

In the Supreme Court of Louisiana

No. 05-KA-1981

State of Louisiana,

Plaintiff-Appellee

v.

Patrick Kennedy,

Defendant-Appellant.

Appeal from Conviction and Death Sentence Imposed
In the 24th Judicial District Court for the Parish of Jefferson
Hon. Ross LaDart, Judge, Presiding.

THIS IS A DEATH PENALTY CASE

SENTENCE REVIEW MEMORANDUM

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SUPREME COURT
LOUISIANA

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SENTENCE REVIEW MEMORANDUM

COMES NOW APPELLANT, Patrick Kennedy, through counsel and pursuant to Rule 28 of the Rules of the Supreme Court of Louisiana, Article 905.9 of the Louisiana Code of Criminal Procedure, the Eighth and Fourteenth Amendments to the United States Constitution, and Article I, sections 13, 16, 19, 20, 21, 22, 23 and 24 of the Louisiana Constitution of 1974, who respectfully files this sentence review memorandum.

INTRODUCTION

Mr. Kennedy is on death row for a non-homicide offense. No person in the United States has been put to death for rape since Missouri executed Ronald Wolfe in 1964. The State of Louisiana has not executed a person for rape since 1957. Of the three thousand three hundred and sixty six (3,366) inmates who are presently on Death Row in the United States, Patrick Kennedy is the only one awaiting execution for a non-homicide rape.

John Michel, in 1957, was the last person put to death for rape in Louisiana. Mr. Michel was a twenty-three-year-old black male convicted of raping a white female. In the entire history of Louisiana, there have been five hundred and ninety nine (599) executions. Although only a small percentage of these executions in total were for non-homicide offenses, all of those executions occurred before our modern capital jurisprudence, and a significant number of them included the hangings of slaves.

Mr. Kennedy would be the first executed for rape since 1957, but would extend the long and lonely string of African-American men executed for rape. The death sentence imposed upon Mr. Kennedy is disproportionate and excessive, given the large number of instances in which defendants have received lesser punishments for greater, or equal offenses.

The State filed a Sentence Review Memorandum on April 21, 2006. The State's Sentence Review Memorandum first details the seventy-seven cases that are *mistakenly* claimed to be all of the "first degree murder indictments" in which sentence was imposed after January 1, 1976. Of those seventy-seven cases, three defendants were executed, and twelve defendants remain on death row with appeals or other challenges to their convictions and sentences pending. The State's Sentence Review Memorandum includes discussion of sixty-two defendants charged with first degree murder who have not been sentenced to death. A number of these defendants who were not sentenced to death committed offenses far worse than the offense committed in this case.¹ The

¹ As discussed in more detail below, the State's Sentence Review Memorandum details a number of cases in which defendants received a life sentence for actions that were incontrovertibly worse than those presented to the jury in this case. For instance, the State's Memorandum details the case of Brian Bibb who was sentenced to life for stabbing to death two children ages 5 and 3, and attempting to kill the children's mother.

State's Sentence Review Memorandum also fails to detail a number of murders, including some of children, that are worse than the offense in this case.²

The State's Sentence Review Memorandum next details a list of capital aggravated rape cases in which sentence was imposed "after August 15, 1995." The Memorandum details twelve aggravated rape cases, and indicates that this is the only case in which a defendant has been sentenced to death. The State's Sentence Review Memorandum does not detail other comparable cases throughout the State of Louisiana that resulted in a sentence less than death. See *e.g.* State v. Clark, 2002-1463 (La. 06/27/03); 851 So. 2d 1055, 1089 ("Given the lack of comparable cases in Richland Parish, it is appropriate for this court to look beyond the judicial district in which the sentence was imposed and to conduct the proportionality review on a state-wide basis.") *citing, inter alia*, State v. Carmouche, 2001-0405 (La. 05/14/02); 872 So. 2d 1020; State v. Deal, 00-0434, p. 17 (La. 11/28/01), 802 So. 2d 1254, 1268; State v. Duncan, 99-2615, p. 38 (La. 10/16/01), 802 So. 2d 533, 559; State v. Howard, 98-0064, (La.4/23/99), 751 So. 2d 783, 820; State v. Ortiz, 96-1609, (La.10/21/97), 701 So. 2d 922, 936. Nor does the State address the particular mitigating circumstances at issue in this case that render the imposition of the death penalty excessive, arbitrary, wanton, and freakish.

Appellant counsel's effort to provide such a review ensues.

² As discussed below the State's Sentence Review Memorandum does not detail a number of cases involving charges of first degree murder, including – for instance – the case of Whitney Spencer, who was charged with four counts of first degree murder for intentionally killing 14-month-old Keitwon Ester, six-year old Ranneisha Kent, seven-year old Deaunta Kent, and four-year old Branika Murph. See *State v. Spencer*, 00-2084, Division A, 24th JDC, Jefferson Parish.

ARGUMENT

In addition to the arguments put forth in Mr. Kennedy's Original and Supplemental Briefs, the sentence of death imposed in this case is disproportionate and excessive given the vast number of instances in which a lesser sentence has been imposed for equal or greater offense. Moreover, the existence of critical mitigating circumstances renders the imposition of the death penalty in this case arbitrary.

Mr. Kennedy is the only person to be sentenced to death in the United States for rape in over forty years, and the only person to be sentenced to death for rape in Louisiana in over fifty years. Louisiana juries' recalcitrance to sentence aggravated rapists to death, and the fact that every other convicted aggravated rapist in Louisiana is serving life or less – independently and together – make clear the excessive and disproportionate nature of the sentence.

As discussed more fully below, in the vast majority of prosecutions for capital rape, the charges are usually dropped to lesser charges, or the case proceeds without the possibility of capital punishment.³ When the cases proceed to a jury, juries in Louisiana routinely return life sentences to those defendants who are convicted of aggravated rape of a child under twelve.

Moreover, the death penalty is an unusual punishment for defendants convicted even of killing children, and a significant number of defendants have received lesser sentences for the offense of intentionally murdering a child during the course of a rape.

Undersigned counsel has attempted to secure information concerning comparable cases from a variety of sources to establish that the death sentence in

³ See Angela D. West, *Death as Deterrent of Prosecutorial Tool? Examining the Impact of Louisiana's Child Rape Law*, 13 Crim. Just. Pol. Rev. 156 (2002).

this case is disproportionate. Counsel sent public records requests to Clerk of Court in every parish in Louisiana. See *Exhibit A*. Thirty-four (34) parishes – including Orleans⁴ -- did not respond to those requests. Eleven (11) responded to that request indicating that they could not provide the information. See *Exhibit B*. Nine (9) responded that no capital rapes prosecutions had occurred in their districts.⁵ See *Exhibit C*. One (1) other parish responded that it was unable to segregate capital rape from other non-capital aggravated rape, but provided information concerning these offenses. See *Exhibit D*. Finally, a mere nine (9) parishes provided information responsive to the request. See *Exhibit E*. This information led to the disclosure of eighty-eight (88) additional cases involving indictments for aggravated rape.

After securing the information discussed above, counsel also sought to review all of the published and unpublished appeals involving the charge of aggravated rape of a child. These additional cases are discussed below. Appellant counsel also reviewed the information concerning one hundred additional cases that were introduced as Exhibit B at the Motion for New Trial. See R. 6053.⁶ At that proceeding, the State stipulated to the authenticity and accuracy of the research prepared by researcher Emily Maw, who had

⁴ Angela West, in assessing the different charging practices prior to the amendment to the aggravated rape statute reviewed the case-files for thirty-two indictments for aggravated rape that occurred in Orleans between 1995 and 1998, roughly ten a year. See Angela D. West, Death as Deterrent of Prosecutorial Tool? Examining the Impact of Louisiana's Child Rape Law, 13 Crim. Just. Pol. Rev. 156, at 160 (2002). Undersigned counsel has not been able to review the case-files on these cases or the ones that have occurred since. It would be sufficiently conservative to approximate that there have been at least an additional one hundred and ten (110) such indictments in *Orleans alone* since 1995.

⁵ This information received from the districts is not necessarily deemed accurate. Indeed, Jerry Jones of the 4th Judicial District indicated that no such capital rape indictments had issued in his jurisdiction, even though the case of *State v. Bettley* arose from that district. See *State v. Wilson*, 685 So.2d 1063, 1073 (La. 1996).

⁶ Where counsel has secured a citation to a court record for any of the cases identified in MNT Exhibit B, counsel has referred to the case citation. Where undersigned counsel could find no record citation, counsel has cited to Exhibit B, MNT (10/2/2003).

endeavored to identify every single pending capital rape indictment within four different parishes.

Finally, undersigned counsel attempted to review news media and other public reports concerning charges of aggravated rape of a child. Substantiation of the data discussed below is attached to this Brief in Reply to the State's Sentence Review Memorandum. Undersigned counsel wholeheartedly concurs that the documentation and citation identified herein does not establish the entire universe of capital rape charges but notes that it vastly expands the universe of eleven (11) cases provided by the state to a total of more than one hundred and eighty (180) cases.

**I. THE SENTENCE OF DEATH IMPOSED ON MR. KENNEDY IS
EXCESSIVE AND DISPROPORTIONATE WHEN COMPARED TO SIMILAR
OR WORSE OFFENSES.**

The sentence of death imposed on Mr. Kennedy is excessive and disproportionate when compared to the sentence imposed in similar or worse offenses. The State lists twelve (12) defendants in its Sentence Review Memorandum who were convicted since the aggravated rape statute's enactment; from these twelve cases, only the Appellant in this case has been sentenced to death.

