

**CLEMENCY PETITION
ON BEHALF OF BRIAN KEITH BALDWIN**

I. INTRODUCTION

In a trial which lasted a day and a half, from jury selection through verdict, Brian Keith Baldwin was convicted and sentenced to death in the Circuit Court of Monroe County, Alabama on August 9, 1977. At trial it was alleged that Brian Baldwin, an 18 year old African-American teenager, and Edward Horsley, a 17 year old African-American teenager, had robbed and killed Ms. Naomi Rolon, a 16 year old white girl. The all white jury found Mr. Baldwin guilty and sentenced him to death by electrocution.

On September 7, 1977 Mr. Baldwin appeared before the trial judge in his case, the Honorable Robert E. Lee Key for sentencing. Judge Key could either impose a sentence of life imprisonment without parole or death by electrocution. In a sentencing hearing which lasted less than one hour Judge Key sentenced Mr. Baldwin to death by electrocution.

Mr. Baldwin's co-defendant, Edward Horsley, was tried after Mr. Baldwin and was also convicted and sentenced to death by electrocution. On February 16, 1996 Edward Horsley was executed by the State of Alabama for the robbery and killing of Naomi Rolon.

The Supreme Court of Alabama has set an execution date of June 18, 1999 for Brian Baldwin. Mr. Baldwin now requests that the Governor of Alabama grant him clemency and commute his sentence of death, pursuant to the Governor's authority under Amendment 38 of the Alabama Constitution "to grant reprieves and commutations to persons under sentence of death."

It is respectfully submitted that the Governor should exercise his commutation authority and grant Mr. Baldwin's request for clemency for the following reasons:

- 1) Clemency is the proper remedy to prevent miscarriages of justice when the

- judicial processes have failed;
- 2) In Mr. Baldwin's case there exists evidence, including a statement from Mr. Baldwin's co-defendant, Edward Horsley, which raises a substantial doubt as to Mr. Baldwin's guilt;
 - 3) Mr. Baldwin's trial was fundamentally unfair and not reliable in that the prosecution conducted virtually no investigation concerning Mr. Baldwin's guilt and relied upon a coerced "confession";
 - 4) Mr. Baldwin's trial was fundamentally unfair and not reliable in that Mr. Baldwin was represented by an appointed attorney with no funds who conducted no investigation and who called no witnesses other than Mr. Baldwin;
 - 5) Mr. Baldwin's trial was fundamentally unfair and unreliable in that racial prejudice contributed to Mr. Baldwin being found guilty and sentenced to death. Said racial prejudice included:
 - a) A trial judge who, as a matter of law, was practicing intentional racial discrimination in the performance of his official duties at the time of Mr. Baldwin's trial;
 - b) A prosecutor who, as a matter of law, was practicing intentional racial discrimination in the performance of his official duties at the time of Mr. Baldwin's trial;
 - c) Mr. Baldwin being tried in a county where the population was 46% African-American and where African-Americans were under-represented on grand juries and petit juries by - 31%;
 - d) Mr. Baldwin being tried by an all white jury in a county where the population was 46% African-American and where the prosecutor used 11 of his peremptory strikes to exclude every African-American juror from Mr. Baldwin's jury; and
 - e) Mr. Baldwin being represented by an appointed attorney who failed to object to the racial discrimination in his case including being tried by an all white jury and who referred to his client, Mr. Baldwin, as "boy".
 - 6) The appellate process in Mr. Baldwin's case was fundamentally unfair and not reliable because Judge Key's court reporter failed to provide Mr. Baldwin with the complete record in his case and to date no court has reviewed Mr.

Baldwin's case on the complete record;

- 7) The appellate process in Mr. Baldwin's case was fundamentally unfair and unreliable in that his case in coram nobis was assigned to Judge Key who reviewed issues of racial prejudice in Mr. Baldwin's case including issues pertaining to his own racial discrimination; and
- 8) Mr. Baldwin has been a positive and productive inmate on Alabama's death row for almost 22 years.

II. THE COMMUTATION AUTHORITY

Clemency and the commutation process is not just another legal appeal. Indeed, it is designed to be a process divorced from legalisms and to be the ultimate safeguard against unduly harsh or unjust sentences, where the legal process affords no remedy. At bottom, the Governor is asked to consider all the circumstances of the case, whether strictly legal or not, and determine whether the imposition of the death penalty, as opposed to some other sentence, typically life imprisonment without the possibility of parole, is ultimately the right and just decision in the case.

Chief Justice William Howard Taft, writing for a unanimous Supreme Court in 1924, emphasized the important role that executive clemency plays in our criminal justice system. As he wrote in Ex Parte Grossman, 267 U.S. 87, 120-121 (1924), "Executive clemency exists to afford relief from undue harshness or evident mistake in the operation or enforcement of criminal law. The administration of the courts is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt. To afford a remedy, it has always been thought essential to popular governments, as well as in monarchies, to vest in some authority other than the courts the power to ameliorate or avoid particular criminal judgments. It is a check entrusted to the executive for special cases."

Chief Justice William Rehnquist, almost 70 years later, echoed and endorsed the holding of

Chief Justice Taft, when he wrote in Herrera v. Collins, 506 U.S. 390, 411-15 (1993), "Clemency is deeply rooted in our Anglo-American tradition of law, and is the historic remedy for preventing miscarriages of justice where a judicial process has been exhausted... Executive clemency has provided the 'fail safe' in our criminal justice system. It is an unalterable fact that our judicial system, like the human beings who administer it, is fallible."

With these considerations in mind, the Governor should commute Mr. Baldwin's sentence of death for the following important and compelling reasons.

III. REASONS FOR GRANTING MR. BALDWIN'S REQUEST FOR CLEMENCY.

A. **BASED UPON NEWLY DISCOVERED EVIDENCE IN MR. BALDWIN'S CASE, THERE NOW EXISTS A SUBSTANTIAL DOUBT AS TO MR. BALDWIN'S GUILT.**

Brian Baldwin was convicted and sentenced to death for robbery when the victim is intentionally killed by the defendant, under Alabama Code §13-11-2(a)(2)(1975), which was subsequently repealed in 1981. In order to receive the death penalty under §13-11-2(a)(2)(1975), the defendant must himself have intentionally killed the victim or at least participated in the criminal venture with the intent that the victim be killed. Indeed, the death penalty act at the time specifically provided, "Evidence of intent under this section shall not be supplied by the felony-murder doctrine." Alabama Code §13-11-2(b)(1975).

