

No. 20-\_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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**JAMES GALEN HANNA,**

*Petitioner*

vs.

**TIM SHOOP, Warden**

*Respondent*

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ON PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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APPENDIX TO  
PETITION FOR WRIT OF CERTIORARI

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2008); *United States v. Lloyd*, 462 F.3d 510, 518–19 (6th Cir. 2006); *United States v. Norton*, 867 F.2d 1354, 1366 (11th Cir. 1989); *United States v. Blackburn*, 446 F.2d 1089, 1090–91 (5th Cir. 1971). As one court noted, that type of allegation “can suggest the normal dynamic of jury deliberations, with the intense pressure often required to reach a unanimous decision.” *United States v. Cuthel*, 903 F.2d 1381, 1383 (11th Cir. 1990). Or, as another said, “total placidity is not the nature of jury deliberation.” *United States v. Tallman*, 952 F.2d 164, 167 (8th Cir. 1991). We instead take *Peña-Rodriguez* at its word: to require *express* statements of racial animus, not *neutral* statements that may suggest unexpressed racial biases.

[22] Brooks lastly relies on an encounter with another juror whose social-media posts suggested he might harbor racial animus. But this encounter undermines Brooks’s claim that *Peña-Rodriguez* imposes broad inroads into the no-impeachment rule. Once the posts were brought to the district court’s attention before trial, the court questioned the juror and excused him for cause. This pretrial incident confirms that courts have other tools at their disposal to “protect against the scourge of racially motivated verdicts without discarding the no-impeachment rule.” *Birchette*, 908 F.3d at 57.

We affirm.



**IN RE: James HANNA, Movant.**

**No. 19-3881**

United States Court of Appeals,  
Sixth Circuit.

Decided and Filed: February 11, 2021

**Background:** Following affirmance, 95 Ohio St.3d 285, 767 N.E.2d 678, of state prisoner’s murder conviction and death sentence, and affirmance, 694 F.3d 596, of denial of federal habeas relief, prisoner filed second-in-time petition for federal habeas relief, without seeking leave from the Court of Appeals. The United States District Court for the Southern District of Ohio, Thomas M. Rose, Senior District Judge, adopted the order of Michael R. Merz, United States Magistrate Judge, 2019 WL 4242735, which granted warden’s motion to transfer the case to the Court of Appeals for a determination of whether leave should be granted to file a successive petition. Inmate filed motion for leave to file a successive petition, and filed a motion for remand which asserted that the second-in-time petition was not successive.

**Holdings:** The Court of Appeals held that prisoner’s second-in-time petition was successive.

Motions denied.

Moore, Circuit Judge, filed a dissenting opinion.

**1. Habeas Corpus ⇄896**

With respect to the filing of a successive habeas petition, the abuse-of-the-writ doctrine concentrates on a petitioner’s acts, to determine whether he has a legitimate excuse for failing to raise a claim at the appropriate time.

**2. Habeas Corpus ⇄896**

The Antiterrorism and Effective Death Penalty Act (AEDPA) modifies

abuse-of-the-writ principles with respect to a state prisoner's filing of a successive habeas petition, and creates new statutory rules. 28 U.S.C.A. § 2244(b).

### 3. Habeas Corpus ⇔894.1

State prisoner's second-in-time petition for federal habeas relief was a successive petition, for purposes of Antiterrorism and Effective Death Penalty Act (AEDPA), which denied federal habeas courts the jurisdiction to adjudicate a successive petition that sought to present claims that had already been adjudicated in a previous petition, where Court of Appeals had previously rejected prisoner's claims, which he asserted in second-in-time petition, that his counsel were ineffective, at penalty phase of capital murder trial, in failing to present certain experts who could have offered mitigation evidence, including psychologist who could have testified that stresses of lifelong incarceration, compounded with prisoner's organic neurological defects and troubled childhood, directly contributed to the attack, even if first petition had not focused on prisoner's current claims of brain damage or history of sexual abuse, and even if current claims had not previously been properly presented in context of prisoner's mental illnesses. U.S. Const. Amend. 6; 28 U.S.C.A. § 2244(b)(1).

### 4. Habeas Corpus ⇔894.1

The Antiterrorism and Effective Death Penalty Act (AEDPA) denies federal habeas courts the jurisdiction to adjudicate a state prisoner's successive petition that seeks to present claims that have already been adjudicated in a previous petition. 28 U.S.C.A. § 2244(b)(1).

### 5. Habeas Corpus ⇔898(1)

Even assuming that state prisoner's claim, in successive federal habeas petition, that his counsel were ineffective, at penalty phase of capital murder trial, in failing to present mitigation evidence from ex-

perts regarding prisoner's brain damage and history of sexual abuse, involved a factual predicate that could not have been discovered previously through the exercise of due diligence, as element for allowing a successive petition, mitigation evidence, categorically, did not satisfy the additional element requiring that the newly-discovered evidence establish the prisoner's actual innocence. U.S. Const. Amend. 6; 28 U.S.C.A. § 2244(b)(2)(B).

### 6. Habeas Corpus ⇔898(1)

Exceptions to a state prisoner's federal habeas petition being deemed second or successive under the abuse-of-the-writ doctrine are generally restricted to two scenarios: (1) the claim was not ripe when the earlier petition was filed, or (2) the earlier petition was dismissed for failure to exhaust.

### 7. Habeas Corpus ⇔894.1

The restrictions, in the Antiterrorism and Effective Death Penalty Act (AEDPA), on a state prisoner's filing of a second or successive petition for federal habeas relief do not apply to petitions challenging intervening judgments. 28 U.S.C.A. § 2244(b).

### 8. Habeas Corpus ⇔898(2)

Even if continuity of counsel, i.e., same public defender's office had represented state prisoner in his state postconviction proceedings and in his initial federal habeas proceeding, had created a conflict of interest that had prevented counsel from raising, in initial federal habeas petition, a claim that counsel were ineffective, at penalty phase of capital murder trial, in failing to present mitigation evidence from experts regarding prisoner's brain damage and history of sexual abuse, such hypothetical conflict of interest did not support an exception to the abuse-of-the-writ doctrine, as would allow

prisoner to file a second or successive federal habeas petition. U.S. Const. Amend. 6; 28 U.S.C.A. § 2244(b).

### 9. Criminal Law ⇌1969

Simply not raising a particular argument on appeal does not constitute ineffective assistance of appellate counsel. U.S. Const. Amend. 6.

On Motion for Leave to File a Second or Successive Habeas Corpus Petition and On Motion to Remand. United States District Court for the Southern District of Ohio at Dayton. No. 3:19-cv-00231—Thomas M. Rose, District Judge.

ON MOTION FOR LEAVE TO FILE A SECOND OR SUCCESSIVE HABEAS CORPUS PETITION AND ON MOTION TO REMAND: Paul R. Bottei, Allen L. Bohnert, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Columbus, Ohio, for Movant. ON RESPONSE: Stephen E. Maher, OFFICE OF THE OHIO ATTORNEY GENERAL, Columbus, Ohio, for Respondent.

Before: SILER, MOORE, and CLAY, Circuit Judges.

The court delivered an order. MOORE, Circuit Judge (pp. 611-16), delivered a separate dissenting opinion.

### ORDER

James Hanna, an Ohio death-row prisoner represented by counsel, has filed two motions. He requests leave to file a second or successive 28 U.S.C. § 2254 habeas corpus petition. *See* 28 U.S.C. § 2244(b)(3)(A). He also moves the Court to remand his pending petition to the district court, arguing that his second-in-time petition is not successive such that his claims must meet the requirements of § 2244(b). We deny both motions.

Hanna was convicted of aggravated murder and sentenced to death. He exhausted direct-appeal and state postconviction remedies, then filed a federal habeas corpus petition, which the district court denied and dismissed with prejudice. *Hanna v. Ishee*, No. C-1:03-cv-801, 2009 WL 485487 (S.D. Ohio Feb. 26, 2009), *aff'd*, 694 F.3d 596 (6th Cir. 2012), *cert. denied sub nom. Hanna v. Robinson*, 571 U.S. 844, 134 S.Ct. 101, 187 L.Ed.2d 74 (2013). We specifically rejected Hanna's claim that he was deprived of effective assistance in mitigation because his counsel failed to present a psychologist to testify as to how organic neurological defects and a troubled childhood, in combination with lifelong incarceration, contributed to the aggravated murder.

Hanna returned to the district court on August 5, 2019 and filed the federal habeas corpus petition now before us. It raises four claims, all alleging that counsel ineffectively assisted Hanna in the penalty phase: (A) counsel failed to present neuroimaging evidence; (B) counsel failed to present mitigating evidence that Hanna suffered from severe mental illnesses at the time of the offense (post-traumatic stress disorder, major depression, and borderline personality disorder) caused by severe sexual abuse and complex trauma; (C) counsel failed to present mitigating evidence that Hanna has, and had at the time of the offense, a serious mental disorder caused by brain damage; and (D) counsel's errors, combined, deprived Hanna of effective assistance in the penalty phase and of a fair and reliable sentencing hearing. The magistrate judge concluded that the petition was a successive petition, which may not be filed without this Court's permission. 28 U.S.C. § 2244(b)(3)(A). He ordered the case transferred here for that permission. Hanna appealed, and the district judge overruled Hanna's objections,



adopted the magistrate judge's transfer order, and transferred the case. Once here, Hanna filed the two motions aforementioned: the § 2244 motion seeking leave to file a successive petition and the motion to remand the case.

Hanna argues, and the dissent agrees, that § 2244, which governs the finality of federal habeas proceedings, does not apply in this case. Hanna concedes that his proposed petition is the second federal habeas corpus petition he has filed and, thus, second in time, but he argues that it is not "second or successive" in the § 2244 sense. Citing *In re Bowen*, 436 F.3d 699, 704 (6th Cir. 2006), he argues that "a second-in-time petition is a 'second or successive' petition only if it constitutes an 'abuse of the writ.'" He contends that his petition does not abuse the writ. According to him, his new claims could not have been raised in his first petition because his previous federal habeas counsel suffered a conflict of interest that prevented their raising the claims—hence § 2244 does not apply, he needs no permission to file, and his proposed petition should be remanded to the district court for treatment as a first petition.

[1] As an initial matter, the abuse-of-the-writ doctrine is no help to Hanna because he raises claims that were presented in the prior petition. The abuse-of-the-writ doctrine "concentrate[s] on a petitioner's acts to determine whether he has a legitimate excuse for failing to raise a claim at the appropriate time." *McCleskey v. Zant*, 499 U.S. 467, 490, 111 S.Ct. 1454, 113 L.Ed.2d 517 (1991). It is not applicable here because Hanna's claims of ineffective assistance in mitigation relating to his brain damage and history of abuse were raised in the previous petition.

[2] Moreover, the abuse-of-the-writ doctrine is applied in light of the Antiterrorism and Effective Death Penalty Act

("AEDPA"), 28 U.S.C. § 2241 *et seq.*, the relevant statute. "AEDPA modifies those abuse-of-the-writ principles and creates new statutory rules under § 2244(b)." *Magwood v. Patterson*, 561 U.S. 320, 337, 130 S.Ct. 2788, 177 L.Ed.2d 592 (2010). If the petitioner's claims fall within a scenario addressed by § 2244, the petition is successive and must satisfy § 2244(b). *See In re Wogenstahl*, 902 F.3d 621, 627–28 (6th Cir. 2018) (*per curiam*).

[3, 4] The current petition is a successive petition and must be dismissed. "A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed." 28 U.S.C. § 2244(b)(1). This Court previously rejected Hanna's claims that his counsel were ineffective for failing to present certain experts, including a psychologist, who specifically "could have testified that the stresses of lifelong incarceration, compounded with his organic neurological defects and troubled childhood, directly contributed to the attack." *Hanna*, 694 F.3d at 617. Accordingly, Hanna "seeks to present claims that have already been adjudicated in a previous petition," and "AEDPA denies federal courts the jurisdiction to adjudicate such a petition" under § 2244(b)(1). *Post v. Bradshaw*, 422 F.3d 419, 425 (6th Cir. 2005).

The dissent concludes that Hanna's current claims are new because brain damage and Hanna's history of sexual abuse were not the focus of his first § 2254 petition or properly presented in the context of his mental illnesses. That Hanna "seeks to supplement with new evidence his claims" that counsel were ineffective at the penalty phase of trial for failing to properly present evidence of his organic brain damage and sexual abuse "would be representing already presented claims." *Moreland v.*

*Robinson*, 813 F.3d 315, 325 (6th Cir. 2016) (citing *Gonzalez v. Crosby*, 545 U.S. 524, 531, 125 S.Ct. 2641, 162 L.Ed.2d 480 (2005)). The dissent’s reference to *Wogenstahl*, where the petitioner sought to bring a completely new *Brady* claim, is therefore distinguishable. See *In re West*, 402 F. App’x 77, 79 (6th Cir. 2010) (holding that claim that counsel was ineffective “for failing to present *additional* pieces of evidence that—like the evidence we already considered—painted [the petitioner] as a troubled individual” was not new). Hanna’s petition must be dismissed under § 2244(b)(1).

[5] Hanna has also not shown that he meets the requirements for consideration of a second or successive petition under § 2244(b)(2). Hanna does not claim that his new petition relies on a new rule of constitutional law under § 2244(b)(2)(A), but it allegedly depends on a factual predicate—the scenario addressed by § 2244(b)(2)(B). The dissent’s contention that Hanna’s petition is not based on a new factual predicate is belied by the petition itself, which seeks “an evidentiary hearing to enable James Hanna to prove the facts asserted in this petition and to prove any and all facts required . . . to prove his entitlement to relief on the merits . . . .” Assuming that the “factual predicate” of Hanna’s current petition supports new claims and could not have been discovered previously, which is far from clear, all the claims at issue relate to trial counsel’s representation in mitigation. 28 U.S.C. § 2244(b)(2)(B)(i). Mitigation evidence categorically does not meet § 2244(b)(2)(B)(ii)’s

1. The dissent argues that because the factual predicate of Hanna’s claim is not new and the facts underlying his claim do not concern his guilt, this petition is outside the scenario contemplated by § 2244(b)(2)(B). However, this analysis rests upon an unduly limited view of § 2244(b)(2)(B), which requires all second or

requirement that the new facts establish a petitioner’s actual innocence.<sup>1</sup>

[6, 7] Even if Hanna had not previously raised these claims under § 2244(b)(1), and they were not squarely foreclosed by § 2244(b)(2), he has not shown that the abuse-of-the-writ doctrine applies. “[T]his not-second-or-successive exception is generally restricted to two scenarios,” neither of which is present here. *In re Coley*, 871 F.3d 455, 457 (6th Cir. 2017) (per curiam). Those scenarios are when (1) the claim was not ripe when the earlier petition was filed and (2) where the earlier petition was dismissed for failure to exhaust. *Id.* The habeas statute’s limits on second or successive habeas petitions also do not apply to challenges to intervening judgments. *Magwood*, 561 U.S. at 323–24, 130 S.Ct. 2788. There is no intervening judgment in this case.

[8] Instead, Hanna argues that his petition is not an abuse of the writ because counsel from the same office, the Ohio Public Defender, represented him in both his state postconviction proceedings and initial federal habeas case. He asserts that this continuity of counsel constituted a conflict of interest which prevented him from previously raising the instant claims because it would have required members of the Ohio Public Defender to argue that they and their colleagues had been ineffective in a prior proceeding. Neither Hanna nor the dissent cite any case where we have found that mere continuity of counsel constitutes a conflict of interest entitling a petitioner to file a second or successive

successive petitions based on a factual predicate to be founded on newly discovered facts and go to establishing a petitioner’s actual innocence. See *In re Caldwell*, 917 F.3d 891, 894 (6th Cir. 2019). That Hanna’s claims fail to meet either of these requirements does not justify bypassing the statute.

petition under the abuse-of-the-writ doctrine.

We also note that the conflict Hanna has attributed to the Ohio Public Defender due to continued representation “is merely hypothetical . . .” *Moss v. United States*, 323 F.3d 445, 464 (6th Cir. 2003). There is no evidence that “a conflict of interest actually affected the adequacy of his representation . . .” *Cuyler v. Sullivan*, 446 U.S. 335, 349, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980). Hanna has not presented any specific instances where the continuity of counsel “adversely affected his lawyer’s performance,” but rather merely suggests “the possibility of conflict . . .” *Id.* at 350, 100 S.Ct. 1708. Hanna has also failed to show that he was prejudiced by counsel’s failure to raise the claims presented in the new petition. *See Leonard v. Warden, Ohio State Penitentiary*, 846 F.3d 832, 844 (6th Cir. 2017) (recognizing that prejudice is presumed only in cases where actual conflict of interest was attributable to multiple concurrent representation).

Additionally, Hanna’s filings fail to acknowledge that his claim that members of the Ohio Public Defender suffered from a conflict of interest was presented to and rejected by the district court in his initial habeas case. After certiorari had been denied in that suit and the Supreme Court decided *Martinez v. Ryan*, 566 U.S. 1, 132 S.Ct. 1309, 182 L.Ed.2d 272 (2012), and *Trevino v. Thaler*, 569 U.S. 413, 133 S.Ct. 1911, 185 L.Ed.2d 1044 (2013), which held that ineffective assistance of state postconviction counsel can excuse procedural default when a petitioner cannot raise claims of ineffective assistance of trial counsel on direct appeal, Hanna sought to have new counsel appointed. He raised the same arguments that he does here—that his attorneys from the Ohio Public Defender were conflicted because they would not be willing to criticize their colleagues who had

represented him in the state postconviction proceedings. The district court considered and rejected this argument twice, finding that members of that office would be perfectly capable of reviewing the prior work of their colleagues for mistakes and that there was no actual conflict of interest. *See Gillard v. Mitchell*, 445 F.3d 883, 891–92 (6th Cir. 2006) (rejecting habeas claim when trial court “fully inquired into the possible conflict of interest . . ., and the Ohio Supreme Court recognized only the possibility of a conflict of interest”). In failing to acknowledge this prior determination, Hanna provides us no basis to conclude that it was made in error. *See United States v. Kilpatrick*, 798 F.3d 365, 377 (6th Cir. 2015).

Hanna’s new petition explicitly recognizes that his previous counsel were bound by Ohio Rule of Professional Conduct 1.7 to consider whether their continued representation would have created “a *substantial* risk that [their] ability to consider, recommend, or carry out an appropriate course of action . . . will be materially limited by . . . [their] own personal interests.” Prior to the denial of certiorari in his own case and the Supreme Court’s decisions in *Martinez* and *Trevino*, there is no indication that counsel from the Ohio Public Defender harbored any concern that their representation of Hanna was compromised by personal interest. *See Mickens v. Taylor*, 535 U.S. 162, 168, 122 S.Ct. 1237, 152 L.Ed.2d 291 (2002) (objection to conflicted representation must be timely). Hanna’s claim that he was not aware of the potential conflict until after the conclusion of the first habeas case is also unavailing. In fact, as the new petition recognizes, continuity was cited by Hanna as a reason in favor of appointing counsel in the initial federal suit. *See McFarland v. Yukins*, 356 F.3d 688, 701 (6th Cir. 2004) (observing that while a defendant has an interest in conflict-free counsel, as well as “to proceed

with counsel of [his] own choice,” he “cannot have it both ways by asking for reversal or habeas corpus on the basis of representation that he or she acceded to during trial”).

[9] Moreover, even if the current petition was not an abuse of the writ, a federal habeas court could not consider Hanna’s claims because they are procedurally defaulted or have been adjudicated in an unchallenged state court decision. Both Hanna and the dissent rely on the Supreme Court’s decisions *Martinez* and *Trevino*. However, even now, Hanna, with new counsel, does not offer a cognizable argument that his state postconviction counsel were ineffective since it is well-established that simply not raising a particular argument does not constitute ineffective assistance. *See Hand v. Houk*, 871 F.3d 390, 410 (6th Cir. 2017) (“Mere failure to raise a potentially viable claim is not enough, as [a]ppellate counsel need not raise every non-frivolous claim on direct appeal.” (alteration in original) (internal quotation marks and citation omitted)). Additionally, the application of *Martinez* or *Trevino* is squarely foreclosed in this case because Hanna “brought a claim of ineffective assistance of trial counsel [at sentencing] on direct appeal, and the Ohio Supreme Court adjudicated that claim on the merits.” *Moore v. Mitchell*, 848 F.3d 774, 775 (6th Cir. 2017). In particular, as the new petition recognizes, Hanna argued on direct appeal that trial counsel failed to adequately present evidence of child abuse. *State v. Hanna*, 95 Ohio St.3d 285, 767 N.E.2d 678, 702–03 (2002). His claim was rejected, and his sentence affirmed. The record reviewed by the Ohio Supreme Court contained evidence of sexual abuse and, as the petition also acknowledges, “[n]europhysical testing [that] showed . . . frontal lobe impairment in the brain, and dysfunction in the right posterior aspect of

his brain.” *Id.* at 705. Hanna presents no claims of error sufficient to entitle him to relief under § 2254(d).

Hanna also argues that not treating his second-in-time petition as a first petition would violate his rights to due process and equal protection, suspend the writ of habeas corpus, and violate 18 U.S.C. § 3599. He does not adequately develop these arguments, however, thereby forfeiting them. *See United States v. Layne*, 192 F.3d 556, 566–67 (6th Cir. 1999).

We **DENY** Hanna’s motion to remand and **DENY** him permission to file the proposed petition.

#### DISSENT

KAREN NELSON MOORE, Circuit Judge, dissenting.

I respectfully dissent. To me, Hanna’s § 2254 petition—raising a new claim of ineffective assistance of trial counsel that he could not have raised in his earlier petition—though second in time, is not “second or successive.” Accordingly, I would grant Hanna’s motion to remand because the district court had jurisdiction to consider Hanna’s § 2254 petition without this court’s prior authorization.

As the majority notes, this is not Hanna’s first time mounting a collateral challenge to his Ohio death sentence for the murder of Peter Copas, Hanna’s former cellmate. With the Ohio Public Defender representing him, Hanna first sought postconviction relief in state court. Then, when state postconviction proceedings failed to result in relief, Hanna—still represented by the Ohio Public Defender—brought a § 2254 petition in district court, asserting ten grounds for relief. This, too, proved unsuccessful: the district court denied Hanna’s § 2254 petition, *Hanna v. Ishee*, No. 1:03-CV-801, 2009 WL 485487 (S.D. Ohio Feb. 26, 2009), this court upheld that

decision, *Hanna v. Ishee*, 694 F.3d 596, 601 (6th Cir. 2012), and the Supreme Court denied certiorari, *Hanna v. Robinson*, 571 U.S. 844, 134 S.Ct. 101, 187 L.Ed.2d 74 (2013).

Hanna currently seeks to pursue a new § 2254 petition in the district court. Now represented by the Federal Public Defender, Hanna asserts that his trial counsel was ineffective during the mitigation phase of his capital trial for failing to present evidence of brain damage, mental illnesses, and a history of being sexually abused and assaulted. Hanna argues that although he procedurally defaulted this claim by failing to raise it during his state postconviction proceedings, the default should be excused under *Martinez v. Ryan*, 566 U.S. 1, 132 S.Ct. 1309, 182 L.Ed.2d 272 (2012), and *Trevino v. Thaler*, 569 U.S. 413, 133 S.Ct. 1911, 185 L.Ed.2d 1044 (2013), because his state postconviction counsel was ineffective in failing to raise it. Similarly, Hanna argues that his new petition, though second in time, is not second or successive because he could not have raised his new claim of ineffective assistance of trial counsel in his first § 2254 petition, which would have required his counsel to argue their own ineffectiveness under *Martinez* and *Trevino*, a plain conflict of interest. I agree.

“The Supreme Court has made clear that not every numerically second petition is ‘second or successive’ for purposes of [the Antiterrorism and Effective Death Penalty Act (“AEDPA”)].” *In re Bowen*, 436 F.3d 699, 704 (6th Cir. 2006) (citing *Slack v. McDaniel*, 529 U.S. 473, 487, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000); *Stewart v. Martinez-Villareal*, 523 U.S. 637, 118 S.Ct. 1618, 140 L.Ed.2d 849 (1998)). To distinguish truly second or successive petitions from those that are merely second in time, courts apply the “abuse of the writ” doctrine, “including those decisions that

predated AEDPA.” *Id.*; *In re Wogenstahl*, 902 F.3d 621, 627 (6th Cir. 2018) (per curiam). “Under the abuse of the writ doctrine, a numerically second petition is ‘second’ when it raises a claim that could have been raised in the first petition but was not so raised, either due to deliberate abandonment or inexcusable neglect.” *Bowen*, 436 F.3d at 704. Though simply stated, the abuse-of-the-writ doctrine refers “to a complex and evolving body of equitable principles informed and controlled by historical usage, statutory developments, and judicial decisions.” *McCleskey v. Zant*, 499 U.S. 467, 489, 111 S.Ct. 1454, 113 L.Ed.2d 517 (1991). Thus, although AEDPA does not define “second or successive,” and pre-AEDPA abuse of the writ cases inform its application, the abuse of the writ doctrine cannot be used to undermine the Act’s text: if the claims asserted in a second-in-time petition “fall within the scenario[s] addressed by” § 2244(b)—new rules of constitutional law and newly discovered evidence of innocence—then the petition is deemed to be second or successive. *Wogenstahl*, 902 F.3d at 627.

As an initial matter, although I agree with my colleagues that a claim must not have been raised previously for the abuse of the writ doctrine to apply, I disagree with their conclusion that Hanna is recycling an already litigated claim of ineffective assistance of trial counsel. Hanna’s new petition alleges that his trial counsel was ineffective in failing to obtain and present neuroimaging of Hanna’s brain to demonstrate organic defects, and to present evidence of Hanna’s mental illnesses. Hanna made no such claim in his first federal habeas petition, which faulted trial counsel’s failure to present evidence of prison culture, a prison employee’s positive experiences with Hanna, the requirements for placing persons in maximum security prisons, and trial counsel’s failure to pre-

pare Hanna’s mitigation psychologist to testify to the impact prison life had had on Hanna. Although Hanna’s counsel made some oblique references to Hanna’s mental illnesses and possible brain damage on appeal after the district court dismissed his first § 2254 petition—references that made their way into this court’s opinion upholding the district court’s dismissal—the petition itself focuses almost exclusively on counsel’s failure to invoke prison culture as a mitigating explanation for why Hanna would have killed Copas. Furthermore, although both Hanna’s first and current § 2254 petitions reference his trial counsel’s failure to investigate and present evidence of sexual abuse suffered by Hanna, the current petition raises those facts in the context of explaining Hanna’s mental illnesses, consistent with the rest of his claim of ineffective assistance of counsel. In short, Hanna’s new claim of ineffective assistance of counsel is just that, new. *See Wogenstahl*, 902 F.3d at 628, n.2 (second *Brady* claim was distinct from first where it involved different evidence that undermined distinct aspects of the trial); *cf. Moreland v. Robinson*, 813 F.3d 315, 325 (6th Cir. 2016) (same claim where both alleged trial counsel’s ineffectiveness for failing to present an expert to challenge blood evidence).

Furthermore, I disagree with my colleagues’ conclusion that Hanna’s new claim of ineffective assistance of trial counsel falls within the scenarios addressed by § 2244(b) and so must be deemed second or successive. First, Hanna’s petition does not rely on a “new rule of constitutional law.” 28 U.S.C. § 2244(b)(2)(A). Hanna’s claim of ineffective assistance of trial counsel is straightforward, relying on the well-established cause and prejudice standard for ineffective assistance claims from *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Although Hanna invokes *Martinez* and

*Trevino* to excuse his failure to raise his claim earlier, the Supreme Court was explicit that the rules adopted in those cases are equitable. In an “equitable ruling,” the Supreme Court in *Martinez* established a limited exception to the general rule that attorney negligence in postconviction proceedings cannot establish cause and prejudice to excuse a procedural default. 566 U.S. at 16, 132 S.Ct. 1309. The exception applies only where the petitioner defaulted a “substantial” claim of ineffective assistance of trial counsel because of postconviction counsel’s own ineffectiveness in an “initial” review proceeding. *Trevino*, 569 U.S. at 423, 133 S.Ct. 1911 (quoting *Martinez*, 566 U.S. at 14, 132 S.Ct. 1309). *Trevino* extended this equitable exception to cover not just cases where the state required claims of ineffective assistance of trial counsel to be raised in postconviction proceedings—the circumstances involved in *Martinez*—but also cases where the state makes it unlikely that a petitioner would have a “meaningful opportunity” to raise the claim on direct appeal. 569 U.S. at 429, 133 S.Ct. 1911. Second, this is not a claim predicated on newly “discovered” evidence, 28 U.S.C. § 2244(b)(2)(B)(i), insofar as Hanna’s trial counsel’s actions and inactions, as well as Hanna’s potential brain damage, mental illnesses, and history of being sexually assaulted were all known to Hanna from the outset. Although the evidence of Hanna’s postconviction counsel’s conflict is new, this evidence is not the basis for Hanna’s claim—he merely offers it to overcome his procedural default. Moreover, the facts underlying Hanna’s claim do not speak to whether a “reasonable factfinder would have found [Hanna] guilty of the underlying offense.” 28 U.S.C. § 2244(b)(2)(B)(ii). Rather, the facts underlying Hanna’s claim concern his culpability, relevant to his punishment, but not to his guilt. In short, the new claim that Hanna

hopes to pursue is outside the scope of the scenarios contemplated by § 2244(b).

Because Hanna's claim of ineffective assistance of counsel is new, and because it falls outside the scope of the scenarios contemplated by § 2244(b), the abuse of the writ doctrine informs whether his petition is second or successive or merely second in time. Although, as the majority recognizes, Hanna's claim of ineffective assistance of trial counsel "do[es] not fall within any of the situations that have been recognized under the abuse-of-the-writ doctrine as making a petition second-in-time but not second or successive" post-AEDPA, *Wogenstahl*, 902 F.3d at 627,<sup>1</sup> I believe that the reasoning of *Martinez* and *Trevino* compels the conclusion that Hanna's petition is not an abuse of the writ and so is not second or successive.

Although *Martinez* and *Trevino* do not address the abuse of the writ doctrine, the equitable foundation of those cases is applicable to an abuse of the writ analysis because of the close connection between the abuse of the writ and procedural default doctrines. In *McCleskey*, a pre-AEDPA case, the Supreme Court expressly held that the cause and prejudice standard for procedural defaults also "applies to determine if there has been an abuse of the writ through inexcusable neglect." 499 U.S. at 493, 111 S.Ct. 1454. This conclusion, the Court reasoned, resulted "from the unity of structure and purpose in the jurisprudence of state procedural defaults and abuse of the writ." *Id.* Indeed, "[t]he doctrines of procedural default and abuse of the writ implicate nearly identical concerns flowing from the significant costs of federal habeas corpus review." *Id.* at 490–

91, 111 S.Ct. 1454. Thus, "[a] federal habeas court's power to excuse these types of defaulted claims derives from the court's equitable discretion." *Id.* at 490, 111 S.Ct. 1454.

In *Martinez* and *Trevino*, that equitable discretion counseled in favor of excusing procedural defaults in cases involving substantial claims of ineffective assistance of trial counsel that, because of the structure of the state's postconviction review procedures, should have been raised for the first time on collateral review but were not due to counsel's ineffectiveness. The equitable basis for that ruling was straightforward: "When an attorney errs in initial-review collateral proceedings, it is likely that no state court at any level will hear the prisoner's claim. . . . And if counsel's errors in an initial-review collateral proceeding do not establish cause to excuse the procedural default in a federal habeas proceeding, no court will review the prisoner's claims." *Martinez*, 566 U.S. at 10–11, 132 S.Ct. 1309. Although other sorts of defaulted claims will generally have had at least one court consider the merits, the same cannot be said of claims of ineffective assistance of trial counsel that cannot be raised until state postconviction proceedings. *See id.* Indeed, "[a] prisoner's inability to present a claim of trial error is of particular concern when the claim is one of ineffective assistance of counsel" given that "[t]he right to the effective assistance of counsel at trial is a bedrock principle in our justice system." *Id.* at 12, 132 S.Ct. 1309.

These principles apply forcefully where the same counsel represents the petitioner in their first federal habeas proceedings as represented them in their state post-

1. Specifically, Hanna's new petition targets the same state court judgment as his first, Hanna did not raise the claims previously such that a federal court would have had the opportunity to decline to address them, and

Hanna's claims were ripe at the time of his first § 2254 petition insofar as the predicate for the new claims—trial counsel's ineffectiveness—had already occurred. *See Wogenstahl*, 902 F.3d at 627–28.

conviction proceedings. Although the federal petitioner could invoke *Martinez* and *Trevino* to excuse their failure to raise a substantial claim of ineffective assistance of trial counsel in state court, doing so would require counsel to argue that they were themselves ineffective in failing to raise the claim earlier. *See Martinez*, 566 U.S. at 17–18, 132 S.Ct. 1309. A plain conflict of interest prevents counsel from making such an argument because it would pit the petitioner’s interest in vigorously presenting the argument against counsel’s interest in preserving their professional reputation, among other things. *See Christeson v. Roper*, 574 U.S. 373, 378–79, 135 S.Ct. 891, 190 L.Ed.2d 763 (2015); *Juniper v. Davis*, 737 F.3d 288, 290 (4th Cir. 2013) (requiring appointment of independent counsel in federal habeas proceeding to determine availability of any previously defaulted claims under *Martinez*). These circumstances implicate the same concerns addressed in *Martinez* and *Trevino*: the petitioner is no more able to raise their substantial claim of ineffective assistance of trial counsel in their first federal petition—due to counsel’s conflict of interest—than they were in their state postconviction proceedings—due to counsel’s ineffectiveness. Thus, if counsel’s conflict of interest does not excuse the failure to raise a claim of ineffective assistance of

trial counsel in a first petition, “no court will review the prisoner’s claims.” *Martinez*, 566 U.S. at 11, 132 S.Ct. 1309. The equitable reasoning of *Martinez* and *Trevino* counsels against such a result.

In sum, Hanna has persuaded me that a § 2254 petition is not second or successive where it raises a new claim of ineffective assistance of trial counsel and where, due to the petitioner having been represented by the same counsel in his state postconviction and § 2254 proceedings, a conflict of interest prevented the petitioner from raising that claim in an earlier petition. That rule favors a remand here. Susan Roche served as lead counsel for Hanna’s state postconviction proceedings and then continued to represent Hanna when he filed his first § 2254 petition. A conflict of interest would have prevented Roche from raising a new claim of ineffective assistance of trial counsel in Hanna’s first § 2254 petition because it would have implicated her own ineffectiveness in failing to raise the claim in Hanna’s state postconviction proceedings. *See Christeson*, 574 U.S. at 378–79, 135 S.Ct. 891; *Juniper*, 737 F.3d at 290. Although other attorneys from the Ohio Public Defender’s office were involved in Hanna’s first § 2254 petition, Roche’s conflict of interest would be imputed to them under the circumstances.<sup>2</sup>

2. The extent to which conflicts of interest will be imputed within a public defender organization is a matter of some debate. *See, e.g., United States v. Lech*, 895 F. Supp. 586, 591 (S.D.N.Y. 1995) (Sotomayor, J.). However, where, as here, the conflicted attorney has worked on the matter from which the conflict of interest arises with the attorneys to whom the conflict would be imputed (or the attorneys to whom the conflict would be imputed began their representation after the conflicted attorney ceased representing the petitioner but at a stage where it would be infeasible to raise the attorney’s ineffectiveness), I would conclude that imputation is appropriate. *Cf. Houston v. Schomig*, 533 F.3d 1076, 1083 (9th Cir. 2008) (suggesting that imputation would

apply to attorneys within the same public defender office). As a practical matter, I do not think that adopting my reasoning would preclude counsel from continuing to represent a petitioner in their federal habeas proceedings after representing them in their state postconviction proceedings. *See generally* David M. Barron, *Martinez Casts Doubt on State Postconviction and Federal Habeas Representation*, 27-Fall CRIM. JUST. 42 (2012) (proposing the use of an independent attorney to identify potential *Martinez* issues in such cases).

Insofar as the majority suggests that Hanna acquiesced to continued representation by the Ohio Public Defender with an awareness of



Moreover, *Trevino* applies to Ohio's procedural framework for claims of ineffective assistance of trial counsel given that such claims cannot be raised on direct appeal in Ohio where the predicate facts are not a part of the trial record (as is the case with Hanna's current claim). See *White v. Warden*, 940 F.3d 270, 277 (6th Cir. 2019), cert. denied, — U.S. —, 140 S. Ct. 2826, 207 L.Ed.2d 158 (2020); *Gunner v. Welch*, 749 F.3d 511, 514 (6th Cir. 2014) ("A claim of ineffective assistance of counsel that is dependent on facts that are not part of the trial record cannot be raised on direct appeal. Instead, it must be raised in a postconviction proceeding pursuant to Ohio Rev. Code § 2953.21."). Whether Hanna is otherwise able to overcome his procedural default under *Martinez* and *Trevino*—or whether he is otherwise unable to proceed because of the nature of the claims of ineffective assistance of trial counsel that he raised on direct appeal—are questions that I would leave for the district court to resolve in the first instance because they do not concern its jurisdiction to consider his new petition.

Because I would conclude that Hanna's new § 2254 petition is not second or successive, I would also conclude that the district court had jurisdiction to consider that petition without our prior authorization. Accordingly, I dissent from the ma-

the conflict of interest, I would disagree. There is no indication in the record that Hanna was aware of the conflict until the Supreme Court decided *Martinez* and *Trevino* and Hanna requested new counsel in the district court. That Hanna earlier requested the same counsel represent him in his first § 2254 proceedings does not suggest otherwise; it shows that Hanna saw there to be some benefit to continuous representation, but not that Hanna appreciated any attendant danger. See *United States v. Brock*, 501 F.3d 762, 772–73 (6th Cir. 2007), abrogated on other grounds by *Ocasio v. United States*, — U.S. —, 136 S. Ct. 1423, 194 L.Ed.2d 520 (2016). Moreover, far from "failing to acknowledge" that the

majority's denial of Hanna's motion to remand. Hanna should have an opportunity to litigate his new claim of ineffective assistance of trial counsel—one that no court has yet passed upon—before Ohio puts him to death.



**Eric WHITE, on behalf of himself  
and others similarly situated,  
Plaintiff-Appellant,**

v.

**UNITED AIRLINES, INC. and United  
Continental Holdings, Inc.,  
Defendants-Appellees.**

**No. 19-2546**

United States Court of Appeals,  
Seventh Circuit.

Argued September 21, 2020

Decided February 3, 2021

Rehearing and Rehearing En Banc

Denied March 10, 2021

**Background:** Employee brought putative class action against employer alleging employer failed to properly compensate employees who took short-term military leave

district court expressed skepticism about the asserted conflict, Maj. Op. at 610-11, Hanna's filings before this court refer us directly to those rulings and provide thorough arguments rebutting the district court's reasoning. See Mot. Remand at 3–8; Mot. Remand, Att. 1 at 12–13 (Hanna's new § 2254 petition, filed as a substantive attachment to his remand motion). In any case, the district court granted Hanna new counsel, acknowledging that this court might view the conflict issue differently, and thus Hanna had little reason to complain about the district court's decisions. R. 158, *Hanna v. Bagley*, No. 03-cv-00801, 2014 WL 1342985 (S.D. Ohio 2014) (Supp. Op. at 9) (Page ID #2921).

App. 013

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

JAMES GALEN HANNA,

Petitioner,

: Case No. 3:19-cv-231

- vs -

District Judge Thomas M. Rose  
Magistrate Judge Michael R. Merz

TIM SHOOP, Warden,  
Chillicothe Correctional Institution,

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Respondent.

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**TRANSFER ORDER**

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This capital habeas corpus case is before the Court on Respondent's Motion to Transfer this case to the Sixth Circuit Court of Appeals for a determination under 28 U.S.C. § 2244(b) of whether Petitioner may proceed in this Court (ECF No. 11). Petitioner opposes the Motion (ECF No. 15) and the Warden has filed a Reply in support (ECF No. 16).

Hanna challenged his conviction and capital sentence in a first-in-time habeas application, *Hanna v. Ishee*, Case No. 1:03-cv-801, 2009 WL 485487 (S.D. Ohio Feb. 26, 2009) (Rose, J.), denial of habeas corpus relief affirmed, 694 F.3d 596 (6<sup>th</sup> Cir. 2012), cert. denied, 571 U.S. 844, 134 S. Ct. 101 (Mem) (2013). The instant Petition is plainly Hanna's second-in-time Petition challenging that conviction and sentence. He has not sought circuit court permission to proceed and claimed in the Petition that this was not a second-or-successive petition requiring that permission (ECF No. 1, PageID 45-51). Because Hanna's theory is novel and the Court did not

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consider it appropriate to decide that question merely on Hanna's argument, it ordered Respondent to reply to that argument, which resulted in the Motion *sub judice*.

### **Hanna's Litigation Situation**

Hanna was convicted of aggravated murder with capital specifications and sentenced to death on November 20, 1998. 2009 WL 485487, at \*3. He completed appeals on his first federal habeas Petition in 2013. Thereafter the Supreme Court of Ohio, set an execution date. Most recently on September 1, 2017, that date was reprieved to December 11, 2019. *In re Ohio Execution Protocol Litig.*, Case No. 2:11-cv-1016, (consolidated method of execution case under 42 U.S.C. § 1983), Notice of Reprieve, ECF No. 1193-1. Hanna has a preliminary injunction hearing set for September 24-October 3, 2019. He has been a plaintiff in that case since it was filed as a consolidated matter in November 2011. He filed the instant Petition August 5, 2019, through the same Assistant Federal Public Defenders who represent him in that case.

In the instant Petition, Hanna pleads the following grounds for relief:

**Claim IV.A** – In violation of the Sixth and Fourteenth Amendments, trial counsel ineffectively failed to secure and present mitigating neuroimaging evidence to the jury, including PET (positron emission tomography) and MRI (magnetic resonance imaging) scans to objectively prove Hanna's brain damage and its effects upon his behavior.

**Claim IV.B** – In violation of the Sixth and Fourteenth Amendments, trial counsel ineffectively failed to investigate and present mitigating evidence that numerous predators inflicted horrific sexual abuse upon James Hanna since the time he was a child, that Hanna suffered severe complex trauma, and that as a result, he suffered at the time of the offense the severe mental illnesses of post-traumatic stress (PTSD), depression, and borderline personality disorder.

## App. 015

**Claim IV.C** – In violation of the Sixth and Fourteenth Amendments, trial counsel ineffectively failed to investigate and present mitigating proof that James Hanna suffers a serious mental disorder caused by brain damage, including damage in his frontal and temporal lobes.

**Claim IV.D** – In violation of the Sixth, Eighth, and Fourteenth Amendments, the cumulative effect of the errors alleged in this petition deprived James Hanna of a fair and reliable sentencing hearing, thus entitling him to federal habeas corpus relief.

(ECF No. 1, PageID 18-19.)

### **Excusing Conflicts of Interest Asserted in the Petition**

Hanna admits that these four claims are procedurally defaulted because they were not presented in Ohio postconviction proceedings under Ohio Revised Code § 2953.21 (Petition, ECF No. 1, PageID 4)<sup>1</sup>. He claims that default is excused by the ineffective assistance he received from postconviction counsel, relying on *Martinez v. Ryan*, 566 U.S. 1 (2012)<sup>2</sup>. The Petition asserts that Hanna was represented in his Ohio postconviction relief proceedings by Ohio Public Defender David Bodiker and two of his assistants, Susan Roche and Kathryn Sandford. *Id.* at PageID 12. After those proceedings were complete on appeal, Hanna filed for habeas corpus relief in this Court, represented again by Mr. Bodiker and his assistants Stephen Ferrell, Kelly Culshaw, and, from 2004 to 2007, Susan Roche. *Id.* at PageID 12-13.

The Petition claims it is not second-or-successive because it “does not constitute an ‘abuse

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<sup>1</sup> Under Ohio law, ineffective assistance of trial counsel claims of this nature would have to have been presented in postconviction because they could not have been proved from the record on direct appeal.

<sup>2</sup> The Sixth Circuit has never held that *Martinez* applies to Ohio’s system for litigating claims of ineffective assistance of trial counsel. Indeed it has elided that question on a number of occasions. Judges of this Court have declined to decide whether *Martinez* applies to Ohio without guidance from the circuit court. While that question is clearly at issue in this case, it is not at issue on the present Motion to Transfer and purporting to decide it in a case where we lack jurisdiction because the Petition is second-or-successive would be an *ultra vires* act.

## App. 016

of the writ,” (Petition, ECF No. 1, PageID 44, relying on *In re Bowen*, 436 F.3d 699, 704 (6<sup>th</sup> Cir. 2006); *Askew v. Bradshaw*, 646 F. App’x 342, 346 (6<sup>th</sup> Cir. 2016); *Tibbetts v. Warden*, 2017 WL 2364383 (S.D. Ohio May 26, 2017) (Dlott, J.). That exception applies, Hanna pleads, because he did not have a full and fair opportunity to litigate these four ineffective assistance of trial counsel claims in his first Petition “because federal habeas counsel at that time labored under a conflict of interest.” *Id.* at PageID 45. Claiming the benefit of *Martinez*, Hanna asserts the ineffectiveness of his post-conviction counsel in not raising these claims cures or excuses his procedural default in not presenting them in that proceeding. *Id.* at PageID 46, citing *Martinez*, 566 U.S. at 4, 14. The conflict of interest which then occurred when the Ohio Public Defender’s Office continued the representation on federal habeas is said to violate Ohio Rule of Professional Conduct 1.7. *Id.* at PageID 47. Other Assistant Ohio Public Defenders who appeared on Hanna’s behalf in his first habeas case – Rachel Troutman and Tyson Fleming – are said to have suffered from the same conflict, the “vested interest” in not criticizing other members of one’s own firm, risking the “firm’s” reputation and their own jobs as subordinates of Mr. Bodiker. *Id.* at PageID 48-49. Because conflicted counsel could not give Hanna a “full and fair opportunity” to litigate these claims, he asserts the instant Petition must be treated as a first habeas application. Indeed to fail to do so would violate the Due Process, Equal Protection, and Suspension Clauses and 18 U.S.C. § 3599. *Id.* at PageID 51 n.8.

### **The Parties’ Positions on the Motion to Transfer**

In his Motion to Transfer, Warden Shoop distinguishes the *Bowen*, *Askew*, and *Tibbetts* cases (ECF No. 11, PageID 688-91). He asserts that the remainder of Hanna’s arguments that this

## App. 017

Petition is not second-or-successive should be addressed by the Sixth Circuit. *Id.* at PageID 691-92).

Hanna's Response reiterates the conflicts-of-interest pleaded in the Petition and repeats his claim that, because of those conflicts, his instant Petition is not an abuse of the writ (ECF No. 15).

The Warden's Reply insists that because the instant Petition is subject to the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. No 104-132, 110 Stat. 1214) (the "AEDPA"), the abuse of writ doctrine does not apply (ECF No. 16, PageID 714, citing ); *In re Jones*, No. 19-1456, 2019 U.S. App. LEXIS 25515, at \*2 (6<sup>th</sup> Cir. Aug. 23, 2019); *In re Moore*, No. 19-1203, 2019 U.S. App. LEXIS 20574, at \*2-\*3 (6<sup>th</sup> Cir. Jul. 10, 2019); *In re Morris*, No. 19-1081, 2019 U.S. App. LEXIS 13603, at \*2-\*3 (6<sup>th</sup> Cir. May 6, 2019).

## Analysis

A motion to transfer for a 28 U.S.C. § 2244(b) determination is a non-dispositive pre-trial motion on which a Magistrate Judge has authority to act in the first instance. 28 U.S.C. § 636(b)(1)(A). To protect Petitioner's right to review of this Order by an Article III judge, the effectiveness of the Order will be delayed to allow appeal to Judge Rose.

A federal court's first obligation on the filing of a new case is to assure itself that it has jurisdiction of the subject matter. A district court lacks jurisdiction to consider a second or successive habeas corpus petition without approval by the circuit court under 28 U.S.C. § 2244(b). *Burton v. Stewart*, 549 U.S. 147 (2007); *Franklin v. Jenkins*, 839 F.3d 465 (6<sup>th</sup> Cir. 2016). At the same time, the district court must make the determination in the first instance of whether a habeas

## App. 018

application is second or successive. *In re Smith*, 690 F.3d 809 (6<sup>th</sup> Cir. 2012); *In re Sheppard*, No. 12-3399, 2012 U.S. App. LEXIS 13709 (6<sup>th</sup> Cir. May 25, 2012).

At common law and in practice under federal habeas corpus statutes before 1996, there was no numerical limit on the number of times a prisoner could apply for a writ of habeas corpus. Prisoners serving long sentences often filed repeated habeas corpus petitions raising the same claims or attacking the same conviction on new grounds. To deal with the burden of this litigation, Rule 9(b) of the Rules Governing Section 2254 Cases formerly provided:

A second or successive petition may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.

While the language of Rule 9(b) would appear to be discretionary, the Supreme Court interpreted the abuse of writ doctrine as follows:

When a prisoner files a second or subsequent application, the government bears the burden of pleading abuse of the writ. The government satisfies this burden if, with clarity and particularity, it notes the petitioner's prior writ history, identifies the claims that appear for the first time, and alleges that petitioner has abused the writ. The burden to disprove abuse then becomes petitioner's. To excuse his failure to raise the claim earlier, he must show cause for failing to raise it and prejudice therefrom as those concepts have been defined in our procedural default decisions. The petitioner's opportunity to meet the burden of cause and prejudice will not include an evidentiary hearing if the district court determines as a matter of law that petitioner cannot satisfy the standard.

*McCleskey v. Zant*, 499 U.S. 467, 494 (1991). See *I. Abuse of the Writ -- "Cause And Prejudice" Applied To Filing Of Subsequent Petition: McCleskey v. Zant*, 105 HARV. L. REV. 319 (1991).

In an effort to reform habeas practice, Congress, in the AEDPA, amended 28 U.S.C. § 2244(b) to read as follows:

## App. 019

(1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)

(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3)

(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.



## App. 020

(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

(4) A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.

The statute appears to contemplate that second petitions directed to the same conviction be presented first to the circuit court for permission to proceed. Shortly after AEDPA was adopted, the Sixth Circuit provided that, should a prisoner file in the district court without that permission, such petitions should be transferred to the circuit court. *In re Sims*, 111 F.3d 45 (6<sup>th</sup> Cir. 1997). However, if a district court is in doubt as to whether a particular petition is second or successive, it must make that determination in the first instance, rather than transferring the case for such an initial determination. *In re Smith*, 690 F.3d 809; *In re Sheppard*, 2012 U.S. App. LEXIS 13709.

At the same time, as discussed above, the appellate courts have held district courts have no jurisdiction to consider a second or successive petition without approval by the circuit court. *Burton v. Stewart*, 549 U.S. 147; *Franklin v. Jenkins*, 839 F.3d 465. In a capital case such as this one, that rule creates a grave risk to judicial economy. As the parties' positions on this issue make clear, it is often not a straightforward question whether a petition is second or successive or merely second-in-time. Since district courts are not prescient about how circuit courts will decide such questions, if they err on the side of permitting a second-in-time petition to proceed and the circuit court later concludes it was second-or-successive, they will have wasted considerable time, usually years in a capital case, in adjudicating matters over which they have no jurisdiction. On the other hand, if they err on the side of finding a second-in-time petition to be second-or-successive, the Sixth Circuit, usually very promptly, will correct that error and remand the case, holding

## App. 021

permission to proceed is unnecessary. See, e.g., *Jackson v. Sloan*, 800 F.3d 260, 261 (6<sup>th</sup> Cir. 2015), citing *Howard v. United States*, 533 F.3d 472, 474 (6<sup>th</sup> Cir. 2008); *In re: Cedric E. Powell*, Case No. 16-3356, 2017 U.S. App. LEXIS 1032 (6<sup>th</sup> Cir. Jan. 6, 2017).

It is certainly true that not every second-in-time petition is properly classified as second or successive under § 2244(b). “Although Congress did not define the phrase ‘second or successive,’ . . . it is well settled that the phrase does not simply ‘refe[r] to all § 2254 applications filed second or successively in time.’” *Magwood v. Patterson*, 561 U.S. 320, 331-32 (2010), quoting *Panetti v. Quarterman*, 551 U.S. 930, 944 (2007). In *Panetti*, the Court allowed a petition raising claim under *Ford v. Wainright* that was not ripe at the time of a prior petition to proceed without satisfying § 2244(b). 551 U.S. at 946-47. In *Magwood* the Court excepted from § 2244(b) a second petition which challenged an intervening judgment in the state case. 561 U.S. at 339. In *King v. Morgan*, 807 F.3d 154, 155-56 (6<sup>th</sup> Cir. 2015), the court extended *Magwood* to the situation where a petitioner was challenging the same conviction but now embodied in a new judgment.

In *In re Bowen*,, relied on by Hanna, the Sixth Circuit found a second petition was not successive when it raised ineffective assistance of trial counsel and ineffective assistance of appellate counsel claims which were not exhausted at the time of the first petition and before *Rhines v. Weber*, 544 U.S. 269, 277-278 (2005)<sup>3</sup>, allowed a stay and abeyance. 436 F.3d at 705-06. That circumstance does not apply here; Hanna’s first petition was not dismissed because it was “mixed” in the *Rose v. Lundy* sense. And although Hanna has admittedly never presented these four claims of ineffective assistance of trial counsel to the Ohio courts, they are not “unexhausted”

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<sup>3</sup> Before *Rhines* allowed such a stay, “mixed” petitions containing both exhausted and unexhausted claims were required to be dismissed under *Rose v. Lundy*, 455 U.S. 509 (1982). Prior to the AEDPA’s adoption of the first statute of limitations applicable to habeas cases, dismissal without prejudice did not prevent a habeas petitioner from refiling once all of his or her claims were exhausted.

## App. 022

in the sense that he could now present them to those courts. Instead, they are procedurally defaulted because all of Hanna's opportunities to present them to the Ohio courts have expired.<sup>4</sup>

Hanna asserts his new Petition is not an "abuse of the writ" because he was prevented from bringing these claims earlier by his counsel's conflicts of interest. The Court believes that, if the abuse of writ doctrine still applied, it would be proper to find the instant Petition is not an abuse of the writ. But the abuse of writ doctrine does not apply here; that judge-crafted limitation on second petitions was replaced by the AEDPA. It is true as Judge Cole says in *Bowen* that courts have used the abuse of writ doctrine to analyze second or successive issues, 436 F.3d at 704 (citations omitted), but Hanna cites no authority that any petition which would have satisfied the abuse of writ doctrine is, by virtue of that fact, not second or successive. Congress did not incorporate the abuse of the writ doctrine into the AEDPA and the category of petitions that are not "abusive" under the doctrine is broader than the category of cases that are not second or successive under § 2244(b).

Probably the clearest example of a petition that would not have been an abuse of the writ and also not second-or-successive is provided in *Panetti*. There the Supreme Court held that 28 U.S.C. § 2244(b) did not bar a second-in-time petition raising a claim of incompetence to be executed that was filed "as soon as that claim [wa]s ripe." 551 U.S. at 945.

Hanna attempts to bring himself within this logic by claiming his ineffective assistance of trial counsel claims did not become ripe until he had conflict-free counsel who could plead them, to wit, his current counsel. The Magistrate Judge disagrees. These ineffective assistance of trial

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<sup>4</sup> "A claim may become procedurally defaulted in two ways." *Lovins v. Parker*, 712 F.3d 283, 295 (6<sup>th</sup> Cir. 2013), quoting *Williams v. Anderson*, 460 F.3d 789, 806 (6<sup>th</sup> Cir. 2006). "First, a claim is procedurally defaulted where state-court remedies have been exhausted within the meaning of § 2254, but where the last reasoned state-court judgment declines to reach the merits because of a petitioner's failure to comply with a state procedural rule." *Id.* "Second, a claim is procedurally defaulted where the petitioner failed to exhaust state court remedies, and the remedies are no longer available at the time the federal petition is filed because of a state procedural rule." *Id.*

### App. 023

counsel claims were ripe – in the sense that both the factual and legal bases of the claims were complete -- as soon as the trial was completed on November 20, 1998, the date on which he was sentenced to death. 2009 WL 485487, at \*3. Because they depend on evidence outside the direct appeal record, they should have been brought, as he now acknowledges, in Hanna’s postconviction petition which, at the time of his conviction, was required to be filed within 180 days of the filing of the appellate transcript<sup>5</sup>.

Hanna did not raise these claims when they first became ripe. He asserts that failure was caused by ineffective assistance of postconviction counsel. He also did not raise them when he filed his first habeas Petition in 2007, allegedly because his habeas counsel behaved unethically in failing to raise the claims which would have damaged the reputation of their “firm,” the Ohio Public Defender Office. The docket in in the first case shows the following termination dates for Ohio Public Defender lawyers: David Bodiker, February 16, 2008; Kelly Culshaw, February 2, 2004; Rachel Troutman, April 9, 2014; Stephen Ferrell, November 18, 2004; Susan Roche, January 26, 2007; Timothy Young, November 6, 2008; Tyson Fleming, April 9, 2014.

On February 10, 2014, Tyson Fleming and Rachel Troutman moved to substitute counsel, asking for independent counsel to perform “a *Martinez* review” as well as represent Hanna in clemency proceedings. They recognized the ethical problem now presented:

[To] ensure that Hanna’s interests are protected, Hanna should be appointed new counsel who is not employed by the Office of the Ohio Public Defender. This is because it is “ethically untenable to require counsel to assert claims of his or her own ineffectiveness in the state habeas proceedings in order to adequately present defaulted ineffective-assistance-of-trial-counsel claims under *Martinez* in the federal habeas proceedings.” *Juniper v. Davis*, 737 F.3d 288, 290 (4<sup>th</sup> Cir. 2013).

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<sup>5</sup> The Ohio General Assembly has doubled that time limit to one year since Hanna’s conviction. Ohio Rev. Code § 2953.21(A)(2).

## App. 024

(Case No. 1:03-cv-801, ECF No. 153, PageID 2886). In deciding that Motion, the Magistrate Judge rejected Hanna's conflict of interest theory<sup>6</sup> but appointed new counsel any way to avoid the risk that the Sixth Circuit might later follow *Juniper*; new counsel were accordingly appointed: Kathleen McGarry as trial counsel and David Doughten as co-counsel (Supp. Opinion, ECF No. 158, PageID 2921). So as of April 3, 2014, Hanna had new counsel who were on notice to look for issues which might have been omitted in postconviction. On August 7, 2018, more than four years later, the Court permitted Ms. McGarry to withdraw upon her acceptance of new employment which was inconsistent with her remaining as counsel in this case; David Doughten remained as co-counsel (ECF Nos. 169, 170). The Federal Defender for the Southern District of Ohio was substituted as counsel in both this and the § 1983 case. (See Notation Order, ECF No. 170; and Notation Order, ECF No. 1902 in Case No. 2:11-cv-1016, substituting Allen L. Bohnert of the Federal Defender trial attorney).

Assuming the plausibility of Hanna's theory that his four ineffective assistance of trial counsel claims did not become ripe until he had conflict-free counsel, that occurred more than five years before he filed the instant Petition.

Hanna makes no claim that he is attacking an intervening judgment, so the *Magwood/King* exception is not available to him.

### **Conclusion**

The Magistrate Judge concludes the instant Petition is second or successive. It is accordingly ordered that the Clerk transfer this case to the Sixth Circuit for a determination of

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<sup>6</sup> Current counsel does not cite this prior ruling in the Memorandum in Opposition.

App. 025

whether Petitioner may proceed.

Although the Court wishes to protect Hanna's right to Article III review before transfer, the imminence of his execution requires shortening the usual appeal period. Accordingly, the effectiveness of this Order is STAYED until noon on September 12, 2019, or such later date as Judge Rose resolves any objections filed by that time and date.

September 6, 2019.

s/ *Michael R. Merz*  
United States Magistrate Judge

App. 026

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

JAMES GALEN HANNA,	:	Case No. 3:19-cv-231
	:	
Petitioner,	:	Judge Thomas M. Rose
	:	
v.	:	Magistrate Judge Michael R. Merz
	:	
TIM SHOOP, Warden,	:	
Chillicothe Correctional Institution,	:	
	:	
Respondent.	:	

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**ENTRY AND ORDER OVERRULING PETITIONER’S OBJECTIONS TO, AND APPEAL FROM, THE MAGISTRATE JUDGE’S TRANSFER ORDER (DOC. 18); ADOPTING THE TRANSFER ORDER (DOC. 17) THAT GRANTED WARDEN’S MOTION TO TRANSFER (DOC. 11); AND, ORDERING PETITIONER’S PETITION FOR WRIT OF *HABEAS CORPUS* (DOC. 1) AND THIS CASE TO BE TRANSFERRED TO THE SIXTH CIRCUIT COURT OF APPEALS FOR A DETERMINATION OF WHETHER PETITIONER MAY PROCEED WITH HIS CLAIMS**

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This capital habeas corpus case is before the Court on Magistrate Judge Michael R. Merz’s September 6, 2019 “Transfer Order” (Doc. 17), “Petitioner James Hanna’s Objections to, and Appeal from, the Magistrate Judge’s Transfer Order” (Doc. 18), and the “Warden’s Opposition to Hanna’s Doc 18 Appeal” (Doc. 19).

Petitioner James Hanna (“Hanna”) is scheduled to be executed on December 11, 2019.<sup>1</sup> Because of the imminence of that date, the Court decides the current appeal in a more summary fashion than it otherwise would.

On August 5, 2019, Hanna filed a writ of habeas corpus. (Doc. 1.) Following Magistrate Judge Merz’s “Order to Respond” (Doc. 7), Respondent Tim Shoop, Warden (“Respondent”) filed

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<sup>1</sup> Execution Schedule posted at <https://drc.ohio.gov/execution-scheduled>, last visited September 12, 2019.

## App. 027

“Warden’s Motion to Transfer” (Doc. 11) on August 14, 2019, asking that this Court transfer the habeas petition to the Sixth Circuit Court of Appeals for consideration as an application for successive petition under 28 U.S.C. § 2244(b).<sup>2</sup> Hanna filed a Response in opposition to Respondent’s motion to transfer (Doc. 15), and Respondent filed a Reply in support of his motion to transfer (Doc. 16).

The Order appealed from (Doc. 17) is an order transferring this case to the United States Court of Appeals for the Sixth Circuit as a second-or-successive habeas application which cannot proceed in this Court without permission of the circuit court under 28 U.S.C. § 2244(b). Regardless of whether the Transfer Order is dispositive, Hanna’s objections involve questions of law that are subject to *de novo* review. *See Henness v. Jenkins*, No. 2:14-cv-2580, 2018 U.S. Dist. LEXIS 33181, at \*7 (S.D. Ohio Feb. 27, 2018) (and citations therein); *Campbell v. Jenkins*, No. 2:15-cv-1702, 2017 U.S. Dist. LEXIS 130803, at \*9 (S.D. Ohio Aug. 16, 2017) (“[g]iven that the question of whether a second-in-time petition is ‘second or successive’ involves a pure question of law, [a transfer order] is subject to *de novo* review regardless of whether it is considered a dispositive order”). This Court has made a *de novo* review of the record in this case, taking into consideration Hanna’s objections to the Transfer Order.

There is no dispute that this is Hanna’s second-in-time habeas petition (Doc. 18 at PAGEID # 729), and it is well-established that District Courts have no jurisdiction to consider such petitions if they are also second-or-successive. *Burton v. Stewart*, 549 U.S. 147 (2007); *Franklin v. Jenkins*, 839 F.3d 465 (6th Cir. 2016). There is also no dispute that a district court, presented with a second-in-time habeas petition, must make the initial determination of whether the petition is second-or-

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<sup>2</sup> Hanna challenged his conviction and capital sentence in a first-in-time habeas application, *Hanna v. Ishee*, Case No. 1:03-cv-801, 2009 WL 485487 (S.D. Ohio Feb. 26, 2009) (Rose, J.), denial of habeas corpus relief affirmed, 694 F.3d 596 (6th Cir. 2012), *cert denied*, 571 U.S. 844, 134 S. Ct. 101 (Mem.) (2013).



## App. 028

successive within the meaning of 28 U.S.C. § 2244(b). *In re Smith*, 690 F.3d 809 (6th Cir. 2012); *In re Sheppard*, No. 12-3399, 2012 U.S. App. LEXIS 13709 (6th Cir. May 25, 2012).

Hanna argued that the Petition in this case was not second-or-successive because he could not have raised the four ineffective assistance of trial counsel claims he now makes during his first habeas case; he says he was precluded by the conflicts of interest under which his first habeas counsel labored. Therefore, he claimed, his new Petition is not an “abuse of the writ” as that term of art was developed prior to adoption of the AEDPA (Antiterrorism and Effective Death Penalty Act) and thereby escapes the second-or-successive bar of § 2244(b) (Doc. 1 at PAGEID # 4, 44-51 n.8). The Magistrate Judge rejected this logic, finding that the “abuse of writ” doctrine did not overcome or replace the statutory language of AEDPA (Doc. 17 at PAGEID # 725).

Hanna appeals, relying on *In re Wogenstahl*, 902 F.3d 621, 627 (6th Cir. 2018); *In re Bowen*, 436 F.3d 699 (6th Cir. 2006); and, *In re Suber*, No. 18-3457, 2018 WL 4517057, at\*1 (6th Cir. Sep. 4, 2018). (Doc. 18 at PAGEID # 731-32.) The Magistrate Judge discussed and distinguished *Bowen* in the Transfer Order (Doc. 17 at PAGEID # 724-25), and the Court agrees with the distinction. Hanna did not cite *Suber* or *Wogenstahl* in opposing the Motion to Transfer, so the Magistrate Judge did not have an opportunity to comment on them.

*Suber* is a case arising under 28 U.S.C. § 2255, not § 2254. The opinion uses the same language as *Bowen*: “federal habeas courts apply the abuse of the writ doctrine to determine whether a petition is second or successive,” 2018 WL 4517057, at \*1, citing *In re Campbell*, 874 F.3d 454, 460, *cert. denied*, 138 S.Ct. 466 (2017), but found that *Suber*’s motion (presented *pro se*) would be both second or successive and an abuse of the writ. *Id.* In other words, *Suber* is not inconsistent with the Magistrate Judge’s reading of *Bowen*: a petition which is an abuse of the

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writ is, by virtue of that finding, also second or successive. *Suber* does not hold, as Hanna would have it, that every writ that is not abusive is also not second or successive.

In *Wogenstahl*, the Sixth Circuit quoted the language from *Bowen* about applying the abuse of the writ doctrine in deciding second or successive questions. 902 F.3d at 627. However, the Sixth Circuit upheld this Court's determination that Wogenstahl's second-in-time petition was second or successive even though it would have qualified as not abusive under the pre-AEDPA abuse of the writ doctrine enunciated in *McCleskey v. Zant*, 499 U.S. 467 (1991). *Id.* at 627-28.

Hanna has cited no case in which the Sixth Circuit (or any other circuit court of appeals) has held that a petition which satisfies the abuse of the writ doctrine thereby qualifies as a "first" petition. The Magistrate Judge's holding to the contrary is not contrary to law.

Hanna also objects to the relevance of the Magistrate Judge's determination that Hanna had conflict-free counsel for five years before he filed the instant Petition (Doc. 18 at PAGEID # 733-35, *citing* Doc. 17 at PAGEID # 727). The Court agrees that this finding is not determinative on the second-or-successive issue, whatever relevance it may have to the statute of limitations issue if the Sixth Circuit remands the case.

Finally, Hanna objects to the Magistrate Judge's "implicit rejection of his constitutional and statutory arguments." (Doc. 18 at PAGEID # 735.) Hanna's argument on that point in his Response to the Motion to Transfer is limited to the following footnote:

In his petition, Hanna has further noted that were this Court [NOT] to consider Hanna's petition as a first-in-time petition, Hanna would suffer the violation of his constitutional rights: It would violate due process, equal protection, and suspend the writ of habeas corpus. See Petition at 48 n. 8, ECF No. 1, PageID 51. Those issues would be mooted upon this Court concluding that the petition does not constitute an abuse of the writ and is not a 'second or successive' habeas petition. Nevertheless, he reasserts those constitutional arguments here.

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(Doc. 15 at PAGEID # 709 n.1.)

Hanna took so little care with this argument as presented in his Response that the word “not” has to be inserted to make sense of the footnote as an argument against transfer. Hanna cites no supporting case authority at all, either in the Response or in the Petition (Doc. 1 at PAGEID # 51, n.8). Nor has he cited any case authority in his Appeal. The Magistrate Judge’s implicit rejection of these cursory claims is not contrary to law.

Finally, Hanna makes no reference to the Magistrate Judge’s analysis of the risks to judicial economy of adjudicating a capital habeas case, perhaps for years, and then having the judgment overturned for lack of jurisdiction. (Doc. 17 at PAGEID # 723-24.)

Upon the Court’s *de novo* review, the Court finds that Petitioner’s objections (Doc. 18) to the Magistrate Judge’s Transfer Order (Doc. 17) are not well-taken and are hereby **OVERRULED**. The Clerk is **ORDERED** to carry into effect the Transfer Order (Doc. 17).

**DONE** and **ORDERED** in Dayton, Ohio, this Friday, September 13, 2019.

s/Thomas M. Rose

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE

App. 031

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>JAMES GALEN HANNA,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	<b>Case No.</b>
<b>vs.</b>	)	
	)	<b>DEATH PENALTY CASE</b>
<b>TIM SHOOP, WARDEN</b>	)	
	)	
<b>Respondent.</b>	)	

---

**PETITIONER JAMES HANNA'S PETITION FOR WRIT OF *HABEAS CORPUS*  
FILED BY NEW, INDEPENDENT COUNSEL**

---

Submitted By:

Allen L. Bohnert  
Paul R. Bottei

The Office of the Federal Public  
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PETITION FOR WRIT OF *HABEAS CORPUS* ..... 1

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**PETITION FOR WRIT OF *HABEAS CORPUS***

Pursuant to 28 U.S.C. §2254, Petitioner James Galen Hanna petitions this Court for a writ of *habeas corpus* declaring unconstitutional the death sentence imposed upon him for his 1998 conviction for aggravated murder, imposed by the Court of Common Pleas of Warren County, Ohio. *State of Ohio v. James Galen Hanna*, No. 98-CR-17677. This Court should vacate his death sentence and order a new sentencing hearing.

**I. INTRODUCTION**

Under *Martinez v. Ryan*, 566 U.S. 1, 14 (2012), a federal habeas corpus petitioner overcomes the procedural default of a substantial ineffective-assistance-of-trial-counsel claim by establishing that state post-conviction counsel ineffectively failed to raise the claim. Pursuant to *Martinez* and with the assistance of the Office of the Federal Public Defender (which just became counsel on August 7, 2018), James Galen Hanna seeks *habeas corpus* relief on procedurally defaulted claims that establish that he was denied the effective assistance of counsel at his capital sentencing proceeding. See Section IV (constitutional claims for relief).

Hanna asserts that he is entitled to relief in this Court because: (a) under *Martinez v. Ryan*, he overcomes the procedural default of the defaulted ineffective-assistance-of-trial-counsel claims raised in Section IV of this petition; and (b) under *Strickland v. Washington*, 466 U.S. 668 (1984) and its progeny, he is entitled to federal *habeas corpus* relief on the merits of those claims.

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Though numerically this is James Hanna’s second federal habeas corpus petition, this Court must address this petition as it would any first-in-time petition for writ of habeas corpus, because this petition does not constitute an “abuse of the writ.” *In Re Bowen*, 436 F.3d 699, 704 (6th Cir. 2006). This is a first petition precisely because Hanna “could not have properly raised his claims in his first petition.” *Tibbetts v. Warden*, 2017 U.S. Dist. Lexis 83416 at \*9-10 (S.D. Ohio May 26, 2017).

This is a first *habeas* petition because initial federal habeas counsel -- who filed and litigated a federal petition for writ of habeas corpus in *Hanna v. Ishee*, S.D. Ohio No. 1:03-cv-801 -- labored under a conflict-of-interest that precluded them from raising and litigating the claims Hanna now raises through non-conflicted counsel. *See* Section V, *infra*.

As explained *infra*, James Hanna’s counsel during his initial federal habeas corpus proceedings were Susan Roche and attorneys from the Office of the Ohio Public Defender (OPD), including Ohio Public Defender David Bodiker. Ms. Roche, OPD, and Mr. Bodiker, however, previously represented Hanna in his state post-conviction proceedings. Ms. Roche and OPD attorneys thus suffered a conflict of interest that prevented them from presenting and fully litigating the ineffective-assistance-of-counsel claims presented in this current habeas petition. They could not ethically allege and litigate the procedurally defaulted ineffectiveness-of-trial-counsel claims now raised, while asserting their own ineffectiveness, the ineffectiveness of OPD, and/or the ineffectiveness of Mr. Bodiker as “cause” for those defaults – as *Martinez* permits. Ohio. R. Prof. Cond.



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1.7; *Juniper v. Davis*, 737 F.3d 288 (4th Cir. 2013) (noting federal counsel's inability to raise claims that would require them to argue that they failed to properly raise such issues in state court proceedings). This petition, therefore, is not a "second or successive" habeas petition but a first petition.

In deciding this petition as a first petition, this Court must apply *Martinez*, because the rule of *Martinez* applies with full force in Ohio. See Section VI, *infra* (under *Gunner v. Welch*, 749 F.3d 511 (6th Cir. 2014) and Ohio case law, ineffective assistance of counsel claims predicated on evidence not contained in trial record can only be raised in post-conviction proceedings, and thus, the rule of *Martinez* applies in Ohio).

This Court should thus address this petition as a first habeas petition. In doing so, this Court should conclude: (a) James Hanna's ineffective-assistance-of-counsel claims were procedurally defaulted, but he is entitled to federal review of those claims under *Martinez v. Ryan*, 566 U.S. 1 (2012); and (b) He is entitled to habeas corpus relief because, under *Strickland v. Washington*, he was denied the effective assistance of counsel.

This Court should grant James Hanna an evidentiary hearing at which he can prove his entitlement to federal review and habeas corpus relief under *Martinez* and *Strickland*. And this Court should also order Hanna transported to Ohio State University for neuroimaging studies necessary for him to prove his entitlement to relief on Claims IV.A, IV.C, and IV.D as presented in this petition.

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**II. JURISDICTION & PARTIES**

This Court has jurisdiction under 28 U.S.C. §2254. Petitioner James Galen Hanna is incarcerated at the Chillicothe Correctional Institution in Chillicothe, Ohio, and is in the custody of Warden Tim Shoop, who is the Respondent in this matter.

**III. STATEMENT OF THE CASE**

1. In 1997, James Galen Hanna was an inmate at the Lebanon Correctional Institution (LCI) in Lebanon, Ohio, serving a life sentence for aggravated murder imposed in 1978.

2. On or about August 18, 1997, Inmate Peter Copas was moved into Hanna's cell without any prior notice to Hanna.

3. Before being placed in a cell with Hanna, Copas had for years been involved in many negative encounters with cellmates, prison employees, and/or persons outside the prison, some of which had led to physical and/or verbal altercations.<sup>1</sup>

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<sup>1</sup> For instance, as shown by prison records, in March, 1989, Copas got into a major verbal confrontation with another inmate that disrupted the dormitory. In March, 1992, Copas got into a severe verbal argument with inmate Morrissey, and had to be escorted away to avoid a fight. In March, 1993, Copas engaged in a fight, after an argument turned into a fight. In April, 1993, Copas got into an argument and a fight with inmate Avery. In March, 1994, Copas sent vulgar letters to women outside the prison. In late 1994, Copas sent "nasty and threatening letters" to still other persons outside the prison, who asked that this stop. In March, 1995, Copas threatened his female schoolteacher. In April, 1995, Copas made threatening statements to his female schoolteacher and the female school supervisor. In May, 1995, after asking inmate Brown to help Copas get information about Copas' female teachers, Copas threatened to kill Brown, because Brown reported Copas' stalking of these women. In August, 1995, Copas then sent a letter to the female teacher stating that he was going to "hunt you

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4. Once Peter Copas was placed in Hanna's cell in August 1997, problems started almost immediately. In a matter of days, Copas altered the cell, used Hanna's property without permission, and had broken Hanna's television.

5. Hanna was upset. He expressed his displeasure with this situation and wanted Copas removed from the cell. Hanna recognized that "his wick was getting short," given the circumstances.

6. To avoid any further problems, Hanna specifically asked numerous prison employees to have Copas moved from the cell, but no one did anything and nothing changed.

7. On August 21, 1997, when Hanna returned to the cell following work, he found the cell door open and some of his belongings either stolen or lying around. This upset Hanna even more.

8. At about 4:00 or 5:00 a.m. on August 22, 1997, Hanna stabbed Copas in the eye with a sharpened paintbrush, which broke off inside Copas' head. Copas rose out of bed and Hanna also struck him with his fist and a lock contained in a sock.

9. Copas arose again about 6:00 a.m., sought assistance, and was removed from the cell. He exclaimed: "Get me out of here, he is trying to kill me. He stabbed me in the eye. He's crazy man. He's crazy."

10. Peter Copas was transferred to Middletown Regional Hospital. Unfortunately, doctors at Middletown did not initially recognize that part of the

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down and fuck you up." In September, 1995, he threatened to get "that damn teacher for what she has done." In October, 1996, he fought with his cellmate Carter. In April 1997, Copas got into another fight with another cellmate.

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paintbrush remained lodged behind Copas' eye. Copas remained conscious, was observed for approximately five hours, and then returned to LCI on August 22.

11. On August 26, 1997, Dr. Steven Katz, a neuro-ophthalmologist conducted a CT (computerized tomography) scan of Copas and identified a large foreign object "like a pen or pencil" lodged in the eye socket.

12. On August 27, neurosurgeons removed the object, and Copas was recovering quickly, including through the administration of intravenous antibiotics.

13. On September 5, however, his condition began to deteriorate and he later died on September 10, 1997 from a brain infarction.

14. The Warren County Grand Jury issued a two-count indictment against James Hanna:

a. In Count 1, the Grand Jury indicted Hanna for aggravated murder with prior calculation and design, with two death penalty specifications: (1) murder committed while in a detention facility, Ohio Rev. Code §2929.04(A)(4); and (2) having a prior conviction for a prior purposeful killing. Ohio Rev. Code §2929.04(A)(5). Count 1 also included a specification for being a repeat violent offender under Ohio Rev. Code §2929.01.

b. In Count 2, the Grand Jury also indicted Hanna for possession of a deadly weapon under detention, with a specification of being a repeat violent offender.

15. A jury found Hanna guilty of Count 1 and the (A)(4) specification. The trial court separately found Hanna guilty of the (A)(5) specification and the

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repeat violent offender specification. Count 2 and its specification were dismissed.

16. After a sentencing hearing, the jury recommended a sentence of death on November 10, 1998.

17. On November 20, 1998, Warren County Court of Common Pleas Judge Neal Bronson conducted his own sentencing hearing, and on November 23, 1998, he issued an opinion in which he imposed the death sentence for aggravated murder and eight (8) years for being a repeat violent offender.

18. James Hanna appealed to the Ohio Supreme Court, and on direct appeal raised fifteen (15) propositions of law.<sup>2</sup> On May 2, 2002, the Ohio

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<sup>2</sup> Those claims were: (1) the trial court precluded admission of evidence relevant to the question whether Hanna acted with prior calculation and design; (2) the trial court failed to instruct the jury when medical malpractice may constitute an independent intervening cause of death; (3) the trial court abused its discretion in not allowing a jury view; (4) the death sentence is disproportionate; (5) the mitigating factors were not outweighed by the aggravating factors; (6) there was insufficient evidence of a purposeful killing with prior calculation and design; (7) jury instructions shifted the burden of proof on *mens rea*; (8) the prosecution did not properly disclose all exculpatory evidence and a court review of the prosecutor's file was required; (9) the prosecution engaged in various forms of misconduct; (10) there was prosecutorial misconduct during the closing argument at the penalty phase; (11) trial counsel was ineffective for failing to inquire about pre-trial publicity, denigrating the reasonable doubt standard of proof, failing to re-raise relevant motions, failing to move for a mistrial, failing to recall or re-depose witnesses, failing to present witnesses with knowledge of the conditions of confinement, failing to adequately present evidence of abuse, introducing voluminous records without providing the jury guidance about the contents of those records, and failing to object as necessary; (12) Hanna was deprived of an individualized sentencing consideration by the trial court; (13) the cumulative effect of errors deprived Hanna of a fair trial; (14) the prosecution was unconstitutionally allowed to convict based upon a standard of proof less than proof beyond a reasonable doubt; (15) Ohio's death penalty law is unconstitutional. See

## App. 041

Supreme Court affirmed Hanna's conviction and death sentence. *State v. Hanna*, 95 Ohio St. 3d 285, 767 N.E.2d 678 (2002).

19. The United States Supreme Court denied a petition for writ of certiorari. *Hanna v. Ohio*, 537 U.S. 1036 (2002).

20. In the meantime, on December 22, 1999, Hanna filed in the Warren County Court of Common Pleas a petition for post-conviction relief containing fifteen (15) grounds for relief. See Exhibit 1 (petition for post-conviction relief).<sup>3</sup>

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*generally Hanna v. Ishee*, S.D.Ohio No. 1:03-cv-801, Direct Appeal Brief, ECF No. 163-2, PageID 3589-3592.

<sup>3</sup> Those claims included: (1) Hanna was denied a fair trial and his right to an unbiased jury because of Juror Reeves, who sat on the jury, was a convicted felon who should not have been allowed to sit in judgment in this case; (2) the trial court improperly sealed Copas' prison records, which deprived Hanna of a fair sentencing hearing; (3) the prosecution unconstitutionally withheld exculpatory information from Trooper Ertel's report; (4) trial counsel ineffectively failed to question Juror Reeves during *voir dire*; (5) trial counsel ineffectively failed to recognize that Juror Reeves' questionnaire showed that he had received a six month sentence and five years probation for an offense; (6) trial counsel ineffectively failed to re-raise their argument that the prosecution's file be copied and sealed for appellate review, as shown by the affidavit of attorney David Doughten; (7) trial counsel failed to conduct an adequate investigation into their client's background, and failed to present mitigating evidence, specifically evidence from a prison culture expert, such as Steve Martin; (8) trial counsel ineffectively failed to cross-examine prosecution witness Joseph Scurlock about his ability to identify James Hanna's handwriting and to have Scurlock present exculpatory testimony on Hanna's behalf; (9) trial counsel ineffectively failed to investigate and present testimony about the Ohio Department of Rehabilitation and Correction's custody policies for high security inmates, including Policy 111-07; (10) trial counsel ineffectively failed to prepare mitigation witness Kathleen Burch to explain how Hanna's actions were formed by his thirty years of incarceration, leading to his disastrous encounter with the victim; (11) trial counsel ineffectively failed to interview and present mitigating evidence from persons such as Steve Martin, Willard Hanna, Nancy La Duke, Beverly Hanna, Joseph Scurlock, with trial counsel's ineffectiveness being supported by the affidavit of attorney David Doughten; (12) Ohio's post-conviction process is inadequate for the vindication of constitutional rights; (13) electrocution is

App. 042

21. In the Warren County Court of Common Pleas, Mr. Hanna was represented by the Office of the Ohio Public Defender (OPD): David Bodiker, Ohio Public Defender; Susan Roche, Assistant State Public Defender; and Kathryn Sandford, Assistant State Public Defender. *See Id.* at 046 (David Bodiker, Susan Roche, and Kathryn Sandford identified as counsel who filed post-conviction petition). *See also* Exhibit 2 (post-conviction motion for discovery and memorandum in support, identifying OPD as post-conviction counsel).

22. Susan Roche was lead counsel for Hanna during his state post-conviction proceedings. *See* Exhibit 3 (declaration of Susan M. Roche, Esq.); Exhibit 4, ¶2 (declaration of Kathryn Sandford, Esq.).

23. The trial court dismissed the petition for post-conviction relief on March 22, 2001, and Hanna appealed.

24. On appeal, the Ohio Court of Appeals affirmed (*State v. Hanna*, 2001 Ohio App. Lexis 5995, 2001-Ohio-8623 (Dec. 31, 2001)), and the Ohio Supreme Court did not accept the appeal for review. *State v. Hanna*, 2002 Ohio Lexis 1611 (July 3, 2002).

25. Counsel from OPD then filed for Mr. Hanna a federal petition for writ of habeas corpus in the United States District Court for the Southern District of Ohio: *Hanna v. Ishee*, S.D. Ohio No. 1:03-cv-801. *See* Exhibit 5 (petition for writ

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unconstitutional; (14) the death sentence, including execution by electrocution or lethal injection, is unconstitutional; (15) the cumulative effect of errors alleged by Hanna deprived him of a fair trial and sentencing hearing.

### App. 043

of habeas corpus filed by Ohio Public Defender David Bodiker, Assistant Public Defenders Stephen Ferrell and Kelly Culshaw).

26. Susan Roche, who had been lead counsel during post-conviction proceedings, served as one of Mr. Hanna's federal habeas counsel from 2004-2007. See Exhibit 6 (Susan Roche's 2004 motion to substitute as federal habeas counsel, which was granted, and 2007 motion to withdraw as counsel).

27. The federal habeas petition filed and litigated by OPD included ten (10) claims for relief.<sup>4</sup>

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<sup>4</sup> The claims presented in that first federal habeas petition were as follows: (1) Juror Reeves' service on the jury violated Hanna's Sixth and Fourteenth Amendment rights to a fair and impartial jury; (2) the trial court rendered counsel ineffective under the Sixth and Fourteenth Amendments by precluding them from reviewing and using all of Copas' prison records at trial; (3) the prosecution suppressed material, exculpatory evidence, in violation of the Sixth and Fourteenth Amendments; (4) Hanna was denied the effective assistance of counsel because counsel (a) failed to use an expert witness on prison culture, (b) failed to present testimony from James Scurlock, (c) failed to present evidence of criteria for housing Hanna in maximum security, (d) failed to provide Kathleen Burch all relevant documentation about Hanna, and (e) failed to present significant mitigating evidence; (5) Hanna was denied the effective assistance of counsel because counsel (a) failed to determine on *voir dire* whether Juror Reeves was a competent juror, (b) failed to question Reeves about his prison experiences, (c) failed to re-raise their motion that the prosecution's file should be copied and sealed for appellate review, and (d) failed to point out inconsistencies in the testimony of the prosecution's medical experts; (6) In violation of the Fourteenth Amendment, the jury instruction on causation and foreseeability lessened the prosecution's burden of proof; (7) the trial court's failure to instruct when medical malpractice is an independent, intervening cause of death violated the Fifth, Sixth, and Fourteenth Amendments; (8) the trial court denied Hanna his rights under the Sixth, Eighth, and Fourteenth amendments by precluding evidence about the prevalence of shanks in prisons; (9) Lethal injection constitutes cruel and unusual punishment under the Eighth and Fourteenth Amendments; (10) the cumulative effect of errors at trial violated the Fifth, Sixth, Eighth, and Fourteenth Amendments.



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28. The petition did not include either Claim IV.A, Claim IV.B, Claim IV.C, or Claim IV.D, as presented in this petition (*See pp. 15-40, infra*), and none of those claims was ever raised by OPD attorneys in the initial federal habeas proceedings.

29. On December 18, 2008, the United States Magistrate issued a report recommending that the petition be denied. *Hanna v. Ishee*, S.D.Ohio No. 1:03-cv-801, Report and Recommendation, ECF No. 126.

30. After Hanna objected (*Id.*, Objections, ECF No. 128), United States District Judge Thomas M. Rose overruled Hanna's objections to the report, adopted the Magistrate's recommendations, dismissed the case, and entered judgment against Hanna on February 26, 2009. *Id.*, Order, ECF No. 132, PageID 2726-27; Judgment, ECF No. 133, PageID 2728-29.

31. Hanna filed a timely notice of appeal (*Id.*, Notice of Appeal, ECF No. 135, PageID 2733-35), and this Court granted a certificate of appealability. *Id.*, Certificate of Appealability, ECF No. 144, PageID 2835-36.

32. On appeal, the United States Court of Appeals for the Sixth Circuit affirmed in an opinion issued on September 11, 2012. *Hanna v. Ishee*, 694 F.3d 596 (6th Cir. 2012).

33. While proceedings on Hanna's habeas petition remained pending in the Sixth Circuit, on March 20, 2012, the United States Supreme Court decided *Martinez v. Ryan*, 566 U.S. 1 (2012) which allows the ineffectiveness of post-conviction counsel to provide cause for the default of an ineffective-assistance-of-trial-counsel claim.

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34. Numerous federal habeas petitioners who in their initial habeas petition raised new, but defaulted, claims of ineffective-assistance-of-trial-counsel and alleged the ineffectiveness of post-conviction counsel as cause for such defaults have had *Martinez* applied to their case during their first habeas proceedings. See e.g., *Richardson v. Varano*, 568 U.S. 802 (2012); *Woods v. Holbrook*, 566 U.S. 902 (2012); *Middlebrooks v. Colson*, 566 U.S. 902 (2012); *Newbury v. Thaler*, 566 U.S. 902 (2012); *Smith v. Colson*, 566 U.S. 901 (2012); *Cantu v. Thaler*, 566 U.S. 901 (2012). See also *Trevino v. Thaler*, 569 U.S. 413 (2013) (same).

35. Unlike the numerous federal habeas petitioners noted in ¶34 who received application of *Martinez* in proceedings on their first federal habeas petition, James Hanna had no opportunity to have *Martinez* applied on his first habeas petition, because his federal habeas counsel (as more fully discussed *infra*) suffered a conflict of interest: Hanna was represented by the Ohio Public Defender (David Bodiker, Susan Roche, Kathryn Sandford) in state post-conviction proceedings, but then represented again by Bodiker, OPD, and OPD attorneys including Roche throughout the entire course of his initial federal habeas proceedings.

36. The United States Supreme Court later denied Hanna's petition for certiorari in 2013 – after the 2012 decision in *Martinez*. *Hanna v. Robinson*, 571 U.S. 844 (2013).

37. In later proceedings before the United States District Court, the United States Magistrate initially denied a motion to appoint new counsel, filed

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pursuant to *Martinez*. See *Hanna v. Bagley*, S.D. Ohio No. 1:03-cv-801, Order, ECF No. 154, PageID 2889-92.

38. On April 3, 2014, however, on reconsideration and after recommittal by the United States District Judge, the United States Magistrate substituted David Doughten and Kathleen McGarry as counsel for Hanna. *Id.*, Supplemental Opinion, ECF No. 158, PageID 2913-21; *Id.*, Notice of Appearance of David Doughten, ECF No. 161, PageID 2925-26; *Id.*, Notice of Appearance of Kathleen McGarry, ECF No. 159, PageID 2922.

39. Ms. McGarry later moved to withdraw and to have the Office of the Federal Public Defender for the Southern District of Ohio substituted as trial attorney for Mr. Hanna. *Id.*, Motion to Substitute Counsel, ECF No. 169, PageID 7371-73.

40. On August 7, 2018, this Court granted that motion and substituted the Office of the Federal Public Defender and Allen Bohnert as trial attorney for Mr. Hanna. *Id.*, Notation Order, ECF No. 170.

41. The Office of the Federal Public Defender now files this current petition for writ of habeas corpus on Mr. Hanna's behalf, having done so within one year of its substitution as counsel for Mr. Hanna.

42. This petition is filed solely by the Office of the Federal Public Defender, and not by counsel David Doughten who was earlier appointed by this Court, because Mr. Doughten himself has had conflicting loyalties under the unique circumstances of this case:

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a. During Mr. Hanna's post-conviction proceedings, Mr. Doughten worked with and assisted Mr. Hanna's post-conviction counsel at OPD as an expert witness, providing an affidavit that was filed with Mr. Hanna's petition for post-conviction relief. *See* Exhibit 7 (post-conviction affidavit of David Doughten, Esq.).

b. While assisting OPD attorneys during Hanna's post-conviction proceedings, Mr. Doughten conducted a "review of the facts of the James Hanna case" (*Id.* at 3) which involved his own review of the transcript of Mr. Hanna's trial. *See* Exhibit 8 (notes of review of the trial transcript during post-conviction proceedings).

c. In his review of the transcript and in his affidavit for OPD attorneys, Mr. Doughten did not note or discuss any of the ineffective-assistance-of-trial counsel claims raised here for the first time by the Office of the Federal Public Defender. *See* Exhibits 7 & 8.

d. Also, from 2007 and until the filing of this petition for writ of habeas corpus in 2019, Mr. Doughten has been a member of the Ohio Public Defender Commission which oversees the operations of OPD. *See* Exhibit 9 (Office of the Ohio Public Defender, 2017 Report at 5)(noting David Doughten's current term as Ohio Public Defender Commissioner from 2013-2021); Exhibit 10 (Office of the Ohio Public Defender, 2010 Report at 3)(noting David Doughten's term as Ohio Public Defender Commissioner from 2007-2013).

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e. Under these circumstances, therefore, Mr. Doughten has not been in a position to challenge the effectiveness of OPD's representation of Mr. Hanna, as now asserted in this petition.<sup>5</sup>

**IV. CONSTITUTIONAL CLAIMS FOR RELIEF**

43. In this petition for writ of habeas corpus, James Hanna raises four claims for relief, which he identifies here, and explains in more detail in Sections IV.A through IV.D, *infra*. His constitutional claims for relief include the following:

**a. Claim IV.A** -- In violation of the Sixth and Fourteenth Amendments, trial counsel ineffectively failed to secure and present mitigating neuroimaging evidence to the jury, including PET (positron emission tomography) and MRI (magnetic resonance imaging) scans to objectively prove Hanna's brain damage and its effects upon his behavior.

**b. Claim IV.B** -- In violation of the Sixth and Fourteenth Amendments, trial counsel ineffectively failed to investigate and present mitigating evidence that numerous predators inflicted horrific sexual abuse upon James Hanna since the time he was a child, that Hanna suffered severe complex trauma, and that as a result, he suffered at the time of the offense the severe mental illnesses of post-traumatic stress (PTSD), depression, and borderline personality disorder.

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<sup>5</sup> Kathleen McGarry was herself an attorney with the Office of the Ohio Public Defender from 1987 to 2001, and was for a time a supervisor in the death penalty division. She too was never in a position to challenge the effectiveness of OPD's post-conviction representation of James Hanna, which commenced in 1999.

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**c. Claim IV.C** – In violation of the Sixth and Fourteenth Amendments, trial counsel ineffectively failed to investigate and present mitigating proof that James Hanna suffers a serious mental disorder caused by brain damage, including damage in his frontal and temporal lobes.

**d. Claim IV.D** – In violation of the Sixth, Eighth, and Fourteenth Amendments, the cumulative effect of the errors alleged in this petition deprived James Hanna of a fair and reliable sentencing hearing, thus entitling him to federal habeas corpus relief.

**A. In Violation Of The Sixth And Fourteenth Amendments, Trial Counsel Ineffectively Failed To Neuroimaging Evidence, Including A PET Scan And MRI Of James Hanna’s Brain, To Establish Objective Mitigating Evidence That Hanna Suffers Serious Brain Damage That Affects His Functioning, And This Error Was Especially Prejudicial Where The Prosecution Criticized Defense Psychologist Kathleen Burch For Not Conducting Such Scans**

44. In violation of the Sixth and Fourteenth Amendments, trial counsel ineffectively failed to secure and present mitigating neuroimaging evidence to the jury, including PET (positron emission tomography) and MRI (magnetic resonance imaging) scans to prove Hanna’s brain damage and its effects upon his behavior.

45. At the sentencing phase of trial, defense counsel called psychologist Kathleen Burch, Psy.D., to testify on James Hanna’s behalf.

46. Dr. Burch’s summarized her evaluation process as follows:

a. Over the course of 4.5 to 5 hours on one day, she met with Hanna on a first day, interviewed him for an hour-and-a-half to two hours, and

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gave him personality tests. See Exhibit 11 at 007, 019, Trial Tr. 1544, 1556 (excerpts of trial transcript).

b. She also reviewed a number of records provided her by defense counsel and the prosecutor's office. *Id.* at 008, Trial Tr. 1545.

c. On a second day, she administered Hanna neuropsychological tests over the course of about six (6) hours. *Id.* at 008-009, 020, Trial Tr. 1545-46, 1557.

d. She learned that Hanna lived in a "very dysfunctional family": the family was terribly poor, James' mother was abusive and neglectful, and James' father died when James was about six years of age. *Id.* at 010-015, Trial Tr. 1547-52.

e. She also was told by one of James' sisters that James had been sexually abused as a child, while in a foster home, but she did not explain the nature of that abuse or its effects upon James in at in any greater detail. *Id.* at 017, Trial Tr. 1554.

47. On direct examination, Dr. Burch testified to the following conclusions about James Hanna:

a. There is "evidence of some frontal lobe impairment in the brain." *Id.* at 024, Trial Tr. 1561. "The opinion is that there is evidence of dysfunction, either developmentally based or from repeated head trauma, in the anterior part of his brain, frontal lobes, and also in the right parietal portion of his brain." *Id.* at 028, Trial Tr. 1565. *See also Id.* at 024, Trial Tr. 1561 ("He also

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has evidence of some relative dysfunction in the right side posterior aspect of his brain.”)

b. She explained that the implications of Hanna’s frontal lobe damage is that “he would have more trouble than someone without such damage or dysfunction thoughtfully, reasonably and with good judgment, planning, organizing, directing, self-monitoring and modulating his behavior.” *Id.* at 029, Trial Tr. 1566.

c. Neuropsychological testing also revealed that James “has attention deficit disorder which was never diagnosed or treated.” *Id.* at 023, 030, Trial Tr. 1560, 1567.

d. From her personality tests, Dr. Burch stated that “the diagnosis is personality disorder, predominantly antisocial, and he has a passive/aggressive style and also hostile/dependent style of relating.” *Id.* at 024, 025, Trial Tr. 1561-62.

e. “There is also evidence of longstanding chronic depressive trends, but that’s not his primary diagnosis.” *Id.*

f. She stated that Hanna’s mental health diagnosis would be antisocial personality disorder, cognitive disorder not otherwise specified, and depressive trends that are chronic.” *Id.* at 025-026, Trial Tr. 1562-63.

g. According to Dr. Burch, Hanna has “neurological deficits” and problems in “personality development” that lead “his thinking to [be] quite illogical” and “when his perceptions are non-conventional,” they “would not easily be appreciated or understood by most people.” *Id.*



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h. She explained: “The distortions in his thinking and in his perception tend to occur around themes related to anger and perceived threat. So, translating that from the testing situation into his life, it would appear that when he is angry or when there is perceived threat, his thinking is kind of strange.” *Id.* at 026-027, Trial Tr. 1563-64. *See also Id.* at 061, Trial Tr. 1598 (discussing Hanna’s illogical thinking when perceiving threat). “He has major difficulties with impulse controls when he feels he is pushed, when he feels that he is subject to threat.” *Id.* at 070, Trial Tr. 1607.

48. On cross-examination, the prosecution attacked Burch’s claims that James Hanna suffers organic brain damage by emphasizing that she was a psychologist and not a medical doctor, neurologist, or neuroradiologist:

a. Initially, the prosecution objected on direct examination to Burch’s qualifications to diagnose brain damage precisely because she was not a medical doctor. *Id.* at 027, Trial Tr. 1564 (objection).

b. The prosecution then started its cross-examination of Burch by emphasizing to the jury that “you’re not a medical doctor.” *Id.* at 038, Trial Tr. 1575.

c. The prosecution proceeded to cross-examine Burch with the fact that in 1978, Dr. Sherman – who was “a medical doctor” (*Id.* at 075, Trial Tr. 1612) – wrote a report in which he stated that Hanna showed “no evidence of organic problems.” *Id.* at 073, Trial Tr. 1610.

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d. The prosecution also emphasized on cross-examination that Burch reached her conclusion of brain damage based on her testing and James' history. *Id.* at 077, Trial Tr. 1614.

e. The *coup-de-grace* on cross-examination was the prosecution's emphasis that unlike a medical doctor, "you [Burch] didn't have objective tests, scientific tests performed . . . to confirm what your opinion is" about brain damage. *Id.* at 078, Trial Tr. 1615.

f. As Burch was forced to admit, objective medical tests could prove the existence of brain damage (*Id.*), but, of course, she had earlier admitted that she had not conducted (and could not conduct) any such tests.

49. Trial counsel performed unreasonably and/or deficiently by not securing neuroimaging tests of Hanna to prove his brain damage, including, for example, a PET Scan (positron emission tomography) or MRI Scan (magnetic resonance imaging).

50. With a PET scan conducted by a medical doctor, trial counsel would have been able to establish (at a minimum) Hanna's decreased glucose metabolism in his frontal lobes and right parietal lobes, thus establishing objective scientific proof of the very functional brain damage that Burch asserted at the sentencing phase of trial.

51. With an MRI – which shows structural defects in the brain – counsel also could have established structural defects in Hanna's brain, in the frontal lobes, the right parietal lobe, the right anterior lobes (as Burch testified at trial) and/or in other brain regions (possibly his brain ventricles).

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52. Before trial, trial counsel was well aware that based upon her neuropsychological tests, Dr. Burch had concluded that James Hanna's "frontal lobe functions" were "impaired." See Exhibit 12, p. 2 (trial counsel's notes preparing for Dr. Burch's testimony).

53. Once trial counsel knew that Burch had concluded that Hanna suffers such brain damage, counsel had no reason not to prove that damage through additional medical tests such as PET and MRI, and counsel's failure to secure that testing constituted deficient performance.

54. Counsel never thought to seek such testing and overlooked that possibility, and counsel made no reasonable tactical decision to fail to secure such testing.

55. Even trial counsel's mitigation specialist would have sought neuroimaging upon learning Dr. Burch's conclusion that Hanna has frontal lobe impairment and other neurological damage. See Exhibit 13 (declaration of James Crates).

56. Trial counsel's performance in failing to secure neuroimaging was unreasonable and constitutionally deficient under the Sixth Amendment, because it was based on ignorance and not a tactical decision. See *e.g.*, *Sims v. Livesay*, 970 F.2d 1575 (6th Cir. 1992) (counsel's performance deficient when counsel's actions based on ignorance, and not a tactical decision).

57. Counsel's failure to secure neuroimaging was highly prejudicial to James Hanna as well, where PET and MRI scans would show that Hanna suffers

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very serious damage (at a minimum) in his frontal lobes (and likely his temporal lobes or other regions as well).

58. To establish prejudice under the Sixth Amendment, Hanna need only show “a reasonable probability that at least one juror would have struck a different balance” had counsel proven Hanna’s brain damage through neuroimaging. *Wiggins v. Smith*, 539 U.S. 510, 537 (2003).

59. James Hanna can (and will) make that showing in these proceedings: At least one juror would have struck a different balance and voted for a life sentence had counsel proven Hanna’s significant frontal lobe (or other brain) problems through the use of objective medical tests like PET and MRI scans. *See e.g., Sears v. Upton*, 561 U.S. 945, 949-950 (2010) (proof of significant frontal lobe abnormalities establishes prejudice under *Strickland*); *Harries v. Bell*, 417 F.3d 631 (6th Cir. 2005) (petitioner prejudiced at capital sentencing by trial counsel’s failure to prove frontal lobe damage).

60. There is a reasonable probability that at least one juror would have voted for a life sentence and spared Hanna from execution had counsel conducted neuroimaging and produced such test results to the jury: That proof would have supported Burch’s opinion and would have debunked the prosecution’s false suggestion that Hanna is not brain damaged.

61. This medical proof of Hanna’s brain dysfunction would have been compelling mitigating evidence, for it would have proven to the jury precisely why Hanna acted as he did when provoked by Copas: Hanna is brain damaged and

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his violent reaction to Copas was the direct consequence of the very type of brain damage he suffers.

62. And indeed, over the years, many others reacted to provocative situations with Peter Copas in violent ways. *See* n. 1, *supra*.

63. Had trial counsel presented proof of an MRI and PET of James Hanna's brain, the jury would have learned as a scientific matter that Hanna's brain damage led him to react in a seemingly more violent way than others – just as one would expect from someone who suffers the type of brain injury which Hanna suffers.

64. Put simply, there is a reasonable probability that at least one juror would not have voted to sentence Hanna to death, because the jurors would have learned conclusively from a PET and/or MRI and Hanna has frontal lobe (and other) brain damage that influenced his behavior and reaction to Copas at the time of the offense.

65. Jurors would have learned that Hanna engaged in behavior that was truly “crazy” (*See* ¶9, *supra*), because of brain injury shown on the PET and MRI.

66. With a PET and MRI in hand, jurors would have voted for life because they would have learned that Hanna's particular brain damage “interfere[d] with [his] judgment and decrease[d] [his] ability to control impulses” when prison authorities literally forced Hanna into the completely untenable situation having to live with Peter Copas. *Harries*, 417 F.3d at 640.

67. To be sure, this claim (IV.A) was never presented to the Ohio state courts and has thus been procedurally defaulted.

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68. James Hanna has “cause” for that procedural default under *Martinez v. Ryan*, 566 U.S. 1 (2012), which provides that a petitioner has cause for the procedural default of an ineffective-assistance-of-trial-counsel claim if the claim is “substantial” and post-conviction counsel ineffectively failed to present the claim during the initial-review collateral proceeding. *Id.* at 14. *See also* Section VI, *infra* (discussing applicability of *Martinez* in Ohio).

69. First, the claim is “substantial” under *Martinez*. Indeed, it will be a meritorious claim should the neuroimaging scans provide objective proof of Hanna’s brain damage, as he fully expects.

70. Second, post-conviction counsel during the initial review collateral proceeding (the trial court post-conviction proceeding), performed deficiently and in an objectively unreasonable manner by failing to raise Claim IV.A in the post-conviction petition and to litigate it in those proceedings:

a. Post-Conviction counsel Roche and attorneys at OPD simply overlooked the claim and failed to raise it without any tactical reason for failing to do so. *See* Exhibit 3 (sworn declaration of post-conviction lead counsel Susan M. Roche, Esq.). *See also* Exhibit 4 (sworn declaration of attorney Kathryn Sandford).

b. Thus, post-conviction counsel’s performance during the initial review collateral proceeding was deficient under *Strickland v. Washington*, 466 U.S. 668 (1984).

71. In fact, post-conviction counsel Roche now acknowledges this to be a viable ineffective-assistance-of-trial-counsel claim, though she simply

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overlooked the claim when reviewing the case as post-conviction counsel. See Exhibit 3, ¶9 (declaration of Susan M. Roche, Esq.).

72. In addition, while assisting post-conviction counsel as their expert counsel, attorney Doughten also failed to recognize the claim when he reviewed the transcript. See *e.g.*, Exhibit 8, p. 015 (not noting this as a possible claim arising from Burch's cross-examination).

73. Ultimately, Hanna will establish in this Court the prejudice flowing from trial counsel's failure to secure neuroimaging, and post-conviction counsel's ineffective failure to raise Claim IV.A in state court, and he will do so after this Court orders that he be transported to Ohio State University for neuroimaging.

74. With the proof from those scans, Hanna will then establish his entitlement to habeas corpus relief on this claim, given trial counsel's failure to conduct such scans.

75. Because the scans are necessary for Mr. Hanna to prove his claims, Mr. Hanna hereby requests this Court to issue an order that he be transported to Ohio State University so that Ohio State may conduct the PET and MRI scans which can then be evaluated by Mr. Hanna's expert (Dr. Douglas Scharre, M.D.) and presented to this Court.

76. Petitioner fully expects that PET and MRI scans will show brain damage, because James Hanna's history is replete with indications that he has brain injury and brain damage:

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a. Dr. Burch herself testified at trial that her neuropsychological testing shows that James Hanna suffers damage in his frontal lobes. *See Exhibit 11 at 024, 028.*

b. James Hanna has had a lifelong history of headaches, a clear sign of brain injury and dysfunction. *See Exhibit 14 (April 1971 note).*

c. Throughout his life, he has suffered numerous blackouts and incidents in which he has suffered a loss of consciousness – again indicating that James Hanna has serious brain problems. *See Exhibit 15 (Dec. 1969 report of Hanna suffering blackouts and passing out); Exhibit 16 (February 1973 incident where Hanna was dizzy and unable to control himself); Exhibit 17 (April 1992 fainting incident).*

d. Before this offense, James Hanna suffered numerous head injuries that would lead to brain damage, including: being repeatedly struck in the head by his mother as a child; as a child, being struck in the head by a rock thrown by his brother; and as a young man, being injured in a car accident.

e. Further, in 1980, he twice suffered cardiac arrest and lost blood flow to the brain during surgery. *See Exhibit 18 (Sept. 1981 report of two cardiac arrests).* Such incidents commonly cause hypoxia and brain injury. *See also Exhibit 19 (March 1978 cross-examination of Dr. Sherman noting that as an adolescent, Hanna was diagnosed by Dr. Kenyon as suffering hyperkinesia and prescribed large doses of tranquilizers).*

77. Further, as Dr. Douglas Scharre, M.D., Director of the Division of Cognitive Neurology at Ohio State University, attests (*See Exhibit 20, Declaration*



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of Douglas Scharre, M.D.), a PET and MRI are warranted from a clinical and diagnostic perspective, and such neuroimaging may indeed confirm the nature and extent of Hanna's brain damage, given the numerous reasons to suspect brain damage outlined in ¶76, *supra*.

78. Because this Court has jurisdiction over this petition as a first habeas petition under 28 U.S.C. §2241 and 2254(a), this Court has ample authority to issue the order of transport under 28 U.S.C. §1651, which allows the ancillary writ which Hanna requests, namely an order of transport necessary for the proper litigation of this petition. *See e.g., Elmore v. Shoop*, 2019 U.S. Dist. Lexis 84144 at \*2 (S.D. Ohio May 20, 2019) (in habeas proceedings, acknowledging federal court's ancillary jurisdiction under 28 U.S.C. §1651 to issue an order to transport a petitioner to outside hospital for neuroimaging); *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1102 (11th Cir. 2004) (under the All Writs Act, a court has the power to issue an ancillary writ which "compel[s] acts 'necessary to promote the resolution of issues in a case properly before it...or facilitate...the court's efforts to manage the case to judgment.>"). This Court should therefore order James Hanna's transport to Ohio State.

79. Once this Court orders Mr. Hanna's transport to Ohio State and Hanna can obtain the scans and Dr. Scharre's expert interpretation of those scans, James Hanna will ultimately prove the prejudice flowing from trial counsel's failure to conduct neuroimaging.

80. In sum, therefore, under the Sixth and Fourteenth Amendments, trial counsel was ineffective for failing to fully investigate and present

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neuroimaging evidence proving James Hanna's brain damage, which affected him at the time of the offense. Trial counsel's performance was deficient and prejudicial, and James Hanna will show the true extent of that prejudice upon securing his requested order of transport for neuroimaging and producing the results of those tests. Although this claim was procedurally defaulted in the initial review collateral proceeding, post-conviction counsel was ineffective under *Strickland* in failing to raise and fully present this claim during post-conviction proceedings, and thus James Hanna has "cause" for the default of this claim under *Martinez v. Ryan*, 566 U.S. 1 (2012). He is entitled to relief on Claim IV.A.

**B. In Violation Of The Sixth And Fourteenth Amendments, Trial Counsel Ineffectively Failed To Investigate And Present Mitigating Evidence That James Hanna Was The Victim Of Severe Sexual Abuse And Complex Trauma And As A Result, He Suffered The Severe Mental Illnesses Of Post-Traumatic Stress Disorder (PTSD), Major Depression, And Borderline Personality Disorder At The Time Of The Offense**

81. In violation of the Sixth and Fourteenth Amendments, trial counsel failed to properly and fully investigate James Hanna's background and life history, and to present compelling mitigating proof to the jury that James Hanna was the victim of severe and complex trauma: Starting in childhood, he suffered horrific sexual (and other) abuse that led to the severe mental illnesses of Post-Traumatic Stress Disorder (PTSD), major depression, and borderline personality disorder, all of which he suffered at the time of the offense.

82. Indeed, counsel failed to investigate and present mitigating proof that starting when he was just a child, Hanna was sexually abused by numerous predators, and he was beaten and raped while incarcerated even as a young

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man. This trauma, along with other terrible trauma, led to severe mental illness at the time of this offense.

83. As noted *supra*, Dr. Burch told jurors that James Hanna's primary mental health diagnosis was antisocial personality disorder, along with cognitive order not otherwise specified, and depressive trends that are chronic. See Exhibit 11 at 025-026, Trial Tr. 1562-63.

84. The jury, however, was gravely misled by Dr. Burch's testimony, because trial counsel failed to fully investigate Hanna's life history and present to the jury compelling mitigating proof of the true nature of the complex and serious trauma experienced by Hanna and its effects upon him.

85. Contrary to Dr. Burch's testimony at trial, James Hanna is not someone whose mental illness merely consists of a personality disorder: He suffered severe and horrific sexual and physical abuse as a child, and as a result, he suffers (and suffered at the time of the offense) the very serious mental disabilities of Post-Traumatic Stress Disorder (PTSD), depression, and borderline personality disorder (not antisocial personality disorder, as Dr. Burch erroneously told jurors).

86. As Dr. Howard Fradkin, Ph.D., explains in his attached sworn declaration (See Exhibit 21), James Hanna was scarred from an early age by numerous traumatic occurrences or Adverse Childhood Experiences (ACEs) that have affected him for a lifetime. *Id.*, pp. 9-15.

87. As Dr. Fradkin notes, James Hanna suffered one of the most traumatic lives a person can survive. As a child, James Hanna experienced at

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least eight (8) out of ten (10) possible ACEs which had been recognized at the time of trial: (1) physical abuse; (2) emotional abuse; (3) physical neglect; (4) emotional neglect; (5) domestic violence; (6) death of a parent, his father, who died when James was only 6 years old; (7) household mental illness; and (8) incarceration of a family member. Dr. Fradkin details those traumas in his report. *Id.*<sup>6</sup>

88. Dr. Fradkin notes, however, that perhaps the gravest harm suffered by James Hanna as a child, adolescent, and adult has been the horrific sexual trauma inflicted upon him by numerous predators, starting when James was just a young boy. In his report, Dr. Fradkin provides the gruesome details of these rapes and abuse:

a. The sexual abuse began when James was just an infant, when his mother would pull down his pants to expose his genitals to show others that he was a boy. *Id.* at 22.

b. Around age 6, James was raped by a half dozen neighborhood boys. *Id.* at 22.

c. When James was a troubled thirteen (13) year old, the Lucas County Juvenile Court placed him into the custody of a foster “father,” Orville Fricke, who rather than protecting him, proceeded to repeatedly beat and rape James. *Id.* at 23-25.

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<sup>6</sup> As Dr. Fradkin also explains, a more recent 2012-13 study has added seven (7) additional ACEs, and when evaluating those 17 ACEs, James Hanna suffered 15 of those traumas.

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d. One of Fricke's other foster charges also sexually abused James. *Id.* at 25-27.

e. When placed in the Child Study Institute (CSI), James was raped and sexually abused by groups of boys. *Id.* at 27-29.

f. James was also raped at the Ohio Penitentiary, where he was set up by a correctional officer (*Id.* at 29-30).

g. He was later gang raped while incarcerated at Lucasville. *Id.* at 31.

h. And he was raped while incarcerated at Mansfield, again after an officer let the inmate into the cell block to allow a sexual predator access to James. *Id.* at 31.

89. This long and terrible history of trauma and sexual trauma is best described as "Complex Trauma." *Id.* at 34.

90. Such extensive and complex trauma (and sexual trauma in particular) often leads to depression, sexual anorexia, self-defeating behavior, violent acting-out, dissociation, inability to develop interpersonal relationships, relentless feelings of shame and helplessness, as well as hypervigilance – the very behaviors which James Hanna has experienced over his lifetime. *Id.* at 35-41. All of this was known at the time of the trial. *Id.* at 45-46.

91. Notably, the terrible sexual (and other) abuse and trauma suffered by James Hanna precipitated mental illness. Dr. Fradkin explains that James Hanna's diagnoses at the time of his trial are Post-Traumatic Stress Disorder, PTSD (*Id.* at 41-43, 50, 52), Borderline Personality Disorder (*Id.* at 43-45, 50,

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52), Major Depression, Recurrent (*Id.* at 50, 52), and Alcohol Abuse (*Id.* at 50, 52).

92. As Dr. Fradkin summarizes, James Hanna suffered trauma well outside the norm – James Hanna’s trauma history is off the charts. The trauma he experienced was far worse than that endured by most other trauma survivors. In fact, the vast extent and duration of the trauma he has suffered “sets him apart from a very large majority of other trauma survivors.” *Id.* at 51.

93. Yet rather than receiving the assistance and support he needed to overcome the horrific trauma he endured, he was instead placed in situations where he was brutalized and traumatized even more – by a “foster father” who raped him repeatedly, and by institutions whose residents also repeatedly brutalized and sexually abused him.

94. Trial counsel, however, failed to fully investigate Hanna’s background and his history of sexual abuse, to present the true nature of that brutality and abuse, and to have the mitigating effects of that abuse explained to the jury: Hanna was severely and gravely traumatized as a young man, which led to PTSD, major depression, and borderline personality disorder.

95. Before trial, counsel was well aware that James Hanna had suffered sexual abuse as a child and young man, with Dr. Burch having initially learned of this abuse through her investigation. *See* Exhibit 12 (trial counsel’s notes). And counsel also knew about some of the maternal abuse. *Id.*

96. Yet before and at trial, Dr. Burch only scratched the surface about the severe sexual abuse which James suffered, but which altered his entire life:

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a. Dr. Burch only briefly mentioned to the jury that there were “allegations” that James was sexually abused by a neighbor and a belief that James was sexually abused in one of his foster placements that supposedly was not “substantiated.” Exhibit 11 at 017, Trial Tr. 1554.

b. At trial, James’ sister Patricia Cutcher cursorily mentioned that James was sexually abused as a child, but counsel did not seek explanation of any of the details. Trial Tr. 1531 (“Q. To your knowledge, as a child, was James subjected to any abuse, sexual or physical? A. Sexually, yes.”).

97. With Dr. Burch and one of James’ sisters having flagged the issue of sexual abuse and trauma, however, it was counsel’s constitutional duty to fully explore the nature and extent of this sexual abuse and brutality, to substantiate it (as has now been done by Dr. Fradkin) and to explain to the jury the mitigating mental health consequences of that abuse. *Strickland v. Washington*, 466 U.S. 668 (1984).

98. Hanna’s “trial counsel did not fulfill their obligation to conduct a *thorough investigation* of [Hanna’s] background. See 1 ABA Standards for Criminal Justice 4-4.1, commentary, p. 4-55 (2d ed. 1980).” *Williams v. Taylor*, 529 U.S. 362, 396 (2000) (emphasis supplied).

99. Dr. Burch’s knowledge of James’ sexual abuse – which was passed on to defense counsel before trial (See Exhibit 12 at 1) -- was a “red flag” that required counsel to investigate further to learn and present the scope and nature of that abuse, just as undersigned counsel has done now. Trial counsel’s knowledge about this sexual abuse triggered a duty to further investigate the

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abuse, especially when they simply needed interview James Hanna. *See e.g., Rompilla v. Beard*, 545 U.S. 374, 389-390 (2005); *Wiggins v. Smith*, 539 U.S. 510, 523 (2003) (counsel unreasonably failed to expand their investigation to seek mitigating evidence once they had some mitigating information about the defendant's personal history).

100. Under the circumstances, there was no reason for counsel not to explore the full extent of the trauma and sexual trauma suffered by James Hanna, and no legitimate reason for counsel not to have conducted the thorough investigation now conducted by undersigned counsel and Dr. Fradkin – which differs dramatically from trial counsel's cursory and incomplete investigation.

101. In fact, all of the evidence of James Hanna's sexual trauma investigated now and presented here was equally available and accessible at the time of trial. *See Exhibit 21 at 50.* Trial counsel's performance was therefore deficient under the Sixth Amendment. *See e.g., Rompilla, supra; Williams, supra.*

102. Trial counsel's failure to investigate James Hanna's history of sexual abuse also resulted in prejudice to Hanna, and there is a reasonable probability that at least one juror would have voted for a life sentence had trial counsel fully investigated and presented to the jury proof of the extent and nature of the abuse James Hanna suffered, and its effects upon him.

103. With a proper and thorough investigation of the sexual and physical abuse James suffered as a child and young man, trial counsel could have presented to the jury the compelling mitigating evidence contained in Dr. Fradkin's report, i.e., mitigating evidence of the true scope and nature of abuse



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suffered by James, as well as the mitigating evidence of the psychiatric diagnoses resulting from that abuse -- post-traumatic stress disorder, major depression, borderline personality disorder.

104. Had trial counsel presented to the sentencing jury the scope, nature, and effects of James Hanna's history of sexual trauma to the jury, there is "a reasonable probability that at least one juror would have struck a different balance" and voted for life had jurors known the truth about the horrific abuse and trauma suffered by James Hanna. *Wiggins v. Smith*, 539 U.S. 510, 537 (2003). This is especially true where Dr. Burch's incomplete analysis led to inaccurate diagnoses (the absence of major mental illness, and the presence of antisocial personality disorder) that were instead considered by the jury.

105. James Hanna suffered prejudice under *Strickland* and he is entitled to relief on the merits of this claim. *See Doe v. Ayers*, 782 F.3d 425 (9th Cir. 2015) (petitioner denied effective assistance at sentencing where counsel failed to investigate and present mitigating evidence of sexual abuse while incarcerated and mental illness and trauma experienced as a child).

106. This claim (IV.B) also was never presented to the Ohio state courts and has thus been procedurally defaulted.

107. Under *Martinez v. Ryan*, 566 U.S. 1, 14 (2012), James Hanna has "cause" for that procedural default:

a. First, the claim is "substantial" under *Martinez*. Indeed, it would appear to be a meritorious claim, for all the reasons cited in ¶¶77-100.

b. Second, post-conviction counsel during the initial review

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collateral proceeding (the trial court post-conviction proceeding), performed deficiently and in an objectively unreasonable manner by failing to raise Claim IV.B in the post-conviction petition and to litigate it in those proceedings.

c. Counsel Roche and attorneys at OPD simply overlooked the claim and failed to raise it without any tactical reason for not raising the claim, and ineffectively failed to secure expert assistance to investigate and present this claim, as it is now presented here. See Exhibit 3, ¶¶6-7, 12-13 (sworn declaration of lead post-conviction counsel Susan Roche).

d. Post-Conviction counsel's performance in failing to present current Claim IV.B was therefore deficient under *Strickland*, and that failure provides "cause" for the default of this substantial ineffectiveness claim.

108. In sum, therefore, James Hanna is entitled to habeas corpus relief on this claim, IV.B. Trial counsel was ineffective for failing to fully investigate and present evidence of James Hanna's severe sexual abuse which began when he was a child and its deleterious psychiatric effects upon him, including PTSD, major depression and borderline personality disorder. Trial counsel's performance was deficient and prejudicial. Although this claim was procedurally defaulted in the initial review collateral proceeding, post-conviction counsel was ineffective under *Strickland* in failing to raise and fully present this claim during post-conviction proceedings, and thus James Hanna has "cause" for the default of this claim under *Martinez v. Ryan*, 566 U.S. 1 (2012).

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**C. Counsel Ineffectively Failed To Investigate And Present Proof That James Hanna Suffered A Serious Mental Disorder Caused By Brain Damage, Including Damage In His Frontal And Temporal Lobes**

109. In addition, trial counsel failed to present proof that Hanna suffers (and suffered at the time of the offense and trial) a mental disorder due to frontal/temporal lobe (and/or other) brain dysfunction and/or enlarged brain ventricles, all of which could have been proven with PET and MRI scans.

110. At the time of James Hanna's trial, the American Psychiatric Association's Diagnostic and Statistical Manual, Fourth Edition (DSM-IV) provided for the diagnosis of any mental disorder that was "the direct physiological consequence of" the general medical condition of brain dysfunction and brain injury. DSM-IV at 7. *See also Id.* at 27 ("When a mental disorder is judged to be a direct physiological consequence of [an individual's] general medical condition, a Mental Disorder due to a General Medical Condition should be diagnosed on Axis I and the general medical condition should be recorded on both Axis I and Axis III.")

111. Trial counsel, however, performed deficiently in failing to request medical tests such as a PET and MRI of Hanna's brain to prove Hanna's general medical condition and explain the connection between his brain injury and his mental illness and psychiatric problems. Trial counsel's failure to request PET and MRI scans was all the more egregious once Dr. Burch's own testing revealed frontal lobe injury that needed to be confirmed by objective, medical tests. *See e.g.*, Exhibit 12 (trial counsel's pretrial notes of Dr. Burch's conclusions).

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112. Had trial counsel conducted neuroimaging, counsel would have established that Hanna has a mental disorder that is “the direct physiological consequence of” the general medical condition of his particular brain dysfunction and brain injury. DSM-IV at 7.

113. Once he has conducted neuroimaging (PET & MRI) in these proceedings (as he is requesting from this Court and has requested in ¶¶73-78, *supra*), Hanna will establish the contours and specifics of his mental disorder due to a general medical condition which existed at the time of the offense and at the time of his trial, but which trial counsel failed to present.

114. While trial counsel’s performance was deficient, counsel’s failure to establish and prove a mental disorder due to a general medical condition was also prejudicial to James Hanna: There is a reasonable probability that had counsel presented proof that James Hanna suffers a mental disorder due to his brain injury, at least one juror would have voted for a life sentence, and Hanna would not have been sentenced to death.

115. This Claim (Claim IV.C) was not presented to the state courts of Ohio and has thus been procedurally defaulted.

116. Under *Martinez v. Ryan*, 566 U.S. 1, 14 (2012), James Hanna has “cause” for that procedural default which, when combined with the underlying merits of this claim, entitles him to federal habeas corpus relief:

a. First, the claim is “substantial” under *Martinez*. Indeed, it would appear to be a meritorious claim, for all the reasons cited *supra*.

