

MTThomas SPD02568

# David M. Schieck

Attorney At Law  
302 E. Carson Ave., Ste. 600  
Las Vegas, NV 89101  
Fax (702) 386-2687  
(702) 382-1844

April 5, 2004

Dr. Thomas Kinsora  
2320 Paseo Del Prado  
Las Vegas NV 89102

FAX: 392-4993

Re: Marlo Thomas

Dear Dr. Kinsora:

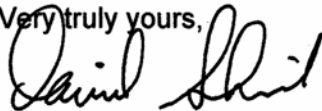
Last month the Nevada Supreme Court ruled that Marlo Thomas was entitled to a new penalty hearing due to an improper jury instruction. You had conducted an evaluation of Mr. Thomas during 1996 and 1997 and testified at his first penalty hearing.

I am court appointed co-counsel along with the Special Public Defender's Office to represent Mr. Thomas at the second penalty hearing. We would like to again utilize your services as well as explore presenting additional information.

If you could determine whether you have retained your records on Mr. Thomas we could set up a meeting to discuss possible avenues of defending against the death penalty in this difficult case.

If you have any questions or need copies of anything from my files please let me know.

Very truly yours,



DAVID M. SCHIECK, ESQ.

DMS: kf

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MTThomas SPD02569

SPD02569

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EXHIBIT 212

EXHIBIT 212

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF PETER )  
LAPORTA. )  
\_\_\_\_\_ )

No. 29452

**FILED**

AUG 29 1997

JANE H. M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
DEPUTY CLERK

ORDER APPROVING ISSUANCE OF PUBLIC REPRIMAND

Pursuant to SCR 113, in exchange for a stated form of discipline, attorney Peter LaPorta tendered a conditional guilty plea to a formal disciplinary complaint. LaPorta agreed to receive a public reprimand, pay restitution to a former client, attend ten hours of continuing legal education in the areas of law office management and/or ethics, and pay the costs of the disciplinary proceedings. The plea was accepted by a hearing panel of the Southern Nevada Disciplinary Board of the State Bar of Nevada, which thereafter forwarded its findings and recommendations to this court for final approval. See SCR 113(1).

Having reviewed the record, we approve the stated form of discipline set forth in the panel's findings and recommendations. LaPorta shall (1) complete ten hours of continuing legal education in the areas of law office management and/or ethics within one year from the date of the formal hearing on this matter and (2) pay disciplinary costs within thirty days of receiving notification of a billing from the State Bar of Nevada. Further, we authorize the publication, in accordance with SCR 121, of the following letter of public reprimand.

To: Peter LaPorta, Attorney at Law

In August 1994, you were retained by a client to file a personal bankruptcy petition. In approximately September 1994, your client met with you and provided you with all the necessary information needed to complete the bankruptcy schedules and file the bankruptcy

SEP 02 1997

petition. At that time, your client paid you a retainer of \$560.00.

You never filed the bankruptcy petition on behalf of your client. Both creditors and your client attempted to make telephone calls to you, but were unsuccessful in communicating with you, as your telephone number was no longer in service.

In November 1994, your client was able to contact you and met with you at your new office. At that time, your client signed all the relevant bankruptcy papers, and you represented to your client that the bankruptcy petition would be filed within three weeks. On or about February 21, 1995, your client contacted the bankruptcy court, which informed him that there had been no bankruptcy petition filed in his name. From approximately mid-December 1994 until mid-February 1995, your client repeatedly telephoned your office, leaving several messages. You failed to return any of his calls.

Your client eventually retained another attorney to file the petition for him. You have paid restitution to your client in the amount of \$560.00.

In a second matter, your client and his company were served with a summons and complaint in June 1994. Thereafter, your client retained you to defend the matter and paid you a \$3,000.00 retainer.

You filed an answer and set the NRCP 16.1 discovery conference. Thereafter, however, you failed to file the required NRCP 16.1 discovery conference report. As a result of this, opposing counsel filed a motion for default which was granted.

In approximately February 1995, your client received a notice that a default judgment had been entered against him. He made various attempts to telephone you, but was unable to contact you. You had closed your office and failed to inform your client.

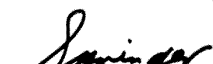
Your client terminated your services and hired another attorney to handle the case. Thereafter, the new attorney successfully brought a motion to set aside the default judgment on the basis that the derelictions causing the default were "based not on the part of defendants, but rather on the part of their attorney."


It is noted that you paid restitution to your client in the amount of \$3,000 as part of a Conditional Guilty Plea Agreement.

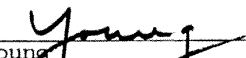
Your conduct is in violation of SCR 151 (competence), SCR 153 (diligence), and SCR 154 (communication), and warrants disciplinary action. You are therefore publicly reprimanded for your actions.


It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Shearing

  
\_\_\_\_\_, J.  
Springer

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Maupin

cc: Gary R. Goodheart, Chairman,  
Southern Nevada Disciplinary Board  
Rob W. Bare, Bar Counsel  
Wayne Blevins, Executive Director  
William B. Terry

# EXHIBIT 213

# EXHIBIT 213

MTThomas-8JDC07126

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**E-FILE LITE  
ORIGINAL**

*Lucy Stangor*  
CLERK

1 NISD  
2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 CHRIS J. OWENS  
6 Chief Deputy District Attorney  
7 Nevada Bar #001190  
8 200 South Third Street  
9 Las Vegas, Nevada 89155-2212  
10 (702) 455-4711  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,  
11 Plaintiff,

Case No. C136862

12 -vs-

Dept No. XV

13 MARLO THOMAS,  
14 #1060797

15 Defendant.

**NOTICE OF EVIDENCE IN SUPPORT OF  
AGGRAVATING CIRCUMSTANCES**

18 COMES NOW, the State of Nevada, through DAVID ROGER, Clark County District  
19 Attorney, by and through CHRIS J. OWENS, Chief Deputy District Attorney, pursuant to  
20 Supreme Court Rule 250, NRS 175.552 and NRS 200.033, and declares its intention to  
21 present the following evidence in support of aggravating circumstance at a penalty hearing:

22 The State will present evidence and witnesses consistent with those presented during  
23 the original trial of this matter in June of 1997, including the trial and penalty phases, the  
24 content of which is incorporated by this reference as though fully set forth herein.

25 Additionally, the State will present prison reports regarding Defendant's disciplinary  
26 events, from August of 1997 through the present time, through testimony of the Nevada  
27 Department of Correction's Custodian of Records, a copy of said records being in the

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possession of the State as well as Defendant's counsel, the contents of those records being incorporated by this reference as though fully set forth herein.

DATED this 23rd day of September, 2005.

Respectfully submitted,

DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781

BY /s/ CHRIS J. OWENS  
CHRIS J. OWENS  
Chief Deputy District Attorney  
Nevada Bar #001190

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of above and foregoing, was made this 23rd day of September, 2005, by facsimile transmission to:

SPECIAL PUBLIC DEFENDER  
FAX#455-6273

BY /s/ M. Beaird  
Employee of the District Attorney's Office

mb

EXHIBIT 214

EXHIBIT 214



# Jessie Mae brown

**BIRTH** Hollandale, Mississippi, USA

**DEATH** Tallulah, Louisiana, USA

## Facts

### Age 0 — Birth

Hollandale, Mississippi, USA

### Birth of Daughter Betty Lee Thomas (1942–1965)

1942 • Tallulah, Louisiana, USA

### Birth of Daughter Eliza Ann Thomas (1960–2008)

12/12/1960 • Tallulah, Madison, Louisiana, USA

### Death of Daughter Betty Lee Thomas (1942–1965)

1965 • Las Vegas, Nevada, USA

### Death of Husband T J Thomas (1925–1991)

1/18/1991 • Kansas City, USA

### Death of Daughter Eliza Ann Thomas (1960–2008)

07/30/2008 • Las Vegas, Clark, Nevada, USA

### Death

Tallulah, Louisiana, USA

## Family

### Parents

### Spouse & Children

 T J Thomas 1925–1991

 Betty Lee Thomas 1942–1965

 Eliza Ann Thomas 1960–2008

 Private

## Sources

### Ancestry Sources

 Ancestry Family Trees



# Rebecca Blue

**BIRTH** ABT 1895 • Tallulah, Madison, Louisiana, USA

**DEATH** Tallulah, Madison, Louisiana, USA

## Facts

### Age 0 — Birth

abt 1895 • Tallulah, Madison, Louisiana, USA

### Age 30 — Birth of Son TJ Thomas (1925–1991)

04 Aug 1925 • Sondheimer, East Carroll, Louisiana, USA

### Age 35 — Residence

1930 • Police Jury Ward 1, East Carroll, Louisiana, USA

Marital Status: Married; Relation to Head of House: Wife

### Age 40 — Residence

1935 • Rural, Madison, Louisiana

### Age 45 — Residence

1 Apr 1940 • Madison, Louisiana, USA

Marital Status: Married; Relation to Head of House: Wife

### Age 96 — Death of Son TJ Thomas (1925–1991)

18 Jan 1991 • Kansas City, Jackson, Missouri, USA

### Death

Tallulah, Madison, Louisiana, USA

## Family

### Parents

### Spouse & Children

Harrison Radell

Private

Private

Private

Private

Private

Private

Private

### Spouse & Children

John Thomas1895-

TJ Thomas 1925–1991

Private

Private

## Sources

### Ancestry Sources

1930 United States Federal Census

1940 United States Federal Census

Ancestry Family Trees



# T J Thomas

**BIRTH** 4 AUG 1925 • Sondheimer, Louisiana

**DEATH** 1/18/1991 • Kansas City, USA

## Facts

### Age 0 — Birth

4 Aug 1925 • Sondheimer, Louisiana

### Birth (Alternate)

4 Aug 1925 • Sundheimer, Louisiana

### Age 5 — Residence

1930 • Police Jury Ward 1, East Carroll, Louisiana, USA

Marital Status: Single; Relation to Head of House: Son

### Age 10 — Residence

1935 • Rural, Madison, Louisiana

### Age 14 — Residence

1 Apr 1940 • Madison, Louisiana, USA

Marital Status: Single; Relation to Head of House: Stepson

### Age 16 — Birth of Daughter Betty Lee Thomas (1942–1965)

1942 • Tallulah, Louisiana, USA

### Age 35 — Birth of Daughter Eliza Ann Thomas (1960–2008)

12/12/1960 • Tallulah, Madison, Louisiana, USA

### Age 40 — Death of Daughter Betty Lee Thomas (1942–1965)

1965 • Las Vegas, Nevada, USA

### Age 54 — Death of Brother Jake Thomas (1924–1979)

Aug 1979 • Los Angeles

### Age 64 — Death of Brother J T Thomas (1925–1989)

17 Oct 1989 • Las Vegas, Nevada, USA

## Family

### Parents

John Thomas 1895–

Rebecca Radell 1896–

### Spouse & Children

Jessie Mae brown

Betty Lee Thomas 1942–1965

Eliza Ann Thomas 1960–2008

Private \*

### Spouse & Children

Emma Nash

Private

JOHN Thomas

Private

Private

## Sources

### Ancestry Sources

1930 United States Federal Census

1940 United States Federal Census

Ancestry Family Trees

U.S., Social Security Applications and Claims Index, 1936-2007

U.S., Social Security Applications and Claims Index, 1936-2007



Line No.	Street	House No.	Family No.	Name	Relation	Age	Sex	Color	Marital	Education	Profession	Industry	Occupation	Attended	Reads & Writes	Birthplace	Parents Birthplace	Mother's Birthplace	Year	Age
12	14114	14114	14114	Melvin, David	Head	2	M	W	Married	High School	Teacher	Teacher	Teacher	Yes	Yes	France	France	France	1911	12
13				Lucas	Wife	2	F	W	Married	High School	Homemaker	Homemaker	Homemaker	Yes	Yes	France	France	France	1911	12
14	14115	14115	14115	Burns, Daniel	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
15	14117	14117	14117	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
16	14118	14118	14118	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
17	14119	14119	14119	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
18	14120	14120	14120	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
19	14121	14121	14121	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
20	14122	14122	14122	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
21	14123	14123	14123	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
22	14124	14124	14124	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
23	14125	14125	14125	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
24	14126	14126	14126	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
25	14127	14127	14127	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
26	14128	14128	14128	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
27	14129	14129	14129	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
28	14130	14130	14130	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
29	14131	14131	14131	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
30	14132	14132	14132	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
31	14133	14133	14133	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
32	14134	14134	14134	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
33	14135	14135	14135	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
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38	14140	14140	14140	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
39	14141	14141	14141	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
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42	14144	14144	14144	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
43	14145	14145	14145	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
44	14146	14146	14146	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
45	14147	14147	14147	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
46	14148	14148	14148	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
47	14149	14149	14149	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
48	14150	14150	14150	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
49	14151	14151	14151	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18
50	14152	14152	14152	John, John	Head	18	M	W	Married	High School	Officer	Officer	Officer	Yes	Yes	Alabama	Alabama	Alabama	1911	18

ABREVIATIONS TO BE USED IN COLUMNS INDICATED:  
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 C-66-1/4611686018427387904  
 C-67-1/9223372036854775808  
 C-68-1/18446744073709551616  
 C-69-1/36893488147419103232  
 C-70-1/73786976294838206464  
 C-71-1/147573952589676412928  
 C-72-1/295147905179352825856  
 C-73-1/590295810358705651712  
 C-74-1/1180591620717411303424  
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 C-82-1/302231454903657293676544  
 C-83-1/604462909807314587353088  
 C-84-1/1208925819614629174706176  
 C-85-1/2417851639229258349412352  
 C-86-1/4835703278458516698824704  
 C-87-1/9671406556917033397649408  
 C-88-1/19342813113834066795298816  
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 C-95-1/2475880078570760549798484448  
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 C-99-1/39614081257132168787975111168  
 C-100-1/79228162514264337575950222336

C-1-1000  
 C-2-1









# EXHIBIT 215

# EXHIBIT 215



**CLARK COUNTY  
OFFICE OF THE DISTRICT ATTORNEY**

*Criminal Division*

**STEVEN B. WOLFSON**  
District Attorney

---

200 Lewis Avenue • Las Vegas, NV 89101 • 702-671-2500 • Fax: 702-455-2294 • TDD: 702-385-7486

---

MARY-ANNE MILLER  
*County Counsel*

CHRISTOPHER LALLI  
*Assistant District Attorney*

ROBERT DASKAS  
*Assistant District Attorney*

JEFFREY J. WITTHUN  
*Director D.A. Family Support*

BRIGID J. DUFFY  
*Director D.A. Juvenile*

Randolph Fiedler  
Assistant Federal Public Defender  
411 E. Bonneville Ave., Ste. 250  
Las Vegas, Nevada 89101

November 3, 2016

Re: Marlo Thomas

Dear Mr. Fiedler,

In your recent letter of October 31, 2016, you claim to represent Nevada death row inmate Marlo D. Thomas in his federal habeas corpus proceedings. Exhibit 1. However, I have searched PACER and can find no such federal habeas proceeding and no indication that your office has been appointed to this case. Your letter is misleading to me, and undoubtedly other recipients as well, as it gives the impression that you have federal court authority to conduct discovery in a pending federal habeas case. Also, the authorization for release of records attached to your letter indicates that inmate Thomas signed the form on October 13, 2016, at a time when the state appeal was still pending and he was represented by state counsel. Remittitur from the state appeal did not issue until October 20, 2016. I had believed that this practice of self-appointment and involvement by your office during the pendency of active state cases had ended with Ms. Forsman.

Of even more concern is why your office would seek appointment and representation of inmate Thomas given your conflict of interest. As you must be aware, your office was involved and participated directly in state habeas proceedings. In fact, your office sought and obtained an ex parte state court order on December 30, 2008, which expressly authorized the Capital Habeas Unit of the Federal Public Defender's office to assist state post-conviction counsel in preparing the pleadings. Exhibit 2. As the entity which influenced and advised state habeas counsel on how to proceed and what claims to raise in state court, your office is conflicted from arguing its own ineffectiveness in federal court. The same type of conflict was acknowledged in at least two other capital habeas cases which lead to the termination of one of your attorneys. *Charles Randolph v. McDaniel*, 3:08-cv-00650-LRH-VPC; *Gregory Bolin v. McDaniel*, 3:07-cv-00481-RLH-VPC.

AA6977

Obviously, as to your request for access to documents in our possession I must decline. As you know, your office already received copies of our case file in 2008 in the state post-conviction proceedings through state counsel Cynthia Dustin. I do not intend to provide a duplicate copy of what you already have, especially considering your conflict of interest and apparent lack of federal appointment to this case. If I am incorrect in my conclusions, please provide me proof to the contrary.

Sincerely,



Steven S. Owens  
Chief Deputy District Attorney

CC: Rene Valladares, FPD  
CC: Heidi Stern, AG  
CC: Gloria Navarro, Chief Judge

# EXHIBIT 1

# EXHIBIT 1

Rene L. Valladares  
Federal Public Defender  
District of Nevada

Lori C. Teicher  
First Assistant

Randolph Fiedler  
Assistant Federal Public Defender



RECEIVED  
OCT 31 2016  
APPELLATE DIVISION  
**FEDERAL PUBLIC  
DEFENDER**

— District of Nevada —

411 E. Bonneville Ave.  
Suite #250  
Las Vegas, NV 89101  
Tel: 702-388-6577

October 31, 2016

Steven S. Owens  
Chief Deputy District Attorney  
Office of the Clark County District Attorney  
Regional Justice Center  
200 Lewis Avenue  
PO Box 552212  
Las Vegas, Nevada 89155-2212

Please reference this number  
in your response [20.6]

Re: Marlo D. Thomas v. Renee Baker, et al.

Eighth Judicial District Court Case No. C136862-1  
Information Requested on: Marlo D. Thomas  
DOB: 11/06/1972  
SS#: 530-68-7216

Dear Mr. Owens:

The Federal Public Defender, District of Nevada (the "FPD") represents Nevada death row inmate Marlo D. Thomas in his federal habeas corpus proceedings. By way of this letter, I am requesting the opportunity to come to your office and review your file pertaining to Mr. Thomas as it relates to his capital conviction in case number C136862-1. Specially, I am requesting any and all records, duplicates of all records, documents, files, notes, confidential and intelligence documents and tangible evidence maintained by and in the legal or physical custody of the Clark County District Attorney's relating or referring to Mr. Thomas.

AA6980

As Mr. Thomas' habeas counsel, it is imperative the FPD be able to review the contents of the District Attorney's file with regard to Mr. Thomas' case. Representation by habeas counsel, such as the FPD, includes the duty to investigate all potential facts or legal grounds that could provide a defendant with habeas relief.

One ground for relief includes the determination of whether there exists exculpatory evidence in possession of the State. See Brady v. Maryland, 373 U.S. 83, 87 (1963); Lisle v. State, 351 P.3d 725, 728 (Nev. 2015). This type of evidence can include, but is not limited to, statements of witnesses or physical evidence that conflicts with testimony of prosecution witnesses and evidence that could allow the defense to impeach the credibility of a prosecution witness. Access to the District Attorney's case file is imperative to the FPD's ability to fully investigate all potential grounds of relief.

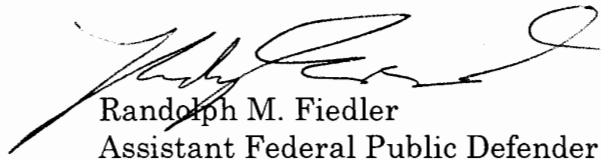
In addition, the State has already given access to this portion of the DA file to trial counsel. During the discovery process before trial, defense counsel was provided with offense reports, laboratory reports, forensic reports, and witness statements. Thus, the file must be opened to current counsel as the State has expressly waived any privilege it may have had to preclude access to its file.

If you cannot comply with this request, please provide a letter stating why you cannot comply. If the documents have been destroyed, please provide a copy of the statute or records retention policy under which authority for destruction was had, and a description of the documents destroyed. If you require pre-payment of copying expense, please notify me in writing of the number of pages and the amount due.

Steven S. Owens, Esq.  
October 31, 2016  
Page 3

Because this is a capital case and we are under court imposed filing deadlines, it is essential that we obtain any and all records as soon as possible. We appreciate your prompt response and thank you in advance for your assistance. If you have any questions or require additional information, please call me at 702-388-5198 or e-mail at [Randolph\\_fiedler@fd.org](mailto:Randolph_fiedler@fd.org).

Very truly yours,



Randolph M. Fiedler  
Assistant Federal Public Defender

AA6982

**AUTHORIZATION FOR RELEASE**  
**OF CONFIDENTIAL INFORMATION AND RECORDS**

Dated: October 31, 2016  
To: Office of the Clark County District Attorney  
  
Re: Marlo D. Thomas

I, **Marlo Demitrius Thomas** by this release, authorize and request you to release to the Federal Public Defender for the District of Nevada, Randolph Fiedler, Assistant Federal Public Defender, and/or their designated representatives, any and all information and/or records relating **Marlo Demitrius Thomas**, including but not limited to, birth certificates and records, death certificates and records, autopsy findings, records and recordings, marriage certificates and records, dissolution files, academic, correctional, employment, law enforcement and military records, medical, psychological, psychiatric, probation and rehabilitation (including alcohol and drug rehabilitation) records as well as any files prepared in connection with prior civil or criminal litigation; any other correspondence or document and all other records, raw data, notes, test results, narrative reports and recordings, together with all time and billing records pertaining to **Marlo Demitrius Thomas**.

This document also authorizes any physicians, experts or other personnel to discuss their otherwise confidential information with the above mentioned legal representatives. In consideration of such disclosure, I hereby release you (in your individual and/or institutional capacity) from any and all liability arising from the disclosure of otherwise confidential information.

This release is limited in the following ways: Not Limited

You are specifically authorized to photocopy these records and to release copies to the above mentioned legal representatives. A photographic copy of this authorization shall be as valid as the original.

Dated: 10-13-16

D.  
Marlo Demitrius Thomas  
Marlo Demitrius Thomas

530-68-7216  
Social Security Number

11-06-1972  
Date of Birth



# EXHIBIT 2

# EXHIBIT 2

ORIGINAL

FILED

DEC 30 3 10 PM '08

*E. L. Dustin*  
CLERK OF THE COURT

1 **ORD**  
2 **FRANNY A. FORSMAN**  
3 **Federal Public Defender**  
4 **Nevada Bar No. 0014**  
5 **411 E, Bonneville Avenue, Suite 250**  
6 **Las Vegas, Nevada 89101**  
7 **(702) 388-6577 (Las Vegas)**  
8 **Attorney for Defendant Marlo Thomas**

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*

11 **STATE OF NEVADA,**  
12 **Plaintiff,**  
13 **vs.**  
14 **MARLO THOMAS,**  
15 **Defendant.**

Case No: 96-C-136862-C  
Dept. No: XV

**EX PARTE ORDER RE: COUNSEL  
FOR PETITIONER**

17 This death penalty case is before the court pursuant to a Petition for Writ of Habeas  
18 Corpus Post Conviction which was filed on March 6, 2008. On May 7, 2008, this court appointed  
19 attorney Cynthia Dustin to represent Petitioner. On September 6, 2008, Defendant/Petitioner filed  
20 a Motion to dismiss counsel; that motion was denied. On December 18, 2008, Attorney Dustin filed  
21 a Motion to Withdraw as Counsel, which <sup>was granted on 12/29/08. <</sup> ~~remains pending before the court.~~

22 The court understands that the office of the Federal Public Defender, as a regular  
23 practice, "tracks" all cases in Nevada in which a sentence of death has been imposed. Pursuant to  
24 the Plan for the Administration of the Criminal Justice Act adopted by the U.S. District Court, the  
25 Capital Habeas Unit of the Federal Public Defender is presumptively appointed in all Capital Habeas  
26 cases filed in the district. As a result, it has come to the attention of the court that the office of the  
27 Federal Public Defender is willing to assist counsel appointed by this court in preparing the state Post  
28 Conviction pleadings.

RECEIVED  
DEC 30 2008  
CLERK OF THE COURT

1 Recruiting qualified counsel to represent petitioners in Capital Post-Conviction cases  
2 has presented some difficulties. The issues presented can be complex. Additionally, the case may  
3 remain pending for long periods of time in order to afford counsel adequate time to investigate and  
4 prepare claims so that the claims will be adequately prepared for further review. The court believes  
5 that assistance from skilled post-conviction counsel from the office of the Federal Public Defender  
6 may result in cost-effectiveness in that the assistance will insure that claims are adequately presented  
7 at the outset of post-conviction proceedings, may result in judicial economy in that thorough  
8 presentation of the claims in the first Post-conviction proceeding may avoid future successive  
9 petitions and will assist in insuring continuity of counsel and enhancing attorney-client relationships  
10 as the matter proceeds through the state and federal courts. Assistance from the Capital Habeas Unit  
11 may also assist the court in recruiting counsel.

12 Accordingly, the court invites the Capital Habeas Unit of the Federal Public  
13 Defender's office, to the extent that it has sufficient resources to do so, to assist appointed counsel  
14 in the Post-conviction proceedings pending before this court. ➡

15 IT IS SO ORDERED.

16 DATED this 30 day, of December, 2008.

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21 SALLY LOEHRER  
22 DISTRICT JUDGE  
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# EXHIBIT 216

# EXHIBIT 216



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
100 North Carson Street  
Carson City, Nevada 89701-4717

ADAM PAUL LAXALT  
*Attorney General*

WESLEY K. DUNCAN  
*First Assistant Attorney General*

NICHOLAS A. TRUTANICH  
*First Assistant Attorney General*

December 29, 2016

Katrina Davidson  
Paralegal, Capital Habeas Unit  
Federal Public Defender  
411 E. Bonneville Rd., Ste. 250  
Las Vegas, NV 89101

**Re: *Thomas v. Filson*, Case No. C136862-1 (Eighth Judicial District Court)  
[Thomas 20.24]**

Dear Ms. Davidson:

This is in response to your letter of November 7, 2016, requesting records from the Nevada Department of Corrections (NDOC) for the habeas corpus proceeding indicated above, as well as a federal habeas corpus proceeding involving the same petitioner, Marlo Thomas.

We can find no indication that your office represented Mr. Thomas in the above-indicated case, or in the direct appeal from that case. The state district court entered its final order denying Mr. Thomas's habeas petition on May 30, 2014, and he was represented by retained private counsel in that matter. The Nevada Supreme Court affirmed the denial of the state habeas petition and remittitur issued on October 20, 2016 (Case No. 65916). Your office was not counsel of record on the appeal. It does not appear that there are any additional pending issues in the state court case.

Your letter also referenced a federal habeas corpus proceeding. However, a recent search of the United States District Court revealed that Mr. Thomas has not filed a federal habeas corpus petition.

In short, we can find no indication that your office has appeared as counsel of record for Mr. Thomas in either state or federal court. We also have found no record of a pending habeas corpus petition for Mr. Thomas.

The NDOC Administrative Regulations (ARs) expressly limit not only the types of records that inmates are permitted to have physical possession of and/or view, but also limit the types of records that may be produced to the inmate's attorney, without a court order, in a habeas corpus proceeding.

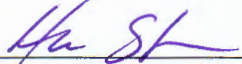
As your office has not appeared as Mr. Thomas' attorney in any pending habeas proceedings, and Mr. Thomas does not have any pending habeas matters in state or federal court, this Office cannot fulfill your request at this time. If Mr. Thomas files a future habeas action, and your office is appointed to represent him, please resubmit your request for records and we will process that request.

Thank you. Please feel free to contact me with any questions.

Sincerely,

ADAM PAUL LAXALT  
Attorney General

By:

  
HEIDI PARRY STERN  
Chief Deputy Attorney General  
Bureau of Criminal Justice  
Post-Conviction Unit  
(702) 486-3594  
[hstern@ag.nv.gov](mailto:hstern@ag.nv.gov)

HPS/hp

cc: Jeff Segal, Bureau Chief, Bureau of Criminal Justice  
Ann McDermott, Bureau Chief, Bureau of Litigation  
Clark Leslie, Chief Deputy Attorney General, Bureau of Litigation – NDOC

# EXHIBIT 217

# EXHIBIT 217



LAS VEGAS METROPOLITAN  
POLICE DEPARTMENT

JOSEPH LOMBARDO, Sheriff

Partners with the Community

November 10, 2016

FEDERAL PUBLIC DEFENDER, DISTRICT OF NEVADA  
Attn: Katrina Davidson, Paralegal  
411 E. Bonneville Avenue, Suite 250  
Las Vegas, Nevada 89101

**RE: Request for Records from LVMPD Criminalistics Bureau  
Marlo Demetrius Thomas  
Reference# [Thomas 20.11]  
Formal Letter Request for Records on Events:  
84-06040624; 88-83051; 960415-0488; 87-65834; 84-76992**

Dear Ms. Davidson:

Your letter dated November 1, 2016 addressed to the Las Vegas Metropolitan Police Department's (LVMPD) Criminalistics Bureau was directed to my office for response. Since you are in the process of filing a habeas petition and no order from the court has been issued for discovery at this time, your letter is being treated as a public records request.

Please be advised that your request will be forwarded to the LVMPD Records and Fingerprint Bureau to research any records that may be responsive to your public records request. The Records and Fingerprint Bureau will be in touch with you within the next thirty (30) days. If there are public records responsive to your request, they will advise you of the cost of the research if extraordinary use of personnel is required and the estimated cost of any copies.

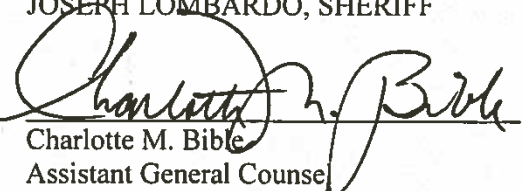
If you provide a **notarized** signed release from Marlo Demetrius Thomas for the release of his criminal history records then those records can be released to you. The release you attached to your letter is not notarized. Please provide a notarized release. However, a signed notarized release does not include the investigative records, forensic records, or evidence; you will need a court order authorizing the discovery for those records.

If you have any questions, please contact me at (702) 828-3310.

Sincerely,

JOSEPH LOMBARDO, SHERIFF

By:

  
Charlotte M. Bible  
Assistant General Counsel

CMB/sa

cc: LVMPD Records Bureau





# EXHIBIT 218

# EXHIBIT 218

### Declaration of Katrina Davidson

I, Katrina Davidson, hereby declare as follows:

1. I am a paralegal in the Capital Habeas Unit of the Federal Public Defender's Office, District of Nevada.
2. At the request of Assistant Federal Public Defender Joanne Diamond, I have reviewed the records in our possession connected to Marlo Thomas's case, as well as the log of records I have requested and received.
3. The file received from state post-conviction counsel, Brett Whipple, does not include the record on appeal. The file received from Mr. Whipple, in its entirety, consists of Appellant's Opening Brief, Appellant's Appendix, Respondent's Answering Brief, Volumes I-VI of Respondent's Appendix, Nevada Supreme Court's Order of Affirmance, and Petition for Rehearing.
4. A review of our records database indicates that we are in possession of nine volumes of the Record on Appeal, which we obtained directly from the Eighth Judicial District Court. These are Volumes 1-9. We are also in possession of the index to Volume 13. We are not in possession of Volumes 10-13.
5. The Record on Appeal was not included in the records I received from the Nevada Supreme Court. I have been informed by the Nevada Supreme Court in another case that the Record on Appeal is destroyed ninety days after conclusion of direct appeal proceedings.
6. I requested records from the Clark County Comptroller's Office, including the billing records for Mr. Thomas's previous attorneys. I was informed that

records preceding 2006 are retained only on microfiche. I have been informed that the microfiche machine at that office is broken.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed in Clark County, Nevada, on July 31, 2017.



---

Katrina Davidson

EXHIBIT 219

EXHIBIT 219

MThomas-8JDC04805

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JURL

**ORIGINAL  
DISTRICT COURT  
CLARK COUNTY, NEVADA**

**FILED**

2005 OCT 31 P 6:03

*S. Riggins*  
CLERK

STATE OF NEVADA,

Plaintiff,

vs

MARLO THOMAS AKA  
MARLO DEMITRIUS THOMAS,

Defendant(s).

Case No. C136862

Dept. No. XV

**JURY**

- |                     |                          |
|---------------------|--------------------------|
| 1. Janet Cunningham | 7. Adele Basye           |
| 2. Janet Jones      | 8. Jill McGrath          |
| 3. Don McIntosh     | 9. Ceasar Elpidio        |
| 4. Connie Kaczmarek | 10. Loretta Gillis       |
| 5. Rosa Belch       | 11. Joseph Delia         |
| 6. Philip Adona     | 12. Christina Shaverdian |
|                     | 13. Herbert Rice         |
|                     | 14. Tamara Chiangi       |

JURL/9-00/JBH

# EXHIBIT 220

# EXHIBIT 220

## Declaration of Tammy R. Smith

I, Tammy R. Smith, hereby declare as follows:

1. I work as an investigator for the Federal Public Defender of Nevada. I have been employed in this capacity since January 2006. I was assigned to assist Assistant Federal Public Defender David Anthony in the investigation of Kevin Lisle's capital habeas cases.
2. In the course of my investigation, I made three visits to the Clark County Comptroller's Office to determine if there existed any records of payments made to witnesses in Mr. Lisle's cases. Finding historical records of witness payments in the Clark County Comptroller's office is an arduous and time-consuming task.
3. I first visited the Comptroller's office for the Lisle investigation on August 31, 2016. In order to gain access to the Comptroller's office to review records, I had to coordinate a suitable visiting time with Comptroller employee Melinda Adkins. Once the August 31st date had been approved by Ms. Adkins, I then had to travel to the Comptroller's physical office to access their archived records.
4. The Comptroller's office serves as Clark County's central financial coordinating agency. The Comptroller's records contain every bill submitted to or paid by Clark County. As such, the Comptroller records archives contain an utterly tremendous number of financial records, receipts and bills – anything from orders for new uniforms for county janitorial staff, to bills for government car repairs, to bulk grocery expenses for the county's juvenile detention center. Within these records, one can also find copies of witness fee payments, as well as hotel/food/airfare expenses paid to accommodate witnesses visiting from out of state and mileage/cab fare for local witnesses. Like all county expenses, records of these court-related payments are ultimately filed with the Comptroller's office.
5. In addition to being voluminous, the Comptroller's records archives are only loosely organized. Bills and receipts are not necessarily filed according to when they were created, but when they were ultimately submitted to the Comptroller, meaning a witness fee paid in one month may not be filed and indexed until months later, if the paperwork was not transferred to the Comptroller in timely manner. Further, the archived records do not group the payments by specific departments or government sub-agencies, meaning there was no way for me to exclusively search court records or witness records.
6. In order to research witness payments made in connection with Kevin Lisle's two capital cases, I followed a multi-step process, one that I developed when conducting similar research on other capital cases from the same era (mid-1990s).

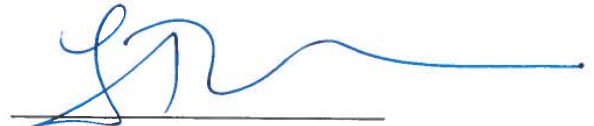
7. First, I located microfiched "Daily Reports" around the appropriate time periods. These reports provide a summary, by date, of every payment made by the Comptroller's office. For each business day there are approximately six to ten microfiche sheets; each piece of fiche contains anywhere from a handful to a couple hundred of images.
8. Next, I loaded each relevant piece of fiche in the machine, scanning for any payments made under Agency 1 (County, general) and specifically Account #101-2220-7270 (or 7330), which is sometimes also listed under the Clark County DA's Office and/or referenced as "WIT/JURY FEES." The entry typically also contains a date range, indicating payments made on that particular date cover witness/jury fees incurred during the indicated range. The entry does not list specific witness names or case numbers..
9. When I located a relevant entry on the microfiche, I then noted its assigned "batch number." A batch number typically consists of three letters followed by a three digit number, i.e. CJA724. Tom Wilson of the office (now retired) previously informed me that the letters refer to the initials of the employee processing the voucher.
10. With a batch number in hand, I next searched the microfilm drawers for the relevant fiscal year, and then for the roll including the relevant batch number. After loading the roll into the machine, I then scrolled through until reaching the appropriate batch number. A microfilm roll typically consists of over 2000 images. One "batch" may consist of several different payment vouchers and receipts, not just the witness payment subset.
11. After locating the appropriate batch number and then the witness payments within that batch, I scanned the pages for relevant witness names or case numbers. The witness payment vouchers are arranged two to a page with usually anywhere from 50-100 witnesses per set.
12. The witness payment voucher itself is a standard form filled in by hand. It usually includes a witness name, case number, mileage information, fees paid, etc. Because the printer connected to the microfilm/fiche reader at the Comptroller's office is not functional, I took photographs of each relevant image.
13. In Mr. Lisle's case, on my first two visits to the Comptroller's office on August 31, 2016, and September 1, 2016, I spent a combined thirteen hours looking for witness payment information. Specifically, I found and reviewed Daily Reports for dates covering Mr. Lisle's two trials, preliminary hearing, and grand jury. As indicated previously, this approach, while very time consuming and tedious, is not an exhaustive approach to finding witness payment information due to the loose organization of the records. This review would not yield witness payment information made on other dates, for example.



14. On September 29, 2016, again after arranging a time to visit with Comptroller staffer Melinda Adkins, I returned to the office and spent another six hours searching for payments on other select dates. Because Ms. Adkins was busy with other obligations, my contact person on this date was staffer Jose Papagular.
15. During my visit on September 29, 2016, the tension on the speed adjustment knob of the microfilm reader loosened, rendering the machine inoperable. I consulted with Mr. Papagular about the issue, who in turn conferred with Melinda Adkins. Mr. Papagular informed me that the county information technology department does not support the microfilm/fiche machine due to its advanced age, therefore they will not service it. Mr. Papagular also indicated that the county will not pay to have the unit serviced by an outside vendor. As such, I was unable to complete review for even this highly targeted, and therefore probably very inadequate, selection of dates.
16. Exhibits 282, 283, 284, and 286 are the various witness payment vouchers and travel itineraries I found for State's witnesses Adam Evans, John Melcher, Larry Prince, and Jose Gonzalez during my research at the Comptroller's office. To be clear, because I searched a very limited set of dates during the August 1994 through April 1996 time period when Mr. Lisle's two capital cases were investigated and prosecuted, it is very possible other witness payments exist for these three witnesses.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Signed this 20<sup>th</sup> day of October, 2016.



Tammy R. Smith

IN THE SUPREME COURT OF THE STATE OF NEVADA

\*\*\*\*\*

MARLO THOMAS,

Appellant,

v.

WILLIAM GITTERE, et al.,

Respondents.

Electronically Filed  
Jun 14 2019 03:16 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

No. 77345

District Court Case No.  
96C136862-1

(Death Penalty Case)

**APPELLANT'S APPENDIX**

Volume 28 of 35

Appeal from Order Dismissing Petition for Writ of Habeas  
Corpus (Post-Conviction)

Eighth Judicial District Court, Clark County  
The Honorable Stefany Miley, District Judge

RENE L. VALLADARES  
Federal Public Defender

JOANNE L. DIAMOND  
Assistant Federal Public Defender  
Nevada Bar No. 14139C  
Joanne\_Diamond@fd.org

411 E. Bonneville, Suite 250  
Las Vegas, Nevada 89101  
(702) 388-6577

Attorneys for Appellant

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**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on June 14, 2019. Electronic Service of the foregoing APPELLANT'S APPENDIX shall be made in accordance with the Master Service List as follows:

Steven S. Owens  
Chief Deputy District Attorney

*/s/ Jeremy Kip*  
\_\_\_\_\_  
An Employee of the  
Federal Public Defender,  
District of Nevada

clients/patients . . . and others with whom they work, and to minimize harm where it is foreseeable and unavoidable. Given the minimally probative nature of PCL-R data . . . combined with the likelihood that it would have a prejudicial impact, it is difficult to postulate a scenario in which these two ethical standards would not be in jeopardy if it were introduced . . . .<sup>247</sup>

It is for these reasons that both the American Psychiatric Association and the American Psychological Association have opposed the use of such evidence in in capital cases.<sup>248</sup>

In sum, serious ethical questions have been raised about whether the PCL-R provides any probative value in capital sentencing procedures.<sup>249</sup> The PCL-R stigmatizes defendants because of its associated label of “psychopath” and the morally damning judgment implicit in many of PCL-R items. “[I]t seems impossible to reconcile the glaring inaccuracy of the prediction made by prosecution experts . . . with the assertion that death sentences have not been meted out in a capricious manner.”<sup>250</sup> In fact, when laypersons attribute psychopathic traits to capital defendants, this strongly predicts their support for decisions to execute them.<sup>251</sup>

#### 4. No Intelligent Design: Conceptual Drift Towards “Evil” and “Wickedness”

An ethical debate of particular relevance to capital litigation is whether the mental health field should weigh in on “wickedness” and “evil,” which are not clinical constructs (for example, neither are they contained anywhere in the DSM, nor are psychiatrists or psychologists trained to assess or identify these moral characterizations). While the introduction of moral and religious overtones into forensic testimony has

247. *Id.* at 619.

248. Edens & Cox, *supra* note 241, at 241; *see also* Brief of Amicus Curiae American Psychological Ass’n in Support of Defendant-Appellant at 9-12, *United States v. Fields*, No. 04-50393 (5th Cir. Apr. 2, 2007).

249. Edens & Cox, *supra* note 241, at 242-43; *see also* Bersoff, *supra* note 77, at 572 (enumerating six concerns); Cunningham & Goldstein, *supra* note 3, at 424, 426; Edens, *Misuses*, *supra* note 190, at 1085, 1087, 1089 (presenting two case examples); Edens et al., *Impact of Mental Health Evidence*, *supra* note 77, at 605-06. The PCL-R also is likely to have a highly prejudicial effect on perceptions of the defendant. Brief for the American Psychological Ass’n & the Missouri Psychological Ass’n as Amicus Curiae Supporting Respondent at 23-24, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633).

250. Edens et al., *Predictions*, *supra* note 77, at 77. Hare, the developer of the PCL-R, has serious concerns about and has disavowed numerous ways in which his instrument has been misused. *See supra* text accompanying notes 206-19.

251. John F. Edens et al., *No Sympathy for the Devil: Attributing Psychopathic Traits to Capital Murderers Also Predicts Support for Executing Them*, 4 PERSONALITY DISORDERS: THEORY, RES. & TREATMENT 175, 175-76 (2012).

been questioned, “[i]nterest in evil is growing. The psychological and psychiatric literature reflects steadily increasing attention to the concept of evil over the past two decades.”<sup>252</sup>

One prominent advocate of the view that “evil” and similar terms (for example, “depravity”) are within the purview of psychiatric assessment is Welner, a psychiatrist who testifies frequently for the government in death penalty cases.<sup>253</sup> His position is that “legal relevance demands that evil be defined and standardized” because, “[i]n 39 American states, and in federal jurisdictions, statutes allow for judges and juries to enhance penalties for convicted offenders if they decide the crime committed was ‘heinous,’ ‘atrocious,’ ‘depraved,’ ‘wanton,’ or otherwise exceptional.”<sup>254</sup> Welner explains that the purpose of introducing “evil” as a forensic concept in criminal cases is to neutralize evidence of the background and character of the accused, which in his personal opinion has no place in capital decision-making.<sup>255</sup>

Without standardized direction, jury decisions on whether a crime is depraved are all too often *contaminated by details about the “who” of a crime* (i.e. a person’s checkered background or, alternatively virtuous qualities that render a jury unable to fathom how such a privileged person could so dramatically offend), as opposed to focusing on “*what*” the defendant actually did.<sup>256</sup>

Welner contends that, “mingling the ‘what’ of a crime” with mitigating circumstances “undercuts an unbiased, equal justice.”<sup>257</sup> He argues that standardizing depravity (evil) is needed to “insulate [jurors] from emotional manipulation, courtroom theatrics, and the introduction of factors that should not play a role in sentencing.”<sup>258</sup> Of course, the factor that Welner seeks to neutralize is the Eighth Amendment’s “need for treating each defendant in a capital case with that degree of respect due the uniqueness of the individual.”<sup>259</sup>

Welner’s advocacy of the use of depravity or evil to focus solely on the “what” of the crime, rather than the “who” of the defendant, is particularly misguided in light of the constitutional demand that the

252. Knoll, *supra* note 56, at 105 (“Medline and PubMed searches using the phrases ‘the concept of evil in forensic psychiatry’ and ‘evil and psychiatry’ revealed significantly more relevant publications beginning in the early to mid 1990s than before this period.”).

253. See Michael Welner, M.D., FORENSIC PANEL, [http://www.forensicpanel.com/about/out\\_experts/expert/20835.html](http://www.forensicpanel.com/about/out_experts/expert/20835.html) (last visited Feb. 16, 2014).

254. Welner, *supra* note 57, at 417.

255. See generally *id.*

256. *Id.* at 417 (emphases added).

257. *Id.* at 417-18.

258. *Id.* at 418 (emphasis added).

259. *Lockett v. Ohio*, 438 U.S. 586, 605 (1978).

sentencer consider the uniqueness of each individual in weighing the death penalty, which is reserved only for “a narrow category” of the most culpable offenders who commit the worst of crimes.<sup>260</sup> Indeed, the very factors which Welner insists on writing out of the capital sentencing equation—“a person’s checkered background or, alternatively virtuous qualities . . . [or] race, orientation, and socioeconomic factors”<sup>261</sup>—are “relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background . . . may be less culpable than defendants who have no such excuse.”<sup>262</sup> The Eighth Amendment condemns any procedure that “treats all persons convicted of a designated offense not as uniquely individual human beings, but as members of a faceless, undifferentiated mass to be subjected to the blind infliction of the penalty of death.”<sup>263</sup> Therefore, the Supreme Court requires that a capital sentencer be permitted to consider, “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.”<sup>264</sup> Welner’s admission that evidence about psychopathy is intentionally designed to obscure constitutionally mandated mitigating evidence provides a compelling ethical argument for excluding it altogether.

Contrary to Welner, psychiatrist Doctor Robert Simon articulates the view that “evil” is not within the purview of the science of psychiatry:

Forensic psychiatrists are ethically required to adhere to the principles of honesty and striving for objectivity in providing opinions and testimony. Evil, however, is a concept too knotted in ambiguity for the application of these principles. The proper *métier* of the forensic psychiatrist is psychological and clinical. Psychiatrists are medically trained in the scientific method, not in the diagnosis and treatment of evil. They observe cause and effect in human behavior. When a concept is beyond scientific investigation, it is the province of the philosopher and theologian. Introducing the concept of evil into forensic psychiatry hopelessly complicates an already difficult task.

