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OFFICE OF THE ATTORNEY GENERAL
GENERAL CIVIL LITIGATION SECTION
THE CAPITOL, STE. PL-01
TALLAHASSEE, FLORIDA 32399-1050
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Bill Cotteral 681-2928..
Lucy Morgan 224-7023..
Tim Nickens 222-9891..

FACSIMILE COVER SHEET

TO: Adam Yeomans FAX NUMBER: 224-2099.

FROM: Jim Peters TELEPHONE NO.: 488-1573

DATE: 3/22/94 NO. OF PAGES (incl. cover) 4

FAX OPERATOR: Paula FAX NO.: (904)488-4872

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MESSAGE: Objections - Corrected 1st page

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FACSIMILE COVER SHEET

Steve Hanlon 224-8832..
Richard Hixson 488-9879..

TO: David Kerns FAX NUMBER: 487-5800..

FROM: Jim Peters TELEPHONE NO.: 488-1573

DATE: 3/22/94 NO. OF PAGES (incl. cover) 4

FAX OPERATOR: Paula FAX NO.: (904)488-4872

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OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

CF

March 21, 1994

Dr. William R. Rogers
Florida State University
History Department
Tallahassee, FL 32306-2029

Re: In the Matter for Relief of: Arnett T. Goins, et al.
House Bill 591

Dear Dr. Rogers:

I am enclosing the bound copy of references which you delivered to my house the week before last. Enclosed additionally are legal memoranda which I filed on behalf of the State of Florida in this regard.

The memorandum concerning admissibility of evidence may be of particular interest to you. It would seem that on that issue our respective professions have different needs and standards. Perhaps there could be a place in the curricula for legal forensic methodology and standards.

Sincerely,

James A. Peters
Assistant Attorney General
Office of the Attorney General
PL-01 The Capitol
Tallahassee, FL 32399-1050
(904) 488-1573
(904) 488-4872 (Fax)

cc: Linda Schmidt, Esquire w/o encl.

<jimp>Ltr.Jim2

CF

FLORIDA STATE CONFERENCE OF BRANCHES
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

1107 Beecher St. • Leesburg, Florida 34748
Phone (904) 787-8597 or (904) 357-3490 • FAX (904) 357-0924

REPLY TO:

STATE OFFICERS
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President
P. O. Box 1334
Eustis, FL 32727
LEON W. RUSSELL
1st Vice President
315 Court Street
Clearwater, FL 34616
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March 17, 1994

Attorney General Robert Butterworth
State of Florida
PL 01 The Capitol
Tallahassee, FL 32399

Dear Attorney General:

The Florida State Conference of Branches of the National Association for the Advancement of Colored People is extremely concerned about the position your office has taken on the Rosewood Claims Bill and the hearings on that bill.

Today, March 17, 1994, the St. Petersburg Times reports that Assistant Attorney General James Peters expressed the opinion that the claimants have failed to prove that state officials officially condoned the actions of the white mob who perpetuated various acts of violence and intimidation to totally eliminate the Village of Rosewood during the first week of January in 1923.

Mr. Peters rejects the independent report developed at the request of the Legislature and belittles the testimony of survivors of this reign of terror as hearsay. This position is an affront to the memory of the victims of the Rosewood Massacre in particular and the African American community in general. Even worse, Mr. Peter's words, your official position, is an affront to the very concept of justice as we know it.

The position which Mr. Peters has argued on your behalf before the Hearings Officer is totally indefensible. In fact, it appears that the State of Florida has intentionally tried to play both sides of the fence on this matter. It is time for your office, as Chief Law Enforcer for the State of Florida to step up and do the responsible thing so this ugly chapter of Florida history can be closed, once and for all.

Consider , if you will, the following uncontested facts:

1. During the first week of January in 1923, a white vigilante mob moved through, and about, the Rosewood community of Levy County, Florida. They threatened , intimidated, beat and ultimately killed several black residents of the community. Their actions also caused the death of several white residents as well. The conclusion of this week long reign of terror was the destruction and abandonment of the community by its black residents. They left their homes, their property and even their livelihood when they were run out of Rosewood.

2. The historical truth of this incident has been documented at the direction of the leadership of the Florida legislature by a team of independent historians who were assembled from the state university system.

3. The details of the events which unfolded during that week have been testified to by survivors, both black and white, during hours of testimony.

4. Evidence has been provided that there were newspaper accounts, as well as word of mouth accounts, of what was happening in Levy County, which was circulated all over the state and certainly in Tallahassee.

5. It is clear and uncontested that even with the knowledge of what was taking place in Levy County, no constitutional officer of the State of Florida took any action, official or unofficial, to intercede in this matter. There was a complete absence of any law enforcement activity or other public effort to stop the violence.

6. Obviously, had black residents of Levy County been afforded the protection of officials sworn to uphold the law, the loss of life, property and livelihood may have been avoided.

7. It is also obvious that the lack of official action was intentional. Officials from the Governor to the Levy County Sheriff were aware of the violence, but refused to take action to stop it.

The questions your office must answer are simple. Could the State of Florida have limited or, in fact, stopped the violence perpetrated by the vigilante mob in Rosewood, Levy County, Florida, during the first week in January 1923?

Did they have the authority to intervene? Did they intervene? As a result of the inaction of the state, were lives, property and livelihood lost? Based on your answers to these questions, we believe you will be able to determine the state's culpability in this matter.

Mr. Peters has incorrectly determined that the state's culpability can only be determined if it is shown that there was some action officially sanctioning the behavior of the mob. This is absolutely ridiculous! The question is whether or not the state acted to carry out its responsibility to protect and defend all the citizens of the state. The residents of Rosewood were Florida citizens. The state failed to carry out its duty. If you choose to support the stand taken by Mr. Peters, that would be tantamount to the negligence and inappropriate inaction made by the governmental bodies 70 years ago.

The State of Florida, through the legislature, is compelled to address this situation. Obviously, this claims bill will not bring back the dead or restore what has been lost. Adoption of the claims bill will, however, send a strong message to the victims of this tragedy that justice will ultimately prevail and that after 70 years, their loss has finally been recognized.

It is up to you, Mr. Attorney General, as Chief Law Enforcement Officer of the State of Florida, to establish the tone and the climate necessary to help this state move forward.

We hope you are up to the task.

Sincerely,

T. H. Poole, Sr., President
Florida State Conference of
Branches NAACP

THP/bwt

cc: The Florida Cabinet
President of the Senate
Speaker of the House
Rep. Al Lawson
The Media
All Members of Black Caucus

OF

OFFICE OF THE ATTORNEY GENERAL
GENERAL CIVIL LITIGATION SECTION
THE CAPITOL, STE. PL-01
TALLAHASSEE, FLORIDA 32399-1050
TELEPHONE: 904/488-1573 or 904/488-9935

FACSIMILE COVER SHEET

TO: Pete Antonacci FAX NUMBER: 7-2564

FROM: Jim Peters TELEPHONE NO.: 8-1573

DATE: 3/21/94 NO. OF PAGES (incl. cover) 3

FAX OPERATOR: Paula FAX NO.: (904)488-4872

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MESSAGE: Ltr re: docu-drama

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THE CAPITOL, STE. PL-01
TALLAHASSEE, FLORIDA 32399-1050
TELEPHONE: 904/488-1573 or 904/488-9935

FACSIMILE COVER SHEET

TO: Steve Hanlon, Richard Hixson, David Kerns

FAX NUMBER: 224-8832, 488-9879, 487-5800

FROM: Jim Peters

TELEPHONE NO.: 488-1573

DATE: 3/30/94

NO. OF PAGES (incl. cover) 11

FAX OPERATOR: Paula

FAX NO.: (904)488-4872

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MESSAGE: Memorandum Re: App. of Hobri and Not. of Supp. Auth.

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FYI

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TALLAHASSEE, FLORIDA 32399-1050
TELEPHONE: 904/488-1573 or 904/488-9935

FACSIMILE COVER SHEET

TO: Jim Hanlon FAX NUMBER: 224-8832

FROM: Jim Peters TELEPHONE NO.: _____

DATE: 3/19/94 NO. OF PAGES (incl. cover) ____

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MESSAGE: !!

Please autograph and return - just sign

" to my favorite defense lawyer

from State "homey" Hanlon

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Attorney Steve Hanlon, representing the Rosewood families, dismissed [redacted] testimony as "about quadruple hearsay," passed down through generations.

Mr. Jim Peters
State Attorney
Rosewood Massacre Survivors
Tallahassee, Florida

OK to pay 3/17/94 Peters

Johns, et al. v. State of Florida House Bill 591 & 94-200148 ROSEWOOD CLAIMS BILL

C1

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JAMES PETERS, ESQUIRE
ATTORNEY GENERALS OFFICE (ALEXANDER
ALEXANDER BUILDING, SUITE 101
2020 CAPITAL CIRCLE SE
TALLAHASSEE, FL 32301

March 9, 1994

INVOICE# 09A0225

BALANCE: $550.00

CAPTION: ROSEWOOD PUBLIC HEARINGS
FILE NO:
SCHEDULED: 02/25/94 BILLED: 03/09/94
REPORTER: SANDI NARGIZ

I N V O I C I N G I N F O R M A T I O N

Charge	Description	Amount
	APPEARANCE	
2-25	9:00-5:00	
3-1	1:30-3:00	
3-4	9:30-4:30	
	TRANSCRIPTS	
VOLUMES 1-5	550 PGS @ 1.00 (PUBLIC HEARING)	550.00

SN
LG
REPORTERS: S. NARGIZ, L. GILBERT

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DEPARTMENT OF LEGAL AFFAIRS

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

March 18, 1994

Richard Hixson
Special Master
Florida House
412 House Office Building
Tallahassee, FL 32399-1300

David Kerns
Special Master
Florida Senate
408 The Capitol
Tallahassee, FL 32399-1100

Re: In the Matter for Relief of: Arnett T. Goins, et al.
House Bill 591

Dear Mr. Hixson and Mr. Kerns:

Enclosed for your records is an undated and unsigned letter received in my office on March 16, 1994.

Sincerely,

James A. Peters
Assistant Attorney General
Office of the Attorney General
PL-01 The Capitol
Tallahassee, FL 32399-1050
(904) 488-1573
(904) 488-4872 (Fax)

cc: Steve Hanlon, Esquire

<jimp>Ltr.Jim

Mr. Jim Peters
State Lawyer
Rosewood Massacre

Dear Mr. Peters,

I am a survivor from the Rosewood Massacre family. I have not been included as one of the survivors. Someone has not done his homework from the research point of view. The research has been strictly based on hearsay from whatsay by whosay. I am in constant touch (daily) with a survivor who is a lawyer and works with one of the biggest law firms in the state of Florida and we are just waiting for a loophole. I feel that the family being represented and presented at the hearings is just a small nucleus of the rich and famous Rosewood family survivors, or what they think themselves to be. We have enough evidence to create a lawsuit of negligence against the state if we are overlooked. There are many survivors throughout the states that you haven't begun to touch. It is an insult to my ancestors for anyone to try to reap benefits for a group of elitish (attitude) family members without having sensitivity toward other family members. Our last count brought our number to one hundred thirty-four.

My suggestions to you is pay all or pay nall.

Seriously speaking,

Members of the Rosewood Massacre family

RECEIVED
MAR 17 1994
Department of Legal Affairs
Civil Section

OFFICE OF THE ATTORNEY GENERAL
GENERAL CIVIL LITIGATION SECTION
THE CAPITOL, STE. PL-01
TALLAHASSEE, FLORIDA 32399-1050
TELEPHONE: 904/488-1573 or 904/488-9935

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TO: Richard Hixson FAX NUMBER: 8-9879

FROM: Jim Peters TELEPHONE NO.: 488.1573

DATE: 3.17.94 NO. OF PAGES (incl. cover) 1

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MESSAGE: To preserve the Record, I request issuance of House subpoena to insure presence of the authors of the "Documented History." I am advised that Dr Coburn and Tom Dye have left on one leaving the city/state and F.S.U. counsel Linda Schmidt can not commit whether Dr Jones, Dr Rice, or Dr Rogers can be present at 9:30. I have tendered a stipulation which may or may not be signed & may or may not resolve this issue.

C.C. S. Hanlon - 224-8832
L. Schmidt - 644-0973

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C.C. S. Hanlon - 224-8532
L. Schmidt - 644-0973

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OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

MEMORANDUM

TO: Richard Hixson, Special Master
David Kerns, Special Master
Steve Hanlon, Esquire
Linda Schmidt, Esquire

FROM: Jim Peters
Assistant Attorney General

DATE: March 17, 1994

Re: In the Matter for Relief of: Arnett T. Goins, et al., HB 591 (Rosewood Claims Bill)

I will be forwarding a Proposed Stipulation for execution by Dr. Rodgers or the team by 2:30pm. Execution of this Stipulation will preclude the need for team members tomorrow. The Stipulation is based on materials which I viewed in the team's records this morning.

<jimp>Memo.Jim

CF

OK
X pay
State of Florida
Goins et al. v. State of Florida
House Bill 591
AG #94-000148
ROSEWOOD CLAIMS BILL

INVOICE

ACCURATE STENOTYPE REPORTERS, INC.
100 Salem Court
Tallahassee, Florida 32301
(904)878-2221
(800)934-9090

INVOICE #: 24D0311
FED. ID. 59-2708168
DATE: 3/15/94

Assistant Attorney General
The Capitol
Tallahassee, Florida 32301

ATTORNEY: JAMES PETERS

RE: Goins et al v. Florida; HB 591

The public hearing before Special Masters Hixson and Kearns taken on March 7 and 11, 1994, at The Capitol, Room 317, Tallahassee, Florida, beginning at 2:00 p.m. and ending at 3:20 p.m; beginning at 9:30 a.m. and ending at 12:15 p.m., respectively.

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TELEPHONE: 904/488-1573 or 904/488-9935

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TO: Tom Hillstrom / Pete Antonacci FAX NUMBER: 487-2564

FROM: Jim Peters TELEPHONE NO.: 488-1573

DATE: 3/16/94 NO. OF PAGES (incl. cover) 16

FAX OPERATOR: Paula FAX NO.: (904)488-4872

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MESSAGE: Please provide comments by 2pm.

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TELEPHONE: 904/488-1573 or 904/488-9935

FACSIMILE COVER SHEET

TO: Pete A. FAX NUMBER: 7-2564

FROM: Jim Peters TELEPHONE NO.: 488-1573

DATE: 3/15/94 NO. OF PAGES (incl. cover) 8

FAX OPERATOR: Paula FAX NO.: (904)488-4872

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MESSAGE: Rosewood Memo - Per Richard Doran

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TALLAHASSEE, FLORIDA 32399-1050
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Richard Hixson
David Kerns
Steve Hamlon

FACSIMILE COVER SHEET

4886-9879
487-5800
224-8832
644-8973

TO: Linda Schmidt FAX NUMBER:

FROM: Jim Peters TELEPHONE NO.: 488-1573

DATE: 3/15/94 NO. OF PAGES (incl. cover) 3

FAX OPERATOR: Paula FAX NO.: (904)488-4872

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MESSAGE: ltr

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ROBERT A. BUTTERWORTH
Attorney General
State of Florida

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

MEMORANDUM

TO: Richard Hixson, Special Master
David Kerns, Special Master

FROM: Jim Peters
Assistant Attorney General

DATE: March 15, 1994

Re: In the Matter for Relief of: Arnett T. Goins, et al., HB 591 (Rosewood Claims Bill)

I spoke with University Attorney Linda Schmidt this morning who indicated that responses to the State's Interrogatories and Request for Production of Documents may be forthcoming by midday Wednesday, March 16, 1994. I assured her that I will review the responses as soon as they are available and will advise her as to which, if any, of the team's members would be requested to appear at the hearing for further examination.

She indicated that many of team members have other plans and commitments but that Dr. Rogers would be available to respond on behalf of the team. At this time I do not know if Dr. Rogers' presence and testimony will suffice for purposes of the State of Florida's examination of this report and its authors.

I do not wish to further delay resolution of this 70 year old claim. However, meaningful and fair defense of the State requires the opportunity for examination of the authors of the report.

Anticipating the possibility that some of these witness may not willingly attend the hearing, I respectfully reserve the right, after examination of discovery responses and documents, to request a House Subpoena to compel attendance for examination.

Please advise if you feel further discussion of this matter would be beneficial.

cc: Steve Hanlon, Esquire
Linda Schmidt, Esquire

<jimp>Memo.Jim

CF

OFFICE OF THE ATTORNEY GENERAL
GENERAL CIVIL LITIGATION SECTION
THE CAPITOL, STE. PL-01
TALLAHASSEE, FLORIDA 32399-1050
TELEPHONE: 904/488-1573 or 904/488-9935

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TO: Steve Hanlon / Richard Hixson / David Kerns — FAX NUMBER: 224-8832 / 488-9879 / 487-5800

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MESSAGE: Memo of Law

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OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

MEMORANDUM

TO: Linda Schmidt
FSU Office of General Counsel

FROM: Jim Peters
Assistant Attorney General

DATE: March 11, 1994

Re: In the Matter for Relief of: Arnett T. Goins, et al., HB 591 (Rosewood Claims Bill)

Thank you for speaking with me yesterday about State of Florida's formal discovery of the faculty team. At approximately 2:30pm yesterday, a copy of a tape of an interview of Mr. Parham was delivered to me by someone from FAMU. The "transcript" in "the record" had been "smoothed" but, with one exception, generally tracked what Parham said.

I listened to the tape and went to Holland & Knight at 4:30pm to interview Mr. Parham personally. I was stunned to be presented with a videotape of yet another interview of Mr. Parham. The video had been provided to Holland & Knight by "the team."

What is going on?

<jimp>Memo.Jim

CF

OFFICE OF THE ATTORNEY GENERAL
GENERAL CIVIL LITIGATION SECTION
THE CAPITOL, STE. PL-01
TALLAHASSEE, FLORIDA 32399-1050
TELEPHONE: 904/488-1573 or 904/488-9935

FACSIMILE COVER SHEET

TO: Linda Schmidt FAX NUMBER: 644-8973

FROM: Jim Peters TELEPHONE NO.: 488-1573

DATE: 3/11/94 NO. OF PAGES (incl. cover) 2

FAX OPERATOR: Paula FAX NO.: (904)488-4872

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MESSAGE: ltr re: Parham videotape

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CF
60ins

FACSIMILE COVER SHEET

TO: Steve Hanlon, Richard Wixson, David Kerns — FAX NUMBER: 224-8832, 488-9879, 487-5800

FROM: Jim Peters — TELEPHONE NO.: 4881573

DATE: 3/10/94 — NO. OF PAGES (incl. cover) 5

FAX OPERATOR: Paula — FAX NO.: (904)488-4872

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MESSAGE: Revised Supp. Wit. List (3/10/94) with Affidavit.

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FACSIMILE COVER SHEET

TO: Linda Schmidt FAX NUMBER: 644-8973

FROM: Jim Peters TELEPHONE NO.: 488-1573

DATE: 3/10/94 NO. OF PAGES (incl. cover) 1

FAX OPERATOR: Paula FAX NO.: (904)488-4872

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MESSAGE: _____

To confirm our telephone conversation this morning, I understand you may be requesting an extension of time for the faculty members to answer the State's interrogatories and requests for production of documents. I request that I be afforded responses and document production at least 24 hours before commencement of the hearing. I suggest additional copies of the record should be made for Mr. Hixson, Mr. Kerns, Mr. Hanlon, and myself. I otherwise restate my urgent need for a copy of the taped interview of Ernest Parham, a tape which has seemingly been provided to claimants' counsel already. Please advise as soon as possible.

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FACSIMILE COVER SHEET

TO: M. Ila Alderman FAX NUMBER: 922-6784

FROM: J. M Peters TELEPHONE NO.: 488-1573

DATE: 3/10/94 NO. OF PAGES (incl. cover) 1

FAX OPERATOR: _____ FAX NO.: (904)488-4872

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MESSAGE: What D.O.B.? There are all older persons - alive in 1923

Jason Mc Elveen - last known address Dade City (deceased)

Ernest Parham - Orlando Fla -

Fred Kirkland - Chiefland

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FACSIMILE COVER SHEET

TO: Steve Hamlon FAX NUMBER: 224-8832

FROM: Jim Peters TELEPHONE NO.: 488-1573

DATE: 3-10-94 NO. OF PAGES (incl. cover) ____

FAX OPERATOR: B Paulson FAX NO.: (904)488-4872

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MESSAGE: Rosewood Claims Bill HB 591
copy of letter to team requesting
official research files

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315 SOUTH CALHOUN STREET
P.O. DRAWER 810 (ZIP 32302-0810)
TALLAHASSEE, FLORIDA 32301
(904) 224-7000
FAX (904) 224-8832

SPECIAL COUNSEL
SHAW, LICITRA, PARENTE, ESERNIO & SCHWARTZ, P.C.
GARDEN CITY, NY
NEW YORK, NY

March 10, 1994

VIA FAX

James A. Peters, Esquire
Office of the Attorney General
Koger Center, Alexander Building
Room 102
Tallahassee, Florida 32399-1050

Re: In the Matter for Relief of:
Arnett T. Goins, et al.
Revised Supplemental
Witness and Exhibit List

Dear Jim:

Please provide us with a copy of the March 2, 1994 facsimile letter to Professor Maxine Jones, Professor Larry Rivers and Professor William Rogers and also the video tapes referred to in your Revised Supplemental Witness and Exhibit List, which was faxed to me yesterday.

Very truly yours,

HOLLAND & Knight

Stephen F. Hanlon/k

Stephen F. Hanlon

SFH/kp

TAL-40952

LAW OFFICES

HOLLAND & KNIGHT

315 SOUTH CALHOUN STREET
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JOHNSON, BARTLETT & LYNN, P.A.
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P.O. BOX 3542 (ZIP 33731)
ST. PETERSBURG, FL 33701
(813) 898-7171 FAX (813) 822-8048

SPECIAL COUNSEL
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GARDEN CITY, NY 11530
(516) 746-0610 FAX (516) 746-2870
300 EAST 42ND STREET
NEW YORK, NY 10017
(212) 338-0870

FAX COVER SHEET

TO: James A. Peterson, Esq. FROM: Stephen F. Hanlon

MESSAGE: _____

_____

URGENCY OF FAX: Super Rush (Immediate) X RUSH (w/in 1 hour) ____

EMPLOYEE NAME: Kathy Phinazee LOCATION: TAL EXT: 5611

Client Initial	Number	Matter	Area Code	FAX #	Time	Zone
	80001	64		488-4872		

Atty. #	No. of Pages (Inc. Cover)	Area Code	Telephone #	Date
	2			3/9/94

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THE CAPITOL, STE. PL-01
TALLAHASSEE, FLORIDA 32399-1050
TELEPHONE: 904/488-1573 or 904/488-9935

FACSIMILE COVER SHEET

TO: SUNSHINE CONCRETE ATTN: LINDEN LINDSEY **FAX NUMBER:** 904-463-6390

FROM: JAMES PETERS **TELEPHONE NO.:** 904-488-1573

DATE: 3/10/94 **NO. OF PAGES (incl. cover)** 3

FAX OPERATOR: PAULA **FAX NO.: (904)488-4872**

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MESSAGE: PLEASE REVIEW FOR ACCURACY. If this accurately reflects what you told me on the telephone, please sign it before a notary and fax it back to me today and mail the hard copy back to me -- James Peters, Assistant Attorney General, Florida Office of the Attorney General, PL-01 The Capitol, Tallahassee, FL 32399-1050. If this version is inaccurate, or ifyou wish to supplement it, please make necessary corrections before you return it to me. Thank you for speaking with me.

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FACSIMILE COVER SHEET

TO: Steve Hanlon FAX NUMBER: 224-8832

FROM: Jim Peters TELEPHONE NO.: 488-1573

DATE: 3/10/94 NO. OF PAGES (incl. cover) 1

FAX OPERATOR: Paula FAX NO.: (904)488-4872

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MESSAGE: I will deliver the Wilkerson video tape statements to you this A.M, would like to pick up "the contracts" at that time. Who are your witness tomorrow? I have no responses from the FAMU - FSU - UF faculty yet, am unsure of their rule. Please call

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FACSIMILE COVER SHEET

TO: Steve Hanlon, Richard Hixson, David Kerns — FAX NUMBER: 224-8832 ✓, 488-9879, 487-5800 ✓

FROM: Jim Peters — TELEPHONE NO.: 488-1573

DATE: 3/9/94 — NO. OF PAGES (incl. cover) 3

FAX OPERATOR: Paula — FAX NO.: (904)488-4872

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MESSAGE: Revised Suppl Wit + Exh List

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CT-

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TALLAHASSEE, FLORIDA 32399-1050
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FACSIMILE COVER SHEET

TO: Dr. Maxine Jones FAX NUMBER: 644-6402

FROM: James A. Peters TELEPHONE NO.: 8-1573

DATE: 3/7/94 NO. OF PAGES (incl. cover) 26

FAX OPERATOR: Kelly FAX NO.: (904)488-4872

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Per Special Master's Order

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MESSAGE: _____

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FACSIMILE COVER SHEET

TO: Steve Hanlon FAX NUMBER: 224-0032

FROM: Jim Peters TELEPHONE NO.: 488-1573

DATE: 3/6/94 NO. OF PAGES (incl. cover) 1

FAX OPERATOR: ⊖ FAX NO.: (904)488-4872

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MESSAGE: Gary Moore called my office & my home Friday evening. Per your privilge and our agreement I did not speak with him. He told my wife he did not get the Fax until Friday afternoon. He told her he want to be involved. Who did FAX go out, how your a response to it? Please call my office or home today about this. (Have you the McCarty Contracts yet?)

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Post-it™ brand Fax Transmittal Memo 7672 | No. of Pages | Today's Date | Time

To Richard Hixson | From Gary Moore

Company Florida House of Representatives | Company

Location Room 412 | Location | Dept. Charge

Fax # (904) 488-9879 | Telephone # | Fax # (601) 680-9271 | Telephone # (601) 842-2744

Comments | Original Disposition: ☐ Destroy ☐ Return ☐ Call for pickup

2303 Woods Street
Tupelo, MS 38801
Tel (601) 842-2744

March 5, 1994

Mr. Richard Hixson
Special Master
Florida House of Representatives
Room 412
Tallahassee, FL 32399

Dear Mr. Hixson:

On Thursday and Friday I received urgent phone calls and a FAX from both the opposing counsel in the Rosewood claims case, now before the Special Master.

The phone calls were conference calls with both counsel present, Mr. Hanlon and Mr. Peters, expressing basically the same message, which, at my request, Mr. Hanlon has repeated in writing by FAX. As I understand this message it is as follows:

Both counsel now seem to be in agreement that it is imperative that the information I have gathered about the 1923 Rosewood case over the past twelve years be brought to bear (and not excluded as has largely been done up to now) in attempting to arrive at some official consensus of truth.

They have made the extraordinary invitation--at times verging on demand--that suddenly, in a startling reversal of their previous stance toward my materials, I surrender all my materials to them so they might summarize and review twelve years' worth of complex notes and tapes in one weekend.

Once again we are welcomed to the sad spectacle of public truth in Florida--where haste and convenience seem to be the guide.

The spectacle was doubly sharp on Friday. That day both counsel presented opposing witnesses whose flambouyant delusions--through no fault of the earnest and honorable witnesses (they were merely pressured by circumstance to state what they truly believe)--can be easily refuted by the most elemental verifiable knowledge of the Rosewood events. The public is again forced to swallow, as substitute for its own history, a slugging match between contradictory fantasies.

Is historical truth what the smartest lawyer is able to connive, bludgeon, or trick us into accepting? I do now wonder if this is about as sophisticated a version of historical truth as Florida is able to swallow.

03. 07. 94 10:00AM P01

I present the following evidence, toward which the Special Master, as far as I can note, has seemed to maintain olympian unconcern. Mr. Hanlon has thus far been able through procedural tricks to keep my extensive evidence--and specifically, my testimony--from entering the hearing on Rosewood. Mr. Hanlon did this by deceptively opening discussions with me on the verification of eligibility of names on his claimant list. The list, filed with House Bill 591 December 31, contained many inexplicable errors, including the exclusion of many known Rosewood survivors and the inclusion of many less eligible individuals who found it possible to gain influence. When Mr. Hanlon opened these discussions with me I offered to provide any verification without charge, as a service to the public record and in my desire that my objectivity not suffer even the appearance of being influenced by one side or the other in the claims case. However Mr. Hanlon insisted that Holland and Knight pay me, and he suggested a fee amount (which was never forthcoming). When he flew me to Tallahassee I found that repeatedly the proposal was a chimera and kept disappearing and changing into new, unrelated proposals--which then also disappeared. Twice I returned from trips to Tallahassee, having provided Mr. Hanlon with the names and addresses of excluded eligible claimants I had found, but then having also found that whatever arrangement he wished to make with me had not been formalized. At last these conversations were terminated suddenly by Mr. Hanlon. I then found a neat surprise. I was told that, due to accepted procedure among attorneys, the mere opening of these discussions by Mr. Hanlon with me, though I had never accepted a dime in payment, meant that Mr. Hanlon now could claim the privilege of controlling <u>all</u> of my testimony and of forbidding any of my testimony to appear before the hearing. He could completely prevent me from conducting any conversations with Mr. Peters, on the opposing side, I was told by Mr. Peters himself. I was astonished--but did receive a useful education. There is now reason to wonder whether the entire exercise in phantasmal arrangements by Mr. Hanlon was from the beginning largely a planned manipulation of the rules in order to exclude my information from the hearing. I am informed that Mr. Hanlon did know that precisely this trick could be pulled--because once in the past he had found it pulled on himself. If this did occur in the past, I commiserate with Mr. Hanlon's bygone injury. But it doesn't excuse his behavior now. It gives him no right to distort the public record by forcing a Special Master's hearing to be conducted on the basis of hearsay and fantasy.

At least as far as I can see from my distant position, the Special Master has thus far allowed this cynical distortion of rules to go forward, effectively excluding evidence. The reversal late last week by both Mr. Hanlon and Mr. Peters, who now have magically concluded that maybe the misuse of the rules can be overcome, moves me to write this reply to their message.

03. 07. 94 10:00AM P02

If the Special Master is serious about truth he will pay careful attention to the nature of the joint demand by Mr. Hanlon and Mr. Peters. Specifically it asks that every scintilla of my work product be handed over to them for a quick weekend's pretentious pawing. This is not a serious request.

I have offered by phone to produce summaries, with specific items of evidentiary support, from my materials demonstrating the most probable scenarios of specific matters at issue in the Rosewood case (such as activity by official government bodies during the violence, ownership of land, the physical dimensions of the destroyed community, etc.)

Nope. This was not good enough for the joint counsel request. They must have everything I own--though everything represents the entirety of my proprietary work product. Again on Friday, as I understand from a fellow reporter, the Special Master may have witnessed the pathetic spectacle of a State University System professor personally paid $8,000 by the State of Florida to research Rosewood get up and testify that he refused to tell what he had learned--because now he is writing a book. I understand that the sudden secrecy imposed by him on his remarkably modest scraps of information--fraught with delusion and gossip--was defended by this professor as being justified because, as I understand he expressed it, these secretive scraps supposedly came to him <u>after</u> his investigation for the State of Florida was completed December 22--when, supposedly, new witnesses, who are white and who were not present at the events, called in with supposed dramatic new revelations never before on record.

Sadly the Special Master is begged to consider who these supposed new witnesses are: people who have heard stories as children. In the testimony Friday we have a specific example. It is again the shame of the State of Florida that such honest people with good intentions are thrust into a public forum in defense of belief complexes they have faithfully accepted as truth. The stories being told by these people are so outrageously unsupported that perhaps even a child--were the child a bit more objective than the official truth process in Florida--might point out with bitter laughter that the Emperor seems to be wearing remarkably few clothes. To wit: a death house filled with rotting corpses, blood, and...lots of sewing machines.

With all respect to the august proceedings before the Special Master, the underlying details of such beliefs (such as a fantasized and never-witnessed death house being inexplicably filled with industrially numerous sewing machines, as in a bedtime story told to an awed child) may not have been elicited in sworn testimony because such details may be a bit inconvenient.

Maybe Florida must have bedtime stories, and so will have them, no matter what.

I don't believe any such credulously heard presenters of hearsay, now judged to be so valuable by both of the opposing counsel in the Rosewood affair, have ever been asked to turn over all <u>their</u> notes, tapes, and research materials. They have simply been invited to testify about what they believe to be probable truth. Has the gentleman from Chicago who judged "hedonic damages" for the Special Master been asked to turn over all <u>his</u> research materials, notes, and tapes? Apparently his airily unsupported word is quite sufficient for the Special Master's profound deliberation.

After years of research, when I have repeatedly discarded conveniently dramatic but unsupported scenarios regarding what happened at Rosewood, I ask the Special Master that I at least be accorded the same consideration as has been accorded to these other paragons of truth.

If there is any seriousness in the Special Master hearings I will be called to testify--and conceivably also will be asked to present organized evidence <u>on specific issues</u>.

Any other stipulations or qualifications laid upon my appearance are merely more tricks--designed to again <u>exclude</u> my evidence, by presenting me with impossible demands. Does the Special Master wish to acquiesce in these tricks--such as asking me what astronomical sum I might wish to be paid for <u>all</u> my notes, tapes, and materials. Even if I agreed to such a strong-arm sale, the State of Florida certainly should not be asked to pay this--and events make it seem highly unlikely that Holland & Knight will magnanimously come forward and make the payment. Repeatedly in this case Holland & Knight has displayed an intriguing eagerness to demand that the State pay for claims, expenses, investigation, and any old thing which Holland & Knight impecuniously would not pay itself.

If fantasy and delusion can be called by both sides to testify (and even hired guns from Chicago maundering about "hedonic damage" for a fee) why can't real research on points of fact be called to testify as well--if counsel sincerely feel it is so urgent (now at last) that such research be heard?

Sincerely,

Gary Moore

RECEIVED
MAR - 9 1994
Department of Legal Affairs
Civil Section

CF

OK to pay - 3/24/94
AS #94-300148
ROSEWOOD CLAIMS BILL

I N V O I C E

ACCURATE STENOTYPE REPORTERS, INC.
100 Salem Court
Tallahassee, Florida 32301
904-878-2221/800-934-9090

DATE: 03-18-94
INVOICE NO: 4D0318
EMPLOYER ID: 59-2708168

OFFICE OF THE ATTORNEY GENERAL
The Capitol
Tallahassee, Florida 32301

ATTORNEY: JAMES PETERS

RE: Goins, et al vs. Florida
Case No. HB 591

FOR - public hearing before Special Masters Hixson and Kerns held on 03-18-94 in Tallahassee

APPEARANCE -

TRANSCRIPT - 43 pgs. at $1.00 $43.00

EXHIBITS -

POSTAGE AND HANDLING -

TOTAL DUE: $43.00

REPORTER: MICHELLE SUBIA

PAYABLE UPON RECEIPT. INTEREST ACCRUES AT 12% PER ANNUM AFTER 45 DAYS.
PLEASE RETURN YELLOW COPY OF INVOICE WITH PAYMENT.
THANK YOU!

ROSEWOOD CLAIM BILL
PARTIAL RECORD

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C. MEMORANDUM OF LAW RE: TOLLING THE STATUTE OF LIMITATIONS

D. MEMORANDUM RE ADMISSIBILITY OF THE ROSEWOOD REPORT AS PROOF OF LIABILITY

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D. MILITIA CALL-OUT IN 1922

CF

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

March 18, 1994

Richard Hixson
Special Master
Florida House
412 House Office Building
Tallahassee, FL 32399-1300

David Kerns
Special Master
Florida Senate
408 The Capitol
Tallahassee, FL 32399-1100

Re: In the Matter for Relief of: Arnett T. Goins, et al.
House Bill 591

Dear Special Masters:

Enclosed for your records is the State's Proposed Affidavit to which the team's response of March 18, 1994, is directed.

On behalf of the State, I respectfully submit the team's answers are not fully responsive and do not afford the type of insight which further examination would have allowed.

However, I appreciate the time deadlines with which the Legislature is dealing and trust that the record of HB 591 is otherwise sufficient to enable you and the members of the Legislature to evaluate this claim.

As a final matter, I am enclosing a copy of a contract between Mrs. Langley and de Passe Entertainment Inc. ("the McCarthy contract") which Mr. Hanlon provided me this morning. I request that it be included as evidence in this matter. I am unsure if there are other contracts with other Claimants, however.

Thank you for your courtesies.

Sincerely,

Jim Peters

James A. Peters
Assistant Attorney General
Office of the Attorney General
PL-01 The Capitol
Tallahassee, FL 32399-1050
(904) 488-1573
(904) 488-4872 (Fax)

cc: Steve Hanlon, Esquire

<jimp>Ltr.Jim2

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

MEMORANDUM

TO: Linda Schmidt, Esquire

FROM: Jim Peters
Assistant Attorney General

DATE: March 17, 1994

Re: In the Matter for Relief of: Arnett T. Goins, et al., HB 591 (Rosewood Claims Bill)

Enclosed is a Proposed Affidavit, for execution by Dr. Rogers or other member of the team on behalf of the team.

The separate paragraphs reference materials which I observed in the records at FSU this morning or follow-up to previous interrogatory questions.

Execution of this Affidavit will suffice for State's purposes and further testimony of the team members will not be required.

Please advise.

JP/pn

cc: S. Hanlon

<jimp>Memo.Jim

AFFIDAVIT

STATE OF FLORIDA)
) SS
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared _____, on behalf of the author's of the "Documented History" who, after being by me first duly sworn, deposes and says:

1. A news article in the team's research product dated January 5, 1923 "by the Associated Press", but not identifying the paper in which is was published, provided in part "early last night a report reached Sumner that the Negros wanted were at this place. A party of citizens came here from Sumner to investigate. In one place it is said they found about 25 Negros heavily armed.

Andrews and Wilkerson started to enter the house, and citizens said they were shot to death without warning. Three other whites were wounded in the first skirmish."

2. Because of the remoteness in time and absence of live witnesses, the team is unable to determine the circumstances by which Andrews and Wilkerson were killed as they started to enter the (Carrier) house, and the team is unable to determine whether or not Andrews and Wilkerson were aggressors or were members of a peaceful group of white citizens.

3. Materials in the team's research file included an article attributed to a New York paper which provided, in part "several of those who were barricaded in the (Carrier) house have been captured and were spirited away for safe keeping. The prisoners captured are said to have admitted that there were eighteen people in the house".

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10. The team is unable to undertake further inquiry to corroborate or discount the Wilkerson's statements that Poly Wilkerson was invited, by a black resident, to the Carrier household to act in a peace keeping role.

11. The team is unable to conclude whether the result of the Grand Jury inquiry was due to lack of diligence by the State Attorney or the Sheriff, or lack of cooperation and deceit by the witnesses who testified to it.

FURTHER AFFIANT SAYETH NOT

_____

_____

Sworn to and subscribed before me this
_____ day of _____, 1994.

_____
(Signature of Notary Public,
State of Florida)

_____
Print, type of stamp commissioned
name of Notary Public.

Commission No. _____

My Commission Expires: _____
Personally Known _____ or
Produced Identification _____
(Check One)

Type of Identification Produced:

_____

On behalf of the authors of the "Documented History of the Incident Which Occurred at Rosewood, Florida".

July 23, 1993

Ms. Mini Lee Langley
1998 W. 30th St.
Jacksonville, FL 32209

RE: ROSEWOOD

Dear Ms. Langley:

This letter will confirm the agreement ("Agreement") made on 7-31-93 between de Passe Entertainment, Inc. ("Producer") and you, with respect to Producer's option to purchase the exclusive rights in and to your life story (the "Life Story").

In consideration of the mutual covenants and agreements herein contained, you and Producer hereby agree as follows:

1. INITIAL OPTION PERIOD/RIGHTS:

In consideration of Producer's payment to you of One Thousand Dollars ($1,000) payable on the latter of the date of execution of this Agreement and the Agreement for the rights to the related stories of Mini Lee Langley and Michael O. McCarthy, you hereby grant to Producer the irrevocable and exclusive option (the "Option"), commencing and continuing for a period of one (1) year from the date of execution of this Agreement and that of Mini Lee Langley and Michael O. McCarthy and you to acquire, forever and throughout the universe and in any and all languages, the sole and exclusive theatrical motion picture, television, radio, dramatic and publication rights (for advertising and promotional purposes only) up to 10,000 words, in and to the Life Story, as well as all subsidiary, ancillary and allied rights therein and thereto (including without limitation all sequel, remake, advertising, publicity merchandising, script novelization and music rights). Such rights shall include without limitation the sole and exclusive right to produce one (1) or more motion pictures, programs and/or television series intended for initial exhibition theatrically or on television (including without limitation free, pay, cable and over-the-air subscription television, video cassette, and video or laser disc,

any computer assisted media, including but not limited to, CD-ROM, CD-I and similar disc systems and interactive cable) based upon the Life Story in whole or in part, and the right to release, distribute, exhibit, perform and otherwise exploit such motion picture(s), television program(s) and series in perpetuity in any and all media, whether now known or hereinafter devised. The rights covered by the Option granted hereunder shall include without limitation the right to use your name or any variant thereof and your photograph or other likeness or any simulation thereof, and the exclusive and irrevocable right to depict, portray and represent you and the Life Story and all past, present and future events, incidents, situations and experiences contained in or associated with or related to your life in and in connection with literary work(s), theatrical motion picture(s), television motion picture(s), program(s) or series and other live or recorded dramatic versions of any type, and in connection with the writing, production, distribution, advertising, publicity and exploitation thereof, in any manner and by any means, either accurately or with such liberties as Producer or its successors, licensees or assigns may deem necessary for the purposes of fictionalization or dramatization, and to utilize the Life Story and experiences or portions of the Life Story whether factually, fictionally or both, and by means of artists who may or may not resemble you. Nothing herein contained shall, however, be deemed to prohibit you from concurrently using your name, likeness, voice and/or biography in connection with any personal or business activity other than the production or exploitation of literary works, theatrical motion picture(s), television motion picture(s), program(s) or series or other live or recorded dramatic versions of the Life Story, any portion thereof or any events or episodes contained therein or relating thereto.

2. OPTION EXTENSIONS: Producer shall have the right to extend the initial Option period as follows:

(a) Producer shall have the right to extend the initial Option period for one (1) year by written notice given to you for One Thousand Dollars ($1,000) (the "Second Option Payment").

(b) Producer shall have the further right to extend the initial Option period, as extended, for one (1) additional year by written notice given to you for One Thousand Five Hundred Dollars ($1,500) (the "Third Option Payment").

Producer shall have the right to credit and apply the First and Second Option Payments against the purchase price outlined below. During the Option period, as it may be extended, Producer may pursue all customary development activities including, but not limited to, the writing of a script based on or including the Life Story.

3. PURCHASE PRICE:

(a) If Producer elects to exercise its Option, Producer shall purchase the exclusive and perpetual worldwide rights specified above by written notice and payment to you of Thirty Thousand Dollars ($30,000) (less the First and Second Option Payments) at any time prior to the expiration of the Option Period, as it may be extended, but in no event later than the commencement of principal photography of the initial production produced by Producer based on the Life Story, if any.

4. PAY OR PLAY: Producer shall not be obligated actually to exercise the Option or to produce any literary work, motion picture, or television program or series hereunder, or otherwise to exercise any of the rights granted to Producer herein; it being agreed that in the event Producer exercises the option, Producer's obligations hereunder shall be satisfied by payment to you of the monies required to be paid pursuant to Paragraph 3 hereof, upon the terms and conditions contained therein.

5. REPRESENTATIONS: You hereby represent and warrant that you have the full right and authority to enter into this Agreement and to grant the Option and rights herein granted; that the consent of no other person or entity is necessary for you to enter into and fully perform under this Agreement; that you will not cause, allow or sanction any use of the Life Story or any part thereof by anyone other than Producer and its successors, affiliates, licensees or assigns nor will you grant or give any consent to, or make any agreement with, any other person, firm or entity, which is in conflict or otherwise inconsistent with the agreements, grants, undertakings, representations and warranties made by you hereunder; that you have not made nor will you make any grant, assignment, or agreement which will or might conflict or interfere with the rights granted to Producer hereunder. At Producer's request, you hereby agree at all times to defend, indemnify and hold harmless Producer and its successors, licensees and assigns from and against any and all claims, liabilities, damages, losses and expenses (including without limitation reasonable attorneys' fees) which may arise from any breach or alleged breach of any representation, warranty or agreement made by you hereunder. You further agree to use your best efforts to assist Producer in procuring such releases as Producer may deem necessary from persons to be depicted in any medium pursuant to Producer's rights hereunder.

6. RIGHT TO EQUITABLE RELIEF: You hereby acknowledge that the rights being optioned hereunder are of a special, unique, unusual, extraordinary and intellectual character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages, and a breach by you of the provisions of this Agreement will cause Producer irreparable injury and damage. You therefore expressly agree that Producer

shall be entitled to injunctive and other equitable relief to prevent a breach of this agreement or any part hereof by you and to secure its enforcement. Resort to such equitable relief, however, shall not be construed to be a waiver of any other rights or remedies which Producer may have for damages or otherwise. It is expressly understood and agreed that in the event it is ultimately determined by a court that Producer has committed a material breach of this Agreement, the damage, if any, caused you thereby would not be irreparable or otherwise sufficient to entitle you to injunctive or other equitable relief. You hereby acknowledge that your rights and remedies in any such event shall be strictly limited to the right, if any, to recover damages in an action at law, and you shall not have either the right to rescind this Agreement or any of Producer's rights hereunder, or the right to enjoin any use by Producer of the Life Story or the broadcast or exploitation of any theatrical motion picture or television program or series, or other dramatic version, based thereon or adapted therefrom.

7. ASSIGNMENT: Producer shall have the right at any time to assign or otherwise transfer this Agreement, in whole or in part, or any or all of Producer's rights or obligations hereunder, to any third party. This Agreement shall be binding upon and shall inure to the benefit of your and Producer's respective successors, licensees and assigns.

8. NO LIMITATION: Nothing contained in Paragraph 1 hereof or elsewhere herein shall be construed to be prejudicial to, or operate in derogation of, any rights, licenses, privileges or property which Producer or its successors, affiliates, licensees or assigns may enjoy or be entitled to as a member of the public even if this instrument were not in existence.

9. RELEASE: You hereby agree that you will not bring, institute or assert any claims or actions against Producer, or its successors, affiliates, licensees or assigns, on the ground that any exercise of any rights granted hereunder, or the exploitation of any results and proceeds thereof, constitutes a libel or slander or invasion of any right of privacy or publicity, or otherwise infringes upon or violates any other right you may have (whether statutory or otherwise), and you hereby release and discharge Producer and its successors, affiliates, licensees and assigns from any and all such claims, actions and causes of action that you may now or hereafter have. In this regard, you expressly waive any and all rights and benefits conferred upon you by the provisions of Section 1542 of the California Civil Code or by any other similar law or provision, which Section reads as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if

known by him must have materially affected his settlement with the debtor."

10. FURTHER INSTRUMENTS: You hereby agree to execute or cause to be executed such further documents and instruments as Producer may reasonably request in order to effectuate the terms and intentions of this Agreement, and in the event you fail or are unable to execute any such documents or instruments, you hereby appoint Producer your attorney-in-fact with the full right and authority to execute and deliver the same, which such appointment shall be deemed a power coupled with an interest and shall be irrevocable under any and all circumstances.

Please confirm your concurrence with the foregoing by signing below in the space provided. This will serve as a binding agreement until execution of a more formal agreement that will incorporate all of the terms hereof and such other terms as are customary in agreements with Producer.

Very truly,

de PASSE ENTERTAINMENT, INC.

By: Suzanne Caston

Its: President

Date: 8/9/93

AGREED TO AND ACCEPTED:

Minnie Lee Langley

MINNIE LEE LANGLEY

SS# 264-22-0829

Date: 8/13/93

CF

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

March 18, 1994

Mr. Richard Hixson, Special Master
Florida House of Representatives
Tallahassee, Florida 32399

Dear Mr. Hixson:

Per your request, we are pleased to enclose a copy of the Transcript of the Public Hearings on the Rosewood Claims Bill, HB 591. We have made this copy for your records and review.

There have been seven (7) volumes to date. The transcript of today's session will not be available until later next week.

Should you have any questions, please feel free to call me at 488-9935 or 488-1573.

Sincerely yours,

Barbara J. Paulson, C.L.A.

Barbara J. Paulson
Certified Legal Assistant
to James A. Peters
Assistant Attorney General

<bjp>hixson.318

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

MEMORANDUM

TO: Linda Schmidt, Esquire

FROM: Jim Peters
Assistant Attorney General

DATE: March 17, 1994

Re: In the Matter for Relief of: Arnett T. Goins, et al., HB 591 (Rosewood Claims Bill)

Enclosed is a Proposed Affidavit, for execution by Dr. Rogers or other member of the team on behalf of the team.