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b. Second, post-conviction counsel during the initial review collateral proceeding (the trial court post-conviction proceeding), performed deficiently and in an objectively unreasonable manner by failing to raise Claim IV.C in the post-conviction petition and to litigate it in those proceedings.

c. Counsel Roche and attorneys at OPD simply overlooked the claim and failed to raise it without any tactical reason for not raising the claim, and simply failed to secure expert assistance to investigate and present this claim, as it is now presented here. See Exhibit 3, ¶¶6-7, 12-13 (sworn declaration of lead post-conviction counsel Susan Roche).

d. Post-Conviction counsel's performance in failing to present current Claim IV.C was therefore deficient under *Strickland*, and that failure provides "cause" for the default of this substantial ineffectiveness claim.

117. In sum, therefore, under the Sixth and Fourteenth Amendments, trial counsel was ineffective for failing to fully investigate and present proof that James Hanna suffers, and suffered at the time of the offense, a mental disorder caused by his brain injury, as defined by DSM-IV. Trial counsel's performance was deficient and prejudicial, and James Hanna will show the true extent of that prejudice upon securing his requested order of transport for neuroimaging and producing the results of those tests and showing the connection between his brain injury and his behavior. Although this claim was procedurally defaulted in the initial review collateral proceeding, post-conviction counsel was ineffective under *Strickland* in failing to raise and fully present this claim during post-conviction proceedings, and thus James Hanna has "cause" for the default of

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this claim under *Martinez v. Ryan*, 566 U.S. 1 (2012). James Hanna is therefore entitled to federal habeas corpus relief on this claim, Claim IV.C.

**D. The Cumulative Effect Of The Errors Alleged In This Petition Entitle James Hanna To Habeas Corpus Relief**

118. Individually, Claims IV.A, IV.B, and IV.C entitle James Hanna to habeas corpus relief under the Sixth and Fourteenth Amendments, because Hanna was denied the effective assistance of counsel.

119. When considered cumulatively, the constitutional violations asserted in Claims IV.A, IV.B, and IV.C also entitle James Hanna to habeas corpus relief, for, when considered together, those claims establish that under the Sixth and Fourteenth Amendments, James Hanna was denied the effective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984).

120. Similarly, given the cumulative effect of all errors alleged in Claims IV.A, IV.B, and IV.C, James Hanna was denied a fair and highly reliable and nonarbitrary sentencing hearing, and thus, his death sentence violates the Eighth Amendment and the due process clause of the Fourteenth Amendment as well.

121. This Claim was defaulted as well, but this claim is meritorious and he has “cause” for any default under *Martinez v. Ryan* for all the reasons stated *supra*, and incorporated in full by reference.

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**V. THIS PETITION MUST BE ADDRESSED AS A FIRST FEDERAL HABEAS PETITION BECAUSE IT DOES NOT CONSTITUTE AN “ABUSE OF THE WRIT”**

**A. Not Every Second-In-Time Habeas Petition Is A “Second Or Successive” Habeas Petition Under 28 U.S.C. §2244**

This a “second-in-time” federal habeas petition, but not every such second federal *habeas* petition is a “second or successive petition” subject to the restrictions of 28 U.S.C. §2244. *In Re Bowen*, 436 F.3d 699, 704 (6th Cir. 2006).

Rather, a second-in-time petition must be addressed under standards governing any numerically first petition if the petition does not constitute an “abuse of the writ.” *Id.* A second-in-time petition constitutes an “abuse of the writ” only if it “raises a claim that could have been raised in the first petition but was not so raised, either due to deliberate abandonment or inexcusable neglect.” *Id.*, citing *McCleskey v. Zant*, 499 U.S. 467, 489 (1991).

As this Court explained the rule in *Tibbetts v. Warden*, 2017 U.S. Dist. Lexis 83416 (S.D. Ohio May 26, 2017): The “abuse-of-the-writ exception . . . allows a federal court to entertain a second-in-time petition without circuit permission when the prisoner *could not have properly raised his claims in his first petition.*” *Id.* \*9-10 (emphasis supplied). Stated another way, a petitioner may raise a claim in a second-in-time petition if s/he did not have “a full and fair opportunity to raise the relevant claim[s] in the district court” when litigating his first-in-time petition. *Askew v. Bradshaw*, 636 Fed.Appx. 342, 346 (6th Cir. 2016) (second-in-time *habeas* petition held to be a first petition). That is precisely the case here with James Hanna’s current petition for writ of habeas corpus.

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**B. This Petition Is A First Federal Habeas Petition Because Original Federal Habeas Counsel Suffered A Conflict Of Interest That Precluded Them From Presenting And Litigating The Ineffectiveness-Of-Trial-Counsel Claims Now Raised By Unconflicted Counsel**

Under *In Re Bowen*, *Tibbetts v. Warden*, and *Askew v. Bradshaw*, James Hanna's current petition is a first federal habeas corpus petition because during Mr. Hanna's initial federal habeas corpus proceedings (*Hanna v. Warden*, S.D. Ohio No. 1:03-cv-801), federal habeas counsel suffered a conflict of interest. Consequently, James Hanna could not raise and fully present the ineffective-assistance-of-trial-counsel claims he now presents in this petition. Hanna did not have a "full and fair opportunity to raise" these claims (*Askew*, 636 Fed.Appx. at 346), and these claims "could [not] have been raised in the first petition," *In Re Bowen*, 436 F.3d at 704, because federal habeas counsel at that time labored under a conflict of interest.

In state post-conviction proceedings, Mr. Hanna was represented by the Ohio Public Defender, David Bodiker (who was Public Defender from 1994 to 2007), Assistant State Public Defender Susan Roche, and Assistant Public Defender Kathryn Sandford. See Exhibit 1 at 046 (signature page). Ms. Roche was lead counsel. See Exhibit 3 (declaration of Susan Roche, Esq.); Exhibit 4 (declaration of Kathryn Sandford). .

In those state proceedings, Roche, Bodiker, Sandford and OPD raised various claims that Hanna's trial counsel were ineffective. See Exhibit 1 (grounds 1, 4-11). Yet counsel did not raise the ineffective-assistance-of-trial-counsel claims raised here as Claims IV.A, IV.B, IV.C, or IV.D. Nor did attorney David



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Doughten, as an expert witness for Hanna, identify any of these issues in his post-conviction affidavit, in which he discussed other ways in which trial counsel was ineffective. *See* Exhibit 7.

Because post-conviction counsel failed raise Claims IV.A, IV.B, IV.C, and IV.D in state court proceedings, they procedurally defaulted those claims for Mr. Hanna's federal habeas corpus proceedings. Because those claims are procedurally defaulted but substantial, Hanna is entitled to review of those claims if he can show (as he does, and will) that state post-conviction counsel was ineffective in failing to raise and properly present those claims during the "initial review collateral proceeding." *See Martinez*, 566 U.S. at 4, 14 (ineffectiveness of post-conviction counsel provides "cause" for the default of a substantial ineffective-assistance-of-trial-counsel claim). Further, upon overcoming any default, he will be entitled to habeas corpus relief upon proving the merits of his claims under *Strickland*.

After Bodiker, Roche, and Sandford failed to raise Hanna's claims in state court, however, OPD continued on as counsel for Hanna in federal court. Ms. Roche was soon after formally appointed as one of Hanna's federal habeas attorneys because she had "represented Petitioner James Hanna in his post-conviction proceedings in the Warren County Court of Common Pleas, the state court of appeals, and the Ohio Supreme Court," and "she wishe[d] to continue representing Petitioner in his federal habeas action." *See* Exhibit 6.

Yet given these circumstances, as a matter of legal ethics, Claims IV.A, IV.B, IV.C and IV.D are not claims that "could have been raised in [Hanna's] first

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petition” (*In Re Bowen*, 436 F.3d at 704) as they are raised here for the first time. Indeed, neither Ms. Roche, Mr. Bodiker, nor any of Bodiker’s attorneys at OPD was in a position to raise any such claim while simultaneously arguing (as new, completely independent counsel does here under *Martinez*) that Roche, Bodiker, and OPD ineffectively failed to raise such claims in state post-conviction proceedings.

Ms. Roche and OPD attorneys suffered a conflict of interest under Ohio R. Prof. Cond. 1.7. Under that Rule, a conflict of interest exists if “there is a substantial risk that the lawyer’s ability to consider, recommend, or carry out an appropriate course of action for [a] client will be materially limited by the lawyer’s responsibilities to . . . a third person or by the lawyer’s own personal interests.” *Id.* That was precisely the situation here.

Ms. Roche had an obvious “personal interest” in not alleging and/or litigating any ineffective-assistance-of-trial-counsel claims that she failed to raise in the post-conviction trial court. Simply by raising in federal court claims that she failed to raise in state court (like Claims IV.A, IV.B, IV.C or IV.D), Ms. Roche would have had to admit that she provided Mr. Hanna ineffective representation in state court. She had an even greater interest in not affirmatively alleging her own ineffectiveness during state court proceedings, as new counsel alleges here under *Martinez*.

It is precisely this type of conflict of interest -- an attorney’s inability to assert his or her own ineffectiveness in state court on behalf of a client -- that has led federal courts to appoint independent counsel to properly and fully argue

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under *Martinez* the ineffectiveness of state post-conviction counsel. See e.g., *Juniper v. Davis*, 737 F.3d 288 (4th Cir. 2013) (under *Martinez*, a federal habeas petitioner is entitled to independent counsel to assert claims of ineffectiveness of state post-conviction counsel, because as counsel in federal proceedings, that same counsel cannot ethically assert claims of his or her own ineffectiveness in state proceedings). David Bodiker suffered that identical conflict in James Hanna's case.

While Ms. Roche had a conflict of interest which prevented her from raising and fully litigating Claims IV.A through IV.D during Hanna's initial federal proceedings, all of Hanna's original federal habeas attorneys suffered that same conflict -- for each such attorney was employed by OPD, headed by Ohio Public Defender David Bodiker.

Each of Hanna's other OPD attorneys in federal court<sup>7</sup> had a vested interest in not raising new ineffectiveness claims which OPD failed to raise in state proceedings, and a vested interest in not attacking in any way the representation provided Hanna in state court by OPD, Mr. Bodiker (their boss at OPD), and/or their OPD co-workers. An attorney suffers a disqualifying conflict of interest if, to properly represent a client, s/he would be required to attack the actions of attorneys in his or her own firm. No attorney can be expected to publicly assert the ineptitude of his or her own firm (and certainly not the failures of a managing or senior partner). Any such attack on one's own firm would not

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<sup>7</sup> OPD attorneys Rachel Troutman and Tyson Fleming also represented Hanna in his initial habeas proceedings.

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only reflect poorly on the firm and its attorneys, but such action could or would also place in jeopardy the continued employment of any attorney who would publicly question the firm's professionalism or competence.

Hanna's OPD attorneys in federal habeas thus had multi-layered interests in not alleging the ineffectiveness of OPD counsel -- which conflicted directly with Hanna's entitlement to a full and fair litigation of all possible ineffective-assistance-of-trial-counsel claims. OPD attorneys had personal and professional interests in protecting themselves and the reputation of OPD, Mr. Bodiker (their boss), and their co-workers – and in not jeopardizing their jobs.

Such personal interests “materially limited” their “ability to consider, recommend, or carry out an appropriate course of action for” Hanna (Ohio R. Prof. Cond. 1.7) – namely alleging ineffectiveness claims which had not been raised in state court because of OPD's ineffectiveness, while alleging and proving the ineffectiveness of Mr. Bodiker, OPD, and/or its attorneys during post-conviction proceedings, as unconflicted counsel does here. *See e.g., Podor v. Harlow*, 2018 Ohio App. Lexis 4454 (9th Dist. Oct. 11, 2018) (upholding disqualification under Rule 1.7 where counsel's strategy on behalf of clients would be “impacted due to adverse interests”); *Lytle v. Mathew*, 2017 Ohio App. Lexis 1454 (8th Dist. Apr. 20, 2017) (disqualifying attorney and entire firm under Ohio Rule 1.7 given attorney's personal interest that conflicted with client's interests).

Numerous courts have thus recognized that an attorney is never ethically in a position to raise and litigate issues that call into question the competence

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or reputation of the attorney's firm, as was the situation here. *See e.g., United States v. Schlesinger*, 335 F.Supp.2d 379, 384 (E.D.N.Y. 2004) (disqualifying counsel where, *inter alia*, counsel had a "personal interest in protecting his and [his] Firm's reputation" in proceedings); *United States v. Dyess*, 231 F.Supp.2d 493, 497, 498 (S.D.W.Va. 2002) (disqualifying entire United States Attorney's Office under Rule 1.7 where all attorneys had a conflict of interest given their "personal interest" in "protecting the good name of the office" and not "caus[ing] reputational injury to the office," including by providing testimony that might prove "potentially prejudicial . . . to the reputation of their office."). *See also Barton v. United States*, 2014 U.S. Dist. Lexis 3617 \*27 n. 7 (W.D. Tex. Jan. 10, 2014) (acknowledging an attorney's "personal interest in not undermining his law firm partner.").

In fine, in proceedings on Mr. Hanna's first-filed federal habeas petition, original habeas counsel labored under a conflict of interest: Under Rule 1.7, Ms. Roche, Mr. Bodiker, and OPD attorneys simply could not ethically allege and/or prove ineffectiveness claims that Roche and OPD failed to raise in state proceedings, but which provide Hanna grounds for relief under *Strickland v. Washington* and *Martinez v. Ryan*.

This petition for writ of habeas corpus, therefore, is not an "abuse of the writ": Mr. Hanna did not have "a full and fair opportunity to raise the relevant claim[s] in the district court" during proceedings on his first-in-time habeas petition, because those proceedings were litigated by conflicted counsel. *Askew v. Bradshaw*, 636 Fed. Appx. at 346. This petition is thus a "first" petition,

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because it does not contain “claim[s] that could have been raised in the first petition.” *In Re Bowen*, 436 F.3d at 704.

Because the claims raised here distinctly could not have been raised and/or fully litigated in the first-in-time habeas petition because of prior counsels’ conflict of interest, all such claims must now be fully addressed on the merits as they would in any first federal habeas petition. Just as numerous other federal petitioners with unconflicted counsel were entitled to consideration of newly-alleged but defaulted ineffectiveness claims and application of *Martinez* in their first habeas proceedings (*See* ¶34, *supra*), James Hanna is entitled to the full application of *Martinez* to his claims in this petition as a first petition -- now that he finally has unconflicted counsel to proceed on these claims for the first time in habeas.<sup>8</sup>

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<sup>8</sup> Because this petition presents James Hanna’s first and only time to present the claims presented herein, it would be unlawful and unconstitutional were he denied review of this petition as a first habeas petition. Given the circumstances outlined in this petition which prohibited him from ever receiving an adjudication of his claims in his original petition for writ of habeas corpus, the failure to consider this petition as a first petition would: be fundamentally unfair and violate due process of law under the Fifth/Fourteenth Amendments; violate equal protection of the laws under the Fifth/Fourteenth Amendments, where all similarly situated federal habeas petitioners without unconflicted counsel whose initial federal habeas proceedings concluded post-*Martinez* were able to present all available ineffectiveness-of-trial-counsel claims in their first habeas; suspend the writ of habeas corpus, in violation of Article I §9 of the Constitution; and violate 18 U.S.C. §3599, where §3599 requires that initial habeas counsel not suffer any conflict of interest whatsoever when presenting and litigating a habeas petitioner’s first federal habeas corpus petition.

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**VI. *Martinez* Applies With Full Force To The Ineffective-Assistance-Of-Trial-Counsel Claims Presented In This Petition**

In *Martinez v. Ryan*, 566 U.S. 1 (2012), the Supreme Court held that the ineffectiveness of post-conviction counsel provides “cause” for the procedural default of a substantial claim of ineffective-assistance-of-trial-counsel when “the initial-review collateral proceeding is the first designated proceeding for a prisoner to raise a claim of ineffective assistance of trial counsel.” *Id.* at 11, 14. The Supreme Court’s reached this conclusion because, under such circumstances, “the collateral proceeding is in many ways the equivalent of a prisoner’s direct appeal as to the ineffective-assistance claim” (*Id.* at 11), the right to effective assistance of counsel is a “bedrock principle in our justice system” (*Id.* at 13), and an “initial-review collateral proceeding if undertaken without counsel or with ineffective counsel, may not have been sufficient to ensure that proper consideration was given to a substantial claim.” *Id.* at 14.

“From this,” the Supreme Court explained, “it follows that when a State requires a prisoner to raise an ineffective-assistance-of-trial-counsel claim in a collateral proceeding, a prisoner may establish cause for a default of an ineffective-assistance claim in two circumstances.” *Id.* “The first is where the state courts did not appoint counsel in the initial-review collateral proceeding for a claim of ineffective assistance at trial. The second is where appointed counsel in the initial-review collateral proceeding, where the claim should have been raised, was ineffective under the standards of *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). To overcome the default, a

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prisoner must also demonstrate that the underlying ineffective-assistance-of-trial-counsel claim is a substantial one, which is to say that the prisoner must demonstrate that the claim has some merit. *Cf. Miller-El v. Cockrell*, 537 U.S. 322, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003) (describing standards for certificates of appealability to issue).” *Martinez*, 566 U.S. at 14.

As the Sixth Circuit has explained, *Martinez* “allows post-conviction counsel’s ineffectiveness to establish ‘cause’ to excuse the procedural default of an ineffective-assistance-of-trial-counsel claim in states where post-conviction proceedings present the defendant’s first opportunity to raise such a claim.” *Sutton v. Carpenter*, 745 F.3d 787, 791 (6th Cir. 2014). The rule of *Martinez* applies whenever state law either “requires that an ineffective assistance of trial counsel claim be raised in an initial-review collateral proceeding,” *Trevino*, 569 U.S. at 423, or if “a state’s procedural framework makes it ‘highly unlikely’ that a defendant in a typical case will have a ‘meaningful opportunity’ to raise ineffective-assistance claims on direct appeal.” *Sutton*, 745 F.3d at 791, *citing Trevino*, 569 U.S. at 429.

That is precisely the case in Ohio, and the rule of *Martinez* thus applies with full force to James Hanna’s claims, allowing him to overcome the procedural default of his ineffectiveness-of-trial-counsel claims by showing the ineffectiveness of his post-conviction counsel in failing to challenge trial counsel’s ineffectiveness.

Ohio law makes it perfectly clear that, as was the case in Arizona in *Martinez*, Hanna’s “initial-review collateral proceeding” (his petition for post-



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conviction relief) was “the first designated proceeding for a prisoner to raise a claim of ineffective assistance of trial counsel.” *Martinez*, 566 U.S. at 11. Indeed, Ohio law “require[d] that [Hanna’s] ineffective assistance of trial counsel claim[s] be raised in an initial-review collateral proceeding,” *Trevino*, 569 U.S. at 423.

As the Sixth Circuit has recognized, under Ohio law, “A claim of ineffective assistance of counsel that is dependent on facts that are not part of the trial record *cannot be raised on direct appeal*. Instead, it *must be raised in a post-conviction proceeding* pursuant to Ohio Rev. Code §2953.21.” *Gunner v. Welch*, 749 F.3d 511, 514 (6th Cir. 2014) (emphasis supplied). See *State v. Taylor*, 2015 Ohio App. Lexis 1271 \*\*8 (Apr. 2, 2015) (acknowledging *Gunner* and noting that when an Ohio petitioner’s allegation of “ineffective assistance of his trial counsel involved evidence *de hors* the record,” his or her “remedy under Ohio law for pursuing this claim appears to . . . be[] limited to a petition for postconviction relief.”

As the Ohio Supreme Court held in *State v. Cooperrider*, 4 Ohio St.3d 226 (1983), on direct appeal, an Ohio appellant is not able to raise an ineffective-assistance-of-trial-counsel claim that depends on facts not contained in the trial record: “For such cases, the General Assembly has provided a procedure whereby appellant can present evidence of his counsel’s ineffectiveness. This procedure is through the post-conviction remedies of R.C. §2953.21.” *Id.* at 228. See also *In Re Clinkscale*, 2008 Ohio App. Lexis 647 ¶18 \*\*8 (Feb. 21, 2008) (“While evidence may exist outside the [direct appeal] record that supports appellant's contention of ineffective assistance, a direct appeal is not the proper

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place to present this evidence. Instead, appellant should raise this issue/evidence by way of postconviction relief.”); *State v. Vroman*, 1996 Ohio App. Lexis 2785 \*10 (June 21, 1996) (citing *Cooperrider*, noting appellant was free to seek post-conviction relief instead).

As the Ohio Courts of Appeals have repeatedly explained: “A postconviction action, rather than a direct appeal, is the proper mechanism for asserting an ineffective assistance of trial counsel claim that is based on evidence *de hors* the record.” *State v. Moon*, 2014 Ohio App. Lexis \*\*9 ¶13 (Jan. 15, 2014), citing *Cooperrider*. “A claim of ineffective assistance of counsel which relies on evidence outside the [trial] record should be raised in a petition for postconviction relief.” *State v. Boone*, 2015 Ohio App. Lexis 2545 \*\*29 (June 30, 2015). “Where an ineffective assistance of counsel claim cannot be supported solely on the trial court record, it should not be brought on direct appeal.” *State v. Imani*, 2009 Ohio App. Lexis 4816 \*\*7 ¶22 (Oct. 27, 2009), quoting *State v. Radel*, 2009 Ohio 3543. See *State v. Fryer*, 90 Ohio App.3d 37, 38 (1993).

In fact, Ohio law makes it impossible for an appellant on direct appeal to raise an ineffective-assistance-of-trial-counsel claim when such a claim is based on evidence not presented at trial: “A claim of ineffective assistance of counsel *cannot be asserted on direct appeal* if it relies on matters outside the record.” *State v. Easterling*, 2019 Ohio App. Lexis 2578 \*\*11 (June 20, 2019) (emphasis supplied); *State v. Harris*, 2017 Ohio App. Lexis 5487 \*\*8, ¶19 (Dec. 15, 2017); *State v. Thomas*, 2017 Ohio App. Lexis 2587 \*\*12, ¶28 (June 23, 2017). *State v. Wright*, 1991 Ohio App. Lexis 6018 \*14 (Dec. 12, 1991) (“A claim of ineffective

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assistance of counsel, which is not demonstrated in the record cannot be raised on direct appeal but must be addressed” in post-conviction proceedings). Such a claim based on extra-record evidence is simply not cognizable on direct appeal in Ohio. *State v. Qualls*, 2015 Ohio App. Lexis 2102 \*\*8, ¶15 (June 5, 2015) (“To the extent that Qualls's claim of ineffective assistance of counsel relies on information outside of the record, we agree with Qualls that the issue is not cognizable on direct appeal.”).

Ohio’s prohibition against an appellant raising ineffectiveness claims based on extra-record evidence dovetails with Ohio law that categorically precludes an appellant from adding evidence to the record on appeal. *State v. Curtis*, 2008 Ohio App. Lexis 795 \*\*5, ¶8 (Mar. 6, 2008) (refusing to decide ineffectiveness claim based on affidavit attached to appellate brief: “The law is well-settled that when allegations of ineffective assistance of counsel hinge on facts not appearing in the record, the proper remedy is a petition for postconviction relief rather than direct appeal.”); *State v. Hunter*, 2014 Ohio App. Lexis 882 \*\*23 (Mar. 12, 2014) (on direct appeal, refusing to consider ineffectiveness claim based on photographs not contained in trial record); *State v. Hutchinson*, 2004 Ohio App. Lexis 3762 \*\*22-23 (July 27, 2004) (on direct appeal, refusing to consider ineffectiveness claim based on evidentiary materials attached to appellate brief, but directing appellant to pursue post-conviction remedy). See *State v. Moon*, 2014 Ohio App. Lexis \*\*8, ¶12 (Jan. 15, 2014) (in Ohio, “a reviewing court cannot add material to the appellate record and then decide the appeal on the basis of the new material.”).

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Put another way, “When affidavits or other proof outside the [trial] record are necessary to support an ineffective assistance claim . . . it is not appropriate for consideration on direct appeal.” *State v. Moore*, 2019 Ohio App. Lexis \*\*5 (Apr. 29, 2019); *State v. Denihan*, 2016 Ohio App. Lexis 4311 \*\*3-4 (Oct. 24, 2016); *State v. Zupancic*, 2013 Ohio App. Lexis 3128 (July 15, 2013). *See also State v. Perkins*, 2019 Ohio App. Lexis 2111 \*\*6, ¶11 (May 24, 2019) (“if establishing ineffective assistance of counsel requires proof outside the record, then such claim is not appropriately considered on direct appeal.”); *State v. Reese*, 2019 Ohio App. Lexis 413 \*\*16, ¶22 (Feb. 8, 2019) (“A postconviction action, rather than a direct appeal, is the proper mechanism for asserting a claim that is based on evidence *de hors* the record.”).

Thus, the Ohio courts always “decline to adjudicate the issue of the ineffectiveness of appellant’s trial counsel” on direct appeal, when such a claim is based on evidence not contained in the trial court record, leaving the appellant “free to petition the trial court for a postconviction evidentiary hearing in order to develop a record upon which this issue may be more effectively addressed.” *In Re Snyder*, 2000 Ohio App. Lexis 5209 \*7 (Nov. 6, 2000). *State v. Sweeten*, 2007 Ohio App. Lexis 5713 \*\*6, ¶12 (Dec. 10, 2007) (on direct appeal, refusing to adjudicate ineffectiveness claim “premised on evidence outside the record”); *State v. Rhoden*, 1997 Ohio App. Lexis 2249 (May 20, 1997); *State v. Baker*, 1990 Ohio App. Lexis 2376 \*3 (June 15, 1990).

It is clear, therefore, that James Hanna’s 1999 petition for post-conviction relief provided his first and only opportunity under Ohio law for raising the

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ineffectiveness claims he raises in this federal habeas petition. As recognized by *Gunner v. Welch*, 749 F.3d at 514, James Hanna could not have raised his ineffectiveness claims on direct appeal, for they are predicated on evidence *de hors* the trial court record. A post-conviction petition was his only remedy under *State v. Cooperrider*, 4 Ohio St.3d 226 (1983). Ohio law, in fact, prohibited him from presenting his ineffectiveness claims on direct appeal, for such claims are based on extra-record evidence that was not before the state trial court – such as evidence from Dr. Fradkin, neuroimaging evidence that the jury never heard, and evidence from post-conviction counsel. *See e.g., State v. Easterling*, 2019 Ohio App. Lexis 2578 \*\*11 (June 20, 2019) (“A claim of ineffective assistance of counsel cannot be asserted on direct appeal if it relies on matters outside the record.”).

Thus, as was the case in Arizona in *Martinez*, Hanna’s post-conviction proceeding was the “first designated proceeding for [him] to raise a claim of ineffective assistance of trial counsel” (*Martinez*, 566 U.S. at 11), and the rule of *Martinez* applies with full force here.

In fact, in *Trevino*, the Supreme Court held that *Martinez* applied in Texas where an appellant *could* raise an ineffectiveness claim on direct appeal, but could only do so with great difficulty, and the Texas courts discouraged such claims on direct appeal. *Trevino*, 569 U.S. at 423-428. Similarly, in *Sutton*, the Sixth Circuit held that *Martinez* applied in Tennessee where an appellant *could* raise an ineffectiveness claim on direct appeal, but could only do so with great

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difficulty, and the Tennessee courts (like the courts in Texas) discouraged such claims on direct appeal. *Sutton*, 745 F.3d at 792-794.

*A fortiori*, because Hanna's claims are based on extra-record evidence and under Ohio law simply "cannot be asserted on direct appeal" (*State v. Easterling*, 2019 Ohio App. Lexis 2578 \*\*11 (June 20, 2019)), and because Ohio law specifically directs appellants to present such claims for the first time in post-conviction proceedings (*Cooperrider, supra*), *Martinez* applies in Ohio and applies to Hanna's ineffective-assistance-of-trial-counsel claims. *See also Brown v. Brown*, 847 F.3d 502 (7th Cir. 2017) (*Martinez* applies in Indiana where Indiana law strongly discouraged ineffectiveness claims from being presented on direct appeal, and practitioners followed that advice).

Because postconviction proceedings constituted James Hanna's first and only opportunity to present his ineffective-of-trial-counsel claims, the rule of *Martinez* applies with full force, allowing him to overcome the procedural default of his claims by showing the ineffectiveness of post-conviction counsel. Thus, upon showing that post-conviction counsel ineffectively failed to challenge trial counsel's ineffectiveness (*See Martinez*, 566 U.S. at 14), James Hanna will establish "cause" for the procedural default of his ineffectiveness-of-trial-counsel claims, and he is also entitled to habeas corpus relief, because his underlying ineffectiveness-of-trial-counsel claims are themselves meritorious (as he will show at a hearing in this matter).

At bottom, because the ineffectiveness-of-trial-counsel claims which Mr. Hanna raises in this petition were procedurally defaulted by state post-

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conviction counsel, this Court must first address whether post-conviction counsel's ineffectiveness establishes "cause" for such defaults under *Martinez*, and then whether Mr. Hanna is entitled to relief on the merits of his claims. Given his claims and the evidence supporting such claims, this Court should either grant him relief without a hearing, and/or Mr. Hanna requests that this Court grant him an evidentiary hearing and discovery (as necessary) to prove his entitlement to the writ of *habeas corpus*.

**CONCLUSION AND PRAYER FOR RELIEF**

1. This Court should conclude that this petition is a first petition for writ of habeas corpus, that it does not constitute an "abuse of the writ," and this Court should adjudicate this petition as it would any initial petition for writ of habeas corpus.

2. Pursuant to 28 U.S.C. §1651, this Court should order James Hanna transported to Ohio State University for neuroimaging (MRI and PET) necessary for him to prove his entitlement to relief on Claims IV.A, IV.C, and IV.D. *See* Exhibit 20.

3. This Court should conduct an evidentiary hearing to enable James Hanna to prove the facts asserted in this petition and to prove any and all facts required: (a) to establish that this petition is not an abuse of the writ and must be adjudicated as a first federal habeas petition; (b) to establish "cause" for the default of his claims under *Martinez v. Ryan*, 566 U.S. 1 (2012); and (c) to prove his entitlement to relief on the merits of his Claims IV.A through IV.D under the Sixth, Eighth, and Fourteenth Amendments.

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4. This Court should grant James Hanna any discovery he may request in these proceedings.

5. This Court should grant James Galen Hanna habeas corpus relief on Claims IV.A, IV.B., IV.C, and/or IV.D, vacate his death sentence, and order a new sentencing hearing that comports with the United States Constitution.

6. This Court should grant any other relief that is just and warranted under the circumstances and provide James Hanna any and all relief “as law and justice require.” 28 U.S.C. §2243.

Respectfully submitted,

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**Federal Public Defender**  
Southern District of Ohio

By

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*Counsel for Petitioner James Hanna*



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**CERTIFICATE OF SERVICE**

I hereby certify that on August 5, 2019, I electronically filed the foregoing petition for writ of habeas corpus with exhibits with the Clerk of Court using the CM/ECF system and served a copy of the petition with exhibits upon the Office of the Attorney General, State of Ohio, 30 East Broad Street, 14<sup>th</sup> Floor, Columbus, Ohio 43215.

/s/ Allen L. Bohnert

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*Counsel for Petitioner James Hanna*

*Hanna v. Shoop*, S.D. Ohio No. 3:19-cv-00231

Doc #1-1 (Petition for Post-Conviction Relief)

IN THE COURT OF COMMON PLEAS  
WARREN COUNTY, OHIO

STATE OF OHIO,

Plaintiff-Respondent,

-vs-

JAMES GALEN HANNA,

Defendant-Petitioner,

**POST-CONVICTION PETITION**

O.R.C. 2953.21

CASE NO: 98-CR-17677

JUDGE NEAL B. BRONSON

**I. CASE HISTORY**

TRIAL:

Charges (include specifications)

Disposition

Aggravated Murder, O.R.C. §2903.01(A)  
O.R.C. §§2929.04(A)(4) and (5) Specifications

Guilty, Death Sentence

Date Sentenced: November 23, 1998

Name of Attorneys: William G. Fowler and Patrick D. Long

Was this conviction the result of a (circle one): **Guilty Plea** **No Contest** **Trial**

If the conviction resulted in a trial, what was the length of the trial? 15 days

Appeal to Supreme Court of Ohio

Number or citation 99-0093

Disposition Briefing completed

Name of Attorneys Stephen A. Ferrell and Kelly L. Culshaw

HAS A POST-CONVICTION PETITION BEEN FILED BEFORE IN THIS CASE?

YES             NO

If YES, attach a copy of the Petition and the Judgment Entry showing how it was disposed.

IF THIS IS NOT THE FIRST POST-CONVICTION PETITION, OR IT IS FILED OUTSIDE THE TIME LIMITS PROVIDED BY LAW, STATE THE REASONS WHY THE COURT SHOULD CONSIDER THIS PETITION: N/A

OTHER RELEVANT CASE HISTORY: \_\_\_\_\_  
\_\_\_\_\_

## II. STATEMENT OF FACTS

1. James Galan Hanna has been in prison for the last 21 years and throughout his life has spent a total of 30 years incarcerated in penal institutions. The only life he knows is what he has learned inside those institutions. The manner in which he operates in the world is a product of his long-term incarceration.

2. On December 18, 1996 James Hanna was transferred from Mansfield Correctional Institution to Lebanon Correctional Institution (LCI). Prior to the middle of August 1997, Mr. Hanna was placed with various cellmates at LCI without incident. Then on or about August 18, 1997 an inmate by the name of Peter Copas was placed in the cell that Hanna had been occupying.

3. During Peter Copas's time at Lebanon Correctional Institution he had been transferred from one cell to another on numerous occasions. Previous cellmates described him as one of the most annoying individuals they had ever had to cell with. Prior to celling with Mr. Hanna, Peter Copas was with his previous cellmate only about 14 hours before he was transferred at the request of the cellmate. Exhibit D.

4. Mr. Hanna found Copas as annoying as did his previous cellmates and wanted him moved to another cell. Ricardo Lee, another cellmate and friend of Peter Copas told Hanna that Copas had filed a request to be moved and it was being processed. Lee told Hanna he had spoken to the Sergeant about the move and told him to be patient. Tr. 810, 814. This unusual procedure of one inmate interceding and delaying a transfer that was vitally necessary for two very incompatible cellmates was totally improper. Exhibit F. However, Ricardo Lee was allowed to delay the move for four days through his manipulation of the system.

5. On Friday, August 22, 1997, at approximately 6:00 a.m., James Hanna stabbed Peter Copas above Copas's right eye with a paintbrush and beat Copas with a padlock in a sock. Copas was found by Correction Officer Doug Stewart as he did his 6:00 a.m. rounds. Copas was taken to the LCI

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infirmary where he was interviewed and treated by Nurse Lynda Young. Copas was conscious and told the infirmary staff that he had been "shanked," and beaten.

6. After brief preliminary treatment in the LCI infirmary, Copas was taken to Middletown Regional Hospital. Although accompanied by LCI guards, the Hospital emergency room staff were never informed that Copas was the victim of a shanking. He was x-rayed and treated for the beating and returned to the LCI infirmary the same day.

7. The following day, August 23, 1997 the LCI Medical Director, Dr. James McWeeney examined Copas and recommended that a CT scan be performed on the injured inmate. Although Dr. McWeeney could have requested that the CT scan be performed immediately, he did not. Tr. 1042. Copas remained in the Lebanon Correctional Institution for four day before the CT scan was finally performed on him at the Ohio State University Hospital on August 26, 1997. Only then did the doctors learn that there was a four-inch piece of wood lodged in Copas's brain.

8. Surgery was performed by doctors at the OSU Hospital on August 27, 1997 and the piece of the paintbrush handle was removed from Peter Copas's brain. At first it appeared that Copas was going to recover. Then on September 5, 1997 he lapsed into a coma and was declared dead on September 6, 1997. As a result of the autopsy, it was learned that a small piece of the paintbrush had remained in Copas's brain after the surgery. Eventually that foreign object worked it's back to the spinal cord, caused an infection which ultimately resulted in his death.

9. Although James Hanna had been restrained and placed in administrative control at the time that Peter Copas was attacked on August 22, 1997, a formal investigation of the matter was not begun until after Copas's death on September 6, 1997. Ohio State Trooper James Ertel investigated the matter, taking statements from many LCI employees and approximately 70 inmates. Numerous inmates stated that Peter Copas was an impossible person with whom to cell. The investigation resulting from Copas's death was reflected in detail in Trooper Ertel's extensive report and attachments. At the conclusion of the investigation, Trooper Ertel's report was provided to the Warren County Prosecutor's office. However, although Mr. Copas's trial counsel filed discovery motions and verbally requested all

discovery on numerous occasions, this report was not released to Hanna's attorneys in discovery. The first time that defense counsel learned of the existence of the report was when the prosecution used to refresh Trooper Ertel's memory during his direct testimony. Tr. 1091. However, it is apparent that some portion of Ertel's report was in the possession of the Prosecutor as of June 18, 1997, because on that date Ertel faxed several pages of his report to Prosecutor Kenneth Ewing. Exhibit N.

10. On September 19, 1997 James Hanna was interviewed at LCI, by Trooper Ertel and Investigator Scott Male. During the process of that interview Hanna allegedly confessed to beating thrusting a sharpened paint brush into the eye of Peter Copas. Exhibit D. Even though each investigator had a tape recorder sitting on the table during the interview, supposedly only one was working and the other used a full tape and stopped before the inquisitors realized it. Consequently, the Miranda warnings and about 20 minutes of the heart of the alleged confession were not on the tape. Tr. 1270-1273, 1285-1287.

11. The Warren County Coroner's report was not finalized until December 15, 1997. In October the Coroner's investigator requested and received information from Trooper Ertel regarding the circumstances of the assault. Exhibit D.

12. Even after the Coroner's report was issued there were no formal charges filed against James Hanna. On November 7, 1997, Mr. Hanna was transferred to Southern Ohio Correctional Facility (SOCF) in Lucasville, Ohio. On January 15, 1998 a letter allegedly written by Hanna to another inmate at SOCF was intercepted in the prison mailroom. In the purported letter, Mr. Hanna discussed being charged with first degree murder for killing his cellmate. James Hanna was indicted on January 26, 1998 and charged with aggravated murder of Peter Copas.

13. The capital trial of James Hanna began on October 26, 1998. In addition to presenting medical evidence and testimony related to the incident, the state provided witnesses that attempted to tie Hanna to the letter allegedly written by him to another inmate at SOCF, where Hanna reported the attack on Copas. Joseph Scurlock, a prison official who had know James Hanna during most of his time in the Ohio prison system, testified that he recognized Hanna's handwriting in the letter.

14. The defense focused on the inadequacies of the early medical treatment provided by the Lebanon Correctional Institution Infirmary and Middletown Regional Hospital, and the later mishap by the OSU Hospital surgical team. Even though prison official Joseph Scurlock's name was on numerous reports in Hanna's prison file, Mr. Hanna's counsel failed to investigate the historical links between Mr. Scurlock and Mr. Hanna. As a result, counsel failed to ask Mr. Scurlock any questions on cross examination, although Mr. Scurlock had personal knowledge that would have been helpful to Mr. Hanna's case. Defense counsel's failure to look into the long-term relationship between Mr. Hanna and Mr. Scurlock also precluded the introduction of important mitigating evidence at the penalty phase of Mr. Hanna's capital trial.

15. On November 9, 1998 James Hanna was convicted of aggravated murder. The mitigation portion of the trial began shortly after the guilty verdict and lasted only one day. The defense presented testimony from Dr. Kathleen Burch who detailed the tests she had administered to Mr. Hanna and explained her findings. Defense counsel failed to ask her for any explanation or connection between Mr. Hanna's psychological problems and the prison environment in which he had spent many years. Consequently, there was no explanation of how Petitioner's his lengthy incarceration had shaped his behavior. Tr. 1529 - 1576. Only one of James Hanna's sisters testified on his behalf, even though his brother and other sisters would have been willing to do so. Exhibits K, L and M. Defense counsel also failed to present the testimony of an expert who was familiar with the effects of long-term incarceration. That is not because such an expert was not available at the time of Mr. Hanna's capital trial. In support of this post-conviction petition is the affidavit of prison expert Steve J. Martin. Exhibit E. Mr. Martin would have been willing to testify at both the trial and the mitigation hearing. However, trial counsel never presented such a witness to explain the prison culture that shaped James Hanna and was an underpinning of Mr. Hanna's attack on Copas.

16. Also at the penalty phase, defense counsel called Trooper James Ertel. His testimony was limited to an explanation of the living conditions of the Ohio State Penitentiary (OSP) in Youngstown. Tr. 1630 - 1634. No witness was presented to testify, nor was any exhibit introduced to



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explain the criteria for incarcerating a convicted felon at OSP. But that is not because such information did not exist at the time of Mr. Hanna's trial. The criteria were outlined in Department of Rehabilitation and Correction Policy # 111-07. An employee of the Ohio Department of Corrections, if subpoenaed, would have been able to testify regarding the policy. Thus, information of this type could have and would have been presented to Mr. Hanna's sentencing jury. Had defense counsel done so, counsel could have preemptively answered the question posed to the trial court during penalty phase deliberations:

If given a life sentence, how is it assured it will be served in maximum security prison? How will we be assured he will be in his cell 23 hours a day. Tr. 1714.

However, since there had been no testimony regarding such a policy, the Court consulted with defense counsel and the prosecution and then merely informed the jurors that no such guarantee was available. Shortly after receiving the Court's reply, the jury recommended that James Hanna be sentenced to death.

### III. GROUNDS FOR RELIEF

#### First Ground for Relief:

17. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

18. Petitioner Hanna's convictions and sentences are void and/or voidable due to the improper constitution of the jury, in violation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 9, 10, and 16 of the Ohio Constitution. The Sixth Amendment to the United States Constitution guarantees a criminal defendant the right to a fair trial by a fair and impartial jury.

19. The trial court failed to ensure that Mr. Hanna received a fair trial by a fair and impartial jury due to the failure to ascertain whether Juror Reeves was competent according to law, to be a member of a jury.

20. Each prospective juror filled out a questionnaire that had been agreed upon by trial counsel, the prosecutor and the trial court prior to the voir dire process commencing. Juror Reeves filled out such a questionnaire. Exhibit A Question 56 asked whether the individual had served on a jury before, to which Juror Reeves responded that he had not. Question 57 asked that should the prospective juror have answered yes to Question 56, whether the prior jury service had been on a civil or criminal case. Juror Reeves answered that the result of the case was "6 mon 5 yr" which did not really answer the question but was repeated in response to other questions which made the answer clear in that it appears that Juror Reeves was responding to the question as though it were asking about his own criminal history.

21. In the questionnaire, Question 60 asked about the potential juror's criminal history, Question 65 asked whether the person had any affiliation with, among other things, the probation or parole department, Question 66 asked the nature of the affiliation, Question 68 asked whether the person had visited or been inside a prison or jail, and Question 69 asked whether the person had ever spoken with someone employed at a prison or jail or an inmate. To all of these questions Juror Reeves wrote that he

had served 6 months in jail and been on 5 years of probation in 1989. Id. The sentence that Juror Reeves had received was the result of an Aggravated Burglary conviction. Exhibit B.

22. The trial court unreasonably and prejudicially failed to ask any questions of Juror Reeves as to the nature of the charge that resulted in his prison term. Juror Reeves was not competent by law to be a juror. O.R.C. § 2961.01 states that a convicted felon is incompetent to be a juror unless the conviction is reversed or annulled. This section also discusses a convicted felon's ability to be an elector (voter) and the effect of a full pardon. The trial court failed to discover whether Juror Reeves had attained either a reversal, annulment or full pardon of his conviction.

23. The result of Juror Reeves not having his civil rights restored to the extent that he was not competent to be a juror, then Petitioner Hanna was convicted and sentenced to death by an improperly constituted jury, rendering the conviction and sentence a nullity. By analogy, in the case of State ex. rel. Gains v. Thomas, 128 Ohio App. 3d 107 (1998) the State brought suit against Respondent Thomas to have him removed from the office of city councilman. Thomas had a ten-year-old conviction on a federal indictment for cocaine distribution. The Court of Appeals held that Thomas did not have evidence showing that the disability imposed upon him pursuant to O.R.C. § 2961.01 (not being allowed to hold office) had been removed, and was removed from office. Id. In Mr. Hanna's case, should Juror Reeves be found to have been incompetent to be a juror, the result would be that his vote for the conviction and sentence is null and void. The result would be that Mr. Hanna was convicted by a jury of only eleven people qualified to be jurors. Therefore, Petitioner would have to be granted a new trial.

24. The trial court erred in not discerning Juror Reeve's status as a convicted felon for the purpose of serving on a jury. Mr. Hanna's case was decided by a jury that was not properly constituted according to Ohio law, thus rendering his case a nullity. Powell v. Alabama, 287 U.S. 45 (1932) (trial court must ensure that defendant's due process rights are protected and a fair trial is received).

25. The United States Constitution's Sixth Amendment guarantees criminal defendants the right to a trial by a fair and impartial jury. This jury must be composed of jurors who are competent and qualified to be jurors, anything less would automatically not be fair and impartial. The sentencing jury in

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Mr. Hanna's case was not properly constituted which would result in a violation of his constitutional rights.

26. The trial court erred by not discovering whether Juror Reeves was competent to be seated on the jury.

27. Petitioner supports this ground with evidence dehors the record that contains sufficient operative facts to demonstrate lack of competent counsel and the prejudice resulting from counsel's ineffectiveness. State v. Jackson, 64 Ohio St. 2d 107, 111 (1980). Petitioner must be granted a new trial or, at a minimum, discovery and an evidentiary hearing on this ground for relief.

**Attached Exhibits:** A, B

**Legal Authority Supporting this Ground for Relief:** U.S. Const., amends V, VI, VIII, IX and XIV; Ohio Const., art I, 10 and 15; Strickland v. Washington, 466 U.S. 668 (1984); State ex. rel. Gains v. Thomas, 128 Ohio App. 3d 107 (1998); State v. Jackson, 64 Ohio St. 2d 107, 111 (1980); Powell v. Alabama, 287 U.S. 45 (1932).

**Second Ground for Relief:**

28. Petitioner Hanna hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

29. Petitioner Hanna's convictions and sentences are void and/or voidable due to restrictions placed on the trial and sentencing phases by the trial court, which restrictions in turn forced trial counsel to render ineffective assistance of counsel, in violation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 9, 10, and 16 of the Ohio Constitution.

30. The Sixth Amendment to the United States Constitution guarantees a criminal defendant the right to effective assistance of counsel during trial. Strickland v. Washington, 466 U.S. 668 (1984). The right to effective assistance of counsel also extends to the sentencing. Johnson v. Armontrout, 961 F.2d 748, 754-56 (8th Cir. 1992).

31. Trial counsel filed a motion with the trial court for the release of the Department of Rehabilitation and Corrections (DRC) file regarding Copas. The trial court conducted an in camera review of the file and only released 19 pages of medical records dating from 1992-1995 from the DRC file. 10/13/98 Tr. 4-8. The failure of the trial court to release the rest of Copas's DRC file precluded trial counsel from presenting valuable evidence during the trial phase as well as the mitigation phase to the prejudice of Mr. Hanna.

32. Contained within the DRC file on Copas are numerous reports of his being threatening and combative. Exhibit N. Trial counsel were not able to pursue any investigation of the material contained within Copas's DRC file due to the trial court's limitation. Had they been given access to this file, they could have presented documents, and potentially witnesses to testify about Copas, which could have lessened the degree to which the jury found Mr. Hanna culpable in Copas's death. This evidence could have gone to show Mr. Hanna's state of mind at the time of the crime and would have painted a more accurate picture for the jury of how life really was for Mr. Hanna at the time of the incident. This material would have shown how other inmates found it impossible to be cellmates with Copas.

33. The trial court's sealing of all but 19 pages from Copas's DRC file prevented trial counsel from presenting evidence of two mitigating factors during Mr. Hanna's sentencing proceeding. Had they been given access to this file, trial counsel could have and should have pursued presenting evidence in support of the existence of the O.R.C. § 2929.04(B)(2) mitigating factor. This factor allows evidence to be presented that supports "Whether it is unlikely that the offense would have been committed, but for the fact that the offender was under ... strong

provocation." Id. This, in conjunction with O.R.C. § 2929.04(C) which states that "The defendant shall be given great latitude in the presentation of evidence of the factors listed in division (B) of this section and of any other factors in mitigation of the imposition of the sentence of death." The documentation in Copas's DRC file was relevant to demonstrate the existence of this mitigating factor because the file contains statements, reports and the like from inmates, staff and others detailing the provoking and threatening nature of Copas. Trial counsel could have pursued an investigation of this material including interviewing individuals from the file who had complaints against Copas and had them testify to support the (B)(2) mitigating factor.

34. The trial court's refusal to release the file to trial counsel prevented the jury from considering this evidence and giving it weight when determining Mr. Hanna's sentence. As such, the sentence imposed upon Mr. Hanna is not reliable. The affidavits of trial counsel reiterate that had they been given access to Copas's DRC file, they would have used it to pursue an investigation of evidence to present at the trial and mitigation phases of Mr. Hanna's case. Exhibits H and I.

35. Trial counsel were also rendered ineffective during the mitigation phase because the trial court's sealing Copas's DRC file (except for the 19 pages of medical documents) prevented the presentation of evidence admissible pursuant to O.R.C. § 2929.04(B)(7). This mitigating factor permits the defendant to introduce "any other factors that are relevant to the issue of whether the offender should be sentenced to death". Trial counsel were not given the opportunity to present valuable evidence in support of the (B)(7) mitigating factor which, by O.R.C. § 2929.04(C) they were to be given great latitude. The trial court did not follow the dictates of O.R.C. § 2929.04 and abused its discretion in improperly denying trial counsel access to Copas's DRC file.

36. The attached affidavit of Attorney Expert David Doughten attests to the fact that the trial court's restrictions on the trial and sentencing phases—in particular the court's refusal to allow counsel access to all of Copas's DRC file rendered counsel's assistance ineffective and prejudiced Petitioner. Exhibit H and I.

37. As a result of this forced ineffective assistance of counsel, Petitioner's right to a trial by a fair and impartial jury under the Sixth Amendment to the United States Constitution was violated. This deficiency in Petitioner's representation undermines the confidence in the outcome of his capital trial, thus violating his rights under the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution; and Sections 9, 10, and 16 of Article I of the Ohio Constitution.

38. Petitioner supports this ground with evidence de hors the record that contains sufficient operative facts to demonstrate the deficient performance of counsel and the prejudice that resulted. State v. Jackson, 64 Ohio St. 2d 107, 111 (1980). Petitioner must be granted a new sentencing hearing or, at a minimum, discovery and an evidentiary hearing on this ground for relief.

**Attached Exhibits:** H, I, N

**Legal Authority Supporting this Ground for Relief:** U.S. Const. amends. VI, VIII, and XIV; Ohio Const. art. I, §§ 9, 10, and 16.; O.R.C. §§ 2945.25 and 2945.27; Ohio R. Crim. P. 24 (A),(B)(9) and (14); Strickland v. Washington, 466 U.S. 668 (1984); Johnson v. Armontrout, 961 F.2d 748, 754-56 (8th Cir. 1992); State v. Jackson, 64 Ohio St. 2d 107 (1980).

**Third Ground for Relief:**

39. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

40. Petitioner Hanna's conviction and/or sentence are void or voidable because the State withheld exculpatory, impeaching, and mitigation evidence by failing to provide to the defense attorneys, before the trial began, a copy of Trooper James Ertel's complete report, including all the attachments. This action by the Prosecutor violated Petitioner's rights as guaranteed by the Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution and Article I, Sections 2, 5, 9, 10, 16 and 20 of the Ohio Constitution.

41. Moreover, Petitioner Hanna's conviction and/or sentence are void or voidable because as a result of the State's failure to disclose this evidence, he was denied the effective assistance of counsel at the suppression hearing and in the trial and mitigation phase of his capital case. This ineffectiveness violated Petitioner's rights as guaranteed by the Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution and Sections 10 and 16 of Article I of the Ohio Constitution. Strickland v. Washington, 466 U.S. 668 (1984).

42. The United States Supreme Court has held that once a defendant has requested evidence material to the determination of his guilt or punishment, a prosecutor's failure to provide violates the defendant's due process rights. Brady v. Maryland, 373 U.S. 83 (1963). Furthermore, the prosecution has the "responsibility to gauge the likely net effect of all such evidence and make disclosure when the point of 'reasonable probability' is reached. This in turn means that the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." Kyles v. Whitley, 514 U.S. 419, 437 (1995)

43. Numerous motions for discovery were filed on behalf of Petitioner Hanna before the trial began. In spite of their efforts, defense counsel did not receive a copy of the basic report prepared by Trooper James Ertel, the chief investigator for the state in Petitioner Hanna's case, until that report was used to refresh the Trooper's recollection during his direct examination by the Prosecutor. At that time



the defense attorneys requested a copy of the report. The Court ordered that it be turned over to Petitioner's attorneys and the trial was adjourned for the weekend. Tr. 1091. When the trial was resumed on Monday, Defense Attorney Patrick Long pointed out that the report referred to statements taken from numerous people, some of whom had testified at the trial. The Court ordered that the attachments to Trooper Ertel's report be provided to the defense because what they had been given was not complete. This time the Defense Attorneys had less than an hour to review the additional documents. Tr. 1095 – 1102.

44. During the post-conviction investigation, a copy of the file maintained by the Ohio State Highway Patrol in support of the investigation and prosecution of James Hanna was obtained and made an attachment to this petition. Exhibit D. Shortly before the petition was prepared, the trial attorneys reviewed the file. Both attorneys agreed that the eleven-page list of names, numbers and summary statements from inmates, which defense counsel had not been provided at trial, would have been valuable in the preparation of Petitioner's defense. The defense attorneys also believe that they did not receive several of the statements from prison officials. Exhibit H and I.

45. Some of the individuals whose statements were summarized in the Ertel report actually testified at trial, yet the defense attorneys never saw these prior statements before the inmates testified at Hanna's trial. The prosecution was under an obligation, pursuant to Rule 16 (c) of the Rules of Criminal Procedure, to allow the trial attorneys to inspect and copy Trooper Ertel's entire report. On June 18, 1998 a portion of the Ertel report was faxed to Prosecutor Kenneth Ewing stating that copies of some written statement were attached and that others just existed. Exhibit N. Trooper James Ertel testified at Petitioner's suppression hearing on. Since he was the state's representative, he sat at the Prosecutor's counsel table throughout the trial. He watched numerous people testify knowing he had taken statements from them and memorialized or summarized them in his reports. The fact that Ertel's report was not turned over to the defense until they requested it after it was used to refresh the Trooper's recollection is an egregious Brady/Kyles violation in itself. However, the violation is compounded when it is considered

from the standpoint that, at the very least, the state's chief investigator on this case and its representative at trial withheld information that was crucial in the preparation of the defense of James Hanna.

46. Many of the inmates who gave statements to Trooper Ertel complained that Peter Copas was an impossible cellmate with whom to get along. Exhibit D, pp. 14 - 24. Inmate Walker explained that he found it impossible to live with Copas for even one full day. Exhibit D, p. 20. The statements of the inmates in Ertel's report were also significant for mitigation once James Hanna had been convicted. The impression the jury was left with was that Peter Copas was an unprovoking individual. When the expressed feelings of the other inmates are taken into consideration it is obvious that the case presented to the jury was lacking a realistic depiction of the real Peter Copas, as well as persuasive mitigation evidence pursuant to O.R.C. §2929/04(B)(2).

47. The trial attorneys were also prevented from developing a stronger case regarding the negligence of the medical staff of Lebanon Correctional Institution by not having all the statements that were taken from LCI personnel. This was their primary defense. By not turning over all of the statements taken by Trooper Ertel from prison personnel the defense attorneys were hampered in their effort to provide an adequate defense for Petitioner. Exhibit H and I.

48. Petitioner supports this ground with evidence dehors the record that contains sufficient operative facts to demonstrate prosecutorial misconduct and the prejudice resulting from the actions of the prosecutor. State v. Jackson, 64 Ohio St. 2d 107, 111 (1980). Petitioner must be granted a new trial or, at a minimum, discovery and an evidentiary hearing on this ground for relief.

**Attached Exhibits:** D, H, I, N

**Legal Authority Supporting this Ground for Relief:** U.S. Const., amends. V, VI, VIII, IX and XIV; Ohio Const., art. I, §§ 1, 2, 5, 9, 10 and 20; Crim. R. 16; O.R.C. §2929.04(B)(2); Kyles v. Whitley, 514 U.S. 419 (1995); Strickland v. Washington, 466 U.S. 668 (1984); State v. Jackson, 64 Ohio St. 2d 107, 111 (1980); Brady v. Maryland, 373 U.S. 83 (1963);

**Fourth Ground for Relief:**

49. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

50. Petitioner Hanna's convictions and sentences are void and/or voidable due to the improper constitution of the jury, in violation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 9, 10, and 16 of the Ohio Constitution. The Sixth Amendment to the United States Constitution guarantees a criminal defendant the right to a trial by a fair and impartial jury.

51. Trial counsel failed to ascertain during voir dire whether Juror Reeves was competent according to law, to be a member of a jury.

52. Each prospective juror filled out a questionnaire that had been agreed upon by trial counsel, the prosecutor and the trial court prior to the voir dire process commencing. Juror Reeves filled out such a questionnaire. Exhibit A Question 56 asked whether the individual had served on a jury before, to which Juror Reeves responded that he had not. Question 57 asked that should the prospective juror have answered yes to Question 56, whether the prior jury service had been on a civil or criminal case. Juror Reeves answered that the result of the case was "6 mon 5 yr" which did not really answer the question but was repeated in response to other questions which made the answer clear in that it appears that Juror Reeves was responding to the question as though it were asking about his own criminal history.

53. In the questionnaire, Question 60 asked about the potential juror's criminal history, Question 65 asked whether the person had any affiliation with, among other things, the probation or parole department, Question 66 asked the nature of the affiliation, Question 68 asked whether the person had visited or been inside a prison or jail, and Question 69 asked whether the person had ever spoken with someone employed at a prison or jail or an inmate. To all of these questions Juror Reeves wrote that he had served 6 months in jail and been on 5 years of probation in 1989. Id. The sentence that Juror Reeves had received was the result of an Aggravated Burglary conviction. Exhibit B.

54. Trial counsel unreasonably and prejudicially failed to ask any questions of Juror Reeves as to the nature of the charge that resulted in his prison term. Due to this failure, it is unclear whether Juror Reeves was competent by law to be a juror. O.R.C. § 2961.01 states that a convicted felon is incompetent to be a juror unless the conviction is reversed or annulled. This section also discusses a convicted felon's ability to be an elector (voter) and the effect of a full pardon. Trial counsel prejudicially failed to discover whether Juror Reeves had attained a reversal, annulment or full pardon of his conviction.

55. The result of Juror Reeves not having his civil rights restored to the extent that he was competent to be a juror, was that Petitioner Hanna was convicted and sentenced to death by an improperly constituted jury, rendering the conviction and sentence a nullity. see State ex. rel. Gains v. Thomas, 128 Ohio App. 3d 107 (1998) In Mr. Hanna's case, Juror Reeves's incompetence to be a juror, results in his vote for the conviction and sentence is null and void. This means that Mr. Hanna was convicted by a jury of only eleven people qualified to be jurors. Therefore, Petitioner would have to be granted a new trial.

56. Trial counsel were unreasonably and prejudicially ineffective for failing to discover whether Juror Reeves was competent to be a juror. See also First Ground for Relief. Mr. Hanna's case was decided by a jury that was not properly constituted according to Ohio law, thus rendering his case a nullity.

57. The United States Constitution's Sixth Amendment guarantees criminal defendants the right to a trial by a fair and impartial jury. This jury must be composed of jurors who are competent and qualified to be jurors, anything less would automatically not be fair and impartial. The sentencing jury in Mr. Hanna's case was not properly constituted resulting in a violation of his constitutional rights.

58. Trial counsel erred by rendering ineffective assistance whereby they did not discover whether Juror Reeves was incompetent to be a juror. Strickland v. Washington, 466 U.S. 668 (1984). This right is violated when counsel's performance falls below an objective standard of reasonableness and the client is prejudiced by counsel's breach of duty. Strickland, 466 U.S. at 690, 696. Here, defense

counsel's deficient performance in questioning prospective jurors undermined confidence in the outcome of his capital trial. Strickland, 466 U.S. at 687.

59. Petitioner supports this ground with evidence deors the record that contains sufficient operative facts to demonstrate lack of competent counsel and the prejudice resulting from counsel's ineffectiveness. State v. Jackson, 64 Ohio St. 2d 107, 111 (1980). Petitioner muse be granted a new trial or, at a minimum, discovery and an evidentiary hearing on this ground for relief.

**Attached Exhibits:** A, B

**Legal Authority Supporting this Ground for Relief:** U.S. Const., amends V, VI, VIII, IX and XIV; Ohio Const., art I 10 and 15; Strickland v. Washington, 466 U.S. 668 (1984); State ex. rel. Gains v. Thomas, 128 Ohio App. 3d 107 (1998); State v. Jackson, 64 Ohio St. 2d 107, 111 (1980).

**Fifth Ground for Relief:**

60. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

61. Petitioner Hanna's conviction and/or sentence are void or voidable because his trial counsel failed, during voir dire, to question juror Howard E. Reeves concerning whether his felony conviction would impair his ability to be a fair and impartial juror. This action by the defense attorneys violated Petitioner's rights as guaranteed by the Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution and Article I, Sections 2, 5, 9,10,16 and 20 of the Ohio Constitution.

62. The Sixth Amendment to the U.S. Constitution guarantees to the criminal defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). This right is violated when counsel's performance falls below an objective standard of reasonableness and the client is prejudiced by counsel's breach of duty. Strickland, 466 U.S. 690, 696.

63. In numerous places throughout his questionnaire juror Howard E. Reeves responded with a variation of the phrase "6 mo. and prob." Sometimes the statement does not seem to respond to the specific question or does not make sense. However, when he was asked in Question No. 65 whether he or a family member had been affiliated with various criminal justice agencies, Mr. Reeves checked the space next to "probation or parole department." He explained his answer in the follow-up question by writing "5 yr on probation 6 mon in jail." He wrote a similar response to Questions Nos. 68 and 69. Exhibit A. By the time the reader gets to Question No. 69 he or she has to be aware that Howard Reeves is stating that he has served time in prison. Furthermore, the Ohio Department of Rehabilitation and Correction's records report that a man named Howard E. Reeves (with the same date of birth as that listed on the Juror's questionnaire) was arrested in Warren County and convicted of Aggravated Burglary. He was incarcerated in Orient Correctional Institution. Exhibit B.

64. The trial attorneys have been shown a copy of Howard Reeves questionnaire and were surprised to realize that he had stated several times that he served six months in jail and five years on

probation. They have admitted that they should have inquired whether Mr. Reeves experience in prison would have prevented him from being a fair and impartial juror. However, they failed to do so. Exhibit H and I.

65. The defense attorneys were ineffective with regards to their voir dire of juror Howard Reeves. First, they were deficient by not noticing what Mr. Reeves wrote regarding six months in jail and five years on probation. Those statements alone deserved inquiry, if nothing more than to verify what they referred to and whether or not the juror understood the question. In addition to verifying and trying to understand the information it was vitally important that the trial attorneys understood what if any affect that experience had on Howard Reeves. Upon first consideration, one may think that someone who had served time in prison might be sympathetic toward Petitioner. However, if Mr. Reeves had been a victim while in prison he may have harbored serious ill will toward James Hanna. Whatever his feelings in this regard, it was vitally important for them to have been uncovered by the defense attorneys during the voir dire process. By not doing so, the trial attorneys were ineffective and James Hanna suffered prejudice due to their ineffectiveness.

66. Petitioner supports this ground with evidence dehors the record that contains sufficient operative facts to demonstrates ineffective assistance of counsel by failing to investigate and seek funding for a prison expert to testify at the mitigation phase of Petitioner's trial. State v. Jackson, 64 Ohio St. 2d 107, 111 (1980). Petitioner must be granted a new trial or, at a minimum, discovery and an evidentiary hearing on this ground for relief.

**Attached Exhibit:** A, B, H, I

**Legal Authority:** . Strickland v. Washington, 466 U.S. 668 (1984); State v. Jackson, 64 Ohio St. 2d 107 (1980); U. S. Const. Amends, V, VI, VIII, IX, XIV; Ohio Const., Art. I §§1,2,5,9,10, and 20.

**Sixth Ground for Relief:**

67. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

68. Petitioner Hanna's conviction and/or sentence are void or voidable because he was denied the effective assistance of counsel in the trial phase of his capital trial, as guaranteed by the Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution and Sections 10 and 16. Article I of the Ohio Constitution. Strickland v. Washington, 466 U.S. 668 (1984).

69. Trial counsel's performance during the trial phase of Petitioner's capital trial was deficient and prejudiced Mr. Hanna. To support this allegation, Petitioner appends the affidavit of Attorney expert David Doughten.

70. Trial counsel unreasonably failed to re-raise their motion that the prosecutor's file be copied and sealed for appellate review. This motion had been denied by the trial court. Judgment May 8, 1998. However, upon realizing that the State had withheld information to which the defense was entitled, trial counsel should have re-raised their motion. This information was the report of Ohio Highway Patrol Trooper Ertel. It was not until Trooper Ertel's recollection was refreshed with his investigative report by the prosecution during its direct examination of him that trial counsel first learned of the existence of such report. This report contained relevant and exculpatory material that was required to have been disclosed pursuant to Brady v. Maryland, 373 U.S. 83 (1963). Exhibit D.

71. After reviewing Trooper Ertel's investigative report trial counsel realized that there were numerous "attachments" referred to in the report that had not been disclosed. Tr. 1095 Trial counsel brought this to the court's attention and the prosecution was ordered to turn over the attachments. (However, as has been discovered in these post-conviction proceedings, the prosecutor did not give trial counsel all of the attachments. Third Ground for Relief).

72. Contained within Trooper Ertel's report that was provided to trial counsel during trial (that should have been disclosed in response to the discovery request), was crucial information. Among other things, trial counsel did not have any information that Copas had lost consciousness after the



assault. Tr. 1095-96. However, contained within the attachment to the report that was disclosed during the trial, was information that he had in fact lost consciousness.

73. Upon learning of the State's withholding of material to which the defense was entitled, trial counsel could have and should have moved for a mistrial or moved for a continuance and to recall witnesses and reopen depositions so that this new information could be used. Trial counsel also should have re-raised their motion for the prosecutor's file be copied and sealed for appellate review.

74. Trial counsel were ineffective for failing to point out the inconsistencies in the testimony of the prosecution's medical experts. Dr. Katz testified for the State that Copas had been experiencing numbness and tingling in the upper and lower right side of his face. Tr. 983. Dr. Katz ordered a CT scan based on Copas's symptoms including the numbness and tingling. Tr. 985. However, Dr. Katz then testified that the subtlety of these symptoms would have precluded others from concluding that there was a foreign body present in Copas's head including Copas's lack of tingling or numbness. Tr. 1028. Trial counsel failed to question Dr. Katz about this obvious inconsistency in Dr. Katz's testimony concerning a crucial point.

75. Trial counsel failed to effectively cross-examine Dr. McWeeney on the need for an immediate CT scan once he detected Copas experiencing numbness in his face. Tr. 1039. Dr. Katz's testimony supports the need for McWeeney to have ordered an immediate CT scan since he detected numbness.

76. Trial counsel unreasonably and prejudicially failed to object to prosecutorial misconduct. The prosecutor stated that "murder one" was the same thing as "prior calculation and design". Tr. 1372-73. This argument was prejudicial because evidence to support prior calculation and design was lacking in this case. The prosecutor misled the jury to equate his interpretation of what a lay person thought murder one meant as being the same thing as prior calculation and design. There was no basis in the record for this argument and as such it was improper. Mr. Hanna was prejudiced by trial counsel's failure to object to this misleading statement by the prosecutor.

77. Trial counsel failed to object to the trial court's definition of reasonable doubt when giving the jury instructions during the culpability phase. In its instructions prior to the jury's deliberations the trial court used the phrases "willing to rely and act", "firmly convinced" and "moral evidence" when defining reasonable doubt. Tr. 1449-50. These phrases, taken as a whole, convey a less stringent standard than that required for a finding of beyond a reasonable doubt. Mr. Hanna was prejudiced by trial counsel's failure to object to this instruction to the jury which lessened the State's burden of proof.

78. The United States Constitution's Sixth Amendment guarantees criminal defendants the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). This right is violated when counsel's performance falls below an objective standard of reasonableness and the client is prejudiced by counsel's breach of duty. Strickland, 466 U.S. at 690, 696. Here, as demonstrated through Attorney Doughten's affidavit, defense counsel's deficient performance in representing Petitioner undermined confidence in the outcome of his capital trial. Strickland, 466 U.S. at 687; Exhibit 1.

79. Petitioner supports this ground with evidence dehors the record that contains sufficient operative facts to demonstrate lack of competent counsel and the prejudice resulting from counsel's ineffectiveness. State v. Jackson, 64 Ohio St. 2d 107, 111 (1980). Petitioner must be granted a new trial or, at a minimum, discovery and an evidentiary hearing on this ground for relief.

**Attached Exhibits: D**

**Legal Authority Supporting this Ground for Relief:** U.S. Const., amends V, VI, VIII, IX and XIV; Ohio Const., art. I, §§ 10 and 16; Strickland v. Washington, 466 U.S. 668 (1984); Brady v. Maryland, 373 U.S. 83 (1963); State v. Jackson, 64 Ohio St. 2d 107 (1980).

**Seventh Ground for Relief:**

80. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

81. Petitioner Hanna's conviction and/or sentence are void or voidable because his trial counsel failed to present adequate expert assistance in his defense during the capital trial and mitigation hearing. This action by the defense attorneys violated Petitioner's rights as guaranteed by the Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution and Article I, Sections 2, 5, 9, 10, 16 and 20 of the Ohio Constitution.

82. The Sixth Amendment to the U.S. Constitution guarantees to the criminal defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). This right is violated when counsel's performance falls below an objective standard of reasonableness and the client is prejudiced by counsel's breach of duty. Strickland, 466 U.S. 690, 696.

83. Trial counsel is ineffective when they fail to conduct an adequate investigation into their client's background, and fail to present mitigating evidence. State v. Johnson, 24 Ohio St. 3d 87 (1986); Glenn v. Tate, 71 F.3d 1204 (6<sup>th</sup> Cir. 1995). The Eighth District Court of Appeals, in State v. Dixon, 1997 WL 113756, March 13, 1997, held that evidence pertaining to a defendant's "familial background, personal history, and cultural experiences" is not only relevant for mitigation purposes, but could "significantly affect" a jury's decision regarding the "ultimate sentence defendant-appellant was to receive." James Hanna's attorneys failed to investigate and present a source of compelling evidence at Hanna's trial and mitigation hearing that was available at the time of his capital trial.

84. Petitioner's trial counsel failed to present expert testimony relating to the discrete culture which exists inside a prison. Steve J. Martin is a prison expert who has been qualified to testify in numerous state and federal courts regarding the culture that exists within prisons. Mr. Martin reviewed the voluminous files of both James Hanna and Peter Copas and then prepared an analysis that reflects what he would have testified to if he had been called as a witness at Petitioner's trial. Exhibit E. An

expert such as Mr. Martin was available at the time of trial.

85. The juror's were unaware of the conditions and process that exist in Ohio State prisons. Steve Martin's affidavit described the classification system of Department of Rehabilitation and Correction and how it is used to maintain order and reduce the possibility of violence by inmates against staff and other prisoners. Mr. Martin also explained that a prisoner's cell is the only home he knows and an inmate wants to protect his "home" and personal belongs just as anyone living in a home outside prison. Mr. Martin then analyzed the information contained in the prison records of Hanna and Copas and demonstrated that these two individuals never should have been celled together, and certainly should not have been allowed to remain together for as long as four days. He further explained why an inmate with Copas's propensity to induce aggravation and stress never should have been placed with Hanna in the first place. Exhibit E.

86. Had he been asked to do so, Steve Martin would have been willing to testify to what he wrote in his post-conviction affidavit. During the trial and mitigation hearing, the jurors heard nothing that would have explained how a fellow prisoner would have reacted to a cellmate like Peter Copas. An expert such as Mr. Martin would have been able to provide a clear picture of what kind of stress develops when one person with psychological and emotional problems has to try to co-habit with another individual with similar personal inadequacies, within the confines of approximately 100 square foot of space. With testimony from Martin, the jury would have learned about the responsibility the Department of Rehabilitation and Correction has for matching cellmates by their classification levels and known histories. Since the trial attorneys failed to present such evidence at Petitioner's mitigation hearing, the jury was left with a totally different view of Mr. Hanna's actions and therefore lacked the ability to understand the culpability of the prison system in the death of Peter Copas.

87. In Dixon, Id., the Court explains the importance of a cultural expert testimony. The Court found this evidence to be so crucial, that it deemed it to mean the difference between a life and a death sentence. James Hanna's counsel failed to investigate and present evidence of this important cultural mitigation, which was available at the time of Mr. Hanna's trial. Petitioner was entitled to expert

assistance under Ake v. Oklahoma, 470 U.S. 68 (1995) and O.R.C. § 2929.024. Trial counsel failed to request funds from the court in order to obtain expert cultural assistance, and as a result, the jury was unable to understand the effect that James Hanna's prison environment had on him and the actions he took.

88. Petitioner supports this ground with evidence de hors the record that contains sufficient operative facts to demonstrate ineffective assistance of counsel by failing to investigate and seek funding for a prison expert to testify at the mitigation phase of Petitioner's trial. State v. Jackson, 64 Ohio St. 2d 107, 111 (1980). Petitioner must be granted a new trial or, at a minimum, discovery and an evidentiary hearing on this ground for relief.

**Attached Exhibit: E**

**Legal Authority:** Strickland v. Washington, 466 U.S. 668 (1984); Ake v. Oklahoma, 470 U.S. 68 (1995); State v. Dixon, 1997 WL 113756, March 13, 1997; Glenn v. Tate, 71 F.3d 1204 (6<sup>th</sup> Cir. 1995); State v. Jackson, 64 Ohio St. 2d 107 (1980) State v. Johnson, 24 Ohio St.3d 87 (1986); O.R.C. § 2929.024; U. S. Const. Amends. V, VI, VIII, IX, XIV; Ohio Const., Art. I §§1,2,5,9,10, and 20.

**Eighth Ground for Relief:**

89. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

90. Petitioner Hanna's conviction and/or sentence are void or voidable because his trial counsel failed to adequately investigate and present sufficient evidence in his defense during the mitigation phase of the trial. This action by the Defense Attorneys violated Petitioner's rights as guaranteed by the Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution and Article I, Sections 2, 5, 9, 10, 16 and 20 of the Ohio Constitution.

91. The Sixth Amendment to the U.S. Constitution guarantees a criminal defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). This right is violated when counsel's performance falls below an objective standard of reasonableness and the client is prejudiced by counsel's breach of duty. Strickland, 466 U.S. 690, 696.

92. Trial counsel is ineffective when they fail to conduct an adequate investigation into their client's background, and fail to present mitigating evidence. State v. Johnson, 24 Ohio St. 3d 87 (1986); Glenn v. Tate, 71 F.3d 1204 (6<sup>th</sup> Cir. 1995).

93. Joseph Scurlock, a Department of Rehabilitation and Correction (DRC) management-level employee testified in the Prosecution's case-in-chief regarding James Hanna's handwriting. The Prosecutor listed him as a possible witness in their September 9, 1998 supplemental response to the Petitioner's discovery motion. Trial counsel possessed James Hanna's prison records before his trial began. Joseph Scurlock's name appears repeatedly throughout that file because he was James Hanna's case manager and social worker for many years. However, when he testified at Hanna's trial the Defense Attorneys did not cross-examine him at all. Tr. 959. Nor did Petitioner's trial counsel consider whether someone who knew James Hanna well enough to recognize his handwriting knew anything about his personality. Exhibit H and I.

94. Joseph Scurlock has provided an extensive post-conviction affidavit in which he exhibits

his knowledge of James Hanna's personality. Because he is a veteran of the Ohio prison system, he was also able to provide important information regarding how the system works with regards to placing and keeping inmates together in a cell. Exhibit F.

95. When the jury heard Scurlock testify at trial they only heard another person connect Hanna to the letter he wrote to an SOCF inmate. Had the trial attorneys made Mr. Scurlock their own witness the jury could have heard that a veteran prison official thought James Hanna was a shy, serious guy who did not cause trouble unless he was pushed into a stressful situation that he could not handle. Exhibit F. After the trial attorneys read Scurlock's affidavit (Exhibit F) they admitted that he would have been an important mitigation witness if they had only been aware of what he would have said about James Hanna. Exhibit H and I. However, defense counsel failed to investigate the importance and availability of Joseph Scurlock

96. In addition to what he would have provided in the way of mitigation evidence, Joseph Scurlock also would have provided valuable impeachment material. Inmate Ricardo Lee testified at length about what he did to control and manipulate the system and postpone the separation of Hanna and Copas. Had Scurlock been called by the defense to testify about cellmate selection procedures, he would have demonstrated that either Ricardo Lee was lying or that a major portion of the blame for what happened to Copas must be placed on the officials at Lebanon Correctional Institution. Exhibit H and I. The Defense Attorneys' failure to call Scurlock for this purpose prevented the jury from being aware of this information and caused prejudice to the Petitioner because his jury could not fully evaluate the testimony of Ricardo Lee or evaluate the culpability of the prison system in the death of Peter Copas.

97. Petitioner supports this ground with evidence de hors the record that contains sufficient operative facts to demonstrate ineffective assistance of counsel by failing to investigate and seek funding for a prison expert to testify at the mitigation phase of Petitioner's trial. State v. Jackson, 64 Ohio St. 2d 107, 111 (1980). Petitioner must be granted a new trial or, at a minimum, discovery and an evidentiary hearing on this ground for relief.

**Attached Exhibits:** F, H, I

**Legal Authority:** Strickland v. Washington, 466 U.S. 668 (1984); Glenn v. Tate, 71 F.3d 1204 (6<sup>th</sup> Cir. 1995); State v. Jackson, 64 Ohio St. 2d 107 (1980) State v. Johnson, 24 Ohio St.3d 87 (1986); U. S. Const. Amends, V, VI, VIII, IX, XIV; Ohio Const., Art. I §§1,2,5,9,10, and 20.



**Ninth Ground for Relief:**

98. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

99. Petitioner Hanna's conviction and/or sentence are void or voidable because his trial counsel failed to investigate and present during the mitigation phase of the trial sufficient evidence explaining the Ohio Department of Rehabilitation and Correction policy regarding the criteria for inmate incarceration in high maximum security prisons. This action by the Defense Attorneys violated Petitioner's rights as guaranteed by the Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution and Article I, Sections 2, 5, 9, 10, 16 and 20 of the Ohio Constitution.

100. The Sixth Amendment to the U.S. Constitution guarantees a criminal defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). This right is violated when counsel's performance falls below an objective standard of reasonableness and the client is prejudiced by counsel's breach of duty. Strickland, 466 U.S. 690, 696.

101. Trial counsel is ineffective when they fail to conduct an adequate investigation to present sufficient mitigation evidence. State v. Johnson, 24 Ohio St. 3d 87 (1986); Glenn v. Tate, 71 F.3d 1204 (6<sup>th</sup> Cir. 1995).

102. In August 31, 1998 the Ohio Department of Rehabilitation and Correction (DRC) issued Policy #1111-07 which described the procedure for determining which inmates were to be housed in high maximum security prisons. Exhibit G. With regards to who would be assigned to high maximum security prisons and what behavior would merit such an assignment, the policy provided the following relevant criteria:

- A. Assignment Criteria. Inmates will be recommended for and assigned to high maximum security when all of the following factors are present:
1. The inmate is or is about to be classified as maximum security;
  2. The inmate has demonstrated behavior which meets high maximum security criteria, as defined in paragraph B., below; and
  3. The inmate presents the highest level of threat to the security and order of the department and its institutions, in the professional

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- judgment of the classifying official.
4. An inmate who has demonstrated these factors will be recommended to high maximum security status as an administrative override of the classification instrument.
- B. Behavior Criteria. An inmate will be considered for assignment to high maximum security status if the inmate's behavior has demonstrated any of the following:
1. The inmate's conduct or continued presence at the current institution poses a serious threat to the physical safety of any person, or to the security of the prison;
  2. The nature of the inmate's criminal offense indicates that the inmate poses a serious threat to the physical safety of any person, or to the security of the prison; . . .

Exhibit G.

103. The defense attorneys failed to investigate whether there was a formal policy regarding the placement of prisoners in high maximum security prisons in Ohio. Consequently they were unaware of the existence of DRC Policy #111-07 . Exhibit G.

104. For post-conviction, Petitioner's trial attorneys have reviewed Policy #111-07. Defense attorney William G. Fowler conceded that it would have been important to have subpoenaed an official from DRC to testify during the mitigation phase of Petitioner's trial regarding that policy. Exhibit H. It was obvious that this was a very significant factor in the jury's sentencing considerations. The only question the juror's asked during deliberation over the sentencing verdict was:

If given a life sentence, how is it assured it will be served in maximum security prison? How will we be assured he will be in his cell 23 hours a day? Tr. 1714.

A DRC official could have testified at the mitigation hearing and this question by the jury would have been unnecessary.<sup>1</sup> The jury was obviously concerned that other inmates might be endangered if James Hanna was placed in a situation similar to what he had been in at Lebanon Correctional Institution. When the jury did not hear that assurance they promptly voted for the death sentence. Tr. 1716.

105. Petitioner supports this ground with evidence dehors the record that contains sufficient

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<sup>1</sup> Furthermore, an official from DRC could have testified regarding the crimes committed by other inmates housed at OSP. For example, Stacy Lane was indicted for the murder of his cellmate at Lebanon Correctional Institution.

operative facts to demonstrates ineffective assistance of counsel by failing to investigate and seek funding for a prison expert to testify at the mitigation phase of Petitioner's trial. State v. Jackson, 64 Ohio St. 2d 107, 111 (1980). Petitioner must be granted a new trial or, at a minimum, discovery and an evidentiary hearing on this ground for relief.

**Attached Exhibits:** G, H

**Legal Authority:** Strickland v. Washington, 466 U.S. 668 (1984); Glenn v. Tate, 71 F.3d 1204 (6<sup>th</sup> Cir. 1995); State v. Jackson, 64 Ohio St. 2d 107 (1980) State v. Johnson, 24 Ohio St.3d 87 (1986); U. S. Const. Amends, V, VI, VIII, IX, XIV; Ohio Const., Art. I §§1,2,5,9,10, and 20.

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Even though Mr. Lane was acquitted of this charge, he was sent to OSP to serve his sentence due to the fact that he had assaulted his cellmate.

**Tenth Grounds for Relief:**

106. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

107. Petitioner Hanna's convictions and/or sentences are void or voidable because he was denied the effective assistance of counsel in the mitigation phase of his capital trial as guaranteed by the Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution and Sections 10 and 16, Article I of the Ohio Constitution. Strickland v. Washington, 466 U.S. 668, 686 (1984).

108. Defense counsel has a duty to investigate a capital defendant's background for mitigating factors. It is only after a full investigation of all the mitigating circumstances that counsel can make an informed, tactical decision about which information would be helpful in the client's case. State v. Johnson, 24 Ohio St. 2d 87 (1986); Glenn v. Tate, 71 F.3d 1204 (6<sup>th</sup> Cir. 1995); Austin v. Bell, 126 F.3d 843 (6<sup>th</sup> Cir. 1997).

109. Defense counsel were ineffective because they did not prepare Dr. Kathleen J. Burch to testify about how Hanna's psychological and emotional makeup was molded during the 30 years he spent in prison. By failing to ask Dr. Burch about the psychological effects long-term prison life had on Petitioner the jury was not given the opportunity to understand the prison conditions that produced James Galen Hanna. The trial attorneys could have made Dr. Burch aware of the information relied upon and presented by prison expert Steve J. Martin in the post-conviction. She would then have been able to explain to the sentencing jury about how James Hanna's prison life caused him to develop certain defense mechanisms that aided him in coping with the conditions he experienced during a lifetime of incarceration.

110. Defense counsel did not adequately prepare for an essential element of a capital trial — the mitigation hearing. Rather than conducting the necessary investigation, defense counsel apparently believed that the jury would impose a life sentence by finding that Copas's inadequate medical treatment contributed to his death. Counsels' persistent focus on that expectation foreclosed the possibility of a thorough investigation into Petitioner's life and the impact his prison life had on the charged capital crime. This approach ultimately resulted in an inadequate preparation and presentation for Petitioner's mitigation hearing. Dr. Burch was only prepared to answer questions about James Hanna's test results and personality characteristics. The defense attorneys never had her address how these characteristics caused Petitioner to arrive at his eventual, disastrous encounter with Peter Copas.

111. As a result of counsel's failure to investigate, prepare and present available mitigating evidence, counsel were unable to present a complete mitigation for Petitioner Hanna. If counsel had conducted a full investigation and properly prepared Dr. Burch the jury would have learned what she has detailed in her affidavit (Exhibit J) and been presented with a much more detailed explanation of why

Hanna acted as he did. Instead the jury heard that Petitioner suffered from Attention Deficit Disorder, a malady that is frequently used today in pop psychology to explain why children cannot sit still in school. If Dr. Burch had been asked to explain Hanna's affliction in such a way as to demonstrate how it related to his prison life the jury may have better understood that Hanna's actions did not merit the death penalty.

112. Petitioner Hanna supports this ground with evidence dehors the record that contains sufficient operative facts to demonstrate lack of competent counsel and the prejudice resulting from counsel's ineffectiveness. State v. Jackson, 64 Ohio St. 2d 107, 111 (1980). Petitioner must be granted a new trial or, at a minimum, discovery and an evidentiary hearing on this ground for relief.

**Attached Exhibits: J**

**Legal Authority in Support of Ground for Relief:** U.S. Const., amends. V, VI, VIII, IX and XIV; Ohio Const., art. I, §§ 10 and 16; Strickland v. Washington, 466 U.S. 668 (1984); State v. Johnson, 24 Ohio St. 2d 87 (1986); Glenn v. Tate, 71 F.3d 1204 (6<sup>th</sup> Cir. 1995); Austin v. Bell, 126 F.3d 843 (6<sup>th</sup> Cir. 1997); State v. Jackson, 64 Ohio St. 2d 107 (1980).

**Eleventh Ground for Relief:**

113. Petitioner Hanna hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

114. Petitioner Hanna's convictions and/or sentences are void or voidable because he was denied the effective assistance of counsel in the mitigation phase of his capital trial as guaranteed by the Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution and Sections 10 and 16, Article I of the Ohio Constitution. Strickland v. Washington, 466 U.S. 668, 686 (1984).

115. Defense counsel has a duty to investigate a capital defendant's background for mitigating factors. State v. Johnson, 24 Ohio St. 2d 87 (1986). It is only after a full investigation of all the mitigating circumstances that counsel can make an informed, tactical decision about which information would be helpful in the client's case. Id. at 90, citing Picken v. Lockhart, 714 F.2d 1455 (1983); Glenn v. Tate, 71 F.3d 1204 (6<sup>th</sup> Cir. 1995); Austin v. Bell, 126 F.3d 843 (6<sup>th</sup> Cir. 1997).

116. Defense counsel were ineffective in their mitigation investigation because they did not interview or failed to adequately interview family members who were available and would have testified for Petitioner at the time of his capital trial. Exhibits K, L and M. For example, counsel did not interview or failed to adequately interview and present the testimony of one of Mr. Hanna's sisters, Nancy LaDuke. Exhibit L. She avers that their mother would whip the children with whatever she could, including a board and a vacuum handle. She also states that she was told by James that he was sexually molested while staying with a foster parent in Archbold, Ohio and that she remembers a newspaper article which corroborates Mr. Hanna's statement to her. Id. Such evidence was important to humanize Mr. Hanna for the jury and to allow the sentencing jury to understand the type of life Petitioner endured and the familial tragedies he suffered.

117. Trial counsel were ineffective by failing to present other relevant evidence and witnesses during the mitigation phase of the trial. Trial counsel did not interview Joseph Scurlock who was available and would have testified for Mr. Hanna. Exhibit F; Eighth Ground for Relief.

118. Trial counsel did not present the testimony of a prison expert to explain prison conditions and the effects of long term incarceration on a person. Exhibit E; Seventh Ground for Relief.

119. Trial counsel did not present the testimony from an official from the Department of Rehabilitation and Corrections to explain to the jury the guidelines and criteria for incarceration at the Ohio State Penitentiary High-maximum (or super-maximum) security prison in Youngstown, Ohio. Exhibit G; Ninth Ground for Relief.

120. Trial counsel also did not adequately investigate, prepare and present Dr. Burch for her testimony during the mitigation phase. Exhibit J; Tenth Ground for Relief.

121. Defense counsel did not take the minimal steps necessary to prepare for an essential element of a capital trial. Exhibit O.

122. As a result of counsel's failure to investigate and prepare available mitigating evidence, counsel were unable to develop a complete social history for Mr. Hanna to provide to Dr. Burch and to present important testimony from others who knew of the prison system and Mr. Hanna.

123. Defense counsel failed to investigate and present viable and relevant mitigating evidence for a sentence less than death. Exhibit O. The absence of this evidence from Petitioner's mitigation hearing clearly undermines confidence in the outcome of his capital trial. His sentencer did not have an opportunity to consider relevant mitigating factors.

124. Trial counsel also failed to object to the trial court's instruction to the jury that Mr. Hanna would not be subject to cross-examination of his unsworn statement during the sentencing phase of the trial. Tr. 1500. Trial counsel were ineffective for failing to object to this instruction which was unacceptable since a court can not comment on the lack of cross-examination of a defendant's unsworn statement.

125. Petitioner Hanna supports this ground with evidence dehors the record that contains sufficient operative facts to demonstrate lack of competent counsel and the prejudice resulting from counsel's ineffectiveness. State v. Jackson, 64 Ohio St. 2d 107, 111 (1980). Petitioner must be granted a new trial or, at a minimum, discovery and an evidentiary hearing on this ground for relief.

**Attached Exhibits:** E, F, G, J, K, L, M, O

**Legal Authority in Support of Ground for Relief:** U.S. Const., amends. V, VI, VIII, IX and XIV; Ohio Const., art. I, §§ 10 and 16; Strickland v. Washington, 466 U.S. 668 (1984); State v. Johnson, 24 Ohio St. 2d 87 (1986); Picken v. Lockhart, 714 F.2d 1455 (1983); Glenn v. Tate, 71 F.3d 1204 (6<sup>th</sup> Cir. 1995); Austin v. Bell, 126 F.3d 843 (6<sup>th</sup> Cir. 1997); State v. Jackson, 64 Ohio St. 2d 107 (1980).



**Twelfth Ground for Relief:**

126. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

127. Petitioner Hanna's conviction and sentence are void or voidable because the post-conviction process provides an inadequate corrective process. Exhibit R.

128. An adequate corrective process should be "swift and simple and easily invoked," should eschew rigid and technical doctrines of res judicata of forfeiture, waiver or default," and should "provide for full fact hearings to resolve disputed factual issues." Case v. Nebraska, 381 U.S. 336, 346-57 (1965) (Brennan, H., concurring); Goldberg v. Kelly, 397 U.S. 254 (1970); Evitts v. Lucev, 469 U.S. 387 (1985).

129. The Ohio Legislature created this state's post-conviction procedure in 1965. Ohio Rev. Code Ann. §§ 2953.21 - 2953.23 (Banks-Baldwin 1995). Ostensibly, its purpose was to provide an adequate corrective process in the state courts for testing the constitutional validity of a criminal conviction or sentence. The post-conviction process, however, is neither adequate nor corrective.

130. As provided by O.R.C. § 2953.21, a post-conviction petitioner must file a petition setting forth grounds for relief and supporting the grounds with evidence dehors the record. All this must be done without any benefit of the discovery processes available to every other civil litigant. Exhibit R. There is no subpoena power, no way to file interrogatories, no depositions, etc. So if a witness refuses to talk to counsel investigating the case or is unavailable, Petitioner has no means by which to compel that information. If Petitioner is without funds, Petitioner has no judicial method to hire the experts he may need to support his ground. If the state exhibited a propensity to withhold evidence at trial, the Petitioner has no method to ensure review of the prosecutor's file, even by in camera review. Yet the petition will be dismissed unless it is supported by fact-specific dehors the record evidence.

131. The Sixth Circuit Court of Appeals has recognized the structural inadequacy of O.R.C. § 2953.21, especially given the fact that the Ohio Supreme Court has, in State v. Perry, 10 Ohio St. 2d 175 (1967) and its progeny, construed that statute in such a way as to eviscerate it of any real ability to function as a procedure for fully and fairly adjudicating federal constitutional and other claims. Keener v. Ridenour, 594 F.2d 581 (6<sup>th</sup> Cir. 1979); Allen v. Perini, 424 F.2d 134 (6<sup>th</sup> Cir. 1970); Coley v. Alvis, 381 F.2d 870 (6<sup>th</sup> Cir. 1967).

132. Although the federal constitution does not force a precise capital statutory scheme on the states, once Ohio erected a capital statutory scheme, those statutes acquired constitutional dimensions implicating the rights to be free from cruel and unusual punishment and to due process protections. See gen. Furman v. Georgia, 408 U.S. 238 (1972); Lockett v. Ohio, 438 U.S. 586 (1978); Ohio Adult Parole Authority v. Woodard, 118 S. Ct. 1244 (1998) (five Justices held that the due process clause provides special protections for the "life" interest at stake in capital cases); U.S. Const., amends. VIII, IX and XIV;

Ohio Const., art. I, §§ 1, 2, 5, 9, 10, 16 and 20. Post-conviction relief is an essential component of the procedural and substantive devices available in Ohio law as avenues of relief for condemned defendants. O.R.C. § 2953.21. See Case v. Nebraska, 381 U.S. 336 (1965).

133. The United States Supreme Court has stated that “death is a different kind of punishment from any other,” being “different in both its severity and its finality.” Beck v. Alabama, 447 U.S. 625, 637 (1980) (citation omitted). The standard for granting post-conviction relief in a capital case should, accordingly, reflect this difference. So, too, should the showing required of the capital defendant in order to gain at least an evidentiary hearing on the petition. However, Ohio ignores these edicts in violation of Petitioner Hanna’s constitutional rights.

134. Mr. Hanna supports this ground with evidence dehors the record that contains sufficient operative facts to demonstrate that the post-conviction process in Ohio is inadequate. State v. Jackson, 64 Ohio St. 2d 107, 111 (1980). Petitioner must be granted a trial or, at a minimum, discovery and an evidentiary hearing on the grounds for relief contained in this petition.

**Attached Exhibit: R**

**Legal Authority Supporting this Ground for Relief:** Case v. Nebraska, 381 U.S. 336 (1965); Goldberg v. Kelly, 397 U.S. 254 (1970); Evitts v. Lucey, 469 U.S. 387 (1985); O.R.C. § 2953.21-2953.23; State v. Perry, 10 Ohio St. 2d 175 (1967); Keener v. Ridenour, 594 F.2d 581 (6<sup>th</sup> Cir. 1979); Allen v. Perini, 424 F.2d 134 (6<sup>th</sup> Cir. 1970); Coley v. Alvis, 381 F.2d 870 (6<sup>th</sup> Cir. 1967); Furman v. Georgia, 408 U.S. 238 (1972); Lockett v. Ohio, 438 U.S. 586 (1978); Ohio Adult Parole Authority v. Woodard, 118 S. Ct. 1244 (1998); U.S. Const., amends. VIII, IX and XIV; Ohio Const., art. I, §§ 1, 2, 5, 9, 10, 16 and 20; Beck v. Alabama, 447 U.S. 625 (1980); State v. Jackson, 64 Ohio St. 2d 107 (1980).

**Thirteenth Ground For Relief:**

135. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

136. The judgment and sentence against Petitioner are void or voidable because the death penalty as administered by electrocution in the state of Ohio violates his constitutional rights to protection from cruel and usual punishment and to due process of law. U.S. Const. amends. VIII, IX, XIV; Ohio Const. art. I §§ 9, 10, 16; Ohio Adult Parole Authority v. Woodard, 523 U.S. 272 (1998) (five justices holding that that the Due Process Clause protects the “life” interest at issue in capital cases).

137. The death penalty in Ohio is presumptively carried out by means of electrocution. O.R.C. § 2949.22. Death by state-sanctioned electrocution violates the due process protections of life and constitutes cruel and unusual punishment in violation of Petitioner’s constitutional rights because it inflicts torturous, gratuitous and inhumane pain, suffering, anguish, and mutilation upon the person executed by this means.

138. Death by electrocution is carried out by placing an electrode on the top of the skull and on one lower leg. The surge of electricity from one electrode to the other inflicts third and fourth degree burns in the skin where the electrodes are attached. Petitioner need cite no authority to prove the fact that all burns are painful, and the greater the degree of burn the more severe and torturous the pain. The electrical current must penetrate the brain to cause unconsciousness and to destroy the nerve activity that otherwise causes the condemned person to suffer excruciating pain. However, the human skull insulates the brain from the electric current. Because of the greater conductivity of the person’s skin tissues relative to the skull bone, most electricity passes from the electrode on top of the prisoner’s head through his body to the electrode on his calf. No study has offered evidence that a person in the throes of electrocution loses consciousness before the moment of death much less before experiencing the horrible pain caused by skin burning and the iron cramping of muscles. Witnesses to many executions have reported that even after thousands of volts of electricity have passed between the electrodes, a person’s heart often continues to beat. Some may contend that the condemned person’s failure to thrash about while being electrocuted indicates the absence of pain. To the contrary, the evidence shows that the electric current passing through the bodies large muscles snaps them into full contraction and thereby renders the person incapable of outward movements which would communicate internal terror and anguish. Exhibits S, T, U, V; See also Deborah W. Denno, Is Electrocution an Unconstitutional Method of Execution? The Engineering of Death Over the Century, 35 Wm & Mary L. Rev. 551 (1994).

139. The Eighth Amendment demands that any punishment comport with the “evolving standards of decency that mark the progress of a maturing society.” Trop v. Dulles, 356 U.S. 86, 101 (1958). At its inception in the late 1800s, some said electrocution improved upon then-existing

barbarism. But by today's standards, electrocution violates the fundamental principles of decency protected by the Ohio and U.S. Constitutions. Compare In Re Kemmler, 136 U.S. 436 (1890) (in an era before the 8<sup>th</sup> Amendment was applied to the states, the Court deferred to the state court, held that execution by electrocution does not violate the 14<sup>th</sup> Amendment Due Process Clause, and established in *dicta* the principle that that a method of execution must result in "the mere extinguishment of life" and that torture or a "lingering death" is unconstitutional). See also the extensive discussion of Kemmler and its aftermath in Denno, supra. Modern science and historical developments reveal that electrocution is at the very least more likely than not a torturous, painful, barbaric and, hence, unconstitutional means of extinguishing life. Electrocution certainly involves much more than the antiseptic elimination of an unwanted human being. The constitution requires the presumption that electrocution inflicts cruel and unusual pain and suffering on the person being executed.

140. Several Justices of the U. S. Supreme Court have expressed concerns about the constitutionality of state-imposed death by electrocution. When faced with an application for a stay of execution to permit review of this issue, three justices dissented from the denial of the stay. Clisby v. Alabama, 514 U.S. 1093 (1995) (Stevens, Ginsberg and Breyer, JJ.). Prior to Clisby, three Justices noted that "[t]he Court has not spoken squarely on the...issue since In re Kemmler, and the holding of that case does not constitute a dispositive response to litigation of the issue in light of modern knowledge about the method of execution in question." Poyner v. Murray, 508 U.S. 931, 932 (1993) (Souter, Blackmun and Stevens, JJ., respecting denial of *certiorari*). Former Justices Brennan and Marshall (dissenting from denial of *certiorari*) also questioned the contemporary validity of Kemmler, noting it was "grounded on a number of constitutional premises that have long since been rejected and on factual assumptions that appear not to have withstood the test of experience." Glass v. Louisiana, 471 U.S. 1080, 1081 (1985).

141. Petitioner's death sentence must be declared void because it entails execution by a method that violates his constitutional rights. U.S. Const. amends. VIII, IX and XIV; Ohio Const. art. I, §§ 9, 10, 16. In the alternative, Petitioner should be granted discovery and an evidentiary hearing on this ground for relief.

**Attached Exhibits:** S, T, U, V

**Legal Authority Supporting this Ground for Relief:** Ohio Adult Parole Authority v. Woodard, 523 U.S. 272 (1998); Clisby v. Alabama, 514 U.S. 1093 (1995); Poyner v. Murray, 508 U.S. 931 (1993); Glass v. Louisiana, 471 U.S. 1080 (1985); Trop v. Dulles, 356 U.S. 86 (1958); U.S. Const. amends. VIII, IX and XIV; Ohio Const. art. I, §§ 9, 10, 16; O.R.C. § 2949.22; Deborah W. Denno, Is Electrocution an Unconstitutional Method of Execution? The Engineering of Death Over the Century, 35 Wm & Mary L. Rev. 551 (1994).

**Fourteenth Ground For Relief:**

142. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

143. The judgment and sentence against Petitioner are void or voidable because the death penalty as administered by lethal injection in the state of Ohio violates his constitutional rights to protection from cruel and usual punishment and to due process of law. U.S. Const. amends. VIII, IX, XIV; Ohio Const. art. I §§ 9, 10, 16; Ohio Adult Parole Authority v. Woodard, 523 U.S. 272 (1998) (five justices holding that that the Due Process Clause protects the “life” interest at issue in capital cases).

144. The death penalty in Ohio is presumptively carried out by means of electrocution; but the condemned person may elect to die by lethal injection. O.R.C. § 2949.22. Death by state-sanctioned lethal injection violates the due process protections of life and constitutes cruel and unusual punishment in violation of Petitioner’s constitutional rights because it inflicts torturous, gratuitous and inhumane pain, suffering and anguish upon the person executed by this means.

145. As demonstrated in another claim herein, state-sanctioned electrocution is unconstitutional. Therefore, offering the condemned the “choice” between two unconstitutional methods of execution neither purges the execution of “state action” nor erases the cruel and unusual nature of the execution. The American Friends Service Committee’s Ohio Criminal Justice Program has submitted an affidavit explaining its opposition to all forms of capital punishment. Exhibit Q.

146. Lethal injection consists of tying a human being to a table then forcing a needle into him through which flows a combination of drugs designed in theory to stop the heart, paralyze the breathing muscles, and sedate the person. This execution method has not been proven to be more humane or less painful than electrocution. “The much-vaunted and increasingly popular technique of lethal injection may well improve upon hanging, electrocution, and the gas chamber, in the same way as these improved upon burning at the stake, disemboweling, and drawing and quartering. But such improvement if it exists, is only incremental.” WILLIAM A. SCHABAS, *THE DEATH PENALTY AS CRUEL TREATMENT AND TORTURE* 200-201 (Northeastern Univ. Press 1996).

147. So far, since the first lethal injection in 1977, there have been “botched” executions which directly violate the Supreme Court’s bar against torture or a “lingering” death. In Texas, Stephen Peter Morin’s execution required that his arms and legs be probed for 45 minutes to find a vein. Randy Woolls, a drug addict, had to help executioners find a good vein for the syringe. It took 35 minutes to insert a catheter into the vein of Elliott Johnson. Raymond Landry was pronounced dead 40 minutes after being strapped to the execution gurney and 24 minutes after the drugs first started flowing. Two minutes into the killing, the syringe came out of his vein, spraying the deadly chemicals across the room, and the executioners had to reinsert the catheter. Stephen McCoy had such a violent physical reaction to the drugs

that one of the male witnesses fainted, knocking over other witnesses. The Texas Attorney General admitted that McCoy “seemed to have a somewhat stronger reaction, the drugs might have been administered in a heavier dose or more rapidly.” It took more than 50 minutes to find a suitable vein in Rickey Ray Rector’s arm, while witnesses heard his loud moans. During the ordeal, Rector, brain damaged from a lobotomy, tried to help find a vein. It took 47 minutes to find a suitable vein in Billy Wayne White, who eventually helped find it. Justin Lee May had an unusually violent reaction to the drugs, and went into coughing spasms, groaned, gasped, and lifted his head from the death chamber gurney. In Oklahoma, Robyn Lee Parks had a violent reaction to the drugs. Two minutes after the drugs began, the muscles in his jaw, neck, and abdomen began to react spasmodically, and Parks gasped and violently gagged until death came 11 minutes after the drugs were administered. After John Wayne Gacy’s execution began in Illinois, one of the three lethal drugs clogged the tube leading to his arm and stopped flowing, which was blamed on the inexperience of the prison officials conducting the execution. Emmitt Foster, Scott Carpenter, Michael Elkins, and Joseph Cannon suffered protracted executions due to procedural foul-ups. Tommie Smith, Indiana, was not pronounced dead until 1 hour and 20 minutes after the executioners began to administer the drugs. Prison officials said they couldn’t find a vein in his arm and had to insert an angio-catheter into his heart, a procedure which took 35 minutes. Similar attempts to insert a needle into Smith’s neck and groin areas failed, after cutting back skin on his chest while Smith remained conscious. Exhibit T.

148. The United States Supreme Court said long ago that state-sanctioned executions must be conducted in such a way as to constitute “the mere extinguishment of life” and that torture or a “lingering death” is unconstitutional. In Re Kemmler, 136 U.S. 436 (1890). Experience reveals that lethal injection is at the very least more likely than not a torturous, painful, barbaric and, hence, unconstitutional means of extinguishing life—it is certainly not an antiseptic method for putting a human being to sleep. The constitution requires the presumption that lethal injection inflicts cruel and unusual pain and suffering on the person.

149. Petitioner’s death sentence must be declared void because it entails execution by a method that violates his constitutional rights. U.S. Const. amends. VIII, IX and XIV; Ohio Const. art. I, §§ 9, 10, 16. In the alternative, Petitioner should be granted discovery and an evidentiary hearing on this ground for relief.

**Attached Exhibits:** Q, T

**Legal Authority Supporting this Ground for Relief:** Ohio Adult Parole Authority v. Woodard, 523 U.S. 272 (1998); Trop v. Dulles, 356 U.S. 86 (1958); U.S. Const. amends. VIII, IX and XIV; Ohio Const. art. I, §§ 9, 10, 16; O.R.C. § 2949.22.

**Fifteenth Ground for Relief:**

150. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

151. Petitioner Hanna's judgment and sentence are void or voidable because, assuming *arguendo* that none of the Grounds for Relief in his Post-Conviction Petition individually warrant the relief sought from this court, the cumulative effects of the errors and omissions as presented in the Petition's foregoing paragraphs have been prejudicial and have denied Petitioner his rights as secured by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 2, 9, 10, and 16 of the Ohio Constitution.

152. Reviewing a criminal case where numerous violations of the Rules of Evidence occurred at trial, the Ohio Supreme Court has held that "a conviction will be reversed where the cumulative effect of the errors deprives a defendant of the constitutional right to a fair trial." State v. DeMarco, 31 Ohio St. 3d 191, syl. 2 (1987). See also, State v. Bunch, 62 Ohio App.3d 801 (1989).

153. Petitioner contends, again assuming *arguendo* that this court does not deem any individual Ground for Relief as meriting the relief sought, that the errors presented in his Post-Conviction Petition taken together, are of sufficient magnitude as to warrant the granting of a new trial or, at minimum, discovery and an evidentiary hearing on this Ground For Relief.

**Attached Exhibits:** A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V

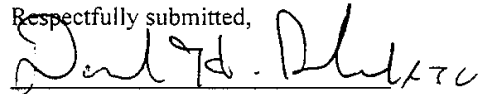
**Legal Authority Supporting this Ground for Relief:** All the legal authorities cited in support of each and every Ground For Relief set forth above in Petitioner's postconviction petition supports this Ground For Relief and is incorporated by reference as if fully re-written herein.

CONCLUSION

WHEREFORE, Petitioner James Galen Hanna requests the following relief:

- A. That this Court declare James Galen Hanna's convictions to be void or voidable and grant him a new trial.
- B. In the alternative, that this Court declare James Galen Hanna's death sentence to be void or voidable and grant him a new sentencing hearing before a jury;
- C. If this Court is not inclined to grant James Galen Hanna relief based on the matters raised in this post-conviction petition and supported by the attached exhibits, then Petitioner Hanna requests that this Court grant him leave to pursue discovery to more fully develop the factual basis demonstrating the constitutional violations that render his conviction and death sentence void or voidable.
- D. If this Court is not inclined to grant James Galen Hanna relief based on the matters raised in this post-conviction petition and supported by the attached exhibits, then Petitioner requests that, after permitting him to pursue discovery, that this Court conduct an evidentiary hearing pursuant to Ohio Revised Code Ann. § 2953.21;
- E. That this Court grant any further relief to which James Galen Hanna might be entitled.

Respectfully submitted,

  
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Ohio Public Defender

  
KATHRYN SANDFORD – 0063985

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COUNSEL FOR DEFENDANT



*Hanna v. Shoop*, S.D. Ohio No. 3:19-cv-00231  
Doc #1-2 (Post-Conviction Motion for Discovery)

IN THE COURT OF COMMON PLEAS  
WARREN COUNTY, OHIO

COMMON PLEAS COURT  
WARREN COUNTY OHIO  
FILED

00 FEB 16 PM 12:07

JAMES L. STAETH  
CLERK OF COURTS

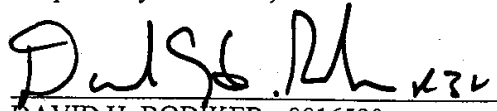
STATE OF OHIO,	:	Case No. 98-CR-17677
Plaintiff-Respondent	:	
v.	:	Judge Neal B Bronson
JAMES GALEN HANNA,	:	
Defendant-Petitioner	:	<b>This is a capital case.</b>

MOTION FOR DISCOVERY

Now comes Petitioner, James Galen Hanna, by and through counsel, and hereby moves this Court for discovery pursuant to Ohio R. Civ. P. 26 et seq., Ohio R. Crim. P. 16, and Ohio Revised Code Section 2953.21, in support of his post-conviction petition. Mr. Hanna additionally requests that this Court order the Warren County Prosecutor's office to disclose for inspection and copying the materials that he is entitled to under Ohio R. Crim. P. 16(B), Ohio R. Civ. P. 26(B), and Ohio Revised Code Section 149.43.

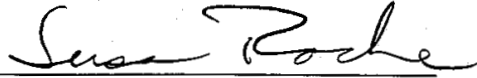
Further, Mr. Hanna intends to amend his post-conviction petition to include all such potential claims for which he discovers a sufficient basis. For the reasons set forth in the attached memorandum, and to ensure James Galen Hanna's rights to due process and a full and fair hearing on his meritorious claims, this Court should allow the necessary discovery.

Respectfully submitted,



DAVID H. BODIKER - 0016590  
Ohio Public Defender

KATHRYN L. SANDFORD - 0063985  
Assistant State Public Defender



SUSAN M. ROCHE - 0070279  
Assistant State Public Defender

Office of the Ohio Public Defender  
8 East Long Street, 11th Floor  
Columbus, Ohio 43215-2998  
(614) 466-5394  
FAX: (614) 644-0703  
COUNSEL FOR PETITIONER

MEMORANDUM IN SUPPORT

**I. INTRODUCTION**

On December 22, 1999, James Galen Hanna filed a petition seeking post-conviction relief from this Court under the authority of Ohio Rev. Code Ann. §2953.21.

Mr. Hanna has presented, through supporting affidavits and other documentary evidence, substantive grounds for relief in his petition. Because he has presented substantive grounds for relief, the statute requires that this Court “proceed to a prompt hearing on the issues.” O.R.C. § 2953.21(E). See also State v. Milanovich, 42 Ohio St. 2d 46, 50 (1975). Thus, because Mr. Hanna’s petition alleges substantive grounds for relief that entitle him to a hearing, he should be granted discovery to assist in preparing for the hearing.

Furthermore, by granting this discovery motion, this Court will ensure that James Galen Hanna is afforded due process, that he is not denied a full and fair hearing on his meritorious claims, and that the interests of justice are served.

**II. DISCOVERY SOUGHT**

Discovery is required at this time to uncover the following relevant and material evidence that supports James Hanna’s claims and that is not available through other means:

- a. A records deposition of the custodians of all files, including all documents, records, files, memoranda, notes, correspondence, and audio and video recordings maintained by the following offices relating to the investigation of the death of Peter Copas at the Lebanon Correctional Institution, Lebanon, Ohio in support of Grounds for Relief Two, Three, Six Seven, Eight, Nine, Ten, and Fifteen:

- Ohio State Highway Patrol
- Franklin County Coroner's Office
- Ohio State Department of Rehabilitation and Correction
- Ohio State DRC Corrections Medical Center
- Ohio State University Hospital
- Turtlecreek Emergency Medical Services Unit
- Lebanon Correctional Institution

b. A records deposition of the custodian of all files maintained by the following offices including all documents, records, files, memoranda, correspondence, notes, audio and video recordings relating to Peter Copas, including but not limited to any records pertaining to his criminal record, medical record, and records of investigations of his activities while incarcerated at any prison or jail prior to August 22, 1997, in support of Grounds for Relief Two, Three, Six, Seven, and Ten:

- Ohio State Department of Rehabilitation and Correction
- Lebanon Correctional Institution
- Ohio State Highway Patrol
- Middletown Hospital
- Turtlecreek Emergency Medical Services

c. Depositions of members of the jury that tried, convicted, and sentenced James Hanna, including the four alternate jurors, in support of Grounds for Relief One, Four, Five, and Six.

d. Depositions of the following individuals in support of Grounds for Relief Two, Three, Six, Seven, Eight, Nine, Ten, and Fifteen:

- Ohio State Trooper James Ertel, Investigator Scott Male, former Trooper Bernard Williams, and all other troopers, investigators and persons employed by the Ohio State Highway Patrol involved in the investigation of the attack of Peter Copas on August 22, 1997;
- All officers and other personnel of Lebanon Correctional Institution involved in the investigation of the attack on Peter Copas on August 22, 1997 at Lebanon CI and his subsequent death, including but not limited to Officer

Douglas Stewart and the female officer who first responded to Copas' cell and then fled;

- All medical and other personnel who were present at the Lebanon Correctional Institution Infirmary on and after August 22, 1997, on the dates and at the times Peter Copas was admitted, present, and treated at the infirmary;
- All medical and other personnel who witnessed or participated in the admission and treatment of Peter Copas at the Emergency Room of Middletown Hospital on August 22, 1997;
- All medical and other personnel who witnessed or participated in the admission and treatment of Peter Copas at the Ohio State University Hospital on and after August 26, 1997;
- All medical and other personnel who witnessed or participated in the admission and treatment of Peter Copas at the Ohio State DRC Corrections Medical Center in August, 1997;
- All personnel of the Turtlecreek Emergency Medical Services present during the treatment and transporting of Peter Copas to and from Middleton Hospital on August 22, 1997;
- All employees of the State of Ohio Department of Rehabilitation and Correction who were involved in the investigation of the attack on Peter Copas at Lebanon Correctional Institution on August 22, 1997 and his subsequent death;
- All employees of the State of Ohio Department of Rehabilitation and Correction who were involved with the interception of the letter allegedly written by James Hanna and allegedly sent to Dennis Boroski on or about January 15, 1998 at the Southern Ohio Correctional Facility, in Lucasville, Ohio;
- All inmates at Lebanon Correctional Institution who were interviewed as part of the investigation of the assault of Peter Copas on August 22, 1997 and his subsequent death;
- Warren County Prosecutors, James Beaton and Kenneth Ewing;

e. A records deposition of the custodians of all documents, records, files, memoranda, correspondence, notes, audio and video recordings maintained by the Ohio State Highway Patrol and the Department of Rehabilitation and Correction related to the taped

interview of James Hanna by Trooper James Ertel and Investigator Scott Male on September 19, 1997 as support for Grounds for Relief Three.

f. A records deposition of the custodian with the Montgomery County Court of Common Pleas who maintains the questionnaires completed by the prospective jury panel in James Hanna's capital trial, in support of his claims that trial counsel were ineffective during the voir dire phase of his trial in support of Grounds for Relief One, Four, Five, and Six.

James Galan Hanna requests that this Court hold a status conference at which time a discovery schedule can be agreed upon setting forth the deadlines by which the above discovery is to be completed. Mr. Hanna suggests that discovery of documents and records be provided as requested within sixty days of the filing of this motion, and that discovery depositions proceed thereafter for an additional sixty days.

### III. ARGUMENT

#### A. This Court Should Allow Petitioner Hanna to Conduct the Discovery Sought.

The Ohio post-conviction statute is silent on the issue of discovery. Instead, the focus of O.R.C. § 2953.21 is on the threshold burden a petitioner must satisfy to be entitled to an evidentiary hearing. In the state of Ohio, a petitioner in a post-conviction proceeding has the initial burden of submitting evidence demonstrating to the trial court that a hearing is warranted on the constitutional violations alleged in the petition. State v. Kapper, 5 Ohio St. 3d 36 (1983); State v. Cole, 2 Ohio St. 3d 112 (1982); State v. Pankey, 68 Ohio St. 2d 58 (1981); State v. Jackson, 64 Ohio St. 2d 107 (1980); State v. Calhoun, 86 Ohio St. 3d 279 (1999).

• This documentation must consist of evidence dehors the record. State v Milanovich, 42 Ohio St. 2d 46 (1975); State v. Mishelek, 42 Ohio St. 2d 140 (1975). Such evidence is usually

in the form of affidavits or documents. The petitioner must submit these exhibits with the petition or face summary dismissal. State v Milanovich, 42 Ohio St. 2d 46 (1975); O.R.C. 2953.21 (D).

The state, consistent with the Fourteenth Amendment's due process clause, cannot place this initial evidentiary burden upon a petitioner and then deny him a meaningful opportunity to meet that burden. To deny James Hanna the opportunity to meet this burden eviscerates his right to pursue post-conviction remedies.

Moreover, Mr. Hanna should be allowed to conduct the discovery he seeks because (1) post-conviction proceedings are civil in nature, and (2) nothing in O.R.C. §2953.21 specifically addresses discovery in such a way as to take precedence over the civil rules governing discovery. Mr. Hanna has submitted affidavits and documents demonstrating he has set forth substantive grounds for relief; therefore, discovery should be granted.

According to the Ohio Supreme Court, "[t]he purpose of the liberal discovery policy contemplated by the Ohio Rules of Civil Procedure is the narrowing and sharpening of the issues to be litigated." State ex rel. Daggett v. Gessaman, 34 Ohio St. 2d 55, 56, (1973).<sup>1</sup> It was in that spirit that Civ. R. 26(B) was promulgated. Civ. R. 26(B)(1) provides a liberal discovery policy:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

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<sup>1</sup> Post-conviction actions are civil proceedings. State v. Milanovich, 42 Ohio St. 2d 46 (1975). See also State v. Harvey, 68 Ohio App. 2d 170, 171 (1980). As such, the Ohio Rules of Civil Procedure apply. Milanovich, supra. at 52. See also Ohio R. Civ. P. 1(A); State v. Nichols, 11 Ohio St. 3d 40, 42-43 (1984).



By permitting discovery, this Court will allow James Hanna to fairly present and exhaust the constitutional challenges to his convictions and death sentence in the state courts. This step is necessary, should these claims later be raised in federal court. Furthermore, the discovery sought is limited to the necessary information. Thus, it will conserve judicial resources by focusing the issues presented in his Petition for Post-Conviction Relief.

**B. Petitioner Hanna is Entitled to Conduct Discovery Because He Has Presented Evidence and Materials Establishing Substantive Grounds for Relief.**

The evidentiary materials and affidavits submitted by James G. Hanna with his petition are sufficient to establish, *prima facie*, substantive grounds for relief on his claims. Relevant documents and affidavits in support of the grounds for relief were submitted with his petition and are before this Court.

Having met the threshold burden, the post-conviction statute affords Mr. Hanna the right to an evidentiary hearing on these grounds. O.R.C. § 2953.21. See also, State v. Milanovich, 42 Ohio St. 2d 46, 51 (1975) (if the petition “states a substantive ground for relief and . . . is based upon matters outside the record, the court should thus proceed to a prompt evidentiary hearing”).

For this statutorily-mandated hearing to be meaningful, this Court should permit Mr. Hanna to conduct the discovery he seeks. The limited discovery sought will allow him to develop the relevant issues for the hearing, focus the proceedings, and conserve judicial resources. It will also give Mr. Hanna the opportunity—denied to this point—to more fully develop the facts establishing that he is entitled to relief. The due process and fundamental fairness rights guaranteed by the United States Constitution’s Fourteenth Amendment, and similar provisions in the Ohio Constitution, will be served, as will the purpose of the post-conviction statute.

C. Even if the Court is Not Prepared to Grant a Hearing, Due Process and Fundamental Fairness Require that the Court Permit the Discovery Sought to Enable Petitioner Hanna to Gather Additional Evidence to Meet the Threshold Burden.

James Galan Hanna has presented sufficient documents and evidentiary materials entitling him to a full evidentiary hearing and the discovery necessary to prepare for that hearing. But if this Court is not prepared to grant a hearing at this time, it should nonetheless permit Mr. Hanna to conduct the limited discovery sought herein so that he can gather additional evidence to support his claims and fully demonstrate that he is entitled to a hearing. Allowing discovery under these circumstances—prior to granting Mr. Hanna an evidentiary hearing—conserves judicial resources, furthers the goals of the post-conviction statute, and ensures due process.

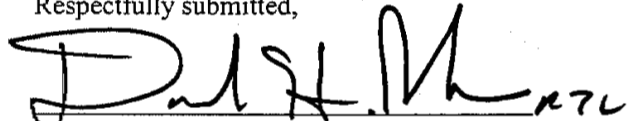
The post-conviction statute places the burden on the petitioner to present documents and other evidentiary materials “containing sufficient operative facts to demonstrate [his] claim” has merit. State v. Smith, 30 Ohio App. 3d 138, 140 (1986). To meet this burden, Mr. Hanna must have access to evidentiary materials that are in the hands of persons not likely to grant him access, e.g., the state. In Calhoun the Ohio Supreme Court discussed the credibility of affidavits submitted in support of postconviction petitions. The Court held that the affidavit(s) must meet the threshold of demonstrating a constitutional violation for the petitioner to be entitled to an evidentiary hearing. Id. at 284. Because of this burden, refusing to permit Mr. Hanna to conduct limited discovery may effectively foreclose him from ever meeting the threshold burden placed upon him by the statute. This result would deprive Mr. Hanna of his rights under the post-conviction statute and violate his due process rights under both the Ohio and federal constitutions.

The need for liberal discovery in capital cases is especially acute because it helps to ensure the reliability in the proceedings and outcome—a particularly important concern where a death sentence is involved. The United States Supreme Court has repeatedly emphasized the need to ensure a heightened reliability of the outcome where an individual's life is at stake. See, e.g., Beck v. Alabama, 447 U.S. 625, (1980); Lockett v. Ohio, 438 U.S. 586 (1978) (plurality opinion); Woodson v. North Carolina, 428 U.S. 280 (1976).

**IV. CONCLUSION**

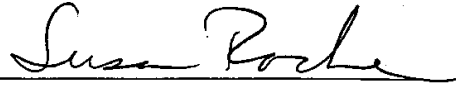
Petitioner James Galan Hanna has produced sufficient evidence dehors the record in the form of affidavits and other documents to support the grounds for relief contained in his Petition for Post-Conviction Relief. However, only through the granting of discovery is Petitioner Hanna able to **fully** support his petition. Granting discovery will ensure due process and fundamental fairness, conserve judicial resources, and serve the interests of justice. Therefore, James Galan Hanna respectfully requests that this Court grant his Motion for Discovery. Further, Mr. Hanna requests that this Court allow him leave to amend his petition to include additional constitutional claims identified after discovery is conducted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David H. Bodiker", with a horizontal line drawn underneath it. To the right of the signature, the letters "R7L" are handwritten.

DAVID H. BODIKER - 0016590  
Ohio Public Defender

KATHRYN L. SANDFORD - 0063985  
Assistant State Public Defender



SUSAN M. ROCHE - 0070279  
Assistant State Public Defender

Office of the Ohio Public Defender  
8 East Long Street, 11th Floor  
Columbus, Ohio 43215-2998  
(614) 466-5394  
FAX: (614) 644-0703

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing MOTION FOR DISCOVERY was delivered by United States Mail to the office of James D. Beaton, Assistant Prosecuting Attorney, 500 Justice Drive, Lebanon, Ohio 45036, on this 11<sup>th</sup> day of February, 2000.



SUSAN M. ROCHE  
Assistant State Public Defender

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DECLARATION OF SUSAN M. ROCHE

State of Massachusetts

County of Hampden

1. I am Susan M. Roche.
2. I was a staff attorney with the Office of the Ohio Public Defender from November 1998 through January 2007.
3. As an attorney with Office of the Ohio Public Defender (OPD), I was counsel for James Galen Hanna in his state post-conviction proceedings challenging his conviction and death sentence from Warren County, Ohio. Attorney Kathryn Sandford was co-counsel.
4. Between 2004 and 2007, I was counsel for Mr. Hanna in federal habeas corpus proceedings.
5. Mr. Hanna's petition for post-conviction relief was filed in 1999.
6. In Mr. Hanna's post-conviction petition, co-counsel and I raised all of the claims of ineffective assistance of trial counsel that we were aware of. If we saw an ineffectiveness claim, we would have presented it.
7. If an ineffective-assistance-of-trial-counsel claim was not included in the post-conviction petition, I made no tactical decision to forgo such a claim.
8. I did not recognize, and did not raise in the post-conviction petition, a claim that trial counsel was ineffective for failing to secure medical tests and brain scans for Mr. Hanna.
9. Having recently reviewed the prosecution's cross-examination of defense expert Dr. Kathleen Burch, I realize now that such an ineffectiveness claim is viable. I had no tactical reason for not challenging trial counsel's failure to get medical tests and brain scans.
10. I do not recall seeking to have Mr. Hanna undergo brain scans, like magnetic resonance imaging or positron emission tomography.
11. During the post-conviction proceedings, I worked with witnesses who had expertise about prisons, Steve Martin and Joseph Scurlock. Their affidavits supported claims that trial counsel failed to explain to the jury the effect of Hanna's incarceration on the offense, as well as the prison's failure in creating the situation.
12. I do not remember hiring, or seeking to hire, a psychologist or psychiatrist to evaluate Mr. Hanna, to determine whether Mr. Hanna suffered

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mental illness not identified by Dr. Burch at the time of trial. I used such experts in other cases at OPD, but not in Mr. Hanna's case.

