

EXECUTION DATE SET FOR APRIL 20, 2017

IN THE SUPREME COURT OF ARKANSAS

LEDELL LEE,)	
)	
Appellant)	
)	
vs.)	Case No. CR96-553
)	
STATE OF ARKANSAS,)	
)	
Appellee.)	

**APPELLANT’S MEMORANDUM IN SUPPORT
OF HIS MOTION TO RECALL THE MANDATE AND
FOR A WRIT OF ERROR CORAM NOBIS**

Petitioner Ledell Lee seeks to recall the mandate to allow a writ of error coram nobis to address his claim that he may be intellectually disabled and ineligible for execution under *Atkins v. Virginia*, 536 U.S. 304 (2002). Mr. Lee has deficits in intellectual functioning, brain injury, Fetal Alcohol Syndrome Disorder and adaptive deficits. *See* Decl. of Elizabeth Vartkessian (Ex. 1) (hereinafter “Varkessian Decl.”); Decl. of Dale Watson (Ex 2).

Mr. Lee filed a separate motion to recall the mandate from the post-conviction decision and included the evidence from Exhibits 1 and 2. In response, the State of Arkansas has contended, relying on this Court’s precedent, that a

person with intellectual disability may only raise such a claim at trial, even if the trial counsel are to blame. Such an interpretation is contrary to the dictates of the Eighth Amendment and unconstitutional and in violation of *Moore v. Texas*, ___ U.S. ___, 137 S.Ct. 1039, 1048 (2017) (quoting *Atkins*, 536 U.S. at 320). This court should recall the mandate and grant the coram nobis for the purpose of inquiring into the question of whether Petitioner has intellectual disability.

I. The Writ of Error Coram Nobis should apply to questions of intellectual disability not raised at trial because there must be a vehicle for addressing the fundamental question of a defendant's exemption from the death penalty for intellectual disability under the Eighth Amendment.

“The writ of error coram nobis is an extraordinary remedy which should be allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature, and a presumption of regularity attaches to the criminal conviction being challenged.” *Larimore v. State*, 938 S.W.2d 818, 822, 327 Ark. 271, 279 (Ark. 1997) *United States v. Morgan*, 346 U.S. 502, 512, 74 S.Ct. 247, 253, 98 L.Ed. 248 (1954).

The question of intellectual disability, like the questions of prosecutorial misconduct and insanity, is a fundamental error extrinsic to the record. *Hydrick v. State*, 104 Ark. 43, 45, 148 S.W. 541, 541–42 (1912) (citing *Johnson v. State*, 97 Ark. 131, 133 S.W. 596 (1911)). This Court recognized over a hundred years ago that a writ of coram nobis is the appropriate vehicle to challenge an insanity issue

not raised until after the conviction was affirmed. *Johnson*, 133 S.W. at 596.

Here, the evidence of intellectual disability is being raised after the affirmance of his conviction and his death sentence, and is a fundamental error.

As the State notes in its response to Petitioner’s separate Motion to Recall the Mandate, this Court has previously held that *Atkins* is not an appropriate basis for a motion to recall the mandate. *Lee v. Arkansas*, No. CR-08-160, Response in Opposition to Motion for Recall of the Mandate and For Stay of Execution (April 19, 2017) at page 9. (citing *Coutler v. State*, 365 Ark. 262, 267 (2006); *Engram v. State*, 360 Ark. 140 (2004)). If the Arkansas state statutory scheme truly does not provide for a post-trial mechanism to raise a claim of intellectual disability, it is facially unconstitutional.

As the U.S. Supreme Court has stated, “[n]o legitimate penological purpose is served by executing a person with intellectual disability.” *Hall v. Florida*, ___ U.S. ___, 134 S. Ct. 1986, 1992 (2014) (citing *Atkins v. Virginia*, 536 U.S. 304, 321 (2002)). Executing intellectually disabled persons also “runs up against a national consensus against the practice . . . creat[ing] “a risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty.”” *Moore v. Texas*, ___ U.S. ___, 137 S.Ct. 1039, 1048 (2017) (quoting *Atkins*, 536 U.S. at 320). For a state to execute an intellectually-disabled person against this authority would violate the “Eighth Amendment, for to impose the harshest of punishments on an

intellectually disabled person violates his or her inherent dignity as a human being.” *Hall*, 134 S. Ct. at 1992.

Thus, while the “States are laboratories for experimentation,” those “experiments may not deny the basic dignity the Constitution protects.” *Hall*, 134 S. Ct. at 2001. The states must therefore afford both defendants at trial, and those prisoners sentenced to death before the U.S. Supreme Court’s decision in *Atkins* a “fair opportunity” to establish an exemption based on intellectual disability. *Hall*, 134 S.Ct. at 1995. The Supreme Court has repeatedly so held. *Moore*, 137 S.Ct. at 1053 (“‘If the States were to have complete autonomy to define intellectual disability as they wished,’ we have observed, ‘*Atkins* could become a nullity, and the Eighth Amendment’s protection of human dignity would not become a reality.’”).

Arkansas’ procedure, limiting *Atkins* claims to trial, like the improper practices in *Hall* and *Moore* threatens to make *Atkins* a nullity. It is well established that the rule in *Atkins* prohibiting the execution of people with intellectual disability “was made retroactive to cases on collateral review by *Penry v. Lynaugh*, 492 U.S. 302, 330, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989) (stating that such a rule would apply retroactively to defendants on collateral review).” *Davis v. Norris*, 423 F.3d 868, 879 (8th Cir. 2005).

Given the constitutional imperative of *Atkins*, and its undisputed retroactive application, there must be some other vehicle for pursuing a valid *Atkins* claim, even when raised post-trial. This is particularly true for prisoners on Arkansas' death row, including Ledell Lee, were tried and convicted before *Atkins* became the law in 2002.

This Court has previously held that “neither a recall of the mandate nor a writ of error coram nobis is allowed to permit a defendant to pursue a claim of mental retardation.” *Anderson v. State*, 385 S.W.3d 783, 789 (Ark. 2011) (citing *Coulter v. State*, 227 S.W.3d 904 (Ark. 2006)).

Mr. Lee's case raises squarely the constitutional problem created by the interplay between Arkansas's statutory scheme limiting *Atkins* claims to trial, and this Court's prior interpretations of the avenue of a recall of the mandate or writ of error coram nobis.¹

As detailed below, Mr. Lee has shown that his state-appointed second post-conviction counsel were on notice, from the pleadings in federal court that he may have intellectual disability, and that an *Atkins* claim should be plead in his amended Rule 37.5 petition. Instead, counsel did nothing to investigate, present, or plead evidence of his intellectual disability. They hired a mitigation specialist who was subsequently barred from working on capital cases for indigent defense

¹ The limitation of vehicles to pursue a post-trial *Atkins* claim could hurt prisoners in other postures, too, but the only issue here is the posture of Lee's case.

appointed because of her poor work. They merely refiled the substantively same limited petition filed by the counsel this court had previously determined was incompetent due to his impairment. *Lee v. State*, 308 S.W.3d 596, 600 (Ark. 2009). These failings of post-conviction counsel cannot be attributed to Mr. Lee, who despite his brain dysfunction and intellectual disability, wrote to this court seeking appointment of new post-conviction counsel.

By denying *Atkins* protection to those who, through no fault of their own, could never have raised the claim, Arkansas procedure as applied to Mr. Lee violates the Eighth Amendment and simply cannot stand. *See also Montgomery v. Louisiana*, ___ U.S. ___, 136 S. Ct. 718, 731 (2016) ("If a State may not constitutionally insist that a prisoner remain in jail on federal habeas review, it may not constitutionally insist on the same result in its own postconviction proceedings.)

II. Mr. Lee has made a prima facie showing of intellectual disability that requires additional investigation and hearing.

Mr. Lee's IQ score suggests the need to investigate his adaptive functioning to determine if he has intellectual disability. He has Fetal Alcohol Syndrome and significant brain damage and was held back in school and placed in special education. Mr. Lee has proffered evidence suggesting he will fulfill the Arkansas statutory criteria to be considered intellectually disabled and thus ineligible for execution under *Atkins*: He has (1) "[s]ignificantly subaverage general intellectual

functioning” that onset before age 18, and (2) preliminary investigation shows that he will likely have “a significant deficit or impairment in adaptive functioning” that onset before age 18 with “[a] deficit in adaptive behavior.”² Ark. Code § 5-4-618(a)(1). Despite this, before April 2017, Mr. Lee had never been examined by an expert in psychology, psychiatry, or neuroscience.

A. Mr. Lee demonstrates significantly subaverage general intellectual functioning with onset before age 18.

First, Mr. Lee’s academic performance, his performance on neuropsychological assessments indicating possible brain damage and Fetal Alcohol Syndrome, and his IQ illustrate Mr. Lee’s “[s]ignificantly subaverage general intellectual functioning” that onset in childhood. Ark. Code § 5-4-618(a)(1)(A). Mr. Lee’s school records reflect that he entered first grade at age 7, suggesting that he had been held back in kindergarten, and scored extremely low on standardized testing. Mr. Lee received poor grades in school, a mix of “below average” and “average” in his first years, despite his advanced age for the year. Ex. No. 3 (school records). Despite being enrolled in special education classes for his entire life, Mr. Lee needed to repeat the 7th and 8th grades. Vartkessian Decl. ¶ 25. He dropped out of school in the 9th grade due to difficulty understanding his

² The statute treats deficits in adaptive behavior as a separate requirement from deficits in adaptive functioning. *Compare* Ark. Code § 5-4-618(a)(1)(A) *with* § 5-4-618(a)(1)(B). However, the Eighth Circuit acknowledges that the adaptive behavior prong “largely duplicates” the adaptive functioning prong. *Sasser v. Hobbs*, 735 F.3d 833, 845 (8th Cir. 2013). Accordingly, this analysis considers deficits in adaptive behavior and functioning together.

school work. *Id.* Mr. Lee explained that, “[e]ven as a special education student he could not do some of the most basic tasks” that other special education students could perform, such as basic division or fractions. *Id.* In other words, at around age 15 or 16, Mr. Lee could not do math that most elementary students have mastered. New testing by a qualified neuropsychologist, Dr. Dale Watson shows that Mr. Lee’s academic performance is more than one standard deviation below the mean; Mr. Lee can only perform math tasks at the 5th grade level. Decl. of Dr. Dale Watson ¶ 19 (Ex. 2) (hereinafter “Watson Decl.”). These facts make clear that Mr. Lee’s intellectual functioning deficits manifested at an early age.

Using a standard 5 point margin of error, Mr. Lee’s IQ adjusted IQ score of 79 could be as low as 74. Watson Decl. ¶ 15; *see Hall v. Florida*, 134 S. Ct. 1986, 1995 (2014). An IQ of 79 places Mr. Lee in only the 8th percentile. Watson Decl. ¶ 15. Although the DSM-IV-TR defines Mr. Lee’s scores as borderline intellectual functioning rather than mild mental retardation, the Eighth Circuit explains that, “[s]imply put, an IQ test score alone is inconclusive of ‘significantly subaverage general intellectual functioning.’” *Sasser v. Hobbs*, 735 F.3d at 844 (quoting Ark. Code § 5-4-618). “Under Arkansas law, mental retardation is not bounded by a fixed upper IQ limit, nor is the first prong a mechanical ‘IQ score requirement.’” *Id.* In fact, the Eighth Circuit has remanded for an *Atkins* hearing when a defendant alleged an IQ score of 79 and exhibited other deficits in intellectual

functioning such as being incapable of graduating high school, just as Mr. Lee was incapable of doing. Vartkessian Decl. ¶ 25; *Sasser v. Norris*, 553 F.3d 1121, 1125–26 (8th Cir. 2009), *abrogated on other grounds by Wood v. Milyard*, 566 U.S. 463 (2012).

Dr. Watson’s examinations of Mr. Lee, in which he conducted 47 different tests and observations, Watson Decl. ¶ 14, show that Mr. Lee has “[s]ignificantly subaverage” functioning in nearly every intellectual area. Ark. Code § 5-4-618(a)(1)(A). For example, Mr. Lee’s non-verbal intellectual abilities fall in the range of intellectual disability at the 5th percentile range even without correction. Watson Decl. ¶ 16. Mr. Lee has deficits in “on the spot” reasoning and visual processing, *id.* ¶ 17, along with a “remarkable failure to learn and problem solve.” *Id.* ¶ 30. Mr. Lee also exhibits a “striking failure of executive functions to organize his behavior” such that his visual special capacities fall at the 0.01 percentile rank. *Id.* ¶ 24. During a test for visual special capacities, Mr. Lee cannot see the overall object he is supposed to draw; he focuses on the details, distorting them to the point where the drawing is unrecognizable. *Id.*

Furthermore, Dr. Watson characterized Mr. Lee’s deficits in both verbal and non-verbal memory and learning as “striking.” *Id.* ¶ 20. Mr. Lee has a “poor learning capacity” with indications of moderate memory impairment in the 4th percentile. *Id.* ¶ 22. In recognition tasks, Mr. Lee either was moderately to

severely impaired, in the 0.1 percentile, or was severely impaired, at the 0.01 percentile. *Id.* In other words, Mr. Lee’s memory ranks as low as 1 out of every 10,000 people.

Dr. Watson’s neuropsychological assessments revealed that Mr. Lee’s right hemisphere and frontal lobe are dysfunctional. *Id.* ¶ 18. As a result of this brain dysfunction, Mr. Lee has “significant and serious deficits in academic skills, memory abilities, motor functions, social cognition, and executive functions.” *Id.* For example, two different memory systems in Mr. Lee’s brain malfunction, making it difficult for Mr. Lee to learn new verbal information and then store and retrieve that information. *Id.* ¶ 22. Mr. Lee’s performance on a tactical performance test illustrates the brain damage to his right hemisphere. Tasks that involve Mr. Lee’s left hand slow him down, indicating a lateralized impairment of the right hemisphere. *Id.* ¶ 27.

During the assessments he conducted, Dr. Watson became “convinced, to a reasonable degree of professional certainty,” that Mr. Lee has a neuro-developmental disorder such as Fetal Alcohol Syndrome. Watson Decl. ¶ 38. Mr. Lee’s mother drank continuously throughout her pregnancies. Vartkessian Decl. ¶ 58. The fact that Mr. Lee’s mother’s “drank and smoked throughout” the time she was pregnant with Mr. Lee, and that her family suffered from a long history of substance abuse, has been confirmed by her sister Dorothy Mackey, who was

living with her at the time. Ex. No. 4, Decl. of Dorothy Mackey ¶¶ 5-11 (hereinafter “Mackey Decl.”). The likely Fetal Alcohol Syndrome that resulted means that Mr. Lee has intellectually disabled since birth; Mr. Lee’s Fetal Alcohol Syndrome contributes to his sub-average intellectual functioning. Watson Decl. ¶ 43. The Supreme Court has acknowledged that Fetal Alcohol Syndrome may cause mental disturbances that can significantly impair cognitive functions. *Rompilla v. Beard*, 545 U.S. 374, 392–93 (2005). In addition to the physical manifestations of Fetal Alcohol Syndrome, such as small eye openings that are very far apart and pointed and folded ears, Vartkessian Decl. ¶ 23; Watson Decl. ¶ 41, Mr. Lee exhibits the cognitive and behavioral effects associated with Fetal Alcohol Syndrome: brain damage, attention and memory problems, difficulty with judgment and reasoning, and learning disabilities. See Nat’l Org. on Fetal Alcohol Syndrome, *FASD: What Everyone Should Know*, https://www.nofas.org/wp-content/uploads/2014/08/Fact-sheet-what-everyone-should-know_old_chart-new-chart1.pdf (last visited Apr. 16, 2017). Individuals with Fetal Alcohol Syndrome “have trouble with assessment, judgment, and reasoning,” have difficulty understanding cause and effect, and may “never socially mature beyond the level of a 6 year old.” Nat’l Org. on Fetal Alcohol Syndrome, *FASD: What the Justice System Should Know About Affected Individuals*, <https://www.nofas.org/wp-content/uploads/2014/05/Facts-for-justice-system.pdf> (last visited Apr. 16, 2017).

In individuals with Fetal Alcohol Syndrome fact, an IQ score may overstate the individual's level of intellectual functioning. *See Adler, supra*, at 403. In intellectually disabled individuals without Fetal Alcohol Syndrome, their IQ tends to match their levels of intellectual and adaptive functioning. Conversely, individuals *with* Fetal Alcohol Syndrome tend to score higher on IQ tests despite their low levels of intellectual and adaptive functioning. *Id.* at 404. That is, their IQ is not an adequate measure of their intellectual and adaptive functioning. Mr. Lee exemplifies this research. Simply put, his IQ score may not fully measure his ability to function, which is what the Arkansas statute on intellectual disability concerns.

Mr. Lee's Fetal Alcohol Syndrome exemplifies the Supreme Court's reasoning behind *Atkins*. Individuals with "disabilities in areas of reasoning, judgment, and control of their impulses . . . do not act with the level of moral culpability that characterizes the most serious adult criminal conduct." 536 U.S. at 306. The justifications for the death penalty—retribution and deterrence—cannot be served by executing people with intellectual disabilities because they are less culpable and do not commit premeditated crimes. *Id.* at 319. This holds true for individuals with Fetal Alcohol Syndrome. Research shows that individuals with Fetal Alcohol Syndrome, like Mr. Lee, have abnormal frontal lobe development that impairs executive functioning and makes it more difficult to develop the level

of culpability for the death penalty. *See* Richard S. Adler, et al., *A Proposed Model Standard for Forensic Assessment of Fetal Alcohol Spectrum Disorders*, 38 J. Psychiatry & L. 383, 390 (2010). Indeed, far from committing premeditated crimes, individuals afflicted with Fetal Alcohol Syndrome often are impulsive and unable to re-route their actions once they have begun. *Id.*

It would be cruel and unusual indeed to execute a man like Mr. Lee, who the Supreme Court considers less culpable due to his inability to reason and control his impulses.

B. Early investigation suggests Mr. Lee exhibits significant deficits and impairments in his adaptive functioning, which likely onset before age 18.

Second, Mr. Lee is likely to be found to have deficits both in adaptive functioning and adaptive behavior based just on the preliminary investigation. Mr. Lee cannot effectively “cope with common life demands” and does not “meet the standards of personal independence expected of someone in their particular age group, sociocultural background, and community setting.” *Jackson v. Norris*, 615 F.3d 959, 961–62 (8th Cir. 2010) (quoting DSM–IV–TR at 42). To show deficits in adaptive functioning under Arkansas law, a person must exhibit limitations in two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety. *Id.* at 962. Moreover, “the

Arkansas standard does not ask whether an individual has adaptive strengths to offset the individual's adaptive limitations.” *Sasser v. Hobbs*, 735 F.3d at 845.

Mr. Lee demonstrates limitations in many skill areas, all of which he has had since an early age due to his probable Fetal Alcohol Syndrome and brain damage. As stated above, Mr. Lee has limited functional academic skills; he is unable to do basic math problems that appear in everyday settings. *Id.* Moreover, Mr. Lee has difficulty communicating and engaging in social situations due to his lack of focus. Vartkessian Decl. ¶ 25. He often loses track of the conversations he is in. *Id.* Mr. Lee also struggles “to understand and process the tonal qualities and prosody of language,” placing him in the 10th percentile. Watson Decl. ¶ 37. He is limited in his “understanding of complex social interactions.” *Id.* It is possible that Mr. Lee’s boxing injury at a young age, resulting in an “easily visible scar” located above his right eyebrow, contribute to his inability to focus and communicate. Vartkessian Decl. ¶ 22.

Perhaps most importantly, Mr. Lee’s disability likely interferes with his ability to take care of and live by himself. Dr. Watson observed that Mr. Lee has a “marked inability to reason and analyze in novel problem solving situations and reflects a degree of confusion that is likely to impact his independent functioning.” Watson Decl. ¶ 31. During one test, Mr. Lee could not match cards based on basic sorting rules such as color and number. *Id.* ¶ 30. If he cannot ascertain even the

simplest of patterns, he is unable to function independently. *See id.* ¶ 31.

Additionally, Mr. Lee is mild to moderately impaired regarding problem solving.

Id. ¶ 34. He “performed well below expectations” in problem solving activities.

Id. Mr. Lee cannot determine salient aspects of a problem or devise solutions, even when given feedback. *Id.* Mr. Lee’s inability to solve even simple problems displays his limitations in the skill areas of self-care, home living, use of community resources, self-direction, work, leisure, health, and safety.

III. The Arkansas procedure for determining Mr. Lee’s Atkins claim failed because the State appointed Mr. Lee highly deficient counsel who abandoned the claim without investigation.

The failings of Mr. Lee’s first state-post conviction, Craig Lambert, are well known and documented by this Court. *Lee v. State*, 238 S.W.3d 52 (Ark. 2006) (“*Lee III*”). *See also, Lee v. Norris*, 354 F.3d 846, 848 (8th Cir. 2004). Mr. Lee’s second post-conviction counsel were, by any objective standard, worse. In between the first and the second rounds of state post-conviction proceedings, Mr. Lambert and his co-counsel, Jenniffer Horan, filed a federal habeas petition an amended motion to file amend to add a claim of mental retardation under Atkins. *Lee v. Hobbs*, No. 5:01-cv-0377 (E.D. Ark.), ECF No. 13.

Shortly after filing the motion to amend, Mr. Lambert’s conflict for gross intoxication came to light. Ms. Horan first moved to withdraw later that year from the Eighth Circuit, and then moved on February 26, 2004, to withdraw from the

case in District Court. Motion to Withdraw as Attorney, *Lee v. Hobbs*, No. 5:01-cv-0377 (E.D. Ark.), ECF 16. Ultimately the Eighth Circuit remanded the case to state court and the District Court denied the motion to amend to add the *Atkins* claim. *Lee v. Hobbs*, No. 5:01-cv-0377 (E.D. Ark.), ECF No. 20. The motion was denied without prejudice, leaving Mr. Lee's counsel free to renew the motion and pursue the *Atkins* claim.

At almost the same time Ms. Horan moved to withdraw, Mr. Lambert's employment with the Federal Public Defender's office was terminated. Motion to Withdraw as Attorney, *Lee v. Hobbs*, No. 5:01-cv-0377 (E.D. Ark.), ECF No. 18; Response to Motion to Withdraw as Attorney, *Lee v. Hobbs*, No. 5:01-cv-0377 (E.D. Ark.), ECF No. 19. On March 15, 2004, Mr. Lambert sought to withdraw from the case because of his conflict, and urged reconsideration of the order permitting withdrawal of the Federal Public Defender's office. Motion to Withdraw as Attorney, *Lee v. Hobbs*, No. 5:01-cv-0377 (E.D. Ark.), ECF No. 18. Mr. Lambert also privately urged Ms. Horan to reconsider keeping Mr. Lee's case. *See* Ex. No. 2 (correspondence).

Mr. Lambert stressed that Mr. Lee had a pending claim of exemption for intellectual disability, and that his case was extraordinarily complex, and would require a massive investigation. He asked the District Court to deny Ms. Horan's withdrawal motion because "[t]he Federal Public Defender Office is the only entity

in Arkansas with the resources that are necessary to adequately represent Lee in these proceedings—especially since the FPD has raised an *Atkins* claim and experts will be needed to present it.” Motion to Withdraw as Attorney, *Lee v. Hobbs*, No. 5:01-cv-0377 (E.D. Ark.), ECF No. 18. In his private correspondence, Mr. Lambert urged Ms. Horan to consider a funding structure where the Federal Public Defender’s office would agree to finance the experts for appointed state counsel so that they could obtain the necessarily evaluations. *See* Ex. No. 5.