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260. *Atkins v. Virginia*, 536 U.S. 304, 319 (2002).

261. *See also Welner, supra* note 57, at 417.

262. *Wiggins v. Smith*, 539 U.S. 510, 535 (2003) (quoting *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989)).

263. *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976).

264. *Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (emphasis omitted).



The determination that a particular behavior is or is not evil is a judgment that is heavily influenced by context and subjectivity.<sup>265</sup>

Simon argues persuasively that “[t]he Gordian knot of evil cannot be untied by forensic psychiatry. It is unreasonable to expect forensic psychiatrists to provide credible testimony about evil.”<sup>266</sup> He explains, “[l]ay people are just as qualified to identify these individuals as evil,” and forensic psychiatrists and psychologists have “an important, but limited consulting role when advising the courts about psychological matters. We are not and should not be asked to offer professional opinions about evil. It’s the law’s final moral judgment of guilt upon individuals whom society brands as evildoers.”<sup>267</sup>

Opponents of using psychiatry to measure evil point out that it is “an entirely subjective concept created by humans.”<sup>268</sup> They argue that “[s]ince evil is a subjective moral concept with inextricable ties to religious thought, it cannot be measured by psychiatric science.”<sup>269</sup> Further, “attempts by behavioral science to define evil as though it were an objective and quantifiable concept are inherently flawed.”<sup>270</sup> To give “evil” quasi-scientific status in the psychiatric study of human behavior would harm patients and impede advancement in the identification and treatment of mental disorders:

The term evil is very unlikely to escape religious and unscientific biases that reach back over the millennia. Any attempt to study violent or deviant behavior under this rubric will be fraught with bias and moralistic judgments. Embracing the term evil as though it were a legitimate scientific concept will contribute to the stigma of mental illness, diminish the credibility of forensic psychiatry, and corrupt forensic treatment efforts.<sup>271</sup>

To conclude otherwise would threaten the neutrality and objectivity that are essential ingredients of ethical and psychiatrically valid forensic mental health evaluations:

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265. Robert I. Simon, *Should Forensic Psychiatrists Testify About Evil?*, 31 J. AM. ACAD. PSYCHIATRY & L. 413, 414 (2003) (footnote omitted). In a private communication with Robert I. Simon, Daniel W. Shuman, Professor of Law at Southern Methodist University, wrote: “As to relevance, no legal standard with which I am familiar turns on depravity – to what is this relevant in the forensic world?” *Id.* at 413.

266. *Id.* at 416.

267. *Id.*

268. Knoll, *supra* note 56, at 105.

269. *Id.* Knoll explains that, “evil can never be scientifically defined because it is an illusory moral concept, it does not exist in nature, and its origins and connotations are inextricably linked to religion and mythology.” *Id.* at 114.

270. *Id.* at 105.

271. *Id.* at 114.

Thus, psychiatry already has a tradition of at least attempting to avoid moralistic bias by focusing on concepts such as violence, aggression, or sexual disorders. Terms with value-laden or pejorative connotations are either limited or avoided. The use of such terms is a tradition that places value on the struggle for neutrality and objectivity. Forensic psychiatrists, as expert witnesses, subscribe to the principle in ethics of striving for objectivity. Forensic clinical psychiatrists, who must follow general ethics guidelines for psychiatry, are instructed to avoid any policy that "excludes, segregates or demeans the dignity" of a patient. When treating offenders, psychiatrists must strike a balance between neutrality and beneficence, regardless of how heinous a crime the patient may have committed.<sup>272</sup>

Finally, introducing "evil" into capital sentencing under the guise of medical science will only increase concerns about the arbitrary and capricious infliction of the death penalty:

[I]t is not difficult to imagine a scenario in which the results of a legal adjudication of evil include discrimination against poor or disadvantaged individuals. . . .

There are strong emotional and psychological forces at play during capital trials that are potentially biasing. It is well known that much more than legal fact is communicated in the courtroom, and that this "much more" has a direct and powerful effect on a jury's punishment decision. For example, it has been found that a defendant's appearance significantly influences whether jurors impose the death sentence. If jurors are unable to discount the physical appearance of a defendant in their deliberations, what is the likelihood that they will remain objective when a word steeped in religious morality is introduced by "experts" as a scientific construct?<sup>273</sup>

In sum, evidence that the defendant has ASPD or psychopathy, and that he will therefore be dangerous in the future, fails the most basic tests of scientific knowledge.<sup>274</sup> The myriad scientific, reliability, and ethical concerns about labeling a person antisocial, psychopathic, and evil cloaked as psychiatric findings should result in this evidence being excluded from the highly-charged adversarial atmosphere of capital trials. Thirty years ago, the Supreme Court rejected a challenge to the

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272. *Id.* at 112 (citation omitted) (footnote omitted).

273. *Id.* at 110 (footnote omitted).

274. "[S]cientists typically distinguish between 'validity' (does the principle support what it purports to show?) and 'reliability' (does application of the principle produce consistent results?)." *Daubert v. Merrill Dow Pharmaceutical, Inc.*, 509 U.S. 579, 590 n.9 (1993). "Scientific methodology today is based on generating hypotheses and testing them to see if they can be falsified; indeed, this methodology is what distinguishes science from other fields of human inquiry." *Id.* at 593.

use of psychiatric testimony in the penalty phase of a death penalty case that the defendant would pose a future danger if not executed.<sup>275</sup> The Court found that, "[t]he suggestion that no psychiatrist's testimony may be presented with respect to a defendant's future dangerousness is somewhat like asking us to disinvent the wheel."<sup>276</sup> As Edens and his colleagues suggest, perhaps the time has come to do so.<sup>277</sup>

#### IV. LEGAL GUIDELINES AND MENTAL HEALTH ASSESSMENTS: AVOIDING FATAL MISTAKES

This Part will discuss the "long recognized . . . critical interrelation between expert psychiatric assistance and minimally effective assistance of counsel."<sup>278</sup> Prevailing standards governing the performance of defense counsel in the post-*Furman*<sup>279</sup> era of capital punishment require the capital defense team's active participation and guidance in the assessment of the client's behavior, background, and mental health.<sup>280</sup> Performance standards have never contemplated that defense counsel would be a passive observer in processes and decisions that could determine his or her client's fate. To the contrary, a capital defendant "requires the guiding hand of counsel at every step in the proceedings against him."<sup>281</sup> In the context of a potential death sentence, assessment of the client's mental condition is a critical stage of the proceeding in which the guiding hand of counsel is absolutely essential under the Constitution.<sup>282</sup> To illustrate our point, we will discuss competent mental health assessments and cases that illustrate the importance of counsel's involvement to assure that the client does not fall victim to unreliable findings of ASPD and psychopathy.

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275. *Barefoot v. Estelle*, 463 U.S. 880, 883-85, 887, 903 (1983).

276. *Id.* at 896.

277. Edens et al., *Predictions*, *supra* note 77, at 76-77.

278. *Blake v. Kemp*, 758 F.2d 523, 531 (11th Cir. 1985) (quoting *United States v. Edwards*, 488 F.2d 1154, 1163 (5th Cir. 1974)).

279. *Furman v. Georgia*, 408 U.S. 238 (1972).

280. ABA GUIDELINES, *supra* note 18, Guideline 1.1 cmt., at 926-27.

281. *Powell v. Alabama*, 287 U.S. 45, 69 (1932).

282. "It is central to [the Sixth Amendment] principle that in addition to counsel's presence at trial, the accused is guaranteed that he need not stand alone against the State at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial." *Estelle v. Smith*, 451 U.S. 454, 470 (1981) (quoting *United States v. Wade*, 388 U.S. 218, 226-27 (1967)).

### A. "Defense Fail"

Justice Ruth Bader Ginsburg observed that "[p]eople who are well represented at trial do not get the death penalty."<sup>283</sup> Her observation holds true a dozen years later, as evidenced by many noteworthy examples in recent memory, including Olympic Park Bomber Eric Rudolph, Unabomber Ted Kaczynski, Atlanta courthouse escapee Brian Nichols, accused September 11th co-conspirator Zacharias Moussaoui, Beltway Sniper Lee Boyd Malvo, and Jared Lee Loughner, the shooter of Congresswoman Gabrielle "Gabby" Giffords and others in Tucson, Arizona. These defendants have three things in common: each was convicted of highly publicized capital crimes that had resulted in the deaths of multiple people; Each had a tragic history of mental illness that played a key role in persuading jurors, judges, or even prosecutors to reject the death penalty; and each was represented by a team of lawyers, investigators, and mitigation specialists who performed consistently with the ABA Guidelines.<sup>284</sup> Experience bears testament to Justice William Brennan's observation that "[t]he evidence is conclusive that death is not the ordinary punishment for any crime."<sup>285</sup>

Without representation consistent with the ABA and Supplementary Guidelines, the outcome of these cases would be different. Evidence supporting Justice Ginsburg's observation is easy to find. Columbia Law Professor James Liebman conducted an exhaustive survey of modern death penalty cases and found that more than two-thirds of death sentences are set aside because of prejudicial error, and that the most common error is ineffective assistance of defense counsel.<sup>286</sup> The vast majority of these cases ended in a more favorable disposition for the defendant after remand.<sup>287</sup> Our research reflects that

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283. *Justice Backs Death Penalty Freeze*, CBS NEWS (Feb. 11, 2009, 9:27 PM), [http://www.cbsnews.com/2100-508\\_162-284850.html](http://www.cbsnews.com/2100-508_162-284850.html).

284. See James Ball, *Artz Shooter Gets 7 Life Terms*, WASH. POST, Nov. 9, 2012, at A3; Shaila Dewan, *Olympics Bomber Offers an Apology at Sentencing*, N.Y. TIMES, Aug. 23, 2005, at A15; William Glaberson, *Kaczynski Avoids a Death Sentence with Guilty Plea*, N.Y. TIMES, Jan. 23, 1998, at A1; Jerry Markon & Timothy Dwyer, *Jurors Reject Death Penalty for Moussaoui*, WASH. POST, May 4, 2006, at A1; *Sniper Malvo Sentenced to Life Without Parole*, CNN, May 5, 2004, <http://www.cnn.com/2004/LAW/03/10/sniper.malvo>.

285. *Furman v. Georgia*, 408 U.S. 238, 291 (1972) (Brennan, J., concurring).

286. A comprehensive study of capital cases in America between 1973 and 1995 found that sixty-eight percent of all death sentences were set aside by appellate, post-conviction, or habeas corpus courts due to serious error. James S. Liebman et al., *Capital Attrition: Error Rates in Capital Cases, 1973-1995*, 78 TEX. L. REV. 1839, 1849-50 (2000).

287. Following appellate or post-conviction rulings finding serious error in capital cases, eighty-two percent of defendants "were found on retrial not to have deserved the death penalty, including [seven percent] . . . who were cleared of the capital offense." *Id.* at 1852 (emphasis omitted).

capital clients are at an increased risk of being diagnosed with ASPD or psychopathy if they are represented by trial, appellate, or post-conviction defense teams who fail to comply with the ABA and Supplementary Guidelines. This failure contributes significantly to the arbitrary pattern of death sentences and executions in the United States.

The Supreme Court's decision in *Rompilla v. Beard*<sup>288</sup> illustrates how defense counsel's deficient performance heightens the risk of a death sentence by facilitating an erroneous forensic opinion that the client is antisocial or psychopathic.<sup>289</sup> Instead of retaining a qualified mitigation specialist, trial counsel relied on a staff investigator to help investigate and develop mitigation evidence in addition to performing traditional guilt-or-innocence investigative functions.<sup>290</sup> Consequently, the defense team was understaffed and, contrary to prevailing performance standards, no team member was "qualified by training and experience to screen individuals for the presence of mental or psychological disorders or impairments."<sup>291</sup> Inevitably, as a result of this failure, critical information was misinterpreted or overlooked.<sup>292</sup>

A qualified mitigation specialist would have brought to Ronald Rompilla's defense team "clinical and information-gathering skills and training that most lawyers simply do not have."<sup>293</sup> These specialized skills include "the training and ability to obtain, understand and analyze all documentary and anecdotal information relevant to the client's life history,"<sup>294</sup> and the ability to conduct multiple, culturally competent, "in-person, face-to-face, one-on-one interviews with the client, the client's

288. 545 U.S. 374 (2005).

289. *See id.*

290. Ronald Rompilla's three-person defense team consisted of two public defenders and "an investigator in the public defender's office." *Id.* at 398 (Kennedy, J., dissenting). This is inconsistent with the ABA Guidelines, which provide that "[t]he defense team should consist of *no fewer than* two attorneys qualified in accordance with Guideline 5.1, an investigator, and a mitigation specialist." ABA GUIDELINES, *supra* note 18, Guideline 4.1(A)(1), at 952 (emphasis added).

291. ABA GUIDELINES, *supra* note 18, Guideline 4.1(A)(2), at 952; *see also id.* Guideline 10.4(C)(2)(a), at 1000 (providing that counsel should select a team that includes "at least one mitigation specialist and one fact investigator" (emphasis added)). More recently, the Supplementary Guidelines provided useful context to this requirement:

At least one member of the team must have specialized training in identifying, documenting and interpreting symptoms of mental and behavioral impairment, including cognitive deficits, mental illness, developmental disability, neurological deficits; long-term consequences of deprivation, neglect and maltreatment during developmental years; social, cultural, historical, political, religious, racial, environmental and ethnic influences on behavior; effects of substance abuse and the presence, severity and consequences of exposure to trauma.

SUPPLEMENTARY GUIDELINES, *supra* note 19, Guideline 5.1(E), at 683.

292. *See Rompilla*, 545 U.S. at 378-80, 382-83.

293. ABA GUIDELINES, *supra* note 18, Guideline 4.1 cmt., at 959.

294. SUPPLEMENTARY GUIDELINES, *supra* note 19, Guideline 5.1(B), at 682.

family, and other witnesses who are familiar with the client's life, history, or family history or who would support a sentence less than death."<sup>295</sup> As illustrated in further detail below, this is no small undertaking, but it is critically important to fair and reliable decisions by everyone involved in the litigation of a capital case.<sup>296</sup> Counsel's decision to proceed to trial without a fully qualified defense team practically guaranteed unreliable results, putting Rompilla at a high risk of being wrongly labeled antisocial or psychopathic.<sup>297</sup> Nor was this oversight overcome by retaining three mental health examiners to evaluate Rompilla; without the benefit of a thorough life history examination, all three experts concluded that Rompilla had ASPD.<sup>298</sup>

Rompilla's trial counsel were found ineffective after a team of post-conviction lawyers, functioning consistently with the ABA and Supplementary Guidelines, uncovered persuasive evidence of developmental disability, possible schizophrenia, fetal alcohol syndrome, and chronic childhood trauma severe enough to cause related disabilities in adulthood; this new picture of Rompilla was so compelling and humanizing that virtually no weight was given to the ASPD diagnoses assessed by the misinformed pretrial examiners.<sup>299</sup> It is

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295. *Id.* Guideline 10.11(C), at 689. The team must also "endeavor to establish the rapport with the client and witnesses that will be necessary to provide the client with a defense in accordance with constitutional guarantees relevant to a capital sentencing proceeding." *Id.*

296. See O'Brien, *supra* note 74, at 707, 709-12, for a more in-depth discussion of the prevailing investigation standards described in the ABA Guidelines and commentary.

297. See generally Dudley & Leonard, *supra* note 74. Typical criminal case investigators are ill-suited for mitigation work because they simply lack the necessary skills and abilities. William M. Bowen, Jr., *A Former Alabama Appellate Judge's Perspective on the Mitigation Function in Capital Cases*, 36 HOFSTRA L. REV. 805, 817 (2008).

298. See *Rompilla v. Beard*, 545 U.S. 374, 379-80 (2005); see also Bowen, *supra* note 297, at 817 (observing that, unlike a mitigation specialist, a psychologist will not "drop in on families, or track down and interview witnesses").

299. *Rompilla*, 545 U.S. at 390-91. The trial team's limited investigation failed to uncover evidence that:

Rompilla's parents were both severe alcoholics who drank constantly. His mother drank during her pregnancy with Rompilla, and he and his brothers eventually developed serious drinking problems. His father, who had a vicious temper, frequently beat Rompilla's mother, leaving her bruised and black-eyed, and bragged about his cheating on her. His parents fought violently, and on at least one occasion his mother stabbed his father. He was abused by his father who beat him when he was young with his hands, fists, leather straps, belts and sticks. All of the children lived in terror. There were no expressions of parental love, affection or approval. Instead, he was subjected to yelling and verbal abuse. His father locked Rompilla and his brother Richard in a small wire mesh dog pen that was filthy and excrement filled. He had an isolated background, and was not allowed to visit other children or to speak to anyone on the phone. They had no indoor plumbing in the house, he slept in the attic with no heat, and the children were not given clothes and attended school in rags.

*Id.* at 391-92.

not difficult to find in virtually every capital punishment jurisdiction in America similar cases in which a thorough post-conviction investigation trumped pretrial diagnoses of ASPD that were based on shallow and superficial social history investigations.<sup>300</sup> *Rompilla* and similar cases illustrate differential explanations for allegedly antisocial or psychopathic behaviors.

*B. Merging Mental Health and Legal Standards—The Role of Counsel*

In this Subpart, we discuss counsel's obligation to participate actively in the investigation of his or her client's background and mental health. Our starting point is the recognition that counsel is obliged to acquire the specialized knowledge necessary to defend his or her client.<sup>301</sup> In capital cases, mental health problems are so common among defendants that "[i]t must be assumed that the client is emotionally and intellectually impaired."<sup>302</sup> Just as a lawyer specializing in the defense of drunk drivers must become familiar with the biological processes of intoxication and the design and functional limits of breathalyzer technology, a capital defense attorney must become knowledgeable about mental health. This includes becoming familiar with the mental health standards and procedures for conducting forensic and clinical evaluations.

The starting point for this discussion is that capital litigators understand that graphs or charts produced by psychometric testing do little to humanize the client:

A problem with much expert testimony is that it is so focused on test score numbers and their psychometric properties, or diagnostic criteria and categorization, that the individual being evaluated sometimes gets forgotten. This often results in "expert battles" about cut-offs or comorbidity, diminishing the credibility of all the participants in the courtroom, but more significantly, failing to bring into focus the significant ways in which the symptoms of a person's mental illness shaped his/her life experiences, altered his/her options,

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300. See, e.g., *Ferrell v. Hall*, 640 F.3d 1199, 1203, 1211-12 (11th Cir. 2011); *Cooper v. Sec'y, Dep't of Corr.*, 646 F.3d 1328, 1346-47 (11th Cir. 2011); *Walbey v. Quarterman*, 309 F. App'x 795, 796-97, 803-04 (5th Cir. 2009); see also O'Brien, *supra* note 74, at 700 n.25 (collecting cases).

301. MODEL RULES OF PROF'L CONDUCT R. 1.1 (2013) ("A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.")

302. ABA GUIDELINES, *supra* note 18, Guideline 10.5 cmt., at 1007 (quoting Rick Kammen & Lee Norton, *Plea Agreements: Working with Capital Defendants*, ADVOCATE, Mar. 2000, at 31, 31). More recently, the U.S. Department of Justice reports that over half of the prisoners in the United States suffer some form of mental disease. JAMES & GLAZE, *supra* note 139, at 1.

choices, and decisions, and brought that person into the courtroom as a subject of testimony.<sup>303</sup>

Psychometric testing in general, and the PCL-R in particular, are unreliable substitutes for a thorough life history investigation into the witnesses and documents that uncover the client's life history and stories that reveal his intrinsic humanity and redeeming qualities that coexist with his mental and emotional impairments.<sup>304</sup>

The mental health field provides important, but often overlooked, criteria for the interpretation of data. Counsel must be aware of the difference between objective behavior (facts or symptoms) and subjective interpretations of that behavior (conclusions or diagnoses). The DSM-5 cautions that, before drawing a conclusion from a person's behavior, many different factors—including his or her social, cultural, and ethnic background—must be taken into account.<sup>305</sup> Competent evaluation requires a thorough patient history, including a family history going back at least three generations.<sup>306</sup> Assessing DSM-5 diagnostic criteria for personality disorders requires evaluation of long-term functioning,<sup>307</sup> and performance standards recognize that it is necessary to conduct multiple interviews over a span of time.<sup>308</sup> Before a behavior

303. Woods et al., *supra* note 74, at 433.

304. *Id.*; see Dudley & Leonard, *supra* note 74, at 973, 975; see also *Wilson v. Trammell*, 706 F.3d 1286, 1290-94 (10th Cir. 2013) (finding that the trial and post-conviction counsel placed primary reliance on whether a pretrial examiner misinterpreted personality test results which arguably established that the client suffered from schizophrenia). *Wilson* devolved into an argument over what diagnostic label most accurately fit the client, and the courts were not moved to find that he was prejudiced by defense counsel's performance. *Wilson*, 706 F.3d at 1288. This contrasts sharply with cases in which trial counsel were similarly deficient, but the post-conviction investigation focused on the client's life story, not the interpretation of psychometric testing or diagnostic labels. See, e.g., *Rompilla v. Beard*, 545 U.S. 374, 378 (2005); *Wiggins v. Smith*, 539 U.S. 510, 514, 535 (2003); *Ferrell*, 640 F.3d at 1203; *Cooper*, 646 F.3d at 1342; *Walbey*, 309 F. App'x at 801.

305. DSM-5, *supra* note 24, at 662.

306. Dudley & Leonard, *supra* note 74, at 966-67; see also Lee Norton, *Capital Cases: Mitigation Investigations*, CHAMPION, May 1992, at 43, 44; Daniel J. Wattendorf & Donald W. Hadley, *Family History: The Three-Generation Pedigree*, 72 AM. FAM. PHYSICIAN 441, 447 (2005).

307. DSM-5, *supra* note 24, at 647. Professors of psychiatry train students to "map out the longitudinal course of their patient's illness; this helps pin down the course and give the student a better understanding of the patient." NANCY C. ANDREASEN & DONALD W. BLACK, *INTRODUCTORY TEXTBOOK OF PSYCHIATRY* 291 (3d ed. 2001).

308. See Deana Dorman Logan, *Learning to Observe Signs of Mental Impairment*, reprinted in *MENTAL HEALTH AND EXPERTS MANUAL* ch.19, at 19-1 to 19-6 (8th ed. 2005) (explaining that a subject's symptoms may not be stable over time, so that multiple interviews are necessary for the defense team to fulfill its duty as the observational caretaker of the client's condition); see also BENJAMIN JAMES SADOCK & VIRGINIA ALCOTT SADOCK, *KAPLAN & SADOCK'S SYNOPSIS OF PSYCHIATRY* 6 (9th ed. 2003). Benjamin and Virginia Sadock recommend:

Psychiatric patients may not be able to tolerate a traditional interview format, especially in the acute stages of a disorder. For instance, a patient suffering from increased



or characteristic of the defendant can be attributed to a personality disorder, multiple alternative factors must be considered and ruled out.<sup>309</sup> Even Cleckley, the influential proponent of the modern construct of psychopathy, argues strongly for differential diagnosis.<sup>310</sup>

As noted above, by definition the diagnostic criteria for any personality disorder must involve traits and behavior that deviate markedly from the expectations of the client's culture.<sup>311</sup> Behavior relied upon to support a personality disorder should not be confused with "the expression of habits, customs, or religious and political values professed by the individual's culture of origin."<sup>312</sup> Therefore, a thorough understanding of the cultural influences in the client's life is essential to an accurate mental health assessment.<sup>313</sup>

Environmental and situational factors must also be considered. The DSM-5 cautions that if a constellation of observed behaviors is better accounted for by another mental disorder, is due to the direct physiological effects of a substance (for example, drug, medication, or toxin exposure), or is caused by a general medical condition (for example, head trauma), a personality disorder should not be diagnosed.<sup>314</sup> A personality disorder diagnosis must also be distinguished from behaviors that emerge in response to situational stressors or more transient mental states, (for example, mood or anxiety

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agitation or depression may not be able to sit for 30 to 45 minutes of discussion or questioning. In such cases, physicians must be prepared to conduct multiple brief interactions over time, for as long as the patient is able, then stopping and returning when the patient appears able to tolerate more.

SADOCK & SADOCK, *supra*, at 6. Mitigation specialist Russell Stetler points out that multiple interviews will be necessary simply because "[i]nvestigating the capital client's biography is a sensitive, complex, and cyclical process." Russell Stetler, *Capital Cases*, CHAMPION, Jan.-Feb. 1999, at 35, 38. Thus, if a person has already been interviewed, and new documents or information suggest a new area of inquiry for that individual, it will be necessary to interview that person again. Norton, *supra* note 306, at 45.

309. The discussion that follows points to a number of directives in the DSM-5 that certain factors be considered or ruled out prior to assessing a personality disorder diagnosis. See *infra* text accompanying notes 323-82; see also DSM-5, *supra* note 24, at 662-63. As noted above, the DSM has been criticized for giving inadequate guidance on the interpretation of symptoms and application of diagnostic criteria. See *supra* notes 113-37 and accompanying text. Although these problems still persist, the ensuing discussion reveals that the context provided by a thorough life history investigation is essential to the proper interpretation of diagnostic criteria and procedures.

310. See Freedman, *Premature Reliance*, *supra* note 160, at 59. In Cleckley's view, conditions such as "mental deficiency or organic brain damage, schizophrenia, psychosis, cyclothymia or paranoia, manic depression, anxiety disorder, or criminality precluded a finding of psychopathy . . . [this] has been quietly forgotten by those who claim his tradition as the theoretical framework in which to assess psychopathy." *Id.*

311. DSM-5, *supra* note 24, at 645.

312. *Id.* at 648.

313. See generally Holdman & Seeds, *supra* note 105.

314. DSM-5, *supra* note 24, at 648, 662.

disorders, substance intoxication)<sup>315</sup> or are associated with acculturation after immigration.<sup>316</sup> When personality changes emerge and persist after an individual has been exposed to extreme stress, a diagnosis of posttraumatic stress disorder (“PTSD”) should be considered.<sup>317</sup> When an individual has a substance-related disorder, the DSM-5 cautions that it is important not to make a personality disorder diagnosis based solely on behaviors that are consequences of substance intoxication or withdrawal, or that are associated with activities in the service of sustaining a dependency.<sup>318</sup>

A thorough life history investigation is also important to an accurate mental health assessment and differential diagnosis because behavior does not qualify for a personality disorder (or ASPD) diagnosis if it is “part of a protective survival strategy.”<sup>319</sup> For example, a child at risk of violence in the home may run away, become truant from school, habitually lie, or engage in other behavior to evade severe maltreatment. Children in impoverished environments may steal food simply to have enough to eat. As noted above, the DSM-IV-TR diagnosis of ASPD requires the existence of conduct disorder prior to age eighteen.<sup>320</sup> In addition, symptoms cannot be attributed to ASPD if the client’s behavior occurred exclusively during the course of schizophrenia or a manic

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315. *Id.* at 647.

316. *Id.* at 648.

317. *Id.* at 649.

318. *Id.* The differential diagnosis of alcohol use disorder and personality disorder is clear when considering the DSM-5 text language for the former, which includes:

Social and job performance may also suffer either from the aftereffects of drinking or from actual intoxication at school or on the job; child care or household responsibilities may be neglected; and alcohol absences may occur from school or work. The individual may use alcohol in physically hazardous circumstances (e.g. driving an automobile, swimming, operating machinery while intoxicated). Finally, individuals with an alcohol use disorder may continue to consume alcohol despite knowledge that continued consumption poses significant physical (e.g., blackouts, liver disease), psychological (e.g., depression), social or interpersonal problems (e.g., violent arguments with spouse while intoxicated, child abuse).

*Id.* at 492-99. A thorough life history investigation can also avoid the problem of “diagnostic overshadowing, which refers to diagnostic errors that result from mistakenly attributing signs and symptoms of one disorder or condition to another.” Kathleen Wayland, *The Importance of Recognizing Trauma Throughout Capital Mitigation Investigations and Presentations*, 36 HOFSTRA L. REV. 923, 942 n.81 (2008) (internal quotation marks omitted). This is especially important because of the “extremely high prevalence of comorbid substance abuse disorders in the highly traumatized population of capital charged defendants.” *Id.* Without a thorough investigation for trauma history or signs and symptoms of major mental disorders such as schizophrenia or bipolar disorder, “[d]iagnostic overshadowing often results in the failure to identify the presence of co-occurring mental disorders.” *Id.*

319. DSM-5, *supra* note 24, at 662.

320. DSM-IV-TR, *supra* note 24, at 702.

episode.<sup>321</sup> Thus, ASPD cannot be diagnosed if the “enduring pattern” of antisocial behavior occurs only during the course of several other serious Axis I disorders.<sup>322</sup>

With these caveats in mind, we will revisit the seven DSM-IV-TR diagnostic criteria for ASPD, and provide a brief discussion with examples of some of the many alternative explanations that could account for the client’s behavior. Apropos to this discussion is a caution about the danger of “the subjectivity involved in making a diagnosis which may be based purely on subjective guesswork and interpretations in worst-case scenarios,”<sup>323</sup> issues that we illustrate below.

1. “Failure to conform to social norms with respect to lawful behaviors, as indicated by repeatedly performing acts that are grounds for arrest.”<sup>324</sup>

Prior conviction and arrest records are not uncommon among capital defendants, and many examiners will consider this criterion satisfied based solely on a piece of paper summarizing the client’s criminal history in a most bare-bones manner. This criterion is inherently flawed, represents circular reasoning, and relates to ethical concerns discussed above; that is, inherent in the criterion is an assumption that “failure to conform to social norms” is by definition an example of antisocial behavior.<sup>325</sup> However, there are a host of reasons why clients may fail to conform to social norms and repeatedly perform acts that are grounds for arrest, or are seemingly violations of pro-social expectations for behavior. Civil rights protesters, such as Rosa Parks and Reverend Doctor Martin Luther King, arguably brought themselves within this criterion through repeated acts of civil disobedience,<sup>326</sup> yet no one would seriously contend that these were antisocial acts.

Among the population of homicide defendants, there are equally valid reasons that an arrest record is not indicative of a personality disorder. For example, a client with limited intellectual functioning may not have the capacity to understand or comply with what society defines as pro-social behavior.<sup>327</sup> Clients with neurodevelopmental disabilities—

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321. *Id.* at 688.

322. *See id.* at 688-89.

323. Bendelow, *supra* note 138, at 546.

324. DSM-5, *supra* note 24, at 659.

325. *Id.*

326. *See id.* at 663.

327. “The mentally retarded person might accompany perpetrators or actually commit a crime on impulse or without weighing the consequences of the act; when stopped by the police he might be unable to focus on the alleged crime or appreciate the gravity of his arrest . . . .” James Ellis & Ruth Luckasson, *Mentally Retarded Criminal Defendants*, 53 GEO. WASH. L. REV. 414, 429 (1985).

for example, individuals on the autism spectrum—are often severely impaired in their ability to understand or appreciate social interactions and cues.<sup>328</sup> Traumatized clients may engage in acts that ostensibly fail to conform to social norms, which represent coping attempts to survive perceived or actual threats to life. In general, persons with severe mental illness are simply more likely to be arrested for a multitude of complex reasons that are unrelated to defects in their personalities.<sup>329</sup> By failing to consider and distinguish these and other potential underlying explanations that contextualize reasons for specific behaviors, mental health evaluators may effectively imply intent to violate social norms where no such intent exists.

It would also be inappropriate to find that this diagnostic criterion is satisfied if the client's arrest records are the product of factors external to the client. Factors related to race, ethnicity, and class may also explain what appears to be "failure to conform to social norms."<sup>330</sup> For example, we frequently see clients who have records of multiple arrests, and, after a proper mitigation investigation, learn that they have been targeted at young ages by law enforcement in their local jurisdictions and subjected to racial profiling and discriminatory charging practices.<sup>331</sup> Black and Hispanic youths are arrested four times more often than Caucasian youths, and are far more likely to be prosecuted as adults than Caucasian youths who engage in the same conduct.<sup>332</sup> Similarly, adolescent girls are far more likely than boys to be arrested and punished harshly for running away from home, even though they are more likely than boys to be fleeing sexual abuse in the home.<sup>333</sup> It is also possible that the client may be innocent of an offense listed on his criminal record,<sup>334</sup> or a prior

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328. See Joseph Jankovic et al., *Tourette's Syndrome and the Law*, 18 J. NEUROPSYCHIATRY & CLINICAL NEUROSCIENCE 86, 90 (2006) (noting that individuals with Tourette's syndrome with behavioral symptoms of comorbid disorders have a significantly higher risk of becoming involved in the criminal justice system).

329. See Linda A. Teplin, *Criminalizing Mental Disorder: The Comparative Arrest Rate of the Mentally Ill*, 39 AM. PSYCHOL. 794, 800-01 (1984) (suggesting that mentally ill persons undergo criminalization with adverse public policy consequences).

330. DSM-IV-TR, *supra* note 24, at 706.

331. "Studies of racial profiling have shown that police do, in fact, exercise their discretion on whom to stop and search in the drug war in a highly discriminatory manner." ALEXANDER, *supra* note 135, at 133 (citing DAVID A. HARRIS, *PROFILES IN INJUSTICE: WHY RACIAL PROFILING CANNOT WORK* 59 (The New Press 2002)).

332. HOWARD N. SNYDER, OFFICE OF JUV. JUST. & DELINQUENCY PREVENTION, JUV. JUST. BULL., JUVENILE ARRESTS 2000, at 10 (2002), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/191729.pdf>; Samuel R. Gross et al., *Exonerations in the United States 1989 Through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 549-50 (2005).

333. See Alecia Humphrey, *The Criminalization of Survival Attempts: Locking Up Female Runaways and Other Status Offenders*, 15 HASTINGS WOMEN'S L.J. 165, 173-77 (2004).

334. See, e.g., *Harlow v. Murphy*, No. 05-CV-039-B, 2008 U.S. Dist. LEXIS 124288, at \*49-

conviction may be otherwise invalid.<sup>335</sup> Thus, the proper application of this diagnostic criterion is impossible without the benefit of a thorough life history investigation of the client and the community in which he lives.

Investigation of the circumstances of each of the client's arrests is also critically important. Some clients have falsely confessed to crimes for a multitude of reasons, including the desire to protect others (for example, to protect a sibling or other loved one).<sup>336</sup> Others have been subjected to coercive interrogation procedures, to which highly suggestible, gullible, developmentally delayed, traumatized, and youthful clients are very vulnerable.<sup>337</sup> Even more common examples from our decades of experience in capital work are de facto consequences of the pervasive effects of poverty (for example, "stealing" food to stave off hunger, breaking into a building to obtain necessary shelter or clothing, and similar such arrests stemming from the effects of poverty, homelessness, mental illness, or substance-related disorders). We have seen many instances where prosecutors or government experts have labeled defendants "antisocial," ignoring the fact that they had acted in a protective mode, and "stole" to provide for family members, rather than personal gain or profit.<sup>338</sup>

2. "Deceitfulness, as indicated by repeated lying, use of aliases, or conning others for personal profit or pleasure."<sup>339</sup>

This criterion, if applied without attention to context, constitutes highly subjective language and may give rise to what often amounts to

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50 (D. Wyo. Feb. 15, 2008) (finding counsel ineffective for failing to investigate his client's prior murder conviction and produce evidence that "forensic evidence surrounding the homicide did not point to [the defendant]" and, in fact, implicated two other boys in the homicide).

335. See, e.g., *Johnson v. Mississippi*, 486 U.S. 578, 590 (1988) (setting aside a death sentence because defendant's prior conviction, which had been used as an aggravating circumstance, was subsequently reversed).

336. Stuart P. Green, *Uncovering the Cover-Up Crimes*, 42 AM. CRIM. L. REV. 9, 16 n.23 (2005).

337. See GISLI H. GUDJONSSON, *THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK* 408-09 (2003) (noting that verbally impaired individuals are more likely to confess to crimes they did not commit in response to modern interrogation methods); see also Roger Kurlan et al., *Non-obscene Complex Socially Inappropriate Behavior in Tourette's Syndrome*, 8 J. NEUROPSYCHIATRY & CLINICAL NEUROSCIENCES 311, 312 (1996) (providing an example of a patient with Tourette's syndrome who spontaneously gave a false confession to police who came to his door to investigate a homicide in the neighborhood).

338. See Michael N. Burt, *The Importance of Storytelling at all Stages of a Capital Case*, 77 UMKC L. REV. 877, 898-900, 909-10 (2009) (describing the life story of capital defendant Alan Quinones—whose parents were so mentally ill and poor that he, as a young man, managed to feed his family by selling drugs—and explaining that his jury unanimously rejected the death penalty).

339. DSM-5, *supra* note 24, at 659.

speculation about possible motivations for actions. Many mental health symptoms, in the absence of context, may be interpreted as “lying.” Delusions, for example, are fixed false beliefs,<sup>340</sup> but a delusional client’s expression of false beliefs is likely to be interpreted as a lie. Dissociative symptoms prevent a client from recalling information, so the client’s attempt to fill gaps in memory may produce unintentionally false statements of fact.<sup>341</sup> Mood symptoms, such as grandiosity, may distort the client’s perception of self and others.<sup>342</sup> Victims of extreme or chronic trauma, including abuse victims, may make statements that are inconsistent with reality for the purpose of self-protection.<sup>343</sup> As a coping strategy of chronic abuse, victims often learn to “lie” as part of a protective survival strategy.<sup>344</sup> Other factors which may explain a client’s false statements include psychotic symptoms—where a client’s statements represent the fact that they are out of touch with reality<sup>345</sup>—or symptoms of brain dysfunction—such as memory impairments—where clients may confabulate to mask severe impairments.<sup>346</sup>

In addition to the symptoms of mental illness that might explain a client’s perception or expression of facts divergent from reality, other factors may also motivate clients to “lie” in order to protect themselves from the social stigma or shame and embarrassment associated with their condition. In *Rompilla*, for example, the client told counsel that his childhood was “normal . . . save for quitting school in the ninth grade,” and he repeatedly sent his lawyers on false leads.<sup>347</sup> He also denied that his parents abused him.<sup>348</sup> Yet, post-conviction counsel’s investigation produced a large body of evidence establishing that Rompilla was raised in an impoverished and abusive home, and that he was the victim of extreme neglect and maltreatment.<sup>349</sup> Social service records established,

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340. Wayland, *supra* note 318, at 942 n.83.

341. DSM-IV-TR, *supra* note 24, at 520.

342. As noted in the DSM-5 description of a manic episode, “[i]nflated self-esteem is typically present, ranging from uncritical self-confidence to marked grandiosity, and may reach delusional proportions.” DSM-5, *supra* note 24, at 128. “The expansive mood, excessive optimism, grandiosity, and poor judgment often lead to reckless involvement in activities such as spending sprees, giving away possessions, reckless driving, foolish business investments, and sexual promiscuity that is unusual for the individual, even though these activities are likely to have disastrous consequences . . . .” *Id.* at 129. Without proper context, an examiner might subjectively and mistakenly interpret such behavior as deceitful, and the DSM-5 provides little specific guidance in this regard.

343. Wayland, *supra* note 318, at 944-45.

344. *Id.* at 947.

345. See Logan, *supra* note 308, at 19-4.

346. See *id.*

347. *Rompilla v. Beard*, 545 U.S. 374, 381 (2005).

348. *Rompilla v. Horn*, 355 F.3d 233, 243 (3d Cir. 2004).

349. *Rompilla*, 545 U.S. at 391-92.

among other things, that Rompilla's father beat him with "hands, fists, leather straps, belts and sticks," and "locked Rompilla and his brother Richard in a small wire mesh dog pen that was filthy and excrement filled."<sup>350</sup> It is not difficult to imagine a number of reasons that Rompilla "lied" to his lawyers, even when telling the truth would have produced life-saving mitigating evidence.<sup>351</sup> Counsel should be alert to the possibility that a client's expression of false information is simply an attempt to minimize, normalize, or deny mental illness or a tragically painful history.<sup>352</sup> Of course, Rompilla's borderline mental retardation may also explain his failure to provide accurate and correct information about his upbringing.<sup>353</sup>

3. "Impulsivity or failure to plan ahead."<sup>354</sup>

Unless contextualized, a determination that these symptoms are examples of antisocial behavior is often subjective and speculative. Many other possible explanations for these symptoms must be considered and ruled out in order to make an accurate determination. For example, a client with a history of traumatic brain injury or attention deficit hyperactivity disorder ("ADHD") may not have the ability to plan and will often act impulsively.<sup>355</sup> Further, "there is abundant evidence that [clients with intellectual disabilities] often act on impulse rather than pursuant to a premeditated plan, and that in group settings they are followers rather than leaders."<sup>356</sup> A client with PTSD might display hyperarousal responses to traumatic triggers that are immediate and seemingly inexplicable if the context is not understood,<sup>357</sup> or may be displaying behaviors that reflect a foreshortened sense of future, a symptom frequently seen in highly traumatized individuals.<sup>358</sup> "Impulsivity and failure to plan ahead" may also be explained by the

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350. *Id.* at 392.

351. Wayland, *supra* note 318, at 942 n.82.

352. John H. Blume & Pamela Blume Leonard, *Capital Cases: Principles of Developing and Presenting Mental Health Evidence in Criminal Cases*, CHAMPION, Nov. 2000, at 63, 64.

353. See ROBERT B. EDGERTON, *THE CLOAK OF COMPETENCE: REVISED AND UPDATED* 134 (1993).

354. DSM-5, *supra* note 24, at 659.

355. Impulsivity is one of the core symptom categories of ADHD, which is categorized as a neurodevelopmental disorder in the DSM-5. DSM-5, *supra* note 24, at 59-60; see also AM. PSYCHIATRIC ASS'N, HIGHLIGHTS OF CHANGES FROM DSM-IV-TR TO DSM-5, at 2 (2013), available at <http://www.psychiatry.org/dsm5>.

356. *Atkins v. Virginia*, 536 U.S. 304, 318 (2002).

357. For example, PTSD symptoms may include self-destructive and impulsive behavior, impaired affect modulation, and difficulty completing tasks. DSM-5, *supra* note 24, at 271-72.

358. A sense of foreshortened future may be expressed in an inability to sustain expectations of a career, marriage, children, or normal life span. *Id.* at 277.

hopelessness, despair, and self-destructive behaviors that may be seen in individuals with severe depression.<sup>359</sup> Highly impulsive behavior, which may be interpreted as “failure to plan ahead,” is often seen in individuals with bipolar disorder, and only a contextualized understanding can help to make this distinction.<sup>360</sup> An individual with diffuse brain injury, or deficits in frontal or temporal lobe functioning, may also appear to be impulsive and fail to plan for future events. Finally, simply being youthful is associated with impulsive behavior and failure to plan ahead.<sup>361</sup>

4. “Irritability and aggressiveness, as indicated by repeated physical fights or assaults.”<sup>362</sup>

Context is critically important to understanding the origins of what may be called “irritability and aggression.”<sup>363</sup> Such behaviors may reflect the hyperarousal component of traumatic stress responses,<sup>364</sup> and are often classic symptoms of brain dysfunction, particularly frontal and temporal lobe problems, or classic expressions of mood symptoms as seen in depressive, bipolar, and related disorders.<sup>365</sup> Irritability and aggressiveness can also result from exposure to environmental toxins, such as chemicals, lead or other heavy metals.<sup>366</sup> In addition, evidence of

359. *Id.* at 659. For individuals suffering from a major depressive disorder, “[l]oss of interest of pleasure is nearly always present, at least to some degree.” *Id.* at 163. This may be expressed as significant withdrawal from many life activities. *Id.*

360. *Id.* at 659. A classic symptom of a manic episode, “increase in goal-directed activity,” is often manifested by poor judgment leading to imprudent involvement in activities that may have painful consequences without regard for apparent risks. *Id.* at 124. Impairment may be severe enough to require intervention to protect an individual from the negative consequences of actions resulting from poor judgment. *Id.* at 129.

361. “[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.” *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

362. DSM-5, *supra* note 24, at 659.

363. *Id.* at 660.

364. This is a core symptom category of PTSD that results in symptoms such as difficulty falling asleep, “exaggerated startle response,” “hypervigilance,” difficulty concentrating, or “irritable behavior and angry outbursts.” *Id.* at 272.

365. The DSM-5 indicates that many individuals suffering from mood disorders “report or exhibit increased irritability (e.g., persistent anger, a tendency to respond to events with angry outbursts or blaming others, an exaggerated sense of frustration over minor matters).” *See id.* at 163.

366. *See, e.g.*, David C. Bellinger, *The Protean Toxicities of Lead: New Chapters in a Familiar Story*, 8 INT’L J. ENVTL. RES. PUB. HEALTH 2593, 2593 (2011) (discussing “health endpoints associated with greater early-life lead exposure in children, including [ADHD], conduct disorder, aggression and delinquency”); R.M. Bowler et al., *Neuropsychiatric Effects of Manganese on Mood*, 20 NEUROTOXICOLOGY 367, 367 (1999) (discussing fifteen studies in which “[a]dverse mood effects of overexposure to Manganese (Mn) . . . report an association of Mn exposure with adverse effects in six dimensions of mood: 1) anxiety, nervousness, irritability; 2) psychotic experiences; 3)



“irritability and aggression” used to diagnosis a client with ASPD is often nothing more than a reflection of the cruel reality of life on the streets for many people living in poverty, in dangerous communities, or in the dangerous environments of the jails and prison in this country.<sup>367</sup> Within that cultural context, aggression might be a necessary part of survival, and does not constitute behavior that “deviates markedly from the expectations of the individual’s culture.”<sup>368</sup>

5. “Reckless disregard for safety of self or others.”<sup>369</sup>

Behaviors that appear risky may be better explained by conditions other than ASPD. Such behaviors may reflect the impulsivity seen in clients with attentional problems or deficits in executive functioning. Rash behavior would also be consistent with the dysregulated affect and behavior often seen in people exposed to complex and chronic histories of psychological trauma, or the lack of insight, called “anosognosia,” that is sometimes seen in individuals with psychotic or mood disorders.<sup>370</sup> Youth with ADHD also often have poor insight into their actions and are poor reporters of their condition.<sup>371</sup> What is often labeled as “reckless disregard for safety,” and therefore considered a symptom of ASPD, might also reflect an inability to accurately perceive one’s environment.<sup>372</sup> This can occur in individuals with psychotic disorders, mood disorders, or untreated substance abuse disorders.<sup>373</sup> It also may be a manifestation of the adaptive deficits of an individual with intellectual

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emotional disturbance; 4) fatigue, lack of vigor, sleep disturbance; 5) impulsive/compulsive behavior; 6) aggression hostility”).

