THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable G. Thomas Cooper, Jr., Circuit Court Judge

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Appellate Case No. 2019-001499

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WILLIAM O. DICKERSON .....PETITIONER,

v.

STATE OF SOUTH CAROLINA.....RESPONDENT.

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# APPENDIX
# VOLUME 13 OF 22

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And the third is even if they can't recall it accurately, can they, when they're presented with it, recognize the information as what -- something that they were asked to learn previously.

Q. Okay.

A. Okay, and different aspects of functioning go into these types of memory tests in the sense that a lot of executive functioning is important up front in the encoding. What's your process? What's your method? Recall and recognition are more driven by memory subsystems, okay?

That complex figure that he drew, the task involves asking the person look at this figure. Draw it. They draw it. You remove it. A little while later -- not a lot, maybe a minute at the most -- present them with blank piece of paper and you say, okay, now I want you to draw that again but from memory. It's a very difficult task, but it gives you a really nice idea of how they perceived it and how they recall it.

Remember he drew it in a piecemeal fashion where he had no real organizing aspect to the photo. That is how he reproduced it, and his reproduction placed him below the 1st percentile. So, we're talking about a striking deficit. I -- you can't -- below the 1st percentile.

There are interesting aspects of his drawing. So,

there are certain elements in the drawing that people with brain damage ---

Q. And we're talking about that same drawing that you said we'd come back to when we got to memory. Okay.

A. Yes. So, there are, within that drawing, there are certain unique elements that stand out for some people. There are a series of five parallel lines, or there is a, there's a face. You know, they're usually like a dot with -- a face with a couple dots on it. Well, people with brain damage, what they do is they will fixate on some aspect of that drawing and when they reproduce it will re-create that aspect more than once and in places it wasn't before. We call this perseveration. So, being fixated on something that they might recall better than some other aspect and then reproducing it in a way that is not correct.

Thirty or twenty -- no, actually twenty minutes later, you give them another piece of paper. You say okay. Now I want you to draw that for me again, please. And again same, he did the same production again with many elements of perseverative features where he drew the same wrong object in multiple places, and again performing at the 1st percentile.

Q. Now, what's the significance of the perseveration?

A. Again as I said, you know, some aspect of this test, a

big part of it looks at executive functioning, that encoding. How does he remember? Does he have enough executive abilities to stop, to look, to plan, to see the big picture, and to organize his behavior so that it helps guide him to an accurate representation? He didn't have that.

The perseveration is in -- if your brain is not organized in a way that you see things in an orderly, logical fashion, you are going to frantically try to remember the thing that is most salient to you, and then you repeatedly go back to that element because you are stuck, in a sense. Executive dysfunction gets you stuck; you perseverate on topics, on themes, on issues. You are locked into that.

Okay, there's a -- so, he had def -- he had difficulties in decoding. He showed executive dysfunction on this test, and he had difficulties with recall.

The last aspect of this test is you show them three pages. On those three pages, each, each of the pieces that are different pieces of that drawing are presented. They're numbered and you say, okay, I want you to see these. Look at these. I want you to circle the particular items that were part of that original picture. So, it's a recognition test. Want you to look at this. It's more passive in a way. Recognize what was in that original

picture.

He had significant difficulty doing that, and that is quite rare, and that tells me that -- much more than this is a problem of executive function or immediate recall. That this is a deficit, a difficulty in learning. That he is not retaining.

Most people when presented with things that they can recognize are cued, and they perform at least average. He scored in the 12th percentile. This tells me this is a person who has fundamental problems with memory and with learning in the nonvisual domain -- nonverbal domain, I apologize, the nonverbal domain.

All right, the parallel test to this in the verbal domain is a test of word reading. It's called the California Verbal Learning Test. On this test, he is presented with a list of sixteen words, and he's presented with them across five trials. And after each trial, he's asked to tell me. Tell me all the words you remember from the list. So, I read sixteen. Tell me all the words you remember from the list.

On his first trial, he remembered an average number of words. The average person remembers at least -- and he remembered, I believe -- I don't want to speak out of turn, but he remembered an average number of words. Okay, so that gives you one measure. Immediate memory, the ability

to repeat what you've heard, average. And that was consistent with other aspects of his immediate sort of repeat what you hear short-term, really short-term store.

But this test is nice because the sixteen words belong to four distinct categories. You don't present the words in their categories; you present them in a random order. What you look for is to see if the person has intact executive functioning, the encoding part. They help themselves by recognizing -- again, stepping back from the immediate, looking at it, and recognizing oh. They're from four categories. Okay. So, then it goes from being -- we call this ---

Q. What do you mean by categories?

A. So, they are multi-transportation, they are animals, they are items of furniture, and they are vegetables, okay? So, they -- instead of being sixteen random words, it's oh. They're, like, four. We call this truncating or chunking. If they chunk, it helps their recall. We call this semantic clustering.

We also look to see, all right, do, do they have intact executive functioning to be able to recognize and truncate to help their memory, one. Two, they have five presentations of this. Does -- their memory improves from trial to trial? Are they learning? Do they benefit from repetition?

He did not use semantic clustering. Poor, poor clustering. Did not recognize that they were part of the -- these five -- these four categories, okay? Didn't help him remember it, and when he was cued with it after free recall, his performance was only slightly better. He didn't learn across trials, so his ability to learn from trial to trial was also poor. He wasn't benefitting from repetition, okay?

And this speaks to, this other aspect speaks to mental control and mental flexibility. The words he recalled from trial to trial were not consistent; they were different. This internal across-trial consistency score was two whole standard deviations below the mean, almost as though each time he heard the list, it was a new list for him. There wasn't consistency.

And there was a great deal of repetition, and that is repetition of the same word in the same recall, and that is the verbal equivalent of the perseveration that I spoke of in the visual domain. So ---

Q. So, you're seeing that repeated?

A. Right. So in the visual domain, he perseverated by drawing the same elements repeatedly when I asked him to recall the whole figure. In the verbal domain, he repeated one or more of the words repeatedly in that whole list.

(A PAUSE.)

A. Yes, and similarly, okay, let me tell you the repetition, which is the perseveration of the words, he scored three whole standard deviations, just disparate from the mean, which has him at the way, way extreme. Less than the 1st percentile.

His recognition, so, similar to the visual domain where I show him pictures of the different elements. I ask him tell me the ones you saw before. This, I read a list of words. There are, like, a list of thirty-six or more words, I think. Tell -- I'm going to read. After I read each word, say yes or no whether or not this was a word on the initial list.

Scored very poorly on that. Again, three standard deviations below the mean. He's not learning it. He's not remembering it. He's not benefitting from repetition, and he can't recognize it.

All right, there is a third element to this test -- fourth, which is this sort of subtle, embedded measure of effort just like the TOMM or the Victoria Symptom Validity which looks for malingering where at the end of the test you say I'm going to say two words to you. I want you to tell me which one. It's a forced choice; you have to pick one. Two words. I want you to tell me which one is -- was on the list and which one wasn't. Just tell me which one was on the list.

Very rarely, if never, do people get hardly any of these wrong. If you're faking, they will get two or three wrong. They will try to pretend that they're not understanding or they've forgotten, right? It's that simple a test.

Perfect score. If I tell him a word from the list and some other word that is completely different, between that forced choice, he, he's accurate, which was reassuring for me because his performance was so poor that I needed to have that reassurance yet again even though I had done those other measures of effort.

So, what I'm seeing in this domain of learning and memory is that he has significant deficits in this, which explain why he's not progressing academically. He's not learning past the sixth grade very much at all in terms of information.

Q. So, that actually helped explain ---

A. Why he ---

Q. --- what's happening at Tara Hall and subsequently?

A. Especially once he left ---

MR. MABRY: Objection to leading.

A. --- Tara Hall.

THE COURT: Sustained.

BY MR. GROSE:

Q. Can you relate what you saw on your testing to what

you learned from his educational history?

A. Yes. So, I would not expect this level of functioning to account for what I saw in grades one, two, three, four, and five. That was a child that was progressing and learning. Subsequent to grades six, seven, eight, and nine when he dropped out was a very different child who was learning with a lot of structure. And then once he was removed from that structural environment, not learning at all. At all is maybe an overstatement. Learning so poorly to the extent that he could no longer continue.

Q. What else did you do on the battery of testing at this point?

A. So, then we looked at sort of specific measures of attention and executive functions. So, executive functions are embedded in these other measures. They are -- we use them all the, all the time every day. They're in all of our interactions, all of our thoughts, reasoning, any goal-directed behavior.

So -- but specifically looking at tests of executive function and attention, what we -- what I found on a test of attention was deficits in impulse control, deficits in his mental flexibility, deficits in strategy, planning, and organization consistent with what I saw before, consistent with what was previously reported, and consistent with reports of his behavior in adolescence, and subsequent to

that.

Q. All right, but let's, let's break that down. When you -- you're talking about the executive functioning and when you say consistent with what you saw before, what specifically do you mean?

A. Well, that he, he doesn't anticipate consequences for his behavior. Doesn't really have forethought. Just can't think sort of big picture, extract meaning from. That's simultaneous reasoning ability or the ability to switch from one thing to another to be flexible. These aspects of this executive, the executive can take all of the pieces of information, coordinate it, understand it, order it, place it in a framework that is prioritizing importance, and use that to act in a way that is to their own best interest.

We're not seeing that in this person behaviorally, and we're not seeing it when I test the actual specific faculties like mental flexibility, like being able to shift from one topic or one aspect to another, like impulse control. Not being impulsive, not reacting quickly, taking the time to slow down. See the big picture.

Q. All right, and is that consistent with anything that you saw in the MUSC records or the MUSC and the William S. Hall records?

A. Well, they didn't really do -- they didn't do any neuropsychological testing on him. But what they were

reporting and in terms of his behaviors was that the impulsivity, the running away, the dysregulation, which is also frontal lobe mediated, okay? So, all executive functioning is frontal lobe mediated, that ability to regulate your emotions. Again, poor judgment, making bad decisions, lacking forethought, poor planning, poor organization, a lot of those were reported in the R&E evaluation that he had when he was assessed at that point when he was an older teenager, when he was sixteen.

Q. Was that reported in the, the pre-Tara Hall stuff, too?

A. Well, in his behaviors, yes.

Q. Okay. All right, what else did you do on your testing where you're looking at the specific parts of the brain?

A. Okay, so he had difficulty with fine motor skills.

Q. Okay. What do you mean fine motor skills?

A. All right, there are two tests that are particularly sensitive to manual dexterity and dexterity and speed. That is sort of under the purview of the prefrontal cortex, the motor cortex. That is right up against the frontal lobes.

The Grooved Pegboard Test is the test that we give to look at fine motor speed and dexterity. There is an array that have different slots at different orientations and pegs that you have to rotate to fit into those slots, and

you have to do it quickly.

The average male with his education would complete that array, put all of those pegs in the array in about 68 seconds. Took him 104 seconds. Compare that 104 seconds with the normative samples, so if I convert that to be statistical normative value for him, it places him four standard deviations below the mean at a scaled score of 41. Average is 100. One standard deviation from average is 85. Two standard deviations is 70. He's -- and we know below 70, at least on IQ measures, we say that person's mentally retarded. He is even further than that.

Now, I'm not talking about intellectual functioning. I just use that word as an example of the ---

Q. Right, and we're not saying he's mentally retarded.

A. Not talking about that.

Q. Okay.

A. And I'm not saying that by any means. But what I'm saying is this is an extreme, extreme fine motor deficit. This was with his dominant right hand.

With his nondominant left hand similarly. Average male his age with his level of education would perform that in about 75 seconds. Took him 128 seconds. That places him -- and it's meaningless at this point -- five standard deviations below the mean. Past two standard deviations, already it's meaningless, that deficient.

Finger tapping was another test. So, there's a tapper and it's got a counter on it. Place your hand. Tap as quickly as you can ten seconds. How many can you tap out. This is a fine motor and also an executive. It taps into some of the executive areas because it's an area that's adjacent to the frontal lobes, yet he scored deficiently on both right and left hand on finger tapping. Again, he is below -- he's one and a half deviations below the mean, okay, and that's what I found.

Q. All right. Does that kind of summarize your testing?

A. Well, I would like to just give you an overview.

Q. All right. Well, I'm going to get, I'm going to get to that, but does that cover the areas that we have talked about? I mean, the areas that you tested?

A. It does and I didn't, I didn't go into the specific subtests of the executive functioning. I don't know if you'd like me to do that because ---

Q. Would, would that be helpful to under ---

A. I think it might, it might help illustrate.

Q. All right. Well, then let's do that.

A. So, one test of mental flexibility is in -- of that verbal fluency test I spoke about where you ask them tell me all the words you can think of that start with this particular letter. The second prong to that test is tell me all the words you can think of that start with a

particular category, okay?

People with executive dysfunction do better when you give them a category because you've told them now a way to organize. He does better, significantly better.

Okay, the, the other, the additional test of executive function -- so, the first is verbal fluency. Just name the letters. The second is semantic. Okay, if I help you, can you do better? Okay, the third is can you switch between. I need you to name me -- switch between categories. So, a piece of furniture and a fruit, then a piece of furniture and a fruit, so to be able to alternate.

He performed in the deficient range on that. That was difficult. The switching was difficult for him even though he was able to do the categorical naming well.

The Color Word Interference Test is a test of impulse control, and again it's shifting as well. This is the old, what we called the Stroop test. It's a test where you ask them, you show them an array of, let's say, sixty-four little color -- blocks of color and you ask them to go across and name red, blue, green, blue, green, whatever. There are three: red, blue, green, red, blue. They name all the colors. Okay, the next task, you write the word. It's not a color; it's just the word. It's the word green. It's the word red. It's the word blue. Okay, red, blue, green, red, blue, green.

Okay, the inhibition task is you present the word green but it's in an ink color that's different from green, and you say don't read the word. Name the color of the ink. Okay, it's very difficult for people to suppress that automatic read of the word to name the color of the ink, and he had significant difficulty with that.

And in addition to that, this -- we have an additional element which is the switching test where then you present a test where you say, okay, if you see the word and it's not encased in a box, I want you to name the ink. But if it's a word in a box, I want you to read the word. And so you have in this array words that are in boxes and words that are aren't randomly, and they have to switch between the rules. Like, okay, so now the rule is ink. Now it's word. Now -- very difficult for him. That mental flexibility just is not there, and that also accounts for that perseveration. That's like getting stuck on something and not being able to...

Okay, and then that was really the, the -- more sort of a -- more support, more evidence for this profound executive dysfunction.

Q. Okay. All right. Anything else about the -- sort of the details of the testing before we move into the overview?

A. No.

Q. Okay. Let me ask it this way to begin with because you, you said that these -- that you're able to look through your testing at different parts of the brain. Are you able to tell which parts of William's brain are more healthy and which parts are damaged?

A. Well, we know that, as I said, different areas of the brain are responsible for different faculties. Based on his deficits, I can then tell you that it seems to me like he's got -- he has executive dysfunctioning, which is a frontal lobe function, and it looks like he has deficient frontal lobe functioning based on his performance across a number of tests, and based on his behavior and his developmental history and the decisions that he has made in his life for himself.

But let me stay strictly with my data. My data shows he has profound executive dysfunction. I -- that is the purview of the frontal lobes. I would say I believe that he has frontal lobe damage.

Verbal and visual learning, memory and learning is subsumed under the temporal lobe, specifically the hippocampus, which is the organ that is responsible for consolidating memory. And, and we know from -- and very, very early on in, in the field it began with epilepsy research. People had epileptic seizures. They would rescind parts of their hippocampus depending on which side

they rescinded, left or right. This, all this research was done at McGill where I did my undergraduate but many, many years before I was then -- but we learn that, oh, okay. So, the right hemisphere hippocampus is responsible for the visual learning, left hemisphere hippocampus is responsible for verbal learning. Unfortunately, they had a -- not, not relevant.

We're looking at dysfunction in temporal lobe functioning with respect to learning and memory. We are looking at deficits in sort of phonological processing, rapid retrieval, and verbal fluency. These are more complicated and it can't -- you can't just point to a single area of the brain that is deficient in this aspect. Some of it is in the right -- sorry, left temporal area, left parietal area, the area of the brain that does the decoding of symbols to their sounds. That area is also adjacent to some visual areas that go into where you have to recognize what letter it is so that you can do the translation. So, there's a visual aspect to it.

The retrieving of it, the naming of it, that has some frontal lobe involvement to it. So, reading is very complex, multi-area, okay, and if you have deficits in multiple areas of your brain, you're going to show reading deficits.

Attention, executive functions again is that full

frontal lobe system. And the motor functioning is partly frontal lobe, but, but largely it is the sort of dopamine mediated functions of fine motor abilities and cerebellar functions, okay, which is the little area that is separate from the brain. That little sort of shape that sits right underneath. That is important for sort of coordinated behavior and fine motor abilities. And that, in his functioning, in his performance, his profoundly deficient performance on those fine motor tasks tells me that he has suffered cerebellar damage.

Q. Okay. All right, and so this, this picture of a damaged brain that you just described, how does that relate to lead neurotoxicity?

A. What -- the profile that emerges, which I have called the thumbprint as a way to sort of help explain that different, different toxins, different elements, different insults -- because of what we know about brain functioning, because of what we know about lead and how it can replace calcium, and the ways in which calcium is important in different areas of the brain for different functions, that lead is affecting areas that are highly sort of calcium driven in their ability to function efficiently and to be intact. And the ways in which we know sort of physiologically the disruptions that are caused by lead in the brain would lead to this pattern, overall pattern of

functioning on neuropsychological measures.

Q. Okay. Now cocaine, we, we know he's -- cocaine would be a toxin, I guess, or ---

A. Yes.

Q. --- it's an insult.

A. Yes, in excess amounts, yes.

Q. All right, and earlier I thought you said that you could tell that he might have some damage to his brain because of cocaine.

A. Well, I, I said that, that decrement in those abilities, that that looked at sort of ability to sustain his attention above and beyond maybe more than what I was able to pick up with the lead could be accounted for by excessive cocaine use, could be. But despite that, there was evidence of this deficit even before.

Q. Okay.

A. And cocaine affects one sort of specific area. It affects the release of dopamine in the brain. Lead affects astrocytes, the, the architecture of the brain. It affects the, the metabolism of the thyroid hormone. It, it affects cell death. It's causes cell death. It affects specific -- targeting the cerebellum in certain areas. So, lead is much, much worse than cocaine.

Q. A minute ago you testified that there was a -- sort of a thumbprint or a pattern that you see when there's lead

neurotoxicity that's damaged a brain. Is there a pattern that you see or a different thumbprint that you see when cocaine has damaged the brain?

A. What you see with cocaine is you will see deficits with -- on learning tasks where you have problems with encoding. You may have problems with recall, but you do not see the recognition problems. You don't see that they can't, once they're shown it, recognize it. You don't see this -- you don't see the fine motor deficits like you see concomitant, together with the, the other deficits, not isolated. You don't see that necessarily with cocaine.

You'll see problems with attention. You'll see problems with concentration. You may see some slowing, mental slowing or slowing in speed of processing but not, not the extent of the visuospatial deficits. So, with cocaine you don't find the selective deficit in the highest order processing of visuospatial information such as the construction, the analysis, and the synthesis.

And, and again it's not just, oh, I got these numbers. This is what they mean. It's oh, I got these numbers. Let me look at the other pieces of my data. Let me look at the context of his life. Let me look at what I know about his childhood, what I know about him from meeting him, what I know about what people say about him, what I know about the trajectory of things for him. It's not just about, oh, I

got this score and it means something. It is in the context, and this is where skill comes in, neuropsychological assessment, and the integration of the information to get to the most parsimonious explanation for all the data points that you consider to get at -- this is a profile that looks very much like lead poisoning and is consistent and convergent with other pieces of information that I have gathered about him and his life.

Q. So, consistent and convergent with other information, that's all of these records we talked about yesterday?

A. Yes, that and other information, yes.

Q. Okay. All right. Now, if somebody has a damaged brain because of lead neurotoxicity, does that have any relationship to how street drugs like -- well, let me just say. Does that have a relationship to how they react if they're using cocaine?

A. One way in which lead impacts the brain is in the storage -- the release of dopamine and also in the receptors for dopamine. So, that's one neurotransmitter that it -- system that it impacts. Dopamine is the neurotransmitter for reward. The reward system of the brain is right in -- deep inside behind the frontal lobes in those nucleus accumbens projections, okay?

We know that lead interrupts, disrupts storage, release, and recognition of dopamine. In individuals with

lead poisoning, they are quite drawn to cocaine. They need it because their sort of low level of functioning is a depressed dopamine, a lack of ability to feel reward generally in life. And things that are -- would be rewarding to us, they don't quite get there because they are deficient in the neurotransmitter that let's you have that feeling.

Cocaine boosts that neurotransmitter artificially, which gives them that added juicing of the brain with dopamine to then allow them to feel a sense -- to feel the reward, to feel good like we do when we achieve things or when we have accomplishments or other, other rewards, normal rewards. So, what we know is individuals who've had lead exposure, have been poisoned by lead are quite susceptible to cocaine.

Q. And, and is, is there also a relationship between this lead-damaged brain and the amounts of cocaine somebody might do?

A. Well, they're starting at a very low level. They need much, much more than the average person to get to the same high. What we find is that they have this tendency to use much more to get to that same level. They are -- they had this capacity to and the brain chemistry to drive them to use much more.

Q. And was there a study with rats that gave us

information about that?

A. There, there was a study with rats. There are several studies. We do almost all of our drug research on, on rats. Rats' brains, their -- particularly their dopamine system, their projections of that areas are very parallel to humans. So, we can do animal studies. We're not going to take humans and give them excessive amounts of drugs. We do it in animal studies, and we know that their system very much parallels humans. And if you have rats that have been prenatally exposed to lead and that has caused damage in their brains, that they will use significantly more. They will use it. They will have more need for it, use it more, and get to a state of being addicted to it faster than those rats that are not exposed.

Q. And so that shows us a correlation between the lead and ---

A. There is ---

Q. --- and excessive ---

MR. MABRY: Objection. Leading.

Q. As a result of that study, is there a correlation between damage to the brain because of lead and excessive cocaine use?

A. What I can say is lead exposure will predispose you to cocaine abuse.

Q. All right. Now, we also have some history that

William used marijuana.

A. Yes.

Q. As one of his first drugs. And in somebody like William with the information that you know about his history and the testing, is there anything significant about his marijuana use?

A. There are some indications that excessive use of marijuana in sort of the early adolescent years can predispose one's brain to develop more of a tendency to have cocaine-induced paranoia. It primes the brain. In some people, just the excessive use of marijuana alone will cause them to have psychotic breaks or psychotic episodes. So, it weakens the resistance of the brain in a sense.

Q. Okay. We, we, we've also talked about yesterday some childhood, a history of childhood maltreatment. Does that have any relationship to drug use?

A. Okay. So, now I'm speaking as a clinical psychologist with a background in brain. Clinically what we find when we study children who are grown, who grew up in houses, households where the primary caregiver is chronically abusive, so chronic maltreatment also impacts brain function and development, yes. But it -- but interpersonally, emotionally what it does is it -- because that child, especially if it's a parent who never shows or hardly ever shows, or the proportion of affection or love

or care or comfort is so low in comparison to the, the abuse that they -- the neglect, abuse, the abandonment, and because that primary caregiver is so central, critical to our survival, if that child doesn't have experience with a primary caregiver that has bonded, attached, and can be a figure of comfort, child learns not to turn to that person but to turn away. In doing that, they learn people aren't a source of comfort for me, and they don't turn to relationships for soothing to help them at times when they are upset, aroused, okay?

We are not born with the capacity to soothe ourselves. The area of our brain that's responsible for that is also prefrontal mediated, and it is relatively immature in the newborn. In newborns we see that they rely on the mother. We say this is co-relation of affect. If the mother can regulate her affect and your affect, the child gets, when they're upset, comfort and regulation. If you don't get that in that phase and then you continue not to have that, but above and beyond that, when you go to the parent you're abused, okay, you don't develop the ability to soothe yourself. So, you're in the state of -- we find them in a state of arousal, agitation, upset higher than most -- than those that don't have that lifelong sort of damage from that maltreatment. And you don't learn to turn to other people, which leaves you very few other options.

Drugs are very soothing very quickly and they don't necessarily involve you making yourself vulnerable to a relationship with someone that might hurt you. So, there's a high incidence of drug abuse in maltreated children.

Q. All right. I want to kind of switch and talk about the crimes that were alleged for a second. Do you have an opinion as to whether or not William had the capacity to conform his conduct to the requirements of the law at the time of the allegations?

A. I do.

Q. Okay, and did he?

A. I do not believe that he did.

Q. All right. Do you have an opinion whether or not William was suffering under mental or emotional distress at the time of the allegations?

A. I do.

Q. And what is that?

A. I believe that he was suffering from a mental and emotional distress ---

Q. Okay.

A. --- disorder.

Q. Okay, and do you have an opinion as to whether or not William's mentality played a role in the allegations?

A. I do believe so, yes.

Q. Okay. Now, we, we've talked about the -- William's

problems with executive functioning. We've talked about William's problems with regulating emotions, right?

A. Yes.

Q. Did the deficits in executive functioning and inability to regulate his emotions play a role in the allegations?

A. Yes, and, and -- you know, you have a person who's compromised, person who doesn't -- can't put on the brakes, can't switch, perseverates once he starts something, doesn't have a lot of judgment and reasoning, okay? You also have a person who can't really regulate their emotions. They can't calm down once they've gotten activated, okay? On top of that, you add what appears to be a cocaine psychosis. So, now you have a person who can't function well, and they've lost touch with reality. You will see behavior that is extreme and very disturbed.

Q. Okay. Now, there was some information in the record about a, a, a videotape of Shelley, a girlfriend, performing a sex act on a male. Given all of what you've just talked about William, how would, how would seeing that videotape affect him?

A. Okay, there's some background to this. William was chronically abused by his mother physically, emotionally. There are many reports. He talks about it, and there are many reports from many family members and, and in the

reports from the hospitals, the treatment centers, the therapists. Everybody's seeing it. It's there, but the type of abuse he sustained with her was particularly damaging, and I can speak to one particular instance.

Before I get to that, the history with her is that she's not available. She's rejecting; there's always some other man that's put before him. That's repeatedly in the documents that I reviewed and the, the declarations. She always put her men before him. There was always a new, a new man in the house. Whether she was married to him or dating him, they all moved in back to back with the exception of Mr. Flood, who treated William like he was his own, which was in an affidavit that I read, who took care of them and protected him. Those were good times but after that, back-to-back you have people that are brought in that are abusive to his mother and abusive to him.

So, there is a Jenkins character who apparently tried to strangle him. There is another Eddie character who, when they're living in Bogard, he walks in on him and his mother, and he gets a beating because he's done that. So, there is -- somebody else is always displacing him. Some other man is displacing him, and he's routinely put out.

So, he gets released from that R&E Center. He goes home. The mother's got a new husband. She's had three or four at this point. She doesn't want him in the house. He

goes to prison for eleven years, I believe -- nine years, nine years he goes to prison. He's released. He goes back home. She's ---

MR. MABRY: Your Honor, I'm going to object. I don't think this is responsive to the question.

MR. GROSE: Well, she's, she's providing the background that is responsive to the question, Your Honor.

THE COURT: I'll allow it. Go ahead.

BY MR. GROSE:

A. He's released. He back goes home. She has another husband. She doesn't want him there; the husband doesn't want him there. He really has nowhere to go. They won't give him a key to the house, so he has to live with an aunt and fend for himself. Again just being displaced, being thrown out. And, and the desire has always been for a family. That's his weakness, wanting a family. Being rejected, having another man take his place.

And then what I was alluding to before, that there is a particular sensitivity to being shamed, and I'm talking about an instance of abuse when they were living -- he and his mother were at the house on Orrs Street. So, he was young. Nine, ten, eleven-ish, okay? He -- several aunts report that on one instance, she got mad at him. Told him that he needed to take his clothes off and give them to her because they were hers. She bought them for him; they're

hers. He needs to take them off, give them to her. He, he tries to get away from her. She forces him to take his clothes off, whereby she puts him outside of the apartment and locks him out naked. Neighbors are calling aunts to come because now she's really done it, you know? She calls the police on him because she wants him to feel what it's like to get handcuffed. So, he is.

Sort of based on his age, based on his medical records, he's at a Tanner stage 2 out of 5, which is a measure of where he is in terms of his puberty. He is starting puberty. So, young boy starting puberty in his neighborhood, buck naked, locked out of the house. Police are coming. Neighbors are coming. There is an element of degraded humiliation, just absolute degradation and mortification I think that you don't recover from. The combination of the sexual, the public degradation stays with him.

My sense is that when Shelley, who he met who had these children he got completely sort of involved in -- because what you also find in children who are chronically maltreated with mothers who can't form attachments is that they never learn how to have a health healthy attachment with people. They become overly attached or overly involved or rejecting and hostile. We call this anxious avoidant.

He becomes completely absorbed in this woman, which is what the reports are, and she's got these kids and he starts providing for them. And I think in his mind he had this family going. Unfortunately, this is also an environment where there is a lot of cocaine and he's using excessively, and he's doing this sort of at the tail end of he's gotten out of jail. He's gotten himself a job with much difficulty because of his felony. He's having difficulty finding an apartment to live in on his own, which a cousin was helping him do because of his felony.

He still has the same damaged brain that he had before he went into jail, but now he's in the world that's dangerous and he can't navigate it well, and he's not -- he can't learn, right? He's got -- with this woman who is compromised, in an environment that is even more toxic to his already damaged brain, and that whatever it was, what, whatever video or -- triggered that deep wound of humiliation, public humiliation and degradation. And I think that that, coupled with the poisoned brain that's susceptible to chronic heavy cocaine use -- which we know heavy, chronic cocaine use in an individual with already weakened brain, with a history of marijuana abuse, with a history of social, social deprivation, okay, is going to be much more likely to kick into a psychotic state.

And in that psychotic stage where he has no reasoning

and no judgment and is divorced from reality, and on top of that is paranoid about people coming after him, coming to get him, which fits his history of multiple people that he has seen die, including a cousin who was murdered. So, it's not someone who is fabricating an impossibility. People have been hunted down and killed. Goes to the other side of reason and operates in that other side of reason with a damaged brain.

Behaves in a way that is perseverative. Inability to put on the brakes, cannot shift. Lost in it. Executive function isn't there. Doesn't see the big picture. Is just swollen up into this haze, okay? Given the deficits that he has, that's when I understand.

Q. All right, and you just referred back to the perseveration.

MR. MABRY: Your Honor, I'm going to object at this point, and, and I may have misunderstood the question earlier. But the question was did he have the capacity to conform his conduct to the requirements of the law. There's been no disclosure that this witness was going to say he's guilty but mentally ill. It's not alleged in the application anywhere. Now, maybe he's talking about the mitigators, but she ----

MR. GROSE: I'm talking about the mitigators.

MR. MABRY: Okay. Well, mitigator is his ability to

conform was substantially impaired. I don't have a problem with that, but that wasn't the question, and the answer seemed to ---

MR. GROSE: I'll, I'll, I'll clear, I'll clear that up.

MR. MABRY: Yeah. If we clear that up, I'll be fine.

BY MR. GROSE:

Q. Based on all of what you described, was William's ability to conform his conduct to the capacity of the law substantially impaired?

A. Yes. I believe his capacity was substantially impaired.

Q. And that's from the lead neurotoxicity?

A. Yes.

Q. That's from the childhood maltreatment?

A. Yes.

Q. That's from the cocaine psychosis?

A. Yes.

Q. Okay, and the question I was getting ready to ask when he objected goes back to the perseveration, and I think you mentioned that in your explanation. The perseveration that you found on your neuropsychological examination, does that play into what happened with Shelley and then the crime?

A. It seems like it to me because it seems that he was unable to divorce himself from that behavior once he began.

He continued the same sort of horrible behavior that he was locked into.

Q. Okay, and I think you also talk about impulse control. Does impulse control play into this?

A. Well, yes, along with having the psychotic thoughts and being sort of in an, in an environment that allows for it.

Q. Okay, and you talked about putting on brakes. What do you mean by that?

A. Well, that's part of that mental flexibility: the ability to shift, the ability to step back and take -- get a broader view of things. To say whoa. That's when you put on the brakes. To be able to put on the brakes, you have to be -- have enough perspective to stand back and realize something here is way off and needs to stop, and you -- to be a perseverative, impulsive person who doesn't have perspective and who doesn't have internal regulations and controls is going to have a tremendous amount of difficulty under a psychotic episode to stop.

Q. All right. So, so, the damaged brain alone plays a role in not being able to stop. Is that fair to say?

A. Yes.

Q. And then you put a cocaine psychosis on top of that, does that have an additional effect?

A. Certainly. Yes.

Q. Okay. Now, we have evidence that there was other people -- and this is just from the transcript -- evidence from other people -- well, let me back up. Are you aware that other people were charged and ultimately convicted as codefendants in this case?

A. I am.

Q. Okay, and that was based on the evidence that they participated in this crime to some degree and were present, correct?

A. Yes.

Q. All right, and I guess we have some evidence about Armon, that he might have had a damaged brain?

A. I haven't examined him, so -- but based on what I've heard and the fact that he was in that environment and had very high levels of lead, yes, I would say so.

Q. But do we have any evidence that any of these other codefendants were additionally suffering under a cocaine psychosis?

A. I don't believe so, and I can't say, no.

Q. Okay, and we -- I guess Dr. Canfield testified when you have problems with executive functioning, sometimes an outside force or an outside -- either the structure or person can help with that judgment with the executive functioning. Were, were there people here who could have maybe helped put on brakes and didn't?

A. It's possible because what we know about William is when he has been in environments where he has had structure, people, settings that substitute, compensate for his lack of frontal lobe functioning, he does really well.

They describe him as a good kid, a kind kid, conforms well. You know, wants to do well. Not an inherent badness in him, not as a young child. Certainly not when he's in those settings where there's someone there who is meeting his needs and who is safe, okay? It's not in him to be evil.

So, when he's in a setting with other people -- I don't know how many others there were, but certainly more than two, two or more at least -- it's puzzling to me. I cannot imagine that, that everyone in that room had the same degree of brain damage and was psychotic to the extent that no one in that room, okay, could step back and say what the -- stop. That's really puzzling. The probability that everyone in that room was compromised to that extent is almost implausible to me.

MR. GROSE: Beg the court's indulgence, Your Honor.

(A PAUSE.)

MR. GROSE: Judge, I, I would tender the witness, but I also request an opportunity to go to the restroom.

THE COURT: All right. We'll take a break, ten-minute

break.

MR. MABRY: Before we do, I do move to strike the earlier question about -- it was phrased as guilty but mentally ill, but I -- and I understand what Charles was trying to ask as a mitigator, and I move to strike that.

MR. GROSE: Well, let's, let's do, let's -- I can stipulate. I, I, I mean, the record's the record. I can stipulate that I was not intending to elicit guilty but mentally ill. That was never the intent, and I think we clarified that through the questioning.

MR. MABRY: Okay. That's fine.

THE COURT: All right.

MR. MABRY: Stipulate. Ten minutes.

MR. MABRY: Yes, sir.

(OFF THE RECORD.)

THE COURT: Just one matter for the record. In reviewing the transcript of this case, I noticed that Judge Dennis, every time court convened, noted that Mr. Dickerson was present, and I want to -- I think that's a good idea. So, I want to let the record show that Mr. Dickerson is present today, December 8th, and was present yesterday during the entire hearing on December 7th.

Counsel, you may proceed.

MR. MABRY: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. MABRY:

Q. Dr. Israelian, you are not a medical doctor. Is that correct?

A. No, I am not.

Q. And you have not attended medical school?

A. No, sir, I have not.

Q. And you can't prescribe medication for a patient, can you?

A. No, sir. I do not.

Q. If you want to do that, you have to get a medical doctor or psychiatrist ---

MR. MABRY: Is this okay, Madame Court Reporter?

COURT REPORTER: Yes.

BY MR. MABRY:

Q. Psychiatrist to do that, correct?

A. Correct.

Q. All right. You have only testified as a witness for the defense. Is that correct?

A. The defense?

Q. In criminal cases.

A. That is correct.

Q. And I believe you testified in three capital cases. Is that correct?

A. I believe so. Yes.

Q. And each time you testified in those cases, you were testifying for the defense?

A. Yes.
Q. And you are not a proponent of capital punishment, are you?
A. I wouldn't say that I am or am not a proponent. I'd say that I have certain views about it that may not be amenable to being a proponent of it.
Q. Okay. Well, you're against not -- you tell me if I'm characterizing -- mischaracterizing your position. You are against the death penalty because you believe it is a waste of resources that can be used in other areas of such as research. You do not believe it is an effective deterrent, and you also believe that it is racially biased. It is applied in a racially discriminatory manner. Is that correct?
A. That is correct, yes.
Q. Okay, and did you have that opinion before you got involved in this case?
A. I think that's an opinion that has evolved over the years as I have had more experience and learned more, I've expanded my knowledge and gotten, gotten more information.
Q. Okay, and was that your opinion when you were asked or retained as an expert in this case? Had you already formed that opinion?
A. I was not asked my opinion.

Q. That wasn't my question. My question was was that your opinion at the time you were asked to work on this case? Had you already formed that opinion about capital punishment?

A. That has always been my opinion.

Q. Okay. Now, did you test Mr. Dickerson for his current lead level?

A. I do not do that, sir. It's not in my profession.

Q. Okay. Did you ask for someone else or refer him for a current lead test?

A. I looked into whether or not that might be feasible, but it was clear that blood lead levels would be meaningless at this point.

Q. Okay.

A. And as we heard previously, the bone phosphorescence test is not, again, it's not as valid and reliable as we would like. It's exploratory. It would need to be done in a center that is specialized in research. So, it was not, not feasible. I had a blood lead, verified blood lead level at eleven years of age that was done in a reputable laboratory, and that was enough for me.

Q. Okay, and at the time this case was tried, was that -- was your opinion, would it have been the same when this case was tried that a taking of his blood lead test at that time or doing a bone scan would have been the same? It

wouldn't have been worth the effort in doing that?
A. I don't know about that; I really can't say. I would have to know more. I don't know.
Q. What else would you need to know?
A. May have been closer to the time of exposure. I don't know. It's just that in this case, this instance it wasn't necessary.
Q. 2015 it wouldn't have helped to have that done, so you didn't request it?
A. I don't think that I would have gotten something reliable or valid more so than what I had. I know that his brain was exposed; I know that it was exposed at a level that was toxic. I don't need, I don't need more than that.
Q. All right. You testified on direct that lead affects the architecture of the brain. Is that correct?
A. Yes.
Q. Did you order an MRI scan on the defendant in this case?
A. No, sir.
Q. Okay, and an MRI scan shows the architecture and the structure of the brain, does it not?
A. In some cases and in some regions, yes, but not necessarily in the level of sort of intricate detail that might be necessary. But an MRI scan particularly, I believe, as the doctor testified yesterday, a functional

MRI scan may have shown that. But again that is something that my tests are more sensitive to determining, based on what we know with regard to specificity and sensitivity of neuropsychological measures versus MRIs in the literature.

Q. Okay. Well, we're going to get into your test in just a minute, but you didn't order any medical tests on him that ---

A. No, sir.

Q. --- show the court damage to his brain such as an MRI, a PET scan, a volumetric brain analysis, an x-ray? You didn't order any kind of medical scan, did you?

A. Because I didn't really feel that that would necessarily be as valid as what I had.

Q. Okay. Do you work with Dr. Agharkar?

A. I don't work with him. I know him. He's a colleague of mine.

Q. And he was first asked to look at this defendant. Isn't that correct?

A. Yes. That's correct.

Q. And he did not diagnose him with any medical disorder or any psychiatric disorder, did he?

A. No, he did not.

Q. Okay, and then you were asked to do the psychological test in this case. Is that correct?

A. That's correct because when Dr. Agharkar saw him and did his neurocognitive screening, which he routinely does with all of the people that he evaluates, he got the impression that there was reason to believe that the gentleman was brain-damaged, in which case he asked for them to contact me so that I could do the neuropsychological testing to aid with his diagnosis.

Q. Okay. Well, what -- let's make sure the court understands what you're talking about. Dr. Agharkar goes in and talks to the defendant or sees him somewhere and does some kind of soft test or signs, as he calls them, and he thought there might be some cognitive deficit there, and he needed psychological testing. Is that what you're saying?

A. He goes in and does a neurocognitive screener where he uses some of the sort of basic fundamental, oldest sort of measures that we have that tap into things like memory and executive function. Based on that, based on his clinical judgment and experience, he had a sense that there was organic brain damage in this gentleman, and he asked that I be retained, I or another neuropsychologist be retained to do an evaluation to aid with his diagnosis.

Q. Okay, but Dr. Agharkar hasn't ordered any MRIs, any pet scans, any volumetric analysis, any x-rays, correct?

A. Yes, sir, and, you know, for the purpose of being sort

of fiscally responsible, all those tests are incredibly expensive. Many of them are in research institutions. The science hasn't quite caught up to what we need in terms of finding accurate, reliable, cost-effective measures. To transport Mr. Dickerson, it takes a lot of people. That would not necessarily give us that much more information than what we have. I do not send every person that comes to my office for a diagnosis to have an MRI to verify their diagnosis.

Q. And Dr. Agharkar did not diagnose this defendant with brain damage, did he?

A. Dr. Agharkar had a strong suspicion that he was brain-damaged, which is why he asked for someone who specializes in assessing brain function to be brought on board.

Q. But he hasn't diagnosed him with brain damage, as he?

A. He hasn't diagnosed him without brain damage either.

Q. Okay, and he's not going to render an opinion in this case, is he?

A. I don't know that.

Q. All right. Now, you, you are aware of cases where a PET scan or an MRI brain scan have been done in capital PCR cases?

A. Yes.

Q. Okay. Now, yesterday your testimony from the time you

went on the stand until you completed it was basically about the history, the developmental history of Mr. Dickerson. Isn't that correct?

A. Yes.

Q. Okay. Your testimony today was about the tests you actually ran?

A. My testimony yesterday about -- was about his developmental history and his history of psychological testing and his childhood and adolescence, and today it was testimony about my psychological assessment, and then my interpretation and understanding of how all of that comes together.

Q. All right and, and almost everything you testified to yesterday was testified in the penalty phase of his trial before the jury, wasn't it?

A. I can't say that for certain.

Q. Well, did you review the penalty phase testimony in this trial?

A. I did, but I can't say that everything I reviewed was reviewed in that. I think there were some things that were not. There were some things that I came across that were not reviewed.

For instance, such as the, the fact that he lived in an area code that was very high risk for lead exposure, I don't think that was expounded upon. I think the amount of

information that they provided at the time of his sentencing about the lead poisoning was really cursory, whereas here, as I hope you have seen, I hope I've conveyed is central.

So, no, I don't feel like anything I said was similar in any way because it did not have that sort of understanding of what is driving this behavior, what might explain it, what his vulnerabilities were given where he was born, given who he was, given his circumstances. So, no, sir, I don't feel like anyone who testified during his penalty phase said anywhere near what I was saying in the extent that I was saying and justifying it with the data that I justified it with.

Q. Was there testimony in the penalty phase about him being born two months premature and spending the first two months of his life in the hospital?

A. There was testimony that he was born premature and had spent two months of his life in the hospital, and that's where that testimony ended.

Q. All right. Was there testimony that his mother was abused while she was pregnant and even kicked by his father?

A. There was testimony that she was abused and kicked, yes.

Q. Was there testimony in the record before the jury that

he tested positive for lead at 9 deciliters -- 9 milligrams per deciliter? Was that testified to before the jury?

A. I can't say. I don't remember if that number was actually stated in the transcript.

Q. Okay. Let me ask you this. You reviewed materials in preparation for your testimony here today. Is that correct?

A. Yes.

Q. And that -- those materials were provided to you by his PCR lawyers, his collateral lawyers sitting over here to my left?

A. Yes. I reviewed that material, and then I did my own independent research.

Q. And that research you've told us about on direct. Is that correct?

A. Things that I learned, the ---

Q. Right.

A. --- research that I spoke of, yes.

Q. The map you showed us of Charleston and the other studies that you -- that's what you're talking about, your research?

A. In part, yes.

Q. Okay. Did you go talk -- did you talk to his mother?

A. No, sir, I did not.

Q. Did you talk to any of the witnesses in this case

other than Mr. Dickerson?

A. No, sir. I did not.

Q. Okay. So, when you talk about his developmental history, you're relying on information that they provided you?

A. Yes, and the multiple interviews that they had with various members of his family and people that were in close contact with him and knew him, and because of the broad range and the large number of those reports -- again, I look for what's convergent, what everyone -- what is it that people are repetitively saying, what holds together, what is relevant, what stands out for all of them. So, again, I have that data.

I didn't independently go and gather it, but I have that data to consider as part of my evaluation, and I do that in the way I do everything else, which is I look for relationships. I look for consistency in order to explain behavior and be able to predict it.

Q. Okay. Well, here's my question and my point, okay? The materials they gave you, did they come from their investigation, or did they come from trial counsels' investigation?

MR. GROSE: Objection. Calls for speculation.

THE COURT: I don't know. Let's see if she knows the answer. Overruled.

BY MR. MABRY:

Q. The materials, were they -- the materials you reviewed, the family interviews, the friends, those, the things you just talked about, did those -- were those things that trial counsel obtained before the trial ---

A. I can't say.

Q. --- through their investigation?

A. I can't say.

Q. You don't know?

A. I don't know because there was, there was thousands and thousands of pages of information. So, I, I don't know what trial counsel had or did not have, but I -- based on at least -- if you want to talk about the testimony at sentencing, they did have an understanding that he had been exposed to lead. They had his medical records. They would have had that value of 9 in that testimony in those transcripts. They would have known that he, if they had his medical records, had been to Tara Hall. They would have known that there was a decrease in functioning. So, you're asking me to speculate about something that I don't know.

Q. Okay. That's fair.

A. For the most part, the things that were critical, things that got me going on the path towards my conclusion, they knew. He was premature. He knew -- they knew where

he lived.

Q. Uh-huh.

A. They would have, I think, wanted to know why he was premature but, it just seemed like it was just given up -- he's premature; big deal -- without an appreciation of, well, that means he fits in a shoe box. Okay, how does that happen? All right, what happens when you're that size and you are in an abusive home? What happens?

It didn't follow. It didn't expand, and it didn't go broad enough to see the big picture. It was like every -- it's like the elephant in the room and everybody's got a different piece of the animal, and one's saying it's a tail and the other's a nose and I don't know what the hell else, but there isn't a full picture. And to get that full picture, you have to take a broad view and ask a lot of questions.

Q. That, that's the elephant in the room that you see, correct?

A. That's the elephant in the room that is apparent in my evaluation and, and explains his behavior.

Q. All right, but that ---

A. The best that I know and the best that I've heard thus far.

Q. Well, let me ask this, if you know as a psychologist. Are babies born premature without the mother being exposed

to lead?

A. Sir, I believe I testified to that, that there are many reasons for babies being born immature -- premature.

Q. Premature.

MR. GROSE: And, Your Honor, I'm just going to -- this is not so much of an objection, but if he's going to go into this, then I'm going to need to go back into what I was cut off on yesterday on direct on reply. I just want to -- it just seemed -- I'm not going to stop him from going because that's where I wanted to go, but it's fair game for everybody now.

MR. MABRY: She -- I'm going into her answer on the last question, but I'll move on.

THE COURT: Go right ahead.

BY MR. MABRY:

Q. Let me ask you this, okay? Was Armon born prematurely?

A. I don't know.

Q. Okay. Well, this is the same mother that you say is exposed to the same lead and you don't know, and you can't tell this court whether he was born prematurely or not?

A. I did not say that she was exposed to lead. I said that it is, it is possible that his prematurity may have been caused by lead exposure, given that she was living in a neighborhood that was very high risk. Not high risk.

There is a lot of -- 68% lead exposed in that neighborhood. That was a hypothesis I would have. It would be reasonable.

Q. You don't have any evidence that Armon was born prematurely, do you?

A. No, I don't because Armon is not my client.

Q. Not your client, correct.

A. No, and, and I don't know. It may be that whatever lead she had stored in her bone was leaked out and he got the mother load of it, and by the time she was pregnant with Armon, there was no lead left in her bone. I don't know.

Q. Well, wasn't ---

A. It's possible.

Q. Wasn't she living in the same house?

A. An adult, you don't absorb more lead. As an adult, you, you have what you've absorbed as a child. What happens is that gets deposited in your bones, as Dr. Canfield testified to. So, she has it in her bones and it's stored in her bones. In pregnancy, that same lead that women carry in their bones that they got when they were children gets leaked into the bloodstream because part of pregnancy is to expand all resources to the development of the fetus. That's why fetuses are at particular risk with mothers who had pre-exposure to lead.

She's now an adult, right? She's had this child. She has, let's say, leached out her lead, right? As an adult, whether she's in a lead environment or not, she's not going to absorb lead the way she did as a child. Adults do not absorb -- grown adults do not absorb lead at the same rate and carry it in their body at the -- with the same amount as children do.

That is why it is toxic to children. That is why it's -- because they absorb more. They ingest more. Their blood-brain barrier isn't as strong. It crosses into their blood-brain barrier quickly. Their brains are undergoing rapid development; it interferes with that rapid development, which results of the structural, functional, biochemical changes.

We're talking very different things. It's not that she had her baby, went home, and all the lead's sucked back into her again. That's not how the physiology of lead absorption works.

Q. Armon was not born prematurely, was he?

A. I have answered that, sir. I do not know.

Q. Okay, and you didn't even look into that, did you?

A. No, sir, I did not.

Q. Because you weren't asked to?

A. It wouldn't have informed my decision.

Q. And it wouldn't have been consistent with your opinion

in this case, would it?

A. No. It could have very easily been consistent, as I explained to you now that he wouldn't necessarily have been exposed to the same amount of lead that Mr. Dickerson would have because she would have probably deposited all the lead that she had stored in him.

Q. Do you have any evidence that she was exposed to lead or had lead poisoning?

A. Sir, did I not say that this was a hypothesis?

Q. Okay. So, there's a risk factor. That's what you're saying?

A. That is what I'm saying.

Q. Okay. Do you know who Dr. Cunningham is?

A. I believe Dr. Cunningham was a psychologist that testified at trial.

Q. Okay. Did you review his materials?

A. I reviewed his testimony.

Q. That wasn't my question. Did you review his materials in preparation?

A. No. I had no access to his materials. I had only his testimony. I don't know whether -- what he had and didn't have. He may have had the exact same thing I had. I don't know.

Q. Okay. So before rendering an opinion in this case, and before testifying here today, you did not review any of

the materials provided to a psychologist you knew that was involved with this defendant?

A. I did not have any materials that were labeled as belonging to or having been presented to Mr. Cunningham. I suspect that I had everything that was given to him based on the fact that he testified on things that I also read and reviewed.

There isn't anything that he said, that he spoke about that was news to me. He didn't talk about, oh, a hospitalization that wasn't in the record or medical records that I didn't have. So, my guess is, given what he talked about, given that none of it was new or surprising to me, that he had the same things I had to review.

Q. All right. You didn't ask for his file, did you?

A. No, sir, I didn't ask his file. As I mentioned before, when I do an evaluation, first thing first, I want to be objective. Second, I read his testimony and everything he testified about, that information I had access to.

Q. And that's what you testified to yesterday, the same thing he testified to before the jury, isn't it?

A. No, not the same thing.

Q. Did he testify about the defendant being abused, physically abused by his mother?

MR. GROSE: Objection. This has already been asked

and answered, Your Honor.

THE COURT: Overruled.

BY MR. MABRY:

Q. Did Dr. Cunningham testify about his mother physically abusing him severely during his early childhood?

A. Yes, he did.

Q. Did he testify about him being committed to MUSC and Hall Psychiatric?

A. I believe he did.

Q. Okay. Did he testify about his drug abuse?

A. Yes, I think he did. I think Dr. Phillips may have testified more to that.

Q. Can you tell me -- Dr. Phillips, who was he in this case?

A. He was also a psychologist that testified.

Q. Psychologist or a psychiatrist?

A. I don't recall, but I think that he had more expertise in drugs.

Q. Did you ask for his file and his materials before you ---

A. No, sir. Rarely do I ask for files of previous experts. I ask for all the materials that are available that have been available to them that I can review. I have been doing this for many years now. I've had no one come and ask me for my files when they've gone to reevaluate

someone that they see. We go based on what we have, and we ask for more information as we need it.

I know that the medical records, the records of his hospitalizations, the blood lead levels from the hospitalizations, the fact that he was anemic, the fact that he had that lower level of thyroid, the neighborhood he lived in, the studies that were done that were available to them, all of that research was available. Every study that I looked at, every document was dated at a time that would have been available to anyone that had been in the position of evaluating Mr. Dickerson.

The only thing that was missing was someone who was able to give a developmental view on the brain and the development of this fetus to the adult that ended up in the predicament that he is right now. To give that broad overview, you need a developmental psychologist. You need a neuropsychologist to understand and appreciate the possibility that lead may be having an impact. And you need on top of that, you need a psychologist who also does psychotherapy and understands family dynamics, interpersonal dynamics, damage to social and interpersonal and interrelational skills that happen in a child that's been maltreated and what that maltreated child is like as an adult. And you need someone to be able to piece together, well, given all this -- all of it, not just

pieces of this -- why, why would this person do what they purportedly did. To have that broad overview, you need someone who understands pre-birth on in both an applied sense, such as the clinician, and in a scientific sense, such as the neuropsychologist and the researcher.

Q. And you're the only one that can do that?

A. No, sir. There are many more people just like me.

Q. Was Dr. Cunningham qualified as an expert in developmental, child developmental psychology?

A. Child development is different than developmental neuropsychology, sir.

Q. Okay.

A. That's only one aspect of it. That looks at the relationships and the social family climate. It doesn't look at brain behavior. It doesn't look at brain behavior relationships. It doesn't look at environmental impact on brain.

Q. Who did ---

A. Developmental psychologists are very valuable, but that's one piece of the whole puzzle.

Q. Well, that's what you said. You needed someone in developmental psychology, childhood developmental psychology, and that's what they had, didn't they?

A. I said a developmental neuropsychologist who also had training and experience in applied psychology and could

render an opinion that spoke both to biology, chemistry, physiology, research, neurocognitive functioning, and family dynamics.

Q. Who is Dr. Deysach?

A. I have never seen that. May I see the name?

Q. D-Y-E-S-A-C-H [sic]. It may be Deysache, or I think it's pronounced Deysach.

A. I -- can you give me a context, please?

Q. He is a neuropsychologist that trial counsel had as a consultant in this case. You don't know who he is?

A. No, sir.

Q. You don't even know he was working on this case, do you?

A. I haven't heard of him before, no.

Q. In fact, they didn't provide you any materials from Dr. Deysach, the neurologist that worked on this case at trial, did they?

MR. GROSE: Objection. That assumes that there was materials, Your Honor. Move to strike.

THE COURT: Overruled. Go ahead.

BY MR. MABRY:

Q. Did you receive any materials from a neuropsychologist, Dr. Deysach, who was a consultant for trial counsel?

A. I didn't know that there was a consultant. I don't

know if there were any records. I assume that if there were, I would have been given them because that is standard procedure. And I also don't know what kind of neuropsychologist Dr. Deysach was, but my suspicion would be that he wouldn't have been a developmental neuropsychologist because if he had evaluated Mr. Dickerson and had noticed the very glaring signs that this is a person who may have been compromised, that he would have done a more thorough evaluation and gotten at things that were not obscure. They were not hidden in some dark cavern.

He's born immature, premature. He's in a lead-infested neighborhood at a lead level that we know is toxic to children. He has done well in school and then has a precipitous decline. He's got anemia. He's got anemia on top of that. He's got microcytes, which are also related to lead poisoning. He's got a thyroid level that's so low that they can't -- they don't even know what to do with it. They call it laver [phonetic]. They have someone presenting with some, some really fundamental symptoms of lead poisoning: poor affect, affect, nausea, not sleeping, disregulated.

I think they -- and I'm not faulting them. I think that they missed some of this big picture that accounts for much, much more than just that he was abused, or just that

he was addicted to drugs, or just that he was, you know, in ---

Q. Exposed to lead?

A. --- criminal activities.

Q. Just exposed to lead?

A. Exactly because you have to put all the pieces together in a way that makes logical sense. It's part of the forest for the trees.

Q. And you're the person to do that?

A. I believe that I have done that in this case. Am I the person to do that? I think I'm, I am a person and there are others like me, trained similar to me who could have done that.

Q. Would you agree with me that to make a correct diagnosis, you need all the information that's available?

A. There never in any situation is all of the information that's available. I wish. It would be a perfect world and my job would be very easy.

Q. And you didn't have all the information in this case, did you?

A. I had enough to render professional opinion with a high degree of certainty and confidence.

Q. You had what they gave you?

A. I have what they gave me. I have my own judgment, my reasoning, my background, my education, the way I can think

and reason scientifically. I have my personal experience of the time I spent with Mr. Dickerson. I have much, much more than what they gave me, but what they gave me was very important. Could not have done any of this without any information to go on, but apparently just the information alone is not enough unless you have someone who is able to put it in context developmentally, historically, and individually to this case.

Q. Well, let me ask you this. When you were retained in this case, what was the first thing you did? Review the materials or did you go and administer the tests?

A. I briefly reviewed the materials.

Q. Okay.

A. Got an overview, got a sense, and then I went and tested him. Same procedure I usually do.

Q. Okay, and if he had not submitted to your test, would you have been able to render an opinion in this case?

A. I believe I would have.

Q. So, without any psychological test that you did ---

A. Well, I take that back. I take that back. Would I have been able to contribute something I think that would have been important that was not previously considered? Yes, I do. I do because I know the first thing I noticed was the prematurity, and the second thing that stood out to me that I reviewed -- the things I reviewed were the trial

counsels' -- the expert testimony briefly. And again it's a long time ago and when I review a case, I review it multiple times, but I quickly reviewed that. I made note of some of the important facts. I would have, if I had never seen him.

Q. You'd be able to render an opinion ---

A. No, I'm not ---

Q. --- if you'd ---

A. --- speaking about rendering an opinion. I would've said to whoever had retained me I think you have a case of lead poisoning here. If I were you, I would investigate that further because this is a premature child in an urban, poor, old housing. He's a non-Hispanic. Based on the research, he's the highest risk group in the highest concentration of lead in -- where he grew up his entire life, and he is presenting with behavioral and psychological symptoms. His life has played out the way we see it play out for individuals who have been lead poisoned, and there is blood work that confirms, confirms he was exposed at a level that is toxic to the brain. I would've said look at this. This, I think, is critical.

Q. Okay. You would ---

A. That's not rendering an opinion, sir.

Q. Right.

A. That is you better look at this.

Q. You better look at this, okay, and what would you have needed to do to look at it further?

A. What I did.

Q. Which is testing?

A. And review all of the literature and review all of the information and be able to -- it's not just testing. Anybody can test him. You need to be able to put things in perspective. Like I said, it's about collecting your data points.

Q. Okay.

A. As objectively as you can, looking at the ways in which they're consistent, how they converge, making sure that you can make -- you can explain them and understand them in a way that is scientifically sound so it makes sense physiologically based on the, the research, that hundreds and years of lead exposure research of the oldest known neurotoxin to us, and then be able to make sense of it in terms of the context of his life, his childhood, his circumstances, the society he grew up in, the risk factors that were social on top of that, the fact that he's a male. Many, many factors to consider.

Q. Were all those risk factors testified to before the jury ---

A. No, sir.

Q. --- by Dr. Cunningham? They weren't?

A. No, sir.
Q. That's your testimony?
A. Did not testify that he was in the highest lead-risk neighborhood in the oldest houses where they had the highest amount of child lead poisoning.
Q. I'm not talking about that. I'm talking about all the risk factors he had that you mentioned other than lead. The abuse, drugs, the crime, everything, was that testified to by Dr. Cunningham or not?
A. Sir, those are not all the risk factors. Those are some of the risk factors.
Q. Here's my question. If he had -- you tested him in prison, correct?
A. Yes.
Q. When you had two days, two days of written and psychological tests that you gave him?
A. Yes.
Q. Okay. If he had come in and said I'm not taking your test, I'm not taking any of them, could you render an opinion in this case that you've rendered yesterday and today?
A. I would have said that there's a high degree of probability that you have a leaded -- lead-poisoned individual with a damaged brain, given what I see developmentally in his behavior in the records that testify

objectively to his behavior, his decline in functioning, his inability to progress academically, the poor decisions that he's made, his lack of judgment and reasoning. I would have said -- and on top of that, I would've said and given that this seems like a person who has a compromised brain, even if I don't know what's caused the compromise, especially in the regard of frontal lobe functioning which is very damning when you're in a dangerous environment and you don't have cognitive faculties to begin with, an individual who has then been on top of that impacted by the psychotic function of cocaine, I may have been able to render an opinion, yes.

But again, all the information that I had that led me to where I am here was available to them, and it was just breezed over. It was a lack of understanding and a lack of knowledge that a lead degree of 9 micrograms per deciliter is extremely high.

Q. You're not sure that you could have rendered an opinion if he would not have submitted to your written test, right?

A. I'm not sure that I couldn't have either.

Q. You don't know?

A. I don't know.

Q. Okay. Are you aware that he refused to cooperate in any written testing with trial counsel or the doctors that

were retained in this case?

A. I am aware.

Q. Okay. So, you can't do psychological testing if the defendant will not do the tests. Isn't that right?

A. No, sir. I think that if you had looked at the record and read behavioral observations of how he responds when he's tested, how hesitant he is, how we know when you have a person who has a compromised brain, the last thing they want is another test to demonstrate that they're brain damaged -- this is where the clinician comes in. This is where the clinical psychologist who does therapy comes in and, and if you had somebody like that working with someone who was that adamant and you felt -- you had this information that lead, given how absolutely poisonous it is, undeniably was a possibility in this case, then you could have had someone who could have sat with him in a clinical capacity and talked through some of his anxieties to the point where he may have been more amenable to testing.

I'm sorry, sir, but it's not a skill that comes naturally to people to be able to sit and soothe and calm someone, especially someone who doesn't have the capacity because of his brain damage to regulate his affect and is in a very pernicious situation.

Q. Somebody ---

A. So ---
Q. Somebody like you?
A. Yes, sir, somebody like me.
Q. Okay.
A. Or somebody who's clinically trained and understands the dynamics of resistance and people who are brain-damaged versus just someone who's oppositional for the sake of it.
Q. So, whoever the experts in this case were that sat down with him, they were not effective? They were ineffective in not getting him to take the test?
A. No, sir. If they'd had a developmental neuropsychologist on this case, as I've argued before, that developmental neuropsychologist, because of their experience in testing children with disabilities, would have looked at those behavioral observations and said boom, that is so typical. I see this all the time in kids who have deficits. This is a defensive posture. I know what to do. Let me try, let me at least try to speak with him.

And maybe they would not have necessarily given eight hours of testing to him, but maybe they could have selected what would have just been critical enough. Just get an assessment of his fine motor functioning, executive skills, some visual cognital -- cognitive measure, WRAT.

We can do an abbreviated battery if we have to. It's not what I prefer to do, but it can be done, and an

abbreviated battery could have given you that information. Just test his motor functioning, and that he would not have been resisted to -- resistant to because that's not an indication of someone's intelligence, motor behavior.

Q. So, your testimony is counsel was ineffective for failing to hire a developmental neuropsychologist to sit down with him and get him to cooperate, convince him to take the written tests that were offered to him?

A. I think counsel was ineffective in the sense that they had this piece of information that, again, it is the biggest neurohazard, the biggest poison. Lead is poison. It has been poisoned for millennia.

Q. But he wouldn't take the tests that they offered him, the psychological tests.

A. They didn't do anything else. They ---

Q. So ---

A. --- acted as though he hadn't been exposed to lead, that he didn't have significant levels in his blood. It was nothing. It was like saying he's got flat feet. They treated it with as much sort of import as -- gave it as much weight as if someone has said, oh, he's flat-footed.

Q. So, they should have got somebody to talk him into taking the test. Is that ---

A. They should ---

Q. --- your testimony?

A. --- have gotten a lead expert at the very least. They should have gotten a pediatrician who has expertise in lead poisoning. I'm sure there are many in his neighborhood, given how many lead poison cases that are.

Q. Has a pediatrician testified in this PCR hearing?

A. No, sir, but a pediatrician would have been able to consult them in the way that would have been meaningful and useful to them.

Q. And there are not -- there's no pediatrician going to testify in this case, is there?

A. Sir, there are experts in psychology, neuropsychology, pediatrics, toxicology, whatever it is. We play multiple roles in the forensic process. Our role is not solely to testify. Many of the -- much of the work that I've done, much more than testifying has been as a consultant. I have reviewed files. I have met with lawyers, and I have directed them in directions that I think would have been important to them. They wouldn't have needed a pediatrician to testify, but if they had had somebody else with some expertise in lead.

And again, lead is not ambiguous in any way, any way. The history of it, what this country went through to eliminate lead from our paint, to eliminate lead from our air...

Q. When did the CDC's standard change from 10 to 5? What

year?
A. In 2011 but that was years and years after we had substantial information. And if you read the book *Toxic Truth*, it details in exquisite sort of -- very well written, too, for a book like that how Dr. Needleman and Dr. Peterson fought the lead industry for decades, decades to get them to back off from the lobbying they did and the harassing they did to the point of even calling their houses and threatening the researchers, okay? There's a long history. It is ugly. The fact that the CDC did not lower it to 5 before then is not very meaningful, just like it's not meaningful that the tobacco companies did not concede to put warnings on their cigarettes saying this could cause damage to your fetus, or this is what your lung's going to look like ---
Q. Did the CDC change ---
A. --- if you keep smoking this.
Q. --- after this trial from 10 to 5?
A. The CDC was already at 10 at this time, wasn't it?
Q. I'm asking you. After the trial, it went down to 5 at some point.
A. Yes, and -- it did.
Q. All right.
A. It did.
Q. Now, you did not take these tests that you gave him in

prison. He took the tests, right?
A. Yes.
Q. You administered the tests?
A. Yes.
Q. All right. I want to -- tell us about his reluctance to take the test when he came -- when you first met with him.
A. He was not reluctant to take the test when I first met with him.
Q. Well, I thought that's what you testified to on direct. He didn't want to take the test. Didn't he say something like what's this got to do with my case?
A. That was after the second day of testing when I was doing more of the written tests with him. But when I went, went and met with him, he was very open to the testing.
Q. Uh-huh.
A. And very cooperative. After six hours of sitting there with his deficits in his face in front of me, publicly again as public embarrassment, the shame -- I, I don't know too many people in his situation who would say give me another one.
Q. I thought you testified to on direct that he came in, and he was initially hesitant to take the test, and he said what does my brain function or what I score on a test or read have to do with my case. Isn't that what you said?

A. No, sir. I, I -- on the approximately sixth hour of my testing on the second battery that I administered on reading and writing, he said what does this have to do with my case. That is not hesitance from the beginning, no. I would not have gone back on the second day if he was not willing to cooperate with me.

He was very willing to cooperate with me, and if you could read my observations, initially he was -- showed good motivation. He made sort of -- it was easy to build rapport with him, but anyone would be frustrated. Even the people who I assess who are completely intact are frustrated at, at a certain point.

Now, let me tell you something. The fact that he, he had a low frustration tolerance, let's say, is very consistent with lead poisoning because they do have a low frustration tolerance.

Q. Did I ask you about the frustration?

A. I thought you did, sir.

MR. GROSE: I think he did. I, I -- she's allowed to explain.

THE COURT: Don't interfere.

MR. GROSE: Sorry.

THE COURT: Don't interfere, please.

MR. GROSE: I, I just ---

THE COURT: If you've got an objection, tell me what

the objection is and stand.

MR. GROSE: Yes, sir. Objection. Allow her ---

THE COURT: Not just interjecting things, please.

MR. GROSE: I, I'd like for her to be allowed to be able to finish her answer is the objection.

THE COURT: Go ahead. Finish your answer.

BY MR. MABRY:

A. I believe that what -- I believe his hesitancy was a function of his frustration and not doing well on the test that I was administering him, and it was an exhibition of his poor ability to tolerate frustration.

Q. Okay, and the tests you administered were written tests and tapping test with his finger and putting pegs in a hole ---

A. And ---

Q. --- in a certain order in a certain time period?

A. And orally answering questions, yes.

Q. Okay, and again he's the one taking the test. You're just administering the test, right?

A. That's right.

Q. Okay, and nobody really knows whether he's doing his best but Mr. Dickerson. Isn't that correct?

A. No, sir. I gave him measures of effort that clearly demonstrated he was doing his best. And, sir, I have many years of experience where I can detect when someone is or

is not performing at a level that I feel confident about saying this is valid or this is not.

I have done many assessments in many different settings where I have written in my report I do not believe this person was giving forth their best effort, or I believe this person's anxiety interfered with their performing, or I believe there was so much noise outside the room that they could -- if, if -- and I'm trained to do this. I had picked up on any sign that he was not doing his best or that there was environmental situations or noises or distractors that were impacting the reliability and the validity of my test, I would have said so in my report.

Q. Did you see him on death row when you tested him?

A. Sir, he was at Lieber. Yes, I believe he was on death row when I tested him.

Q. And he knew this was about his case, his PCR case, didn't he?

A. Yes, sir, he did.

Q. Okay. Let me ask you about some of the things that's happened. He found that he had damage to his brain. I gather that's what your testing, in your opinion, showed, that he had damage to his brain?

A. I found neuropsychological deficits that are consistent with brain damage. That is consistent with what

we know and see when someone has been exposed to lead, yes.

Q. Okay, and what else can cause damage to the brain beside lead poisoning?

A. The brain in general?

Q. Yes, the brain.

A. Any part of the brain?

Q. Frontal lobe, side of the brain, you tell me. What can cause brain damage?

A. Many things. Physical blows, mechanical blows, genetic abnormalities, hereditary disorders, many things.

Q. Okay. Is premature, is premature birth a risk factor for brain damage?

A. Premature birth is a risk factor for learning disabilities and delays.

Q. Okay. Well ---

A. Not all children who are born premature have suffered brain damage.

Q. But some ---

A. The time ---

Q. --- have?

A. The time at which they are born premature and the circumstances around that and whether or not they were subjected to or at risk for intraventricular hemorrhage, which is what happens with really premature babies, that would determine their risk for brain damage. Not all

premature babies are brain damaged. Again, it's complicated, sir. It's not simple.

Q. I didn't say it was simple. I asked you a simple question. Is it a risk factor for brain damage, premature birth?

A. And I explained to you that it is, and I qualified it with it depends.

Q. Okay. Would you agree with me that everybody's brain is different?

A. Within a certain degree, yes.

Q. Okay, and everybody has strengths and weaknesses, isn't that ---

A. Certainly.

Q. --- right? Isn't that true?

A. Yes, sir.

Q. Okay. Are you aware that Mr. Dickerson was physically abused in his early childhood?

A. Yes, sir, I was.

Q. You testified to that yesterday several times, didn't you?

A. Yes, sir.

Q. Okay. In fact, are you aware that his mother -- and this comes from his sister -- I mean his aunt, his stepfather, and other people, that his mother would hit him in the head with her fist?

A. Yes, sir.
Q. When he was growing up. What kind of brain damage can that cause?
A. It can cause a lot of different damage depending on the blow, the location, whether or not she knocked him unconscious. The fact is she was abusive from the day he was born.
Q. Okay. We don't know how many times she hit him in the head, do we?
A. Right, but we know that there was a real shift in his behavior at the same time that his blood level registered really high, and he was anemic and his thyroid hormone was so off the charts, they didn't know what to do with it and at -- subsequent to that point, he was not the same person. The mother has always been abusive. She didn't accelerate her abuse of him. She's a constant.
Q. Let me ask you something. Did I ask you when his behavior changed?
A. No. You asked me if the blows to his head could have caused brain damage.
Q. Right.
A. And I explained to you that it depends, and that doesn't seem to have been the case with him because he was beaten throughout his life, and that alone is not the most parsimonious explanation for the data points.

Q. Okay. Well, they'll get to ask you any questions on redirect, but I'd like you to answer my questions, okay ---

A. I believe ---

Q. --- first.

A. --- I did, sir. I'll be clearer.

Q. I understand you want to defend your opinion, but I'm going to ask you some questions, and please answer them, all right?

A. Sure. Uh-huh.

Q. Do you know how many times he was hit in the head with a fist when he was ---

A. No sir.

Q. --- growing up, but it was numerous times, wasn't it?

A. It appears to be.

Q. I mean, she hit him. She hit him with her fist. She threw things at him, and you said it started from the time he was an infant throughout his childhood. Isn't that correct?

A. That's correct. It appears that it was that way.

Q. What can repeated head trauma cause ---

A. It can cause ---

Q. --- to the brain?

A. It can cause all kinds of delays and damage and problems.

Q. What parts of the brain can it damage?

A. Depends on where the blow is because it depends on what, what area of the brain is hits. When your brain is hit, it's taking the velocity of the first hit that it takes. When she -- that, that location -- because your brain is gelatinous, and it sits inside of a bony case. That case, bony case has protrusions in it. There are spikes in the bones inside your skull. It's not smooth. You have a jelly brain in a skull that is not smooth. Once you get a blow to your head, we call this a coup injury. What happens is because your brain is gelatinous, depending on the velocity of the blow and when in your development it occurs, and that brain will swish back, okay, and you'll have an injury on the other end. You will -- what you see typically of someone who has a discreet head injury is you will see deficits in the area that was hit and the opposite side, and you'll see some diffuse damage.

With him, who knows where she hit him, how many times she hit him, how badly she hit him, whether she hit him in the -- but, but, but blows to the head do not cause motor deficits to the extent that he has.

Q. Well, you don't know how many times he was hit, do you?

A. Doesn't matter. Blows to the head do not impact cerebellar function to that extent.

Q. Without even knowing how many times and how hard he

was hit, that's your opinion?

A. It is extremely improbable to have cerebellar damage with blow to the head, and I have worked with head-injured individuals and written papers on head injuries, sir.

Q. You've been practicing since 2010. Isn't that correct?

A. Since 2000, sir.

Q. Well, do you remember giving a deposition in this case?

A. I do.

Q. Okay, and I asked you how long you had been practicing, and you said you started practicing in 2010, didn't you?

A. No, sir. I said 2000 and I remember you clarifying and saying, so, fifteen years. I may be wrong, but it's clear in my CV that I've been practicing much more than five years. I may have misspoken, but my CV is clear in that.

MR. MABRY: If I could have just a moment, Your Honor? Can I approach the witness, Judge?

THE COURT: Sure.

BY MR. MABRY:

Q. Okay, I'm going to show you deposition on page 8, and I ask you on line 8: How long have you been practicing? And what was your answer?

A. I said I've been practicing -- it says that I said that I've been practicing since 2010, 2010. I believe I requested an opportunity to review this deposition at the time of the deposition, and I have not. This is the first time I've seen it. That I would have corrected because it is an obvious mistake, and if you looked up when I was licensed, you would know that to be true.

Q. Did he suffer any other head injuries besides his mother beating him in the head with a fist?

A. I don't recall reading about any significant head injuries. It's possible he may have, but again that would not be the parsimonious explanation that would -- I'm sorry, no.

Q. Would a blow to the back of the head cause damage to the frontal lobe?

A. It can, yes.

Q. Were you aware that his head hit the concrete and he had to be taken to the hospital?

A. I was not aware of that. I -- or I may have read about it and forgot about it. I don't know. When was that?

Q. I'm looking for it right now. I may have to find it in a minute, but apparently he was a teenager. Fell and hit the concrete and had to be taken to the hospital. Is that something that would have been important ---

A. I would need to see that.

Q. --- to you? Okay. I'm looking for it.

MR. MABRY: And I do have it, Your Honor. I'll just have to find it.

(A PAUSE.)

MR. MABRY: And I can't locate it right now, but I'll come back to it.

BY MR. MABRY:

Q. Let's ---

A. Well, sir, I'm looking at his intake, and typically when we see a child in a mental hospital, we do quite a thorough review of possible head injuries in there. All the notations are that he's been a healthy, robust child since that point.

And a head injury to -- that would have -- had the extent of the head injury that he would have had to have sustained to be able to account for the deficits that I see would have caused drastic changes in his behavior. And that would have been noted in his school records or in family or other people that knew him and came across him. He wouldn't have been the same person post that injury, head injury that he was pre if it was significant enough to cause the damage I saw.

Q. Was he abused by any of the boyfriends that the mother had in the home?

A. I read that the -- she had boyfriends that were abusive to him, yes.

Q. Okay. So, he was abused by his mother and also physically abused by boyfriends in the home. Isn't that correct?

A. Yes, sir.

Q. When was his IQ first tested?

A. The document that I have with an IQ on it is from the time that he was hospitalized -- let me see, at Tara Hall, I believe. Not -- no, he was at -- in treatment at Tara Hall.

Q. Okay, 1990 sound about correct?

A. Yes. I believe so. Can you just give me one second, please, just to make sure that that was the first IQ for him? I believe so, yes. I think so, yes, 1990, which was after his 1988 admission to the hospital and then his subsequent transfer to Tara Hall.

Q. And he had a verbal IQ of 96, performance of 86, and a full scale of 90. Isn't that correct?

A. That's correct.

Q. All right, and when was he tested for lead?

A. He was tested for lead on, I believe, on June 2, 1988.

Q. Now, after he left Tara Hall, where did he go?

A. I think he went back home.

Q. Okay, and then when was the next time his IQ is

tested?

A. There were two more IQ tests, and I need to -- just give me a second so I can see when they were. I missing something here I know.

The next one that I, I have, and it may not be the one that, that was actually -- was the one when he was tested at the Department of Youth Services.

Q. What year was that?

A. In 1992.

Q. So, two years later he's tested at the Department of Youth Services?

A. Yes.

Q. Okay, and he scores an 83?

A. Yes.

Q. Okay. What happened between the time he left Tara Hall and the time he went to the Youth Services? What was going on in his life at that time?