Ms. Horan opposed Mr. Lambert’s motion to oppose her withdrawal by disclosing that her close “out of work” personal relationship with Mr. Lambert created an actual conflict with her continued representation of Mr. Lee. Response to Motion to Withdraw as Attorney, *Lee v. Hobbs*, No. 5:01-cv-0377 (E.D. Ark.), ECF No. 19. Her contemporaneous notes reflect that she also was concerned with the lack of available counsel in Arkansas who could competently investigate the case given that the small number of qualified attorneys had conflicts. Ex. No. 6 Ms. Horan attempted to recruit the NAACP Legal Defense Fund to take the case, explaining that an *Atkins* claim had been raised, and that his case “also presents the opportunity to set the standard for mental retardation litigation in Arkansas for the death row population here.” *Id.*

On June 29, 2005, this Court recalled the mandate in *Lee II*, ruling that Rule 37.5 requires qualified counsel and that Mr. Lee’s representation by impaired

counsel required new proceedings. *Lee v. State*, 238 S.W.3d 52 (Ark. 2006) (“*Lee III*”). The Arkansas Public Defender appointed Arkansas attorneys Gerald Coleman and Danny Glover to represent Mr. Lee in his new Rule 37.5 proceedings.

As discussed further below, the level of representation by Mr. Coleman and Mr. Glover was grossly incompetent, falling significantly short of even the impaired performance of Mr. Lee’s first conflicted counsel. Traverse, *Lee v. Hobbs*, No. 5:01-cv-0377 (E.D. Ark.), ECF No. 94 at 12-13. They abandoned Mr. Lee, refusing to return Mr. Lee’s phone calls or discuss witnesses or claims, and failing to provide him with pleadings. *Id.* at 42-43. They moved for investigators, but never sought any life history investigation of Mr. Lambert. They did no exploration of Mr. Lee’s *Atkins* claim or possible mental health issues. They filed an amended petition for post-conviction relief under Arkansas Rule of Criminal Procedure 37 that failed to include the *Atkins* claim proposed in federal court and relied exclusively on the claims presented by Mr. Lambert.

The circuit court judge held another hearing on August 28, 2007, and subsequently denied Lee’s petition and entered findings of fact and conclusions of law on November 21, 2007. For the limited issues in the petition, second Rule 37.5 counsel actually presented less evidence. They failed to preserve the most compelling issue raised: the extramarital affair between the trial judge Chris Piazza

and the prosecuting attorney Melody LaRue.³ Traverse, *Lee v. Hobbs*, No. 5:01-cv-0377 (E.D. Ark.), ECF No. 94 at 13. In his intoxicated state, Mr. Lambert had presented five days of testimony. Mr. Coleman and Mr. Glover presented less than half a day, and did not use or present any of the evidence uncovered by their fact investigator. *Id.* at 13; Ex. No. 8 (Notes of Matilda Buchanan). They hired a mitigation specialist, who produced no file, and did no meaningful investigation into the case. She was subsequently removed from her capital cases, after multiple complaints, because an evaluation of her work showed that it fell below the standard for meaningful defense and mitigation investigation. No. 9.

Mr. Lee fared no better in federal court, where his federal counsel did no new investigation and did not amend his federal petition to include an Atkins claim. Traverse *Lee v. Hobbs*, No. 5:01-cv-0377 (E.D. Ark.), ECF No. 94 at 12-13. His federal counsel moved on May 24, 2015 to withdraw, describing themselves as “ill equipped” to fulfill Mr. Lee’s right to have counsel for executive clemency and stay of execution litigation under 18 U.S.C. § 3599(e). *Lee v. Hobbs*, No. 5:01-cv-0377 (E.D. Ark.), ECF No. 94 at 12-13 ECF No. 148. In a

³ Judge Piazza cast a long shadow over this case. As described above, he personally intervened to prevent Mr. Lee from receiving appointment of conflict-free counsel on appeal. He then ruled on the substance of his own motion to recuse, calling the motion that Mr. Lee wanted to raise for his recusal “ridiculous.” Tp at 1602-03. He undertook these actions at a time when he was married and having an extramarital affair with a prosecutor. The fact that this highly personal conflict would be an important issue in Rule 37.5 litigation likely impacted the willingness of attorneys and investigators to take the case in post-conviction. *See* Ex. No. 6 (notes of Federal Defender); Ex. No. 7 (email of Matilda Buchanan).

subsequent filing, one of the counsel revealed that he had been suspended from the practice of law due to his very serious mental health issues. *Lee v. Hobbs*, No. 5:01-cv-0377 (E.D. Ark.), ECF No. 94 at 12-13 ECF No. 156. Ultimately, undersigned counsel Lee Short and Cassandra Stubbs were appointed as substitute counsel in the federal case on August 16, 2016 and April 17, 2017 respectively.

Nothing changed with respect to Mr. Lee's intellectual disability between his 1995 trial and today. The only change was counsel. With new counsel a vast amount of readily accessible information about Mr. Lee's disability has been amassed in a short time – including psychological testing for the first time.

Mr. Lee has made a sufficient showing that this Court should grant relief by recalling the mandate, entering a writ of coram nobis, and granting Mr. Lee an opportunity to investigate and present his claim of intellectual disability. It should revisit its prior holding in *Coutler v. State*, 365 Ark. 262 (2006). When a prisoner's life could be forfeit by the abandonment of *Atkins* by state-appointed counsel, the Court should provide a state mechanism for the prisoner to raise the claim. The Court can and should prevent this miscarriage of justice.

Respectfully submitted,

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EXHIBIT 1

DECLARATION OF ELIZABETH VARTKESSIAN, PH.D.

1. I am the Executive Director of ARC, Inc., a not-for-profit organization located in Baltimore, Maryland that provides mitigation investigation in capital and juvenile cases. I have worked as a mitigation specialist in death penalty cases since 2004 at the trial, state and federal post-conviction, and clemency stages. I have worked as a mitigation specialist on well over 30 death penalty cases in the last 13 years. I currently supervise a staff of five mitigation specialists of varying degrees of experience.
2. I am a licensed Private Detective in Maryland. I have held Private Investigator licenses in Texas and New York.
3. I received my Bachelor's Degree in Philosophy and Political Science with Honors from The George Washington University. I received a Master's of Science in Comparative Social Policy from the University of Oxford, St. Antony's College. I returned to the University of Oxford, St. Hilda's College to undertake my Ph.D. (DPhil) in Law, which I was awarded in 2012.
4. My doctoral research investigated how capital jurors come to make their sentencing decisions with a focus on understanding their receptivity to mitigation evidence. I worked as a part of the Capital Jury Project, a National Science Foundation sponsored program that has yielded over 70 publications in peer review and law review journals as well as being cited in six United States Supreme Court decisions.
5. My research has been widely cited by the American Bar Association (ABA). My publications appear in both law and peer view journals as well as in invited contributions to books. My most recent publication appears as a co-authored chapter in the forthcoming ABA book "To Tell the Client's Story: Mitigation in Criminal and Death Penalty Cases".
6. I am often an invited presenter and faculty member at national and state trainings. I have been an invited speaker in various jurisdictions, including Arkansas, where I presented to the Arkansas Association of Criminal Defense Lawyers on the topics of records collection and capital jurors in 2014. My curriculum vita is included with this declaration (Ex. A).
7. On March 22, 2017, I was contacted by Jessica Brand, the legal director of the Fair Punishment Project—a joint initiative with Harvard Law School's Charles Hamilton Houston Institute for Race and Justice and its Criminal Justice Initiative. Ms. Brand had recently researched the cases and was preparing to publish a report about the scheduled executions. Her report, which was published on March 30, determined that among other issues there was a lack of investigation conducted in the eight cases (See, *Prisoners on Arkansas's Execution List Defined By Mental Illness, Intellectual Disability, and Bad Lawyering* at <http://fairpunishment.org/new-report->

arkansass-executions/). Due to this concern, Ms. Brand contacted me about my availability to assist in conducting a social history investigation in Mr. Lee's case. On March 27 I was informed that Mr. Lee's counsel, Mr. Kent Gipson, had agreed to accept the offer of mitigation services and would arrange for me to visit with Mr. Lee as soon as possible. I provided my availability, cleared my schedule, and sent copies of my drivers and Private Detective licenses. After several follow up emails I did not hear anything further about whether I was needed.

8. On or around April 7th I was contacted by Cassandra Stubbs of the ACLU and asked if I was still available to provide mitigation services in his case. I confirmed I was, and she contacted Mr. Lee's Arkansas counsel, Lee Short, who quickly arranged for me to visit with Mr. Lee in prison during the week of April 10th. I began reviewing approximately 300 pages of pleadings from the case on April 9th and flew to Little Rock, Arkansas on April 10th. I conducted investigation on Mr. Lee's case in Arkansas until the evening of April 14, 2017.

ASSESSING INVESTIGATION – DOCUMENT REVIEW OF COUNSEL'S FILES

9. In my review of the pleadings in preparation for the trip my primary focus was on a few issues - the conflicts of Mr. Lee's trial counsel, the extra-marital affair Judge Chris Piazza and Melody LaRue were engaged in during his trial, and the issues surrounding his post-conviction counsel Craig Lambert's intoxication during his initial rule 37 hearing. I noted that counsel Danny Glover and Gerald Coleman who were appointed to do Mr. Lee's subsequent rule 37 hearing hired an investigator named Matilda Buchanan, but from the materials I could not see what work was conducted. The pleadings indicated that Mr. Glover and Coleman did not present any additional evidence beyond that presented by Mr. Lambert.
10. In order to review Ms. Buchanan's notes I contacted Mr. Lee's counsel Kent Gipson to ask for her records. He indicated that he had sent all his files to Mr. Lee Short for "logistical reasons". I was surprised that he did not have an electronic copy of the records given that he was still counsel of record. Indeed, when I inquired about how I might reach Ms. Buchanan he provided me with a number that did not work. The man who answered the phone stated that he had had the number for 14 years. Mr. Gipson did not have an alternative way to reach Ms. Buchanan. From the pleadings she appeared to be the primary investigator who had worked on the case in its 24-year history.
11. In order to better understand what had been done in Mr. Lee's case, I reviewed his case files at Mr. Short's office on April 11. As previously noted, Mr. Lee's case is over 20 years old. I have worked on a number of capital resentencing cases, cases in federal habeas, and cases in late stage litigation. I expected to see numerous boxes of notes, investigative memos, reports, a witness list and a chronology that included both the social history of the client as well as the facts of the case. I expected to see records requests and the fruits of those efforts. I expected to see correspondence

from the client to the attorneys and from the attorneys to the client. I expected to see pre-trial motions, reports from the coroner, reports from tests of the physical evidence, defense expert reports or trial counsel notes from conversations with retained experts that they might not have eventually used for strategic reasons. What I saw instead were three boxes filed mainly with copies of the pleadings I had already reviewed. Contained within the file were some handwritten notes, some materials from Ms. Buchanan, and some newspaper clippings about the case. Other than the Buchanan materials, there was no evidence of any investigative work.

12. I reviewed Ms. Buchanan's materials closely. She had prepared a chronology that focused entirely on the relationships between Judge Piazza and members of the prosecutor's office, where he had worked as the head prosecutor before leaving for the bench. She had interviewed a number of employees of that office. These interviews revealed that Judge Piazza was a serial womanizer who had affairs with various women in that office. For instance, interview notes indicated that Judge Piazza had been having an affair with Teresa Napper, which ended when Ms. Napper's husband caught them having sex. She then married Hugh Finkelstein who was also a deputy prosecutor. Judge Piazza's relationship with Melody LeRue started shortly after his relationship with Ms. Napper ended.
13. One witness also indicated that sexual relationships between members of the prosecutor's office often took place during "work trips" and "trainings".
14. After the affair was discovered, Ms. Napper never returned to the prosecutor's office. Staff in the office were told not to speak of the circumstances of her departure. Two other employees packed up her belongings and she went to work for the Attorney General's office.
15. This same witness told Ms. Buchanan that the members of the prosecutor's office frequently partied together and were a "very incestuous bunch". On Thursday nights, they would stay late at the office, drink and have private meetings in various offices. Her notes went on to reveal that Piazza and LaRue's affair was common knowledge among members of the office by 1991. She also indicated that Piazza was close with other judges involved in Mr. Lee's case, including Judge Plegge, who officiated the wedding of Piazza and LaRue. The witness indicated that Piazza was a "pro at fooling around" and that he had told her he didn't want anyone "fucking around in his business." The witnesses recounted that it was common knowledge in the office that Judge Piazza lied on the stand in Mr. Lee's case.
16. At the end of the memo was a list of follow-up tasks, which included subpoenaing Piazza and LaRue's phone records from 1994-1995, records of Pulaski County Prosecutor's Office employee vacation time, travel, and professional training reimbursements for 1991-1995, and Piazza's docket for 1991-1995. It does not appear that any of these records were obtained or requested.

17. There was only scant correspondence included in Ms. Buchanan's file. However, what was there was illuminating. She had reached out to attorney Scott Braden about the case. In her message she wrote, "I may need to take you to a fancy lunch place to pick your brain about the pitfalls of this case. I just read where the def attorney was turned down by six investigators including one that I think is the single most unethical PI I've ever run across. All refused because they were afraid of going up against the state and Judge Piazza. What have I gotten myself into?" (Ex. B).
18. Some of Ms. Buchanan's billing records were also included. In May 2007 she billed for 14.25 hours of work, for a total of \$789.64. (Ex. C). On April 13 I requested the billing totals for those involved in Mr. Lee's case that had been paid by the Arkansas Public Defender Commission. This showed that Ms. Buchanan had been paid a total of \$3,386.82. This total includes expenses related to her work on the case. Due to time limitations I was not able to obtain the complete invoicing in Mr. Lee's case. The records exist off site from the Commission if they exist at all. Ms. Buchanan's rate was \$50 an hour so I estimate that she worked about 60 hours in total investigating the facts of Mr. Lee's case. The rule 37 hearing for which she was retained took place on August 28, 2007. Ms. Buchanan spent about 60 hours over four months helping counsel prepare for this critical stage of litigation.
19. According to Ms. Buchanan's own notes she was responsible for the "guilt" phase investigation, yet no records existed within the files about alternate suspects, the forensics involved in the case, publically available records for the witnesses who testified, or any correspondence with potential experts to evaluate the evidence against Mr. Lee. The correspondence between Ms. Buchanan and counsel shows that they did not guide the investigation leaving Ms. Buchanan to investigate independently, without direction from counsel.
20. The only records I found related to Mr. Lee had been requested by Mr. Short. They were approximately 92 pages of medical health records from the Department of Corrections spanning the years 2015-2017. In the 24 year history of this case Mr. Lee has had at least ten separate attorneys. No one appears to have meaningfully investigated the allegations lodged against him or to have conducted even the most basic of social history investigation. To call the investigation paltry would be an overstatement.

MR. LEE'S MENTAL HEALTH AND OTHER MITIGATION

21. I met with Ledell Lee three times during the four days I had to conduct mitigation investigation in Arkansas; April 11 for approximately three hours, April 12 for approximately 6 hours; and April 14 for less than one hour.
22. On meeting Mr. Lee I observed physical indications of potential traumatic brain injury and possible Fetal Alcohol Spectrum Disorder (FASD). An easily visible scar is located on Mr. Lee's face above his right eyebrow. When asked how he got the scar

he indicated it happened when he participated in boxing while at a youth detention facility.

23. The physical characteristics of FASD, which I noted on meeting Mr. Lee, include small eye openings, eyes that are very far apart, ears that looked pointed and folded over as if there was something biological that happened when he was developing inside the womb, and a smooth and wide philtrum.
24. Mr. Lee also has a finger that is unusually bent. I asked Mr. Lee about this and he explained that he had broken his finger playing basketball when he was about 12 years old. His family did not have the money for him to go to the doctor so he had placed a couple of sticks around it and wrapped it with tape. He had watched a TV program where he saw someone do something similar. The injury eventually healed but his finger was never the same.
25. Throughout our conversations I also noted that Mr. Lee had a hard time focusing. He lost track of the conversation at various points. This is consistent with what he described with respect to his educational history. He explained that he often struggled to stay focused in school, frequently daydreaming and not able to pay attention. Mr. Lee said that he had been held back in the 7th and 8th grades. He dropped out of school in the 9th grade because he had trouble understanding the work he needed to do. His reported attending two elementary schools and his school records reflect that the first school was Harrison Learning Center, a school for children in special education. He transferred in first grade and appeared to remain in some kind of special education courses. Even as a special education student he could not do some of the most basic tasks. For example, he explained that he struggled mightily with fractions and basic division. He started the first grade at the age of 7.
26. He was concrete in his thinking. One example of this was when we discussed common street drugs in circulation in the 1980s and 1990s. I mentioned that I thought wet, a marijuana cigarette dipped in formaldehyde, was popular back then. He said it was, but that he didn't understand why people would use it. He heard that formaldehyde was used on dead people so to Mr. Lee, smoking wet would be like someone smoking a dead person. He didn't understand why someone would want to do that.
27. Mr. Lee also stammered from time to time and said the wrong words, such as when he meant to say aptitude test he said altitude test.
28. Mr. Lee is one of seven children born to his mother Stella Young. He has an older brother who the family reports as being mentally ill. Stella had another child before Mr. Lee, a daughter who died of crib death. Stella gave birth to Mr. Lee when she was just 16 years old. Therefore, her first pregnancy was likely to have been as early as age 13.

29. No one has ever taken a basic family history from Mr. Lee. In addition to his own large immediate family, his mother was also one of nine children. He believes his biological father, Ledell Lee Jr., had two other siblings. His biological father was born in Milwaukee and has several children from other relationships. It seems that his father was about 4 years older than his mother at the time that they conceived Mr. Lee. That would mean his mother was approximately 14 years old and having a sexual relationship with an 18 year old. It is not clear whether this was a consensual relationship given her youth.
30. Mr. Lee's biological father has stage four Alzheimer's disease and is living in an assisted living facility.
31. Mr. Lee lived with his mom and her brothers and sisters in his grandmother's house until his mother married his step-father, Eddie Young. They married when Mr. Lee was about 5 years old.
32. Mr. Lee's maternal grandmother's house was full. She and her common-law husband lived in one room. The rest of the 9 children lived in any nook or cranny the house had. It is not clear if any of Mr. Lee's cousins were also living there at the time. They were poor. The couch in the main room didn't have legs on one side so someone in the family found a brick in the road and used that to prop the couch up. Mr. Lee didn't have a bed to sleep in. He had a blanket and slept on the floor where there was space with his brother and an uncle. In the summer time when it was hot they would tie up a sheet to a fan and then tie the other end of the sheet to something else. They would sleep in the fan tunnel to keep them cool and to keep the mosquitos out. In the winter he would sleep close to the stove, which the family used as their main source of heat. When it was very cold someone would turn on the burners as well as the oven to warm up the home. The fire source was propane. There was no central cooling or heating system.
33. Food was scarce. Mr. Lee's grandmother worked as a janitor and her boyfriend worked at a slaughterhouse. He would also go hunting for bullfrogs and fish in local areas. The family had a deep freezer where extra meat from the slaughterhouse and hunting trips could be found. Mr. Lee's grandmother kept locks on the freezer and the refrigerator otherwise she would have been eaten out of house and home. Mr. Lee often went hungry.
34. The family lived next to a large drainage pipe. The part of Blytheville where the family lived routinely flooded. The drainage pipe had sewage, old appliances, shopping carts and trash in it. It was a dumping ground for trash and debris. It is not clear where Mr. Lee's family water supply came from or if the food they caught was tainted by toxins or chemicals coming from the drainage system.
35. Mr. Lee's mother, aunts and uncles partied hard on the weekends and usually at least once a week. His grandmother was a heavy drinker, enjoying her gold cans of Miller outside with friends. Her children drank whatever was available in the house.

In addition, they smoked weed. Some of his aunts and uncles also used heroin. Mr. Lee remembers seeing his one uncle, Eddie Booker shooting up regularly, using his belt as a tourniquet. His aunts and uncles would start drinking and getting high before heading to a local juke joint or club. It was less expensive to show up to the club already intoxicated. They would leave the house around 11 pm and return around 3 or 4 in the morning. When they came back Mr. Lee's grandmother usually let them have something to eat. Mr. Lee stated that he was happy when they came home so he could get some food too. He was frequently hungry.

36. Mr. Lee's mom smoked cigarettes throughout her pregnancies with his siblings. He recalled seeing her drink while pregnant as well. In addition to going out with her brothers and sisters she also enjoyed playing bingo. She continued to play throughout his life, often leaving her kids to do so, even though money was tight.
37. After Stella and Eddie married they lived in a small apartment. He was in the Air Force and was away from home a lot of the time. He served in Vietnam, South Korea, and in South Dakota. He would come home on occasion for 30 days at a time. Most of the time, Stella was essentially on her own trying to raise all the kids by herself.
38. Stella was the disciplinarian in the house. She was quick tempered and would beat Mr. Lee with a switch when he didn't comply with her demands. As one of the older children she leaned on him to help her with the household, but he wasn't able to do it the way she wanted much of the time. When he failed she would make him get a switch from a tree that she would use to whip him. If he returned with a switch that was too small he had to get a second one. She would then tie the switches together with a rope and beat him with that instead. He noted this double switch was called a willow switch because he could hear it whiz as she flung it up and down against him.
39. Stella also beat him when his siblings did something that she did not approve. For example, someone in the family once ate a pie she had made and because she could not determine who had eaten it she beat all the kids with a switch. Mr. Lee was a teenager at that point.
40. Mr. Lee cared deeply for his brothers and sisters. He was able to get breakfast and lunch at school and would therefore not take the food from home because he knew he would be able to get something to eat, whereas his younger siblings might not.
41. Mr. Lee started to get into trouble when he was about 11-12 years old. He was caught stealing with a friend of his and was sent to a juvenile detention center. Mr. Lee could not recall the name of the detention center, but remembered that he was given an IQ test and his first physical exam. He was one of the youngest children in the facility so after a few months of being there he was sent back to the diagnostic center where a makeshift dorm was opened for the youngest residents. He returned to the home when he was 13 years old. He could not recall how long he stayed. He remembered that he did janitorial work and school was not a large component of his daily schedule. He did not recall family coming to see him. He remembered that his

mother did not come to pick him up when he was released and he had to make his way back from Pine Bluff to Blytheville without any assistance. He was able to catch a ride with someone. He was given a total of two IQ tests at the diagnostic center.

42. Some of Mr. Lee's school records from Blytheville were included in the trial record. Those records indicate that he was transferred to a juvenile detention facility. Requesting these records is a standard initial mitigation investigation step and I am surprised that this has never been done before. Mr. Lee did not recall anyone ever asking him to sign releases for his records, another sign of a dramatic departure from standard practice. I worked with counsel Lee Short to request his juvenile file and records during my time in Arkansas.
43. I also note that there is a long history of abuse and mistreatment of children in Arkansas state facilities. Mr. Lee himself noted that one of the dorms was referred to as Little Saigon.
44. Despite the difficulties Mr. Lee experienced, he also tried extremely hard to be a good son, boyfriend, and father. He was always working. The jobs he had were unskilled, but he took tremendous pride in bringing home money and being able to support himself and help members of his family.

FAMILY WITNESSES: MENTAL HEALTH AND OTHER MITIGATION

45. I conducted brief interviews with Mr. Lee's step-father Eddie Young, his mother Stella Young, his sister Lynn Coates, and the mother of one of his daughters.
46. Eddie relayed helpful information about Mr. Lee's work experience. The family moved to Valdosta, Georgia when Mr. Lee was about 14 years old. At some point Eddie helped get Mr. Lee a job on the base as a janitor. He explained that after the family moved back to Arkansas they did not have a lot of contact with Mr. Lee because he was moving around. He had moved to Colorado to live with one of his brothers who was stationed there for the military. He could not find a job so he left.
47. Stella displayed signs of mental illness. She rocked back and forth during our conversation, spoke with slurred speech, and was narrowly focused on her son's innocence. She shared with me a large suitcase full of clipping from newspapers about her son's case over the years. She explained that she doesn't like to go out at night because she is worried she will be killed. She does not sleep for more than a couple of hours a night and normally stays in the front room with a gun. She would shoot anyone who came into her house.
48. Stella did indicate that members of the defense team prior to Mr. Short had not come to see her in person. No one had asked her about her family history or asked her to sign releases for her records, which she did without any issue.