13. I made no tactical reason to forgo a psychological or psychiatric evaluation of Mr. Hanna that could have supported a claim that trial counsel ineffectively failed to present evidence of Mr. Hanna's mental illness to the jury.

14. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 13, 2019

  
\_\_\_\_\_  
Susan M. Roche

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DECLARATION OF KATHRYN L. SANDFORD, ESQ.

1. I am Kathryn L. Sandford, an attorney licensed in the State of Ohio. I am employed by the Office of the Ohio Public Defender.

2. After James Hanna was convicted of aggravated murder and sentenced to death, the Ohio Public Defender represented him in state post-conviction proceedings. I was an attorney on his case, along with Susan Roche, who was lead counsel for Mr. Hanna.

3. In the post-conviction petition, we raised all of the claims of ineffective assistance of trial counsel of which we were aware.

4. If a claim of ineffective-assistance-of-trial-counsel was not included in the petition, we made no tactical decision to forgo any such claim.

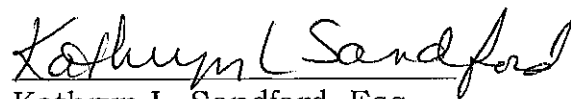
5. If we had sought to conduct brain scans of Mr. Hanna, we would have filed a motion for discovery seeking such scans, and the post-conviction record would contain any such motion.

6. As an exhibit to the post-conviction petition, we included an affidavit from psychologist Kathleen Burch, who had testified at trial, but we did not hire a new psychologist or psychiatrist to evaluate Mr. Hanna.

7. We also filed an affidavit from attorney David Doughten addressing various claims of ineffective assistance of counsel. Before securing that affidavit, we would have asked him to review the trial transcript and other relevant documents, so that he could evaluate potential ineffectiveness claims in the case.

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 22, 2019

  
Kathryn L. Sandford, Esq.

FILED  
KENNETH J. MURPHY  
CLERK

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**C-1-03-801**

**03 NOV 17 PM 1:26**

**THOMAS M. ROSE**

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WEST CITY CINCINNATI  
PETITION UNDER 28 USC § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY  
AO 241 (Rev. 5/85)

**UNITED STATES DISTRICT COURT**

**District SOUTHERN DISTRICT OF OHIO**

Name

Prisoner No.

Case No.

**JAMES HANNA**

**A - 152-169**

**1:03-MC-042**

Place of Confinement

**OHIO STATE PENITENTIARY, YOUNGSTOWN, OHIO**

Name of Petitioner  
(include name under which convicted)

Name of Respondent (authorized person  
having custody of petitioner)

**JAMES HANNA**

**TODD ISHEE, WARDEN**

v.

The Attorney General of the State of: **OHIO**

**PETITION**

1. Name and location of court which entered the judgment of conviction under attack **Warren County Court of Common Pleas, Lebanon, Ohio.**

2. Date of judgment of conviction November 23, 1998

3. Length of sentence **Death.**

4. Nature of offense involved (all counts): **Aggravated Murder.**

5. What was your plea? (Check one)

(a) Not guilty

(b) Guilty

(c) Nolo contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

\_\_\_\_\_  
\_\_\_\_\_



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6. If you pleaded NOT guilty, what kind of trial did you have? (Check one)

(a) Jury

(b) Judge only

7. Did you testify at the trial?  
Yes  No

8. Did you appeal from the judgment of conviction?  
Yes  No

9. If you did appeal, answer the following:

(a) Name of Court Supreme Court of Ohio

(b) Result Convictions and sentences affirmed.

(c) Date and result and citation, if known State v. Hanna, 767 N.E.2d 678 (2002), recon denied, 770 N.E.2d 1048 (2002)

(d) Grounds raised See petition, Appendix "A" attached.

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court \_\_\_\_\_

(2) Result . \_\_\_\_\_

(3) Date of result and citation, if known \_\_\_\_\_

(4) Grounds raised . \_\_\_\_\_

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court Supreme Court of Ohio

(2) Result Petition for Writ of Certiorari denied

(3) Date of result and citation, if known November 18, 2002; 537 U.S. 1036

(4) Grounds raised See petition, Appendix "B" attached

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes • No

11. If your answer to 10 was "yes" give the following information:

(a) (1) Name of court Warren County Court of Common Pleas

(2) Nature of proceeding Petition to Vacate Conviction and Sentence

(3) Grounds raised See petition, Appendix "C" attached

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes  No •

(5) Result Petition denied.

(6) Date of result March 22, 2001

(b) As to any second petition, application or motion give the same information:

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes  No •

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc.    Yes     No

(2) Second petition, etc.    Yes     No

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Claims are too numerous to list here - see petition, attached.

\_\_\_\_\_  
\_\_\_\_\_

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Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_

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B. Ground two: \_\_\_\_\_

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Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_

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C. Ground three: \_\_\_\_\_

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Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_

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D. Ground four: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes  No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing William G. Fowler and Patrick D. Long  
\_\_\_\_\_  
\_\_\_\_\_

(b) At arraignment and plea William G. Fowler and Patrick D. Long  
\_\_\_\_\_  
\_\_\_\_\_

(c) At trial William G. Fowler and Patrick D. Long  
\_\_\_\_\_  
\_\_\_\_\_

(d) At sentencing William G. Fowler and Patrick D. Long  
\_\_\_\_\_  
\_\_\_\_\_

(e) On appeal Stephen Ferrell and Kelly Culshaw

(f) In any post-conviction proceeding Susan Roche and Kathryn Sandford

(g) On appeal from any adverse ruling in a post-conviction proceeding  
Susan Roche and Kathryn Sandford

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes 0 No X

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes  No X

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) Give date and length of the above sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes  No •

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Stephen Ferrell  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

October 23, 2003

(Date)

James Hann  
Signature of Petitioner

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Second Ground for Relief: The Trial Court prohibited Trial Counsel from reviewing all available prison records pertaining to the victim and thereby violated Petitioner Hanna’s rights to effective assistance of counsel guaranteed by the Sixth, Eighth, and Fourteenth Amendments of the United States Constitution. ....9

Third Ground for Relief: Petitioner Hanna’s Due Process rights guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution were denied when the State suppressed exculpatory and impeachment evidence that was favorable to petitioner. ....10

Fourth Ground for Relief: Petitioner Hanna was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution when his Trial Counsel failed to investigate and present adequate mitigation evidence during the penalty phase. ....12

A. Trial counsel failed to utilize the services of an expert witness to explain the culture of prison life. ....13

B. Trial counsel was ineffective when they failed to investigate and utilize the knowledge and experience of prison employee James Scurlock regarding his positive experiences with Petitioner in prison. ....14

C. Trial counsel were ineffective when they failed to present evidence of the criteria for placing a prisoner in a maximum security prison where he would be prevented from harming another inmate. ....15

D. Trial counsel were ineffective when they failed to provide to mitigation psychologist Dr. Kathleen Burch all relevant, available documentation about Petitioner.....16

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**I. STATEMENT OF FACTS AND CASE HISTORY**

1. James Galen Hanna has spent nearly all of his adolescent and adult life incarcerated in penal institutions. The only life he knows is what he has learned inside those institutions. The manner in which he operates in the world is a product of his long-term incarceration.

2. On December 18, 1996 James Hanna was transferred from Mansfield Correctional Institution to Lebanon Correctional Institution (LCI). Prior to the middle of August 1997, Mr. Hanna was placed with various cellmates at LCI without incident. Prison officials at the Lebanon Correctional Institution moved Peter Copas into James Hanna's cell without Hanna's prior knowledge, which broke with customary prison practice. Tr. 1075-76, 1279.

3. During Peter Copas's time at Lebanon Correctional Institution he had been transferred from one cell to another on numerous occasions. Previous cellmates described him as one of the most annoying individuals they had ever had to cell with. Prior to celling with Hanna, Peter Copas was with his previous cellmate only about 14 hours before he was transferred at the request of the cellmate. Post-conviction Exhibit D.

4. Petitioner Hanna found Copas as annoying as did his previous cellmates and wanted him moved to another cell. From the outset, the two cellmates encountered difficulties each with the other. Copas used, rearranged and damaged Hanna's property. Tr. 1075-76, 1279. Hanna was angry with Copas because Copas's carelessness resulted in the theft of some of Hanna's property. Tr. 1116, 1283. A bout of pushing and shoving occurred. Tr. 1116. Then Copas's friend, Ricardo Lee, threatened Hanna. Tr. 1117-18. Hanna told another inmate he was going to "whip" Copas. Tr. 1116. Hanna wanted Copas out of his cell and officials were alerted to the need for a change. Def. Ex. G. at 1-2; Tr. 807.

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5. Ricardo Lee, another cellmate and friend of Peter Copas told Hanna that Copas had filed a request to be moved and it was being processed. Lee told Hanna he had spoken to the Sergeant about the move and told him to be patient. Tr. 810, 814. This unusual procedure of one inmate interceding and delaying a transfer that was vitally necessary for two very incompatible cellmates was totally improper. Post-conviction Exhibit F. However, Ricardo Lee was allowed to delay the move for four days through his manipulation of the system.

6. On August 21, 1997, Copas returned to the cell drunk. Tr. 1076. In the early morning hours of August 22, 1997, Hanna decided that he had had enough. He was going to get Copas out of the cell. Def. Ex. G at 2. Hanna sharpened and burned a paintbrush and placed a lock in a sock. Tr. 1078. He proceeded to stab Copas and to hit him with the lock in a sock. Copas was stabbed above the right eye. Tr. 905. After the attack Copas remained in his bunk. Hanna could hear Copas above him moaning and vomiting. Tr. 1083. At six a.m. Copas jumped from his bed yelling to corrections officers. Id. Officer Stewart responded to his call and found Copas at the cell door. Tr. 785. Hanna was sitting on his bed. Tr. 786. Copas was taken to the LCI infirmary where he was interviewed and treated by Nurse Lynda Young. Copas was conscious and told the infirmary staff that he had been “shanked,” and beaten.

7. After brief preliminary treatment in the LCI infirmary, Copas was taken to Middletown Regional Hospital. Although accompanied by LCI guards, the Hospital emergency room staff were never informed that Copas was the victim of a shanking. He was x-rayed and treated for the beating and returned to the LCI infirmary the same day.

8. The following day, August 23, 1997 the LCI Medical Director, Dr. James McWeeney examined Copas and recommended that a CT scan be performed on the injured inmate. Although Dr. McWeeney could have requested that the CT scan be performed

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immediately, he did not. Tr. 1042. Copas remained in the Lebanon Correctional Institution for four days before the CT scan was finally performed on him at the Ohio State University Hospital on August 26, 1997. Only then did the doctors learn that there was a four-inch piece of wood lodged in Copas's brain.

9. Surgery was performed by doctors at the OSU Hospital on August 27, 1997 and the piece of the paintbrush handle was removed from Peter Copas's brain. At first it appeared that Copas was going to recover. Then on September 5, 1997 he lapsed into a coma and was declared dead on September 6, 1997. According to testimony at trial, Copas died as the result of a subarachnoid hemorrhage resulting from a weakened blood vessel caused either by infection or by the shank. Tr. 1180, 1184.

10. Although James Hanna had been restrained and placed in administrative control at the time that Peter Copas was attacked on August 22, 1997, a formal investigation of the matter was not begun until after Copas's death on September 6, 1997. Ohio State Trooper James Ertel investigated the matter, taking statements from many LCI employees and approximately 70 inmates. Numerous inmates stated that Peter Copas was an impossible person with whom to cell. The investigation resulting from Copas's death was reflected in detail in Trooper Ertel's extensive report and attachments. At the conclusion of the investigation, Trooper Ertel's report was provided to the Warren County Prosecutor's office. However, although Copas's trial counsel filed discovery motions and verbally requested all discovery on numerous occasions, this report was not released to Hanna's attorneys in discovery. The first time that defense counsel learned of the existence of the report was when the prosecution used it to refresh Trooper Ertel's memory during his direct testimony. Tr. 1091. It is apparent that some portion of Ertel's report

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was in the possession of the Prosecutor as of June 18, 1997, because on that date Ertel faxed several pages of his report to Prosecutor Kenneth Ewing. Post-conviction Exhibit N.

11. On September 19, 1997 James Hanna was interviewed at LCI, by Trooper Ertel and Investigator Scott Male. During the process of that interview Hanna allegedly confessed to beating and thrusting a sharpened paint brush into the eye of Peter Copas. Post-conviction Exhibit D. Even though each investigator had a tape recorder sitting on the table during the interview, supposedly only one was working and the other used a full tape and stopped before the inquisitors realized it. Consequently, the Miranda warnings and about 20 minutes of the heart of the alleged confession were not on the tape. Tr. 1270-1273, 1285-1287.

12. The Warren County Coroner's report was not finalized until December 15, 1997. In October the Coroner's investigator requested and received information from Trooper Ertel regarding the circumstances of the assault. Post-conviction Exhibit D.

13. Even after the Coroner's report was issued there were no formal charges filed against James Hanna. On November 7, 1997, Hanna was transferred to Southern Ohio Correctional Facility (SOCF) in Lucasville, Ohio. On January 15, 1998 a letter allegedly written by Hanna to another inmate at SOCF was intercepted in the prison mailroom. In the letter, Hanna discussed being charged with first degree murder for killing his cellmate.

14. Subsequently, James G. Hanna was indicted for the aggravated murder of Peter Copas. On January 26, 1998, Hanna was charged with purposefully causing Copas's death with prior calculation and design under Ohio Rev. Code Ann. § 2903.01(A) (Anderson 1996). The capital count included three specifications. First, Hanna was charged with committing the offense while he was a prisoner in a detention facility under O.R.C. § 2929.04(A)(4). Second, Hanna was charged with being convicted of a prior offense that included the essential element of

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a purposeful killing or attempt to kill another under O.R.C. § 2929.04(A)(5). Third, Hanna was charged with being a repeat violent offender under O.R.C. § 2929.01. Hanna faced a second non-capital count for possession of a deadly weapon while under detention pursuant to O.R.C. § 2923.131(B), which included a repeat violent offender specification pursuant to O.R.C. § 2941.149.

15. The trial began on October 28, 1998. The State presented twenty-three witnesses in its case in chief. Thereafter, the defense moved for acquittal pursuant to Rule 29. Tr. 1310. The defense then presented three witnesses in its case in chief. At the close of their case, the defense renewed its motion for acquittal. Tr. 1358.

16. The defense tried the prior purposeful killing and repeat violent offender specifications to the trial court. The trial court found Hanna guilty of each specification on October 29, 1998. The State entered a *nolle prosequi* to the count of possession of a deadly weapon while under detention and its accompanying specification on November 17, 1998.

17. The jury was instructed on November 4, 1998. That same day the jury returned guilty verdicts on count one and the specification that Hanna was a prisoner in a detention facility. Tr. 1482-83.

18. The penalty phase began on November 9, 1998. The defense presented the testimony of two lay witnesses and that of an expert psychologist. Hanna made an unsworn statement. Tr. 1639. The State offered one rebuttal witness.

19. The sentencing jury was charged on November 10, 1998. During deliberations, the jury posed the following question: "If given a life sentence, how is it assured it will be served in a maximum security prison? How will we be assured he will be in his cell twenty-three

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hours a day?" Tr. 1714. The Court responded that it could not provide the jury with any further information. The jury recommended the death penalty that same day.

20. Hanna was sentenced to death on November 20, 1998. The trial court issued its sentencing opinion on November 23, 1998. The trial court issued its judgment entry on November 30, 1998.

21. The Ohio Supreme Court affirmed on direct appeal. State v. Hanna, 95 Ohio St.3d 285 (2002). The United States Supreme Court denied Hanna's Petition for Writ of Certiorari. Hanna v. Ohio, 537 U.S. 1036 (2002). Hanna filed a Petition for Post-Conviction relief in the state trial court asking for discovery and an evidentiary hearing. His petition was denied without discovery or an evidentiary hearing and these denials were upheld on appeal to the Twelfth District Court of Appeals. State v. Hanna, No. CA 2001-04-032 (2001 Ohio App. LEXIS 5995). The Ohio Supreme Court denied Hanna's Memorandum in Support of Jurisdiction. State v. Hanna, 770 N.E.2d 1048 (Ohio 2002). Hanna now petitions this Court for a Writ of Habeas Corpus on his claims of federal constitutional error at his capital trial.

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**II. CONSTITUTIONAL GROUNDS FOR RELIEF**

**First Ground for Relief: When a convicted felon served on Petitioner Hanna's capital jury, he was denied his Due Process rights to a fair and impartial jury, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution.**

22. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

23. Petitioner Hanna was denied his Sixth and Fourteenth Amendment rights to Due Process and a fair trial by a fair and impartial jury when he was tried by an improperly constituted jury. The trial court failed to ascertain whether Juror Howard Reeves was competent according to law, to be a member of a jury. In fact, at the time he was selected, Reeves had been convicted of a felony and had served time in prison and on probation. He was therefore not competent to sit as a juror in the State of Ohio.

24. On the juror questionnaire for Petitioner's trial, Juror Reeves repeatedly stated that he had served six months in jail and five years on probation. The court never made any inquiries about Reeves's felony conviction.

25. O.R.C. § 2961.01 states that a convicted felon is incompetent to be a juror unless the conviction is reversed or annulled, or a full pardon was granted. No evidence has ever been presented to show that Reeves's had attained either a reversal, annulment, or full pardon of his conviction. Reeves was not competent by law to be a juror.

26. Petitioner's conviction and sentence was determined by a jury that was not properly constituted according to Ohio law, thus rendering his case a nullity. Powell v. Alabama, 287 U.S. 45 (1932) (trial court must ensure that defendant's due process rights are protected and a fair trial is received). The Ohio Supreme Court has explained that the Ohio Revised Code contains numerous restrictions on convicted felons. One such restriction is the



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denial of “the privilege of serving as a juror, and may never hold an office of ‘honor, trust, or profit.’”<sup>1</sup> State v. Golston, 71 Ohio St. 3d 224, 227 (1994).

27. Due to his felony conviction, Howard Reeves was not competent to be a juror in Petitioner’s capital trial or any trial. The United States Constitution’s Sixth Amendment guarantees criminal defendants the right to a trial by a fair and impartial jury. Irwin v. Dodd, 361 U.S. 717 (1961). Under Rule 23(B) of the Ohio Rules of Criminal Procedure, a felony jury consist of twelve jurors. Petitioner Hanna’s jury consisted of only eleven jurors – Juror Reeves was not competent to sit on the jury. Since Ohio state rules require a jury of 12 jurors in a felony trial, Petitioner was entitled to be tried by 12 “impartial and unprejudiced jurors,” not eleven. Parker v. Gladden, 385 U.S. 363, 366 (1966).

28. This claim was raised in the state post-conviction petition as Petitioner’s First Ground for Relief and was denied on the merits without discovery or an evidentiary hearing. Petitioner then raised this claim on appeal to the Twelfth District Court of Appeals, as well as the Ohio Supreme Court. The Ohio Court of Appeals addressed the issue on the merits, but its decision was an unreasonable application of federal constitutional law established in Queenan v. Oklahoma, 190 U.S. 548 (1902). Therefore, this Court must grant the writ of habeas corpus on this Ground for Relief.

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<sup>1</sup> The Supreme Court refers to the language in State v. Williams, 80 Ohio App.3d 542 (8<sup>th</sup> Dist. 1992) in which the appellate court explained: “R.C. 2961.01 sets forth the civil rights of convicted felons. Although the law in Ohio now allows felons to exercise voting privileges after they are granted probation, parole or a conditional pardon, felons still face a loss of certain civil rights. A convicted felon may not serve as a juror, or ‘hold an office of honor, trust, or profit.’” (80 Ohio App.3d at 546)

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**Second Ground for Relief: The Trial Court prohibited Trial Counsel from reviewing all available prison records pertaining to the victim and thereby violated Petitioner Hanna's rights to effective assistance of counsel guaranteed by the Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.**

29. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

30. Petitioner was denied his Sixth, Eighth and Fourteenth Amendment rights to Due Process, a fair trial, and effective assistance of counsel when the court below denied Petitioner's trial counsel access to all but a small portion of victim Peter Copas's inmate records from the Ohio Department of Rehabilitation and Correction.

31. Petitioner was prevented from receiving effective assistance of counsel when the trial court refused to permit the trial attorneys to see and analyze a major portion of the prison records of Peter Copas, the victim and Petitioner's former cellmate. Trial counsel filed a motion with the trial court for the release of the Department of Rehabilitation and Correction (DRC) file regarding Copas. The trial court conducted an *in camera* review of the file and released only 19 pages of medical records dating from 1992-1995 from the DRC file. (October 13, 1998 hearing transcript, pp. 4 - 8.) The failure of the trial court to release the rest of Copas's DRC file precluded trial counsel from presenting valuable evidence during the trial phase as well as the mitigation phase, to the prejudice of Petitioner.

32. In Ohio, evidence about a victim is admissible when it relates directly to circumstances of the crime and is not offered to elicit sympathy from the jury. State v. Allen, 73 Ohio St.3d 626 (1995). Ohio Revised Code 2929.04 (B)(7) allows for the presentation of evidence in a capital mitigation hearing that is "relevant to the issue of whether the offender should be sentenced to death." The evidence not turned over to trial counsel was therefore admissible at his trial. It was also material to the issues of guilt and punishment.

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33. This claim was raised in the state post-conviction petition as Petitioner's Second Ground for Relief, and was denied on the merits. Petitioner then raised this claim on appeal to the Twelfth District Court of Appeals, as well as the Ohio Supreme Court. The Ohio Court of Appeals addressed this issue on the merits, but its decision was an unreasonable application of federal constitutional law established in Wiggins v. Smith, \_\_\_ U.S. \_\_\_, 123 S.Ct. 2527, (2003); Williams v. Taylor, 529 U.S. 362 (2000); Strickland v. Washington, 466 U.S. 668 (1984); and United States v. Cronin, 466 U.S. 648 (1984). This Court must determine that the writ of habeas corpus is justified here.

**Third Ground for Relief: Petitioner Hanna's Due Process rights guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution were denied when the State suppressed exculpatory and impeachment evidence that was favorable to petitioner.**

34. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

35. Petitioner was denied his Fifth and Fourteenth Amendment right to Due Process and a fair trial when, before the trial began, the State suppressed a copy of the primary investigation file, Trooper James Ertel's complete report and all its attachments. This file contained material, exculpatory, and impeachment evidence. Moreover, Petitioner was denied his Sixth and Fourteenth Amendment right to the effective assistance of counsel at the suppression hearing and in the trial and mitigation phase of his capital case due to the State's suppression of this evidence.

36. Numerous motions for discovery were filed on behalf of Petitioner before the trial began. In spite of their efforts, defense counsel did not receive a copy of the basic report prepared by the state's chief investigator, Trooper James Ertel, until that report was used to refresh the Trooper's recollection during his direct examination. At that time, the defense

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attorneys requested a copy of the report. The court ordered that it be turned over to Petitioner's attorneys and the trial was adjourned for the weekend. Tr. 1091. On Monday, the court ordered the State to provide trial counsel with the attachment to the report. At that point, the trial attorneys had less than an hour to review the additional documents. Tr. 1095-1102. However, trial counsel had not received the complete file. During the preparation of the state post-conviction petition, Petitioner's post-conviction attorneys received from the Ohio Highway Patrol an even more complete file than what had been given to trial counsel..

37. After the suppression hearing (at which Trooper Ertel testified) and several months before the trial began, the court ordered the prosecutor to secure – and not to destroy – all statements in the case and to disclose all exculpatory evidence. May 1, 1998 Suppression Hearing, pp. 116-117.

38. Prior to Petitioner's trial, a portion of the Ertel report was faxed to Prosecutor Kenneth Ewing stating that copies of some written statements were attached and that others existed. PC Ex. N. The fact that Ertel's report was not turned over to the defense until they requested it after it was used to refresh the Trooper's recollection was an egregious Brady/ Kyles violation in itself. However, the violation is compounded when it is considered from the standpoint that the state's chief investigator informed the prosecutor that these statements existed and the state withheld this information in spite of the court's order.

39. Several of the inmates named in the Ertel report testified at trial. Trial counsel were not given a copy of the report and the brief statements of some of the inmates, until long after they were cross-examined. There were also inmates named and quoted in the report who were not called to testify. Appellant was prejudiced when his attorneys did not have the report to adequately cross-examine the witnesses that testified or to investigate those inmates that gave

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statements but were not called as state's witnesses. When the withholding of all the evidence in the Ertel report is considered, a collective exculpable effect is generated and Petitioner must be granted a new trial.

40. Evidence that serves to impeach a state's witness and exculpatory evidence are both "evidence favorable to the accused" and must be disclosed. The court must consider the collective exculpability effect of the nondisclosed evidence." Schledwitz v. United States, 169 F.3d 1003, 1013 (6<sup>th</sup> Cir.1999) relying on Brady v. Maryland, 373 U.S. 83 (1963), Kyles v. Whitley, 514 U.S. 419 (1995).

41. This claim was raised in the state post-conviction petition as Petitioner's Third Ground for Relief, and was denied on the merits. Petitioner then raised this claim on appeal to the Twelfth District Court of Appeals, as well as the Ohio Supreme Court. The Ohio Court of Appeals addressed this issue on the merits, but its decision was an unreasonable application of federal constitutional law established in Brady v. Maryland, 373 U.S. 83 (1963), Kyles v. Whitley, 514 U.S. 419 (1995). This Court must determine that the writ of habeas corpus is justified here.

**Fourth Ground for Relief: Petitioner Hanna was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution when his Trial Counsel failed to investigate and present adequate mitigation evidence during the penalty phase.**

42. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

43. Petitioner was denied his Sixth and Fourteenth Amendment right to effective assistance of counsel when his trial counsel's performance during the penalty phase of Petitioner's capital trial was deficient and he was prejudiced. Counsel's performance was substandard in the following ways:

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**A. Trial counsel failed to utilize the services of an expert witness to explain the culture of prison life.**

44. Petitioner Hanna has been incarcerated virtually his entire adult life. The society in which he lives is one where there are rules and practices that are very different from the society in which most people exist. Testimony from a prison expert would have made this aspect of Petitioner's life understandable to the jurors.

45. Petitioner's trial counsel failed to present expert testimony relating to the discrete culture which exists inside a prison. Steve J. Martin is a prison expert who has been qualified to testify in numerous state and federal courts regarding the culture that exists within prisons. Mr. Martin reviewed the voluminous files of both Petitioner and the victim, his cellmate, Peter Copas and then prepared an analysis that reflects what he would have testified to if he had been called as a witness at Petitioner's trial. PC Ex. E.

46. Expert Martin discussed the stress that develops when two people like Petitioner and Copas are forced to cell together, and concluded that these two individuals should never have been assigned to the same cell. He also explained about the responsibility the Department of Rehabilitation and Correction has for matching cellmates by their classification levels and known histories, and how DRC failed to do that in Petitioner's case. PC Ex. E. Martin's analysis and conclusions were important information for Petitioner's jury to hear. This would have helped to explain why the crime occurred and the culpability of the prison system in the death of Peter Copas.

47. Since trial counsel were deficient in failing to present such evidence through expert testimony at Petitioner's mitigation hearing, the jury was left with a totally different view of Petitioner's actions. Trial counsel's ineffectiveness caused Petitioner to be prejudiced by the jury's lack of information and misconceptions.

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48. This claim of ineffective assistance of counsel was raised in Petitioner's state post-conviction petition as his Seventh and Eleventh Grounds for Relief. Petitioner Hanna was never granted discovery or an evidentiary hearing on this claim of ineffectiveness.

**B. Trial counsel was ineffective when they failed to investigate and utilize the knowledge and experience of prison employee James Scurlock regarding his positive experiences with Petitioner in prison.**

49. Joseph Scurlock, a Department of Rehabilitation and Correction (DRC) management-level employee testified in the prosecution's case-in-chief regarding Petitioner's handwriting. The prosecutor listed him as a possible witness in their September 9, 1998 supplemental response to Petitioner's discovery motion. Trial counsel possessed Petitioner Hanna's prison records before his trial began. Joseph Scurlock's name appears repeatedly throughout that file because he was James Hanna's case manager and social worker for many years. However, when he testified at Hanna's trial the Defense Attorneys did not cross-examine him at all. Tr. 959. Nor did Petitioner's trial counsel consider whether someone who knew James Hanna well enough to recognize his handwriting knew anything about his personality. PC Ex. H and I.

50. For the state post-conviction petition, Joseph Scurlock provided an extensive affidavit in which he discussed his knowledge of Petitioner's personality. Because he is a veteran of the Ohio prison system, he also was able to provide important information regarding DRC's cell assignment system. PC Ex. F.

51. Because trial counsel failed to investigate and present evidence through Joseph Scurlock, the jury were unaware that a veteran prison official thought Petitioner was a shy, serious guy who did not cause trouble unless he was forced into a stressful situation that he could not handle. PC Ex. F. Trial counsel's failure to utilize Joseph Scurlock caused Petitioner to be

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prejudiced.

52. This claim of ineffective assistance of counsel was raised in Petitioner's state post-conviction petition as his Eighth and Eleventh Grounds for Relief. Petitioner Hanna was never granted discovery or an evidentiary hearing on this claim of ineffectiveness.

**C. Trial counsel were ineffective when they failed to present evidence of the criteria for placing a prisoner in a maximum security prison where he would be prevented from harming another inmate.**

53. In August 31, 1998 the Ohio Department of Rehabilitation and Correction (DRC) issued Policy #111-07 which described the procedure for determining which inmates were to be housed in high maximum security prisons. PC Ex. G. The policy provided the following relevant criteria regarding assignments to maximum security prisons:

A. Assignment Criteria. Inmates will be recommended for and assigned to high maximum security when all of the following factors are present:

1. The inmate is or is about to be classified as maximum security;
2. The inmate has demonstrated behavior which meets high maximum security criteria, as defined in paragraph B., below; and
3. The inmate presents the highest level of threat to the security and order of the department and its institutions, in the professional judgment of the classifying official.
4. An inmate who has demonstrated these factors will be recommended to high maximum security status as an administrative override of the classification instrument.

B. Behavior Criteria. An inmate will be considered for assignment to high maximum security status if the inmate's behavior has demonstrated any of the following:

1. The inmate's conduct or continued presence at the current institution poses a serious threat to the physical safety of any person, or to the security of the prison;
2. The nature of the inmate's criminal offense indicates that the inmate poses a serious threat to the physical safety of any person, or to the security of the prison; . . .

PC Ex. G.



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54. Trial counsel failed to investigate whether there was a formal policy regarding the placement of prisoners in high maximum security prisons in Ohio. Consequently they were unaware of the existence of DRC Policy #111-07. Petitioner's counsel were further ineffective, and have admitted as much, by failing to have an individual testify about the reasons outlined by DRC for an individual to be placed at the Ohio State Penitentiary in Youngstown and that Appellant met that criteria. PC Exs. H and I. This would have answered the jury's question during penalty phase deliberations about how they could be assured that Petitioner would be incarcerated at a maximum security prison and confined to his cell for 23 hours a day. Tr. 1714. Petitioner was prejudiced when the jury was unable to get a sufficient answer to their deliberation question.

55. This claim of ineffective assistance of counsel was raised in Petitioner's state post-conviction petition as his Ninth and Eleventh Grounds for Relief. Petitioner Hanna was never granted discovery or an evidentiary hearing on this claim of ineffectiveness.

**D. Trial counsel were ineffective when they failed to provide to mitigation psychologist Dr. Kathleen Burch all relevant, available documentation about Petitioner.**

56. Trial counsel were ineffective in failing to perform the rudimentary task of providing their mental health expert with a background of the client that is the product of a reasonable investigation. Counsel's performance was further deficient because they did not prepare Dr. Kathleen J. Burch to testify about how Petitioner Hanna's psychological and emotional makeup was molded during the 30 years he spent in prison. Since Dr. Burch never testified about the psychological effects long-term prison life had on Petitioner, the jury was unable to understand the prison conditions that produced James Galen Hanna.

57. The trial attorneys should have made Dr. Burch aware of the information relied upon and presented by prison expert Steve J. Martin in the state post-conviction. She then would

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have been able to explain to the sentencing jury how prison life caused Petitioner to develop certain defense mechanisms that aided him in coping with the conditions he experienced during a lifetime of incarceration.

58. Dr. Burch was only prepared to answer questions about James Hanna's test results and personality characteristics. The defense attorneys never had her address how these characteristics, coupled with his life-time in prison, caused Petitioner to arrive at his eventual, disastrous encounter with Peter Copas. Petitioner was prejudiced when the jury never heard a complete analysis of how his psychological makeup was adversely affected by the prison system.

59. This claim of ineffective assistance of counsel was raised in Petitioner's state post-conviction petition as his Tenth and Eleventh Grounds for Relief. Petitioner Hanna was never granted discovery or an evidentiary hearing on this claim of ineffectiveness.

**E. Trial counsel were ineffective when they failed to investigate and present significant mitigation evidence.**

60. Defense counsel were ineffective in their mitigation investigation because they did not interview or failed to adequately interview family members who were available and would have testified for Petitioner at the time of his capital trial. PC Exs. K, L and M. For example, counsel did not interview or failed to adequately interview and present the testimony of one of Petitioner Hanna's sisters, Nancy LaDuke. PC Ex. L. She described how their mother would whip the Hanna children with whatever she could, including a board and a vacuum handle. She also explained that Petitioner told her that he was sexually molested while living with foster parents. Such evidence was important to allow the sentencing jury to understand the kind of life Petitioner endured and the familial tragedies he suffered. Petitioner was prejudiced by the jury having an incomplete picture of his background and upbringing.

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61. This claim of ineffective assistance of counsel was raised in Petitioner's state post-conviction petition as his Eleventh Grounds for Relief. Petitioner Hanna was never granted discovery or an evidentiary hearing on this claim of ineffectiveness.

**Conclusion**

62. Petitioner Hanna's counsel's performance was substandard during the penalty phase of his capital trial due to the above-noted errors and omissions. State courts reviewing these claims either failed to address them or unreasonably applied the Strickland standard. Wiggins v. Smith, 123 S.Ct. 2527 (2003); Williams v. Taylor, 529 U.S. 362 (2000). This Court must determine that the writ of habeas corpus is justified here.

**Fifth Ground for Relief: Petitioner Hanna was denied his rights to a fair trial in the trial phase of his capital trial because his counsel's performance fell below constitutional standards and Hanna suffered prejudice.**

63. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

64. Petitioner Hanna's conviction and/or sentence are void or voidable because he was denied the effective assistance of counsel in the trial phase of his capital trial, as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984).

65. Trial counsel's performance during the trial phase of Petitioner's capital trial was deficient and prejudiced Petitioner. Counsel's performance was substandard in the following ways:

**A. Trial Counsel failed to ascertain during voir dire whether Juror Reeves was competent under Ohio law to serve on a jury.**

66. Each prospective juror filled out a questionnaire that had been agreed upon by trial counsel, the prosecutor and the trial court prior to the voir dire process commencing. Juror

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Reeves filled out such a questionnaire. Question 56 of the questionnaire asked whether the individual had served on a jury before, to which Juror Reeves responded that he had not. Question 57 asked that should the prospective juror have answered yes to Question 56, whether the prior jury service had been on a civil or criminal case. Juror Reeves answered that the result of the case was “6 mon 5 yr” which did not really answer the question but was repeated in response to other questions which made the answer clear in that it appears that Juror Reeves was responding to the question as though it were asking about his own criminal history.

67. In the questionnaire, Question 60 asked about the potential juror's criminal history, Question 65 asked whether the person had any affiliation with, among other things, the probation or parole department, Question 66 asked the nature of the affiliation, Question 68 asked whether the person had visited or been inside a prison or jail, and Question 69 asked whether the person had ever spoken with someone employed at a prison or jail or an inmate. To all of these questions Juror Reeves wrote that he had served 6 months in jail and been on 5 years of probation in 1989. The sentence that Juror Reeves had received was the result of an Aggravated Burglary conviction. Post-conviction Petition Exhibit B.

68. Trial counsel unreasonably and prejudicially failed to ask any questions of Juror Reeves as to the nature of the charge that resulted in his prison term. Due to this failure, trial counsel never learned that Juror Reeves was not competent by law to be a juror. O.R.C. § 2961.01 states that a convicted felon is incompetent to be a juror unless the conviction is reversed or annulled. This section also discusses a convicted felon's ability to be an elector (voter) and the effect of a full pardon. Trial counsel prejudicially failed to discover whether Juror Reeves had attained a reversal, annulment or full pardon of his conviction.

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69. The result of Juror Reeves not having his civil rights restored to the extent that he was competent to be a juror, was that Petitioner Hanna was convicted and sentenced to death by an improperly constituted jury, rendering the conviction and sentence a nullity under Ohio law. see State ex. rel. Gains v. Thomas, 128 Ohio App. 3d 107 (1998) In Hanna's case, Juror Reeves's incompetence to be a juror, results in his vote for the conviction and sentence being null and void. This means that Mr. Hanna was convicted by a jury of only eleven people qualified to be jurors.

70. This claim of ineffective assistance of counsel was raised in Petitioner Hanna's state post-conviction petition as his Fourth Ground for Relief. Petitioner Hanna was never granted discovery or an evidentiary hearing on this claim of ineffectiveness.

**B. Trial Counsel were ineffective when they failed to question Juror Reeves about his prison experiences to determine whether he could be a fair juror at Petitioner Hanna's trial which involved the a killing in prison.**

71. Petitioner Hanna's conviction and/or sentence are void or voidable because his trial counsel failed, during voir dire, to question juror Howard E. Reeves concerning whether his felony conviction would impair his ability to be a fair and impartial juror. This action by the defense attorneys violated Petitioner's rights as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

72. As detailed above, counsel was given notice in the juror questionnaire that Juror Reeves had spent time in prison.

73. The defense attorneys were ineffective in the voir dire of juror Howard Reeves. First, they were deficient by not noticing what Mr. Reeves wrote regarding six months in jail and five years on probation. Those statements alone deserved inquiry, if nothing more than to verify what they referred to and whether or not the juror understood the question. In addition to

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verifying and trying to understand the information it was vitally important that the trial attorneys understood what if any affect that experience had on Howard Reeves. It may seem that someone who had served time in prison might be sympathetic toward Petitioner. However, if Mr. Reeves had been a victim while in prison he may have harbored serious ill will toward James Hanna. Whatever his feelings in this regard, it was vitally important for them to have been uncovered by the defense attorneys during the voir dire process. By not doing so, the trial attorneys were ineffective and James Hanna suffered prejudice due to their ineffectiveness.

74. In state post-conviction proceedings, the trial attorneys admitted that they should have inquired whether Mr. Reeves experience in prison would have prevented him from being a fair and impartial juror. However, they failed to do so.

75. This claim of ineffective assistance of counsel was raised in Petitioner Hanna's state post-conviction petition as his Fifth Ground for Relief. Petitioner Hanna was never granted discovery or an evidentiary hearing on this claim of ineffectiveness.

**C. Trial Counsel were ineffective because they failed to re-raise their motion that the prosecutor's file be copied and sealed for appellate review.**

76. Trial counsel unreasonably failed to re-raise their motion that the prosecutor's file be copied and sealed for appellate review. This motion had been denied by the trial court. However, upon realizing that the State had withheld information to which the defense was entitled, trial counsel should have re-raised their motion. This information was the report of Ohio Highway Patrol Trooper Ertel. It was not until Trooper Ertel's recollection was refreshed with his investigative report by the prosecution during its direct examination of him that trial counsel first learned of the existence of such report. This report contained relevant and exculpatory material that was required to have been disclosed pursuant to Brady v. Maryland, 373 U.S. 83 (1963).

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77. After reviewing Trooper Ertel's investigative report trial counsel realized that there were numerous "attachments" referred to in the report that had not been disclosed. Tr. 1095 Trial counsel brought this to the court's attention and the prosecution was ordered to turn over the attachments. (However, as was discovered in post-conviction proceedings, the prosecutor did not give trial counsel all of the attachments.)

78. Contained within Trooper Ertel's report that was provided to trial counsel during trial was crucial information. Among other things, there was evidence that Copas had lost consciousness after the assault. Other information should have led trial counsel to conduct further investigation.

79. Upon learning of the State's withholding of material to which the defense was entitled, trial counsel could have and should have moved for a mistrial or moved for a continuance and to recall witnesses and reopen depositions so that this new information could be used. Trial counsel also should have re-raised their motion for the prosecutor's file be copied and sealed for appellate review.

80. This claim of ineffective assistance of counsel was raised on direct appeal in Petitioner Hanna's Proposition of Law No. 11, and in Petitioner Hanna's state post-conviction petition in his Sixth Ground for Relief. Petitioner Hanna was never granted discovery or an evidentiary hearing on this claim of ineffectiveness.

**D. Trial counsel were ineffective for failing to point out the inconsistencies in the testimony of the prosecution's medical experts.**

81. Dr. Katz testified for the State that Copas had been experiencing numbness and tingling in the upper and lower right side of his face. Tr. 983. Dr. Katz ordered a CT scan based on Copas's symptoms including the numbness and tingling. Tr. 985. However, Dr. Katz then testified that the subtlety of these symptoms would have precluded others from concluding that

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there was a foreign body present in Copas's head including Copas's lack of tingling or numbness. Tr. 1028. Trial counsel failed to question Dr. Katz about this obvious inconsistency in Dr. Katz's testimony concerning a crucial point.

82. Trial counsel failed to effectively cross-examine Dr. McWeeney on the need for an immediate CT scan once he detected Copas experiencing numbness in his face. Tr. 1039. Dr. Katz's testimony supports the need for McWeeney to have ordered an immediate CT scan since he detected numbness.

83. This claim of ineffective assistance of counsel was raised on direct appeal in Petitioner Hanna's Proposition of Law No. 11, and in Petitioner Hanna's state post-conviction petition in his Sixth Ground for Relief. Petitioner Hanna was never granted discovery or an evidentiary hearing on this claim of ineffectiveness.

**Conclusion**

84. Petitioner Hanna's counsel's performance was substandard during the trial phase of his capital trial due to the above-noted errors and omissions. State courts reviewing these claims either failed to address them or unreasonably applied the Strickland standard. This Court must determine that the writ of habeas corpus is justified here.

**Sixth Ground for Relief: The jury instruction on causation and foreseeability given in this case shifted the burden of proof on the mens rea element of the offense to the accused and reduced the State's burden of proof in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.**

85. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

86. The instructions given in this case weakened the State's burden of proof on the elements of purpose and prior calculation and design that the jury had to find in order to convict Hanna of aggravated murder. The court instructed the jury as follows:



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Causation. The State charges that the act of the defendant caused the death of Peter Copas. Cause is an act which in a natural and continuous sequence directly produces the death of Peter Copas and without which it would not have occurred.

*The defendant's responsibility is not limited to the immediate or most obvious result of the defendant's act. The defendant is also responsible for the natural and foreseeable results that follow, in the ordinary course of events, from the act.*

Tr. 1459 (emphasis added). The second paragraph of this instruction shifted the burden of proof to the defendant and diluted the State's burden of proof as to the element of specific intent to kill, one of the key contested elements in this trial.

87. This error violated the basic constitutional requirement that the State must prove each essential element of the crime charged beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364 (1970). The State may not avoid this requirement by shifting the burden of proof to the accused. Wilbur v. Mulaney, 421 U.S. 684, 698-701 (1975); Francis v. Franklin, 471 U.S. 307, 313, 317-18 (1985); Sandstrom v. Montana, 442 U.S. 510, 517-18, 524 (1979).

88. The State's burden of proof on the *mens rea* requirement was diluted when the trial court instructed the jury on the civil standard of "foreseeability." It also created the assumption that the defendant was responsible for all that could be "foreseen" from his actions instead of requiring the State to prove that Hanna specifically intended the death of Copas by his actions.

89. This claim was raised to the Ohio Supreme Court on direct appeal as Petitioner Hanna's Seventh Proposition of Law. The Ohio Supreme Court addressed the issue on the merits, but its conclusion that no prejudicial error took place was an unreasonable application of federal constitutional law. Therefore, this Court must grant the writ of habeas corpus on this Ground for Relief.

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**Seventh Ground for Relief: The trial court's failure to instruct the jury as to when medical malpractice may constitute an independent intervening cause denied Petitioner Hanna his right to present a defense and a fair trial in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.**

90. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

91. During his capital trial, Petitioner Hanna presented evidence that medical malpractice in the treatment of Peter Copas that may have constituted an independent intervening cause of death. Defense counsel proffered accurate instructions under Ohio law so that the jury could consider whether the medical malpractice constituted an independent intervening cause of death. However, the trial court gave only standard jury instructions from O.J.I. that were not tailored to the particular facts of this case and that were, in fact, misleading. See Sixth Ground for Relief.

92. The instruction given by the trial court to the jury completely negated Hanna's defense of medical malpractice. It provided no standard for the jury to evaluate the evidence presented concerning medical malpractice. There is a reasonable likelihood that the instruction given precluded the jury from considering Hanna's defense that gross medical malpractice constituted an intermediate intervening cause in Copas's death. See, Boyde v. California, 494 U.S. 370, 380 (1990).

93. Petitioner Hanna had a constitutional right to present a defense in his case and a concomittant right for his jury to consider that defense. Crane v. Kentucky, 476 U.S. 683 (1986). The trial court's instructions to the jury took away that right.

94. This claim was raised to the Ohio Supreme Court on direct appeal as Petitioner Hanna's Second Proposition of Law. The Ohio Supreme Court addressed the issue on the merits, but its decision that no error occurred was an unreasonable application of federal

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constitutional law. Therefore, this Court must grant the writ of habeas corpus on this Ground for Relief.

**Eighth Ground for Relief: The Preclusion of Petitioner Hanna's Proffered Evidence As To The Prevalence Of "Shanks" In The Prison System Was A Violation Of Hanna's Due Process Rights Guaranteed By The Sixth, Eighth, And Fourteenth Amendments To The United States Constitution.**

95. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

96. Petitioner was denied his Fourteenth Amendment right to Due Process and a fair trial when the state trial court refused to allow him to present testimony from Warden Russell. Russell's testimony would have rebutted the State's arguments that purpose and prior calculation and design could be inferred from the fact that Hanna used a homemade shank to attack Peter Copas. Where the State bases a significant portion of its case for purpose and prior calculation and design on inferences drawn from the use of a weapon, fundamental fairness demands that the defendant be allowed to present evidence about the significance of that weapon.

97. During the prosecution's case in chief, witness testimony detailed the shank James Hanna used in the attack on Peter Copas and its creation. Tr. 1078, 1081, 1284, 1289. The prosecution introduced the shank as an exhibit. Pros. Ex. 29. Then, in closing, the prosecutor argued that a purpose to kill could be inferred from the type of weapon used. Tr. 1380. The shank was integral to the prosecution's attempt to demonstrate a purposeful killing committed with prior calculation and design. Tr. 1379-80, 1435.

98. Trial counsel subpoenaed Warden Russell. The warden would have offered testimony to rebut the inference of prior calculation and design. The warden would have testified to the number of shanks and other weapons found at the Lebanon Correctional Institute and charges filed relating to the possession and use of those items. Tr. 1328-29.

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99. The trial court precluded the warden's testimony. Tr. 1327-29. The Defense proffered Defense Exhibit L that detailed the number of weapons seized over a five-year period at Lebanon Correctional Institution, Reluse Infraction Board statistics, and criminal charges filed.

100. The Warden's testimony was relevant to the issue of whether the existence of a shank in this case was evidence of prior calculation and design. In order to prove the element of prior calculation and design, the State relied in part on Hanna's use of the shank.

101. The Ohio state court erred when it would not allow the defendant to put on the proffered testimony. It was admissible under Ohio law and more importantly, its exclusion was a violation of the Due Process Clause of the Fourteenth Amendment because the defendant was trying to rebut the State's case against him. Under clearly established federal law, a criminal defendant such as Petitioner Hanna must have a "meaningful opportunity to present a complete defense." Crane v. Kentucky, 476 U.S. 683, 690 (1986) (citing California v. Trombetta, 467 U.S. 479, 485 (1984)).

102. The Sixth Amendment also promises the right to present a defense. Washington v. Texas, 388 U.S. 14, 19 (1967).

103. The preclusion of the warden's testimony prevented the jury from considering this aspect of the nature and circumstances of the offense as mitigating evidence during the sentencing phase. In Ohio, the jury must weigh the nature and circumstances of the offense against the aggravating circumstances in their determination of the appropriate sentence for a capital defendant. O.R.C. § 2929.04(B). Clearly established caselaw from the United States Supreme Court holds that capital juries must be permitted to consider all relevant evidence in

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mitigation of the death penalty in order to comply with the Eighth Amendment. Woodson v. North Carolina, 428 U.S. 280; Penry v. Lynaugh, 492 U.S. 302 (1989).

104. This claim was raised to the Ohio Supreme Court on direct appeal as Petitioner Hanna's First Proposition of Law. The Ohio Supreme Court addressed the issue on the merits, but its decision that no error occurred was an unreasonable application of federal constitutional law. Therefore, this Court must grant the writ of habeas corpus on this Ground for Relief.

**Ninth Ground for Relief: Execution by lethal injection represents cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution.**

105. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

106. The judgment and sentence against Petitioner are void or voidable because the death penalty as administered by lethal injection in the state of Ohio violates his constitutional rights to protection from cruel and usual punishment and to due process of law. Ohio Adult Parole Authority v. Woodard, 523 U.S. 272 (1998) (five justices holding that that the Due Process Clause protects the "life" interest at issue in capital cases).

107. The death penalty in Ohio is carried out by means of lethal injection. Death by state-sanctioned lethal injection violates the due process protections of life and constitutes cruel and unusual punishment in violation of Petitioner's constitutional rights because it inflicts torturous, gratuitous and inhumane pain, suffering and anguish upon the person executed by this means.

108. Lethal injection consists of tying a human being to a table then forcing a needle into him through which flows a combination of drugs designed in theory to stop the heart, paralyze the breathing muscles, and sedate the person. This execution method has not been

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proven to be more humane or less painful than electrocution. “The much-vaunted and increasingly popular technique of lethal injection may well improve upon hanging, electrocution, and the gas chamber, in the same way as these improved upon burning at the stake, disemboweling, and drawing and quartering. But such improvement if it exists, is only incremental.” WILLIAM A. SCHABAS, *THE DEATH PENALTY AS CRUEL TREATMENT AND TORTURE* 200-201 (Northeastern Univ. Press 1996).

109. So far, since the first lethal injection in 1977, there have been “botched” executions which directly violate the Supreme Court’s bar against torture or a “lingering” death. In Texas, Stephen Peter Morin’s execution required that his arms and legs be probed for 45 minutes to find a vein. Randy Woolls, a drug addict, had to help executioners find a good vein for the syringe. It took 35 minutes to insert a catheter into the vein of Elliott Johnson. Raymond Landry was pronounced dead 40 minutes after being strapped to the execution gurney and 24 minutes after the drugs first started flowing. Two minutes into the killing, the syringe came out of his vein, spraying the deadly chemicals across the room, and the executioners had to reinsert the catheter. Stephen McCoy had such a violent physical reaction to the drugs that one of the male witnesses fainted, knocking over other witnesses. The Texas Attorney General admitted that McCoy “seemed to have a somewhat stronger reaction, the drugs might have been administered in a heavier dose or more rapidly.” It took more than 50 minutes to find a suitable vein in Rickey Ray Rector’s arm, while witnesses heard his loud moans. During the ordeal, Rector, brain damaged from a lobotomy, tried to help find a vein. It took 47 minutes to find a suitable vein in Billy Wayne White, who eventually helped find it. Justin Lee May had an unusually violent reaction to the drugs, and went into coughing spasms, groaned, gasped, and lifted his head from the death chamber gurney. In Oklahoma, Robyn Lee Parks had a violent

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reaction to the drugs. Two minutes after the drugs began, the muscles in his jaw, neck, and abdomen began to react spasmodically, and Parks gasped and violently gagged until death came 11 minutes after the drugs were administered. After John Wayne Gacy's execution began in Illinois, one of the three lethal drugs clogged the tube leading to his arm and stopped flowing, which was blamed on the inexperience of the prison officials conducting the execution. Emmitt Foster, Scott Carpenter, Michael Elkins, and Joseph Cannon suffered protracted executions due to procedural foul-ups. Tommie Smith, Indiana, was not pronounced dead until 1 hour and 20 minutes after the executioners began to administer the drugs. Prison officials said they couldn't find a vein in his arm and had to insert an angio-catheter into his heart, a procedure which took 35 minutes. Similar attempts to insert a needle into Smith's neck and groin areas failed, after cutting back skin on his chest while Smith remained conscious. PC Exhibit T.

110. The United States Supreme Court said long ago that state-sanctioned executions must be conducted in such a way as to constitute "the mere extinguishment of life" and that torture or a "lingering death" is unconstitutional. In Re Kemmler, 136 U.S. 436 (1890). Experience reveals that lethal injection is at the very least more likely than not a torturous, painful, barbaric and, hence, unconstitutional means of extinguishing life—it is certainly not an antiseptic method for putting a human being to sleep. The constitution requires the presumption that lethal injection inflicts cruel and unusual pain and suffering on the person.

111. Petitioner's death sentence must be declared void because it entails execution by a method that violates his constitutional rights. In the alternative, Petitioner should be granted discovery and an evidentiary hearing on this ground for relief.

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**Tenth Ground for Relief: Petitioner Hanna's convictions and death sentence are invalid because the cumulative effect of the constitutional errors set forth in this Habeas Corpus Petition violated his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments.**

112. Petitioner hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

113. The Eighth and Fourteenth Amendments require a heightened degree of reliability in the determination that death is the appropriate punishment for each individual who is capitally tried.

114. Standing alone, each of the constitutional claims demonstrated in Petitioner Hanna's habeas petition require the granting of habeas relief, and the cumulative effect of the errors set out in this petition compromise the fundamental fairness of Petitioner's capital trial and direct appeals as to result in a constitutionally unreliable sentence.

115. The totality of these multiple constitutional violations had a substantial and injurious effect on the fairness of the process that produced Petitioner's convictions and death sentence. The Court should grant relief based on the cumulative impact of the constitutional errors in this case.

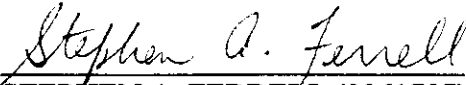


### III. PRAYER FOR RELIEF

Wherefore, Petitioner James Hanna respectfully prays that this Court:

1. Issue a writ of habeas corpus to have Petitioner brought before it, to the end that he may be discharged from his unconstitutional confinement and restraint;
2. Issue a writ of habeas corpus to have Petitioner brought before it, to the end that he may be relieved of his unconstitutional sentences;
3. Grant Petitioner the authority to obtain subpoenas in forma pauperis for witnesses and documents necessary to prove the facts as alleged in this petition;
4. Conduct a hearing at which proof may be offered concerning the allegations of this petition;
5. Stay Petitioner's execution (if necessary) pending final disposition of this petition;
6. Order the Respondent to file an answer or other responsive pleading to Petitioner's petition;
7. Order the Respondent to provide the Court with a complete record of all proceedings in Petitioner's case;
8. Grant other such relief as may be appropriate and to dispose of the matter as law and justice require.

Respectfully submitted,

  
STEPHEN A. FERRELL (0061707)  
Assistant State Public Defender  
Trial Attorney

KELLY L. CULSHAW ( 0066394)  
Assistant State Public Defender

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COUNSEL FOR PETITIONER

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Petition has been forwarded to Henry Appel, Assistant Attorney General, Capital Crimes Section, 30 East Broad Street, 23<sup>rd</sup> Floor, Columbus, Ohio 43215-3428, by regular United States Mail, postage prepaid, on this 17th day of November, 2003.

  
Stephen A. Ferrell  
Counsel for Petitioner

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APPENDIX "A"

**PROPOSITIONS OF LAW IN THE OHIO SUPREME COURT**

PROPOSITION OF LAW NO. 1

WHEN A TRIAL COURT PRECLUDES ADMISSION OF RELEVANT EVIDENCE MATERIAL TO A DEFENDANT'S PURPOSE TO KILL WITH PRIOR CALCULATION AND DESIGN, THE TRIAL COURT VIOLATES A CAPITAL DEFENDANT'S RIGHTS AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND §§10 AND 16, ARTICLE I OF THE OHIO CONSTITUTION.

PROPOSITION OF LAW NO. 2

THE TRIAL COURT'S FAILURE TO INSTRUCT THE JURY AS TO WHEN MEDICAL MALPRACTICE MAY CONSTITUTE AN INDEPENDENT INTERVENING CAUSE DENIED APPELLANT HIS RIGHT TO PRESENT A DEFENSE AND A FAIR TRIAL AS GUARANTEED BY THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 1, 2, 9, 10 AND 16 OF THE OHIO CONSTITUTION.

PROPOSITION OF LAW NO. 3

WHERE THE TRIAL COURT ABUSES ITS DISCRETION IN DENYING A DEFENDANT'S MOTION FOR A JURY VIEW, IT VIOLATES A DEFENDANT'S RIGHTS AS GUARANTEED BY THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND SECTIONS 10 AND 16, ARTICLE I OF THE OHIO CONSTITUTION.

PROPOSITION OF LAW NO. 4

WHEN COMPARED TO SIMILAR CASES, THE DEATH PENALTY IS AN EXCESSIVE AND DISPROPORTIONATE PENALTY FOR JAMES HANNA.

PROPOSITION OF LAW NO. 5

THE DEATH SENTENCE MUST BE VACATED WHERE THE MITIGATING FACTORS ARE NOT OUTWEIGHED BY THE AGGRAVATING CIRCUMSTANCES.

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PROPOSITION OF LAW NO. 6

WHERE THERE IS INSUFFICIENT EVIDENCE OF A PURPOSEFUL KILLING COMMITTED WITH PRIOR CALCULATION AND DESIGN, A TRIAL COURT'S DENIAL OF A RULE 29 MOTION FOR ACQUITTAL VIOLATES A CAPITAL DEFENDANT'S RIGHTS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I §16 OF THE OHIO CONSTITUTION.

PROPOSITION OF LAW NO. 7

A JURY INSTRUCTION THAT SHIFTS THE BURDEN OF PROOF ON THE *MENS REA* ELEMENT OF ANY OFFENSE TO THE ACCUSED, OR REDUCES THE STATE'S BURDEN OF PROOF VIOLATES THE DUE PROCESS CLAUSE OF FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

PROPOSITION OF LAW NO. 8

WHEN THE TRIAL COURT DISCOVERS THAT THE PROSECUTION DID NOT COMPLY WITH ITS DUTY TO DISCLOSE EXCULPATORY INFORMATION TO THE DEFENDANT, THE TRIAL COURT MUST REVIEW THE PROSECUTOR'S FILE FOR ADDITIONAL VIOLATIONS AND SEAL THAT FILE FOR APPELLATE REVIEW.

PROPOSITION OF LAW NO. 9

WHERE THE PROSECUTOR DENIGRATES THE REASONABLE DOUBT STANDARD, IMPROPERLY USES PEREMPTORY CHALLENGES, FAILS TO COMPLY WITH DISCOVERY, AND MAKES IMPROPER ARGUMENT, A CAPITAL DEFENDANT HAS BEEN DENIED HIS RIGHTS TO DUE PROCESS AND A FAIR TRIAL AS GUARANTEED BY THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTIONS 9 AND 16 OF THE OHIO CONSTITUTION.

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PROPOSITION OF LAW NO. 10

PROSECUTORIAL MISCONDUCT DURING THE PENALTY PHASE CLOSING ARGUMENT OF APPELLANT'S TRIAL VIOLATED HIS DUE PROCESS RIGHT TO A FAIR TRIAL AND A RELIABLE DEATH SENTENCE AS GUARANTEED BY THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTIONS 9 AND 16 OF THE OHIO CONSTITUTION.

PROPOSITION OF LAW NO. 11

WHEN TRIAL COUNSEL FAIL TO INQUIRE ABOUT PRE-TRIAL PUBLICITY DURING INDIVIDUAL VOIR DIRE, DENIGRATE THE REASONABLE DOUBT STANDARD, FAIL TO RE-RAISE RELEVANT MOTIONS, FAIL TO MOVE FOR A MISTRIAL OR TO RECALL OR RE-DEPOSE WITNESSES, FAIL TO EFFECTIVELY CROSS-EXAMINE WITNESSES, FAIL TO PRESENT A WITNESS WITH KNOWLEDGE OF THE CONDITIONS OF CONFINEMENT, FAIL TO ADEQUATELY PRESENT EVIDENCE OF ABUSE, INTRODUCE VOLUMINOUS RECORDS WITHOUT GUIDANCE TO THE JURY, AND FAIL TO OBJECT, A CAPITAL DEFENDANT IS DEPRIVED OF THE RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, §§ 10 AND 16 OF THE OHIO CONSTITUTION.

PROPOSITION OF LAW NO. 12

WHEN THE TRIAL COURT COMPARES A CAPITAL DEFENDANT TO HIS SIBLINGS, IMPROPERLY WEIGHS MITIGATION EVIDENCE AND REFUSES TO CONSIDER MITIGATION EVIDENCE, A CAPITAL DEFENDANT IS DEPRIVED OF THE RIGHT TO INDIVIDUALIZED SENTENCING AND OF HIS LIBERTY INTEREST IN THE STATUTORY SENTENCING SCHEME THUS VIOLATING RIGHTS GUARANTEED BY THE FIFTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND §§ 9 AND 16, ARTICLE I, OF THE OHIO CONSTITUTION.

PROPOSITION OF LAW NO. 13

THE DEFENDANT IS ENTITLED TO A NEW TRIAL WHEN THE CUMULATIVE EFFECT OF TRIAL ERROR RENDERS HIS CONVICTION UNRELIABLE.

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PROPOSITION OF LAW NO. 14

THE ACCUSED'S RIGHT TO DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION IS VIOLATED WHEN THE STATE IS PERMITTED TO CONVICT UPON A STANDARD OF PROOF BELOW PROOF BEYOND A REASONABLE DOUBT.

PROPOSITION OF LAW NO. 15

OHIO'S DEATH PENALTY LAW IS UNCONSTITUTIONAL. THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND §§ 2, 9, 10 AND 16, ARTICLE I OF THE OHIO CONSTITUTION ESTABLISH THE REQUIREMENTS FOR A VALID DEATH PENALTY SCHEME. OHIO REV. CODE ANN. §§ 2903.01, 2929.02, 2929.021, 2929.022, 2929.023, 2929.03, 2929.04 AND 2929.05, (ANDERSON 1996), DO NOT MEET THE PRESCRIBED CONSTITUTIONAL REQUIREMENTS AND ARE UNCONSTITUTIONAL ON THEIR FACE AND AS APPLIED TO JAMES HANNA.

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APPENDIX "B"

**QUESTION PRESENTED ON PETITION FOR WRIT OF CERTIORARI IN THE  
UNITED STATES SUPREME COURT**

Are the Eighth and Fourteenth Amendments violated when the trial court excludes evidence of prison conditions, precluding a capital jury from considering evidence related to the nature and circumstances of the offense and to the history, character, and background of the offender?

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APPENDIX "C"

**GROUND FOR RELIEF IN HANNA'S PETITION FOR POST-CONVICTION RELIEF**

**First Ground for Relief:** Petitioner Hanna's convictions and sentences are void and/or voidable due to the improper constitution of the jury, in violation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 9, 10, and 16 of the Ohio Constitution. The Sixth Amendment to the United States Constitution guarantees a criminal defendant the right to a fair trial by a fair and impartial jury.

**Second Ground for Relief:** Petitioner Hanna's convictions and sentences are void and/or voidable due to restrictions placed on the trial and sentencing phases by the trial court, which restrictions in turn forced trial counsel to render ineffective assistance of counsel, in violation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 9, 10, and 16 of the Ohio Constitution.

**Third Ground for Relief:** Petitioner Hanna's conviction and/or sentence are void or voidable because the State withheld exculpatory, impeaching, and mitigation evidence by failing to provide to the defense attorneys, before the trial began, a copy of Trooper James Ertel's complete report, including all the attachments. This action by the Prosecutor violated Petitioner's rights as guaranteed by the Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution and Article I, Sections 2, 5, 9, 10, 16 and 20 of the Ohio Constitution.

**Fourth Ground for Relief:** Petitioner Hanna's convictions and sentences are void and/or voidable due to the improper constitution of the jury, in violation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 9, 10, and 16 of the Ohio Constitution. The Sixth Amendment to the United States Constitution guarantees a criminal defendant the right to a trial by a fair and impartial jury.

**Fifth Ground for Relief:** Petitioner Hanna's conviction and/or sentence are void or voidable because his trial counsel failed, during voir dire, to question juror Howard E. Reeves concerning whether his felony conviction would impair his ability to be a fair and impartial juror. This action by the defense attorneys violated Petitioner's rights as guaranteed by the Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution and Article I, Sections 2, 5, 9, 10, 16 and 20 of the Ohio Constitution.

**Sixth Ground for Relief:** Petitioner Hanna's conviction and/or sentence are void or voidable because he was denied the effective assistance of counsel in the trial phase of his capital trial, as guaranteed by the Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution and Sections 10 and 16, Article I of the Ohio Constitution. Strickland v. Washington, 466 U.S. 668 (1984). Trial counsel's performance during the trial phase of Petitioner's capital trial was deficient and prejudiced Mr. Hanna.



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**Seventh Ground for Relief:** Petitioner Hanna's conviction and/or sentence are void or voidable because his trial counsel failed to present adequate expert assistance in his defense during the capital trial and mitigation hearing. This action by the defense attorneys violated Petitioner's rights as guaranteed by the Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution and Article I, Sections 2, 5, 9, 10, 16 and 20 of the Ohio Constitution.

**Eighth Ground for Relief:** Petitioner Hanna's conviction and/or sentence are void or voidable because his trial counsel failed to adequately investigate and present sufficient evidence in his defense during the mitigation phase of the trial. This action by the Defense Attorneys violated Petitioner's rights as guaranteed by the Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution and Article I, Sections 2, 5, 9,10, 16 and 20 of the Ohio Constitution.

**Ninth Ground for Relief:** Petitioner Hanna's conviction and/or sentence are void or voidable because his trial counsel failed to investigate and present during the mitigation phase of the trial sufficient evidence explaining the Ohio Department of Rehabilitation and Correction policy regarding the criteria for inmate incarceration in high maximum security prisons. This action by the Defense Attorneys violated Petitioner's rights as guaranteed by the Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution and Article I, Sections 2, 5, 9, 10,16 and 20 of the Ohio Constitution.

**Tenth Grounds for Relief:** Petitioner Hanna's convictions and/or sentences are void or voidable because he was denied the effective assistance of counsel in the mitigation phase of his capital trial as guaranteed by the Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution and Sections 10 and 16, Article I of the Ohio Constitution. Strickland v. Washington, 466 U.S. 668, 686 (1984). Defense counsel were ineffective because they did not prepare Dr. Kathleen J. Burch to testify about how Hanna's psychological and emotional makeup was molded during the 30 years he spent in prison.

**Eleventh Ground for Relief:** Petitioner Hanna's convictions and/or sentences are void or voidable because he was denied the effective assistance of counsel in the mitigation phase of his capital trial as guaranteed by the Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution and Sections 10 and 16, Article I of the Ohio Constitution. Strickland v. Washington, 466 U.S. 668, 686 (1984). Defense counsel were ineffective in their mitigation investigation because they did not interview or failed to adequately interview family members who were available and would have testified for Petitioner at the time of his capital trial.

**Twelfth Ground for Relief:** Petitioner Hanna's conviction and sentence are void or voidable because the post-conviction process provides an inadequate corrective process.

**Thirteenth Ground For Relief:** The judgment and sentence against Petitioner are void or voidable because the death penalty as administered by electrocution in the state of Ohio violates his constitutional rights to protection from cruel and usual punishment and to due process of law. U.S. Const. amends. VIII, IX, XIV; Ohio Const. art. I §§ 9, 10, 16; Ohio Adult Parole Authority v. Woodard, 523 U.S. 272 (1998) (five justices holding that that the Due Process Clause protects the "life" interest at issue in capital cases).

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**Fourteenth Ground For Relief:** The judgment and sentence against Petitioner are void or voidable because the death penalty as administered by lethal injection in the state of Ohio violates his constitutional rights to protection from cruel and usual punishment and to due process of law. U.S. Const. amends. VIII, IX, XIV; Ohio Const. art. I §§ 9, 10, 16; Ohio Adult Parole Authority v. Woodard, 523 U.S. 272 (1998) (five justices holding that that the Due Process Clause protects the “life” interest at issue in capital cases).

**Fifteenth Ground for Relief:** Petitioner Hanna’s judgment and sentence are void or voidable because, assuming *arguendo* that none of the Grounds for Relief in his Post-Conviction Petition individually warrant the relief sought from this court, the cumulative effects of the errors and omissions as presented in the Petition’s foregoing paragraphs have been prejudicial and have denied Petitioner his rights as secured by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 2, 9, 10, and 16 of the Ohio Constitution.

#189395

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

JAMES G. HANNA,	:	
	:	
Petitioner,	:	CASE NO.: 1:03-801
	:	
v.	:	Judge Thomas M. Rose
	:	
MARGARET BAGLEY, Warden	:	Magistrate Judge Merz
	:	
Respondent.	:	

**MOTION FOR SUBSTITUTION OF COUNSEL**

Assistant State Public Defender Susan M. Roche hereby enters her appearance as counsel for Petitioner in the above styled action and moves this Court to substitute her for Attorney Kelly Culshaw. The reasons in support of this Motion are more fully developed in the attached Memorandum in Support.

Respectfully submitted,

DAVID H. BODIKER  
Ohio Public Defender

/s/ Susan M. Roche  
SUSAN M. ROCHE - 0070279  
Assistant State Public Defender

Office of the Ohio Public Defender  
8 East Long Street, 11th Floor  
Columbus, Ohio 43215  
(614)466-5394  
Fax (614) 728-3670

COUNSEL FOR PETITIONER

**MEMORANDUM IN SUPPORT**

On January 22, 2004, Assistant State Public Defender Susan Roche was admitted to practice law in this Court. She has represented Petitioner James Hanna in his post-conviction proceedings in the Warren County Court of Common Pleas, the state court of appeals, and the Ohio Supreme Court. Now that Ms. Roche has been admitted to practice in the Southern District of Ohio, she wishes to continue representing Petitioner in his federal habeas action. Ms. Roche has been working for the Office of the Ohio Public Defender in the Death Penalty Division for more than five years. Prior to that, she was a public defender in the Bronx for ten years. She is qualified under Rule 20 to handle capital appeals in the Ohio Supreme Court and therefore has a very good knowledge of the law in capital cases. She is qualified to assume the duties of co-counsel in this habeas action.

Assistant State Public Defender Kelly Culshaw – who was one of the attorneys representing Petitioner in the early stages of his federal habeas proceedings – was recently promoted. Due to this increase in responsibilities, Ms. Culshaw has asked to be removed from this case. Assistant State Public Defender Stephen Ferrell will continue to represent Petitioner in this matter.

For the above-cited reasons, Petitioner requests that this Court appoint Susan Roche, of the Office of the Ohio Public Defender, to represent him in this habeas corpus action.

Respectfully submitted,

/s/ Susan M. Roche  
SUSAN M. ROCHE - 0070279  
Assistant State Public Defender  
Office of the Ohio Public Defender  
8 East Long Street, 11th Floor  
Columbus, Ohio 43215  
(614)466-5394 Fax (614) 728-3670  
COUNSEL FOR PETITIONER

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**CERTIFICATE OF SERVICE**

A copy of the foregoing **MOTION FOR SUBSTITUTION OF COUNSEL** was sent by electronic transmission to Henry Appel, Assistant Attorney General, Capital Crimes Section, 30 East Broad Street, 23rd Floor, Columbus, Ohio 43215-3428 on this 2nd day of February, 2004.

/s/ Susan M. Roche \_\_\_\_\_  
SUSAN M. ROCHE  
Counsel for Petitioner

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

JAMES G. HANNA,	:	
	:	
Petitioner,	:	CASE NO. 1:03-cv-00801
	:	
v.	:	Judge Thomas M. Rose
	:	
TODD ISHEE, Warden	:	Magistrate Judge Michael R. Merz
	:	
Respondent.	:	

**MOTION BY SUSAN M. ROCHE TO WITHDRAW  
AS ATTORNEY FOR PETITIONER**

Assistant State Public Defender Susan M. Roche notifies this Court that she is retiring on January 31, 2007, and therefore requests withdrawal as counsel of record for Petitioner James G. Hanna in the above styled matter.

Respectfully submitted,

DAVID H. BODIKER  
Ohio Public Defender

/s/ Susan Roche  
Susan Roche – 0070279  
Assistant State Public Defender

Rachel Troutman – 0076741  
Assistant State Public Defender

Office of the Ohio Public Defender  
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Columbus, Ohio 43215  
Telephone: (614) 466-5394  
Fax: (614) 644-0703

COUNSEL FOR PETITIONER HANNA

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 25, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to Thomas E. Madden and Stephen Maher, Assistant Attorneys General, Capital Crimes Section, 30 East Broad Street, 23<sup>rd</sup> Floor, Columbus, Ohio 43215-3428.

/s/Susan M. Roche  
Susan M. Roche - 0070279  
Counsel for Petitioner

*Hanna v. Shoop*, S.D. Ohio No. 3:19-cv-00231

Doc #1-7 (Post-Conviction Affidavit of David Doughten, Esq.)



IN THE COURT OF COMMON PLEAS  
WARREN COUNTY, OHIO

STATE OF OHIO

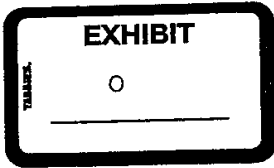
Respondent,	:	
v.	:	Case No. 98 CR 17677
JAMES HANNA,	:	JUDGE BRONSON
Defendant.	:	

AFFIDAVIT OF DAVID L. DOUGHTEN

STATE OF OHIO                    )  
                                          ) ss:  
COUNTY OF CUYAHOGA        )

I, David L. Doughten, being duly sworn, deposes and states as follows:

- 1) I am an attorney and have been licensed to practice law in the State of Ohio since 1981, Atty. Reg. No. 0002847.
- 2) The Supreme Court of Ohio has certified me to be lead counsel at the trial, appellate and post-conviction stages of capital litigation
- 3) I am also admitted to the following courts:
  - A. United States District Court, Northern District of Ohio – 1990.
  - B. Unites States Court of Appeals, Sixth Circuit – 1995.
  - C. United States Supreme Court – 1991.
- 4) Upon graduating from Case Western Reserve University College of Law and being admitted to the Ohio Bar in 1981, I served as lead counsel in the following (approximately):
  - A. 18 capital cases at the trial level;
  - B. 20 capital cases on direct appeal;
  - C. 12 capital cases on post-conviction;
  - D. 4 federal capital habeas proceedings.
- 5) I estimate that I have provided advice in approximately 50 capital cases at all stages of the proceedings.
- 6) I have authored or co-authored several articles on the subject of capital litigation for capital defenders.
- 7) I have instructed at numerous Ohio capital defense seminars for purposes of continuing legal education since 1989 and attended numerous national seminars on capital defense..
- 8) As a result of my legal education, instruction and attendance at continuing legal education seminars and my providing of direct representation, and consultation for cases at trial and on appeal, I am aware of the standard of practice of lawyers in appellate criminal cases, both capital and non-capital. 1989 instructing and attending
- 9) Since the reintroduction of capital punishment by the United States Supreme Court in 1976, the area of capital litigation has become a recognized specialty
- 10) Numerous substantive and procedural areas have been carved out by the United States Supreme Court with respect to capital cases



- 11) An attorney who litigates in the area of capital punishment must be familiar with these issues in order to raise and preserve them for appellate and post-conviction review
- 12) The preparation for a capital case requires the recognition that the case is likely to proceed to the penalty phase
- 13) ~~This recognition requires the simultaneous investigation of factual trial issues and potential mitigating factors~~
- 14) Because the client himself is often a primary source of information, regular pre-filing visits and interviews with the client are an important part of the investigative process
- 15) The Sixth Amendment to the United States Constitution guarantees a capital defendant the right to the effective assistance of counsel for his defense. Powell v. Alabama, 287 U.S. 45, 71-2 (1932); Johnson v. Zerbst, 304 U.S. 458, 462-3 (1938); Gideon v. Wainwright, 372 U.S. 335, 342-5 (1963).
- 16) After several attempts, the United States Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984)<sup>1</sup> set forth the modern standards for evaluating the effectiveness of an attorney's performance in a criminal proceeding. McMann v. Richardson, 397 U.S. 759, 771, n.14 (1970); Cuyler v. Sullivan, 446 U.S. 335, 344 (1980); Engle v. Isaac, 456 U.S. 107, 134 (1982)
- 17) In Strickland, the defendant pleaded guilty in a Florida trial court to an indictment that included three capital murder charges. While preparing for the sentencing hearing, the defense counsel spoke with the defendant about his background, but neither sought out character witnesses or requested a psychiatric examination, nor requested a pre-sentence report. The trial judge sentenced defendant to death on each of the murder counts. The Court in Strickland held that:

The benchmark for judging any claim of ineffectiveness must be whether **counsel's conduct** so undermined the proper functioning of the adversarial process that the **trial cannot be relied on as having produced a just result.**<sup>2</sup>

\* \* \*

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction of death sentence has two components. First, the defendant must show that **counsel's performance was deficient.** ... Second, the defendant must show that the deficient performance **prejudiced the defense.** This requires showing that counsel's errors were so serious as to **deprive the defendant of a fair trial, a trial whose result is reliable.**<sup>3</sup>

\* \* \*

The defendant must show that there is a **reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.** A **reasonable probability** is a probability sufficient to **undermine confidence in the outcome.**<sup>4</sup>

<sup>1</sup> The United States Supreme Court established the rules governing "actual" ineffectiveness in Strickland, and distinguished them from "constructive" ineffectiveness which it expounded in United States v. Cronin, 466 U.S. 648 (1984).

<sup>2</sup> 466 U.S. at 686. (Emphasis added.)

<sup>3</sup> Id. at 687. (Emphasis added.)

<sup>4</sup> Id. at 694. (Emphasis added.) Under this language the first sentence of the test appears to suggest that ineffectiveness can be proven only upon a show of counsel's unprofessional errors and that but for those the result of the trial would have been different. However, the test is incomplete until the second sentence is read. Said sentence clarifies that a "probability sufficient to undermine confidence in the outcome" is enough to substantiate ineffectiveness of counsel. Thus unreliability, not mere difference, in the trial outcome is the essence of the Sixth Amendment requirement.

18) Consequently, in evaluating claims of ineffective assistance of counsel a court will first determine if the performance of counsel was deficient (or unprofessional). The proper measure of attorney performance is simply reasonableness under prevailing professional norms. Strickland, 466 U.S. at 688. Second, a court must determine if

deprived of a trial whose result was reliable, or there is a reasonable probability that undermines the confidence in the result of the trial). The essence of this prong is not whether the outcome of the trial was affected by counsel's performance. In fact, the Strickland Court rejected the strict outcome-determinative test employed by some courts when it stated:

[W]e believe that a defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case.

\*\*\*

The result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome.

Id. at 693-4. (Emphasis added.) Thus, the second prong of Strickland requires only that *the trial outcome be shown unreliable* (not simply that it would have been different).<sup>5</sup>

19) In Glenn v. Tate, 71 F.3d 1204 (6th Cir. 1995), the United States Court of Appeals for the Sixth Circuit reviewed a claim of ineffective assistance of trial counsel brought by an Ohio capital defendant seeking habeas corpus relief. John Glenn was convicted and sentenced to death for the aggravated murder of a part-time deputy sheriff. Id. at 1205. During the mitigation phase of the proceedings defense counsel failed to provide the petit jury with sufficient evidence of defendant's character, background and condition of mental retardation. Id. at 1208-9. The Glenn Court applied the Strickland standard by holding:

Under the Strickland test the petitioner must show a "reasonable probability" that, but for his counsel's unprofessional errors, the result would have been different. ... The *petitioner does not have to show that his counsel's deficient conduct 'more likely than not altered the outcome in the case.'* ... The 'reasonable probability' of which Strickland speaks of, rather, is 'a probability sufficient to undermine confidence in the outcome.' ... *The question, in other words, is whether counsel's errors were serious enough to deprive the petitioner of a proceeding the result of which was 'reliable'....*

Id. at 1210. (Emphasis added.) The United States Court of Appeals for the Sixth Circuit determined that trial counsel's performance had been deficient during mitigation, and that consequently it had produced an unreliable result. Id. at 1211. Hence, it instructed the federal district court to grant John Glenn habeas corpus relief for the death sentence but conditioned the relief on Ohio reconsidering and imposing a life sentence within a reasonable period of time. Id. 1211.

20) Upon review of the facts of the James Hanna case, it is my opinion that Mr. Hanna's counsel provided ineffective assistance of counsel during voir dire and at the trial and penalty phases of Hanna's capital trial. As a result of his counsel's ineffectiveness, Mr. Hanna was prejudiced.

#### VOIR DIRE

21) Voir dire in a capital case must be conducted in a manner that ensures that the jury that is ultimately seated will not only be fair and impartial regarding the determination of guilt and innocence but also that the jurors will consider and give effect to the mitigating evidence presented at the penalty or mitigation phase. A criminal defendant in a state court is guaranteed an "impartial jury" by the Sixth and the Fourteenth Amendments to the

<sup>5</sup> The ultimate focus must be on the reliability of the result being challenged in order to prevent a breakdown of the adversarial process that our system counts on to produce justice. Dillon v. Duckworth, 751 F.2d 895, 898 (7th Cir. 1984).

United States Constitution. Duncan v. Louisiana, 391 U.S. 145, 153-4 (1968). Furthermore, the principles of federal due process guarantee a defendant a trial by a "panel of impartial, indifferent jurors." Irvin v. Dowd, 366 U.S. 717, 722 (1961); Morgan v. Illinois, 504 U.S. 719, 727 (1992)

22) Since "impartiality" is a state of mind, not a technical conception, a juror is impartial when he has not

~~formed an opinion about the case to be heard.~~  
 "indifferent as he stands unsworn." Id. In addition, the standard of "impartiality" is satisfied if a juror can lay aside an impression or opinion and render a verdict solely on the evidence presented in court. Id. at 723.

23) Voir dire assures impartiality by unmasking those potential jurors who will not follow the instructions of the court and evaluate the evidence - objectively, and by assisting the defendant in using his peremptory challenges as provided by statute and court rule. Rosales-Lopez v. United States, 451 U.S. 182, 188 (1981). In writing for the majority in Morgan v. Illinois, 504 U.S. 719, 733-4 (1992) Justice White stated that:

Were voir dire not available to lay bare the foundation of petitioner's challenge for cause against those prospective jurors who would always impose death following conviction, his right not to be tried by such jurors would be rendered ... nugatory ... (Emphasis in original.)

24) Since all venirepersons are potentially biased, the process of voir dire guarantees that the eventual collective trier of fact will not hold extreme views, i.e., "those who, in spite of the evidence, would automatically vote to convict or impose the death penalty or automatically vote to acquit or impose a life sentence." Smith v. Balkcom, 660 F2d 573, 578-9 (5th Cir. 1981). At times venirepersons are unaware, even though they swear to uphold the law and follow the instructions of the judge, that they maintain beliefs about the death penalty that are contrary to due process. Morgan at 735-6. And, their assurances that such beliefs about the death penalty can be set aside, "cannot be dispositive of the accused's rights . . ." Murphy v. Florida, 421 U.S. 794, 800 (1975). Voir dire must be applied surgically to expose the layers of unconstitutional thought that cloud and poison the unaware mind of the prospective juror.

25) The recent history of selecting capital jurors commenced with the seminal case of Witherspoon v. Illinois, 391 U.S. 510 (1968). In Witherspoon's trial, Illinois improperly excluded all prospective jurors who expressed any concerns over the death penalty, which then resulted in a jury "uncommonly willing to condemn a man to die." Id. at 521. In the now infamous footnote 21, the Court suggested that the focus of questioning during voir dire should be to determine if jurors are willing to consider all penalties that may be applicable even if they have conscientious scruples against the death penalty. Id. at 522 fn. 21. The text of the footnote, however, created more controversy than it resolved.

26) Because the Witherspoon footnote spoke in terms of what a juror was willing to consider rather than what she was capable of considering, juries could be created with individuals who, despite their protestations to the contrary, were predisposed toward death. Jurors who would impose death in all cases could, nonetheless, profess a willingness to consider alternatives and qualify to sit on a capital jury. In Adams v. Texas, 448 U.S. 38 (1980), the Court attempted to resolve this dilemma by clarifying the Witherspoon standard. The Court emphasized that it is not the views of the individual juror that should determine his eligibility for capital jury service but, rather, his ability to follow the law with respect to sentencing. Id. at 589.

27) The Adams Court admonished that the Witherspoon inquiry is not a basis for a state to challenge any prospective juror because of her views. Instead, it is a means of determining whether a prospective juror is suitable to serve by concentrating solely on the juror's ability to apply the law to the facts of the case. Adams, 448 U.S. at 591. Removing a juror on any broader basis than the inability to abide by this oath and follow the law renders a capital jury invalid. Id.

28) The Court attempted to solidify the Witherspoon question in Wainwright v. Witt, 469 U.S. 412 (1985), by refining the scope of the inquiry. Because the concern over the composition of the jury stems from the Sixth Amendment right to a fair trial, the Court explained, the quest for an impartial jury is achieved by seating individuals who will conscientiously apply the law as instructed to them even if their personal beliefs would dictate a different result. Id. at 424-425. To that end, the Court abandoned the Witherspoon focus on knee-jerk decision-making and posed the question as whether a juror's personal views would "prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." Id. The Court cautioned, however, that such a debilitating bias need not be proved with unmistakable clarity but is subject to assessment in the course of voir dire. Id.

29) Ohio codified the Witherspoon-Witt inquiry as it pertains to individuals who are opposed to the death penalty. Ohio Revised Code Ann. § 2945.25(C) (Anderson 1993) states:

(C) In the trial of a capital offense, that he unequivocally states that under no circumstances will he follow the instructions of a trial judge and consider fairly the imposition of a sentence of death in a particular case. A prospective juror's conscientious or religious opposition to the death penalty in and of itself is not grounds for a challenge for cause. All parties shall be given wide latitude in voir dire questioning in this regard.

This codification of the Witt standard was adopted by the Ohio Supreme Court in State v. Rogers, 17 Ohio St. 3d 174, 178-179, 478 N.E.2d 984, 990 (1985), vacated on other grounds, 474 U.S. 1002 (1985). The inquiry is a basis for challenging prospective jurors. Ohio Rev. Code Ann. § 2945.25(O) (Anderson 1993); State v. Buell, 22 Ohio St. 3d 124, 139, 489 N.E.2d 795, 808 (1986); State v. Beuke, 38 Ohio St. 3d 29, 526 N.E.2d 274 (1988).

30) In Morgan v. Illinois, 504 U.S. 719 (1992), the United States Supreme Court supplemented the permissible scope of questioning in the death-qualifying of jurors. The guiding principle the Court has sought to apply is that no individual is properly seated on a capital jury if he would unwaveringly impose death after a finding of guilt, or would never impose a sentence of death under any circumstances. Identifying individuals who fall between these polar extremes is the critical cog in the machinery of the capital voir dire because it is the only safeguard against the imposition of a sentence by a hanging jury. Justice White in Morgan identified at least three areas of inquiry in determining juror impartiality:

We have ... come to recognize that the principles first propounded in Witherspoon v. Illinois ... the reverse of which are at issue here, demand inquiry into whether the views of prospective jurors on the death penalty would disqualify them from sitting.

Id. at 731. (Emphasis added.)

\*\*\*

Any juror who would impose death regardless of the facts and circumstances of conviction cannot follow the dictates of law.

Id. at 735. (Emphasis added.)

\*\*\*

A juror who will automatically vote for the death penalty in every case will fail in good faith to consider the evidence of ... **mitigating circumstances** as the instructions require him to do. Indeed, because such a juror has already formed an opinion on the merits, the presence ...of... mitigating circumstances is entirely irrelevant to such a juror. Therefore, based on the requirement of impartiality embodied in the Due Process Clause of the Fourteenth Amendment, a capital defendant may challenge for cause any prospective juror who maintains such views. If even one such juror is empanelled and the death sentence is imposed, the State is disentitled to execute the sentence.

Id. at 729. (Emphasis added.)

31) In summary, the Morgan Court established that in order to identify biased venirepersons, a defendant on trial for his life "must" be permitted to voir dire prospective jurors about their views on capital punishment, facts and circumstances of conviction, and willingness to consider mitigating factors. Id. 729-36.

32) The United States Supreme Court in Morgan then established the form or structure that voir dire questions should take in capital cases. It held that a trial court's general questions to venire members about their ability to "follow the law" were not sufficient to detect those in the venire who automatically would vote for the death penalty. Id. at 734-5. "[I]t is the adversary seeking exclusion who must demonstrate, *through questioning* that the potential juror lacks impartiality." Morgan at 733, quoting Wainwright at 423. The Constitution of the United States does not guarantee a defendant a "catechism" of pre-rehearsed questions during voir dire but only that he be afforded an adequate voir dire in order to identify unqualified jurors. Morgan at 729.

33) Defense counsel in a capital case must be aware of these standards and must apply them and make the necessary objections in order to effectively pursue voir dire. Counsel in Mr. Hanna's case failed to follow these strictures, however.

34) In Mr. Hanna's case, Trial counsel moved for individual sequestered voir dire in order to inquire and determine

against Mr. Hanna. Tr. 120-22. The trial court granted counsel's motion. Judgment Entry May 8, 1998. However, trial counsel were deficient in their performance by failing to question the prospective jurors as to their exposure to pre-trial publicity during individual sequestered voir dire. In fact, trial counsel failed to ask any questions about pre-trial publicity during the individual sequestered voir dire, prejudicing Mr. Hanna.

35) During voir dire the prosecution misstated and denigrated the reasonable doubt standard that the jurors would apply in their deliberations at the culpability and penalty phases of Mr. Hanna's capital trial. The prosecutor gave an example of "the most important of one's own affairs" that unconstitutionally diluted this stringent standard. The prosecutor compared the level of certainty required for a finding beyond a reasonable doubt to the level of safety one feels before crossing a bridge, calling this the most important of his own affairs. Tr. 611-12. This lowered the State's burden of proof. Trial counsel were deficient in their performance by failing to object to the prosecution's denigrating and misleading comments regarding the reasonable doubt standard. Moreover, trial counsel then exacerbated the effect of the prosecution's improper comments and argument by themselves denigrating the standard during voir dire Tr. 641.

36) Trial counsel were deficient in their performance by failing to question Juror Reeves about his prior incarceration. Each prospective juror filled out a questionnaire prior to voir dire. Question 56 asked the prospective juror whether he had any prior jury service to which Juror Reeves answered that he had not. Question 57 is a follow-up question and asks if the person has had prior jury duty, whether the case was civil or criminal and the nature of the case. Juror Reeves answered this question with "6 mon 5 yr (illegible)" as being the result of the case. (Exhibit A). Due to his responses to later questions it appears that Juror Reeves was responding to question 57 as though it was asking about his own criminal legal history. In response to question 60 that dealt with a criminal record; question 65 that asked whether the person had any affiliation with, among other things, the probation or parole department; question 66 which asked the nature of the affiliation; question 68 that asked whether the person had visited or been inside a prison or jail; and question 69 that asked whether the person had ever spoken with someone employed at a prison or jail or an inmate, Juror Reeves wrote that he had served 6 months in jail and been on 5 years of probation in 1989. (Exhibit A). Trial counsel were deficient in their performance by failing to question Juror Reeves about his criminal history. Had counsel questioned Juror Reeves about his criminal background they would have discovered that Juror Reeves had served time in prison for an Aggravated Burglary conviction. (Exhibit B) By not discovering Juror Reeves' prior incarceration, trial counsel did not know whether Juror Reeves had a bias towards inmates based on his own personal experience or if his experiences in prison would have precluded him from sitting on Petitioner Hanna's jury.

37) Trial counsel were deficient in their performance by failing to ascertain whether Juror Reeves' was competent to be a juror. Pursuant to O.R.C. § 2961.01 a convicted felon is incompetent to be a juror unless the conviction is reversed or annulled. Trial counsel unreasonably failed to discover whether Juror Reeves' conviction had been expunged, and if his rights to serve as a juror had been restored because he served his sentence. Petitioner was denied effective assistance of counsel by this failure to ascertain whether Juror Reeves was legally qualified to serve as a juror.

#### TRIAL AND PENALTY PHASES

38) At the trial phase of Mr. Hanna's capital trial his counsel rendered the ineffective assistance of counsel and as a result Mr. Hanna was prejudiced.

39) Trial counsel were deficient in their performance by failing to re-raise their motion that the prosecutor's file be copied and sealed for appellate review. The trial court had initially denied the motion. Judgment Entry, May 8, 1998. This motion should have been re-raised during Trooper Ertel's testimony for the State. During his testimony, Trooper Ertel's recollection was refreshed by the prosecution with Ertel's investigative report generated in Mr. Hanna's case. It was at this point that Mr. Hanna's trial counsel first learned that a valuable piece of information – Ertel's investigative file – had not been disclosed to them pursuant to their motion for discovery and in violation of the rule of Brady v. Maryland, 373 U.S. 83 (1963). Tr. 1095. This report contained information and summaries of statements from staff that would have been useful for trial counsel to know for their investigation and preparation of Mr. Hanna's defense. Exhibit D.

40) Upon reviewing Ertel's investigative report, trial counsel realized that there were attachments to this report. Tr. 1095. However, trial counsel were provided with one attachment only upon their alerting the trial court of this omission. Tr. 1101. Because trial counsel was in the process of cross-examining Ertel when they received the attachment, they had little time to review the attachment for purposes of cross-examination. This attachment contained important information that trial counsel could have and should have used in their defense of Mr. Hanna.

For example, Ertel's investigative report contained witness statements describing Peter Copas's intoxication at the time of the offense which corroborated Mr. Hanna's statement and information that Copas lost consciousness after he was assaulted by Mr. Hanna. Further, although trial counsel were given this one attachment to the report, others existed that were not disclosed.

41) For example, counsel never saw the attachment containing interviews with numerous Lebanon Correctional inmates who had personal knowledge of the incident between Copas and Mr. Hanna and what the inmates knew about the actions of Copas and Mr. Hanna. Had counsel been provided this material to which they were entitled, they could have and should have moved for a mistrial or asked for a continuance so they could properly investigate these inmates for potential witnesses and exculpatory value.

42) During trial, an emergency room physician and defense medical expert testified that a CT scan is necessary when a patient loses consciousness. Tr. 921, Def. Trial Ex. N at 16. Prior to the disclosure of Trooper Ertel's investigative report at trial, defense counsel had no information that Peter Copas lost consciousness after he was assaulted by Mr. Hanna. Tr. 1095-96. This was crucial to the defense's theory that negligent medical care was the intervening cause of Copas's death. Consequently, because trial counsel did not receive the investigative report until the end of the prosecution's case-in-chief they were prevented from using this information in their cross-examination of State witnesses at trial and in depositions conducted prior to trial. However, trial counsel failed to move for a mistrial and failed to seek an opportunity to recall witnesses or to reopen depositions when counsel discovered that the prosecution had improperly withheld evidence that was important to Mr. Hanna's defense.

43) Trial counsel were deficient in their performance by failing to demonstrate inconsistencies among and between the prosecution's medical experts. Dr. Katz testified that Copas experienced numbness and tingling, thus necessitating a CT scan. Tr. 983, 985. Dr. Katz, however, contradicted himself when he stated that the subtlety of Copas's symptoms would have precluded others from concluding that a foreign body was present in Copas's head. Tr. 1028. This inconsistency in Dr. Katz's testimony required exploration by trial counsel since it went to the heart of the issue of poor medical care as the intervening cause in Copas's death. Also, Dr. McWeeney testified that Copas's face was numb at times. Tr. 1039. The presence of numbness was a cue for ordering of an immediate CT scan as established by the testimony of Dr. Katz. However, trial counsel failed to question Dr. McWeeney about the implications of the numbness.

44) Trial counsel were deficient in their performance by failing failed to object to prosecutorial misconduct. Trial counsel should have objected to the prosecution stating that "murder one" was the same thing as "prior calculation and design". The prosecution equated "prior calculation and design" with his belief of what most people think of as "murder one". Tr. 1372-73. The prosecutor's statement amounted to testimony and was improper.

45) Trial counsel were deficient in their performance by failing to present available witnesses who would have testified regarding the prospects of Mr. Hanna's incarceration at the Ohio State Penitentiary (OSP), a high-maximum security prison in Youngstown, Ohio, if convicted of the aggravated murder of Peter Copas. Trial counsel wanted the jury to accept as true that Mr. Hanna would serve his time at the OSP. Trial counsel presented the testimony of Trooper Ertel who stated the prison conditions at OSP. Tr. 1631-32. Trial counsel did not present any testimony from an official at the Department of Rehabilitation and Corrections (DRC) about the guidelines that dictate whether a convicted felon – such as Mr. Hanna – is sent to OSP versus another less secure institution. Such guidelines existed at the time of Mr. Hanna's capital trial as evidence by the DRC policy presented as one of Mr. Hanna's post-conviction exhibits. Exhibit G.

Further, a DRC official should have been called to testify about the DRC guidelines for an inmate being housed at the OSP. The jury then would have had a much better basis to assess the likelihood of Mr. Hanna serving his sentence in a super-maximum prison. The importance of such testimony is illustrated by the fact the jury presented a question to the trial court during its penalty phase deliberations on this issue. The jury inquired as to how they could be assured Mr. Hanna would serve a life sentence in a maximum-security prison and be confined to his cell for twenty-three hours a day if the jury recommended a life sentence. Tr. 1714. The jury's question underscores the necessity for testimony from an official at DRC to confirm that Mr. Hanna's crime warranted incarceration at the OSP. To reiterate, the jury should have and could have heard testimony from such a DRC official. Trial counsel should also have introduced the DRC guidelines as an exhibit by counsel so that the sentencing jury could have referred to them during deliberations.

46) Trial counsel were deficient in their performance by failing to adequately present evidence of the abuse Petitioner Hanna suffered as a child. Testimony was presented by Petitioner Hanna's sister, Patricia Cutcher, and a psychologist, Dr. Burch, during the mitigation phase. Both witnesses testified about abuse in Petitioner Hanna's home when he was growing up but neither addressed the abuse suffered by Petitioner Hanna himself and the impact

~~of sexual abuse on Mr. Hanna. Trial counsel were ineffective for failing to present testimony about Mr. Hanna having been sexually abused. Tr. 1547-51.~~  
 51. In her testimony, Dr. Burch mentioned in passing that she knew of an allegation of sexual abuse of Mr. Hanna. Tr. 1554. Trial counsel did not question either witness about the impact of sexual abuse on Mr. Hanna. Trial counsel did not effectively prepare or present these witnesses such that their testimony would have communicated the impact of sexual abuse to the jury when deciding Petitioner Hanna's sentence.

47) Trial counsel were deficient in their performance by failing to give any guidance to the jury regarding the voluminous Children's Services and Department of Youth Services records that they admitted as evidence. (Def. Trial Exs. S, T) The defense admitted these records which contained relevant mitigating evidence for Mr. Hanna. However, trial counsel presented no witness to testify to the contents of these records or in any other way give the jurors an explanation of the records the defense considered most important. Trial counsel failed to ensure that whether the jurors understood the mitigating value of the contents of these records. The records contain material relative to Mr. Hanna's inability to interact with other people and difficulties in Mr. Hanna's childhood. Petitioner Hanna was prejudiced because had the sentencers been guided to the relevant mitigating evidence in the records, they would have given the records weight and effect in the weighing process.

48) Trial counsel were deficient in their performance by failing to object to prosecutorial misconduct. Trial counsel should have objected to the prosecution's mischaracterization of Petitioner Hanna's mitigation evidence. During the sentencing phase the prosecution improperly minimized the impact of child abuse and extreme poverty suffered by Mr. Hanna. The prosecutor made statements that were not supported by the record and misleading. Tr. 1524-26, 1547-48, 1679. Trial counsel were ineffective for failing to object to these improper and prejudicial statements by the prosecutor.

49) Trial counsel were deficient in their performance by failing to object to instructions given to the jury by the trial court during the culpability and sentencing phases of the trial. The trial court's definition of reasonable doubt should have been objected to by trial counsel. The instructions on the definition of "reasonable doubt" given as whole by the trial court did not convey the stringent "beyond a reasonable doubt" standard. Tr. 1449-50; 1689. Based on these instructions, the jury convicted and sentenced Mr. Hanna on a standard below that required by the Due Process Clause of the Fourteenth Amendment. Trial counsel should have objected to the trial court's instruction that Mr. Hanna would not be subject to cross-examination of his unsworn statement during the sentencing phase of the trial. Tr. 1500. It is not acceptable for a court to comment on the lack of cross-examination of a defendant's unsworn statement. Trial counsel were ineffective for failing to object to these prejudicial instructions given to the jury by the trial court.

50) Trial counsel were deficient in their performance by failing to have a prison expert testify during the mitigation phase of the trial. Had a prison expert testified at Petitioner Hanna's trial the jury would have learned about what life is like in a prison environment. The prison expert also would have testified about, among other things, Mr. Hanna's lengthy prison history and the effects of such long term institutionalization. The prison expert would have testified to the incompatibility of Mr. Hanna and Copas and how Mr. Hanna "perceived [Copas] an ongoing and real threat [to him]". (Exhibit E) This would have also had the effect of humanizing Petitioner for the jury by first giving them a look at Petitioner's life in prison and then the difficulty of celling with Copas. Trial counsel were ineffective by failing to have a prison expert (who was available) testify at Mr. Hanna's mitigation hearing.

51) Trial counsel were deficient in their performance by failing to present Joseph Scurlock as a witness or to adequately prepare an effective cross-examination of Mr. Scurlock during the trial and/or mitigation phase. Mr. Scurlock testified as a prosecution witness during the trial relative to identifying prison kites. Tr. 954. Trial counsel failed to investigate whether Mr. Scurlock would be a beneficial witness for Petitioner Hanna on other issues. In his post-conviction affidavit Mr. Scurlock avers that he had known Mr. Hanna since 1971. (Exhibit F) In his affidavit to this post-conviction petition, Mr. Scurlock states that Mr. Hanna mostly kept to himself and was sincere in the requests that he made to Mr. Scurlock. (Exhibit F). The jury was deprived of this evidence in determining the sentenced imposed on Mr. Hanna due to trial counsel's failure to have Mr. Scurlock testify in mitigation.

52) Trial counsel were rendered ineffective in their trial and mitigation presentation by the trial court not releasing Peter Copas's DRC file in its entirety, rather than simply nineteen (19) pages of records. 10/13/98 Tr. 4-8. Trial counsel were not able to present compelling evidence which could have resulted in Mr. Hanna being convicted of something less than Aggravated Murder. Trial counsel were also



prevented from presenting evidence of the O.R.C. § 2929.04(B)(2) mitigating factor whereby the sentencers would consider "Whether it is unlikely that the offense would have been committed, but for the fact that the offender was under ... strong provocation." Copas's DRC file was relevant to this mitigating factor because the file contains voluminous items from inmates, staff and others documenting the agitating and provoking actions of Copas, as well as his threatening nature. Had trial counsel had access to this file

~~they could have interviewed the individuals who had been interviewed by the State and had them testify to his propensity for agitating others and his inability to be incarcerated at a prison without causing problems. The trial court deprived the jury from weighing and giving effect to this evidence. Evidence that Copas was capable of provoking Petitioner Hanna to the point of Hanna assaulting Copas. This evidence coupled with the prison expert's testimony about prison life and the "rules" that exist for inmates dealing with each other would have been powerful mitigation for the jurors to learn before imposing sentence.~~


53) Trial counsel were rendered ineffective in the mitigation phase of the case due to the trial court not granting them access to all of Copas's DRC file, because they were prevented from presenting evidence admissible pursuant to O.R.C. § 2929.04(B)(7). This mitigating factor allows the defendant to introduce "Any other factors that are relevant to the issue of whether the offender should be sentenced to death". Furthermore, O.R.C. § 2929.04(C) requires that "The defendant shall be given great latitude in the presentation of evidence of the factors listed in division (B) of this section and of any other factors in mitigation of the imposition of the sentence of death". The trial court erred in not granting trial counsel access to Peter Copas's DRC file, thus preventing them from presenting full mitigation evidence. As set out above, had this file been disclosed, trial counsel could have presented valuable evidence to the jury in order to have jury spare Petitioner Hanna's life.

54) Trial counsel were deficient in their performance by failing to conduct an effective mitigation investigation by failing to have individuals testify about Petitioner Hanna and his life prior to being institutionalized. Trial counsel presented very little evidence of this sort during mitigation. However, other compelling mitigating evidence was available and should have been introduced by counsel at the mitigation phase including the testimony of Willard Hanna, Beverly Hanna and Nancy LaDuke, siblings of Mr. Hanna. (Exhibits KLM). Had trial counsel effectively investigated Petitioner Hanna's background, they would have discovered other compelling mitigation witnesses who were available and should have testified.

55) Trial counsel were deficient in their performance by failing to prepare and present the testimony of Dr. Kate Burch at Mr. Hanna's mitigation hearing. Dr. Burch has stated in her affidavit which is Exhibit J to this post-conviction petition that she was not asked by the trial attorneys to explain the psychological and neurological problems of Mr. Hanna that contributed to the assault of Copas. Dr. Burch avers that she would have testified differently had she been able to have the information found in the prison expert's and Mr. Scurlock's affidavits (Exhibits E, F). After reviewing these affidavits, her opinion is that Mr. Hanna's assault of Copas was to be expected. Trial counsel were ineffective by not preparing and presenting Dr. Burch's testimony to the jury by not effectively questioning her and with not providing her with the information from the prison expert and Mr. Scurlock.

56) In sum, the errors and omissions set out above reveal that James Hanna received the ineffective assistance of counsel in all phases of his capital trial. As a result he was prejudiced. Strickland v. Washington, 466 U.S. 668 (1984).

Further Affiant sayeth naught.

  
DAVID L. DOUGHTEN

Sworn to and subscribed before me, a Notary Public, on this 20 day of December, 1999.

  
NOTARY PUBLIC Exp. 8/12

Delonte Atty

Lanier County

App. 221

cons  
Foules

Vol 1 98 CR 17677

- 4 arrangement @ murder in detention facility, 2 proskiller from Lucas Cty 1978
- 7 in Prison since 1977
- 8 waves 24 service tm

April 22, 1998

order for fingerprints

5 troops James Ericl

- intercepted envelope - letter

6 letter from S to another inmate at institution - 1-14-98

7 personnel at SOCF had intercepted letter

9 W was investigator at Ceboman conviction, & there at time, before transferred to SOCF

11 personnel at SOCF thought strange letter sent to another through U.S. mail

FEYE  
MWA

Dean Crutchfield

PID 5135  
9

- shift commander

- 8-22-97, was performing count, got a signal 3, -

10 signify some kind of high, asking for back up

11 - brought to infirmary earlier, 1st Hanna Arost to captain's office

Δ say u must have fallen out of bunk, say u screaming, "might be a psych"

App. 222

- 13 O say no fight  
 14 O deny doing anything  
 CROSS  
 17 w in office with O brought in, after he had been  
 in in Germany  
 18 officer James brought O to w office  
 - w had O take off his shirt, within 10 minutes  
 looking for evidence of fight  
 19 O in lower bunk, v jumped & hit head on locker  
 boy  
 20 w not read O Miranda  
 21 w so check on copas (v)  
 24 w not have miranda card, but does have sheet  
 24 - doesn't read rights after every fight  
 24 not taped

POSS STEWARD

- 5155 - 29 CO at cabin  
 30 heard copas yell "stewart, he's killing me, he's killing me, he's  
 killing me."  
 - w not sure where coming from, v ran to 2-10-18,  
 saw v blood face  
 31 door locked, w open, copas fall out  
 - D sitting on bed; dark, silhouetted  
 - D stand & was cuffed  
 - was new officer, she took off, w alone, van  
 flood  
 - w call over radio - "signal three..."



App. 223

- 32 thought near officer securing Copas. <sup>ask what song</sup> "ask what song on?"  
 D said "I told them not to put him in my cell"  
 33 after D uttered, asked "what's song on?"  
 35 told D to turn around & face ~~away~~ back of cell wall  
 36 asked after uttered, but before backing out of cell  
 37 near officer, Johnson, not there upon D made comment  
 - no miranda warnings  
 38 didn't originally, tell investigators what D said

5167

stefan fec

- 44 6:05 am got signal 3  
 - w got D & escort him out  
 42 when got there, D already out of cell  
 43 on way to infirmary, saw copas crazy, was a mess acting weird all night  
 - took to infirmary by light  
 - w not ask D any questions  
 44 copas walk in, hot at head wards bleeding badly  
 - ~~was~~ army light  
 45 only question ~~was~~ asked was if he was in light  
 46 stefan already in cell w w arrive  
 - D get to infirmary before D  
 - D not given miranda on way to infirmary D voluntary  
 49 after D treated, ask more questions

App. 224

- saw wounds on Copas head, & state "so you're telling me this wasn't a fight"

- says no, & fell or jump out of bed & hit his head

50 w/ D for about ~~15~~<sup>15-20</sup> minutes

5178

James Eate.

53 ~~tape~~

54 D sign waiver - 9-19-97 at UET

- scott male also present, tapece interview, & waltendray, scott's workccq

56 w use form

59 & agree to talk

60 form signed

62 cassettes became full, re-tape first side over remaining  
- when D said he would say what really happened

66 tape not played as part of hearing

68 had mini cassette.

70 went over rights verbally, D said understood

71 D sign waiver of one form, w/ kept, & no talk at all

73 taped over waiver part

74 w recorder ok, wasn't working, right, so told scott to bring her

75 D not have extra tapes

76 D change story from not doer - 180°



App. 225

- 77 Δ say tired at Lynn  
 78 so confession at beginning of tape, not end  
 83 prosecutor transcribes "confession part," patrol transcribe  
 the whole interview that was on tape

5210

Scott Mall

- 86 Δ given Miranda rights after start interview  
 87 Δ sign 9-19-97 = 11:45 - Miranda waiver form  
 88 micro-cassette placed in middle of table,  
 89 turned on before Mirandas  
 90 Δ confess about 3/4 thru interview, notice  
 cassette had run out, Δ decide not to fool w/ it  
 and just listened  
 - had already flipped form  
 91 so Δ flip over tape & ask Δ to repeat  
 93 Δ only notice his tape recorder  
 96 condensed version after tape turned back on

5224

Ertel

- 100 takes notes and enters it into a computer base & HP-24  
 form  
 101 doesn't recall fold in this case

5233 107

motion for psdi granted

App. 226

August 24, 1998  
Suppress letter

5250

4. step that  $\Delta$ 's statement from interaction hearing may be used only in rebuttal

5253

6 Danny Mullen - CO SOCF

7. 1-15-98 - inspect letter - gave to supervisor  
- looking for contraband saw references to a murder

8 when saw murder reference, turned it over

10 - everything opened + inspected

12 - was free or institutional letter, gets one outside letter a week

13 was inbound letter

14 looked to another inmate in institution

15 sees through 2000-2500 ads

16 glanced down looking for key words

17 some inmates make for censorship, but not  $\Delta$ s

21 caught by eye b/c of graphic description of wording

24 cell location of recipient put on letter

PID 5273

charles schuman

26 Lt at SOCF



App. 227

- 27 mullen gave him letter  
 28 w took it to Mr. Sec - letter said how murder carried out  
 - all incoming mail can be inspected under §120-9-17  
 32 w sign envelope  
 35 question it can review <sup>about</sup> mail ~~about~~ about crime already committed  
 36 outgoing mail not inspected  
 38 mail opened w/ Pitney Bowes opening machine

5286

David See - investigator 5284

- 40 - 1-15-98, Schram brought him letter  
 - letter states "caught murderer case cancelled"  
 - called investig at Lebanon  
 41 Lebanon investig say was murder  
 - addressed to inmate Dennis Korowak  
 43 drafted memo to warden Haske  
 1-20-98  
 - warden say ok not to notify, & of letter was kept  
 46 not aware of investigation of & before letter  
 - letter governed by prison's Rule 5120-9-17  
 47 didn't go into & files after get letter  
 49 question of whether there is difference between future crimes + past crimes  
 50 of say & have no standing to challenge as he sent letter  
 - say not author, so no standing to challenge



App. 228

- ct que

52 s to remain in LCI for testing,

#5301 letter in question

5305

10-13-98

4 excuses for jurors

5 review v copas inmate files

48 medical records of v

19 ct to remove shackles but s will have shir sun

21 s to waive appearance at depositions

31 stipulation as to fingerprint

33 first set ok, manducate, ask for 2nd set, s refuse

35 s agree to stipulate to brand of custody witnesses

5343

10-23-98

Urrd..

17 excuses for jurors - no objections

18 additional excuses, no objections

5446

videotaped Depo of Michael Mauer MD

4 proffer OSU neurosurgery

6 examined copas, problems w/ right eye

App. 229

- 6 had problems w/ right side
  - CT scan, foreign body in brain
  - had been there 5 days, urgent but not emergency
7. & could talk at that time
  - operation performed to remove
- 10 couldnt find object when open
- 5457 11 only option to push out the way it came in
- 12 Object went in ~~straight~~ very right over eyeball
- 13 was able to pull out
- 14 object was half inch below ~~brain~~ surface
  - object was about 5 inches
- 15 life threatening
- 18 no indication v lost consciousness, looked like fight
- 20 o doc 5:24am 9-16-97
  - operation 8-27-97
- 21 w able to speak w/ v often after operation
- 22 week after surgery v deteriorate
- 23 v had stroke - bloodclots
- 25 hemorrhage on the brain
- 26 traumatic aneurysm
- 27 wasnt seen by coroner
- 28 risk to even looking for aneurysm
  - couldnt have located
- 29 wouldnt have mattered if found earlier, not direct infection
  - caused by wooden object
- 33 damage caused by paint brush handle
- 34 surgery actually 8-28-97



App. 230

- patient die 9-10-97
- 38 questions as to why cat scan not done earlier
- 43 vein that hemorrhaged not identified
- 51 object is 4 inches
- 53 no other cause likely, unless U allergic to sandbags,  
but nothing found

### 5504 Video Deposition of Bruce Jankals

- 5. emergency medicine specialty
- 8 reviewed medical records
- 13 when COPAs got worse, no cat scan at Middletown, not  
until U got to OSU
- 16 D should have ~~been~~ given cat scan, enough signs,  
when he was brought in
- 18 head injury, <sup>and</sup> questionable loss of consciousness, should  
have been done
- incontinence is very clear sign of problem
- 19 plain x-rays not good at showing wood
- 20 complications would have been less if found earlier
- 25 whether alert or had firm grasp irrelevant to determine  
if need for cat scan
- 27 W not make causation determination

trademarke word

App. 231

Trial Transcript  
Vol 4

5459 index of witness

5779 233 KENSILL vs DP  
- But could do it

5796 volume II

5870 (315) PERIOD - no questions (WE)

350 undecided

370 HOWARD no questions (we)

385 CUREN - ~~no~~ (we) - no questions

Oct 27, 1998

5949

Ennis - DH - 6035 - T. 480 PASS

Keen 6048 485 PASS

App. 232

Vol III

Mirlisen - APP - 6070, T. 506

Brusch 6079, T. 515 - DH

6117 → statement in front of inbreeding board stip by co  
T. 554 Miranda will only be used for impeachment

6120-21 - prior convictions & u.o. spec to be determined by judge

6124  
T. 560

wednesday 10-28-98

-no peremptories

no motions for cause

6309

U. IV

-prior code  
causation



App. 233

mwf

Vol. VII

closing state

1381 Debose

1477 requests for jury instructions filed this morn.  
OL

1484 jurors polled

1487 <sup>Alternat</sup> jurors sat in w/ others

Vol. VIII

m. Negaboa  
11-9-98

Patricia Cote

1521 1 brother, & grow up in Toledo  
- dad die, mom alive

1522 - six sisters, 2 brother  
w/ 44, youngest

1523 no indoor plumbing  
- had water pump & outhouse

1524 left house at 19, ran away several times before

App. 234

- mom would catch her + place in juvenile facility
- 1525 2 of 4 graduated HS
  - harsh discipline, shoe, used part of vacuum
- 1526 willow switch
  - made sure bruises not shown when went to school
  - mom broke w nose when 13
- 1527 mom not want w to move up w/ get SS check
  - mom cash \$
  - w have to give mom pay check + tips
- 1529 everyone get married to move out of house
- 1530 w thought D was mom's favorit
  - wos had no supervision
- \* 1531 A victim of sex abuse when young  
(no follow up?)
- 1532 D m to stay home lol

Kathia Burck

- 1547 35-40 hours w/ D
  - poor, dysfunctional family
- 1548 doughnut paddle
  - extreme lack of cooperation w/ family for social service
  - boys were roses, girls were mom's thorns
- 1550 D have long curly hair, told no city man pull pants  
down to prove boy
- 1551 A paupered, then abused, run away
  - fight back w/ mom, D not learn to accept responsibility  
over protective



125 App. 235 <sup>7.10</sup> 879 8.80

- not have many friends, mostly who
- no indoor plumbing, poor is not clean

1533 - made v left cell open, s's things stolen  
 1559 - abused? cellmate was

1562 anti social personality disorders

1564 perceived threats set z off  
 - more prone to perceive a threat

1565 repeated head trauma

1566 attachment disorders

1569 - death of father, poor parenting, pampering, abuse

1573 frontal lobe damage

1574 isolation not help mental health, but would protect others

CP CROSS

- creates - ambiguous investigations

- can't believe someone had that about antisocial  
 Andre.

1640 NOV 10, 1998

1687 penalty, phase change



App. 236

# OHIO PUBLIC DEFENDER COMMISSION



## 2010 ANNUAL REPORT

**Ted Strickland**  
*Governor*

**Thomas J. Moyer**  
*Chief Justice*  
*Ohio Supreme Court*

**Samuel Porter**  
*Chair*  
*Public Defender*  
*Commission*

**Timothy Young**  
*State Public Defender*

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**MEMBERS OF THE OHIO PUBLIC DEFENDER COMMISSION**

	<b>Appointed By</b>	<b>Term</b>
Porter, Samuel (Chairman) Porter, Wright, Morris & Arthur 41 S. High Street Columbus, Ohio 43215-6194 <i>Occupation: Attorney</i>	Governor	07/16/04 – 03/09/2006 03/10/06 – 01/12/2014 (Chair)
Brown, Herbert R. 5 East Long Street, Ste 1009 Columbus, Ohio 43215 <i>Occupation: Former Justice</i>	Supreme Court	12/31/2003 – 01/12/2011
Doughten, David 4403 St. Clair Avenue Cleveland, Ohio 44103-1125 <i>Occupation: Attorney</i>	Supreme Court	09/19/2007 – 01/12/2013
Donovan, Mary J. 910 Race Street Cincinnati, Ohio 45202-1027 <i>Occupation: Attorney</i>	Governor	01/20/2010 – 01/12/2014
Espy, Ben E. Gonzalez, Saggio & Harlan 43 Hamilton Park Columbus, Ohio 43203-1826 <i>Occupation: Attorney</i>	Governor	12/09/2009 – 01/12/2013
Liston, Jefferson Tyack, Blackmore & Liston Co., LPA 536 S. High Street Columbus, Ohio 43215-5605 <i>Occupation: Attorney</i>	Governor	05/12/2006 – 01/13/2012
Moore, Janet 205 Worthington Avenue Wyoming, OH 45215 <i>Occupation: Attorney</i>	Supreme Court	04/01/2009 – 01/12/2012
Newman, Robert Newman & Meeks, LPA 215 E. Ninth St., Ste. 650 Cincinnati, Ohio 45202 <i>Occupation: Attorney</i>	Governor	04/04/2007 – 01/13/2011
Wright, J. Craig 65 E. State Street, Suite 1000 Columbus, OH 43215 <i>Occupation: Former Justice</i>	Supreme Court	01/13/2006 – 01/12/2010

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**MANAGEMENT**

Timothy Young	<i>State Public Defender</i>
Theresa G. Haire	<i>Deputy Director</i>
John D. Alge	<i>Director-Administrative Division</i>
Sharon Allison	<i>Human Resources Administrator/EEO Officer</i>
Jill Beeler	<i>Chief-Juvenile Division</i>
Amy Borrer	<i>Legislative and Media Liaison</i>
Jim Foley	<i>Legal Division Supervisor</i>
Dorian L. Hall	<i>Supervisor-Mitigation/Criminal Investigation</i>
Dan Jones	<i>Outreach Projects Coordinator</i>
Glenn T. Jones	<i>Director-Athens Branch Office/Multi-Co Office</i>
Robert L. Lane	<i>Legal Division Supervisor</i>
James F. Lewis	<i>Director-Trumbull Branch Office</i>
Jay A. Macke	<i>Legal Division Supervisor</i>
Gregory W. Meyers	<i>Chief-Trial Division</i>
Lisa R. Ostrolenk	<i>Librarian</i>
Susan Pettit	<i>Director-Ross Branch Office</i>
Linda Prucha	<i>Death Penalty Division Supervisor</i>
Pam Prude-Smithers	<i>Chief-Death Penalty Division</i>
Kelly Schneider	<i>Death Penalty Division Supervisor</i>
M. Kathryn Smith	<i>Counsel to Administration/County Outreach</i>
Raymond Smith	<i>Director-Washington Branch Office</i>
Ken Spiert	<i>Chief-Legal Division</i>
Dennis Taylor	<i>Office Services Manager</i>
Terri Wilson	<i>Training Coordinator</i>

The central office of the Ohio Public Defender Commission is in Columbus, Ohio. In addition, branch offices are located in Trumbull, Athens, Ross, and Washington counties. Our office also has on-site staff based at several adult and juvenile correctional institutions in Ohio.

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**THE STATE OF INDIGENT DEFENSE IN OHIO IN FY 2010****I. Introduction**

*“The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”*

*Gideon v. Wainwright*

The constitutional promises articulated by the United States Supreme Court in *Gideon* remain challenges for Ohio. Ohio’s indigent defense system teeters on the precipice of a constitutional crisis as caseloads increase while funding does not. Because indigent defense is a constitutionally required service, chronic underfunding of the system logically leads to the potential for major litigation should the demands for legal services to qualified indigent criminal defendants and juvenile offenders exceed the resources necessary to provide minimal protections to Ohio’s citizens. The Ohio Public Defender Commission has worked during Fiscal Year 2010 to hold this looming crisis at bay, while also attempting whatever large-scale systemic reform is possible in light of funding and political realities.

Ohio’s indigent criminal defense framework relies upon state and county funding, while each county retains control over its local defense system. During FY 2010, Ohio’s county governments, which bear “[a]n excessive portion of the burden of providing indigent criminal representation,”<sup>1</sup> have had to slash county budgets as local revenue has continued to diminish. Though a local public defender office can reduce its budget by cutting staff, public defenders are powerless to control the two primary causes of increased demands for indigent defense services: First, county judges and prosecutors exercise dominion over the numbers of arrests, types and numbers of prosecutions, and choices as to sentencing options. Second, legislators’ regular passage of new “tough on crime” legislation increases the number of offenses and/or the penalties for already existing offenses. Either circumstance directly implicates the Sixth Amendment right to counsel, and correspondingly increases the need for criminal legal representation of indigent persons across Ohio.

Eight Ohio counties have experienced more than 200% growth in their indigent criminal cases since 1997 – Carroll, Cuyahoga, Darke, Lorain, Lucas, Pike, Vinton, and Warren. In 22 other Ohio counties, indigent caseloads have spiraled by more than 100% during this period – Ashtabula, Brown, Butler, Columbiana, Crawford, Fayette, Fulton, Greene, Hancock, Harrison, Highland, Holmes, Jackson, Licking, Logan, Morrow, Muskingum, Pickaway, Putnam, Richland, Union, and Van Wert. Yet funding across Ohio has continued to decrease.

Unfortunately, the immediate future offers no signs of relief. With the state facing an estimated \$8 billion deficit in the next two-year budget, drastic cost-saving measures touted by both political parties are likely to strip away even more agency resources.<sup>2</sup> At the behest of Ohio’s Governor, Chief Justice, and legislative leadership, the Council of State Governments Justice Center has been assisting policymakers through the Ohio Justice Reinvestment Project.

<sup>1</sup> The Supreme Court Task Force on Pro Se and Indigent Litigants, *Report and Recommendations* 43, April, 2006, [http://www.sconet.state.oh.us/publications/prose/report\\_april06.pdf](http://www.sconet.state.oh.us/publications/prose/report_april06.pdf).

<sup>2</sup> Aaron Marshall, *Ohio lawmakers say they’re ready to pick up the pace on budget work*, THE PLAIN DEALER, June 9, 2010, [http://www.cleveland.com/open/index.ssf/2010/06/ohio\\_lawmakers\\_say\\_theyre\\_read.html](http://www.cleveland.com/open/index.ssf/2010/06/ohio_lawmakers_say_theyre_read.html).

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After conducting intensive criminal justice data analysis, engaging practitioners from across the criminal justice system, and developing a statewide policy framework for reducing spending on corrections and reinvesting in strategies to increase public safety, the project has issued publications that provide key statistics and analysis illustrating the significant corrections challenges that Ohio faces.<sup>3</sup> Ultimately, though legislative efforts aimed at reforming this inefficient and costly justice system were developed in FY 2010,<sup>4</sup> these efforts failed to gain political traction. In a state that spends 69 cents on corrections for every dollar it spends on higher education,<sup>5</sup> long-term investment in indigent defense is necessary if the financial burdens that weigh on public defender offices are to be eased.