To the extent that the State's Sentence Review Memorandum does not have sufficient data to demonstrate the disproportionality of the sentence in this case, "it is appropriate for this court to look beyond the judicial district in which the sentence was imposed and to conduct the proportionality review on a state-wide basis." State v. Clark 2002-1463 (La. 06/27/03); 851 So. 2d 1055, 1089.

As discussed more fully below, over one hundred and eighty (180) defendants have been charged with capital rape since 1995. Mr. Kennedy is the only person sentenced to death. Moreover, over forty (40) defendants have been sentenced to a lesser penalty for a greater offense.

Assuming, arguendo, the constitutionality of the death penalty for aggravated rape, a comparison of this case and other instances in which death was not imposed suggests that the imposition of the death penalty is being applied in an unconstitutional manner. See State v. Sonnier, 380 So. 2d 1 (La. 1979). In Sonnier, this Court observed:

. . . A review of [. . .] other prosecutions shows that the jury's recommendation of the death penalty in the instant case does not conform with sentences meted out in other [. . .] cases. . . . Imposition of the death penalty in this case but not in the other cases suggests that the penalty is being applied in the "freakish" and "wanton" manner reprobated by the United States Supreme Court in *Furman v. Georgia*, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d

346 (1972). Therefore, under this test, the penalty is excessive within the meaning of Article 905.9 of the Code of Criminal Procedure.

State v. Sonnier, 380 So. 2d 1, 7-8 (La. 1979). A review of other cases located by appellant counsel is warranted.

A. Since The Adoption Of The Statute, Defendants Have Not Received The Death Penalty In All of the One Hundred And Eighty (180) Comparable Cases Identified By Appellant .

Appellant counsel has attempted to identify all of the comparable cases. In the one hundred eighty (180) comparable cases identified by appellant counsel, no other defendant has been sentenced to death.

1. Daniel E. Dickerson was convicted of raping his four year-old granddaughter anally and vaginally. Though the state sought death, the jury in his case found life imprisonment to be the more appropriate sentence. State v. Dickerson, 01-KA-1287 (La App. 5 Cir. 6/26/02) 822 So.2d 849; writ denied 02-K-2108 (La. 2/21/03) 837 So.2d 627.

2. Fred J. Leblanc was convicted of repeatedly raping (vaginally, anally and orally) the four-year-old child he was babysitting. He also made the child perform oral sex on him while watching pornographic films with him. Despite the extensive nature of the rapes, the jury declined to sentence Fred Leblanc to death and imposed life without parole. State v. Leblanc, 00-1322 (La. App. 5 Cir. 5/31/01) 788 So.2d 1255; writ denied 01-K-1920 (La. 5/24/02) 816 So.2d 299.

3. Keith Bell Breland was convicted of raping and attempting to kill his fellow church congregant's eleven-year-old daughter. As she screamed during the rape he stabbed her multiple times. He also tried to smother the child by putting his hand over her nose and mouth causing the child to lose consciousness. When the girl regained consciousness, Mr. Breland slashed her

throat. Despite sustaining life-threatening injuries, the little girl survived. Keith Bell Breland was sentenced to fifty (50) years for attempted murder and twenty-five (25) for rape. State v. Breland, 722 So.2d 51 (La. App. 1 Cir. 1998).

4. Bryan Cole was convicted of raping a five-year-old girl. Before sexual intercourse, he made the little girl masturbate him. The victim was diagnosed with gonorrhea when examined after the rape. Mr. Cole's older daughter and her eleven year-old friend witnessed the rape. His daughter's friend was also anally raped by Mr. Cole on another occasion when she was spending the night with his daughters. Bryan Cole was given a life sentence on November 14, 2003. State v. State ex rel. Bryan Cole, 05-1348 (La. 2/10/06), 924 So.2d 157.

5. Tracy Albert was found guilty of impregnating his ten year-old step-daughter. Soon after the pregnancy was discovered, the little girl was forced to undergo an abortion. The jury sentenced Albert to life without parole on 9/8/2004. State v. Albert (La.App. 4 Cir. 7/27/05) 914 So.2d 574.

6. Patrick Dewayne Bethley was convicted of repeatedly raping three girls, one of whom was his daughter. The ages of the little girls at the time of the rape were five, seven, and nine. Mr. Bethley knew he was HIV positive when he committed the rapes. He received a life sentence. Cf State v. Bethley, No. 96-KA-1392 consol. with No. 96-KA-2076, 96-1392 (La. 12/13/96); 685 So. 2d 1063; State v. Wilson, 685 So.2d 1063, 1073 (La. 1996); see also Rhonda Bell, Rape Suspect OT Ready for Trial Mentally Retarded Man Faces Death if Convicted of Rape of Six-Year-Old, NEW ORLEANS TIMES PICAYUNE, December 16, 1999, Section: Metro.

7. Michael Chad Lowe was found guilty of repeatedly raping (orally) his stepdaughter from the time she was eight until she was ten. He was sentenced to twenty-five (25) years imprisonment, two of which without benefits. State v. Lowe, 39,181 (La. App. 2 Cir. 12/22/04), 890 So.2d 745.

8. Robert Bourgeois was found guilty of raping his granddaughter from the time she was nine until she turned twelve. He performed oral sex on the child and made the victim perform oral sex on him. Robert Bourgeois received a life sentence on November 20, 1999. State v. Bourgeois, 00-KA-1353 (La. App. 5 Cir. 4/11/01) 786 So.2d 771.

9. Jimmy J. Bergeron was found guilty of raping his eleven-year-old daughter and sentenced to life imprisonment. State v. Bergeron, 01- 2400 (La. App. 1 Cir. 5/10/02), 826 So.2d 658, writ denied 2002-KA-1735 (La. 5/30/03), 845 So.2d 1070.

10. Jerry Zornes was convicted of raping his six-year-old step-daughter and was sentenced to life imprisonment. State v. Zornes, 34,070 (La. App. 2 Cir. 4/3/02), 814 So.2d 113, writ denied 02- 1280 (La. 11/27/02), 831 So.2d 269.

11. Isaac Singleton, III was convicted of raping his eleven-year-old niece on March 3, 2001. Isaac Singleton was sentenced to life imprisonment. State v. Singleton, 05-KA-622 (La. App. 5 Cir. 1/31/06), 922 So.2d 647.

12. Donald Sims was found guilty of raping a seven-year-old girl. The victim was diagnosed first with vaginitis and vaginal pin worms, gonorrhea and chlamydia in her vagina and in her anus from the rape. Donald Sims received a life sentence on September 9, 1999. State v. Sims, 00-KA-1728 (La. App. 5 Cir. 5/30/01), 796 So.2d 941.

13. Donald Washington was convicted of raping his girlfriend's seven-year-old daughter multiple times. Mr. Washington also raped the victim's fourteen-year-old sister and another fourteen-year-old while armed with a deadly weapon. He was sentenced to ten (10) years imprisonment for sexual battery and forty (40) years imprisonment for each forcible rape conviction. There were two in all. State v. Washington, 99-KA-1330 c/w 99-KA-1331 (La.

App. 5 Cir. 5/17/00), 793 So.2d 574, writ denied 00-KO-1943 (La. 9/21/00), 797 So.2d 59.

14. David Earl Roberts was convicted of raping a seven-year-old girl. He received a sentence of life imprisonment. State v. Roberts, 33,814 KA (La. App. 2 Cir. 9/27/00), 769 So.2d 162, writ denied, 2000-3027 (La. 10/26/01) 799 So.2d 1149.

15. John Clyde Allen, Jr. was found guilty of raping an eleven-year-old girl three times in one night. Mr. Allen woke the victim up in the middle of the night and took her into the bathroom. He then disrobed himself and the little girl and proceeded to penetrate her vagina with his penis. Mr. Allen was given a life sentence on January 9, 2002. State v. Allen, KA 02-593 (La. App. 3 Cir. 11/6/02), 830 So.2d 606.

16. Ronald Knightshed was found guilty of raping a six year-old girl. He fondled the victim's genitalia with his hands and then his penis. He also performed oral sex on her. After the rape, the child was diagnosed with gonorrhea. Ronald Knightshed was sentenced to twenty (20) years. State v. Knightshed, 00-KA-1410 (La.App. 5 Cir. 3/28/01), 783 So.2d 501.

17. Lester Gomez was found guilty of raping two eight-year-old boys (anally and orally) over a series of months. At the time, Mr. Gomez believed he was HIV positive. On February 2, 2001, Mr. Gomez was sentenced to life imprisonment. State v. Gomez, 2000-KK-0677 (La. 1/17/01), 778 So.2d 549.

18. Jearl Ramsey Plunkett was found guilty of raping a four-year-old girl. While babysitting the victim, Mr. Plunkett penetrated her with his penis and ejaculated into her vagina. Joel Ramsey Plunkett was sentenced to life imprisonment on November 18, 2002. State v. Plunkett, 37,306 (La. App. 2 Cir. 9/12/03), 855So.2d 831, writ denied 03-2943 (La. 2/13/04), 867 So.2d 688.

19. Jimmy Level was convicted of raping his eight-year-old niece and received a life sentence on October 23, 1996. State v. Level, 99-2266 (La. 12/17/99), 751 So.2d 869, writ denied 01- 0953 (La. 2/1/02), 807 So.2d 855.