The separate paragraphs reference materials which I observed in the records at FSU this morning or follow-up to previous interrogatory questions.

Execution of this Affidavit will suffice for State's purposes and further testimony of the team members will not be required.

Please advise.

JP/pn

cc: S. Hanlon

<jimp>Memo.Jim

OFFICE OF THE ATTORNEY GENERAL
GENERAL CIVIL LITIGATION SECTION
THE CAPITOL, STE. PL-01
TALLAHASSEE, FLORIDA 32399-1050
TELEPHONE: 904/488-1573 or 904/488-9935

FACSIMILE COVER SHEET

TO: Steve Hanlon, Linda Schmidt FAX NUMBER: 224-8832, 644-8973

FROM: Jim Peters TELEPHONE NO.: 488-1573

DATE: 3/17/94 NO. OF PAGES (incl. cover) 6

FAX OPERATOR: _____ FAX NO.: (904)488-4872

✓ AS WE DISCUSSED

___ AS REQUESTED

___ FOR YOUR INFORMATION

___ FOR YOUR COMMENTS

✓ FOR YOUR APPROVAL

✓ FACSIMILE TRANSMISSION ONLY

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___ VIA REGULAR MAIL

___ VIA OVERNIGHT MAIL

MESSAGE: _____

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AFFIDAVIT

STATE OF FLORIDA)
) SS
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared _____, on behalf of the author's of the "Documented History" who, after being by me first duly sworn, deposes and says:

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FURTHER AFFIANT SAYETH NOT

_____

_____

Sworn to and subscribed before me this
_____ day of _____, 1994.

_____
(Signature of Notary Public,
State of Florida)

_____
Print, type of stamp commissioned
name of Notary Public.

Commission No. _____

My Commission Expires: _____
Personally Known _____ or
Produced Identification _____
(Check One)

Type of Identification Produced:

_____

On behalf of the authors of the "Documented History of the Incident Which Occurred at Rosewood, Florida".

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

MEMORANDUM

TO: Linda Schmidt, Esquire

FROM: Jim Peters
Assistant Attorney General

DATE: March 17, 1994

Re: In the Matter for Relief of: Arnett T. Goins, et al., HB 591 (Rosewood Claims Bill)

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The separate paragraphs reference materials which I observed in the records at FSU this morning or follow-up to previous interrogatory questions.

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Please advise.

JP/pn

cc: S. Hanlon

<jimp>Memo.Jim

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FURTHER AFFIANT SAYETH NOT

_____

_____

Sworn to and subscribed before me this
_____ day of _____, 1994.

_____
(Signature of Notary Public,
State of Florida)

_____
Print, type of stamp commissioned
name of Notary Public.

Commission No. _____

My Commission Expires: _____
Personally Known _____ or
Produced Identification _____
(Check One)

Type of Identification Produced:

_____

On behalf of the authors of the "Documented History of the Incident Which Occurred at Rosewood, Florida".

CF

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FLORIDA 32399-1050

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STATE OF FLORIDA)
) SS
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared _____, on behalf of the author's of the "Documented History" who, after being by me first duly sworn, deposes and says:

1. A news article in the team's research product dated January 5, 1923 "by the Associated Press", but not identifying the paper in which is was published, provided in part "early last night a report reached Sumner that the Negros wanted were at this place. A party of citizens came here from Sumner to investigate. In one place it is said they found about 25 Negros heavily armed.

Andrews and Wilkerson started to enter the house, and citizens said they were shot to death without warning. Three other whites were wounded in the first skirmish."

2. Because of the remoteness in time and absence of live witnesses, the team is unable to determine the circumstances by which Andrews and Wilkerson were killed as they started to enter the (Carrier) house, and the team is unable to determine whether or not Andrews and Wilkerson were aggressors or were members of a peaceful group of white citizens.

3. Materials in the team's research file included an article attributed to a New York paper which provided, in part "several of those who were barricaded in the (Carrier) house have been captured and were spirited away for safe keeping. The prisoners captured are said to have admitted that there were eighteen people in the house".

4. Because of remoteness in time and the absence of live witnesses the team is unable to followup on this article to corroborate its accuracy. The team does not know if blacks who barricaded themselves in the Carrier household were or were not "spirited away for safe keeping" by law enforcement.

5. Included in the team's research material was a record compiled by Monroe N. Work, dated December 31, 1922 which reported 57 lynchings but also reported 58 other instances in which officers of the law prevented the lynchings. Mention of this report was made in an initial draft of the "Documented History" but was deleted from other drafts.

6. Included in the team's research material was a reported compiled by Monroe N. Work which provided that recorded lynchings in 1924 were "the smallest number . . . in any year since records . . . have been kept and is 17 less than the number for the year 1923 and 41 less than the number for the year 1922". That report otherwise stated "there were 45 instances in which officers of the law prevented lynchings ..."

7. On or about September, 1993 the team received an eleven page document entitled "Rosewood Family History - Rewritten by Dr. Annette Goins Shakir" with the notation "to Dr. Rogers - thank you for your leadership and support! Peace, Annette Goins Shakir".

8. That document contained what purported to be a narrative of the Rosewood incident "as told through oral history", portions for which the team could find no cobborative articles or testimony. Accordingly the team did not use the text of that "Rosewood Family History" in its bibliography as the team was unable to vouch for its accuracy.

9. The team was unable to schedule interviews with James Wilkerson and Herbert Wilkerson within the time schedule required for submission of the team's report. The interview of the Wilkerson's was done by Tom Dye in February, 1994.

10. The team is unable to undertake further inquiry to corroborate or discount the Wilkerson's statements that Poly Wilkerson was invited, by a black resident, to the Carrier household to act in a peace keeping role.

11. The team is unable to conclude whether the result of the Grand Jury inquiry was due to lack of diligence by the State Attorney or the Sheriff, or lack of cooperation and deceit by the witnesses who testified to it.

FURTHER AFFIANT SAYETH NOT

_____

_____

Sworn to and subscribed before me this
_____ day of _____, 1994.

_____
(Signature of Notary Public,
State of Florida)

_____
Print, type of stamp commissioned
name of Notary Public.

Commission No. _____

My Commission Expires: _____
Personally Known _____ or
Produced Identification _____
(Check One)

Type of Identification Produced:

_____

On behalf of the authors of the "Documented History of the Incident Which Occurred at Rosewood, Florida".

LAW OFFICES

HOLLAND & KNIGHT

FORT LAUDERDALE
JACKSONVILLE
LAKELAND
MIAMI
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SPECIAL COUNSEL
SHAW, LICITRA, PARENTE, ESERNIO & SCHWARTZ, P.C.
GARDEN CITY, NY
NEW YORK, NY

March 16, 1994

VIA HAND DELIVERY

Mr. Richard Hixson
Staff Director
Judiciary Committee
Room 412, House Office Building
Tallahassee, Florida 32399

Re: In the Matter for Relief of:
Arnett T. Going, Minnie L. Langley, et al.
HB 591

Dear Richard:

Enclosed please find Claimants' Memorandum of Law Re Excited Utterance Exception to the Hearsay Rule and Claimants' Memorandum of Law Re Justices of Peace and Constables in 1923.

Very truly yours,

HOLLAND & KNIGHT

Stephen F. Hanlon /k

Stephen F. Hanlon

SFH/kp

Enclosures

cc: David Kerns
(w/enclosure)

James A. Peters, Esq.
(w/enclosure)

TAL-39708

RECEIVED
MAR 17 1994
Department of Legal Affairs
Civil Section

LAW OFFICES

HOLLAND & KNIGHT

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SPECIAL COUNSEL
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GARDEN CITY, NY
NEW YORK, NY

March 16, 1994

VIA HAND DELIVERY

Mr. Richard Hixson
Staff Director
Judiciary Committee
Room 412, House Office Building
Tallahassee, Florida 32399

Re: In the Matter for Relief of:
Arnett T. Going, Minnie L. Langley, et al.
HB 591

Dear Richard:

Enclosed please find Claimants' Memorandum of Law Re Damages for Posttraumatic Stress Disorder and related cases.

Very truly yours,

HOLLAND & KNIGHT

Stephen F. Hanlon

Stephen F. Hanlon

SFH/kp

Enclosures

cc: David Kerns
(w/enclosure)

James A. Peters, Esq.
(via fax w/out enclosure)
(via U.S. Mail w/enclosure)

TAL-39708

CF

Goins et al. v. State of Florida
House Bill 591
AG #94-300148
ROSEWOOD CLAIMS BILL

INVOICE

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100 Salem Court
Tallahassee, Florida 32301
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(800)934-9090

INVOICE #: 24D0311
FED. ID. 59-2708168
DATE: 3/15/94

Assistant Attorney General
The Capitol
Tallahassee, Florida 32301

ATTORNEY: JAMES PETERS

RE: Goins et al v. Florida; HB 591

The public hearing before Special Masters Hixson and Kearns taken on March 7 and 11, 1994, at The Capitol, Room 317, Tallahassee, Florida, beginning at 2:00 p.m. and ending at 3:20 p.m; beginning at 9:30 a.m. and ending at 12:15 p.m., respectively.

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HARRY A. McCLAREN, Ph.D.
Clinical and Forensic Psychology

P.O. Box 522
Quincy, Florida 32351

Telephone:
(904) 627-2298

March 14, 1994

Honorable Jim Peters
Assistant Attorney General
Office of the Attorney General
P. L. - 01
The Capitol
Tallahassee, Florida 32399-1050

Dear Jim:

I hope by the time this reaches you that the hearings have been concluded in regard to the Rosewood incident. I certainly hope that our work together helped provide the legislature with truthful information on which to make their decisions. It certainly was a pleasure working with you on this most interesting project. I hope that you would think of me again when psychological services are important to litigation of any of your cases.

Also, and charged is a statement of services rendered in working with you on the Rosewood incident. As we discussed, I have shown the previously discussed cap of $3000 separately from additional time spent completing our efforts. Please advise if there are questions in regard to the report.

Sincerely yours,

Harry A. McClaren, Ph.D.
Licensed Psychologist

P-I
request approval for payment of
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3/17/94

Coinsett vs. State of Florida
House Bill 591
AG # 94-200148
ROSEWOOD CLAIMS BILL

Florida
Lic. # PY0003239

Alabama
Lic. # 426

HARRY A. McCLAREN, Ph.D.
Clinical and Forensic Psychology

P.O. Box 522
Quincy, Florida 32351

Telephone:
(904) 627-2298

March 14, 1994

Jim Peters
Office of the Attorney General
Assistant Attorney General
P.L.-01
The Capitol
Tallahassee, Florida 32399-1050

Re: ROSEWOOD

S T A T E M E N T

Dear Mr. Peters:

A statement of my charges for recent services is provided below:

Service: Review of voluminous documents in regard to the Rosewood incident including statements of survivors and their descendants; a historical account of the Rosewood incident submitted to the Florida Board of Regents on December 22, 1993, was reviewed. Transcripts of testimony before Special Masters on February 25, 1994, were reviewed. Video tape segments involving Rosewood survivors which was aired on both 60 Minutes and a Tampa area television station were inspected. Consultation was provided in regard to the assessment of the Claimants by Dr. Tucker. Dr. Tucker's interview prior to her testimony provided to the Attorney General's Office was monitored. An over-view of proposed testimony provided was provided to counsel for the Claimants. Expert testimony was provided before the Special Masters in the Capital.

Dates of Service: February 23, 1994; February 24, 1994; February 25, 1994.

TOTAL: 20 hours at $150.00/hour = $3000.00 (pre-approved CAP).

ADDITIONAL DATES OF SERVICE: March 2, 1994; March 4, 1994; March 7, 1994; additional hours necessary to complete assignment.
8 hours at $150.00/hour = $1200.00.

Florida
Lic. # PY0003239

Alabama
Lic. # 426

TOTAL DUE: $4200.00

Thank you for your attention in this matter.

Sincerely yours,

Harry A. McClaren, Ph.D.
Licensed Psychologist

OFFICE OF THE ATTORNEY GENERAL
GENERAL CIVIL LITIGATION SECTION
THE CAPITOL, STE. PL-01
TALLAHASSEE, FLORIDA 32399-1050
TELEPHONE: 904/488-1573 or 904/488-9935

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MESSAGE: My questions to the team will number less than thirty but will require use of their newsclips. Please have them bring the entire set. I will also need the map which the Wilkerson's drew for them. I will be leaving for the Capitol at 8:45, please call before then if you have questions.

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TELEPHONE: 904/488-1573 or 904/488-9935

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TO: Steve Hanlon, Linda Schmidt FAX NUMBER: 224-8832, 644-8973

FROM: Jim Peters TELEPHONE NO.: 488-1573

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By Representatives De Grandy, Lawson

A bill to be entitled

An act for the relief of Arnett T. Goins, Minnie L. Langley, Lonnie Carroll, Willie Evans, Dorothy Hosey, Margie Hall, Wilson Hall, Mary Hall, Lillie Washington, Berthina Wagin, Eva Jenkins, Vera Hamilton, Arnett Doctor, Yvonne Doctor, Doris Jones, Earnest Brockington, Wesley D. Bailey, Robert King, Barbara Woods, Mae E. McDonald, Ella M. Reddick, Rosetta Jackson, Clarence Pollard, Bobbie Bradley, Rollie Owab, Queen Manley, Annie B. Lee, Altamese Krispus, Thelma Evans Hawkins, Virginia Briscoe, Willie Mae Thomas, Helen Crockett Taylor, Galbesper N. Bradley, Jr., Rosley J. Bradley, Leruth Bradley, Charlene Bradley, Gail Bradley, Tadga Bradley, Edwan Bradley, Janie M. Bradley, Mary Bradley, Rose Wooten, Berthnia Edwards, Leona Taylor, Larcel Edwards, Martha J. Edwards, Vivian Edwards, Abraham Edwards, Milbert Edwards, Jr., Joseph Edwards, Maud Edwards, Queen E. Edwards, Helen D. Edwards, Earvin Edwards, Albert Edwards, and Dorothy Edwards as the victims of the Rosewood Massacre; providing an appropriation to compensate each of them for injuries they sustained as a result of the massacre and destruction of the property of the African-American citizens of Rosewood during the month of January 1923; providing an effective date.

CODING: Deletions are stricken; additions are underlined.

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To	From
Jim Peters	Pete A.
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Dept.	Fax call me —
Fax #	

both fact & law

Gary Moore 60 minutes

Feb-10-94 09:25 No.066 P.01
4-48*-2564
ATTY GEN DEC

WHEREAS, during the month of January 1923 in and about the town of Rosewood, in Levy County, Florida, certain gross violations of law and human decency occurred in connection with the massacre and destruction of the property of the African-American citizens of Rosewood, Florida, which are more particularly described in the "Historical Investigation of the Facts Relating to the Incident Which Occurred at Rosewood, Florida, in 1923," dated December 22, 1993, and submitted to the Florida Board of Regents, and

WHEREAS, the State of Florida was on notice of the [illegible] occurring in Rosewood in January 1923, in time to have prevented the massacre and destruction of property which occurred in Rosewood, and

WHEREAS, the State of Florida had the obligation, pursuant to, inter alia, the United States Constitution and the Florida Constitution, to act upon such knowledge to prevent the massacre and destruction of property which occurred in Rosewood, and

WHEREAS, the State of Florida knowingly failed and refused to act to prevent the massacre and destruction of property which occurred in Rosewood, and

WHEREAS, as a direct and proximate result of the [illegible] negligence of the State of Florida in failing to act to prevent the Rosewood Massacre and destruction of property, each of the victims of the Rosewood Massacre has suffered severe mental and emotional pain, suffering and anguish, loss of property, enjoyment of living, loss of community, and other losses too numerous to mention, and

WHEREAS, these losses are permanent and continuing and the Rosewood victims of the Rosewood Massacre will suffer

CODING: Deletions are stricken; additions are underlined.

these and other presently undiagnosed losses in the future, and

WHEREAS, the victims of the Rosewood Massacre include Arnett T. Goins, Minnie L. Langley, Lonnie Carroll, Willie Evans, Dorothy Hosey, Margie Hall, Wilson Hall, Mary Hall, Lillie Washington, Berthina Fagin, Eva Jenkins, Vera Hamilton, Arnett Doctor, Yvonne Doctor, Doris Jones, Earnest Brockington, Wesley D. Bailey, Robert King, Barbara Woods, Mae E. McDonald, Ella M. Reddick, Rosetta Jackson, Clarence Pollard, Bobbie Bradley, Rollie Owah, Queen Manley, Annie B. Lee, Altamese Wrispus, Thelma Evans Hawkins, Virginia Briscoe, Willie Mae Thomas, Helen Crockett Taylor, Galbosper N. Bradley, Jr., Wesley J. Bradley, Leruth Bradley, Charlene Bradley, Gail Bradley, Tadga Bradley, Edwin Bradley, Janie M. Bradley, Mary Bradley, Rose Wooten, Berthnia Edwards, Leona Taylor, Larcel Edwards, Martha J. Edwards, Vivian Edwards, Abraham Edwards, Wilbert Edwards, Jr., Joseph Edwards, Maud Edwards, Queen E. Edwards, Helen D. Edwards, Earvin Edwards, Albert Edwards, and Dorothy Edwards, and each of the victims of the Rosewood Massacre is either:

1. An "eligible individual," that is, an African-American who was a resident of Rosewood in January 1923, an African-American who owned or leased property in Rosewood or its surrounding vicinity in January 1923, or an African-American who was present in Rosewood at the time of the Rosewood Massacre; or

2. In the case of an eligible individual who is deceased:

(a) The surviving spouse of said deceased individual; or

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(b) A surviving child of said deceased eligible individual (including a natural child, a stepchild who lived with the eligible individual in a [regular] parent-child relationship, and/or an adopted child), and

WHEREAS, the Legislature desires to compensate the victims of the Rosewood Massacre for their losses in the amounts set forth as follows:

Arnett T. Goins.....$270,000
Minnie L. Langley.....$270,000
Lonnie Carroll.....$270,000
Willie Evans.....$270,000
Dorothy Mosey.....$270,000
Sergie Hall.....$270,000
Wilson Hall.....$270,000
Mary Hall.....$270,000
Lillie Washington.....$270,000
Berthina Fagin.....$270,000
Eva Jenkins.....$270,000
Vera Hamilton.....$270,000
Arnett Doctor.....$135,000
Minnie Doctor.....$135,000
Doris Jones.....$135,000
Earnest Brockington.....$135,000
Wesley D. Bailey.....$270,000
Robert King.....$90,000
Barbara Woods.....$90,000
Rae E. McDonald.....$90,000
Lula M. Reddick.....$135,000
Rosetta Jackson.....$135,000
Clarence Pollard.....$270,000
Minnie Bradley.....$90,000

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Rollie Gwah.....$90,000
Queen Manley.....$90,000
Annie B. Lee.....$135,000
Altameso Wrispus.....$135,000
Thelma Evans Hawkins.....$270,000
Virginia Briscoe.....$135,000
Willie Mae Thomas.....$135,000
Helen Crockett Taylor.....$270,000
Galbesper N. Bradley, Jr.....$16,875
Wesley J. Bradley.....$16,875
Leruth Bradley.....$16,875
Charlene Bradley.....$16,875
Gail Bradley.....$16,875
Tadga Bradley.....$16,875
Edwin Bradley.....$16,875
Janie M. Bradley.....$16,875
Mary Bradley.....$135,000
Rose Wooten.....$15,000
Berthnia Edwards.....$15,000
Leona Taylor.....$15,000
Larcel Edwards.....$15,000
Martha J. Edwards.....$15,000
Vivian Edwards.....$15,000
Abraham Edwards.....$15,000
Wilbert Edwards, Jr.....$15,000
Joseph Edwards.....$15,000
Maud Edwards.....$135,000
Queen E. Edwards.....$33,750
Helen D. Edwards.....$33,750
Earvin Edwards.....$33,750
Albert Edwards.....$33,750

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TY GEN OFC TEL:904-487-2564 Feb 10,94 9:25 No.006 P.03

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A Non-Political, Non-Partisan Coalition Against the Falsification of WWII History

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United States Army (Ret.)
Former Ass't Chief of Staff
for Intelligence, U.S. Army-
Honolulu, Hawaii

Mrs. Lillian Baker, Director
Author-Historian, Awardee:
Freedoms Foundation at
Valley Forge-
Gardena, California

Commander Wm. J. Hopwood, USNR (Ret.)
East Coast Coordinator-
Miami, Florida
(305)667-9815

Mr. Jim Peters
Assistant Attorney General
State of Florida

March 22, 1994

FAX 1-904-488-4872

Dear Mr. Peters:

Re: Rosewood case

A story in today's Miami Herald appears to indicate that proponents of possible payment of compensation to Rosewood survivors use as a justification the payments made to Japanese evacuated from West Coast war zones during WWII. Any such compensation would be a sham and a delusion if based on the racially motivated, "politically correct" determination of eligibility used to qualify the Japanese for payment under the 1988 Japanese Money Bill.

Among those compensated at the expense of today's taxpayers - who have no responsibility for WWII actions - were 18,000 enemy alien and American-born (dual-citizen) Japanese who swore allegiance to Emperor Hirohito (5000 of the American-born having renounced their U.S. citizenship) and 4300 Japanese-Americans who spent their war years attending colleges and universities. Hopefully, the matter of Rosewood eligibility, if any, would be more carefully considered.

When Congress was considering the Japanese Money Bill, U.S. Assistant Attorney General John R. Bolton wrote to the late Congressman Claude Pepper on September 14, 1987, the following words: "...the compensation would include survivors of the estimated 20,000 Japanese who requested repatriation or expatriation to Japan ...the enactment of this bill would encourage other politically well-organized groups to seek similar private relief legislation giving financial compensation for injustices real or perceived, resulting from government action." (Emphasis added).

Enclosed is a copy of an article of mine which appears in the current issue of Conservative Review outlining the Japanese Money Bill in more detail. I hope this information will be helpful to you in presenting your argument, with which I agree, when the matter is before the appropriate legislative bodies.

Sincerely,

William J. Hopwood

William J. Hopwood
4145 Bonita Avenue, Miami, FL 33133 - (305) 667-9815

Encl. Article - CONSERVATIVE REVIEW (6 pages)

CONSERVATIVE REVIEW

Volume Five, Number One January/February 1994

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Conservative Review is published six times a year by Newcomb Publishers Inc., Editor Frederic N. Smith, Associate Editors Dwight D. Murphey and Susan L.M. Huck, Consulting Editor - William P. Hoar. The mailing address for subscriptions, manuscripts, letters to the editor and all correspondence is: *Conservative Review*, 1307 Dolley Madison Blvd., Room 203, McLean, Virginia 22101. Telephone (703) 893-7302. Fax: (703) 893-7273. All other communications (other than subscriptions) to be accompanied by a self-addressed stamped envelope.

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ISSN 1047-5990

MAR-22-94 TUE 03:28 PM DUSSAULT STATIONERY 305 6622356 P

The Japanese Money Bill: A Two Billion Dollar Fraud

William J. Hopwood, CDR USNR (Ret.)

In 1988, Congress passed a law which labelled President Franklin Roosevelt and other top World War II leaders as racists, wartime hysterics, and failed political leaders. The reason for such infamous charges, made a half-century after the fact, is that shortly after Pearl Harbor, those leaders made a military decision based on solid intelligence (now ignored) to evacuate enemy alien Japanese and their mostly minor dual-citizen children from West Coast war zones.

Justice Felix Frankfurter, in one of the wartime Supreme Court decisions upholding Roosevelt's evacuation order, described the action as valid "under the war power (which) must be judged wholly in the context of war." Roosevelt's prudent decision is now considered politically incorrect by a majority of today's politicians and by the historical revisionists in much of the academy and the media.

These were the days of Vietnam-- the "down with America" period when Bill Clinton was in Europe attending peace demonstrations and "death marches" against his own country's Southeast Asia policy.

The law, P.L. 100-383, commonly known as The Japanese Money Bill, authorized the payment of $20,000 each, tax free, as restitution for alleged "human suffering" inflicted on World War II Japanese enemy aliens and their American-born children (or the heirs thereof) who were evacuated as a result of President Roosevelt's Executive Order 9066 of February 19, 1942, or who were interned for security reasons after Department of Justice hearings during the war. It is the purpose of this article to review the background leading up to the passage of this odious law and to draw some conclusions therefrom.

The Background of P.L. 100-383

The roots of the movement for Japanese redress and reparations can be traced to the late 1960's and early 70's. These were the days of Vietnam– the "down with America" period when Bill Clinton was in Europe attending peace demonstrations and "death marches" against his own country's Southeast Asia policy.

Meanwhile, in California, young activist Japanese-Americans began to sense an opportunity to cash in on the increasing Congressional zeal for preferential treatment of minorities. These activists were the children and grandchildren of WWII Japanese enemy aliens. Most of them, if they had been directly affected by the evacuation/relocation at all, were infants and minors at the time. Some had been born in a relocation center, but many had not been born until after the war.

Most prominent among such groups were the National Council for Japanese-American Redress (NCJAR) and the National Coalition for Redress and Reparations (NCRR). In addition, the Japanese-American Citizens League (JACL), which had approved of and supported the U.S. Government's evacuation/relocation policy throughout WW II, and had later given two testimonial dinners for now-deceased War Relocation Authority director Dillon S. Myer, switched sides and beat the drums for redress and reparations. All previous manifestations of friendship and understanding toward Dillon Myer and the WRA were disavowed.

In a newspaper column distributed throughout the country by the Register and Tribune syndicate in July 1974, the late S.I. Hayakawa, a Japanese-American who was then a popular national figure because of his firm stand against student militants while president of San Francisco State University, wrote about the movement for redress:

> "At the time of the Japanese attack on Pearl Harbor, the average age of Nisei-- the American-born children of Japanese immigrants-- was 15. This fact is important in evaluating the War Relocation Program of 1942.
>
> "I bring these matters up now because...a small wolf-pack of dissident Japanese-Americans, most of whom weren't born when the relocation took place, has for years been [criticizing]

MAR-22-94 TUE 03:28 PM DUSSAULT STATIONERY 305 6622356 P.04

President Roosevelt's relocation order.

Appointment of the Commission on Wartime Relocation and Internment of Civilians

By 1980, the Japanese-American redress and reparations movement had been on-going for over ten years. It was then thought that sufficient public relations and political groundwork had been put in place for a final move toward payoff.

Accordingly, political pressure was applied, with the result that Congress, in 1980, established The Commission on Wartime Relocation and Internment of Civilians (CWRIC). Its declared purpose was to review the facts and circumstances of Roosevelt's Executive Order 9066 of February 19, 1942, and its impact on certain aliens and citizens who had been relocated or detained as a result thereof. The commission was also charged with recommending "appropriate remedies."

The commission was an appointed body consisting of a chairman, vice chairman and seven members. Some $1.5 million was appropriated for salaries and expenses. The commission was directed to submit a written report of its findings to Congress within one year.

It was obvious from the remarks of several of the politically-appointed commissioners that the commission had an advance agenda-- to recommend payment of restitution to those who asked for it, and to tailor its findings to fit that goal. Two of the appointees had personal interests which stood to benefit from any financial restitution which might result from the commission's findings. Of its 33 named staff personnel, 40% had Japanese surnames.

The commission held 20 days of hearings and took testimony from over 700 witnesses. Testimony was not required to be given under oath. Japanese-American proponents of redress and reparations held mock hearings and dress-rehearsals before testimony was given, and opponents of redress were treated with disdain and discourtesy by members of the commission, as well as by largely hostile audiences composed primarily of Japanese-Americans.

Perhaps the tenor of the commission hearings and subsequent consideration of information brought before it was best described by the Honorable John J. McCloy (now deceased), who, as Assistant Secretary of War during the Japanese relocation period, was thoroughly familiar with the military necessity for the evacuation. Mr. McCloy, in a letter to Senator Ted Stevens dated August 10, 1984, strongly condemned the manner and conduct of the commission hearings. His remarks are excerpted below:

> The manner and conduct of the hearings of the relocation commission are...proof of the utterly biased character of the investigation. They were a disgrace to the good traditions of our legislative investigative procedures.
>
> Any attempt to justify [President Roosevelt's] action was greeted with boos and hisses in a manner disgraceful to any fair investigation or to our own legislative hearing tradition...

The late Karl R. Bendetsen, then an Army colonel and McCloy's on-scene assistant at the time of the evacuation/relocation, said of his appearance before the CWRIC:

> I, plus other witnesses of highest integrity... were greeted with hisses and unprofessional behavior by those charged with conducting democratic hearings about this misunderstood issue. The pressures brought upon any witnesses who felt duty-bound to testify on behalf of those in government, whose untarnished reputations were about to be darkened by outright revision of historical events and by political overtones, was at the outset unbecoming of those whose responsibilities were to carry out an edict of investigation into constitutional government actions.

The CWRIC concluded its hearings and subsequent analysis with the presentation to Congress of its report, "Personal Justice Denied," in February of 1983. The commission's "recommendations" followed in June of 1983.

Congressional Action Which Followed

Within days after the "recommendations" of the CWRIC were released to Congress, legislation was introduced in both the Senate and House to implement them. Congress, which for 40 years had hailed as national heroes the wartime leaders who guided us to victory, now enthusiastically set out to prove that these same leaders were, in the words of the CWRIC's report, guilty of "race prejudice, war hysteria, and a failure of political leadership." Hearings were scheduled in both the Senate and the House to consider the drafting of a final act to cover redress and reparations.

The "MAGIC" Bombshell

Before hearings could start, however, an article appeared in the *New York Times* on May 22, 1983, headlined "1941 Cables Boasted of Japanese-American Spying." The article revealed that the CWRIC had ignored the single most important piece of intelligence behind the relocation of those of Japanese descent from West Coast war zones-- that

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the U.S. had been reading Japanese coded diplomatic messages prior to the Pearl Harbor attack.

The *Times'* story covered information provided by David Lowman, a retired special assistant to the director of the National Security Agency, who told of pre-war messages to and from Tokyo and its U.S. Consulates and Embassy, which had been intercepted and decoded by American intelligence officers using a then-new cryptographic technique cover-named "MAGIC." The story stated:

> Mr. Lowman, who in the 1970's worked on the declassification and publication of the decoded Japanese cables, said that Roosevelt, Secretary of War Henry L. Stimson, and a handful of other officials were on the limited distribution list of the cable traffic.
>
> Anyone reading this flow of messages during 1941 could easily conclude that thousands of resident Japanese were being organized into subversive organizations,' Mr. Lowman said.

The *Times* story then went on to state that the CWRIC had *not* been aware of this information before filing its report with Congress and continued by stating that John J. McCloy, Assistant Secretary of War during WWII, had been interviewed for the story and confirmed the information provided by Mr. Lowman.

The *Times* then pointed out that the information brought forward by Mr. Lowman was certainly no secret as the Department of Defense had in 1977, published a series of volumes under the title "The MAGIC Background of Pearl Harbor," which had revealed literally "hundreds of espionage reports."

It is inconceivable that the MAGIC story could have escaped the attention of the CWRIC. Although knowledge of the interception and decoding of Japanese message traffic was highly classified and closely guarded from before Pearl Harbor until the mid-1970's, when a presidential order made declassification possible, after publication of this eight volume series in 1977, the information was available to anyone and well known to many in military intelligence circles and among historians. The evidence strongly suggests that MAGIC was deliberately ignored by the CWRIC for political reasons.

The Congressional Hearings

The first of the Congressional Japanese-American Evacuation Redress hearings was held on July 27, 1983 before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary. It pertained to Senate Bill S.1520, with Senator Charles Grassley of Iowa presiding.

Several members of Congress testified on behalf of the bill, while several witnesses testified in opposition. The Lowman interview in the *New York Times* was brought to the attention of the committee by author/historian Lillian Baker of California, a witness who opposed redress and restitution, and who also submitted numerous documents challenging the findings of the CWRIC.

As a result of the Lowman story, the CWRIC staff attempted to justify why it had ignored such a crucial piece of evidence as the existence of MAGIC in its report to Congress. Only six days after having released its recommendations for implementation of "Personal Justice Denied," the CWRIC rushed out an addendum to the report which sought to denigrate the importance of MAGIC.

It would have taken some doing to absorb the information contained in the eight volumes of the Department of Defense publication on MAGIC in only six days. Accordingly, CWRIC researchers could only come up with an unsubstantiated denial that MAGIC played any part in the government's evacuation/relocation decision, and made only feeble attempts to show that since they had not known about the existence of MAGIC, it therefore could not have had any significance.

Congressional hearings on implementation of the CWRIC recommendations extended over five years (1983-88) during which period of time numerous witnesses pro and con appeared before the various Congressional committees and subcommittees which provided the forums. On June 20, 1984, Dr. David Trask, Chief Historian, U.S. Army Center of Military History, appeared before a subcommittee of the House Judiciary Committee. His testimony was a devastating indictment of the CWRIC report. He said:

> ...the purpose of the report does not seem to have been to present an historical account that meets professional standards, but rather to argue the best possible case for the victims of government action in 1942...I am simply unable to certify this brief as a credible piece of history. It simply doesn't measure up to professional standards.

One week after the above statement was made by Dr. Trask, David Lowman testified before the same subcommittee. Mr. Lowman presented stark evidence of MAGIC's priority intelligence value, particularly when dovetailed with other intelligence reports from the Office of Naval Intelligence and the Military Intelligence Division of the Army.

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On August 16, 1984, Colonel Frederick Bernays Wiener, AUS (Ret.), a distinguished attorney with a long record of military service in the Judge Advocate General's Department, as well as civilian service as Assistant Solicitor General, 1945-48, testified before a Senate subcommittee hearing held in Los Angeles. A summary of his statement follows:

> 1. The Relocation commission arrived at a predetermined result because its operations were flawed in four critical respects: (i) Terms of reference; (ii) composition of the Commission; (iii) composition of the commission's staff; and (iv) conduct of commission's hearings.
>
> 2. The commission's conclusion that there was no evidence that any individual American was actively disloyal to his country was totally inaccurate.
>
> 3. The commission failed to disclose that almost 40% of those relocated were enemy aliens subject to internment under long-settled law (national and international).
>
> 4. The commission's characterization that the evacuation and relocation was the result of "racism, war hysteria, and the failure of political leadership" (was false).
>
> 5. The commission disregarded the wartime Supreme Court decisions which upheld the constitutionality of the relocation program.

Justice Department Opposition

The Reagan Justice Department had opposed the Japanese Money Bill from the outset. This position was reflected in a letter dated September 14, 1987, almost one year prior to passage of the bill, from Assistant Attorney General John R. Bolton to the late Claude Pepper, then-Chairman of the House Rules Committee. In his letter Mr. Bolton said:

> This letter is to inform you of our continuing concerns about...the 'Civil Liberties Act' as reported by the House Judiciary Committee. As you know, the bill would implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians by, among other things, dispersing (*sic*) payment of $20,000, tax free, to each of the estimated 60,000 Japanese-American survivors of the evacuation internment program...The Department of Justice opposes enactment of this bill...
>
> ...Congress [in 1948] acknowledged and responded to [claims arising from the evacuation/relocation program] by enacting the American-Japanese Evacuation Claims Act... The compensation provisions of the Act were plainly intended to remedy the losses caused by the internments, and to close this regrettable chapter in our history. Congress explicitly stated... that:
>
> *Except as herein provided, the payment of an award shall be final and conclusive for all Purposes,...and shall be a full discharge of the United States...with respect to all claims arising out of the same subject matter.*' (emphasis added)
>
> ...Nothing has occurred since these remedies were provided that justifies revisiting that history or paying additional compensation. Our opposition to the bill is underscored by the fact that the compensation recipients would include survivors of the estimated 20,000 Japanese-Americans who requested repatriation or expatriation to Japan during the internment period.
>
> Finally, the enactment of this bill could establish an ill-conceived precedent that would encourage other politically well-organized groups to seek similar private relief legislation giving financial compensation for injustices, real or perceived, resulting from government action.
>
> ...the Department of Justice, along with the President's senior advisors...recommend that the President veto this legislation.

The Bill Passes

Notwithstanding all of the information presented to Congress in opposition to the implementation of the "recommendations and findings" of the CWRIC, it was, after all was said and done, purely a political matter and the fix was in.

Accordingly, on August 4, 1988, the House voted approval and H.R. 442, together with the House-Senate Conference Report adopted on July 27,1988 carrying Senate approval, was sent to the White House. The Japanese Money Bill passed the Senate by 69 to 27. The House passed it by 257 to 156. Democrats heavily favored passage. Republicans split about evenly. President Reagan, succumbing to the urging of Vice President Bush (then a candidate for President), signed the bill into law.

The Bill became Public Law 100-383 on Au-

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gust 10, 1988, containing all of the significant CWRIC recommendations. However, as all laws are almost entirely drafted by staffers, with the Congressmen and Senators hardly ever considering the wording, some outrageous mistakes as to dates of eligibility were made, resulting in a really bizarre list of persons eligible for payment.

Those Eligible

The Japanese Money Bill authorized payments of $20,000 each (with an apology) to WWII Japanese enemy aliens and dual-citizen Japanese-Americans, as well as to certain others of Japanese descent, who had been evacuated from West Coast war zones and relocated or interned during the period from Pearl Harbor Day, 1941, until June 30, 1946.

In drafting the bill, Congress made no distinction between persons who were evacuated from West Coast war zones and moved to relocation centers, and enemy aliens who had been arrested by the FBI as a result of pre-war intelligence information. The two actions were markedly different.

Those arrested were given individual hearings, then either released or interned in Department of Justice facilities to await deportation to their enemy homeland. Those merely moved to relocation centers were under the administration of the civilian War Relocation Authority (WRA) and were free to leave the centers if they swore allegiance to the United States and had somewhere to go (other than the War Zones) without becoming wards of the public.

The conventional wisdom in today's media is that the evacuated and relocated or interned persons of Japanese descent were all American citizens; that they had their civil rights unconstitutionally violated; and that they were put in "concentration camps." None of this is true.

As the MAGIC decoded Japanese messages revealed in early 1942, sabotage and espionage by resident enemy aliens and American-born Japanese was a very real and present consideration. Nevertheless, Congress, in the political wisdom of uninformed hindsight, included among those eligible to receive $20,000 each, with an apology from our government, the following:

> Japanese nationals and American-born (dual-citizen) Japanese who were arrested and interned after hearings on FBI security charges; Japanese sent to this country from Latin America to be held for deportation to Japan; over 5000 American-born Japanese who renounced their U.S. citizenship and now live in Japan; almost 20,000 Japanese nationals and American-born Japanese who swore allegiance to Emperor Hirohito and refused to take a loyalty oath to the United States; over 6000 babies (now in their 40's and 50's) who were born in the relocation and internment centers under the best medical conditions then existing in the country; more than 4300 evacuees who left the relocation centers to attend universities during the war years; Japanese-Americans imprisoned for refusing to serve when drafted.

As originally passed in 1988, the Japanese Money Bill specified that a fund of $1.25 billion was authorized, with no more than $500 million to be appropriated in any one year. As ballyhooed for public consumption, however, the administration and Congress indicated that the monies would be appropriated over a ten-year period, thereby not significantly adding to annual deficits. It was only a year later, however, that Japanese-American lobbying efforts succeeded in having the bill amended to become an *entitlement*, to be fully appropriated over a three-year period beginning October 1, 1991.

In addition, in 1992, another amendment authorized yet another $400 million to include *non-Japanese* spouses and parents who had *voluntarily* accompanied Japanese-descent persons into relocation or internment centers, and efforts are now under way by the redress lobby to further amend the Bill to include Peruvian-Japanese sent to the U.S. for deportation to Japan and not accepted back in Peru or by Japan at war's end.

Conclusion

The Japanese Money Bill is a wholly race-based, politically motivated move to transfer funds from U.S. citizens, innocent of any guilt, to former enemy aliens, U.S. citizen renunciants, those born and/or nurtured as children in the safety of wartime relocation centers, and others of Japanese ancestry whose "human suffering" was no more than that of the average American family during World War II. This bill could well be called "the mother of all" Congressional pork. It is an insult to the memory of our 300,000 American WWII dead and to their families. It is a national disgrace.

William J. Hopwood is a Cdr. USNR (Ret) and lives in Florida. He is the East coast coordinator for the group called "Americans for Historical Accuracy."

Editor's Note: For an article telling what was done in the evacuation and why, see Dwight D. Murphy's The World War II Relocation of the Japanese-Americans" *in the Jan/Feb 1993 issue of* Conservative Review.

CF

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94-200148CIV AG ATTORNEY James A. Peters
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VS Florida, State of MISCELLANEOUS
COURT NAME Fla. House of Representatives SETTLE AMOUNT
ORD DUE LONG CASE NO
SUBJECT
CASE NO HB 591 LOWER CT # OP COUNS private
LOWER CT # LOWER CT # RM CLM# CivRights/Other

DATE			PROCEEDINGS
			Posttraumatic Stress Disorder
	Recvd	31b.	Claimants' Memorandum of Law Re Excited Utterance Exception to the Hearsay Rule
03/18/94	Filed	32.	Notice of Supplemental Authority
	Filed	33.	Response to Claimants' Memorandum of Law Re: Excited Utterance
	Recvd	33a.	Supplement to Team's Answers to Interrogatories
03/20/94	Filed	34.	State of Florida's Notice of Supplemental Authority
	Filed	35.	State of Florida's Memorandum Re: Application of Hohri v. United States
03/21/94	Recvd	36.	Special Master's Final Report
03/22/94	Filed	37.	State of Florida's Response to Special Master's Final Report
05/06/94	TRANSFERRED TO OUTSIDE COUNSEL - GREG DURDEN - BROWARD CIVIL RIGHTS. CASE CLOSED.		

94-200148CIV AG ATTORNEY James A. Peters
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VS Florida, State of MISCELLANEOUS
COURT NAME Fla. House of Representatives SETTLE AMOUNT
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DATE			PROCEEDINGS
02/25/94	Recvd	17.	Notice of Hearing
02/28/94	Filed	18.	State of Florida's Response to Claimants' Memorandum in Support of Admissibility of Expert Testimony of Hedonic Damages
03/01/94	Filed	19.	Notice of Filing and Supplemental Authority
03/03/94	Filed	20.	State of Florida's Supplemental Witness and Exhibit List
	Filed	21.	State of Florida's Motion to Continue Hearings
03/04/94	Recvd	22.	Notice of Hearing
03/07/94	Filed	23.	Interrogatories and Request for Production of Documents to the Documented History Team
	Filed	23a.	State of Florida's Designation of Statements and Interviews for Hearing Record
03/09/94	Filed	24.	State of Florida's Revised Supplemental Witness and Exhibit List
03/10/94	Filed	25.	State of Florida's Revised Supplemental Witness List
03/15/94	Filed	26.	Respondent's Memorandum of Law Re Tolling the Statute of Limitations
03/16/94	Recvd	27.	Answers to Interrogatories
	Filed	28.	State of Florida's Supplemental Exhibit List
	Filed	29.	State of Florida's Notice of Supplemental Authority
	Filed	30.	State of Florida's Memorandum Re Admissibility of the Rosewood Report as Proof of Liability
	Filed	31.	State of Florida's Response to Claimants' February 24, 1994, Memorandum of Law Re Constitutional Claims
	Recvd	31a.	Claimants' Memorandum of Law Re Damages for

94-200148CIV AG ATTORNEY James A. Peters
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VS Florida, State of MISCELLANEOUS
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LOWER CT # LOWER CT # RM CLM# CivRights/Other

DATE			PROCEEDINGS
02/11/94	Recvd	1.	Notice of Hearing
	Filed	2.	Notice of Appearance
02/13/94	Filed	3.	Respondent, State of Florida's, First Motion for Discovery
02/14/94	Filed	3a.	Respondent's Corrected First Interrogatories and Requests for Production of Documents
02/15/94	Filed	4.	State of Florida's Second Interrogatories and Requests for Production of Documents
	Filed	5.	Respondent, State of Florida's, Second Motion for Discovery
02/19/94	Filed	6.	Respondent, State of Florida's, Third Motion for Discovery
02/22/94	Recvd	7.	Memorandum in Support of the Admissibility of Expert Testimony on Hedonic Damages
	Recvd	8.	Claimants' Opposition to Respondents, State of Florida's, First and Second Motions for Discovery
	Recvd	9.	Memorandum in Support of the Admissibility of the Rosewood Report
02/23/94	Filed	10.	State of Florida's Witness and Exhibit List
	Filed	11.	State of Florida's Prehearing Memorandum
02/24/94	Filed	12.	State of Florida's Corrected Prehearing Memorandum
	Recvd	13.	Claimants' Memorandum of Law Regarding Their Constitutional Claims
	Recvd	14.	Claimants' Memorandum of Law Regarding Tolling the Section 1983 Statute of Limitations
	Recvd	15.	Claimants' Responses to Respondent's Third Motion for Discovery
	Recvd	16.	Claimants' List of Witnesses and Documents

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FLORIDA HOUSE OF REPRESENTATIVES

IN THE MATTER FOR RELIEF OF:

Relief of ARNETT T. GOINS,
MINNIE L. LANGLEY, et al.,

Claimants,

v. HB 591

STATE OF FLORIDA,

Respondent.
_____/

STATE OF FLORIDA'S RESPONSE
TO SPECIAL MASTER'S FINAL REPORT

The State of Florida respectfully files its response to the Special Master's Final Report.

The State concurs with the Special Master's finding that "if these proceedings were conducted in a judicial forum," the principles of law "dictated by the rules of evidentiary hearsay and the statute of limitations would preclude consideration of these claims."[1] Rather, the Special Master notes that HB 591 represents a moral claim and as such its merits can not be ascertained as a matter of law.

If the House proceeds with the consideration of HB 591, the State urges careful review of several of the Conclusions of Law contained in the Special Master's Final

[1]The State specifically endorses the Special Master's observation that "at this time conclusive findings of fact as to all relevant issues do not appear possible."

Report so as to avoid precedent. First, lifting the time bar of §11.065, Fla. Stat., should only be done in the rarest circumstances. The Final Report overlooks the fact that time bar statutes have their basis in equitable considerations. As noted by the United States Supreme Court in United States v. Kubrick, 444 U.S. 111, 118 (1979), they are found and approved "in all systems of enlightened jurisprudence." They "represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that the right to be free of stale claims in time comes to prevail over the right to prosecute them."

Second, generalized "duty to protect" claims presented under the ambit of the United States Constitution are not recognized. In DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189, 103 L.Ed.2d 249, 109 S.Ct. 998 (1989), the Court held that nothing in the language of the Fourteenth Amendment requires a State to protect life, liberty, and property of citizens against invasion by private actors: "as a general matter...we conclude that a State's failure to protect an individual against private violence simply does not constitute a violation of the due process clause." 489 U.S. at 196.

Finally, it should be noted that prior to the commencement of this hearing, undersigned counsel took the necessary steps to refer this matter to the Florida

Department of Law Enforcement for it to undertake an appropriate inquiry.

In sum, the Special Master has recognized the basis of any relief in this case to be moral, not legal, in nature. Such decisions represent acts of legislative grace and are solely within the discretion of this body. Attorney General Opinion 55-82.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **STATE OF FLORIDA'S RESPONSE TO SPECIAL MASTER'S FINAL REPORT** has been served on Stephen Hanlon, Esquire, and Martha Barnett, Esquire, Post Office Drawer 810, Tallahassee, Florida 32302-0810 this 22 day of March, 1994.

JAMES A. PETERS

<jimp>rd.Rosewood.Obj.

FLORIDA HOUSE OF REPRESENTATIVES

Tallahassee

March 21, 1994

SPECIAL MASTER'S FINAL REPORT

The Honorable Bo Johnson
Speaker of the House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

RE: HB 591 by Representatives De Grandy and Lawson
Claim of Arnett Goins, Minnie Lee Langley, et al. v. State of Florida

FINDINGS OF FACT: THIS IS AN EQUITABLE CLAIM SEEKING $7.2 MILLION FOR DAMAGES RESULTING FROM THE 1923 DESTRUCTION OF ROSEWOOD, FLORIDA.

This report is based upon the record presented to House and Senate special masters in the course of legislative hearings conducted pursuant to Rule 6.63, Rules of the Florida House of Representatives. The hearings began on March 4, 1994 and continued on a weekly basis, concluding on March 18, 1994.

The claimants in this matter are former residents, and descendants of former residents of Rosewood, Florida, who contend that certain acts or omissions of law enforcement and other officials of Levy County and the State of Florida, resulted in the destruction of their community, the deaths of their relatives, and the loss of their property, and inflicted on them both physical and emotional harm for which they should be compensated by the State of Florida. The claimants are represented by the law firm of Holland and Knight.

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The State takes the position that the claims presented in this matter are without legal basis, that the evidence now available does not support a finding that acts or omissions of law enforcement officials caused the damages to the claimants, and that the claims should be barred by the statute of limitations. The State further contends that bringing these claims at this time prohibits the reasonable defense of the allegations since the officials charged are now deceased and cannot be called to testify as to these events. The State of Florida is represented by the Office of the Attorney General.