The denial of effective counsel in Ohio had been documented well before FY 2010. In 2006, the National Legal Aid and Defender Association (NLADA) determined that Hamilton County, largely due to state funding deficiencies, failed to serve its indigent population with effective legal representation as defined by the Sixth Amendment. While the NLADA report specifically addressed Hamilton County's indigent defense services, other Ohio counties and their public defender and/or appointed counsel systems increasingly face similar challenges that demand fundamental reform not only at the county level, but also at the state level.

## II. Ohio Public Defender Commission Reform Efforts During FY 2010

The Ohio Public Defender Commission, having recognized the need for reform, now faces finding solutions to the substantial problems that undermine delivery of a constitutionally adequate indigent defense system in Ohio. But no overnight reform is possible. For the long-term repairs, increasing the government dollars devoted to indigent defense is the most obvious solution, but the Commission recognizes that existing funding and political realities require supplemental and alternative solutions as interim “stop-gap” measures towards eventual meaningful reform.

During FY 2010, the Ohio Public Defender Commission took additional steps beyond increased funding to ensure that the criminal representation afforded Ohio's poorest citizens meets minimal constitutional standards. At the invitation of Chief Justice Moyer, the Ohio Public Defender presented a unitary, statewide solution for the provision of effective indigent defense representation to the Judicial Leadership Conference. Many judges had been unfamiliar with how poorly Ohio's funding levels had kept up with caseloads or the need for a more effective delivery system with some uniformity across all 88 Ohio counties.

The looming crisis did result in some degree of incremental reform during FY 2010. For example, after investigations conducted by the Office of the Ohio Public Defender and a “town meeting” directed by the Ohio Public Defender Commission, Hamilton County Commissioners unanimously passed a resolution that goes far toward addressing many of the fundamental flaws in the Hamilton County indigent criminal defense delivery system, which had been criticized and

<sup>3</sup> See Council of State Governments Justice Center, *Overview of Justice Reinvestment in Ohio*, <http://www.justicereinvestment.org/states/ohio>. See also Council of State Governments Justice Center, *Justice Reinvestment in Ohio: Reducing Spending on Corrections and Reinvesting in Strategies to Increase Public Safety*, December 2009, [http://www.justicereinvestment.org/files/JR\\_Ohio\\_Overview\\_Final.pdf](http://www.justicereinvestment.org/files/JR_Ohio_Overview_Final.pdf).

<sup>4</sup> See NBC4i, *Senate Bill Could Mean Early Release for Inmates*, Nov. 19, 2009, [http://www2.nbc4i.com/news/2009/nov/10/senate\\_bill\\_could\\_mean\\_early\\_release\\_for\\_inmates-ar-19512/](http://www2.nbc4i.com/news/2009/nov/10/senate_bill_could_mean_early_release_for_inmates-ar-19512/).

<sup>5</sup> National Association of State Budget Officers, *2007 State Expenditure Report*, Fall 2008, <http://www.nasbo.org/LinkClick.aspx?fileticket=eoJyccT9iAo%3d&tabid=107&mid=570&forcedownload=true>.

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documented for the past decade. The Ohio Public Defender Commission continues to closely monitor Hamilton County reform efforts as we enter FY 2011.

The Ohio Public Defender, with the support of the Ohio Public Defender Commission, has also sought reform by helping to create and host the Collateral Consequences Database. In partnership with the Ohio Department of Rehabilitation and Correction (DRC) and the Ohio Justice and Policy Center (OJPC), the Ohio Public Defender has designed an electronic database that will report the multifaceted civil consequences associated with various criminal convictions. The scope and depth of this database will provide policymakers, judges, practitioners, and others with a valued electronic resource for identifying the varying effects as to licensing, job opportunities, etc. that often follow as consequences of particular types of criminal convictions.

The Ohio Supreme Court has provided leadership towards criminal defense reform during FY 2010. The Court implemented two highly lauded amendments to the Ohio Rules of Criminal Procedure during this past year. On July 1, 2010, amendments to Criminal Rule 16 took effect. Consequently, Ohio criminal justice practice will progress toward the goal of “open discovery” across the state, rather than in selected counties. Further, the Court revised Rule 20, which outlines the requirements for serving as counsel in a capital case, effective March 1, 2010. The Office of the Ohio Public Defender assisted in drafting the progressive changes as reflected in Criminal Rules 16 and 20 as adopted by the Ohio Supreme Court. As to Rule 20, the Office of the Ohio Public Defender also assisted by drafting a “Best Practices” appendix to the rule that is under review by the Rule 20 Committee. The combination of these measures, and others, ultimately will help the goal of achieving needed practice reforms within Ohio’s criminal justice system.

The Ohio Public Defender Commission and Office of the Ohio Public Defender have provided leadership on the national level with regard to Adam Walsh Act (AWA) issues. Public Information Officer and Legislative Liaison Amy Borrer testified before both the U.S. Congress<sup>6</sup> and the Maryland legislature,<sup>7</sup> and her expertise has helped to attract national interest in the short-sighted nature of existing AWA legislation. NLADA now refers all of its AWA inquiries to the Ohio Public Defender’s website. In addition, the Ohio Supreme Court handed down its decision in *State v. Bodyke* on June 3, 2010. The Court ultimately agreed that the retroactive application of the Adam Walsh Act to persons who were subject to prior judicial adjudications as to sex-offender registration violated the separation-of-powers doctrine.

The Ohio Public Defender also received national recognition when the Associated Press reported on the office’s new Wrongful Conviction Project,<sup>8</sup> an innovative partnership between the Ohio Public Defender and The Ohio State University Moritz College of Law. The Project aims to help innocent Ohio inmates who have been victimized by Ohio’s flawed criminal justice system.

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<sup>6</sup> See U.S. House of Representatives, *Hearing on the Sex Offender Registration and Notification Act, Written Testimony of Amy Borrer*, March 10, 2009, <http://judiciary.house.gov/hearings/pdf/Borrer090310.pdf>.

<sup>7</sup> See Justice Policy Institute, *National Experts and Maryland Groups to Testify Against Multiple Bills Relating to Sex Offenses*, Feb. 22, 2010, <http://www.justicepolicy.org/content-hmID=1817&smID=1571.htm#advisory>.

<sup>8</sup> Andrew Welsh-Huggins, *Ohio public defender launches new non-DNA innocence initiative*, THE SEATTLE TIMES, Nov. 19, 2009, [http://seattletimes.nwsourc.com/html/nationworld/2010308066\\_apuswrongfulconviction.html](http://seattletimes.nwsourc.com/html/nationworld/2010308066_apuswrongfulconviction.html).



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The Ohio Public Defender Commission and the Office of the Ohio Public Defender have provided leadership through sponsoring and organizing statewide training programs for the Ohio criminal defense bar. To this end, a training curriculum has been developed with the National Defender Training Project (NDTP). On April 9, 2010, we began the first of our skill-based defender trainings in Dayton, Ohio. NDTP taught public defender directors from throughout Ohio defender leadership and management skills. This training curriculum also includes the following programs: Appellate Training, New Lawyer Training, Train the Trainers, Trial Advocacy Training, and Juvenile Training.

During FY 2010, Ohio's prison population continued to increase.<sup>9</sup> DRC predicts continued, steady increases in Ohio's prison population over the next year, reaching 51,546 by July 2011<sup>10</sup> and a projected 55,734 by July 2018.<sup>11</sup> The Ohio Public Defender Commission and the Office of the Ohio Public Defender continue to work with the Governor, the General Assembly, the Ohio Supreme Court, the Ohio Attorney General, the Director of the Department of Rehabilitation and Corrections, and other government leaders in an attempt to decriminalize offenses that should not require prison sentences, such as particular traffic and nonviolent offenses. Rising incarceration rates for relatively minor varieties of crime only serve to unduly burden Ohio's judicial, prosecutorial, public defense, and prison systems. All stakeholders in this process, particularly in a time of dwindling financial resources, must continue to work together to achieve long-term meaningful reforms.

### III. The Budget Situation Has Improved, But Requires Continued Advocacy

The agency's budget situation has slowly been improving over the past several fiscal years. The agency's 2010–2011 biennial budget plan provided for a transition whereby the agency would increase non-GRF funding sources and decrease GRF, the purpose of which was twofold: to transition the agency away from dependence on GRF, while at the same time increasing overall funding, largely for reimbursing counties for indigent defense costs.

Accordingly, H.B. 1, the 2010-2011 Biennial Budget Bill, included several new dedicated funding sources and modified Ohio Revised Code section 120.08 to designate that 90 percent of all funds remitted to the Indigent Defense Support Fund be used to support reimbursement. The funding sources flowing to the Indigent Defense Support fund are summarized below:

- R.C. 2937.22: Enacted via H.B. 1. Added a \$25.00 surcharge on bail bonds.
- R.C. 2949.091: Enacted via H.B. 1. Replaced the \$15.00 flat fee court cost with a sliding scale of \$30.00 for felonies, \$20.00 for misdemeanors, and \$10.00 for non-moving traffic violations, excluding parking tickets. The change also redirected court cost revenue from the GRF to the Indigent Defense Support Fund.

<sup>9</sup> See The Crime Report, *Ohio prison crowding at crisis stage*, April 27, 2010, <http://www.thecrimereport.org/archive/ohio-prison-crowding-at-crisis-stage/>.

<sup>10</sup> Ohio Department of Rehabilitation and Correction, *Ohio Prison Population Projections and Intake Estimates 1*, July 2009, [http://www.drc.state.oh.us/WEB/Reports/proj\\_july2009.pdf](http://www.drc.state.oh.us/WEB/Reports/proj_july2009.pdf).

<sup>11</sup> *Id.* at 4.

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- R.C. 2949.111 Enacted via H.B. 1. Defines “state fines or costs” collected via 2949.091 to be deposited to the Indigent Defense Support Fund rather than the GRF.
- R.C. 4507.45 Enacted via H.B. 1. Increased license suspension reinstatement fees from \$30.00 to \$40.00 and designated the additional \$10.00 to be deposited to the Indigent Defense Support Fund.
- R.C. 4509.101 Enacted via H.B. 1. Increased the financial responsibility reinstatement fee (a.k.a. FRA Suspension) by \$25.00 for the first offense, \$50.00 for the second offense, and \$100.00 for the third and subsequent offenses, and designated the additional amount be deposited to the Indigent Defense Support Fund.
- R.C. 4510.22 Enacted via H.B. 1. Increased the fine for reinstatement following an F Class license suspension from \$15.00 to \$25.00 and designated the additional \$10.00 to be deposited to the Indigent Defense Support Fund.
- R.C. 2949.094 Enacted via H.B. 562. Added a \$10.00 surcharge on court costs that is divided between three entities. Fifty percent of the revenue is remitted to the Indigent Defense Support Fund. Of the balance, 35 percent is remitted to the Drug Law Enforcement Fund and 15 percent to the County or Municipal Indigent Drivers Alcohol Treatment Fund.
- R.C. 4511.19 Enacted via S.B. 209. Increased DUI penalties by \$75.00 for the first offense, \$125.00 for the second offense, \$250.00 for the third offense, and \$500.00 for the fourth and subsequent offenses, and designated the additional amount be deposited to the Indigent Defense Support Fund.

As a result of changes and new funding sources included in H.B. 1, excluding civil legal aid funding<sup>12</sup>, non-GRF revenues increased by \$21.5 million or 223 percent over fiscal year 2009. At the same time, the H.B. 1 decreased GRF appropriations to the agency by \$13.2 million or 38.8 percent compared with fiscal year 2009. The net result was an overall increase in available funding of \$8.3 million or 19.0 percent compared with fiscal year 2009.

Given timing of the receipt of new revenue and GRF spending limitations, actual expenditures were slightly different from revenues. In fiscal year 2010, actual non-GRF expenditures increased by \$19.6 million, or 231 percent, compared with fiscal year 2009. GRF expenditures decreased by \$13.3 million, or 39.1 percent, compared with fiscal year 2009. The net result was an overall increase in expenditures of \$6.3 million, or 14.8 percent. The increase was entirely attributable to funding for county indigent defense systems. Expenditures for subsidy and branch office operations (including subsidy and branch offices) were up 18.8

<sup>12</sup> We have excluded civil legal aid funding in these tables because it is pass-through money to the Ohio Legal Assistance Foundation, and the agency does not use the funds to support indigent criminal or juvenile defense.

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percent. Expenditures for agency operations was down 0.8 percent. The tables below summarize revenues and expenditures for fiscal year 2009 compared with 2010.

**Ohio Public Defender  
Revenues & Expenditures  
Fiscal Year 2009-2010 Comparison  
(Excludes Civil Legal Aid)**

<b>REVENUES</b>	<b>FY 09</b>	<b>FY 10</b>	<b>\$ Change</b>	<b>% Change</b>
GRF	33,991,557	20,794,297	(13,197,260)	-38.8%
Non-GRF	9,624,413	31,099,084	21,474,671	223.1%
<b>TOTAL</b>	<b>43,615,970</b>	<b>51,893,381</b>	<b>8,277,411</b>	<b>19.0%</b>

<b>EXPENDITURES</b>	<b>FY 09</b>	<b>FY 10</b>	<b>\$ Change</b>	<b>% Change</b>
GRF	33,958,058	20,684,480	(13,273,579)	-39.1%
Non-GRF	8,462,392	28,020,783	19,558,391	231.1%
<b>TOTAL</b>	<b>42,420,450</b>	<b>48,705,263</b>	<b>6,284,813</b>	<b>14.8%</b>

<b>EXPENDITURES BY CATEGORY</b>	<b>FY 09</b>	<b>FY 10</b>	<b>\$ Change</b>	<b>% Change</b>
Operating Budget	8,724,190	8,658,721	(65,469)	-0.8%
Subsidy/Branch Office	33,696,260	40,046,542	6,350,282	18.8%
<b>TOTAL</b>	<b>42,420,450</b>	<b>48,705,263</b>	<b>6,284,813</b>	<b>14.8%</b>

The increased funding allowed the Ohio Public Defender to maintain existing programs within the agency's operating budget and to increase the rate of reimbursement to counties for their indigent defense costs from 26.1 percent in fiscal year 2009 to 35.0 percent in fiscal year 2010. Despite this increase, the rate of reimbursement to the counties remains near an historic low. Moreover, the rate is based in reimbursing counties for a system that is currently underfunded. To bring the system up to acceptable standards will require additional advocacy, funding, and policy changes outlined below.

#### **IV. Recommendations**

The need for immediate and long-term reform of Ohio's indigent defense system is real, and will surely increase as caseloads grow and funding wanes. Long-term solutions must be considered, but shorter-term fixes certainly are in the mix, given economic and political realities. The Ohio Public Defender Commission continues to maintain that the following reforms are fundamental to Ohio's promise and constitutional guarantee that indigent defense services within this State will meet Sixth Amendment standards of scrutiny.

- The creation of a unified indigent defense delivery system to ensure quality, efficiency and accountability within the system.
- Pay parity for public defenders and prosecutors will increase the quality of representation and restore fundamental fairness, while also reducing systemic costs of enhanced prison

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sentences and appeals and other post-trial proceedings, including new trials engendered by ineffective counsel.

- The Ohio Public Defender Commission should have statutory authority to set minimum rates for appointed counsel in order to attract and retain quality attorneys as appointed counsel.
- The Ohio Public Defender Commission should establish mandatory caseload standards for public defenders.
- The Office of the Ohio Public Defender should be sufficiently funded to assure that it can fulfill its constitutional and statutory obligations while conducting training and certification programs for public defenders and appointed counsel.
- The Ohio Public Defender Commission should be empowered to deny reimbursement for services provided by poorly-performing criminal defense attorneys to discourage trial courts from additional appointments.

### V. Conclusion

As the State enters FY 2011, Ohio's indigent defense system faces historic budget challenges. Though available funding remains inadequate while caseload numbers continue to rise, the Ohio Public Defender Commission has strategically invested in programs that it believes will contribute to the systemic reform of Ohio's broken indigent defense system. The Sixth Amendment of the United States Constitution demands no less.

“Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. .... **That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries.**”

*Gideon v. Wainwright*

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**CONSTITUTIONAL AND STATUTORY AUTHORITY**

In *Gideon v. Wainwright*, the United States Supreme Court extended the Sixth Amendment right to counsel to all persons accused of crime, regardless of the accused's ability to pay for counsel. Additionally, Article I of the Ohio Constitution provides that "[i]n any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel."

In 1976, the Ohio General Assembly enacted Ohio Revised Code Section 120, which established the Ohio Public Defender Commission "to provide, supervise, and coordinate legal representation at state expense for indigent and other persons."

Ohio Revised Code Section 120.06 authorizes the State Public Defender to provide legal representation under five circumstances:

- 1) When an indigent adult or juvenile is charged with an offense or act for which the penalty includes the potential loss of liberty;
- 2) When an indigent person, while incarcerated in any state correctional institution, is charged with an offense or act for which the penalty includes the potential loss of liberty;
- 3) When any person incarcerated in any correctional institution asserts he is unlawfully imprisoned or detained;
- 4) When the State Public Defender has provided representation and an appeal of the decision is warranted;
- 5) When an indigent adult or juvenile is charged with a parole or probation violation.

The State Public Defender fulfills its statutory mandate in its central office by providing legal representation to capital and non-capital adult clients, as well as juveniles. The central office also provides necessary business support to the agency, including processing reimbursement for counties' indigent defense costs.

Through contracts with participating counties, the State Public Defender also operates the Trumbull County Branch Office and the Multi-County Branch Office, which provide legal representation to indigent criminal defendants at the county level (i.e., trial and direct appeal representation).

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### OFFICE ORGANIZATION

#### I. Legal Division

The Legal Division serves non-capital adult clients. The appeal and post-conviction section represent clients in state and federal courts throughout Ohio with the goal of providing the finest legal representation possible within available resources.

After the right to counsel at trial and direct appeal has been exhausted, defendants may also seek the assistance of the State Public Defender with their claims of unlawful imprisonment. Legal Division attorneys strive to quickly determine whether a client's claim has arguable merit. If a claim does not have arguable merit, the attorney meets with or writes to the client to explain that determination. If a claim has arguable merit, the attorney uses the latest research tools and, with the assistance of support staff, litigates the claim in the appropriate courts.

The Legal Division includes the Prison Legal Services Section. Prison Legal Services performs three critical functions: reception center orientation, parole violation hearing representation, and file management and case assignment. The State Public Defender has attorneys stationed at the state prison reception centers who meet with inmates within a few weeks of their arrival. Potentially-meritorious cases are identified and forwarded to the central office for further review and assignment.

#### II. Juvenile Division

Juvenile Division attorneys represent juveniles who have been committed to the Ohio Department of Youth Services on appeal and in other post-disposition issues. In addition to providing legal representation on appeal, attorneys offer legal assistance, such as gathering general information for youth, correcting sentencing errors, and filing motions in juvenile court. The Juvenile Division also coordinates with and provides training to defense attorneys who handle juvenile work around the state, and provides legislative advocacy on right to counsel issues and other substantive issues involving children in the justice system.

#### III. Death Penalty Division

The Death Penalty Division provides, coordinates, and supervises legal representation for indigent criminal defendants in capital cases. Death Penalty Division attorneys handle all three types of post-trial cases: direct appeal, post-conviction, and habeas corpus. In addition, the assistant public defenders assigned to this division frequently advise and assist attorneys defending indigent capital clients at trial.

##### A. Direct Appeals

The Supreme Court of Ohio's review of a capital case on direct appeal is mandatory under ORC §2929.05. Death Penalty Division attorneys represent clients on direct appeal before the Ohio Supreme Court when the State Public Defender is appointed to appeal a conviction and death sentence imposed by a trial court. The direct appeal process also includes discretionary review by the United States Supreme Court.

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Although the direct appeal process is limited to a review of any matters contained in the trial record, the litigation of these appeals is complex and the records are usually voluminous. Attorneys handling direct appeals must be certified under Ohio Supreme Court Superintendence Rule 20.

### B. Post-Conviction

Death Penalty Division attorneys represent capital clients by petitioning for relief in the trial court under ORC §2953.21. This statute provides a means of relief for trial errors that cannot be fully litigated on direct appeal. Post-conviction cases thus involve an extensive investigation into matters outside the trial record.

Attorneys must have expertise in topics that apply to the off-record challenge of a client's conviction or death sentence (for example, ballistics, blood spatter, DNA, post-traumatic stress, cultural mitigation, substance abuse, and mental retardation). This area of practice involves both trial-level skills, when evidentiary hearings are granted by the trial court, and appellate skills, as a client has an appeal of right if his or her petition is denied.

### C. Federal Habeas Corpus

Death Penalty Division attorneys also represent capital clients in federal courts on habeas corpus proceedings. A habeas petition is filed after a client has exhausted his or her direct appeal and state post-conviction remedies. On habeas, attorneys combine the prior claims raised on direct appeal and state post-conviction in one petition to the United States District Court. In this habeas petition, the client may only seek relief on claims that involve a violation of the United States Constitution (for example, violation of the Sixth Amendment right to effective counsel or violation of the Eighth Amendment right to present mitigating evidence for sentencing).

Habeas cases are complex. An attorney on a capital habeas case must know substantive constitutional law and must be well-versed in a body of law that deals with the procedural technicalities that often arise when a federal court reviews a state prisoner's claim. This area of practice also combines the skills used in direct appeals and state post-conviction cases. Habeas counsel may be called upon to take depositions, examine witnesses at a hearing, and draft appellate briefs (all habeas cases filed in Ohio, win or lose, are reviewed by the United States Court of Appeals for the Sixth Circuit in Cincinnati).

## IV. Trial Section

ORC §120.06(D) provides that the State Public Defender may represent an indigent person accused of a serious crime when appointed by a court or when a county public defender makes a request for assistance.

The agency's Trial Section was created during fiscal year 1998. Trial attorneys represent clients in capital or other high-profile trials, generally when conflicts prevent local counsel from providing representation or the county otherwise lacks necessary resources.



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The State Public Defender also accepts cases under the County Representation Program whenever resources permit. In most instances, these are appeals for which judges are unable to secure local counsel.

### V. Investigation and Mitigation Section

Criminal Investigators assist attorneys by developing evidence that will be used during trial or, after the trial, that should have been used during trial (this evidence is presented on state post-conviction or federal habeas). The Criminal Investigator's focus is twofold: first, analyzing and challenging the evidence that the State uses to carry its burden of proof; and second, finding evidence the defendant needs to bring forward to rebut the State's case.

Mitigation Specialists assist attorneys in developing evidence that will mitigate the punishment imposed on clients found guilty of capital or non-capital criminal offenses. In non-capital cases, they work to develop community placements as an alternative to incarceration and to provide information that may lower the prison term if one is imposed. In capital cases, Mitigation Specialists do the critical work of tracking down information about a client's life history that attorneys rely on in their efforts to demonstrate that a death sentence is inappropriate for their client.

### VI. Administrative Division

The Administrative Division provides necessary business support services to the agency. The Division is composed of six sections: Fiscal, Office Services, Human Resources, Information Systems, County Reimbursement and Assistance, and Legal Resource Center/Library. Additionally, the State Public Defender, agency legal counsel, and public information officer are considered part of the Administrative Division.

In 2008, the State Public Defender created the County Outreach Section. This program provides a free consulting service to Ohio counties, conducting an in-depth evaluation of their local indigent defense system. This evaluation includes making recommendations to help counties reduce costs, improving the quality of service, and maximizing state reimbursements. The Ohio Public Defender observes each of the courts and/or speaks with judges, prosecutors, public defenders, local bar members, county commissioners, auditors, court reporters, and bailiffs. The office gathers data, prepares budgets, conducts statistical analysis, and provides other information on current and alternative delivery systems.

### VII. Branch Offices & County Assistance Programs

ORC §120.04(C)(7) allows the State Public Defender to contract with a joint or county public defender commission or with a board of county commissioners to provide services that a county public defender would otherwise provide. The State Public Defender operates two such programs: the Trumbull County Branch Office and the Multi-County Branch Office.



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### A. Trumbull County Branch Office

The State Public Defender has maintained and operated a branch office in Trumbull County since 1984. Located in Warren, this office delivers indigent criminal defense representation in the courts of Trumbull County.

The office staff includes attorneys, investigators, paralegals, and secretaries. The State Public Defender also contracts with local attorneys, in order to afford flexibility in managing caseloads. Cases handled by staff and contract attorneys range from misdemeanors to capital offenses, including juvenile cases and appeals.

At the common pleas level, branch office attorneys provide representation in the four general divisions and in the juvenile and domestic relations divisions. At the municipal and county court levels, representation is provided in the cities of Niles, Newton Falls, Girard, Warren, Cortland, and Brookfield. Attorneys also provide appellate representation in the 11th District Court of Appeals in cases handled by the branch office in the lower courts, or for defendants who can no longer afford representation at the appellate level.

The state and county jointly fund the operation of the Trumbull County Branch Office. The percentage paid by each mirrors the reimbursement rate applicable to all counties under either the assigned counsel or county public defender systems. Approximately ten percent of the Trumbull County contract obligation comes from the participating municipalities.

### B. Multi-County Program

The Ohio Public Defender began the operation of the Multi-County Branch Office Program in January of fiscal year 1991. The program includes ten counties in the south and southeastern part of the state: Adams, Athens, Brown, Fayette, Jackson, Meigs, Pickaway, Pike, Ross, and Washington.

The State Public Defender has established three branch offices in Athens, Ross, and Washington counties. These offices provide indigent defense services to these counties and offer support services to all participating counties. There are private attorneys or law firms working under contract in each of the ten counties.

The program is supported by financial contributions from both the counties and the state, with the state contributing a portion relatively equal to the percentage of overall state reimbursement.

Prior to the implementation of the Multi-County Program, all participating counties, except Athens, used the appointed counsel system exclusively. Under an appointed counsel system, attorneys are paid on a case-by-case basis. Because of this, as caseloads increase, costs are likely to increase proportionately. Under the Multi-County Program, contract attorneys and assistant state public defenders agree to provide representation in cases assigned to them over a fixed period of time for a pre-determined fee or salary. An increase in caseload, therefore, does not directly increase the overall cost, since existing staff can absorb much of the increased caseload. The result is a lower average cost per case and a lower overall cost.

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### C. County Assistance

ORC §120.04(B)(13) requires the State Public Defender to “provide technical aid and assistance to county public defender offices, joint county public defender offices, and other local counsel providing legal representation to indigent persons....” In addition to the various assistance programs mentioned earlier, the Legal Resource Center maintains an expert witness list. Attorneys in need of experts call the central office librarian, who provides them with the necessary information. The central office library also supplies case law to the law librarians in the state correctional institutions.

The State Public Defender central office also offers assistance to county public defenders’ investigators. County public defenders typically cannot afford to purchase access to various records databases. The State Public Defender takes requests from the county public defender investigators to run searches for their cases. The vast majority of the requests are for arrest records and for help in locating witnesses.

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**TABLE I**  
**OHIO PUBLIC DEFENDER COMMISSION DISBURSEMENTS**  
**FISCAL YEAR 2010**

<b>FUND</b>	<b>ALI</b>	<b>ALI TITLE</b>	<b>TOTAL DISBURSEMENTS</b>
GRF	019-321	Administration	758,136
GRF	019-401	State Legal Defense Services	4,332,802
GRF	019-403	Multi-County: State Share	1,045,479
GRF	019-404	Trumbull County: State Share	335,725
GRF	019-405	Training Account	45,490
GRF	019-501	County Reimbursement: Non-Capital Cases	14,135,879
<b>TOTAL GENERAL REVENUE FUND</b>			<b>20,653,512</b>
101	019-602	Inmate Legal Assistance	-
406	019-603	Training and Publications	-
407	019-604	County Representation	153,590
408	109-605	Client Payment Fund	804,166
574	019-606	Legal Services Corporation	19,937,292
4N9	019-613	Gifts and Grants	-
4C7	019-601	Multi-County: County Share	2,015,273
4X7	019-610	Trumbull County Share	649,483
5CX	019-617	Civil Case Filing Fee	704,112
5DY	019-618	Indigent Defense Support	21,847,763
5DY	019-619	Indigent Defense Support	1,616,292
<b>TOTAL NON-GRF/NON-FEDERAL FUNDS</b>			<b>47,727,971</b>
3S8	019-608	Federal Representation	194,964
<b>TOTAL FEDERAL FUNDS</b>			<b>194,964</b>
<b>TOTAL PUBLIC DEFENDER COMMISSION</b>			<b>68,576,447</b>

**OHIO PUBLIC DEFENDER COMMISSION DISBURSEMENTS**

<b>FUND</b>	<b>FY 2010</b>
<b>TOTAL GENERAL REVENUE FUND</b>	<b>20,653,512</b>
<b>TOTAL NON-GRF/NON-FEDERAL FUNDS</b>	<b>47,727,971</b>
<b>TOTAL FEDERAL FUNDS</b>	<b>194,964</b>
<b>TOTAL PUBLIC DEFENDER COMMISSION</b>	<b>68,576,447</b>

**NOTES TO TABLE I: OHIO PUBLIC DEFENDER COMMISSION DISBURSEMENTS**

019-321: Administration: This line item is used for personal services, maintenance, and equipment for the Administrative Division.

019-401: State Legal Defense Services: This line item is used for personal services, maintenance, and equipment for the Legal and Death Penalty Divisions.

019-403: Multi-County: State Share: This line item is used to fund the state's share of the Multi-County Branch Office.

019-404: Trumbull County Office: This line item is used to fund the state's share of the Trumbull County Branch Office.

019-405 Training Account: This line item is to fund attorney training seminars that have a pro bono qualification.

019-501: County Reimbursement: Non-Capital Cases: This line item is used for state reimbursement to the counties for their indigent defense expenditures on non-capital cases.

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### NOTES TO TABLE I (continued)

019-602: Inmate Legal Assistance: This account funds one attorney stationed in the Marion Correctional Institution as part of the Prison Legal Services Program. The Department of Rehabilitation and Correction provides funding through an interdepartmental agreement with the State Public Defender.

019-603: Training and Publications: This account is authorized per R.C. 120.03(E) and is used to administer educational seminars and related costs and publications.

019-604: County Representation: Revenues for this account come from funds paid to the State Public Defender by counties throughout the state where counties have requested the State Public Defender to provide counsel in local cases. Upon providing such representation, the State Public Defender bills the county for a portion of the costs.

019-605: Client Payment Fund: This account receives revenues from the Indigent Application Fee per R.C. 120.36 and from Client Recoupment per R.C. 2941.51(D). Funds received are used for State Public Defender operating expenses.

019-606: Legal Services Corporation: This account is used for the Civil Legal Services Program. Revenues come from Interest on Lawyer's Trust Accounts (IOLTA), civil case filing fees, and investment earnings. In fiscal year 1994, the State Public Defender created the Ohio Legal Assistance Foundation (OLAF), a non-profit organization to administer the Civil Legal Services Program. Funds from this account are now distributed to OLAF, who makes distributions and grants to Ohio's civil legal aid societies.

019-613: Gifts & Grants: This account is authorized under R.C. 120.04(C)(2), and is used to administer funds when the State Public Defender receives money from private donors or from non-federal grants.

019-601: Multi-County: County Share: This account is used to administer funds received via contract from counties that participate in the agency's Multi-County Branch Office Program. The program is authorized under R.C. 120.04(C)(7) and 120.33(B).

019-610: Trumbull-County: County Share: This account is used to administer funds received via contract from Trumbull County for their participation in the agency's Trumbull County Branch Office Program. The program is authorized under R.C. 120.04(C)(7) and 120.33(B).

019-617: Civil Case Filing Fee: This account is used to administer funds received from the State Public Defender's portion of civil filing fee surcharge per R.C. 120.07, 1901.26, 1907.24 and 2303.201. The State Public Defender receives four percent of the amount collected. The funds are used for operating expenses for the Office of the State Public Defender.

019-618: Indigent Defense Support: County Reimbursement: This account is used to administer funds remitted to the State Treasurer to the credit of the Indigent Defense Support Fund. Funds come from court costs, bail bond fees, and license reinstatement fees collected by the Department of Public Safety, Bureau of Motor Vehicles. The funds are used to make reimbursement payments to the counties for their indigent defense costs per R.C. 120.18, 120.28, 120.33 and 120.35.

019-619: Indigent Defense Support: State Office: This account is used to administer funds remitted to the State Treasurer to the credit of the Indigent Defense Support Fund. Funds come from court costs, bail bond fees, and license reinstatement fees collected by the Department of Public Safety, Bureau of Motor Vehicles. The funds are used for operating costs for the Ohio Public Defender Office.

019-608: Federal Representation: Revenues for this account come from reimbursement for representation on federal habeas cases by Ohio Public Defender employees.

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**TABLE II**

**OFFICE OF THE OHIO PUBLIC DEFENDER  
FISCAL YEAR 2010 CASES (7/1/09 - 6/30/10)  
Death Penalty, Trial & Juvenile**

<b>COURT</b>	<b>DEATH PENALTY DIVISION</b>			<b>TRIAL SECTION</b>			<b>JUVENILE DIVISION</b>		
	<b>PENDING</b>	<b>CLOSED</b>	<b>TOTAL</b>	<b>PENDING</b>	<b>CLOSED</b>	<b>TOTAL</b>	<b>PENDING</b>	<b>CLOSED</b>	<b>TOTAL</b>
<b>Juvenile Court</b>	n/a	n/a	n/a	n/a	n/a	n/a	10	0	<b>10</b>
<b>Common Pleas Court-trial</b>	4	1	<b>5</b>	112	21	<b>133</b>	3	4	<b>7</b>
<b>Common Pleas Court</b>	62	12	<b>74</b>	0	0	<b>0</b>	7	1	<b>8</b>
<b>Court of Appeals</b>	11	10	<b>21</b>	0	0	<b>0</b>	111	102	<b>213</b>
<b>Ohio Supreme Court</b>	21	22	<b>43</b>	0	0	<b>0</b>	22	5	<b>27</b>
<b>Federal District Court</b>	34	27	<b>61</b>	0	0	<b>0</b>	1	2	<b>3</b>
<b>6th Circuit Court of Appeals</b>	21	12	<b>33</b>	0	0	<b>0</b>	0	0	<b>0</b>
<b>US Supreme Court</b>	3	10	<b>13</b>	0	0	<b>0</b>	0	1	<b>1</b>
<b>Parole Board</b>	3	2	<b>5</b>	0	0	<b>0</b>	0	0	<b>0</b>
<b>Other**</b>	18	5	<b>23</b>	0	0	<b>0</b>	163	249	<b>412</b>
<b>Juvenile Interview Only</b>	n/a	n/a	n/a	n/a	n/a	n/a	0	407	<b>407</b>
<b>Total</b>	<b>177</b>	<b>101</b>	<b>278</b>	<b>112</b>	<b>21</b>	<b>133</b>	<b>317</b>	<b>771</b>	<b>1088</b>

\*\*Other includes: jail time; sentence Q; misdemeanor; FOIA & assistance to others

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**TABLE II (cont'd)****FISCAL YEAR 2010 CASES (7/1/09 - 6/30/10)****LEGAL DIVISION****ASSIGNED to STAFF****INTAKE ONLY**

<b>COURT</b>	<b>PENDING</b>	<b>CLOSED</b>	<b>TOTAL</b>	<b>PENDING</b>	<b>CLOSED</b>	<b>TOTAL</b>
<b>Common Pleas Court-trial</b>	1	4	5	0	10	10
<b>Common Pleas Court</b>	305	233	538	14	367	381
<b>Court of Appeals</b>	129	195	324	6	129	135
<b>Ohio Supreme Court</b>	90	209	299	48	124	172
<b>Federal District Court</b>	89	83	172	0	17	17
<b>6th Circuit Court of Appeals</b>	15	16	31	0	2	2
<b>US Supreme Court</b>	4	8	12	0	2	2
<b>PB - Ankrom/Hall Class</b>	3	0	3	945	33	978
<b>PB - Parole Revocation Hearings</b>	n/a	n/a	n/a	26	214	240
<b>PB - Full Board Hearings</b>	n/a	n/a	n/a	3	64	67
<b>PB - Other Inquires</b>	3	4	7	1	28	29
<b>Other**</b>	51	78	129	51	721	772
<b>Total</b>	<b>690</b>	<b>830</b>	<b>1520</b>	<b>1094</b>	<b>1711</b>	<b>2805</b>

\*\*Other includes: jail time; sentence Q; misdemeanor; FOIA &amp; assistance to others

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**TABLE III**  
**DEATH PENALTY CASES IN OHIO**

<b>FISCAL YEAR 2010 DEATH SENTENCES</b>				
<b>Sentence Date</b>	<b>Defendant</b>	<b>Race-Sex- Age</b>	<b>County</b>	<b>Victim's Race</b>
09-21-09	Von Clark Davis	B-M-62	Butler	B
01-22-10	James Mammone III	W-M-36	Stark	2W
03-31-10	Anthony Kirkland	B-M-51	Summit	2W
04-07-10	Jeremiah J. Jackson	B-M-30	Cuyahoga	W
05-03-10	Gregory Osie	W-M-48	Butler	W
06-23-10	Ashford Thompson	B-M-25	Summit	W

**CUMULATIVE TO DATE SUMMARY OF DEATH SENTENCES BY COURT**

<b>COUNTY</b>	<b>NO.</b>	<b>% of TOTAL</b>	<b>Index to Population</b>	<b>COUNTY</b>	<b>NO.</b>	<b>% of TOTAL</b>	<b>Index to Population</b>
Allen	2	1.1%	0.192	Licking	2	1.1%	0.126
Ashland	1	0.5%	0.182	Lorain	3	2.7%	0.098
Ashtabula	1	0.5%	0.099	Lucas	11	8.0%	0.237
Belmont	3	1.6%	0.441	Madison	1	0.5%	0.235
Brown	1	0.5%	0.227	Mahoning	7	3.7%	0.296
Butler	7	3.2%	0.193	Marion	2	1.1%	0.305
Clark	5	2.6%	0.358	Montgomery	6	3.7%	0.113
Clermont	3	1.6%	0.153	Noble	1	0.5%	0.699
Clinton	1	0.5%	0.232	Portage	3	1.6%	0.190
Crawford	1	0.5%	0.229	Preble	1	0.5%	0.241
Cuyahoga	26	16.8%	0.204	Richland	2	1.1%	0.161
Delaware	1	0.5%	0.059	Ross	1	0.5%	0.132
*Franklin	12	7.4%	0.104	Stark	5	2.1%	0.132
Greene	2	1.1%	0.125	**Summit	8	5.3%	0.147
Guernsey	1	0.5%	0.250	Trumbull	8	5.3%	0.381
Hamilton	33	19.7%	0.386	Vinton	1	0.5%	0.756
Jefferson	1	0.5%	0.148	Warren	1	0.5%	0.047
Lake	1	0.5%	0.042	Wood	1	0.6%	0.080
Lawrence	1	0.5%	0.159	<b>Total</b>	<b>167</b>		

NOTE: "Index to Population" is the number of death sentences indexed to the population of each county. It is represented here as the number of death sentences per 10,000 persons in each county based on July 1, 2009 population estimates. Source: Population Division, U.S. Census Bureau.

\*Reflects two death sentence cases for James Conway III.

\*\*Reflects two death sentence cases for Donald Craig.

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**TABLE IV**  
**TRUMBULL COUNTY BRANCH OFFICE**  
**CASES CLOSED AND PENDING**  
**FISCAL YEARS 2008, 2009 & 2010**

Table IV shows the caseload of the Trumbull County Branch Office for fiscal years 2008, 2009 & 2010. Pending cases are those which remained open as of July 1, 2010.

Type of Case	FY 2008		FY 2009		FY 2010	
	Closed	Pending	Closed	Pending	Closed	Pending
Capital Felony	1	0	1	0	0	1
Felony	1,218	453	1,300	325	556	518
Misdemeanor	2,220	313	2,555	443	1216	813
Ordinance	1,656	45	1,502	396	431	345
Probation Revocation	369	83	328	57	217	52
Juvenile Offender	299	10	263	53	122	76
Appeal	0	29	0	34	0	34
Drug Court	2	113	0	156	141	49
Other	21	17	21	15	5	6
<b>Total</b>	<b>5,786</b>	<b>1,063</b>	<b>5,970</b>	<b>1,479</b>	<b>2,688</b>	<b>1,894</b>

**TABLE V**  
**MULTI COUNTY PROGRAM**  
**CASES CLOSED FISCAL YEAR 2010**

COUNTY	Felony	Misde- Meanor	Juv- enile	Appeal	Family	Pro- bation	Capital	Other	TOTAL	Pending Cases
Adams	119	348	147	0	0	32	0	28	674	281
Athens	540	863	60	0	0	0	0	108	1,571	374
Brown	312	560	95	0	0	166	0	40	1,173	351
Fayette	208	397	62	0	0	8	0	24	699	102
Jackson	216	963	103	0	5	193	0	61	1,541	450
Meigs	88	233	1	0	0	9	1	15	347	87
Pickaway	234	520	84	0	0	17	1	35	891	181
Pike	189	426	45	0	0	86	0	84	830	218
Ross	560	2,640	343	0	0	269	0	20	3,832	1,113
Washington	630	1644	222	5	0	163	0	21	2,685	595
<b>TOTAL</b>	<b>3,096</b>	<b>8,594</b>	<b>1,162</b>	<b>5</b>	<b>5</b>	<b>943</b>	<b>2</b>	<b>436</b>	<b>14,243</b>	<b>3,752</b>



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**TABLE VI****COUNTY PUBLIC DEFENDER TERMS AND OFFICES**

<b>COUNTY</b>	<b>PUBLIC DEFENDER</b>	<b>TELEPHONE</b>	<b>FAX</b>
Ashtabula *	Marie Lane Ashtabula County Public Defender Office 4817 State Road, Suite 202 Ashtabula, Ohio 44004 <i>Contract Services</i>	(440) 998-2628	(440) 998-2972
Auglaize	Gerald Siesel Auglaize County Public Defender Office 15 Willipie Street, Suite 220 P.O. Box 180 Wapakoneta, Ohio 45895 <i>Term:</i> Re-appointed February 1, 2010 for a four year term.	(419) 739-6796	(419) 739-6797
Belmont	Eric Costine Belmont County Public Defender Office 121 Newell Avenue St. Clairsville, Ohio 43950 <i>Term:</i> Appointed June 1, 2009 for a four year term.	(740) 695-5263	(740) 695-5639
Butler **	Mary Asbury Legal Aid Society of Greater Cincinnati Guardian Ad Litem Project 10 Journal Square Hamilton, Ohio 45011 <i>Term:</i> Contract Services.	(513) 241-9400	(513) 241-0047
Carroll	John Gartrell Carroll County Public Defender P.O. Box 507 Dover, Ohio 44622 <i>Term:</i> Appointed February 1, 2007 for a four year term.	(330) 364-5595	(330) 364-2423
Clark	John D. Marshall Clark County Public Defender Office 50 East Columbia Street, 4 <sup>th</sup> Floor Springfield, Ohio 45502 <i>Term:</i> Appointed February 26, 2007 for a four year term.	(937) 521-1725	(937) 328-2715

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TABLE VI (continued)

COUNTY	PUBLIC DEFENDER	TELEPHONE	FAX
Clermont	R. Daniel Hannon Clermont County Public Defender Office 10 South Third Street Batavia, Ohio 45103 <i>Term:</i> Re-appointed September 4, 2009 for a one year term.	(513) 732-7223	(513) 732-5382
Clinton	Joseph H. Dennis Clinton County Public Defender Office 32 E. Sugartree St. Wilmington, Ohio 45177 <i>Term:</i> Re-appointed January 1, 2010 for a one year term.	(937) 382-1316	(937) 382-8670
Columbiana *	Frederic E. Naragon Columbiana County Criminal Defense Co. P.O. Box 61 Salem, Ohio 44460 <i>Term:</i> Contract Services	(330) 337-9578	(330) 337-1223
Coshocton	Jeffrey A. Mullen Coshocton County Public Defender Office 239 North 4 <sup>th</sup> Street Coshocton, Ohio 43812 <i>Term:</i> Appointed March 1, 2006 for a four year term.	(740) 623-0800	(740) 623-0296
Cuyahoga	Robert L. Tobik Cuyahoga County Public Defender Office 310 Lakeside Ave, Suite 400 Cleveland, Ohio 44113-1021 <i>Term:</i> Appointed May 13, 2006 for a four year term.	(216) 443-8355	(216) 443-3632
Darke*	Paul Wagner Indigent Legal Assistance Fund of West Central Ohio 1400 North Broadway Greenville, Ohio 45331 <i>Term:</i> Contract Services.	(937) 548-6888	(937) 548-8066
Erie	Jeffrey J. Whitacre Erie County Public Defender Office 220 Columbus Avenue Sandusky, Ohio 44870 <i>Term:</i> Re-appointed July 3, 2006 for a four year term.	(419) 627-6620	(419) 627-6633

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TABLE VI (continued)

COUNTY	PUBLIC DEFENDER	TELEPHONE	FAX
Franklin	Yeura R. Venters Franklin County Public Defender Office 373 South High Street, 12th Floor Columbus, Ohio 43215 <i>Term:</i> Re-appointed February 16, 2008 for a four year term.	(614) 525-3194	(614) 461-6470
Gallia*	Douglas Cowles Gallia County Criminal Defense Corp. 435 Second Ave. Gallipolis, OH 45631 <i>Term:</i> Contract Services.	(740) 446-0644	(740) 446-8433
Geauga	R. Robert Umholtz Geauga County Public Defender Office 211 Main Street Chardon, Ohio 44024 <i>Term:</i> Re-appointed December 1, 2007 for a four year term.	(440) 279-1890	(440) 286-4136
Greene	Arthur L. Sidell, III Greene County Public Defender Office 90 East Main Street Xenia, Ohio 45385 <i>Term:</i> Re-appointed March 1, 2008 for a four year term.	(937) 562-5045	(937) 562-5671
Hamilton	Louis F. Strigari Hamilton County Public Defender Office 230 East Ninth Street, 2 <sup>nd</sup> Floor Cincinnati, Ohio 45202 <i>Term:</i> Re-appointed January 1, 2007 for a four year term.	(513) 946-3700	(513) 946-3707
Hancock	Michael C. Galose Hancock County Public Defender Office 100 E. Main Cross, Suite 200 Findlay, Ohio 45840 <i>Term:</i> Re-appointed January 1, 2011 for a two year term.	(419) 424-7276	(419) 424-7274
Harrison	C. Adrian Pincola Harrison County Public Defender Office 112 North Main Street P.O. Box 427 Cadiz, Ohio 43907-0427 <i>Term:</i> Re-appointed January 1, 2007 for a four year term.	(740) 942-2010	(740) 942-2080

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TABLE VI (continued)

COUNTY	PUBLIC DEFENDER	TELEPHONE	FAX
Huron	George C. Ford III Huron County Public Defender Office 16 E. Main St., 2 <sup>nd</sup> floor Norwalk, Ohio 44857 <i>Term:</i> Re-appointed July 1, 2009 for a two year term.	(419) 668-3702	(419) 668-3703
Knox	Bruce J. Malek Knox County Public Defender Office One Public Square Mount Vernon, Ohio 43050 <i>Term:</i> Re-appointed January 1, 2009 for a four year term.	(740) 393-6734	(740) 397-6611
Lake	R. Paul LaPlante Lake County Public Defender Office 125 East Erie Street Painesville, Ohio 44077 <i>Term:</i> Re-appointed October 1, 2009 for a four year term.	(440) 350-3200	(440) 350-5715
Lucas *	Henry B. Herschel Toledo Legal Aid Society-Defender Division 555 North Erie Street, Suite 248 Toledo, Ohio 43624 <i>Term:</i> Contract Services.	(419) 244-8351	(419) 244-4833
Medina	Timothy R. Lutz Medina County Public Defender Office 120 West Washington Street, Suite 2D Medina, Ohio 44256 <i>Term:</i> Appointed June 1, 2009 for a two year term.	(330)-764-8437  (330) 225-7100-Brunswick office  (330) 336-6657-Wadsworth office	(330) 764-8440
Miami	Steven R. Layman Miami County Public Defender Office Courthouse, 2 <sup>nd</sup> Floor 215 West Main Street Troy, Ohio 45373 <i>Term:</i> Appointed March 1, 2009, for a three year term.	(937) 440-3950	(937) 440-3951
Monroe	C. Mark Morrison Monroe County Public Defender Office 117 North Main Street Woodsfield, Ohio 43793 <i>Term:</i> Re-appointed December, 28 2008 for a one year term.	(740) 472-0703	(740) 472-9190

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TABLE VI (continued)

COUNTY	PUBLIC DEFENDER	TELEPHONE	FAX
Montgomery	Rudy Wehner Montgomery County Public Defender Office 117 S. Main Street, Suite 400 P.O. Box 972 Dayton, Ohio 45422 <i>Term:</i> Appointed July 26, 2007 for a three year term.	(937) 225-4652	(937) 225-3449
Portage	Dennis Day Lager Portage County Public Defender Office Administration Building 209 South Chestnut St., Suite 400 Ravenna, Ohio 44266 <i>Term:</i> Re-appointed August 7, 2009 for a four year term.	(330) 297-3665	(330) 298-2064
Shelby	Timothy S. Sell Shelby County Public Defender Office 108 East Poplar Street Sidney, Ohio 45365 <i>Term:</i> Re-appointed February 1, 2009 for a one year term.	(937) 498-1714	(937) 492-6957
Stark	Tammi R. Johnson Stark County Public Defender Office 200 W. Tuscarawas St., Ste.200 Canton, Ohio 44702 <i>Term:</i> Re-appointed July 1, 2009 for a four year term.	(330) 451-7200	(330) 451-7227
Summit *	Joseph S. Kodish Legal Defender Office of Summit County, Ohio, Inc. One Cascade Plaza, Suite 1940 Akron, Ohio 44308 <i>Term:</i> Contract Services.	(330) 434-3461	(330) 434-3371
Tuscarawas	Gerald A. Latanich Tuscarawas County Public Defender Office 153 North Broadway New Philadelphia, Ohio 44663 <i>Term:</i> Re-appointed December 31, 2008 for a two year term.	(330) 343-4540	(330) 364-7616
Union *	Perry R. Parsons Union County Criminal Defense Lawyers 111 W. Sixth Street Marysville, Ohio 43040 <i>Term:</i> Contract Services.	(937) 644-3144	(937) 644-3517

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TABLE VI (continued)

COUNTY	PUBLIC DEFENDER	TELEPHONE	FAX
Van Wert *	Kelly J. Rauch Van Wert County Public Defender Office 124 East Main Street Van Wert, Ohio 45891 <i>Term:</i> Contract Services.	(419) 238-5064	(419) 238-4705
Wayne	Beverly J. Wire Wayne County Public Defender Program 113 West Liberty Street Wooster, Ohio 44691 <i>Term:</i> Re-appointed January 12, 2007 for a four year term.	(330) 287-5490	(330) 287-5479
Wood	Kathleen M. Hamm Wood County Public Defender Office 123 North Summit St. Bowling Green, Ohio 43402 <i>Term:</i> Re-appointed October 16, 2006 for a four year term.	(419) 354-9244	(419) 353-9865

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\* Denotes counties using non-profit corporations for some or all public defender services.

\*\* Denotes counties using non-profit corporations for Guardian Ad Litem services only.

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**TABLE VII**  
**COUNTY PUBLIC DEFENDER OFFICE CASELOADS\***  
**FISCAL YEAR 2010**

COUNTY	Fel-Onies	Misde-meanors	Juv-enile	Dom. Rel.	App-eals	Post-conv.	Parole/ Prob. Revoc.	Habeas Corpus	Extra-ditions	Other	TOTAL CASES	PENDING CASES
Ashtabula	573	2,051	574	244	12	466	198	0	5	0	4,123	2,543
Auglaize	99	393	73	27	0	77	47	0	0	1	717	208
Belmont	357	878	216	122	9	54	90	0	0	0	1,726	394
Butler	0	15	1,020	0	0	0	0	0	0	0	1,035	479
Carroll	67	418	48	32	0	0	0	0	0	0	565	368
Clark	1,610	2,612	532	100	0	0	181	0	0	0	5,035	181
Clermont	1,319	4,090	968	130	1	246	1,657	0	48	296	8,755	4,740
Clinton	215	1,196	143	14	2	9	108	0	0	0	1,687	426
Columbiana	205	1,184	623	69	0	123	30	0	0	0	2,234	1,763
Coshocton	127	456	265	16	18	57	119	0	2	0	1,060	544
Cuyahoga	4,256	27,770	4,974	301	82	84	662	0	0	196	38,325	16,778
Darke	138	184	95	10	0	0	21	0	1	1	450	207
Erie	849	1,048	476	0	3	147	189	0	17	0	2,729	3,323
Franklin	4,187	31,754	9,858	44	130	50	4,276	0	128	7	50,434	11,501
Gallia	310	968	327	149	1	0	99	2	4	3	1,863	253
Geauga	203	251	227	8	5	53	61	0	7	0	815	257
Greene	0	2,194	122	15	2	0	0	0	0	0	2,333	404
Hamilton	2,759	22,194	8,075	12	12	420	21	0	0	106	33,599	12,776
Hancock	238	1,074	415	159	4	0	221	0	3	278	2,392	744
Harrison	53	514	80	17	0	22	87	0	0	17	790	206
Huron	141	364	446	36	3	2	55	0	16	0	1,063	495
Knox	322	939	180	7	7	98	17	0	0	247	1,817	2,885
Lake	1,245	1,258	903	2	27	0	0	0	0	38	3,473	3,535
Lucas	308	19,195	1,520	0	0	2	204	0	29	0	21,258	0
Medina	0	1,526	330	0	0	0	20	0	0	81	1,957	423
Miami	392	1,335	346	16	3	120	111	0	0	0	2,323	397
Monroe	43	156	25	1	0	0	0	0	0	0	225	41
Montgomery	1,945	19,503	2,338	196	130	46	3,724	0	111	0	27,993	7,337
Portage	652	2,299	351	39	0	4	106	0	0	0	3,451	1,562
Shelby	415	1,117	212	0	1	7	86	0	2	356	2,196	302
Stark	1,069	3,926	1,829	498	13	938	399	0	40	0	8,712	860
Summit	0	9,383	2,179	0	0	35	0	0	0	32	11,629	1,142
Tuscarawas	268	1,334	226	50	5	9	384	0	5	0	2,281	3,609
Union	167	589	470	21	7	0	149	0	0	0	1,403	495
Van Wert	188	315	159	11	4	90	57	0	0	0	824	283
Wayne	328	1,104	377	52	0	5	591	0	3	34	2,494	2,606
Wood	476	1,963	143	0	4	26	557	0	3	1	3,173	5,872
<b>TOTAL</b>	<b>25,524</b>	<b>167,550</b>	<b>41,145</b>	<b>2,398</b>	<b>485</b>	<b>3,190</b>	<b>14,527</b>	<b>2</b>	<b>424</b>	<b>1,694</b>	<b>256,939</b>	<b>89,939</b>

\* As reported by each county to the State Public Defender.

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**TABLE VIII**  
**COST OF COUNTY PUBLIC DEFENDER OFFICES**  
**FISCAL YEARS 2009 & 2010**

Table VIII shows the 100 percent cost the counties reported to the State Public Defender to operate public defender offices, followed by the amount reimbursed each year for fiscal year 2009 and fiscal year 2010. Counties prepare monthly expense reports that are certified by county auditors. The county auditor then submits the report to the State Public Defender for reimbursement for up to 50 percent of allowable costs.

<b>COUNTY</b>	<b>FY 2009</b>	<b>AMOUNT REIMBURSED</b>	<b>FY 2010</b>	<b>AMOUNT REIMBURSED</b>
Ashtabula	\$530,240	\$132,560	\$533,295	\$186,653
Auglaize	272,536	68,134	292,634	102,422
Belmont	282,133	70,533	279,349	97,772
Butler	724,953	181,238	626,373	219,231
Carroll	152,997	38,249	133,134	46,597
Clark	888,126	222,032	908,848	318,097
Clermont	1,335,873	333,968	1,338,156	468,355
Clinton	323,413	80,853	308,148	107,852
Columbiana	415,500	103,875	400,500	140,175
Coshocton	281,654	70,413	265,543	92,940
Cuyahoga	12,376,607	3,094,152	10,083,212	3,529,124
Darke	210,000	52,500	210,000	73,500
Erie	769,661	192,415	748,779	262,073
Franklin	11,278,408	2,819,602	11,936,450	4,177,757
Gallia	265,900	66,475	279,500	97,825
Geauga	304,797	76,199	312,533	109,387
Greene	450,368	112,592	431,239	150,934
Hamilton	9,320,839	2,330,210	9,360,540	3,276,189
Hancock	446,343	111,586	457,296	160,053
Harrison	119,932	29,983	139,842	48,945
Huron	245,162	61,291	216,530	75,785
Knox	328,657	82,164	314,357	110,025
Lake	1,462,017	365,504	1,448,659	507,031
Lucas	1,644,660	411,165	1,779,410	622,794
Medina	501,299	125,325	509,124	178,193
Miami	422,292	105,573	401,960	140,686
Monroe	64,597	16,149	57,141	19,999
Montgomery	5,397,913	1,349,478	5,149,062	1,802,172
Portage	743,738	185,935	768,088	268,831
Shelby	387,981	96,995	359,765	125,918
Stark	1,627,332	406,833	1,699,630	594,871
Summit	1,194,659	298,665	1,084,890	379,712
Tuscarawas	625,335	156,334	638,928	223,625
Union	379,814	94,953	412,441	144,354
Van Wert	143,399	35,850	156,533	54,787
Wayne	515,477	128,869	496,706	173,847
Wood	970,437	242,609	1,024,677	358,637
<b>TOTAL</b>	<b>\$57,405,049</b>	<b>\$14,351,263</b>	<b>\$55,563,271</b>	<b>\$19,447,145</b>



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**TABLE IX**  
**APPOINTED COUNSEL DEATH PENALTY REIMBURSEMENT**  
**FISCAL YEARS 2008, 2009 & 2010**

Table IX shows the amount of funds reimbursed to the counties for death penalty representation. The state reimbursed the counties the amounts shown below. For the 100 percent amount submitted, see Table X.

<b>COUNTY</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>
Allen	\$827	\$0	\$0
Ashtabula	-	-	-
Belmont	3,158	480	14,545
Butler	-	7,779	11,514
Clark	-	-	-
Clinton	-	-	-
Crawford	-	4,663	-
Cuyahoga	147,749	150,640	275,518
Delaware	-	376	-
Erie	-	-	10,958
Fairfield	9,071	-	-
Franklin	72,357	29,913	53,822
Fulton	2,213	-	-
Greene	25,242	-	-
Guernsey	3,784	-	-
Hamilton	12,459	56,812	59,066
Hocking	125	8,308	12,232
Jefferson	10,232	-	-
Licking	1,600	11,371	32,656
Lorain	3,337	4,036	18,465
Lucas	20,501	16,917	1,500
Madison	-	921	5,583
Mahoning	7,508	5,269	110,779
Meigs	-	-	8,233
Montgomery	19,764	1,142	16,881
Morrow	13,406	875	-
Muskingum	5,503	13,084	-
Pike	-	1,780	17,357
Portage	-	-	7,975
Preble	50	4,943	-
Richland	-	21,726	15,507
Ross	5,787	9	5,366
Sandusky	4,439	-	-
Scioto	18	7,703	-
Shelby	-	-	613
Stark	13,157	6,402	50,392
Summit	27,040	20,730	60,523
Trumbull	6,270	3,863	25,198
Warren	325	1,245	513
Wood	6,020	655	17,003
<b>TOTAL</b>	<b>\$421,942</b>	<b>\$381,641</b>	<b>\$832,199</b>

## App. 269

**TABLE X**  
**APPOINTED COUNSEL SYSTEMS CASELOAD, HOURS, AND EXPENSES**  
**FISCAL YEAR 2010**

Table X, on the following pages, shows the caseloads and 100 percent costs submitted for reimbursement during fiscal year 2010. The table shows cases, hours, and expenses broken down into seven categories -- felonies, misdemeanors, juvenile, appeals, death penalty, felonies in municipal/county court, and other. The cases in the category "felonies in municipal/county court" are felonies that are initially filed in municipal or county court. The cases are only in those courts for a brief period of time prior to indictment, the preliminary hearing, or 15 days after arrest, whichever comes first. Since the longest these cases can last is 15 days and the municipal court has no jurisdiction to find a defendant guilty of a felony, and since most of the cases will eventually be picked up at the common pleas court level, they are not counted as a "felony" case at this stage. This prevents giving the same weight to a case that lasts 14 days and the full-fledged case that lasts six months. It also prevents double counting the same case. The category "other" includes postconviction, parole, habeas corpus, extradition, and other miscellaneous cases.

In fiscal year 2010, the state reimbursed the counties at an average monthly rate of 35 percent.

It should be noted the figures in this table are reported using the cash basis of accounting, meaning they show the cases and costs submitted to the Ohio Public Defender that were actually reimbursed during fiscal year 2010 pursuant to the Office of the Ohio Public Defender's reimbursement schedule. Because the cash basis is used, these figures will not match cases and costs reported by counties on either a calendar or fiscal year basis. In addition, the figures contained in the death penalty category are based on reimbursement for both new and ongoing cases. Attorneys may submit more than one bill per case. Often, because of the length of time needed to try a death penalty case, bills are received in more than one fiscal year. Only new cases, however, are recorded under the "cases" column of the death penalty category. For this reason, there are instances where the number of cases is zero, but hours and expense figures are shown. In these instances, the costs are based on cases which originated in a prior fiscal year, but for which bills were received during fiscal year 2010.

The key to Table X is as follows:

**Cases:** The number of cases submitted and accepted for reimbursement after adjustments\*. This is determined by counting each individual and unique case number as one case.

**Total Hours:** The number of total hours reported, after adjustments\*.

**Attorney Fees:** The total amount of attorney fees submitted for reimbursement per each kind of case, after adjustments\*.

**Expenses:** The total amount of expenses submitted for reimbursement after adjustments\*.

**Transcripts:** The total amount of transcript fees submitted for reimbursement after adjustments\*.

**Total Cost:** The 100 percent cost, after adjustments\*, that was subject to reimbursement.

**Avg. Fees/Hour:** Attorney fees submitted divided by the number of hours reported. This does not include expenses.

**Avg. Fees/Case:** The total fees submitted divided by the number of cases reported. This does not include expenses.

**Avg. Ttl. Cost/Case:** Total cost divided by the number of cases submitted, including expenses.

*\*Adjustments include reducing fee requests for exceeding the State or County Fee Schedule, unallowable or undocumented expenses, denying reimbursement for failure to prove indigency, late submissions, etc.*

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**Adams County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	2	2	26.8	\$1,340.00	\$0.00	\$1,340.00	\$50.00	\$670.00	\$0.00	\$670.00
Common Pleas - Felony	4	4	50.2	\$2,620.00	\$0.00	\$2,620.00	\$52.19	\$655.00	\$0.00	\$655.00
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	1	1	2.1	\$110.00	\$0.00	\$110.00	\$52.38	\$110.00	\$0.00	\$110.00
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	8	9	70.0	\$3,895.00	\$0.00	\$3,895.00	\$55.64	\$486.88	\$0.00	\$486.88
Juvenile - Other	68	69	226.8	\$11,776.00	\$0.00	\$11,776.00	\$51.92	\$173.18	\$0.00	\$173.18
Municipal - Felony	12	12	33.8	\$1,821.00	\$0.00	\$1,821.00	\$53.88	\$151.75	\$0.00	\$151.75
Municipal - Misdemeanor	14	14	69.7	\$3,809.00	\$0.00	\$3,809.00	\$54.65	\$272.07	\$0.00	\$272.07
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	109	111	479.4	\$25,371.00	\$0.00	\$25,371.00	\$52.92	\$232.76	\$0.00	\$232.76

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**Allen County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	16	16	246.5	\$9,710.00	\$247.50	\$9,957.50	\$39.39	\$606.88	\$30.94	\$622.34
Common Pleas - Felony	236	250	2858.5	\$120,882.00	\$9,087.75	\$129,969.75	\$42.29	\$512.21	\$60.25	\$550.72
Common Pleas - Misdemeanor	3	3	23.0	\$950.00	\$0.00	\$950.00	\$41.30	\$316.67	\$0.00	\$316.67
Common Pleas - Other	79	92	512.6	\$20,658.00	\$4,201.50	\$24,859.50	\$40.30	\$261.49	\$106.37	\$314.68
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	7	7	22.4	\$885.00	\$0.00	\$885.00	\$39.51	\$126.43	\$0.00	\$126.43
Juvenile - A/D/N	298	556	5871.9	\$232,305.50	\$3,170.52	\$235,476.02	\$39.56	\$779.55	\$18.50	\$790.19
Juvenile - Other	313	331	2030.5	\$86,844.50	\$4,351.75	\$91,196.25	\$42.77	\$277.46	\$27.81	\$291.36
Municipal - Felony	168	169	157.6	\$12,785.00	\$0.00	\$12,785.00	\$81.12	\$76.10	\$0.00	\$76.10
Municipal - Misdemeanor	2147	2158	5876.5	\$259,597.50	\$0.00	\$259,597.50	\$44.18	\$120.91	\$0.00	\$120.91
Municipal - Other	7	7	21.3	\$698.00	\$0.00	\$698.00	\$32.77	\$99.71	\$0.00	\$99.71
Supreme	1	1	13.5	\$540.00	\$0.00	\$540.00	\$40.00	\$540.00	\$0.00	\$540.00
*****Totals:	3275	3590	17634.3	\$745,855.50	\$21,059.02	\$766,914.52	\$42.30	\$227.74	\$11.40	\$234.17

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**Ashland County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	5	5	83.1	\$4,171.00	\$12.10	\$4,183.10	\$50.19	\$834.20	\$2.42	\$836.62
Common Pleas - Felony	66	67	480.9	\$25,215.00	\$100.50	\$25,315.50	\$52.43	\$382.05	\$3.05	\$383.57
Common Pleas - Misdemeanor	2	2	19.1	\$986.00	\$0.00	\$986.00	\$51.62	\$493.00	\$0.00	\$493.00
Common Pleas - Other	7	7	18.5	\$1,018.00	\$0.00	\$1,018.00	\$55.03	\$145.43	\$0.00	\$145.43
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Felony	2	2	9.7	\$214.00	\$0.00	\$214.00	\$22.06	\$107.00	\$0.00	\$107.00
Municipal - Misdemeanor	200	201	603.9	\$28,748.50	\$0.00	\$28,748.50	\$47.60	\$143.74	\$0.00	\$143.74
Municipal - Other	14	14	31.7	\$1,586.00	\$0.00	\$1,586.00	\$50.03	\$113.29	\$0.00	\$113.29
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	296	298	1246.9	\$61,938.50	\$112.60	\$62,051.10	\$49.67	\$209.25	\$0.72	\$209.63

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**Ashtabula County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	12	12	193.3	\$7,254.00	\$3,232.51	\$10,486.51	\$37.53	\$604.50	\$533.33	\$873.88
Common Pleas - Felony	85	88	1126.6	\$45,629.00	\$5,328.25	\$50,957.25	\$40.50	\$536.81	\$66.74	\$599.50
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	44	58	383.5	\$15,308.00	\$16,981.75	\$32,289.75	\$39.92	\$347.91	\$768.97	\$733.86
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	147	253	2233.5	\$92,451.00	\$998.38	\$93,449.38	\$41.39	\$628.92	\$13.58	\$635.71
Juvenile - Other	270	308	2332.7	\$95,402.00	\$487.05	\$95,889.05	\$40.90	\$353.34	\$3.37	\$355.14
Municipal - Felony	76	78	346.6	\$12,154.00	\$38.50	\$12,192.50	\$35.07	\$159.92	\$1.01	\$160.43
Municipal - Misdemeanor	138	138	657.0	\$26,266.00	\$142.22	\$26,408.22	\$39.98	\$190.33	\$1.31	\$191.36
Municipal - Other	18	18	6.5	\$289.00	\$1,886.25	\$2,175.25	\$44.46	\$16.06	\$143.94	\$120.85
Supreme	1	1	25.8	\$1,000.00	\$346.00	\$1,346.00	\$38.76	\$1,000.00	\$346.00	\$1,346.00
*****Totals:	791	954	7305.5	\$295,753.00	\$29,440.91	\$325,193.91	\$40.48	\$373.90	\$65.75	\$411.12

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**Athens County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	2	2	28.1	\$1,405.00	\$0.00	\$1,405.00	\$50.00	\$702.50	\$0.00	\$702.50
Common Pleas - Felony	24	25	256.0	\$11,847.50	\$295.70	\$12,143.20	\$46.28	\$493.65	\$12.32	\$505.97
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	12	14	42.4	\$2,120.00	\$3,355.00	\$5,475.00	\$50.00	\$176.67	\$559.17	\$456.25
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	58	129	998.3	\$44,393.00	\$260.94	\$44,653.94	\$44.47	\$765.40	\$4.50	\$769.90
Juvenile - Other	58	61	413.2	\$20,490.00	\$103.14	\$20,593.14	\$49.59	\$353.28	\$1.78	\$355.05
Municipal - Felony	6	8	17.6	\$880.00	\$260.00	\$1,140.00	\$50.00	\$146.67	\$74.33	\$190.00
Municipal - Misdemeanor	47	49	125.7	\$6,284.50	\$163.19	\$6,447.69	\$50.00	\$133.71	\$6.86	\$137.18
Municipal - Other	7	7	6.0	\$298.50	\$393.00	\$691.50	\$49.75	\$42.64	\$112.29	\$98.79
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	214	295	1887.3	\$87,718.50	\$4,830.97	\$92,549.47	\$46.48	\$409.90	\$41.70	\$432.47

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**Auglaize County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	3	3	58.3	\$1,457.50	\$6.75	\$1,464.25	\$25.00	\$485.83	\$2.25	\$488.08
Common Pleas - Felony	18	19	208.1	\$7,708.00	\$0.00	\$7,708.00	\$37.04	\$428.22	\$0.00	\$428.22
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	1	1	2.2	\$87.00	\$0.00	\$87.00	\$39.55	\$87.00	\$0.00	\$87.00
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Misdemeanor	6	6	26.8	\$1,070.00	\$0.00	\$1,070.00	\$39.93	\$178.33	\$0.00	\$178.33
Municipal - Other	2	2	11.8	\$443.00	\$0.00	\$443.00	\$37.54	\$221.50	\$0.00	\$221.50
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	30	31	307.2	\$10,765.50	\$6.75	\$10,772.25	\$35.04	\$358.85	\$0.23	\$359.08



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**Belmont County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	9	9	80.3	\$3,936.25	\$1,630.65	\$5,566.90	\$49.02	\$437.36	\$381.88	\$618.54
Common Pleas - Felony	30	34	615.6	\$30,644.00	\$42.72	\$30,686.72	\$49.78	\$1,021.47	\$8.52	\$1,022.89
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	7	7	41.6	\$2,194.00	\$1,501.41	\$3,695.41	\$52.74	\$313.43	\$431.99	\$527.92
Death Penalty	1	2	384.1	\$38,405.00	\$3,152.81	\$41,557.81	\$99.99	\$38,405.00	\$3,558.31	\$41,557.81
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	45	80	733.1	\$36,371.00	\$620.78	\$36,991.78	\$49.61	\$808.24	\$16.97	\$822.04
Juvenile - Other	27	29	194.4	\$9,936.00	\$1,396.38	\$11,332.38	\$51.11	\$368.00	\$102.55	\$419.72
Municipal - Felony	21	21	103.0	\$5,154.00	\$41.67	\$5,195.67	\$50.04	\$245.43	\$1.98	\$247.41
Municipal - Misdemeanor	51	53	340.6	\$17,521.00	\$98.53	\$17,619.53	\$51.44	\$343.55	\$1.93	\$345.48
Municipal - Other	6	6	12.1	\$636.00	\$360.31	\$996.31	\$52.56	\$106.00	\$122.76	\$166.05
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	197	241	2504.8	\$144,797.25	\$8,845.26	\$153,642.51	\$57.81	\$735.01	\$74.54	\$779.91

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**Brown County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	16	31	15.0	\$600.00	\$10,408.00	\$11,008.00	\$40.00	\$37.50	\$1,301.00	\$688.00
Common Pleas - Felony	3	3	34.1	\$1,458.00	\$0.00	\$1,458.00	\$42.76	\$486.00	\$0.00	\$486.00
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	5	11	0.0	\$0.00	\$1,726.00	\$1,726.00	\$0.00	\$0.00	\$690.40	\$345.20
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	56	58	314.1	\$15,181.00	\$17.50	\$15,198.50	\$48.33	\$271.09	\$0.31	\$271.40
Juvenile - Other	21	21	70.7	\$3,242.00	\$0.00	\$3,242.00	\$45.86	\$154.38	\$0.00	\$154.38
Municipal - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Misdemeanor	3	3	16.5	\$778.00	\$0.00	\$778.00	\$47.15	\$259.33	\$0.00	\$259.33
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	104	127	450.4	\$21,259.00	\$12,151.50	\$33,410.50	\$47.20	\$204.41	\$233.51	\$321.25

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**Butler County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	97	99	1889.3	\$65,243.00	\$1,273.94	\$66,516.94	\$34.53	\$672.61	\$21.01	\$685.74
Common Pleas - Felony	1276	1320	16672.9	\$715,497.00	\$8,508.77	\$724,005.77	\$42.91	\$560.73	\$11.53	\$567.40
Common Pleas - Misdemeanor	21	21	158.8	\$5,971.00	\$55.35	\$6,026.35	\$37.60	\$284.33	\$5.03	\$286.97
Common Pleas - Other	410	440	1865.8	\$80,488.00	\$33.76	\$80,521.76	\$43.14	\$196.31	\$0.08	\$196.39
Death Penalty	1	2	793.8	\$32,801.00	\$98.23	\$32,899.23	\$41.32	\$32,801.00	\$98.23	\$32,899.23
Domestic Relations	252	411	1021.9	\$40,125.50	\$65.24	\$40,190.74	\$39.27	\$159.23	\$0.38	\$159.49
Juvenile - A/D/N	486	1172	5886.6	\$211,776.50	\$61.48	\$211,837.98	\$35.98	\$435.75	\$0.13	\$435.88
Juvenile - Other	2047	2838	8749.6	\$350,175.50	\$140.91	\$350,316.41	\$40.02	\$171.07	\$0.10	\$171.14
Municipal - Felony	618	620	1972.8	\$82,292.00	\$216.60	\$82,508.60	\$41.71	\$133.16	\$0.77	\$133.51
Municipal - Misdemeanor	3457	3485	9580.5	\$352,080.00	\$2,984.41	\$355,064.41	\$36.75	\$101.85	\$1.70	\$102.71
Municipal - Other	174	180	480.8	\$17,276.00	\$634.50	\$17,910.50	\$35.93	\$99.29	\$7.29	\$102.93
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	8839	10588	49072.8	\$1,953,725.50	\$14,073.19	\$1,967,798.69	\$39.81	\$221.03	\$2.83	\$222.63

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**Carroll County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Felony	20	20	154.0	\$7,590.00	\$0.00	\$7,590.00	\$49.29	\$379.50	\$0.00	\$379.50
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - Other	1	1	4.0	\$162.00	\$0.00	\$162.00	\$40.50	\$162.00	\$0.00	\$162.00
Municipal - Felony	1	1	1.9	\$101.00	\$0.00	\$101.00	\$53.16	\$101.00	\$0.00	\$101.00
Municipal - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	22	22	159.9	\$7,853.00	\$0.00	\$7,853.00	\$49.11	\$356.95	\$0.00	\$356.95

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**Champaign County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	5	5	115.7	\$3,855.00	\$3.19	\$3,858.19	\$33.32	\$771.00	\$0.64	\$771.64
Common Pleas - Felony	156	160	1467.3	\$75,190.00	\$1,194.38	\$76,384.38	\$51.24	\$481.99	\$8.76	\$489.64
Common Pleas - Misdemeanor	4	4	24.9	\$1,286.00	\$0.00	\$1,286.00	\$51.65	\$321.50	\$0.00	\$321.50
Common Pleas - Other	53	60	204.9	\$10,058.00	\$9,940.20	\$19,998.20	\$49.09	\$189.77	\$374.93	\$377.32
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	28	84	267.1	\$13,414.00	\$13.50	\$13,427.50	\$50.22	\$479.07	\$0.48	\$479.55
Juvenile - Other	167	186	853.3	\$42,788.50	\$63.11	\$42,851.61	\$50.14	\$256.22	\$0.38	\$256.60
Municipal - Felony	38	39	121.3	\$6,355.00	\$102.94	\$6,457.94	\$52.39	\$167.24	\$2.71	\$169.95
Municipal - Misdemeanor	541	549	1703.0	\$90,680.00	\$491.89	\$91,171.89	\$53.25	\$167.62	\$0.91	\$168.52
Municipal - Other	46	46	123.4	\$6,533.00	\$56.00	\$6,589.00	\$52.94	\$142.02	\$1.22	\$143.24
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	1038	1133	4880.9	\$250,159.50	\$11,865.21	\$262,024.71	\$51.25	\$241.00	\$21.16	\$252.43

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**Clark County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	27	27	755.7	\$25,755.00	\$450.61	\$26,205.61	\$34.08	\$953.89	\$21.84	\$970.58
Common Pleas - Felony	99	114	1947.3	\$102,389.00	\$196.34	\$102,585.34	\$52.58	\$1,034.23	\$3.07	\$1,036.22
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	2	2	93.0	\$5,079.00	\$0.00	\$5,079.00	\$54.61	\$2,539.50	\$0.00	\$2,539.50
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	1	1	3.5	\$188.00	\$0.00	\$188.00	\$53.71	\$188.00	\$0.00	\$188.00
Juvenile - A/D/N	130	242	1727.7	\$86,280.00	\$256.65	\$86,536.65	\$49.94	\$663.69	\$1.97	\$665.67
Juvenile - Other	162	211	1498.0	\$70,814.10	\$498.95	\$71,313.05	\$47.27	\$437.12	\$3.08	\$440.20
Municipal - Felony	8	8	29.7	\$1,566.50	\$0.42	\$1,566.92	\$52.74	\$195.81	\$0.05	\$195.87
Municipal - Misdemeanor	69	72	272.3	\$14,568.20	\$2.10	\$14,570.30	\$53.50	\$211.13	\$0.03	\$211.16
Municipal - Other	5	6	17.1	\$895.00	\$0.84	\$895.84	\$52.34	\$179.00	\$0.17	\$179.17
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	503	683	6344.3	\$307,534.80	\$1,405.91	\$308,940.71	\$48.47	\$611.40	\$3.29	\$614.20

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**Clermont County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	11	11	203.6	\$8,129.00	\$0.00	\$8,129.00	\$39.93	\$739.00	\$0.00	\$739.00
Common Pleas - Felony	108	109	1246.0	\$53,985.70	\$79.12	\$54,064.82	\$43.33	\$499.87	\$0.73	\$500.60
Common Pleas - Misdemeanor	8	8	40.5	\$1,802.00	\$0.00	\$1,802.00	\$44.49	\$225.25	\$0.00	\$225.25
Common Pleas - Other	5	5	46.8	\$1,921.00	\$0.00	\$1,921.00	\$41.05	\$384.20	\$0.00	\$384.20
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	156	210	1115.4	\$48,891.00	\$1.05	\$48,892.05	\$43.83	\$313.40	\$0.01	\$313.41
Juvenile - Other	67	74	526.9	\$21,637.50	\$0.00	\$21,637.50	\$41.07	\$322.95	\$0.00	\$322.95
Municipal - Felony	55	55	151.3	\$6,820.00	\$0.00	\$6,820.00	\$45.08	\$124.00	\$0.00	\$124.00
Municipal - Misdemeanor	102	102	417.9	\$18,684.00	\$0.00	\$18,684.00	\$44.71	\$183.18	\$0.00	\$183.18
Municipal - Other	1	1	0.7	\$35.00	\$0.00	\$35.00	\$50.00	\$35.00	\$0.00	\$35.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	513	575	3749.1	\$161,905.20	\$80.17	\$161,985.37	\$43.19	\$315.60	\$0.16	\$315.76

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**Clinton County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	41	68	303.8	\$16,092.00	\$0.00	\$16,092.00	\$52.97	\$392.49	\$0.00	\$392.49
Juvenile - Other	28	33	163.0	\$8,165.50	\$0.00	\$8,165.50	\$50.10	\$291.63	\$0.00	\$291.63
Municipal - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	69	101	466.8	\$24,257.50	\$0.00	\$24,257.50	\$51.97	\$351.56	\$0.00	\$351.56



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**Columbiana County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	15	17	36.1	\$1,305.00	\$8,295.50	\$9,600.50	\$36.15	\$87.00	\$1,105.67	\$640.03
Common Pleas - Felony	17	17	0.0	\$0.00	\$7,824.00	\$7,824.00	\$0.00	\$0.00	\$466.76	\$460.24
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	18	18	0.0	\$0.00	\$2,232.00	\$2,232.00	\$0.00	\$0.00	\$248.00	\$124.00
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	1	1	0.0	\$0.00	\$55.76	\$55.76	\$0.00	\$0.00	\$111.52	\$55.76
Juvenile - Other	1	1	0.0	\$0.00	\$535.00	\$535.00	\$0.00	\$0.00	\$535.00	\$535.00
Municipal - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	52	54	36.1	\$1,305.00	\$18,942.26	\$20,247.26	\$36.15	\$25.10	\$569.82	\$389.37

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**Coshocton County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Felony	33	34	556.1	\$25,675.50	\$2,072.84	\$27,748.34	\$46.17	\$778.05	\$62.81	\$840.86
Common Pleas - Misdemeanor	2	2	18.8	\$883.75	\$0.00	\$883.75	\$47.01	\$441.88	\$0.00	\$441.88
Common Pleas - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Felony	1	1	5.6	\$252.00	\$0.00	\$252.00	\$45.00	\$252.00	\$0.00	\$252.00
Municipal - Misdemeanor	53	55	373.0	\$16,022.50	\$3.36	\$16,025.86	\$42.96	\$302.31	\$0.06	\$302.37
Municipal - Other	2	2	7.0	\$319.50	\$0.00	\$319.50	\$45.64	\$159.75	\$0.00	\$159.75
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	91	94	960.5	\$43,153.25	\$2,076.20	\$45,229.45	\$44.93	\$474.21	\$22.82	\$497.03

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**Crawford County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	1	1	15.0	\$750.00	\$0.00	\$750.00	\$50.00	\$750.00	\$0.00	\$750.00
Common Pleas - Felony	143	150	1700.3	\$86,902.00	\$188.39	\$87,090.39	\$51.11	\$607.71	\$1.32	\$609.02
Common Pleas - Misdemeanor	4	4	57.3	\$2,322.00	\$0.00	\$2,322.00	\$40.52	\$580.50	\$0.00	\$580.50
Common Pleas - Other	29	30	115.5	\$5,816.00	\$0.00	\$5,816.00	\$50.35	\$200.55	\$0.00	\$200.55
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	87	171	755.6	\$39,406.00	\$0.52	\$39,406.52	\$52.15	\$452.94	\$0.01	\$452.95
Juvenile - Other	125	145	498.9	\$25,483.00	\$0.00	\$25,483.00	\$51.08	\$203.86	\$0.00	\$203.86
Municipal - Felony	78	81	263.4	\$13,255.00	\$0.00	\$13,255.00	\$50.32	\$169.94	\$0.00	\$169.94
Municipal - Misdemeanor	187	190	947.5	\$49,403.00	\$41.72	\$49,444.72	\$52.14	\$264.19	\$0.22	\$264.41
Municipal - Other	10	10	47.4	\$2,249.00	\$0.00	\$2,249.00	\$47.45	\$224.90	\$0.00	\$224.90
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	664	782	4400.9	\$225,586.00	\$230.63	\$225,816.63	\$51.26	\$339.74	\$0.35	\$340.09

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**Cuyahoga County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	569	600	9964.4	\$320,420.00	\$219,782.66	\$540,202.66	\$32.16	\$563.13	\$768.56	\$949.39
Common Pleas - Felony	6530	7633	120493.1	\$4,633,887.70	\$109,349.94	\$4,743,237.64	\$38.46	\$709.63	\$23.31	\$726.38
Common Pleas - Misdemeanor	5	5	27.7	\$810.00	\$0.00	\$810.00	\$29.24	\$162.00	\$0.00	\$162.00
Common Pleas - Other	3260	4035	11421.4	\$496,921.70	\$127,995.25	\$624,916.95	\$43.51	\$152.43	\$73.47	\$191.69
Death Penalty	46	139	15766.5	\$676,908.00	\$242,589.71	\$919,497.71	\$42.93	\$14,715.39	\$6,421.04	\$19,989.08
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	1469	2456	21119.4	\$765,893.00	\$2,867.59	\$768,760.59	\$36.26	\$521.37	\$4.06	\$523.32
Juvenile - Other	5304	5983	48353.5	\$1,738,517.75	\$15,162.20	\$1,753,679.95	\$35.95	\$327.77	\$5.73	\$330.63
Municipal - Felony	349	351	1511.3	\$45,783.00	\$0.00	\$45,783.00	\$30.29	\$131.18	\$0.00	\$131.18
Municipal - Misdemeanor	3245	3308	16785.8	\$455,558.50	\$1.76	\$455,560.26	\$27.14	\$140.39	\$0.00	\$140.39
Municipal - Other	212	217	765.3	\$20,275.50	\$0.00	\$20,275.50	\$26.49	\$95.64	\$0.00	\$95.64
Supreme	6	6	109.9	\$4,336.00	\$88.42	\$4,424.42	\$39.45	\$722.67	\$14.74	\$737.40
*****Totals:	20995	24733	246318.3	\$9,159,311.15	\$717,837.53	\$9,877,148.68	\$37.18	\$436.26	\$55.29	\$470.45

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**Darke County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	2	2	41.4	\$1,656.00	\$5.80	\$1,661.80	\$40.00	\$828.00	\$2.90	\$830.90
Common Pleas - Felony	15	15	0.0	\$0.00	\$3,386.64	\$3,386.64	\$0.00	\$0.00	\$225.78	\$225.78
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Felony	1	1	0.0	\$0.00	\$5.96	\$5.96	\$0.00	\$0.00	\$5.96	\$5.96
Municipal - Misdemeanor	2	2	0.0	\$0.00	\$132.09	\$132.09	\$0.00	\$0.00	\$66.05	\$66.05
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	20	20	41.4	\$1,656.00	\$3,530.49	\$5,186.49	\$40.00	\$82.80	\$176.52	\$259.32

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**Defiance County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	1	1	28.8	\$1,450.00	\$0.00	\$1,450.00	\$50.35	\$1,450.00	\$0.00	\$1,450.00
Common Pleas - Felony	158	168	1431.1	\$79,908.00	\$3,155.30	\$83,063.30	\$55.84	\$505.75	\$30.83	\$525.72
Common Pleas - Misdemeanor	5	5	24.1	\$1,325.00	\$74.00	\$1,399.00	\$54.98	\$265.00	\$29.60	\$279.80
Common Pleas - Other	63	69	195.5	\$10,090.00	\$6,872.00	\$16,962.00	\$51.61	\$160.16	\$242.86	\$269.24
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	22	47	434.9	\$20,620.00	\$4,793.50	\$25,413.50	\$47.41	\$937.27	\$513.07	\$1,155.16
Juvenile - Other	44	51	246.3	\$12,723.00	\$0.00	\$12,723.00	\$51.66	\$289.16	\$0.00	\$289.16
Municipal - Felony	45	45	137.2	\$7,365.00	\$33.27	\$7,398.27	\$53.68	\$163.67	\$0.74	\$164.41
Municipal - Misdemeanor	158	158	464.3	\$26,705.00	\$33.27	\$26,738.27	\$57.52	\$169.02	\$0.21	\$169.23
Municipal - Other	12	13	24.7	\$1,338.00	\$0.00	\$1,338.00	\$54.17	\$111.50	\$0.00	\$111.50
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	508	557	2986.9	\$161,524.00	\$14,961.34	\$176,485.34	\$54.08	\$317.96	\$62.35	\$347.41

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**Delaware County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	25	25	418.6	\$17,973.00	\$120.92	\$18,093.92	\$42.94	\$718.92	\$4.84	\$723.76
Common Pleas - Felony	444	529	6664.0	\$338,240.25	\$30,583.30	\$368,823.55	\$50.76	\$761.80	\$79.04	\$830.68
Common Pleas - Misdemeanor	6	6	36.7	\$1,829.00	\$0.00	\$1,829.00	\$49.84	\$304.83	\$0.00	\$304.83
Common Pleas - Other	176	200	584.2	\$29,055.66	\$22,882.88	\$51,938.54	\$49.74	\$165.09	\$259.89	\$295.11
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	145	423	4141.7	\$197,571.00	\$1,185.79	\$198,756.79	\$47.70	\$1,362.56	\$13.54	\$1,370.74
Juvenile - Other	666	866	5251.4	\$262,299.00	\$2,107.32	\$264,406.32	\$49.95	\$393.84	\$5.67	\$397.01
Municipal - Felony	78	78	219.7	\$11,182.00	\$34.81	\$11,216.81	\$50.90	\$143.36	\$0.45	\$143.81
Municipal - Misdemeanor	1022	1043	6410.9	\$333,069.50	\$86.86	\$333,156.36	\$51.95	\$325.90	\$0.08	\$325.98
Municipal - Other	78	79	273.2	\$14,116.00	\$767.53	\$14,883.53	\$51.67	\$180.97	\$19.65	\$190.81
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	2640	3249	24000.4	\$1,205,335.41	\$57,769.41	\$1,263,104.82	\$50.22	\$456.57	\$33.47	\$478.45

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**Erie County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	6	6	97.0	\$4,794.50	\$202.02	\$4,996.52	\$49.43	\$799.08	\$57.94	\$832.75
Common Pleas - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Death Penalty	2	5	460.9	\$20,000.00	\$11,309.17	\$31,309.17	\$43.39	\$10,000.00	\$5,654.59	\$15,654.59
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	14	20	278.2	\$12,505.00	\$0.00	\$12,505.00	\$44.95	\$893.21	\$0.00	\$893.21
Juvenile - Other	4	4	73.9	\$1,205.00	\$35.35	\$1,240.35	\$16.31	\$301.25	\$8.84	\$310.09
Municipal - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	26	35	910.0	\$38,504.50	\$11,546.54	\$50,051.04	\$42.31	\$1,480.94	\$449.70	\$1,925.04



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**Fairfield County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	12	12	304.7	\$9,152.00	\$17.17	\$9,169.17	\$30.04	\$762.67	\$1.43	\$764.10
Common Pleas - Felony	390	426	6952.6	\$280,603.60	\$8,337.25	\$288,940.85	\$40.36	\$719.50	\$22.41	\$740.87
Common Pleas - Misdemeanor	12	12	177.4	\$6,537.00	\$1,275.00	\$7,812.00	\$36.85	\$544.75	\$106.25	\$651.00
Common Pleas - Other	159	174	1047.1	\$42,079.50	\$1,340.73	\$43,420.23	\$40.19	\$264.65	\$16.24	\$273.08
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	68	89	587.9	\$11,933.00	\$277.97	\$12,210.97	\$20.30	\$175.49	\$5.73	\$179.57
Juvenile - A/D/N	243	571	5615.0	\$227,012.50	\$0.00	\$227,012.50	\$40.43	\$934.21	\$0.00	\$934.21
Juvenile - Other	222	297	2134.5	\$89,468.00	\$0.00	\$89,468.00	\$41.92	\$403.01	\$0.00	\$403.01
Municipal - Felony	151	154	795.0	\$30,533.00	\$65.57	\$30,598.57	\$38.41	\$202.21	\$0.43	\$202.64
Municipal - Misdemeanor	1531	1605	14408.6	\$588,967.00	\$3,374.27	\$592,341.27	\$40.88	\$384.69	\$2.34	\$386.90
Municipal - Other	257	296	1502.6	\$61,404.00	\$208.77	\$61,612.77	\$40.87	\$238.93	\$0.81	\$239.74
Supreme	1	1	31.5	\$1,260.00	\$0.00	\$1,260.00	\$40.00	\$1,260.00	\$0.00	\$1,260.00
*****Totals:	3046	3637	33556.9	\$1,348,949.60	\$14,896.73	\$1,363,846.33	\$40.20	\$442.86	\$5.54	\$447.75

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**Fayette County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	14	15	180.1	\$5,005.00	\$4,356.99	\$9,361.99	\$27.79	\$357.50	\$621.71	\$668.71
Common Pleas - Felony	2	2	5.1	\$255.00	\$395.50	\$650.50	\$50.00	\$127.50	\$395.50	\$325.25
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	8	8	4.9	\$245.00	\$924.00	\$1,169.00	\$50.00	\$30.63	\$231.00	\$146.13
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	42	81	487.7	\$23,470.00	\$563.00	\$24,033.00	\$48.12	\$558.81	\$30.65	\$572.21
Juvenile - Other	18	18	58.5	\$2,925.00	\$0.00	\$2,925.00	\$50.00	\$162.50	\$0.00	\$162.50
Municipal - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	84	124	736.3	\$31,900.00	\$6,239.49	\$38,139.49	\$43.32	\$379.76	\$150.36	\$454.04

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**Franklin County**

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Appellate	84	109	2863.8	\$125,598.00	\$9,177.28	\$134,775.28	\$43.86	\$1,495.21	\$193.80	\$1,604.47
Common Pleas - Felony	1858	1942	44898.9	\$2,263,797.00	\$134,491.43	\$2,398,288.43	\$50.42	\$1,218.41	\$79.57	\$1,290.79
Common Pleas - Misdemeanor	2	2	9.5	\$518.00	\$0.42	\$518.42	\$54.53	\$259.00	\$0.21	\$259.21
Common Pleas - Other	465	522	7789.3	\$338,898.00	\$153,389.50	\$492,287.50	\$43.51	\$728.81	\$493.92	\$1,058.68
Death Penalty	6	16	2313.8	\$116,680.00	\$54,396.26	\$171,076.26	\$50.43	\$19,446.67	\$9,597.04	\$28,512.71
Domestic Relations	93	98	944.7	\$31,812.00	\$386.00	\$32,198.00	\$33.67	\$342.06	\$8.13	\$346.22
Juvenile - A/D/N	1731	2598	35763.9	\$1,736,729.25	\$8,084.19	\$1,744,813.44	\$48.56	\$1,003.31	\$4.74	\$1,007.98
Juvenile - Other	3053	3560	43372.8	\$1,933,063.66	\$19,681.50	\$1,952,745.16	\$44.57	\$633.17	\$7.77	\$639.62
Municipal - Felony	43	43	103.7	\$5,644.00	\$0.00	\$5,644.00	\$54.43	\$131.26	\$0.00	\$131.26
Municipal - Misdemeanor	849	866	6812.4	\$357,556.00	\$1,427.26	\$358,983.26	\$52.49	\$421.15	\$3.02	\$422.83
Municipal - Other	146	161	938.9	\$46,155.50	\$702.61	\$46,858.11	\$49.16	\$316.13	\$9.54	\$320.95
Supreme	3	3	73.5	\$2,880.00	\$172.44	\$3,052.44	\$39.18	\$960.00	\$57.48	\$1,017.48
*****Totals:	8333	9920	145885.2	\$6,959,331.41	\$381,908.89	\$7,341,240.30	\$47.70	\$835.15	\$58.58	\$880.98

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**Fulton County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	2	3	47.2	\$1,530.00	\$0.00	\$1,530.00	\$32.42	\$765.00	\$0.00	\$765.00
Common Pleas - Felony	123	127	1080.1	\$56,142.50	\$5.22	\$56,147.72	\$51.98	\$456.44	\$0.04	\$456.49
Common Pleas - Misdemeanor	2	2	12.8	\$710.00	\$0.00	\$710.00	\$55.47	\$355.00	\$0.00	\$355.00
Common Pleas - Other	41	45	160.3	\$7,694.00	\$0.00	\$7,694.00	\$48.00	\$187.66	\$0.00	\$187.66
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	6	6	27.3	\$988.00	\$0.00	\$988.00	\$36.19	\$164.67	\$0.00	\$164.67
Juvenile - A/D/N	27	50	490.8	\$26,139.00	\$532.84	\$26,671.84	\$53.26	\$968.11	\$23.76	\$987.85
Juvenile - Other	61	62	259.1	\$13,734.00	\$169.68	\$13,903.68	\$53.01	\$225.15	\$2.78	\$227.93
Municipal - Felony	52	53	171.5	\$8,784.00	\$1.05	\$8,785.05	\$51.22	\$168.92	\$0.02	\$168.94
Municipal - Misdemeanor	252	260	1070.7	\$58,131.00	\$10.92	\$58,141.92	\$54.29	\$230.68	\$0.04	\$230.72
Municipal - Other	5	5	15.8	\$847.00	\$0.44	\$847.44	\$53.61	\$169.40	\$0.09	\$169.49
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	571	613	3335.6	\$174,699.50	\$720.15	\$175,419.65	\$52.37	\$305.95	\$1.45	\$307.21

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**Gallia County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Felony	4	4	0.0	\$0.00	\$5,022.00	\$5,022.00	\$0.00	\$0.00	\$2,511.00	\$1,255.50
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	3	4	0.0	\$0.00	\$5,787.00	\$5,787.00	\$0.00	\$0.00	\$3,858.00	\$1,929.00
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	7	8	0.0	\$0.00	\$10,809.00	\$10,809.00	\$0.00	\$0.00	\$3,088.29	\$1,544.14

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**Geauga County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	2	2	0.0	\$0.00	\$3,112.50	\$3,112.50	\$0.00	\$0.00	\$3,112.50	\$1,556.25
Common Pleas - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	11	13	151.8	\$8,288.00	\$0.00	\$8,288.00	\$54.60	\$753.45	\$0.00	\$753.45
Juvenile - Other	15	15	52.5	\$2,637.00	\$0.00	\$2,637.00	\$50.23	\$175.80	\$0.00	\$175.80
Municipal - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	28	30	204.3	\$10,925.00	\$3,112.50	\$14,037.50	\$53.48	\$390.18	\$222.32	\$501.34

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**Greene County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	29	29	1024.0	\$24,325.00	\$418.41	\$24,743.41	\$23.75	\$838.79	\$14.43	\$853.22
Common Pleas - Felony	521	567	8264.9	\$375,800.00	\$37,080.40	\$412,880.40	\$45.47	\$721.31	\$71.55	\$792.48
Common Pleas - Misdemeanor	4	4	56.5	\$2,695.00	\$0.00	\$2,695.00	\$47.70	\$673.75	\$0.00	\$673.75
Common Pleas - Other	134	137	709.7	\$33,172.50	\$1,079.35	\$34,251.85	\$46.74	\$247.56	\$8.05	\$255.61
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Other	3	3	0.0	\$0.00	\$575.00	\$575.00	\$0.00	\$0.00	\$383.33	\$191.67
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	691	740	10055.1	\$435,992.50	\$39,153.16	\$475,145.66	\$43.36	\$630.96	\$57.78	\$687.62

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**Guernsey County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	6	6	51.3	\$2,562.50	\$693.43	\$3,255.93	\$49.95	\$427.08	\$115.57	\$542.66
Common Pleas - Felony	174	193	1723.8	\$88,322.50	\$8,845.78	\$97,168.28	\$51.24	\$507.60	\$62.34	\$558.44
Common Pleas - Misdemeanor	4	4	32.2	\$1,703.00	\$189.00	\$1,892.00	\$52.89	\$425.75	\$94.50	\$473.00
Common Pleas - Other	64	72	176.0	\$8,896.00	\$6,352.50	\$15,248.50	\$50.55	\$139.00	\$198.52	\$238.26
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	42	111	859.8	\$45,297.50	\$148.03	\$45,445.53	\$52.68	\$1,078.51	\$3.52	\$1,082.04
Juvenile - Other	156	165	587.1	\$30,642.50	\$23.94	\$30,666.44	\$52.19	\$196.43	\$0.15	\$196.58
Municipal - Felony	90	91	232.5	\$12,061.00	\$0.00	\$12,061.00	\$51.88	\$134.01	\$0.00	\$134.01
Municipal - Misdemeanor	505	515	2456.9	\$128,038.50	\$85.31	\$128,123.81	\$52.11	\$253.54	\$0.33	\$253.71
Municipal - Other	12	13	32.7	\$1,712.00	\$1,680.00	\$3,392.00	\$52.35	\$142.67	\$280.00	\$282.67
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	1053	1170	6152.3	\$319,235.50	\$18,017.99	\$337,253.49	\$51.89	\$303.17	\$26.90	\$320.28



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**Hamilton County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	244	246	5812.7	\$220,037.75	\$0.00	\$220,037.75	\$37.85	\$901.79	\$0.00	\$901.79
Common Pleas - Felony	3879	4494	60658.2	\$2,420,217.75	\$595.46	\$2,420,813.21	\$39.90	\$623.93	\$0.15	\$624.08
Common Pleas - Misdemeanor	21	21	213.0	\$5,557.50	\$0.00	\$5,557.50	\$26.09	\$264.64	\$0.00	\$264.64
Common Pleas - Other	1261	1417	8018.8	\$339,783.50	\$355.57	\$340,139.07	\$42.37	\$269.46	\$0.28	\$269.74
Death Penalty	14	21	4521.6	\$199,538.00	\$5,287.55	\$204,825.55	\$44.13	\$14,252.71	\$391.93	\$14,630.40
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	747	2103	17027.2	\$720,268.25	\$138.87	\$720,407.12	\$42.30	\$964.21	\$0.19	\$964.40
Juvenile - Other	623	670	2862.0	\$114,124.75	\$0.00	\$114,124.75	\$39.88	\$183.19	\$0.00	\$183.19
Municipal - Felony	1998	2007	5596.2	\$232,261.00	\$95.00	\$232,356.00	\$41.50	\$116.25	\$0.05	\$116.29
Municipal - Misdemeanor	1286	1297	6496.3	\$252,439.00	\$0.00	\$252,439.00	\$38.86	\$196.30	\$0.00	\$196.30
Municipal - Other	24	24	76.2	\$1,800.00	\$0.00	\$1,800.00	\$23.62	\$75.00	\$0.00	\$75.00
Supreme	29	29	400.5	\$17,747.30	\$692.90	\$18,440.20	\$44.31	\$611.98	\$23.89	\$635.87
*****Totals:	10126	12329	111682.7	\$4,523,774.80	\$7,165.35	\$4,530,940.15	\$40.51	\$446.75	\$0.73	\$447.46

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**Hancock County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	4	4	76.1	\$2,188.00	\$278.40	\$2,466.40	\$28.75	\$547.00	\$69.60	\$616.60
Common Pleas - Felony	57	63	825.8	\$30,728.00	\$5,555.43	\$36,283.43	\$37.21	\$539.09	\$97.46	\$636.55
Common Pleas - Misdemeanor	2	2	12.9	\$570.00	\$0.00	\$570.00	\$44.19	\$285.00	\$0.00	\$285.00
Common Pleas - Other	13	17	25.5	\$1,068.00	\$6,271.74	\$7,339.74	\$41.88	\$82.15	\$962.86	\$564.60
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	24	33	331.8	\$13,296.00	\$4,630.96	\$17,926.96	\$40.07	\$554.00	\$386.46	\$746.96
Juvenile - Other	21	22	202.2	\$8,181.00	\$10.25	\$8,191.25	\$40.46	\$389.57	\$0.49	\$390.06
Municipal - Felony	6	6	30.8	\$1,277.00	\$0.00	\$1,277.00	\$41.46	\$212.83	\$0.00	\$212.83
Municipal - Misdemeanor	52	53	295.0	\$11,934.00	\$83.07	\$12,017.07	\$40.45	\$229.50	\$1.60	\$231.10
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	179	200	1800.1	\$69,242.00	\$16,829.85	\$86,071.85	\$38.47	\$386.83	\$154.86	\$480.85

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**Hardin County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	9	9	190.1	\$9,505.00	\$0.00	\$9,505.00	\$50.00	\$1,056.11	\$0.00	\$1,056.11
Common Pleas - Felony	140	146	1906.2	\$94,928.00	\$10,061.25	\$104,989.25	\$49.80	\$678.06	\$106.39	\$749.92
Common Pleas - Misdemeanor	1	1	0.3	\$15.00	\$0.00	\$15.00	\$50.00	\$15.00	\$0.00	\$15.00
Common Pleas - Other	29	33	110.2	\$5,637.00	\$3,316.85	\$8,953.85	\$51.15	\$194.38	\$228.75	\$308.75
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	23	35	199.1	\$10,117.00	\$0.42	\$10,117.42	\$50.81	\$439.87	\$0.02	\$439.89
Juvenile - Other	175	192	721.5	\$36,173.50	\$14.19	\$36,187.69	\$50.14	\$206.71	\$0.08	\$206.79
Municipal - Felony	117	118	296.0	\$15,320.00	\$114.51	\$15,434.51	\$51.76	\$130.94	\$1.66	\$131.92
Municipal - Misdemeanor	222	222	828.3	\$42,343.00	\$49.97	\$42,392.97	\$51.12	\$190.73	\$0.23	\$190.96
Municipal - Other	7	7	5.4	\$274.00	\$530.63	\$804.63	\$50.74	\$39.14	\$151.61	\$114.95
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	723	763	4257.1	\$214,312.50	\$14,087.82	\$228,400.32	\$50.34	\$296.42	\$31.60	\$315.91

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**Harrison County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Felony	12	13	316.2	\$11,354.00	\$524.01	\$11,878.01	\$35.91	\$946.17	\$43.67	\$989.83
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	5	7	29.5	\$1,252.00	\$0.00	\$1,252.00	\$42.44	\$250.40	\$0.00	\$250.40
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	4	7	24.4	\$1,071.00	\$0.00	\$1,071.00	\$43.89	\$267.75	\$0.00	\$267.75
Juvenile - Other	6	6	21.7	\$917.00	\$0.00	\$917.00	\$42.26	\$152.83	\$0.00	\$152.83
Municipal - Felony	2	2	4.8	\$232.00	\$0.00	\$232.00	\$48.33	\$116.00	\$0.00	\$116.00
Municipal - Misdemeanor	2	2	8.1	\$347.00	\$0.00	\$347.00	\$42.84	\$173.50	\$0.00	\$173.50
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	31	37	404.7	\$15,173.00	\$524.01	\$15,697.01	\$37.49	\$489.45	\$16.90	\$506.36

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**Henry County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	1	1	8.1	\$324.00	\$0.00	\$324.00	\$40.00	\$324.00	\$0.00	\$324.00
Common Pleas - Felony	51	56	666.1	\$28,347.00	\$2,788.99	\$31,135.99	\$42.56	\$555.82	\$54.69	\$610.51
Common Pleas - Misdemeanor	2	3	7.3	\$302.00	\$0.44	\$302.44	\$41.37	\$151.00	\$0.22	\$151.22
Common Pleas - Other	21	23	49.1	\$2,169.00	\$3,663.19	\$5,832.19	\$44.18	\$103.29	\$363.64	\$277.72
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	13	16	84.1	\$3,168.00	\$0.00	\$3,168.00	\$37.67	\$243.69	\$0.00	\$243.69
Juvenile - A/D/N	14	20	447.1	\$12,267.00	\$317.58	\$12,584.58	\$27.44	\$876.21	\$22.68	\$898.90
Juvenile - Other	93	106	645.2	\$26,814.00	\$27.96	\$26,841.96	\$41.56	\$288.32	\$0.30	\$288.62
Municipal - Felony	52	54	254.9	\$9,775.00	\$4.27	\$9,779.27	\$38.35	\$187.98	\$0.08	\$188.06
Municipal - Misdemeanor	203	207	1166.7	\$49,973.00	\$426.08	\$50,399.08	\$42.83	\$246.17	\$2.10	\$248.27
Municipal - Other	11	12	30.7	\$1,313.00	\$0.00	\$1,313.00	\$42.77	\$119.36	\$0.00	\$119.36
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	461	498	3359.3	\$134,452.00	\$7,228.51	\$141,680.51	\$40.02	\$291.65	\$24.30	\$307.33

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**Highland County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	4	4	94.4	\$3,304.00	\$0.00	\$3,304.00	\$35.00	\$826.00	\$0.00	\$826.00
Common Pleas - Felony	170	181	2281.6	\$77,057.00	\$2,329.06	\$79,386.06	\$33.77	\$453.28	\$13.94	\$466.98
Common Pleas - Misdemeanor	2	2	35.6	\$1,234.00	\$0.00	\$1,234.00	\$34.66	\$617.00	\$0.00	\$617.00
Common Pleas - Other	57	62	244.4	\$7,910.50	\$2,992.42	\$10,902.92	\$32.37	\$138.78	\$104.99	\$191.28
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	50	123	563.3	\$19,142.00	\$0.00	\$19,142.00	\$33.98	\$382.84	\$0.00	\$382.84
Juvenile - Other	220	246	916.6	\$30,325.50	\$1,067.67	\$31,393.17	\$33.08	\$137.84	\$9.65	\$142.70
Municipal - Felony	104	106	381.0	\$12,964.50	\$0.00	\$12,964.50	\$34.03	\$124.66	\$0.00	\$124.66
Municipal - Misdemeanor	540	569	2850.9	\$97,227.00	\$3.78	\$97,230.78	\$34.10	\$180.05	\$0.01	\$180.06
Municipal - Other	25	26	72.2	\$2,440.00	\$0.00	\$2,440.00	\$33.80	\$97.60	\$0.00	\$97.60
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	1172	1319	7440.0	\$251,604.50	\$6,392.93	\$257,997.43	\$33.82	\$214.68	\$8.94	\$220.13

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**Hocking County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	1	1	3.5	\$140.00	\$0.00	\$140.00	\$40.00	\$140.00	\$0.00	\$140.00
Common Pleas - Felony	161	169	1421.3	\$58,597.00	\$835.64	\$59,432.64	\$41.23	\$363.96	\$9.24	\$369.15
Common Pleas - Misdemeanor	1	1	9.4	\$404.00	\$0.00	\$404.00	\$42.98	\$404.00	\$0.00	\$404.00
Common Pleas - Other	66	80	291.8	\$10,887.00	\$135.31	\$11,022.31	\$37.31	\$164.95	\$2.79	\$167.00
Death Penalty	3	8	712.5	\$28,609.00	\$6,339.71	\$34,948.71	\$40.15	\$9,536.33	\$2,162.40	\$11,649.57
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	21	29	312.8	\$13,119.00	\$0.00	\$13,119.00	\$41.94	\$624.71	\$0.00	\$624.71
Juvenile - Other	34	38	210.7	\$8,791.00	\$103.75	\$8,894.75	\$41.72	\$258.56	\$6.10	\$261.61
Municipal - Felony	115	115	385.0	\$16,366.00	\$25.00	\$16,391.00	\$42.51	\$142.31	\$0.22	\$142.53
Municipal - Misdemeanor	439	458	2005.6	\$83,496.50	\$200.39	\$83,696.89	\$41.63	\$190.20	\$0.81	\$190.65
Municipal - Other	25	27	79.1	\$2,287.00	\$0.00	\$2,287.00	\$28.91	\$91.48	\$0.00	\$91.48
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	866	926	5431.7	\$222,696.50	\$7,639.80	\$230,336.30	\$41.00	\$257.16	\$10.10	\$265.98

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**Holmes County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	2	2	41.6	\$1,463.50	\$128.60	\$1,592.10	\$35.18	\$731.75	\$128.60	\$796.05
Common Pleas - Felony	71	75	699.4	\$33,327.25	\$8,791.70	\$42,118.95	\$47.65	\$469.40	\$123.83	\$593.22
Common Pleas - Misdemeanor	6	6	65.9	\$3,103.50	\$0.00	\$3,103.50	\$47.09	\$517.25	\$0.00	\$517.25
Common Pleas - Other	23	23	105.6	\$4,592.00	\$0.00	\$4,592.00	\$43.48	\$199.65	\$0.00	\$199.65
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	39	82	942.3	\$40,323.00	\$1.00	\$40,324.00	\$42.79	\$1,033.92	\$0.03	\$1,033.95
Juvenile - Other	37	38	212.2	\$8,136.00	\$4.95	\$8,140.95	\$38.34	\$219.89	\$0.13	\$220.03
Municipal - Felony	63	63	302.0	\$14,305.50	\$0.00	\$14,305.50	\$47.37	\$227.07	\$0.00	\$227.07
Municipal - Misdemeanor	219	219	1400.8	\$64,338.00	\$4.80	\$64,342.80	\$45.93	\$293.78	\$0.02	\$293.80
Municipal - Other	48	49	243.1	\$11,537.00	\$0.00	\$11,537.00	\$47.46	\$240.35	\$0.00	\$240.35
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	508	557	4012.9	\$181,125.75	\$8,931.05	\$190,056.80	\$45.14	\$356.55	\$17.83	\$374.13



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**Huron County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	2	2	86.1	\$2,500.00	\$0.00	\$2,500.00	\$29.04	\$1,250.00	\$0.00	\$1,250.00
Common Pleas - Felony	52	55	677.8	\$35,195.00	\$670.54	\$35,865.54	\$51.93	\$676.83	\$28.15	\$689.72
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	4	4	11.7	\$608.00	\$0.00	\$608.00	\$51.97	\$152.00	\$0.00	\$152.00
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	48	124	472.2	\$24,682.00	\$7.42	\$24,689.42	\$52.27	\$514.21	\$0.15	\$514.36
Juvenile - Other	78	106	375.5	\$19,777.00	\$45.42	\$19,822.42	\$52.67	\$253.55	\$1.16	\$254.13
Municipal - Felony	8	8	16.8	\$900.00	\$0.00	\$900.00	\$53.57	\$112.50	\$0.00	\$112.50
Municipal - Misdemeanor	25	25	119.6	\$6,187.00	\$4.40	\$6,191.40	\$51.73	\$247.48	\$0.18	\$247.66
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	217	324	1759.7	\$89,849.00	\$727.78	\$90,576.78	\$51.06	\$414.05	\$7.22	\$417.40

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**Jackson County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	47	275	1233.5	\$52,815.80	\$113.21	\$52,929.01	\$42.82	\$1,123.74	\$2.41	\$1,126.15
Juvenile - Other	20	44	57.5	\$2,790.00	\$0.84	\$2,790.84	\$48.52	\$139.50	\$0.04	\$139.54
Municipal - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Misdemeanor	3	5	13.5	\$625.00	\$0.00	\$625.00	\$46.30	\$208.33	\$0.00	\$208.33
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	70	324	1304.5	\$56,230.80	\$114.05	\$56,344.85	\$43.11	\$803.30	\$1.63	\$804.93

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**Jefferson County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	5	5	154.1	\$5,000.00	\$1.22	\$5,001.22	\$32.45	\$1,000.00	\$0.24	\$1,000.24
Common Pleas - Felony	142	160	4673.3	\$178,887.00	\$12,648.00	\$191,535.00	\$38.28	\$1,259.77	\$121.95	\$1,348.84
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	33	38	423.8	\$16,604.00	\$6,382.95	\$22,986.95	\$39.18	\$503.15	\$369.10	\$696.57
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	64	117	1115.0	\$46,872.50	\$5.04	\$46,877.54	\$42.04	\$732.38	\$0.08	\$732.46
Juvenile - Other	89	93	682.1	\$24,504.00	\$802.60	\$25,306.60	\$35.92	\$275.33	\$9.02	\$284.34
Municipal - Felony	302	307	1881.1	\$79,369.50	\$16.54	\$79,386.04	\$42.19	\$262.81	\$0.05	\$262.87
Municipal - Misdemeanor	70	71	421.2	\$17,739.50	\$30.89	\$17,770.39	\$42.12	\$253.42	\$0.44	\$253.86
Municipal - Other	11	11	68.4	\$2,861.00	\$0.00	\$2,861.00	\$41.83	\$260.09	\$0.00	\$260.09
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	716	802	9419.0	\$371,837.50	\$19,887.24	\$391,724.74	\$39.48	\$519.33	\$42.39	\$547.10



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**Lake County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	14	14	599.9	\$16,118.00	\$175.15	\$16,293.15	\$26.87	\$1,151.29	\$22.15	\$1,163.80
Common Pleas - Felony	69	71	1090.7	\$43,364.00	\$160.69	\$43,524.69	\$39.76	\$628.46	\$4.00	\$630.79
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	17	19	60.5	\$2,458.00	\$2,939.68	\$5,397.68	\$40.63	\$144.59	\$345.57	\$317.51
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	184	541	3561.2	\$149,671.70	\$2,790.94	\$152,462.64	\$42.03	\$813.43	\$35.75	\$828.60
Juvenile - Other	266	417	2522.8	\$99,023.30	\$1,910.65	\$100,933.95	\$39.25	\$372.27	\$14.30	\$379.45
Municipal - Felony	69	72	321.8	\$13,919.00	\$3.04	\$13,922.04	\$43.25	\$201.72	\$0.04	\$201.77
Municipal - Misdemeanor	83	86	423.8	\$18,674.88	\$3.59	\$18,678.47	\$44.07	\$225.00	\$0.04	\$225.04
Municipal - Other	5	5	8.9	\$404.00	\$0.00	\$404.00	\$45.39	\$80.80	\$0.00	\$80.80
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	707	1225	8589.6	\$343,632.88	\$7,983.74	\$351,616.62	\$40.01	\$486.04	\$23.83	\$497.34

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**Lawrence County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	1	1	21.8	\$872.00	\$0.00	\$872.00	\$40.00	\$872.00	\$0.00	\$872.00
Common Pleas - Felony	151	153	1243.8	\$54,477.00	\$45.00	\$54,522.00	\$43.80	\$360.77	\$0.60	\$361.07
Common Pleas - Misdemeanor	1	1	5.3	\$255.00	\$0.00	\$255.00	\$48.11	\$255.00	\$0.00	\$255.00
Common Pleas - Other	41	44	174.1	\$7,642.00	\$0.00	\$7,642.00	\$43.89	\$186.39	\$0.00	\$186.39
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	38	59	502.8	\$22,289.00	\$384.00	\$22,673.00	\$44.33	\$586.55	\$10.11	\$596.66
Juvenile - Other	145	163	587.6	\$24,718.00	\$162.00	\$24,880.00	\$42.07	\$170.47	\$1.12	\$171.59
Municipal - Felony	146	148	475.3	\$21,094.00	\$0.00	\$21,094.00	\$44.38	\$144.48	\$0.00	\$144.48
Municipal - Misdemeanor	487	492	1552.7	\$69,628.50	\$0.00	\$69,628.50	\$44.84	\$142.97	\$0.00	\$142.97
Municipal - Other	18	19	55.0	\$2,426.00	\$0.00	\$2,426.00	\$44.11	\$134.78	\$0.00	\$134.78
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	1028	1080	4618.4	\$203,401.50	\$591.00	\$203,992.50	\$44.04	\$197.86	\$0.62	\$198.44

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**Licking County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	53	53	1987.8	\$37,544.50	\$48.92	\$37,593.42	\$18.89	\$708.39	\$0.92	\$709.31
Common Pleas - Felony	557	588	9339.3	\$314,433.00	\$20,500.73	\$334,933.73	\$33.67	\$564.51	\$44.16	\$601.32
Common Pleas - Misdemeanor	3	3	36.5	\$1,170.50	\$0.00	\$1,170.50	\$32.07	\$390.17	\$0.00	\$390.17
Common Pleas - Other	191	208	826.8	\$28,362.50	\$11,827.35	\$40,189.85	\$34.30	\$148.49	\$123.94	\$210.42
Death Penalty	3	7	1557.6	\$54,986.00	\$38,315.92	\$93,301.92	\$35.30	\$18,328.67	\$12,771.97	\$31,100.64
Domestic Relations	117	167	622.9	\$23,064.00	\$0.00	\$23,064.00	\$37.03	\$197.13	\$0.00	\$197.13
Juvenile - A/D/N	306	758	6459.0	\$229,265.50	\$6,359.49	\$235,624.99	\$35.50	\$749.23	\$41.02	\$770.02
Juvenile - Other	522	776	5530.7	\$198,560.50	\$7,144.01	\$205,704.51	\$35.90	\$380.38	\$27.28	\$394.07
Municipal - Felony	8	8	71.7	\$2,256.50	\$124.00	\$2,380.50	\$31.47	\$282.06	\$31.00	\$297.56
Municipal - Misdemeanor	1192	1215	8686.2	\$305,315.00	\$554.82	\$305,869.82	\$35.15	\$256.14	\$0.60	\$256.60
Municipal - Other	47	48	226.8	\$7,708.00	\$20.00	\$7,728.00	\$33.99	\$164.00	\$0.43	\$164.43
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	2999	3831	35345.3	\$1,202,666.00	\$84,895.24	\$1,287,561.24	\$34.03	\$401.02	\$38.15	\$429.33

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**Logan County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	2	2	35.1	\$1,575.00	\$0.00	\$1,575.00	\$44.87	\$787.50	\$0.00	\$787.50
Common Pleas - Felony	172	186	1566.8	\$81,925.00	\$3,663.65	\$85,588.65	\$52.29	\$476.31	\$21.30	\$497.61
Common Pleas - Misdemeanor	7	7	33.2	\$1,787.00	\$4.24	\$1,791.24	\$53.83	\$255.29	\$0.61	\$255.89
Common Pleas - Other	97	111	638.2	\$31,626.00	\$11,142.58	\$42,768.58	\$49.55	\$326.04	\$129.92	\$440.91
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	82	228	997.6	\$53,652.00	\$171.09	\$53,823.09	\$53.78	\$654.29	\$2.09	\$656.38
Juvenile - Other	46	47	256.8	\$12,803.00	\$147.91	\$12,950.91	\$49.86	\$278.33	\$5.48	\$281.54
Municipal - Felony	130	132	225.7	\$12,278.00	\$2.18	\$12,280.18	\$54.40	\$94.45	\$0.02	\$94.46
Municipal - Misdemeanor	327	327	1029.8	\$54,907.00	\$27.00	\$54,934.00	\$53.32	\$167.91	\$0.08	\$167.99
Municipal - Other	2	2	3.9	\$219.00	\$0.00	\$219.00	\$56.15	\$109.50	\$0.00	\$109.50
Supreme	1	1	10.0	\$500.00	\$0.00	\$500.00	\$50.00	\$500.00	\$0.00	\$500.00
*****Totals:	866	1043	4797.1	\$251,272.00	\$15,158.65	\$266,430.65	\$52.38	\$290.15	\$19.31	\$307.66



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**Lorain County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	46	50	606.2	\$20,095.75	\$11,145.45	\$31,241.20	\$33.15	\$436.86	\$484.58	\$679.16
Common Pleas - Felony	1419	1478	19449.2	\$863,137.75	\$4,364.30	\$867,502.05	\$44.38	\$608.27	\$3.64	\$611.35
Common Pleas - Misdemeanor	7	7	66.8	\$3,074.00	\$50.50	\$3,124.50	\$46.02	\$439.14	\$7.21	\$446.36
Common Pleas - Other	286	293	992.2	\$44,987.00	\$5,617.60	\$50,604.60	\$45.34	\$157.30	\$39.18	\$176.94
Death Penalty	6	14	1127.1	\$47,613.00	\$5,143.81	\$52,756.81	\$42.24	\$7,935.50	\$1,642.41	\$8,792.80
Domestic Relations	20	23	103.5	\$3,300.00	\$0.00	\$3,300.00	\$31.88	\$165.00	\$0.00	\$165.00
Juvenile - A/D/N	237	416	3015.1	\$95,490.00	\$627.55	\$96,117.55	\$31.67	\$402.91	\$5.30	\$405.56
Juvenile - Other	1031	1417	8327.0	\$262,040.10	\$3,142.85	\$265,182.95	\$31.47	\$254.16	\$6.10	\$257.21
Municipal - Felony	405	408	1568.2	\$67,697.00	\$302.85	\$67,999.85	\$43.17	\$167.15	\$0.77	\$167.90
Municipal - Misdemeanor	1800	1815	8301.1	\$351,756.06	\$1,950.97	\$353,707.03	\$42.37	\$195.42	\$1.08	\$196.50
Municipal - Other	15	15	69.1	\$2,894.00	\$37.36	\$2,931.36	\$41.88	\$192.93	\$2.49	\$195.42
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	5272	5936	43625.5	\$1,762,084.66	\$32,383.24	\$1,794,467.90	\$40.39	\$334.23	\$11.08	\$340.38

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**Lucas County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	80	80	2312.8	\$76,301.50	\$313.44	\$76,614.94	\$32.99	\$953.77	\$3.92	\$957.69
Common Pleas - Felony	883	1005	13936.3	\$601,969.70	\$25,436.03	\$627,405.73	\$43.19	\$681.73	\$37.34	\$710.54
Common Pleas - Misdemeanor	6	6	27.5	\$1,237.50	\$0.00	\$1,237.50	\$45.00	\$206.25	\$0.00	\$206.25
Common Pleas - Other	427	485	1847.0	\$79,047.50	\$54,427.44	\$133,474.94	\$42.80	\$185.12	\$248.16	\$312.59
Death Penalty	4	4	63.5	\$2,857.50	\$1,440.50	\$4,298.00	\$45.00	\$714.38	\$720.25	\$1,074.50
Domestic Relations	56	77	440.8	\$14,891.00	\$44.65	\$14,935.65	\$33.78	\$265.91	\$0.80	\$266.71
Juvenile - A/D/N	655	1783	13135.7	\$524,972.75	\$5,081.10	\$530,053.85	\$39.97	\$801.49	\$15.16	\$809.24
Juvenile - Other	2592	2970	15966.2	\$664,552.48	\$12,230.84	\$676,783.32	\$41.62	\$256.39	\$8.78	\$261.10
Municipal - Felony	9	9	31.4	\$1,363.50	\$0.00	\$1,363.50	\$43.42	\$151.50	\$0.00	\$151.50
Municipal - Misdemeanor	43	43	249.4	\$10,446.75	\$0.88	\$10,447.63	\$41.89	\$242.95	\$0.02	\$242.97
Municipal - Other	1	1	17.7	\$796.50	\$0.00	\$796.50	\$45.00	\$796.50	\$0.00	\$796.50
Supreme	1	1	8.9	\$400.50	\$17.50	\$418.00	\$45.00	\$400.50	\$17.50	\$418.00
*****Totals:	4757	6464	48037.2	\$1,978,837.18	\$98,992.38	\$2,077,829.56	\$41.19	\$415.98	\$36.76	\$436.79