20. Elbert Taylor was convicted of raping his six-year-old niece and was sentence to life imprisonment. State v. Taylor, 36,066 KA (La. App. 2 Cir. 6/12/02), 821 So.2d 633, writ denied 02- 2068 (La. 6/20/03), 847 So.2d 1222.

21. Bernard Williams was convicted of repeatedly raping (vaginally, anally and orally) a five-year-old girl. On one occurrence, Mr. Williams had sex with the five-year-old victim's babysitter and then proceeded to rape the victim vaginally. Bernard Williams was sentenced to life on July 16, 2004. State v. Williams, 05-KA-318 (La. App. 5 Cir. 1/17/06), 921 So.2d 1033, writ denied 04-KO-0051 (La. 5/21/04), 874 So.2d 171.

22. Latroy Oates was convicted of repeatedly raping an eight-year-old girl in her aunt and uncle's home. Mr. Oates would enter the home at night while the child was sleeping and take her downstairs where he would rape her.

If she cried out in pain, Mr. Oates would cover her mouth with his hand. Latroy Oates was sentenced to life imprisonment. State v. Oates, 01-KA-63 (La. App. 5 Cir. 5/30/01) 796 So.2d 941, writ denied 01-K-1827 (La. 6/14/02), 817 So.2d 1150.

23. Jason Marcantel was convicted of kidnapping and raping a ten-year-old girl in a wooded area near the victim's grandparent's home. When police found the victim she was filthy and disoriented. Her clothing revealed blood and fecal matter in her underwear and shorts. Mr. Marcantel was sentenced to life. State v. Marcantel, CR-98-825 (La. App. 3 Cir. 12/22/99), 756 So.2d 366.

24. John Kinsel was found guilty of raping a little girl repeatedly over a three year period. The abuse began when she was six years old. The victim told the jury that Mr. Kinsel threatened to kill her and her family if she ever told

anyone about the abuse. He was sentenced to life imprisonment. State v. Kinsel, 00- KA-1610 (La. App. 5 Cir. 3/28/01), 783 So.2d 532, writ denied 01-K-1230 (La. 3/28/02), 812 So.2d 641.

25. Ricky E. Chatman was convicted of raping a ten-year-old girl. He first took the victim to an overgrown, deserted area. He then proceeded to take off her blue jeans, pull her underwear down and penetrate her vagina with his finger and penis. Mr. Chatman was sentenced to life imprisonment. State v. Chatman, 37,523 KA (La. App. 2 Cir. 9/24/03), 855 So.2d 875.

26. Ricky E. Adkins raped two girls under the age of twelve, one of whom was mentally retarded. The physician who examined the children after the rapes reported that their hymens were torn and there was substantial scarring in their genital areas. Ricky Adkins received concurrent sentences of forty (40) years. State v. Adkins, 31300-KA (La. App. 2 Cir. 11/9/98) 721 So.2d 1090.

27. Christopher Ross was found guilty of raping a seven-year-old girl and received a life sentence. The physician testified that the victim's genital area was very red and had extensive abrasions and excoriations. The victim's hymen was ruptured and torn. State v. Ross, 03-0564 (La. App. 3 Cir. 12/17/03), 861 So.2d 888, writ denied 04-0376 (La. 6/25/04) 876 So.2d 829.

28. Adrian McKinnie was convicted of raping a four-year-old girl and was sentenced to life imprisonment. He penetrated the victim's vagina with his fingers and then his penis. State v. McKinnie, 36,997 (La. App. 2 Cir. 6/25/03), 850 So.2d 959.

29. Charles Latroy was convicted of raping an eight-year-old girl and sentenced to twenty (20) years on October 28, 1999. State v. Oates, 01-KA-63 (La. App. 5 Cir. 5/30/01) 796 So.2d 941, writ denied 01-K-1827 (La. 6/14/02), 817 So.2d 1150.

30. Levar Doughty was convicted of raping an eleven-year-old and sentenced to seven (7) years imprisonment. Mr. Doughty was fifteen years old at the time of the offense. State v. Doughty 02-0496 (La. 1/10/03), 834 So.2d 435.

31. Bobby Knox was found guilty of raping a six-year-old and received a life sentence. State v. Knox 02-2426 (La. 9/19/03), 853 So.2d 629.

32. Allen Maise was found guilty of raping a six-year-old and was sentenced to life imprisonment. State v. Maise, 805 So.2d 1141 (La. 2002).

33. Leon Simmons was found guilty of raping a five-year-old and received a life sentence. State v. Simmons, 03-20 (La. App. 5 Cir. 4/29/03), 845 So.2d 1249.

34. Elvis Singleton was found guilty of raping an eight-year-old and received a life sentence. State v. Singleton, 96-1127 (La. App. 1 Cir. 5/9/97), 698 So.2d 1070.

35. Michael Smith was convicted of raping an eight-year-old and was sentenced to life imprisonment. State v. Smith, 98-1193 (La. App. 5 Cir. 4/14/99), 734 So.2d 103.

36. Ralph Tate was convicted of raping a five-year-old and was sentenced to thirteen (13) years imprisonment. State v. Tate, 97-1242 (La. 6/30/97), 696 So.2d 1010.

37. Eddie Orange was charged with aggravated rape of child under twelve on June 2, 2006. He impregnated his eleven-year-old daughter, who subsequently gave birth to the child. Mr. Orange was also charged with raping his older daughter. AP Alert, *Man Accused of Raping sisters, One of Whom Gave Birth*, THE ASSOCIATED PRESS, June 2, 2006.

38. Keith Raymond Fremin was convicted of raping two sisters, who were eleven and thirteen at the time of the attacks. Fremin was sentenced to twenty-five (25) years imprisonment and castrated. *Man who Pleaded Guilty to*

Rape Agrees to Castration, THE BATON ROUGE ADVOCATE, July 14, 2005, Section: National.

39. Quincy Vidal Williams was convicted raping an eleven-year-old girl and received a life sentence. AP Alert, *Man to Spend Life in Prison Following Child Rape Conviction*, THE ASSOCIATED PRESS, May 14, 2006.

40. Herbert J. Prejean has been charged with raping a young girl at a motel where he had taken her to swim. Richard Burgess, *Death Ruled Out For Two Murder Suspects* *** *Prosecutor Undecided on Third Man*, THE BATON ROUGE ADVOCATE, April 11, 2006, Section: B.

41. Rodney Mingo has been charged with raping a three-year-old little boy. *Meet Your Neighbor*, CBS 10 KLFY-LA, April 5, 2006.

42. Richard Lee Davis has been charged with raping the five-year-old girl he was babysitting. AP Alert, *DA To Decide Whether to Seek Death in Caddo Child Rape Case*, THE ASSOCIATED PRESS, August 25, 2005.

43. Melissa Ticer has been charged with raping the five-year-old girl she was babysitting. AP Alert, *DA To Decide Whether to Seek Death in Caddo Child Rape Case*, THE ASSOCIATED PRESS, August 25, 2005.

44. Allen Pierson has been charged with aggravated rape of a child under twelve. *Grand Jury Indicts 7 in Tangipahoa*, THE BATON ROUGE ADVOCATE, June 25, 2005.

45. Patricia Pierson has been charged with aggravated rape of a child under twelve. *Grand Jury Indicts 7 in Tangipahoa*, THE BATON ROUGE ADVOCATE, June 25, 2005.

46. Paul Fentenot has been charged with aggravated rape of a child under twelve. *Grand Jury Indicts 7 in Tangipahoa*, THE BATON ROUGE ADVOCATE, June 25, 2005.

47. Christopher Labat has been charged with aggravated rape of a child under twelve. *Grand Jury Indicts 7 in Tangipahoa*, THE BATON ROUGE ADVOCATE, June 25, 2005.

48. Robin Lamonica has been charged with aggravated rape of a child under twelve. *Grand Jury Indicts 7 in Tangipahoa*, THE BATON ROUGE ADVOCATE, June 25, 2005.

49. Louis Lamonica has been charged with aggravated rape of a child under twelve. *Grand Jury Indicts 7 in Tangipahoa*, THE BATON ROUGE ADVOCATE, June 25, 2005.

50. Dexter Troy Pounds was convicted of raping an eight-year-old girl. *State v. Pounds*, 2002-0064 (La. App. 1 Cir. 6/21/02), 826 So.2d 1202, writ denied, 2002-2766 (La. 9/5/03) 852 So.2d 1022.

51. Dustin McLelland was convicted of raping a five-year-old girl. *State v. McLelland*, 03-498 (La. App. 5 Cir. 10/15/03), 860 So.2d 31, writ denied, 2003-3372, (La. 3/26/04), 871 So.2d 347.

52. Charles Perry was convicted of raping a ten-year-old girl and sentenced to life imprisonment. *State v. Perry*, 2002-2489 (La. 9/26/03) 854 So.2d 355.

53. Rhashedi Mohamed was convicted of raping a child under twelve. *State v. Mohamed*, 96-845 (La. App. 5 Cir. 9/17/97) 700 So.2d 881.

54. Andrew Mitchell, Sr. was convicted of raping a child under twelve. *State v. Mitchell*, 2001-1414 (La. App. 1 Cir. 2/15/02) 812 So.2d 149.

55. Charlie Finley was convicted of raping a ten-year-old child. *State v. Finley*, 2001-2506 (La. App. 1 Cir. 5/10/02), 826 So.2d 655.

56. Johnnie L. Smith was convicted of raping a nine-year-old. *State v. Smith*, 01-02-0058.

57. James Scott was convicted of raping an eleven-year-old child. State v. Scott 96-1905 (La. App. 4 Cir. 3/12/97), 690 So.2d 1129.

