death penalty must be restricted, such as "blasphemy"; and in violation of the defendants' right to a fair trial.

One new death sentence was imposed for murder in **Papua New Guinea**, the only country in the Pacific that continues to use the death penalty. Fourteen people, including two who escaped in 2015 and 2016, remained under sentence of death. A man who was 12 or 13 years old when the crime was committed remained on death row at the end of the year.

In **the Philippines**, under the government of newly elected President Rodrigo Duterte, in June and July members of the majority party introduced at the House of Representatives seven bills seeking to reinstate the death penalty for a wide range of crimes. On 29 November the Sub-Committee on Judicial Reforms took an unexpected vote on the bills, confirming fears

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[37] Inquisitr, "North Korea publicly executes six officials blamed for allowing 13 workers to defect to South Korea", 29 July 2016, available at www.inquisitr.com/3361159/north-korea-publicly-executes-six-officials-blamed-for-allowing-13-workers-to-defect-to-south-korea/

[38] Daily NK, "North Korea orders ban on public trials and executions", 16 December 2016, available at www.dailynk.com/english/read.php?num=14251&catald=nk01500

[39] Courts established by the 21st Constitutional Amendment Bill of 2015 and the Pakistan Army (Amendment) Act 1952

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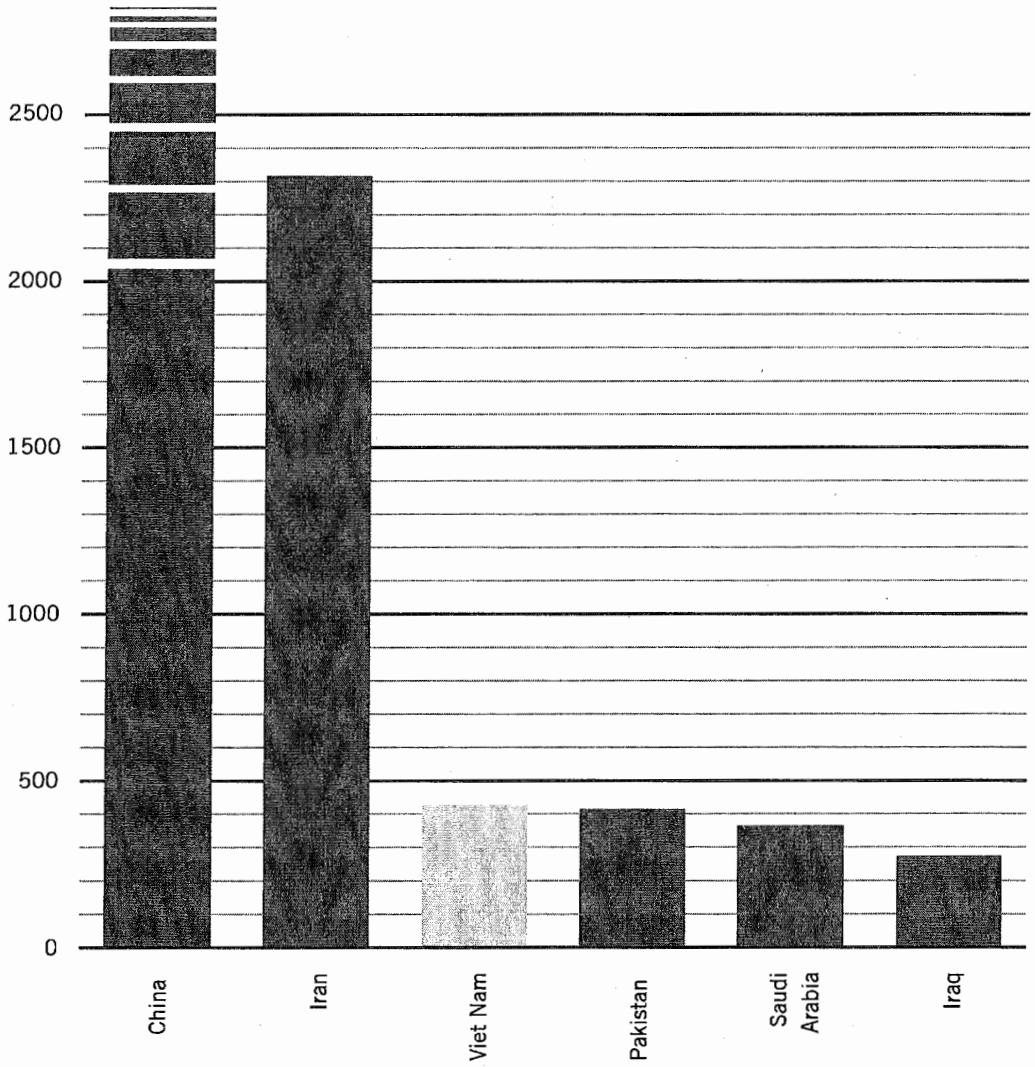
SECRET EXECUTIONS IN VIET NAM

Viet Nam joins the top 5 recorded executing countries
1 August 2013 – 30 June 2016



Amnesty International believes Viet Nam to be among the top recorded executing countries. A report by Viet Nam's Ministry of Public Security sheds new light on the application of this punishment in the country, revealing that executions have been carried out at a higher rate than previously understood.

For detailed information, see the Viet Nam section in the Asia-Pacific Regional Overview.

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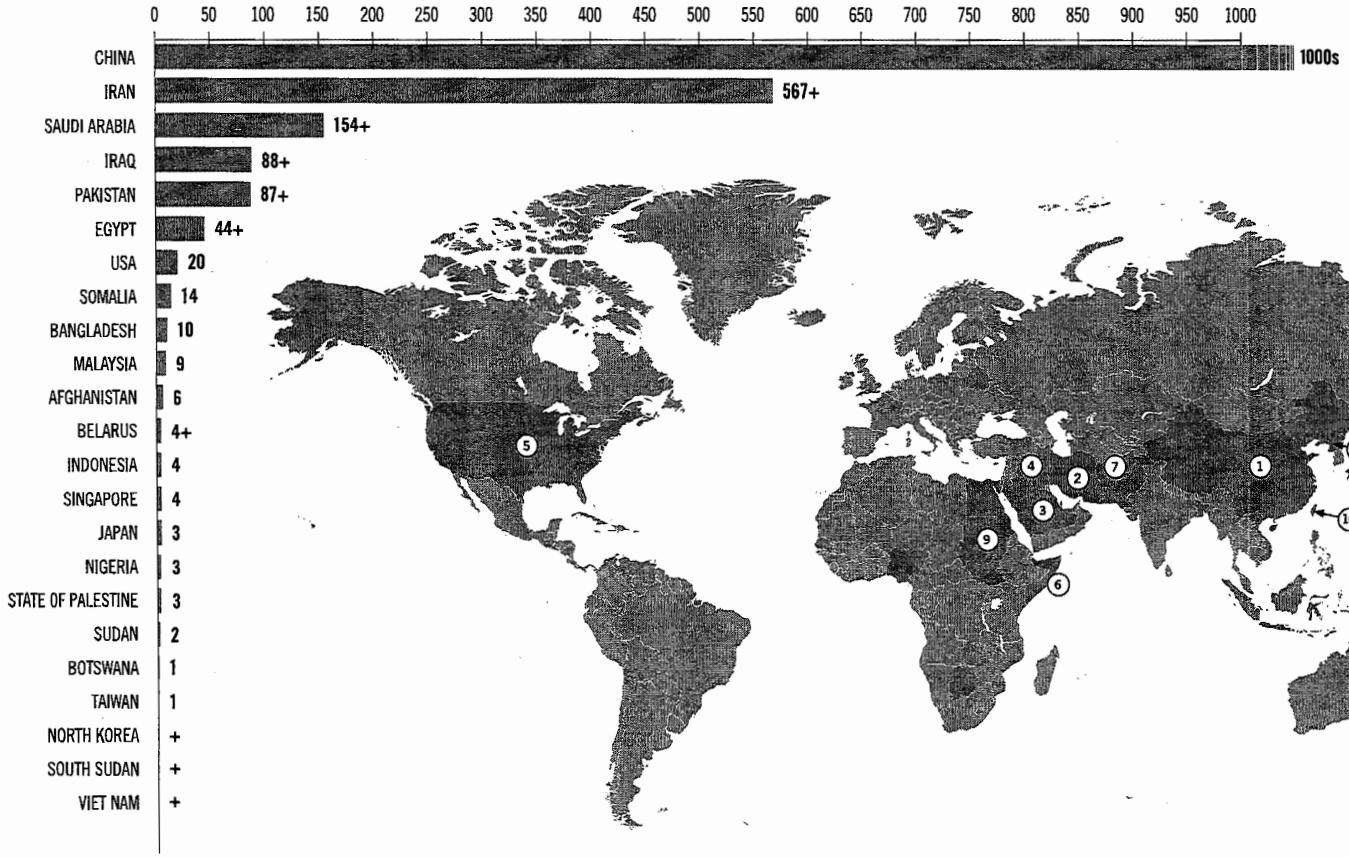
EXECUTING COUNTRIES IN 2016



This map indicates the general locations of boundaries and jurisdictions and should not be interpreted as Amnesty International's view on disputed territories.

+ indicates that the figure that Amnesty International has calculated is a minimum. Where + is not preceded by a number, this means Amnesty International is confident that there was more than one execution but it was not possible to establish a figure.

Judicial executions may have taken place in Libya, Syria and Yemen, although Amnesty International was unable to confirm any figures.

11 PERSISTENT EXECUTIONERS 2012-2016

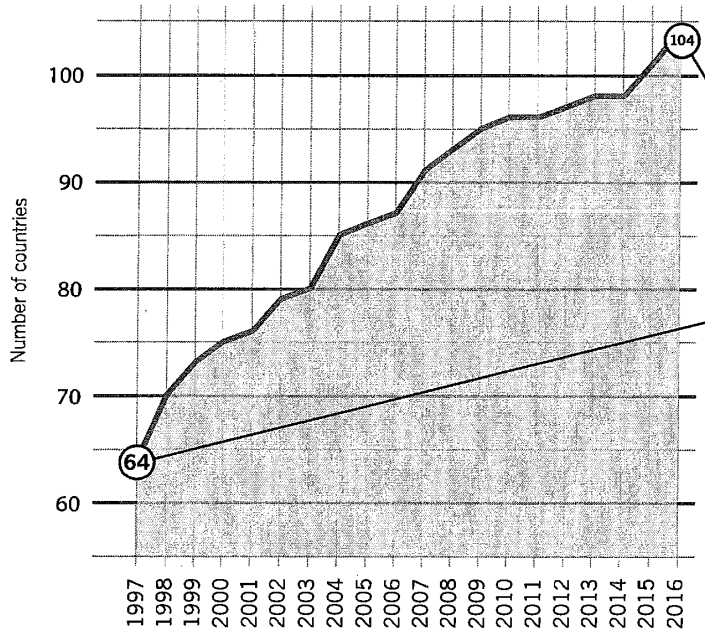
1. **CHINA** Figures on the use of the death penalty remain a state secret.
2. **IRAN** Hundreds executed every year. Majority of executions carried out for drug-related offences. Scores of death sentences were imposed.
3. **SAUDI ARABIA** Scores of people executed.
4. **IRAQ** Significant increase in executions recorded.
5. **USA** Lowest number of executions and death sentences recorded since 1991 and 1973 respectively.
6. **SOMALIA** Decrease in known executions; significant increase in death sentences.
7. **AFGHANISTAN** Six executions carried out in one day.
8. **JAPAN** Executions carried out in secret.
9. **SUDAN** Criminal Law amended to provide death by hanging for apostasy.
10. **TAIWAN** One man was executed less than three weeks after his death sentence was finalized by the court.
11. **NORTH KOREA** Executions after unfair trials and for a wide range of offences or acts for which the death penalty should not be imposed.

DEATH SENTENCES AND EXECUTIONS 2016
AMNESTY INTERNATIONAL APRIL 2017

Under strict embargo until 00:01 BST (07.01 HKT/ 23:01 GMT) 11 April 2017

DEATH PENALTY TRENDS 1997-2016

Increase in countries abolishing the death penalty

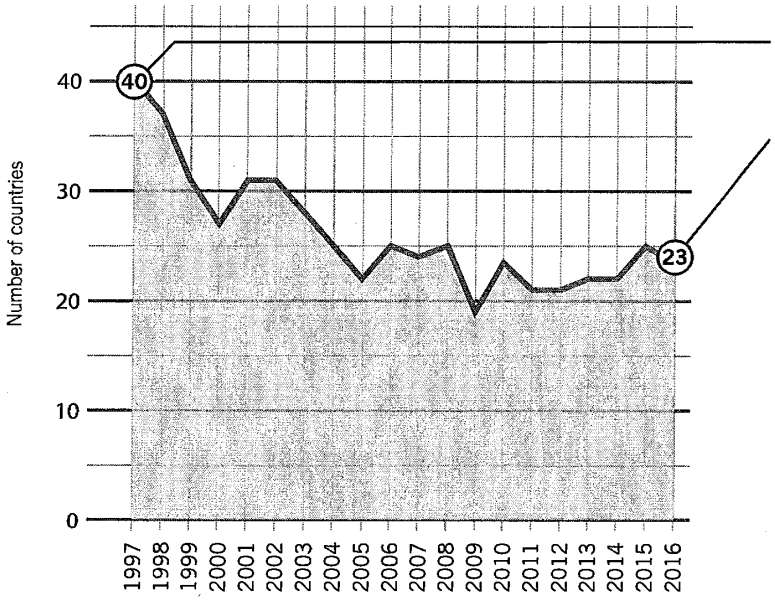


At the end of 2016, 104 countries had abolished the death penalty in law for all crimes.

20 years ago, in 1997, this figure stood at 64.

As of 31 December 2016, 141 countries had abolished the death penalty in law or practice.

Decrease in countries carrying out executions



20 years ago, in 1997, Amnesty International recorded executions in 40 countries.

In 2016, this figure stood at 23.

This reflects the continued overall decline in the use of the death penalty.

DEATH SENTENCES AND EXECUTIONS 2016
AMNESTY INTERNATIONAL APRIL 2017

that the authorities were trying to expedite the adoption of the measures. A consolidated version of the bills was sent to the plenary session of the House of Representatives for its consideration in 2017.

Four executions were carried out in **Singapore** in 2016 – two for murder and two for drug trafficking. Two Malaysian nationals and one Nigerian national were among those executed. At least seven new mandatory death sentences were imposed for drug trafficking. Two men convicted of drug trafficking had their mandatory death sentence commuted. At least 38 people were on death row at the end of the year.

While upholding the death sentence of one of the men executed in 2016, on 5 April 2016 the Supreme Court held that disagreement among the judges is not a ground to review a decision and that a simple majority is sufficient, including in death penalty cases. It also issued new restrictive guidance on application for judicial review in criminal cases after the conclusion of ordinary appeals, which would make it more difficult for a defendant to challenge the implementation of a death sentence. The Court also suggested that Parliament consider amending the country's statutes to reflect the new guidance.[40]

The overall number of people whose death sentences were final in **South Korea** (the Republic of Korea) rose to 61 in 2016, after the Supreme Court upheld the 2015 sentence of a soldier. On 2 March the National Assembly adopted the government-backed Act on the Prevention of Terrorism for Protection of the People and Public Safety, which makes the death penalty the maximum punishment for those found guilty of organizing or joining "terrorist organizations" and identified as "ringleaders".[41]

At least 79 death sentences were imposed in **Sri Lanka**, almost all for murder. One death sentence was imposed on a foreign national for attempting to sell heroin. The Commissioner of Prisons said that 1,004 people including 28 women were under sentence of death at the end of April.[42] President Maithripala Sirisena commuted at least 153 death sentences in April and May, following a recommendation made by an expert committee appointed by the Minister of Justice.[43]

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[40] Court of Appeal of Singapore, *Kho Jabing v Public Prosecutor* [2016] SGCA 21, delivered on 5 April 2016

[41] Act No. 14071, 3 March 2016, available at https://elaw.klri.re.kr/eng_service/lawView.do?lang=ENG&hseq=38450

[42] Global Press Journal, 40 Years Without an Execution, Sri Lanka Still Heatedly Debates the Death Penalty, 13 July 2016, available at https://globalpressjournal.com/asia/sri_lanka/40-years-without-execution-sri-lanka-still-heatedly-debates-death-penalty/

[43] *The Island*, "Nearly 190 death sentences commuted under present govt. moving to abolish death penalty", 28 May 2016, available at www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=145964

Taiwan executed a man in May, less than three weeks after his death sentence was finalized by the Supreme Court. Two new death sentences were imposed and 42 people, whose sentences were finalized, were under sentence of death at the end of 2016.

The risk of executing the innocent became the centre of public attention in 2016. On 29 February the Taiwan High Prosecutors' Office announced that it would apply for a retrial in the case of Cheng Hsing-tse, following the emergence of new forensic evidence that cast doubts over his conviction of a 2002 murder.[44] In April Minister of Justice Luo Ying-shay also announced that a special committee was established to review finalized death penalty cases that could involve miscarriages of justice.[45] In October the Supreme Court upheld a 2015 High Court decision which acquitted Hsu Tzi-chiang of charges of kidnapping, extortion and murder in 1995. The acquittal came during his 9th retrial.[46]

Figures provided to Amnesty International by the authorities of **Thailand** state that 216 new death sentences were imposed in 2016. A total of 427 people, including 24 foreign nationals, remained under sentence of death at the end of the year. Several death sentences were commuted as part of multiple commutations granted by the King during the year. Figures released by the Ministry of Justice in September indicated that at that time 213 people were under sentence of death for drug-related offences.

The abolition of the death penalty remained part of the Third National Human Rights Action plan, due to be implemented by 2018. In November the Legislative Assembly adopted the Narcotic Act (Vol. 6) 2016, which abolished the mandatory death penalty for the offence of selling drugs. On 20 December, the Constitution Drafting Committee announced that it had decided to include the death penalty in the draft Anti-Corruption Law, making most serious offences punishable by death. During the review of Thailand under the UN Universal Periodic Review in May, Thailand accepted recommendations to review the imposition of the death penalty for offences related to drug trafficking, commute the death sentences with a view to abolishing the death penalty and take steps towards abolishing the death penalty.[47]

Viet Nam continued to classify figures on the death penalty as state secrets. Information received by Amnesty International in early 2017, however, sheds new light on the application of this punishment in the country, revealing that executions have been carried out at a higher rate than previously understood.

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[44] *Taipei Times*, "Prosecutors seek retrial of man in 2002 police killing", 23 March 2016, available at www.taipeitimes.com/News/taiwan/archives/2016/03/23/2003642245

[45] *Taipei Times*, Committee to review execution cases, 3 April 2016, available at www.taipeitimes.com/News/taiwan/archives/2016/04/03/2003643078

[46] Taiwan Focus, Supreme Court acquits man in controversial death penalty case, 13 October 2016, available at http://focustaiwan.tw/news/asoc/201610130019.aspx

[47] Human Rights Council, Report of the Working Group on the Universal Periodic Review, Thailand, Addendum, UN doc. A/HRC/33/16/Add.1, 7 September 2016

ONE OF THE WORLD'S TOP EXECUTIONERS

According to a report of Viet Nam's Ministry of Public Security, which was first published by a national media outlet in February 2017, 429 prisoners were executed between 8 August 2013 and 30 June 2016, at an average rate of 147 executions per year.[48]

While the new information does not include figures by year and as such makes it impossible to determine an accurate figure for the number of death sentences implemented in Viet Nam in 2016 only, a closer look at the aggregated executions figures for other countries for the same period depicts a truly alarming picture. That would place it among the world's top executioners over that period, with significantly higher numbers than Iraq and the USA and with numbers comparable to Saudi Arabia and Pakistan.

The information previously available did not suggest such a high execution rate in Vietnam. It is imperative that the Vietnamese authorities make publicly available a full breakdown of information on their use of this punishment in the country and immediately establish a moratorium on all executions with a view to abolishing the death penalty.

Information gathered by Amnesty International during 2016 indicated that the courts imposed 63 new death sentences, although the real number is believed to be considerably higher. Of these, at least 54 were imposed for drug-related offences and four involved foreign nationals. According to official figures, 681 people were under sentence of death as of 1 July 2016.

Two men were exonerated from death row in 2016. On 9 August, 80 year-old Tran Van Them was found innocent of murder after 43 years on death row.[49] On 20 December, 57-year-old Han Duc Long was cleared of rape and murder and released after spending 11 years on death row.[50]

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[48] Report of the Ministry of Public Security No. 05/BC-BCA-C81, 4 January 2017. See also *Dtinews*, "Vietnam to build five more lethal injection venues", 9 February 2017, available at www.dtinews.vn/en/news/017/49419/vietnam-to-build-five-more-lethal-injection-venues.html

[49] *Than Nien News*, "Man cleared of wrongful murder charge after over 43 years", 17 August 2016, available at www.thanhniennews.com/society/man-cleared-of-wrongful-murder-charge-after-over-43-years-65111.html

[50] Vietnamese media outlet Dan News, http://dannews.info/2016/12/21/ong-han-duc-long-neu-khong-nhan-toi-chac-chan-toi-da-nam-duoi-mo/

EUROPE AND CENTRAL ASIA

REGIONAL TRENDS

- Belarus resumed executions in April 2016 after a 17-month hiatus. Two people remain on death row in Belarus.
- Kazakhstan imposed one death sentence.

COUNTRY	2016 RECORDED EXECUTIONS	2016 RECORDED DEATH SENTENCES	PEOPLE KNOWN TO BE UNDER SENTENCE OF DEATH AT THE END OF 2016
Belarus	4+	4	2
Kazakhstan	0	1	1
Russia	0	0	0
Tajikistan	0	0	0

NOTABLE COUNTRY DEVELOPMENTS

Courts in **Belarus** imposed four death sentences. At least four people were executed during the year.

Syarhei Ivanou was executed in April, the first person known to have been executed in Belarus since November 2014. He was sentenced to death in 2015 for murder, theft and robbery committed in 2013. His brother had petitioned the UN Human Rights Committee, arguing that Syarhei Ivanou's trial was unfair. The Committee had requested the Belarusian authorities not to carry out the execution while the case was under consideration.[51]

Syarhei Ivanou's execution was followed by those of Hyanadz Yakavitski, Syarhei Khmialeuski and Ivan Kulesh in November.

In January, the Minsk Regional Court found Hyanadz Yakavitski guilty of a murder committed in 2015. Hyanadz Yakavitski denied the charges against him and lodged an appeal against his conviction and death sentence with the Supreme Court and an appeal for clemency to the

[51] Such requests are binding on states parties to the First Optional Protocol to the International Covenant on Civil and Political Rights, which Belarus acceded to in 1992.

President. His defence lawyers maintained that vital evidence was omitted at his trial.

Syarhei Khmialeuski was sentenced to death in February for theft and murder. The UN Human Rights Committee had requested the Belarusian authorities not to carry out the execution pending the examination of his case.

Ivan Kulesh was sentenced to death in 2015 for murder, theft and robbery. His sentence was upheld in March 2016.

Syarhei Vostryakau and Kiryl Kazachok are the last people known to be on death row in Belarus. Syarhei Vostryakau was sentenced to death in May, having been found guilty of two separate cases of rape and murder. Kiryl Kazachok was sentenced to death in December for killing two of his children in January.

Kazakhstan continued to observe the official moratorium on executions in place since 2003. A court in November 2016 sentenced to death Ruslan Kulekbayev, charged with terrorism-related offences after the killing of 10 people in July.

In **Russia,** throughout the year, some politicians expressed support for the death penalty; in March they submitted a bill to the Duma (lower house of the parliament) to reinstate the death penalty for terrorism-related crimes. The government and the Supreme Court expressed their opposition to the bill in the same month.