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**Madison County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	5	5	125.7	\$4,126.00	\$0.00	\$4,126.00	\$32.82	\$825.20	\$11.00	\$825.20
Common Pleas - Felony	93	100	1359.7	\$70,437.00	\$18.44	\$70,455.44	\$51.80	\$757.39	\$0.20	\$757.59
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	14	14	60.9	\$3,201.00	\$0.00	\$3,201.00	\$52.56	\$228.64	\$0.00	\$228.64
Death Penalty	1	1	260.1	\$13,200.00	\$2,750.00	\$15,950.00	\$50.75	\$13,200.00	\$2,750.00	\$15,950.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	27	44	392.6	\$19,718.00	\$0.00	\$19,718.00	\$50.22	\$730.30	\$0.00	\$730.30
Juvenile - Other	51	53	229.6	\$11,755.75	\$0.00	\$11,755.75	\$51.20	\$230.50	\$0.00	\$230.50
Municipal - Felony	30	30	99.5	\$5,197.00	\$0.00	\$5,197.00	\$52.23	\$173.23	\$0.00	\$173.23
Municipal - Misdemeanor	458	473	3006.6	\$158,233.00	\$0.42	\$158,233.42	\$52.63	\$345.49	\$0.00	\$345.49
Municipal - Other	14	15	46.5	\$2,471.00	\$99.00	\$2,570.00	\$53.14	\$176.50	\$17.00	\$183.57
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	693	735	5581.2	\$288,338.75	\$2,867.86	\$291,206.61	\$51.66	\$416.07	\$4.42	\$420.21

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**Mahoning County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	90	115	1267.6	\$48,141.38	\$20,263.12	\$68,404.50	\$37.98	\$534.90	\$450.04	\$760.05
Common Pleas - Felony	1048	1178	14988.2	\$673,445.50	\$36,331.53	\$709,777.03	\$44.93	\$642.60	\$42.16	\$677.27
Common Pleas - Misdemeanor	13	14	90.8	\$4,234.50	\$150.00	\$4,384.50	\$46.64	\$325.73	\$11.54	\$337.27
Common Pleas - Other	379	396	2515.1	\$102,890.53	\$9,243.83	\$112,134.36	\$40.91	\$271.48	\$34.61	\$295.87
Death Penalty	7	60	5979.9	\$236,365.00	\$80,146.03	\$316,511.03	\$39.53	\$33,766.43	\$13,294.95	\$45,215.86
Domestic Relations	8	8	48.3	\$1,994.50	\$1.40	\$1,995.90	\$41.29	\$249.31	\$0.18	\$249.49
Juvenile - A/D/N	118	144	1477.8	\$62,513.00	\$27.41	\$62,540.41	\$42.30	\$529.77	\$0.23	\$530.00
Juvenile - Other	568	629	4858.1	\$219,109.27	\$159.26	\$219,268.53	\$45.10	\$385.76	\$0.28	\$386.04
Municipal - Felony	308	312	1419.8	\$66,569.50	\$2.52	\$66,572.02	\$46.89	\$216.13	\$0.01	\$216.14
Municipal - Misdemeanor	3171	3219	17085.1	\$786,907.65	\$161.10	\$787,068.75	\$46.06	\$248.16	\$0.06	\$248.21
Municipal - Other	197	200	903.5	\$42,007.50	\$136.69	\$42,144.19	\$46.49	\$213.24	\$1.35	\$213.93
Supreme	2	2	70.0	\$2,000.00	\$62.67	\$2,062.67	\$28.57	\$1,000.00	\$31.34	\$1,031.34
*****Totals:	5909	6277	50704.2	\$2,246,178.33	\$146,685.56	\$2,392,863.89	\$44.30	\$380.13	\$32.45	\$404.95

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**Marion County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	6	6	178.3	\$8,470.00	\$45.30	\$8,515.30	\$47.50	\$1,411.67	\$7.55	\$1,419.22
Common Pleas - Felony	443	466	3919.8	\$205,856.00	\$6,023.80	\$211,879.80	\$52.52	\$464.69	\$27.08	\$478.28
Common Pleas - Misdemeanor	13	13	110.4	\$5,811.00	\$1.76	\$5,812.76	\$52.64	\$447.00	\$0.14	\$447.14
Common Pleas - Other	162	180	403.5	\$21,584.00	\$1,911.70	\$23,495.70	\$53.49	\$133.23	\$23.60	\$145.04
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	113	316	898.2	\$47,657.50	\$82.58	\$47,740.08	\$53.06	\$421.75	\$0.73	\$422.48
Juvenile - Other	185	246	690.2	\$34,968.50	\$5.38	\$34,973.88	\$50.66	\$189.02	\$0.03	\$189.05
Municipal - Felony	13	13	26.5	\$1,437.00	\$0.00	\$1,437.00	\$54.23	\$110.54	\$0.00	\$110.54
Municipal - Misdemeanor	548	549	1397.9	\$74,380.00	\$91.64	\$74,471.64	\$53.21	\$135.73	\$0.30	\$135.90
Municipal - Other	9	9	46.8	\$1,912.00	\$0.00	\$1,912.00	\$40.85	\$212.44	\$0.00	\$212.44
Supreme	2	2	80.2	\$4,015.00	\$0.00	\$4,015.00	\$50.06	\$2,007.50	\$0.00	\$2,007.50
*****Totals:	1494	1800	7751.8	\$406,091.00	\$8,162.16	\$414,253.16	\$52.39	\$271.81	\$10.79	\$277.28

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**Medina County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	19	21	514.9	\$14,933.00	\$7,753.00	\$22,686.00	\$29.00	\$785.95	\$815.50	\$1,194.00
Common Pleas - Felony	372	405	6244.8	\$262,350.40	\$16,404.60	\$278,755.00	\$42.01	\$705.24	\$50.67	\$749.34
Common Pleas - Misdemeanor	3	3	30.4	\$1,265.00	\$0.00	\$1,265.00	\$41.61	\$421.67	\$0.00	\$421.67
Common Pleas - Other	162	177	902.1	\$38,892.00	\$12,081.56	\$50,973.56	\$43.11	\$240.07	\$120.94	\$314.65
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	62	69	371.2	\$15,189.00	\$0.00	\$15,189.00	\$40.92	\$244.98	\$0.00	\$244.98
Juvenile - A/D/N	46	93	1342.9	\$58,617.00	\$366.20	\$58,983.20	\$43.65	\$1,274.28	\$7.96	\$1,282.24
Juvenile - Other	121	146	1091.7	\$45,430.00	\$8,563.94	\$53,993.94	\$41.61	\$375.45	\$141.53	\$446.23
Municipal - Felony	73	73	194.3	\$8,191.00	\$1.71	\$8,192.71	\$42.16	\$112.21	\$0.02	\$112.23
Municipal - Misdemeanor	12	12	92.8	\$3,796.00	\$0.00	\$3,796.00	\$40.91	\$316.33	\$0.00	\$316.33
Municipal - Other	5	5	50.6	\$2,131.00	\$52.00	\$2,183.00	\$42.11	\$426.20	\$20.80	\$436.60
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	875	1004	10835.7	\$450,794.40	\$45,223.01	\$496,017.41	\$41.60	\$515.19	\$81.75	\$566.88

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**Meigs County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Death Penalty	1	3	354.1	\$15,680.00	\$7,843.75	\$23,523.75	\$44.28	\$15,680.00	\$7,843.75	\$23,523.75
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	1	3	354.1	\$15,680.00	\$7,843.75	\$23,523.75	\$44.28	\$15,680.00	\$7,843.75	\$23,523.75

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**Mercer County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	1	1	16.2	\$817.00	\$0.00	\$817.00	\$50.43	\$817.00	\$0.00	\$817.00
Common Pleas - Felony	80	87	1018.2	\$53,819.00	\$3,292.43	\$57,111.43	\$52.86	\$672.74	\$41.86	\$713.89
Common Pleas - Misdemeanor	3	3	19.4	\$1,053.00	\$0.00	\$1,053.00	\$54.28	\$351.00	\$0.00	\$351.00
Common Pleas - Other	28	32	167.5	\$8,887.00	\$505.04	\$9,392.04	\$53.06	\$317.39	\$20.51	\$335.43
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	32	50	460.9	\$23,355.75	\$380.87	\$23,736.62	\$50.67	\$729.87	\$12.41	\$741.77
Juvenile - Other	95	112	491.0	\$25,205.50	\$105.51	\$25,311.01	\$51.34	\$265.32	\$1.11	\$266.43
Municipal - Felony	9	9	38.7	\$2,052.00	\$14.00	\$2,066.00	\$53.02	\$228.00	\$1.56	\$229.56
Municipal - Misdemeanor	154	154	619.2	\$33,701.00	\$152.82	\$33,853.82	\$54.43	\$218.84	\$0.99	\$219.83
Municipal - Other	1	1	1.5	\$80.00	\$0.00	\$80.00	\$53.33	\$80.00	\$0.00	\$80.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	403	449	2832.6	\$148,970.25	\$4,450.67	\$153,420.92	\$52.59	\$369.65	\$11.40	\$380.70



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**Miami County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	4	4	86.2	\$3,816.00	\$22.22	\$3,838.22	\$44.27	\$954.00	\$5.56	\$959.56
Common Pleas - Felony	38	43	488.1	\$17,451.00	\$144.60	\$17,595.60	\$35.75	\$459.24	\$6.17	\$463.04
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	3	3	14.0	\$480.00	\$0.84	\$480.84	\$34.29	\$160.00	\$0.28	\$160.28
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	23	60	424.1	\$17,631.00	\$2.16	\$17,633.16	\$41.57	\$766.57	\$0.09	\$766.66
Juvenile - Other	69	83	666.4	\$24,083.50	\$3,751.83	\$27,835.33	\$36.14	\$349.04	\$104.98	\$403.41
Municipal - Felony	35	35	98.0	\$4,288.00	\$0.00	\$4,288.00	\$43.76	\$122.51	\$0.00	\$122.51
Municipal - Misdemeanor	50	50	181.6	\$7,769.00	\$2.98	\$7,771.98	\$42.78	\$155.38	\$0.06	\$155.44
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	222	278	1958.4	\$75,518.50	\$3,924.63	\$79,443.13	\$38.56	\$340.17	\$33.81	\$357.85

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**Monroe County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Felony	6	6	237.0	\$3,935.00	\$0.88	\$3,935.88	\$16.60	\$655.83	\$0.15	\$655.98
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	3	3	20.4	\$1,055.00	\$0.00	\$1,055.00	\$51.72	\$351.67	\$0.00	\$351.67
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	7	10	95.4	\$4,962.20	\$0.50	\$4,962.70	\$52.01	\$708.89	\$0.07	\$708.96
Juvenile - Other	6	6	23.1	\$1,212.30	\$1,167.50	\$2,379.80	\$52.48	\$202.05	\$389.17	\$396.63
Municipal - Felony	1	1	3.2	\$166.00	\$0.00	\$166.00	\$51.88	\$166.00	\$0.00	\$166.00
Municipal - Misdemeanor	7	7	37.2	\$1,926.00	\$0.00	\$1,926.00	\$51.77	\$275.14	\$0.00	\$275.14
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	30	33	416.3	\$13,256.50	\$1,168.88	\$14,425.38	\$31.84	\$441.88	\$77.88	\$480.85

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**Montgomery County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	256	280	4274.2	\$183,994.50	\$75,829.54	\$259,824.04	\$43.05	\$718.73	\$588.05	\$1,014.94
Common Pleas - Felony	1240	1433	18533.6	\$895,788.80	\$83,995.44	\$979,784.24	\$48.33	\$722.41	\$89.34	\$790.15
Common Pleas - Misdemeanor	14	14	121.9	\$6,346.00	\$6.08	\$6,352.08	\$52.06	\$453.29	\$0.43	\$453.72
Common Pleas - Other	411	466	2346.3	\$117,414.80	\$46,032.09	\$163,446.89	\$50.04	\$285.68	\$174.32	\$397.68
Death Penalty	3	14	29.4	\$1,764.00	\$46,467.56	\$48,231.56	\$60.00	\$588.00	\$16,118.53	\$16,077.19
Domestic Relations	11	11	43.4	\$2,239.00	\$74.88	\$2,313.88	\$51.59	\$203.55	\$13.21	\$210.35
Juvenile - A/D/N	712	1053	12036.7	\$470,055.50	\$10,853.21	\$480,908.71	\$39.05	\$660.19	\$26.92	\$675.43
Juvenile - Other	1874	2185	20136.9	\$787,010.75	\$6,981.18	\$793,991.93	\$39.08	\$419.96	\$6.43	\$423.69
Municipal - Felony	58	58	275.9	\$14,160.00	\$2.60	\$14,162.60	\$51.32	\$244.14	\$0.04	\$244.18
Municipal - Misdemeanor	463	473	2572.4	\$131,979.50	\$101.63	\$132,081.13	\$51.31	\$285.05	\$0.22	\$285.27
Municipal - Other	18	18	73.5	\$3,845.00	\$0.44	\$3,845.44	\$52.31	\$213.61	\$0.02	\$213.64
Supreme	4	4	125.2	\$4,661.00	\$217.25	\$4,878.25	\$37.23	\$1,165.25	\$54.31	\$1,219.56
*****Totals:	5064	6009	60569.4	\$2,619,258.85	\$270,561.90	\$2,889,820.75	\$43.24	\$517.23	\$81.56	\$570.66

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**Morgan County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Felony	37	38	528.1	\$22,332.00	\$1,489.72	\$23,821.72	\$42.29	\$603.57	\$40.26	\$643.83
Common Pleas - Misdemeanor	3	3	27.2	\$1,175.00	\$0.00	\$1,175.00	\$43.20	\$391.67	\$0.00	\$391.67
Common Pleas - Other	10	12	78.2	\$2,935.00	\$334.38	\$3,269.38	\$37.53	\$293.50	\$63.44	\$326.94
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	4	5	55.4	\$1,913.00	\$0.00	\$1,913.00	\$34.53	\$478.25	\$0.00	\$478.25
Juvenile - Other	22	22	203.1	\$8,182.00	\$4.90	\$8,186.90	\$40.29	\$371.91	\$0.22	\$372.13
Municipal - Felony	7	7	23.7	\$989.00	\$0.82	\$989.82	\$41.73	\$141.29	\$0.12	\$141.40
Municipal - Misdemeanor	111	113	559.7	\$23,721.00	\$49.99	\$23,770.99	\$42.38	\$213.70	\$0.46	\$214.15
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	194	200	1475.4	\$61,247.00	\$1,879.81	\$63,126.81	\$41.51	\$315.71	\$11.24	\$325.40

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**Morrow County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Felony	155	156	1804.4	\$95,742.00	\$100.00	\$95,842.00	\$53.06	\$617.69	\$0.65	\$618.34
Common Pleas - Misdemeanor	1	1	57.3	\$3,061.00	\$0.00	\$3,061.00	\$53.42	\$3,061.00	\$0.00	\$3,061.00
Common Pleas - Other	78	82	650.2	\$32,427.00	\$12,815.50	\$45,242.50	\$49.87	\$415.73	\$168.03	\$580.03
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	23	44	374.7	\$19,755.00	\$0.00	\$19,755.00	\$52.72	\$858.91	\$0.00	\$858.91
Juvenile - Other	79	86	599.0	\$30,640.00	\$0.00	\$30,640.00	\$51.15	\$387.85	\$0.00	\$387.85
Municipal - Felony	13	13	51.6	\$2,692.00	\$0.00	\$2,692.00	\$52.17	\$207.08	\$0.00	\$207.08
Municipal - Misdemeanor	163	163	917.8	\$44,899.00	\$41.34	\$44,940.34	\$48.92	\$275.45	\$0.25	\$275.71
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	512	545	4455.0	\$229,216.00	\$12,956.84	\$242,172.84	\$51.45	\$447.69	\$25.87	\$472.99

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**Muskingum County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	11	11	325.3	\$10,460.00	\$0.00	\$10,460.00	\$32.15	\$950.91	\$0.00	\$950.91
Common Pleas - Felony	230	246	3739.6	\$152,943.00	\$6,597.24	\$159,540.24	\$40.90	\$664.97	\$28.68	\$693.65
Common Pleas - Misdemeanor	2	2	11.0	\$459.00	\$0.00	\$459.00	\$41.73	\$229.50	\$0.00	\$229.50
Common Pleas - Other	30	32	140.1	\$5,740.00	\$0.00	\$5,740.00	\$40.97	\$191.33	\$0.00	\$191.33
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	87	97	377.0	\$14,823.00	\$1.45	\$14,824.45	\$39.32	\$170.38	\$0.02	\$170.40
Juvenile - A/D/N	148	320	3556.6	\$144,984.00	\$15,584.48	\$160,568.48	\$40.76	\$979.62	\$139.90	\$1,084.92
Juvenile - Other	369	452	4169.8	\$169,104.00	\$1,628.29	\$170,732.29	\$40.55	\$458.28	\$4.41	\$462.69
Municipal - Felony	5	5	29.4	\$1,251.00	\$0.00	\$1,251.00	\$42.55	\$250.20	\$0.00	\$250.20
Municipal - Misdemeanor	259	266	2114.2	\$84,185.00	\$134.75	\$84,319.75	\$39.82	\$325.04	\$0.79	\$325.56
Municipal - Other	13	13	71.7	\$2,905.00	\$0.00	\$2,905.00	\$40.52	\$223.46	\$0.00	\$223.46
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	1154	1444	14534.7	\$586,854.00	\$23,946.21	\$610,800.21	\$40.38	\$508.54	\$25.25	\$529.29

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**Noble County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Felony	41	43	214.5	\$9,206.00	\$130.40	\$9,336.40	\$42.92	\$224.54	\$6.25	\$227.72
Common Pleas - Misdemeanor	4	4	29.7	\$1,238.00	\$0.00	\$1,238.00	\$41.68	\$309.50	\$0.00	\$309.50
Common Pleas - Other	6	6	15.1	\$673.00	\$0.00	\$673.00	\$44.57	\$112.17	\$0.00	\$112.17
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	10	26	221.7	\$7,234.00	\$145.20	\$7,379.20	\$32.63	\$723.40	\$14.52	\$737.92
Juvenile - Other	21	21	52.9	\$2,272.00	\$3.52	\$2,275.52	\$42.95	\$108.19	\$0.17	\$108.36
Municipal - Felony	26	26	56.0	\$2,386.00	\$1.32	\$2,387.32	\$42.61	\$91.77	\$0.05	\$91.82
Municipal - Misdemeanor	98	98	347.6	\$14,590.00	\$35.48	\$14,625.48	\$41.97	\$148.88	\$0.36	\$149.24
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	206	224	937.5	\$37,599.00	\$315.92	\$37,914.92	\$40.11	\$182.52	\$2.15	\$184.05

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**Ottawa County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	13	13	224.0	\$7,793.00	\$39.61	\$7,832.61	\$34.79	\$599.46	\$3.05	\$602.51
Common Pleas - Felony	97	102	1846.0	\$73,017.50	\$1,203.54	\$74,221.04	\$39.55	\$752.76	\$12.41	\$765.17
Common Pleas - Misdemeanor	1	1	13.0	\$550.00	\$0.00	\$550.00	\$42.31	\$550.00	\$0.00	\$550.00
Common Pleas - Other	24	25	161.2	\$6,591.00	\$21.08	\$6,612.08	\$40.89	\$274.63	\$0.88	\$275.50
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	47	109	1173.1	\$36,947.00	\$133.32	\$37,080.32	\$31.50	\$786.11	\$2.84	\$788.94
Juvenile - Other	124	129	769.7	\$31,309.20	\$0.00	\$31,309.20	\$40.68	\$252.49	\$0.00	\$252.49
Municipal - Felony	53	53	336.2	\$12,920.00	\$0.00	\$12,920.00	\$38.43	\$243.77	\$0.00	\$243.77
Municipal - Misdemeanor	337	342	2362.5	\$99,211.00	\$10.00	\$99,221.00	\$41.99	\$294.39	\$0.03	\$294.42
Municipal - Other	10	11	52.9	\$2,258.00	\$0.00	\$2,258.00	\$42.68	\$225.80	\$0.00	\$225.80
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	706	785	6938.6	\$270,596.70	\$1,407.55	\$272,004.25	\$39.00	\$383.28	\$1.99	\$385.28



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**Paulding County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	3	3	65.2	\$2,608.00	\$0.00	\$2,608.00	\$40.00	\$869.33	\$0.00	\$869.33
Common Pleas - Felony	38	40	388.7	\$16,628.00	\$405.02	\$17,033.02	\$42.78	\$437.58	\$10.66	\$448.24
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	9	9	17.4	\$788.40	\$0.00	\$788.40	\$45.31	\$87.60	\$0.00	\$87.60
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	5	7	52.6	\$2,333.50	\$37.88	\$2,371.38	\$44.36	\$466.70	\$7.58	\$474.28
Juvenile - Other	15	15	87.7	\$3,862.50	\$14.76	\$3,877.26	\$44.04	\$257.50	\$0.98	\$258.48
Municipal - Felony	2	2	15.8	\$697.00	\$0.00	\$697.00	\$44.11	\$348.50	\$0.00	\$348.50
Municipal - Misdemeanor	67	67	400.2	\$17,534.00	\$31.56	\$17,565.56	\$43.81	\$261.70	\$0.47	\$262.17
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	1	1	10.3	\$425.00	\$6.83	\$431.83	\$41.26	\$425.00	\$6.83	\$431.83
*****Totals:	140	144	1037.9	\$44,876.40	\$496.05	\$45,372.45	\$43.24	\$320.55	\$3.54	\$324.09

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**Perry County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	1	2	0.0	\$0.00	\$1,785.25	\$1,785.25	\$0.00	\$0.00	\$3,645.50	\$1,785.25
Common Pleas - Felony	65	69	1187.9	\$42,332.50	\$5.75	\$42,338.25	\$35.64	\$651.27	\$0.09	\$651.36
Common Pleas - Misdemeanor	2	2	10.5	\$395.50	\$0.00	\$395.50	\$37.67	\$197.75	\$0.00	\$197.75
Common Pleas - Other	10	11	50.2	\$1,680.00	\$2,547.80	\$4,227.80	\$33.47	\$168.00	\$513.56	\$422.78
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	5	8	123.7	\$3,699.50	\$0.00	\$3,699.50	\$29.91	\$739.90	\$0.00	\$739.90
Juvenile - Other	51	53	253.5	\$8,655.00	\$0.00	\$8,655.00	\$34.14	\$169.71	\$0.00	\$169.71
Municipal - Felony	46	47	105.3	\$3,978.50	\$0.00	\$3,978.50	\$37.78	\$86.49	\$0.00	\$86.49
Municipal - Misdemeanor	208	214	1337.8	\$47,442.00	\$15.00	\$47,457.00	\$35.46	\$228.09	\$0.07	\$228.16
Municipal - Other	19	21	67.7	\$2,514.50	\$0.00	\$2,514.50	\$37.14	\$132.34	\$0.00	\$132.34
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	407	427	3136.6	\$110,697.50	\$4,353.80	\$115,051.30	\$35.29	\$271.98	\$21.63	\$282.68

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**Pickaway County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	3	3	0.0	\$0.00	\$4,050.00	\$4,050.00	\$0.00	\$0.00	\$2,700.00	\$1,350.00
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - Other	17	17	37.0	\$1,329.50	\$0.00	\$1,329.50	\$35.93	\$78.21	\$0.00	\$78.21
Municipal - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	20	20	37.0	\$1,329.50	\$4,050.00	\$5,379.50	\$35.93	\$66.48	\$405.00	\$268.98

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**Pike County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	2	2	47.8	\$2,151.00	\$2.58	\$2,153.58	\$45.00	\$1,075.50	\$1.29	\$1,076.79
Common Pleas - Felony	28	28	182.6	\$8,463.00	\$0.00	\$8,463.00	\$46.35	\$302.25	\$0.00	\$302.25
Common Pleas - Misdemeanor	1	1	1.5	\$70.50	\$0.00	\$70.50	\$47.00	\$70.50	\$0.00	\$70.50
Common Pleas - Other	4	4	7.5	\$342.50	\$1,850.50	\$2,193.00	\$45.67	\$85.63	\$925.25	\$548.25
Death Penalty	2	6	547.1	\$30,087.75	\$19,503.67	\$49,591.42	\$54.99	\$15,043.88	\$9,751.84	\$24,795.71
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	14	21	135.7	\$6,270.00	\$0.00	\$6,270.00	\$46.20	\$447.86	\$0.00	\$447.86
Juvenile - Other	22	23	98.6	\$4,123.25	\$0.00	\$4,123.25	\$41.82	\$187.42	\$0.00	\$187.42
Municipal - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	73	85	1020.8	\$51,508.00	\$21,356.75	\$72,864.75	\$50.46	\$705.59	\$317.91	\$998.15

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**Portage County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	12	12	230.5	\$10,330.00	\$4,993.80	\$15,323.80	\$44.82	\$860.83	\$825.65	\$1,276.98
Common Pleas - Felony	191	200	2959.0	\$118,904.00	\$4,246.29	\$123,150.29	\$40.18	\$622.53	\$47.89	\$644.77
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	40	46	149.6	\$6,361.00	\$9,362.50	\$15,723.50	\$42.52	\$159.03	\$483.84	\$393.09
Death Penalty	1	2	656.1	\$22,223.50	\$562.79	\$22,786.29	\$33.87	\$22,223.50	\$562.79	\$22,786.29
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	217	565	4123.7	\$168,925.00	\$674.31	\$169,599.31	\$40.96	\$778.46	\$5.23	\$781.56
Juvenile - Other	100	120	718.7	\$29,208.00	\$1,302.30	\$30,510.30	\$40.64	\$292.08	\$27.00	\$305.10
Municipal - Felony	42	42	144.1	\$6,346.00	\$0.00	\$6,346.00	\$44.04	\$151.10	\$0.00	\$151.10
Municipal - Misdemeanor	116	117	817.4	\$33,699.00	\$21.00	\$33,720.00	\$41.23	\$290.51	\$0.18	\$290.69
Municipal - Other	9	9	31.7	\$1,344.00	\$0.00	\$1,344.00	\$42.40	\$149.33	\$0.00	\$149.33
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	728	1113	9830.8	\$397,340.50	\$21,162.99	\$418,503.49	\$40.42	\$545.80	\$58.83	\$574.87

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**Preble County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	6	6	161.5	\$6,994.00	\$0.00	\$6,994.00	\$43.31	\$1,165.67	\$0.00	\$1,165.67
Common Pleas - Felony	149	163	1879.4	\$88,100.73	\$3,246.12	\$91,346.85	\$46.88	\$591.28	\$43.15	\$613.07
Common Pleas - Misdemeanor	3	3	21.3	\$1,043.00	\$0.00	\$1,043.00	\$48.97	\$347.67	\$0.00	\$347.67
Common Pleas - Other	28	28	156.7	\$7,170.00	\$211.25	\$7,381.25	\$45.76	\$256.07	\$15.09	\$263.62
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	37	49	501.7	\$23,960.00	\$2.16	\$23,962.16	\$47.76	\$647.57	\$0.06	\$647.63
Juvenile - Other	47	48	416.3	\$20,790.00	\$5.52	\$20,795.52	\$49.94	\$442.34	\$0.12	\$442.46
Municipal - Felony	11	11	62.4	\$3,065.00	\$0.00	\$3,065.00	\$49.12	\$278.64	\$0.00	\$278.64
Municipal - Misdemeanor	178	179	895.1	\$44,657.25	\$0.00	\$44,657.25	\$49.89	\$250.88	\$0.00	\$250.88
Municipal - Other	2	2	5.5	\$275.00	\$0.00	\$275.00	\$50.00	\$137.50	\$0.00	\$137.50
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	461	489	4099.9	\$196,054.98	\$3,465.05	\$199,520.03	\$47.82	\$425.28	\$14.88	\$432.80

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**Putnam County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	1	1	9.0	\$360.00	\$0.00	\$360.00	\$40.00	\$360.00	\$0.00	\$360.00
Common Pleas - Felony	44	48	571.3	\$29,731.50	\$2,437.50	\$32,169.00	\$52.04	\$675.72	\$55.40	\$731.11
Common Pleas - Misdemeanor	3	3	26.5	\$1,401.00	\$0.00	\$1,401.00	\$52.87	\$467.00	\$0.00	\$467.00
Common Pleas - Other	22	23	106.6	\$4,752.00	\$0.00	\$4,752.00	\$44.58	\$216.00	\$0.00	\$216.00
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	10	28	186.5	\$6,558.00	\$12.24	\$6,570.24	\$35.16	\$655.80	\$1.22	\$657.02
Juvenile - Other	58	61	300.9	\$14,449.00	\$46.46	\$14,495.46	\$48.02	\$249.12	\$0.80	\$249.92
Municipal - Felony	21	21	81.6	\$4,281.00	\$0.00	\$4,281.00	\$52.46	\$203.86	\$0.00	\$203.86
Municipal - Misdemeanor	113	119	714.4	\$37,296.65	\$127.80	\$37,424.45	\$52.21	\$330.06	\$1.13	\$331.19
Municipal - Other	4	4	12.4	\$651.00	\$0.00	\$651.00	\$52.50	\$162.75	\$0.00	\$162.75
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	276	308	2009.2	\$99,480.15	\$2,624.00	\$102,104.15	\$49.51	\$360.44	\$9.51	\$369.94

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**Richland County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	39	39	866.9	\$40,438.00	\$5,138.98	\$45,576.98	\$46.65	\$1,036.87	\$262.60	\$1,168.64
Common Pleas - Felony	702	744	9795.4	\$511,233.50	\$6,316.58	\$517,550.08	\$52.19	\$728.25	\$16.64	\$737.25
Common Pleas - Misdemeanor	6	6	57.0	\$2,929.00	\$0.00	\$2,929.00	\$51.39	\$488.17	\$0.00	\$488.17
Common Pleas - Other	228	249	1230.4	\$70,763.00	\$27,354.75	\$98,117.75	\$57.51	\$310.36	\$204.09	\$430.34
Death Penalty	3	5	389.7	\$36,689.00	\$7,616.08	\$44,305.08	\$94.15	\$12,229.67	\$2,538.69	\$14,768.36
Domestic Relations	44	44	195.6	\$9,266.00	\$0.00	\$9,266.00	\$47.37	\$210.59	\$0.00	\$210.59
Juvenile - A/D/N	364	991	6161.0	\$314,159.00	\$1,656.62	\$315,815.62	\$50.99	\$863.07	\$9.06	\$867.63
Juvenile - Other	432	481	2712.2	\$142,380.00	\$312.50	\$142,692.50	\$52.50	\$329.58	\$1.45	\$330.31
Municipal - Felony	182	182	748.6	\$37,934.00	\$994.50	\$38,928.50	\$50.67	\$208.43	\$10.93	\$213.89
Municipal - Misdemeanor	1612	1660	10350.6	\$545,686.00	\$0.00	\$545,686.00	\$52.72	\$338.51	\$0.08	\$338.51
Municipal - Other	33	34	162.5	\$8,265.00	\$0.00	\$8,265.00	\$50.86	\$250.45	\$0.00	\$250.45
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	3645	4435	32669.9	\$1,719,742.50	\$49,390.01	\$1,769,132.51	\$52.64	\$471.81	\$22.53	\$485.36



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**Ross County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	11	11	166.3	\$6,662.00	\$0.00	\$6,662.00	\$40.06	\$605.64	\$0.00	\$605.64
Common Pleas - Felony	29	32	388.1	\$16,888.00	\$1,545.50	\$18,433.50	\$43.51	\$582.34	\$97.48	\$635.64
Common Pleas - Misdemeanor	1	1	7.8	\$366.00	\$0.00	\$366.00	\$46.92	\$366.00	\$0.00	\$366.00
Common Pleas - Other	16	28	0.0	\$0.00	\$9,328.50	\$9,328.50	\$0.00	\$0.00	\$1,166.06	\$583.03
Death Penalty	1	4	0.0	\$0.00	\$15,331.08	\$15,331.08	\$0.00	\$0.00	\$15,394.08	\$15,331.08
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	69	122	409.5	\$17,919.50	\$76.50	\$17,996.00	\$43.76	\$259.70	\$2.22	\$260.81
Juvenile - Other	296	333	558.0	\$26,845.00	\$90.00	\$26,935.00	\$48.11	\$90.69	\$0.61	\$91.00
Municipal - Felony	2	2	8.7	\$398.00	\$0.00	\$398.00	\$45.75	\$199.00	\$0.00	\$199.00
Municipal - Misdemeanor	7	7	27.8	\$1,354.00	\$0.00	\$1,354.00	\$48.71	\$193.43	\$0.00	\$193.43
Municipal - Other	5	5	9.0	\$400.00	\$346.50	\$746.50	\$44.44	\$80.00	\$138.60	\$149.30
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	437	545	1575.2	\$70,832.50	\$26,718.08	\$97,550.58	\$44.97	\$162.09	\$86.74	\$223.23

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**Sandusky County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	10	10	249.1	\$9,143.00	\$2.60	\$9,145.60	\$36.70	\$914.30	\$0.26	\$914.56
Common Pleas - Felony	167	179	1860.7	\$89,242.00	\$61.40	\$89,303.40	\$47.96	\$534.38	\$0.37	\$534.75
Common Pleas - Misdemeanor	4	4	12.1	\$595.50	\$0.00	\$595.50	\$49.21	\$148.88	\$0.00	\$148.88
Common Pleas - Other	28	30	163.4	\$7,933.00	\$0.00	\$7,933.00	\$48.55	\$283.32	\$0.00	\$283.32
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	93	222	2152.7	\$100,407.25	\$0.44	\$100,407.69	\$46.64	\$1,079.65	\$0.00	\$1,079.65
Juvenile - Other	174	180	1001.1	\$47,806.70	\$0.00	\$47,806.70	\$47.75	\$274.75	\$0.00	\$274.75
Municipal - Felony	97	99	377.4	\$17,810.00	\$0.00	\$17,810.00	\$47.19	\$183.61	\$0.00	\$183.61
Municipal - Misdemeanor	550	567	2605.9	\$124,990.00	\$0.00	\$124,990.00	\$47.96	\$227.25	\$0.00	\$227.25
Municipal - Other	62	63	230.1	\$11,130.50	\$384.00	\$11,514.50	\$48.37	\$179.52	\$12.39	\$185.72
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	1185	1354	8652.5	\$409,057.95	\$448.44	\$409,506.39	\$47.28	\$345.20	\$0.70	\$345.58

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**Scioto County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	7	7	240.7	\$5,174.00	\$0.00	\$5,174.00	\$21.50	\$739.14	\$0.00	\$739.14
Common Pleas - Felony	658	680	3987.7	\$133,273.00	\$2,752.46	\$136,025.46	\$33.42	\$202.54	\$4.18	\$206.73
Common Pleas - Misdemeanor	2	2	6.7	\$236.00	\$0.00	\$236.00	\$35.22	\$118.00	\$0.00	\$118.00
Common Pleas - Other	158	165	378.1	\$12,396.00	\$0.00	\$12,396.00	\$32.78	\$78.46	\$0.00	\$78.46
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	97	98	478.5	\$14,871.70	\$0.00	\$14,871.70	\$31.08	\$153.32	\$0.00	\$153.32
Juvenile - A/D/N	125	165	1203.8	\$39,760.29	\$22.80	\$39,783.09	\$33.03	\$318.08	\$0.18	\$318.26
Juvenile - Other	272	323	1664.4	\$54,267.12	\$14.00	\$54,281.12	\$32.60	\$199.51	\$0.05	\$199.56
Municipal - Felony	444	447	910.2	\$30,896.34	\$0.00	\$30,896.34	\$33.94	\$69.59	\$0.00	\$69.59
Municipal - Misdemeanor	1236	1262	4511.9	\$150,619.26	\$22.39	\$150,641.65	\$33.38	\$121.86	\$0.02	\$121.88
Municipal - Other	57	57	93.9	\$3,202.00	\$60.00	\$3,262.00	\$34.10	\$56.18	\$2.11	\$57.23
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	3056	3206	13475.9	\$444,695.71	\$2,871.65	\$447,567.36	\$33.00	\$145.52	\$0.96	\$146.46

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**Seneca County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	8	11	178.6	\$6,685.00	\$18,577.80	\$25,262.80	\$37.43	\$835.63	\$5,209.73	\$3,157.85
Common Pleas - Felony	169	187	3589.0	\$82,090.00	\$17,124.74	\$99,214.74	\$22.87	\$485.74	\$162.19	\$587.07
Common Pleas - Misdemeanor	4	4	20.0	\$886.00	\$0.00	\$886.00	\$44.30	\$221.50	\$0.00	\$221.50
Common Pleas - Other	72	84	421.9	\$17,331.00	\$2,819.93	\$20,150.93	\$41.08	\$240.71	\$79.74	\$279.87
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	106	360	3644.0	\$157,734.00	\$21.72	\$157,755.72	\$43.29	\$1,488.06	\$0.20	\$1,488.26
Juvenile - Other	197	243	1205.6	\$50,993.00	\$3,608.58	\$54,601.58	\$42.30	\$258.85	\$45.89	\$277.17
Municipal - Felony	80	80	353.3	\$14,232.00	\$33.88	\$14,265.88	\$40.28	\$177.90	\$0.42	\$178.32
Municipal - Misdemeanor	339	344	2040.1	\$82,033.70	\$534.75	\$82,568.45	\$40.21	\$241.99	\$1.69	\$243.56
Municipal - Other	19	19	63.2	\$2,693.00	\$29.40	\$2,722.40	\$42.61	\$141.74	\$1.55	\$143.28
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	994	1332	11515.7	\$414,677.70	\$42,750.80	\$457,428.50	\$36.01	\$417.18	\$85.04	\$460.19

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**Shelby County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Felony	60	62	408.5	\$21,156.50	\$18.64	\$21,175.14	\$51.79	\$352.61	\$0.31	\$352.92
Common Pleas - Misdemeanor	1	1	6.5	\$293.00	\$0.00	\$293.00	\$45.08	\$293.00	\$0.00	\$293.00
Common Pleas - Other	1	1	2.5	\$130.00	\$0.00	\$130.00	\$52.00	\$130.00	\$0.00	\$130.00
Death Penalty	1	1	0.0	\$0.00	\$1,750.00	\$1,750.00	\$0.00	\$0.00	\$1,750.00	\$1,750.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	13	16	117.1	\$4,686.50	\$4.12	\$4,690.62	\$40.02	\$360.50	\$0.32	\$360.82
Juvenile - Other	9	9	39.3	\$1,992.00	\$389.41	\$2,381.41	\$50.69	\$221.33	\$93.87	\$264.60
Municipal - Felony	12	12	37.5	\$1,941.00	\$3.52	\$1,944.52	\$51.76	\$161.75	\$0.29	\$162.04
Municipal - Misdemeanor	58	59	202.0	\$10,486.00	\$21.40	\$10,507.40	\$51.91	\$180.79	\$0.37	\$181.16
Municipal - Other	1	1	1.9	\$103.00	\$0.00	\$103.00	\$54.21	\$103.00	\$0.00	\$103.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	156	162	815.3	\$40,788.00	\$2,187.09	\$42,975.09	\$50.03	\$261.46	\$16.94	\$275.48

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**Stark County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	63	63	1257.5	\$47,804.50	\$135.66	\$47,940.16	\$38.02	\$758.80	\$2.92	\$760.95
Common Pleas - Felony	216	238	3516.5	\$145,988.00	\$4,603.40	\$150,591.40	\$41.52	\$675.87	\$36.71	\$697.18
Common Pleas - Misdemeanor	4	4	24.9	\$1,061.00	\$51.00	\$1,112.00	\$42.61	\$265.25	\$25.50	\$278.00
Common Pleas - Other	96	124	243.8	\$9,677.00	\$30,010.70	\$39,687.70	\$39.69	\$100.80	\$624.32	\$413.41
Death Penalty	8	37	945.8	\$38,811.00	\$109,108.15	\$147,919.15	\$41.04	\$4,851.38	\$16,057.93	\$18,489.89
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	503	1283	6935.6	\$280,169.00	\$1,016.63	\$281,185.63	\$40.40	\$557.00	\$3.85	\$559.02
Juvenile - Other	444	529	2895.9	\$118,794.00	\$4,275.34	\$123,069.34	\$41.02	\$267.55	\$19.11	\$277.18
Municipal - Felony	108	108	453.7	\$18,397.00	\$459.52	\$18,856.52	\$40.55	\$170.34	\$8.52	\$174.60
Municipal - Misdemeanor	251	252	1379.2	\$57,523.00	\$111.33	\$57,634.33	\$41.71	\$229.18	\$0.73	\$229.62
Municipal - Other	20	21	18.4	\$693.00	\$1,532.40	\$2,225.40	\$37.66	\$34.65	\$155.81	\$111.27
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	1713	2659	17671.3	\$718,917.50	\$151,304.13	\$870,221.63	\$40.68	\$419.68	\$123.33	\$508.01

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**Summit County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	129	133	3609.9	\$129,270.00	\$1.00	\$129,271.00	\$35.81	\$1,002.09	\$0.01	\$1,002.10
Common Pleas - Felony	3129	3657	44721.0	\$1,724,003.50	\$32,095.87	\$1,756,099.37	\$38.55	\$550.98	\$10.38	\$561.23
Common Pleas - Misdemeanor	16	19	194.0	\$7,578.00	\$73.19	\$7,651.19	\$39.06	\$473.63	\$4.57	\$478.20
Common Pleas - Other	945	1071	6762.4	\$267,271.50	\$8,778.84	\$276,050.34	\$39.52	\$282.83	\$9.29	\$292.12
Death Penalty	7	26	2912.9	\$119,936.00	\$52,985.73	\$172,921.73	\$41.17	\$17,133.71	\$7,569.39	\$24,703.10
Domestic Relations	71	83	495.1	\$11,409.20	\$21.60	\$11,430.80	\$23.04	\$160.69	\$0.30	\$161.00
Juvenile - A/D/N	824	1808	16939.8	\$712,999.00	\$15.00	\$713,014.00	\$42.09	\$865.29	\$0.02	\$865.31
Juvenile - Other	325	344	3664.6	\$151,346.50	\$0.00	\$151,346.50	\$41.30	\$465.68	\$0.00	\$465.68
Municipal - Felony	292	293	1346.3	\$58,639.00	\$0.00	\$58,639.00	\$43.56	\$200.82	\$0.00	\$200.82
Municipal - Misdemeanor	51	51	265.3	\$11,508.00	\$0.00	\$11,508.00	\$43.38	\$225.65	\$0.00	\$225.65
Municipal - Other	2	2	6.5	\$280.00	\$0.00	\$280.00	\$43.08	\$140.00	\$0.00	\$140.00
Supreme	3	3	108.0	\$3,781.00	\$143.98	\$3,924.98	\$35.01	\$1,260.33	\$47.99	\$1,308.33
*****Totals:	5794	7490	81025.8	\$3,198,021.70	\$94,115.21	\$3,292,136.91	\$39.47	\$551.95	\$16.31	\$568.20

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**Trumbull County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	4	4	112.5	\$3,776.00	\$100.30	\$3,876.30	\$33.56	\$944.00	\$25.08	\$969.08
Common Pleas - Felony	43	45	808.7	\$30,866.50	\$23,838.82	\$54,705.32	\$38.17	\$717.83	\$619.32	\$1,272.22
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	18	23	83.0	\$3,589.00	\$19,368.14	\$22,957.14	\$43.24	\$199.39	\$2,187.81	\$1,275.40
Death Penalty	3	12	997.6	\$40,726.00	\$31,267.99	\$71,993.99	\$40.82	\$13,575.33	\$11,770.00	\$23,998.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	134	357	1479.3	\$55,242.50	\$96.75	\$55,339.25	\$37.34	\$412.26	\$1.47	\$412.98
Juvenile - Other	36	45	206.7	\$8,174.00	\$290.50	\$8,464.50	\$39.55	\$227.06	\$16.14	\$235.13
Municipal - Felony	52	55	181.1	\$7,876.00	\$0.00	\$7,876.00	\$43.49	\$151.46	\$0.00	\$151.46
Municipal - Misdemeanor	53	53	177.8	\$8,037.00	\$68.00	\$8,105.00	\$45.20	\$151.64	\$2.57	\$152.92
Municipal - Other	7	7	14.2	\$460.00	\$310.00	\$770.00	\$32.39	\$65.71	\$88.57	\$110.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	350	601	4060.9	\$158,747.00	\$75,340.50	\$234,087.50	\$39.09	\$453.56	\$294.16	\$668.82



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**Tuscarawas County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	11	11	214.7	\$8,677.50	\$56.41	\$8,733.91	\$40.42	\$788.86	\$5.13	\$793.99
Common Pleas - Felony	44	47	647.5	\$31,687.00	\$20.93	\$31,707.93	\$48.94	\$720.16	\$0.48	\$720.63
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	8	10	58.8	\$2,802.00	\$36.00	\$2,838.00	\$47.65	\$350.25	\$4.50	\$354.75
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	84	210	1383.8	\$64,653.00	\$982.92	\$65,635.92	\$46.72	\$769.68	\$11.77	\$781.38
Juvenile - Other	78	100	478.2	\$22,076.50	\$98.84	\$22,175.34	\$46.17	\$283.03	\$1.27	\$284.30
Municipal - Felony	23	25	118.8	\$5,647.00	\$10.10	\$5,657.10	\$47.53	\$245.52	\$0.44	\$245.96
Municipal - Misdemeanor	91	92	433.3	\$22,467.00	\$30.21	\$22,497.21	\$51.85	\$246.89	\$0.33	\$247.22
Municipal - Other	2	2	9.6	\$501.00	\$50.00	\$551.00	\$52.19	\$250.50	\$25.00	\$275.50
Supreme	1	1	33.3	\$1,000.00	\$0.00	\$1,000.00	\$30.03	\$1,000.00	\$0.00	\$1,000.00
*****Totals:	342	498	3378.0	\$159,511.00	\$1,285.41	\$160,796.41	\$47.22	\$466.41	\$3.78	\$470.16



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**Van Wert County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Felony	1	1	19.0	\$991.00	\$0.00	\$991.00	\$52.16	\$991.00	\$0.00	\$991.00
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	6	8	0.0	\$0.00	\$4,828.75	\$4,828.75	\$0.00	\$0.00	\$1,609.58	\$804.79
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	12	19	65.9	\$3,319.00	\$0.00	\$3,319.00	\$50.36	\$276.58	\$0.00	\$276.58
Juvenile - Other	2	2	0.0	\$0.00	\$810.00	\$810.00	\$0.00	\$0.00	\$810.00	\$405.00
Municipal - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	21	30	84.9	\$4,310.00	\$5,638.75	\$9,948.75	\$50.77	\$205.24	\$537.02	\$473.75

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**Vinton County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	1	1	2.4	\$72.00	\$0.00	\$72.00	\$30.00	\$72.00	\$0.00	\$72.00
Common Pleas - Felony	57	67	771.9	\$24,607.00	\$380.70	\$24,987.70	\$31.88	\$431.70	\$6.68	\$438.38
Common Pleas - Misdemeanor	1	1	2.7	\$106.00	\$25.25	\$131.25	\$39.26	\$106.00	\$25.25	\$131.25
Common Pleas - Other	14	15	134.9	\$2,596.00	\$155.92	\$2,751.92	\$19.24	\$185.43	\$25.42	\$196.57
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	32	75	653.0	\$20,546.00	\$54.76	\$20,600.76	\$31.46	\$642.06	\$1.71	\$643.77
Juvenile - Other	116	141	865.2	\$26,637.00	\$26.86	\$26,663.86	\$30.79	\$229.63	\$0.23	\$229.86
Municipal - Felony	103	105	366.2	\$11,083.00	\$0.00	\$11,083.00	\$30.26	\$107.60	\$0.00	\$107.60
Municipal - Misdemeanor	216	224	1067.2	\$33,534.50	\$30.30	\$33,564.80	\$31.42	\$155.25	\$0.14	\$155.39
Municipal - Other	15	17	84.7	\$2,280.00	\$0.00	\$2,280.00	\$26.92	\$152.00	\$0.00	\$152.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	555	646	3948.2	\$121,461.50	\$673.79	\$122,135.29	\$30.76	\$218.85	\$1.57	\$220.06

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**Warren County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	26	28	761.0	\$30,555.00	\$700.30	\$31,255.30	\$40.15	\$1,175.19	\$48.56	\$1,202.13
Common Pleas - Felony	419	442	4992.9	\$250,528.00	\$1,813.19	\$252,341.19	\$50.18	\$597.92	\$8.38	\$602.25
Common Pleas - Misdemeanor	4	4	21.6	\$1,148.00	\$0.00	\$1,148.00	\$53.15	\$287.00	\$0.00	\$287.00
Common Pleas - Other	111	118	433.4	\$19,987.50	\$5,642.06	\$25,629.56	\$46.12	\$180.07	\$103.48	\$230.90
Death Penalty	2	2	28.3	\$1,465.00	\$0.00	\$1,465.00	\$51.77	\$732.50	\$0.00	\$732.50
Domestic Relations	45	53	139.4	\$7,513.00	\$0.00	\$7,513.00	\$53.90	\$166.96	\$0.00	\$166.96
Juvenile - A/D/N	80	294	2059.8	\$93,926.40	\$687.84	\$94,614.24	\$45.60	\$1,174.08	\$9.04	\$1,182.68
Juvenile - Other	443	474	2713.2	\$133,200.00	\$155.64	\$133,355.64	\$49.09	\$300.68	\$0.35	\$301.03
Municipal - Felony	115	124	318.2	\$17,067.00	\$0.00	\$17,067.00	\$53.64	\$148.41	\$0.00	\$148.41
Municipal - Misdemeanor	461	478	1277.8	\$69,351.00	\$5.52	\$69,356.52	\$54.27	\$150.44	\$0.01	\$150.45
Municipal - Other	16	16	28.2	\$1,623.00	\$0.00	\$1,623.00	\$57.55	\$101.44	\$0.00	\$101.44
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	1722	2033	12773.8	\$626,363.90	\$9,004.55	\$635,368.45	\$49.04	\$363.74	\$9.96	\$368.97

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**Washington County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	15	17	122.0	\$4,250.00	\$4,598.81	\$8,848.81	\$34.84	\$283.33	\$609.12	\$589.92
Common Pleas - Felony	7	7	100.2	\$5,810.50	\$300.85	\$6,111.35	\$57.99	\$830.07	\$47.26	\$873.05
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	13	13	89.5	\$2,256.00	\$9,019.58	\$11,275.58	\$25.21	\$173.54	\$1,364.74	\$867.35
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	54	86	631.5	\$25,391.20	\$39.16	\$25,430.36	\$40.21	\$470.21	\$0.73	\$470.93
Juvenile - Other	144	156	631.7	\$22,536.40	\$1,620.14	\$24,156.54	\$35.68	\$156.50	\$22.34	\$167.75
Municipal - Felony	2	2	2.3	\$92.00	\$0.00	\$92.00	\$40.00	\$46.00	\$0.00	\$46.00
Municipal - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Other	11	11	0.0	\$0.00	\$2,090.55	\$2,090.55	\$0.00	\$0.00	\$380.10	\$190.05
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	246	292	1577.2	\$60,336.10	\$17,669.09	\$78,005.19	\$38.26	\$245.27	\$140.84	\$317.09

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**Wayne County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	18	22	516.7	\$16,004.00	\$0.00	\$16,004.00	\$30.97	\$889.11	\$0.00	\$889.11
Common Pleas - Felony	70	76	810.2	\$32,849.41	\$561.53	\$33,410.94	\$40.54	\$469.28	\$8.02	\$477.30
Common Pleas - Misdemeanor	2	2	11.3	\$472.00	\$0.00	\$472.00	\$41.77	\$236.00	\$0.00	\$236.00
Common Pleas - Other	4	4	60.5	\$2,460.00	\$7.55	\$2,467.55	\$40.66	\$615.00	\$1.89	\$616.89
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	116	204	2055.1	\$85,462.00	\$0.00	\$85,462.00	\$41.59	\$736.74	\$0.00	\$736.74
Juvenile - Other	48	57	507.4	\$20,734.00	\$2,283.75	\$23,017.75	\$40.86	\$431.96	\$95.16	\$479.54
Municipal - Felony	14	14	41.5	\$1,791.00	\$350.44	\$2,141.44	\$43.16	\$127.93	\$25.03	\$152.96
Municipal - Misdemeanor	73	77	502.1	\$20,436.00	\$612.99	\$21,048.99	\$40.70	\$279.95	\$9.01	\$288.34
Municipal - Other	13	13	28.7	\$1,252.00	\$135.00	\$1,387.00	\$43.62	\$96.31	\$10.38	\$106.69
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	358	469	4533.5	\$181,460.41	\$3,951.26	\$185,411.67	\$40.03	\$506.87	\$17.54	\$517.91

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**Williams County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	8	9	140.4	\$5,307.50	\$6,507.48	\$11,814.98	\$37.80	\$663.44	\$1,627.25	\$1,476.87
Common Pleas - Felony	162	169	1014.8	\$48,497.45	\$863.08	\$49,360.53	\$47.79	\$299.37	\$6.09	\$304.69
Common Pleas - Misdemeanor	3	3	11.6	\$603.00	\$0.00	\$603.00	\$51.98	\$201.00	\$0.00	\$201.00
Common Pleas - Other	32	35	45.9	\$2,387.00	\$2,213.50	\$4,600.50	\$52.00	\$74.59	\$138.34	\$143.77
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	30	50	275.1	\$13,152.00	\$0.00	\$13,152.00	\$47.81	\$438.40	\$0.00	\$438.40
Juvenile - Other	50	51	182.8	\$9,467.00	\$710.14	\$10,177.14	\$51.79	\$189.34	\$43.50	\$203.54
Municipal - Felony	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Municipal - Other	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	285	317	1670.6	\$79,413.95	\$10,294.20	\$89,708.15	\$47.54	\$278.65	\$72.31	\$314.77



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**Wood County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	29	31	1076.3	\$26,834.00	\$1,438.71	\$28,272.71	\$24.93	\$925.31	\$84.47	\$974.92
Common Pleas - Felony	137	160	2827.1	\$102,895.35	\$17,355.98	\$120,251.33	\$36.40	\$751.06	\$135.84	\$877.75
Common Pleas - Misdemeanor	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Common Pleas - Other	90	106	457.7	\$18,732.00	\$16,919.75	\$35,651.75	\$40.93	\$208.13	\$347.91	\$396.13
Death Penalty	2	11	666.8	\$27,931.00	\$20,648.08	\$48,579.08	\$41.89	\$13,965.50	\$13,258.04	\$24,289.54
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	50	66	509.1	\$19,492.00	\$5.54	\$19,497.54	\$38.29	\$389.84	\$0.11	\$389.95
Juvenile - Other	256	271	1555.8	\$58,827.00	\$120.33	\$58,947.33	\$37.81	\$229.79	\$0.47	\$230.26
Municipal - Felony	131	131	744.8	\$30,682.00	\$1,590.29	\$32,272.29	\$41.19	\$234.21	\$12.14	\$246.35
Municipal - Misdemeanor	296	314	1860.2	\$79,757.50	\$91.39	\$79,848.89	\$42.88	\$269.45	\$0.31	\$269.76
Municipal - Other	40	41	246.9	\$10,409.00	\$0.00	\$10,409.00	\$42.16	\$260.23	\$0.00	\$260.23
Supreme	1	1	4.6	\$184.00	\$18.57	\$202.57	\$40.00	\$184.00	\$18.57	\$202.57
*****Totals:	1032	1132	9949.3	\$375,743.85	\$58,188.64	\$433,932.49	\$37.77	\$364.09	\$78.21	\$420.48

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**Wyandot County**

<u>Type of Case</u>	<u>Cases</u>	<u>Certs</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total Cost</u>	<u>Fees/Hour</u>	<u>Fees/Case</u>	<u>Trans+Exp/Case</u>	<u>Cost/Case</u>
Appellate	3	3	84.8	\$4,210.00	\$0.00	\$4,210.00	\$49.65	\$1,403.33	\$0.00	\$1,403.33
Common Pleas - Felony	52	58	575.2	\$29,533.00	\$1,201.43	\$30,734.43	\$51.34	\$567.94	\$23.10	\$591.05
Common Pleas - Misdemeanor	1	1	7.9	\$404.00	\$0.00	\$404.00	\$51.14	\$404.00	\$0.00	\$404.00
Common Pleas - Other	14	14	146.0	\$7,161.00	\$589.00	\$7,750.00	\$49.05	\$511.50	\$93.07	\$553.57
Death Penalty	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Relations	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Juvenile - A/D/N	1	1	14.2	\$726.00	\$0.00	\$726.00	\$51.13	\$726.00	\$0.00	\$726.00
Juvenile - Other	5	5	10.5	\$550.00	\$0.00	\$550.00	\$52.38	\$110.00	\$0.00	\$110.00
Municipal - Felony	27	27	82.7	\$4,287.00	\$0.00	\$4,287.00	\$51.84	\$158.78	\$0.00	\$158.78
Municipal - Misdemeanor	144	148	627.2	\$32,568.00	\$3.50	\$32,571.50	\$51.93	\$226.17	\$0.02	\$226.19
Municipal - Other	4	4	6.8	\$348.00	\$26.50	\$374.50	\$51.18	\$87.00	\$14.13	\$93.63
Supreme	0	0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
*****Totals:	251	261	1555.3	\$79,787.00	\$1,820.43	\$81,607.43	\$51.30	\$317.88	\$10.22	\$325.13

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For All Counties

**Summary**

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Appellate	2253	2406	47924.6	\$1,696,202.13	\$423,531.58	\$2,119,733.71	\$35.39	\$752.86	\$373.90	\$940.85
Common Pleas - Felony	31040	34615	484564.8	\$20,480,756.34	\$751,470.40	\$21,232,226.74	\$42.27	\$659.82	\$30.15	\$684.03
Common Pleas - Misdemeanor	258	263	2188.0	\$93,817.75	\$1,956.23	\$95,773.98	\$42.88	\$363.63	\$8.99	\$371.22
Common Pleas - Other	10897	12526	57941.3	\$2,507,879.59	\$713,708.55	\$3,221,588.14	\$43.28	\$230.14	\$115.56	\$295.64
Death Penalty	128	402	41469.2	\$1,803,275.75	\$764,054.58	\$2,567,330.33	\$43.48	\$14,088.09	\$6,805.14	\$20,057.27
Domestic Relations	1058	1358	6007.5	\$207,659.90	\$873.19	\$208,533.09	\$34.57	\$196.28	\$1.38	\$197.10
Juvenile - A/D/N	12158	25417	214284.7	\$9,070,129.34	\$77,244.01	\$9,147,373.35	\$42.33	\$746.02	\$10.60	\$752.37
Juvenile - Other	26117	30931	214836.7	\$8,745,688.88	\$110,118.55	\$8,855,807.43	\$40.71	\$334.87	\$7.58	\$339.08
Municipal - Felony	7864	7938	27381.2	\$1,165,818.34	\$4,953.40	\$1,170,771.74	\$42.58	\$148.25	\$0.90	\$148.88
Municipal - Misdemeanor	33523	34141	168057.4	\$7,167,192.90	\$14,929.09	\$7,182,121.99	\$42.65	\$213.80	\$0.61	\$214.24
Municipal - Other	1864	1953	7644.4	\$320,099.00	\$13,105.72	\$333,204.72	\$41.87	\$171.73	\$13.19	\$178.76
Supreme	57	57	1105.2	\$44,729.80	\$1,766.56	\$46,496.36	\$40.47	\$784.73	\$30.99	\$815.73
****Total	127217	152007	1273405.0	\$53,303,249.72	\$2,877,711.86	\$56,180,961.58	\$41.86	\$418.99	\$33.74	\$441.62

# ADVOCATING FIGHTING HELPING

2017 Annual Report



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## ABOUT US

The Office of the Ohio Public Defender (OPD) was created in 1976 by Chapter 120 of the Ohio Revised Code. OPD is the state agency responsible for providing legal representation and other services to indigent people accused or convicted of a crime and who, otherwise, cannot afford to hire an attorney. The office, which is overseen by the Ohio Public Defender Commission, is divided into Administrative, Appellate Services, Policy & Outreach, and Trial Services divisions.

OPD provides representation on appeals and post-conviction actions in death penalty,

criminal, and juvenile delinquency cases; at trial when requested by local courts and in counties that contract with OPD for trial services; and at parole revocation hearings for more than 50,000 people in Ohio's prisons. The agency provides technical assistance, research services, educational programs, and investigation and mitigation services to local public defenders and court-appointed counsel throughout Ohio. OPD also reimburses counties for a portion of the cost of running local indigent defense systems, and enforces standards established by the OPD Commission.



## OUR MISSION

Advocating. Fighting. Helping.

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## OUR VISION

A Fair Justice System.

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## OUR VALUES

### Compassion

*We will be mindful of the conditions and experiences that shape those who come to us for help and each other.*

### Dignity

*We will treat all with respect.*

### Equity

*Our work and our office will be free from bias or favoritism towards others and each other.*

### Integrity

*We will act with sound moral character and a dedication to professional and ethical principles for our clients and each other.*

### Service

*We will dedicate ourselves to protecting the rights of indigent individuals, and in doing so will protect the rights afforded to all citizens by the Constitution.*

### Community

*We will foster a collaborative and supportive environment and empower each other in our work protecting the rights of our clients.*



## MESSAGE FROM THE CHAIR

“ The opposite of poverty is not wealth. The opposite of poverty is justice. ”

**Bryan Stevenson**



The Office of the Ohio Public Defender’s mission is “fighting, advocating, helping.” The vision is to achieve a fair justice system. The values the agency aspires to are compassion, dignity, equity, integrity, service, and community. This combination of mission, vision, and values drives the agency and its staff as they seek to change the lives of their clients, and improve Ohio’s criminal and juvenile justice systems.

Public defense provides significant value. A citizen’s most fundamental rights are at stake in criminal courtrooms. Public defenders provide balance against the government when it asserts its authority and seeks to take an individual’s freedom. Public defenders fight for the Bill of Rights every day. Their fight is not just for the indigent, but for all citizens.

For the public to have confidence and trust in the validity of our adversarial justice system, it is fundamental that the system be fair. Fairness is measured in funding, staffing, access, policy, laws, and outcome. The balance of all of these factors between the two sides is essential for our criminal justice system to be fair. If one side in an adversarial process is grossly underfunded and understaffed, the public cannot have confidence and trust in the system. The imbalance creates predetermined results. For decades, the government has increased funding for policing and prosecutions. And the number of criminal cases filed, and the corresponding number of convictions, has skyrocketed. In contrast, funding for public defense has lagged far behind, resulting in mass

incarceration. Today, the Office of the Ohio Public Defender operates in a system out of balance.

Despite the imbalance, the agency still sets the standard for quality representation in Ohio, providing training to hundreds of lawyers in juvenile law, forensics, trial skills, and death penalty practice. Additionally, the agency has developed OPD Online, a cutting-edge case management and document management system. OPD Online will soon be available to all county public defender offices across Ohio and in the near future it will be available to all appointed counsel in any courtroom, anywhere in the state.

These accomplishments and the exceptional level of quality representation happen despite large disparities in funding. Public defense in Ohio is estimated to be underfunded by over \$35 million dollars annually. Yet, in 2015, the agency’s budget lost one million dollars in funding that has yet to be restored. The agency remains dramatically underfunded and understaffed, given the number of clientele and the needs of the indigent defense system. At risk is the most fundamental principle of our justice system—fairness.

To restore balance to Ohio’s criminal justice system, to ensure confidence and trust that the system is fair for all citizens, and to protect our freedoms, Ohio must fully fund the delivery of constitutionally mandated indigent defense services, and must do so now.

## MEMBERS OF THE COMMISSION

The Ohio Public Defender Commission is a nine-member board appointed by the Ohio governor and the Supreme Court of Ohio for the purpose of overseeing the Office of the Ohio Public Defender. Commission members are generally practicing attorneys with experience in providing representation in criminal matters to indigent persons. The Commission meets at least quarterly, and may meet at other times pursuant to the call of the chair or state public defender.

### WILLIAM R. CREEDON

#### Chair

Attorney, Scott Scriven, LLP  
Governor appointment  
6/9/2016–1/12/2020

### MARY A. AUGSBURGER

#### Executive Director

Ohio State Bar Association  
Supreme Court appointment  
6/24/2016–1/12/2020

### M. GABRIELLA CELESTE

#### Policy Director & Adjunct Assistant Professor

Schubert Center for Child Studies  
Case Western Reserve University  
Governor appointment  
1/15/2015–1/12/2019

### JOHN P. CURP

#### Attorney

Blank Rome LLP  
Governor appointment  
2/2/2017–1/12/2021

### DAVID DOUGHTEN

#### Attorney

David Doughten Attorney at Law  
Supreme Court appointment  
1/13/2013–1/12/2021

### CARMEN ROBERTO

#### Attorney

Niekamp, Weisensell,  
Mutersbaugh & Mastrantonio, LLP  
Supreme Court appointment  
1/13/2015–1/12/2019

### ROGER M. SYNENBERG

#### Attorney

Synerberg, Coletta & Moran, LLC  
Governor appointment  
3/9/2016–1/12/2018

### R. ROBERT UMHOLTZ

#### Attorney

Geauga County Public Defender Office  
Supreme Court appointment  
1/13/2014–1/12/2018

### JENNIFER VERMILLION

#### Jennifer Vermillion

Crawford County Commissioner  
Governor appointment  
1/30/2014–01/12/2018  
(resigned 10/27/2016)



# MESSAGE FROM THE DIRECTOR

“Many states can no longer afford to support public education, public benefits, public services without doing something about the exorbitant costs that mass incarceration have created.”

**Bryan Stevenson**



Fighting. Advocating. Helping. This is our mission. The Office of the Ohio Public Defender (OPD) staff work tirelessly to change client lives by ensuring their rights are protected, and their voices heard. Through training, innovative systems, and exemplary litigation, OPD staff raises the bar and helps change lives.

The OPD has achieved a national reputation for its innovation and advocacy, setting the standard both in the courtroom and in the community. It seeks to raise the defense bar statewide by providing thousands of hours of training to Ohio lawyers. In FY 2017, we conducted multiple forensic trainings, hosted a two-day juvenile summit, sponsored a five-day skill-based trial school, and held an annual county public defender summit. OPD attorneys spoke at numerous conferences and CLE trainings throughout the state and country on topics from costs and fines collection, to the death penalty.

Calendar year 2016 ended with countless victorious appellate decisions and a plethora of groundbreaking Supreme Court of Ohio decisions in which OPD was involved. In *State v. Noling*, the Court unanimously agreed that a statute limiting DNA testing in death penalty cases was unconstitutional. In *State v. Moore*, the Court held that “a term-of-years prison sentence that exceeds a [juvenile] defendant’s life expectancy violates the Eighth Amendment when it is imposed on a juvenile non-homicide offender.” In *State v. Aalim*, the Court held that the mandatory bindover of juveniles violates the Ohio Constitution. Finally, the Court

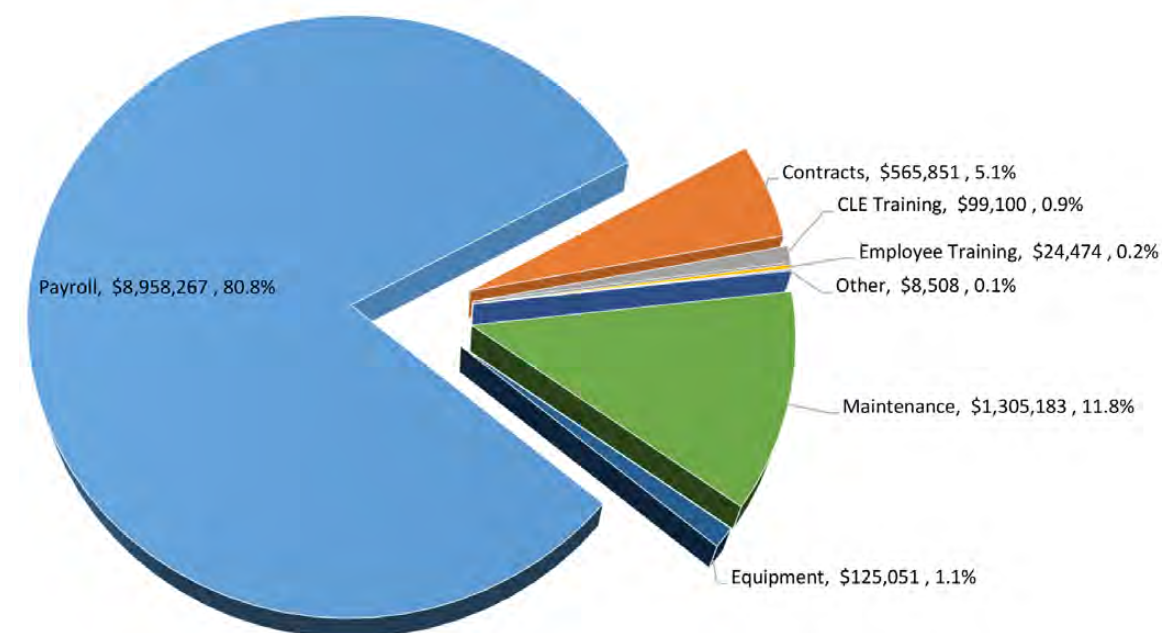
issued a decision that opened public records requests for post-conviction litigation in *State ex. rel v. Castor*. As a result, police files now become public records upon completion of trial. Regrettably, two of the decisions, *Aalim* and *Gonzales*, were reversed when two of the justices retired.

The OPD rolled out OPD Online, its innovative practice management software system. OPD Online provides one platform for Ohio public defense professionals to enter information about their cases. This service is free to county public defender offices and court appointed counsel. The system was implemented in all OPD offices. Ultimately, OPD will collect a detailed set of data about public defense in Ohio, enabling us to make more effective arguments about the need for reform, and helping us to better identify the degree and location of issues in Ohio.

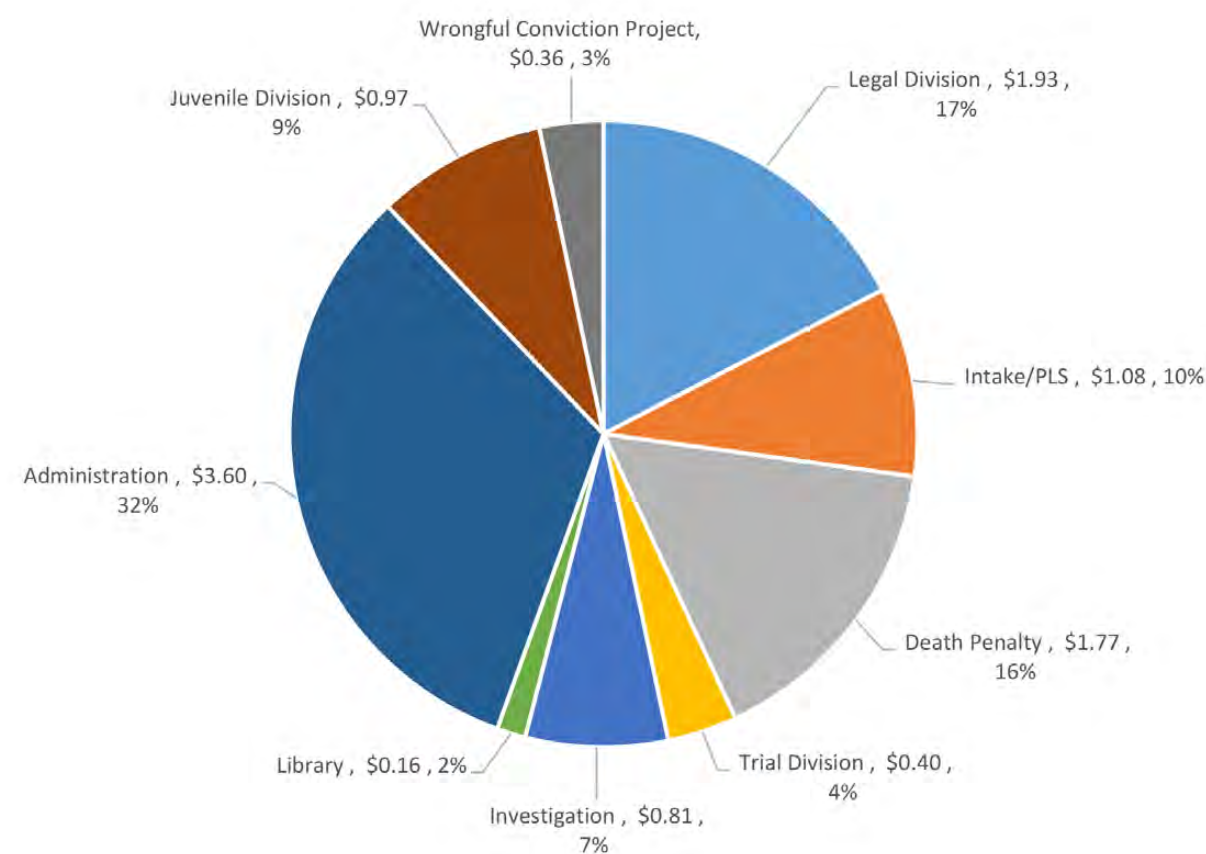
Despite OPD’s advancements and indigent defense victories, Ohio’s indigent defense funding is \$40 million below what is needed annually. Money alone will not solve our problems but the structure of our criminal justice system can only be fixed if it is properly funded.

Ohioans believe in fairness at a very fundamental level. The vision of the Office of the Ohio Public Defender is “A Fair Justice System.” Until we can tell Ohioans that our justice system is fair, the OPD will continue to shine a light on the pervasive inequity in our state, and fight for those who need our assistance, protection, and representation.

Ohio Public Defender  
Operating Budget by Expense Category  
FY 2017



Ohio Public Defender  
Expenditures FY 2017 by Department  
(Dollars in Millions)



# MANAGEMENT TEAM

## EXECUTIVE STAFF

**TIMOTHY YOUNG**  
Ohio Public Defender

**ELIZABETH R. MILLER**  
Assistant Director

**JOHN D. ALGE/SHARON M. FLYNT**  
Deputy Director - Administrative Division

**JILL BEELER**  
Deputy Director - Appellate Services Division

**AMY M. BORROR/LAURA AUSTEN**  
Deputy Director - Policy & Outreach Division

**TERRI L. WILSON**  
Program Administrator

## ADMINISTRATIVE DIVISION

**JOHN D. ALGE/ANDY PLAGENZ**  
Chief Financial Officer

**LISA OSTROLENK CAUDILL**  
Legal Resource Center Manager

**SHARON M. FLYNT**  
Human Resources Administrator/EEO Officer

**KENNETH MCNEIL**  
Manager - Information Systems

**BRENDA L. SWINGLE**  
Program Administrator - Contracts

**DENNIS TAYLOR**  
Office Services Manager

## APPELLATE SERVICES DIVISION

**RICH CLINE**  
Chief Counsel, Death Penalty Department

**KIMBERLY S. RIGBY**  
Supervising Attorney - Death Penalty Department

**KATHRYN L. SANDFORD**  
Supervising Attorney - Death Penalty Department

**RACHEL TROUTMAN**  
Supervising Attorney - Death Penalty Department

**TERI SLACK**  
Program Administrator - Death Penalty Department

**CRAIG M. JAQUITH**  
Chief Counsel - Legal Services Department

**JAMES R. FOLEY**  
Supervising Attorney - Legal Services Department

**KRISTOPHER A. HAINES**  
Supervising Attorney - Legal Services Department

**JEREMY J. MASTERS**  
Supervising Attorney - Legal Services Department

**ROBIN MESSMER-TAYLOR**  
Program Administrator - Legal Services Department

**KATHERINE A. SZUDY**  
Supervising Attorney - Legal Services Department

**BROOKE BURNS**  
Chief Counsel - Juvenile Department

**LAURA AUSTEN**  
Supervising Attorney - Juvenile Department

**DORIAN L. HALL**  
Chief Criminal Investigator & Mitigation Specialist

**JOE BODENHAMER**  
Director - Wrongful Conviction Project

## POLICY & OUTREACH DIVISION

**M. KATHRYN SMITH**  
Reimbursement Administrator/Contracts Counsel

## TRIAL SERVICES DIVISION

**GREGORY W. MEYERS**  
Chief Counsel - Trial Services Department

**HERMAN CARSON**  
Director - Multi-County Program Office

**DOUGLAS FRANCIS**  
Supervising Attorney - Athens County Office

**JOHN CORNELLY**  
Director - Ross County Office

**RAYMOND SMITH**  
Director - Washington County Office

**MATTHEW PENTZ**  
Director - Trumbull County Office

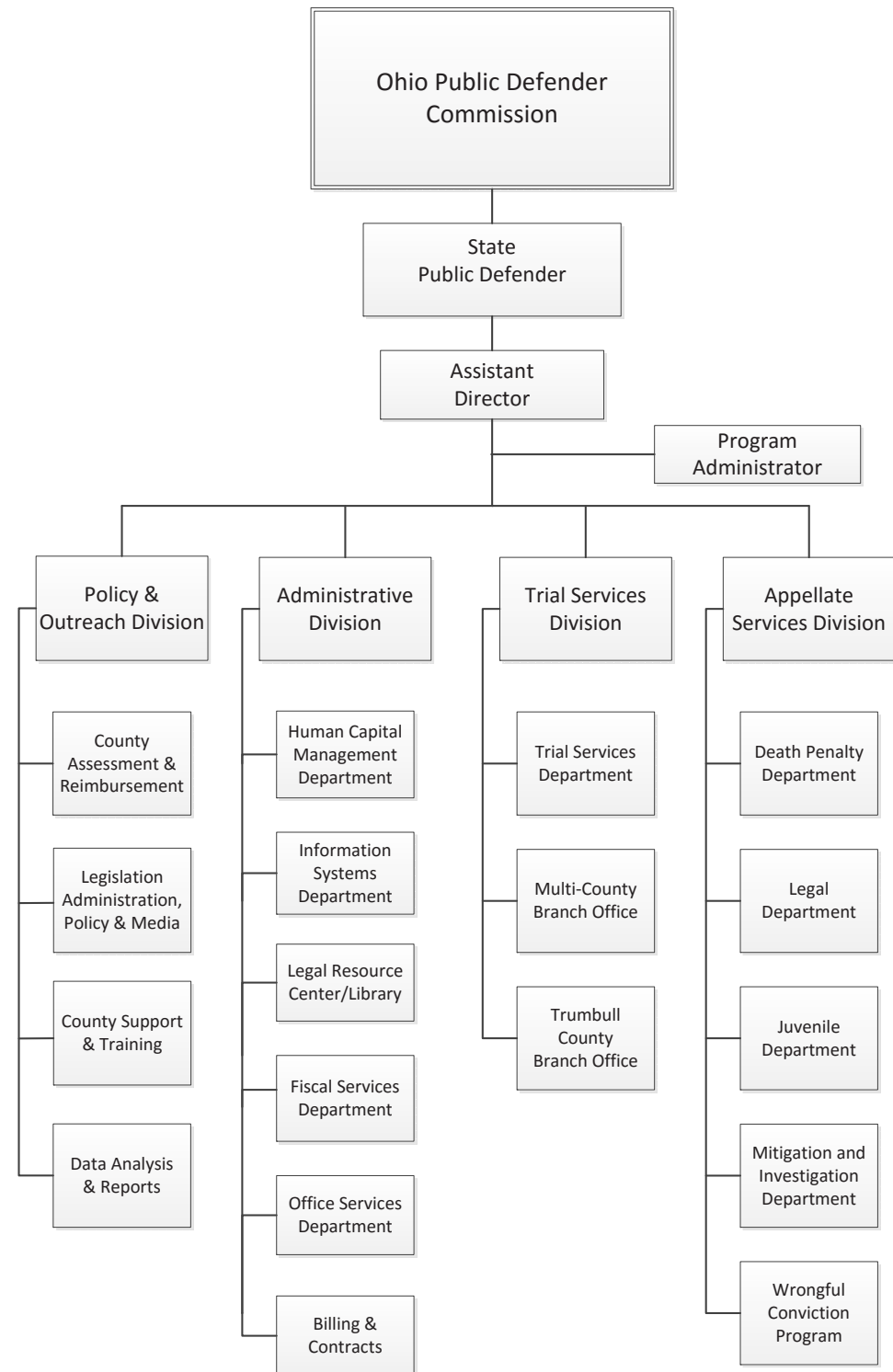
**TARA SAYRE/CASEY GARAND**  
Program Administrator - Athens County Office

“ Justice consists not in being neutral between right and wrong, but in finding out the right and upholding it, wherever found, against the wrong. ”

**Theodore Roosevelt**



# TABLE OF ORGANIZATION



# ADMINISTRATIVE DIVISION

## WHAT WE DO

The Administrative Division provides necessary business support services to the agency. This division is composed of six departments: Fiscal, Office Services, Human Capital Management, Information Systems, Billing & Contracts, and Legal Resource Center/Library.

The Administrative Division's activities typically include accounting, budgeting, and contract services, IT systems and data management, selection and recruitment, benefits and payroll administration, financial accounting, budgeting, and procurement services.

Ohio Revised Code §120.04(B) (13) requires the State Public Defender to "provide technical aid and assistance to county public defender offices, joint county public defender offices, and other local counsel providing legal representation to indigent persons... ." In addition to the various administrative programs, the Legal Resource Center/Library maintains an expert witness list.

Attorneys in need of experts call the librarian, who provides them with the necessary information. The library also supplies case law to law librarians in state correctional institutions.

## SPECIAL PROJECTS/INITIATIVES IN FISCAL YEAR 2017

### Onboarding Working Group

Working group charged with creating a plan for orienting new employees, initiated February 2017

### Reclassifications

OPD Office Assistants and Clerks reclassification, spring/summer 2017

### Temporary service system

Transitioned to an automated temporary service system (Fieldglass), spring 2017



# MANAGEMENT INFORMATION SYSTEMS DEPARTMENT

## WHAT WE DO

The mission of the Management Information Systems department is to provide the highest quality technology-based services, in the most cost-effective manner, to facilitate the Office of the Ohio Public Defender's vision for a fair justice system and mission of advocating, fighting and helping the indigent people of Ohio who are in need of legal services.



## SPECIAL PROJECTS/INITIATIVES IN FISCAL YEAR 2017

### OPD Online deployment

OPD Online deployments to Athens, Cuyahoga (Felony), Trumbull, and Washington counties

### OPD Online Columbus Go Live

OPD Online Columbus Go Live deployment with subsequent PC Docs and Time Matters decommission and migration

### OPD Online 3.0 and network upgrade

OPD Online version 3.0 and network upgrade, which improved the user interface, business processes, and overall performance

### Consolidation

Full consolidation to DAS OIT (servers, network, domain, antivirus, encryption, Windows 10, firewall)

### Refresh

Full equipment refresh (devices, monitors, peripherals)

### Helpdesk processes

Instituted more efficient helpdesk processes to serve employees more efficiently and effectively

## ESPECIALLY SIGNIFICANT

OPD Online Columbus Go Live deployment was a substantial project that required the involvement of the entire MIS team, as well as the cooperation of the entire agency.



# APPELLATE DIVISION

## DEATH PENALTY DEPARTMENT

### WHAT WE DO

The Death Penalty Department represents inmates sentenced to death on direct appeal, in state post-conviction, in federal habeas, and in clemency proceedings. We also represent inmates sentenced to death in related litigation, such as the §1983 lawsuit challenging the constitutionality of Ohio's lethal injection protocol.

As subject-matter experts, death penalty attorneys teach at both the Ohio State Bar Association and Ohio Association for Criminal Defense Lawyer annual seminars to qualify counsel as eligible for appointment in capital cases. Death penalty attorneys regularly teach trial practice and appellate practice courses throughout the state on diverse topics such as Understanding DNA Evidence, Working with Experts, and Search and Seizure.

Death penalty staff are active in OPD working groups, including the Forensic Working Group, Kids in Adult Prisons, Wellness, Pay Equity, Workforce Diversity, Racial Justice Initiative, and Compassion Fatigue.

### SPECIAL PROJECTS/INITIATIVES IN FISCAL YEAR 2017

#### Death penalty challenge

In FY 2017, the Death Penalty Department mounted an extensive challenge to Ohio's death penalty statute based on the United States Supreme Court's Jan. 12, 2016 decision in *Hurst v. Florida*. We filed *Hurst*-based pleadings (motions for new trial, successor post-conviction petitions)

in 32 cases. Those cases are now pending in common pleas courts, courts of appeal, and the Supreme Court of Ohio.

#### Compassion fatigue efforts

Compassion fatigue is a serious concern for public defenders, especially those who defend capital cases. In FY 2017 the Death Penalty Department, working with the Mitigation and Investigation Department, as well as OPD administration, initiated ground-breaking efforts to address compassion fatigue among OPD staff.

#### Staff changes

FY 2017 was a transition year for employees in the Death Penalty Department. We filled six vacancies, with new hires ranging from experienced attorneys who have practiced more than 20 years, to attorneys with one year of practice experience.

### ESPECIALLY SIGNIFICANT

#### Injunction to prevent executions in Ohio

The Death Penalty Department, along with our colleagues in the CHU, won a federal district court preliminary injunction to prevent executions in Ohio. This was later overturned by an *en banc* decision at the Sixth Circuit, but halted executions for several months.

#### Important cases

Death penalty attorneys worked with the Trial Division to raise a *Hurst*-based challenge in a death-eligible trial case. After considering the *Hurst*-based challenge, the trial evidence, and the costs associated with a capital case, the



prosecutor agreed to allow our client to plead guilty to the stipulated lesser included offense of murder. Instead of facing a death sentence, our client is serving an 18 years-to-life sentence.

In another case, death penalty attorneys worked with local counsel to negotiate an agreed life sentence on remand after a client's 1983 death sentence was vacated.

The First District reversed the dismissal of the post-conviction petition in one of our cases. The trial court accepted *ex parte* communications from the prosecutor and thus denied due process of law. The matter was remanded to the trial court to revisit the post-conviction petition.

The Death Penalty Department presented an evidentiary hearing in support of a post-

conviction petition during FY 2017. Initially, the trial court excluded half of the witnesses, but allowed us to brief the legal basis for the testimony. After reading our brief, the State withdrew its objection, the trial court reconvened the hearing, and we presented the witnesses.

The General Assembly amended the post-conviction statute to expand a petitioner's right to amend after filing, authorizing the trial court to grant discovery in post-conviction cases for good cause shown, and requiring the trial court to state specific reasons for denial of each claim asserted in a post-conviction petition.

#### Statewide rate increase

The Capital Case Attorney Fee Council set the statewide rate for capital appointed work at \$125/hr.

## JUVENILE DEPARTMENT

### WHAT WE DO

The Juvenile Department is a team of professionals dedicated to providing excellent legal service and representation to children in Ohio's juvenile and criminal justice systems. The department is comprised of eight attorneys, a program administrator, an administrative assistant, and a law clerk. The department provides direct representation to youth in trial level proceedings, post-disposition actions (appeals, post-conviction, collateral actions), administrative and conditions of confinement advocacy, post-release/reentry proceedings, including sex offender classification representation and sealing and expunging, and in federal court actions.

In addition to direct representation, the department members provide support to local defenders throughout the state, supplying sample motions, pleadings, and offering amicus support in the

Supreme Court of Ohio. Annually, the department coordinates and provides a delinquency-focused training to members of Ohio's juvenile defense bar, training more than 200 attorneys in the 2017 fiscal year; and members of the department also serve as faculty at various seminars throughout the state and at national juvenile-defense trainings.

Members of the department also participate in policy and reform work on various state, regional, and national commissions and boards, including the Juvenile Detention Alternatives Initiative, the Criminal Sentencing Commission, the Governor's Council on Juvenile Justice, the Ohio Fees Working Group, the JLC National Working Group on Juvenile Records, the Ohio State Bar Association's Juvenile Law Committee, and the Shared Hope International JUST Response Council.



“ It would be absurd to limit confinement credit due to a juvenile under R.C. 2152.18(B) merely because the form of the charging instrument against him or her changes even though the allegations set forth therein remain the same. ”

*In re D.S.*, Supreme Court of Ohio

### SPECIAL PROJECTS/INITIATIVES IN FISCAL YEAR 2017

In FY 2017, our department started its annual “Summer Series,” which is a series of internal trainings, open to any agency employee interested in learning more about a juvenile delinquency topic (e.g., serious youthful offender dispositions; transfer; court costs and fines; human trafficking; education issues for incarcerated youth, etc.). In our first year, we were joined by OPD staff members from other departments and branches. This was also the inaugural year for our department to become the primary host for the Ohio Juvenile Defender Leadership Summit, a training that we have partnered with other child advocate organizations since 2004.

### ESPECIALLY SIGNIFICANT

One of our clients, a juvenile charged with aggravated murder and tampering with evidence, was facing a potential sentence of juvenile life without parole in adult prison. One of our attorneys co-counseled the case with a local defender office, and for more than a year, worked to ensure that he had the best possible chance of having his case viewed through the lens of his youth in Ohio's justice system. This included multiple proceedings in juvenile and criminal court, enlisting the assistance of experts, and counseling the client for months concerning potential plea offers. After superb counseling, care, and advocacy—and in the eleventh hour, our client agreed with counsel's advice to accept a plea which got him a life sentence rather than a sentence without the possibility of parole.



## LEGAL DEPARTMENT

### WHAT WE DO

The Legal Department's client base is composed of adult men and women who have been convicted of a non-capital crime. Our department is comprised of three sections: Prison Legal Services, Intake, and Appeals and Post-Conviction.

The Prison Legal Services team works in the reception area of prisons and has the first contact with potential clients. They interview everyone who has gone to trial for post-conviction screening, hold orientations to make sure everyone understands his or her rights, and they represent clients in front of the parole authority.

Information collected by the Prison Legal Services team is given to the Intake staff, who also receive mail, faxes, emails, phone calls and other correspondence from potential clients and their families. They respond to inquiries and build files to determine if a case is viable, what records are needed, and create a potential plan to move forward.

Open cases end up in the Appeals and Post-Conviction section, where team members work on direct appeals, jail-time credit, postrelease control, and post-conviction petitions.

The Legal Department serves a wide variety of clients throughout the state in cases ranging from serious felony offenses and

sexual classifications, to motions to shorten a prison stay.

### SPECIAL PROJECTS/INITIATIVES IN FISCAL YEAR 2017

We designed the Judicial Sanction Postrelease Control Project to sort through potential clients in DRC custody serving time on void sentences.

### ESPECIALLY SIGNIFICANT

#### ***State v. Hand***

In cooperation with the OPD Juvenile Department, Supreme Court of Ohio case regarding the use of prior juvenile adjudications to enhance the degree of adult charges

#### ***State v. Grimes***

Supreme Court of Ohio case that ultimately defined the necessary steps to properly impose sentence, including postrelease control



## MITIGATION AND INVESTIGATION DEPARTMENT

### WHAT WE DO

The Mitigation and Investigation Department, currently consisting of eight investigators and one supervisor, is responsible for providing investigative services to the agency, and frequently to outside counsel. The investigators are capable of providing both criminal investigation and mitigation investigations. Criminal investigation involves researching the facts surrounding a crime, while mitigation investigation focuses on telling the life story of the client. These services are also offered to OPD county offices.

The range of services provided by the Mitigation and Investigation Department is rather varied. Both mitigators and criminal investigators are involved in record collection, locating and interviewing witnesses, locating and interviewing expert witnesses, review of gathered material, notary services, subpoena service, assisting in developing mitigation themes for trial, federal habeas and post-conviction cases, juror interviews and assisting in re-entry programs and placement for clients. The goal

in most investigations is to attempt to mitigate the punishment for the client. The criminal investigation looks at the facts of the crime in an effort to refute the state's theory. The mitigation investigation centers on the defense team's efforts to lessen the severity of a client's sentence. In death-eligible cases, saving the life of the client is our focus.

### SPECIAL PROJECTS/INITIATIVES IN FISCAL YEAR 2017

#### **New OPD-specific mitigation and criminal investigator classification**

The majority of the investigation/mitigation specialists at OPD have been in their positions for 20-plus years, and have not received an increase in compensation to reflect their expertise. OPD leaders worked with Mitigation and Investigation Department members to create a new classification that would better reflect those investigation/mitigation specialists'

“ There is a strength, a power even, in understanding brokenness, because embracing our brokenness creates a need for mercy, and perhaps a corresponding need to show mercy. When you experience mercy, you learn things that are hard to learn otherwise. You see things you can't otherwise see; you hear things you can't otherwise hear. You begin to recognize the humanity that resides in each of us. ”

**Bryan Stevenson**

experience and knowledge, as well as provide appropriate compensation.

#### **Staff changes**

Staff changes in FY17, left our department with two mitigator/investigator positions to fill. Two new additions joined the agency in spring 2017.

#### **Justice for Incarcerated Battered Women**

Members of the Mitigation and Investigation Department were involved in the Justice for Incarcerated Battered Women project, alongside several agency attorneys. Members of this department were assigned to assist the defense attorneys in investigating whether the client was a battered woman, locating evidence, conducting interviews, meeting with the women, and assisting with developing information to present to the parole board as part of a clemency application. Work on this initiative continues into FY 2018.

### ESPECIALLY SIGNIFICANT

From the administrative perspective, our biggest win was gaining the new classification that allows for appropriate compensation and accurately reflects the experience of our mitigation specialists/fact investigators.

From a client perspective, our biggest wins were saving the lives of two clients facing potential death sentences. Our mitigation specialists/investigators worked with both OPD attorneys and outside co-counsel to persuade these clients to accept plea bargains for life without parole, therefore, avoiding possible death sentences. Both OPD attorneys and outside co-counsel expressed their sincere appreciation for the dedication and hard work of our mitigation specialists/investigators in these cases. In fact, one of our team members did such an excellent job that the prosecutor acknowledged her during the plea hearing.





## WRONGFUL CONVICTION PROJECT

### WHAT WE DO

The Wrongful Conviction Project (WCP) investigates and litigates cases in which there is significant evidence that the person is actually innocent. Each year, the WCP screens hundreds of cases for actual innocence, conducts in-depth investigation in dozens of cases, and litigates innocence cases in state and federal court. The WCP's cases are varied, often involving perjury/false evidence, eyewitness identification, flawed forensic science, and official misconduct.

The WCP often collaborates with other OPD divisions. The WCP consults with the Policy & Outreach Division on legislation and rule changes that could both prevent wrongful convictions and change how courts address specific post-conviction claims often seen in innocence cases. Further, because members of the WCP have developed expertise in a number of forensic disciplines, they often advise attorneys in OPD and throughout Ohio on how to address forensic issues in trial and postconviction.

The WCP is also OPD's connection to the larger innocence community by way of its membership in the Innocence Network and our director's elected position on the Innocence Network Executive Board.

### SPECIAL PROJECTS/INITIATIVES IN FISCAL YEAR 2017

#### Lab examiner review

The WCP, the Ohio Innocence Project, and Bureau of Criminal Investigation entered into an agreement to review all cases involving a former BCI lab examiner. The review is ongoing.

#### Conference presentations

The WCP conducted in-depth research on race and misdemeanor wrongful convictions and presented on the topic at national conferences, including at the 2017 Innocence Network Conference in San Diego.

#### Media presence

The WCP worked diligently with the media to highlight the cases of two of its clients.

#### Delay in courts study

The WCP continued to work with other parties studying delay in courts considering post-conviction petitions and new trial motions in actual innocence cases. The work is ongoing.

### ESPECIALLY SIGNIFICANT

The Wrongful Conviction Project's most significant win in FY 2017 involved a client we have represented since 2011. In 2016, the

Tenth District Court of Appeals ordered the trial court to hold a hearing on our client's post-conviction and permit him to file a motion for new trial. The WCP successfully defended against the prosecutor's subsequent appeal to the Supreme Court of Ohio, filed the client's new trial motion, and then prepared (along with another OPD attorney serving as co-counsel) for the evidentiary hearing. Just prior to the June 2017 hearing, the WCP negotiated a deal for the client (who was previously serving 23 years-to-life for aggravated murder), whereby he entered an *Alford* plea to involuntary manslaughter. Our client was released one month later, after being incarcerated for 10 years and seven months.

“ Thank you for all of your hard work and time spent! From the very beginning you were and to this day have been such a key part in my recovery. Also, thank you for being there for my mother. ”

**OPD client**



# POLICY & OUTREACH DIVISION

## WHAT WE DO

The Policy & Outreach Division was created in fiscal year 2015 to house the agency's growing policy, public outreach, and oversight efforts. In addition to providing direct client representation, the agency is statutorily mandated to supervise the compliance of county indigent defense systems with the Commission's standards and the agency's guidelines, and to provide technical aid and assistance to local indigent defense service providers. The Division serves as the main point of contact for county indigent defense systems and oversees reimbursement to the counties. It is also responsible for the agency's media and social media efforts, public records requests, and legislation.

## SPECIAL PROJECTS/INITIATIVES IN FISCAL YEAR 2017

In fiscal year 2017, the OPD provided testimony on a number of legislative bills. The OPD advocated for legislation that provided expungement of records related to the apprehension, arrest, criminal charging, or trial of a person based on mistaken identity—and legislation that barred a death sentence for an individual that had a serious mental illness at the time of the offense.

The Policy and Outreach Division assisted OPD's Wrongful Conviction Project with a social media campaign for Wrongful Conviction Day, and designed a brochure for the Mitigation and Investigation Department, highlighting



the Department's work. The OPD letterhead underwent a redesign, and portions of the OPD's website were updated.

OPD's MIS Department and the Policy & Outreach Division continued our joint project work with OPD Online, which included deployment to the OPD offices and preparation for development to the county public defender offices.

## ESPECIALLY SIGNIFICANT

As fiscal year 2017 came to a close, the Policy & Outreach Division looked for ways to improve efficiencies in our reimbursement system, moving away from paper processing and toward electronic processing, with the use of OPD Online. We also began to explore the use of social media as a channel of communicating the good work of OPD's dedicated team members.

# TRIAL SERVICES DIVISION

## TRIAL SERVICES DEPARTMENT

## WHAT WE DO

This division represents clients at the trial level in common pleas, municipal and juvenile courts. It consists of four branch offices (Athens, Ross, Trumbull, and Washington counties), contractors in Adams, Brown, Fayette, Jackson, Pickaway, and Pike counties, and the Trial Department in Columbus (which concentrates on death penalty trial work and represents clients in all Ohio counties, and the U.S. District Court for the Southern District of Ohio).

Trial Services lawyers regularly consult with outside counsel on trial matters, help keep the Death Penalty Motions Manual up-to-date, assist office colleagues with evidentiary hearings, in-state post-conviction and federal habeas corpus cases, and present at various death-penalty trial seminars.

## SPECIAL PROJECTS/INITIATIVES IN FISCAL YEAR 2017

The division was formed in March of 2017, combining the Multi-County Office, Trumbull Branch, and the Trial Department.

## ESPECIALLY SIGNIFICANT

The formation of the division was especially significant in fiscal year 2017.



“ In matters of truth and justice, there is no difference between large and small problems, for issues concerning the treatment of people are all the same. ”

**Albert Einstein**



## ATHENS COUNTY

### WHAT WE DO

The Athens County office provides top-notch legal defense for any client who meets the financial qualifications of the Office of the Ohio Public Defender. We provide representation to juveniles charged with delinquency, adults charged with misdemeanors that carry potential jail time, and adults charged with felonies.

### SPECIAL PROJECTS/INITIATIVES IN FISCAL YEAR 2017

This year we participated in the Athens County Stand Down Program, which is geared toward helping veterans and other who may be homeless. We participated in the Ohio combined charitable campaign, raising \$1,410. As an office, we volunteered at the local food

pantry. We participated in an ALS walk for charity (raising \$2,500). One of our attorneys (formerly a social worker in our office before passing the bar exam) has been working with the State of Michigan to help them revamp their indigent defense system.

### ESPECIALLY SIGNIFICANT

We had numerous successful cases, each one having been incredibly significant for the client that was impacted. The biggest victories were cases where there was no opinion or decision because, based on the hard work of our attorneys and staff, we were able to convince the prosecutor to dismiss the case without any risk of putting the decision into the hands of a judge or a jury.



## ROSS COUNTY

### WHAT WE DO

We handle trial level cases while providing client-centered representation in common pleas, municipal and juvenile courts. We represent indigent defendants accused of M-4 misdemeanors all the way to unclassified felonies. We also represent indigent juveniles in delinquency and unruly cases.

### SPECIAL PROJECTS/INITIATIVES IN FISCAL YEAR 2017

One special project we undertook was running an expungement clinic in which we were able

to guide people on how to apply for, and successfully achieve, getting their records sealed.

### ESPECIALLY SIGNIFICANT

Three of our attorneys won multiple trials, and a fourth has had more victories in juvenile court than any of us thought possible.



## TRUMBULL COUNTY

### WHAT WE DO

OPD has maintained and operated a branch in Trumbull County since 1984. The office is located in Warren and provides indigent defense representation in Trumbull County courts. In addition to full-time attorneys and staff, the Trumbull office contracts with 17 local attorneys for additional representation.

Our attorneys provide representation at the common pleas level and in the juvenile division of the domestic relations division. At the municipal and county courts, representation is provided in Brookfield, Cortland, Girard, Newton Falls, Niles, and Warren. Attorneys also provide appellate and drug court representation.

The state and county jointly fund the operation of the Trumbull County office.

### SPECIAL PROJECTS/INITIATIVES IN FISCAL YEAR 2017

One of our attorneys was invited by the Trumbull County Bar Association to speak on DNA in criminal cases. As one who has studied DNA extensively, he is competent in reading and deciphering DNA results, and skilled at cross-examining DNA experts.



“ I got your name from someone at Girard Court as the attorney who handled my brother’s recent menacing case. Harold’s mental illness is severe to the point where he cannot function properly in society and needed to be remanded to a hospital instead of jail, and I appreciate all of your efforts to ensure that happened.

**Client letter to contract attorney**

”

## WASHINGTON COUNTY

### WHAT WE DO

Our office’s jurisdiction falls exclusively to Washington County, where we handle felonies (except death penalty cases), misdemeanors, juvenile delinquency cases, and conduct all indigency interviews. There are four attorneys in our office and two independent contract attorneys. We handle a substantial majority of the criminal cases in Washington County, and juvenile cases that are referred to us from the court. We file for judicial release, driving rights, motions to return property, and any other motions during or after the initial case that may be in the best interest of our client.

As a result of our attorney’s efforts, her client is currently out of incarceration.

Another one of our attorneys had a client who maintained his innocence in a case. The case involved a gentleman and his passenger in a vehicle in a store parking lot. The sheriff’s deputy approached the vehicle, knocked on the window and observed a gentleman, sketching, and a female passenger. The driver was asked

### ESPECIALLY SIGNIFICANT

One of our attorneys represented a mentally ill client deemed not restorable to competency. Law enforcement continued to charge him with crimes in the community. Our attorney filed a Suggestion of Incompetence, then she persuaded her client to attend his competency meeting. Almost instantly, the evaluator realized that the client was, in fact, not competent and, based on his records and prior one year commitment at a mental health facility. The Court wanted to try to restore the client anyway and ordered that he return to the mental health facility. Our attorney continued the hearing and called a physician about the lack of restorability. After the hearing, the Judge took the matter under advisement and within a week decided that the client was not restorable, and would not be returning to the mental health facility.





if he would consent to a search, but he did not consent. The deputy indicated that he believed the driver was acting nervous and his heart was palpating, so he walked the drug dog around the vehicle, to which it hit on the passenger side. The defendant was removed and searched, and drug paraphernalia was located. A more thorough search of the vehicle found felony levels of drugs, and the defendant was charged with M4 Drug Paraphernalia with felony charges forthcoming.

Upon receiving the file, our attorney spoke to the client who advised that it was not him, but probably his brother, in the vehicle. Discovery revealed a video of the driver, with tattoos around his neck and on his hands. In fact, the individual was actually sketching tattoos when the officer approached his vehicle. The client did not come in for an office conference, although two were scheduled. He did appear at pretrial sentencing. Our attorney instantly observed

that there were no tattoos on his neck or hands; in fact, the client *was* innocent of the charges. Counsel asked the law director if the client could view the video. Upon viewing the video, the client advised that the individual in the video was, in fact, his brother. The law director's secretary witnessed the fact that the client did not have tattoos on his neck and hands, while the individual in the video did. The State agreed to dismiss the case outright.

Another client had a long history of drug addiction, and was sent to prison July 2016 on several drug related charges, with credit for 270 days previously served. She was to serve an aggregate of four years in prison with no mandatory time. Our attorney filed for judicial release at the request of the client, and in August 2017, it was granted. Since her release, our client has been an advocate against drugs in the community, speaking at the High on Hope Movement in April 2018.

“ All the great things are simple, and can be expressed in a single word: freedom, justice, honor, duty, mercy, hope.

**Winston Churchill**

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**TABLE I**  
**OHIO PUBLIC DEFENDER COMMISSION EXPENDITURES**  
**FISCAL YEAR 2017**  
**(Budgetary Basis)**

FUND	ALI	ALI TITLE	FY 17 EXPENDITURES
GRF	019401	State Legal Defense Services	\$ 3,384,762.92
GRF	019403	Multi-County: State Share	1,851,734.33
GRF	019404	Trumbull County: State Share	517,411.49
GRF	019405	Training Account	34,215.00
GRF	019501	County Reimbursement	21,944,819.35
<b>TOTAL GENERAL REVENUE FUND</b>			<b>\$27,732,943.09</b>
1010	019607	Juvenile Legal Assistance	\$ 181,458.94
4060	019603	Training & Publications	26,655.00
4070	019604	County Representation	325,475.57
4080	019605	Client Payment Fund	855,758.81
5740	019606	Legal Services Corporation	16,178,342.92
4N90	019613	Gifts and Grants	8,815.14
4C70	019601	Multi-County: County Share	2,291,571.59
4X70	019610	Trumbull County Share	616,270.09
5CX0	019617	Civil Case Filing Fee	440,978.34
5DY0	019618	Indigent Defense Support: County Share	40,127,590.89
5DY0	019619	Indigent Defense Support: State Office	5,623,707.54
<b>TOTAL NON-GRF/NON-FEDERAL FUNDS</b>			<b>\$66,676,624.83</b>
3S80	019608	Federal Representation	\$ 165,801.55
3GJ0	019622	Byrne Memorial Grant	28,131.35
<b>TOTAL FEDERAL FUNDS</b>			<b>\$ 193,932.90</b>
<b>TOTAL PUBLIC DEFENDER COMMISSION</b>			<b>\$94,603,500.82</b>

**NOTES TO TABLE I: OHIO PUBLIC DEFENDER COMMISSION EXPENDITURES**

FY 17 Expenditures: Net expenditures of fiscal year 2017 budget appropriations using the budgetary basis of accounting. Under the budgetary basis, the agency matches or accrues all expenditures to the fiscal year for which they were appropriated. The figures include disbursements on open encumbrances of fiscal year 2017 appropriations made between July 1, 2017 and November 30, 2017.

The agency accounts for expenditures using the budgetary basis method for two reasons. First, it is common for the agency to have open encumbrances at year end that are ultimately not disbursed. Some encumbrances may lapse, meaning they go unspent. To include the full value of open encumbrances at year end would potentially overstate the amount of fiscal year 2017 appropriations actually expended. Second, and for a similar reason, the agency excludes disbursements of prior year encumbrances made in the current year. For example, the figures would exclude an equipment acquisition encumbered and received in fiscal year 2016, but not vouchered and disbursed until fiscal year 2017.

A full detailed report of the agency's fiscal year 2017 financial statements including reconciliation to the modified accrual basis of accounting is available on the agency's website at [www.opd.ohio.gov](http://www.opd.ohio.gov).

019401: State Legal Defense Services: This line item is used for personal services, maintenance, and equipment for the Legal and Death Penalty Divisions.

019403: Multi-County: State Share: This line item is used to fund the state's share of the Multi-County Branch Office.

019404: Trumbull County: State Share: This line item is used to fund the state's share of the Trumbull County Branch Office.

019405 Training Account: This line item is to fund attorney training seminars under the *pro bono* qualification.

019501: County Reimbursement: This line item is used for state reimbursement to the counties for their indigent defense expenditures.

019607: Juvenile Legal Assistance: This line item is used to administer the Juvenile Legal Assistance Program. Under the program, the Office of the Ohio Public Defender (OPD) staff provides legal assistance to youths committed to the Department of Youth Services (DYS). Funding is provided by DHS through an interdepartmental agreement with OPD.

019603: Training & Publications: This line item is used to administer training programs sponsored or directly provided by OPD.

019604: County Representation: Revenues for this account come from funds paid to OPD by counties throughout the state where counties have requested the State Public Defender to provide counsel in local cases. Upon providing such representation, OPD bills the county for a portion of the costs.

019605: Client Payment Fund: This account receives revenues from the Indigent Application Fee per R.C. 120.36 and from Client Recoupment per R.C. 2941.51(D). Funds received are used for OPD operating expenses.

019606: Legal Services Corporation: This account is used for the Civil Legal Services Program. Revenues come from Interest on Lawyer's Trust Accounts (IOLTA), civil case filing fees, and investment earnings. In fiscal year 1994, OPD created the Ohio Legal Assistance Foundation (OLAF), a non-profit organization to administer the Civil Legal Services Program. Funds from this account are now distributed to OLAF, who makes distributions and grants to Ohio's civil legal aid societies.

019613: Gifts & Grants: This account is authorized under R.C. 120.04(C)(2), and is used to administer funds when the OPD receives money from private donors or from non-federal grants. Presently, the agency is using the account to accept and disburse grant funds related to the Wrongful Conviction Project.

019601: Multi-County: County Share: This account is used to administer funds received via contract from counties that participate in the agency's Multi-County Branch Office Program. The program is authorized under R.C. 120.04(C)(7) and 120.33(B).

019610: Trumbull County: County Share: This account is used to administer funds received via contract from Trumbull County for their participation in the agency's Trumbull County Branch Office Program. The program is authorized under R.C. 120.04(C)(7) and 120.33(B).

019617: Civil Case Filing Fee: This account is used to administer funds received from OPD's portion of civil filing fee surcharge per R.C. 120.07, 1901.26, 1907.24 and 2303.201. The Office of the Ohio Public Defender receives four percent of the amount collected. The funds are used for operating expenses for OPD.

019618: Indigent Defense Support: County Share: This account is used to administer funds remitted to the State Treasurer to the credit of the Indigent Defense Support Fund. Funds come from court costs, bail bond fees, and license reinstatement fees collected by the Department of Public Safety, Bureau of Motor Vehicles. The funds are used to make reimbursement payments to the counties for their indigent defense costs per R.C. 120.18, 120.28, 120.33 and 120.35.

019619: Indigent Defense Support: State Office: This account is used to administer funds remitted to the State Treasurer to the credit of the Indigent Defense Support Fund. Funds come from court costs, bail bond fees, and license reinstatement fees collected by the Department of Public Safety, Bureau of Motor Vehicles. The funds are used for OPD operating costs.

019608: Federal Representation: Revenues for this account come from reimbursement for representation on federal habeas cases by OPD employees.

019622: Byrne Memorial Grant: Revenues for this account come from a federal grant. This is a reimbursement grant, so expenditures may be used for any purpose, are currently being used for the Social Worker position in the Athens Branch Office.

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TABLE II

**OFFICE OF THE OHIO PUBLIC DEFENDER**  
**FISCAL YEAR 2017 CASES (7/1/16 - 6/30/17)**  
 Death Penalty, Trial & Juvenile

COURT	DEATH PENALTY DIVISION			TRIAL SECTION			JUVENILE DIVISION		
	PENDING	CLOSED	TOTAL	PENDING	CLOSED	TOTAL	PENDING	CLOSED	TOTAL
Juvenile Court	0	0	0	0	0	0	179	276	455
Common Pleas Court-Trial	0	1	1	63	29	92	1	1	2
Common Pleas Court	49	18	67	1	2	3	0	0	0
Court of Appeals	22	5	27	0	0	0	86	75	161
Supreme Court of OH	26	22	48	0	0	0	27	21	48
Federal District Court	33	6	39	0	0	0	0	0	0
6th Circuit Court of Appeals	6	4	10	0	0	0	0	0	0
US Supreme Court	5	5	10	0	0	0	2	0	2
Parole Board	4	0	4	0	0	0	8	20	28
Other**	6	8	14	10	1	11	152	134	286
Juvenile Interview Only	0	0	0	0	0	0	12	56	68
<b>Total</b>	<b>151</b>	<b>69</b>	<b>220</b>	<b>74</b>	<b>32</b>	<b>106</b>	<b>448</b>	<b>648</b>	<b>1,096</b>

\*\*Other includes jail time, sentence issues (including Graham Class and SB 10), misdemeanors, and assistance to others.

TABLE II (cont'd)

**FISCAL YEAR 2017 CASES (7/1/16 - 6/30/17)**

COURT	LEGAL DIVISION STAFF			INTAKE ONLY			WRONGFUL CONVICTION		
	PENDING	CLOSED	TOTAL	PENDING	CLOSED	TOTAL	PENDING	CLOSED	TOTAL
Common Pleas Court-Trial	0	0	0	0	0	0	4	1	5
Common Pleas Court	283	129	412	366	1037	1103	326	70	396
Court of Appeals	25	139	164	8	121	129	1	2	3
Supreme Court of OH	62	138	200	10	88	98	1	1	2
Federal District Court	9	15	24	2	11	13	1	1	2
6th Circuit Court of Appeals	0	0	0	0	0	0	1	0	1
US Supreme Court	1	2	3	0	0	0	0	0	0
PB - Parole Revocation Hearings	0	677	677	1	2	3	0	0	0
PB - Full Board Hearings	5	127	132	0	0	0	0	0	0
PB - Other Inquires	0	0	0	0	7	8	0	1	1
Other**	1	1	2	0	1	1	0	0	0
<b>Total</b>	<b>386</b>	<b>1,228</b>	<b>1,614</b>	<b>387</b>	<b>1,267</b>	<b>2,442</b>	<b>334</b>	<b>76</b>	<b>410</b>

\*\*Other includes jail time, sentence questions, misdemeanors, and assistance to others.

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**TABLE III**  
**DEATH PENALTY CASES IN OHIO**  
**FISCAL YEAR 2017 DEATH SENTENCES**

Sentence Date	Defendant	Race-Sex-Age	County
10-17-16	Glen Bates	B-M-34	Hamilton
11-15-16	Damantae Graham	B-M-19	Portage
6-22-17	Terry Froman	B-M-43	Warren

**CUMULATIVE TO DATE DEATH SENTENCES BY COUNTY**

As of Fiscal Year 2017

COUNTY	NO.	% of TOTAL	COUNTY	NO.	% of TOTAL	COUNTY	NO.	% of TOTAL
Adams	0	0.0%	**Hamilton	60	18.3%	Noble	1	0.3%
Allen	3	0.9%	Hancock	1	0.3%	Ottawa	0	0.0%
Ashland	1	0.3%	Hardin	0	0.0%	Paulding	0	0.0%
Ashtabula	1	0.3%	Harrison	0	0.0%	Perry	0	0.0%
Athens	0	0.0%	Henry	0	0.0%	Pickaway	0	0.0%
Auglaize	0	0.0%	Highland	0	0.0%	Pike	0	0.0%
Belmont	2	0.6%	Hocking	1	0.3%	Portage	4	1.2%
Brown	1	0.3%	Holmes	0	0.0%	Preble	1	0.3%
Butler	10	3.1%	Huron	0	0.0%	Putnam	1	0.3%
Carroll	0	0.0%	Jackson	0	0.0%	Richland	3	0.9%
Champaign	0	0.0%	Jefferson	3	0.9%	Ross	1	0.3%
Clark	7	2.2%	Knox	1	0.3%	Sandusky	1	0.3%
Clermont	3	0.9%	Lake	3	0.9%	Scioto	6	1.9%
Clinton	3	0.9%	Lawrence	0	0.0%	Seneca	0	0.0%
Columbiana	1	0.3%	Licking	5	1.6%	Shelby	2	0.6%
Coshocton	0	0.0%	Logan	0	0.0%	Stark	6	1.9%
Crawford	1	0.3%	Lorain	10	3.1%	***Summit	20	6.1%
Cuyahoga	63	19.2%	Lucas	23	7.2%	Trumbull	11	3.4%
Darke	0	0.0%	Madison	1	0.3%	Tuscarawas	0	0.0%
Defiance	0	0.0%	Mahoning	15	4.6%	Union	0	0.0%
Delaware	1	0.3%	Marion	2	0.6%	Van Wert	1	0.3%
Erie	1	0.3%	Medina	2	0.6%	Vinton	1	0.3%
Fairfield	0	0.0%	Meigs	0	0.0%	Warren	5	1.5%
Fayette	0	0.0%	Mercer	0	0.0%	Washington	0	0.0%
*Franklin	19	5.8%	Miami	0	0.0%	Wayne	1	0.3%
Fulton	0	0.0%	Monroe	0	0.0%	Williams	0	0.0%
Gallia	0	0.0%	Montgomery	8	2.5%	Wood	2	0.6%
Geauga	1	0.3%	Morgan	0	0.0%	Wyandot	0	0.0%
Greene	4	1.3%	Morrow	0	0.0%			
Guernsey	3	0.9%	Muskingum	1	0.3%	<b>TOTAL</b>	<b>328</b>	<b>100%</b>

\*Reflects 2 death sentence cases for James Conway  
 \*\*Reflects 2 death sentence cases for Alton Coleman  
 \*\*\*Reflects 2 death sentence cases for Donald Craig

**TABLE IV**  
**TRUMBULL COUNTY BRANCH OFFICE**  
**CASES OPENED**  
**FISCAL YEAR 2017**

Type of Case	FY 2017
Capital Felony	0
Felony	1,180
Misdemeanor (Revised Code and Ordinance)	4,168
Probation Revocation	741
Juvenile Offender	205
Drug Court	58
Total	6,352

**TABLE V**  
**MULTI-COUNTY BRANCH OFFICE**  
**CASES CLOSED**  
**FISCAL YEAR 2017**

County	Felony	Felony CCSV	Felony Preliminary Hearing	Misdemeanor	Misdemeanor CCSV	Juvenile Delinquency and Unruly	Juvenile Delinquency CCSV	Juvenile Abuse, Neglect, or Dependency	Total
Adams	146	9	73	167	2	88	8	29	522
Athens	246	305	104	937	11	52	8	44	1,707
Brown	225	132	156	553	147	64	4	61	1,342
Fayette	257	1	111	431	18	112	19	2	951
Jackson	132	40	100	1,051	203	18	0	5	1,549
Meigs	42	8	0	299	24	0	0	0	373
Pickaway	123	18	157	636	195	122	1	77	1,329
Pike	103	120	124	364	185	36	1	45	978
Ross	433	85	210	1,855	278	200	0	118	3,179
Washington	491	77	205	1,414	89	123	3	0	2,402
Total	2,198	795	1,240	7,707	1,152	815	44	381	14,332



**TABLE VI**  
**COUNTY PUBLIC DEFENDER TERMS AND OFFICES**  
 (For recent changes please visit [www.opd.ohio.gov/CountyPD/CountyPD.htm](http://www.opd.ohio.gov/CountyPD/CountyPD.htm))

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COUNTY	PUBLIC DEFENDER	TELEPHONE	FAX
Allen	Steve Chamberlain Allen County Public Defender 109 N. Union Street Lima, Ohio 45801 Re-appointed Jan. 25, 2015, for a four-year term	(419) 221-5220	(419) 998-5517
Ashtabula*	Marie Lane Ashtabula County Public Defender Office 4817 State Road, Suite 202 Ashtabula, Ohio 44004 Contract Services	(440) 998-2628	(440) 998-2972
Auglaize	Gerald F. Siesel Auglaize County Public Defender Office 15 Willipie Street, Suite 220 P.O. Box 180 Wapakoneta, Ohio 45895 Re-appointed Feb. 1, 2014, for a four-year term	(419) 739-6796	(419) 739-6797
Belmont	Frank Pierce Belmont County Public Defender Office 100 West Main Street St. Clairsville, Ohio 43950 Re-appointed Jan. 3, 2017, for a four-year term	(740) 695-5263	(740) 695-5639
Butler**	Mary Asbury Legal Aid Society of Greater Cincinnati 10 Journal Square Hamilton, Ohio 45011 Contract Services	(513) 241-9400	(513) 894-7669
	Michael P. Weisbrod Butler County Public Defender Office 315 High Street, 8th Floor Hamilton, Ohio 45011 Re-appointed Jan. 1, 2016, for a two-year term	(513) 887-3540	(513) 887-3545
Carroll	Stephen J. Kandel Carroll County Public Defender 20 Second Street SE Carrollton, Ohio 44615 Re-appointed Feb. 1, 2015, to Jan. 31, 2019	(330) 627-5595	
Clark	James D. Marshall Clark County Public Defender Office 50 East Columbia Street, 4th Floor Springfield, Ohio 45502 Appointed Aug. 26, 2015, for a four-year term	(937) 521-1725	(937) 328-2715

Clermont	Willard Haynes Clermont County Public Defender Office 302 E. Main Street Batavia, Ohio 45103 Appointed Oct. 5, 2015, for a three-year term	(513) 732-7223	(513) 732-5382
Clinton	Robert Baker Clinton County Public Defender Office 111 S. Nelson Avenue, Suite 4 Wilmington, Ohio 45177 Appointed Jan. 1, 2013, for a four-year term	(937) 382-1316	(937) 382-8670
Columbiana*	Frederic E. Naragon Columbiana County Criminal Defense Co. P.O. Box 61 Salem, Ohio 44460 Contract Services	(330) 337-9578	(330) 337-1223
Coshocton	Jeffrey A. Mullen Coshocton County Public Defender Office 239 North 4th Street Coshocton, Ohio 43812 Re-appointed March 1, 2014, for a four-year term	(740) 623-0800	(740) 623-0296
Cuyahoga	Mark Stanton Cuyahoga County Public Defender Office 310 Lakeside Avenue, Suite 400 Cleveland, Ohio 44113-1021 Appointed May 1, 2017, to Apr. 30, 2021	(216) 443-7223	(216) 443-3632
Darke*	Paul Wagner Indigent Legal Assistance Fund of West Central Ohio 111 North Bridge Street P.O. Box 315 Gettysburg, Ohio 45328 Contract Services	(937) 447-8181	(937) 841-0020
Erie	Jeffrey J. Whitacre Erie County Public Defender Office 220 Columbus Avenue Sandusky, Ohio 44870 Re-appointed Feb. 16, 2015, for a four-year term	(419) 627-6620	(419) 627-6633
Franklin	Yeura R. Venters Franklin County Public Defender Office 373 South High Street, 12th Floor Columbus, Ohio 43215 Re-appointed March 9, 2016, for a four-year term	(614) 525-3194	(614) 461-6470
Gallia*	Andrew J. Noe Gallia County Defense Attorneys Corp. 19 Locust Street P.O. Box 301 Gallipolis, OH 45631 Contract Services	(740) 446-0603	

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Geauga	R. Robert Umholtz Geauga County Public Defender Office 211 Main Street Chardon, Ohio 44024 Re-appointed Dec. 1, 2015, for a four-year term	(440) 279-1890	(440) 286-4136		Medina	Jocelyn Stefancin Medina County Public Defender Office 120 West Washington Street, Suite 2D Medina, Ohio 44256 Appointed Feb. 18, 2015, for a four- year term	(330)-764-8437	(330) 764-8440  (330) 225-7100-Brunswick office (330) 336-6657-Wadsworth office
Greene	Arthur L. Sidell III Greene County Public Defender Office 90 East Main Street Xenia, Ohio 45385 Re-appointed March 13, 2017, for a four-year term	(937) 562-5041	(937) 562-5671		Miami	Steven R. Layman Miami County Public Defender Office Courthouse, 2nd Floor 201 West Main Street Troy, Ohio 45373 Appointed Jan. 3, 2015, for a four-year term	(937) 440-3950	(937) 440-3951
Hamilton	Raymond Faller Hamilton County Public Defender Office 230 East Ninth Street, 2nd Floor Cincinnati, Ohio 45202 Appointed Aug. 1, 2014, for a two-year term	(513) 946-3700	(513) 946-3707		Monroe	C. Mark Morrison Monroe County Public Defender Office 117 North Main Street Woodsfield, Ohio 43793 Re-appointed January 2017 for a one-year term	(740) 472-0703	(740) 472-9190
Hancock	Paul Maekask Hancock County Public Defender Office 100 E. Main Cross, Suite 200 Findlay, Ohio 45840 Appointed Dec. 31, 2015	(419) 424-7276	(419) 424-7274		Montgomery	Rudy Wehner Montgomery County Public Defender Office 117 S. Main Street, Suite 400 P.O. Box 972 Dayton, Ohio 45422 Re-appointed July 1, 2016, for a two-year term	(937) 225-4652	(937) 225-3449
Harrison	C. Adrian Pincola Harrison County Public Defender Office 112 North Main Street P.O. Box 427 Cadiz, Ohio 43907-0427 Re-appointed Jan. 1, 2016, for a four-year term	(740) 942-2080			Portage	John P. Laczko Portage County Public Defender Office 209 South Chestnut Street, Suite 400 Ravenna, Ohio 44266 Term expires March 5, 2020	(330) 297-3665	(330) 298-2064
Huron	David J. Longo Huron County Public Defender Office 16 E. Main Street, 2nd floor Norwalk, Ohio 44857 Re-appointed Oct. 5, 2016, for a two-year term	(419) 668-3702	(419) 668-3703		Shelby	Jonathan Richard Shelby County Public Defender Office 129 East Court Street Sidney, Ohio 45365 Re-appointed Jan. 17, 2017, for a four-year term	(937) 498-1714	(937) 658-6124
Knox	John S. Pyle Knox County Public Defender Office 11 E. High Street Mount Vernon, Ohio 43050 Re-appointed Jan. 1, 2017, for a four-year term	(740) 393-6734	(740) 397-6611		Stark	Tammi R. Johnson Stark County Public Defender Office 201 Cleveland Avenue SW, Suite 104 Canton, Ohio 44702 Re-appointed July 1, 2013, for a four-year term	(330) 451-7200	(330) 451-7227
Lake	Charles Grieshammer Lake County Public Defender Office 125 East Erie Street, Suite 50 Painesville, Ohio 44077 Appointed Jan. 22, 2014, for a four-year term	(440) 350-3200	(440) 350-5715		Summit*	Joseph S. Kodish Legal Defender Office of Summit County, Ohio, Inc. One Cascade Plaza, Suite 1940 Akron, Ohio 44308 Contract Services	(330) 434-3461	(330) 434-3371
Lucas*	M. Sean McNulty Toledo Legal Aid Society 555 N. Erie Street, Suite 248 Toledo, Ohio 43604 Contract Services	(419) 213-6911			Tuscarawas	Gerald A. Latanich Tuscarawas County Public Defender Office 153 North Broadway New Philadelphia, Ohio 44663 Re-appointed Jan. 1, 2015, for a four-year term	(330) 364-3523	(330) 364-7616

Union\* Perry R. Parsons (937) 644-3144 (937) 644-3517  
 Union County Criminal Defense Lawyers  
 111 W. Sixth Street  
 Marysville, Ohio 43040  
 Contract Services

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Van Wert\* Scott R. Gordon (419) 238-5025 (419) 238-4705  
 Van Wert County Public Defender Office  
 124 East Main Street  
 Van Wert, Ohio 45891  
 Contract Services

Wayne Rodney A. Baca (330) 287-5490 (330) 287-5479  
 Wayne County Public Defender Program  
 113 West Liberty Street  
 Wooster, Ohio 44691  
 Re-appointed Jan. 1, 2016, for a four-year term

Wood Kathleen M. Hamm (419) 354-9244 (419) 353-9865  
 Wood County Public Defender Office  
 123 North Summit Street  
 Bowling Green, Ohio 43402  
 Re-appointed Aug. 16, 2014, for a four-year term

**TABLE VII  
 COUNTY PUBLIC DEFENDER OFFICE CASELOADS  
 FISCAL YEAR 2017**

County	Felonies	Misdemeanors	Juvenile	Domestic Relations	Appeals	Post-Conviction	Parole/Prob. Revocation	Habeas Corpus	Extraditions	Other	Total Cases	Pending Cases
Allen	0	1,532	0	0	0	0	0	0	0	0	1,532	662
Ashtabula	891	2,092	435	168	5	81	229	0	3	0	3,904	813
Auglaize	123	431	155	5	4	83	86	0	1	0	888	197
Belmont	625	1,473	219	153	0	49	18	0	3	0	2,540	640
Butler	1,850	3,777	444	57	0	0	1,222	214	0	0	7,564	1,170
Carroll	34	147	12	21	0	0	0	0	0	0	214	0
Clark	1,258	2,390	248	23	0	0	130	0	0	1	4,050	256
Clermont	784	3,434	1,046	71	19	490	1,723	0	120	407	8,094	1,108
Clinton	226	801	101	10	0	0	137	0	1	0	1,276	449
Columbiana	335	1,222	619	275	0	254	357	0	0	1	3,063	1,170
Coshocton	106	566	351	8	8	38	63	0	4	0	1,144	255
Cuyahoga	3,135	32,723	8,064	21	221	980	924	0	0	17	46,085	7,844
Darke	177	352	136	16	1	5	52	1	0	0	739	222
Erie	680	1,037	460	2	3	122	254	0	12	2	2,572	1,729
Franklin	3,476	34,255	3,747	21	53	0	4,189	0	2	0	45,743	7,538
Gallia	200	1,147	263	75	2	3	40	0	3	0	1,733	517
Geauga	250	458	233	3	1	46	113	0	2	0	1,106	356
Greene	0	2,491	133	22	0	0	0	0	0	0	2,646	309
Hamilton	7,246	24,767	4,409	91	124	210	0	0	0	0	36,847	7,272
Hancock	269	1,469	437	24	0	61	521	0	0	0	2,781	723
Harrison	65	184	143	2	0	9	96	0	5	11	515	77
Huron	175	561	319	17	1	1	100	0	11	0	1,184	490
Knox	197	503	181	8	2	13	17	0	4	0	927	0
Lake	1,367	941	757	20	21	0	369	0	3	4	3,485	2,595
Lucas	216	12,352	2,963	0	0	22	254	0	42	0	15,849	4,446
Medina	123	1,343	320	0	0	0	117	0	0	109	2,012	583
Miami	546	1,358	301	98	0	59	29	0	0	0	2,402	705
Monroe	52	176	79	6	4	0	0	0	0	0	315	56
Montgomery	2,487	14,503	2,066	80	24	20	2,782	0	176	0	22,115	6,963
Portage	1,446	2,165	379	20	0	0	214	0	0	0	4,224	0
Shelby	280	1,100	252	2	2	3	126	0	4	76	1,845	236
Stark	978	3,556	1,390	258	9	1,053	523	0	45	0	7,812	625
Summit	0	8,817	2,273	0	0	88	0	0	0	47	11,225	1,274
Tuscarawas	193	1,604	234	17	5	2	203	0	8	0	2,266	605
Union	233	408	373	6	4	0	184	0	0	0	1,208	352
Van Wert	116	269	120	4	4	36	82	6	3	1	635	181
Wayne	251	924	559	9	0	7	391	0	0	3	2,144	496
Wood	405	1,273	173	0	1	1	437	0	8	4	2,302	1,629
<b>TOTAL</b>	<b>30,795</b>	<b>168,601</b>	<b>34,394</b>	<b>1,613</b>	<b>506</b>	<b>3,736</b>	<b>15,982</b>	<b>214</b>	<b>460</b>	<b>683</b>	<b>256,984</b>	<b>54,543</b>

\* Denotes counties using non-profit corporations for some or all public defender services.