58. Shawn Lacour was convicted of raping a child under the age of twelve. State v. Lacour, 01-602 (La. App. 5 Cir. 1/15/02), 810 So.2d 588, writ denied, 2002-0642 (La. 1/31/03), 836 So.2d 60.

59. Austin Bernard, III was charged with aggravated rape of a child under the age of twelve. Debra Lenoine, *Four Sex Counts Filed in Case Alleged Church Cult Suspect Booked with Aggravated Rape*, THE BATON ROUGE ADVOCATE, June 14, 2005, Section B.

60. David Constance was charged with aggravated rape of a child under the age of twelve. Late Local News, CBS 9 WAFB – Baton Rouge, March 17, 2006.

61. Patrick Brown was convicted of raping a six-year-old girl. He received a life sentence. State v. Brown, 1997-2260 (La. App. 4 Cir. 10/6/99), 746 So.2d 643.

62. Frazen Chesson was convicted of raping a child under the age of twelve. State v. Chesson, 1999-0173 (La. 2/5/99) 737 So.2d 736.

63. Stephen Titzer was convicted of raping a child under the age of twelve and sentenced to life imprisonment. State v. Titzer, 2001-2868 (La. App. 1 Cir. 6/21/02), 826 So.2d 1201.

64. Joseph Thibodeaux was convicted of raping a child under the age of twelve. State v. Thibodeaux, 1999-0857 (La. 8/25/99), 746 So.2d 1287.

65. Ryan Watson was convicted of raping a child under the age of twelve. State v. Watson, 02-1154 (La. App. 5 Cir. 3/25/03), 844 So.2d 198.

66. Aaron Wilford was convicted of raping a child under the age of twelve. State v. Wilford, 01-513 (La. App. 5 Cir. 11/14/01), 800 So.2d 453, writ denied, 2004-1269 (La. 3/24/05), 896 So.2d 1025.

67. Allen Vicks was convicted of raping a child under the age of twelve. State v. Vicks, 2000-1700 (La. App. 4 Cir. 9/26/01) 798 So.2d 308.

68. Cesar Roca was convicted of raping two children under the age of twelve and received two consecutive life terms. State v. Roca, 03-1076 (La. App. 5 Cir. 1/13/04) 866 So.2d 867, writ denied, 2004-0583 (La. 7/2/04), 877 So.2d 143.

69. Darrel McDuffey was convicted of raping a ten-year-old girl and sentenced to forty (40) years imprisonment. TV 8, *Convicted Child Rapist Sentenced to 40 yrs*, April 11, 2006.

70. Gary Sanchez was convicted of raping a five-year-old boy and sentenced to thirty (30) years imprisonment. Joe Darby, *Child Molester Sentenced in Attempted Rape Case Man Pleads Guilty, Gets 30 years in Jail*, NEW ORLEANS TIMES PICAYUNE, August 9, 2003, Section: Metro.

71. Brandon Billiot was charged with two counts of aggravated rape of a child under the age of twelve. Joe Darby, *Metairie Man is Indicted in April Shooting Witnesses Said Man Argued With Victim*, NEW ORLEANS TIMES PICAYUNE, December 6, 2003, Section: Metro.

72. Gregory Brown was charged with aggravated rape of a ten-year-old girl. Mark Waller, *Jeff Jury Indicts 6 in 2 Separate Killings Suspects in the Two Cases Face Life In Jail*, NEW ORLEANS TIMES PICAYUNE, September 24, 2004, Section: Metro.

73. Shawn Esteve was charged with two counts of aggravated rape of a five-year-old girl and received a sentence of forty-nine-and-a-half (49 ½) years. Joe Darby, *Child's Rapist Pleads Guilty Terrytown Man Get Forty Nine*, NEW ORLEANS TIME PICAYUNE, August 16, 1997, Section: Metro.

74. Hector J. Perez was charged with two counts of aggravated rape of a child under twelve. Kenner Bureau, *Kenner Man Booked with Raping 8-Year-Old*, NEW ORLEANS TIME PICAYUNE, May 28, 1997, Section: Metro.

75. Ed R. Littleton was charged with aggravated rape of a child under twelve-years-old. Steve Cannizaro, *Burras Couple Booked In Rape of 11-Year-Old*, NEW ORLEANS TIME PICAYUNE, November 18, 1997, Section: Metro.

76. Sarah May was charged with being a principal to aggravated rape of a child under twelve. Steve Cannizaro, *Burras Couple Booked In Rape of 11-Year-Old*, NEW ORLEANS TIME PICAYUNE, November 18, 1997, Section: Metro.

77. Anthony Wilson was charged with raping a six-year-old girl. State v. Wilson, 685 So.2d 1063, 1073 (La. 1996); see also Rhonda Bell, *Rape Suspect OT Ready for Trial Mentally Retarded Man Faces Death if Convicted of Rape of Six-Year-Old*, NEW ORLEANS TIMES PICAYUNE, December 16, 1999, Section: Metro.

78. Danny Davis, Jr. was charged with raping three children in St. Bernard Parish. Steve Cannizaro, *Man, 18, Wanted in Sex Abuse of Minors 1 Girl, 2 Boys Say Attack Occurred in January*, NEW ORLEANS TIMES PICAYUNE, March 23, 2000, Section: Metro.

79. Ithona Nation was charged with raping a ten-year-old girl. Kenner Bureau, *Kenner Man Booked in Rape of Child*, NEW ORLEANS TIMES PICAYUNE, May 12, 2000, Section: Metro.

80. Ferdinand D. Arcourt was charged with aggravated rape of a five-year-old boy. Stephanie A. Stanley, *Abita Man Raped Boy, 5, Police Say 2 Other Men Charged In Deadly Crushes*, NEW ORLEANS TIMES PICAYUNE, March 23, 2002, Section: Metro.

81. Greg Laffavillere was charged with aggravated rape of a child. Steve Cannizaro, *Child Rape Suspect Worked Outside Jail*, NEW ORLEANS TIMES PICAYUNE, February 20, 2003, Section: Metro.

82. Brian J. Sapia was convicted of raping a six-year-old girl and was sentenced to twelve (12) years. Gwen Filosa, *Man Gets 12 Years for Raping 6-Year-Old*, NEW ORLEANS TIMES PICAYUNE, August 6, 2003, Section: Metro.

83. Thomas Farve was charged with raping a seven-year-old girl. Joe Darby, *Man Charged in Sex Crimes Against Foster Child*, NEW ORLEANS TIMES PICAYUNE, December 20, 2003, Section: Metro.

84. Ceaser Harper was charged with raping an eight-year-old girl. Staff Reports, *Man Is Arrested in Child Rape Case, Suspect Faces Death if Convicted of Crime*, NEW ORLEANS TIMES PICAYUNE, January 7, 2004, Section: Metro.

85. Roderick Riggins was convicted of aggravated rape of a child and was sentenced to forty (40) years in prison. West Bank Bureau, *Man Pleads Guilty in Girl Rape*, NEW ORLEANS TIMES PICAYUNE, January 23, 2004, Section: Metro.

86. Daniel Joseph Moore was charged with three counts of aggravated rape of a child under twelve. Meghan Gordan, *Janitor Charged In Child Sex Case Babysitter Accused of Raping Three Boys*, NEW ORLEANS TIMES PICAYUNE, July 21, 2004, Section: Metro.

87. Randy Conner was charged with aggravated rape of a four-year-old girl. Joe Darby, *Step-dad charged in Harvey Stabbing Cops Say Teen Victim May Have Been Raped*, NEW ORLEANS TIMES PICAYUNE, August 6, 2004, Section: Metro.

88. Christopher S. Shank was convicted of raping a five-year-old girl. Paul Purpura, *Jeff Man To Get Life In Rape of Child Unanimous Jury Spurns Lesser Charge*, NEW ORLEANS TIMES PICAYUNE, October 30, 2004, Section: Metro.

89. Roy A. Vanderhoff was charged with aggravated rape of a child under twelve. Amy Blakely, *1 Indicted, 1 Sought In Rape of Child, Boy Found to Have Contracted an STD*, NEW ORLEANS TIMES PICAYUNE, May 6, 2005, Section: Metro.

90. Irvin Roussel was indicted on capital rape charges for orally sodomizing a six-year old girl. Roussel told police, relatives and then the jury

how he orally sodomized the girl after a night of hard drinking. Rousell even wrote a letter to Marullo admitting the crime. The jury found Rousell guilty of sexual battery, which carries a sentence of up to 10 years in prison. Gwen Filosa, *Indigent board to have day in court* – New Orleans, The Times-Picayune, September 23, 2006, B1.

91. Keith Raymin Fremin was sentenced to 25 years in prison, and agreed to castration, after having been charged with multiple counts of aggravated rape of two girls in Mandeville, Louisiana. Bruce Hamilton, *Child rapist undergoes castration*, The Times-Picayune, November 7, 2006, B1.

92. Eric Donald Hayes was found guilty of raping an eleven-year-old and sentenced to ten (10) years imprisonment. See Exhibit B, MNT (10/2/2003).

93. Celestine Livingston was convicted of raping a six-year-old and sentenced to two (2) years on March 21, 1996. Exhibit B, MNT (10/2/2003).

94. Jason Robardi was found guilty of raping a nine-year-old girl and received a life sentence. The child lost a substantial amount of blood from the vaginal tears she sustained from the rape. See Exhibit B, MNT (10/2/2003).