MIDDLE EAST AND NORTH AFRICA

REGIONAL TRENDS

- There was an overall reduction in the use of the death penalty in the Middle East and North Africa region in 2016 compared to 2015.
- There were confirmed executions in five countries – three fewer than in 2015. However, it was not possible to confirm if judicial executions took place in Libya, Syria or Yemen.
- The total number of recorded executions decreased by 28% compared to 2015.
- Death sentences were imposed in 14 countries. However, it was not possible to confirm any figures for Iran, Syria or Yemen.

COUNTRY	2016 RECORDED EXECUTIONS	2016 RECORDED DEATH SENTENCES	PEOPLE KNOWN TO BE UNDER SENTENCE OF DEATH AT THE END OF 2016
Algeria	0	50	+
Bahrain[52]	0	0	+
Egypt	44+	237+	+
Iran	567+	+	+
Iraq	88+	145+	+
Israel	0	0	0
Jordan	0	13	+
Kuwait[53]	0	49	+
Lebanon	0	126	+
Libya	Unconfirmed	1+	Unconfirmed
Morocco/Western Sahara	0	6	92+
Oman	0	0	

[52] On 15 January 2017, three men were executed – the first executions in Bahrain since 2010.

[53] On 25 January 2017, seven people were executed – the first executions in Kuwait since 2013.

Palestine (State of)	3	21	21+
Qatar	0	4	+
Saudi Arabia	154+	40+	44+
Syria	Unconfirmed	Unconfirmed	Unconfirmed
Tunisia	0	44	+
United Arab Emirates	0	26	+
Yemen	Unconfirmed	Unconfirmed	Unconfirmed

The use of the death penalty in the region decreased in 2016. The number of executions recorded by Amnesty International fell by 28%, from 1,196 in 2015 to 856 in 2016. Iran, Saudi Arabia and Iraq were the top three executing countries in the region. Iran executed at least 567 people – 66% of all confirmed executions in the region. Saudi Arabia executed at least 154 people and Iraq executed at least 88 people. The three countries were responsible for 95% of all the executions recorded in the region in 2016.

Amnesty International confirmed that 764 death sentences were imposed in the region in 2016, a decrease on the 831 recorded in 2015. The majority were recorded in Egypt, where at least 237 people were sentenced to death. There was a decrease in the number of countries that imposed death sentences (14 in 2016 compared to 17 in 2015). Amnesty International believes that scores of death sentences were imposed in Iran but the lack of transparency in the criminal justice system prevented the organization from confirming any credible figures for the country.

Algeria, Jordan, Kuwait, Lebanon, Morocco/Western Sahara, Qatar, Tunisia and the United Arab Emirates imposed death sentences; they did not carry out executions.

NOTABLE COUNTRY DEVELOPMENTS

Amnesty International did not record any executions in **Algeria** in 2016. The last known execution was carried out in 1993. However, the courts imposed 50 death sentences. The sentences were imposed for terrorism-related offences, murder and rape.

Egypt carried out at least 44 executions in 2016. Adel Habara was executed in December 2016; his conviction was related to the 2013 attack and killings of security forces in North Sinai Governorate. Eight women were executed in relation to offences that included murder. Another 35 people were executed; the men had been convicted of offences that included rape, robbery linked to murder, and murder.

Egypt also imposed at least 237 death sentences in 2016. At least 44 men were sentenced to death by ordinary courts in relation to "terrorism" and political violence while at least 15 men were sentenced to death by military courts after grossly unfair trials and in connection to offences related to political violence and "terrorism" that did not lead to loss of life, in contravention of international human rights law. At least 11 women were sentenced to death by ordinary courts for murder or robbery linked to murder. At least 167 men were sentenced to death by ordinary courts for common law offences including rape and murder.

At least three commutations were granted by the Court of Cassation in April 2016; the men had been sentenced to death for offences that included murder linked to robbery.

Iran carried out at least 567 executions in 2016, including of at least eight of women. The authorities announced 242 executions through official and semi-official sources. However, credible sources confirmed that at least 325 more executions took place, in addition to those officially announced. At least 33 executions were carried out in public.

The majority of executions – at least 328 – were carried out for drug-related offences; 96 of these executions were announced by the authorities while 232 others were confirmed by credible sources. Other executions were for murder, rape or vague offences such as "enmity against God". Consensual same-sex sexual conducts remained punishable by death.

At least two juvenile offenders were executed. Amnesty International received reports that five other juvenile offenders were among those executed, but was unable to obtain documentary evidence to verify the age of those individuals at the time of the crime.

Amnesty International believes that scores of death sentences were imposed during the year. However, given the lack of transparency in the criminal justice system, it was not possible to confirm any credible figure for death sentences. At least two men were sentenced to death for "insulting the prophet", in violation of their right to freedom of religion or belief and of expression.

On 2 August 2016, 25 Sunni Muslim men – 22 from Iran's Kurdish minority and three of Iraqi nationality – were executed in Raja'i Shahr prison in Karaj, northwest of the capital Tehran. The men had been convicted of the vaguely worded crime, under Iranian law, of "enmity against God" (*moharebeh*), in connection with a number of armed activities, which occurred mainly in Kurdistan Province between 2009 and 2011. The mass executions were carried out without advance notice of the men's executions being given to families and lawyers. Following the mass executions, the authorities issued statements attributing to the men a range of criminal activities; some of these activities had occurred months after some of the men's arrest and after they aired "confession" videos, seemingly intended to dehumanize them. The justice system blatantly violated the defendants' right to a fair trial.

At least 78 juvenile offenders remained on death row. Scores of people who were below 18 years of age when the crime was committed were granted retrials, based on the juvenile sentencing provisions in the 2013 Islamic Penal Code, but were sentenced to

death again after the courts concluded that they had attained sufficient "mental maturity" at the time of the crime. Among these people were Himan Uraminejad, Salar Shadizadi, Hamid Ahmadi, Sajad Sanjari, Alireza Tajiki and Amanj Veisee. The scheduled execution of several juvenile offenders was halted at the last minute following intense international pressure.

The 2013 Islamic Penal Code continued to provide for stoning as a method of execution for adultery; at least one woman, Fariba Khaleghi, remained under sentence of death by stoning for adultery.

At least 88 executions were carried out in **Iraq**. All the executions were carried out by the authorities of the Central Iraqi Government. There were no executions in the Kurdistan Region. At least 145 death sentences – seven in the Kurdistan Region – were imposed for offences that included terrorism. Those sentenced to death were mostly Iraqi nationals.

There were 40 people convicted over the Speicher massacre in February 2016. On 31 July the verdict was upheld for 36 of the defendants; President Fuad Masum ratified the executions on 14 August. During the year the authorities came under increased political and public pressure to speed up executions, particularly following the deadly attack on 2 July on Karrada, a shopping district in the capital Baghdad, which claimed over 300 lives. In the wake of the attack, the Ministry of Justice announced that seven executions were carried out on 4 and 5 July. It stated that there were up to 3,000 individuals on death row.

On 12 July amendments were introduced to the Criminal Code, making it more difficult for defendants sentenced to death to seek a retrial.

In **Lebanon**, 126 Lebanese and Syrian nationals were sentenced to death. The sentences were imposed for "terrorism", murder and attacking the army. There were no executions during the year.

Three executions were carried out in **Palestine (State of)**. Mohammed Fathi Mohammed Othman, Yousef Mohammed Abu Shamleh and Ahmad Helmi Abdel Qader Sharab were executed on 31 May 2016 by the Hamas de facto administration in the Gaza Strip; the executions were carried out without the ratification of the death sentences by the Palestinian President, contrary to the Palestinian Basic Law of 2003 and the 2001 Penal Procedure Law. Amnesty International recorded 21 death sentences, all in the Gaza Strip. There were 12 death sentences issued by military courts and nine by civilian courts. At least 21 people were under sentence of death at the end of 2016.

Saudi Arabia executed at least 154 people: three women and 151 men. Among those executed were 118 Saudi Arabians. Others were foreign nationals: one (Bangladesh), one (Chad), one (Eritrea), one (Iraq), one (Nigeria), one (Qatar), one (Syria), three (Egypt), three (Ethiopia), four (Jordan), nine (Pakistan), 10 (Yemen). The executions were: 81 for murder, 47 for "terrorism", 24 for drug-related offences, one for kidnapping and torture, and one for rape.

Amnesty International recorded the imposition of at least 39 death sentences on Saudi Arabian men and at least one death sentence on a woman of unspecified nationality. At least 44 people were under sentence of death at the end of the year. At least five people received commutations of their death sentences.

Sheikh Nimr Baqir al-Nimr, the imam of al-Awamiyya mosque in al-Qatif, Eastern Province, and a vocal critic of discrimination against the country's Shi'a population, was executed on 2 January, together with 46 other prisoners. The trial proceedings contravened international fair trial standards. The authorities did not inform his family before he was executed. They refused to return his body for burial, despite the family's numerous requests, thereby compounding their suffering.

Due to the lack of transparency surrounding the use of the death penalty in **Syria** and the degree to which Syria has prevented independent organizations from accessing detention centres and judicial processes, it was not possible to confirm whether any executions were carried out or whether death sentences were imposed after judicial processes in Syria in 2016.[54]

The **United Arab Emirates** did not carry out executions; 26 death sentences were imposed; three commutations were granted. During the year a new law (7/2016) relating to data protection and expression, expanded the scope of the death penalty.

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[54] This does not include reports of extrajudicial executions and other unlawful killings by both government forces and non-state armed groups during the armed conflict, or deaths in custody following torture or other ill-treatment. In February 2017 Amnesty International published the report of its investigation into extrajudicial executions and the imposition of death sentences without judicial processes between 2011 and 2015 in Saydnaya prison. See: Syria: *Human slaughterhouse – mass hangings and extermination at Saydnaya prison, Syria* (MDE 24/5415/2017).

SUB-SAHARAN AFRICA

REGIONAL TRENDS

- Executions took place in five countries in the Sub-Saharan Africa region, one more than was recorded in 2015.
- At least 22 judicial executions were carried out, 14 of these in Somalia.
- The number of death sentences recorded rose sharply, from 443 in 2015 to at least 1,086 in 2016. This was largely due to a significant rise in Nigeria.
- The death penalty was abolished in Benin, while Guinea abolished the death penalty for ordinary crimes.

COUNTRY	2016 RECORDED EXECUTIONS	2016 RECORDED DEATH SENTENCES	PEOPLE KNOWN TO BE UNDER SENTENCE OF DEATH AT THE END OF 2016
Benin	0	0	14
Botswana	1	0	1
Burkina Faso	0	0	12
Cameroon	0	160+	+
Central African Republic	0	0	
Chad	0	0	
Comoros	0	0	7
Democratic Republic of the Congo	0	93+	+
Equatorial Guinea	0	0	
Eritrea	0	0	
Ethiopia	0	2	10
Gambia	0	0	+
Ghana	0	17	148
Guinea	0	0	12

Kenya	0	24+	2+
Lesotho	0	0	
Liberia	0	5+	+
Malawi	0	1	28
Mali	0	30	53
Mauritania	0	0	77
Niger	0	11	+
Nigeria	3	527	1,979
Sierra Leone	0	5	18
Somalia	14	60	100+
South Sudan	+	+	+
Sudan	2	21	+
Swaziland	0	0	
Tanzania	0	19	491
Uganda	0	0	208
Zambia	0	101	157
Zimbabwe	0	8	97

2016 saw mixed developments on the use of the death penalty in Sub-Saharan Africa.

A Constitutional Court decision in Benin effectively abolished the death penalty for all crimes while Guinea abolished the death penalty for ordinary crimes. Amnesty International recorded fewer executions in the region than in 2015 – 22 compared to 43.

However, the resumption of executions in Botswana and Nigeria, two countries that had not carried out executions since 2013, cast a shadow over positive developments in other countries.

Amnesty International recorded a 145% increase in the number of death sentences imposed across the region, although the number of countries where such punishment was handed down by the courts fell from 21 in 2015 to 17 in 2016. The sharp increase in the number of death sentences recorded was largely due to a significant rise in Nigeria.

NOTABLE COUNTRY DEVELOPMENTS

On 21 January the Constitutional Court of **Benin** determined that the entry into force of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and its ratification by Benin, "now renders inoperative all legal provisions [including those of the Criminal Code] stipulating the death penalty as a punishment".[55] The Constitutional Court found that "no legal provision contained in the internal legal order can any longer mention the death penalty; that, likewise, no criminal prosecution undertaken by any jurisdiction can have as its legal basis a provision stipulating capital punishment as the punishment for the offence committed, such that no one can now be sentenced to capital punishment in Benin."[56] This ruling effectively abolished the death penalty for all crimes in Benin.

Nonetheless, 14 people – 10 Beninese, two Nigerians, one Togolese and one Ivorian – remained under sentence of death in Benin at the end of the year. A bill seeking to revise the Criminal Code and expressly remove death penalty provisions completely was pending at the National Assembly at the end of the year.

According to information that the **Botswana** government provided to Amnesty International, one execution was carried out in 2016, the first since 2013. No death sentence was imposed. A 35-year-old man was under sentence of death at the end of the year.

Amnesty International has received credible information from legal sources in **Cameroon** that at least 160 death sentences were imposed by military courts in the northern city of Maroua during 2016.[57] Some of those who had been sentenced to death were acquitted on appeal.

In December the National Assembly of **Chad** adopted a revised Penal Code which abolished the death penalty except for "terrorism".[58] The Penal Code had not entered into force at the end of the year.

The courts in the **Democratic Republic of the Congo** sentenced at least 93 people to death for offences including kidnapping, extortion and participation in a criminal gang, murder, participation in an insurrectional movement, terrorism and crimes against humanity. No executions were carried out.

According to information that the **Ghana** Prisons Service provided to Amnesty International, no executions were carried out, while 17 death sentences were imposed. At the end of the year, 148 people were under sentence of death, seven of whom were foreign nationals – five

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[55] Benin Constitutional Court Decision DCC 16-020, unofficial translation

[56] Benin Constitutional Court Decision DCC 16-020

[57] The death sentences were imposed for terrorism-related offences.

[58] "Tchad: l'Assemblée nationale abroge la peine de mort et interdit les mariages précoces", BBC Afrique, 12 Décembre 2016, available at www.bbc.com/afrique/38297969

from Togo, one from Burkina Faso and one from Nigeria. Four commutations were granted and one person was exonerated.

In 2016 **Guinea** abolished the death penalty for ordinary crimes. On 4 July the National Assembly voted in favour of a revised Criminal Code which removed the death sentence from the list of applicable penalties. On 26 October President Alpha Condé promulgated the revised Criminal Code, bringing it into force. The Military Code of Justice still provided for the death penalty for exceptional crimes including treason; desertion in presence of the enemy; capitulation; destruction of ships/planes and revolt at times of war or state of emergency. An amendment of the Military Code to remove all death penalty provisions was pending in the National Assembly at the end of the year.

In **Kenya** at least 24 death sentences were imposed. No executions were carried out; Kenya has not carried out an execution since 1987. On 24 October President Uhuru Kenyatta commuted the death sentences of 2,747 people to life imprisonment.[59]

There were no executions or death sentences in **Mauritania**. A total of 77 people, including 11 foreign nationals, were under sentence of death at the end of the year. Fifteen commutations were granted and one person was exonerated.

Niger imposed 11 death sentences; no executions were carried out. During the review of Niger under the UN Human Rights Council Universal Periodic Review (UPR), Niger accepted recommendations to abolish the death penalty and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.[60]

Three people were executed in **Nigeria** in 2016, the first executions since 2013. The executions were carried out in Benin Prison in Edo State. According to information provided by the Nigerian Prisons Service to Amnesty International, 527 people were sentenced to death in 2016. The Nigerian Prisons Service also reported that 33 pardons were granted, 32 death row prisoners were exonerated and 1,979 people were on death row, including five foreign nationals. During the year a total of 105 death sentences were commuted.

The courts in **Sierra Leone** imposed five death sentences. No executions were carried out. Eighteen people were under sentence of death at the end of the year. In September the Minister of Internal Affairs stated that the government would resume executions to deal with the increase in gang-related killings in the country. In October, the Minister supervised

[59] The 2,747 prisoners had all been under sentence of death at the time of the commutation of sentences.

[60] UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, Niger, UN doc. A/HRC/32/5, 12 April 2016, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/075/23/PDF/G1607523.pdf?OpenElement

testing of the gallows in Pademba Road Prison. Following the review of Sierra Leone under the UPR in January, Sierra Leone had accepted recommendations to abolish the death penalty and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.[61]

In **Somalia,** 14 people were executed: seven of these executions were carried out under the authority of the Federal Government of Somalia; six executions were carried out in Somaliland; and one execution was carried out in Puntland.[62] There were 60 death sentences imposed – seven under the authority of the Federal Government of Somalia, eight in Somaliland and 45 in Puntland. At the end of the year, at least 100 people were under sentence of death in the country.

Sudan carried out two executions and imposed 21 death sentences. One commutation and 17 pardons were granted, while nine people were exonerated. In September, Article 126 of the 1991 Sudan Criminal Law, which provided for death by stoning for apostasy, was amended to provide for death by hanging.

According to information provided by the government of **Swaziland** to Amnesty International there is a moratorium on the use of the death penalty in the country and no executions have been carried out since 1983.

Zambia informed Amnesty International that there has been a moratorium on executions in the country since 1997, no executions were carried out in 2016; however, the High Court imposed 101 death sentences. At the end of the year 157 people – including two foreign nationals from Senegal and Tanzania – were under sentence of death.

According to information provided by the government of **Zimbabwe** to Amnesty International, no executions were carried out; eight death sentences were imposed. There were 97 people under sentence of death at the end of the year; two people had their death sentences commuted.

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[61] UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, Sierra Leone, UN doc. A/HRC/32/16/Add.1, 22 June 2016, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/127/92/PDF/G1612792.pdf?OpenElement

[62] These figures do not include reports of public unlawful killings by Somali armed opposition groups such as al-Shabab.

ANNEX I: EXECUTIONS AND DEATH SENTENCES IN 2016

This report only covers the judicial use of the death penalty and does not include figures for extrajudicial executions. Amnesty International only reports figures for which it can find reasonable confirmation, although the true figures for some countries are significantly higher. Some states intentionally conceal death penalty proceedings; others do not keep or make available data on the numbers of death sentences and executions.

Where "+" appears after a figure next to the name of a country – for instance, Afghanistan (4+) – it means that Amnesty International confirmed 4 executions or death sentences in Afghanistan but believes there were more than 4. Where "+" appears after a country name without a figure – for instance, Iran (+) – it means that Amnesty International has corroborated executions or death sentences (more than one) in that country but had insufficient information to provide a credible minimum figure. When calculating global and regional totals, "+" has been counted as 2, including for China.

RECORDED EXECUTIONS IN 2016

China 1,000s[63]

Iran 567+

Saudi Arabia 154+

Iraq 88+

Pakistan 87+

Egypt 44+

USA 20

Somalia 14 (Puntland 1; Somaliland 6; Federal Government of Somalia 7)

Bangladesh 10

Malaysia 9

Afghanistan 6

Belarus 4+

Singapore 4

Indonesia 4

Japan 3

Nigeria 3

Palestine (State of) 3, Hamas authorities, Gaza

Sudan 2

Botswana 1

Taiwan 1

North Korea +

Viet Nam +

South Sudan +

[63] The use of "s" means several thousands.

RECORDED DEATH SENTENCES IN 2016

China 1,000s[64]

Nigeria 527

Pakistan 360+

Bangladesh 245+

Egypt 237+

Thailand 216

Cameroon 160+

Iraq 145+

India 136

Lebanon 126

Zambia 101

Democratic Republic of the Congo 93+

Sri Lanka 79+

Viet Nam 63+

Indonesia 60+

Somalia 60 (Puntland 45; Somaliland 8; and Federal Government of Somalia 7)

Algeria 50

Kuwait 49

Tunisia 44

Saudi Arabia 40+

Malaysia 36+

USA 32

Mali 30

United Arab Emirates 26

Kenya 24+

Palestine (State of) 21, Hamas authorities, Gaza

Sudan 21+

Tanzania 19

Ghana 17

Jordan 13

Niger 11

Zimbabwe 8

Singapore 7+

Morocco/Western Sahara 6

Liberia 5+

Sierra Leone 5

Afghanistan 4+

Belarus 4

Qatar 4

Barbados 3

Laos 3+

Myanmar 3+

Japan 3

Ethiopia 2

Maldives 2

Taiwan 2

Trinidad and Tobago 2

Libya 1+

Guyana 1

Kazakhstan 1

Malawi 1

Papua New Guinea 1

Iran +

North Korea +

South Sudan +

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[64] See note 63.

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ANNEX II: ABOLITIONIST AND RETENTIONIST COUNTRIES AS OF 31 DECEMBER 2016

More than two thirds of the countries in the world have now abolished the death penalty in law or practice. As of 31 December 2016 the numbers were as follows:

Abolitionist for all crimes: 104

Abolitionist for ordinary crimes only: 7

Abolitionist in practice: 30

Total abolitionist in law or practice: 141

Retentionist: 57

The following are lists of countries in the four categories: abolitionist for all crimes, abolitionist for ordinary crimes only, abolitionist in practice and retentionist.

1. ABOLITIONIST FOR ALL CRIMES

Countries whose laws do not provide for the death penalty for any crime:

Albania, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Bulgaria, Burundi, Cambodia, Cabo Verde, Canada, Colombia, Cook Islands, Congo (Republic of), Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Dominican Republic, Ecuador, Estonia, Finland, Fiji, France, Gabon, Georgia, Germany, Greece, Guinea-Bissau, Haiti, Holy See, Honduras, Hungary, Iceland, Ireland, Italy, Kiribati, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Malta, Marshall Islands, Mauritius, Mexico, Micronesia, Moldova, Monaco, Montenegro, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Niue, Norway, Palau, Panama, Paraguay, Philippines, Poland, Portugal, Romania, Rwanda, Samoa, San Marino, Sao Tome and Principe, Senegal, Serbia (including Kosovo), Seychelles, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Suriname, Sweden, Switzerland, Timor-Leste, Togo, Turkey, Turkmenistan, Tuvalu, UK, Ukraine, Uruguay, Uzbekistan, Vanuatu, Venezuela.

2. ABOLITIONIST FOR ORDINARY CRIMES ONLY

Countries whose laws provide for the death penalty only for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances:

Brazil, Chile, El Salvador, Guinea, Israel, Kazakhstan, Peru.

3. ABOLITIONIST IN PRACTICE

Countries that retain the death penalty for ordinary crimes such as murder but can be considered abolitionist in practice in that they have not executed anyone during the last 10 years and are believed to have a policy or established practice of not carrying out executions:

Algeria, Brunei Darussalam, Burkina Faso, Cameroon, Central African Republic, Eritrea, Ghana, Grenada, Kenya, Laos, Liberia, Malawi, Maldives, Mali, Mauritania, Mongolia, Morocco/Western Sahara, Myanmar, Niger, Papua New Guinea, Russian Federation,[65] Sierra Leone, South Korea (the Republic of Korea), Sri Lanka, Swaziland, Tajikistan, Tanzania, Tonga, Tunisia, Zambia.