In fact, Brian Baldwin did not kill Ms. Rolon, as the prosecution contended at his trial. Nor did Brian Baldwin intend for Ms. Rolon to be killed. Instead, Ms. Rolon was killed by Mr. Baldwin's co-defendant Edward Horsley without Mr. Baldwin's knowledge or participation. Edward Horsley was executed in 1996, but signed a statement in 1985, declaring, "Brian Baldwin was not present at any point before or after the murder of Naomi occurred. In fact, he was not even aware that she had

been killed until after we were arrested and the dead body was recovered that night in Monroeville.” (See attached Exhibit “A”). But, as compelling as Edward Horsley’s statement is, the case for Mr. Baldwin’s innocence does not depend upon Horsley’s statement alone. To understand fully the case for innocence, a detailed analysis of the evidence presented at trial is required.

Mr. Baldwin’s trial in 1977, from jury selection through verdict, including hearings regarding the voluntariness of his alleged “confessions”, lasted only a day and a half. The primary evidence against Mr. Baldwin were alleged custodial “confessions”, which were admitted in spite of Mr. Baldwin’s testimony that these “confessions” were the result of terror, intimidation and beatings. (TT-66-69, 97-103, 166-169).¹ The prosecution could not have made out a case against Mr. Baldwin for robbery when the victim is intentionally killed without these “confessions.”

The State proved at trial that on March 14, 1977, an El Camino pick-up truck was stolen from a grocery store parking lot in Camden, Alabama. (TT-40-41). The owner of the truck, Travis Durant, testified at trial that a “brand new hatchet” was in the truck at the time it was stolen. (TT-41).

On March 15, 1977, a police officer in Lanett, Alabama stopped this El Camino truck and arrested the driver and passenger, Brian Baldwin and Edward Horsley. (TT-40-41). A North Carolina license plate, EPM-720, was found in the El Camino. (TT-46-47).

On March 15, 1977, Deputy Lawrence Sheffield of the Wilcox County Sheriff’s Department went to Lanett, Alabama to pick up Mr. Baldwin and Mr. Horsley and to transfer them to Wilcox County on charges of stealing the El Camino truck. Deputy Sheffield was given the North Carolina license plate and brought it back with him to Wilcox County. (TT-48-49).

On March 15, 1977, at approximately 3:55 p.m., Mr. Baldwin, while in custody at the Wilcox

¹Citations to the Trial Transcript will be noted by the designation “TT” followed by the page number.

County Jail, was interviewed by Wilcox County Sheriff Moody Maness, Wilcox County Deputy Sheriff Nathaniel Manzie and Wilcox County Deputy Sheffield. This interview concerned only the stolen El Camino truck. (TT-55-56).

The Wilcox County authorities began a check of the North Carolina license plate. No report had been filed that a vehicle bearing this license plate had been stolen. However, further investigation revealed that this license plate was registered to a 1970 Chevrolet Impala, which a Naomi Rolon was driving when she was last seen by her mother on March 12, 1977, in North Carolina. She had not been seen since that date. (TT-34-36). When this circumstance was learned, Sheriff Maness renewed the interrogations of Mr. Baldwin and Mr. Horsley. (TT-75-77). He was obviously determined to find out what had happened to Ms. Rolon and we now know was willing to use terror and physical abuse to get what he wanted.

The interrogation of Mr. Baldwin regarding the 1970 Chevrolet Impala, the North Carolina license plate, and Ms. Rolon began in the early evening of March 16, 1977. (TT-56, 62, 75-77). Wilcox County Sheriff's Department Deputy Nathaniel Manzie, the first African-American Deputy Sheriff in Wilcox County and the only African-American with the Wilcox County Sheriff's Department at the time, has only recently come forward to swear under oath that Baldwin "was beaten and physically mistreated by Sheriff Moody Maness and others when Maness and others interrogated Baldwin." (Exhibit "B"). Counsel for Mr. Baldwin have also located other inmates housed at Wilcox County Jail at the time who remember bruises and other bloody marks on the body of Brian Baldwin, which obviously resulted from the beatings. (Exhibits "C", "D" and "E"). We also know that a cow prod was maintained at the Wilcox County Jail by Jailer Pledge Bennett, which was kept for no other reason than to coerce "confessions" from inmates. (Exhibit "B").

Ultimately, Mr. Baldwin was forced to tell Sheriff Maness and the other law enforcement officers that were abusing him that he knew the whereabouts of the stolen North Carolina car and that Ms. Rolon should still be in the car, but not hurt. (TT-77-78, 171-172). Baldwin stated that he and Horsley had escaped from a North Carolina prison, where Mr. Baldwin was serving a relatively short sentence, had encountered Ms. Rolon in the Chevrolet Impala and had driven the car with Ms. Rolon in it from North Carolina to Camden, Alabama, where they stole the El Camino truck. They then decided to abandon the Chevrolet Impala in Alabama and drive on in the El Camino truck. They found an isolated location in Monroe County to leave the Chevrolet Impala. Baldwin further told the officers that he could show them where the Impala was located and that Ms. Rolon was still in the car and still alive. (TT-77).

