

APPENDIX A

1 IN THE CIRCUIT COURT OF THE THIRTEENTH
2 JUDICIAL CIRCUIT OF THE STATE OF FLORIDA,
3 IN AND FOR HILLSBOROUGH COUNTY
4 CRIMINAL DIVISION

4 STATE OF FLORIDA,)
5 Plaintiff,) Case No.: 98-17084
6 vs.)
7 WILLIE CRAIN,) Division: "G"
8 Defendant.)
9

10
11 JURY TRIAL SECOND PHASE (VOL. XXIII)

12
13 BEFORE: THE HONORABLE BARBARA FLEISCHER
14 Circuit Judge

15 TAKEN AT: Courtroom No. 14
16 Hillsborough County
17 Courthouse Annex,
18 Tampa, Florida.

19 DATE: September 17, 1999
11:45 a.m.

20 REPORTED BY: Althea C. Williams-Gonzalez
21 Official Court Reporter
22 Notary Public,
23 State of Florida at Large.

24 STENOGRAPHICALLY RECORDED (ORIGINAL
25 COMPUTER-AIDED TRANSCRIPTION (COPY 

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1 APPEARANCES:

2

3 On behalf of the Plaintiff:

4 JAY PRUNER, ESQUIRE
5 Assistant State Attorney
6 State Attorney's Office
7 Courthouse Annex
8 Tampa, FL 33602

9 CHRIS MOODY, ESQUIRE
10 Assistant State Attorney
11 State Attorney's Office
12 Courthouse Annex
13 Tampa, FL 33602

14 On behalf of the Defendant:

15 DANIEL M. HERNANDEZ, ESQUIRE
16 902 North Armenia Avenue
17 Tampa, FL 33609

18 CHARLES J. TRAINA, ESQUIRE
19 P. O. BOX 625
20 Brandon, FL 33509

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I N D E XWitnesses for State:

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1 jury in, please.

2 THE BAILIFF: Yes, ma'am.

3 THE COURT: Hold up. L.A, one
4 minute, I'm sorry. Now you folks who are
5 in here now, I am going to be reading
6 these jurors instructions.

7 It's disconcerting for people to
8 be coming and going; so if you don't wanna
9 remain, I urge you to leave at this time.
10 Otherwise, I ask that you remain until I
11 complete the instructions, okay? Thank
12 you. Bring the jury in, please.

13 (Thereupon, the jurors enter
14 the courtroom at 11:41)

15 JURY CHARGE

16 THE COURT: Ladies and gentlemen
17 of the jury, it is now your duty to advise
18 the Court as to what punishment should be
19 imposed upon the defendant for his crime
20 of Murder in the First Degree.

21 As you have been told, the final
22 decision as to what punishment shall be
23 imposed, is my responsibility. However,
24 your advisory sentence as to what sentence
25 should be imposed on the defendant, is

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1 entitled by law and will be given great
2 weight by this Court in determining what
3 sentence to impose in this case.

4 It is only under rare
5 circumstances that this Court could impose
6 a sentence other than what you recommend.
7 It is your duty to follow the law that I
8 will now give you, and render to me an
9 advisory sentence based upon your
10 determination as to whether sufficient
11 aggravating circumstances exist to justify
12 the imposition of the death penalty; or
13 whether sufficient mitigating
14 circumstances exist to outweigh any
15 aggravating circumstances found to exist.

16 Your advisory sentence should be
17 based upon the evidence that you have
18 heard while trying the guilt or innocence
19 of the defendant, and evidence that has
20 been presented to you in these
21 proceedings.

22 The aggravating circumstances
23 that you may consider are limited to any
24 one of the following that are established
25 by the evidence:

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1 That, one, the defendant has
2 been previously convicted of a felony
3 involving the use of threat of violence to
4 some person.

5 Excuse me, I'll read that again.
6 The defendant has been previously
7 convicted of a felony involving the use or
8 threat of violence to some person.