367. See DSM-5, *supra* note 24, at 59-60.

368. *Id.* at 645; see, e.g., *Harlow v. Murphy*, No. 05-CV-039-B, 2008 U.S. Dist. LEXIS 124288, at \*47 (D. Wyo. Feb. 15, 2008) (explaining that the successful habeas corpus presentation focused on the culture and environment of a maximum security prison and strongly “supported a defense theme that [defendant] is not a dangerous person, but he was in a dangerous place”).

369. DSM-5, *supra* note 24, at 659.

370. See NATIONAL ALLIANCE ON MENTAL ILLNESS, NAMI COMMENTS IN THE APA’S DRAFT REVISION OF THE DSM-V: ANOSOGNOSIA 1, available at [http://www.nami.org/Content/ContentGroups/Policy/Issues\\_Spotlights/DSM5/Anosognosia\\_Paper\\_4\\_13\\_2010.pdf](http://www.nami.org/Content/ContentGroups/Policy/Issues_Spotlights/DSM5/Anosognosia_Paper_4_13_2010.pdf) (noting that “anosognosia” is not referenced in the DSM-5). “Lack of insight is common in schizophrenia. A patient may not believe that he or she is ill or abnormal in any way.” ANDREASEN & BLACK, *supra* note 307, at 221 (emphasis omitted).

371. Russel A. Barkley et al., *Adolescents with ADHD: Patterns of Behavioral Adjustment, Academic Functioning, and Treatment Utilization*, 30 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 752, 732-61 (1991).

372. DSM-5, *supra* note 24, at 659.

373. For example, extremely impaired judgment, disregard for safety, and engagement in risky behaviors are frequently seen in individuals with mood and/or substance abuse disorders. See *id.* “Research has shown that more than 90% of suicide completers had a major psychiatric illness and that half were clinically depressed at the time of the act . . . .” ANDREASEN & BLACK, *supra* note 307, at 555.

or developmental disabilities, or simply the immaturity of a youthful offender.<sup>374</sup> In these cases, understanding the context is critical: yet, so often it is this context which is lost in how a client's behavior is interpreted by the prosecution, jurors, courts, and—unfortunately, all too often—the defense.

6. "Consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations."<sup>375</sup>

Once again, the language of this criterion is highly subjective. Without context, it is impossible to make a reliable and valid determination that the criterion of consistent irresponsibility is indicative of antisocial behavior. Consider just a few examples: someone who has the deficits in adaptive behavior seen in individuals with intellectual or developmental disabilities, or who is impaired by mood or psychotic symptoms, or by the consequences of severe trauma exposure, may well have difficulties meeting the tasks of daily life; difficulties functioning in occupational settings; and, consequently, difficulties meeting financial, occupational, or social obligations.<sup>376</sup> Quite frankly, impairments such as these, and many other supposed symptoms of ASPD, are highly consistent with the severe impairments in daily functioning that are often present in individuals with various Axis I mental disorders, particularly when these disorders are undiagnosed or untreated.<sup>377</sup> Individuals suffering from chronic poverty, underemployment, racial discrimination, and lack of socially sanctioned occupational opportunities are also likely to be described by the consistent irresponsibility criterion for reasons that have nothing to do with antisocial behavior.

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374. The Supreme Court has established that children are "constitutionally different from adults for purposes of sentencing" because they have a "lack of maturity and underdeveloped sense of responsibility," leading to recklessness, impulsivity, and heedless risk-taking." *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012) (quoting *Roper v. Simmons*, 543 U.S. 551, 569 (2005)).

375. DSM-5, *supra* note 24, at 659.

376. A person with developmental disabilities, for example, has "significant limitations on an individual's effectiveness in meeting the standards of maturation, learning, personal independence, and/or social responsibility that are expected for his or her age level and cultural group, as determined by clinical assessment and, usually, standardized scales." Ellis & Luckasson, *supra* note 327, at 422 (quoting AM. ASSOC. ON MENTAL DEFICIENCY, CLASSIFICATION IN MENTAL RETARDATION 11 (Herbert J. Grossman ed., 1983)).

377. DSM-5, *supra* note 24, at 662-63.

7. "Lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another."<sup>378</sup>

A finding that the client lacks remorse is almost always based on an observation that he or she does not display emotion that would be expected in a particular situation, or by a client's failure to voice his or her remorse for a crime or crimes that have occurred and the impact on the victims of those crimes. Failure to display emotional responses that we are societally conditioned to expect, however, is itself often a hallmark feature of a range of mental disorders and other severely disabling conditions.<sup>379</sup> For example, psychic numbing is a hallmark symptom of PTSD.<sup>380</sup> Flat affect is often seen in severe mental disorders such as mood disorders (for example, major depression) or psychotic disorders (for example, schizophrenia).<sup>381</sup> Absence of emotional expression may be seen in people with severe brain dysfunction, people with neurodevelopmental disabilities—such as autism spectrum disorders—and in people who are inappropriately medicated or overmedicated.<sup>382</sup> Absence of emotional expression may reflect cultural norms, for example, individuals from cultures where emotional stoicism is a reflection of loyalty to one's culture and family, and is a sign of pride and decency—rather than a lack of remorse.<sup>383</sup> In addition, someone who has faced a lifetime of racism might not be willing to share his or her emotions with authority figures such as representatives

378. *Id.* at 659.

379. Incongruent emotion is commonly misinterpreted in capital clients; counsel must understand that it is a common symptom of mental impairment. Logan, *supra* note 308, at 19-5.

380. DSM-5, *supra* note 24, at 271-72, 275. Psychic numbing is "described as a diminished responsiveness to the external world." Norah C. Feeny et al., *Exploring the Roles of Emotional Numbing, Depression, and Dissociation in PTSD*, 13 J. TRAUMATIC STRESS 489, 489 (2000).

381. DSM-5, *supra* note 24, at 101, 163. For example, "affective flattening" is a common negative symptom of schizophrenia; social withdrawal and lack of interest or pleasure is one of the key manifestations of how a major depressive episode might be expressed. See ANDREASEN & BLACK, *supra* note 307, at 219-20.

382. DSM-5, *supra* note 24, at 50, 53. The influence of medications can be so pronounced that the Supreme Court has found that the Due Process Clause is implicated by the involuntary administration of medication to a defendant in a criminal case. See *Riggins v. Nevada*, 504 U.S. 127, 143 (1992) (Kennedy, J., concurring). "By administering medication, the State may be creating a prejudicial negative demeanor in the defendant -- making him look nervous and restless, for example, or so calm or sedated as to appear bored, cold, unfeeling, and unresponsive. . . . That such effects may be subtle does not make them any less real or potentially influential." *Id.*

383. Cultural differences can interfere with the reliability of medical and mental health assessments of the client. See DSM-IV-TR, *supra* note 24, at xxxiv. Because culture defines the "'spectrum of 'normal behaviors' as well as thresholds of tolerance for diverse 'abnormalities,'" unfamiliarity "with the nuances of an individual's cultural frame of reference may incorrectly judge as psychopathology those normal variations in behavior, belief, or experience that are particular to the individual's culture." SADOCK & SADOCK, *supra* note 307, at 168-69; see DSM-IV-TR, *supra* note 24, at xxxiv.

of law enforcement, or show emotion in a courtroom filled with predominantly majority culture judges, jurors, and spectators.<sup>384</sup> Finally, absence of the expression of remorse may reflect the fact that an individual has been falsely charged or falsely convicted of a crime.<sup>385</sup>

### C. Additional Problems with Psychopathy

A similar contextualized analysis is relevant in assessing conclusions that an individual is a psychopath. Such determinations are most often based on the scores from the PCL-R's twenty-item checklist, which, "unfortunately, often lead to misdiagnosis of bipolar patients" because of "the overlap of symptoms of mania and hypomania with the criteria used by Hare to diagnose psychopathy."<sup>386</sup> All clinicians recognize that "during manic or hypomanic episodes, many individuals commit antisocial acts, violent and non-violent."<sup>387</sup>

Three items from the PCL-R commonly attributed to capital defendants are representative of the problem: "[g]libness/superficial charm," "[p]arasitic lifestyle," and "[l]ack of realistic, long-term goals."<sup>388</sup> Willem H. J. Martens notes that Hare does not define "[g]libness/superficial charm" precisely, and asks how it can be "measured in an objective and reliable way": "How does the investigator know if the charm of a particular patient is superficial enough to be pathological?"<sup>389</sup> Martens points out that these characteristics:

can contribute substantially to academic, vocational and even social success and status and these features are rather common and widely accepted as necessary tools for surviving in this complicated modern

384. ABA GUIDELINES, *supra* note 18, Guideline 10.11(F)(2), at 1055-56 ("Counsel should consider . . . [e]xpert and lay witnesses . . . to provide . . . cultural or other insights into the client's mental and/or emotional state and life history."); *see also id.* Guideline 4.1 cmt., at 957 (noting that "it might well be appropriate for counsel to retain an expert from an out-of-state university familiar with the cultural context by which the defendant was shaped"); *id.* Guideline 10.5 cmt., at 1007-08 ("There will also often be significant cultural and/or language barriers between the client and his lawyers. In many cases, a mitigation specialist, social worker or other mental health expert can help identify and overcome these barriers, and assist counsel in establishing a rapport with the client."); *id.* Guideline 10.7 cmt., at 1026 ("[C]ounsel must learn about the client's culture.").

385. Since 1973, 142 people have been released from death row based on new evidence establishing innocence. *Innocence and the Death Penalty*, DEATH PENALTY INFO. CENTER, <http://www.deathpenaltyinfo.org/innocence-and-death-penalty> (last updated Feb. 11, 2013).

386. Lewis, *Adult Antisocial Behavior*, *supra* note 34, at 2260. "Among the manic traits that Hare lists as psychopathic are glibness, superficial charm, grandiosity and exaggerated sense of self-worth, need for stimulation, conning and manipulative behavior, promiscuous sexual behavior, impulsivity, irresponsibility, poor behavioral controls, early behavioral problems, and lack of realistic long-term goals." *Id.*

387. *Id.*

388. Martens, *supra* note 189, at 457-58.

389. *Id.* at 457.

world. Why should such socially accepted traits (almost every president in the modern world needs and shows such charm and glibness) be rated as pathological?<sup>390</sup>

It is difficult to imagine objective criteria for distinguishing a person who is glib and superficially charming for manipulation purposes from one who is socially fluent and genuinely charming—assuming that there actually is any difference at all. Martens raises similar issues with the “parasitic lifestyle” criterion, explaining:

Dependence on others . . . might not be a matter of free choice. A parasitic (severely prejudicial term) lifestyle suggests a harmful planning of misuse of other persons. This is not the case in most of the psychopaths we studied. Those who demonstrated a “parasitic lifestyle” are not able to cope with the world, because of their emotional suffering and social-emotional and moral incapacities and they believe that they can only survive in this way. For example, some patients were unable to keep jobs despite their good intentions because of social interaction problems and the consequences of other diagnostic features which are frequently neurobiologically determined.<sup>391</sup>

Finally, Martens is critical of the “[l]ack of realistic, long-term goals” criterion.<sup>392</sup> He asks, “[w]hat are realistic long-term goals?”<sup>393</sup> Martens points out: “In the eyes of normal people many brilliant scientists and artists (until they became famous or recognized) did not have realistic goals.”<sup>394</sup> Again, without the context of a complete life history investigation, an examiner might find this criterion met in the case of a client who is exhibiting hallmark features of PTSD, which may often include a foreshortened sense of his or her future stemming from “negative alterations in cognitions and mood associated with the traumatic event(s),”<sup>395</sup> including but not limited to:

Persistent and exaggerated negative beliefs or expectations about oneself, others, or the world (e.g. “I am bad,” “No one can be trusted,” “The world is completely dangerous,” “My whole nervous system is permanently ruined”).

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390. *Id.*

391. *Id.* at 458 (citations omitted). While this discussion takes as a given that individuals labeled “psychopaths” are indeed so, please see the above discussion contextualizing individual criteria of ASPD for a more thorough discussion of alternative explanations for what is supposedly a “parasitic lifestyle,” including intellectual disabilities, executive dysfunction, post traumatic stress symptoms, and symptoms of severe mood or psychotic disorders. See *supra* text accompanying notes 323-82.

392. Martens, *supra* note 189, at 458.

393. *Id.*

394. *Id.*

395. DSM-5, *supra* note 24, at 271.

Persistent, distorted cognitions about the cause or consequences of the traumatic event(s) that lead the individual to blame himself/herself or others.

Persistent negative emotional state (e.g., fear, horror, anger, guilt, or shame).

Feelings of detachment or estrangement from others.

Persistent inability to experience positive emotions (e.g., inability to experience happiness, satisfaction, or loving feelings).<sup>396</sup>

Indeed, given the life circumstances of many capital defendants, and the pervasiveness of mental and emotional disabilities that are common among our clients, it is difficult to imagine long-term life goals that would be realistic.

Just as with the criteria for diagnosing ASPD, in the absence of meaningful context, the PCL-R checklist often amounts to subjective and demeaning value judgments that are prone to mistaken interpretation. This is particularly the case when assessments are not culturally competent and lack critical context derived from a thorough life history investigation. What is the objective distinction between narcissism and grandiosity, and how can it be drawn reliably in the absence of a thorough life history? When is lying “pathological,” and when is it a learned survival strategy? How can a clinician know that a capital defendant lacks remorse, guilt, or empathy, or whether his lack of emotion is better explained by the psychic numbing of PTSD, or flattened affect that accompanies schizophrenia or dementia? Because of the serious consequences of such a mistake in any setting, clinical or forensic, “the psychiatrist given the task of evaluating an offender, especially an offender deemed obnoxious or troublesome, must take care not to write off such an offender as simply psychopathic or antisocial.”<sup>397</sup> In each individual case, the difference between telling the client’s life story and allowing him or her to fall victim to an unreliable dehumanizing “psychopath” stereotype is simply understanding the difference between objective fact (for example, absence from school) and the subjective interpretation of that fact (for example, truancy, a symptom of conduct disorder).<sup>398</sup> The goal of effective capital representation is to search diligently for the humanizing and mitigating explanation for the client’s behavior and demeanor (for example, the client skipped school to protect his sister from their abusive father). “A careful history regarding mood and behaviors, as well as a detailed

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396. *Id.* at 272.

397. Lewis, *Adult Antisocial Behavior*, *supra* note 34, at 2260.

398. Bendelow, *supra* note 138, at 546.

family history, will enable the conscientious psychiatrist to determine to what extent, if any, a mood disorder or some other potentially remediable psychiatric disorder may underlie the antisocial behaviors that brought the individual into conflict with the law.<sup>399</sup> It is for this reason that the standards of capital defense practice, as described in the ABA and Supplementary Guidelines, require the defense team to thoroughly investigate the client's life story, and to do so with the assistance of a mitigation specialist who is "qualified by training and experience to screen individuals for the presence of mental or psychological disorders or impairments."<sup>400</sup>

### V. CONCLUSION

In summary, there are enormous contextual problems that plague mental health evaluations and prosecutorial characterizations of individuals who are capitally charged and convicted, and who are often inappropriately labeled as antisocial or psychopathic. The motivation for, and recognition of, the need to contextualize is easily lost, in part because capital defendants are overwhelmingly impoverished and disproportionately minorities; and often have multigenerational family histories of racial discrimination and disenfranchisement.<sup>401</sup> The best antidote to the influence of prejudicial psychiatric labels is a compelling mitigating narrative based on a thorough life history investigation which uncovers humanizing conditions and events in the client's life that demonstrate his human complexity, including the mental, emotional, or developmental impairments which he has struggled to overcome.<sup>402</sup> A thorough and methodical ABA and Supplementary Guidelines-based approach to investigating a client's life history will protect the client from the dehumanizing inferences that flow from being labeled antisocial.

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399. Lewis, *Adult Antisocial Behavior*, *supra* note 34, at 2260.

400. ABA GUIDELINES, *supra* note 18, Guideline 4.1(A)(2), at 952; *see also id.* Guideline 10.4(C)(2)(b), at 1000.

401. *Id.* Guideline 10.5 cmt., at 1007; Haney, *The Social Context*, *supra* note 43, at 562-63, 579.

402. *See* Haney, *The Social Context*, *supra* note 43, at 559 (examining the life histories of capital defendants "leads us to conclusions about the causes of crime and the culpability of capital offenders that are very much at odds with the stereotypes created and nourished by the system of capital punishment that prevails in our society"). For decisions overturning death sentences that had been based in part on diagnoses of ASPD, where post-conviction investigations provided substantial evidence contextualizing and humanizing defendants' life histories, *see, for example, Rompilla v. Beard*, 545 U.S. 374, 391-93 (2005); *Stankewitz v. Wong*, 698 F.3d 1163, 1164-65 (9th Cir. 2012); *Blystone v. Horn*, 664 F.3d 397, 426-27 (3d Cir. 2011); *Cooper v. Sec'y, Dep't of Corr.*, 646 F.3d 1328, 1345-47 (11th Cir. 2011); *Goodwin v. Johnson*, 632 F.3d 301, 319-21, 324, 326 (11th Cir. 2011).

Haney suggests that the system of capital punishment thrives on procedures that dehumanize the defendant, resulting in “jurors’ relative inability to perceive capital defendants as enough like themselves to readily feel any of their pains, to appreciate the true nature of the struggles they have faced, or to genuinely understand how and why their lives have taken very different courses from the jurors’ own.”<sup>403</sup> Through the inappropriate use of controversial constructs, such as ASPD and psychopathy, prosecutors “demoniz[e] the perpetrators of violence [and] facilitate their extermination at the hands of the state.”<sup>404</sup> Haney explains that this “is why ‘humanizing’ capital clients is so important in penalty trials.”<sup>405</sup>

Put simply, every capital defendant possesses “the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind.”<sup>406</sup> Justice Sandra Day O’Connor acknowledged that the process of understanding defendants’ disadvantaged backgrounds or their emotional or mental impairments is essential to the constitutionally-required “moral inquiry into the culpability of the defendant.”<sup>407</sup> This Eighth Amendment requirement triggers a Sixth Amendment duty, on the part of defense attorneys, to assist jurors with this inquiry by developing mitigation evidence through a detailed, socio-historical analysis of the capital defendant’s life.<sup>408</sup> Therefore, “[t]he

403. Craig Haney, *Condemning the Other in Death Penalty Trials: Biographical Racism, Structural Mitigation and the Empathic Divide*, 53 DEPAUL L. REV. 1557, 1558 (2004) [hereinafter Haney, *Condemning the Other*].

404. Haney, *The Social Context*, *supra* note 43, at 548.

405. Haney, *Condemning the Other*, *supra* note 403, at 1558, 1581. Ninth Circuit Court of Appeals Judge Alex Kozinski recently derided the importance of humanizing capital clients, suggesting that it “may be the wrong tactic in some cases because experienced lawyers conclude that the jury simply won’t buy it.” *Pinholster v. Ayers*, 590 F.3d 651, 692 (9th Cir. 2009) (Kozinski, J., dissenting), *rev’d sub nom* *Cullen v. Pinholster*, 131 S. Ct. 1388 (2011). To support his view that trial counsel’s minimal investigation and pursuit of a “family sympathy defense” was good enough, Judge Kozinski relied on two California cases, *State v. Cooper*, 809 P.2d 865 (Cal. 1991), and *In re Visciotti*, 926 P.2d 987 (Cal. 1996), for the proposition that a “family sympathy defense” was consistent with prevailing standards of performance in capital cases. *Pinholster*, 590 F.3d at 707. Both of those cases ended in death sentences: in *Cooper*, the jury was expressly *not* permitted to consider family sympathy evidence. 809 P.2d at 908-09. In *In re Visciotti*, the trial attorney had never before handled a capital trial, and could point to no case in which a family sympathy defense had succeeded. 926 P.2d at 993. Such anecdotal failures do not evidence a standard of performance. See Russell Stetler & W. Bradley Wendel, *The ABA Guidelines and the Norms of Capital Defense Representation*, 41 HOFSTRA L. REV. 635, 677-79 (2013). Further, scrutiny of the complete record in *Pinholster* makes our point; based on trial counsel’s superficial and shallow pretrial investigation, the defense psychologist diagnosed him as a psychopath. See 590 F.3d at 659-61. A more thorough life history investigation produced evidence that the defendant was severely beaten by his stepfather as a child, and had epileptic seizures, brain damage, and bipolar disorder. *Id.*

406. *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976).

407. *California v. Brown*, 479 U.S. 538, 545 (1987) (O’Connor, J., concurring).

408. See *Wiggins v. Smith*, 539 U.S. 510, 519-23, 536 (2003).



social history of the defendant has become the primary vehicle with which to correct the misinformed and badly skewed vision of the capital jury."<sup>409</sup>

The ABA and Supplementary Guidelines establish current and long-established standards of death penalty practice. They provide a necessary road map with which to enhance the fairness and reliability of capital sentencing proceedings in numerous ways that are important to protecting the client from misleading, incomplete, and damaging assessments. The ABA and Supplementary Guidelines help capital defense teams explain to judges and funding authorities why more time and resources are necessary to properly defend the client, particularly when it comes to investigation of the client's life history. They also specify necessary qualifications of capital defense team members, including the admonition that at least one member of the team be qualified, by training or experience, to identify symptoms and characteristics of mental and emotional impairment. If trial counsel fails to assemble a team with the necessary skills, resources, and time, the ABA and Supplementary Guidelines provide a template for post-conviction counsel to challenge substandard work. It is the authors' experience that the client's humanity is established, and the fallacies of the ASPD rubric are exposed, when capital defense teams comply with the ABA and Supplementary Guidelines to conduct a thorough investigation of the client's life history.

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409. Haney, *The Social Context*, *supra* note 43, 559-60.

**EXHIBIT 187**

**EXHIBIT 187**

Declaration of Donald McIntosh

<sup>DLM</sup>  
I, Donald McIntosh, hereby declare as follows:

1. I am fifty-nine years old. I currently reside in Clark County, Nevada. I served as a juror in the 2005 case of State versus Marlo Thomas.
2. To my understanding, jurors were selected to participate in the re-trying of the defendant's penalty phase. Prior to the beginning of the trial, the judge informed the jurors that the defendant had been convicted of murder and sentenced to death in his previous trial. It was not the 2005 jury's job to find guilt, as that had already been determined.
3. I knew nothing about the case. At the time of the crime, I was employed as a truck driver and rarely stayed in Las Vegas for long periods of time. I remember filling out the jury questionnaire. I felt the questions asked were slanted towards people that would consider the death penalty. At the time of the trial, I felt some people deserved the death penalty. I still feel this way today.
4. I was surprised to be picked as a juror. Although I was open to all forms of punishment, I was not willing to accept any information about the defendant's background as mitigating evidence. I told the attorneys this during voir dire.

A person's experiences during their upbringing do not determine their behavior as adults.

5. I remember the jury consisting of more women than men. I believe there was only one African American on the jury. I feel there was an equal amount of older and younger individuals on the jury. I was surprised by the amount of jurors that knew law enforcement officials. Lieutenant Sean Donnelly of the Las Vegas Metro Police Department was an acquaintance of mine at the time of the trial. I knew him through my ex-wife and did not speak to him that often. I never consulted him during the 2005 trial.
6. In regards to courtroom security, I felt safe during the trial. I do not remember the defendant being shackled. I was not sure if the amount of deputies was typical. The 2005 trial was the first time I had ever served as a juror.
7. I did not know any of the attorneys involved in the case. The working relationship between the defense and prosecution was very professional. I felt they both appeared competent. It was clear both sides wanted to prove their case and win. The judge made sure the attorneys stayed on track, and that the case went along at a decent pace.

8. As the trial went on, I felt some of the testimony became too repetitive. I remember a few inmates testifying on the defendant's behalf. I felt only one was actually positive towards the defendant. I remember one of the inmates testifying about how the defendant had helped him cope with the passing of his mother while incarcerated. The defendant helped prevent the inmate from acting out in a way that would get him into more trouble.
9. I also remember the defendant's brother testifying. His brother was a preacher at the time. Even he did not have very many good things to say about the defendant. I do not believe the brother's testimony helped the defendant. When taking the defense's witnesses into account, I thought it was odd that the majority of them were in shackles and jumpsuits. *more believable*  
*INMATES WERE IN SHACKLES, WOULD HAVE BEEN BETTER*  
*IF THEY WERE NOT SHACKLED FOR TESTIMONY DLM*
10. The defense presented evidence about the defendant's low IQ and exposure to abuse as a child. But, as mentioned before, none of this information mattered to me and I didn't consider it in my deliberations. Like I told the attorneys during voir dire, I was only concerned about the defendant's criminal record and behavior while incarcerated. The jury learned that the defendant had once beat someone's head in with a rock. We also learned that he had fired a firearm into someone's house. While in prison, the defendant had been involved in multiple altercations. He also threw feces at one of the guards. The defendant submitted an apology, but I felt it was rehearsed and insincere.


11. During the trial, there was family present for both the defendant and the victims. I remember it being about half and half. The father of the victim that was stabbed the most testified. I found the father's testimony very moving and the most effective.
  
12. I do not remember many of the questions that were submitted by the jury. I do remember one juror asking if the defendant was sentenced to death, how long would it take before he was executed. The jury was told not to allow that to influence their decision.
  
12. Before going into the deliberation room, my mind was made up. I already knew the defendant deserved the death penalty. I do not remember how the foreman was picked, but I remember it being someone that talked more than the other jurors. I do not remember how exactly the voting process took place. I remember multiple votes taking place. At the first vote, seven jurors were in favor of the death penalty. <sup>DLM</sup> ~~I was the first person to speak out against the remaining five jurors.~~ After I spoke up, three more jurors followed suit and tried to convince the remaining jurors. More votes took place, and soon there was only one juror not willing to vote for death. Her husband had previously been incarcerated, and she was aware of how people were treated in prison. I reminded her that it was our civil duty to protect the rest of the community

from people like the defendant. The remaining juror finally came around and voted in favor of death.

13. Some of the jurors believed that if we did not give the defendant the death penalty, he would have a chance at being released. The death penalty was the only way to ensure that never happened. The defendant was not the type of person that belonged on the streets. None of the mitigating facts were discussed during deliberation. We focused on the defendant's character. Looking back, no one really believed the defendant would ever be executed. All I knew is that we could not have a hung jury. The family did not deserve to go through this situation over and over again.
14. After the trial was over, I talked to my sister to clear my mind and ease some stress. As stated on my questionnaire, she had been the victim of robbery and the suspects were never caught. This did not have an effect on my decision in the 2005 trial.
15. By not being a part of the guilt phase, I do not feel I received the whole story behind the case. I knew nothing about the co-defendants' involvement, as that information was not allowed to be presented during the 2005 trial. I would have liked to receive that information.

16. Christopher Milan and Jocelyn Murphy are the first people from the defense team to ever contact me since the trial.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed in Clark County, Nevada, on July 27, 2017.

  
\_\_\_\_\_  
Donald McIntosh  
DLM



**EXHIBIT 188**

**EXHIBIT 188**

MThomas TSF02428

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**INTEROFFICE MEMORANDUM**

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**TO:** PETE AND LEE  
**FROM:** JERRY  
**SUBJECT:** STATE V. MARLO THOMAS  
**DATE:** JUNE 2, 1997

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On today's date I interviewed Emma Nash concerning the events which took place at her home during the evening following the killings at the Lone Star. Nash's home phone number is 636-9010. Emma advised me of the fact that all of the statements which she and her daughter Barbara Smith had given to the police were given voluntarily. Emma advised that she had asked her pastor and her children how she should handle the information which had been given to her by Marlo and she stated that her pastor said to her "tell them everything you know" and that that is exactly what she did when the police talked to her.

Nash stated that she and her daughter had given their statements to the police in a D.A. investigator's car, in front of her sister's house. Nash stated that when Marlo told her about the killings he was not crying or upset, but that Barbara Smith did become upset.

When asked by me whether or not there was anything she could relate to me which she had not told the police concerning statements made to her by Marlo, she stated that Marlo had said to her that he hoped the other one would die and that she had not told the

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police this. Nash advised that, in fact, the other Lone Star employee had died on the way to the hospital.

Nash stated that it was not her impression that Marlo was making any attempt to protect Kenya since Marlo never mentioned him and both she and Barbara had known that Marlo had left the house with Kenya and therefore Marlo realized that they already knew about him.

When asked by me whether or not it was her opinion that Marlo should be put on the stand during his trial Nash emphatically stated to me that she would not recommend putting Marlo on the stand because she did not think he would come across as anyone who cared at all about the men who had been killed and that he would show zero emotion.

She stated "if Marlo tells the story to the jury he'll get death".

During the course of this interview I repeatedly advised Nash of the fact that I desired to talk to her daughter Barbara and Nash advised me of the fact that Barbara would tell me the same things she had told me. Attempts made to contact Barbara subsequent to this interview all proved negative and it is my opinion that Barbara did not wish to talk to me.

EXHIBIT 189

EXHIBIT 189

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**INTEROFFICE MEMORANDUM**

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**TO:** PETE AND LEE  
**FROM:** JERRY  
**SUBJECT:** STATE V. MARLO THOMAS  
**DATE:** JUNE 5, 1997

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On today's date I interviewed Charles Nash, telephone 869-4698, home address 9890 Cherokee Avenue, Las Vegas 89117. Nash advised that he had gotten Marlo his job as a kitchen worker at the Lone Star Steak House and that he himself had been fired from there shortly after Marlo's employment had commenced. Charles stated that he had been fired for coming to work late.

Also, Charles stated that he had seen Marlo the night before the killings at his mother's home and that the two had engaged in casual conversation with no hint of any anger towards the Lone Star by Marlo. Charles stated that he had not seen Marlo immediately after the killings and that he knew nothing about them. Also, Charles advised that an individual named J.D. who had worked at the Lone Star had lied to the police about statements that Charles had made to him.

Charles was unable to provide me with any other information concerning the killings or the time frame immediately thereafter which might assist in Marlo's defense.

# EXHIBIT 190

# EXHIBIT 190

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**INTEROFFICE MEMORANDUM**

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**TO:** PETE AND LEE  
**FROM:** JERRY  
**SUBJECT:** STATE V. MARLO THOMAS  
**DATE:** JUNE 13, 1997

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On today's date I interviewed Mary Resendez in my office. Her work telephone number is 455-5272 and her home phone number is 458-9809. I specifically questioned Resendez about any recollection she might have concerning her contacts with Marlo when he was a teenager. Resendez advised me of the fact that she had worked in the intake unit of the Youth and Family Services Department doing court reports and that she had never worked with Marlo. Resendez suggested to me that I attempt to obtain any prior results of psychology tests which Marlo had taken and she stated that it was her opinion that any emotional problems which Marlo might have had during his teenage years would have been addressed by the State, and not ignored.

Resendez was unable to provide any specific information regarding Marlo.

EXHIBIT 191

EXHIBIT 191



# MEMO

To : Lee and Pete  
From : Jerry  
Date : June 14, 1997  
Re : State v. Thomas

On today's date I conducted the following investigation with the following results:

Ms. Linda Overbee came to my office and discussed with me both her professional credentials and her personal knowledge of the Defendant. Overbee advised me that she had received a Bachelor of Science Degree in Special Education and that she also had three Masters Degrees in the Special Education and School Psychology Fields. Overbee stated that her current job title was that of School Psychologist and that she was currently employed by the Clark County School District. Overbee advised that she was also professionally qualified as a Marriage and Family Counselor and a Drug and Alcohol Specialist. Overbee further advised that she had received her Bachelor's Degree in 1968 and that she had worked in the field of psychology in Las Vegas since 1973. She stated that, in addition to many other duties and responsibilities, one of her duties did include observing children interacting with other children. Concerning the number of children with whom she had worked since 1973, Overbee stated that the number would be between 150 and 200 children per year. Also, Overbee advised that she had testified in Juvenile Court on three or four prior occasions.

Overbee advised that she was currently assigned to Juvenile Court Schools and that, as a result of this assignment, she regularly dealt with troubled kids.

Concerning the Defendant, Overbee stated that she had never been involved in an evaluation of him although she had dealt with him from age of 12 or 13. Overbee stated that because the Defendant's mother had refused to accept the serious nature of his problems he had gone from Rancho High School to Chaparral High School to Washington School and from there back to Rancho High School where his education terminated. Overbee advised that the Defendant's mother had insisted that he go to a normal high school despite the recommendation of officials in the school district that he be assigned to a special school because of his problems.

Concerning her recollections of the Defendant, Overbee advised that he was always deviant beyond the norm and that it was her opinion that he had genetic problems and was programmed for criminal behavior. Overbee advised that she did not believe that environment was responsible for the Defendant's aberrant behavior. She stated that, in her opinion, the Defendant had never developed a sense of community.

When asked by me to speculate as to the reasons for the Defendant's current makeup, Overbee advised that if the Defendant's mother had used drugs or alcohol during her pregnancy with him or if the birth had been a traumatic one, such as oxygen deprivation, that these might be the causes for the Defendant's current problems. Overbee classified the Defendant as a "different" person whom she believed was emotionally disturbed from childhood. Also, Overbee advised that the Defendant stood out in her memory as a person full of rage.

Concerning any psychiatric reports which the Clark County School District might currently possess, Overbee advised that after twenty-two years of age these reports were routinely destroyed by the school district. Other questions that Overbee advised the Defendant's mother should be asked were questions concerning whether or not the

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Defendant as an infant walked on time, talked on time or had any other birth related complications. She stated that the responses to these questions might assist in determining whether or not the Defendant's psychiatric problems had manifested themselves from birth.

**EXHIBIT 192**

**EXHIBIT 192**

# MEMO

**To:** Lee and Pete  
**From:** Jerry  
**Subject:** Re: State v. Marlo Thomas  
**Date:** July 8, 1997

On today's date I conducted the following investigation with the following results:

I interviewed Thomas Jackson, Marlo's former Probation Officer, and he provided the following information to me concerning Marlo:

Jackson advised that he vaguely remembered Marlo as one of many individuals whom he had supervised in his 25 year career but that he had no specific recollections concerning Marlo's activities. Jackson advised that he did recall that Marlo had gained a lot of weight towards the end of the period when he had supervised him and Jackson further advised that he remembered Marlo as being an angry individual. Jackson stated that he recalled Marlo as having been an angry individual and that he believed that Marlo had become much more angry as he had gotten older. Jackson stated that Marlo had come from a bad environment in that he had come from the projects. When asked by me whether or not he would be willing to testify on Marlo's behalf in the penalty phase of Marlo's trial, Jackson stated that he had been removed from Marlo for more than 10 years and that he did not desire to testify. Jackson stated that it had been more than 10 years since he had seen Marlo and that he could not think of anything that he could say that would assist him positively. Jackson advised that he did not desire to testify for Marlo in either the guilt phase or the penalty phase of his trial. Jackson again reiterated the fact that although his memories of Marlo were vague and sketchy, what little recollection he did have of him was not good.

# MEMO

**To:** Lee and Pete  
**From:** Jerry  
**Subject:** Re: State v. Marlo Thomas  
**Date:** July 8, 1997

On today's date I interviewed Thomas Jackson, Marlo's former Probation Officer, and he provided the following information to me concerning Marlo:

Jackson advised that he vaguely remembered Marlo as one of many individuals whom he had supervised in his 25 year career but that he had no specific recollections concerning Marlo's activities. Jackson advised that he did recall that Marlo had gained a lot of weight towards the end of the period when he had supervised him and Jackson further advised that he remembered Marlo as being an angry individual. Jackson stated that he recalled Marlo as having been an angry individual and that he believed that Marlo had become much more angry as he had gotten older. Jackson stated that Marlo had come from a bad environment in that he had come from the projects. When asked by me whether or not he would be willing to testify on Marlo's behalf in the penalty phase of Marlo's trial, Jackson stated that he had been removed from Marlo for more than 10 years and that he did not desire to testify. Jackson stated that it had been more than 10 years since he had seen Marlo and that he could not think of anything that he could say that would assist him positively. Jackson advised that he did not desire to testify for Marlo in either the guilt phase or the penalty phase of his trial. Jackson again reiterated the fact that although his memories of Marlo were vague and sketchy, what little recollection he did have of him was not good.

# EXHIBIT 193

# EXHIBIT 193

Thomas-8JDC02671

Marlo D. Thomas  
P.O. Box 208  
Indian Springs, NV.  
89070

FILED  
SEP 4 2 00 PM '96  
Loretta L. ...  
CLERK

District Court  
Clark County, Nevada

State of Nevada )  
                  ) plaintiff )  
  
                  ) Vs. )  
  
Marlo D. Thomas )  
                  ) Defendant )

Case NO: C-136862  
Dept. NO: III

Date of Hearing: 9-17-96  
Time of Hearing: 9:00 AM

Motion To Dismiss Counsel  
And/or  
Appointment of Co-Counsel

Comes now the defendant requesting this Court to Dismiss appointed counsel and/or appoint a second Attorney to represent defendant.

This Motion is based upon the attached points of Authorities and sworn Affidavit of Defendant.

Dated this 14 Day of August, 1996



*Marlo Thomas*  
Marlo Thomas





- 5. Counsel has failed to discuss any Defenses with defendant, nor has he established a factual basis as to why defendant was charged initially as to the information lodged in this case.
- 6. Counsel has failed to file any pretrial motions to mitigate or reduce charges against the defendant.

The defendant, further saith Naught.

Marlo Thomas  
Marlo Thomas

Dated this 14 day of August, 1996  
I, do solemnly swear, under the  
Penalty of Perjury, that the above  
Affidavit in Support of Motion to  
Dismiss counsel is Accurate, correct,  
and true to the best of my knowledge.  
NRS. 171.102 and NRS. 208.165

Marlo Thomas  
Marlo Thomas

MTD035-8JDC02674

# Points of Authority

Defendant in the above cited case is facing A Capital Charge which carries the Death Penalty, is entitled to Effective representation by two (2) counsels of record.

## I. Procedural Background.

Since counsel was appointed, the Defendant has been prejudiced and suffers Manifest Injustice based on counsels refusal or failure to:

- ① Consult or retain effective counsel outside of his office in the preparation of trial as the law provides.
- ② Personally interview witnesses or thoroughly investigate this case.
- ③ File any pretrial motions as to defendant's defense.
- ④ Communicate and/or visit defendant at Clark County Detention Center or MSP. Only time defendant spoke with Attorney is during court proceedings.
- ⑤ Investigate any defense that may mitigate or reduce charges against the Defendant.
- ⑥ Find factual basis as to why defendant was charged initially as to the information filed in this case.

|||||  
|||||

MThomas-8JDC02675

### III. Argument

Defendant Asserts he is being denied his right to Effective representation by Not being Afforded two (2) Counsel. of record to properly prepare for trial, and due to wholly inadequate actions of his Court appointed. further, Counsel's inerte actions comport to Nothing more than A Violation of defendants due process rights.

Defendant has an unqualified right to legal assistance and assistance that Expresses Loyalty to the defendant. "The right to Counsel" is the right to Effective Assistance of Counsel." Cuyler V. Sullivan, 100 S.Ct. 1708 (1980). Frazier V. U.S., 18 F.3d 778 (9th Cir 1994)

The Constitutions guarantee of Assistance of counsel cannot be Satisfied by mere formal Appointment. Avery V. ALABAMA, 306 U.S. 444, 446 (1940) Thus, the Adversarial process protected by the Sixth Amendment requires that the accused have "Counsel Acting in the role of an Advocate" Auders V. CALIFORNIA, 386 U.S. 738, 734 (1967).

A party whose counsel is unable to provide Effective or adequate Assistance is NO better than one who has NO counsel at all

NIH0038-8JDC02676

And any appeal would be a futile gesture.  
Evitts v. Lucey 105 S.Ct. 830 (1985).;  
Douglas v. California, 83 Sct. 814 (1963).

Appointed counsel for this defendant has done nothing to represent him since appointment; has not retained co-counsel to assist in the preparation and this alone is a viable claim as to ineffective counsel.

Crandel v. Bunnell, NO. 92-5530 D.C. NO. CV-90-6419-WJR(s), Filed May 25, 1994, 9th Cir.

The United States Supreme Court in Murray v. Carrier, 106 S.Ct 2639 (1986), held that the right to effective assistance of counsel may be violated by even an isolated error of counsel, if that error is sufficiently egregious and prejudicial. U.S. v. Cronig, 104 S.Ct 2039 (1984). Defendant contends that although counsel has been appointed, co-counsel is required in his case due to the death penalty being punishment, and the actions of counsel, or lack thereof, have created unfair prejudice and obstacles which do not comport with the fair procedures owed to defendant.

|||||  
|||||

(b)

NIThomas-8JDC02677

The plurality opinion in Evitts and Douglas, Infra, made it very clear that:

There is lacking that equality demanded by the fourteenth Amendment, where the rich man enjoys the benefit of Counsel's examination in-to the Record, research of the law, and marshalling of the arguments on his behalf, while the indigent, burdened by a preliminary determination that his case is without merit, is forced to shift for himself... 105 S.Ct. At 842; 83 S.Ct. At 816-17.

Notwithstanding, the strong favoring policy of Autonomy, "Ethical, professional and constitutional principals" establish Counsel's control in any given case, especially the duty standards owed to a client. See: Professional Responsibility Code, American Bar Association.

The law addresses itself to actualities. Adjudication is not a mere mechanical process, nor does it compel any either or determination. Griffin V. Illinois, 76 S.Ct 585, 592-94 (1956).

//////  
//////

(7)

Thomas-8JDC02678

Fundamental fairness requires the abolition of prejudice. which Defendant is presently suffering. This is an actuality the law must address. Anything short of Abdication would further Manifest Injustice.

The Effective Assistance of counsel is an individuals most fundamental right, for without it, Every other right he has to assert becomes Affected..

Dated this 14 Day of August 1996.

Respectfully Submitted.

Marlo D. Thomas  
Marlo D. Thomas

///  
///  
///

M Thomas - 8JDC02679

# Prayer

Based on the above and foregoing, Defendant prays this Honorable Court will dismiss Counsel of record, and appoint other counsel to represent the defendant, and/or appoint co-counsel in the cause of action before this Court, as the defendant is facing punishment of the Death penalty, He is entitled to representation by at least two (2) Attorneys.

Respectfully Submitted.

Marlo Thomas

Marlo Thomas

Dated this 14 day of August, 1996  
I, do solemnly swear, under the penalty of perjury, the above motion is accurate, correct, and true to the best of my knowledge.  
NRS. 171.102 And NRS. 208.165

Marlo Thomas  
Marlo Thomas

(9)



EXHIBIT 194

EXHIBIT 194

MThomas SPD02566

## David M. Schieck

Attorney At Law  
302 E. Carson Ave., Ste. 600  
Las Vegas, NV 89101  
Fax (702) 386-2687  
(702) 382-1844

April 12, 2004

Marlo Thomas, No. 50682  
Ely State Prison  
P.O. Box 1989  
Ely NV 89301

Re: State v. Thomas

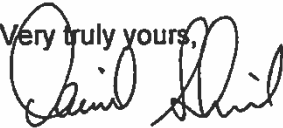
Dear Mr. Thomas:

Enclosed please find the information I referred to concerning Pete LaPorta.

I will be filing a Motion to Disqualify the Special Public Defender this week.

If you have any questions or comments please let me know.

Very truly yours,



DAVID M. SCHIECK, ESQ.

DMS: kf  
Enclosure

SPD02566

AA6811

EXHIBIT 195

EXHIBIT 195

**Declaration of Connie Kaczmarek**

*Connie*  
I, ~~Gennie~~ Kaczmarek, hereby declare as follows:

1. I am 60 years old. I currently reside in Lane County, Oregon. I served as the foreman of the jury in the 2005 case of State versus Marlo Thomas. I knew nothing about the crime prior to serving as a juror, nor was I exposed to any media pertaining to the crime. I had only moved to Las Vegas, Nevada in the spring of 2004.
2. When it came to being picked as the foreman, it sort of just fell into my hands. I remember speaking up more than the other jurors. I believe I was seen as one of the most realistic members of the jury; as in being able to focus on the facts of the case. I do not remember whether or not there was a vote to select me as the foreman. But, I do remember filling the role as foreman of the jury.
3. I remember the jury questionnaire being very extensive. The questionnaire asked many different questions in many different ways. I do not feel any of the questions were too personal. However, many of the questions required me to be honest with myself. I understood honesty was important, because it evaluated an individual's ability to serve on a murder case.
4. As stated in my questionnaire, I was the victim of a mugging. Although my shoulder was injured and the suspect never caught, it did not affect my decision in the defendant's 2005 trial. I have never held any animosity towards law

enforcement because of the mugging. The way I see it, police officers have a very hard job to do. Police officers have to be able to do the right thing in a split second. When it comes to the law, it is very simple. You follow the rules, and the law will leave you alone. If you break you the law, law enforcement will get you.

5. I remember the ages of the selected jurors being equally balanced. I do feel the jury needed more African American members. Although I am not sure if it would have changed the outcome, I am not sure if I remember there being any African American jurors at all.
  
6. The jury was given very specific instructions prior to the trial. We were informed that the defendant had been sentenced to death in his previous trial. As jurors, it was our job to reaffirm the defendant's prior death sentence. Once the jury was given a chance to review evidence, we were supposed to determine whether or not the defendant had been properly sentenced. It was not our job as jurors to decide if the defendant should be put to death. I do not remember ever sitting through the penalty phase of the trial.
  
7. The trial was conducted at a steady pace. The jury was provided with plenty of evidence pertaining to the facts of the crime. We were informed about where the crime took place, the victims, weapons used, and the money obtained during the robbery. I do not recall photographs being brought in as evidence. The prosecution talked about the defendant's behavior while incarcerated, but I do

not feel that information was important. The jury was supposed to base their decision on what took place during the commission of the crime, and not what occurred after the fact. I will admit that it did not help the defendant's case by allowing us to hear that he continued to be violent.

8. I remember the defendant's mother providing testimony about his upbringing. However, I do not feel it had much of an impact on my decision. It was not the jury's place to determine why he may have committed the crime. We were there to determine if the defendant's previous death sentence was justified. I remember learning that the defendant had a low IQ, but it would have been nice to learn about the factors that may have led to his low IQ. It would have liked to have heard a neuropsychologist's take on the defendant. I also wanted to ask the defendant's mother if she had given up on her son, but the judge did not feel it was an appropriate question.
  