In connection with this interrogation of Mr. Baldwin, he was forced to sign forms ostensibly evidencing that his Miranda rights had been read to him and that he had waived these rights. (State's Exhibits 5 and 6; TT-56-58, 60-62, 74, 142-144, 148). The waivers were phony, because Mr. Baldwin had been coerced into signing them. Moreover, Deputy Manzie was not present during any claimed waiver of rights, but Sheriff Maness insisted that he sign the forms as a witness in spite of the fact that he was not present. (Exhibit "B"). The forms were then offered into evidence, ostensibly to prove a valid Miranda waiver. (State's Exhibits 5 and 6; TT-74, 144, 148). Sheriff Maness falsely testified that Manzie was present when the waivers were signed (TT-59) and the prosecution further sought to buttress the credibility of the waivers by eliciting testimony from investigator Headley that Deputy Manzie is "a black man" (TT-172), obviously for the purpose of convincing the jury that the waivers were valid and Mr. Baldwin's "confessions" were voluntary, because, if otherwise, a black Deputy would have revealed what really happened. We now know the waivers were shams and that

Deputy Manzie was aware of the mistreatment of Mr. Baldwin, but did not reveal what he knew for fear of the consequences, especially to his family. (Exhibit "B").

After this first "confession" was forced from Mr. Baldwin, Mr. Baldwin led the officers to the location where the car was found. In the vehicle along with Mr. Baldwin were Sheriff Maness, Deputy Manzie, and State Trooper Investigator E. B. Headley. (TT-77-78). When they arrived at the location of the Chevrolet Impala, Mr. Baldwin stated that Ms. Rolon was in the trunk of the car and was not harmed. (TT-78). This is the same statement which he had made originally to the investigating officers. (TT-77, 171-172). The officers pried open the trunk of the car, but Ms. Rolon was not there. (TT-78). Mr. Baldwin told the officers to "call her—maybe she will answer." (T-173). Mr. Baldwin then told the officers to look inside the car or under it. (TT-79, 173). Ultimately, the officers found Ms. Rolon's body in front of the car, tangled up in some pine tops. (TT-79, 174). She was dead, apparently as a result of a large and severe wound on her neck. (T-174).

The State's expert witness, James Small, a toxicologist with the Alabama Department of Toxicology and Criminal Investigation, testified that Ms. Rolon had died from "trauma and bleeding" resulting from a "large cut located on her neck which severed two major blood vessels and actually penetrated the vertebrae of her neck." (TT-218). His report indicated that "this cut was made by a heavy cutting instrument" (Exhibit "F") and he testified at trial that the wound was "consistent with a wound which would be produced by a hatchet." (TT-220).

The body was found in a remote location in Monroe County at approximately 9:00 p.m. Soon, a number of law enforcement officers arrived at the scene. Sheriff Lenwood Sager of Monroe County arrived, along with deputies of the Monroe County Sheriff's Department. An Alcohol Beverage Control Officer was among the law enforcement officers who came to the scene. Edward Horsley,

who was in another vehicle with other officers of the Wilcox County Sheriff's Department, was also brought to the scene. There were numerous law enforcement officers present, from both Wilcox County and Monroe County, as well as State Troopers and other Alabama State law enforcement officers. (TT-153-156 Exhibit "B").

Mr. Baldwin was terrorized and intimidated by these law enforcement officers at the scene. Threats were made that they might go ahead and execute him there. The ABC Officer fired his gun. Mr. Baldwin was led to believe that this "mob" of law enforcement officers was about to lynch him there on the spot and this might have even happened had not Sheriff Sager finally broke up the crowd telling everybody there that this was his county and he was going to handle the matter. (Exhibit "B").

Mr. Baldwin was taken back to the Wilcox County Jail, where at approximately 12:10 a.m. on the morning of March 17, 1977, he was interrogated again by Sheriff Maness, Sheriff Sager, and Investigator Headley. (TT-94, 104, 107, 193-196). Mr. Baldwin was again intimidated, threatened and physically abused in order to obtain a so-called "confession." Ultimately, a recorded "confession" was obtained. This "confession" was an essential part of the State's evidence at trial. (State's Exhibits 9 and 10). It was not voluntary and not true. (The transcript of the statement admitted at trial, which has been corrected based upon the actual recording of the statement, is attached as Exhibit "G").

For example, Mr. Baldwin "confessed" to killing Ms. Rolon by cutting her "across the throat one time" with a "little knife she had in her pocketbook." (Exhibit "G", TT-7-87). This "confession" was contrary to the physical evidence, because the injury to Ms. Rolon's neck could not have been caused by a cut from a pocket knife. (See Report of Medical Examiner Dr. Joseph Burton attached hereto as Exhibit "H"). Indeed, the conclusion of the State's own expert was that the wound "was

made by a heavy cutting instrument." (Exhibit "F"). Nevertheless, this obviously false recorded statement was the primary evidence offered by the State against Mr. Baldwin at his trial and sentencing. (State's Exhibits 9 and 10).

After Mr. Baldwin's recorded "confession" in the early morning hours of March 17, 1977, Horsley was then interrogated and recorded statements taken from him. Horsley stated that Mr. Baldwin had killed Ms. Rolon with "a little wooden hatchet" that was in the El Camino. (See Exhibit "I", a corrected transcript of Horsley's recorded statement given at 5:27 p.m. on March 17, 1977, pp. 22-23). Horsley denied that he had struck the victim with the hatchet and claimed that Mr. Baldwin had administered the death blow. (Exhibit "I", p. 28). Horsley further stated that the hatchet had been thrown away in Monroeville, somewhere "in the town" and "on some street", the name of which he did not know. (Exhibit "I", p. 33).

After Horsley gave his statement that Mr. Baldwin, not he, had killed Ms. Rolon and that the death blow had been delivered by a hatchet which Horsley had later discarded some distance away from the scene, Mr. Baldwin was interrogated once again. This interrogation occurred on March 17, 1977, at approximately 8:15 p.m. The statement was given to J.C. Butler, an investigator with the State of Alabama. (TT-204-208; State's Exhibit 12). It was written out by Butler and Mr. Baldwin was forced to sign. (Exhibits "J" and "K"). This statement merely summarized the statement which had been coerced from Mr. Baldwin earlier, except that, as opposed to the original statement in which Mr. Baldwin stated that he had killed Ms. Rolon with a knife, this statement was made to conform with the physical evidence and Horsley's "confession" by including a statement that the death blow had been administered with a hatchet. This was a false and scripted "confession", which was the continuing result of the intimidation, terror and physical abuse of Mr. Baldwin. It was the first, and

only, mention by Mr. Baldwin of a hatchet. The change was necessary to make Mr. Baldwin's "confessions" fit the physical evidence and Horsley's "confession."