\*\* Denotes counties using non-profit corporations for Guardian Ad Litem services only.

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**TABLE VIII**  
**COST OF COUNTY PUBLIC DEFENDER OFFICES**  
**FISCAL YEARS 2016 & 2017**

Table VIII shows the 100 percent cost the counties reported to OPD to operate public defender offices and the amount the state reimbursed the counties for fiscal year 2016 and 2017. The reimbursement rate was 48 percent in fiscal year 2016 and was annualized at 45 percent 2017.

COUNTY	FY 16 Amount Submitted	FY 16 Amount Reimbursed	FY 17 Amount Submitted	FY 17 Amount Reimbursed
Allen	\$192,760	\$92,525	\$192,976	\$86,911
Ashtabula	596,983	286,552	613,169	276,271
Auglaize	361,794	173,661	370,173	166,048
Belmont	373,842	179,444	406,343	183,024
Butler	2,418,642	1,160,948	2,521,264	1,135,655
Carroll	154,533	74,176	167,575	75,448
Clark	997,242	478,676	1,040,976	465,212
Clermont	1,492,675	716,484	1,609,812	721,654
Clinton	313,251	150,360	304,921	137,963
Columbiana	478,167	229,520	489,500	220,075
Coshocton	339,578	162,997	338,902	152,864
Cuyahoga	10,519,675	5,049,444	12,953,432	5,852,346
Darke	288,300	138,384	295,020	132,759
Erie	941,034	451,697	1,002,998	451,281
Franklin	13,373,673	6,419,363	13,557,936	6,092,278
Gallia	309,453	148,538	314,967	141,776
Geauga	543,734	260,992	579,063	260,274
Greene	589,075	282,756	638,762	285,806
Hamilton	12,991,044	6,235,701	12,176,005	5,473,310
Hancock	598,798	287,423	652,747	293,785
Harrison	199,961	95,982	212,690	95,081
Huron	466,585	223,961	333,934	151,795
Knox	437,983	210,232	486,299	217,483
Lake	1,580,700	758,736	1,553,094	699,125
Lucas	1,683,445	808,053	1,951,623	874,909
Medina	573,834	275,440	657,524	295,455
Miami	455,782	218,775	451,828	203,209
Monroe	142,766	68,528	182,287	82,003
Montgomery	5,305,270	2,546,530	5,482,188	2,458,840
Portage	818,403	392,833	850,442	382,900
Shelby	401,154	192,554	416,280	187,476
Stark	1,690,692	811,532	1,840,013	826,164
Summit	1,438,720	690,585	1,344,981	599,449
Tuscarawas	762,430	365,966	780,568	351,709
Union	401,662	192,798	418,306	187,571
Van Wert	175,161	84,077	185,151	83,318
Wayne	615,007	295,203	626,986	280,753
Wood	1,242,431	596,367	1,304,857	584,456
<b>TOTAL</b>	<b>\$66,266,239</b>	<b>\$31,807,793</b>	<b>\$69,305,594</b>	<b>\$31,166,436</b>

Note: In FY 2017, the reimbursement rate was 48% from July-December, 44% from January-March, and 40% from April-June. Therefore, an individual county's rate of reimbursement may vary slightly based on the timing of reimbursement request submissions.

**TABLE IX**  
**APPOINTED COUNSEL DEATH PENALTY REIMBURSEMENT**  
**FISCAL YEARS 2016 & 2017**

Table IX shows the 100 percent cost the counties reported to OPD for appointed counsel death penalty cases, post-audit, followed by the amount the state reimbursed the counties for fiscal years 2016 and 2017. The amounts shown below are not in addition to the amounts shown in Table X, but are the portion of the amounts shown in Table X that were for death penalty cases. The reimbursement rate was 50 percent in both fiscal years.

COUNTY	FY 16 Amount Submitted	FY 16 Amount Reimbursed	FY 17 Amount Submitted	FY 17 Amount Reimbursed
Allen	\$44,736	\$22,368	3,480	1,740
Ashtabula	97,487	48,744	582	291
Auglaize	6,823	3,411	44,768	22,384
Butler	54,641	27,320	10,653	5,227
Clinton	8,083	4,041	4,484	2,242
Coshocton	9,465	4,732	0	0
Cuyahoga	31,839	15,920	311,422	155,692
Erie	8,319	4,159	0	0
Franklin	33,928	16,964	155,717	77,858
Fulton	0	0	3,018	1,509
Guernsey	44,563	22,282	27,390	13,695
Hamilton	25,368	12,684	239,357	119,678
Knox	0	0	7,813	3,906
Lake	26,409	13,204	22,123	11,061
Logan	21,491	10,745	45,862	22,931
Lorain	51,281	25,641	21,178	10,589
Lucas	6,044	3,022	12,368	6,184
Mahoning	80,303	40,151	143,494	71,747
Marion	3,229	1,615	0	0
Medina	8,529	4,264	85,445	42,723
Mercer	0	0	5,489	2,745
Montgomery	4,512	2,256	136,141	68,071
Ottawa	17,607	8,803	0	0
Portage	0	0	55,672	27,836
Richland	98,948	49,474	0	0
Shelby	8,212	4,106	0	0
Stark	0	0	2,626	1,313
Summit	488,487	244,243	148,150	74,075
Trumbull	8,569	4,285	5,684	2,842
Union	0	0	7,096	3,548
Van Wert	0	0	4,028	2,014
Warren	29,664	14,832	43,830	21,915
Wood	14,860	7,430	0	0
<b>TOTAL</b>	<b>\$1,233,397</b>	<b>\$616,696</b>	<b>\$1,547,869</b>	<b>\$773,815</b>

Note: Column totals may not reflect the total amount because of rounding.







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“

Human progress is neither automatic nor inevitable. Even a superficial look at history reveals that no social advance rolls in on the wheels of inevitability. Every step towards the goal of justice requires sacrifice, suffering, and struggle; the tireless exertions and passionate concern of dedicated individuals. Without persistent effort, time itself becomes an ally of the insurgent and primitive forces of irrational emotionalism and social destruction. This is no time for apathy or complacency. This is a time for vigorous and positive action.

”

**Dr. Martin Luther King, Jr.**

OFFICE OF THE OHIO PUBLIC DEFENDER  
614-466-5394 | 800-686-1573 | [www.opd.ohio.gov](http://www.opd.ohio.gov)

250 E. BROAD STREET  
SUITE 1400  
COLUMBUS, OHIO 43215

App. 387

STATE OF OHIO, WARREN COUNTY  
IN THE COURT OF COMMON PLEAS  
CASE NO. 98CR17677

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STATE OF OHIO,

JAMES GALEN HANNA,

-vs-

Plaintiff,

Defendant.

- - -

TRANSCRIPT OF PROCEEDINGS

VOLUME VII of VIII

- - -

BE IT REMEMBERED that the above-captioned cause  
came on for hearing before the Honorable Neal B. Bronson  
of the Court of Common Pleas for Warren County, Ohio, on  
October 26, 27, 28, 29, November 2, 4, 5, 6, 9 and 10, 1998.

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Q. That was Bill?

A. Yes.

Q. Were any of the girls placed anywhere in any foster homes?

A. Not that I recall.

Q. All right.

MR. LONG: That's all the questions I have.

THE COURT: Any recross, Mr. Ewing?

MR. EWING: No questions, Your Honor.

(Witness excused.)

THE COURT: Your next witness, please.

MR LONG: Dr. Kathleen Burch.

---

KATHLEEN BURCH, PsyD,

of lawful age, a witness herein, having been first duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

BY MR. LONG:

Q. Doctor, would you state your name.

1 please?

2 A. Kathleen J. Burch, PsyD.

3 Q. And what is your business address?

4 A. 42 East Bahn Road, Dayton, Ohio.

5 Q. What is your occupation?

6 A. I'm a clinical psychologist.

7 Q. And do you have a major area of practice?

8 A. Well, I specialize in psychological  
9 assessments, including neuropsychological assessments, but I  
10 do general psychological practice, including psychotherapy  
11 and consultations and teaching.

12 Q. Would you tell us what neuropsychological  
13 assessments are?

14 A. Neuropsychological assessments involve  
15 using psychological instruments that address a person's  
16 cognitive functions. And the neuropsychological examination  
17 was developed because of the relative ineffectiveness of  
18 neurological examinations to determine functional  
19 disabilities due to neurological injury or developmental  
20 deficits.

21 And what's involved is testing such  
22 functions as a person's alertness and reaction time,  
23 learning and memory functioning, sensory perceptual  
24 functioning, conceptual reasoning and problem solving.

1 auditory and visual processing, a number of similar  
2 functions.

3 Q. Where do you get referrals for doing  
4 these kind of neuropsychological assessments?

5 A. From a number of places. I get -- well,  
6 forensic referrals, of course, including criminal work and  
7 also personal injury examinations. For example, when  
8 someone has been in an automobile accident or suffered a  
9 fall and has some adaptive or functional deficits as a  
10 result.

11 I also get referrals for doing these  
12 kind of examinations from psychiatrists and general medical  
13 physicians when they have a question about a person's  
14 cognitive functioning. For example, to make a  
15 differentiation between depression and dementia in an older  
16 person.

17 I get referrals from schools, from other  
18 psychologists and private individuals, and do a number of  
19 hospital consultations as well.

20 Q. All right. How long have you been in  
21 practice?

22 A. I've been in practice since 1986.

23 Q. And are you licensed by the state of  
24 Ohio?

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1 A. Yes, I am.

2 Q. Now, you mentioned neurological --  
3 psychoneurological assessments: do you also do psychological  
4 assessments?

5 A. Personality assessments, yes, and  
6 learning disability.

7 Q. All right. And you mentioned forensic  
8 assessments and what are those?

9 A. That's anything that has to do with the  
10 law (criminal or civil).

11 Q. All right. What's your educational  
12 background, Doctor?

13 A. I have, to start off, an associate degree  
14 in nursing from Sinclair Community College in Dayton. And  
15 then I got a bachelor's of science degree in nursing from  
16 Miami University. And then a doctor of psychology degree  
17 from Wright State University.

18 Q. Are you affiliated currently or have you  
19 been associated with any universities in a teaching  
20 situation?

21 A. Yes, I am on the adjunct faculties of  
22 Wright State University and the University of Dayton.

23 Q. As part of your licensing requirements,  
24 were you required to do a psychological residency?

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1           A.           Yes. I was required to do a one-year  
2 residency and I did that through the residency program at  
3 Wright State University in Dayton.

4           Q.           Besides forensic assessments that you do,  
5 have you been associated with any courts?

6           A.           Do you mean -- associated with them in  
7 what way?

8           Q.           Have you done work for other courts?

9           A.           Oh, yes. I have, a number of courts  
10 around Ohio. And I've also been qualified as an expert  
11 witness in Florida.

12          Q.           Have you been involved in presentations  
13 to your colleagues in the field?

14          A.           Yes. I have. I've given a number of  
15 presentations on various issues.

16          Q.           And do you become involved in workshops  
17 and conferences as a result of your efforts?

18          A.           Yes. I don't usually like to present  
19 because I'm busy enough, but I do go to workshops and  
20 conferences.

21          Q.           And do you engage in continuing education  
22 in your profession?

23          A.           Yes. I do. I typically get about 65 to  
24 75 hours of continuing education every year.

1 Q. Doctor, at my request did you see James  
2 Hanna?

3 A. Yes, I did.

4 Q. And what was the purpose of your  
5 involvement in seeing Mr. Hanna?

6 A. You asked me if I would see him to help  
7 you to determine whether there were any psychological issues  
8 that could help to explain his -- or understand his criminal  
9 behavior.

10 Q. And on how many occasions did you see  
11 James?

12 A. I saw him twice on -- I believe it was  
13 the 5th of May and the 4th of September.

14 Q. And what settings did you see him in?

15 A. I saw him at the jail.

16 Q. All right. Why don't you tell us about  
17 the first session and how long it lasted?

18 A. The first time I saw him, I went to  
19 interview him and administer some personality tests. And I  
20 interviewed him for about an hour and a half to two hours,  
21 and then I administered several tests including a  
22 personality inventory and a couple of projective personality  
23 tests. And the whole thing was probably four and a half to  
24 five hours.

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1 Q. Doctor, when you do that sort of thing,  
2 that assessment, you go and interview somebody and then you  
3 do a test: is your work over at that point?

4 A. No. I have to score and interpret the  
5 tests and pull it altogether.

6 Q. Including your visits, did you also  
7 review records that were submitted by myself and the Warren  
8 County prosecutor's office?

9 A. A great big box of them, yes.

10 Q. Did you also have the opportunity to  
11 interview family members?

12 A. Yes. I talked with four family members  
13 by phone. I talked with three of his sisters - Nancy and  
14 Shirley and Patricia - and I talked with his mother, Mary  
15 Hanna.

16 Q. You indicated there was a second visit?

17 A. Yes.

18 Q. What basically occurred on that occasion  
19 and how long did it take?

20 A. On that visit I administered a  
21 neuropsychological test battery. And that includes, as  
22 indicated before, a number of measures of different  
23 cognitive functions. And I could tell you the tests if you  
24 want me to or --

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1 Q. At this point I just wanted a general  
2 explanation of how long of a time were you involved in  
3 administering that neuropsychological battery of tests?

4 A. About six hours.

5 Q. And, again, after you administered those  
6 tests, was your work done?

7 A. No. There again, there is the scoring  
8 and interpretation of the tests, and then the integration of  
9 that material with what I got before about the personality  
10 functioning, and then all of the records and the interview  
11 data all has to be pulled together to try to come up with a  
12 coherent picture.

13 Q. All right. And in administering and  
14 interviewing Mr. Hanna on the first and the second occasion,  
15 in reviewing the records that were submitted to you, in the  
16 interview, and in your process of interpreting and analyzing  
17 and compressing, how much time have you spent on behalf of  
18 Mr. Hanna?

19 A. In everything?

20 Q. Yes.

21 A. In reviewing all the records and  
22 everything?

23 Q. Yes.

24 A. Oh, my gosh. I would estimate it's



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1 probably 35 to 40 hours.

2 Q. All right. As part of what you do in  
3 terms of talking to Mr. Hanna and his family, do you  
4 assemble a clinical history about Mr. Hanna?

5 A. Yes.

6 Q. And what, if anything, did that history  
7 reveal about the family structure that James grew up in?

8 A. Well, there is historical information  
9 from a number of sources, from Mr. Hanna and from his family  
10 members and also that boatload of records that I have, and  
11 there is a lot of evidence of a very dysfunctional family.

12 The family was very poor, and I mean  
13 extremely poor to the point of living in an Army surplus  
14 tent for several years, and there were nine children, and  
15 the father was employed as a driver and was frequently ill,  
16 eventually dying when James was six.

17 The mother was not employed outside the  
18 home and there were various problems apparently associated  
19 with getting public assistance and it was a very poverty  
20 stricken environment.

21 There was also a lot of evidence from the  
22 reports of family members as well as the records that the  
23 mother was a woman who was rather aggressive and abusive  
24 toward the children to the point of beatings administered

1 with a vacuum cleaner pipe and a paddle that was called the  
2 doughnut paddle because it left a doughnut-shaped welt. A  
3 lot of humiliation and very, very inconsistent and hostile  
4 treatment of the children and some very questionable  
5 supervision.

6 There was neglect substantiated at one  
7 point and the records indicate there were also some  
8 complaints made to the protective services about the  
9 children being unsupervised. I can go on and on.

10 Q. All right. Well, let's try to go down  
11 the list in terms of your clinical history. Did the history  
12 reveal James' contacts with the juvenile and the adult court  
13 systems?

14 A. Yes.

15 Q. You've indicated I think a little. But  
16 what, if anything, did the history reveal about the Hanna  
17 family involvement with any social service agencies?

18 A. The involvement was marked by extreme  
19 lack of cooperation. The mother's response to any efforts  
20 that were made to intervene in the schools and in the  
21 social service agencies with unwillingness to admit that  
22 there were any problems in the first place, and then putting  
23 the blame on teachers and social workers and judges and  
24 police officers and anybody from any agency that was

1 involved.

2 Q. Now, you've indicated a little bit in  
3 terms of use of items for discipline - the vacuum cleaner  
4 and the doughnut paddle. What else, if anything, did the  
5 clinical history reveal about discipline used, whether it  
6 be type or consistency or any of those issues?

7 A. There were reports from the sisters  
8 about extremely different attitudes on the part of the  
9 mother toward her female children and her male children.

10 The sisters agree that the boys were --  
11 particularly James -- were the mother's -- as she put it --  
12 they were her roses and the girls were her thorns.

13 And the boys, particularly James because  
14 he was the favorite, having come close to death from a  
15 strangulated hernia when he was an infant, he was allowed to  
16 pull the girls' hair and be mean to them and not get  
17 punished for it.

18 The girls would be punished. As a matter  
19 of fact, there was one incident described to me where one of  
20 the sisters stepped on a rake and it came up and hit James  
21 in the face and he, quote, went off on her. And the mother  
22 broke the sister's nose because she made her brother get  
23 angry. So it was very, very inconsistent and also  
24 humiliating, both -- for both the daughters and James.

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1 I was told by one sister that James was  
2 not given a haircut until he was five years old and he had  
3 long, blond, curly hair and the mother -- people would think  
4 he was a girl because he was a pretty baby. And the mother  
5 would take down his pants to prove that he was a boy to  
6 people.

7 One of the sisters went out on a date  
8 one time and did not come immediately in the house when she  
9 returned home with her date and the mother went out and beat  
10 her with a board in front of her boyfriend. Just  
11 humiliating, hostile, overly aggressive, inconsistent.

12 Q. What, if anything, did the clinical  
13 history reveal about James' relationship with his father?

14 A. He reported, and it was pretty much  
15 agreed on by family members, that his father was a pretty  
16 benign figure in his life.

17 He remembers going fishing with his  
18 father. And all of the children missed the father by their  
19 report. They felt closer to him. He would hug and kiss the  
20 children, kiss them good night, for example. And the mother  
21 would push the girls, at least, away.

22 The -- well, you asked about the history.  
23 There were also some test findings about that.

24 Q. All right. In terms of what did the

1 clinical history reveal about his relationship with his  
2 mother?

3 A. Well, their relationship was ambivalent,  
4 at best. It seems that James was pampered, but also abused  
5 later on.

6 As he became more active and mobile and  
7 able to be defiant, the mother would try to restrain him  
8 and keep him at home. And he early learned to run away.

9 She also became physically abusive and he  
10 would actually fight with her. He admitted to punching his  
11 mother and restraining her when he got big enough.

12 So she overprotected him in the sense  
13 of not allowing him to accept responsibility or to be made  
14 to be responsible for any of his behaviors, but also treated  
15 him in a humiliating and overly controlling fashion.

16 Q. Did the history reveal anything about  
17 his relationship with his siblings?

18 A. The relationships with the siblings were  
19 not close. The family is not close at all, really. As  
20 indicated by really the lack of contact in recent years --  
21 well, and by recent. I'm talking about 20 or 30.

22 But he had -- he sort of ran around with  
23 his brother, but they were not really close. He was closest  
24 to one of his elder sisters in early life, one of the older

1 girls. And then later on after his youngest sister was  
2 born, he sort of looked out after her and they sort of --  
3 well, actually, he reportedly spent more time with her than  
4 he did with any other kids. He didn't have very many little  
5 boy friends, he mostly spent time with her.

6 Q. You indicated something about their  
7 economic circumstances. Did the history reveal anything  
8 else about their economic circumstances other than the tent  
9 and those things you referred to?

10 A. Oh, there was no indoor plumbing in the  
11 home. The reports from the social workers and such who  
12 looked at the house said that it was very small and very  
13 poor, but clean.

14 Q. You indicated some history about his  
15 relationship with his parents. Did the clinical history  
16 reveal anything about the quality of James' relationship  
17 with his parents and any other adult caregivers that might  
18 have been in his life?

19 A. There was -- well, his father was absent  
20 from a very early age. Mother, as I've described before,  
21 was a very dysfunctional parent and there really wasn't much  
22 else available.

23 Q. Did James describe to you when you  
24 assembled this history the crime in this case and his

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1 involvement in it?

2 A. Yes, he did.

3 Q. What did he tell you?

4 A. He told me that his cellmate had been  
5 very careless and left the cell open when James was at work.  
6 And when this guy left, he would leave the cell open and  
7 that a number of James' personal belongings were stolen. He  
8 objected to this. And he said that the cellmate enlisted  
9 the support of some of his friends and that threats were  
10 made against James.

11 Then the night that this happened, James  
12 said that his cellmate came back to the cell late and he was  
13 drunk and he was loud and noisy and James was trying to  
14 sleep and could not sleep because of this guy's disruption.

15 So he said that he then stabbed him in  
16 the eye and then would beat him when he would stir around.

17 Q. Did you also have an opportunity to  
18 review a letter in this case that was introduced into  
19 evidence?

20 A. Yes, I did.

21 Q. From James to Dennis Borowski?

22 A. Yes.

23 Q. All right. In terms of the clinical  
24 history, you've mentioned some physical abuse, was there a

1 history of any other kind of abuse?

2 A. Well, there were allegations by family  
3 members that sexual abused had occurred, perpetrated by a  
4 neighbor.

5 There was also an allegation by one of  
6 the sisters that in one of the foster placements she  
7 believed that there may have been some sexual abuse. This  
8 has not been able to be substantiated.

9 Q. In terms of the clinical history, was it  
10 indicated in that history how children survived in the Hanna  
11 home when they were growing up, including James?

12 A. What I gathered from the reports that I  
13 got was that the mother got the children -- the girls  
14 really the daughters -- to do the work of the home. And  
15 mother really didn't -- well, from the reports of the girls,  
16 that the mother did not really do very much of the  
17 housework, that she got the girls to do this.

18 And that she kept the children there as  
19 long as she possibly could because it was to her financial  
20 benefit to do so. That she would demand that the girls go  
21 out and get jobs cleaning houses and so forth early and then  
22 the money would go to the mother. So they were pretty much  
23 on their own.

24 Q. Did you also review in assembling this



1 clinical history any efforts that were made to treat James  
2 as a juvenile or to rehabilitate him?

3 A. There were a lot of efforts made to treat  
4 him, beginning at about age 12 when he was several times  
5 admitted to Child Study Institute. And then there were a  
6 couple of foster placements in between those admissions.  
7 And then he was involved in Ohio Youth Services and several  
8 placements.

9 There was an attempt to get him into a  
10 boys' school in Ohio, which had no places, and they  
11 recommended a place in New York, which -- an attempt was  
12 made to get him into that, but his admission was denied  
13 because it was believed that he needed more supervision than  
14 they could afford. So there were quite a few efforts made.

15 Q. After you assembled your history, you did  
16 perform some testing; is that correct?

17 A. Yes, I did.

18 Q. And for purposes of discussion, would it  
19 be easier to discuss two kinds of tests?

20 A. Yes, I think so.

21 Q. And what was the first battery of tests  
22 that you administered?

23 A. The first battery of tests that I  
24 administered was the Minnesota Multi-Phasic Personality

1 Inventory, which is just what it says, an inventory, a  
2 true/false test that is quite lengthy and that yields a  
3 personality profile. Then --

4 Q. Go ahead. I didn't mean to interrupt  
5 you.

6 A. Then I also administered a Rorschach  
7 test, which is commonly known as the inkblot test, which is  
8 what's called a projective psychological test, meaning that  
9 the person is confronted with a series of ambiguous stimuli  
10 and the person is asked to use their own problem solving  
11 style, their own perceptions and thinking and their own  
12 internal processes to come up with some interpretations of  
13 the stimuli.

14 I also gave him a test called projective  
15 drawings or the house/tree/person test. This is another one  
16 in which the person is put in a situation where he must call  
17 on his own internal resources to make a product and the  
18 product gives evidence about the person's internal needs and  
19 conflicts and attitudes.

20 Q. All right. And that was the first  
21 battery of tests you performed?

22 A. That was the first battery of tests.

23 Q. All right. What was the second battery  
24 of tests?

1                   A.           The second battery was the  
2                   neuropsychological battery. And I basically used the  
3                   Halstead Reitan neuropsychological test battery. And what  
4                   are included in this are the Wechsler Intelligence Scale for  
5                   Adults, the third edition; I gave him a test of learning and  
6                   memory called the California Verbal Learning Test; I gave  
7                   him a test called the Bender Visual Motor Gestalt test; I  
8                   gave him a finger oscillation test, a tactual performance  
9                   test, which is a test where the person is asked to put  
10                  wooden shapes into a form board while blindfolded; a test  
11                  called the frontal lobe battery, which addresses the  
12                  person's ability to perform motor activities that are  
13                  mediated by frontal lobes of the brain; the trail making  
14                  test, which addresses visual scanning and ability to be  
15                  flexible in deploying attention; the complex figure test,  
16                  which looks at a person's ability to copy a model, a visual  
17                  spatial model, in a way that is accurate and effective; and  
18                  I gave him a test called the category test, which is a  
19                  conceptual reasoning and problem solving test; the sensory  
20                  perception examination, which determines whether there is  
21                  any cortically based lesion in the brain that interferes  
22                  with sensory or perception functioning; and the speech  
23                  sounds perception test and the seashore rhythm test, which  
24                  address auditory processing of verbal and nonverbal stimuli;

1 and then the Hooper -- I think this is the last one -- the  
2 Hooper Visual Organization Test, which is another test of  
3 frontal lobe functions and addresses a person's ability to  
4 put together in the brain fragmented visual stimuli.

5 Q. All right, Doctor, before we go on, do  
6 any of these tests have ways to check the validity of the  
7 testing process?

8 A. Well, the tests themselves have been in  
9 use for quite a few years now, and so they've been -- had  
10 lots of validity and reliability studies on them.

11 But in doing any kind of psychological  
12 assessment, there are a lot of aspects of the subject's  
13 functioning and performance that need to be examined by the  
14 person doing the testing in order to determine validity.

15 You look at the person's overall level of  
16 effort and persistence, for one thing, and then you look at  
17 the pattern of the test results. You kind of know after  
18 you're familiar with the tests what you would expect a  
19 person to do based on what they've done in other tests. And  
20 if the pattern of results is discrepant from that, you say,  
21 "Well, okay, why did they miss that one? They should have  
22 been able to do that." And so then the validity comes into  
23 question.

24 If someone, for example, fails easier

1 items and then succeeds on more difficult items. this raises  
2 a red flag and you say. "Well. why did this happen?"

3 There are a number of things that you  
4 look at during the testing itself. And then you compare all  
5 that information again with everything else that you've got  
6 to help determine whether this looks like valid results.

7 Q. Can anyone in the field of psychology  
8 administer these tests?

9 A. Well. people -- anybody who is a clinical  
10 psychologist gets some education and training in the  
11 administration and interpretation of psychological tests.  
12 Some people learn it in graduate school and then they never  
13 want to do it again.

14 In order to really be good at it. you  
15 have to get some ongoing training in it and a lot of  
16 experience. particularly in the neuropsychological testing.

17 Q. How much testing do you do or have you  
18 done in your career?

19 A. Oh. I do a lot of it. I've done it for  
20 years and I teach it. I go for continuing education in it.  
21 I supervise graduate students in this area. I've done a  
22 lot.

23 Q. All right. Doctor. let me ask you. Once  
24 you've administered these tests. then you sit down to

1 analyze them: is that correct?

2 A. Yes.

3 Q. Tell us what your process is. I mean, do  
4 you make findings? Do you make a diagnosis? What comes out  
5 of that testing process?

6 A. Coming out of the testing process  
7 initially come a lot of hypotheses, which then are funneled  
8 down into an integrated picture and then, eventually, a  
9 diagnosis.

10 Q. All right. In terms of your discussing  
11 this I'd like to ask you a couple of questions and I'd like  
12 to have you base your answers on your education, training  
13 and experience, and to a degree of psychological certainty,  
14 and I'd like to ask your opinion about a couple of things.

15 After you did the testing, did you form  
16 an opinion as to some of these hypotheses that you've  
17 referred to about James Hanna?

18 A. Yes.

19 Q. And what were those?

20 A. Well, there are several. With regard to  
21 the neuropsychological testing, there is evidence that he  
22 has attention deficit disorder which was never diagnosed or  
23 treated.

24 And as a part of that picture, there is

1 evidence of some frontal lobe impairment in the brain. And  
2 what that means is that the anterior part of his brain,  
3 which is the part of the brain that develops the latest in  
4 an individual person's life, you know, it doesn't really  
5 mature until late adolescence or early adulthood, that part  
6 of his brain is not working as well as it should be.

7 He also has evidence of some relative  
8 dysfunction in the right side posterior aspect of his brain.

9 Now, there are allusions to this in  
10 previous test results and observations from the juvenile  
11 justice system and also some from, I think, his earlier  
12 adult incarcerations where his testing that was given him  
13 showed that he was poor in manual skills, and there is a  
14 correlation there.

15 In my testing, he was quite discrepant  
16 in his performance on tests that addressed that part of the  
17 brain.

18 Q. So, what was your next step after forming  
19 those?

20 A. Okay. So, I believe that he has those  
21 problems on the neuropsychological.

22 Q. All right. And then the psychological?

23 A. And then the personality testing results  
24 indicate -- well, the diagnosis is personality disorder.

1 predominantly antisocial, and he has a passive/aggressive  
2 style and also hostile/dependent style of relating.

3 There is also evidence of some  
4 longstanding chronic depressive trends, but that's not his  
5 primary diagnosis.

6 The diagnosis is the personality  
7 disorder. And I can talk more about the characteristics,  
8 if you want.

9 Q. Okay. Well, let's -- before we get to  
10 that point, let me ask you. When you proceeded to the final  
11 step, again asking your opinion based on those factors, were  
12 you able to formulate a diagnosis?

13 A. Yes.

14 Q. And what would that diagnosis be?

15 A. Personality disorder -- antisocial  
16 personality disorder.

17 Q. And then there were other factors  
18 involved?

19 A. Yes. Then in the -- from the  
20 neuropsychological part I would diagnose him as cognitive  
21 disorder not otherwise specified.

22 Q. And from the personality testing?

23 A. Antisocial personality disorder.

24 Q. And where would the depression fit in?



1           A.           Well, there's not a primary depression  
2 diagnosis.

3           Q.           All right.

4           A.           But he has -- he has depressive trends  
5 that are chronic.

6           Q.           Now, Doctor, again I want to ask you a  
7 series of questions and I want to have you base those  
8 factors on a degree of psychological certainty. Do you have  
9 an opinion as to the effect of this diagnosis and these  
10 findings on Mr. Hanna's prognosis?

11          A.           Yes, I do.

12          Q.           What would that opinion be?

13          A.           Well, there are probably contributions  
14 from both the neurological deficits and from the personality  
15 development -- or the deficits in personality development  
16 that contribute to some real problems in thinking.

17                       He had on the projective psychological  
18 testing some considerable difficulty with perceptual  
19 accuracy and also with his thinking. There are times when  
20 his thinking is quite illogical and when his perceptions  
21 are non-conventional and would not easily be appreciated or  
22 understood by most people.

23                       The distortions in his thinking and in  
24 his perception tend to occur around themes related to anger

1 and perceived threat.

2 So, translating that from the testing  
3 situation into his life, it would appear that when he is  
4 angry or when there is perceived threat, his thinking is  
5 kind of strange.

6 And also another inference would be  
7 that he is more prone than most people to perceive threat  
8 when threat may not be consentually validated by other  
9 people.

10 Q You referred to some -- I think -- damage  
11 to the frontal lobe area and in another area of the brain.  
12 Would you describe -- and I realize you're not a medical  
13 doctor; is that correct?

14 A Correct.

15 Q But could you tell us what type of damage  
16 we're talking about that these tests indicate?

17 MR. BEATON: Objection then, Your  
18 Honor. She says she's not a medical doctor.

19 THE COURT: Further foundation,  
20 please, Mr. Lord.

21 Q In terms of your training, do you have  
22 training in these tests that allow you to make a prediction  
23 or a diagnosis as to what type of brain damage --

24 A Yes.

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Q. -- it would indicate?

A. Yes.

Q. And in this case you did perform that type of testing, did you not?

A. Yes.

Q. And, based on your experience, were you able to look at those tests and make a determination as to what kind of damage you thought there was?

A. Yes.

Q. And do you have an opinion, based upon a reasonable degree of medical certainty and based upon your education, experience and training, as to what type of damage existed as a result of the test results that you found?

A. Yes.

Q. And what is that opinion?

A. Okay. The opinion is that there is evidence of dysfunction, either developmentally based or from repeated head trauma in the anterior part of his brain, frontal lobes, and also in the right parietal portion of his brain, which is the posterior upper part of the brain on the right side.

Did you ask me also about implications?

I don't --

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Q. Well, let me ask you first, Was there anything in the clinical history that you assembled that would have given you any guidance in that area about the damage that you've indicated?

A. There was history of a number of fights, falls, a couple of automobile accidents. There was head trauma.

Q. All right. Now that you've indicated the damage, what are the implications of that damage?

A. The implications of the frontal lobe impairment are that he would have more trouble than someone without such damage or dysfunction thoughtfully, reasonably and with good judgment, planning, organizing, directing, self-monitoring and modulating his behavior in accordance with the demands -- realistic demands of effective living.

The frontal lobes of the brain, as I mentioned before, are the part of the brain that mature the latest in an individual person. And maturation of that part of the brain is essential for what we call mature behavior, meaning the ability to delay gratification, the ability to plan, the ability to stick to a program of behavior when it's appropriate. And to deviate from that program or plan when the facts require that.

That kind of functioning -- mature

1 functioning also includes the ability to kind of talk to  
2 one's self internally and say, "Well, okay, how is this  
3 working? How am I doing?" And make a judgment about  
4 whether one's behavior is effective and adaptive and then,  
5 again, modulate or change the behavior if that's necessary.

6 It's that kind of ability to keep a lot  
7 of information in mind and operate on it in an effective  
8 and mature and reasoned manner that is dependent on frontal  
9 lobe functioning.

10 Now, I mentioned before that I believe he  
11 probably has attention deficit disorder.

12 Q. Yes. And would you describe what that  
13 is, please?

14 A. Well, attention deficit, slash,  
15 hyperactivity disorder is a neurologically based disorder  
16 that is usually diagnosed in children, although sometimes  
17 it's not diagnosed, and it wasn't diagnosed when Mr. Hanna  
18 was growing up.

19 But it -- the effects of it are problems  
20 greater than those of other individuals the same age in  
21 staying focused on a task, in focusing attention and  
22 sustaining attention appropriately, again, you know, kind  
23 of behaving in accordance with the demands of the situation.

24 Children with attention deficit disorder

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1 frequently have trouble learning because they have problems  
2 paying attention in school. they have problems if they have  
3 the hyperactive kind. controlling their behavior. They tend  
4 to be disruptive, they speak out this class when it's not  
5 their turn. they have trouble waiting. they are  
6 disorganized, they lose things, and just have all kinds of  
7 trouble.

8 And then as they get older, they quite  
9 often with a frequency much more than that of children  
10 without attention deficit hyperactivity disorder, get into  
11 trouble. There is a much, much greater incidence of  
12 delinquent behavior in these children.

13 Q. You mentioned that seemingly in regard to  
14 children Is it an unusual diagnosis in an adult?

15 A. No, it's not. And I do quite a few  
16 assessments of adults who think that they may have attention  
17 deficit disorder. Sometimes they do, sometimes they don't.

18 But when it is diagnosed in adults, you  
19 will typically see problems in their being able to perform  
20 the tests on the neuropsychological battery that address  
21 frontal lobe functioning and it is believed to reflect some  
22 deficits in frontal lobe functioning.

23 Q. All right. Doctor, you've referred to  
24 these findings and we talked before you went into them about

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1 determining validity. Do you have an opinion based upon  
2 your experience, training and education and to a degree of  
3 reasonable psychological certainty whether these test  
4 results that you've interpreted for us here today are  
5 consistent with the history and the records that you've  
6 reviewed?

7 A. Yes, they are very consistent. The test  
8 results that I got were very, very similar -- on the tests  
9 that had been given before -- were very similar to the  
10 results that were reported in previous evaluations.

11 Mr. Hanna was a cooperative subject and,  
12 you know, the testing went well and I consider it valid.

13 Q Doctor, do you have an opinion, again  
14 based on all these factors so I don't have to read them  
15 every time, as to the significant events in James Hanna's  
16 life that helped shape him? Did you identify any of those  
17 in your testing and interpretation?

18 A. Yes.

19 Q. And what would that be?

20 A. Well, the death of his father and the  
21 loss of what probably was a somewhat stabilizing influence  
22 on the home by the father's presence; the poor parenting by  
23 his mother, particularly the failure of his mother to guide  
24 him and support the efforts of -- well, support him in

1 learning to behave within the expectations of society; her  
2 coddling him in one way, and allowing him to abuse his  
3 sisters and get away with it, and then making excuses for  
4 him to school authorities and legal authorities was, I  
5 believe, extremely damaging.

6 Q. You mentioned -- and I know you spoke a  
7 little bit about it -- the MMPT?

8 A. Uh-huh.

9 Q. What is the purpose of that test?

10 A. The MMPT is the gold standard of  
11 psychological personality tests. It is the most studied and  
12 published test in the whole realm of psychological testing.  
13 And it contains 567 statements, which are answered true or  
14 false by the person, and the test is these days almost  
15 always scored by a computer which is programmed with  
16 actuarial data from these gazillions of studies on the MMPT.

17 And what comes out is a personality  
18 profile, which shows indications of the person's current and  
19 characteristic personality style and functioning and acute  
20 and characterological symptoms. For example, if someone has  
21 an acute depressive disorder or anxiety disorder, that would  
22 show up.

23 It also shows evidence of more chronic or  
24 characterological functioning, such as the way a person



1 relates to others, whether they tend to be more socially  
2 outgoing or more introverted, whether they tend to be  
3 someone who is highly energetic in their behavior or someone  
4 who is more slowed down.

5 Q. What did the MMPT indicate about James in  
6 regard to that?

7 A. Well, the results of the MMPT were valid  
8 and the indications were that he has a combination of  
9 problems. There is the characterological problem most  
10 prominently, the antisocial personality disorder.

11 But also the MMPT addresses the  
12 depressive trends, longstanding, low self-esteem, very low  
13 self-esteem, a negative self perception -- and this is from  
14 the MMPT and also corroborated by the projective testing --  
15 a tendency to ruminate about aspects of his self image that  
16 are negative, to feel a lot of internal disruption and  
17 distress and pain about that, very anxious and worried, a  
18 high potential for explosive behavior, a rather passive and  
19 overintellectualized style of behavior.

20 Feelings of ineffectiveness and, you  
21 know, kind of a wish that someone else would solve his  
22 problems for him, but then that doesn't happen.

23 Q. You mentioned the test was valid; what  
24 did you mean by that the MMPT?

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1           A.           Well, that means that -- the test  
2 includes a number of validity scales. There are two sets  
3 of validity scales that look at things like the person's  
4 consistency in answering. You know, does a person answer  
5 one item one way and then answer another item that asks  
6 almost the same thing similarly or differently. If the  
7 answers are different, you say, "Hmm, why is that?"

8                       It also will look at things like whether  
9 a person really seemed to be paying attention to the items  
10 or just sort of answering them too rapidly and hurriedly.

11                      It looks at things like whether a person  
12 tends to either overly exaggerate their problems and issues  
13 or underplay them. Like say, "Well, everything is fine. I  
14 haven't got any problems at all." So those are the basic.

15                      Oh, also it looks at the different  
16 segments of the test and compares the kind of responses that  
17 are given in those parts. So there are a number of factors  
18 on which validity is judged.

19           Q.           Doctor, you indicated that some of these  
20 issues, the frontal lobe damage and the ADD, and I think you  
21 indicated that it impaired to some extent or it involved the  
22 ability to plan, focus, and you mentioned a number of items.

23                      So that we're clear to the jury, you're  
24 not saying, are you, that James Hanna was incapable of 10 to

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1 15 minutes before this event happened of sharpening a paint  
2 brush and sticking it in somebody and that's not what you  
3 mean by inability to plan, is it?

4 A. No.

5 Q. All right. What are you talking about?

6 A. I'm talking about things that have to do  
7 with his day-to-day functioning. He is not a person who  
8 functions very well. He had a lifelong history of poor  
9 performance in most areas. He's not ever really showed the  
10 ability to look ahead, to behave in his best interests, to  
11 delay gratification toward a future goal, to regulate his  
12 feelings and his behavior in a way that allows healthy,  
13 productive, effective relationships with other people.

14 He doesn't -- he just doesn't get it  
15 together, doesn't organize himself very well or behave in  
16 effective ways.

17 Q. Doctor, I'd like to ask you one last  
18 question. And I'd like for purposes of my question for you  
19 to assume -- or let me ask it in this way.

20 Again, based upon your training and  
21 education and experience and to a degree of psychological  
22 certainty, let me ask you to assume if James Hanna were  
23 sentenced to life imprisonment in a super maximum prison  
24 where inmates are locked up a vast majority of the day in a

1 cell by themselves, where there is virtually no contact with  
2 inmates and limited contact with corrections officers who  
3 are never alone with a prisoner, do you have an opinion as  
4 to how James would function in that setting?

5 A. Yes.

6 Q. And what is that opinion?

7 A. Well, I don't think that being in such  
8 circumstances would be helpful from the perspective of his  
9 mental health. I think that his thinking would be likely to  
10 get even more kind of off the beam than it is in that  
11 situation.

12 But he certainly would be protected under  
13 those circumstances from getting angry, being what he calls  
14 pushed by other people. It would be safer for him and, from  
15 that aspect, for other people.

16 Q. Thank you, Doctor.

17 THE COURT: Counsel approach.

18 please.

19 (Side-bar conference.)

20 (End side-bar conference.)

21 THE COURT: Ladies and gentlemen:

22 We were trying again to choreograph as best we can  
23 the presentation of the case. And we'll take our  
24 luncheon break at this time and we'll continue

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with Dr. Burch's cross examination after the lunch break.

Again, please remember the cautions of the court not to discuss anything you've heard in the courtroom among yourselves nor to form any opinions regarding what you have heard.

If you'll be back in the jury room at 1:10, we'll be ready to proceed at that time.

(Court recessed at 12:10 p.m.)

(Court reconvened at 1:15 p.m.)

THE COURT: Mr. Beaton, you may cross examine Dr. Burch.

MR. BEATON: Thank you, Your Honor.

- - -

CROSS EXAMINATION

BY MR. BEATON:

Q Good afternoon, Doctor.

A Good afternoon.

Q Doctor, I think you indicated already you're not a medical doctor; is that correct?

A That's true.

1 Q. All right. And you'd indicated in your  
2 testimony that you have testified in cases like this?

3 A. A number of cases.

4 Q. And how many times have you testified for  
5 Mr. Long?

6 A. I've testified at least one other time  
7 for Mr. Long in a death penalty mitigation.

8 Q. Would that have been the Ledford case?

9 A. Yes.

10 Q. Okay. Would you agree with me that  
11 psychiatry and psychology are an art and not a science?

12 A. No. I would not agree with that.

13 Q. Are you aware of all of the literature  
14 that indicates that?

15 A. I would say that there is a combination  
16 of art and science. There is definitely a scientific basis  
17 for both psychiatry, which is a branch of medical practice  
18 as you know, and clinical psychology.

19 But there is also, obviously, the input  
20 of training and experience and art, but it is definitely a  
21 scientifically based discipline.

22 Q. As you mentioned, the word art does come  
23 into play?

24 A. Yes.

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Q. All right.

A. As in anything.

Q. As in anything?

A. An engineer uses art in his work.

Q. That's your assessment.

A. Well, isn't it true?

Q. Well, I'm asking you. I'm saying that's your assessment.

A. Well, that is my assessment.

Q. All right. You've indicated that in this case you gathered certain information, and I believe you indicated you talked to four family members?

A. Yes.

Q. Did you talk to any friends?

A. No, I didn't.

Q. Did you talk to any police officers?

A. No.

Q. Did you talk to you any corrections officers?

A. No.

Q. Or corrections officials?

A. No.

Q. Okay. Now, I think you indicated in your testimony that Mr. Long contacted you?

1 A. Yes.

2 Q. On the phone, I would assume?

3 A. Yes.

4 Q. What did he tell you about the case at  
5 that point in time?

6 A. Well, this is going back a ways. I can't  
7 tell you exactly what he told me. I mean, I'm sure that he  
8 told me that this was a death penalty case and told me some  
9 of the outlines.

10 A. Actually, I probably got that preliminary  
11 information from Mr. Crates, the mitigation consultant, and  
12 then talked with Mr. Long.

13 Q. Well, do you recall what that gentleman  
14 told you? I assume that was one of the first contacts?

15 A. Well, again, that it was a death penalty  
16 case and the outlines of the incident.

17 Q. But what do you recall? You say outlines  
18 of the incident; what do you happen to recall your initial  
19 impression was as far as the information given to you?

20 A. That this was a man who was already  
21 incarcerated for aggravated murder and that he had murdered  
22 a cell mate and he was again charged with aggravated murder.

23 Q. Okay. That's what you recall that you  
24 were told? That was it?



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1 A. Well, --

2 Q. Okay.

3 A. I don't recall exactly what I was told on  
4 the initial contact.

5 Q. Would you agree with me then that in  
6 order for you to do an evaluation you must take in certain  
7 information to make that evaluation: correct? You must take  
8 in certain information in order to make the evaluation and  
9 to incorporate your testing along the way?

10 A. Well, yes. As I was indicating before,  
11 a volume of records from the time he was a child, up through  
12 the current offense, and then my own interview and testing  
13 data and the interviews with the family members.

14 Q. But your testimony is that you don't  
15 recall much about what was told you initially?

16 A. Well, not on that first contact because  
17 I had several conversations with Mr. Crates and Mr. Long.

18 Q. Okay.

19 A. But initially, yes, they told me the  
20 nature of the charges and the outline of the incident.

21 Q. Well, you said you had several  
22 conversations with Mr. Long. I assume -- am I to assume  
23 that on those occasions he gave you certain information?

24 A. (No response.)

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1 Q. Did he give you additional information  
2 on those subsequent contacts?

3 A. I got information from both Mr. Crates  
4 and Mr. Long orally and also the written records. And  
5 I'm -- I guess I'm kind of lost to know what you're asking  
6 me.

7 Q. It's not real clear.

8 A. No.

9 Q. I guess my question is, You've indicated  
10 that you had several conversations with Mr. Long concerning  
11 this case: is that a fair statement?

12 A. Yes.

13 Q. Okay. My question is -- and further you  
14 said that on the initial contact you don't recall much of  
15 what was said. We've established that.

16 A. No, that's not what I said.

17 Q. Okay. Then tell me what you said.

18 A. I said I can't tell you exactly what was  
19 said to me on that initial contact in the context of the  
20 several oral communications I've had with them and the  
21 written records.

22 Now, I have gathered information from all  
23 those sources and I just can't tell you exactly what was  
24 said to me on April whatever --

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1 Q. Well, let me put it to you this way --

2 A. -- as opposed to other days.

3 Q. Okay. Well, let me ask it to you this  
4 way. Can you tell me -- can you put into summary form  
5 collectively or altogether, what did Mr. Long tell you on  
6 these numerous occasions, whatever they -- how many times  
7 there were, but altogether, what information was imparted  
8 to you by him?

9 A. I guess, again, I'm kind of puzzled as  
10 to what you're asking. I got a history from him and from  
11 Mr. Crates of kind of --

12 Q. Okay. Let me ask you again.

13 A. Okay.

14 Q. You've already testified that you have  
15 various sources for information here. Some of those are  
16 records that you've reviewed all the way back to his  
17 childhood. You've established that.

18 A. Yes.

19 Q. You indicated that you talked to four of  
20 the family members: correct?

21 A. Yes.

22 Q. And I asked you whether or not you had a  
23 conversation with Mr. Long and you said you had several.  
24 And you said you also had one or more conversations with the

1 mitigation specialist.

2 A. Yes.

3 Q. Okay. My question to you is, What do you  
4 recall of the conversations you had with Mr. Long concerning  
5 this? That's all I'm asking. Just Mr. Long concerning this  
6 case.

7 A. Just Mr. Long?

8 Q. Just Mr. Long, right.

9 A. I can't really tell you.

10 Q. You don't remember then?

11 A. I can't really tell you what was said  
12 to me specifically by him as opposed to what was told me  
13 by Mr. Crates. I can't really tell you. It's been months  
14 ago.

15 Q. Well, do you recall what Mr. Crates --  
16 altogether what Mr. Crates and Mr. Long told you?

17 A. Are you asking me to tell you the  
18 particulars of the offense as they told me about it or --  
19 I still am having a hard time understanding what you're  
20 asking me.

21 Q. My question is, What information do you  
22 recall that the two of those men gave you as it relates to  
23 this case?

24 A. Okay. I'm going to go on the assumption

1 that you are asking me to tell you what they told me about  
2 the offense: is that correct?

3 Q. About this case.

4 A. Okay. They told --

5 Q. In other words, you got -- you said you  
6 got information from various sources to render your opinion?

7 A. Yes.

8 Q. One of those sources is Mr. Long and Mr.  
9 Crates?

10 A. Yes, but only for the -- only for the  
11 bare facts of the case -- that this involved the murder of --  
12 the attack and stabbing and beating of Mr. Hanna's cellmate  
13 by him.

14 Q. And then they told me the course of  
15 events after that, that the victim was taken to the hospital  
16 and then sent back, and then sent to Columbus, and then had  
17 surgery and then eventually, after three weeks, died.

18 Q. Is that the extent of what you remember  
19 that the two of those gentlemen told you collectively?

20 A. About this case, yes.

21 Q. Okay. I think you testified earlier that  
22 you met with the Defendant on two occasions. I believe one  
23 was May 5 and the other was -- I can't remember the date --  
24 September 4, I believe, of 1998?

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1           A.           Yes.

2           Q.           And I believe on one occasion I think you  
3 said six hours?

4           A.           Five or six.

5           Q.           Five or six. Okay. Fair enough. And on  
6 the other occasion about how long?

7           A.           About six.

8           Q.           During this time period were these -- on  
9 either one of these occasions were the tests employed that  
10 you've testified to?

11          A.           Were the?

12          Q.           Well, the MMPT test, for instance, was  
13 that -- did he take that test during one of these sessions?

14          A.           Yes.

15          Q.           Okay. And I would assume that some of  
16 the other tests were also utilized during one of these  
17 sessions or the other?

18          A.           Yes.

19          Q.           Okay. Now, when you're -- when these  
20 tests are administered, do you have to be in the room when  
21 he's administering the tests?

22          A.           I certainly prefer that and I have to  
23 have either myself or someone who is my --

24          Q.           Assistant?

1           A.           -- my assistant and qualified to be so.  
2           I would not leave it with the person and not have the person  
3           observed during the taking of the test.

4           Q.           Well, that's my question.

5           A.           Yes.

6           Q.           But do you recall on this occasion --  
7           let's say on the 5th of May, do you recall if any tests were  
8           given then?

9           A.           The 5th of May was when I interviewed Mr.  
10          Hanna and I gave him the MMPT-2, the Rorschach and the  
11          projective drawings.

12          Q.           On those testing periods were you always  
13          present in the room?

14          A.           Yes, sir.

15          Q.           Okay. So, were you in his presence for  
16          the six hours then?

17          A.           Yes.

18          Q.           Five to six hours?

19          A.           I didn't look at the ledger to see  
20          exactly how long it was, but I know I was there for a period  
21          of probably five or six hours. I interviewed him at length  
22          and then administered those tests.

23          Q.           Okay. Now, how about the second  
24          occasion, the 4th of September. I think you indicated, what,

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four or five hours?

A. Probably six hours.

Q. Six hours?

A. Probably, yes, to do the neuropsych battery.

Q. And you were present during all those time periods?

A. Yes.

Q. So, your testimony is you were present for 11 to 12 hours?

A. Yes.

Q. Okay. Is it fair to say that the first time that you ever laid eyes on the Defendant was on the 5th of May 1998?

A. Yes.

Q. And so that your contact with him, other than being in the courtroom with him today, was the 5th of May and the 4th of September 1998?

A. That's correct.

Q. Okay. And the family members that you've indicated, I think you said there were four?

A. Yes.

Q. And I think you'd mentioned -- I know I remember the name Patricia -- is it Crutcher (sic.)?



1 A. Yes.

2 Q. And who else did you talk to?

3 A. Nancy LaDuke and Shirley -- I can't  
4 remember her last name right off.

5 Q. Well, they were siblings: is that a fair  
6 statement?

7 A. Yes, three sisters. And if you want me  
8 to find the other sister. --

9 Q. That's okay.

10 A. And the mother.

11 Q. And the mother?

12 A. Yes.

13 Q. And those conversations -- is it fair to  
14 say those conversations were done by telephone?

15 A. Yes.

16 Q. Okay. So you've never met any of those  
17 four individuals in person?

18 A. Well, this morning I met Patricia out in  
19 the hall.

20 Q. This morning?

21 A. Yes.

22 Q. Now, I think you indicated also that --  
23 in your testimony -- that you reviewed various records?

24 A. Yes.

1           Q.           Those would include records and reports  
2 from -- I believe there's at least one psychiatrist and a  
3 social worker back in the late 70s?

4           A.           Oh, there were a number of psychiatrists,  
5 social workers, counselors, a number of reports of people  
6 who had interviewed and assessed Mr. Hanna in the various  
7 juvenile settings that he was in and also at Lima State  
8 Hospital. There were a number of them.

9           Q.           And in one of those -- do you recall one  
10 of the reports authored by a Dr. Sherman?

11          A.           Well, I couldn't say which one was which.

12          Q.           Let me refresh your recollection. 1978  
13 or nine?

14          A.           Well, I remember reading a very long  
15 report from that time. That was right after -- well, let's  
16 see. There was one before the aggravated murder that he  
17 was -- is currently incarcerated for, and then there was one  
18 shortly after that, I believe, but I don't remember which  
19 one was Dr. Sherman.

20          Q.           And one of the purposes -- he was  
21 submitted for examination, was he not, on that basis on a  
22 competency and a sanity issue: is that correct?

23          A.           Yes, I do recall that.

24          Q.           And is it fair to say that the doctor's

1 report reflects that they found no signs of psychosis or  
2 anything that would be consistent with that?

3 A. That's correct.

4 Q. So, in other words, they were saying he  
5 was not insane?

6 A. That's correct.

7 Q. Okay. Do you believe the Defendant to be  
8 a violent and dangerous person based on the information you  
9 had and the tests that you've run?

10 A. Yes, I do.

11 MR. LONG: Objection.

12 THE COURT: Sustain the  
13 objection. The jury will disregard the question  
14 and the answer.

15 Q. In this particular case, is it a fair  
16 statement that you did not prepare a report?

17 A. That's correct.

18 Q. And isn't it a fairly common practice to  
19 prepare a report?

20 A. It depends on the circumstances. It is  
21 common practice, yes.

22 Q. But is it fair to say that in the records  
23 that you read you found numerous reports by various  
24 psychologists and psychiatrists concerning this Defendant?

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1 A. Yes.

2 Q. Okay. Now, I believe you made an  
3 assessment -- well, strike that. Part of your -- the  
4 information that you had in this case were prison records;  
5 is that correct?

6 A. Yes.

7 Q. And what were the nature of the prison  
8 records? In other words, what information did it give to  
9 you?

10 A. There were some reports of -- I remember  
11 one report of some sexual activity that occurred between Mr.  
12 Hanna and another inmate, and there were some copies of  
13 some -- what they call kites that he had sent, complaining  
14 about various things and making various requests. That's  
15 what I remember from the prison records.

16 Q. Okay. So, you said that you saw several  
17 kites?

18 A. Yes.

19 Q. And you know what a kite is, I take it?

20 A. Well, it's a communication from a  
21 prisoner to the authorities making a special request or  
22 complaining about something.

23 Q. Wanting something, in other words?

24 A. Wanting something, yes.

1 Q. Okay. So it's a formal way of  
2 communicating from an inmate. An inmate can communicate to  
3 an official about a problem that he may have; correct?

4 A. That's what I understand.

5 Q. Okay. And you said you saw several of  
6 those in there?

7 A. Yes.

8 Q. Did you read any of those kites?

9 A. Well, I did, but I didn't -- I read those  
10 over once. I didn't go back and look at those. I got --  
11 you know, I go through these things and I basically  
12 highlight and take out what seems pertinent.

13 Q. You don't recall? Well, I guess my  
14 question goes to the fact -- in reading those kites, did you  
15 see anything in the kites that seemed illogical?

16 A. I'm not sure I --

17 Q. Well, if he's making -- you said the  
18 purpose of a kite is to make a request, to solve whatever  
19 the inmate may think might be a problem. He might be  
20 requesting a single cell assignment, for instance; correct?

21 A. Correct.

22 Q. Moving out of the cell?

23 A. Uh-huh.

24 Q. Or getting something that he feels he

1 needs or whatever?

2 A. Yes.

3 Q. And my question is. In reading those, did  
4 you see anything in there that -- in reading those kites --  
5 that just didn't quite make any sense? In other words, did  
6 the request make any sense or was it illogical?

7 A. (Pause.) I don't recall reading anything  
8 that seemed illogical in those.

9 Q. Okay. And did the kites that you --  
10 strike that. You also said that you read the letter, that  
11 was one piece of information that you had. There was a  
12 letter that was intercepted that the Defendant wrote?

13 A. Yes.

14 Q. And you read that?

15 A. Yes.

16 Q. Was there anything illogical about the  
17 letter, the contents of the letter?

18 A. No.

19 Q. This is marked State's Exhibit Number 17.

20 A. Yes.

21 Q. I would assume you received a copy of  
22 that to read?

23 A. Yes, I did.

24 Q. All right. You indicated there was

1 nothing illogical as far as what the contents of the letter  
2 is?

3 A. No.

4 Q. Okay. Is the letter legible?

5 A. Yes.

6 Q. Is -- the printing on the letter, does it  
7 stay on the lines?

8 A. Yes.

9 Q. Okay. Thank you. Doctor, you I think  
10 indicated in your testimony a diagnosis of antisocial  
11 personality disorder?

12 A. Yes.

13 Q. Is it fair to say that that is a disorder  
14 that is listed in what is called DSM-TV?

15 A. Yes.

16 Q. Okay. Which is the Diagnostic and  
17 Statistical Manual of Mental Disorders?

18 A. Correct.

19 Q. But that's a little bit of a misnomer, is  
20 it not, when it says Manual of Mental Disorders, isn't that  
21 explained in the preface of the book?

22 A. I'm not sure what you're referring to.

23 Q. Let me ask you this. Is insomnia or  
24 nightmares -- are those considered disorders and are they

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1 not listed in this book?

2 A. That's correct.

3 Q. All right. Would you agree with me that  
4 if a disorder -- well, strike that. The DSM-IV is the  
5 latest manual -- statistical manual: correct?

6 A. Correct.

7 Q. Which was preceded by I, II, III and  
8 III-R.

9 A. Correct.

10 Q. Is it not true that at one time  
11 bed-wetting was considered a disorder?

12 A. Correct.

13 Q. It is also not true that from -- isn't it  
14 also not true that these become disorders because there is a  
15 panel of over a thousand or so individuals who vote on these  
16 from time to time?

17 A. That's true.

18 Q. And then sometimes things that are placed  
19 in there as a disorder are then sometimes taken out?

20 A. That's true.

21 Q. Or even put back in at a later time?

22 A. That's true.

23 Q. Okay. Thank you. Now, antisocial  
24 personality -- you're not saying that antisocial personality



1 disorder is equivalent to insanity, are you?

2 A. No, I'm not.

3 Q. Okay. Does -- the DSM-IV, does it not  
4 list certain criteria --

5 A. Yes.

6 Q. -- that are associated with this  
7 particular disorder?

8 A. Yes.

9 Q. And I think that is -- in the book is  
10 301.7. I believe --

11 A. Yes.

12 Q. -- is the correct numerical designation?

13 A. Yes.

14 Q. Now, how many of these criteria in your  
15 opinion do you feel are necessary in order to make that  
16 evaluation?

17 A. Well, there are a certain number of  
18 criteria that are essential for the diagnosis.

19 Now, in Mr. Hanna's case some of the  
20 criteria are really not very easy to use because they  
21 require that a person has been out in the world.

22 For example, he has hardly had an  
23 opportunity to do things like pay or not pay the bills or  
24 be living independently. He never really has lived

1 independently. So, some of the criteria that would have  
2 to do with a failure to take responsibility in those areas  
3 don't really have much relevance for him.

4 Q. Let me ask you a question then. You  
5 mentioned an interesting point. You said failure to take  
6 responsibility. If I'm not mistaken, in the criteria it  
7 says that and it actually gives an example?

8 A. Yes.

9 Q. And one is, Do you have regular work  
10 habits: isn't that true?

11 A. Yes, that's right.

12 Q. Did you obtain any information to suggest  
13 that he did not have a regular work habit?

14 A. Yes.

15 Q. Okay. What information did you have?

16 A. Well, in his years while he was growing  
17 up when he was, for example, -- well, in school he did not  
18 have regular habits of working and cooperating in school.

19 In his foster placements, he did not  
20 do the work that was required of him on the farm and so  
21 forth.

22 In his work experience, such as it was,  
23 he did not have habits of reliability and cooperative and  
24 responsible behavior.

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1 Q. My question, though, is when he was in  
2 the prison. You've just testified that it's a little  
3 different because of the prison setting. And you  
4 mentioned -- you yourself mentioned the one about not taking  
5 on responsibility or being irresponsible. In other words, is  
6 another way to say it.

7 A. Yes.

8 Q. My question is, Do you have any  
9 information, let's say within the last -- a year prior to  
10 August 22, 1997, did you have any information to indicate  
11 that he was irresponsible in this fashion?

12 A. In the prison setting?

13 Q. Yes.

14 A. (Pause.) I am not completely sure.  
15 And all I can say is that I have -- I have not recently  
16 reviewed those records from his behavior in the prison.  
17 The records that I've reviewed recently have to do with  
18 the juvenile court records and the foster placements and the  
19 family life and so forth. I'm not exactly sure what I've  
20 read about his work behavior in the prison.

21 Q. Okay. Well, we're talking and you're  
22 rendering an opinion, are you not, that said in so many  
23 words that from your testimony this morning that relates,  
24 first of all, to the incident itself as to his lack of

1 control: is that not true?

2 A. (No response.)

3 Q. You're relating it -- you gave an opinion  
4 this morning that indicated that on or about the 22nd of  
5 August 1997 at that time that he did not have -- I think,  
6 as you said, he was -- first of all, you diagnosed him as  
7 antisocial personality disorder, and I think you said  
8 associated with illogical thinking and with lack of control,  
9 and I think you mentioned the term anger, did you not?

10 A. I don't think I said that he had lack of  
11 control.

12 Q. Okay. Then he did have control then?

13 A. I wouldn't say that exactly either.

14 Q. Okay. What did you say?

15 A. I did say that the psychological test  
16 data shows that this is a person whose thinking is sometimes  
17 very unconventional: that he would -- he's a person who does  
18 tend to think too much: he is very ideational: and his  
19 thinking would not at times be easily understood by other  
20 people: he would draw faulty and illogical conclusions: and  
21 that he makes some misjudgments on the basis of perceptual  
22 inaccuracies: and that these tended to occur in the testing  
23 when the percents that he had and the themes had to do with  
24 anger and perceived threat. That's what I testified this

1 morning.

2 Q. All right. Then, getting back to my  
3 earlier question to you, you don't have any information  
4 within a year of the incident that says that he was  
5 irresponsible, and one indication, i.e., that he had good  
6 work habits; you don't have any information on that, do you  
7 not?

8 A. Not that he was in that setting in that  
9 instance the work habits, no.

10 Q. You don't know whether he was a good  
11 worker or bad worker?

12 A. No.

13 Q. All right. Now, you said he has this  
14 attention deficit disorder?

15 A. Well, I believe he probably has attention  
16 deficit disorder. If he were in my office there are some  
17 other instruments that I would have used to nail that down;  
18 however, his pattern of behavior in childhood and the test  
19 results that I got suggest that.

20 Q. Well, if you have an attention deficit  
21 disorder, is that -- just to put it so I can understand it  
22 and the jury -- does that mean that he has a problem in  
23 concentrating for periods of time; is that another way to  
24 put it?

1           A.           That's one facet of it. Attention  
2 deficit disorder has quite a number of behaviors that are  
3 included in the syndrome.

4           Q.           But that would be one of them?

5           A.           That would be one of them.

6           Q.           So, if you're -- for instance, if you  
7 were sitting in a class, let's say, and the teacher is  
8 teaching, you might have trouble listening to what's going  
9 on in the class?

10          A.           Might have, yes.

11          Q.           Because I think you indicated earlier in  
12 your testimony that they would often cut up in class because  
13 they were bored, right?

14          A.           Well, no, not because --

15          Q.           Okay.

16          A.           Some children with attention deficit  
17 disorder of the hyperactive type and some children without  
18 ADHD will cut up in class. But it is a common behavior  
19 among children with ADHD.

20          Q.           Now, if you were to sit down and comprise  
21 a letter, doesn't that take a certain amount of  
22 concentration to do that?

23          A.           Yes.

24          Q.           Now, would you agree with me that one of

1 the other criteria under antisocial personality disorder,  
2 which you've diagnosed. one is deceitfulness?

3 A. Yes.

4 Q. What information did you have that  
5 supported that particular thing?

6 A. Well, the thing that I recall right now  
7 are some reports of incidents in his childhood when he would  
8 be truant from school, for example, and --

9 Q. Well, let me say this, the question --  
10 when I ask you these questions, can you -- and with this  
11 question and other questions -- what information did you  
12 have, let's say, within the year prior to August 22, 1997,  
13 that indicated or suggested deceitfulness?

14 MR. LONG: Your Honor, I'm going  
15 to object and ask that she be allowed to answer the  
16 question he asked and then, if he has another one,  
17 ask that.

18 MR. BEATON: I thought she did.

19 THE COURT: I'll overrule the  
20 objection. Go ahead.

21 Q. I want to restrict your answers to within  
22 a year of the incident. So we can go back to, let's say  
23 August 22 of 1996, one year -- within a year of the date of  
24 this event, this crime, what information did you have on the

1 issue of deceitfulness?

2 A. I don't recall any specific information  
3 that I had from that time period that had to do with  
4 deceitfulness.

5 Q. Okay. And what about -- I think one of  
6 the other criteria is failure to conform to social norms or  
7 respect to lawful behavior by repeatedly performing acts  
8 that would be grounds for arrest: isn't that the very first  
9 one, in fact?

10 A. Yes.

11 Q. Did you have any information -- again,  
12 we're talking in the context of a year -- let's say within  
13 a year or so or less of the 22nd of August 1997 -- that  
14 would support that particular prong?

15 A. I can't tell you specifically any  
16 information from that year, that one-year time prior to  
17 August 22, 1997.

18 Q. All right. And what about -- would you  
19 agree with me that there's another prong to this particular  
20 disorder. Irritability or aggressiveness as indicated by  
21 repeated physical fights and assaults. Number one, you  
22 would agree that's one of the criteria?

23 A. Yes.

24 Q. And, again the same question, within a



1 year of August 22, 1997, what information did you have  
2 concerning that?

3 A. I don't believe I saw anything about  
4 assaultive behavior in that year.

5 Q. Okay. And would you agree with me  
6 that another criteria of antisocial personality disorder is  
7 reckless disregard for the safety of one's self and of  
8 others?

9 A. Yes.

10 Q. Did you have any information within a  
11 year of August 22, 1997, that would support that particular  
12 prong or criteria?

13 A. Not within that year.

14 Q. And that would include August 22 -- by  
15 the way, that would include August 22, 1997?

16 A. So, you're talking about the crime  
17 itself?

18 Q. Well, I said within a year. It would  
19 obviously include the event.

20 A. Well, now, I didn't understand your  
21 question that way.

22 Q. All right. Well, let's talk about number  
23 five, the reckless disregard for safety of self or others?

24 A. Yes, that -- the event in question.

1 Q. Okay. Your interpretation of the event  
2 in question is that you termed that reckless disregard for  
3 the safety of self and others; is that right?

4 A. Well, yes.

5 Q. Okay. Can you tell me how you  
6 interpreted that to mean reckless disregard for himself?

7 A. (No response.)

8 Q. Strike that. Let me ask it to you in  
9 this way. If he approached the victim in this case in a  
10 locked cell, and while the victim was asleep and after he  
11 had already fashioned one or more weapons to commit the  
12 offense, is it your interpretation that would be reckless  
13 toward him -- reckless disregard for him?

14 A. For his own safety?

15 Q. For his own safety.

16 A. Not in that instant. Farther down the  
17 line, yes.

18 Q. Okay. Farther down the line, meaning  
19 what?

20 A. Meaning the consequences to him. He did  
21 not think about the -- or did not regard the consequences to  
22 himself.

23 Q. But doesn't this say reckless disregard  
24 for the safety of himself? Are you interpreting safety to

1 mean consequences or physical safety?

2 A. It could be open to interpretation and it  
3 could go either way.

4 I would say in answer to the scenario  
5 that you created that if it occurred as you stated that it  
6 was, not in that instant a situation that was recklessly  
7 disregarding of his own safety.

8 Q. Not in that instance?

9 A. Not in that instant.

10 Q. And, as I said, isn't also one of the  
11 criteria under antisocial personality disorder impulsivity  
12 or failure to plan ahead?

13 A. Yes.

14 Q. Okay. Is that what you wanted to say  
15 or --

16 A. What? I don't understand.

17 Q. Well, you're saying -- in going back to  
18 the reckless disregard for his safety, you're saying in that  
19 instance no, but you said later; correct?

20 A. Correct.

21 Q. All right.

22 THE COURT: Just for  
23 clarification of the word she used, it was instant  
24 rather than instance.

1 A. Thank you.

2 MR. BEATON: Instant.

3 THE COURT: Instant, not  
4 instance.

5 MR. BEATON: No, I meant at that  
6 instant, at that point in time. No, I understood  
7 that's what she said.

8 Q. At that point in time but not later, as I  
9 said: correct?

10 A. Correct.

11 Q. But that's your interpretation; correct?

12 A. (No response.)

13 Q. That's your interpretation of that word?

14 A. Yes.

15 Q. Okay. And is it fair to say, using as an  
16 example, that a lot of what you do is a matter of  
17 interpretation?

18 A. That's not a question that is really  
19 answerable by yes or no because it seems to me that it's  
20 sort of meaningless to ask for an answer yes or no of that.

21 Of course, interpretation is required in  
22 this as in any other discipline.

23 Q. Okay. Now, what about impulsivity or  
24 failure to plan ahead?

1 A. Yes.

2 Q. You said that was present including the  
3 22nd and going back. Let's say, a year?

4 A. Mr. Hanna in my interactions with him  
5 and in the test results is not a pervasively impulsive  
6 person. He occasionally has problems with impulsive  
7 controls, and he has major difficulties with impulse  
8 controls when he feels that he is pushed, when he feels  
9 that he is subject to threat. But he is not pervasively  
10 impulsive. I did not see that in my testing.

11 Q. Is that what that means, the  
12 impulsivity meaning --

13 A. Impulsivity.

14 Q. Impulsivity. Excuse me.

15 A. Impulsivity means an ability to delay  
16 action.

17 Q. So, one would -- something occurs, they  
18 would react to it rather than thinking: --

19 A. Correct.

20 Q. -- is that one way to say it?

21 A. That would be one way of saying it.

22 Q. And you're saying in this case you did  
23 not see that?

24 A. No.

1 Q. Okay. And it says here, "Or a failure to  
2 plan ahead."

3 A. Failure to plan ahead.

4 Q. Did you -- okay. Number one, you said  
5 you didn't see any impulsivity. Did you see any failure to  
6 plan ahead?

7 A. In my test results I saw difficulties  
8 with planning.

9 Q. Okay.

10 A. Again, that is not something that is seen  
11 in every instance this time, but it is part of the picture  
12 with him.

13 Q. But did you have any information whether  
14 through any sort of records other than your testing, okay?  
15 Put your testing aside. Did you have any data within a year  
16 of the incident that would support your opinion of failure  
17 to plan ahead?

18 A. No.

19 Q. Now, I believe I've gone over all of the  
20 criteria except one, and the last one says, "lack of  
21 remorse"; would you agree?

22 A. Correct.

23 Q. That's the very last criteria that makes  
24 it up?

1 A. Correct.

2 Q. We've talked about them all?

3 A. Yes.

4 Q. Okay. And did you have an assessment on  
5 that?

6 A. I did not see much -- yes, I did have an  
7 assessment on that.

8 Q. Okay. And your assessment was?

9 A. My assessment is that I did not see much  
10 remorse.

11 Q. You did not see much remorse?

12 A. Correct.

13 Q. Now, you had testified I think earlier  
14 concerning -- I guess, for lack of a better term -- organic  
15 problems --

16 A. Yes.

17 Q. -- with this Defendant?

18 A. Yes.

19 Q. And this is, I think as you testified,  
20 was based upon your interpretation of some of the testing --

21 A. Correct.

22 Q. -- that you administered to him?

23 A. Correct.

24 Q. All right.

1 A. And the history.

2 Q. And the history.

3 A. Correct.

4 Q. Do you recall in the history -- and we  
5 talked earlier I think in the beginning about Dr. Sherman?

6 A. Yes.

7 Q. Okay. Do you recall in his report that  
8 he indicated there was no evidence -- and this would have  
9 been in '79 now?

10 A. Yes.

11 Q. This would have been after this  
12 so-called -- after this alleged accident and after any  
13 fights. I think that you indicated; is that true?

14 A. Yes.

15 Q. '79 would have been after that time  
16 period?

17 A. Yes.

18 Q. Do you recall that in his report he  
19 indicated that there was no evidence of organic problems?

20 A. Yes. I do. And I'd like to elaborate on  
21 that, if I may.

22 Q. All right.

23 A. I talked about in answer to Mr. Long's  
24 questioning about how neuropsychology as a discipline was



1 developed in response to the difficulty of neurological  
2 assessment to pick out cognitive and adaptive and functional  
3 deficits in behavior.

4           There are many, many, many people who  
5 will suffer an automobile accident and will be checked out  
6 at the hospital and the x-ray will be fine, the CAT scan  
7 will be fine, the neurological testing of reflexes and  
8 sensory motor functions will be fine. And the person will  
9 go back to work and they will not be able to function.

10           They'll have difficulties with attention  
11 and concentration, they'll have headaches, they'll have  
12 problems regulating their mood, they'll be fatigued, they'll  
13 be hypersensitive to light and sound, they'll be just  
14 generally miserable.

15           And this is the picture of a  
16 postconcussion syndrome, something that does not show up  
17 on neurological testing but that is a frequent reason for  
18 referral to me by medical doctors for neuropsychological  
19 assessment to see what kind of functional and cognitive  
20 deficits the person has.

21           So, that's one example of the subtlety  
22 of the kind of information that is obtained through the  
23 neuropsychological testing.

24           We've talked a little bit about attention

1 deficit/hyperactivity disorder, too, which is also a  
2 neurological problem, but which is not assessed by a  
3 neurological assessment of the typical kind.

4 Q. All right. I think I do remember you  
5 indicating that this morning. You said you did review then  
6 Dr. Sherman's report?

7 A. Yes. I did.

8 Q. And that report is dated -- I think I  
9 said 1979. It's January of 1978, I think it is, not '79.  
10 And Dr. Sherman was indicated as a medical doctor; is that  
11 correct?

12 A. Yes.

13 Q. And, as you said, you acknowledge that  
14 his assessment was that he was not suffering from any  
15 mental illness and that he did not have any organic  
16 problems: correct?

17 A. That's correct. That's what he said.

18 Q. Let me ask you this. Would it be fair to  
19 say that if somebody -- some examples of someone who might  
20 be exhibiting organic problems might be problems with short  
21 memory?

22 A. Correct.

23 Q. Short-term memory?

24 A. Yes.

1 Q. Or even long-term memory?

2 A. Yes.

3 Q. Okay. And do you recall Dr. Sherman  
4 actually indicating that in his report that he did not have  
5 problems with short-term or long-term memory?

6 A. Yes. And what that means is that he  
7 would have said to him three -- the names of three objects  
8 and told him that he wanted him to remember them because he  
9 was going to ask him a few minutes later, and then asking  
10 him if he could say the three objects. And that's a  
11 standard --

12 Q. I'm sorry. Go ahead.

13 A. That's a standard part of the  
14 neurological mental status examination. And if he were able  
15 to do that, that would say that he was able to do that. But  
16 it's not a very sophisticated or comprehensive assessment of  
17 memory.

18 Q. All right. Well, you're assuming that  
19 that's the extent of what this doctor did; correct? You  
20 weren't there.

21 A. I'm assuming that.

22 Q. And you never called him on the phone and  
23 said, "Doctor, I read your report and, by the way, when you  
24 gave him these tests, did you ask him three questions?" You

1 didn't do that.

2 A. Well, I'm assuming that because there was  
3 nothing indicated at the beginning of the report about using  
4 anything other than that mental status exam.

5 Q. Do you recall the doctor in his report  
6 went on to say -- and we're talking about this issue of lack  
7 of organic impairment of the Defendant -- that he said that  
8 he was also able to correctly interpret proverbs and he says  
9 in parenthesis, "Testing the ability to think abstractly"?

10 A. Yes.

11 Q. "As well as answer simple questions in  
12 regards to his judgment"?

13 A. Yes.

14 Q. Do you recall that?

15 A. Yes.

16 Q. Okay. And in doing your testing you said  
17 that you relied upon -- I'm sorry, strike that. You said in  
18 making the assessment of these organic problems you relied  
19 upon your testing: correct?

20 A. And the history.

21 Q. And the history?

22 A. Yes.

23 Q. Okay. You didn't -- part of that  
24 history -- would it be fair to say that part of that

1 history was you didn't have objective tests, scientific  
2 tests performed, such as an EEG or a CAT scan or anything  
3 of that nature to confirm what your opinion is on the  
4 testing?

5 A. Well, now, again I need to answer that  
6 question in a little more detail because an EEG or a CAT  
7 scan would not necessarily show any problem that would show  
8 up on the tests of functional abilities.

9 Q. You said not necessarily, meaning that it  
10 could?

11 A. It could, it possibly could, but not  
12 necessarily.

13 Q. So, if a test were given, it could show  
14 that possibility?

15 A. Possible.

16 Q. Okay. Now, in reviewing the records, as  
17 you said you reviewed them back to childhood, is it a  
18 correct assessment that at various times when he was tested  
19 it showed that his IQ or intelligence quotient was in the  
20 normal range?

21 A. Correct.

22 Q. I believe as low as 91 and as high as  
23 111, I believe?

24 A. Correct.

1 Q. In the records -- and we're talking about  
2 the time periods for placement -- I believe in his teenage  
3 years they were trying to place him various places?

4 A. In the foster placements, do you mean?

5 Q. You're right, foster placements. Thank  
6 you. Do you recall -- you read those records?

7 A. Yes.

8 Q. Okay. Do you recall on one occasion that  
9 he was placed with a family and he ran away -- I don't know  
10 if you want to say he ran away from home -- he ran away from  
11 there on several occasions to be brought back?

12 A. Yes.

13 Q. And the complaint was that he had to work  
14 too hard?

15 A. Yes.

16 Q. Okay. I think, and would you agree with  
17 me, that the early assessments we're talking about from the  
18 reports did diagnose him at that particular time -- we're  
19 talking in the '70s and in the late '60s, like '69 and let's  
20 say through '78, that they did diagnose him as antisocial  
21 personality disorder, did they not?

22 A. Well, not completely. Early on, say  
23 before age 18, they usually said passive/aggressive. But  
24 then when he got to be an adult, then we call him antisocial

1 personality disorder, because it's improper really against  
2 convention and sort of not considered to be a very healthy  
3 thing to diagnose a child as an antisocial personality  
4 disorder.

5 Q. Okay. I would agree. I think in the  
6 DSM-IV in that criteria it does say that it has to be  
7 diagnosed at 18.

8 A. Yes.

9 Q. Would it be fair to say that he was born  
10 in 1949. I believe?

11 A. Uh-huh.

12 Q. So he would have been an adult in '67?

13 A. Yes.

14 Q. So, if you take the report from '69,  
15 didn't it indicate a diagnosis there of antisocial  
16 personality disorder?

17 A. I believe so.

18 Q. I think there were a couple of occasions  
19 in, let's say from '69 and into the 70s, he was diagnosed as  
20 then?

21 A. Yes.

22 Q. And is it fair to say that there were  
23 facts and indications and other indications in that time  
24 period that would support these criteria?

1 A. Yes.

2 Q. Such as getting into a lot of fights?

3 A. Yes.

4 Q. Being impulsive?

5 A. Yes.

6 Q. Not holding a job. I think as you've  
7 testified earlier?

8 A. Yes.

9 Q. Did you in your -- you said you talked to  
10 four of the siblings -- no, three siblings and the mother?

11 A. And the mother.

12 Q. Right. When you talked to the three  
13 siblings, did you ask them whether or not -- because they  
14 all came from the same household, right?

15 A. Yes.

16 Q. Did you ask them whether or not they had  
17 run into any serious problems with the law?

18 A. I didn't ask them about that, but I know  
19 from the records that at least one of them did and -- but I  
20 didn't ask them about that specifically.

21 Q. Okay. But the others -- you had no  
22 information to indicate that the others had problems with  
23 the law?

24 A. That's not the case. I did have



1 information that at least one did.

2 Q. Okay. Aside from the one?

3 A. At least two.

4 Q. The Defendant and one other; correct?

5 A. At least two siblings.

6 Q. The Defendant and two others?

7 A. Correct.

8 Q. Okay. And I said serious problems with  
9 the law: of course, I guess that's open to interpretation.

10 A. Well, I suppose. All that I was aware  
11 of with the one sister was juvenile problems, and then with  
12 the brother there were -- all I had was juvenile.

13 Q. Juvenile?

14 A. Indications of juvenile and I don't know  
15 how far it went.

16 Q. I think Patricia, who's the youngest, --

17 A. Yes.

18 Q. -- did she indicate to you that she'd  
19 smoked a little marijuana?

20 A. I didn't ask her about it, but I saw  
21 records that had to do with that.

22 Q. You saw records that she smoked some  
23 marijuana?

24 A. Well, there were runaways and I think she

1 was called incorrigible or ingovernable and something like  
2 that and sent to live with relatives, and there were a  
3 number of juvenile contacts.

4 Q. Okay. Runaways, like run away from home,  
5 or if they're put in a placement or something of that  
6 nature, that's what you're referring to; correct?

7 A. Well, I think that she was called  
8 ungovernable and I think that it had to do with runaway  
9 behavior and school refusal and maybe smoking marijuana.  
10 I'm not --

11 Q. A little marijuana, okay.

12 A. I'm not sure what all -- I don't remember  
13 what all it was, but I know that she was in trouble as a  
14 teen.

15 Q. Okay. What I'm getting at is not the  
16 juvenile stuff of running away or unruly, if you want to --  
17 I'm talking about -- my question to you is, Did you have any  
18 information about the siblings getting into serious trouble?  
19 We're talking about going to prison, violent crimes, things  
20 of that nature.

21 A. No, I don't.

22 Q. Okay. And you didn't ask those siblings  
23 whether or not they or any other siblings of this family had  
24 been to prison?

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A. I didn't ask them that specifically myself. but I had that information from Mr. Long and Mr. Crates that the other siblings had not been convicted of any serious crimes.

Q. Okay. And when I'm asking you these questions. I don't mean to say you didn't ask them, but you did have information to indicate they did not?

A. Yes.

Q. Okay. None of them had been to prison that you would remember?

A. Well, okay. The juvenile incarcerations for one but, okay, but not to adult prison, I guess.

Q. No adult prison?

A. As far as I know.

Q. Okay. Thank you very much. Doctor..

THE COURT: Thank you, Mr.

Beaton.

Mr. Long, redirect?

MR. LONG: Just a couple, Your

Honor.

---

REDIRECT EXAMINATION

BY MR. LONG:

Q. Dr. Burch, looking back through the records there were a number of diagnoses of antisocial personality: correct?

A. Correct.

Q. And that agreed with your diagnosis?

A. Correct.

Q. Does one year have any clinical significance? Mr. Beaton asked you a series of 253 questions about one year: does that have any clinical significance to the diagnosis of antisocial personality?

A. No.

Q. And were -- in fact, all those items he asked you about, were those present at some time during the life of Mr. Hanna and did you see those in the records or receive them in the clinical history you assembled?

A. Yes. I did.

Q. Mr. Beaton asked you a question about a letter that you looked at that Mr. Hanna had written to a Mr. Borowski?

A. Well, it's Dennis.

Q. Dennis Borowski, all right. Let me ask you to assume the following about that letter: That it

1 indicates that somebody that -- that Mr. Copas died in 20  
2 and a half hours when, in fact, the passage of time starting  
3 with August the 22nd and starting to count the 23rd, the  
4 24th, that Mr. Copas died 19 days later: let me ask you to  
5 assume that the letter says an eyeball was stabbed out when,  
6 in fact, a stab wound was above the eye and did not touch  
7 the eye itself: let me ask you to assume that the letter  
8 refers to Peter Copas as a maggot, baby rapist, killer when,  
9 in fact, he had been convicted of intimidation and  
10 corruption of a minor.

11 Now, if those facts were true, does that  
12 change your opinion about the logicalness of that letter?

13 A. It wouldn't change my opinion of the  
14 logicalness of the letter, but it would -- well, the one  
15 about saying 20 and a half hours rather than 20 and a half  
16 days could be one of those things that --

17 Q. I'm asking you to say 20 and a half hours  
18 versus 19 days.

19 A. Nineteen days?

20 Q. Yes.

21 A. Okay. To write hours instead of days  
22 could be just one of the kind of things that I do  
23 increasingly every year that is just, you know, kind of  
24 normal stuff, I hope.

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1                   But the other things, which are kind of  
2                   increasing the luridness of the description and making it  
3                   more dramatic and making the victim sound very -- extremely  
4                   pathological and hateful, would have some significance  
5                   probably as kind of a grandiosity to put forth an image of  
6                   himself as a tough guy and a mean guy.

7                   And the part about the maggot, baby  
8                   rapist, baby killer. I don't know. I don't know whether  
9                   that would be a way to -- it's possible that that could have  
10                  been a distortion in his thinking or it's possible that that  
11                  could have been said in that way to make the crime more  
12                  dramatic. I couldn't say for sure.

13                  But those are strange when you tell me  
14                  that they're way off the beat in terms of factual  
15                  information.

16                  Q.           All right. Mr. Beaton specifically asked  
17                  you about whether Mr. Hanna engaged in or whether he  
18                  recklessly disregarded the safety of others or himself.  
19                  And, again, in all the volumes of material that you looked  
20                  at, is that a true statement, that you found that to be  
21                  true?

22                  A.           Yes.

23                  MR. LONG:                   I have no further  
24                  questions. Your Honor.

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THE COURT: Recross, Mr. Beaton?

MR. BEATON: Just a couple of very  
brief questions.

THE COURT: Go ahead.

- - -

RECROSS EXAMINATION

BY MR. BEATON:

Q. I think one of the last things that you  
said that Mr. Long was asking you about whether or not this  
was reckless disregard for others, the incident?

A. Yes.

Q. You said that that was -- your  
interpretation is that's reckless disregard for others?

MR. LONG: I'm going to object.

Your Honor, that was not the question and answer.

THE COURT: The question was  
within the entirety of the records.

MR. BEATON: The entirety of the  
records. Okay. Within the entirety of the  
records.

A. Yes.

Q. Within the entirety of the records, which  
comprises all the information that you had; is that correct?

A. Yes.

1 Q. Everything we've talked about here for  
2 the last hour?

3 A. Yes.

4 Q. Okay. Including the facts of the case as  
5 you know them as it was told to you and from what you read:  
6 correct?

7 A. Yes.

8 Q. And your interpretation is that that is  
9 recklessness towards another person?

10 MR. LONG: I'm going to object  
11 again, Your Honor.

12 THE COURT: I sustained the  
13 objection. You're crossing over the testimony from  
14 what she -- the records she's talking about is she  
15 said there was evidence of all those  
16 characteristics. If I interpret your testimony  
17 correctly.

18 A. Uh-huh.

19 THE COURT: Evidence of all those  
20 characteristics within the entirety of the record,  
21 not focusing on August 22, 1997.

22 MR. BEATON: Well, I'm focusing on  
23 that one thing then. That's part of the criteria.

24 THE COURT: That wasn't part of



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the --

MR. BEATON: Yes, it was.

MR. LONG: That wasn't my question.

THE COURT: That wasn't Mr. Long's question.

MR. BEATON: Okay. Let me ask this.

Q. Isn't it true Mr. Long's question is going to all the criteria that comprise antisocial personality disorder?

A. That's what I understood.

Q. Right. And one of those criteria deals with recklessness towards one's self or towards others?

A. Yes.

Q. Okay. My question to you is, Out of all the information you had, which includes the facts of the case. --

A. Yes.

Q. -- is it your assessment that that criteria was met?

A. Yes.

Q. And is that recklessness toward him or recklessness toward the other individual?

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1           A.           Well, the specific incident that comes to  
2           mind right now is during one of his runaway episodes when he  
3           was gone for several days and sleeping out in the open or  
4           sleeping up on a roof of a building, sleeping in a drive-in,  
5           getting -- subsisting on apples that he got out of a field.  
6           I would say that's pretty reckless.

7           Q.           Okay. That's something that occurred  
8           when he was a child: correct?

9           A.           An adolescent.

10          Q.           That wasn't -- and his given year of  
11          birth is 1949: correct?

12          A.           Yes.

13          Q.           So, he's -- in August of 1997, he was 48  
14          or 49?

15          A.           Yes.

16          Q.           Forty-eight. Let's say?

17          A.           Yes.

18          Q.           Which is -- the incident you're referring  
19          to is probably 30 -- over 30 years before that: is that not  
20          true?

21          A.           Probably.

22          Q.           All right. So, that's a diagnosis of --  
23          that meets the criteria when he was young: is that not true?

24          A.           Yes.

1 Q. Okay. Not necessarily the criteria on  
2 August the 22nd, 1997?

3 A. Not necessarily.

4 Q. Okay. So, your assessment as far as  
5 arriving at your conclusion on that particular prong is  
6 based on just what you said, this incident when he was a  
7 child?

8 A. That's one incident that came to mind.

9 Q. Did any others come to mind other than in  
10 the childhood?

11 A. The diagnosis is made on a pattern of  
12 behavior that displays those criteria, and I believe that  
13 his behavior going back as far as we have records and  
14 historical information to document it, does meet those  
15 criteria.

16 Q. Let me ask you this. Can you give me some  
17 factual -- some facts or factual basis for the last instance  
18 that you are aware of, in other words, the time closest to  
19 August 22, 1997, what piece of information to support what  
20 you've just said?

21 A. Nothing is coming to mind right now.

22 Q. All of this is in the distant past,  
23 right?

24 A. I can't tell you a specific thing right

1 now.

2 Q. Okay. Thank you.

3 (Witness excused.)

4 THE COURT: Your next witness,  
5 please?

6 MR. FOWLER: Trooper Ertel.

7 - - -

8 JAMES ERTEL.

9 of lawful age, a witness herein, having been previously  
10 sworn, was examined and testified as follows:

11 - - -

12 DIRECT EXAMINATION

13 BY MR. FOWLER:

14 Q. Just for the record, would you state your  
15 name again?

16 A. My name is James Ertel, E-R-T-E-L.

17 Q. Trooper Ertel, as an investigating  
18 officer for the highway patrol, have you had occasion to  
19 visit the maximum security institution in Youngstown, Ohio?

20 A. I did once, yes.

21 Q. And what was the purpose for that visit?

22 A. My one-time visit was to interview  
23 several inmates.

24 Q. And has that been recently?

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Dr. Kate Burch

- ~~1.~~ Name
- ~~2.~~ Occupation
- ~~3.~~ Business address
- ~~4.~~ Major area of practice
- ~~5.~~ How long in practice
- ~~6.~~ Licensed by the state of Ohio
- ~~7.~~ Psychological and neurological assessments- please explain
- ~~8.~~ Do you do forensic assessments? What are they?
- ~~9.~~ Educational background- degrees
- ~~10.~~ Are you affiliated with any universities?
- ~~11.~~ Were you required to do a psychological residency? Where?
- ~~12.~~ Have you been associated with any courts?
- ~~13.~~ Have you been involved in presentations to your colleagues?
- ~~14.~~ Have you been involved in workshop and conferences?
- ~~15.~~ Do you engage in continuing education in your profession?
- ~~16.~~ Doctor Burch, at my request, did you see James Hanna?
- ~~17.~~ What was the purpose of your involvement?
- ~~18.~~ How many occasions did you see James?
- ~~19.~~ Where and when?
- ~~20.~~ For how long?
- ~~21.~~ Did you also review records that were submitted by myself and the Warren County Prosecutor? (the juvenile court records came from them)
- ~~22.~~ Did you have the opportunity to interview any family members? Who?
- ~~23.~~ Describe what was involved in your assessment and the amount of time you spent
- ~~24.~~ Did you take a clinical history from James, the records, and the family members?
- ~~25.~~ What did that clinical history reveal about:
  - ~~a.~~ the family structure James grew up in
  - ~~b.~~ James contacts with the adult court system
  - ~~c.~~ James contact with the juvenile court systems
  - ~~d.~~ the Hanna family involvement with social service agencies
  - ~~e.~~ discipline used in the Hanna family
  - ~~f.~~ relationship with father
  - ~~g.~~ relationship with mother
  - ~~h.~~ relationship with siblings
  - ~~i.~~ Family's economic situation while James was growing up
  - ~~j.~~ Quality of James relationship with parents, and other adult care givers?
  - ~~k.~~ Did he describe the crime of which he has been convicted in this case?
  - ~~l.~~ Review a letter that was introduced in this case
  - ~~m.~~ History of any abuse (\*physical or sexual)
  - ~~n.~~ Information about Peter Copas
  - ~~o.~~ What efforts have been made as an adult to treat or rehabilitate James Hanna?
  - ~~p.~~ What efforts were made as a juvenile to treat or rehabilitate James Hanna?
  - ~~q.~~ Medical history? (head injuries)
  - ~~r.~~ How did children survive growing up in the Hanna home?

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*Murder  
in 6 count*

- 26. Did you perform psychological tests?
- 27. What ones? Purpose?
- 28. Do these tests have some way to determine validity of finding?
- 29. Results of tests
- 30. Doctor, based on your education, training, and experience, and to a degree of psychological certainty, do you have an opinion as to a diagnosis for James Hanna?
  - A. neuro-psychological disorder
  - B. AD/D
  - C. Frontal lobe functions impaired
  - D. Personality disorder - *anti-social*
  - E. Chronic depression
  - F. Anti-social - *paranoid*

VALIDITY

- 31. Doctor I would like to ask you for a series of opinions and I would like you to answer them based upon your education, training, and experience, upon your testing and diagnosis of James Hanna, upon a review of records, and interviews with family members and to a degree of reasonable psychological certainty. All right?
- 32. Do you have an opinion as to the effect of the disorders you have diagnosed upon James thinking process? What is that opinion? (working memory, focus, approach, planning and organization)
- 33. Describe type of neurological damage the tests indicated?
- 34. Do you have an opinion as to James's ability to control his anger? What is that opinion?
- 35. Do you have an opinion as to significant events in James Hanna's life that helped shape him? What is that opinion? (death of father?) How did this effect James?
- 35. You reviewed the juvenile court records supplied by the prosecutor to us concerning James?
- 36. How would you describe the quality of efforts in James teen age years to intervene in Family situation and to treat or rehabilitate him? *Efforts to*
- 37. Do you have an opinion as to the successful rehabilitation of James if there had been Effective intervention and treatment early in his life, that treatment including nurturing and committed care? What is that opinion? *By this family's effort*
- 38. I would like for the purposes of my question to assume that James believed that his Victim sexually abused a child. Do you have an opinion as to the psychological significance of that belief and its importance as a motivator in the murder of Peter Copas? What is that opinion?
- 39. How would you classify James depression?
  - A. not suicidal- chronic
  - B. no positive self image
  - C. negative and introspective
- 40. Do you have an opinion as to the effect on James if his father had lived, and James Had been raised with his father's help? What is that opinion?
- 41. Do you have an opinion as the effect on James of being incarcerated for long Periods of his life? What is that opinion?



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- 42. Do you have an opinion as to how James relates to people? What is that opinion?
- 43. Let me ask you to assume that if James Hanna were sentenced to life imprisonment in a super maximum prison where inmates are locked up a vast majority of the day in a cell by themselves, where there is virtually no contact with inmates, and limited contact with corrections officers who are never alone with the prisoner. Do you have an opinion as to how James would function in that setting? - LINDA STANLEY

44. As for the MURKIN - HAS TRUCHE PIVOTAL

45. U. C. A. M. 22

VALIDITY

PREJUDICIAL DEPEND

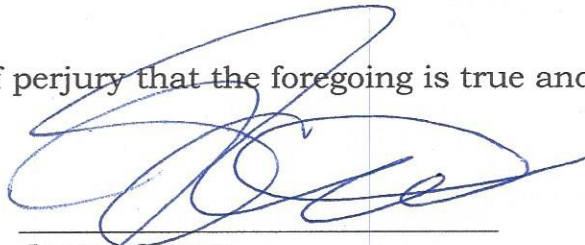
NEWS P. 1 N. J. 17-6

N. J. 17-6 - SUBTLE - GOOD EXAMPLE

App. 483

DECLARATION OF JAMES CRATES

1. I am James Crates.
2. In preparation for the trial of James Hanna, I worked with the attorneys for Mr. Hanna as a mitigation specialist.
3. I have reviewed trial counsel's outline for the presentation of testimony of Dr. Kathleen Burch and excerpts of Dr. Burch's testimony at the sentencing hearing, pages 1561 to 1566.
4. In his outline, trial counsel prepared questions for Dr. Burch to explain her findings that Mr. Hanna's frontal lobe functioning was impaired and that her testing indicated neurological damage.
5. In her testimony, Dr. Burch testified that there was evidence that Mr. Hanna suffered frontal lobe impairment, dysfunction in anterior part of the brain and in the right parietal portion of the brain, and neurological deficits.
6. I do not recall working directly with Dr. Burch in this case.
7. Had I been aware of that, before trial, Dr. Burch found frontal lobe impairment and neurological deficits from her testing, I would have recommended that Mr. Hanna be scanned for such damage, using techniques such as MRI or PET.
8. I declare under the penalty of perjury that the foregoing is true and correct.



James Crates

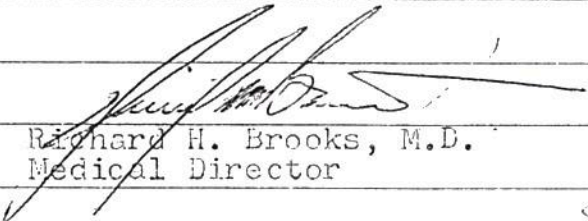
Executed: 8/31, 2019



App. 484

Medical Clinics

**PROGRESS NOTES***(Sign and date all notes)*

DATE	
	Initial Evaluation
4/14/71	This lad alleges headaches of many, many, many years duration. He
	never bothered to see a physician concerning same on the "outside".
	By his description, these are rather classically those of a <del>xxxxx</del>
	tension type headache and are not any form of true migraine head-
	aches and they do not in any way resemble vascular headaches.
	He has also had a multiplicity of "passing out" spells on the
	"outside" but did not see a physician about same either. They fol-
	low no pattern other than "nerves".
	The blood pressure was 100/70. The heart rate and rhythm were
	normal except for a rather remarkable sinus arrhythmia. There was
	no palpable thyroid tissue. The chest was clear. The E.E.N.T. exam,
	inclusive of an ophthalmoscopic, was negative except for a rather
	remarkable refractive error.
	Conclusions: Tension headache.
	Treatment: None
	Recall: None.
	<div style="text-align: right;">             Richard H. Brooks, M.D.            Medical Director         </div>
RHB/bh	

*(Continue on reverse side)*

H A N N A, James E.      #131-937      Out-patient

James Hospital - Ohio Penitentiary

**PROGRESS NOTES**



App. 483

February 28, 1973

To: C. C. Foulk, Associate Superintendent/Custody  
From: Jerry Flaughter, Training Coordinator  
Date: February 28, 1973

At approximately 1:45 a.m. I was walking down the "J" Block Corridor when Captain Hall received a telephone call. Captain Hall stated to me that Resident Hanna, 1001 087 was laying in his cell, screaming and crying saying he was ill.

Captain Hall, Officer [redacted] and myself immediately went to "J" Block. On the way we met the nurse, June Marcol and the tour of the block. We could hear the screaming of the Resident. I noticed that Resident Hanna wasn't properly clothed. He asked the nurse to stand by the cell until we got Resident Hanna properly clothed.

Resident Hanna was asked several times to please clothe himself by pulling up his shorts. He stated he was unable to do so that he was dizzy and couldn't control himself. Captain Hall asked him what was wrong and Resident Hanna stated he had had these dizzy spells while an inmate at the Ohio Penitentiary, and that he couldn't control himself.

At this time Captain Hall placed a blanket over Resident Hanna's lower body. The nurse that was standing by, then entered the cell and asked the Resident the nature of his illness. The Resident still crying and screaming just stated that he was dizzy and unable to control himself. The nurse then checked the Resident's blood pressure, pulse and a general examination was given. The nurse then stated to Captain Hall to her knowledge there was nothing seriously wrong with the Resident, that after the examination he seemed more or less normal.

The Resident was then asked if he would be alright if he was placed in bed. The Resident said he would roll off the bed and couldn't even sit on a commode because of dizziness. Captain Hall then stated, "if you are afraid you are going to fall and hurt yourself then we will place you in a cell with a low mattress." Resident Hanna was asked again to please clothe himself and get up. Resident Hanna stated he was dizzy and unable to clothe himself or stand.

At this time Captain Hall asked Officer Pullman to assist Resident Hanna with his feet. Officer Pullman placed his hands under Resident Hanna's arms but the Resident was unable to stand even with assistance. At this time Captain



-2-

Hall took one leg and Captain Tackett took the other leg. These three Officers then carried Resident Hanna to the other side to the Psychiatric cell for his own safety.

At no time did I see Resident Hanna being mistreated or mishandled. The Officers took every precaution possible not to injure the Resident.

At this time the rest of the staff went home.  
The time was approximately 2:10 a.m. this date.

SOUTHERN OHIO CORRECTIONAL FACILITY

*Jerry Flaughner*  
Jerry Flaughner  
Training Coordinator

07:00

- cc. Mr. Wheeler
- Mr. Schotten
- Mr. Bishop
- Mr. Seth
- Captains Office
- File



App. 487

## INTER-OFFICE COMMUNICATION

To: J. A. SMITH, ASST. Supt. OF CUSTODY ..... Date, FEBRUARY 28, 1973.....  
 From: B. G. SMITH, ASST. Supt. OF CUSTODY .....  
 Subject: ~~CONFIDENTIAL~~ FROM RESIDENT HANNA, SOCF 131-937

..... approximately 1:00 p.m. this date to talk with Resident Hanna  
 about an incident that happened on this date.

Resident was confined to Cell #46 in J-2 Block. He stated he was on the  
 floor. He called for an  
 officer who was working in the block (name of officer unknown). The officer came  
 to his cell and Resident Hanna stated to him what had happened. The officer asked  
 the Resident to get back up on his bed, Resident Hanna stated that he could not be-  
 cause he was weak. The Officer called the hospital for a nurse to come to J-2 block  
 to check this Resident, before the nurse arrived a blanket was placed over him.

When the Nurse arrived to check this resident she asked that he be rolled over on his  
 back and doing so it was observed that this resident had a bruised left forearm that  
 was previously hurt, in moving him it aggravated this injury and caused him to hurt him  
 again. The nurse checked the vital signs of this Resident and said that everything was  
 normal and she then left.

Capt. Hall was present and sitting on the bed while the nurse was checking this Resident.  
 After the nurse had gone Capt. Hall arose from the bed and he state their is not any-  
 thing wrong with you fool. Lifting his left foot he kicked the Resident in the  
 mouth. Two Officers along with Capt. Hall removed the cover from the Resident. Capt.  
 Hall and another officer raised up the Resident by the shoulders. While another Officer  
 was trying to pull the Residents underwear shorts back up. The one of the Officers  
 suggested that he be removed from his cell and taken to a strip cell and Capt. Hall  
 agreed. While they were carrying him to the cell he started complaining about his  
 stomach hurting, and also his arms were hurting him from being carried. When arriving  
 at the strip cell he stated that he was dumped on the bed and the door was closed.

At this time he started hollering that he needed help, and medication. Then Capt. Hall  
 opened the trap food door and stated "Maybe some of this will help you out". He sprayed  
 Chemical Mace into the cell Hanna was occupying at this time. The Resident started gag-  
 ging and coughing from the fumes. He started crying and screaming and saying he wasn't  
 an animal and did not want to be treated as such. Then Capt. Hall again opened the trap  
 door and sprayed some more Chemical Mace through the opening. Then closing the trap door  
 he placed a blanket under the sliding entrance door of his cell. Again the Resident  
 cried out that he needed some medical attention and did not want to be killed. He continu-  
 ed to holler until his lungs were filled with gas and he could not holler anymore. After  
 some recuperation he asked the officer if he could have something to wipe his eyes out  
 with and the officer stated to lay down and shut up, and he did.

I have a rules infraction ticket initiated by Officers Reed and Pulman; time of offense  
 is 1:45 a.m.; date of offense is 2-28-73; (Class II offence, creating a minor disturbance.)  
 The last sentence in the remarks of this ticket reads as such, "We had to give Hanna a



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PAGE 2

FEBRUARY 28, 1973

CONTINUED FROM PREVIOUS PAGE: SUBJECT: Complaint from Resident Hanna, SOCF 131-937

shot of Mace to try and quiet him down".

As of this date I have no unusual incident report, or use of force report and/or use of Chemical Mace report.

SIGNED:

*D. G. Beck*  
D. G. Beck  
Ass't. Assoc. Supt. of  
Custody

BGS/dl

CC : File



App. 485

March 1, 1973

TO: J. E. Foulk, Associate Superintendent/Custody  
FROM: Capt. Hall, Capt. Tackett, G. R. Pullman, P. Reed  
INCIDENT REPORT - FEBRUARY 27, 1973

Mr. Foulk:

Sir, at about 12:30 a.m. February 28, 1973 Captain Hall and I was called to J-2 to Resident Hanna 'S, #131-93/ cell. Hanna was laying on the floor with his shorts pulled down to his ankles. I, Captain Hall and Officer Pullman went into Hanna 's cell. Pullman put a blanket over Hanna and then Nurse Marcum checked his pulse and blood pressure. Mrs. Marcum said she could find nothing wrong with Hanna. He was yelling that he needed medical attention and causing quite a disturbance.

After the nurse had examined Hanna he kept on yelling. Captain Hall decided that he should be in the correction cell which would muffle the yelling. Officer Pullman pulled Hanna 's shorts up and then took hold of his legs. I took his left arm and Hall took his right. We carried him to J-2-1. After we left Hanna continued to yell and started kicking the door. Officer Fraley who was in J-1 said he could hear him kicking on the door.

Officer Pullman tried to get Hanna to quiet down but could not. Chemical mace was then used as a last resort. This resident was ordered to quiet down several times before chemical mace was used.

Capt. A. Hall  
Captain A. Hall

C. Tackett  
Captain C. Tackett

G. R. Pullman  
G. R. Pullman

P. Reed  
P. Reed



App. 490

March 6, 1973

TO: W. J. Whealon, Superintendent  
FROM: J. E. Foulk, Associate Superintendent/Custody  
SUBJECT: INCIDENT REPORT - FEBRUARY 27, 1973

Sir:

This will inform you of an incident that happened February 27, 1973. The reason for the delay is for attempting to compile all information necessary for your information.

On February 27, 1973 Resident Hanna, #139-937 was confined in J-2-46 at which time the reports stated he was sitting on the commode, became dizzy and fell off the commode hitting his head on the floor.

When Officers arrived, the Resident stated he was too weak and dizzy to get up off the floor and back on his bed. The officers called for a nurse to check the Resident and found everything to be normal.

Captain A. Hall, third shift officer decided to move him over to J-2 north where the beds were lower to the floor, thinking that if for some reason he should have another dizzy spell he would not injure himself.

In the process of this Resident being taken from J-2-46 to J-2 north, he has accused the Captain of kicking him in the mouth and elbow. This complaint in the opinion of the writer is not valid, however, a short time later Resident Hanna was causing a disturbance and was sprayed with chemical mace. The reason for this was officers felt he was creating a disturbance, however, this is no excuse for the use of chemical mace. The officers involved have been reprimanded and informed that no time in the future will they spray anyone that isn't a threat to either himself, an employee or the facility.

Until the time chemical mace was used I feel the officers used good judgment in handling Resident Hanna.

SOUTHERN OHIO CORRECTIONAL FACILITY

  
J. E. Foulk  
Associate Superintendent/Custody

JEF:ca

cc: Mr. Schotten  
Mr. Seth  
File

Mr. Bishop  
Captain Hall



Ohio Department of Mental Retardation and Developmental Disabilities

# Unusual Incident Report

App. 491

Institution: \_\_\_\_\_



Name of Resident Involved (Last, First & Middle) <i>Llanusk</i>		Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	Age	Resident No. <i>152-169</i>
Resident Status <i>K765</i>	Residential Unit (Cottage, Building, Floor, etc.)		Police Dept. Case No.	
Name of Person Reporting		Telephone No. ( )	Reporting Date <i>4/18/92</i>	Reporting Time <i>1:50 P</i>
Incident Location (Street, Building, Floor, Unit, Room No., etc.) <i>M1 Gym</i>			Incident Date <i>4/18/92</i>	Incident Time

Incident Description (Describe what happened):

*Says faint. Color pale, skin cool + clammy. Oriented x3. Says no lunch taken -  
Dimes pain, 1/2 " knot in mid <sup>umbilical</sup> ~~chest~~ area.  
1/2 falling on (R) hand. Sl. abrasion to lateral aspect of hand.*

Action Taken (Describe action taken immediately following the incident, such as first aid, notification of authorities, etc.):

*S/P 120/78 P 78.  
1/2 glass pineapple juice given  
X-ray ordered of hand -  
ASA refusal *C. Brown**

Physician's Statement (When an injury is involved):

\_\_\_\_\_  
Physician's Signature

\_\_\_\_\_  
Date



App. 492

**NURSING NOTES**

(Sign all notes)

DATE	HOUR		OBSERVATIONS <small>INCLUDE MEDICATION AND TREATMENT WHEN INDICATED</small>
	A. M.	P. M.	
12/14/69	v		pat adm fr Lucas Co Obs. 30 days pat has Hernia scar. pat is a little self centered, slightly arrogant, but appears to be Dr. Phyllis Chong of Hamon
12/13/69	3 <sup>30</sup>		P 84 C/P 115/70. apt. states "he doesn't feel good & feels like "Passing out" W. L. Davis RN
DEC 16 1969			HEAF. TEST GIVEN
12/19/69			Pat apparently passed out on bed - B.P. 160/30 Brot to M. H. div Hernia w/ + cyanopt - 11 <sup>00</sup> To lab per wheelchair & ret'd - Reg diet - taken up in day hall & restraint - T 99 P100 S16 B.P. 160/30

(Continue on reverse side)

HANNA JAMES G	000
441909 H W P	III
07 12 49	ADM LIMA
276 48 5339	
12 11 69	

24944

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PROGRESS NOTES

(Sign and date all notes)

DATE

12 22 69 HEAF Test Reading *[Signature]*

12/19/69 Discharge - Fever in good.  
 This pt was admitted to this  
 hospital 12/11/69 and 2 days later  
 had a stroke out spell. Today  
 again looked out. Had  
 no complaint of pain on left  
 side of abdomen - BP 120/80.  
 Temp 98° - Heart & lungs OK.  
 Abdomen - tenderness ? L side  
 of abdomen - flange spit in  
 muscle rigidity - no rebound.  
 WBC 5 - normal - T<sub>4</sub> blue  
 not taken to word. *[Signature]*

(Continue on reverse side)

HANNA JAMES G	000
441909 H W P	III
07 12 49	
276 48 5339	ADP : HA
	12 11 69

24944

App. 494

385

nothing further.

JUDGE FRANKLIN: Anything further?

MR. BURNS: Nothing further.

JUDGE FRANKLIN: Thank you very much,

Dr. Cassel.

MR. HARRIS: State would call

Dr. Thomas Sherman.

- - -

Thereupon, the State of Ohio, further to maintain the issues on its part to be maintained, called as a witness,

THOMAS G. SHERMAN,

who, having been first duly sworn, according to law, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q Would you give us your full name, please, sir?

A Thomas G. Sherman.

Q And your occupation?

A I'm a psychiatrist.

Q Now, do you have any particular affiliation with any other agency in the City?

A Yes. I'm Director of Medical Training for the



It is only after these preliminary stages and this hypothetical case would the individual demonstrate an overt psychotic break. He's hearing voices. At other times, it seems to happen overnight.

I have one lady in the hospital right now who is constantly a puzzle to me because she becomes psychotic virtually overnight and reorganizes within 48 hours.

So there are some cases in which psychotic illnesses for sure can be preceded by a long history of difficulties, especially in inter-personal relationships, how one relates to his important people in his environment.

Q What if a person were to have been diagnosed as hyperkinetic in his childhood. Would that have any possible effect, and were ever treated for it for a period of time with -- I won't say massive doses -- with doses of tranquilizers, about 800 cubic centimeters a day, would that have any effect on his subsequent behavior?

A I find the diagnosis of hyperkinetic behavior in children significant. Often we do see that this individual may come into contact with mental health personnel later on in life.

Now, the diagnosis of hyperkinesis is one that is often thrown out with very little regard for the clinical

B-17



signs and symptoms of that illness.

Q By people like Dr. Kenyon?

A Are you asking me to comment on Dr. Kenyon's reputation?

Q No. I'm just suggesting that that is a diagnosis that was made by Dr. Kenyon when James Hanna was 13 years old.

A It is quite possible that Dr. Kenyon had a legitimate reason for doing that. I'm just saying in the mainstream of things, hyperkinesis is overdiagnosed.

Q You had known of that diagnosis along with the taped statement that was given to you by the prosecution, might it have been of interest to you in making your examination of the Defendant --

A I think it would have been of interest.

MR. BURNS: Thank you, doctor.

- - -

REDIRECT EXAMINATION

BY MR. HARRIS:

Q Would that have changed your opinion?

A I don't think so.

MR. HARRIS: I have nothing further.

JUDGE FRANKLIN: Thank you very much,



App. 497

9-11-81

CONSULTATION SHEET

REQUEST

TO: Med FROM: Dental DATE OF REQUEST: 9/22/81

REASON FOR REQUEST (COMPLAINTS AND FINDINGS)

Patient gives Hx of 2 Cardiac arrests last year please evaluate and advise of any precautions necessary concerning the Medical Management of this patient during routine Dental

DOCTOR'S SIGNATURE APPROVED PLACE OF CONSULTATION EMERGENCY ROUTINE

CONSULTATION REPORT

David Martin MD B.P. 110/70 @ arm P.E. Eyes P.E.R.R.L.A. Throat normal. Neck supple no L.N. enlarged. Heart N.S.R. No (m).

E.K.G. Urinalysis 10.3.81 B. Rivera

(Continue on reverse side)

Hanna 152169

K-1-35 A.C.

R. Garcia Rivera MD SIGNATURE AND TITLE

10-3-81 DATE

App. 498

DECLARATION OF DOUGLAS W. SCHARRE, M.D.

1. I am Douglas W. Scharre, M.D. I am the Director of the Division of Cognitive Neurology and Professor of Clinical Neurology and Psychiatry at The Ohio State University. My *curriculum vitae* is attached as an exhibit to this declaration.

2. Counsel for James Galen Hanna has requested that I assess the appropriateness of conducting neuroimaging on Mr. Hanna to establish the existence of brain injury, damage, or dysfunction.

3. In my opinion, neuroimaging is fully warranted in Mr. Hanna's case, and there is a high probability that brain neuroimaging including a magnetic resonance imaging (MRI) and a fluorodeoxyglucose positron emission tomography (FDG PET), would establish evidence that Mr. Hanna does indeed have brain injury, damage, or dysfunction.

4. In reaching this conclusion, I have been provided and reviewed documentation concerning Mr. Hanna's history, including:

a. December, 1969 nursing notes (2 pages) which indicate that Hanna was passing out and suffering blackouts.

b. April, 1971 progress notes (1 page) explaining that Hanna informed a physician of "headaches of many, many, many years duration."

c. January and March, 1973 progress notes and medication sheets (3 pages) indicating that Hanna couldn't sleep or get along with others and was treated with Mellaril and Serax.

d. A February, 1973 incident report (2 pages) in which Hanna reported that he was "dizzy and unable to control himself."

e. A February, 1978 medical summary (1 page) noting that on April 14, 1971, Hanna had been "seen by Dr. Brooks with complaints of headaches for many years. Diagnosed as tension headache - no treatment."

f. March, 1978 testimony from Dr. Thomas Sherman, M.D. (3 page excerpt) indicating that Hanna was diagnosed with hyperkinesia at age 13 by a Dr. Kenyon and given large quantities of tranquilizers.

g. A June 20, 1978 report from Dr. Thomas Sherman, M.D. (4 pages) discussing Hanna's blackouts and his being beaten or knocked out and raped while in prison, and Dr. Sherman stated that he did not identify any impairment of consciousness based upon organic factors.

h. A September 1981 consultation sheet (1 page) in which Hanna reported a history of two cardiac arrests in the past year.

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i. An April, 1992 incident report in which Hanna fainted.

j. Trial testimony from Kathleen Burch, Psy.D., who administered neuropsychological tests to Mr. Hanna. She testified that Mr. Hanna suffered brain dysfunction in the frontal and right parietal lobes. She stated that Mr. Hanna has attention deficit disorder, antisocial personality disorder, and chronic depressive trends. She testified that he has distorted thinking when angry or perceiving threat. In questioning Dr. Burch, the prosecutor noted that Dr. Sherman had not found that Mr. Hanna suffered organic problems. The prosecutor noted that Dr. Burch was not a medical doctor and had not conducted any objective tests or scientific tests to confirm her opinions about Mr. Hanna.

k. Testimony of Patricia Cutcher, involving Mr. Hanna's family background, including maternal abuse.

l. An undated medication sheet indicating that Mr. Hanna was treated with mellaril and serax while incarcerated.

5. I have further been informed by counsel that Mr. Hanna has stated that when he was a child, his mother hit him in the head dozens of times with various objects. Mr. Hanna has also stated that he was once struck in the head by a rock thrown by his brother, after which he bled profusely and was taken to the hospital. Mr. Hanna has also informed that, as an adolescent, he was in a car accident, sitting in the back seat. Mr. Hanna has described a feeling of getting nauseous and light-headed before he passes out. He also has informed that his heart stopped on two occasions involving surgery at Scioto Medical Center in 1980. He said he "flatlined" and had to be "brought back" twice.

6. Mr. Hanna's history provides numerous markers/signs of brain damage or dysfunction for which neuroimaging is an appropriate diagnostic and confirmatory tool.

7. For instance, brain injury could result from his multiple head traumas (beaten by mother, brother, and while in prison), from his reported motor vehicle accident, from his reported asystole (heart stopping), and from his reported passing out spells. MRI and FDG PET neuroimaging of his brain could identify focal regions of injury or dysfunction (low metabolism).

8. In particular, frontal lobe dysfunction is often seen in those individuals with antisocial personality disorder, attention deficit disorder, and in those with poor impulse control. In fact, neuropsychological testing reportedly showed dysfunction attributable to his frontal lobes and the right parietal region. In addition, brain trauma often preferentially impacts the frontal lobes. Therefore, MRI and in particular FDG PET brain neuroimaging would be very



App. 500

likely to indicate impaired function in his frontal lobes in particular, based on his diagnoses, possible brain injuries, and neuropsychological test findings.