9 The crime of Sexual Battery is a
10 felony involving the use or threat of
11 violence to another person. The crime of
12 Aggravated Child Abuse is a felony
13 involving the use or threat of violence to
14 another person.

15 Two, the crime for which the
16 defendant is to be sentenced, was
17 committed while he was engaged in the
18 commission of or an attempt to commit
19 Kidnapping.

20 And, three, the victim of the
21 capital felony was a person less than 12
22 years of age. The State may not rely upon
23 a single aspect of the offense to
24 establish more than one aggravating
25 circumstance.

1 Therefore, if you find that two
2 or more of the aggravating circumstances
3 are proven beyond a reasonable doubt by a
4 single aspect of the offense, you are to
5 consider that as supporting only one
6 aggravating circumstance.

7 If you find the aggravating
8 circumstances do not justify the death
9 penalty, your advisory sentence should be
10 one of life imprisonment.

11 Should you find sufficient
12 aggravating circumstances do exist, it
13 will then be your duty to determine
14 whether mitigating circumstances exist
15 that outweigh the aggravating
16 circumstances.

17 Among the mitigating
18 circumstances you may consider, if
19 established by the evidence, are: One,
20 the crime for which the defendant is to be
21 sentenced, was committed while he was
22 under the influence of extreme mental or
23 emotional disturbance.

24 Two, the capacity of the
25 defendant to appreciate the criminality of

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1 his conduct or to conform his conduct to
2 the requirements of law, was substantially
3 impaired.

4 Three, any one of the following
5 circumstances that would mitigate against
6 the imposition of the death penalty: Any
7 other aspect of the defendant's character,
8 record or background; any other
9 circumstance of the offense.

10 Each aggravating circumstance
11 must be established beyond a reasonable
12 doubt before it may be considered by you
13 in arriving at your decision.

14 If one or more aggravating
15 circumstances are established, you should
16 consider all the evidence tending to
17 establish one or more mitigating
18 circumstances and give that evidence such
19 weight as you feel it should receive in
20 reaching your conclusion as to the
21 sentence that should be imposed.

22 A mitigating circumstance need
23 not be proved beyond a reasonable doubt by
24 the defendant. If you are reasonably
25 convinced that a mitigating circumstance

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exists, you may consider it as established.

The sentence that you recommend to the Court must be based upon the facts as you find them from the evidence and the law.

You should weigh the aggravating circumstances against the mitigating circumstances, and your advisory sentence must be based on these considerations.

You have heard evidence about the impact of this homicide on the family of the victim. This evidence may be considered by you to determine the victim's uniqueness as an individual human being, and the resultant loss to the community by the victim's death.

However, the law does not allow you to weigh this evidence as an aggravating circumstance. Your recommendation to the Court must be based only on the aggravating circumstances and the mitigating circumstances about which I have instructed you.

In these proceedings, it is not
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1 necessary that the advisory sentence of
2 the jury be unanimous. The fact that the
3 determination of whether you recommend a
4 sentence of death or a sentence of life
5 imprisonment in this case can be reached
6 by a single ballot should not influence
7 you to act hastily or without due regard
8 to the -- excuse me -- without due regard
9 to the gravity of these proceedings.

10 Before you ballot, you should
11 carefully weigh, sift and consider the
12 evidence, and all of it, realizing that
13 human life is at stake, and bring to bear
14 your best judgment in reaching your
15 advisory sentence.

16 If a majority of the jury
17 determines that Willie Seth Crain should
18 be sentenced to death, your advisory
19 sentence will be: "A majority of the
20 jury, by a vote of whatever the vote is,
21 advise and recommend to the Court that it
22 impose the death penalty upon Willie Seth
23 Crain."

24 On the other hand, if by six or
25 more votes the jury determines that Willie

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1 Seth Crain should not be sentenced to
2 death, your advisory sentence will be:
3 "The jury advises and recommends to the
4 Court that it impose a sentence of life
5 imprisonment upon Willie Seth Crain
6 without the possibility of parole."