Mr. Baldwin testified at his trial that the "confessions" which had been obtained from him were the result of intimidation and physical abuse. (TT-66-69, 97-103, 166-169). For example, Mr. Baldwin testified, "They told me if I didn't tell them where the car was, they were going to hang me, shoot me, beat me up; then they took handcuffs and handcuffed me to a bar and took an electric stick, the thing you stick cows with, and poked me with that" (TT-66).

With regard to Miranda waivers, Mr. Baldwin testified: "They had me in a room and all of them was standing around and said if I didn't sign it they were going to beat me up again." (TT-97); "Lieutenant Headley opened his coat and put his hand on his pistol and started pulling it out and asked me was I gone (sic) sign it, so I signed it." (TT-100); and "They said if I didn't sign the papers and cooperate with them, they was going to beat me or either kill me." (TT-169). Mr. Baldwin's testimony, however, was discounted by the trial judge, Judge Robert E. Lee Key, and instead Judge Key credited the testimony of Sheriff Maness and others that the claimed "confessions" from Mr. Baldwin were not extracted from him through intimidation, terror and physical abuse, that Mr. Baldwin's Miranda rights had been fully protected and appropriate Miranda waivers executed. We now know this testimony was false. (TT-56-58, 71-74, 90-91, 105, 131-132, 143-147, 159-161, 191-192, 205).

The fact that Mr. Baldwin's "confessions" were not only coerced but were in fact false is corroborated not only by the newly discovered descriptions of witnesses to the beatings and intimidation, but also because the "confessions" do not fit the physical evidence. Not knowing himself how Ms. Rolon was killed, Mr. Baldwin falsely "confessed" to cutting Ms. Rolon's

throat with a pocket knife, contrary to the physical evidence. Moreover, the State failed to disclose to the defense at the time of the trial their own expert examination which revealed that Mr. Baldwin's clothing, including his shoes, had no blood on them, a circumstance totally inconsistent with a death blow administered with a hatchet. Horsley's clothing, on the other hand, had blood stains on them. (Exhibit "L"). It is extremely unlikely that the death blow could have been administered by Mr. Baldwin and no blood be found on his clothing. The death blow was necessarily delivered at close range to Ms. Rolon and the presence of blood on Horsley's clothing, while no blood was on Mr. Baldwin's clothing, is a compelling circumstance indicating that Horsley, not Mr. Baldwin, delivered the death blow. (Exhibit "H").

The prosecution also failed to reveal to the defense at the time of trial that a hatchet was found at the scene. (Exhibit "L"). This newly discovered fact is contrary to Horsley's false statement that Mr. Baldwin had administered the death blow with a hatchet and that Horsley had later thrown the hatchet away somewhere in Monroeville.² If Horsley was telling the truth that Mr. Baldwin, not Horsley, had delivered the death blow, why did Horsley claim that the hatchet had been discarded in Monroeville, miles from the murder scene, when the hatchet was recovered from the scene? (Exhibit "I", p. 33). The only logical answer is that Horsley, obviously fearing that his fingerprints might be found on the hatchet, intentionally misled the investigating officers by claiming that the hatchet had been discarded somewhere in Monroeville, when he knew that he had thrown it away at the scene. He hoped that his statements might cause the authorities not to look for the hatchet at the scene and thereby avoid the risk of his blaming of the death blow on Mr. Baldwin being contradicted by his fingerprints on the hatchet. If the existence of a hatchet at the scene had been revealed to the defense, the defense would have had this ammunition, along with the blood stains on Horsley's clothing and

²Curiously, the investigators never showed this hatchet to its owner, Travis Durant, so he could identify it. (Affidavit of Travis Durant, Exhibit "M").

the absence of similar stains on Mr. Baldwin's clothing, to show that Horsley, not Mr. Baldwin, as he falsely "confessed", had actually killed Ms. Rolon.

One final compelling piece of physical evidence is that based on the angle of the wound to Ms. Rolon's neck, the marks on her body near the wound and the way her body was bent in front of the Chevrolet Impala when she was killed, the death blow was most probably delivered by a left-handed person. (Exhibit "H"). Mr. Baldwin is right-handed. Mr. Horsley is left-handed. Moreover, there was a cut on Mr. Horsley's right hand at his thumb when he was arrested. (Exhibit "I", pp. 32-33). Therefore, the physical evidence is consistent with Horsley injuring his right hand while holding Ms. Rolon's head when he delivered the fatal blow from the hatchet with his right hand or when he pulled back with his right hand one or more of the pinetop branches where Ms. Rolon had fallen, cutting his thumb, and then delivered the death blow using the hatchet with his left hand. (Dr. Burton's Report, Exhibit "H").

The truth of what happened on March 14, 1977, is that after the El Camino was stolen in Camden and the decision made to abandon the Chevrolet Impala, Edward Horsley drove the Chevrolet Impala with Ms. Rolon in it up the small dirt road where she was killed. Mr. Baldwin waited in the El Camino near the turn-off onto the dirt road. He believed that Horsley would leave the Impala with Ms. Rolon in it. As Mr. Baldwin waited in the El Camino, Horsley delivered the death blows. Mr. Baldwin was not present and there was no plan or agreement to kill Ms. Rolon. The understanding was just the opposite—Horsley was to abandon the car with Ms. Rolon in it alive. Horsley returned to the El Camino and they drove off. Mr. Baldwin assumed Ms. Rolon was still alive.

These circumstances do not relieve Mr. Baldwin of any criminal responsibility. However, they are insufficient for a death sentence under §13-11-2(b) (1975), because Mr. Baldwin did not "intentionally kill" Ms. Rolon, nor was he an accomplice present or encouraging the killing. There

was no such agreement or understanding. His culpable intent would only be under the "felony murder" rule and under Alabama Code §13-11-2(b)(1975), "[e]vidence of intent...shall not be supplied by the felony-murder doctrine." See, generally, Ex Parte Ritter, 375 So.2d 270, 273-275 (Ala. 1979).