9. In regards to the attorneys' efforts during the trial, both the prosecution and defense appeared to have been down this road before. Both sides came across as competent. I felt the prosecutor was aggressive, but did not get the sense that he had negative feelings toward the defendant or his attorneys. I felt the defense attorneys were simply there to fulfill their obligation to their client. I do not think they expected the outcome to be any different from the defendant's previous trial. Just like the members of the jury, all of the attorneys were there just doing their job.

10. I would describe the defendant's demeanor as resigned. I did not look at him all that often. He remained quiet during the trial, and did not look around the courtroom that much. It was hard for me to tell whether or not he was remorseful. I do not remember the defendant wearing shackles. I did not feel threatened by the defendant during the trial.
  
11. There was enough security in the courtroom that I did not fear for my safety. I remember the members of the security team standing very close to the defendant. I was not sure if this was standard procedure. If the defendant did have an outburst, he would not have stood a chance.
  
12. Once all of the evidence had been presented, the jury made their way to a closed deliberation room. Before entering the deliberation room, we knew the defendant had already been found guilty. We were there to decide if the defendant had been properly sentenced in his previous trial. Initially, we took a vote to see how the members of the jury were feeling. I remember there being two or three jurors that were not willing to accept the defendant's first death sentence as an acceptable penalty. One was an older gentlemen whom simply thought the death penalty was wrong. Another was a lady that felt the death penalty did not sit well with her faith. There was also a younger man who appeared not to have enough life experience to make a decision. More discussions about the evidence took place and more votes were conducted. All jurors soon felt the defendant was in

fact guilty of the crime and received the proper sentence. I feel we as a jury spent enough time to come to our final decision.

13. I was a bit concerned about how people would feel after I provided the jury's decision to the court. There was a level of discomfort when leaving the courthouse that day. I was not concerned about the family retaliating. They already had to live with the defendant's fate being decided once. I never received any threats from anybody.
14. In my opinion, the defendant's case was about a crime that spiraled way out of control. I do not agree with what he did, but I do not feel the death penalty should apply to the defendant's case. Although the punishment that was decided in his previous case fit the crime, I feel life without parole would have been a more acceptable punishment.
15. Christopher Milan is the first person from the defense team to ever contact me since the trial. I declare under penalty of perjury that the foregoing is true and correct to the

best of my knowledge, and that this declaration was executed in Lane County,

Oregon, on July 22, 2017.

  
Gennie Kaczmarek  
Connie



EXHIBIT 196

EXHIBIT 196

### Declaration of Roy Shupe

I, Roy Shupe, hereby declare as follows:

1. I am [ 70 ] years old. I currently reside in Polk County, Oregon. I am a retired teacher with the Clark County School District. I was a lead teacher and administrator at Miley Achievement Center for three years in the mid 1980's when Marlo Thomas was a student.
  
2. In 1984, Miley was a part of Children's Behavior Services, a county agency. Miley was located on the grounds of the state psychiatric hospital on West Charleston Boulevard. Some students lived on site at the psychiatric hospital and were under psychiatric care. Others were bussed from various schools in the district.
  
3. The students who were bussed to Miley were those who could not succeed in regular classrooms or even resource rooms at regular schools. Miley educated children in grades first through twelfth. Several of the grades were combined because so there were so few students in each. Fourth and fifth grades were in one classroom. Sixth through twelfth were taught in a room together.
  
4. I remember Marlo from his time at Miley. Marlo suffered from learning disabilities. I think perhaps the problem was associated with poor cognitive function or memory. Marlo also had an impairment with regard to his judgement. He angered easily and could not control his anger.

5. Marlo was often in trouble for acting out. I think he was referred to juvenile court for assaulting teachers and students. The policy at Miley was to treat every instance of assaultive behavior as a serious event. The police were always called, even if the "offense" was a child kicking a teacher. This policy did not ingratiate us with local police and juvenile officials, who were of the opinion that minor infractions should have been handled at the facility, not referred to court, but it was necessary to maintain order.
  
6. Some misbehavior at Miley was managed on-site, by placing a child in a "time-out room," where students were observed for up to hours at a time until they were deemed fit to return to class.
  
7. If a child's behavior pointed to a mental disorder, the staff at Miley might refer the child's parent to a psychologist or psychiatrist. It was then the parent's responsibility to seek help for the child, whether it involved counseling or therapy. I don't recall if that ever happened with Marlo
  
8. I remember speaking with someone from Marlo's defense team some years ago. I was not asked to sign a declaration. If I had been asked to testify at Marlo's original trial in 1997, or his resentencing in 2005, I would have agreed and told the jurors the things in this declaration.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed in Polk County, Oregon, on July 21, 2017.

  
\_\_\_\_\_  
Roy Shupe

EXHIBIT 197

EXHIBIT 197

4/27/07 Las Vegas Sun A1  
2007 WLNR 8005001

Las Vegas Sun  
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April 27, 2007

Section: A

Judge out of order, ethics claims say

Sam Skolnik

Former Nevada Supreme Court Justice Nancy Becker is under fire from defense lawyers claiming she may have committed ethics violations during her recent transition to the Clark County District Attorney's Office.

In papers filed this month with the Supreme Court, lawyers from the Special Public Defender's Office say that late last year, Becker ruled on several cases involving the district attorney's office while she was negotiating with that office for a high-ranking, high-paying job.

In motions to the Supreme Court to rehear three murder case appeals, the defender's office says Becker should have recused herself from ruling on those cases, and that by not doing so she may have violated the part of the Nevada Code of Judicial Conduct that says judges must disqualify themselves from matters "in which the judge's impartiality might reasonably be questioned."

In one of the appeals motions, in fact, Deputy Special Public Defender Randall Pike argued that facts had come to light that warrant a "confidential investigation by either the attorney general's office, the Nevada Commission on Judicial Discipline, and/or the Supreme Court regarding the actions of departing Justice Nancy Becker and her subsequent employment with the district attorney's office."

On Nov. 7 Becker, who had served as a Supreme Court justice since 1998, lost her reelection bid to District Judge Nancy Saitta.

District Attorney David Roger said Becker first called him later that month or in early December to discuss possibly working for his office. Roger said Becker was weighing at least one other offer .

The Supreme Court issued the three rulings in question - in the cases of Donte Johnson, Marlo Thomas and Charles Summers - on Dec. 28, three days before Becker's term on the court expired.

In each case the murderer had appealed his sentence, saying his rights had been violated when prosecutors introduced hearsay evidence during his sentencing hearing without allowing the defense to confront the witness.

In each case Becker sided with the majority in 4-3 rulings, which favored the district attorney's argument that no violation had occurred.

The three other justices signed on to a separate, concurring opinion. Although all the justices agreed that none of the men deserved to have his sentence reversed, the three others argued that future murder defendants should have the right to argue that such hearsay evidence shouldn't be allowed.

News reports surfaced in the first week in January that Becker was in discussions to work for Roger's office. One sticking point was money: Becker and Roger agreed that Becker needed an exemption from Clark County to earn a salary closer to what she made on the court, \$140,000.

She gained the exemption from the county and started her job as a chief deputy in the office's appellate section on Jan. 16. Assistant Clark County Manager Elizabeth Quillin said Becker was approved by the county to earn \$120,000 annually.

Roger said he and Becker did not discuss any of Becker's pending Supreme Court cases while they were discussing a possible job for her. As to whether Becker should have recused herself from any cases involving his office while they were in discussions, he said, "I think that's an issue for Justice Becker to address."

Becker declined to comment on the cases. But in a response to the special public defender's motion in the Thomas case, Chief Deputy District Attorney Steve Owens noted that oral arguments in that case took place in June, six months before the Dec. 28 decision was handed down.

In other words, said Owens, chief of the office's Capital Case Unit for death penalty cases, the real vote-taking and decisions in all three cases may have been made months before the election, making any talk about a conflict of interest moot.

Owens added that because he wasn't an expert on court procedures, he couldn't say for sure when the actual decisions were made.

The special public defender "can say all sorts of crazy things," Owens said, "but that doesn't mean there's a story there."

Special Public Defender David Schieck strongly disagreed. "Obviously," he said, "there's an appearance of impropriety, and an appearance of a huge conflict."

Allen Lichtenstein, general counsel for the American Civil Liberties Union of Nevada, concurred.

"There's no basis to say there was collusion, but there clearly appears to be a conflict of interest," Lichtenstein said. "This doesn't help people to have faith in judicial independence, which is unfortunate."

Becker also was criticized recently by a private defense lawyer regarding the cases she has worked on since becoming a prosecutor.

In February Las Vegas attorney JoNell Thomas filed a motion with the Supreme Court arguing that Becker should have disqualified herself from any role in a case involving Thomas' client, William Bickom.

Becker was one of three justices who in 2006 signed an order affirming Bickom's conviction. Then as a prosecutor, Becker earlier this year filed a motion on the same case.

Thomas has argued that Becker should have recused herself, and that her client's rights were violated because she did not. As a justice, Thomas said, Becker had access to information about the case not afforded her.

Referring to the Nevada Rules of Professional Conduct, Thomas said "Becker was precluded from representing the state in connection with Mr. Bickom's case because she 'personally and substantially' participated in this case while a Nevada Supreme Court justice."

Becker responded in court papers that there are certain types of cases from which she has agreed to recuse herself as a prosecutor, including cases in which she had participated as a justice.

But she said she does not believe she should be screened from handling appeals cases stemming from post-conviction proceedings like Bickom's. Becker added that she had participated in thousands of appeals cases and had no recollection of Bickom's case.

The Supreme Court has not ruled on Thomas' or the special public defender's motions.

Sam Skolnik can be reached at 474-7406 or at sam.skolnik@lasvegassun.com.

---- Index References ----

Company: O M HOLDING INC; OWENS AND MINOR INC; STATE OF NEVADA (USA)

News Subject: (Violent Crime (1VI27); Crime (1CR87); Legal (1LE33); Judicial (1JU36); Social Issues (1SO05); Criminal Law (1CR79); Economics & Trade (1EC26))

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Other Indexing: (AMERICAN CIVIL LIBERTIES; BECKER; CHIEF DEPUTY DISTRICT ATTORNEY STEVE OWENS; CLARK COUNTY; CLARK COUNTY DISTRICT ATTORNEYS OFFICE; CLARK COUNTY MANAGER ELIZABETH QUILLIN; DEPUTY SPECIAL PUBLIC DEFENDER RANDALL PIKE; DISTRICT; DONTE; JUDICIAL; JUSTICE BECKER; JUSTICE NANCY BECKER; NEVADA; NEVADA CODE OF JUDICIAL; NEVADA COMMISSION; NEVADA SUPREME COURT; OWENS; PROFESSIONAL CONDUCT; PUBLIC; SUPREME COURT) (Allen Lichtenstein; Bickom; Charles Summers; David Roger; David Schieck; JoNell Thomas; Lichtenstein; Marlo Thomas; Nancy Saitta; Roger; Thomas; William Bickom)

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EXHIBIT 198

EXHIBIT 198

## NewsRoom

1/5/07 Las Vegas Rev.-J. 1B  
2007 WLNR 326702

Las Vegas Review-Journal (NV)  
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January 5, 2007

Section: City

Mabey takes heat for attending his patients instead of the inauguration

John L. Smith

The Legislature isn't yet in session, and Gov. Jim Gibbons hasn't finished unpacking his boxes, but incoming Republican Assembly Minority Leader Garn Mabey of Las Vegas is taking a thumping for failing to interrupt his medical practice and fly to Carson City for this week's inauguration.

If Gibbons missed Mabey's presence, he hasn't registered an official complaint, but GOP knife-fighter Chuck Muth continues to whittle on the assemblyman. In a widely circulated e-mail message, Muth wrote, "Also conspicuous by his absence was newly elected Assembly Minority Leader Garn Mabey ... who happens to be from the same party as the new Governor. What an insult."

Mabey, a local gynecologist, said he hadn't intended to insult anyone, but he was busy earning a living prior to the start of the '07 session, during which time his practice will lose a bundle. He was also working on a legislative proposal that would enable retired physicians to return to practice as volunteers to assist indigent Nevadans in need of medical attention.

Sounds like worthy work to me.

"I just thought, it's the governor's time," Mabey said. "I'm proud he's our governor. But I didn't go."

What Mabey didn't say was the thought of sitting in the Carson City cold for a swearing-in ceremony is almost as uncomfortable as it is boring.

"I stayed home and worked to make a nickel," said Mabey, who has been criticized for not striking a tougher posture in his caucus. "I figure when the session starts I'll be up there for four months and will sacrifice a lot. For somebody to complain that I didn't go up and stand in cold weather and listen to the inauguration, it's asinine."

Interestingly, Mabey's taking more hits in conservative Republican circles for his no-show than out-going Gov. Kenny Guinn for his absence.

**BECKER'S BUSINESS:** Former Supreme Court Justice Nancy Becker is considering accepting a newly created position as an appellate attorney in the district attorney's office. Before she can accept the job, however, District Attorney David Roger will have to analyze his budget to find the necessary funds to pay Becker's salary.

REID'S RENAISSANCE: CNN's Dana Bash is the latest national reporter to sketch the character and background of Nevada Sen. Harry Reid. In "The Situation Room" earlier this week, Bash interviewed Reid at his Searchlight home, talked about his Nevada roots, Mormon faith, and eclectic tastes in music (the Cowboy Junkies gets a plug) and magazines ("People" is one of his favorites).

My favorite Reid quote: "I'm a pessimist about everything in life. That way I have fewer disappointments."

Sounds pretty somber for a guy who finds himself on top of the Democratic political world.

ETHICS MEETING: The Nevada Center for Public Ethics has scheduled a public meeting for 11 a.m. Saturday at the Flamingo Library's theater. Among the topics of discussion are several upcoming legislative proposals. The center is the creation of ethicist Craig Walton.

So why do I suspect the public officials who could most benefit from an ethics update won't be in attendance?

ON THE BOULEVARD: More union organizing rumors swirling from Wynn Las Vegas following management's decision to include floor personnel in the dealers' tip pool and a complaint this week with the National Labor Relations Board. Some of the dealers are being very, very careful not to let their identities become known for fear of reprisal. ... Dice dealer Robert "Razorback" Hendrix died recently at age 79. The Arkansas native opened the first MGM Grand and was there the day the pleasure palace burned. The Navy veteran and 44-year Las Vegas spent 27 years chasing the galloping dominoes on the Strip.

BOULEVARD II: Longtime locals who fondly remember the Batter Beater Café will want to know that it's back in business at 222 S. Decatur Blvd. on the site of the former Fasolini's Pizza Café. This time around, the Batter Beater has added Korean specialties to its All-American café lineup. ... Jerry Tao, who ran a spirited and unsuccessful campaign for county commissioner, has joined Ayala and Associates as a partner. Tao is an ex-deputy DA and former chief speechwriter for Harry Reid.

BOULEVARD III: Former Clark County Commissioner Thalia Dondero is recovering from a broken arm. No truth to the rumor it happened while she was arm-wrestling. ... Metro Deputy Chief Mike Ault is retiring after 34 years with the department.

Have an item for the Bard of the Boulevard? E-mail comments and contributions to [Smith@reviewjournal.com](mailto:Smith@reviewjournal.com) or call 383-0295.

---- Index References ----

Company: AKTIEBOLAGET WILH BECKER; REPUBLICAN; NEVADA SECRETARY OF STATE: DIVISION OF CORPORATIONS; MGM MIRAGE

News Subject: (Legal (1LE33); Judicial (1JU36))

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LABOR RELATIONS BOARD; NAVY; NEVADA; NEVADA CENTER FOR PUBLIC ETHICS; REPUBLICAN; REPUBLICAN ASSEMBLY MINORITY) (Ayala; David Roger; Dice; Garn Mabey; Harry Reid; Interestingly, Mabey; Jerry Tao; Jim Gibbons; Kenny Guinn; Mabey; Mike Ault; Mormon; Muth; Reid; S. Decatur Blvd.; Sounds; Tao; Thalia Dondero)

Keywords: john l smith; on the boulevard column; garn mabey; governor jim gibbons; inauguration; chuck muth; nancy becker; david roger; dana bash; nevada center for public ethics; meeting; legislatie proposals; wynn las vegas; dealers tip pool; nlr; robert hendrix; died obituary; batter beater cafe; jerry tao; thalia dondero; mike ault

Word Count: 903

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**NewsRoom**

# EXHIBIT 199

# EXHIBIT 199

  
Declaration of Everlyn Brown ~~Thomas~~-Grace

  
I, Everlyn Brown ~~Thomas~~-Grace, hereby declare as follows:

1. I am sixty-five years old. I currently reside in Clark County, Nevada. I am Marlo Thomas's maternal aunt by marriage. His mother, Georgia, was my sister-in-law.
2. I have known the Thomas family since I was eighteen years old. I saw them around but didn't get to know them well until I met my first husband, John Thomas. We married when I was twenty-five and have three children together.
3. Marlo was close friends with my son Jody. They ran the streets together. Sometimes I found Marlo, Jody, and their friend Tink crashed on the sofa when I got home from work around 3:00 a.m. Jody was killed gang banging when he was twenty years old.
4. Marlo was a very angry, unhappy child. I think it had something to do with his father, Bobby, not being around. I met Bobby a couple of times. From what I saw, he was an alcoholic. Each time he appeared to be drunk. I don't know Larry's father but I remember he was a friend of John's. He smoked weed and drank liquor.
5. When Georgia had her fourth son, PJ, she became more attached to him and his father and pushed Marlo and the others away. She made it obvious she didn't care for Marlo. PJ got whatever he wanted but if Marlo asked for anything, Georgia told him to leave her alone. I believe Georgia disliked Bobby

so much she couldn't love Marlo and took her anger out on him. Jody told me Georgia whipped and hit Marlo. He teased Marlo about the whippings.

6. Georgia was nasty and mean. She was very hard on Larry and Darrell. She beat them and talked crazy to them. There was no structure, love, or compassion in the home. One time when Larry was around thirteen years old, he wanted to do something and Georgia just cussed him smooth out. I asked her what was going on and told her, "You don't cuss at your son like that." Georgia responded by kicking me out of her house.
7. Larry and Darrell lived with me and my husband John Thomas, Georgia's brother, for about three years. Darrell got in trouble for stealing and was facing jail time. I went to court and spoke up for him. I told the judge that I thought Darrell had been abused at home. After that, Darrell came to live with me. Two years later, Larry moved in.
8. Georgia should have been thankful for me keeping her kids. Instead, her attitude was, "Let her do it, she's got the money." I didn't get along well with Georgia and her sisters. They thought I acted "white" and wanted to be more than them. The only time they called was when they needed something for their kids. I worked hard for the things I had, including my education at UNLV.

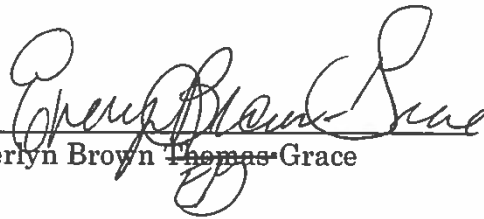
9. The boys were around ninth and tenth grade when they lived with me. They told me they hated Georgia and didn't want to live with her. I left it at that and gave them lots of love and attention. I pushed them to do well in school.
10. Having Larry and Darrell was a lot on me and I didn't reach out to Marlo. He came over to see Jody or when he was hungry. I took Marlo to work sometimes, but I don't recall where. After I married my second husband, Alan ~~Keiffer~~<sup>Preifer</sup>, Marlo sometimes helped Alan's brother at the Dairy Queen where he was part owner. Alan became a drug addict and started toting things out of our home. Marlo was around Alan but I'm not sure of their relationship. I eventually divorced him and married my third husband, Kelly Grace.
11. When he was older, Larry got into gangs. He later went to prison for molesting a young girl on his drill team. Larry has one child with his wife and two from affairs.
12. Darrell beat his first wife horribly. They called me over to the house many times. I told Darrell he shouldn't be doing that; if he didn't want her, then let her go. I was a victim of domestic violence when I was married to John. John was beating me and I pulled out my gun. It discharged and fragments of the bullet shattered my brain. I had to learn to speak and walk again after the incident.
13. God turned Darrell and Larry's lives around. They are both preachers now. I am a pastor and Larry fellowships with me every third Sunday. He is also



- superintendent at the church where Darrell is bishop. Darrell attended Pastor Alan Kincad's church. Pastor Kincad knew a lot about the family and started directing Darrell. He died last year. Having a mentor and someone to guide Darrell started his healing. Marlo didn't have anyone to mentor him.
14. I kept my children away from John's side of the family. Larry told me there was incest with the father and the girls, and some of the girls had children by their father. Shirley Nash had two children by him. The father's twin molested his children too.
  15. I also discovered John had sex with his first cousin in Louisiana. When the cousin came to Las Vegas to visit, John wanted her to stay in our home. My sister-in-law, Jonnie, advised me not to allow it and told me they had a sexual relationship. I approached John and he said it was like kissing cousins. I found this out about four years into our marriage. I told him I would kill him and not think twice about it if he tried to molest my children.
  16. Georgia didn't watch her sons and I always felt someone may have been molesting them. Growing up, Darrell got in trouble because some little girl claimed he put his hand up under her in a sexual manner in school. I got him out of it and I think it didn't go on his record.
  17. Cassie Ragsdale is the first person from Marlo's defense team to ever contact me. If I had been asked to testify at Marlo's original trial in 1997, or his

resentencing in 2005, I would have agreed and told the jurors the things in this declaration.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed in Clark County, Nevada, on July 25, 2017.

  
\_\_\_\_\_  
Evelyn Brown Thomas-Grace

**EXHIBIT 200**

**EXHIBIT 200**

## Declaration of Ceasar Elpidio

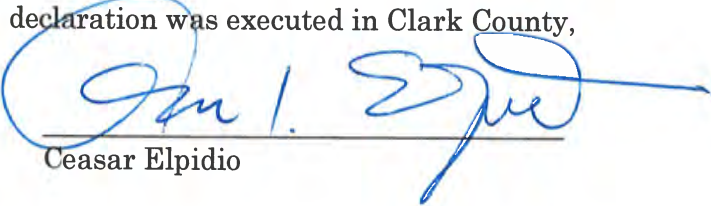
I, Ceasar Elpidio, hereby declare as follows:

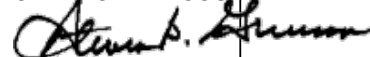
1. I am sixty-three years old. I currently reside in Clark County, Nevada. I served as a juror in the 2005 case of State versus Marlo Thomas.
2. The one thing that stood out to me about the case was jury selection. It was grueling. The lawyers were going through a lot of people. They were getting off the jury because they knew law enforcement officers or had religious problems. I think one guy even brought a Bible with him to make sure he wasn't picked.
3. I knew Marlo had already been sentenced to death by a different jury. Either the judge told us that at the beginning of the trial or the attorneys told us in their opening or closing statements. Our job as jurors was to decide whether or not to affirm the death sentence that the prior jury had given him.
4. Our objective was to act as a new set of eyes to make sure nothing was wrong with Marlo's conviction. We were to look at the evidence of guilt and see if anything was missed the first time around. Essentially, we were auditing the previous jury's finding of guilt. If we validated the finding of guilt, we were required to affirm the death sentence. I was ok with affirming the death

sentence if he murdered the victims. If it had been an accident or something, then he probably shouldn't get the death penalty.

5. When we went back to deliberate, the only thing we did was go through the facts of the crime and the judge's instructions. We had been hoping there may be some evidence presented to indicate Marlo was not guilty, but I don't remember anything like that being shown. I think we voted by a show of hands. It was all very orderly. I don't feel responsible for Marlo's death sentence. As far as I am concerned, that decision had already been made by the previous jury.
  
6. Joanne Diamond and Ian Graham were the first people from the defense team to ever contact me since the trial.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed in Clark County, Nevada, on July 26, 2017.

  
Cesar Elpidio



1 **EXHS**

2 RENE L. VALLADARES

3 Federal Public Defender

4 Nevada Bar No. 11479

5 JOANNE L. DIAMOND

6 Assistant Federal Public Defender

7 California Bar No. 298303

8 Joanne\_Diamond@fd.org

9 BENJAMIN H. MCGEE, III

10 Assistant Federal Public Defender

11 Mississippi Bar No. 100877

12 Humphreys\_McGee@fd.org

13 RANDOLPH M. FIEDLER

14 Assistant Federal Public Defender

15 Nevada Bar No. 12577

16 Randolph\_Fiedler@fd.org

17 411 E. Bonneville, Ste. 250

18 Las Vegas, Nevada 89101

19 (702) 388-6577

20 (702) 388-5819 (Fax)

21 Attorneys for Petitioner

22 DISTRICT COURT

23 CLARK COUNTY, NEVADA

\* \* \* \* \*

MARLO THOMAS,

Petitioner,

v.

TIMOTHY FILSON, Warden, and ADAM  
PAUL LAXALT, Attorney General of the  
State of Nevada,

Respondents.

Case No. 96C136862-1

Dept No. XXIII

**EXHIBITS IN SUPPORT OF  
PETITION FOR WRIT OF HABEAS  
CORPUS**

**(EXHIBITS 201-247)**

(Death Penalty Habeas Corpus Case)

201. Criminal File, State v. John Thomas Jr., In the Eighth Judicial District Court  
of the State of Nevada in and for the County of Clark, Case No. C61187

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- 202. Bobby Lewis Police Photo
- 203. Photograph of Bobby Lewis
- 204. Photograph of Georgia Thomas
- 205. Declaration of Thomas F. Kinsora, Ph.D. (July 26, 2017) (CV attached as Exhibit A)
- 206. Neuropsychological Evaluation of Marlo Thomas, by Joan W. Mayfield, PhD. (July 27, 2017) (CV attached as Exhibit A)
- 207. "Mayor shakes up housing board", Las Vegas Sun (June 17, 2003)
- 208. Declaration of Roseann Pecora (June, 2017)
- 209. Declaration of Annie Stringer (July 28, 2017)
- 210. Declaration of David M. Schieck (July 28, 2017)
- 211. Correspondence from David M. Schieck to Dr. Thomas Kinsora (April 5, 2004)
- 212. Order Approving Issuance of Public Remand, In re: Discipline of Peter LaPorta, In the Supreme Court of the State of Nevada, Case No. 29452 (August 29, 1997)
- 213. Notice of Evidence in Support of Aggravating Circumstances, State v. Thomas, District Court, Clark County, Nevada Case No. C136862 (September 23, 2005)
- 214. Ancestry.com results
- 215. Correspondence from Steven S. Owens to Randolph Fiedler (November 3, 2016)
- 216. Correspondence from Heidi Parry Stern to Katrina Davidson (December 29, 2016)
- 217. Correspondence from Charlotte Bible to Katrina Davidson (November 10, 2016)
- 218. Declaration of Katrina Davidson (July 31, 2017)

- 1 219. Jury, State v. Thomas, District Court, Clark County, Nevada Case No.  
2 C136862 (October 31, 2005)
- 3 220. Declaration of Tammy R. Smith (October 20, 2016)
- 4 221. Marlo Thomas Residential Chronology
- 5 222. Agreement to Testify, State v. Hall, Justice Court, Las Vegas Township,  
6 Clark County, Nevada Case No. 96F07190B (June 27, 1996)
- 7 223. "A Blighted Las Vegas Community is Transformed into a Model  
8 Neighborhood", U.S. Department of Housing and Urban Living (August 27,  
9 2002)
- 10 224. Social History Report and Narrative (July 2, 2017)
- 11 225. Fountain Praise Ministry Annual Report, Larry J. Thomas, Sr., Domestic  
12 Non-Profit Corporation, File No. C5-221-1994 (April 6, 1994)
- 13 226. Declaration of Cynthia Thomas (August 1, 2017)
- 14 227. Declaration of Denise Hall (August 28, 2017)
- 15 228. Declaration of Jordan Savage (August 23, 2017)
- 16 229. Declaration of Shirley Beatrice Thomas (August 10, 2017)
- 17 230. Billing Records for Daniel Albrechts, Esq., State v. Thomas, District Court Case  
18 No. C136862 (June 6, 2005)
- 19 231. Billing Records for David M. Schieck, Esq., State v. Thomas, District Court  
20 Case No. C136862 (July 8, 2004)
- 21 232. Itemized Statement of Earnings, Social Security Administration, Georgia A.  
22 Thomas, (September 8, 2017)
- 23 233. Louisiana School Census, Family Field Record Sheet, Bobby Lewis
234. Criminal Records for Bobby Lewis, Sixth Judicial District Court, Parish of  
Madison, Case No. 11969
235. Criminal Records for Bobby Lewis, Sixth Judicial District Court, Parish of  
Madison, Case No. 11965



- 1 236. Declaration of Christopher Milian (October 10, 2017)
- 2 237. Declaration of Jonathan H. Mack, Psy.D. (October 12, 2017)
- 3 238. Declaration of Joseph Hannigan (September 13, 2017)
- 4 239. Declaration of Claytee White (October 13, 2017)
- 5 240. "Woman in salon-related shooting to be paroled", Las Vegas Sun (February 25,  
6 1997)
- 7 241. Order Regarding Sanctions, Denying Motion to Dismiss, and Imposing  
8 Additional Sanction, Brett O. Whipple v. Second Judicial District Court and K.  
9 Beth Luna (Real Parties in Interest), In the Supreme Court of the State of  
10 Nevada, Case No. 68668 (June 23, 2016)
- 11 242. Order Approving Conditional Guilty Plea Agreement, In the Matter of  
12 Discipline of Brett O. Whipple, Bar No. 6168, In the Supreme Court of the State  
13 of Nevada, Case No. 70951 (December 21, 2016)
- 14 243. Angela Thomas Southern Nevada Mental Health Services Records
- 15 244. Declaration of Brett O. Whipple (October 16, 2017)
- 16 245. Declaration of Angela Colleen Thomas (October 17, 2017)
- 17 246. Declaration of Kenya Hall (October 19, 2017)
- 18 247. Declaration of Sharyn Brown (October 19, 2017)
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**CERTIFICATE OF SERVICE**

In accordance with EDCR 7.26(a)(4) and 7.26(b)(5), the undersigned hereby certifies that on October 20, 2017, a true and accurate copy of the foregoing EXHIBITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS was filed electronically with the Eighth Judicial District Court and served by Odyssey EFileNV, addressed as follows:

Steven S. Owens  
Chief Deputy District Attorney  
motions@clarkcountyda.com  
Eileen.davis@clarkcountyda.com

In accordance with EDCR 7.26(a)(1), the undersigned hereby certifies that on this October 20, 2017, a true and correct copy of the foregoing EXHIBITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS PURSUANT was served by United States Mail/UPS, postage prepaid, and addressed as follows:

Jeffrey M. Conner  
Assistant Solicitor General  
Office of the Nevada Attorney General  
100 North Carson Street  
Carson City, Nevada 8701-4717

Timothy Filson, Warden  
Ely State Prison  
P.O. Box 1989  
Ely, Nevada 89301

/s/ Jeremy Kip  
An Employee of the  
Federal Public Defender,  
District Of Nevada

**EXHIBIT 201**

**EXHIBIT 201**

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CASE NO. *CL1187*  
*H*

FILED  
JAN 26 12 49 PM '83  
LORETTA BOWMAN  
CLERK  
BY *Joyce M. [Signature]*

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP  
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA, )  
Plaintiff, )  
-vs- )  
JOHN THOMAS, JR. )  
Defendant. )

(R)

JUSTICE COURT

CASE NO. 3824-82F

STATE VS. THOMAS, JOHN JR.  
 CHARGE ASSAULT WITH A DEADLY WEAPON  
 BAIL

DATE/JUDGE  
 OFFICERS OF  
 COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

SEPTEMBER 27, 1982 M. MCCREARY M. BOWEN, DA P. BROCIOS, CLK.	DEFENDANT NOT PRESENT IN COURT ACTIVATE WARRANT	MICROFILMED SEP 15 1982
September 15, 1982 September 23, 1982 W. WHITE for D3. W. DESTERLE, DA M. LEONARD, CR P. STOTTS, CLK	\$3000 BOND POSTED BY LYLES BATH BONDS  INITIAL ARRAIGNMENT Defendant PRESENT in Court Defendant ADVISED/WAIVES CONTINUED for Defendant to SECURE OWN COUNSEL  BOND CONTINUES	10-4-82 at 1:30 PM D3  MICROFILMED OCT 14 1982
OCTOBER 4, 1982 M. MCCREARY D. BOWMAN, DA P. BRITCHARD, ESQ. (confirms) D. DUPREE, CR. P. BROCIOS, CLK.	CONTINUED ARRAIGNMENT Defendant PRESENT in Court on Bond P/H date set  BOND CONTINUES	1/11/83 at 9:00AM D3 P/H  MICROFILMED OCT 14 1982
January 11, 1983 D. AHLSTROM C. OWENS, DA T. BURNS, ESQ. D. LITTLE, C.R. M. MCCREARY, CLK.	PRELIMINARY HEARING Defendant PRESENT in Court CONTINUED by STIPULATION of Counsel for possible negotiations. Defendant has another case pending in the system.  BOND CONTINUES	1-11-83 1:30 #3 (poss. negs.)
January 11, 1983 D. AHLSTROM C. OWENS, DA T. BURNS, ESQ. D. LITTLE, CR M. MCCREARY, CLK	CONTINUED ARRAIGNMENT Defendant PRESENT in Court PRELIMINARY HEARING DATE RESET  BOND CONTINUES	1-25-83 at 9:00am D3  MICROFILMED JAN 17 1983
January 25, 1983 D. AHLSTROM D. BOWMAN, DA T. BURNS, ESQ. C. BRUCH, C.R. M. MCCREARY, CLK.	PRELIMINARY HEARING Defendant PRESENT in Court Defendant WAIVES PRELIMINARY HEARING Defendant BOUND OVER as Charged to District Court APPEARANCE DATE SET  BOND CONTINUES	2-10-83 9:00 #5 District Court

MINUTES — CRIMINAL

AA6846

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP  
IN AND FOR THE COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA,  
Plaintiff,  
vs.  
JOHN THOMAS, JR.

Case No. 3824  
Docket No. 82F

CRIMINAL COMPLAINT

Defendant \_\_\_\_\_

Personally appeared before the undersigned Justice of the Peace this day P. PEREZ  
of LAS VEGAS, in the County of Clark, State of Nevada, who, being first duly sworn,  
complains and says that JOHN THOMAS, JR.  
the Defendant above named, has committed the crime of ASSAULT WITH A DEADLY  
WEAPON (Felony - NRS 200.471)

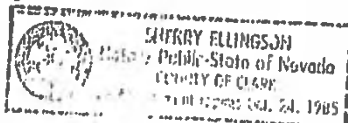
In the manner following to wit: That the said Defendant on or about the 24th day of August  
1982, at and within the County of Clark, State of Nevada, did, coupled with the present  
ability, wilfully, unlawfully, and feloniously attempt to commit a  
violent injury, with use of a deadly weapon, upon the person of  
another, to-wit: RICHARD C. WILHITE, by intentionally driving at,  
and attempting to strike the said RICHARD C. WILHITE, with a pickup  
truck.

All of which is contrary to the form, force and effect of Statutes in such cases made and provided and  
against the peace and dignity of the State of Nevada. Said Complainant, therefore, prays that a Warrant be  
issued for the arrest of the said Defendant in order that said Defendant may be dealt with according to  
law.

Subscribed and sworn to before me this 2nd day of September, 1982.

02F3824/bm  
LVMPD DR#82-72497  
AWDW - F

DA-2



MICROFILMED

OCT 14 1982

JOHN S. McBRIDE

SEP 15 1982

CRIMINAL  
DEPT. III

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

AFFIDAVIT  
(N.R.S. 171.106)

STATE OF NEVADA )  
                          ) ss: JOHN THOMAS JR.  
COUNTY OF CLARK ) ID-141345

3824-82F

ROBERT E. MURRAY, being first duly sworn, deposes  
and says;

That he is a police officer with the Las Vegas, Nevada Metropolitan Police Department, being  
so employed for a period of 20 years, assigned to investigate the crime of  
BATTERY WITH DEADLY WEAPON  
committed on or about 8/24/82, which investigation has developed  
(date)  
JOHN THOMAS JR. as the perpetrator thereof.  
(name of suspect)

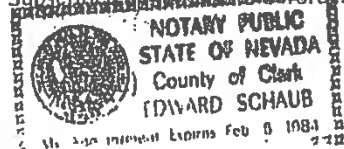
That affiant developed the following facts in the course of the investigation of said crime, to wit:

1. That on 8/24/82 at 2105 hours, RICHARD WILHITE, WMA, DOB: /48, became the victim of a B.W.D.W. when above suspect deliberately backed his vehicle, a 1955 or 1956 Orange pickup truck striking and knocking down victim.
2. That upon suspect knocking victim down, suspect again tried to run victim over.
3. That victim rolled out of the way of the truck and drew his service weapon and fired one round at the suspect.
4. That witness ROBERT KELLY, victim's partner, also drew his service weapon and fired one shot at suspect.
5. That both victim and witness are employed as security officers at the Showboat Hotel.
6. That they were detaining suspect while his girlfriend was leaving the area.

Wherefore, affiant prays that a Warrant of Arrest/~~Subpoena~~ be issued for suspect JOHN THOMAS JR. on a charge of B.W.D.W.

AFFIANT Robert E. Murray

Subscribed and sworn to before me this 30 day of Aug., 19 82.



Edward Schaub  
Notary Public in and for said State and County

OCT 14 1982

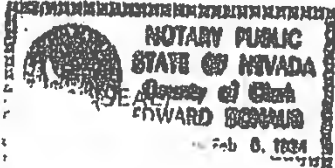
AFFIDAVIT  
(N.R.S. 171.106)

Page -2-

7. That suspect had come to the Showboat, where his girlfriend is employed, and started a fight with his girlfriend.
8. That L.V.M.P.D. was called and OFFICERS F. ADAM P-1348 and R. MERGELL P-1788 responded and took a crime report under DR 82-72497.
9. That this occurred in Las Vegas, Clark County, Nevada.

AFFIANT Robert E. Murray

Subscribed and sworn to before me this 30 day of Aug., 19 82.



Edward Scowles  
Notary Public in and for said State and County

NOTARY PUBLIC

NV 50 24 (12-78)

UCT 14 1982

AA6849





Surety Insurance Company  
 of California  
 (A California Corporation)  
 "The Dollars and Sense Surety"  
 BOX 2430  
 La Habra, California 90831

**LYLES' BAIL BONDS**

Phone 304-5544 - Any Where, Any Time  
 600 North Flamingo Ave. (Corner First and Bonanza)

SEP 15 11 23 AM  
 JUSTICE COURT  
 LAS VEGAS, NEVADA  
 BY [Signature] DEPUTY

3824-82F

BAIL BOND NO. 6-66635

(NUMBER OF ATTORNEY WITH THIS NUMBER MUST BE ATTACHED)

JUSTICE COURT  
 Municipal, Justice, Judicial District  
 LAS VEGAS CLARK  
 (City, Township, County)

STATE OF NEVADA

J.P. Receipt # 854499

Bail Bond Register # 140085

LAS VEGAS NEVADA  
 City of, State of Plaintiff  
 JOHN THOMAS  
 Defendant

BAIL BOND  
 \$ 3,000.00

An order having been made on the 15TH day of SEPTEMBER 19 82  
 by JUSTICE OF THE PEACE LAS VEGAS CLARK State of Nevada,  
 (Municipal Judge, Justice of the Peace, District Judge) (of the City of, Township of, in and for the County of)

that JOHN THOMAS be held to answer (or for examination) upon a charge of ASSULT WITH DEADLY WEAPON upon which he has been duly admitted to bail in the sum of THREE THOUSAND Dollars (\$ 3,000.00).

Now we, SURETY INSURANCE COMPANY OF CALIFORNIA, a corporation of the State of California, as Surety, duly authorized to transact business as Surety in the State of Nevada, hereby undertake that the above-named JOHN THOMAS will appear and answer the charge above mentioned, in whatever court it may be prosecuted, and shall at all times render HIM self amenable to the orders and the process of the Court, and, if convicted, shall appear for judgment and render HIM self in execution thereof, or if he fails to perform any of these conditions, that we will pay to the STATE OF NEVADA the sum of THREE THOUSAND Dollars (\$ 3,000.00).

THIS BOND IS VOID IF WRITTEN FOR AN AMOUNT GREATER THAN THE POWER OF ATTORNEY ATTACHED HERETO, IF MORE THAN ONE SUCH POWER IS ATTACHED, OR IF WRITTEN AFTER THE EXPIRATION DATE SPECIFIED ON THE ATTACHED POWER OF ATTORNEY.

SURETY INSURANCE COMPANY OF CALIFORNIA

By [Signature]  
 Attorney-in-Fact

STATE OF NEVADA  
 COUNTY OF CLARK

On this 15TH day of SEPTEMBER in the year one thousand nine hundred and EIGHTY TWO before me, RUTH LYLES a Notary Public in and for said County and State, residing herein, duly commissioned and sworn, personally appeared ELBERT LYLES, known to me to be the Attorney-in-Fact of SURETY INSURANCE COMPANY OF CALIFORNIA, a California corporation, and acknowledged to me that he subscribed the name SURETY INSURANCE COMPANY OF CALIFORNIA, a California corporation, thereto, as Surety, and his name as Attorney-in-Fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Signature]  
 RUTH LYLES  
 NOTARY PUBLIC  
 State of Nevada, Clark County  
 My commission expires Aug. 26, 1988

Approved by me this \_\_\_\_\_ day of SEP 15 1982

[Signature]  
 Municipal Judge, District Judge, Justice of the Peace

MICROFILMED

OCT 14 1982

Township

327-00 (Rev. 7/80)

NOTE: This is not a power of attorney. It is a certificate of bail. It is not a contract. It is a document which is filed in court. It is not a document which is filed in court. It is not a document which is filed in court.

40,  
 12/1/82  
 12/1/82



# Surety Insurance Company of California

## POWER OF ATTORNEY

"The Dollars and Sense Surety"

HOME OFFICE MAILING ADDRESS: BOX 2430 LA HABRA, CALIFORNIA 90631

3824-82F

ITEM 1	ITEM 2 Not Valid For Bond In Excess Of	ITEM 3 Date Issued	ITEM 4 Not Valid If Used After	POWER NUMBER
TO ACT AS ATTORNEY-IN-FACT:	5,000.00	9 08 82	9 30 83	6-66635

KNOW ALL MEN BY THESE PRESENTS: That the SURETY INSURANCE COMPANY OF CALIFORNIA has made, constituted and appointed, and by these presents does make, constitute and appoint the person whose name is set forth in item (1) above its true and lawful Attorney-In-Fact for it and in its name, place and stead, to execute, seal and deliver for and on its behalf and as its act and deed, as surety.

**DAILY BOND** on behalf of JOHN THOMAS

To be given to JUSTICE/ LAS VEGAS, NEVADA Court

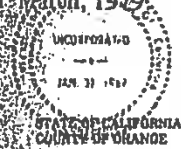
- Provided: (A) That the authority of such Attorney-In-Fact to bind the company shall not exceed the sum set forth in item (2) above, and
- (B) That the Power of Attorney is used on or before the date set forth in item (4) above, and
- (C) That this Power of Attorney is filed with the bond and retained as a part of the court record.
- (D) That this Power of Attorney is void if more than one (1) Power of Attorney has been attached to any one bond.

The said Attorney-In-Fact is hereby authorized to insert in this Power of Attorney the court and the name of the person on whose behalf this bond was given.

This Power of Attorney can be used only for an Appearance Bond and cannot be used for any bond which can be construed as being a bond to guarantee for failure to provide payments, back alimony payments, FINES, or Wage Loss Claims.

**THIS POWER VOID IF ALTERED OR ERASED AND CAN ONLY BE USED ONCE.**

IN WITNESS WHEREOF, THE SURETY INSURANCE COMPANY OF CALIFORNIA has caused these presents to be signed by its duly authorized officer, proper for the purpose and its corporate seal to be hereunto affixed on the 7th day of March, 1979.



SURETY INSURANCE COMPANY OF CALIFORNIA

By: John F. Merrill  
President

On the 7th day of March, 1979, before me, a Notary Public of the State of California in and for the County of Orange duly commissioned and qualified came JOHN F. MERRILL of SURETY INSURANCE COMPANY OF CALIFORNIA, to me personally known to be the individual and officer described in, and who executed the preceding instrument and acknowledged the execution of the same, and being by me duly sworn, deposed and said that he is the officer of the said Company aforesaid and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation, pursuant to the following By-Law adopted April 9, 1969, and now in force, to wit:

"Article IV Section 7(b) The President shall have power and authority to appoint Attorneys-In-Fact, and authorize them to execute, on behalf of the Company, bonds and undertakings, contracts of indemnity, and other writings obligatory in the nature thereof, and he may at any time in his judgment remove any such appointees and revoke the authority given to them."

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year set forth above.



MICROFILMED  
OCT 4 1982

By: Terry L. Porter  
Notary Public

0029-15-82

In the Justice's Court

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LAS VEGAS TOWNSHIP, COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA

Plaintiff,

vs.

JOHN THOMAS, JR. #141345

Defendants...

Case No. 3824

Docket No. 82F

WARRANT OF ARREST

THE STATE OF NEVADA,

To Any Sheriff, Constable, Marshall, Policeman, or Peace Officer in This State:

A complaint upon oath has been this day laid before me by F. PEREZ

that the crime of ASSAULT WITH A DEADLY WEAPON (Felony-NRG 200.471)

has been committed, and accusing JOHN THOMAS, JR.

thereof

You are Therefore Commanded forthwith to arrest the above named JOHN THOMAS, JR.

and bring him before me at my office in Las Vegas Township, County of Clark, State of Nevada, or in case of my absence or inability to act, before the nearest and most accessible Magistrate in this County.

WITNESS my hand this 2nd day of September A. D. 1982.

And I direct that this Warrant may be served at any hour of the day or night.

JOHN S. MCGROARTY

Justice of the Peace In and for Said Township

I hereby certify that I received the above war rant on the day of A.D. 19 and served the said Warrant by arresting the within named defendant

and bringing into Court this day of A. D. 19

82F3824/sm  
LVMPD DR#82-72497  
AWDW - F

Sheriff of Clark County

By Deputy

MICROFILMED

OCT 14 1982

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP  
COUNTY OF CLARK, STATE OF NEVADA

STATE OF NEVADA, PLAINTIFF,  
VS.