95. Don Tran was found guilty of raping an eight-year-old girl and was sentenced to twenty-five (25) years imprisonment. See Exhibit B, MNT (10/2/2003).

96. Nazareth Harrison was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Parish of St. Tammany (Oct. 26, 2000).

97. Cedric Jannison was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Parish of St. Tammany (Sept. 21, 2001).

98. Ferdinand D'Arcourt was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Parish of St. Tammany (Mar. 22, 2002).

99. Christina Vanrycke was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Parish of St. Tammany (May 24, 2002).

100. Richard Carrier was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Parish of St. Tammany (Sept. 19, 2002).

101. Danny Thomas Davis was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Parish of St. Tammany (June 30, 2000).

102. Gary Rush was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Parish of St. Tammany (April 25, 2001).

103. John Pratt, III was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Parish of St. Tammany (Oct. 24, 2002).

104. Michelle Littlefield was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Parish of St. Tammany (May 3, 2004).

105. Burt S. Stockstill was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Parish of St. Tammany (May 3, 2004).

106. Frazen "Pookie" Chesson was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Aug. 9, 1996).

107. Donnell Colquitt was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Mar. 16, 2000).
108. Eddie Tom Cannon was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Nov. 19, 1998).
109. Teresa Gail Cannon was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Nov. 29, 1998).
110. Stanley R. Elpers was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Sept. 23, 1999).
111. Gary Wayne Mood was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Nov. 11, 2000).
112. John Edward Hess was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Dec. 14, 2000).
113. Joseph Herbert Bargeman was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (July 19, 2001).
114. Chester Lee Marcantel was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (May 15, 2002).
115. Russell E. Fuselier was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (May 21, 2002).

116. Jimmy Dorris was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (June 13, 2002).
117. Luther Deel was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Sept. 19, 2002).
118. Timothy Benoit was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Feb. 10, 2006).
119. Brent A. Repponde was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Oct. 13, 2005).
120. James Brooks was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Aug. 25, 2005).
121. Neal P. Broussard was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Aug. 18, 2005).
122. Keith L. London was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (July 18, 2005).
123. Floyd Tillman was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (June 8, 2005).
124. Harvey T. Simons was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (May 5, 2005).

125. Dennis McGehee was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (April 18, 2006).
126. Joseph Albert Ripley was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Nov. 18, 2004).
127. James A. Fontenot was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Nov. 10, 2004).
128. Johnny London was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Sept. 30, 2004).
129. Dwayne A. Colston was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Sept. 23, 2004).
130. Joseph Molitor was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Aug. 12, 2004).
131. Ernest Chapman was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Aug. 12, 2004).
132. Carl Ledet was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Aug. 12, 2004).
133. Decator Crochet was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (May 6, 2004).

134. Carmen L. Oregeron was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (May 6, 2004).
135. John Nunez was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Mar. 3, 2004).
136. Marvin William Welsh was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Feb. 26, 2004).
137. Robert Thomas was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Feb. 26, 2004).
138. Arnold Mercado was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Feb. 26, 2004).
139. Michael W. Granger was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Aug. 14, 2003).
140. Stephen Lanphier was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Oct. 14, 2001).
141. John Mark was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Oct. 10, 2003).
142. James Wimberly, Jr. was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Oct. 10, 2003).

143. Jude Wimberly was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Oct. 10, 2003).
144. James Wimberly, Sr. was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Oct. 10, 2003).
145. Michael W. Granger was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Aug. 14, 2003).
146. Marcus Jacobs was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Aug. 14, 2003).
147. John Molitor was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (July 10, 2003).
148. Michael Wayne Guillory was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (July 10, 2003)
149. Kenneth Tittle was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (June 17, 2003).
150. Joseph Thibodeaux was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (May 22, 2003).
151. Robin LeBlanc was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (March 6, 2003).

152. Glenn Allan Duhon was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Jan. 1, 2003).
153. Mark Allen Dittmer was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Oct. 10, 2002).
154. Dustin Chad Ducote was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Sept. 12, 2002).
155. Daniel Holland was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Sept. 12, 2003).
156. Xavier Lewis was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (June 6, 2002).
157. Rock A. Doucet was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Feb. 2, 2002).
158. Brian Saltzman was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Oct. 25, 2001).
159. Emery Marcantel, Jr. was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (March 1, 2001).
160. Ellis Bartie was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Sept. 7, 2000).

161. Troy L. Williams was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Aug 28, 1998).
162. Donus Demon Edwards was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, St. Landry Parish (2001).
163. Alton Romar, Jr. was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, St. Landry Parish (1997).
164. Erick D. Mitchell was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, St. Landry District Parish (1987).
165. Fabian L. Mitchell was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, St. Landry Parish (1998).
166. Thomas E. Biledeaux was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, St. Landry Parish (1995).
167. Albert Jones, Jr. was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, St. Landry Parish (1998).
168. Clarence Edwards Rogers was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Grant Parish.
169. John Alden Vallery Sr. was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Grant Parish.

170. Robert Wayne Warren was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Grant Parish.
171. Barry Keith Chelette was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Grant Parish.
172. Alcide Boudoin was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Assumption Parish (2006).
173. Grady L. Rushing, Sr. was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Assumption Parish (2004).
174. Carroll C. David, Sr. was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Pointe Coupee Parish.
175. Isiah Van Buren was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Pointe Coupee Parish (Aug. 22, 2000).
176. Marcus Guidry was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Pointe Coupee Parish (April 29, 2003).
177. Michael Young was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Pointe Coupee Parish (April 29, 2003).
178. Ricky Chatman was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Morehouse Parish (Sept. 13, 2001).

179. James Watts was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Morehouse Parish (Feb 9, 2006).

180. John Freeman was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Pointe Coupee Parish (April 29, 2003).

181. Christopher Williams was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Morehouse Parish (Aug. 17, 2004).

182. David Marshall was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Morehouse Parish (April. 26, 2004).

183. Damien Lebrun was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Morehouse Parish (Aug. 15, 2003).

184. Jason P. Rebari was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Morehouse Parish (Aug. 23, 2003).

B. A Significant Number Of Defendants Have Received A Sentence Less Than Death For A Worse Offense.

In Coker v. Georgia, the United States Supreme Court noted that murder was without doubt a more severe offense than rape:

Rape is without doubt deserving of serious punishment; but in terms of moral depravity and of the injury to the person and to the public, it does not compare with murder, which does involve the unjustified taking of human life. Although it may be accompanied by another crime, rape by definition does not include the death of or even the serious injury to another person. The murderer kills; the rapist, if no more than that, does not. Life is over for the victim of the

murderer; for the rape victim, life may not be nearly so happy as it was, but it is not over and normally is not beyond repair.

Coker v. Georgia, 433 U.S. 584, 598 (1977).⁷ While this Court has suggested that there is an open question concerning whether the rape of a child is equivalent to the murder of an adult, it is unquestionable that the murder (let alone the rape and murder) of a child remains, from a constitutional perspective, a worse offense than a rape.

In the following cases, a defendant actually killed the child-victim or child-victims, but received a lesser sentence than the Appellant in this case:

185. Ralph Stogner kidnapped, raped and killed an eleven year-old girl and received a sentence of life imprisonment in the same year Mr. Kennedy was sentenced to death. Mr. Stogner's victim disappeared from her neighborhood in Slidell, Louisiana. Her badly mutilated body was found two days later in an Industrial Canal in New Orleans. Stephanie A. Stanley, *Killer is sentenced for attack on child*, NEW ORLEANS TIMES PICAYUNE, January 5, 2002, at Section: National.

186. Darren Hooks was convicted of raping and murdering his girlfriend's two-year-old daughter. The child had lacerations and contusions, both internally and externally, all over her body. She ultimately died when her brain swelled from head injuries and a tear in her kidneys. Darren Hooks received a life sentence. State v. Hooks, 421 So.2d 880 (La. 1983).

⁷ In Appellant's Brief on Appeal and Supplemental Brief on Appeal, Appellant notes that the decision in Coker (finding the death penalty unconstitutional for the rape of a sixteen (16) year old girl) supports the claim that the execution of a defendant for a non-homicide offense is unconstitutional. Since Coker, this Court ruled that the rape of a child is sufficiently more severe than the rape of an adult woman to justify the imposition of the death penalty for rape made aggravated by the youth of the victim. See State v. Wilson, 685 So.2d 1063, 1073 (La. 1996). That decision cannot stand for the proposition that the rape of a child is worse than the murder of a child. Indeed, it is beyond purview that the position of the Court in Coker -- that murder is a worse offense than rape -- remains, regardless of whether the Court can extend the constitutionality of capital punishment to the present charge.

187. Nathan Johnson was convicted of raping and killing his two-year-old daughter. The child died from head wounds she sustained from the attack. Her vagina and rectum indicated that she had been penetrated anally and vaginally. Mr. Johnson was sentenced to life imprisonment. State v. Johnson, 96-1834 (La. App. 1 Cir. 6/20/97), 697 So.2d 288.

188. Delia Nelson was found guilty of killing her two-year-old daughter. Medical examinations revealed older and fresh bruises, and abrasions on both sides of the forehead and face; bruises on the chest, back, shoulder, genital area and legs. The child ultimately died of severe bruising of the brain. Ms. Nelson was sentenced to forty (40) years imprisonment. State v. Nelson, 98-1907 (La. App. 1 Cir. 6/25/99), 744 So.2d 226.