The "confessions" later obtained from Mr. Baldwin that he had killed Ms. Rolon were the product of coercion, intimidation and physical abuse and were not the truth. In fact, Mr. Baldwin had not killed Ms. Rolon. We know this not only because Horsley has admitted that he alone killed Ms. Rolon without the knowledge or participation of Mr. Baldwin and because we now know that Mr. Baldwin's "confessions" were obtained through intimidation and physical abuse and therefore are untrustworthy, but also because the "confessions" do not fit the physical evidence. (1) Ms. Rolon was killed with a blunt instrument, such as a hatchet, not a pocket knife, as Mr. Baldwin falsely "confessed." If he was truthfully confessing to a murder anyway, why "confess" to a method for the murder other than the truth. (2) There was no blood on Mr. Baldwin's clothing, while there was blood on Horsley's clothing, a circumstance strongly indicating that Horsley, not Mr. Baldwin, administered the death blow. (3) The hatchet, contrary to Horsley's false statement in which he blamed the killing on Mr. Baldwin and said the hatchet had been thrown away miles from the scene, was in fact at the scene, something that Mr. Baldwin would have had no knowledge of one way or the other, because he was not there. Horsley was hoping it would not be found lest his false statement accusing Mr. Baldwin would be belied by his own fingerprints on the hatchet. (4) The fact that Mr. Baldwin believed that Ms. Rolon was still in the car and alive is consistent with Mr. Baldwin's statements to the law enforcement officers when he showed them where the car was located. If he had known that she was already dead, the victim of a savage blow to the neck with a hatchet that he himself had administered and that the officers would soon be finding her in this condition, why state to them that she was in the car and still alive? (5) Finally, and perhaps even most important, the killing of Ms.

Rolon was likely committed by someone who was left-handed, like Mr. Horsley, not someone who was right-handed, like Mr. Baldwin.

The combination of all of these facts and circumstances is compelling evidence that Mr. Baldwin is not guilty of the crime for which he was convicted and sentenced to death. As Governor Buddy Romer of Louisiana stated when commuting the death sentence of Lionel Moore in 1989, "The test ought not be reasonable doubt. The test ought to be is there any doubt." Here, there is clearly substantial doubt as to Mr. Baldwin's guilt for the crime for which he has been convicted and sentenced to death. This circumstance alone compels a commutation of his sentence.

B. MR. BALDWIN'S TRIAL WAS FUNDAMENTALLY UNFAIR AND CANNOT BE RELIED UPON AS HAVING PRODUCED A RELIABLE RESULT.

1. The Prosecution Conducted Virtually No Investigation In Mr. Baldwin's Case And Relied Upon Mr. Baldwin's "Confession" At Trial.

Rather than conduct a thorough investigation of the circumstances surrounding Ms. Rolan's death, the prosecution relied upon a "confession" which it maintained was voluntarily given by Brian Baldwin. Mr. Baldwin testified at trial that the alleged "confession" was not true and was the result of police beatings and that an electric cattle prod had been used on him to force him to make a statement.

We now know that Mr. Baldwin's alleged "confession" was the result of police beatings, terror and intimidation. (Exhibit "B"). We now know that the prosecution's witnesses at trial committed perjury when they testified that Mr. Baldwin's "confession" was voluntary and not the result of police beatings, terror or intimidation. We also know that an electric cattle prod was on the sheriff's premises when Mr. Baldwin was forced to make a statement. (Exhibit "B"). The fact is that Mr. Baldwin's alleged "confession" was a scripted lie coerced by the police and perpetuated by the perjury of the prosecution's witnesses at trial.

This "confession" was the State's case and we now know it was not reliable.

2. Mr. Baldwin's Defense At Trial: An Appointed Attorney With No Funds, Who Conducted No Investigation And Who Called No Witnesses Other Than Mr. Baldwin.

Prior to Mr. Baldwin's trial, his appointed attorney, Windell Owens, asked if there were any funds available to assist him in representing Mr. Baldwin. The trial judge told him there were none. Appointed attorney Owens conducted virtually no investigation and presented no witnesses or evidence, other than the testimony of Mr. Baldwin, before the jury on Mr. Baldwin's behalf. Although Mr. Baldwin's clothing and shoes had NO blood stains, while Horsley's did, this powerful evidence confirming that Horsley, not Mr. Baldwin had committed the murder, was never presented.

During Mr. Baldwin's sentencing hearing the only evidence presented by appointed attorney Owens was the testimony of Mr. Baldwin. Mr. Baldwin's parents or family were never contacted and no mitigating evidence other than the testimony of Mr. Baldwin was presented at sentencing.

3. A Short Trial And A Shorter Sentencing Hearing.

Mr. Baldwin's entire trial from the beginning of jury selection through the return of the verdict by the jury lasted a day and a half. Mr. Baldwin's sentencing hearing lasted less than an hour and is reported in only 19 pages of transcript.

4. Racism Contributed To Brian Baldwin Being Found Guilty And Sentenced To Death And To The Unreliability Of His Trial.

a. A Highly Publicized Violent Interracial Crime.

As a case which alleged a violent crime committed by two young African-American teenagers against a sixteen year old white girl, Mr. Baldwin's case was racially charged. The prosecution contributed to this atmosphere by suggesting to the jury that Mr. Baldwin had raped the victim even though the prosecution never charged Mr. Baldwin with rape. Mr. Baldwin's case was the most highly publicized trial in the history of Monroe County, Alabama.

b. A Trial Judge Practicing Intentional Racial Discrimination.

The judge in Mr. Baldwin's case was Robert E. Lee Key. It has been determined by the Alabama Court of Criminal Appeals that Judge Key was practicing intentional racial discrimination in the performance of his official duties at the time of Mr. Baldwin's trial. Lee v. State, 631 So. 2d 1059 (Ala. Cr. App. 1993). (Exhibit "N").

c. A Prosecutor Practicing Intentional Racial Discrimination.