CASE NO. 3824

DOCKET NO. 82F

JOHN THOMAS, JR.  
DEPENDANT

PROCEEDINGS

Personally Appeared Before this Court 2nd day of September,  
1982. F. PEREZ in Las Vegas, who being first duly  
sworn, complains and says: That the Defendant                      above named on or about  
the 24th day of August, 1982, Las Vegas, State of Nevada,  
committed the crime of ASSAULT WITH A DEADLY WEAPON

Warrant issued September 2, 1982  
Defendant                      in Court, Complaint read to him and he was advised  
of his rights including the right to services of Counsel. Defendant  
stated his true name as JOHN THOMAS, JR.

ARRAIGNED: September 23, 1982

BAIL SET AT: \$3000 SURETY BOND POSTED BY LYLES BAIL BONDS on 9-15-82

PRELIMINARY HEARING: January 25, 1983 (Def. waived P/H)

JUDGE PRESIDING: D. AHLSTROM

DISTRICT ATTORNEY: D. BOWMAN

PUBLIC DEFENDER and/or ATTORNEY: T. BURNS, ESQ.

COURT REPORTER: G. BRUCE

CRIMINAL CLERK: M. MCCREARY

WITNESSES FOR STATE: NONE

WITNESSES FOR DEFENSE: NONE

EVIDENCE FOR STATE: NONE

EVIDENCE FOR DEFENSE: NONE

DISPOSITION: Defendant WAIVED P/H - Defendant BOUND OVER as Charged to District Court

DISTRICT COURT TRIAL DATE: February 10, 1983 9:00 #5

DATED THIS 25th DAY OF January, 1983

  
JUSTICE OF THE PEACE, LAS VEGAS TOWNSHIP

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP  
COUNTY OF CLARK, STATE OF NEVADA

CASE NO. 3824

DOCKET NO. 82F

STATE OF NEVADA, )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
JOHN THOMAS, JR. )  
 )  
 )  
 )  
Defendant )

COMMITMENT  
and  
ORDER TO APPEAR

An Order having been made this day by me, that

JOHN THOMAS, JR.

be held to answer upon the charge of

ASSAULT WITH A DEADLY WEAPON

Committed in said Township and County, on or about the 24th day of August, A.D. 1982.

IT IS FURTHER ORDERED that the Sheriff of the County of Clark is hereby commanded to receive

\_\_\_\_\_ into custody, and detain \_\_\_\_\_ until \_\_\_\_\_ he legally discharged, and that

\_\_\_\_\_ be admitted to bail in the sum of \_\_\_\_\_ Dollars,

and be committed to the custody of the Sheriff of said County, until such bail is given; and

IT IS FURTHER ORDERED that said Defendant \_\_\_\_\_ is/are commanded to appear in

Department 5 of the Eighth Judicial District Court, Clark County Courthouse, Las Vegas, Nevada, at 9:00

A.M., on the 10th day of February, 1983, for arraignment and further proceedings on the

within charge \_\_\_\_\_.

DATED this 25th day of January, 1983.

  
JUSTICE OF THE PEACE FOR SAID TOWNSHIP

AA6854

I hereby certify the foregoing to be a full, true and correct copy of the proceedings as the same appear in the case of:

THE STATE OF NEVADA

vs.

JOHN THOMAS, JR.

Plaintiff

Defendant

CASE NO. 3824

DOCKET NO. 82E

Witness my hand this 25th day of January, 1923.

  
Justice of the Peace, Las Vegas Township

Robert J. Miller  
District Attorney  
Clark County Courthouse  
Las Vegas, Nevada

CASE NO. C61187  
DEPT. NO. V

FEB 0 11 45 AM '83

A. BUNMAN

In the Eighth Judicial District Court of the  
State of Nevada,  
in and for the County of Clark.

THE STATE OF NEVADA,

Plaintiff,

— vs —

JOHN THOMAS, JR.

Defendant.

INFORMATION

ASSAULT WITH A DEADLY WEAPON  
(Felony NRS 200.471)

STATE OF NEVADA }  
COUNTY OF CLARK } ss:

ROBERT J. MILLER, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That JOHN THOMAS, JR.

the Defendant above named, on or about the 24th day of August, 1982, at and within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did coupled with the present ability, wilfully, unlawfully, and feloniously attempt to commit a violent injury, with use of a deadly weapon, upon the person of another, to-wit: RICHARD C. WILHITE, by intentionally driving at, and attempting to strike the said RICHARD C. WILHITE, with a pickup truck.

ROBERT J. MILLER  
DISTRICT ATTORNEY

DA#02F3024X/b1  
LVMPD DR# 82-72497

BY [Signature]  
C. DAN BOWMAN  
Deputy District Attorney



FILED

1 CASE NO. C61187

MAR 29 4 51 PM '83

2 DEPT. NO. V

BY *[Signature]*

3 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
4 IN AND FOR THE COUNTY OF CLARK

5 THE STATE OF NEVADA, )  
6 Plaintiff, )  
7 -vs- )  
8 JOHN THOMAS, JR., )  
9 Defendant. )

JUDGMENT OF CONVICTION  
(PLEA)

10 WHEREAS, on the 10th day of February, 19 83, the Defendant  
11 JOHN THOMAS, JR., appeared before the Court herein with h is counsel  
12 and entered a plea of guilty to the crime of ASSAULT WITH A DEADLY WEAPON

13 \_\_\_\_\_  
14 committed on the 24th day of August, 19 82, in violation of NRS  
15 200.471; and

16 WHEREAS, thereafter on the 15th day of March, 19 83, the  
17 defendant being present in Court with h is counsel THOMAS M. BURNS,  
18 and CHRIS J. OWENS, Deputy District Attorney, also being present; the  
19 above entitled Court did adjudge the Defendant guilty thereof by reason of h is plea of  
20 guilty and sentenced Defendant to serve a term of one (1) year in the  
21 Nevada State Prison with credit for time served of one (1) day.

22 \_\_\_\_\_  
23 \_\_\_\_\_  
24 \_\_\_\_\_  
25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this Judg-  
28 ment of Conviction as part of the record in the above entitled matter.

29 DATED this 28<sup>th</sup> day of March, 19 83, in the City of Las  
30 Vegas, County of Clark, State of Nevada.

31 DA#83-61187X/b1  
32 LVMPD DR# 82-72497

*[Signature]*  
DISTRICT JUDGE

(8)



1 CASE NO.

C 61188  
C 61187

ORIGINAL FILED

FEB 8 7 16 PM '83

IN THE JUSTICE COURT OF LAS VEGAS  
COUNTY OF CLARK, STATE OF NEVADA

LONGMAN  
BY *[Signature]*

7 THE STATE OF NEVADA,  
8 Plaintiff,  
9 vs.  
10 JOHN THOMAS, JR.,  
11 Defendant.

Case No. 3794  
Docket No. 82E  
Case No. 3824  
Docket No. 82E

14 REPORTER'S TRANSCRIPT

15 OF  
16 PROCEEDINGS

18 BEFORE THE HONORABLE DANIEL E. AHLSTROM, JUSTICE OF THE PEACE

19 Tuesday, January 25, 1983

20 9:00 o'clock A.M.

21 APPEARANCES:

23 For the State: C. DAN BOWMAN  
24 Deputy District Attorney  
25 200 East Carson Avenue  
26 Las Vegas, Nevada 89101

27 For the Defendant: BURNS & PRITCHARD  
28 2031 East Lake Mead Boulevard  
29 North Las Vegas, Nevada 89030  
30 BY: THOMAS M. BURNS, ESQ.

31 Reported by: CHERYL BRUCE, R.P.H.  
32 C.S.R. No. 174

1 LAS VEGAS, CLARK COUNTY, NEVADA, TUESDAY, JANUARY 25, 1983

2  
3 9:00 o'clock A.M.

4  
5 \* \*

6  
7 P R O C E E D I N G S

8  
9 THE COURT: John Thomas, 3794-82F and 3024-82F,  
10 State of Nevada versus John Thomas, Jr.

11 MR. BURNS: Your Honor, at this time the defendant  
12 will waive his right to preliminary hearing in both cases, 3824-82F  
13 and 3794-82F. In District Court the defendant will plead guilty  
14 to the assault of the deadly weapon charge, a felony, and the  
15 attempted murder charge will be dismissed, I would assume at the  
16 time of sentencing.

17 MR. BOWMAN: Yes, Your Honor.

18 MR. BURNS: The District Attorney reserves the  
19 right to argue.

20 THE COURT: Do you understand all this, Mr.  
21 Thomas?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand you have a right to  
24 a felony preliminary hearing on the charge of attempt murder with  
25 use of a deadly weapon and on the charge of assault with a deadly  
26 weapon?

27 THE DEFENDANT: Yes.

28 THE COURT: You wish to give up your right to a  
29 preliminary hearing and have me send both of these cases directly  
30 to District Court?

31 THE DEFENDANT: Yes.

32 THE COURT: You understand that in District Court

1 you'll be pleading guilty to the charge of assault with a deadly  
2 weapon and the charge of attempt murder with use of a deadly will  
3 be dismissed?

4 THE DEFENDANT: Yes.

5 THE COURT: Is that what you want to do?

6 THE DEFENDANT: Yes.

7 THE COURT: Appearing to me from the Complaint in  
8 Case 3794-82F, the crime of attempt murder with use of a deadly  
9 weapon having been committed and the defendant, John Thomas, Jr.,  
10 having waived his right to a preliminary examination, I hereby  
11 order said defendant to be held to answer to the said charge in  
12 the Eighth Judicial District Court of the State of Nevada in and  
13 for the County of Clark on February 10, 1983, 9:00 A.M.,  
14 Department 5.

15 In Case 3824-82F, State of Nevada versus John  
16 Thomas, Jr., appearing to me from the Complaint the crime of assault  
17 with a deadly weapon having been committed and the defendant having  
18 waived his right to a preliminary examination, I hereby order said  
19 defendant to be held to answer to the said charge in the Eighth  
20 Judicial District Court of the State of Nevada in and for the County  
21 of Clark on February 10, 1983, 9:00 A.M., Department 5.

22 Please stay in touch with your attorney, make  
23 certain you're in District Court on that date.

24 MR. BURNS: Thank you, Your Honor.

25  
26 (Whereupon the foregoing proceedings were recessed.)

27 \* \*

28 ATTEST: Full, true, and accurate transcript.

29  
30 *Cheryl Bruce*  
31 CHERYL BRUCE, R.P.R.  
32 C.S.R. NO. 174

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CASE NO. C61187 & C61188

*William Skursta*

DEPARTMENT NO. V

DOCKET H

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA, )  
 )  
 PLAINTIFF, )  
 )  
 VS. )  
 )  
 JOHN THOMAS, JR., )  
 )  
 DEFENDANT. )

REPORTER'S TRANSCRIPT OF  
NEGOTIATED PLEA

BEFORE THE HONORABLE JOHN F. MENDOZA, DISTRICT JUDGE  
THURSDAY, FEBRUARY 10, 1993

APPEARANCES:

FOR THE STATE: CHRIS OWENS, ESQUIRE  
NANCY OESTERLE, ESQUIRE  
DEPUTY DISTRICT ATTORNEYS  
CLARK COUNTY COURTHOUSE  
LAS VEGAS, NEVADA 89101

FOR THE DEFENDANT: THOMAS M. BURNS, ESQUIRE  
2031 EAST LAKE MEAD BOULEVARD  
NORTH LAS VEGAS, NEVADA 89030

REPORTED BY: RENEE SILVAGGIO, C.S.R. NO. 122

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LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 10, 1983, 9:00 A.M.

\*\*\*\*\*

THE COURT: STATE VERSUS JOHN THOMAS.

COUNSEL, HAVE YOU RECEIVED A COPY

OF THE INFORMATION?

MR. BURNS: NO, SIR. I HAVE NOT.

THE COURT: THERE DOESN'T SEEM TO BE ONE IN THE FILE. WOULD YOU PLEASE PROVIDE ONE FOR HIM, COUNSEL?

MR. BURNS: THIS IS FOR A NEGOTIATED PLEA, SIR.

MR. DWENS: THAT'S CORRECT.

THE COURT: ALL RIGHT. WHAT ARE THE NEGOTIATIONS?

MR. BURNS: THE NEGOTIATIONS ARE THAT THE DEFENDANT IS GOING TO ENTER A PLEA OF GUILTY TO CASE C61187, ASSAULT WITH A DEADLY WEAPON, THE INFORMATION IN CASE C61188 WILL BE DISMISSED AT THE TIME OF SENTENCING.

MR. DWENS: THAT IS CORRECT, YOUR HONOR, THE STATE RESERVES THE RIGHT TO ARGUE.

THE COURT: ALL RIGHT. FOR THE RECORD, WHAT IS YOUR TRUE NAME, SIR?

DEFENDANT THOMAS: JOHN THOMAS, JUNIOR.

THE COURT: AND, MR. THOMAS, HAVE YOU BEEN FURNISHED WITH A COPY OF THE INFORMATION CHARGING YOU WITH ASSAULT WITH A DEADLY WEAPON, ALLEGEDLY COMMITTED ON THE 4TH DAY OF AUGUST, 1982?

DEFENDANT THOMAS: YES, I HAVE.

THE COURT: HAVE YOU READ THE SAME, SIR?

DEFENDANT THOMAS: YES.

THE COURT: HAVE YOU DISCUSSED IT THOROUGHLY WITH YOUR ATTORNEY?

DEFENDANT THOMAS: YES.

1 THE COURT: HAS YOUR ATTORNEY ADVISED YOU  
2 OF YOUR CONSTITUTIONAL RIGHTS?

3 DEFENDANT THOMAS: YES, HE HAVE.

4 THE COURT: WHAT HAS HE ADVISED YOU, SIR?

5 DEFENDANT THOMAS: WELL, HE TOLD ME IF I  
6 IF I PLEAD TO THIS THAT I WILL WAIVE ALL OF MY RIGHTS.

7 THE COURT: DID HE TELL YOU THAT YOU HAVE  
8 A RIGHT TO TRIAL BY JURY?

9 DEFENDANT THOMAS: YES. YES, HE DID.

10 THE COURT: AND TO CALL WITNESSES?

11 DEFENDANT THOMAS: YES.

12 THE COURT: AND REMAIN SILENT OR HAVE YOU  
13 TESTIFY?

14 DEFENDANT THOMAS: YES.

15 THE COURT: AND AT THIS TIME, SIR, ARE  
16 YOU WAIVING THESE RIGHTS IN ORDER TO ENTER A PLEA OF GUILTY?

17 DEFENDANT THOMAS: YES.

18 THE COURT: AND HAS YOUR ATTORNEY ADVISED YOU  
19 AS TO THE PENALTY INVOLVED, SIR?

20 DEFENDANT THOMAS: YES, HE HAVE.

21 THE COURT: WHAT DID HE TELL YOU?

22 DEFENDANT THOMAS: THAT I COULD GET SIX,  
23 YEARS OR \$5,000 OR BOTH.

24 THE COURT: SIX YEARS AND --

25 DEFENDANT THOMAS: YES.

26 THE COURT: (CONTINUING) -- WHAT, SIR?

27 DEFENDANT THOMAS: FIVE -- \$5,000.

28 THE COURT: AND FINED \$5,000 AND/OR BOTH?

29 DEFENDANT THOMAS: YEAH.

30 THE COURT: HAS HE DISCUSSED WITH YOU ANY  
31 POSSIBLE DEFENSES THAT YOU MIGHT HAVE TO THIS CASE IN TALKING  
32 OVER THIS CASE WITH YOU?

1 DEFENDANT THOMAS: YES, HE HAVE.  
2  
3 THE COURT: AT THIS TIME ARE YOU ENTERING  
4 YOUR PLEA FREELY AND VOLUNTARILY, WITHOUT ANY THREAT OR FEAR  
5 TO YOURSELF OR TO ANYONE CLOSELY RELATED TO OR ASSOCIATED  
6 WITH YOU?  
7  
8 DEFENDANT THOMAS: YES.  
9  
10 THE COURT: HAS ANYONE FORCED YOU INTO  
11 ENTERING THIS PLEA?  
12  
13 DEFENDANT THOMAS: (NO AUDIBLE RESPONSE)  
14  
15 THE COURT: YOU WILL HAVE TO ANSWER.  
16  
17 DEFENDANT THOMAS: I -- I SAID NO.  
18  
19 THE COURT: ALL RIGHT. SHE'S TAKING ALL  
20 OF THIS DOWN. SO SHE DOESN'T TAKE NODS ON THAT LITTLE MACHINE.  
21  
22 DEFENDANT THOMAS: I UNDERSTAND.  
23  
24 THE COURT: IS IT YOUR INTENTION TO PLEAD  
25 GUILTY?  
26  
27 DEFENDANT THOMAS: YES, IT IS.  
28  
29 THE COURT: WHAT IS THE BARGAIN?  
30  
31 MR. BURNS: THE BARGAIN WAS SET FOR, SIR,  
32 THAT THE STATE WOULD NOT OPPOSE THE DISMISSAL IN CASE C61189.  
33  
34 MR. OWENS: FOR THE RECORD, YOUR HONOR, THE  
35 DEFENDANT IS PLEADING GUILTY TO THE ASSAULT WITH A DEADLY  
36 WEAPON IN CASE C61187. AT RENDITION OF SENTENCE ON THAT  
37 CASE THE STATE WILL MOVE TO DISMISS CASE C61188, THE ATTEMPT  
38 MURDER WITH USE OF A DEADLY WEAPON. THE STATE RESERVES THE  
39 RIGHT TO ARGUE AND MAKE A RECOMMENDATION.  
40  
41 THE COURT: ALL RIGHT. DO YOU UNDERSTAND  
42 THE PLEA BARGAIN, SIR?  
43  
44 DEFENDANT THOMAS: YES.  
45  
46 THE COURT: AND DO YOU ACCEPT IT?  
47  
48 DEFENDANT THOMAS: YES.  
49  
50 THE COURT: NOW, HAS ANYONE MADE A PROMISE



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OF A LESSER SENTENCE, LENIENCY, PROBATION, REWARD, IMMUNITY,  
OR ANYTHING ELSE IN ORDER TO INDUCE YOU TO PLEAD GUILTY?

DEFENDANT THOMAS: NO.

THE COURT: DO YOU UNDERSTAND THAT THE  
MATTER OF PROBATION AND SENTENCE WILL BE DETERMINED SOLELY  
BY THIS COURT?

DEFENDANT THOMAS: YES, I DO.

THE COURT: TO THE INFORMATION, WHICH  
ALLEGES AND CHARGES YOU WITH ASSAULT WITH A DEADLY WEAPON,  
A FELONY, WHEREIN IT IS ALLEGED THAT ON THE 24TH DAY OF AUGUST,  
1982, IN THE COUNTY OF CLARK, YOU DID THEN AND THERE, COUPLED  
WITH PRESENT ABILITY, WILFULLY AND UNLAWFULLY AND FELONIOUSLY  
ATTEMPT TO COMMIT A VIOLENT INJURY WITH THE USE OF A DEADLY  
WEAPON UPON THE PERSON OF ANOTHER, TO-WIT: RICHARD C. WILLET,  
(PHONETIC) BY INTENTIONALLY DRIVING AT OR ATTEMPTING TO STRIKE  
THE SAID RICHARD C. WILLET WITH A PICKUP TRUCK; HOW DO YOU  
PLEAD TO THAT CHARGE, GUILTY OR NOT GUILTY?

DEFENDANT THOMAS: GUILTY.

THE COURT: ARE YOU PLEADING GUILTY BECAUSE  
IN TRUTH AND IN FACT YOU ARE GUILTY AND FOR NO OTHER REASON?

DEFENDANT THOMAS: YES.

THE COURT: HOW DID YOU COMMIT THIS OFFENSE,  
SIR? TELL ME ABOUT THIS. WHAT DID YOU DO?

DEFENDANT THOMAS: WELL, ACTUALLY JUST  
LEAVE -- HE WAS GOING TO LEAVE, YOU KNOW. SO THEN THEY SAY,  
STAY HERE, OR SOMETHING LIKE THAT. SO WHEN I THOUGHT --  
STARTED THE TRUCK UP, YOU KNOW, I STARTED TO BACK-UP AND WHEN  
I TURNED AROUND HE WAS THERE. SO I JUST, YOU KNOW, KEPT  
GOING.

THE COURT: YOU TRIED TO HIT HIM WITH THE  
TRUCK; IS THAT CORRECT?

DEFENDANT THOMAS: YEAH -- YES, SIR.



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THE COURT: ALL RIGHT. THE COURT AT THIS  
TIME FINDS THAT YOUR PLEA IS VOLUNTARY AND THAT YOU FULLY  
UNDERSTAND THE NATURE OF THE OFFENSE AND THE CONSEQUENCES  
OF YOUR PLEA AND, THEREFORE, ACCEPTS YOUR PLEA OF GUILTY.

GIVE ME A SENTENCING DATE, PLEASE.  
30 DAYS FROM NOW.

THE CLERK: IN 30 DAYS, YOUR HONOR?

THE COURT: YES.

THE CLERK: MARCH 10TH.

THE COURT: SET THIS MATTER DOWN FOR  
MARCH 10TH AT THE HOUR OF 9:00 A.M.

YOUR COMPANION CASE C61188 WILL BE  
CONTINUED UNTIL THE SAME TIME.

MR. BURNS: THANK YOU, SIR.

THE COURT: THAT'S ALL.

( END OF PROCEEDINGS. )

ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE PROCEEDINGS.

*Renee Silvaggio*  
RENEE SILVAGGIO, C.S.R. NO. 122

FILED  
APR 12 10 20 AM '83

CASE NOS. C 61187 and C 61188  
DEPARTMENT FIVE

BY *William S. Long*

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,	)
	)
PLAINTIFF,	)
	)
VS.	)
	)
JOHN THOMAS, JR.,	)
	)
DEFENDANT.	)

REPORTER'S TRANSCRIPT

OF

PROCEEDINGS

BEFORE THE HONORABLE JOHN F. MENDOZA, DISTRICT JUDGE

Tuesday, March 15, 1983

9:00 A.M.

SENTENCING

DISMISSAL

APPEARANCES:

For the State:	CHRIS OWENS, ESQ. Deputy District Attorney
For the Defendant:	THOMAS M. BURNS, ESQ. BURNS & PRITCHARD
For Parole and Probation:	DAN D'ARPA

1 LAS VEGAS, NEVADA, TUESDAY, MARCH 15, 1983, 9:00 A.M.

2 \* \* \* \* \*

3 THE COURT: State versus Thomas.

4 You may proceed.

5 MR. OWENS: Your Honor, the facts of the  
6 case again on the 24th of August, of last year, 1982, they're  
7 all surrounding a domestic dispute between the defendant,  
8 John Thomas, and his girlfriend. There are two cases as a  
9 result of the events around that night that were filed against  
10 the defendant. One being attempt murder with use and another  
11 being assault with a deadly weapon. The assault with a deadly  
12 weapon occurred on the evening of the 24th, when the defendant  
13 went to the Showboat Hotel looking for his girlfriend. The  
14 girlfriend was attempting to get into her car, with disturbance  
15 by the defendant, and, therefore, security guards escorted him  
16 off the property of the hotel there and placed him in his  
17 vehicle and was asked to leave. At that time, he started his  
18 engine very quickly and knocked one officer down with the door  
19 of the vehicle, as he was backing up and drove forward, almost  
20 hitting the officer as he drove his vehicle. The officer dove  
21 out of the way and was able to avoid injury, as far as the  
22 vehicle was concerned. But he was injured slightly when the  
23 door hit him. The defendant then went over to his sister's  
24 house and -- ostensibly, to obtain his child. He asked where  
25 his girlfriend was at that time. With him coming over, she had  
26 hidden herself in her sister's bedroom. When the defendant was  
27 advised of this, he went down the hall, kicked the door in, and,  
28 according to a couple witnesses, the sister and another person,  
29 he then beat up his girlfriend. He then left and the police  
30 came.

31 Later on, he contacted the victim again in  
32 the automobile with a couple other witnesses. At that time he

1 had a domestic argument, the conclusion of which he pulled a gun  
2 out of his waistband and in the presence of two witnesses shot  
3 his girlfriend in the head. He then left and went to a couple  
4 of other persons and admitted to both of them he had shot his  
5 girlfriend in the head.

6 The injury produced no permanent damage,  
7 fortunately, to the victim. Sometime, after this case was  
8 filed, the victim came into our office and indicated that it was  
9 not her desire to prosecute the attempt murder with use of a  
10 deadly weapon charge any further. We denied her request to  
11 dismiss the case at that time. However, we saw fit, that being  
12 a factor in it, to use that as part of the negotiations in the  
13 instant case. Accordingly, the defendant pled to assault with  
14 a deadly weapon against the security officer.

15 His criminal record states that he has had  
16 some substantial contact with law enforcement for misdemeanor  
17 type offenses. I would point out he has an old misdemeanor  
18 conviction for prowling and recent conviction for misdemeanor  
19 carrying a concealed weapon.

20 The Department of Parole and Probation has  
21 recommended incarceration for a period of one year. The State  
22 feels that is appropriate. Even taking into consideration his  
23 prior record, he appears to be a person who is a danger to the  
24 community. He endangered not only his girlfriend, in what might  
25 be described, and to what might appear to some as a domestic  
26 situation, I don't know what it was, but he endangered the lives  
27 of other parties, third parties, who were not involved.

28 Based upon that, we would concur with the  
29 recommendation.

30 THE COURT: Department of Parole and  
31 Probation?

32 MR. D'ARPA: Nothing further, Your Honor.

1 THE COURT: Counsel?

2 MR. BURNS: May I present the Court with a  
3 correspondence, please?

4 THE COURT: You may.

5 MR. BURNS: First of all, may I state that  
6 the author of that letter is the victim of the alleged attempt  
7 murder in the case which was dismissed, as far as negotiations.  
8 She is sitting out in the hall, if the Court would want to  
9 address her as to her letter.

10 Now, concerning the defendant's record, I  
11 know in looking at the Department's report that prior to these  
12 two incidents happening, the last problems which resulted in a  
13 conviction, in 1975, and those several incidents, as the D.A.  
14 indicated, were either misdemeanor or traffic offenses.

15 Concerning the letter to the Court, as I  
16 indicated to the Court, Ms. Brown is present in the courthouse  
17 and she indicates in that letter that she requested the D.A.  
18 to dismiss the case because, as she stated, she felt that the  
19 shooting was accidental, that the defendant did not intend to  
20 kill her. And that she indicated, also, that she discussed  
21 with other people and, apparently, they reached the same  
22 conclusion. And she also indicated that throughout their  
23 relationship they lived together, for lack of a better term,  
24 common law, as man and wife, and had for eight or nine years.  
25 For that period of time, he has been a good father to their  
26 common child and a good stepfather to her children by another  
27 man.

28 The defendant's version of the facts  
29 surrounding the assault charge are that he was being restrained  
30 by the victim in this matter -- the security guards at the  
31 Showboat. There had been a problem. He was ordered to leave  
32 and in his act of leaving, they were surrounding him. In fact,

1 they had shot at him after he left and that he did, you know,  
2 pointed his vehicle toward the victim in this matter. We are  
3 not contesting that fact. But the situation was one where he  
4 was surrounded by people who were hostile to him for whatever.  
5 That, I would ask the Court to take into consideration.

6 Now, also, according to the Department, they  
7 contacted the security guard in this matter and he wasn't  
8 particularly vehement about incarceration in this case.

9 As I review the report and discussed  
10 Mr. Thomas' history with him, he appears to have come from a  
11 solid family and also appears to have created, other than these  
12 incidences, obviously, a good solid family relationship with  
13 Ms. Brown and his children. He has lived with her for eight or  
14 nine years, as I indicated. They have children together. That  
15 length of a relationship shows some stability. He has had the  
16 same job for apparently ten years. That is a factor indicating  
17 stability. He has been steadily employed since he has been 15  
18 or 16 years old.

19 Initially, he went to work to help his  
20 father support his younger brothers and sisters -- I'm sorry.  
21 Half brothers and sisters. His mother died in '68 and he went  
22 to work in '69. There were like 13 or 14 young kids his father  
23 needed help supporting. He was the oldest son.

24 I don't understand the recommendation. As  
25 you read through the report, it sounds like this fella has been  
26 a pretty good citizen. Steadily working, taking care of his  
27 family, taking care of his responsibilities as a father, and  
28 that all reads until you come to the recommendation of one year  
29 in prison. I don't think that that recommendation, as it stands,  
30 makes a lot of sense, because if the Court were to follow that  
31 recommendation and put him in prison for a year and he would  
32 come out and he would never have any period of supervision

1 within the community. I don't think -- I think the Court would  
2 agree that other than just straight punishment, a year in  
3 prison is not going to accomplish a lot. I think it makes much  
4 more sense to allow him to remain in the community, to remain  
5 a provider for his wife, or common law wife, and his children  
6 under, obviously, supervision. It seems to me this would  
7 accomplish several things, not the least of which would enable  
8 him to modify or control his temper so that these things,  
9 kind of things, wouldn't happen again.

10                   They apparently didn't happen in the past.  
11 He doesn't have a history of violent conduct. These two things  
12 happened out of, as stated by the District Attorney, domestic  
13 problems. That is certainly no excuse, but I think factors  
14 which I would hope the Court would consider.

15                   I feel the only recommendation -- I'm sorry.  
16 The reason for the recommendation is, of course, the case is  
17 just going to be dismissed. I think in light of the letter  
18 that I presented the Court, that that reason somewhat lessens,  
19 somewhat modifies, I think it makes a whole lot more sense to  
20 put this man on a period of probation, put him -- suspend that  
21 sentence and put him on a period of probation and allow him to  
22 continue to support his family and to go through a period of  
23 supervision, which will enable him to modify his conduct so  
24 that he can get along with the rest of society.

25                   THE COURT: Mr. Thomas, stand up. This is  
26 your opportunity to make any statements you so desire to the  
27 Court before the Court imposes its sentence.

28                   THE DEFENDANT: I just regret that all this  
29 happened. I'll never let it happen again. I'm sorry for it.

30                   THE COURT: Remain standing.

31                   Mr. Thomas, you're indeed certain that this  
32 Evelyn Brown is still available to write this letter, aren't you?

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THE DEFENDANT: I'm sorry, Your Honor.

THE COURT: This Court having accepted your plea to assault with a deadly weapon, the Court at this time adjudges you guilty of that offense and sentences you to the Nevada State Prison for a term of one year. That is all, sir.

MR. D'ARPA: Your Honor, credit for time served, one day.

THE COURT: All right. Credit for time served will be granted at one day.

State's motion?

MR. OWENS: The State would move to dismiss, I believe, it's already been dismissed, Your Honor. My record reflects it was attempt murder case 61188. If it hasn't been previously dismissed --

THE COURT: Well, apparently, it doesn't appear to be clear. It just says that matter was continued, according to my record.

MR. OWENS: If that's the case, the State would move to dismiss that case.

THE COURT: Any objection?

MR. BURNS: No, Your Honor.

THE COURT: All right. The order will be the same. You may remove the defendant.

\* \* \* \* \*

ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE PROCEEDINGS:

Sandra Wiener  
SANDRA WIENER, Court Reporter



Rec'd  
3/7/83  
def

Dear Sir

Concern the case against  
John Thomas, and why el drop  
them, drop them because it was  
accident, all thought a lot were not  
out of shock, ~~but~~ but after talking  
about it everyone felt it was accident  
and el told the Dist. Att. this and  
in my ten years of knowing John  
el felt him to be a very nice  
person and very caring person. He  
has been a good father & stepfather  
to my kids. and found him not to  
be a violent person.

Charles Baker

Victim

RELEASE ORDER FOR JUDGMENT OF IMPRISONMENT

STATE OF NEVADA

CASE NO. C 61187

vs.

John Thomas, Jr.

On the 15th day of March, 1983, the Honorable John F. Mendoza District Judge of the Eighth Judicial Court of the State of Nevada sentenced the above-named Defendant. The Defendant previously was (Found Guilty/Plead Guilty) on 10th day of February, 1983, and the sentence of imprisonment in the Nevada State Prison is as follows:

COUNT	OFFENSE	SENTENCE
	<u>Assault w/ Deadly Weapon</u>	<u>One year</u>

with credit for time previously served in the amount of 1 days.

Pursuant to NRS 176.335 the Sheriff of Clark County is instructed to immediately notify the director of the department of prisons and the director shall, without delay, send some authorized person to receive the prisoner for commitment.

LORETTA BOWMAN, County Clerk and Clerk of the Eighth Judicial District Court, in and for the County of Clark, State of Nevada.

By: Roberta Anape Deputy

# Office of County Clerk

200 East Carson  
Las Vegas, Nevada 89101

**LORETTA BOWMAN**  
County Clerk  
Commissioner of Civil Marriages

Telephones  
Day: 385-3158, Night: 386-4415

**DONNA HOMSHER**  
Assistant County Clerk

## NOTICE OF TRANSFER OF BOND

Surety Company: SURETY INSURANCE COMPANY

Bail Agent: LYLE'S BAIL BONDS

Bond Number: 6-66635

Date: Jan 27, 1983

The above bond has been transferred to the Eighth Judicial District Court of the State of Nevada in and for the County of Clark from  
in the case entitled:

STATE OF NEVADA, )  
 )  
Plaintiff, )  
 )  
vs. JOHN THOMAS )  
 )  
 )  
Defendant(s), )

CASE NO. 061187

LORETTA BOWMAN, COUNTY CLERK

By: *Lucy Thomas*  
Deputy

### Ex-Officio Clerk of:

Eighth Judicial District Court • Board of County Commissioners • Board of Equalization  
Clark County Liquor and Gaming Licensing Board • Kyle Canyon Water District  
Clark County Sanitation District • General Obligation Bond Commission  
Civil Service Board, Las Vegas Metropolitan Police Department • Southern Nevada Memorial Hospital

AA6876

Please return form to:

# LYLES' BAIL BONDS

Phone 384-5544 - Any Where, Any Time

600 North First Street (Corner First and Bonanza)

TO THE CLERK OF THE COURT ADDRESSED: 3824-82f  
Will you please check your records for the bond listed below. If the bond has been exonerated, please enter the date of exonerated; sign and return this form to us.  
If the bond has not been exonerated, will you please indicate the current status of the bond in the space provided below. Thank you.

CURRENT STATUS OF BOND (if bond not exonerated): \_\_\_\_\_

## CERTIFICATE OF DISCHARGE OF BOND

This is to certify that I have examined the records of the court and found the liability of Surety Insurance Company of California, a California Corporation, for the bond shown with corresponding power

number was terminated on 8-11-83

Court: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

By: Lora Duncan (Seal)

480-70 Rev. 3/81 (Signature of Clerk or other officer of the Court)

OCT 14 1982

BOND NO. 60251 6-66635  
DEFENDANT John Thomas  
AMOUNT \$ 3,000.00  
DATE POSTED 9/15/82  
CHARGE Assult With Deadly Weapon  
CASE NO. C61187  
AGENT Elbert Lyles  
Supervising Agent's Approval Stamp:



SURETY INSURANCE COMPANY OF CALIFORNIA

Box 2667  
La Habra, California 90631-1867

LORETTA BOWMAN  
COUNTY CLERK  
COURTHOUSE  
200 EAST CARSON  
LAS VEGAS, NEVADA 89101

LYLES BAIL BONDS  
600 North First Street  
Las Vegas, Nevada



CASE NO. C61187 TITLE STATE VS. JOHN THOMAS, JR.

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
3-10-83 JOHN F. MENDOZA DEPT. V S. NICHOLS CLERK R. SILVAGGIO REPORTER	ARRAIGNMENT STATE REPRESENTED BY NANCY OESTERLE AND CHRIS OWENS, DDAS. DEFT THOMAS PRESENT WITH THOMAS BURNS. NEGOTIATIONS: DEFT WILL PLEAD GUILTY IN THIS CASE; CASE C61186 TO BE DISMISSED AT TIME OF SENTENCING; STATE RESERVES RIGHT TO ARGUE. <u>DEFT ARRAIGNED AND PLED GUILTY TO ASSAULT WITH A DEADLY WEAPON. COURT ACCEPTED PLEA.</u>	3-10-83 @ 9 AM SENTENCING
3/10/83 JOHN F. MENDOZA DEPT. V S. Nicholson, Clerk R. Silvaggio, Reporter	SENTENCING State represented by Mel Bowers, DDA. Deft. Thomas present with William Pritchard for Thomas Burns. Jim Keough of P&P also present. Mr. Pritchard requested a continuance in order to review the pre-sentence report. There being no objection, COURT ORDERED, matter continued.	3/15/83 @ 9 AM SENTENCING
3-15-83 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK S. WENNER, REPORTER	SENTENCING State represented by Christopher Owens, Deputy District Attorney. Defendant Thomas present with Thomas Burns. Dan D'Arna, Probation Officer, also present. Court heard statements by Counsel and the Defendant. Mr. Burns presented letter to the Court. <u>COURT ORDERED, Defendant is adjudged Guilty and sentenced to N.S.P. for one year, and</u>	
	Defendant is to receive <u>one day credit</u> for time served.	
8-11-83 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK	COURT ORDERED, BOND IS EXONERATED.	

MINUTES — CRIMINAL

AA6879



**EXHIBIT 202**

**EXHIBIT 202**





AA6882

**EXHIBIT 203**

**EXHIBIT 203**



AA6884

**EXHIBIT 204**

**EXHIBIT 204**



AA6886

# EXHIBIT 205

# EXHIBIT 205

Declaration of Thomas F. Kinsora, Ph.D.

I, Thomas F. Kinsora, Ph.D, hereby declare as follows:

1. I am a neuropsychologist licensed to practice in Nevada. I have over twenty years of experience rendering neuropsychological assessments of criminal defendants and inmates. My complete curriculum vitae is attached to this declaration as Exhibit A.
2. Although I had rendered opinions in connection with other criminal proceedings before Marlo Thomas's counsel contacted me in 1996, Mr. Thomas was among the first capital cases I had been involved with.
3. At the request of Mr. Thomas's federal habeas counsel, I have very recently reviewed the 1997 report I prepared for the Thomas defense team and my testimony at Mr. Thomas's first penalty hearing.
4. The battery of testing I gave to Mr. Thomas, as reflected in my report, is, for the most part, the same battery of testing I would give in any adult referral. However, in 1996 and 1997 I gave the Hare Psychopathy Checklist only to criminal defendants, and I did so with Mr. Thomas. At that time, the professional literature and prevailing views in the psychological community encouraged psychologists to explore antisocial traits in criminal defendants. The Hare Psychopathy Checklist, in conjunction with the Minnesota Multiphasic Personality Inventory-II, was used to classify individuals as having anti-social personality disorder (ASPD), sociopathy, or psychopathy. People who fell into these categories were portrayed as driven by extreme callousness and as incapable of remorse. As my report reflects, I did not find a lack of remorse in Mr. Thomas; in fact I observed that "he is capable of showing remorse and has the ability to care deeply for others." I therefore diagnosed Mr. Thomas with antisocial personality disorder "[w]ith some qualification."
5. I no longer use the Hare Psychopathy Checklist. In my opinion, the Hare Checklist is too morally driven. My experience and continuing education as a neuropsychologist in the years since I evaluated Mr. Thomas have changed my use of the labels "sociopath" and "psychopath" and, to a good extent, "antisocial personality disorder." I do not subscribe to the use of these or any other labels that stand as a clinical synonym or euphemism for the view that some people are monstrous or intrinsically evil. I now find that the vast majority of criminal defendants referred to me are people intrinsically broken by their backgrounds and experiences. To the extent the Hare test and the labels "sociopath" or "psychopath" indicate some organic or inherent inability to conform to basic moral norms, I do not subscribe to their use.

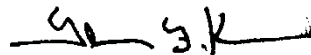
6. Because I was new to working on capital cases at the time of Mr. Thomas's first trial, I was unaware that the label "antisocial personality disorder" carried dire connotations for a jury deciding between life and death. From my subsequent years of experience, I have learned that ASPD causes jurors to pass a judgment on the defendant that they are not equipped to form. They blind themselves to everything except that diagnosis.
7. When I first started out in my forensic criminal practice, it was automatic for me to give a diagnosis to the defendant because this is what I always did in my clinical practice. I do not remember the content of my conversations with Mr. LaPorta or Ms. McMahon, however if one of them had directed me not to diagnose Mr. Thomas, but instead to identify his impairments and describe their impact on his functioning, I would have done so.
8. In my forensic practice today, I rarely give a clinical diagnosis to the defendants I evaluate. I only do so if specifically asked for a diagnosis by the referring attorney. In my opinion, diagnosis is not pertinent to my role as a forensic neuropsychologist in a criminal case. The individual's pattern of cognitive deficiencies, real world problems, and childhood experiences are the things that are important for juries to hear about, not a label that gets pinned to the defendant.
9. On July 25, 2017, I reviewed Dr. Richard Dudley's analysis of Mr. Thomas's trauma history, which reaches back to his early childhood. The full picture of Mr. Thomas's history was unknown to me until I read Dr. Dudley's declaration: none of Mr. Thomas's prior lawyers had provided me with most of the information contained in it. This information would have been of great value to my analysis in 1996 and 1997. Had I been provided this additional social history information, I would have explained the "creation" of Mr. Thomas as a broken individual, which I diagnosed as ASPD, through the prism of his terrible formative experiences: factors including his borderline intellectual functioning, his impulse and mood regulation disorders, as well as his horrible family and social environment as a child.
10. I believe a neurological assessment that took into account Mr. Thomas's traumatic upbringing also would have added greatly to a defense of lesser culpability – i.e., of something other than premeditated murder. The violent collision between the confrontation with the victims in the Lone Star Restaurant and the impulse control deficits attributable to Mr. Thomas's whole psychological profile begged for an explanation that a neuropsychological evaluation and complete social history, such as that contained in Dr. Dudley's declaration, would have provided.
11. I remember that David Schieck represented Mr. Thomas at his second penalty hearing in 2005 but I do not recall the extent of any communication I had with



Mr. Schieck about Mr. Thomas's case. If Mr. Schieck had asked me for my thoughts on the case, I would have reviewed my file, asked Mr. Schieck if there was anything new that had not been provided to me in 1996-1997, and given him my opinion on what would be helpful for the jury to hear.

12. I would have told Mr. Schieck that since Mr. Thomas's first trial, the psychological profession had grown to give more credence to the prevalence and effects of fetal alcohol spectrum disorder (FASD). In light of Mr. Thomas's mother's admission to me that she drank heavily during her pregnancy, I would have recommended that he retain an expert in FASD and obtain a full evaluation and diagnosis in that field.
13. If Mr. Schieck had made me aware of the social history information contained in Dr. Dudley's declaration, I would have advised him that an appropriately qualified mitigation specialist or mental health expert should testify to Mr. Thomas's childhood history, and to his mother's use of alcohol during pregnancy. I would have recommended that the mitigation specialist paint a complete picture of Mr. Thomas's childhood. I would have recommended that Mr. Schieck obtain and present to the jury a new psychiatric evaluation that directly addressed the effects of Mr. Thomas's social history, especially his traumatic upbringing.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. I further state under penalty of perjury that this declaration was executed in Jackson County, Oregon, on July 26, 2017.



\_\_\_\_\_  
Thomas F. Kinsora, Ph.D.

# EXHIBIT A

# EXHIBIT A

**THOMAS FRANCIS KINSORA, PH.D.**

Nevada License PY265

716 South 6<sup>th</sup> Street Las Vegas, Nevada 89101  
 (702) 382-1960 drkinsora@earthlink.net drkinsora.com

**EDUCATION****CALIFORNIA SCHOOL OF PROFESSIONAL PSYCHOLOGY**Accredited by the **American Psychological Association**

- **Ph.D.** in Clinical Psychology-Neuropsychology Proficiency;  
Behavioral Medicine Proficiency, February, 1991
- **M.A.** in Clinical Psychology, 1986

**WAYNE STATE UNIVERSITY**, Detroit, Michigan 1981-1984.

- **B.A.** in Psychology, 1984

**DOCTORAL RESEARCH: Implicit stem-completion priming and memory processing in the differentiation of Alzheimer's type dementia from Parkinson's related dementia.**

**TOTAL SUPERVISED TRAINING HOURS IN CLINICAL NEUROPSYCHOLOGY**

Over 8000 hours spanning five years. All supervision provided by formally trained clinical neuropsychologists. Formal training meets criteria for definition of clinical neuropsychologist established by the National Academy of Neuropsychology and the Neuropsychology Division of the American Psychological Association.

**CLINICAL EXPERIENCE****2008 – Present     Adjunct Professor, Neuropsychology, University of Nevada Las Vegas**

- Center for Applied Neuroscience is a Practicum training site for the APA Approved Doctoral Program in Psychology.

**1993 – Present     Center for Applied Neuroscience**

- Neuropsychological Assessment (Child, Adult, Elderly)
- Forensic/Medical-Legal Work and Independent Medical Evaluations
- Disability Examinations
- Criminal Forensic Evaluations
- Expert testimony and case consultation on complex medical/legal cases.
- Deposition and Courtroom experience
- Independent Medical Evaluations for Workers Compensation Claims
- Concussion Management services to Nevada high schools (in partnership with Staci R. Ross, Ph.D., ABPP and operating under the name **Sports Concussion Specialists of Nevada**). Manage concussion consultation for approximately 15,000 Nevada High School Students. Concussion management consultation includes:
  - All Clark County School District High School Athletes
  - Lyon County School District Athletes
  - Bishop Gorman High School Athletes

- Faith Lutheran High School Athletes
- Professional Boxers

1992-July, 1994

**COMMUNITY REHABILITATION SERVICES OF LAS VEGAS**

Director of Clinical Services/Director of Neuropsychology

**Supervision to licensure - Lewis Etcoff, Ph.D. ABPN**

- \* Directed delivery of brain injury rehabilitation by multidiscipline team.
- \* Consultation with rehabilitation team to coordinate treatment.
- \* Neuropsychological/Neurobehavioral Assessment.

1988-1992

**REHABILITATION INSTITUTE OF MICHIGAN** Detroit, Michigan.

A comprehensive medical rehabilitation facility of Detroit Medical Center.