7 You may be polled at the end of
8 this part of the trial as you were at the
9 end of the first phase of the trial. You
10 will not be asked to disclose your
11 individual vote; you will only be asked to
12 confirm the jury recommendation.

13 You will now retire to consider
14 your recommendation. When you have
15 reached an advisory sentence in conformity
16 with these instructions, that form of
17 recommendation should be signed by your
18 foreperson and returned to the Court. Is
19 there anything further before I excuse the
20 alternates?

21 MR. PRUNER: No, ma'am.

22 MR. TRAINA: No, Judge.

23 THE COURT: Now, Mr. Smith; Mr.
24 Vanatta; Ms. Jason; Mr. Williams and
25 Ms. Regalla, I'm gonna ask again that you

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1 remain, um, with us briefly, so that I can
2 talk with you briefly.

3 You, obviously, are all aware
4 that you are the alternates in this -- in
5 this case. And I know that you were more
6 than willing to step in, if need be; and I
7 do have some other comments to make to
8 you, so I ask, again, that, um, you remain
9 with us.

10 I would ask that the bailiff
11 take the jury into the jury room. Just so
12 the record's clear, the alternate advisory
13 sentence forms will be given to you
14 obviously, as will the instructions that I
15 have just read to you.

16 Also all of the evidence, not
17 only from this phase of the trial, but
18 from the first phase of the trial, will be
19 placed in the jury room if you want to
20 look at it. Take the jury out, please.

21 (Thereupon, the jury leaves
22 the courtroom at 11:52).

23 THE COURT: Now I wanna say
24 something to you, because I've been around
25 a long time. Um, you folks have been

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1 extraordinary and I wanted to say that to
2 you.

3 I realize that I am very
4 demanding; I don't think there's anybody
5 presently in the courtroom who would
6 disagree. Um, I haven't heard a thing.

7 And I understand that; um, and
8 I'm not saying that that's necessarily
9 good, but I know myself well enough to
10 know that.

11 You have put up with all of the
12 restrictions and the demands that, um,
13 I've put on you. And I do want you to
14 know that, um, you have, again, gone way
15 out of your way, I think, um, to be here
16 on time, to put up with delays that could
17 be foreseen, such as holidays that
18 extended this trial, and some of the
19 delays that could not be foreseen, such as
20 the threat of a hurricane.

21 Um, and I -- I want you to know
22 that, um, I speak on behalf of the State
23 and the defense and -- and, certainly,
24 myself that, um, you have more than done
25 your jury service.

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1 I hope that as you reflect on
2 that service, for the most part, it will
3 be a positive experience and I do hope
4 that you will come back if called upon and
5 serve again.

6 Um, I'm going to lift all of the
7 restrictions, obviously. Um, there are
8 people probably who would like to speak
9 with you.

10 It is up to you to decide
11 whether you wish to speak with anybody or
12 whether you don't wish to speak with
13 anybody.

14 I'm going to, um, suggest that,
15 um, those of you who want to speak or
16 don't mind speaking with somebody, can
17 certainly do that.

18 If you wish to remain in the
19 courtroom and await the -- the, um, jury's
20 decision, you, certainly, can do that.
21 And if you'll remain, actually a lunch has
22 been ordered for you and -- and you can
23 have that lunch.

24 If you do not want to speak to
25 anybody, um, I'm gonna ask the bailiff to

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1 make sure that nobody does speak with
2 these folks.

3 And if you want to speak with
4 somebody, as I indicated to you a few
5 minutes ago, you can read what you want,
6 you can talk with anybody, you can do
7 anything that you like, um, about this
8 case or anything else at this point.

9 If you don't want to remain and
10 await the jury's decision, but you're
11 interested in what that decision is, um,
12 the bailiff will make sure you have my --
13 my phone number.

14 And if you wish not to remain
15 and want to be escorted to your car, a
16 bailiff will make that arrangement as
17 well, okay?