A. I think he was failing school at that time, but I do believe I address why I -- wait one second. Just let me think. Let me take a look here.

(A PAUSE.)

A. He was failing school and he was unsupervised.

Q. Okay. He went home from Tara Hall and when he got home, he started using drugs at that age, didn't he?

A. I believe he started using marijuana when he was

fourteen.

Q. Okay. Well, he was thirteen and nine months when he went home from Tara Hall. He started using marijuana at fourteen. He experimented with heroin and crack cocaine and also cocaine, and then he ended up in the Department of Youth Services, correct?

A. I don't know that he had done all those drugs at that point, but I know he was using marijuana, yes.

Q. Okay. So, we've got a 90 IQ when he's at Tara Hall?

A. Uh-huh.

Q. He goes home. He starts using drugs, and then he goes to the Department of Youth Services and he scores an 83?

A. Yes, and that, as I have mentioned in the past, is an average which can vary, and I have not seen any of the subtests that he was administered, and I, I think I mentioned that he had just -- I think they tested him just as he had turned sixteen, and they gave him the adult intelligence test, which I don't believe would have -- was the best clinical judgment on their part. But I would have given him, I would have given him the WISC because I felt -- I would feel that -- the WISC goes up, all the way up to sixteen, eleven months. And I don't have, I don't have any of the numbers. An average hides many things. It's kind of meaningless on its own.

Q. Well, he went ---

A. What's interesting is that they're reporting this strength and this psychomotor speed, which sounds very consistent to what I found and what was found previously. An average IQ -- an IQ measure alone, as I've mentioned several times, is not a very sensitive indicator of any type of brain damage in general. It's not specific and it's not sensitive.

Q. He went from a 90 at Tara Hall to an 83 in the Department of Youth Services.

A. And that is not a significant difference. A significant difference between IQ points would have to be at this point at least fifteen points, and there wasn't that -- he's still scoring in the low average/average range. He hasn't gone from above average to borderline or superior to deficient. He's in this narrow range.

Q. Did you tell -- did you hear Dr. Canfield testify yesterday?

A. Yes.

Q. Okay. Did he not testify that there was a variance of five points either way in the test?

A. Between the subjects that he tested in his research group, that he was comparing this group's average with that group's average.

Q. On an IQ test, if you score a 90, that means it could -- or 91, you could be a 96. You could be an 86.

A. That's right.
Q. Okay.
A. Yes.
Q. He went from a 92 to an 83. There's more than five points he went down from the time he left Tara Hall ---
A. Okay.
Q. --- and when he was tested.
A. You're talking about standard error of the estimate, and that is five points. But when you talk about confidence intervals which is, as I've mentioned, that 95th percentile, statistically it's a completely different measure.

Confidence intervals are what we report and what software generates for us, and that gives us always a broader range because it is -- if I test him, 95 times out of 100 I'm going to get some number in here and some number in there. And typically those two numbers are not going to be so far apart that I would think this is a different brain. They're so close together that it's a similar brain.

That 95 you're talking about is a different measure than the standard error of the estimate, which is what I'm talking about.
Q. Okay. Now let me ask you this ---
A. Statistically ---

Q. --- question.

A. Statistically, the mean is 100. Standard deviation is 15, but it's statistically different is it -- when a score is more than one, one or more standard deviation discrepant from what you find.

And I'm simply saying these two scores are not that discrepant, and I believe that the fact that he was given a test that I don't think he should have given that -- he should have not been given that version of the test. My sense is this examiner may not have been the most competent. I don't know.

Q. Let me ask you this. Have you ever given a test to a subject that you weren't supposed to give?

A. I'm not sure what you're asking me.

Q. I'm asking you ---

A. But, but ---

Q. --- if you've ever given ---

A. --- no, no. I can tell you this. I know that typically I find a test that is normed, that is current because they get renormed, okay? So I use the latest version that is age-appropriate, that is socioeconomically appropriate as best, that may be language sensitive or not, and I always administer more than one measure so that I can get a broad overview.

So, I may have administered a test -- who knows --

that was not necessarily the right one.

Q. That's what I'm asking ---

A. Right.

Q. --- you.

A. But, but typically I'm very careful about that because I know that can make a big difference, especially when I have a child coming in who has a history of school failure. I would pick my test very carefully, and I wouldn't necessarily administer six projective tests either. Those are not normed; they're not standardized. So, I'm not very confident in this number.

Q. Mr. Dickerson have any head injuries after his childhood?

A. Did you find what you were looking for?

Q. Yeah. We got it on the computer.

A. Okay.

Q. He fell 3/26, I think it's '91. He fell backwards onto the concrete, striking his skull. Was taken to the hospital. Do you remember seeing that record?

A. How -- was he kept in the hospital?

Q. I don't think so. He ---

A. Did they do a ---

Q. All I know is he was taken to the hospital because he struck his head on concrete.

A. Was his behavior significantly different after that?

Q. I can't tell you that. All I can tell you is what the record -- what I've got here. That's what it says.
A. Okay.
Q. Were you aware of that injury that he suffered?
A. No, and I would have noticed it and paid attention to it if there was also a concomitant indication that his behavior had changed.
Q. Did he suffer any head injuries as an adolescent or a teenager?
A. I don't know any that were significant enough that they changed his behavior that required hospitalization or that resulted in loss of consciousness.
Q. All right.
(A PAUSE.)
(MEDICAL REPORT MARKED AS RESPONDENT'S EXHIBIT NUMBER 1 FOR IDENTIFICATION.)
BY MR. MABRY:
Q. Dr. Israelian, I'm going to show you a document, Respondent's Exhibit 1, and isn't it a fact that Mr. Dickerson suffered a gunshot wound to the head?
A. Yes. That is a fact.
Q. Okay, and isn't it a fact that the emergency room noted that he was intermittently incoherent and confused in that record?
A. Yes, sir.

Q. The bullet entered his head, went under his scalp, and exited. Almost took his ear, one of his ears off?

A. The bullet was superficial. It never hit his -- it never punctured his skull. It blowed off the top of his ear, and he had been brought in at that point after being knocked out. I'm not sure. There was an altercation. There was no loss of consciousness, it says, and there was no penetration of the wound -- of the head from that bullet. The injury was all superficial, and I don't see anything in this that indicates a significant head injury that would result in brain injury and change in behavior subsequent to a graze to the head and a nip of the ear.

Q. Was he noted in the emergency room to be confused and incoherent ---

A. Most people ---

Q. --- intermittently?

A. Well, I, I could explain that as someone who was apprehended, shot, and is now in an emergency room with a bloody ear. I think he was also shot in his shoulder. Most people who are in that state of -- and it is shock or trauma -- aren't very coherent or conscious or together. That doesn't mean that he has a head injury. Many things can cause confusion. Doesn't have to be essentially, necessarily be a head injury, and there was no loss of consciousness.

Q. Okay.

A. And there was no subsequent -- he was not seen by a neurologist. If he'd had a head injury, definitely I would have seen a note in here. There would have been a referral to the neurologist. There would have been some bedside cognitive assessment.

There was -- the drawings very simply shows that it was a grazed wound to the head right here.

Q. Your IQ score that you got on your test in 2015, was that consistent with the IQ score that was obtained at Tara Hall?

A. Yes.

Q. Okay. Do you remember testifying differently at your deposition?

A. I don't remember because I haven't had a chance to review my deposition.

Q. Okay. On page 17 I ask you: Do you remember Dr. Cunningham got an IQ of 90? Actually, I was referring to Tara Hall.

A. See, that confused me, sir, because I never remember Dr. Cunningham ever testing him. So, I do remember that I was thrown by that.

Q. Well, it's a 90. You agree with me? I asked you about a 90 and your answer was what?

A. I said: No, sir, I don't. That would not be

consistent with this score. And I'm, frankly I'm puzzled because you were referring to something that I have not seen, that does not exist, that I haven't had a chance to look at.

If you had asked me were his scores on the assessment at Tara Hall consistent with yours, I would have replied yes. I don't know what you're talking about.

Q. Okay. Well, I asked you about an IQ score of 90, didn't I?

A. Could have, yes, but I -- a score, as I've mentioned, just a score in itself is meaningless unless I can see the pattern and the profile. The pattern analysis, if that matches, regardless of what it averages to, any constellation of numbers could average to a 90. What I want to know is -- what I want to see are the deficits and the pattern of his deficits on those different faculties in those different areas. Are they consistent?

We have ten, up to fifteen different subtests that go into an IQ average. I want to know is this brain the same brain over time in that it is showing the same deficit consistently? A 90 average can come from a number of different numbers.

Q. Well, I asked you about a 90 IQ in relation to your 86, and your answer was: That would not be consistent with this score of 86. Am I wrong?

A. As I said, I -- no knowledge of a Dr. Cunningham IQ score. It really threw me.

Q. And you've attributed the drop in the IQ score from Tara Hall to 86 that you administered to damage from drugs. Is that correct?

A. No, sir. I, I need you to rephrase that because ---

Q. I thought that was your testimony ---

A. No, no, sir. I know what you're getting at, and I need you to slow down, please, so that I can find my test and I can explain what I was trying to convey.

Q. Okay. Well, did you testify under oath that drug abuse, chronic, heavy use of cocaine, crack cocaine, whatever you're using can damage the frontal lobes of the brain?

A. Yes, and I remember what I said now.

Q. Okay. Well, the record will reflect what you said, but please tell us what you remember.

A. I said that his profile of scores on my administration, right, of this test was highly consistent with what he achieved at Tara Hall and -- okay, the full-scale IQ is very consistent with the VIQ, the PIQ. The averages are very consistent. Where I look at this pattern of performance, they show the exact same thing except there is an additional weakness. This was never a strength in him. There's an additional weakness on two

particular subtests that are particularly sensitive to attention and working memory, and that decline could be explained potentially by the cocaine that he was using prior to or after that point at which time I assessed him.

I was doing what I do, which is I look at the pattern of the subtest scores, and I try to look and see what's discrepant, and I try to come up with a hypothesis. The two things that came up that were lower but not significantly lower, just lower, were these digit span and arithmetic scores. And that is why I said -- because I want to understand what could potentially -- I gave you a possibility -- could be high levels of cocaine use.

Q. Okay. He abused cocaine before this incident, long before this incident we're talking about here today, correct?

A. Which incident? The one that he was on trial for?

Q. Yeah.

A. Yes.

Q. Okay, and he, in fact, had used heroin at one time?

A. I believe used it once. I know that he had -- did not particularly like it, which was also consistent with lead poisoning because they have an aversion to heroin. They don't ---

Q. Heavy use ---

A. --- respond.

Q. --- of marijuana?
A. Yes, heavy use of marijuana.
Q. He was, he was smoking as many as five blunts a day of marijuana, wasn't he?
A. Yes, sir.
Q. Okay. That, does that cause brain damage?
A. Yes, sir, but it doesn't cause damage of fine motor skills, and it's very particular, very specific, very profound deficits in visuospatial construction, but yes, it does.
Q. And he was using cocaine additionally before this incident?
A. Yes.
Q. Okay. Had he ever had a psychotic episode before this incident?
A. I did not come across any psychotic episode before this incident, no.
Q. Okay. Even though he was using drugs before this incident?
A. Yes, sir.
Q. I heard you say he had basically the reading skills of twelfth grade. What were you talking about the twelfth grade?
A. His reading comprehension, his ability to read short sentences and fill in a word that would complete the

meaning of that sentence.

Q. All right. He got his GED while he was in the Department of Corrections at one time, didn't he?

A. Yes, he did.

Q. What do you think of his writing skills?

A. Be specific, please.

Q. I'm asking you what you think his -- of his writing skills.

A. It depends on the task. It depends on whether or not it's timed. It depends on whether or not it is going to involve some level of sophistication in terms of organizing thoughts. It depends on whether or not he's going to generate that outline or framework independently, or whether or not he has been given an outline or framework to follow. It's dependent.

Writing skills, like reading skills, like any other skill, is dependent on the sort of particular nuances in the ability that is tapped. So, I would like to know what you mean.

(COLLECTION OF LETTERS MARKED AS RESPONDENT'S EXHIBIT NUMBER 2 FOR IDENTIFICATION.)

BY MR. MABRY:

Q. I want to show you what's marked as Respondent's 2 for identification and specifically going to show you a letter that Mr. Dickerson wrote. This was after he tested

positive three or four times for marijuana in the Department of Corrections.

A. What year was this?

Q. He's in the -- I don't know exactly. It's on the document you're looking at.

A. This is an addiction treatment unit while he's incarcerated. Is that correct?

Q. Yes. Two letters that he wrote.

A. Okay.

Q. Okay. I want you to look at the letter that he wrote. Could you read that letter for the ---

A. Can ---

Q. --- court, please?

A. Can you please let me read it?

Q. I want you -- I'd ask you to read it out loud so the court can hear it.

A. Yes.

Dear Ms. Jennifer Campbell. This is William Dickerson. Yes, I'm writing to you again about the ATU program. Ms. Campbell, in the request form that you have sent back, you said be patient during the process. Yes, I'm being patient, but it's really hard dealing with the situation at hand. It seems like I'm reaching out for help and it's taking entirely too long, but as soon,

as soon as I make a mistake, the punishment comes real fast and harsh. I'm trying to make self a better person. All I need is a little help. Ms. Campbell, this is the year of 2003. The last time I saw the free world is of May '96. I wish I can get back into time and change the past, but we are dealing with reality and I can only correct my future. I'm trying to cope with a lot of inner demons, and I'm being alone. The only friend I got is drugs to help me out. I'm not making an excuse, but it's as hard. If you can just help me a little bit, I will really appreciate it from the bottom of my heart. Thank you. William Dickerson.

MR. MABRY: Move this into evidence, Your Honor.

MR. GROSE: No objection.

THE COURT: Without objection.

MR. MABRY: Also introduce my previous exhibit, Defendant's Exhibit 1. It's a gunshot wound.

MR. GROSE: No objection.

Without objection.

(COLLECTION OF LETTERS MARKED INTO EVIDENCE AS RESPONDENT'S EXHIBIT NUMBER 2.)

(MEDICAL REPORT MARKED INTO EVIDENCE AS RESPONDENT'S EXHIBIT NUMBER 1.)

BY MR. MABRY:

Q. Dr. Israelian, you have pointed to the defendant going to MUSC and also to Tara Hall as part of this fingerprint or thumbprint, as you call it. Have you reviewed those records from MUSC?

A. Which records, sir? There were multiple.

Q. Well, did you just review part of the records, or did you review all of them?

A. No, sir, but I don't know which one of the records you're referring to when you're asking me.

Q. Well, let me ask you this. Do those records not reflect that Mr. Dickerson was running away from home when he was eleven because his mother was beating him?

A. They reflect that he was running away to his grandmother, and they reflect that he had a bad home situation.

Q. Okay, and the grandmother lived next door. Is that right?

A. I'm not sure that this is the Bogard Street address. I could be wrong. Bogard Street was when they lived couple doors down from each other. At this point they're at Orrs Court, and I do not know what the grandmother's address is.

Q. All right, and you testified on direct that at the age of ten, Mr. Dickerson was going into puberty. Isn't that correct?

A. I believe he was eleven, and that's when they had the medical done on him at William S. Hall.

Q. Right. Well, my question was on direct you said when he was ten, he was going into puberty.

A. No, sir. I said I believe the incident was when he was ten or eleven, and based on the Tanner scale that was in the records from, I think -- because that's the only place the Tanner scale is that I saw that was in the record from the time he was in the hospital he was -- he had begun puberty.

Q. Okay, and this was around the time he was in, actually in the sixth grade. He was starting the sixth grade, wasn't he?

A. He was at the end of sixth grade. He had just finished it, I believe, because he was hospitalized in May. He was evaluated in early June. So, he had just failed the sixth grade.

Q. All right, and he's not the first child or teenager or person going into puberty who has trouble dealing with his mother in the sixth grade, is he?

A. No, sir.

Q. All right, and, in fact, all of those records from MUSC show that his problems were in dealing with his mother. Isn't that correct?

A. They indicate that he had problems. He had issues,

difficulties with his relationship with his mother, and that was one of the recommendations that was made in terms of treatment for him.

Q. All right, and, and he didn't need to go back to his mother's home?

A. And he didn't need to go back to his mother's home, but to say that all of his problems were because of that is only saying that they believe that all of his problems were because of that.

(A PAUSE.)

MR. GROSE: I think this is already in evidence.

MR. MABRY: It might be.

BY MR. MABRY:

Q. Well, what I'm asking you is nobody at MUSC or William S. Hall diagnosed him with having brain damage from lead poisoning, did they?

A. No, sir, because at that time the cut off for toxicity, which is toxicity that is manifested in frank physiological illness in the soft tissues, was 85. They tested him at 9 and they said it was within normal limits because they are not operating from the knowledge base that would have clearly indicated, if they had understood and knew the facts, that a child who comes in, regardless of who their mother is, who has, who has lost weight, is not eating, has become very impulsive in terms of his running

away, is depressed, is suicidal, and has become disregulated and disruptive and is now failing the sixth grade when he has passed all along in the past, and when he has anemia, and a frank biomarker that they missed -- the thyroid hormone which they said was laver -- no.

I believe that the fact that they didn't say or didn't investigate doesn't mean that he didn't have it. I believed that they missed it.

Q. Well, what I'm asking you is if you -- you can go throughout all of the William S. -- I mean the MUSC records, all the MU -- all the William S. Hall records and there's no doctor, psychiatrist, nurse, anybody that says I suspect brain damage, I suspect brain damage from lead poisoning, is there?

A. No, sir. I'm sure I could give you millions of cases where lead poisoned children have been seen at hospitals where doctors have not said they suspect brain damage. Many children are misdiagnosed millions of times.

Q. In fact, what those -- what they say in those records is this is a child who's having problems with a mother who is abusive, and she's using drugs.

A. Because that's very obvious. You need to be sophisticated to look for the subtle.

Q. My question was the records. I'm not talking about your opinion. The records show from both places, MUSC and

William S. Hall, the medical professionals there, the nurses, the doctors, everybody said this is a child who's having problems with a mother that he says is abusive and she's not only physically abusive to him, but she's using drugs.

A. They said that he reports that she's using drugs. There was no other indication of that, but yes.

Q. Right.

A. They, they in their evaluation of him said this is a child who is being abused. We do not want him to go back into that ---

Q. Right.

A. --- environment. He has done very well while he's here. He has recovered quite rapidly.

Q. Right.

A. He's eating voraciously. He is cooperating, getting along well. Let's remove him from what, what is an obvious toxic environment.

Q. All right, and when they send him back to his mother from MUSC, then he ends up back at William S. Hall shortly thereafter?

A. Uh-huh.

Q. Twice, and, and one of the doctors at MUSC said I told y'all this was going to happen. We send him back to the mother, he's going to end up back here.

A. Right, because they exercised poor judgment in doing that, which is the same poor judgment, I think, that led them to misdiagnose him.

Q. Well, he didn't send back to -- the doctors didn't send him back to his mother. They diagnosed what was going on, and they said this is a conflict going on in the family between him and his mother ---

A. And they were ---

Q. Whoever the authorities were let him go back to his mother. The doctor was upset that they let him go back.

A. Oh, okay. As you said, the doctor said I told you not to do that.

Q. Right, right, but nobody said he's got brain damage from lead. In fact, they list all the incidents that he talks about where his mother's beat him with a belt on the chest. His, his brother doesn't get in any trouble, but he gets into trouble, all those things. That's what's listed in those records, isn't it?

A. Yes; sir.

Q. And the impulsivity you're talking about is him running away from home at eleven to escape his mother's physical abuse?

A. Yes.

Q. Okay.

A. And the fact that that shows very poor judgment

because he's doing it repeatedly and with no new results. That speaks to me of an executive dysfunction, going ten times in the last five months doing the same time, and each time he gets sent back home doesn't really speak to judgment, reasoning, forethought, planning, organization.

Q. But he's ---

A. So ---

Q. --- an eleven, eleven-year-old boy, right?

A. Sir, I've tested many eleven year olds. Not all eleven-year-old boys exercise such poor judgment.

Q. Well, he's being beaten by his mother, and he's now big enough to run or fight back and he runs to his grandmother's or, or the records say to a friend's to get away from the abuse. What is illogical about that?

A. That's much more likely the behavior of a seven or an eight-year-old. It doesn't involve these more sophisticated, abstract reasoning that you would expect to see from a child that is eleven, twelve, thirteen and entering into that adolescent phase where we see more abstract thought and reasoning. You see -- this is very much what I would expect from a much younger child.

Q. Do you remember testifying in a case, *State vs. Jones*, in Georgia?

A. I believe so, ten years or more ago, yes.

Q. All right, and that's where you practice. Is that

correct, in Georgia?
A. Yes, sir.
Q. And isn't it true that the Georgia Supreme Court found your testimony was not credible in that case, and you testified that the defendant suffered from brain damage from a certain chemical, dry-cleaner chemical?
A. I believe that I said that the defendant suffered brain damage because he had bipolar disorder, had had chronic childhood trauma, and on top of that had been exposed to this trichloric [phonetic] whatever acid. I do not -- and I know -- say that all of his deficits were because of the trichloric acid. In fact, this was an individual who had long history of bipolar illness. We know what impact bipolar illness had on the brain, and we also know that he was institutionalized at the Sheraton Center for Boys where he was placed in a hold with rats and a child abuser. So, for you to simplify my testimony like that, I think, is a mischaracterization.
Q. Well, my question is the Georgia Supreme Court found that all of your testimony, all of it in mitigation was not credible. Isn't that correct?
A. That's possible. I don't know this. This is news to me and, you know, many other experts testify and people find them not credible.
(SUPREME COURT CASE MARKED AS RESPONDENT'S EXHIBIT

NUMBER 3 FOR IDENTIFICATION.)

MR. MABRY: Your Honor, I move into evidence the case *Jones vs. Warden*. It's the federal habeas corpus from that case. It talks about what the Supreme Court of Georgia found. It's Respondent's 3.

THE COURT: All right, without objection?

MR. GROSE: I haven't had a chance to review it yet, Your Honor. This was just handed ---

THE COURT: Well, still, regardless of what it says, you don't question the authenticity of it, do you?

MR. GROSE: I don't question the authenticity of it, but I don't know the relevance of it yet.

THE COURT: Can it not be relevant?

MR. GROSE: Then, then, then I'd like the chance to review it, know whether to make an objection based on that.

THE COURT: Well, I accept your objection to relevance at this time.

MR. GROSE: All right. Fair enough.

THE COURT: Overruled.

(SUPREME COURT CASE MARKED INTO EVIDENCE AS RESPONDENT'S EXHIBIT NUMBER 3.)

BY MR. MABRY:

Q. Ma'am, you testified in that case that basically because of his brain dysfunction, bipolar and the -- I don't know how to pronounce that chemical, dry-cleaner

chemical.

THE COURT: Trichloride.

Q. I don't know, but he was basically led along by other people because of his brain dysfunction. Isn't that correct?

A. It's been many years, but I know that I found significant deficits in him, and I do believe that I felt that they explained some of his behavior.

Q. Okay, and, in fact, the court, what the court said was there was evidence that showed he was the leader. He was the person. He knew what was going on. He told people what was going on when they committed the crime. Your, your opinion did not fit with the evidence. Do you recall that?

A. Sir, I have not seen this opinion. I -- the last I knew of this was when I did my deposition.

Q. In this case, when you tell me -- did you read the guilt phase testimony in this case?

A. I read the sentencing, and I read the mitigation, that -- that part of it I read.

Q. Okay. Well, what do you know about the facts of this case, the crime itself? If you didn't read the guilt phase testimony, did you read the police reports?

A. I know that, I know that, from what I read, that Mr. Roper was kidnapped and he was taken to a hotel room, where

he was tortured for a number of hours and was found dead.

Q. Okay. Well, he was actually kidnapped and taken to a condominium and tortured over two and a half days. Does that sound about right?

A. Yes.

Q. Okay, or do you really know what the facts were?

A. No. That seems right. I do know that he was kidnapped. Where he was taken, I was mistaken. There was some talk of a hotel room somewhere in that timeline. He was taken somewhere outside of his home, and he was tortured and murdered.

Q. Who was, who was giving all the orders during this case?

A. I don't know that.

Q. Wasn't Mr. Dickerson directing people to get rid of the body and go to a motel room and go get him a vehicle or go get such and such a person and go and -- he was the one giving all the orders, wasn't he?

A. I don't know that.

Q. Do you remember testimony of there -- him being in a gang?

A. No, I don't.

Q. Well, if he is in a gang and he's giving all the orders, then who's the leader of the gang?

A. I would need to know the nature of the gang, the

nature of his orders. I don't know. All I can say is this is not a person who was a leader of anything. He doesn't have the capacity.

Q. Okay. That's your opinion?

A. That's my opinion now. If the people that he's in a gang with are equally deficient, possibly if he is the least of the deficient, it's possible he could be a leader.

Q. All right. In another case, do you remember the case *KC vs. Fulton County Schools* that you were involved in?

A. Yes, I do. *KC*, yes, I do. I do remember that.

Q. All right, and isn't it, in fact, true in that case you were found to have administered a test that you shouldn't even have administered?

A. No. On that case, I administered a test that he had previously been administered, and I administer -- administered it within the window of time that was acceptable in my profession. But the opposite side took that, misconstrued it, and said I had administered it wrong and that I had gotten, I believe, practice effects because of that. That is a question of reliability. It's not a question of choosing the wrong test.

Q. Well, what did the court find ---

MS. FRANKLIN-BEST: Do you have another copy?

A. Again, you're bringing things ---

MR. MABRY: Excuse me? I'm sorry.

A. --- to my attention that I don't know.

MS. FRANKLIN-BEST: I'm sorry.

THE COURT: At least whisper or something.

MS. FRANKLIN-BEST: I'm sorry, Your Honor. We're just now receiving this. We were trying to process it while he's questioning our witness, and we just need copies of what he's questioning her about, and we'd really just like a few minutes to sort of review ---

THE COURT: Sure.

MS. FRANKLIN-BEST: --- what this new material ---

THE COURT: Sure. Sure. Do you have others?

MR. MABRY: I'm almost done, Your Honor. And, Judge -- sorry.

(SUPREME COURT CASE MARKED AS RESPONDENT'S EXHIBIT NUMBER 4 FOR IDENTIFICATION.)

(A PAUSE.)

MS. FRANKLIN-BEST: We're ready.

THE COURT: All right, you may proceed.

MR. MABRY: Okay.

BY MR. MABRY:

Q. Dr. Israelian, I'm going to read to you a portion of this opinion: In The District Court, United States District Court, Northern District. They said:

> The plaintiff also points to independent examination of AC by Dr. Israelian, a clinical

psychologist, who concluded that as a twelve year old, AC was reading only at an eighth year, eighth month level. This court, however, finds Dr. Israelian's analysis to be of suspect liability as a measure of educational benefit. First, she did not measure or intend to measure AC's academic progress as this cannot be determined by psychological testing alone. Id. at 679, Plaintiff's Exhibit 3.

Then it says:

Furthermore, she opined that AC had not made any measurable progress based on the results she obtained from the Woodcock-Johnson Achievement Test, which is not designed for, nor capable of tracking academic achievement over time. Test., at 544-546. Evidence also showed that her testing deviated from standard testing protocol in that AC was instructed not to take his ADHD medication and one test, the WISC-III, was administered only eight months after his most recent prior administration. Id. at 590-91, 598. According to the undisputed testimony by defendant's coordinator for psychological services Jenner Schua -- Schaho [phonetic], the best practice for this test requires a waiting

period of at least a year between administrations. Finally, the defendant agreed to implement many of Dr. Israelian's suggestions even before her evaluation was performed.

Okay. Do, do you recall that case?

A. I do recall that case. AC was a child who had a profound reading disability. He had been assessed by the school and not found eligible for services despite a profound long history of it. He was -- I was contacted by his educational attorney in order to conduct an evaluation of him to determine disability in reading. As I mentioned, I am an expert in assessing reading disabilities.

The Woodcock-Johnson one of the gold standards that we use in my profession to measure academic achievement. If -- the school psychologists use a different measure that is different, but every assessment that we do to look at achievement is either the Woodcock-Johnson or the WRAT. The, if the individual had been aware or knew about the reliability of the WISC that I administered, that test is reliable at least six, within six months of administration. This is sort of an interpretation that is biased in a way. And as I mentioned before, it's not that I have not made a mistake or given the wrong test, but that was again one of these eight hour batteries.

Not, not everyone that I submit an opinion to is going

to agree with me. That's sort of naive. That case, they didn't agree with me, but I stand with the choices that I made and the tests that I administered and the findings that I have.

Q. Has Mr. Dickerson ever been diagnosed with ADHD or ADD?

A. Mr. Dickerson was not tested when he was in school, no.

MR. MABRY: One moment, Your Honor.

(A PAUSE.)

A. Can you ask me that question again, please?

Q. No, ma'am.

A. No, ma'am? Okay.

(A PAUSE.)

MR. MABRY: Judge, I have two more exhibits. One was a psychiatric evaluation from MUSC, and then the other is similar records of Mr. Dickerson, and I believe ---

MR. GROSE: I looked at one packet. Do you have two?

MR. MABRY: Well, you'd already seen this one.

MR. GROSE: Okay.

Judge, Judge, I think some of this is actually already cumulative, some may be addition, but there's no objection.

THE COURT: Thank you.

(PSYCHIATRIC EVALUATION MARKED INTO EVIDENCE AS RESPONDENT'S EXHIBIT NUMBER 5.)

(HOSPITAL RECORDS MARKED INTO EVIDENCE AS RESPONDENT'S EXHIBIT NUMBER 6.)

BY MR. MABRY:

Q. Dr. Israelian, when the defendant went to -- Mr. Dickerson, applicant in this case, went to Hall -- I mean not Hall, Tara Hall, okay, your testimony was he excelled there at Tara Hall. Is that correct?

A. He did well there, yes.

Q. Okay, and there's a note in the records from Tara Hall about two weeks before his time there was about to expire. He was noted to be getting depressed, withdrawn, and staring out the window. Do you remember that?

A. I vaguely remember that, yes.

Q. Okay, and that's because he was, he was about to have to go back home and live with his mother?

A. That's speculation, but it seems likely.

Q. Okay, and then of course he went back home and then started getting in trouble again?

A. He went back to his toxic environment, yes.

Q. Okay.

MR. MABRY: Thank you.

MR. GROSE: Beg the court's indulgence for a moment.

(A PAUSE.)

MR. GROSE: Judge, just real quick. Under the rule of completeness, I want to read into the record the very next

sentence from the case that Mr. Mabry read, which is the recommendation:

> That AC receive speech language evaluation, an occupational therapy evaluation, one-to-one reading assistance, and possible enrollment in the Fast ForWard Program had already been agreed to by the defendant.

REDIRECT EXAMINATION BY MR. GROSE:

Q. And, Dr. Israelian, you had asked for Mr. Mabry to repeat his question about ADHD. Was there something you wanted to clarify on that?

A. There was. I recall there was a brief mention of ADHD in one of the documents, and I remember seeing it, but I know that he was not formally assessed. He was not diagnosed. He never saw a psychologist. He was never prescribed any stimulant medication. There was no record of it in his school records throughout elementary school. He was never put in special education. He would have been -- he would have qualified for a 504, which is what we call the other-health impaired classification for children who are diagnosed with ADHD, and he would have been eligible for services as such.

So, I don't have any substance -- substantive evidence that he was ever diagnosed that formally or that he met the criteria. If he had been diagnosed with it and met

criteria, it would not be surprising to me because children who are lead exposed often behave in ways that are very consistent with an ADHD presentation. In fact, we've discovered in, in our studies that if we selectively give lead to animals, they become ADHD, and that was one of the first papers that was submitted that received a lot of negative press. In fact, the, the researcher, the individual who submitted that at a talk was later threatened and bribed to take back her findings.

MR. GROSE: That's all I have, Your Honor. Thank you.

THE COURT: All right. Thank you very much, Doctor.

WITNESS: Thank you.

THE COURT: You may come down.

(THE WITNESS EXITS THE STAND.)

MR. GROSE: And I'm not sure when she's leaving, but for the court's purposes, we would ask that she be released.

MR. MABRY: No objection.

MR. GROSE: I believe that our next witness is supposed to be here at 2.

(A PAUSE.)

MR. GROSE: When do you want to break?

THE COURT: Well, we want to break now.

MR. GROSE: Well, how long, I guess, is what I meant to say.

THE COURT: Well, how many more witnesses do you plan to have today?

MS. FRANKLIN-BEST: We have three witnesses. I expect them to be fairly short.

MR. GROSE: The trial counsel and Bob Dudek from Appellate Defense.

THE COURT: Well, let's adjourn -- I mean, let's be at ease until 2:30.

MR. GROSE: Thank you.

THE COURT: I know your witness is coming back. It takes a while to get everything together. 2:30 p.m. Thank you very much.

MR. GROSE: Thank you, Judge.

(OFF THE RECORD.)

(LETTER MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT NUMBER 15 AND STIPULATED TO BY PARTIES DURING THE BREAK.)

MS. FRANKLIN-BEST: Your Honor, I just wanted to put on the record the parties have agreed to the introduction of -- we've marked it Applicant's 15, which is a letter written by Mr. Jeffrey Bloom dated July 22, 2009. And that's not going to be relevant for this first witness, but it will become relevant for the second witness, Your Honor.

THE COURT: All right. Call your witness, Ms. Best.

MS. FRANKLIN-BEST: Thank you. If it please the

court? The applicant would call Mr. Drew Carroll.

CALVIN A. CARROLL, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

THE COURT: Have a seat in the witness box. State your full name for the record, please.

WITNESS: My name is Calvin Andrew Carroll.

DIRECT EXAMINATION BY MS. FRANKLIN-BEST:

Q. Hey, Mr. Carroll.

A. Hey.

Q. For the record, could you please talk about your participation in this particular case?

A. I was contacted by Judge Markley Dennis and asked if I would consider accepting an appointment to defend Mr. Dickerson in a capital case after he had been made aware of the state's intent to seek the death penalty in this case. I asked Judge Dennis if I could have some time to consider that. He said that I could, and he said that he would appoint whatever cocounsel I, I would ask for. And so after a week's time, I called him back. Actually he called me to see if I'd made my decision.

By that time I'd talked with Jeff Bloom, who was the cocounsel that I thought best, and Jeff agreed to participate in the defense, and so we started working for Mr. Dickerson.

Q. And you had had experience with Mr. Bloom in the past?

A. I had. Mr. Bloom had contacted me after being appointed to defend Mr. Von Dohlen on a resentencing from a death sentence in Berkeley County, and so he and I had worked and ultimately negotiated a parole-eligible result for Mr. Von Dohlen.

Q. Okay, and all right. So, so, how many capital cases have you worked on in total?

A. Up to this point, three cases. Mr. Dickerson's was the second and, of course, the only trial.

Q. Okay, and so you had Mr. Von Dohlen, Mr. Dickerson, and then?

A. Mr. Fields in Colleton County.

Q. Down in Colleton County, okay. In your participation in this case, could you please describe some of the division of labor? How did you and Mr. Bloom decide who would be doing what?

A. Mr. Bloom, being the seasoned capital defense lawyer that he is, sort of took the lead, and we had regular meetings where we doled out responsibilities. For contacting witnesses, we had an investigator that we worked with, a mitigation investigator that we worked with. And as the case took shape and it appeared that we were headed towards a trial, I concentrated on the fact witnesses that would be relevant to the question of guilt or innocence in the first phase of the trial, and Mr. Bloom focused on the

witnesses that would be called should we go to the second phase.

Q. And did you have any conversations regarding the, the two different parts of the case and whether or not to -- they should be cohesive?

A. Yes. Though this was my first capital murder trial, I had tried a number of cases in general sessions court. And being a trial lawyer, I'm a big believer in the idea of consistency in your theme, consistency in your approach, and so we talked about how, in order to be effective advocates, we would ideally be able to present a consistent message from beginning to end of the trial.

Q. And could you just briefly explain your theory of what the case was with respect to the guilt and innocence phase?

A. Our theory was that Mr. Dickerson was an accomplice after the fact, an accessory after the fact, and that he aided his brother and another codefendant in moving a body that they had tortured and killed, an individual they had tortured and killed. And so that was our approach was to, to attack the state's case and showing what Mr. Dickerson's role would have been, given the physical evidence and the testimonial evidence.

Q. Okay. Could you describe what your mitigation theory was?

A. Mitigation theory was that Mr. Dickerson had lived a

very difficult life. He was brought up by a mother who was distant at best, very detached from him. His father died in prison while serving a life term after having been convicted of committing a murder. He had been abused. Our, our investigation showed over the course of his life had spent a significant amount of time incarcerated, and so he was a broken individual who suffered from, we think, some drug-induced psychosis during this event.

Q. And did you perceive any inconsistencies between those two phases of the trial?

A. Yes. Well, the way it played out, and this is sort of the way it's dictated, I think, in capital cases in general, is that we were very aggressive in advancing our theory that Mr. Dickerson was not culpable for the murder of Mr. Roper. But when the jury did not see things our way, we were left with the difficult decision of accepting that and letting them know that we accepted that as their verdict, and then proceeded to give to them the picture of Mr. Dickerson's life.

Q. Okay, and I'm just going to run over some of the claims that we've raised, and to the extent that you remember the particular issues, I would just ask that you tell me what your thoughts are ---

A. Okay.

Q. --- on that. We have alleged --- so, we have alleged

in claim 10.B.3 that trial counsel rendered ineffective assistance of counsel during the sentencing phase of trial by not objecting to Bruce Durant's closing argument that diluted the jurors' sense of responsibility in rendering the death verdict. And if I may hand this to you, and I have it at tab 4.

A. Okay.

THE COURT: What page?

MS. FRANKLIN-BEST: I'm sorry. I'm going to hand this up to Your Honor. Tab 4 just so you have easy access to it. It is at appendix page 4362. There's that.

THE COURT: You said 10.B.3?

MS. FRANKLIN-BEST: I said...

THE COURT: I have it as 11.B. 10.B?

MS. FRANKLIN-BEST: And I think that's accurate, Your Honor. That's right, 11.B.

THE COURT: 3.

MS. FRANKLIN-BEST: 3, that's right, and so if everyone has...

THE COURT: Got it.

MR. ZELENKA: I'm sorry, what page?

MS. FRANKLIN-BEST: I've got it at ---

THE COURT: Depending on which number you're looking at, it's either 4171 or 4363.

MS. FRANKLIN-BEST: Should be 4362, yes, and the

closing argument starts on 4363.

BY MS. FRANKLIN-BEST:

Q. And the relevant portions, I will just put these down on the record, please, but the relevant portions of the closing argument would be at 4368 where Mr. Bruce DuRant informs the jury that: The penalty can be imposed only under certain circumstances.

THE COURT: What line?

MS. FRANKLIN-BEST: Should be around line 4.

BY MS. FRANKLIN-BEST:

Q. Informing the jury that: The penalty can be imposed only under certain circumstances in limited cases.

Suggesting that the solicitor's office had already concluded that this was an appropriate case for the death penalty.

MR. MABRY: Objection. Leading the witness.

THE COURT: She's just reading from the ---

MR. MABRY: No, sir. I'm sorry, Your Honor. I didn't mean...

THE COURT: Aren't you just reading from ---

MS. FRANKLIN-BEST: Yes, I'm just trying to ---

THE COURT: --- the transcript?

MS. FRANKLIN-BEST: --- so that we're all talking about the same things.

MR. MABRY: That's not her -- that's not in the

argument. She, she read a portion of the argument and then she made her argument. She made an argument in her question. So, I would ---

THE COURT: Okay. Ask the witness.

MS. FRANKLIN-BEST: Well, Your Honor, I just wanted the witness to know what I was referring to.

THE COURT: Well, show it to him.

BY MS. FRANKLIN-BEST:

Q. I am at, I am at 4368 where the solicitor informs the jury that the penalty can be imposed, quote: Only under certain circumstances in limited cases.

THE COURT: That's lines 10 through 18.

Q. Suggesting that the solicitor's office had already concluded that this was an appropriate case for the death penalty. Also ---

MR. MABRY: That's my objection because it doesn't say that. That's her, that's her argument. That's not what it says in the argument.

THE COURT: In the transcript?

MR. MABRY: In the transcript, yes, sir, closing argument.

MS. FRANKLIN-BEST: I'm just trying to make sure that the witness knows what I'm talking about. I mean, I, I ---

MR. MABRY: I would object.

THE COURT: All right, I'm going to sustain it. It

doesn't say anything about the solicitor feeling that this was the only ---

MS. FRANKLIN-BEST: Okay.

THE COURT: --- penalty ---

MS. FRANKLIN-BEST: Yes, Your Honor.

THE COURT: --- that's appropriate.

MS. FRANKLIN-BEST: Okay.

THE COURT: I mean, it says what it says.

MS. FRANKLIN-BEST: It says what it says, Your Honor.

BY MS. FRANKLIN-BEST:

Q. Also at appendix page 4369, the discussion about mercy.

THE COURT: And where is that? Line 19?

MS. FRANKLIN-BEST: Yes.

THE COURT: Okay.

MS. FRANKLIN-BEST: Around 4371.

THE COURT: What are you referring to?

MS. FRANKLIN-BEST: If I can say this without drawing an objection, about downplaying William's mitigation.

THE COURT: Where are you in the transcript?

MS. FRANKLIN-BEST: 4371.

THE COURT: I've got the whole page.

MS. FRANKLIN-BEST: Right. Starting on, pretty much starting at line 1, going into the second page.

THE COURT: All of that page?

MS. FRANKLIN-BEST: Going into the third page.

THE COURT: Talking about 71, 72, and 73?

MS. FRANKLIN-BEST: Until 4374.

THE COURT: All of that?

MS. FRANKLIN-BEST: Yes.

THE COURT: All right. Go ahead.

BY MS. FRANKLIN-BEST:

Q. And 4374 ---

MR. MABRY: I'm going to object to the form of the question. She never finished asking it, but she, she's ---

THE COURT: Well.

MS. FRANKLIN-BEST: I'm going to be -- I'm sorry.

MR. MABRY: I'm just, I ---

THE COURT: Don't argue with her.

MR. MABRY: I'm sorry.

THE COURT: I'm going to let her ask the question. We'll never get through this if we don't. She's, she's laid the groundwork. She wants to ask him about these passages in the Bruce DuRant final argument, and I guess she's going to ask him why he didn't object, but I don't know that.

MR. MABRY: I just object to her characterization on what the solicitor's doing because that's -- she's, she's trying ---

THE COURT: Well, we don't have a jury.

MR. MABRY: Yes, sir.

THE COURT: I understand.

MR. MABRY: Yes, sir.

MS. FRANKLIN-BEST: And then lastly ---

THE COURT: All right, we're through, through 4374?

MS. FRANKLIN-BEST: We are, but then again at 4374, the solicitor refers to some people as being: So evil, so mean, they do not deserve to walk among the living.

THE COURT: Okay.

MS. FRANKLIN-BEST: So, those are the four parts that I have identified as what we believe as being problematic.

BY MS. FRANKLIN-BEST:

Q. And so what I would like to ask the witness is whether or not you perceive any of that to be problematic?

A. Yeah, I think that the solicitor was clearly painting a picture of the absolute worst of the worst of inhumanity, and telling the jury that they should disregard all the mitigation that had been offered that was relevant to their decision about imposing this ultimate penalty. And there's no question that we should have made an objection to that argument.

Q. And can you offer any strategic reason why there would not have been an objection?

A. No. There isn't, not one.

Q. Okay. We have claimed -- I'm sorry, we have alleged

and claimed 10.B.4, that trial counsel rendered ineffective assistance of counsel when they failed to uncover and present evidence of William's significant neurological deficits.

THE COURT: I've got that. It's 11.b.4.

Q. And I would like to ask if you would explain what investigation you undertook with respect to William's exposure to lead.

A. Quite honestly I don't recall exactly what we did in that regard.

Q. Do you recall ever hearing that William was not particularly cooperative with some of the neurological testing?

A. Yes. There were certain psychological tests, and I think he saw it as a stigma to even participate in.

Q. And do you recall if you undertook any actions to alleviate his concerns or, or to sort of get him to a point where he would agree to that testing?

A. Jeff spent time talking to him, and I think our mitigation expert also spent time talking to him about that, but I was not involved in those conversations.

MS. FRANKLIN-BEST: And I think that is all of the questions I have ---

WITNESS: Okay.

MS. FRANKLIN-BEST: --- for you.

THE COURT: Cross-examination.

MR. MABRY: You ready, Your Honor?

THE COURT: Yes, sir.

MR. MABRY: Okay.

CROSS-EXAMINATION BY MR. MABRY:

Q. Mr. Carroll, you were asked about consistent theme between the guilt phase and penalty phase. Do you remember your deposition being taken in this case?

A. I do recall that.

Q. Okay, and in that deposition, you were under oath?

A. I was.

Q. Okay. You were asked about that at the deposition in this case, and I believe your testimony under oath was, and I'll find it here in just a second, but your testimony was that's what you would like to do in a capital case is basically concede guilt in the guilt phase, and then move forward into the penalty case. But the facts in this case did not lend themselves to that, did they?

A. That's correct. This was a case where we were challenging the allegation that, that William Dickerson committed a murder.

Q. All right, and that came from the client, did it not?

A. And our investigation of the physical evidence.

Q. And what you basically had in this case, all of the eyewitnesses were friends of Mr. Dickerson and friends of

the victim's -- who were friends of the victim had either criminal records, were involved in drugs or gangs, that type of thing?

A. Right. It was a -- that's exactly correct.

Q. All right, and they also had given -- some of these witnesses had given statements to the police, and those statements changed over time or were inconsistent?

A. Correct.

Q. Okay, and, and then some of them didn't even come forward to the police until the last minute?

A. That's right.

Q. And some of them had given false information or hid evidence from the police until shortly before the trial?

A. That is a fact.

Q. All right. So, he wanted you to fight the guilt in the guilt phase, and he basically -- what he told you was he was an accessory after the fact?

A. That's right.

Q. Okay, but he was unwilling to get on the stand and implicate his brother in the murder?

A. I can't recall specifically what the -- some of the issues were that led to him not taking the stand, but he didn't take the stand.

Q. Okay, and in the penalty phase after he was found guilty, of course the jury didn't agree with y'all's

presentation but found him guilty. Y'all basically told the jury at the very beginning:

> We respect your verdict. You found him guilty, but now we're going to present the mitigation in the sentencing.

A. Right. Being unable to -- having to deal with the question of our credibility and the arguments we were making to them, given what was at stake, we made the, the decision -- and really I don't think we had a decision to make. We had to shift to accepting their verdict and presenting our mitigation.

Q. All right, and in the penalty phase you presented the fact that -- well, first of all, you had -- Dale Davis was your mitigation investigator?

A. That is correct.

Q. And she did an excellent job in her mitigation investigation.

A. I think she ---

Q. Isn't that true?

A. I think she did.

Q. All right. She even went back to before his birth?

A. That's right.

Q. All right, and you presented to the jury that he was born two months premature and spent the first two months of his life in the hospital?

A. Correct.
Q. And you presented all the physical abuse of him by his mother growing up?
A. That's a fact.
Q. And presented he was committed psychiatrically at age eleven?
A. Yes, sir.
Q. And then to MUSC and to Hall Psychiatric facility?
A. Right.
Q. And then he got out of that, got out of that treatment and, and he ended up -- went back to his mother and then ended up having to go to, I believe, Tara Hall?
A. That is right.
Q. And basically y'all showed the jury that when he was away from his mother, he excelled?
A. That was borne out by the facts, I think.
Q. Okay, and then when he returned back to his mother from Tara Hall, then he started engaging in drug abuse and criminal activity?
A. Right.
Q. He basically wasn't supervised by his mother?
A. In no way, shape, or form.
Q. Okay, and then he ended up in prison. You also presented prison adaptability through Mr. Akin?
A. Right. We did.

Q. And I believe you had five jail guards that testified he was a model inmate in the county jail?
A. I -- yes, but I don't the exact number. There were a number of jail guards that said he was no problem with them whatsoever and adhered to the rules and so forth.
Q. Now, did you -- also had Dr. Mark Cunningham, who's a psychologist who testified?
A. That is correct.
Q. And he testified to all of the risk factors that Mr. Dickerson was exposed to?
A. I believe so. I, I've not reviewed that part of the ---
Q. Do, do you ---
A. --- trial.
Q. Do you remember him testifying to the jury about the fact that he had tested positive for lead, he had a 9 milligrams per deciliter?
A. I do remember him testifying.
Q. And that no exposure to lead poisoning was a safe level?
A. Correct.
Q. And he also testified to the cocaine psychosis at the time of the crime?
A. I believe that may have been Dr. Morton. I'm not sure.

Q. Okay, and also Dr. Phillips was the psychiatrist that you had testify?

A. Correct.

Q. He also testified to the cocaine psychosis?

A. There was testimony. I can't remember exactly who testified to what.

Q. All right, and, and your experts testified that he fit, he fit within those mitigating factors that are set forth in the statute?

A. They did.

Q. Mental, mental factors 2, 6, and 7. Is that correct?

A. They did. I don't remember the numbers, but I do remember her testimony being consistent with mitigation factors.

Q. All right, and you agree with me that there was no objection made during the closing argument by the state?

A. That's correct.

Q. All right, and your, your testimony or your position now is that some objection should have been raised?

A. That is correct.

Q. Can -- let me ask you this. Can the solicitor argue in closing argument that the defendant should be sentenced to death?

A. I, I think that he can make that argument obviously in a capital case.

Q. Okay. Can he argue to the jury that they could, should consider the facts of the crime more than they should consider defendant's mitigation?

A. I think he can argue that they should consider the facts of the crime.

(A PAUSE.)

Q. Can the solicitor also argue the weight of the evidence supports a death sentence? The weight of the crime itself, what the defendant did, outweighs the mitigation in the case?

A. I think the solicitor can argue his, his interpretation of the facts and what the penalty ought to be.

Q. Okay, and that would include saying this crime is so horrendous, it outweighs any mitigation that's offered by the defendant?

A. That may be getting to the point of crossing the line.

Q. Well, you agree with me the solicitor, the solicitor is never going to tell a jury in closing argument that the mitigation outweighs the aggravation?

A. I've never read an instance where that's occurred.

MR. MABRY: No further questions.

THE COURT: Ms. Franklin.

MS. FRANKLIN-BEST: No additional questions, Your Honor.

THE COURT: All right, you may come down.

MR. GROSE: And, Your Honor.

THE COURT: May the witness be excused?

MR. GROSE: Yes. Thank you.

MR. MABRY: Thank you.

THE COURT: Thank you very much.

(THE WITNESS EXITS THE STAND.)

MS. FRANKLIN-BEST: And, Your Honor, if I may call Jeff Bloom to the stand.

JEFFREY P. BLOOM, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

THE COURT: Have a seat in the witness box. State your full name for the record.

WITNESS: Jeffrey, Jeffrey Bloom, B-L-O-O-M.

DIRECT EXAMINATION BY MS. FRANKLIN-BEST:

Q. Good afternoon, Mr. Bloom.

A. Good afternoon.

Q. How are you?

A. Good afternoon. Fine, thank you.

Q. Could you please provide for the record your background?

A. I passed the North Carolina bar in 1983, the South Carolina bar in 1985. I started out doing juvenile criminal work in North Carolina. In 1985 I took a good job with legal aid in South Carolina in Conway. After about a

year of that, I worked with the Horry County public defender's office for seven years and was the chief public defender there for the last four of those years. In 1992 to '99, I was a Richland County public defender, and then have been in private practice since 1999.

Q. And how long have you been involved in capital cases?

A. Six months into my stint as a baby public defender in Horry County, I had my first capital trial.

Q. And have you taken a lot of continuing education in capital litigation?

A. I, I have. I have taken annual courses in capital litigation training, as well as taught courses in capital litigation training.

Q. And isn't it true that you, you have some expertise in voir dire and that line, that aspect of ---

A. Given ---

Q. --- capital litigation?

A. --- my experience in a number of capital jury trials, I did for a period of time for maybe five to six years consult with attorneys on jury selection and voir dire in capital cases.

Q. Okay, and how did you ---

A. I don't do that anymore.

Q. I'm sorry? Okay. How did you get involved in this case?

A. I got a phone call from Drew Carroll that he was appointed by Judge Dennis, and Judge Dennis had given Drew some leeway to kind of select his cocounsel, and Andrew and I had worked on the *Von Dohlen* case together. That's spelled V-O-N, second name Dohlen, D-O-H-L-E-N. And had brought that to successful conclusion, and Drew asked me to be cocounsel on the case with him.

Q. Okay, and once you became counsel on the, on the case, did you assemble a team, defense team?

A. We did and you want me to go through the list of who we got or?

Q. Yes, please.

A. Okay. We hired Dale Davis, and her first name is D-A-L-E, as a mitigation investigation investigator. She had a lot of experience in that area and resided in Charleston County. We hired Vicki Childs as a fact investigator. She also lived in the Charleston County area and had a lot of experience in investigations and was licensed by SLED. After that, Drew and I began to consult in terms of what other experts we would need either, either to consult with or perhaps testify in the case.

Q. Okay, and did you receive all the funding that you requested? Do you recall?

A. Yes. Judge Dennis did not deny us any funding request at all.

Q. We've made a number of allegations in this case, and I'd like to sort of run down these claims.

A. Sure.

Q. To the extent you recall them or you have thoughts about them, we'd just ask about that. For your benefit, I've got a book.

A. All right.

Q. So, these are some of the excerpts from the trial that may help.

A. Okay.

Q. If possible, but we have alleged in claim 10.A.1 that trial counsel rendered ineffective assistance of counsel for not advancing a consistent theory between the guilt and innocence phase of William's trial and the penalty phase. Could you please -- well, can you explain what your theory of the case was with respect to both, both parts of the trial and, and address that issue?

A. Right. As a preface, I, I was here in court and heard Mr. Carroll testify, and I don't really disagree with any of his recollection or summary in that regard in terms of the guilty/not guilty phase. That came later in the development of the case, and it was in essence an argument to the jury. The most the state could prove through the evidence, especially the forensic and scientific evidence, was that -- accessory after the fact, and so that became

our main guilty/not guilty theme.

In terms of mitigation, without a long recitation -- it's all reflected in the transcript in terms of the witnesses we had there, and I would reiterate what Mr. Carroll said about William's very deprived and abusive childhood background, his mother's role in that, as well as some of the mental health issues and, and the last part being that of the cocaine-induced psychosis on the date and time underlying the incident. Those are kind of the primary mitigation themes.

Q. And did you perceive any inconsistency between those two?

A. That is something we struggled with throughout the investigation, preparation of the case, and presentation of the case in court. It was very difficult to thread that needle, and obviously we weren't successful or I wouldn't be sitting here. So, I'm not sure how successful we were at that.

It was, it was very difficult to go full tilt with the jury in an argument that our client was not guilty of murder and then once they rendered that verdict, having to flip and then try to provide an explanation in mitigation.

The primary thing you want to do in mitigation is give the jury a reason as to why this happened. Not an excuse, not a, a rationale, but for the jury to come to understand

how this human being came to be in this situation and, and that was the difficulty and challenge of this case, if I've answered your question.

Q. I think you have.

A. Okay.

MS. FRANKLIN-BEST: Beg the court's indulgence, Your Honor.

Q. If I could have hand Applicant's 15 ---

A. Sure.

Q. --- to you for identification and ask if you recall that?

A. Yes, I do. Applicant's 15 is a memo I prepared after the trial to Joseph Savitz, who was then the head attorney at Appellate Defense, and Savitz is S-A-V-I-T-Z. I updated it. This is the updated version on July 22, 2009. And it listed most of the court hearings we had, and then it listed what I also humbly thought were a number of potential appellate issues in the case, and I did that shortly after the trial while things were still fresh in my memory.

Q. Okay.

MS. FRANKLIN-BEST: If I could move this into evidence? I think it's without objection.

MR. MABRY: I'm sorry?

MS. FRANKLIN-BEST: I'm sorry. I was just moving this

in.

MR. MABRY: No, no objection.

MS. FRANKLIN-BEST: No objection.

MR. MABRY: No objection.

MS. FRANKLIN-BEST: Okay.

BY MS. FRANKLIN-BEST:

Q. If I could just point you to page 4?

A. Of Applicant's 15?

Q. I'm sorry, of the, of the letter.

A. Yes.

Q. That you wrote, yes. You have a subheading IV Penalty Phase Part 12.

A. Okay.

Q. Where it appears, and please tell me if this is accurate. It appears that you have identified a particular claim to be raised in appeal.

A. Correct.

Q. And would you please ---

THE COURT: Do you have an extra copy?

WITNESS: Do you need a copy, Your Honor?

THE COURT: Well ---

WITNESS: I actually have an extra ---

THE COURT: --- I assume that she wants me to read it.

WITNESS: I have an extra.

MS. FRANKLIN-BEST: I do.

(A PAUSE.)

MS. FRANKLIN-BEST: I apologize, Your Honor.

BY MS. FRANKLIN-BEST:

Q. And again we're on page 4, IV, subheading Penalty Phase 12.

A. Right.

Q. And if you could -- do you recall that claim?

A. I do.

Q. Could you identify for the record what that claim is?

A. Well, if I can just read it so we're all talking about the same thing, item 12 says, quote:

> Allowing probation officer to testify that thirteen years ago in an administrative hearing the defendant stated he, quote, wished he had shot them, end quote, referring to the police officers in a 1996 case where defendant had pointed a firearm at police and the police shot the defendant.

It goes on a little bit, but our main objection in the trial record was this issue was from a probation file that was labeled confidential. So, it's something Mr. Dickerson nor his attorney in 1996 would have ever seen. And so they had no opportunity to file a response, rebuttal, or, or other objection to it in 1996.

And so to expect us, then, to try then to not only

defend against it but put it in context when there was no defense right in 1996 to see it and rebut it, well, we felt was a violation of due process and whatever other objections we put in the trial record.

Q. And ---

A. I thought it was a significant claim at the time because the information, especially when it came out to the jury, was fairly devastating.

Q. Okay.

A. I mean, it had a -- you could tell from, from the jury's reception of the evidence that it was a -- it was bad for us.

MS. FRANKLIN-BEST: And for the record, this testimony, Mr. Bloom's objection to this testimony begins at -- I've got it tabbed at tab 3. It starts on appendix page 3770 and continues to appendix page 3778.

BY MS. FRANKLIN-BEST:

Q. And have you had an opportunity to review the transcript with regards to that particular claim?

A. I have skimmed parts of the transcript. I remember -- when I say I've skimmed parts of the transcript, let me be clear. I met with you and Mr. Grose and Mr. Zelenka and Mr. Mabry just this past Thursday, December 3rd, and was provided portions of the transcript at that time. Between last Thursday and through yesterday, I have reviewed some

parts of the transcript, not in detail. I do remember skimming this part.

Q. Okay, and I wanted to know if in reviewing it, if you perceive that it was -- that the issue was properly preserved for appeal.

A. I, I think I properly preserved it for appeal.

Q. Okay. Okay, and again you did include that in a letter you wrote to Appellate Defense ---

A. Correct.

Q. --- asking that particular claim be raised?

A. Correct.

THE COURT: I don't follow.

MS. FRANKLIN-BEST: Well, we're going to tie it in in a few minutes.

THE COURT: How did he raise it to preserve it for appeal?

MS. FRANKLIN-BEST: Well, he made an extensive proffer for the objections. They had a, an in-limine hearing.

THE COURT: Okay.

MS. FRANKLIN-BEST: So, he, he made a number of objections to that testimony. Now, what happened was after that, the solicitor called another witness, a Mr. Gainey, who testified. And then after that, the solicitor called this particular witness, Mr. Cedric Davis.

THE COURT: All right.

MS. FRANKLIN-BEST: At the time that Mr. Davis did testify, there was not a contemporaneous objection. So, I only put that out there because we know that Mr. Bloom asked -- believed that this was a claim that should have been raised but ultimately wasn't, and so ---

THE COURT: All right. I understand. Thank you.

MR. MABRY: Can I ask what allegation in the application, the final application this is?

MS. FRANKLIN-BEST: It is allegation 11.B.2.

MR. MABRY: Okay. 11.E?

THE COURT: B.

MR. MABRY: I'm looking at -- I'm sorry. Thank you.

THE COURT: B.2, page 3.

MR. MABRY: I'm sorry.

(A PAUSE.)

MR. MABRY: Oh, I see what you're talking about.

BY MS. FRANKLIN-BEST:

A. And if I may explain my answer why I thought it was preserved? This was not some issue we had litigated, you know, three months before trial in a pretrial hearing where I then felt we had to renew. We were in the midst of the trial. We had a very lengthy hearing, I felt, outside the jury's presence. It was clear how the trial judge had ruled, and I did not believe at the time I needed to renew the objection when they called the witness in front of the

jury.

It's, it's no different than any other trial. An objection comes up. The jury gets sent out. The issue gets argued, and then the jury comes back in. You don't have to keep objecting just because the jury is now in the courtroom. As I said, this was not some pretrial issue. We were in the heat of the trial. It was Judge Dennis's ruling. We accepted his ruling, and we moved on to the next issue.

Q. Okay. Now, we have also alleged in claim 10.B.3 that trial counsel rendered ineffective assistance of counsel during the sentencing phase of trial by not objecting to Bruce DuRant's closing argument that diluted the jury's sense of responsibility in rendering a death verdict. And I knew that you were in here when I asked Mr. Drew Carroll about this particular closing argument.

A. Right, but I didn't have this particular transcript in front of me. So, if you could tell me which page.

Q. Absolutely.

A. And if I could just read it myself?

Q. Sure. It is at tab ---

A. I see it. Tab 4?

Q. Yes. I would direct your attention to 4368, and that is the: Only under certain circumstances in limited cases.

A. Okay.

Q. 4369.

A. All right.

Q. They're going to talk to you about mercy. Mercy is not automatic.

A. Okay.

Q. 4371 through 74:

We're not here because he didn't get along with his mama.

A. Okay.

Q. And then 4374:

Some people are so evil, so mean, they do not deserve to walk among the living.

A. Okay.

Q. And I would just ask if you perceived anything about that closing argument that was problematic.

A. You know, at the time I did not. In hindsight, I suppose so. At the time I didn't see it. Reading it now, I suppose I should have interposed an objection.

Q. Well, so, if you were going to interpose an objection today, what do you -- what would be your objection?

A. Well, collectively they, as Mr. Carroll alluded to, border, I think, on telling the jury they are to weigh the aggravation against the mitigation. In total, that's kind of collectively what all those arguments are doing. And we are not, according to our statutes or case law, a weighing

state. The jury is never told to weigh the aggravators against the mitigators and if the aggravators outweigh the mitigators, then you vote for death.

We're, we're not a balancing state. The jury considers both aggravation and mitigation. Gives it whatever weight it wants to in terms of credibility but, but can reach a life verdict even if the mitigation does not outweigh the aggravation. So, I suppose that would be collectively the -- or the argument I would make collectively to all those arguments.

Q. Would you make any additional arguments?

A. You know, perhaps some -- certainly I always in these cases cite to the Fifth Amendment under due process, Eighth Amendment, Fourteenth Amendment and, and tie them to those. The...

Q. I didn't want to interrupt you if you were still ---

A. No, no. I was just kind of thinking. Go ahead with your next question.

Q. I'm sorry. I just wanted, I just wanted to make sure that I had sort of your full answer if you wanted to add anything to that.

A. The only other thing I would add is page 4368 where the solicitor's arguing that state can ask for the death penalty under our law. It seems close to the solicitor's opinion being instituted, you know, in the case, which of

course we have case law where the solicitor cannot inject to the jury the solicitor's opinion as to whether the death penalty is proper or not.

Q. And are you familiar with the *Furman* challenges to South Carolina statute?

A. Yes.

Q. Death penalty, and so the claim only under certain circumstances in limited cases, how do you think that interplays with -- to the *Furman* challenges that are sort of percolating in the state and in others in terms of the narrowing portion?

A. Well, it, it's, it's perhaps misleading to try to tell the jury that the narrowing has already been done so that this case, among all cases, is proper for the death penalty. So, it probably runs afoul of *Furman* as well.

Q. And what is the law regarding mercy in South Carolina and a defendant's right to have a jury consider mercy?

A. Well, of course the jury can render mercy for any reason, for no reason, or as a simple act of mercy is the instruction. And, of course, we just recently had some guidance from our South Carolina Supreme Court where three cases were reversed as to the sentencing phase because of the trial judge not giving that very small instruction, but it's a very important instruction. So, so, this probably crosses the line is to the, the -- our law under mercy.

Q. I'm going to move on.
A. Okay.
Q. Now, we've alleged in claim in 10.B.4 that trial counsel rendered ineffective assistance of counsel when they failed to uncover and submit evidence of William's significant neurological deficits. Specifically, we're talking about lead exposure. So, I wanted to ask if you had any thoughts about that, how and your team addressed the lead issue.
A. I, I reviewed some of my files over the weekend on that. I know our mitigation investigator, Dale Davis, collected a lot of records in that regard. She got a lot of -- specifically housing records from Charleston County and other agencies regarding the, the specific neighborhoods and houses that had had lead paint problems over the decades.

We got a court order from Judge Dennis requiring DHEC to give us records regarding lead levels and specific records also on both William and his brother, Armon. And I'm trying to think if we obtained any other records but, but that was the global aspect of our investigation regarding lead.
Q. And how did you take what you obtained and, and, and present that at trial?
A. We provided that information to our psychiatrist, Dr.

Robert Phillips, and to our psychologist, Dr. Mark Cunningham. The -- one of the difficulties there involved the fact that most of the records regarding William's brother, Armon, were available but none on William. His had for some unknown reason been destroyed, and so we had one record regarding William and, and a blood lead level on him, I believe, when he was about age eleven, and that was mostly it. So, we just -- we didn't have a lot of information on William individually.

Q. And did you retain sort of a developmental psychologist or neuro ---

A. We had a neuropsychologist, a Dr. Robert Deysach, D-E-Y-S-A-C-H.

Q. Do you know what his field of expertise is?

A. Neuropsychology.

Q. Neuropsych, and do you recall having some -- encountering some resistance from William with regards to some of the testing?

A. With Dr. Deysach, yes.

Q. Okay. What about any of the other experts?

A. With Dr. Cunningham there were some topics William did not want to answer questions about, but that didn't -- wasn't a big stumbling block with Dr. Cunningham because we had records that -- and other witness information that corroborated and provided the information Dr. Cunningham

needed on, on those few handful of topics. With Dr. Phillips, he was cooperative through most of the interview, and so that's it. The, the only -- in going back over my notes and files, he was not cooperative with Dr. Deysach.

Q. And can you tell me what efforts you made to have him submit to the testing? Did you go and speak to him or have somebody speak to him about what this testing was about?

A. Dale Davis and I would meet with William in advance of any meeting he had with one of our experts, and, and sometimes Dale and I would do that together. Some -- often times she would go, then I would go as a follow up, and we would try to explain to him who the person was, what the testing was for and, and try to persuade him to be cooperative.

And the issue here, when I say cooperative, he wasn't ever belligerent or hostile or threatening. I want to make that clear. When I say not cooperative, he just, he, he wasn't really interested in helping us build a mitigation case. And I understand that. I, you know, I've often had clients who weren't cooperative, and we have to work around that. It's our responsibility to do that, so I'm not putting the blame on him at all.

But it was really only Dr. Deysach that, that he did not want to participate, and those were mostly what I call paper and pencil tests. Sometimes they are hands-on tests

where, where the person has to manipulate three-dimensional objects or solve types of puzzles. And, and it's testing their, their ability to think through a problem, respond to a problem, and reach a result. Sometimes there's not even a right result. It's just how they process the problem. So, those were the tests that William was not cooperative in.

Q. Well, so, do you recall how many numbers of talks or conversations you may have had with William about this particular issue?

A. With Dr. Deysach or the issue in general?

Q. Well, I think what I'm hearing is that he did not want to participate with the paper and pen test. So, I, I guess my question is directed towards what efforts did you undertake to have him participate in that testing?

A. I don't remember the exact number of times I met with William on that specific issue. I, I just know in going back over my notes over the weekend that Dale Davis or I or both of us sometimes together, sometimes separately would meet with him in advance. Try to explain what the test was, what we were doing it for, what we were trying to achieve with it, why his cooperation was essential, and answer the questions he may have about it.

Q. And just to go back through a couple more issues regarding the letter that you wrote to Appellate Defense

regarding claims that you wanted to be raised, or you thought had merit and would like to have seen raised.

A. You asking me generally which ones I thought ---

Q. Well, I was just trying to ---

A. Or you have specific ones ---

Q. I was going to refer you back ---

A. Okay. Go ahead.

Q. --- to the document and I'll ask you a couple of specific questions.

A. Yes, ma'am. Go ahead.

Q. But on page 2, I notice that you note the following potential appellate issues. Number 2 you say:

> Motion to prohibit death penalty based on unconstitutional proportionality review.

Could you explain a little bit what that particular motion was about?

A. Yes. We, of course, filed a written motion on this, which is in the record. In my research and review of cases and, and looking at issues that kind of percolate across the country in both capital litigation as well as regular litigation, a, a significant issue is how states conduct their proportionality review if someone is sentenced to death. And it appeared to me that this was a significant and coming issue, and it still is, and, and that is -- I, I give you some examples which are both in the transcript and

perhaps in our written motion.

In our state, I humbly and respectfully submit that our state Supreme Court has run somewhat abroad of what *Furman* and the other cases require. For example, our state Supreme Court, when it conducts proportionality review, only looks at other cases where a defendant received death. We may be the only state in the Southeast that does that.

I know Georgia does not. Georgia looks at cases, similar cases with similar aggravating circumstances where a defendant received life. North Carolina does the same, and both Georgia and North Carolina Supreme Courts have reversed some cases because they were disproportionate when compared to other cases that also received life. Not a lot but, but a few. That, I think, is one very prime example of how our -- again, I humbly and respect submit -- state Supreme Court may have -- be misinterpreting *Furman*.

The pool our court looks at when it does proportionality review only includes other defendants sentenced to death, and our court has never, never reversed a case based on proportionality since the death penalty was reinstated in the mid-1970s after *Gregg* and *Furman*. And again I'm, I'm -- I don't pretend to be a scholar on our South Carolina Supreme Court and, and they are the ultimate arbiters of how to conduct proportionality review. But some other courts in the federal system as well as some

dissents by the US Supreme Court have begun to say that's not a proper narrowing function or proportionality review under *Furman*. And, and I'll leave it to, you know, smarter minds than mine to prevail on ultimately what is the answer to that.

But those are the reasons, and I didn't mean to make that a long explanation, but those are some of the reasons I felt very strongly that this issue should be included in William's case for a number of reasons. While the aggravating circumstances were substantial in this case, given the, the allegations and evidence of physical torture and kidnapping, there are many other cases similar to William's in South Carolina that have pled out to life or, or been resolved with a sentence less than death. I would give an example. Just look at all the cases where there's just one homicide victim with aggravating circumstances. So, I felt this was a significant issue for appeal.

In all candor, I did not think I would persuade a majority of our South Carolina Supreme Court to, to take that view, but I felt it was significant to preserve it for later review by a federal court and federal habeas corpus or, or perhaps the United States Supreme Court or some other venue.

Q. Right, and so you recognize the case *Walker vs. Georgia*, which was a denial of cert?

A. Correct, and I think I cited that in my written motion and may have attached the, the -- that to it.

Q. But in that case ---

A. The *Walker* case.

Q. --- that was a dissent from the United States Supreme Court on this very issue.

A. Correct and, and, and by dissent let me clarify. It, it was not a formal United States Supreme Court opinion. I believe it was a denial of certiorari. So, it has no precedential value, but it gives one, you know, kind of a window into the thinking of, of some on the US Supreme Court.

Q. And also on page 2, Roman number 1, pretrial motion, subsection 4: Motion to Bar the Death Penalty Based on Race. So, you also identify this as one of the issues that you thought would ---

A. Correct, and without going into a long explanation, kind of for the same reasons as I cited for proportionality. That issue, too, is, is becoming more significant in, in capital litigation as well as noncapital litigation across the country and, and there's been some -- well, I'll just leave it at that.

Q. Okay.

(A PAUSE.)

MS. FRANKLIN-BEST: Just a couple more questions, Your

Honor.

Q. Do you recall what materials you provided to Dr. Deysach?

MR. MABRY: I'm sorry. I couldn't hear your question.

MS. FRANKLIN-BEST: I'm sorry. Do you recall what materials you provided to Dr. Deysach.

MR. MABRY: Okay.

BY MS. FRANKLIN-BEST:

A. I, I don't. My practice with a neurological test, since his ultimate opinion would be primarily based on the neuropsychological testing and not necessarily records or, or collateral witnesses, at least initially, leads me to say that I probably just provided him a brief memo outlining the case. Maybe some relevant dates, why his services were needed, and maybe just a little periphery information.

Most of the time I've worked with neuropsychologists, they don't want a lot of information initially because their opinion is going to be based on the testing. After they get through that testing, if you have records that corroborate things they found such as the, the records we found on lead or things of that nature, they would be interested in that. But most of their opinion is based on, on the psychological testing. So, I probably would not have provided him a lot of advance information.

Q. And that ---

A. And when we got to the day of testing, it didn't -- it just didn't go forward.

Q. And do you recall hiring a lead expert?

A. We did not and in going through my notes, I had been emailing and talking to a couple lead experts, but I never got to the point of hiring them to actually consult with them because we never had what we felt was the cause of the, the -- you know, I'm searching for a word here -- the definitive evidence that William did, in fact, suffer from lead poisoning as a child. So, they -- so, they were not -- so, the ones I had talked to via email, when I say talk, weren't in a position to, to offer a professional opinion in court based on what we had, what we had.

MS. FRANKLIN-BEST: Thank you, Your Honor. I tender the witness.

THE COURT: Cross-examination.

MR. MABRY: Yes, sir. Thank you.

CROSS-EXAMINATION BY MABRY:

Q. Mr. Bloom, good afternoon.

A. Good afternoon, Mr. Mabry.

Q. How are you?

A. I am very fine, thank you.

Q. Good. First just want to kind of get out of the way. You filed written motions to bar the death penalty based on

race and also a written motion on proportionality.

MR. MABRY: I'm going to have these admitted without objection just so we have them in the record.

(A PAUSE.)

MR. MABRY: They're without objection.

THE COURT: They're in evidence.

(TWO MOTIONS MARKED INTO EVIDENCE AS RESPONDENT'S EXHIBIT NUMBER 7.)

MR. MABRY: Excuse me just a moment.

(A PAUSE.)

BY MR. MABRY:

Q. Sorry, Mr. Bloom. First want to talk to you about the lead issue.

A. Okay.

Q. And you ---

A. Okay.

Q. You investigated -- your mitigation investigator, you had Dale Davis, whom you -- as you described you had. Who was your fact investigator?

A. Vicki Childs.

Q. Vicki Childs.

A. And Vicki is V-I-C-K-I.

Q. All right, and you obtained any and all records you could obtain on Mr. Dickerson?

A. To my knowledge, yes. We went after every source and

every agency and -- that we knew of to find records.

Q. Okay, and you, you said you started doing death penalty cases in what year?

A. 1986.

Q. All right, and at the time, time of this trial you, you were familiar with lead poisoning and its dangers and what it could cause?

A. That's correct. I was.

Q. In fact, you had used it in another case?

A. I had used it in another case here in Richland County, *State vs. LeVar Bryant*.

Q. All right, and so you, you got one record on Mr. Dickerson, Dickerson that showed 9 milligrams per deciliter, but you could not find any other records, and I believe they told you that any records that were on him had been destroyed?

A. That's correct.

Q. All right, and you even found, you found his brother's records that showed a high level of lead?

A. That's correct.

Q. Much, much, much higher than Mr. Dickerson's?

A. That's correct.

Q. All right, and you also presented that to the jury in the penalty phase?

A. That's correct.

Q. And you looked at actually having a test done on Mr. Dickerson, either a blood test or bone test?
A. Well, we did a blood test, but I knew that probably wouldn't show anything because of the passage of time, but it is one of the kind of threshold tests you do. We also looked at doing an x-ray bone scan, which I knew the name of it at one point. I think I have an email of what that's called.
Q. That's close enough.
A. An x-ray fluorescence.
Q. Okay. Did you ---
A. And ---
Q. You actually did a blood test?
A. I, I -- my -- I went back over my notes this weekend, and I found that we did line up William to do a blood test. Then I couldn't find a record of the exact date that it was drawn or any lab result.
Q. Okay.
A. But I know we were in the process of doing that, and William was agreeable to a blood test.
Q. All right, and if that had been favorable to William, would you have presented that in the penalty phase of the trial?
A. Yes, I have to concede that. If, if, if -- I can't find the lab report in my file. If, if it had turned up

anything, we would have given that to our experts.
Q. Okay.
A. And then as to the x-ray fluorescence test, we couldn't find a hospital or medical facility with the proper equipment in South Carolina to do that.
Q. To do that, okay.
A. And I didn't think we were going to be able to get William transported to Boston to do it where they had a machine.
Q. All right, and so you had to work with what you had, and you had a neuropsychologist, Dr. Deysach?
A. Correct.
Q. That was going to do psychological, neuropsychological testing, paper and pencil?
A. Correct.
Q. And with your hands and that kind of thing?
A. Correct.
A. And he would not cooperate in that testing?
A. That's correct.
Q. All right, and you tried to get him to cooperate, but he wouldn't?
A. That's correct.
Q. And ---
A. He did some of the -- I went back in my notes. He did a few of the tests, but from my notes it appeared he didn't

do them to completion. He wouldn't answer all the questions. Some of the tests he wouldn't do at all, and Dr. Deysach said he couldn't come up with a score, an opinion. It would be invalid based on partial answers and some tests not done.