**Lead Neuropsychologist-Traumatic Brain Injury Unit (1989-July 24, 1992)**

**Training and Supervision**

**Scott Millis, PhD ABPP-ABCN; Mitchell Rosenthal, PhD**

- \* Neuropsychological assessment
- \* Behavior programming
- \* Cognitive "remediation" consultation
- \* Treatment/Management consultation
- \* Comprehensive multidisciplinary five day IMEs
- \* Multiple research related activities
- \* Inservice education to treatment team and medical residents/staff
- \* Program development

**Staff Neuropsychologist on Stroke Unit (1988)**

**Supervision-Diane Klisz-Karle, Ph.D.**

1988-Sept. 1992

**PSYCHOLOGICAL SYSTEMS, INC** Huntington Woods, Michigan.

**Post-doctoral Training and Supervision**

**Supervision-Manfred F. Greiffenstein, PhD, ABPP-ABCN**

- \* Neuropsychological Assessment
- \* Assessment of Learning Disabilities
- \* Forensic/Medical-Legal Work and Independent Medical Evaluations
- \* Detection of Malingering/Exaggeration of Symptoms

1987-1988

**VETERANS ADMINISTRATION MEDICAL CENTER** Allen Park, Michigan.

**Pre-doctoral Internship, American Psychological Association Accredited.**

**Neuropsychology Laboratory (1 year)**

**Supervision-Manfred Greiffenstein, PhD, ABPP-ABCN**

- Neuropsychological Assessment
- Sleep Lab Assessments

**Outpatient Clinic (1 year)**

Supervision-Joseph Druker, PhD; John Wickey, PhD

- Individual Psychotherapy (short/long term)
- Intake Interviews
- Psychodiagnostic Testing

**Inpatient Psychiatric Unit (6 months)**

Supervision-Morris Bruck, PhD  
-Co-led Group Therapy

- 1986-1987**      **FRESNO TREATMENT CENTER** Fresno, California.  
**Practicum Training and Supervision**  
A residential treatment facility for adolescents with emotional, behavioral, and substance abuse disorders.
- 1985-1986**      **CALIFORNIA MENS COLONY** San Luis Obispo, California.  
**Practicum Training and Supervision**  
Prison with "protective custody" inmates and psychiatric care.  
-Personality Assessment  
-Individual psychotherapy  
-Group Substance abuse therapy
- 1985-1986**      **HAMMS DOWNTOWN SCHOOL** Fresno, California.  
**Practicum Training and Supervision**  
A private school for children with disorders of emotion and behavior.
- 1985**            **FRESNO UNIFIED SCHOOL DISTRICT** Fresno, California.  
**Practicum Training and Supervision (6 month practicum)**  
- Intellectual and Projective Personality Testing.

**RESEARCH EXPERIENCE AND ACQUIRED GRANTS**

- REHABILITATION INSTITUTE OF MICHIGAN** Detroit, Michigan.
- 1996-2006**      Wrote or assisted in writing grants totaling over \$1 million dollars related to the delivery of services to children and families served by Nevada Children's Center.
- 1991**            Recipient of a \$15,000 United Way/Kenny R.E.H.A.B. sponsored grant to develop a new memory measure. Title of research: "Anoetic Verbal Priming: A normative investigation of stem completion priming."
- 1990**            Recipient of a \$10,000 United Way/Kenny R.E.H.A.B. sponsored grant to investigate stem completion frequencies to be used in the design of a new memory measure based on current theoretical principles in stem completion priming and cued recall.
- 1990-1991**      Involved as a research liaison and in data collection for the Neuropsychology component of a NIDRR sponsored grant entitled: "A Comprehensive Model of Research and Rehabilitation for the Traumatically Brain Injured". co-developed a battery of neuropsychological measures to provide an index of change throughout

the course of recovery. The project involves the coordination of five major rehabilitation facilities.

**1989-1992 Grant Review Panel Appointment**

Research Funds Allocation Committee. Review research proposals for funding of United Foundation sponsored grants for research.

**1988-1990 VETERANS ADMINISTRATION MEDICAL CENTER** Allen Park, Michigan.  
Conducted research for doctoral dissertation on the differentiation of dementia subgroups by their performance on an implicit memory measure.

**1983 WAYNE STATE UNIVERSITY** Detroit, Michigan.  
Administered psychological and neuropsychological measures to relatives of schizophrenics for a research project conducted by Gerald Rosenbaum, Ph.D., Professor, WSU.

**INTERNATIONAL CONFERENCE PRESENTATIONS**

**1989 INTERNATIONAL NEUROPSYCHOLOGICAL SOCIETY**  
Seventeenth Annual Meeting, Vancouver, British Columbia, Canada. Panel  
"Anoetic Verbal Priming in Cortical and Subcortical Dementia".

**PUBLICATIONS**

Kinsora, T. F., Greiffenstein, M. F., Verma, N. P., & Nichols, C. N. (1989).  
Anoetic verbal priming in cortical and subcortical dementia. *Journal of Clinical and Experimental Neuropsychology*, 11, 53. (Abstract).

**PROFESSIONAL MEMBERSHIPS**

International Neuropsychological Association  
National Academy of Neuropsychology  
American Academy of Clinical Neuropsychology, Associate Member  
Nevada State Psychological Association  
American Psychological Association  
Division 40 (Neuropsychology Division) of the American Psychological Association

**BOARD MEMBERSHIPS/Consultations (Non reimbursed)**

**Nevada Children's Center**  
President, 1997-2005; 2009-2010, Vice President, 2011; 2013 member  
**Nevada Board of Bar Examiners (Expert Panel on Special Accommodations)**  
1996 to present  
**National Multiple Sclerosis Society - Desert Southwest Chapter**  
Program Service Committee Chairman 1993-1996  
**Traumatic Brain Injury Professional Group** 1993-1995  
**Nevada State Psychological Association - Southern Division**  
Secretary 1996 to 1999; Chair, 1999-2000



## Center for Applied Neuroscience

"Putting neuroscience research into practice"

Specializing in the assessment of cognitive functioning

Thomas F. Kinsora, Ph.D.  
Clinical Neuropsychologist

### Fee Schedule Agreement for Legal/Forensic Services

#### Neuropsychological Assessment (may also include Psychological/Personality Assessment)

- \$6000.00 non-refundable case opening, retainer fee **due prior to scheduling an appointment**. This fee gives permission to the undersigned to name Dr. Kinsora as an expert witness. This fee may also cover the first 15 hours toward review of records, clinical interview, administration of neuropsychological measures (including Personality and Academic testing as needed), scoring of results, and preparation of a final report.
- If work exceeds 15 hours, \$350.00 per additional hour will be charged.
- \$1750.00 will be charged for **rescheduling** appointments with less than seven days notice.
- \$2750.00 will be charged for **rescheduling less than 72 hours before a scheduled appointment**.
- \$4000.00 will be charged for **No-Shows and non-rescheduled cancellations less than 72 hours before a scheduled appointment**.
- **With regard to records sent to this office. Scanned and digitalized information placed on a USB flash is requested. Digitized information should be organized logically, in folders, and in order by date or Bates numbering.** If material is presented to our office in such a manner that requires organization by our office staff, an additional \$500.00 will be charged.

#### Psychological/Personality Assessment

- \$4500.00 non-refundable case opening, retainer fee **due prior to scheduling an appointment**. This fee gives permission to the undersigned to name Dr. Kinsora as an expert witness. This fee may also cover the first 12 hours toward review of records, a clinical interview, administration of measures (Personality and limited academic/intellectual testing if needed), scoring of results, and preparation of a final report.
- If work exceeds 12 hours, a fee of \$350.00 per additional hour will be charged.
- \$1750.00 will be charged for **rescheduling** appointments with less than seven days notice.
- \$2750.00 will be charged for **No-Shows and rescheduling less than 72 hours before a scheduled appointment**.
- \$4000.00 will be charged for **No-Shows and for non-rescheduled cancellations less than 72 hours before a scheduled appointment**.
- **With regard to records sent to this office. Scanned and digitalized information placed on a USB flash is requested. Digitized information should be organized logically, in folders, and in order by date or Bates numbering.** If material is presented to our office in such a manner that requires organization by our office staff, an additional \$500.00 will be charged.

#### Case Reviews or Rebuttals

- \$3500.00 non-refundable case opening, retainer fee **due prior to scheduling an appointment**. This fee gives permission to the undersigned to name Dr. Kinsora as an expert witness. This fee may also cover review of medical and other case related records, and the preparation of a summarized opinion letter.
- If the work exceeds 10 hours, a fee of \$350.00 per additional hour will be charged.
- **With regard to records sent to this office. Scanned and digitalized information placed on a USB flash is requested. Digitized information should be organized logically, in folders, and in order by date or Bates numbering.** If material is presented to our office in such a manner that requires organization by our office staff, an additional \$500.00 will be charged.

#### Deposition Fees

- \$2500.00 non-refundable deposition fee to be paid **prior to scheduling a deposition**. This fee retains Dr. Kinsora and covers the first hour of deposition.
- \$400.00 per hour for each additional hour (or portion thereof) in deposition.
- \$175.00 for each additional hour (or portion thereof) spent out of independent practice on the day of the scheduled deposition for purpose of waiting to provide expert testimony, travel, etc.
- \$350.00 per hour consulting with counsel, preparation, or consulting with others involved in case. Preparation for a deposition typically requires no less than 6 hours preparation time and one hour in consultation with the attorney.
- If the deposition is **rescheduled** less than 72 hours from the scheduled time, \$1250.00 will be charged to the party who rescheduled the deposition to cover lost clinical time.
- If the deposition is **cancelled** less than seven days from the scheduled time, the \$2500.00 deposition fee will be charged to the party who scheduled the deposition, and any time put into preparation will be charged to the attorney who initially retained Dr. Kinsora.
- Out of town depositions will require an additional fee of \$1750.00 per day out of office. Costs travel will be additional.

**Expert Testimony in Court**

- \$3000.00 as a non-refundable retainer fee to name Dr. Kinsora as an expert witness and may cover the first two hours of testimony to **be paid at least one week prior to trial**. \$400.00 per hour will be charged for each additional hour (or portion thereof) providing testimony.
- When testimony **carries over to a second day** or more, an additional \$3000.00 will be charged for each day, and again will cover up to two hours of testimony per day. \$400.00 per hour will be charged for each additional hour (or portion thereof) providing testimony.
- When testimony is **delayed** for a day or more, with less than 72 hours notice, \$3000.00 will be charged for the lost day, and the new day of trial will once again be charged \$3000.00 and will cover the first two hours of testimony. \$400.00 per hour will be charged for each additional hour (or portion thereof) providing testimony.
- If a court appearance is **cancelled** less than seven days from the scheduled time to testify, \$3000.00 will be charged. In addition, preparation time and the cost for supplies will be charged.
- \$350.00 per hour for preparation, consulting with counsel, or consulting with others involved in case. Testimony will typically take no less than 10 hours of preparation and usually at least one hour of consultation with the attorney.
- Reimbursement for all supplies, including visual aids, presentation devices as needed.
- \$175.00 for each additional hour (or portion thereof) spent out of independent practice for purpose of waiting to provide expert testimony, travel, etc.

**Work conducted out of town.**

- \$1750.00 per 24 hour period (or fraction thereof), plus expenses (transportation, food/lodging, delivery of documents, and others as required), with the estimated total **due two weeks prior to departure**.
- This amount is **In addition** to the fee for whatever services are being requested.
- This amount is due even if, because of predictable or unpredictable causes, no work is completed or required, or in the event Dr. Kinsora is not able to provide services due to cancellation by the client, delay, postponement, client or facility refusal, client illness, or any foreseeable or unforeseeable cause that may prevent services from being rendered as scheduled upon arrival.

**Third Party Presence During Assessments**

All assessments and clinical interviews are conducted free from third party interests. Dr. Kinsora follows a "best practices" model and is required to make the assessment environment conducive to the most optimum conditions for a valid data set, and that means by conducting it without a third party interest present, whether it be by physical presence or audio/visual recording. **Under no condition** will Dr. Kinsora allow the presence of a third party interest in the assessment session. If such a presence is demanded from the opposing side's attorney, the assessment appointment will be cancelled immediately by Dr. Kinsora, and **I, the retaining attorney, hereby agree to vigorously contest this demand**. Dr. Kinsora can provide some assistance using established case law and scientific studies on the effects of third party observers in neuropsychological testing. If the assessment is cancelled and Dr. Kinsora withdraws from the case (in accordance to ethical "best practices"), time spent on the case will be charged and all fees described above will remain in place. If the demand for a third party presence occurs within 72 hours of the appointment date, fees for cancellation or no-show will also apply, even though Dr. Kinsora cancelled the assessment.

Dr. Kinsora will help prepare an attorney in the deposition or cross examination of another expert but will generally not agree to appear in person during the deposition or cross examination of another expert.

**If payment for any of the above services is not paid when due, all work shall stop and all appointments will be vacated and replaced by other patients/clients. For any amount that is owed for any reason a monthly charge of 2% of the balance will be added until the balance is paid.**

I have read the above fee schedule and agree to fully abide by it's terms. I agree to return this agreement with the total fee for the services requested. I understand that the above costs and conditions can be modified by Dr. Kinsora from time to time, but that Dr. Kinsora will consider this signed document to be the working agreement on the current case, with the exception of deposition fees which are subject to pricing at the time of the deposition.

Print Name (Attorney) \_\_\_\_\_ Date \_\_\_\_\_

Sign (Attorney) \_\_\_\_\_

Case Name \_\_\_\_\_



EXHIBIT 206

EXHIBIT 206

**Joan W. Mayfield, PhD., ABN, ABPdN**  
**Neuropsychologist**  
**9735 Windham Drive**  
**Dallas, TX 75243**  
**972-978-5290**

## **NEUROPSYCHOLOGICAL EVALUATION**

**Name:** MARLO THOMAS  
**Age:** 44 years, 6 months  
**Date of Birth:** November 6, 1972  
**Date of Testing:** June 5 & 6, 2017  
**Date of Report:** July 27, 2017

### **REASON FOR REFERRAL**

Marlo Thomas was referred for a neuropsychological evaluation by his current federal habeas attorneys at the Office of the Federal Public Defender, District of Nevada. I was asked to assess Mr. Thomas' cognitive functioning and relative neuropsychological integrity. Specifically, I was asked to evaluate Mr. Thomas for a possible Fetal Alcohol Spectrum Disorder (FASD). FASD is an umbrella term used to describe the spectrum of birth defect and neurologic difficulties caused by maternal alcohol consumption during pregnancy. The brain injuries caused by prenatal alcohol exposure are quite variable, but they can include such outcomes as lower IQ, attention deficit/hyperactivity disorder (ADHD), difficulties with judgment and impulse control, language and social difficulties, learning disabilities, memory problems, and impairment in higher level cognitive skills such as cognitive flexibility, planning, organization, inhibition, and novel problem solving.

The professional opinions that follow, which I hold to a reasonable degree of neuropsychological certainty, are based on a review of records and documents related to Mr. Thomas and biologically-related members of his family, declarations of Mr. Thomas' family and acquaintances, and my direct neuropsychological examination of Mr. Thomas at the Ely State Prison in Ely, Nevada. The information upon which I relied in forming my opinions is of the nature, scope, and reliability of information generally employed by mental health professionals when conducting such forensic evaluations, especially those performed in the context of capital litigation. I have also reviewed documents pertaining to Mr. Thomas' capital trial, re-sentencing, and state post-conviction proceedings, and the reports and testimony of Jonathan Mack, Psy.D. and Thomas Kinsora, Ph.D.

### **SUMMARY OF RESULTS**

Following two days of neuropsychological testing, which included a clinical interview, and a review of the records, I have determined that Mr. Thomas meets the criteria for a diagnosis of Alcohol Related Neurodevelopmental Disorder (ARND). As explained below, this diagnosis has significantly impacted Mr. Thomas' life.

### **EDUCATION AND TRAINING**

I am a psychologist, licensed in the State of Texas. I obtained a Bachelor of Science in Education from Midwestern University in Wichita Falls, Texas, in 1972. In 1982, I earned a Master of Education in Special Education from the University of Texas at Tyler in Tyler, Texas. In 1996, I earned a PhD in School Psychology with specializations in Child Clinical Psychology and Neuropsychology from Texas A&M University in College Station, Texas. I completed a Post-Doctoral Fellowship in Neuropsychology at the University of Texas Southwestern Medical Center, Dallas, Texas from 1996-1997.

From August 1997 until December 2015, I was employed as a pediatric neuropsychologist/psychologist at Our Children's House at Baylor, which was acquired in September 2015 by Children's Health. My responsibilities included assessment and development of treatment plans for inpatients, cognitive rehabilitation, monitoring of coma status, and parent support, education, and training. I was also a part of a multidisciplinary program treating children and adolescents, as well as administering neuropsychological evaluations for children and adolescents with head injuries approximately six to nine months post-injury. I also continued to follow their recovery as they returned for subsequent evaluations.

In addition to my duties described above, I have maintained a private practice in Dallas, Texas.

I am currently an Associate Professor at the University of Nevada, Las Vegas, and have previously taught at Richland College in Richardson, Texas, and at Texas A&M University.

I am currently a member of the American Board of Professional Neuropsychology (Diplomate/Fellow), American Board of Pediatric Neuropsychology (Diplomate), American Psychological Association, and the National Academy of Neuropsychology (Fellow).

### **BEHAVIORAL OBSERVATIONS and BRIEF HISTORY REGARDING MR. THOMAS**

My testing with Mr. Thomas was conducted over a two-day period in a contact visitation room at the Ely State Prison, Nevada. Mr. Thomas was provided with a written consent form, which was explained to him by the examiner, along with a review of his rights, and the use of limitations of confidentiality of the examination results. He subsequently agreed to participate in the evaluation.

Mr. Thomas was neatly groomed in appropriate jail attire, blue jeans and a denim blue shirt. He had a short trimmed beard and a shaved head. He is a large built African American male. He was taking no medication on the day of the evaluation. He has worn reading glasses in the past, but he was not wearing them during the evaluation as they were broken and had not been replaced. He stated that he was able to see the written material without any difficulty. Breaks were taken as needed. As he was celebrating Ramadan, he did not eat or drink during the course of the evaluation. He appeared more guarded and somewhat defensive during the first morning of testing; however, by the afternoon, he appeared more relaxed. He was talkative on both days. He appeared more fatigued on the second day of testing. On the night before, he had stayed up late eating dinner as he was not able to eat until sundown which was about 9:00 p.m., and then he had gotten up early to eat breakfast before sunrise. He became frustrated when completing academic tasks. He continued to be distracted by outside noises. He was impulsive at times and would say, "I've got it!" before I had finished giving the directions. On difficult tasks, he was quick to say that he would have done better if I had provided him with additional time. He frequently told me that he was smart; he denied any learning problems in school. His attention was short and he required frequent redirection to task. He made good eye contact. Three validity measures were administered during the evaluation: The Test of Memory and Malingering (TOMM), the 15 Item Test, and the Dot Counting Test. Test results are considered a valid representation of his current level of functioning.

Mr. Thomas has two older brothers and one younger brother. His mother typically worked late in the evenings as a school custodian, so Mr. Thomas' older brothers were his primary caregivers. For the majority of Mr. Thomas' life, his father was incarcerated for an incident involving a kidnap and rape. According to declarations from family members, Mr. Thomas was abused and beaten as a child. There were times when there was no food in the home.

According to records provided by Mr. Thomas' counsel, Georgia Thomas, Mr. Thomas' mother, drank MD 20/20, Strawberry Hill wine, or vodka on a daily basis until she was intoxicated. She drank heavily while she

was pregnant with Mr. Thomas. She was abused by Mr. Thomas' father, Bobby Lewis, whom she never married. In fact, she was punched and kicked in the stomach when she was pregnant with Mr. Thomas.

As a child, Mr. Thomas was slow meeting his developmental milestones. He had difficulty with incontinence until the age of 12. He was described as hyper as a child and had anger issues.

Educationally, Mr. Thomas attended many schools as a child. Problems were noted with academic skills; his scores were well below his grade level and age level across assessments. Along with his academic problems, Mr. Thomas experienced significant behavior problems in school. At age 10, he was referred to Children's Behavioral Services, placed in Miley Elementary School (a school for severely emotionally handicapped children), and placed on a strict behavioral program. Early peer relationships were poor. He was teased by other children and was given the nickname "Stinky" due to his reluctance to shower and from smelling of urine from his bladder incontinence. He completed 11 ½ years of school.

Mr. Thomas always had difficulty with authority. His problems with the judicial system began in 1984, when he was 11 years old and received a judicial reprimand from the juvenile court for battery upon one of his teachers. Through the rest of his juvenile years, he was picked up for numerous incidences involving trespassing, evading a police officer, vagrancy and prowling, grand larceny, possession of a stolen vehicle, domestic violence, battery, robbery with the use of a deadly weapon, and curfew violations. Many of those charges were dismissed, but at the age of 14, he was committed to a juvenile correctional facility in Elko, Nevada. He was sent back to that facility on new grand larceny and battery charges at the age of 15. He was certified as an adult on a charge of attempted robbery when he was 17 and sentenced to six years in the Nevada State Penitentiary in Carson City, Nevada.

### **TESTS ADMINISTERED**

A complete list of tests administered and the results from that testing is attached to this report.

### **RESULTS AND INTERPRETATION**

#### **Intellectual Functioning:**

Mr. Thomas' cognitive functioning was assessed using the Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV). His Verbal Comprehension Score (Standard Score = 89) and Processing Speed (Standard Score = 84) were low average. His Perceptual Reasoning Score (Standard Score = 77) and Working Memory (Standard Score = 77) were borderline. His Full Scale IQ was 78 and in Borderline Intellectual Function range.

#### **Academic Functioning:**

Mr. Thomas' academic abilities in the areas of reading, reading comprehension, and spelling were assessed using the WRAT-4. His word reading abilities were in the borderline range (Standard Score = 79). When asked to read a sentence and insert a missing word based on contextual cues, his abilities remained borderline (Standard Score = 75). Spelling (Standard Score = 76) remained borderline. Math computation (Standard Score = 67) and math reasoning (Standard Score = 69) abilities were assessed with the AAB and were significantly impaired.

#### **Attention/Executive Functioning:**

Executive functions are a set of cognitive processes which guide goal-directed behaviors. They do not refer to an individual's knowledge or skills but to the mental processes that direct whether and how these are applied to accomplish a goal. They include control of attention, inhibition of impulses, shifting set, working memory, planning, organization, self-monitoring and emotional regulations.

Mr. Thomas' attention and concentration abilities were assessed using the TOMAL-2 and the CPT3. Results of the TOMAL-2 was in the borderline range with a Standard Score of 77. His score was consistently in the low average range when repeating numbers in a forward and reverse sequence or letters in a forward sequence. When repeating letters in a reverse manner, his abilities were average. He scored in the low average range when mimicking hand positions. Mr. Thomas' attention was mildly to moderately impaired on the Speech Sounds Perception Test and severely impaired on the Rhythm Test. His sustained visual attention was measured by the CPT-3. Results indicated that he had significant inattentiveness and poor vigilance. Compared to the normative group, Mr. Thomas responded more slowly, displayed less consistency and more variability in response speed, and a reduction in response speed at longer ISIs (inter-stimulus interval change).

On a simple visual scanning task, Mr. Thomas' abilities were low average. When simple distractors were added, his performance improved to the average range. In contrast, as complex distractors were added, his abilities dropped to the borderline range. When alternating between numbers and number words (cognitive flexibility), his abilities were low average. His abilities were significantly impaired on a more complicated task of cognitive flexibility (connecting numbers and letters in an alternating sequence).

In order to examine fluency, cognitive flexibility, problem solving and inhibition, selected subtests from the D-KEFS, as well as the WCST-IV were administered. On a verbal cognitive flexibility task, Mr. Thomas performed in the borderline range when required to switch between two categories. On another activity, Mr. Thomas was asked to identify colors and read words as quickly as possible; his performance was in the borderline range. When he had to inhibit an automatic response in favor of a competing one, Mr. Thomas' performance was in the significantly impaired range. On a more complex task requiring him to switch between two sets of instructions, his performance remained significantly impaired. On a task of general reasoning, his abilities were significantly impaired.

In terms of problem solving abilities, his abilities were in the average range. On a problem solving task requiring him to make inferences based on feedback received, his abilities were within normal limits. He benefitted from corrective feedback and was able to generate strategies to complete all six categories. When provided with six cards, he was able to sort the cards into two categories with average abilities. However, when he needed to describe how the cards in a specific group were alike, his skills were low average. On the recognition portion of the task, where the examiner sorted the cards and Mr. Thomas was required to verbalize how the cards in the group were similar, he continued to perform in the low average range. On a hands-on problem solving task, his abilities were average. He tended to demonstrate a random, trial-and-error approach. He did not appear to learn the basic pattern of moves nor apply what he learned as the task became more complex.

**Memory:**

Mr. Thomas' memory abilities were assessed using the TOMAL-2. Overall, Mr. Thomas' verbal memory abilities were at the cusp of the borderline and significantly impaired range (Standard Score = 70), while his nonverbal memory abilities were significantly impaired (Standard Score = 54). When information was presented in a context (short stories), he recalled limited information resulting in a borderline score. After a thirty-minute delay, he recalled the same amount of information. When information was presented across repeated trials (a list of words), his performance improved to the low average range. On the first trial, he recalled five words. By the sixth trial, he recalled 10 words. After a thirty minute delay, he did not recall any of the words, resulting in a significantly impaired score. However, when provided visual prompts, he was able to identify eight of the 12 words. Mr. Thomas continued to perform in the low average range when attempting to recall words when simultaneously presented visually and verbally. His recall of verbal information remained in the low average range when provided with verbal associations.

Mr. Thomas' immediate recall of visual information in a context (faces) and his memory for abstract designs were in the borderline range. His visual spatial memory remained in the borderline range. In contrast, his visual sequential memory was in the significantly impaired range and a weakness for him.

**Perceptual Reasoning and Organization:**

Mr. Thomas' overall nonverbal abilities were in the borderline range. His nonverbal reasoning abilities were borderline. His visual spatial assembly of block designs was low average. Additionally, Mr. Thomas performed in the low average range on a task that required him to view a completed puzzle and then select three response options that, when combined, reconstructed the puzzle.

**Language:**

Mr. Thomas' overall verbal abilities were in the low average range and a strength for him. His ability to define words and his general fund of information were in the average range. His abilities to verbally explain how two words or concepts are similar were in the low average range. Confrontation naming was significantly impaired, while receptive vocabulary skills were in the borderline range. Overall, Listening Comprehension skills were in the significantly impaired range (Standard Score = 68) on the Academic Achievement Battery. In terms of Listening Comprehension: Words and Sentences, Mr. Thomas was read a word or a short sentence and provided with four pictures. One of the four pictures matched the word or sentence exactly; the other pictures were close but were not an exact match. Mr. Thomas was to choose the picture which was an exact match. His abilities were significantly impaired (Standard Score = 69). In contrast, when he was read a short story and then requested to answer factual questions about the story, his abilities improved to the low average range (Standard Score = 81). In terms of verbal fluency, his ability to name words that began with a specific letter in a one-minute time frame was in the average range. His semantic fluency (ability to name words in a specific category in one-minute) was low average.

**Motor and Visual Perceptual Functioning:**

Mr. Thomas is right hand dominant. His grip strength was within normal limits bilaterally. His finger tapping skills were average with his right hand and above average with his left hand. Manual dexterity were average bilaterally. Mr. Thomas' ability to construct drawings of increasing difficulty was in the borderline range.

**CONCLUSIONS AND DIAGNOSIS**

Fetal alcohol spectrum disorder (FASD) is an umbrella term describing the range of effects that can occur in an individual whose mother drank alcohol during pregnancy. These effects may include physical, mental, behavioral, and/or learning disabilities with possible lifelong implications. FASD refers to the following conditions: Fetal Alcohol Syndrome (FAS), including partial FAS, Fetal Alcohol Effects (FAE), Alcohol-Related Neurodevelopmental Disorder (ARND), and Alcohol-Related Birth Defects (ARBD). FAS is characterized by a pattern of neurologic, behavioral, and cognitive deficits that can interfere with growth, learning, and socialization. Partial FAS is used to describe persons with confirmed alcohol exposure, facial dysmorphic features, and one other group of symptoms (growth retardation, central nervous system deficits or cognitive deficits.) People with ARND have the central nervous system deficits of FAS but not all of the physical features of FAS. ARBN describes defects in the skeletal and major organ systems (heart, eyes, ears, kidneys).

People with any manifestation of FASD are born with them. There is no cure. The primary effect of FASD is on the brain. Primary deficits appear in and impair a broad array of neurocognitive functions, such as attention, learning, visual perceptual, sensory integration, motor ability, memory, language development, logical thinking, impulse, inhibitions, and emotional/behavioral control. There can be significant variability in individual deficits. Some people are slightly affected and manifest only mildly dysfunctional behaviors; others may be severely affected and exhibit devastating disability in their ability to cope with ordinary life changes/challenges. Each person with FASD has his or her own special needs, problems, and capabilities. Although prenatal alcohol exposure can cause intellectual disability, there are only approximately 10% of those who fall within the intellectually deficient range. In fact, there is a wide range of differences, with IQ scores ranging from 16 to 120.

Intellectually, Mr. Thomas has a Full Scale IQ of 78, which places him in the Borderline Intellectual Functioning range. Borderline Intellectual Functioning is a categorization of intelligence wherein a person has below average cognitive abilities (Standard Score 70-79), but this functioning is not as severe as Intellectual Disability (Standard Score below 70). During school years, individuals with Borderline Intellectual Functioning are often "slow learners" and have academic difficulties.

A high proportion of children with FASD meet criteria for a diagnosis of ADHD. Although Mr. Thomas did not have a formal diagnosis of ADHD, Linda Overby, School Psychologist, Clark County School District, described Mr. Thomas as impulsive, distracted, and one who did not learn from consequences. This description would have been during Mr. Thomas' middle school years.

Mr. Thomas continues to have significant problems with attention. Pervasive deficits in visual sustained attention have been found. Mr. Thomas' performance on the CPT-3 (a sustained visual attention task) indicated inattentiveness. Results of the Speech-Sounds Perception Test and Seashore Rhythm Test indicated mild/moderate to severe impairment. Verbal attention abilities were in the borderline range. People with FASD are reported to have learning problems with lower school performance and lower performance in reading and spelling, with deficits in mathematical skills. Mr. Thomas' academic skills meet this description: they are consistently in the borderline to significantly impaired range. Spelling, word reading, and reading comprehension skills were borderline. Math calculation and math reasoning were in the significantly impaired range.

Deficits in processing speed and efficiency have been found in more challenging and complex tasks. Mr. Thomas' processing speed was in the low average range. Additionally, on visual tasks requiring simple visual scanning and visual scanning with simple and complex distractor, his abilities declined as the difficulty increased. Mr. Thomas exhibits expressive and receptive language deficits. Verbal comprehension and verbal fluency were in the average to low average range. Confrontational naming was significantly impaired. Receptive language skills were borderline. Listening comprehension skills were impaired with words and sentences. His listening comprehension improved to the low average range when comprehending paragraph-length information. Mr. Thomas exhibited significant memory deficits, with visual memory more impaired than verbal memory abilities. In terms of executive functioning, visual cognitive flexibility was impaired, and verbal cognitive flexibility skills were low to borderline. Planning and organization were average to low average. General reasoning skills were significantly impaired. Hands-on problem solving abilities were average; however, it should be noted that Mr. Thomas had a random, trial-and-error approach. When provided with corrective feedback, his problem solving abilities were within normal limits. Deficits in visuospatial abilities were noted; Mr. Thomas performed in the borderline range on the VMI.

Following 2 days of testing, which included a clinical interview, and a review of documents and records, I have determined that Mr. Thomas meets the criteria for a diagnosis of Alcohol-Related Neurodevelopmental Disorder (ARND). My diagnosis is based on the following results:

1. The first criteria for this diagnosis is based on maternal consumption of alcohol during her pregnancy. There is documentation in the records that Mr. Thomas' mother consumed alcohol in great quantities during her pregnancy.
2. Central nervous system abnormalities were measured by the neuropsychological evaluation. Although Mr. Thomas does not have a prior formal diagnosis of ADHD, there are contemporaneous indications from Linda Overby, the school psychologist, that he met many of the criteria for that diagnosis. Results of the current evaluation show difficulties with attention, poor impulse control, and impulsive behaviors. He also exhibits deficits in intellectual abilities, academic functioning, verbal abilities (expressive, receptive, verbal fluency, confrontational naming, and listening comprehension), processing speed, memory, executive functioning, and visuospatial abilities.

3. There is evidence of a pattern of behavior or cognitive abnormalities that are inconsistent with developmental level and cannot be explained by familial background or environment (e.g., learning difficulties, poor impulsive control). There is a history of school and behavioral difficulties, as summarized in the narrative of the Social History.

Secondary disabilities arise because of the interaction of cognitive deficits observed in people with FASD and their traumatic environmental experiences in childhood. These secondary disabilities adversely affect an individual's life outcomes. These secondary disabilities include: mental health problems, inappropriate sexual behaviors, disrupted school experiences, substance abuse problems, criminal behavior, confinement, poor work history, and problems living independently as an adult.

Mr. Thomas grew up in a home characterized by abuse, violence, alcoholism and poverty (lack of food). His father physically abused his mother. His mother drank heavily while she was pregnant with Mr. Thomas and throughout his upbringing. Mr. Thomas was beaten by his mother. His father was incarcerated for kidnapping and rape. His family moved frequently and he attended multiple schools. He was developmentally delayed during his early years. Peer interaction was poor because he refused to shower and generally smelled of urine because he was incontinent. He was called "Stinky." Mr. Thomas was an angry child and was resistant to people in authority. He received support services in school under a diagnosis of Severe Emotional Handicapped and Severe Learning Disabilities. He was a discipline problem in school, attended alternative schools, and had early encounters with the legal system.

Date: July 27, 2017



Joan Mayfield, Ph.D., ABN, ABPdN  
Licensed Psychologist  
Neuropsychologist



## SUMMARY OF TEST RESULTS

### VALIDITY TESTING

TOMM – Trial 1 – 48/50; Trial 2 – 50/50; Retention – 50/50  
15-Item – 12/15 – Cut Off 9/15

Dot Counting Test – E-Score – 15; E-Score Cut-Off - 15

Reliable Digit Span – WAIS-IV

Digit Span Forward 4

Digit Span Backward 4

Digit Span Sequence 3

11 – Within Normal Limits

### INTELLIGENCE

Wechsler Adult Intelligence Scale - Fourth Edition (WAIS-IV)

	<u>Standard Score</u>	<u>Scaled Score</u>
Verbal Comprehension	89	
Similarities		7
Vocabulary		9
Information		8
Perceptual Reasoning	77	
Block Design		7
Matrix Reasoning		4
Visual Puzzles		7
Working Memory	77	
Digit Span		7
Arithmetic		5
Processing Speed	84	
Symbol Search		7
Coding		7
Full Scale	78	
General Ability Index	80	

Test of General Reasoning Ability (TOGRA)

	<u>Standard Score</u>	<u>Percentile Rank</u>
General Reasoning Index	57	0.2

## ACHIEVEMENT

### Wide Range Achievement Test - Fourth Edition (WRAT 4)

	<u>Standard Score</u>	<u>Percentile Rank</u>
Word Reading	79	8
Sentence Comprehension	75	5
Spelling	76	5
Reading Composite	75	5

### Academic Achievement Battery (AAB)

	<u>Standard Score</u>	<u>Percentile Rank</u>
Listening Comprehension -- Words/Sentences	69	2
Listening Comprehension -- Passages	81	10
Mathematical Calculation	67	1
Mathematical Reasoning	69	2

## ATTENTION/ EXECUTIVE FUNCTIONING

### Delis-Kaplan Executive Function System

	<u>Scaled Score</u>
Verbal Fluency	
Letter Fluency	8
Category	6
Category Switching Responses	4
Category Switching Accuracy	6
Color-Word Interference Test	
Color Naming	4
Word Reading	4
Inhibition	3
Inhibition/ Switching	1
Free Sorting	
Confirmed Correct Sorts	8
Free Sorting Description Score	7
Sort Recognition	
Sort Recognition Description Score	7
Tower	10

**Halstead Reitan Battery**

	<u>Level of Impairment</u>
Speech – Sounds Perception Test	Mild/Moderate Impairment
Seashore Rhythm Test	Severe Impairment

**Conners' Continuous Performance Test-Third Edition (CPT3)**

	<u>T-Score</u>	<u>Interpretation</u>
Detectability	42	Good ability to differentiate targets from non-targets
Omissions	49	Average rate of missed targets
Commissions	38	Good performance; below average rate of incorrect responses to no-targets
Perseverations	45	Average rate of random, repetitive, or anticipatory responses
RT	78	Very slow mean response speed
HRT SD	64	High inconsistency in reaction times
Variability	60	High Variability in reaction time consistency
HRT Block Change	44	Showed a good ability to sustain or increase response speed in later blocks
HRT ISI Change	80	Very substantial reduction in response speed at longer ISIs

Issues related to:  
 Inattentiveness (Strong Indication)  
 Vigilance (Some Indication)

**Wisconsin Card Sorting Test – Computer Version 4**

	<u>Raw Score</u>	<u>Standard Score</u>	<u>Percentile</u>
Perseverative Responses	3	116	86
Categories Completed	6		> 16
Trials to Complete 1 <sup>st</sup> Category	12		> 16
Failure to Maintain Set	0		> 16

**Comprehensive Trail-Making Test (CTMT)**

	<u>Standard Score</u>	<u>Percentile</u>
Trail 1	87	18
Trail 2	99	46
Trail 3	75	5
Trail 4	84	14
Trail 5	64	< 1
<b>Quotient Score</b>	<b>79</b>	<b>7</b>

**MEMORY**

**Test of Memory and Learning-Second Edition (TOMAL-2)**

<u>Indexes</u>	<u>Standard Score</u>	<u>Percentile Rank</u>
Verbal Memory Index	70	2
Nonverbal Memory Index	54	<1
Composite Memory Index	56	<1
Delayed Verbal Recall Index	54	<1
Attention/ Concentration Index	77	6
Sequential Recall Index	66	1
Free Recall Index	61	<1
Associative Recall Index	71	3
Learning Index	81	10
	<u>Scaled Score</u>	<u>Percentile Rank</u>
Memory for Stories	4	2
Word Selective Reminding	6	9
Object Recall	6	9
Paired Recall	6	9
Facial Memory	5	5
Abstract Visual Memory	4	2
Visual Sequential Memory	1	<1
Memory for Location	4	2
Digits Forward	6	9
Letters Forward	6	9
Digits Backward	8	25
Letters Backward	6	9
Manual Imitation	7	16
Visual Selective Reminding	11	63
Memory for Stories (Delayed)	5	5
Word Selective Reminding (Delayed)	1	<1

**LANGUAGE**

**Comprehensive Receptive and Expressive Vocabulary Test – Third Edition – CREVT - 3**

	<u>Standard Score</u>	<u>Percentile Rank</u>
Receptive Vocabulary	74	4

**Boston Naming Test – Significantly Impaired**

**MOTOR AND VISUAL PERCEPTUAL**

**Berry-Buktenica Developmental Test of Visual – Motor Integration**

<b>Standard Score</b>	77
<b>Percentile</b>	6

**Grooved Pegboard**

	<u>Scaled Score</u>
Dominant Hand	8
Non-Dominant Hand	8

**Grip Strength**

	<u>Scaled Score</u>
Dominant Hand	10
Non-Dominant Hand	10

**Tapping**

	<u>Scaled Score</u>
Dominant Hand	11
Non-Dominant Hand	13

# EXHIBIT A

# EXHIBIT A

## CURRICULUM VITAE

Joan Weaver Mayfield, Ph.D, ABN, ABPdN

ADDRESS:	<u>Residence</u> 9735 Windham Dr. Dallas TX 75243	<u>Professional</u> Our Children's House at Baylor 3301 Swiss Avenue Dallas, TX 75204
TELEPHONE:	(214) 570-9737	(214) 820-9808
MOBILE:	(972) 978-5290	
FAX:		(214) 820-9878
E-mail		joanmayfieldphd@gmail.com

### CURRENT POSITION:

August 1997-Present Pediatric Neuropsychologist / Psychologist  
Our Children's House at Baylor  
Dallas, TX

Our Children's House is a pediatric specialty hospital with a 35-bed capacity. Children are admitted into one of several programs including acute rehabilitation (head injury, spinal cord injury, tumors, etc), sub-acute (coma monitoring and training of parents), ventilatory care, palliative care, and a feeding disorders (failure to thrive, feeding disorders).

Duties: Responsibilities include assessment and development of treatment plans for inpatients, cognitive rehabilitation, monitoring of coma status, parent support, education, and training. It also consists of being part of a multidisciplinary team treating all our children, as well as administering comprehensive neuropsychological evaluations for children with head injuries approximately 6-months after injury.

### EDUCATION:

Ph.D. Texas A&M University-College Station, TX  
Degree: Ph.D., August 1996  
Major: School Psychology (APA approved)  
Specialization: Child Clinical Psychology  
Clinical Neuropsychology  
Dissertation: Are ethnic differences in diagnosis of childhood psychopathology an artifact of psychometric methods? An experimental evaluation of Harrington's hypothesis using parent reported symptomatology.  
Major Professor: Cecil R. Reynolds, Ph.D.