Because the events relating to this claim occurred more than 71 years ago, the record presented in the legislative hearings is comprised of media accounts of the events, incomplete public records, stories related by former residents and repeated to descendants, and the distant recollections of elderly witnesses not readily subject to corroboration and cross-examination. As will be discussed below, if these proceedings were conducted in a judicial forum, the principles of law dictated by the rules of evidentiary hearsay and the statute of limitations would preclude consideration of these claims. In an equitable claim bill proceeding, however, these principles do not, as a matter of law, restrict the legislature's consideration of these claims. Accordingly, this report is intended to provide the legislature with a description of the events that occurred in and around Rosewood, Florida in 1923, from the available remaining sources of evidence as presented at the legislative hearings, with the understanding that at this time conclusive findings of fact as to all relevant issues do not appear possible.

The events which occurred at Rosewood in 1923 were widely reported at that time not only by the Florida press, but also by the national media. In February of 1923, a month after the violence subsided, a special grand jury was convened in Levy County to investigate these matters. The grand jury returned no indictments, and except for newspaper accounts, no records of the grand jury proceedings remain. It does not appear that any other official investigation of Rosewood was undertaken. Over the years following these events, brief references to the events of Rosewood were made in a few historical studies of racial violence; however, no researched report of these matters was published until July 25, 1982, when a comprehensive article by an investigative journalist, Gary Moore, appeared in The

Floridian magazine, a Sunday supplement to the St. Petersburg Times. Mr. Moore's article prompted a December 13, 1983 CBS 60 Minutes report; however, no other official investigation was conducted at that time.

In 1993 this matter was brought before the Florida Legislature when HB 813 by Representatives DeGrandy and Lawson, and SB 1452 by Senator Jones were filed seeking compensation for persons injured by the violence at Rosewood. In response to the issues raised by HB 813, the Speaker determined that a thorough study of the events surrounding the destruction of Rosewood should be conducted in an objective scholarly manner, and accordingly, after the 1993 Session, an academic research team, which included distinguished professors from Florida State University, Florida A&M University, and the University of Florida was commissioned to research the Rosewood incident and report its findings to the Legislature. The academic research team was chaired by Dr. Maxine Jones of the Florida State Department of History.

The academic research team conducted research during the legislative interim, and on December 22, 1993 issued its report entitled A Documented History of the Incident Which Occurred at Rosewood, Florida in January 1923. Exceptions to the accuracy, findings, methodology, and thoroughness of the report were expressed by investigative journalist, Gary Moore, and in response to Mr. Moore's concerns, an extensive review of the academic study team's report was conducted under the authority of Dr. Richard Greaves, Chairman of the Florida State University Department of History. With minor reservations, the Review of the Rosewood Project endorsed the findings and methodology of the report of the academic study team. In response to the review, Mr. Moore submitted his detailed analysis of the review to the Legislature. All of the academic research studies, reports, reviews, and appendices, as well as Mr. Moore's responses, were received and have been made part of the record in the legislative proceedings.

Upon review of the record presented, and consideration of the sworn testimony, the following description of the events which occurred in Rosewood in 1923 emerges. In January of 1923 Rosewood was a small, mostly African-American community of approximately 120 residents located on the Seaboard Air Line

Railroad in western Levy County, nine miles east of Cedar Key. Today the site of Rosewood is marked on State Road 24. At one time the community had a timber mill, a post office, several stores, a depot and hotel; however, by 1923 the cedar wood had been harvested, and the sawmill operations moved to Sumner, a somewhat larger community, three miles west of Rosewood. The black residents remaining at Rosewood earned a living by working at the Cummer sawmill in Sumner, trapping and hunting, and vegetable farming. In addition, several of the black women of Rosewood worked in domestic capacities for the white residents of Sumner. The main store of Rosewood was owned and operated by a white man named John Wright.

In 1923 the black community of Rosewood consisted of approximately twenty families, many of whom were closely related through marriages. Some of the black families owned their homes as well as other property in the area. The community had a one-room school, at least two churches, and a masonic lodge. The railroad depot remained, but it does not appear that there was a regularly scheduled stop at Rosewood at that time. There was no history of racial tension at Rosewood, and the record indicates that prior to 1923 the black and white communities had a generally amiable relationship.

On Monday, January 1, 1923, in Sumner, Florida, Mrs. Frances Taylor, a twenty-two year old white housewife, alleged that a black man had entered her home and assaulted her. Mrs. Taylor, who was visibly bruised, told her neighbors that while her husband James Taylor was at work at the sawmill, an unidentified black man had assaulted and robbed her. The specific nature of the assault is not apparent from the record; however, the white community believed there had been a sexual assault, although it does not appear that Mrs. Taylor was ever examined by a physician. After repeating her allegations, Mrs. Taylor then collapsed and was taken to a neighbor's home.

A contradictory account of this event circulated in the black community. According to Mrs. Sarah Carrier, a black woman from Rosewood who did laundry for Mrs. Taylor, and Mrs. Carrier's granddaughter, Philomena Goins, who accompanied Mrs. Carrier to the Taylor home on the morning of January 1, 1923, a white man had visited Mrs. Taylor that day, and left shortly before Mrs. Taylor made her allegations. The black

community believed that Mrs. Taylor had a romantic relationship with this unidentified white man, that they had quarrelled, and that this white man was actually responsible for Mrs. Taylor's injuries.

In response to Mrs. Taylor's allegations, a group of white men, mainly residents of Sumner or workers at the Cummer sawmill, came together to search for the perpetrator. At about this time word reached Sumner from Levy County Sheriff Robert Elias Walker that a black convict named Jesse Hunter had escaped from a work crew doing road construction near Otter Creek. Jesse Hunter became the focus of the search. Later that day, Sheriff Walker sent for bloodhounds, and the trail of the fugitive was followed from behind the Taylor house in Sumner, leading the party of men toward Rosewood.

The group first came across Aaron Carrier, a black man from Rosewood who apparently was coerced into implicating Sam Carter, a forty-five year old black man who did some blacksmith work. Sheriff Walker intervened during the interrogation of Aaron Carrier and apparently sent him to the jail in Bronson for safekeeping. The dogs followed the trail to Sam Carter's house, and the search party became convinced that Sam Carter had placed the fugitive in his wagon and assisted the fugitive in an escape. The men seized Sam Carter and strung him up over a tree limb in an effort to make Carter reveal the place where he had taken the fugitive.

The role of the law enforcement officers in the search is unclear. The record indicates that Sheriff Walker was informed and probably sent for the bloodhounds from Ft. White. There is also testimony that the deputy sheriff assigned to western Levy County, Clarence Williams, who also served as a quarterboss at the Cummer sawmill, was involved in searching for the fugitive; however, it does not appear that either the sheriff or the deputy were actually members of the search party that seized Sam Carter.

Of particular interest in this regard is the testimony of Ernest Parham, who at that time was a nineteen year old resident of Sumner, working at the general store. Mr. Parham testified that after the news of Mrs. Taylor's assault on January 1, 1923 spread, tension was very high in Sumner. At the general store

where he worked, they sold so much ammunition that the store's owner decided to hide his supplies and tell customers that they were sold out. Later that evening, Mr. Parham closed the store and noticed that deputy sheriff Williams, who had walked to Rosewood, had left his car parked outside. Mr. Parham drove the Williams' car by a back road from Sumner to Rosewood and located the deputy near Rosewood. At that time noise from a crowd could be heard from down the road. Mr. Parham left the deputy and walked down to where the crowd was gathered, and observed that a group of white men, many of whom he knew, had strung Sam Carter up on a tree limb in an attempt to force him to reveal information about the fugitive. Mr. Parham intervened in the situation, and the crowd of men let Carter down. Carter then took them to a place down the road where he said he let the fugitive off; however, when the dogs failed to pick up the scent, one of the men in the crowd shot and killed Sam Carter. The crowd then dispersed, and Mr. Parham returned to Sumner.

The body of Sam Carter was left on the road that night and apparently law enforcement officials did not discover the body until the following morning of Tuesday, January 2, 1923. Later that same day a coroner's jury inquest verdict signed by L.L. Johns as Justice of the Peace determined:

> "We the Jury after the examination of the said Sam Carter who being found lying Dead, find that the said Sam Carter came to his Death by being shot by Unknown Party so say we all."

It does not appear that any further criminal investigation was conducted into the circumstances of the death of Sam Carter.

The search for Mrs. Taylor's assailant continued. On Thursday, January 4, 1923, word reached Sumner that the man they sought was being protected by Sylvester Carrier in Rosewood. A group of white men went to the Carrier home that evening. Minnie Lee Langley and Arnett Goins, claimants in this case, were children present at the Carrier home the night of January 4, 1923, and testified to the events of that evening. The children had been told that trouble was expected and they were gathered together with other relatives at the Carrier home for their protection.

They were taken to an upstairs bedroom. A group of white men approached the house and called for Sarah Carrier to come out. She did not respond. The white men then came to the porch. The white men shot and killed a dog tied in front of the house. According to the testimony, one of the white men, C.P. "Poly" Wilkerson, a former quarterboss from Sumner, kicked in the door, and was immediately shot and killed by Sylvester Carrier. A second white man Henry Andrews tried to enter the house and was also shot and killed by Sylvester Carrier. The remaining white men retreated, and gunfire was exchanged. During the ensuing gunfire Sarah Carrier was shot and killed. The white men apparently ran out of ammunition, and during the respite the children were taken out of the house by older relatives, and escaped into the woods of Gulf Hammock.

It does not appear that any law enforcement officials were among the group at the Carrier home on the night of January 4, 1923. Ernest Parham testified that deputy Williams was at the hotel in Sumner that evening. Mr. Parham specifically remembered that deputy Williams was discussing the ongoing events and stated that "All hell's breaking out in Rosewood." There is nothing in the record to indicate the whereabouts of Sheriff Walker on that night.

In the morning of January 5, 1923 the bodies of Poly Wilkerson, Henry Andrews, Sarah Carrier, and another black man, reported to be Sylvester Carrier were found at the house. There is some dispute as to whether Sylvester Carrier was actually killed at Rosewood. His family believes that he escaped and members received Christmas greetings from him for many years after the shootings at Rosewood.

After the killing of Poly Wilkerson and Henry Andrews, the violence escalated. Groups of white men from the surrounding areas, and some reportedly from other states, came to Rosewood. During the following days every black residence was burned. The black community fled to the woods. Two more deaths of residents of Rosewood were reported. Lexie Gordon, a woman of mixed color, was sick with typhoid fever and unable to leave Rosewood. When her home was set on fire she went out the back door and was shot and killed. James Carrier, the grandfather of Minnie Lee Langley, was reported to have been forced to dig his own grave and was then shot and killed.

Another black man, Mingo Williams, was reportedly shot while chopping down a tree twenty miles away by a group of the white men going to Rosewood.

Many of the white residents of the area came to the assistance of the black community. John Wright, the white owner of the general store in Rosewood, hid some of the children at his house, and arranged for a railroad car to pick up the women and children who had escaped into Gulf Hammock. Margaret Cannon testified that her father, Morris Cannon, a deputy sheriff in Levy County at the time, went into the woods and found the black woman and children and brought them to the train. They were taken to Gainesville. The black residents of Rosewood did not return.

Several years later the Cummer sawmill in Sumner burned. The company opened a new mill in Lacoochee, Florida, in Pasco County, and many of the Rosewood families moved to that area. Others dispersed to Jacksonville and Miami, and a few others moved out of state. Some of the property of the Rosewood residents apparently was lost to taxes, but there are a few records that indicate some property was later sold.

At this time it is difficult to determine the role of law enforcement officers, and other local and state officials, regarding their conduct during the Rosewood violence. Media accounts state that the Governor, Cary Hardee, was aware of the events, but had gone hunting on the afternoon of January 4, 1923. It also appears that Sheriff Walker had informed the Governor that there was no need to call in National Guard troops. Although the record indicates that the National Guard had been mobilized in preceding years to keep the peace during civil disturbances, the Guard was not called to Rosewood. It further appears that the Sheriff of Alachua County organized a posse to come to Levy County to assist in keeping order, but the role of the Alachua Sheriff in these events is not clear from the record. Sheriff Walker resigned July 8, 1924 after the Rosewood incident, and was replaced by L.L. Johns, the former Justice of the Peace, who signed the coroner's verdict regarding the death of Sam Carter.

On January 29, 1923 the Governor ordered that a special grand jury investigate the violence at Rosewood. The grand jury was

presided over by Judge A.V. Long of the Eighth Judicial Circuit. George DeCottes, the state attorney for the Seventh Circuit in Deland was appointed as prosecutor. On February 12, 1923 the grand jury convened in Bronson. There are no records of the grand jury. The newspaper accounts state that thirteen witnesses testified on February 13, 1923, and more witnesses were scheduled for the following day. Examination of witnesses ended on February 14, 1923, and on February 16, 1923 the grand jury stated that they were unable to find any evidence upon which to base indictments.

No charges were ever brought by the State of Florida against any person for the assault on Frances Taylor, for the killing of Sam Carter, for the deaths occurring at the Carrier home on the night of January 4, 1923, for the deaths of Lexie Gordon, James Carrier, or Mingo Williams, or for any acts of arson and theft which occurred at Rosewood, Florida.

CONCLUSIONS OF LAW: The initial question of law is the applicability of section 11.065(1), Florida Statutes, which provides:

> No claims against the state shall be presented to the Legislature more than 4 years after the cause for relief accrued. Any claim presented after this time of limitation shall be void and unenforceable.

It is a long-established rule of law that the act of one legislature cannot bind a future legislature. Kirklands v. Town of Bradley, 104 Fla. 390, 139 So. 144 (1932); Tamiami Trail Tours v. Lee, 142 Fla. 68, 194 So. 305 (1940). This principle has been specifically applied to the statute of limitations for legislative claim bills. Attorney General's Opinion 55-82. As stated by the Attorney General, the statute of limitations is an expression of legislative policy, and not a prohibition against the consideration of claims against the state. Accordingly, as a matter of law, should the legislature determine that an equitable basis exists for the consideration of these claims, then there is no legal restriction on the power of the legislature to enact a claim bill under these circumstances.

In this matter, the primary claimants are now elderly former residents of Rosewood who as children were displaced from their homes due to the destruction of their community. They have a very limited education. Their testimony reflects a profound fear of reprisal and a distrust of state officials. In light of their personal experiences and the racial attitudes at the time, their testimony is substantiated. There is a question as to whether the fears of the claimants of coming forward are justified especially after the 1983 national broadcast of the Rosewood events. The State contends that at least since 1983 there was no justifiable impediment to the bringing of these claims to the legislature. Moreover, the State contends that under the principles of laches, Cone Brothers Construction v. Moore, 193 So. 288 (Fla. 1940), the claimants have delayed too long, that the matters asserted are not subject to a safe conclusion as to the truth thereof, and the State at this time is unable to defend against these allegations.

In balancing the equities of whether to proceed to consider the claims of these claimants, against the obvious difficulties of the State to completely respond to these claims after so many years have passed, it is important to distinguish these proceedings from proceedings at law. As a matter of law, the record does not demonstrate that the claimants could overcome the State's objections if these proceedings were judicial in nature. Claim bill proceedings, however, address the "moral obligations of the state" and are matters purely within the prerogative of the legislature. Gamble v. Wells, 450 So.2d 850 (Fla. 1984); Dickinson v. Board of Public Instruction, 217 So.2d 553, 560 (Fla. 1968). Under these circumstances, neither the provisions of section 11.065(1), Florida Statutes, nor the principles of laches should be construed to preclude the legislature's consideration of these claims to determine whether there is a moral obligation on the part of the State of Florida which should be addressed.

Claimants seek compensation for damages resulting from property loss and for emotional trauma. As to property loss, Florida law in 1923, as well as today, recognizes that compensation is required when state action effects a taking of property which was set forth in Article XVI, section 29 of the Florida Constitution of 1885 and is now incorporated in Article X, section 6 of the Florida Constitution as revised in 1968. While the State of Florida did not affirmatively take title to

property in Rosewood, the displacement of the Rosewood population was done with the knowledge and assistance of law enforcement officers. In a case involving the claims of Japanese-Americans who were displaced from their homes and property during World War II, the court held that the claimants were entitled to compensation for their property loss. Hohri v. United States, 768 F.2d 227 (D.C. Cir. 1986). The court stated:

> Given the alleged damage to the appellant's real and personal property directly caused by the evacuation program, there is no question that appellants have stated a claim cognizable under the Takings Clause.

Id. at 242. The court went on to hold that this claim was compensable regardless of whether the government took title to the property. See also United States v. General Motors Corp., 323 U.S. 373 (1945).

Although there are obvious distinctions between the federal evacuation program of Japanese-Americans and the displacement of the residents of Rosewood, in both instances the evacuees were forced to leave their homes and were unable to attend to their property. The residents of Rosewood did not return due to fear, and it appears that many simply abandoned their property because the area was not secured for their safety.

In this respect the State cites the case of Monarch Insurance Company of Ohio v. District of Columbia, 353 F. Supp. 1249 (D.C. D.C. 1973), affirmed, 497 F.2d 684 (D.C. Cir. 1974), cert. denied, 419 U.S. 1021 (1974), where the court dismissed constitutional and statutory claims brought against the United States, the District of Columbia and local law enforcement officials for property damages resulting from riots which occurred after the assassination of Dr. Martin Luther King. The court in Monarch held that the decisions regarding the deployment of law enforcement in riot control situations was a discretionary function that did not subject the government to liability under the federal Tort Claims Act. Similarly, Florida law provides that discretionary governmental functions are not subject to liability. Commercial Carrier Corp. v. Indian River County, 371 So.2d 1010 (Fla. 1979). As recognized by the

Monarch court, however, if the claim arises from a taking of property, then there is a cognizable cause of action. 353 F. Supp. at 1252.

Moreover, the United States Supreme Court in the case of National Board of Young Men's Christian Assn's v. United States, 395 U.S. 1511 (1969) held that persons whose property was damaged as a result of rioting after occupation of the buildings by federal troops had no Fifth Amendment claim for compensation. However, as Justice Harlan stated:

> ...it is for Congress, not this Court, to decide the extent to which those injured in the riot should be compensated, regardless of the extent to which the police or military attempted to protect the particular property which each individual owns.

395 U.S. at 96. Similarly, while it may be argued that there would not exist a judicially cognizable claim under the takings provisions of the federal and state constitutions, it is nonetheless clear that the legislature has the authority to determine the extent of compensation in this matter.

In relevant circumstances, Congress enacted the Civil Liberties Act to compensate Japanese-Americans for property damages resulting from the federal evacuation policy during World War II. 50 App. U.S.C. s. 1989a(a). The federal law enacted in 1988 recognized that "a grave injustice was done both to citizens and permanent resident aliens of Japanese ancestry by their forced relocation and internment during World War II," and attempted to make amends by issuing a formal apology and $20,000 to each Japanese intern. Jacobs v. Barr, 959 F.2d 313, 314 (D.C. Cir. 1992). The federal law sets forth eligibility standards and provides for time limitations in which eligible individuals must present their claims to the Attorney General.

Under these circumstances, it is appropriate to compensate the claimants in this matter for the property losses sustained by the destruction of Rosewood. While there is not a showing of participation on the part of governmental agents in the destruction of the property, there is no question that governmental officers were aware of the violent situation that existed during the entire week of January 1, 1923, that

government officers assisted in the evacuation of the Rosewood residents, that after the destruction the government did not secure the area, that the residents of Rosewood sustained property damage, and that the justice system did not redress the injuries sustained. This is particularly evident when the legislative hearings 71 years later are uncovering evidence identifying the perpetrators of the criminal acts that occurred in Rosewood. In light of these circumstances, and the authorities cited above, the Rosewood families sustaining property damage should be compensated.

As to the emotional and mental anguish damages sought by the claimants, there is no clear remedy. In 1923 the State had not waived sovereign immunity; accordingly, a state cause of action based upon principles of tort law does not arise. See Article III section 22 of the 1885 Constitution which is presently set forth in Article X section 13 of the Florida Constitution. Under section 870.04, Florida Statutes, which also was in force at the time, a sheriff has the duty to order rioters to disperse, but it does not appear that the statute gives rise to a civil cause of action. Cleveland v. City of Miami, 263 So.2d 573 (Fla. 1972).

The federal civil rights acts, section 42 U.S.C. s. 1983 et seq., were in existence, and require a showing that the acts which resulted in personal injury to the claimants were under color of law and done with the intent to deprive the claimants of their constitutional rights. Washington v. Davis, 426 U.S. 229 (1976). As indicated above, there is evidence that governmental officials knew of the potentially violent situation at Rosewood, but there is no indication of direct participation of governmental officers in the events leading up to the destruction of Rosewood. The most persuasive evidence of governmental responsibility is the failure of any showing that the criminal acts committed at Rosewood were reasonably investigated and redressed by the State of Florida. The record reflects that the death of Sam Carter, who was killed in front of many residents of Sumner, clearly was not properly investigated, and even today there is at least one witness available to testify to the circumstances of that crime. Any records of the investigation conducted by the special grand jury were lost, but it is difficult to understand the grand jury's determination that there was insufficient evidence to

proceed on any of the criminal acts when 71 years later witnesses describing the events and identifying the perpetrators are appearing at legislative hearings.

While this evidence may not be sufficient to sustain a cause of action at law, it does compel the conclusion that a moral obligation exists on the part of the State of Florida to remedy this matter. This conclusion appears to be in keeping with the equitable claim bills redressing "moral obligations" that the legislature has previously enacted. Gamble v. Wells, supra. In Gamble the legislature awarded $150,000 to a child who was physically and emotionally damaged due to the failure of the State to provide adequate foster care. In upholding the constitutionality of Chapter 80-448, Laws of Florida, the Florida Supreme Court in Gamble stated:

> This voluntary recognition of its moral obligation by the legislature in this instance was based on its view of justice and fair treatment of one who had suffered at the hands of the state but was legally remediless to seek damages.

450 So.2d at 853.

This principle is equally applicable here. In the Rosewood claim, although the claimants are now elderly, the damage they sustained was as children, and while ascertaining an amount of damage for emotional harm is subjective, the Gamble case provides guidance as to prior legislative enactments in this regard. Accordingly, it appears that those Rosewood claimants who as children were subjected to the violence and forced to leave their homes should each be awarded compensation in the amount of $150,000.

In the final analysis, the legal authorities cited above support the conclusion that this is an equitable matter that is addressed to the sound discretion of the Florida Legislature. The federal and state cases demonstrate that the legislature's responsibility is to determine whether there is a moral obligation on the part of the State of Florida to compensate the claimants. Although the evidence presented may not be sufficient to establish an action at law, it nonetheless is clear that government officials were responsible for some of the damages sustained by the claimants,

if not by the failure to provide reasonable law enforcement prior to the destruction of Rosewood, then surely in the failure to reasonably investigate this matter, to bring the perpetrators to justice and to thereafter secure the area for the safe return of the displaced residents. Under these circumstances, the claimants have met the test for an equitable claim bill by showing that a moral obligation exists to redress their injuries.

COLLATERAL SOURCES: Claimant Minnie Lee Langley received $1,000 for the motion picture rights to her story.

ATTORNEYS FEES: The law firm of Holland & Knight is representing the claimants on a pro bono basis.

RECOMMENDATION: For the above reasons, I recommend that HB 591 be amended as follows:

1. The bill should direct the Florida Department of Law Enforcement, or other appropriate law enforcement officials, to conduct a complete investigation of this matter including interviewing the available witnesses to determine if any criminal proceedings may still be pursued.

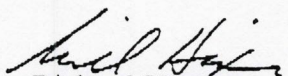
2. A fund should be established to compensate the Rosewood families who can demonstrate a property loss as a result of the displacement of the Rosewood residents.

3. The elderly claimants who sustained emotional trauma as a result of the destruction of Rosewood and the evacuation of the residents should each be compensated in the amount of $150,000.

4. A state university scholarship fund should be established for the families and the descendants of the Rosewood residents.

As AMENDED, I recommend HB 591 be reported FAVORABLY.

Respectfully submitted,



Richard Hixson
Special Master

CF

FLORIDA HOUSE OF REPRESENTATIVES

IN THE MATTER FOR RELIEF OF:

Relief of ARNETT T. GOINS,
MINNIE L. LANGLEY, et al.,

Claimants,

v. HB 591

STATE OF FLORIDA,

Respondent.
_____/

STATE OF FLORIDA'S MEMORANDUM RE:
APPLICATION OF HOHRI v. UNITED STATES

State of Florida submits its Memorandum with reference to application of the above-styled case, per the request of the Special Master on March 18, 1994.

Hohri v. United States, reported at 586 F.Supp. 769 (U.S. DC 1984), and 782 F.2d 227 (D.C. Cir. 1986), tracks the efforts of Japanese-American World War II internees, who brought actions against the United States, to recover damages arising from their wartime internment by the United States government. Review of these cases discloses their lack of support to the claims asserted under HB 591, both as to facts and process.

THE UNDISPUTED FACTS

Unlike HB 591 Claimants, the Japanese-Americans in Hohri were displaced from their families and property by affirmative, undenied, overt government action and policy.

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See e.g. 586 F.Supp. at 774 - proclamation authorized Attorney General to regulate conduct of residents of Japanese nationality and to apprehend such persons, Secretary of War authorized evacuation of Japanese and other subversive persons from Pacific coast; 586 F.Supp. at 775, the War Relocation Authority authorized removal from designated areas of persons whose removal is necessary in the interest of national security, pursuant to which army was to remove Japanese-Americans from designated military areas to temporary assembly centers for relocation to permanent camps. "That wrongs were done to Americans of Japanese ancestry under executive order 9066 is disputed by no one involved in this case." 782 F.2d at 256. "The use of official historic documents is particularly appropriate here. They relate to events which occurred more than forty years ago. Most of the actors who might give better evidence are no longer living. It is unlikely that the historical facts recounted in the documents can ever be the subject of a material dispute."

THE TIME BAR STATUTE

These two decisions otherwise evidence the legal process by which the Japanese-American claims were timely tried and adjudicated.[1] Their claims were subject to

[1] See also Hirabayashi v. United States, 320 U.S. 81 (1943); Korematsu v. United States, 323 U.S. 214 (1944); Yasui v. United States, 320 U.S. 115 (1943); and Ex Parte Endo, 323 U.S. 283 (1944).

several defenses, one of which was the United States government's assertion of the six year time bar prescribed by 28 U.S.C. §2401. The District Court initially imposed that limitation to bar the claims. However, the Court of Appeal determined that the government had "fraudulently concealed" the basis for a cause of action and, accordingly, the statute was tolled.

The Court of Appeal applied a "due diligence" standard based upon its fact specific judgment as to what a reasonable plaintiff could be expected to do under the circumstances.[2] It determined that "not every act of concealment will toll the statute of limitations" and that "concealment must go to a critical element or defense attending each particular cause of action." 782 F.2d at 250.

In regards to HB 591 Claimants' lack of due diligence to assert their claims, there is every indication from the record that they, whether individually or as a group, voluntarily chose to remain silent to both state and federal officials, at least until their 1983 television broadcast on 60 Minutes.

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[2]Contemporary news clippings of 1923, only a few of which were critical of the Florida government, would have seemingly then motivated Claimants that there may be at least arguable facts upon which to base a case against the state or county government.

There is no fraudulent concealment by the State alleged or remotely suggested by the record of HB 591.[3]

THE NATURE OF THE TAKING

Hohri otherwise speaks to the nature of the taking which was deemed to be sufficient for the plaintiffs in that action. It found the Hohri claims were "in essence an inverse condemnation proceeding in which a citizen is deprived of property by the government and then must initiate judicial action to obtain compensation." But there the takings claim arose from the undenied overt evacuation program which had been authorized by proclamation number 2525, 6 Fed.Reg. 6321 (1941) and by executive order 9066, 7 Fed.Reg. 1407, and by executive order 9102, 7 Fed.Reg. 2165, which established the War Relocation Authority.

The Court of Appeal decision discussion otherwise turns upon the undisputed fact that "the government forced appellants to give up actual possession and control of their property." It found no legal significance in the fact that the government did not actually take title to the property. 782 F.2d at 242.

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[3]One of the many unanswered questions is the absence of formal academic research into the Rosewood tragedy - whether by FSU, U of F, or especially FAMU. Clearly, the violence at Rosewood was the subject of myriad contemporary news accounts. This seeming lack of interest by Florida's universities to include Rosewood in the State's history text cannot be reasonably attributable to "the State."

The hearsay-ridden record of HB 591 evidences neither of the facts undisputed in Hohri. There is no evidence that the State "forced" HB 591 Claimants to give up possession and control of their property. Rather, Claimants left the immediate vicinity of Rosewood (some merely moved up the road to Wiley) to avoid what they perceived as unchecked threats to their personal safety during the first week of January, 1923.

To the extent Claimants were afforded rail transportation from Rosewood - at the initiative of State government, county government, or private actors - they were afforded that option for reasons of personal safety and not to separate them from their property and possessions. There was no government force which separated Claimants from possession and control of their property. Rather, the record reasonably evidences that Claimants essentially abandoned their property.[4]

The Hohri Court determined the plaintiffs' alleged property losses fell into three categories - personal property like cameras, radios, props; property lost as the result of the government's exclusion of plaintiffs from

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[4]The hearing testimony of Douglas McCoy, Clerk of the Levy County Court, evidences that there were property transactions by some of claimants subsequent to January, 1923. The fact of those transactions squarely rebuts any arguments that the property was previously taken, by government action or otherwise.

their homes and business; vested constitutional rights lost as a result of the evacuation and internment.

In evaluating the takings, the trial court determined it should engage in "ad hoc factual inquiries" and that its ruling would depend upon the particular circumstances in the case. It enumerated factors to guide its determination:

> One is the character of the governmental action; a taking may more readily be found when there is actual physical invasion of the property than when the interference took the form of a public program. Still, physical invasion is not essential; a statute that substantially furthers important public policies may still so frustrate distinct investment-backed expectations as to amount to a taking (citation omitted). 586 F.Supp. at 784.

Here, there is neither. Hohri does not stand for the proposition that destruction of property arising from civil disobedience is a taking by the government.

CONCLUSION

The record of the litigation by Japanese-American internees does not aid HB 591 Claimants. Rather, that record demonstrates the ramifications of the distinctions between the Japanese-Americans' diligent and timely efforts to assert their rights and the 70-year silence of the Rosewood Claimants.

Respectfully submitted,

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(904) 488-1573
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **STATE OF FLORIDA'S MEMORANDUM RE: APPLICATION OF HOHRI v. UNITED STATES** has been faxed and mailed to Stephen Hanlon, Esquire, Post Office Drawer 810, Tallahassee, Florida 32302-0810 this 20 day of March, 1994.

JAMES A. PETERS

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FLORIDA HOUSE OF REPRESENTATIVES

IN THE MATTER FOR RELIEF OF:

Relief of ARNETT T. GOINS,
MINNIE L. LANGLEY, et al.,

Claimants,

v. HB 591

STATE OF FLORIDA,

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STATE OF FLORIDA'S NOTICE OF SUPPLEMENTAL AUTHORITY

State of Florida submits the following authority to supplement its February 24, 1994, Prehearing Memorandum and its March 15, 1994, Memorandum of Law Re: Tolling the Statute of Limitations.

In United States v. Kubrick, 444 U.S. 111, 118, 62 L.Ed.2d 259, 100 S.Ct. 352 (1979), the United States Supreme Court explained the policy justifications behind the statute of limitations which was applicable to claims against the federal government under the Federal Tort Claim Act:

> Statutes of limitations, which "are found and approved in all systems of enlightened jurisprudence" (citation omitted) represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that "the right to be free of stale claims in time comes to prevail over the right to prosecute them." (Citation omitted.) These enactments are statutes of repose, and although affording plaintiffs what the

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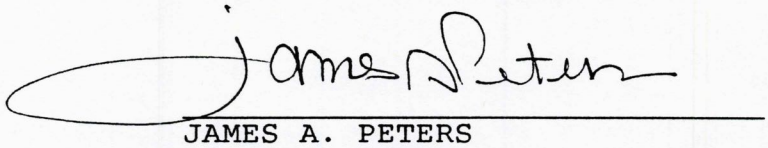
legislature deems a reasonable time to present their claims, they protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise. (Citations omitted.)

Section 2401(b), the limitations provision involved here, is the balance struck by Congress in the context of tort claims against the Government; and we are not free to construe it so as to defeat its obvious purpose, which is to encourage the prompt presentation of claims. (Citation omitted.) We should regard the plea of limitations as a "meritorious defense, in itself serving a public interest." (Citation omitted.) (Emphasis supplied.)

Respectfully submitted,



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(904) 488-4872 (Fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **STATE OF FLORIDA'S NOTICE OF SUPPLEMENTAL AUTHORITY** has been faxed and mailed to Stephen Hanlon, Esquire, Post Office Drawer 810, Tallahassee, Florida 32302-0810 this 20 day of March, 1994.

James A Peters

JAMES A. PETERS

<jimp>Rosewood.SuppAuth2

Team's
Supplement to Answers to Ints

Reply to Question and Statements submitted to the Rosewood Investigative Team by Mr. Peters

The team has already responded to 90 interrogatories given to us by Mr. Peters. We are glad to respond to additional statements that Mr. Peters has made, and we prefer to do so in our own words. Our responses are a joint effort of the team with the exception of Dr. David Colburn who is in Madrid. We are faxing him these responses and are convinced that he will agree with them. Dr. Maxine Jones, Principal Investigator, will read our responses.

1. The team states that this article was carried in the St. Petersburg Evening Independent, January 5, 1923, and that it was one of several articles describing the January 4, shooting. Yet, there is testimony from eyewitnesses who were in the Carrier house that most of the occupants were women and children. That there were 25 heavily armed blacks and the statement that Andrews and Wilkerson were shot to death without warning is an extreme version of events and could not be used and was not accepted by the team as being the correct version.

2. The team was unable to determine all of the circumstances by which Andrews and Wilkerson were killed as they started to enter the Carrier house. But such a declaration as that made by Jason McElveen about the intent and anger of the whites who went to the Carrier house make it impossible for the team to state that it was just as likely that the whites had peaceful intentions as that they were aggressors. See Jason McElveen Tape. See also Ernest Parham Interview, Appendices, 353, and Ernest Parham's testimony before a Special Master's hearing in Tallahassee, Florida, on Friday, March 11, 1994.

The following answer applies to questions 3 and 4 which are interrelated.

The article is from the New York Age, January 13, 1923, and since it contains various statements that could not be verified, the team could not accept its accuracy. The team could not authenticate that 18 people were captured and taken away for safekeeping. The article itself does not say who the alleged people were--whether they were men, women or children. This is only one of several accounts. There were eyewitnesses, none of whom, made any statement about 18 people being captured. See Sworn Statements of Langley, Davis and Goins.

The following answer applies to questions 5 and 6 which are interrelated.

The number of lynchings that did occur is a shocking total. The team wrote several versions of its report as it progressed in its research, adding and deleting as it went along. The report by Monroe N. Work applied to the total number of lynchings from 1922 to 1924 and was deleted with other material

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— Respondent's Ex # 18 —

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through the editing process because it was not central to the Rosewood study.

7. The team received Dr. Shakir's Rosewood Family History.

8. Professor Rogers states that he has met Dr. Shakir only once. That was when the Rosewood survivors and family members came to Tallahassee. He did not interview her, and their acquaintanceship is only slight. Dr. Shakir's Rosewood Family History is a good overview, but its focus is narrow and related from the family's point of view. The team using the Historical Method used a much larger variety of primary and secondary sources.

The following answer applies to questions 9 and 10 which are interrelated.

The team turned in its report on December 22, 1923, and therefore the Wilkerson Interview could not be included. Yet, Ernest Parham disputes that Mr. Wilkerson was there on a peacekeeping mission by invitation. Ernest Parham's testimony before a Special Master's hearing in Tallahassee, Florida, on Friday, March 11, 1994.

11. Since the report of the Grand Jury does not exist or has yet to be discovered, the team was unable to make any conclusions. The team used newspaper articles stating that no True Bill was returned, and in fact, there were no indictments relating to the Rosewood incident.

FLORIDA HOUSE OF REPRESENTATIVES

IN THE MATTER FOR RELIEF OF:

Relief of ARNETT T. GOINS,
MINNIE L. LANGLEY, et al.,

Claimants,

v. HB 591

STATE OF FLORIDA,

Respondent.
_____/

RESPONSE TO CLAIMANTS'
MEMORANDUM OF LAW RE: EXCITED UTTERANCE

State of Florida submits there is no record basis in the hearing testimony of Ernest Parham to invoke the excited utterance exception to the hearsay rule.

Parham's reference to the alleged assertions by (M.L.) Studstill[1] appear at T-643 through 648. Indeed, it is not apparent from Mr. Parham's testimony if he was relying on assertions by Studstill or by other residents of Sumner or on news accounts.

Parham's recitation of Studstill's alleged assertions is rank hearsay. Further, there is no foundation or predicate to even suggest that Studstill was

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[1]Although it is not apparent from the transcript of the March 11, 1994, hearing, news articles the first week of 1923 indicate the wounded white male was M.T. or M.L. or Sephus Studstill. See January 5, 1923 article in Tribune (enclosed) also January 5, 1983 AP (article enclosed.) The wounded white citizen is not to be confused with J.M. Studstill, a resident of Chiefland, who was Justice of the Peace in 1922.

present at the commencement of the gunfire at the Carrier household. Nor is there indication that M.L. Studstill was "excited." Rather, he was wounded. Accordingly, the record supports no basis for invocation of the excited utterance exception.

Respectfully submitted,

JAMES A. PETERS
Assistant Attorney General
Florida Bar No. 0230944

Counsel for the Respondent
PL-01 The Capitol
Tallahassee, FL 32399-1050
(904) 488-1573
(904) 488-4872 (Fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **RESPONDENT'S RESPONSE TO CLAIMANTS' MEMORANDUM OF LAW RE EXCITED UTTERANCE** has been hand-delivered to Stephen Hanlon, Esquire, Post Office Drawer 810, Tallahassee, Florida 32302-0810 this 18 day of March, 1994.

JAMES A. PETERS

<jimp>Rosewood.Resp3

...ining the strikers from interfering with railroad transportation ...based.

...he shop crafts' motion for a trial ...pen court was granted however, ...ough decision on the defense's ...ion for a jury trial in the equity ... was reserved by the court until ... calling of the trial. The trial ... was fixed for May 2. The order ...cting that a special examiner take ...ence in the case in various cities ... set aside.

...he court in its decision refusing ...ismiss the preliminary injunction ... the bill, upheld the government ...piracy case introduced by the ...rney-general at the time the in...tion was asked as the basis for ...action.

...ferring to the contention of ...ald Richberg, attorney for the ... crafts, that the injunction was ...tically null and void because the ...ers are back at their jobs and ...strike no longer exists and to his ...ment the federal district court ... no jurisdiction outside the dis... for which it is appointed, the de... said "the settlement of the ... on the part of the railroads ... the alleged territorial limitations ... process in contempt proceedings ...sh no stronger grounds for dis...ng the injunction than for dis...ing the bill.

...he defendants are here asserting ... right to do the things which are ...dden by the injunction. Ques... of procedure, in case there are ...tions of the injunction, can be ...sed of if and when they arise."

Get Sixty Days

...e government was given sixty ... from Jan. 8 to file depositions ... the defendants thirty days from ... expiration of that time to make ... statements. In making his de..., Judge Wilkerson read extracts ... strike bulletins, issued by the ... crafts organization, which he ... constituted enough evidence for ... on the presumption that the ... crafts union had engineered a ...piracy to restrict interstate com...e.

...e injunction, one of the most ...ping of its kind ever procured by ... government, was granted last ... after the strike had been in ...ess since July 1. It restrained ...hop crafts officers, members and ... on strike from interferring in ... manner whatsoever with rail... transportation.

...ASS BLOWERS' AND ...PLOYERS' CONTRACT ...EGAL, SAYS JURY

the supply could be replenished.

(Special to The Tribune.)

Six Were Killed at Rosewood

GAINESVILLE, Jan. 5—Six persons, two of whom were prominent residents of Levy County, are dead tonight, an entire negro settlement is smouldering in ashes and racial feeling is still running strong as the result of a clash between black and whites at Rosewood, a small mill town forty-eight miles southwest of Gainesville, late last night. The dead are:

Boly Wilkinson, Sumner, age 45, a merchant.

Henry Andrews, Otter Creek, age 42, lumber superintendent.

Sylvester Carrier, negro, age 22.

Bertha Carrier, negro, mother of Sylvester Carrier.

Miage Williams, negro, age 48.

An unidentified negro woman.

Known wounded, all white:

Mannie Hudson, scalp wound.

M. T. Studstill, shot through arm.

—Odom, shot through neck.

Sylvester Carrier, negro who was killed last night, is a brother of the man now being held in jail for complicity in the assault upon a young white woman at Sumner several days ago. Six men made up the posse which attempted to place him under arrest last night at the negro home. When Wilkinson and Andrews stepped upon the porch of the house they were shot and killed by negroes who had barricaded themselves in an attempt to protect Carrier.

Armed Citizens Hasten to Scene.

Scores of heavily armed citizens poured into Sumner, a larger mill town, three miles away, with the break of dawn today. When the posse went to the scene of the shooting, four gruesome corpses were the only remaining evidences of the encounter. Other negroes believed to have been in the house at the time had fled during the early hours of the morning. Several of them are thought to have been wounded. The bodies of the two white men were removed to their home. Enfuriated citizens tore down pictures, smashed furniture and completely ransacked the negro dwelling. Flames were then applied and in a short while

Continued on Page 9 Column 5

Near East Conference Approaches End With

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Notice.

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...called upon ...minister and ...r for a half ...ear Eastern ...f action on ...s, in which ...ain may co...

...plial ship Vinh-Long which caught fire in the Sea of Marmora. Above is shown the Bainbridge loaded with rescued alongside the burning Vinh-Long. Below is shown the flaming hospital ship.

GUN BATTLE AS WHITES RUSH NEGRO BARRICADE ROSEWOOD

Rosewood, Fla., Jan. 5.—(By the Associated Press:)—Hundreds of citizens were early today preparing to renew their efforts to smash a barricade behind which 25 or more heavily armed negroes are making a stand here in a small hut. Two white men are known to be dead, three wounded, and a score or more blacks are believed slain in the fighting which took place early last night.

Deputized posses and citizens said to be numbering in the thousands were pouring into this village early this morning. Automobile after automobile heavily laden with armed men have arrived, some coming from a distance of about 75 miles.

All night long citizens surrounding the hut kept up a heavy fire, and at intervals volleys of lead were fired from behind the barricade. At the first break of dawn the whites were preparing to rush the house from all sides. Authorities believe that unless the negroes surrender "they will be smoked out."

At an early hour the number of negro dead could not be estimated, but the hut is said to be riddled with bullets from its flooring to the roof.

Casualty List.

The white dead are: Henry Andrews, superintendent of the Cummer Lumber company's saw mill.

Boly Wilkerson, of Sumner.

The wounded:

Man named Odom, said to be from Jacksonville, employed at a box factory at Otter Creek.

Sephus Studstill, of Rosewood.

Warner Kirkland, of Rosewood.

The bodies of Andrews and Wilkerson lay all night where they fell. No one was able to rescue them, so hot was the fire from behind the barricade. Andrews leaves wife and three children, and Wilkerson a wife and five children.

The hut was in total darkness throughout the night, but efforts of the citizens to creep up on the barricade met with a heavy fire. The negroes seemed well supplied with ammunition, most of it being buckshot.

Town's Under Guard.

Sheriff's and their deputies from neighboring counties arrived here during the early morning, while in the meantime negro villages in surrounding towns have been placed under heavy guard. In each place practically a martial law has been declared, the blacks being warned to remain within their homes. At Sumner and Bronson armed men are patrolling the streets.

No racial outbreaks other than at this place have been reported.

Since monday this section of Florida has been stirred as the result of an alleged criminal attack upon a young white woman at Sumner. Three negroes are alleged to have taken part in the attack. Monday night one negro was shot to death when he is said to have admitted to a mob that he had transported one of the wanted negroes in a wagon.

Early last night a report reached Sumner that the negroes wanted were at this place. A party of citizens came here from Sumner to investigate. In one place it is said they found about 25 negroes heavily armed.

Andrews and Wilkerson started to enter the house, and citizens said they were shot to death without warning. The three other whites were wounded in the first skirmish.

Governor Makes Inquiry.

Tallahassee, Fla., Jan. 5.—Governor Hardee of Florida, when informed by the Associated Press

(Continued on Page 3.)

JOHN PHILIP SOUSA

Enjoyed eating at the Poinsettia cafe. Chicken dinner $1.00, Sunday, 12 to 8 p. m. (adv) 53-2t

...Dance of the "Bay... ...benstein.

5. Selection from "... of Normandy," P...
6. Xylophone solo, ... Peasant," Suppe. Herbert Leak...

Intermission

7. "Operatic Master... freaek. "Lohrengren," "Samson and ... "Faust," "Aida," ... Hoffman."
8. (a) "Forget Me ... mezzo), Macbeth. (b) "Three o'Clo... Morning," Roble...
9. Harold Stockton, ... loist and bird im...
10. Grand potpourri of ... songs and dance...
11. "The Bells of Do... der. Bobbie Brollier, ... Scotch Highland ... Star Spangled Banner.

Members of the ban... are: Soloists, Turner ... net; Herbert Leake, ... Harold Stockton, whis... Brollier, Scotch tenor; ... er, solo clarinet; Willia... Jimmy Schlang, Eddie ... inets; Harold Stockt...

(Continued on P...

VISITORS.

Will find a complet... at 208 Central avenue. Ray Kimball Realty ...

BOLL WEEV... MEET C...

SECRETARY WALL... NOUNCES CONFER... MEMPHIS NEXT

Washington, Jan. 5. ...ment of a cotton cor... Memphis, Tenn., early ... to consider use of cal... ate and other means in... boll weevil was made ... Secretary Wallace, of ... ment of agriculture t... ator Harris, Democrat, ...

Senator Harris mad... letter from Secretary ... tailing plans for the m...

FLORIDA HOUSE OF REPRESENTATIVES

IN THE MATTER FOR RELIEF OF:

Relief of ARNETT T. GOINS, MINNIE L. LANGLEY, et al.

Claimants,

vs. HB 591

STATE OF FLORIDA,

Respondent.
_____/

CLAIMANTS' MEMORANDUM OF LAW RE EXCITED UTTERANCE EXCEPTION TO THE HEARSAY RULE

Ernest Parham testified under oath that a witness named Mr. Studstill returned to the Sumner Hotel on the evening of the attack at the Carrier household led by Poly Wilkerson and Henry Andrews. This witness had been shot in the arm, according to Ernest Parham, and this witness described what had happened at the Carrier household that night. The witness was in an excited state, according to Mr. Parham.

Witness Studstill's description of the events which occurred at the Carrier household that evening should be admissible under Section 90.803(2), Florida Statutes, as an excited utterance, that is, a statement or excited utterance relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

The excited utterance exception to the hearsay rule is one of the most common and widely used res gestae exceptions to the hearsay rule. A person who is excited as a result of a startling

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event does not have the reflective capacity which is essential for conscious misrepresentation. United States v. Moore, 791 F.2d 566, 571, 572 (7th Cir. 1986). Because statements made in a state of excitement are spontaneous, they have sufficient guarantees of truthfulness. Although Mr. Parham identified witness Studstill, it is not necessary that the person who made the statement be identified for this exception to apply. United States v. Boyd, 620 F.2d 129, 132 (6th Cir. 1980), cert. denied, 449 U.S. 855, 101 S.Ct. 151, 66 L.Ed. 2d 69.

The excited utterance exception differs from the spontaneous statement exception mainly by the amount of time that may lapse between the event and the statement describing the event. Under Section 90.803(2) it is not necessary that there be contemporaneity between the event and the statement. As long as the excited state of mind is present when the statement is made, the statement is admissible if it meets the other requirements in Section 90.803(2). This excited statement can exist a substantial length of time after the event. Conley v. State, 592 So.2d 723, 727-728, (Fla. 1st D.C.A. 1992); (35 to 60 minutes later). Edmond v. State, 559 So.2d 85, 86, (Fla. 1st D.C.A. 1990), rev. denied, 570 So.2d 1304 (2 or 3 hours later).

RESPECTFULLY SUBMITTED,

HOLLAND & KNIGHT

Stephen F. Hanlon
FBN: 209430
P. O. Drawer 810
Tallahassee, Florida 32302
(904) 224-7000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing Claimants' Memorandum of Law Re Excited Utterance Protection to the Hearsay Rule by fax and regular mail upon James A. Peters, Esquire, Koger Center, Alexander Building, Room 102, 2020 Capitol Circle, Tallahassee, Florida, this 16 day of March, 1994.