The prosecutor in Mr. Baldwin's case was Theodore Pearson. It has been determined by the Alabama Court of Criminal Appeals that Prosecutor Pearson was practicing intentional racial discrimination in the performance of his official duties at the time of Mr. Baldwin's trial. Lee v. State, 631 So. 2d 1059 (Ala. Cr. App. 1993)(Exhibit "N"). Prosecutor Pearson referred to Mr. Baldwin at trial as "boy" and in the prosecution's closing argument Mr. Baldwin was called a "savage".

d. Underrepresentation By -31% Of African-Americans On The Grand Jury And Petit Jury Lists In Monroe County.

In 1977 the population of Monroe County, Alabama was 46% African-American. On grand jury and petit jury lists, African-Americans were underrepresented by -31%. This was true of the grand jury which indicted Mr. Baldwin and the jury venire from which Mr. Baldwin's trial jury was selected.

e. An All White Jury.

During jury selection in Mr. Baldwin's case, 11 African-American citizens of Monroe County were summoned as potential jurors in Mr. Baldwin's case. Prosecutor Pearson used 11 of his discretionary strikes to exclude every African-American juror from Mr. Baldwin's jury. Mr. Baldwin's appointed attorney did not object to the all white jury, Judge Key did nothing to intervene and Mr. Baldwin was tried and sentenced to death by an all white jury. Under current law no

conviction or sentence of death under these circumstances would be approved on appeal. The only reason Mr. Baldwin's conviction and sentence of death have not been reversed is because his appointed attorney did not object and because his direct appeal ended months prior to the Supreme Court's decision in Batson v. Kentucky, 476 U.S. 79 (1986).

f. An Appointed Defense Attorney Who Not Once Objected To The Racial Prejudice In Mr. Baldwin's Case Including The All White Jury And Who Referred To Mr. Baldwin As Boy.

Mr Baldwin's attorney at trial was appointed by Judge Key. Judge Key appointed Windell Owens, a former mayor of Monroeville. Mr. Owens never objected to Mr. Baldwin being tried by an all white jury and did nothing to challenge the pervasive racial prejudice which infected every stage of Mr. Baldwin's trial. In fact, even Mr. Owens referred to Mr. Baldwin at trial as "boy". According to Mr. Owens, he did not ask any of the prospective white jurors about their racial views because he knew every one of them "intimately" and thought that "the less you rile a prospective juror, . . . the better off you are going to be."

C. THE APPELLATE PROCESS IN MR. BALDWIN'S CASE WAS FUNDAMENTALLY UNFAIR AND CANNOT BE RELIED UPON AS HAVING PRODUCED A RELIABLE RESULT.

1. On Appeal Judge Key's Court Reporter Fails To Transcribe The Complete Record In Mr. Baldwin's Case And As A Result No Court Has Ever Reviewed Mr. Baldwin's Case On The Complete Record.

On appeal Mr. Baldwin's attorney asked Judge Key's court reporter to provide him with all voice recordings of Mr. Baldwin's trial because there were important parts of Mr. Baldwin's trial which were missing. (Exhibit "O"). Judge Key's court reporter wrote Mr. Baldwin's attorney that there were no voice recordings. (Exhibit "O"). This was not true. The voice recordings were discovered later and are now in the process of being transcribed. As a result of the court reporter's misrepresentation, Mr. Baldwin has never had the complete record in his case and no appellate court has ever reviewed Mr. Baldwin's case on the complete record.

Ms. Julia Crotty, a certified court reporter in Montgomery, Alabama, is in the process of completing the first complete transcript in Mr. Baldwin's case. She is accomplishing this by utilizing the voice recordings in Mr. Baldwin's case, the shorthand notes of the original court reporter and the original transcript prepared by the court reporter in Mr. Baldwin's case. According to Ms. Crotty, "the transcript prepared by the original court reporter is so incomplete that it should not be relied upon as the official transcript in Mr. Baldwin's case." (See Attached Exhibit "P").

2. In Coram Nobis Judge Key Reviews The Impact Of Racial Prejudice On Mr. Baldwin's Trial.

The only opportunity that Mr. Baldwin has ever had on appeal to call witnesses and present evidence with respect to issues of fairness, including the factor of racial prejudice, in his case was in coram nobis when his case was assigned to Judge Key. At the time Mr. Baldwin was, once again, represented by an attorney appointed by Judge Key. Judge Key determined that racial prejudice played no part in Mr. Baldwin's trial. The federal courts which reviewed Mr. Baldwin's case deferred to Judge Key's findings about the impact of racial prejudice on Mr. Baldwin's trial.

3. The Fundamental Unfairness In Mr. Baldwin's Case Has Been Denounced By 33 Former Judges And Prosecutors.

Based upon the fundamental unfairness in Mr. Baldwin's case, 33 former judges and prosecutors filed a brief as amicus curiae in the United States Supreme Court on Mr. Baldwin's behalf. The former judges include six former State Supreme Court Justices from Mississippi, Georgia, North Carolina, Tennessee, Wisconsin, and Washington. (See attached brief of amicus curiae, Exhibit "Q", at pages ii-iii). The former prosecutors include prosecutors from 7 states including Larry D. Thompson, former United States Attorney for the Northern District of Georgia as well as Craig A. Gillert, former Deputy Independent Counsel. (Exhibit "Q", at pages v-vi). In their brief the former judges and prosecutors stated:

... we cannot tolerate a federal court that merely defers to state findings

made by a judge who is practicing racial discrimination at the time he is reviewing claims about his own racial discrimination.

The federal courts refused to review Mr. Baldwin's claims concerning racial discrimination because those claims were procedurally defaulted. There is, of course, no such bar when considering Mr. Baldwin's request for clemency. Mr. Baldwin's case was permeated by racial prejudice and this racial prejudice made his trial unfair and unreliable. This constitutes a compelling reason for clemency.

D. JUDGE KEY'S AND PROSECUTOR PEARSON'S INVOLVEMENT IN CONVICTING AND SENTENCING TO DEATH AN INNOCENT AFRICAN-AMERICAN MAN FOR AN INTERRACIAL CRIME, THE CASE OF WALTER McMILLIAN.