49. Stella acknowledged the fact that she was overwhelmed as essentially a single parent to 7 kids. She had one son who suffered seizures which required a lot of attention and care. The first time he had a seizure she wasn't sure what was happening and ran down the street to her mother's house. Her mom told her to put a spoon in his mouth so he would not bite his tongue off. Her son had seizures from about the ages of 3-6. He was given phenobarbital and treated at a hospital in Memphis, Tennessee. She had another son who had one seizure, but that was it. Her daughter, Lynn Coates, has advanced stage Lupus. She reported that sickle cell runs in the family and a couple of her siblings have died from it.
50. To deal with the stress of her life alone with the kids she gambled, playing bingo often. She relied on her older children to help feed the kids.
51. Mr. Lee was always looking to pick up side jobs. If someone needed their car to be detailed he would do it for a few dollars. He would clean anything.
52. Stella was not prepared by trial counsel to testify at Mr. Lee's trial. They did not meet with her beforehand to go over her testimony. She had no idea what they planned to ask her.
53. Lynn talked about how much she loved her brother. He had lived with her for a period of time. She indicated that he loved his children and always wanted to help his family.
54. Mr. Lee's ex-girlfriend also provided helpful information about Mr. Lee's functioning. She stated that they would argue about money. She liked to have bills paid on time, but Mr. Lee often paid their bills late. She had lived with Mr. Lee in Colorado when she was pregnant. He tried to find work, but was unsuccessful. She thinks they left after about three months. At that point she returned to her mother's house to have their daughter.
55. Mr. Lee met his ex-girlfriend in the neighborhood. She was renting an apartment not far from Stella's place. Mr. Lee often spent the night at her apartment. Sometimes he slept at home. He did not like living with his mom because she was "crazy." Stella would get upset with Mr. Lee for leaving the house. It was as if he could never do anything right.

ESSENTIAL TASKS FOR A DIAGNOSIS OF INTELLECTUAL DISABILITY AND FETAL ALCOHOL SPECTRUM DISORDER

56. Even from these cursory interviews there is evidence of some adaptive functioning limitations, a history of family mental illness and disease, as well as experiences of living in extreme poverty, neglect, abuse and familial dysfunction. That none of this information was developed or presented to any fact-finder is extraordinary given the age of Mr. Lee's case and the number of counsel who have been appointed to represent him.

57. At a minimum, there needs to be interviews with people who have known Mr. Lee before he was 18 years old and observed his functioning. Having obtained only a few school records it would be possible to try and locate teachers or administrators to interview. Likewise, friends, family, and neighbors would all be able to provide information about deficits in Mr. Lee's daily living skills. The hallmark of Intellectual Disability is not a rigid IQ score, but significant deficits in everyday living skills. Although initial interviews with some family members and an ex-girlfriend indicate that Mr. Lee did have limitations, more information would be needed in order for an expert to provide an opinion. Through conversations with Mr. Lee and his family I have identified a number of friends and relatives who would be available to be interviewed.
58. In order for an expert to diagnose FASD there must be confirmation of maternal drinking during the time of the pregnancy. This is a really sensitive topic and one that will need to be corroborated by others beyond Mr. Lee, who could only say that his mother drank while pregnant with her other children.
59. There are also essential records that need to be collected, which I will request on April 17. These records include Stella's medical records, including anything related to Mr. Lee's birth; records from the juvenile detention facility Mr. Lee was sent to as a child; records from the diagnostic center where he was given at least two IQ tests; and his sister's education and medical records. Often intellectual disability and mental health issues are not confined to one member of a family so reviewing these additional materials are critical.

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

Signed on this 17th day of April, 2017.



Elizabeth Vartkessian, Ph.D.

Exhibit A

CURRICULUM VITAE

Elizabeth S. Vartkessian, Ph.D.
325 Taplow Rd.
Baltimore, MD 21212
Phone: (281) 217-0946 esv@advancechange.org

EDUCATION

- 2012 Ph.D. in Law (DPhil)
 University of Oxford, St. Hilda's College—Oxford, England
- 2004 M.S. in Comparative Social Policy (M.Sc.)
 University of Oxford, St. Antony's College—Oxford, England
- 2003 B.A., Political Science; B.A., Philosophy; Minor, Africana Studies, *Magna Cum Laude*
 George Washington University, Washington D.C.

PROFESSIONAL EXPERIENCE

- 2014-Present *Founding Executive Director*, Advancing Real Change, Inc. (ARC, Inc.),
 Baltimore, Maryland.
 ARC, Inc. seeks to transform the U.S. criminal justice system by bringing
 comprehensive and accurate life history investigation to inform the fates of
 individuals facing the most severe penalties. In addition to casework, ARC, Inc.
 provides training and consulting services to legal teams regarding the best
 practices of life history investigations.
- In addition to working as a mitigation specialist additional tasks as the
 Executive Director include:
- Managing daily office operations of a staff of six.
 - Providing direct supervision to all mitigation and records collection specialists.
 - Engaging and reporting to the Governing Board of Directors.
 - Overseeing office finances.
 - Leading fundraising efforts.
 - Engaging in coalition building and community outreach.
 - Providing training and consultation services to defender organizations and private
bar attorneys.
 - Licensed as a Private Detective in Maryland, number 101-24647.
- 2010-2014 *Mitigation Specialist*, private consulting services for death penalty and
 cases involving juvenile life sentences.
- Built a successful solo mitigation practice.

- Engaged in networking including identifying clients and marketing.
- Ran daily operations, including budgeting, invoicing, accounting, and collection of payments.
- Obtained a private investigator license in New York.
- Trained as a Defense Victim Outreach Liaison in death penalty cases.

2004-2010 *Mitigation Specialist*, The Gulf Region Advocacy Center, Houston, Texas.
Life history investigator for death penalty cases at trial and post-conviction stages.
Regular tasks included:

- Providing expert testimony regarding the standard of care for the development and presentation of mitigating evidence in death penalty cases.
- Interviewing the client for the purpose of preparing a social history.
- Identifying, locating, and interviewing family, friends, and other witnesses for the purpose of preparing a social history.
- Collecting and evaluating birth, medical, education, social welfare, employment, incarceration, military, and other records of clients and family members for the construction of a social history.
- Investigating and researching issues related to medical history; prenatal, pediatric and adult health; exposure to harmful substances *in utero* and in the environment; substance abuse history; mental health history; history of maltreatment and neglect; trauma history; educational history; employment and training history; military experience; multi-generational family history, genetic disorders and vulnerabilities, as well as multi-generational patterns of behavior; prior adult and juvenile correctional experience; religion, gender and sexual orientation; ethnic, racial, cultural and community influences; socio-economic, historical, and political factors.
- Working with the client's family, community, and clergy in the development of other favorable evidence for the client during the punishment phase.
- Analyzing information gathered in investigation to determine potential expert witness consultations.
- Writing memoranda analyzing the factual information obtained from witnesses and historical documents in light of the principles discerned from the professional literature.

INVITED GUEST LECTURES, PRESENTATIONS, AND TRAINING SESSIONS

- 2017 Texas Criminal Defense Lawyers. *Capital Defense College at the Center of American and International Law*. Plenary speaker "Trauma as a Mitigator". Plano, Texas. April 26 (confirmed).
- 2017 Habeas Assistance and Training Counsel Project: *Fourteenth Annual National Seminar on the Development and Integration of Mitigation Evidence*. "Basics of Case Organization and Tools of the Mitigation Trade". Baltimore, Maryland. April 7.

- 2017 Florida Defender Organization: Topic: “Compelling Narratives: Mitigation Themes and Theories” (by videoconference). March 24.
- 2017 Georgetown University, School of Law: *Capital Punishment*. Topic: the development of mitigation evidence in capital cases. Guest speaker. Washington D.C. March 23.
- 2017 Yale School of Management: *Yale Philanthropy Conference*. Invited panelist, “A Public Voice: Rethinking How Advocacy Supports Mission”. New Haven, Connecticut. February 24.
- 2017 Advancing Real Change, Inc.: *Baltimore Mitigation Training*. Curriculum coordinator and plenary session speaker, “Best Practices of Mitigation Investigation,” and “Forward-looking Mitigation”. Baltimore, Maryland. February 10-11.
- 2017 Yale School of Law: *Educational Opportunity and Juvenile Justice Clinic*. Topic: records collection and interviewing basics for mitigation development. Guest speaker. New Haven, Connecticut (by videoconference). January 31.
- 2016 Atlantic Center for Capital Representation: *Bring Your Own Case Training*. Faculty member and plenary session speaker, “Themes and Theories”. Lafayette Hill, Pennsylvania. December 15-17.
- 2016 Michigan State Appellate Defender: *Juvenile Life Mitigation Training*. Curriculum coordinator and plenary session speaker, “Best Practices of Mitigation Investigation”. Detroit, Michigan. December 8-9.
- 2016 Louisiana State Public Defender: *Bring Your Own Case Training*. Faculty member and plenary session speaker, “Walk a Mile in My Shoes: A Day in the Life of Your Client”. Baton Rouge, Louisiana. October 19-21.
- 2016 University of Baltimore, School of Law: *Capital Punishment*. Topic: the development of mitigation evidence in capital cases. Guest speaker. Baltimore, Maryland. April 25.
- 2015 Maryland Office of the Public Defender, *Summer Law Clerk Training*. Plenary session speaker, “Mitigation: The Heart of Criminal Defense”. Baltimore, Maryland. May 27.
- 2015 Habeas Assistance and Training Counsel Project: *Twelfth National Seminar on the Development and Integration of Mitigation Evidence*. “Basics of Case Organization and Tools of the Mitigation Trade”. Baltimore, Maryland. April 12.
- 2015 Arizona Capital Representation Project: *Bring Your Own Case Training*. Faculty member Phoenix, Arizona. April 1-3.

- 2015 University of Maryland, School of Law: *Social Work and Law*. Topic: social work assessments and sentencing determinations. Guest speaker. Baltimore, Maryland. March 30.
- 2015 Georgetown University, School of Law: *Capital Punishment*. Topic: the development of mitigation evidence in capital cases. Guest speaker. Washington D.C. March 19.
- 2015 Administrative Offices of the U.S. Courts: *Fourth Annual Capital Mitigation Skills Workshop*. Faculty member and plenary session speaker, "Basics of Case Organization and Tools of the Mitigation Trade", Kansas City, Missouri. January 15-18.
- 2014 Atlantic Center for Capital Representation: *Bring Your Own Case Training*. Faculty member and plenary session speaker, "Themes and Theories". Lafayette Hill, Pennsylvania. November 20-22.
- 2014 Arkansas Association of Criminal Defense Lawyers: *Death Penalty Conference*. Plenary session speaker, "Records Collection" and "What Matters to Capital Jurors". Rogers, Arkansas. October 31-November 1.
- 2014 Oregon Capital Resource Center: Plenary session speaker, "Capital Jurors and Mitigation Evidence". Gleneden Beach, Oregon. October 10-11.
- 2014 Florida Death Penalty Training Program: *Life Over Death*. Plenary session speaker, "What Matters to Capital Jurors". Orlando, Florida. September 5.
- 2014 The Gulf Region Advocacy Center: *Bring Your Own Case Training*. Plenary session speaker, "Capital Jurors and Mitigation Evidence"; "Developing the Social History"; "Effective Team Work". Faculty member. St. Louis, Missouri. August 15-17.
- 2014 Atlantic Center for Capital Representation: *Mitigation Skills Training*. Planner and faculty member. Philadelphia, Pennsylvania. August 8-9.
- 2014 University of Baltimore, School of Law: *Capital Punishment*. Topic: the development of mitigation evidence in capital cases. Guest speaker. Baltimore, Maryland. June 10.
- 2014 Maryland Office of the Public Defender, Summer Law Clerk Training. Plenary session speaker, "Mitigation: The Heart of Criminal Defense". Baltimore, Maryland. May 28.

- 2014 Georgetown University, School of Law: *Capital Punishment*. Topic: the development of mitigation evidence in capital cases. Guest speaker. Washington D.C. February 27.
- 2013 The Gulf Region Advocacy Center: *Mitigation Skills Training*. Faculty member. Houston, Texas. November 20-22.
- 2013 Atlantic Center for Capital Representation: *Bring Your Own Case Training*. Faculty member. Lafayette Hill, Pennsylvania. September 25-28.
- 2013 University of Baltimore, School of Law: *Capital Punishment*. Topic: the development of mitigation evidence in capital cases. Guest speaker. Baltimore, Maryland. May 28.
- 2013 Oregon Capital Resource Center: Plenary session speaker, "Capital Jurors and Mental Health Mitigation Evidence". Portland, Oregon. April 19-21.
- 2013 University at Albany, School of Criminal Justice: *Qualitative Research Methods*: Topic: intensive interviewing techniques and conducting field research. Guest speaker. Albany, New York. January 22.
- 2012 University at Albany, School of Criminal Justice: *Law and Psychology*: Topic: the role of mitigation evidence in juror decision-making in capital cases. Guest speaker. Albany, New York. October 31.
- 2012 Idaho Federal Defenders Annual Training Seminar: Plenary session speaker, "Capital Jurors and Mitigation Evidence". Boise, Idaho. September 13.
- 2012 Habeas Assistance and Training Counsel Project: Ninth National Seminar on the Development and Integration of Mitigation Evidence. Plenary session speaker, "Capital Jurors and Mitigation Evidence". Atlanta, Georgia. April 28.
- 2008 Reprieve U.K. *Death Penalty Investigators Training*. Faculty member. London, England. March 29-30.
- 2007 Reprieve U.K. *Death Penalty Investigators Training*. Faculty member. London, England. April 21.
- 2007 National Consortium for Capital Defense Training funded by the Bureau of Justice Assistance: *Capital Defense Mitigation Issues*. Faculty member. Plano, Texas. March 23-24.
- 2007 The Gulf Region Advocacy Center: *Mitigation Skills Training*. Faculty member. Houston, Texas. January 19-21.
- 2006 Texas Criminal Defense Lawyers Association: *Mitigation Training*. Faculty

member. Dallas, Texas. April 20-21.

2005 Capital Unit of the Oklahoma City Public Defenders Office: *Conducting Mitigation Investigation*. Faculty member. Oklahoma City, Oklahoma. September 20-23.

PROFESSIONAL TRAININGS AND CONFERENCES ATTENDED

2015 Post-2255 Litigation and Advocacy, Federal Capital Habeas Project Training Conference. Philadelphia, Pennsylvania, July 21-22.

2015 NAACP Legal Defense Fund, Inc. 35th Annual Capital Punishment Training Conference. Warrenton, Virginia. July 9-12.

2014 Defense Initiated Victim Outreach Training, sponsored by the Administrative Offices of the U.S. Courts. Santa Clara, California. September 15-19. (by application).

2014 NAACP Legal Defense Fund, Inc. 35th Annual Capital Punishment Training Conference. Warrenton, Virginia. July 17-20.

2014 Eleventh National Seminar on the Development and Integration of Mitigation Evidence in Capital Cases sponsored by the Administrative Offices of the U.S. Courts. Philadelphia, Pennsylvania. March 27-30.

2013 Eighteenth Annual National Federal Habeas Corpus Seminar sponsored by the Administrative Offices of the U.S. Courts. Cleveland, Ohio. August 15-18.

2013 NAACP Legal Defense Fund, Inc. 34th Annual Capital Punishment Training Conference. Warrenton, Virginia. July 11-14.

2013 Tenth National Seminar on the Development and Integration of Mitigation Evidence in Capital Cases sponsored by the Administrative Offices of the U.S. Courts. Baltimore, Maryland. April 4-7.

2011 Law and Society Annual Meeting, San Francisco, California. June 2-5.

2011 Vermont Law School Symposium, New Perspectives on Capital Punishment, South Royalton, Vermont. February 11.

2009 NAACP Legal Defense Fund, Inc. 30th Annual Capital Punishment Training Conference. Warrenton, Virginia. July 9-12.

2008 Law and Society Annual Meeting, Montreal, Quebec. May 29-June 1.

- 2006 Mitigation Seminar sponsored by the Habeas Assistance and Training Counsel: The Development and Integration of Mitigation Evidence in Capital Cases. Washington D.C. April 27-30.
- 2006 Third National Forensics Seminar sponsored by The Habeas Assistance and Training Counsel. San Antonio, Texas. January 26-29.
- 2006 National Consortium for Capital Defense Training funded by the Bureau of Justice Assistance. Plano, Texas. January 11-14.
- 2005 National Association of Criminal Defense Lawyers Death Penalty Seminar. Oklahoma City, Oklahoma. September 30-October 2.
- 2005 A Fighting Chance: Themes and Theories of Mitigation Investigation. New Orleans, Louisiana. June 1-3.
- 2005 Records collection, Juror and Witness Interviews and Legal Aspects of Investigative Work. Houston, Texas. April 12-14.
- 2005 National Legal Aid and Defender Association: Life in the Balance. New Orleans, Louisiana. March 18-22.
- 2005 Capital and Mental Health Seminar. Houston, Texas. February 23-25.

ACADEMIC POSITIONS

- 2013-present *Research Fellow*, School of Criminal Justice, University at Albany
- 2012-2013 *Adjunct Professor*, School of Criminal Justice, University at Albany
Introduction to Criminal Justice Processes
- 2010-2011 *Discussion Leader*, School of Criminal Justice, University at Albany
Introduction to Criminal Justice Processes
Introduction to Criminology

PUBLICATIONS

- Under review Riner, Robin and Elizabeth S. Vartkessian. "Showing Humanity: How Defense Attorneys Use Mitigation Narratives to Advocate for Clients" in *Language & Social Justice: Case Studies on Communication & the Creation of Just Societies* (Invited chapter in edited volume).
- 2017 Sandys, Marla, Elizabeth S. Vartkessian, Heather Pruss, and Sarah Walsh, "Setting the Stage and Listening to What Jurors Have to Tell Us About Mitigation" in Edward Monahan and Jim Clark (Eds.) *Mitigation in Capital*

Cases: Understanding and Communicating the Life Story. American Bar Association.

- 2014 Vartkessian, Elizabeth S., Jonathan Sorenson, and Christopher E. Kelly. "Tinkering with the Machinery of Death: Juror Decision-Making in Texas Death Penalty Trials During Two Statutory Eras" *Justice Quarterly* (ahead-of-print), 1-24.
- 2014 Bowers, William, Christopher E. Kelly, Ross Kleinstuber, Elizabeth S. Vartkessian, and Marla Sandys. "The Life or Death Sentencing Decision: It's at Odds with Constitutional Standards, Is it Beyond Human Ability?" in James R. Acker, Robert M. Bohm, and Charles S. Lanier (Eds.) *America's Experiment with Capital Punishment*. Carolina Academic Press.
- 2012 Vartkessian, Elizabeth S. "What One Hand Giveth, the Other Taketh Away: How Future Dangerousness Corrupts Guilt Verdicts and Produces Premature Punishment Decisions in Capital Cases." *Pace Law Review*. 32: 447-543.
- 2011 Vartkessian, Elizabeth S. and Jared P. Tyler. "Legal and Social Exoneration: The Consequences of Michael Toney's Wrongful Conviction." *Albany Law Review*. 75: 1467-1498.
- 2011 Vartkessian, Elizabeth S. "Dangerously Biased: How the Texas Capital Sentencing Statute Encourages Jurors to be Unreceptive to Mitigation Evidence." *Quinnipiac Law Review*. 29: 237-288.

WORKS IN PROGRESS

Vartkessian, Elizabeth S. "Capital Jurors and the Death Penalty" (Book manuscript. Drafting)

RESEARCH INTERESTS

Capital Punishment
Sentencing
Juror and Jury Decision-Making
Wrongful Convictions
Victimology
Policy Reform
Qualitative Research Methods

RESEARCH EXPERIENCE

2010-2013 *Visiting Researcher*, School of Criminal Justice, University at Albany, State University of New York
Capital Jury Project

2008-2010 *Primary Investigator*, Research Foundation of the State University of New York,
Hindelang Criminal Justice Research Center
Capital Jury Project, Texas data collection

SCHOLARSHIPS, GRANTS, AND AWARDS

2015 J.M. Kaplan Social Innovation Prize Awardee (private foundation grant to support
the work of ARC, Inc.)

2014 Research Affinity Group (private foundation grant)

2010 Research Affinity Group (private foundation grant)

2009 Criminology Department, Oxford University (partial tuition)

2009-2008 St. Hilda's Graduate Student Scholarship (partial tuition)

2008 Alpha Delta Pi Foundation (academic, philanthropic, and social society grant)

2008 Law and Society Graduate Students Workshop Grant

1999-2003 George Washington University's Presidential Scholarship

ACADEMIC PAPERS PRESENTED

2017 Vartkessian, Elizabeth S., Paper entitled "Mitigation's Role in Criminal Defense"
Legal Services for the Indigent: Social Work, Mitigation, and Holistic Defense,
The American Society of Criminology, Philadelphia, Pennsylvania (confirmed
panelist).

2017 Vartkessian, Elizabeth S., Paper entitled "*Capital Juror's Response to Mental
Health Evidence: Context Matters Most*" International Academy of Law and
Mental Health, Prague, Czech Republic (invited panelist, confirmed).

2013 Vartkessian, Elizabeth S. and Christopher E. Kelly, Paper entitled "*Capital
Improvements? Juror Decision-Making in Texas Death Penalty Trials Before and
After Penry v. Lynaugh*" Law and Society Association, Boston, Massachusetts.

2011 Acker, Jim, William J. Bowers, Andrew L.B. Davies, Elizabeth S. Vartkessian,
and Kay Lang, Paper entitled "*Families and Friends of Homicide Victims: Violent
Bereavement and Adaptation*" The American Society of Criminology,
Washington D.C.

2011 Vartkessian, Elizabeth S., Paper entitled "*What One Hand Giveth, the Other
Taketh Away: How Future Dangerousness Corrupts Guilt Verdicts and Produces*

Premature Punishment Decisions in Capital Cases" School of Criminal Justice, University at Albany.

- 2011 Bowers, William J., Wanda Foglia, Elizabeth S. Vartkessian, Marla Sandys, and Christopher E. Kelly, Paper entitled "*The Receptivity of Courts to Empirical Evidence of How Jurors Decide Death Penalty Cases: The Capital Jury Project (CJP) as a Case Study*" Michigan State Law School Symposium, East Lansing, Michigan.
- 2010 Vartkessian, Elizabeth S., Paper entitled "*Fatal distraction: Does the Texas capital sentencing statute discourage the consideration of mitigating evidence?*" Law and Society Annual Meeting, Chicago, Illinois.
- 2009 Vartkessian, Elizabeth S., Paper entitled "*Persuasive Mitigation Evidence in Texas Capital Cases*" Law and Society Annual Meeting, Denver, Colorado.
- 2008 Vartkessian, Elizabeth S., Paper entitled "*Making the Case for Life: Patterns of Successful Mitigation Evidence Presented to Capital Juries in Texas*" St. Hilda's College, Oxford University.

BOARD MEMBERSHIPS

- 2008-Present Governing Board of the Gulf Region Advocacy Center
A non-profit law office committed to providing quality defense services to indigent defendants facing capital charges primarily in Texas and throughout the south.

Exhibit B

matilda buchanan

From: <swbraden@comcast.net>
 To: "matilda buchanan" <matildab@msn.com>
 Sent: Thursday, June 07, 2007 10:26 AM
 Subject: Re: legal question

The opt in provisions of the habeas statute is the real boogie man of habeas corpus. Basically if a state does certain things like provide for counsel at trial and at post conviction, make rules and standards for appointment, pay them etc and have a well operating system of appointment and so forth then the opt in provisions apply which make shorter time periods for filing habeas corpus petitions and requiring the federal court to move faster on making decisions etc. The major issue is 1) who decides if a state has set up a properly operating system of appointment and payment 2) and how do you know when it applies to you. Not too long again a provision in some terrorism bill said the person to decide this is the U.S. Attorney General, in other words the U.S. A.G. is the one to decide if Arkansas meets the criteria of providing qualified counsel paying them etc. Recently (yesterday in fact) the U.S. A.G. published some rules for how to go about this which basically boils down to any state that applies will be certified as an opt in state. This is a huge issue in Lee because even though in his case he had lawyers that were appointed and paid etc the lawyer was not qualified. The Ark Supreme Court talks about this in the 2006 opinion granting a new post conviction. They make no bones about saying we want to be an opt in state so we can kill people faster. Some states like Oklahoma for instance don't really worry about the opt in stuff because they are getting to have executions regularly and the opt in requirements in theory anyway would cost the state lots of extra money in lawyer fees and so forth.