4. RETENTIONIST

Countries that retain the death penalty for ordinary crimes:

Afghanistan, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Botswana, Chad, China, Comoros, Democratic Republic of the Congo, Cuba, Dominica, Egypt, Equatorial Guinea, Ethiopia, Gambia, Guatemala, Guyana, India, Indonesia, Iran, Iraq, Jamaica, Japan, Jordan, Kuwait, Lebanon, Lesotho, Libya, Malaysia, Nigeria, North Korea (the Democratic People's Republic of Korea), Oman, Pakistan, Palestine (State of), Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Somalia, South Sudan, Sudan, Syria, Taiwan, Thailand, Trinidad and Tobago, Uganda, United Arab Emirates, USA, Viet Nam, Yemen, Zimbabwe.

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[65] The Russian Federation introduced a moratorium on executions in August 1996. However, executions were carried out between 1996 and 1999 in the Chechen Republic.

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ANNEX III: RATIFICATION OF INTERNATIONAL TREATIES AS OF 31 DECEMBER 2016

The community of nations has adopted four international treaties providing for the abolition of the death penalty. One is of worldwide scope; three are regional.

Below are short descriptions of the four treaties, a list of states parties to the treaties and lists of countries which have signed but not ratified the treaties, as of 31 December 2016. (States may become states parties to international treaties either by acceding to them or by ratifying them. Signature indicates an intention to become a party at a later date through ratification. States are bound under international law to respect the provisions of treaties to which they are a party, and to do nothing to defeat the object and purpose of treaties which they have signed.)

SECOND OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, AIMING AT THE ABOLITION OF THE DEATH PENALTY

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, adopted by the UN General Assembly in 1989, is of worldwide scope. It provides for the total abolition of the death penalty but allows states parties to retain the death penalty in time of war if they make a reservation to that effect at the time of ratifying or acceding to the Protocol. Any state which is a party to the International Covenant on Civil and Political Rights can become a party to the Protocol.

States parties: Albania, Andorra, Argentina, Australia, Austria, Azerbaijan, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Cabo Verde, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guinea-Bissau, Honduras, Hungary, Iceland, Ireland, Italy, Kyrgyzstan, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Mexico, Moldova, Monaco, Mongolia, Montenegro, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Philippines, Poland, Portugal, Romania, Rwanda, San Marino, Serbia (including Kosovo), Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Timor-Leste, Togo, Turkey, Turkmenistan, UK, Ukraine, Uruguay, Uzbekistan, Venezuela (total: 83)

Signed but not ratified: Angola, Madagascar, Sao Tome and Principe (total: 3)

PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS TO ABOLISH THE DEATH PENALTY

The Protocol to the American Convention on Human Rights to Abolish the Death Penalty, adopted by the General Assembly of the Organization of American States in 1990, provides for the total abolition of the death penalty but allows states parties to retain the death penalty in wartime if they make a reservation to that effect at the time of ratifying or acceding to the Protocol. Any state

party to the American Convention on Human Rights can become a party to the Protocol.

States parties: Argentina, Brazil, Chile, Costa Rica, Dominican Republic, Ecuador, Honduras, Mexico, Nicaragua, Panama, Paraguay, Uruguay, Venezuela (total: 13)

PROTOCOL NO. 6 TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS, CONCERNING THE ABOLITION OF THE DEATH PENALTY

Protocol No. 6 to the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), concerning the abolition of the death penalty, adopted by the Council of Europe in 1983, provides for the abolition of the death penalty in peacetime; states parties may retain the death penalty for crimes "in time of war or of imminent threat of war". Any state party to the European Convention on Human Rights can become a party to the Protocol.

States parties: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, UK, Ukraine (total: 46)

Signed but not ratified: Russian Federation (total: 1)

PROTOCOL NO. 13 TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS, CONCERNING THE ABOLITION OF THE DEATH PENALTY IN ALL CIRCUMSTANCES

Protocol No. 13 to the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), concerning the abolition of the death penalty in all circumstances, adopted by the Council of Europe in 2002, provides for the abolition of the death penalty in all circumstances, including time of war or of imminent threat of war. Any state party to the European Convention on Human Rights can become a party to the Protocol.

States parties: Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, UK, Ukraine (total: 44)

Signed but not ratified: Armenia (total: 1)

Under strict embargo until 00:01 BST (07.01 HKT/ 23:01 GMT) 11 April 2017

ANNEX IV: VOTING RESULTS OF UN GENERAL ASSEMBLY RESOLUTION 71/187, ADOPTED ON 19 DECEMBER 2016

The UN General Assembly adopted its sixth resolution on a moratorium on the use of the death penalty. The resolution was adopted by an overwhelming majority of UN member states.

Co-sponsors of UN General Assembly resolution 71/187, adopted on 19 December 2016

Albania, Algeria, Andorra, Angola, Argentina, Armenia, Australia, Austria, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Cabo Verde, Canada, Chile, Colombia, Congo (Republic of), Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Eritrea, Estonia, Fiji, Finland, France, Georgia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Lesotho, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Malta, Marshall Islands, Mexico, Micronesia, Moldova, Monaco, Mongolia, Montenegro, Mozambique, Netherlands, New Zealand, Norway, Palau, Panama, Paraguay, Poland, Portugal, Romania, Rwanda, Samoa, San Marino, Serbia (including Kosovo), Sierra Leone, Slovakia, Slovenia, Somalia, South Africa, Spain, Sweden, Switzerland, Timor-Leste, Togo, UK, Ukraine, Uruguay, Vanuatu, Venezuela (total: 89)

Votes in favour – Albania, Algeria, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cabo Verde, Cambodia, Canada, Central African Republic, Chad, Chile, Colombia, Congo (Republic of), Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Eritrea, Estonia, Fiji, Finland, France, Gabon, Georgia, Germany, Greece, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Kazakhstan, Kiribati, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Malawi, Mali, Malta, Marshall Islands, Mexico, Micronesia, Moldova, Monaco, Mongolia, Montenegro, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Palau, Panama, Paraguay, Peru, Poland, Portugal, Romania, Russian Federation, Samoa, San Marino, Sao Tome and Principe, Serbia (including Kosovo), Sierra Leone, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Switzerland, Tajikistan, Timor-Leste, Togo, Tunisia, Turkey, Turkmenistan, Tuvalu, UK, Ukraine, Uruguay, Uzbekistan, Vanuatu, Venezuela (total: 117)

Votes against – Afghanistan, Antigua and Barbuda, Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei Darussalam, Burundi, China, Dominica, Egypt, Ethiopia, Grenada, Guyana, India, Iran, Iraq, Jamaica, Japan, Kuwait, Libya, Malaysia, Maldives, North Korea (the Democratic People's Republic of Korea), Oman, Pakistan, Papua New Guinea, Qatar, Saint Kitts and Nevis,

Saint Lucia, Saint Vincent and Grenadines, Saudi Arabia, Singapore, South Sudan, Sudan, Syria, Trinidad and Tobago, USA, Yemen (total: 40)

Abstentions – Bahrain, Belarus, Cameroon, Comoros, Cuba, Djibouti, Equatorial Guinea, Ghana, Indonesia, Jordan, Kenya, Laos, Lebanon, Lesotho, Liberia, Mauritania, Morocco/Western Sahara, Myanmar, Niger, Nigeria, Philippines, Seychelles, South Korea (the Republic of Korea), Tanzania, Thailand, Tonga, Uganda, United Arab Emirates, Viet Nam, Zambia, Zimbabwe (total: 31)

Not present – Democratic Republic of the Congo, Gambia, Mauritius, Rwanda, Senegal (total: 5)

AMNESTY INTERNATIONAL IS A GLOBAL MOVEMENT FOR HUMAN RIGHTS. WHEN INJUSTICE HAPPENS TO ONE PERSON, IT MATTERS TO US ALL.

CONTACT US

info@amnesty.org

+44 (0)20 7413 5500

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Under strict embargo until 00:01 BST (07.01 HKT/ 23:01 GMT) 11 April 2017

DEATH SENTENCES AND EXECUTIONS 2016

Amnesty International recorded more than 1,000 executions around the world in 2016. While this figure represented a reduction from 2015 – a year in which the organization logged a historical spike – more than 3,000 death sentences were imposed in 2016, an increase on the figure recorded for the previous year.

Two countries – Benin and Nauru – abolished the death penalty for all crimes, while Guinea abolished it for ordinary crimes.

In the Middle East and North Africa, the number of executions recorded decreased by 28%, but Iran and Saudi Arabia remained among the world's top executioners.

In Asia-Pacific, the number of known executions decreased, mostly due to a significant reduction in Pakistan. China was once again the world's lead executioner but figures remained classified as a state secret. The number of recorded death sentences in the Asia-Pacific region rose significantly, while new information which came to light in China, Malaysia and Viet Nam painted an alarming picture of the extensive resort to the death penalty in these countries.

In Sub-Saharan Africa, there were fewer executions recorded; however the number of death sentences logged rose by 145%, largely due to a steep rise in Nigeria.

The USA remained the only country to carry out executions in the Americas region, for the 8th consecutive year. However, the number of executions and death sentences continued to decrease. Two Caribbean countries – Antigua and Barbuda and Bahamas – commuted their last remaining death sentences.

In Europe and Central Asia, Belarus resumed executions after a 17-month hiatus. Belarus and Kazakhstan were the only two countries in the region to use the death penalty.

Amnesty International opposes the death penalty in all cases without exception, regardless of the nature or the circumstances of the crime; guilt, innocence or other characteristics of the individual; or the method used by the state to carry out the execution.

Index: ACT 50/5740/2017
April 2017
amnesty.org

AMNESTY INTERNATIONAL

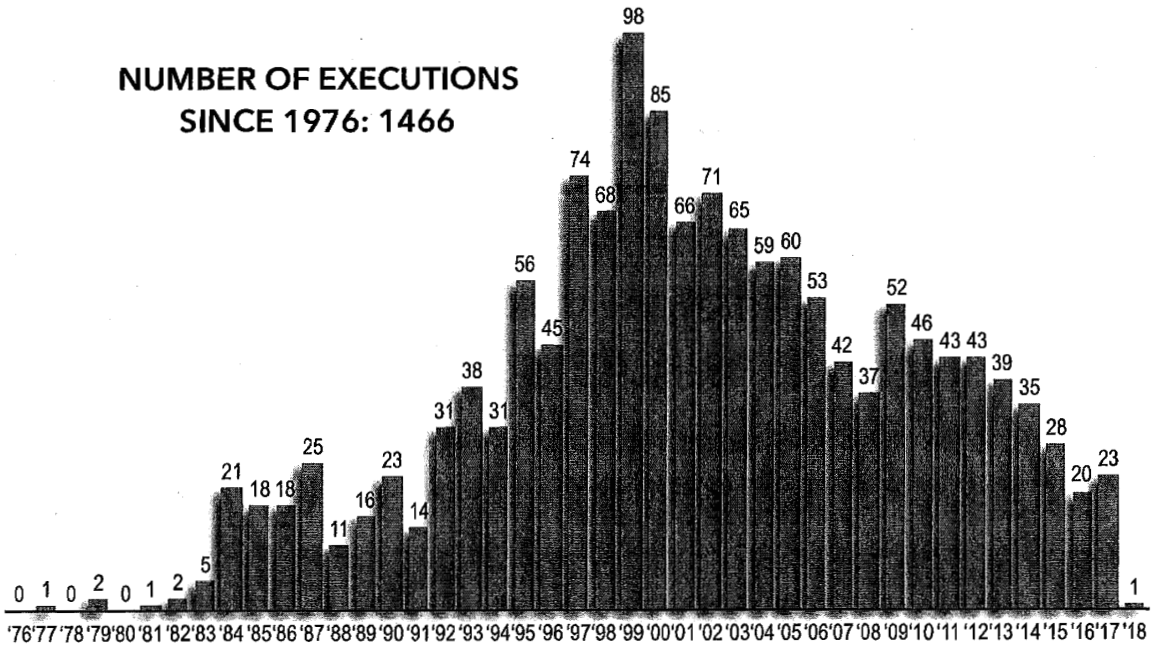
EXHIBIT 55

DEATH PENALTY INFORMATION CENTER
Facts about the Death Penalty

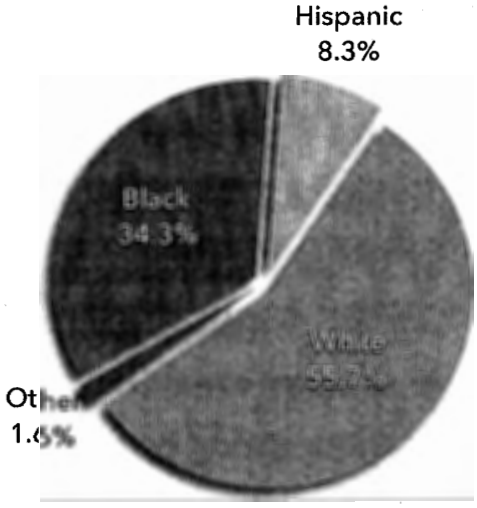
1701 K St. NW, Suite 205
Washington, DC 20006
www.deathpenaltyinfo.org
dpic@deathpenaltyinfo.org
@DPInfoCtr
facebook.com/DeathPenaltyInfo

Updated: January 19, 2018

NUMBER OF EXECUTIONS SINCE 1976: 1466

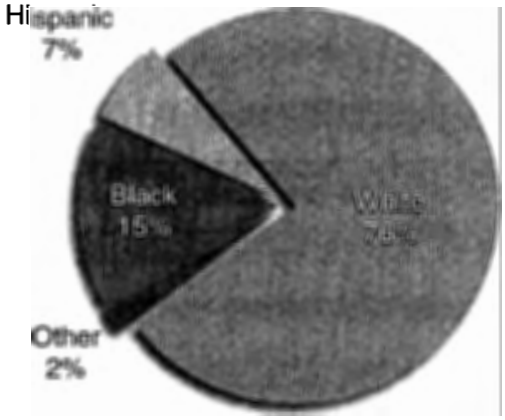


RACE OF DEFENDANTS EXECUTED



- **White: 817**
- **Black: 503**
- **Hispanic: 122**
- **Other: 24**

RACE OF VICTIMS IN DEATH PENALTY CASES



Over 75% of the murder victims in cases resulting in an execution were white, even though nationally only 50% of murder victims generally are white.

DEATH PENALTY STATES (31)
Alabama
Arizona
Arkansas
California
Colorado
Florida
Georgia
Idaho
Indiana
Kansas
Kentucky
Louisiana
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
North Carolina
Ohio
Oklahoma
Oregon
Pennsylvania
South Carolina
South Dakota
Tennessee
Texas
Utah
Virginia
Washington
Wyoming
U.S. Gov't
U.S. Military

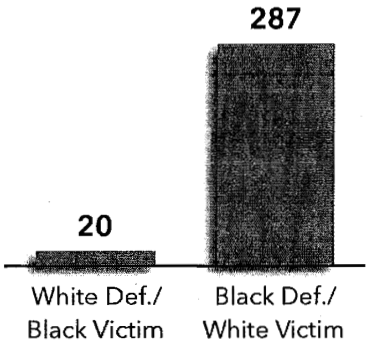
NON-DEATH PENALTY STATES (19)
Alaska
Connecticut
Delaware
Hawaii
Illinois
Iowa
Maine
Maryland
Massachusetts
Michigan
Minnesota
New Jersey
New Mexico*
New York
North Dakota
Rhode Island
Vermont
West Virginia
Wisconsin
District of Columbia

**2 prisoners remain on death row.*

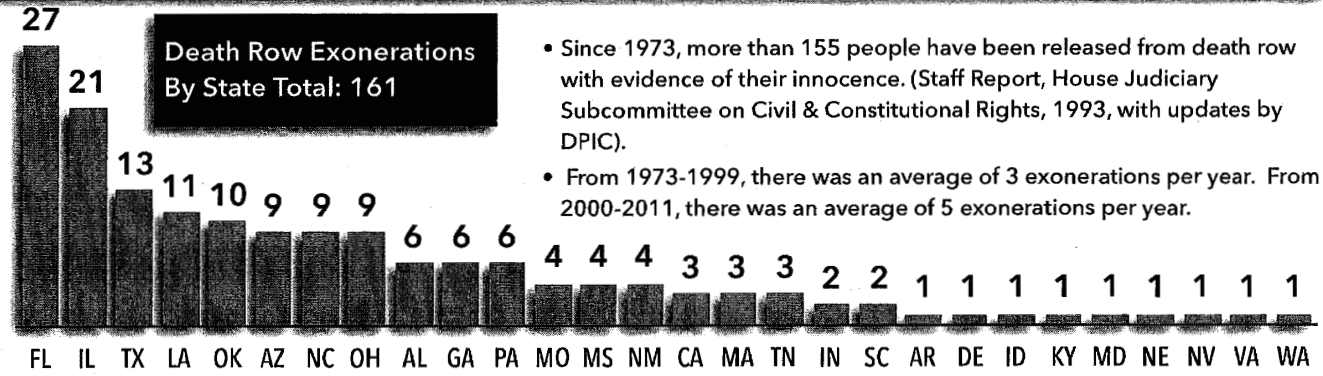
RECENT STUDIES ON RACE

- Jurors in Washington state are three times more likely to recommend a death sentence for a black defendant than for a white defendant in a similar case. (Prof. K. Beckett, Univ. of Washington, 2014).
- In Louisiana, the odds of a death sentence were 97% higher for those whose victim was white than for those whose victim was black. (Pierce & Radelet, Louisiana Law Review, 2011).
- A study in California found that those convicted of killing whites were more than 3 times as likely to be sentenced to death as those convicted of killing blacks and more than 4 times more likely as those convicted of killing Latinos. (Pierce & Radelet, Santa Clara Law Review, 2005).
- A comprehensive study of the death penalty in North Carolina found that the odds of receiving a death sentence rose by 3.5 times among those defendants whose victims were white. (Prof. Jack Boger and Dr. Isaac Unah, University of North Carolina, 2001).
- In 96% of states where there have been reviews of race and the death penalty, there was a pattern of either race-of-victim or race-of-defendant discrimination, or both. (Prof. Baldus report to the ABA, 1998).

Persons Executed for Interracial Murders

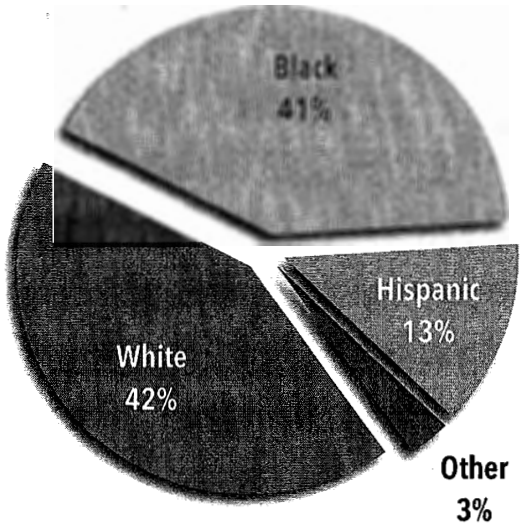


INNOCENCE



- Since 1973, more than 155 people have been released from death row with evidence of their innocence. (Staff Report, House Judiciary Subcommittee on Civil & Constitutional Rights, 1993, with updates by DPIC).
- From 1973-1999, there was an average of 3 exonerations per year. From 2000-2011, there was an average of 5 exonerations per year.

DEATH ROW INMATES BY RACE



DEATH ROW INMATES BY STATE: July 1, 2017

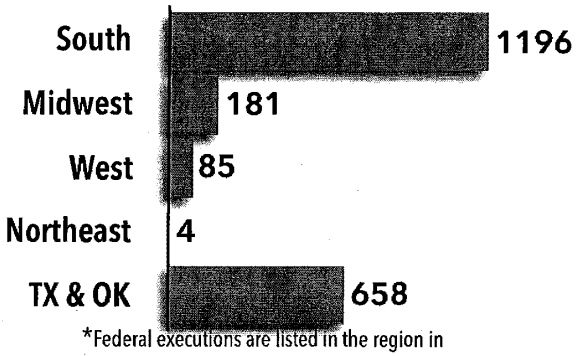
California	746	Mississippi	48	Idaho	8
Florida	374	Oklahoma	47	Washington	8
Texas	243	South Carolina	41	Virginia	5
Alabama	191	Kentucky	33	U.S. Military	5
Pennsylvania	169	Oregon	33	Colorado	3
North Carolina	152	Arkansas	32	South Dakota	3
Ohio	144	Missouri	24	Montana	2
Arizona	125	Indiana	12	New Mexico	2
Nevada	82	Nebraska	11	New Hampshire	1
Louisiana	73	Kansas	10	Wyoming	1
Tennessee	62	Utah	9	Delaware	0
Georgia	61			**TOTAL: 2,817**	
U.S. Gov't	61				

Race of Death Row Inmates and **Death Row Inmates by State** Source: NAACP Legal Defense Fund, "Death Row USA" (July 1, 2017). When added, the total number of death row inmates by state is slightly higher than the given total because some prisoners are sentenced to death in more than one state.

EXECUTIONS BY STATE SINCE 1976

State	Tot	2018	2017	State	Tot	2018	2017	State	Tot	2018	2017
TX	546	1	7	LA	28	0	0	PA	3	0	0
VA	113	0	2	MS	21	0	0	KY	3	0	0
OK	112	0	0	IN	20	0	0	MT	3	0	0
FL	95	0	3	DE	16	0	0	*US GOVT*	3	0	0
MO	88	0	1	CA	13	0	0	ID	3	0	0
GA	70	0	1	IL	12	0	0	SD	3	0	0
AL	61	0	3	NV	12	0	0	OR	2	0	0
OH	55	0	2	UT	7	0	0	NM	1	0	0
NC	43	0	0	TN	6	0	0	CO	1	0	0
SC	43	0	0	MD	5	0	0	WY	1	0	0
AZ	37	0	0	WA	5	0	0	CT	1	0	0
AR	31	0	4	NE	3	0	0				

EXECUTIONS BY REGION*



*Federal executions are listed in the region in which the crime was committed.

DEATH SENTENCING

The number of death sentences per year has dropped dramatically since 1999.

Year	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Sentences	295	279	223	153	166	151	138	140	123	126	120	118	114	85	82	83	73	49	31	39

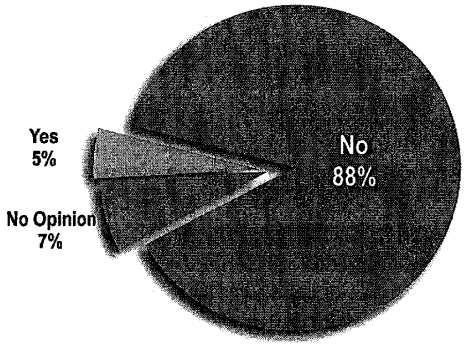
Source: Bureau of Justice Statistics: "Capital Punishment, 2013." 2014 - 2017 figure from DPIC research.

MENTAL DISABILITIES

- **Intellectual Disabilities:** In 2002, the Supreme Court held in Atkins v. Virginia that it is unconstitutional to execute defendants with 'mental retardation.'
- **Mental Illness**: The American Psychiatric Association, the American Psychological Association, the National Alliance for the Mentally Ill, and the American Bar Association have endorsed resolutions calling for an exemption of the severely mentally ill.

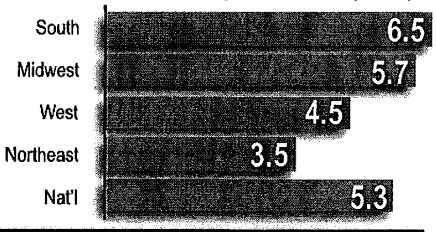
DETERRENCE

Do executions lower homicide rates?