18 So you folks can decide how
19 you -- how you want to do this; and,
20 again, I thank you, and you're excused.
21 Mr. Smith, you had a question?

22 MR. SMITH: Where do we remain?

23 THE COURT: You can remain right
24 here, you can remain outside, you can
25 remain wherever -- wherever you're

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1 comfortable; there's no reason why you
2 cannot remain in the courtroom, certainly.

3 Um --

4 (Thereupon, the jury's recommendation
5 was awaited)

6 THE COURT: Charlotte, do you
7 wanna get the people out of that anthem --
8 antiway (phonetic).

9 THE BAILIFF: Yes, ma'am.

10 THE COURT: Thank you. Okay.
11 Now I need your attention for a moment,
12 please. I've asked you who've been in
13 this courtroom throughout the course of
14 the trial, to, please, not show any
15 reaction whatsoever to anything that has
16 been said by a witness or by an attorney;
17 and you have all done as this Court has
18 asked.

19 I realize, again, that this is a
20 very difficult time for many of you
21 because of your concerns either for the
22 victim, or for the defendant, or for that
23 matter, both.

24 And I realize that it's very
25 difficult to control your emotions in this

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1 setting, but I am asking you once again if
2 you do not feel that you can control
3 yourself when you hear this jury's
4 recommendation, then I want you to leave
5 the courtroom now.

6 If you find that you had thought
7 that you could control yourself, but
8 cannot, then I want you to pick yourself
9 up and leave the courtroom.

10 These jurors have worked long
11 and hard to reach whatever decision they
12 will have reached and I do not want them
13 to feel in any way any criticism of their
14 recommendation.

15 Does anybody not understand what
16 I have said? Okay. Thank you. I would
17 ask one final thing. If you have any
18 beepers or telephones, please doublecheck
19 and make sure that those beepers and
20 telephones are turned off.

21 And I'd ask the bailiffs if
22 there are people coming in during this --
23 and you can let them come in -- if there
24 are people coming in, I want them asked --

25 THE BAILIFF: Yes, ma'am.

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1 THE COURT: -- specifically if
2 they have a beeper or a telephone and,
3 please, to check and make sure that it's
4 off. Thanks. Okay. Bring the jury in,
5 please.

6 (Thereupon, the jurors enter
7 the courtroom at 1:37)

8 THE JURY'S RECOMMENDATION

9 THE COURT: Ms. Cardone, without
10 telling me what your recommendation is,
11 have you, in fact, reached an advisory
12 recommendation for the Court?

13 THE FOREPERSON: Yes, your
14 Honor.

15 THE COURT: I would ask that you
16 hand that recommendation, please, to the
17 bailiff.

18 (Thereupon, the foreperson complies)

19 THE COURT: Thanks. Publish the
20 recommendation, please.

21 THE CLERK: State of Florida
22 versus Willie Seth Crain. Advisory
23 sentence. The majority of the jury, by a
24 vote of 12 to zero, advise and recommend
25 to the Court that it impose the death

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1 penalty upon Willie Seth Crain, dated at
2 Tampa Hillsborough County Florida, the
3 17th day of September, 1999, signed by the
4 foreperson of the jury, Sharon Cardone.

5 THE COURT: Is there anything
6 further from the State or the defense at
7 this time?

8 MR. PRUNER: No, ma'am.

9 MR. TRAINA: Judge, could you
10 ask that the jury be polled, please?

11 THE COURT: Yes. Members of the
12 jury, I am going to ask each of you
13 individually about the advisory sentence.
14 It's not necessary that you state how you
15 personally voted, or how any other person
16 voted, but only if the advisory sentence
17 as read was correctly stated.

18 Mr. Bechtold, do you agree and
19 confirm that a majority of the jury joined
20 in the advisory sentence that you have
21 just heard read by the clerk?