Q. You, you tried to get him to do all the tests and everything? He just, William would not do it?

A. Correct. He did not see the value in those.

Q. And one of the problems you had in this case was he did not really care or understand, or for whatever reason he thought mitigation was going to be him conceding that he was guilty. Is that fair?

A. I don't know if he saw mitigation as conceding him guilty. Everything else in your statement is correct. He didn't see the value in mitigation. He wanted a full frontal defense on the issue of guilt. And based on the forensic and scientific evidence, as well as the other evidence, Mr. Carroll and I thought we had a, a credible avenue to argue that the state at the most had evidence to convict him of accessory after the fact. And so that was our primary defense in the guilt/not guilty phase.

Q. And ---

A. Apart from that, William just didn't see the value in mitigation.

Q. Okay. He told you he didn't commit the murder.

Somebody else did.

A. That's correct. He said he did not commit the murder.

Q. All right, and he, and he was unwilling to testify in the guilt phase and put the blame on another individual?

A. He would not at any time do anything to harm his brother, Armon.

Q. All right, and that's who you understood -- at least from his, his version of facts -- is who actually killed the victim?

A. Well, and I, and I think our argument to the jury, if we come right out and say it, Mr. Carroll's cross-examination touched on it of, of Armon, his brother, that Armon and his wife committed this and, and then, you know, blamed William for it when the heat got on them.

Q. Okay.

A. I mean, there were only three people in the case who could have done it. It would have been William or his brother, Armon, and that's A-R-M-O-N, and Armon's wife, and I forget her name but it's in the transcript.

Q. Yeah, I can ---

A. There -- I mean ---

Q. --- read it.

A. --- realistically there were -- under the evidence the state had, it would have been those three people. So, our argument was -- and, and William agreed and wanted this

defense. The most the state could prove was he was an accessory after the fact with whoever the other perpetrators were, but he would not implicate or harm his brother in any way.

Q. All right.

A. In court.

Q. And the, and the eyewitnesses involved in this case, at least as far as what, you know, physically saw what happened, you had a bunch of friends of Mr. Dickerson or the victim, and they had -- whether criminal records, inconsistent statements, or that kind of thing that y'all could, you could work with on cross-examination in the guilt phase?

A. That's correct. I wouldn't disagree with that.

Q. And so when you got to the -- the jury found him guilty. You got to the penalty phase. You basically told the jury we accept your verdict, and then you have to shift to the mitigation phase?

A. That's correct.

Q. Now, that's not something that you would normally like to do, but that's -- you really didn't have any choice in this case with what you had?

A. I, I wouldn't disagree with that. That was -- that's correct.

Q. Now, I want to ask you first of all about the --

moving on to another topic. The, the statement of the -- at the -- the state sought to introduce a statement he made at his parole hearing, okay?

A. Yes.

Q. And as I understand it, the objection is *Gardner*, but actually in *Gardner* what happened was the defendant was sentenced based on the confidential report that the judge saw, and the defendant never had a chance to see the confidential report. That was a violation.

A. Right, and if I can answer your question in several ways? One, I don't remember my entire objection to the probation evidence in the -- in his statement. I'd have to -- you know, the transcript speaks for itself, whatever, however I framed the objection.

Secondly, I was trying to analogize the objection to the *Gardner vs. Florida* case, and *Gardner vs. Florida*, you're correct. The judge was actually the decider in the death penalty case. There was no jury, and the judge received a confidential probation report from the probation office and didn't let the defense see it.

Q. Or his lawyer.

A. Or, or, or -- right, or the lawyer and the judge's verdict rendering death was based in part on that evidence, and so the court reversed saying the defendant was never allowed to rebut.

And I explained. So, we were trying to analogize the *Gardner* argument to William's situation. Even though we had the information pretrial, his attorney in 1996 didn't. So, there was no contemporaneous rebuttal in the 1996 record as to that evidence. And, and so that was our, our use of *Gardner* in that context.

Q. Okay. Well, actually at the parole hearing in '96, correct me if I'm wrong, but my understanding from the record is at the parole hearing, Mr. Dickerson actually made the statement he wished he had shot the officers in that altercation.

A. I would not, I would, I would not disagree with that. I, I, I think my explanation, though, is in our objecting to that at his capital trial, he was not made aware of the confidential portion of that probation report which contained some of that information.

Q. But y'all ---

A. If -- and, and ---

Q. But you knew about ---

A. Well, let me, let me see if I can explain. My recollection of the evidence is that William allegedly made that statement I wish I'd shot the officers, too, at his probation violation hearing in 1996. That alleged statement by him in 1996 was not part of the probation violation report or other records in his file. It was made

a part of a confidential file so that his lawyer wasn't able to rebut it in 1996.

Q. Okay, but wasn't there a tape recording of that statement that he made?

A. Well, but -- and it wasn't clear to me that the lawyer was present at that. I guess that's the point I'm making.

Q. Okay.

A. So, so, he had no opportunity through his Sixth Amendment right to counsel to contest that or the circumstances in which he made it. You know, there may have been *Miranda* violations in him making that statement and how it was obtained, and that wasn't clear because all of that was contained in a confidential part of the probation file, not in his ---

Q. I understand.

A. --- regular file. Have, have I ---

Q. Right ---

A. --- explained that?

Q. But, but you were given all that before the penalty phase?

A. We had it before the penalty phase, but our objection was his lawyer didn't have that information to rebut it.

Q. But he -- but Mr. Dickerson was the one that actually made the statement. So, he knew he made the statement.

A. Well, I don't, I don't know if I would ever remember

statements I made, you know, twelve years before trial. I mean, you're trying to...

Q. You seem to ---

A. I'm not going to -- I don't, I don't want to get in an argument with -- I guess my, my, my objection at the time is while William allegedly made that statement in 1996, it's not reasonable to believe that he would remember when we were at trial in -- and I forget the trial date, if you can remind me. 2010?

Q. '9.

A. '9. You know, if he could remember some thirteen years later one isolated statement he allegedly made...

Q. He may not ---

A. But our objection is what it is.

Q. Right.

A. And I sought -- I thought it was a significant issue.

Q. Was there ---

A. Issue.

Q. Was there testimony in the record that he was advised of his rights before making that statement?

A. I don't, I don't remember.

Q. Okay, and whatever's in the record is accurate. I got you.

A. I don't, I don't remember. Whatever the transcript in his trial reflects.

Q. Now as far as the closing argument, you said you started trying death penalty cases in -- what year was it?
A. 1986.
Q. How many had you tried before this case, capital cases?
A. Actual trials? Probably over fifteen.
Q. That actually went to trial?
A. Correct.
Q. How many had you handled?
A. Counting this case? This was my last trial so far.
Q. How many had you handled that didn't go to trial?
A. I have handled probably between forty and fifty capital cases, and that would include capital PCRs.
Q. All right. Can the solicitor argue against mercy in the penalty phase?
A. Yes.
Q. Okay. Certainly y'all are going to argue for mercy?
A. Yes, sir.
Q. And can he argue the facts in the case?
A. Yes, sir.
Q. In support of not?
A. Yes, sir.
Q. Granting mercy?
A. Yes, sir.
Q. Is every murder case a death penalty case?

A. No, sir.
Q. Has to be an aggravating circumstance?
A. Correct.
Q. And that makes you eligible for the death penalty?
A. Correct.
Q. And is the death penalty a lawful punishment?
A. Yes.
Q. Is there anything wrong with telling the jury in closing argument that the death penalty is a lawful punishment?
A. No.
Q. Did the jury know the state was seeking the death penalty in this case?
A. Obviously. Yes, sir.
Q. All right. So, there's nothing wrong with telling the jury the state is seeking the death penalty in your closing argument, is there?
A. Correct.
Q. Is there anything wrong with the solicitor arguing that justice in this case is -- deserves the death penalty and not mercy?
A. No, sir. No, sir, meaning there's nothing wrong with that argument. I agree with you.
Q. Can the solicitor argue that the defendant's acts in committing the murder justify a death sentence more than

what happened to him during his life?

A. Yes, sir.

Q. Certainly y'all are going to argue everything that happened in his life?

A. Certainly.

Q. And, and you did that?

A. I think so, yes, sir.

Q. You presented the premature birth?

A. Yes, sir.

Q. The terrible abuse by his mother?

A. Yes, sir.

Q. Even abuse by other people in the home?

A. Yes, sir.

Q. Psychiatric commitment at age eleven?

A. Yes, sir.

Q. Lead exposure?

A. Yes, sir.

Q. Taken out of the home and put in Tara Hall for two years?

A. Yes, sir.

Q. And that he excelled, whenever he was away from his mother he excelled?

A. I agree with that.

Q. And when he'd go back into that environment, then he would start getting in trouble?

A. Yes, sir.
Q. Drugs, alcohol, crime?
A. Yes, sir.
Q. And then he ended up in prison?
A. Yes, sir.
Q. And spent most of his life incarcerated, but you presented evidence of prison adaptability?
A. Yes, sir.
Q. And I believe you called five guards from the jail?
A. I, I don't remember, but whatever the transcript reflects. I know we had more than two, whatever that reflects.
Q. And you also had Mr. Akin testify?
A. That's correct.
Q. And you had a psychologist who testified to all these risk factors that he was exposed to in his life?
A. That's right.
Q. And you also had a psychiatrist and also a pharmacologist?
A. Yes, sir.
Q. And they all testified he was suffering from cocaine psychosis at the time of this crime, and he met the mitigating circumstances of 2, 6, and 7?
A. Yes, sir.
Q. Hang on just one minute, please.

A. Okay.

MR. MABRY: If I could have one just a minute, Your Honor?

WITNESS: And, Judge, while he's doing that, I don't mean to invite more questions, but I know there is a *Batson* issue in this case because I've been asked by both sides about it. Are ---

MR. MABRY: We're going to ---

WITNESS: Am I supposed to answer ---

MR. MABRY: --- do that later.

WITNESS: We're going to do that issue another time? All right. Thank you.

(A PAUSE.)

BY MR. MABRY:

Q. Can you tell me what -- I'm sorry, Mr. Bloom. What lead experts did you consult in this case?

A. I had emails mostly with a Dr. Herbert Needleman, N-E-E-D-L-E-M-A-N, of Pennsylvania. He is the same expert I consulted with and used as an expert testifying in the LeVar Bryant trial. And then there was someone else from the Boston area but I don't, I don't recall that professional's name, and I can't say for certain I ever emailed him. I know I did some research on his background.

Q. Okay.

A. And then Dale Davis found a paralegal, I believe, who

had been involved with a law firm in Charleston over some lead paint lawsuits that we consulted in terms of where the records were.

Q. Right. So, you were aware of the area he lived in?

A. Yes.

Q. There was litigation over lead ---

A. Yes.

Q. --- paint and those type things? Okay, and how did you present in the LeVar Bryant case, how did you present the lead poisoning?

A. LeVar Bryant had grown in a similar area here in Richland County where there had been a lot of lead paint in the housing, and DHEC had extensive records on those neighborhoods, and we were able to find specific lead testing of him in his records from the time -- I believe the earliest stage was five or less up through -- excuse me -- up through past age ten. And at the time the levels in his blood system, lead levels were, quote unquote, acceptable during the years that they were taken. Later it was determined his, his lead levels were at a toxic level.

Q. Right.

A. We had that kind of documentation for Dr. Needleman, along with specific neuropsychological and neurological testing that corroborated that deficiency, and so we had Dr. Needleman testify, and we may have had a neurologist

testify, too. I can't recall specifically, and that's how we presented it. So, the records corroborated it. We were never able to find the records on William other than what, what ---

Q. The one?

A. --- is in the transcript.

Q. Right.

MR. MABRY: One second. I'm sorry.

(A PAUSE.)

BY MR. MABRY:

Q. And in this case, you had, you had the one test of Mr. Dickerson that was a 9 milligrams per deciliter?

A. That's correct.

Q. All right, and the CDC later changed after this trial, I think, in 2012 and lowered it to 5. But at that time, did that stop you from presenting the lead mitigation in this case?

A. No. I just -- I didn't have enough to bring Dr. Needleman in to testify. As I said, I consulted with him via email, and we just weren't able to find the smoking gun, if I can use that phrase, for Dr. Needleman to be confident enough to have the, the documentation he needed to testify.

Q. Okay, and you didn't have the neuropsychological testing either, you said?

A. And I did not have a neuropsychological test.
Q. All right, but you did present what you could present in this case regarding his exposure to lead that you did have?
A. We did present the information we had through Dr. Phillips, I believe, and also Dr. Cunningham, I think.
Q. Okay.
A. Whatever the transcript reflects, but I think both of them covered ---
Q. And, and Ms. ---
A. --- covered it.
Q. --- and Ms. Hammock, the social worker as well?
A. That's right. I think Ms. Hammock testified to it as well.

MR. MABRY: That's all I have. Thank you.

MS. FRANKLIN-BEST: Your Honor, I just have a couple of questions.

WITNESS: Sure.

REDIRECT EXAMINATION BY MS. FRANKLIN-BEST:

Q. You testified earlier that -- so, you never retained Dr. Needleman?
A. No. He never sent me a bill. It was just a, a few emails back and forth because I had worked with him before.
Q. Okay, and did you send him any of the documents?
A. I did send him the one 9 milligram lead level test on

William.

Q. So, just that one document that ---

A. I may have sent him Armon's records, too, but I, I'm not sure about that.

Q. And do you recall if ---

A. I'm just not sure about that.

Q. --- you saw those or if you saw that in your box when you were reviewing your file this week?

A. Of what I sent Dr. Needleman?

Q. Yes.

A. I found an email. I didn't bring it with me. I found a printout of an email with Dr. Needleman.

Q. Okay.

A. Where I -- and I -- well, let me clarify. I found an email I had with Dr. Needleman. I don't know if that reflects that I sent him William's one-page blood level test what he was eleven.

Q. Okay. So, is it sort of safe to say that you know you had some communication with Dr. Needleman?

A. That's correct.

Q. But we don't know exactly what you sent or what documents he saw?

A. I'm, I'm pretty sure I sent him the 9 milligram blood level on William. I don't know if I sent him all of Armon's records because they would have been thicker.

Q. Okay, and just ---

A. Probably not. Probably did not send him Armon's stuff because it wasn't specific to William.

Q. Okay.

A. And what Dr. Needleman needed.

Q. Okay. Just to, to clarify, earlier we were talking about the people who were actually in the building when this crime happened, and you mentioned that Armon and Selena Rouse ---

A. Selena Rouse, thank you.

Q. --- were also there, and I'm just, I'm just trying to clarify the record here because there was an, an additional person, and I just wanted to see if you recall that Rashid Malik was also in and out of ---

A. Yes. So, there could have been a fourth person involved in the homicide or maybe more. I -- you know, the record and our argument reflects what it is. I didn't mean to narrow it to just ---

Q. Okay, is that ---

A. --- those three. I know there were a number of other players, if I can use that term loosely, that we were trying to argue to the jury could have as easily done this as our client.

Q. Okay. I just wanted to clarify that.

A. Sure.

Q. Were you familiar with the studies that Mr. John Blume and some others did regarding death eligibility for murders down in Charleston during the 2002 ---

MR. MABRY: I'm going to object. I'm going to object, Your Honor. It's not proper redirect.

THE COURT: Let me hear, let me hear the question.

MS. FRANKLIN-BEST: Between 2002 and 2007.

THE COURT: I'll allow it.

BY MS. FRANKLIN-BEST:

A. On proportionality, you mean, or ---

MS. FRANKLIN-BEST: If I may ---

A. --- on what?

MS. FRANKLIN-BEST: --- approach the witness, Your Honor? I will move to -- for identification, please, and I have a copy for Your Honor.

(A PAUSE.)

MR. MABRY: Yes, sir, Judge, we object. We don't mind marking it for ID and asking the witness about it, but we object to its submission.

THE COURT: Okay.

MR. MABRY: It's an article written by her law firm. It's not proper redirect, too. That's, that's why I object, Your Honor.

THE COURT: Well.

(ARTICLE MARKED AS APPLICANT'S EXHIBIT NUMBER 16 FOR

IDENTIFICATION.)

MS. FRANKLIN-BEST: Your Honor, its relevance is to -- they were cross-examining him as to one of the closing arguments regarding, you know, seeking the death in certain circumstances, in limited circumstances. This article contains a statistical study.

THE COURT: Well, let him tell me.

BY MS. FRANKLIN-BEST:

Q. So, I thought I would ask if you were familiar with that article.

A. You know, I've read a lot of John Blume's work, and his Blume is B-L-U-M-E. I, I can't specifically recall if I've read this or not. I probably have. I read most of his work because it's interesting and statistically based.

Q. I didn't know if you recalled that -- I'm trying to think. Were you aware of a study looking at the death eligibility murders, Charleston specific, between the years of 2002 and 2007 that found that 76% of those murders were, in fact, death eligible?

MR. MABRY: That's same, same objection. Not proper redirect.

MS. FRANKLIN-BEST: Just asking if he recalls, Your Honor.

THE COURT: I'll allow the question.

A. I, I remember looking at ---

THE COURT: Overruled.

WITNESS: Oh. I'm sorry.

BY MS. FRANKLIN-BEST:

A. I remember looking at a number of studies and articles, many of which were South Carolina focused, as to both proportionality and race at the time. And, and those provided some of the stimulus, if you will, for us filing the proportionality and race-based motion.

If I can go back for a minute? One of the additional reasons we filed the, the race-based motion that was a little different from proportionality is we had found in our own research that the Ninth Circuit Solicitor's Office had rarely sought the death penalty involving an African-American victim. That virtually every capital case they had sought the death penalty on involved a white victim. And so we felt at the time that the Ninth Circuit Solicitor's Office -- and, and I don't mean this to sound crass; it just is what it is -- felt they needed a capital case with an African-American victim in order to ---

MR. MABRY: Your Honor, object to speculation.

A. -- address their ---

WITNESS: Well, it was my theory. It was my theory at the time. I'm not, I'm, I'm, I'm not ---

MR. MABRY: Object.

WITNESS: --- saying that was their reason, but we ---

THE COURT: I'll accept is as his ---

WITNESS: That, that was one ---

THE COURT: --- interpretation based on his research.

BY MS. FRANKLIN-BEST:

A. That was one of the reasons Mr. Carroll and I discussed specifically in filing that motion because it's not a pleasant motion to file. It's, it's just not and, and -- but that, was that was one of our theories at the time as to why that motion was necessary.

MS. FRANKLIN-BEST: And no further questions.

RECROSS EXAMINATION BY MR. MABRY:

Q. What's the date of that study that she handed up to you?

MS. FRANKLIN-BEST: Well, that's the article.

MR. MABRY: The article.

MS. FRANKLIN-BEST: Versus a study.

BY MR. MABRY:

A. The article is dated April 1, 2010. I'd have to dig into ---

THE COURT: That's enough.

A. --- the study itself to see when it was done.

THE COURT: That answers the question.

BY MR. MABRY:

Q. And the vic, just for the record, the victim in this case was African-American?

A. The victim was African-American and I -- to be fair, because these are, these are difficult issues to discuss, and to be fair to the solicitor, Mr. Carroll and I did not find in our research at the time any evidence that she specifically had acted discriminatorily in seeking death against Mr. Dickerson and, and I think we acknowledge that in the transcript.

Q. Okay.

A. And, and so to be fair, I, I think I have to acknowledge that here today because if we had found any, we would have presented it.

MR. MABRY: No further recross, Your Honor.

THE COURT: All right, you may come down.

MS. FRANKLIN-BEST: May he be released?

MR. MABRY: No objection.

WITNESS: Thank you, sir.

(THE WITNESS EXITS THE STAND.)

(A PAUSE.)

THE COURT: We'll take a ten-minute break.

(OFF THE RECORD.)

THE COURT: All right, Ms. Franklin-Best, you may proceed.

MS. FRANKLIN-BEST: Your Honor, may it please the court? Applicant would call Bob Dudek to the stand,

ROBERT K. DUDEK, BEING DULY SWORN,

TESTIFIES AS FOLLOWS:

THE COURT: Be seated in the witness box. State your full name for the record, please.

WITNESS: Robert M. Dudek, D-U-D-E-K.

DIRECT EXAMINATION BY MS. FRANKLIN-BEST:

Q. And, Mr. Dudek, if you would please put your background, profession, education on the record, please?

A. A graduate of the University of South Carolina, College of Journalism where my father was a professor emeritus. I'm a graduate of the University of South Carolina, School of Law. I started out at Appellate Defense February 1990 as an assistant appellate defender. At some point I became the deputy chief attorney for capital appeals. I think in about 2009 I became acting chief attorney, and thereafter I became chief appellate defender.

Q. And that's the role that you hold now?

A. Yes, it is.

Q. And if you had to provide an estimate, how many capital appeals do you think you've handled?

A. This is a guess, and I'd say ten to twelve. Again, I have not counted them. Ten, ten to twelve would be my guess.

Q. Okay, and just for court's edification, could you describe a little bit about the error preservation rules in

South Carolina?

A. Yes. They're very strict. Obviously you don't have plain error in *Torrance* 1991. In form vite was abolished in capital cases. So, now capital cases, like any other case, there has to be a contemporaneous objection obviously on the proper ground and a ruling obtained from the trial judge on that ground for the issue to be preserved.

Q. And so if an issue is not preserved, then what generally happens?

A. Well, I mean, if an issue's not preserved, then, I mean, the court's not going to address it except in, in, you know, kind of rare, rare circumstances. There was Beyondey Pace [phonetic] where the trial judge had, you know, called the defense attorney a pretty little girl, and there was a *Toyota vs. Lynch* that happened with the court. There was no objection, but the Supreme Court reversed because of ethnic stereotypes, as I recall, about Japanese people. And there were a couple of others where the court didn't like a colloquy between the trial judge and the defendant, and those are about the only four offhand that I can think of that our Supreme Court in modern times has ever reversed without a contemporaneous objection. Anything else would have to go into postconviction relief where somebody like me would be sitting here explaining why they didn't object or didn't raise an issue or whatever.

Q. And now let's just sort of move on into this case. What exactly was your role in this case?

A. Well, I mean, I would have been the lead attorney on the appeal, responsible for it. Kathrine Hudgins would have been second chair and Jeff Bloom, trial counsel, came on the case at, at some point as third counsel. And, and Jeff, Mr. Bloom, actually is -- my memory is that Jeff and I split up the oral argument in the Supreme Court. We both argued part of the case.

Q. I'm just going to go down some of the allegations that we've made. I think you've seen the third-amended application for postconviction relief, and we'd just sort of like to point to some of these issues and just ask if you have any thoughts as to why a particular issue was not raised.

A. Okay.

Q. Just so we can put that on the record. And if I could show you.

MS. FRANKLIN-BEST: Excuse me. Request permission to approach the witness, Your Honor?

THE COURT: Okay.

BY MS. FRANKLIN-BEST:

Q. I'm showing you what is marked as Applicant's 15.

A. Okay.

Q. Can you tell me if you recognize that?

(A PAUSE.)

A. I, I, I cannot swear that I've seen this before. I mean, some of these things seem, you know, as far as the issues seem familiar but I don't, you know, know if that's from doing the case or from seeing this document is my honest and frank answer.

Q. Well, and it is addressed to Mr. Joseph Savitz.

A. Right.

Q. But if it had made it into the file, I'm just curious if you'd actually seen it. We have alleged in our application that appellate counsel rendered ineffective assistance of counsel by failing to present for appellate review defense counsels' motion to dismiss the death penalty due to the unconstitutionality of South Carolina's proportionality review.

A. Uh-huh.

Q. And I guess I would ask if you recall that particular claim.

A. Yes, I do and, you know, my memory refreshed from an email that I think I've shared with everybody was that Mr. Bloom and I, you know, had discussed this issue at some point, and unfortunately correctly or incorrectly -- that's a determination Judge Cooper will have to make -- I did not think this was the right case to raise the proportionality, the proportionality issue.

Q. Okay. Okay, and there was also an additional motion to dismiss the death penalty based on race?

A. Now that one, that one is much, much vaguer with me, you know. I, I was in the courtroom when Mr. Bloom testified and I, I -- frankly at the time and as I'm sitting here now don't know what kind of record you would have to have to, to raise that issue. What, you know, what kind of statistical record or if, if, you know, if, if this were -- if, if the allegation were they only went against -- for the death penalty against Mr. Dickerson because he was an African-American and, and they hadn't done that in any other case involve -- I mean, more specifically because there was an African-American victim. I don't know what kind of record you would need on that and, and, you know, maybe it's just I'm not smart enough to, to grasp the issue. But I, I did not raise it and, you know, if I was wrong, I was wrong.

Q. We've also raised the claim that appellate counsel rendered ineffective assistance of counsel for failing to present for appellate review defense counsels' objections to the admission of a number of photographs. And do you -- can you share if there's a reason for not raising that particular objection or those objections?

A. No. I don't have any specific, you know, specific recollection on those. I mean, you know, it was -- again,

I'm trying to refresh my memory on the photographs. Obviously, you know, they were noted in my notes and I, and I think we had sent Todd Ferguson, who was then our courier, down -- as I'm trying to recollect -- to actually take photographs of the photographs, but I don't recall specifically as to, you know, as to the photographs.

I can tell you in general. Maybe I'm a little jaded on it because I've seen some horrible, horrible, horrible photographs, including in one of Mr. Grose's cases, John Kennedy Huey where a woman just, you know, literally had her eyeball popping out. And, and, and then again our court had put in, you know, kind of standard language while not pleasant to look at. We, you know, we don't think they denied the defendant a fair sentencing phase. So, again, you know, this is one where the record is what the record is and, you know, and, and, and I didn't raise the issue of photographs.

Q. And I think we all sort of all kind of recognize the only way for us to prevail on this claim would be to show that one of these claims was meritorious and that you didn't raise it. I mean ---

A. Right.

Q. --- calling appellate counsel to talk about strategy just ---

A. Right.

Q. --- is what we ---

A. Right.

Q. --- do in these cases, but thank you for being here.

We also raised the issue that appellate counsel rendered ineffective assistance of counsel for failing to present for appellate review defense counsels' objection to the solicitor's questioning of Dr. Phillips about whether Dickerson knew right from wrong at the time of the killing.

A. Uh-huh.

Q. And then again I would ask if you had any specific recollection as to why that issue was not briefed.

A. Well, again, I, I talked in my meeting, I guess, last Friday with, with Mr. Grose, and that is something that I think from prior cases that Mr. Bloom had been -- kind of a major issue with him at the time of mitigating evidence being offered, that they were going into a McNaughton standard on whether he knew right from wrong, which Mr. Bloom has argued, I think, consistently didn't have any place during the mitigation phase of the, of, you know, of the capital trial. It was kind of mixing apples and oranges, as he argued it.

Again I didn't, you know, I didn't, I didn't raise it as an issue. So, if it was a winning issue, then obviously I -- you know, Mr. Dickerson would be entitled to relief.

Q. All right.

MS. FRANKLIN-BEST: And I would tender the witness, Your Honor.

THE COURT: Cross-examination.

MR. ZELENKA: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. ZELENKA:

Q. Bob. Robert. Mr. Dudek. I'm sorry.

A. Whichever.

Q. I apologize. When you decided what role you were going to play in this case, what's your usual protocol for how you decide issues to raise? What particularly do you do to get prepared to write that initial brief?

A. Okay. Well, discuss. I generally -- you know, if there's more than one, one attorney -- it depends on the case -- we, we can divide up responsibilities.

Here from my notes, you know, clearly I had both the guilt and, and penalty phase, and I keep a running list of witnesses. And anything that they say that I think is important, I note the page they say it on. I keep a separate legal pad with all, all, most all of the objections unless, you know, it's something like leading or asked and answered or something that nobody's going to win on on appeal anyway. I keep that as a separate list and then go back and -- or as I'm going, I might note something that I think looks promising in the appeal.

And then if there are other attorneys on the case with

me, at some point I would think we would discuss what we thought was promising, and if there were agreement or disagreement, and then this stage -- in this case, you know, there were four issues raised in the final analysis.

Q. Okay. Do you recall what those four issues were? Do you have your brief with you?

A. I do. They were just whether the court erred -- do you want me -- what do you want? Just read them into the record?

Q. Yes, just for the record.

A. Court erred by refusing to allow defense counsel to cross-examine the pathologist, Dr. Schandl, about the fact that the decedent tested positive for cocaine in his urine since the pathologist testified on direct examination that the decedent's blood tested negative for drugs, and appellant had the right to correct a misleading perception the pathologist had given the jury, and the omission in her testimony reflected on her credibility as a, quote, neutral expert witness. Number two, the court erred by refusing to charge the jury on the lesser offense of accessory after the fact of murder since there was evidence appellant was only guilty of that offense since appellant's brother admitted he

beat the decedent inside the decedent's home. His brother's wife decided the decedent should be killed. The decedent died inside his apartment, and he placed the dead body inside a vacant apartment, the vacant apartment next door. Number three, the court erred by refusing to allow appellant's first cousin Johnette Watson, to whom appellant was like a brother to, testify that appellant's execution would deeply hurt her since appellant's ability to maintain his positive relationship was admissible character evidence during the penalty phase. Number four, the court erred by qualifying a juror who would, if the state proved aggravating circumstances -- excuse me -- automatically vote for the death penalty unless the defense presented evidence that convinced him that a death sentence was not warranted, improperly shifting the burden to the defendant to prove he should not be executed.

Q. And what you're reading from, is that the initial brief of appellant or the final brief?

A. No. This is -- must have been one supplied to me by your office because it has Attorney General's Office received and the date, initial brief.

Q. All right. What page was that, that in the ---

A. Well, I was reading from the index, which had been page I and page ii. Those would just been the headings for each ---

Q. Okay.

A. --- argument section.

Q. And that was from the initial brief of appellant?

A. That's correct.

Q. And that was dated what day?

A. That was, that was dated August 11, 2010.

Q. Okay. As you've prepared that brief, you stated in preparation that you did a outline, basically a summary of the evidence and the objections that were made?

A. Right. I did that in this case, and that's my habit to keep a running list of witness testimony on one pad and a separate legal pad of objections.

Q. Okay, and did, at my request, did you provide me a copy of that list?

A. Yes, I did.

Q. Let me ask if this appears to be a copy of the material you provided?

A. Right. This is a copy of the copy of my notes that I gave to you and Mr. Mabry when you met with me last Friday, getting you to copy, copy my notes because I don't -- maybe twenty years ago you cussed me out for not keeping a copy of my notes and I've never forgotten.

THE COURT: You want that to be a part of the record?

WITNESS: Huh?

THE COURT: You want that to be part of the record?

MR. ZELENKA: Let that be know that that's not the first person who said those words to me.

BY MR. ZELENKA:

Q. And, and, Mr. Dudek, as we look at this document, as I understood there are two separate areas. One was your summary of the evidence. The other one was your summary of the notes of the objections that were raised?

A. That's correct.

Q. And could you look at that, and how many pages at the back of it were there the summary of the objections that were raised?

A. The final two pages is the -- would have been the objections, running list. And I can tell you probably from experience I tend to use the long legal pads, and this is obviously 8.5 x 11.

Q. So, it was shrunk?

A. Yeah. Would have had to be, you know. It's cut off at the bottom here, but they would've had to do whatever they do to make the copies ---

Q. Make the copies fit?

A. Yeah, make the copies fit, yeah.

Q. Okay.

MR. ZELENKA: Your Honor, we provided a copy of this to opposing counsel. We move to have this introduced as Applicant -- whoops, excuse me, Respondent's Number 8.

MS. FRANKLIN-BEST: No objection, Your Honor.

THE COURT: Without objection.

(COPY OF NOTES MARKED INTO EVIDENCE AS RESPONDENT'S EXHIBIT NUMBER 8.)

BY MR. ZELENKA:

Q. Mr. Dudek, as you went through this list, you indicated that both Kathrine Hudgins and Mr. Bloom were also cocounsel with you in preparation of this record?

A. Well, I mean, I think -- and again, you know, refreshing my memory, Kathrine Hudgins was cocounsel. Jeff came on. Mr. Bloom came on later in the process but, but we were all three on the case in the end. I, I think, you know, as far as I know Kathrine Hudgins was on the case with me from the very, you know, from the very beginning. So.

Q. Okay. Who decided which preserved issues to raise and which preserved issues not to raise? What's -- how was your assessment on weaning out some issues such as the four issues that were presented on the left that were not raised compared to the issues that were raised?

A. I don't -- and, you know, I don't, Mr. Zelenka, have very clear memory of that. There were some, you know,

emails exchanged between Kat Hudgins and myself as far as, you know, as I recall, dead -- deadlines for us. You know, meeting a deadline for a draft ahead of time and that type of thing. And, you know, as I'm recalling, I briefed two of the issues. I, I, I remember one of them was the lesser-related offense of accessory after the fact because that was something that kind of -- that issue predated this particular case with Dickerson. It's something Joseph Savitz and I had talked about on other cases and, you know, to -- even though it didn't win in this case, give credit where credit's due. That was kind of an issue that Joey Savitz was very big of for a long time. But as I recall then, Kathrine Hudgins and I had briefed two of these, two each of these four issues.

Q. Okay. Did you resolve -- were, were you the one as lead counsel who decided what issues were not going to be briefed although they were objected to?

A. I don't -- well, to answer that question, I don't remember there being any, you know, specific debate of I, you know, I really want to raise this issue other than what I've just testified to about with Mr. Bloom on wanting to raise proportionality. And I had responded to Mr. Bloom, to Jeff Bloom that I didn't think this was the case. And I think, you know, he acquiesced in that. But I don't remember there being any debate, or I really want to raise

this issue.

And, frankly, from doing these cases, if cocounsel felt very strongly I think we ought to raise this and I didn't believe in the issue -- and I don't mean to be flippant about this at all. I think, you know, my response would be fine. Write it up and, you know, we'll include it in the brief.

Q. Okay, and as you noted, Mr. Bloom shared the argument with you before the South Carolina Supreme Court as you recall, correct?

A. Well, right. He did.

Q. With respect to the proportionality issue, you noted, didn't you, on the next to the last, last page the objection in the record to proportionality page at 3411. That's reflected in that exhibit, applicant's exhibit.

A. Yeah. Excuse me, Respondent's Exhibit 8?

Q. At 3411.

A. Right, 3411, right. I remember the proportionality, proportionality issue and then let me -- you know, too, as far as Mr. Bloom in the oral argument, in the record, the tape of the oral arguments, the record, but I -- my memory, and I might be wrong. So, you know, check behind me, as I'm sure you would. But my memory on one reason I thought it was important for Jeff to be on this case, Jeff Bloom also be on this case was that this particular juror who we

had argued shouldn't have been on the jury, I thought Jeff's explanation as to how he used his peremptory challenges became important. And, and I don't have a totally clear memory on it, but I know I had something in me, some paranoia procedurally about how Jeff had used his strikes. That we might have to get over some procedural hurtle to explain maybe why this guy wasn't struck and ended up on the jury. And I, and I remember I thought Jeff's rating system of I had to get rid of this juror before the one that sat was a hurdle we needed to get over. And as I recall, we got over that procedural hurdle and, you know, won that battle and then got blown up on the merits of the issue.

Q. And, in fact, the juror questionnaire sheets, just to follow up on what you said.

A. Right.

Q. Were actually Jeff's jury questionnaire sheets that included his rating system.

A. That's correct.

Q. They were placed in the record?

A. They were placed in record, that's correct.

Q. Much to the chagrin of Assistant Attorney General Melody Brown, who was trying to figure what those numbers were, correct?

A. Well, that's what you had passed on.

Q. Okay.
A. But right.
Q. You don't recall her sharing that with you as to where the notations had come from before? If not ---
A. No, I don't, I don't. I mean, I don't, I don't recall that, that particular thing but, you know, if she was, you know, upset about them -- I mean, I don't -- you know, tell the truth, the whole truth, and nothing but the truth, I might have been expecting a motion to strike that never came.
Q. Okay, and if we get back to the proportionality issue, is there any question that that was an issue that was preserved for the appeal in your mind?
A. I, I mean, I don't remember there being -- I mean, I don't remember any kind of -- I cannot -- over error preservation. What I remember is -- again, rightfully or wrongfully -- visualizing an opinion that came out, whatever you want you say about our proportionality review, that they would just tee off on us on, on the physical torture matter, understanding bigger picture that there's the crack cocaine psychosis. But again that was something I was worried about the court just teeing off on us ---
Q. Okay.
A. --- if we got into proportionality.
Q. By teeing off, this is a record where the victim had

been brutalized and perceivably tortured over a significant period of time, which kind of made it a unique case in South Carolina, correct?

A. Well, I don't know about, I don't know about unique, Mr. Zelenka, but again it's -- you know, often times in capital cases, you know, you tend to gravitate, just because of the nature of it, to stay away from the facts and certainly proportion, you know, if we got into proportionality, you know, it would be a chance for you, Melody, or, you know, Ed Salter, Mr. Mabry to, you know, have a field day with the facts. That, that's what I'm trying to articulate.

Q. All right, but there was a written motion that was made to the court, correct? I'm showing you Applicant's Exhibit Number ---

A. Yeah.

Q. --- 7.

A. Yeah, and I, and I remember, and this is a vague memory, you know, some discussion with Jeff, and I hope I'm not conflating this case with other cases just about Charleston County in particular and, you know, some of the same sentiments had been, you know, aired about this county versus, you know, across the, across the river, Lexington County. In, in other words, you know, what I heard here about Mr. Dickerson and an African-American, going for the

death penalty because there was an African-American victim. Again, the same sorts of things were said over in Lexington with -- in the Johnny Bennett case.

So, again I, I vaguely remember some discussion in, in Charleston that they thought there were problems with -- racially with how the death penalty was sought, but they're vague recollections.

Q. By who in Charleston?

A. By whoever the solicitor was at any particular time.

Q. They were making those statements?

A. Who? Who is they?

Q. Well, I was asking you who they was in response to your statement.

A. I mean, again, this would have been discussions that were had between -- and here I would be talking about Mr. Bloom again, you know, about particular issue of race in Charleston. Now, again, I did not ---

Q. Mr. Bloom? Apologize. Mr. Jeff Bloom or Mr. John Blume?

A. Jeff Bloom.

Q. Okay. Go ahead.

A. No, I mean, that's about, that's about all I had to say. I mean, I just remembered generally the -- you know, that you showed me that and, you know, I, I don't remember in any specifics other than that and, you know, the issue

what -- wasn't raised. So, it wasn't raised.

Q. Okay. Wasn't raised on appeal, but it was raised in the motion hearing on April 3rd.

A. Yeah.

Q. And I provided you volume 1 of the transcript, and if you want to refer to it if you need to refer to it. It was set forth at, at the record, page 153 to 160, and you had that before you at the time of the appeal, correct?

A. I mean, I vaguely remember the motion. I mean, I don't, you know, I don't have any great recollection of why the issue, you know, you know -- it, it didn't strike my fancy and I was either right or, you know, I'm wrong.

Q. Okay, and with the motion on race, which is part of the respondent's exhibit that I showed you, Mr. Bloom did make a written motion to bar the death penalty based upon race.

A. He did.

Q. It was raised in the pretrial hearing on April 3, 2009, before the trial, correct?

A. Again, I'm not trying to articulate that there was an error preservation problem with that that led me not to raise it on appeal. If there was some deficiency in not raising the race thing, then, you know, I guess that was on me. If that's, you know, what you want me to say, that's on me.

Q. No. I, I want you to say why you didn't raise it.
A. Well.
Q. If you didn't raise it because ---
A. I don't have ---
Q. --- it wasn't preserved ---
A. I don't ---
Q. That's one thing.
A. I don't have any memory of any procedural problem, and I don't have a memory of it being a winning issue or, you know, I don't have a, you know -- if something's a winning issue, I would hope I'd raise it. And if I didn't, then I was wrong. Then I was wrong.
Q. Okay, and with respect to the photographs, there's no dispute that objections were made by Mr. Bloom to the photographs, correct?
A. Correct.
Q. And there's, there's no dispute that you included the photographs and the photographs were included as part of the record on appeal, correct?
A. No. That is incorrect. I mean, again, we went over this. We, we did not raise the issue of photographs, and I did not designate the photographs. The photographs were designated by the Attorney General to your office which, as I recall, was Melody Brown. Now, once Ms. Brown designated the photographs, that obviously becomes our responsibility

as the appellant to have those photographs transported to the Supreme Court.

Q. Okay.

A. I mean, if we're not going to raise photographs as, as an issue, you know, the, the -- frankly the last thing I want is the photographs over there for the court to look at. But if your office designates them, we -- we're just doing our administerial responsibility in transporting them to the court.

Q. Okay. All right. Perhaps you misunderstood my question. It is intended to simply be that you have reviewed the record, you have noted the objections ---

A. Right.

Q. --- to the photographs in that record?

A. Right.

Q. You didn't brief that issue?

A. No.

Q. But the photographs ended up being still a part of the record on appeal?

A. Right. I haven't, I haven't matched up photograph for photograph what Ms. Brown designated, but yes, a lot of the photographs -- and it might be every one on that list.

Q. Okay.

A. I don't know.

Q. Well, I think we can refer to the record on appeal.

Volume 1, page 28, and, and what does it note at the bottom of that?

A. Photographs included in the record are -- excuse me. Sorry.

Q. I understand.

A. State's Exhibit 141, 153, 160, 161, 162, 166, 171, 172, 173, 177, 178, 181, 184, 335, and 336. So, those were the ones that were included. Okay.

Q. So, those are the same ones you note within your outline?

A. I -- the only -- I have an extra one here that doesn't appear. It looks like 360, but again outside of that, it looks like that's all.

Q. Okay. With respect to the argument after Dr. -- during Dr. Phillips's testimony.

A. Right.

Q. You note that as occurring in your notes on the last page, I believe?

A. Yeah. I have 4167. As I recall, and I recall this only from reviewing my notes to -- I mean, in the transcript to refresh my memory, that this, apparently the objection happened at a bench conference on about 4051 of the record or 4053. Mr. Bloom put the objection on the record at 4167. So, I mean, I was ---

Q. Okay.

A. --- I was aware of the issue and again did not raise the issue.

Q. Did not raise the issue. Chose to raise the other four issues that were presented to the court, correct?

A. That's correct.

Q. And you were aware of the objections that had been made prior to the time of filing your initial brief for the appellant on each of those four issues that we've discussed, correct?

A. Correct.

Q. And you made a conscious decision not to present those, correct?

A. Yes. I mean, I, I -- right. Right or wrong, I'm, I'm -- you know, I was lead counsel. I made that decision.

Q. Okay, aware that your failing to raise those would preclude those matters from being presented to the South Carolina Supreme Court in Mr. Dickerson's case, correct?

A. Correct. Right.

MR. ZELENKA: As I understand, we're deferring all the *Batson* questions to the second proceeding, I believe. Those were the only claims of ineffective appellate counsel that were raised, and I'll submit Mr. Dudek back to the applicant's counsel at this time.

MS. FRANKLIN-BEST: No additional questions, Your Honor.

THE COURT: All right. Thank you very much. Thank you very much, Mr. Dudek.

WITNESS: Thank you, Judge.

THE COURT: Good to see you.

(THE WITNESS EXITS THE STAND.)

THE COURT: All right, counsel, that will conclude the testimony for today. It's my understanding that my clerk has arranged and everybody has agreed to reconvene this hearing on March 31st and April 1st for the issues regarding Batson that the appellant has raised. Is that correct, everybody?

MR. ZELENKA: That's our understanding, Your Honor.

MS. FRANKLIN-BEST: Ours, too, Your Honor.

MR. ZELENKA: We understand that will be Dr. Cunningham and the other witnesses.

THE COURT: I don't know. That happens to be a PCR week. If you find that you need an additional day, we're going to have to just talk to the PCR division like we did this week and put them off again, but that's just for information purposes.

I still have in my possession the unredacted notes, jury notes primarily from the Ninth Solicitor's Office. It's my understanding that they are to be made a part of the record, and I can either ship them to Charleston or -- under seal or what would you have me -- any objection to

that?

MS. FRANKLIN-BEST: I'm sorry. That they, that they are going to be made part of the record?

THE COURT: I thought that's what you wanted.

MS. FRANKLIN-BEST: It is what I want.

MR. ZELENKA: Under seal.

MS. FRANKLIN-BEST: Under seal. I would just like ---

THE COURT: For appellate purposes only.

MS. FRANKLIN-BEST: Okay, so I just want to make -- am I going to get to see them?

MR. ZELENKA: That's his call.

THE COURT: We've already -- you've already seen all you're going to see.

MS. FRANKLIN-BEST: Well, I've seen the, the documents from the second ---

THE COURT: The redacted form.

MS. FRANKLIN-BEST: For the juror list. Okay, I'm sorry. I'm confusing the jury notes, which you have released roughly 846 pages to us. There is still the first discovery production of roughly 3000 pages of documents, of which about 2000 pages of those are additional juror notes. We may be requesting that Your Honor provide those to us as well.

THE COURT: I thought we did because I ordered the solicitor's office to provide them, to obey the subpoena in

redacted form because I ruled that their notes on the jury forms were privileged. Are we talking about the same thing?

MR. GROSE: Can I jump in for a second because I, I think we're -- there are several things we're talking about. And there's, there's the first disc that you got from Judge Dickson that needs to -- from -- that was the first claim of privilege that needs to be a sealed part of the record.

THE COURT: That ---

MR. GROSE: Huh?

THE COURT: Wasn't that as a result of your subpoena?

MR. GROSE: That, that was, right, but there, but there's, there, there's really three things at play. There was, there was the first disc that went to Judge Dickson back in 2012. None of that has ever been released to us. Then there was a second subpoena that dealt with the juror materials from the other cases that Solicitor Wilson tried. You ordered portions of that to be released to us and portions not, and it was our understanding that you still have the unredacted versions of that.

THE COURT: I do.

MR. GROSE: And then the third disc was ---

THE COURT: That's not an issue.

MR. GROSE: Well, it, it, it is an issue because the

third disc was when they discovered the additional boxes. You've released portions of those, so what you've released to us is, is not an issue, but what you've not released to us potentially still could be because there was, there, there was also materials that spoke to *Brady* as far as the underlying crime as opposed to your issues.

MS. FRANKLIN-BEST: Yeah. It's really, what's really unclear right now is from that first disc, roughly 2000 pages of juror notes. And we gave Your Honor a pleading on that earlier because during our last hearing, I brought to the court's attention that I don't ---

THE COURT: Have you got my ruling on that?

MS. FRANKLIN-BEST: Never ruled on that at this point, Your Honor.

(A PAUSE.)

THE COURT: Why don't you set it out in a letter.

MS. FRANKLIN-BEST: Okay.

THE COURT: Copy to the state because I thought the document -- the disc that was sent to Judge, was sent to Judge Dickson had already been ruled on and was not an issue anymore.

MS. FRANKLIN-BEST: There was not a ruling on that.

THE COURT: But there was a privilege log sent with it.

MS. FRANKLIN-BEST: For the first disc?

THE COURT: Yes.

MS. FRANKLIN-BEST: Yes, that's correct.

THE COURT: All right, put that ---

MS. FRANKLIN-BEST: I'll get that ---

THE COURT: --- put in the letter what you think is outstanding.

MS. FRANKLIN-BEST: I'll do that immediately, Your Honor.

MR. MABRY: I needed to correct something on the record, Judge. When I was cross-examining Dr. Israelian and I referred to an incident where Mr. Dickerson hit his head. That was in 2001 and I couldn't -- we had it up on the computer screen, and that actually occurred at SCDC, and he was taken to the infirmary 2001. So, I misstated that.

THE COURT: All right.

MR. MABRY: I wanted to correct that so Your Honor wasn't under any false impression.

THE COURT: This belongs to you.

MS. FRANKLIN-BEST: Thank you, Your Honor.

THE COURT: All right, we'll stand adjourned.

**--- END OF TRANSCRIPT OF RECORD ---**

**CERTIFICATE**

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR CHARLESTON COUNTY, SOUTH CAROLINA, ON THE 7TH AND 8TH DAYS OF DECEMBER, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/*ELIZABETH B. HARRIS*, CVR-M

COLUMBIA, SOUTH CAROLINA

FEBRUARY 28TH, 2016

# LABORATORY REPORT

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SmithKline Bio-Science Laboratories

WILLIAM B HALL PSYCHIATRI
PO BOX 119
COLUMBIA,SC 29202

DICKERSON,WILLIAM SEX: M AGE: NG

SPECIMEN: BLOOD

COLLECTED: 06/02/88
RECEIVED: 06/03/88 1040AM
REPORTED: 06/04/88

REQ: 5024350 WHPT 005400
LOG: 5450208
BT# 002 2

LAB REF#

DR. KIM
HOSP# 8813294 ROOM# 160C

| TEST | RESULTS | | REFERENCE RANGE |
|---|---|---|---|
| LEAD BLOOD | 9 | UG/DL | LESS THAN 25 |

ACCEPTABLE BLOOD LEAD LEVELS IN OCCUPATIONALLY EXPOSED INDIVIDUALS VARY WITH CONDITIONS OF EXPOSURE AS DEFINED BY CURRENT FEDERAL REGULATIONS.
TEST BY SKBL VAN NUYS, CDC #04-1013

Applicant's 1 12-7-15 HB

6-7 ST CSL

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# Using Geographic Information Systems to Assess Risk for Elevated Blood Lead Levels in Children

Applicant's
2
12-7-15 eBH

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## SYNOPSIS

**Objectives.** Targeted screening for childhood lead poisoning depends on assessment of risk factors including housing age. Using a geographic information system (GIS), we aim to determine high-risk regions in Charleston County, South Carolina, to assist public health officials in developing targeted lead-screening.

**Methods.** Properties built before 1978 were geocoded (assigned latitude and longitude coordinates) from tax assessor data. Addresses of Charleston County children who have been screened for lead poisoning were also geocoded. Locations of all housing, lead poisoning cases, and negative screens were created as separate map layers. Prevalence ratios of lead poisoning cases were calculated, as were relative risks for each category of housing.

**Results.** Maps of Charleston County were produced showing the location of old housing, where screening took place, and where cases were found. One thousand forty-four cases were identified. Twenty percent of children living in pre-1950 homes had elevated blood lead levels (EBLL). Children living in pre-1950 housing were 3.9 times more likely to have an EBLL than children living in post-1977 housing There was no difference in risk of living in a 1950–1977 home vs. a post-1977 home. A large number of cases were also found in an area of newer houses, but near a potential point source. Eighty-two percent of all screens were from children in post-1977 homes.

**Conclusions.** Children living in pre-1950 housing were at higher risk for lead poisoning. GIS is useful in identifying areas of risk and unexpected clustering from potential point sources and may be useful for public health officials in developing targeted screening programs.

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The prevalence of childhood lead poisoning in the United States has decreased since the mid-1980s.[1,2] The Centers for Disease Control and Prevention (CDC) attributes most of this decline to the removal of lead from gasoline and soldered cans.[2] In addition, the 1978 Consumer Product Safety Commission banned the use of lead-based paint on residential surfaces and toys, so that all houses built since 1978 should contain no lead-based paint.[3] Unfortunately, the problem of childhood lead poisoning has not been eliminated, but instead has remained a serious public health problem concentrated in high-risk populations. Higher prevalence of lead poisoning has occurred among children of lower socioeconomic status and among racial/ethnic minorities. In addition, a higher prevalence of lead poisoning has been documented in children living in housing built before 1950 compared to children living in newer housing. The mean blood lead level is also higher for these same children.[1,4,5] The release of these data has prompted the CDC to recommend major changes in lead-screening, placing emphasis on a targeted screening approach,[6] rather than the universal screening recommendation of 1991.[3] State public health departments were charged by the CDC to develop screening plans for their state.[6]

Under the targeted screening plan, only areas designated as "high-risk" would conduct universal screening. Population-based lead prevalence data for a corresponding geographic region is the preferred method to designate an area as high-risk, and therefore require universal screening of all one- and two-year-olds. Recognizing that these data were non-existent in many communities, the CDC provided interim recommendations for targeted screening until prevalence data became available. These suggest screening all children in counties in which ≥27% of the houses were built before 1950, and screening all children who receive Medicaid, as a proxy for poverty.[6]

Targeted screening for childhood lead poisoning requires an assessment of risk, including age of housing. Many clinicians assess age of housing by asking parents. Unfortunately, uncertainty exists about the parents' ability to reliably determine age of housing. In our population, asking parents whether they lived in a house built before 1950 was not reliable and could not be used for risk assessment.[7] Reliance on census data may also be problematic, as census data rely on respondent's estimates. Evidence indicates that there is under-reporting in the older structure categories.[8]

We have developed a geographic information system (GIS) that enhances the reliability of determining housing age, particularly among families who rent their homes. GIS may also be an ideal mechanism to identify clustering of cases based on an isolated exposure source. This method was hypothesized to have a greater case finding rate than door-to-door screening,[9] and has been demonstrated to describe areas of high-risk in New Jersey and guide public health efforts in Kentucky.[10,11]

The objective of this study is to use GIS methodology to determine which areas in Charleston County, South Carolina, are considered high-risk for lead poisoning based on the age of housing. In addition, we wish to assess the utility of GIS in developing a targeted lead-screening program.

## METHODS

### Construction of the database

Childhood lead-screening data for the Charleston County Lead Poisoning Prevention Program were maintained in the Systematic Tracking of Elevated Lead Levels and Remediations (STELLAR) software.[12] The STELLAR data are maintained in several relational files: (*a*) a child file containing child demographic information; (*b*) an address file containing addresses that can be linked back to a child; and (*c*) the lab file, containing all lead laboratory test results. One child could have multiple tests, and similarly one child could have several home addresses. The Lead Program provided data for all children screened from 1991 through August 1998. Names were not included so that an individual child could not be identified. We examined data for all children screened from 1991 through August 1998 (excluding children's names to preserve confidentiality). Addresses in the STELLAR records were geocoded (assigned latitude and longitude coordinates) using Matchmaker/2000 address matching software.[13]

The Charleston County Tax Assessor's Office provided the following data on residential housing: (1) built before 1950; (2) built from 1950 through 1977; and (3) any properties missing year built data. Properties built before 1950 were checked against the 1950–1951 Charleston City Directory, and properties built from 1950 through 1977 were checked against the 1978 Charleston City directory to verify that the address existed at that time. All non-geocodable addresses (Post Office Box, Rural Delivery) were deleted. Next, the data were entered into SAS software[14] and duplicate addresses (such as from duplexes, apartment complexes, and so forth) were deleted. The data were then geocoded. The tax assessor files were merged with the STELLAR records. All data cleaning, merging, and analysis were done using SAS.

### Visualization of the Data

All data were entered into Maptitude 4.2 Geographic Information System.[15] Lead poisoning cases (blood lead levels ≥10 µg/dL) and all lead screens were created as separate map layers. Quality assurance checks verified that for every "case" the same location had a "screen." Tax assessor data (pre-1950 and 1950–1977 housing) were also created as separate map layers. These map layers were incorporated into a map containing the following geographic census layers for Charleston County: census places (cities and towns), census tracts, block groups, and streets. To maintain consistency with recent CDC recommendations, the housing categories were pre-1950, 1950–1977, and post-1977.[6]

### Data Analysis

We calculated prevalence ratios of positive cases among children who were screened for lead poisoning. Relative risks with 95% confidence intervals were determined comparing prevalence in 1950 housing and 1950–1977 housing to that of post-1977 housing. Within the 1950–1977 housing age category, we also calculated the risk at smaller intervals (1950–1955, 1956–1960, and so on) to determine whether older houses within the 1950–1977 category posed a different risk than a newer one. We also compared data among ZIP Codes.

The Institutional Review Board at the Medical University of South Carolina approved this project.

## RESULTS

From tax assessor data, 13,003 addresses were identified as pre-1950. Of these, 321 were deleted as unusable because they represented a Post Office (P.O.) Box or Rural Delivery. Of 12,682 of the remaining properties, 12,341 were geocoded (assigned a latitude and longitude), identifying 97.3% of houses. Once duplicate addresses were removed (duplexes, apartments, and so forth) using SAS software, there were 10,812 unduplicated pre-1950 addresses. In the 1950–1977 tax assessor dataset, 40,285 were identified, 822 were deleted as P.O. Boxes or Rural Delivery, and 38,081 (96.5%) of the properties were geocoded. Once duplicate addresses were deleted, we identified 37,144 houses built from 1950 through 1977.

In the STELLAR file, 600 P.O. Boxes and Rural Districts were deleted from the 16,040 addresses. Of the remaining 15,440 addresses, 14,957 were geocoded (96.9%). After merging the lab and child files with the address file, we had 34,792 geocoded STELLAR records representing the location of all Charleston County children tested with a blood lead level. The larger number of STELLAR records compared to the number of addresses is partly a result of numerous siblings or cousins sharing the same home, but mostly represents multiple follow-up lead tests for those children with elevated blood lead levels (EBLLs). After removal of duplicate tests, we determined that 1,710 children lived in pre-1950 housing, 3,715 lived in housing built from 1950 through 1977, and the remaining 9,847 children lived in post-1977 housing.

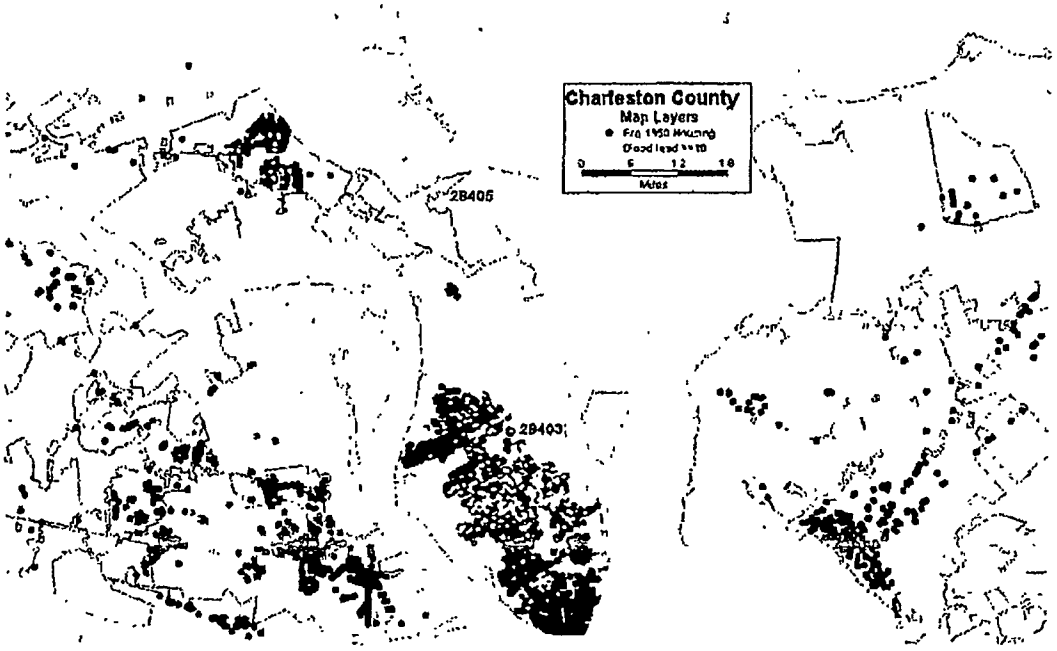
Figures 1 and 2 show Charleston County and an enlargement of the lower end of the peninsula of the City of Charleston.[15] Each map displays the locations of all houses built before 1950 and the location of all children with blood lead levels of ≥10 µg/dL. The lower end of the peninsula of Charleston is where almost all early settlement occurred and is where a substantial number of lead poisoned children are located. The map demonstrates that most of the cases are located in pre-1950 houses. In several areas of Charleston County, there are areas with a high concentration of pre-1950 housing, but little screening activity.

The number of cases found and their association with age of housing is presented in Table 1. One third of the lead poisoned children lived in pre-1950 housing; 17% lived in homes built from 1950 through 1977; and 49.5% lived in homes built after 1977. However, there were more than five times the number of children screened who live in post-1977 housing compared to children living in pre-1950 housing. Children living in pre-1950 housing were four times more likely to be lead poisoned than children living in housing built after 1950. There was no statistically significant difference in risk for lead poisoning among children living in housing built from 1950 through 1977 compared to housing built after 1977. The 1950–1977 housing category was divided equally into four subcategories to determine whether houses, such as those built in the early 1950s or 1960s, may pose some risk; however, no risks were found.

Table 2 presents data for screening activity, the number of cases, and the percentage of cases per children screened, as stratified by ZIP Codes. The last column of the table represents the percentage of cases in that ZIP Code associated with residence in pre-1950 housing. The largest number of cases (578) were located in ZIP Code 29403 (Figure 2). More than half of the children in this ZIP Code with EBLLs live in pre-1950 housing. Of those children not residing in a pre-1950 house, all are in immediate proximity to pre-1950 housing. Despite relatively limited screening activity in the 29401 ZIP Code, an area with very expensive but well maintained homes, almost 16% of the children screened were positive.

**Figure 1. Map of Charleston County**

All houses built before 1950 are shown in black. The white dots represent all locations of lead poisoning cases.




In contrast, the next largest number of cases (225) were located in the 29405 ZIP Code, but only 15 (6.7%) of these children resided in a pre-1950 house (Table 2). This region can be seen in Figure 3. Pre-1950 housing is much more limited in this area, with approximately 1,005 pre-1950 houses in this ZIP Code; yet the percentage of lead poisoned children in pre-1950 housing was nearly identical to that of the whole region, regardless of age of housing. Of the 225 cases in this ZIP Code, 171 (76 %) are found in post-1977 housing, suggesting an additional exposure apart from housing may exist. Little screening activity was noted in some pre-1950 neighborhoods for many other ZIP Codes in Charleston.

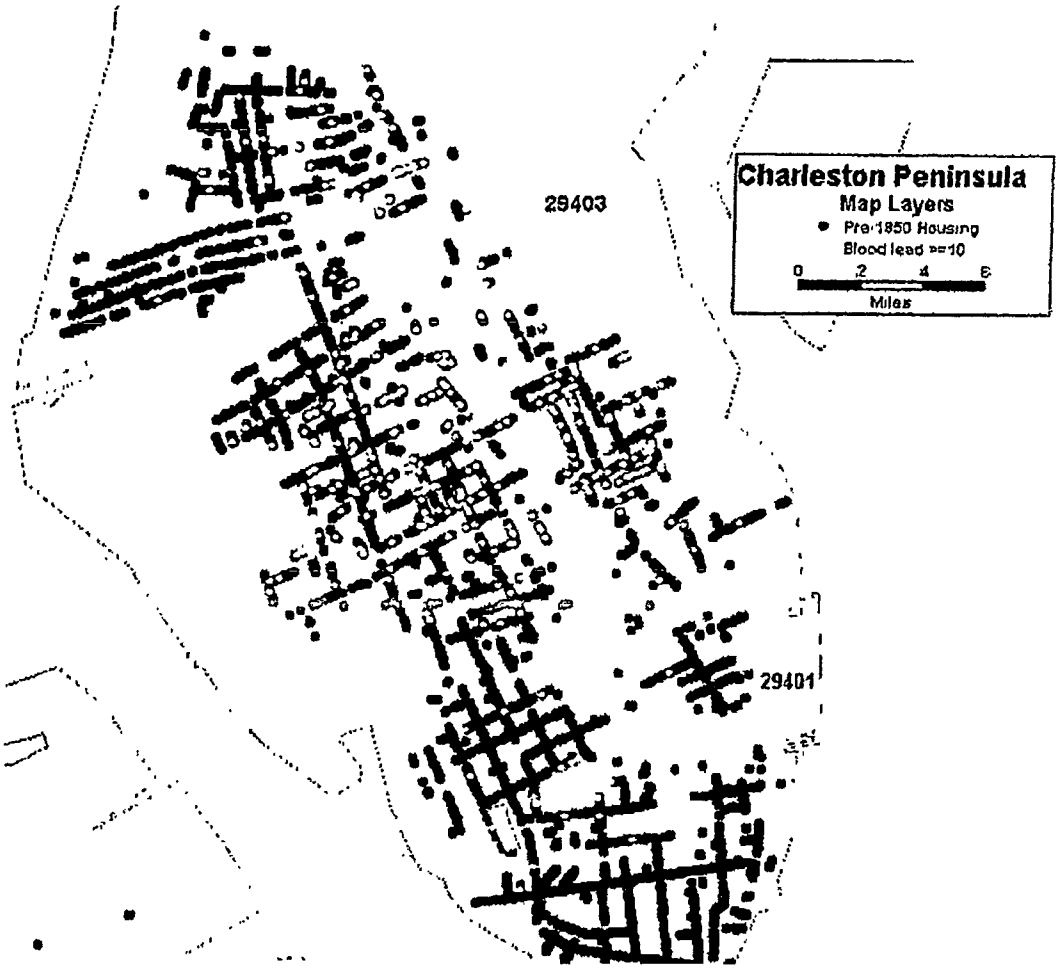
## DISCUSSION

Our study supports the finding that housing is a known risk factor for lead poisoning by providing geographic evidence supporting pre-1950 housing as a primary risk factor. In our population, the children who lived in pre-1950 homes had a relative risk of 3.9 for acquiring lead poisoning. We did not find a higher risk for lead poisoning among children living in 1950–1977 housing, neither as a category, nor in five-year increments after 1950. This may be due to the fact that prior to 1950, the concentration of lead in paint was considerably higher, than from 1950 through 1977. During this period, before lead-based paint was banned for indoor and residential use, there was a voluntary reduction by the paint industry in the concentration of lead used in paint.[16]

Our study also provides evidence that GIS is useful to determine where flaws in the housing risk assessment model lie. Had housing age been the only risk factor with which to target lead screening, a large number of cases would have been missed in the North Charleston area. GIS allows additional risks to be iden-

**Figure 2. Closeup view of the tip of the peninsula in Charleston, which is the site of the original settlement**

Most cases are associated with residence in pre-1950 housing.




tified and factored into a targeted screening plan. The cluster of cases that were found in post-1978 housing in North Charleston is one example. Another study has documented outdoor environmental soil contamination using GIS techniques, due to automobile exhaust.[7] Further investigation into this cluster is in progress and will be the subject of a future article.

Two other important findings are worth special mention. Several areas in which there were large numbers of pre-1950 housing were noted to have an absence of screening. Without GIS, one would easily overlook these potential target areas where screening should occur. Also, a significant number of cases were noted in children living in newer housing, but in a geographic region surrounded by a high concentration of pre-1950 housing. If screening for these chil-

**Table 1. Percentage of cases per children screened from 1991 through 1998 in Charleston County**

| Age of house | Children Screened | Cases | Cases/Screened | All Cases | Relative Risk[a] | 95% Confidence Interval |
|---|---|---|---|---|---|---|
| Pre-1950 | 1,710 | 349 | 20.4% | 33.4% | 3.9 | 3.4, 4.4 |
| 1950–1956 | 906 | 49 | 5.4% | 4.7% | 1.0 | 0.8, 1.4 |
| 1957–1963 | 881 | 37 | 4.2% | 3.5% | 0.8 | 0.6, 1.1 |
| 1964–1970 | 1,020 | 41 | 4.0% | 3.9% | 0.8 | 0.6, 1.1 |
| 1971–1977 | 908 | 51 | 5.6% | 4.9% | 1.1 | 0.8, 1.4 |
| Post-1977 | 9,847 | 517 | 5.3% | 49.5% | 1.0 | REF |
| Total | 15,272 | 1,044 | | | | |

[a]RR in relation to Post-1977 housing

REF = referant

**Table 2. Risk of lead poisoning by neighborhood and ZIP Code**

| | ALL HOUSING | | | PRE-1950 HOUSING | | | |
|---|---|---|---|---|---|---|---|
| ZIP Code | Screened | Cases | Cases/Screened | Screened | Cases | Cases/Screened | Cases in ZIP Code due to pre-1950 housing |
| 29401 | 274 | 43 | 15.7% | 78 | 8 | 10.3% | 18.6% |
| 29403 | 2,733 | 578 | 21.2% | 1,186 | 319 | 26.9% | 55.2% |
| 29405 | 3,259 | 225 | 6.9% | 248 | 15 | 6.0% | 6.7% |
| 29406 | 1,978 | 37 | 1.8% | 0 | 0 | | |
| 29407 | 1,466 | 54 | 3.7% | 49 | 1 | 2.0% | 1.9% |
| 29412 | 852 | 20 | 2.3% | 48 | 1 | 2.1% | 5.0% |
| 29418 | 1,243 | 22 | 1.8% | 6 | 3 | 50.0% | 13.6% |
| 29455 | 546 | 15 | 2.8% | 5 | 0 | 0% | 0% |
| 29464/66[a] | 719 | 11 | 1.6% | 49 | 1 | 2.0% | 9.1% |
| All others[b] | 2,165 | 39 | 1.8% | 39 | 1 | 2.6% | 2.6% |

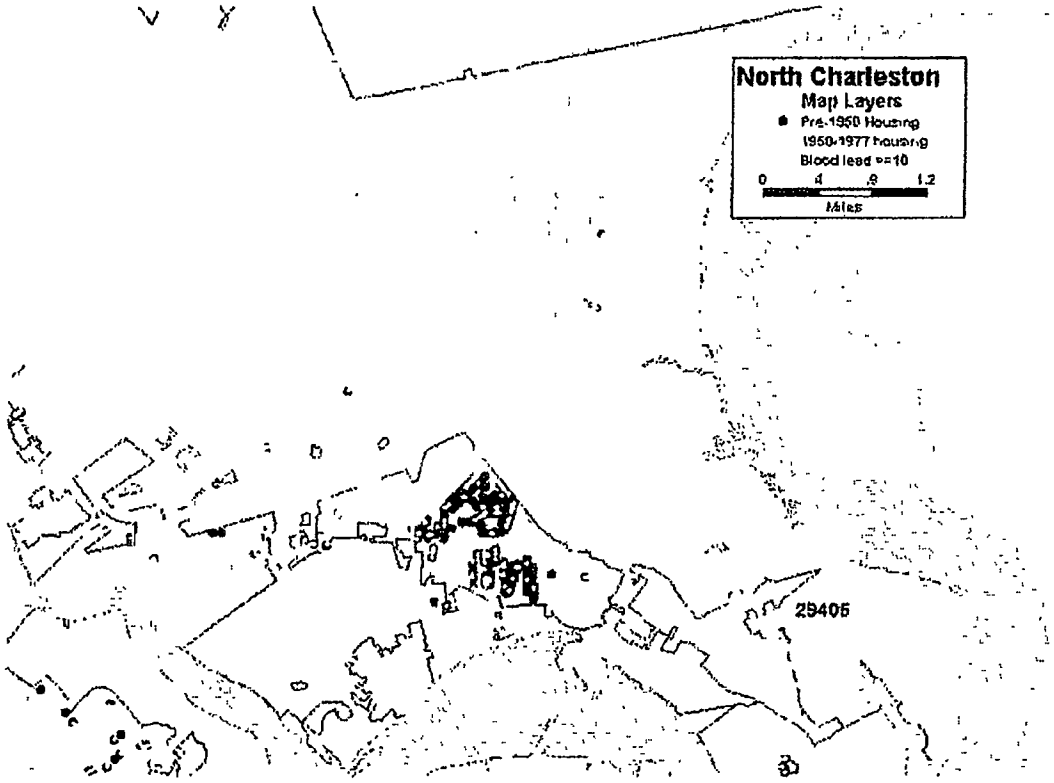
NOTE. In 29406, 29407, 29412, 29418, 29455, and 29464/66, very little screening of children living in pre-1950 housing occurs. Past screening in a lot of these areas has been focused on testing the pre-K and kindergarten children through schools.

[a]Represents town of Mount Pleasant—ZIP Codes combined due to small numbers of screens

[b]Represents ZIP Codes in which 10 or fewer lead poisoning cases were found

**Figure 3. Segment of the city of North Charleston, which can be found on the County map as the northern-most part of the peninsula**

A small number of homes (shown in black) were built before 1950. A much larger proportion of the homes were built after 1950. (1950–1977 housing are shown in gray; houses built after 1978 houses are not shown due to the overwhelming number of houses in the area of question). A large number of cases (shown in white) were found in children who lived in housing built after 1950.




dren relied solely on parental report of the age of their residence, it is likely that few of these would have been screened. GIS should be a focal point for determining risk for any public health lead-screening plan.

In communities, such as rural areas with limited resources to complete a study with GIS, our results could be used to modify or develop a concentrated approach to lead screening. First, there should be an attempt to identify at the local level the neighborhoods that fit the profile for risk, including poverty, race/ethnicity, and old housing. Next, there should be local knowledge of any potential point sources in the community, and these should be considered in any model. Finally, rather than using a questionnaire to determine which children should be screened, one should do mass screening of those neighborhoods or even roads or houses to establish the prevalence. Arguably, it is the rural areas that may be at greater risk, where, unlike most urban areas, there is no concentrated screening program.

Methods used in the geocoding process for the construction of this database yielded a successful

geocoding ratio of 97% or better. This is due in large part to careful use of resources to insure accuracy of street names, and thorough verification of addresses using the city directory. This accuracy is at least as efficient as or better than most commercial geocoding firms and the U.S. Bureau of the Census.[18]

This study has several limitations. Due to the retrospective nature of the data, we are unable to differentiate individual risk patterns per case. These include additional soil contamination, pica, the presence of lead-contaminated mini-blinds, and whether the child spent a significant amount of time in a home of a relative or babysitter that may have been built before 1950. The soil contamination often occurs from old deteriorated housing, though contamination from point sources or automobile exhaust are additional considerations. The latter issue would actually misclassify a child with a post-1977 address as low risk. These data are predominantly of South Carolina Medicaid recipients. Although these data arguably represent the children at highest risk, there is a possible underreporting of the risk in some areas of Charleston. Most notably, the ZIP Code of 29401 consists of a high percentage of old but often well maintained and high-priced homes. Though a small number of children have been screened in this area, a significant number of cases have been found there. Our data possibly represent an underestimation of the actual risk for this group of children.

By creating a map of all the data, GIS allows one to visualize the population at once. This allows quick assessment of case location, resources spent on lead screening, and potential risk factors. Once this information is seen graphically, public health officials or practitioners have a greater understanding on how to assess past performance of a lead screening program, evaluate the risks, and develop a methodical and practical approach to screening.

The clustering of lead poisoning cases makes GIS an ideal mechanism for identifying new cases based on geographic risk. One can quickly determine from GIS where old houses are located and predict where lead poisoned children would most likely be found. This information can be combined with census data to take into account socioeconomic factors, allowing targeted lead screening efforts and/or primary prevention interventions in neighborhoods with the highest concentration of pre-1950 housing and children living in poverty.[6] GIS may be useful for state or local public health officials as they develop a targeted lead-screening program as outlined by the CDC. It also clearly and simply articulates risk to the public, and therefore may be useful as an outreach tool for public health programs as they develop outreach interventions.

This article is based on work presented by James R. Roberts in part at the Pediatric Academic Societies Meeting; 2001 Apr 28–May 2, Baltimore, MD.

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# Childhood Lead Exposure: Causes and Consequences

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Applicant's
3
10-7-15

# What is Lead?

- Dull gray metal
- Element, but typically not in elemental form ($Pb^{++}$)
- Used to make batteries, paint, and as an "antiknock" additive to gasoline, $PbEt_4$
- Widely used in house paint prior to its ban in 1978.
- Still used in industrial, marine, and military applications.

# What is lead poisoning?

- Still one of the most common environmental health problems for children in the US
- Caused by too much lead in the body
- High blood lead can cause brain damage, mental retardation, behavior problems, anemia, liver and kidney damage, hearing loss, hyperactivity, developmental delays, other physical and mental problems, and death.

5920

# How Are We Exposed to Lead?

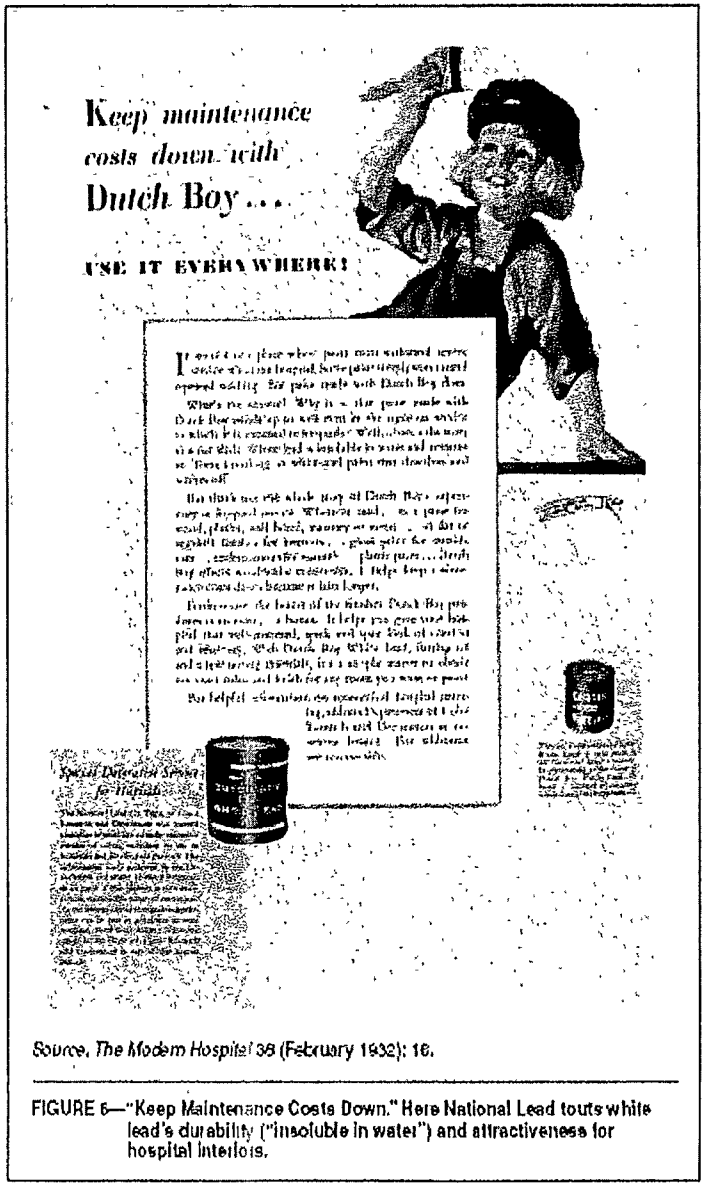
- Lead chips and lead dust from peeling and chalking paint
- Lead particles from exhaust that have settled on the soil near busy roadways
- Drinking water, occupations, hobbies, and food

# Lead-based Paint

- Prior to ~1930 paint was white
  - Pigment was white lead
- ~1930-1950 increased use of color
  - "Red Lead"
- 1978 lead-based paint is banned in U.S.