- A report by the National Research Council, titled Deterrence and the Death Penalty, stated that studies claiming that the death penalty has a deterrent effect on murder rates are "fundamentally flawed" and should not be used when making policy decisions (2012).
- Consistent with previous years, the 2016 FBI Uniform Crime Report showed that **the South had the highest murder rate. The South accounts for over 80% of executions.** The Northeast, which has less than 1% of all executions, had lowest murder rate.
- According to a survey of the former and present presidents of the country's top academic criminological societies, 88% of these experts rejected the notion that the death penalty acts as a deterrent to murder. (Radelet & Lacock, 2009)

Murder Rates per 100,000 (2016)



EXECUTIONS SINCE 1976 BY METHOD USED

1291	Lethal Injection
158	Electrocution
11	Gas Chamber
3	Hanging
3	Firing Squad

32 states plus the US government use lethal injection as their primary method. Some states utilizing lethal injection have other methods available as backups. Though New Mexico has abolished the death penalty, its law was not retroactive, leaving 2 prisoners on its death row and its lethal-injection protocol intact.

JUVENILES

- In 2005, the Supreme Court in Roper v. Simmons struck down the death penalty for juveniles. 22 defendants had been executed for crimes committed as juveniles since 1976.

WOMEN

- There were 53 women on death row as of July 1, 2017. This constitutes less than 2% of the total death row population. (NAACP Legal Defense Fund, July 1, 2017). 16 women have been executed since 1976.

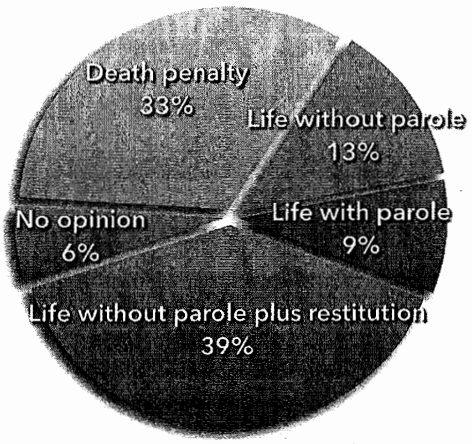
FINANCIAL FACTS ABOUT THE DEATH PENALTY

- Oklahoma capital cases cost, on average, 3.2 times more than non-capital cases. (Study prepared by Peter A. Collins, Matthew J. Hickman, and Robert C. Boruchowitz, with research support by Alexa D. O'Brien, for the Oklahoma Death Penalty Review Commission, 2017.)
- Defense costs for death penalty trials in Kansas averaged about $400,000 per case, compared to $100,000 per case when the death penalty was not sought. (Kansas Judicial Council, 2014).
- A study in California revealed that the cost of the death penalty in the state has been over $4 billion since 1978. Study considered pre-trial and trial costs, costs of automatic appeals and state habeas corpus petitions, costs of federal habeas corpus appeals, and costs of incarceration on death row. (Alarcon & Mitchell, 2011).
- Enforcing the death penalty costs Florida $51 million a year above what it would cost to punish all first-degree murderers with life in prison without parole. Based on the 44 executions Florida had carried out since 1976, that amounts to a cost of $24 million for each execution. (Palm Beach Post, January 4, 2000).
- The most comprehensive study in the country found that the death penalty costs North Carolina $2.16 million per execution over the costs of sentencing murderers to life imprisonment. The majority of those costs occur at the trial level. (Duke University, May 1993).
- In Texas, a death penalty case costs an average of $2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years. (Dallas Morning News, March 8, 1992).

PUBLIC OPINION AND THE DEATH PENALTY

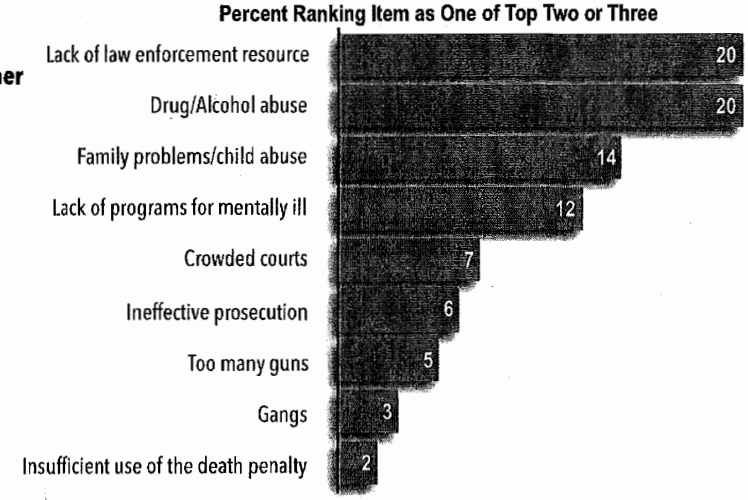
Support for Alternatives to the Death Penalty

- A 2010 poll by Lake Research Partners found that **a clear majority of voters (61%) would choose a punishment other than the death penalty for murder**.



What Interferes with Effective Law Enforcement?

Percent Ranking Item as One of Top Two or Three



- A 2009 poll commissioned by DPIC found police chiefs ranked the death penalty **last** among ways to reduce violent crime. The police chiefs also considered the death penalty the least efficient use of taxpayers' money.

The Death Penalty Information Center has available more extensive reports on a variety of issues, including:

- "The Death Penalty in 2017: Year-End Report" (December 2017)
- "Battle Scars: Military Veterans and the Death Penalty" (November 2015)
- "The 2% Death Penalty: How a Minority of Counties Produce Most Death Cases at Enormous Costs to All" (October 2013)
- "Struck By Lightning: The Continuing Arbitrariness of the Death Penalty 35 Years After Its Reinstatement in 1976" (June 2011)
- "Smart on Crime: Reconsidering the Death Penalty in a Time of Economic Crisis" (October 2009)
- "A Crisis of Confidence: Americans' Doubts About the Death Penalty" (2007)
- "Blind Justice: Juries Deciding Life and Death with Only Half the Truth" (2005)
- "Innocence and the Crisis in the American Death Penalty" (2004)
- "International Perspectives on the Death Penalty: A Costly Isolation for the U.S." (1999)
- "The Death Penalty in Black & White: Who Lives, Who Dies, Who Decides" (1998)
- "Innocence and the Death Penalty: The Increasing Danger of Executing the Innocent" (1997)

EXHIBIT 56

Blackstone School of Law

ESTABLISHED A.D. 1890

DALLAS, U.S.A.

confers this certificate of

Legal Assistant/Paralegal

upon

Eric S. Branch

who has fulfilled all the requirements prescribed by the School and is entitled to all of the honors, rights and privileges thereunto appertaining.

In Testimony Whereof *this recognition of achievement is Given this fourth day of March A.D. 1996 at Dallas in the State of Texas.*

BLACKSTONE SCHOOL OF LAW CORPORATE SEAL

President

Director of Instruction

1055

Filing # 67192542 E-Filed 01/29/2018 03:02:23 PM

**THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY, FLORIDA**

STATE OF FLORIDA,
Plaintiff, **CASE NO.: 1993 CF 000870 A**

vs.

ERIC SCOTT BRANCH,
Defendant

NOTICE OF COMPLIANCE BY LAW ENFORCEMENT AGENCY

The Honorable David Morgan, Sheriff of Escambia County, Pensacola, Florida through undersigned counsel, notifies the Attorney General of compliance with the provisions of §27.7081, Florida Statutes, and Rule 3.852, Florida Rules of Criminal Procedure, by delivery of public records involving the case to the records repository of the Secretary of State.

I further certify, to the best of my knowledge and belief, the Escambia County Sheriff's Office has previously copied, sealed, indexed, and delivered all public records in its possession or in the possession of any employee of this agency involving this case to the records repository of the Secretary of State. See Attachment 1, affidavit of ECSO Public Records Custodian, Elizabeth Medeiros. No additional documents exists.

Respectfully Submitted,

/s/ Debra D. Little
Debra D. Little, General Counsel
Escambia County Sheriff's Office
1700 W. Leonard Street
Pensacola, Florida 32501
Telephone: (850) 436-9515
ddlittle@escambiaso.com
Florida Bar No. 0010556

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, a true and correct copy of the Notice of Compliance was electronically filed with the Clerk of Court, via the Florida Courts E-filing Portal on this 29th day of January 2018.

/s/ Debra D. Little
Debra D. Little, General Counsel

THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff, **CASE NO.: 1993 CF 000870 A**

vs.

ERIC SCOTT BRANCH,
Defendant

AFFIDAVIT

I, Elizabeth Medeiros, the undersigned, declare, verify, and state under penalties of perjury under the laws of the United States of America that:

1. I am employed by the Escambia County Sheriff's Office in the position of Public Records Coordinator, and as such I am the custodian of the records which are the subject of this declaration.

2. By reason of my position I am authorized and qualified to make this declaration.

3. On January 15, 1999, the Escambia County Sheriff's Office provided to the Capital Collateral Post Conviction Records Repository, Exhibit A, the following documents:
   a. Arrest Report
   b. Photos
   c. Fingerprint records
   d. Missing Person Bolo's
   e. Correspondence
   f. Intelligence Report
   g. Inmate correspondence
   h. Infirmary/Medical Records
   i. Records disposition Request No. 97 and 105

4. On June 29, 1999, the Escambia County Sheriff's Office provided to the Capital Collateral Post Conviction Records Repository, Exhibit B, the following documents:
   a. Public records pertaining to defendant's case on listed jurors
   b. Inter-office memorandum listed public records submitted
   c. General Records Schedule GS2
   d. Records disposition Request No. 97 and 105
   e. Computer printout information on defendant
   f. Inmate record on defendant
   g. S.R.T. Log Book #00155 on defendant
   h. Floor Log Book #00383 for blue six on defendant

ATTACHMENT 1

i. Floor Log Book #00411 for blue six on defendant
j. Confidential medical file on defendant
k. Lobby Visitation Record #00388 on defendant

5. I certify, to the best of my knowledge and belief, all public records in possession of this agency or in the possession of any employee of this agency – as specifically requested by Capital Attorney Stacy Biggart-involving this case have been copied, sealed, indexed and delivered to the Capital Collateral Post Conviction Records Repository as indicated on the transmittal receipt.

Sworn to and subscribed before me on this 29th day of January 2018.

Elizabeth Medeiros

Carissa L. Mitchell
Notary Public
My Commission Expires: 04/01/2020
Commission Number: FF 940644

NOTARY PUBLIC STATE OF FLORIDA
CARISSA MITCHELL
MY COMMISSION # FF 940644
EXPIRES: April 1, 2020
Bonded Thru Budget Notary Services

Delivered 1-19-99

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Library and Information Resources
Form LS/TEMP/CCR100

TRANSMITTAL RECEIPT
TRANSFER OF CAPITAL COLLATERAL POST CONVICTION RECORDS
TO THE FLORIDA STATE ARCHIVES

1. RECORD GROUP NO. 660
SERIES NO. 1739

2. AGENCY: Escambia County Sheriff's Office

3. DIVISION: Support Services

4 BUREAU: Central Records ACR Records

5. ADDRESS (Street, City, and Zip Code)
1700 West Leonard Street
Pensacola, Florida 32501

6. CONTACT (Name and Telephone Number)
1st Lt. Eric Enquist
850-436-9562

7. SUBMIT TO:
Florida Department of State
Bureau of Archives and Records Management
Mail Station 9A
R. A. Gray Building
500 South Bronough Street
Tallahassee FL 32399-0250

8. SCOPE DATES: 1993 - 1997

RECORDS SERIES TITLE: CCR Post Conviction Records

DEFENDANT NAME & CASE # Eric Scott Branch
Case # 93-870-F

9. DESCRIPTION

CENTRAL RECORDS CASE FILE:
- Arrest Report
- Photos
- Fingerprint Records
- Missing Person Bolo's
- Correspondence
- Intelligence Report

CORRECTIONS:
- Inmate correspondence
- Infirmary / Medical Records

Records Disposition Request No. 97 & No. 105

VOLUME 1 (CUBIC FEET)

(USE CONTINUATION SHEET IF NECESSARY)

10. TYPE OF RECORD (CHECK EACH TYPE THAT APPLIES)

a. X PAPER COPIES b. X PHOTOGRAPHS c. ____ OTHER ____

11. LIST BOXES WITH SEALED RECORDS (RESTRICTED ACCESS) (CITE APPLICABLE STATUTE)

12. THE ABOVE DESCRIBED RECORDS ARE TRANSFERRD TO THE CUSTODY OF THE CAPITAL COLLATERAL POST CONVICTION RECORDS REPOSITORY (FLORIDA STATE ARCHIVES)

TRANSMITTING AGENCY: I AUTHORIZE THE TRANSFER OF THE RECORDS HEREIN DESCRIBED

Eric R. Enquist 1/15/99
SIGNATURE DATE

Eric R. Enquist
1st Lieutenant
TYPE NAME AND TITLE

13. FLORIDA STATE ARCHIVES:
I ACCEPT CUSTODY OF THE RECORDS HEREIN DESCRIBED.

Jim Burbrick 1-26-99
BUREAU CHIEF DATE

Elena Richburg
CCR POST CONVICTION RECORDS ARCHIVIST DATE

EXHIBIT A

STATE OF FLORIDA DEPARTMENT OF STATE Division of Library and Information Resources Form LS/TEMP/CCR100	TRANSMITTAL RECEIPT TRANSFER OF CAPITAL COLLATERAL POST CONVICTION RECORDS TO THE FLORIDA STATE ARCHIVES	1. RECORD GROUP NO. 660 SERIES NO. 1739
2. AGENCY Escambia County Sheriff's Office	3. DIVISION Support Services	4 BUREAU Central Records Dept. of Corrections

5. ADDRESS (Street, City, and Zip Code)	6. CONTACT (Name and Telephone Number)
1700 West Leonard Street Pensacola, Florida 32501	1st Lt. Eric R. Enquist (850) 436-9562
7. SUBMIT TO: Florida Department of State Bureau of Archives and Records Management Mail Station 9A R. A. Gray Building 500 South Bronough Street Tallahassee FL 32399-0250	8. SCOPE DATES: 1984 - 1998 RECORDS SERIES TITLE: CCR Post Conviction Records DEFENDANT NAME & CASE # Eric Scott Branch Case # 93-870-F

9. DESCRIPTION

CENTRAL RECORDS

Enclosed court order for additional public records pertaining to defendant's case on listed jurors. All files pertaining to above.

DEPT. OF CORRECTIONS

1 Inter-Office Memorandum listed public records submitted
2 General Records Schedule GS2
3 Records Disposition Request No. 97 and 105
4 Computer print out information on defendant
5 Inmate record on defendant
6 S.R.T. Log Book #00155 on defendant
7 Floor Log Book #00383 for blue six on defendant
8 Floor Log Book #00411 for blue six on defendant
Confidential Medical file on defendant
9 Lobby Visitation Record #00388 on defendant

VOLUME _____ (CUBIC FEET)

(USE CONTINUATION SHEET IF NECESSARY)

10. TYPE OF RECORD (CHECK EACH TYPE THAT APPLIES)

a. X PAPER COPIES b. X PHOTOGRAPHS c. X OTHER Sealed Medical Records

11. LIST BOXES WITH SEALED RECORDS (RESTRICTED ACCESS) (CITE APPLICABLE STATUTE)

(1) Pkg. Eric Scott Branch Case #93-370-F - Escambia County Sheriff's Office

12. THE ABOVE DESCRIBED RECORDS ARE TRANSFERRD TO THE CUSTODY OF THE CAPITAL COLLATERAL POST CONVICTION RECORDS REPOSITORY (FLORIDA STATE ARCHIVES) TRANSMITTING AGENCY: I AUTHORIZE THE TRANSFER OF THE RECORDS HEREIN DESCRIBED	13. FLORIDA STATE ARCHIVES; I ACCEPT CUSTODY OF THE RECORDS HEREIN DESCRIBED.
Eric R. Enquist 6/29/99 SIGNATURE DATE	Jim Burbank 7-7-99 BUREAU CHIEF DATE
Eric R. Enquist 1st Lieutenant TYPE NAME AND TITLE	Elena Rich Irving 7-6-99 CCR POST CONVICTION RECORDS ARCHIVIST DATE

EXHIBIT B

Filing # 67226853 E-Filed 01/30/2018 09:57:03 AM

IN THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY,
FLORIDA

STATE OF FLORIDA,

Plaintiff

v.

CASE NO. 1993-CF-870A-"N"
CAPITAL CASE
EXECUTION SCHEDULED FOR FEBRUARY 22, 2018, at 6:00 p.m.

ERIC SCOTT BRANCH,

Defendant
_____/

STATE'S ANSWER TO SUCCESSIVE RULE 3.851 MOTION FOR POSTCONVICTION RELIEF

On January 19, 2018, Governor Scott signed a warrant in this capital case scheduling Branch's execution for Thursday, February 22, 2018 at 6:00 p.m. On January 29, 2018, Branch, represented by Capital Collateral Regional Counsel - North (CCRC-N), filed a successive postconviction motion raising two claims: 1) a claim based on *Atkins v. Virginia*, 536 U.S. 304 (2002), and *Roper v. Simmons*, 543 U.S. 551 (2005), asserting that the Eighth Amendment prohibition on execution should be extended to emotional immaturity; and 2) a claim arguing that his 24 years on death row violates the Eighth Amendment prohibition on cruel and unusual punishment. The *Atkins/Roper* claim is procedurally barred. And both claims are meritless as a matter of law under controlling Florida Supreme Court precedent and therefore, are properly summarily denied. The

successive postconviction motion should be summarily denied.

Facts of the crime and procedural history

Branch was convicted of first-degree murder, grand theft, sexual battery, and sentenced to death. *Branch v. State*, 685 So.2d 1250 (Fla. 1996). Branch had been improperly released from prison for sexual battery of a 14-year-old girl. He joined his cousin in Panama City, Florida, in a Pontiac Bonneville. Once in Panama City, Branch raped another woman. *Branch v. State*, 671 So. 2d 224, 224 (Fla. 1st DCA 1996), *affirmed*, 684 So.2d 195 (Fla. 1996) (reviewing a conviction and sentence for sexual battery).

Branch spent the weekend prior to the murder on the campus of the University of West Florida in Pensacola, spending Sunday night in the dorm room of a student, Melissa. On Monday, January 11, 1993, Branch, who was worried that law enforcement was looking for him either for the recent rape or on an Indiana warrant and could trace him via the Pontiac Bonneville, drove the Bonneville to the Pensacola airport, parked it, and took a taxi back to campus. Shortly after 8:20 p.m., Branch kidnapped a young female college student from a remote parking lot on campus to steal her car. Branch savagely beat her. The medical examiner, who had conducted thousands of autopsies, testified that he will always remember this one because of the extent of her injuries. Branch stomped; strangled; and sexually assaulted her with a tree branch. He left her nude body in the nearby woods after covering her with leaves and debris. Branch

then stole her red Toyota Celica with a black antenna and broken left taillight. Branch then returned to the dorm room. Melissa noticed that Branch had a cut on his hand.

The next day, Branch drove back to Panama City and then to Bowling Green, Kentucky, in the victim's red Toyota. He called his grandfather in Indiana to come pick him up. The victim's car was recovered shortly afterward in a parking lot in Bowling Green.

After arriving in Indiana and speaking with a lawyer, Branch turned himself in. The booking officer who took Branch's fingerprints noticed he had a cut on his hand. *See generally Branch v. McDonough*, 779 F.Supp.2d 1309 (N.D. Fla. 2010) (detailing the facts of the crime).

Judge Edward Phillips Nickinson, III, presided at the trial. The prosecution presented DNA evidence consisting of the victim's blood located on boots and socks in Branch's Pontiac Bonneville. The bloodstains matched the victim's DNA profile "conservatively" at one in 9 million. (T. Vol. III 519). The jury convicted Branch of first-degree murder, sexual battery, and grand theft. Branch testified at the guilt phase admitting that he stole the victim's car. His story was that, while he helped an "other Eric" carry the victim into the woods, it was the "other Eric" who beat and murdered her.

The jury recommended a death sentence by a vote of ten to two. The judge found three aggravators: 1) the murder was committed in the course of a sexual

battery; 2) prior violent felony based on an Indiana rape conviction;[1] and 3) the murder was especially heinous, atrocious, or cruel. The trial court found several nonstatutory mitigating circumstances, including: remorse; unstable childhood; positive personality traits; and acceptable conduct at trial. The trial court sentenced Branch to death.

In the direct appeal to the Florida Supreme Court, Branch raised nine issues. *Branch v. State*, 685 So.2d 1250, 1252 n.3 (Fla. 1996) (listing the nine issues in a footnote).[2] The Florida Supreme Court affirmed the convictions and death sentence. *Branch v. State*, 685 So.2d 1250 (Fla. 1996).

Branch then filed a petition for writ of certiorari in the United States Supreme Court. On May 12, 1997, the United States Supreme Court denied review. *Branch v. Florida*, 520 U.S. 1218 (1997).

On May 7, 1998, Branch filed a shell motion for postconviction relief in state trial court and then on April 1, 2003, he filed a second amended motion, raising fourteen claims. *Branch v. State*, 952 So.2d 470, 474 n.1 (Fla. 2006) (listing the

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[1] The Indiana rape conviction, not the Florida rape conviction, was used as the basis for the prior violent felony aggravator. *Branch v. State*, 685 So.2d 1250, 1253 (Fla.1996) (finding the remainder of Branch's claims in the direct to be "without merit"); *Branch v. State*, 952 So.2d 470, 482 (Fla. 2006) (rejecting a claim of ineffectiveness of appellate counsel for raising but not adequately briefing the issue of the admissibility of the Indiana conviction).

[2] The nine issues were: 1) failure to grant a continuance; 2) failure to conduct a hearing into counsel's competence; 3) failure to give a requested instruction on circumstantial evidence; 4) insufficient evidence; 5) comment on right to silence; 6) photo of the victim; 7) failure to give a requested instruction defining mitigating circumstances; 8) evidence of another crime; 9) victim impact evidence.

claims raised in the amended 3.851 motion).[3] The trial judge, Judge Nickinson, also presided over the state postconviction proceedings. The trial court held an evidentiary hearing on three claims. Two defense mental health experts testified at the state evidentiary hearing. Dr. James Larson, who had been hired by trial counsel as a confidential mental health expert before trial, but who was not presented at the penalty phase because his testimony would not be "helpful," testified during the postconviction evidentiary hearing. *Branch*, 952 So.2d at 478 (stating that "Dr. Larson's evaluation was not helpful to the defense"). And state postconviction counsel Reiter also presented Dr. Henry L. Dee at the evidentiary hearing to support the claim of ineffectiveness for failing to obtain an adequate mental health evaluation. *Id.* (noting much of the proposed mitigation presented at the evidentiary hearing either was "not credible or would actually have been

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[3] The fourteen claims were: 1) ineffective assistance of trial counsel at the guilt phase and violations of *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972); 2) ineffective assistance of trial counsel during the penalty phase and violations of *Brady* and *Giglio*; 3) newly discovered evidence shows that the jury and trial court considered a nonstatutory aggravating circumstance of an improper prior violent felony; 4) counsel was ineffective for failing to obtain an adequate mental health evaluation; 5) postconviction counsel was unconstitutionally hindered because of the rules prohibiting counsel from interviewing jurors; 6) jury instructions diluted the jury's sense of overall responsibility in Florida's death penalty scheme; 7) Florida's death penalty sentencing scheme is unconstitutional under *Ring v. Arizona*, 536 U.S. 584 (2002); 8) unconstitutionality of execution by electrocution and lethal injection; 9) defendant may become mentally incompetent by the time of his execution; 10) felony underlying felony murder was an automatic aggravating circumstance; 11) improper direct appeal and ineffective assistance of appellate counsel; 12) public records are being withheld; 13) Florida's capital punishment statute is unconstitutional because it fails to prevent the arbitrary imposition of the death penalty; and 14) cumulative error.

harmful to the defendant's case"). Dr. Dee's deposition was taken before the evidentiary hearing and was filed with the trial court. Dr. Dee testified during the deposition that Branch's full scale IQ was 115. The trial court denied the motion following the evidentiary hearing.