189. Ricky Langley was convicted of killing a six-year-old and received a life sentence. He strangled the little boy, carried him up the stairs and hid him under blankets. There is evidence indicating that Mr. Langley sexually molested the child before and after the murder. State v. Langley, 94-00326 (La.App. 3 Cir. 4/14/94), 639 So.2d 211.

190. Alvin Scott Loyd was convicted of kidnapping, raping and killing a three-year-old girl. State v. Loyd, 96-1805 (La. 2/13/97) 689 So.2d 1321.

191. James Koon was found guilty of beating an eight-month-old girl to death, breaking the baby's skull, forearms, right tibia, right fibula. He was sentenced to life imprisonment. State v. Koon, 31177 (La. App. 2 Cir. 2/24/99), 730 So.2d 503.

192. Christopher McCants was found guilty of killing a two-year-old girl and sentenced to life imprisonment. The little girl died from blunt trauma to her head which caused brain hemorrhaging. The child was also covered in lacerations caused by belt wounds. State v. McCants, 93-1703 (La. App. 1 Cir. 10/7/94), 644 So.2d 752.

193. William Simpson was found guilty of killing his two-year-old daughter and received a life sentence. Mr. Simpson confessed to strangling his daughter with a belt and then stabbing her with a butcher knife. State v. Simpson, 629 So. 2d 468 (La. App. 3 Cir. 1993).

194. Willie Lee Douglas was convicted of killing a two-year-old girl. The child's injuries indicated that she was beaten to death. Mr. Douglas was sentenced to life in prison without parole. State v. Douglas, 37-721 (La. App. 2 Cir. 12/10/03), 862 So.2d 390.

195. Melvin Dewayne Pugh was found guilty of killing his six-week-old daughter and sentenced to forty (40) years in prison. The baby died when Mr. Pugh struck her multiple times and threw her on the floor. State v. Pugh, 40,287-KA (La. App. 2 Cir. 11/02/05), 914 So.2d 1183.

196. Joseph Glenn, IV was convicted of killing a two-month-old girl and sentenced to life imprisonment on April 10, 2003. The cause of death was brain hemorrhaging brought on by Mr. Glenn shaking the baby. State v. Glenn, 04-KA-526 (La. App. 5 Cir. 03/01/05), 900 So.2d 26.

197. Burnell Hart was found guilty of killing an eleven-month-old girl and was sentenced to life imprisonment. The child sustained injuries all over her entire body, including brain and stomach hemorrhaging, fractured ribs and one of her lungs was filled with blood. Her liver had also been torn. State v. Hart, 2004-KA-0121 (La. App. 4 Cir. 08/18/04), 881 So. 2d 1237.

198. Kortney T. Smith was convicted of killing his seven-month-old infant and sentenced to life imprisonment. The child died from a skull fracture and brain hemorrhaging. State v. Smith, 04-KA-199 (La.App. 5 Cir. 06/29/04), 877 So.2d 1123.

199. Frank Guillory was found guilty of killing his wife and her nine-year-old son. Mr. Guillory shot to death both victims. Mr. Guillory received a

life sentence on January 31, 1996. State v. Guillory, 95-383 (La. App. 1 Cir. 02/14/03), 839 So.2d 455.

200. Timothy Booker was convicted of killing his girlfriend's four-year-old daughter and received a life sentence. The child, found in sleeveless shirts and shorts on December 18, 2000, was not breathing, did not have a pulse and was cold to the touch. After efforts to revive her failed, the coroner listed hypothermia, battered child syndrome, and malnourishment as the causes of the child's death. State v. Booker, 2002 KA 1269 (La. App. 1 Cir. 02/14/03), 839 So. 2d 455.

201. Raynell Bright was convicted of killing his six-month-old daughter and received a life sentence on June 1, 1998. Mr. Bright opened fire on his former girlfriend's mother and his daughter. The baby was shot in the heart. State v. Bright, 809 So.2d 1112 (La. 2002).

202. James Thomas Porter was convicted of killing his female roommate's three-year-old daughter and sentenced to life imprisonment on September 1, 1999. The child's body had burn marks on her chest and back from a steam iron, bruising about the head, face, shoulders and legs, and the skin on the buttocks had been burned severely. Ultimately, the cause of death was hemorrhaging in the brain brought on by a blow to the back of the head. State v. Porter, 99-1722 (La. App. 3 Cir. 5/3/00), 761 So.2d 115.

203. Loris Houston was convicted of beating to death her two-year-old son and sentenced to life imprisonment. Ms. Houston admitted to repeatedly beating her son with a broom, handle, hanger, slipper and hand. The cause of death was subdural blood clots and a skull fracture. State v. Houston, 95-656 (La. App.5 Cir. 2/14/96), 671 So.2d 19.

204. Esther Penns was found guilty of murdering her four-year-old and sentenced to life imprisonment. While being questioned by authorities regarding

the shooting of her ten-year-old son, the defendant admitted to the attempted murder of her daughter and the drowning of her four-year-old. The four-year-old's decomposed body was found the next day found hidden in the bushes. State v. Penns, 407 So.2d 678 (La. 1981).

205. James Felo was found guilty of killing his neighbor's four-year-old daughter. The little girl died from head injuries caused by a severe blow. Her left wrist and right arm were also broken. State v. Felo, 454 So.2d 1150 (La. App. 4 Cir. 1984), writ denied, 488 So.2d 686 (La. 1986).

206. Yvonne Sepulvado was convicted of killing a six-year-old boy and received a sentence of twenty (20) years imprisonment. State v. Sepulvado, 26,948 (La. App.2 Cir. 5/10/95), 655 So.2d. 623, writ denied, 95-1437 (La. 11/13/95), 662 So.2d 465.

207. Larry Williams was found guilty of murdering a two-year-old girl. The child died from a blow to the head that caused a skull fracture at the base of the neck. Mr. Williams received a twenty-one (21) year sentence. State v. Williams, 609 So.2d 878 (La. App. 4 Cir. 1992).

208. Eugene Davis was charged and convicted of killing a six-month-old child. The cause of death was a fracture in the skull and a brain hemorrhage. The coroner concluded that the baby's head had been slammed on something very hard. Mr. Davis was sentenced to twenty-one (21) years in prison. State v. Davis, 562 So.2d 1173 (La. App. 4 Cir. 1990).

209. Charles Kenneth LaFleur was convicted of killing a two-year-old handicapped boy. He left the little boy's body in a box by the side of a road. The child had been severely abused before he was murdered. Mr. LaFleur received a life sentence. State v. LaFleur, 398 So.2d 1074 (La. 1981).

210. Gloria Aucoin was found guilty of killing an eight-year-old girl and was sentenced to life imprisonment. She strangled, stabbed, beat and drove the car over the little girl. State v. Aucoin, 362 So.2d 503 (La. 1978).

211. Selina Anderson was convicted of killing her eighteen-month-old daughter and given a life sentence. The dead child was found in the back of the house; the cause of death was asphyxia due to suffocation. State v. Anderson, 99-456 (La. App. 5 Cir. 10/26/99), 750 So.2d 1008. The state did not introduce evidence concerning the deaths of two of her other children. Martha Carr, *Laplace Mom Convicted In Child's Death*, The Times-Picayune, December 4, 1998, B1.

212. Jack R. Obney was convicted of killings a three-year-old boy and sentenced to life imprisonment. The child died from a rupture in his abdominal region which was caused from being violently hit in the stomach. State v. Obney, 505 So.2d 211 (La. App. 3 Cir. 1987/1987); writ denied, 508 So.2d 818 (La. 1987).

213. Anita Mosley was found guilty of killing her boyfriend's eighteenth-month-old son and sentenced to life imprisonment. The child's liver was also torn down the middle causing him to go into heart failure. The state's medical examiner concluded that the death resulted from multiple blows from a broad, flat object, most probably a fist. State v. Moseley, 475 So.2d 76 (La. App. 2 Cir. 1985).

214. Victor Johnson was convicted of killing his girlfriend's sixteen-month-old child. The child sustained a fractured skull, tear in the liver, and abdominal injuries. Mr. Johnson received a life sentence. State v. Johnson, 469 So.2d 1099 (La. App. 2 Cir. 1985).

215. Helen Beck was found guilty of killing her son by slamming the window on his head twice. Ms. Beck was sentenced to life. State v. Beck 455 So.2d 470 (La App. 2 Cir. 1984), writ denied, 446 So.2d 315 (La. 1984).

216. Larry M. Archer was convicted of killing his girlfriend's twenty-two-month-old daughter. Mr. Archer kicked the child in the abdomen which ruptured her bowels and led to peritonitis. He received a sentence of forty (40) years imprisonment. State v. Archer, 96-2750 (La. App. 1 Cir. 11/7/97); 709 So.2d 1093; writ denied, 97-3047 (La. 4/2/98), 717 So.2d 646.

217. Monica Lynn Guzman was found guilty of killing his seven-month-old daughter and sentenced to forty (40) years in prison. Both of the baby's legs were broken, her spine was separated, fluid in the chest and her kidneys were in shock. State v. Guzman, 95-444 (La. App. 5 Cir. 11/15/95), 665 So.2d 512, writ denied, 95-2853 (La. 2/28/96), 668 So.2d 366.

218. Larry A. Cushman was found guilty of killing his seventeen-month-old stepson and sentenced to thirty (30) years in prison. The child died from intracranial injuries caused by head trauma and an autopsy revealed physical abuse. State v. Cushman, 94-336 (La. App. 3 Cir. 11/2/94), 649 So.2d 639, writ denied, 95-2045 (La. 3/7/97), 689 So.2d 1370.