In 1987 Mr. Walter McMillian was indicted by Prosecutor Pearson in Monroe County, Alabama. Mr. McMillian, a 45 year old African-American man, was alleged to have killed an 18 year old white woman. As was the case in Mr. Baldwin's trial, Prosecutor Pearson did not charge Mr. McMillian with sexual assault but nevertheless did suggest to the jury that a sexual assault had occurred. Mr. McMillian was tried before Judge Key. After a two day trial Mr. McMillian was found guilty and the jury recommended a sentence of life without parole. At sentencing before Judge Key, however, Judge Key refused to accept the jury's recommendation and sentenced Mr. McMillian to death based upon "the vicious and brutal killing of a lady in the first full flower of adulthood". After being on Alabama's death row for five years Mr. McMillian was released an innocent man after it was determined that Prosecutor Pearson had withheld favorable evidence which would have assisted Mr. McMillian in proving his innocence.

The similarities between Mr. McMillian's case and Mr. Baldwin's case are striking. Racial prejudice permeated Mr. McMillian's case as it did Mr. Baldwin's case. Additionally, we now know that Prosecutor Pearson clearly withheld favorable evidence concerning Mr. Baldwin's alleged

“confession” and concerning his lack of involvement in the murder of Ms. Rolon which would clearly have assisted Mr. Baldwin in proving his innocence.

E. BRIAN BALDWIN HAS BEEN A POSITIVE AND PRODUCTIVE INMATE ON ALABAMA'S DEATH ROW FOR ALMOST TWENTY TWO YEARS.

Brian Baldwin has been on Alabama's death row for almost 22 years. He has been a positive, productive and thoughtful inmate who has attempted to better himself and help others. He has obtained his GED (Exhibit “R”). He has also successfully, completed the Legal Assistant/Paralegal curriculum offered by Blackstone School of Law. (Exhibit “S”).

He currently edits a newsletter, *On Wings of Hope*, which is mailed quarterly to 1600 people in 33 states and 13 foreign countries. Publisher Julie Zimmerman of Maine writes of Brian, who wrote for her *Frontiers of Justice* anthology: “He cares deeply about contributing to the philosophy and programs that give prisoners reason and motivation to reshape their lives . . . he understands the importance of finding alternatives for inmates to express their pain, fear and anger.”

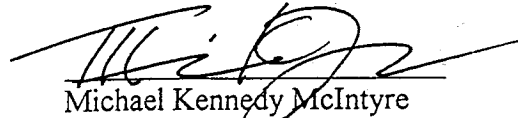
IV. CONCLUSION

Brian Keith Baldwin's request for clemency should be granted. There exists substantial doubt as to whether he committed the offense for which he is scheduled to be executed. There is no doubt that his case was poorly investigated in 1977, that he was poorly defended in 1977 and that issues of racial prejudice permeated every aspect of his case.

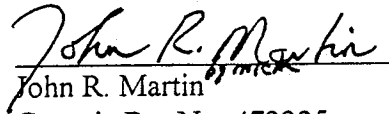
Mr. Baldwin's execution would clearly be a miscarriage of justice. It is respectfully requested that Governor Siegelman exercise his commutation authority, avoid this miscarriage of justice and grant Mr. Baldwin's clemency request.

(Signatures on next page)

Respectfully submitted,



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No. 98 -

**IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1998**

BRIAN KEITH BALDWIN,

Petitioner-Appellant,

WILLIE JOHNSON, Warden,

Respondent-Appellee.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

**SUMMARY OF ARGUMENT AND SIGNATORIES TO AMICUS BRIEF
FILED IN THE U.S. SUPREME COURT ON BRIAN BALDWIN'S BEHALF**

No. 98 - 7889 IN THE SUPREME COURT OF THE UNITED STATES October Term 1998

**MOTION FOR LEAVE TO FILE AN AMICI CURIAE BRIEF PRIOR TO THE
COURT'S CONSIDERATION OF A PETITION FOR A WRIT OF CERTIORARI**

The above-styled petition centers on the responsibility of a federal court to consider the merits of a claim that a capital murder conviction and death sentence turned on considerations of race. The circuit court in this case held that it was unable to consider the merits of any race-based claims because the state court's adverse findings were entitled to a presumption of correctness. The Petitioner asserts that this was improper because the judge whose findings were presumed correct was the very judge whose decision making was under challenge and the same judge who had been found to be practicing systematic and deliberate race discrimination in the performance of his duties as a state court judge at the time he presided over Petitioner's case.

The petition for a writ of certiorari, therefore, raises claims that are central to our understanding of comity and the proper relation between federal and state courts in resolving constitutional claims that are at the core of our democratic morality.

The amici curiae are all former state court judges or prosecutors. All have distinguished careers as jurists and attorneys. Many have served on supreme courts of review in their respective states. As such, each brings a perspective that makes him or her uniquely able to comment on the appropriate role of comity in resolving the questions Mr. Baldwin's certiorari petition raises. As such the amici curiae are in a position to raise matters that neither of the parties can raise given their responsibilities as advocates.

SUMMARY OF ARGUMENT

Petitioner asks the Court to grant the writ of certiorari to decide whether a capital habeas corpus petitioner whose substantial evidence and allegations of racial discrimination, and the failure to challenge that discrimination, were evaluated by the very state judge who practiced racial discrimination, is entitled to show in federal court that the state court findings are not entitled to a presumption of correctness. Amici support Petitioner's contentions and urge the Court to grant the petition.

Petitioner contends that his state court proceedings, from the selection of the grand jury foreman to the denial of his request for post-conviction relief, were presided over by a judge who practiced racial discrimination in multiple cases contemporaneous with his rulings against Petitioner. Although courts and prosecutors have long deplored racial bias in the judicial process, and required that courts take affirmative steps to identify and correct for bias, no such steps were allowed to be taken in this case. The only opportunity Petitioner had to educe evidence through the use of discovery and the subpoena power was when he was before the very judge whose racial bias was the subject of his challenges; the judge whose wholesale adoption of an order prepared by the state was given great deference in federal habeas. Such a state court hearing is not "full and fair" within the meaning of 28 U.S.C. 2254(d) (1994). Amici strongly urge the Court to recognize that factual determinations authored by the state and adopted wholesale by the judge whose racial discrimination was at issue are not entitled to the presumption of correctness in federal habeas corpus proceedings.