In his postconviction appeal to the Florida Supreme Court, Branch raised nine issues.[4] *Branch v. State*, 952 So.2d 470, 474 (Fla. 2006). Branch also filed a state habeas petition raising four claims of ineffectiveness of appellate counsel.[5] *Branch*, 952 So.2d at 481. The Florida Supreme Court affirmed the trial court's denial of the postconviction motion and denied the state habeas petition.

On March 28, 2007, Branch, represented by Michael Reiter, filed a 132-page

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[4] The nine issues were: 1) trial counsel was ineffective for failing to file a motion to suppress the items taken from the Pontiac; 2) trial counsel was ineffective for failing to investigate and present sufficient mitigation evidence during the penalty phase; 3) trial counsel was ineffective for failing to hire experts; 4) trial counsel was ineffective for failing to object to the introduction of the abstract of judgment during the penalty phase; 5) trial counsel was ineffective for failing to impeach witnesses; 6) trial counsel was ineffective for failing to investigate for the guilt phase; 7) trial counsel was ineffective for failing to object at the guilt and penalty phases; 8) Branch's Indiana conviction was not a felony under Florida law in order to establish the prior violent felony aggravating circumstance; and 9) Branch was entitled to relief based on cumulative error.

[5] The four claims of ineffectiveness of appellate counsel were: 1) failing to argue that the Indiana conviction was not a felony under Florida law and the inadmissibility of the abstract of judgment; 2) failing to raise on appeal the trial court's error in admitting into evidence DNA probability statistics without conducting a proper *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923), hearing; 3) failing to raise the issue of the trial court's order denying the defense's request for a recess; and 4) failing to argue that the trial court had failed to conduct a proper *Nelson v. State*, 274 So.2d 256 (Fla. 4th DCA 1973), inquiry.

habeas petition in federal court, raising seven issues.[6] *Branch v. McDonough*, 4:06-cv-00486-RH (Doc #7). The district court denied the federal habeas petition but granted a certificate of appealability on one issue. *Branch v. McDonough*, 779 F.Supp.2d 1309 (N.D. Fla. 2010) (detailing the facts and denying the federal habeas petition).

The Eleventh Circuit rejected the *Doyle v. Ohio*, 426 U.S. 610 (1976), claim and affirmed the federal district court's denial of habeas relief. *Branch v. Sec'y, Fla. Dept. of Corr.*, 638 F.3d 1353 (11th Cir. 2011).

On October 19, 2011, Branch filed a petition for writ of certiorari in the United States Supreme Court from the Eleventh Circuit opinion, raising two issues: 1) whether there is a right of self-representation in a federal habeas appeal and 2) the *Doyle* issue. The United States Supreme Court denied certiorari review. *Branch v. Tucker*, 565 U.S. 1248 (2012) (No. 11-8117).

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[6] The seven issues were: 1) ineffective assistance of counsel in (a) not filing a motion to suppress the evidence seized from the Pontiac, (b) not hiring a blood-spatter expert, (c) not hiring a forensic pathologist to rebut the medical examiner's testimony about the stick found in the victim's vagina and the effect of the ligature found around her neck, (d) insufficiently investigating and presenting evidence in mitigation, and (e) not challenging on direct appeal the admission of DNA evidence; 2) the court's failure to conduct a hearing on Mr. Branch's attorney's competence; 3) the court's refusal to again continue the trial; 4) the prosecutor's references to Mr. Branch's failure to disclose the "other Eric" story prior to the trial; 5) the court's refusal to give a requested jury instruction further defining the term "mitigation"; 6) the admission, during the penalty phase, of evidence of Mr. Branch's sexual-battery conviction in Indiana, without a showing that it was a crime of violence and a felony as required for use as an aggravating circumstance under the Florida death-penalty statute; and 7) the state's failure to provide additional postconviction resources to hire additional postconviction experts.

On December 7, 2012, Branch filed a *pro se* motion for DNA testing. Branch sought DNA testing of a towel in Melissa's dorm room; a brochure that may have belonged to Eric St. Pierre, who Branch asserted was the "other Eric"; hair found in the Pontiac Bonneville; the victim's shoelaces; and a stocking used to choke the victim (actually a sock). Branch also sought a court order for DNA samples from Eric St. Pierre in Maine. Prior state postconviction counsel, registry counsel Mike Reiter, was replaced by CCRC-N, as state postconviction counsel of record.

On March 19, 2015, CCRC-N counsel adopted the *pro se* motion for DNA testing. The State filed an answer to the DNA motion objecting the DNA testing of the towel and pointing out the DNA evidence tying Branch to the murder. At trial, the prosecution established that a sock, found in the Pontiac Bonneville that Branch had been driving and then abandoned in the Pensacola airport parking lot, had bloodstains matching the victim's DNA profile at one in 9 million. (T. Vol. III 519).

On July 1, 2015, the trial court denied the motion. The trial court noted that the towel and the stocking had been previously DNA tested and the results were admitted at the 2004 postconviction evidentiary hearing as Exhibits B & C. The DNA testing performed by the Florida Department of Law Enforcement (FDLE) on the victim's sock showed only her DNA. The trial court noted that the towel was not involved in the murder or located at the crime scene. The trial court ruled there was an insufficient nexus between the towel and the issues in the case. The

trial court found the motion for DNA insufficient because Branch failed to explain how the DNA results would show he was not present at the crime scene.

The Florida Supreme Court affirmed the denial of the motion for DNA testing concluding that Branch had "failed to demonstrate a nexus between the potential results of DNA testing on each piece of evidence and the issues in the case, or how the DNA testing of each item requested to be tested would give rise to a reasonable probability of acquittal or a lesser sentence." *Branch v. State*, 2016 WL 4182823 (Fla. Aug. 8, 2016) (SC15-1869).

On April 2, 2014, Branch, represented by S. Douglas Knox of Quarles & Brady, filed a § 1983 action in federal district court challenging the registry statute on two equal protection grounds. The district court dismissed the § 1983 action on statute of limitations grounds. Following oral argument, the Eleventh Circuit affirmed the dismissal. *Branch v. Sec'y, Fla. Dept. of Corr.*, 608 Fed. Appx. 912 (11th Cir. 2015).

On June 30, 2016, Branch, represented by CCRC-N, filed a successive postconviction motion raising a claim that his death sentence violated the right to jury trial established in *Hurst v. Florida*, 136 S.Ct. 616 (2016) (*Hurst v. Florida*), and *Hurst v. State*, 202 So.3d 40 (Fla. 2016) (*Hurst II*). On April 3, 2017, Branch filed an amended motion. On July 12, 2017, the trial court denied summarily the *Hurst* claim concluding that *Hurst* did not retroactively apply to Branch citing *Asay v. State*, 210 So.3d 1, 22 (Fla. 2016).

The Florida Supreme Court has recently affirmed the trial court's denial of

the *Hurst* claim. *Branch v. State*, 2018 WL 495024 (Fla. Jan. 22, 2018) (SC17-1509).

On January 19, 2018, Governor Scott signed a warrant in this capital case setting Branch's execution for Thursday, February 22, 2018 at 6:00 p.m. On January 29, 2018, Branch, represented by CCRC-N, filed a successive postconviction motion. This is the State's answer.

Summary denials of postconviction claims

A trial court may deny a postconviction motion without conducting an evidentiary hearing. When the record conclusively rebuts the claim or where there is controlling precedent disposing of the claim, it is proper for the trial court to summarily deny the postconviction motion. In *Mann v. State*, 112 So.3d 1158, 1162 (Fla. 2013), the Florida Supreme Court rejected a claim that the trial court was required to conduct an evidentiary hearing regarding a claim raised in a fifth successive postconviction motion that was controlled by existing precedent. The Florida Supreme Court explained, that "[b]ecause Mann raised purely legal claims that have been previously rejected by this Court, the circuit court properly summarily denied relief." The Florida Supreme Court affirms summary denials when there is controlling precedent from their Court in the area. *McLean v. State*, 147 So.3d 504, 513 (Fla. 2014) (affirming a summary denial of a lethal injection claim due to the existing precedent). Where there is controlling precedent from the Florida Supreme Court, a trial court should summarily deny the claim.

The two claims being raised in the successive postconviction motion are Eighth Amendment claims which are purely legal issues. No factual development of either claim is needed and therefore, no evidentiary hearing is required. Furthermore, there is extensive Florida Supreme Court caselaw rejecting both claims. Both claims should be summarily denied.

Claim 1 - *Atkins/Roper* claim

Branch, mixing *Atkins v. Virginia*, 536 U.S. 304 (2002), with *Roper v. Simmons*, 543 U.S. 551 (2005), asserts that the Eighth Amendment prohibition on execution should be extended beyond chronological age to emotional immaturity. Succ. Motion at 39. Branch relies on the reports of two mental health experts: 1) Dr. Faye E. Sultan's report dated January 28, 2018; and 2) Dr. James Garbarino's report dated January 28, 2018, regarding brain development of young adults. The *Atkins/Roper* claim is procedurally barred. Alternatively, on the merits, *Atkins* is limited to persons with intellectual disabilities and *Roper* is limited to minors. Branch is neither. Branch was not a minor at the time of this murder nor was he intellectually disabled at the time of this murder. Branch was nearly 22 years old at the time of the murder. And the existing record establishes that Branch's full scale IQ is 115. Therefore, neither *Atkins* nor *Roper* applies to him. The Florida Supreme Court has repeatedly and consistently rejected claims attempting to extend *Atkins* to mental conditions other than intellectual disability

such as mental illness or to expand *Roper* beyond the chronological age of 18 years of age. The Florida Supreme Court has also rejected combined *Atkins/Roper* claims and it rejected those combined claims based on mental illness, not mere emotional immaturity, as Branch attempted to do. In light of the well established precedent rejecting *Atkins/Roper* claims, this claim should be summarily denied.

Facts in the existing record

Both the defense mental health experts testified that Branch did not suffer from any major mental illness.

Dr. James Larson, who was hired before trial as the defense confidential mental health expert before trial, but who did not testified at the penalty phase, testified at the state postconviction proceedings. Dr. Larson testified at the postconviction evidentiary hearing that he examined Branch in 1993 but did not "find any mental illness." (PC Vol I 107). He found that Branch has "some" antisocial personality disorder with features of other personality disorders, such as borderline personality disorder. (PC Vol I 107).

Dr. Henry L. Dee, was hired as the postconviction defense mental health expert. Dr. Dee examined Branch in 2002. (PC Vol. I 66). He testified at the evidentiary hearing that Branch did not suffer from mental illness. (PC Vol. I 62; 87; 100-101). Dr. Dee also testified he did not find any evidence of brain damage. (PC Vol. I 87). Dr. Dee testified that Branch had features of a personality disorder such as antisocial, histrionic and borderline, but did not fully meet the criteria for

any of them. (PC Vol. I 88). Dr. Dee also testified that Branch was very impulsive. (PC Vol. I 69).

As part of the state postconviction proceedings, the defense mental health expert, Dr. Henry L. Dee, examined Branch which included administering IQ tests. Dr. Dee wrote a report. On April 8, 2004, the prosecutor, Assistant State Attorney Pitre, deposed Dr. Dee. At the deposition, the prosecutor asked Dr. Dee about his report. (Depo. at 9). The prosecutor stated that the report indicated that Mr. Branch had a full scale IQ of 115 and Dr. Dee responded: "correct." (Depo. at 9). Dr. Dee testified that this placed Branch in the 84th percentile for intellectual functioning. (Depo. at 10). On April 22, 2004, that deposition was filed with this Court and is currently part of the court file.

Procedural bar

The *Atkins/Roper* claim is procedurally barred. *Carroll v. State*, 114 So.3d 883, 886-87 (Fla. 2013) (finding an *Atkins/Roper* claim to be both untimely and procedurally barred). The Florida Supreme Court found the claim to be procedurally barred because despite the fact that *Atkins* case was decided in 2002 and *Roper* was decided in 2005, Carroll had not raised an *Atkins* claim in his successive postconviction motion that he filed in 2003. *Id.* at 886-87 (citing *Simmons v. State*, 105 So.3d 475, 511 (Fla. 2012)).

Here, as in *Carroll*, the claim is procedurally barred. Branch could have raised any *Atkins* claim as part of his original postconviction proceedings. Branch

filed an initial postconviction motion in 1998 and then filed an amended initial motion in April of 2003, which was after *Atkins*, but he did not raise any such claim at that time. Nor did he amend his pending postconviction motion in 2004 with an *Atkins* claim, despite the rule of court at the time requiring that any such claim be raised within 60 days of the enactment of the rule. Fla. R. Crim Pro. rule 3.203(d)(4)(c) (providing that "if a death sentenced prisoner has filed a motion for postconviction relief and that motion has not been ruled on by the circuit court on or before October 1, 2004, the prisoner may amend the motion to include a claim under this rule within 60 days after October 1, 2004"); *See Amendments to Florida Rules of Criminal Procedure & Florida Rules of Appellate Procedure*, 875 So. 2d 563, 570 (Fla. 2004) (providing the text of rule 3.203 as originally enacted). Nor did Branch raise a *Roper* claim in his state habeas petition filed in the Florida Supreme Court in August of 2005 despite *Roper* being decided earlier that year in March. *Branch v. State*, 952 So. 2d 470, 481 (Fla. 2006)(listing claims raised in state habeas petition). Any *Atkins/Roper* claim should have been raised years ago during the initial postconviction proceedings and in the habeas petition, not on the eve of an execution. The *Atkins/Roper* claim is procedurally barred.

This Court should not grant an evidentiary hearing to explore a procedurally barred claim. And on that ground alone, the claim should be summarily denied.

Merits

The Florida Supreme Court has repeatedly and consistently rejected claims

attempting to extend *Atkins* to mental conditions other than intellectual disability or to expand *Roper* beyond the chronological age of 18. Furthermore, the Florida Supreme Court has also rejected combined *Atkins/Roper* claims involving more serious claims of mental illness.

Conformity Clause

Under Florida's constitution, courts are required to interpret the state's cruel and unusual punishment provision in conformity with the United States Supreme Court's Eighth Amendment jurisprudence. Art. I, § 17, Fla. Const.; *Henry v. State*, 134 So.3d 938, 947 (Fla. 2014) (noting that, under Article I, section 17 of the Florida Constitution, Florida courts are "bound by the precedent of the United States Supreme Court" regarding Eighth Amendment claims). This Court may not independently expand the holding of *Roper* or *Atkins*. Unless and until, the United States Supreme Court expands *Roper* to adults over 21 years old or expands *Atkins* to emotional immaturity, this claim is not legally valid.

Atkins does not apply

Branch is not intellectually disabled. During the postconviction proceedings, one of the defense mental health experts, Dr. Henry L. Dee, testified during a deposition, based on his examination in 2002, that Branch's full scale IQ was 115. Branch cannot establish the first prong of significantly subaverage intellectual functioning of the test for intellectual disability with such an IQ score.

§ 921.137(1), Fla. Stat. (2017); *Glover v. State*, 226 So.3d 795, 808 (Fla. 2017); Fla. R. Crim. P. 3.203. Indeed, that score establishes that Branch has above average intellectual functioning. Therefore, *Atkins* does not apply to him at all.[7]

Branch is actually seeking to extend *Atkins*. He wants *Atkins* to include other types of intellectual impairments, such as emotional immaturity, to the prohibition rather than being limited to intellectual disability. But the Florida Supreme Court has repeatedly rejected attempts to expand *Atkins* beyond intellectual disabilities. *Frances v. State*, 143 So.3d 340 (Fla. 2014) (noting "this Court has previously rejected defendants' attempts to extend *Atkins* to mental impairments that are not mental retardation" citing *Henyard v. State*, 992 So.2d 120 (Fla. 2008); and *Schoenwetter v. State*, 46 So.3d 535, 563 (Fla. 2010)); *Wickham v. State*, 124 So.3d 841, 863 (Fla. 2013) (rejecting an *Atkins* claim based on mental illness); *Carroll v. State*, 114 So.3d 883, 886-87 (Fla. 2013) (rejecting a claim that mental illness bars execution and citing numerous cases); *Simmons v. State*, 105 So.3d 475, 510-11 (Fla. 2012) (rejecting a claim that persons with mental illness must be treated similarly to those with mental retardation due to reduced culpability); *Johnston v. State*, 27 So.3d 11, 26 (Fla. 2010) (rejecting an attempt to extend *Atkins* to mental illness and neurological impairments citing *Lawrence v. State*, 969 So.2d 294, 300, n.9 (Fla. 2007); and *Connor v. State*, 979

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[7] The United States Supreme Court in *Hall v. Florida*, 134 S.Ct. 1986 (2014), did not expand the Eighth Amendment prohibition on executions to any other form of mental impairment. *Atkins* is still limited to intellectual disability in the wake of *Hall*.

So.2d 852, 867 (Fla. 2007)).

The Eleventh Circuit has also rejected a claim that Equal Protection requires courts to extend *Atkins* to other mental conditions, such as mental illness. *Carroll v. Sec'y, DOC*, 574 F.3d 1354, 1370 (11th Cir. 2009) (noting that there was no decision from the United States Supreme Court barring the execution of persons with some form of mental illness).

Additionally, there already is a prohibition on the execution of the mentally incompetent. *Ford v. Wainwright*, 477 U.S. 399, 410 (1986). But the prohibition only applies if the mental illness reaches the point of incompetency or insanity to be executed. Branch is actually raising a *Ford* claim in a case where not only is there is no evidence that he is incompetent to be executed, there is no evidence that he is mentally ill at all. Both his defense mental health experts testified at the evidentiary hearing that he did not suffer from any mental illness or brain damage. He seeks to extend *Ford* beyond serious mental illness and even beyond some mental illness into a case with no mental illness at all. Even if one day, the United States Supreme Court expands the prohibition to severely mentally ill defendants, that new prohibition would still not extend to Branch who is not severely mentally ill. This is not a valid *Ford* claim.

Atkins does not extend to emotional immaturity; it is limited to intellectual disability. *Atkins* does not apply to Branch.

Roper does not apply either

Roper is limited to chronological age, it does not extend to "emotional age." *Roper* only applies to those under 18 years of age. Branch is seeking to expand *Roper* from minors to adults. Branch is seeking to expand *Roper* not merely to those over 18 years old but to those over 21 years of age. Branch was born on February 7, 1971, and this murder occurred on January 11, 1993. Branch was nearly 22 years old at the time of the murder. Branch was exactly 21 years and 11 months old in January of 1993. Indeed, he was just 27 days shy of his twenty second birthday.

The United States Supreme Court itself in *Roper* limited the prohibition to those under 18 years of age. The United States Supreme Court was well aware that drawing a bright line rule based on chronological age would include mature 17 year olds in the prohibition but exclude immature 19 year olds. The *Roper* Court noted that drawing "the line at 18 years of age is subject, of course, to the objections always raised against categorical rules," because many of the qualities that distinguish juveniles from adults do not just "disappear when an individual turns 18," but nevertheless held that "a line must be drawn." *Roper*, 543 U.S. at 574. Basically, the United States Supreme Court itself has rejected Branch's claim that the prohibition extends to adults who are emotionally immature with this observation.

The Florida Supreme Court has repeatedly and consistently held *Roper* only prohibits the execution of those defendants whose chronological age is below 18

years old. *Roper* is limited to chronological age under Florida Supreme Court precedent; it does not extend to emotional maturity. The Florida Supreme Court has expressly rejected *Roper* claims based on "mental and emotional age."

In *Davis v. State*, 142 So.3d 867, 874-76 (Fla. 2014), the Florida Supreme Court rejected a *Roper* claim in a warrant case. Although Davis was 25 years old when he committed the rape and murder, Davis argued, based on the effects of alcoholism and sexual abuse on brain development in children, that he was the "functional equivalent of a child" and had "the mind of a juvenile." He relied on recently published studies on the effects of alcoholism and sexual abuse on brain development. The trial court denied the *Roper* claim without conducting an evidentiary hearing.

The Florida Supreme Court affirmed the summary denial. The Florida Supreme Court first noted that between the time of the *Roper* decision in 2005 and the warrant proceedings, Davis had never raised a *Roper* claim. *Davis*, 142 So.3d at 875. The Florida Supreme Court found the claim to be "without merit." The Florida Supreme Court noted that they had "consistently" rejected such claims in cases where the defendant was not below eighteen years of age at the time of the criminal offense. The Florida Supreme Court once again held that "*Roper* only prohibits the execution of those defendants whose chronological age is below eighteen." *Id.* at 874 (citing *Hill v. State*, 921 So.2d 579, 584 (Fla. 2006)). The Florida Supreme Court found that the studies cited by Davis on brain development were not newly discovered evidence. *Id.* at 875 (citing *Schwab v.*

State, 969 So.2d 318, 325 (Fla. 2007)). But even considering the recent articles as newly discovered evidence, the Florida Supreme Court still concluded that Davis had failed "to put forth a cognizable claim." *Davis*, 142 So.3d at 875. The Florida Supreme Court explained that "*Roper* only prohibits the execution of those defendants whose *chronological* age is below eighteen." *Id.* at 876 (emphasis is original). The Florida Supreme Court held that, because Davis was over the age of eighteen when he committed murder, *Roper* did not apply to him. *Id.*[8]

Here, as in *Davis*, this Court should summarily deny the *Roper* claim because it is not based on chronological age. Like the *Roper* claim in *Davis*, this is not a valid *Roper* claim. *Roper* claims based on anything other than age are not valid *Roper* claims. The exact same claim that Branch is raising has been

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[8] *See also Barwick v. State*, 88 So.3d 85, 106 (Fla. 2011) (rejecting a *Roper* claim based on mental age and noting "the Court has expressly rejected the argument that *Roper* extends beyond the Supreme Court's pronouncement that the execution of an individual who was younger than eighteen at the time of the murder violates the eighth amendment" citing cases in a capital case where the defendant was 19 years old); *Hill v. State*, 921 So.2d 579, 584 (Fla. 2006) (rejecting *Roper* claim in a capital case where the defendant was 23 years old).

The Florida Supreme Court has rejected *Roper* claims even when the crime used as an aggravator was committed when the defendant was under 18 years of age. *Melton v. State*, 949 So.2d 994, 1020 (Fla. 2006) (rejecting a *Roper* claim in a case where the defendant was 18 years old at the time of the capital murder but was 17 years old at the time he committed the crime used as an aggravator); *England v. State*, 940 So.2d 389, 406-07 (Fla. 2006) (rejecting a *Roper* claim where the defendant was under 18 years old at the time he committed the crime used as an aggravator because the *Roper* Court "provided a bright line rule for the imposition of the death penalty itself, but nowhere did the Supreme Court extend this rule to prohibit the use of prior felonies committed when the defendant was a minor as an aggravating circumstance); *Lowe v. State*, 2 So.3d 21, 46 (Fla. 2008) (same).

specifically rejected by the Florida Supreme Court. Branch's claim is just as meritless as Davis' was. Indeed, *Davis* is procedurally in the same posture as this case. *Davis* was a warrant case just like this case is a warrant case. This Court should likewise summarily deny the *Roper* claim.

Additionally, the Eleventh Circuit has also limited *Roper* to chronological age. *Melton v. Sec'y, Fla. Dept. of Corr.*, 778 F.3d 1234, 1237 (11th Cir. 2015) (denying a certificate of appealability (COA) on a claim seeking to extend *Roper* to a case where the defendant committed the murder when he was eighteen but committed the crime used as an aggravator he was under eighteen).