I will gladly have lunch with you about this any time. I think all will be ok. The whole Judge Piazza thing seems to have blown over. But we can talk about it anytime you want. I am free Mon and Tues. next week.
 Scott

----- Original message -----

From: "matilda buchanan" <matildab@msn.com>
 Dear Scott,

I know you're not running an email law school, but I've got a question that I hope you can help me with. What is the "op-in" rule in regard to Federal *habeas corpus*? This seems to be taking up a lot of angst between the state and the def in the rule 37 hearing transcript.

I may need to take you to a fancy lunch place to pick your brain about the pitfalls of this case. I just read where the def attorney was turned down by six investigators including one that I think is the single most unethical p. I. I've ever run across. All refused because they were afraid of going up against the state and Judge Piazza. What have I gotten myself into?

Matilda

06/07/2007

EXHIBIT C

Matilda Buchanan, Legal Assistance and Investigations
 2212 Gaines
 Little Rock, AR 72206
 Phone: 501-375-7794; Fax 501-375-2007
 matildab@msn.com

Invoice

June 1, 2007

Ref:

Ledell LEE, Appellant

v.

**STATE of Arkansas, Apellee
 No. CR 99-1116**

Mail to:

Didi H. Sallings
 Arkansas Public Defender Commission
 101 E. Capitol Ave, suite 201
 Little Rock, AR 72201

Gerald A. Coleman, attorney
 Durrett and Coleman
 105 North Avalon
 P. O. Box 1667
 West Memphis, AR 72303

Date	Description	Hours
May 14	Email to and from G. Coleman. Phone conf. G. Coleman setting meeting for Monday, May 21	0.25
May 18	Research public library and online. Downloaded and printed news articles relating to L. Lee from 1988-2007 (total of 30 articles)..	2.50
May 20	Meeting with Coleman to obtain file on previous rule 37 hearing	0.25
	evaluate news articles and begin work on rule 37 transcript	2.00
May 21	phon conf. G. Coleman	0.25
	Copy and organize rule 37 transcript (see attached expense documentation)	1.00
	Conf. G. Coleman; discuss history of Lee cases and possible strategies. Drive to Varner to interview L. Lee. On return trip evaluate L. Lee's ideas for case and discuss possible leads to investigate	5.50
May 22	Westlaw search and print on related Supreme Court decisions. Read rule 37 transcript. Organize notes from meetings with Coleman and Lee. Write Coleman to clarify investigation strategy and tactics.	2.50

total hours for May 2007

14.25

Rate per hours = 50.00 Total amount for time \$712.50

total expenses May 2007 \$77.14

amount due \$789.64

Make all checks payable to:

Matilda Buchanan, Legal Assistance and Investigation
2212 Gaines
Little Rock, AR 72206

EXHIBIT 2

DECLARATION OF DALE G. WATSON

I, Dale G. Watson, Ph.D., declare as follows:

1. I am licensed to practice psychology in California. I specialize in clinical and forensic neuropsychology. I am a member of the American Psychological Association (APA) and subdivisions of that organization including Division 33 (Intellectual and Developmental Disabilities), Division 40 (Society for Clinical Neuropsychology), and Division 41 (American Psychology – Law Society). I am also a member of the International Neuropsychological Society (INS), the National Academy of Neuropsychology (NAN), the International Society for Intelligence Research (ISIR), the American Association on Intellectual and Developmental Disabilities (AAIDD), and the Society of Personality Assessment (SPA).
2. I received my Bachelor of Arts degree, with a major in psychology, from California State College, Sonoma in 1975. I received my Master of Arts degree in Clinical Psychology from John F. Kennedy University in Orinda, California in 1980. In 1988, I earned a Ph.D. in Clinical Psychology from the California School of Professional Psychology (CSPP) in Berkeley, California. CSPP was accredited by the APA and is now a school within Alliant International University with a campus in San Francisco, California.
3. I have been in private practice in the Bay Area of California since 1990. In addition, I am an adjunct faculty member at the Wright Institute, an APA accredited institution in Berkeley, California, where I teach a 3-trimester course in

Graduate Level Psychodiagnostic Assessment focusing on intellectual, academic and psychological evaluation. This course covers the broad array of psychological assessment instruments utilized within the field of assessment and includes modules on the assessment of intellectual functioning, academic skills, and personality assessment.

4. In California, I have given expert testimony in the Superior Courts of Alameda, Contra Costa, Fresno, Los Angeles, Marin, Monterey, Riverside, Sacramento, San Mateo, Santa Clara, San Francisco, and Shasta Counties. I have also qualified and testified as an expert in Maricopa County, Arizona; Howard County, Arkansas; Butts county, Georgia; Latah County, Idaho; Caddo Parish, Louisiana; Custer County, Montana; Anderson County, South Carolina; Harris County, Texas; York County, Virginia; and King and Whatcom Counties in Washington. I have qualified and testified in United States District Courts of Arkansas, California, Montana, Oklahoma, and Tennessee. From the early 1990s until 2003, I was on the panel of forensic examiners for the Superior Court in Contra Costa County, California. In that role, I regularly examined criminal defendants referred by the court for the evaluation of competency to stand trial and insanity. I have also completed several “*Atkins*” evaluations assessing intellectual disabilities in my role as a forensic neuropsychologist. I assessed Darryl Atkins, the defendant in *Atkins v. Virginia*, after the U.S. Supreme Court found it a violation of the constitution to execute the intellectually disabled. I also assessed Anderson Hawthorne and authored the declaration filed with the state habeas petition that

resulted in the California Supreme Court's decision allowing for evidentiary hearings in state habeas proceedings upon a prima facie showing of intellectual disability. Over the course of my career I have evaluated several hundred capital appellants.

5. I previously served as a Consulting Neuropsychologist to Neurobehavioral Cognitive Services (NCS) of Dixon, California, a residential/outpatient brain-injury rehabilitation program, between 2000 and 2015. In that role, I was involved in the evaluation of individuals with moderate to severe brain injuries resulting from trauma, stroke, and other neuropathological processes.
6. I was a Clinical Neuropsychologist for NeuroCare in Concord, California from 1989 to 1992. In that role, I conducted neuropsychological evaluations, and was involved in post-acute rehabilitation of the brain-injured, treatment planning, psychotherapy for individual, couples, and groups, substance abuse treatment, cognitive rehabilitation and crisis intervention. From 1986 to 1989, I was on staff at Specialized Rehabilitation Services in Fremont, California. In that capacity, I coordinated the Treatment Team for the Brain Injury Rehabilitation Program (1986-87), and conducted case management, patient education, and individual and group psychotherapy for the Chronic Pain Management Program.
7. I have given numerous presentations throughout my career to professional, academic, and legal organizations. Topics of my presentations have included the neuropsychology of mental retardation and other intellectual disabilities, the neuropsychology of schizophrenia, neuropsychological assessment and brain

impairment, brain functions including executive functioning, the roles of psychology and neuropsychology in forensic evaluations, the impact of norms on neuropsychological evaluation, and the teaching of psychological assessment.

8. I am the author of a chapter entitled “Intelligence Testing,” which was included in the recent publication of the American Association on Intellectual and Developmental Disabilities (AAIDD), *The Death Penalty and Intellectual Disability*, edited by Edward A. Polloway (2015).¹
9. Neuropsychology is the study of the relationship between brain functions and behavior. The discipline of neuropsychology is fully accepted by the relevant professional communities as providing information for the evaluation, description, and diagnosis of brain-related conditions affecting cognition, sensory-motor functioning, memory, language, auditory processing, intelligence, and executive functions. Neuropsychologists commonly utilize batteries of tests to provide information relevant to questions of behavioral functioning.
10. My curriculum vita is attached to this declaration as Appendix 1 and test results are found in Appendix 2.

Evaluation of Ledell Lee, Jr.

11. At the request of defense counsel Cassandra Stubbs, I examined Ledell Lee, Jr. at the Varner Correctional Facility on April 13, 2017 and April 14, 2017. I conducted a clinical interview and two full days of neuropsychological testing.

¹ Watson, D. G. (2015). Intelligence testing. In E. A. Polloway (Ed.), *The death penalty and intellectual disability* (pp. 113-140). Washington, DC: AAIDD.

12. I also have reviewed the declaration from the mitigation specialist Elizabeth Vartkessian, Ph.D. and have relied upon the information contained in that affidavit for additional social history information. I have not reviewed a number of documents that would provide relevant information to my opinions, including Mr. Lee's medical records, school records, and records from incarceration. Counsel have informed me that they are new on the case and that these records were not previously collected. In the event counsel can obtain these records, I will consider and weigh those records in evaluating my opinions. As explained below, I believe these records would be extremely valuable in evaluating adaptive deficits and to an ultimate determination of intellectual disability.

13. Mr. Lee put forth excellent effort throughout our testing. I administered both stand alone and embedded measures of performance validity and Mr. Lee's performance is judged to be valid.

14. The battery of tests administered to Mr. Lee included the following:

- Behavioral Observations
- Mental Status Examination
- Advanced Clinical Solutions for the WAIS-IV and WMS-IV Social Cognition Test (ACS SCT)
- Aphasia Screening Test (AST)
- Auditory Consonant Trigrams (ACT)
- b Test (bT)
- Boston Naming Test (BNT)
- BRIEF-A (BRIEF)
- Brown Location Test (BLT)
- California Verbal Learning Test-II (CVLT-II)
- Conners' Continuous Performance Test – III (CPT-III)
- Dichotic Word Listening Test (DWLT)
- Digit Vigilance Test (DVT)

- D-KEFS Design Fluency Test (D-KEFS DFT)
- D-KEFS Tower Test (D-KEFS TWR)
- D-KEFS Proverb Test (D-KEFS PT)
- D-KEFS Twenty Questions Test (D-KEFS TQT)
- D-KEFS Verbal Fluency Test (D-KEFS VFT)
- Finger Tapping Test (FTT)
- Forced Choice Test (FCT)
- Green's Medical Symptom Validity Test (MSVT)
- Grip Strength (GS)
- Grooved Pegboard Test (GPT)
- Halstead Category Test (HCT)
- Iowa Gambling Task (IGT)
- Judgment of Line Orientation (JOLO)
- Lateral Dominance Exam (LDE)
- National American Adult Reading Test (NAART)
- Neuropsychological Assessment Battery (NAB) Mazes Test (MAZ)
- One Minute Estimation (OME)
- Rey Auditory Verbal Learning Test (RAVLT)
- Rey Complex Figure Test (RCFT)
- Ruff-Light Trail Learning Test (RULIT)
- Seashore Rhythm Test (SRT)
- Sensory-Perceptual Examination (SPE)
- Sentence Repetition (SR)
- Speech Sounds Perception Test (SSPT)
- Tactile Form Recognition Test (TFRT)
- Tactual Performance Test (TPT)
- Test of Memory Malinger (TOMM)
- Texas Functional Living Scale (TFLS)
- Token Test (TT)
- Trail Making Test A & B (TMT)
- Wechsler Adult Intelligence Scale - IV (WAIS-IV)
- Wechsler Memory Scale – IV Flexible Approach (WMS-IV)
- Wide Range Achievement Test - 4 (WRAT-4)
- Wisconsin Card Sorting Test (WCST)

15. Mr. Lee's intellectual abilities were assessed using the Wechsler Adult

Intelligence Scale, Fourth Edition (WAIS-IV). His performance on the WAIS-IV

falls within the Low Average to Borderline range of intelligence. Nonetheless, his

performance raises the possibility that he has a Mild Intellectual Disability. His Full Scale IQ (FSIQ), a measure of general intellectual ability, was 82, but is most appropriately represented as a score of 79, taking into account the Flynn Effect.² The latter score places his measured intellectual ability in the range between 75 and 83 and at the 8th percentile rank. This finding is somewhat above the 2nd to 4th percentile ranks usually associated with a diagnosis of Intellectual Disability. However, with the advent of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), confirmed by the United States Supreme Court in *Hall v. Florida*, 572 U.S. ____ (2014), there has been a shift from emphasizing IQ to the role of adaptive functioning in making the diagnosis. This necessitates a complete and thorough examination of Mr. Lee's adaptive functioning. Furthermore, given that IQ scores can change over time, additional investigation into intellectual and adaptive deficits is necessary in order to evaluate the presence of intellectual disability.

16. The evaluation of intellectual functioning provides the context for a more detailed analysis of his neurocognitive functioning. On the WAIS-IV, Mr. Lee's General Ability Index (GAI) was 79 (Flynn-corrected to 76 and at the 5th percentile). The GAI assesses his core intellectual capacities without the impact of either working memory or processing speed, both of which fell within the Average range (Working Memory Index (WMI) = 92 / 30th percentile rank; Processing Speed

² The Flynn Effect relates to the phenomenon of the inflation of IQ scores as a test's norms become increasingly obsolete. The WAIS-IV was normed in 2007 requiring an adjustment downward of Mr. Lee's FSIQ of 3 points, equaling an FSIQ of 79.

Index (PSI) = 92 / 30th percentile rank). In contrast, his verbal capacities fell in the Low Average range (Verbal Comprehension Index (VCI) = 87). More strikingly, his non-verbal intellectual abilities fell in the Borderline range (Perceptual Reasoning Index = 75 / 5th percentile rank / 95% Confidence Interval (CI) = 70 – 82). This part score falls in the range of Intellectual Disability absent any Flynn correction.

17. The pattern of WAIS-IV IQ scores was relevant to the nature of Mr. Lee's neurocognitive dysfunction. The difference between the VCI and the PRI of 12 points was significant and initially raises the question of greater right versus left hemisphere dysfunction. It is apparent that he has deficits in fluid or "on the spot" reasoning and visual processing with relatively intact verbal functions such as vocabulary. Were someone to rely solely on assessing Mr. Lee's vocabulary to understand his neurocognitive abilities, they would entirely miss the nature of his brain dysfunction.
18. Neuropsychological assessment revealed Mr. Lee to have significant and serious deficits in academic skills, memory abilities, motor functions, social cognition, and executive functions. The findings are indicative of diffuse brain dysfunction, worse in the right hemisphere, with particular evidence of frontal-striatal and temporal lobe dysfunction. The temporal lobes are responsible for an array of cognitive tasks most notably including language and memory. The frontal-striatal system is involved in executive processes, active learning and recall, and making tasks routine.

Academic Functioning

19. Mr. Lee's academic skills are somewhat limited, though generally consistent with his educational attainment. He could sight read at the 8.6 grade level, comprehend at the 9.7 grade level, and perform math at only the 5.9 grade level. His performance does fall over one standard deviation below the mean – and this finding is relevant to a diagnosis of Fetal Alcohol Spectrum Disorder (FASD) as discussed below.

Memory Functioning

20. Mr. Lee has striking deficits in both verbal and non-verbal memory and learning.

21. Verbal recall was assessed with list-learning measures and paragraph length verbal recall measures including the Rey Auditory Verbal Learning Test (RAVLT), the California Verbal Learning Test, Second Edition (CVLT-II), and the Logical Memory scales from the Wechsler Memory Scale, Fourth Edition, Flexible Approach (WMS-IV).

22. The results of the RAVLT are illustrative of his deficits in verbal learning and recall. This task required him to learn a list of 15 words presented five times. He initially recalled five words – an average performance and one reflecting adequate auditory attention. Subsequently he recalled 7, 6, 9, and 7 words over the next four trials. This performance reflects poor learning capacity. Over the course of the next four trials following his initial recall, he essentially acquired only two additional words. Following a distractor, he could only recall five of these same 15 words – a performance indicative of moderate memory impairment and falling at

only the 4th percentile rank. Some 30 minutes later he could only recall four of the words. Notably, on a recognition task, where he was asked if a number of words were on the list he had learned, he could recognize eight of the words – though this is still moderately to severely impaired and fell at only the 0.1 percentile rank. Moreover, his recall was vulnerable to intrusion errors such that he falsely recalled six words that were not actually on the list – a reflection of “source memory” deficits, a marker of frontal lobe dysfunction. This latter performance reflected severe impairment, falling at only the 0.01 percentile rank. This pattern of performance not only represents dysfunction of the left hippocampal/medial temporal lobe memory system but of the frontal-striatal executive memory system as well.³ He has difficulty learning new verbal information, storing that information, and retrieving that information.

23. Mr. Lee demonstrated equal, if not greater, impairment on measures of visual recall. These measures included the Rey Complex Figure Test (CFT), the Brown Location Test (BLT), the Ruff-Light Trail Learning Test (RULIT), and the Visual Reproduction subtests of the WMS-IV.

24. Mr. Lee’s performance on the Rey Complex Figure Test illuminated marked memory retrieval deficits and a striking failure of executive functions to organize

³ Koziol and Budding (2009) have specifically addressed this pattern of performance and indicated it is a feature of dysfunction within the frontal-striatal system rather than the hippocampal/temporal lobe system (Koziol, L. F., & Budding, D. E. (2009). *Subcortical structures and cognition: Implications for neuropsychological assessment*. New York: Springer, p. 229.) They wrote, in similar cases, “there is an obvious disparity between limited response production on voluntary recall trials and completely intact recognition.... There is very good retention but very poor self-activation that results in limited voluntary access” (p. 229). They further noted, “a shallow but incremental learning slope ... implicates frontal systems” (p. 230).

his behavior. To begin with, Mr. Lee's copy of a complex figure was marred by a disorganized, piecemeal approach to the task. Rather than taking a gestalt approach to the task, he instead focused on details such that when finished his drawing had several significant distortions. His copy score, reflecting visual spatial capacities, fell at only the 0.01 percentile rank and was classified as severely impaired. Just a few minutes later, his drawing from memory performance was markedly simplified and even more distorted. Approximately 30 minutes later it had even less relationship to the original figure and was marred by perseverative repetitions of a particular design element. On each of these recall tasks his performance fell at below the 1st percentile rank and was severely impaired. However, on recognition testing his performance improved somewhat, to the 2nd percentile rank – reflecting moderate impairment. At that point, I performed a procedure to test the limits of his impairment – I showed him how to draw the figure using a gestalt approach. Now, when he copied the figure it was more organized and his recall three minutes later had improved substantially – to the Below Average range (Immediate Recall after demonstration = 44t / 27th percentile rank). This procedure demonstrated that Mr. Lee's recall of visual information is particularly poor by, once again, a failure of the fronto-striatal executive memory system, this time of the right hemisphere.

25. Similar failures to learn visual information were seen on a measure of spatial recall (Brown Location Test Trials 1 – 5 Free Recall Total = -2.46z / 0.6 percentile

rank). Likewise, his ability to learn a visual trail over multiple trials was impaired (RULIT Total Correct Trials 2-10 = 33t / 5th percentile rank).

Sensory and Motor Functions

26. Comparing the performance of an individual on their right and left sides is a technique borrowed from neurology. On sensory and motor measures, there are known relationships of performance on tasks of the right and left sides. These comparisons can assist in identifying lateralized brain damage to either the left or right hemispheres of the brain. As is well known, the left hemisphere of the brain controls motor and sensory functions on the right side of the body and vice versa.
27. Though Mr. Lee performed reasonably well on measures of fine motor speed (Finger Tapping) and control (Grooved Pegboard Test) he demonstrated lateralized dysfunction on the Tactual Performance Test (TPT). The TPT is a measure of complex visual spatial problem solving tapping into the mapping capacities of the posterior regions of the brain as well as the planning capacities of the frontal regions. The task required Mr. Lee to place puzzle pieces in a form-board, while blind-folded, first with his right hand, then his left, and finally with both together. Most individuals with intact capacities can place the 10 pieces into the board with their dominant hand in about 6 to 7 minutes. They then will cut their time with their non-dominant hand by about a third to 4 to 5 minutes. Finally, they can reduce their time by one third again with both hands. Mr. Lee initially placed the 10 blocks in the board with his right hand in 7'38" – an adequate performance. However, with his left hand he required 10'33" – fully three minutes

slower than with his right hand. He then required 6'07" with both hands together, barely improving on his right hand performance and suggesting that the left slowed even this performance. The pattern of performance between the right and left hands likely reflects lateralized impairment of the right hemisphere – consistent with the IQ findings and the more severely impaired visual memory functioning. This pattern was similarly reinforced on the Tactile Form Recognition Test which also showed lateralized dysfunction impacting the right hemisphere.

Executive Functioning

28. Executive functions are brain-related cognitive processes that control planning, generating hypotheses, cognitive flexibility, initiating activity, organization, decision-making and problem solving, judgment, inhibition and regulation of behavior, and utilizing feedback to change a behavior or response. The importance of executive functions in activities of daily living is well recognized. Individuals with executive dysfunction tend to become stuck in “mental ruts” - demonstrating perseverative behaviors that involve the continuance of behaviors beyond their relevance. In contrast, cognitive flexibility, or the ability to shift sets, is required any time an individual attempts to solve a problem using multiple pieces of information. The individual must incorporate feedback concerning the effect of each piece of information and then consider how the new information affects subsequent choices or behavior. The process is dynamic in that it requires continuous evaluation and incorporation of new information. Executive functions are necessary to plan and organize behavior, reason abstractly, and perceive

accurately and respond appropriately to social expectations; they are required for effective and environmentally appropriate behavior. The frontal lobes of the brain are largely responsible for these functions.

29. Mr. Lee demonstrated both strengths and weaknesses in this domain. He had notable strengths in verbal abilities with profound deficits in non-verbal executive functions – consistent with some degree of lateralized brain dysfunction, worse within the right hemisphere. For example, he was readily able to generate words beginning with either a specified letter or a specified category. These abilities are putatively the result of left hemisphere processes. In contrast, he was severely impaired on measures of visual problem solving.

30. Mr. Lee demonstrated a remarkable failure to learn and problem solve on a card-sorting test requiring conceptual thinking. The *Wisconsin Card Sorting Test* (WCST) requires an individual to match cards from a deck of cards to one of four “key” cards – based upon the color, shape, or number of design elements on the card. For example, a card might have four blue circles on it, which might be matched to a key card with two blue crosses – sorting to color. Each time a choice is made the person is told whether they are correct or incorrect and in this way, most people learn to do the task and typically can complete six different sorting rules (e.g., color, shape, or number completed twice) in fewer than 128 cards.

31. Mr. Lee’s performance on the WCST was profoundly impaired. He did not complete any of the expected six categorical sorts and was “on target” only 9 percent of the time – a performance falling at only the 1st percentile rank of the

population. Though his errors on the WCST included perseverative responses, his difficulties appeared principally to be due to a conceptual failure. Of the 128 cards, he was correct on only 40 of them. This level of performance represents a marked inability to reason and analyze in novel problem solving situations and reflects a degree of confusion that is likely to impact his independent functioning.

32. On a measure of visual planning under timed conditions, Mr. Lee was mildly impaired with a performance falling just beyond 1 standard deviation below the mean (NAB Mazes test = 39t / 14th %ile).
33. Though Mr. Lee performed well on several measures from the Delis-Kaplan Executive Function System (D-KEFS), he did, nonetheless demonstrate mild deficits in set switching on the Design Fluency Test (Condition 3 Switching: Total Correct = 6SS / 10th %ile).
34. Finally, on another visual reasoning task assessing abstraction, concept formation, and flexible thinking when confronted with novel and complex tasks requiring analysis, he performed well below expectations and in the Mildly to Moderately Impaired range (Halstead Category Test = 99 errors / SS = 4 / 2nd %ile). This task required the capacity to discern the most salient aspects of a problem-situation, to devise a solution/approach, monitor the effectiveness of the approach when given feedback as to its accuracy, and adapt the approach as needed to reach an accurate solution. This task is a general measure of neuropsychological integrity sensitive to impairment in many regions of the brain.

35. It is apparent from the above that Mr. Lee has clear and consistent findings of impaired executive functioning impacting non-verbal abilities.

SOCIAL COGNITION

36. Social cognition is the capacity to understand social communications and intention by interpreting facial expressions and the use of intonation and prosody in speech to convey emotion. Importantly, "...affect recognition and face processing abilities are primary to understanding deficits in social functioning commonly observed in individuals with developmental, neuropsychiatric, and neurological disorders."⁴ Deficits in social cognition commonly result in impairment in understanding and coping with the complexities of relationships and daily functioning.