M.Ed. University of Texas at Tyler-Tyler, TX  
Degree: Masters of Education, May 1982  
Major: Special Education

BS Midwestern State University-Wichita Falls, TX  
Degree: Bachelor of Science, May 1972  
Major: Elementary Education  
Minor: Music

### OTHER EDUCATIONAL EXPERIENCES

- September 27, 2014 Cultural competence and Health Care (Cultural Competence: Module 5). Presented by The National Register of Health Service Psychologists.  
3 CE Units
- September 6, 2014 The WISC-V & Q-Interactive: The New System. Presented at the American Academy of Pediatric Neuropsychology Annual Conference.  
3 CE Units
- September 5, 2014 Ethical Issues Facing Pediatric Clinical Neuropsychologist When Called Up to Provide Deposition of Courtroom Testimony: Staying Sane and Ethical in an Adversarial Environment. Presented at the American Academy of Pediatric Neuropsychology Annual Conference.  
3 CE Units
- April 25, 2014 Bipolar and Borderline Personality Disorders. Presented by Paul E. Keck, Jr., MD and Lois Choi-Kain, MD, Med. McLean Hospital, Department of Postgraduate Continuing Education.  
3 CE Units
- April 1, 2014 Ethics in Psychology. Presented by Elite Continuing Education.  
3 CE Units
- March 21, 2014 Brain-Based Therapy & Practical Neuroscience: Attachment & Emotional Regulation. Presented by John B. Arden, Ph.D., PESI, Inc.  
6 CE Units
- January 29, 2014 What Psychologists Need to Know About the Impact of Hearing Loss (Module 24, 2012). Presented by The National Register of Health Service Psychologists.  
1 CE Unit
- January 28, 2014 Activism – Protecting Patient Privacy (Ethics: Module 22, 2013). Presented by The National Register of Health Service Psychologists.  
1 CE Unit
- January 28, 2014 DOGS, DNA and DOMA: Supreme Court 2012-2013 (Legal Issues: Module 11, 2013). Presented by The National Register of Health Service Psychologists.  
2 CE Units
- January 23, 2014 The Assessment of Childhood Trauma (Module 29, 2013). Presented by The National Register of Health Service Psychologists.  
2 CE Units
- July 15, 2013 CE Exam: Assessing and Managing Risk in Psychological Practice, Second Edition. American Psychological Association Insurance Trust.  
8 CE Units
- July 11, 2013 DSM-5. Presented as an interactive webinar sponsored by TZKSeminars.  
3 CE Units
- June 3, 2013 New Developments in Ethics and the Law. Presented as an interactive webinar sponsored by TZKSeminars.  
3 CE Units



- May 29, 2013 Introduction to Sports Neuropsychology. Presented by Robert L. Conder, PsyD. National Academy of Neuropsychology webinar.  
1.5 CE Units
- March 11, 2012 Ethical/Legal Issues in Neuropsychological Practice: Update. Presented by Theodore Wasserman, Ph.D. & Barry Crown, J.D., Ph.D. by the American College of Professional Neuropsychology, Las Vegas, NV  
3 CE Units
- March 10, 2012 Enhancing Objectivity in Forensic Neuropsychological Assessment-A Workshop Sponsored by PAR. Presented by David Schwartz, Ph.D. the by the American College of Professional Neuropsychology, Las Vegas, NV  
3 CE Units
- March 10, 2012 Update on Third Party Observers: Practice and Ethical Considerations. Presented by Robert J. McCaffrey, Ph.D. by the American College of Professional Neuropsychology, Las Vegas, NV  
1.5 CE Units
- March 9, 2012 Montessori, Waldorf, and Reggio Emilia: Understanding and Working with Children in Alternative Education Programs. Presented by Steve Hughes, Ph.D. and Sarah Schnoebelen, Ph.D. by the American College of Professional Neuropsychology, Las Vegas, NV  
3 CE Units
- March 9, 2012 Current Developments in the Public School Response to Intervention (RTI) Movement and the Impact on Pediatric Neuropsychology Practice. Presented by Elaine, Fletcher-Janzen, Ph.D. by the American College of Professional Neuropsychology, Las Vegas, NV  
3 CE Units
- March 8, 2012 Diagnosing Autism and Related PDD's, Pediatric Bipolar Disorder, ADHD, and Applications of BASC-2 in Behavioral RTI: Advanced Training of the BASC-2. Presented by Cecil Reynolds, Ph.D., ABN, ABPdn, ABPP by the American College of Professional Neuropsychology, Las Vegas, NV  
6 CE Units
- March 13, 2011 Current Ethical/ Legal Issues for Professional Neuropsychology. Presented by Theodore Wasserman, Ph.D., ABPdN & Barry Crown, Ph.D., ABN, JD sponsored by the American College of Professional Neuropsychology, Las Vegas, NV  
3 CE Units
- March 12, 2011 Pediatric Sleep Disorders: Assessment and Treatment Implications for Neuropsychologists. Presented by Peter A. Dodzik, Psy.D., ABPdN, ABN sponsored by the American College of Professional Neuropsychology, Las Vegas, NV  
3 CE Units
- March 12, 2011 Reframing Nonverbal Learning Disorders: Identifying Clinical Subgroups. Presented by Gail M. Grodzinsky, Ph.D., ABPdN sponsored by the American College of Professional Neuropsychology, Las Vegas, NV  
3 CE Units
- March 11, 2011 From Movement to Thought: Subcortical Contributions to Psychiatric and Learning Disorders. Presented by Dana Chidekel, Ph.D., ABPdN, ABN and

Deborah E. Budding, Ph.D., ABPdN, ABN sponsored by the American College of Professional Neuropsychology, Las Vegas, NV

3 CE Units

- March 11, 2011 Neuropsychological Science and Forensic Competencies: Applications in Civil and Criminal Cases. Presented by Daniel A. Martell, Ph.D. ABPP sponsored by the American College of Professional Neuropsychology, Las Vegas, NV  
3 CE Units
- March 10, 2011 Management of Sports Related Brain Injury: The Evolving Role of Neuropsychology. Presented by Mark R. Lovell, Ph.D. sponsored by the American College of Professional Neuropsychology, Las Vegas, NV  
3 CE Units
- February 28, 2010 Current Ethical/Legal Issues in Neuropsychological Practice. Presented by Thomas Theodor Wasserman, Ph.D., ABPP, ABPdN & Robert J. McCaffrey, PhD., ABN; Barry Crown, Ph.D., ABN, JD-Moderator/ Discussant sponsored by the American College of Professional Neuropsychology, Las Vegas, NV  
3 CE Units
- February 27, 2010 Introduction to Empirically Based Assessment: Developing an EBA Model for AD/HD. Presented by Steven J. Hughes, Ph.D., LP, ABPdN: The Tova Company sponsored by the American College of Professional Neuropsychology, Las Vegas, NV  
3 CE Units
- February 27, 2010 Neuropsychology and the Death Sentenced Inmate. Presented by Michael B. Charlton, J.D. sponsored by the American College of Professional Neuropsychology, Las Vegas, NV  
3 CE Units
- February 26, 2010 Assessment of Executive Function with the BRIEF and the TEC. Presented by Gerald A. Gioia Ph.D., sponsored by the American College of Professional Neuropsychology, Las Vegas, NV  
3 CE Units
- February 26, 2010 Central Auditory Processing in Children and Adolescents. Presented by Teresa Bailey Ph.D., sponsored by the American College of Professional Neuropsychology, Las Vegas, NV  
3 CE Units
- November 13, 2009 The Gifted Brain: The state of the literature on neurobiological differences. Presented by Nadia Webb, Psy.D., ADPdN, ABN by the American College of Professional Neuropsychology at the National Academy of Neuropsychology, New Orleans, LA.  
2 CE Units
- November 11, 2009 CPT Update. Presented by Antonio E. Puente, Ph.D. sponsored by the National Academy of Neuropsychology, New Orleans, LA  
1 CE Unit
- April 19, 2009 Bottom-Line Ethics for Neuropsychologists. Presented by Larry Cohen, J.D, sponsored by the American College of Professional Neuropsychology, San Diego, CA  
3 CE Units
- April 18, 2009 An Updated Primer for Neuropsychologists on the Admission of clinical and Forensic Evidence. Presented by Larry Cohen, J.D, sponsored by the American College of Professional Neuropsychology, San Diego, CA  
3 CE Units

- April 18, 2009      Interpreting Neuropsychological Patterns: Looking at something other than scores. Presented by John Meyers, Psy.D.,FACPN, ABPdN sponsored by the American College of Professional Neuropsychology, San Diego, CA  
1.5 CE Units
- April 18, 2009      Assessment of Executive Functioning with the Test of Verbal Conceptualization and Fluency (TVCF) and the Comprehensive Trailmaking Test (CTMT). Presented by Cecil Reynolds, Ph.D, ABN and A. Mac Horton, EdD, ABPP, ABN, sponsored by the American College of Professional Neuropsychology, San Diego, CA  
1.5 CE Units
- April 17, 2009      Ethical, Professional and Scientific Issues to Consider in Adopting Revised/Updated Psychological/Neuropsychological Test. Presented by Robert McCaffrey, Ph.D, ABN, ABPdN sponsored by the American College of Professional Neuropsychology, San Diego, CA  
1.5 CE Units
- April 17, 2009      2007-2008 Psychopharmacology Update. Presented by John Courtney, Ph.D, ABN, sponsored by the American College of Professional Neuropsychology, San Diego, CA  
1.5 CE Units
- April 17, 2009      Development and Application of the Reynolds Intellectual Assessment Scales (RIAS) and the Comprehensive Trailmaking Test (CTMT). Presented by Cecil Reynolds, Ph.D. ABN. sponsored by the American College of Professional Neuropsychology, San Diego, CA  
1.5 CE Units
- April 17, 2009      Neuropsychological Assessment and Sports: New Clinical Opportunités. Presented by Mark Lovell, Ph.D, ABN, sponsored by he American College of Professional Neuropsychology, San Diego, CA  
1.5 CE Units
- October 24, 2008      Executive Functions and How the Brain Deals with Novelty and Ambiguity. Presented by Eklhonon Goldberg, Ph.D., ABPP, sponsored by the American College of Professional Neuropsychology, New York City, New York.  
2 CE Units
- July 26, 2008      Boundary Crossing: The Ethics of Race, Class, and Gender. Presented by Pamela Brandwein, Ph.D., sponsored by The Reunion Institute, Dallas, Texas.  
3 CE Units
- November 16, 2007      The Neuropsychological IME: Tips from the "Inside." Presented by Tom McLaren, Ph.D., ABPN, by the American College of Professional Neuropsychology, Scottsdale, Arizona  
2 CE Units
- November 15, 2007      Clinical Updates in Pediatric Epilepsy. Presented by Philip Fastenau, Ph.D., at the 27<sup>th</sup> Annual Meeting of the National Academy of Neuropsychology, Scottsdale, Arizona  
1.5 Units
- November 15, 2007      Retirement, Planning, and Fringe Benefits for the Practitioner. Presented by Steven Swartz, CPA, PFS, CVA, at the 27<sup>th</sup> Annual Meeting of the National Academy of Neuropsychology, Scottsdale, Arizona  
1 CE Unit

- November 15, 2007 Behavioral Teratology: Neuropsychological Effects of Prenatal Exposures. Presented by Sarah N. Mattson, Ph.D., at the 27<sup>th</sup> Annual Meeting of the National Academy of Neuropsychology, Scottsdale, Arizona  
1.5 CE Units
- October 19, 2007 Ethics: A Musical Comedy. Presented by the Dancing Moose Productions at the Reunion Institute, Dallas, Texas  
3 CE Units
- July 13, 2007 Using the Cognitive Hypothesis Testing Model in Neuropsychological Assessment. Presented by James B. Hale, Ph.D., ABSNP, at the Second National School Neuropsychology Conference, Grapevine, Texas.  
3 CE Units
- July 13, 2007 The Neuropsychological Implications of Central Nervous System Infectious Diseases. Presented by David Lang, M.D., FAAP, FPID, at the Second National School Neuropsychology Conference, Grapevine, Texas  
3 CE Units
- July 12, 2007 The Trajectory of Frontal Lobe Development: What is it and when does it all end? Presented by Cecil R. Reynolds, Ph.D., ABPN at the Second National School Neuropsychology Conference, Grapevine, Texas  
2 CE Units
- October 27, 2006 The Meyers Neuropsychological Battery (MNB). Presented by John Meyers and Martin Rohling by the American College of Professional Neuropsychology, San Antonio, Texas  
2 CE Units
- October 26, 2006 “War of the Words”—The Neuropsychological Deposition. Presented by John Courtney, James Ewbank, Bonny Forrest, and Cecil Reynolds at the 26<sup>th</sup> Annual Conference of National Academy of Neuropsychology, San Antonio, Texas  
3 CE Units
- October 25, 2006 Recovery of Consciousness After Severe Brain Injury: From Coma to Confusion to Altered Awareness. Presented by Joseph Giacino and Mark Sherer at the 26<sup>th</sup> Annual Conference of National Academy of Neuropsychology, San Antonio, Texas  
3 CE Units
- July 28, 2006 Ethical Issues Confronting Mental Health Professionals: Avoiding Risk and Dangerous Clients. Presented by Thomas L. Hartsell, Jr. at the Salesmanship Club, The Reunion Institute, Dallas, Texas  
3 CE Units
- January 21, 2006 Is Neuropsychology going extinct? Presented by Sam Goldstein at the Coalition of Clinical Practitioners in Neuropsychology Annual Meeting, Las Vegas, Nevada  
1.5 CE Units
- January 21, 2006 Psychoeducational Evaluations and Interventions. Presented by Deborah Kundert at the Coalition of Clinical Practitioners in Neuropsychology Annual Meeting, Las Vegas, Nevada  
3 CE Unit
- January 21, 2006 Medical Informatics in Neuropsychology. Presented by Peter Gillman at the Coalition of Clinical Practitioners in Neuropsychology Annual Meeting, Las Vegas, Nevada  
1 CE Unit

- January 21, 2006      Developing and Maintaining an Independent Practice in Forensic Neuropsychology. Presented by Randolph Price at the Coalition of Clinical Practitioners in Neuropsychology Annual Meeting, Las Vegas, Nevada  
3 CE Units
- January 20, 2006      Developmental and Application of the Reynolds Intellectual Assessment Scales (RIAS) and the Comprehensive Trail Making Test (CTMT). Presented by Cecil R. Reynolds at the Coalition of Clinical Practitioners in Neuropsychology Annual Meeting, Las Vegas, Nevada      3 CE Units
- October 21, 2005      Assessing Executive Functioning with the Comprehensive Trailmaking Test (CTMT) and the Test of Verbal Conceptualization and Fluency (TVCF). Presented by Cecil R. Reynolds and Arthur MacNeil Horton, Jr. by the American College of Professional Neuropsychology      2 CE Units
- October 20, 2005      “News they can use”: Translating Test Results Into Real-World Recommendations in Pediatric Neuropsychological Evaluations. Presented by Karen Wills at the National Academy of Neuropsychology 25<sup>th</sup> Annual Conference, Tampa FL      3 CE Units
- October 20, 2005      The Assessment of Effort and Test Taking Compliance in Children: An Acknowledgment of our Potential for Error. Presented by John Courtney, Paul Green, Lloyd Flaro, Martin Rohling, and Juliet Dinkins at the National Academy of Neuropsychology 25<sup>th</sup> Annual Conference, Tampa FL  
3 CE Units
- April 7-8, 2005      Reprogramming the Human Brain: Translating Brain Plasticity Research into Clinical Practice. Presented by the Center for Brain Health, U of TX at Dallas  
9 CE Units
- January 16, 2005      Legal and Ethics Updates for Neuropsychologists. Presented by Larry Cohen, J.D. at the Second Professional Neuropsychology Weekend and Annual Meeting of the Coalition of Clinical Practitioners in Neuropsychology, Las Vegas, NV.  
3 CE Units
- January 15, 2005      Case Studies in Child/Adolescent Neuropsychology: LD/ADHD/Forensic. Presented by Lewis Etcoff, Ph.D. at the Second Professional Neuropsychology Weekend and Annual Meeting of the Coalition of Clinical Practitioners in Neuropsychology, Las Vegas, NV.      3 CE Units
- January 15, 2005      An Introduction to the Louisiana Prescription Authorization Bill: Lessons Learned. Presented by Cary Rostow, Ph.D. at the Second Professional Neuropsychology Weekend and Annual Meeting of the Coalition of Clinical Practitioners in Neuropsychology, Las Vegas, NV.  
1 CE Unit
- January 15, 2005      An Update on ADHD Across the Lifespan: Science, Non-Science and Nonsense. Presented by Sam Goldstein, Ph.D. at the Second Professional Neuropsychology Weekend and annual Meeting of the Coalition of Clinical Practitioners in Neuropsychology, Las Vegas, NV.      3 CE Units
- January 14, 2005      Town Hall Meeting: Issues Related to Neuropsychology Standards of Care. Presented by A. MacNeill Horton, Jr., EdD. And Ralph M. Reitan, Ph.D. at the

Second Professional Neuropsychology Weekend and Annual Meeting of the  
Coalition of Clinical Practitioners in Neuropsychology, Las Vegas, NV.

1 CE Unit

- January 14, 2005 From BASE to BASC2: Assessing Child Behavior Disorder, Personality, and Affect at the Second Professional Neuropsychology Weekend and Annual Meeting of the Coalition of Clinical Practitioners in Neuropsychology, Las Vegas, NV. 3 CE Units
- November 19, 2004 The Spectrum of Right Hemisphere Syndromes: Classification and Differential Diagnosis. Presented by Patricia A. Pimental, Psy.D., ABPN, by The American College of Professional Neuropsychology, Westin Hotel, Seattle, WA 2 CE Units
- October 11, 2004 Review of Ethical Principles & Situations. Presented by Thomas L. RoCHAT, Ph.D., Professional Association for Continuing Education, Dallas, TX 3 CE Units
- October 18-19, 2003 Current Issues within Private Practice in the HIPAA Era. Presented by Edward A. Peck, III, Ph.D., ABPN at the Fourth Annual Meeting of the Coalition of Clinical Practitioners in Neuropsychology, Adam's Mark Hotel, Dallas, TX 2 CE Units
- October 17, 2003 Ethical Issues in Neuropsychology: When Ethics and Practice Collide. Presented by Shane Bush, Ph.D., Grant Iverson, Ph.D., and Margaret Bogie at the 23<sup>rd</sup> Annual Meeting of the National Academy of Neuropsychology, Adam's Mark Hotel, Dallas, TX 3 CE Units
- October 17, 2003 Navigating Around Land Mines on the Ethics and Practice Highways. Presented by Larry Cohen, J.D., Ph.D. by the American College of Professional Neuropsychology. Adam's Mark Hotel, Dallas, TX 2 CE Units
- October 16, 2003 The Atkins Decision and the Forensic Evaluation of Mental Retardation: Roles for the Neuropsychologist and Special Educator. Presented by Randall Price, Ph.D. and Kay B. Stevens Ph.D. at the 23<sup>rd</sup> Annual Meeting of the National Academy of Neuropsychology, Adam's Mark Hotel, Dallas, TX 3 CE Units
- March 20-23, 2003 13<sup>th</sup> Annual Nelson Butters' West Coast Neuropsychology Conference. Presented by the University of California, San Diego School of Medicine, San Diego, CA 15 CE Units
- October 12, 2002 Practice Survival in Clinical Neuropsychology: Legislative/Reimbursement Issues and the Art of the Possible. Presented by Patricia A. Pimental, PsyD at the Coalition of Clinical Practitioners in Neuropsychology 3<sup>rd</sup> Annual Meeting, Miami Beach, Florida 2 CE Units
- October 12, 2002 Making the Courtroom Safe for Neuropsychologists: Getting Heard and Being Believed. Presented by Larry J. Cohen, J.D., Ph.D. at the Coalition of Clinical Practitioners in Neuropsychology 3<sup>rd</sup> Annual Meeting, Miami Beach, Florida 3 CE Units

- October 11, 2002 The Clinical Assessment Scales for the Elderly, Development, Standardization, and Clinical Applications. Presented by Cecil R. Reynolds, Ph.D., ABPN, ABPP at the Coalition of Clinical Practitioners in Neuropsychology 3<sup>rd</sup> Annual Meeting, Miami Beach, Florida  
3 CE Units
- October 9, 2002 Town Hall Meeting. Presented by Leslie D. Rosentein, Ph.D.; Antonio E. Puente, Ph.D.; Jeffrey T. Barth, Ph.D., & Neil H. Pliskin, Ph.D. at the 22<sup>nd</sup> Annual National Academy of Neuropsychology Conference.  
1 CE Unit
- October 9, 2002 Reimbursement, Documentation, and Fraud Issues Involving the Reimbursement for Clinical Neuropsychological Services (or how Medicare dictates the practice of clinical neuropsychology). Presented by Antonio E. Puente, Ph.D. at the 22<sup>nd</sup> Annual National Academy of Neuropsychology Conference.  
1 CE Unit
- April 25, 2002 Ethical Principles in the Practice of the Mental Health Professional. Presented by Allan M. Tepper, J.D., Psy.D. for Medical Educational Services, Inc. in Dallas, Texas  
6 CE Units
- November 3, 2001 Current Issues in Clinical Neuropsychology. Presented by Cecil R. Reynolds, Ph.D. and Rosemarie S. Moser, Ph.D. at the Coalition of Clinical Practitioners in Neuropsychology 2<sup>nd</sup> Annual Meeting, San Francisco, California  
1 CE Unit
- November 1, 2001 Mild Head Injury in Children and Adolescents. Presented by Keith Owen Yeates, Ph.D. at the National Academy of Neuropsychology Annual Conference, San Francisco, California.  
3 CE Units
- September 14, 2001 Pediatric Medical Symposium. Sponsored by the University of Oklahoma College of Medicine, Office of Continuing Medical Education, Department of Pediatrics, University of Oklahoma College of Medicine—Tulsa, The Brain Injury Association of Oklahoma, Tulsa, Oklahoma.  
8 CE Units
- August 2, 2001 Cerebral Mysteries: Impulsive Behavior, Cognition, & Learning Disabilities. Presented by Nikita B. Katz, M.D., Ph.D. for the Institute for Natural Resources in Dallas, Texas.  
6 CE Units
- November 19, 2000 Understanding and Surviving the Daubert Challenge to Your Testimony. Presented by Cecil R. Reynolds, Ph.D. at the Coalition of Clinical Practitioners in Neuropsychology Conference, Orlando Florida.  
2 CE Units
- November 18, 2000 Town Hall Meeting: Open Discussion. Clinical Neuropsychology: What is our current status and do we have a future? Discussants: Gerald Goldstein, Cecil R. Reynolds, Robert J. McCaffrey, and Joan W. Mayfield. Presented at the Coalition of Clinical Practitioners in Neuropsychology, Orlando, Florida.  
1.5 CE Units
- November 17, 2000 Woodcock-Johnson III: Overview and Neuropsychological Interpretation. Workshop presented by Raymond S. Dean, Ph.D. and Frederick A. Schrank,

- Ph.D. at the National Academy of Neuropsychology Annual Meeting, Orlando, Florida. 2 CE Units
- September 18, 2000 Treatment of Serious Mental Disorders. Another View of Empirically Supported Techniques. Telehealth Applications in Professional Practice. August 2000 Register Report, Volume 26, N. 2,3. 1 CE Unit
- March 3, 2000 Update on the Neuropsychology of Children: Diagnosis, Treatment and Promising Research. Workshop presented by CEU Solutions, Austin, TX. 6 CE Units
- November 13, 1999 Developmental Framework for the Neuropsychological Assessment of the Child. Workshop presented by Jane H. Bernstein, Ph.D. at the National Academy of Neuropsychology Annual Meeting, San Antonio, TX 6 CE Units
- July 8 & 9, 1999 Critical Incident Stress Management—Basic Course presented by Paul Tabor, M.Miss., EMT-P, State CISM Coordinator, Texas Department of Health, Austin Texas. 16 CE Units
- June 13, 1999 Management of Pediatric Brain Injury. Workshop moderated by Ann V. Deaton, Ph.D. at The 23<sup>rd</sup> Annual Williamsburg Conference: Cognitive, Neuromedical and Behavioral Aspects of Brain Injury Rehabilitation, Williamsburg, Virginia. 3 CE Units
- June 12, 1999 Ecological Validity and Approaches to Cognitive Rehabilitation. Workshop presented by Rick J. Parente, Ph.D. at the 23<sup>rd</sup> Annual Williamsburg Conference: Cognitive, Neuromedical and Behavioral Aspects of Brain Injury Rehabilitation, Williamsburg, Virginia. 2.25 CE Units
- June 11, 1999 Self-Awareness Assessment and Intervention. Workshop presented by Tessa Hart, Ph.D. at the 23<sup>rd</sup> Annual Williamsburg Conference: Cognitive, Neuromedical and Behavioral Aspects of Brain Injury Rehabilitation, Williamsburg, Virginia. 2 CE Units
- March 25, 1999 WeeFIM System: Functional Assessment for Children and Adolescents with Acquired and Congenital Disability Training. Cooks Children's Medical Center, Ft. Worth, TX
- November 7, 1998 Mild TBI: Diagnostic Challenges. Workshop presented by Jeffrey Barth, Ph.D. and Ronald Ruff, Ph.D. at the National Academy of Neuropsychology Annual Conference, Washington, DC. 3 CE Units
- November 5, 1998 Pervasive Developmental Disorders and Autistic Spectrum Disorders. Workshop presented by Valerie Scaramella-Nowinski, Ph.D.; Jeffrey Lewine, Ph.D.; Ricki Robinson, M.D.; & Porta Iverson at the National Academy of Neuropsychology Annual Conference, Washington, DC. 6 CE Units
- August 19, 1998 The Grieving Child: What to Do When Death Enters the Life Of A Child.  
Cv: 2/18/2015



- Workshop presented by Dr. James A. Fogarty of Carondelet Management Institute, Dallas, TX 3 CE Units
- November 13, 1997 A Process-Oriented Approach to Intelligence Testing: The WISC-III as a Neuropsychological Instrument. Workshop presented by Edith Kaplan, Ph.D. at the National Academy of Neuropsychology Annual Conference, Las, Vegas, NV 3 CE Units
- November 11, 1997 Neurobiological Basis of Reading Disabilities and ADHD. Workshop presented by George Hynd, Ph.D. at the National Academy of Neuropsychology Annual Conference, Las Vegas, NV 3 CE Units
- November 11, 1997 Pediatric Head Trauma: Integrating Research with Clinical Data. Workshop presented by Eileen Fennell, Ph.D. at the National Academy of Neuropsychology Annual Conference, Las Vegas, NV 3 CE Units
- November 8, 1996 Autism: Diagnosis, Treatment and Current Issues. Presented by Texas Education Agency
- October 31, 1996 Diagnosis and Treatment in Mild Head Injury. Workshop presented by Wiley Mittenberg, Ph.D. and Lori Miller, Ph.D. at the National Academy of Neuropsychology Annual Conference, New Orleans, LA 3 CE Units
- April 11, 1995 He did it because he wanted to.... Workshop presented by Joan McCord at the Nebraska Symposium of Motivation, Lincoln, NE April 11, 1995. Perspectives on the heterogeneity of antisocial behavior. Workshop presented by Michael Rutter at the Nebraska Symposium of Motivation, Lincoln, NE.
- November 4, 1995 Behavioral, developmental and emotional problems in the school setting. Workshop presentation by Sam Goldstein at the National Academy of Neuropsychology Annual Conference, San Francisco, CA 3 CE Units
- November 2, 1995 Psychosocial consequences of traumatic brain injury. Workshop presented by Murial Lezak, Ph.D. at the National Academy of Neuropsychology Annual Conference, San Francisco, CA 3 CE Units
- August 25, 1995 Assessment and Intervention Planning with the Behavior Assessment System for Children (BASC). Workshop presented by Randy Kamphaus, Ph.D., Omaha, NE
- November 1994 Practical Approaches to Puzzling Problems in Clinical Neuropsychology Using the Halstead-Reitan Neuropsychological Test Battery. Full-day workshop presented by Ralph Reitan, Ph.D. and Deborah Wolfson, Ph.D. at the National Academy of Neuropsychology Annual Conference, Orlando, FL 3 CE Units
- November 1994 Neurobehavioral Characteristics of Diffuse Damage in Brain Disease. Workshop presented by Muriel Lezak, Ph.D. at the National Academy of Neuropsychology Annual Conference, Orlando, FL 3 CE Units

- November 1993 Forensic Aspects of Minor TBI in Children. Workshop presented by Lawrence C. Hartlage, Ph.D., at the National Academy of Neuropsychology Annual Conference, Phoenix, AZ  
3 CE Units
- November 1993 Life Goes On: Neuropsychological Sequelae of Childhood Diseases Workshop presented by Greta N. Wilkening, Ph.D., at the National Academy of Neuropsychology Annual Conference, Phoenix, AZ  
3 CE Units
- November 1993 Beyond Diagnosis: Planning Interventions for Children's Neuropsychologically Based Disorders. Workshop presented by Cathy Telzrow, Ph.D. at the National Academy of Neuropsychology Annual Conference, Phoenix, AZ  
3 CE Units
- April 1993 Play Therapy with Sexually Abused Children (Full-day), Workshop presented by Family Psychological Consultants. Byron E. Norton, Ed D, Austin, TX

## PROFESSIONAL EXPERIENCES

### TEACHING

- Associate Professor  
2013 – 2018  
University of Nevada Las Vegas  
Las Vegas, Nevada
- Adjunct Faculty  
Spring 1997  
Department of Psychology  
Richland College  
Richardson, TX  
Department of Psychology  
Courses: Understanding Human Sexuality  
Introduction to Psychology
- Co-instructor  
Fall 1994-Spring 1995  
Texas A&M University  
Department of Educational Psychology  
Course: Consultation: Theory and Techniques  
Doctoral level course  
Supervisor: Jan Hughes, Ph.D.
- Duties: Responsible for developing role plays, training students through role play activities, supervise students in consultation in the schools
- Instructor  
Summer, 1994  
Texas A&M University  
Dept. of Educational Psychology  
Course: Educational Psychology  
Junior/Senior level course (approximately 75 students)  
Supervisor: Patricia Alexander, Ph.D.
- Duties: Responsible for all phases of teaching including the preparation and administration of lectures, the selection of reading materials and assignments, the creation of exams, and the assignment of course grade.

Graduate Teaching  
Assistant  
Fall 1993-Spring 1994

Texas A&M University  
Dept. of Educational Psychology  
Course: Educational Psychology  
Junior/Senior level course (approximately 20 students/lab)  
Supervisor: Ernie Goetz, Ph.D. Fall, 1993  
Stephanie Knight, Ph.D. Spring, 1994

Duties: Responsible for the instruction of the lab portion of  
of the course, working individually with students, grading  
assignments, and the assignment of course grade.

Director  
1985-1987

Tokyo Student Center  
Tokyo, Japan.

Duties: Management of English language training program for 320  
Japanese students per week including registration, selection of  
materials, teaching classes, and supervision of other teachers.

Special Education Teacher  
1981-1983

Mabank Middle School  
Mabank, Texas

Duties: Resource room teacher for grades 6-8 children with mentally  
retardation, children with learning disabilities, and children who are  
severely emotionally disturbed.

Substitute Teacher  
1974-1981

Tyrone Public Schools  
Tyrone, Oklahoma.

Duties: Regular education teacher grades K-12

Band/Kindergarten  
Teacher  
Fall 1975

Adams School District  
Adams, OK

Duties: Half-day kindergarten teacher and half day middle school  
band teacher

Elementary Teacher  
1972-1974

Ft. Worth Independent School District  
Ft. Worth, TX

Duties: Regular education grades 3 and 4, and music grades 1-5.

## CLINICAL

Private Practice  
Oct 1997-Present  
Oct 1997-Sept 2000  
Post Doctoral Fellowship  
In Neuropsychology  
Aug 1996-July 1997

Psychologist/ Neuropsychologist  
Dallas, Texas  
The Cornerstone Center, Sherman, Texas  
UT Southwestern Medical Center  
Supervisors: C. Munro Cullum, Ph.D., ABPP  
Cheryl H. Silver, Ph.D.

Psychology Intern  
July 1995-July 1996

Nebraska Internship Consortium in Professional Psychology  
Director: Jane Close Conoley, Ph.D.

Meyer Rehabilitation Center  
University of Nebraska Medical Center  
600 South 42nd Street  
Omaha, NE 68198-5450

Duties: Neuropsychological assessment, psychological screens for potential transplant patients for the Liver Transplant team, developmental testing for Neonatal Intensive Care Follow-up Clinic, provide psychological services in an inter-disciplinary University Affiliated Program to children and families presenting with behavioral, emotional, physical, educational and cognitive disabilities.

Neuropsychology  
Practicum  
Jan 1995-May 1995

Austin Neurological Clinic  
Austin, TX  
Supervisors: David R. Steinman, Ph.D., Cecil R. Reynolds, Ph.D.  
Duties: Child and Adult Neuropsychological Evaluations

School Psychology  
Intern  
Aug 1994-May 1995

Bryan Independent School District  
Bryan, TX  
Supervisors: Michael J. Ash, Ph.D., Jan Hughes, Ph.D.

Duties: Teacher consultation, Multidisciplinary Team meetings, LD and ED assessments, individual child therapy.

Therapist  
Aug 1994-May 1995

Contract with Texas Department of Human Services  
Texas A&M University  
College Station, TX  
Supervisor: Frances Worchel Prevatt

Duties: Provide group therapy with adolescents regarding the necessary skills to successfully transition into independent living.

Diagnostician/  
Clinician  
1993-1994

Counseling and Assessment Clinic  
Texas A&M University  
College Station, TX  
Supervisor: Cecil R. Reynolds

Duties: Psychoeducational testing

Therapist  
Spring, 1994

Counseling and Assessment Clinic  
Texas A&M University  
College Station, TX  
Supervisor: Frances Worchel Prevatt  
Duties: Individual and family therapy

Private Practice  
1988-1992

Tokyo, Japan

Duties: Specialized in educational evaluations and making treatment recommendations.

**CONSULTATION**

Cv: 2/18/2015

Educational Diagnostician  
Spring 1994  
Bastrop Independent School District  
Special Education Services.  
Bastrop, TX

Educational Diagnostician.  
Spring 1993  
Gonzales Independent School District  
Special Education Services  
Gonzales, TX

Educational Consultant  
1988-1992  
Japan Baptist Mission  
Tokyo, Japan.

Duties: Provide educational diagnostic testing and evaluations; make recommendations for remediations; prepare educational budget needs for missionary children in Japan; serve as resource person for teaching materials, textbooks, teaching aids; help in selection of home school curriculum; coordinate ordering of home school materials; maintain a resource library of materials; and plan/conduct seminars/field trips for parents and home school students.

Learning Improvement  
Consultant.  
1991-1992  
The American School in Japan  
Tokyo, Japan

Responsibilities: provide faculty with educational profiles on students with diagnosed learning difficulties; assist faculty by providing educational modifications to use in the classroom; monitor the progress of these students; consult with parents and teachers; serve as a specialist on the child study team.

Editorial Consultant.  
Fall, 1988  
"Living in Tokyo"--published in 1988 by Publication Section  
Public Relations Division  
Office of Information  
Tokyo Metropolitan Government.  
Tokyo, Japan

### **ADMINISTRATIVE ACTIVITIES**

Intern Representative, 1995-1996, Nebraska Internship Consortium in Professional Psychology  
Student Volunteer Coordinator, 1995, National Academy of Neuropsychology Program Committee.  
Conference Chairman, 1994-1995, Educational Psychology Social Organization (EPSO),  
Texas A&M University  
Treasurer, 1994-1995 Texas Student Council for Exceptional Children

### **EDITORIAL ACTIVITIES**

Ad Hoc Reviewer (2011 to present) International Journal of Developmental Neuroscience  
Ad Hoc Reviewer (2011 to present) The Clinical Neuropsychologist  
Editorial Review Board. (2004 to present) Applied Neuropsychology  
Editorial Review Board. (1997 to present) Archives of Clinical Neuropsychology.

### **PUBLICATIONS**

Thaler, N.S., Terranova, J., Turner, A., Mayfield, J., & Allen, D.N. (2015). A comparison of IQ and memory cluster solutions in moderate to severe pediatric traumatic brain injury. Applied Neuropsychology: Child 4(1), 20-30.

Allen, D.N., Stolberg, P.C., Thaler, N.S., Sutton, G., & Mayfield, Joan (2014). Validity of the RIAS for assessing children with traumatic brain injury: Sensitivity to TIB and comparability to the WISC-III and WISC-IV. Applied Neuropsychology: Child 3 (2), 83-93.

Schiffmann, R., Mayfield, J., Swift, C., & Nestrail, I. (2013). Quantitative neuroimaging in mucopoliposis type IV., Molecular Genetics and Metabolism, <http://dx.doi.org/10.1016/j.ymgme.2013.11.007>.

Thaler, N.S., Reger, S.L., Ringdahl, E.N., Mayfield, J., Goldstein, G., & Allen, D.N. (2013). Neuropsychological profiles of children with ischemic and hypoxic anoxic brain injury: Six case reports. Child Neuropsychology 19 (5), 479-494.

Allen, D.N., Thaler, N.S., Ringdahl, E.N., Barney, S., & Mayfield, J. (2012). Comprehensive Trail Making Test performance in children and adolescents with traumatic brain injury. Psychological Assessment 24 (3), 556-564.

Thaler, N.S., Mayfield, J., Reynolds, C.R., Hadland, Cora & Allen, D.N. (2012). Teacher reported behavioral disturbances in children with traumatic brain injury: An examination of the BASC-2. Applied Neuropsychology: Child 1 (1), 30-37.

Thaler, N.S., Allen, D.N., Hart, J.S., Boucher, J.R., McMurray, J.C., & Mayfield, J (2012). Neurocognitive correlates of the Trail Making Test for Older Children in patients with traumatic brain injury. Archives of Clinical Neuropsychology 27 (4), 446-452.

Ensign, J., Maricle, D.E., Brown, C., & Mayfield, J. (2012). Psychosocial subtypes on the Behavior Assessment System for Children, Second Edition following pediatric traumatic brain injury. Archives of Clinical Neuropsychology 27 (3), 277-292.

Rackley, Christopher, Allen, D.N., Fuhrman, L.J., & Mayfield, J. (2011). Generalizability of WISC-IV index and subtest score profiles in children with traumatic brain injury. Child Neuropsychology, DOI:10.1080/09297049.2011.628308.

Thaler, N.S., Barney, S. J., Reynolds, C.R., Mayfield, J., Allen, D.N. (2011). Differential sensitivity of TOMAL subtests and index scores to pediatric traumatic brain injury. Applied Neuropsychology, 18 (3), 168-178.

Thaler, N.S., Bello, D.T., Randall, C., Goldstein, G., Mayfield, J., & Allen, D.N. (2010). IQ profiles are associated with differences in behavioral and emotional functioning following pediatric traumatic brain injury. Archives of Clinical Neuropsychology, 25 (8), 781-790.

Brauman Johnson, W.L., Maricle, D.E., Miller, D.C., Allen, D.N., & Mayfield J (2010). Utilization of the Comprehensive Trail Making Test as a Measure of Executive Functioning in Children and Adolescents with Traumatic Brain Injuries. Archives of Clinical Neuropsychology, 25(7), 601-609.

Allen, D.N., Leany, B.D., Thaler, N.S., Cross, C., Sutton, G.P., & Mayfield, J. (2010). Attention and memory profiles in pediatric traumatic brain injury. Archives of Clinical Neuropsychology, 25(7), 618-633.

Thaler, N.S., Allen, D. N., Park, B.S., McMurray, J.C., & Mayfield, J. (2010). Attention processing abnormalities in children with TBI and ADHD: Differential impairment of component processes. Journal of Clinical and Experimental Neuropsychology, *iFirst*, 1-8.

Thaler, N.S., Allen, D.N., McMurray, J., & Mayfield, J. (2010). Sensitivity of the Test of Memory and Learning to attention and memory deficits in children with ADHD. Clinical Neuropsychologist, *24*(20), 246-264.

Allen, D.N., Thaler, N.S., Donohue, B., & Mayfield, J (2010). WISC-IV profiles in children with traumatic brain injury: Similarities and differences to the WISC-III. Psychological Assessment, *22*(1), 57-64.

Allen, D.N., Haderlie, M., Kazakov, D., & Mayfield, J. (2009). Construct and criterion validity of the Comprehensive Trail Making Test in children and adolescents with traumatic brain injury. Child Neuropsychology, *15*, 543-553.

Park, B.S., Allen, D.N., Barney, S.J., Rindhahl, E.N., & Mayfield, J.W. (2009). Structure of attention in children with traumatic brain injury. Applied Neuropsychology, *16* (1), 1-10.

Bello, D.T., Allen, D.N., & Mayfield, J.W. (2008). Sensitivity of the Children's Category Test Level 2 to brain dysfunction. Archives of Clinical Neuropsychology, *23* (3), 329-339.

Armstrong, C.M., Allen, D.N., Donohue, B., & Mayfield, J.W. (2008). Sensitivity of the comprehensive trail making test to traumatic brain injury in adolescents. Archives of Clinical Neuropsychology, *23* (3), 351-358.

Allen, D.N., Knatz, D.T., & Mayfield, J.W. (2006). Validity of the Children's Category Test-Level 1 in a clinical sample with heterogeneous forms of brain dysfunction. Archives of Clinical Neuropsychology, *21* (7 ), 711-720.

Mayfield, J. W. & Homack, S. (Summer 2005). Behavior considerations associated with traumatic brain injury. Special issue: traumatic brain injury in children and youth: Educational planning to ensure positive student outcomes. Preventing School Failure, *49* (4), 17-22.

Alexander, A. I. & Mayfield, J. W. (2005). Latent factor structure of the Test of Memory and Learning in a pediatric traumatic brain injured sample: Support for a general memory construct. Archives of Clinical Neuropsychology, *20* (5), 587-598.

Warzak, W.J. & Mayfield, J.W. (2005) Practice of child-clinical Neuropsychology: An introduction. Book Review. Journal of Child Neurology, *20*(1), 85.

Shafer, M. E., Mayfield, J. W. & McDonald, F. (2005). Alternating hemiplegia of childhood: A study of neuropsychological functioning. Applied Neuropsychology, *12* (1), 49-56.

Lowther, J. L. & Mayfield, J. W. (2004). Memory functioning in children with traumatic brain injuries: A TOMAL validity study. Archives of Clinical Neuropsychology, *19*(1), 105-118.

Lowe, P. A., Mayfield, J. W. & Reynolds, C. R. (2003). Gender differences in memory test performance among children and adolescents. Archives of Clinical Neuropsychology, *18*(8), 865-878.

Kuhn, B. R., Mayfield, J. W., & Kuhn, R. H. (Summer 1999). Clinical assessment of child and adolescent sleep disturbance. Journal of Counseling and Development, *77*(3), 359-368.

Mayfield, J. W. & Reynolds, C. R. (1998). Are ethnic differences in diagnosis of childhood psychopathology an artifact of psychometric methods? An experimental evaluation of Harrington's hypothesis using parent reported symptomatology. Journal of School Psychology, 36(3), 1-22.

Mayfield, J. W. & Reynolds, C. R. (1997). Black-white differences in memory test performance among children and adolescents. Archives of Clinical Neuropsychology, 12(2), 111-122.

### **Educational Material**

Mayfield, J. W., & Murphy, P. K. (1994). Educational psychology: Lab manual for students. Texas A&M University: College Station, TX.

Mayfield, J. W., & Murphy, P. K. (1994). Educational psychology: Lab manual for instructors. Texas A&M University: College Station, TX.

### **BOOKS**

Thaler, N.S., Allen, D.N., Reynolds, C.R. & Mayfield, J.W. (2013). Identifying neurodevelopmental stages of memory from childhood through adolescence with cluster analysis. In D.N. Allen & G. Goldstein (Eds). Cluster Analysis in Neuropsychological Research. New York: Springer.

Allen, D.N., Thaler, N.S., Cross, C.L. & Mayfield J.W. (2013). Classification of traumatic brain injury severity: A neuropsychological approach. In D.N. Allen & G. Goldstein (Eds). Cluster Analysis in Neuropsychological Research. New York: Springer.

Reynolds, C.R. & Mayfield, J.W. (2011). Neuropsychological assessment in genetically linked neurodevelopmental disorders. In S. Goldstein and C. R. Reynolds (Eds). Handbook of Neurodevelopmental and Genetic Disorders in Children 2<sup>nd</sup> Edition. New York: Guilford Press.

Mayfield, J.W., Pederson, L., McDonald, F. (2009). Neuropsychology and coma management. In C. R. Reynolds, and E. Fletcher-Janzen (Eds). Handbook of Clinical Child Neuropsychology 3<sup>rd</sup> Edition.

Reynolds, C. R. & Mayfield, J. W. (2009). Neuropsychological assessments. In T. B. Gutkin & C. R. Reynolds (Eds). The Handbook of School Psychology 4<sup>th</sup> Edition. New York: John Wiley & Sons.

Reynolds, C. R. & Mayfield, J. W. (2005). Neuropsychological assessment in genetically linked neurodevelopmental disorders. In C. R. Reynolds & S. Goldstein (Eds.), Handbook of neurodevelopmental and genetic disorders in adults. New York: Guilford Press.

Mayfield, J. W. (2003). Contributing editor. In E. Fletcher-Janzen & C.R. Reynolds (Eds.), Childhood Disorders Diagnostic Desk Reference. New York: John Wiley & Sons.

Lowe, P. A. & Mayfield, J. W. (2000). Scott craniodigital syndrome with mental retardation. In C. R. Reynolds & E. Fletcher-Jansen (Eds.), Encyclopedia of special education (2<sup>nd</sup> ed., vol. 3, p.1602). New York: John Wiley & Sons.

Lowe, P. A. & Mayfield, J. W. (2000). Singleton-Merton syndrome. In C. R. Reynolds & E. Fletcher-Jansen (Eds.), Encyclopedia of special education (2<sup>nd</sup> ed., vol. 3, p.1652). New York: John Wiley & Sons.



Lowe, P. A. & Mayfield, J. W. (2000). Yunis-Varon syndrome. In C. R. Reynolds & E. Fletcher-Jansen (Eds.), Encyclopedia of special education (2<sup>nd</sup> ed., vol. 3, pp. 1645-1646). New York: John Wiley & Sons.

Reynolds, C. R. & Mayfield, J. W. (1999). Neuropsychological assessment in genetically linked neurodevelopmental disorders. In Goldstein, S & C. Reynolds (Ed.), Handbook of neurodevelopmental and genetic disorders in children (pp. 9-37). New York: Guilford.

Warzak, W. J., Mayfield, J. W., & McAllister, J. L. (1998). Central nervous system dysfunction: Brain injury, post-concussive syndrome, and seizure disorder. In T.S. Watson & F. M. Gresham (Eds.), Handbook of child behavior therapy (pp. 287-309). New York: Plenum Press.

Young, M. & Mayfield, J. W. (1998). Cornelia DeLange. In L. Phelps (Ed.), Health-related disorders in children and adolescents: A guidebook for understanding and educating (pp.179-184). Washington, DC: APA.

## ABSTRACTS

Mayfield, A., Reyes, A., Mayfield, J., & Allen, D. (2014). Improvements in executive function following traumatic brain injury in children. Archives of Clinical Neuropsychology 29 (6), 590 doi:10.1093/arclin/acu038.225

Parke, E., Call, E., Allen, D., & Mayfield, J. (2014). Social cognition in adolescents with traumatic brain injury. Archives of Clinical Neuropsychology 29 (6), 586 doi:10.1093/arclin/acu038.216

Vertinski, M., Allen, D., Farcello, C., & Mayfield, J. (2014). Factor Structure of the CPT-II in Pediatric Populations. Archives of Clinical Neuropsychology 29 (6), 570-571 doi:10.1093/arclin/acu038.179

Stolberg, P., Hart, J., Jones, W., Mayfield, J., & Allen D. (2012). Executive function predicts academic achievement in children with brain injuries. Archives of Clinical Neuropsychology 27 (6), 672.

Turner, A., Thaler, N.S., Ringhadl, E.N., Mayfield, J., & Allen, D.N. (2011). Discrete executive functional outcome in children with acquired brain disorders. Applied Neuropsychology 18 (3), 234-235.

Hart, J.S., Ringhadl, E.N., Thaler, N.S., Mayfield, J., & Allen, D.N. (2011). Criterion validity of the Comprehensive Trail-Making Test for traumatic brain injury. Applied Neuropsychology 18 (3), 234.

Boucher, J.R., Barney, S.J., Mayfield, J., & Allen, D.N. (2011). Trail-Making Tests: comparing versions in children with TBI. Applied Neuropsychology 18 (3), 233-234.

Terranova, J., Barney, S.J., Mayfield, J., & Allen, D.N. (2011). Construct validity of the Comprehensive Trail-Making Test in children with traumatic brain injury. Applied Neuropsychology 18 (3), 232-233.

Sutton, G.P., Allen, D.N., Stolberg, P.C., Thaler, N.S., & Mayfield, J. (2011). Comparability of IQ scores produced by different measures of intelligence in children with traumatic brain injury. Applied Neuropsychology 18 (3), 232.

Safko, E., Thaler, N.S., Terranova, J., Mayfield, J., & Allen, D. (2011). Cognitive and behavioral differences among ADHD subtypes. Applied Neuropsychology 18 (3), 231-232.

Stolberg, P., Hart, J., Jones, W., Mayfield, J., & Allen, D. (2011). Associations between executive functions and academic achievement in Children with traumatic brain injury (TBI). Archives of Clinical Neuropsychology, *26* (6), 521.

Sutton, G, Ringdahl, E., Thaler, N. Barney, S. Mayfield, J., Pinegar, J., & Allen, D. (2010). Differences in executive function profiles in normal children and those with traumatic brain injury. Archives of Clinical Neuropsychology, *25* (6), 492.

Terranova, J., Kazakov, D., McMurray, J., Mayfield, J., & Allen, D (2010). Construct validity of the Wechsler Intelligence Scale for Children – Fourth Edition in pediatric traumatic brain injury. Archives of Clinical Neuropsychology, *25* (6), 492.

Vertinshi, M., Smith, L., Thaler, N., Mayfield, & Allen, D. (2010). Criterion Validity of the Test of Memory and Learning (TOMAL) in pediatric TBI. Archives of Clinical Neuropsychology, *25* (6), 525.

Thaler, N., Lechuga, D., Cross, C., Salinas, C., Reynolds, C., Mayfield, J. & Allen, D. (2010). Memory profile patterns across developing youth: An examination of the Test of Memory and Learning. Archives of Clinical Neuropsychology, *25* (6), 550.

Barney, S., Allen, D., Stolberg, P., & Mayfield, J. (2010). Construct validity of Reynolds Intellectual Assessment Scales (RIAS) in brain-injured children. Archives of Clinical Neuropsychology, *25* (6), 528.

Stolberg, P., Thayer, S.P., Mayfield, J., Jones, W., & Allen, D. (2010). Achievement test profiles in children with traumatic brain injury. Archives of Clinical Neuropsychology, *25* (6), 491.

Neblina, C., Terranova, J., Mayfield, J., & Allen, D.N. (2010). Longitudinal stability of neurocognitive profiles in children with traumatic brain injury. Applied Neuropsychology, *17* (3), 212-213.

Barney, S.J., Pinegar, J., Thaler, N.S., McMurray, J.C., Mayfield, J., Allen, D.N. (2010). Differential impairment of attention component processes in children with TBI and ADHD. Applied Neuropsychology, *17* (3), 213-21.

Thaler, N.S., Terranova, J., Reynolds, C.R., Mayfield, J., & Allen, D.N. (2010). Behavioral disturbances in children with traumatic brain injury: teacher reports using the BASC-2. Applied Neuropsychology, *17* (3), 214.

Ringdahl, E.N., Thaler, N.S., Sanders, L.J., Mayfield, J., & Allen, D.N. (2010). Neuropsychological profiles of children with acquired anoxic brain injury: six case studies. Applied Neuropsychology, *17* (3), 219.