Roper does not apply to 21 year-old adults; it is limited to juveniles under 18 years of age. Branch was nearly 22 years old at the time of this murder. *Roper* does not apply to him.

Mixing *Atkins* with *Roper*

Furthermore, the Florida Supreme Court has also rejected attempts to mix and match *Atkins* with *Roper*. In *McCoy v. State*, 132 So.3d 756, 775 (Fla. 2013), the Florida Supreme Court rejected an Eighth Amendment claim based in part on *Atkins* and, in part, on *Roper*. McCoy asserted that the underlying rationale for the prohibition on executing minors and the intellectual disabled applied equally to him because he was mentally ill and therefore, lacked the requisite moral culpability to justify the imposition of the death penalty just like those other two categories. The Florida Supreme Court noted that it has "consistently rejected"

similar claims and cited numerous cases in support, both more recent cases and cases extending back to 2007. The Florida Supreme Court relying on its "established precedent" refused to reconsider its extensive caselaw. The Florida Supreme Court rejected the mixed *Atkins/Roper* claim.

The Florida Supreme Court also rejected a *Atkins/Roper* claim in *Carroll v. State*, 114 So.3d 883, 887 (Fla. 2013). Carroll argued that his borderline mental retardation in addition to his severe brain damage warranted extending the prohibition established in *Atkins* and *Roper* to him. The Florida Supreme Court, in addition to finding the claim untimely, as well as procedurally barred, rejected the *Atkins/Roper* claim on the merits. *See also Johnston v. State*, 27 So.3d 11, 26 (Fla. 2010) (rejecting an *Atkins/Roper* claim based on mental illness); *Johnson v. Stephens*, 617 Fed. Appx. 293, 303 (5th Cir. 2015) (refusing to grant a COA on an *Atkins/Roper* claim based on a combination of "borderline retarded" and mental illness because neither the Supreme Court nor the Fifth Circuit has extended *Atkins/Roper* to mental illness does not reach that of incompetency or insanity to be executed as required by *Ford v. Wainwright*, 477 U.S. 399 (1986)).

In sum, the Eighth Amendment prohibition on executions simply does not extend to emotionally immature 21 year olds. The *Atkins/Roper* claim should be summarily denied.

Claim 2 - Length of time on death row

Branch, relying on Justice Stevens' dissenting opinion from the denial of certiorari in *Lackey v. Texas*, 514 U.S. 1045 (1995), asserts that his incarceration of nearly 24 years on death row violates the Eighth Amendment prohibition on cruel and unusual punishment. Succ. Motion at 67. This claim has been repeatedly rejected by the Florida Supreme Court. In light of that controlling precedent, this claim should be summarily denied.

Under Florida's constitution, Florida courts are bound by United States Supreme Court precedent in the area of Eighth Amendment jurisprudence, including the lack of precedent. *Howell v. State*, 133 So.3d 511, 516 (Fla. 2014), *cert. denied*, 134 S.Ct. 1376 (2014) (explaining that, under article I, section 17, of the Florida Constitution, Florida courts are required to evaluate all Eighth Amendment claims in conformity with decisions of the United States Supreme Court). Florida courts are not free to create new precedent in the area of Eighth Amendment law. There is no United States Supreme Court case holding that a lengthy stay on death row violates the Eighth Amendment.[9] A single Justice's

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[9] While Justice Breyer thinks the Court should address the issue, Justice Thomas has written that there is no support in the American constitutional tradition or in the Court's precedent "for the proposition that a defendant can avail himself of the panoply of appellate and collateral procedures and then complain when his execution is delayed." Compare *Correll v. Florida*, 2015 WL 6111441 (2015) (Breyer, J., dissenting from denial of certiorari), and *Johnson v. Bredesen*, 558 U.S. 1067 (2009) (Stevens, J., and Breyer, J., dissenting from denial of certiorari), *with Knight v. Florida*, 528 U.S. 990 (1999) (Thomas, J., concurring from denial of certiorari).

dissenting opinion is not Eighth Amendment law.

The Florida Supreme Court has consistently rejected *Lackey* claims. *Valle v. State*, 70 So.3d 530, 552 (Fla. 2011) (rejecting a *Lackey* claim in a case where the defendant was on death row for 33 years); *Lambrix v. State*, 217 So.3d 977, 988 (Fla. 2017), *cert. denied*, 138 S.Ct. 312 (2017) (rejecting a *Lackey* claim in a case where the defendant was on death row for over 31 years); *Muhammad v. State*, 132 So.3d 176, 206-07 (Fla. 2013), *cert. denied*, 134 S.Ct. 894 (2014) (rejecting a *Lackey* claim in a case where the defendant was on death row for over 30 years); *Ferguson v. State*, 101 So.3d 362, 366-67 (Fla. 2012), *cert. denied*, 133 S.Ct. 497 (2012) (rejecting a *Lackey* claim in a case where the defendant was on death row for 30 years); *Correll v. State*, 184 So.3d 478, 486 (Fla. 2015), *cert. denied*, 2015 WL 6111441 (Oct. 29, 2015) (rejecting a *Lackey* claim in a case where the defendant was on death row for 29 years); *Gore v. State*, 91 So.3d 769, 780-81 (Fla. 2012) (rejecting a *Lackey* claim in a case where the defendant was on death row for over 28 years). And everyone of these defendants spent more time on death row than Branch has. *Gore*, 91 So.3d at 781 (observing that another inmate, who had been on death row even longer, had been executed).

The Eleventh Circuit has also consistently rejected *Lackey* claims. *Thompson v. Sec'y, Fla. Dept. of Corr.*, 517 F.3d 1279, 1283-84 (11th Cir. 2008) (rejecting a *Lackey* claim in a case where the defendant was on death row for over 31 years); *Tompkins v. Sec'y, Fla. Dept. of Corr.*, 557 F.3d 1257, 1260-61 (11th Cir. 2009) (denying a COA on a *Lackey* claim where the defendant was on death row

for 24 years).

Moreover, the Eighth Amendment prohibition requires both cruel and unusual punishment. As is obvious from the above list of Florida cases, spending decades on death row, unfortunately, is not unusual. And such lengthy delays are common in other states as well. *Johnson v. Bredesen*, 558 U.S. 1067 (2009) (denying review of a *Lackey* claim in a Tennessee case where the defendant was on death row for nearly 29 years); *Andrews v. Davis*, 866 F.3d 994, 1039-40 (9th Cir. 2017) (denying a COA on a *Lackey* claim in a California case where the defendant was on death row for 22 years). Such delays did not occur at common law when there was little or no appellate review and executions were carried out immediately. *McKenzie v. Day*, 57 F.3d 1461, 1467 (9th Cir. 1995) (noting at common law, executions could be carried out on the dawn following the pronouncement of sentence). As the Florida Supreme Court has observed, defendants contribute to the lengthy time and delay "by continually challenging his convictions and sentences" and they are not permitted to contend that their punishment has been illegally prolonged because the delay in carrying out the sentence that is, in large part, "due to his own actions" in challenging his convictions and sentences. *Lambrix*, 217 So.3d at 988. During the vast majority of his time on death row, Branch's case was being reviewed by the state and federal courts, including reviewing his *pro se* motions.

Opposing counsel simply ignores this solid wall of precedent from the Florida Supreme Court in her successive motion. But, unlike opposing counsel,

this Court cannot simply ignore Florida Supreme Court precedent; this Court must follow that precedent. The *Lackey* claim is meritless under controlling precedent and should be summarily denied.

Motion for stay of execution

Branch included a motion for stay of execution in his successive motion. A stay of execution is warranted only when there are substantial grounds upon which relief might be granted. *Chavez v. State*, 132 So.3d 826, 832 (Fla. 2014) (citing *Bowersox v. Williams*, 517 U.S. 345 (1996) and denying a stay); *Howell v. State*, 109 So.3d 763, 778 (Fla. 2013) (stating that a defendant must show that there are substantial grounds upon which relief might be granted to obtain a stay of execution and denying a stay). There are no substantial grounds being raised in the successive postconviction motion. Both of the claims being raised in the successive postconviction are meritless under Florida Supreme Court controlling precedent. Both should be summarily denied.

But even if this Court grants an evidentiary hearing on Claim 1, no stay is necessary to conduct that evidentiary hearing. This Court has already scheduled an evidentiary hearing, if necessary, for Thursday, February 1, 2018. Dr. Faye E. Sultan's report states that she examined Branch on December 14, 2017. Contrary to the claim of "truncating concerns" in the motion to stay, the defense has had months to develop this claim.

Branch has been litigating his case for decades in both state and federal

court. There is no compelling reason for a stay of execution.

Accordingly, this Court should summarily deny the successive postconviction motion and the motion for a stay of execution.

Respectfully submitted,
PAMELA JO BONDI
ATTORNEY GENERAL

/s/ *Charmaine Millsaps*
CHARMAINE M. MILLSAPS
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0989134
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL, PL-01
TALLAHASSEE, FL 32399-1050
(850) 414-3300
primary email:
capapp@myfloridalegal.com
secondary email:
charmaine.millsaps@myfloridalegal.com

CO-COUNSEL FOR THE STATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing STATE'S ANSWER TO SUCCESSIVE RULE 3.851 MOTION FOR POSTCONVICTION RELIEF has been furnished via the e-portal to STACY R. BIGGART, Assistant Capital Collateral Regional Counsel-North, 1004 DeSoto Park Drive, Tallahassee, FL, 32301; phone: (850) 487-0922 x114; email: Stacy.Biggart@ccrc-north.org and KATHLEEN PAFFORD, Assistant Capital Collateral Regional Counsel-North, 1004 DeSoto Park Drive, Tallahassee, FL, 32301; phone: (850) 487-0922; email: Kathleen.Pafford@ccrc-north.org this 22nd day of January, 2018.

/s/ *Charmaine Millsaps*
Charmaine M. Millsaps
Attorney for the State of Florida

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

vs. CASE NO: 1993-CF-000870A

ERIC SCOTT BRANCH,

Defendant.

_____/

Proceedings held in the above-styled cause before the Honorable Edward P. Nickinson, III, Circuit Judge, on the 30th day of January 2018, at the M.C. Blanchard Judicial Building, 190 Governmental Center, Pensacola, Florida 32502.

PAM CHILDERS
CLERK OF CIRCUIT COURT
ESCAMBIA COUNTY, FL
2018 JAN 31 A 8:57
APPEALS DIVISION
FILED & RECORDED

JODI COPELAND, RPR
CIRCUIT COURT REPORTER

APPEARANCES:

FOR THE STATE:	JOHN A. MOLCHAN, ESQUIRE Assistant State Attorney 190 Governmental Center Pensacola, Florida 32502
(Via Telephone)	CHARMAINE M. MILLSAPS, ESQUIRE LISA HOPKINS, ESQUIRE Assistant Attorney General Office of the Attorney General The Capitol, PL-01 Tallahassee, Florida 32399
FOR THE DEFENDANT:	STACY R. BIGGART, ESQUIRE KATHLEEN PAFFORD, ESQUIRE Assistant Capital Collateral Regional Counsel, North 1004 DeSoto Park Drive Tallahassee, Florida 32301
	BILLY NOLAS, ESQUIRE KIMBERLY SHARKEY, ESQUIRE Federal Public Defender 227 N. Bronough Street, Suite 4200 Tallahassee, Florida 32301
STAFF ATTORNEY:	ADELE W. GIBSON, ESQUIRE Senior Staff Attorney 190 Governmental Center Pensacola, Florida 32502
ALSO PRESENT:	TONYA THIBODEAUX JESSICA EVERETT

P R O C E E D I N G S

THE COURT: This is Judge Nickinson.

MS. MILLSAPS: Hello. This is Charmaine Millsaps and Lisa Hopkins with the Attorney General's Office.

THE COURT: Very good.

Let me ask those who are here with me to state their appearances.

MS. SHARKEY: Good afternoon. I'm Kimberly Sharkey from the Federal Defender's Office.

MR. NOLAS: And Billy Nolas, Your Honor, also with the Federal Defender's Office.

MS. BIGGART: Stacy Biggart with CCRC.

MS. PAFFORD: Kathleen Pafford with CCRC.

MS. THIBODEAUX: Tonya Thibodeaux, Appeals Clerk.

MR. MOLCHAN: John Molchan, State Attorney's Office.

MS. GIBSON: Adele Gibson, Staff Attorney.

MS. EVERETT: Jessica Everett, Appeals Clerk.

THE COURT: Good.

Are we expecting Mr. Knox?

MR. NOLAS: No. Mr. Knox asked us to cover things for him.

THE COURT: Very good.

All right. Well, we are convened this afternoon for a *Huff* hearing in this post-conviction motion and motion for stay of execution.

Purpose of this afternoon's hearing to determine whether there is a need for an evidentiary hearing, which I think has been requested by the Defense.

MR. NOLAS: Yes, Your Honor.

THE COURT: You're speaking to that, Mr. Nolas?

MR. NOLAS: Yes, Your Honor.

THE COURT: Thank you. You may proceed.

MR. NOLAS: Thank you, Your Honor.

One ministerial matter. The appendix that Your Honor has that's quite voluminous had an affidavit from Mr. Knox. We have an S slash. We weren't able to get the final signed copy. I do have the final signed copy, and if it's okay with everybody, I'll just e-file that when we're all done.

MR. MOLCHAN: No objection, Judge.

THE COURT: Very well.

And I will tell you I have read the motion. I have read the State's response. I have read, though not studied, the two reports generated by, I think they're psychologists, within the past week.

I cannot tell you that I have looked at a great deal else from the appendix, but just so that you have an idea of what I have looked at, that pretty well covers so far.

MR. NOLAS: Yes, Your Honor.

So let me jump in, Your Honor. I had Ms. Biggart, Ms. Pafford, Ms. Sharkey, and I have been discussing this argument for the last couple of days, and our initial thought before we had the State's response was to take Your Honor through what the expert reports are about, take Your Honor through the current consensus in the mental health community in order to persuade you that -- that we have before you a claim that necessitates a hearing; and I think we do.

The State's response has simplified much of what we were going to say, so let me cut to the chase on that.

Number one, the State's response does not contest that we are relying upon a newly developed consensus in the scientific community that was not available earlier.

If you go through the State's response, there is no contradiction as to the factual proffer that we have provided to Your Honor from Dr. Sultan and Dr. Garbarino, and this is a predicate to the point

that we're going to make that the claims are properly before you and should be determined on their merits.

So Dr. Sultan indicates that there is a new mental health professional consensus that brain development continues into the 20s. Dr. Garbarino explains our science now recognizes that the cutoff of 18 years is arbitrary and not in accord with the current understanding of the scientific community.

Dr. Sultan explains this new mental health professional consensus was not available during previous proceedings in the case of Eric Branch. This new mental health professional consensus has real consequences.

Dr. Sultan also explains the professional mental health consensus of a developing human brain in the case of a 20 year-old, such as Eric Branch, was not available to the experts who assessed this case in the past. And specifically as to the prior expert Dr. Henry Dee, Dr. Garbarino notes, Dr. Henry Dee assessed Mr. Branch. At that time, the science of brain development had not progressed to the point where Mr. Branch's psychological problems could be recognized for what they were: Developmental brain immaturity.

The reason I say all that at the outset is that the rub in this case ultimately is whether Your

Honor is going to follow what the United States Supreme Court and what the Florida Supreme Court have held, that it's proper under the Eighth Amendment when you have a scientific consensus that provides a claim to the Court that was not previously available.

Now, under Rule 3.851, there's -- the State has not disputed, and properly so, that what we have brought to Your Honor today was not previously ascertainable through due diligence. The proffer is conclusive in this case, and the Attorney General's Office does not argue against the fact that what we have presented today through the proffer from Dr. Sultan, Dr. Garbarino, and the other matters that we've provided to you, was not available previously.

You have an affidavit from Mr. Knox, the last lawyer in line before Ms. Biggart and Ms. Pafford, explaining that the claim that has been brought to the Court was not available previously and that he would have raised it had it been available.

So on the question of the propriety of this claim under Rule 3.851(d)(2), there's really not a dispute as to whether the claim was available earlier. Plainly, the claim was not.

Under 3.851(e)(2), the rule that applies to successive petitions, plainly the proffer sets out that

this claim is not an abuse of discretion. It's not an abuse of discretion to bring a claim that was not previously available.

So the actual issue before the Court, as the State has phrased it, is whether this Court is going to interpret the Florida Supreme Court's precedent and the United States Supreme Court precedent that we've relied in a manner favorable to Mr. Branch or not on what the State calls the conformity clause.

The conformity clause states that the prohibition against cruel and unusual punishment shall be construed in conformity with the decisions of the U.S. Supreme Court, which interpret the Eighth Amendment.

In practice what that means is that as long as Your Honor is consistent with Eighth Amendment decisions, you are properly acting under the conformity clause, or in another line of case law, Your Honor needs to follow the applicable case law from the United States Supreme Court and the Florida Supreme Court where you have a new scientific consensus under the Eighth Amendment indicating that imposition of capital punishment would be cruel and unusual, Your Honor should apply that case law, and that case law includes *Hall*, includes the Florida Supreme Court's opinions

after *Hall* was decided by the United States Supreme Court, all of which hold that as a trial court you should rely on the consensus in the scientific community.

Here, that consensus is new, that consensus was not previously available, that consensus establishes that for the very same reasons that the capital punishment is precluded in the case of a 17 year-old it should be precluded in this particular situation involving a 21 year-old, such as Mr. Branch.

Now, you know that the Florida Supreme Court applies case law in a robust manner to protect the Constitutional rights. So when *Hurst* was decided by the United States Supreme Court, the United States Supreme Court had decided -- had relied upon Sixth Amendment precedent. The Florida Supreme Court added an Eighth Amendment component to that analysis in order to be consistent with the rulings of the United States Supreme Court.

And our position, now that the State has focused on this conformity clause, is that under proper analysis of all of the United States Supreme Court's applicable case law, as we've laid out in our motion, and under a proper analysis of the Florida Supreme Court's application of that case law, you should

entertain this claim on its merits relating to the preclusion of the death penalty.

I -- we're prepared to go forward with a hearing. It's an interesting, kind of, position we're in because the State has not contradicted our factual proffer, but we're absolutely ready to go forward with a hearing.

And we think this is a significant claim in accord with the law. If you take our proffer, which is not contradicted, and you look at what the core presentation is, under that core presentation Mr. Branch's execution should be prohibited.

So that's -- now that we have the State's response, that's, sort of, a summary version of where we are today. There's a legal issue for Your Honor to determine first, and then once you determine that legal issue, and we believe given what *Hall* says and given that our position is that Your Honor's duty bound to apply the scientific consensus in a manner favorable to Mr. Branch, that we should proceed to a stay of execution and an evidentiary hearing on contested issues, although there aren't many contested issues in light of the State's submission.

On the second claim, Your Honor, I think the -- it's clear that, that claim is not right for

review until the death warrant is issued, and therefore, I would urge Your Honor to also grant the stay on the basis of Claim 2.

But that's our position in a summary form. If Your Honor has questions, or maybe after we hear from Ms. Millsaps, I might have some more.

THE COURT: I may have some questions, but I'm going to wait until I hear from Ms. Millsaps.

Ms. Millsaps.

MS. MILLSAPS: Yes, Your Honor.

First of all, I did want to point out that summary denials of post-conviction claims, including in warrant cases, is perfectly proper under Florida Supreme Court precedent. If there is controlling precedent, the Court is entitled to deny the claim as a matter of law without holding an evidentiary hearing. And there's extensive precedent rejecting both of these claims from the Florida Supreme Court. So the State's position is that's exactly what you should do.

Now, I'd also then like to talk about the conformity clause. Your Honor, Mr. Branch is raising two claims in his motion, a combined *Atkins/Roper* claim and a *Lackey* claim. They are both based on the Eighth Amendment.

So the conformity clause matters very much

because both claims before Your Honor are really governed by our -- by the conformity clause of the State Constitution, which requires all state courts, all Florida courts, to evaluate all cruel and unusual punishment claims in conformity with the United States Supreme Court precedent in the area.

I'm afraid I'm hearing from opposing counsel that you're welcome to freeform things, and that's exactly what the conformity clause says that state courts, that Florida courts should not do.

So under the conformity clause, courts should not create new precedent in the area of Eighth Amendment law.

But then turning to the individual claims that -- first the *Atkins/Roper* claim, Your Honor, I -- first I want to do it as a straight *Atkins* and then as a straight *Roper* and then a combined one.

Atkins is the case that -- from the United States Supreme Court that prohibited the execution of intellectually disabled capital defendants. Branch's full scale IQ, however, is 115, and Your Honor can see that from -- first it's in the existing record from Dr. Dee's deposition, and I have the page and depo cite, and that depo was filed with Your Honor -- with the Court's file -- and is in the Court's file as part

of the post-conviction proceeding.

So Branch is -- not only does he not have significant subaverage intelligence, he is average and/or above average, Your Honor. So he is not entitled to a pure *Atkins* prohibition. He is eligible to be executed based on his mental acuity.

And then *Roper*, addressing *Roper* all by itself as a straight *Roper* claim, it is limited to minors, and by that the -- when the United States Supreme Court means 18 year-olds. They were well-aware, and I quoted that part of *Roper*, that by drawing a bright line rule, adopting a bright line rule meant some people who were 17 but more mature would be included and immature 18 year-olds would be excluded from the prohibition. And they were aware of that, and they addressed that in opinion. So, basically, the United States Supreme Court itself has rejected any expansion of *Roper*.

Now, Your Honor, I would also like to point out that this -- that the first claim is procedurally barred under the case of *Carroll*, and I cited *Carroll* in my motion and discussed it and Your Honor can read that.

But if he wanted to raise an *Atkins/Roper* claim, he could have done that -- he was in a position to do that as part of his original post-conviction

proceedings.

Atkins came out in 2002, and he filed an amended motion in 2003, so he could have included an *Atkins* claim in that. But even later after *Atkins*, the Florida Supreme Court adopted a rule that required everybody to file an *Atkins* claims and were entitled under this rule to amend yet again to include. So he had two clear opportunities to include an *Atkins* claim in his original 3.851 and did not do it.

And then he also had an opportunity to raise a *Roper* claim in the State habeas petition because that was not filed until August of 2005, and *Roper* had been decided earlier in the year in March. So he had months to raise a *Roper* claim and neither one of those.

And under *Carroll* the claim is procedurally barred.

But going back to the merits of the *Atkins/Roper* claim, Your Honor, the Florida Supreme Court not -- I'm not going to -- I'm going to just name the cases. I'm not going to give you the cites. I think that's difficult for everybody, especially over the phone, but Your Honor, the cites that I'm going to read to you are on Page 22 of the State's answer.

The Florida Supreme Court has rejected this combined *Atkins* versus *Roper* claim not once, not twice,

but three times. They rejected it in *McCoy*, they rejected it in *Carroll*, and they rejected it in *Johnston*. And once more, Your Honor, in all of those cases, the claims -- well, the State may have disputed the severity of it. In all of those claims, they were based either on severe brain damage or mental illness.

Your Honor, Branch is not raising a claim based on severe mental illness or brain damage. According to his own expert Dr. Dee, he has no brain damage. What he is basing this on is basically developmental immaturity, that his brain is -- that the 21 year-old's -- and, Your Honor, he was nearly 22 when this crime occurred -- that the brain's -- 21 year-old human beings are not fully developed -- one of the experts -- I won't pronounce his name beginning with a G -- said until 26 and -- in his report. So what they're saying is he was not fully developed.

Well, Your Honor, that's less compelling of a claim than the claims presented to the Florida Supreme Court in *McCoy, Carroll*, and *Johnston*. So this is -- a developmental claim is going to be rejected quicker by the Florida Supreme Court than brain damage or mental illness was.