Stephen F. Hanlon

TAL-41283

FLORIDA HOUSE OF REPRESENTATIVES

IN THE MATTER FOR RELIEF OF:

Relief of ARNETT T. GOINS, MINNIE L. LANGLEY, et al.

Claimants,

vs. HB 591

STATE OF FLORIDA,

Respondent.
_____/

CLAIMANTS' MEMORANDUM OF LAW RE JUSTICES OF PEACE AND CONSTABLES IN 1923

Attached to this memorandum of law are excerpts from the 1885 Constitution of the State of Florida (See Tab A) highlighted to show the provisions pertaining to constables and justices of the peace, together with copies of the revised statutes of Florida (1920) (See Tab B), again highlighted to reflect similar provisions in the Florida Statutes in 1920 pertaining to sheriffs, constables and justices of the peace.

RESPECTFULLY SUBMITTED,

HOLLAND & KNIGHT

Stephen F. Hanlon
FBN: 209430
P. O. Drawer 810
Tallahassee, Florida 32302
(904) 224-7000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing Claimants' Memorandum of Law Re Damages For Posttraumatic Stress Disorder by fax and regular mail upon James A. Peters, Esquire, Koger Center, Alexander Building, Room 102, 2020 Capitol Circle, Tallahassee, Florida, this 16 day of March, 1994.

Stephen F. Hanlon

TAL-41267

CONSTITUTION OF THE STATE OF FLORIDA.

ADOPTED BY THE CONVENTION OF 1885; WENT INTO EFFECT JANUARY 1, 1887.

PREAMBLE.

We, the People of the State of Florida, grateful to Almighty God for our constitutional liberty, in order to secure its blessings and to form a more perfect government, insuring domestic tranquility, maintaining public order, and guaranteeing equal civil and political rights to all, do ordain and establish this Constitution.

DECLARATION OF RIGHTS.

SECTION 1. All men are equal before the law, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing happiness and obtaining safety.

SECTION 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the citizens, and they have the right to alter or amend the same whenever the public good may require it; but the paramount allegiance of every citizen is due to the Federal Government, and the people of this State have no power to dissolve its connection therewith.

SECTION 3. The right of trial by jury shall be secured to all, and remain inviolate forever.

SECTION 4. All courts in this State shall be open, so that every person for any injury done him in his lands, goods, person or reputation shall have remedy, by due course of law, and right and justice shall be administered without sale, denial or delay.

SECTION 5. The free exercise and enjoyment of religious profession and worship shall forever be allowed in this State, and no person shall be rendered incompetent as a witness on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to justify licentiousness or practices subversive of, or inconsistent with, the peace or moral safety of the State or society.

SECTION 6. No preference shall be given by law to any church, sect or mode of worship, and no money shall ever be taken from the public treasury directly or indirectly in aid of any church, sect or religious denomination, or in aid of any sectarian institution.

The third judicial circuit shall be composed of the counties of Madison, Taylor, Lafayette, Hamilton, Suwannee and Columbia.

The fourth judicial circuit shall be composed of the counties of Nassau, Duval, Baker, Bradford, Clay and St. Johns.

The fifth judicial circuit shall be composed of the counties of Putnam, Alachua, Levy, Marion and Sumter.

The sixth judicial circuit shall be composed of the counties of Hernando, Hillsborough, Manatee, Polk and Monroe.

The seventh judicial circuit shall be composed of the counties of Volusia, Brevard, Orange and Dade.

SECTION 11. The circuit courts shall have exclusive original jurisdiction in all cases in equity, also in all cases at law, not cognizable by inferior courts, and in all cases involving the legality of any tax, assessment, or toll; of the action of ejectment and of all actions involving the titles or boundaries of real estate, and of all criminal cases not cognizable by inferior courts; and original jurisdiction of actions of forcible entry and unlawful detainer, and of such other matters as the legislature may provide. They shall have final appellate jurisdiction in all civil and criminal cases arising in the county court, or before the county judge, of all misdemeanors tried in criminal courts, of judgments or sentences of any mayor's court, and of all cases arising before justices of the peace in counties in which there is no county court; and supervision and appellate jurisdiction of matters arising before county judges pertaining to their probate jurisdiction, or to the estates and interests of minors, and of such other matters as the legislature may provide. The circuit courts and judges shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, prohibition, habeas corpus and all writs proper and necessary to the complete exercise of their jurisdiction.

SECTION 12. The circuit courts and circuit judges may have such extra territorial jurisdiction in chancery cases as may be prescribed by law.

SECTION 13. It shall be the duty of the judges of the circuit courts to report to the attorney-general at least thirty days before each session of the legislature such defects in the laws as may have been brought to their attention, and to suggest such amendments or additional legislation as may be deemed necessary. The attorney-general shall report to the legislature at each session such legislation as he may deem advisable.

SECTION 14. A circuit judge may appoint in each county in his circuit one or more attorneys at law to be court commissioners, who shall have power in the absence from the county of the circuit judge, to allow writs of injunction, and to issue writs of habeas corpus, returnable before himself or the circuit judge. Their orders in such matters may be reviewed by the circuit judge, and confirmed, qualified or vacated. They may be removed by the circuit judge. The legislature may confer upon them further powers, not judicial, and shall fix their compensation.

SECTION 15. The governor, by and with the consent of the senate, shall appoint a state attorney in each judicial circuit, whose duties shall be prescribed by law, and who shall hold office for four years. There shall be elected in each county a sheriff, and a clerk of the circuit court, who shall also be clerk of the county court, except in counties where there are criminal courts, and of the board of county commissioners, and recorder and *ex-officio* auditor of the county, each of whom shall hold office for four years. Their duties shall be prescribed by law.

SECTION 16. There shall be in each county a county judge who shall be elected by the qualified electors of said county at the time and places of voting for other county officers and shall hold his office for four years. His compensation shall be provided for by law.

SECTION 17. The county judge shall have original jurisdiction in all cases at law in which the demand or value of property involved shall not exceed one hundred dollars; of proceedings relating to the forcible entry or unlawful detention of lands and tenements; and of such criminal cases as the legislature may prescribe. The county judge shall have jurisdiction of the settlement of the estates of decedents and minors, to order the sale of real estate of decedents and minors, to take probate of wills, to grant letters testamentary and of administration and guardianship, and to discharge the duties usually pertaining to courts of probate. He shall have the power of a committing magistrate and shall issue all licenses required by law to be issued in the county.

SECTION 18. The legislature may organize in such counties, as it may think proper, county courts which shall have jurisdiction of all cases at law in which the demand or value of the property involved shall not exceed five hundred dollars; of proceedings relating to the forcible entry or unlawful detention of lands and tenements, and of misdemeanors, and final appellate jurisdiction in civil cases arising in the courts of justices of the peace. The trial of such appeals may be *de novo* at the option of appellant. The county judge shall be the judge of said court. There shall be elected by the qualified electors of said county, at the time when the said judge is elected, a prosecuting attorney for said county, who shall hold office for four years. His duties and compensation shall be prescribed by law. Such courts may be abolished at the pleasure of the legislature.

SECTION 19. When any civil case at law in which the judge is disqualified shall be called for trial in a circuit or county court, the parties may agree upon an attorney at law, who shall be judge *ad litem*, and shall preside over the trial of and make orders in said cause as if he were judge of the court. The parties, may, however, transfer the cause to another circuit court or county court, as the case may be, or may have the case submitted to a referee.

SECTION 20. Any civil cause may be tried before a practicing attorney as referee upon the application of the parties and an order from the court in whose jurisdiction the case may be, authorizing such trial and appointing such referee. The referee shall keep a complete record of the case, including the evidence taken, and such record shall be filed with the papers in the case in the office of the clerk; and the cause shall be subject to an appeal in the manner prescribed by law.

SECTION 21. The county commissioners of each county shall divide it into as many justice districts, not less than two, as they may deem necessary. There shall be elected one justice of the peace for each of the said districts. He shall hold his office for four years.

SECTION 22. In each county where there is no county court, as provided for in section eighteen of this article, the justices of the peace shall have jurisdiction in cases at law in which the demand or value of the property involved does not exceed one hundred dollars, and in which the cause of action accrued, or the defendant resides in his district; and in such criminal cases, except felonies, as may be prescribed by law; and in counties where county courts are established, as provided for in section eighteen of this article, every justice of the peace shall have jurisdiction in cases at law in which the demand or value

of the property does not exceed fifty dollars, and in which the cause of action accrued, or the defendant resides in his district; and he shall have power to issue process for the arrest of persons charged with crime, and to make the same returnable before himself or the county judge, for examination, discharge, commitment or bail of the accused. Justices of the peace shall have power to hold inquests of the dead. Appeals from justice of the peace courts to circuit courts in criminal cases shall be tried *de novo* under such regulations as the legislature may prescribe.

SECTION 23. A constable shall be elected by the registered voters in each justice's district, who shall perform such duties, and under such regulations as may be prescribed by law.

SECTION 24. There shall be established in the county of Escambia, and upon application of a majority of the registered voters in such other counties as the legislature may deem expedient, a criminal court of record, and there shall be one judge for each of the said courts, who shall be appointed by the governor and confirmed by the senate, who shall hold his office for four years, and whose salary shall be one thousand dollars a year, the counties paying the salaries.

SECTION 25. The said courts shall have jurisdiction of all criminal cases not capital which shall arise in said counties respectively.

SECTION 26. There shall be six terms of said courts in each year.

SECTION 27. There shall be for each of said courts a prosecuting attorney, who shall be appointed by the governor and confirmed by the senate, and who shall hold his office for four years. His compensation shall be fixed by law.

SECTION 28. All offences triable in said court shall be prosecuted upon information under oath, to be filed by the prosecuting attorney, but the grand jury of the circuit court for the county in which said criminal court is held may indict for offences triable in the criminal court. Upon the finding of such indictment the circuit judge shall commit or bail the accused for trial in the criminal court, which trial shall be upon information.

SECTION 29. The county courts in counties where such criminal courts are established shall have no criminal jurisdiction and no prosecuting attorney.

SECTION 30. The clerk of said court shall be elected by the electors of the county in which the court is held and shall hold office for four years, and his compensation shall be fixed by law. He shall also be clerk of the county court. The sheriff of the county shall be the executive officer of said court, and his duties and fees shall be fixed by law.

SECTION 31. The State attorney residing in the county where such court is held shall be eligible for appointment as county solicitor for said county.

SECTION 32. Such courts may be abolished by the legislature.

SECTION 33. When the office of any judge shall become vacant from any cause, the successor to fill such vacancy shall be appointed or elected only for the unexpired term of the judge whose death, resignation, retirement, or other cause created such vacancy.

SECTION 34. The legislature may establish in incorporated towns and cities, courts for the punishment of offences against municipal ordinances.

SECTION 35. No courts other than those herein specified shall be established in this State.

SECTION 36. All judicial officers in this State shall be conservators of the peace.

until the next apportionment thereafter; and shall be assigned, when created, to one of the adjoining senatorial districts as shall be determined by the legislature.

SECTION 5. The legislature shall provide for an enumeration of all the inhabitants of the State by counties for the year 1895, and every ten years thereafter.

ARTICLE VIII.

COUNTIES AND CITIES.

SECTION 1. The State shall be divided into political divisions to be called counties.

SECTION 2. The several counties as they now exist are hereby recognized as the legal political divisions of the State.

SECTION 3. The legislature shall have power to establish new counties, and to change county lines. Every newly established county shall be held liable for its proportion of the then existing liabilities of the county or counties from which it shall be formed, rated upon the basis of the assessed value of the property, both real and personal, subject to taxation within the territory taken from any county or counties; and every county acquiring additional territory from another county shall be held liable for its proportion of the liabilities of such other county existing at the time of such acquisition, to be rated upon the basis of the assessed value of all property subject to taxation within such acquired territory.

SECTION 4. The legislature shall have no power to remove the county seat of any county, but shall provide by general law for such removal; *Provided*, That in the formation of new counties the county seat may be temporarily established by law.

SECTION 5. There shall be appointed by the governor, by and with the consent of the senate, in and for each county, five county commissioners. Their terms of office shall be two years, and their powers, duties and compensation shall be prescribed by law. The legislature shall provide for the division of each county into five districts, and one county commissioner shall be selected from each of such districts.

SECTION 6. The legislature shall provide for the election by the qualified electors in each county of the following county officers: A clerk of the circuit court, a sheriff, constables, a county assessor of taxes, a tax collector, a county treasurer, a superintendent of public instruction, and a county surveyor. The term of office of all county officers mentioned in this section shall be four years, except that of county assessor of taxes, county tax collector and county treasurer, who shall be elected for two years. Their powers, duties and compensation shall be prescribed by law.

SECTION 7. The legislature shall by law authorize the county commissioners of the several counties, where it is deemed necessary for assessment purposes, to divide their respective counties into taxation districts, and to appoint in and for each district an assistant assessor of taxes, whose powers, duties and compensation shall be prescribed by law. All county officers, except assistant assessors of taxes, shall, before entering upon the duties of their respective offices, be commissioned by the governor; but no such commission shall issue to any such officer until he shall have filed with the secretary of state a good and sufficient bond in such sum and upon such conditions as the legislature

SECTION 9. A general election shall be held in each county in this State on the first Tuesday after the first Monday in November, A. D. 1888, and every two years thereafter, for all elective State and county officers whose terms of office are about to expire, or for any office that shall have become vacant.*

SECTION 10. The first election for county judge, clerk of the circuit court, sheriff, tax assessor, tax collector, county treasurer, county superintendent of public instruction, county surveyor, justices of the peace, constables and all other elective county officers shall be at the general election in 1888.

SECTION 11. It shall be the duty of the president of this convention immediately on its adjournment to certify to the governor a copy of this Constitution.

SECTION 12. Upon receipt of such certified copy the governor shall forthwith announce the fact by proclamation, to be published in such newspapers in this State as may be deemed requisite for general information, and five printed copies of such Constitution shall be transmitted by the secretary of state to the clerk of the circuit court, and five to the county judge of each county, which shall be kept on file in their respective offices for examination by any person desiring the same.

SECTION 13. All courts as now organized and constituted shall continue with their jurisdiction until the legislature shall conform to the requirements of this Constitution the jurisdiction of such courts as, under this Constitution, are to exercise in whole or in part the jurisdiction of courts now organized.

SECTION 14. The terms of office of all county officers, unless otherwise provided, shall commence on the first Tuesday after the first Monday in January next after their election.

ARTICLE XIX.

LOCAL OPTION.

SECTIOT 1. The board of county commissioners of each county in the State, not oftener than once in every two years, upon the application of one-fourth of the registered voters of any county, shall call and provide for an election in the county in which application is made, to decide whether the sale of intoxicating liquors, wines or beer shall be prohibited therein, the question to be determined by a majority vote of those voting at the election called under this section, which election shall be conducted in the manner prescribed by law for holding general elections; *Provided*, That intoxicating liquors, either spirituous, vinous, or malt, shall not be sold in any election district in which a majority vote was cast against the same at the said election. Elections under this section shall be held within sixty days from the time of presenting said application, but if any such election should thereby take place within sixty days of any State or National election, it shall be held within sixty days after any such State or National election.

SECTION 2. The legislature shall provide necessary laws to carry out and enforce the provisions of section one of this article.

*Amended in 1890.

necessary sustenance or raiment, or unnecessarily or excessively chastise, or shall mutilate his or her child or ward, or who shall wilfully deprive such child or ward of necessary medical attention, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars.

CHAPTER III.

OFFENSES AGAINST THE PUBLIC PEACE.

ARTICLE I.

AFFRAYS, RIOTS, ROUTS AND UNLAWFUL ASSEMBLIES,

5072. (3239.) **Punishment of affray.**—All persons guilty of an affray or riot shall be punished by imprisonment not exceeding twelve months, or by fine not exceeding five hundred dollars.

5073. (3240.) **Unlawful assemblies.**—If three or more persons meet together to commit a breach of the peace, or to do any other unlawful act, each of them shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars.

Ch. 1637, Sub-Ch. 7, Sec. 7, Aug. 6, 1868.

5074. (3241.) **Riots and routs.**—If any persons unlawfully assembled demolish, pull down or destroy, or begin to demolish, pull down or destroy, any dwelling house or other building, or any ship or vessel, each of them shall be punished by imprisonment in the State prison not exceeding five years.

Ibid. Ib., Secs. 1 and 2.

5075. (3242.) **Magistrate to disperse riotous assembly.**—If any number of persons, whether armed or not, are unlawfully, riotously or tumultuously assembled in any city or town, it shall be the duty of the sheriff or his deputies, or of any constable or justice of the peace of the county, or of the mayor, or of any alderman of the said city or town, to go among the persons so assembled, or as near to them as may be with safety, and in the name of the State to command all the persons so assembled immediately and peaceably to dis-

perse; and if such persons do not thereupon immediately and peaceably disperse, it shall be the duty of said officers to command the assistance of all persons in seizing, arresting and securing such persons in custody; and if any person present being so commanded to aid and assist in seizing and securing such rioter or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, refuses or neglects to obey such command, or, when required by such officers to depart from the place, refuses and neglects to do so, he shall be deemed one of the rioters or persons unlawfully assembled, and may be prosecuted and punished accordingly.

5076. (3243.) **When killing excused.**—If, by reason of the efforts made by any of said officers or by their direction to disperse such assembly, or to seize and secure the persons composing the same, who have refused to disperse, any such person or other person present is killed or wounded, the said officers and all persons acting by their order or under their direction shall be held guiltless and fully justified in law; and if any of said officers or any person acting under or by their direction is killed or wounded, all persons so assembled and all other persons present who when commanded refused to aid and assist said officer shall be held answerable therefor. Ibid. Ib., Sec. 6.

5077. (3246.) **Unauthorized military organizations.**—It shall be unlawful for any body of men whatsoever, other than the regularly organized land and naval militia of this State, the troops of the United States, and the students of regularly chartered educational institutions where military science is a prescribed part of the course of instruction, to associate themselves together as a military organization for drill or parade in public with firearms, in this State, without special license from the Governor for each occasion, and application for such license must be approved by the mayor and aldermen of the cities and towns where such organizations may propose to parade. Each person unlawfully engaging in the formation of such military organization, or participating in such drill or parade, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five dollars and not more than twenty-five dollars, and imprisonment not exceeding thirty days. Ch. 1466, Sec. 15, Acts 1866, amended by Ch. 5202, Acts 1903, Sec. 10, revised.

State Geologist and his assistants, when they discover any mineral deposit, or other substance of value, to notify the owner of the land upon which such deposits occur. Failure of said Geologist to notify the owner of such deposit before disclosing to any other person or persons, shall subject said Geologist to a fine of one thousand dollars and six months' imprisonment.

5379. Refusing public admission to municipal council meetings or to allow inspection of records.—Any city or town council or member of any board of aldermen, or other city or town official, within the State of Florida, who shall violate the provisions of Section 1842, shall, upon conviction, be fined not more than one hundred dollars, or imprisoned not more than two months, in the descretion of the court. Ch. 5463, Acts 1905, Sec. 2.

5380. Conviction under preceding section vacates office.—A conviction of any such city or town councilman or member of the board of aldermen, or any other officer of such city or town, of a violation of the provisions of the preceding section, shall immediately vacate the office held by such city or town councilman or member of the board of aldermen, or other officer of such city or town. Ib., Sec. 3.

5381. Municipal official refusing to submit records for examination.—Any municipal official who shall refuse to submit his books of account, records, vouchers, papers, warrants, or any other property in his possession or control belonging to any municipality in the State, or kept by him for the use of any municipality, to the Comptroller or other examiner for inspection or examination, may be suspended from office by the Governor, and such refusal shall constitute a misdemeanor. And upon conviction therefor, such officer shall be punished by a fine of five hundred dollars, or six months' imprisonment in the county jail. Ch. 6817, Acts 1915, Sec. 2.

ARTICLE 4.

FAILURE TO EXECUTE PROCESS OR TO RECEIVE PRISONER.

5382. (3497.) Failure to execute process generally.—Any sheriff or other officer authorized to execute process, who wilfully or corruptly refuses or neglects to execute and re-

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turn, according to law, any process delivered to him, shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars.

Ch. 1637, Sub-Ch. 6, Sec. 15, Acts 1868.

5383. (3498.) **Refusal to execute criminal process.**—If any officer authorized to serve process wilfully and corruptly refuses to execute any lawful process to him directed and requiring him to apprehend and confine any person convicted or charged with an offense, or wilfully and corruptly omits or delays to execute such process, whereby such person escapes and goes at large, he shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars.

Ibid. Ib., Sec. 14.

5384. (3499.) **Refusal to receive prisoner.**—Any jailer or other officer, who wilfully refuses to receive into the jail or into his custody a prisoner lawfully directed to be committed thereto on a criminal charge or conviction, or any lawful process whatever, shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars.

ARTICLE 5.

RESISTING ARREST OR PROCESS, AND REFUSING TO AID OFFICERS.

Ch. 3276, Sec. 1, Acts 1881.

5385. (3500.) **Resisting officer with violence to his person.**—Whoever knowingly and wilfully resists, obstructs or opposes any sheriff, deputy sheriff, constable or other person legally authorized to execute process, in the execution of legal process or in the lawful execution of any legal duty, by offering or doing violence to the person of such officer or legally authorized person, shall be punished by imprisonment in the State prison not exceeding two years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars.

In an indictment for obstructing an officer in the discharge of his duty in carrying a prisoner arrested by him to the proper committing magistrate, it is not necessary to allege the elements constituting the offense for which the arrest was made. Johnson v State, 51 Fla. 44, 40 So. 678.

Evidence held sufficient to support a conviction under this section. Ib.

Ib., Sec. 2.

5386. (3501.) **Same, without violence.**—Whoever shall obstruct or oppose any such officer or legally authorized person, in the execution of legal process or in the lawful

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execution of any legal duty, without offering or doing violence to the person of the officer, shall be punished by imprisonment not exceeding one year, or by fine not exceeding one thousand dollars.

5387. (3502.) Obstruction by disguised person.—Whoever in any manner disguises himself with intent to obstruct the due execution of the law, or with the intent to intimidate, hinder or interrupt any officer or other person in the legal performance of his duty or the exercise of his rights under the Constitution or laws of this State, whether such intent is effected or not, shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars, and may also be bound to good behavior for a term of one year after the expiration of such punishment. Ch. 1637, Sub-Ch. 6, Sec. 19, Acts 1868.

5388 (3503.) Refusal or neglect to aid sheriff.—Whoever refuses or neglects to render the sheriff all assistance in the execution of his office when called on, not being physically incompetent, shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars. Ch. 1659, Sec. 2, Acts 1868.

5389. Refusing to assist prison officers in arresting escaped convicts.—That it shall be the duty of all prison officers and guards to immediately arrest any convict, held under the provisions of law, who may have escaped, and any such officer or guard may call upon the sheriff or other officer of the State, or of any county or municipal corporation, or any citizen, to make search and arrest such convict, and any officer or citizen refusing to assist shall be punished by imprisonment in the State prison not exceeding one year or by fine not exceeding one thousand dollars. Ch. 6530, Acts 1917, Sec. 17.

5390. (3504.) Resisting timber agent.—Whoever obstructs, resists or opposes a timber agent in the discharge of his duties, or attempts so to do, shall be punished by fine not exceeding fifty dollars for each and every offense. Ch. 3020, Sec. 5, Acts 1877.

5391. (3505.) Neglect or refusal to aid peace officers.—Whoever, being required in the name of the State by any constable, police officer or watchman, neglects or refuses to assist him in the execution of his office in a criminal case, or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in case Ch. 1637, Sub-Ch. 6, Sec. 16, Acts 1868.

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of rescue or escape of person arrested upon civil process, shall be punished by imprisonment not exceeding one month, or by fine not exceeding fifty dollars.

Ibid. Ib., Sec. 17.

5392. (3506.) Refusal to obey justice of the peace.—Whoever, being required by a justice of the peace, upon view of a breach of the peace or any other offense proper for his cognizance, to apprehend and bring before him the offender, refuses or neglects to obey such justice, shall be punished in the manner provided in Section 5388, for refusing assistance to a sheriff, and no person to whom such justice is known or declares himself to be a justice of the peace, shall plead any excuse on pretence of ignorance of his office.

Ibid. Ib., Sec. 18.

5393. (3507) Falsely personating justice of peace, officer, etc.—Whoever falsely assumes or pretends to be a justice of the peace, sheriff, deputy sheriff, coroner, constable, police officer or watchman, and takes upon himself to act as such, or to require any person to aid or assist him in a matter pertaining to the duty of any such officer, shall be punished by imprisonment not exceeding one year, or by fine not exceeding four hundred dollars.

Ch. 4391, Acts 1895, Sec. 2.

5394. (3508.) Interference with county convicts.—Whoever shall interfere with prisoners while at work, or at their meals, or at rest, or while going to and from their quarters or with the guards in charge of them, either by assaulting them or by inciting them or attempting to incite the prisoners to disobedience or revolt, or escape, shall be guilty of a misdemeanor, and shall, upon conviction, be fined not to exceed one hundred dollars.

ARTICLE 6.

ESCAPES.

Ibid. Ib., Sec. 13.

5395. (3509.) Voluntary escape by officer.—If a jailer or other officer voluntarily suffers a prisoner in his custody, upon conviction of any criminal charge, to escape, he shall suffer the like punishment and penalties as the prisoner suffered to escape was sentenced to or would be liable to suffer, upon conviction of the crime or offense, wherewith he stood charged.

5396. (3510.) **Negligent escape by officer.**—If a jailer or other officer, through negligence, suffer a prisoner in his custody upon conviction of any criminal charge to escape, he shall be punished by imprisonment not exceeding one year, or by fine not exceeding one thousand dollars. Ibid. Ib., Sec. 14.

5397. (3511.) **Conveying tools into jail to aid escape; forcible rescue.**—Whoever conveys into a jail or other like place of confinement, any disguise, instrument, tool, weapon or other thing adapted or useful to aid a prisoner in making his escape, with intent to facilitate the escape of any prisoner there lawfully committed or detained, or, by any means whatever, aids or assists such prisoner in his endeavors to escape therefrom, whether such escape is effected or attempted or not; and whoever forcibly rescues any prisoner held in custody upon any conviction or charge of an offence, shall be punished by imprisonment in the State prison not exceeding ten years; or, if the person whose escape or rescue was effected or intended, was charged with an offence not capital nor punishable by imprisonment in the State prison, then by imprisonment in the jail not exceeding one year, or by fine not exceeding five hundred dollars. Ibid. Ib., Sec. 11.

5398. (3512.) **Aiding escape.**—Whoever knowingly aids or assists a person in escaping, or attempting to escape, from an officer or person who has or is entitled to the lawful custody of such person, shall be punished by imprisonment in the State prison not exceeding one year, or by fine not exceeding five hundred dollars. Ibid. Ib., Sec. 12, amended by Ch. 5154, Acts 1903, Sec. 1.

Record of conviction and sentence of prisoner proper evidence. Murray v State, 25 Fla. 528, 6 So. 498.

Prisoner must be in lawful custody. King v State, 42 Fla. 260, 28 So. 206.

ARTICLE 7.

COMPOUNDING FELONY.

5399. (3513.) **Compounding felony.**—Whoever, having knowledge of the commission of an offense punishable with death or by imprisonment in the State prison, takes money or a gratuity or reward, or an engagement therefor, upon an agreement or understanding, expressed or implied, to compound or conceal such offensé, or not to prosecute therefor, or not to give evidence thereof, shall when such offense of Ch. 1637, Sub-Ch. 3, Sec. 20, Acts 1868.

PART II.

CRIMINAL PROCEDURE, ETC.

TITLE I

COURTS OF CRIMINAL JURISDICTION AND JURORS AND WITNESSES.

CHAPTER I.

GENERAL PROVISIONS.

5937. (3842.) **Courts in which criminal jurisdiction is vested.**—Original jurisdiction in criminal cases is vested in the circuit courts, criminal courts of record, county courts, county judges' courts and courts of justices of the peace.

A mere grant of jurisdiction to one court to try a certain class of criminal cases, is not a withdrawal from another court of an existing jurisdiction to try the same offenses. State v Butt, 25 Fla. 258, 5 So. 597.

5938. (3843.) **Process.**—Said courts shall have full power and authority to issue all writs and process necessary or proper to the exercise of the criminal jurisdiction, and such writs and process, except when otherwise provided by law, shall run and be of full force and effect throughout the State.

5939. (3844.) **Contempts.**—Said courts, in the exercise of their criminal jurisdiction, shall have the same power to punish for contempts as the same courts, respectively, possess in the exercise of their civil jurisdiction, and the criminal courts of record shall possess, in this respect, the same powers as the circuit courts.

It is improper for trial courts as a penalty for contempt of court by counsel pending a trial to deprive a defendant on trial for crime of the services of such counsel pending such trial by suspending such counsel. The proper practice in such a case is to defer the application of a penalty upon the offending counsel until after the close of the trial, and then to punish the contempt by fine or imprisonment. Charles v State, 58 Fla. 17, 50 So. 419.

5940. (3845.) **Contempts before committing magistrate.**—A committing magistrate, while holding any examination, shall have the same power to punish for contempts as he possesses while presiding at the trial of any criminal cause.

ney ceases or as soon as the prosecuting attorney returns to the county of which he is prosecuting attorney.

Ib., Sec. 2.

5992. Compensation of acting prosecuting attorney.—Acting prosecuting attorneys appointed under the provisions of the preceding section shall receive the same compensation for the service and time of performing the duties of the prosecuting attorney as is paid to prosecuting attorneys, and prosecuting attorneys shall receive no compensation for service or time in which the duties of the office are performed by acting prosecuting attorneys. Acting prosecuting attorneys shall sign all papers as "Acting Prosecuting Attorney."

ARTICLE 3.

ITS EXECUTIVE OFFICER.

Ch. 3730, Sec. 12, Acts 1887.

5993. (3896.) To be the sheriff.—The sheriff of the county shall serve and execute all criminal process of said court, and do and perform all the duties that are required of an executive officer.

5994. (3897.) Compensation. — His compensation for services in criminal cases in the county court shall be the same as that for like services in the circuit court.

CHAPTER V.

COURTS OF THE JUSTICES OF THE PEACE AND HEREIN OF THE COUNTY JUDGE'S COURT

ARTICLE 1.

COURTS OF JUSTICES OF THE PEACE.

Amended by Ch. 4729, Acts 1899, Sec. 1.

5995. (3898.) Jurisdiction.—In counties where there are no county courts or criminal courts of record justices of the peace shall have power to hold a court to try and determine all misdemeanors committed in their respective districts punishable by fine not exceeding five hundred dollars, or by imprisonment not exceeding six months, or by both such fine and imprisonment.

(No jurisdiction to try offenses for selling liquor, etc., see Sec. 5487.)

Justices of the peace have no jurisdiction to try felonies. McLean v State, 23 Fla. 281, 2 So. 5; Alford v State, 25 Fla. 852, 6 So. 857.

In criminal cases the jurisdiction is determined by the charge made in the indictment. McLean v State, 23 Fla. 281, 2 So. 5.

See Blue v State, 32 Fla. 53, 13 So. 637.

In counties where there are criminal courts of record, justices of the peace have in criminal cases no trial jurisdiction as distinguished from mere power as committing magistrates to inquire into criminal charges with reference to the detention for trial, or bail, or discharge of the accused. Jackson v State, 33 Fla. 620, 15 So. 250.

5996. Jurisdiction in counties having county courts.— That in counties where there are county courts, justices of the peace shall have power to hold a court to try and determine all misdemeanors committed in their respective districts, punishable by fine not exceeding one hundred dollars, or by imprisonment not exceeding three months, or by both such fine and imprisonment. Ch. 6218, Acts 1911, Sec. 1.

5997. (3899.) May bind over to keep the peace.—After an affidavit is made before any justice of the peace by any person that he or she has reason to believe, and does believe, that he or she will suffer personal violence at the hands of another, he shall issue his warrant for the arrest of the party against whom the affidavit has been made, commanding the officer into whose hands the warrant has been placed, to bring the said person against whom the warrant has issued before him, and if, after a full and thorough examination, he shall have reason to believe, from evidence produced before him, that there is just cause for said complaint, he shall bind the person or persons so arrested over by bond, with two or more good and sufficient sureties, said bond to be approved by the justice, for one year, to keep the peace, and, upon failure of said person or persons to give bond as aforesaid, he shall commit such person to jail until the required bond is given, but the said commitment shall not be for more than three months. Ch. 3270, Sec. 1, Acts 1881.

Where it appears that a committing magistrate, on complaint that the accused had threatened to do damage to a schooner and also to do bodily harm to the complainant, issued a warrant of commitment to the jail for want of sureties against doing damage to the property and to keep the peace toward the complainant; held, that this was erroneous. Sureties of the peace against doing damage to property (except as to threats to burn a dwelling house) are not authorized. Ex parte Harfourd, 16 Fla. 283.

5998. (3900.) Disqualification.—In case a justice of the peace be disqualified or unable from any cause to try any criminal case, the same may be tried before any other justice of the peace of the county, or before the county judge.

Ch. 1949, Sec. 2, Acts 1873.

5999. (3901.) **Subpoena, oaths.**—Any justice of the peace may issue subpoenas to compel the attendance of witnesses before any court held by a justice of the peace, and may administer all necessary oaths in proceedings before such court.

Ch. 2093, Sec. 32, Acts 1877, amended by Ch. 4384, Acts 1895, Sec. 1.

6000. (3902.) The sheriff or any constable of the county shall be the executive officer of the courts of justices of the peace, but if the sheriff or constable shall for any reason be disqualified or unable to act, justices of the peace may appoint any individual, not interested in the case on trial, to serve process and to perform all duties of such executive officers.

ARTICLE 2.

COUNTY JUDGE'S COURT.

Ch. 3889, Sec. 2, Acts 1889.

6001. (3903.) **Jurisdiction.**—The county judge shall have and exercise such criminal jurisdiction as is held and exercised by the justices of the peace, except that his territorial jurisdiction shall extend throughout the county.

(Exclusive jurisdiction of county judge's courts in certain counties of prosecutions for first offense of prohibition laws, see Sec. 5487.)

County judge has jurisdiction to inaugurate the proceedings in a bastardy case. Edwards v Edwards, 48 Fla. 71, 37 So. 569.

Amended by Ch. 4384, Acts 1895, Sec. 2.

6002. (3904.) **Executive officer.**—The sheriff of the county or any constable shall be the executive officer of the county judge's court, but if the sheriff or constable shall for any reason be disqualified or unable to act, the county judge may appoint any individual, not interested in the case on trial, to serve process and perform all duties of such executive officer.

CHAPTER VI.

JURORS.

ARTICLE 1.

QUALIFICATIONS.

6003. (3905.) **Stated.**—The qualifications of jurors in criminal cases shall be the same as their qualifications in civil cases.

(See sections 2692, 2693, 2701, 2771-2787, and notes thereunder.)

6187. (4083.) **Search warrants for obscene books.**—Any justice of the peace may issue a warrant for the purpose of searching for any obscene books, pamphlets, ballads, printed papers or other things mentioned in Section 5438, and all such things found by an officer in executing a search warrant, or produced or brought into court, shall be safely kept so long as is necessary for the purpose of being used as evidence in any case, and so soon as may be afterwards, shall be destroyed by order of the court before whom the case is brought. Ch. 1637, Sub. Ch. 8, Sec. 16, Acts 1868.

6188. (4084.) **Search warrant on charge of cruelty to animals.**—When a complaint is made to a court or magistrate authorized to issue warrants that the complainant believes, and has reasonable cause to believe, that the laws in relation to cruelty to animals have been or are violated in any particular building or place, such court or magistrate, if satisfied that there is reasonable cause for such belief, shall issue a search warrant authorizing the sheriff, constable or any police officer to search such building or place; but no such search shall be made after sunset, unless specially authorized by the magistrate upon satisfactory cause shown. Ch. 3921, Sec. 6, Acts 1889.

CHAPTER III.

INQUESTS OF THE DEAD.

ARTICLE I.

BY WHOM INQUESTS ARE TO BE HELD.

6189. (4085.) **Justices to hold inquests.**—Justices of the peace, within their respective districts, shall hold inquests of the dead, and to that extent shall be deemed coroners. In case the justice of the district in which the death occurs shall be for any reason unable to hold an inquest, it shall be held by the county judge or by a justice of one of the adjoining districts of the county. Amended by Ch. 5125, Acts 1903, Sec. 1.

ARTICLE 2.

WHEN INQUEST SHALL NOT BE HELD.

Ch. 3253, Sec. 1, Acts 1881.

6190. (4086.) Inquest not held unless death caused by crime or negligence.—Unless there shall appear to the satisfaction of the coroner, after considering the circumstances attending the cause of death, that he has good reason to believe that the death was caused by the criminal act and negligence of another, no inquest shall be held, nor shall any compensation be allowed for a jury; and if in the opinion of the coroner an inquest ought to be held, he shall include the grounds for that opinion in the order for the jury.

ARTICLE 3.

PROCEEDINGS ON THE INQUEST.

Ch. 52, Sec. 6, Acts 1845; Ch. 3116, Sec. 1, Acts 1879, amended by Ch. 4543, Acts 1897, Sec. 1.

6191. (4087.) Jury to be summoned.—Every coroner, as soon as he shall be notified of the dead body of any person supposed to have come to his death by violence or criminal negligence of another, found lying within his district, shall make out his warrant, directed to a constable of the district, if there be one, and if not, then to any constable of the county, or to the sheriff, requiring him forthwith to summon a jury of good and lawful men of the county, not less than six in all, to appear before the coroner at the time and place expressed in the warrant, and to inquire, upon view of the body (naming the person, if known, there lying dead), how and in what manner and by whom he came to his death.

Ch. 3116, Sec. 1, Acts 1879.

6192. (4088.) Number and fees of jurors.—A coroner's jury shall consist of only six men. They shall be paid by the county, and shall receive the same pay and mileage as jurors in justice's courts.

Ch. 52, Sec. 7, Acts 1845.

6193. (4089.) Summons and return of jurors.—Every officer to whom such warrant shall be delivered or directed shall forthwith execute the same, and shall repair to the place where the dead body is, at the time mentioned, and make return of the warrant, with his proceedings thereon, to the coroner who granted the same.

RECEIVED
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Department of Legal Affairs
Civil Section

FLORIDA HOUSE OF REPRESENTATIVES

IN THE MATTER FOR RELIEF OF:

Relief of ARNETT T. GOINS, MINNIE L. LANGLEY, et al.

Claimants,

vs. HB 591

STATE OF FLORIDA,

Respondent.
_____/

CLAIMANTS' MEMORANDUM OF LAW RE DAMAGES FOR POSTTRAUMATIC STRESS DISORDER

The House Special Master recently inquired with respect to case law involving damages claims for posttraumatic stress disorder. Claimants have researched the matter and attach hereto Gough v. Natural Gas Pipeline Co. of America, 996 F.2d 763 (5th Cir. 1993) and Ruiz v. Gonzalez Caraballo, 929 F.2d 31 (1st Cir. 1991). Both cases, as well as cases cited therein, sustain substantial damage awards for posttraumatic stress disorder.

RESPECTFULLY SUBMITTED,

HOLLAND & KNIGHT

Stephen F. Hanlon
FBN: 209430
P. O. Drawer 810
Tallahassee, Florida 32302
(904) 224-7000

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing Claimants' Memorandum of Law Re Damages For Posttraumatic Stress Disorder by fax and regular mail upon James A. Peters, Esquire, Koger Center, Alexander Building, Room 102, 2020 Capitol Circle, Tallahassee, Florida, this 16 day of March, 1994.

Stephen F. Hanlon

TAL-41257

sion in *Cheek v. United States*, — U.S. —, 111 S.Ct. 604, 112 L.Ed.2d 617 (1991). In *Cheek*, the Court overturned a tax evasion conviction where the district court had instructed the jury that a defendant's good-faith misunderstanding of the requirements of the law would negate willfullness only if the misunderstanding was "objectively reasonable." The inquiry, the Court said, should properly focus on what the defendant actually believed; the reasonableness or unreasonableness of a purported belief is relevant only inasmuch as it casts light on the credibility of the defendant's claim. 111 S.Ct. at 610–12. This has long been the rule in this circuit, *see United States v. Aitken*, 755 F.2d 188, 191–93 (1st Cir.1985), and the district court's instructions to the jury followed the law exactly.

[13] Lussier contends, however, that the district court violated *Cheek* when it excluded three proffered exhibits; (1) a copy of the 1946 Federal Register, which contained a long-superseded regulation saying that a W–2 form can be filed in lieu of a Form 1040 tax return, (2) a copy of the tax code, and (3) a copy of the United States Constitution. Lussier says that he wanted to introduce the exhibits to show that he actually believed that he was not required to file a tax return.

Since the critical element in a tax case is often the defendant's mental state, many courts have given the accused "wide latitude" in the introduction of evidence which may tend to show a lack of willfulness or specific intent. *United States v. Sternstein*, 596 F.2d 528, 530 (2d Cir.1979). *See also United States v. Brown*, 411 F.2d 1134 (10th Cir.1969). In *Cheek*, the Supreme Court noted that the district court erred when it instructed the jury to disregard evidence (in that case, the defendant's own testimony) that the defendant was not required to file a return or to pay income taxes, "as incredible as such misunderstandings of and beliefs about the law might be." 111 S.Ct. at 611.

The evidence at issue here, however, was properly excluded because the exhibits lacked a foundation of evidence or offer of proof to link them to the willfulness issue. The exhibits would have been relevant only insofar as they supported other evidence offered to negate the element of willfulness, for example, testimony that Lussier knew of the 1946 regulation and relied on it when he decided not to file a tax return, or that he attempted to consult the tax code and was led astray by its bulk and confusing language. But no evidence to that effect was introduced or proffered. Absent such a foundation, the exhibits could only have confused the jury. *See United States v. Wilson*, 798 F.2d 509, 515–16 (1st Cir.1986).

Affirmed.

Marta RUIZ a/k/a Marta Ruiz Romero, Plaintiff, Appellee,

v.

Generoso GONZALEZ CARABALLO, etc., et al., Defendants, Appellants.

No. 90–1468.

United States Court of Appeals, First Circuit.

Heard March 6, 1991.

Decided April 2, 1991.

Plaintiff brought § 1983 civil rights action for police officers' alleged use of excessive force while she was pregnant. Jury returned verdict for plaintiff. The United States District Court, District of Puerto Rico, Jaime Pieras, Jr., J., upheld verdict on liability but granted remittitur on damages. Plaintiff accepted reduced award. Police officers appealed. The Court of Appeals, Selya, Circuit Judge, held that: (1) $150,000 compensatory damage award was supported by evidence, and (2) $200,000 postremittitur award of future damages was not excessive.

Affirmed.

See also 681 F.Supp. 123.

1. Civil Rights ⇐274

Compensatory damage award of $150,000 in pregnant woman's § 1983 civil rights action for use of unnecessary force when police officers arrested her was not excessive where beating inflicted upon woman by police was brutal, woman developed posttraumatic stress disorder, and woman suffered emotional distress which was real, prolonged, and caused by officers' acts. 42 U.S.C.A. § 1983.

2. Federal Courts ⇐873

Court of Appeals will not, without substantial cause, overrule trial judge's considered refusal to tamper with damages assessed by jury.

3. Civil Rights ⇐274

Postremittitur future damages award of $200,000 to pregnant woman in § 1983 civil rights action for police officers' use of excessive force was not so exorbitant as to entitle police officers to new trial where woman's posttraumatic stress syndrome would likely require extensive future medical treatment, woman had permanent partial disability which could account for loss of earnings of as much as $84,000, and woman's suffering and emotional distress would last indefinitely. 42 U.S.C.A. § 1983.

4. Civil Rights ⇐306

Pregnant woman who prevailed on appeal from her § 1983 civil rights action for police officers' use of unnecessary force was entitled to attorneys' fees on appeal provided that she file her application for award of fees in district court within 30 days after issuance of Court of Appeals' mandate. 42 U.S.C.A. §§ 1983, 1988.

Vanessa Ramirez, Asst. Sol. Gen., with whom Jorge E. Perez–Diaz, Sol. Gen., was on brief for defendants, appellants.

Eric M. Quetglas Jordan, with whom Jose F. Quetglas Alvarez and Jose F. Quetglas Jordan, were on brief for plaintiff, appellee.

Before BREYER, Chief Judge, and TORRUELLA and SELYA, Circuit Judges.

SELYA, Circuit Judge.

In this case, there was evidence that plaintiff-appellee Marta Ruiz Romero (Ruiz), a thirty-six year old female in her thirty-seventh week of pregnancy, was beaten by Generoso Gonzalez Caraballo (Gonzalez), a police officer, on a public street in San Juan. Gonzalez's fellow officer, Samuel Fontanez Berberena (Fontanez), stood by and, when requested, handcuffed the plaintiff. Ruiz was then thrown face down onto the floor of a nearby police cruiser and transported to the stationhouse by her attackers. She was hit several more times while in transit.

When Ruiz arrived at the station, she was slapped again and locked up. After far too long, she was removed from her cell and taken to the emergency room. Several hours later, Juan Comas Valle (Comas), a police sergeant, handcuffed Ruiz and took her from the municipal hospital to the Criminal Investigation Center. She was kept there for over seven hours. A total of twelve misdemeanor complaints were filed against Ruiz by Sergeants Comas and Merced Diaz (Merced), charging her with breach of the peace, aggression, resisting arrest, deadly threat, malicious destruction of property, and the like. The plaintiff was eventually exonerated on all counts.

Ruiz sued Gonzalez, Fontanez, Comas, Merced, and Lt. Alfredo Cortes Rivera (Cortes), who was in command at the precinct on the night in question.[1] The primary thrust of her action was under 42

1. She also sued the then superintendent of police, alleging inadequate training and supervision. At trial, the superintendent's motion for directed verdict was granted. The plaintiff has not appealed from this ruling, so we treat the case as if only the five lower-ranking officers were named as defendants.

U.S.C. § 1983. The case was tried to a jury over a seven day span. At trial's end, the judge asked the jury to enter its findings on a special verdict form (SVF). Neither side objected. The jury returned verdicts totalling $1,000,000. We summarize the contents of the completed SVF insofar as relevant to this appeal.

* * * * * *

3. We, the Jury, unanimously find by a preponderance of the evidence that ... defendants [Gonzalez and Fontanez] did ... use excessive force during the arrest of plaintiff.... [and] award plaintiff the sum of $150,000 in compensation for the use of excessive force during her arrest.

4. We, the Jury, unanimously find by a preponderance of the evidence that [all five] defendants did initiate a prosecution against plaintiff, either maliciously or for an illegitimate purpose.... [and] award plaintiff the sum of $100,000 for this malicious or illegitimate prosecution.

5. We, the Jury, unanimously find by a preponderance of the evidence that [all five] defendants did continue the incarceration of plaintiff after it was apparent that there was no probable cause for her detention.... [and] award plaintiff the sum of $50,000 for her continued detention.

6. We, the Jury, unanimously find by a preponderance of the evidence that the defendant Generoso Gonzalez Caraballo did ... use excessive force against the plaintiff during her detention.... [and] award the plaintiff the sum of $75,000 as compensation for the use of excessive force during her detention.

7. We, the Jury, unanimously find by a preponderance of the evidence that the plaintiff will ... continue to suffer damages as a result of the acts and omissions of the [defendant Gonzalez].... [and] award plaintiff the sum of $400,000 to compensate her continuing damages.

8. We, the Jury, unanimously find by a preponderance of the evidence that the following defendants [Fontanez, Comas, Merced, and Cortes] did ... proximately cause a deprivation of the plaintiff's civil right to liberty by failing to intervene when fellow officers deprived the plaintiff of her civil right to liberty.... [and] award the plaintiff the sum of $100,000 as compensation.

9. We, the Jury, unanimously find by a preponderance of the evidence that [all five] defendants did ... conspire to deprive the plaintiff of her civil rights.... [and] award the plaintiff the sum of $100,000 as compensation.

10. We, the Jury, unanimously find by a preponderance of the evidence that the plaintiff.... is entitled to recover punitive damages from the [defendant Gonzalez] in the [sum of] ... $25,000.

* * * * * *

A number of post-trial motions were filed. The district judge upheld the verdict on liability. He determined, however, that certain damage awards were duplicative and/or excessive. Consequently, he authored a careful, precise rescript explaining his thought processes and ordered a remittitur aggregating $600,000. For perspective's sake, we think it helpful to divide the remittitur order into three constituent parts. (1) The judge refused to disturb either the $150,000 award against Gonzalez and Fontanez for the use of excessive force during Ruiz's arrest (SVF No. 3) or the $25,000 punitive damage award against Gonzalez (SVF No. 10). (2) The judge reduced three of the awards substantially, cutting the $400,000 award for future damages (SVF No. 7) to $200,000, the $100,000 award for malicious prosecution (SVF No. 4) to $10,000, and the $75,000 award for excessive force during Ruiz's detention (SVF No. 6) to $15,000.[2] (3) The judge obliterated the awards numbered 5, 8, and 9 on the SVF.