9. In my opinion, therefore, neuroimaging of Mr. Hanna's brain is appropriate and warranted in Mr. Hanna's situation, because there is a great likelihood that he has brain dysfunction that can be measured and quantified through neuroimaging.

10. Such neuroimaging would include brain MRI with Neuroquant (which measures brain structure and allows for comparison to a control population of individuals) and brain FDG PET neuroimaging (which measures brain function). This neuroimaging could confirm the validity of Dr. Burch's conclusions about brain damage and dysfunction and may show whether any damage is more or less pronounced than she noted.

11. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: August 3, 2019

A handwritten signature in black ink, appearing to read 'D. Scharre', written over a horizontal line.

Douglas Scharre, M.D.

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CURRICULUM VITAE

Douglas William Scharre, MD

8/2018

PERSONAL

Current Position: Interim Chair, Department of Neurology  
Director, Division of Cognitive Neurology,  
Director, Center for Cognitive and Memory Disorders,  
Director, Memory Disorders Research Center,  
Co-Director, Neuroscience Research Institute,  
Medical Director, Memory Disorders and Neurobehavior Clinics,  
Medical Director, Forest Hills Center for Alzheimer's and  
Related Disorders,  
Medical Director, Memory Disorders Clinic at the Riverside  
John J. Gerlach Center for Senior Health,  
Professor of Clinical Neurology and Psychiatry,  
Department of Neurology,  
Ohio State University

Hospital Address: Department of Neurology  
The Ohio State University  
395 W. 12<sup>th</sup> Ave., #620  
Columbus, Ohio 43210

Research Site/Clinic  
Address: Martha Morehouse Tower  
2050 Kenny Rd.  
Columbus, OH 43210

Home Address:

Date of Birth:

Place of Birth: Fort Monmouth, New Jersey

Citizenship: U.S.A.

## EDUCATION

Undergraduate: University of California, Los Angeles  
1974-1978  
Graduated: June 1978, BS, cum laude  
Double Major: Physics and Biology

Postgraduate: Georgetown University  
1978-1979  
Graduated: August 1979, MS, first in class standing  
Major: Physiology and Biophysics

Medical School: Georgetown University  
1979-1983  
Graduated: May 1983, MD

Internship: William Beaumont Army Medical Center, El Paso, Texas  
1983-1984  
Graduated: June 1984, Internal Medicine

Residency: Letterman Army Medical Center, San Francisco, California  
1984-1987  
Graduated: June 1987, Neurology

Fellowship: University of California, Los Angeles  
1991-1993  
Graduated: June 1993, Neurobehavior

Licensure: State of California Physician's and Surgeon's Certificate (#G54195),  
January 1985; State Medical Board of Ohio (35-06-5397), July 1994

Boards: The American Board of Psychiatry and Neurology, Diplomate  
in **Neurology**: March 1990

United Council for Neurologic Subspecialties, Subspecialty  
Certification for **Behavioral Neurology & Neuropsychiatry**,  
September 2006 – September 2016

United Council for Neurologic Subspecialties, Subspecialty  
Recertification for **Behavioral Neurology & Neuropsychiatry**,  
November 2016 – November 2026

Certifications: Certified Medical Director (CMD) given by the American  
Medical Directors Certification Program for Medical Directors in  
Long Term Care: January 1999-2012

Certified Medical Director (CMD) given by the American Board of Post-Acute and Long-Term Care Medicine: January 2015-2021

### ACADEMIC APPOINTMENTS

1991	Assistant Clinical Professor, Department of Medical and Surgical Neurology, Texas Tech University, El Paso, Texas
1991-1993	Clinical Instructor, Department of Neurology, University of California, Los Angeles, California
1993-2002	Assistant Professor of Clinical Neurology, Department of Neurology, Ohio State University, Columbus, Ohio
1994-2002	Assistant Professor of Clinical Psychiatry, Department of Psychiatry, Ohio State University, Columbus, Ohio
1995-present	Category M status on the graduate faculty in the Graduate Program in Biomedical Engineering
2002-2014	Associate Professor of Clinical Neurology and Psychiatry, Department of Neurology, Ohio State University, Columbus, Ohio
2014-present	Professor of Clinical Neurology and Psychiatry, Department of Neurology, Ohio State University, Columbus, Ohio

### EMPLOYMENT AND HOSPITAL POSITIONS

1976-1978	Computer Programmer for the Voyager and Galileo spacecraft, Jet Propulsion Laboratory, Liquid Propulsion Section and Energy Division, Pasadena, California
1979-1982	Research Assistant, Georgetown University, Department of Cardiology, Washington, D.C.
1983-1991	United States Army Medical Corps, Major (Active Duty)
1983-1984	Intern, William Beaumont Army Medical Center, El Paso, Texas
1984-1987	Neurology Resident, Letterman Army Medical Center, San Francisco, California
1987-1988	Neurologist, Landstuhl Army Regional Medical Center, Landstuhl, Germany
1988-1989	Chief, Neurology Service, Landstuhl Army Regional Medical Center, Landstuhl, Germany
1989-1990	Chief, Adult Neurology Service, Landstuhl Army Regional Medical Center, Landstuhl, Germany
1990-1991	Assistant Chief, Neurology Service and Chief,

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Douglas W. Scharre, MD 4

Neurophysiology Laboratory, William Beaumont Army Medical Center, El Paso, Texas

1991-1993 Neurobehavior Fellow, University of California, Los Angeles, California; funded by a National Research Service Award from the National Institute of Aging (NIA)

1993-present Director of Cognitive Neurology; Medical Director, Memory Disorders and Neurobehavior Clinics, Department of Neurology, Ohio State University, Columbus, Ohio

1993-present Attending and Consulting Staff, Ohio State University Medical Center, Columbus, Ohio

1993-present Attending and Consulting Staff, The James Cancer Hospital and Research Institute, Columbus, Ohio

1993-present Attending and Consulting Staff, Neuropsychiatric Hospital, Columbus, Ohio

1994-2000 Consultant in neurology and neurobehavior for Twin Valley Psychiatric Hospital, Columbus, Ohio

1994-present Medical Director, Forest Hills Center for Alzheimer's and Related Disorders (nursing home), Columbus, Ohio

1995-present Medical Director, Memory Loss Clinic at the Riverside John J. Gerlach Center for Senior Health, Columbus, Ohio

1996-present Consulting Staff, Department of Medicine, Section of Neurology, Riverside Methodist Hospitals, Columbus, Ohio

1997-2006 Attending and Consulting Staff, Select Hospital of Columbus, Columbus, Ohio

1999-present Attending and Consulting Staff, Ohio State University Hospitals East, Columbus, Ohio

2005-2013 Consultant in neurology and neurobehavior for Westminster Thurber Community, Columbus, Ohio

2007-2016 Consultant in neurology and neurobehavior for Tuscany Gardens, Pataskala, Ohio

2016-present Consultant in neurology and neurobehavior for Ganzhorn Suites, Powell, Ohio

2015-present Co-Director, Neuroscience Research Institute, Neurological Institute, Ohio State University, Columbus, Ohio

2018-present Interim Chair, Department of Neurology, Ohio State University, Columbus, Ohio

2018-present Co-Director, Neurological Institute, Ohio State University, Columbus, Ohio

AWARDS

**Research Awards**

- |           |                                                                                                                        |
|-----------|------------------------------------------------------------------------------------------------------------------------|
| 1991-1993 | National Research Service Award: Funded by the National Institute of Aging (NIA); \$70,000                             |
| 1995      | Monitor's Choice for best site in the E2020-A001-302 Study from Eisai America Inc.                                     |
| 2014      | Alzheimer's Drug Discovery Foundation Harrington Scholar Award (Douglas W. Scharre, MD and Chien-Liang Glenn Lin, PhD) |
| 2016      | Nominated by Dean for Innovator of the Year Award                                                                      |

**Teaching Award**

- |      |                                                                                                        |
|------|--------------------------------------------------------------------------------------------------------|
| 1995 | CME Faculty Award of Excellence from The Ohio State University Center for Continuing Medical Education |
| 2010 | Ohio State University College of Medicine Excellence in Teaching Award                                 |
| 2012 | Department of Neurology Graduating Class Resident Mentor Award                                         |

**Special Faculty Award**

- |      |                                                                                                                    |
|------|--------------------------------------------------------------------------------------------------------------------|
| 2015 | Outstanding Faculty Academic Performance recognizing contributions to research, education, and faculty development |
|------|--------------------------------------------------------------------------------------------------------------------|

**Clinical Excellence Award**

- |      |                                                                                                                    |
|------|--------------------------------------------------------------------------------------------------------------------|
| 2015 | Outstanding achievement in patient service, certificate of excellence - top 10% nationally in patient satisfaction |
| 2017 | Outstanding achievement in patient service, certificate of excellence - top 10% nationally in patient satisfaction |

**Other Awards**

- |           |                                   |
|-----------|-----------------------------------|
| 2005-2006 | Best Doctor's in America          |
| 2006      | Top 100 Health Professionals 2006 |
| 2007-2008 | Best Doctor's in America          |
| 2009      | America's Top Physicians          |
| 2009-2010 | Best Doctor's in America          |
| 2011-2012 | Best Doctor's in America          |
| 2013      | Best Doctor's in America          |
| 2014      | Best Doctor's in America          |
| 2015-2016 | Best Doctor's in America          |
| 2017-2018 | Best Doctor's in America          |
| 2018      | Castle Connolly Top Doctors       |

**Military Awards**

- |      |                           |
|------|---------------------------|
| 1990 | Meritorious Service Medal |
|------|---------------------------|

1989	Army Achievement Medal
1991	National Defense Service Medal
1983	Armed Forces Reserve Medal
1983	Army Service Ribbon

### PROFESSIONAL SOCIETY AND COMMITTEE MEMBERSHIP

2017-present	Lewy Body Dementia Association Research Center of Excellence (LBDA-RCOE), Clinical Care and Professional Education working group member
2017-present	LBDA-RCOE, Clinical Trial Design and Optimization working group member
2017-2018	AAN, Aging, Dementia, Cognitive and Behavioral Neurology Topic Work Group Member
2010-2013	AAN, Geriatric Neurology Section, Councilor
2010-2011	AAN, Performance in Practice Medication Reconciliation Module Development member
2006-present	Alzheimer's Disease Cooperative Study (ADCS) group member
2006-2013	AAN, Residency Examination Advisory Panel (REAP)
2005	ADNI Resource Allocation Committee member
2005-present	ADNI Data and Publications Committee member
2004-present	Alzheimer's Disease Neuroimaging Initiative (ADNI) Steering Committee member
2002-2012	American Medical Directors Association Foundation Long-Term Care Research Network, participant
2001-2016	Nightingale Home Healthcare, Board of Trustees and Medical Director
2001-present	Society for Behavioral and Cognitive Neurology, member
1997-present	Ohio Medical Directors Association, member
1995-present	American Medical Directors Association, member
1994-present	The Center for Cognitive Science, member
1993-present	AAN, Behavioral Neurology Section, member
1993-present	AAN, Geriatric Neurology Section, member
1993-present	AAN, Neuroimaging Section, member
1985-present	American Academy of Neurology (AAN), Active member
1975-present	Sigma Pi Sigma (Physics Honor Society)
2004-2005	Ohio Medical Directors Association (OMDA) Board of Directors
1993-2004	Central Ohio Neurological Society
1996-2001, 2005	Alzheimer's Home Care Inc., Professional Advisory Committee
1995-2001	Alzheimer's Association of Central Ohio, Board of Trustees
1994-2001	Behavioral Neurology Society, member
1987-1991	Uniformed Services Organization of Neurologists (USON)

1987-1990

German-American Medical Society

**FELLOWSHIP DIRECTOR**

1. Behavioral Neurology & Neuropsychiatry program at The Ohio State University since September 2017
2. Geriatric Neurology program at The Ohio State University since September 2017

**TEACHING - CURRENT**

1. Med Coll 664 and Med Coll 665 - Med 3 and Med 4 Neurology Clerkship Clinic Rotation; Ohio State University: 4 to 8 hours per week. One or more medical students rotate per month. Taught with a few other neurology clinic attendings. Students rotate through various neurology specialty clinics. My attending role is to teach and supervise as they rotated through the Memory Disorders and Neurobehavior Clinics. Monthly from 1993 to present
2. Med Coll 664 and Med Coll 665 - Med 3 and Med 4 Neurology Clerkship Consult or Neurology Clerkship Ward Rotation; Ohio State University: Approximately 4 to 5 hours per day, 5 days per week. Usually 4 medical students and one neurology resident. My role is attending and neuroscience teacher for the month. Selected months 1994 to present
3. Neuropsychiatry Case Conference; Ohio State University: 1 hour per month. Monthly CME conference for faculty, residents, interns, and medical students where I interview patients and families. Taught by myself (June 1994 to 1999) and taught with Steven Pariser, MD and David Beversdorf, MD (2000 to 2002) and taught with Yiu-Chung Chan, MD, Steven Pariser, MD, David Beversdorf, MD, and Maria Kataki, MD, PhD (2004 to 2006) and taught with Steven Pariser, MD, David Beversdorf, MD, and Maria Kataki, MD, PhD (2007) and Steven Pariser, MD and Maria Kataki, MD, PhD (2008 to 2010) and taught with Steven Pariser, MD, Maria Kataki, MD, PhD, and Punit Agrawal, DO (2010-2014), and taught with Maria Kataki MD, PhD, Punit Agrawal, DO, Anahita Adeli, MD, and Brendan Kelley, MD (2014 to 2015) and taught with Maria Kataki MD, PhD, Punit Agrawal, DO, and Brendan Kelley, MD (2015 to present). My role is to help select the patients, interview the patients, and teach neurobehavioral clinical science. Monthly from June 1994 to present
4. College of Medicine - Neurology Resident Subspecialty Selective; Ohio State University: 4 to 8 hours per week. One neurology resident per month rotated. Taught with a few other neurology clinic attendings. Residents rotate through various neurology specialty clinics. My attending role is to teach and supervise as they rotated through the Memory Disorders and Neurobehavior Clinics. Periodically from 1994, monthly from October 1995 to 1998, and periodically from 1998 to present



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5. College of Medicine – Psychiatry Resident Neurobehavior Elective; Ohio State University: 12 to 20 hours per week. One psychiatry resident per month rotated. Residents participate in the Memory Disorders and Neurobehavior outpatient clinics as well as in the nursing home rounds at Forest Hills Nursing Home on the dementia patients. Periodically from 1996 to present
6. Mock oral examination on neurology residents. Most years from May 1998 to present
7. College of Medicine – Psychiatry Resident Clinic Rotation; Ohio State University: 4 to 8 hours per week. One psychiatry resident per month rotated (averaging 6 students per year). Taught with one other neurology attending. Residents participate in the Memory Disorders and Neurobehavior outpatient clinics. My attending role is to teach and supervise as they rotate through the Memory Disorders and Neurobehavior Clinics. Periodically from 2000 to present
8. College of Medicine – Neurology Resident Emergency Care Conferences; Ohio State University: 1 hour lecture per year on “Acute confusional states” to Neurology residents. Teach diagnosis and evaluation of patients with acute confusional states. Yearly from July 2000 to present
9. Vision Science 804 – Anatomy and Physiology of the Visual System; Ohio State University: Invited lecturer for 1-hour lecture entitled “Disorders of Higher Visual Centers” to Vision Science students. Yearly from August 2001 to 2014
10. Med Coll 661- Med 1 Neuroscience Course; Ohio State University: Invited lecturer for 1-hour lecture entitled “Dementia” to 1st year medical students. Yearly from 2003 to present
11. Med Coll 661- Med 1 Neuroscience Course; Ohio State University: Invited lecturer for 1-hour lecture entitled “Cutting Edge – Research Approach to Alzheimer’s Dementia” to 1st year medical students. Yearly from 2003 to present
12. College of Medicine – Cognitive Journal Club; Ohio State University: 1 hour per year. Neurology residents and faculty discuss current neurologic literature in cognition. Yearly from 2004-present
13. College of Medicine – Neurology Resident lecture; Ohio State University: 1 hour lecture on “HIV and Neurosyphilis” to Neurology residents. Teach diagnosis and evaluation of patients with HIV and neurosyphilis. Every other year 2007 to present.
14. Doctor’s Hospital Family Practice Resident Geriatrics Rotation; John J. Gerlach Center for Senior Health: 4 hours per week. One family practice resident per month rotated. My attending role is to teach and supervise as they rotated through the Memory Disorders Clinic. Periodically monthly from August, 2008 to present
15. College of Medicine – Neurology Resident lecture; Ohio State University: 1 hour lecture on “Frontotemporal dementia” to Neurology residents. Teach diagnosis and clinical features of frontotemporal dementia conditions. Every other year 2008 to 2012.
16. College of Medicine – Neurology Resident lecture; Ohio State University: 1 hour lecture on “Neuroanatomical basis of neurobehavioral symptoms” to Neurology residents. Teach diagnosis and clinical features of vascular and subcortical dementia conditions. Every other year 2010, 2012, 2015

17. College of Medicine – Neurology Resident lecture; Ohio State University: 1 hour lecture on “Psychopharmacology” to Neurology residents. Teach diagnosis and clinical features of vascular and subcortical dementia conditions. Every other year 2012, 2015

### **ACADEMIC ADVISING AND MENTORING**

1. Master's Examination Committee and Thesis Advisor for Masters student Xiaoyi Wu from 1995-1996: Graduate Program in Biomedical Engineering; Graduated 1996; Thesis title: A Practical X-Window-Based Software Tool for Quantitative SPECT Analysis
2. Research Mentor for Neurology Resident Paul Wasielewski in 1996; Research project: PET scan in a case of late onset Huntington's disease with minimal dementia and absence of caudate atrophy
3. Junior Faculty Mentor for David Q. Beversdorf from 1998-present; Member of the Division of Cognitive Neurology in the Department of Neurology
4. Master's Thesis Advisor for Masters student Ruth Maceyak in 1999; Graduate Program in Gerontology Nursing; Thesis title: Comparison of special care units and traditional long term care facilities in the management of the agitated dementia patient
5. Research Mentor for Neurology Resident Jawad Kirmani in 2000; Research project: Driving performance in Alzheimer's disease is predicted by easily administered cognitive tasks
6. Neurology Resident Mentor for Laszlo Vaghy from 2000-2001
7. Research Mentor for Medical Student Tammy Chan from 2000-2001; Research project: Early diagnosis of Alzheimer's disease using hippocampal SPECT imaging
8. Research Mentor for Neurology Resident Miriam Klaiman in 2001; Research project: Progressive aphasia
9. Doctorate Advisor and Doctoral Examination Committee (2002) for doctoral student Chastity Whitaker from 2001-2004: Graduate Program in Neuroscience; Research project: Using 8-Tesla, ultra-high field magnetic resonance neuroimaging to evaluate for signal changes due to iron deposition as a possible biomarker for early detection of Alzheimer's disease
10. Research Mentor for Medical Student Blake Shusterman from 2001-2002; Research project: Prediction of psychotic behaviors in Alzheimer's disease patients
11. Research Mentor for Medical Student Jennifer Burkhart from 2002-2003; Research project: Using SPECT for the prediction of psychotic behaviors in Alzheimer's disease patients
12. Research Mentor for Medical Student Meicheng Chiang in 2003; Research project: Correlation of disinhibition and apathy with anatomical localization in frontotemporal dementia patients using SPECT
13. Research Mentor for Pre-Intern Student Shawn Smyth from 2004 to 2005; Research project: Correlation of cognitive and examination findings with anatomical localization in dementia with Lewy bodies, corticobasal ganglionic degeneration, and other tauopathy patients using SPECT

14. Doctorate Advisor and Doctoral Thesis Defense Committee (2004) for doctoral student Chastity Whitaker from 2001-2004: Graduate Program in Neuroscience; Research project: Using 8-Tesla, ultra-high field magnetic resonance neuroimaging to evaluate for signal changes due to iron deposition as a possible biomarker for early detection of Alzheimer's disease
15. Research Mentor for Medical Student Alex Larsen in 2005; Research project: Alzheimer's disease subject demographics in the Buckeye Brain Bank database
16. Research Mentor for Medical Student Kay Ritchey in 2006; Research project: Clinical correlations with the SAGE test
17. Research Mentor for Department of Industrial, Interior, and Visual Communication Design student Ying Lee in 2007; Research project: Manage your life: a digital calendar for assisted living facility residents with early stage Alzheimer's disease
18. Research Mentor for Medical Student Natalie Wheeler in 2007; Research project: SAGE in normal aging, Mild Cognitive Impairment (MCI) and early dementia
19. Doctorate Candidacy Committee (2007) for doctoral student Ananth Narayanan: Graduate Program in Neuroscience; Research project: Noradrenergic modulation and fMRI of semantic network flexibility in Autism Spectrum Disorder (ASD)
20. Research Mentor for Medical Student Nicholas Milano in 2007; Research project: Insight and prognosis of Mild Cognitive Impairment (MCI) subjects
21. Research Mentor for Geriatric Fellow Abul Ahsan in 2007; Research project: Investigation of Selection bias in Neuroleptic Trials in Alzheimer's (ISNTA Study)
22. Research Mentor for Medical Student Hillary Bashaw in 2008; Winner of training grant from the 2008 Summer Training on Aging Research - Mental Health (START-MH). Research project: Effectiveness of pharmacologic therapy in treating psychiatric symptomology with frontotemporal dementia
23. Research Mentor for Medical Student Muyuan Ma in 2009; Winner of Roessler scholarship. Research project: SAGE testing over time in patients with and without dementia
24. Research Mentor for Medical Student Andrew Levin in 2010; Research project: Normative scores for demographic and self-reported data on the SAGE
25. Research Mentor for Medical Student Jennifer Yager-Schweller in 2011; Research project: SAGE as a screening instrument for MCI in the community setting
26. Research Mentor for Medical Student Michael Merjanian in 2012; Research project: Atypical antipsychotic efficacy and tolerability in dementia subjects living at a long-term care facility
27. Clinical Mentor (Howard Hughes Medical Institute (HHMI) Med into Grad Scholars Program) for psychology graduate student Sarah Hopp in 2012-2013
28. Research Mentor for Medical Student Christopher Plowman in 2013; Research project: SAGE and MMSE score change over time among AD, FTD, and DLB patients
29. Clinical Mentor (Howard Hughes Medical Institute (HHMI) Med into Grad Scholars Program) for biomedical engineering graduate student Yongchen Wang in 2015-2016

**CLINICAL SERVICE**

1. Consult and manage patients with dementia, neurobehavioral, and neuropsychiatric disorders
2. Supervise neurological services to inpatients as the consult or ward attending for the housestaff. William Beaumont Army Medical Center, El Paso, Texas; selected months July 1990 to June 1991
3. Supervise neurobehavior consultations to inpatients as the consult attending for the housestaff. West Los Angeles Veterans Administration Medical Center, Los Angeles, California; July 1992 through June 1993
4. Attending Staff, Ohio State University Medical Center, The Arthur G. James Cancer Hospital and Research Institute, and the Neuropsychiatric Hospital; July 1993 to present
5. Provide neurological and neurobehavioral services to outpatients in the Memory Disorder Clinic and Neurobehavior Clinic. Ohio State University Medical Center, Columbus, Ohio; 1993 to present
6. Supervise neurological services to inpatients as the consult or ward attending for the housestaff. Ohio State University Medical Center, Columbus, Ohio; selected months 1994 to present
7. Supervise neurological services to outpatients as the neurology clinic attending for the housestaff. Ohio State University Medical Center, Columbus, Ohio; selected months 1994 to 2005
8. Consultant in neurology and neurobehavior for Twin Valley Psychiatric Hospital, Columbus, Ohio; 1993 to 2000
9. Consultant in neurology and neurobehavior for Forest Hills Center for Alzheimer's and Related Disorders (long-term care facility), Columbus, Ohio; August 1994 to present
10. Consultant in neurology and neurobehavior for the Riverside John J. Gerlach Center for Senior Health, Columbus, Ohio; August 1995 to present
11. Consultant in neurology and neurobehavior for Riverside Methodist Hospitals, Columbus, Ohio; April 1996 to present
12. Consultant in neurology and neurobehavior for Select Hospital of Columbus, Columbus, Ohio; 1997 to present
13. Consultant in neurology and neurobehavior for Ohio State University Hospitals East, Columbus, Ohio; 1999 to present
14. Consultant in neurology and neurobehavior for Emerald Crossings of Dublin (assisted living facility), Dublin, Ohio; September 2003 to 2005
15. Consultant in neurology and neurobehavior for Westminster-Thurber Community (assisted living facility), Columbus, Ohio; January 2006 to 2012
16. Consultant in neurology and neurobehavior for Tuscany Gardens (long-term care facility), Columbus, Ohio; 2007 to 2016
17. Consultant in neurology and neurobehavior for Ganzhorn Suites (assisted living facility), Columbus, Ohio; 2016 to present

**CONSULTANT SERVICE** (Industry, Education, Government, Community)

1. Parke-Davis, Inc.: 1996
2. Pfizer, Inc.: 1996-1998, 2000-2006
3. Alzheimer's Disease Neurology Education Council: 1997
4. Multidisciplinary Curriculum Development Meeting: Progress and Perspectives in the Management of Alzheimer's Disease: 1997
5. Novartis Pharmaceuticals Corp.: 1999-2001
6. Janssen, Inc.: 2000-2005
7. Ortho-McNeil, Inc.: 2002-2003; 2005
8. Forest Laboratories: 2004-2006; 2011-2013
9. Avanir Pharmaceuticals: 2006, 2014-2015, 2017
10. Novartis: 2010
11. Eli Lilly and Company: 2011-2017
12. Grifols Inc.: 2013
13. BrainTest, Inc.: 2014-present
14. Alois Alzheimer Foundation: 2014-2015
15. H. Lundbeck A/S: 2015
16. Ganzhorn Operating Company of Powell: 2015
17. Biogen: 2016
18. Head of Medial Affairs, BrainTest, Inc.: 2018-present

**ADMINISTRATIVE SERVICE - CURRENT**

1. Director, Cognitive Neurology Division, Department of Neurology, 1993 to present
2. Medical Director, Memory Disorders and Neurobehavior Clinics, 1993 to present
3. Medical Director, Forest Hills Center for Alzheimer's and Dementia, 1994 to present
4. Medical Director, Memory Disorders Clinic at the Riverside John J. Gerlach Center for Senior Health, 1995 to present
5. Patient Centered Medicine Student Review Committee, Ohio State University, 1999 to present
6. Chairman, Awards Committee of The Harold Brenner Pepinsky Early Career Award in Neurobehavioral Science, 2000 to present
7. Medical Staff Bylaws Committee, Ohio State University, 2000 to present
8. Ohio State University Medical Staff Committee for Licensed Independent Practitioner Health, Ohio State University, 2002 to present
9. Academic Behavior Review Committee, College of Medicine, Ohio State University, July 2009 to present



10. Co-Director, Neuroscience Research Institute, Ohio State University, 2015 to present
11. Coordinator, faculty searches in Neuroscience, College of Medicine, Ohio State University, 2017 to present
12. Member, search committee for Chair, Department of Neurology, College of Medicine, Ohio State University, 2018 to present
13. Interim Chair, Department of Neurology, 2018 to present
14. Co-Director, Neurological Institute, Ohio State University, 2018 to present

#### **ADMINISTRATIVE SERVICE - PAST (SELECTIVE)**

1. Chief-of-Staff Elect, Ohio State University Hospitals, 2011-2013
2. Medical Staff Officers Group, Ohio State University, 2011-2015
3. Chairman, Medical Staff Officers Group, Ohio State University, 2013-2015
4. Chief-of-Staff, Ohio State University Hospitals, 2013-2015
5. Promotion and Tenure Committee, member, College of Medicine, Ohio State University, 2014 to 2017
6. Promotion and Tenure Committee, chairperson, Department of Neurology, Ohio State University, 2015 to 2018

#### **COMMERCIALIZATION**

1. Brain Test, Inc. licensed agreement on SAGE (Self-Administered Gerocognitive Examination) to commercialize the copyright test, January 1, 2014

#### **MEDICAL MONITOR - RESEARCH**

1. Clinical trial to test the efficacy and safety of MMFS, a synaptic density enhancer, in Mild Alzheimer's Disease patients. Sponsored by Neurocentria: a single site (Ohio State University) investigational drug trial; Scharre DW (Medical Monitor); 2017-present
2. Safety and efficacy of MMFS-205-SR for improving cognitive function and mood in phase 2-3 Alzheimer's Disease patients (Protocol NC009 Protocol). Sponsored by Neurocentria: a single site investigational drug trial; Scharre DW (Medical Monitor); 2017-present
3. Comparison of MMFS Dosages For Improving Cognition, Mood, and Sleep Quality In Older Adults (Protocol NC010). Sponsored by Neurocentria: a single site investigational drug trial; Scharre DW (Medical Monitor); 2018-present

**RESEARCH & GRANTS - CURRENT****Investigator Initiated Studies**

1. Cerebrospinal fluid (CSF), serum, and plasma markers for Alzheimer's disease. Ohio State University Protocol 94H0440; Scharre DW (Principal Investigator); 1994-present; Funded internally
2. Neurodegenerative disease brain tissue repository (Buckeye Brain Bank). Ohio State University Protocol 99H0168: Collecting brains for potential future study; Scharre DW (Principal Investigator); 1999-present; Funded internally
3. Normal Aged Brains for the Neurodegenerative Disease Brain Tissue Repository (Buckeye Brain Bank). Collecting normal aged brains to compare to diseased brains for future study; Funded by Pfizer, Inc. by a research grant; Scharre DW (Principal Investigator); December 2003-present; \$15,000
4. Cognitive screening test results in the general adult population. Exempt from Ohio State University IRB, project number 2004E0500: Cognitive screening test for adults; Scharre DW (Principal Investigator); 2004-present; Funded internally
5. Investigation of Selection bias in Neuroleptic Trials in Alzheimer's (ISNTA Study). Exempt from Ohio State University IRB, project number 2007E0117: Study looking at use of antipsychotic medications to help agitation and psychosis in Alzheimer's disease patients; Scharre DW (Principal Investigator); 2007-present; Funded internally
6. Insight and prognosis of Mild Cognitive Impairment (MCI) subjects. Exempt from Ohio State University IRB, project number 2007E0678: Predicting MCI conversion to dementia by assessing insight; Scharre DW (Principal Investigator); 2007-present; Funded internally
7. Magnetic resonance imaging and spectroscopy using 7Tesla MI device. Grant application; Ohio State University Protocol 2006H0081; Knopp MV (Principal Investigator), Scharre DW, Schmalbrock P, and others (Co-Investigators); 2008-present; funded internally
8. Assessment of structural and functional changes in brain with normal aging as studied by 7 Tesla MRI. Grant application; Ohio State University Protocol 2006H0082; Schmalbrock P (Principal Investigator), Scharre DW, Knopp MV, and others (Co-Investigators); 2008-present; funded internally
9. Cerebral fluid (CSF) and blood repository (Buckeye Biospecimen Repository): evaluating biomarkers for degenerative brain conditions. Sponsored by Phylogeny, Inc.: an investigational biomarker trial; Scharre DW (Principal Investigator); 2012-present; \$60,924
10. Diagnosing between Alzheimer's disease, Lewy body dementia, and Parkinson's disease. Funded by the Mangurian Foundation; Ohio State University Protocol 2014H0415; Scharre DW (Principal Investigator); 2015-present; \$500,000
11. Cerebrospinal Fluid Markers of Synaptic Injury and Functional Connectivity in Alzheimer's Disease. Funded by the 2017 Chronic Brain Injury (CBI) Pilot

Award, Ohio State University; Tarawneh R (PI), Scharre DW (Co-PI); 2017-present; \$25,000

12. Ultrastructural characterization of iron in AD. Funded by the 2017 Chronic Brain Injury (CBI) Pilot Award, Ohio State University; Agarwal G (PI), Scharre DW and McTigue D (Co-PIs); 2017-present; \$25,000
13. Brain functional connectivity and self-management in African Americans with Alzheimer's disease and related dementia disorders and hypertension. Funded by the 2018 Chronic Brain Injury (CBI) Pilot Award, Ohio State University; Wright KD (PI), Scharre DW, Mion LC, Lu Z-L, and Tan A (Co-PIs); 2018-present; \$25,000
14. Clinical trial to test the efficacy and safety of MMFS, a synaptic density enhancer, in Mild Alzheimer's Disease patients. Sponsored by Neurocentria: a single site (Ohio State University) investigational drug trial; Scharre DW (Medical Monitor and site PI); 2017-present

### **International Multicenter Studies**

1. A phase III, randomized, placebo-controlled, parallel-group, double-blind clinical trial to study the efficacy and safety of MK-8931 (SCH 900931) in subjects with amnesic mild cognitive impairment due to Alzheimer's Disease (prodromal AD) (protocol number MK-8931-019-00). Sponsored by Merck Inc.: an investigational drug trial; Scharre DW (Principal Investigator); 2014-present; \$261,350
2. A phase 3, multicenter, randomized, double-blind, placebo-controlled, parallel-group study to evaluate the efficacy and safety of aducanumab (BIIB037) in subjects with early Alzheimer's disease (protocol number AVP-786). Sponsored by Biogen Inc.: an investigational drug trial; Scharre DW (Principal Investigator); 2015-present; \$213,273
3. A phase 3, multicenter, randomized, double-blind, placebo-controlled study to assess the efficacy, safety and tolerability of AVP-786 (deuterated [d6] dextromethorphan hydrobromide [d6-DM]/quinidine sulfate [Q]) for or the treatment of agitation in patients with dementia of the Alzheimer's type (protocol number 15-AVP-786-303). Sponsored by Avanir Inc.: an investigational drug trial; Scharre DW (Principal Investigator); 2015-present; \$30,622
4. A 24-month, Multicenter, Randomized, Double-blind, Placebo-controlled, Parallel-group, Efficacy, Safety, Tolerability, Biomarker, and Pharmacokinetic Study of AZD3293 in Early Alzheimer's Disease (The AMARANTH Study). Sponsored by Astra Zeneca and Eli Lilly: an investigational drug trial; Scharre DW (Principal Investigator); 2015-present
5. Effects of traumatic brain injury and post-traumatic stress disorder and Alzheimer's disease on brain tau in Vietnam veterans using ADNI. Supported by the National Institute on Aging and private organizations: Scharre (Site Principal Investigator); 2015-present



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6. Alzheimer's disease Neuroimaging Initiative 3 (ADNI3). Supported by the National Institute on Aging and private organizations: Scharre (Site Principal Investigator); 2016-present; \$126,225
7. A randomized, double-blind, placebo-controlled and delayed-start study of LY3314814 in mild Alzheimer's disease dementia (the Daybreak study). Sponsored by AstraZeneca and Eli Lilly: an investigational drug trial; Scharre DW (Principal Investigator); 2017-present; \$11,360
8. Randomized, double-blind, parallel-group, placebo-controlled, dose-ranging study of piromelatine in patients with mild dementia due to Alzheimer's disease (NeuP11-AD2). Sponsored by INC research and Neurim: an investigational drug trial; Scharre DW (Principal Investigator); 2017-present
9. A Phase 3, multicenter, randomized, double-blind, placebo-controlled study to assess the efficacy, safety, and tolerability of AVP-786 for the treatment of agitation in patients with dementia of the Alzheimers type (Protocol 301). Sponsored by Avanir Inc.: an investigational drug trial; Scharre DW (Principal Investigator); 2015-present; \$56,000
10. A randomized, double-blind, delayed-start study of LY3314814 (AZD3293) in early Alzheimer's disease dementia (extension of study AZES, the AMARANTH study). Sponsored by Eli Lilly and Astra Zeneca: an investigational drug trial; Scharre DW (Principal Investigator); 2015-present; \$68,581
11. A Study of Crenezumab Versus Placebo to Evaluate the Efficacy and Safety in Participants With Prodromal to Mild Alzheimer's Disease (AD) (CREAD 2). Sponsored by Roche: an investigational drug trial; Scharre DW (Principal Investigator); 2017-present
12. A randomized, double-blind, placebo-controlled, two-cohort parallel group study to evaluate the efficacy of CAD106 and CNP520 in participants at risk for the onset of clinical symptoms of Alzheimer's disease. Sponsored by Novartis: an investigational drug trial; Scharre DW (Principal Investigator); 2017-present
13. Escitalopram for agitation in Alzheimer disease. Sponsored by Johns Hopkins and NIA: an investigational drug trial; Scharre DW (Principal Investigator); 2017-present
14. Multiple-Dose, Dose-Escalation Study to Assess the Safety, Tolerability, Pharmacokinetics and Pharmacodynamics of LY3303560 in Patients with Mild Cognitive Impairment due to Alzheimer's Disease or Mild to Moderate Alzheimer's Disease (Protocol I8G-MC-LMDD). Sponsored by Eli Lilly: an investigational drug trial; Scharre DW (Principal Investigator); 2017-present
15. Assessment of safety, tolerability and efficacy of LY3002813 alone and in combination with LY3202626 in early symptomatic Alzheimer's disease. Sponsored by Eli Lilly: an investigational drug trial; Scharre DW (Principal Investigator); 2018-present
16. Long-term nicotine treatment of mild cognitive impairment. Sponsored by University of Southern California and ATRI: an investigational drug trial; Scharre DW (Principal Investigator); 2018-present

**RESEARCH & GRANTS - PAST****Investigator Initiated Studies**

1. Experimental Investigation of the Acoustical Properties of Superfluid Helium: Senior Project, UCLA Physics Department, Los Angeles, California, 1978
2. The Effects of Prostaglandins on Macrophages: Master's Degree thesis requirement, Georgetown University Department of Physiology and Biophysics, Washington, D.C., 1979
3. MECA (Medical Education through Computer Assistance): The Microcomputer Information Organizer for the Medical Student, Computer Program, Copyright Douglas W. Scharre, February 1983; Georgetown University School of Medicine, Washington, D.C., 1979-1983
4. Ultrasound Visualization of Damaged Spinal Cords in Laboratory Cats: Georgetown University Department of Anatomy, Washington, D.C., 1979-1981; I helped on this project. Published in a report, Gammell PM, Rigamonti DD, and Hestenes JD: Spinal Cord Lesion Assessment by Ultrasound. NASA Task Order RD-170, August 30, 1980
5. The Assessment of Performance in Electrocardiographic Interpretation: Georgetown University Department of Cardiology, Washington, D.C.; I helped on this project, 1979-1982
6. The Early Neurological Manifestations of Human Immunodeficiency Virus (HIV) Infection and Disease. Clinical Investigation Project, Protocol N87-13, Letterman Army Medical Center, San Francisco, California; Scharre DW (Principal Investigator), 1987; Funded internally
7. A neurobehavioral assessment of violent criminals looking at predictors, types, and neurologic substrates of violence. Scharre DW and Benson DF (Co-Principal Investigators), 1992-1993; Funded internally
8. Predictors of driving performance in Alzheimer's disease. Ohio State Department of Aging Grant; Scharre DW and Kantor B (Principal Investigators); 1994-1999; \$8,000.
9. Tourette Syndrome: Behavioral, Neurochemical, and Neuropsychological abnormalities. deGroot CM (Principal Investigator), Scharre DW (Sub-Investigator); 1995
10. Markers of Inflammation in Alzheimer's Disease. Serum markers of inflammation being studied; DiSilvestro RA and Scharre DW (Principal Investigators); 1995-1996; Funded internally
11. Brain SPECT Quantitation in Dementia. Scharre DW (Principal Investigator), Johnson R, Wu X, Pozderac RV, and Olsen JO; 1995-1997; Funded internally
12. Assessment of Mental Status in Aphasic Persons. Pashek GV (Principal Investigator) and Scharre DW (Co-Investigator); 1995-1997; Funded internally
13. Acquired Visual Deficits in Alzheimer's Disease. Humen NG (Principal Investigator), Early M, and Scharre DW (Co-Investigator); 1996-1997; Funded internally

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14. Quetiapine in patients with Alzheimer's disease and behavioral symptoms. Ohio State University Protocol 98H0056: Efficacy and safety of quetiapine for psychosis and aggression in Alzheimer's patients; Scharre DW (Principal Investigator) and Chang S-I; 1998-1999; Funded internally
15. Noradrenergic modulation of cognition. Ohio State University Protocol 98H0258: Problem solving tasks and beta-blockers; Beversdorf DQ (Principal Investigator), Scharre DW (Co-Principal Investigator), and Bornstein R; 1998-1999; Funded internally
16. Donepezil in the treatment of diffuse Lewy body disease. Ohio State University Protocol 98H0257. Sponsored by Pfizer, Incorporated: an investigational drug trial; Beversdorf DQ (Principal Investigator) and Scharre DW (Co-Principal Investigator); 1998-2001; 47,547.
17. Screening for mild cognitive impairment (MCI) and dementia using the clock drawing test (CDT). Sponsored by Pfizer, Incorporated: Evaluating screening tests for early diagnosis; Scharre DW (Principal Investigator); 1999-2002; \$5,000.
18. Behavioral modification for the treatment of abnormal behaviors in dementia patients. Sponsored by AstraZeneca, Inc: Production of a teaching video for behavioral modification techniques; Scharre DW (Principal Investigator); 2000-2002; \$1,000.
19. Citalopram in patients with Alzheimer's disease and behavioral symptoms. Ohio State University Protocol 98H0394. Sponsored by Forest Laboratories, Incorporated: an investigational drug trial; Scharre DW (Principal Investigator), and Pollak CP (Co-Principal Investigator); 1998-2002; 36,563.
20. Outcomes study of behavioral pharmacotherapy in Alzheimer's disease. Caballero J and Scharre DW (Principal Investigators); 2002-2005; Funded by Division of Pharmacy Practice and Administration at Ohio State
21. Endogenous contrast at  $>7T$  for measuring iron and perfusion in aging, MCI and AD. Grant application submitted 2/1/05 to NIH; Schmalbrock P (Principal Investigator), Scharre DW, Knopp MV, Yuh W, Chakeres D, Heverhagen JT, Abduljalil AM, Beversdorf DQ, Hammel CP, Olesik J, George P, Bradley C (Co-Investigators); 2005
22. SPECT (Single Photon Emission Computed Tomography) Imaging and Dementia. Ohio State University Protocol 97H0429. Sponsored in part by Amershan: Comparing normal elderly controls to dementia patients; Scharre DW (Principal Investigator), Jones A, Pozderac RV, and Olsen JO; 1997-2008; Drug provided by company.
23. Detection of neural activity in patients undergoing surgical procedures on the nervous system. Ohio State University Protocol 98H0259: Using miniature electrode grids to detect columnar cortical activity; Beversdorf DQ (Principal Investigator), Scharre DW (Co-Principal Investigator), Goodman J, Reeves A, and Norman R; 1998-2008; Funded internally
24. Neuropsychological analysis using cortical stimulation. Ohio State University Protocol 98H0260: Evaluating brain function through use of cortical stimulation

- during surgery; Beversdorf DQ (Principal Investigator), Scharre DW (Co-Principal Investigator), Goodman J, and Reeves A; 1998-2008; Funded internally
25. Ultra high resolution magnetic resonance imaging and spectroscopy study of Alzheimer's disease. Ohio State University Protocol 99H0360: Looking for plaques, entorhinal cortex atrophy, and functional impairment with the 8-Tesla MRI; Beversdorf DQ, Kuret J, and Scharre DW (Principal Investigators); 1999-2008; Funded internally
  26. The use of Positron Emission Tomography for the early diagnosis of Mild Cognitive Impairment and Alzheimer's disease. Exempt from Ohio State University IRB, project number 2007E0295: Use of PET for early diagnosis of MCI and Alzheimer's disease; Kataki M (Principal Investigator), Scharre D, Sarikaya I, Pozderac R, Beversdorf D (Co-Investigators); 2007-2010; Funded internally
  27. Genetic polymorphisms in stress and cognition - autism and cora part. Ohio State University Protocol 2007H0252: To look at the genetics of autism in regards to stress-related genes; Scharre DW (Principal Investigator); 2007-2010; Funded internally
  28. Genetic polymorphisms in stress and cognition - stress and cognition part. Ohio State University Protocol 2007H0253: To look at the genetics of Alzheimer's disease in regards to stress-related genes; Scharre DW (Principal Investigator); 2007-2010; Funded internally
  29. Functional Magnetic Resonance Imaging in neurological and neuropsychiatric patients. Ohio State University Protocol 2003H0173: Using fMRI to differentiate MCI and dementia patients; Scharre DW (Principal Investigator); 2003-2011 Funded internally
  30. Self-Administered Gerocognitive Examination (SAGE) and glycemic control in diabetes. Ohio State University Protocol 2010H0076: Scharre DW (Principal Investigator), 2010-2012 Funded internally
  31. The impact of cognitive impairment on dialysis patients. Ohio State University Protocol 2010H0079: Scharre DW (Principal Investigator), 2010-2012; Funded internally
  32. Validity of the Self-Administered Gerocognitive Examination (SAGE): A screening test for mild cognitive impairment (MCI) and dementia. Ohio State University Protocol 01H0116: SAGE was created and designed by DW Scharre as a practical screening tool; Funded by Pfizer and Eisai, Inc. by a research grant; Scharre DW (Principal Investigator); 2001-2012; \$68,000
  33. Cognitive, behavioral, and functional assessments in frontotemporal dementia patients. Ohio State University Protocol 2004H0034: 4-year study looking at natural course of frontotemporal dementia and effect of treatments; Scharre DW (Principal Investigator); 2004-2016; Funded internally
  34. Diagnosing dementia with Lewy bodies and Parkinson's disease dementia. Ohio State University Protocol 2011H0018; Scharre DW (Principal Investigator); 2011-2016; funded by the Mangurian Foundation; \$500,000
  35. Deep brain stimulation (DBS) for treatment of the cognitive, behavioral, and functional disability of Alzheimer's disease; Ohio State University Protocol; an

- investigational device trial. Rezai A (Principal Investigator), Scharre DW and others (Co-Investigators); 2012-2017; funded internally
36. Immediate effects of treadmill walking in individuals with dementia with Lewy bodies and Huntington's disease. Ohio State University Protocol; Kloos A (Principal Investigator), Scharre DW (Co-Investigators); 2013-2017; funded by the Mangurian Foundation
  37. Validity of the Electronic Self-Administered Gerocognitive Examination (eSAGE). Ohio State University Protocol 2014H0039; Scharre DW (Principal Investigator); 2014-2017; funded by the Brain Test, Inc.; \$126,599
  38. Genetics and therapy of dementia with Lewy bodies (DLB) and other neurodegenerative dementias. Ohio State University Protocol; Sadee W (Principal Investigator), Scharre DW and Kataki M (Co-Investigators); 2012-2017; funded by the Mangurian Foundation

### **International Multicenter Studies**

1. Placebo controlled evaluation of galantamine in the treatment of Alzheimer's disease: safety and efficacy of a controlled release formulation (Protocol number GAL-INT-10). Sponsored by Janssen Research Foundation: an investigational drug trial; Scharre DW (Principal Investigator); 2001-2002; \$114,850.
2. A randomized placebo-controlled trial to evaluate the efficacy and safety of galantamine in patients with minimal cognitive impairment (MCI) clinically at risk for the development of probable Alzheimer's disease (Protocol number GAL-INT-11). Sponsored by Janssen Research Foundation: an investigational drug trial; Scharre DW (Principal Investigator); 2001-2003; \$326,400.
3. An open-label extension trial to assess the long-term safety of a controlled release formulation of galantamine HBr in the treatment of Alzheimer's dementia (Protocol number GAL-INT-21). Sponsored by Janssen Research Foundation: an investigational drug trial; Scharre DW (Principal Investigator); 2001-2003; \$54,000.
4. An open-label extension study to assess the long-term safety and tolerability of galantamine HBr in the treatment of mild cognitive impairment (Protocol number GAL-MCI-301). Sponsored by Janssen Research Foundation: an investigational drug trial; Scharre DW (Principal Investigator); 2003-2004; \$6,450.
5. A 54-week, double-blind, randomized, placebo-controlled, parallel-group study to investigate the effects of rosiglitazone (extended release tablets) as adjunctive therapy to acetylcholinesterase inhibitors on cognition and overall clinical response in APOE e4-stratified subjects with mild to moderate Alzheimer's disease (REFLECT-3) (Protocol number AVA102670). Sponsored by GlaxoSmithKline: an investigational drug trial; Scharre DW (Principal Investigator); 2006-2009; \$69,989
6. A 52-week open-label extension study of the long-term safety and efficacy of rosiglitazone extended-release (RSG XR) as adjunctive therapy to acetylcholinesterase inhibitors in subjects with mild to moderate Alzheimer's disease (REFLECT-4) (protocol number AVA102675). Sponsored by



- GlaxoSmithKline: an investigational drug trial; Scharre DW (Principal Investigator); 2007-2009; \$1,500
7. A multicenter, randomized double-blind placebo-controlled study of the safety, tolerability, pharmacodynamic and pharmacokinetic effects of BMS-708163 in the treatment of patients with mild to moderate Alzheimer's disease (protocol number CN156013). Sponsored by Bristol-Myers Squibb: an investigational drug trial; Scharre DW (Principal Investigator); 2009-2012
  8. A multicenter, randomized double-blind placebo-controlled study of the safety, tolerability, pharmacodynamic and pharmacokinetic effects of BMS-708163 in the treatment of patients with prodromal Alzheimer's disease (protocol number CN156018). Sponsored by Bristol-Myers Squibb: an investigational drug trial; Scharre DW (Principal Investigator); 2009-2012
  9. Placebo controlled evaluation of galantamine in the treatment of Alzheimer's disease: safety and efficacy of a controlled release formulation (Protocol number GAL-INT-10). Sponsored by Janssen Research Foundation: an investigational drug trial; Scharre DW (Principal Investigator); 2001-2002; \$114,850.
  10. A randomized placebo-controlled trial to evaluate the efficacy and safety of galantamine in patients with minimal cognitive impairment (MCI) clinically at risk for the development of probable Alzheimer's disease (Protocol number GAL-INT-11). Sponsored by Janssen Research Foundation: an investigational drug trial; Scharre DW (Principal Investigator); 2001-2003; \$326,400.
  11. An open-label extension trial to assess the long-term safety of a controlled release formulation of galantamine HBr in the treatment of Alzheimer's dementia (Protocol number GAL-INT-21). Sponsored by Janssen Research Foundation: an investigational drug trial; Scharre DW (Principal Investigator); 2001-2003; \$54,000.
  12. An open-label extension study to assess the long-term safety and tolerability of galantamine HBr in the treatment of mild cognitive impairment (Protocol number GAL-MCI-301). Sponsored by Janssen Research Foundation: an investigational drug trial; Scharre DW (Principal Investigator); 2003-2004; \$6,450.
  13. A 54-week, double-blind, randomized, placebo-controlled, parallel-group study to investigate the effects of rosiglitazone (extended release tablets) as adjunctive therapy to acetylcholinesterase inhibitors on cognition and overall clinical response in APOE e4-stratified subjects with mild to moderate Alzheimer's disease (REFLECT-3) (Protocol number AVA102670). Sponsored by GlaxoSmithKline: an investigational drug trial; Scharre DW (Principal Investigator); 2006-2009; \$69,989
  14. A 52-week open-label extension study of the long-term safety and efficacy of rosiglitazone extended-release (RSG XR) as adjunctive therapy to acetylcholinesterase inhibitors in subjects with mild to moderate Alzheimer's disease (REFLECT-4) (protocol number AVA102675). Sponsored by GlaxoSmithKline: an investigational drug trial; Scharre DW (Principal Investigator); 2007-2009; \$1,500

15. A multicenter, randomized double-blind placebo-controlled study of the safety, tolerability, pharmacodynamic and pharmacokinetic effects of BMS-708163 in the treatment of patients with mild to moderate Alzheimer's disease (protocol number CN156013). Sponsored by Bristol-Myers Squibb: an investigational drug trial; Scharre DW (Principal Investigator); 2009-2012
16. A multicenter, randomized double-blind placebo-controlled study of the safety, tolerability, pharmacodynamic and pharmacokinetic effects of BMS-708163 in the treatment of patients with prodromal Alzheimer's disease (protocol number CN156018). Sponsored by Bristol-Myers Squibb: an investigational drug trial; Scharre DW (Principal Investigator); 2009-2012
17. Alzheimer's disease Neuroimaging Initiative - Grand Opportunity (ADNI-GO). Supported by the National Institute on Aging and private organizations: Scharre (Site Principal Investigator); 2009-2012; \$349,925
18. Multi-center trial to evaluate home-based assessment methods for Alzheimer's disease prevention research in people over 75 years old. Supported by the National Institute on Aging: Scharre DW (Site Principal Investigator); 2007-2015; \$173,414.
19. A multi-center, randomized, double-blind, placebo-controlled study to evaluate the safety, tolerability and the effect of BMS-241027 on cerebrospinal fluid biomarkers in subjects with mild Alzheimer's Disease. Sponsored by Bristol-Myers Squibb: an investigational drug trial; Scharre DW (Site Principal Investigator); 2012-2014; \$129,061
20. A phase 2, randomized, double dummy double-blind, placebo controlled study to assess the efficacy, safety, and tolerability of AVP-923 for the treatment of symptoms of agitation in patients with Alzheimer's disease. Sponsored by Avanir Pharmaceuticals: an investigational drug trial; Scharre DW (Site Principal Investigator); 2012-2015; \$121,385
21. A seamless, phase IIa/IIb, multicenter, randomized, double-blind, placebo-controlled parallel group trial to evaluate the efficacy and safety of MK-7622 as an adjunctive therapy to donepezil for symptomatic treatment in subjects with Alzheimer's disease (protocol number MK-7622-012-02). Sponsored by Parexel Intl Corp.: an investigational drug trial; Scharre DW (Principal Investigator); 2014-2016; \$147,835
22. Alzheimer's disease Neuroimaging Initiative (ADNI). Supported by the National Institute on Aging and private organizations: Scharre (Site Principal Investigator); 2004-2016; \$1,003,099
23. A randomized, double blind, placebo-controlled parallel-group, 26-week, phase 3 study of two doses of EVP-6124 in subjects with mild to moderate Alzheimer's disease currently or previously receiving acetylcholinesterase inhibitor medication (protocol number EVP-6124-024). Sponsored by Forum Pharmaceuticals: an investigational drug trial; Scharre DW (Principal Investigator); 2014-2016; \$38,021

24. Alzheimer's disease Neuroimaging Initiative 2 (ADNI2). Supported by the National Institute on Aging and private organizations: Scharre (Site Principal Investigator); 2010-2016; \$1,003,099
25. Randomized, double-blind, parallel-group, placebo-controlled, fixed-dose study of LuAE58054 in patients with mild-moderate Alzheimer's disease treated with donepezil; study 1 (protocol number 14861A). Sponsored by Lundbeck A/S: an investigational drug trial; Scharre DW (Principal Investigator); 2014-2016; \$160,545
26. An open label extension study to evaluate the long-term safety and tolerability of Lu AE58054 as adjunctive treatment to donepezil in patients with mild-moderate Alzheimer's disease (protocol number 14861B). Sponsored by Lundbeck A/S: an investigational drug trial; Scharre DW (Principal Investigator); 2014-2017; \$80,862
27. Effect of passive immunization on the progression of mild Alzheimer's Disease: solanezumab (LY2062430) versus placebo (protocol number H8A-MC-LZAX). Sponsored by Quintiles Transnational Corp.: an investigational drug trial; Scharre DW (Principal Investigator); 2013-2017; \$578,087
28. A randomized, placebo controlled, parallel-group, double blind efficacy and safety trial of MK-8931 with a long term double-blind extension in subjects with mild to moderate Alzheimer's disease (protocol number MK-8931-017-00). Sponsored by Merck Inc.: an investigational drug trial; Scharre DW (Principal Investigator); 2015-2017; \$235,211
29. Registry of amyloid positive patients for Alzheimer's disease drug research trials (RAmP). Sponsored by PRA International, Avid, and ELi Lilly: a study designed to register subjects with positive Amyloid PET brain imaging; Scharre DW (Principal Investigator); 2017-2018; \$1800
30. Imaging dementia-evidence for amyloid scanning (IDEAS) study: A coverage with evidence development longitudinal cohort study. Sponsored by American College of Radiology: a study designed to determine the clinical utility of Amyloid PET brain imaging; Scharre DW (Principal Investigator); 2017-2018; \$3000

#### **National Multicenter Studies**

1. Cerebrospinal fluid (CSF) beta amyloid protein in the diagnosis of Alzheimer's disease. Sponsored by Athena Neuroscience; Cummings JL (Principal Investigator) and Scharre DW (Sub-Investigator), 1992-1993; \$35,000
2. Cognex Treatment IND Protocol 970-58. Sponsored by Parke-Davis: an open label trial of Cognex (tacrine) for Alzheimer's disease patients; Scharre DW (Principal Investigator), 1993
3. Evaluation of Cerebrospinal fluid (CSF), Serum, and Plasma Markers as In Vitro Diagnostic Tests for Alzheimer's Disease (Protocol #AD-01). Sponsored by Hybritech Incorporated and Athena Neurosciences Incorporated; Scharre DW (Principal Investigator); 1994; \$41,456.



4. Development of a blood based assay for Alzheimer's disease using an IgM marker. Sponsored by Hybritech Incorporated; Scharre DW (Principal Investigator); 1994: \$3,000.
5. A 30-week, multicenter, randomized, double-blind, placebo-controlled evaluation of the safety and efficacy of E2020 in patients with Alzheimer's disease (E2020-A001-302). Sponsored by Eisai America, Incorporated: an investigational drug trial; Nasrallah H (Principal Investigator) and Scharre DW (Sub-Investigator); 1994-5; \$32,100.
6. An open-label, multicenter, extended evaluation of the safety and efficacy of E2020 in patients with Alzheimer's disease (E2020-A001-303). Sponsored by Eisai America, Incorporated: an investigational drug trial; Nasrallah H (Principal Investigator) and Scharre DW (Sub-Investigator); 1994-7; \$60,000.
7. Efficacy of extended-release oral physostigmine in Alzheimer's disease and senile dementia of the Alzheimer type. Sponsored by Forest Laboratories, Incorporated: an investigational drug trial; Scharre DW (Principal Investigator); 1995-1996; \$13,063.
8. Cognex®: Neuropsychiatric Testing and Assessment of Caregiver Time (CONTACT Study), Protocol 970-87. Sponsored by Parke-Davis Medical Research, Division of Warner-Lambert Company; Scharre DW (Principal Investigator); 1996-1998; \$1,050.
9. A 54-week, randomized, double-blind, placebo-controlled evaluation of the effects of Donepezil hydrochloride (E2020) on functional outcomes in patients with Alzheimer's disease with a staged crossover to open-label Donepezil hydrochloride (E2020) treatment (E2020-A001-312). Sponsored by Eisai America, Incorporated: an investigational drug trial; Scharre DW (Principal Investigator); 1996-1998; \$157,951.
10. An open-label, multicenter clinical trial evaluating the safety and efficacy of donepezil hydrochloride (E2020) in patients with Alzheimer's disease (E2020-A001-314). Sponsored by Eisai America, Incorporated: an investigational drug trial; Scharre DW (Principal Investigator); 1996-1998; \$8,750.
11. A 52-week, randomized, double-blind, placebo-controlled, parallel-group, multicenter study of milameline (CI-979/RU 35926) in patients with probable Alzheimer's disease with long-term open-label extension (Protocol 979-15). Sponsored by Parke-Davis: an investigational drug trial; Scharre DW (Principal Investigator); 1996-1998; \$158,054.
12. A prospective, multi-center, open-label pilot study of the safety and efficacy of Exelon in patients with moderate to severe probable Alzheimer's disease in a long-term care setting (Protocol ENAB-452). Sponsored by Novartis Pharmaceuticals: an investigational drug trial; Scharre DW (Principal Investigator); 1996-2000; \$143,600.
13. An open-label study to evaluate the safety and efficacy of 1.5 mg bid (3 mg/day) through 6.0 mg bid (12 mg/day) of Exelon in patients with mild to severe probable Alzheimer's disease in the community setting (Protocol ENAB-356).

- Sponsored by Novartis Pharmaceuticals: an investigational drug trial; Scharre DW (Principal Investigator); 1997-2000; \$131,862.
14. A 24 week, multicenter, randomized, double-blind, placebo-controlled evaluation of the efficacy and safety of donepezil hydrochloride (E2020) in patients with dementia associated with cerebrovascular disease (Protocol number E2020-A001-308). Sponsored by Eisai America, Incorporated: an investigational drug trial; Scharre DW (Principal Investigator); 1997-1999; \$104,626.
  15. Mefrifonate Investigational Nationwide Trial (M.I.N.T.) (Protocol number D97-019). Sponsored by Bayer Corporation: an investigational drug trial; Scharre DW (Principal Investigator); 1997-1998; \$8,500.
  16. Evaluation of donepezil hydrochloride (E2020) in patients with dementia associated with cerebrovascular disease (Protocol number E2020-A001-309). Sponsored by Eisai America, Incorporated: an investigational drug trial; Scharre DW (Principal Investigator); 1998-2000; \$25,560.
  17. Placebo controlled evaluation of galantamine in the treatment of Alzheimer's disease: Safety and efficacy under a slow-titration regimen (Protocol number GAL-USA-10). Sponsored by Janssen Research Foundation: an investigational drug trial; Scharre DW (Principal Investigator); 1998-1999; \$341,500.
  18. Safety and efficacy of galantamine during withdrawal in the treatment of Alzheimer's disease (Protocol number GAL-USA-11). Sponsored by Janssen Research Foundation: an investigational drug trial; Scharre DW (Principal Investigator); 1999; \$54,000.
  19. Long-term safety of galantamine in the treatment of Alzheimer's (Protocol number GAL-USA-12). Sponsored by Janssen Research Foundation: an investigational drug trial; Scharre DW (Principal Investigator); 1999-2000; \$88,800.
  20. Delay in nursing home placement of Alzheimer's disease patients treated in the Aricept clinical trial program. Sponsored by Battelle Memorial Institute Centers for Public Health Research and Evaluation: a follow-up study by telephone interview of previous study patients; Scharre DW (Principal Investigator); 2000; \$8,470.
  21. Open label use of synthetic galantamine in the treatment of Alzheimer's disease (Protocol number GAL-USA-18). Sponsored by Janssen Research Foundation: an investigational drug trial; Scharre DW (Principal Investigator); 2000-2001; \$25,500.
  22. Olanzapine versus risperidone and placebo in the treatment of psychosis and associated behavioral disturbances in patients with dementia (Protocol number F1D-MC-HGGU(b)). Sponsored by Eli Lilly and Company: a comparative drug trial; Scharre DW (Principal Investigator); 2000-2001; \$54,138.
  23. A randomized, double-blind, placebo-controlled evaluation of the safety and efficacy of memantine in patients with mild to moderate dementia of the Alzheimer's type (Protocol number MEM-MD-10). Sponsored by Forest

- Laboratories: an investigational drug trial; Scharre DW (Principal Investigator); 2001-2003; \$135,300.
24. A 52-week prospective, randomized, multicenter, double-blind, placebo-controlled, parallel-group comparison of the efficacy, tolerability, and safety of 3-12 mg/day of Exelon® (rivastigmine) capsules in patients with probable vascular dementia (Protocol number CENA713 IA05). Sponsored by Novartis Pharma AG: an investigational drug trial; Scharre DW (Principal Investigator); 2002-2003; \$5,493.75
  25. A multicenter, double-blind, randomized comparison of the efficacy and safety of quetiapine fumarate (Seroquel) and placebo in the treatment of agitation associated with dementia (Protocol number 5077US/0046). Sponsored by Astra Zeneca: an investigational drug trial; Scharre DW (Principal Investigator); 2002-2003; \$43,000.
  26. A 24-week, multi-center, randomized, double-blind, placebo-controlled evaluation of the efficacy, safety, and tolerability of donepezil hydrochloride (E2020) in patients with dementia associated with cerebrovascular disease (Protocol number E2020-A001-319). Sponsored by Eisai: an investigational drug trial; Scharre DW (Principal Investigator); 2003; \$12,976.
  27. A double-blind, placebo-controlled, dose-finding study evaluating the safety and efficacy of MKC-231, 80 mg bid, and 20 and 80 mg qd in the treatment of mild to moderate Alzheimer's disease (Protocol number MKC-231/A01). Sponsored by Mitsubishi Pharma America: an investigational drug trial; Scharre DW (Principal Investigator); 2003-2004; \$200,000.
  28. A randomized, double-blind, placebo-controlled evaluation of the safety and efficacy of neramexane in patients with moderate to severe dementia of the Alzheimer's type (Protocol number NER-MD-01). Sponsored by Forest Laboratories: an investigational drug trial; Scharre DW (Principal Investigator); 2003-2004; \$243,382.
  29. Long-term safety and efficacy of open-label MKC-231, 80 mg bid in the treatment of probable Alzheimer's disease: A 6-month follow-up after completion of study MKC-231/A01 (Protocol number MKC-231/A02). Sponsored by Mitsubishi Pharma America: an investigational drug trial; Scharre DW (Principal Investigator); 2003-2004; \$37,815.
  30. An analysis of mortality in subjects who participated in three studies of galantamine in mild cognitive impairment (Protocol number GAL-COG-3002). Sponsored by Janssen Research Foundation: a follow-up study to an investigational drug trial; Scharre DW (Principal Investigator); 2004; \$1,589.
  31. A 6-month safety follow-up study of select patients previously enrolled and randomized to MKC-231 in studies MKC-231/A01, MKC-231/A02 or MKC-231/A03 (Protocol number MKC-231-A04). Sponsored by Mitsubishi Pharma America: an investigational drug trial; Scharre DW (Principal Investigator); 2004-2005.

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32. A long-term extension study evaluating the safety and tolerability of bid and qd administration of memantine in patients with mild to moderate dementia of the Alzheimer's type (Protocol number MEM-MD-11). Sponsored by Forest Laboratories: an investigational drug trial; Scharre DW (Principal Investigator); 2002-2006; \$64,304.
33. An evaluation of the long-term safety and efficacy of neramexane in patients with moderate to severe dementia of the Alzheimer's type (Protocol number NER-MD-03). Sponsored by Forest Laboratories: an investigational drug trial; Scharre DW (Principal Investigator); 2004-2006; \$53,873
34. A randomized, double-blind, placebo-controlled evaluation of the safety and efficacy of neramexane in patients with moderate to severe dementia of the Alzheimer's type (Protocol number NER-MD-02). Sponsored by Forest Laboratories: an investigational drug trial; Scharre DW (Principal Investigator); 2003-2006; \$42,264
35. Galantamine ER open label rapid dose escalation trial in Alzheimer's disease (Protocol number GAL-ALZ-303). Sponsored by Janssen Research Foundation: an investigational drug trial; Scharre DW (Principal Investigator); 2004-2006; \$32,000
36. A randomized, double-blind, placebo-controlled evaluation of the effectiveness and safety of memantine in nursing home residents with moderate to severe Alzheimer's disease (Protocol number MEM-MD-22). Sponsored by Forest Research Institute: an investigational drug trial; Kataki M (Principal Investigator), Scharre DW (Sub Investigator); 2004-2006
37. A double-blind, phase II, safety and efficacy evaluation of ONO-2506PO in patients with mild to moderate Alzheimer's disease (Protocol number ONO-2506POU010). Sponsored by Ono Pharma USA, Inc.: an investigational drug trial; Scharre DW (Principal Investigator); 2004-2007; \$121,018
38. A one-year, multicenter, randomized, double-blind, placebo-controlled evaluation of the efficacy and safety of donepezil hydrochloride (E2020) in subjects with mild cognitive impairment (Protocol number E2020-A001-412). Sponsored by Eisai, Inc. and Pfizer, Inc: an investigational drug trial; Scharre DW (Principal Investigator); 2004-2007; \$14,481.
39. A 1-year, double-blind, randomized, placebo-controlled, study of rasagiline 1 mg and 2 mg added to Aricept 10 mg daily in patients with mild to moderate dementia of the Alzheimer's type (Protocol number TVP-1012-A001-201). Sponsored by Eisai, Inc.: an investigational drug trial; Scharre DW (Principal Investigator); 2004-2007; \$76,464
40. A randomized, double-blind, placebo-controlled, parallel group phase 2 study to evaluate the safety and efficacy of FK962 in subjects with mild to moderate Alzheimer's disease (Protocol number 03-0-189). Sponsored by Astellas Pharma US, Inc. (formally Fujisawa, Inc.): an investigational drug trial; Scharre DW (Principal Investigator); 2004-2007; \$128,544

41. A randomized, multicenter, double-blind, placebo-controlled, 18-month study of the efficacy of Xaliproden in patients with mild-to-moderate dementia of the Alzheimer's type (Protocol number CPR-EFC2724). Sponsored by Sanofi-Aventis: an investigational drug trial; Scharre DW (Principal Investigator); 2004-2007; \$248,269
42. Phase III, multicenter, randomized, double blind, placebo controlled study of the effect of the daily treatment with MPC-7869 on measures of cognitive and global function in subjects with mild to moderate dementia of the Alzheimer's type (Protocol number MPC-7869-04-005.02). Sponsored by Myriad Pharmaceuticals: an investigational drug trial; Scharre DW (Principal Investigator); 2005-2008; \$374,400
43. A double-blind placebo-controlled study of VP4896 for the treatment of mild-to-moderate Alzheimer's disease (Protocol number VP-AD-301). Sponsored by Voyager Pharmaceutical Corporation: an investigational drug trial; Scharre DW (Principal Investigator); 2005-2007; \$79,243
44. A 28-week open label extension study evaluating the safety and tolerability of donepezil hydrochloride in subjects with mild cognitive impairment (Protocol number E2020-A001-414). Sponsored by Eisai, Inc. and Pfizer, Inc: an investigational drug trial; Scharre DW (Principal Investigator); 2006-2007; \$2,449
45. A double-blind, randomized, placebo-controlled study of the efficacy, safety and tolerability of 8 week treatment of Rozerem 8 mg (qhs) in sleep disturbed, community dwelling, mild to moderately severe Alzheimer's disease subjects (Protocol number Takeda 01-05-TL-375-061). Sponsored by Takeda: an investigational drug trial; Scharre DW (Principal Investigator); 2006-2008; \$36,305
46. Open label study of the effect of daily treatment with MPC-7869 in subjects with dementia of the Alzheimer's type (Protocol number MPC-7869-05-009). Sponsored by Myriad Pharmaceuticals: an investigational drug trial; Scharre DW (Principal Investigator); 2007-2008; \$6,477
47. A prospective, open-label, randomized, multi-center, parallel-group study of 5 weeks, with a 20-week extension evaluating the tolerability and safety of switching from donepezil to an initial dose of 5cm<sup>2</sup> rivastigmine patch (protocol number CENA713D US38). Sponsored by Novartis Pharmaceuticals: an investigational drug trial; Scharre DW (Principal Investigator); 2007-2008; \$14,732
48. Women's Health Initiative Memory Study. Supported by the National Institutes of Health and Wyeth-Ayerst: Jackson RD (Principal Investigator), Scharre DW (Sub-Investigator); 1996-2009; \$115,000.
49. A randomized double-blind placebo-controlled trial of the effects of docosahexaenoic acid (DHA) in slowing the progression of Alzheimer's disease. Supported by the National Institute on Aging: Scharre DW (Site Principal Investigator); 2007-2011; \$70,050
50. Double-blind, parallel-group comparison of 23 mg donepezil sustained release to 10 mg donepezil immediate release in patients with moderate to severe Alzheimer's disease (protocol number E2020-G000-327). Sponsored by Eisai, Inc.:



an investigational drug trial; Scharre DW (Principal Investigator); 2007-2012; \$231,974

51. A phase III, multicenter, randomized, double-blind, placebo-controlled, parallel group, efficacy and safety trial of bapineuzumab (AAB 001, ELN115727) in patients with mild to moderate Alzheimer's disease who are apolipoprotein E non-carriers (protocol number AAB-001-ELN115727-301). Sponsored by Elan Pharmaceuticals Inc.: an investigational drug trial; Scharre DW (Principal Investigator); 2008-2013; \$611,143
52. A phase III, multicenter, randomized, double-blind, placebo-controlled, parallel group, efficacy and safety trial of bapineuzumab (AAB 001, ELN115727) in patients with mild to moderate Alzheimer's disease who are apolipoprotein E carriers (protocol number AAB-001-ELN115727-302). Sponsored by Elan Pharmaceuticals Inc.: an investigational drug trial; Scharre DW (Principal Investigator); 2008-2013; \$755,934
53. Open-label extension of 23 mg donepezil sustained release in patients with moderate to severe Alzheimer's disease (protocol number E2020-G000-328). Sponsored by Eisai, Inc.: an investigational drug trial; Scharre DW (Principal Investigator); 2008-2012; \$126,375
54. Effect of  $\gamma$ -secretase inhibition on the progression of Alzheimer's disease: LY450139 versus placebo (protocol number H6L-MC-LFAN (b)). Sponsored by Eli Lilly: an investigational drug trial; Scharre DW (Principal Investigator); 2008-2012; \$140,097
55. A double-blind placebo-controlled preliminary study of the efficacy, safety and tolerability of ST101 in the treatment of Alzheimer's disease in subjects concurrently receiving donepezil (Aricept). (protocol number ST101-A001-202). Sponsored by Sonexa Therapeutics, Inc.: an investigational drug trial; Scharre DW (Principal Investigator); 2009-2012; \$52,670
56. A phase III multicenter, parallel-group, long term safety and tolerability treatment trial of bapineuzumab (AAB 001, ELN115727) in subjects with Alzheimer's disease who participated in study ELN115727-301 or in study ELN115727-302 (protocol number AAB-001-ELN115727-351). Sponsored by Elan Pharmaceuticals Inc.: an investigational drug trial; Scharre DW (Principal Investigator); 2009-2013; \$527,553
57. An open label study of the safety and tolerability of ST101 in subjects with Alzheimer's disease (protocol number ST101-A001-401). Sponsored by Sonexa Therapeutics, Inc.: an investigational drug trial; Scharre DW (Principal Investigator); 2009-2012; \$11,748
58. A phase 3, multicenter, randomized, double-blind, placebo-controlled, parallel-group efficacy and safety trial of bapineuzumab (AAB-001, ELN115727) in subjects with mild to moderate Alzheimer disease who are apolipoprotein E e4 carriers (protocol number 3133K1-3001-US). Sponsored by Wyeth: an investigational drug trial; Scharre DW (Principal Investigator); 2009-2013; \$437,497

59. A randomized, 18-week, placebo-controlled, double-blind, parallel group study of the safety and efficacy of PF-05212377 (SAM-760) in subjects with mild-to-moderate Alzheimer's disease with existing neuropsychiatric symptoms on a stable dose of donepezil. Sponsored by ICON clinical research: an investigational trial; Scharre DW (Site Principal Investigator); 2013-2014; \$12,348

#### **ASSOCIATE JOURNAL EDITOR**

1. Journal of Alzheimer's Disease 2017-2018

#### **AD HOC JOURNAL AND GRANT REFEREE**

2. Archives of Neurology 1993-1996  
 3. Schizophrenia Research 1994-1995  
 4. Neurology 1999-2017  
 5. Neurocase 1999  
 6. Gynecologic Oncology 2002  
 7. Psychiatric Times 2003-2004  
 8. Expert Review of Neurotherapeutics 2004  
 9. Alzheimer's Association Grants 2004-2005, 2007, 2011, 2012  
 10. Progress in Neuro-Psychopharmacology and Biological Psychiatry 2005  
 11. The Journal of Clinical Pharmacology (Guest Editor) 2006  
 12. Aging Health 2006  
 13. Primary Psychiatry 2009  
 14. Drugs Aging 2010  
 15. Future Medicine 2011  
 16. Neurochemical Research Review 2011  
 17. Alzheimer's Disease & Related Disorders 2011  
 18. Human Psychopharmacology: Clinical and Experimental 2011  
 19. Journal of Alzheimer's Disease 2012, 2018  
 20. Cognitive and Behavioral Neurology 2012  
 21. Current Alzheimer Research 2013  
 22. Drug Safety 2013  
 23. BioMed Research International Neuroscience 2014  
 24. American Geriatrics Society 2015  
 25. Frontiers in Aging Neuroscience 2015  
 26. American Journal of Alzheimer's Disease and Other Dementias 2017

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5. Scharre DW, Mahler ME: Parkinson's Disease: Diagnosis and Management. *Geriatrics* 1994;49:14-23.
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9. Scharre D, Grossman M, Mayeux R, Cummings J (Contributors). How to treat dementia in its early stages. Published interview in *Practical Neurol* 2002;1:60.
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12. Scharre DW, Davis RA, Warner JL, Chang S-I, Beversdorf DQ: A pilot open-label trial of citalopram for restless activity and aberrant motor behaviors in Alzheimer disease. *American Journal of Geriatric Psychiatry* 2003; 11:687-691
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1. Scharre DW (Ed.). Long-Term Management of Dementia. New York, Informa Healthcare, 2010

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### EDUCATIONAL VIDEOS

1. Alzheimer's Disease: A New Look at Management. Produced by Health Science Media, Inc. with Tariot PN, Ham RJ, Scharre DW. Presented as an educational service by Eisai, Inc. and Pfizer, Inc., September 1996
2. Aricept: New Hope for Alzheimer's Disease. Produced by Health Science Media, Inc. with Scharre DW, Baumel B. Presented as an educational service by Eisai, Inc. and Pfizer, Inc., September 1996
3. The 4-Turn Test. Produced by Ohio State University as a video news press release about my test to help decide whether Alzheimer's disease patients should or should not be driving, November 2000
4. Behavioral Modification Techniques. Produced by Douglas W. Scharre with Scharre DW and patients and staff of Forest Hills Nursing Home, April 2002
5. Could Check-ups Include an Alzheimer's Test? Produced by Ohio State University as a video news press release about the Alzheimer's Disease Neuroimaging Initiative NIH study and my involvement as the OSU site principal investigator, March 15, 2005

6. Pen-and-paper test may help spot Alzheimer's early. Produced by Ohio State University as a video news press release about my publication and invention of the Self-Administered Gerocognitive Examination (SAGE), March 15, 2010
7. Deep brain stimulation (DBS) for Alzheimer's disease. Produced by Ohio State University as a video news press release to the TODAY Show and NBC Nightly News among others about our study using DBS in the first US Alzheimer's disease patient, February 8, 2013
8. Study: Self-administered test helps spot early Alzheimer's. Produced by Ohio State University as a video news press release about my 2014 publication and invention of the Self-Administered Gerocognitive Examination (SAGE), January 7, 2014

### **BLOGS**

1. NetWellness: A web-based consumer health information service. Served as a volunteer expert who answers health questions posed by NetWellness users. I answered over the web within 24-48 hours. 1999-2001 and 2003 to 2014
2. ParentGiving.com: Alzheimer's, Dementia, and Parkinson's Disease Topic Expert. Answered questions from public regarding Alzheimer's and Parkinson's disease through ParentGiving.com website, 2010-2014
3. OSU Medical Center Blog: Benefits of Lifelong Learning. January 10, 2018

### **ABSTRACTS**

1. Scharre DW and Powe LK: Magnetic Resonance and Computer Tomography in Jadassohn's Nevus Phakomatosis: Comparison in Two Cases. *Child Neurology Society Proceedings*, Boston, Massachusetts, October 9-11, 1986.
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11. Wasielewski P, Scharre D: PET scan in a case of late onset Huntington's disease with minimal dementia and absence of caudate atrophy. Presented at the American Society of Neuroimaging, Oakland, California, March 21, 1996.
12. Scharre DW, Johnson RH, Wu X, Pozderac RV, Olsen JO: SPECT imaging in fronto-temporal degeneration: anatomical correlations with apathy and disinhibition. Poster presentation at the 48th Annual Meeting of the American Academy of Neurology, San Francisco, California, March 26, 1996. *Neurology* 46: A178, 1996
13. Scharre DW, Kirmani JF, Davis RA, Mauger L, Kantor BS: Driving performance in Alzheimer's disease is predicted by easily administered cognitive tasks. Poster presentation at the 51<sup>st</sup> Annual Meeting of the American Academy of Neurology, San Diego, California, May, 2000. *Neurology* 54(Suppl 3):A207, 2000
14. Beversdorf DQ, Warner JL, Sharma UK, Haikady HN, Scharre DW: Problem-solving ability in patients with mild memory impairment. Poster presentation at the 52<sup>nd</sup> Annual Meeting of the American Academy of Neurology, Philadelphia, Pennsylvania, May 2001. *Neurology* 56(Suppl 3):A53, 2001
15. Chakeres DW, Scharre D, Beversdorf D, Santi M, Dashner R, Kangarlu A, Whitaker CDS, Schmalbrock P, DePhilip R, Abduljalil A, Kuret J: Correlation of in vivo and cadaver high-resolution hippocampal MRI anatomy at 8 Tesla. Presentation at the RSNA annual meeting 2001. *Radiology* 221: 345, 2001
16. Chakeres DW, Novak P, DePhilip R, Abduljalil AM, Kangarlu A, Novak V, Dashner RA, Sloan HW, Whitaker C, Scharre DW, Santi M: Correlation of in vivo

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  19. Scharre DW, Davis R, Warner J, Chang S-I, Daniel A, Beversdorf DQ: Citalopram reduces restless activity and aberrant motor behaviors in Alzheimer's dementia. Poster presentation at the annual meeting of the American Association for Geriatric Psychiatry (AAGP), February 26, 2002. *Am J Geriatr Psychiatry* 10[suppl1]:91, 2002
  20. Whitaker CDS, Scharre DW, Beversdorf DQ, Santi MS, Dashner RA, Chakeres DW, Schmalbrock P: T2 and T2\* relaxation in normal and Alzheimer's formalin fixed hippocampus at 8T. Poster presentation at the International Society of Magnetic Resonance in Medicine (ISMRM) meeting, May 2002
  21. Chakeres DW, Scharre D, Beversdorf D, Santi M, Dashner R, Kangarlu A, et al.: Correlation of in vivo and cadaver high-resolution hippocampal MRI anatomy at 8 tesla. Poster presentation at the International Society of Magnetic Resonance in Medicine (ISMRM) meeting, May 2002
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  23. Pollak CP and Scharre DW: Subjective and actigraphic responses of restless and agitated Alzheimer's disease patients to citalopram. Poster presentation at the Sleep Research Society Meeting, June 2002
  24. Whitaker CDS, Scharre DW, Beversdorf DQ, RayChaudhry A, Dashner RA, Chakeres DW, Schmalbrock P: T2 relaxation in normal and Alzheimer's Hippocampus at 8T. Hunt-Curtis Symposium on translational Neuroscience, 2002
  25. Rabinowicz A, Koumaras B, Cummings J, Noursalehi M, Mirski D, and the Rivastigmine Nursing Home Study Team including Scharre, DW: Effects of rivastigmine treatment on the psychiatric and behavioral disturbances of nursing home residents with moderate to severe Alzheimer's disease (final results). Poster presentation at the International Psychogeriatric Association Meeting, Spring 2003

26. Whitaker CD, Scharre DW, Beversdorf DQ, Pavlicova M, Chaudhury AR, Dashner RA, Smith MA, Perry G, Chakeres DW, Schmalbrock P: Hahn, CPMG, and combined analysis of T2 relaxation in the Alzheimer's hippocampus using a mixed effects model. Poster presentation at the International Society of Magnetic Resonance in Medicine (ISMRM) meeting, July 2003
27. Burkhart J, Scharre DW: Patterns of asymmetry on SPECT imaging in Alzheimer's disease subjects with psychosis compared to those without behavioral disturbances. Poster presentation at the American Association for Geriatric Psychiatry (AAGP) meeting in Baltimore, Maryland, February 23, 2004
28. Whitaker CD, Truong T-K, Dashner RA, Beversdorf DQ, Scharre D, Ruegsegger M, Olesik J, Pavlicova M, Abduljalil A, Chakeres DW, Schmalbrock P: Assessment of iron with 8T MRI T2 imaging in human brain. Oral presentation at the International Society of Magnetic Resonance in Medicine (ISMRM) 12<sup>th</sup> Scientific Meeting, Kyoto, Japan, 2004
29. Beversdorf DQ, Warner JL, Sharma UK, Bornstein RA, Nagaraja HN, Scharre DW, Al-Dahhak R: Performance on problem solving tasks as a measure for cholinesterase inhibitor treatment response in mild cognitive impairment. Poster presentation at the 56<sup>th</sup> Annual Meeting of the American Academy of Neurology, San Francisco, California, April 28, 2004, *Neurology* 62(Suppl 5):A321-A322, 2004
30. Caballero J, Hitchcock M, Scharre D, Beversdorf D, Nahata MC: Effect of antidepressants on cognition in Alzheimer's disease. Poster presentation at the 2004 Annual Meeting of the American College of Clinical Pharmacology, Dallas, Texas, October 24-27, 2004
31. Caballero J, Hitchcock M, Scharre D, Beversdorf D, Nahata MC: Atypical antipsychotic treatment in Alzheimer's disease: Effect on cognition. Poster presentation at the 2004 Annual Meeting of the American College of Clinical Pharmacology, Dallas, Texas, October 24-27, 2004
32. Hitchcock M, Caballero J, Beversdorf D, Scharre D, Nahata MC: Adjunctive therapy in Alzheimer's disease: Is vitamin E neuroprotective? Poster presentation at the 2004 Annual Meeting of the American College of Clinical Pharmacology, Dallas, Texas, October 24-27, 2004
33. Scharre DW, Ferguson JL, Knick JA, Davis RA, Theado-Miller, N, Chang, S-I: Memantine in frontotemporal dementia. Poster presentation at the 57<sup>th</sup> Annual Meeting of the American Academy of Neurology, Miami, Florida, April 12, 2005, *Neurology* 64(Suppl 1):A99-A100, 2005
34. Narayanan A, White CA, Kim N, Tivarus ME, Hillier A, Schmalbrock P, Kataki M, Scharre D, Beversdorf D: Effect of donepezil on left inferior frontal lobe activation during verbal fluency in MCI. Poster presentation at the 59<sup>th</sup> Annual Meeting of the Cognitive Neuroscience Society, 2007
35. Narayanan A, White CA, Kim N, Tivarus M, Hillier A, Schmalbrock P, Kataki M, Scharre D, Beversdorf D: Effect of cholinesterase inhibitors on parietal lobe activation during a spatial attention task in MCI. Poster presentation at the 14<sup>th</sup>



- Annual Meeting of the American Academy of Neurology, Boston, Massachusetts, May 1, 2007, *Neurology* 68(Suppl 1):A10, 2007
36. Scharre D, Chang S-I, Beversdorf D, Kataki M, Nagaraja H, Bornstein R: Self-Administered Gerocognitive Examination (SAGE): Validity and reliability of a brief cognitive screening instrument for Mild Cognitive Impairment (MCI) and early dementia. Poster presentation at the 60<sup>th</sup> Annual Meeting of the American Academy of Neurology, Chicago, Illinois, April 16, 2008, *Neurology* 70(Suppl 1):A184, 2008
  37. Scharre DW, Chang S, Murden R, Lamb J, Beversdorf DQ, Kataki M, Nagaraja H, Bornstein R: Self-administered test to screen for mild cognitive impairment and early dementia. Poster presentation at American Geriatrics Society 2008 Annual Scientific Meeting, Washington, DC, May 2, 2008, *JAGS* 56(Suppl):S198, 2008
  38. Scharre DW, Chang S, Murden R, Lamb J, Beversdorf DQ, Kataki M, Nagaraja H, Bornstein R: Validity of a self-administered test for detection of Mild Cognitive Impairment (MCI) and early dementia. Poster presentation at International Conference on Alzheimer's Disease (ICAD) 2008, Chicago, Illinois, July 27, 2008
  39. Scharre DW, Lefebvre P, Vekeman F, Foreix J, Kahler KH, Turk F, Duh MS: Antipsychotic drug use in patients with Alzheimer's disease treated with rivastigmine versus donepezil: Evidence from health claims data. Poster presentation at International Conference on Alzheimer's Disease (ICAD) 2008, Chicago, Illinois, July 30, 2008
  40. Scharre DW, Lefebvre P, Vekeman F, Foreix J, Kahler KH, Turk F, Duh MS: Antipsychotic drug use in patients with Alzheimer's disease treated with rivastigmine versus donepezil: Evidence from health claims data. Poster presentation at the American Society of Consultant Pharmacists 2008 Annual Meeting, New Orleans, November 21, 2008, *Alzheimer's & Dementia* 4(Suppl):T762, 2008
  41. Scharre DW, Bashaw H, Chang, S-I: Memantine in frontotemporal dementia. Poster presentation at the American Neuropsychiatric Association (ANPA) 20<sup>th</sup> Annual Meeting, San Antonio, Texas, February 20, 2009
  42. Scharre DW, Vekeman F, Lefebvre P, Kahler KH, Mody-Patel N, Duh MS: Emergent use of antipsychotic drugs in patients with Alzheimer's disease treated with rivastigmine versus donepezil: Evidence from health claims data. Poster presentation at the Academy of Managed Care Pharmacy 21<sup>st</sup> Annual Meeting, Orlando, Florida, April 17, 2009
  43. Scharre DW, Lefebvre P, Vekeman F, Kahler KH, Turk F, Duh MS: Antipsychotic drug use in patients with Alzheimer's disease treated with rivastigmine versus donepezil: Evidence from health claims data. Poster presentation at the International Society for Pharmacoeconomics and Outcomes Research (ISPOR) 14<sup>th</sup> Annual International Meeting, Orlando, Florida, May 20, 2009, *Value in Health* 12:A196-197, 2009
  44. Scharre DW, Chang, S-I, Kataki M, Nagaraja H: Self Administered Gerocognitive Examination (SAGE) score changes over time in worried well, Mild Cognitive

- Impairment (MCI), and dementia converter patients. Poster presentation at the American Neuropsychiatric Association (ANPA) 21<sup>st</sup> Annual Meeting, Tampa, Florida, March 18, 2010
45. Scharre DW, Chang, S-I, Kataki M, Nagaraja H: Self Administered Gerocognitive Examination (SAGE) and Mini-Mental State Examination (MMSE) score changes over time in worried well, Mild Cognitive Impairment (MCI), and dementia converter patients. Poster presentation at the 61<sup>st</sup> Annual Meeting of the American Academy of Neurology, Toronto, Canada, April 13, 2010, *Neurology* 74(Suppl 2):A134-135, 2010
  46. Scharre DW: Cognitive screening for Mild Cognitive Impairment and early dementia. Platform presentation and session chair of the session, Diagnostic Tests for Common Neurological Disorders at Neurotalk 2010, Singapore, June 26, 2010
  47. Scharre DW, Chang, S-I, Wheeler NC, Kataki M, Nagaraja H: Self Administered Gerocognitive Examination (SAGE) score changes over time in worried well, Mild Cognitive Impairment (MCI), dementia converter, and Alzheimer's disease patients. Poster presentation at the International Conference on Alzheimer's Disease (ICAD) 2010, Honolulu, Hawaii, July 12, 2010
  48. Scharre DW, Chang, S-I, Levin A, Nagaraja H: Self-Administered Screening Uncovers Mild Cognitive Impairment and Dementia Among Community Dwelling Seniors. Poster presentation at the American Neuropsychiatric Association (ANPA) 22<sup>nd</sup> Annual Meeting, Denver, Colorado, March 24, 2011
  49. Scharre DW, Chang, S-I, Kataki M, Nagaraja H: Community Outreach Self-Administered Screening Uncovers Mild Cognitive Impairment and Dementia Among Seniors. Poster presentation at the 62<sup>nd</sup> Annual Meeting of the American Academy of Neurology, Honolulu, Hawaii, April 12, 2011, *Neurology* 76(Suppl 2):A, 2011
  50. Abduljalil AM, Scharre D, Stoicea N, Narayanan A, Knopp M, Schmalbrok P: Brain function mapping of pre-mild cognitive impairment. Platform presentation at the International Society of Magnetic Resonance in Medicine (ISMRM) meeting, May 2011
  51. Scharre DW: Frontotemporal lobar degeneration: Clinical, imaging, and pathologic features. Platform presentation and session chair of the session, Behavioral and Cognitive Neuroscience at Neurotalk 2011, Dalian, China, May 24, 2011
  52. Stoicea N, Scharre D, Spetie D, Narayanan A, Gusti A: The impact of cognitive impairment on dialysis patients. Poster presentation at the 8<sup>th</sup> International Brain Research Organization (IBRO) World Congress of Neuroscience, Florence, Italy, July 16, 2011
  53. Scharre DW, Chang S-I, Murden RA, Osei K, Nagaraja HN: Characteristics of the Self-Administered Gerocognitive Examination (SAGE) used as a screening tool. Poster presentation at the International Conference on Alzheimer's Disease (ICAD) 2011, Paris, France, July 17, 2011, *Alzheimer's & Dementia* 7(Suppl):S166

54. Scharre D, Chang S, Kataki M, Agrawal P, Park A, Kostyk AS, Davis R, Kovesci R, Nagaraja H: Differences in the cognitive profiles of Parkinsonian dementia syndromes and Alzheimer's disease. Poster presentation at the American Medical Directors Association (AMDA) annual meeting 2012, San Antonio, Texas, March 8, 2012, JAMDA 13:B21-B22, 2012
55. Scharre DW: Cognitive biomarkers: SAGE screening for the early identification of mild cognitive impairment and Alzheimer's disease. Platform presentation at the International Conference and Exhibition on Neurology & Therapeutics, Las Vegas, Nevada, May 14, 2012, J Neurol Neurophysiol 3:53, 2012
56. Scharre DW: Early identification of Alzheimer's disease: Biomarkers, imaging, and cognitive assessment. Keynote speaker and platform presentation and session chair of the session, Alzheimer's Disease and Other Dementias at Neurotalk 2012, Beijing, China, May 18, 2012
57. Scharre D, Chang S-I, kataki M, Agrawal P, Park A, Kostyk S, Kovesci R, Davis R, Nagaraja H: Memory profiles differ between Parkinsonian dementia syndromes and Alzheimer's disease. Poster presentation at the Alzheimer's Disease International Conference (AAIC) 2012, Vancouver, Canada, July 17, 2012, Alzheimer's & Dementia 8(Suppl):P124, 2012
58. Scharre DW, Chang S-I, Nagaraja HN, Agrawal P, Kataki M, Linder S, Park A: Distinguishing Parkinsonian dementia syndromes from Alzheimer's disease: Behavioral and cognitive characteristics using SAGE. Poster presentation at the 64th Annual Meeting of the American Academy of Neurology, San Diego, California, March 21, 2013
59. Scharre DW: Distinguishing Parkinsonian dementia syndromes from Alzheimer's disease: Cognitive, behavioral and motor characteristics. Platform presentation at Neurotalk 2013, Xi'an, China, May 23, 2013
60. Scharre DW, Chang S-I, Nagaraja H, Merjanian M, Greenley G, Davis R: Atypical antipsychotic efficacy and tolerability in dementia subjects living at a long-term care facility: A retrospective study. Poster presentation at the Alzheimer's Disease International Conference (AAIC) 2013, Boston, Massachusetts July 16, 2013
61. Mascarenhas R, Smith RM, Papp AC, Scharre DW, Kataki M, Sadee W: Multiplexed RNA amplicon sequencing reveals altered gene expression and functional regulatory variants in dementia with Lewy bodies. Poster presentation at the Society for Neuroscience, San Diego, CA, November 11, 2013
62. Scharre DW, Chang S-I, Nagaraja H, Merjanian M, Greenley G, Davis R: Atypical Antipsychotic Utilization in Dementia Patients at a Long-Term Care Facility: A Retrospective Study. Poster presentation at the 65th Annual Meeting of the American Academy of Neurology, Philadelphia, PA, April 29, 2014
63. Scharre DW, Chang S-I, Nagaraja H, Park A, Agrawal P, Adeli A, Linder S, Kloos A, Kegelmeyer D, Fritz N, Kataki M: Paired Comparison Study Distinguishing Parkinsonian Dementia Syndromes from Parkinson's Disease. Poster

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- presentation at the 65th Annual Meeting of the American Academy of Neurology, Philadelphia, PA, April 30, 2014
64. Scharre DW, Chang S-I, Nagaraja H, Park A, Agrawal P, Adeli A, Linder S, Kloos A, Kegelmeyer D, Fritz N, Kataki M, Kostyk S: Motor and Cognitive Profiles Differ between Lewy Body Dementia and Parkinson's Disease in a Paired Comparison Study. Poster presentation at the Alzheimer's Disease International Conference (AAIC) 2014, Copenhagen, Denmark, July 15, 2014
  65. Scharre DW, Chang S-I, Nagaraja HN, Kataki M, Wheeler N, Adeli A: Self-Administered Gerocognitive Examination (SAGE) Score Changes over Time in Subjective Cognitive Impairment (SCI), Mild Cognitive Impairment (MCI), Dementia Converters, and Alzheimer's Disease (AD) Patients. Poster presentation at the 66th Annual Meeting of the American Academy of Neurology, Washington, D.C., April 22, 2015
  66. Scharre DW, Chang S-I, Nagaraja H, Kataki M, Wheeler N, Adeli A: Longitudinal Changes in Self-Administered Gerocognitive Examination (SAGE) and Mini-Mental State Exam (MMSE) Scores for Subjective Cognitive Impairment (SCI), Mild Cognitive Impairment (MCI), Dementia Converters, and Alzheimer's Disease (AD) Patients. Poster presentation at the Alzheimer's Disease International Conference (AAIC) 2015, Washington, D.C., July 20, 2015
  67. Cummings J, Lyketsos C, Peskind ER, Porsteinsson AP, Mintzer JE, Scharre DW, De La Gandara JE, Agronin M, Davis CS, Nguyen U, Shin P, Tariot PN, Siffert J: Dextromethorphan/Quinidine (AVP-923) Phase 2 Study for Treatment of Agitation in Alzheimer's Disease: Comparing the Enrolled Agitation Sample with the International Psychogeriatric Association Definition of Agitation in Cognitive Disorders (NCT01584440). Poster presentation at the Alzheimer's Disease International Conference (AAIC) 2015, Washington, D.C., July 21, 2015
  68. Scharre DW, Chang S-I, Nagaraja H, Vrettos N: Electronic Self-Administered Gerocognitive Examination (eSAGE). Poster presentation at the Alzheimer's Disease International Conference (AAIC) 2015, Washington, D.C., July 22, 2015
  69. Cummings J, Lyketsos C, Peskind ER, Porsteinsson AP, Mintzer JE, Scharre DW, De La Gandara JE, Agronin M, Davis CS, Nguyen U, Shin P, Tariot PN, Siffert J: Dextromethorphan/Quinidine (AVP-923) for Treatment of Agitation in Patients with Alzheimer's Disease: Analysis of Week 10 Results for Patients Treated only with AVP-923 Versus Patients Receiving only Placebo (NCT01584440). Poster presentation at the Alzheimer's Disease International Conference (AAIC) 2015, Washington, D.C., July 22, 2015
  70. Pietrzak M, Papp A, Curtis A, Kataki M, Scharre D, Rempala G, Sadee W. Gene expression profiling of anterior cingulate cortex from subjects with Lewy body dementia. Poster presentation at the Society for Neuroscience, Chicago, October 19, 2015
  71. Scharre DW, Weichart E, Nielson D, Zhang J, Agrawal P, Sederberg PB, Knopp MV, Rezai A: Deep brain stimulation of frontal lobe networks to treat

- Alzheimer's disease. Poster presentation at the 67th Annual Meeting of the American Academy of Neurology, Vancouver, BC, Canada, April 17, 2016
72. Scharre DW, Chang S-I, Nagaraja H, Vretos N: Digital versus paper Self-Administered Gerocognitive Examination (SAGE). Poster presentation at the 67th Annual Meeting of the American Academy of Neurology, Vancouver, BC, Canada, April 21, 2016
  73. Scharre DW, Chang S-I, Nagaraja H: SAGE (Self-Administered Gerocognitive Examination): A cognitive assessment tool. Platform (oral) presentation at the 31st International Conference of Alzheimer's Disease International, Budapest, Hungary, April 24, 2016
  74. Scharre DW, Chang S-I, Nagaraja H, Vrettos N, Kataki M: Digital Self-Administered Gerocognitive Examination (eSAGE). Platform (oral) presentation at the Alzheimer's Disease International Conference (AAIC) 2016, Toronto, Canada, July 28, 2016
  75. Rezai AR, Weichart ER, Nielson DM, Zhang J, Agrawal P, Sederberg PB, Knopp MV, Scharre DW: Deep brain stimulation of frontal lobe behavioral networks for Alzheimer's disease. Poster presentation at the American Academy of Neurological Surgery, Jackson Hole, Wyoming, September 17, 2016
  76. Sun L, Fan Z, Yue T, Huang Y, Kuret J, Scharre D, Zhang M: Fluorescent Cyclic Peptide Nanoparticles to Detect Amyloid-beta Aggregates in Alzheimer's Disease. Platform (oral) presentation at the BMES 2016 Annual Meeting, Minneapolis, October 5-8, 2016
  77. Jia X, Wang D, Kaltenmark K, Carper B, Scharre D, Galster S, Zhang M: Integration of Music, Thermal, and Mechanical Stimulation for Management of Alzheimer's Disease. Platform (oral) presentation at the BMES 2016 Annual Meeting, Minneapolis, October 5-8, 2016
  78. Sun L, Fan Z, Yue T, Fine J, Lee E-M, Davis R, Kuret J, Scharre D, Zhang M: Lab-on-a-chip Self-assembly of Fluorescent Peptide-based Nanoparticles for Blood-based Diagnosis of Alzheimer's Disease. Poster presentation at the BMES 2016 Annual Meeting, Minneapolis, October 5-8, 2016
  79. Yue T, Jia X, Petrosino J, Wang D, Fan Z, Sun L, Fine J, Davis R, Galster S, Kuret J, Scharre D, Zhang M: Computational Integration of Nano-scale Physical Biomarkers and Cognitive Assessments for Diagnosis and Prediction of Alzheimer's Disease. Poster presentation at the BMES 2016 Annual Meeting, Minneapolis, October 5-8, 2016
  80. Scharre DW, Chang S-I, Nagaraja H, Vretos N: Digital Self-Administered Gerocognitive Examination (eSAGE): Correlations with neuropsychological evaluations. Poster presentation at the 69th Annual Meeting of the American Academy of Neurology, Boston, Massachusetts, April 26, 2017
  81. Scharre DW, Chang S-I, Nagaraja H, Vretos N, Kataki M: Digitally translated Self-Administered Gerocognitive Examination (eSAGE): relationship to clinical assessments. Poster presentation at the Alzheimer's Disease International Conference (AAIC) 2017, London, UK, July 16, 2017



82. Danek A, Mente K, Karp B, Ramamurthy A, Scharre D: "Levine syndrome": neither chorea-acanthocytosis nor McLeod syndrome? Poster presentation at the 9<sup>th</sup> International Meeting on Neuroanthocytosis, Dresden, Germany, March 24, 2018
83. Scharre DW, Chang S-I, Nagaraja H, Vretos N, Kataki M: Influence of digital proficiency, age, education, and cognitive impairment/ diagnosis on time to complete digital cognitive testing using the electronic Self-Administered Gerocognitive Examination (eSAGE). Poster presentation at the 70th Annual Meeting of the American Academy of Neurology, Los Angeles, California, April 27, 2018
84. Knopp M, et al including Scharre DW: Advantages of 3<sup>rd</sup> generation 320ps time-of-flight PET/CT system to advance FDG brain PET imaging. Poster presentation at the 2018 MIC meeting, 2018

#### CREATIVE WORKS

1. 4-Turn Test. Test developed for use in the office setting to help decide whether Alzheimer's disease patients should or should not be driving, 2000.
2. Self Administered Gerocognitive Examination (SAGE). Test developed for use in the office setting as a brief cognitive assessment instrument for Mild Cognitive Impairment (MCI) and early dementia detection. Copyright 2007. Assessed at: [www.sagetest.osu.edu](http://www.sagetest.osu.edu)
3. Digitally translated Self-Administered Gerocognitive Examination (eSAGE). Electronically adapted SAGE for tablet use as a brief cognitive assessment instrument for Mild Cognitive Impairment (MCI) and early dementia detection. Produced by BrainTest Inc. (<https://braintest.com>) through a license agreement with The Ohio State University.

#### PEER REVIEWED RESEARCH PUBLICATIONS WITHOUT NAMED AUTHORSHIP

1. Rogers SL, Farlow MR, Doody RS, Mohs R, Friedhoff LT, and the Donepezil Study Group including Scharre DW: A 24-week, double-blind, placebo-controlled trial of donepezil in patients with Alzheimer's disease. *Neurology* 50:136-145, 1998
2. Van Dyck CH, Newhouse P, Falk WE, Mattes JA, and the Physostigmine Study Group including Scharre D: Extended-release physostigmine in Alzheimer Disease. *Arch Gen Psychiatry* 2000;57:157-164.
3. Tariot PN, Solomon PR, Morris JC, Kershaw P, Lilienfeld S, Ding C, and the Galantamine USA-10 Study Group including Scharre D: A 5-month, randomized, placebo-controlled trial of galantamine in AD. *Neurology*. 2000;54:2269-2276.
4. Mohs RC, Doody RS, Morris JC, Ieni JR, Rogers SL, Perdomo CA, Pratt RD, and the "312" Study Group including Scharre D: A 1-year, placebo-controlled

- preservation of function survival study of donepezil in AD patients. *Neurology* 2001;57:481-488.
5. Wilkinson D, Doody R, Helme R, Taubman K, Mintzer J, Kertesz A, Pratt RD, and the Donepezil 308 Study Group including Scharre DW. Donepezil in vascular dementia. A randomized, placebo-controlled study. *Neurology* 2003;61:479-486.
  6. Peskind ER, Potkin SG, Pomara N, Ott BR, Graham SM, Olin JT, McDonald S, for the Memantine MEM-MD-10 Study Group including Scharre D. Memantine treatment in mild to moderate Alzheimer's disease: A 24-week randomized controlled trial. *Am J Geriatr Psychiatry* 2006;14:704-715.
  7. Winblad B, Gauthier S, Scinto L, Feldman H, Wilcock GK, Truyen L, Mayorga AJ, Wang D, Brashear HR, Nye JS, GAL-INT-11/18 Study Group including Scharre DW. Safety and efficacy of galantamine in subjects with mild cognitive impairment. *Neurology*. 70:2024-2035, 2008.
  8. Lawhorne LW, Ouslander JG, Parmelee PA, Urinary Incontinence Work Group of the AMDA-F LTC Research Network including Scharre, DW. Clinical practice guidelines, process improvement teams, and performance on a quality indicator for urinary incontinence: a pilot study. *J Am Med Dir Assoc*. 9:504-508, 2008.
  9. Green RC, Schneider LS, Amato DA, Beelen AP, Wilcock G, Swabb EA, Zavitz KH, Tarenflurbil Phase 3 Study Group including Scharre DW. Effect of tarenflurbil on cognitive decline and activities of daily living in patients with mild Alzheimer disease: a randomized controlled trial. *JAMA* 302:2557-2564, 2009.
  10. Sadowsky CH, Dengiz A, Olin JT, Koumaras B, Meng X, Brannan S, US38 study group including Scharre DW. Switching from donepezil tablets to rivastigmine transdermal patch in Alzheimer's disease. *Am J Alzheimers Dis Other Demen*. 24:267-275, 2009.
  11. Stephen Salloway, M.D., Reisa Sperling, M.D., Nick C. Fox, M.D., Kaj Blennow, M.D., William Klunk, M.D., Murray Raskind, M.D., Marwan Sabbagh, M.D., Lawrence S. Honig, M.D., Ph.D., Anton P. Porsteinsson, M.D., Steven Ferris, Ph.D., Marcel Reichert, M.D., Nzeera Ketter, M.D., Bijan Nejadnik, M.D., Volkmar Guenzler, M.D., Maja Miloslavsky, Ph.D., Daniel Wang, Ph.D., Yuan Lu, M.S., Julia Lull, M.A., Iulia Cristina Tudor, Ph.D., Enchi Liu, Ph.D., Michael Grundman, M.D., M.P.H., Eric Yuen, M.D., Ronald Black, M.D., and H. Robert Brashear, M.D. for the Bapineuzumab 301 and Investigators 302 Clinical Trial. Two Phase 3 Trials of Bapineuzumab in Mild-to-Moderate Alzheimer's Disease. *N Engl J Med* 370:322-333, 2014.
  12. Liu E, Schmidt ME, Margolin R, Sperling R, Koeppe R, Mason NS, et al. for the bapineuzumab 301 and 302 clinical trial investigators. Amyloid-  $\beta$  <sup>11</sup>C-PiB-PET imaging results from 2 randomized bapineuzumab phase 3 AD trials. *Neurology* 85:692-700, 2015.
  13. 771 additional peer-reviewed articles that cite the use of North American ADNI Data: <http://adni.loni.usc.edu/news-publications/publications/>

**SYMPOSIA AND CONFERENCES CHAIRED/ORGANIZED**

1. Course director and lecturer, *Behavioral Neurology Course* for psychiatry residents. Ohio State University, Columbus, Ohio, April 14-28, 1994
2. Course director and lecturer, *Dementia Update - 1994*, continuing medical education conference for health professionals, Columbus, Ohio, October 1, 1994
3. Course director and lecturer, *Dementia Preceptorships: A Day at the Memory Disorders Clinic* ; 19 one-day preceptorships involving lectures and demonstration for health care professionals, Ohio State University, Columbus, Ohio, February through December 1995
4. Course director and lecturer, *Alzheimer's Disease Preceptorships* ; 3 one-day preceptorships for health care pharmaceutical professionals, Westin Hotel, Columbus, Ohio, September through December 1996
5. Course director and lecturer, *Neurologic and Psychiatric Care: The Older Adult*; continuing medical education conference for health professionals, Columbus, Ohio, April 9-10, 1999
6. Course director and lecturer, *Alzheimer's Disease Preceptorship*; one-day preceptorship for medical professionals, Columbus, Ohio, June 1999
7. Course co-director and lecturer, *The OSU Geriatric Medicine Course*; continuing medical education conference for health professionals, Columbus, Ohio, December 4, 1999
8. Course director and lecturer, *Alzheimer's Disease Preceptorship* ; one-day preceptorship for health care pharmaceutical professionals, Columbus, Ohio, May 10, 2000
9. Course director and lecturer, *Summer Alzheimer Symposium*; three-day continuing medical education conference for health professionals, Columbus, Ohio, August 16-18, 2001
10. Co-course director and lecturer, *Pharmaceuticals, Nutraceuticals and Novel Treatments: Disorder of Mood and Cognition*; one-day continuing medical education conference for health professionals, Columbus, Ohio, December 1, 2001
11. Course director and lecturer, American Academy of Neurology (AAN) Breakfast Seminar, *Management of Common Behavioral disturbances in Dementia*, 54<sup>th</sup> Annual Meeting, Denver, Colorado, April 19, 2002
12. Course director and lecturer, American Academy of Neurology (AAN) Breakfast Seminar, *Management of Common Behavioral disturbances in Dementia*, 55<sup>th</sup> Annual Meeting, Honolulu, Hawaii, March 31, 2003
13. Course director and lecturer, American Academy of Neurology (AAN) Dinner Seminar, *Management of Common Behavioral disturbances in Dementia*, 56<sup>th</sup> Annual Meeting, San Francisco, California, April 26, 2004
14. Course director and lecturer, *Brain Health and Aging: Protecting your Memory*; Monthly series for 5 months for lay public, Upper Arlington Senior Center, Upper Arlington, Ohio, April 5, May 3, June 7, July 5, and August 2, 2005



15. Course director and lecturer, American Academy of Neurology (AAN) Dinner Seminar, *Management of Common Behavioral disturbances in Dementia*, 57<sup>th</sup> Annual Meeting, San Francisco, California, April 10, 2005
16. Course director and lecturer, *Neuropsychiatry Case Conference*, Ohio State University, Columbus, Ohio, the first Wednesday of each month beginning July 20, 2006
17. Course director and lecturer, *Alzheimer's Disease Symposium*, one-day symposium to lay public to present the latest basic science and clinical research on Alzheimer's disease going on at Ohio State University, Columbus, Ohio, April 14, 2007
18. Moderator, Plenary session, Big Data Analytics & Bioinformatics for Biomarkers Development. Invited moderator, Biomarker Summit 2018, San Diego, California, March 27, 2018

### **SELECTED PRESENTATIONS AND LECTURES**

1. Personal Information System on a Microcomputer. Report and demonstration of the prototypical system called MECA to the on-site reviewers from the Public Health Service who were reviewing and later approved the grant application from Georgetown University Medical Center entitled "Library Computer Information Service" which included the MECA system as an integral part, Washington, D.C., June 21, 1983
2. Update on the Medical Fitness Standards for Appointment, Enlistment, and Induction: Neurologic Evaluation and Diagnosis. Guest Lecturer, Western Sector U.S. Military Entrance Processing Command Chief Medical Officers' Conference, San Francisco, California, February 12, 1987
3. Head Trauma; Spine and Spinal Cord Trauma. Guest Lecturer, U.S. State Department sponsored Operation Medflag Botswana, to the civil and military medical personnel of Botswana; Gaborone, Botswana, July 14, 1989
4. Taking Sides: Left Brain vs. Right Brain. Guest lecturer at Ohio's Center of Science & Industry (COSI), Columbus, Ohio, July 17, 1993
5. Alzheimer's Disease. Guest speaker, Life Choices with Erie Chapman, Radio Show on WBNS, Columbus, Ohio, October 10, 1993
6. An Alzheimer's Disease Update. Moderator in a nationwide videoconference sponsored by Parke-Davis, The Concourse Hotel & Conference Center, Columbus, Ohio, November 17, 1993
7. Exercising the Mind: Neuronal Growth and Interconnections. Guest speaker, TV Channel 4 News, Columbus, Ohio, September 14, 1994
8. Diagnosing Alzheimer's Disease. Guest speaker, TV Channel 4 News, Columbus, Ohio, November 7, 1994
9. Research Update in Alzheimer's Disease. Guest speaker, TV Channel 10 News, Columbus, Ohio, November 8, 1994
10. Dementias. Guest Lecturer, Osler Institute, Neurology Board Review Course, Cincinnati, Ohio, May 31, 1995

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11. Delirium, Dementia, and Coma. Guest Lecturer, Osler Institute, Psychiatry Board Review Course, Cincinnati, Ohio, May 31, 1995
12. Head Injury and Increased ICP. Guest Lecturer, Osler Institute, Neurology Board Review Course, Cincinnati, Ohio, May 31, 1995
13. Improving Your Memory. Guest speaker, TV Channel 4 News, Columbus, Ohio, November 6, 1995
14. Left Brain vs. Right Brain. Guest Lecturer, Mid-Ohio Chapter of the American Association for Medical Transcription Meeting, Grant Medical Center, Columbus, Ohio, February 10, 1996
15. Challenging Behaviors: Causes and Creative Solutions. Guest Lecturer, AOPHA Annual Conference, Dayton, Ohio, September 11, 1996
16. Approach to the Diagnosis of Dementing Disorders; Genetics and Neurobiology of Alzheimer's Disease; Treatment of Alzheimer's Disease. Guest lecturer, 3 lectures given on each of 3 dates (9 hours), Alzheimer's Disease Preceptorship, Columbus, Ohio, September 25, October 2, and December 4, 1996
17. Update on Alzheimer's & Other Dementias. Guest Lecturer on Ohio Medical Education Network (OMEN) radio (4 times) and OMEN TV (once); One hour CME for the participants is provided; November 1996
18. An Update on the Diagnosis and Treatment of Alzheimer's Disease and Dementia. Guest Lecturer with question and answer period; 4 live Great Lakes Region teleconferences with handouts and audio; January 1997 through March 1997
19. Alzheimer's Disease. Guest Lecturer with question and answer period; 11 live national teleconferences with slides and audio; March 1997 through May 1997
20. Mental Status in Geriatrics for Competency. Guest Lecturer, St. Ann's Psychology Department, Westerville, Ohio, June 18, 1997
21. Diagnosis and Treatment of Dementias. Guest Lecturer on Ohio Medical Education Network (OMEN) radio (4 times); One hour CME for the participants is provided; April 26 - 29, 1999
22. Long-Term Use of Cholinesterase Inhibitors in Alzheimer's Disease: Case Studies. Guest Lecturer with question and answer period; 4 live Great Lakes Region teleconferences with handouts and audio; July 21, August 11, August 25, and September 29, 1999
23. Symptoms of Alzheimer's Disease. Guest speaker, eldercare segment of "820 @ 9", radio show on WOSU 820 AM, Columbus, Ohio, January 26, 2000
24. Behavior Modification for Alzheimer's disease. Guest speaker, eldercare segment of "820 @ 9", radio show on WOSU 820 AM, Columbus, Ohio, January 26, 2000
25. Medications for Alzheimer's Disease. Guest speaker, eldercare segment of "820 @ 9", radio show on WOSU 820 AM, Columbus, Ohio, January 26, 2000
26. Managing Behaviors of Dementia and Delirium. Guest Lecturer, Division of Nursing, Ohio State University, Columbus, Ohio, February 22, 2000
27. Reminyl: Effect on Cognition. Guest Lecturer, Reminyl Advisory Board Meeting, New York, New York, June 17, 2000

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28. Alzheimer's Disease: Case Studies. Guest Lecturer with question and answer period; 3 live Great Lakes Region teleconferences with handouts and audio; June 28, July 26, August 23, 2000
29. Acute Confusional State. Guest Lecturer, Emergency Lecture Series, Ohio State University, Columbus, Ohio, July 12, 2000
30. Alzheimer's disease and Driving: The 4-Turn Test. Guest speaker, TV Channel 4 News, Columbus, Ohio, October 19, 2000
31. Cholinesterase Inhibitors and Other Therapeutic Strategies in the Management of Alzheimer's disease. Guest lecture, Pfizer/Eisai Advisory Board Meeting, Cincinnati, Ohio, October 27, 2000
32. Putting on the brakes: Neurologist helps Alzheimer's patients decide when to stop driving. Feature article about my research with the 4-Turn Test in the Columbus Dispatch (newspaper), Columbus, Ohio, December 21, 2000
33. Daffodil-based drug assists Alzheimer's patients. Interviewed for a press release from the Ohio State University Medical Center Communications Department, March 26, 2001
34. Daffodil-based drug helps Alzheimer's patients. Interviewed for a featured article in the Dean's Newsletter, Ohio State University, May 8, 2001
35. Alzheimer's Disease Update. Guest Lecturer on Ohio Medical Education Network (OMEN) radio (3 times) and OMEN TV (once); One hour CME for the participants is provided; September 2001
36. Leisure activity decreases risk of Alzheimer's disease. Interviewed by reporters for an article in the Columbus Dispatch (newspaper), Columbus, Ohio, October 19, 2001
37. Alzheimer's Disease Special. Half-hour special program on WCMH-TV Channel 4, with Dr. Scharre, Dr. Lamb and Rebecca Davis, RN, Columbus, Ohio, November 28, 2001
38. Parkinson's Disease. Guest Lecturer on Ohio Medical Education Network (OMEN) radio (3 times) and OMEN TV (once); One hour CME for the participants is provided; December 2001
39. Busy brains may help slow Alzheimer's. Interview included in a feature article in the Columbus Dispatch (newspaper), Columbus, Ohio, December 25, 2001
40. Gabrion's lawyers blame his brain injuries. Description of my testimony in a forensic case reported in an article in the Grand Rapids Press (newspaper), Grand Rapids, Michigan, March 14, 2002
41. Introduction and Preferred Approaches for the Management of Affective Disturbances and Neurovegetative Dysfunctioning in Dementia. Lecturer, American Academy of Neurology (AAN) Breakfast Seminar, Denver, Colorado, April 19, 2002
42. Behavioral Modification Approaches. Lecturer, American Academy of Neurology (AAN) Breakfast Seminar, Denver, Colorado, April 19, 2002
43. Recent advances in screening, diagnosis, and treatment of Alzheimer's disease. Guest lecturer, ProActive Healthcare Communications, with 21 live teleconferences to physicians across the country, March 7, 19, April 1, 10, 22, 30, May 2, 21, June 17, 25, 27, July 17, 23, 30, August 13, September 10, 18, October 21, 24, 29, 30, November 13, 2002
44. Quetiapine and Alzheimer's disease. Interviewed by Ohio State University's Department of Research Communications science and medical writer, August 29, 2002

45. Antipsychotic drug has few side effects in Alzheimer's patients. News release from Ohio State University regarding my quetiapine publication, September 18, 2002
46. Antipsychotic drug has few side effects in Alzheimer's patients. News report on my article in the "News Ticker" on website [www.innovations-report.com](http://www.innovations-report.com) and in the column "Berichte, Medizin Gensundheit, September 19, 2002
47. Quetiapine and Alzheimer's disease. Health news release on my article mentioned at Science for Seniors [www.scienceforseniors.org](http://www.scienceforseniors.org), September 19, 2002
48. Drug has few side effects in Alzheimer's patients. News report on my article by United Press International, September 24, 2002
49. Quetiapine and Alzheimer's disease. Interviewed by Ohio State University's "On Campus" newspaper, October 10, 2002
50. Quetiapine and Alzheimer's disease. Interviewed by Media Source for a video news release, October 16, 2002
51. Quetiapine and Alzheimer's disease. News story in Ohio State University's "The Lantern" newspaper, October 17, 2002
52. A New Approach to AD Psychosis. Health news release on my quetiapine article was published in the news section of the October issue of *Practical Neurology* 2002;1(10);6
53. Quetiapine and Alzheimer's disease. Story aired on NBC's Live at 5 program in New York City, November 11, 2002
54. New Medicines for Alzheimer's disease. WTVN Radio Interview, December 10, 2002
55. New Medicines for Alzheimer's disease. Interviewed for a news story in the *Marion Star* newspaper, December 10, 2002
56. New Medicines for Alzheimer's disease. WOSU Radio Interview, December 19, 2002
57. Introduction and Preferred Approaches for the Management of Affective Disturbances and Neurovegetative Dysfunctioning in Dementia. Lecturer, American Academy of Neurology (AAN) Breakfast Seminar, Honolulu, Hawaii, March 31, 2003
58. Preferred Approaches for the Management of Aggression and Psychosis in Dementia. Lecturer, American Academy of Neurology (AAN) Breakfast Seminar, Honolulu, Hawaii, March 31, 2003
59. Behavioral Modification Approaches. Lecturer, American Academy of Neurology (AAN) Breakfast Seminar, Honolulu, Hawaii, March 31, 2003
60. Diagnosis of Clinical Parkinsonian Syndromes in the Long-Term Care Arena. Guest lecturer, Health Essentials Teleconference, with a live teleconference to nurse practitioners and physician assistants across the country, March 25, 2003
61. Brain activity preventing Alzheimer's disease. TV Channel 4 interview, April 29, 2003
62. Dementia. Updated web article at [www.netwellness.org/healthtopics/alzheimer/dementia.cfm](http://www.netwellness.org/healthtopics/alzheimer/dementia.cfm), June 3, 2003
63. Memantine for Alzheimer's disease. Interviewed for a news story in the *Dayton Daily News* newspaper, November 10, 2003
64. Memantine for Alzheimer's disease. Quoted in a health news story in the *New York Times Syndicate*, November 2003
65. Memantine for Alzheimer's disease. Quoted in a health news story in *Good Housekeeping*, November 2003

66. *The Forgetting*. Guest speaker, discussant, and panelist after the TV showing of *The Forgetting*, WOSU TV, Columbus, Ohio, January 13, 2004
67. Citalopram for restless activity in AD. Review of my published citalopram article was published in *the Brown University Geriatric Psychopharmacology Update* February 2004, pages 3-4
68. Coma. Guest lecturer on 2003-2004 MedNet21 (formerly known as OMEN) live CME webcast; One hour CME for the participants is provided; February 20, 2004
69. Introduction and Preferred Approaches for the Management of Affective Disturbances and Neurovegetative Dysfunctioning in Dementia. Lecturer, American Academy of Neurology (AAN) Dinner Seminar, San Francisco, California, April 26, 2004
70. Behavioral Modification Approaches. Lecturer, American Academy of Neurology (AAN) Dinner Seminar, San Francisco, California, April 26, 2004
71. Dementia wreaks havoc on younger adults too. Interview published in a news story in the *Columbus Dispatch* newspaper, Columbus, Ohio, May 27, 2004
72. Alzheimer's Disease Neuroimaging Initiative. Guest speaker, radio interview on WTVN radio, Columbus, Ohio, October 12, 2004
73. Alzheimer's Disease Neuroimaging Initiative. Guest speaker, radio interview on WOSU 820 AM radio, Columbus, Ohio, October 13, 2004
74. OSU Medical Center part of national Alzheimer's initiative. Interviewed for a Ohio State University Medical Center news release, Columbus, Ohio, October 13, 2004
75. Long-Term Care Research. Interviewed for a story in *Caring for the Ages* magazine, Chicago, Illinois, October 21, 2004
76. National Alzheimer's Initiative Explores Neuroimaging. WBNS-TV Channel 10 interview by Andrea Cambern, Columbus, Ohio, November 11, 2004
77. OSU Joins Study on Alzheimer's Disease. Interviewed published in a news story in the *Columbus CEO Magazine*, Columbus, Ohio, December 28, 2004
78. Exercises for Brain Fight Lapses in Memory. Interview (12/2/05) published in a news story in the *Columbus Dispatch* newspaper, Columbus, Ohio, December 29, 2004
79. Introduction and Preferred Approaches for the Management of Affective Disturbances and Neurovegetative Dysfunctioning in Dementia. Lecturer, American Academy of Neurology (AAN) Dinner Seminar, Miami, Florida, April 10, 2005
80. Behavioral Modification Approaches. Lecturer, American Academy of Neurology (AAN) Dinner Seminar, Miami, Florida, April 10, 2005
81. Dementia. Updated web article at [www.netwellness.org/healthtopics/alzheimer/dementia.cfm](http://www.netwellness.org/healthtopics/alzheimer/dementia.cfm), September 9, 2005
82. Medications Used to Control Dementia. Updated web article at [www.netwellness.org/healthtopics/alzheimer/medications.cfm](http://www.netwellness.org/healthtopics/alzheimer/medications.cfm), September 9, 2005
83. Progress in Alzheimer's Disease Research and Clinical Care. Guest presentation at the Senior Vice President/Dean's Dinner Group, Columbus, Ohio, October 12, 2005
84. Artistic changes in dementia. Interview (1/26/07) published in a news story in the *Columbus Dispatch* newspaper, Columbus, Ohio, January 26, 2007



85. Mild Cognitive Impairment: Diagnosis and Differential. Guest lecturer on 2007 MedNet21 live CME webcast; One hour CME for the participants is provided; November 2, 2007
86. Overview of Dementia: Diagnosis and Differential. Guest lecturer on 2008 MedNet21 live CME webcast; One hour CME for the participants is provided; September 19, 2008
87. Ohio State Studies Alzheimer's Vaccine Effectiveness. HealthNewsDigest.com interview published January 5, 2009
88. Ohio State Studies Alzheimer's Vaccine Effectiveness. WTVN Radio interview, Columbus, Ohio, January 5, 2009
89. OSU researchers studying effectiveness of Alzheimer's vaccine. Interview published in "Medical and Science News from the *Plain Dealer*", Cleveland, Ohio, January 5, 2009
90. OSU Studies Alzheimer's vaccine. Interview published in a news story in the *The Lantern* newspaper, Columbus, Ohio, January 6, 2009
91. Alzheimer's Vaccine. Interview presented on CBS News affiliate in Rockford, Illinois, January 8, 2009
92. Vaccine for Alzheimer's Disease. Interview presented on NBS News affiliate in Los Angeles, California, January 8, 2009
93. New treatment being studied for Alzheimer's. Ohio News Network (ONN) television interview, Columbus, Ohio, January 21, 2009
94. Vaccine-like treatment for Alzheimer's disease. Columbus Dispatch interview, Columbus, Ohio, January 28, 2009
95. Finders keepers: OSU researchers advance knowledge of neurodegenerative diseases. Interview published in *Discovery Magazine*, April 2009
96. Dimebon increases brain beta amyloid in Alzheimer's mouse models. Interview by Pharmawire, July 15, 2009
97. Simple test to detect Alzheimer's disease. Multiple media coverage and published widely regarding the publication of the SAGE test validity paper: TV, print and radio, April 2010 - August 2010
98. Stuck in the Middle: Caring for Mom and Dad. Scharre DW ; Brochetti D; Browning W; McVicker B: PBS broadcast, February 2012
99. Brain Pacemaker to treat Alzheimer's disease. Rezai A, Scharre DW: Coverage regarding the first in the US neuropacemaker implanted in an Alzheimer's disease patient at OSU for deep brain stimulation (DBS) to treat the symptoms of Alzheimer's disease. Widespread media coverage on TV, radio, print including the Today Show and NBC Nightly News with more than 468 million viewers total, January 2013 - March 2013
100. Dementia Rate is Found to Drop. TV broadcast/recording, July 2013
101. Pulse pressure linked to Alzheimer's disease biomarkers. Douglas W. Scharre commented on a new study: Online broadcast/recording, November 2013.
102. Early Warning for dementia: SAGE test. Coverage regarding the SAGE test and the publication of the SAGE test community research paper. Widespread media coverage on TV, radio, print including the NBC Nightly News, CBS News, BBC World News, Fox Business Network, Fox News, Voice of America, USA Today,

- Wall Street Journal, Huffington Post with 511 media hits and 635 million viewers total and resulting in over 1,000,000 downloads of SAGE test by June 25, 2014 (181,000 downloads on January 13, 2014 the most visits on a single day in the history of OSU Medical Center), January 2014
103. Multimedia News Release about SAGE, 20 media hits, 27 million audience, July 2015
  104. SAGE: Self-Administered Gerocognitive Examination. Neurology Grand Rounds, Ohio State University, October 6, 2015
  105. Management of behavioral disturbances in MCI and dementia. Psychiatry Grand Rounds, Ohio State University, February 17, 2016
  106. Management of Non-Psychotic Behavioral Disturbances in Dementia. Lecturer, American Academy of Neurology (AAN) Educational Seminar, Vancouver, BC, Canada, April 20, 2016
  107. SAGE test. TV video recording for the Dr. Oz Show, twice in April 2016 and May 2016
  108. SAGE test for Cognitive Deficits. Global Brain Health and Performance Summit presentation, Columbus, Ohio, May 12, 2016
  109. Management of Non-Psychotic Behavioral Disturbances in Dementia. Lecturer, American Academy of Neurology (AAN) Educational Seminar, Boston, Massachusetts, April 28, 2017
  110. Stimulating the brain. Published interview in *Neurology Now*, November 2017, pg 42-45
  111. Bill Gates' Newest Mission: Curing Alzheimer's. Interview presented on WBNS-TV/10 News affiliate in Columbus, Ohio, November 14, 2017
  112. Promising New Alzheimer's Drug Moves to Stage Three Trials. Interviewed live on WCMH-TV/4 News affiliate in Columbus, Ohio, December 6, 2017
  113. A Journey Through Alzheimer's: Medical Center to Hire More Basic Neuroscientists. Interviewed live on WCMH-TV/4 News affiliate in Columbus, Ohio, December 6, 2017
  114. Why Can't I Remember Being a Baby?. Published online interview in *AARP*, January 2018
  115. Brain 'Pacemaker' for Alzheimer's. Coverage regarding the publication of our study of Deep Brain Stimulation in Alzheimer's disease. Widespread media coverage on TV, radio, print including the BBC News, Daily Mail (UK), ABC News, CBS News, Web MD, Health, Medscape, Neurotech business report, and the Columbus Dispatch with 509 media hits and 711 million viewers total, January 2018
  116. Four simple steps for a healthier, sharper brain. Interview published by *The Columbus Dispatch*, March 4, 2018
  117. Clinical Biomarkers for Alzheimer's Disease. Invited lecturer, Biomarker Summit 2018, San Diego, California, March 28, 2018
  118. Which Doctor Should I See for Dementia and Cognitive Decline? Interview published online by *US News & World Report*, March 30, 2018
  119. Management of Behavioral Disturbances in Dementia. Lecturer, American Academy of Neurology (AAN) Educational Seminar, Los Angeles, California, April 24, 2018



120. BrainTest App has equivalent sensitivity and specificity as SAGE test for Mild Cognitive Impairment. Published online interview in *Practical Neurology*, August 2018
121. BrainTest App and paper SAGE test for identification of Mild Cognitive Impairment. Interview by the *Radio Health Journal* September 2018
122. **114** lectures to the lay public or community groups, as an invited guest lecturer, on topics regarding dementia, Alzheimer's disease, degenerative disorders, or normal aging. November 1993 through October 2013
123. **582** lectures or teleconferences to physicians and health care professionals, as an invited guest lecturer, on topics regarding diagnosis, management, and treatment of dementia, Alzheimer's disease, and cognitive disorders. No Continuing Medical Education (CME) credit was awarded for these lectures. February 1994 through October 2013
124. **316** Continuing Medical Education (CME) lectures on various neurology topics given either as a guest lecturer or as a Grand Rounds presentation. Each CME lecture qualified for one hour Category I credit. December 1987 through October 2013

## Expert Report About James Hanna

### I. Expert Qualifications

1. I, Howard Fradkin, Ph.D., LICDC-CS, have been licensed as a Psychologist since 1982 by the State of Ohio, and have been licensed as a Licensed Independent Chemical Dependency Counselor since 2005 by the State of Ohio. My *curriculum vitae* is attached to this report.
2. I provided psychological psychotherapy to men and women who had experienced sexual trauma since 1979, providing me with over 39 years of clinical experience. I retired from private practice in December 2017. For at least the past 20 years, more than 50% of my clients were survivors of sexual trauma. For the past 15 years, more than 80% of my clients were survivors of sexual trauma. Of these, roughly 84% were male survivors, and the remaining 16% were female survivors of sexual trauma. Over the course of my career, it is my best estimate that I have provided psychotherapy and psychological interventions to more than 1,000 male survivors of sexual trauma and over 200 female survivors.
3. I was one of the co-founders of the organization, The National Organization On Male Sexual Victimization (NOMSV), in 1985, which is now known as MaleSurvivor: The National Organization Against Male Sexual Victimization. I served on the board of NOMSV for six years, including a term as President. I served as an Advisory Board Member of MaleSurvivor from 2001-2017. I served as the Chairperson of the MaleSurvivor Weekends of Recovery program, from 2001-2010, and served as the Co-Chairperson from 2011-2016. During this time, more than 1500 male survivors participated in the program. The Weekends of Recovery program is now housed at MenHealing.com, where I serve as Facilitator Emeritus.