37. On the *ACS Social Cognition Test*, Mr. Lee demonstrated a mixed pattern of intact and impaired social perception skills. He struggled to understand and process the tonal qualities and prosody of language to understand social communications. His performance on the Social Perception Prosody index was mildly impaired (10th percentile rank) reflecting limitations in his understanding of complex social interactions that "use prosody to understand emotional content of a verbal expression, to link prosody with facial expressions, to discriminate sarcasm from other emotions, to label emotions from prosody, to express the impact of prosody

⁴ Holdnack, J. A., & Whipple Drozdick, L. (Research Directors) (2009). *Advanced Clinical Solutions for WAIS-IV and WMS-IV (ACS) Clinical and Interpretive Manual*. San Antonio, TX: Pearson, p. 299.

on the meaning of a verbal statement, and to link an auditory expression of emotion to an interaction between two people.”⁵ He thus seemed to struggle at times to match a pictures to their corresponding taped, emotionally significant statements.

Fetal Alcohol Spectrum Disorders

38. Based on my evaluation, interview, and review of records, I am convinced, to a reasonable degree of professional certainty, that Mr. Lee has a neurodevelopmental disorder. The most probable condition is that of a Fetal Alcohol Spectrum Disorder (FASD). FASD is a group of conditions, caused by maternal alcohol consumption during pregnancy. Alcohol is a teratogen that causes disruptions in the process of cell proliferation, migration and differentiation in the body and brain. These conditions include Fetal Alcohol Syndrome (FAS), partial fetal alcohol syndrome (pFAS), alcohol-related neurodevelopmental disorder (ARND) and alcohol-related birth defects (ARBD).
39. FAS is a permanent birth defect syndrome caused by maternal consumption of alcohol during pregnancy, characterized by growth deficiency, a unique cluster of facial anomalies, and central nervous system abnormalities.
40. FAS requires specific facial anomalies to be diagnosed wherein, in the other conditions, the characteristic dysmorphic facial features of FAS may not be present. Nonetheless, cognitive deficits remain.

⁵ *Id.*, p. 366.

41. Mr. Lee has at least some of the characteristic facial anomalies found in FAS. His eyes are notably short and wide set, a cardinal feature of FAS. Moreover, he has truly remarkable ears, highly unusual and deformed. There is a lack of internal detail and one is actually pointed on the posterior edge. Mr. Lee recalls being teased as a child and called “Dr. Spock” because of his unusual ears. The deformity is a strong indicator of FAS. In addition, he has a flat nasal bridge – another associated feature. Because other neurodevelopmental disorders can present with dysmorphic features, further investigation of Mr. Lee’s genetic background and his mother’s use of substances/medications must be explored.

42. The Center for Disease Control (CDC) has developed diagnostic criteria for FAS.

These criteria include the following central nervous system abnormalities:

I. Structural

- 1) Head circumference (OFC) at or below the 10th percentile adjusted for age and sex.
- 2) Clinically significant brain abnormalities observable through imaging.

II. Neurological

Neurological problems not due to a postnatal insult or fever, or other soft neurological signs outside normal limits.

III. Functional

Performance substantially below that expected for an individual's age, schooling, or circumstances, as evidenced by:

1. Global cognitive or intellectual deficits representing multiple domains of deficit (or significant developmental delay in younger children) with performance below the 3rd percentile (2 standard deviations below the mean for standardized testing) or
2. Functional deficits below the 16th percentile (1 standard deviation below the mean for standardized testing) in at least three of the following domains:
 - a) cognitive or developmental deficits or discrepancies
 - b) executive functioning deficits
 - c) motor functioning delays
 - d) problems with attention or hyperactivity
 - e) social skills
 - f) other, such as sensory problems, pragmatic language problems, memory deficits, etc.⁶

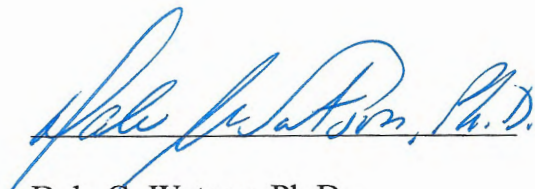
43. My examination of Mr. Lee addressed the Functional criteria associated with FAS as outlined by the CDC. He has demonstrated deficits falling below the 16th percentile, i.e., 1 standard deviation below the mean, in the areas of executive functioning, academic skills, motor functioning, social skills, and memory functions. Mr. Lee meets the requirement of impaired brain function as described

⁶ National Center on Birth Defects and Developmental Disabilities Centers for Disease Control and Prevention Department of Health and Human Services. (n.d.). Fetal Alcohol Syndrome: Guidelines for referral and diagnosis. Retrieved April 16, 2017, from https://www.cdc.gov/ncbddd/fasd/documents/fas_guidelines_accessible.pdf

by the CDC for Fetal Alcohol Syndrome (FAS). Confirmation of this diagnosis will require additional investigation of his mother's substance use. The work of Elizabeth Vartkessian, Ph.D., mitigation specialist, provides initial support for the proposition that Mr. Lee's mother may have drank alcohol during her pregnancy with him.

44. In sum, I believe Mr. Lee has significant brain impairments, a neurodevelopmental disorder, a probable Fetal Alcohol Spectrum Disorder, and likely has either borderline or mild Intellectual Disability. I believe these are life-long impairments, that the physical markers of dysfunction are readily apparent, and would have been uncovered at any point since Mr. Lee's trial had a competent psychologist or neuropsychologist evaluated Mr. Lee.

I swear that the foregoing is true and correct to the best of my knowledge under penalty of perjury under the laws of the United States. Executed in Contra Costa County, State of California, on the 17th day of April, 2017.


Dale G. Watson, Ph.D.

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CURRICULUM VITAE

MARCH 20, 2017

EDUCATION:

- 1988 Ph.D. California School of Professional Psychology-Berkeley/Alameda
 Clinical Psychology (APA accredited)
- 1980 M.A. John F. Kennedy University, Orinda, CA.
 Clinical Psychology
- 1975 B.A. California State College, Sonoma, Rohnert Park, CA.
 Psychology

PROFESSIONAL EXPERIENCE:

1990- **Private Practice**

Pinole, CA.

- Forensic Evaluation/Trial Consultation.
- Comprehensive Neuropsychological/Psychodiagnostic Assessment services.
- Mental Retardation “Atkins” evaluations.
- Adjudicative Competency & to be Executed, Insanity, Mitigation and Future Dangerousness.
- Trial testimony in Superior and Federal District Courts.
- Individual Psychotherapy.

2007- **Adjunct Faculty**

1994-2000 The Wright Institute, Berkeley, CA. (APA accredited)

- Teaching 3-trimester courses in Graduate Level Psychodiagnostic Assessment including intellectual and psychological evaluation and neuropsychological screening.
- Dissertation supervision.

2000-2016 **Consulting Clinical Neuropsychologist**

Neurobehavioral Cognitive Services, Dixon, CA.

- Neurocognitive rehabilitation services including consultation and treatment planning.
- Individual and Group Psychotherapy with neurologically impaired patients.
- Neuropsychological and Psychodiagnostic Assessment.

1990-1992 **Clinical Neuropsychologist**

NeuroCare, Concord, CA.

- Acting program director (July 1991).
- Psychology team leader.
- Supervision of interns and the behavioral technician.
- Post-acute rehabilitation of the brain-injured.
- Neuropsychological evaluation.
- Treatment planning.
- Individual/Couples/Group Psychotherapy.
- Substance Abuse treatment/Cognitive Rehabilitation/Crisis Intervention.

CURRICULUM VITAE

PROFESSIONAL EXPERIENCE (CONTINUED):

1989-1990 Psychological Assistant

Supervisor: James Cole, Ph.D.

NeuroCare, Concord, CA.

- Post-acute rehabilitation of the brain-injured.
- Neuropsychological evaluation.
- Treatment planning.
- Individual/Couples/Group Psychotherapy.
- Substance Abuse treatment/Cognitive Rehabilitation/Crisis Intervention.

1988-1990 Psychological Assistant

Supervisor: Virginia Wulf, Ph.D., Pinole, CA.

- Individual/Couples Psychotherapy.

1988-1989 Psychological Assistant

Supervisor: Norbert Ralph, Ph.D.

Comprehensive Assessment Services/Sausalito Professional Clinic Sausalito, CA.

- Psychodiagnostic evaluations of hospitalized, adolescent substance abusers.
- Hospital Consultation (New Beginnings - Modesto).

1986-1989 Psychological Assistant

Supervisors: Michael Shore, Ph.D./Harry Noda, Jr., Ph.D.

Specialized Rehabilitation Services

An affiliate of Transitions / Bay Area Recovery Centers, Fremont, CA.

Brain Injury Rehabilitation Program (1986-1987)

- Coordinating the Treatment Team.
- Neuropsychological and Psychodiagnostic Evaluation.
- Cognitive Rehabilitation.
- Individual Psychotherapy/Case Management.

Chronic Pain Management Program

- Individual/Group Psychotherapy.
- Case Management.
- Biofeedback Training.
- Patient education.

1981-1986 Clinical Coordinator/ Psychological Assistant

Supervisors: Sheila Bastien, Ph.D./Ann Hoff, Ph.D.

Spectrum Psychology Associates, Berkeley, CA.

- Clinical Coordination.
- Neuropsychological, Psychodiagnostic and Vocational Evaluation.
- Evaluation of the Developmentally Disabled
- Individual Psychotherapy.
- Forensic psychology.

1984-1985 Clinical Psychology Intern (Academic Year)

Supervisor: Neil Young, Ph.D.

Community Education and Counseling Center, Fremont, CA.

- Individual Psychotherapy within a Control Mastery framework.
- Group and Couples Psychotherapy.
- Community Needs Assessment (Program Evaluation).

CURRICULUM VITAE**PROFESSIONAL EXPERIENCE (CONTINUED):****1983-1984 Clinical Psychology Intern (Academic Year)**

Supervisor: Joan Roth, Ph.D.

Northern California Reception Center,

California Medical Facility, Vacaville, CA.

- Psychodiagnostic Evaluation of court referred criminal offenders.
- Group Psychotherapy with Category "B" inmates (Pre-operational Transsexuals).
- Individual Psychotherapy.

1983 Teaching Assistant

Neuropsychological Measurement Laboratory

California Graduate School of Marital and Family Therapy, San Rafael, CA.

- Taught the laboratory section of Neuropsychological Assessment using the Halstead-Reitan Battery.

1983 Clinical Psychology Intern

East Bay Activities Center, Oakland, CA.

- Milieu therapy in classroom setting with emotionally disturbed children.

1983 Co-Leader: Neuropsychological Assessment - An In-service Training Workshop. Sonoma County Office of Education.

- 1-day in-service training workshop with psychologists and nurses.

1982 Teaching Assistant

Neuropsychological Measurement Laboratory

California School of Professional Psychology, Berkeley, CA.

- Taught the laboratory section of Neuropsychological Assessment using the Halstead-Reitan Battery.

1982 Teaching Assistant

Neuropsychological Measurement Laboratory

California Graduate School of Marital and Family Therapy

San Rafael, CA.

- Taught the laboratory section of Neuropsychological Assessment using the Halstead-Reitan Battery.

1979-1980 Counselor Intern

Contra Costa County Alcoholism Information and Rehabilitation Service (AIRS), Antioch, CA.

- Conducted Alcoholism Education Orientations.
- Individual, Marital and Group Psychotherapy.

1978-1979 Counselor Intern

John F. Kennedy University Community Counseling Center, Concord, CA.

- Individual, Marital, and Family Psychotherapy.
- Peer Supervision.

1975 Staff Counselor

New Horizons Center, Pittsburg, CA.

- Milieu treatment of developmentally disabled and psychotic adolescents and young adults.
- Liaison to Consulting Psychiatrist.

PROFESSIONAL TRAINING:

2017 "R-PAS Coding Solutions." Donald J. Viglione, Ph.D., Society for Personality Assessment, March 19, 2017, San Francisco, CA 7 CE Units.

2017 "Proficiency in Personality Assessment: Producing an Integrated Report." Hades Pade, Psy.D. & A. Jordan Wright, Ph.D., Society for Personality Assessment, March 15, 2017, San Francisco, CA 3.5 CE Units.

2017 "Developmental Amnesia: Memory Formation in the Absence of Remembering." Faraneh Vargha-Khadem, Ph.D., International Neuropsychological Society (INS) 45th Annual Meeting, February 1, 2017, New Orleans, LA 1 CE Unit.

PROFESSIONAL TRAINING (CONTINUED):

- 2017 “Frontal Cortex and Human Behavior: Evidence from Intracranial Recording.” Robert T. Knight, M.D., International Neuropsychological Society (INS) 45th Annual Meeting, February 1, 2017, New Orleans, LA 1 CE Unit.
- 2017 “Adult Aphasia: Classifications, Localization, and Neuroimaging.” Nina Dronkers, Ph.D., International Neuropsychological Society (INS) 45th Annual Meeting, February 1, 2017, New Orleans, LA 3 CE Units.
- 2017 “Clinical Assessment of Frontal Lobe Functions: A Historical Perspective of the Application of the Boston VA Jamaica Plains VA Process Approach.” Donald Stuss, Ph.D., International Neuropsychological Society (INS) 45th Annual Meeting, February 1, 2017, New Orleans, LA 3 CE Units.
- 2016 “21st Century Neuroimaging Applications in the Practice of Clinical Neuropsychology.” Erin Bigler, Ph.D., National Academy of Neuropsychology, October 21, 2016, Seattle, WA. 3 CE Units.
- 2016 “Overview of Recreational and Medical Marijuana: Ethical, Scientific and Legal Issues Across the Lifespan.” Godfrey Pearlson, Ph.D., National Academy of Neuropsychology, October 20, 2016, Seattle, WA. 2.0 CE Units.
- 2016 “Neuropsychological Assessment and Preclinical Alzheimer’s Disease.” Dorene Rentz, Ph.D., National Academy of Neuropsychology, October 20, 2016, Seattle, WA. 3 CE Units.
- 2016 “Historical, Conceptual, and Empirical Factors in Performance and Symptom Validity Assessment.” Glenn Larrabee, Ph.D., National Academy of Neuropsychology, October 19, 2016, Seattle, WA. 3 CE Units.
- 2016 “Legal and Ethical Challenges Using the DSM-5: Best Practices.” Pamela Harmell, Ph.D., Professional Psych Seminars, March 3, 2016. Online at <http://www.psychsem.com/> 6 CE Units.
- 2015 “Behavioral Neurology: Integrating the Neurologic Examination for the Neuropsychologist: Neuroanatomic Localization of Common Pathologies, Interventions, and Higher Cognitive Functions.” Lola Morgan, M.D., Annual Conference, National Academy of Neuropsychology, November 7, 2015, Austin, TX. 2 CE Units.
- 2015 “Moving Neuropsychology from the Backdoor to the Front Door: Embracing Outcomes in Research and Practice.” Gordon J. Chelune, Ph.D., Annual Conference, National Academy of Neuropsychology, November 6, 2015, Austin, TX. 1 CE Units.
- 2015 “The New Metabolic Cascade and Comprehensive Model of Concussion: Looking to Drive Clinical Practice.” Christopher Giza, M.D. and Michael McCrea, Ph.D., Annual Conference, National Academy of Neuropsychology, November 6, 2015, Austin, TX. 3 CE Units.
- 2015 “Improving the Methodology for Assessing Mild Cognitive Impairment in Children, Adults, and Older Adults.” Grant L. Iverson, Ph.D., Annual Conference, National Academy of Neuropsychology, November 5, 2015, Austin, TX. 1 CE Units.
- 2015 “Performance Validity Testing in At-Risk Populations: Ethical Practices.” Kyle Brauer Boon, Ph.D., Annual Conference, National Academy of Neuropsychology, November 5, 2015, Austin, TX. 3 CE Units.
- 2015 “Frontal Lobe Functioning: Clinicians Beware – Appearances May Be Deceiving.” Donald T. Stuss, Ph.D., Annual Conference, National Academy of Neuropsychology, November 4, 2015, Austin, TX. 1 CE Units.
- 2015 “The Ethical Practitioner: Assessing Executive Functioning in an Emotional World.” Yana Suchy, Ph.D., Annual Conference, National Academy of Neuropsychology, November 4, 2015, Austin, TX. 2 CE Units.
- 2015 “Decision Making: The Role of the Evidence-Based Practitioner.” Gordon Chelune, Ph.D., Annual Conference, National Academy of Neuropsychology, November 4, 2015, Austin, TX. 2 CE Units.
- 2015 “R-PAS Intermediate Level Workshop: Sharpening Coding, Administration, and Interpretation Skills.” Philip Erdberg, Ph.D., ABPP & Donald Viglione, Ph.D., ABAP, October 24-25, 2015, San Francisco, CA. 13 CE Units.
- 2015 “Neuro-Oncology for Neuropsychologists.” Michael W. Parson, Ph.D., ABPP, 13th Annual Conference, American Academy of Clinical Neuropsychology, June 19, 2015, San Francisco, CA. 3 CE Units.

PROFESSIONAL TRAINING (CONTINUED):

- 2015 "Chronic Issues and Controversies in Mild TBI." Rodney D. Vanderploeg, Ph.D., ABPP & Heather G. Belanger, Ph.D., ABPP, 13th Annual Conference, American Academy of Clinical Neuropsychology, June 19, 2015, San Francisco, CA. 3 CE Units.
- 2015 "Multiple Performance & Symptom Validity Tests in Neuropsychological Assessment." Glenn J. Larrabee, Ph.D., ABPP & Jeremy J. Davis, Psy.D., ABPP, 13th Annual Conference, American Academy of Clinical Neuropsychology, June 18, 2015, San Francisco, CA. 3 CE Units.
- 2015 "Current Controversies in Neuropsychology Computerized Brain Training: What's the Evidence?" Aaron Nelson, Elkhonon Goldberg, & Robert S. Wilson, 13th Annual Conference, American Academy of Clinical Neuropsychology, June 18, 2015, San Francisco, CA. 1 CE Unit.
- 2015 "Advanced Neuropsychological Report Writing." Jacobus Donders, Ph.D., ABPP, 13th Annual Conference, American Academy of Clinical Neuropsychology, June 18, 2015, San Francisco, CA. 3 CE Units.
- 2015 "Development, Revision, and Implementation of the HCR-20 Version 3." Kevin Douglas, Ph.D., Consolidated Continuing Education and Professional Training (CONCEPT), February 4, 2015, Webinar (3 CE units).
- 2014 "Ethics: Informed Consent, Confidentiality, and Diagnosing." At Health, Inc. and PsychoEducational Resources, Inc. February 1, 2014. Online <http://www.athealthce.com>, (1 CE unit).
- 2014 "From Exner to R-PAS: Surviving the Transition." Andrew Pojman, Ed.D. & Barbara Peterson, Ph.D. The Wright Institute Continuing Education Program. February 1, 2014. Berkeley, CA (6 CE units).
- 2013 "Statistics 2: Inference and Association." Michelle Everson. The Institute for Statistics Education at Statistics.com. October 10, 2013 – November 11, 2013. (5 CE units).
- 2013 "Cognitive Science, Technology, and Neuropsychological Test Development: A Look at the Past and Future." Dean Delis, Ph.D. Annual Conference of the National Academy of Neuropsychology (NAN). October 18, 2013. San Diego, CA (2 CE credits).
- 2013 "Brains in the 'Cloud': The Amnesic Patients H.M., E.P. and the Digital Brain Library. Jacopo Annese, Ph.D. Annual Conference of the National Academy of Neuropsychology (NAN). October 18, 2013. San Diego, CA (2 CE credits).
- 2013 "Unfolding, Unfurling, and Unraveling: Imaging of Brain Development in Adolescence, Early, and Middle Adulthood." Monte S. Buchsbaum, M.D. Annual Conference of the National Academy of Neuropsychology (NAN). October 18, 2013. San Diego, CA (3 CE credits).
- 2013 "Conners Continuous Performance Test: Revised Version of the Visual Paradigm and New Audio Paradigm." Gill Sitarenios, Ph.D. & Kent Lam, Ph.D. Annual Conference of the National Academy of Neuropsychology (NAN). October 17, 2013. San Diego, CA (2 CE credits).
- 2013 "Scientific Update on Mild Traumatic Brain Injury (MTBI). New Evidence for Diagnosis and Management." Michael McCrea, Ph.D. Annual Conference of the National Academy of Neuropsychology (NAN). October 17, 2013. San Diego, CA (3 CE credits).
- 2013 "Early Detection of Alzheimer's Disease." Ronald C. Petersen, M.D., Ph.D. Annual Conference of the National Academy of Neuropsychology (NAN). October 16, 2013. San Diego, CA (1 CE credits).
- 2013 "Emotion, Decision-Making, and the Prefrontal Cortex Across the Lifespan." Daniel Tranel, Ph.D. Annual Conference of the National Academy of Neuropsychology (NAN). October 16, 2013. San Diego, CA (3 CE credits).
- 2013 "Forensic Neuropsychology: A Scientific Approach to Forensic Neuropsychology." Glenn J. Larrabee, Ph.D. Annual Conference of the National Academy of Neuropsychology (NAN). October 16, 2013. San Diego, CA (3 CE credits).
- 2013 "Statistics 1: Probability and Study Design." Michelle Everson. The Institute for Statistics Education at Statistics.com. September 11, 2013 – October 12, 2013. (5 CE units).