- Craig A. Gillen, Deputy Independent Counsel, 1990-93; Lead Attorney, Presidential Drug Task Force, Northern District of Georgia, 1983-89; Assistant United States Attorney, Northern District of Georgia, 1978-83; Assistant District Attorney, Look-Out Mountain Judicial Circuit, Georgia 1977-78
- Stephen Gustitis, Assistant District Attorney, Brazos, Texas, 1990-94
- Kathryn Haight, Special Assistant United States Attorney, Assistant United States Attorney, Organized Crime Drug Enforcement Task Force, District of Colorado, 1987-90
- Seth D. Kirschenbaum, Assistant United States Attorney, Northern District of Georgia, 1982-84; Staff Attorney, Anti-Trust Division, Department of Justice, Northern District of Georgia, 1978-81
- Robert T. McAllister, Assistant United States Attorney, District of Colorado, 1980-83; Assistant United States Attorney, Northern District of Illinois, 1976-80
- Peter Mair, Assistant United States Attorney, Western District of Washington, 1975-79; Assistant United States Attorney, District of Columbia, 1972-75
- Perry E. Mann, Prosecuting Attorney, Summers County, West Virginia, 1972-80
- Steve Roberts, Chief Assistant District Attorney, Dekalb County, Georgia, 1986-90; Assistant District Attorney, Dekalb County, Georgia, 1981-86
- Benjamin Sender, Assistant United States Attorney, District of Columbia, 1979-82
- Dean A. Strang, Assistant United States Attorney, Eastern District of Wisconsin, 1987-88
- Larry D. Thompson, United States Attorney for the Northern District of Georgia, 1982-86
- David Seth Vogel, Deputy Prosecuting Attorney, King County, Washington, 1984-89
- Elizabeth M. Williamson, Assistant District Attorney, Fulton County, Georgia, 1994-97; Assistant District Attorney, Dekalb County, Georgia, 1991-94; Assistant Solicitor General, Fulton County, Georgia, 1989-91
- Robert E. Wilson, District Attorney, Stone Mountain Judicial Circuit, Georgia, 1981-92

A

Brian Baldwin

JUN-16-99 07:18

From-CONGRESSMAN JOHN LEWIS

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JOHN LEWIS
5TH DISTRICT GEORGIA
CHIEF DEPUTY DEMOCRATIC WHIP
COMMITTEE
WAYS AND MEANS
SUBCOMMITTEE
HEALTH
OVERSIGHT



Congress of the United States
House of Representatives
Washington, DC 20515-1005
June 15, 1999

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Governor Don Siegelman
600 Dexter Avenue
Montgomery, Alabama 36130

Dear Governor Siegelman:

As Members of the Congressional Black Caucus, we have a strong interest in ensuring that the federal courts deliver justice without prejudice. Racism "destroys the appearance of justice and thereby casts doubt on the integrity of the judicial process" *Smith v. Texas* 311 U.S. 128, 130 (1940). In light of the clear pattern of racial discrimination evident in his case, we believe that the execution of Mr. Brian Baldwin, scheduled for Friday June 18, 1999, should be stayed until the facts surrounding his conviction and sentencing can be reviewed.

[ITEMIZATION OF INJUSTICES IN CASE OMITTED IN THIS COPY]

It is one of the bedrocks upon which our democracy is built that no matter what their race, defendants in our country are entitled to a fair hearing before an impartial judge. The actions of both Prosecutor Pearson and Judge Key raise serious doubts as to whether Mr. Baldwin enjoyed either. We note that 33 former judges and prosecutors, including six former State Supreme Court Justices, signed an amicus curias brief supporting Mr. Baldwin's efforts to have the merits of his claim reconsidered given the evidence that he was the victim of racial discrimination.

We join the above mentioned leaders in their request that the case be reviewed and we reiterate our request that Mr. Baldwin be granted a stay of execution

Sincerely,

John Lewis, M.C.

[24 ADDITIONAL SIGNATURES OMITTED IN THIS COPY]



3339 MASSACHUSETTS AVENUE, N.W.
WASHINGTON, D.C. 20008-3687

APOSTOLIC NUNCIATURE
UNITED STATES OF AMERICA

June 15, 1999

COPY

N. 1826

Dear Governor Siegelman:

On behalf of His Holiness Pope John Paul II, I have the honor to approach you with the purpose of presenting an appeal for clemency for Mr. Brian Baldwin, who is scheduled to be executed on June 18, 1999.

As you know, the Holy Father's appeals to end the death penalty have become more and more frequent and pressing, especially as the new Millennium draws near.

In the homily of his Mass in St. Louis on January 27, 1999, the Holy Father stated:

"a sign of hope is the increasing recognition that the dignity of human life must never be taken away, even in the case of someone who has done great evil. Modern society has the means of protecting itself, without definitively denying criminals the chance to reform"

A sentence of life without the possibility of parole provides substantial safeguards for society and levels a grave punishment against the accused.

On that same occasion Pope John Paul II added that the "new evangelization calls for followers of Christ who are unconditionally pro-life, who will proclaim, celebrate and serve the Gospel of life in every situation". The first and fundamental "human right" is certainly the right to life.

The Holy Father prays that the life of Mr. Baldwin may be saved through your compassion and magnanimity. His Holiness counts on your right to spare a life by commuting this sentence with a gesture of mercy that would hopefully contribute to the promotion of nonviolence in today's society.

With gratitude for your kind consideration and with cordial regards, I extend a promise of prayer, while remaining,

Sincerely yours,

+ *Gabriel Montalvo*
Archbishop Gabriel Montalvo
Apostolic Nuncio

The Honorable DON SIEGELMAN
Governor of Alabama
State Capitol N-104
600 Dexter Avenue
Montgomery, AL 36130-2751