In due course, the plaintiff signified her willingness to accept the reduced recovery. Gonzalez and Fontanez now appeal.

We need not dwell on how the case arose, inasmuch as the appellants no longer contest liability. In this appeal, they as-

2. The malicious prosecution award, originally and as pared, ran against all five defendants. The other two awards included under this rubric ran only against Gonzalez.

sign error only in respect to two aspects of damages,[3] contending that both the jury award of $150,000 on the "excessive force during arrest" claim and the judge's (post-remittitur) figure of $200,000 for future damages are grossly excessive. In our estimation, neither point has merit.

[1] We have patiently reviewed the record and believe, as did the court below, that the evidence fully supports a $150,000 compensatory damage award for the unnecessary force employed by appellants at the time of plaintiff's arrest. The beating was brutal. In consequence of it, the plaintiff developed what her psychiatrist diagnosed as a post-traumatic stress disorder. The jury obviously believed that Ruiz's claimed suffering and emotional distress were real, prolonged, and caused by the constables' acts. Given the testimony of plaintiff and the witnesses she produced, the jury was entitled to draw those conclusions. *See, e.g., Betancourt v. J.C. Penney Co.*, 554 F.2d 1206, 1207 (1st Cir.1977) (in considering appropriateness of verdict, court of appeals must view the evidence "in the light most favorable to [the prevailing party]").

[2] To be sure, it is surpassingly difficult on the basis of an algid appellate record to quantify money damages for intangible losses. Yet that difficulty must be resolved in favor of the factfinders. After all, "[t]ranslating legal damage into money damages—especially in cases which involve few significant items of measurable economic loss—is a matter peculiarly within a jury's ken." *Wagenmann v. Adams*, 829 F.2d 196, 215 (1st Cir.1987). For exactly that reason, "[w]e rarely will override the jury's judgment on the appropriate amount of damages to be awarded." *Brown v. Freedman Baking Co.*, 810 F.2d 6, 11 (1st Cir.1987). This case is by no means the exception that proves the rule. Because we cannot say that the compensatory damage award "is 'grossly excessive,' 'inordinate,' 'shocking to the conscience of the court,' or 'so high that it would be a denial of justice to permit it to stand,' " *Segal v. Gilbert Color Systems, Inc.*, 746 F.2d 78, 80–81 (1st Cir.1984) (quoting *Grunenthal v. Long Island R.R. Co.*, 393 U.S. 156, 159 & n. 4, 89 S.Ct. 331, 333 & n. 4, 21 L.Ed.2d 309 (1968)), the verdict must endure. We cannot, and will not, without substantial cause, overrule a trial judge's considered refusal to tamper with the damages assessed by a jury. *See Wagenmann*, 829 F.2d at 215–16; *McDonald v. Federal Laboratories, Inc.*, 724 F.2d 243, 246 (1st Cir.1984); *LaForest v. Autoridad de Las Fuentes Fluviales de Puerto Rico*, 536 F.2d 443, 447 (1st Cir.1976).

[3] In connection with the award of future damages the appellants face a double obstacle. The jury thought the claim was worth $400,000. At appellants' urging, the district court reviewed the award and reduced it by half. It is settled law in this circuit that:

> Once a verdict has been trimmed and reshaped at the hands of the trial judge, an assault on the remaining amount calls upon [the court of appeals] not merely to grade the essay, but to grade the teacher's grading of the essay. The resultant constraints are not inconsiderable. We agree with the Fifth Circuit that "[w]here the trial court already has invoked its discretion in granting a remittitur, [the] scope of review is even narrower than usual." *Stapleton v. Kawasaki Heavy Industries, Ltd.*, 608 F.2d 571, 574 n. 7 (5th Cir.1979). *Accord Princemont Construction Corp. v. Smith*, 433 F.2d 1217, 1221 n. 25 (D.C. Cir.1970) (per curiam).

3. To be sure, the appellants take the opportunity in the preliminary sections of their brief to cast aspersions about other matters. *See, e.g.*, Appellants' Brief at 6 (complaining that the SVF was "misleading"); *id.* at 8–11 (suggesting that the plaintiff did not timely assent to the remittitur). But appellants neither mentioned these matters in their statement of issues on appeal nor made any effort in the argument section of their brief to develop any reasoned argumentation anent them. Hence, all such points were waived. *See Ryan v. Royal Ins. Co.*, 916 F.2d 731, 734 (1st Cir.1990) ("issues adverted to on appeal in a perfunctory manner ... are deemed to have been abandoned"); *United States v. Zannino*, 895 F.2d 1, 17 (1st Cir.) (same), *cert. denied*, —— U.S. ——, 110 S.Ct. 1814, 108 L.Ed.2d 944 (1990).

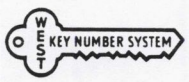
Wagenmann, 829 F.2d at 215. The appellants "must show, therefore, that the reduced sums remain so exorbitant, so disturbing to our collective conscience, as to entitle them to new trials." *Id.* In this instance, the appellants have not come close to scaling this two-tiered barrier.

We need not wax longiloquent. We have found evidence in the record that Ruiz's life expectancy at the time of trial was well over forty years; that her post-traumatic stress syndrome would likely require extensive future medical treatment at appreciable cost; that she had a permanent partial disability which could, in the opinion of at least one expert witness, account for lost earnings of as much as $84,000 over time; and that her suffering and emotional distress would last indefinitely. No more was required. We have made no secret of our view that, in setting damages, a jury is ordinarily "free to run the whole gamut of euphonious notes—to harmonize the verdict at the highest or lowest points for which there is a sound evidentiary predicate, or anywhere in between—so long as the end result does not violate the conscience of the court or strike such a dissonant chord that justice would be denied were the judgment permitted to stand." *Milone v. Moceri Family, Inc.*, 847 F.2d 35, 37 (1st Cir.1988).

To be sure, the appellants assail the plausibility and/or veracity of much of the testimony upon which the "future damages" award rests—and their animadversions are not without some modest weight. But those contentions, when made to us on appeal, are misdirected. The jury found the same protests to be lacking in convictive force; and the trial judge, who, like the jurors, saw and heard the witnesses, credited the bulk of the disputed evidence. Mindful, as we must be, "that the extent of a damage award for noneconomic injuries attributable to the abridgement of one's constitutional rights is a matter committed largely to the discretion of the trial court," *Wagenmann*, 829 F.2d at 216, there is no principled basis upon which we may massage again the already once-reduced award of future damages.

[4] We need go no further. The damages that appellants will have to pay, while substantial, do not exceed the outermost total which, by a process of rational appraisal, could fairly be said to flow from the evidence adduced at trial. Put another way, the aggregate amount of damages which plaintiff stands to recover falls comfortably "within the universe of possible awards that are supported by the evidence...." *Clark v. Taylor*, 710 F.2d 4, 14 (1st Cir.1983). While perhaps overgenerous initially, the gross verdict, after its reduction at the practiced hand of an experienced trial judge, "fails to shock—or even to tweak—our collective conscience." *Segal*, 746 F.2d at 81.

Affirmed. Double costs to be taxed against appellants, see Fed.R.App.P. 38.[4]



UNITED STATES of America, Appellee,

v.

David W. BOLDT, Defendant, Appellant.

No. 90–1454.

United States Court of Appeals, First Circuit.

Heard Feb. 5, 1991.

Decided April 3, 1991.

Defendant was convicted in the United States District Court for the District of Massachusetts, Walter Jay Skinner, J., of violation of Clean Water Act by authorizing discharge of industrial wastewater containing excessive metals, and he appealed.

4. The plaintiff, having prevailed on appeal, is also entitled to attorneys' fees on appeal. *See* 42 U.S.C. § 1988. She may file her application for an award of fees in the district court at any time within thirty days after our mandate issues.

Darreyl Wayne GOUGH, Plaintiff–Appellee, Cross–Appellant,

v.

NATURAL GAS PIPELINE CO. OF AMERICA, Defendant–Appellant, Cross–Appellee.

No. 92–4220.

United States Court of Appeals, Fifth Circuit.

July 20, 1993.

Rehearing Denied Aug. 20, 1993.

Captain of vessel which exploded when it collided with natural gas pipeline that was supposed to have been buried brought suit against pipeline owner, under general maritime law. The United States District Court for the Eastern District of Texas, Joe J. Fisher, J., entered judgment on jury verdict which awarded captain $2 million, but which assessed to him 35% of the fault for the accident. Defendant appealed, and plaintiff cross-appealed. The Court of Appeals, Patrick E. Higginbotham, Circuit Judge, held that: (1) plaintiff satisfied physical injury or impact test permitting recovery for purely emotional damages; (2) damage award of $1,444,599 for plaintiff's ongoing emotional distress in form of posttraumatic stress disorder was excessive, and would be reduced to $600,000; (3) evidence supported jury's finding that plaintiff was 35% at fault for accident; and (4) district court did not abuse its discretion in declining to give preclusive effect to earlier finding in limitation proceeding that defendant was solely at fault for accident.

Affirmed in part and remanded.

1. Damages ⇐50

Purely emotional injuries will be compensated when maritime plaintiffs satisfy physical injury or impact rule.

2. Damages ⇐50

Physical injury or impact test permitting recovery of purely emotional injuries was satisfied in case of captain of vessel which exploded when it collided with natural gas pipeline; captain could feel heat of flames, and immediately after he left pilot house fire engulfed it; to avoid flames, captain had to jump overboard where he inhaled fumes from the fire, and also ingested sea water; captain suffered multiple contusions, and there was some testimony that he suffered minor burns.

3. Damages ⇐221(7)

Jury's assessment of damages will not stand if it is entirely disproportionate to injuries sustained.

4. Damages ⇐130.1

Jury award of $1,444,599 for ongoing emotional distress in the form of posttraumatic stress disorder was excessive; considering circumstances of accident in which vessel exploded when it collided with natural gas pipeline and evidence of plaintiff's mental anguish and disability, $600,000 represented maximum reasonable award for emotional distress.

5. Negligence ⇐135(9)
Shipping ⇐63

Evidence supported jury's verdict that captain of vessel which exploded when it collided with natural gas pipeline was 35% at fault; charts of coastline warned of uncharted pipelines and advised that mariners should use caution when anchoring, dragging or trawling; captain admitted knowing that another vessel belonging to his company had struck a pipeline, and his own ship had previously lifted a pipeline from the bottom with its anchor.

6. Shipping ⇐63

Evidence that captain of vessel which struck natural gas pipeline could foresee danger posed by unburied pipelines gave rise to duty to avoid pipeline.

7. Judgment ⇐632

District court in suit against owner of natural gas pipeline brought by captain of vessel which collided with pipeline did not abuse its discretion in declining to give preclusive effect to earlier finding in limitation action that pipeline owner was solely at fault for accident.

Glibert I. Low, Orgain, Bell & Tucker, Beaumont, TX, S. Gene Fendler, Don K. Haycraft, Liskow & Lewis, New Orleans, LA, for appellant.

J. Thad Heartfield, Benckenstein, Oxford & Johnson, Beaumont, TX, Lawrence E. Abbott, Deborah D. Kuchler, John P. Napolitano, Jr., Abbott, Best & Meeks, New Orleans, LA, for appellee.

Appeals from the United States District Court for the Eastern District of Texas.

Before REYNALDO G. GARZA, HIGGINBOTHAM, and DeMOSS, Circuit Judges.

PATRICK E. HIGGINBOTHAM, Circuit Judge:

When a fishing vessel backed over a natural gas pipeline that was supposed to have been buried, a fireball swept the ship killing eleven of its fourteen crew. Her captain, Darreyl Wayne Gough, survived by fleeing the pilot house and jumping overboard. He sued the pipeline owner, NGP, under general maritime law. A Beaumont jury awarded Captain Gough $2 million, but assessed to him 35 percent of the fault for the accident. NGP challenges the damage award which rested in substantial part on emotional distress. We are persuaded that Captain Gough suffered a sufficient physical impact but order a remittitur of damages. We also affirm the finding of contributory fault, finding the evidence sufficient to support it, rejecting the Captain's claim that an earlier finding in a limitation proceeding that NGP was solely at fault was binding.

I

On October 3, 1989, Zapata Haynie Corporation's steamer F/V Northumberland was operating near Sabine Pass. Darreyl Wayne Gough captained the vessel as it fished for menhaden roughly one-half mile from the Texas coast. The Captain had previously fished in the same area of the coast during the 1988 and 1989 fishing seasons. He did not consult navigational charts on October 3; he claimed to know that coastline "like the back of [his] hand."

Late that afternoon, when the Northumberland deployed its purse boats, radar showed that it was one-half mile from shore. Captain Gough's cousin Mac Gough was in charge of the ship while Captain Gough was in a purse boat. Mac Gough thought that the Northumberland was floating freely, not touching bottom, because the ship moved without hindrance. He admitted that it was possible for the ship to skim through the soft mud bottom of Sabine Flats without being felt on deck. After the set, Captain Gough returned to the pilot house of the Northumberland. The ship's bow was pointed toward the shore. Around 5:45 p.m., Captain Gough began backing the ship away from the beach at what Mac Gough described as moderate speed. All three survivors, Captain Gough, Mac Gough, and crew member Arthur Jackson, testified that the ship did not touch bottom.

After backing three hundred feet, the Northumberland suddenly stopped. There was an immense explosion. The ship struck and ruptured NGP's submerged sixteen-inch diameter gas pipeline. Within seconds, a fireball swept the ship from stern to bow. The Captain and Mac Gough escaped the pilot house, jumped overboard, and swam away from the heat and flames. Spotter helicopters dropped rafts and tried to assist survivors. Captain Gough tried to assist one injured seaman who slipped away and drowned. Eleven crew members died. Mac Gough and Jackson were severely burned. All three survivors were pulled from the water and airlifted to a Beaumont hospital by helicopter.

Captain Gough was in the hospital for only two days, but soon began experiencing nightmares, flashbacks, and depression. Psychiatrists and psychologists diagnosed post-traumatic stress disorder, and Captain Gough began therapy. One expert testified that post-traumatic stress disorder typically requires two to three years of treatment. Captain Gough's therapist testified that the demands of various lawsuits continue to aggravate Captain Gough's condition and delay recovery. She was uncertain how long it would take before Captain Gough could [illegible]

tion adequately, and noted that the memories of this event will remain the rest of his life.

Captain Gough claimed that as a result of the post-traumatic stress disorder, he was unable to return to work as a mariner. He now earns his living, for less pay, as a carpenter. An economist testified that this diminished earning capacity resulted in a total pecuniary loss of $559,401.

The NGP pipeline was unmarked. The Corps of Engineers permit issued to NGP in 1972 required that the pipeline be buried three feet under the seabed and that NGP maintain it in accordance with the plans. Three days after the accident a diver inspected the pipeline and found it exposed for more than fifty feet between the point at which the Northumberland sank and the shore; it was exposed for more than three hundred feet farther out to sea. In places, nearly half of the pipe's diameter was unburied.

NGP elicited testimony suggesting that Captain Gough's handling of the ship could have led to the allision. On a previous occasion, the Northumberland's anchor had gotten hung up on a submerged five-inch pipeline after the ship was anchored overnight. The anchor picked up the pipeline, but came free after it was lowered again. Mac Gough testified that Captain Gough occasionally got into the mud, rather than always maintaining a margin between the keel and bottom. The Northumberland was not equipped with a fathometer. Coastline charts feature a warning concerning submerged pipelines. National Ocean Service chart 11342 states: "Caution ... Additional uncharted submarine oil and gas pipelines and submarine cables may exist within the area of this chart. Mariners should use caution when anchoring, dragging or trawling." Captain Gough admitted that he was familiar with this warning.

The six-person jury deliberated for eighty-two minutes. In a note to District Judge Fisher, the jury asked whether it could award Captain Gough more than he asked for.[1] It then found both NGP and Captain Gough negligent and responsible for the accident. The jury assigned them 65 and 35 percent of the fault, respectively. The verdict then awarded Captain Gough $2,000,000 in total damages.[2]

II

Captain Gough's physical injuries had little compensable value. He presented evidence of economic loss, but the principal basis on which the Captain sought damages was the emotional distress associated with post-traumatic stress disorder. NGP contends that the maritime law does not permit recovery for purely emotional damages. We think that this assertion is too broad.

[1] Beyond question, purely emotional injuries will be compensated when maritime plaintiffs satisfy the "physical injury or impact rule." *Plaisance v. Texaco, Inc.*, 966 F.2d 166, 168–169 (5th Cir.1992) (en banc). Either a physical injury or physical impact has traditionally been required. *See Hagerty v. L & L Marine Services, Inc.*, 788 F.2d 315, 318 (5th Cir.1986).[3] *Hagerty*, a Jones Act case, questioned the wisdom of this rule, but found that the plaintiff suffered both a physical impact and injury. *Id.* at 318 & n. 1.

The impact or injury rule is an arbitrarily stated rule with important functions. One purpose is "to provide courts with an objective means of ensuring that the alleged mental injury is not feigned." *Hagerty*, 788 F.2d at 318. A more important purpose of the rule is to provide a principled basis for limiting liability. Traumatic events may cause foreseeable emotional distress through a broad range of time and space. Jurisdictions that apply expansive recovery rules such as the bystander theory must depend upon proximate cause to define the boundary of

1. Judge Fisher replied that it could award no more for lost earnings than the evidence established, but could award whatever amount necessary to justly compensate Captain Gough for his pain and suffering or mental anguish.

2. The jury did not find gross negligence, precluding the award of punitive damages.

3. We note that the en banc court also referred to the rule in disjunctive terms: physical injury *or* impact. *Plaisance*, 966 F.2d at 168; *see also id.* at 169 (Politz, C.J.) ("physical injury or contact").

liability. We are wary of such ad hoc adjudication and prefer predictable rules for the determination of liability. *Cf. State of Louisiana ex rel. Guste v. M/V Testbank*, 752 F.2d 1019, 1028–29 (5th Cir.1985) (en banc) (requiring physical injury to proprietary interest for recovery of economic damages in admiralty). The bright line impact or injury rule performs a similar function.

NGP misplaces its reliance on *Gaston v. Flowers Transp.*, 866 F.2d 816 (5th Cir.1989). The plaintiff in that Jones Act case watched as his half-brother was crushed between two colliding vessels. The plaintiff himself suffered only a bruised elbow when he fell to the deck. He did not consider himself to be in danger. The plaintiff, diagnosed with post-traumatic stress disorder, sought damages for his emotional distress. He did not establish that he had suffered a physical impact or significant physical injury. His only claim was for emotional distress caused by witnessing his brother's death.

Gaston dismissed as dictum the suggestion in *Hagerty* that emotional distress recovery might occur without physical injury or impact. *Id.* at 819 (quoting *Hagerty*, 788 F.2d at 318). The *Gaston* plaintiff, a mere bystander, could not recover for his emotional distress. *Id.* at 820. Left open is the question whether a plaintiff may recover under the zone of danger theory. *Id.; see also Plaisance*, 966 F.2d at 169.

[2] NGP emphasizes that *Gaston* described the plaintiff's bruised elbow as "only [a] trivial physical injury." Insisting that Captain Gough's physical injuries are no more substantial, NGP maintains that *Gaston*'s denial of recovery controls this case. NGP understates the evidence of Captain Gough's injuries and the nature of his experience. Captain Gough was located in the pilot house when the steamer collided with NGP's pipeline. Within seconds, flames spread towards Captain Gough. He could feel the heat, and immediately after he left the pilot house fire engulfed it. To avoid the flames, Captain Gough had to jump overboard into the Gulf of Mexico. Even in the water, the heat was unbearable, and Captain Gough inhaled fumes from the fire. He also ingested salt water, as another victim of the disaster pulled him underwater. Besides being submerged in the ocean, Captain Gough suffered multiple contusions. Finally, some testimony suggests that Captain Gough suffered from minor burns, although no medical record confirmed these opinions.

Keeping in mind its purpose, these facts meet the impact test. Emotional distress damages were awarded to a seaman on this basis in *Petition of United States*, 418 F.2d 264 (1st Cir.1969). A Coast Guard vessel was towing Roberts' boat when it ran aground, capsized, and sank. Roberts was forced into the sea, where he remained for more than thirty minutes before being rescued by the Coast Guard vessel. The court allowed Roberts to recover for emotional distress, stating:

> The grounding of the B & G resulted in a substantial jolt to Roberts and he was thrown into the water as the boat capsized. Both these impacts were caused by the negligence of the [Coast Guard] and were sufficient to satisfy the test applied by jurisdictions following the impact rule.

Id. at 268.

Our precedent also supports the conclusion that Captain Gough has suffered the requisite impact. In *Hagerty*, the seaman was drenched with toxic and carcinogenic chemicals. At the time, he felt dizziness, leg cramps, and stinging in his extremities. As a result of this accident, he developed cancerphobia. We held that drenching with chemicals constituted a sufficient impact to support the recovery of emotional distress damages. *Hagerty*, 788 F.2d at 318 n. 1. The proof of impact, and of physical injury, is even more convincing in the present case.

Unlike *Gaston*, this accident caused Captain Gough far more harm than a fall to the deck and a bruise. Captain Gough suffered both a physical impact and tangible physical injuries as a foreseeable result of NGP's negligence.

Captain Gough argued that if the impact rule was not satisfied, he could nonetheless recover for emotional distress because he was within the zone of danger. We have repeatedly declined to adopt or preclude the zone of danger theory. *See Gaston*, 866 F.

at 820; *Plaisance v. Texaco, Inc.*, 966 F.2d 166, 169 (5th Cir.1992) (en banc); *Ainsworth v. Penrod Drilling Corp.*, 972 F.2d 546, 548 (5th Cir.1992). Since Captain Gough may recover on another basis, we once more leave this question open.

III

NGP also complains that the jury verdict must be set aside as excessive. The district court denied NGP's motion for new trial, which contended that the award of $2,000,000 was beyond any reasonable bound.

[3] The jury's assessment of damages is heavily weighted against appellate reconsideration. We do not disturb a jury verdict for excessiveness except on the strongest of showings. Even so, "[t]he sky is simply not the limit for jury verdicts." *Caldarera v. Eastern Airlines, Inc.*, 705 F.2d 778, 784 (5th Cir.1983). The verdict will not stand if it is entirely disproportionate to the injury sustained. *Id.*[4] When a jury's award exceeds the bounds of any reasonable recovery, we must suggest a remittitur ourselves or direct the district court to do so. In that case, we reduce the verdict to the maximum amount the jury could properly have awarded. *Id.*

We will consider any quantifiable evidence of pecuniary loss. The principal basis of relief, however, was emotional distress—an inherently subjective matter. Our reassessment cannot be entirely supported by rational analysis, and must depend upon experience and judgment. *See id.; Osburn v. Anchor Laboratories, Inc.*, 825 F.2d 908, 920 (5th Cir.1987). We may also look to the "rough guidance" of awards for similar injuries in recent cases. *Osburn*, 825 F.2d at 920; *Simeon v. T. Smith & Son, Inc.*, 852 F.2d 1421, 1427 (5th Cir.1988).

[4] In this case, the jury's general damage award of $2,000,000 included the following elements: lost past and future earnings, pain and suffering, mental disability and mental anguish. An economist valued Captain Gough's lost earnings at $559,401. NGP concedes that this much of the damage award is unassailable. Captain Gough's physical injuries resolved within days of the accident. While these injuries were real and tangible, we conclude that their compensable value is negligible. Thus, the remainder of the verdict ($1,444,599) must be supported by the evidence of mental disability and mental anguish.

Captain Gough narrowly escaped a harrowing disaster with minor physical injuries. He suffers, however, from on-going emotional distress in the form of post-traumatic stress disorder. The disorder typically resolves in two to three years, but experts were unable to predict the resolution of Captain Gough's condition. Testimony suggests its perpetuation by Captain Gough's involvement in lawsuits arising from the accident.

Other cases show virtually no satisfying analogues to Captain Gough's injuries. Many post-traumatic stress disorder patients also suffered severe physical injuries; others were themselves neither injured nor endangered. Captain Gough falls between these extremes. Perhaps the best guidepost involves the survivor of a gas-leak explosion that destroyed a house in Illinois. *DeYoung v. Alpha Constr. Co.*, 186 Ill.App.3d 758, 134 Ill.Dec. 513, 542 N.E.2d 859 (1989). The explosion threw the plaintiff 75 feet out of her home and into a neighbor's yard, bruising the left side of her body, fracturing three teeth, and requiring stitches for her mouth, lips, and chin. Her mother was killed. Afterward, the plaintiff experienced insomnia, depression, and anxiety and was diagnosed with post-traumatic stress disorder. The court affirmed an award of $500,000 for the plaintiff's noneconomic damages. *Id.*, 134 Ill. Dec. at 518, 542 N.E.2d at 864.

We must rely upon our judgment to determine the maximum amount the jury could properly have awarded. *See Caldarera*, 705 F.2d at 784 (stating the "maximum recovery" rule). Considering the circumstances of the accident and the evidence of mental anguish and disability, $600,000 represents the maxi-

4. Such verdicts have been variously described: so gross or inordinately large as to be contrary to right reason; shocking the judicial conscience; clearly exceeding that amount that any reasonable person could feel claimant is entitled to; or so exaggerated as to indicate bias, passion, prejudice, corruption, or other improper motive. *See Caldarera*, 705 F.2d at 784.

mum reasonable award for emotional distress. Adding the economic damages of $559,401, the verdict must be reduced to $1,159,401, less the reduction for contributory fault. We therefore order a new trial unless Captain Gough will accept a remittitur amending the judgment to the amount of $753,610.65.

IV

[5] The district court denied Captain Gough's motion for a judgment notwithstanding the jury's verdict that he was 35 percent at fault. We review this decision under the familiar standard of *Boeing Co. v. Shipman*, 411 F.2d 365 (5th Cir.1969) (en banc). To prevail, Captain Gough must show that the facts and inferences point so strongly and overwhelming in his favor that reasonable persons could not arrive at a contrary verdict. *Id.* at 374.

The jury heard that the depth of the water at spots around the Northumberland, three days after the accident and near the same time of day, measured eight and nine feet. The steamer's draft was described as nine or ten feet. Captain Gough did not employ a depth meter. NGP argued that Captain Gough acted unreasonably by either dragging through the mud bottom or failing to maintain a margin of safety under the keel of his ship.

Captain Gough denies touching bottom. All three survivors testified to floating freely, although Mac Gough said that the ship could move through soft mud without hindrance. The pilot of the spotter plane did not see a trail of mud to indicate dragging. Captain Gough also defended his conduct by asserting that all submerged pipelines were assumed to be safely buried beneath the seabed. He knew that there were pipelines in the vicinity, but assumed that they could not be hit. He also initially stated that he had never heard of any ship hitting a pipeline, despite fishing in the area for thirteen seasons. Finally, Captain Gough maintains that the non-use of charts was causally unrelated because the NGP pipeline was not accurately charted.

Nonetheless, some evidence supports the reasonable conclusion that caution was in order. Charts of the coastline warned of uncharted pipelines and advised that "Mariners should use caution when anchoring, dragging or trawling." On cross-examination, Captain Gough admitted knowing that the Zapata Haynie vessel Sea Chief had struck a pipeline in Mississippi waters. His own ship had lifted a five-inch pipeline from the bottom with its anchor. Captain Gough replaced it on the seabed and therefore knew that it was not buried. There is ample evidence by which a reasonable factfinder could conclude that Captain Gough's conduct contributed to this tragedy.

[6] Captain Gough also attacks the contributory fault finding by contending that he had no duty to avoid the pipeline. Starting with the premise that NGP's unburied pipeline created an obstacle to navigation, Captain Gough concludes that the priority of navigation demands that NGP bear sole responsibility for the allision. "[Plaintiff] is incorrect, however, to assert that this right of navigation is wholly unfettered: when a mariner knows of obstructions to navigation he must avoid them." *Pennzoil Producing Co. v. Offshore Express, Inc.*, 943 F.2d 1465, 1470 (5th Cir.1991). The presumption of fault of *The Pennsylvania*, 86 U.S. (19 Wall.) 125, 22 L.Ed. 148 (1874), does not control the allocation of fault where several parties are responsible; the rules of comparative fault still apply. *Pennzoil*, 943 F.2d at 1472. The record shows that Captain Gough could foresee the danger posed by unburied pipelines. A duty therefore arose, and the district court properly submitted the issue of Captain Gough's fault to the jury.

V

[7] Captain Gough also maintains that the question of his contributory negligence should not have been submitted to the jury. He seeks to bind NGP with a district court finding from the Western District of Louisiana that NGP is solely responsible for the accident. Captain Gough's employer, Zapata Haynie, filed a limitation action in that court regarding the Northumberland. Captain Gough did not join that action. NGP and

representatives of other victims of the accident contested Zapata's right to limitation or exoneration. In particular, NGP attempted to show that Captain Gough's errors contributed to the accident. Following a three-week bench trial, District Judge Walter found that NGP's negligence was the sole cause of the accident. On appeal, we held that this finding was not clearly erroneous. *Zapata Haynie Corp. v. Arthur*, 980 F.2d 287 (5th Cir. 1992).

While Captain Gough was not a party to the previous action, NGP was and so Captain Gough now invokes the doctrine of issue preclusion, also known as offensive collateral estoppel. Captain Gough complains that the jury's finding of fault is inconsistent with Judge Walter's finding. Captain Gough did not, however, assert collateral estoppel below, even though Judge Walter ruled seven months before Captain Gough's trial.[5] Captain Gough mentioned Judge Walter's findings in his pretrial Memorandum of Authorities. Captain Gough did not, however, request that those findings be given preclusive effect. Nor did he mention Judge Walter's findings in his motion for judgment notwithstanding the verdict of contributory fault.[6]

The offensive use of collateral estoppel is permitted, but limited by judicial discretion. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331, 99 S.Ct. 645, 651, 58 L.Ed.2d 552 (1979). Courts hesitate to allow "wait and see" plaintiffs to benefit from offensive collateral estoppel after failing to present their claims in the prior litigation. *See, e.g., Hauser v. Krupp Steel Producers, Inc.*, 761 F.2d 204, 207 (5th Cir.1985).

> The general rule should be that in cases where a plaintiff could easily have joined in the earlier action or where ... for other reasons, the application of offensive estoppel would be unfair to a defendant, a trial judge should not allow the use of offensive collateral estoppel.

Parklane, 439 U.S. at 331, 99 S.Ct. at 652.

NGP contends that Captain Gough could have joined the limitation action. Captain Gough responds that participation would have been self-defeating because, as master of the Northumberland, evidence suggesting Zapata Haynie's fault also suggested his own fault. NGP maintains that Captain Gough did not join the previous action because he settled with the ship owner. The record does not indicate when that settlement occurred. The uncertainty of this issue reflects the critical problem with Captain Gough's position—he failed to raise it below by drawing attention to issue preclusion.

Captain Gough objects to the resulting inconsistent fact findings, but collateral estoppel would not eliminate the inconsistent decisions. *See* Jack Ratliff, *Offensive Collateral Estoppel and the Option Effect*, 67 Texas L.Rev. 63, 100 (1988). They happen—and once inconsistent decisions have been reached, none may be given preclusive effect. *Parklane*, 439 U.S. at 330–31 & n. 14, 99 S.Ct. at 651 & n. 14. Prof. Ratliff observed that "efficiency is [offensive] collateral estoppel's only true justification." *Option Effect, supra*, at 101. It is too late to invoke the virtue of efficiency when the case has already been tried.

We are not persuaded that the district court committed reversible error in submitting the issue of Captain Gough's fault to the jury. Captain Gough failed to address the issue as one of collateral estoppel in the district court. Even reviewing it as such, there is no showing that the court abused its discretion in declining to give Judge Walter's findings preclusive effect. In short, Captain Gough has failed to show an injustice.

In a related argument, Captain Gough asserts that affirming the jury's finding of contributory fault would violate our rule that one

5. Judge Walter's judgment had preclusive effect during the pendency of its appeal. *Erebia v. Chrysler Plastic Prods. Corp.*, 891 F.2d 1212, 1215 n. 1 (6th Cir.1989); *Nixon v. Richey*, 513 F.2d 430, 438 n. 75 (D.C.Cir.1975); *cf. Huron Holding Corp. v. Lincoln Mine Operating Co.*, 312 U.S. 183, 189, 61 S.Ct. 513, 515, 85 L.Ed. 725 (1941).

6. At oral argument, Captain Gough contended that he objected to submitting the contributory fault issue to the jury on this basis. Captain Gough failed to get this objection into the record and we may not rely upon it.

panel cannot overturn another. This assertion is meritless. In *Zapata Haynie*, we held that Judge Walter's finding that NGP was solely responsible for the accident was not clearly erroneous. 980 F.2d at 292. By affirming the jury's findings here we do not upset any rule of law stated in *Zapata Haynie*.

We affirm the district court in all respects except we remand with instruction to grant a new trial unless plaintiff accepts the remittitur we order today.

AFFIRMED in part and REMANDED.

Mitchell LOWERY, Petitioner–Appellant,

v.

James COLLINS, Director, Texas Department of Criminal Justice, Institutional Division, Respondent–Appellee.

No. 91–5086.

United States Court of Appeals,
Fifth Circuit.

July 20, 1993.

After his conviction for sexual assault of child was affirmed, defendant sought discretionary review. The Texas Court of Criminal Appeals vacated and remanded, 757 S.W.2d 358. On remand, the Court of Appeals affirmed, 764 S.W.2d 4. Defendant then petitioned for writ of habeas corpus. The United States District Court for the Eastern District of Texas, Robert M. Parker, Chief Judge, denied relief, and defendant appealed. The Court of Appeals reversed, granted petition, and vacated judgment of conviction, 988 F.2d 1364. On state's petition for rehearing, the Court of Appeals, Wiener, Circuit Judge, held that: (1) failure to call child victim to testify did not waive violation of Sixth Amendment right to confront adverse witness, and (2) error was not harmless.

Petition denied.

1. Criminal Law ⇐662.80

Defendant's failure to call child complainant to testify does not waive right to confront adverse witness; such waiver occurs only when prosecution first calls witness and defendant then, for tactical or other reasons, voluntarily limits or foregoes cross-examination. U.S.C.A. Const.Amend. 6.

2. Criminal Law ⇐662.80

Defendant's failure to call child victim as witness in sexual assault prosecution did not waive violation of defendant's right to confront adverse witness which resulted from admission, over objection, of videotape of interview of child, even though child was available in courtroom and was found competent to testify; defendant could not be required to choose between his Sixth Amendment right and his due process right to have state bear burden of proof at trial, and objections sufficed to preserve error for review. U.S.C.A. Const.Amends. 6, 14.

3. Habeas Corpus ⇐442, 705.1

In habeas corpus proceeding, state has burden to sustain verdict by proving that constitutional error is "harmless"; error is "harmless" if, upon de novo review of entire trial record, court determines that error did not influence jury and that judgment was not substantially swayed by error.

See publication Words and Phrases for other judicial constructions and definitions.

4. Habeas Corpus ⇐481

Admission of videotaped interview of child victim in sexual assault prosecution in violation of defendant's right to confront adverse witness had substantial and injurious effect on jury's verdict, as required to support defendant's petition for habeas corpus relief; state failed to introduce any nonhearsay, direct evidence of guilt other than videotape which showed little boy describing in innocent yet prurient detail acts of molestation which he indicated were perpetrated

FLORIDA HOUSE OF REPRESENTATIVES

IN THE MATTER FOR RELIEF OF:

Relief of ARNETT T. GOINS,
MINNIE L. LANGLEY, et al.,

Claimants,

v. HB 591

STATE OF FLORIDA,

Respondent.
_____/

STATE OF FLORIDA'S RESPONSE
TO CLAIMANTS' FEBRUARY 24, 1994,
MEMORANDUM OF LAW RE CONSTITUTIONAL CLAIMS

Respondent, State of Florida, respectfully submits its Response to Claimants' above-styled Memorandum. The State is embarrassed by the shameful events in Rosewood and does not intend to justify or excuse this death and destruction. It responds, seriatim, to the issues and arguments concerning State complicity presented by the Claimants.

I. SUMMARY OF FACTS

It is not the purpose of this Memorandum to specifically confront the "Summary of Facts" attributed to the "Documented History of the Incident Which Occurred at Rosewood, Florida" ("the Report"). The insufficiency of that Report as a source of competent proof of liability is addressed in the State's memorandum of March 16, 1994, and should be apparent from the testimony of the authors of the Report. Suffice to say, the Report's indiscriminate and

3/16/94

undocumented use of the word "posse" echoed in Claimants' Memorandum, lacks competent record basis.

II. STATUTORY DUTIES OF THE SHERIFF AND GOVERNOR IN 1923

The statutory duties and responsibilities of the Sheriff, "an officer of the county," Article VIII, §1(d), Florida Constitution, are correctly cited. To what extent the Sheriff, pursuant to §28.58, Fla. Stat., "raised the county's militia to assist him" in an honest good faith attempt to provide additional security is a dispositive matter which has heretofore escaped the record.

As to the identity of the Levy County Sheriff as a state official, Hufford v. Rodgers, 912 F.2d 1338 (11th Cir. 1990) is instructive. Hufford, at 912 F.2d 1341, analyzes criteria whereby determination would be made whether a Sheriff is or is not "a state official." The Court squarely concluded that the Sheriff "acted as a county rather than a state official" and that "at any rate" "Sheriffs in Florida act only on behalf of the counties they serve." (Emphasis supplied.) 912 F.2d 1342.[1]

Claimants' recitation of the duties and authorities of the Florida Governor (as prescribed by Florida Statutes in 1927) are inappropriate. The State does

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[1]The identity of the Sheriff as a county rather than a state officer may have increasing significance based upon the Special Masters' analysis of the record in this matter, relative to perceived fault and causation. See heading III, page 4 below.

not refute the fact that the Governor had the authority, at his discretion, to procure and secure protection to life, liberty and property. The exercise of the Governor's discretion was subject to other considerations including, particularly, official reports submitted to him as to the necessity of exercising that discretion and the presence in Rosewood of Alachua County authorities, their Deputies, and the county militia. The feasibility of a timely dispatch of the militia to this remote unpopulated panhandle area is another consideration. There is a void in the record as to each and everyone of these matters.

III. RELIEF PURSUANT TO CLAIMS BILL

As noted in Dickinson v. Board of Public Construction of Dade County, 217 So.2d 553, 560 (Fla. 1968) claims bills are enacted to satisfy moral obligations. Fair resolution of this issue - even given the needless death and destruction - must turn, among other things, on harm to the state and county officials, and to their families, whose reputations would be adversely and irreversibly impacted should the Legislature adopt the allegations of HB 591 and the Report with insufficient proof. Prejudice to the State's ability to muster testimony to defend against the claim of State complicity due to passage of time - well over one average life expectancy - is another factor.[2]

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[2] See Atlas and Yearbook, 1991, 44th Edition, Houghton Mifflin. A white male born in 1919-1921 had an average life expectancy of 56.34 years. Copy attached.

Dickinson is otherwise instructive for its discussion of Article III, §21, Florida Constitution, and the claims bill there at issue, a "local law." As to this type of special law, Article III, §10 now requires:

> "no special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area effected."

Florida Statutes §11.021 requires publication of the notice of intent required as a condition precedent to a special law. Such notice was not given for House Bill 591. To the extent a record of substantial competent evidence emerges from this process to demonstrate no State complicity, local notice in Levy County would be appropriate if fault and causation are attributed to county officials.[3]

Dickinson does not stand for the proposition that the Legislature should dispense with all traditional notices of process and proof to discharge even moral obligations.

IV. EQUAL PROTECTION DUTY

Claimants' recitation of case authority construing the "equal protection duty" are insightful as indicators of the type of proof required to sustain a claim under the Fourteenth Amendment. The hearsay-plagued record of this

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[3]The State does not, however, suggest a fair objective reading of the record would allow even that conclusion.

claims bill pales in comparison to the records in the cases cited by Claimants.

Moody v. City of Hoboken, 758 F.Supp. 1027 (N.D. NJ 1991), was before the Court on the Defendant City's Motion to Dismiss. In denying the Motion, the trial court held that Moody, a person of Indian decent who was beaten to death, had no special relationship with the City and the City, thus, had no affirmative duty under the Fourteenth Amendment to protect him from private violence.

The Court recognized, however, that an express or implied policy which permits or condones attacks upon members of a minority group is the "very evil which the post-civil war statutes sought to eradicate." This statute, now codified at 42 U.S.C. §1983, provides a federal remedy which Claimants have heretofore avoided without justification for their reluctance to step forward.[4]

Moody otherwise requires proof of the existence of a discriminatory policy, acts done in reliance upon that policy, and resulting injury. These are items of competent proof which are absent from this record, whether the Claimants' aim is directed against the Governor, the Levy

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[4] But see Claimants' Exhibit 1, Report, Appendix, at 413. "More often witnesses showed no fear of reprisals...Some said they felt no sadness...and were glad to have left the drudgery of rural isolation."

County Sheriff, the Alachua County Sheriff, the Grand Jury, or the State Attorney.[5] As recognized in Moody:

> A plaintiff in an equal protection action has the burden of demonstrating discriminatory intent. (Citations omitted.) A plaintiff does not have to demonstrate that the challenged policy was taken solely for discriminatory purposes; it is necessary only to show that a discriminatory purpose was a motivating factor. Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and

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[5]Mustering of evidence on key issues as to each official are compromised due to the passage of over one life span since the actions in question. To wit:

On what matters was the Governor apprised? When? How was his judgment flawed?

On what matters was the Sheriff advised? When? On what matter was his judgment flawed? Did citizens step forward or assist in the Sheriff's investigation to ascertain the identity of the persons who killed Rosewood's black residents? Did citizens lie to the Sheriff?

What were the relevant circumstances of the shoot-out at the Carrier household in which two blacks and two whites were killed? Were Williams and Andrews invited guests on a peacekeeping mission? Who initiated the gunfire? How many separate groups of whites were involved in it? Was a first peaceful group of citizens later followed by an angry crowd, and then followed by law enforcement? Did law enforcement know children were in the house ~~when the shooting~~ began?

What was the extent of the inquiry by State Attorney DeCottes? Did citizens cooperate and assist him in his investigation? Did they lie? Did Claimants' relatives come, at his insistence, from Gainesville to testify before the Grand Jury? Did their failure to participate thwart the process? Was the finding of the Grand Jury a consequence of bad faith efforts of the State Attorney, lack of cooperation of witnesses, or grand jury vote contrary to and in spite of the best efforts of the State Attorney?

direct evidence of intent as may be available. (Emphasis supplied.)

The hearsay-ridden record of HB 591 and the passage of time deprives the Florida Legislature of the ability to responsibly undertake this sensitive inquiry as to State complicity in the Rosewood tragedy. Rather, they require the Legislature to rely upon hearsay and uncorroborated, contradictory news reports.[6]

Similarly, Hynson v. City of Chester Legal Department, 864 F.2d 1026 (3d Cir. 1988), imposes a burden of proof on the Claimant. There, the defendant police officer's Motion for Summary Judgment was denied and the officer appealed. The Court of Appeal vacated and remanded.

The Court recognized that a plaintiff, to survive summary judgment, must proffer sufficient competent evidence that would allow a reasonable jury to infer that it is the policy or custom of the police to provide less protection to victims of domestic violence than to the victims of violence, that discrimination was a motivating factor in the policy, and that plaintiff was injured by the policy or custom. These quantums of proof as to state policy and county policy in 1923 are wholly absent from the record of

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[6] It cannot be said that the Grand Jury activity that served the Rosewood area was discriminatory against blacks. See "Documented History" at page 30, note 32. After Sam Carter, a black, was accused of assault with a shotgun in 1921, the Grand Jury found no true bill.

HB 951 once it is stripped of its hearsay-ridden undocumented bulk.

The State does not dispute the holding of United States v. Price, 383 U.S. 787 (1966), that private persons, "jointly engaged with state officials" in prohibited action, are acting under color of law for purposes of the civil rights statute. However, Price otherwise stands for the proposition that such "private persons" must "participate in joint activity with the state or its agents" to be acting under color of State law. This is an issue for proof by competent substantial evidence. The Report's seemingly indiscriminate use of the words "crowd," "posse," and "vigilantes" improperly clouds this determination. For competent proof of "joint activity" under color of State law, there must be more than printed hearsay.

In Delgado v. Smith, 861 F.2d 1489, 1497 (11th Cir. 1988), the Court articulated a standard for the determination of State action. It found:

> ...State action is present only if (1) the governmental and private actors share a symbiotic relationship, Rendell-Baker v. Kohn, 457 U.S. 830 (1982), such that the State is recognized as a joint participant in the challenged activity, Burton v. Willmington Parking Authority, 365 U.S. 715, 725 (1961); (2) the government has delegated a traditional State power to the private party, Jackson v. Metropolitan Eidson Co., 419 U.S. 345, 352 (1974); or (3) the government and the private parties share a close nexus such that the private party's actions are deemed those of the State.

In Delgado, the Court rejected plaintiff's allegations of State action in the context of a challenge to an English only language petition.

The traditional definition of acting under color of State law requires that the defendant in a §1983 action have exercised power "possessed by virtue of State law and made possible only because the wrongdoer is clothed with the authority of State law." West v. Atkins, 487 U.S. 42, 50 (1988) (emphasis supplied).

> To constitute State action, the deprivation must be caused by the exercise of some right or privilege created by the State...or by a person for whom the State is responsible, and the party charged with the deprivation must be a person who may fairly be said to be a State actor. West, 487 U.S. at 50.

As recognized in McGillicuddy v. Clemonts, 746 F.2d 76 (1st Cir. 1984), the relationship or nature of cooperation between the State and a private individual alleged to be acting under color of State law must be pled and proven in detail.

Even the sworn non-hearsay hearing testimony of Ernest Parham does not carry this burden. He acknowledged, on cross-examination, that the person who killed Sam Carter was not "a leader" of the group which Parham joined after closing his store on the evening of January 1, 1923; that he was not present when the group was formed to know if it was the "posse" authorized by the Sheriff, and that the Deputy

Sheriff was beyond sight, one quarter to one half mile down the road when Parham observed the group harming Mr. Carter on that night.[7]

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[7] See cross-examination of Ernest Parham - page 668, the group that was present when Sam Carter was killed was not a mob, they were there with "good intentions" and "were terribly upset when this Sam Carter was killed;" page 670, the largest group the witness ever observed during the Rosewood incident was 25 to 30 persons; page 672, both black and white citizens were apprehensive about their personal safety that week; page 673, the white population was not supportive of violence or a mob; page 675, Parham was not present when this group was formed, does not know who formed them, does not know how many other groups were out that night; page 677, had no idea how long the Levy Deputy had been out chasing the fugitive; page 678, concluded the man who shot Sam Carter "was not a leader" of the group and does not even know if the Deputy appointed him to be a member of the group, the killer have been "a nasty cracker doing his own thing and these people that were there weren't even following him;" page 680, he encountered the group that was confronting Sam Carter about a quarter or a half mile past the Deputy in the dark of night and the Deputy "couldn't see as whether or not they were stringing this man up or not;" page 682, did not sense something was wrong until after he was "on the way down, after talking with Clarence Williams;" page 684, thought the killer was bluffing and concluded others would have stopped it or told the Sheriff if they really believed Sam Carter was going to be killed; page 685, he did not see the Deputy Sheriff at the site when Sam Carter was killed; page 687, does not know who was called in as witnesses at the inquest but he did not volunteer to participate; page 688, does not remember when he saw Deputy Williams next and does not know if any of the persons who witnessed the killing went to tell this law enforcement officer about it; page 689, does not know who they had on the inquest and does not know if the members at the inquest were or were not "an honest to God group of folks trying to do good but none of the citizens came to tell him to make - help him do good;" page 691, does not know who notified Mr. Pillsbury and ask that he mobilize security "well it could have been the Sheriff;" page 695, does not know if the persons who were wounded at the shoot-out at the Carrier household were there when it all started and could not have heard the gunfire from the hotel when it started because the doors were closed; page 696, does not know if the Deputy Sheriff knew a group had gone to the Carrier household when

Hence his testimony on cross-examination, presents no competent proof that the unnamed white who killed Sam Carter was acting under of color of State law. Nor does it present proof that this group was acting under color of State law. It is no proof of State action.