So in light of the well-established precedent and the fact that this is procedurally barred, we think

that claim should be summarily denied.

Moving on to the *Lackey* claim, Your Honor, length of time on death row arguments are commonly referred to as *Lackey* claims based on the -- an opinion, a dissenting opinion from a denial of certiorari in a case called *Lackey vs. Texas* in 1995. And so I'm going to call it the *Lackey* claim because that's what everybody calls it.

And what the argument is, is that he's -- that Branch has been on death row for nearly 24 years and that the sheer length of time is a violation of the Eighth Amendment's cruel and unusual prohibition.

Your Honor, that has been rejected by the Florida Supreme Court six times, Your Honor, and I -- it's been rejected more than that, Your Honor. The cases that I put before you on Page 24 of my answer, and I won't cite them all, but I cited every one where the defendant had been on death row longer than Branch has. So there are more cases than this, but I wanted to pick the ones where the defendant had been on death row longer.

So, for example, in *Valle* the defendant had been on death row for 33 years, yet the claim was rejected. In *Lambrix*, *Lambrix* had been on death row for 31 years, yet the *Lackey* claim was rejected by the

Florida Supreme Court. In *Muhammad*, *Muhammad* had been on death row for over 30 years, yet the *Lackey* claim was rejected by the Florida Supreme Court. In *Ferguson* the defendant had been on death row for 30 years, yet the *Lackey* claim was rejected by the Florida Supreme Court. In *Correll* the defendant had been on death row for 29 years, yet the Florida Supreme Court rejected the *Lackey* claim. In *Gore* the defendant had been on death row for over 28 years, yet the defendant -- *Gore* had been on death row for 28 years.

Now, Your Honor, Branch has been on death row less than 24 years. He's had -- it's nearly 24. But every one of these cases -- some of these cases are nearly, for example, *Valle* is nearly -- he spent a decade more on death row than Branch has. And the Florida Supreme Court in *Gore* had used that as one of the reasons to reject the *Lackey* claim, that they have not only rejected *Lackey* claims every time that a *Lackey* claim has been raised, but they have rejected *Lackey* claims involving significantly more years on death row than Branch has spent.

And in light of that controlling precedent, Your Honor, we think the *Lackey* claim should be summarily denied.

Your Honor, I'm not going to talk about the

motion to stay part of the -- of my answer because I think the State's real point is very clear. There's overwhelming controlling precedent. There's no point whatsoever for a stay because these claims should summarily be denied.

And that's the State's presentation, Your Honor.

THE COURT: Thank you, Ms. Millsaps.

MR. NOLAS: Reply, Your Honor?

THE COURT: Yes, Mr. Nolas, of course.

MR. NOLAS: None of the cases cited by Ms. Millsaps, none of the cases in the State's answer, none of cases referred to today presented to the Court a scientific consensus that was not available at the time of prior litigation.

You have specific expert opinions in this case that have been proffered to the Court with respect to that scientific consensus and Mr. Branch. *Carroll* didn't have that. *Johnston* didn't have that. *Davis* didn't have that. *McCoy* didn't have that. All of those cases were arguments to the Florida Supreme Court that were based on, essentially, a request that the Florida Supreme Court expand its case law.

None of those involve a factual proffer about a new consensus in the scientific community supported

by expert opinions from qualified experts and, in this case, not contradicted by the State. There's no contradiction in the cases that Ms. Millsaps has brought up or in the State's pleading as to the newness of this science or as to the fact that it applies to someone who is 21 years old at the time of the crime, such as Mr. Branch.

So the question to Your Honor is what do you do with this scientific consensus. Ms. Millsaps would be right that there is controlling precedent from the United States Supreme Court rejected it -- rejecting it if she cited to you a case from the United States Supreme Court that says when a dispositive, new, scientific consensus is brought to a court, that court must ignore it. There's no case like that. Ms. Millsaps has cited no case like that. They don't exist. There's no case in the United States Supreme Court, there's no case in the Florida Supreme Court that says as a matter of Eighth Amendment law you are bound to ignore a dispositive, scientific consensus.

Actually, the case law goes completely the other way. It goes in Mr. Branch's favor. So in *Hall vs. Florida*, the United States Supreme Court held the courts must look, must abide by scientific consensus when assessing Eighth Amendment Claims. In *Moore vs.*

Texas, the United States Supreme Court chided the Texas Court of Criminal Appeals for doing exactly what Ms. Millsaps wants you to do, for putting on blinders and saying I'm not looking at this science. The United States Supreme Court has held that courts in assessing the Eighth Amendment must look at the new scientific consensus that may affect whether somebody should be executed or not.

The Florida Supreme Court has said the same thing in various settings and has applied a more expansive view, a more expansive understanding than a strict reading of the United States Supreme Court's case law.

The Florida Supreme Court did that in *Falcon* when the United States Supreme Court in *Miller* held that people under 18 should not serve life in prison without parole. The Florida Supreme Court in *Falcon* said that's going to apply retroactively to everybody. The United States Supreme Court had not said that yet. If Ms. Millsaps is right, the Florida Supreme Court violated Florida law.

Obviously, the Florida Supreme Court did not, and two years later the United States Supreme Court agreed with the Florida Supreme Court in *Montgomery*.

When the United States Supreme Court decided

Hurst and said there are specific Sixth Amendment considerations -- the jury must sentence, essentially -- the Florida Supreme Court held in *Hurst vs. State* that there are Eighth Amendment considerations requiring a unanimous verdict. If Ms. Millsaps was right, the Florida Supreme Court doesn't know Florida law and erred in *Hurst vs. State*.

When the United States Supreme Court decided in *Thompson* and *Stanford* that there were limitations on the degree to which juveniles would be protected, in *Allen* the Florida Supreme Court took a more expansive view, and it took a more expansive view for the reason I just gave you a moment ago, which is that unless Ms. Millsaps can provide to you a case from the United States Supreme Court that says Mr. Branch loses because you are not to consider the science he has brought before you, then United States Supreme Court case law plainly councils Your Honor to apply the scientific consensus, to take heed of it, and to then, I would submit, enter a stay of execution and ultimately rule in Mr. Branch's favor.

But for purposes of the narrow issue about the conformity clause that we're debating, there is no case that Ms. Millsaps has cited and I do not know a case that says when scientific consensus that is dispositive

is brought to a court under the Eighth Amendment, that court should put on blinders and refuse to look at it. There's no such thing.

Now, I will tell you going back -- back when I used to teach this stuff, back to 1816 and *Martin vs. Hunter's Lessee*, the United States Supreme Court held that you are just as empowered to apply the United States Constitution as any other judge.

In *Danforth vs. Minnesota*, the United States Supreme Court held that it is appropriate for state courts to read United States Supreme Court case law in a more expansive way than the United States Supreme Court.

But you know what? In this case, you have case law in favor of Mr. Branch issued by the United States Supreme Court, *Hall* and *Moore* and other cases that we've cited in the petition, that say do not ignore science; and in this case, the science is not rebutted.

THE COURT: I have a couple of questions for you, Mr. Nolas.

MR. NOLAS: Yes, Your Honor.

THE COURT: And I ask the first one in -- with some trepidation because it is, as you say, an issue that the State does not seem to be contradicting. I'm

not sure that I understand this recent consensus.

If I understand it correctly, your argument is that Mr. Branch should be treated as though he was under 21 -- or under 18 at the time of the offense because of new science about brain development; and perhaps particularly applied to Mr. Branch given his rather horrendous childhood, he wasn't really emotionally over 18; he wasn't really emotionally an adult.

I've been a drug court judge for the last 20 years, and in that capacity, I have gone to a fairly large number of educational opportunities for drug court judges. I've been hearing for at least the last 10 or 15 years about the psychological evidence of -- that human brains, particularly of men, don't mature until their mid to late 20s.

I'm having a little trouble understanding -- and the studies cited in the expert reports that you've given me seem to be mostly from 2016 and 2017, but they -- they go back to some far earlier than that, back into the previous decade.

I'm a little skeptical of just how recent this consensus is, and I'm not sure that the conclusory statements by a couple of psychologists that it's a recent consensus binds the Court. How would you

respond to that?

MR. NOLAS: Two ways, Your Honor. One, there's --

THE COURT: And I say that -- I say that -- I'm sorry. I interrupted you. I apologize. I say that because we are, in fact, dealing with this, as we all know, after the issuance of a death warrant --

MR. NOLAS: Sure.

THE COURT: -- in proceedings that have to take place -- I don't have, you know, three months to let people get ready for hearings on this consensus --

MR. NOLAS: Sure.

THE COURT: -- and both sides prepare for whether there really is a consensus and how it ought to be applied. I'm asked to do this on the fly. And my initial reaction was I've been hearing from psychologists for a decade or more about exactly the kind of thing that's being presented here as though it were something recent that could have not been addressed five or six or seven years ago.

MR. NOLAS: Or to put it another way, Your Honor, even if you had not had your experience in juvenile court, right, we all know when a 41 year-old guy hits on a 21 year-old girl we all scratch our heads, right? There's this instinctive thing we know

in society. If a 31 year-old gets in a bar fight and beats the daylights out of a 21 year-old, we go, why were you picking on that boy, right? Health insurance covers kids until they're 26.

But the point -- I'm sorry --

THE COURT: No, no, no. I'm not arguing -- I'm not arguing the psychology of it.

MR. NOLAS: But that's --

THE COURT: I'm questioning if this was going to get raised why did it have to wait until there was a death warrant issued?

MR. NOLAS: And that's -- that's -- I was segueing to that. It's not as if we waited until a death warrant was issued to raise this claim in Mr. Branch's case. As you know from Dr. Sultan's evaluation, she had seen Mr. Branch before a death warrant was issued. So Ms. Biggart, Ms. Pafford, Ms. Sharkey, and I, we're looking at this issue in light of the science that's available today in 2017 and 2018.

Now, we have known for a long time that abusing children is a bad thing, and we've known for a long time that kids drinking and kids doing illegal substances is a bad thing for kids. What is now available and crystallized is that national consensus,

that the two experts have proffered to the Court, that there are specific effects on the brain, that there are specific brain chemical and brain synaptic activity that applies to someone who's 19, 20, 21, 22, and the experts have provided that in their reports.

You have in Dr. Sultan's report synaptic pruning, the process by which brain synapses are selected and pruned or eliminated continues until this time, early 20s, allowing for more efficient later brain functioning.

The myelination process, M-Y-E-L-I-N-A-T-I-O-N process, the development of the substance which provides insulation for the nerve fibers continues as well. This allows a mature individual to effectively transmit signals promoting healthy brain functioning and more complex functions. This process continues well into the individual's 20s.

And both Dr. Garbarino and Dr. Sultan have explained why executive functioning, frontal lobe functioning, there are studies that are available now that allow for a scientific consensus that someone who is in their early 20s, late teens time period is really no different than someone who's pre-18.

Now, I did capital penalty phases 25 years ago, and 25 years ago I would argue it's not a good

thing -- Mr. Molchan will remember; we did hearings together -- it's not a good thing for a kid to be abused, it's not a good thing for a kid to drink, and the human brain doesn't develop; and I've argued that the youth mitigator should apply to a 25 year-old.

But that is not the scientific consensus that brings the issue before the Court today. The scientific consensus is based upon we have a specific proffer from experts telling you today this is the science. And you know from reading Dr. Dee's report -- I don't know if Your Honor has had familiarity with Dr. Dee's -- he was -- he was pretty -- he was --

THE COURT: I have not reread --

MR. NOLAS: He was a very experienced, knowledgeable mental health practitioner. And what does he say in this report? He lists personality factors. He says Mr. Branch was immature. He says Mr. Branch never really grew up. He doesn't talk about the science of brain development. Think about that.

Henry Dee, who I've called as a witness in two dozen capital cases, does not talk about the science of brain development in his report. Why not? Because it didn't exist. If Henry Dee is saying Mr. Branch is immature, Mr. Branch functions no better than a child, Mr. Branch had all these difficult life experiences

that you should consider, where in his report does he say and science supports treating him in the same way that you would treat someone who's an adolescent. Henry Dee doesn't say that.

And Dr. Dee, who has since passed, my dear beloved friend, didn't say that back then because the science didn't exist back then. The science, as Dr. Sultan and Dr. Garbarino explained, is available today. And the reality of it is, as a presiding judge, you don't have a contradictory presentation from the parties on the science itself.

So in light of the proffer to Your Honor, that the science has crystallized today and the consensus is available today, the real question, as the State has pitched it to Your Honor, is what do you do with the relevant case law. And as I said before -- I won't repeat it -- the relevant case law we have submitted is in Mr. Branch's favor.

One final thought. Consensus doesn't just, kind of, fall from the sky, right? You don't wake up one morning and you open your closet door and, oh, look, there's a scientific consensus; there was this book I had up here. Scientific consensus takes awhile to develop.

And as Your Honor has seen yourself, you know,

we've known that there -- that there are bad things that happen to children, and we know that young people don't behave the same way that adults do, people in their 30s and their 40s and their 50s, but we didn't have this specific science with these specific studies about the prefrontal cortex, about the frontal lobes that have been presented to Your Honor by Dr. Sultan and Dr. Garbarino indicating that all of these brain components we now know are compromised in individuals in their 20s.

And so, yeah, we've known stuff for a long time, but we haven't had the consensus for a long time. The consensus exists today, and the consensus, I would most respectfully submit, urges that Your Honor stay this execution.

MS. MILLSAPS: Your Honor, may I have a moment --

THE COURT: By all means.

MS. MILLSAPS: Your Honor, the Florida Supreme Court has specifically rejected this particular argument. I want to -- on -- for three pages in my answer I discuss the case of *Davis vs. State*. It's 19, 20, 21. The argument made to the Florida Supreme Court in *Davis* was that although *Davis* was 25 years old, based on the effects of alcoholism and sexual abuse of

brain development in children, he was the functional equivalent of a child and had the mind of a juvenile. And in that case, they relied on recently published studies of the effects of things like alcoholism and age on brain development.

Your Honor, understand the Florida Supreme Court has been presented with a claim of scientific studies being used as a basis for an argument that a defendant had the functional equivalent of the mind of a child; and therefore, the *Roper* prohibition should be extended to him.

The Florida Supreme Court has specifically rejected an argument based on these new studies, and they did that in *Davis*. And, Your Honor, I don't know how I could discuss *Davis* for more pages than I did when I was trying to keep under 25, but the Florida Supreme Court, there is controlling precedent from years ago -- *Davis* is a 2014 case -- there is controlling precedent from the Florida Supreme Court rejecting a *Roper* claim based on exactly this argument about new studies regarding brain development.

And part of the Florida Supreme Court's rejection of this depended on their longstanding interpretation of what newly discovered evidence is. They are willing to hear about new studies and things

like that when it's case specific. They do not consider new studies -- and I'm going to quote -- "The studies cited by *Davis* on brain development were not newly discovered evidence." And they cited -- that's *Davis* citing *Schwab*. That's on Page 19 and 20 of the State's answer. When it's just studies, it has to be case specific for it to even count as newly discovered evidence.

Your Honor, *Davis* is directly on point, and it says we will not consider these new studies, we don't consider them newly discovered evidence, they're not newly -- they're not case specific.

And the exact -- and the Florida Supreme Court rejected it once again and held that the prohibition established in *Roper* only applies, and I quote, "To defendants whose chronological age is below 18." And chronological is emphasized in their opinion.

Your Honor, there is directly controlling Florida Supreme Court precedent rejecting this exact argument based on very similar studies.

THE COURT: Mr. Nolas --

MR. NOLAS: -- if I may.

Yes, the Florida Supreme Court said you need case specific studies. You have them here. You have Dr. Sultan. You have Dr. Garbarino. You have case

specific expert opinions proffered. We did what the Florida Supreme Court said in *Davis* counsel had not done.

Now, in *Davis* the proffer was not what you have before you today. In *Davis* the argument was *Davis* had been sexually abused in childhood and *Davis* had drunk alcohol in childhood, and the argument was to the Florida Supreme Court based on studies that talked about why drinking for children is bad and studies that had shown that sexual abuse for children is bad based on new studies in that area that Mr. Davis should receive the Constitutional protection of *Roper*.

That's a very different presentation than the presentation here, which is case specific mental health expert opinions that say to Your Honor that the science of brain development and that -- you're not going to find that in *Davis* -- the science of brain development now teaches us that someone in their late 20s -- early 20s and late teens has the brain capacity that's no different than that of a 17 year-old. So you have case specific studies, and you have a proffer that was different than the proffer that was made in *Davis*.

Yeah, and *Davis* neither spoke about a consensus -- Ms. Sharkey just reminded me -- neither spoke about a consensus nor rejected a consensus in the

scientific community. Basically, *Davis* held sexual abuse and drinking is bad for kids. We've known that all along.

But there was no proffer of a scientific consensus *in Davis*. There was no proffer, as Ms. Millsaps says, of a case specific study.

THE COURT: We've talked mostly about the law today. If there were to be an evidentiary hearing, Mr. Nolas, what do you anticipate presenting?

You indicated earlier you weren't quite sure there would be much because the State has not argued against the facts --

MR. NOLAS: The State's response has, kind of, put us in a quandary in the defense in the sense -- not in a bad way but in a way that usually you'll have a proffer and then you'll have a contradictory argument, then as the defendant you need to prove your proffer.

Again, our proffer is not challenged, and so as I, sort of, restructured my own thinking after seeing the State's response and as we all conferred on the Defense side, it seems to me that if there's a hearing you should hear from Dr. Garbarino, you should hear from Dr. Sultan, you should hear from Mr. Knox, who indicated in his affidavit that he would have raised --

THE COURT: But I have all of that --

MR. NOLAS: You do have all of it. You have the reports, and they're not contradicted.

I was going to say originally our thinking was to bring some of the lay witnesses in and to have them describe Mr. Branch's behavior and Mr. Branch's history, but that's not contradicted either.

And so if you're asking me whether the direct examination of the witnesses will go beyond the written submission, the written submission captures a lot of that testimony we would be presenting.

THE COURT: I'll tell you, my initial thought this afternoon is I don't think we need an evidentiary hearing.

My next question, because, frankly --

MR. NOLAS: I got to tell you, to interrupt you, Your Honor, it's really hard for Defense counsel in this setting to say --

THE COURT: I understand. I'm not asking you to agree with that.

MR. NOLAS: Yeah.

THE COURT: The question -- my next question, though, because, candidly, this is the first of such, and I think probably the last since I'm retiring in five months, such proceeding that I'll be presiding

over, if there's no evidentiary hearing, do counsel anticipate any other hearings between now and a ruling by the Court on the motion?

I think we pretty much argued the law today.

MR. NOLAS: We did, Your Honor, and thank you for the opportunity. I should have said that at the outset, but yes, we did, the law -- we said a lot, both sides.

THE COURT: Okay. All right. I do not believe we need an evidentiary hearing.

That said, unless there is some reason for additional argument on the law, I intend to go to work on the motion. I may get you something out before the end of the week, which would set you on the next step sooner rather than later.

I hear no dissent.

If that's right, then I believe we've concluded today's hearing, and we will be adjourned.

Thank you, Ms. Millsaps.

MR. NOLAS: Your Honor, thank you very much.

MS. BIGGART: Thank you, Your Honor.

THE COURT: Pleasure hearing from all of you. Thank you.

(Proceedings adjourned)

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF ESCAMBIA

I, JODI COPELAND, RPR, Official Court Reporter, do hereby certify that the foregoing, being pages numbered 1 through 35, inclusive, is a true and correct transcript of the proceedings held in the case of STATE OF FLORIDA vs. ERIC SCOTT BRANCH, Case No. 1993-CF-000870A, on the 30th day of January 2018, before the Honorable Edward P. Nickinson, III, Circuit Judge, at 190 Governmental Center, Pensacola, Florida.

IN WITNESS WHEREOF, I have hereunto set my hand, this the 30th day of January 2018.

Jodi Copeland

JODI COPELAND, RPR
Official Circuit Court Reporter

Filing # 67288881 E-Filed 01/31/2018 09:21:11 AM

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

CAPITAL CASE
DEATH WARRANT SIGNED- EXECUTION SET FOR FEBRUARY 22, 2018, AT 6:00 P.M.

v.

ERIC SCOTT BRANCH,

Defendant.

Case No.: 1993 CF 000870 A
Div.: A
/ S. Ct. No.: SC83805

ORDER GRANTING MOTION TO EXCEED PAGE LIMITATION

THIS MATTER is before the Court upon Defendant's Motion to Exceed Page Limitation, filed on January 29, 2018. Under the circumstances of this case, the Court will grant the motion to exceed page limit as to the postconviction motion, also filed January 29, 2018, which exceeds the 25 page limit of rule 3.851.

Accordingly, it is

ORDERED AND ADJUDGED Defendant's Motion to Exceed Page Limitation is GRANTED, such that the Court will accept the rule 3.851 motion of January 29, 2018.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida.

eSigned by CIRCUIT COURT JUDGE E P NICKINSON III
on 01/30/2018 16:25:51 nOfvtlEW

EPN/awg

Service of the Order Granting Motion to Exceed Page Limitation shall be made by the Clerk upon:

STACY R. BIGGART, Assistant Capital Collateral Regional Counsel, North
1004 DeSoto Park Drive, Tallahassee, FL 32301
Stacy.Biggart@ccrc-north.org

KATHLEEN PAFFORD, Assistant Capital Collateral Regional Counsel, North
1004 DeSoto Park Drive, Tallahassee, FL 32301
Kathleen.Pafford@ccrc-north.org

BILLY H. NOLAS, Assistant Federal Public Defender
227 N. Bronough St., Ste. 4200, Tallahassee, FL 32301-1300
Billy_nolas@fd.org

KIMBERLY SHARKEY, Attorney, Office of the Federal Public Defender
227 N. Bronough St., Ste. 4200, Tallahassee, FL 32301-1300
Kimberly_sharkey@fd.org

JOHN A. MOLCHAN, Assistant State Attorney
Office of the State Attorney, 190 Governmental Center, Pensacola, FL 32502
JMolchan@sa01.org

CHARMAINE M. MILLSAPS, Assistant Attorney General
Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL 32399
capapp@myfloridalegal.com
Charmaine.Millsaps@myfloridalegal.com

LISA HOPKINS, Assistant Attorney General
Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL 32399
capapp@myfloridalegal.com
Lisa.Hopkins@myfloridalegal.com

S. DOUGLAS KNOX, ESQ.
Quarles & Brady, LLP, 101 East Kennedy Boulevard, Suite 3400, Tampa, FL 33602-5195
doug.knox@quarles.com

JOHN A. TOMASINO, Clerk of the Court of the Florida Supreme Court
Attn: Death Warrants, Office of the Clerk of the Supreme Court of Florida, 500 S. Duval St., Tallahassee, FL 32399
warrant@flcourts.org

ERIC SCOTT BRANCH (DC# 313067)
Florida State Prison
7819 N.W. 228th Street
Raiford, Florida 32026-1000

Filing # 67311581 E-Filed 01/31/2018 01:08:27 PM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY, FLORIDA**

STATE OF FLORIDA

CASE NO. 1993-CF-870-A

v.

ERIC SCOTT BRANCH,
Defendant.
_____/

NOTICE OF FILING DECLARATION OF S. DOUGLAS KNOX

COMES NOW, the Defendant, **ERIC SCOTT BRANCH**, by and through undersigned counsel, and provides Notice of Filing of Declaration of S. Douglas Knox. In support of this notice, Mr. Branch shows:

On January 29, Mr. Branch filed an Application for Stay of Execution and Motion to Vacate Judgment and Sentence with Special Request for Leave to Amend pursuant to Fla. R. Crim. P. 3.851. One of the exhibits to this pleading was Exhibit 19, Declaration of S. Douglas Knox.