5922

HIGH LEAD CONTENT PAINT
WHITE-LEAD
-Lasts!




Source, *The Modern Hospital* 38 (February 1932): 16.

FIGURE 6—"Keep Maintenance Costs Down." Here National Lead touts white lead's durability ("insoluble in water") and attractiveness for hospital interiors.

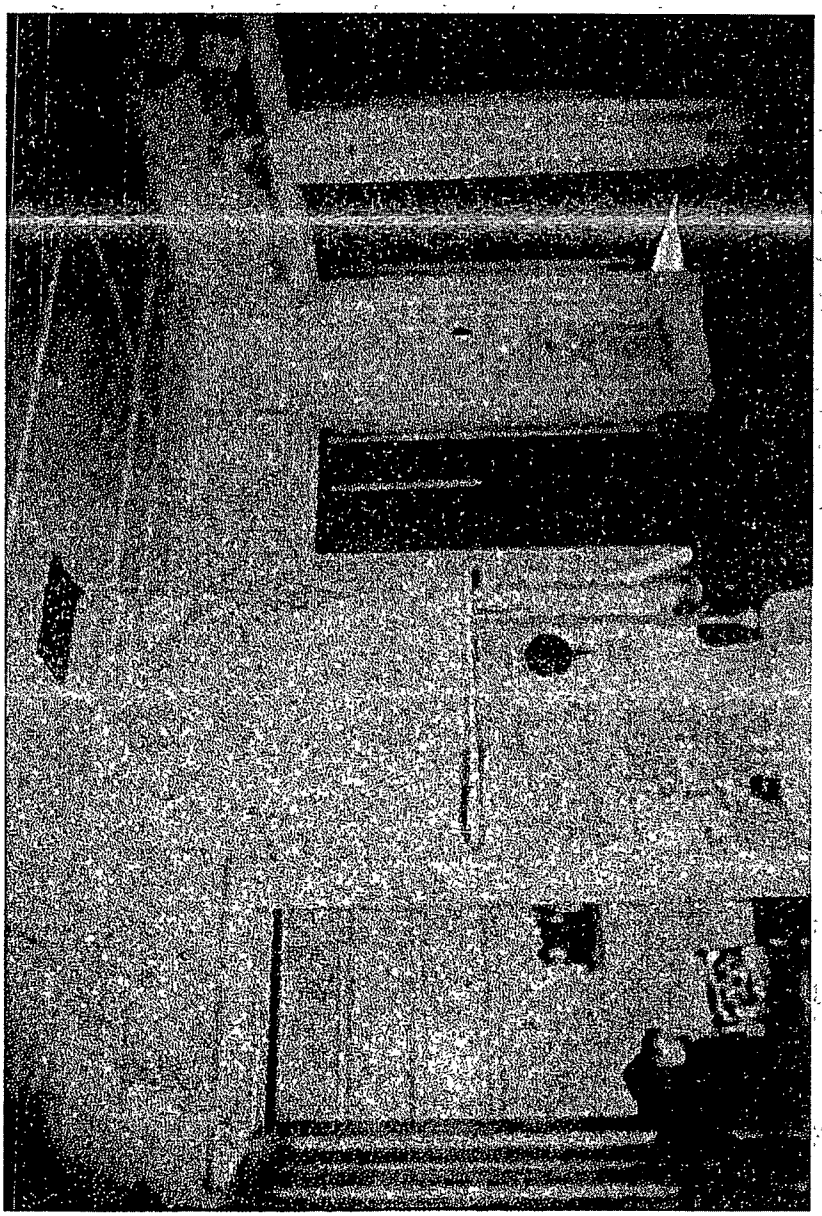



## Do Not Forget the Children—
## Some Day They May Be Customers

We are not even overlooking the children in our campaign for a record paint business this fall. The children's paint book, which is reproduced in only two colors above, carries a paint message to the grown-ups, while its jingles and "pictures" amuse the little ones. Moreover, in the back of the book there is a special paint message to the parents.

By all means do not hand out these children's paint books at random. One way is to hand a copy to each youngster who comes into your store *with a parent*. Parents appreciate little attentions of this sort paid their children. They like to trade at stores where the youngster is not overlooked. Another effective method is to mail the paint books to the children of prospective customers. Accompany the book with a pleasant little personal letter, working in subtly a few references to your store and the "Save the Surface" idea. There are other ways to distribute these clever little books, which you no doubt will work out to your advantage. Order a supply of these children's paint books today.

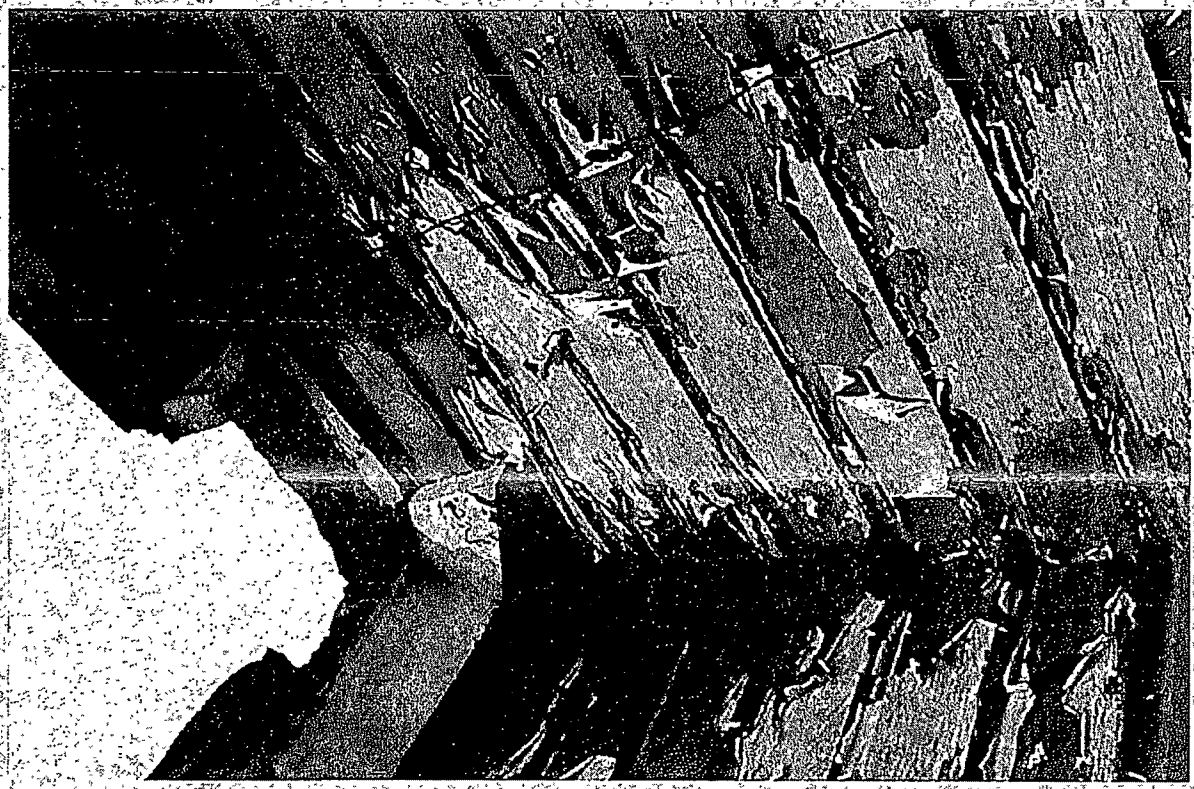




5927

# Young Children at Greatest Risk

- Hand-to-mouth behaviors
- Higher absorption rates for lead in children than in adults
- Critical brain structures in process of development



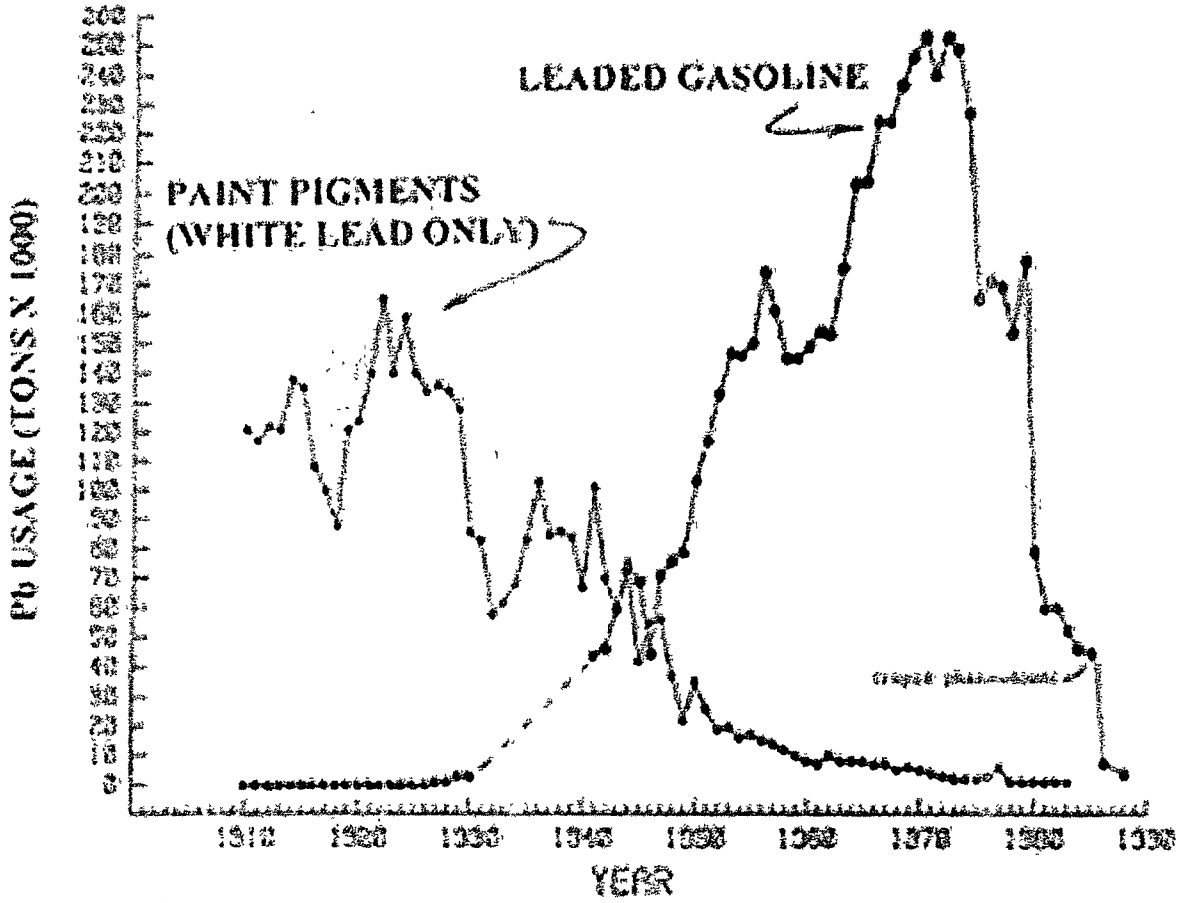
Beyond
85.9
83.9
WE
SELL
4 STAR
XSU 807

# Distribution of lead in soil from auto emissions in New Orleans – pre-Katrina




CDC soil standards 400ppm play areas; 1200 ppm non-play areas

# Tonnage of lead used in paint and gasoline 1910-1990

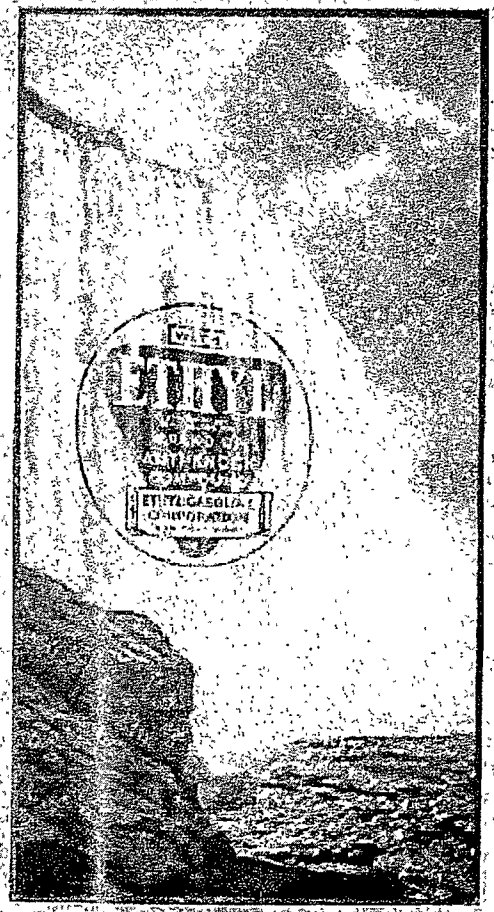



Reprinted from EPA approved model curriculum: Lead abatement training for supervisors and contractors. US Environmental Protection Agency (1992).

1.25 million gallons of Pb

5933

Over *one billion* gallons of Ethyl a year




ETHYL GASOLINE

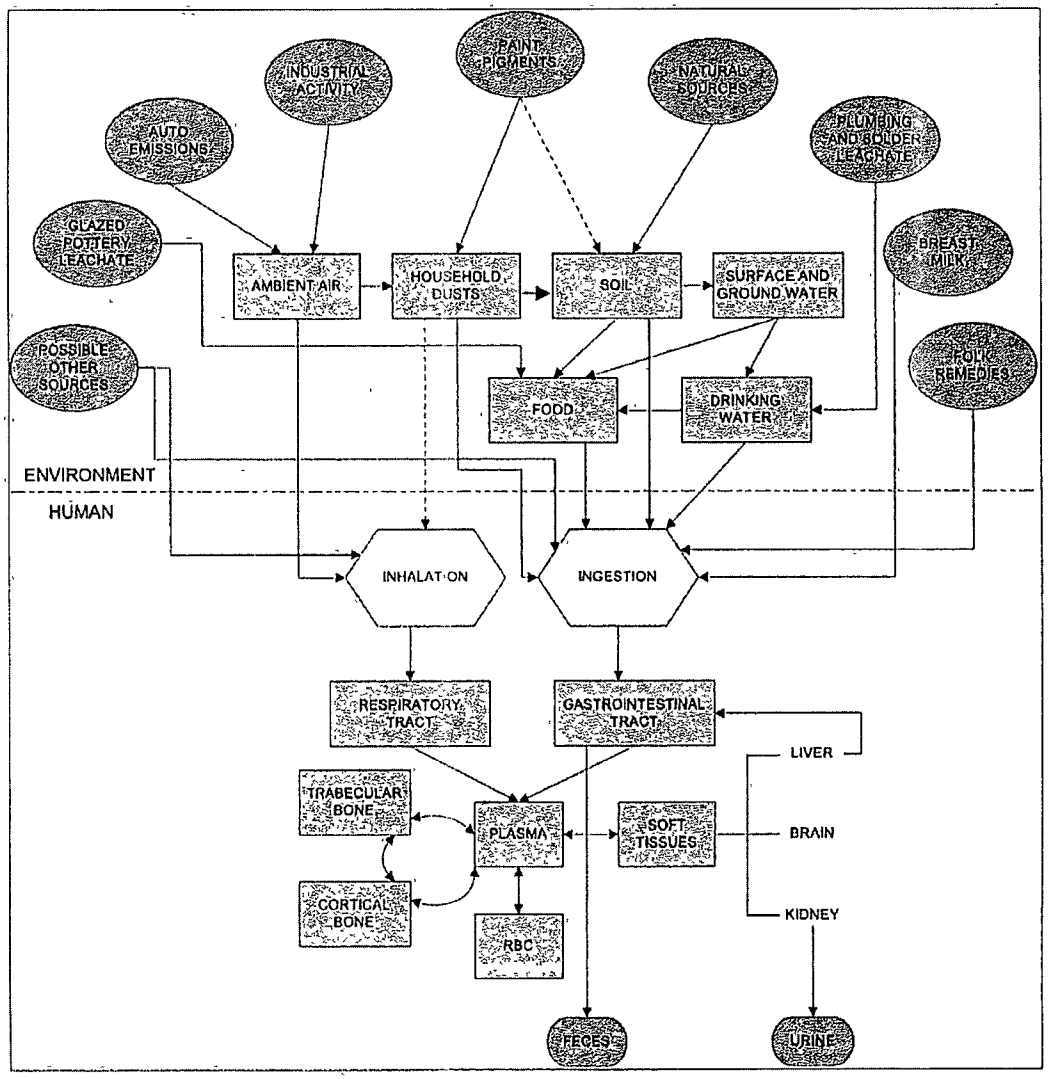



SHERWIN WILLIAMS®

5934

# Intake and Biologic Fate

# Pathways of Lead Exposure



# Intake and Biologic Fate

- Intake is by ingestion or inhalation
- Transported by the erythrocytes (red blood cells)
- Deposited in soft tissue and bone
- Rate of absorption depends on
  - Age
  - Nutritional status

- Inhaled lead deposited in the lower respiratory tract is completely absorbed.
- 10-15% of ingested lead is absorbed from the GI tract of adults.
- Up to 50% of ingested lead is absorbed from the GI tract of pregnant women and children.
  - Proportion absorbed increases under fasting conditions and with iron or calcium deficiency.

5938

# Why is Lead hazardous?

- Like other necessary minerals, it has a +2 oxidation state.
- This allows $Pb^{2+}$ to "mimic" essential nutrients like calcium ($Ca^{2+}$) and iron ($Fe^{2+}$).
- Disruption of cellular metabolism

5939

# Why is Lead hazardous?

- Damage to astroglial cells
- Demyelination
- Disruption of neurotransmitter synthesis, uptake, and re-uptake

5940

# Lead storage

- **Blood**
  - 99% in erythrocytes, 25 day half-life
- **Soft Tissue** (kidney, bone marrow, liver, brain)
  - ~40 day half-life
- **Mineralizing tissue** (bones, teeth)
  - contains ~95% of total body burden in adults
  - ~25 year half-life in non-labile bone

5941

# Measures of Lead Exposure

- Blood lead (micrograms per deciliter, μg/dL)
  - Venous or capillary
- Tooth lead
  - Which tooth?
  - What part of the tooth?
- Bone lead
  - X-ray fluorescence
    - Remains exploratory

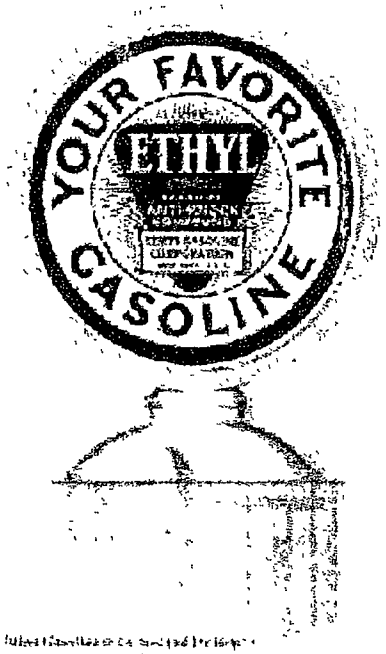
# Pb: A Very Potent Neurotoxin

- 1 microgram of Pb = .000000003 ounces
- 1 deciliter = 20 tsp
- Child has ~4 quarts of blood
- Toxicity = one-millionth of a tsp in the bloodstream



# Less than a teaspoonful to the gallon

## *but what a difference* ETHYL *makes!*




ETHYL is the name of the "anti-knock" compound developed by General Motors Research Laboratories to make motor gasoline more efficient.

Leading oil companies mix it with their gasoline at their refineries to form *Ethyl Gasoline*—the standard high compression fuel.

There is less than a teaspoonful of ETHYL fluid in a gallon of Ethyl Gasoline—but what a difference it makes!

In cars of ordinary compression, ETHYL eliminates that "knock" and power loss we call knock—and more than the higher compression created by the carbon deposits into extra power. As for the new high compression cars, ETHYL made them possible!

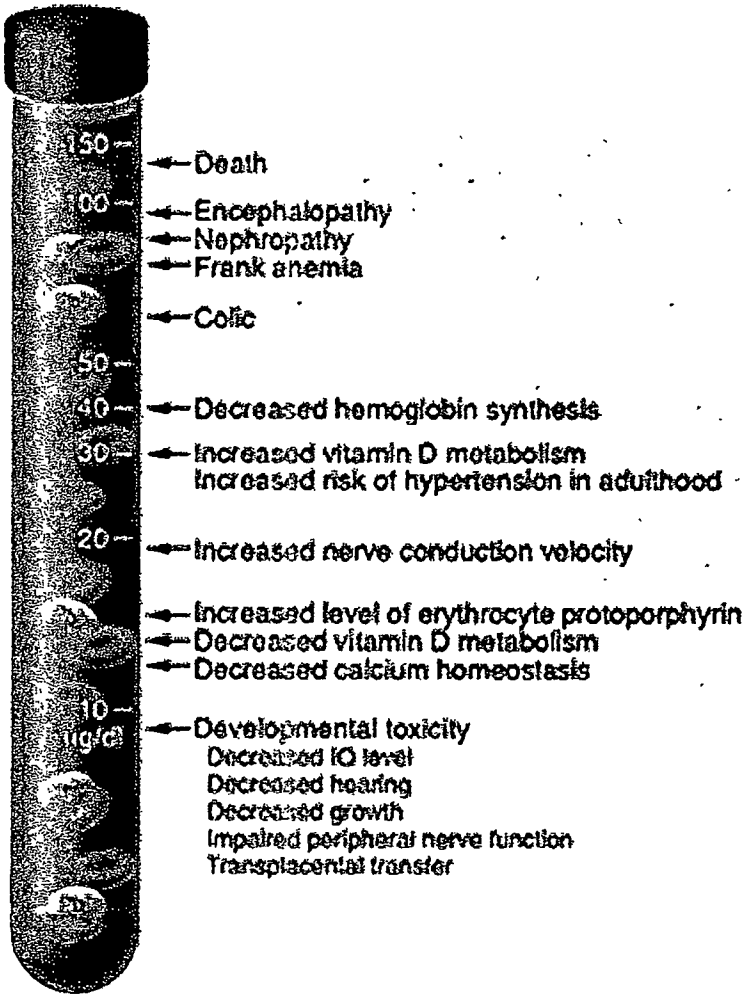
Ethyl Gasoline is now available throughout the United States and Canada at pumps bearing the ETHYL emblem. Ride with ETHYL today.

ETHYL GASOLINE CORPORATION
New York City
Toronto, Ont., Can.

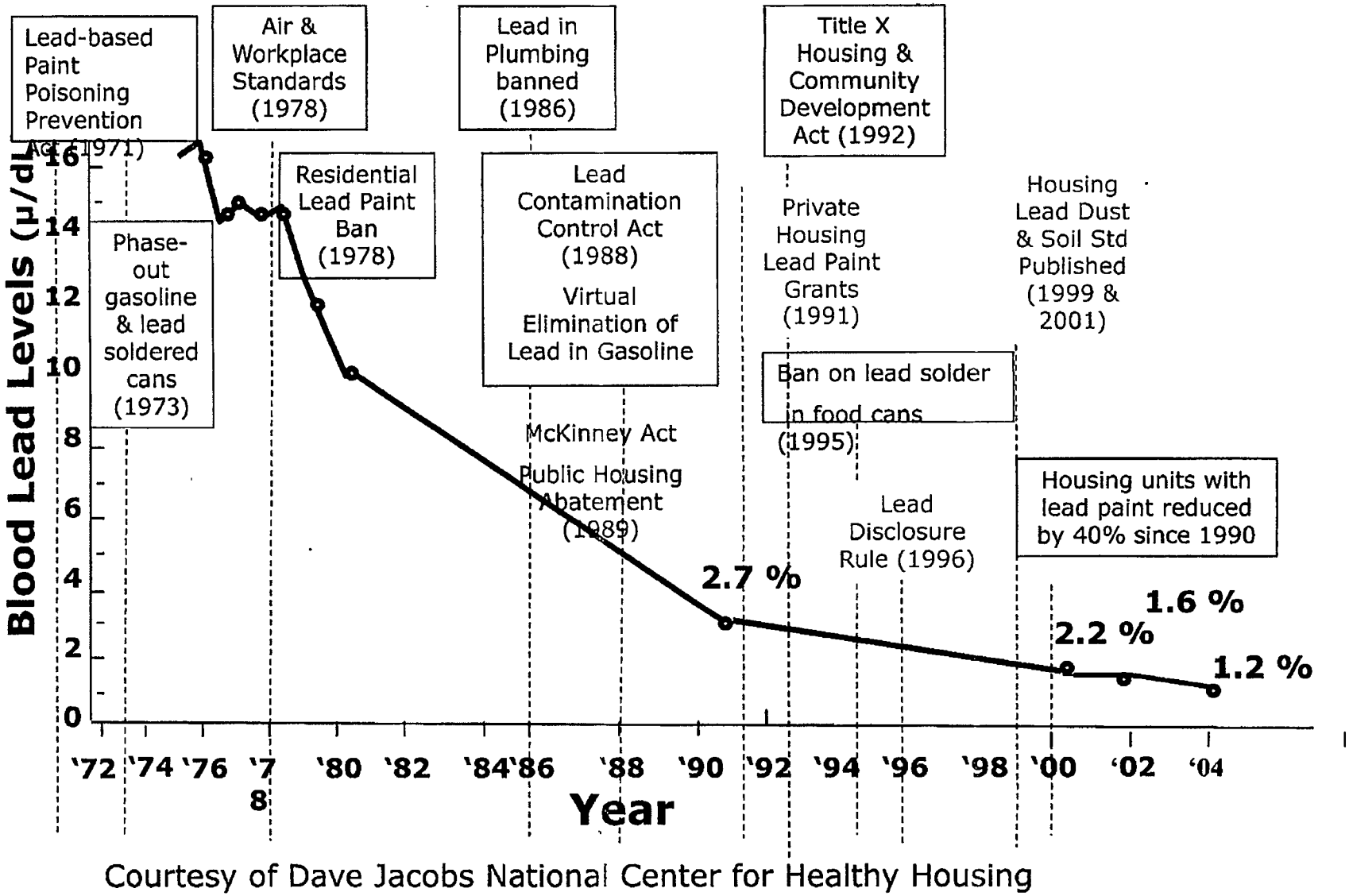
# ETHYL GASOLINE

*Knocks out that "knock"*

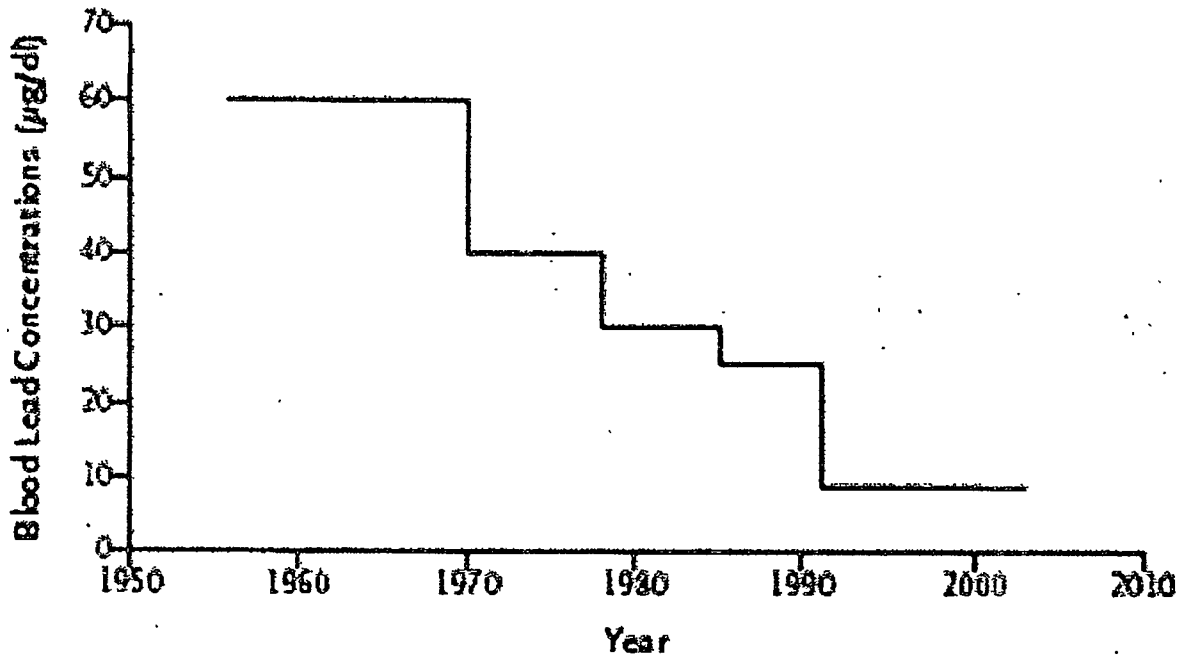
# Health Effects of Pb Exposure



# US Policies & Blood Lead 1971-2004




Courtesy of Dave Jacobs National Center for Healthy Housing




**Blood Lead Concentrations Considered to Be Elevated by the Centers for Disease Control and Prevention.**

To convert the values for blood lead concentrations to micromoles per liter, multiply by 0.0483. Data are from the Centers for Disease Control and Prevention, 1991.[1]

# Percentage of US Children ages 1-5 with Elevated Blood Lead Concentrations by Race/Ethnicity, 1997

| Race/Ethnicity | % of Children ages 1–5 years with PbBs ≥ 10 μg/dL |
|---|---|
| Black, Nonhispanic | 11.2% |
| Mexican American | 4.0% |
| White, Nonhispanic | 2.3% |

Source: CDC, Screening Young Children for Lead Poisoning, Nov. 1997, p. 41.

5948

W.O.D. was a (poorly) documented case of childhood Pb poisoning

- Understanding the meaning of a BPb of 9 µg/dL in a 12 yr old child

- A BPb of 9 µg/dL is nearly double the current CDC definition of an elevated blood lead level, which is 5 µg/dL

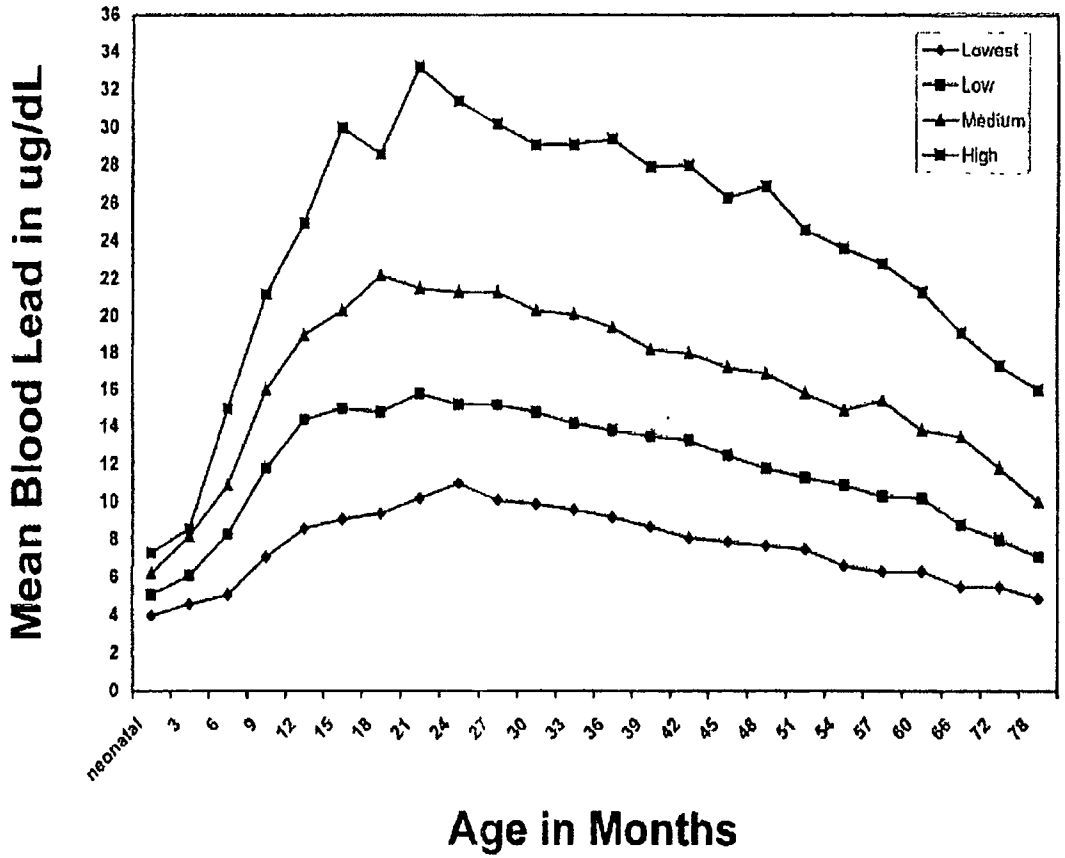
# Blood Lead "Tracks" Over Time

- Blood lead changes with age
- The pattern of change is lawful and predictable

# Blood Lead "Tracks" Over Time

## Cincinnati Cohort

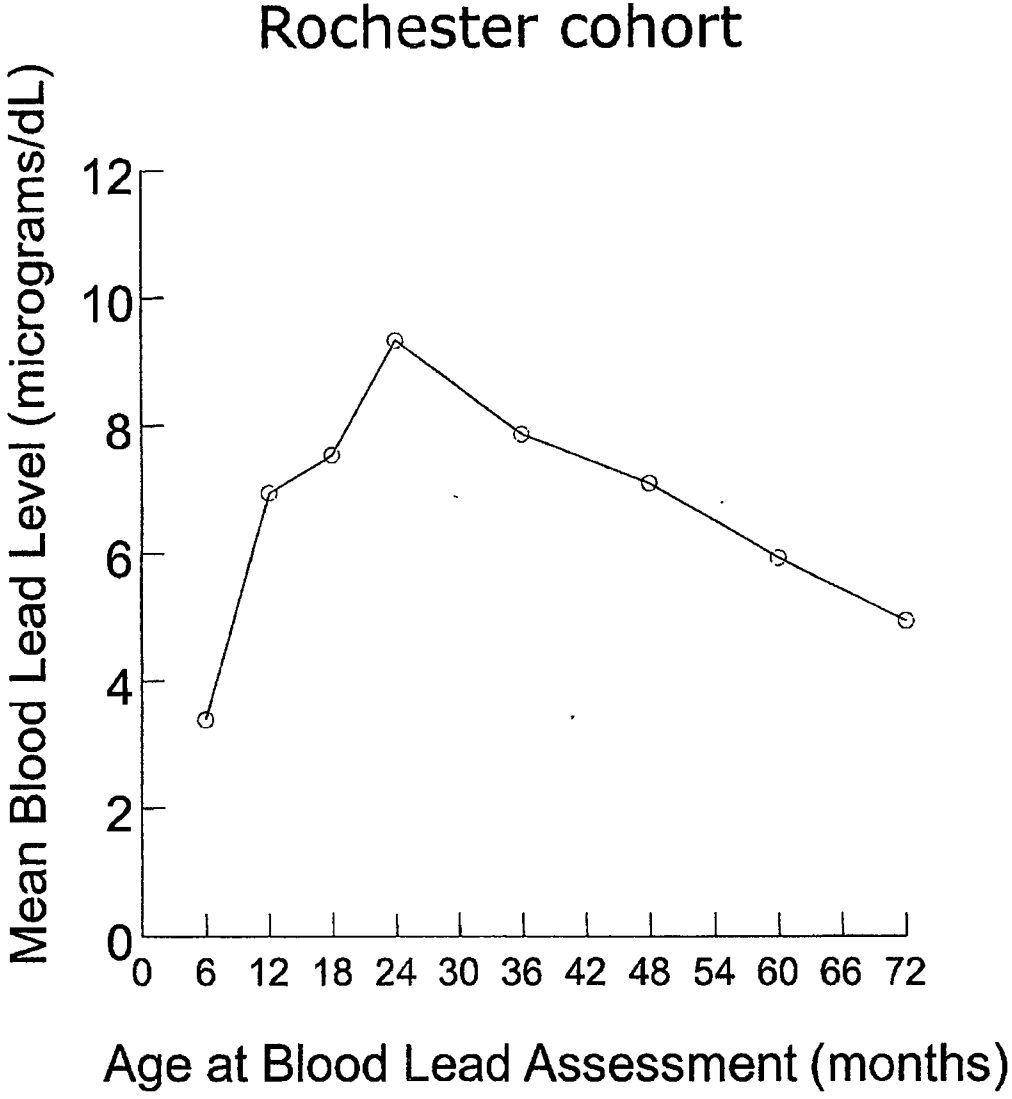
K.N. Dietrich et al. / Neurotoxicology and Teratology 23 (2001) 511–518




Dietrich et al., 2001

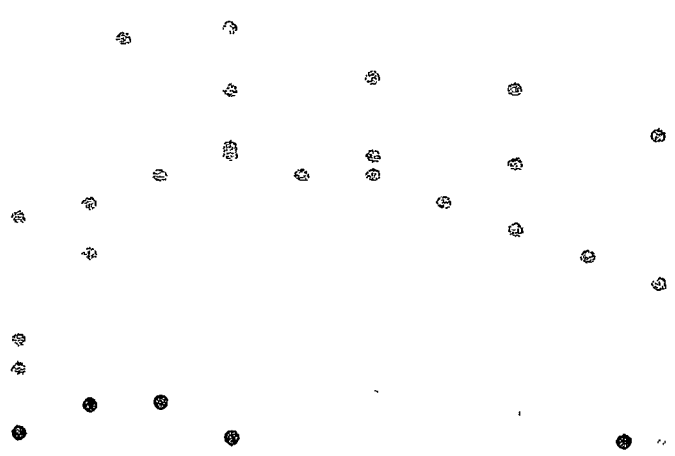
- Cincinnati Cohort Study (Dietrich)
- Recruited beginning in 1979
- Inner city, minority population, low income
- Housing stock comparable to Charleston at the time
  - Air lead likely lower
  - Paint condition a few years newer

# Blood Lead Tracks over Time



- Rochester Cohort Study (Canfield)
- Recruited beginning in 1997
- Inner city, minority population, low income
- Much lower airborne exposure
- Lower exposure from most sources
- Housing in better condition

# Comparison of Mean Blood Lead Levels Across Cohorts



**Yugoslavia**

**Port Pirie**

**Cincinnati**

**Cleveland**

**Boston**

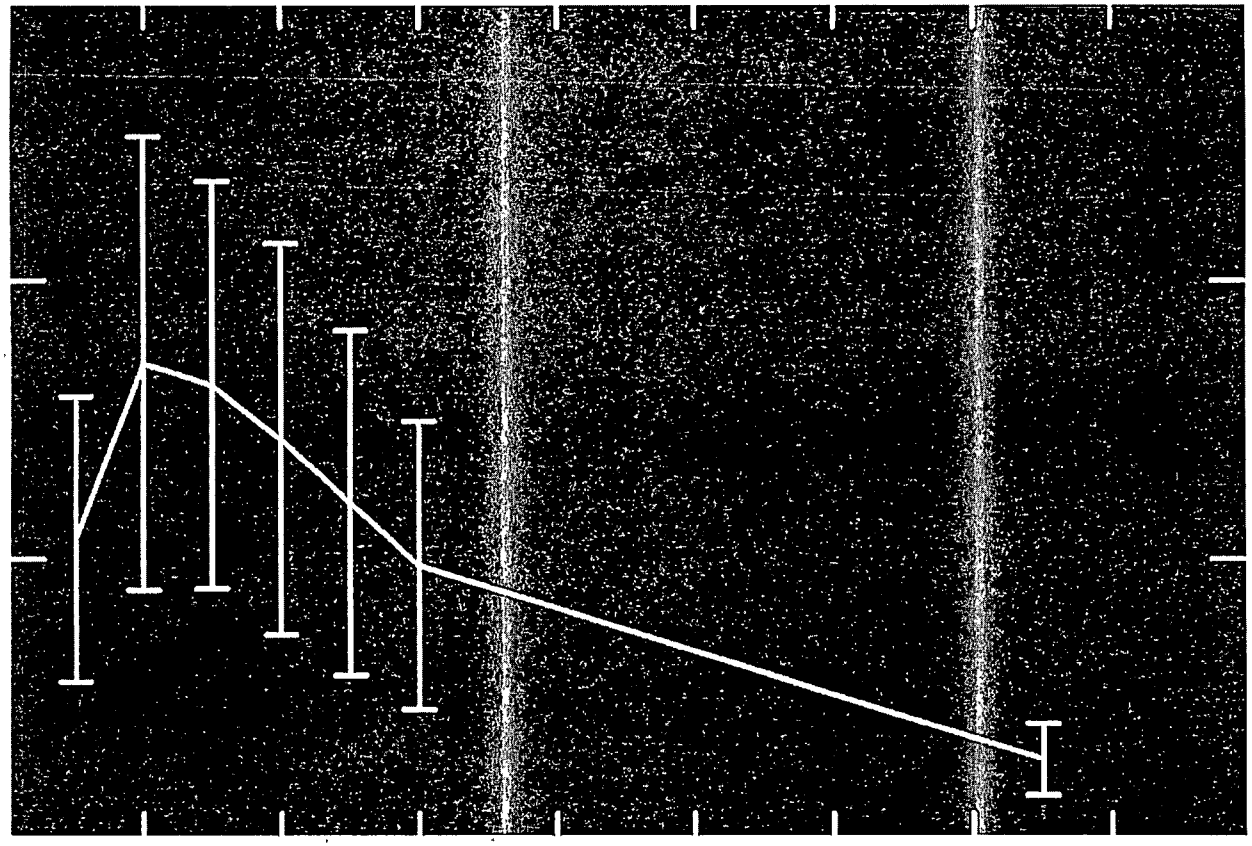
**Rochester**

# Age Changes in BPb are Lawful (Tracking)

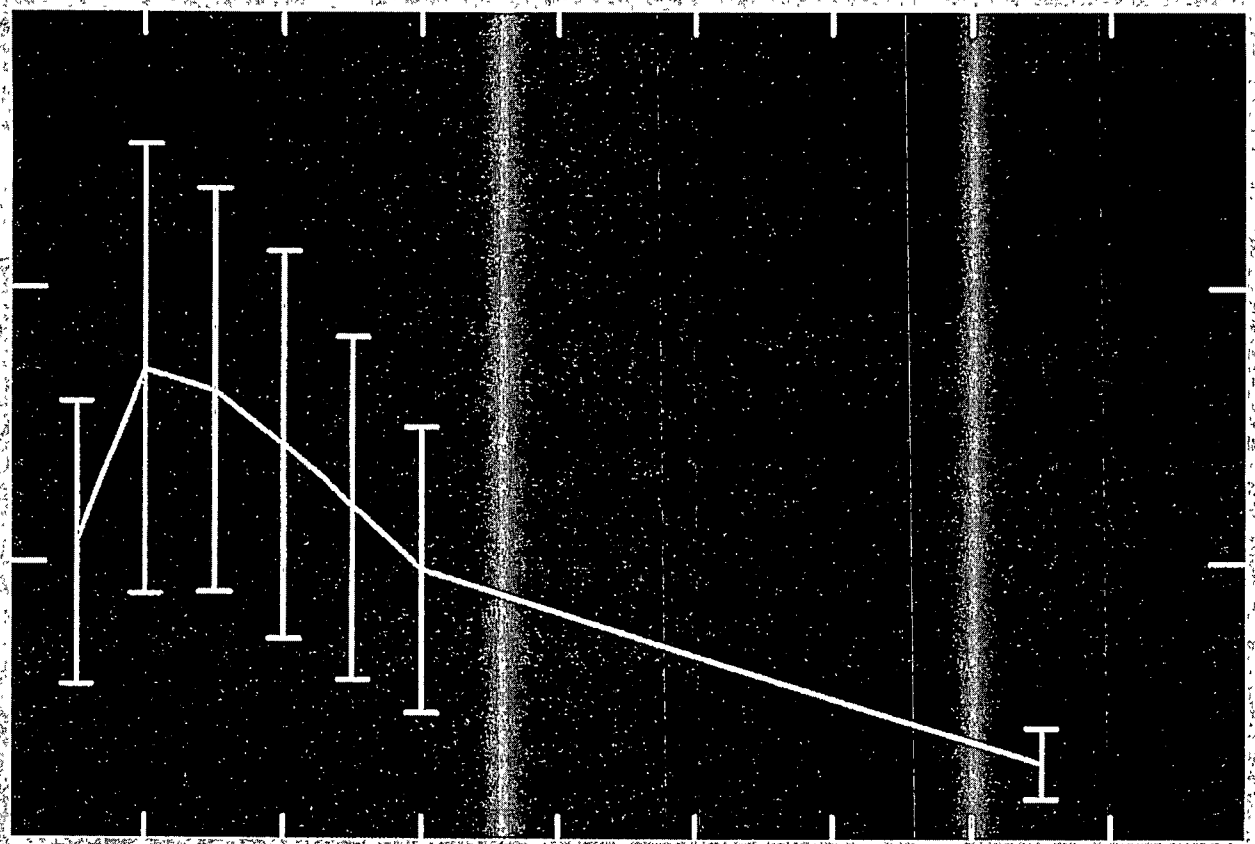
BPB1
BPB2
BPB3
BPB4
BPB6
BPB8
BPB1
BPB2
BPB3
BPB4
BPB6
BPB8

# Drilling Down with the Cincinnati Cohort

# Average Blood Lead Levels in the Cincinnati Cohort

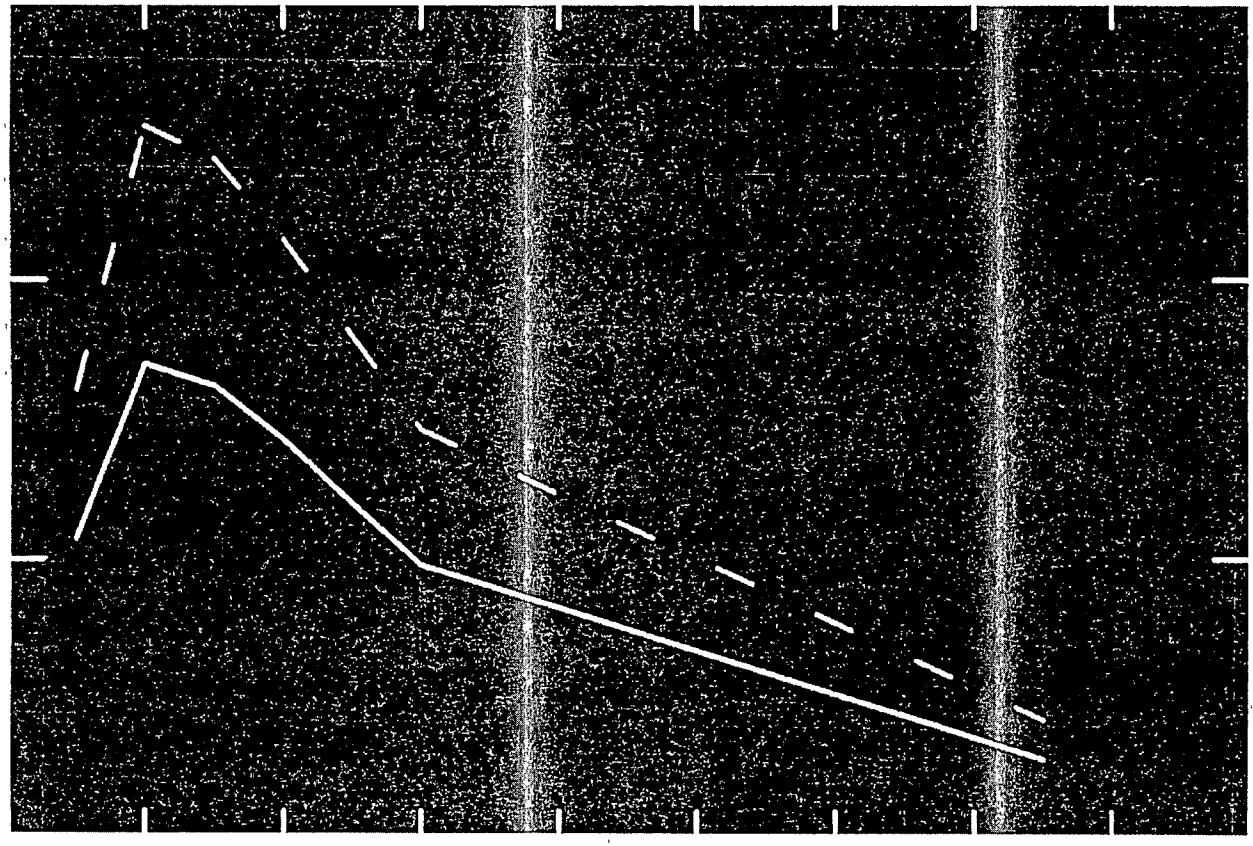


# Average Blood Lead Levels in the Cincinnati Cohort and W.O.D. at age 12 years

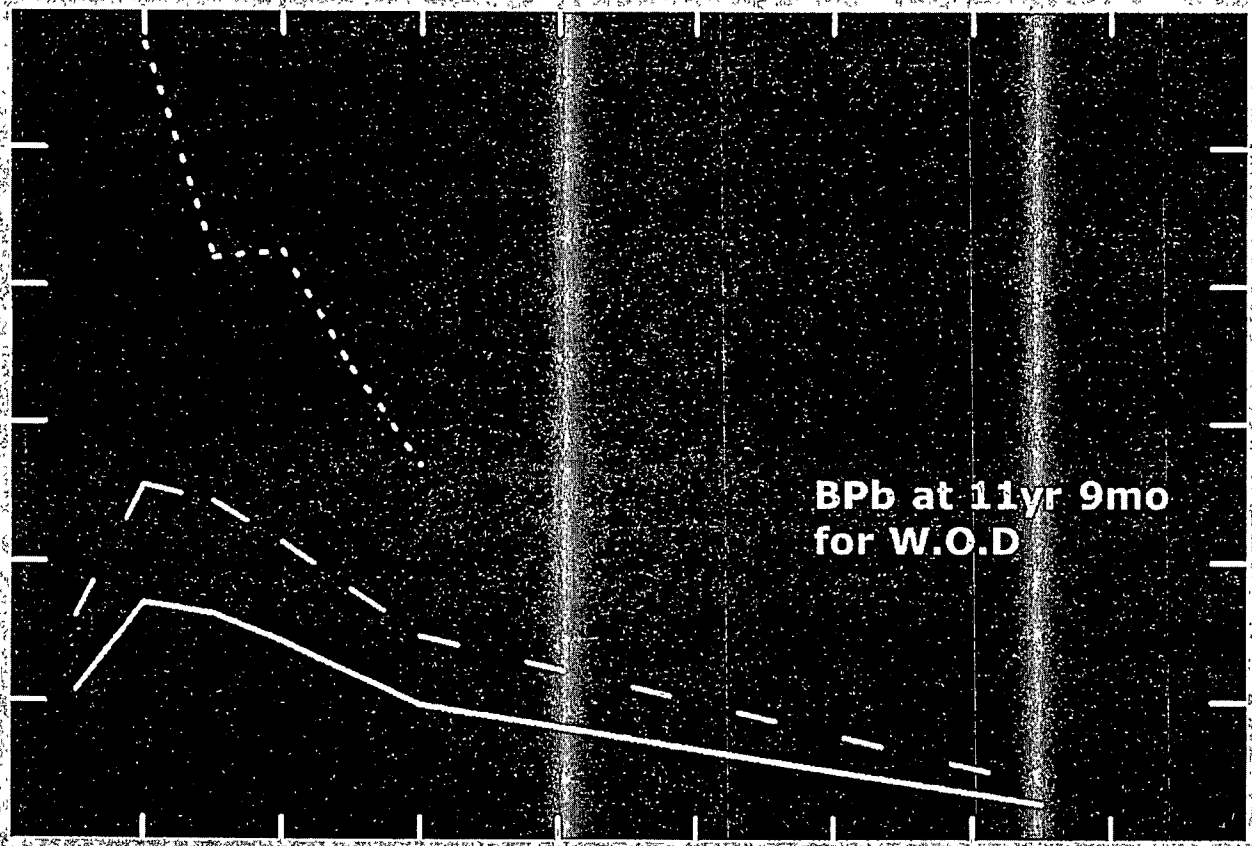


5961

Average Blood Lead Levels in the Cincinnati Cohort used to estimate blood lead profile of W.O.D.



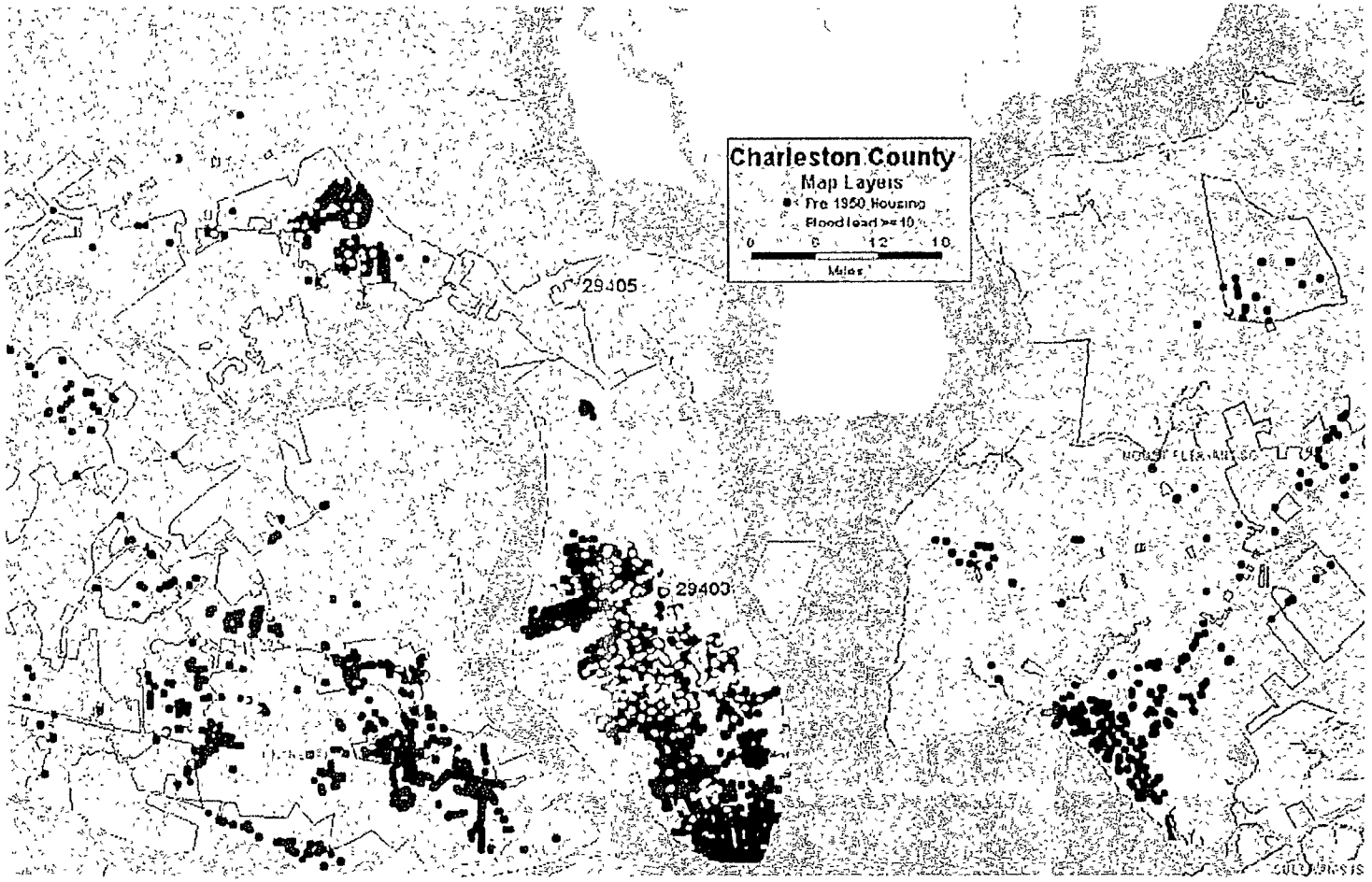
Average Blood Lead Levels of Cincinnati Cohort compared to measured BPb values for A.R.D and estimated values for W.O.D.



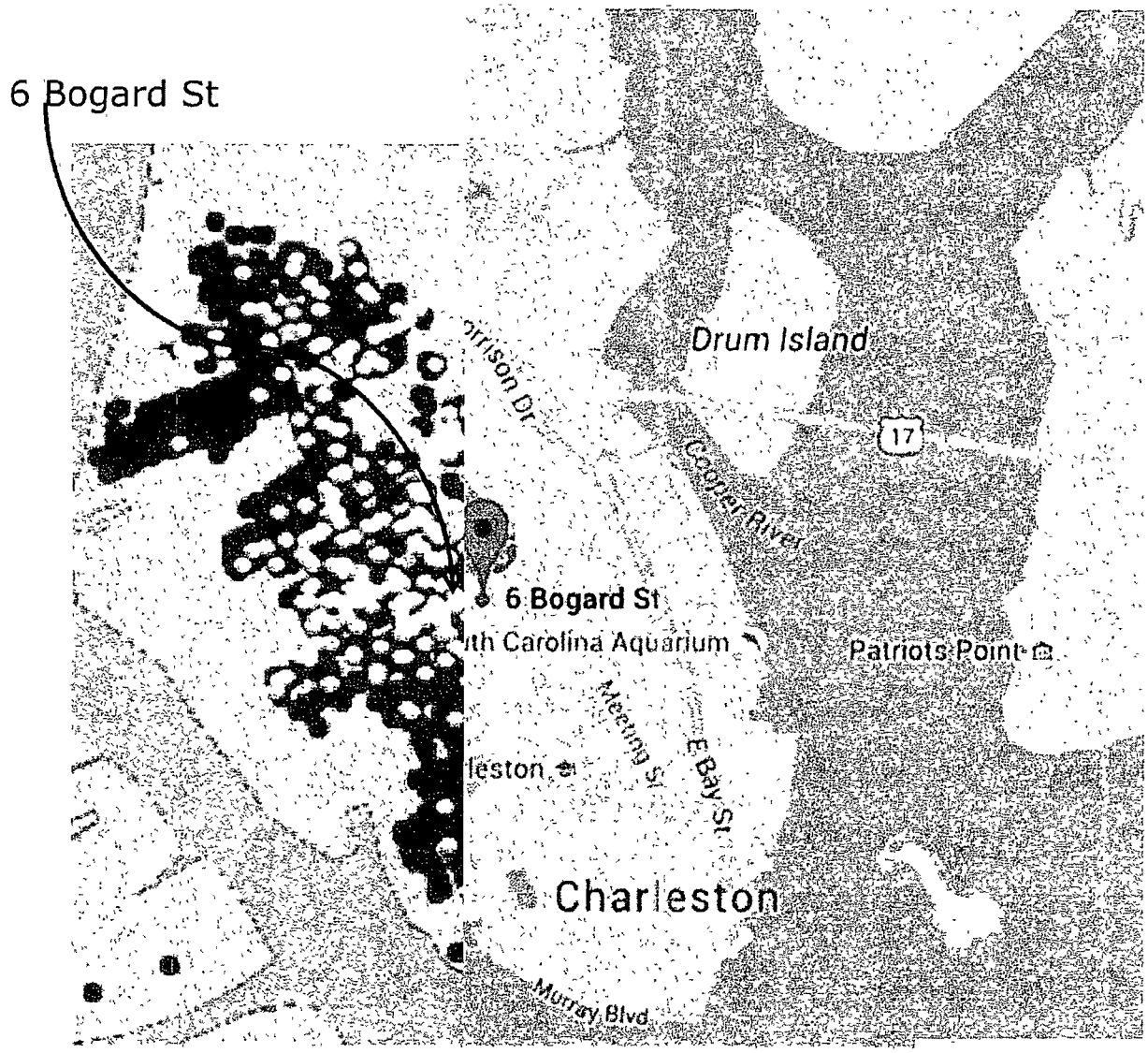
# Correlation of pre-1950 housing and elevated BPb levels in children in Charleston, SC 1991-1998

**Figure 1. Map of Charleston County**

All houses built before 1950 are shown in black. The white dots represent all locations of lead poisoning cases.



Richard
Drum Island
Cooper River
Patriots Point
17
52
26
Morrison Dr
Rutledge Ave
Hasell St
The Citadel
6 Bogard St
South Carolina Aquarium
Meeting St
E Bay St
College of Charleston
Charleston
Murray Blvd
James Is
Ashley River
5th Ave
Magnolia Rd
61
17
Ashley River




Black dots:
House build pre-1950

White dots:
Child with BPb ≥10 µg/dL

5967

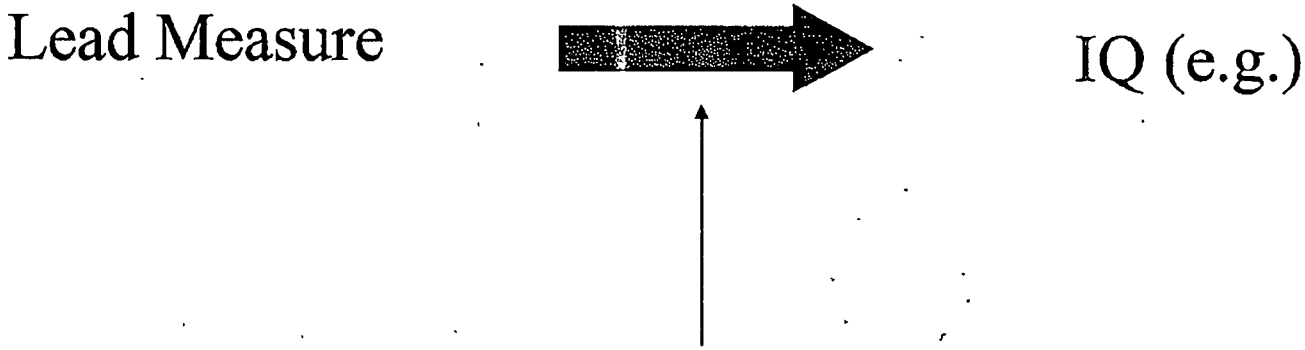
6 Bogard St

# Medical history of childhood Pb poisoning

- Roman "plumbism"
- Gibson's observations, 1904
- Physicians' case reports, 1910's - ...
- Byers and Lord, 1943
  - Lasting effects*
- **Needleman, 1979**
  - **Subclinical effects**

5968

# Relating Lead to Child Outcomes




- Perinatal Factors
- Socio-Demographic Factors
- Child Characteristics
- Maternal Factors

5969

# Needleman, 1979

- Dentine Pb levels of 3329 1st & 2nd graders
  - Cross-sectional design
- High Pb vs. Low Pb
- Children tested for general cognitive function, attention, classroom behavior
- Is there an independent association between Pb and a neurobehavioral functioning in children?

5970

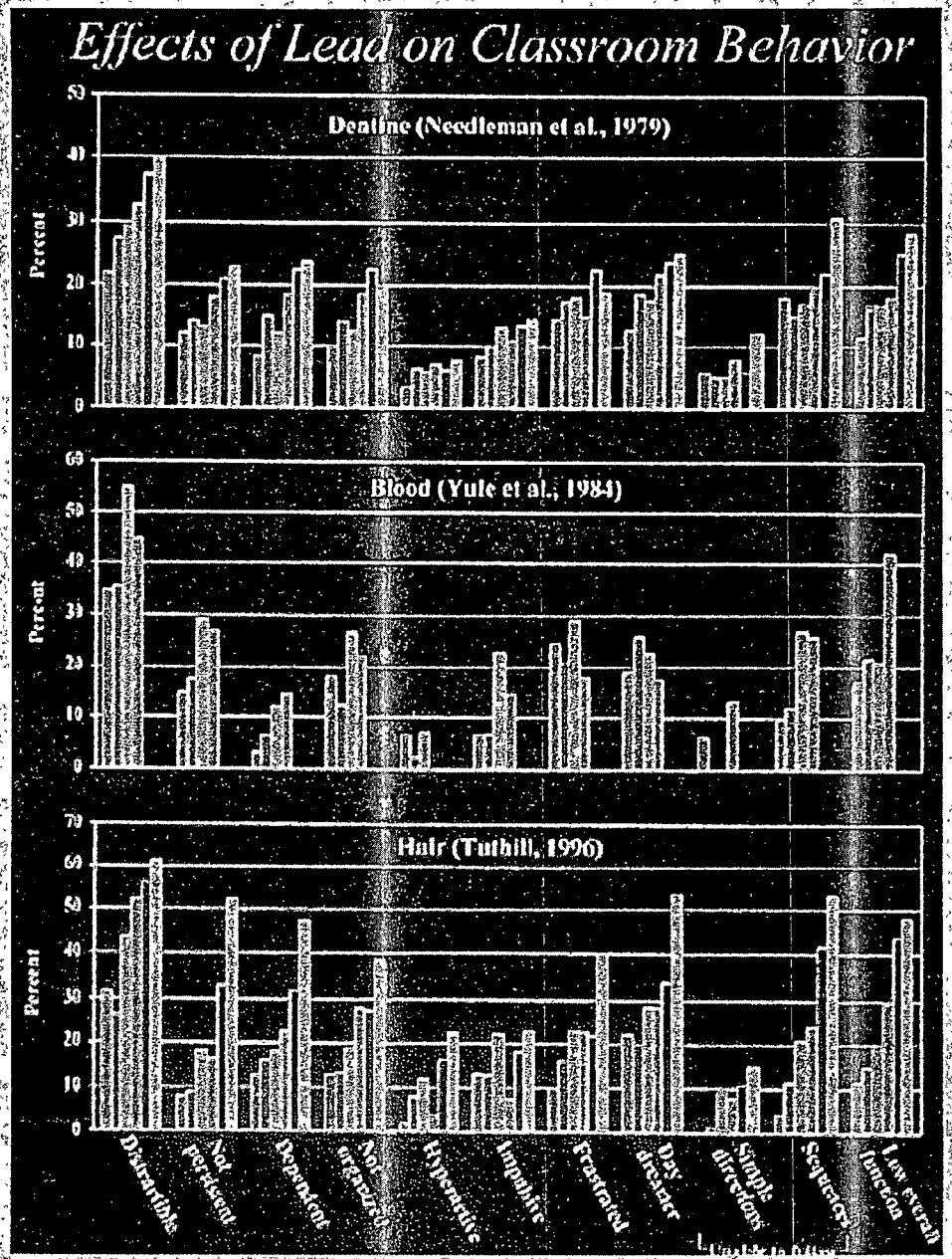
# Results

- WISC-R
  - Low-Pb Mean Full Scale IQ = 106.6
  - High-Pb Mean Full Scale IQ = 102.1
    - p=.03
  - Verbal IQ 103.9 vs. 99.3
    - p=.03
  - Performance IQ 108.7 vs. 104.9
    - p=.08

# Classroom behavior

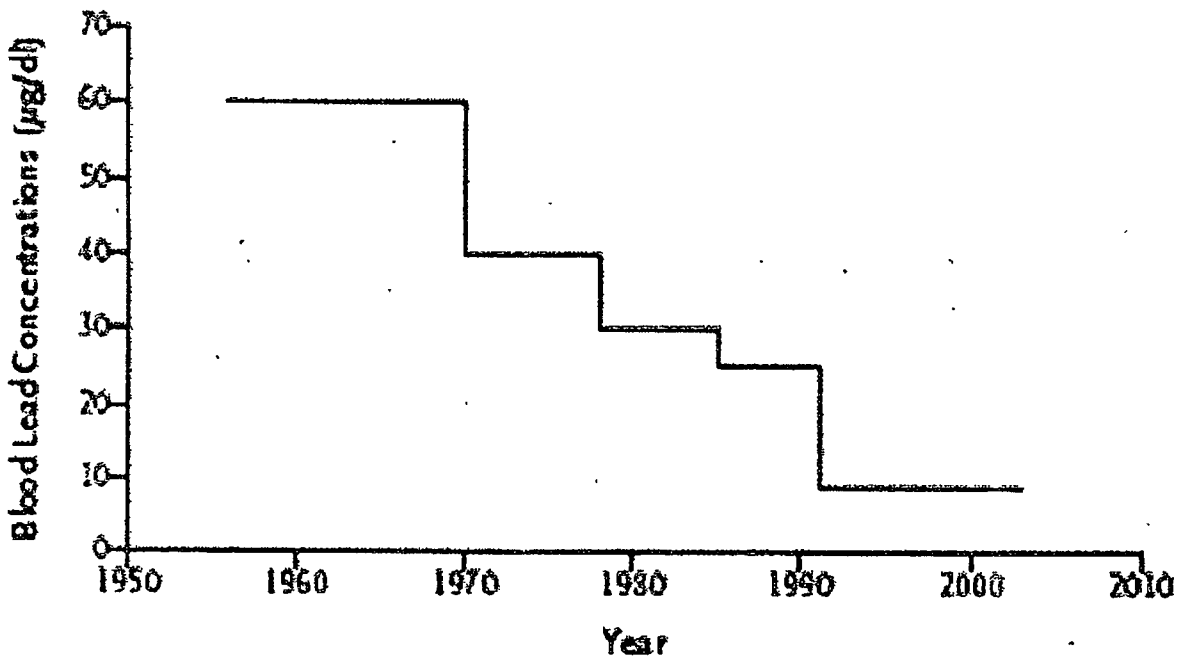
- High Pb more
  - Distractible
  - Dependent
  - Impulsive
  - Easily frustrated
  - A daydreamer
- Low Pb more
  - Persistent
  - Able to follow simple directions
  - Able to follow a sequence of directions

Strong dose-response relationship across many outcomes



# Selected Control Variables (total N=39)

- Age, Sex, Height, Weight, Head Circumference, Race, Birth Weight, Birth order, Family structure, No. of hospital admissions, Immunization history, Pica history, No. pregnancies, Mother's age at birth, Mother's education, Mother's occupation, Father's age at birth, Father's social class, Paternal education, Father's occupation, Parent IQ, Parental attitudes and aspirations for child, etc.




**Blood Lead Concentrations Considered to Be Elevated by the Centers for Disease Control and Prevention.**

To convert the values for blood lead concentrations to micromoles per liter, multiply by 0.0483. Data are from the Centers for Disease Control and Prevention, 1991.[1]

# Prospective cohort studies 1986-1995

- 7 studies
- 3 continents
- 3000 infants/fetuses
- Measures of possible confounders and effect modifiers
- Cognitive outcomes

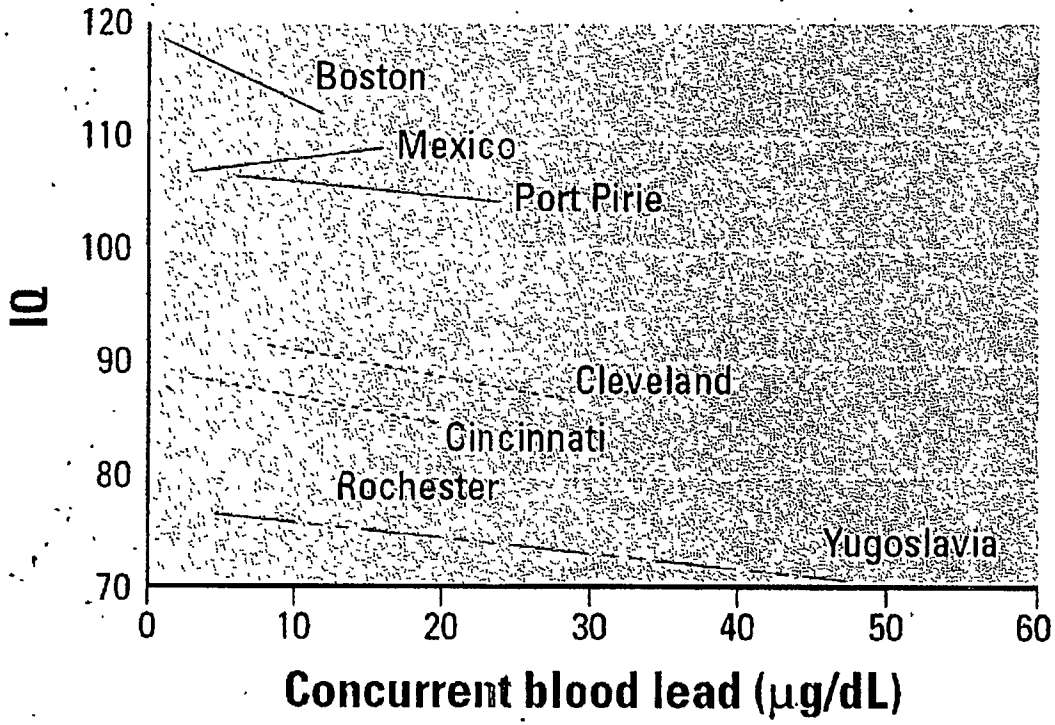
5976

# Prospective cohort study design

- A cohort study follows the same individuals over time (longitudinally).
- Individuals differ with respect to toxic exposure, diet, disease…
- Goal is to determine how these insults affect the rate or level of an outcome.