PROFESSIONAL TRAINING (CONTINUED):

- 2013 "Schizophrenia: The Role of Symptom Domain on Patient Outcomes." Henry A. Nazralla, M.D. & Joseph P. McEvoy, M.D. MCE LLC. Online <http://www.naccme.com/node/6424/course/6707/presentation>, January 24, 2013 (1.5 CME).
- 2012 "Meyers Neuropsychological Battery and Meyers Neuropsychological Software System." John E. Myers, Psy.D., ABN, ABPdN. The American College of Professional Neuropsychology, June 15-16, 2012. Irvine, CA (12 CE credits).
- 2011 "Introduction to the Rorschach Performance Assessment System: Practical Clinical Training and Case Illustrations." Donald Viglione, Ph.D. & Philip Erdberg, Ph.D. Alliant International University, June 3 & 4, 2011. San Francisco, CA (12.5 CE credits)
- 2011 "Biopsychosocial Outcome from Mild Traumatic Brain Injury." Grant Iverson, Ph.D. The American College of Professional Neuropsychology, March 12, 2011. Las Vegas, NV. (3 CE credits)
- 2011 "Reframing Nonverbal Learning Disorders: Identifying Clinical Subgroups." Gail M. Grodzinsky, Ph.D., ABPdN. The American College of Professional Neuropsychology, March 12, 2011. Las Vegas, NV. (3 CE credits)
- 2011 "From Movement to Thought: Subcortical Contributions to Psychiatric and Learning Disorders." Dana Chidekel, Ph.D., ABPdN & Deborah E. Budding, Ph.D., ABPdN, ABN. The American College of Professional Neuropsychology, March 11, 2011. Las Vegas, NV. (3 CE credits)
- 2011 "Neuropsychological Science and Forensic Competencies: Applications in Civil and Criminal Cases." Daniel A. Martell, Ph.D., A.B.P.P. The American College of Professional Neuropsychology, March 11, 2011. Las Vegas, NV. (3 CE credits)
- 2010 "Neuroanatomical Dissection: Human Brain and Spinal Cord." William E. Cullinan, Ph.D., David A. Baker, Ph.D., Subhash C. Bhatnagar, M.S.-CCC (SPL), Ph.D., James P. Herman, Ph.D., John R. Mantsch, Ph.D., & Robert C. Thompson, Ph.D. Marquette University, July 15 – 17, 2010. (21 hours)
- 2010 "Finding Balance: Legal & Ethical Issues of Boundaries & Privacy in Psychotherapeutic Services." Daniel Taube, J.D., Ph.D. John F. Kennedy University, March 12, 2010. Campbell, CA. (6 C.E. credits)
- 2010 "Neuropsychology and the Death Sentenced Inmate." Michael B. Charlton, J.D. Annual Conference of the American College of Professional Neuropsychology, February 27, 2010. Las Vegas, NV. (3 C.E. credits)
- 2010 "Introduction to Empirically Based Assessment: Developing an EBA Model for AD/HD." Steven J. Hughes, Ph.D., LP, ABPdN. Annual Conference of the American College of Professional Neuropsychology, February 27, 2010. Las Vegas, NV. (3 C.E. credits)
- 2010 "Central Auditory Processing in Children and Adolescents." Teresa Bailey, Ph.D., Ph.D. Annual Conference of the American College of Professional Neuropsychology, February 26, 2010. Las Vegas, NV. (3 C.E. credits)
- 2010 "What the Forensic Neuropsychologist Needs to Know about Death Penalty Litigation." Thomas J. Reidy, Ph.D., ABPP. Annual Conference of the American College of Professional Neuropsychology, February 26, 2010. Las Vegas, NV. (3 C.E. credits)
- 2010 "Reitan Society Meeting." Ralph Reitan, Ph.D., Deborah Wolfson, Ph.D., Jim Hom, Ph.D., & Janice Nice, Ph.D., February 24-25, 2010. Las Vegas, NV. (12 C.E. credits)
- 2009 "WAIS-IV/WMS-IV and the Advanced Clinical Solutions for WAIS-IV/WMS-IV: Clinical Application and Interpretation in Neurological and Psychiatric Disorders." James A. Holdnack, Ph.D. 29th Annual Conference of the National Academy of Neuropsychology, November 14, 2009. New Orleans, LA. (3 C.E. credits)
- 2009 "Neuroimaging Evidence in the Criminal Trial Process: Recent Developments, the Role of Attitudes, Some Unasked Questions, and Predictions for the Future." Michael L. Perlin, J.D. 29th Annual Conference of the National Academy of Neuropsychology, November 12, 2009. New Orleans, LA. (3 C.E. credits)
- 2009 "Psychometrics: Making Test Classification Decisions Practical." Richard Frederick, Ph.D. 29th Annual Conference of the National Academy of Neuropsychology, November 12, 2009. New Orleans, LA. (3 C.E. credits)

PROFESSIONAL TRAINING (CONTINUED):

- 2009 "Functional Neuroanatomy of Memory: Three Amnesias or One?" Russell M. Bauer, Ph.D. 29th Annual Conference of the National Academy of Neuropsychology, November 11, 2009. New Orleans, LA. (3 C.E. credits).
- 2008 "Law and Ethics." Daniel O. Taube, J.D., Ph.D. John F. Kennedy University, March 10, 2006. Pleasant Hill, CA. (6 APA CE units).
- 2007 "Useful Clinical Ratings of CT and MRI in the Clinical Practice of Neuropsychology." Erin Bigler, Ph.D. 27th Annual Conference of the National Academy of Neuropsychology, November 14-17, 2007. Scottsdale, AZ (3 CE Credits).
- 2007 "The Amazing Halstead Finger Oscillation Test." George Prigatano, Ph.D. 27th Annual Conference of the National Academy of Neuropsychology, November 14-17, 2007. Scottsdale, AZ (3 CE Credits).
- 2007 "Introducing the MMPI-2-RF (Restructured Form)." Yossef Ben-Porath, Ph.D. 27th Annual Conference of the National Academy of Neuropsychology, November 14-17, 2007. Scottsdale, AZ (3 CE Credits).
- 2007 "Behavioral Teratology: Neuropsychological Effects of Prenatal Exposures. Sarah N. Mattson, Ph.D. 27th Annual Conference of the National Academy of Neuropsychology, November 14-17, 2007. Scottsdale, AZ (1.5 CE Credits).
- 2007 "Releasing Raw Data and Psychological Test Materials: Ethical Dilemmas, Legal Requirements, and Simple Solutions to Discovery Demands." Paul Kaufmann, J.D., Ph.D. 27th Annual Conference of the National Academy of Neuropsychology, November 14-17, 2007. Scottsdale, AZ (1.5 CE Credits).
- 2007 "The Neurobiology of Antisocial, Violent, and Psychopathic Behavior." Adrian Raine, Ph.D. 27th Annual Conference of the National Academy of Neuropsychology, November 14-17, 2007. Scottsdale, AZ (3 CE Credits).
- 2007 "Forensic Evaluation." Institute of Law, Psychiatry and Public Policy, School of Medicine & School of Law, University of Virginia under contract for the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services and the Office of the Attorney General, April 30 - May 4, 2007, Charlottesville, VA (30 APA CE Units).
- 2006 "Deepening Legal and Ethical Understanding in Clinical Practice." Daniel O. Taube, J.D., Ph.D. John F. Kennedy University, March 10, 2006. Pleasant Hill, CA. (6 APA CE units).
- 2004 "Assessment of Response Bias: Beyond Malingering Tests." Scott R. Millis, 24th Annual Conference of the National Academy of Neuropsychology, November 17-20, 2004. Seattle, WA. (3 APA CE units).
- 2004 "Neurochemistry and Medication Management of Aggression in Children, Adolescents, and Adults." Daniel Matthews, M.D. 24th Annual Conference of the National Academy of Neuropsychology, November 17-20, 2004. Seattle, WA. (3 APA CE Units).
- 2004 "Constitutional/Judicial Foundations for Criminal Forensic Neuropsychology: Competency to Stand Trial and Confess." Robert L. Denny, Psy.D. & James Sullivan, Ph.D., 24th Annual Conference of the National Academy of Neuropsychology, November 17-20, 2004. Seattle, WA. (3 APA CE Units).
- 2004 "Professional Issues." Antonio Puente, Leslie Rosenstein, & Patricia Pimental, 24th Annual Conference of the National Academy of Neuropsychology, November 17-20, 2004. Seattle, WA. (1.0 APA CE Units).
- 2004 "Pediatric Brain Injury: Neuroimaging, Clinical Presentation, and Neuropsychological Status, Dr. Paul C. Leiby, 24th Annual Conference of the National Academy of Neuropsychology, November 17-20, 2004. Seattle, WA. (3 APA CE Units).
- 2004 "What neuropathology can teach us about the neurobiology of the self." Todd Feinberg, 24th Annual Conference of the National Academy of Neuropsychology, November 17-20, 2004. Seattle, WA. (1.5 APA CE Units).
- 2004 "Imaging brain circuitry in the clinical neuropsychology of memory: fMRI, morphometry & DTI. Andrew J. Saykin, 24th Annual Conference of the National Academy of Neuropsychology, November 17-20, 2004. Seattle, WA. (3 APA CE Units).

PROFESSIONAL TRAINING (CONTINUED):

- 2004 "Workshop in Clinical Neuropsychology: Significant Developments and Advanced Clinical Issues." Ralph Reitan, Deborah Wolfson, Jim Hom et al. Reitan Neuropsychology Laboratories, October 1-3, 2004. Phoenix, AZ (17 APA CE Units).
- 2004 "Spousal/Partner Abuse Assessment and Treatment: Domestic Violence Training." John F. Kennedy University, February 20, 2004. Pleasant Hill, CA. (7 APA CE units).
- 2004 "6-Hour Ethics and the Law." Daniel O. Taube, J.D., Ph.D. John F. Kennedy University, February 6, 2004. Pleasant Hill, CA. (6 APA CE units).
- 2003 "A New Anatomical Framework for Neuropsychiatric Disorders: Systems Analysis and Hands-On Dissection of the Human Brain." Lennart Heimer, M.D. Saint Louis University School of Medicine Practical Anatomy Workshop, October 31-November 2, 2003. St. Louis, MO. (17 APA CE units).
- 2003 "Practical Issues and Clinical Methods of Practice with the Wechsler Scales." David Tulsy, Gordon Chelune & Josette Harris, 23rd Annual Conference of the National Academy of Neuropsychology, October 15-18, 2003. Dallas, TX. (3 APA CE units).
- 2003 "New Scores and Methods of Practice with the Wechsler Scales." Gordon Chelune, David Tulsy & Josette Harris, 23rd Annual Conference of the National Academy of Neuropsychology, October 15-18, 2003. Dallas, TX. (3 APA CE units).
- 2003 "Race and Education in Neuropsychological Testing." Jennifer Manly, 23rd Annual Conference of the National Academy of Neuropsychology, October 15-18, 2003. Dallas, TX. (3 APA CE units).
- 2003 "Neuropsychological Impairment and Environmental Risk Factors in Capital Murder Offenders." Robert A. Geffner, Elizabeth Lim, Barbara Hart & Robert Owen, 23rd Annual Conference of the National Academy of Neuropsychology, October 15-18, 2003. Dallas, TX.
- 2003 "Functional Neuroanatomy Primer: Clinical Presentation of Patients with Neuropsychological Conditions." Paul Leiby, Ph.D., 23rd Annual Conference of the National Academy of Neuropsychology, October 15-18, 2003. Dallas, TX.
- 2003 "The Atkins Decision and the Forensic Evaluation of Mental Retardation: Roles for the Neuropsychologist and Special Educator." J. Randall Price & Kay Stevens, 23rd Annual Conference of the National Academy of Neuropsychology, October 15-18, 2003. Dallas, TX. (3 APA CE units).
- 2003 "Increasing Diagnostic and Predictive Accuracy in Neuropsychology." David Faust, Ph.D., 2003 23rd Annual Conference of the National Academy of Neuropsychology, October 15-18, 2003. Dallas, TX. (3 APA CE units).

PUBLICATIONS:

- Watson, D. G. (2015). Intelligence Testing. In E. A. Polloway (Ed.), *The death penalty and intellectual disability* (pp. 113-140). Washington, DC: American Association on Intellectual and Developmental Disabilities (AAIDD).
- Blank, J., Evered, L., Watson, D., & Ruff, R. (2014). C-87 Malingering Madness: Distress as a Diagnostic Alternative (Abstract). *Archives of Clinical Neuropsychology*, 29(6), 605.
- McGrew, K.S., & Watson, D.G. (2012). Applied Psychometrics 101 Brief #14. Demographically adjusted neuropsych (Heaton) norm-based scores inappropriate for MR/ID dx. *Intellectual competence and the death penalty*. Retrieved from <http://www.atkinsmrdeathpenalty.com/2012/07/ap-101-brief-14-demographically.html>
- Abueg, F., Woods, G.W., & Watson, D.G. (2000). Disaster Trauma. In Frank M. Dattillio & Arthur Freeman (Eds.) *Cognitive Behavioral Strategies in Crisis Intervention, Second Edition*. New York, N.Y.: Guilford Press.
- Bastien, S., Peterson, D. & Watson, D.G. (1996). IQ abnormalities associated with chronic fatigue syndrome in repeated WAIS-R testing (Abstract). *Journal of Chronic Fatigue Syndrome*, 2(2/3).

PRESENTATIONS:

- 2017 “Neuropsychological Development and Presenting Findings.” Co-presented with Sean O’Brien. 2017 Capital Case Defense Seminar. California Attorneys for Criminal Justice/California Public Defender Association. February 18, 2017. San Diego, CA.
- 2017 “Neuropsychological Assessment: Overview of a Competent Assessment.” Co-presented with Denise Gragg, Esq. 2017 Capital Case Defense Seminar. California Attorneys for Criminal Justice/California Public Defender Association. February 18, 2017. San Diego, CA.
- 2016 “New Issues in Atkins Cases.” Co-presented with James Patton, Ed.D., & Sara Coebra. 13th National Seminar on the Development & Integration of Mitigation Evidence. Administrative Offices of the U.S. Courts. April 2, 2016. New Orleans, LA.
- 2016 “Traumatic Brain Injury.” Co-presented with Jackie Walsh, Esq. CACJ/CPDA Capital Case Defense Seminar. California Attorneys for Criminal Justice/California Public Defender Association. February 14, 2016. San Diego, CA.
- 2016 “Emerging Issues in Neuropsychology.” Co-presented with Michael Laurence, Esq. CACJ/CPDA Capital Case Defense Seminar. California Attorneys for Criminal Justice/California Public Defender Association. February 14, 2016. San Diego, CA.
- 2015 “Neuropsychological Assessment.” National Association of Criminal Defense Lawyers’ Seminar, “Making the Case for Life,” August 22, 2015, Las Vegas, NV.
- 2015 “Working with Mental Health Experts.” Co-presented with Mark Olive, Esq. National Association of Criminal Defense Lawyers’ Seminar, “Making the Case for Life,” August 22, 2015, Las Vegas, NV.
- 2015 “*Atkins, Hall, and Brumfield*.” Co-presented with Mark Olive, Esq. National Association of Criminal Defense Lawyers’ Seminar, “Making the Case for Life,” August 22, 2015, Las Vegas, NV.
- 2015 “Litigating Intellectual Disability Post-Hall: *Atkins, Hall, and Brumfield*.” Co-presented with Stephen Harper, Esq. 36th Annual Death Penalty Training Conference, Airlie Conference Center, July 12, 2015, Warrenton, VA.
- 2015 “Understanding (and Avoiding the Pitfalls of) Neuroimaging.” Twelfth National Seminar on the Development and Integration of Mitigation Evidence. Habeas Assistance and Training Counsel/Administrative Offices of the United States Courts. April 12, 2015, Baltimore, MD.
- 2015 “An Overview of IQ Scores and Testing.” Twelfth National Seminar on the Development and Integration of Mitigation Evidence. Habeas Assistance and Training Counsel/Administrative Offices of the United States Courts. April 10, 2015, Baltimore, MD.
- 2015 “Litigating Atkins Claims at Trial and on Post-conviction Review.” Co-presented with Mark Olive, Esq. CACJ/CPDA Capital Case Defense Seminar. California Attorneys for Criminal Justice/California Public Defender Association. February 14, 2015. Monterey, CA.
- 2015 “Advanced Issues in Neuropsychology, including Presenting Data.” Co-presented with Michael Laurence, Esq. CACJ/CPDA Capital Case Defense Seminar. California Attorneys for Criminal Justice/California Public Defender Association. February 14, 2015. Monterey, CA.
- 2014 “Neuropsychological Assessment.” Making the Case for Life conference. National Association of Criminal Defense Lawyers (NACDL). October 25, 2014. Charlotte, NC.
- 2014 “Intellectual Disability.” CACJ/CPDA Capital Case Defense Seminar. California Attorneys for Criminal Justice/California Public Defender Association. February 15, 2014. Monterey, CA.
- 2014 “Emerging Trends in Neuropsychology.” Co-presented with Michael Laurence, Esq. CACJ/CPDA Capital Case Defense Seminar. California Attorneys for Criminal Justice/California Public Defender Association. February 15, 2014. Monterey, CA.

PRESENTATIONS (CONTINUED):

- 2013 “What is Mental Retardation/Intellectual Disability?” Co-presented with Michael Burt, Esq. CACJ/CPDA Capital Case Defense Seminar. California Attorneys for Criminal Justice/California Public Defender Association. February 16, 2013. Monterey, CA.
- 2013 “Neuropsychology 201: Neuropsychological Testing.” Co-presented with Michael Laurence, Esq. CACJ/CPDA Capital Case Defense Seminar. California Attorneys for Criminal Justice/California Public Defender Association. February 16, 2013. Monterey, CA.
- 2013 “Neuropsychology 301: Presenting Neuropsychological Evidence.” Co-presented with Michael Laurence, Esq. CACJ/CPDA Capital Case Defense Seminar. California Attorneys for Criminal Justice/California Public Defender Association. February 16, 2013. Monterey, CA.
- 2012 “Psychosis Risk and Attenuated Psychosis Syndromes: Current Understanding.” Contra Costa Psychological Association. October 10, 2012 (2 CE units).
- 2011 “Atkins and Neuro-Psychological Testing.” Co-presented with Mark Olive, Esq. Capital Case Litigation Training Conference, Office of the Public Defender of the State of Delaware. October 13, 2011, Dover, Delaware.
- 2011 “The Neuropsychology of Fetal Alcohol Spectrum Disorders.” Capital Mitigation – Beyond Atkins. Center for American and International Law. July 9, 2011. Houston, TX.
- 2011 “Uncovering Evidence of Brain Damage: Phineas Gage.” Co-presented with Richard Burr, Esq. and Russell Stetler, National Mitigation Coordinator. National Capital Habeas Unit (CHU) Conference. Administrative Office of the United States Courts. April 8, 2011. Austin, TX.
- 2011 “Testing Issues in Intellectual Disability/*Atkins* Cases.” Eighth National Seminar on the Development and Integration of Mitigation Evidence: Mitigation Narratives. Habeas Assistance and Training Counsel/Administrative Offices of the United States Courts. April 2, 2011, Chicago, IL.
- 2011 “Winning *Atkins* hearings: Case Studies.” Co-presented with Michael Burt, Esq. Eighth National Seminar on the Development and Integration of Mitigation Evidence: Mitigation Narratives. Habeas Assistance and Training Counsel/Administrative Offices of the United States Courts. April 2, 2011, Chicago, IL.
- 2011 Plenary Presentation: “DSM-5 (Psychosis Risk Syndrome/Intellectual Disability).” CACJ/CPDA Capital Case Defense Seminar. California Attorneys for Criminal Justice/California Public Defender Association. February 20, 2011. Monterey, CA.
- 2011 “Cross Examination of a Defense Mental Retardation/Intellectual Disability Expert.” Co-presented with Edward Souza, J.D. CACJ/CPDA Capital Case Defense Seminar. California Attorneys for Criminal Justice/California Public Defender Association. February 19, 2011. Monterey, CA.
- 2011 “Basic Neuropsychology (Brain Dysfunction).” CACJ/CPDA Capital Case Defense Seminar. California Attorneys for Criminal Justice/California Public Defender Association. February 19, 2011. Monterey, CA.
- 2011 “Current Issues in Neuropsychology.” Fourth National Seminar on Mental Health and the Criminal Law. Habeas Assistance and Training Counsel/Administrative Office of the United States Courts. January 15, 2011. New Orleans, LA.
- 2010 “DSM-5: Proposed Changes.” Habeas Corpus Resource Center Spring Conference. Habeas Corpus Resource Center. May 17, 2010. San Francisco, CA.
- 2010 “Neuropsychology of Mental Retardation.” CACJ/CPDA Capital Case Defense Seminar. California Attorneys for Criminal Justice/California Public Defender Association. February 14, 2010. Monterey, CA.
- 2010 “Model Direct of a Mental Retardation Neuropsychologist.” Co-presented with Edward Sousa, J.D. CACJ/CPDA Capital Case Defense Seminar. California Attorneys for Criminal Justice/California Public Defender Association. February 14, 2010. Monterey, CA.

PRESENTATIONS (CONTINUED):

- 2009 "Presenting a Reason to Vote for Life via the Testimony of a Neuropsychologist." 2009 Death Penalty Defense Seminar. Oregon Criminal Defense Lawyers Association (OCDLA), October 23, 2009, Bend, Oregon.
- 2009 "The Neuropsychology of Intellectual Disabilities: Current Research on Intellectual Impairment." 14th Annual Federal Habeas Corpus Seminar. Administrative Offices of the U.S. Courts. August 22, 2009, Pittsburgh, PA.
- 2009 "The Neuropsychology of Schizophrenia." 14th Annual Federal Habeas Corpus Seminar. Administrative Offices of the U.S. Courts. August 22, 2009, Pittsburgh, PA.
- 2009 "Testing and Other Psychological Issues." Habeas Corpus Resource Center Spring Conference. Habeas Corpus Resource Center. June 19, 2009. San Francisco, CA.
- 2009 Plenary Presentation: "The Neuropsychology of Intellectual Disabilities: Current Research on Intellectual Impairment." Fifth National Seminar on the Development and Integration of Mitigation Evidence. Administrative Offices of the U.S. Courts. April 18, 2009, Philadelphia, PA.
- 2009 "Neuropsychological Assessment and Brain Impairment." Life in the Balance 2009. The National Legal Aid & Defender Association. March 7, 2009. New Orleans, LA.
- 2009 "Mental Health/Mental Retardation Testing." Life in the Balance 2009. The National Legal Aid & Defender Association. March 7, 2009. New Orleans, LA.
- 2009 Plenary Presentation: "The Neuropsychology of Psychiatric Disorders – Schizophrenia." CACJ/CPDA Capital Case Defense Seminar. California Attorneys for Criminal Justice/California Public Defender Association. February 15, 2009. Monterey, CA.
- 2009 "New Developments in Psychological Testing." CACJ/CPDA Capital Case Defense Seminar. California Attorneys for Criminal Justice/California Public Defender Association. February 15, 2009. Monterey, CA.
- 2008 "Executive Functioning." 2008 Capital Case Seminar. Los Angeles County Public Defender. October 17, 2008. Los Angeles, CA.
- 2008 "Recent Developments in the Science of Brain Damage and Observations on Interviewing Experts." Mitigation Workshop. Virginia Capital Representation Resource Center (VCCRC). September 25, 2008. Charlottesville, VA.
- 2008 "Intellectual Disabilities: IQ and Adaptive Functioning Evaluation." Life in the Balance 2008: Defending Death Penalty Cases. The National Legal Aid & Defender Association. March 8, 2008. Atlanta, GA.
- 2008 "Neuropsychological Evaluation." Life in the Balance 2008: Defending Death Penalty Cases. The National Legal Aid & Defender Association. March 8, 2008. Atlanta, GA.
- 2007 "The Roles of Psychology and Neuropsychology in Forensic Evaluations." Second Annual Solano County Public Defender Felony Transition Seminar. Office of the Solano County Public Defender. September 28, 2007. Fairfield, CA.
- 2007 "Attacks on Neuropsychological Norms." National Seminar on the Development and Integration of Mitigation Evidence in Capital Cases. Administrative Office of the US Courts. March 30, 2007. Washington, D.C.
- 2007 "Intelligence Testing." National Seminar on the Development and Integration of Mitigation Evidence in Capital Cases. Administrative Office of the US Courts. March 30, 2007. Washington, D.C.
- 2007 "Neuropsychological Evaluation: The Impact of Norms." 2007 CACJ/CPDA Capital Case Defense Seminar. February 18, 2007. Monterey, CA.
- 2007 "Frontal and Temporal Brain Systems and Functions." Co-presented with Karen Froming, Ph.D. 2007 CACJ/CPDA Capital Case Defense Seminar. February 18, 2007. Monterey, CA.

PRESENTATIONS (CONTINUED):

- 2006 "Neuropsychological Assessment." Making the Case for Life IX: Mitigation and Jury Selection in Capital Cases. National Association of Criminal Defense Lawyers and the Southern Center for Human Rights. September 30, 2006. Las Vegas, NV.
- 2006 "Foundations of Neuropsychology." First Annual Felony Transition College. Solano County Public Defender's Office. June 23, 2006. Fairfield, CA.
- 2006 "Psychological and Neuropsychological Testing." Motions, Evidence & Expert Witnesses. The Center for American and International Law. May 21, 2006. Plano, TX.
- 2006 "Brain, Behavior, and Cognition." Co-Presented with James R. Merikangas, M.D. National Seminar on the Development and Integration of Mitigation Evidence. Administrative Offices of the U.S. Courts. April 28, 2006. Washington, DC.
- 2005 "Executive Functions." Second National Seminar on Development and Integration of Mitigation Evidence. Administrative Office of the U.S. Courts. April 22, 2005. Salt Lake City, UT.
- 2005 "Law and the Brain – The Neurobiology of Violence." Washington State Appellate Courts Spring Judicial Conference. April 6, 2005. Walla Walla, WA.
- 2005 "Mental Retardation." Texas Criminal Defense Lawyers Association. February 23 & 24, 2005. Dallas, TX.
- 2005 "Neuropsychological Evaluation." 2005 CACJ/CPDA Capital Case Defense Seminar. February 21, 2005. Monterey, CA.
- 2005 "Mental Retardation." CACJ/CPDA Capital Case Defense Seminar. February 21, 2005. Monterey, CA.
- 2004 "Developmental Aspects of Executive Functions." 2004 CACJ/CPDA Capital Case Defense Seminar. February 15, 2004. Monterey, CA.
- 2004 "Advanced Determination of Competency – A Case Study (Workshop)." Co-presented with John Philipsborn and Judge Michael Ryan. 2004 CACJ/CPDA Capital Case Defense Seminar. February 15, 2004. Monterey, CA.
- 2003 "Update on IQ Testing: Neuropsychology for the 21st Century." Paper presented with George W. Woods, M.D. at the 2003 Annual Meeting of the American Academy of Psychiatry and the Law (AAPL), October 19, 2003, San Antonio, TX.
- 2003 "The Subtlety of IQ Testing." 8th Annual National Federal Habeas Corpus Seminar. Administrative Office of the United States Courts and Habeas Assistance and Training Counsel. Chicago, IL.
- 2003 "Mental Retardation." Investigating Capital Cases Seminar. Virginia Capital Representation Resource Center. Charlottesville, VA.