Prior to filing, Mr. Knox had reviewed the declaration and requested that undersigned counsel sign it electronically. He would not be at his office and able to provide undersigned counsel with a hand-signed copy of the declaration until after Mr. Branch's filing deadline. In accordance with Mr. Knox's request, undersigned counsel typed in his signature as "/s/ S. Douglas Knox." *See* Exhibit 19.

Counsel subsequently received a hand-signed copy of the declaration from Mr. Knox. Undersigned counsel explained this to the Court during the *Huff* hearing held on January 30, 2018. *See* Transcript of Hearing, at 4. The State expressed that it had no objection to undersigned counsel now filing the hand-signed copy of Mr. Knox's declaration. *Id.*

Attached is the Declaration of S. Douglas Knox Pursuant to 28 U.S.C. § 1746 that includes Mr. Knox's handwritten signature. Counsel requests this be made a permanent part of the docket and considered as an exhibit to Mr. Branch's Stay of Execution and Motion to Vacate Judgment and Sentence with Special Request for Leave to Amend.

Respectfully submitted,

/s/ Stacy Biggart
Stacy Biggart
Assistant Capital Collateral
Regional Counsel—North
stacy.biggart@ccrc-north.org
Florida Bar No. 89388
Kathleen Pafford
Assistant Capital Collateral
Regional Counsel—North
1004 DeSoto Park Drive
Tallahassee, FL 32301
(850) 487-0922
kathleen.pafford@ccrc-north.org
Florida Bar No. 99527

/s/ Billy H. Nolas
Billy H. Nolas
Chief, Capital Habeas Unit
billy_nolas@fd.org
Florida Bar No. 806821
Kimberly Sharkey
Attorney, Capital Habeas Unit
Office of the Federal Public Defender
Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301-1300
(850) 942-8818
kimberly_sharkey@fd.org
Florida Bar No. 505978

Counsel for Eric Branch

DECLARATION OF S. DOUGLAS KNOX

PURSUANT TO 28 U.S.C § 1746

1. My name is S. Douglas Knox. I am an attorney licensed to practice law in the State of Florida. I am a partner with Quarles & Brady LLP in Tampa.
2. I represented Eric Branch beginning in 2014. The District Court had difficulty finding an attorney who could represent Eric, and eventually my law firm became involved. I later entered an appearance in the state circuit court.
3. I have reviewed the reports of James Garbarino, Ph.D., and Faye Sultan, Ph.D., on recent scientific research regarding brain development and the significance of this science to Eric's case. This science did not exist at the time I represented Eric or beforehand. It explains Eric's immature behavior before and at the time of the offense and during the trial, and his subsequent maturation by the time I came to represent him. Eric was 21 at the time of the offense.
4. Had this new scientific understanding in the mental health professions been available to me during the time I represented Eric, I certainly would have used it. I would have litigated that his death sentence was unconstitutional and that he should not be executed due to the lack of moral culpability related to his immature level of functioning.
5. At the time of the offense and trial, Eric was immature. But, by the time of my representation of Eric, he was more mature and responsible. The new scientific understanding relating to human brain development makes perfect sense in his situation. At the time of the offense and trial, he really was no different than a child or disabled individual. From a moral culpability perspective, he should be afforded the same protections the *Roper* and *Miller* cases afford "juveniles" and cases like *Hall* afford the intellectually disabled. I certainly would have made these arguments

had this scientific understanding been available to me. I would have actively relied on the information outlined by Dr. Sultan and Dr. Garbarino.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.

S. Doug Knox
January 29, 2018

CERTIFICATE OF SERVICE

I certify that on January 31, 2018, the foregoing was served via the e-portal to Assistant Attorney General Charmaine Millsaps at cappapp@myfloridalegal.com and Assistant State Attorney John Molchan at jmolchan@sa01.org.

/s/ Billy Nolas
Billy Nolas

Filing # 67397059 E-Filed 02/01/2018 04:02:16 PM

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

CAPITAL CASE
DEATH WARRANT SIGNED- EXECUTION SET FOR FEBRUARY 22, 2018, AT 6:00 P.M.

v.

ERIC SCOTT BRANCH,

Defendant.

Case No.: 1993 CF 000870 A
Div.: A
/ S. Ct. No.: SC83805

ORDER DENYING APPLICATION FOR STAY OF EXECUTION AND MOTION TO VACATE JUDGMENT AND SENTENCE

THIS MATTER came before the Court upon Defendant's "Application for Stay of Execution and Motion to Vacate Judgment and Sentence with Special Request for Leave to Amend," as well as exhibits thereto,[1] filed January 29, 2018, and brought pursuant to Florida Rule of Criminal Procedure 3.851, and the State's Answer to Successive Rule 3.851 Motion for Postconviction Relief, filed January 30, 2018. In his motion, Defendant raises two claims for relief. On January 30, 2018, a *Huff* hearing was held to determine whether there was nay need for an evidentiary hearing.[2] The Court heard extensive argument as to the claims raised in Defendant's motion. After determining there was no need for an evidentiary hearing, the Court also inquired of the parties and determined there would be no additional argument on the law. Having reviewed the motion and exhibits, the State's response, the record, and case law, and having heard and carefully considered argument of counsel, the Court finds as follows:

[1] An updated Declaration of S. Douglas Knox was filed January 31, 2018.
[2] Present at the hearing were Assistant State Attorney John Molchan; Assistant Capital Collateral Regional Counsel Stacy Biggart and Kathleen Pafford; and Assistant Federal Public Defenders Billy Nolas and Kimberly Sharkey. Attending by telephone were Assistant Attorneys General Charmaine Millsaps and Lisa Hopkins.

PROCEDURAL HISTORY

On May 3, 1994, Defendant was sentenced to death for the January 1993 first-degree murder of Susan Morris after a jury recommendation of 10 to two in favor of death. Defendant's conviction and sentence were affirmed on direct appeal, and the facts of his case are recited in the opinion. *See Branch v. State*, 685 So. 2d 1250 (Fla. 1996). Defendant's conviction and death sentence became final on May 12, 1997, when the United States Supreme Court denied certiorari review in the direct appeal. *Branch v. Florida*, 520 U.S. 1218, 117 S.Ct. 1709, 137 L.E.2d 833 (1997).

On May 7, 1998, Defendant filed a rule 3.850 motion and amended motions on April 1, 2003, and October 10, 2003. After an evidentiary hearing, Defendant was denied relief by the order of March 4, 2005. He filed motions for postconviction DNA testing on April 17, 2014, and July 30, 2015, which were denied without hearing by the orders of July 2, 2015, and August 17, 2015, respectively. He filed a successive motion for postconviction relief on June 30, 2016, and an amended motion on April 3, 2017, raising claims under *Hurst v. Florida,* —— U.S. ——, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), which were denied by the order of July 12, 2017. On January 19, 2018, Governor Scott signed a warrant scheduling Defendant's execution for Thursday, February 22, 2018, at 6:00 p.m.

CLAIM 1

Defendant claims his sentence is precluded by the Eighth Amendment because there is emerging consensus that brain development continues into the mid-twenties, rendering people in their early twenties, such as Defendant, cognitively comparable to juveniles under the age of 18.

He alleges he was 21 years of age at the time of the offense, and the emerging medical science in support of his claim was not available during his prior litigation. Defendant argues this emerging consensus is newly discovered evidence.

In support of his motion, Defendant relies in large part upon *Roper v. Simmons*, 543 U.S. 551, 567 (2005), and also references *Atkins v. Virginia*, 536 U.S. 304, 321 (2002). In *Roper*, the United States Supreme Court held the Eighth Amendment prohibits the death penalty for juveniles under the age of 18. *Atkins* prohibits the execution of intellectually disabled people.

Defendant does not claim he is intellectually disabled or the equivalent thereof. Moreover, extension of *Atkins* to a mental condition or illness that is not intellectual disability has been repeatedly rejected by the Florida Supreme Court. *See Frances v. State*, 143 So. 3d 340, 358 (Fla. 2014); *Carroll v. State*, 114 So. 3d 883, 887 (Fla. 2013); *Simmons v. State*, 105 So. 3d 475, 510-511 (Fla. 2012); *Schoenwetter v. State*, 46 So. 3d 535, 563 (Fla. 2010); *Henyard v. State*, 992 So. 2d 120, 130 (Fla. 2008). Therefore, *Atkins* does not apply to Defendant's claim.

Defendant argues he is the cognitive equivalent of a juvenile, so that the Eighth Amendment principle of *Roper* should apply to him. *Roper* establishes a bright line rule that the age of 18 is the age at which the individual is eligible for the death penalty. *See* 543 U.S. at 574. Extension of *Roper* to those over 17 has also been repeatedly rejected by the Florida Supreme Court. *See Davis v. State*, 142 So. 3d 867, 876 (Fla. 2014); *Barwick v. State*, 88 So. 3d 85, 106 (Fla. 2011); *Hill v. State*, 921 So. 2d 579, 584 (Fla. 2006). For example, in *Davis*, the defendant, who was 25 years old at the time of the murder, relied on allegedly new evidence regarding the effects of alcoholism and sexual abuse on brain development in children and the decision in *Roper* to claim his execution was unconstitutional. *See* 142 So. 3d at 874. The defendant contended he "'was the functional equivalent of a child' because he 'likely had the mind of a

juvenile' as opposed to his actual chronological age." *Id.* The Florida Supreme Court found because the defendant was over the age of 18 at the time of the murder, *Roper* did not apply. *Id.* at 876.

This Court must construe the prohibition against cruel and unusual punishment in conformity with decisions of the United States Supreme Court. *See Correll v. State*, 184 So. 3d 478, 489 (Fla. 2015). In light of the decision in *Roper*, this Court declines to propose a modification of the bright line of *Roper* based on psychological evidence.

Furthermore, Defendant also argues that emerging science showing brain development is incomplete and continues into the mid-twenties qualifies as newly discovered evidence. This argument also fails. His exhibits include recent studies and articles from 2010 through 2017, which in turn reference reports and sources from previous years. New opinions and new research studies have not been recognized as newly discovered evidence. *See* 142 So. 3d at 875. *See also Henry v. State*, 125 So. 3d 745, 751 (Fla. 2013) (finding a revised definition of addiction was the culmination of several decades of advancement in neuroscience and was thus not newly discovered evidence); *Morton v. State*, 995 So. 2d 233, 245 (Fla. 2008) (evidence from a 2004 brain mapping study showing the brain is not fully developed until age 25 was based on previously available data and was not newly discovered evidence). The emerging science alleged and referenced by Defendant explains information already known and does not qualify as newly discovered evidence.

The Court also notes the idea that the brain is not fully formed as a young adult has been known for some time. In *Roper*, it was recognized "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18." 543 U.S. at 574. Studies from 2004 showing the human brain development is not complete until the age of 25 have been cited in

previous case law, including challenges to the death penalty. *See Gall v. United States*, 552 U.S. 38, 57–58 (2007); *Lebron v. State*, 135 So. 3d 1040, 1067 (Fla. 2014); 995 So. 2d at 245; *Farina v. State*, 992 So. 2d 819 (Fla. 2008). Defendant could have brought this claim in the years prior to the signing of his death warrant. *See Glock v. Moore*, 776 So. 2d 243, 251 (Fla. 2001) (denying a claim that had been known for a number of years based on reported cases and noting "any claim of newly discovered evidence in a death penalty case must be brought within one year of the date such evidence was discovered or could have been discovered through the exercise of due diligence"). Nonetheless, regardless of the alleged newness of Defendant's evidence, his claim fails under *Roper*.

CLAIM 2

Defendant claims the needless suffering and uncertainty he has experienced during his time on death row is in violation of the Eighth Amendment prohibition against cruel and unusual punishment. The Florida Supreme Court has repeatedly rejected such claims made by inmates who have been on death row longer than Defendant. *See Lambrix v. State*, 217 So. 3d 977, 988 (Fla. 2017); *Muhammad v. State*, 132 So. 3d 176, 206 (Fla. 2013); *Carroll v. State*, 114 So. 3d 883, 889 (Fla. 2013); *Valle v. State*, 70 So. 3d 530, 552 (Fla. 2011). The Eleventh Circuit has also rejected such claims. *See Thompson v. Sec'y for Dept. of Corr.*, 517 F.3d 1279, 1284 (11th Cir. 2008). There is no United States Supreme Court case holding that a lengthy stay on death row violates the Eighth Amendment. Moreover, Defendant cannot contend his sentence has been illegally prolonged where he has contributed to the lengthy time and delay by filing numerous challenges to his conviction and sentence. *See* 217 So. 3d 988 (other citations omitted). In light of Florida Supreme Court and Eleventh Circuit precedent and the lack of

United States Supreme Court precedent, the Court finds Defendant is not entitled to relief as to this claim.

APPLICATION FOR STAY OF EXECUTION

Defendant requested a stay of execution in order to provide an opportunity for meaningful consideration of his claims and a meaningful evidentiary hearing. In light of the Court's findings above, the Court finds a stay of execution is not warranted. *See Chavez v. State*, 132 So. 3d 826, 832 (Fla. 2014).

Accordingly, it is

ORDERED AND ADJUDGED Defendant's "Application for Stay of Execution and Motion to Vacate Judgment and Sentence with Special Request for Leave to Amend" is **DENIED**.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida.

eSigned by CIRCUIT COURT JUDGE E P NICKINSON III
on 02/01/2018 14:45:11 tVr3X7TD

EPN/awg

Service of the Order Denying Defendant's Application for Stay of Execution and Motion to Vacate Judgment and Sentence shall be made by the Clerk upon:

STACY R. BIGGART, Assistant Capital Collateral Regional Counsel, North
1004 DeSoto Park Drive, Tallahassee, FL 32301
Stacy.Biggart@ccrc-north.org

KATHLEEN PAFFORD, Assistant Capital Collateral Regional Counsel, North
1004 DeSoto Park Drive, Tallahassee, FL 32301
Kathleen.Pafford@ccrc-north.org

BILLY H. NOLAS, Chief, Capital Habeas Unit, Office of the Federal Public Defender
227 N. Bronough St., Ste. 4200, Tallahassee, FL 32301-1300
Billy_nolas@fd.org

KIMBERLY SHARKEY, Attorney, Capital Habeas Unit, Office of the Federal Public Defender
227 N. Bronough St., Ste. 4200, Tallahassee, FL 32301-1300
Kimberly_sharkey@fd.org

JOHN A. MOLCHAN, Assistant State Attorney
Office of the State Attorney, 190 Governmental Center, Pensacola, FL 32502
JMolchan@sa01.org

CHARMAINE M. MILLSAPS, Assistant Attorney General
Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL 32399
capapp@myfloridalegal.com
Charmaine.Millsaps@myfloridalegal.com

LISA HOPKINS, Assistant Attorney General
Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL 32399
capapp@myfloridalegal.com
Lisa.Hopkins@myfloridalegal.com

S. DOUGLAS KNOX, ESQ.
Quarles & Brady, LLP, 101 East Kennedy Boulevard, Suite 3400, Tampa, FL 33602-5195
doug.knox@quarles.com

JOHN A. TOMASINO, Clerk of the Court of the Florida Supreme Court
Attn: Death Warrants, Office of the Clerk of the Supreme Court of Florida, 500 S. Duval St., Tallahassee, FL 32399
warrant@flcourts.org

ERIC SCOTT BRANCH (DC# 313067)
Florida State Prison
7819 N.W. 228th Street
Raiford, Florida 32026-1000

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,
PLAINTIFF
vs.

ERIC SCOTT BRANCH ,
DEFENDANT

Case No.: **1993 CF 000870 A**
DIV: **A**
DCA NO.:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. Mail (unless otherwise indicated) to:

BRANCH, ERIC SCOTT
DC# 313067
FLORIDA STATE PRISON
7819 N.W. 228TH STREET
RAIFORD, FLORIDA 32026

By E-Service

STACY R. BIGGART
KATHLEEN PAFFORD
BILLY NOLAS
KIMBERLY SHARKEY
JOHN A. MOLCHAN
CHARMAINE M. MILLSAPS
LISA HOPKINS
S. DOUGLAS KNOX
JOHN A. TOMASINO

on February 1, 2018.

PAM CHILDERS, CLERK OF THE CIRCUIT COURT

By: Jessica Everett
Deputy Clerk

CLERK OF THE CIRCUIT COURT ESCAMBIA COUNTY, FLORIDA

Filing # 67499153 E-Filed 02/05/2018 12:19:30 PM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY, FLORIDA**

STATE OF FLORIDA

CASE NO. 1993-CF-870-A

v.

ERIC SCOTT BRANCH,
Defendant.
_____/

NOTICE OF APPEAL

Defendant, ERIC SCOTT BRANCH, takes and enters his appeal to the Florida Supreme Court to review the final order of the Circuit Court of the First Judicial Circuit, in and for Escambia County, bearing the date of February 1, 2018, denying Defendant's Application for Stay of Execution and Motion to Vacate Judgment and Sentence with Special Request for Leave to Amend, in the above-captioned case. This notice also applies to all other rulings, actions, or acts rendered adversely to the Defendant in support of said judgment, including the denial of a discovery request for the expiration dates of the drugs that will be used to execute the Defendant and the report from the autopsy of Patrick Hannon.

All parties to said cause are hereby notified of the entry of this appeal.

Respectfully submitted,

/s/ Stacy Biggart

Stacy Biggart
Florida Bar No. 89388
Kathleen Pafford
Florida Bar No. 99527
Assistant Capital Collateral
Regional Counsel – North
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922
Stacy.Biggart@ccrc-north.org

/s/ Billy H. Nolas

Billy H. Nolas
Florida Bar No. 806821
Chief, Capital Habeas Unit
Kimberly Sharkey
Florida Bar No. 505978
Attorney, Capital Habeas Unit
Office of the Federal Public Defender
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301-1300
(850) 942-8818
billy_nolas@fd.org

Counsel for Eric Branch

CERTIFICATE OF SERVICE

I certify that on February 5, 2018, the foregoing was served via the e-portal to Assistant Attorney General Charmaine Millsaps at cappapp@myfloridalegal.com and Assistant State Attorney John Molchan at jmolchan@sa01.org.

/s/ Stacy Biggart

Stacy Biggart

Filing # 67499153 E-Filed 02/05/2018 12:19:30 PM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY, FLORIDA**

STATE OF FLORIDA

CASE NO. 1993-CF-870-A

v.

ERIC SCOTT BRANCH,
Defendant.
_____/

DIRECTIONS TO THE CLERK

Defendant, ERIC SCOTT BRANCH, respectfully directs the Clerk to include all items filed in this Florida Rule of Criminal Procedure 3.851 proceedings as described in 921.141(4), Florida Statutes, and in Fla. R. App. P. 9.142(a) and 9.200(a)(1). Pursuant to Fla. R. App. P. 9.200(a)(2), Defendant respectfully directs the clerk to include on the record on appeal in this case all pleadings, notices of hearing, orders, original documents, exhibits (whether entered into evidence or proferred for purpose of appeal) and transcripts of proceedings from the status conference on January 23, 2018, the hearing on the Defendant's 3.852 records requests on January 26, 2018, and the case management conference on January 30, 2018.

Respectfully submitted,

/s/ Stacy Biggart

Stacy Biggart
Florida Bar No. 89388
Kathleen Pafford
Florida Bar No. 99527
Assistant Capital Collateral
Regional Counsel – North
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922
Stacy.Biggart@ccrc-north.org

/s/ Billy H. Nolas

Billy H. Nolas
Florida Bar No. 806821
Chief, Capital Habeas Unit
Kimberly Sharkey
Florida Bar No. 505978
Attorney, Capital Habeas Unit
Office of the Federal Public Defender
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Tallahassee, FL 32301-1300
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Counsel for Eric Branch

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/s/ Stacy Biggart

Stacy Biggart

Filing # 67499153 E-Filed 02/05/2018 12:19:30 PM

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO.: 1993-CF-870A

vs.

ERIC SCOTT BRANCH,
Defendant.
_____/

STATEMENT OF JUDICIAL ACTS TO BE REVIEWED

Defendant, ERIC SCOTT BRANCH, files the following Statement of Judicial Acts to be Reviewed:

1. Order Sustaining Objections and Denying Defendant's Demand for Public Records, dated and served on Defendant January 29, 2018.

2. Order Denying Defendant's Application for Stay of Execution and Successive Motion to Vacate Judgment and Sentence with Special Request for Leave to Amend, dated and served on Defendant February 1, 2018.

Respectfully submitted,

/s/ Stacy Biggart
Stacy Biggart
Florida Bar No. 89388
Kathleen Pafford
Florida Bar No. 99527
Assistant Capital Collateral
Regional Counsel – North
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922
Stacy.Biggart@ccrc-north.org

/s/ Billy H. Nolas
Billy H. Nolas
Florida Bar No. 806821
Chief, Capital Habeas Unit
Kimberly Sharkey
Florida Bar No. 505978
Attorney, Capital Habeas Unit
Office of the Federal Public Defender
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301-1300
(850) 942-8818
billy_nolas@fd.org

Counsel for Eric Branch

CERTIFICATE OF SERVICE

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/s/ Stacy Biggart
Stacy Biggart

Filing # 67499153 E-Filed 02/05/2018 12:19:30 PM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY, FLORIDA**

STATE OF FLORIDA

CASE NO. 1993-CF-870-A

v.

ERIC SCOTT BRANCH,
Defendant.
_____/

DESIGNATION TO COURT REPORTER

Defendant, ERIC SCOTT BRANCH, files the following designation to the court reporter requesting preparation of all transcripts including, but not limited to, hearings held on:

January 23, 2018

January 26, 2018

January 30, 2018

Undersigned counsel certifies that Capital Collateral Regional Counsel – North is responsible for payment to the official court reporter for the transcripts, pursuant to *Porter v. State*, 700 So. 2d 647 (Fla. 1997), and immediate payment will be made upon receipt of an invoice from the court reporter.

Respectfully submitted,

/s/ Stacy Biggart

Stacy Biggart
Florida Bar No. 89388
Kathleen Pafford
Florida Bar No. 99527
Assistant Capital Collateral
Regional Counsel – North
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922
Stacy.Biggart@ccrc-north.org

/s/ Billy H. Nolas

Billy H. Nolas
Florida Bar No. 806821
Chief, Capital Habeas Unit
Kimberly Sharkey
Florida Bar No. 505978
Attorney, Capital Habeas Unit
Office of the Federal Public Defender
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301-1300
(850) 942-8818
billy_nolas@fd.org

Counsel for Eric Branch

CERTIFICATE OF SERVICE

I certify that on February 5, 2018, the foregoing was served via the e-portal to Assistant Attorney General Charmaine Millsaps at cappapp@myfloridalegal.com and Assistant State Attorney John Molchan at jmolchan@sa01.org.

/s/ Stacy Biggart

Stacy Biggart

CERTIFICATE OF THE CLERK

STATE OF FLORIDA)
)
COUNTY OF ESCAMBIA)

CASE NO.(S) 2016 CF 001842

I, Pam Childers, Clerk of the Circuit Court of Escambia County, State of Florida, do hereby certify that ERIC BRANCH, Appellant, versus the STATE OF FLORIDA, Appellee, and a true and correct recital and copy of all such papers and proceedings in said cause as appear from the records and files of my office that have been directed to be included in said record by the directions furnished me.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said court this 6TH day of FEBRUARY, 2018

PAM CHILDERS
Clerk, Circuit Court and County Court
Escambia County, Florida

BY: _____
Deputy Clerk