5977

# Pre-2000 conclusion: 1-2 IQ points per 10 µg/dL




5978

# General Conclusion:

As blood lead increases from 10-30 ug/dl, IQ declines by 1-3 points

# The Cornell-Rochester Study of Low-level Pb Exposure

- Prospective cohort study
  - 6 months – 6 years
  - Initial N=275
  - Multiple assessments
    - PbB
    - Cognitive function
    - Potential confounders and effect modifiers

5980

# Other Contributors to IQ Scores

- Maternal factors
  - Cigarette smoking during prenatal period
  - Alcohol and drug use prenatally
  - Education
  - Maternal IQ
  - Marital status
  - Maternal depression
  - Harsh or insensitive parenting practices

# Child characteristics

- Age
- Sex
- Birth order
- Birth complications
- Breastfeeding
- Iron status
- Daycare attendance
- Race/ethnicity

# Family characteristics

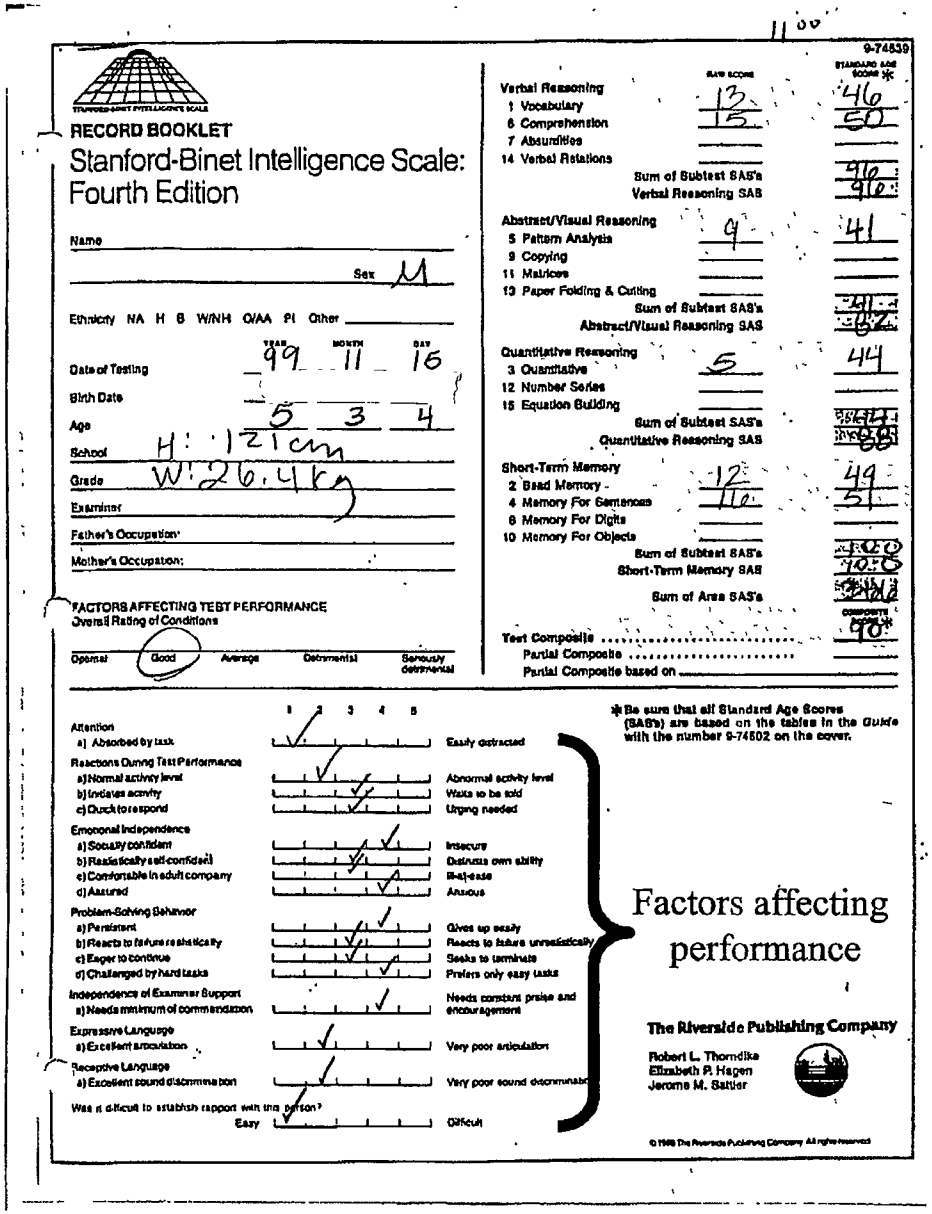
- Crowding in home
- HOME score
- Income

# HOME Scale

- Home Observation for Measurement of the Environment
- Checklist – 6 measures
- Measures:
  - Responsivity (11)
    - "Parent responds to child with a verbal response"
  - Acceptance (8)
    - "Parent does not shout at child"
  - Organization (5)
    - "Child's play environment is safe"

# HOME Scale

- Materials (8)
  - Toys for literature and music
- Involvement (4)
  - "Parent keeps child in visual range, looks at often"
- Variety (5)
  - "Child eats at least one meal a day with with mother and father"



RECORD BOOKLET

Stanford-Binet Intelligence Scale: Fourth Edition

9-74539

Name

Sex M

Ethnicity NA H B W/NH O/AA PI Other

Date of Testing YEAR 99 MONTH 11 DAY 16

Birth Date

Age 5 3 4

School H: 121cm

Grade W: 26.4kg

Examiner

Father's Occupation:

Mother's Occupation:

FACTORS AFFECTING TEST PERFORMANCE
Overall Rating of Conditions

Optimal | Good | Average | Detrimental | Seriously detrimental

| | Raw Score | Standard Age Score* |
|---|---|---|
| Verbal Reasoning | | |
| 1 Vocabulary | 13 | 46 |
| 6 Comprehension | 15 | 50 |
| 7 Absurdities | | |
| 14 Verbal Relations | | |
| Sum of Subtest SAS's | | 96 |
| Verbal Reasoning SAS | | 96 |
| Abstract/Visual Reasoning | | |
| 5 Pattern Analysis | 9 | 41 |
| 9 Copying | | |
| 11 Matrices | | |
| 13 Paper Folding & Cutting | | |
| Sum of Subtest SAS's | | 41 |
| Abstract/Visual Reasoning SAS | | 82 |
| Quantitative Reasoning | | |
| 3 Quantitative | 5 | 44 |
| 12 Number Series | | |
| 15 Equation Building | | |
| Sum of Subtest SAS's | | 44 |
| Quantitative Reasoning SAS | | 88 |
| Short-Term Memory | | |
| 2 Bead Memory | 12 | 49 |
| 4 Memory For Sentences | 10 | 51 |
| 8 Memory For Digits | | |
| 10 Memory For Objects | | |
| Sum of Subtest SAS's | | 100 |
| Short-Term Memory SAS | | 98 |
| Sum of Area SAS's | | 278 |
| | | Composite* |
| Test Composite | | 90 |
| Partial Composite | | |
| Partial Composite based on | | |

| | 1 | 2 | 3 | 4 | 5 | |
|---|---|---|---|---|---|---|
| Attention | | | | | | |
| a) Absorbed by task | | ✓ | | | | Easily distracted |
| Reactions During Test Performance | | | | | | |
| a) Normal activity level | | ✓ | | | | Abnormal activity level |
| b) Initiates activity | | | ✓ | | | Waits to be told |
| c) Quick to respond | | | ✓ | | | Urging needed |
| Emotional Independence | | | | | | |
| a) Socially confident | | | | ✓ | | Insecure |
| b) Realistically self-confident | | | | ✓ | | Distrusts own ability |
| c) Comfortable in adult company | | | | | ✓ | Ill-at-ease |
| d) Assured | | | | | ✓ | Anxious |
| Problem-Solving Behavior | | | | | | |
| a) Persistent | | | | ✓ | | Gives up easily |
| b) Reacts to failure realistically | | | | ✓ | | Reacts to failure unrealistically |
| c) Eager to continue | | | | ✓ | | Seeks to terminate |
| d) Challenged by hard tasks | | | | | ✓ | Prefers only easy tasks |
| Independence of Examiner Support | | | | | | |
| a) Needs minimum of commendation | | | | ✓ | | Needs constant praise and encouragement |
| Expressive Language | | | | | | |
| a) Excellent articulation | | | ✓ | | | Very poor articulation |
| Receptive Language | | | | | | |
| a) Excellent sound discrimination | | | ✓ | | | Very poor sound discrimination |
| Was it difficult to establish rapport with this person? | | | | | | |
| Easy | | | | | | Difficult |

Factors affecting performance

*Be sure that all Standard Age Scores (SAS's) are based on the tables in the *Guide* with the number 9-74502 on the cover.

The Riverside Publishing Company

Robert L. Thorndike
Elizabeth P. Hagen
Jerome M. Sattler

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← Verbal Reasoning

← Abstract-Visual

← Quantitative

← Short-Term Memory

4 Area Scores Comprise IQ score

# Child Characteristics

- Gestation 39 weeks
- Birthweight 3300 grams
- Hb 12
- Transferrin saturation 23
- Stanford-Binet IQ 90

5987

# Maternal/Family Characteristics

- 25 Years at delivery
- 30% Tobacco users
- 28% Married
- 74% Nonwhite
- Yearly income $16K
- 60% High School or more
- HOME score 28/39
- Stanford-Binet IQ 82

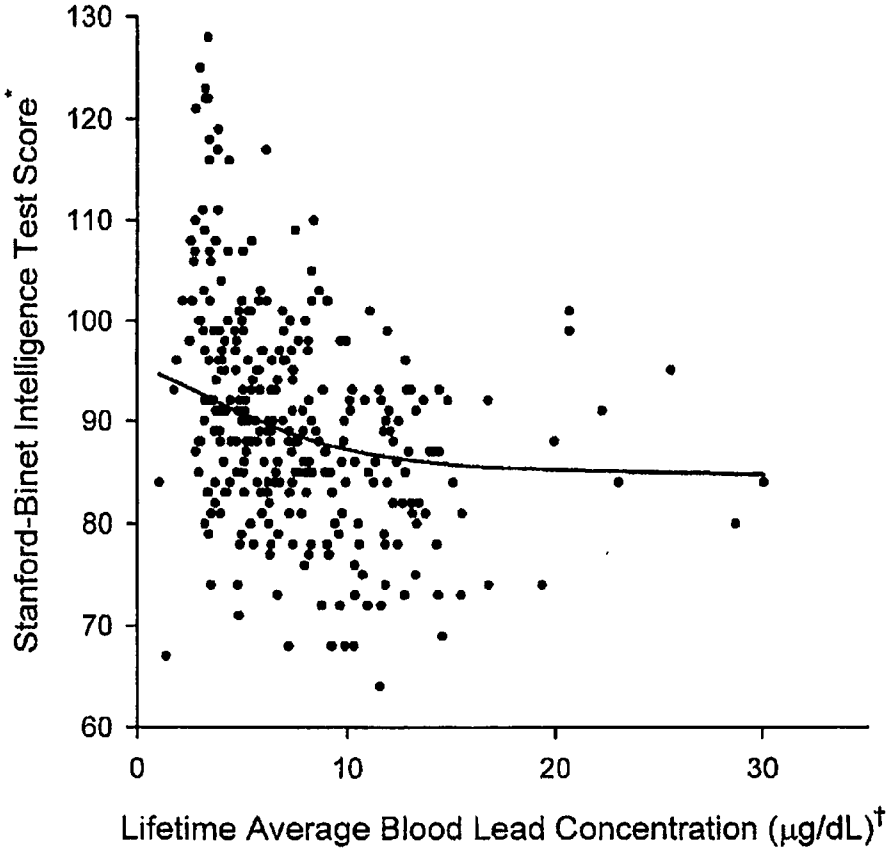
5988

# How to draw an inference...
## *a priori* analyses

# PbB and IQ scores
# Covariates in *a priori* Model

- Sex
- Race
- Birthweight
- Maternal IQ
- Income
- HOME Score
- Maternal Education
- Maternal smoking
- Transferrin Saturation

# Exposure-Outcome Relation

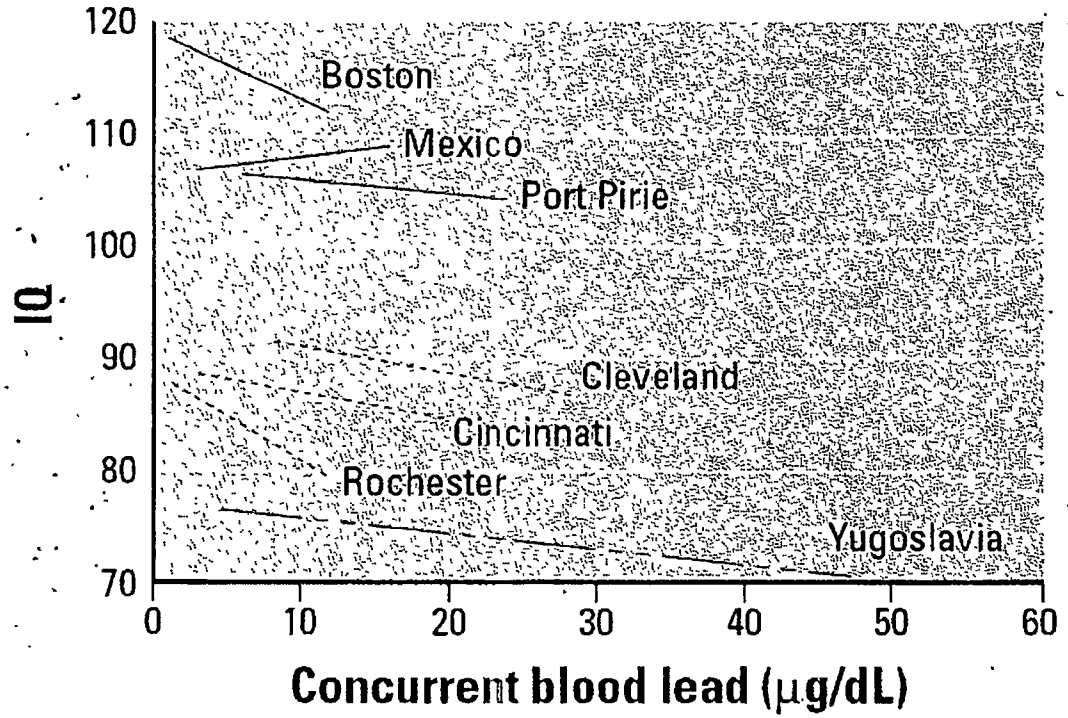



Adapted from Canfield, et al. (2003) N Engl J Med

# Boston study reanalysis

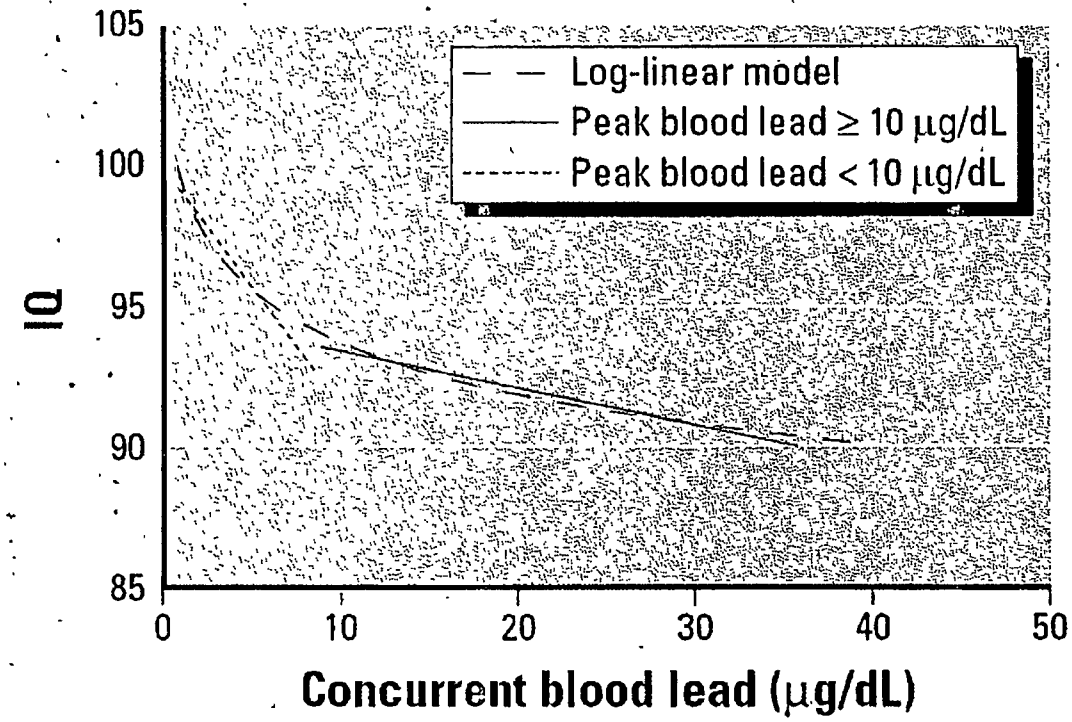
- Subsample with PbB < 10 ug/dL
  - at 6, 12, 18, 24, 57, 120 months
  - (n=48)
- 24 month PbB associated with IQ at 120 months $\beta$=-1.56, p=.03
  - Versus $\beta$=-0.58 for full sample

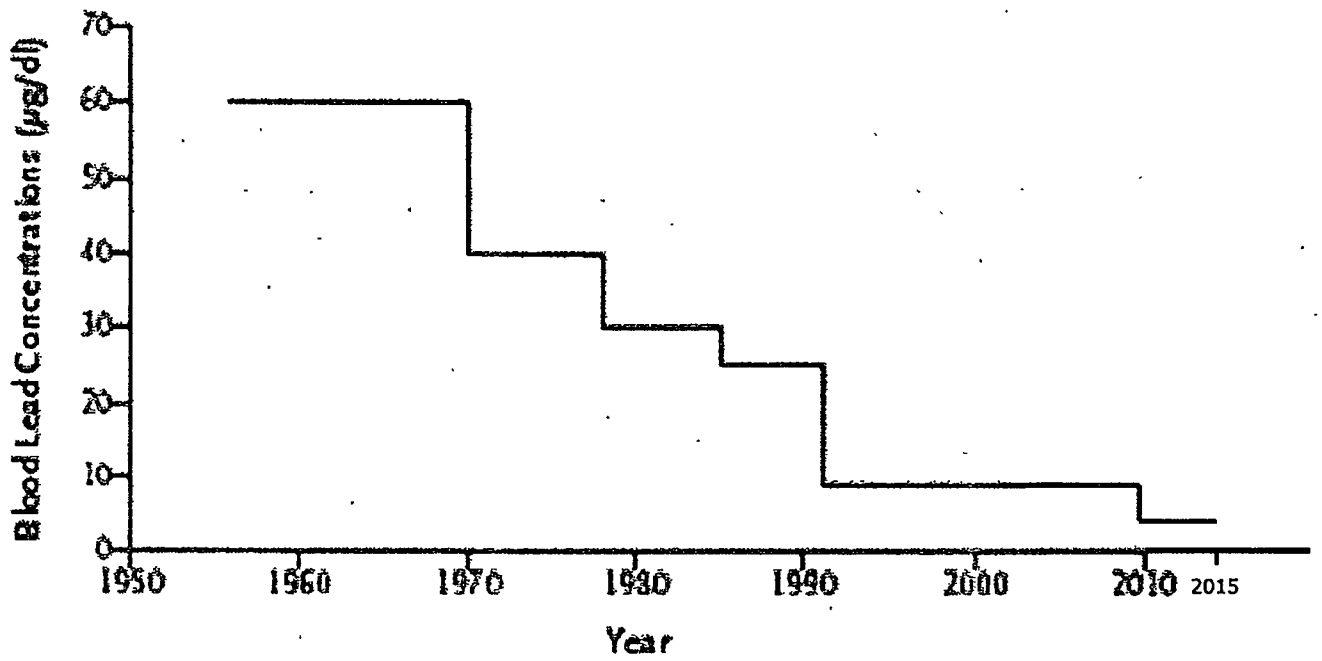
# Pooled analysis




5993

# Pooled analysis of cohort studies






**Blood Lead Concentrations Considered to Be Elevated by the Centers for Disease Control and Prevention.**

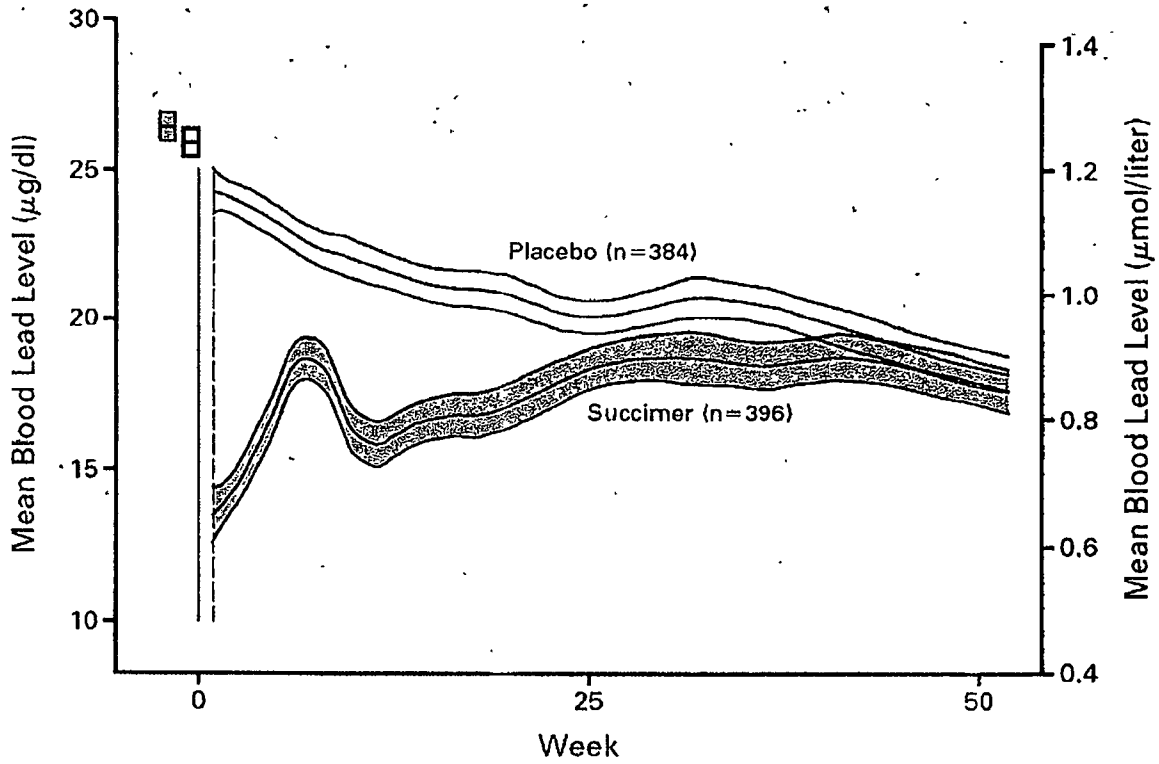
To convert the values for blood lead concentrations to micromoles per liter, multiply by 0.0483. Data are from the Centers for Disease Control and Prevention, 1991.

# Reversible damage?

- Chelation study
  - Randomized intervention trial

5996

# Effects of Chelation




5997

# Reversible damage?

- Chelation study
  - Randomized intervention trial
    - No improvement

5998

# Lead and Behavior Problems

- Parent Rating Scales
- Delinquency

5999

# Examples of Items on Conners Parent Rating Scale (CPRS)

- **Impulsive-Hyperactive**
  - Restless in the 'squirmy' sense
  - Excitable, impulsive
- **Conduct Problem**
  - Fights constantly
  - Destructive
- **Learning Problem**
  - Distractibility or attention span a problem
  - Difficulty in learning
- **Psychosomatic Problem**
  - Vomiting and nausea
  - Headaches
- **Anxiety Problem**
  - Shy
  - Fearful

6000

# Hyperactivity Index

- 10 items
  - Eight from Conduct Problem, Learning Problem, and Impulsive-Hyperactive subscales
- Items most sensitive to drug efficacy

6001

# Ages CPRS Completed At:

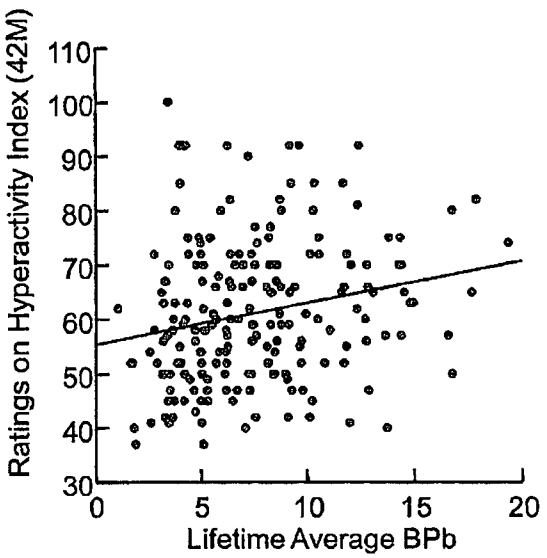
- 42 months
- 48 months
- 54 months

# Comparison Between Normative and Study Sample

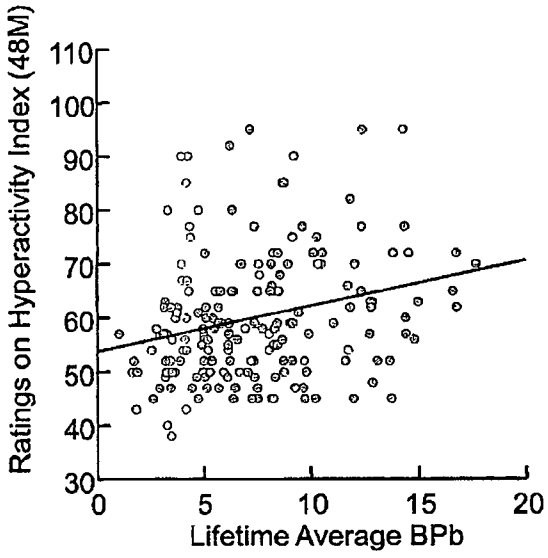
| | Normative Sample | | | Study Sample | | |
|---|---|---|---|---|---|---|
| **CPRS Subscale** | Mean | SD | % Clinical Signif | **Mean** | **SD** | **% Clinical Signif** |
| Hyperactivity Index | 50 | 10 | 2.5 | 61 | 13 | 35 |
| Impulsive-Hyperactive | 50 | 10 | 2.5 | 62 | 9 | 21 |
| Conduct Problem | 50 | 10 | 2.5 | 62 | 15 | 40 |
| Learning Problem | 50 | 10 | 2.5 | 55 | 15 | 30 |
| Psychosomatic Problem | 50 | 10 | 2.5 | 55 | 16 | 36 |
| Anxiety Problem | 50 | 10 | 2.5 | 49 | 7 | 1 |

6003

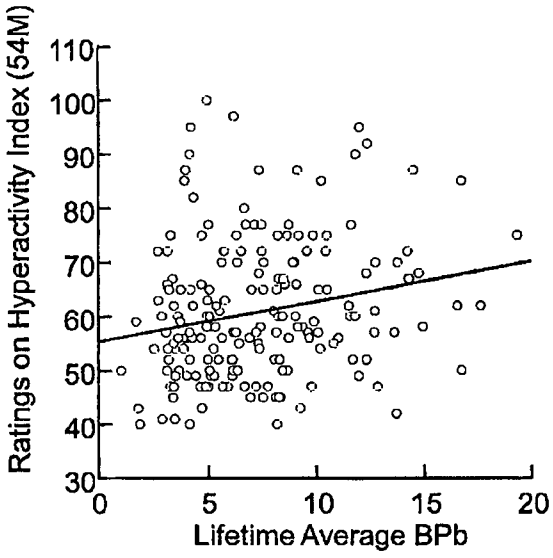
# Hyperactivity Index and Lifetime Average BPb Level (by Age)




3.5 years




4 years

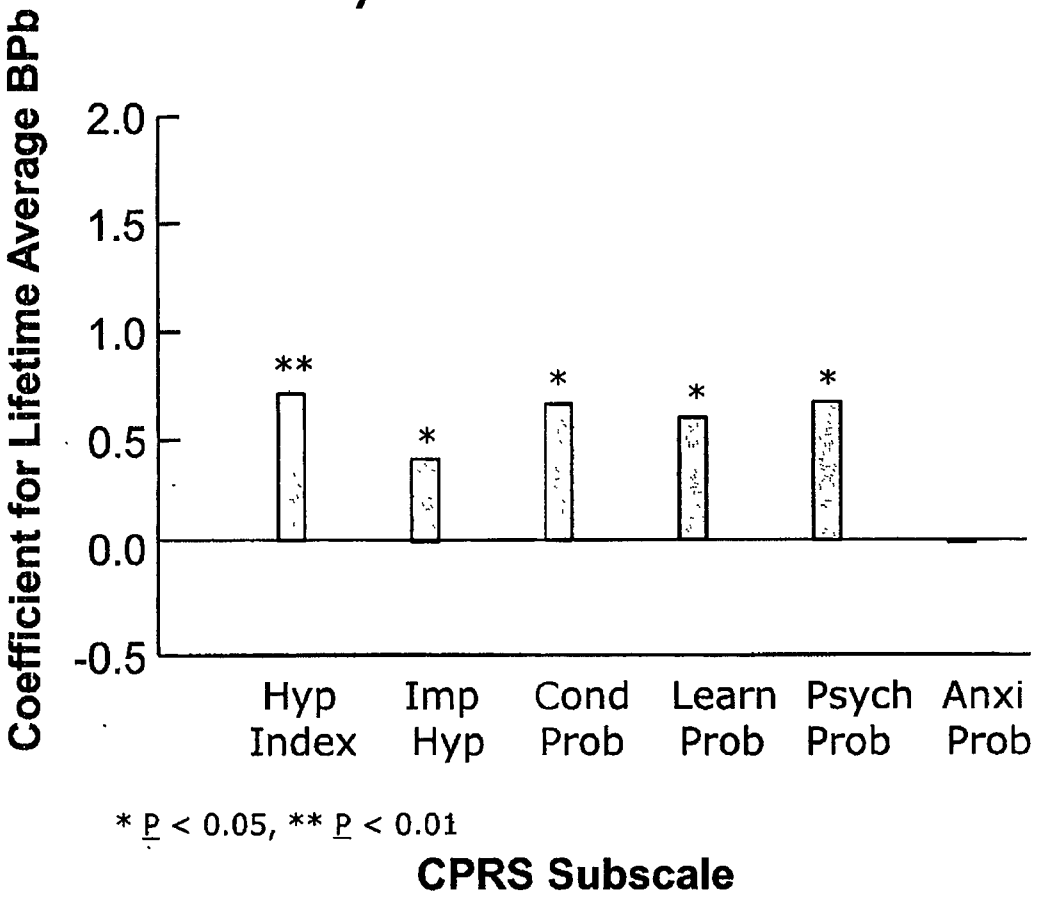



4.5 years

# Results

- Adjusted models for full range of BPb levels

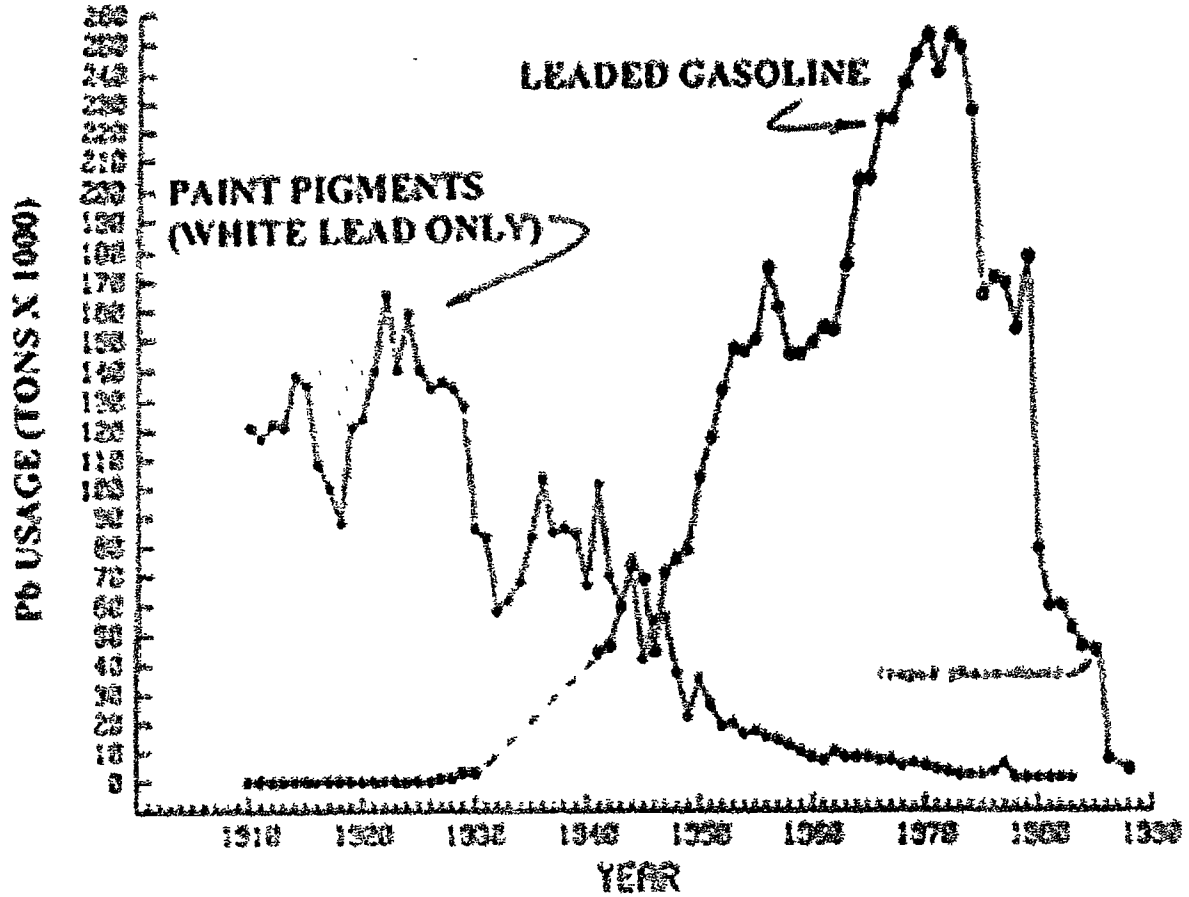
# Coefficient for Lifetime Average BPb Level by CPRS Subscale




9009

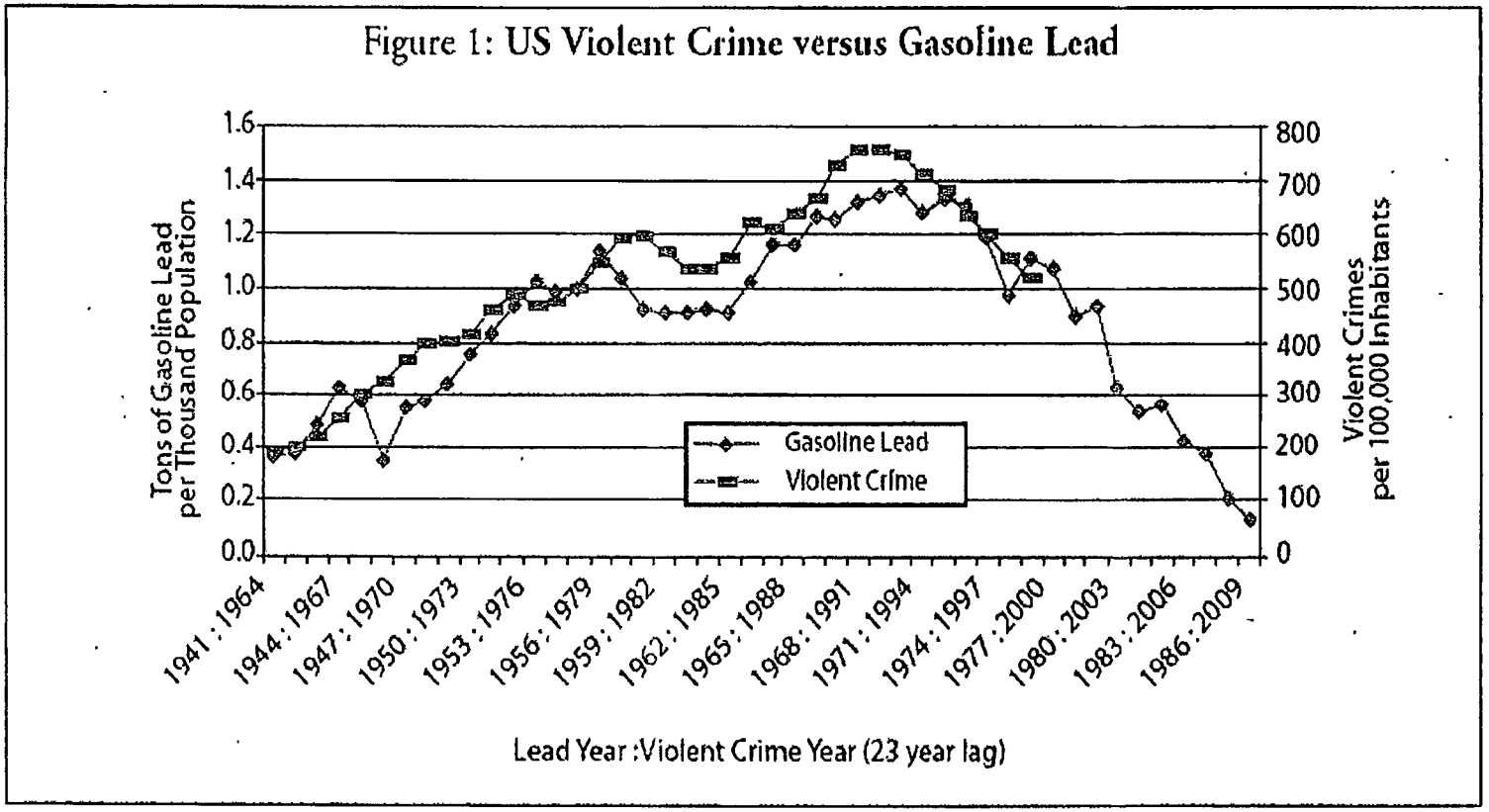
# Long Term Consequences

# Tonnage of lead used in paint and gasoline 1910-1990




Reprinted from EPA approved model curriculum: Lead abatement training for supervisors and contractors. US Environmental Protection Agency (1992).

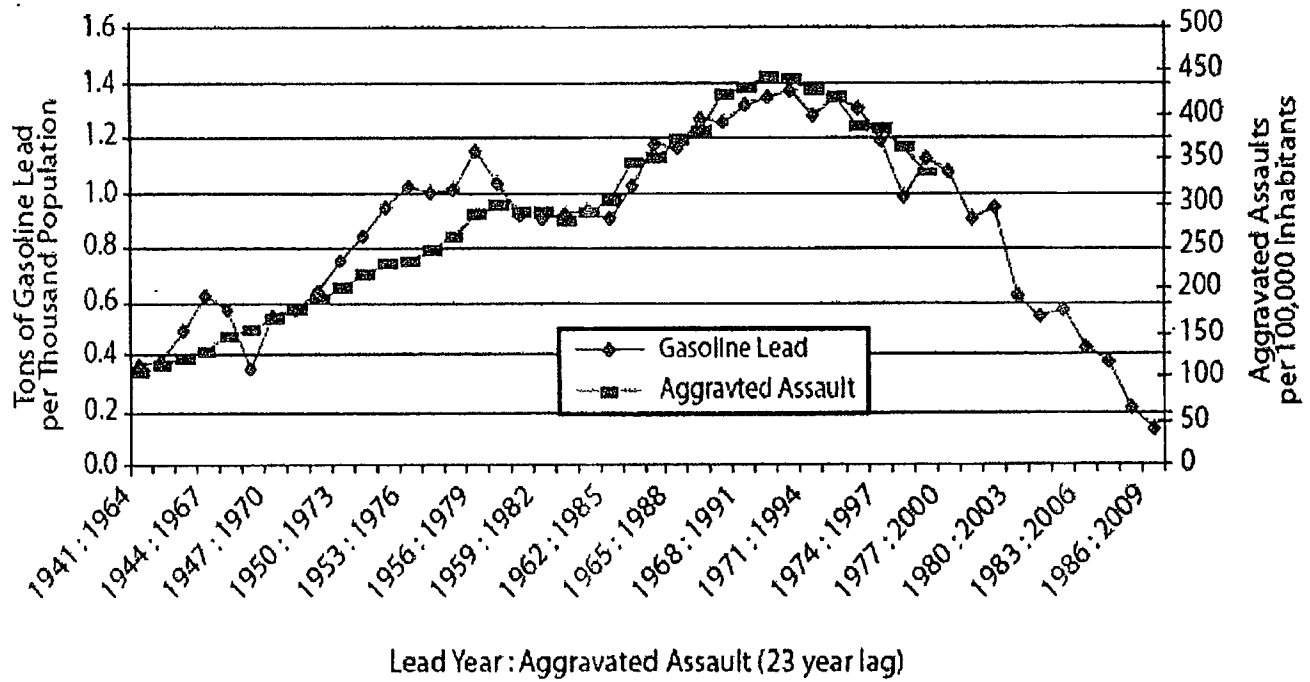
# Historical trends in Pb & crime




Nevin, 2000

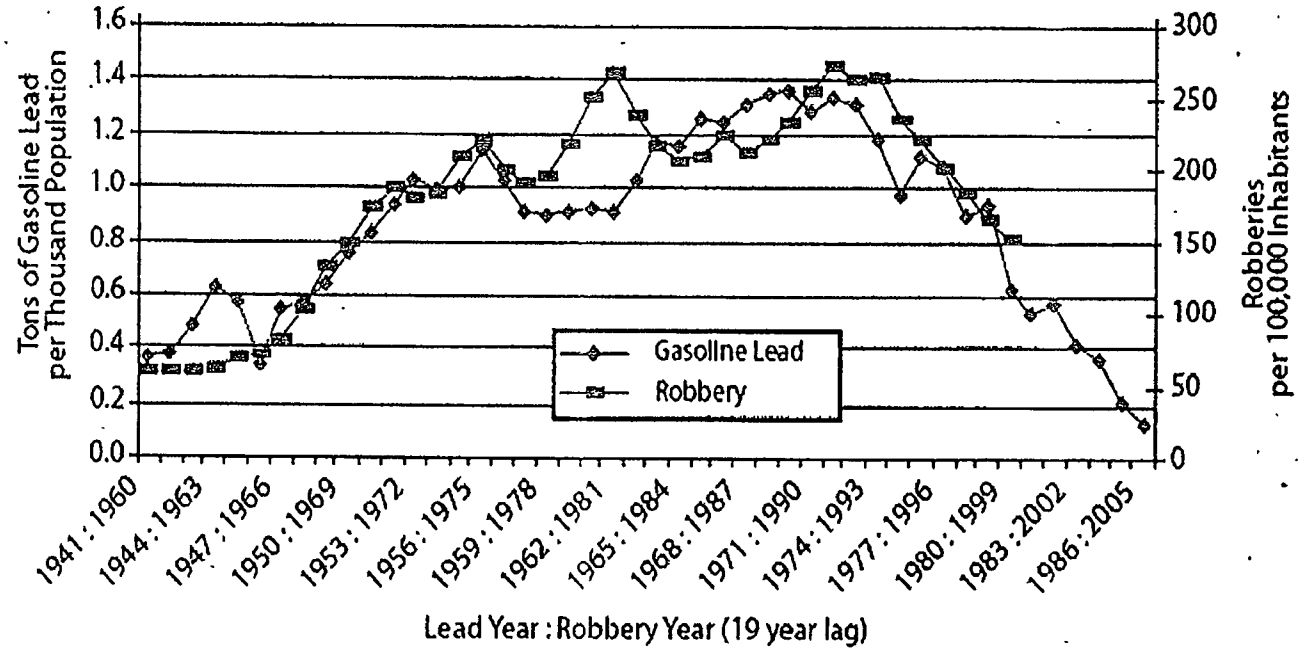
6009

Figure 3: Aggravated Assault versus Gasoline Lead




Nevin, 2000

Figure 4: Robbery versus Gasoline Lead




Nevin, 2000

Table 1: Comparison of Best-Fit Lags with Age Brackets for Violent Offenders

| Dependent Variable | Best-Fit Time-Lag | Age at Time of Arrest* | |
|---|---|---|---|
| | | Mode | Median |
| Murder (1960-98) | 18 | 18 – 23 | 23 – 29 |
| Murder (1900-60) | 21 | 18 – 23 | 23 – 29 |
| Assault (1960-98) | 23 | 18 – 24 | 25 – 28 |
| Rape (1960-98) | 21 | 18 – 21 | 22 – 27 |
| Robbery (1960-98) | 19 | 17 – 18 | 19 – 22 |
| All Violent Crime (1960-98) | 23 | 18 – 21 | 22 – 26 |

*Ranges shown for arrests reflect medians and modes in 1965, 70, 75, 80, 85, 90, and 1995.

Nevin, 2000

6012

# Air Pb and Homicide

Table 2. The Relationship Between Estimated Air Lead Concentrations and Homicide Rates Across US Counties, 1990*

| | Unadjusted Estimate | | Adjusted Estimate | |
|---|---|---|---|---|
| Air Pollutant† | IRR | 95% CI | IRR | 95% CI |
| Lead | 14.094 | 3.676-53.990 | 4.119 | 1.021-16.615 |
| Toluene | | | 0.866 | 0.297-2.519 |
| Benzene | | | 0.648 | 0.129-3.250 |
| Ethylene dibromide | | | 1.346 | 0.614-2.950 |
| Ethylene dichloride | | | 3.111 | 0.739-13.111 |
| Ethylene glycol | | | 0.637 | 0.265-1.536 |
| Cyanide | | | 3.617 | 0.914-14.309 |
| Trifluralin | | | 0.886 | 0.216-3.633 |
| Naphthalene | | | 0.877 | 0.251-3.071 |
| Ethylbenzene | | | 2.319 | 0.550-9.784 |

*IRR indicates incidence rate ratio; CI, confidence interval; and ellipses, not applicable. The natural log of the population is entered into the model as an offset term.

†Air pollutant estimates are adjusted for the following sociologic confounding factors: number of African Americans, number of persons living below the determined poverty level, census-defined urbanization, southern state, number of persons aged ≥ 18 years who did not graduate from high school, number of persons aged 16-29 years, and county area.

Stretsky & Lynch, 2001

# Pb & Crime in NZ

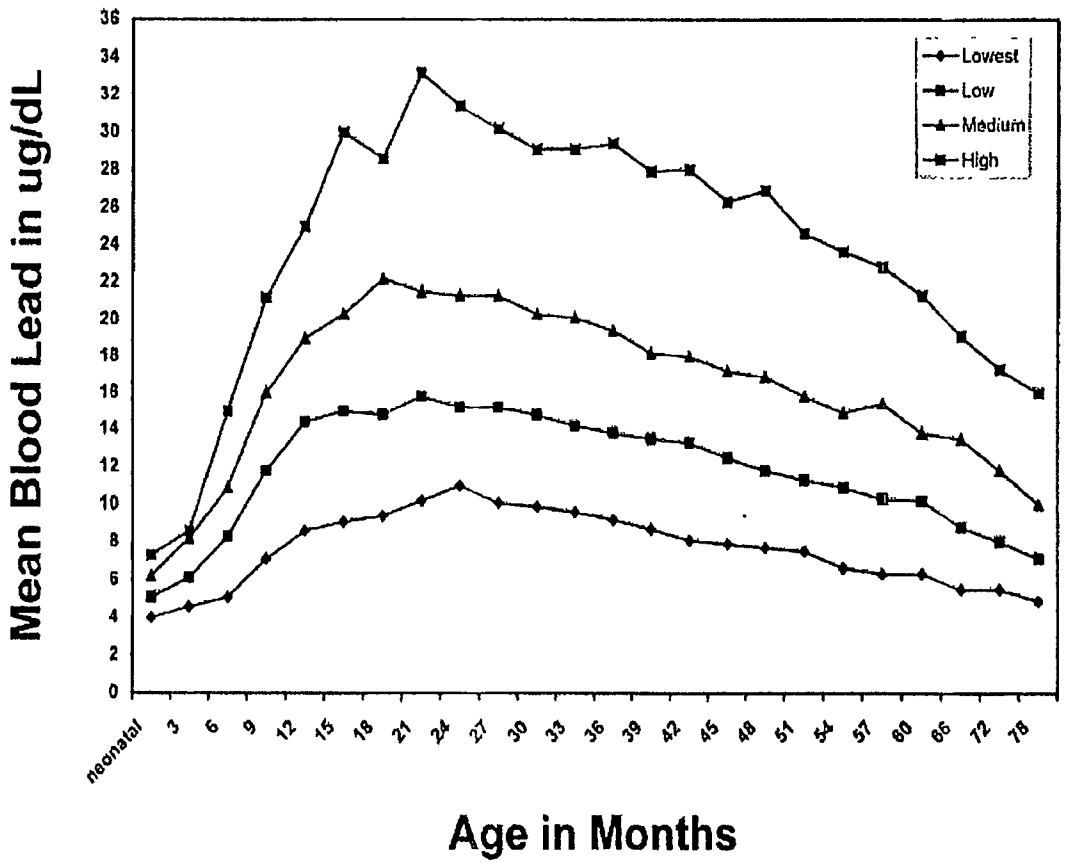
**Table 3** Associations between dentine lead levels and crime, after adjustment for (a) covariate factors and (b) intervening education measures

| | Lead levels (μg/g) | | | | | Regression parameters* | | |
|---|---|---|---|---|---|---|---|---|
| Outcome | 0–2 | 3–5 | 6–8 | 9–11 | 12+ | B | SE | p Value |
| Adjusted mean number of violent/ property convictions, ages 14–21† | 0.16 | 0.23 | 0.35 | 0.52 | 0.79 | 0.41 | 0.18 | 0.02 |
| Adjusted mean number of self-reported/violent/ property offences, ages 14–21‡ | 7.40 | 7.93 | 8.49 | 9.10 | 9.74 | 0.07 | 0.11 | 0.52 |

Fergusson et al., 2008

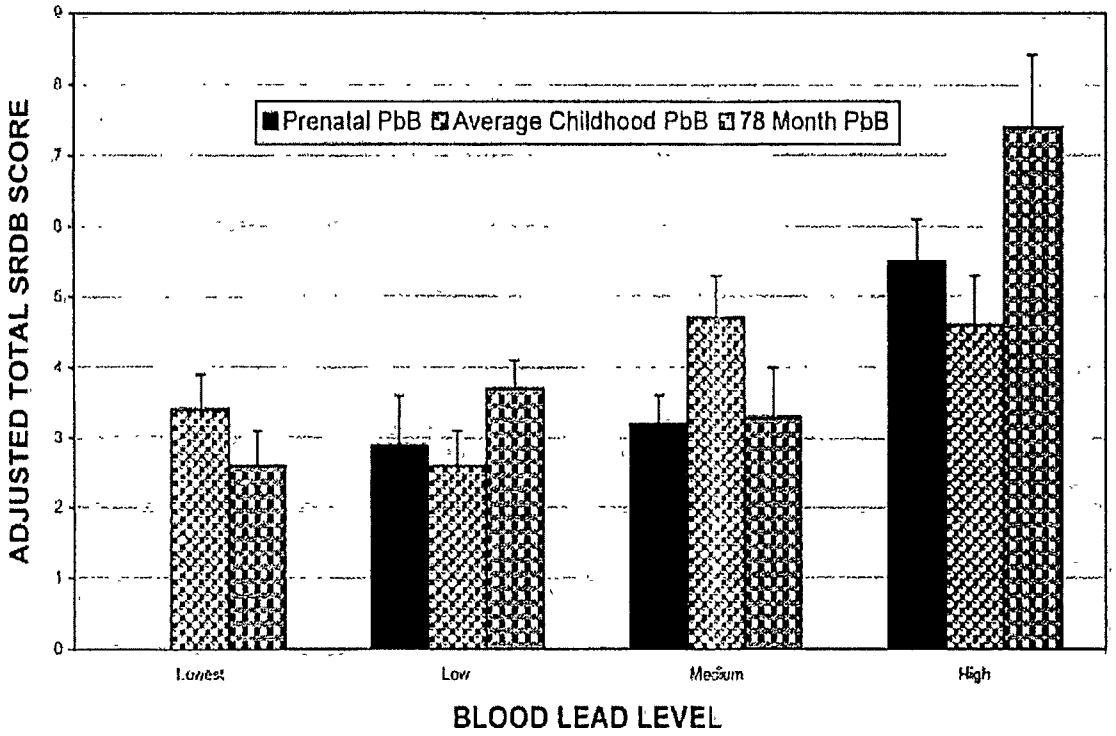
# Blood Lead Over Time
## Cincinnati Cohort

*K.N. Dietrich et al. / Neurotoxicology and Teratology 23 (2001) 511–518*




Dietrich et al., 2001

# Self-reported delinquent behaviors

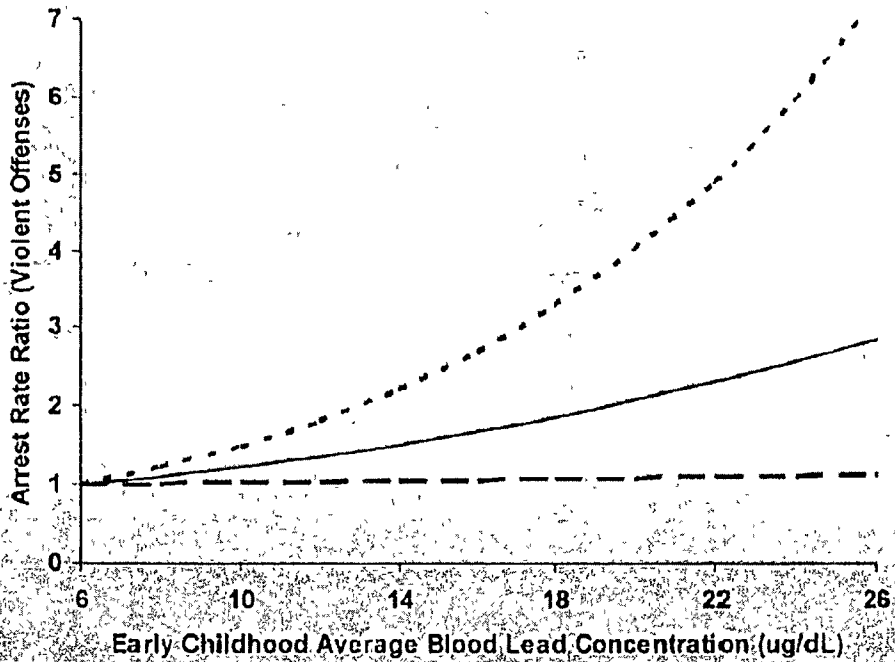



- **high prenatal = 2.3 x low**
- **high+med =1.5 x lowest+low**
- **high 78-mo = 4.5 x lowest**

Dietrich et al., 2001

# Childhood BPb Predicts Violent Offences in Adulthood






adjusted for maternal IQ, sex, SES using the Hollingshead Score, and maternal education level (Wright et al., 2008)

# Brain Volume

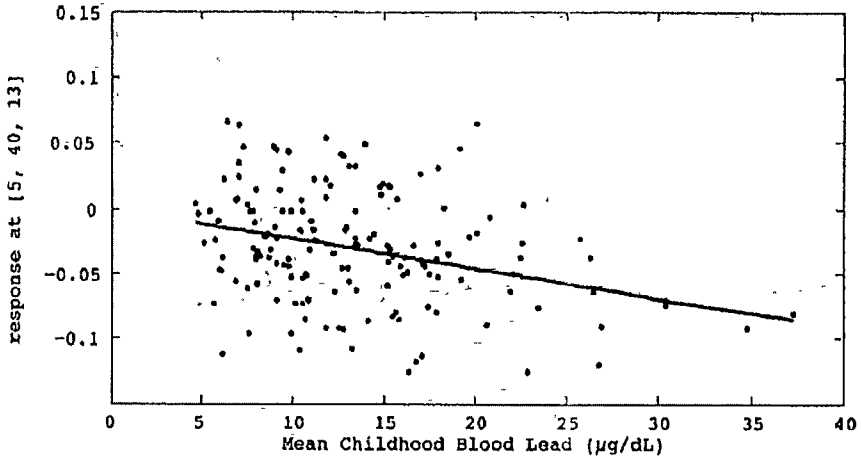



**Figure 2.** Regional Brain Volume Loss for the Cincinnati Lead Study Participants

The relationship of individual brain volume with mean childhood blood lead concentrations within a medial frontal cluster is illustrated by this plot. The model is adjusted for age at time of scanning and birth weight, using a cluster threshold of 700 voxels and unadjusted $p \leq 0.001$.

doi:10.1371/journal.pmed.0050112.g002

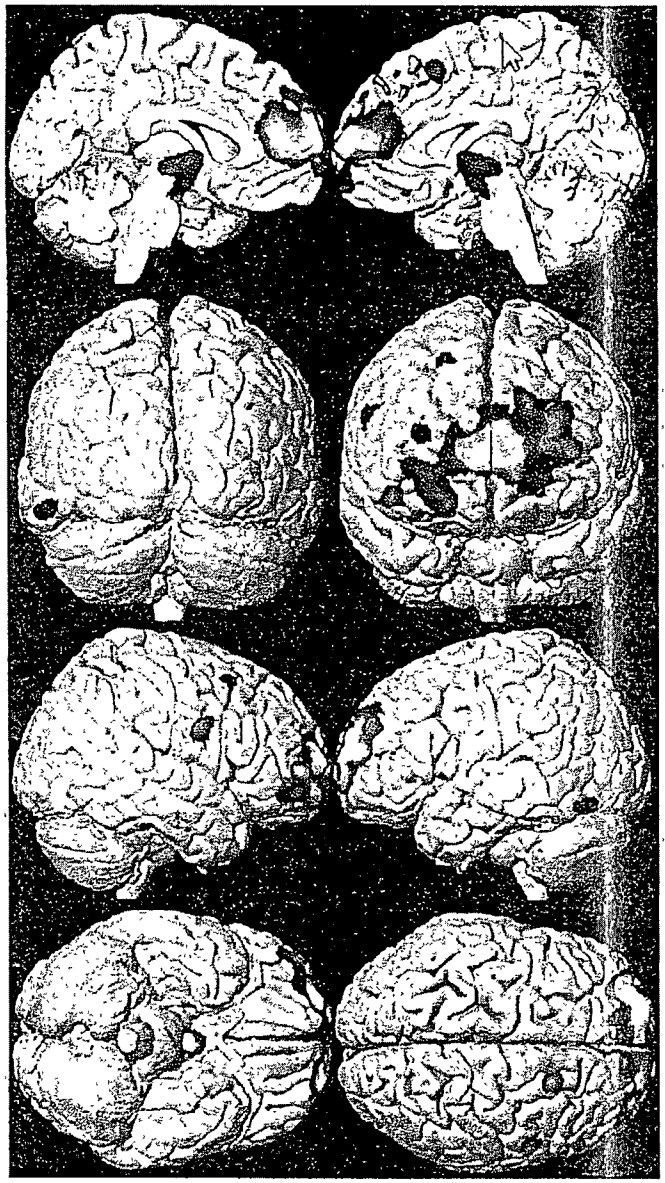


Figure 4. Sex Influences Brain Volume Loss Associated with Lead Exposure (Males)

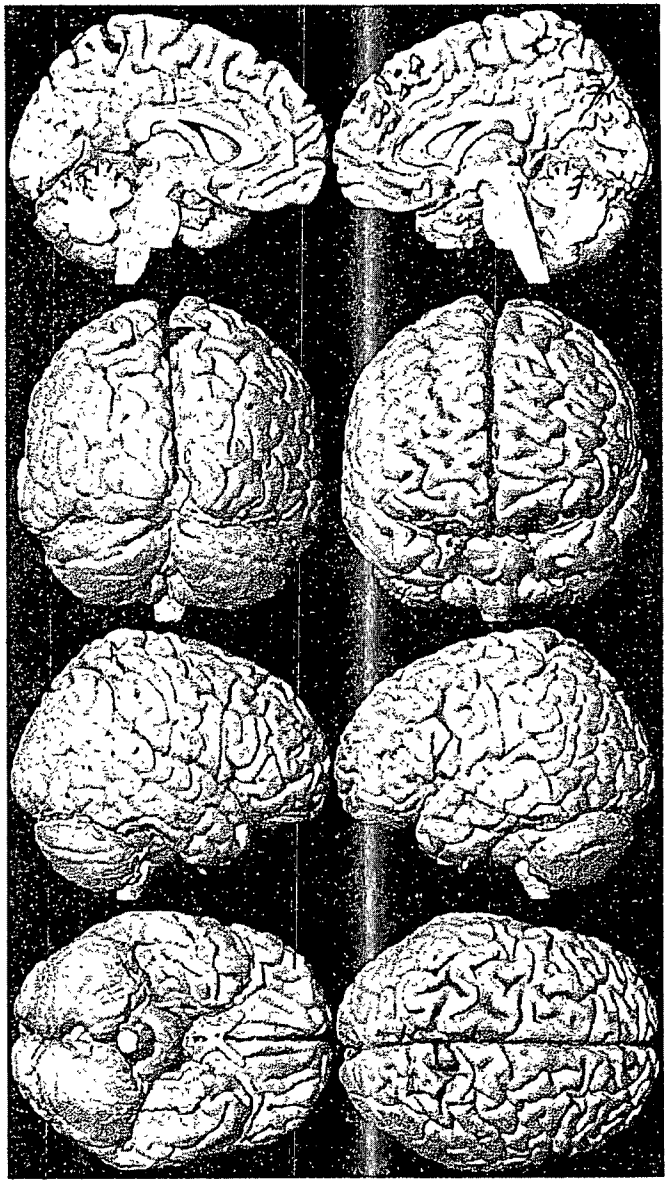


Figure 5. Sex Influences Brain Volume Loss Associated with Lead Exposure (Females)

# Conclusions

- Lead is a very dangerous neurotoxin
- Childhood exposure damages:
  - Intellectual functioning
  - Behavioral and emotional stability
  - Brain structure and function
- The damage is permanent

6020

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*Clinical Psychologist*

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misraelian@gmail.com

Applicant's 4 12-7-16 EBH

## EDUCATION

| | | |
|---|---|---|
| Ph.D. | 2000 | Emory University – Atlanta, GA<br>Doctor of Philosophy in Clinical Psychology |
| M.A. | 1997 | Emory University – Atlanta, GA<br>Master of Arts in Clinical Psychology |
| B.Sc. | 1992 | McGill University – Montreal, Canada<br>Bachelor of Science in Psychology<br>Graduated with First Class Honors |

## PROFESSIONAL CREDENTIALS

Licensed Psychologist, Georgia Board of Psychology Examiners, License # 2583

## PROFESSIONAL EXPERIENCE

11/2007 -- Present — **Emory University Department of Psychology**
Adjunct Assistant Professor of Psychology
*Atlanta, GA*

1/2007 – 11/2007 — **Emory University Department of Psychology**
Lecturer
*Atlanta, GA*

1/2004 – Present — **Pine River Psychotherapy Training Institute**
*Atlanta, GA*
Faculty

2/2002 – Present — **Clinical Psychologist and Owner of Comprehensive Psychological Services of Atlanta, LLC**
*Atlanta, GA*
Private practice specializing in adult and child psychotherapy, neuropsychological assessment, and forensic evaluation

10/2001 – 7/2004 — **Georgia State University: Multicultural and Bilingual Literacy Project Coordinator**
*Atlanta, GA*
Coordinating a study examining reading disabilities in children. Project funded through the Interagency Education Research Initiative (IERI) representing the National Science Foundation (NSF), the U.S. Department of Education (DOE) and the National Institute of Child Health and Human Development (NICHD).

| | |
|---|---|
| 10/2000 – 10/2002 | **Therapist and Group Facilitator at Caminar Latino: A Domestic Violence Intervention Program**<br>*Doraville, Georgia*<br>Providing group, family, and individual therapy in a community-based intervention program for immigrant Latino families affected by domestic violence. |
| 7/2000 - 10/2001 | **Fellow in Neuropsychology**<br>*Regents Center for Learning Disorders, Atlanta, GA*<br>Conducted neuropsychological assessments of college students with learning disabilities, attention deficit hyperactivity disorder, psychiatric disorders, developmental disorders, and brain injuries. |
| 8/2000 – 2/2002 | **Psychotherapist, Georgia State University Psychology Clinic**<br>*Atlanta, GA*<br>Conducted individual and couples therapy. |
| 9/1999 – 7/2000 | **Neuropsychological Associates, Assistant to Vivian Auerbach, Ph.D.**<br>*Atlanta, GA*<br>Participated in the neuropsychological assessment of children and adults presenting with a wide variety of neurological disorders and neuropsychological complaints. |
| 10/1996 – 5/2000 | **Predoctoral Fellow: NIMH National Research Service Award**<br>*Emory University, Atlanta, GA*<br>Conducted fetal movement and habituation research in a population of low and high risk subjects of African-American, Caucasian, and Asian-Chinese origin. |
| 8/1998 – 8/1999 | **Psychology Intern**<br>*University of Alabama at Birmingham Birmingham, AL*<br>Conducted comprehensive neuropsychological assessments of adults and children with acquired, developmental, and neurological injury. Conducted comprehensive cognitive, adaptive, and behavioral assessments of children 8 months to 12 years of age with developmental, genetic, behavioral, and/or health concerns. Provided individual, family, and group therapy in inpatient and outpatient settings. |
| 9/1998 – 1/1999 | **Research Associate to Dr. Tom Novack**<br>*Spain Rehabilitation Center - Birmingham, AL*<br>Participated in the following projects while on rotation at the Traumatic Brain Injury Unit: *Neuropsychological Performance and Cognitive Flexibility after Traumatic Brain Injury.* Poster presented at the American Psychological Association Annual Convention in August of 1999; *Orientation Status Following TBI as Assessed by the Orientation Log.* Presented at APA division 40 paper session: Traumatic Brain Injury in August 1999. Results from this study were submitted to and accepted for publication in Rehabilitation Psychology. |

| | |
|---|---|
| 5/1994 – 5/1998 | **Resident Extern**<br>*Emory University Psychological Center, Atlanta, GA*<br>Conducted individual, marital, and family therapy as well as neuropsychological, psychoeducational, personality, and vocational evaluations of children, adolescents, and adults. |
| 3/1995 – 5/1997 | **Research Associate**<br>*Chinese University of Hong Kong, Sha Tin, H.K.*<br>Established collaborative study with the Prince of Wales Hospital and the Chinese University of Hong Kong examining the neonatal hypothalamic-pituitary-adrenocortical response to stressful stimulation. |
| 9/1993 – 12/1994 | **Instructor for Research Methods in Psychology**<br>*Emory University, Atlanta, GA* |
| 9/1993 – 12/1993 | **Teaching Assistant for Elementary Statistics**<br>*Emory University, Atlanta, GA* |
| 9/1992 - 9/1996 | **Research Assistant**<br>*Crawford Long Hospital, Atlanta, GA*<br>Conducted a study on neonatal hypothalamic-pituitary-adrenocortical response to pain. |
| 9/1990 – 5/1991 | **Research Assistant to Merrill Hiscock, Ph.D.**<br>*University of Houston, Houston, TX*<br>Reviewed scientific literature on sex differences in visual laterality. Published findings in the Journal of Clinical and Experimental Neuropsychology. Participated in an experiment examining the effects of semantic and episodic priming on declarative memory in patients with head injuries. |
| 5/1990 - 9/1990 | **Research Assistant to Matthew Shapiro, Ph.D.,**<br>*McGill University, Montreal, Canada*<br>Conducted psychobiological research examining the physiological basis of memory using, lesion, neurochemical, and transplant techniques. |

## MEMBERSHIP IN PROFESSIONAL ASSOCIATIONS

American Psychological Association
- Division 40: Clinical Neuropsychology
- Division 41: American Psychology – Law Society

International Neuropsychological Society

## HONORS, AWARDS & GRANTS

| | |
|---|---|
| 1997 | **Best Student Paper/Poster Presentation**<br>National Academy of Neuropsychology<br>Award for *"Chronic Effects of Maternal Cigarette Smoking on Patterns of Fetal Cerebral Blood Flow and Fetal Movement"* |
| 1996-1998 | **National Research Service Award**<br>National Institute of Mental Health |
| 1992-1996 | **Full Academic Scholarship**<br>Emory University Graduate School of Arts & Sciences |

## PRESENTATIONS

| | |
|---|---|
| 11/2014 | **Georgia Capital Defender Training**<br>Forensic Neuropsychology and Death Penalty Litigation<br>St. Simons, GA |
| 10/2014 | **Nuts and Bolts of Family Law**<br>Cross Examining the Psychological Expert<br>Karine Burney, Esq. co-presenter<br>State Bar of Georgia |
| 11/2011 | **National Multiple Sclerosis Society, Georgia Chapter**<br>Mindfulness Meditation<br>Atlanta, GA |
| 4/ 2009 | **Pine River Psychotherapy Training Institute**<br>Psychotherapy with Today's Adolescent: A Collaborative Symposium<br>Marlyne K. Israelian. Ph.D., & Mark H. Timberlake, Ph.D. |
| 10/2008 | **Pine River Psychotherapy Training Institute**<br>Updates in the Treatment of Bipolar Illness<br>Dr. Bushan Agharkar & Dr. Marlyne Israelian |
| 10/2007 | **Pine River Psychotherapy Training Institute**<br>Clinical Psychopharmacology |
| 8/2007 | **Pine River Psychotherapy Training Institute**<br>Impasse and Treatment Failure Louis<br>McLeod, Ph.D. co-presenter. |
| 8/2007 | **National Multiple Sclerosis Society –Georgia Chapter & Deliver the Dream Foundation**<br>Weekend retreat for families dealing with the challenges of living with Multiple Sclerosis |
| 7/2007 | **National Multiple Sclerosis Society –Georgia Chapter**<br>**MS – Health Expo**<br>Intimate Relationships: Establishing a lasting connection despite the added challenge of living with MS. |

| | |
|---|---|
| 5/2007 | **Multiple Sclerosis Center of Atlanta**<br>Presentation on the challenges of being a caregiver to someone who suffers from Multiple Sclerosis. |
| 2/2007 | **National Multiple Sclerosis Society –Georgia Chapter Family Fun Day**<br>What the psychological impact is on families and children when a parent has Multiple Sclerosis. |
| 11/2006 | **Pine River Psychotherapy Training Institute**<br>Clinical Psychopharmacology |
| 11/2005 | **Pine River Psychotherapy Training Institute**<br>Termination in Psychotherapy<br>Bernhard Kempler, Ph.D., ABPP , co-presenter. |
| 2/2005 | **Language Preference in Bilingual Children with Reading Disabilities**<br>Poster presented at the 33rd Annual International Neuropsychological Society Conference, Baltimore, Maryland Eva Jansiewicz M.A., Robin Morris, Ph.D., Jennifer Harrison, B.A., Ryan Carter, M.A., Marlyne Israelian, Ph.D. |
| 1/2003 | **Women, MS, & Stress: The Importance of Making Yourself a Priority**<br>Presentation given at the 2003 National Multiple Sclerosis Society, Georgia Chapter, Women's Conference. |
| 9/ 2001 | **Exploration of the Double-Deficit Hypothesis in Adults with Reading Disability**<br>Poster presented at the American Psychological Association meeting in, San Francisco, CA<br>Marlyne Israelian Ph.D., Paul Cirino Ph.D., Mary Morris Ph.D. & Robin Morris Ph.D. |
| 2/2001 | **Prenatal Movement and Habituation: Obstetrics Complications and Postnatal Outcome.**<br>Poster presented at the International Neuropsychological Society, Chicago, IL Marlyne Israelian Ph.D. & Eugene Emory, Ph.D. |
| 9/1999 | **Orientation Status Following Traumatic Brain Injury as Assessed by the Orientation Log**<br>Paper presented at the American Psychological Association Division 40 meeting, Boston, Mass.<br>Marlyne Israelian M.A., Tom Novack Ph.D., &<br>Elisabeth Glenn Psy.D |
| 7/2/98 | **Functional Brain Imagery of Early Cognitive Processing in the Fetus**<br>Poster presented at the International Society for the Study of Behavioral Development, Switzerland<br>Eugene K. Emory, Marlyne K. Israelian, Marilyn E. Dickerson, Denis Raynor, & Kim Bard. |

| | |
|---|---|
| 11/1997 | **Chronic Effects of Maternal Cigarette Smoking on Patterns of Fetal Cerebral Blood Flow and Fetal Movement**<br>Poster presented at the National Academy of Neuropsychology Meeting, Las Vegas, Nevada<br>Awarded Best Student Poster<br>Marlyne K. Israelian, Margaret E Spauve, & Eugene K. Emory |
| 5/1996 | **Neonatal Hypothalamic-Pituitary-Adrenocortical Response to Repeated Stressors: Ethnic Differences in Temperament**<br>Poster presented at the National Institute of Mental Health Conference for Advancing Research on Developmental Plasticity, Chantilly, Virginia<br>Marlyne K. Israelian, & Eugene K. Emory. |
| 10/1994 | **Neonatal HPA Activity in Response to Repeated Stressful Stimulation: Evidence for 1 Trial Contextual Learning in Newborn Infants**<br>Poster presented at the Society for Psychophysiology Research, Atlanta, GA<br>Marlyne K. Israelian, & Eugene K. Emory |

PUBLICATIONS

Brenneman, M., Morris, R, & Israelian, M (in press). *Language Preference and its Relationship with Reading Skills in English and Spanish.* Psychology in the Schools, John Wiley & Sons Inc.

Cirino, P; Israelian, M; Morris, M; Morris M (2005). *Exploration of the Double-Deficit Hypothesis in Adults Referred for Learning Difficulties.* Journal of Learning Disabilities, Vol 38 (1), 29-43

Israelian, Marlyne K. (2000). *Patterns of Fetal Movement and Habituation as Predictors of Postnatal Anthropometric Measures and Neurobehavioral Outcome.* Unpublished Doctoral Dissertation, Emory University.

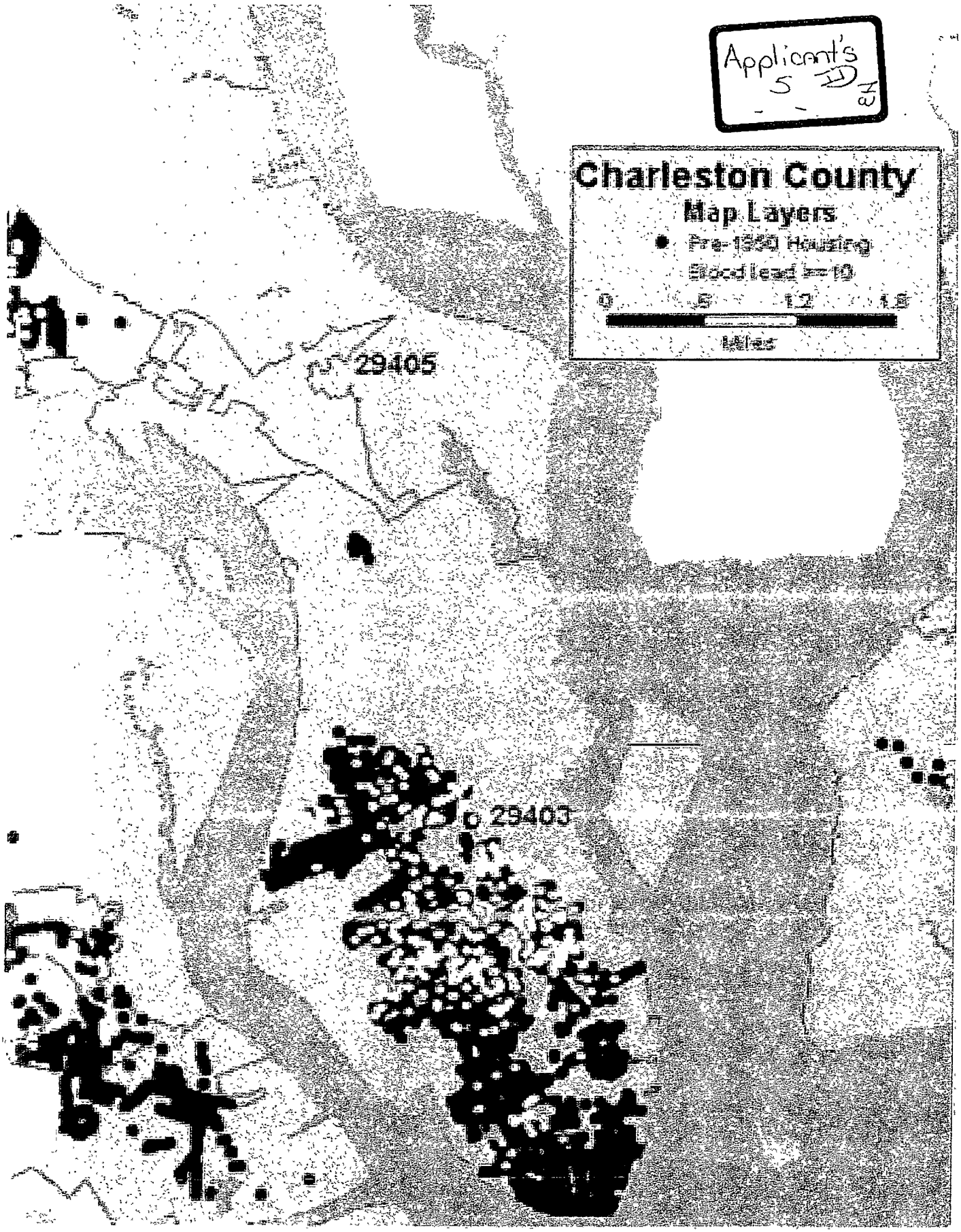
Israelian, Marlyne K; Novack, Thomas A; Glen, Elizabeth T; Alderson, Amy L (2000). *Changes in orientation during acute rehabilitation after traumatic brain injury.* Rehabilitation Psychology. Vol 45(3), 284-291.

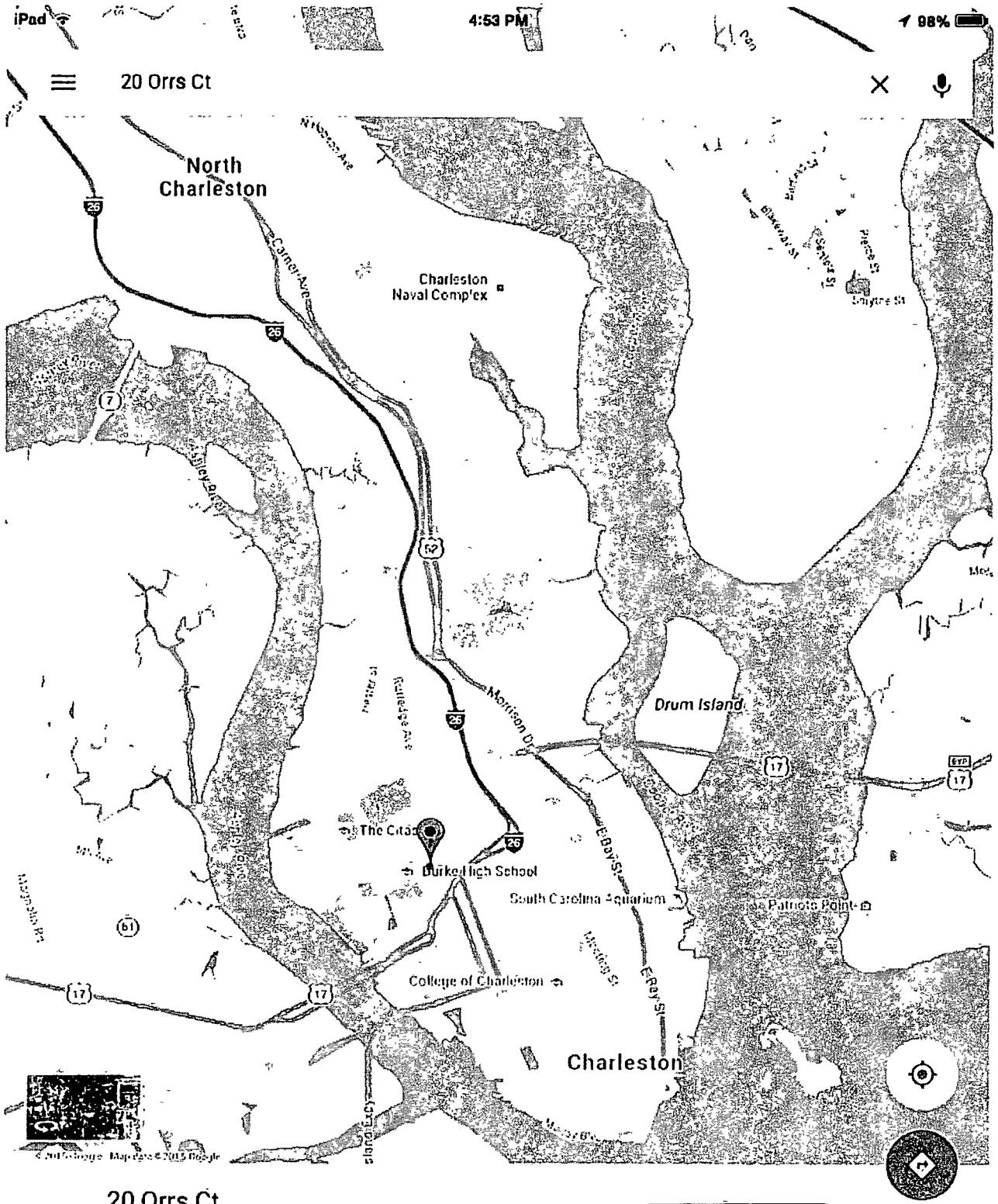
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Applicant's
S ID
eH
Charleston County
Map Layers
Pre-1950 Housing
Blood lead >= 10
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5
12
15
Miles
29405
29403




20 Orrs Ct

20 Orrs Ct, Charleston, SC 29403

Applicant's 6 12-7-15 BH

MEDICAL UNIVERSITY OF SOUTH CAROLINA
Department of Psychiatry and
Behavioral Sciences
(803) 792-4037




171 Ashley Avenue
Charleston, South Carolina 29425-0742

Psychiatric Evaluation

Applicant's 7
12-7-15 eBH

Name: William Dickerson

Date: 5/12/88

Identifying Information: William Dickerson is an 11-year-old, black boy who was brought directly to the MUSC Youth Division by his mother.