DISSERTATION:

"Screening for Neurotoxicity: A Comparison of the Neurobehavioral Evaluation System and the California Neuropsychological Screening Battery"

PROFESSIONAL AFFILIATIONS:

- International: Member, International Neuropsychological Society (2004-present)
Member, International Society for Intelligence Research (2011-present)
- National: Member, American Psychological Association (1988-present).
Member, Division 12 (Society of Clinical Psychology), Section IX (Assessment)
Member, Division 33 (Intellectual and Developmental Disabilities)
Member, Division 40 (Clinical Neuropsychology)
Member, Division 41 (American Psychology - Law Society)
Member, National Academy of Neuropsychology (1995-present)
Associate Member (1983-1994)
Member, the Reitan Society (1998-2006)
Member, American Association on Intellectual and Developmental Disabilities (2007-present)
Member, Society for Personality Assessment (2009-present)

CURRICULUM VITAE**HOSPITAL PRIVILEGES:**

2000-2003	Doctors Medical Center – San Pablo Campus
1991-2003	Doctors Medical Center – Pinole Campus
1992-1997	East Bay Hospital, Richmond, CA.
1993-1995	First Hospital of Vallejo

LICENSES, QUALIFICATIONS AND CERTIFICATES:

1990-Present	State of California Licensed Psychologist (PSY11899)
2017-2018	State of Oregon Limited Visitor's Permit 348
2016-2018	Association of State and Provincial Psychology Boards Interjurisdictional Practice Certificate (IPC) (Valid in Georgia, Idaho, Kentucky, Mississippi, Ohio, and South Carolina) #4462
2016-2017	State of Nevada Non-Resident Consultant Permit.
2016	State of Louisiana Temporary Registration
2016	State of Idaho Temporary License No PSYT - 202955
2016	State of Oregon Limited Visitor's Permit 309
2015-2016	State of Texas Temporary License NTLP-15-0002
2014-2016	State of Indiana Limited Scope License No. 99065119A
2014-2015	State of Alaska Courtesy License No 33
2014-2015	State of Mississippi Temporary Practice Certificate
2012	State of Texas Temporary License TLP-13-0008
2012	State of Texas Temporary License TLP-13-0003
2012-2014	State of Indiana Limited Scope License No. 99054133A
2012-2013	State of Oregon Psychology Visitor's Permit No. 218
2012	State of Louisiana Temporary Registration
2011-2012	State of Indiana Limited Scope License No. 99048551A
2011	State of Texas Psychology Temporary License No. TLP-11-0023
2010	State of Louisiana Temporary Registration
2010-2011	State of Washington Psychology Temporary Permit (Credential #: TE 60072389)
2010	State of Texas Psychology Temporary License No. TLP-10-0019
2009-2010	State of Washington Psychology Permit (Credential #: TE 60072389)
2007	State of Texas Psychology Temporary License No. TLP-07-0014; TLP-07-0015
2007	State of Texas Psychology Temporary License No. TLP-07-0009; TLP-07-0012
2003-2004	State of Washington Psychology Permit (030503)
2002-2004	State of Oregon Psychology Permit (LP 077)
2001-2002	State of Washington Psychology Permit (010903)
1992-1994	Qualified Medical Examiner / Psychology (State of California Industrial Medical Council # 009321)

References on request

APPENDIX 2
Ledell Lee, Jr.
Neuropsychological Domain Scores
Dale G. Watson, Ph.D.
4/13/2017

Ledell Lee, Jr.
Neuropsychological Domain Scores
Dale G. Watson, Ph.D.
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Performance Validity

Scale	Score	Percentile	Range
Test of Memory Malingering (TOMM)			
<i>TOMM Trial 1 (Cutoff >44 of 50)</i>	<i>47</i>		<i>wnl</i>
<i>TOMM Trial 2 (Cutoff > 44 of 50)</i>	<i>50</i>		<i>wnl</i>
Advanced Clinical Solutions Effort Assessment			
<i>Reliable Digit Span (Cutoff > 6)</i>	<i>10</i>		<i>wnl</i>
Meyers Embedded Validity Scales (Failed of 10)	<i>1</i>		<i>wnl</i>

Halstead-Reitan Battery Summary Scores (HRBSUM)

Scale	Score	Percentile	Range
<i>General Neuropsychological Deficit Scale (GNDS)</i>	<i>39</i>		<i>Mild Impairment</i>
<i>Left Neuropsychological Deficit Scale (LNDS)</i>	<i>6</i>		<i>Elevated</i>
<i>Right Neuropsychological Deficit Scale (RNDS)</i>	<i>8</i>		<i>Elevated</i>
<i>Average Impairment Scale (AIR)</i>	<i>54</i>	<i>66</i>	<i>Average</i>
<i>Global Deficit Scale (GDS)</i>	<i>56</i>	<i>73</i>	<i>Average</i>

Note: T scores have a mean of 50 and a standard deviation of 10.

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Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV)

Scale	Score	Percentile	Range
<i>COMPOSITE INDICES</i>			
<i>Full Scale IQ (FSIQ)</i>	82	12	<i>Low Average</i>
<i>General Ability Index (GAI)</i>	79	8	<i>Borderline</i>
<i>Cognitive Proficiency Index (CPI)</i>	91	27	<i>Average</i>
<i>INDEX SCORES</i>			
<i>Verbal Comprehension Index (VCI)</i>	87	19	<i>Low Average</i>
<i>Similarities</i>	5	5	<i>Borderline</i>
<i>Vocabulary</i>	10	50	<i>Average</i>
<i>Information</i>	8	25	<i>Average</i>
<i>Working Memory Index (WMI)</i>	92	30	<i>Average</i>
<i>Arithmetic</i>	9	37	<i>Average</i>
<i>Digit Span</i>	8	25	<i>Average</i>
<i>Letter-Number Sequencing*</i>	9	37	<i>Average</i>
<i>Perceptual Reasoning Index (PRI)</i>	75	5	<i>Borderline</i>
<i>Block Design</i>	6	9	<i>Low Average</i>
<i>Visual Puzzles</i>	6	9	<i>Low Average</i>
<i>Matrix Reasoning</i>	5	5	<i>Borderline</i>
<i>Figure Weights*</i>	4	2	<i>Borderline</i>
<i>Picture Completion*</i>	9	37	<i>Average</i>
<i>Processing Speed Index (PSI)</i>	92	30	<i>Average</i>
<i>Symbol Search</i>	8	25	<i>Average</i>
<i>Coding</i>	9	37	<i>Average</i>
<i>Cancellation*</i>	6	9	<i>Low Average</i>

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Scale	Score	Percentile	Range
KEITH FACTORS			
<i>Crystallized Intelligence (Gc)</i>	95	37	<i>Average</i>
<i>Short-Term Memory (Gsm)</i>	92	30	<i>Average</i>
<i>Fluid Reasoning (Gf)</i>	69	2	<i>Extremely Low</i>
<i>Visual Processing (Gv)</i>	78	7	<i>Borderline</i>
<i>Processing Speed (Gs)</i>	92	30	<i>Average</i>

Note: Index scores have a mean of 100 and a standard deviation of 15. Scaled scores have a mean of 10 and a standard deviation of 3.

* These tests are conceptually related to the factor indexes under which they appear but are not used to compute the factor index.

Wide Range Achievement Test, Fourth Edition (WRAT-4)

Scale	Std. Score	Percentile	Range
<i>Word Reading</i>	83	13	<i>Low Average</i>
<i>Sentence Comprehension</i>	84	14	<i>Low Average</i>
<i>Math Computation</i>	84	14	<i>Low Average</i>
<i>Reading Composite</i>	81	10	<i>Low Average</i>

Note: Standard scores have a mean of 100 and a standard deviation of 15.

Attention (Registration/Encoding)

Scale	Score	Percentile	Range
<i>Digits Forward (Raw)</i>	7		<i>wnl</i>
<i>CVLT-II Trial 1 (Raw))</i>	4	7	<i>Mildly Impaired</i>
<i>CVLT-II Trial B (Raw)</i>	4	16	<i>Below Average</i>
<i>Rey AVLT Trial 1 (Raw)</i>	5	42	<i>Average</i>
<i>Rey AVLT Trial B (Raw)</i>	5	42	<i>Average</i>
<i>Forced Choice (Free Recall) (raw score)</i>	5	0.6	<i>Moderate-Severe Impairment</i>
<i>WMS-IV LM 1 (Scaled Score)</i>	8	25	<i>Low Average</i>
<i>Sentence Repetition (Raw)</i>	12	18	<i>Below Average</i>

Note: Scaled scores have a mean of 10 and a standard deviation of 3. z scores have a mean of 0 and a standard deviation of 1. T scores have a mean of 50 and a standard deviation of 10.

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Neuropsychological Domain Scores
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Attention (Focus/Execute)

Scale	Score	Percentile	Range
<i>Trails A (t Score)</i>	<i>54</i>	<i>66</i>	<i>Average</i>
<i>Trails B (t Score)</i>	<i>61</i>	<i>86</i>	<i>High Average</i>
<i>WAIS-IV Coding (Scale Score)</i>	<i>9</i>	<i>37</i>	<i>Average</i>
<i>WAIS-IV Symbol Search (Scale Score)</i>	<i>8</i>	<i>25</i>	<i>Low Average</i>

Note: T scores have a mean of 50 and a standard deviation of 10. Scaled scores have a mean of 10 and a standard deviation of 3.

Attention (Attentiveness/ Sustaining/ Vigilance) Conners Continuous Performance Test

Scale	Score	Percentile	Range
Inattentiveness			
<i>Detectability (d')</i>	<i>41</i>	<i>18</i>	<i>Low</i>
<i>Omissions</i>	<i>45</i>	<i>31</i>	<i>Average</i>
<i>Commissions</i>	<i>44</i>	<i>27</i>	<i>Low</i>
<i>Hit Response Time (HRT)</i>	<i>43</i>	<i>24</i>	<i>Low</i>
<i>HRT SD</i>	<i>43</i>	<i>24</i>	<i>Low</i>
<i>Variability</i>	<i>40</i>	<i>16</i>	<i>Low</i>
Distractibility			
<i>HRT Block Change</i>	<i>45</i>	<i>31</i>	<i>Average</i>
Inconsistency			
<i>Inter-stimulus Intervals Change (HRT-ISI)</i>	<i>42</i>	<i>21</i>	<i>Low</i>

Note: T scores have a mean of 50 and a standard deviation of 10. Low scores represent better performance.

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Learning and Memory Domain

California Verbal Learning Test, Second Edition (CVLT-II)

Scale	Raw Score	z-Score	Percentile	Range
<i>Trial 1 (z Score)</i>	4	-2	2	<i>Very Low</i>
<i>Trial 2 (z Score)</i>	6	-1	16	<i>Low Average</i>
<i>Trial 3 (z Score)</i>	9	-1	16	<i>Low Average</i>
<i>Trial 4 (z Score)</i>	9	-1	16	<i>Low Average</i>
<i>Trial 5 (z Score)</i>	8	-1	16	<i>Low Average</i>
<i>Trials 1-5 Total (t Score)</i>	42	42	21	<i>Low Average</i>
<i>Trial B (z Score)</i>	4	-1	16	<i>Low Average</i>
<i>Short Delay Free Recall (z Score)</i>	8	-1	16	<i>Low Average</i>
<i>Short Delay Cued Recall (z Score)</i>	10	0	50	<i>Average</i>
<i>Long Delay Free Recall (z Score)</i>	8	-1	16	<i>Low Average</i>
<i>Long Delay Cued Recall (z Score)</i>	9	-1	16	<i>Low Average</i>
<i>Total Repetitions (z Score)*</i>	8	1	84	<i>High Average</i>
<i>Total Intrusions (z Score)*</i>	15	2	98	<i>Very High</i>
<i>Total Hits (Recognition) (z Score)</i>	13	-1	16	<i>Low Average</i>
<i>Total False Positives (z Score)*</i>	11	3	99.9	<i>Extremely High</i>

Note: z scores have a mean of 0 and a standard deviation of 1. T scores have a mean of 50 and a standard deviation of 10.

* Higher z Scores represent poorer performance on these scales.

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Rey Auditory Verbal Learning Test (R-AVLT)

Scale	Raw Score	T-Score	Percentile	Range
<i>Trial 1 (t Score)</i>	5	48	42	<i>Average</i>
<i>Trial 2 (t Score)</i>	7	45	31	<i>Average</i>
<i>Trial 3 (t Score)</i>	6	32	4	<i>Moderate Impairment</i>
<i>Trial 4 (t Score)</i>	9	42	21	<i>Below Average</i>
<i>Trial 5 (t Score)</i>	7	28	1	<i>Moderate Impairment</i>
<i>AVLT Total (t Score)</i>	35	35	7	<i>Mild Impairment</i>
<i>Trial B (Distracter) (t Score)</i>	5	48	42	<i>Average</i>
<i>AVLT Immediate (t Score)</i>	5	32	4	<i>Moderate Impairment</i>
<i>AVLT Delayed (t Score)</i>	4	33	4	<i>Moderate Impairment</i>
<i>AVLT Recognition (t Score)</i>	8	20	0.1	<i>Moderate to Severe Impairment</i>
<i>AVLT False Positives (t Score)</i>	6	1	0.01	<i>Severe Impairment</i>
<i>Long Term % Retention (LTPR) (t Score)</i>	30	30	2	<i>Moderate Impairment</i>
<i>AVLT (Learning) Efficiency Index (MAVLEI) (t Score)</i>	29	29	2	<i>Moderate Impairment</i>

Note: T scores have a mean of 50 and a standard deviation of 10.

Rey Complex Figure Test (RCFT)

Scale	T-Score	Percentile	Range
<i>RCFT Copy (t Score)</i>	1	0.01	<i>Severe Impairment</i>
<i>RCFT Immediate (t Score)</i>	19	0.1	<i>Severe Impairment</i>
<i>RCFT Delayed Recall (t Score)</i>	17	0.05	<i>Severe Impairment</i>
<i>RCFT Recognition (t Score)</i>	29	2	<i>Moderate Impairment</i>
<i>RCFT False Positives (t Score)</i>	45	31	<i>Average</i>
<i>RCFT False Negatives (t Score)</i>	29	2	<i>Moderate Impairment</i>

Note: T scores have a mean of 50 and a standard deviation of 10.

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Brown Location Test (BLT)

Scale	Z-Score	Percentile	Range
<i>Trial 1 Free Recall (z Score)</i>	-2	2	<i>Very Low</i>
<i>Trial 2 Free Recall (z Score)</i>	-2	2	<i>Very Low</i>
<i>Trial 3 Free Recall (z Score)</i>	-2	2	<i>Very Low</i>
<i>Trial 4 Free Recall (z Score)</i>	-2	2	<i>Very Low</i>
<i>Trial 5 Free Recall (z Score)</i>	-1	16	<i>Low Average</i>
<i>Trials 1 - 5 Free Recall Total (z Score)</i>	-2	2	<i>Very Low</i>
<i>Interference Trial Correct (z Score)</i>	-2	2	<i>Very Low</i>
<i>Short Delay Free Recall Correct (z Score)</i>	-3	0.1	<i>Extremely Low</i>
<i>Long Delay Free Recall Correct (z Score)</i>	-1	16	<i>Low Average</i>
<i>Long Delay Rotated Free Recall Correct (z Score)</i>	-1	16	<i>Low Average</i>
<i>Recognition Total Correct (z Score)</i>	-2	2	<i>Very Low</i>
<i>Recognition True Positives "Hits" (z Score)</i>	0	50	<i>Average</i>
<i>Recognition False Positives (z Score)</i>	2	98	<i>Very High</i>

Note: z scores have a mean of 0 and a standard deviation of 1.

Ruff-Light Trail Learning Test (RULIT)

Scale	Score	Percentile	Range
<i>Learning</i>			
<i>Total Correct</i>	33	4	<i>Moderate Impairment</i>
<i>Total Step Errors</i>	35	7	<i>Mild Impairment</i>
<i>Immediate Memory</i>			
<i>Trial 2 Correct</i>	29	2	<i>Moderate Impairment</i>
<i>Trial 2 Errors</i>	12		<i>Deficient</i>
<i>Delayed Memory</i>			
<i>Delayed Correct</i>	14		<i>Intact/Average</i>
<i>Delayed Errors</i>	1		<i>Intact/Average</i>

Note: T scores have a mean of 50 and a standard deviation of 10.

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Wechsler Memory Scale - IV Flexible Approach (WMS-IV Flex)

Scale	Score	Percentile	Range
<i>Immediate Memory (LMVR) (Standard Score)</i>	88	21	<i>Low Average</i>
<i>Delayed Memory (LMVR) (Standard Score)</i>	88	21	<i>Low Average</i>
<i>Auditory Memory (LM) (Standard Score)</i>	88	21	<i>Low Average</i>
<i>Visual Memory (VR) (Standard Score)</i>	92	30	<i>Average</i>
<i>Logical Memory I (Scaled Score)</i>	8	25	<i>Average</i>
<i>Logical Memory II (Scaled Score)</i>	7	16	<i>Low Average</i>
<i>Visual Reproduction I (Scaled Score)</i>	8	25	<i>Average</i>
<i>Visual Reproduction II (Scaled Score)</i>	9	37	<i>Average</i>

Note: Index scores have a mean of 100 and a standard deviation of 15. Scaled scores have a mean of 10 and a standard deviation of 3.

Language Domain

Scale	Score	Percentile	Range
<i>Language Functions</i>			
<i>Aphasia Screening Test (t Score)</i>	62	88	<i>High Average</i>
<i>Receptive Language / Comprehension</i>			
<i>Token Test (t Score)</i>	41	18	<i>Low Average</i>
<i>Repetition</i>			
<i>Sentence Repetition (t Score)</i>	41	18	<i>Low Average</i>
<i>Expressive Language</i>			
<i>WAIS-IV Vocabulary (Scaled Score)</i>	10	50	<i>Average</i>
<i>WAIS-IV Similarities (Scaled Score)</i>	5	5	<i>Low</i>
<i>Confrontational Naming</i>			
<i>Boston Naming Test (t Score)</i>	46	34	<i>Average</i>
<i>Verbal / Ideational Fluency</i>			
<i>D-KEFS Letter Fluency (Scaled Score)</i>	9	37	<i>Average</i>
<i>D-KEFS Category Fluency (Scaled Score)</i>	13	84	<i>High Average</i>

Note: Scaled scores have a mean of 10 and a standard deviation of 3. T scores have a mean of 50 and a standard deviation of 10.

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VISUAL-SPATIAL DOMAIN (VISUAL)

Scale	Score	Percentile	Range
<i>Object Identification/Recognition Functions</i>			
<i>Boston Naming Test (BNT) (t Score)</i>	<i>46</i>	<i>34</i>	<i>Average</i>
<i>Object Location Functions</i>			
<i>Judgment of Line Orientation (JOLO) (t Score)</i>	<i>39</i>	<i>14</i>	<i>Low Average</i>
<i>Tactual Performance Test (TPT) Localization (t Score)</i>	<i>44</i>	<i>27</i>	<i>Average</i>
<i>Construction Functions</i>			
<i>RCFT- Copy (t Score)</i>	<i>1</i>	<i>0.01</i>	<i>Extremely Low</i>
<i>Block Design (Scaled Score)</i>	<i>6</i>	<i>9</i>	<i>Low</i>
<i>Visual Puzzles (Scaled Score)</i>	<i>6</i>	<i>9</i>	<i>Low</i>

Note: T scores have a mean of 50 and a standard deviation of 10. Scaled scores have a mean of 10 and a standard deviation of 3.

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SENSORY-MOTOR FUNCTIONS

Scale	Score	Percentile	Range
Motor Functions			
<i>Finger Tapping Dominant (t Score)</i>	50	50	<i>Average</i>
<i>Finger Tapping NonDominant (t Score)</i>	53	62	<i>Average</i>
<i>Hand Dynamometer Dominant (t Score)</i>	44	27	<i>Below Average</i>
<i>Hand Dynamometer NonDominant (t Score)</i>	49	46	<i>Average</i>
<i>Grooved Pegboard Dominant (t Score)</i>	54	66	<i>Average</i>
<i>Grooved Pegboard NonDominant (t Score)</i>	50	50	<i>Average</i>
<i>Tactual Performance Test Dominant (t Score)</i>	54	66	<i>Average</i>
<i>Tactual Performance Test NonDominant (t Score)</i>	47	38	<i>Average</i>
<i>Tactual Performance Test Both (t Score)</i>	45	31	<i>Average</i>
Sensory Functions			
<i>Sensory-Perceptual Right (t Score)</i>	62	88	<i>Above Average</i>
<i>Tactile Stimulation Right (raw score)</i>	0		<i>wnl</i>
<i>Auditory Stimulation Right (raw score)</i>	0		<i>wnl</i>
<i>Visual Stimulation Right (raw score)</i>	0		<i>wnl</i>
<i>Tactile Finger Recognition Right (raw score)</i>	1		<i>wnl</i>
<i>Finger-tip Number Writing Right (raw score)</i>	0		<i>wnl</i>
<i>Sensory Perceptual Left (t Score)</i>	67	96	<i>Above Average</i>
<i>Tactile Stimulation Left (raw score)</i>	0		<i>wnl</i>
<i>Auditory Stimulation Left (raw score)</i>	0		<i>wnl</i>
<i>Visual Stimulation Left (raw score)</i>	0		<i>wnl</i>
<i>Tactile Finger Recognition Left (raw score)</i>	0		<i>wnl</i>
<i>Finger-tip Number Writing Left (raw score)</i>	0		<i>wnl</i>
<i>Tactile Form Recognition Right (t Score)</i>	54	66	<i>Average</i>
<i>Tactile Form Recognition Right Errors (raw score)</i>	0		<i>wnl</i>
<i>Tactile Form Recognition Left (t Score)</i>	43	24	<i>Below Average</i>
<i>Tactile Form Recognition Left Errors (raw score)</i>	0		<i>wnl</i>

Note: T scores have a mean of 50 and a standard deviation of 10.