219. Richard Hubner was found guilty of killing a two-year-old boy and received a twelve (12) year sentence. The child died from a blow to the head that caused a skull fracture. State v. Hubner, 553 So.2d 1056 (La. App. 3 Cir. 1989); writ denied, 560 So.2d 11(La. 1990).

220. Belverly White was convicted of killing her adopted four-year-old daughter. The evidence established that Ms. White beat the child with objects such as combs, knives and brushes. The child also sustained third-degree burns over her body. The ultimate cause of death was a massive infection brought on

by the abuse to the child's body. State v. White, 543 So. 611 (La. App. 2 Cir. 1989).

221. Carolyn Bolden was convicted of killing a two-year-old child left in her care during the mother's incarceration. The child died from brain injuries sustained from severe, intentional shakings. Ms. Bolden was sentenced to twenty (20) years imprisonment. State v. Bolden, 501 So.2d 942 (La. App. 2 Cir. 1987).

222. Roger Addison was convicted of killing his girlfriend's sixteen-month-old child and received a ten (10) year sentence. The child's body had a lacerated liver, bruises on the face, head, back and buttocks and broken ribs. State v. Addison, 464 So.2d 887 (La. App. 4 Cir. 1985).

223. Bernard Hayes was found guilty of killing his two-year-old son and received a fifteen (15) year sentence. The little boy died from trauma caused by multiple blows to the head. State v. Hayes, 446 So.2d 1233 (La. App. 4 Cir. 1985).

224. James Lois Humphrey was convicted of killing his two infant daughters. One daughter died from head injuries and the other from a neurogenic shock from the brain stem and spinal cord injuries resulting from a fracture of twisting of one of the neck vertebrae. Mr. Humphrey received consecutive fifteen (15) year sentences. State v. Humphrey, 445 So.2d 1155 (La. 1984).

225. Curtis Germain was convicted of killing his three-year-old daughter. The child's body had bruises of all colors over the entire body. The cause of death was hemorrhaging in the left part of the brain. Testimony established that the Mr. Germain beat the child with a belt regularly and threatened to kill the entire family. He received a twenty-one (21) year sentence.

State v. Germain, 433 So.2d 110 (La. 1983).

226. Renee Morris was found guilty of killing her infant son. The degree of bruising all over the child's body made it a classic case of battered child syndrome. The child ultimately died from a skull fracture caused by massive trauma to the head. Ms. Morris was sentenced to forty-two (42) years. State v. Morris, 429 So.2d 111 (La. 1983).

227. Deborah Crawford was found guilty of murdering her nine-month-old daughter. The child died from head trauma inflicted by multiple blows. Ms. Crawford received a twenty-one (21) year sentence. State v. Crawford, 410 So.2d 1076 (La. 1982).

228. Delia Nelson was found guilty of killing her two-year-old daughter. Medical examinations revealed older and fresh bruises, and abrasions on both sides of the forehead and face; bruises on the chest, back, shoulder, genital area and legs. The child ultimately died of severe bruising of the brain. Ms. Nelson was sentenced to forty (40) years imprisonment. State v. Nelson, 98-1907 (La. App. 1 Cir. 6/25/99), 744 So.2d 226.

229. Whitney Spenser was sentenced to life for four counts of first degree murder arising from the intentional burning to death of 14-month-old Keitwon Ester, six-year-old Ranneisha Kent, seven-year-old Deaunta Kent, and four-year-old Branika Murph. See State v. Spencer, 00-2084, Division A, 24th JDC, Jefferson Parish.

230. Eric Matthews was sentenced to life imprisonment for two counts of first degree murder and one count of second degree murder, including the murder of a one-year-old child. State v. Matthews, 1997-1757 (La. 1/16/98) 706 So.2d 972.

231. Perry Pooler and Simon Hutchinson were indicted for the murders of Joseph Curry age 17, Daytoria Curry age 16, and Jacorey Marshall age 16 months. Joseph Curry was shot execution style. Daytoria Curry was raped and

then shot execution style. Both were ultimately sentenced to life imprisonment. Marshall was burned in the trailer fire. See e.g. State v. Hutchinson, 2001--0704 (La.App. 1 Cir. 12/28/01); 803 So. 2d 1120; State v. Pooler, 96 1794 (La.App. 1 Cir. 05/09/97);, 696 So. 2d 22.

232. Lawrence Robertson, Darnieion Tillman and Corey Richardson were indicted for the first degree murder of Chasitty Calhoun, age 2. They were also charged with the murder of the girl's father Kevin Calhoun. Robertson pled guilty to the killing of Chasitty Calhoun and received a ten (10) year sentence. See State v. Robertson, 409-923 "E" (Orleans Parish Criminal District Court). Each of the other co-defendants pled guilty to a lesser offense and received a term of years.

233. James Davis was indicted for the first degree murder of Terica Toledano, age 2. He ultimately pled guilty to manslaughter and received a sentence under ten years. See State v. Davis, 387-332 "A" (Orleans Parish Criminal District Court).

II. THE CIRCUMSTANCES OF THIS CASE MAKE THE DEATH PENALTY AN EXCESSIVE AND DISPROPORTIONATE SENTENCE

Assuming, *arguendo*, the constitutionality of the death penalty for aggravated rape, the circumstances of this case render the sentence excessive and disproportionate. See State v. Sonnier, 380 So. 2d 1 (La. 1979). In Sonnier, this

Court observed:

The mere existence of a three step process indicates that a death sentence may be excessive even if sufficient ground exists for each aggravating circumstance found by the jury. . . . Certainly an inference of arbitrariness would arise if a jury's recommendation of death was inconsistent with sentences imposed in similar cases from the same jurisdiction. Rule 28, § 1(c). Another indication of arbitrariness would be a jury's recommendation of death in disregard of numerous and persuasive mitigating circumstances

which clearly outweigh any aggravating circumstances found to be present. In the instant case, our review demonstrates that the sentence is excessive under either standard.

State v. Sonnier, 380 So. 2d 1, 7-8 (La. 1979).

A. The Circumstances of Patrick Kennedy's Mental limitation and Cognitive Deficits Makes the Death Sentence Excessive and Disproportionate.

Patrick Kennedy has an I.Q. of 70. It is also unlikely that Mr. Kennedy has ever had a higher I.Q. Mr. Kennedy was diagnosed with learning problems when he was child and assigned to special education classes. Despite being put in special education, he continued to perform poorly in school and on standardized tests. Mr. Kennedy's formal education ended in the ninth grade.

At the beginning of Mr. Kennedy's trial, defense counsel moved to bar the State from seeking the death penalty based on the United States Supreme Court's prohibition on the execution of mentally retarded defendants in Atkins v. Virginia, 536 U.S. 304 (2002). However, at the time this case went to trial, Article 905.5, which codified the Atkins decision in Louisiana law, was not yet enacted. The trial court thus decided it could not be applied and went on to appoint a sanity commission to assess Mr. Kennedy's retardation per this Court's decision in State v. Williams, 2001-1650 (La. 11/01/02); 831 So. 2d 835.

The examining doctors from the sanity commission reported that throughout their interviews with Mr. Kennedy, he remained adamant that he was not mentally retarded and instructed the doctors to diagnose him as "normal" – even though a finding of mental retardation would ameliorate greatly to his benefit. Eventually, they were able to conduct their evaluations to determine that Mr. Kennedy's I.Q. score and to find out about his developmental history. The commissioners determined that Mr. Kennedy was not mentally retarded asserting: 1) that an IQ score of 70 was not *below* two standard

deviations of the norm; 2) that evidence of adaptive deficits in two or more life-skills areas did not exist; and 3) that despite evidence that Mr. Kennedy was in special education, did not pass ninth grade, and did poorly on standardized testing, there was insufficient evidence that onset of low-IQ occurred prior to the age of 18. The trial court adopted the committee's conclusion and held that Mr. Kennedy was not mentally retarded and therefore competent to stand trial for capital rape.

Contemporaneously to these proceedings, the State moved to bar defense counsel from asserting that Mr. Kennedy's mental retardation constituted a bar to the imposition of the death penalty. The State based its motion on prospective application of the Article 905.5 which would – when enacted – require *full* cooperation as a prerequisite to litigating this matter before the jury; Mr. Kennedy, the state alleged, was not initially cooperative with the sanity commission doctors. After learning of the sanity commission's results, the trial court reversed itself and ruled that Article 905.5 applied retroactively and barred the defense counsel from litigating Mr. Kennedy's mental retardation in front of the jury. Thus, having at first held that Article 905.5 *did not* apply, thereby depriving Mr. Kennedy of the benefit of the Supreme Court's holding in Atkins v. Virginia, 536 U.S. 304 (2002), codified in this article, the trial court later reversed itself to hold that Article 905.5 *did* apply, and held on this basis that because Mr. Kennedy did not provide the "full" cooperation required by the article, he could not rely on mental retardation as a grounds to oppose the death penalty, the very holding of *Atkins* in the first place.

The trial court's approach is reminiscent of Tweedledee's statement to Alice in *Through the Looking Glass*, "Contrariwise, if it was so, it might be; and if it were so, it would be; but as it isn't, it ain't." It would be laughable – if its purpose wasn't to sentence a man to death.

B. The Circumstances Of The Injuries Inflicted On The Victim Make The Death Penalty Excessive.

At trial, and on appeal, the defense has not contested that Ms. Hammond was not raped. Nor has the defense contested that the rape – whoever committed it – was a vicious attack on the humanity of Ms. Hammond. The record on appeal, nevertheless, respectfully details the healing powers exhibited by Ms. Hammond and the significant difference between a murder and a rape.