Similarly, the holding in O'Neil v. Krzeminski, 839 F.2d 9 (2d Cir. 1989), does not aid Claimants' hearsay-ridden record. There is no evidence that any County Sheriff or Deputy was in a situation like that of the City of New Haven police officers. See O'Neil at 839 F.2d 11 ("This was not an episode of sufficient duration to support a conclusion that an officer who stood by without trying to assist the victim became a tacit collaborator. With respect to the subsequent beating...the case against [police officer] is adequate to create an issue of fact for the jury. Having seen the victim beaten, he was alerted to the need to protect....")[8]

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he said "all hell is breaking loose" "I don't know that;" page 697, feels the Deputy was a pretty good guy, an honest man "well as far as I know he was;" page 698, does not even know if the Deputy was still in the hotel when the wounded men came back from the Carrier shoot-out ("I don't even know that he was there when they were coming in" "now how long he was there after made that remark ["all hell is breaking loose"] I don't know"); page 699, he could have left right after he made that remark; page 700, does not know how many men were in the initial group that went to the Carrier household. The Claimants' witness otherwise concluded that the Rosewood incident has been "blown out of proportion" (page 707).

[8]House Bill 591 sounds in claims of obligations arising under the "United States Constitution and the Florida

Neither Hawkins v. Town of Shaw, 437 F.2d 1286 (5th Cir. 1971): Washington v. Davis, 426 U.S. 229 (1976); or Dowdell v. City of Apopka, 698 F.2d 1181 (11th Cir. 1983), aid Claimants. Each of these cases required a statistical basis to support the underlying allegations of discrimination. In Hawkins, there was a fivefold statistical analysis of the relative extent of services provided for street paving, street lights, sanitary sewers, surface water drainage, and fire hydrants. There "the record...discloses similar statistical evidence of grave disparities in both the level and kinds of services offered...." Unlike here, hearsay, rumor, family legends, and contradictory newspaper articles were not used as proof.

Similarly, the Court in Dowdell had available to it "substantial evidence, including videotapes, photographs, charts, and the testimony of community residents and of qualified experts who made on-site surveys" to reveal a disparity in the provision of municipal services. Dowdell, 698 F.2d 1181. See Dowdell v. City of Apopka, 511 F.Supp. 1375 (M.D. Fla. 1981) for amplification of the extent of the record in that case.

Constitution" and "gross negligence." Simple negligence is not a basis for liability for constitutional torts. See Daniels v. Williams, 474 U.S. 327 (1986); Davidson v. Cannon, 474 U.S. 344 (1986); Johnson v. Glick, 481 F.2d 1028 (2d Cir. 1973), cert denied, 414 U.S. 1033.

Likewise, there was in Ammons v. Dade City, 783 F.2d 982 (11th Cir. 1986), an ample statistical record of non-hearsay proof to support the findings of disparity. See specifically Ammons v. Dade City, 594 F.Supp. 1274, 1285 (M.D. Fla. 1984). The Ammons Court squarely held that to trigger analysis under the Fourteenth Amendment "preliminary findings of both disparate impact and discriminatory intent are required." Ammons, 783 F.2d at 984. It otherwise required "there must be a correlation between municipal service disparities and racially tainted purposiveness to mandate a finding of discriminatory intent" citing Dowdell, 698 F.2d at 1185. Because of the "extensive evidence concerning the magnitude of the disparities in municipal services" the Court ruled in plaintiffs' favor.

What was present in all of those cases and what is lacking in the record of HB 591 is evidence to support the allegations. What was present in all of those cases, and what is absent here, is a timely presented claim with the fair opportunity to muster living witnesses and documents.

V. FAILURES TO ARREST, FAILURE TO PROTECT, FAILURE TO PROSECUTE

Claimants' ipse dixit arguments about State complicity at the concluding paragraph of their legal memorandum warrant response. Their arguments make a quantum leap in the record, a leap which is unsupported and unsupportable.

Claimants confuse silence in the record with proof as to investigative attempt. What Sheriff Walker did or did not do cannot now be demonstrated by interview with him or with his Deputies or even by review of his records. Rather, any proof of the alleged failure now rests solely in the hearsay ridden Report or conjecture.

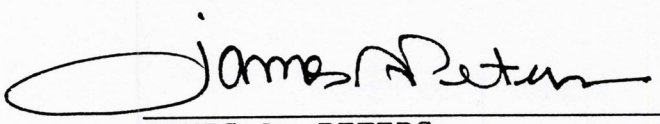
Claimants' arguments about the "Governor's failure to provide troops" are not supported by competent evidence. At best, all that exists is a void in the record. The Report's authors conceded neither the Governor, his staff, nor his records were reviewed to determine the extent that the Governor played any role in summoning the Alachua Sheriff, in mobilizing the railroad, or even in initiating the protection by the mill employees. There is no record evidence of any circumstances whereby the Governor had, in like situations in isolated rural areas of the State, requested presence of the State militia. Neither of the militia records evidence State militia's role to protect white citizens under similar circumstances. In fact, the call-up of the militia in 1923 was for purposes of protecting a black convict. See Claimants' Exhibit 11. (Militia called up in Jacksonville to protect a Negro held in jail.)

Claimants' allegations of the "failure to prosecute" the perpetrators of this needless violence is essentially unexplored in the record. Did citizens with

knowledge step forward and cooperate in investigations? Did they lie to investigators? The news articles in the record demonstrates the Governor requested a Grand Jury investigation, the Grand Jury met for a multiple of days, and State Attorney DeCottes recessed to attempt to get witnesses from Gainesville. Proof of the motivations of the State Attorney - good or bad - is dehors the record, as is proof of the nature of the testimony presented to the Grand Jury by white citizens or by Claimants' relatives.

Claimants' make weight arguments, without record basis, can prove no state or county complicity to sustain the claim of House Bill 591. The Rosewood violence was deplorable, but it is not attributable to the State.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **STATE OF FLORIDA'S RESPONSE TO CLAIMANTS' FEBRUARY 24, 1994, MEMORANDUM OF LAW RE CONSTITUTIONAL CLAIMS** has been hand-delivered to Stephen Hanlon, Esquire, Post Office Drawer 810, Tallahassee, Florida 32302-0810 this 16 day of March, 1994.

James A. Peters

JAMES A. PETERS

<jimp>Rosewood.Resp2

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S Kahn 3/17/94
R McSwain 3/17/94
R. Peterson 3/17/94

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FLORIDA HOUSE OF REPRESENTATIVES

IN THE MATTER FOR RELIEF OF:

Relief of ARNETT T. GOINS,
MINNIE L. LANGLEY, et al.,

Claimants,

v. HB 591

STATE OF FLORIDA,

Respondent.
_____/

STATE OF FLORIDA'S MEMORANDUM RE ADMISSIBILITY OF THE ROSEWOOD REPORT AS PROOF OF LIABILITY

Respondent, State of Florida, respectfully submits its Memorandum opposing admissibility of the "Documented History of the Incident Which Occurred at Rosewood, Florida" ("the Report") for use as competent proof of liability. With all due respect to the authors, and with recognition of their difficult task, exclusion of this document is required due to the rampant hearsay which permeates the Report, its acknowledged reliance on myriad and frequently contradictory newspaper accounts, and the dearth of sworn and corroborated accountings of the events of January 1-7, 1923. In the alternative, the Report should be given no weight in its finding of state and county complicity at page 87 because of these deficiencies.

As is apparent from the March 4, 1994, hearing preliminary testimony of four of the authors of the Report,

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undocumented use of the word "posse" echoed in Claimants' Memorandum, lacks competent record basis.

II. STATUTORY DUTIES OF THE SHERIFF AND GOVERNOR IN 1923

The statutory duties and responsibilities of the Sheriff, "an officer of the county," Article VIII, §1(d), Florida Constitution, are correctly cited. To what extent the Sheriff, pursuant to §28.58, Fla. Stat., "raised the county's militia to assist him" in an honest good faith attempt to provide additional security is a dispositive matter which has heretofore escaped the record.

As to the identity of the Levy County Sheriff as a state official, Hufford v. Rodgers, 912 F.2d 1338 (11th Cir. 1990) is instructive. Hufford, at 912 F.2d 1341, analyzes criteria whereby determination would be made whether a Sheriff is or is not "a state official." The Court squarely concluded that the Sheriff "acted as a county rather than a state official" and that "at any rate" "Sheriffs in Florida act only on behalf of the counties they serve." (Emphasis supplied.) 912 F.2d 1342.[1]

Claimants' recitation of the duties and authorities of the Florida Governor (as prescribed by Florida Statutes in 1927) are inappropriate. The State does

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[1]The identity of the Sheriff as a county rather than a state officer may have increasing significance based upon the Special Masters' analysis of the record in this matter, relative to perceived fault and causation. See heading III, page 4 below.

The Report is otherwise not admissible under Florida Statutes §90.803(20)(b), which recognizes, as an exception to the hearsay rule, reports of "reputation concerning boundaries or general history." In the context of this claims bill, this Report is not submitted as proof of "general history." Rather, its intended use is as proof of liability for a seven million dollar claims bill.

Aside from the financial consequences to the State treasury, utilization of this Report as proof of liability would have a profound and unwarranted negative impact on the reputations of state and county officials, and others, against whom claimants' criticisms are directed. These are persons who are, as observed by the Report's authors, deceased and, thus, unavailable for interviews or document production or otherwise to confront the findings of the Report.

Nor is this a report about the state and county officials' "reputation as to matters of general interest and concern" under the exception discussed at 5 Wigmore, Evidence, §1580, page 444 (3d edition 1940). This is because the topic for which the Report is being utilized - proof of liability as to these officials - is not a topic "such that the facts are likely to have been inquired about in that persons having personal knowledge had disclosed facts which had thus been discussed in the community; and thus the community's conclusion, if any has been formed, is likely to be a trustworthy one."

Through no fault of its authors, the Report leaves many questions unanswered and many information sources unreached because of passage of 71 years and remoteness of the events to which the Report is addressed. See Gallagher v. L.K. Restaurant & Motels, Inc., 481 So.2d 562, 563 (Fla. 5th DCA 1986), in which trial court refused to allow a written report of a health inspector because of its remoteness in time, 29 days. "The general rule that remoteness in point of time goes to weight rather than admissibility of the evidence applies except when the time is so far removed as to deprive the circumstances of any evidentiary value." See also Hopkins v. McClure, 45 So.2d 656 (Fla. 1950). Here the Report is "remote" by over 25,500 days.

The Report otherwise abounds in thrice and twice told stories passed down by generations of the Claimants. The "documentation" that is provided of these versions is merely printed hearsay on hearsay. The Claimants' versions are word of mouth from grandparent to parent to child or, on a few occasions, 70-year-old recollections by persons who were anywhere from infants to eight year old children at the time. Furthermore, it is not known what influence word of mouth accounts might have had in shaping such childhood-based recollections. None of these hearsay statements or

childhood recollections should be regarded as competent proof for liability purposes.[1]

Hearsay in the Report is not cured because it is memorialized in type. The Report itself must be subject to examination for verification. There should be no doubt that "...the rule in Florida is firmly established that unverified out of court writings attempted to be introduced for the purpose of establishing the truth of matters contained in the writings constitutes hearsay in exactly the same manner as out of court oral declarations." Auletta v. Fried, 388 So.2d 1067 (Fla. 4th DCA 1980).[2]

Much of the "fact" content of the interviews and answers is, at best, suspect not only because of rampant hearsay content, the youth of the Claimants' witnesses in 1923, but because of the manner in which leading questions were posed to the interviewees. See e.g. September 23, 1993 interview of Arnett Doctor at pages 134, 135, 136, 137,

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[1] See Hulsh v. Hulsh, 431 So.2d 658, 664 (Fla. 3d DCA 1983), "...although the witness was not incompetent to testify concerning the decedents' actions or non-verbal conduct, it is clear that such testimony was being offered to prove an assertion on the part of the decedent and is therefore, by definition, hearsay."

[2] See also Liberty Leasing Co. v. Hillsum Sales Corp., 380 F.2d 1013 (5th Cir. 1967). (Under Florida law where deponent admitted that he had no personal knowledge of facts and that he was testifying to what others had told him, testimony as hearsay and trial court correctly refused to give any weight to deposition on which defendant relied."

138,[3] and 146; September 24, 1993 interview of Arnett Goins at pages 223 and 228; September 24, 1993 interview of Marjie Hall Johnson at pages 317, 318, 319, 320, and 325; Minnie Langley interview at pages 332, 334, and 336; and March 24, 1993 interview of Lillie Washington at pages 382, 383, 384, 385, and 387.

Even the probative value of the "depositions" of the Claimants by their counsel are marred due to the presence and apparent participation by non-parties. Movie producer Michael O. McCarty attended and participated in the June 2, 1992, interview of Minnie Langley (pages 2 and 48) and in the May 4, 1992, interview of Lee Ruth Davis (pages 2, 22, and 69); he responded to several questions from counsel and offered up the "manuscript." (Claimants have, to date, not produced the contract between them and this movie producer.)

Rosewood was a tragic situation. It is an embarrassing page of Florida history that should not be forgotten. However, Claimants' ask too much of the legislative claims process when they, after a 70-year silence, offer the hearsay-ridden Report as proof of the State's culpability. Because of its exclusive reliance on

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[3]Claims of black ownership of the turpentine still were squarely contradicted by hearing testimony of Claimants' witness, Ernest Parham, on March 11, 1994. See also Arnett Goins interview at pages 205 and 228; Langley interview at page 328.

hearsay, the Report cannot be rehabilitated. It cannot be introduced as competent evidence, either substantial or insubstantial, on the matter of liability. It should be excluded accordingly.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **STATE OF FLORIDA'S MEMORANDUM RE ADMISSIBILITY OF THE ROSEWOOD REPORT AS PROOF OF LIABILITY** has been hand-delivered to Stephen Hanlon, Esquire, Post Office Drawer 810, Tallahassee, Florida 32302-0810 this 16 day of March, 1994.

JAMES A. PETERS

<jimp>Rosewood.Memo

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T. McSwain 3/17/94
S. Kahn 3/17/94
J. Peterson 3/17/94

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FLORIDA HOUSE OF REPRESENTATIVES

IN THE MATTER FOR RELIEF OF:

Relief of ARNETT T. GOINS,
MINNIE L. LANGLEY, et al.,

Claimants,

v. HB 591

STATE OF FLORIDA,

Respondent.
_____/

STATE OF FLORIDA'S NOTICE OF SUPPLEMENTAL AUTHORITY

Respondent, State of Florida, here submits the following supplemental authority and articles for additional insight by the Special Masters on the designated topics:

1. Hedonic Damages: The viability of this theory of damages recovery was addressed in a series of articles published in the Journal of Forensic Economics, No. 3, Fall, 1990, including "The Value of Life: Has Voodoo Economics Come to the Courts;" "The Plausible Range for the Value of Life - Red Herrings Among the Mackerel;" "Hedonic Damages in the Courtroom Setting;" "A Bridge Over Troubled Water;" "Assuming the Can Opener: Hedonic Wage Estimates and the Value of Life;" "The Econometric Basis for Estimates for the Value of Life;" and in an article in the Journal of Legal Economics, Vol. 2, March, 1992, "Why Hedonic Measures are Irrelevant to Wrongful Death Litigation."

2. Post Traumatic Stress Disorder: PTSD, its definition, epidemiology, etiology, factors, signs and

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symptoms, and diagnosis are the subject of an annotated article in the Comprehensive Textbook of Psychiatry, Volume I, 5th Edition, at Chapter 18.4.

3. Memory Factor and the Reliability of Hearsay Testimony: This topic was the subject of an article published at Volume 41, Florida Law Review, Spring, 1989, "The Importance of the Memory Factor in Analyzing the Reliability of Hearsay Testimony: A Lesson Slowly Learned - and Quickly Forgotten" by Professor Edward Imwinkelried. The article notes in part:

> Although legal psychologists have not reached consensus on every aspect of human memory, most agree it is a much more subtle, error prone process than the common law judges assume. Psychologists found that testimonial error was only rarely caused by insincerity, but frequently was traceable to defective memory. One authority declared that memory was "one of man's most fallible...instruments." After summarizing the research, another authority asserted that honest errors in mental capacities such as memory were "the most important source of testimonial conflict."

This article otherwise contains an annotation of case law and documented reports by psychologists assessing the lack of reliability of hearsay testimony.

Respectfully submitted,

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I HEREBY CERTIFY that a true and correct copy of the foregoing **STATE OF FLORIDA'S NOTICE OF SUPPLEMENTAL AUTHORITY** has been hand-delivered to Stephen Hanlon, Esquire, Post Office Drawer 810, Tallahassee, Florida 32302-0810 this 16 day of March, 1994.

JAMES A. PETERS

<jimp>Rosewood.SuppAuth

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FLORIDA HOUSE OF REPRESENTATIVES

IN THE MATTER FOR RELIEF OF:

Relief of ARNETT T. GOINS,
MINNIE L. LANGLEY, et al.,

Claimants,

v. HB 591

STATE OF FLORIDA,

Respondent.
_____/

STATE OF FLORIDA'S
SUPPLEMENTAL EXHIBIT LIST

Respondent, State of Florida, here supplements its February 23, 1994, March 3, 1994, and March 9, 1994, Exhibit List with the following:

EXHIBITS

10. Information Almanac, 1991, 4th Edition, Houghton Mifflin Co., Expectation of Life in the United States Table.

11. Vital Statistics of the United States, Vol. I - Average Remaining Lifetime in Years as Specified Ages by Race and Sex.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **STATE OF FLORIDA'S SUPPLEMENTAL EXHIBIT LIST** has been hand-delivered to Stephen Hanlon, Esquire, Post Office Drawer 810, Tallahassee, Florida 32302-0810 this 16 day of March, 1994.

JAMES A. PETERS

<jimp>Rosewood.SuppExh4

INFORMATION PLEASE ALMANAC®

ATLAS & YEARBOOK

1991

44TH EDITION

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1991

Expectation of Life

Expectation of Life in the United States

Calendar period	Age 0	10	20	30	40	50	60	70	80
WHITE MALES									
1850[1]	38.3	48.0	40.1	34.0	27.9	21.6	15.6	10.2	5.9
1890[1]	42.50	48.45	40.66	34.05	27.37	20.72	14.73	9.35	5.40
1900–1902[2]	48.23	50.59	42.19	34.88	27.74	20.76	14.35	9.03	5.10
1909–1911[2]	50.23	51.32	42.71	34.87	27.43	20.39	13.98	8.83	5.09
1919–1921[3]	56.34	54.15	45.60	37.65	29.86	22.22	15.25	9.51	5.47
1929–1931	59.12	54.96	46.02	37.54	29.22	21.51	14.72	9.20	5.26
1939–1941	62.81	57.03	47.76	38.80	30.03	21.96	15.05	9.42	5.38
1949–1951	66.31	58.98	49.52	40.29	31.17	22.83	15.76	10.07	5.88
1959–1961[5]	67.55	59.78	50.25	40.98	31.73	23.22	16.01	10.29	5.89
1969–1971[6]	67.94	59.69	50.22	41.07	31.87	23.34	16.07	10.38	6.18
1979–1981	70.82	61.98	52.45	43.31	34.04	25.26	17.56	11.35	6.76
1985	71.9	62.9	53.3	44.0	34.7	25.8	18.0	11.6	6.8
1986	72.0	62.9	53.4	44.2	34.9	26.1	18.2	11.7	6.9
1987	72.2	63.1	53.6	44.3	35.1	26.2	18.3	11.8	6.9
WHITE FEMALES									
1850[1]	40.5	47.2	40.2	35.4	29.8	23.5	17.0	11.3	6.4
1890[1]	44.46	49.62	42.03	35.36	28.76	22.09	15.70	10.15	5.75
1900–1902[2]	51.08	52.15	43.77	36.42	29.17	21.89	15.23	9.59	5.50
1909–1911[2]	53.62	53.57	44.88	36.96	29.26	21.74	14.92	9.38	5.35
1919–1921[3]	58.53	55.17	46.46	38.72	30.94	23.12	15.93	9.94	5.70
1929–1931	62.67	57.65	48.52	39.99	31.52	23.41	16.05	9.98	5.63
1939–1941	67.29	60.85	51.38	42.21	33.25	24.72	17.00	10.50	5.88
1949–1951	72.03	64.26	54.56	45.00	35.64	26.76	18.64	11.68	6.59
1959–1961[5]	74.19	66.05	56.29	46.63	37.13	28.08	19.69	12.38	6.67
1969–1971[6]	75.49	66.97	57.24	47.60	38.12	29.11	20.79	13.37	7.59
1979–1981	78.22	69.21	59.44	49.76	40.16	30.96	22.45	14.89	8.65
1985	78.7	69.6	59.8	50.1	40.4	31.1	22.6	15.0	8.7
1986	78.8	69.6	59.9	50.1	40.5	31.2	22.6	15.1	8.8
1987	78.9	69.7	59.9	50.2	40.6	31.3	22.7	15.1	8.8
ALL OTHER MALES[4]									
1900–1902[2]	32.54	41.90	35.11	29.25	23.12	17.34	12.62	8.33	5.12
1909–1911[2]	34.05	40.65	33.46	27.33	21.57	16.21	11.67	8.00	5.53
1919–1921[3]	47.14	45.99	38.36	32.51	26.53	20.47	14.74	9.58	5.83
1929–1931	47.55	44.27	35.95	29.45	23.36	17.92	13.15	8.78	5.42
1939–1941	52.33	48.54	39.74	32.25	25.23	19.18	14.38	10.06	6.46
1949–1951	58.91	52.96	43.73	35.31	27.29	20.25	14.91	10.74	7.07
1959–1961[5]	61.48	55.19	45.78	37.05	28.72	21.28	15.29	10.81	6.87
1969–1971[6]	60.98	53.67	44.37	36.20	28.29	21.24	15.35	10.68	7.57
1979–1981	65.63	57.40	47.87	39.13	30.64	22.92	16.54	11.36	7.22
1985	67.2	58.7	49.1	40.2	31.6	23.7	16.9	11.4	7.2
1986	67.2	58.7	49.1	40.3	31.8	23.9	17.0	11.5	7.1
1987	67.3	58.8	49.2	40.4	32.0	24.1	17.2	11.6	7.2
ALL OTHER FEMALES[4]									
1900–1902[2]	35.04	43.02	36.89	30.70	24.37	18.67	13.60	9.62	6.48
1909–1911[2]	37.67	42.84	36.14	29.61	23.34	17.65	12.78	9.22	6.05
1919–1921[3]	46.92	44.54	37.15	31.48	25.60	19.76	14.69	10.25	6.58
1929–1931	49.51	45.33	37.22	30.67	24.30	18.60	14.22	10.38	6.90
1939–1941	55.51	50.83	42.14	34.52	27.31	21.04	16.14	11.81	8.00
1949–1951	62.70	56.17	46.77	38.02	29.82	22.67	16.95	12.29	8.15
1959–1961[5]	66.47	59.72	50.07	40.83	32.16	24.31	17.83	12.46	7.66
1969–1971[6]	69.05	61.49	51.85	42.61	33.87	25.97	19.02	13.30	9.01
1979–1981	74.00	65.64	55.88	46.39	37.16	28.59	20.49	14.44	9.17
1985	75.0	66.3	56.5	47.0	37.7	28.9	21.1	14.4	8.9
1986	75.1	66.4	56.6	47.1	37.8	29.1	21.2	14.5	8.9
1987	75.2	66.5	56.7	47.2	38.0	29.2	21.3	14.6	8.9

1. Massachusetts only; white and nonwhite combined, the latter being about 1% of the total. 2. Original Death Registration States. 3. Death Registration States of 1920. 4. Data for periods 1900–1902 to 1929–1931 relate to blacks only. 5. Alaska and Hawaii included beginning in 1959. 6. Deaths of nonresidents of the United States excluded starting in 1970. *Sources:* Department of Health and Human Services, National Center for Health Statistics.

Expectation of Life

Age	Expectation of life in year: Total persons	White: Male	White: Female	Ma
0	75.0	72.2	78.9	6
1	74.7	71.9	78.5	6
2	73.8	71.0	77.6	6
3	72.8	70.0	76.6	6
4	71.9	69.0	75.6	6
5	70.9	68.1	74.7	6
6	69.9	67.1	73.7	6
7	68.9	66.1	72.7	6
8	67.9	65.1	71.7	6
9	66.9	64.1	70.7	5
10	66.0	63.1	69.7	5
11	65.0	62.2	68.7	5
12	64.0	61.2	67.7	5
13	63.0	60.2	66.8	5
14	62.0	59.2	65.8	5
15	61.0	58.2	64.8	5
16	60.1	57.3	63.8	5
17	59.1	56.4	62.8	5
18	58.2	55.4	61.9	5
19	57.2	54.5	60.9	5
20	56.3	53.6	59.9	4
21	55.3	52.6	59.0	4
22	54.4	51.7	58.0	4
23	53.5	50.8	57.0	4
24	52.5	49.9	56.1	4
25	51.6	49.0	55.1	4
26	50.7	48.0	54.1	4
27	49.7	47.1	53.1	4
28	48.8	46.2	52.2	4
29	47.8	45.3	51.2	4
30	46.9	44.3	50.2	4
31	46.0	43.4	49.3	3
32	45.0	42.5	48.3	3
33	44.1	41.6	47.3	3
34	43.1	40.6	46.4	3
35	42.2	39.7	45.4	3
36	41.3	38.8	44.4	3
37	40.4	37.9	43.5	3
38	39.4	37.0	42.5	3
39	38.5	36.0	41.6	3
40	37.6	35.1	40.6	3
41	36.7	34.2	39.7	3
42	35.8	33.3	38.7	3
43	34.8	32.4	37.8	3
44	33.9	31.5	36.8	2
45	33.0	30.6	35.9	2
46	32.1	29.7	35.0	2
47	31.2	28.8	34.0	2
48	30.4	27.9	33.1	2
49	29.5	27.1	32.2	2
50	28.6	26.2	31.3	2
51	27.8	25.4	30.4	2
52	26.9	24.5	29.5	2
53	26.1	23.7	28.6	2
54	25.3	22.9	27.8	2
55	24.4	22.1	26.9	2
56	23.6	21.3	26.0	1
57	22.8	20.5	25.2	1
58	22.1	19.8	24.3	1
59	21.3	19.0	23.5	1
60	20.5	18.3	22.7	1
61	19.8	17.6	21.9	1
62	19.1	16.9	21.1	1
63	18.3	16.2	20.3	1
64	17.6	15.6	19.5	1
65	16.9	14.9	18.8	1

MAR-18-94 WED 12:18 PM TEL NO: #552 P02

U.S. National Office of Vital Statistics.

VITAL STATISTICS OF THE UNITED STATES

1950

VOLUME I

ANALYSIS AND SUMMARY TABLES WITH SUPPLEMENTAL TABLES FOR ALASKA, HAWAII, PUERTO RICO, AND VIRGIN ISLANDS

PREPARED UNDER THE SUPERVISION OF
HALBERT L. DUNN, M. D.
Chief, National Office of Vital Statistics

UNITED STATES GOVERNMENT PRINTING OFFICE
WASHINGTON : 1954

For sale by the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C. - Price $3.50

data. The life table values shown in tables 8.06, 8.08, 8.09, and 8.10 for 1949 and 1950 are based on the new population estimates, while the values for 1941 through 1948 in table 8.10 are the same as those published in previous reports. The 1949 and 1950 values are thus not entirely comparable with figures for the previous years of the decade. In general, if the revised population estimates had been used, the average length of life for the years 1941 through 1948 would have been slightly higher than the figures shown in table 8.10.

In the period of nearly a half-century covered by table 8.09, the average duration of life has increased by 18.4 years for white males, 21.3 years for white females, 26.7 years f nonwhite males, and 28.2 years for nonwhite females. The pr portion reaching age 65 (table 8.08) has increased by 63 perce for white males, 76 percent for white females, 136 percent f nonwhite males, and 135 percent for nonwhite females. T improvement in the average remaining lifetime becom progressively less at older ages, but the recent values ev at relatively old ages are substantially higher than in t earliest period. It is a striking fact that the improveme in longevity since the beginning of the century has been appr ciably greater for females than for males.

Table 8.09. AVERAGE REMAINING LIFETIME IN YEARS AT SPECIFIED AGES, BY RACE AND SEX: DEATH-REGISTRATION STATES, FOR SELECTED YEARS

RACE, SEX, AND AGE	1950	1949	1939-41	1929-31[1]	1919-21[1]	1909-11[1]	1900-1902[1]
WHITE MALE							
0	66.6	66.2	62.61	59.12	56.34	50.23	48.23
1	67.6	67.4	64.98	62.04	60.24	56.26	54.61
5	64.0	63.8	61.68	59.38	58.31	55.37	54.43
10	59.2	59.0	57.03	54.90	54.15	51.32	50.58
15	54.4	54.2	52.33	50.39	49.74	46.91	46.25
20	49.7	49.6	47.76	46.02	45.60	42.71	42.19
25	45.2	45.0	43.28	41.78	41.60	38.79	38.52
30	40.5	40.4	38.80	37.54	37.65	34.87	34.88
35	35.9	35.8	34.36	33.33	33.74	31.08	31.29
40	31.4	31.3	30.03	29.22	29.86	27.43	27.74
45	27.1	27.0	25.87	25.28	26.00	23.86	24.21
50	23.0	22.9	21.96	21.51	22.22	20.39	20.75
55	19.3	19.2	18.34	17.97	18.59	17.03	17.42
60	15.9	15.9	15.05	14.72	15.25	13.98	14.35
65	13.0	13.0	12.07	11.77	12.21	11.25	11.51
70	10.3	10.3	9.42	9.20	9.51	8.83	9.03
75	8.0	8.0	7.17	7.02	7.30	6.75	6.84
WHITE FEMALE							
0	72.4	71.9	67.29	62.67	58.53	53.62	51.08
1	73.1	72.8	68.93	64.93	61.51	58.69	56.39
5	69.5	69.1	65.57	62.17	59.43	57.67	56.03
10	64.6	64.3	60.85	57.65	55.17	53.57	52.15
15	59.7	59.5	56.07	53.00	50.67	49.12	47.79
20	54.9	54.6	51.38	48.52	46.46	44.88	43.77
25	50.1	49.9	46.78	44.25	42.55	40.88	40.05
30	45.4	45.1	42.21	39.99	38.72	36.96	36.42
35	40.6	40.4	37.70	35.73	34.86	33.09	32.82
40	36.0	35.8	33.25	31.52	30.94	29.26	29.17
45	31.5	31.3	28.90	27.39	26.98	25.45	25.51
50	27.1	26.9	24.72	23.41	23.12	21.74	21.89
55	22.9	22.8	20.73	19.60	19.40	18.18	18.43
60	19.0	18.8	17.00	16.05	15.83	14.92	15.23
65	15.3	15.2	13.56	12.81	12.75	11.97	12.23
70	12.0	11.9	10.50	9.98	9.94	9.38	9.59
75	9.2	9.2	7.92	7.56	7.62	7.20	7.33
NONWHITE MALE							
0	59.2	58.9	52.33	47.55	47.14	34.05	32.5
1	61.3	61.2	56.05	51.08	51.63	42.53	42.4
5	58.0	57.9	53.13	48.69	50.18	44.25	45.0
10	53.2	53.2	48.54	44.27	46.99	40.65	41.9
15	48.5	48.5	43.95	39.83	41.75	36.77	38.2
20	44.0	44.0	39.74	35.95	38.36	33.46	35.1
25	39.7	39.8	35.94	32.67	35.54	30.44	32.1
30	35.5	35.6	32.25	29.45	32.51	27.32	29.2
35	31.5	31.6	28.67	26.39	29.54	24.42	26.1
40	27.5	27.7	25.23	23.56	26.53	21.57	23.1
45	23.8	24.0	22.02	20.59	23.55	18.85	20.0
50	20.5	20.8	19.18	17.92	20.47	16.21	17.3
55	17.6	18.0	16.67	15.46	17.50	13.82	14.8
60	15.2	15.7	14.38	13.15	14.74	11.67	12.6
65	13.3	13.7	12.18	10.87	12.07	9.74	10.3
70	11.1	11.4	10.06	8.78	9.58	8.00	8.3
75	9.3	9.5	8.09	6.99	7.61	6.58	6.6
NONWHITE FEMALE							
0	63.2	62.7	55.51	49.51	46.92	37.67	35.0
1	64.8	64.5	58.47	52.33	50.39	45.15	43.5
5	61.4	61.1	55.47	49.81	48.70	46.42	46.0
10	56.7	56.3	50.83	45.33	44.54	42.84	43.0
15	51.9	51.5	46.22	40.87	40.36	39.18	39.7
20	47.3	47.0	42.14	37.22	37.15	36.14	36.8
25	42.9	42.6	38.31	33.93	34.35	32.97	33.9
30	38.5	38.4	34.52	30.67	31.48	29.61	30.7
35	34.4	34.2	30.83	27.47	28.58	26.44	27.5
40	30.4	30.2	27.31	24.30	25.60	23.34	24.3
45	26.6	26.5	24.00	21.39	22.61	20.43	21.3
50	23.2	23.3	21.04	18.60	19.76	17.65	18.6
55	20.2	20.3	18.44	16.27	17.09	14.99	15.8
60	17.7	17.7	16.14	14.22	14.69	12.78	13.6
65	15.6	15.7	13.95	12.24	12.41	10.82	11.3
70	13.0	13.1	11.81	10.38	10.25	9.22	9.6
75	11.0	11.1	9.80	8.62	8.37	7.55	7.9

[1]Figures for the nonwhite groups cover only Negroes. However, in no case did the Negro population comprise less than 95 percent of the corresponding nonwhite population.

NOTE.—For 1900-1902 and 1909-11, data are for the death-registration States of 1900, which consisted of 10 States and the District of Columbia; for 1919-21, for the death-registration States of 1920, which consisted of 34 States and the District of Columbia; for 1929-31, 1939-41, 1949, and 1950, for the entire continental United States.

The Florida State University
Office of the General Counsel
540 W. Jefferson St.
Tallahassee, Florida 32306-1612
Telephone: (904) 644-4440
Fax: (904) 644-8973

b.4 cont'd
interrog responses

March 16, 1994

Mr. Richard Hixon
House Judiciary Committee
Room 412
House Office Building
The Capitol
Tallahassee, Florida 32399-1300

Dear Mr. Hixon:

Enclosed are the responses to the interrogatories submitted to the Rosewood Investigative Team by Assistant Attorney General James Peters that were delivered to me today by Principal Investigator Professor Maxine Jones, with cover letter and attached documents.

Yours sincerely,

Linda Schmidt

Linda C. Schmidt
Associate General Counsel

/ls

cc: Mr. Steve Hanlon, with enclosures
Mr. James Peters, with enclosures
Professor Maxine Jones
Dean Steve Edwards
Ms. Betty Southard, with enclosures

3/16/94
R

The Florida State University
Tallahassee, Florida 32306-2029
Department of History R-126

16 March 1994

Mr. Richard Hixson, Special Master
House Judiciary
The Capitol
Tallahassee, Fl 32399

Dear Mr. Hixson:

Please find enclosed our responses to the interrogatories submitted to the Rosewood Investigative Team by Assistant Attorney General James Peters. The Team spent approximately 45 hours answering and providing the record basis for the 90 questions and their sub-parts. We have answered the interrogatories to the best of our ability.

We have made available our research materials for the "Documented History of the Incident which Occurred at Rosewood, Florida." These materials may be reviewed in the History Department, 429 Bellamy, The Florida State University by contacting Miss Deborah Russ (644-5888).

We also request permission to file supplements to our responses as recorded in the official transcript of March 1, 1994, regarding the accuracy of the photograph that was included in our report and a couple of other items.

It is our strong hope that our written responses will satisfy the state and that the appearance of the Team will not be necessary at the hearings Friday, March 18, 1994. I am,

Sincerely,

Maxine D. Jones

Maxine D. Jones
Principal Investigator,
The Rosewood Investigative Team

(904) 644-5888 • FAX (904) 644-6402

Population Shifts
Precinct 9 (Levy County)
1920-1930

Precinct 9 in Levy County, of which Rosewood was a part, had a population in 1920 of 342 blacks and 295 whites[1]. In 1925, its black population had declined by 19 to 323, while its white population had increased by 81.[2] Following the burning of Rosewood black families had to seek places to live. Because many of the Rosewood men worked at the Cummer Cypress Lumber Mill in Sumner (also in Precinct 9) and because some of the Rosewood women were employed as domestics there, it would have been a natural thing for them to have managed to move to Wylly (also nearby and in Precinct 9) and to Sumner. Many of the blacks were of limited means, especially following the Rosewood episode, and employment in Sumner offered them a way of survival. No doubt some of the survivors of Rosewood moved immediately away from Levy County. Then when the mill closed in the late 1920s, Precinct 9 declined by 1930 to 166 blacks and 239 whites.[3]

The team believes that the small decline in population between 1920 and 1925 was due to the hard economic times (and devastation for some) that forced the former residents of Rosewood to stay nearby in order to make a living. It is also possible that other blacks moved into Precinct 9, but not Rosewood, to seek employment at the lumber mill.

---

[1]The Fifth Census of the State of Florida Taken in the Year 1925 (Tallahassee: T. J. Appleyard, State Printer, n.d.), p. 39.

[2]U.S. Bureau of the Census, 14th Census of the United States MS, Levy County, Florida, Precinct 9.

[3]U.S. Bureau of the Census, 15th Census of the United States: 1930. Population. Volume II. Part I. (Washington, D.C.: Government Printing Office, 1932) p. 405.

Florida State
UNIVERSITY

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Mr. Richard Hixson
Staff Director of the Florida House of Representatives
Judiciary Committee @ Special Master for the Hearings to
Investigate the Rosewood Incident of 1923.
412 House Office Building
Tallahassee, Florida 32399-1300

March 12, 1994

Dear Mr. Hixson,

I would like to amend the official record of the special masters hearing in regards to my interview with Mr. James Wilkerson and Mr. Herbert Wilkerson (page 425).

I interviewed the Wilkersons on February 18, 1994. On that day Mr. Wilkerson expressed to me a concern that he not be misrepresented in the press. As a condition of taping, I agreed not to release this interview. The Wilkerson's interview is not a part of the investigation that I conducted on behalf on the Florida Board of Regents, and the State University System. That investigation ended on December 20, 1993. When I was questioned by Mr. Peters I felt that by commenting on this interview, in the presence of the press, I would be betraying the confidence of Mr. Wilkerson.

Subsequent to the hearings on Monday March 7, 1994, I contacted Mr. Herb Wilkerson by telephone and received his permission to release the tape to the Attorney Generals office. Consequently, on Tuesday I provided both the Holland and Knight law firm, and the State Attorney General with copies of the Wilkerson's interview.

Please accept this letter as a part of the record with the understanding that it is my intention to cooperate fully and to the best of my ability with these proceedings.

Sincerely,

R, Thomas Dye
Ph. D. Student & Adjunct Instructor of History
Department of History
Florida State University
Tallahassee, Florida

201 Oglesby Union B-214 • Tallahassee, Florida 32306
(904) 644-1811

STATE OF FLORIDA)
)SS
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared R. TOM DYE, who, being first duly sworn, deposes and states that he has read the foregoing answers to interrogatories executed by him and the facts contained therein are true and correct to the best of his knowledge and belief.

Sworn to and subscribed before me this 16th day of March, 1994.

Signature of Notary Public, State of Florida

Larry Black
Print, type or stamp commissioned name of Notary Public

Commission No. _____

My Commission Expires: _____

Personally Known _____ or Produced Identification ✓ (Check One)

Type of Identification Produced: FL Driver License
D000-738-58-123

LARRY BLACK
MY COMMISSION EXPIRES
MAY 3, 1998
#CC 195170
NOTARY PUBLIC, STATE OF FLORIDA

STATE OF FLORIDA)
)SS
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared LARRY E. RIVERS, who, being first duly sworn, deposes and states that he has read the foregoing answers to interrogatories executed by him and the facts contained therein are true and correct to the best of his knowledge and belief.

Sworn to and subscribed before me this 15 day of March, 1994.

LINDA N. HUDSON
MY COMMISSION # CC 244199 EXPIRES
December 3, 1996
BONDED THRU TROY FAIN INSURANCE, INC.

Signature of Notary Public, State of Florida

LINDA N. HUDSON
MY COMMISSION # CC 244199 EXPIRES
December 3, 1996
BONDED THRU TROY FAIN INSURANCE, INC.

Print, type or stamp name of Notary Public

Commission No. 244199

My Commission Expires: 12/3/96

Personally Known xx or Produced Identification xx (Check One)

Type of Identification Produced: Drivers License

STATE OF FLORIDA)
)SS
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared WILLIAM R. ROGERS, who, being first duly sworn, deposes and states that he has read the foregoing answers to interrogatories executed by him and the facts contained therein are true and correct to the best of his knowledge and belief.

Sworn to and subscribed before me this 15 day of March, 1994.

Carmen Victoria Bernal
Signature of Notary Public, State of Florida

Carmen Victoria Bernal
Print, type or stamp commissioned name of Notary Public

CARMEN VICTORIA BERNAL
MY COMMISSION # CC 190351 EXPIRES
April 1, 1996
BONDED THRU TROY FAIN INSURANCE, INC.

Commission No. _____

My Commission Expires: _____

Personally Known ✓ or Produced Identification _____ (Check One)

Type of Identification Produced: _____

William R. Rogers

STATE OF FLORIDA)
)SS
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared MAXINE D. JONES, who, being first duly sworn, deposes and states that she has read the foregoing answers to interrogatories executed by her and the facts contained therein are true and correct to the best of her knowledge and belief.

Sworn to and subscribed before me this 15 day of March, 1994.

Carmen Victoria Bernal
Signature of Notary Public, State of Florida

Carmen Victoria Bernal
Print, type or stamp commissioned name of Notary Public

CARMEN VICTORIA BERNAL
MY COMMISSION # CC 190351 EXPIRES
April 1, 1996
BONDED THRU TROY FAIN INSURANCE, INC.

Commission No. _____

My Commission Expires: _____

Personally Known ✓ or Produced Identification _____ (Check One)

Type of Identification Produced: _____

STATE OF FLORIDA)
)SS
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared DAVID R. COLBURN, who, being first duly sworn, deposes and states that he has read the foregoing answers to interrogatories executed by him and the facts contained therein are true and correct to the best of his knowledge and belief.

Sworn to and subscribed before me this 16 day of March, 1994.