4. I have provided professional training to more than 2,000 colleagues about male sexual trauma on numerous occasions throughout the United States, including providing the Keynote Address to the MaleSurvivor International Conference in New York in 2010. In the past three years, I have also trained over 2,000 military personnel at all levels of the hierarchy. I have received several professional awards for my work with survivors of sexual trauma.
5. I was a contracted presenter with Training for the Mind, an Oregon based training organization, and from 2016-2018, I co-presented a three-part course on Men and Trauma for seven different training sessions. I taught about Adverse Childhood Experience (ACE's) research, how to administer the Forensic Experiential Trauma Interview (FETI), how to assess for trauma, and how to help trauma survivors heal.
6. I was selected by Penn State University to provide professional training to their entire counseling staff who provide services in their more than 20 campuses, on April 4, 2012 after the Jerry Sandusky scandal broke.
7. I was selected to be the expert for *The Oprah Winfrey Shows*, "200 Men", which aired on November 5 and 12, 2010. I also appeared as an expert on the most recent March 4, 2019 Oprah documentary, "After Neverland," the story of the men who were sexually abused by Michael Jackson. I have also appeared as an expert on the *Katie Couric Show*; NPR *On Point Radio With Tom Ashbrook*; several times locally in Columbus on WOSU-Radio on *All Sides with Ann Fisher*; *TAALK Radio with Diane Cranley*; and on numerous other nationwide syndicated radio shows.

8. I am the author of *Joining Forces: Empowering Male Survivors to Thrive*, published by Hay House in November 2012. It has been highly rated by the leading clinical professionals in the field. It is a self-help book targeted to male survivors, however many female survivors have also found it to be an important guide for them as well. I have also co-authored two chapters in two recently published therapist guides to providing treatment for male survivors. The books, *Understanding the sexual betrayal of boys and men: The trauma of sexual abuse* and *Healing sexually betrayed men and boys: Treatment for sexual abuse, assault, and trauma*, were edited by one of the experts in the field, Richard Gartner, Ph.D.
9. I have attended seminars conducted by Russell W. Strand on how to administer the Forensic Experiential Trauma Interview, and to understand the distinct advantages of using this methodology when working with trauma victims and conducting investigations. This is the gold standard for trauma interviewing. I received an additional 16 hours of training in June 2018 with Russell Strand. In August, 2019, I will attend 24 more hours of training on Practical Applications of the FETI with Russell Strand and his training staff.
10. I have worked on 17 other similar cases as a trauma expert since 2012.

## **II. Information Reviewed For This Report**

11. I have reviewed the following materials:
12. August 11, 1962, Lucas County Sheriff, Miscellaneous Activities Report;

13. August 16, 1962 Juvenile Report Form, Lucas County Sheriff's Office;
14. September 7, 1962, Child Study Institute, Observation Report;
15. January 22, 1964, State of Ohio, Juvenile Diagnostic Center Screening Summary, Medical Report, Psychiatric Evaluation;
16. October 27, 1964, Juvenile Report Form, Lucas County Sheriff's Office;
17. February 5, 1965, Juvenile Offense, Police Department, Toledo, Ohio;
18. February 5, 1965, Juvenile Offense, Police Department, Toledo, Ohio;
19. December 29, 1965, Juvenile Offense, Police Department, Toledo, Ohio;
20. January 10, 1966, Juvenile Offense, Police Department, Toledo, Ohio;
21. December 27, 1967, Lucas County Adult Probation Department, Presentence Report;
22. July 23, 1968, Ohio State Reformatory, Mansfield, Ohio, Social Service Department, Social Summary;
23. November 25, 1968, Ohio State Reformatory, Pre-Parole Evaluation; December 1968, Ohio State Reformatory, Mansfield, Ohio, Individual Test Conference Record, Initial Psychological Survey;
24. December 1, 1969, Lima State Hospital, List of Information Sources;
25. December 2, 1969, Court of Common Pleas, Lucas County, Ohio, Commitment to Lima State Hospital;
26. December 11, 1969, Admission Record: Lima State Hospital, Physician's Progress Notes & Psychiatric Progress Notes;

27. December 11, 1969, Lima State Hospital, Social History Questionnaire;
28. December 11, 1969, Lima State Hospital, Admission Record & Physician's Progress Notes, Staff Note, Psychiatric Progress Notes;
29. December 16, 1969, Lima State Hospital, Social Services Report;
30. December 13 & 19, 1969, Lima State Hospital, Nursing Notes and Progress Notes;
31. December 23, 1969, Lima State Hospital, Psychologist's Report;
32. December 23, 1969: FBI Rap Sheet;
33. December 23, 1969, City of Toledo Letter to Lima State Hospital;
34. December 29, 1969, Ohio State Reformatory, Mansfield, Ohio, Letter to Ted. S. Wilson, Psychiatric Social Worker, Lima State Hospital;
35. December 30, 1969, Letter from Adult Parole Authority to Ted S. Wilson, Lima State Hospital, with attachments;
36. December 31, 1969: R Buki, M.D., Lima State Hospital, Psychiatric Examination;
37. January 7, 1970, R. Buki, M.D., Lima State Hospital, Narrative Summary;
38. January 9, 1970, G.W. Wilson, Superintendent, Lima State Hospital, Letter to Honorable John J. Connors, Court of Common Pleas, Lucas County, Ohio;
39. January 13, 1970, Court of Common Pleas Letter to Lima State Hospital;
40. January 28, 1970, Ohio Youth Commission Letter of Howard V. Ware providing file to Lima State Hospital;

41. February 1, 1971, Lucas County Adult Probation Department, Presentence Report;
42. February 16, 1971: R. Brooks, M.D., Medical History And Physical Examination – Adult Correctional Units;
43. March 10, 1971: Daniel J. McElroy, Ohio Penitentiary, Initial Personality Evaluation, Office of Psychological Services & Psychometric Report;
44. March 22, 1971, Ohio Penitentiary, Admission Summary;
45. March 22, 1971, Transfer Status Report;
46. April 14, 1971, Richard H. Brooks, M.D., Progress Notes;
47. January 19, 1973, Physician’s Progress Notes;
48. February 26, 1973 through March 21, 1973, Progress Notes;
49. February 28 to March 6, 1973, Incident Reports;
50. June 6, 1973, Report of Unusual Incident;
51. March 11, 1977, Robert J. Travis, Southern Ohio Correctional Facility, Office of Psychological Services, Preparole Personality Evaluation;
52. October 7, 1977, Larry Whirl, M.S.W., Court Diagnostic & Training Center, Initial Interview;
53. October 25, 1977, Thomas G. Sherman, M.D., Court Diagnostic & Training Center, Toledo, Ohio, Letter to Judge Robert V. Franklin, Lucas County Court of Common Pleas;
54. December 28, 1977, Larry Whirl, M.S.W., Court Diagnostic & Treatment Center, Contact Note;
55. January 18, 1978, Thomas G. Sherman, M.D., Court Diagnostic & Training Center, Psychiatric Evaluation;
56. January 19, 1978, Thomas G. Sherman, M.D., Court Diagnostic & Training Center, Letter to Judge Robert V. Franklin;



57. January 30, 1978, Charlene Cassel, Ph.D., Court Diagnostic & Training Center, Psychological Report;
58. February 7, 1978 Letter of Robert J. Travis
59. February 9, 1978: Peggie Spence R.N., Southern Ohio Correctional Facility Notes;
60. March 15, 1978, Trial Testimony of Charlene Cassel, Ph.D., Transcript 372-384 and Thomas G. Sherman, M.D., Transcript 385-406;
61. April 10, 1978: Simon Dorfman, M.D., Toledo, Ohio, Bill for Psych. Exam and Report;
62. April 21, 1978, Charlene Cassel, Ph.D., Court Diagnostic & Treatment Center, Psychological Report;
63. May 1, 1978: Marvin Gottlieb, M.D., Medical College of Ohio, Toledo, Ohio, Letter to Judge Franklin, Lucas County Court of Common Pleas;
64. May 5, 1978, Robert E. Walden, M.D., Medical College of Ohio, Toledo, Ohio, Psychiatric Evaluation;
65. June 13, 1978, R.V. Fitzgerald, M.D., Letter to Counsel Robert A. Burns, Esq.;
66. June 20, 1978, Thomas G. Sherman, M.D., Court Diagnostic & Treatment Center, Toledo, Ohio Report/Affidavit for Judge Robert V. Franklin, Lucas County Court of Common Pleas;
67. June 22, 1978, Lucas County Adult Probation Department, Presentence Report;
68. August 29, 1978 Intake Screening Evaluation, Ohio Department of Rehabilitation and Correction;
69. September 22, 1981 Notes re: history of two cardiac arrests;
70. April 18, 1992, Ohio Dept. of Mental Retardation & Developmental Disabilities, Unusual Incident Report;
71. Testimony of Kathleen Burch, Psy.D.

72. Testimony of Patricia Cutcher
73. Lucas County Children Services Records (Trial Exhibit S)
74. Child Study Institute Records (Trial Exhibit T)
75. Notes from 11/1, 11/6, 11/20 and 1/17 and 1/19 (year unknown) indicating administration of Mellaril
76. Report of Interview with Nancy LaDuke (sister) 7-17-19
77. Report of Interview with Elene West (sister) 7-24-19
78. In addition to reviewing the above material, I have also referenced the books listed below in Section X.
79. In addition, I interviewed James on four separate occasions on Death Row at CCI, for a total of 10.58 hours:
  - 7-17-19 2.5 hours
  - 7-19-19 2.83 hours
  - 7-29-19 2.58 hours
  - 7-30-19 2.67 hours

Should I review additional materials in the future, I reserve the right to reaffirm, modify or amend the statements in this report.

### **III. Expert Knowledge about the Connection between Trauma/Adverse Childhood Experiences (ACE) and Medical/Mental Health Problems known in 1998**

80. The last trial for James Hanna occurred October-November 1998. Therefore, all information known about male survivors of any type of childhood traumas, as well as specifically sexual traumas, could have been accessed by the defense attorneys advocating for James Hanna, and psychologists and psychiatrists who testified, especially regards to mitigating evidence that could have been presented. Below is a summary of what was known about Adverse Childhood Experiences. In

Section X below, I will detail what was known specifically about male survivors of sexual victimization.

81. As the Center for Disease Control and Prevention explains, “[c]hildhood experiences, both positive and negative, have a tremendous impact on future violence victimization and perpetration, and lifelong health and opportunity.”<sup>1</sup> The CDC, in partnership with a major healthcare provider, is responsible for one of the largest investigations of childhood abuse and neglect and later-life health and well-being ever conducted. That study is called the CDC-Kaiser Permanente Adverse Childhood Experiences, or the “ACE Study.”
82. The original ACE Study was conducted at Kaiser Permanente from 1995 to 1997 with two waves of data collection. Over 17,000 Health Maintenance Organization members from Southern California receiving physical exams completed confidential surveys regarding their childhood experiences and current health status and behaviors.<sup>2</sup> The summary of this research was first published in May of 1998, months before the trial (Felitti, et al, 1998)
83. Of the 17,337 participants, about half were female; 74.8% were white; the average age was 57; 75.2% had attended college; all had jobs and good health care, because they were members of the Kaiser Health Maintenance Organization.<sup>3</sup> Participants were asked about different types of childhood trauma that had been identified in earlier research literature:<sup>4</sup>

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<sup>1</sup> Adverse Childhood Experiences (ACEs), <https://www.cdc.gov/violenceprevention/acestudy/>

<sup>2</sup> About the CDC-Kaiser ACE Study, <https://www.cdc.gov/violenceprevention/acestudy/about.html>

<sup>3</sup> Anda RF; Felitti VJ (April 2003). *"Origins and Essence of the Study"* (PDF). ACE Reporter.

<sup>4</sup> Anda RF; Felitti VJ (April 2003). *"Origins and Essence of the Study"* (PDF). ACE Reporter.

1. **Physical abuse**
2. **Sexual abuse**
3. **Emotional abuse**
4. **Physical neglect**
5. **Emotional neglect**
6. **Exposure to domestic violence**
7. **Household substance abuse**
8. **Household mental illness**
9. **Parental separation or divorce**
10. **Incarcerated household member**

84. The ACE's study researchers, and subsequent researchers, found that people with *one or more* Adverse Childhood Experiences are significantly more likely to suffer from a number of serious health and mental health problems, including alcoholism and substance abuse, suicide attempts, depression, sleep disturbance, high risk sexual behaviors, and negative physical health outcomes.

#### **IV. The Combination of Adverse Childhood Experiences Experienced by James Hanna Based on Initial ACE (not including sexual abuse)**

85. When reviewing a case such as this, which involves a multitude of trauma, the ACE's provides a structured way to categorize and conceptualize the various forms of trauma, and its likely effects, if improperly treated or not treated at all.

86. **Physical abuse** experiences: I will detail below five sources of multiple physical abuse.

87. His mother would be physically abusive. She'd swing shoes and hit him. One time she hit him in the head with a spoon, when he reached across the table for butter without

asking for it first. She also hit him with a book—she'd hit him in the head, the arm, back, wherever. "If she ever got real angry, there was no telling what she might pick up to hit you with." He remembers she hit him with a doughnut board, it had a pine knot in it, and it made a swirl welt on my skin. Her next favorite disciplinary object was a Kirby hard plastic sweeper handle. She'd hit him at least 3-5 times in a row to get his attention. **She hit him on the head at least 50 times, and more than once each time.** She left bruises on his arm and back, quite a few times. These bruises were witnessed by both his teachers and the school nurse, who told him she couldn't do anything because she had not witnessed the bruises being inflicted on his body. His mother always went back to the younger kids. It would stem from somebody else, but she'd blame them. It didn't make for a very positive attitude for him toward her. More times than not it was very upsetting. He had a great many of these feelings which led to him running away. One of the additional physical consequences of these beatings is that he believes this is when he started having fainting spells, in 2<sup>nd</sup> grade. They told him it was due to his belt being too tight, but he believes it was due to all the stress he experienced. Dr. Sherman in his mitigation report and trial testimony testified that his mother engaged in what he described as "Chinese torture" and suggested he had a "deprived upbringing".

88. James's brother also was physically abusive to him. He'd shake him, push him down, and punch him, especially if he had had a bad day. If he was angry at somebody else, he'd take it out on James. His sister Elene also stated in a deposition that she remembers him coming back to the house after Bill had bloodied him in a fight.

89. In his first foster home at the Frickes, another older foster child Harold also punched him in the nose and knocked him around.

90. Mr. Fricke also pushed him down and called him stupid for fainting from the fumes in the silo where he was feeding the animals.

91. At CSI, in the day room they tossed James against chairs stacked up in the back of the room. Especially if they wanted to watch something different on TV, they would subject him to beatings. They also made up stories about him that he started fights, and the supervisor would take their word and wouldn't even ask him what happened. The beatings were bad enough that they left marks, at least a dozen times.

92. **Emotional abuse** His mother could go on some rants. He remembers he'd find someplace to hide, usually in the back bedroom upstairs. I'd hide behind the plaster board walls. It was not comfortable. I couldn't get comfortable, sitting on boxes of dishes in the attic. I could still hear her yelling; we had no doors and the walls were very thin. His mother and father had a very stormy relationship, and he heard them arguing and raising their voices often.

93. **Physical neglect** -James lived in a tent for the first six months of his life. Then his family moved into a house with no running water, no doors on rooms, and a ladder to get up to his bedroom. He shared the house with his 8 siblings and parents.

94. At the end of the month, because his mother struggled financially, they had to suffice with day old bread and just sandwiches for meals instead of what he described as "regular meals" at the beginning of the month.

95. **Emotional neglect.** James remembers very few good times in his childhood. Despite having multiple siblings, he was close to none of them, not even his older brother. His sister Elene said he had no one to stand up for him. Because of the fact his house had no running water, he felt like an alien, that's what it mainly felt like; being like an alien. It restricted his ability to express myself; he wouldn't associate with any people. He couldn't find

any reason to associate; they made him feel odd to be around them; he felt rejected by them, judged. And his mother wouldn't let them go anywhere. She was very stern; she acted like a drill sergeant. "It was not good at all." She was like adamant about doing everything just so, the things that had to be done in house. She paid little attention to him, except one time when he got hit in the head with a rock by his brother, and blood was pouring out of his head after his sister extracted the rock. She did find a neighbor to take him to the hospital. This is his memory of the only time she really paid him any significant attention. Holidays and birthdays were rarely celebrated. With regards to his dad, he has no memory of his dad hugging him or putting him to bed. Often he and his mom would walk a good mile to meet him after work, but even then, he was never greeted with warmth.

96. Dr. Kathleen Burch in her 1998 testimony in the trial testified that parental neglect had been substantiated by Children's Protective Services.

**97. Exposure to domestic violence** One time he walked away from the house to get away from his mother's fit, and he saw her punch his little sister in the nose. He saw her do that, and that's the only reason he came back, to protect his little sister. He told me he had no idea what she would do next. His sisters after his father's death because abusive to him too, as they would take their own pain and frustration from being pushed around by their mother out on him. He remembers witnessing her grabbing them by the hair, yanking them back and forth, and smacking them. One time, Elene stated she remembered her mother smacking her to the ground and then saying, "That was for nothing, now do something". His sister Nancy described her mother as a terror and a cruel woman. Nancy remembered her mother hitting her in the head with a cast iron skillet for talking back. As a result of the abuse they suffered, James remembers they would push him off the couch if he was sitting there.



98. **Death of a parent:** James's father died when he was 6. He had been struggling with heart disease and was on bed rest. When his mother came home from the hospital, the whole house was in upheaval. He went to the funeral, and afterwards, relatives came to their house who had never visited, and it was quite uncomfortable for him as he had very little relationship with them.

99. To make matters worse, at school the kids would mock him for not having a father. They'd call him "orphan" and stuff like that.

100. His mother functioned very poorly after her husband's death, and became even more controlling and restrictive, insisting he had to around the house all the time.

101. **Household mental illness** It seems very clear his mother suffered from a severe mental illness as she was so out of control with her anger and rage and couldn't handle the responsibilities of motherhood as she was often overwhelmed. She was so severely cruel to all of her children and horribly physically abusive to them, especially James who seems to have gotten the brunt of it. All of the children ran away from home as a result.

102. **Did anyone you live with serve time or was sentenced to serve time in a prison, jail or other correctional facility?**

Yes, his brother served time. Some of his older sisters were also in trouble with the law at different times in their lives.

101. **James's total ACE score:** It is important to note that this is a total of 8 Adverse Childhood Experiences out of a possible score of 10, not including **sexual abuse** (detailed below in Section VI and VII) which make his conventional ACE score **9 out of 10**.

## V. The Combination of Adverse Childhood Experiences Experienced by James Hanna-Based on the Philadelphia ACE

103. The Philadelphia ACE study was conducted in 2012-2013. While it is true this study was not available at the time of James Hanna's last trial, it is relevant now in this evaluation. This Philadelphia ACE study rephrased some of the original questions and also provided more response options beyond the original yes/no survey.<sup>5</sup> As a result, the revised question format expanded the scope of experiences covered in the conventional ACE's listed above in order to also capture the effects of the broader environment outside the household that can also have a serious impact on an individual's life outcomes.

104. Specifically, the Philadelphia ACE measures assesses 7 additional indicators, in addition to those addressed by the conventional ACE's.<sup>6</sup> These are:

- a. **Witnessing violence** (How often, if ever, did you see or hear someone being beaten up, stabbed, or shot in real life?)
- b. **Felt discrimination** (How often did you feel that you were treated badly or unfairly because of your race or ethnicity?)
- c. **Adverse neighborhood experience** (Did you feel safe in your neighborhood? Did you feel people in your neighborhood looked out for each other, stood up for each other, and could be trusted?).

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<sup>5</sup> See Appendix B to the Findings from the Philadelphia Urban Ace Survey, *Comparison of ACE Questions from the Philadelphia Urban ACE Study, Kaiser ACE Study, and the BRFSS AC Module*, <http://www.instituteforsafefamilies.org/sites/default/files/isfFiles/Philadelphia%20Urban%20ACE%20Report%202013.pdf>

<sup>6</sup> The Philadelphia ACE Study did not ask about parental separation or divorce. As a result there is a maximum total of 14 possible indicators on the expanded ACE's. See Appendix B to the Findings from the Philadelphia Urban Ace Survey, *supra*.

- d. **Bullying** (How often were you bullied by a peer or classmate?).
- e. **Ever had a life threatening illness?**
- f. **Suffered from the effects of poverty? (ie not enough food to eat or clean clothes)**
- g. **Foster care** (Were you ever placed in foster care?).<sup>7</sup>

105. Based on my review of the material, and my interviews with James, in addition to the conventional ACE's discussed above, he has also experienced six of these expanded ACE's:

106. He **witnessed violence**: He saw 4-5 bar fights in which men would hit each other over the head with beer bottles. One man pulled a knife on another man. He also witnessed a robbery of a clerk at gunpoint when he was a teen.

107. He recounted **bullying by peers and classmates**. For example at Solomon Lutheran Parochial School, the boys there always tried to exclude him from activities. They played keep away from James and rejected him immediately because he was a "big city kid".

108. At CSI, they labeled him as the bully, but he reports that he only retaliated after being attacked by them or having his personal property stolen. They left marks on him often, such as when they'd push him into a stack of chairs. In fact, CSI reports show that from 8-5-62 through 10-31-63, in 12 separate reports, it was reported by staff members that he was the victim of being ridiculed and being pushed around, shunned by

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<sup>7</sup> Findings from the Philadelphia Urban ACE Survey, Institute for Safe Families, (Sept. 2013), <http://www.instituteforsafefamilies.org/sites/default/files/isfFiles/Philadelphia%20Urban%20ACE%20Report%202013.pdf>

the group as a whole, labeled a misfit, and bullied by most of the children in his section. In the 1998 trial, Dr. Walden testified that James was badly beaten on more than one occasion.

109. **Your family sometimes cut the size of meals or skipped meals because there was not enough money in the budget for food.** James reported this was often true.
110. **Foster care?** Yes, James lived in two foster homes. In the first home, with the Frickes, they lived on a farm, and he also had to work on four other farms that belonged to other members of the family. He had to be up at 4 am to do his farming chores. He also had to work on several other farms owned by the Fricke family. He said he felt like “I was in a foreign country”. He was not allowed to use the regular bathroom, rather he had to use the bathroom in the basement. He told me he felt like he was treated “like the help.” Mr. Fricke engaged in physical and sexual abuse of James, which I will detail below (see points 125-139). He also suffered sexual abuse from another charge at the house, Thomas (see points 140-153).
111. The second foster home was not much better, according to James. They wanted him to work in their gas station and go to school at the same time. He had a lot of problems working and going to school. He couldn’t get any sleep at night after he was done working, because it was a strange set of circumstances and it was a new place. He’d get home from school, change clothes and put on coveralls for the gas station. He’d sort out cans, rags, broken glass; he’d clean up oil spills. They weren’t about to pay him, but they got \$55 a month out of my social security money. He had no money to go anywhere or do anything. They bumped heads about his

homework; he reports he didn't have any time at home, so he'd get it done in the classroom. Most days except weekends he had to work at the gas station.

112. **James has a life-threatening strangulating hernia as an infant at 3 months old, and almost didn't survive.**

113. **He did not feel people in his neighborhood were trustworthy and looked out for each other.** He said they always gossiped and would talk behind his back.

114. The Philadelphia ACE interview also identifies any protective aspects of a child's life. This was also not present for James, including **Someone in your life helped you feel important or special:** James told me this was never true.

115. **Total Adverse Childhood Experiences—** Including sexual abuse which is detailed below, James suffered from 15 adverse childhood experiences. **This is an extraordinarily high number for any person.** In the next section, I will add the evidence of the sexual abuse perpetrated on James.

## **VI. Documenting the Sexual Abuse Done Perpetrated On James Hanna Using the Forensic Experiential Trauma Interview (FETI)**

116. The FETI was developed by Russell Strand, a now retired Army Psychotherapist who led the US Army Military Police School, to use with victims of sexual assault in the military. The FETI is not a psychological test, it is not a technique, but it is a methodology of interviewing victims of trauma. It is a combination of child forensic interview techniques; critical

incident stress debriefings; neurobiology; and three-dimensional, offense-centric investigation of crime. Strand describes it as a forensic psychophysiological investigative tool. It is based on the belief that victims should not be treated as witnesses to their own crime.

117. When trauma occurs, the prefrontal cortex (the more advanced part of the brain that records the sequence of events, and specific details and peripheral information) frequently shuts down, and the more primitive part of the brain takes over, which records sensory information and fragmented emotions. Good solid neurobiological science routinely demonstrates that when a person is stressed or traumatized, inconsistent statements are not only the norm, but sometimes strong evidence that the memory was encoded in the context of severe stress and trauma.
118. The FETI, according to Strand and his vast experience training military police, is a highly effective technique for victims and witness interviews, because it provides an opportunity for the victim to describe the experience of the sexual assault, physically and emotionally. He states that “this technique significantly enhances the quality and quantity of testimonial and psychophysiological evidence obtained.” Further, it drastically reduces victim recantations, increases victim cooperation and participation, and significantly improves the chances for successful investigations and prosecutions.
119. The parts of the interview are:
  - I. Acknowledge the victim’s trauma and/or pain.
  - II. Ask the victim what they are able to remember about their experience.
  - III. Ask the victim about their thought process at particular points during their experience.

- IV. Ask about tactile memories such as sounds, sights, smells, and feelings, before, during and after the incident.
  - V. Ask the interviewee how this experience affected them physically and emotionally.
  - VI. Ask the victim what the most difficult part of the experience was for them.
  - VII. Ask the victim what, if anything, the interviewee cannot forget about their experience.
120. FETI evidence has been accepted in Ohio courts in all five of the court cases in which I have testified as validated sexual abuse.

**VII. The Reported and Suspected Sexual Abuse Suffered by James Hanna**

121. Every sexual abuse James experienced is imprinted in his memory and in his body. He has never received any appropriate treatment to help cope with the traumatic effects of such abuse. Even after he reported these incidents to his attorneys in 2002 when he was 53, he received no treatment, and no one chose to use that information as the basis for another mitigation hearing.

I will detail below the perpetrations of overt and covert sexual victimization by his mother, neighborhood boys, his foster parent Mr. Fricke, Tommy LaRue-another charge living at the Fricke's, boys at CSI, and as an adult at the Ohio Pen, Lucasville and Mansfield Prisons.

122. The first experiences of sexual abuse occurred when his mother would pull his diaper and pants down to prove he was a boy when anyone would mistake him for a girl, due to his uncut long hair. James said he felt very embarrassed about it. His sisters reported he learned to put two pairs of pants on to defend himself. His mother said she didn't want to take him



to the barbershop because she didn't want to spend the money. The barber kept one of the curls from his hair in a plastic bag on his shelf from the first time he got his hair cut, and he kept it for a long time. This abuse was documented in the testimony of Dr. Kathleen Burch at the 1998 trial.

123. This type of sexual abuse is referenced in the literature as covert sexual abuse, and it is known that covert sexual abuse can be as damaging as overt sexual abuse.

124. His sister Elene said that James was raped by a half dozen neighborhood boys around the age of 6. The boys said that if James was going to look like a girl, they would treat him like a girl. Elene remembered that James always cinched his belt very tight around his waist like a girl. His sister Patricia also testified at his trial that James was sexually abused. Psychologist Kathleen Burch also testified at the 1998 trial on allegations by family members that James had been sexually abused by neighborhood perpetrators. This is one incidence of sexual abuse which James does not have a memory about. He does remember these boys being physically abusive to him, pushing him down and knocking him to the ground.

125. On the Fricke farm, the first time he was sexually abused was after he got into an argument with another older foster child, and shot holes in the roof with that boy's .22 rifle. Here is how he described what was done to him:

I got a horrible beating from Mr. Fricke. He was naked and I was naked; we were in the basement. He put my head between his knees and beat my ass with both of his hands. His wife knew what was going on and didn't say anything. He beat me with both his hands; he was sitting down with my head between his legs, under his genitals.

126. Following this, when they'd come in after working outside, everybody would strip down to shower. Below are the FETI responses of James to these many **abuses by Mr. Fricke. Note the FETI responses will be in first person:**

127. *What I remember:*

Mr Fricke was very playful after that beating. I would be in the showers with Mr. Fricke after we'd been working on the farm. He would rub soap in a sponge and he'd put his hands all over my body and rub me down. He'd grab me, he'd grab me sexually, bear hugs and stuff like that, he'd grab me between my legs and my behind. He'd try to have sexual relations with me; he wouldn't try to penetrate, but he'd rub his erection against me He'd have an erection and he'd rub it in between my legs. This was during his wife's pregnancy with her 3<sup>rd</sup> child, and he told me he couldn't have relations with her and that's why he was doing it to me.

128. *What I was thinking and feeling:*

It wasn't right. He was doing what he wanted to do and I couldn't stop him. He was just all the way weird about it.

129. *What I saw:*

I remember he was very hairy.

130. *What I smelled:*

I remember the smell of his sweat.

131. *What I heard:*

He would grunt like an animal. He told me I should feel glad he was paying me attention. He'd tell me nobody would ever believe me if I told them, and to keep my mouth shut

132. *What I experienced in my body:*

I felt like I wasn't even there. Like this was being done to somebody else's body. I had the experience of floating away, trying to be somewhere else. I felt like being trapped; he'd restrain me with a bear hug.

133. *What happened when it was over:*

He'd go upstairs and change clothes. I stayed downstairs.

134. *What is the most difficult part:*

I didn't have any power to say no.

135. *What, if anything, can't you forget:*

He made it like it was a happy time; I remember him laughing

136. *How did it impact you?*

Negatively, I knew I was probably not the only one. When I went to school, I couldn't express myself and couldn't let anyone know what had been happening. I was so upset that eventually I ran away.

137. *Did you tell anyone?*

When I ran away, they took me to jail. I told the police, and then my Parole Officer met me. I told him too, and nobody ever documented what I told them. All they reported is that I left the house. James also wrote all this down when he was 53, in 2002. The Public Defender did not bring it up in post-conviction hearing, or even when I went to Dayton to appear before the magistrate. I don't remember the attorneys having any reaction to what I shared with them.

138. *How many times did you experience these abuses from Mr. Fricke?*

He did this to me 15-20 minutes at a time, and maybe 10 times. I didn't have any choice or power to do anything about it.

139. *How often have you thought about it?*

Every time I see things on TV or movies, I think about it. Also, in 1965, Mr. Fricke was arrested because he had involved some of the other boys who were his charges in a car theft ring, and he was sent to federal prison in Lewisburg.

140. James was also **abused on this farm by another foster child, Thomas**, whom he described as a "creep". This is how he described this abuse, using the FETI:

141. *What do you remember experiencing:*

After Mr. Fricke had sexually abused me, Tommy LeMay, another charge, moved in. Tommy was a roughouser. He was bisexual. Several times, The Frickes would leave them alone at the house; he started out wrestling with me on my bed. he put me in a hammer lock; Then he pulled himself out of his shorts, and pulled my shorts down. He layed on top of me, and masturbated between my legs; he ejaculated; he would go back and forth between my legs.

142. *What do you remember smelling:*

I remember he was very sweaty. I remember the smells of fresh air at the farm as the window was open.

143. *What do you remember hearing:*

He told me he was treating me like his older girlfriends. He told me he was just starting to be sexually active and he couldn't find any girls at the time. He told me about his last girlfriend and the different things he'd do with her. During the act, he moaned and when he released, he let out a whole lot of air.

144. *What do you remember thinking?*

I felt like I was being taken advantage of. I also thought he must not be my friend like he had been telling me.

145. *What do you remember about how he touched you?*

He was just holding me down.

146. *What do you remember about what you experienced in your body?*

I remember having strange sensations, and feeling very uncomfortable, like an experience of him touching somebody else.

147. *What happened after it was over:*

He'd clean himself up. I remember looking at him and thinking he was as big as a grown man. He took the sheet off the bed and took it to the laundry, and brought back clean sheets. I remember I ran away after the 2<sup>nd</sup> time, and I remember seeing the road and the house, and all I could think was, I just want to get away.

148. *What was the most difficult part of this experience?*

There was nothing I could do about it. I was restrained and couldn't get up. I was overpowered.

149. *What if anything can't you forget?*

I couldn't get him off me; he made grunting noises; after that when they got home, that is when I decided to take off.

150. *What was the impact on you?*

I didn't know that this was a part of getting along; I didn't have words for what he was doing to me.

151. *Who did you tell?*

I told the Washington police and my PO, and as indicated above, no report was ever made. I also told the attorneys.

152. *How often do you think about it?*

I've tried to block it out.

153. In testimony by Kathleen Burch in the 1998 trial, she testified that it was also alleged that in one of the foster homes there may have been some sexual abuse, but it has not been substantiated. This FETI evidence is substantiation of the two perpetrators in the Fricke foster home.

154. James was also **sexually abused while he was serving time at CSI**. Here are his FETI responses to these abuses:

155. *What do you remember experiencing:*

I was 13, I think I was in F or H section.

Other boys pushed me around, pulled my shirt over my head, and pounded me in the back. While one boy would hold my arms, the other would spread my legs so I was either straddling the toilet or the sink.

They would simulate sex acts, rubbing against me against my butt. I was getting ready to take a shower, and they pulled my pants and underpants down to my feet, and they took their clothes off. It was three or more boys at a time. The same boys did this repeatedly to me, more than 10 times. They figured out a way to plug the beeper that would signal the bathroom door was closed, as it was supposed to be left open.

156. *What were you thinking?*

They acted like they were friendly, like this was just horseplay.

157. *What do you remember seeing?*

I saw bright lights in the bathroom and remember the yellow tiles.

158. *What did you smell?*

I remember smelling the disinfectant in the bathroom.

159. *What did you hear?*

They told me if I told anybody, they would beat me up in the middle of the night. I remember them laughing and cheering each other on by name.

160. *What did you feel in your body?*

I remember the same kind of weird sensation I experienced with Tommy. They were not pleasant feelings, and definitely not arousal. At least 2 of them ejaculated, and they either ejaculated down my legs, or into the sink or toilet.

161. *What touch do you remember?*

I remember them holding me around the waist.

162. *What do you remember tasting?*

I had the taste of bad bile in my throat.

163. *What was the most difficult part?*

I was not able to get away.

164. *What if anything can't you forget?*

The whole thing

165. *What happened afterwards?*

They went back to their rooms. I felt like I had to wash myself again; I felt dirty.

166. *What was the impact?*

I had major trust issues; and felt like I couldn't communicate with anybody. One time I do remember they were going to do it to another kid, and I stopped them by knocking on the window in the coat room where they were trying to force him behind a pillar. They were trying to pull his pants down, but when I knocked, the section leaders came in and broke it up and they ran.

167. *Who did you tell?*

I told a supervisor, who brushed it off as horseplay. I believe these assaults were some of the reasons why they said I was having trouble with the other kids. I also told my attorneys, who did nothing.

168. *How often have you thought about it?*

If I saw anything in a movie, I'd think about it. Shawshank Redemption was especially difficult, as it was filmed in the old Mansfield prison and reminded me of this.

169. James has also been **raped as an adult while in prison.**

One of the first was at the **Ohio Pen**. Here are his FETI responses to these rapes:

170. *What do you remember experiencing?*

I was staying in K block, the 6<sup>th</sup> range, upstairs. Office Scurlock let another prisoner into my cell, and since I had no cell mate, and he didn't bring any property into the cell, I knew he wasn't supposed to be in there with me. After Scurlock opened the door and let him in, he locked it, and walked away. The prisoner told me, "you know why I am here, so you better get ready". There was no time to do anything but get my clothes off. There was nobody around to help me; no time to say



anything. He then made me bend over the bed and he said, “no relaxing” and he penetrated me anally.

171. *What do you remember experiencing in your body?*

I felt a lot of pain. My head was buried at the top of the bed and I held onto some chains there.

172. *What were you thinking?*

All I could think was leaving my body, try to go somewhere else.

173. *What do you remember seeing?*

He was black and had curly hair.

174. *What do you remember hearing?*

Office Scurlock called him SJ, and said, “I’ll be back in a few” I heard outside noises, people talking over in the range. I remember hearing him breathe heavily.

175. *What touch do you remember?*

He had his hands on my hips.

176. *What was the most difficult part?*

Knowing there was an officer involved. What that meant is that I couldn’t report it to any other officer, because they’d just tell me I was making it up.

177. *What if anything can’t you forget?*

Being in that cell.

178. *What happened afterward:*

Officer Scurlock came back about 15 minutes later. SJ washed up and he let him out and locked the door.

179. *What was the impact:*

I knew I could not confide in any of the authority figures there.

I wound up with a hernia in 72 as a result of these rapes.

180. *How many times did this happen to you?*

I remember Scurlock brought two different inmates into my cell; and five other times, other officers were involved with other inmates. Five of those times I was locked up in

Security control. In every case, an officer let another prisoner in to rape me. I believe this was between 71-72.

181. *Who did you tell?*

I told the attorneys.

182. Here are abbreviated FETI responses to additional adult prison rapes:

183. **One of the rapes at Lucasville** (*abbreviated FETI*)

I was working in the kitchen. I would go to the bathroom, and officers were not around. A couple guys 2-3 would come in, they'd push me up against the wall, they had a knife they held to my throat. All 3 of them took turns raping me. I felt dirty afterwards. The worst part was that they made me clean them off after they got done with a towel. What I can't forget is that they held the knife to my throat. I was raped more than once in several different areas at Lucasville, including the showers.

184. **Rapes at Mansfield Prison** (*abbreviated FETI*)

In 92, I went to the new Mansfield prison. I remember being in the shower, and on several occasions, other inmates came right in and raped me in the shower. Most of the times this was at night after being in the rec yard. All I had on was a robe and a towel around my neck. I would be in the shower behind a privacy curtain, and they'd come right in. Several different men raped me. One time the guy who raped me did not even live in C block where I was, which means another officer had to have let him into our block.

185. *How often do you remember this?*

I know when I saw Shawshank Redemption, I was especially triggered because I had been raped at Mansfield where it was filmed.

### **VIII. The Importance of James's ACE score**

186. I will next discuss the implications of this remarkably high score and the likely outcomes of untreated survivors of childhood traumas and sexual abuse.
187. The ACE score is highly correlated with significant life challenges and problems in adulthood. The greater the number of ACE's, the more likely it is that people will have an increased risk of health and other life problems. (Anda, et al, 2006). Short-term negative outcomes implicated by higher ACE scores include an increase in the odds of smoking, heavy drinking, intravenous drug use, morbid obesity, incarceration, violence perpetration, and poor educational and employment outcomes (Bellis, Lowey, Leckenby, Hughes, & Harrison, 2014). Many of these apply to James, including incarceration, violence perpetration, and poor educational and employment outcomes.
188. Recent analyses conducted using samples of juvenile offenders have been observed to have ACE prevalence rates 3 times higher, and are 13 times less likely to have no ACE exposure and 4 times more likely to have ACE scores of four or above, compared to the original privately-insured ACE Study adults (Baglivio et al., 2014; Grevstad, 2010). As well, juvenile offenders with higher ACEs have a greater likelihood of being assessed as high risk to re-offend on a validated risk assessment (Baglivio et al., 2014) and a greater likelihood of being classified as serious, violent, and chronic (SVC) offenders by age 18 (Fox et al., 2015). Some research has also considered the relationship between community context and ACEs, with a recent study finding that concentrated

disadvantage and affluence affect ACE exposure (Baglivio et al., 2015).

189. James has also struggled with depression, even though he never received this diagnosis due to virtually non-existent treatment. Kathleen Burch in her testimony at the 1998 trial testified he has evidence of a long-standing chronic depression. In addition, the literature describes a masculine form of depression that is more characterized by externalizing behaviors, including getting in fights or altercations with others which can be outward manifestations of depression.
190. ACE's have both direct and indirect effect on juvenile recidivism (nearly half of total effect of ACE's on re-offending operate through negative emotionality). (Wolff, K.T. & Baglivio, M.T). James became involved in the criminal justice system at a rather young age and was sent to juvenile detention for the first time in 1962 at the age of 13 for two separate offenses. Research indicates that 59% of children who experience child abuse and neglect are more likely to be arrested as a juvenile; 28% more likely to be arrested as an adult; and 30% more likely to commit a violent crime. (US Dept of Human Services, 2006).
191. Widom's research on the cycle of violence has been instrumental in showcasing how children exposed to violence are at increased risk of perpetrating violence in later life (Widom & Maxfield, 2001; see also Wilson, Stover, & Berkowitz, 2009). Relatedly, childhood maltreatment has been found to increase the risk of later criminality by approximately 50% (Caspi et al., 2002).
192. This research cited above indicates how important it is that ACEs should not be assumed to be isolated exposures with unique effects, and that both the negative short- and

long-term influences of ACEs on health and behaviors is *better conceptualized and examined as a cumulative, dose–response relationship* (Anda et al., 1999; Dietz et al., 1999; Dong, Dube, Felitti, Giles, & Anda, 2003; Dong et al., 2004; Dube et al., 2001). Accumulated childhood trauma has been shown to also contribute to trauma and complex symptomatology (Briere, Kalman, & Green, 2008, Courtois, 2004; Courtois & Ford, 2013). *In other words, the resulting effect of the trauma is greater than the sum of the parts.* What James experienced based on his ACE score is **Extremely Severe Childhood Trauma**. Another term described in the literature that fits this pattern of extreme interpersonal trauma (abuse, neglect, betrayal, exploitation, rejection, antipathy and abandonment) is **Complex Trauma** (Courtois, 2004; Courtois & Ford, 2013).

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193. Though research in the field is always advancing, there was a substantial amount of research available at the time of James’s trial to demonstrate the harmful impact and potential negative outcomes for a child who, like James, grew up in a highly traumatic environment. All of the abuse, neglect, and trauma discussed in this report took place while James was still a child. Even just one experience, as the literature demonstrates, puts a person a risk for negative outcomes. When addressing the potential damage to an individual caused by multiple ACE’s, most of the research talks about people with 4 or more ACE’s. What James experienced is far and above those with “a bad childhood,” or “a deprived childhood” as was referenced in various court documents I reviewed.

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<sup>8</sup> It is important to note that the concept of Complex Trauma was known at the time of the trial as well as the ACE conceptualization. Complex Trauma is the result of multiple untreated ACE’s.

194. I would further add that in my 40 years of clinical experience, experiencing 15 ACE's is extremely rare. James's history is one of the worst cases I have worked on, even comparing his history to other capital cases in which I have consulted.

### **IX. Likely Outcomes of Untreated Sexual Abuse and Trauma**

195. When a male survivor never gets treatment for the sexual abuse perpetrated upon them and the multiple traumas they have experienced, there are many likely outcomes:

196. *An untreated male survivor of sexual abuse and trauma often suffers from life-long depression.*

197. Dr. Burch accurately diagnosed James as having evidence of a long-standing chronic depression. This was also validated by the results of the MMPI.

198. When I asked James if he had suffered from depression, he told me he really didn't understand what it was. When I described depression to him, he admitted he did often feel hopeless and powerless, and out of sorts. He rarely felt he had anything to look forward to, just the same situation every day. He talked about how he would sit by himself a lot, just to pass the time away. (see also point 189)

199. *An abuse survivor will be so loyal to the offender that he may not even be able to recognize what was done to him as abuse.* The problem in James's life is that he screamed for help in multiple ways, sometimes found the courage to tell people in authority when injustices were done to him, and no one ever protected him. It seems logical that he wouldn't be able to recognize it as abuse as no one in authority did. He went along believing that he was a problem child and he was the reason that other kids bullied him.

200. *Substance abuse is highly correlated with being abused as a boy and experiencing a number of ACE's.*
201. James said he drank mainly at parties. The first time he drank was finding cooking sherry in the kitchen cabinet and he drank almost the whole bottle.
202. When he did drink, he would mostly drink beer, but also 7&7's while listening to the music on the jukebox. He'd have 5-6 drinks per night, depending on if he had money to buy booze. He says 5-6 drinks made him "pretty well drunk". Most times, he was able to sleep it off. He did have about a dozen or more times when he blacked out.
203. He also admitted to me a number of times he took 3-4 Valiums from his mother's bathroom cabinet; and did this at least 4-5 times. He maintains he did not drink when taking the Valium.
204. Although James maintains he was in control of his drinking, the fact that he blacked out a dozen or more times indicates he was not in fact in control, and was either an alcoholic or at the very least abused alcohol regularly for a period of time.
205. *A male survivor without treatment could struggle with being preoccupied with his body and sexual feelings, and struggle with concerns about masculine identity.*
206. In various court documents, there are references to his struggles with his masculine identity, and that these struggles were manifested sometimes with him over-identifying with masculine interest patterns (1/12/78 psychological report).
207. Dr. Walden in his trial testimony on 5/5/78 testified he grew up with gender confusion in a house of females with a sickly and ineffective father and hostile brother. He suggested James's criminal acts were an expression of his distorted masculine identity.



208. In my interviews with James, he denies he struggled with his masculine identity and never had gender confusion. It seems much more accurate to say that James struggled to develop any sense of a comfortable relationship with his sexuality. He admitted to me that he has always struggled with his sexuality as a result of the many sexual abuses he suffered.
209. *Sexual acting out or sexual anorexia is a very common reaction to untreated sexual abuse. A boy who is abused by males may also struggle with homophobic feelings and behaviors.*
210. James never dated anyone and only reported one consensual sexual experience to me in his life. If anything, it makes sense to say James has suffered his entire life with sexual anorexia.
211. *When male survivors do not get treatment, they typically may reject or deny vulnerability. In other cases, these boys are very passive and insecure. Sometimes they may exhibit passive-aggressive behaviors, going between being vulnerable and invulnerable.*
212. In a number of psychological reports, James is described as insecure and passive. In other reports, he is found to be passive-aggressive. It is known from the literature that perpetrators of sexual abuse and bullying seek vulnerable victims. For example, in a CSI report, on 10-2-62, it is stated he is at odds with nearly every boy in the section and comes out on the wrong end because he is not aggressive and is good natured.
213. *Survivors who do not receive treatment most typically scream for help, not by telling their secret, but by acting out to let others know they are in trouble.*
214. James ran away on numerous occasions any time he was experiencing severe abuse, including numerous times from

home and also from the Frickes where he was sexually abused by Mr. Fricke and Thomas. Much of his acting out at CSI I would hypothesize was a cry for help, which was heard but ignored.

215. *Child sexual abuse survivors commonly engage in self-defeating and self-destructive behaviors in an attempt to escape from the internal pain they cannot face.*

216. This is best illustrated by the behaviors he engaged in during his time at CSI. However, as stated in point 108, I believe these behaviors were more cries for help than self-defeating behaviors. Still, the staff kept pointing out to him he was making matters worse for himself, but he was unable to modify his behavior. I would hypothesize this is because the underlying problem was never addressed. This is most clearly articulated by a CSI staff member who wrote on 10-19-62 “He gives me the impression there is something bothering him very much” and this causes his frequent misbehavior.

217. *Child sexual abuse survivors who do not get help have an increased risk of committing acts of violence.<sup>9</sup>*

218. Needless to say, James has committed two murders and one attempted murder.

219. *Survivors who go without treatment may experience signs of dissociative symptoms.*

220. Gartner states dissociation is “a protective defense against the terrifying and disorganizing feelings that accompany childhood trauma” (Gartner, 1999; Hunter, 1990).

221. In James’s case, when we were going through the FETI interview, he told me on several occasions he left his body (see points 132, 146 and 172).

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<sup>9</sup> Lecture by David Lisak, Ph.D., at the *Ending Violence Against Women International Conference*, April 3, 2013. Dr. Lisak has been evaluating Death Row inmates as a forensic psychologist for over 20 years.

222. During our interviews, he also admitted at times he dissociates when people are talking to him about uncomfortable parts of his life, and he admitted he lost track of time many times when visiting members of his family, and gets numb when he is being yelled at. These are all symptoms of dissociation.
223. *When sexual abuse is not dealt with, along with witnessing intimate personal violence, it is highly likely that another possible aftereffect is significant difficulty with intimacy and interpersonal relationships.*
224. Gartner (1999) describes many intimacy challenges for survivors of trauma. Anda et al (2006), Hunter (1990) and Fradkin (2012) also detailed these challenges in their research and writings.
225. These challenges include distrust of power and authority, as James experienced numerous times in foster settings, at CSI, and in prison settings, and prior to that, with his parents.
226. Another challenge is maintaining emotional and sexual distance. James has never had a significant emotional relationship with any human being, male or female. He is sexually anorexic.
227. In a 3-9-77 pre-parole personality evaluation, James was evaluated as being insecure, indecisive, weak ego strength, fearfulness, hostile impulses, constricted emotional expression, superficial relationships, and resentful of authority. All of these are typical symptoms of an untreated sexual abuse survivor.
228. In the 1978 trial, Psychologist Charlene Ann Cassel testified that James had serious deficiencies in his ability to relate to people and was **incapable of developing interpersonal relationships.**

229. *Anger is one of the few emotions that survivors allow*

*themselves*, and there is significant evidence that James was an angry boy and an angry man. As noted above, he had hostile impulses. Dr. Burch notes he has a high potential for explosive behavior. For many men in our society, it is much safer to be angry than to display any sadness. Despite all the documentation of the abuses done to him at CSI, for example, there is no mention of James ever expressing sadness.

230. The only real “intimacy” James saw with his parents was based in them arguing with each other. Having only that experience be modeled for him made it very difficult for him to pursue intimacy, because he would have seen intimacy as dangerous.

231. *Survivors who do not receive treatment carry around a significant amount of shame and hopelessness.*

232. James suffered from significant shame and hopelessness throughout his life. His childhood was devoid of any sense of warmth or caring from either parent or his siblings, and in fact the reverse was true. The message he learned was that he doesn’t deserve to be valued. When he ran away, rather than any social service agency taking the time to find out what was wrong, he was labeled as a delinquent, furthering his shame and hopelessness. He then is sent to a foster home where he is treated as “the help” and is a victim of multiple instances of sexual trauma, further cementing his lack of worth.

233. When Dr. Sherman was conducting his mitigation interview and testified on 4/25/78, he testified that when he asked James about how he felt about being accused of a crime that could carry the death penalty, James said “What difference does it make, I’m dead already.”

234. *Survivors who do not receive treatment who are feeling shame may also exhibit symptoms of hypervigilance.*

235. Dr. Fitzgerald in his testimony on 6/13/78 stated James sees all people as evil, greedy, self-serving, exploitative and rapacious. In other words, he had been so scarred that he trusted no one and believed it was him against the world.

236. Dr. Burch in her 1998 testimony also indicated as a result of his emotional and sexual traumas, as well as his brain dysfunctions and impairments, may have problems with inaccurately perceiving threats.

237. *It is known that the earlier the sexual abuse of a boy, the more likely it is he will develop significant aftereffects. (Hunter, 1990; Gartner, 1999)*

238. James's abuse began as a very young child, with his mother engaging in covert sexual abuse. This abuse was extremely embarrassing to him.

239. *Another outcome of untreated trauma is the development of Post-Traumatic Stress Disorder (PTSD) (Gartner, 1999). The diagnostic criteria for a PTSD diagnosis as outlined in the DSM-IV (1994) are as follows:*

240. *Criterion A: Person experiences a traumatic event*

James witnessed serious violence and experienced physical abuse and actual sexual violence. These were threats to his physical integrity. The DSM-IV made it clear that repeated violations such as in verbal abuse, physical abuse, emotional abuse and sexual abuse met the criteria for A. In addition, they specified regular intrusion and violation, both physical and psychological, as in bullying, harassment and domestic violence.

241. *Criterion B: The traumatic event is persistently re-experienced*

James experiences significant emotional distress during his abuse and when reminded of his abuse. An example is watching the movie Shawshank

Redemption which was very triggering. As I conducted the FETI, James hesitated many times to answer my questions, and appeared to be in significant psychological distress.

242. *Criterion C: Persistent Avoidance of stimuli associated with the trauma*

James avoids talking about or even thinking about most of the traumatic experiences he has endured. He exhibited markedly diminished interest or participation in significant activities, and often spent time alone. He felt and was detached from others. He has a restricted range of affect.

243. *Criterion D: Persistent symptoms of increased arousal*

James exhibited irritability and outbursts of anger. He had difficulty concentrating. He exhibited signs of hypervigilance.

244. *Criterion E: Duration*

James's symptoms have lasted for more than one month.

245. *Criterion F: Functional significance*

James's symptoms have created distress and significant functional impairment. As Dr. Burch testified, he has a lifelong history of poor performance in most areas of his life.

246. James met the criteria for Post-Traumatic Stress Disorder in 1998 at the time of his trial.

247. It is very significant that at no time was James ever diagnosed with PTSD. To me, this is a significant failure of my colleagues who never took the time to put all the pieces together, and were satisfied to wrongly label James as anti-social instead (see points 249-256 below)



248. The lifetime prevalence of PTSD in the general population is 7.3% and 9.1% among persons exposed to traumatic events (Roberts, Gilman, Breslau, Breslau, & Koenen, 2011). For as many as 42% of individuals who develop PTSD, the disorder becomes chronic, with symptoms persisting years after exposure to the index trauma (Cogle, Resnick, & Kilpatrick, 2013). One possible explanation for chronic PTSD is that post-traumatic stress (PTS) symptoms heighten the risk for further traumatic events that, in turn, perpetuate or exacerbate PTSD over time.
249. *Another very common diagnosis for men and women who never received treatment for sexual traumas as well as serious other traumas is Borderline Personality Disorder. Below are the criteria which fit James's history:*
250. A pattern of unstable relationships. He wanted to be liked by his parents, his siblings, and the kids in the neighborhood and at school, and in the juvenile justice system. He would look up to kids and think they were his friends, only to find out they were rejecting him and targeting him for bullying. In response, he would act out toward them and be provocative, which would lead to further abuse. When I think about his history at CSI and all the problems he encountered there, he was behaving in classic borderline fashion. They conceptualized it as anti-social, but given his history, it is much more accurate in my professional opinion to diagnose it as borderline behavior. I suspect some of the correctional staff may also have reacted to these features in his personality, leading them to act in abusive ways toward him, such as the incident in which he fell off the toilet at the Ohio Pen in February, 1973. The nurse said, "There is nothing wrong with you fool." The officers sprayed him with mace twice when he was screaming for help. It is very common that



treatment providers can get very frustrated with a person with this disorder.

251. Identity disturbance: This is documented in Dr. Burch's report that he suffered from markedly and persistent unstable self-image and sense of self.
252. Impulsivity in at least two areas that are potentially self-damaging: He engaged in abusing alcohol, and would engage in criminal behavior at the urging of boys in the neighborhood to fit in.
253. Affective instability: In the CSI records especially, James goes from being polite and cooperative to being disrespectful and provoking fights. He goes from following the rules and being respectful of others to being a rule-breaker and disrespectful.
254. James talked with me about how he has had chronic feelings of emptiness, goal-less, and just living from day to day. This has been true his whole life. He's never had much of anything to look forward to.
255. James has at times had difficulty controlling his anger, including the documentation of many temper tantrums at CSI.
256. In my professional opinion, if I was diagnosing James in 1998, I would have diagnosed him with Borderline Personality Disorder, not Anti-Social Personality. He was engaging in the pattern of behaviors described there, however, I believe they are rooted in his untreated trauma.

#### **X. Expert Knowledge about Male Sexual Victimization known in 1998, at the time of James Hanna's trial**

257. James Hanna was tried in 1998, convicted, and sentenced to death. By the time of his trial, there was a significant amount of knowledge in the field specific to male survivors of abuse. This knowledge is

represented in the literature and resources that were available at that time. The exchange of information was shared among professionals through organizations and conferences. Additionally, there were resources available to survivors of abuse.

258. By 1998, many scholarly books had already been published about the dynamics of male sexual victimization and treatment. Significant professional contributions to the field by that time include:

1. Hunter, M. (1990) *Abused Boys: The neglected victims of sexual abuse*
2. Hunter, M. (1990) *The Sexually Abused Male. Volume 1: Prevalence, impact and treatment*
3. Hunter, M. (1990) *The Sexually Abused Male. Volume 2: Application of treatment strategies*
4. Scarce, M. (1997) *Male on Male Rape: The hidden toll of stigma and shame*

259. The most significant professional self-help book published was in 1990, entitled M. Lew, *Victims No Longer: The classic guide for men recovering from sexual child abuse*.

260. The leading organization that brought together most of the professionals in the field, the National Organization Against Male Sexual Victimization, was founded in 1994 in Columbus, Ohio. It was renamed MaleSurvivor in 2001. Prior to the organization's founding, by 1998, there were five professional training conferences to help all professionals learn about male sexual victimization, starting in 1988. Since the founding of the organization, two more sponsored professional training conferences were also held prior to the Hanna trial. These conferences were known to be one of the primary places that any professional would attend to learn about male sexual victimization, and these conferences attracted many major therapists and researchers in the field from all over the world.

The conference was also a place where all of the most current books were also available for purchase.

**XI. Failures of Schools, Foster Care, Police, Jails, and the Court to be Trauma-Informed and Failure of the Defense to Protect James**

261. Early on in school, he needed glasses, but they didn't know. When he'd ask questions about what was on the board, he was sent out of the room and punished. This was in first grade. He got in a fight with a kid who was picking on him because he didn't have a father, and after that, he couldn't pay attention and became disruptive.
262. Starting in 2<sup>nd</sup> grade, he had black-outs or fainting spells. They told him it was because his belt was too tight, but James believes he was responding from the abuse at home. No one ever took the time to address the abuse, or the impact of the abuse, even when teachers and the school nurse witnessed the bruises from the physical abuse.
263. As noted in point 87 above, school personnel including teachers and nurses were fully knowledgeable about the evidence of the severe bruising he had sustained from his mother. Yet they refused to do anything about it. It may well be that mandatory reporting laws were not in existence at the time, however the severity of the abuse should have risen to the level of calling Child Protective Services in my professional opinion.
264. When he reported the sexual abuse by Mr. Fricke and Thomas to the Washington police and his parole officer, they never documented the report and took no action to hold them accountable. Again, the message James learned from this is that I am not worthy of being protected.

265. He became labeled as an “all-around juvenile” at the Boys Industrial School in 1964; He frequently had problems getting along with other kids, but even when staff noted he didn’t fit on a unit, they did little to protect him or move him to a different situation.
266. These problems were amplified during his stays at CSI (see points 91 and 108) It appears there was no effort at understanding what was beneath his attempts to push other kids away with his behavior, yet it is clear the many childhood traumas he experienced left him feeling very poorly about himself. He adopted the attitude of trying to get rejected before others rejected him. When he complained to supervisors about abuse, they brushed it under the rug and treated it as “horse-play”. Further, he got labeled an informer and squealer which made the abuse worse. Yet it was clear they knew he was on the wrong unit (9-19-92 note: “he is definitely out of place in this setting”) In modern times, such bullying would never be tolerated.
267. Children’s Protective Services had documented the serious maltreatment in the Hanna home, but never took action. It appears there was some attempt to involve Mrs. Hanna, but since she didn’t “cooperate” and denied problems, the case was dropped.
268. In October of 1977 in an intake interview it is noted he received counseling at CSI, the Juvenile Diagnostic Center, The Ohio State Reformatory, and at Lima State Hospital. However, it is noted he never was involved in any ongoing counseling. I never found any records of counseling in the files I reviewed. This again is a significant failure of the system when it was clear that James was a very troubled individual.
269. As indicated in my FETI interview with James, he was also failed by the criminal justice system in protecting him from

sexual abuse and rape, at CSI, the Ohio Pen, Lucasville and Mansfield.

270. Especially egregious is the behavior of Office Scurlock and other prison guards who let known rapists into James's cell (points 170 and 180). Officer Scurlock, according to James, testified in the trial, but his egregious behavior was never addressed.

271. There was a failure on the part of the Psychologists and Psychiatrists called to testify to the mitigating circumstances of the life of James Hanna.

272. One of the most egregious instances of this was testimony by Dr. Sherman who stated the following during James Hanna's first trial:

He mentions he has had numerous homosexual experiences, although these are not the mode of sexual expression that he chooses. Almost always "by attack", in which he was beaten or knocked out and raped while he was in prison. Dr. Sherman pointed out to James he was a fairly good-sized guy and asked why couldn't ward some of this off. James responded: "I never really learned to fight." Dr. Sherman explained his homosexuality as a product of his prison environment and testified that James admitted to no active role in it.

273. What is egregious about this testimony is that Dr. Sherman is completely trauma-ill-informed, and it is unethical and abusive to suggest to James he should have been able to protect himself from a prison rape. It is totally inaccurate to label James as a "homosexual" due to his experiences of prison rape. Rape never defines or causes a person's sexual orientation, and it is clear Dr. Sherman has had no education in trauma or human sexuality.

274. The testimony of Dr. Kathleen Burch comes the closest to be of some limited use in James's mitigation defense.
275. She is the only psychologist to carefully document the brain damage he has suffered and the effects of it, but it appears she hasn't asked enough questions to find out how severe the beatings were that James suffered (see point 85). She attributes the brain damage to falls, fights and accidents, but fails to attribute beatings with a vacuum hose and doughnut paddle as contributing. I suspect she did not ask enough questions to find out the extent of the abuse.
276. To describe his mother as having engaged in "poor parenting" is grossly minimizing. In my professional opinion, she minimized the impact of what she documents as substantial adverse childhood experiences.
277. She documents depression, but then minimizes its role in James's malfunctioning, or in his diagnosis.
278. She references his sexual abuse as being unsubstantiated, yet as a psychologist she had the ability to discuss with James the numerous sexual traumas he had suffered, but it appears she did not as it is not in her testimony.

## **XII. The Misdiagnosis of James Hanna by Dr. Burch and other mental health professionals**

279. Dr. Burch never diagnoses PTSD (points 239-247) even though James met all the criteria.
280. She gives him the primary diagnosis of anti-social personality disorder. I do not believe given all the records that it is an accurate diagnosis by her or the many other mental health professionals who testified.
281. If I were diagnosing James in 1998, given all the information I have and had I been able to conduct my own

interviews with him, I would have given him the following diagnoses:

282. Axis I: Post Traumatic Stress Disorder  
Major Depression, Recurrent  
Alcohol Abuse
283. Axis II: Borderline Personality Disorder with anti-social features
284. The implications of this misdiagnosis are vast. James was regarded by many to have very little rehabilitative potential because of the Anti-Social Personality Diagnosis. Not only wasn't he given the treatment he needed and deserved, but the underlying causes of his depression, alcohol abuse, and borderline personality disorder were never uncovered and therefore any hope he could have had to achieve a better life and healthy functioning were completely lost. Further, had he been protected from further traumatization by the system, he might have had the opportunity to turn his life around before engaging in the murders which he is now serving time for.

### **XIII. Summary of Findings About James Hanna**

285. I state the following conclusions as my professional opinions as a trauma psychologist, within a reasonable degree of psychological certainty:
286. In summary, James has suffered from Extremely Severe Childhood Trauma and Complex Trauma. I have documented 9 conventional Adverse Childhood Experiences, and expanded ACE's, for a total of 15 Adverse Childhood Experiences. Most of these ACE's were horrific in nature. This remarkable number of ACE's—15 out of a possible total of 17—sets him apart from



a very large majority of other trauma survivors, even from other capital punishment cases in which I have consulted.

287. As indicated above, what is most important to consider with this number is that we know it is the cumulative effect of each of these horrific traumas which have led to James's debilitation as a juvenile and as an adult. I have outlined above 17 outcomes of untreated trauma associated with sexual abuse and other forms of trauma. Each of these outcomes are serious in themselves, and considered cumulatively, it means that James has been severely negatively impacted by the cumulative traumas and the lack of any trauma-informed treatment. This is the essence of the description of the struggles of people with Complex Trauma.

288. As I indicated in point 284, the implications of the misdiagnosis of James are severe. Although he exhibits anti-social features, that should have never been his primary diagnosis or even his diagnosis at all. Instead, he should have been diagnosed with PTSD, Major Depression, Alcohol Abuse and Borderline Personality Disorder.

289. He was abandoned from the time he was a little kid and hardly ever found any adults he could count on. Even when a principal did stand up to help him, his ability to trust was so severely crippled that he couldn't benefit from this one helping hand in a sea of sharks.

290. What is important about a person's ability to cope with trauma is the presence of supportive people in their lives who could help them regain their footing. In almost every case, the adults in his life not only did not provide protection, but indeed contributed mightily to the cascade of trauma he already was facing, by refusing to provide him the protection he needed and deserved. As I indicated above, some professionals knew well how much he was struggling, but either sat on their hands

and did nothing, or worse, exposed him to violent sexual predators.

291. Growing up, he had no healthy role models to teach him about how to cope with life stresses. Each of those potential role models were so dysfunctional themselves that any good they contributed was far outweighed by the additional traumas they foisted on top of James's already vulnerable state.
292. James's coping mechanisms, all unhealthy, further exacerbated his ability to function in the world, and severely compromised his ability to face any new stressor. To make matters worse, James never received the trauma-informed treatment he desperately needed; in fact, he received very little psychological help at all.
293. As I have presented above, the research has clearly demonstrated that a juvenile with high ACE's is highly likely to struggle with recidivism. From a trauma-informed perspective, James's high recidivism rate is a direct and indirect result of his untreated trauma and not his failures as an adolescent or adult.
294. James was failed by the very system that was also supposed to be helping him. When he did disclose his trauma, he most often was shamed, humiliated, brushed aside and unprotected. What this taught him, and, thus, what he learned growing up is that when you ask for help, you will be shamed and humiliated, because you are unworthy of any help or protection. This message was borne out in the trial when the mitigating circumstances of his extremely traumatic life were either minimized, brushed aside, or completely denied and distorted. When he sought welfare, his Parole Officer told the office he needed to find a job, and then offered him no assistance in job hunting when he was out on parole.

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Expert Report Concerning James Hanna

295. If I was asked to present these opinions during his 1998 trial, I would have been able to do so, based on the literature and my training and experience at the time. While the expanded ACE study was not available at that time, the foundational study with the conventional ACE's was indeed available.

*Howard Fradkin, Ph.D., LICDC-CS*  

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Howard Fradkin, Ph.D., LICDC-CS

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DECLARATION

I declare under the penalty of perjury that the foregoing is true and correct.

*Howard Fradkin, Ph.D., LICDC-CS*  
Howard Fradkin, Ph.D., LICDC-

CS Executed: August   j  , 2019

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seeking for post-traumatic stress disorder in the United States. *Psychol Med.*, Jan, 41 (1), 71-83.

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## ***VITA***

### ***HOWARD R. FRADKIN, PH.D., L.I.C.D.C.-CS***

#### **PRIVATE CONSULTING ADDRESS & PHONE**

#### **EDUCATION**

Ph.D., COUNSELING PSYCHOLOGY, University of North Carolina at Chapel Hill, 1980.

M.S., THERAPEUTIC RECREATION, University of North Carolina at Chapel Hill, 1978.

B.S., RECREATION AND LEISURE STUDIES, Temple University, Philadelphia, PA, 1974.

#### **DISSERTATION**

An Exploratory Study of the Specific Effects of Training Counselors to Work with Gay and Lesbian Clients, 1980.

#### **LICENSURE**

Psychologist, Ohio Board of Psychology, Granted October, 1982,  
License #3237

Licensed Independent Chemical Dependency Counselor and Certified Supervisor, Chemical Dependency Professionals Board, Granted 01/14/2005, #933439

#### **CERTIFICATION**

Council for the National Register of Health Service Providers in Psychology, Granted 4/11/84; #33033

***Internationally Certified Alcohol and Drug Counselor***, granted 4/26/11, by the International Certification and Reciprocity Consortium

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**PROFESSIONAL EXPERIENCE**

*Psychologist, Founding Partner, Affirmations Psychological Services, Inc. 1982-2013. Psychologist and Partner Emeritus, 2013-2017. Partner Emeritus, 2018-*

Provided psychotherapy in private practice, primarily serving adults with a variety of psychological problems. Specializations include: Individual psychotherapy, group psychotherapy, couples psychotherapy, male and female survivors of sexual victimization, Gay and Lesbian affirmative psychotherapy, chemical dependency, sexual addiction, AIDS/HIV-related concerns, sexuality & sexual dysfunction, adult children of alcoholics and other dysfunctional families, hypnotherapy, men's issues, women's issues, depression and anxiety disorders, dissociative disorders. Retired from active private practice December 31, 2017.

*Consulting Psychologist and Trainer, 2012-*

Provide expert reports and consultation in legal cases for male and female survivors of childhood and adulthood sexual abuse and other childhood and adulthood traumas across the United States. Experience includes working with Ohio and Federal Public Defender's Offices on death row mitigation cases providing reports and court testimony; accepted as a trauma expert in Ohio courts in five cases; provided expert testimony for a victim of priest abuse. Provide professional, para-professional and public awareness training for the Veteran's Administration, military bases, and sexual abuse agencies about male sexual victimization.

*Psychologist, Trainer, Healthy Minds Group, 2016-2018*

Co-developed a three-part sequential experiential training program for therapists working with men with trauma histories with Jim Struve, LISW. Healthy Minds Group is a national educational organization based in Portland, Oregon.

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*Co-Chairperson, MaleSurvivor Weekends of Recovery Program, 2010-August 2017*

*Leadership Team, MaleSurvivor Weekends of Recovery Program, 2014-August 2017*

*Chairperson, MaleSurvivor Weekends of Recovery Program, 2001- 2009*

*Facilitator Emeritus, MenHealing Weekends of Recovery, 2018-*

Administered and facilitated 3-day intensive experiential Weekends of Recovery for male survivors in the U.S. and Canada for over 1200 male survivors. Supervised a team of 12 psychotherapists who facilitated each weekend experience.

*Co-facilitator , HIV Spectrum Support Group, Columbus AIDS Task Force, October, 1986- December, 1998*

Co-facilitated weekly support group with over 300 men and women over the course of the last nine years. Helped train co-facilitators for other groups.

*Psychologist, Southeast Community Mental Health Center, November 1982- December, 1983.*

Provided adult psychotherapy to variety of outpatient clients, including individual, family and marital, and group psychotherapy. Consulted and helped organize domestic violence program for court referrals. Provided supervision for psychology practicum students.

*Counselor , Southeast Community Mental Health Center, July,1981-October, 1982.*

Provided outpatient psychotherapy to variety of clients. Specialized in alcohol and substance abuse counseling.

*Senior Counselor , State University of New York at Fredonia, August, 1980- June, 1981.*

Provided outpatient counseling as member of small college counseling center staff. Organized structured and unstructured group counseling program. Organized and facilitated workshop program for dormitory residents on a number of mental health topics. Co-facilitated faculty awareness support group. Served as advisor for gay/lesbian student group.

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**PROFESSIONAL EXPERIENCE (continued)**

*Psychology Intern, The Ohio State University Counseling and Consultation Service, September, 1979- June, 1980.*

Full-time psychology internship, APA-approved. Provided individual, couples and group psychotherapy. Trained in a variety of psychotherapeutic approaches.

**PUBLICATIONS**

Struve, J., Beckstead, L. and Fradkin, H.R. (2018) Beyond the gay/straight binary: Gender and/or sexually diverse male survivors. In Gartner, Richard (Ed.). *Understanding the sexual betrayal of boys and men: The trauma of sexual abuse*. NY, NY: Routledge.

Fradkin, H.R. and Struve, J. (2018) Empowering Male Survivors to Heal Through Community and Peer Connections. In Gartner, Richard (Ed.). *Healing sexually betrayed men and boys: Treatment for sexual abuse, assault, and trauma*. NY, NY: Routledge.

Fradkin, H.R., and Rauch, M. (2014) Empowering male survivors who struggle with addiction. *Paradigm Magazine*, pgs 9-11.

Fradkin, H.R., Rauch, M. and Anderson, C.A. (2014) Male survivors of sexual victimization. *Paradigm Magazine*, pgs 8-9.

Fradkin, H.R. (2012) *Joining forces: Empowering male survivors to thrive*. Carlsbad, CA: Hay House.

Hall, A.S. & Fradkin, H.R. (1992) Affirming gay men's mental health: Counseling with a new attitude. *Journal of Mental Health Counseling*.

Fradkin, H.R. (1987) AIDS: New challenge to the counseling psychologist in private practice. Paper presented at the Annual Convention of the American Psychological Association (95th, New York, New York, August 28-September 1, 1987). (Eric Document Reproduction Service N.ED 289-152).

Sher, M., Stevens, M., Good, G., & Eichenfield, G. (Eds). (1987). *Counseling men in the AIDS crisis*. In Handbook of Counseling and Psychotherapy with Men. NY, NY: Sage Publications.



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**ADMINISTRATIVE/ORGANIZATIONAL EXPERIENCE**

PRESIDENT, National Organization on Male Sexual Victimization, January, 1997- December, 1997; Treasurer, 1999- 2001; Board Member, 1995-2001; Advisory Board, 2001-2017.

CHAIRPERSON, Ohio Psychological Association Lesbian, Gay, Bisexual and Transgender Task Force, 2000-2004.

CHAIRPERSON, Ohio Coalition on Male Survivor Issues (1993-1995) and the Chairperson of the Steering Committee, 6th World Interdisciplinary Conference on Male Sexual Victimization. October 5-7, 1995. Columbus, OH.

SUPPORT SERVICES CHAIRPERSON, 1986-1992;

CHAIRPERSON, 1988-1992, Ohio AIDS Coalition.

Served as the statewide coordinator of service providers for this advocacy group. Served as Primary Facilitator of statewide Healing Weekends for HIV Challenged individuals. for 15 Healing Weekends from October, 1987- February 1992. Chaired planning committee for each weekend. Facilitated number of workshops at each weekend, including: Intimacy, Grieving, Humor as Healing, Sexual Addiction and Sexual Healing, Positive Sexual Expression, Spirituality. Consulted with Ohio Dept of Health AIDS unit.

SUPPORT SERVICES ADMINISTRATIVE DIRECTOR, Columbus AIDS Task Force, 1984-1987.

Served as first volunteer administrator of Support Services of this community-based AIDS organization. Tasks included recruitment of administrative staff, organizing and facilitating training of buddy support program volunteers, policy development, supervision of social service advocate, budget development, program administration. Also developed curriculum and provided training for HIV antibody testing and education.

**MEDIA APPEARANCES**

*Oprah Winfrey Presents: After Neverland, HBO/OWN, March 4, 2019.*

*Aaron Klein Show, WABC-Radio, January 13, 2013*

*First Coast Connect, Melissa Ross, WJCT-Radio, January 2, 2013.*

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**MEDIA APPEARANCES (cont'd)**

Globe and Mail. Canadian newspaper. Quoted in article, December 18, 2012.

Change Your Attitude, Joan Hermann, Nationally syndicated radio program, December 11, 2012.

Voices in the Family, Dan Gottlieb, WHYY-Radio,  
December 10, 2012.

Carlette Christmas, NC Radio, On Point, December 10,  
2012.

Bob Barrett, The Health Show, WAMC/NPR, November 20 and 23, 2012.

Male Survivor Conference Examines Sexual Abuse in Sports. **New York Times** Sports Section, November 19, 2012.

Huffington Post Live TV, November 14, 2012

Surviving and Coping with Male Sexual Abuse. All Sides with Ann Fisher, WOSU-FM Radio, November 8, 2012.

Bottom Line's Daily Health News: Male Sexual Abuse-Survivors, Are You Truly Over It? November 8, 2012.

**Katie Couric Show.** Expert with Keyon Dooling. November 8, 2012.

Gary Goldberg, In the Spirit, WRPI-Radio. November  
1, 2012.

Philadelphia Inquirer. Jeff Gammage. September 14,  
2012.

All Sides with Ann Fisher. Focus on the Jerry Sandusky trial. WOSU-FM Radio. June 20, 2012.

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**MEDIA APPEARANCES (cont'd)**

Penn State Scandal: Parents Beware. **Dr. Phil Show**, appeared as the expert on the show. November 16, 2011.

The Penn State Scandal. All Sides with Ann Fisher. WOSU-FM Radio, November 14, 2011.

The Gayle King Show, Penn State Scandal, November 14, 2011.

Assisting Male Survivors of Sexual Violence. Office for Victims of Crime HELP for Victim Service Providers Web Forum, August 31, 2011.

TAALK Radio. Show on Male Survivors of Sexual Abuse, hosted by Diane Cranley. April 29, 2011. Appeared with Simon Weinberg and Kathy Barbini, Big Voice Pictures.

On Point Radio With Tom Ashbrook. Show on Senator Scott Brown and Male Sexual Abuse. February 11, 2011. Appeared with Mikele Rauch, MFT.

***The Oprah Winfrey Show, 200 Men***: Male Survivors of Sexual Abuse, 2-part show aired on November 5 and November 12, 2010. Appeared as the only expert on the show speaking about the dynamics of male survivors and abuse recovery. Chicago, Il.

**PROFESSIONAL, PARAPROFESSIONAL AND MILITARY PUBLIC AWARENESS TRAININGS**

Now is the Time for Us: Prioritizing Your Self-Care. Co-presented with Cathy McDaniels-Wilson. The Ohio Psychological Association 2019 Convention, Columbus, Ohio. April 25, 2019.

Engaging Males to Heal from Trauma. Sponsored by Training for the Mind. Portland, OR. January 12, 2017. Clark County, WA. May 8, 2017. Seattle, WA, September 12, 2018.

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**PROFESSIONAL, PARAPROFESSIONAL AND MILITARY PUBLIC AWARENESS TRAININGS (cont'd)**

Retaining Males in the Ongoing Process of Healing from Trauma. Sponsored by Training for the Mind. Portland, OR. February 13, 2017. Clark County, WA. July 18, 2017. Salem, OR November 15, 2017, Mt. Vernon, WA Behavioral Health Organization, November 15, 2018.

Special Therapeutic Issues When Working with Male Trauma Survivor. Sponsored by Training for the Mind. Portland, OR. March 22, 2017. Clark County, WA. August 30, 2017, Salem, OR October 25, 2018.

Breaking the Silence of Male Sexual Trauma in the US Military: Aim High to Enhance Trust, Character and Mission Readiness. US Air Force Academy. Colorado Springs, CO. April 12, 2017

Breaking the Silence: Male on Male Sexual Assault. Joint Base Fort Sam Houston Sexual Assault Awareness and Prevention Month. San Antonio, TX. April 19, 2017.

Breaking the Silence of Male Sexual Trauma in the Military: Do Your Part to Enhance Trust, Character and Mission Readiness. Camp Atterbury Sexual Assault Awareness Prevention Month Training. Edinburgh, IN. April 24, 2017.

Understanding and Supporting Male Survivors of Sexual Victimization. Indiana Coalition Against Sexual Assault. Indianapolis, IN. September 15, 2016.

Breaking the Silence: Healing the Shame of Male Survivors of Military Sexual Trauma. Blanchfield Army Community Hospital (BACH), Sexual Harassment Assault Response Program (SHARP), Fort Campbell, Kentucky. 3 hour training for Behavioral Health Providers and 3 hour training for SARC's/VA's. September 8, 2016.

Healing the Shame of Male Survivors of Military Sexual Trauma. Teleconference for Region 4A, Mountain Region, Veteran's Administration Military Sexual Trauma Counselors. April 14, 2016

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**PROFESSIONAL, PARAPROFESSIONAL AND MILITARY PUBLIC  
AWARENESS TRAINING (cont'd)**

Exquisite Self Compassion: A Key for Thriving for Survivors. With Rob Hawkings. 74<sup>th</sup> Annual Conference of the American Society for Group Psychotherapy and Psychodrama. Phoenix, AZ. April 2, 2016.

Healing the Shame of Male Survivors of Military Sexual Trauma. Army Special Forces, Ft. Bragg, NC. November 20, 2015.

Healing the Shame of Male Survivors of Military Sexual Trauma. With Lynne MacDonell. Minnesota Army and Air National Guard. Minneapolis, MN. November 18, 2015.

Healing the Shame of Male Survivors of Military Sexual Trauma. Great Lakes Naval Station. North Chicago, Illinois. September 21 and December 7, 2015.

Healing the Shame of Male Survivors of Military Sexual Trauma. US Army Africa Sexual Assault Summit for Junior and Senior Commanders. Vicenza, Italy. Oct 6-7, 2015.

Healing the Shame of Male Survivors of Military Sexual Trauma. National Guard Annual Conference-Training for SARC's and VA's. Leesbury, VA. May 12, 2015.

Male on Male Sexual Assault. JFHQ-NCR/Assault Response and Prevention Conference. Military District of Washington Sexual Assault Conference. Ft. Belvoir, VA Officer's Club. May 7, 2015.

Breaking the Silence: Healing the Shame of Male Sexual Trauma Survivors. Beausejour Family Crisis Resource Centre. With Lynne MacDonell. Moncton, New Brunswick, Canada. April 20, 2015.

Breaking the Silence: Healing the Shame of the Male Veteran's Sexual Trauma. Chalmers P. Wylie VA ACC, Columbus, OH. April 6, 2015.

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**PROFESSIONAL, PARAPROFESSIONAL AND MILITARY PUBLIC AWARENESS TRAININGS (cont'd)**

Breaking the Silence: Healing the Shame of the Male Veteran's Sexual Trauma. Louis Stokes Cleveland VAMC, Cleveland, OH. April 2, 2015.

Sculpting Challenges and Strengths in Relationship. Co-presented with Rob Hawkings, MA, MES, MBA. 73<sup>rd</sup> Annual Conference of the American Society for Group Psychotherapy and Psychodrama, Philadelphia PA. Apr. 2015

Ending Isolation, Finding Hope and Creating Community to Heal.

Presented at 14<sup>th</sup> International MaleSurvivor Conference. Newark, NJ. October 31, 2014.

Exquisite Compassion: A Key to Thriving. Presented at 14<sup>th</sup> International MaleSurvivor Conference. Newark, NJ. November 2, 2014.

Breaking the Silence: Healing the Shame of the Male Veteran's Sexual Trauma. Webinar for the National Military Sexual Trauma (MST) Support Team, Veteran's Administration. June 5, 2014.

Empowering Survivors of Sexual Abuse. Co-presented with Rob Hawkings, MA, MES, MBA, and Bill Burmester MA, MFT. 72<sup>nd</sup> Annual Conference of the American Society for Group Psychotherapy and Psychodrama, Oakland, CA. April, 2014.

Breaking the Silence, Healing the Shame of Male Survivors of Sexual

Victimization. 18<sup>th</sup> Interpersonal Violence, Abuse and Trauma Conference. Plenary workshop presented with Christopher Anderson. September 10, 2013. San Diego, CA.

Empowering Male Survivors to Break Their Silence. National Child Protection Training Center; When Words Matter: Emerging Issues in Forensic Interviewing. August 1, 2013. Columbus, Ohio.

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**PROFESSIONAL, PARAPROFESSIONAL AND MILITARY  
PUBLIC AWARENESS TRAININGS (cont'd)**

Surviving Male Sexual Abuse –Patterns, Care, and Case Study: Plenary  
Session for the 13<sup>th</sup> Annual Child Abuse Conference, Child Abuse Training  
Services Program, Prosecuting Attorneys Association of Michigan. June 19,  
2013. Traverse City, Michigan.

Great Lakes Bay Male Survivor Task Force Professional Training. April  
30, 2013. Midland, Michigan.

In the Wake of the Penn State Scandal. Keynote Plenary Panel Member.  
Ending Violence Against Women International Conference, April 2013.

Empowering Male Survivors to Thrive in the Aftermath of Sexual  
Abuse Scandals. Sponsored by The Ohio State University School of  
Social Work. February, 2012.

Male Survivors of Sexual Abuse. Sponsored by the Central Ohio  
Psychological Association. August 26, 2011. Columbus, OH.

Invisible Survivors: The Legacy of Male Sexual Trauma: Implications for  
Mental Health Clinicians and other Health Care Providers. Sponsored by  
Boston Area Rape Crisis Center. April 8, 2011, Boston, Massachusetts.

Keynote Address: Dare to Dream: The MaleSurvivor Weekends of  
Recovery: Creating Community One Weekend at a Time, The MaleSurvivor  
International Conference, March 2010, New York City.

**IN-SERVICE TRAINING  
EXPERIENCE**

Breaking the Silence, Healing the Shame of Male Survivors of Sexual  
Victimization. With Jim Struve. Provided to the Penn State Counseling  
Service, April, 2012.

Sculpting in Group Psychotherapy and Training—Provided to The Ohio  
State University Counseling and Consultation Service, May, 2002.



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**IN-SERVICE TRAINING  
EXPERIENCE (cont'd)**

Sexual Addiction Recovery--Provided training to the Columbus Health Department staff of HIV/AIDS counselors and outreach workers, 1997; Provided training to The Ohio State University Counseling and Consultation Service clinical staff, 2000.

AIDS and Mental Health -- Presented over 15 workshops to various agencies, including Franklin County Alcohol, Drug and Mental Health Board; North Central Mental Health Center; Maryhaven Inc.; Southeast Community Mental Health Center; Grant Hospital; Riverside Methodist Hospital; The Ohio State University Counseling and Consultation Service; The Ohio State University Medical School; 1986-1994.

Gay and Lesbian Affirmative Psychotherapy-- Provided various workshops for The Ohio Department of Health AIDS Activities Unit; Franklin County Alcohol, Drug and Mental Health Board; The Ohio State University Counseling and Consultation Service; The Ohio State University Medical School; 1991-1994.

**CONTINUING EDUCATION EXPERIENCE**

Working Together to Build A Culture of Understanding. The Ohio Psychological Association 2019 Spring Convention. April 25-26, 2019. 10 hours; 7 ethics credits.

Complex Trauma and LGBTQI+ Clients: Ethical and Clinical Competencies. Ohio Psychological Association, June 25, 2018. Columbus, OH. 6 hours.

Introduction to the Forensic Experiential Trauma Interview. CertifiedFETI.com. June 11, 2018. Columbus, OH. 16 hours.

Star Behavioral Health Providers Evidence Based Psychotherapy. June 16, 2016. 13.50 hours.

Star Behavioral Health Providers Military Sensitivity Training for Civilian Professionals. Tier Two Training. March 23-24, 2016. Cincinnati, OH 18 hours.

Star Behavioral Health Providers Military Culture Training for Civilian Professionals. Tier One Training. March 3, 2016. Akron, OH. 8 hours

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**CONTINUING EDUCATION EXPERIENCE (cont'd)**

American Group Psychotherapy and Psychodrama Conference. April 9-12, 2015. Philadelphia, PA 15 hours

MaleSurvivor 14<sup>th</sup> International Conference. Oct 31-Nov 2, 2014.  
Newark, NJ. 16 hours.

Practicing Telepsychology In Ohio. Sept 26, 2014. Columbus, OH. 3 hours.

American Society of Group Psychotherapy and Psychodrama 72<sup>nd</sup> Annual Conference. April 3-6, 2014. Oakland, CA. 27.75 hours.

A Paradigm Shift: The Forensic Experiential Trauma Interview (FETI).  
Presenter Russell Strand. End Violence Against Women International  
Webinar, August 22, 2013.  
1.5 hours

Ending Violence Against Women International Conference, Baltimore,  
Maryland. April 3-5, 2013. 11.25 hours.

MaleSurvivor International Conference, New York, NY. November 15-18, 2012. 24 hours.

Ethical Boundary Considerations. The Ohio Psychological Association.  
Columbus, OH. June 9, 2010. 3 hours.

Healing and Hope. MaleSurvivor International Conference, New York, NY.  
March 18- 20, 2010. 20 hours.

Religious and Spiritual Abuse. The Ohio Psychological Association.  
Columbus, OH. June 5, 2009. 6 hours.

Psychology, Policy and Politics. The Ohio Psychological Association.  
Columbus, OH. October 31, 2008. 1 hour.

Addressing Medication Abuse and Mis-Use. The Ohio Psychological  
Association. Columbus, OH. October 31, 2008. 3 hours.

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**CONTINUING EDUCATION EXPERIENCE (cont'd)**

Treating LGBT Clients When You're Not. The Ohio Psychological Association. Columbus, OH. October 31, 2008. 3 hours.

Denial Management Counseling. The Cenaps Corporation. Spring Hill, FL. November 16, 2007. 14 hours.

Clinical Supervision. Association for Advanced Training in the Behavioral Sciences. Online Study Course. November 9, 2006. 10 hours.

Ecstasy (MDMA) Abuse: Current Research. Association for Advanced Training in the Behavioral Sciences. Online Study Course. October 27, 2006. 3 hours.

Anabolic Steroid Abuse. Association for Advanced Training in the Behavioral Sciences. Online Study Course. October 26, 2006. 2 hours.

A Body to Die For: Advanced Training in the Treatment of Eating Disorders and Body Image Disturbance in Women. The Renfrew Center Foundation. Columbus, OH. April 7, 2006. 6 hours.

Psychopharmacology and Psychotherapy. The Institute for Dynamic Psychiatry and Psychotherapy. Columbus, OH. February 24, 2006. 3.5 hours.

Boundaries and Boundary Violations in Psychotherapy. The Institute for Dynamic Psychiatry and Psychotherapy. Columbus, OH. February 24, 2006. 3 hours.

**HONORS**

Award of Excellence, Ohio Psychological Association, April, 2019.

Albert Nelson Marquis Lifetime Achievement Award, October, 2018.

Columbus Mayor's Commendation for Male Survivor Recognition Day. November, 2012.

Biltmore Who's Who, December, 2010.

Faye Honey Knopp Award, November 2007, awarded by MaleSurvivor, for outstanding contributions to the field of treatment for male abuse survivors.

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**HONORS (cont'd.)**

Association for Gay, Lesbian and Bisexuals Issues in Counseling  
(AGLBIC) Legacy Inaugural Fellow, March, 2007

Who's Who In the World, 2006.

Achievement Award for Public Interest, Ohio Psychological Association,  
2005.

Nationwide Register of Who's Who in Executives and Businesses, 2002.

President's Award of Appreciation of Service, National Organization On  
Male Sexual Victimization, 2001.

Ohio Psychological Association Special Projects Award, 2001.

Stonewall Union Gay, Lesbian and Bisexual Community Leadership  
Award, 1997. American Directory of Who's Who, 1997-1998, 1988.

Spirit of Healing Award, Ohio AIDS Coalition Leadership Award,  
1996.

Who's Who in Medicine and Healthcare, 1997-1998.

Who's Who of Emerging Leaders in America, 1992, 1990,  
1988.

Ohio Department of Health Director's AIDS Service Award,  
1988.

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>JAMES GALEN HANNA,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	<b>No. 3:19-cv-00231-TMR-MRM</b>
<b>vs.</b>	)	
	)	<b>DEATH PENALTY CASE</b>
<b>TIM SHOOP, WARDEN</b>	)	
	)	
<b>Respondent.</b>	)	

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**DECLARATION OF JAMES HANNA**

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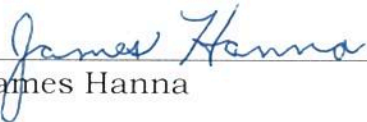
1. I am James Galen Hanna.
2. In my state post-conviction proceedings, I was represented by attorneys from the Office of the Ohio Public Defender, including Susan Roche.
3. In federal habeas corpus proceedings filed in 2003, I was later represented by attorneys from the Ohio Public Defender, and Susan Roche was on my case.
4. During those federal habeas proceedings, none of my federal attorneys from the Ohio Public Defender informed me that the Ohio Public Defender may have failed to raise issues during my post-conviction proceedings, and no attorney told me about any such issues.
5. Just before my case was transitioned to attorneys Kate McGarry and David Doughten, attorney Tyson Fleming told me that the Ohio Public Defender needed to get off the case because of a conflict of interest.
6. That was the first time I was ever told about a conflict of interest.
7. During my earlier federal habeas corpus proceedings, no attorney ever asked me to waive any conflict of interest of the Ohio Public Defender.
8. Also, no attorney from outside the Ohio Public Defender ever advised me whether the Ohio Public Defender had a conflict of interest, or whether I could or should waive any conflict.
9. I have never waived, nor have I ever intended to waive, any conflict the Ohio Public Defender or its attorneys have had in my case in federal court.

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10. In my federal habeas proceedings, I have always wanted all my issues raised.

11. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: August 15, 2019

  
James Hanna



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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

<b>IN RE:</b>	)	<b>No. 19-3881</b>
	)	
	)	<b>Capital Case</b>
	)	
<b>JAMES GALEN HANNA</b>	)	<b>Execution Date:</b>
	)	<b>December 11, 2019</b>

**MOTION TO REMAND**

In the United States District Court, James Galen Hanna filed a numerically second petition for writ of habeas corpus that is not a “second or successive” habeas petition under 28 U.S.C. §2244, because it is not an “abuse of the writ.” *Hanna v. Shoop*, S. D. Ohio No. 3:19-cv-231, ECF 1, PageID 1-62 (petition) (attached); ECF Nos. 1-1 through 1-23, PageID 63-596 (petition exhibits).

This Court has held in *In re Bowen*, 436 F.3d 699 (6th Cir. 2006) that a second-in-time petition is a “second or successive” petition only if it constitutes an “abuse of the writ.” *Id.* at 704. Hanna has not abused the writ. Rather, Hanna’s current petition contains non-abusive claims that were not raised or fully litigated during his first federal habeas proceeding, because initial federal habeas counsel from the Office of the Ohio Public Defender (OPD) suffered a conflict of interest.

Indeed, OPD previously represented Hanna in state post-conviction proceedings, but at that time procedurally defaulted his current ineffective-assistance-of-trial-counsel claims by failing to raise them. In federal court, OPD counsel thus had a conflict of interest: OPD counsel could not (and did not) raise claims that OPD earlier defaulted in state court while alleging OPD’s

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ineffectiveness in state court as cause for the default, as Hanna does now. See *Martinez v. Ryan*, 566 U.S. 1 (2012).

The United States Magistrate agreed that Hanna simply has not abused the writ. *Hanna v. Shoop*, S. D. Ohio No. 3:19-cv-231, Magistrate's Transfer Order, ECF No. 17, PageID 725 (agreeing that under abuse of the writ doctrine, "it would be proper to find the instant Petition is not an abuse of the writ"). That is correct, given initial habeas counsel's conflict of interest. Nevertheless, the Magistrate and District Judge have refused to consider Hanna's non-abusive petition as a first petition, instead contending that Hanna's non-abusive petition might still be a "second or successive" petition under 28 U.S.C. §2244. Magistrate's Order, ECF No. 17, PageID 725-26; District Judge Order, ECF No. 20, PageID 744-45.

Respectfully, the Magistrate and District Judge have erred. This Court has uniformly held that if a second-in-time habeas petition does not constitute an abuse of the writ, it is by definition *not* a "second or successive" petition within the meaning of 28 U.S.C. §2244. Under *In re Bowen* and its progeny, Hanna's non-abusive petition is not "second or successive," and it must be adjudicated using the standards governing any first-in-time petition.

This only makes sense. Hanna was entitled to one full and fair opportunity in federal habeas to raise and litigate the claims contained in his current petition. Having been denied that opportunity because he was given conflicted counsel who could not fully represent his interests (and who did not disclose their conflict

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to Hanna until after the first habeas proceedings concluded), Hanna is entitled now to that first opportunity to secure federal habeas relief.

This Court, therefore, should conclude that Hanna's petition is not a "second or successive" petition within the meaning of 28 U.S.C. §2244 and that Hanna does not require authorization to file his petition in the District Court. See 28 U.S.C. §2244(b)(3). This Court should remand this matter to the District Court for the Court to adjudicate Hanna's petition on its merits. See *Bowen, supra*.

**I. James Hanna Has Filed A Second-In-Time Petition That Raises Claims That Initial Federal Counsel Could Not, And Did Not, Raise For Hanna During The Course of Hanna's Initial Federal Habeas Proceedings Given Habeas Counsels' Conflict Of Interest**

In the District Court, James Hanna has filed a petition for writ of habeas corpus that contains four ineffective-assistance-of-trial-counsel claims that were neither raised in state post-conviction proceedings, nor raised or litigated in his initial federal habeas proceedings. *Hanna v. Shoop*, S. D. Ohio No. 3:19-cv-231, ECF No. 1, PageID 1-62. Those claims for relief are:

(1) Trial counsel ineffectively failed to conduct neuroimaging to prove the nature and extent of James Hanna's brain damage at sentencing, an especially prejudicial error where the prosecution faulted the defense psychologist for not proving brain damage through scientific testing. See *Id.*, Claim IV.A, ¶¶44-80, PageID 19-31; ECF No. 1-20, PageID 465-67 (sworn declaration of Ohio State University neurologist Douglas Scharre, M.D., establishing that given Hanna's history of headaches,

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blackouts, and head injuries, neuroimaging is an appropriate diagnostic and confirmatory tool to show nature and scope of Hanna's brain damage);

(2) Trial counsel ineffectively failed to investigate and present mitigating evidence that James Hanna was the lifelong victim of severe sexual abuse and complex trauma, which precipitated severe mental illness, including post-traumatic stress disorder, major depression, and borderline personality disorder. *See* Petition, Claim IV.B, ¶¶81-108, ECF No. 1, PageID 31-39; ECF No. 1-22, PageID 523-80 (sworn report of Howard Fradkin, Ph.D., detailing the extraordinary adverse childhood experiences (ACEs) and trauma endured by Hanna over his lifetime, including being gang raped as a child, sexually abused by a pedophilic foster father, raped and beaten when imprisoned, and discussing Hanna's resulting mental illnesses);

(3) Trial counsel ineffectively failed to present mitigating evidence of Hanna's serious mental disorder resulting from his brain injury. *See* Petition, Claim IV.C, ¶¶109-117, PageID 40-43.

(4) The cumulative effect of trial counsel's errors set forth in Claims IV.A through IV.C denied Hanna the effective assistance of counsel and violates the Eighth and Fourteenth Amendments. *Id.*, Claim IV.D, ¶¶118-121, PageID 43.

As James Hanna has asserted in his petition, these claims were never raised in post-conviction proceedings (and thus procedurally defaulted for purposes of federal habeas corpus review), because post-conviction counsel

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ineffectively failed to recognize or raise such claims. *See* Petition, ECF No. 1, ¶28, PageID 14; *Id.*, ¶¶ 70-72, PageID 27-28 (Claim IV.A); *Id.*, ¶107, PageID 38-39 (Claim IV.B); *Id.*, ¶116, PageID 41-42 (Claim IV.C); *Id.*, ¶121, PageID 43 (Claim IV.D). Further, none of Hanna's current claims were raised or litigated during his initial federal habeas proceedings, because federal habeas counsel suffered a conflict of interest that undermined their ability to raise and litigate such claims. *See Id.*, ¶28, PageID 14.

The fundamental problem with Hanna's initial federal habeas proceedings was that he was represented in those proceedings by the Office of the Ohio Public Defender (OPD), Ohio Public Defender David Bodiker, and Bodiker's assistants – including Assistant Public Defender Susan Roche. *See* Petition, ECF No. 1, ¶¶25-28, PageID 12-14; Initial Federal Habeas Petition, ECF No. 1-5, PageID 123-73; Motions to Substitute and Withdraw, ECF No. 1-6, PageID 174-78.

In state post-conviction proceedings, however, OPD, Bodiker, Roche, and OPD Assistant Public Defender Kathryn Sandford had earlier represented Hanna. Petition, ECF No. 1, ¶21, PageID 12; State Post-Conviction Petition, ECF No. 1-1, PageID 108; State Post-Conviction Motion for Discovery, ECF No. 1-2, PageID 109-19; Declaration of Susan M. Roche, Esq., ECF No. 1-3, PageID 120-21; Declaration of Kathryn Sandford, Esq., ECF No. 1-4, PageID 122. In those state proceedings, OPD, Bodiker, Roche, and Sandford failed to raise (and thus defaulted) the very ineffective-assistance-of-trial-counsel claims that Hanna raises now for the first time in his second-in-time federal habeas petition. State Post-Conviction Petition, ECF No. 1-1, PageID 63-108.

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In Hanna's initial federal habeas corpus proceedings, therefore, OPD, Bodiker, Roche, and OPD attorneys suffered a conflict of interest. As initial federal habeas counsel, they were unable to raise new claims that they had failed to raise in state court (which *ipso facto* would have called into question their own errors and those of OPD), or to otherwise allege that they themselves and/or OPD had ineffectively represented Hanna in state court proceedings – a legal predicate for overcoming the failure to raise such claims in state court. *See Martinez v. Ryan*, 566 U.S. 1 (2012).

That Hanna's initial federal habeas counsel suffered a conflict of interest is eminently clear, as Hanna has set out in his petition. *See* Petition, ECF No. 1, PageID 45-51. In federal court, OPD counsel were materially limited by their own personal interests: All counsel had an interest in not challenging the state court representation of Mr. Bodiker (the Ohio Public Defender himself and their boss), who was counsel in both state and federal court; in federal habeas proceedings, Susan Roche herself had a personal interest in not challenging her own actions in state court; and all OPD counsel who represented Hanna in initial federal habeas proceedings also had personal interests in not undermining their boss or their own firm, and in not attacking their legal partners.

James Hanna has emphasized the ethical rules and case law which prove the conflict of interest suffered by initial federal habeas counsel. *See* Petition, ECF No. 1, PageID 49-50, *citing cases*. *See also* Ohio R. Prof. Cond. 1.7. As noted below, Hanna's situation in federal court was wholly untenable: The annals of law contain no situation in which attorneys associated in a firm have taken over

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a case from other attorneys in their firm and then alleged the malpractice of their partners and firm in the representation of the firm's client. *See* Response to Motion to Transfer, ECF No. 15, PageID 705-07.

Moreover, the proof is in the pudding that there was a conflict. After Hanna's initial habeas proceedings had concluded, federal counsel from OPD maintained that Hanna needed new counsel because Hanna could allege the ineffectiveness of post-conviction counsel at OPD in support of claims for relief. *See Martinez v. Ryan*, 566 U.S. 1 (2012); *Juniper v. Davis*, 737 F.3d 288 (4th Cir. 2013) (noting that federal habeas counsel cannot raise claims containing allegations of their own ineffectiveness in earlier state court proceedings).

At that point, however, it was too late to ensure Hanna an opportunity to raise the ineffectiveness-of-trial-counsel claims that Hanna raises now. It was not until after Hanna's first federal habeas proceedings had concluded that Hanna was informed that federal counsel had a conflict. Not having been informed of the conflict during the initial habeas proceedings, Hanna obviously never waived any such conflict during those proceedings. *See* Declaration of James Hanna, ECF No. 15-1, PageID 712-13.

Because Hanna was given ethically conflicted counsel for his initial federal habeas proceedings, the question becomes whether his current petition – because it raises claims that were not raised or litigated by conflicted counsel – must be considered as a first petition, or whether it is a “second or successive” habeas petition within the meaning of 28 U.S.C. §2244.



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As he now shows, both as a matter of simple fairness and as a matter of settled law, his petition is not “second or successive,” because his petition is not an “abuse of the writ,” the standard which informs the “second or successive” petition inquiry under 28 U.S.C. §2244.

**II. This Court’s Governing Law In *In Re Bowen* Holds That A Second-In-Time Petition Is “Second Or Successive” Only If It Constitutes An “Abuse of the Writ,” And James Hanna’s Current Petition Does Not Constitute An Abuse Of The Writ And Is Therefore Not “Second or Successive”**

To determine whether James Hanna’s petition is “second or successive,” this Court must apply the foundational law set forth by this Court in *In re Bowen*, 436 F.3d 699 (6th Cir. 2006). *Bowen* holds that this Court must apply “abuse of the writ” principles to Hanna’s petition to determine whether it is “second or successive.” When this Court does so, it must conclude that Hanna’s petition – like Bowen’s petition – is not an “abuse of the writ” and not “second or successive.” Hanna’s petition, therefore, must be remanded to the District Court for adjudication on its merits, exactly as occurred in *Bowen*.

**A. A Second-In-Time Petition Is A “Second Or Successive” Petition Only If It Constitutes An “Abuse of the Writ”**

As this Court stated in *Bowen*, “The Supreme Court has made clear that not every numerically second petition is ‘second or successive’ for purposes of AEDPA.” *Id.* at 704. *Bowen* thus explained that to assess whether a petition is “second or successive,” “[C]ourts defining ‘second or successive’ generally apply abuse of the writ decisions, including those decisions that predated AEDPA.” *Id.*, *citing cases*. “Under the abuse of the writ doctrine,” *Bowen* holds, a numerically

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second petition is ‘second’ when it raises a claim that could have been raised in a first petition but was not so raised, either due to deliberate abandonment or inexcusable neglect.” *Id.*, citing *McCleskey v. Zant*, 499 U.S. 467, 489 (1991). Notably, *McCleskey* pointed out that to determine whether a petitioner has abused the writ, a court must assess “whether [s/]he has a legitimate excuse for failing to raise a claim at the appropriate time.” *Id.* at 490.

In the years since *In re Bowen*, this Court has repeatedly reaffirmed *Bowen* as stating the law of this Circuit, namely that “to determine whether a petition is second or successive, the abuse of the writ standard is applied.” *In re Wogenstahl*, 902 F.3d 621, 627 (6th Cir. 2018), citing *In re Bowen*. See also *In Re Morris*, 2018 U.S. App. Lexis 32167 \*4 (6th Cir. 2018) (same); *In Re Priddy*, 2018 U.S. App. Lexis 27100 \*2 (6th Cir. 2018), citing *In re Campbell*, 874 F.3d 454, 459-60 (6th Cir. 2017) (*per curiam*); *In re Suber*, 2018 U.S. App. Lexis 25107 \*3 (6th Cir. 2018) (same); *In re Campbell*, 869 F.3d 403, 405 (6th Cir. 2017) (same); *In re Landrum*, 2017 U.S. App. Lexis 6035 (6<sup>th</sup> Cir. 2017)(courts rely on abuse of the writ doctrine to analyze second or successive petitions); *In Re Pillette*, 2013 U.S.App.Lexis 25971 \*3 (6th Cir. 2013) (citing *Bowen*); *Lang v. United States*, 474 F.3d 348, 351 (6<sup>th</sup> Cir. 2007) (also citing *Bowen*).

Similarly, in *Askew v. Bradshaw*, 636 Fed. Appx. 342 (6th Cir. 2016), this Court recognized that the Supreme Court has interpreted the phrase “second or successive” “in light of its own decisional law, including pre-AEDPA abuse-of-the-writ principles that asked whether a petitioner already had a full and fair

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opportunity to raise the relevant claim in the district court.” *Id.* at 346, citing *In re Bowen*, 436 F.3d at 704.<sup>1</sup>

In other words, *Bowen* and its Sixth Circuit progeny establish that “second or successive petitions” are those petitions that constitute an “abuse the writ.” These two concepts are equivalent: An abusive petition is “second or successive.” On the other hand, given this equivalence, if a petition is *not* abusive, it is *not*

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<sup>1</sup> The Supreme Court and other circuits likewise apply the abuse-of-the-writ standard to determine whether a petition is “second or successive” under 28 U.S.C. §2244. See e.g., *Panetti v. Quarterman*, 551 U.S. 930, 947 (2007) (second-in-time habeas petition was not “second or successive” when claim had not ripened at time of first petition and petition did not constitute abuse of the writ); *Magwood v. Patterson*, 561 U.S. 320, 346 (2010)(Kennedy, J., Roberts, C.J., Ginsburg, J., Alito, J., dissenting) (“[I]f the petitioner had no fair opportunity to raise the claim in the prior application, a subsequent application raising that claim is not ‘second or successive,’ and §2244(b)(2)’s bar does not apply.”); *Raineri v. United States*, 233 F.3d 96, 100 (1st Cir. 2000) (phrase ‘second or successive petition’ is a term of art designed to avoid abuse of the writ); *Urinyi v. United States*, 607 F.3d 318, 320 (2d Cir. 2009) (“second or successive” defined using abuse-of-the-writ principles); *Muniz v. United States*, 236 F.3d 122, 127 (2d Cir. 2001) (“We . . . answer the question of whether a petition is ‘second or successive’ with reference to the equitable principles underlying the ‘abuse of the writ’ doctrine”); *Benchoff v. Colleran*, 404 F.3d 812, 817 (3d Cir. 2005) (“we look to principles of the abuse of the writ doctrine in defining ‘second or successive.’”); *Crawford v. Minnesota*, 698 F.3d 1086, 1090 (8th Cir. 2012) (“Claims raised in second habeas petitions which would have been barred under the abuse of the writ doctrine are now classified as second or successive.”); *Crouch v. Norris*, 251 F.3d 720, 723 (8th Cir. 2001) (“[I]t is generally acknowledged that the interpretation of ‘second or successive’ involved the application of pre-AEDPA abuse-of-the-writ principles.”); *Goodrum v. Busby*, 824 F.3d 1188, 1193-94 (9th Cir. 2016) (when passing the AEDPA, “Congress did not . . . alter the set of rules federal habeas courts had developed to determine whether a petition is second or successive” and courts therefore apply abuse of the writ principles); *Stanko v. Davis*, 617 F.3d 1262, 1271 (10th Cir. 2010); *Hutton v. Lawrence County*, 717 Fed. Appx. 960, 961 (11<sup>th</sup> Cir. 2018) (“AEDPA’s restrictions on second or successive motions are meant to prevent abuse of the writ of habeas corpus by, for example, ‘barring successive motions raising habeas claims that could have been raised in earlier motions where there was no legitimate excuse for failure to do so.’”)

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“second or successive” for purposes of 28 U.S.C. §2244, and such a petition must be adjudicated on the merits as any other first federal habeas petition – as was the case in *In re Bowen*.

That is precisely the case here: Hanna’s petition is not abusive. Accordingly, Hanna’s petition is not “second or successive,” and it must be adjudicated on the merits by the District Court on remand, as Hanna now explains.

**B. James Hanna’s Petition for Writ of Habeas Corpus Is Not A “Second Or Successive” Petition, Because Through No Fault Of His Own, He Was The Victim Of Conflicted Counsel During His Initial Federal Habeas Proceedings, And He Has Not Abused The Writ By Raising In His Current Petition Claims That Were Not Raised And Fairly Litigated By His Earlier, Conflicted Counsel**

In *Bowen*, this Court concluded that Bowen’s second-in-time petition “was not abusive” and therefore not “second or successive” within the meaning of 28 U.S.C. §2244. This Court reached this conclusion because Bowen was not able to “bring[] his ineffective assistance of counsel claim in his first habeas petition **through no actions of his own.**” *In re Bowen*, 436 F.3d at 705 (emphasis supplied). Consequently, “it is not appropriate to subject [that] petition to the restrictions attendant to a second or successive petition.” *Id.*

That is precisely the situation with James Hanna’s current petition. Hanna was unable to bring his current ineffective assistance of counsel claim in his earlier petition because he was given conflicted counsel: “[T]hrough no actions of his own,” Hanna was thus unable to present and fully and fairly litigate the claims he now presents in this second-in-time petition. Under the direct

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authority of *In re Bowen*, Hanna's petition is not "second or successive." Hanna is not at fault for the failure to raise these claims sooner, and this Court should remand the petition to be adjudicated in the District Court.

Similarly, in *Askew v. Bradshaw*, 636 Fed. Appx. 342 (6<sup>th</sup> Cir. 2016), this Court emphasized that the operative question for assessing whether a numerically second petition is "second or successive" is whether the petitioner had "a full and fair opportunity to raise the relevant claim[s] in the district court" when litigating his first-in-time habeas petition. *Id.* at 346. James Hanna had no such "full and fair opportunity": He was represented by conflicted counsel who could not have raised nor fully litigated his current claims. *Askew* likewise establishes that Hanna's current petition is not second or successive. *See also Magwood v. Patterson*, 561 U.S. at 346 (Kennedy, J., dissenting) (§2244 does not apply to claims raised in a second-in-time petition "if the petitioner had no fair opportunity to raise the claim[s] in the prior application").

*McCleskey v. Zant*, 499 U.S. 467 (1991) leads to the identical conclusion. *McCleskey* holds that a second petition is not abusive when the petitioner "has a legitimate excuse for failing to raise a claim at the appropriate time." *Id.* at 490. Hanna's representation by conflicted counsel is such a "legitimate excuse." Nor, under *McCleskey*, did Hanna deliberately abandon any such claims in his first habeas proceedings. *See Id.* at 489. Rather, Hanna has made clear that he has always wanted his claims fully litigated. Declaration of James Hanna, ECF No. 15-1, PageID 712. This, too, proves that Hanna has not acted with "inexcusable neglect." *McCleskey*, 499 U.S. at 489. There was "neglect" -- but it was the neglect

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by conflicted counsel, making such neglect “excusable” for Hanna under the circumstances.

The United States Magistrate thus correctly concluded that Hanna’s current petition is not an “abuse of the writ.” *Hanna v. Shoop*, S. D. Ohio No. 3:19-cv-231, Magistrate’s Transfer Order, ECF No. 17, PageID 725 (“it would be proper to find the instant Petition is not an abuse of the writ”).

Under *In re Bowen* and its extensive progeny (*See* p. 9, *supra*), that should have ended the matter, requiring adjudication of Hanna’s petition on the merits: Under *Bowen*, Hanna’s non-abusive petition is, by definition, not a second or successive petition under 28 U.S.C. §2244.

The Magistrate and District Judge, however, seemed to think that even though Hanna’s petition is not an abuse of the writ, it somehow could still be considered a second or successive petition. As Hanna has already shown, however, that is not the law of this Circuit. That is manifestly not the law as held in *In re Bowen*, which controls.<sup>2</sup> Hanna has not abused the writ, and therefore

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<sup>2</sup> The Magistrate asserted that *Panetti v. Quarterman*, 551 U.S. 930 (2007) supported a conclusion that a non-abusive petition could still be “second or successive,” but *Panetti* held nothing of the sort. In fact, the Supreme Court’s holding in *Panetti* was that Panetti’s petition *was not* second or successive. With the Supreme Court having held that Panetti’s petition was not second or successive, a court cannot invoke *Panetti* as providing a basis for the exact opposite conclusion that a non-abusive petition could be a second or successive petition. Moreover, the District Judge stated that Hanna had cited no Sixth Circuit law providing “that a petition which satisfies the abuse of the writ doctrine thereby qualifies as a ‘first’ petition.” Order, ECF No. 20, PageID 745. If Hanna understands that statement correctly, he respectfully notes that *In re Bowen* holds precisely that.

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his numerically second petition is not second or successive, and it must be adjudicated under the standards for any first petition.<sup>3</sup>

**III. Conclusion: This Court Should Remand James Hanna's Petition to the District Court For Adjudication On The Merits As A First Federal Habeas Petition**

Under *In re Bowen*, a second-in-time petition is “second or successive” only if the petition constitutes an abuse of the writ. Because James Hanna’s petition does not constitute an abuse of the writ, it is not second or successive, and he does not require authorization under 28 U.S.C. §2244(b)(3)(A) to file his petition and to have his petition adjudicated by the District Court.

This Court, therefore, should remand Hanna’s petition to the United States District Court for the Southern District of Ohio to be adjudicated on its merits. *See e.g., Allen v. Westbrooks*, 700 Fed. Appx. 406, 410 (6th Cir. 2017) (remanding for district court to adjudicate claim, where court of appeals’ authorization was not necessary because petition was not truly a “second or successive” application for habeas relief).<sup>4</sup>

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<sup>3</sup> In his petition, Hanna has further noted that the Office of the Federal Public Defender filed Hanna’s current petition within a year of its appointment, and that previously substituted counsel – like initial federal habeas counsel – also had a conflict of interest. *See* Petition, ECF No. 1, ¶¶38-42 & n.5, PageID 16-18. The District Judge correctly noted that these matters have no bearing on the question whether Hanna’s current petition is “second or successive,” though they may be relevant to any “statute of limitations issue if the Sixth Circuit remands the case.” District Court Order, ECF No. 20, PageID 745. The Magistrate asserted that Hanna had “conflict-free counsel” years ago. Magistrate’s Transfer Order, ECF No. 17, PageID 727. That is not accurate. That occurred only with the substitution of the Office of the Federal Public Defender in 2018.

<sup>4</sup> In *In re Bowen*, 436 F.3d at 705 n. 3, because this Court concluded that Bowen was entitled to proceed on his habeas petition without needing authorization, this Court pretermitted consideration of Bowen’s constitutional



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Respectfully submitted,

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By

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challenges that would arise were he not allowed to proceed on his habeas petition. Hanna has likewise raised constitutional challenges that would arise were he not allowed to proceed on this non-abusive, and thus not “second or successive,” petition. He has alleged that he would be denied due process and equal protection under the Fifth Amendment, and/or have the writ of habeas corpus suspended in violation of Article I §9, and/or it would violate 18 U.S.C. §3599. James Hanna incorporates those arguments in full here as stated in his petition, ECF No. 1, PageID 51 n. 8 and his Response to Motion to Transfer, ECF No. 15, PageID 709 n. 1. He reasserts those constitutional arguments here as necessary, though, as in *Bowen*, those issues will be mooted by this Court simply allowing him to proceed in the district court on his petition without authorization.

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**CERTIFICATE OF COMPLIANCE**

I certify that this motion complies with Fed. R. App. P. 27(d)(2)(A), in that it contains no more than 4136 words.

/s/ **Paul R. Bottei**

Paul R. Bottei

Assistant Federal Public Defender

**CERTIFICATE OF SERVICE**

I hereby certify that on October 2, 2019, I electronically filed the foregoing motion to remand with the Clerk of Court using the CM/ECF system which shall serve this upon all counsel of record.

/s/ **Paul R. Bottei**

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