To explain why the death penalty for a rapist was a disproportionate sentence, Justice Stewart wrote, “for the rape victim, life may not be nearly so happy as it was, but it is not over and normally is not beyond repair.” Coker, 433 U.S. at 597. This proved true for the rape victim in this case, Lavelle Hammond, whose life certainly “was not over and not beyond repair.”

Ms. Hammond underwent surgery to repair a tear in her vaginal cavity after she was raped. Dr. Scott Benton testified that “after two days the swelling is gone” and that the genital area came “back to normal in two weeks.”

Referencing photographs of the injuries displayed at trial, Dr. Benton testified:

After two days, the swelling is gone, and you see the stitches kind of holding the skin together.

Children heal incredibly rapidly, one of the remarkable values of youth. This is a two week follow-up, which is typical for what we do, and it shows you what, what some evidence of repair, normal, really should look like. . . . And almost without a scar, again, fairly traumatic healing, you can still see some of the, what we call absorbable sutures, are still kind of poking in and visible, and there’s, you know, obviously, an injury to the hymen there, that may never heal, but it’s functional, these things have come back to normal in two weeks.

In addition to her physical injuries, Ms. Hammond also appeared to recover quickly from the emotional trauma. Office of Career Services records lodged with the appellate record show that Ms. Hammond indicated no fear or psychological disturbance in the weeks and months following the rape, “Lavelle

appeared to be a very active and friendly 8 year old. She did not appear distraught, depressed or in any way saddened by the event of the rape.”

To execute Patrick Kennedy for a crime in which the victim was physically “back to normal” and “emotionally stable” after only a few weeks would be a shameful use of the death penalty.

C. The Death Penalty is Disproportionate and Excessive Given the Heightened Chance of Wrongful Convictions in this Case.

There has been heightened concern in the lacunae between the decision in State v. Wilson, and this date, concerning the chance of error in capital cases. In Atkins v. Virginia, one of the grounds on which the Court based its decision to invalidate the death penalty was its observation that mentally retarded defendants face a special risk of wrongful conviction. See Atkins, 536 U.S. 304, 321 (2002) (holding death penalty unconstitutional for defendants with mental retardation because of heightened risk of wrongful conviction)⁸

Rendering the risk of wrongful conviction a relevant factor in assessing the excessiveness of the death penalty, counsel must observe that defendants charged with aggravated rape of a child similarly face a special risk of wrongful execution. The rate of wrongful convictions for rape exceeds that for any other crime. ROB HALL, RAPE IN AMERICA 105 (1995). A study of exonerations during 1989-2003 revealed that 90% of non-homicidal exonerations involved rape

⁸ In Atkins, the Court observed that the death penalty was unconstitutional in that instance because “Mentally retarded defendants in the aggregate face a special risk of wrongful execution.” Id. The Court went on to observe:

... Despite the heavy burden that the prosecution must shoulder in capital cases, we cannot ignore the fact that in recent years a disturbing number of inmates on death row have been exonerated. As two recent high-profile cases demonstrate, these exonerations include mentally retarded persons who unwittingly confessed to crimes that they did not commit.

Id. at 321, n.25 citing See Baker, *Death-Row Inmate Gets Clemency; Agreement Ends Days of Suspense*, Washington Post, Jan. 15, 1994, p. A1; Holt & McRoberts, *Porter Fully Savors First Taste of Freedom; Judge Releases Man Once Set for Execution*, Chicago Tribune, Feb. 6, 1999, p. N1.

cases. Gross, *Innocence In Capital Sentencing: Exonerations in the United States 1989 through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 530 (2005). This high level of unfounded allegations among rape cases can likely be attributed to the prosecution's heavy reliance on testimony from the child-rape victims. State v. Wright, 598 So. 2d 561, 564-65 (La. App. 4th Cir. 1992) (well-settled that testimony of child-victim in rape case, without more, is sufficient to prove elements of the offense). Because courts afford great deference to a rape victim's testimony, many of these exonerations occurred only because of DNA evidence. Innocence In Capital Sentencing: Article, 95 J. CRIM. L. & CRIMINOLOGY 531 (finding that 87% of rape exonerations occurred because of DNA evidence).

The risk of wrongful conviction is especially great when the conviction, as in this case, results primarily from a child-witness's testimony. Studies suggest that child-witness testimony is more likely to be inaccurate than adult testimony. See James O'Brien Jr., Television Trials and Fundamental Fairness: The Constitutionality of Louisiana's Child Shield Law, 61 TUL. L. REV. 141, 150 (1986) (citing BERLINER & STEVENS, ADVOCATING FOR SEXUALLY ABUSED CHILDREN IN THE CRIMINAL JUSTICE SYSTEM 13 (Nov. 1976)). Children have inaccurate memories, an inability to communicate effectively the events they recall, and a subjective sense of time. *Id.* They are also subject to "memory-fade," meaning adults have better capacity to "remember" retained information. Loftus & Davies, *Distortions in the Memory of Children*, 40 J. SOC. ISSUES 51, 54 (1984) (in general, children have greater difficulty than adults in retrieving information from long-term memory). Other studies indicate that child-witnesses can be subject to an increased level of suggestibility by opposing counsel. Douglas P. Peters, *The Influence of Stress and Arousal on the Child Witness, in The Suggestibility Of Children's Recollections*, 75 (John Doris ed. 1991).

The reliance on a child-witness, combined with above problems, indicates a higher rate of false child-rape allegations and convictions. See John Johnson, *"Kids Don't Lie": Faith in this Assumption Led to Dozens of Unjust Molestation Convictions in Bakersfield, Today One Man Remains in Prison Even After Four of his Original Accusers Said he Never Touched Them*, L.A. TIMES, Aug. 10, 2003, § 9 at 16; see also Child Protection: Balancing Diverging Interests: Hearing Before the Senate Comm. on Labor and Human Resources and the Subcomm. on Children and Families, 104th Cong. (1995) (statement of father wrongly convicted of raping daughter, based primarily on daughter's testimony coerced by therapist). Consequently, allowing child-rape to be punished by death increases the likelihood of wrongful executions.⁹

Regardless of the general propriety or constitutionality of imposing a death sentence for aggravated rape, the facts in this case suggest that the imposition of an irrevocable punishment is excessive. There is no DNA evidence establishing that Mr. Kennedy committed the rape of Lavelle Hammond. The only evidence directly connecting Mr. Kennedy to the offense is the testimony of Ms. Hammond, which came some five years after the offense. During the first three years after the offense, Ms. Hammond steadfastly insisted that Mr. Kennedy was not responsible, claiming that two neighborhood teenagers were

⁹ Louisiana's death row is currently the twelfth largest in the country, with eighty-seven inmates immured there. See BUREAU OF JUSTICE STATISTICS, CAPITAL PUNISHMENT 1 (2004), <http://www.ojp.usdoj.gov/bjs/pub/pdf/cp04.pdf>. Since 1976, Louisiana has executed twenty-seven people, ranking it tenth among the states that authorize imposing the death penalty. *Id.* at 9. But Louisiana ranks third (behind only Florida and Illinois) in the number of exonerations during that same time period, with eight. Death Penalty Information Center, State by State Information: Louisiana, [http://www.deathpenaltyinfo.org/state/\(last+visited+Nov.+2,+2006\)](http://www.deathpenaltyinfo.org/state/(last+visited+Nov.+2,+2006)). That is, for every four executions in Louisiana there has been at least one wrongfully convicted inmate on death row. Given its population, per capita, Louisiana leads the nation in wrongful convictions. Because of the high level of wrongful convictions in rape cases, and the inability to rely fully on a child-victim's testimony, imposition of the death penalty based solely on the testimony of a child-witness renders the death sentence excessive.

responsible.¹⁰ Indeed, the only way the State secured a conviction at all was through the delayed disclosure of exculpatory evidence (an exculpatory videotape and test results indicating that the blood on the mattress pad did not belong to the victim or the defendant in this case) until such time as the victim in this case changed her testimony and identified the defendant as the perpetrator. That the victim made a variety of inconsistent statements throughout the proceeding does nothing to further confidence in the outcome of this extraordinary case.

CONCLUSION

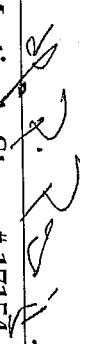
Mr. Kennedy would be the first person executed for a non-homicide rape in Louisiana for over fifty years. Assuming, *arguendo*, the constitutionality of the capital rape statute, the imposition of the death penalty on Mr. Kennedy is excessive, wanton, arbitrary and freakish.

Given the circumstances of the evidence in this case – no D.N.A., the late disclosure of exculpatory evidence, and the contradictory statements made by the State's only witness – the imposition of the death penalty creates an unnecessary risk of wrongful conviction. Given the fact that there have been hundreds of other defendants indicted for capital rape who have not received the death penalty, it plainly appears that the sentence in this case – where the victim recovered in days or weeks after the offense – is wanton or freakish. Moreover, given the fact that dozens of defendants have received lesser sentences for far worse offenses, the imposition of the death penalty in this case appears excessive and unnecessary.

Accordingly, if Kennedy's conviction is not reversed or this case remanded for other errors in the penalty phase to be corrected, then, for the

reasons set forth herein, Defendant-Appellant Patrick Kennedy prays that his death sentence be vacated.

Respectfully submitted,


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Certificate of Service

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