M A Morgan
Signature of Notary Public, State of Florida
NOTARY PUBLIC, STATE OF FLORIDA.
MY COMMISSION EXPIRES: Sept. 2, 1995.
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

M A Morgan
Print, type or stamp commissioned name of Notary Public

Commission No. _____

My Commission Expires: 9/2/95

Personally Known ✓ or Produced Identification _____ (Check One)

Type of Identification Produced: _____

ANSWERS TO INTERROGATORIES

1. Following the Taylor incident the Tampa Morning Tribune, 1/2/23 stated, "The entire county is aroused, and virtually every able bodied man has joined in the search." The Jacksonville Times-Union, 1/3/23 and the Gainesville Daily Sun, 1/2/23, reported that Sheriff Walker had obtained bloodhounds. Matters got out of hand when Sam Carter was captured and the posse degenerated into a mob. Carter's death was reported in most large Florida newspapers and elsewhere; see also coroner's jury report, Box C, Office of the Clerk, Levy County Courthouse, Bronson. (Team)

2. Jacksonville Times-Union, 1/5,8,/23; Tampa Morning Tribune 1/5-6, 23; St. Petersburg Evening Independent, 1, 5, 23. See also for example, the sworn statements of Lee Ruth Davis and Minnie Lee Langley. (Team)

3. Based on their study of the newspaper reports and the testimony of witnesses, the team did not conclude definitively who fired the first shot. The initial shooting could have come from inside the house to repulse the whites who came up on the porch, or the whites could have begun shooting. The team discovered no absolute answer. (Team)

ANSWERS TO INTERROGATORIES 2

4. Coming from Alachua County were Sheriff Ramsey, Chief Deputy Dunning, and "several car loads of deputies and armed citizens...." See Jacksonville Times-Union, 1/5/23. Sheriff Walker was Levy County's chief law officer. His deputies included Clarence Williams and Marshal Cannon. W. H. Pillsbury, mill superintendent at the Cummer Cypress mill, was given much credit for helping control the situation. See Gainesville Daily Sun, 1/8/23. (Team)

5. For accounts of the second burning on Sunday see Jacksonville Times-Union, 1/8/23; Tampa Morning Tribune, 1/8/23; Gainesville Daily Sun, 1/8/23. Except for the murder of James Carrier on Saturday, the mob quieted and while probably not dispersing entirely, was less active. Some of its members reassembled on Sunday, and a crowd of spectators watched the second burning. It is not possible to determine when the mob left and where it went, but individuals or small groups went their separate ways. The participants who lived in Levy County went to their homes. (Team)

6. Neither the number of people in the mob who set the fire nor the number who watched it done is known. It is not known whether law enforcement officers were present. (Team)

ANSWERS TO INTERROGATORIES 3

7. In convening the grand jury to investigate, Governor Hardee said the state should use its resources "to apprehend and punish crime...." He added that in Levy and Alachua counties it was essential "that a thorough and rigid investigation of mob violence be made...." The team knows of no practical impediments to convening the grand jury at an earlier date. The grand jury's methods in 1923 were to assemble, be advised by a judge, and listen to witnesses as they testified upon examination by the special prosecuting attorney. On the basis of the evidence presented they were to decide whether to return a true bill. Modern scientific investigative technologies were undoubtedly far less advanced in 1923 than today. See Minutes Circuit Court, Book J, Levy County; see also Jacksonville Times-Union, 2/13, 14, 16/23; Tampa Morning Tribune, 2/13, 14/23; and Jacksonville Journal, 2/16/23. (Team)

8. Lester Dabbs,Jr., "A Report of the Circumstances and events of the Race Riot on November 2, 1920, in Ocoee, Florida, Unpublished Master's Thesis, Stetson University, July 1969; Crisis Magazine, 21 (January, 1921), 107; Papers of the NAACP. The Anti-Lynching Campaign, 1912-1955. Series A: Anti-Lynching Investigative Files, 1912-1953. Reel 9. Group 1, Series C, Administrative File Box C-353. Florida State University Library, Tallahassee. (Jones and Colburn)

ANSWERS TO INTERROGATORIES 4

9. Gainesville Daily Sun, December 4-13, 1922; Papers of the NAACP. The Anti-Lynching Campaign, 1912-1955. Series A: Anti-Lynching Investigative Files, 1912-1953. Reel 10. Group 1, Series C, Administrative File Box C-353. Florida State University Library, Tallahassee. Interview by Tom Dye with Ms. H. U. Baskins, October 10, 1993. Ms. Baskins is a black woman who lives in Perry and was alive when the trouble occurred. (Jones, Dye, and Colburn)

10. The anti-lynching bill of Representative L. C. Dyer of Missouri was a federal measure. Whether state officials Hardee and DeCottes or county officials Walker and Ramsey ever expressed themselves publicly or otherwise is unknown by the team. In general Southern politicians and officeholders opposed the bill. (Team)

11. As described by Minnie Lee Langley in her Interview, Appendices, 331, "It was a wide place, just like a depot down here. It was a wide platform and [had] an old house sitting there on top of it but that's where the office was." She added, "it was wide [and had] one room and it had a little house sitting on top of it. The First annual Report Of The Railroad Commission Of The State Of Florida, March 1, 1888, p. 92, refers to Rosewood as Station No 11. (Dye)

ANSWERS TO INTERROGATORIES 5

12. In 1923 Ed Goins owned 68 acres in Sec 30, 14S, 14E, Levy County which was in Rosewood. See Levy County Tax Rolls 1923, Levy County Courthouse. In 1923 the Goins no longer leased land for turpentine. (Dye)

13. The Goins Brothers turpentine operation in Rosewood was not active in 1923. (Dye)

14. Please see Interrogatory 11. In 1923 there was no public school, white or black, in Rosewood. Minnie Lee Langley, who was 9 in 1923, remembered attending a private black school. See Langley Interview, Appendices, 328. (Team)

15. Pages 20-23 are a summary or overview of Levy County history and the Sumner-Rosewood precinct leading up to the events of 1923. They are based on Mr. Dye's master's thesis (FSU, 1992). Footnote 21 is a listing of some of the sources he used writing the thesis. Mr. Dye, of course, used many more. Those listed in footnote 21 are indicative of the materials he consulted in his research. (Team)

16. The county commissioners' minutes are in excellent condition and are kept in the Levy County Courthouse at Bronson. Copies of the state and

federal manuscript censuses are on file at the Florida Department of Archives and History at Tallahassee, as are the Railroad Commissioner reports. Because of their bulk, it would have been almost impossible to have included such reports in the Appendices. Numerous secondary sources are available in university libraries and archives such as general histories of Florida. (Team)

17. The number of men in the posse is not known, nor is the number of posses known. Undoubtedly their composition and leadership changed from time to time over the week. It is clear that the posses, armed men (they were variously referred to as mobs) performed extra legal acts that resulted in the deaths of six blacks. Two whites were also killed during the week. It is made even clearer when one considers that none of the people who were killed had anything to do with the original Taylor incident. See for example the Parham interview, Appendices, 352-353. (Team)

18. McElveen was interviewed by 2 members of the Cedar Key Historical Society as part of a locally produced oral history project in either 1984 or 1985. It is not known if he was sworn. He is now dead, and no detailed information on his background or veracity was sought by the Team. (Team)

ANSWERS TO INTERROGATORIES 7

19. The record basis is the interview itself as related by Jason McElveen. He is saying that it was probable that if blacks left their quarters and the mill area at Sumner, they would be in harm's way of whites who might carry their roles as posse members or armed men to extremes. McElveen used the word farmers as a synonym for whites, particularly the outsiders. (Team)

20. The various newspapers, for the most part, had stories quite similar in their content because they were based on Associated Press news releases. The team, on seeing essentially the same presentations in various newspapers, accepted their consensus accounts. Our criteria ruled out such stories as the one that appeared in the New York New Amsterdam News, 2/10/23, which had the following headlined, "22 Killed In Florida Race War" and a lead-in headline that called the whites a "Mob of Savages...." Such stories were discounted when encountered by the team in either white or black newspapers. For example, the Miami Daily Metropolis was guilty 1/5/23 of writing the following headline: "MANY DIE IN FLORIDA RACE WAR" and declaring, "Deputized posses and citizens said to be numbering in the thousands were said to be pouring in...." Then, as now, it is impossible to attribute absolute degrees of accuracy to news accounts. (Team)

ANSWERS TO INTERROGATORIES 8

21. The members of the special grand jury that declined to find a true bill are not known. The grand jury's foreman was R. C. Philpett, a prominent Levy County farmer. Yet the team cannot say if any members of the coroner's six-man jury were a part of the special grand jury. Since the juries were made up of area residents it is possible that some were. (Team)

22. It is not known and there is no record basis of how many of the posse left the group or how many may have joined it as it was first assembled by Sheriff Walker and then began trailing Jesse Hunter. (Team)

23. Specifically, Henry Andrews and C. P. "Poly" Wilkerson, the two white men who were killed, had mill connections at Sumner. Also, the original posse was formed at Sumner and made up, probably in large part, by Sumner men. Ernest Parham, who was present, mentioned that the first posse included the company store's manager who went "with the group." See Appendices, 356. See also Sworn Statement of Lee Ruth Davis, p. 17. (Team)

24. It is impossible to say that no black was a posse member, but it would have been highly unusual for a white posse in pursuit of an alleged black assailant to have used blacks in their search. The idea was to reduce

the potential for more violence by keeping the blacks who lived in Sumner from leaving the town. See Tampa Morning Tribune, 1/6/23. See also Parham interview, Appendices, 352-353. On December 2, 1993, Dye and Rogers interviewed Fred Kirkland, a white man born in 1906, who was visiting in Sumner on the day of the Fannie Taylor assault and who witnessed the assembling of the armed men who began searching for her assailant who they believed was a black man. Kirkland said that he saw a powerful black man "locked" to two bloodhounds. Whether the black man was a member of the group searching for the accused man is not known. The team contends, however, that the general use of blacks as posse members did not occur. (Team)

25. See Sworn Statement of Minnie Lee Langley, p. 19. For a different version of what Aaron Carter was subjected to see Arnett T. Doctor interview, Appendices, p. 148. (Team)

26. See Minnie Lee Langley Sworn Statement, p. 23. There are other versions of what happened, but the team does not believe that this was done at the authorization of Sheriff Walker. The team did not include the following statement in its report because Ernest Parham did not reveal it in his interview. But testifying before a Special Master's hearing in Florida's Capitol in Tallahassee on Friday, 3/11/94, Parham noted that he

was an eye-witness to Carter's death and that Levy County Deputy Sheriff Clarence Williams was in the vicinity when Carter was killed and did nothing to prevent it. (Team)

27. See Lee Ruth Davis Sworn Statement, p. 23; Parham's Interview, Appendices, 352; and please see also answer to Interrogatories 1 and 26. The team does not believe that Sheriff Walker authorized the murder of Sam. It does believe that the posse got out of hand and became a lynch mob. (Team)

28. See Gary Moore writing in the Miami Herald's magazine section March 7, 1993. Moore is cited to show an interpretation of events by an acknowledged authority on the Rosewood incident. (Team)

29. Those two days appear from the team's research to have been inactive regarding mob violence. (Team)

30. The Bronson Levy Times Democrat, as quoted in the Gainesville Daily Sun, January 13, 1923. Particular credence was given to the Levy Times Democrat because it was published in Levy County and was more informed of conditions in the county than other papers. (Team)

ANSWERS TO INTERROGATORIES 11

31. Various newspapers reported the event, but see particularly Jacksonville Times-Union, 1/6/23. Since the report was filed Tom Dye interviewed James and Herbert Wilkerson of Gulf Hammock on February 22, 1994. The other Team members have not heard the tape. But see Tallahassee Democrat, 3/11/94, for an account by Herbert Wilkerson that was heard by the special Master's hearing at the capitol. (Team)

32. According to the McElveen tape, he was a part of the "bunch of [whites] who "gathered up and went up there to see them [the blacks at the Carrier house]. It is reasonable to suggest that other whites joined them during the several hours of firing. (Team)

33. See George De Cergueira Leite Zarur, "Seafood Gatherers in Mullet Springs: Economic Rationality and the Social System," Unpublished Ph.D. dissertation, University of Florida, 1975, p. 51. The author was making the point that certain citizens of Cedar Key declined to participate in the affairs at Rosewood, including the several searches by posses. (Team)

34. Yes, and please see the answer to Interrogatory 32. (Team)

ANSWERS TO INTERROGATORIES 12

35. For three estimates that the number of blacks in the house was in this range see Tampa Morning Tribune, 1/6/23; Gainesville Morning Sun, 1/6/23, and Jacksonville Times-Union, 1/5/23. (Team)

36. Tampa Morning Tribune, 1/6/23. There is no way to say if this was the same group. (Team)

37. The team found no evidence that Sheriff Walker or his deputies were present. Those there who were involved in the cordoning off included the "bunch of whites" mentioned by the McElveen tape and others who joined the shooting later. It is not known how much time elapsed after the gunfire. See Jacksonville Times-Union, 1/5/23; Tampa Morning Tribune, 1/6/23; Gainesville Daily Sun, 1/5/23; and Jacksonville Journal, 1/5/23. (Team)

38. Dye and Rogers made research trips to Levy County attempting to interview survivors or their descendants, and advertisements were published in the Chiefland Sentinel and the Levy County Journal. (Team)

39. The Jacksonville Times-Union, 1/5/23, reported that the news was received at Gainesville shortly after midnight, and that by 1 A.M. Friday morning Sheriff Ramsey and the others were preparing to leave for Levy

County. The firing had begun early in the evening, so from 4 to 5 hours had elapsed. (Team)

40. Jacksonville Times-Union, 1/5/23, mentions "several car loads," but does not mention the number of cars. The parties included the sheriff, chief deputy, deputies, and armed citizens, who presumably had been deputized for the emergency. (Team)

41. Jacksonville Times-Union, 1/8/23. (Team)

42. The versions of the Thursday night, January 4, incident are taken from newspaper sources and summarized on pp.42-43. The versions of some of the people in the Carrier house are provided on pp. 58-67. The team did not have any other versions and omitted none. Please see the answer to Interrogatory 31. The team sifted through many of the stories and legends that have been circulated since 1923 and discarded them. (Team)

43. See Tampa Morning Tribune, 1/6/23; Gainesville Daily Sun, 1/6/23; Parham interview, Appendices, 358. (Team)

ANSWERS TO INTERROGATORIES 14

44. The team does not contend on p.44 that the sheriff, his deputies, or his posse ransacked the Carrier house. That was done by the mob. See Jacksonville Times-Union, 1/6/23; St. Petersburg Evening Independent, 1/6/23; Gainesville Daily Sun, 1/5/23; Tampa Morning Tribune, 1/6/23. See also Elmer Johnson interview, Appendices, p. 308. (Team)

45. Based on the documentary evidence that the team found, Sylvester Carrier was killed the night of January 4-5, at the Carrier house. The team felt, however, that it was important to include the information that presently some members of the Carrier family believe that he escaped. (Team)

46. Mr. Hall owned a large store in the nineteen teens, but the team does not believe there was a black store in 1923, and on p. 45, in their report, they are summarizing the background of the Hall family. See interview with Wilson Hall, Appendices, 254-255. (Team)

47. It is easy to conceive how a small child was so frightened by events that she thought the white men were searching for any blacks they could find, Appendices, p. 346. While the team does not know the number of men in the legal and lawful posse, it believes that they were attempting to

protect the area blacks. Members of the mob had other motives, as witnessed by the killings and the burnings. (Team)

48. Yes, the armed men at Sumner had a peacekeeping mission. Yes, because after the first excitement, the white workers do not seem to have participated extensively in the violence. The team found no record basis for the role of Sheriff Walker in controlling events at Sumner, although he may have played one. He may have played a role at Bronson similar to that carried out by Pillsbury at Sumner. See Jacksonville Journal, 1/5/23; interview with Elmer Johnson, Appendices, 308-309; interview with Parham, Appendices, pp. 353-354. (Team)

49. The team believes that Pillsbury got black workers to remain at their jobs in order to protect them from possible mob violence. Nor did he want his white workers to be a part of mob action. Some of them had participated in the activities early on. As the Tampa Morning Tribune, 1/3/23, described events, "A mob estimated at between 500 men combed the woods last night [Tuesday] but returned to their work in the lumber mill [at Sumner] this morning." Later in the week the white workers appear to have remained in Sumner. (Team)

ANSWERS TO INTERROGATORIES 16

50. Tampa Morning Tribune, 1/6/23. The team believes that the blacks were turned back by Sheriff Walker in order to protect them. (Team)

51. Tampa Morning Tribune, 1/6/23. The guards were acting under the directions of Sheriff Walker. These orders seem to have been issued on Friday, 1/5/23, although the time of day is not known. It is not known if the blacks were armed. It seems unlikely that these blacks included those who had barricaded themselves in the Carrier household. The newspaper account is not completely clear about whether the blacks were being prevented from returning to Rosewood or to Sumner. If it was Rosewood, then the action was to protect them. If it was to Sumner, then the team has no answer as to the motivation. (Team)

52. For example, Miami Daily Metropolis, 1/5/23; New York New Amsterdam News, 2/10/23; Chicago Defender, 1/13/23. The team also found that some newspapers would run one partisan story but in the same issue print a story that could be used. By reading the various newspaper accounts, it became clear which papers were objective and which ones used extravagant language, inflated totals of those killed, and highly partisan versions. The team also used as an important part of its methodology their analytical skills acquired over many years of doing research in newspapers. (Team)

53. Jacksonville Times-Union, 1/5/23; Tampa Morning Tribune, 1/6/23; and Miami Daily Metropolis, 1/5/23; all describe the activities going on with the armed men, and for the record basis of drinking see Parham interview, Appendices, 356; even the Gainesville Daily Sun, an outright apologist for lynching as the proper punishment for the crime of rape, in its 1/8/23 issue, had the following comment on the shooting of James Carrier: "We are told that bootleg liquor was the bottom of that. What a shame! What a disgrace!"

The "macabre mission" is how the team interprets the way events turned out at Rosewood. There the search for an alleged fugitive grew out of the law officials' control, and various armed men roamed the area with little restraint. The situation became one that resulted in the deaths of innocent people and the destruction of their property. The record basis for this constitutes a large part of the team's report. (Team)

54. On Friday, 1/5/23, Sheriff Walker told the Associated Press that more trouble was imminent. He stated that the relatives of the blacks were believed to be armed and were expected to cause trouble. The Tampa Tribune stated that the sheriff said, "if overtaken by the whites" then trouble would probably occur. See issue of 1/6/23. The team believes that if armed whites and armed blacks had confronted each other, then

trouble very probably could have occurred. Fortunately, that did not happen. (Team)

55. A story date-lined 1/5/23 in the Tampa Morning Tribune, 1/6/23, noted, "A telegram was received at the governor's mansion late today from the sheriff of Levy county to the effect that the racial disturbances around Rosewood had quieted to the extent that local authorities had the situation under control." The story added that the governor went hunting for a few hours that afternoon. So the story and others put the time as late afternoon. (Team)

56. The Tampa Morning Tribune, 1/6/23 and Gainesville Daily Sun, 1/6/23, noted that Sheriff Ramsey and his deputies returned to Gainesville on Friday, 1/5/23. The papers did not mention what inquiry Ramsey and his men made or what methodology they used. They returned, the journals noted, "after it was believed local officers had [the] situation under fairly good control." (Team)

57. The number of men in the mob, or armed men, or Sheriff Walker's deputies and posses who remained in the Rosewood vicinity on Friday afternoon is unknown. None of the sources consulted by the team made an estimate. (Team)

58. Other than Governor Hardee's telegram Friday morning and Sheriff Walker's reply Friday afternoon, the team found no communication between the two men. This does not mean there was none, but the team did not discover any. Governor Hardee's papers and his official correspondence are extremely limited at the Florida Department of Archives and History, Tallahassee. (Team)

59. Governor Hardee may have received unofficial reports by telegraph and by newspaper accounts. Associated Press articles usually came by wire service. The team does not know if there was a direct connection by telephone to Cedar Key, but there may have been one to a larger area city. The team believes that it would have been difficult for the governor not to have known informally about trouble in Levy County any later than Tuesday. (Team)

60. Governor Hardee sent his telegram to Sheriff Walker on Friday morning, 1/5/23. That day the governor's office closely watched the press bulletins, but the governor gave no indication of what he might do based on unofficial reports. He was gone that afternoon "for a few hours in nearby fields at hunting." When he returned his Secretary, Professor L. B. Edwards, gave him the press version of events, and undoubtedly the articles were analyzed. Then the governor received the sheriff's

telegram. The team was unable to identify Edwards or what his rank was. See Tampa Morning Tribune, 1/6/23. See also Tallahassee Daily Democrats, 1/5/23; and Miami Daily Metropolis, 1/5/23. The team discovered no official press release issued by the governor. (Team)

61. National Guard units were at Live Oak, approximately 100 miles from Rosewood, and at Lake City, about the same distance. The team cannot be certain of the response time but would estimate seven to eight hours. (Team)

62. The team has no knowledge of a County Guard in either county. If such units existed, the governor's role in their activation is unknown. Other than a scrapbook and a few speeches, Governor Hardee's official papers are not on deposit at the Florida Department of Archives and History. (Team)

63. This account is from the Jacksonville Times Union, 1/8/23. Since the blacks were placed under arrest, that would have been done by officials of the law. The article cited "several" without naming a specific number. Those persons captured were not named. Based on the estimates of those captured, there were 18 people in the house. By subtracting Sarah Carrier and Sylvester Carrier, who were killed, and the "several"

captured, there could have been 15 or so people, although the number is not absolutely certain. Other estimates varied about how many people were in the Carrier house. (Team)

64. This is a quote from an interview with Mrs. Lillie Washington, Appendices, p. 380. She made no references to whether the whites were deputy sheriffs, sworn posses, or county guardsmen. (Team)

65. The team found no source that explained specifically the coordination efforts between W. H. Pillsbury and Sheriff Walker, although a possibility exists that there was. Please see Interrogatory 66. (Team)

66. According to the Gainesville Daily Sun, 1/8/23, Sheriff Walker returned to Bronson on 1/7/23, leaving Clarence Williams, a constable in Sumner in charge. The article mentioned that a dead line had been established in Sumner, and it also praised Pillsbury highly for establishing a curfew and keeping the blacks in their quarters and working. The three men--Walker, Williams, and Pillsbury--may have worked together. The team believes that the "dead line" at the Sumner mill was a legitimate peacekeeping effort. Pillsbury took precautions to protect his work force and the company property that he was responsible for. (Team)

ANSWERS TO INTERROGATORIES 22

67. The team included the Literary Digest photographs of Rosewood (which also appeared in other publications) because the magazine was reputable and nationally circulated, because the pictures were captioned Rosewood, and because there was no reason to question their authenticity and probably no way to test their authenticity. (Team)

68. The statement is taken from Gary Moore's "Synopsis of Research: The Destruction Of Rosewood, Florida," Appendices, p. 411. Turner made the statement to Moore in an interview. The team does not know if it was made under oath. The team was unable to obtain any of Mr. Moore's tapes. (Team)

69. The team accepts the list of 18 homes supplied by Moore, Appendices, 422. They also have tax records and deed records from the Levy County Courthouse The fact that no deed records were found for certain residents of Rosewood does not mean they did not own property because deeds were often recorded years after the purchases were made. The Levy County tax rolls for Levy County for 1923 contain many names listed in Rosewood, including George Bradley, Isaac Hall, Rance Edwards, Ed Goins, John Coleman, John McCoy, Emma and Hayward Carrier, Sam King, Hardee Davis, Mary Hall. (Team)

ANSWERS TO INTERROGATORIES 23

70. Page 23 was written in the context of a general statement describing the Rosewood area in 1920. The number 18 was a more precise figure, but it is difficult to state unequivocally that the figure is absolutely correct. (Team)

71. Moore in "Conclusions," Appendices, p. 423 mentions homes in Rosewood with organs, parlor upright pianos, and one with a grand piano. These were substantial possession in rural Florida for whites or blacks in 1923. Wilson Hall remembered that his family's house was two-storied, Appendices, p. 252; Mrs. Eva Jenkins, daughter of Agnes Goins and William James Marshall, spoke in an interview of "upholster furniture" that her family had, Appendices, 292; Mrs. Minnie Lee Langley, remembers, "We had a two-story building, front and back porch, glass windows upstairs and downstairs...." Appendices, p. 327; Parham, Appendices, p. 354, said in an interview, "The Rosewood people were very frugal people. They kept nice homes, their yards were nice and had gardens and they did not bother people." The above are examples, and there are more, that Rosewood did have some substantial dwellings. (Team)

72. The team accepts Minnie Lee Langley's statement that she and other children were upstairs under a mattress when Sarah Carrier was shot.

This remark appears in her Sworn Statement, p. 26. The team also accepts her slightly different version in Appendices, 333. (Team)

73. The team cannot say who saw the initiation of the shooting and has been unable to determine whether the blacks or the whites fired first. (Team)

74. The significance is that at least some of the whites left and that there was a lull in the firing. The team does not know, but believes, that many of the whites returned at daylight. See Langley's comment in her Sworn Statement, p. 27. (Team)

75. The team does not know with certainty that the whites withdrew completely, but the fighting ceased in order for the whites to resupply themselves with ammunition. There is no team disagreement on this point. (Team)

76. All of the testimony indicates that the blacks hiding in the swamps concealed themselves from whites, particularly those who were armed. It would have been difficult for them to differentiate between which whites were their protectors and those who meant them harm. (Team)

ANSWERS TO INTERROGATORIES 25

77. No, the team was informed of no such efforts and did not find any in its research. The team does not deny that this was done. See Appendices, 241, 259, 375-376, 392. (Team)

78. In her Sworn Statement, p. 33, Lee Ruth makes the above assertion, and the team has no reason not to accept it. (Team)

79. Men wearing uniforms would in all probability have been national guardsmen. The Report Of The Florida Adjutant General 1923, p. 10, states that the Florida National Guard was not activated for duty involving civil disturbances in 1923. There is general agreement that Governor Hardee, acting on the advice of Sheriff Walker, did not activate them. (Team)

80. The statement appears in Appendices, 389. Mrs. Washington did not live at Rosewood but at Lucans (or Lukins) some 6 miles away and just outside of Cedar Key. Mrs. Washington did not identify her protector by name or by what branch of service or law enforcement he represented. The team could not include every story or statement that it received. Its report was, of necessity, a selective process. Those are the reasons why no reference was made to Mrs. Washington's account of her protector. It should be added that Mrs. Washington's interview was a

good one and that she supplied the team with valuable information about the Rosewood area and its people. (Team)

81. What is meant is that first, the mob was made up of whites, some of them citizens of Levy County and therefore locals; the mob was also made up of a large number of outside whites (estimates vary but 150-200 is not extravagant). The report cites examples of where local whites helped protect black citizens. The statement that most whites sided with the mob would be better stated that many whites either sided with the mob or were passive and did little to restrain its members. The deaths and the destruction is evidence of that. Also, not enough whites who were witnesses to what happened came forward or testified before the grand jury to convince that body to issue any indictments. The team does believe, however, that its statement should be revised to read "Although many whites sided with the mob or remained passive, there were several examples of whites who aided the black residents." (Team)

82. The team does not have the information to answer this question. (Team)

83. The team agrees that there do not appear to have been bad or violent relations between the races in the Rosewood and surrounding area before or after the first week in January 1923. The area around what was

once Rosewood, like the rest of the South, returned to the Jim Crow world of segregation that existed. (Team)

84. The sentence is a matter of the team's interpretation of events. The team conclusion is that Governor Hardee would, as chief executive, naturally not desire a series of violent racial outbreaks. He also would not wish to have Florida's 1920s image as a rising progressive and prosperous state, one of economic opportunity, one that appealed to tourists, tarnished. Governor Hardee would have wanted Florida to enter the mainstream of America and not be burdened with the then stereotyped view of Southern states as racist strongholds. Northern criticism was to be avoided. Lawlessness was part of the governor's fear about continued racial unrest, and there may well have been other motivations. (Team)

85. The most important reason for the skepticism was Florida's past record of lynchings and how often no punishment followed. In 1920 there had been the incident at Ocoee in western Orange County where six blacks and two whites were killed by violence and the homes of blacks and other buildings were destroyed. Please see the answer to Interrogatory 8. More recently, only a month before the Rosewood incident, and during Governor Hardee's administration, in neighboring Perry (Taylor

County) three blacks had been lynched and there were burnings. See Gainesville Daily Sun, December 4-13, 1922. During Governor Hardee's administration there were 24 lynchings in Florida, Appendices, 113. Between 1915-1930, 66 Floridians, the overwhelming majority of them African-Americans, were lynched. See Appendices,109-113. The information in the Appendices regarding the number of lynchings came from Woody Beck at the University of Georgia who has been studying NAACP statistics on lynchings for five years. The above comments were reasons for the skepticism by blacks and some whites about any indictments resulting from the Rosewood incident, and there were none. (Team answer, but Colburn contributed the lynching statistics).

86. In 1923 few blacks served on grand juries in the South. See Gunnar Myrdal, An American Dilemma, p. 499 and Chapter 26.

87. The team does not have the data to answer this question. (Team)

88. The Oklahoma City Black Dispatch, 1/9/23, was critical of governor Hardee for not sending in the National Guard; Nation, 1/17/23, was critical of state and Levy County authorities for their insensitivity to the fate of the African-Americans; Norfolk [Virginia] Journal and Guide, 1/27,23, was critical of Sheriff Walker; the Utica [New York] Press,

condemned the entire state and its people, quoted in Literary Digest, 1/20/23. (Team)

89. The History Department at Florida State University and most graduate history departments in Florida and nationwide require for the master's degree a prescribed number of courses and hours, passing a reading knowledge examination of a foreign language, writing a thesis under the direction of a major professor and graduate committee, taking a written and sometimes an oral examination, and defending the thesis. The Ph.D. requirements are similar but require more hours, a rigorous oral and written examination, a reading knowledge of two foreign languages (sometimes two course in statistics can substitute for one of the languages), the writing of a dissertation (much larger and more comprehensive than a thesis) and defense of it, and direction by a major professor and a graduate committee. For oral examinations a representative of the graduate school (a person outside the department who has master's or doctoral status) sits in to assure that the examination is conducted in a scholarly and professional manner. The candidate for either the master's or the Ph.D. works closely with a major professor and several committee members. The thesis/dissertation is closely directed and read by the major professor. The candidate is frequently required to look at additional sources, and the

thesis/dissertation often undergo several revisions. The thesis/dissertation is closely scrutinized by the major professor as well as the committee members. (Team)

90. Advertisements were placed in the weekly Chiefland Citizen (September 16, 21, 30 and October 7, 1993). Colburn had announcements made in Levy and Alachua County African-American churches. The team also benefitted from media exposure about the Rosewood incident. Rivers coordinated the assembling in Tallahassee of members of the Carrier family and related families. In continuing its research the team plans to expand, if possible, the number of witnesses and printed sources.

FLORIDA HOUSE OF REPRESENTATIVES

IN THE MATTER FOR RELIEF OF:

Relief of ARNETT T. GOINS,
MINNIE L. LANGLEY, et al.,

Claimants,

v. HB 591

STATE OF FLORIDA,

Respondent.
_____/

RESPONDENT'S MEMORANDUM OF LAW
RE TOLLING THE STATUTE OF LIMITATIONS

State of Florida respectfully responds to argument in Claimants' February 24, 1994, Memorandum Re Tolling the Statute of Limitations. There exists absolutely no legal, equitable, or moral justification of record to toll the time bars prescribed by §11.065, Fla. Stat., §95.11, Fla. Stat., or otherwise.

The circumstances of Machules v. Department of Administration, 523 So.2d 1132 (Fla. 1988), are no way analogous to the facts at bar whereby Claimants have waited over a generation, 71 years, to air their grievances. The plaintiff in Machules did not wait ten years after the airing of his grievance on national television, did not form a family reunion group and advisory committee, and then attempt an appeal. The tolling allowed in Machules was but for a few days.

Further, Machules' ruling was premised on its observation that there was no prejudice to the employer against whom the grievance was directed. Here, the passage of 70 years has deprived the State of the ability to muster both witnesses and documents.

Here further, there is no proof or argument that Claimants have been misled. Here there is no proof or argument that Claimants have been lulled into non-action. Here there is no competent proof that Claimants have been "prevented from asserting [their] rights." At best, there appears to be some type of Rosewood family agreement that Claimants would not step forward.

Even the cursory psychological examination of six of Claimants by Dr. Tucker affords no record basis for this 70 year delay. Indeed, her examination and conclusions do not account for the Claimants' silence since their 60 Minutes broadcast over a decade ago.

Claimants' argument that "after the massacre they were witnesses to crimes which were never prosecuted by the State" is not born out by the record in this cause. The only Claimants who have even arguably testified they were "witnesses to crimes" were five and six year old children in the Carrier household on the night of January 5, 1923. They were upstairs hiding in the closet. No other Claimants' interviews and statements in the record evidence that any were witnesses to crimes. Claimants' broad-brushed,

unsubstantiated legal argument on this matter should not suffice as a record basis for this unprecedented waiver of time bars otherwise prescribed.

Because there is no record justification for waiving the time bars prescribed by Florida law and because of the harsh consequences to the State fisc and to the reputations of state and county officials and citizens, these time bars should be applied, if not from 1923, then at least from the 1983 television broadcast.

Respectfully submitted,

JAMES A. PETERS
Assistant Attorney General
Florida Bar No. 0230944

Counsel for the Respondent
PL-01 The Capitol
Tallahassee, FL 32399-1050
(904) 488-1573
(904) 488-4872 (Fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **STATE OF FLORIDA'S MEMORANDUM RE TOLLING THE STATUTE OF LIMITATIONS** has been faxed and mailed to Stephen Hanlon, Esquire, Post Office Drawer 810, Tallahassee, Florida 32302-0810 this 15 day of March, 1994.

JAMES A. PETERS

<jimp>Rosewood.ML

Received

Filed w/court

Docketed by

Copy to:
Risk

Agency-Legal

Client

S. Cohn 3/17/94
K. McSwain 3/17/94
P. Peterson 3/17/94

FLORIDA HOUSE OF REPRESENTATIVES

IN THE MATTER FOR RELIEF OF:

Relief of ARNETT T. GOINS,
MINNIE L. LANGLEY, et al.,

Claimants,

v. HB 591

STATE OF FLORIDA,

Respondent.
_____/

STATE OF FLORIDA'S REVISED
SUPPLEMENTAL WITNESS LIST

Respondent, State of Florida, here supplements its February 23, 1994, March 3, 1994, and March 9, 1994, Witness List with the following:

WITNESSES

11. Linden J. Lindsey Affidavit (Attached).

Respectfully submitted,

James N Peters

JAMES A. PETERS
Assistant Attorney General
Florida Bar No. 0230944

Counsel for the Respondent
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3/10/94
F

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **STATE OF FLORIDA'S REVISED SUPPLEMENTAL WITNESS LIST** has been faxed and mailed to Stephen Hanlon, Esquire, Post Office Drawer 810, Tallahassee, Florida 32302-0810 this 11 day of March, 1994.

James A. Peters

JAMES A. PETERS

<jimp>Rosewood.SuppExh3

AFFIDAVIT OF LINDEN J. LINDSEY

STATE OF FLORIDA)
)SS
COUNTY OF LEVY)

LINDEN J. LINDSEY, being duly sworn, states as follows:

1. My name is LINDEN J. LINDSEY. I am 67 years old. I am now retired after working for the Florida Department of Corrections for 18 years.

2. Sometime in approximately 1987-1988, as a hobby, I did some taped interviews of persons who said they knew of events in Levy County's history. I was a member of the Cedar Key Historical Society and gave those tapes to the Historical Society.

3. A man who identified himself as Jason McElveen called me and said he would give an interview about Lukins and Summer. I drove to his home in Dade City, Pasco County, Florida, and taped that interview. He also said he knew about Rosewood and told about some of it at the same time. This is the tape referred to as the "McElveen tape" from the Cedar Key Historical Society.

4. I did not know Mr. McElveen before I taped the interview and I did not do any follow-up or verification after the interview to determine if the story was accurate. I was told that he died several years ago.

5. I am providing this statement because James Peters, Florida Assistant Attorney General, called me and asked me about the tape. No one from the State Universities has ever called me about it.

FURTHER AFFIANT SAYETH NOT.

Lindon J. Lindsey
LINDON J. LINDSEY

Sworn to and subscribed before me this 10 day of March, 1994.

Donna Jones
(Signature of Notary Public, State of Florida)

Donna Jones
Print, type of stamp commissioned name of Notary Public.

Commission No. _____

My Commission Expires: 6/24/94

NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires June 24, 1994

Personally Known ✓ or
Produced Identification _____
(Check One)

Type of Identification Produced:

_____

<jimp>Rosewood.Aff3

CF

FLORIDA HOUSE OF REPRESENTATIVES

IN THE MATTER FOR RELIEF OF:

Relief of ARNETT T. GOINS,
MINNIE L. LANGLEY, et al.,

Claimants,

v. HB 591

STATE OF FLORIDA,

Respondent.
_____/

STATE OF FLORIDA'S REVISED SUPPLEMENTAL WITNESS AND EXHIBIT LIST

Respondent, State of Florida, here supplements its February 23, 1994, and March 3, 1994, Witness List with the following:

WITNESSES

9. Sworn video taped statement of James H. Wilkerson.

10. Sworn video taped statement of Herbert M. Wilkerson.

EXHIBITS

Respondent, State of Florida, supplements its February 23, 1994, and March 3, 1994, Exhibit List to include the following:

9. March 2, 1994, facsimile letter to Professor Maxine Jones, Professor Larry Rivers, Professor William Rogers.

3/9/94
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Respectfully submitted,

JAMES A. PETERS
Assistant Attorney General
Florida Bar No. 0230944

Counsel for the Respondent
PL-01 The Capitol
Tallahassee, FL 32399-1050
(904) 488-1573
(904) 488-4872 (Fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **STATE OF FLORIDA'S REVISED SUPPLEMENTAL WITNESS AND EXHIBIT LIST** has been faxed and mailed to Stephen Hanlon, Esquire, Post Office Drawer 810, Tallahassee, Florida 32302-0810 this 9 day of March, 1994.

JAMES A. PETERS

<jimp>Rosewood.SuppExh2

cF

FLORIDA HOUSE OF REPRESENTATIVES

IN THE MATTER FOR RELIEF OF:

Relief of ARNETT T. GOINS,
MINNIE L. LANGLEY, et al.,

Claimants,

v. HB 591

STATE OF FLORIDA,

Respondent.
_____/

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS TO THE DOCUMENTED HISTORY TEAM

Respondent, State of Florida, pursuant to House Rule 6.63(d), the ore tenus order of the Special Master on March 4, 1994, and Rule 1.350, Fla. R. Civ. P., hereby serves its interrogatories and request for production of documents on Associate Professor Maxine D. Jones, Professor Larry E. Rivers, Professor David R. Colburn, R. Tom Dye, and Professor William R. Rogers, the Documented History Team.

Written responses to these interrogatories and physical production of requested documents are respectfully requested within the time frame yet to be authorized by the Special Master.

INTRODUCTION

Each interrogatory is required to be answered based on the entire knowledge of the investigative team, from all sources and all information in its possession or otherwise available to you.

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If you cannot fully answer any interrogatory, answer it to the extent possible, explain why you cannot answer the remainder, and state the nature of the information you cannot furnish. If your answer is qualified, explain the terms and nature of each qualification.

If you object to any interrogatory or any part thereof, explain the grounds for your objection in detail. If an interrogatory is only partly objectionable, answer the portion of the question which is not objectionable.

After the answers to each interrogatory, identify the person giving the answer or providing the information needed to answer the interrogatory.

If any interrogatory calls for a description of a document or is derived in whole or in part from a document, describe such document with sufficient specificity so that it can be identified in the collection of materials which was used to document the "Documented History" and collection of materials otherwise used to support conclusions in the "Documented History." These materials shall be referenced as "the record of research" or "the record." Alternatively, you may attach a legible copy of the document to your answer.

DEFINITIONS

For the purposes of this discovery request, the terms "document" and "documents" mean all handwritten,

typed, printed, recorded, marked, or graphic mater, however produced or reproduced, pertaining in any manner to the subject matter indicated, now or formerly in your actual or constructive possession, custody, or control, and including, but not limited to, all originals, copies, and drafts of:

1. Correspondence, office memo, memo and logs of telephone conversations, and telegrams;

2. Minutes, circulars, reports, records, and drafts of the same.

INTERROGATORIES

The Interrogatories generally refer to passages from the "Documented History of the Incident Which Occurred at Rosewood, Florida" (as submitted to the Florida Board of Regents on December 22, 1993). Specific record basis support for your answers is sought in each question.

1. (Page 3) What is the record basis for the conclusion at page 3 that "a posse" apprehended and killed a black man named Sam Carter on January 1, 1923?

2. (Page 3) What is the record basis for the conclusion at page 3 that "white vigilantes attack the Carrier house" on January 4, 1923?

3. (Page 3) Did the team identify a conflict in versions of the accounts of the gun battle at the Carrier household with reference to who initiated the gun fire? See Report text at page 40 "According to newspaper descriptions, the blacks inside opened fire (those who were armed had shotguns mainly), and the two white men fell dead." If the team concluded there was no conflict in evidence, on what basis did it do so?

4. (Page 4) Concerning the conclusion at page 4 that "approximately 200-300 whites" began to converge on Rosewood, what number were Deputy Sheriffs from Levy County, Deputy Sheriffs from Alachua County, duly authorized peacekeeping posses from Levy County, and duly authorized peacekeeping posses from Alachua County? Specify the record basis for your answer.

5. (Page 4) With reference to "a mob of 100-150 whites return to Rosewood" on January 7, 1923, what is the record basis for this conclusion? From what areas did the "mob" "return?" When had the "mob" left the Rosewood area? Where did it go?

6. (Page 4) With reference to the event of January 7, 1923, what number of the "mob" set fire to the remaining structures in Rosewood? Please specify in your response the record basis for the conclusion that all, many, some, few, or individuals ignited the structures. Was law enforcement present at the burning?

7. (Page 4) With reference to the grand jury investigation which convened on February 11, 1923, what were the specific objects of the investigation? What, if any, practical impediments existed to convening the grand jury at an earlier date? What technologies existed in 1923 to enable the grand jury to muster information, evidence, and witnesses? What is the record basis?

8. (Page 16) What interviews, media clippings, and other matters evidence the nature, source, and circumstances of the 1920 violence in Ocoee, Florida?

9. (Page 16) What interviews, media clippings, and other matters evidence the nature, source, and circumstances of the 1920 violence in Perry, Florida?

10. (Page 19) What position did Governor Hardee, Levy County Sheriff Walker, Alachua County Sheriff Ramsey, and State Attorney DeCottes take with reference to the proposed anti-lynching bill?

11. (Page 21) Did a "railroad station" or a "small depot," or both exist in Rosewood in 1923?

12. (Page 22) In 1923, how many acres of land did the Goins Brothers Operation own? Lease?

13. (Page 22) Did the Goins Brothers "stores company" exist in Rosewood in 1923?

14. (Page 23) Did a "train station" and a "black school" exist in Rosewood in 1923?

15. (Page 23) What is the nature and extent of the research of Tom Dye referenced at footnote 21?

16. (Page 23) Where are the "minutes of the Levy County Board of Commissioners, state and federal manuscript census reports, Florida Railroad Commissioner reports,

Levy County deed record books, other primary sources, official and unofficial, and a large number of secondary sources" referenced at footnote 21? Why were they omitted from the Appendices?

17. (Page 27) What number of men were in the posse(s) formed at the direction of Levy County Sheriff Walker? How many posses were formed? Who was in charge of each? What materials evidence that the authorized posses under the direction of the Sheriff acted with "extra-legal objectives?"

18. (Page 28) Under what circumstances was the interview of Jason McElveen taken? Was the witness under oath? What background and character inquiries were made by the team to ascertain his veracity?

19. (Page 29) What is the record basis to equate "the farmers" with the "white posse members?"

20. (Page 29) What efforts did the team make to attribute absolute or relative degrees of accuracy to the news account reported in, inter alia, Jacksonville Times-Union, Gainesville Daily Sun, Tampa Morning Tribune, St. Petersburg Times, Tallahassee Democrat, AP? What criteria were used.

21. (Page 30) What was the composition of the grand jury that declined to find a true bill against Sam Carter? Was it the same grand jury that convened on February 11, 1923 and found insufficient evidence to prosecute based on the Rosewood violence?

22. (Page 31) Is there a record basis for the conclusion that the posse authorized by Sheriff Walker was the same group that lynched Mr. Carter?

23. (Page 32) What is the record basis for the conclusion that "many posse members were outsiders, a number of them were whites who worked at the sawmill?"

24. (Page 32) What is the record basis for the conclusion that absence of blacks from the posse "was deliberate?"

25. (Page 35) What is the record basis for the conclusion that "the posse" dragged Aaron Carrier from his bed to hang him?

26. (Page 36) What is the record basis that "a posse" confronted Sylvester Carrier and ordered him out of town? Is this group activity at the instruction or authorization of the Levy Sheriff?

27. (Page 37) What is the record basis that "a posse" took Mr. Carter in a wagon and hanged and shot him? Is this group activity at the instruction or authorization of the Levy Sheriff?

28. (Page 37) What is the record basis for the conclusion that the men who captured Carter overpowered Sheriff Walker and took his weapon?

29. (Page 38) Does record evidence exist of violence, individual or mass, on Tuesday, January 2, 1923 and Wednesday, January 3, 1923? If so, what is it?

30. (Page 38) What record evidence exists for the conclusion that "no one believed that Jesse Hunter was among" the group of blacks that had "taken refuge in Rosewood?"

31. (Page 38) What record evidence exists to ascertain the motivations of the "'party of citizens' who went to Rosewood," who were "particularly interested in locating Sylvester Carrier," and who "planned to warn Carrier against further incendiary talk and to discover what he or the others knew about Hunter?" Do team members have other insights into this group not disclosed in the December 22, 1993 Documented History? If so, what?

32. (Page 39) Is the "bunch of white people" referenced in the McElveen tape interview the same group as the "party of citizens" who "planned to warn Carrier against further incendiary talk?" What is the record basis?

33. (Page 39) Is the "manhunt" in which some white people declined to participate the same group as the "party of citizens" who "planned to warn Carrier against further incendiary talk?" What is the record basis?

34. (Page 39) Is the "posse" who found a group of African Americans the "party of citizens" that "planned to warn Carrier against further incendiary talk?" Is that "posse" the same as the "bunch of white people" with whom some people declined to participate? What is the record basis?

35. (Page 39) What is the record basis of information that "between fifteen and twenty-five" African Americans were barricaded in Sarah Carrier's house?

36. (Page 40) What is the record basis that the "white posse" initially had six men? Is this the same group as the "party of citizens" referenced at page 38?

37. (Page 40) Which group of whites "rapidly cordoned off the house and surrounded the building?" How much time lapsed after the gunfire? Was this the "party of citizens," Sheriff Walker's Deputies, Sheriff Walker's posse, or the "bunch of whites that gathered up and went up there to see them?" What is the record basis?

38. (Page 40) Did the team attempt to interview survivors or families of survivors of persons identified as wounded at page 40? What efforts were made to locate them? What were the results of those efforts?

39. (Page 41) At what time was the Gainesville Sun contacted and asked to forward a request for assistance to Alachua County Sheriff Ramsey? How many hours after the initial exchange of gunfire at the Carrier household had lapsed?

40. (Page 41) How many "car loads of deputies and armed citizens" left Alachua County under the direction and control of Alachua County Sheriff Ramsey? Were these "armed citizens" members of a duly authorized peacekeeping posse? What is the record basis?

41. (Page 42) What is the record basis for the accounting of the "attacker" who climbed through a darkened window and allegedly directed that "crouching blacks" be fired upon?

42. (Page 43) Are there other versions of the incident at the Carrier household which have been related to members of the team and which are omitted from the summary of events at pages 42-43? If so, who are the team members with this information and what are those versions and why were they omitted?

43. (Page 44) What is the record basis for the conclusion that the body of Sylvester Carrier was discovered in the house?

44. (Page 44) What is the record basis for the conclusion that Sheriff Walker, his Deputies, or his posse, or Alachua Sheriff Ramsey, his Deputies, or his posse ransacked the Carrier household?

45. (Page 44) Why did the team discount claimants' testimony that Sylvester Carrier was <u>not</u> killed in the Carrier household?

46. (Page 45) Was Mr. Hall "the village's only black store owner" in 1923?

47. (Page 45) Does the team agree with Ruth Bradley's belief that "the white men were searching for any

blacks they could find?" Does not the record evidence indicate that a substantial number of Deputy Sheriffs and/or lawfully deputized posses, with benign peacekeeping intentions, were in the area to protect black residents? What is the record basis?

48. (Page 46) Was the "group of armed men" that surrounded the black district on a peacekeeping mission? Did it reasonably accomplished this task? What was the role of the Levy Sheriff? What is the record basis?

49. (Page 46) If W.H. Pillsbury "got the whites to keep order in Sumner," why would he dissuade his workers from joining lawful peacekeeping efforts of posses? Did the team identify a contradiction in these alleged motivations? How did the team resolve it?

50. (Page 46) To what motive does the team ascribe the allegation that the Levy Sheriff "turned back" blacks who attempted to leave town? Was this action taken to keep them in a relatively secured area and away from wooded and isolated parts of the County where they could not be protected? What is the record basis?

51. (Page 46) What is the record basis for the conclusion that "guards were stationed around the village to keep blacks who had fled into the woods from returning?" On whose directions were they acting? At what time were those directions given? Were those blacks armed? Is this part of the group of "fifteen to twenty-five" that had barricaded themselves in Sarah Carrier's household? Were the motivations of the guard to maintain peace or to isolate this group of blacks from protection? What is the record basis?

52. (Page 47) To which newspapers did the team conclude the reporters "took large liberties?" What methodology did the team use in isolating accurate objective accounts from sensationalized accounts?

53. (Page 48) Does the team identify as the same group "the white mob, many of whom had been drinking and were indiscriminately seeking black victims" with "the posse" which "fluctuated between two hundred and three hundred men?" What is the record basis? What is the "macabre mission" which the team attributes to the "posse?" What is the record basis?

54. (Page 48) Does the team agree with the conclusion that "relatives of the slain blacks were believed to be armed and were expected to cause trouble?" On what date and in what context did Sheriff Walker tell AP "that more trouble was imminent?" What is the record basis?

55. (Page 48) At what time of day did Sheriff Walker advise Governor Hardee that the situation was in hand?

56. (Page 48) At what time did Sheriff Ramsey and his Deputies return to Gainesville? What inquiry did they make before assessing matters were "under 'fairly good control?'" What methodology did they use? What is the record basis?

57. (Page 48) What number of the "white mob" remained in the Rosewood vicinity on Friday afternoon? What number of Sheriff Walker's Deputies and posses remained in the Rosewood vicinity that afternoon? What is the record basis?

58. (Page 48) What evidence exists of communications, or lack thereof, between Governor Hardee and Sheriff Walker other than the Friday morning telegram to the Sheriff?

59. (Page 49) What "unofficial reports" did Governor Hardee have in Tallahassee on Thursday, January 4, 1923? On Friday, January 5, 1923? How were newspaper articles dispatched to Tallahassee in 1923? What delays in delivery of newspapers existed at that time?

60. (Page 49) How long and at what distance did Governor Hardee leave his office on Friday afternoon, January 5, 1923? What were the professional credentials and what rank in the Governor's office did "secretary Professor L.B. Edwards" have? What analysis of the Rosewood situation, other than the dispatch from the Levy Sheriff, were made by the Office of the Governor and his staff? What did the press releases from the Governor concerning the Rosewood incident say? When and how were they distributed?

61. (Page 49) What would have been the response time for dispatch of the Florida National Guard?

62. (Page 49) Did Alachua or Levy County activate its County Guard? What, if any, was the role of the Governor in that activation? What is the record basis?

63. (Page 51) Who "spirited away for safekeeping" several of the blacks who were in the Carrier household? When was this done? At whose instructions? Who were the "captured men" who "allegedly reported that there had been eighteen people in the house?" What number of them were spirited away for safekeeping? What number escaped to the swamps? What number were killed?

64. (Page 53) What number of the "white people in their trucks with their guns sticking up on the trucks and cars" were lawful Deputy Sheriffs or lawfully sworn posses or County Guard whose missions were to keep the peace? What is the record basis?

65. (Page 53) What coordination existed between the efforts of Levy County Sheriff Walker and mill superintendent W.H. Pillsbury? What is the record basis?

66. (Page 53) Who established the "dead line" between the black and white sections at the Sumner lumber mill? Does the team ascribe to this activity a legitimate peacekeeping effort? If not, why not? What is the record basis?

67. (Page 55) What efforts were made to authenticate claims that the pictures in the Literary Digest were authentic?

68. (Page 57) Does the team and official record include the transcript of the statement attributed to James Turner? Under what circumstances was that statement made? Was it under oath? Does the team have the tape?

69. (Page 58) What record evidence exists of proof of ownership of the eighteen homes destroyed?

70. (Page 58) How does the team reconcile that number (18) with the number of homes described at page 23 of the Report? ("There were several unpainted plank wood two-story homes and perhaps a dozen two-room homes that often included a lean-to or a half-roofed room. There were also a number of small one-room shanties, some of them unoccupied.")

71. (Page 58) What record evidence indicates that "the homes were substantial dwellings and well furnished for the time and place?" What does that mean?

72. (Page 59) Is it the team's consensus that "Minnie and Lee and the children were upstairs under a mattress" when Sarah Carrier was shot? If not, why not? What is the record basis?

73. (Page 59) Who saw the initiation of the shooting? What is the record basis?

74. (Page 60) What significance, if any, does the team attribute to Minnie Lee's assertion that "one of the men say let's us go, they done kill almost all us. And I heard the car crank, the truck they had, they crank it up, and they left?" Did the final group to go to the Carrier household leave? What is the record basis?

75. (Page 60) Is there team agreement that the "whites withdrew?"

76. (Page 60) Did the persons who hid in the swamps conceal themselves from Deputies and lawful posses who were in the vicinity to protect them?

77. (Page 60) Was the team apprised of any efforts by whites in the vicinity to return the personal property of the Rosewood residents? If so, why was this evidence not disclosed in the team report?

78. (Page 64) Does the team accept Lee Ruth's statement that "Sheriff Walker had notified Wright to have the blacks meet at his house?" If not, why not?

79. (Page 64) Why does the team discount as a "puzzling story" Lee Ruth's "deposition" that she was protected by men wearing uniforms?

80. (Page 64) Why did the team make no reference to Mrs. Washington's similar assertion that a "federal protector" sat with her family?

81. (Page 66) What is the record basis for the conclusion that "most whites sided with the mob?"

82. (Page 80) What number of "blacks continued to work at the Cummer saw mill in Sumner" in 1923? Where did they reside? What number of them were former Rosewood residents?

83. (Page 80) Does the team agree or disagree with the assertion by Oliver Miller that "relations between his fellow whites and blacks were good before and after the Rosewood incident?" "That there were few if any repercussions in Otter Creek or Cedar Key?" What is the record basis?

84. (Page 84) What is the record basis for the conclusion that "fear about continued racial unrest and northern criticism led Governor Cary Hardee to order a special grand jury and a special prosecuting attorney to investigate conditions there and in Levy County?" Might there have been other motivations, including particularly his concern that lawlessness had occurred and should be rectified?

85. (Page 85) What is the record basis for the team's observation that "blacks and some whites...remained skeptical" of Governor Hardee's conclusions and efforts and of his declaration the Rosewood violence had brought disgrace upon Levy County and the entire State.