22 MR. BECHTOLD: Yes.

23 THE COURT: Mr. Samson?

24 MR. SAMSON: Yes?

25 THE COURT: Do you agree and

1 confirm -- I have to -- I have to finish
2 this, okay? I know you're about to say,
3 "yes", but I need to finish it so that the
4 record is clear.

5 Mr. Samson, do you agree and
6 confirm that a majority of the jury joined
7 in the advisory sentence that you have
8 just heard read by the clerk?

9 MR. SAMSON: Yes.

10 THE COURT: Mr. Krotzer, do you
11 agree and confirm that a majority of the
12 jury joined in the advisory sentence that
13 you have just heard read by the clerk?

14 MR. KROTZER: Yes.

15 THE COURT: Mr. Finnicum, do
16 agree and confirm that a majority of the
17 jury joined in the advisory sentence that
18 you have just heard read by the clerk?

19 MR. FINNICUM: Yes.

20 THE COURT: Mr. Riedl, do you
21 agree and confirm that a majority of the
22 jury joined in the advisory sentence that
23 you have just heard read by the clerk?

24 MR. RIEDL: Yes.

25 THE COURT: Mr. Dougherty, do

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1 you agree and confirm that a majority of
2 the jury joined in the advisory sentence
3 that you have just heard read by the
4 clerk?

5 MR. DOUGHERTY: Yes.

6 THE COURT: Ms. Schramer, do you
7 agree and confirm that a majority of the
8 jury joined in the advisory sentence that
9 you have just heard read by the clerk?

10 MS. SCHRAMER: Yes.

11 THE COURT: Mr. Ochenrider, do
12 you agree and confirm that a majority of
13 the jury joined in the advisory sentence
14 that you have just heard read by the
15 clerk?

16 MR. OCHENRIDER: Yes.

17 THE COURT: Ms. Dagata, do you
18 agree and confirm that a majority of the
19 jury joined in the advisory sentence that
20 you have just heard read by the clerk?

21 MS. DAGATA: Yes.

22 THE COURT: Ms. Crawford, do you
23 agree and confirm that a majority of the
24 jury joined in the advisory sentence that
25 you have just heard read by the clerk?

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1 MS. CRAWFORD: Yes.

2 THE COURT: Ms. Cardone, do you
3 agree and confirm that a majority of the
4 jury joined in the advisory sentence that
5 you have just heard read by the clerk?

6 MS. CARDONE: Yes.

7 THE COURT: Ms. Oliver, do you
8 agree and confirm that a majority of the
9 jury joined in the advisory sentence that
10 you have just heard read by the clerk?

11 MS. OLIVER: Yes.

12 THE COURT: Thank you. Is there
13 anything further from the State or the
14 defense at this time?

15 MR. PRUNER: No, ma'am.

16 MR. TRAINA: No, your Honor.

17 THE COURT: Now, members of the
18 jury, I have one final instruction for
19 you. I do wanna thank you for your time
20 and your consideration of this case.

21 I also want to advise you of
22 some privileges enjoyed by jurors. No
23 juror can ever be required to talk about
24 the discussions that occurred in the jury
25 room, except by Court order.

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1 For many centuries our society
2 has relied upon juries for consideration
3 of difficult cases. We have recognized
4 for hundreds of years that a jury's
5 deliberations, discussions and votes
6 should remain their private affair, as
7 long as they wish it; therefore, the law
8 gives you a unique privilege not to speak
9 about the jury's work.

10 Although you are at liberty to
11 speak with anyone about your
12 deliberations; you are also at liberty to
13 refuse to speak to anyone.

14 A request may come from those
15 who are simply curious or from those who
16 might seek to find fault with you. It
17 will be up to you to decide whether to
18 preserve your privacy as a juror.

19 And I do -- I would feel remiss
20 if I did not add to the formal instruction
21 that you have, throughout the course of
22 this trial that has been extended because
23 of holidays and because of hurricane
24 threats, you have, each of you, because I
25 have observed each of you, you have

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1 cooperated, I think, to an extraordinary
2 extent with a very demanding Judge.