History of Present Illness: The patient was brought for psychiatric treatment because of repeated running away from home, uncontrollable behavior, and failing school performance. The mother recalls the onset of his oppositional behavior as starting at Christmas, 1987. William had hoped to receive a "Mike Tyson" doll; when he did not, it upset him greatly. Over the ensuing weeks, William was noted to be more withdrawn and pouty, and when confronted by mother would often not respond or not listen. At other times, they fought engage in verbally and sometimes physically.

William began running away from home, but always to his grandmother's house. Initially, this simply irritated Mrs. Dickerson, as she knew he was safe, but on later occasions he would stay longer (e.g. 2 days), and sometimes would go to others' houses. Due to physical aggressiveness and running away, Mrs. Dickerson tried to enlist the aid of several agencies, including the local MHC, ER, Continuum of Care, DYS, and ultimately the police. She has been frustrated with the help she has received, which she states is minimal.

Due to her financial status (she earns just enough to NOT qualify for Medicaid, but has no insurance), she is in a very poor situation as far as funding any inpatient help for William. She was therefore recommended to look into Tara Hall, which may be able to work around the funding problem. While this was in progress, and due to the urgency of the problem plus their need for a psychological evaluation, she presented William to the MUSC Youth Outpatient division.

William reports that he is very unhappy at home and sometimes feels he cannot tolerate his mother. He acknowledges sometimes not listening or defying her, but states that she "naps" a lot. He questions sometimes whether he is really loved. He admits to feeling sad much of the time with frequent crying. He states that his sleep is poor with much difficulty falling asleep and midnight awakening. His appetite is poor. Mother confirms all of these aspects of depression, but goes on to state that she suffers from all the above symptoms "even worse than William." William has only a few friends now, and plays much less than he used to. He has wondered whether there is any hope or whether life is worth living, but has not made a suicide attempt.



"An equal opportunity-m/f affirmative action employer"

William, or "Little Man" as mother calls him, is in the 6th grade at Rivers Middle School. He is currently failing all but one of his classes. He has missed several days as well. His decline in school parallels his decline in mood and behavioral problems, although he never was an excellent student.

Past Psychiatric History: No prior psychiatric problems known.

Past Medical History: William has been a healthy boy since birth with no major medical or surgical problems. Developmentally he reached normal milestones.

Family History: William's father was jailed for a felony when William was 4 months of age, and remains in jail. William has never met his father. Mrs. Dickerson has attempted to develop other relationships but feels that William tries to interfere. Other family psychiatric history is unknown. William has one younger brother.

Social History: William denies using alcohol, cigarettes or drugs. He alleges that he has seen his mother use marijuana, but she denies this. William likes sports and TV.

Mental Status Examination: William was a well-built, well nourished black boy appearing at least his stated age. He was clearly sad with sloped shoulders and downcast gaze. With mother present he was nearly nonverbal and only answered a few yes/no questions. With her absent he became much more verbal, and demonstrated no abnormalities of thought process or content. He acknowledges suicidal thoughts but denied plan. His affect was clearly sad and mood nearly hopeless. Insight was minimal.

Assessment: William is suffering from depressive symptoms and meets criteria for Major Depression. His history of apparently very good premorbid functioning followed by a persistent 5 month period of full-spectrum depressive features suggests no other diagnosis. Some of his behavior may seem antisocial, but this appears directed almost exclusively towards mother and seems a function of the great tension and hostility present between them. Mother herself seems likewise suffering from Major Depression and has very little tolerance for any erratic behavior from William.

Provisional Diagnosis:

Axis I: Major Depression, single episode, moderate

Axis II: Deferred

Axis III: None

Axis IV: Severe

Axis V: GAF now of 45

nuredini/dickerson.ev1/2

Plan:

1. I am working with Mrs. Dickerson to arrange residential or inpatient treatment, at this point, as I feel the situation merits this. I will help her pursue applications to Tarn Hall or possibly Carolina Youth Development Center.

2. In the meantime, I will treat both mother and son as outpatients. I will start them both on antidepressants (imipramine) and will continue outpatient psychotherapy.

Douglas Mossman, M.D.
Supervisor

Ray Nuredini, M.D.
Resident in Psyhiatry

RN:td

Applicant's
8
12-7-15

SOCIAL HISTORY

NAME OF PATIENT: DICKERSON, William
HOSPITAL NUMBER: 881-3294
DATE OF ADMISSION: 05/26/88
DATE OF BIRTH:

IDENTIFICATION DATA: William Dickerson is an 11-year-old, Black male who was admitted to William S. Hall Psychiatric Institute on 05/26/88 on emergency papers. He is of the Baptist religion and is currently a 6th grade student at Rivers Middle School in Charleston, SC. William has been living with his mother, Sandra Dickerson, at 20-B Orrs Court in Charleston, SC.

REASON FOR ADMISSION: William was hospitalized after having suicidal ideations and a plan. William was sitting in a window of a second story building and planned to jump. This followed repeated attempts at running away from home approximately every other day.

HISTORY OF PRESENT ILLNESS: Social history information was derived by telephone by patient's mother, Sandra Dickerson. This social history is considered incomplete although portions provided are considered valid. Please see social work history progress note for further referral and family information. Mrs. Dickerson reports William's concerns dating to the last three months. She could not identify any particular stressor in the past three months. During this time, William has run away eight times and Mrs. Dickerson reports feeling overwhelmed and helpless in managing this behavior. In addition, William has been truant from school occasionally and has been failing his classes in the 6th grade. This is the first psychiatric hospitalization for William. He has, however, been seen on an outpatient basis at MUSC three times and is currently being assessed for permission to Tara Hall Home for Boys'. The Department of Youth Services has been involved with William regarding his running away and destructive behavior. Mrs. Dickerson denied any alcohol or substance abuse problems.

FAMILY COMPOSITION: William is the eldest of two boys, he has a younger brother age 7. Mrs. Dickerson is a single parent as William's father has been in CCI for the past twelve years for armed robbery. Mrs. Dickerson is currently employed doing domestic work and has been denied medicaid although hopes to reapply for this in the future. Mrs. Dickerson reports not having transportation and will find it difficult to visit him at William S. Hall Psychiatric Institute.

DEVELOPMENTAL HISTORY: Mr. and Mrs. Dickerson had been married one year prior to her pregnancy with William. This was a planned pregnancy, however, this was a very unhealthy and difficult

(continue on reverse side - head to toe)

Include precipitating events, social evaluation, and placement plans. Mention prenatal and genetic factors, developmental milestones, previous hospitalizations, education employment pattern, family interaction, military and criminal history

pregnancy for Sandra. She reports that her husband was abusive to her and physically abused her kicking her during her pregnancy. She describes William's father as "mad dog" and that she would repeatedly have to run away from his and used to jump fences in order to escape from his abuse. William was a premature birth at seven months weighing three pounds three ounces. William was in the hospital for his first two months of life. Following his discharge, he was considered a healthy baby with normal developmental milestones as reported by Mrs. Dickerson. Mrs. Dickerson reports no major medical illnesses in her family or with William, however, states that William's father was a diabetic. Mrs. Dickerson denies drug or alcohol abuse with her husband, William's father, and herself. Mrs. Dickerson, however, reports feeling depressed and occasionally in the past was given medication, however, she is not on any medication at this time. Mrs. Dickerson had difficulty reporting developmental history facts regarding toilet training, separation from school and other emotional milestones. Mrs. Dickerson appears focused on William's recent temper that began three months ago and the fact that he doesn't "listen to her." She reports his often running naked and running away from the house repeatedly. She also reports that he fights with her and has also stolen from her. She reports that outside of the home he has reasonable behavior at this point she feels very frustrated by this.

Mrs. Dickerson's family resides in Charleston; both her mother and father are living and she has nine sisters and four brothers. She is the sixth oldest sibling and reports a close relationship with her family.

Regarding William's strength, it is reports that he enjoys basketball and is good a this sport. He also has had no school problems or failures prior to this year. William, however, will be repeating the sixth grade at Rivers Middle School in Charleston.

FAMILY DYNAMICS: Due to the scant amount of detail from this social history on the telephone, it is difficult to fully understand the dynamic and needs of this family system. We can hypothosize, however, this is a single mother who has limited educational and economic support and is currently overwhelmed by her parenting responsibilities. It will be important to fully assess her level of functioning and depression as well as the assessment of William's ability to function with the family system and out of the family system. A medication assessment is recommended. Currently Mrs. Dickerson appears in a projective blaming situation and feel inadequate in her parenting role. There is much ambivalence in her wish to help her family and herself and it is recommended that much support be given to her during the hospitalization (as much as can be accomplished without transportation) and to continue this should William be placed outside of the home. In addition, it should be important to fully understand the precipitating events to this hospitalization for all family members.

(continue on reverse side - head to toe)

Include precipitating events social evaluation, and placement plans. Mention prenatal and genetic factors, developmental milestones previous hospitalizations education, employment pattern, family interaction military and criminal history

DICKERSON, William 881-3294

RECOMMENDATIONS: It is recommended that further data be gathered regarding DYS involvement with this family and the follow-up of placement arrangements at Tara Hall Home for Boys'. Brief family therapy is recommended. Mrs. Dickerson can obtain transportation to visit the hospital in Columbia. At this time, identification of family issues/roles should be clarified in order to prepare them for long term therapy of individual and for the family system. Individual group and milieu therapy is recommended for William while on the Children's Unit. A medication assessment is also recommended.

Susan Kennell, MSW
Clinical Social Worker

SK:mnl

RD: 06/01/88
FD: 06/06/88

(continue on reverse side - head to foot)

Include precipitating events, social evaluation, and placement plans. Mention prenatal and genetic factors, developmental milestones, previous hospitalizations, education, employment pattern, family interaction, military and criminal history

DICKERSON, William 861-3294

Applicant's
9
12-7-15 EF

DATE OF ADMISSION: 05/26/88
DATE OF DISCHARGE: 06/10/88
HOSPITAL WARD: 160-C, CHILDREN'S UNIT

IDENTIFYING INFORMATION: This is a first admission to William S. Hall Psychiatric Institute (WSHPI) of a 11-year-old black male on emergency papers because of his being potentially dangerous to himself. He was referred from Charleston, SC from MUSC ER by psychiatric resident.

CHIEF COMPLAINT: "The patient has been running away from home and threatened to kill himself because of alleged punishment by his mother."

HISTORY OF PRESENT ILLNESS: The patient states that he became depressed approximately about one year ago. Since that time he has felt sad and discouraged most of the time with worse feelings when he is criticized by his mother. He claimed that he often does not know why he is being scolded, because of that he has become more fearful of his mother when she physically punishes him that sometimes she has used a belt or some type of weapon and on occasion has inflicted an injury on his chest. One such injury has left a mark. He said his appetite was good, his ability to sleep has been good, and that he is able to go back to sleep well if he should wake up in the middle of the night. Recently, he was brought to the MUSC ER and seen by resident psychiatry at MUSC because of statements of possibly wanting to harm himself. After evaluation he was referred up to WSHPI for evaluation because of possible suicidal ideation.

PAST MEDICAL HISTORY: Noncontributory. The patient has been a C student in school and has not failed in school until this year. He is suppose to repeat the 6th grade at Rivers Middle School in Charleston. The patient does not smoke, has not been sexually active and has no history of allergies to medications.

MENTAL STATUS EXAMINATION: The patient spoke in a soft voice. He was oriented as to person, place and time. His affect seemed to be reasonably bright, though he did have a sad appearance. Speech was slow and soft. His thought content appeared to be logical and goal directed. He denied any hallucinations and any thought of harming others. He gave no evidence of delusion. There was a question of the hypnagogic type of hallucination occurring one time when he awoke to see a friend calling to help him. This was followed by his returning sleep. His memory and concentration were good. His judgement appeared good. He stated he has had thoughts of suicide such as jumping out of a window, but actually has not developed a specific plan yet for carrying this out.

PHYSICAL EXAMINATION: Vital Signs: BP 120/76, pulse 64, respirations 20, temperature 98.4. General Appearance: This is a



RS SAW:01899

well-developed youth in no acutes distress. Height: 61 inches, 80th percentile. Weight: 117 pounds, 92nd percentile. HEENT: Unremarkable. Neck: Supple without adenopathy. Chest: Symmetrical with equal expansion. There was an area of tenderness over the left lower rib cage. Also a mark on the chest from a supposedly previous injury from a belt. Lungs: Clear to percussion and auscultation. Heart Exam: WNL. Liver, spleen, kidneys were normal. Bowel sounds were normal. No masses were felt. Genitalia: Normal developed, Tanner stage 2/5. Spine and Back: Unremarkable. Extremities: WNL. No limitation of movement is noted.

NEUROLOGICAL EXAMINATION: WNL. Reflexes: 1-2+ symmetrical bilaterally.

INITIAL DIAGNOSIS: AXIS I Adjustment disorder with mixed disturbance of emotions and conduct.
AXIS II No diagnosis.
AXIS III No diagnosis.

LABORATORY AND DIAGNOSTIC STUDIES: Admission CBC blood count 4.860000, white count 5,000 with 64 polys, 33 lymphs, 2 monos, 1 eosinophil. Hematocrit is 37.1, hemoglobin 12.0. MHHC 32.3%, MCH 24.7 mcg, MCV 76. Microcytes were 2+. Urinalysis specific gravity 1025 otherwise the exam was WNL. Thyroid function studies T-3 1.10, T-4 was 11.04, FTI was 10.06. The TSH which was a separate type of reading was read as .04 and this most likely to lab error. Serum iron 61 within the normal range, lower range of normal. Total iron binding capacity 299 which was in the normal range. Saturation 20%. SMA-18 was WNL. There was a high total protein of 8.8 which has no specific significance of the other readings.

CONSULTATIONS: An educational report was given by the school district. He was enrolled in the 6th grade where he continued to work on his subjects. His testing indicated that of a reading at 6E, Spelling 5B, Arithmetic 5B, Vocabulary 6.0, Comprehension 7.4, total testing is 6.9. His overall work indicated weakness in Language Arts, his writing skills needed improvement. His placement however did not appear appropriate for EH placement. Hearing exam was normal. Electrocardiogram was WNL.

HOSPITAL COURSE: The patient was admitted to Ward 160 where he adjusted to ward milieu rapidly and in general provided good behavior during his hospitalization. There was a tendency of William to try to instigate problems and to direct other children into conflicts. These manipulative plays that he exhibited were identified and explained to the patient. He was assessed for a tendency to harm himself or others by court appointed designees and found to be not harmful to himself or others. During his hospital stay he denied any further thoughts of self-harm and agreed that this was not a good way to approach his problems. His

family situation went under evaluation by the DSS for possible child abuse. This case is pending further investigation. William's case was heard in the probate court and he was ordered released on the basis that he was not harmful to himself or others. At the time of his discharge, the patient was free of any evidence of psychotic features, hallucinations or delusions and had expressed no intentions to harm himself or others. He was ordered release from the facility to return to Charleston where he will be under the care of his aunt pending the investigation by the DSS. Because of borderline findings of his serum iron and the presence of microcytes on the blood osmear, the patient was started a course of treatment of iron therapy Ferrous Sulfate 300 mg daily for three weeks.

CONDITION AT DISCHARGE: No evidence of psychosis. The patient was free of thoughts of self-harm or danger to others.

DISCHARGE MEDICATIONS: Ferrous Sulfate 300 mg daily.

DISCHARGE AND FOLLOW-UP ARRANGEMENTS: Charleston MUSC clinic. The patient was placed in the care of his aunt pending completeness of the investigation by DSS.

FINAL DIAGNOSIS: AXIS I Adjustment disorder with depressed mood. 309.00
AXIS II No diagnosis.
AXIS III No diagnosis.

Robert Sholtes, M.D.
Attending Psychiatrist

John B. Burns, M.D.
Fellow in Child Psychiatry

RS/JBB/dko

DD: 07/05/88
RT: 07/12/88
FT: 07/25/88

DICKERSON, WILLIAM O.
881-3294

Applicants
10
18- 7- 15 03

☐ Routine

Date and Time Specimen Collected
☐ Post ☐ Trough ☐ Random 6/2 9A A.M. P.M.

Date and Time Specimen Received in Lab
1988 JUN -7 AM 10 08

☐ ____ SIGNATURE ☐ ____ WORK NUMBER
Date and Time Specimen Examined by Lab
1988 JUN -6 AM 10 21

| THERAPEUTIC DRUG LEVEL (UG/ML) | | |
|---|---|---|
| ☐ Phenytoin (Dilantin) | 10 - 20 | |
| ☐ Phenobarbital | 15 - 40 | |
| ☐ Primidone (Mysoline) | 5 - 12 | |
| ☐ Carbamazepine (Tegretol) | 4 - 12 | |
| ☐ Ethosuximide (Zarontin) | 40 - 100 | |
| ☐ Valproic Acid (Depakene) | 50 - 100 | |
| ☐ Quinidine | 1.5 - 5.0 | |
| ☐ Tobramycin | 4 - 10 peak < 2 trough | |
| ☐ Gentamicin | 4 - 10 peak < 2 trough | |
| ☐ Theophylline | 8 - 20 | |
| ☐ Digoxin (Lanoxin) | .8 - 2.0 NG/ML | |
| ☐ Cortisol 8 - 9 AM 4 - 6 PM | 6 - 28 3 - 16 | |
| ☑ Serum Iron | ~~45-150~~ | 61 |
| ☑ Total Iron Binding Capac. | ~~250-450~~ | 299 |
| ☑ ~~Ferritin~~ MALE FEMALE | ~~AGE 20 AGE 40~~ | 20% |

| THYROID PROFILE | | |
|---|---|---|
| ☐ T-3 (T-Uptake) | 0.72 - 1.24 | |
| ☐ T-4 (Thyroxine) | 4.5 12.0 ug/dl | |
| ☐ F.T.I. | 5.0 - 12.0 ug/dl | |
| ☐ T.S.H | .45 - 6.2 | |
| | | |
| ☐ Serum Beta HCG (Pregnancy Indicator) | | |

| | |
|---|---|
| ☐ HEPATITIS B - | |
| ☐ HBsAG | |
| ☐ Anti-HBs | |
| ☐ Anti-HBc | |
| ☐ HBeAG | |
| ☐ Anti-HBe | |
| ☐ Anti-HAV | |

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SCDMH FORM REV NOV 87 M-1550 SPECIAL CHEMISTRY BYRNES MEDICAL CENTER / SCDMH CLINICAL LABORATORY 2100 BULL STREET, COLUMBIA, SOUTH CAROLINA 29202

MUCUS 1+
BACTERIA 1+

05/26/88 08:46
T 165

88 MAY 26 AM 11:00

DICKERSON, WILLIAM C 881-324 4 NMS CHAR SC JA 160C STUDENT

URINALYSIS

☐ MANUAL DIFFERENTIAL ☐ ELT-8 TEST

| DIFFERENTIAL | | MORPHOLOGY |
|---|---|---|
| | 64 | Normal |
| | | Hypochromasia |
| | 33 | Polychromasia |
| | | Target Cell |
| | | Schistocytes |
| | | Burr Cells |
| | | Acanthocytes |
| | 2 | Microcytosis |
| | | Macrocytosis |
| | | Ovalocytes |
| | | Crenated RBC's |
| | | Base Stippling |
| | | Tear Drop Cells |
| | | Dohle Bodies |
| | 15 | Vacuolated NEUTROPHILS |
| | | Toxic Gran. |
| | | NSRF x 100 WBC |

HEMATOLOGY refab tam M295-D

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DICKERSON, WILLIAM C 881-324 4 NMS CHAR SC JA 160C STUDENT

SANDRA DICKERSON/MOTHER 20 [illegible]

6-1-88 CSW

BYRNES MEDICAL CENTER/ SCDMH CLINICAL LABORATORY 2100 BULL STREET COLUMBIA, SC 29201

SAM 6/6/1965

(Attach top of 10th report to this line. Continue on same type form.)

(Attach top of 9th report to this line.)

NOTE: ALL SPECIAL CHEMISTRY REQUESTS REQUIRE A SEPARATE 10CC TUBE OF CLOTTED BLOOD.

☒ Routine

☐ EMERGENCY REQUEST

Doctor SHOLTES

Date and Time Specimen Collected: 5/26 920 A.M. P.M.

☐ Peak ☐ Trough ☐ Random

Date and Time Specimen Received in Lab: 1988 MAY 26 AM 9:50

Date and Time Specimen Examined by Lab: 1988 MAY 26 PM 5:33

| THERAPEUTIC DRUG LEVEL (UG/ML) | | |
|---|---|---|
| ☐ Phenytoin (Dilantin) | 10-20 | |
| ☐ Phenobarbital | 15-40 | |
| ☐ Primidone (Mysoline) | 5-12 | |
| ☐ Carbamazepine (Tegretol) | 4-12 | |
| ☐ Ethosuximide (Zarontin) | 40-100 | |
| ☐ Valproic Acid (Depakene) | 50-100 | |
| ☐ Quinidine | 1.5-5.0 | |
| ☐ Tobramycin | 4-10 peak < 2 trough | |
| ☐ Gentamicin | 4-10 peak < 2 trough | |
| ☐ Theophylline | 8-20 | |
| ☐ Digoxin (Lanoxin) | .8-2.0 NG/ML | |
| ☐ Cortisol 8-9 AM / 4-5 PM | 6-28 / 3-16 | |
| ☐ Serum Iron | 65-165 | |
| ☐ Total Iron Binding Capac | 245-419 | |
| ☐ Ferritin MALE / FEMALE < AGE 40 / FEMALE > AGE 40 | 23-311 / 5-96 / 8-277 | |

| THYROID PROFILE | | |
|---|---|---|
| ☒ T-3 (T-Uptake) | 0.72-1.24 | 1.10 |
| ☒ T-4 (Thyroxine) | 4.6-12.0 ug/dl | 11.04 |
| ☒ F.T.I. | 5.0-12.0 ug/dl | 10.06 |
| ☒ T.S.H. | .45-6.2 | .04 ? |
| | | |
| ☐ Serum Beta HCG (Pregnancy Indicator) | | |

Date 26 May 88

I.D.

DICKERSON, WILLIAM O EH
329 M
JA 1600
DENT

SANDRA DICKERSON/MOTHER
H7721559

5-31-88 SK

| HEPATITIS B | |
|---|---|
| ☐ HBsAG | |
| ☐ Anti-HBs | |
| ☐ Anti-HBc | |
| ☐ HBeAG | |
| ☐ Anti-HBe | |
| ☐ Anti-HAV | |

Technologist EBG

1 SCDMH FORM REV. NOV. 87 M-2950

SPECIAL CHEMISTRY BYRNES MEDICAL CENTER / SCDMH CLINICAL LABORATORY 2100 BULL STREET, COLUMBIA, SOUTH CAROLINA 29202

1 SCDMH FORM REV. NOV. 87 M-2950

SPECIAL CHEMISTRY BYRNES MEDICAL CENTER / SCDMH CLINICAL LABORATORY 2100 BULL STREET, COLUMBIA, SOUTH CAROLINA 29202

MUCUS 1+
BACTERIA 1+

05/26/88 08:46
T 165

88 MAY 26 AM 11:00

DICKERSON, WILLIAM O EH 329 M JA 1600

SANDRA DICKERSON/MO

MANUAL DIFFERENTIAL | EST & TECH

| DIFFERENTIAL | | MORPHOLOGY |
|---|---|---|
| PMN's 30-70 | 64 | Normal |
| Bands 0-12 | | Hypersegmented |
| Lymphs 21-49 | 33 | Polychromasia |
| Monos 2-10 | 2 | Target Cells |
| EOS 0-4 | 1 | Schistocytes |
| Baso 0-1 | | Burr Cells |
| REACTIVE LYMPH | | Anisocytosis |
| | 2+ | Microcytes |
| MEGA | | Macrocytes |
| MYELO | | Dimicrocytes |
| PRO MYELO | | Enclosed RBC's |
| BLAST | | Base Stippling |
| HYPER SEG NEUT | | Tear Drop Cells |
| | | Oval Fragmented |
| PLTS EST 8-24/HPF | 15 | Vacuolated NEUTROPHILS |
| | 3 | Band Gran. |
| Abnormal Cells | | MISC/ING WBC |

HEMATOLOGY worksheet form M285-D

DICKERSON, WILLIAM O EH 329 M JA 1600

6-1-88 JK

BYRNES MEDICAL CENTER/ SCDMH CLINICAL LABORATORY 2100 BULL STREET COLUMBIA SC 29204

LABORATORY
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TECH. REV. REVIEWED BY

URINALYSIS

SCDMH FORM M-2250 REV. FEB 87

..PGN01
..FOOT57C- Page ## -
..FOOT58CPsychological Evaluation - DICKERSON, WILLIAM

Applicant's
11
10-7-15

# Psychological Evaluation

Name: DICKERSON, WILLIAM Evaluation: May 28, 1990

Age: 13 years, 9 [illegible]

School: TARA HALLReferred by: DUMM Examiner: RIVERS

Test administered:

Wechsler Intelligence Scale for Children - Revised

Behavior Observations:

WILLIAM approached the testing session in a tense and anxious manner. As the evaluation progressed, mild encouragement and praise were sufficient to ensure comfort and cooperation.

Appearance and grooming were adequate and appropriate.

WILLIAM had an inconsistent style of working on most problems. Some care and deliberation were noted, but many errors were not [illegible]iced. This may have caused failure on some easier tasks, while more difficult ones were sometimes done correctly.

Activity level was observed to be within normal limits for age range. Fidgeting or difficulty remaining seated were not noted.

WILLIAM conversed fluently and spontaneously on many topics, demonstrating good communication skills and verbal expression.

Instructions were followed carefully and understood without apparent difficulty. Repetition and emphasis was not needed.

When new tasks or new instructions were presented, there was no difficulty adjusting or responding appropriately, and no signs of emotional reactions or unexpected errors on early items.

WILLIAM made an adequate effort on most tasks, but reacted to failure without clear frustration or renewed effort. Motivation to succeed and perform well appeared to be, at best, minimal.

In general, it was assumed that a valid and reliable sample of true ability and optimal performance was obtained.

---

[illegible]chsler Intelligence Scale for Children - Revised (WISC-R)

| | IQ Scale Score | Confidence Interval | Range |
|---|---|---|---|
| Verbal IQ | 96 | 90 - 102 | Average |
| Performance IQ | 86 | 78 - 94 | Below Average |

Full Scale IQ 90 85 - 95 Average

Test scores change over time due to chance, error, and many other factors. The confidence interval indicates the probable range of scores which can be expected when this individual is retested.

| | National Percentile Rank | 0 25 50 75 100 |
|---|---|---|
| | | +----+----+----+----+----+----+----+----+ |
| Verbal IQ | 39 | ********** |
| Performance IQ | 18 | ******** |
| Full Scale IQ | 25 | ********** |

---

Differences between WISC-R scales

Verbal and Performance IQ scores not significantly different

Verbal IQ subtest scatter = 2 (normal variability)
Performance IQ subtest scatter = 9 (normal variability)
Full Scale IQ subtest scatter = 9 (normal variability)

---

| Subtest | Scaled Score | Diff mean | Perc Rank | Strength or Weakness |
|---|---|---|---|---|
| Information | 10 | +0.6 | 50 | nonsignificant |
| Similarities | 8 | -1.4 | 25 | nonsignificant |
| Arithmetic | 10 | +0.6 | 50 | nonsignificant |
| Vocabulary | 10 | +0.6 | 50 | nonsignificant |
| Comprehension | 9 | -0.4 | 37 | nonsignificant |
| Picture Completion | 9 | +1.0 | 37 | nonsignificant |
| Picture Arrangement | 8 | +0.0 | 25 | nonsignificant |
| Block Design | 6 | -2.0 | 9 | nonsignificant |
| Object Assembly | 4 | -4.0 | 2 | nonsignificant ** |
| Coding | 13 | +5.0 | 84 | STRENGTH * |

* difference occurs in less than 10 percent of population
** difference occurs in less than 5 percent of population

The column labelled 'Strength or Weakness' indicates whether a subtest score is a reliable, or true, difference from the other scores on that scale. Nonsignificant means that the subtest does not differ from the other scores for this youngster.

If a subtest score is marked with asterisks, the difference from the average of that scale is meaningful because it occurs rarely in the average population. This difference is a comparison to differences obtained by others, while the 'Strength or Weakness' label indicates how reliable the difference is expected to be.

---

WISC-R Deviation Quotients

| | National Percentile Rank | 0 25 50 75 100 |
|---|---|---|
| Verbal Comprehension | 39 | ********** |
| Perceptual Organiz. | 8 | **** |
| Verb/Perc total | 18 | ******** |

---

WISC-R subtest combination scores

Note: all of the following scores are listed as deviation quotients to make comparisons with IQ scores easier. The letters in parentheses stand for subtests used in the group calculations. These abbreviations are: IN = Information; SI = Similarities; AR = Arithmetic; VO = Vocabulary; CO = Comprehension; DS = Digit Span; PC = Picture Completion; PA = Picture Arrangement; BD = Block Design; OA = Object Assembly; CD = Coding.

Verbal (IN,SI,VO,CO) = 96
Perceptual (PC,PA,BD,OA) = 79

Verbal/Perceptual total = 86

Acquired Knowledge (IN,AR,VO) = 100
Reasoning (SI,AR,CO) = 94
Meaningful Stimuli (PC,PA,OA) = 81
Abstract Stimuli (BD,CD) = 97

Visual Organization (PC,PA) = 91
Visual-Motor Coordination (BD,OA,CD) = 85

Cognition/Spatial/Field Independence (PC,BD,OA) = 78
Convergent Production (PA,CD) = 103

Much Verbal Expression (SI,VO,CO) = 94
Longer Stimuli (IN,AR,CO) = 98
Simultaneous Processing (PC,BD,OA) = 78
Sequential Processing (PA,CD) = 103

Social Judgement (CO,PA) = 91

---

WISC-R Interpretation

To interpret these intelligence test scores, note that the Wechsler Intelligence Scale for Children has up to six subtests

for language and verbal skills (the Verbal IQ Scale) and up to six subtests for perceptual-motor or nonverbal problem-solving ability (the Performance IQ Scale). Subtests are based on an average scale score of ten for the child's age group. If a scaled score is significantly different from this child's other scores, it is noted in the table above and the paragraphs below.

Intelligence test scores reflect a sample of learning in several different skill areas, including factual knowledge, learned abilities, problem solving, memory, and attention. Therefore, the scores are generally good predictors of future learning and academic success. However, there are several factors which are not measured by this or other intelligence tests. These factors include motivation, curiosity, creative talent, work habits, study skills, and achievement in particular academic subjects. Learning potential and innate ability cannot be measured by any test. All of these factors should be taken into account along with other test scores when interpreting the results.

Scores on subtests requiring verbal comprehension abilities were generally higher than those on subtests which assess perceptual organization skills and nonverbal problem solving ability. Perceptual organization skills were consistently at a lower level than those which involved verbal, language, and auditory ability.

A significantly higher score on the Coding subtest, compared to other Performance scale subtests, may be due to excellent speed of eye-hand coordination, good visual short-term memory, or high motivation on this rote learning task.

Performance on tasks which involved abstract symbols or designs was superior to performance on problems which required knowledge of people or actual objects. This ability to manipulate abstract stimuli is related to the learning of mathematics and reading.

On the Performance scale, tasks which assessed convergent production, or responding within a limited context to find the correct response, were better than those which required figural cognition or solving problems of spatial relationships.

Scores on Performance scale subtests which assessed nonverbal sequential or successive processing skills were superior to those on which simultaneous or integrated ability was needed.

Educational Recommendations

Based upon the overall level of intelligence, it should be expected that academic performance can be within the average range in most achievement areas, and commensurate with that of most age and grade mates. This, of course, assumes that other problems or school factors do not contribute to any difficulty. The evaluation suggests that this youngster's typical school performance should fall within average age and grade limits.

A superiority of sequential over simultaneous mental processing

skills indicates that instruction should focus on the well developed strengths of logical, step-by-step thinking and using explicit rules and facts to help learning. Details and specific sequences of events are likely to be recalled better than the concepts and theses of a story or assignment. Comprehending the meaning by using a context, and generalizing or stating the idea of a passage are likely to be more difficult and may be a focus for future remediation after progress is made.

William Dickerson, Jr. June 26, 1990

William was referred for testing prior to his return to home after remaining at Tara Hall for 2 years. He had on the last home visit gotten drunk and had behaved in a manner that concerned his mother. During the clinical interview, it was determined that William lived in a neighborhood where alcohol/drugs were easily brought. William described the area that had poolhalls, bars, and shootings. His family all live within a small area in Charleston on the peninsula and have different family members in trouble. William was adamant that he would not participate in activities that could get him in trouble, however, he will be an exceptional young man if he could escape trouble.

The intelectual testing indicated normal/average funtioning with VIQ of 96, PIQ of 86, FSIQ of 90. This placed William in the average range of functioning. The educational programs at Tara Hall were obviously geared for William's logical thinking process and his need for structure with specific rules and guidelines. The public school system may not be as appropriate for William's style of learning. The overall exepectation in a public system, however, would be grade level/average grades for his placement.

Kay Rivers, Ph.D.

Applicant's
12 XD
12-7-15 ef

William Dickerson (13-9)

Verbal Verbal IQ = 96

Performance IQ = 86 Allegis IQ

Scale Full Scale IQ = 90

① Visual perceptual problem

② Needs enrichment EXposure / multisensory for exposure to

Work up for ultimate operation

Make up Cultural Deprivation

Wechsler Intelligence Scale
for Children—Revised

SCHOOL Tate Hall GRADE 7th
PLACE OF TESTING Tate Hall TESTED BY Ruin
REFERRED BY Dumm

## WISC-R PROFILE

Clinicians who wish to draw a profile should first transfer the child's scaled scores to the row of boxes below. Then mark an X on the dot corresponding to the scaled score for each test, and draw a line connecting the X's.*

| | VERBAL TESTS | | | | | | PERFORMANCE TESTS | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Information | Similarities | Arithmetic | Vocabulary | Comprehension | Digit Span | Picture Completion | Picture Arrangement | Block Design | Object Assembly | Coding | Mazes | |
| Scaled Score | | | | | | | | | | | | | Scaled Score |
| 19 | | | | | | | | | | | | | 19 |
| 18 | | | | | | | | | | | | | 18 |
| 17 | | | | | | | | | | | | | 17 |
| 16 | | | | | | | | | | | | | 16 |
| 15 | | | | | | | | | | | | | 15 |
| 14 | | | | | | | | | | | | | 14 |
| 13 | | | | | | | | | | | | | 13 |
| 12 | | | | | | | | | | | | | 12 |
| 11 | | | | | | | | | | | | | 11 |
| 10 | | | | | | | | | | | | | 10 |
| 9 | | | | | | | | | | | | | 9 |
| 8 | | | | | | | | | | | | | 8 |
| 7 | | | | | | | | | | | | | 7 |
| 6 | | | | | | | | | | | | | 6 |
| 5 | | | | | | | | | | | | | 5 |
| 4 | | | | | | | | | | | | | 4 |
| 3 | | | | | | | | | | | | | 3 |
| 2 | | | | | | | | | | | | | 2 |
| 1 | | | | | | | | | | | | | 1 |

*See Chapter 4 in the manual for a discussion of the significance of differences between scores on the tests.

| | Year | Month | Day |
|---|---|---|---|
| Date Tested | 90 | 5 | 28 |
| Date of Birth | | | |
| Age | 13 | 9 | 4 |

| | Raw Score | Scaled Score |
|---|---|---|
| **VERBAL TESTS** | | |
| Information | 19 | 10 |
| Similarities | 14 | 8 |
| Arithmetic | 14 | 10 |
| Vocabulary | 40 | 10 |
| Comprehension | 22 | 9 |
| (Digit Span) | ( ) | ( ) |
| Verbal Score | | 47 |
| **PERFORMANCE TESTS** | | |
| Picture Completion | 20 | 9 |
| Picture Arrangement | 26 | 8 |
| Block Design | 23 | 10 |
| Object Assembly | 13 | 4 |
| Coding | 69 | 13 |
| (Mazes) | ( ) | ( ) |
| Performance Score | | 40 |

| | Scaled Score | IQ |
|---|---|---|
| Verbal Score | 47 | 96 |
| Performance Score | 40 | 86 |
| Full Scale Score | 87 | 90 |

*Prorated from 4 tests, if necessary.

NOTES

William Glenn Dickerson, Jr.

Iowa Brie Arithmetic = 7.6 G.E.

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## 1. INFORMATION
Discontinue after 5 consecutive failures.

| | | Score 1 or 0 |
|---|---|---|
| | 1. Finger | 1 |
| | 2. Ear | 1 |
| | 3. Legs | 1 |
| | 4. Ball | 1 |
| 8 yrs | 5. Nickel | 1 |
| | 6. Cow | 1 |
| 13 yrs | 7. Week 7 | 1 |
| | 8. March Spri | 1 |
| | 9. Bacon Pig | 1 |
| | 10. Dozen 12 | 1 |
| 16 yrs | 11. Seasons S, F, W, S | 1 |
| | 12. America Columbus | 1 |
| | 13. Stomach Digests food | 1 |
| | 14. Sun S | 0 |
| | 15. Leap Year Spri | 0 |
| | 16. Bulb Franklin | 0 |
| | 17. 1776 Eng | 1 |
| | 18. Oil Lights | 1 |
| | 19. Border Canada, Mexico | 1 |
| | 20. Ton 2000 | 1 |
| | 21. Chile SA | 1 |
| | 22. Glass Plastic | 0 |
| | 23. Greece Athens | 1 14 |
| | 24. Tall 6'3" | 0 |
| | 25. Barometer Rain, Fair | 0 |
| | 26. Rust Steel | 0 |
| | 27. Los Angeles 5000 | 0 |
| | 28. Hieroglyphics Italian | 0 |
| | 29. Darwin | |
| | 30. Turpentine | |
| | Total | Max.=30 19 |

## 2. PICTURE COMPLETION
Discontinue after 4 consecutive failures.

8-16 yrs.

| | Score 1 or 0 | | Score 1 or |
|---|---|---|---|
| 1. Comb | 1 | 14. Playing Card 36 | 1 |
| 2. Woman | 1 | 15. Girl Running 34 | 1 |
| 3. Fox | 1 | 16. Coat | 1 |
| 4. Hand | 1 | 17. Boy 51 | 1 |
| 5. Cat | 1 | 18. Scissors 00 | 1 |
| 6. Mirror | 1 | 19. Girl 16 | 1 |
| 7. Clock 68 | 0 | 20. Screw 25 A | 0 |
| 8. Elephant 24 | 1 | 21. Cow 55 OT | 0 |
| 9. Ladder 35 | 1 | 22. Thermometer 28 | 0 |
| 10. Dresser 77 | 1 | 23. House 48 | 1 |
| 11. Belt 2 | 1 | 24. Telephone 58 | 0 |
| 12. Man 13 | 1 | 25. Profile 26 | 1 |
| 13. Door 70 | 1 | 26. Umbrella 35 OX | 0 |
| | | Total | Max.= 21 |

## 3. SIMILARITIES
Discontinue after 3 consecutive failures.

| | | Score 1 or |
|---|---|---|
| 1. Wheel—ball | roll, round, turn | 1 |
| 2. Candle—lamp | light | 1 |
| 3. Shirt—hat | put—have Body | 1 |
| 4. Piano—guitar | play music | 1 |
| 5. Apple—banana | eat / fruit | Score 2, 1 2 |
| 6. Beer—wine | dangerous, drink | 1 |
| 7. Cat—mouse | animals | 2 |
| 8. Elbow—knee | bone | 1 |
| 9. Telephone—radio | hear sounds | 0 |
| 10. Pound—yard | measure by | 2 |
| 11. Anger—joy | feeling | 2 |
| 12. Scissors—copper pan | Both made of copper | 0 |
| 13. Mountain—lake | U can go to Both | 0 |
| 14. Liberty—justice | Same thing | 0 |
| 15. First—last | | |
| *16. The numbers 49 and 121 | | |
| 17. Salt—water | | |

*If the child gives a 1-point response to item 16, say, "How else are the numbers 49 and 121 alike?"

Total Max. 14

## 4. PICTURE ARRANGEMENT

Discontinue after 3 consecutive failures.

| Arrangement | Time | Order | Score (Circle the appropriate score for each item.) |
|---|---|---|---|
| Sample [SAMPLE] | | | |
| 1. Fight 45" | 1 / 2 | | 0 1 (2) OUT |
| 2. Picnic 45" | 1 / 2 | | 0 1 (2) DOG |
| 3. Fire 45" | 1 / 2 19 | FIRE | 0 1 (2) FIRE |
| 4. Plank 45" | 1 / 2 14 | WALK | 0 1 (2) WALK |
| 5. Burglar 45" | 9 | THUG | 0 — 16.45: 3 / 11.15: 4 / 1.10: (5) THUG |
| 6. Sleeper 45" | 12 | RUSH | 0 — 16.45: 3 / (11.15: 4) / 1.10: 5 RUSH |
| 7. Artist 45" | 22 | VAMP | 0 — (16.45: 3) / 11.15: 4 / 1.10: 5 VAMP |
| 8. Lasso 45" | 35 | CAST | 0 — (16.45: 3) / 11.15: 4 / 1.10: 5 CAST |
| 9. Boat 60" | 50 | CHASE | 0 2 HCASE — (21.60: 3) / 11.10: 4 / 1.10: 5 CHASE |
| 10. Gardener 60" | 0X 73 | MSWOR | (0) 2 WROMS — 26.60: 3 / 16.25: 4 / 1.15: 5 WORMS |
| 11. Bench 60" | 32 | BCENH | (0) 2 BECHN — 26.60: 3 / 16.25: 4 / 1.15: 5 BENCH |
| 12. Rain 60" | 51 | COOLU | (0) 2 COLUD — 26.60: 3 / 16.25: 4 / 1.15: 5 CLOUD |

Sample item first.

Max.=48

Total 26

## 5. ARITHMETIC

Discontinue after 3 consecutive failures.

| Problem | Response | Score 1 or 0 |
|---|---|---|
| 1. 30" | | 1 |
| *2. 30" | | 1 |
| *3. 30" | | 1 |
| 4. 30" | | 1 |
| 5. 30" | | 1 |
| 6. 30" | | 1 |
| 7. 30" | | 1 |
| 8. 30" | 14 | 1 |
| 9. 30" | 7 | 1 |
| 10. 30" | 24 | 1 |
| 11. 30" | 77 | 1 |
| 12. 30" | 11 | 1 |
| 13. 30" | 9 | 1 |
| 14. 45" | 604 | 0 |
| 15. 45" | 18 | 1 |
| 16. 75" | 8 | 0 |
| 17. 75" | 82 | 0 |
| 18. 75" | 16 | 0 |

Max.=18

*Problems 2 and 3 are given ½ point each if child makes error but corrects it within time limit

Total

## 6. BLOCK DESIGN

Discontinue after 2 consecutive failures.

| Design | Time | Pass-Fail | Score (Circle the appropriate score for each design.) |
|---|---|---|---|
| 1. 45" | 1 / 2 | | 0 1 (2) |
| 2. 45" | 1 / 2 | | 0 1 (2) |
| 3. 45" | 1 / 2 14 | P | 0 1 (2) |
| 4. 45" | 23 | P | 0 — (21.45: 4) / 16.20: 5 / 11.15: 6 / 1.10: 7 |
| 5. 75" | 23 | P | 0 — (21.75: 4) / 16.20: 5 / 11.15: 6 / 1.10: 7 |
| 6. 75" | 62 | P | 0 — (21.75: 4) / 16.20: 5 / 11.15: 6 / 1.10: 7 |
| 7. 75" | 30 | P | 0 — 21.75: 4 / (16.20: 5) / 11.15: 6 / 1.10: 7 |
| 8. 75" | — | F | (0) — 26.75: 4 / 21.25: 5 / 16.20: 6 / 1.15: 7 |
| 9. 120" | — | F | (0) — 56.170: 4 / 26.55: 5 / 26.25: 6 / 1.25: 7 |
| 10. 120" | | | 0 — 76.170: 4 / 56.75: 5 / 41.55: 6 / 1.40: 7 |
| 11. 120" | | | 0 — 81.170: 4 / 56.80: 5 / 41.55: 6 / 1.40: 7 |

Max.= 62

Total 23

| 9. VOCABULARY Discontinue after 5 consecutive failures. | Score 2, 1, or 0 |
|---|---|
| 1. Knife | 2 |
| 2. Umbrella | 2 |
| 3. Clock | 2 |
| 4. Hat | 2 |
| 5. Bicycle | 2 |
| 6. Nail sthg. that used to use to hold cloth | 2 |
| 7. Alphabet abcd letter A - D | 2 |
| 8. Donkey similar to horse but smaller | 2 |
| 9. Thief someone who took sthg that doesn't belong to them | 2 |
| 10. Join to fix / to connect pieces | 2 |
| 11. Brave to be courageous | 2 |
| 12. Diamond sthg - expensive and that costs alot | 2 |
| 13. Gamble sth that is illegal done to get money | 2 |
| 14. Nonsense stupid / ridiculous | 2 |
| 15. Prevent to stop | 2 |
| 16. Contagious communicable disease | 2 |
| 17. Nuisance annoying | 2 |
| 18. Fable that not true | 1 |
| 19. Hazardous dangerous | 2 |
| 20. Migrate to move | 2 |
| 21. Stanza ? | 0 |
| 22. Seclude to avoid on | 0 |
| 23. Mantis ? | 0 |
| 24. Espionage ? | 0 |
| 25. Belfry ? | 0 |
| 26. Rivalry | |
| 27. Amendment | |
| 28. Compel | |
| 29. Affliction | |
| 30. Obliterate | |
| 31. Imminent | |
| 32. Dilatory | |
| | Max.=64 |
| Total | 40 |

## 8. OBJECT ASSEMBLY Give entire test to all children.

| Object | Time | Enter Number of Correctly Joined Cuts | Multiply by | Score (Circle the appropriate score for each item.) |
|---|---|---|---|---|
| Apple (SAMPLE) | | | | |
| 1. Girl 120" | 35 | (0-6) 4 | 1 | 0 1 2 3 **4** 5 [31-170 6] [21-30 7] [1-20 8] PERFECT ASSEMBLY |
| 2. Horse 150" | 121 | (0-5) 2 | 1 | 0 1 **2** 3 4 [36-150 5] [21-35 6] [16-20 7] [1-15 8] PERFECT ASSEMBLY |
| 3. Car 150" | 62 | (0-9) 6 | 1½* | 0 1 2 **3** 4 [31-150 5] [26-30 6] [16-25 7] [1-15 8] PERFECT ASSEMBLY |
| 4. Face 180" | 142 | (0-12) 8 | 1½* | 0 1 2 3 **4** 5 [76-180 6] [51-75 7] [36-50 8] [1-35 9] PERFECT ASSEMBLY |

*Round half-scores upward.

Max.=33

Total 13

## 9. COMPREHENSION Discontinue after 4 consecutive failures.

| | Score 2, 1, or 0 |
|---|---|
| 1. Cut finger Clean it put onto Bandaid | 2 |
| 2. Find wallet give it to Someone | 2 |
| *3. Smoke Bullied (2) war two | 2 |
| *4. Policemen ① fight crime ② Look for crook | 2 |
| 5. Lose ball Tell him she mother | 2 |
| 6. Fight watch ya | 2 |
| *7. Build house ① Put-two pieces ② paint fix | 2 |
| *8. License plate ① Tell you car ② stop I find the car | 2 |
| *9. Criminals ① dida crime ② Can B dizzy | 2 |
| 10. Stamps go PO know who to send at the car you | 0 |
| 11. Inspect meat drive / cook like Pizza | 2 |
| *12. Charity ① go to movie the 1 pm - help many people ② Mrs D dizzy | 2 |
| 13. Secret ballot so nobody can change your vote | 0 |
| *14. Paperbacks but the that ocay | 0 |
| 15. Promise U should go by your word | 0 |
| *16. Cotton Shirt | 0 |
| *17. Senators | |

*If the child replies with only one idea, ask him for a second response. Rephrase the test item appropriately, saying, "Tell me another thing to do (reason why, advantage of)...."

Max.=34

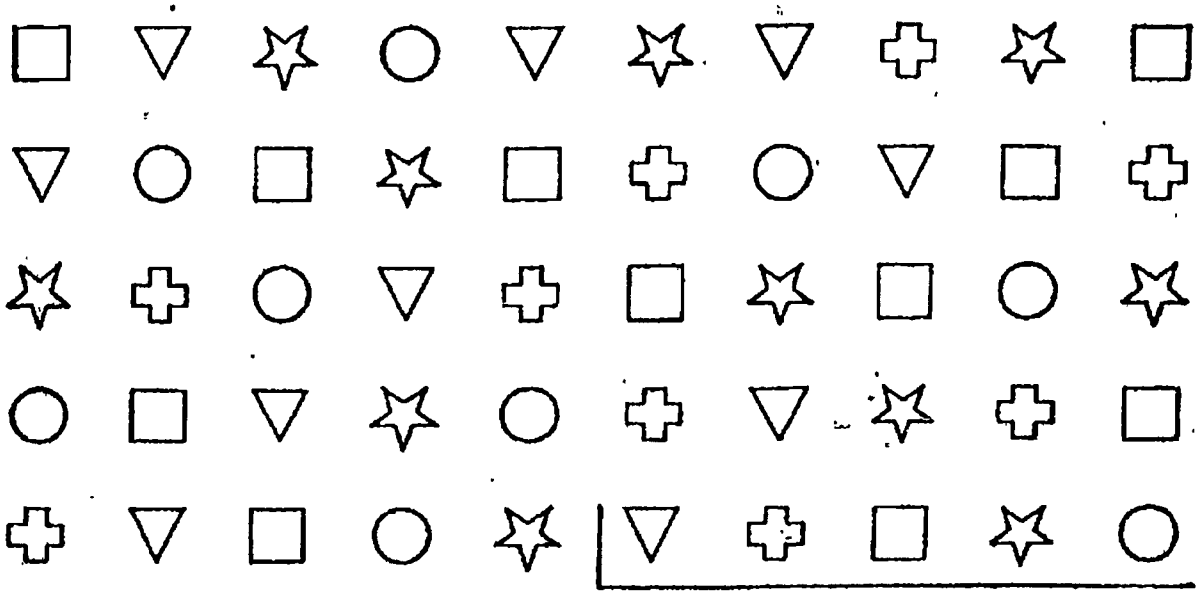
Total 22

## 10. CODING

| | Time | Score |
|---|---|---|
| A (for children under 8) 120" | | (0-50) |
| B (for children 8 & older) 120" | X | (0-93) |

CODING A
Score Including Time Bonus for Perfect Performance

| Time in Seconds | Score |
|---|---|
| 111-120 | 45 |
| 101-110 | 46 |
| 91-100 | 47 |
| 81-90 | 48 |
| 71-80 | 49 |
| 1-70 | 50 |



SAMPLE



A

B



SAMPLE

| | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 2 | 1 | 4 | 6 | 3 | 5 | 2 | 1 | 3 | 4 | 2 | 1 | 3 | 1 | 2 | 3 | 1 | 4 | 2 | 6 | 3 | 1 | 2 | 5 | 1 |
| 3 | 1 | 5 | 4 | 2 | 7 | 4 | 6 | 9 | 2 | 5 | 8 | 4 | 7 | 6 | 1 | 8 | 7 | 5 | 4 | 8 | 6 | 9 | 4 | 3 |
| 1 | 8 | 2 | 9 | 7 | 6 | 2 | 5 | 4 | 7 | 3 | 6 | 8 | 5 | 9 | 4 | 1 | 6 | 8 | 9 | 3 | 7 | 5 | 1 | 4 |
| 9 | 1 | 5 | 8 | 7 | 6 | 9 | 7 | 8 | 2 | 4 | 8 | 3 | 5 | 6 | 7 | 1 | 9 | 4 | 3 | 6 | 2 | 7 | 9 | 3 |

## 11. DIGIT SPAN (Optional)

Discontinue after failure on both trials of any item. Administer both trials of each item, even if child passes first trial.

**DIGITS FORWARD**

| | Trial 1 | Pass-Fail | Trial 2 | Pass-Fail | Score 2, 1, or 0 |
|---|---|---|---|---|---|
| 1. | 3-8-6 | P | 6-1-2 | P | 2 |
| 2. | 3-4-1-7 | P | 6-1-5-8 | P | 2 |
| 3. | 8-4-2-3-9 | P | 5-2-1-8-6 | P | 2 |
| 4. | 3-8-9-1-9-4 | F | 7-9-6-4-8-3 | P | 1 |
| 5. | 5-1-7-4-2-3-8 | P | 9-8-5-2-1-6-3 | F | 1 |
| 6. | 1-6-4-5-9-7-6-3 | F | 2-9-7-6-3-1-5-4 | F | 0 |
| 7. | 5-3-8-7-1-2-4-6-9 | | 4-2-6-9-1-7-8-3-5 | | |

Max.=14

Total Forward: 8

Administer DIGITS BACKWARD even if child scores 0 on DIGITS FORWARD.

**DIGITS BACKWARD**

| | Trial 1 | Pass-Fail | Trial 2 | Pass-Fail | Score 2, 1, or 0 |
|---|---|---|---|---|---|
| 1. | 2-5 | P | 6-3 | P | 2 |
| 2. | 5-7-4 | F | 2-5-9 | P | 1 |
| 3. | 7-2-9-6 | F | 8-4-9-3 | P | 1 |
| 4. | 4-1-3-5-7 | F | 9-7-8-5-2 | F | 0 |
| 5. | 1-6-5-2-9-8 | | 3-6-7-1-9-4 | | |
| 6. | 8-5-9-2-3-4-2 | | 4-5-7-9-2-8-1 | | |
| 7. | 6-9-1-6-3-2-5-8 | | 3-1-7-9-5-4-8-2 | | |

Max.=14

Total Backward: 4

Max.=28

8 + 4 = 12

Forward Backward Total

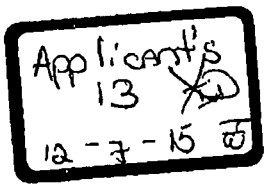
## 12. MAZES (Optional)

Discontinue after 2 consecutive failures.

| | Maze | Maximum Errors | Errors | Score (Circle the appropriate score for each maze.) |
|---|---|---|---|---|
| | SAMPLE | | | |
| 1. | 30" | 1 | | 0 / 1 Error 1 / 0 Errors 2 |
| 2. | 30" | 1 | | 0 / 1 Error 1 / 0 Errors 2 |
| 3. | 30" | 1 | | 0 / 1 Error 1 / 0 Errors 2 |
| 4. | 30" | 2 | | 0 / 2 Errors 1 / 1 Error 2 / 0 Errors 3 |
| 5. | 45" | 2 | | 0 / 2 Errors 1 / 1 Error 2 / 0 Errors 3 |
| 6. | 60" | 3 | | 0 / 3 Errors 1 / 2 Errors 2 / 1 Error 3 / 0 Errors 4 |
| 7. | 120" | 3 | | 0 / 3 Errors 1 / 2 Errors 2 / 1 Error 3 / 0 Errors 4 |
| 8. | 120" | 4 | | 0 / 4 Errors 1 / 3 Errors 2 / 2 Errors 3 / 1 Error 4 / 0 Errors 5 |
| 9. | 150" | 4 | | 0 / 4 Errors 1 / 3 Errors 2 / 2 Errors 3 / 1 Error 4 / 0 Errors 5 |

Max.=30

Total




**SOUTH CAROLINA DEPARTMENT OF YOUTH SERVICES**
**RECEPTION AND EVALUATION CENTER**
**SOCIAL WORK REPORT**

**NAME:** William Dickerson, Jr. **DATE:** September 14, 1992

**MIS#:** 114980 **AGE:** **DOB:**

**CURRENT OFFENSE**

Failed to Undergo a Community Evaluation Ordered by the Court (for Incorrigibility)

**COURT SUMMARY**

William was court-ordered for a community evaluation. However, he did not show up.

According to William's story, the reason for the need for a psychological evaluation was that he stayed out late or did not come home at all, he would not listen to his mother and just gave her an overall, hard time. He admitted that he did not "show up" for the court-ordered evaluation.

It should be noted that this young man expressed no insight into the reasons for his behavior nor did he express any plans to change.

Previous court history indicates that William was placed on probation in April, 1991, and ordered to pay restitution for Receiving Stolen Goods. He was released from probation in February, 1992. This is his first commitment to R&E.

**NEEDS ASSESSMENT**

**Substance Abuse**

William indicated that he drinks beer on a very casual, "once-in-a-while basis". He denied that he has ever used any form of illegal substances.

**Living Arrangement/Family Function**

Prior to commitment to R&E, William was living with his mother, stepfather, and eleven year old brother. His mother is employed as a housekeeper; his stepfather is a truck driver; they have been married since last Thanksgiving. Family functioning seems to very strained at this time, since, according to William, they seem to give each other the "silent treatment/cold shoulder". Evidently, this contributes to the stressful character of the household, particularly since William is very quick to blame his stepfather for wanting to "run the whole house".

Apparently, William is feeling very displaced from his former role of "kingpen", and seems rather jealous of the new stepfather. When this possibility was discussed, William was very quick to relate to the description of what was going on,

and seemed to have new insight into the situation. He did state that he would consider giving his stepfather more of a chance to fit into a father role, and try not to be so critical of him. Although much of the family functioning revolves around this particular relationship, William did state that he has an excellent relationship with his eleven year old brother, and apparently, is very protective of the boy. William reported that he has never had any outside placements nor has he ever received previous counseling. This family would probably benefit from family counseling in order to smooth out the family roles and expectations.

**School/Employment**

William is currently enrolled in Burke High School, where he will be repeating the ninth grade. By his own report, he has never failed another grade. Concerning his failure of the ninth grade, William attributes this to his disturbing behavior and other distractions. Apparently, his relationship with teachers this year left a bit to be desired. His attendance, reportedly, is acceptable. He acknowledged having only one suspension this year and that was for fighting.

**Emotional Stability**

A synthesis of testing and observation indicates William to be functioning in the low average range of intellectual ability, with very good reading skills. Testing was suggestive of a young man who is very angry, resulting in oppositional and impulsive behavior. It was further indicated that William possesses very poor planning abilities, resulting in his acting without giving thought to consequences. Underlying anxiety and an emotional inaccessibility may be the result of his emotional needs not being met. In view of this information, William would probably respond to individual and/or group counseling focused on anger management and reducing impulsivity.

**Peer Associations**

William reported that most of his friends are older than he. Most of them are about seventeen years old. Activities usually revolve around sports, particularly basketball. William noted that he has a seventeen year old girlfriend, with whom he is sexually active; they use protection.

**BEHAVIORAL OBSERVATIONS**

William was reported to have made a very good adjustment to the structure of the R&E Center. His Residential Life evaluation indicated him to be mild-tempered and very easygoing. It was further noted that he has excellent work habits, and a very good sense of responsibility. William was observed to mix very well with peers and participated in most activities. William had a very good relationship with staff, and as such, his attitude toward supervision was considered excellent.

In the academic program at R&E, William was reported to have adjusted very well. He was considered to have excellent behavior, adhering to rules, respecting staff and peers, and accomplishing very satisfactory class work.

**RECOMMENDATIONS**

The following dispositional and placement recommendations were formulated in consultation with the case psychologist:

___ Diversion ___ Suspended Commitment ___ Monetary Restitution

_X_ Probation ___ Commitment ___ Community Service

_X_ Home Placement ___ Alternative Placement ___ DYS Institution

1. It is recommended that William be placed on probation with the Department of Youth Services (Charleston County), with the recommendation that he be closely monitored in the home, school and community; a curfew is in order.

   It is also recommended that William's attendance at weekly family counseling sessions be made a requirement of his probation.

2. Concurrent with his return to the home, it is recommended that William, along with his mother and stepfather, be referred to family counseling at the local Mental Health facility.

**NOTE:** Additional treatment recommendations are presented in the attached Psychological Evaluation.

Gracemarie Kehoe, M.S.
Social Worker

Terry L. Fender, LMSW
Director of Social Work

GK/cem

Applicant's 14 12-7-15

SOUTH CAROLINA DEPARTMENT OF YOUTH SERVICES
PSYCHOLOGICAL EVALUATION

William Eugene Dickerson #132008 8/9/92

Referral Statement:

This student was referred for psychological evaluation because of commitment and this report was prepared as part of an overall evaluation by the R&E Center. Recommendations and observations contained herein have been considered by the R&E Treatment Team in the determination of the final recommendation as presented in the Evaluation Summary.

Identifying Information:

William Dickerson is an 16 year old male from Charleston, South Carolina who was committed to the R&E Center on 8-13-92 for the offense of Failing to Undergo a Community Evaluation Ordered by the Court. He was seen for the present psychological evaluation on 8-24-92. No specific referral questions were asked.

Sources of Information:

Wechsler Adult Intelligence Scale-Revised (WAIS-R)
Human Figure Family Drawings
California Achievement Test
Bender-Gestalt Visual Motor Test
Clinical Interview
Behavioral Observations
DYS Files
House-Tree-Person Projective Test
Rotter Incomplete Sentences Blank
Mooney Problem Check List

Background Information:

William stated that he was living with his mother in Charleston prior to commitment. Also living in the home are his stepfather and his 11 year old brother. Reportedly, he often argues with his mother and stepfather who "fuss" when he misbehaves; he denied ever being abused. William stated that he does not remember his father who was divorced from his mother when William was an infant.

William stated that he failed the ninth grade at Burke High School last year. This is reportedly the only grade that he has failed. He has never had a special placement and has always attended "regular classes." William stated that he was suspended from school once last year for fighting. Reportedly, he

has several friends who are generally older than him (17 to 18 years old) and is sexually active; he stated that he uses birth control. William stated that he has consumed about two beers on "three or four" occasions but denied any other illicit drug use. Reportedly, he has never received counseling or mental health treatment.

William stated that his charge is the result of "not staying home", he also reported that "sometimes I wouldn't come home at night." He admitted not reporteding for an evaluation as ordered bu the court. William was placed on probation and ordered to make restitution for two counts of Receiving Stolen Goods in April of 1991. He was released from probation in February of this year.

Behavioral Observations:

William presented for the interview as an individual of average height and muscular build who was appropriately attired for the situation in state clothing. He generally appeared to be in good health and denied any history of serious injuries or illnesses. William's affect was appropriate to the content of his speech during the interview and he denied ever being seriously depressed or experiencing suicidal ideation. His speech was logical, coherent and well ordered and was not suggestive of a thought disorder. He denied ever experiencing hallucinations and no evidence of delusional ideation was noted. William answered all questions but in a hesitant, slow manner and did not initiate conversation with the examiner. He did not express insight into the reasons for his behavior or plans to change. William generally appeared to put forth his best efforts in taking the test measures.

Test Results and Interpretation:

William achieved a full-scale IQ of 83 (Verbal = 81; performance = 89) on the WAIS-R which is suggestive of low average intellectual functioning. Among the subtests his highest achievement was in the area of psycho-motor speed while his chief relative weakness was on a task tapping common sense reasoning. William's California Achievement Test score indicates that his reading ability is between the 8.6 and 10.9 grade levels which is consistent with his latest placement. William's reproduction of two dimensional geometric designs on the Bender-Gestalt was generally accurate and offered no evidence of perceptual-motor impairment.

A synthesis of all available data suggests that William generally has the ability to interpret his environment in a conventional manner and no evidence of psychotic functioning was noted. He appears to an angry young man who may express this anger overtly in the form of oppositional behavior. He is impulsive, possesses poor planning abilities and tends to act without thought of the consequences of his behavior. The data further suggest that William is emotionally inaccessible and unlikely to reveal his true feelings to others. He tends to be anxious in social situations and has dependency needs which are presently frustrated.

Summary and Recommendations:

William Dickerson is a 16 year old male from Charleston who was recently committed to the R&E Center for the offense of Failing to Undergo a Community Evaluation Ordered by the Court. William lives with his mother and stepfather in Charleston. He failed the ninth grade at Burke High School during the past school year. Test data suggest that William is an individual of low average intelligence whose reading ability is consistent with his latest placement. The data further suggest that William is angry, emotionally inaccessible, and impulsive.

Recommendations:

1. Referral to a Marine Institute program is recommended.

2. Probation with regular meetings with a probation counselor is recommended.

3. Individual and/or group counseling with the goals of anger management and reducing impulsivity is recommended.

4. Family therapy involving William, his mother and stepfather is recommended.

Jack E. Crawford, M.A.
Psychologist

Edwin Hearon, Ph.D.
Supervising Psychologist

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**JEFFREY P. BLOOM**
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CELL # (803) 261-4576

TO: Joseph Savitz, Chief Attorney – Office of Appellate Defense

From: Jeff Bloom, Trial Counsel

Date: This Memo UPDATED as of July 22, 2009

RE: State v. William O. Dickerson, Jr.
Death Penalty Appeal
Charleston County

ENCLOSURES:
Notice of Intent to Appeal
Letter to Court Reporter for Trial Transcripts
Indictments, Notice of Aggravating Circumstances & Supp. Notice
Motion for New Trial, & Pre-Trial Motions
Transcript of Pre-Trial Motion Hearing of April 3, 2009

Court proceedings:

| | |
|---|---|
| Designated Trial Judge: | R. Markley Dennis, Jr. |
| Court Reporter for all proceedings: | Deborah Garrison, CCR<br>J [illegible]<br>(864) 350-7548<br>dgarrison@sccourts.org |
| Pre-Trial Motion Hearings: | April 3, 2009 (transcript enclosed) |
| Jury Trial & Sentencing: | April 17, 2009 – Jury Qualifications *<br>April 20 – 22, 2009 – Jury Voir Dire *<br>April 23 – 30, 2009 – Trial Phase *<br>May 1, 2009 – Motion Hearing *<br>May 4 –7, 2009 – Sentencing Phase * |
| Motion for New Trial Filed: | May 15, 2009 (copy enclosed) |
| Motion for New Trial Heard: | July 7, 2009 – Motion Hearing * |
| Notice of Appeal Filed: | July 15, 2009 (copy enclosed) |

* A Transcript has been requested as to the above court hearings (letter enclosed).

Please note the following potential appellate issues, from my trial notes:

I. Pre-Trial Motions.

1. Motion to Prohibit State from using 12-7-08 assault incident at the jail

   This was based on a "pattern of conduct allegation" in which several inmates signed affidavits, and some testified, as to abuses by certain county detention officers. The defense maintained that the guards initiated the 12-7-08 incident and that the defendant did not assault anyone.

2. Motion to Prohibit the Death Penalty based on Unconstitutional Proportionality Review

   The argument is that the S.C. Supreme Court fails to engage in a proper proportionality review because: 1. The Court only looks at other capital cases and not all similar homicides; 2. The Court conducts a perfunctory review; 3. The Court has never found a case not proportional. *It is recommended this issue be included in the state appeal and thus preserved for possible federal review.*

3. Motion to Dismiss CSC as "Late" Indictment, and as an Aggravator

   The State waited until almost 3 years, and just a few months before trial, before indicting the defendant for CSC, and adding it as an aggravating circumstance.

4. Motion to Bar the death penalty based on Race

   It appeared that the State sought the death penalty initially due to a high number of homicides in Charleston in 2006, and that the State needed a capital case with a black victim. However, the defense uncovered no "hard" evidence of the State's intent on this issue.

II. Jury Voir Dire.

5. The trial court qualified juror # 370 (Hood;-W/M) over defense objection. The juror was seated; although, the defense had a strike it was being saved for later "worse" jurors.

6. Several jurors were disqualified for their views against the death penalty. But stated that their views were based on a religious belief. An objection was made as to their disqualification on 1st Amendment grounds, as well as 5th, 6th, 8th, & 14th Amendments. Jurors # 280 (Singleton; B/F); 65 (Deas: B/M); 392 (Simmons; B/F).

III. Trial Phase.

7. Witness: Kimberly Gregg
   Objection was made under Rule 402, 403 & 404, when the witness testified in detail as to a criminal domestic violence incident (days before the homicide) involving the defendant's girlfriend, Tomeisha "Shelley" Nelson. Shelley had been allowed, without defense objection, to testify in a limited manner as to the incident, but witness Gregg was allowed to go into more detail, specifically including Shelley's injuries.

8. Witness: Dr. Cynthia Schandl, pathologist for the State
   The defense was not allowed to cross-examine the witness that the victim's urine initially tested positive for cocaine. A proffer was made on the record.

9. Witness: Armon Dickerson; codefendant (and brother of defendant)
   Trial court allowed State to submit witness' prior written/transcribed statement despite objection under Rule 801(d), and *State v. Saltz* and *State v. Foster.*

10. Witness: Rashid Malik AKA Derrick Jenkins AKA "Popcorn"; codefendant
    Trial court allowed State to submit witness' prior written/transcribed statement despite objection under Rule 801(d), *State v. Saltz* and *State v. Foster.*

11. Court refused to submit Accessory Before the Fact to Murder, and Accessory After the Fact to Murder, as lesser-included offenses.

- A written Motion for New Trial was filed on May 15, 2009 (copy enclosed). The main basis as cited in the Motion and argued to the trial court was the court's failure to instruct the jury as to Accessory Before and After the Fact to Murder and the *Gentry* issue. This matter was heard with the trial court on July 7, 2009, and denied by oral order of the court.

IV. Penalty Phase.

12. Allowing probation officer to testify that 13 years ago at an administrative hearing the defendant stated he "wished he had shot them" referring to the police officers in a 1996 case where defendant had pointed a firearm at police, and the police shot the defendant.

    The defense objected because the allegation was contained in a confidential report which the defendant had never seen in 1996, and thus had no opportunity in 1996 to respond. An objection was made per due process, and analogized to *Gardner v. Florida*, in that the defendant had no opportunity to deny, rebut or explain.

13. Photos at autopsy.

    Objection was made, though the trial court found that each of the 15 photos showed a different part on the victim's body involving wounds from torture.

14. Renewed the proffer as to Dr. Schandl and the victim initially testing positive for cocaine in his urine.

15. Witness: Jim Aiken – adjustment to prison / defense expert

    State was allowed, over objection, to go into some specific county jail and SCDC incidents on cross-examination, even though the trial court had previously denied this except for the 12-7-08 incident at the county jail.

16. Witness: Robert Phillips, forensic psychiatrist / defense expert

    State was allowed, over objection, to ask witness if the defendant "knew what he did was wrong." The defense had objected in that this is in essence the insanity test for "right/wrong" and is not the proper standard for the jury's consideration at sentencing.

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# When Lightning Strikes Back: South Carolina's Return to the Unconstitutional Standardless Capital Sentencing Regime of the Pre-Furman Era

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# WHEN LIGHTNING STRIKES BACK: SOUTH CAROLINA'S RETURN TO THE UNCONSTITUTIONAL, STANDARDLESS CAPITAL SENTENCING REGIME OF THE PRE-*FURMAN* ERA

*John H. Blume*[*]
*Sheri L. Johnson*[**]
*Emily C. Paavola*[***]
*and*
*Keir M. Weyble*[****][1]

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## I. INTRODUCTION

> These death sentences are cruel and unusual in the same way that being struck by lighting is cruel and unusual. . . . [T]he petitioners are among a capriciously selected random handful upon whom the sentence of death has in fact been imposed.[2]

In 1972, the United States Supreme Court held, in *Furman v. Georgia*,[3] that Georgia's death penalty statute violated the Cruel and Unusual Punishments Clause of the Eighth Amendment because it gave judges and jurors "untrammeled discretion"[4] to

2. Furman v. Georgia, 408 U.S. 238, 309–10 (Stewart, J., concurring).
3. 408 U.S. 238 (1972) (per curiam).
4. *Id.* at 247 (Douglas, J., concurring).



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decide which defendants should be sentenced to death. The pre-*Furman* era of capital sentencing in America was characterized by a standardless sentencing regime resulting in death sentences that were "wantonly and . . . freakishly imposed"[5] in that there was no "rational basis that could differentiate . . . the few who die from the many who go to prison."[6] For the "capriciously selected random handful"[7] chosen to die, it was akin to being "struck by lightning."[8] Justice Stewart further observed that, "if any basis can be discerned for the selection of these few . . . , it is the constitutionally impermissible basis of race."[9] The decision in *Furman* effectively created a moratorium on the death penalty for those states (including South Carolina) that had death penalty statutes similar to Georgia's. Several states attempted to draft new death penalty statutes in accordance with the constitutional principles articulated in *Furman*.

In 1976, the Supreme Court approved of Georgia's revamped death penalty statute in *Gregg v. Georgia*.[10] The Court pointed to three features of Georgia's new statute that were critical to its acceptance: (1) it narrowed the class of defendants eligible for the death penalty by providing ten aggravating circumstances, "one of which must be found by the jury to exist beyond a reasonable doubt before a death sentence can ever be imposed";[11] (2) it required the jury to consider the particular circumstances of the crime and the defendant before it was permitted to make its sentencing recommendation;[12] and (3) it included the "important additional safeguard"[13] of requiring the state supreme court to determine whether a sentence had been "imposed under the

5. *Id.* at 310 (Stewart, J., concurring).
6. *Id.* at 294 (Brennan, J., concurring).
7. *Id.* at 309–10 (Stewart, J., concurring).
8. *Id.* at 309.
9. *Id.* at 310.
10. 428 U.S. 153 (1976).
11. *Id.* at 196–97.
12. *Id.* at 197; *see also id.* ("No longer can a Georgia jury do as Furman's jury did: reach a finding of the defendant's guilt and then, without guidance or direction, decide whether he should live or die.").
13. *Id.* at 198.



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influence of passion or prejudice, whether the evidence supports the jury's finding of a statutory aggravating circumstance, and whether the sentence is disproportionate compared to those sentences imposed in similar cases."[14]

In response to *Gregg*, South Carolina passed its own death penalty statute essentially identical to the one that the Supreme Court approved of in *Gregg*.[15] However, through legislative expansion of the statute and judicial interpretation over the years, South Carolina has failed to adhere to the constitutional standards set forth in *Furman* and *Gregg*, thus reverting to a pre-*Furman* death penalty scheme. South Carolina's current death penalty statute makes virtually every murderer eligible for the death penalty. . The statute's failure to limit the death penalty to only the most extreme and egregious cases returns the decision to the hands of solicitors, judges, and jurors and renders South Carolina's system susceptible to impermissible inequities among defendants and abuses of discretion by state officials. Compelling empirical evidence shows significant racial effects in capital sentencing decisions in South Carolina. Furthermore, the South Carolina Supreme Court has failed to correct these flaws through meaningful proportionality review. Consequently, the death penalty in South Carolina is currently imposed in an unconstitutionally arbitrary and capricious manner.[16]

---

14. *Id.*

15. *See* State v. Shaw, 255 S.E.2d 799, 802 (S.C. 1979) (describing South Carolina's 1977 death penalty statute as "patterned after the death penalty statutes of our sister state Georgia"). South Carolina, like several other states, had previously responded to *Furman* by adopting a mandatory death penalty for certain classes of offenders. These statutes were quickly struck down, however, as constitutionally defective for a variety of reasons. *See, e.g.*, Woodson v. North Carolina, 428 U.S. 280 (1976); State v. Rumsey, 226 S.E.2d 894, 895 (S.C. 1976). For a more detailed history of the death penalty in South Carolina, see John H. Blume, *Twenty-Five Years of Death: A Report of the Cornell Death Penalty Project on the Modern "Era" of Capital Punishment in South Carolina*, 54 S.C. L. REV. 285 (2002).

16. We note that we are not the first to observe the general regression toward a pre-*Furman* era. Others have pointed out this trend in some of South Carolina's sister states. *See, e.g.*, Bill Rankin et al., *A Matter of Life or Death:*



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Part II of this Article provides a historical overview of the judicial and legislative expansion of South Carolina's death penalty statute. Part III discusses empirical data demonstrating the statute's failure to narrow the class of offenders eligible for the death penalty. Part IV examines and provides empirical data on how this failure to narrow creates an opportunity for race to continue to play an impermissible role in the life-or-death decision, as it has historically. Part V explains how the South Carolina Supreme Court has failed to fulfill its constitutional duty to provide meaningful proportionality review. Finally, Part VI uses a case example to demonstrate that there is no rational basis distinguishing the few who die from the many who do not. Thus, this Article concludes that South Carolina's current death penalty scheme is unconstitutional.

## II. HISTORICAL OVERVIEW: THE LEGISLATIVE AND JUDICIAL EXPANSION OF SOUTH CAROLINA'S CAPITAL SENTENCING STATUTE

### A. Relevant Legal Background

Prior to 1972, states were free to make capital punishment available as a sentencing option for any murder or other "capital" offense and to leave the determination of whether to actually impose a death sentence entirely to the discretion of jurors in individual cases.[17] Although juries exercising this unbridled

*Death Still Arbitrary*, ATLANTA J. CONST., Sept. 23, 2007, at A1 (reporting that 56% of all murders in a decade studied in Georgia were eligible for death, including hundreds of moderately aggravated cases); John Seigenthaler, *Deeper Look Shows Even More Cases of Unequal Justice*, TENNESSEAN, Jan. 10, 2010 (reporting on the striking differences in sentences that state judges and juries gave women convicted of killing their abusive husbands in Tennessee); *see also* Kristen Nugent, *Proportionality and Prosecutorial Discretion: Challenges to the Constitutionality of Georgia's Death Penalty Laws and Procedures Amidst the Deficiencies of the State's Mandatory Appellate Review Structure*, 64 U. MIAMI L. REV. 175 (2009) (arguing that Georgia's capital sentencing scheme is unconstitutional for many of the same reasons discussed herein—particularly, the Georgia Supreme Court's failure to conduct a meaningful proportionality review).