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Executive Functions

Scale	Score	Percentile	Range
Working Memory			
WAIS-IV Working Memory Index			
<i>Digits Backwards (Scale Score)</i>	<i>7</i>	<i>16</i>	<i>Low Average</i>
<i>Digit Sequencing (Scale Score)</i>	<i>7</i>	<i>16</i>	<i>Low Average</i>
<i>Arithmetic (Scale Score)</i>	<i>9</i>	<i>37</i>	<i>Average</i>
<i>Letter Number Sequencing (Scale Score)</i>	<i>9</i>	<i>37</i>	<i>Average</i>
<i>One Minute Estimation</i>	<i>38</i>	<i>12</i>	<i>Low Average</i>
Auditory Consonant Trigrams			
<i>9-s Delay (t Score)</i>	<i>50</i>	<i>50</i>	<i>Average</i>
<i>18-s Delay (t Score)</i>	<i>42</i>	<i>21</i>	<i>Low Average</i>
<i>36-s Delay (t Score)</i>	<i>49</i>	<i>46</i>	<i>Average</i>
Planning			
D-KEFS Tower Test			
<i>Total Achievement Score (Scale Score)</i>	<i>13</i>	<i>84</i>	<i>High Average</i>
<i>Total Rule Violations (Raw)</i>	<i>1</i>		<i>wnl</i>
<i>Mean First Move Time (Scale Score)*</i>	<i>14</i>	<i>91</i>	<i>High</i>
Neuropsychological Assessment Battery (NAB)			
<i>Mazes</i>	<i>39</i>	<i>14</i>	<i>Mildly Impaired</i>
Inhibition			
<i>Conners CPT Commission Errors (t Score)*</i>	<i>44</i>	<i>27</i>	<i>Average</i>

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Scale	Score	Percentile	Range
Shifting			
Wisconsin Card Sorting Test (WCST)			
<i>Trials Administered (raw score)</i>	128		
<i>Total Correct (raw score)</i>	40		
<i>Total Errors (t Score)</i>	20	0.1	Moderate to Severe Impairment
<i>Perseverative Responses (t Score)</i>	39	14	Mild Impairment
<i>Perseverative Errors (t Score)</i>	37	10	Mild Impairment
<i>Nonperseverative Errors (t Score)</i>	20	0.1	Moderate to Severe Impairment
<i>% Conceptual Level Responses (t Scores)</i>	20	0.1	Moderate to Severe Impairment
<i>Categories Completed (of 6)</i>	0	≤ 1	Moderate Impairment
<i>Trials to Complete 1st Category</i>	129	2-5%	Mild to Moderate Impairment
<i>Failure to Maintain Set</i>	0	N/A	
Trail Making B			
<i>Time (Scaled Score)</i>	9	38	Average
<i>Errors (raw score)</i>	1		wnl
Concept Formation			
<i>Halstead Category Test (raw score)</i>	99	2	Mild to Moderate Impairment
<i>WCST Conceptual Level Responses (t Scores)</i>	20	0.1	Moderate to Severe Impairment
<i>Vocabulary (Scale Score)</i>	10	50	Average
<i>Similarities (Scale Score)</i>	5	5	Mild to Moderate Impairment
D-KEFS Twenty Questions Test			
<i>Initial Abstraction Score (Scale Score)</i>	10	50	Average
<i>Total Weighted Achievement Score (Scale Score)</i>	10	50	Average
Idea Generation			
<i>WCST Categories Completed</i>	0	≤ 1	Moderately Impaired

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Scale	Score	Percentile	Range
<i>WCST Trials to Complete 1st Category</i>	<i>129</i>	<i>2-5</i>	<i>Mild to Moderately Impaired</i>
<i>D-KEFS Letter Fluency (Scale Score)</i>	<i>9</i>	<i>37</i>	<i>Average</i>
<i>D-KEFS Category Fluency (Scale Score)</i>	<i>13</i>	<i>84</i>	<i>High Average</i>
<i>D-KEFS Filled Dots (Scale Score)</i>	<i>12</i>	<i>75</i>	<i>High Average</i>
<i>D-KEFS Empty Dots Only (Scale Score)</i>	<i>9</i>	<i>37</i>	<i>Average</i>
Reward Delay (Iowa Gambling Task)			
<i>Net Total (t Score)</i>	<i>45</i>	<i>31</i>	<i>Average</i>
<i>Net 1 (t Score)</i>	<i>59</i>	<i>82</i>	<i>High Average</i>
<i>Net 2 (t Score)</i>	<i>49</i>	<i>46</i>	<i>Average</i>
<i>Net 3 (t Score)</i>	<i>42</i>	<i>21</i>	<i>Low Average</i>
<i>Net 4 (t Score)</i>	<i>42</i>	<i>21</i>	<i>Low Average</i>
<i>Net 5 (t Score)</i>	<i>45</i>	<i>31</i>	<i>Average</i>

Note: T scores have a mean of 50 and a standard deviation of 10. Scaled scores have a mean of 10 and a standard deviation of 3.

Delis-Kaplan Executive Function System (DKEFS)

Scale	Score	Percentile	Range
<i>Verbal Fluency Test</i>			
<i>Letter Fluency</i>	<i>9</i>	<i>37</i>	<i>Average</i>
<i>Category Fluency</i>	<i>13</i>	<i>84</i>	<i>High Average</i>
<i>Category Switching</i>	<i>11</i>	<i>63</i>	<i>Average</i>
<i>Design Fluency</i>			
<i>Filled Dots</i>	<i>12</i>	<i>75</i>	<i>High Average</i>
<i>Empty Dots</i>	<i>9</i>	<i>37</i>	<i>Average</i>
<i>Switching</i>	<i>6</i>	<i>9</i>	<i>Low Average</i>
<i>Twenty Questions Test Total Weighted Achievement</i>	<i>10</i>	<i>50</i>	<i>Average</i>
<i>Tower Test Total Achievement</i>	<i>13</i>	<i>84</i>	<i>High Average</i>
<i>Proverbs</i>	<i>8</i>	<i>25</i>	<i>Average</i>

Note: Scaled scores have a mean of 10 and a standard deviation of 3.

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Advanced Clinical Solutions for the WAIS-IV and WMS-IV Social Cognition Test (SCT)

Scale	Score	Percentile	Range
Social Cognition			
<i>Social Perception</i>	8	25	<i>Low Average</i>
<i>Social Perception Affect Naming</i>	12	75	<i>High Average</i>
<i>Social Perception Prosody</i>	6	9	<i>Low</i>
<i>Social Perception Pairs</i>	7	16	<i>Low Average</i>

Note: Scaled scores have a mean of 10 and a standard deviation of 3.

Behavior Rating Inventory of Executive Function Adult Version (BRIEF-A)

Scale	Score	Percentile	Range
<i>Inhibit</i>	70	98	<i>Very High</i>
<i>Shift</i>	67	96	<i>High</i>
<i>Emotional Control</i>	69	97	<i>High</i>
<i>Self-Monitor</i>	65	93	<i>High</i>
<i>Behavioral Regulation Index (BRI)</i>	72	99	<i>Very High</i>
<i>Initiate</i>	67	96	<i>High</i>
<i>Working Memory</i>	74	99.2	<i>Very High</i>
<i>Plan/Organize</i>	75	99.4	<i>Very High</i>
<i>Task Monitor</i>	72	99	<i>Very High</i>
<i>Organization of Materials</i>	57	76	<i>High Average</i>
<i>Metacognition Index (MI)</i>	72	99	<i>Very High</i>
<i>Global Executive Composite (GEC)</i>	74	99.2	<i>Very High</i>
<i>Validity Scales</i>			<i>Acceptable</i>

Note: T scores have a mean of 50 and a standard deviation of 10. On the BRIEF-A, elevations represent greater abnormality and impairment. Scores over 65t are considered clinically significant.

EXHIBIT 3

(Enrollment Record Cont. on Inside Page)

SECONDARY

Frank LaPl

LEE Ledelle, Jr. X M F

MISCELLANEOUS Enrollment Record (cont.)

Table with 15 columns: DATE, GRA, COMPOSITE, READING, LANGUAGE ARTS, MATHEMATICS, SOC STU, SCIENCE, SOURCES, STEA. Includes handwritten notes like 'Retained 1979 J.G. by R.H.' and 'AA ABOVE AVERAGE'.

STANDARDIZED TEST RESULTS. Table with multiple columns: DATE, GRADE, C. A., NAME OF TEST, FORM, RAW SCORE, % TILE, I. Q., and various test scores (NATL PCTLE, NATL STA, etc.).

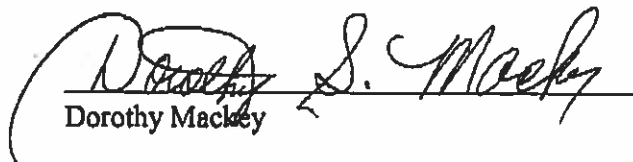
EXHIBIT 4

Declaration of Dorothy Mackey

1. My name is Dorothy Mackey. I am 69 years of age, and live in Hinesville, GA.
2. I am the oldest child born to Mr. Green Smith and Emma Lee. My sisters are Stella Young, Amy Templeton, Fay Smith, and Mary Smith. My sisters, Fay and Mary have both passed away from complications due to sickle cell. I later learned through my grandmother that Mr. Green Smith was not my biological father. My grandmother offered to introduce me to my father while on a trip to Chicago, but I refused.
3. Emma Lee sent me to live with my great-grandmother, Cora Horton until I was six years of age. The family lived in a mile radius of each other. So, it was easy to go back and forth between the homes.
4. After my mother divorced from Mr. Green Smith she had a relationship with Eddie Booker. They had Shilby Smith-Booker, Eddie Booker Jr., Marie Booker, and Charles Booker. I later learned that Eddie Booker was fathered by another man. My mother left Eddie Booker and later had a relationship with Robert Earl Lee. They had a child together, Robert Lee, who passed away from sickle cell.
5. My biological great-grandfather was Mr. Kirkwood who was an alcoholic. He and my great-grandmother, Cora divorced. My great-grandmother's second husband was Willie Horton. Mr. Horton was also an alcoholic.
6. Every time my mother was pregnant I felt that I was the one pregnant because I knew I would end up taking care of the baby. I was overwhelmed with so many brothers and sisters that my mother had and that I had to care for. I missed my childhood cleaning, washing clothes, and taking care of babies.
7. I babysat every week for my younger siblings when my mother went out to party with her friends. My mother would invite a male friend over to her house while I was caring for my siblings. He would bring beer over. I was 13 years of age and this man was 18 years of age. Slowly over time, he got me to have sex with him. I got pregnant at 13 years of age with my daughter. I felt that my mother had sold me for sex. She did not protect me or any of my sisters. We lacked parenting care and supervision in the home. Her night life was more important than her children's. I confronted my mother about this when I was 18 years old. I chose to only have one child due to my childhood.

8. My sister, Stella got pregnant when she was 14 years of age and gave birth to a son, William O. Smith. His father was called Jerry D., but I do not remember his last name. I do not remember that my mother ever helped my sister to receive pre-natal care. I received it only because of my great-grandmother. Stella did not receive pre-natal care when she was pregnant with Ledell either.
9. I noticed early on that my nephew William Smith was slow. He had problems counting money. He did not make good decisions, and was vulnerable. It was easy to talk him into doing anything.
10. Stella got pregnant with Ledell when she was 15 years of age. His father was Ledell Lee. He has dementia and is being cared for by his family. Stella's third child was Princess Lee who was fathered by Anthony. I do not remember his last name. Princess died due to crib death after a few months.
11. I was with Stella when she was pregnant with Ledell. She drank and smoked throughout her pregnancy.
12. Eddie Young Sr. was in the military service when he met and married Stella. They had Sharon Lynn, Howard Louis, Kevin Leon, Shantel and Patricia.
13. Mr. Eddie Young has been a wonderful husband and father. The Young children have done better for themselves than William and Ledell due to him. Although he was gone a lot because he was stationed out of state, when he was home he was there for each of the children and made sure they received an education. He was a home body and loved being with his children. Stella was the opposite, she wanted the night life and was too selfish to care for her own children. I believe if it wasn't for the children, Mr. Young would have not stayed with Stella.
14. My sister Stella spent most of her life, attending bars, house parties, and gambling at card parties and bingo games. Her life and mine couldn't be more different. I like to dance and would accompany Stella to a club at the Missouri state line on the weekends in our teen years. I stopped going there due to the environment. But, Stella continued to attend this bar. I went for the music and to dance and she went for the alcohol, cigarettes, and the party life. Her circle of friends consisted of alcohol, smoking, and gambling. She would gamble twice a week and was at a weekend party every week. She was gone at least 3 days a week and sometimes more if her husband was stationed away.
15. Stella left the children many times with her younger siblings, Eddie Booker who was 17 years at the time would babysit. Eddie Booker started using drugs as an adult.

16. When Mr. Eddie Young was stationed in Korea, Stella was in charge of paying the bills and the mortgage. Stella called me one month saying she had lost the money to pay her mortgage and wanted me to help so she did not lose her house. I believed her and sent her the money. The following month, Stella called again saying that she had lost the money again to pay for her mortgage and asked me for help. This time, I knew she had gambled and lost the money and I refused to send it to her. Later, I heard that they had lost the house. After this, Mr. Young took over the finances.
17. Ledell had difficult teenage years. He didn't have a chance without a father, a mother to guide him and provide structure in the home. He had no rules in the home. He went to school if he wanted to. No one helped him with his homework.
18. Stella never worked until she was older and then worked a part time job. She became ill with diabetes and gradually got worse and lost part of her eye sight about 10 years ago. This is when she stopped partying.
19. Stella has never taken responsibility for not caring for her children like she should have. She followed our mother's example.
20. I was devastated to hear about Ledell's case. I know that my nephew has had a trouble past, but he is not capable of killing and committing the crime that he has been sentenced to.
21. My nephew has not had good legal representation. My sister, Stella called me and asked me for financial help to get an attorney to help Ledell at the time of his arrest. I gave her money, but nothing came out of this. No attorney or investigator ever came to me and discussed these issues with me.
22. I love my nephew Ledell Lee very much. He was a good son and brother.


Dorothy Mackey

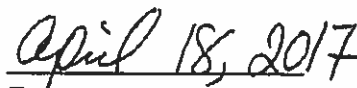

Date

EXHIBIT 5

To: Wclambert@aol.com

Priority: Urgent

Receipt requested

Subject: Re:Ledell Lee 2

it is not a matter of my reconsidering a discretionary decision.

this office is prohibited by law from expending money for experts -- except in cases where we represent the client for whom the funds are to be expended.

since this office cannot represent ledell lee, the proposal you set forth below is not an option.

jennifer

Reply Separator

Subject: Ledell Lee 2

Author: Wclambert@aol.com

Date: 3/17/2004 7:58 AM

Alternatively, if the FPD office would make all of its resources available, including funding for experts, etc., I think a couple of private lawyers would be able to handle the case. You told me on the phone late yesterday that this isn't an option, but I want to ask you to reconsider that.

Thanks -

<HTML><HTML>Alternatively, if the FPD office would make all of its resources available, including funding for experts, etc., I think a couple of private lawyers would be able to handle the case. You told me on the phone late yesterday that this isn't an option, but I want to ask you to reconsider that.

Thanks -</HTML>

EXHIBIT 6

F

FEDERAL PUBLIC DEFENDER
ARKANSAS

Jenniffer Horan
Federal Defender

Investigators
Michael Watts
Dana Harrison
Joseph Cummings

Capital Habeas Unit
The Victory Building
1401 W. Capitol, Suite 490
Little Rock, AR 72201
(501) 324-6113
FAX 324-6128

Assistant Defenders
Bruce D. Eddy

Paralegals
Maggie Hill
Debra Bumpass

May 14, 2004

BY FEDERAL EXPRESS

Ms. Stephanie Pope
NAACP Legal Defense and Education Fund
99 Hudson Street, Suite 1600
New York, NY 10013

RE: Legal Representation for
Ledell Lee

Dear Ms. Pope:

I contacted your office by phone several weeks ago and left a voice mail message regarding the need for legal representation for Ledell Lee -- a death row inmate here in Arkansas.

Specifically, the Federal Defender Office has a conflict in representing Mr. Lee, which is why the NAACP Legal Defense Fund was asked to help. I was thereafter contacted by your office and asked to provide some materials on the case so that the NAACP team could review them. Those materials are attached to this letter and contained within the enclosed notebook.

In particular, the attached Law Review article accurately-- and compelling -- describes Ledell Lee's plight.¹ What's more, the article analyzes the available capital post-conviction proceedings available in Arkansas and eloquently argues for the entitlement to competent counsel in such proceedings.

Once you have had an opportunity to look into this matter, I am certain that Ledell Lee's case will be deemed to be one worthy of the NAACP's help. As you will see, this case

¹Please note that the article is scheduled to be published this summer and, therefore, cannot presently be cited without the author's permission.

Ms. Stephanie Pope
RE: Ledell Lee
May 14, 2004
Page Two

has been remanded to the State Court so that Mr. Lee can have another chance to present his claim for relief. This is unprecedented in Arkansas -- which makes Mr. Lee's a case of first impression. As such, it affords the unique opportunity to make good law for death row inmates in this State and, hopefully, within the Eighth Circuit.

Additionally, an *Atkins* claim has been raised on Ledell's behalf; so the case also presents the opportunity to set the standard for mental retardation litigation in Arkansas for the death row population here.

If ever there was a case that warranted your attention, this is it. So I hope that you will decide to get involved and let me send you the entire case file.

Please note that Deborah Sallings is the attorney of record for Ledell Lee. I am providing you with the enclosed materials with her knowledge and consent. Indeed, she very much wants your office to become involved in Mr. Lee's case and to work with her in representing Ledell. She can be reached at:

Deborah Sallings
Attorney at Law
P. O. Box 25438
Little Rock, AR 72221-5438
(501) 312-8500 - office
(501) 317-8505 - fax

We both look forward to hearing from you soon.

Highest personal regards,

A handwritten signature in black ink, appearing to read 'JWA', followed by a horizontal line extending to the right.

Jenniffer Horan
Federal Defender

JH:daw

Enclosure

cc: Deborah Sallings w/encl.

DICK BURR re Ledell Lee

4.6.04

Mo. Lawyers make. call Sean.

Political Thing might be to get a big firm involved.

Robin Maher = ABA DP Project Person

Christina Swarns DP Project

★ Geo. Ken 945-2207 (old etc.)

See if Sean can rec. firm

w/pol. influence

+

EXHIBIT 7

matilda buchanan

From: <swbraden@comcast.net>
To: "matilda buchanan" <matildab@msn.com>
Sent: Thursday, June 07, 2007 10:26 AM
Subject: Re: legal question

The opt in provisions of the habeas statute is the real boogie man of habeas corpus. Basically if a state does certain things like provide for counsel at trial and at post conviction, make rules and standards for appointment, pay them etc and have a well operating system of appointment and so forth then the opt in provisions apply which make shorter time periods for filing habeas corpus petitions and requiring the federal court to move faster on making decisions etc. The major issue is 1) who decides if a state has set up a properly operating system of appointment and payment 2) and how do you know when it applies to you. Not too long again a provision in some terrorism bill said the person to decide this is the U.S. Attorney General, in other words the U.S. A.G. is the one to decide if Arkansas meets the criteria of providing qualified counsel paying them etc. Recently (yesterday in fact) the U.S. A.G. published some rules for how to go about this which basically boils down to any state that applies will be certified as an opt in state. This is a huge issue in Lee because even though in his case he had lawyers that were appointed and paid etc the lawyer was not qualified. The Ark Supreme Court talks about this in the 2006 opinion granting a new post conviction. They make no bones about saying we want to be an opt in state so we can kill people faster. Some states like Oklahoma for instance don't really worry about the opt in stuff because they are getting to have executions regularly and the opt in requirements in theory anyway would cost the state lots of extra money in lawyer fees and so forth.

I will gladly have lunch with you about this any time. I think all will be ok. The whole Judge Piazza thing seems to have blown over. But we can talk about it anytime you want. I am free Mon and Tues. next week.
 Scott

----- Original message -----

From: "matilda buchanan" <matildab@msn.com>
 Dear Scott,

I know you're not running an email law school, but I've got a question that I hope you can help me with. What is the "opt-in" rule in regard to Federal *habeas corpus*? This seems to be taking up a lot of angst between the state and the def in the rule 37 hearing transcript.

I may need to take you to a fancy lunch place to pick your brain about the pitfalls of this case. I just read where the def attorney was turned down by six investigators including one that I think is the single most unethical p. I. I've ever run across. All refused because they were afraid of going up against the state and Judge Piazza. What have I gotten myself into?

Matilda

06/07/2007

EXHIBIT 8

Legal Assistance and Investigations
2212 Gaines
Little Rock, AR 72206

"Always the beautiful answer that asks the more beautiful question"

e. e. cummings

FAX: 501- 375-2007
email: matildab@msn.com

phones: (501) 375-7794
(501) 690-4355

Report of Investigation and Recommendations Pursuant to Rule 37 hearing, August 28,
2007 (Ledell Lee; second Arkansas state post-conviction case)

The investigation supporting preparation for the August 28, 2008, Rule 37 hearing lasted from May 22, 2007- August 28, 2007. During that time all previous transcripts were read and analyzed. A draft of possible strategies for the hearing was developed. (See attached document "Rule 37 Strategies") Two trips to interview the defendant occurred as well as several telephone conversations with him and his mother. Also, several attorneys currently not directly involved in the case, but with possible knowledge of events relevant to the case, were also interviewed.

In support of issues identified in "Rule 37 Strategies," a chronology of events and court actions involving Mr. Lee and many of the attorneys (both defense and prosecution) was developed. This chronology covers 1989- 2006 and was developed after extensive interviews and research in the court records of Faulkner and Pulaski Counties. Many significant coincidences and interesting time sequences were discovered. (See attached document "Chronology")

In consideration of possible prejudice by the original trial judge, an analysis of the first murder trial which ended in a mistrial was undertaken to chart and analyze the pattern of judicial rulings on objections by the defense and prosecution. (See attached document "Objections and rulings from State vs. Ledell Lee October 4-7, 1994")

A list of potential witnesses was developed (see attached document "Addresses for Ledell Lee Case"). This office offered to prepare the subpoenas but was informed that Mr. Coleman's office in West Memphis would handle that. A request for help in obtaining addresses was received on August 15, 2007, from Mr. Coleman's office. Problems with subpoena service seems to have occurred resulting in several witnesses either not receiving service until the day of the trial, August 28, 2007, or service not being completed.

Additionally, the following *Duces Tecum* subpoenas were recommended:

- 1) Judge Piazza's docket for the years 1994-1995
 - 2) List of names addresses and phone numbers of all attorneys working in the Pulaski County Prosecutors office during 1994-1995 and lists of dates of hiring, assigned duties, names of immediate supervisor, date and reason for leaving employment.
 - 3) Arkansas Bike organization's schedule of bike rides in 1994 and 1995
 - 4) Arkansas Bar Association schedule of meetings, events, and CME courses for 1994- 1995.
- As far as is known, none of these was prepared or served.

EXHIBIT 9

DECLARATION OF GREGG PARRISH

1. I am currently the Executive Director of the Arkansas Public Defender Commission (APDC). I have served in this role since 2013.
2. Prior to becoming the Executive Director of APDC, I worked as a trial attorney in the Capital Conflicts Office of the Arkansas Public Defender Commission. I have practiced criminal law since licensure in 1987, and have served in the roles of deputy prosecuting attorney, deputy public defender, and managing public defender. During my career, I have handled cases ranging from non-violent misdemeanors to capital murder cases.
3. I was contacted by Elizabeth Vartkessian, a mitigation specialist who has been working with Mr. Lee Short and Ms. Cassandra Stubbs on Ledell Lee's case. She sent an email to me on Mr. Short's behalf requesting public information about the billing records for court appointed lawyers and investigators on Ledell's case. I had my assistant Debra Bumpass provide that information to her and Mr. Short the same day by email.
4. Ms. Vartkessian contacted me again on April 17, 2017 asking for the contact information for the mitigation specialist who worked on Ledell's case during state post-conviction proceedings in 2007. The mitigation specialist was Lisa Croy. I inquired if Lisa Croy is also known as Lisa Bartlett with my staff, and confirmed that was accurate.
5. I contacted Ms. Vartkessian later that day to confirm receipt of the information requested. I was asked if I remembered Ms. Croy-Barlett, and I indicated that I did. I expressed shortly after being appointed to the position of Executive Director of the APDC, I learned of complaints from counsel on two (2) cases to which Ms. Croy-Bartlett was assigned by my predecessor. Those cases involved her work on two (2) separate and distinct capital cases, and involved her work product. I scheduled a meeting with Ms. Croy-Bartlett in my office to address these concerns, and instructed her to come to my office with the files for both cases.
6. Upon reviewing her files, I determined they contained discovery information and formed the opinion that the quality of work being conducted did not meet the standards I felt necessary for a meaningful defense and mitigation case. I made the immediate decision to remove her from both cases on that day, and took possession of the files she maintained. My office has not used her as a mitigation specialist or investigator since that time.
7. At the same meeting, I recall discussing issues I had with her billing practice. She and I went over invoices she had submitted, and I pointed out what I considered to be inaccuracies. Ms. Croy-Bartlett acknowledged my concerns, and corrected her billing. I made the decision on that date that her services with regard to investigative and mitigation work would no longer be used by the Arkansas Public Defender Commission given the issues I saw.



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

Signed on this 18th day of April, 2017.



Handwritten signature of Gregg Parrish in cursive script, written over a horizontal line.

Gregg Parrish