Stolberg, P., Jones, P., Mayfield, J., Allen, D.N. (2010). Pattern of Achievement in test performance of children following a traumatic brain injury. Applied Neuropsychology, *17* (3), 220-221.

Ringdahl, E. N., Thaler, N.S., Hodges, T. D., Mayfield, J., & Allen, D. N. (2009). WISC-IV GAI and CPI profile patterns in children with TBI. Archives of Clinical Neuropsychology, *24* (5), 478.

Barney, S. J., Thaler, N. S., Allen, D. N., Donohue, B., & Mayfield, J. (2009). Similarities and differences to the WISC-III. Archives of Clinical Neuropsychology, *24* (5), 475.

Kazakov, D., Haderlie, M. H., Terranova, J., Jones, P., Allen, D. N., & Mayfield, J. (2009). Factor structure of the Comprehensive Trail Making Testing in pediatric TBI. Archives of Clinical Neuropsychology, 24 (5), 479.

Stolberg, P., Terranova, J., Joones, P., Allen, D. N., & Mayfield, J. (2009). Performance on the Woodcock-Johnson Test of Achievement of Individuals with Traumatic Brain Injury. Archives of Clinical Neuropsychology, 24 (5), 476.

Kazakov, D., Duke, L.A., Field, R. B., Allen, D. N., & Mayfield, J. (2009). Verbal comprehension and perceptual reasoning deficits predict learning and memory impairment in children with TBI. Archives of Clinical Neuropsychology, 24 (5), 474-475.

Sutton, GP, Bello, DT, Mayfield, J, & Allen, DN. (2008). Criterion and construct validity of the DTVM I in children with brain injury. Archives of Clinical Neuropsychology, 23 (6), 643-644.

Knatz-Bello DT, Allen DN, Mayfield J (2007). Behavioral profiles of WISC-III cluster subtypes in pediatric traumatic brain injury. Archives of Clinical Neuropsychology, 22 (7), 805.

Shafer, M., Neumann, C.S., Mayfield, J.W., & Koch, S. (2007). Cluster analysis of the WISC-III factor index for children with TBI. Archives of Clinical Neuropsychology, 22 (7), 835

Randall C, Knatz-Bello DT, Allen DN, Mayfield J (2007). Attention and memory as predictors of behavioral functioning in pediatric traumatic brain injury. Archives of Clinical Neuropsychology, 22 (7), 837.

Leany B, Allen DN, Mayfield, J (2006). Further support for the validity of the Test of Memory and Learning (TOMAL) in children with traumatic brain injury and attention-deficit/hyperactivity disorder (Abstract). Archives of Clinical Neuropsychology, 21, (6), 533-537.

Randall C, Mayfield J, Strauss GP, Allen DN (2006). Sensitivity of behavioral ratings for brain dysfunction in children. Applied Neuropsychology, 13, 190-193.

Kantz, D.T., Allen, D.N., Mayfield, J.W. (2006). Sensitivity of the children's category test level 2 to brain damage. Archives of Clinical Neuropsychology, 21(6), 571.

Morrison, J.R., Mayfield, J.W., Lowther, J.L., Miller D.C., Bentz, B.B. (2006). Discriminate function analysis using the test of memory and learning: Comparisons between groups of TBI, ADHD, and control youth. Archives of Clinical Neuropsychology, 21(6), 535.

Leany, B.D., Allen D.N., Mayfield, J. W. (2006). Further support for the validity of the test of memory and learning (TOMAL) in children with traumatic brain injury and attention-deficit/hyperactivity disorder. Archives of Clinical Neuropsychology, 21(6), 533-534.

Knatz, D.T., Mayfield, J., Allen, D.N. (2005). Confirmatory factor analysis of the Children's Category Test Level 1. Archives of Clinical Neuropsychology, 20(7), 822.

Strauss, G.P., Mayfield, J, Caron, J, Allen, D.N. (2005). Behavioral differences among neuropsychological profiles of severe pediatric brain injury. Archives of Clinical Neuropsychology, 20(7), 872.

Park, B.S., Allen, D.N., Mayfield, J, Knatz, D.T. (2005). Recovery of memory function following traumatic brain injury in children. Archives of Clinical Neuropsychology, 20(7), 869.

Armstrong, C.M., Mayfield, J, Allen, D.N. (2005). Sensitivity of the Comprehensive Trail Making Test to brain injury in adolescents. Archives of Clinical Neuropsychology, 20(7), 834.

Park, B.S., Strauss, G.P., Mayfield, J, Caron, J, Allen, D.N. (2005). Teacher and parent intentional ratings are unrelated to neuropsychological measures of attention in pediatric brain injury. Archives of Clinical Neuropsychology, 20(7), 872.

Leany, B, Knatz, D.T., Allen, D.N., Mayfield, J (2005). Improvement of abstraction abilities following brain injury in children. Archives of Clinical Neuropsychology, 20(7), 868.

Newman, C. S., Shafer, M.E., Mayfield, J. W. (2003). Examining the factor structure of the Wechsler Intelligence Scale for Children—Third Edition: confirmatory factor analysis with a group of children with traumatic brain injuries. Archives of Clinical Neuropsychology, 18(7), 776.

Shafer, M. E., Mayfield, J.W., & McDonald, F. (2003). Alternating hemiplegia of childhood: a review of neuropsychological functioning. Archives of Clinical Neuropsychology, 18(7), 731-732.

Mayfield, J. W., & Reynolds, C. R. (1999). Are there differences in memory test performance among children and adolescents? Archives of Clinical Neuropsychology, 14(1), 86.

Saine, K., Mayfield, J. W., Martin, K., Cullum, C. M., & Weiner, M. F. (1998). Effects of Aricept (Donepezil) on cognitive and functional living skills in Alzheimer's disease. Journal of International Neuropsychological Society, 4(1), 32.

Barringer, M., Mayfield, J. W., & Reynolds, C. R. (1998). Performance of normal elderly on a verbal measure of set-shifting and executive function controlling gender and educational level. Archives of Clinical Neuropsychology, 13(1), 95-96.

Saine, K., Mayfield, J. W., Martin, K., Cullum, C. M., & Weiner, M. (1998). Validity of the functional living scale in a sample of alzheimer's patients. Archives of Clinical Neuropsychology, 13(1), 45.

Mayfield, J. W., Warzak, W. J., & McAllister, J. (1997). A case of Bruton's agammaglobulinemia with dementia. Archives of Clinical Neuropsychology, 12(4), 364-365.

Mayfield, J. W. & Reynolds, C. R. (1996). Black-white differences in memory test performance among children and adolescents. Archives of Clinical Neuropsychology, 11(422-423).

Reynolds, C. R., James, B. J., & Mayfield, J. W. (1995). Baseline performance of normal elderly on a verbal measurement of set-shifting and executive function. Archives of Clinical Neuropsychology, 10(4), 383.

## RESEARCH PROJECTS

2009-Present    Development of a Data Base to measure the efficiency of a cognitive day neuro rehabilitation program for children ages 5-18.

1999-Present    Developing Data Base for testing of children with traumatic brain injury, ages 5-18  
Currently have approximately 760 subjects with over 200 variables entered.

1995-1996        Research Assistant to Dr. William J. Warzak on 2 projects--

1) Primary Nocturnal Enuresis Project--to determine how treating PNE affects psychosocial functioning in children 2) trends in neuropsychology training opportunities for school psychologists, including trends in psychology journals.

- 1994-1996 Research Assistant to Dr. Cecil R. Reynolds on 2 projects:  
1) development of a standard clinical assessment of memory in the elderly (with Erin Bigler); 2) life-span development (and decline) of executive functions for ages 8 years to 90 years.
- 1994-1995 Research Assistant, Co-instructor, and Field Supervisor working with Dr. Jan Hughes on a federally funded grant. This grant, sponsored by the US Department of Education, supports activities necessary to develop and evaluate a model of conjoint, ecosystemic consultation.

### PROFESSIONAL WORKSHOPS

Mayfield, J.W. (June 26, 2012). Behavior Management for Pediatric TBI Patients. Presented to the PM&R Residents at Baylor University Medical Center, Dallas, Texas.

Mayfield, J.W. (June 16, 2012). A Child's Journey to Recovery: School Reentry. Presented at the 28th Annual Statewide Conferences of the Brain Injury Association of Texas, Austin, Texas.

Mayfield, J.W. (March 29, 2012). Neuropsychological Evaluation: Medical Model vs. School Model. Presented Social Workers and Case Managers at Our Children's House at Baylor, Dallas, Texas.

Mayfield, J.W. (January 25, 2012). School Re-Entry following a Traumatic Brain Injury. Presented to the PM&R Residents at Children Medical Center, Dallas, Texas.

Mayfield, J.W. (July 12, 2007). From Coma to the Classroom. Presented at the Second National School Neuropsychology Conference, Grapevine, Texas.

Allen, D. N., Mayfield, J. W., & Strauss, G. P. (August 11, 2006). Neuropsychological subtypes of childhood traumatic brain injury. Presented APA, New Orleans, Louisiana.

Mayfield, J.W. (September 23, 2005). Traumatic Brain Injury and its Effects on the Behavior of Children and Youth. Presented at the Sixth International Conference on Children and Youth with Behavioral Disorders, Dallas, TX

Mayfield, J. W. (May 13, 2005). Pediatric Traumatic Brain Injury. Presented to the Lewisville Independent School District Psychological Staff. Lewisville, TX

Mayfield, J. W. (July 23, 2003). Coma—Administration and Scoring of the Rappaport Coma/Near Coma Scale. Presented to the staff of Our Children's House at Baylor, Dallas. TX

Mayfield, J. W., Croom, J, Poskey, G, McCann, J. (September 14, 2001). Innovative Team Approaches in Pediatric TBI. Presented at the 2001 Pediatric Medical Symposium. Tulsa, OK.

Mayfield, J. W. (Summer 2001). Pediatric Traumatic Brain Injury. Presented as part of a seminar on Traumatic Brain Injury: Educational Implications, EDSP 5800, at University of North Texas, Programs in Special Education.

Mayfield, J. W. (December 1, 2000). Pediatric Traumatic Brain Injury: Educational strategies to help families. Presented at the 2000 Pediatric Forum: Care of the Child with Neuro-Muscular Disorders, Temple, TX.

Goldstein, G., Reynolds, C. R., McCaffrey, R. J. & Mayfield, J. W. (November 18, 2000). Clinical Neuropsychology: What is our current status and do we have a future? Town Hall Meeting. Presented at the Coalition of Clinical Practitioners in Neuropsychology First Annual Meeting, Orlando, FL.

Mayfield, J. W. (October 21, 2000). Pediatric traumatic brain injury. Presented by Pro-Med: From Hospital to Home--The Pediatric Comprised Patient, Dallas, TX.

Mayfield, J. W. (June 28, 1996). Traumatic brain injury: Helping families with educational strategies. Presented at the Summer Institute for Support Personnel: Serving Student with Traumatic Brain Injury. University of Northern Colorado, Greeley, CO.

Mayfield, J. W. (April 25, 1996). An introduction to brain injury: Implications for education. Presented at the Nebraska Department of Education Annual Staff Development Conference, Lincoln, NE.

Kuhn, B. R. & Mayfield, J. W. (March 30 & 31, 1996). Teaching parents general behavior management skills. Presented at a VISINET Workshop, Omaha, NE.

Mayfield, J. W. (March 28, 1996, April 2, 1996). Normal development: Review of general development milestones and coping strategies, screening tools. Presented by Children's Hospital Educational Council, Omaha, NE.

Mayfield, J. W. (Feb. 9, 1996). Developing an effective IEP: Special issues in educating brain injured students. Presented at the Brain Injury Update: Contributions to Educational Planning funded by Nebraska Department of Education.

## **PRESENTATIONS**

Mayfield, A., Reyes, A., Mayfield, J., & Allen, D. (2014). Improvements in Executive Function Following Traumatic Brain Injury in Children. Poster presented at the 34<sup>th</sup> Annual Meeting of the National Academy of Neuropsychology, Puerto Rico.

Parke, E., Call, E., Allen, D., & Mayfield, J. (2014). Social Cognition in Adolescents with Traumatic Brain Injury. Poster presented at the 34<sup>th</sup> Annual Meeting of the National Academy of Neuropsychology, Puerto Rico.

Vertinski, M., Allen, D., Farcello, C., & Mayfield, J. (2014). Factor Structure of the CPT-II in Pediatric Populations. Poster presented at the 34<sup>th</sup> Annual Meeting of the National Academy of Neuropsychology, Puerto Rico.

Vertinski, M., Allen D., & Mayfield, J. (2013). Factor structure of the CPT-II in a pediatric TBI sample. Poster presented at the 33<sup>rd</sup> Annual Meeting of the National Academy of Neuropsychology, San Diego, CA.

Stolberg, P., Hart, J., Jones, W., Mayfield, J., & Allen D. (2012). Executive function predicts academic achievement in children with brain injuries. Poster presented at the 32<sup>nd</sup> Annual Meeting of the National Academy of Neuropsychology, Nashville, TN.

Stolberg, P., Hart, J., Jones, W., Mayfield, J., & Allen, D. (2011). Associations between executive functions and academic achievement in Children with traumatic brain injury (TBI). Poster presented at the 31<sup>st</sup> Annual Meeting of the National Academy of Neuropsychology, Marco Island, FL.

Safko, E., Thaler, N.S., Terranova, J., Mayfield, J., & Allen, D.N. (2011). Cognitive and behavioral differences among ADHD subtypes. Poster presented at the American College of Professional Neuropsychology Annual Meeting, Las Vegas, NE.

Sutton, G.P., Allen, D.N., Stolberg, P.C., Thaler, N.S. & Mayfield, J. (2011) Comparability of IQ scores produced by different measures of intelligence in children with traumatic brain injury. Poster presented at the American College of Professional Neuropsychology Annual Meeting, Las Vegas, NE.

Terranova, J., Barney, S.J., Mayfield, J., & Allen, D.N. (2011). Construct validity of the Comprehensive Trail Making Test in children with traumatic brain injury. Poster presented at the American College of Professional Neuropsychology Annual Meeting, Las Vegas, NE.

Boucher, J.R., Barney, S.J., Mayfield, J., & Allen, D.N. (2011). Trail making tests: Comparing versions in children with TBI. Poster presented at the American College of Professional Neuropsychology Annual Meeting, Las Vegas, NE.

Hart, J.S., Thaler, N.S., Mayfield, J., & Allen, D.N. (2011). Criterion validity of the Comprehensive Trail Making Test for traumatic brain injury. Poster presented at the American College of Professional Neuropsychology Annual Meeting, Las Vegas, NE.

Turner, A., Thaler, N.S., Ringdahl, E.N., Mayfield, J., Allen, D.N. (2011). Discrete executive functions differentially predict functional outcome in children with acquired brain disorders. Poster presented at the American College of Professional Neuropsychology Annual Meeting, Las Vegas, NE.

Reger, S.L., Thaler, N.S., Mayfield, J., & Allen, D.N. (2011). Constructs mediating Trail Making Test performance in pediatric traumatic brain injury. Poster presented at the American College of Professional Neuropsychology Annual Meeting, Las Vegas, NE.

Vertinski, M., Terranova, J., Mayfield, J., & Allen, D.N.(2011). Factor structure of the Conner's Continuous Performance Test-II in children with traumatic brain injury. Poster presented at the American College of Professional Neuropsychology Annual Meeting, Las Vegas, NE.

Thaler, N.S., Mayfield, J., Allen, D.N. (2011). Factor structure of the Comprehensive Trail Making Test in children with traumatic brain injury. Poster presented at the American College of Professional Neuropsychology Annual Meeting, Las Vegas, NE.

Stolberg, P.C., Allen, D.N., Sutton, G.P., Thaler, N.S. & Mayfield, J. (2011) Validity of the Reynolds Intellectual Assessment Scales (RIAS) for assessment of children with traumatic brain injury. Poster presented at the American College of Professional Neuropsychology Annual Meeting, Las Vegas, NE.

Sutton, G, Ringdahl, E., Thaler, N, Barney, S, Mayfield, J., Pinegar, J., & Allen, D. (2010). Differences in executive function profiles in normal children and those with traumatic brain injury. Poster presented at the National Academy of Neuropsychology 30<sup>th</sup> Annual Conference, Vancouver, British Columbia.

Terranova, J., Kazakov, D., McMurray, J., Mayfield, J., & Allen, D (2010). Construct validity of the Wechsler Intelligence Scale for Children – Fourth Edition in pediatric traumatic brain injury. Poster

presented at the National Academy of Neuropsychology 30<sup>th</sup> Annual Conference, Vancouver, British Columbia.

Vertinshi, M., Smith, L., Thaler, N., Mayfield, & Allen, D. (2010). Criterion Validity of the Test of Memory and Learning (TOMAL) in pediatric TBI. Poster presented at the National Academy of Neuropsychology 30<sup>th</sup> Annual Conference, Vancouver, British Columbia.

Thaler, N., Lechuga, D., Cross, C., Salinas, C., Reynolds, C., Mayfield, J. & Allen, D. (2010). Memory profile patterns across developing youth: An examination of the Test of Memory and Learning. Poster presented at the National Academy of Neuropsychology 30<sup>th</sup> Annual Conference, Vancouver, British Columbia.

Barney, S., Allen, D., Stolberg, P., & Mayfield, J. (2010). Construct validity of Reynolds Intellectual Assessment Scales (RIAS) in brain-injured children. Poster presented at the National Academy of Neuropsychology 30<sup>th</sup> Annual Conference, Vancouver, British Columbia.

Stolberg, P., Thayer, S.P., Mayfield, J., Jones, W., & Allen, D. (2010). Achievement test profiles in children with traumatic brain injury. Poster presented at the National Academy of Neuropsychology 30<sup>th</sup> Annual Conference, Vancouver, British Columbia.

Stolberg, P., Jones, P., Mayfield, J., & Allen, D. N. (2010). Pattern of achievement test performance of children following a traumatic brain injury. American College of Professional Neuropsychology Annual Meeting, Las Vegas, NE.

Sutton G., Thaler, N. S., Garcia, A. E., Mayfield, J., & Allen, D. N. (2010). Memory and attention profiles in pediatric traumatic brain injury. Poster presented at the American College of Professional Neuropsychology Annual Meeting, Las Vegas, NE.

Thaler, N. S., Terranova, J., Reynolds, C. R., Mayfield, J., & Allen, D. N. (2010). Behavioral disturbances in children with traumatic brain injury: Teacher reports using the BASC-2. Poster presented at the American College of Professional Neuropsychology Annual Meeting, Las Vegas, NE.

Ringhdal, E. N., Thaler, N. S., Sanders, L. J., Mayfield, J., & Allen DN (2010). Neuropsychological Profiles of Children with Acquired Anoxic Brain Injury: Six Case Studies. Poster presented at the American College of Professional Neuropsychology Annual Meeting, Las Vegas, NE.

Barney, S. J., Pinegar, J., Thaler, N. S., McMurray, J. C., Mayfield, J., & Allen, D. N. (2010). Differential impairment of attention component processes in Children with TBI and ADHD. Poster presented at the American College of Professional Neuropsychology Annual Meeting, Las Vegas, NE.

Neblina, C., Allen, D. N., & Mayfield, J. (2010). Longitudinal stability of neurocognitive profiles in children with traumatic brain injury. Poster presented at the American College of Professional Neuropsychology Annual Meeting, Las Vegas, NE.

Neblina, C., Thaler, N.S., Snaders, L. J., McMurray, J.C., Mayfield, J., & Allen, D. N. (2009). TOMAL Factor Structure of children with ADHD compared to controls. Poster presented at the National Academy of Neuropsychology 29<sup>th</sup> Annual Conference, New Orleans, LA.

Barney, S. J., Thaler, N. S., Allen, D. N., Donohue, B., & Mayfield, J. (2009). Similarities and differences to the WISC-III. Poster presented at the National Academy of Neuropsychology 29<sup>th</sup> Annual Conference, New Orleans, LA.



Kazakov, D., Haderlie, M. H., Terranova, J., Jones, P., Allen, D. N., & Mayfield, J. (2009). Factor structure of the Comprehensive Trail Making Testing in pediatric TBI. Poster to be presented at the National Academy of Neuropsychology 29<sup>th</sup> Annual Conference, New Orleans, LA.

Stolberg, P., Terranova, J., Joones, P., Allen, D. N., & Mayfield, J. (2009). Performance on the Woodcock-Johnson Test of Achievement of Individuals with Traumatic Brain Injury. Poster to be presented at the National Academy of Neuropsychology 29<sup>th</sup> Annual Conference, New Orleans, LA.

Kazakov, D., Duke, L.A., Field, R. B., Allen, D. N., & Mayfield, J. (2009). Verbal comprehension and perceptual reasoning deficits predict learning and memory impairment in children with TBI. Poster to be presented at the National Academy of Neuropsychology 29<sup>th</sup> Annual Conference, New Orleans, LA.

Kazakov, D., Allen, D. N., Haderlie, M., Barney, S., & Mayfield, J. (2009). Construct validity of the Comprehensive Trail Making Test. Poster presented at the American Psychological Association Annual Convention, Atlanta, Georgia.

Sutton, G.P., Bello, D.T., Mayfield, J., & Allen, D.N. (2008). Criterion and construct validity of the DTVMi in children with brain injury. Poster presented at the National Academy of Neuropsychology 28<sup>th</sup> Annual Conference, October 22-25, New York City, NY.

Shafer, M., Neumann, C.S., Mayfield, J.W., & Koch, S. (2007). Cluster analysis of the WISC-III factor index for children with TBI. Poster presented at the National Academy of Neuropsychology 27<sup>th</sup> Annual Conference, November 14–17, Scottsdale, AZ.

Randall, C., Knatz-Bello, D.T., Allen, D.N., & Mayfield, J. (2007). Attention and memory as predictors of behavioral functioning in pediatric traumatic brain injury. Poster presented at the National Academy of Neuropsychology 27<sup>th</sup> Annual Conference, November 14-17, Scottsdale, AZ.

Knatz-Bello, D.T., Allen, D.N., Mayfield, J. (2007). Behavioral profiles of WISC-III cluster subtypes in pediatric traumatic brain injury (Abstract). Poster presented at the National Academy of Neuropsychology 27<sup>th</sup> Annual Conference, November 14-17, Scottsdale, AZ.

Timko, C.J., Kamalani, L., Mayfield, J., Allen, D.N. (2007). Using TOMAL to examine sensitivity of memory and learning in children affected with anoxia. Poster presented at the Western Psychological Association 87<sup>th</sup> Annual Convention, May 3-6, Vancouver, BC, Canada.

Pace, S.A., Barnes, L.M., Mayfield, J., Allen, D.N. (2007). Using TOMAL to assess Autism Spectrum Disorder in children. Poster presented at the Western Psychological Association 87<sup>th</sup> Annual Convention, May 3-6, Vancouver, BC, Canada.

Barney, S.J., Jetha, S.S., Mayfield, J., Allen, D.N. (2007). The results of memory and learning from TOMAL index with ADHD children. Poster presented at the Western Psychological Association 87<sup>th</sup> Annual Convention, May 3-6, Vancouver, BC, Canada.

Hoyt, T.E., Mayfield, J., Allen, D.N. (2007). The Test of Memory and Learning examining memory and learning in TBI. Poster presented at the Western Psychological Association 87<sup>th</sup> Annual Convention, May 3-6, Vancouver, BC, Canada.

Allen, D.N., Mayfield, J., Strauss, G.P. (2006). Neuropsychological subtypes of childhood traumatic brain injury. Poster presented at the American Psychological Association, August 10-13, New Orleans, LA.

Kantz, D.T., Allen, D.N., Mayfield, J.W. (2006). Sensitivity of the children's category test level 2 to brain damage. Poster presented at the 26<sup>th</sup> Annual Conference of the National Academy of Neuropsychology, October 25-28, San Antonio, Texas.

Morrison, J.R., Mayfield, J.W., Lowther, J.L., Miller D.C., Bentz, B.B. (2006). Discriminate function analysis using the test of memory and learning: Comparisons between groups of TBI, ADHD, and control youth. Poster presented at the 26<sup>th</sup> Annual Conference of the National Academy of Neuropsychology, October 25-28, San Antonio, Texas.

Leany, B.D., Allen D.N., Mayfield, J. W. (2006). Further support for the validity of the test of memory and learning (TOMAL) in children with traumatic brain injury and attention-deficit/hyperactivity disorder. Poster presented at the 26<sup>th</sup> Annual Conference of the National Academy of Neuropsychology, October 25-28, San Antonio, Texas.

Randall, C., Mayfield, J.W., Strauss, G.P., Allen, D.N. (2006). Sensitivity of behavioral ratings for brain dysfunction in ADHD. Poster presented at the Annual Meeting of the Coalition of Clinical Practitioners in Neuropsychology, January 20-22, Las Vegas, Nevada.

Leany, B., Mayfield, J.W., Allen, D.N. (2006). Sensitivity of the Test of Memory and Learning (TOMAL) to attention disorders. Poster presented at the Annual Meeting of the Coalition of Clinical Practitioners in Neuropsychology, January 20-22, Las Vegas, Nevada.

Park, B., Leany, B., Mayfield, J.W., Allen, D.N. (2006). Structure of attention in children with traumatic brain injury. Poster presented at the Annual Meeting of the Coalition of Clinical Practitioners in Neuropsychology, January 20-22, Las Vegas, Nevada.

Knatz, D.T., Mayfield, J., Allen, D.N. (2005). Confirmatory factor analysis of the Children's Category Test Level 1. Poster presented at the 25th Annual Conference of the National Academy of Neuropsychology, October 19-22, Tampa, Florida.

Strauss, G.P., Mayfield, J, Caron, J, Allen, D.N. (2005). Behavioral differences among neuropsychological profiles of severe pediatric brain injury. Poster presented at the 25th Annual Conference of the National Academy of Neuropsychology, October 19-22, Tampa, Florida.

Park, B.S., Allen, D.N., Mayfield, J, Knatz, D.T. (2005). Recovery of memory function following traumatic brain injury in children. Poster presented at the 25th Annual Conference of the National Academy of Neuropsychology, October 19-22, Tampa, Florida.

Armstrong, C.M., Mayfield, J, Allen, D.N. (2005). Sensitivity of the Comprehensive Trail Making Test to brain injury in adolescents. Poster presented at the 25th Annual Conference of the National Academy of Neuropsychology, October 19-22, Tampa, Florida.

Park, B.S., Strauss, G.P., Mayfield, J, Caron, J, Allen, D.N. (2005). Teacher and parent attentional ratings are unrelated to neuropsychological measures of attention in pediatric brain injury. Poster presented at the 25th Annual Conference of the National Academy of Neuropsychology, October 19-22, Tampa, Florida.

Leany, B, Knatz, D.T., Allen, D.N., Mayfield, J (2005). Improvement of abstraction abilities following brain injury in children. Poster presented at the 25th Annual Conference of the National Academy of Neuropsychology, October 19-22, Tampa, Florida.

Alexander, A. & Mayfield, J. (2003). CFA of the test of memory and learning in a TBI sample. Poster presented at the annual meeting of the National Academy of Neuropsychology, Dallas, TX.

Newman, C. S., Shafer, M.E., Mayfield, J. W. (2003). Examining the factor structure of the Wechsler Intelligence Scale for Children—Third Edition: confirmatory factor analysis with a group of children with traumatic brain injuries. Poster presented at the annual meeting of the National Academy of Neuropsychology, Dallas, TX.

Shafer, M. E., Mayfield, J.W., McDonald, F. (2003). Alternating hemiplegia of childhood: a review of neuropsychological functioning. Poster presented at the annual meeting of the National Academy of Neuropsychology, Dallas, TX.

Mayfield, J. W., Lowe, P.A., & Reynolds, C. R. (1998). Are there gender differences in memory test performance among children and adolescents. Poster presented at the annual meeting of the National Academy of Neuropsychology, Washington, DC.

Benton, S. B., Silver, C. H., Navarrete, M. G., & Mayfield, J. W. (1998). Diagnosing learning disabilities in adults: WJ-R versus SATA. Poster presented at the annual meeting of the American Psychological Association, San Francisco, CA.

Saine, K., Mayfield, J. W., Martin, K., Cullum, C. M., & Weiner, M. F. (1998). Effects of Aricept (Donepezil) on cognitive and functional living skills in Alzheimer's disease. Poster presented at the annual meeting of the International Neuropsychological Society Convention, Honolulu, Hawaii.

Barringer, M., Mayfield, J. W., & Reynolds, C. R. (1997). Performance of normal elderly on a verbal measure of set-shifting and executive function controlling gender and educational level. Poster presented at the annual meeting of the National Academy of Neuropsychology Convention, Las Vegas, NE.

Saine, K., Mayfield, J. W., Martin, K., Cullum, C. M., & Weiner, M. (1997). Validity of the functional living scale in a sample of alzheimer's patients. Poster to be presented at the annual meeting of the National Academy of Neuropsychology Convention, Las Vegas, NE.

Mayfield, J. W., Warzak, W. J., Poler, M., & Ford, L. (1996). Trends in neuropsychological training opportunities for school psychologists. Poster presented at the 104th Annual Convention of the American Psychological Association, Toronto, Canada.

Warzak, W. J., Gimpel, G. A., Mayfield, J. W., Kuhn, B. R. & Zucker, S. (1996). Do children treated with enuresis alarms wake-up or do they learn to sleep through the night? Poster presented at the 22nd Annual Convention of the Association for Behavior Analysis, San Francisco, CA.

Warzak, W. J., Mayfield, J. W., & McAllister, J. (1996). Integrating neuropsychological and behavioral data to develop comprehensive assessment strategies in brain injured individuals. Poster presented at the annual meeting of the Association for Advancement of Behavioral Therapy, San Francisco, CA.

Mayfield, J. W., Warzak, W. J., & McAllister, J. (1996). A case of Bruton's agammaglobulinemia with dementia. Poster presented at the annual meeting of the National Academy of Neuropsychology Convention, New Orleans, LA.

Mayfield, J. W. & Warzak, W. (1996). Trends in neuropsychology training opportunities for school psychologists. Poster presented at the annual meeting of the American Psychological Association, Toronto, Canada.

Warzak, W. J., Gimpel, G., Mayfield, J. W., Kuhn, B. R., & Zucker, S. (1996). Do children treated with enuresis alarms learn to wake-up or do they learn to sleep through the

night? Poster presented at the annual meeting of the Association of Behavior Analysis, San Francisco, CA.

Mayfield, J. W. & Reynolds, C. R. (1995). Black-white differences in memory test performance among children and adolescents. Poster presented at the annual meeting of the National Academy of Neuropsychology Convention, San Francisco, CA.

Mayfield, J. W. & Reynolds, C. R. (1995). Factor analytic investigation of ethnic bias on the test of memory and learning (TOMAL). Poster presented at the annual meeting of the National Association of School Psychologists, Chicago, IL.

Mayfield, J. W., Reynolds, C. R., & Barringer, M. (1994). Baseline performance of normal elderly on a verbal measure of set-shifting and executive function. Poster presented at the annual meeting of the National Academy of Neuropsychology Convention, Orlando, Florida.

Mayfield, J. W. (1991, October). We're all in this together. Presented at the American School in Japan Faculty In-Service, Tokyo, Japan.

Mayfield, J. W. (1989, July). Home schooling and preparing for boarding school. Presented at the Japan Baptist Mission, Tokyo, Japan.

Mayfield J. W. (1987-1988, 1992-1993) Living and working in Japan. Numerous presentations to churches, clubs, and schools in Japan, Texas, Oklahoma, & Missouri.

## **PROFESSIONAL AFFILIATIONS**

American Board of Professional Neuropsychology—Fellow  
 Oral Examination Chairman (2007 to 2011)  
 Chair of Long Range Planning Committee (2006-2009)  
 Member at Large (2006-2009, 2011-2012)  
 American Board of Pediatric Neuropsychology--Diplomate  
 American Psychological Association—Division 40 Member  
 Coalition of Clinical Practitioners in Neuropsychology  
 Chairman (2005)  
 Co-Chairman (2003-2004)  
 Member-at-Large  
 Membership Chairman  
 National Academy of Neuropsychology--Fellow  
 Membership Committee—(2005 to 2011)

## **PROFESSIONAL HONORS**

Distinguished Clinical Neuropsychologist—American Board of Professional Neuropsychology 2008  
 Nominated for Early Career Award—National Academy of Neuropsychology 2005  
 Nominated for the DFW Hospital Council Employee of the Year Award--2005  
 Notable Graduate of the Texas A&M College of Education 1999.  
 Outstanding Student Research Paper Award, National Academy of Neuropsychology  
 Annual Convention 1995.  
 Outstanding Student Research Paper Award, National Academy of Neuropsychology  
 Annual Convention 1994.  
 Phi Chi National Honor Society in Psychology, April 1993

## **CREDENTIALS AND LICENSES**

Diplomate—American Board of Pediatric Neuropsychology, 2006  
Diplomate with Added Qualifications in Child and Adolescence—ABN, 2006  
Diplomate—American Board of Professional Neuropsychology, 2002  
Credentialed Health Service Provider in Psychology #46002—National Register, issued July 2000  
Texas License #26888, issued September 1997  
Professional Educational Diagnostician--Texas, Life, issued April 1988  
Provisional Generic Special Education--Texas, Life, issued January 1983  
Provisional Elementary (Grade 1-8)--Texas, Life, issued May 1972



**EXHIBIT 207**

**EXHIBIT 207**

## Mayor shakes up housing board

Tuesday, June 17, 2003 | 11:04 a.m.

In the late 1980s gangs terrorized the residents of the Las Vegas Housing Authority's dilapidated Gerson Park project. The only thing some residents feared or mistrusted more than the hoodlums were the police.

Nevertheless, then-Metro Sgt. Robert "Bobby G" Gronauer and a small band of officers set up operations at the site that former Las Vegas City Councilman Frank Hawkins once called "the Cabrini-Green of Las Vegas," referring to the infamous Chicago housing project.

Slowly but surely, Gronauer and his officers won the support of many residents. In time the gangs were chased off, the project at Lake Mead and Martin Luther King boulevards was torn down and the Housing Authority built on the 40-acre site the Whispering Timbers single-family public homes.

If Gerson Park could be fixed, Gronauer reasons, no challenge facing today's Las Vegas Housing Authority is insurmountable.

Gronauer, who now is the Las Vegas constable, on Monday was one of three prominent Las Vegas to accept Mayor Oscar Goodman's offer to serve on the troubled Housing Authority board that is facing a potential audit by the Department of Housing and Urban Development on the mishandling of more than \$158,000 in contracts.

The other two appointees are Las Vegas commercial developer Don Davidson and Federal Public Defender Franny Forsman.

Gronauer will fill the unexpired term of former City Councilman Michael McDonald, who resigned. That term will expire in June 2004. Davidson and Forsman replace Commissioners Robert Forbuss and Dewain Steadman, whose four-year terms expire this month.

"When I patrolled Gerson Park, I saw that people who are economically challenged really need special attention -- a different kind of leadership," said Gronauer, who is in Carson City this week receiving training and recertification related to his constable position.

"I can bring that street knowledge to the job to serve the tenants, which is what public housing is all about. To be successful, you need to earn the confidence of the Housing Authority employees and the tenants."

The Las Vegas Housing Authority, now in its 56th year of operation, provides 6,800 units to 16,500 low-income families and seniors and operates on a \$65 million budget. Commissioners are paid \$80 a meeting.

"These appointees all come from varied backgrounds, but all possess leadership skills," Goodman said. "Their management and personnel skills are paramount to their performance as board members to the authority."



Gronauer declined to comment on the recent HUD report that was critical of contracting and oversight procedures regarding the Housing Authority's handling of five contracts from January 1999 through June 2002, including a controversial, \$36,000 public relations contract to former Clark County Commissioner Dario Herrera in 2001. Gronauer said he had not yet read it, but would do so.

Davidson, who has lived in Las Vegas eight years and prior to that was a longtime buyer and seller of public housing apartments and manager of Section 8 housing in Ohio, said he sent e-mail to Goodman offering to do what he could to help to address the current crisis.

"I understand the areas of funding, finance and economics and working with HUD," said Davidson, vice president of Triple Five, which built Boca Park at Charleston and Rampart boulevards and Village Square at Sahara Avenue and Fort Apache Road, among other commercial projects

"When I first came to Las Vegas I went to the Housing Authority to volunteer to help out. As I sat in the lobby I listened to angry tenants using a lot of four-letter words and saw a lot of apathy toward them. I felt if there ever came a time that I could be in a position to correct that, I would."

Davidson also declined to discuss the HUD report because he has not yet read it, but said he would do so. He said he is ready to face the rough road ahead.

"I love a challenge," Davidson said.

Attempts to reach Forsman for comment were not successful.

The trio join Housing Authority Commissioners Christopher Hoye, a Metro Police lieutenant, and Beatrice Turner, longtime tenants' rights activist.

Goodman has privately asked both to resign so that he can install more new members, Hoye and Turner said. Turner's term end in 2008. Hoye's current term expires in 2006.

Hoye said he would resign if Goodman makes a public request for him to do so. Turner said she would not resign. Goodman has declined to comment on his private discussions with Turner and Hoye.

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**EXHIBIT 208**

**EXHIBIT 208**

### Declaration of Roseann Pecora

I, Roseann Pecora, hereby declare as follows:

1. I am 67 years old. I currently reside in Colonial Heights, Virginia. I am a retired probation officer and social worker.
2. From 1981 to 1986, I was a probation officer at the Clark County juvenile detention facility.
3. The campus consisted of five main structures: the school, Zenoff Hall, boy's cottage, girl's cottage, and Third Cottage. Zenoff Hall was the main detention facility. Residents were placed at Zenoff if the discipline in the cottages proved unsuccessful.
4. The cottages were shaped like a circle on the inside. They consisted of ten rooms where each juvenile was boarded separately. The center of the cottage served as a meeting and monitoring area. The residents met here once a week, sometimes with their parents, to discuss the progress of their treatment.
5. The teachers at the school were employed by the Clark County School District. The curriculum was consistent with any other public school. The staff walked residents to and from school each day. Because males and females were separated on campus, they attended classes at different times. Residents of each cottage were kept separate, but had an opportunity to mingle during lunch and recreational activities.

6. During the day, five staff were on duty in the cottages. One staff member worked the graveyard shift. A licensed psychologist was always on call. Staff received extensive training, covering everything from physical fitness to de-escalation techniques. Safety of the staff and kids was always important. The staff was taught to avoid escalating any type of conflict. There were some children that had to be restrained and placed in their rooms. There were not many fights; a lot of the staff were fairly decent sized men that knew how to shut things down before they got out of hand.
7. The treatment model was geared towards empowering juveniles through praise and reinforcement of positive behavior, instead of only focusing on and correcting negative behavior. The residents met weekly to discuss shortfalls and progress. If residents were unable to conform to the treatment program, they lost recreation hours or the ability to wear personal clothing during designated times. Residents that did behave received more privileges, working their way up to something like a trustee. Some residents were allowed to work in the kitchen, or given additional home visits.
8. Third Cottage only housed male juveniles, ages ten through eighteen. Prior to being placed at Third Cottage, a juvenile had to stand before a judge who decided whether he was a good candidate. Once admitted, the juvenile and parent/s were given an orientation period and informed of the expectations and limitations of the program. Residents stayed for approximately six to nine months, depending on their level of treatment needs or severity of the crime.

If a child was unable to fulfill their treatment obligations at Third Cottage, there was a chance they would be sent to Elko.

9. Christopher Milan is the first person from Marlo Thomas's defense team to ever contact me. If I had been asked to testify at Marlo's original trial in 1997, or his resentencing in 2005, I would have agreed and told the jurors the things in this declaration.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed in Colonial Heights, Virginia, on June \_\_\_\_\_, 2017.

  
\_\_\_\_\_  
Roseann Pecora

# EXHIBIT 209

# EXHIBIT 209

### Declaration of Annie Stringer

I, Annie Stringer, hereby declare as follows:

1. I am seventy years old. I currently reside in Clark County, Nevada. I am the sister of Bobby Lewis, Marlo Thomas's father.
2. My parents were Will Bouldin and Pearlene Lewis. My mother kept her maiden name after they married.
3. I am the third of four children born to my parents. My brother, Willie Lewis, is two years older than me. I lost contact with Willie around 1965. My sister Rosa Lee is one year younger than me and lives in Memphis, Tennessee. Bobby was the baby of the family. He was one year younger than Rosa. Bobby died in 2014, about a year after his prison release. His cause of death was lung related.
4. Before marrying our mother, my father was married to Anna Bouldin. They had six children together, although I can only remember the names of four: Emma, Jack, Joe, and Robert. My half-siblings were much older than us and lived in Mississippi. Anna passed away and left my dad a widower.
5. My father was born in Arkansas and my mother was born in Mississippi but our family lived in Tallulah, Louisiana. Tallulah was racially segregated. We lived in a black area of West Tallulah called the Fairground. The area got its name because it hosted the annual town fair. The other blacks lived on the Southside of town, near the Mill, named for Chicago Mill and Lumber. The whites lived on the Northside in an area called the Lakes. When people in the

Fairground got sick, we burned their belongings to prevent the spread of disease.

6. We didn't leave the Fairground often, other than to go to school, the store, the post office, or work. My siblings and I attended school at Wright Elementary and Reuben McCall Junior High. Both were segregated schools for blacks. We walked around ten miles each way to school. Bobby stayed in school through the sixth grade. He didn't read or write well.
7. Our home was large and had five bedrooms. In addition to my parents and siblings, my aunt Aliyah Hendrix and my cousin Willie James also lived with us. My half siblings Jack, Joe, Emma, and Robert stayed with us sometimes too.
8. My father was older when he had his second family. He received an old folk pension. My mother also received a check because she was partially blind. We grew up poor. We bought food at the first of the month and it had to last until the first of next month. The last week of each month was hard because food was scarce. For clothing, my mother took flour sack bags and made dresses for the girls. The boys wore jeans. When my half siblings visited, they sometimes brought us clothes. We washed our clothes over the weekend and wore them again each week. My mother bought us new clothes at Christmas. Our shoes were purchased twice a year.
9. My family had a vegetable garden, pigs, chickens, and a cow. My siblings and I worked the garden and the livestock. My father was really strict about us



- doing our chores. My brothers got up early to chop wood and slop the hogs. We also picked cotton in the fields near the fairgrounds. When the fair was in town, my parents let us keep our earnings so we could go.
10. Sometimes in summers, my family traveled to Yazoo City, Mississippi, to visit my half siblings. It was during one of these trips, when Bobby was nine, that my father introduced him to bear fighting <sup>wrestling AS</sup>. Bear fighting was a big thing in Mississippi at the time. It was a weekend outdoor event where spectators stood around a square wooden box and watched people wrestle bear cubs. People were on hand to pull the bear <sup>away AS</sup> if the fighter was getting injured. Bobby was stout and tough. He was never injured in a bear fight. He got tussled around but no scratches. I remember watching him fight the bears, cheering with the other spectators. Bobby engaged in the bear fights until he was about twelve or thirteen. Eventually, it became dangerous for the family to travel to Mississippi because of the racial tension in the South at the time.
  11. Bobby loved to fight. Growing up, he fought a lot at school and in the neighborhood. He spent around two years in prison in Tallulah for fighting. Bobby had been out of prison for about a year before moving to Las Vegas to live with me. Bobby went to jail a few times in Las Vegas. Each jail stay involved fighting. His last go around involved the alleged rape of his girlfriend.
  12. I met Georgia around 1966. I knew her from the area and from school, but we weren't close. The Thomas's were a large family but I didn't know much about them. I do remember the mother passing when the children were young. Bobby

also met Georgia in Tallulah. I think he may have moved to Las Vegas because Georgia was moving here.

13. Bobby primarily lived with me in Las Vegas but was in and out of the house staying with his girlfriends. Georgia and Bobby lived together for a time. Bobby told me he and Georgia argued and fought a lot, and that there was physical abuse in the relationship. Darrell also told me about fights between Bobby and Georgia.
14. Darrell is the only one of Georgia's children I knew well. I have always called Darrell "Darren." Bobby and Georgia used to bring him over often. I kept him as a baby and changed his diapers. When he was six or seven years old, he was allowed to walk to my house by himself. Darrell treated me like his grandmother not his aunt. He called me granny. I didn't really know Larry and I don't recall meeting Marlo. Bobby had another son, Daisheki, by a different woman. I babysat him. Bobby also adopted the daughter of one of his girlfriends, Annie Dell. The daughter's name was Tina.
15. Prior to Bobby going to prison, he and Darrell were close. I kept up with what was happening with Darrell via letters from Bobby in prison. Darrell attended seminary school and became a preacher while Bobby was incarcerated. A few years prior to Bobby's release, I got in contact with Darrell and started attending his church.
16. Bobby called me from prison to tell me that Marlo was locked up with him. Bobby was keeping him straight, showing him the ins and outs of prison.

17. Cassie Ragsdale and John Carter are the first people from Marlo's defense team to ever contact me. If I had been asked to testify at Marlo's original trial in 1997, or his resentencing in 2005, I would have agreed and told the jurors the things in this declaration.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed in Clark County, Nevada, on July 28 2017.

  
Annie Stringer

# EXHIBIT 210

# EXHIBIT 210

**Declaration of David M. Schieck**

I, David M. Schieck, hereby declare as follows:

1. I am an attorney licensed to practice in Nevada since 1982. I was counsel for Marlo Thomas at his 2005 penalty-phase retrial. I was lead counsel and Dan Albrechts was second chair. This was Dan's first capital case that went to a penalty phase.
2. I have reviewed Dr. Kinsora's report and testimony from the penalty phase of Marlo's first trial. I believe the decision not to call Dr. Kinsora at Marlo's penalty retrial was based on his opinion that Marlo had a violent and explosive personality. However, we should have found another expert to explain away Dr. Kinsora's previous testimony and opinion. I did not have a tactical justification for not conducting further investigation to determine whether another mental health expert could provide such information.
3. I was not contacted by Marlo's state post-conviction attorney, Brett Whipple. If Mr. Whipple had asked me, I would have provided him with the information contained in this declaration and testified to such at an evidentiary hearing.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed in Clark County, Nevada, on July 28, 2017.

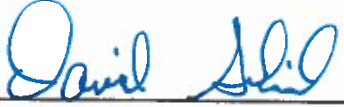
  
\_\_\_\_\_  
David M. Schieck

EXHIBIT 211

EXHIBIT 211