3 You have kept to a schedule, um,
4 with little or no complaint that I, at
5 least, have heard, and I want to express
6 my thanks and the thanks of everybody who
7 has been a participant in this trial.

8 Um, you have more than done your
9 jury service. I hope as you reflect on
10 it, as difficult on you as it may have
11 been at times, as restricted, um, the
12 conditions were that were set for you at
13 times, um, I hope that when you reflect on
14 your jury service, it will have been a
15 positive experience for the most part.

16 Now I am lifting, obviously, all
17 of those restrictions that I set out for
18 you. As the instruction, the formal
19 instruction I read to you has indicated,
20 you're, obviously, free to discuss with
21 anybody or not discuss with anybody as you
22 choose to do.

23 Now I'm going to tell you I'm
24 gonna ask those alternates who are still
25 with us, to join the jurors and accompany

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1 the bailiff. The bailiff will -- will
2 take you safely, um, to your cars at this
3 time. Thank you.

4 (Thereupon, the jury leaves
5 the courtroom at 1:45)

6 THE COURT: Now I'm gonna ask
7 the attorneys to bring with them
8 calendars. Um, we will meet next week.
9 Um, I'd like you to look at your
10 calendars, at this point.

11 What I want to do when we meet
12 is establish a time for a Spencer hearing,
13 um, and I want to talk with you. Um, I am
14 asking both sides to prepare sentencing
15 memoranda.

16 I am specifically asking the
17 defendant -- although I have taken
18 extensive notes, um, throughout the course
19 of this phase of the trial, um, and intend
20 to get a transcript -- I would want the
21 defense particularly to list any and all
22 mitigating factors that this Court should
23 consider.

24 Um, I would ask that we meet
25 either Tuesday or Wednesday of next week,

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1 and I don't really have a preference at
2 this point, simply for scheduling
3 purposes. So if you want to tell me or
4 you want to call my office, I -- I don't
5 have any problem with that.

6 MR. HERNANDEZ: Judge, um,
7 Tuesday would be better for me than
8 Wednesday.

9 THE COURT: Mr. Traina?

10 MR. TRAINA: That's fine, Judge.

11 THE COURT: Fine. Then I would
12 ask that, um -- it's a trial week for me
13 next week, so I'm gonna ask that, um, we
14 meet, um, at 8:00 so that I can schedule.

15 I will tell you now that
16 tentatively I'm looking for that Spencer
17 hearing to occur the afternoon of
18 October 11th; and I'd ask that you see
19 what your schedules permit.

20 Um, it would be probably
21 beginning at 1:30 in the afternoon; so
22 that's what I'm looking to. That was the
23 date, um, that I think is available at
24 this time.

25 Obviously, it's subject to

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1 change depending on what your schedules
2 are as well. And when we meet on Tuesday
3 with -- if the October 11th date works,
4 then we'll agree on a sentencing date,
5 hopefully, after October 11th, obviously.

6 So does anybody else have any
7 issues at this time? No? Fine. We'll
8 see you, then, on Tuesday, the 21st, at
9 8:00. Thank you.

10 THE CLERK: Judge, you want the
11 defendant brought over on Tuesday?

12 THE COURT: Yes.

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C E R T I F I C A T E

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, ALTHEA WILLIAMS-GONZALEZ, Official Court Reporter for the Circuit Court of the Thirteenth Judicial Circuit of the State of Florida, in and for Hillsborough County.

DO HEREBY CERTIFY, that I was authorized to and did report in shorthand the proceedings and evidence in the above-styled cause, as stated in the caption hereto, and that the foregoing pages, numbered 3512 to 3683, inclusive, constitute a true and correct transcription of said shorthand report of said proceedings and evidence.

IN WITNESS WHEREOF, I have hereunto set my hand in the City of Tampa, County of Hillsborough, State of Florida, this 13th day of February, 2001.

BY:


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