17. *See generally* McGautha v. California, 402 U.S. 183 (1971).



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discretion were thus free to impose death sentences in large numbers of cases, they actually imposed it in only a small fraction of the cases in which they could have done so.[18] Over time, the infrequency and randomness with which juries were imposing the death penalty raised concerns that it was being administered arbitrarily and that jurors' determinations of whether a defendant would live or die were turning on discriminatory factors such as race, religion, and economic or social standing.

These concerns over arbitrariness and discrimination in the administration of the death penalty culminated in *Furman v. Georgia*, where the Supreme Court held that sentences imposed under the standardless, entirely discretionary statutes then in use across the country "constitute[d] cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments."[19] Although *Furman* resulted in separate opinions from all nine Justices, the risk of arbitrariness and discrimination inherent in a system with no mechanism for objectively separating those who should suffer death from those who should not was a central consideration for each of the Justices who voted to strike down the existing statutes.[20] As the

18. *Id.* at 203–04.

19. Furman v. Georgia, 408 U.S. 238, 239–40 (1972) (per curiam).

20. *See id.* at 255 (Douglas, J., concurring) ("Yet we know that the discretion of judges and juries in imposing the death penalty enables the penalty to be selectively applied, feeding prejudices against the accused if he is poor and despised, and lacking political clout, or if he is a member of a suspect or unpopular minority, and saving those who by social position may be in a more protected position."); *id.* at 256–57 ("Thus, these discretionary statutes are unconstitutional in their operation. They are pregnant with discrimination and discrimination is an ingredient not compatible with the idea of equal protection of the laws that is implicit in the ban on 'cruel and unusual' punishments."); *id.* at 294 (Brennan, J., concurring) ("When the rate of infliction is at this low level, it is highly implausible that only the worst criminals or the criminals who commit the worst crimes are selected for this punishment. No one has yet suggested a rational basis that could differentiate in those terms the few who die from the many who go to prison."); *id.* at 309–10 (Stewart, J., concurring) ("These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. For, of all the people convicted of rapes and murders in 1967 and 1968, many just as reprehensible as these, the



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Court later observed,

> [b]ecause of the uniqueness of the death penalty, *Furman* held that it could not be imposed under sentencing procedures that created a substantial risk that it would be inflicted in an arbitrary and capricious manner. . . . [T]he concerns expressed in *Furman* . . . can be met by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance.[21]

Some states, including South Carolina, responded to *Furman*'s concerns over sentencer discretion by simply eliminating that discretion altogether in favor of mandatory death sentences for certain classes of offenders. These statutes, however, were quickly rejected as incompatible with "contemporary standards" and as inadequate "to provide a constitutionally tolerable response to *Furman*'s rejection of unbridled jury discretion in the imposition of capital sentences."[22] Other states addressed the problems identified in *Furman* by crafting new capital punishment procedures designed to limit and guide the discretion of decision makers in capital cases. The first such procedure to be reviewed and endorsed by the Supreme

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petitioners are among a capriciously selected random handful upon whom the sentence of death has in fact been imposed. . . . [I]f any basis can be discerned for the selection of these few . . . , it is the constitutionally impermissible basis of race. . . . I simply conclude that the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed.") (footnotes omitted); *id.* at 313 (White, J., concurring) ("[T]he death penalty is exacted with great infrequency even for the most atrocious crimes and . . . there is no meaningful basis for distinguishing the few cases in which it is imposed from the many cases in which it is not."); *id.* at 365 (Marshall, J., concurring) ("Racial or other discriminations should not be surprising. In *McGautha v. California*, 402 U.S., at 207, this Court held 'that committing to the untrammeled discretion of the jury the power to pronounce life or death in capital cases is [not] offensive to anything in the Constitution.' This was an open invitation to discrimination.") (alteration in original).

21. Gregg v. Georgia, 428 U.S. 153, 189 (1979) (opinion of Stewart, Powel & Stevens, JJ.).

22. Woodson v. North Carolina, 428 U.S. 280, 301–02 (1976); *see also* State v. Rumsey, 226 S.E.2d 894, 895 (S.C. 1976) (striking down South Carolina's mandatory death penalty statute as "constitutionally defective" in light of *Woodson*).



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Court was Georgia's in *Gregg v. Georgia*.[23] The Georgia statutory scheme included three features that proved critical to its acceptance in *Gregg*. First, it worked "to narrow the class of murderers subject to capital punishment by specifying 10 statutory aggravating circumstances, one of which must be found by the jury to exist beyond a reasonable doubt before a death sentence can ever be imposed."[24] Second, it required particularized consideration of "the circumstances of the crime and the criminal" before the jury was permitted to make its sentencing recommendation.[25] And third, the Georgia scheme included the "important additional safeguard"[26] of an "automatic appeal,"[27] under which the state supreme court was required to determine whether a sentence had been "imposed under the influence of passion or prejudice, whether the evidence supports the jury's finding of a statutory aggravating circumstance, and whether the sentence is disproportionate compared to those sentences imposed in similar cases."[28] "On their face," the Court observed, "these procedures seem to satisfy the concerns of *Furman*."[29]

After *Gregg*, the Supreme Court continued to refine and add meaning to the principles upon which it had relied in upholding Georgia's sentencing scheme. Among the most prominent of those principles has been the requirement that a state's capital sentencing statute "define the crimes for which death may be the sentence in a way that obviates 'standardless [sentencing] discretion.'"[30] In *Godfrey v. Georgia*, enforcement of this principle required reversal of a Georgia death sentence based

23. 428 U.S. 153 (1976).

24. *Id.* at 196–97.

25. *Id.* at 197; *see also id.* ("No longer can a Georgia jury do as Furman's jury did: reach a finding of the defendant's guilt and then, without guidance or direction, decide whether he should live or die.").

26. *Id.* at 198.

27. *Id.*

28. *Id.*

29. *Id.*

30. Godfrey v. Georgia, 446 U.S. 420, 428 (1980) (quoting *Gregg*, 428 U.S. at 196 n.47) (alteration in original).



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solely on the statutory aggravating circumstance that the offense had been "outrageously or wantonly vile, horrible and inhuman."[31] The Court reasoned that the language of the aggravating circumstance was so broad and vague that "[a] person of ordinary sensibility could fairly characterize almost every murder as" falling within it, and therefore qualifies the defendant for a death sentence.[32] The Court went on to conclude that reversal of the defendant's death sentence was required because "[t]here is no principled way to distinguish this case, in which the death penalty was imposed, from the many cases in which it was not."[33]

In *Zant v. Stephens*,[34] the Court considered a claim that Georgia's capital sentencing scheme was inconsistent with *Furman* because, under Georgia law, "the finding of an aggravating circumstance does not play any role in guiding the sentencing body in the exercise of its discretion, apart from its function of narrowing the class of persons convicted of murder who are eligible for the death penalty."[35] After emphasizing once again that "an aggravating circumstance must genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder,"[36] the Court held that Georgia's decision to have its aggravating circumstances perform only that function was acceptable:

> Our cases indicate . . . that statutory aggravating circumstances play a constitutionally necessary function at the stage of legislative definition: they circumscribe the class of persons eligible for the death penalty. But the Constitution does not require the jury to ignore other possible aggravating factors in the process of selecting, from among that class, those defendants who will actually be sentenced to death. What is important at the selection stage is an *individualized*

31. *Id.* at 426.
32. *Id.* at 428–29.
33. *Id.* at 433.
34. 462 U.S. 862 (1983).
35. *Id.* at 874.
36. *Id.* at 877.



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> determination on the basis of the character of the individual and the circumstances of the crime.
>
> The Georgia scheme provides for categorical narrowing at the definition stage, and for individualized determination and appellate review at the selection stage.[37]

Over the nearly three decades since *Godfrey* and *Zant*, the Supreme Court has consistently adhered to and reinforced the constitutional requirement that statutory aggravating circumstances meaningfully narrow the class of murder defendants eligible for a death sentence.[38] Consistent with this

37. *Id.* at 878–79 (footnote and citations omitted); *see also id.* at 879 (noting that the two aggravating circumstances found by Stephens' jury "adequately differentiate this case in an objective, evenhanded, and substantively rational way from the many Georgia murder cases in which the death penalty may not be imposed.").

38. *See, e.g.*, Kansas v. Marsh, 548 U.S. 163, 173–74 (2006) ("[A] state capital sentencing system must: (1) rationally narrow the class of death-eligible defendants; and (2) permit a jury to render a reasoned, individualized sentencing determination based on a death-eligible defendant's record, personal characteristics, and the circumstances of his crime."); Buchanan v. Angelone, 522 U.S. 269, 275 (1998) ("In the eligibility phase, the jury narrows the class of defendants eligible for the death penalty, often through consideration of aggravating circumstances."); Tuilaepa v. California, 512 U.S. 967, 972 (1994) ("As we have explained, the aggravating circumstance must meet two requirements. First, the circumstance may not apply to every defendant convicted of a murder; it must apply only to a subclass of defendants convicted of murder."); Arave v. Creech, 507 U.S. 463, 474 (1993) ("If the sentencer fairly could conclude that an aggravating circumstance applies to *every* defendant eligible for the death penalty, the circumstance is constitutionally infirm."); Lowenfield v. Phelps, 484 U.S. 231, 244 (1988) ("The use of 'aggravating circumstances' is not an end in itself, but a means of genuinely narrowing the class of death-eligible persons and thereby channeling the jury's discretion."); Spaziano v. Florida, 468 U.S. 447, 460 (1984) ("If a State has determined that death should be an available penalty for certain crimes, then it must administer that penalty in a way that can rationally distinguish between those individuals for whom death is an appropriate sanction and those for whom it is not."). The Supreme Court of the United States has further limited the scope of the death penalty in recent decisions holding that persons with mental retardation and persons under the age of eighteen can not be sentenced to death. *See* Roper v. Simmons, 543 U.S. 551, 578–79 (2005) (under eighteen); Atkins v. Virginia, 536 U.S. 304, 321 (2002) (mental retardation). In doing so, the Court noted that the categorical exclusions were necessary in order to ensure "that only the most deserving of execution are put to death." *Atkins*, 536 U.S. at 319.



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unbroken line of precedent, the Court last Term once again reiterated the Eighth Amendment command "that resort to the [death] penalty must be reserved for the worst of crimes and limited in its instances of application."[39]

### B. South Carolina's Capital Sentencing Statute, as Written by the Legislature and Construed by the South Carolina Supreme Court, Does Not Perform the Constitutionally Mandated Narrowing Function

A state's capital sentencing scheme is constitutional only if its statutory aggravating factors genuinely and objectively narrow the class of murder offenders eligible for a sentence of death. South Carolina's scheme was constitutional at the time of its adoption in 1977 and likely remained so for some time thereafter. More recently, however, dramatic legislative expansion of the list of aggravating factors that make a murder death-eligible and sweepingly broad judicial constructions of several of those factors have combined to yield a set of death-eligibility criteria that can be met in nearly all murder cases. The result is that South Carolina's scheme for determining death eligibility today bears a much closer resemblance to the standardless regime outlawed in *Furman* than to the guided discretion approach accepted in *Gregg*.

39. Kennedy v. Louisiana, 554 U.S. ___, 128 S. Ct. 2641, 2665 (2008). Even strong supporters of capital punishment recognize the importance of applying it narrowly through eligibility criteria designed to objectively identify only the most deserving cases. *See, e.g.*, Alex Kozinski & Sean Gallagher, *Death: The Ultimate Run-On Sentence*, 46 CASE W. RES. L. REV. 1, 29 (1995) ("Increasing the number of crimes punishable by death, widening the circumstances under which death may be imposed, obtaining more guilty verdicts, and expanding the population of death rows will not do a single thing to accomplish the objective, namely to ensure that the very worst members of our society—those who, by their heinous and depraved conduct have relinquished all claim to human compassion—are put to death.") (footnote omitted); *id.* at 31 (criticizing "the current system, where we load our death rows with many more than we can possibly execute, and then pick those who will actually die essentially at random").



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### 1. Legislative Adoption and Expansion of South Carolina's Capital Sentencing Scheme

After South Carolina's post-*Furman* mandatory death penalty statute was struck down in the wake of *Woodson v. North Carolina*,[40] the legislature responded in 1977 with a new statutory scheme "patterned after the death penalty statutes of our sister state Georgia."[41] Like Georgia's system, South Carolina's capital sentencing mechanism purports to perform the constitutionally mandated narrowing function by conditioning a murder defendant's eligibility for a death sentence on the finding of at least one statutory aggravating factor.[42]

The original statute contained seven statutory aggravating factors.[43] The first of these aggravating factors included a list of subparts making a murder death-eligible if it occurred during the commission of any one of eight different offenses: rape, assault with intent to ravish, kidnapping, burglary, robbery while armed with a deadly weapon, larceny with use of a deadly weapon, housebreaking, and killing by poison. The remaining six statutory aggravating factors were: the murder was committed by a person with a prior conviction for murder; the offender "knowingly created a great risk of death to more than one person

40. 428 U.S. 280 (1976).

41. State v. Shaw, 255 S.E.2d 799, 802 (S.C. 1979). Both the Georgia and South Carolina statutes were modeled after the Model Penal Code, recommended by the American Law Institute in 1962. On April 15, 2009, however, the American Law Institute withdrew its support for its own statute, citing a variety of reasons including: "the difficulty of limiting the list of aggravating factors so that they do not cover (as they do in a number of state statutes now) a large percentage of murderers," and "the near impossibility of addressing by legal rule the conscious or unconscious racial bias within the criminal-justice system that has resulted in statistical disparity in death sentences based on the race of the victim." Report of the Council to the Membership of The American Law Institute on the Matter of the Death Penalty, Apr. 15, 2009, available at http://www.ali.org/doc/Capital%20Punishment_web.pdf.

42. *Shaw*, 255 S.E.2d at 802.

43. Act of June 8, 1977, No. 177, sec. 1, § 16-52(C)(a), 1977 S.C. Acts 407, 408.



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in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person"; the murder was committed for the purpose of receiving money or a thing of monetary value; the murder of a judicial officer, solicitor, or other officer of the court (current or former) during or because of the conduct of his or her official duties; the offender either committed or caused to be committed murder-for-hire; and the murder of a peace officer, corrections officer, or firefighter while engaged in the performance of his or her official duties.[44]

In the three decades since the original death penalty statute was passed, the legislature has expanded the list of aggravating factors on numerous occasions:[45]

- In 1978, physical torture was added to the list of concomitant crimes that made a murder death-eligible.[46]
- In 1986, the legislature added two more aggravating factors: "[m]urder wherein two or more persons are murdered by the defendant by one act or pursuant to one scheme or course of conduct,"[47] and murder of a child eleven years old or younger.[48]
- In 1990, the list was again expanded to include murder during the commission of drug trafficking[49] and murder of a family member of a judicial officer, a peace

44. Sec. 1, §§ 16-52(C)(a)(2)–(7), 1977 S.C. Acts 407, 408.

45. This steady expansion is precisely the opposite of what the Supreme Court envisioned when it upheld Georgia's statutory response to *Furman* in *Gregg*. *See* Zant v. Stephens, 462 U.S. 862, 877 n.15 (1983) (recalling Justice White's concurring opinion in *Gregg*, which "asserted that, over time, as the aggravating circumstance requirement was applied, 'the types of murders for which the death penalty may be imposed [would] become more narrowly defined and [would be] limited to those which are particularly serious or for which the death penalty is peculiarly appropriate.'" (quoting Gregg v. Georgia, 428 U.S. 153, 222 (1976) (White, J., concurring)) (alteration in original).

46. Act of June 30, 1978, No. 555, sec. 1, § 16-3-20(C)(a)(1), 1978 S.C. Acts 1636, 1636.

47. Omnibus Criminal Justice Improvements Act of 1986, sec. 27, § 16-3-20(C)(a)(8)–(9), 1986 S.C. Acts 2955, 2985.

48. *Id.*

49. Act of June 26, 1990, No. 604, sec. 15, § 16-3-20(C)(a), 1990 S.C. Acts 2549, 2567–68.



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officer, a corrections officer, or a firefighter with "intent to impede or retaliate against the official."[50]

- In 1995, dismemberment of a person was added as an aggravating factor.[51]

- In 1996, the legislature added an entirely new aggravating factor: "[t]he murder of a witness or potential witness committed at any time during the criminal process for the purpose of impeding or deterring prosecution of any crime."[52]

- In 2002, the factor covering peace and correction officers was expanded to include "[t]he murder of a federal, state, or local law enforcement officer or former federal, state, or local law enforcement officer, peace officer or former peace officer, corrections officer or former corrections officer, including a county or municipal corrections officer or a former county or municipal corrections officer, a county or municipal detention facility employee or former county or municipal detention facility employee, or fireman or former fireman during or because of the performance of his official duties."[53]

- In 2006, as part of the "Sex Offender Accountability and Protection of Minors Act of 2006," the legislature expanded the list again to make sexually violent predators death-eligible.[54]

- And in 2007, the legislature acted again, adding arson in the first degree to the list of concomitant crimes

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50. *Id.*

51. Act of June 7, 1995, No. 83, sec. 10, § 16-3-20(C)(a)(1)(i), 1995 S.C. Acts 545, 558.

52. Act of May 20, 1996, No. 317, sec. 1, § 16-3-20(C)(a), 1996 S.C. Acts 2028, 2028.

53. Act of May 1, 2002, No. 224, sec. 1, § 16-3-20(C)(a)(7), 2002 S.C. Acts 2537, 2537–38.

54. Sex Offender Accountability and Protection of Minors Act of 2006, sec. 2, § 16-3-20(C)(a), 2006 S.C. Acts 2697, 2699.



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that make a murder death-eligible.[55]

Thus, as it currently stands, the South Carolina death penalty statute enumerates twelve statutory aggravating factors,[56] the first of which includes ten individual subparts for a total of twenty-one circumstances that can make a murder death-eligible.[57] On its face, such a broad array of death-eligible circumstances would have difficulty passing muster under *Gregg* and its progeny. In practice, however, the situation is even worse than the statute suggests, as South Carolina's gradual but steady drift toward a pre-*Furman* death penalty scheme has been substantially exacerbated by the state judiciary's broad constructions of several of the statute's aggravating factors.

2. Judicial Expansion of Death-Eligibility in South Carolina

As is true with regard to virtually any statutory provision, the scope of S.C. Code Ann. § 16-3-20's aggravating factors is subject to judicial interpretation.[58] The more narrowly a state's statutory aggravating factors are construed, the more likely its scheme as a whole is to satisfy the requirements of the Eighth Amendment. Conversely, the more broadly aggravating factors establishing death-eligibility are construed, the greater the likelihood that the state's capital sentencing scheme will violate the requirements established in *Gregg*.[59]

In South Carolina, the legislature's steady expansion of the

55. Act of June 18, 2007, No. 101, sec. 1, § 16-3-20(C)(a)(1), 2007 S.C. Acts 488, 488.

56. S.C. CODE ANN. §§ 16-3-20(C)(a)(1)–(12) (1976 & Supp. 2009).

57. S.C. CODE ANN. §§ 16-3-20(C)(a)(1)(a)–(j) (2009).

58. *See, e.g.*, Bell v. Cone, 543 U.S. 447, 453 (2005) (noting that *Proffitt v. Florida*, 428 U.S. 242 (1976), rejected a challenge to a statutory aggravating factor "on the express ground that a narrowing construction had been adopted by that State's Supreme Court"); *In re* Amir X.S., 639 S.E.2d 144, 146 (S.C. 2006) (recognizing judicial authority to impose "limiting construction" on a statute).

59. *See* Zant v. Stephens, 462 U.S. 862, 876–77 (1983); *see also id.* at 877 ("To avoid this constitutional flaw, an aggravating circumstance must genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder.") (footnote omitted).



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class of death-eligible murders, as described previously, has been matched—if not surpassed—by the South Carolina Supreme Court's sweeping construction of several statutory aggravating factors. Four examples are described below.

a. Physical Torture

Pursuant to S.C. Code Ann. § 16-3-20(c)(1)(h) (1976), a murder is death-eligible if it occurs during the commission of "physical torture." The statute does not define the conduct or circumstances which constitute "physical torture." In 1983, the South Carolina Supreme Court adopted Georgia's definition of that term, holding in *State v. Elmore* that "'[t]orture occurs when the victim is subjected to serious physical abuse before death,'"[60] or "'when the victim is subjected to an aggravated battery.'"[61]

Since *Elmore*, the South Carolina Supreme Court has carried out a significant expansion of what was already a very inclusive definition of physical torture. For example, in *State v. Davis*,[62] the court endorsed the following description of "aggravated battery" constituting physical torture:

> What is aggravated battery? An aggravated battery is an unlawful act of violent injury to the person of another, accompanied by circumstances of aggravation, such as the use of a dangerous, or deadly, object; the infliction of serious bodily injury with intent to commit a felony; a great disparity between the ages and physical condition of the parties; a difference in the sexes.[63]

On its face, this definition encompasses—and therefore renders death-eligible—the vast majority of murders committed with weapons and all murders involving defendants and victims of opposite sexes. If taken literally, this definition encompasses

60. State v. Elmore, 308 S.E.2d 781, 785 (S.C. 1983) (quoting Hance v. State, 268 S.E.2d 339, 345 (Ga. 1980)).

61. *Id.* (quoting *Hance*, 268 S.E.2d at 345).

62. 422 S.E.2d 133 (S.C. 1992).

63. *Id.* at 147.



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all murders because any object used to murder someone is inherently "a dangerous or deadly object."

Additionally, in *State v. Johnson*,[64] the court further expanded the circumstances in which physical torture can be found, this time to include cases in which the victim had no conscious awareness of pain. According to the court, "[p]hysical torture is not predicated upon the amount of pain suffered by a murder victim. Although conscious awareness of pain may buttress the conclusion that the victim was subjected to serious physical abuse before death, its absence does not foreclose a finding of physical torture."[65]

### b. Kidnapping

Under South Carolina law, murder is death-eligible if it occurs during the commission of a kidnapping.[66] As with "physical torture," the statute is silent with respect to the definition of kidnapping. The South Carolina Supreme Court filled this definitional void by reference to South Carolina's kidnapping statute, which provides that "[w]hoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law"[67] is guilty of kidnapping.[68]

In *State v. Tucker*,[69] the court expanded the definition of kidnapping when it accompanies a murder. In *Tucker*, the defendant challenged the trial court's finding of kidnapping[70] based on evidence that he duct-taped the victim to a bed while he searched for things to steal, then shot and killed the victim while he packed to leave.[71] Relying on a non-murder case, the South Carolina Supreme Court explained that, "[k]idnapping is a

64. 525 S.E.2d 519 (S.C. 2000).
65. *Id.* at 526.
66. S.C. CODE ANN. § 16-3-20(C)(1)(b) (1976).
67. *See* § 16-3-910.
68. *See, e.g.*, State v. Copeland, 300 S.E.2d 63, 66 (S.C. 1982).
69. 512 S.E.2d 99 (S.C. 1999).
70. *Id.* at 105.
71. *Id.* at 102.



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continuing offense. The offense commences when one is wrongfully deprived of freedom and continues until freedom is restored."[72] Applying this view to the facts in *Tucker*, the court concluded that "[the victim] was unquestionably deprived of her freedom once appellant bound her with the duct tape," and added that "restraint constitutes kidnapping within the meaning [of the statute], regardless of the fact that the purpose of this seizure was to facilitate the commission of a [crime other than murder]."[73]

In *State v. Stokes*,[74] the court utilized the kidnapping statute's references to inveigling and decoying to further expand the range of conduct satisfying § 16-3-20(C)(a)(1)(b). Relying on the *New Webster's Dictionary and Thesaurus*, the court defined "decoy" as "'to lure successfully'"[75] and defined "inveigling" as "'enticing, cajoling, or tempting the victim, usually through some deceitful means such as false promises.'"[76] Based on these definitions, the court concluded that the defendant kidnapped the victim by luring her into the woods for the ostensible purpose of facilitating her willing participation in the killing of a third party.[77]

This expansive definition of kidnapping created by the South Carolina Supreme Court has substantially broadened the range of conduct capable of elevating a murder to death-eligibility.[78]

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72. *Id.* at 105 (citing State v. Hall, 310 S.E.2d 429 (S.C. 1983)).

73. *Id.*

74. 548 S.E.2d 202, 205 (S.C. 2001).

75. *Id.* at 204 n.6 (quoting NEW WEBSTER'S DICTIONARY AND THESAURUS 250 (1993)).

76. *Id.* at 204 n.6 (quoting United States v. Macklin, 671 F.2d 60, 66 (2d Cir. 1982)).

77. *Id.* at 204.

78. *See, e.g.*, State v. Vazsquez, 613 S.E.2d 359, 361 (S.C. 2005) (finding murder during the commission of kidnapping where defendant locked two people in restaurant freezer, from which they escaped five minutes later and fled the scene unharmed); State v. Kelly, 540 S.E.2d 851, 853 (S.C. 2001) (finding murder during the commission of kidnapping where defendant duct-taped victim's hands behind her back); State v. Cheeseboro, 552 S.E.2d 300, 304 (S.C. 2001) (finding kidnapping where defendant forced victims to walk from the back of a barbershop to the front, then back again, during holdup).



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c. Attempted Armed Robbery

South Carolina also provides for death-eligibility where a murder takes place while in the commission of an armed robbery.[79] In *State v. Humphries*,[80] the South Carolina Supreme Court construed the statutory phrase "while in the commission of" to encompass any "acts that are concurrent with the murder."[81] Consequently, both uncompleted attempts to commit accompanying crimes and accompanying crimes completed only after the murder are sufficient to elevate a murder to a death-eligible offense under § 16-3-20(C)(a)(1).

d. Prior Conviction for Murder

South Carolina also recognizes prior murder convictions as aggravating circumstances.[82] This provision, too, has been construed expansively by the South Carolina Supreme Court. In *State v. Locklair*,[83] the court held that "prior," as set forth in South Carolina's death penalty statute, means "prior to trial, rather than prior to the time of the crime."[84] As a result, death-eligibility can be established on the basis of a murder conviction that did not exist at the time of the murder for which the death sentence is sought.

## III. THE EMPIRICAL DATA: NEARLY ALL MURDER OFFENDERS ARE LEGALLY ELIGIBLE FOR A DEATH SENTENCE IN SOUTH CAROLINA

The transformation of South Carolina's capital sentencing scheme from one designed to objectively distinguish the few cases in which death could be sought from the many in which it could not, to one in which death is almost always legally available, is

79. S.C. CODE ANN. § 16-3-20(C)(a)(1)(d) (1976).

80. 479 S.E.2d 52 (S.C. 1996).

81. *Id.* at 55 ("That the murder may occur before an armed robbery actually is completed does not mean that a robbery was not taking place.").

82. § 16-3-20(C)(a)(2).

83. 535 S.E.2d 420 (S.C. 2000).

84. *Id.* at 428–29.



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illustrated by data collected in Charleston County. Using court files, contemporary news accounts, and other publicly available information, researchers assembled profiles of all 151 homicides that occurred in Charleston County between 2002 and 2007. These profiles included relevant facts about the circumstances of the offense, the characteristics of the defendants and victims, and whether or not the State chose to seek the death penalty.[85]

Analysis of the Charleston County data in light of S.C. Code Ann. §16-3-20 and the judicial decisions interpreting it indicates that of the 151 cases identified, 115—fully 76%—involved facts that would support the existence of at least one statutory aggravating circumstance sufficient to render them eligible for capital prosecution.[86] Of those 115 death-eligible cases, only 5—a mere 4.3% of the total death-eligible pool—were actually prosecuted as capital cases.[87]

Strikingly similar results were obtained in Richland County. Using the same methods described above for the Charleston County data collection, researchers assembled profiles on 152

85. It should be noted that South Carolina is not unique in the rate at which it imposes death sentences. A 2002 study, for example, found that the national average was twenty-one death sentences for every 1000 homicides. At that time, South Carolina's death sentencing rate was 16 death sentences for every 1,000 homicides, placing it in twenty-first place among the thirty-eight states that had a death penalty. Blume, *supra* note 15, at 297–98.

86. This statistic is a conservative number. First, if a case was questionable or it otherwise could not be determined whether the facts would render the case death-eligible, we counted it as not death-eligible. Second, this statistic does not account for all murders that fit the definition of "physical torture" as described in subsection II.B.2.a. of this Article. Seemingly any object used to murder someone would inherently be "a dangerous or deadly object." Thus, this statistic would be 100% if this factor were accounted for.

87. Only 1 of the 5 capitally prosecuted cases—*State v. Dickerson*, 535 S.E.2d 119 (S.C. 2000)—resulted in a death sentence, and that outcome, according to Dickerson's trial attorney, was made possible only by the defendant's rejection of a life sentence offered by the prosecution. Dickerson was not "the worst of the worst"; if he were, there would have been no offer to reject. *See generally* Furman v. Georgia, 408 U.S. 238, 294 (1972) (Brennan, J., concurring). Rather, as the lone recipient of a death sentence from a pool of 115 eligible candidates and 5 actual capital defendants, Dickerson was simply the rare defendant "struck by lightning."



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total homicide cases that occurred in Richland County between 2000 and 2008. Of those 152 cases, 117—or 77%—involved facts that would render them death-eligible under South Carolina's current death penalty statute as interpreted and applied. Out of the 117 legally death-eligible homicides, only 4—a mere 3.4% of the death-eligible cases—were actually prosecuted as a capital case.

These results confirm that South Carolina's present day capital sentencing scheme possesses the same combination of defining characteristics that *Furman* condemned: widely applicable death-eligibility (76% of cases in Charleston County and 77% of cases in Richland County), and narrow actual application of death to eligible cases (4.3% in Charleston County and 3.4% in Richland County). As a practical matter, South Carolina's statutory aggravating circumstances can no longer be relied upon to "adequately differentiate [a capital case] in an objective, evenhanded, and substantively rational way from the many [South Carolina] murder cases in which the death penalty may not be imposed."[88] Instead, with 76%–77% of all homicides to choose from, the task of selecting who will live and who will face the prospect of dying rests exclusively with the prosecutors who make the charging decisions[89]—decisions which are as

88. *See* Zant v. Stephens, 462 U.S. 862, 879 (1983).

89. That prosecutorial discretion plays a disproportionate role in determining which eligible defendants will be sentenced to death is confirmed by the substantial disparities in death sentencing among South Carolina counties. *See* Blume, *supra* note 15, at 298–99 ("There is wide variation from county to county, and from judicial circuit to judicial circuit, in whether the death penalty will be sought, or obtained. Ten of South Carolina's forty-six (22%) counties have never produced a death sentence. Other counties, even though they are relatively large and have, at least comparatively speaking, significantly more murders, produce very few death sentences. By contrast, more than one-third of the death sentences imposed in the last ten years arose from two of the state's sixteen Judicial Circuits. Twenty-four of the sixty-two (39%) persons sentenced to death from January 1993 to the present came from either the First Judicial Circuit (Calhoun, Dorchester, and Orangeburg counties) or the Eleventh Judicial Circuit (Edgefield, Lexington, and Saluda counties). However, these counties do not have higher homicide rates than other counties. . . . Lexington County's death sentencing rate of 11% is approximately five times greater than the national average and seven times the South Carolina average of 1.6%. Based on currently available data, Lexington County



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inscrutable, unreviewable, and susceptible to arbitrariness and bias as those *Furman* found to be intolerable. As the jurisprudence described in section II.A. of this Article makes clear, this is decidedly *not* what the Supreme Court envisioned when it upheld the statutory scheme challenged in *Gregg*.[90]

## IV. SOUTH CAROLINA'S CAPITAL SENTENCING SYSTEM PERMITS DISCRIMINATION ON THE BASIS OF RACE IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS

In the long history of capital punishment in the United States, race has played a large role. Although the more blatant forms of racial discrimination are less common in capital prosecutions than they were in the past, there is compelling empirical evidence that, at least in South Carolina, capital punishment decisions continue to be influenced by race. Moreover, the potential for discrimination is exacerbated by four factors: (1) the breadth of death-eligibility; (2) the frequency with which juries are exposed to bias-triggering victim impact evidence; (3) the dearth of African-American decision makers both as prosecutors and as jurors; and (4) the confusing nature of the penalty phase instructions received by capital juries. The resulting distortion of life and death determinations violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment, and the Cruel and Unusual Punishments Clause of the Eighth Amendment.

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has the highest death sentencing rate of *any* large county in the United States.").

90. *See, e.g.*, Godfrey v. Georgia, 446 U.S. 420, 433 (1980) ("There is no principled way to distinguish this case, in which the death penalty was imposed, from the many cases in which it was not.").



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### A. The History of Race Discrimination in the Imposition of Capital Punishment

Until the post-*Furman* era, the history of the imposition of the death penalty in this country has been dominated by race. During the Colonial period, many states made eligibility for capital punishment depend upon the offense committed and the offender's race, status, or both.[91] By the time of the Civil War, none of the northern states provided for capital punishment for any crime other than murder, and in many, the institution itself was questioned, but "[m]uch of the debate that took place in the North simply did not occur in the South because of the perceived need to discipline a captive workforce."[92] It is telling that in the first half of the nineteenth century, all of the southern states had abolished the death penalty for certain previously death-eligible crimes committed *by whites*.[93] The picture was quite different for African-American perpetrators. In Texas, African-Americans, whether slave or free (unlike whites), were subject to capital punishment for insurrection, arson, attempted murder of a white victim, rape or attempted rape of a white victim, robbery or attempted robbery of a white person, and assault with a deadly weapon upon a white person.[94] Free African-Americans were death-eligible for the kidnapping of a white woman.[95] In Virginia, free African-Americans (but not whites) could get the death penalty for rape, attempted rape, kidnapping a woman, and aggravated assault—all provided the victim was white. Slaves in Virginia were eligible for death for commission of a remarkable sixty-six crimes.[96] In Mississippi, that number was

91. A. LEON HIGGINBOTHAM, JR., IN THE MATTER OF COLOR: RACE & THE AMERICAN LEGAL PROCESS 181–82, 256–57, 262–63 (1978).

92. STUART BANNER, THE DEATH PENALTY: AN AMERICAN HISTORY 137 (2002).

93. *Id.* at 139. Moreover, the change in practices—for whites—was even more dramatic than the change in theoretical eligibility: "Between 1800 and 1860 the southern states are known to have executed only seven white burglars . . . six white horse thieves . . . four white robbers" and *no* white rapists. *Id.*

94. *Id.* at 141.

95. *Id.*

96. *Id.*



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thirty-eight,[97] and though most southern states did not have such a staggering number of capital felonies for slaves, all had statutes that differentiated between crimes that were capital if committed by a slave but not if committed by a white man.[98] In all slaveholding states, including South Carolina, the rape of a white woman by a black man was a capital crime.[99] In Georgia, the disparity in penalty was particularly notable; rape of a white woman by a white man was punishable by imprisonment of twenty years or less, and attempted rape by not more than five years, but rape or attempted rape of a white woman by an African-American was punishable by death.[100]

Moreover, race of victim disparities, as well as race of defendant disparities, can be traced to the antebellum period. A slave could not be raped by her owner at all, and the rape of a slave by another white man was not punished as rape but as a trespass against the owner's property.[101]

Nor were these differences merely unenforced possibilities. This "black-white divergence in southern criminal codes was reflected in actual practice."[102] In the antebellum South, African-Americans were hanged in numbers far out of proportion to their representation in the population and for many more crimes than were whites.[103]

After the Civil War, the Black Codes in some states, such as

97. *Id.*

98. KENNETH M. STAMPP, THE PECULIAR INSTITUTION: SLAVERY IN THE ANTE-BELLUM SOUTH 210–11 (1956); *see* GEORGE M. STROUD, A SKETCH OF THE LAWS RELATING TO SLAVERY IN THE SEVERAL STATES OF THE UNITED STATES OF AMERICA 158–88 (2d ed. 1856).

99. JOHN HOPE FRANKLIN & ALFRED A. MOSS, JR., FROM SLAVERY TO FREEDOM: A HISTORY OF AFRICAN AMERICANS 142 (8th ed. 2000).

100. LUCIUS Q. C. LAMAR, A COMPILATION OF THE LAWS OF THE STATE OF GEORGIA 804 (1821).

101. FRANKLIN & MOSS, *supra* note 99, at 141. Indeed, in antebellum Louisiana, the rape of a black woman, whether slave or free, was no crime at all. JUDITH KELLEHER SCHAFER, SLAVERY, THE CIVIL LAW, AND THE SUPREME COURT OF LOUISIANA 85–87 (1994).

102. BANNER, *supra* note 92, at 141.

103. *Id.*



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South Carolina, served to punish African-Americans by death for crimes that incurred lesser punishments for white offenders.[104] In other states, such as Georgia, the same discrimination was accomplished by facially neutral statutes that accomplished the same discrimination by making the death penalty available at the discretion of the jury.[105] The Fourteenth Amendment did away with the formal sources of discrimination, as it was intended,[106] but left untouched the disparate applications made possible by discretion. From 1930, when national statistics were first kept, to 1972, when the Supreme Court struck down unguided discretion statutes, about half of the defendants executed for murder in the United States were African-American, a number which is clearly disproportionate, whether considered in comparison to their proportion in the population or in the ranks of murderers. Even that sizable disparity pales when compared to the racial disparity in executions for rape: of the 455 men executed for rape, 405—or 89%—were African-American men.[107] Virtually all of these men were accused of raping white women.[108]

These stark raw numbers reflect disparities that persisted even when possible confounding factors were investigated. When the Legal Defense Fund of the NAACP commissioned a

104. *See, e.g.*, RANDALL KENNEDY, RACE, CRIME, AND THE LAW 84–85 (1997); *see also* THEODORE BRANTNER WILSON, THE BLACK CODES OF THE SOUTH 97, 105–06 (1965) (discussing North Carolina law).

105. WILSON, *supra* note 104, at 101, 104–05, 113–14.

106. When Senator Howard introduced the Fourteenth Amendment in the Senate, he described it as "prohibit[ing] the hanging of a black man for a crime for which the white man is not to be hanged." CONG. GLOBE, 39th Cong., 1st Sess. 2766 (1866).

107. BUREAU OF PRISONS, U.S. DEP'T OF JUSTICE, BULLETIN NO. 45, NATIONAL PRISONER STATISTICS: CAPITAL PUNISHMENT 1930–1968, at 7 tbl.1 (1969). Unofficial statistics from the longer period of 1864 to 1972 are similar. Anthony G. Amsterdam, *Opening Remarks: Race and the Death Penalty Before and After* McCleskey, 39 COLUM. HUM. RTS. L. REV. 34, 37–38 (2007).

108. JACK GREENBERG, CRUSADERS IN THE COURTS: HOW A DEDICATED BAND OF LAWYERS FOUGHT FOR THE CIVIL RIGHTS REVOLUTION 440 (1994). Indeed, it appears that no white man has ever been executed for raping a black victim. Michael L. Radelet, *Executions of Whites for Crimes Against Blacks: Exceptions to the Rule?*, 30 SOC. Q. 529, 537–41 (1989).



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comprehensive study by Professor Marvin Wolfgang of capital rape prosecutions between 1945 and 1965, Wolfgang considered over two dozen possibly aggravating nonracial factors and concluded that none of those variables accounted for racial disparities.[109] Controlling for those factors, "[African-American] defendants whose victims were white were sentenced to death approximately eighteen times more frequently than . . . any other racial combination of defendant and victim."[110]

Thus, it was not surprising that the influence of race on capital sentencing was one of the factors that led the Supreme Court to overturn Georgia's standardless death penalty.[111] Moreover, when the Court upheld remodeled death penalty statutes in *Gregg v. Georgia*,[112] it did so on the rationale that the new statutes channeled the sentencer's discretion, thus minimizing the risk that race—or other arbitrary factors—would influence the imposition of the death penalty.[113]

Unfortunately, the newer statutes did not eliminate racial disparities in the imposition of capital punishment in this state—or in any other. Raymond Paternoster conducted a comprehensive analysis of all the death penalty prosecutions in the state of South Carolina between 1977 and 1981.[114] After controlling for a host of variables, Paternoster found that the odds of being charged with capital murder in South Carolina during that period were 9.6 times greater in white victim cases

109. Marvin E. Wolfgang & Marc Riedel, *Race, Judicial Discretion, and the Death Penalty*, 407 ANNALS AM. ACAD. POL. & SOC. SCI. 119, 126–33 (1973).

110. *Id.* at 130.

111. Furman v. Georgia, 408 U.S. 238, 364 (1972) (Marshall, J., concurring) (discussing the history of racial discrimination in the imposition of the death penalty); *id.* at 255 (Douglas, J., concurring) (stating that discretion permits prejudice to determine who receives the death penalty); *id.* at 310 (Stewart, J., concurring) ("[I]f any basis can be discerned for the selection of these few to be sentenced to die, it is the constitutionally impermissible basis of race.").

112. 428 U.S. 153 (1976).

113. *Id.* at 206–07.

114. Raymond Paternoster, *Race of Victim and Location of Crime: The Decision to Seek the Death Penalty in South Carolina*, 74 J. CRIM. L. & CRIMINOLOGY 754 (1983).



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than in black victim cases.[115] A meta-analysis of the relationship between race and the death penalty was conducted by the United States General Accounting Office, which concluded that most studies found that the race of the victim significantly influenced the imposition of the death penalty and that a sizeable minority of studies also found that the race of the defendant played a significant role.[116]

### B. The Legal Standard for Evaluating Evidence of Racial Discrimination

When the Supreme Court first considered a study documenting such racial disparities, in *McCleskey v. Kemp*,[117] it held that general statistical evidence showing that a particular state's capital punishment scheme operated in a discriminatory manner did not establish a constitutional violation.[118] *McCleskey* did not, however, exempt capital punishment from the ordinary constitutional prohibitions against racial discrimination. Rather, it held that because the large number of actors and aspects of the capital sentencing process increased the likelihood that factors other than race were responsible for racial disparities,[119] general statistical evidence was not sufficient to establish discrimination that would violate either the Equal Protection Clause of the Fourteenth Amendment or the Cruel and Unusual Punishments

115. *Id.* at 782–83. *See also* Michael Songer & Isaac Unah, *The Effect of Race, Gender and Location on Prosecutorial Decisions to Seek the Death Penalty in South Carolina*, 58 S.C. L. REV. 161 (2006) (concluding that South Carolina prosecutors are 3 times more likely to seek the death penalty in white victim cases than in black victim cases); John Blume, Theodore Eisenberg & Martin T. Wells, *Explaining Death Row's Population and Racial Composition*, 1 J. EMPIRICAL LEGAL STUD. 165 (2004) (noting a significant black defendant/white victim effect in explaining the racial makeup of death row in South Carolina as well as other states).

116. U.S. GEN. ACCOUNTING OFFICE, DEATH PENALTY SENTENCING: RESEARCH INDICATES PATTERN OF RACIAL DISPARITIES 5 (1990) (reviewing all previous studies), *available at* http://archive.gao.gov/t2pbat11/140845.pdf.

117. 481 U.S. 279 (1987).

118. *Id.* at 317–19.

119. *Id.* at 294–95.



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Clause of the Eighth Amendment.[120]

In contrast, racial discrimination claims that focus on the actions of a particular prosecutor (or judge or juror), do not suffer from the confounding influence of multiple actors and multiple stages, nor do they lack the evidence "specific to [the defendant's] own case" that the Supreme Court found lacking in *McCleskey*.[121] Allegations of selective prosecution based on race must be evaluated in light of "ordinary equal protection standards."[122]

Under those "ordinary equal protection standards," a death-eligible defendant need not prove discriminatory intent by direct evidence.[123] Rather, "invidious discriminatory purpose may often be inferred from the totality of relevant facts."[124] The appropriate analysis "demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available"[125] because race-based discrimination is rarely announced publicly and those responsible for key decisions may have "[m]ore subtle, less consciously held racial attitudes."[126] Such attitudes are especially problematic when, as in the decision to seek the death penalty, those responsible for the decision are entrusted with broad discretion.[127]

In *Arlington Heights*, the Supreme Court provided guidance concerning the proof of covert forms of intentional discrimination. Where the pattern of discrimination is stark, evidence of the impact alone is determinative. "Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation

120. *Id.* at 292–93.

121. *Id.*

122. United States v. Armstrong, 517 U.S. 456, 465 (1996); *see also* Wayte v. United States, 470 U.S. 598, 608 (1985); Hunter v. Underwood, 471 U.S. 222, 232 (1985).

123. *See* Washington v. Davis, 426 U.S. 229, 242 (1976); *see also* Rogers v. Lodge, 458 U.S. 613, 618 (1982); Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 266 (1977).

124. *Washington*, 426 U.S. at 242.

125. *Arlington Heights*, 429 U.S. at 266.

126. Turner v. Murray, 476 U.S. 28, 35 (1986).

127. *Id.*



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appears neutral on its face."[128]

When impact is not so stark, a number of factors may contribute to a prima facie showing of racially discriminatory intent. Those factors include, but are not limited to, "the impact of the official action,"[129] (even when short of "clear pattern" evidence); "the historical background of the decision . . . , particularly if it reveals a series of official actions taken for invidious purposes";[130] "departures from the normal procedural sequence";[131] "[s]ubstantive departures . . . , particularly if the factors usually considered important by the decision-maker strongly favor a decision contrary to the one reached";[132] and "contemporary statements by members of the decisionmaking body."[133]

### C. Evidence that Race Infects the Administration of Capital Punishment in South Carolina

"[S]ensitive inquiry into such circumstantial and direct evidence of intent as may be available"[134] compels the conclusion that the administration of the death penalty in South Carolina is not color blind. At least four of the *Arlington Heights* indicia are present, and together they establish the purposeful discrimination prohibited by both the Equal Protection and the Cruel and Unusual Punishments Clauses.

128. *Arlington Heights*, 429 U.S. at 266; *see also* Yick Wo v. Hopkins, 118 U.S. 356, 374 (1886) (holding that ordinances that gave unfettered discretion to county officials regarding the operation of laundries was unconstitutional where the effect was discrimination against Chinese laundry owners).

129. *Arlington Heights*, 429 U.S. at 266; *see also* Hunter v. Underwood, 471 U.S. 222, 232 (1985) (stating *Arlington Heights* supplies the proper analysis for selective prosecution claims).

130. *Arlington Heights*, 429 U.S. at 267.

131. *Id.*

132. *Id.*

133. *Id.* at 268.

134. *Id.* at 266.



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### 1. The Impact of Official Action

As alluded to previously, in the wake of South Carolina's post-*Furman* death penalty reform, Raymond Paternoster conducted a statewide comprehensive analysis of all the death penalty prosecutions between 1977 and 1981. He found disparities even more striking than those reported in *McCleskey*. In Georgia, the odds of being charged with capital murder were about 4 times as great when the victim was white, but in South Carolina, the odds were more than 9 times greater in white victim cases than in black victim cases.[135] Paternoster's early post-*Gregg* findings of racial disparities in the imposition of South Carolina's death penalty have since been corroborated by at least three different methods. Most simply, one can compare the racial composition of death row to the racial composition of the population. African-Americans comprise slightly less than 30% of South Carolina's population;[136] yet, as of January 1, 2009, they constituted over half of the inmates on the state's death row.[137]

Another possible comparison is between homicides and death sentences, and this comparison also yields strong racial disparities. Utilizing the FBI database, a comparison of all homicide cases from 1977 to 1998 with cases that resulted in death sentences reveals that African-Americans who kill whites are sentenced to death at approximately three times the rate of whites who kill whites.[138] Close analysis shows two powerful forms of discrimination at work in the South Carolina capital punishment scheme. First, the death penalty is rarely sought (or obtained) when the murder victim is African-American. Only

135. *See generally* Paternoster, *supra* note 114.

136. *See* U.S. Census Bureau Fact Sheet, http://factfinder.cens us.gov on sidebar under "Fact Sheet" menu.

137. Of the 63 death row inmates, 33 were African-Americans. NAACP, DEATH ROW USA: A QUARTERLY REPORT BY THE CRIMINAL JUSTICE PROJECT OF THE NAACP LEGAL DEFENSE AND EDUCATION FUND, INC. 35 (Winter 2009), *availableat* http://naacpldf.org/content/pdf/pubs/drusa/DRUSA_winter_2009.pdf.

138. Blume, *supra* note 15, at 306.



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0.46% of black victim cases result in a death sentence, in contrast to white victim cases, where 3.4% result in the death penalty.[139] Thus, a person charged with killing someone who is white is seven times more likely to be sentenced to death than a person charged with killing an African-American. Secondly, within white victim cases, African-American defendants are disparately prosecuted: "[A]n African American charged with killing a white person is approximately six times more likely to be sentenced to death than cases involving any other race of victim/defendant combination."[140]

A third kind of study has focused on local, identified decision makers. Statistical analyses have been conducted in at least three South Carolina counties, and in every county studied, prosecutors have been found to discriminate on the basis of race in their decisions about whether to seek the death penalty. An examination of all homicide cases in Charleston County from 1981–1990 (the time period during which South Carolina Attorney General Charlie Condon was solicitor) revealed that the prosecution sought the death penalty in 10 of 25 cases (40%) in which the defendant was African-American and the victim was white, and only 2 of 70 cases (2.9%) in which the defendant and the victim were both African-American, producing a pattern that "would occur by chance less than one time in a thousand."[141] Moreover, Mr. Condon sought the death penalty in 32% of all white victim cases and 5% of all black victim cases, another

139. *Id.* at 307; *see also*, David McCord, *A Year in the Life of Death: Murders and Capital Sentences in South Carolina*, 1998, 53 S.C. L. REV. 249, 296–97 (2002) (finding strong race of victim effects over shorter period of time).

140. Blume, *supra* note 15, at 307. These conclusions were confirmed by a 2004 study of all homicides in several states, including South Carolina, from 1977 to 1998, *See* Blume et al., *supra* note 115. The study revealed that, even though most murder victims are African-American, only 0.46% of black victim cases result in a death sentence, while 3.4% of white victim cases resulted in a death sentence. *See id.* at 197 tbl.8. Thus, a person charged with killing a white victim is 8 times more likely to be sentenced to death than a person charged with killing an African-American. Second, African-American's are generally more likely to be sentenced to death regardless of the race of their victims. *Id.*

141. John H. Blume et al., *Post-*McCleskey *Racial Discrimination in Capital Cases*, 83 CORNELL L. REV. 1771, 1782 (1998).



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statistical discrepancy which "would occur by chance less than one time in one thousand."[142] Another statistical study revealed that in Lexington County, the solicitor had sought death in 10% of the white victim cases but had never sought death in a black victim case.[143]

In the most sophisticated study, Theodore Eisenberg compiled information concerning all homicide cases that occurred in the Seventh Judicial Circuit from 1993 through 1997 and for each case, determined

> the race of the defendant, the race of the victim, the presence of aggravating factors that would render the crime death-eligible, and whether a notice of intent to seek death was filed. For the period between 1977 and 1993, [Professor Eisenberg] found that the [circuit's] solicitor sought death in fifty percent of the (fifty-two) death-eligible white victim cases and in zero percent of the (nineteen) death-eligible black victim cases. . . . Such a result would occur by chance about four times in one hundred thousand. [Professor Eisenberg] also isolated the cases that occurred when Holman Gossett was solicitor, the period of 1985 to 1993, and found that Gossett decided to seek death in forty-three percent of the death eligible white victim cases, and in zero percent of the black victim cases. This result . . . would occur only six times in ten thousand as a matter of chance.[144]

"Moreover," as found in the state-wide study by John Blume, "the defendant-victim combination most likely to result in the decision to seek the death penalty was a black defendant/white victim pairing."[145]

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142. *Id.*

143. *Id.* at 1790.

144. Sheri Lynn Johnson, *Litigation for Racial Fairness After* McCleskey v. Kemp, 39 COLUM. HUM. RTS. L. REV. 178, 181–82 (2007) (footnotes omitted).

145. *Id.* Professor Eisenberg later testified about his findings in a capital case in South Carolina. *Id.*

> Because [the case in which he testified] involved armed robbery, Professor Eisenberg separately considered armed robbery cases, and found that the propensity to seek death in white victim cases was also very pronounced in this subset. Looking at the longer period, the resulting disparity would occur by chance only in eight out of one



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Although no formal study has been done in Richland County, the racial impact of the official actions taken by Solicitor Giese is dramatic. African-American males in the Richland County community are being noticed for death—and white defendants are not. Solicitor Giese has managed to maintain a record of 100% discretionary use of the death penalty against non-white defendants, thereby singling out non-white, primarily African-American, defendants for the ultimate penalty of death. Put simply, life and death decisions line up perfectly with the color of the defendant's skin.

Impact is circumstantial evidence of discriminatory intent, and in this case, in at least two counties it rises to the level of a sufficiently "stark" disparate effect that impact alone is sufficient to establish a prima facie case of discrimination. In Richland County, as in *Yick Wo*,[146] where the ordinance regulating laundries was applied only to Chinese laundry owners, "a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face."[147] During the entire period of Solicitor Giese's term, he *never* sought the death penalty against a white defendant despite the existence of a pool of white defendants whose offenses included an aggravating circumstance. Likewise, Solicitor Gossett maintained a racially pure pool of capital case victims for eight years.

### 2. Historical Background

Even aside from the stark patterns presented above, the historical backdrop of discrimination in South Carolina as a whole supplements the undeniably powerful statistical evidence. The "distorting effects of racial discrimination"[148] are at work in

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thousand cases, and looking at the shorter period of Holman Gossett's tenure as solicitor, one time in one hundred.

*Id.*

146. 118 U.S. 356 (1886).

147. Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 266 (1977).

148. Godfrey v. Georgia, 446 U.S. 420, 439 (1980) (Marshall, J., concurring).



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this state. South Carolina has a long history of blatant racial discrimination in the selection of persons for execution.[149] By and large the most egregious, or at least the shamelessly open, race-based decision making in capital prosecution is in the past. It is, however, still relevant in assessing the likelihood that purposeful discrimination is the cause of racial disparities.

3. Departures from the Normal Procedural Sequence

Among the most basic criminal procedural rights is the entitlement to a jury trial. Juries must be selected in a race-neutral manner,[150] but at least some South Carolina prosecutors have violated this most basic right when exercising peremptory challenges in capital cases. A study of the use of peremptory challenges in Lexington County capital cases conducted by Professor William Jacoby of the University of South Carolina found systematic elimination of potential black jurors.[151] In fact, the study concluded that the statistical likelihood that racial discrimination did not explain the disparity was less than one in a billion.[152] This statistical evidence was supported by the observations of several local attorneys, including that of a public defender who in fourteen years had *never* tried a black defendant case in Lexington county in which an African-American served on the jury.[153]

In the post-*Furman* period, at least twelve African-American defendants were convicted and sentenced to death by all-white juries in South Carolina;[154] two such sentences occurred in the

149. *See* Margaret O'Shea, *Race Plays Into Death Penalty Use*, AUGUSTA CHRON., Nov. 14, 1999, at A1.

150. *See* Batson v. Kentucky, 476 U.S. 79, 85 (1986).

151. Blume et al., *supra* note 141, at 1792.

152. *Id.*

153. *Id.* at 1792 n.112.

154. These defendants are: J.D. Gleaton, Larry Gilbert, Sterling Spann, Andrew Smith, Donald Jones, Raymond Patterson, Theodore Kelly, Richard Stewart, Albert Thompson, Jeffrey Jones, Andre Rosemond, and Richard Moore. In several of these cases, the selection of an all-white jury was never reviewed on appeal due to procedural default by trial counsel. *See* Blume, *supra* note 15,



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twenty-first century.[155] Given the population of South Carolina, which is nearly 30% African-American, and the constitutional command of racial neutrality in jury selection, these statistics establish a departure from normal procedures.

4. Substantive Departures

Often, the decision to seek death in black defendant/white victim cases itself constitutes a substantive departure due to the relatively unaggravated nature of the case. For example, the state sought death for Earl Matthews despite the fact that he was only nineteen at the time of the offense, had a minimal prior record, and the case arose from a botched armed robbery where only the armed robbery aggravator was present.[156] Holman Gossett's decision to seek death against Keith Simpson under similar circumstances was likewise a substantive departure.[157]

5. Contemporary Statements by Decision Makers

In some cases, statements by decision makers have produced anomalously direct evidence of racial discrimination in the death penalty process. In a recent Lexington County case, the prosecutor referred to a large African-American capital defendant as "King-Kong."[158] Earl Matthews, a death-sentenced inmate from Charleston County, presented anecdotal evidence, as well as a statistical study, to support his claim of racial bias in his federal habeas corpus proceedings.[159] A former assistant prosecutor in the Charleston County Solicitor's office at the time of Matthew's trial declared that the office had prosecuted homicide cases in a racially discriminatory manner, treating

at 308.

155. Richard Moore was convicted and sentenced to death by an all-white jury in Spartanburg in 2001. *Id.* at 308 n.145. Kevin Mercer was convicted and sentenced to death by an all-white jury in Lexington County in 2006. *See* Transcript of Record, *State v. Mercer* (2003-GS-32-0409) (on file with authors).

156. State v. Matthews, 373 S.E.2d 587, 589 (S.C. 1988).

157. *See* State v. Simpson, 479 S.E.2d 57 (S.C. 1996).

158. State v. Bennett, 632 S.E.2d 281, 285 (S.C. 2006).

159. Blume et al., *supra* note 141, at 1782–83.



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cases involving black victims as less important than cases involving white victims.[160] Another former prosecutor similarly declared that she heard a colleague say at a staff meeting that a particular case deserved less priority because the victim was "just a little old black man."[161] Louis Truesdale, who was accused of murdering a young white woman in Lancaster County, was executed in 1998 despite uncontradicted evidence that jurors openly used racial slurs during deliberations at the sentencing phase of his trial.[162] Similarly, Johnny Bennett developed evidence in his post-conviction proceedings that a juror who served on his capital trial thought Bennett committed the crime because he was "just a dumb nigger."[163] There have also been shocking examples of discrimination by defense lawyers. In one case, appointed counsel referred to his African-American client as a "big black . . . buck."[164]

One last example is particularly instructive. Theodore Kelly was convicted and sentenced to death for a double homicide in Spartanburg County, South Carolina.[165] After an unsuccessful direct appeal, Kelly's lawyer serendipitously[166] elicited the following testimony from the deputy solicitor:

> I told [Solicitor Gossett] that I felt like the black community would be upset though if we did not seek the death penalty because there were two black victims in this case. . . . The only mention that was ever made of race was when I said that I felt like if we did not seek the death penalty, that the community, the black community would be upset because we are seeking the death penalty in the (Andre) Rosemond case for

160. *Id.*

161. *Id.*

162. Carrie Armstrong, *Truesdale Executed for Murder*, THE STATE (Columbia, S.C), Dec. 12, 1998, at B1.

163. *See* Bennett Post-Conviction Relief Hearing Transcript Record at 9 (2006-CP-40-5751) (on file with authors).

164. Application for Post-Conviction Relief at 23, State v. Butler, 290 S.E.2d 420 (S.C.1982) (on file with authors).

165. State v. Kelly, 502 S.E.2d 99, 102 (S.C. 1998).

166. The deputy solicitor had been deposed prior to the hearing and had not revealed the information at that time.



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the murder of two white people.[167]

The post-conviction relief court found that these statements revealed an impermissible racial motivation in the decision to seek death. It is worth noting that the solicitor in this case, Holman Gossett—as revealed in Eisenberg's statistical study—had never previously sought death in a black victim case. Once it is known that Gossett was influenced by race in Kelly's case, it seems extraordinarily unlikely that Kelly was the only case in which race colored his thinking.

Although the obvious influence of race in these examples may occur in only a handful of cases, we think that their occurrence likely points to a much broader underlying current of racial bias which is likely exacerbated by the broad discretion afforded to decision makers under South Carolna's capital sentencing scheme. Other studies have conclusively shown that racial prejudice has a more profound effect when the decision maker is afforded a great amount of discretion.[168] Likewise, when the strong statistical disparities that characterize the South Carolina capital punishment system are taken into account with the other evidence of purposeful racial discrimination—history, procedural departures, substantive departures, and contemporary statements by decision makers—it is clear that the system is impermissibly tainted by racial bias.

### D. South Carolina's Capital Punishment System Poses a Constitutionally Unacceptable Risk of Racial Bias, Thereby Violating the Due Process Clause

When a practice creates an "unacceptable risk of racial prejudice infecting the capital sentencing proceeding,"[169] due process is violated. In *Turner*, the Supreme Court held that the refusal to voir dire jurors about racial prejudice in an interracial

167. State v. Kelly, No. 99-CP-42-1174, at 38 (S.C. Ct. C.P. Oct. 6, 2003) (order granting relief).

168. *See, e.g.*, Jennifer Eberhardt, et al., *Looking Deathworthy: Perceived Stereotypicality of Black Defendant Predicts Capital-Sentencing Outcomes*, 17 PSYCHOL. SCIENCE 5 (2006).

169. Turner v. Murray, 476 U.S. 28, 37 (1986) (emphasis omitted).



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capital case created just such a risk.[170] The Court's judgment that this refusal created an unacceptable risk of racial prejudice infecting the capital sentencing proceeding was "based on a conjunction of three factors: the fact that the crime charged involved interracial violence, the broad discretion given to the jury at the death penalty hearing, and the special seriousness of the risk of improper sentencing in a capital case."[171] At least in interracial capital crimes, four South Carolina practices create an analogously unacceptable risk.

### 1. The Broad, Virtually Untrammeled Discretion Which South Carolina Prosecutors Possess and with Which Capital Jurors are Charged

Part I demonstrates that South Carolina's capital sentencing statute, as written by the legislature and construed by the South Carolina Supreme Court, does not perform the constitutionally mandated narrowing function. This is inherently impermissible because it produces arbitrariness, but it also unacceptably increases the risk that race will influence capital sentencing decisions.

As the Baldus Study of Georgia's death penalty revealed, race effects are most pronounced in the middle range of cases.[172] In contrast, at high levels of aggravation, race does not seem to play a role in selecting who is sentenced to death:

> One of the lessons of the Baldus study is that there exist certain categories of extremely serious crimes for which prosecutors consistently seek, and juries consistently impose, the death penalty without regard to the race of the victim or the race of the offender. If Georgia were to narrow the class of death-eligible defendants to those categories, the danger of

170. *Id.* at 36–37.

171. *Id.* at 37.

172. *See* McCleskey v. Kemp, 481 U.S. 279, 308 n.29 (1987) (alteration in original) (citation omitted) ("McCleskey's case falls in [a] grey area where . . . you would find the greatest likelihood that some inappropriate consideration may have come to bear on the decision.").



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> arbitrary and discriminatory imposition of the death penalty would be significantly decreased, if not eradicated.[173]

This pattern—racial disparity in close cases—is both consistent with older empirical findings from field studies and corroborated by mock jury studies. Kalven and Zeisel's classic work, *The American Jury*, reported that, in weaker cases, "[t]he closeness of the evidence makes it possible for the jury to respond to sentiment by *liberating it* from the discipline of the evidence."[174]

> [T]he jury does not often consciously and explicitly yield to sentiment in the teeth of the law . . . it yields to sentiment in the apparent process of resolving doubts as to evidence. The jury, therefore, is able to conduct its revolt from the law within the etiquette of resolving issues of fact.[175]

Likewise, mock jury studies, which have the virtue of perfect control, have found that racial bias is more often influential in cases with marginal evidence.[176] Thus, one can confidently predict that as the class of cases in which the death penalty is permissible grows larger, more and more cases will be unclear and consequently, will permit the jury to resort to "sentiment" produced by the race of the defendant, the race of the victim, or both.

Four of the nine members of the *McCleskey* court found the risk presented by the Georgia statute constitutionally impermissible.[177] Because the South Carolina legislature and courts have expanded death eligibility in South Carolina substantially beyond that encompassed by the Georgia statute at the time *McCleskey* was decided, race continues to infect decisions of life and death in this state.

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173. *Id.* at 367 (Stevens, J., dissenting).

174. *Id.* at 326 n.4 (Brennan, J., dissenting) (alteration in original) (quoting HARRY KALVEN, JR. ET AL., THE AMERICAN JURY 165 (1966)).

175. *Id.* (alteration in original).

176. *See, e.g.*, Denis Chimaeze E. Ugwuegbu, *Racial and Evidential Factors in Juror Attribution of Legal Responsibility*, 15 J. EXPERIMENTAL SOC. PSYCHOL. 133, 139 (1979).

177. *McCleskey*, 481 U.S. at 320 (Brennan, J., dissenting).



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### 2. Victim Impact

The risk that racial bias will infect the capital sentencing decision is further exacerbated by South Carolina's embrace of victim impact evidence. Viewed in isolation, victim impact evidence does not violate the Constitution.[178] Nonetheless, its admissibility may contribute to a constitutionally cognizable risk that racial bias may infect a state's system of capital punishment. As the dissent in *Payne* noted,

> Evidence offered to prove such differences can only be intended to identify some victims as more worthy of protection than others. Such proof risks decisions based on the same invidious motives as a prosecutor's decision to seek the death penalty if a victim is white but to accept a plea bargain if the victim is black.[179]

The majority rejected this view, reasoning,

> [a]s a general matter, however, victim impact evidence is not offered to encourage comparative judgments of this kind-for instance, that the killer of a hardworking, devoted parent deserves the death penalty, but that the murderer of a reprobate does not. It is designed to show instead *each* victim's "uniqueness as an individual human being," whatever the jury might think the loss to the community resulting from his death might be.[180]

In South Carolina, however, much broader victim impact testimony and argument is permitted, and the breadth of the admissibility rules enhance the likelihood that racial bias will result from the jury's contemplation of victim impact evidence.[181] Most notably, a solicitor is permitted to make comparisons

178. Payne v. Tennessee, 501 U.S. 808, 827 (1991) ("[If] the State chooses to permit the admission of victim impact evidence and prosecutorial argument on that subject, the Eighth Amendment erects no *per se* bar.").

179. *Id.* at 866 (Stevens, J., dissenting).

180. *Id.* at 823.

181. *See* John H. Blume, *Ten Years of* Payne*: Victim Impact Evidence in Capital Cases*, 88 CORNELL L. REV. 257 (2003).



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between the defendant's character and the victim's character—a comparison that is highly likely to stir up racial bias in interracial crime cases.[182] Thus, this factor also contributes to the unacceptable risk of racial bias created by the South Carolina capital punishment system.

### 3. The Racial Identity of the Decision Makers

All of the solicitors in South Carolina are white, as are virtually all of the assistant solicitors. Moreover, in the post-*Furman* period, at least twelve African-American defendants were convicted and sentenced to death by all-white juries.

Under these circumstances, mock jury studies show that racial bias is far more likely to affect the fate of African-American defendants.[183]

Nor is the expression of bias by white jurors against black defendants solely a laboratory phenomenon. An all-white jury is significantly more likely to impose death than is a racially mixed jury, and a black defendant/white victim case is much more likely to result in a death sentence when the jury is heavily white.[184]

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182. *See* Humphries v. State, 570 S.E.2d 160, 168 (S.C. 2002) (holding that *Payne* only "prohibits comparisons that suggest that there are worthy and unworthy victims," not comparisons between the worth of the defendant and the worth of the victim); *see also* State v. Ard, 505 S.E.2d 328, 331–32 (S.C. 1998) (upholding the admissibility of photographs of the deceased unborn child of the victim dressed in clothes his mother had purchased in anticipation of his birth).

183. Netta Shaked-Schroer et al., *Reducing Racial Bias in the Penalty Phase of Capital Trials*, 26 BEHAV. SCI. & L. 603, 603 (2008) (demonstrating no correlation between sentence and the defendant's race for non-white jurors, but white jurors were more likely to sentence African-American defendants to death); Thomas W. Brewer, *Race and Jurors' Receptivity to Mitigation in Capital Cases: The Effect of Jurors', Defendants', and Victims' Race in Combination*, 28 LAW & HUM. BEHAV. 529, 539–40 (2004) (demonstrating white jurors are less receptive to mitigation in black defendant/white victim cases than are African-American jurors); John F. Dovidio et al., *Racial Attitudes and the Death Penalty*, 27 J. OF APPLIED PSYCHOL. 1468, 1480 (1997) (demonstrating white mock jurors more likely to impose death penalty on African-American defendants than on white defendants).

184. William J. Bowers et al., *Death Sentencing in Black and White: An Empirical Analysis of the Role of Jurors' Race and Jury Racial Composition*, 3 U. PA. J. CONST. L. 171, 191–96 (2001); *see also* Stephen P. Garvey, *Aggravation and Mitigation in Capital Cases: What Do Jurors Think?*, 98 COLUM. L. REV.



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Thus, the fact that South Carolina prosecutors and jurors are overwhelmingly white further increases the likelihood that race will influence the assessment of death-worthiness.

4. The Confusing Nature of South Carolina Jury Instructions

According to Capital Jury Project data, confusion on key matters is common in jurors who have served on capital cases in South Carolina:

> [S]ubstantial minorities of jurors believed that the law required them to impose the death penalty if the crime was "heinous, vile or depraved" or if the evidence proved the defendant would be dangerous in the future. Many jurors who survive the death-qualification process also are unable to consider evidence in mitigation of punishment which the law requires them to consider.
>
> . . . [J]urors do not understand the sentencing phase instructions and are mistaken about most key concepts of aggravation and mitigation, which are the cornerstone of the Supreme Court's belief that a capital sentencing jury's discretion can be suitably limited and channeled. For example, the sentencing phase of a capital case begins with many jurors presuming that the death penalty is the correct punishment, or with a "presumption of death." Furthermore, a significant number of jurors do not understand that aggravating circumstances must be established beyond a reasonable doubt. Many jurors believe that the jury must unanimously agree that a mitigating circumstance has been established before it can be considered even though the United States Supreme Court has clearly said otherwise. More than half of the South Carolina jurors interviewed [wrongly] believed that the defendant was required to establish a mitigating factor beyond a reasonable doubt.[185]

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1538, 1559 (1998) (demonstrating the race of the defendant influences jurors' perceptions of future dangerousness).

185. Blume, *supra* note 15, at 316 (reviewing the literature). *See also*, Theodore Eisenberg & Martin T. Wells, *Deadly Confusion: Juror Instructions in Capital Cases*, 79 CORNELL L. REV. 1, 10 (1993) (finding 20% of jurors on



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The failure of jurors to adequately comprehend such important features of capital punishment law, in and of itself, threatens the legitimacy of the death penalty. But this confusion is especially pernicious because of its racial consequences. Although confusing jury instructions did not affect white mock jurors sentences of *white* defendants, one study found that confusing instructions increased the likelihood that white jurors would vote for a death sentence for *black* defendants.[186] Similarly, other researchers found that mock jurors who understood the instructions treated black and white defendants equally, but mock jurors who had poor comprehension of the instructions sentenced black defendants to death 50% more often than they sentenced white defendants to death.[187]

Thus, the lack of clarity in penalty phase instructions, like the breadth of death-eligibility, the racial identity of the decision makers, and the wide latitude given victim impact evidence, increases the risk that racial bias will infect jury deliberations in capital proceedings. Together, these aspects of capital punishment in South Carolina create "unacceptable risk of racial prejudice infecting the capital sentencing proceeding."[188]

## V. THE SOUTH CAROLINA SUPREME COURT CONSISTENTLY FAILS TO FULFILL ITS STATUTORY AND CONSTITUTIONAL OBLIGATION TO CONDUCT MEANINGFUL PROPORTIONALITY REVIEW IN CAPITAL CASES

As explained in Parts II and III, South Carolina's capital sentencing statute fails to perform the constitutionally required narrowing function on the "front end" required by *Furman* and its progeny. Because the statute allows the prosecution to seek

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capital juries believe that an aggravating factor can be established by a preponderance of the evidence or only to a juror's personal satisfaction).

186. Shaked-Schroer, *supra* note 183, at 611.

187. Mona Lynch & Craig Haney, *Discrimination and Instructional Comprehension: Guided Discretion, Racial Bias, and the Death Penalty*, 24 LAW & HUM. BEHAV. 337, 349–50 (2000).

188. Turner v. Murray, 476 U.S. 28, 37 (1986).



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the death penalty in virtually *any* murder case, the decision whether or not to seek the death penalty in murder cases is placed in the unbridled hands of the circuit solicitors. The evidence also reveals that the "selection" decision (i.e., whether to seek or impose a death sentence) is also tainted by race and other arbitrary factors. These defects on the "front end" are exacerbated by the South Carolina Supreme Court's failure to adequately monitor and regulate the capital sentencing scheme on the "back end." The most notable defect in the state supreme court's appellate review of capital cases is its failure to engage in anything resembling meaningful proportionality review of death sentences. This section discusses the constitutional implications of the "back end" problem caused by the court's lack of oversight.

### A. The Importance of Meaningful Proportionality Review

South Carolina's death penalty statute mandates the South Carolina Supreme Court review all death sentences to determine "whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant."[189] The statutorily required proportionality review is intended to serve as "[a]n additional check against the random imposition of the death penalty."[190] Meaningful proportionality review can "substantially eliminate[] the possibility that a person will be sentenced to die by the action of an aberrant jury."[191] A robust proportionality review helps to ensure that capital punishment is "limited to those offenders who commit 'a narrow category of the most serious crimes' and whose extreme culpability makes them 'the most deserving of execution.'"[192]

Of course, proportionality review can only be meaningful to the extent that a reviewing court makes a thorough comparison

189. S.C. CODE ANN. § 16-3-25(C)(3) (2003).

190. State v. Shaw, 255 S.E.2d 799, 807 (S.C. 1979).

191. Gregg v. Georgia, 428 U.S. 153, 206 (1976).

192. Kennedy v. Louisiana, 554 U.S. ___, 128 S. Ct. 2641, 2650 (2008) (quoting Roper v. Simmons, 543 U.S. 551, 568 (2005)).



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of the outcomes in similar cases for similarly situated defendants. The only logical method for an adequate proportionality review is to engage in a comparison not only of similar cases in which the death penalty was imposed but similar cases in which the death penalty was not imposed. Justice Stevens recently pointed out that this approach is "judicious because, quite obviously, a significant number of similar cases in which death was not imposed might well provide the most relevant evidence of arbitrariness in the sentence before the court."[193]

Consideration of life cases is consistent with the United States Supreme Court's approval of Georgia's amended capital sentencing scheme after *Furman* in *Gregg v. Georgia*.[194] One of Georgia's new procedures was a requirement that the Georgia Supreme Court conduct a proportionality review of the sentences imposed on similarly situated defendants.[195] The Court pointed out that proportionality review was "an additional provision designed to assure that the death penalty will not be imposed on a capriciously selected group of convicted defendants."[196] The Court was reassured by Georgia's claim that "if the death penalty is only rarely imposed for an act or it is substantially out of line with sentences imposed for other acts it will be set aside as excessive."[197] The Court pointed to Georgia Supreme Court's demonstrated willingness to overturn death sentences on proportionality grounds as evidence that the court had "taken its review responsibilities seriously."[198] Finally, the Court concluded:

193. Walker v. Georgia, 554 U.S. ___, 129 S. Ct. 453, 454–55 (2008) (statement of Stevens, J., respecting the denial of certiorari).

194. 428 U.S. 153 (1976); *see also* Proffitt v. Florida, 428 U.S. 242 (1976) (approving Florida's revised capital sentencing statute).

195. *Gregg*, 428 U.S. at 198.

196. *Id.* at 204.

197. *Id.* at 205 (quoting Coley v. State, 204 S.E.2d 612, 616 (Ga. 1974)).

198. *Id.*; *see also Proffitt*, 428 U.S. at 253 ("The Supreme Court of Florida, like that of Georgia, has not hesitated to vacate a death sentence when it has determined that the sentence should not have been imposed. Indeed, it has vacated 8 of the 21 death sentences that it has reviewed to date.").



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> [P]roportionality review substantially eliminates the possibility that a person will be sentenced to die by the action of an aberrant jury. If a time comes when juries generally do not impose the death sentence in a certain kind of murder case, the appellate review procedures assure that no defendant convicted under such circumstances will suffer a sentence of death.[199]

Justice Stevens has explained that the *Gregg* Court naturally assumed that Georgia "would consider whether there were 'similarly situated defendants' who had *not* been put to death because that inquiry is an essential part of any meaningful proportionality review."[200] The Court confirmed its expectation in *Zant v. Stephens*,[201] when it emphasized that its decision to uphold a Georgia death sentence, notwithstanding the jury's reliance on an invalid aggravating circumstance, "depend[ed] in part on the existence of an important procedural safeguard, the mandatory appellate review of each death sentence by the Georgia Supreme Court to avoid arbitrariness and to assure proportionality."[202] The Court reached its conclusion in *Zant* only after the Georgia Supreme Court expressly stated, in response to the Court's certified question, that Georgia uses both life and death cases for comparison purposes under its proportionality review.[203]

Thus, the Supreme Court's jurisprudence confirms that meaningful proportionality review is an important procedural safeguard against arbitrary imposition of the death penalty under a capital sentencing scheme like South Carolina's.[204] The

199. *Gregg*, 428 U.S. at 206.

200. Walker v. Georgia, 554 U.S. ___, 129 S. Ct. 453, 454 (2008) (statement of Stevens, J., respecting the denial of certiorari).

201. 462 U.S. 862 (1983).

202. *Id.* at 890; *see also Proffitt*, 428 U.S. at 251 ("[T]he Supreme Court of Florida, like its Georgia counterpart, considers its function to be to [guarantee] that the [aggravating and mitigating] reasons present in one case will reach a similar result to that reached under similar circumstances in another case . . . .") (alteration in original).