86. (Page 86) What is the record basis for the team's conclusion that "it is probable" that there were no blacks on the grand jury?

87. (Page 86) What is the record evidence of the name and number of blacks who returned from Gainesville with State Attorney DeCottes to testify at the grand jury? Did claimants' participate? Decline to participate?

88. (Page 86) Did any news articles or editorials criticize the Governor or the Levy Sheriff for failing to attempt to muster protection for Rosewood residents? Which ones? What is the record basis?

89. What formalized standards do the universities in Florida use to evaluate dissertations and thesises submitted for advanced degrees? What verification of proof is required by such standards? What other standards exist in other states?

90. How did you solicit witness participation in your interview process? What newspapers were used? What dates?

REQUEST FOR PRODUCTION

State of Florida requests physical production and opportunity to review and copy, at least twenty-four hours before presentation of sworn testimony of team members, the complete and official documentation of the materials used in preparation of the "Documented History of the Incident Which Occurred at Rosewood, Florida," including all newspaper articles, all state and county records, all interviews, all tapes, all pictures, and any other matters referenced in the

responses to the foregoing interrogatories, and other materials used in preparing responses.

The team, and including members thereof, are requested to produce, for at least in camera inspection by the Special Master, all other materials in the possession of the team or individual members thereof, related to inquiry of the Rosewood, Florida incident whether or not included in the team report, if work product privilege is claimed.

Respectfully submitted,

JAMES A. PETERS
Assistant Attorney General
Florida Bar No. 0230944

Counsel for the Respondent
PL-01 The Capitol
Tallahassee, FL 32399-1050
(904) 488-1573
(904) 488-4872 (Fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS TO THE DOCUMENTED HISTORY TEAM** has been ~~faxed~~ handed to Stephen Hanlon, Esquire, Post Office Drawer 810, Tallahassee, Florida 32302-0810 and faxed **MAXINE D. JONES** for distribution to team members this 7 day of March, 1994.

JAMES A. PETERS

<jimp>Rosewood.Int

STATE OF FLORIDA)
)SS
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared MAXINE D. JONES, who, being first duly sworn, deposes and states that she has read the foregoing answers to interrogatories executed by her and the facts contained therein are true and correct to the best of her knowledge and belief.

Sworn to and subscribed before me this _____ day of _____, 1994.

_____
Signature of Notary Public, State of Florida

_____
Print, type or stamp commissioned name of Notary Public

Commission No. _____

My Commission Expires: _____

Personally Known _____ or Produced Identification _____ (Check One)

Type of Identification Produced: _____

STATE OF FLORIDA)
)SS
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared LARRY E. RIVERS, who, being first duly sworn, deposes and states that he has read the foregoing answers to interrogatories executed by him and the facts contained therein are true and correct to the best of his knowledge and belief.

Sworn to and subscribed before me this ____ day of _____, 1994.

_____
Signature of Notary Public, State of Florida

_____
Print, type or stamp commissioned name of Notary Public

Commission No. _____

My Commission Expires: _____

Personally Known _____ or Produced Identification _____ (Check One)

Type of Identification Produced: _____

STATE OF FLORIDA)
)SS
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared DAVID R. COLBURN, who, being first duly sworn, deposes and states that he has read the foregoing answers to interrogatories executed by him and the facts contained therein are true and correct to the best of his knowledge and belief.

Sworn to and subscribed before me this ____ day of _____, 1994.

_____
Signature of Notary Public, State of Florida

_____
Print, type or stamp commissioned name of Notary Public

Commission No. _____

My Commission Expires: _____

Personally Known _____ or Produced Identification _____ (Check One)

Type of Identification Produced: _____

STATE OF FLORIDA)
)SS
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared R. TOM DYE, who, being first duly sworn, deposes and states that he has read the foregoing answers to interrogatories executed by him and the facts contained therein are true and correct to the best of his knowledge and belief.

Sworn to and subscribed before me this ____ day of _____, 1994.

_____
Signature of Notary Public, State of Florida

_____
Print, type or stamp commissioned name of Notary Public

Commission No. _____

My Commission Expires: _____

Personally Known _____ or Produced Identification _____ (Check One)

Type of Identification Produced: _____

STATE OF FLORIDA)
)SS
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared WILLIAM R. ROGERS, who, being first duly sworn, deposes and states that he has read the foregoing answers to interrogatories executed by him and the facts contained therein are true and correct to the best of his knowledge and belief.

Sworn to and subscribed before me this _____ day of _____, 1994.

_____
Signature of Notary Public, State of Florida

_____
Print, type or stamp commissioned name of Notary Public

Commission No. _____

My Commission Expires: _____

Personally Known _____ or Produced Identification _____ (Check One)

Type of Identification Produced: _____

FLORIDA HOUSE OF REPRESENTATIVES

IN THE MATTER FOR RELIEF OF:

Relief of ARNETT T. GOINS,
MINNIE L. LANGLEY, et al.,

Claimants,

v. HB 591

STATE OF FLORIDA,

Respondent.
_____/

STATE OF FLORIDA'S DESIGNATION OF STATEMENTS AND INTERVIEWS FOR HEARING RECORD

State of Florida respectfully designates the following statements and interviews of claimants for inclusion in the record of the hearing. The Statements of Lee Ruth Davis and Minnie Lee Langley were taken under oath by claimants' counsel. The Interview of Lilly Washington was taken by a member of the University's team. Items #2 and #3 are otherwise admissible pursuant to §90.803 18(a) and (b), Fla. Stat. as admissions. Copies of the designated portions are enclosed.

1. Sworn statement of Lee Ruth Davis, page 1, 2, 22, 33, 36, 48, 69, 70, (Exhibit A).

2. Sworn statement of Minnie Lee Langley, page 1, 2, 47, 48, (Exhibit B).

3. Interview of Lilly Washington by Larry E. Rivers page 388, 389, 390 (Exhibit C)

3/7/94

4. Interview of Arnett T. Doctor by William W. Rogers, Maxine Jones, and Larry E. Rivers, page 188 (Exhibit D).

Respectfully submitted,

JAMES A. PETERS
Assistant Attorney General
Florida Bar No. 0230944

Counsel for the Respondent
PL-01 The Capitol
Tallahassee, FL 32399-1050
(904) 488-1573
(904) 488-4872 (Fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **STATE OF FLORIDA'S DESIGNATION OF STATEMENTS AND INTERVIEWS FOR HEARING RECORD** have been forwarded to Stephen Hanlon, Esquire, and Martha Barnett, Esquire, Post Office Drawer 810, Tallahassee, Florida 32302-0810 this 7 day of March, 1994.

JAMES A. PETERS

<jimp>Rosewood.des

S W O R N S T A T E M E N T

IN RE: LEE RUTH DAVIS

_____/

2238 NORTHWEST 59TH STREET
MIAMI, FLORIDA
MONDAY/2:35 P.M.
MAY 4, 1992

S W O R N S T A T E M E N T

OF

LEE RUTH DAVIS

- - -

APPEARANCES:

LAW OFFICES OF HOLLAND & KNIGHT
BY: STEPHEN F. HANLON, ESQUIRE
AND LORA J. SMELTZLY, ESQUIRE
400 NORTH ASHLEY
P.O. BOX 1288
TAMPA, FLORIDA 33601

ALSO PRESENT: ARMANDO GARCIA
MICHAEL O'MCCARTHY
JANIE BLACK

I N D E X

WITNESS	DIRECT
LEE RUTH DAVIS (BY MR. HANLON)	3

SO THEY TRACKED THE WAGON ALL THE WAY DOWN TO THE HAMMOCK.

Q. ALL THE WAY?

A. "GULF HAMMOCK."

Q. WHAT DO YOU CALL THAT?

A. "HAMMOCK." WHERE YOU DO THAT AND DO EVERYTHING ELSE. YOU KNOW, PEOPLE GO DOWN THERE TO HUNT, GULF HAMMOCK.

Q. GULF HAMMOCK?

MR. MCCATHY: H-A-M-M-O-C-K.

THE WITNESS: THEY GO HUNTING DOWN THERE. NOW, THEY GO HUNTING DOWN THERE EVERY YEAR. WHEN THEY GOT DOWN TO THE HAMMOCK THEY GOT TO THE STREET WHERE THE RIVER WATER IS. THAT IS WHY THEY COULDN'T GO NO FURTHER.

SO THEY KNOW THAT HE MUST HAVE GOTTEN INTO WATER AND WENT ON A BOAT OR WHATEVER.

THEN THEY BROUGHT THE TRAILER OUT OF HAMMOCK. ALL THE WAY THEY WALK TO SAM CARTER, AND SAM CARTER WAS SITTING THERE EATING LUNCH.

MY DADDY TOLD ME, AND THEY DIDN'T DO ANYTHING BUT TOOK SAM CARTER FROM HIS TABLE AND BROUGHT HIM. THEY COULD HAVE LAID TIMBER UP THERE. THAT WAS A MILL OUT OF ROSEWOOD. THAT WAS BETWEEN SUMNER AND ROSEWOOD.

١٤١٢ - ٩٤٥

Q. HOW WAS IT THAT EVERYBODY KNEW TO GO TO MR. AND MRS. WRIGHT'S HOUSE?

A. BECAUSE BOB WALKER -- I DON'T KNOW -- THE GOVERNMENT OF BOB WALKER. BUT HE HAD NOTIFIED MR. WRIGHT TO GET EVERYBODY WITH EVERYBODY, WOMENS AND CHILDRENS, AND HAVE THEM MEET AND GET AT HIS HOUSE. THE GOVERNMENT WAS GOING TO PUT A TRAIN IN THERE THE NEXT MORNING TO TAKE US OUT.

Q. WHO WAS BOB WALKER?

A. THAT IS THE HIGH SHERIFF IN BRONSON. I KNOW YOU CAN GO TO THE COURTHOUSE. YOU WILL FIND HIS NAME THERE.

Q. WHICH COURTHOUSE?

A. THE ONE IN BRONSON FLORIDA. THAT WAS IT.

THAT MORNING WHEN THE TRAIN CAME AROUND THAT MORNING AROUND 4 O'CLOCK MR. WRIGHT'S HOUSE WAS ABOUT A MILE FROM THE STATION. HE HAD A BOARDWALK FROM THE HOUSE TO THE STATION.

THERE WERE SOLDIERS, MARINES. I KNOW THEY WERE MARINES BECAUSE THEY HAD ON GREEN. THEY WERE STANDING ON THIS SIDE OF THE BOARDWALK FOR THAT MILE TO THE TRACKS SHOULDER TO SHOULDER WITH RIFLES THERE.

Q. SO THAT THE WOMEN AND CHILDREN CAN GET THROUGH TO THE TRAIN?

WHITE. THEY TOOK ABOUT SEVEN OF US. YOU ARE GOING TO SURVIVE WITH US WITH THE CHILDREN UNTIL THEY CAN FIND THE PARENTS OF THE CHILDREN.

AND THE TOWN PEOPLE GIVE THEM SOMEWHERE, TOO, BECAUSE GAINESVILLE REALLY LOOKED OUT FOR US.

THE GOVERNMENT HAD EVERYTHING FOR US.

SO WE STAYED IN GAINESVILLE, I GUESS, FOR THREE WEEKS.

MY AUNT FOUND WHERE MY FATHER'S SISTER WAS IN OAKS, FLORIDA. THEN THEY TOOK US AND TOOK US TO OAKS, FLORIDA, TO MY FATHER'S SISTER.

THERE IS WHERE WE STAYED IN OAKS, FLORIDA, UNTIL WE FIND PAPA, WHERE PAPA WAS.

Q. HOW DID YOU FIND HIM?

A. SOMEBODY FIND HIM. I DON'T KNOW HOW THEY DID IT, BUT THEY FOUND HIM.

Q. DID THEY COME TO OAKS?

A. YES. YES. HE CAME AND GOT US. HE CAME AND GOT US AND TOOK US BACK TO PLATKA, FLORIDA, P-L-A-T-K-A.

Q. DID YOU GROW UP THEN IN PLATKA?

A. YES. WE, YOU KNOW, QUITE A WHILE, UNTIL WE GOT IN THE TEENS.

Q. THEN WHERE DID YOU MOVE TO?

A. THEN WE WENT TO MIAMI, SOUTH MIAMI.

WERE WOUNDED; IS THAT RIGHT?

A. NO. THE ONLY BLACK PEOPLE THAT WERE KILLED WERE RUNNING THROUGH THE WOODS AND GETTING CUT. THEN THERE WAS NOBODY SHOT. THERE WAS NO BLACK PEOPLE.

Q. WHY WERE THEY THROWING PEOPLE ON THE TRUCK? I MISSED THAT.

A. THERE WAS THE PAPA AND SYLVESTER SHOOT IT OUT WITH THEM. THEY DIDN'T KNOW THAT THE SHOT WAS COMING FROM. THEY THOUGHT IT WAS IN THE HOUSE, AND PAPA THOUGHT IT WAS OUTSIDE.

THAT IS HOW POLY GOT KILLED. HE WAS THE FIRST ONE THAT GOT KILLED.

Q. POLY WHO?

A. POLY THE SHERIFF. HE WAS THE FIRST ONE WHO GOT KILLED. HE KNOCKED ON THE DOOR AND KNOCKED ON THE DOOR, AND AUNT SARAH SHOT HIM, AND HE SHOT HER. SHE SHOT HIM, AND HE SHOT HER. SHE RAN INTO THE TRUCK AND RAN BECAUSE A LOT OF THEM HAD RUN.

WHEN THEY COME BACK THAT DAY -- SEE, EVERYTHING WAS SET, YOU KNOW. THAT PLACE YOU THOUGHT IT WAS A FALL. YOU COULD NOT SEE FROM THE SMOKE. THERE WAS GUN POWDER EVERYWHERE.

THE CHURCH WAS THERE BEFORE THEY BURNT IT DOWN THAT NIGHT.

A. POLY?
Q. YES.
A. I WON'T KNOW.
Q. HENRY ANDREWS. DOES THAT NAME RING A BELL?
A. HENRY?
Q. YES.
A. NO, THAT DOESN'T RING A BELL.
Q. A SOMETHING-SUPERINTENDENT?
A. THAT WAS SOMETHING AROUND THE MILL UP THERE.
Q. AND SYLVESTER CARRIER. YES, SYLVESTER.
Q. BERTHA CARRIER, MOTHER OF SYLVESTER CARRIER?
A. SARAH CARRIER.
Q. THAT IS REALLY SARAH?
A. YES, THAT IS SARAH CARRIER.
Q. WILLIAMS, A NEGRO AGE 48, SOMEBODY WILLIAMS. MILLER. I CAN'T READ IT.

MR. MCCARTHY: DO YOU WANT ME TO TRY?

MR. HANLON: SEE IF YOU CAN PICK UP THAT WILLIAMS' NAME. S-I-N-I-K-O-G?

MR. MCCARTHY: AN UNIDENTIFIED NEGRO WOMAN. THERE WAS A NEGRO WILLIAMS, AGE 48. HUDSON AND STUDSTILL GOT SHOT IN THE ARM. ODUM GOT SHOT

THROUGH THE NECK.

HE CLAIMS THAT SYLVESTER WAS KILLED.

MR. HANLON: I APPRECIATE IT.

THANK YOU.

THE WITNESS: ODUM? I DON'T KNOW.

MR. HANLON: LET'S GO OFF THE RECORD FOR A MINUTE.

[DISCUSSION OFF THE RECORD.]

MR. HANLON: BACK ON THE RECORD.

BY MR. HANLON:

Q. HOW OLD ARE YOU NOW?

A. 76.

Q. 76?

A. 77 NOW.

Q. HOW IS YOUR HEALTH?

A. GOOD. EVERYBODY, I DON'T KNOW HOW I AM DOING OF WHAT YOU ARE DOING.

Q. WHAT ARE YOU DOING SUNDAY?

A. CHURCH ALL DAY SUNDAY.

Q. TELL ME HOW SUNDAY MORNING GOES.

A. SUNDAYS, I GUESS, I AM UP MAYBE AROUND 5 O'CLOCK AND GET MYSELF BREAKFAST. I GET TO CHURCH AROUND 7:00, A QUARTER TO 7:00, AND I GET BACK HOME ABOUT 3 O'CLOCK.

MOST OF THE TIME I GET A BREAKFAST, AND

SWORN STATEMENT

OF

MINNIE LEE LANGLEY

4:25 o'clock p.m. June 2, 1992

EXHIBIT

B

The sworn statement of MINNIE LEE LANGLEY was made to Stephen F. Hanlon, Esquire, before Tina S. Radloff, a Notary Public in and for the State of Florida at Large; commencing at approximately 4:25 o'clock p.m., on June 2, 1992, at 1998 West 30th Street, Jacksonville, Florida.

A P P E A R A N C E S

STEPHEN F. HANLON, ESQUIRE
HOLLAND & KNIGHT
P.O. DRAWER 810
Tallahassee, Florida

LORA SMELTZLY, ATTORNEY AT LAW
HOLLAND & KNIGHT
P.O. BOX 1288
Tampa, Florida 33601

ALSO PRESENT:
Michael O' McCarthy
Dorothy Smith
Betty S. Carley

A (Witness nods head affirmatively.)
Q Yeah?
A They build this house, we was waiting till they get through with it.
Q I'm sorry, they were waiting until what?
A They build this house; we were waiting till they get through with it so we could move in '59.
Q Let's take a break for a minute and I want to read some stuff, we're almost through, okay.
A (Witness nods head affirmatively.)
(Short recess.)
BY MR. HANLON:
Q Are you any relation to Lee Ruth Davis?
A Yeah, that's my cousin.
Q Cousin?
A Uh-huh (affirmative response). Did you brought them pictures?
MS. CARLEY: You talking about the articles?
THE WITNESS: Uh-huh.
MS. CARLEY: No, not yet. I was out of town all last week.
THE WITNESS: Not you, baby, not you.
MS. CARLEY: You ask him?
THE WITNESS: Yeah, you remember, you told him to bring that cover.

MR. McCARTHY: I'm sorry, I wasn't listening.

MS. CARLEY: Did you bring her a copy of the manuscript?

MR. McCARTHY: No, I'm going to mail it up to you on Thursday. I've been on the road and I did not return to Miami so I didn't bring my file.

MS. CARLEY: And if you all get a copy of the Ed Bradley tape will you all give him a copy of that too, the transcript.

MR. McCARTHY: I'll mail you up on Thursday, this coming Thursday.

(Whereupon, a discussion was held off the record.)

THE WITNESS: All our houses, every one but Wrights, but the store keeper, they burn every house in that town.

BY MR. HANLON:

Q All the churches burned?

A Churches and everything, they left nothing.

Q When you were --

A Took all our chickens and cows and everything from us.

Q When you were in the woods --

A We seen the fire burning, when sister came up there to get us, that fire just leaping over the

Interviewer: Larry E. Rivers

Interviewed Mrs. Lillie Washington at the Florida A&M University Black Archives Research Center and Museum on September 24, 1993.

Brief Introduction/Rivers: Hello Mrs. Lillie Washington! My name is Larry E. Rivers and I am most appreciative to you for allowing us time to talk to you about Rosewood and what happened in Rosewood in 1923.

Question: Before we talk about Rosewood in 1923, I'd like for you to tell me a little bit about yourself, for example, when you were born, where you were born, your parents, and if you can remember, your grandparents.

Answer: I was born in Rosewood and my mother left Rosewood when I was very young. She went to a place called Wylly Florida that was two or three miles down the road. So she lived there for a time (a good while). I was around about nine years when she left there and went to a place called Lenin, Florida. That was not to far from Rosewood, and I was not in the riot. My mother got up one morning and she got to thinking about her family and she said, "The Lord has shown me where there was a riot in Rosewood - that something was happening in Rosewood." So, we were living with my brother-in-law and they had one of these telephones in there. It rings and so my brother-in-law says this telephone has been ringing all night and all day and I'm going to eavesdrop and see what's going on. So when they picked it up the white was calling from different places saying come on and help us to kill the Negroes out in Rosewood. My mother became worried and from time to time we would go out into the yard and play. It wasn't far from the road. It wasn't a highway, but it was a dirt road. We could see the white people in the trucks with their guns sticking up in the truck and cars right behind them. This went on all day and all night and we would standing out in the yard looking. As time went on my brother-

Question: We have heard people say there was a mass grave as though there were quite a few Blacks killed but unaccounted for. Have you heard this?

Answer: Most of them were whites. A lady came down looking for her husband and she never did find him.

Question: The first two whites to die, were Henry Andrews and Polly Wilkerson, who were sheriff and deputy and they opened the door to Sylvester Carrier's house and he killed both of them and other whites were killed on the outside. Have you heard this claim?

Answer: Sara Carrier killed the sheriff.

Question: Did she killed both the sheriff and deputy?

Answer: She killed one of them.

Question: Who killed the other, Sylvester.

Answer: I was told that Cousin Sara shot one of the officers, I don't know who shot the other one. She was in the house. They were all in the house because they didn't want them to take what they had. What happened is that the shells ran out and that's why they had to get out because they didn't have anything left to shoot with.

Question: Was this after the whites had gone and came back again? I understand they came first and the two white men were killed and then the whites gave out of bullets and they went back for reinforcements. Before the whites returned the second time to the Carrier's house did the women and children escape into the woods for the train to pick them up while Sylvester stayed in the house. When the whites were first at Sylvester's house, was his mother killed then, or was it after the whites came back a second time?

Answer: A second time.

Question: So she was not killed when they came the first time even though they were shooting into the house?

Answer: No.

Question: It was on their second trip that they gave out of bullets that she was killed along with Sylvester?

Answer: Yes

Question: What did the governor and those who could have stopped this do. Do you remember how they dealt with this? Wasn't it Governor Hardee at the time?

Answer: I don't remember his name but he came up to the house late that evening and he told us that he wasn't going to hurt us. He just come to help us. So we had a long back porch where you come in at. The house wasn't far from the roadway. He said that when he come he wasn't going hurt us but to help us. He sat out on the back porch and took out some papers that had my brother-in-law to read them. He said he was there to stop the riot. If they didn't stop they would send troops into Rosewood. So he sat out on the back porch all that evening and all that night until the next morning.

Question: This is the white man.

Answer: Yes, and he got up and he didn't come in the house and lay down or anything. He stayed out on the porch. The next morning he said I think the last car has come out from down there but I got to go back down the road to be sure because if it's not the last car then we will have to send in the troops. He got up and went out to the railroad and the last car came along and picked him upand carried him back down the road and we didn't see him anymore.

Question: Was he a law enforcement officer?

Answer: Yes.

Question: But he wasn't a part of the sheriff's department.

Answer: No, no. He was the United States Protector

Question: United States Marshall. But you don't remember his name?

Answer: Well, he told us his name but I can't remember.

Question: What do you remember about the attack on Fannie Taylor? Was it by a Black man or white man?

Answer: Well, I don't know. Some say white, some say Black.

Question: But the one thing you remember very clearly, is that Rosewood was burning and you could stand at your house and see it. Now when you were standing at your house were whites in cars passing by where you were living, going further down into Rosewood.?

Answer: They were going back and forth all day.

Question: But they didn't bother you?

Answer: No, they didn't bother us but they would look at us. The fact of the matter is they could have shot us because we were just standing in the yard looking at them and they saw us.

Question: They didn't say anything to you?

Answer: No.

Question: Were your family members afraid at that time?

Answer: No

Question: When did you all realize it was important for you all to leave the area because of what was happening in Rosewood.

Answer: We didn't leave there until my mother moved to Gainesville.

Question: So, you stayed through the whole ordeal?

Answer: Yes, we stayed and didn't leave.

Question: So you all did not leave Rosewood?

Answer: It seems as though they were not going to bother us and they didn't bother us.

Question: This is interesting. Why did the whites seem to be so adamant about the Carriers. It seems as though if they had allegedly gotten Jessie Hunter, then the killing should have stopped. They had avenged whatever happened or at least said happened to Fannie Taylor. Why would they seem like they were going after the Carriers?

Answer: Well, at that time see you don't know about it. You could not even look at a white woman. A Black man couldn't look at white woman even if they were just standing

Interviewee: Arnett T. Doctor

Interviewers: William W. Rogers, Maxine Jones, and Larry E. Rivers at the Radisson Hotel in Tallahassee, Florida on September 23, 1993.

INTRODUCTION

I'll just say out front or up front, first of all, that all of us was involved in this investigation, what we are interested in is something that is very elusive. And what is very elusive is the truth, and its hard to get at no matter how honest you are or whatever your motives are, but just getting the truth,its hard for anybody and I, in thirty-five years or more during active research have never had anything more complicated, more complexed, more emotionally charged, more important, and with such potential for making a statement about it. So, each of us, Larry and Maxine and myself and Mr. Colbert and this young man, he's a remarkable young man. You may know Tom Dye.

Question:

Have you and he had any contact with Tom Dye, a graduate student?

Respondent:

No, we have not.

Comments from One Interviewer:

Well, each of us as an Historian is absolutely fascinated and galvanized

EXHIBIT
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doing this, unless he really snowed me, is that he has a contractual agreement and can not release anything to someone else. That's the only way I see him not doing it. But if he really did appear to be a very decent guy. Well, I give everybody the benefit of doubt,

QUESTION:

You've been very cooperative Mr. Doctor and we hope Mr. Moore will be as well.

RESPONDENT:

I understand that, again it was back to what I said before, I think he is contractually tied to someone, I think its for McCarthy.

QUESTION:

Who is McCarthy.

RESPONDENT:

O. McCarthy is the gentleman who had spoken with Ms. Langley that's here and Lewis Davis who is recently deceased, he represented himself to the Holland and Knight Law Firm, he represented himself with information that was given to him by Gary Moore to the tune that there were only two survivors, Minnie Langley and Lewis Davis and he had their story and he wanted the Holland and Knight Law Firm to really go forth, they were going to make a movie about it and everybody was

cF

FLORIDA HOUSE OF REPRESENTATIVES

IN THE MATTER FOR RELIEF OF:

Relief of ARNETT T. GOINS,
MINNIE L. LANGLEY, et al.,

Claimants,

v. HB 591

STATE OF FLORIDA,

Respondent.
_____/

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS TO THE DOCUMENTED HISTORY TEAM

Respondent, State of Florida, pursuant to House Rule 6.63(d), the ore tenus order of the Special Master on March 4, 1994, and Rule 1.350, Fla. R. Civ. P., hereby serves its interrogatories and request for production of documents on Associate Professor Maxine D. Jones, Professor Larry E. Rivers, Professor David R. Colburn, R. Tom Dye, and Professor William R. Rogers, the Documented History Team.

Written responses to these interrogatories and physical production of requested documents are respectfully requested within the time frame yet to be authorized by the Special Master.

INTRODUCTION

Each interrogatory is required to be answered based on the entire knowledge of the investigative team, from all sources and all information in its possession or otherwise available to you.

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If you cannot fully answer any interrogatory, answer it to the extent possible, explain why you cannot answer the remainder, and state the nature of the information you cannot furnish. If your answer is qualified, explain the terms and nature of each qualification.

If you object to any interrogatory or any part thereof, explain the grounds for your objection in detail. If an interrogatory is only partly objectionable, answer the portion of the question which is not objectionable.

After the answers to each interrogatory, identify the person giving the answer or providing the information needed to answer the interrogatory.

If any interrogatory calls for a description of a document or is derived in whole or in part from a document, describe such document with sufficient specificity so that it can be identified in the collection of materials which was used to document the "Documented History" and collection of materials otherwise used to support conclusions in the "Documented History." These materials shall be referenced as "the record of research" or "the record." Alternatively, you may attach a legible copy of the document to your answer.

DEFINITIONS

For the purposes of this discovery request, the terms "document" and "documents" mean all handwritten,

typed, printed, recorded, marked, or graphic mater, however produced or reproduced, pertaining in any manner to the subject matter indicated, now or formerly in your actual or constructive possession, custody, or control, and including, but not limited to, all originals, copies, and drafts of:

1. Correspondence, office memo, memo and logs of telephone conversations, and telegrams;

2. Minutes, circulars, reports, records, and drafts of the same.

INTERROGATORIES

The Interrogatories generally refer to passages from the "Documented History of the Incident Which Occurred at Rosewood, Florida" (as submitted to the Florida Board of Regents on December 22, 1993). Specific record basis support for your answers is sought in each question.

1. (Page 3) What is the record basis for the conclusion at page 3 that "a posse" apprehended and killed a black man named Sam Carter on January 1, 1923?

2. (Page 3) What is the record basis for the conclusion at page 3 that "white vigilantes attack the Carrier house" on January 4, 1923?

3. (Page 3) Did the team identify a conflict in versions of the accounts of the gun battle at the Carrier household with reference to who initiated the gun fire? See Report text at page 40 "According to newspaper descriptions, the blacks inside opened fire (those who were armed had shotguns mainly), and the two white men fell dead." If the team concluded there was no conflict in evidence, on what basis did it do so?

4. (Page 4) Concerning the conclusion at page 4 that "approximately 200-300 whites" began to converge on Rosewood, what number were Deputy Sheriffs from Levy County, Deputy Sheriffs from Alachua County, duly authorized peacekeeping posses from Levy County, and duly authorized peacekeeping posses from Alachua County? Specify the record basis for your answer.

5. (Page 4) With reference to "a mob of 100-150 whites return to Rosewood" on January 7, 1923, what is the record basis for this conclusion? From what areas did the "mob" "return?" When had the "mob" left the Rosewood area? Where did it go?

6. (Page 4) With reference to the event of January 7, 1923, what number of the "mob" set fire to the remaining structures in Rosewood? Please specify in your response the record basis for the conclusion that all, many, some, few, or individuals ignited the structures. Was law enforcement present at the burning?

7. (Page 4) With reference to the grand jury investigation which convened on February 11, 1923, what were the specific objects of the investigation? What, if any, practical impediments existed to convening the grand jury at an earlier date? What technologies existed in 1923 to enable the grand jury to muster information, evidence, and witnesses? What is the record basis?

8. (Page 16) What interviews, media clippings, and other matters evidence the nature, source, and circumstances of the 1920 violence in Ocoee, Florida?

9. (Page 16) What interviews, media clippings, and other matters evidence the nature, source, and circumstances of the 1920 violence in Perry, Florida?

10. (Page 19) What position did Governor Hardee, Levy County Sheriff Walker, Alachua County Sheriff Ramsey, and State Attorney DeCottes take with reference to the proposed anti-lynching bill?

11. (Page 21) Did a "railroad station" or a "small depot," or both exist in Rosewood in 1923?

12. (Page 22) In 1923, how many acres of land did the Goins Brothers Operation own? Lease?

13. (Page 22) Did the Goins Brothers "stores company" exist in Rosewood in 1923?

14. (Page 23) Did a "train station" and a "black school" exist in Rosewood in 1923?

15. (Page 23) What is the nature and extent of the research of Tom Dye referenced at footnote 21?

16. (Page 23) Where are the "minutes of the Levy County Board of Commissioners, state and federal manuscript census reports, Florida Railroad Commissioner reports,

Levy County deed record books, other primary sources, official and unofficial, and a large number of secondary sources" referenced at footnote 21? Why were they omitted from the Appendices?

17. (Page 27) What number of men were in the posse(s) formed at the direction of Levy County Sheriff Walker? How many posses were formed? Who was in charge of each? What materials evidence that the authorized posses under the direction of the Sheriff acted with "extra-legal objectives?"

18. (Page 28) Under what circumstances was the interview of Jason McElveen taken? Was the witness under oath? What background and character inquiries were made by the team to ascertain his veracity?

19. (Page 29) What is the record basis to equate "the farmers" with the "white posse members?"

20. (Page 29) What efforts did the team make to attribute absolute or relative degrees of accuracy to the news account reported in, inter alia, Jacksonville Times-Union, Gainesville Daily Sun, Tampa Morning Tribune, St. Petersburg Times, Tallahassee Democrat, AP? What criteria were used.

21. (Page 30) What was the composition of the grand jury that declined to find a true bill against Sam Carter? Was it the same grand jury that convened on February 11, 1923 and found insufficient evidence to prosecute based on the Rosewood violence?

22. (Page 31) Is there a record basis for the conclusion that the posse authorized by Sheriff Walker was the same group that lynched Mr. Carter?

23. (Page 32) What is the record basis for the conclusion that "many posse members were outsiders, a number of them were whites who worked at the sawmill?"

24. (Page 32) What is the record basis for the conclusion that absence of blacks from the posse "was deliberate?"

25. (Page 35) What is the record basis for the conclusion that "the posse" dragged Aaron Carrier from his bed to hang him?

26. (Page 36) What is the record basis that "a posse" confronted Sylvester Carrier and ordered him out of town? Is this group activity at the instruction or authorization of the Levy Sheriff?

27. (Page 37) What is the record basis that "a posse" took Mr. Carter in a wagon and hanged and shot him? Is this group activity at the instruction or authorization of the Levy Sheriff?

28. (Page 37) What is the record basis for the conclusion that the men who captured Carter overpowered Sheriff Walker and took his weapon?

29. (Page 38) Does record evidence exist of violence, individual or mass, on Tuesday, January 2, 1923 and Wednesday, January 3, 1923? If so, what is it?

30. (Page 38) What record evidence exists for the conclusion that "no one believed that Jesse Hunter was among" the group of blacks that had "taken refuge in Rosewood?"

31. (Page 38) What record evidence exists to ascertain the motivations of the "'party of citizens' who went to Rosewood," who were "particularly interested in locating Sylvester Carrier," and who "planned to warn Carrier against further incendiary talk and to discover what he or the others knew about Hunter?" Do team members have other insights into this group not disclosed in the December 22, 1993 Documented History? If so, what?

32. (Page 39) Is the "bunch of white people" referenced in the McElveen tape interview the same group as the "party of citizens" who "planned to warn Carrier against further incendiary talk?" What is the record basis?

33. (Page 39) Is the "manhunt" in which some white people declined to participate the same group as the "party of citizens" who "planned to warn Carrier against further incendiary talk?" What is the record basis?

34. (Page 39) Is the "posse" who found a group of African Americans the "party of citizens" that "planned to warn Carrier against further incendiary talk?" Is that "posse" the same as the "bunch of white people" with whom some people declined to participate? What is the record basis?

35. (Page 39) What is the record basis of information that "between fifteen and twenty-five" African Americans were barricaded in Sarah Carrier's house?

36. (Page 40) What is the record basis that the "white posse" initially had six men? Is this the same group as the "party of citizens" referenced at page 38?

37. (Page 40) Which group of whites "rapidly cordoned off the house and surrounded the building?" How much time lapsed after the gunfire? Was this the "party of citizens," Sheriff Walker's Deputies, Sheriff Walker's posse, or the "bunch of whites that gathered up and went up there to see them?" What is the record basis?

38. (Page 40) Did the team attempt to interview survivors or families of survivors of persons identified as wounded at page 40? What efforts were made to locate them? What were the results of those efforts?

39. (Page 41) At what time was the Gainesville Sun contacted and asked to forward a request for assistance to Alachua County Sheriff Ramsey? How many hours after the initial exchange of gunfire at the Carrier household had lapsed?

40. (Page 41) How many "car loads of deputies and armed citizens" left Alachua County under the direction and control of Alachua County Sheriff Ramsey? Were these "armed citizens" members of a duly authorized peacekeeping posse? What is the record basis?

41. (Page 42) What is the record basis for the accounting of the "attacker" who climbed through a darkened window and allegedly directed that "crouching blacks" be fired upon?

42. (Page 43) Are there other versions of the incident at the Carrier household which have been related to members of the team and which are omitted from the summary of events at pages 42-43? If so, who are the team members with this information and what are those versions and why were they omitted?

43. (Page 44) What is the record basis for the conclusion that the body of Sylvester Carrier was discovered in the house?

44. (Page 44) What is the record basis for the conclusion that Sheriff Walker, his Deputies, or his posse, or Alachua Sheriff Ramsey, his Deputies, or his posse ransacked the Carrier household?

45. (Page 44) Why did the team discount claimants' testimony that Sylvester Carrier was <u>not</u> killed in the Carrier household?

46. (Page 45) Was Mr. Hall "the village's only black store owner" in 1923?

47. (Page 45) Does the team agree with Ruth Bradley's belief that "the white men were searching for any

blacks they could find?" Does not the record evidence indicate that a substantial number of Deputy Sheriffs and/or lawfully deputized posses, with benign peacekeeping intentions, were in the area to protect black residents? What is the record basis?

48. (Page 46) Was the "group of armed men" that surrounded the black district on a peacekeeping mission? Did it reasonably accomplished this task? What was the role of the Levy Sheriff? What is the record basis?

49. (Page 46) If W.H. Pillsbury "got the whites to keep order in Sumner," why would he dissuade his workers from joining lawful peacekeeping efforts of posses? Did the team identify a contradiction in these alleged motivations? How did the team resolve it?

50. (Page 46) To what motive does the team ascribe the allegation that the Levy Sheriff "turned back" blacks who attempted to leave town? Was this action taken to keep them in a relatively secured area and away from wooded and isolated parts of the County where they could not be protected? What is the record basis?

51. (Page 46) What is the record basis for the conclusion that "guards were stationed around the village to keep blacks who had fled into the woods from returning?" On whose directions were they acting? At what time were those directions given? Were those blacks armed? Is this part of the group of "fifteen to twenty-five" that had barricaded themselves in Sarah Carrier's household? Were the motivations of the guard to maintain peace or to isolate this group of blacks from protection? What is the record basis?

52. (Page 47) To which newspapers did the team conclude the reporters "took large liberties?" What methodology did the team use in isolating accurate objective accounts from sensationalized accounts?

53. (Page 48) Does the team identify as the same group "the white mob, many of whom had been drinking and were indiscriminately seeking black victims" with "the posse" which "fluctuated between two hundred and three hundred men?" What is the record basis? What is the "macabre mission" which the team attributes to the "posse?" What is the record basis?

54. (Page 48) Does the team agree with the conclusion that "relatives of the slain blacks were believed to be armed and were expected to cause trouble?" On what date and in what context did Sheriff Walker tell AP "that more trouble was imminent?" What is the record basis?

55. (Page 48) At what time of day did Sheriff Walker advise Governor Hardee that the situation was in hand?

56. (Page 48) At what time did Sheriff Ramsey and his Deputies return to Gainesville? What inquiry did they make before assessing matters were "under 'fairly good control?'" What methodology did they use? What is the record basis?

57. (Page 48) What number of the "white mob" remained in the Rosewood vicinity on Friday afternoon? What number of Sheriff Walker's Deputies and posses remained in the Rosewood vicinity that afternoon? What is the record basis?

58. (Page 48) What evidence exists of communications, or lack thereof, between Governor Hardee and Sheriff Walker other than the Friday morning telegram to the Sheriff?

59. (Page 49) What "unofficial reports" did Governor Hardee have in Tallahassee on Thursday, January 4, 1923? On Friday, January 5, 1923? How were newspaper articles dispatched to Tallahassee in 1923? What delays in delivery of newspapers existed at that time?

60. (Page 49) How long and at what distance did Governor Hardee leave his office on Friday afternoon, January 5, 1923? What were the professional credentials and what rank in the Governor's office did "secretary Professor L.B. Edwards" have? What analysis of the Rosewood situation, other than the dispatch from the Levy Sheriff, were made by the Office of the Governor and his staff? What did the press releases from the Governor concerning the Rosewood incident say? When and how were they distributed?

61. (Page 49) What would have been the response time for dispatch of the Florida National Guard?

62. (Page 49) Did Alachua or Levy County activate its County Guard? What, if any, was the role of the Governor in that activation? What is the record basis?

63. (Page 51) Who "spirited away for safekeeping" several of the blacks who were in the Carrier household? When was this done? At whose instructions? Who were the "captured men" who "allegedly reported that there had been eighteen people in the house?" What number of them were spirited away for safekeeping? What number escaped to the swamps? What number were killed?

64. (Page 53) What number of the "white people in their trucks with their guns sticking up on the trucks and cars" were lawful Deputy Sheriffs or lawfully sworn posses or County Guard whose missions were to keep the peace? What is the record basis?

65. (Page 53) What coordination existed between the efforts of Levy County Sheriff Walker and mill superintendent W.H. Pillsbury? What is the record basis?

66. (Page 53) Who established the "dead line" between the black and white sections at the Sumner lumber mill? Does the team ascribe to this activity a legitimate peacekeeping effort? If not, why not? What is the record basis?

67. (Page 55) What efforts were made to authenticate claims that the pictures in the Literary Digest were authentic?

68. (Page 57) Does the team and official record include the transcript of the statement attributed to James Turner? Under what circumstances was that statement made? Was it under oath? Does the team have the tape?

69. (Page 58) What record evidence exists of proof of ownership of the eighteen homes destroyed?

70. (Page 58) How does the team reconcile that number (18) with the number of homes described at page 23 of the Report? ("There were several unpainted plank wood two-story homes and perhaps a dozen two-room homes that often included a lean-to or a half-roofed room. There were also a number of small one-room shanties, some of them unoccupied.")

71. (Page 58) What record evidence indicates that "the homes were substantial dwellings and well furnished for the time and place?" What does that mean?

72. (Page 59) Is it the team's consensus that "Minnie and Lee and the children were upstairs under a mattress" when Sarah Carrier was shot? If not, why not? What is the record basis?

73. (Page 59) Who saw the initiation of the shooting? What is the record basis?

74. (Page 60) What significance, if any, does the team attribute to Minnie Lee's assertion that "one of the men say let's us go, they done kill almost all us. And I heard the car crank, the truck they had, they crank it up, and they left?" Did the final group to go to the Carrier household leave? What is the record basis?

75. (Page 60) Is there team agreement that the "whites withdrew?"

76. (Page 60) Did the persons who hid in the swamps conceal themselves from Deputies and lawful posses who were in the vicinity to protect them?

77. (Page 60) Was the team apprised of any efforts by whites in the vicinity to return the personal property of the Rosewood residents? If so, why was this evidence not disclosed in the team report?

78. (Page 64) Does the team accept Lee Ruth's statement that "Sheriff Walker had notified Wright to have the blacks meet at his house?" If not, why not?

79. (Page 64) Why does the team discount as a "puzzling story" Lee Ruth's "deposition" that she was protected by men wearing uniforms?

80. (Page 64) Why did the team make no reference to Mrs. Washington's similar assertion that a "federal protector" sat with her family?

81. (Page 66) What is the record basis for the conclusion that "most whites sided with the mob?"

82. (Page 80) What number of "blacks continued to work at the Cummer saw mill in Sumner" in 1923? Where did they reside? What number of them were former Rosewood residents?

83. (Page 80) Does the team agree or disagree with the assertion by Oliver Miller that "relations between his fellow whites and blacks were good before and after the Rosewood incident?" "That there were few if any repercussions in Otter Creek or Cedar Key?" What is the record basis?

84. (Page 84) What is the record basis for the conclusion that "fear about continued racial unrest and northern criticism led Governor Cary Hardee to order a special grand jury and a special prosecuting attorney to investigate conditions there and in Levy County?" Might there have been other motivations, including particularly his concern that lawlessness had occurred and should be rectified?

85. (Page 85) What is the record basis for the team's observation that "blacks and some whites...remained skeptical" of Governor Hardee's conclusions and efforts and of his declaration the Rosewood violence had brought disgrace upon Levy County and the entire State.

86. (Page 86) What is the record basis for the team's conclusion that "it is probable" that there were no blacks on the grand jury?

87. (Page 86) What is the record evidence of the name and number of blacks who returned from Gainesville with State Attorney DeCottes to testify at the grand jury? Did claimants' participate? Decline to participate?

88. (Page 86) Did any news articles or editorials criticize the Governor or the Levy Sheriff for failing to attempt to muster protection for Rosewood residents? Which ones? What is the record basis?

89. What formalized standards do the universities in Florida use to evaluate dissertations and thesises submitted for advanced degrees? What verification of proof is required by such standards? What other standards exist in other states?

90. How did you solicit witness participation in your interview process? What newspapers were used? What dates?

REQUEST FOR PRODUCTION

State of Florida requests physical production and opportunity to review and copy, at least twenty-four hours before presentation of sworn testimony of team members, the complete and official documentation of the materials used in preparation of the "Documented History of the Incident Which Occurred at Rosewood, Florida," including all newspaper articles, all state and county records, all interviews, all tapes, all pictures, and any other matters referenced in the

responses to the foregoing interrogatories, and other materials used in preparing responses.

The team, and including members thereof, are requested to produce, for at least in camera inspection by the Special Master, all other materials in the possession of the team or individual members thereof, related to inquiry of the Rosewood, Florida incident whether or not included in the team report, if work product privilege is claimed.

Respectfully submitted,

JAMES A. PETERS
Assistant Attorney General
Florida Bar No. 0230944

Counsel for the Respondent
PL-01 The Capitol
Tallahassee, FL 32399-1050
(904) 488-1573
(904) 488-4872 (Fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS TO THE DOCUMENTED HISTORY TEAM** has been ~~faxed~~ handed to Stephen Hanlon, Esquire, Post Office Drawer 810, Tallahassee, Florida 32302-0810 and faxed **MAXINE D. JONES** for distribution to team members this 7 day of March, 1994.

JAMES A. PETERS

<jimp>Rosewood.Int

STATE OF FLORIDA)
)SS
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared MAXINE D. JONES, who, being first duly sworn, deposes and states that she has read the foregoing answers to interrogatories executed by her and the facts contained therein are true and correct to the best of her knowledge and belief.

Sworn to and subscribed before me this _____ day of _____, 1994.

_____
Signature of Notary Public, State of Florida

_____
Print, type or stamp commissioned name of Notary Public

Commission No. _____

My Commission Expires: _____

Personally Known _____ or Produced Identification _____ (Check One)

Type of Identification Produced: _____

STATE OF FLORIDA)
)SS
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared LARRY E. RIVERS, who, being first duly sworn, deposes and states that he has read the foregoing answers to interrogatories executed by him and the facts contained therein are true and correct to the best of his knowledge and belief.

Sworn to and subscribed before me this ____ day of _____, 1994.

_____
Signature of Notary Public, State of Florida

_____
Print, type or stamp commissioned name of Notary Public

Commission No. _____

My Commission Expires: _____

Personally Known _____ or Produced Identification _____ (Check One)

Type of Identification Produced: _____

STATE OF FLORIDA)
)SS
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared DAVID R. COLBURN, who, being first duly sworn, deposes and states that he has read the foregoing answers to interrogatories executed by him and the facts contained therein are true and correct to the best of his knowledge and belief.

Sworn to and subscribed before me this ____ day of _____, 1994.

_____
Signature of Notary Public, State of Florida

_____
Print, type or stamp commissioned name of Notary Public

Commission No. _____

My Commission Expires: _____

Personally Known _____ or Produced Identification _____ (Check One)

Type of Identification Produced: _____

STATE OF FLORIDA)
)SS
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared R. TOM DYE, who, being first duly sworn, deposes and states that he has read the foregoing answers to interrogatories executed by him and the facts contained therein are true and correct to the best of his knowledge and belief.

Sworn to and subscribed before me this ____ day of _____, 1994.

_____
Signature of Notary Public, State of Florida

_____
Print, type or stamp commissioned name of Notary Public

Commission No. _____

My Commission Expires: _____

Personally Known _____ or Produced Identification _____ (Check One)

Type of Identification Produced: _____

STATE OF FLORIDA)
)SS
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared WILLIAM R. ROGERS, who, being first duly sworn, deposes and states that he has read the foregoing answers to interrogatories executed by him and the facts contained therein are true and correct to the best of his knowledge and belief.

Sworn to and subscribed before me this _____ day of _____, 1994.

_____
Signature of Notary Public, State of Florida

_____
Print, type or stamp commissioned name of Notary Public

Commission No. _____

My Commission Expires: _____

Personally Known _____ or Produced Identification _____ (Check One)

Type of Identification Produced: _____

Florida House of Representatives

Tallahassee

IN THE MATTER FOR RELIEF OF:

Arnett T. Goins, Minnie L. Langley, et al.,

Claimants, **HB 591**

v.

State of Florida,

Respondent.

_____/

NOTICE OF HEARING

TO: Stephen Hanlon, Esquire
Martha Barnett, Esquire
Post Office Drawer 810
Tallahassee, Florida 32302-0810

Attorneys for Claimant

James Peters, Esquire
Office of the Attorney General
PL 01, The Capitol
Tallahassee, Florida 32399-1050

Attorney for Respondent

PLEASE TAKE NOTICE that further hearings on the above claim bill will be conducted on Monday, March 7, 1994, at 2:00 p.m., in Room 214, The Capitol, and on Friday, March 11, 1994, at 9:30 a.m. in Room 317, House Office Building, Tallahassee, Florida 32399-1300.

DATED this 4th day of March, 1994.

Richard Hixson
Special Master

cc: The Honorable Ron Klein
The Honorable Miguel De Grandy
David Kerns, Senate Special Master
Clerk of the House

3/4/94
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Civil Section