203. *Zant*, 462 U.S. at 880 n.19.

204. As explained in Part I, South Carolina's death penalty statute was



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need is even greater, however, when viewed in conjunction with the remainder of South Carolina's scheme, which fails to meaningfully narrow the pool of death-eligible cases, limit prosecutorial selection of death cases, ensure that death sentences are not imposed in a racially discriminatory manner, channel the jury's discretion in weighing aggravating and mitigating factors, and prevent abusive use of overly prejudicial victim impact evidence. The systemic flaws discussed previously in this Article result in the arbitrary and discriminatory imposition of death sentences in South Carolina that, standing alone, violate the Eighth Amendment. In addition, these failures simultaneously heighten South Carolina's obligation to conduct proportionality review in a meaningful way and highlight its consistent failure to do so.

### B. The South Carolina Supreme Court Invariably Fails To Conduct Meaningful Proportionality Review

Notwithstanding its statutory obligation to compare sentences imposed in "similar" cases, the South Carolina Supreme Court has determined that it will only consider other cases in which the death penalty was imposed, thereby ignoring hundreds of other cases involving similar crimes and similarly situated defendants.[205] The court has rejected the view of other jurisdictions that the appropriate "universe of cases" includes both those in which the death penalty was not imposed as well as those in which it was.[206] The court has noted that "[t]here is, after all, some logic to the view that the heinous crime is *sui*

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modeled after and is virtually identical to the Georgia statute approved in *Gregg*. The Court has stated that the Eighth Amendment does not require comparative proportionality review where other statutory procedures adequately channel the sentencer's discretion. *See* McCleskey v. Kemp, 481 U.S. 279, 306 (1987); Pulley v. Harris, 465 U.S. 37, 50–57 (1984). But that assertion merely conveys the Court's "recognition of differences among the States' capital schemes," and it "was not meant to undermine [the Court's] conclusion in *Gregg* and *Zant* that such review is an important component of the Georgia scheme." *Walker*, 129 S. Ct. at 456 (statement of Stevens, J., respecting the denial of certiorari).

205. *See, e.g.*, State v. Copeland, 300 S.E.2d 63, 74 (S.C. 1982).

206. *Id.*



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*generis*, simply beyond comparison."[207] But this view is inconsistent with the court's constitutional and statutory obligation to make that comparison.[208] Moreover, the court's method is illogical and tautological. Since the death penalty was reinstated in South Carolina in 1977, the court has never determined that any of the 176 death sentences imposed was excessive or disproportionate. Each case that is affirmed decreases the likelihood that any subsequent sentence will be found disproportionate because of the fact that another case, to which some future case may be similar, has entered the comparison pool.

A survey of the court's proportionality analysis reveals a perfunctory inquiry. Its undertaking uniformly consists of the same single sentence, or a slight variation thereof, repeated at the end of every opinion affirming a sentence of death: "[A] review of similar cases illustrates that imposing the death sentence in this case would be neither excessive nor disproportionate in light of the crime and the defendant."[209] The

207. *Id.* at 72.

208. In further support of its limited proportionality analysis, the court has said that including life cases in the comparison pool would result in "pure conjecture" and that the court will not subject death verdicts to "scrutiny in pursuit of phantom 'similar cases.'" *Id.* at 74. And yet, the Court has no difficulty conjuring up "phantom similar cases" in affirming death sentences. *Id.* On several occasions, the court has failed to find any similar cases for comparison purposes but nonetheless affirmed on the conclusory basis that the death sentence was simply "appropriate." *See e.g.*, State v. Passaro, 567 S.E.2d 862, 868 (S.C. 2002) (finding no similar cases but affirming on the grounds that it had affirmed other death sentences where the victim was under the age of eleven and defendant's crime was "no less gruesome than those"); *Copeland*, 300 S.E.2d at 77 (finding no similar case exists that would permit meaningful comparative review but that "we are satisfied that the sentence of death imposed on each of these appellants was appropriate and neither excessive nor disproportionate in light of their crimes and their respective characters"); State v. Shaw, 255 S.E.2d 799, 807 (S.C. 1979) (finding no similar cases existed, but the death sentence was appropriate and not excessive considering the crime and the defendants).

209. *E.g.*, State v. Stanko, 658 S.E.2d 94, 98 (S.C. 2008); State v. Stone, 655 S E.2d 487, 489 (S.C. 2007); State v. Evins, 645 S.E.2d 904, 913 (S.C. 2007); State v. Bryant, 642 S.E.2d 582, 589 (S.C. 2007); State v. Bennett, 632 S.E.2d 281, 289 (S.C. 2006); *see e.g.*, State v. Mercer, 672 S.E.2d 556, 567 (S.C. 2009)



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court routinely supports this single sentence analysis with a string cite of approximately three cases, on average, in which death sentences were upheld and the cases involved the same aggravating circumstance as the case under review. The court makes no effort to compare the circumstances of the defendants' lives and backgrounds in even the limited pool of cases that it does consider. The court's inquiry is constitutionally and statutorily deficient because it fails to meaningfully consider similarly situated defendants convicted of similar crimes.

## VI. CASE EXAMPLE: A MEANINGFUL PROPORTIONALITY ANALYSIS DEMONSTRATES THAT THERE IS NO RATIONAL BASIS FOR DISTINGUISHING DEATH CASES FROM NON-DEATH CASES IN SOUTH CAROLINA

A meaningful proportionality analysis in an actual case illustrates this point. For this example, we use the facts of an actual homicide case from Lexington County. Kevin Mercer, an African-American male, was convicted of murder and armed robbery in connection with a carjacking at the Raintree Apartment complex near Columbia, South Carolina.[210] The State alleged, and the jury found, armed robbery as the single aggravating circumstance.[211] An eyewitness viewed the carjacking taking place from an apartment bedroom window and called 911.[212] Mercer was arrested shortly thereafter driving the victim's car with his co-defendant, Marcus Thompson, seated in the passenger seat.[213] The murder weapon was found under the driver's side seat of the victim's vehicle. The ammunition for this weapon and two pairs of gloves were found in Thompson's

("We further find that the evidence supports the jury's finding of a statutory aggravating circumstance, and that the sentence of death is proportionate to sentences imposed under similar situations."); State v. Owens, 664 S.E.2d 80, 82 (S.C. 2008) ("[A] review of other decisions demonstrates that appellant's sentence was neither excessive nor disproportionate.").

210. State v. Mercer, 672 S.E.2d 556, 558 (S.C. 2009).

211. *Id.* at 557.

212. *Id.* at 558.

213. *Id.*



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possession.[214] Mercer's size and clothing generally matched the description of the eyewitness, although the witness only saw the perpetrator from behind.[215] At trial, the State offered evidence that testing conducted on Mercer's left hand showed substances consistent with gunshot residue, although it could not be conclusively identified as gunshot residue.[216] The eyewitness description and inconclusive gunshot residue testing constituted the bulk of the State's case against Mercer. Mercer was convicted by an all-white jury in Lexington County and sentenced to death.[217] Under the South Carolina Supreme Court's current "rubber stamp" method of proportionality review, looking only at other cases in which the death penalty was imposed and upheld, the court's proportionality analysis was as follows:

> We have conducted the statutorily mandated review under S.C. Code Ann. § 16-3-25 (2003). We find the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor. We further find that the evidence supports the jury's finding of a statutory aggravating circumstance, and that the sentence of death is proportionate to sentences imposed under similar situations. Mercer's convictions and sentence of death are affirmed.[218]

214. *Id.* at 559.

215. *Id.* at 558–59.

216. *Id.* at 558.

217. Mercer's case highlights yet another arbitrary factor in capital sentencing in South Carolina—geographic disparity in death sentences. There is wide variation from county to county in whether the death penalty will be sought or obtained. Blume, *supra* note 15, at 298. Mercer's crime occurred just a few miles over the line between Richland and Lexington Counties. Lexington county is part of the Eleventh Judicial Circuit, from which a disproportionately large share of death sentences have historically been produced. *Id.* at 299. Richland county, however, has traditionally produced very few death sentences, despite its relatively high murder rate. *Id.* Thus, based on the historical trends, had Kevin Mercer's crime occurred just a few short miles over into Richland county, it is likely that the State would never even have sought death against him, or if it had, that a jury would not have imposed it.

218. *Id.* at 567 (citing *State v. Huggins*, 519 S.E.2d 574 (1999); *State v. McWee*, 472 S.E.2d 235 (1996)).



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If the court were to look outside this narrow universe of death cases, however, it would find numerous cases involving offenses very similar to Mr. Mercer's in which the jury or judge imposed a sentence of life imprisonment instead of death. Moreover, if the court were to expand its inquiry further, it would discover many similar cases in which the State did not even seek death. Both of these categories are relevant to the question of whether a death sentence in Kevin Mercer's case is proportionate to the offense. Such an approach would be consistent with the methods of several other states, which have embraced a more robust method of proportionality review. For example, Delaware, Montana, New Mexico, South Dakota, Tennessee, and Virginia all consider cases that went to a penalty trial regardless of whether the defendants received life or death sentences.[219] Louisiana, Washington, and New Jersey (prior to abolishing the death penalty in December 2007) also consider murder cases in which the death penalty was not sought.[220]

### A. Death Cases Resulting in Life or Less

Collecting and analyzing the data necessary to conduct a thorough, meaningful proportionality review in South Carolina is not a difficult task. Indeed, the same small team of researchers that collected the data described in Part III were able to compile the necessary information in only a few days. The research team

219. *See, e.g.*, Flamer v. State, 490 A.2d 104, 139 (Del. 1980) (explaining that including life cases is "inherently fair, logical and necessary to prevent disproportionate sentencing"); State v. Fry, 126 P.3d 516, 537 (N.M. 2005) (including as comparison cases "those New Mexico cases in which a defendant was convicted under the same aggravating circumstance(s) and then received *either* the death penalty *or* life imprisonment"); State v. Piper, 709 N.W.2d 783, 800 (S.D. 2006) ("[A]nalysis of similar cases . . . compares cases involving a capital sentencing proceeding, whether life imprisonment or a death sentence was imposed"); Gray v. Commonwealth, 645 S.E.2d 448, 457 (Va. 2007) (comparing "other capital murder cases, including those cases when a life sentence was imposed"); *see also* State v. Sattler, 956 P.2d 54, 72 (Mont. 1998); State v. Rice, 184 S.W.3d 646, 679 (Tenn. 2006).

220. *See* State v. Campbell, 983 So. 2d 810, 875–76 (La. 2008); State v. Feaster, 757 A.2d 266, 272–74 (N.J. 2000); State v. Yates, 168 P.3d 359, 398–99 (Wash. 2007).



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created a comprehensive database of cases between the years 1995 and 2007 in which the state sought the death penalty and the outcome of the case was a sentence of life or less. When a South Carolina solicitor serves notice that he or she intends to seek the death penalty in a particular case, the South Carolina Supreme Court issues an order appointing a particular circuit judge to have exclusive jurisdiction over that case. Since late 1994, these appointment orders have been kept by the Office of Court Administration. Thus, the research team began by reviewing the files at the Office of Court Administration and compiling a list of all death-noticed cases in South Carolina from 1995 to 2007.[221] Next, the researchers sorted the cases by county and traveled in teams to select county courthouses, where they reviewed the individual case files and collected data about the facts and circumstances of the crime, the characteristics and background of the defendant and the victim, and the ultimate outcome of the case. The research produced the following data:

- From 1995 to 2007, South Carolina solicitors sought death in 226 cases—an average of 17.4 per year.
- The greatest concentration of death-noticed cases came from the following counties: Calhoun, Charleston, Clarendon, Dillon, Florence, Greenville, Greenwood, Horry, Lexington, Richland, Spartanburg, and Sumter. In these counties alone, the state sought death in 124 cases during the relevant years.

The research team collected comprehensive data on each death-noticed case in these counties. Of the 124 cases from the selected counties, 115 resulted in a sentence of life or less. Thus, nearly 93% of the total cases in which the state sought death in these counties resulted in a sentence of life or less. Of those 115 cases:

221. Because the Office of Court Administration did not begin collecting the appointment orders until late in 1994, the data for that year was excluded from the analysis.



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- 50 resulted in a sentence less than death as a result of a plea agreement;
- 39 were jury verdicts of life or less;
- 9 were sentences of life or less handed down by a judge;
- In 3 cases, the State opted to withdraw the death notice, without a plea agreement, before trial;
- In 1 case, a judge found that the defendant was not eligible for the death penalty because he was mentally retarded;
- In 6 cases, the state did obtain the death penalty, but it was subsequently vacated because the defendant was under the age of 18 at the time of the crime; and
- 7 resulted in a sentence less than death for a reason that could not be determined by a review of the case files.

A closer look at the facts of these cases shows no meaningful difference from the facts of Mr. Mercer's case. Mr. Mercer was charged with murder and armed robbery. Of the 115 cases that resulted in life or less, 68 (or 59%) involved an armed robbery aggravator and 49 (or 43%) involved purpose of receiving money or a thing of monetary value as an aggravating circumstance. Kevin Mercer's case is, in many respects, an unaggravated homicide compared to the majority of cases in this data set. For example, 100 (or 87%) of the 115 cases that resulted in a life sentence or less involved more than one aggravating circumstance. Seventeen of the cases involved six or more aggravating circumstances in a single case. Sixteen of the defendants in this group killed more than one person. Two dismembered their victims.

The State's evidence against Mr. Mercer was not any stronger in his particular case than in the 115 cases resulting in a sentence of life or less. As discussed above, the State's case for guilt against Mr. Mercer involved eyewitness identification and inconclusive gunshot residue testing. Twenty-eight (28) of the 115 cases in the sample also involved eyewitness testimony. In fact, many of the cases in the sample involved an even stronger case for guilt and/or death than was present in Mr. Mercer's case:



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- In 37 cases the defendant gave a full confession directly to the police;
- In 7 cases the defendant confessed to another witness who was not involved in the crime;
- 9 cases had DNA evidence tying the defendant to the crime; and
- 1 case included a videotape of the crime.

### B. Death-Eligible cases in Which the State Did Not Seek Death

As explained in Part III, researchers collected data on all homicides in Richland County for the years 2000 to 2008. During this period of time, there were 152 homicide profiles collected. One-hundred and seventeen (117)—or 77%—of these cases involved facts that made them death-eligible, yet Richland County solicitors sought the death penalty in only 4 of these cases. With regard to the remaining 113 cases in which the State could have, but elected not to seek the death penalty, a comparison with the facts of Mr. Mercer's case again reveals no meaningful difference that would render him more deserving of death:

- 38 of the 113 cases involved armed robber;
- 4 involved physical torture;
- 85 involved facts that would support more than one aggravating circumstance;
- 57 cases involved three or more aggravating circumstances.[222]

222. By contrast, Max Knoten was one of the four defendants in this data set against whom the state did seek the death penalty. State v. Knoten, 555 S.E.2d 391 (S.C. 2001). Knoten was convicted of murdering a thirty-year-old woman by beating her to death with a pipe and then drowning a three-year-old girl. *Id.* at 393. The jury found four aggravating circumstances: rape, torture, muder of more than one person, and murder of a child under the age of eleven. Nonetheless, that jury voted to impose a life sentence for Knoten. *Id.*



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A comparison to the data collected in Charleston County produces similar results. There were 151 homicide profiles collected in Charleston County for the years 2002 to 2007. One-hundred and fourteen (114)—or 76%—of these cases were death-eligible. Charleston County solicitors sought death in four (4) of those cases. In the remaining 110 cases in which the State could have, but elected not to seek the death penalty:

- 31 of the 110 cases involved kidnapping;
- 36 involved robbery;
- 10 involved larceny with the use of a deadly weapon;
- 28 involved physical torture;
- 36 were committed for the purpose of receiving money or a thing of monetary value;
- 3 involved the killing of a law enforcement officer;
- 10 of these cases involved facts supporting five or more aggravating circumstances.

Thus, there is no meaningful basis of distinction—either by comparing Mr. Mercer's case to others in which the State sought but failed to obtain a death sentence, or by comparing his case to others in which the State could have but opted not to seek a death sentence—that would prove Mr. Mercer was somehow the worst of the worst and therefore more deserving of death than any other defendant charged with murder. Instead, he is simply one of the capriciously selected few who has had the unfortunate luck of being struck by lightning.

## VII. CONCLUSION

Through repeated additions to the statutory list of aggravating factors and further expansion of the aggravating factors through judicial interpretation, South Carolina's capital sentencing statute does not genuinely narrow the class of individuals eligible for a sentence of death as mandated by the Eighth Amendment. The empirical evidence demonstrates that the overwhelming majority of homicides in South Carolina are



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legally death-eligible. Thus, to the extent that any narrowing occurs in South Carolina's capital sentencing scheme, it is performed by and at the unbridled discretion of solicitors and judge or jury sentencers, where whim, passion, political pressure, prejudice and caprice have ample and unconstitutional room to roam. To compound the problem, South Carolina has no effective method for monitoring and regulating the capital sentencing scheme because the South Carolina Supreme Court fails to conduct meaningful proportionality review. Thus, the South Carolina Supreme Court has failed to fulfill its constitutional duty to remedy unconstitutional practices occurring at the trial level. These characteristics render South Carolina's methods for the imposition and review of capital punishment more akin to the statute rejected as unconstitutional by the United States Supreme Court in *Furman* than the one approved of in *Gregg*.[223] As such, South Carolina's statutory scheme has not withstood the test of time and experience, and it should be struck down because it is unconstitutional.

223. Although a detailed discussion of alternative proposals is outside the scope of this Article, there are at least three steps that we would recommend to bring South Carolina's capital sentencing scheme back in line with the requirements of *Furman* and *Gregg*, short of abolishing the death penalty altogether. First, the legislature could scale back the pool of death-eligible offenders by carefully crafting a much narrower and more specific set of aggravating circumstances. Second, South Carolina could adopt a racial justice act that would prevent the State from seeking or carrying out a death sentence in cases where the defendant can show racial bias through the use of historical and statistical evidence. Kentucky and North Carolina have enacted such statutes. *See* KY. REV. STAT. ANN. § 532.200 (West 2006); N.C. GEN. STAT. ANN. §§ 15A-2010-15A-2012 (West 2009). For a detailed discussion on the merits of a racial justice act, see, e.g., Erwin Chemerinsky, *Eliminating Discrimination in Administering the Death Penalty: The Need for a Racial Justice Act*, 35 SANTA CLARA L. REV. 519 (1995). A racial justice act could also require more transparency in prosecutorial decision making by imposing reporting requirements. Several states have imposed reporting requirements in an effort to combat racial profiling in the context of traffic stops. *See, e.g.*, David A. Harris, *The Reality of Racial Disparity in Criminal Justice: The Significance of Data Collection*, 66 LAW & CONTEMP. PROBS. 71, 73 (Summer 2003). Third, the South Carolina Supreme Court should conduct a meaningful proportionality review in capital cases, which we have demonstrated is not a difficult task.



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MEDICAL UNIVERSITY OF SC
Charleston, SC 29425-0768

## HOSPITAL DISCHARGE SUMMARY

**Patient Name:** DICKERSON, WILLIAM
**MRN:** 00914346 289733
**Admitted:** 05/17/96
**Discharged:** 05/18/96
**Service:** Trauma
**Attending:** T. Karl Byrne, M. D.

Respondent's 1 12-8-15 FD

**Referring:**

DISCHARGE DIAGNOSES:
1. Gunshot wound to the left shoulder, through and through.
2. Gunshot wound to the right face and ear.

PROCEDURES: None.

HISTORY: The patient is a 19-year-old black male status post gunshot wound to the head, essentially to the face and left shoulder, during an altercation with the police. There was no loss of consciousness. He was hemodynamically stable in the field and in route and on arrival to 1 West Trauma Center. The patient received wounds as a result of a .45 caliber handgun.

PAST MEDICAL HISTORY: Unremarkable. The patient is on no medications.

PAST SURGICAL HISTORY: Significant for an appendectomy.

ALLERGIES: No known drug allergies.

PHYSICAL EXAMINATION: The pulse was 120. Respiration 24. Blood pressure 130/80. Initially, he was awake but uncooperative. HEENT revealed gunshot wound to the right face, across the right temporal area with partial avulsion of the right penna. There was active bleeding and some swelling about the right temporal. Pulpils equal and reactive to light. Canals are clear. Tympanic membranes were normal. Nasopharynx was atraumatic. Chest was clear to ausculation bilaterally. There were no wounds about the chest. Cardiovascular S1 and S2 with no added sounds. He had 2+ radial and femoral pulses bilaterally and 2+ distal pulses. Abdomen was soft and there were bowel sounds. Abdomen was nontender and nondistended. There was a right lower quadrant scar. Genitourinary examination revealed normal genitalia. There was no blood at the meatus. Extremities revealed on the left shoulder an entrance and exit wound with no active bleeding. He has active and passive range of motion of the

**HOSPITAL DISCHARGE SUMMARY**

**Patient Name: DICKERSON, WILLIAM**
**MRN: 00914346**
**PAGE 2**

left shoulder. Flexion extension was intact. He was 5/5 muscle strength in the deltoid and triceps. His radial pulse was 2+ and there was no evidence of vascular injury.

HOSPITAL COURSE: The patient was stable throughout his hospitalization. He was evaluated by the plastic surgery consultants who repaired his avulsion of his right ear. His left arm was placed in pressure dressings overnight with clear serous sanguinous drainage in the a.m. of discharge. Patient's vital signs remained stable. He was afebrile throughout his hospital course. On the day of discharge, he was tolerating a regular diet. He continued to have intact sensory motor function of the left extremity. The wound was packed with wet to dry dressings.

DISPOSTION:
1. The patient is discharged in custody of the City of Charleston Police.
2. Diet: regular.
3. Activity: no heavy lifting with the left arm.

MEDICATIONS:
1. Vicodin 1-2 p.o. every 4-6 hours as needed pain.
2. Keflex 500 mg 1 p.o. every 6 hours.
3. Follow with plastic surgery clinic on 5/20/96, 8:00 a.m.
4. Radial dressing to be remain in place.
5. Left shoulder to have wet to dry dressings b.i.d.
6. Followup in trauma clinic on 5/21/96 at 2:00 p.m.

Rod Dippel, M. D.
Resident

T. Karl Byrne, M. D.
Attending

:750/
DD: 05/18/96
DT: 06/14/96
Additional CC:

Consultation

EMERGENCY
P/T F
RAUHA

- At convenience of consultant
- Urgent
- Evaluate and advise only
- Orders & Aid in management
- ...pt in transfer
- ...ecial procedure only

Requested of Dr. Plastics
On Service
Requested on Patient
In Room/Ward
Diagnosis/Reason for request S/P GSW to (R) hand w/ laceration of ... tendon. Plastics eval

☐ Written Order in medical record
AND
☐ Physician/service notified by: _____
NAME DATE TIME

MD/Service DATE TIME

**REPORT**

19yo BM presents to IWTC s/p GSW to (R) forehead (across) and (L) shoulder. Awake in good condition / hemodynamically stable.

PMH - ϕ
PSHx - ϕ
Meds - ϕ
All - NKDA.




PE: Awake Alert Oriented x3
HEENT - Laceration as described. PERRL, EOMI
ϕ VA deficits.
(R) ear ~ avulsion type injury ~ significant loss of tissue. EAC intact. ϕ hemotympanum. Hearing grossly intact. (R) parotid normal.
Facial nerve grossly intact.
Radiographs: 3 views C's of skull ordered.
A/P laceration as described (skin/subQ/galea) ~ 8cm / 9cm (R) forehead
1- Irrigated wounds ~ 1 liter NS. Also total of 8cc 1% lidocaine. Wounds reexamined and closed in layered fashion.
Pressure dressing applied.
Pt discussed & d/c'd by Dr. Hanney.

Signed _____
Name & Title
Date 5/17/94 Time: 0040.

OTC NO. 411209 MEDICAL RECORD

# MUSC MEDICAL CENTER
## CHARLESTON, S.C.

EMERGENCY

Name_____

Address_____

Age_____ Sex_____ Race_____ Marital Status_____ History No._____

Service_____ Referring Physician_____

## Patient's History

Chief Complaints (Use patient's own words)

**Present Illness**

19 yo BM s/p GSW to head & (L) shoulder during altercation w police. Ø LOC

~~HDS in field, en route & on arrival to ED.~~

Denies EtOH or drugs. ? blood loss

Weapon used was .45 caliber handgun.

| PMH | PSH | MEDS | ALL |
|---|---|---|---|
| Ø | appy | Ø | Ø |

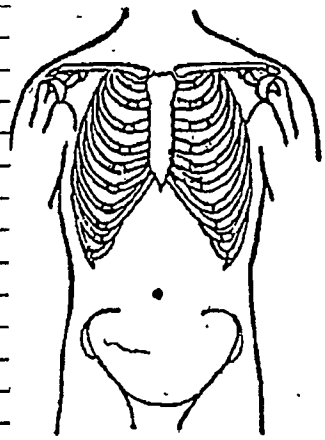
OTC NO. 410600 Rev. 8/94

William O. Dickerson, Jr. v. State
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# MUSC MEDICAL CENTER
## PHYSICAL EXAMINATION

EMERGENCY
P/T E

Name
Age Sex Race
Height Weight AverageWeight
Temp a.m. p.m.
Pulse Respiration
General Appearance awake but intermittently inappropriate/confused
Skin cool
Head-Sinuses (R) upper pinna partially avulsed; (+) otria bleeding
Eyes PERRL, EOMI (+) swelling (R) temporal area
Ears as above (+) hemotympanum (R)
Nose
Tongue, Lips, Oral Cavity and Teeth (-)
Tonsils and Pharynx-Larynx
Lymph Nodes
Neck- (Thyroid) C collar in place
Hair Changes-Endocrine Stigmata
Breasts
Chest and Lungs
symmetrical BS (B) CTA
(-) wounds



Cardiovascular System-Heart, Arteries, Veins-B.P. Right Left
RRR
2+ radial/femoral pulse (B)
Abdomen
soft, NT/ND
RLQ scar
Hernia

OTC NO. 410605 Rev. 8/94

Genito-Urinary System: ext genitalia, ϕ blood c meatus

Rectum

Prostate

Pelvis (Female)

Muscles-Bones-Joints-Foot Arches-Posture-Spine: (L) shoulder c entrance/exit wound

Neurological Findings-Cranial Nerves: grossly intact

Reflexes

Motor Disturbances: moves all 4 equally

Sensory Disturbances

Positive Findings_History and Physical

Impression of Examiner: s/p GSW (L) head, (L) shoulder

Signed _____
Intern/Resident

Comment by Attending and Tentative Diagnosis

Plan of Study: CXR
CT head
Coping
(L) clavicle X-ray
Neurosurgery consult

_____
Signature, Attending Physician/Surgeon.

Date _____ Time _____

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HOSPITAL OPERATIVE REPORT

DICKERSON, WILLIAM O. 29733
MRN 00914346-980296560
Date of Surgery: 5/17/96

Drs. Harvey/Wilson/Nguyen

PREOPERATIVE DIAGNOSIS:
1. Status post gun shot wound to right forehead.
2. Three cm entrance wound complex and stellate in nature.
2. Avulsive exit wound of the right ear with significant tissue destruction.

PROCEDURES PERFORMED:
1. Irrigation, debridement and closure of the above-mentioned entrance and exit wounds.

ANESTHESIA: A total of 12 cc of 1% Lidocaine with 1:100,000 epinephrine.

INDICATIONS: Mr. Dickson is a 19 year old black male, brought to 1 West Trauma Center in the custody of the Charleston Police Department after sustaining a gun shot wound to the right forehead which tracked subcuticularly and exited the right external ear. Entrance wound on examination was hemostatic but was noted to be complex and stellate with multiple areas of tissue necrosis already present. The right ear wound was severely avulsive in nature with the loss of a significant amount of the conchal bowl and posterior helix. The external auditory canal was noted to be intact, with no hemotympano present. There was also no gross hearing deficits present at this time. Patient presents now in 1 West Trauma Center for repair of the above-mentioned wounds.

DESCRIPTION OF OPERATION: Approximately 12 cc of 1% Lidocaine, 1:100,000 epinephrine was infiltrated into both the right forehead and the left ear wound. Anesthesia for the right ear wound was achieved by an auricular temporal and posterior auricular block. Our attention was first placed on the right forehead wound, totalling approximately 3 cm in its greatest diameter. Using a #15 blade, the wound margins were refined to reshape the wound in a horizontal ellipse and at this point, using 4-0 Vicryl and 6-0 nylon, the wound was closed in a layered fashion. Attention was then placed on the right ear wound, where a significant portion of the conchal cartilage was noted to be exposed severely comminuted in nature. Several pieces of the cartilage which were not attached to perichondrium was removed at this time. The right ear underwent irrigation with copious amounts of normal saline and it was prepped and draped in a standard fashion. Using some 4-0 clear monofilament, the remaining cartilage was reattached to its appropriate positions. The wound margins of the right ear were undermined using a #15 blade and the remaining soft tissue was pulled together using 6-0 nylon sutures in a simple fashion. At this point, a Xeroform pressure dressing was placed inside the ear proper and the posterior auricular region and using a Kerlex, a pressure

HOSPITAL OPERATIVE REPORT



head dressing was placed at this time. Patient remained stable throughout the procedures and was escorted to the 7 West ward without any complications. Estimated blood loss was minimal. Fluid replacement was approximately 400 cc Crystalloid. There were no complications noted.

:James C. Wilson, D.D.S.
:Resident in Plastic Surgery

:Tracy S. Harvey, M.D.
:Attending in Plastic Surgery

JCW:me
DD: 05/18/96
DT: 05/21/96
cc: 1 each surgeon

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William Dickerson
from
MUSC
IDENTIFYING # 29733

50

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Brenda J. Bailey, RRA

BRENDA J. BAILEY, R.R.A.
MANAGER, RECORD RETRIEVAL &
MAINTENANCE
HEALTH INFORMATION SERVICES DEPT.

5/96

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# SUBPOENA IN A CRIMINAL CASE

| | |
|---|---|
| SOUTH CAROLINA GENERAL SESSION COURT | COUNTY: CHARLESTON |
| STATE OF SOUTH CAROLINA V. WILLIAM O. DICKERSON | CASE NO. 96-GS-10-4348/4349 |
| | SUBPOENA FOR ☐ PERSON ☒ DOCUMENT(S) OR OBJECT(S) |
| TO: ADRIAN GADSDEN<br>MUSC MEDICAL RECORDS<br>FAX: 792-8391 | OCA NO(S): |

☐ YOU ARE HEREBY COMMANDED to appear in the above named court at the places, date, and time specified below to testify in the above entitled case.

| PLACE | COURTROOM B<br>GENERAL SESSIONS |
|---|---|
| CHARLESTON COUNTY TEMPORARY JUDICIAL CENTER<br>2144 MELBOURNE AVENUE<br>NORTH CHARLESTON, SOUTH CAROLINA 29415 | DATE AND TIME<br>UPON RECEIPT |

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).

LIST DOCUMENT(S) or OBJECT(S)

*PLEASE PROVIDE ALL TREATMENT RECORDS ON WILLIAM O. DICKERSON, BLACK MALE, DOB: AUGUST 24, 1976, SSN 249-33-7829. DICKERSON WAS ADMITTED TO MUSC ON MAY 1, 1996.*

*PLEASE CONTACT CHIEF INVESTIGATOR JOHN C. BURNETT FOR PICK-UP OF SAID RECORDS AT TELEPHONE NUMBER 740-5857.*

COPY-MED, INC.

This subpoena shall remain in effect until you are granted to depart by the court or by an officer acting on behalf of the court.

| | |
|---|---|
| CLERK OF COURT<br>Julie J. Armstrong | DATE<br>April 15, 1998 |
| (BY) DEPUTY<br>Ronald J. Bryan | |

ADM _____ FS _____ LAB _____ DS _____ OP _____ H&P _____ PATH _____ DRUG _____ EEN _____ PROG N _____ EKG _____ CONS _____ OPD _____ XRAY _____ ER _____ DATE 4/24/98 BY SW

This subpoena is issued upon application of the

☒ SOLICITOR ☐ DEFENDANT

ATTORNEY'S NAME AND ADDRESS
DAVID PRICE SCHWACKE
SOLICITOR, NINTH JUDICIAL CIRCUIT
CHARLESTON AND BERKELEY COUNTIES
COUNTY COURTHOUSE, 2144 MELBOURNE AVENUE
NORTH CHARLESTON, SOUTH CAROLINA 29405

William O. Dickerson, Jr. v. State
Bloom File, Box B, Page 2151

TW

# PATIENT REGISTRATION

☒ INPATIENT ☐ OUTPATIENT ☐ EMERGENCY

| DATE | REG TIME | MEDICAL RECORD # | SOURCE # | EPISODE # | PAT COM # | DISCHARGE DATE | SEX | RACE | BIRTH DATE | AGE |
|---|---|---|---|---|---|---|---|---|---|---|
| 7/96 | 15:47 | 000914346 | 811 | 001 | 980296560 | 5-18-96 | M | B | | Y |

| LAST | FIRST | MI | MARITAL STATUS | |
|---|---|---|---|---|
| RSON | WILLIAM | D | S | CVJ,TPR |

| ESS STREET | CITY | ST | ZIP | COUNTY | VIP CODE | EMPL |
|---|---|---|---|---|---|---|
| | CHARLESTON | SC | 29401 | 10 | | FX |

| HOME TELEPHONE | RELIGION | REFERENCE NAME | EMPLOYER NAME |
|---|---|---|---|
| 9-33-7825 | UNKNOWN | SANDRA-MOTHER | |

| YER PHONE | EMPLOYER ADDRESS STREET | CITY | ST | ZIP | OCCUPATION |
|---|---|---|---|---|---|
| | | | | | |

| TYPE | NURSING STATION | ROOM | BED | ATTENDING DOCTOR | MED SERV |
|---|---|---|---|---|---|
| | 007W | 0785 | A | NORCROSS, E (1D118) | SUR |

| A | ON FILE | REQ PROV | ADMITTING DOCTOR | LOS | PREV. ADMIT DATE |
|---|---|---|---|---|---|
| | N | N | NORCROSS, E | 3 | |

SIS: NSHOT TO HEAD

EDURE:

| CHT # | PRECERT LOS | PRECERT DATE |
|---|---|---|
| | 0000 | |

| LAST | FIRST | MI | RELATIONSHIP | HOME TELEPHONE |
|---|---|---|---|---|
| NKINS | SANDRA | | 18 - PARENT | |

| ESS STREET | CITY | STATE | ZIP | WORK TELEPHONE |
|---|---|---|---|---|
| 5 | CHARLESTON | SC | 29401 | |

| EMPLOYER LOCATION | LAST | FIRST | MI | RELATIONSHIP | HOME TELEPHONE |
|---|---|---|---|---|---|
| | NKINS | SANDRA | | 18 - PAREN | |

| ESS STREET | CITY | STATE | ZIP | WORK TELEPHONE |
|---|---|---|---|---|
| | [illegible]ESTON | | | |

| ATTENDING DOCTOR | UPIN | DES | CITY |
|---|---|---|---|
| RCROSS, E | 803792382A | A71 | [illegible]ESTON |

| ZIP | REFERRING INSTITUTION | EMERGENCY REFERRAL |
|---|---|---|
| 2942$ | | |

| N DOCTOR | PHONE | ADDRESS | CITY | ST | ZIP |
|---|---|---|---|---|---|
| K. DR. | | | | | |

| DIAGNOSIS | CODE NUMBER |
|---|---|
| | V70.0 |
| DRAFT DIAGNOSIS: ECODE 880 SKULL FX OPEN | E965.0 |
| S/P ASSAULT - HOMICIDE | V62.84 |

NOTE: This report is strictly Confidential and is for the information only of the person to whom it is addressed. No responsibility can be accepted if it is made available to any other person, INCLUDING THE PATIENT. DIAL MR161

| ION OR SPECIAL PROCEDURES | |
|---|---|
| | 40.50 |

JUL 17 1996

GE SUMMARY
☐ DICTATED DATE
☐ DICTATED DATE
☐ MAILED DATE

HEALTH INFORMATION SERVICE

MUSC MEDICAL CENTER
MEDICAL RECORDS
(803) 792-3881

MEDICAL UNIVERSITY OF SC
171 [illegible]
Charleston, SC 29425-3768

## HOSPITAL DISCHARGE SUMMARY

Patient Name: DICKERSON, WILLIAM
MRN: 00914346 25733
Admitted: 05/17/96
Discharged: 05/18/96
Service: Trauma
Attending: T. Karl Byrne, M. D.

Referring:

DISCHARGE DIAGNOSES:
1. Gunshot wound to the left shoulder, through and through.
2. Gunshot wound to the right face and ear.

PROCEDURES: None.

HISTORY: The patient is a 19-year-old black male status post gunshot wound to the head, essentially to the face and left shoulder, during an altercation with the police. There was no loss of consciousness. He was hemodynamically stable in the field and in route and on arrival to 1 West Trauma Center. The patient received wounds as a result of a .45 caliber handgun.

PAST MEDICAL HISTORY: Unremarkable. The patient is on no medications.

PAST SURGICAL HISTORY: Significant for an appendectomy.

ALLERGIES: No known drug allergies.

PHYSICAL EXAMINATION: The pulse was 120. Respiration 24. Blood pressure 130/80. Initially, he was awake but uncooperative. HEENT revealed gunshot wound to the right face, across the right temporal area with partial avulsion of the right penna. There was active bleeding and some swelling about the right temporal. Pupils equal and reactive to light. Canals are clear. Tympanic membranes were normal. Nasopharynx was atraumatic. Chest was clear to ausculation bilaterally. There were no wounds about the chest. Cardiovascular S1 and S2 with no added sounds. He had 2+ radial and femoral pulses bilaterally and 2+ distal pulses. Abdomen was soft and there were bowel sounds. Abdomen was nontender and nondistended. There was a right lower quadrant scar. Genitourinary examination revealed normal genitalia. There was no blood at the meatus. Extremities revealed on the left shoulder an entrance and exit wound with no active bleeding. He has active and passive range of motion of the

HOSPITAL DISCHARGE SUMMARY

Patient Name: DICKERSON, WILLIAM
MRN: 00914346
PAGE 2

left shoulder. Flexion extension was intact. He was 5/5 muscle strength in the deltoid and triceps. His radial pulse was 2+ and there was no evidence of vascular injury.

HOSPITAL COURSE: The patient was stable throughout his hospitalization. He was evaluated by the plastic surgery consultants who repaired his avulsion of his right ear. His left arm was placed in pressure dressings overnight with clear serous sanguinous drainage in the a.m. of discharge. Patient's vital signs remained stable. He was afebrile throughout his hospital course. On the day of discharge, he was tolerating a regular diet. He continued to have intact sensory motor function of the left extremity. The wound was packed with wet to dry dressings.

DISPOSTION:
1. The patient is discharged in custody of the City of Charleston Police.
2. Diet: regular.
3. Activity: no heavy lifting with the left arm.

MEDICATIONS:
1. Vicodin 1-2 p.o. every 4-6 hours as needed pain.
2. Keflex 500 mg 1 p.o. every 6 hours.
3. Follow with plastic surgery clinic on 5/20/96, 8:00 a.m.
4. Facial dressing is to remain in place.
5. Left shoulder to have wet to dry dressings b.i.d.
6. Followup in trauma clinic on 5/21/96 at 2:00 p.m.

Rod Dippel, M. D.
Resident

T. Karl Byrne, M. D.
Attending

:750/
DD: 05/18/96
DT: 06/14/96
Additional CC:_____

Consultation

at convenience of consultant
(Urgent)
Evaluate and advise only
Orders & Aid in management
Transfer
Secure only

Name of Dr. Plastics
Service
Requested on Patient
Room/Ward
Purpose/Reason for request Eval for SIP GSW to (R) chest w/L evisceration of liver, pleural eval

☐ Written Order in medical record
AND
☐ Physician/service notified by:
NAME DATE TIME

MD/Service DATE TIME

REPORT

19yo BM present to TWTC s/p GSW to (R) parietal (entry) → (L) shoulder.
Arrives in good condition / hemodynamically stable.

PMH - ϕ
PSH - ϕ
Meds - ϕ
All - NKDA



PE: Awake Alert Oriented x3
HEENT - Normocephalic as described. PERRL, EOMI
ϕ VA deficits.
(R) eye c avulsion type injury c significant loss of tissue. EAC intact ϕ hemotympanum. Hearing grossly intact. (L) parietal wound.
ϕ meningismus / no focal neuro exam.
Radiographs: 3 views AP's of chest, upper
A/P extremities as described (skull c/o 8cm / 3cm (R) parietal lac)
1- Irrigated wounds c 1 liter NS. Abx
tolmed by EDC 10/0 1. Sutures. Wounds remained
and dressed c bagged Gelfoam.
Pressure dressing applied.
Pt discussed c ED attending Dr. Harvey.

Signed [signature]
Name & Title
Date 5/17/94 Time: 2040.

NO. 411209 MEDICAL RECORD

# MUSC MEDICAL CENTER
## CHARLESTON, S.C.

EMERGENCY

Name_____

Address_____

Age_____ Sex_____ Race_____ Marital Status_____ History No._____

Service_____ Referring Physician_____

## Patient's History

Chief Complaints (Use patient's own words)

Present Illness

19yo BM s/p GSW to head & (L) shoulder during altercation w/ police. ϕ LOC. HDS in field, en route & on arrival to ED. Denies ETOH, drugs, ? blood loss.

Weapon used was .45 caliber handgun.

| PMH | PSH | MEDS | ALL |
|---|---|---|---|
| ϕ | appy | ϕ | ϕ |

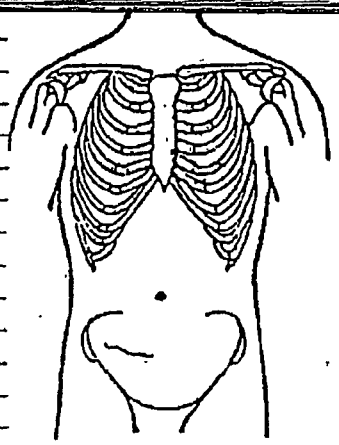
OTC NO. 410600 Rev. 8/94

William O. Dickerson, Jr. v. State
Bloom File, Box 8, Page 2156

# MUSC MEDICAL CENTER
## PHYSICAL EXAMINATION

EMERGENCY
P/T E

Name_____
Age_____ Sex_____ Race_____
Height_____ Weight_____ AverageWeight_____
Temp._____ a.m._____ p.m.
Pulse_____ Respiration_____
General Appearance Awake but intermittently inappropriate / confused
Skin cool
Head-Sinuses (R) tyler pinna partially avulsed, (+) active bleed
Eyes PERRL, EOMI (+) swelling (R) temple
Ears as above (+) hemotympanum (R)
Nose
Tongue, Lips, Oral Cavity and Teeth (-)
Tonsils and Pharynx-Larynx
Lymph Nodes
Neck- (Thyroid) C collar in place
Hair Changes-Endocrine Stigmata
Breasts
Chest and Lungs
symmetrical BS (R), CTA



Cardiovascular System-Heart, Arteries, Veins-B.P. Right_____ Left_____
RRR
2+ radial / femoral pulse (R)
Abdomen
soft, NT/ND
RLQ scar
Hernia

OTC NO. 410605 Rev. 8/

MUSC MEDICAL CENTER
MEDICAL RECORDS
(803) 792-3881

MEDICAL UNIVERSITY OF SC
Ch[illegible]-0768

HOSPITAL OPERATIVE REPORT

DICKERSON, WILLIAM O.
MRN 00914345-980296560 [illegible]
Date of Surgery: 5/17/96

Drs. Harvey/Wilson/Nguyen

PREOPERATIVE DIAGNOSIS:
1. Status post gun shot wound to right forehead.
2. Three cm entrance wound complex and stellate in nature.
2. Avulsive exit wound of the right ear with significant tissue destruction.

PROCEDURES PERFORMED:
1. Irrigation, debridement and closure of the above-mentioned entrance and exit wounds.

ANESTHESIA: A total of 12 cc of 1% Lidocaine with 1:100,000 epinephrine.

INDICATIONS: Mr. Dickson is a 19 year old black male, brought to 1 West Trauma Center in the custody of the Charleston Police Department after sustaining a gun shot wound to the right forehead which tracked subcuticularly and exited the right external ear. Entrance wound on examination was hemostatic but was noted to be complex and stellate with multiple areas of tissue necrosis already present. The right ear wound was severely avulsive in nature with the lost of a significant amount of the conchal bowl and posterior helix. The external auditory canal was noted to be intact, with no hemotympano present. There was also no gross hearing deficits present at this time. Patient presents now in 1 West Trauma Center for repair of the above-mentioned wounds.

DESCRIPTION OF OPERATION: Approximately 12 cc of 1% Lidocaine, 1:100,000 epinephrine was infiltrated into both the right forehead and the left ear wound. Anesthesia for the right ear wound was achieved by an auricular temporal and posterior auricular block. Our attention was first placed on the right forehead wound, totalling approximately 3 cm in its greatest diameter. Using a #15 blade, the wound margins were refined to reshape the wound in a horizontal ellipse and at this point, using 4-0 Vicryl and 6-0 nylon, the wound was closed in a layered fashion. Attention was then placed on the right ear wound, where a significant portion of the conchal cartilage was noted to be exposed severely comminuted in nature. Several pieces of the cartilage which were not attached to perichondrium was removed at this time. The right ear underwent irrigation with copious amounts of normal saline and it was prepped and draped in a standard fashion. Using some 4-0 clear monofilament, the remaining cartilage was reattached to its appropriate positions. The wound margins of the right ear were undermined using a #15 blade and the remaining soft tissue was pulled together using 6-0 nylon sutures in a simple fashion. At this point, a Xeroform pressure dressing was placed inside the ear proper and the posterior auricular region and using a Kerlex, a pressure

DICKERSON, WILLIAM O.
MRN 00914346-980296560
Page 2

head dressing was placed at this time. Patient remained stable throughout the procedures and was escorted to the 7 West ward without any complications. Estimated blood loss was minimal. Fluid replacement was approximately 400 cc Crystalloid. There were no complications noted.

:James C. Wilson, D.D.S.
:Resident in Plastic Surgery

:Tracy S. Harvey, M.D.
:Attending in Plastic Surgery

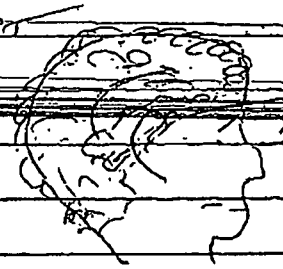
JCW:me
DD: 05/18/96
DT: 05/21/96
cc: 1 each surgeon

William O. Dickerson, Jr. v. State
Bloom File, Box 8, Page 2159

MUSC MEDICAL CENTER
PROGRESS RECORD

NAME _____ UNIT NUMBER _____

| DATE | Note Progress of case, condition on discharge, instructions to patient |
|---|---|



OTC NO. 410510 Rev. 12/93

INPATIENT

MRN 00091434

MUSC MEDICAL CEN
PROGRESS RECORD

NAME _____ UNIT NUMBER _____

| DATE | Note Progress of case, condition on discharge, instructions to patient |
|---|---|
| 5/18/94 | Plaster's — POD #1 |
| 0830 | PE = c/o's |
| | stitches. |
| | PE: Hand dressing removed — hematoma |
| | wound margins well approx. |
| | Sm amount serosanguinous drainage. |
| | A/P — D/C to D/C fiberglass splint. |
| | — Keflex 500mg 1 po q 6° |
| | — Return Plaster clinic Monday AM 5/23/94 |
| | Incidental Burns. |
| | Sig |

OTC NO. 410610 Rev. 12/93

# MEDICAL UNIVERSITY HOSPITAL
## PHYSICIAN'S ORDER SHEET

| | 1. | 2. | 3. | 4. |
|---|---|---|---|---|

Another brand of a generically equivalent product identical in dosage form and content of active ingredient may be administered unless checked. ➡ ✓

WRITE OR IMPRINT PATIENT INFORMATION BELOW

Page 1 of 2

*Cross through those which do not apply*

(1) Admit to 1 West Trauma Center Norcross MD
Attending on Trauma Call

(2) Diagnosis: GSW to Head & Chest

(3) VS on admission and per Admitting Area routine

(4) EKG, BP, and Pulse Oximetry monitors

(5) Nursing Assessment

6) Respiratory: (1) O2 at 12 per NRB
2. Intubate patient
3. Initial vent settings:
FIO2___ IMV___ Vt___ PEEP___

(7) Initiate or maintain spinal immobilization

8) May remove from backboard. Maintain C-collar.
Per _____ MD

(9) Initiate or maintain IV access
(1) Peripheral x 2
2. ~~Central Line x~~ ___
3. Intraosseous x ___
(1) Use NS or LR
(5) Rate variable per hemodynamics

10) Utilize Fluid Warmer as per protocol

11) Labs: (1) Routine Trauma Labs per protocol
2. Routine Burn Labs per protocol
3. β-HCG per protocol
4. Deletions / additions _____

12) Initiate or maintain NG/OG tube to low intermittent suction

(13) Initiate or maintain Urinary Catheter to gravity drainage

14) X-Rays, portable: (1) CXR AP
(2) C-spine - lat & Swimmers
3. Pelvis AP
4. _____
5. _____
6. _____
7. _____

⇑ DO NOT WRITE BELOW THIS LINE ⇑

PHYSICIAN'S ORDER

NO. 800709 Rev. 2/94 (1 of 2)

# MEDICAL UNIVERSITY HOSPITAL
## PHYSICIAN'S ORDER SHEET

| DRUG SENSITIVITY | 1. | 2. | 3. | 4. |
|---|---|---|---|---|

ORDERS: Another brand of a generically equivalent product identical in dosage form and content of active ingredient may be administered unless checked. ➡ ✓

WRITE OR IMPRINT PATIENT INFORMATION BELOW

DATE

page 2 of 2

16) ~~CT Scan:~~ (1) Head
2. ABD - give Hypaque 5cc in 240cc H2O per NGT or PO q 15min x 3

17) Medications: (1) Tetanus toxoid 0.5cc IM
(2) Morphine Sulfate 4mg IV
3. _____
4. _____
5. _____

TIME

18) Restraints: 1. Medical immobilization for medical, surgical or diagnostic procedures.
2. Restraints for patient or staff protection
3. Type _____
Duration _____
Rationale _____

AM PM

DATE

19) Diagnostic Peritoneal Lavage Tray to bedside. Labs as per protocol.

(20) Suture Tray to bedside.

21) Chest Tube Tray to bedside. Pleurvac to ~~20cm H2O~~. Attach to wall suction

TIME

22) Attach Autotransfusion Device to Pleurvac, utilize as per protocol.

23) Transfuse: 1. ___u Uncrossed O-Neg PRBC
2. ___u Type Specific PRBC
3. ___u Type & Crossed PRBC
4. ___u FFP
5. ___U Platelets

AM PM

DATE

24) Consults: 1. Neurosurg
2. Plastics
3. _____

25) Additional orders:
1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

TIME

26) Transfer/ Admit to _____
Services of _____ MD,
Attending on call

_____ MD
Chief Resident on Call

AM PM

UUSC

⇑ DO NOT WRITE BELOW THIS LINE ⇑

PHYSICIAN'S ORDER

OTC NO. 800709 Rev. 2/94( 2 of 2)

...EDICAL UNIVERSITY HOSPITA...
PHYSICIAN'S ORDER SHEET

TV GH

| DRUG SITIVITY | 1. | 2. | 3. | 4. |
|---|---|---|---|---|

RD...: Another brand of a generically equivalent product identical in dosage form and content of active ingredient may be administered unless checked ➡ ✓

WRITE OR IMPRINT PATIENT INFORMATION BELOW

DATE | START | TIME

1. admit St Trauma / Neuro
2. s/p GSW head - (L) shoulder
3. guarded
4. vitals q 1° x 4 hrs q 2° x 2 hrs q 4
5. NKDA
6. ? I's Os
7. NPO
8. bedrest
9. X D5 LR @ 150 cc/hr
10. CT head

DATE | START | TIME

11. X Tylenol 650 mg po/pr q 4° p pain, temp > 101°
12. notify MD for unstable vitals
13. repeat CXR @ 10^

AM PM

DATE | START | TIME

Ancef 1g IV q 8°
(1st dose on arrival to floor).
Mannitol head dressing.
5129.
5/15/96 0215

AM PM

DO NOT WRITE BELOW THIS LINE

PHYSICIAN'S ORDER

...USC

...S NO. 410724
Rev. 2/92

# MEDICAL UNIVERSITY HOSPITAL
## PHYSICIAN'S ORDER SHEET

| DRUG SITIVITY | 1. | 2. | 3. | 4. |
|---|---|---|---|---|

ORDERS: Another brand of a generically equivalent product identical in dosage form and content of active ingredient may be administered unless checked. ➡ ✓

WRITE OR IMPRINT PATIENT INFORMATION BELOW

DATE 1/18 START

TIME 1745 AM PM

Ortho Dist

DATE START

TIME AM PM

DATE START

TIME AM PM

MUSC

⇑ DO NOT WRITE BELOW THIS LINE ⇑

PHYSICIAN ORDE

CS NO. 410724
Rev. 2/92

# MEDICAL UNIVERSITY HOSPITAL
## PHYSICIAN'S ORDER SHEET

| DRUG SITIVITY | 1. | 2. | 3. | 4. |
|---|---|---|---|---|

ORDERS: Another brand of a generically equivalent product identical in dosage form and content of active ingredient may be administered unless checked. ➡ ✓

WRITE OR IMPRINT PATIENT INFORMATION BELOW

DATE / START

(1) Discharge

(1) D/C c Police

(2) Dx: GSW (L) Shoulder
GSW face

5/18/96 3:50

(3) Condition: Stable

TIME 1/20/96

(4) Activity - No heavy lifting 75 lbs

AM PM

DATE / START

(5) Nursing: Wet → Dry dressing
Change BID
(L) Shoulder
Leave Open dressing on
until 5/20

TIME

(6) Meds: ~~Darvocet N-100~~
Vicodin - ORT - PO q 4-6°

AM PM

DATE / START

Pain
Keflex 500 mg PO q 6° X 5 days

(7) Fla Plastic Surgery Clinic McClure
Banks on Monday 5/20/96
@ 0800
Trauma clinic McClure-Banks
on Tuesday 5/21/96 2:00PM

TIME

AM PM

MUSC

⇑ DO NOT WRITE BELOW THIS LINE ⇑

PHYSICIAN'S ORDE

CS NO. 410724
Rev. 2/92

INPATIENT PATIENT 00094734 WILLIAM

Medical University of South Carolina Medical Center

MEDICATION ADMINISTRATION RECORD

DIAGNOSIS:
*GUNSHOT TO HEAD

ALLERGIES:

DICKERSON, WILLIAM, O 007W D785-A

980296560 MRN: 000914346
AGE: 19 SEX: M
HGT: WGT: kg

FOR PERIOD: 05-18-96 0700
THROUGH : 05-19-96 0659

SITE CODES

IM SITES
A. (L) DELTOID
(R) DELTOID
DORSOGLUTEAL
DORSOGLUTEAL
VENTROGLUTEAL
F. (R) VENTROGLUTEAL
G. (L) VASTUS LATERALIS
H. (R) VASTUS LATERALIS

SUB-Q SITES
I. (L) UPPER OUTER AREA
J. (R) UPPER OUTER AREA
K. (L) LOWER ADB. QUADRANT
L. (R) LOWER ADB. QUADRANT
M. (L) ANTERIOR THIGH
N. (R) ANTERIOR THIGH
O. (L) BUTTOCK
P. (R) BUTTOCK

| START | STOP | MEDICATION | 0700-1459 | 1500-2259 | 2300-065 |
|---|---|---|---|---|---|
| 5-17-96 24 | 05-24-96 07 | CEFAZOLIN INJ 1GM<br>DEXTROSE 5% 50ML (281528)<br>FREQ: EVERY 8 HOURS<br>Infuse @ 100 ml/hr 17 drops/min<br>(ANCEF PREMIX)<br>*** REFRIGERATE ***** | ~~0300~~ 0700 | 1600 | 2400 |

DRUG OMISSION/DELAY — GIVE DATE, TIME, DRUG, AND DOSE, REASON FOR OMISSION/DELAY, AND INITIAL

| INITIALS | NAME & PROFESSIONAL DESIGNATION | INITIALS | NAME & PROFESSIONAL DESIGNATION | INITIALS | NAME & PROFESSIONAL DESIGNATION | INITIALS | NAME & PROFESSIONAL DESIGNATIC |
|---|---|---|---|---|---|---|---|
| | | | | | | | |

Medical University of South Carolina Medical Center
MEDICATION ADMINISTRATION RECORD

SITE CODES

| IM SITES | | SUB-Q SITES | |
|---|---|---|---|
| A | (L) DELTOID | I. | (L) UPPER OUTER AREA |
| | (R) DELTOID | J | (R) UPPER OUTER AREA |
| | (L) DORSOGLUTEAL | K. | (L) LOWER AOB. QUADRANT |
| | (R) DORSOGLUTEAL | L. | (R) LOWER AOB. QUADRANT |
| | (L) VENTROGLUTEAL | M. | (L) ANTERIOR THIGH |
| F | (R) VENTROGLUTEAL | N | (R) ANTERIOR THIGH |
| G | (L) VASTUS LATERALIS | O | (L) BUTTOCK |
| H. | (R) VASTUS LATERALIS | P | (R) BUTTOCK |

DIAGNOSIS:
*GUNSHOT TO HEAD

ALLERGIES:

DICKERSON, WILLIAM. O 007W 0785-A

980296560 MRN: 000914346
AGE: 19 SEX: M
HGT: . WGT: kg

FOR PERIOD: 05-18-96 0700
THROUGH : 05-19-96 0659

| START | STOP | MEDICATION | 0700-1459 | 1500-2259 | 2300-065 |
|---|---|---|---|---|---|
| | | PRN ORDERS | | | |
| 05-17-96 21 | 03-13-97 20 | ACETAMINOPHEN~650MG~2TAB~EVERY~4~HOURS~AS~NEEDED~PO (TYLENOL) (281532) T > 101 OR PAIN | | | |
| 6-17-96 21 | 03-13-97 20 | ACETAMINOPHEN SUPP 650MG~1SUPP EVERY 4 HOURS AS NEEDED PR (TYLENOL SUPP (UHC) (281533) T > 101 OR PAIN | | | |

DRUG OMISSION/DELAY — GIVE DATE, TIME, DRUG, AND DOSE, REASON FOR OMISSION/DELAY, AND INITIAL

| TIALS | NAME & PROFESSIONAL DESIGNATION | INITIALS | NAME & PROFESSIONAL DESIGNATION | INITIALS | NAME & PROFESSIONAL DESIGNATION | INITIALS | NAME & PROFESSIONAL DESIGNATK |
|---|---|---|---|---|---|---|---|
| | | | | | | | |

DICKERSON, WILLIAM. O 007W 0785-A 0800 1600

UP NO 501152 Rev. 9

Medical University of South Carolina Medical Center

MEDICATION ADMINISTRATION RECORD

INPATIENT

SITE CODES

| IM SITES | | SUB-Q SITES | |
|---|---|---|---|
| DELTOID | I | L UPPER OUTER AREA | |
| DELTOID | J | R UPPER OUTER AREA | |
| R DOROGLUTEAL | K | L LOWER ADB QUADRANT | |
| L DOROGLUTEAL | L | R LOWER ADB. QUADRANT | |
| L VENTROGLUTEAL | M | L ANTERIOR THIGH | |
| R VENTROGLUTEAL | N | R ANTERIOR THIGH | |
| L VASTUS LATERALIS | O | L BUTTOCK | |
| R VASTUS LATERALIS | P | R BUTTOCK | |

| START | STOP | MEDICATION | 0700-1459 | 1500-2259 | 2300-0659 |
|---|---|---|---|---|---|
| 7/96 | | Ancef Tgm IV Q 8° (1st dose on arrival to floor) | | ~~2300~~ AMD | ~~0700~~ |

DRUG OMISSION/DELAY — GIVE DATE, TIME, DRUG, AND DOSE, REASON FOR OMISSION/DELAY, AND INITIAL

| INITIALS | NAME & PROFESSIONAL DESIGNATION | INITIALS | NAME & PROFESSIONAL DESIGNATION | INITIALS | NAME & PROFESSIONAL DESIGNATION | INITIALS | NAME & PROFESSIONAL DESIGNATION |
|---|---|---|---|---|---|---|---|
| | | | | AMD | Wm Matthew Dickerson JR | MC | Mary Johnson R |

UP NO 501152 Rev. 9

Medical University of South Carolina Medical Center

## MEDICATION ADMINISTRATION RECORD

SITE CODES

| IM SITES | | SUB-Q SITES | |
|---|---|---|---|
| DELTOID | I | L) UPPER OUTER AREA | |
| DELTOID | J | R) UPPER OUTER AREA | |
| L) VENTROGLUTEAL | K | L) LOWER ABD. QUADRANT | |
| R) VENTROGLUTEAL | L | R) LOWER ABD. QUADRANT | |
| L) VASTUS LATERALIS | M | L) ANTERIOR THIGH | |
| R) VASTUS LATERALIS | N | R) ANTERIOR THIGH | |
| | O | L) BUTTOCK | |
| | P | R) BUTTOCK | |

| START | STOP | MEDICATION | 0700-1459 | 1500-2259 | 2300-0659 |
|---|---|---|---|---|---|
| 9/96 KN | | L5 RL @ 150 cc/hr | | | |
| 9/96 KN | | Tylenol 650 mg PO/PR Q4° Pain Pain/Temp 7/101° | | 2215 11 2.4 | 0215 2 |

DRUG OMISSION/DELAY — GIVE DATE, TIME, DRUG, AND DOSE, REASON FOR OMISSION/DELAY, AND INITIAL

| TIALS | NAME & PROFESSIONAL DESIGNATION | INITIALS | NAME & PROFESSIONAL DESIGNATION | INITIALS | NAME & PROFESSIONAL DESIGNATION | INITIALS | NAME & PROFESSIONAL DESIGNATION |
|---|---|---|---|---|---|---|---|
| | Kara Cantrell, RN | | | | | MC | |

UP NO 501152 Rev. 9/

~~William O. Dickerson, Jr. V. State~~
Bloom File, Box 8, Page 2170

MUSC Medical Center
24-Hour Nursing Record

INPATIENT

DICKERSON

Date 5/17/96

DICKERSON-76

| TIME | Temp | Pulse | Resp | BP | | | | COMMENTS |
|---|---|---|---|---|---|---|---|---|
| 2400 | 98.2 | 105 | 24 | 140/76 | | | | |
| 0300 | 98.6 | 102 | 20 | 140/76 | | | | |
| 0615 | 98.8 | 102 | 18 | 134/84 | | | | |
| 0915 | 98.0 | 101 | 16 | 132/76 | | | | |
| 1200 | 98.4 | 73 | 20 | 154/86 | | | | |
| 1405 | 98.2 | 57 | 18 | 144/78 | | | | |
| 1625 | 98.0 | 55 | 16 | 138/80 | | | | |

CODE: I- INDEPENDENT A-NEEDS ASSISTANCE D-DEPENDI

| | Activity | 0700-1500 | 1500-2300 | 2300-0700 |
|---|---|---|---|---|
| HYG | Bath | I A D | I A D | I A |
| | Mouth Care | I A D | I A D | I A |
| | Skin care | I A D | I A D | I A |
| ACT | Ambulate | I A D | I A D | I A |
| | OOB-Chair | I A D | I A D | I A |
| | Bedrest/BRP | I A D | I A D | I A |
| | Turn/position | I A D | I A D | I A |
| | ROM-Joints | I A D | I A D | I A |
| E L M | Bathroom/BSC | I A D | I A D | I A |
| | Bedpan/Urinal | I A D | I A D | I A |
| | Catheter | I A D | I A D | I A |
| | Ostomy Care | I A D | I A D | I A |
| | Diaper A | | | |
| | Peri Care | | | |
| PULM | Spirometer | I A D | I A D | I A D |
| | Deep Breathe | I A D | I A D | I A D |
| | Cough | I A D | I A D | I A D |
| | Suction | I A D | I A D | I A D |
| | Trach Care | I A D | I A D | I A D |
| SAFETY | Siderails | | X4 | X4 |
| | Monitors | | Cardiac | Cuffs |
| | Restraints Type | | MB | |
| | Release time | | Lee | |
| | Bed type | | Lindsay | Hill-Rom |
| | Isolation Type | | | |
| | | | | |
| | | | | |

UP NO. 501364

INPATIENT

| DATE | WEIGHT | CHANGE +/- |
|---|---|---|
| | | |

| INTAKE | | | | | | OUTPUT | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Time | PO | IV | | | | Urine | | | | |
| 0800 | | | | | | | | | | |
| 0900 | | | | | | | | | | |
| 1000 | | | | | | | | | | |
| 1100 | | | | | | | | | | |
| 1200 | | | | | | | | | | |
| 1300 | | | | | | | | | | |
| 1400 | | | | | | | | | | |
| 1500 | | | | | | | | | | |
| 8° sub total | | | | | | | | | | |
| 1600 | | | | | | | | | | |
| 1700 | | | | | | | | | | |
| 1800 | | | | | | | | | | |
| 1900 | | | | | | | | | | |
| 2000 | | | | | | | | | | |
| 2100 | 240 | 150 | | | | 100 | | | | |
| 2200 | | 150 | | | | | | | | |
| 2300 | | 150 | 50 | | | | | | | |
| 8° sub total | | 450 | 50 | | | 100 | | | | |
| 2400 | | 150 | | | | | | | | |
| 0100 | | | | | | | | | | |
| 0200 | | | | | | 250 | | | | |
| 0300 | 240 | | | | | | | | | |
| 0400 | | | | | | | | | | |
| 0500 | | | | | | | | | | |
| 0600 | | | | | | | | | | |
| 0700 | | ↓ | | | | | | | | |
| 8° sub total | | 600 | | | | 350 | | | | |
| 24° sub total | | 1650 | | | | 350 | | | | |

## NUTRITION

| Meal | Breakfast I A D | Lunch I A D | Supper I A |
|---|---|---|---|
| Type | | | |
| Amount | | | |
| Supplement | | | |
| Restrictions | | | |

## IV SOLUTIONS

| TIME | IV FLUID/RATE | SIGNATURE |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

## IV SITE CARE

| | | |
|---|---|---|
| Tubing Change | Yes | No |
| Time: Site | | |
| Time: Site | | |
| Time: Site | | |

## DRESSING/TREATMENT/OTHER

[redacted]

# 24 HOUR NURSING ASSESSMENT

DATE 5/17/96

NEUROLOGICAL ASSESSMENT: Orientation X 3
Level of Consciousness ALERT Pupils PERRL
Motor R WNL's L WNL's
Sensory R WNL's L WNL's
Other Observations ☐ No Problem
EMOTIONAL ASSESSMENT: -COOPERATIVE-

EENT ASSESSMENT
Ears: R ____ L ____ Other Occluded c drsg.
Eyes: R WNL's L WNL's Other ____
Nose: WNL's
Mouth: Lesions Ø Other ____ ☐ No Problem

CARDIOVASCULAR ASSESSMENT Rhythm REGULAR
Arterial Pulses (P-PRESENT A-ABSENT D-DOPPLER)
Radial R P L P Dorsalis Pedis R P L P
VASCULAR CATHETERS: SITE/ APPEARANCE
#14 (L) A.C - 5 redness or EDEMA
ama
Other Observations ☐ No Problem

RESPIRATORY: (No Distress) SOB Labored
Cough: Productive Non-productive (Absent) Sputum ____
Breath Sounds: P-PRESENT A-ABSENT D-DIMINISHED CLEAR
CRACKLES (Fine) ____
CRACKLES (Coarse) ____
WHEEZES ____
OTHER ____


☐ No Problem
Airway: Oral Trach ETT (cuff/uncuffed) Nasal $O_2$ RM Air
size ____ appearance ____ secretions ____
Vent ____ Settings ____
CHEST TUBES: SITE/DRAINAGE/SUCTION
H2O Seal ____ Fluctuations ____ Air Leak ____

GASTROINTESTINAL/ GENITOURINARY ASSESSMENT
Abdomen: (Soft) Firm Hard Distended ____ cm Girth
Bowel Sounds: (Normal) Hypoactive Hyperactive Absent
NG-Tube: SIZE ____ Suction Gravity Clamped Last BM 5/16
Feeding Tube ____
Urine: Color ____ Character ____
Other ____ Incontinent: Bowel Bladder
Catheter Type ____
TUBES/DRAINS: TYPE/SITE/DRAINAGE CHARACTER
Ø
Perineum ____
Fundus ____ Breasts ____
Lochia ____
Other Observations: ☐ No Problem
SKIN: (Normal) Pale Cyanotic Jaundice (Warm)
Cool (Dry) Moist Diaphoretic Flushed Turgor good
SKIN ALTERATION: SITE/APPEARANCE
(#1) Drsg (L) shoulder CDI
(#2) Drsg to (R) EAR & scalp c bloody drsg., Mod. Amt.
Other Observations ☐ No Problem

MUSCULOSKELETAL:

| | R Arm | L Arm | R Leg | L Leg |
|---|---|---|---|---|
| Full ROM | ✓ | | ✓ | ✓ |
| Limited ROM | | ✓ | | |
| Weakness | | | | |
| Other | | | | |

TRACTION/DRAIN/CAST: SITE/ APPEARANCE
Other Observations ☐ No Problem
SIGNATURE ____ TIME ____
RN SIGNATURE Kris Lumbar RN TIME 21:15

TIME RECORD CHANGES IN PATIENT'S STATUS
21:15: Pt. received to ER c police custody & handcuffed to bed c left shackled. (21:00) Portable CXR done, KC.

PATIENT
MRN 000914345 P/T
DICKERSON WILLIAM O,
AT 930296560 SUF

DATE_____

TIME: RECORD CHANGES IN PATIENT'S STATUS

EVALUATION OF PATIENT PROBLEMS/STANDARDS:

#1 Vitals assessed as ordered & WNL's, drsg's maintained as ordered; Head dress ☐ Mod. Amt. bloody drng. ① Shoulder dsg CDOI. K.C.

#2 Pt. c/o headache ☐ adequate relief from prescribed analgesics. K.C.

#3 Pt. encouraged ask questions & voice any concerns about care, Pt. verbalized understanding and agreed to voice any concerns. K.C.

| Signature/Title/Shift | Int. | Signature/Title/Shift | Int. |
|---|---|---|---|
| | | Kris Crumbee RN 7P-7A | K.C. |
| | | | |
| | | | |

MUSC Medical Center

INPATIENT

MRN 000914346 P/T 1
DICKERSON WILLIAM O
PAT 960296560 SUF
BIRTH
FIN

# MUSC Medical Center
# 24-Hour Nursing Record

Date May 18, 1996

285

| TIME | Temp | Pulse | Resp | B/P | COMMENTS |
|---|---|---|---|---|---|
| 08 | 98 | 50 | 16 | 154/84 | D/ pulled (D) |
| 09 | | | | | |

CODE: I- INDEPENDENT A-NEEDS ASSISTANCE D-DEPEND

| | Activity | 0700-1500 | 1500-2300 | 2300-070 |
|---|---|---|---|---|
| HYG | Bath | I A D | I A D | I A |
| | Mouth Care | I A D | I A D | I A |
| | Skin care | I A D | I A D | I A |
| ACT | Ambulate | I A D | I A D | I A |
| | OOB/Chair | I A D | I A D | I A |
| | Bedrest/BRP | I A D | I A D | I A |
| | Turn/position | I A D | I A D | I A |
| | ROM Joints | I A D | I A D | I A |
| | Bathroom/BSC | I A D | I A D | I A |
| ELIM | Bedpan/Urinal | I A D | I A D | I A |
| | Catheter | I A D | I A D | I A |
| | Ostomy Care | I A D | I A D | I A |
| | Diaper Δ | | | |
| | Peri Care | | | |
| PULM | Spirometer | I A D | I A D | I A |
| | Deep Breathe | I A D | I A D | I A |
| | Cough | I A D | I A D | I A |
| | Suction | I A D | I A D | I A |
| | Trach Care | I A D | I A D | I A |
| SAFETY | Siderails | 4 X 2 | | |
| | Monitors | — | | |
| | Restraints Type | — | | |
| | Release time | — | | |
| | Bed type | Hill Rom | | |
| | Isolation Type | Universal | | |
| | | | | |
| | | | | |

UP NO. 501364

INPATIENT

MRN 000914346 P/T I

PAT

FX

| DATE 5/18 | WEIGHT | CHANGE +/- |
|---|---|---|

| INTAKE | | | | | | OUTPUT | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Time | PO | IV | | | | Urine | | | | |
| 0800 | W | 150 | | | | | | | | |
| 0900 | P | | | | | | | | | |
| 1000 | O | D/C'd | | | | | | | | |
| 1100 | 240 | | | | | | | | | |
| 1200 | 120 | | | | | | | | | |
| 1300 | | | | | | | | | | |
| 1400 | | | | | | | | | | |
| 1500 | | | | | | | | | | |
| 8* sub total | 360 | 150 | | | | | | | | |
| 1600 | | | | | | | | | | |
| 1700 | | | | | | | | | | |
| 1800 | | | | | | | | | | |
| 1900 | | | | | | | | | | |
| 2000 | | | | | | | | | | |
| 2100 | | | | | | | | | | |
| 2200 | | | | | | | | | | |
| 2300 | | | | | | | | | | |
| 8* sub total | | | | | | | | | | |
| 2400 | | | | | | | | | | |
| 0100 | | | | | | | | | | |
| 0200 | | | | | | | | | | |
| 0300 | | | | | | | | | | |
| 0400 | | | | | | | | | | |
| 0500 | | | | | | | | | | |
| 0600 | | | | | | | | | | |
| 8* sub total | | | | | | | | | | |
| 24* sub total | | | | | | | | | | |

**NUTRITION**

| Meal | Breakfast-I-A-D | Lunch-I-A-D | Supper I A |
|---|---|---|---|
| Type | N | / | |
| Amount | P | | |
| Supplement | O | | |
| Restrictions | | | |

**IV SOLUTIONS**

| TIME | IV FLUID/RATE | SIGNATURE |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

**IV SITE CARE**

| | | |
|---|---|---|
| Tubing Change | Yes | No |
| Time: Site | | |
| Time: Site | | |
| Time: Site | | |

**DRESSING/TREATMENT/OTHER**

830 — Dsrg D/d to (2) Stumpfeet + head. (2) Log MD.

[redacted] State
Blount File, Box 3, Page 2177

# 24 HOUR NURSING ASSESSMENT

TE 5/18/96

NEUROLOGICAL ASSESSMENT: Orientation X 3
Level of Consciousness alert Pupils PERL
Motor R + L +
Sensory R + L +
Other Observations
☐ No Problem

EMOTIONAL ASSESSMENT: Cooperative guarded

GASTROINTESTINAL/ GENITOURINARY ASSESSMENT
Abdomen (Soft) Firm Hard Distended ____ cm Girth
Bowel Sounds: (Normal) Hypoactive Hyperactive Absent
NG Tube: SIZE ____ Suction Gravity Clamped Last BM ____
Feeding Tube
Urine: Color ____ Character ____
Other ____ Incontinent: Bowel Bladder
Catheter Type

EENT ASSESSMENT
Ears. R ____ L ____ Other ____
Eyes: R ✓ L ✓ Other ____
Nose:
Mouth: Lesions ____ Other ____
☐ No Problem

CARDIOVASCULAR ASSESSMENT Rhythm Reg
Arterial Pulses (P-PRESENT A-ABSENT D-DOPPLER) P
Radial R P L P Dorsalis Pedis R P L P
VASCULAR CATHETERS: SITE/ APPEARANCE
1.
2.
3.
4.
5.
Other Observations
☐ No Problem

TUBES/DRAINS: TYPE/SITE/DRAINAGE CHARACTER
1.
2.
3.
Perineum
Fundus Breasts
Lochia
Other Observations:
☐ No Problem

SKIN: (Normal) Pale Cyanotic Jaundice Warm
Cool (Dry) Moist Diaphoretic Flushed Turgor good
SKIN ALTERATION: SITE/APPEARANCE
BSW (L) Shoulder dry & pink
BSW Head & Dry intact
Other Observations
☐ No Problem

RESPIRATORY: (No Distress) SOB Labored
Cough: Productive Non-productive Absent Sputum
Breath Sounds: P-PRESENT A-ABSENT D-DIMINISHED
CRACKLES (Fine)
CRACKLES (Coarse)
WHEEZES R L
OTHER
☐ No Problem
Airway: Oral Trach ETT (cuff/uncuffed) Nasal $O_2$ RA
size ____ appearance ____ secretions ____
Vent ____ Settings ____
CHEST TUBES: SITE/DRAINAGE/SUCTION
1. N/A
2.
H2O Seal ____ Fluctuations ____ Air Leak ____

MUSCULOSKELETAL:

| | R Arm | L Arm | R Leg | L Leg |
|---|---|---|---|---|
| Full ROM | ____ | ✓ | ____ | ✓ |
| Limited ROM | ____ | ____ | ____ | ____ |
| Weakness | ____ | ____ | ____ | ____ |
| Other | ____ | ____ | ____ | ____ |

TRACTION/DRAIN/CAST: SITE/ APPEARANCE
1.
2.
3.
Other Observations
☐ No Problem
SIGNATURE ____ TIME ____
RN SIGNATURE [signature] TIME 0825

TIME RECORD CHANGES IN PATIENT'S STATUS
0825 - MD @ bedside. Dsg (L) Shoulder dry - Head Dsg intact & small amt bloody drainage dry. Pt & family Pt. Capped @ bedside by MD Person @ bedside. KW
0900 - D/C order written. MD @ bedside. Dsg Head Dsg. Instruction & Rx given to Pt. Pt Office & F/U appointment for plaster & Trauma Clinic @ McClellan Bone heads KW