SUPREME COURT OF LOUISIANA

No._____

STATE EX REL.
DARRELL J. ROBINSON, applicant

v.

DARRELL VANOY, WARDEN
LOUISIANA STATE PENITENTIARY,
ANGOLA, LOUISIANA

DEATH PENALTY CASE

ORDER

Considering the foregoing Motion for Leave to File *Amicus Curiae* Brief and Motion for Court to Allow *Amicus* to File Exhibits which the Court May Not Otherwise Have Access:

IT IS ORDERED that Misty Shannon Antoon is hereby GRANTED leave to file the attached brief as *amicus curiae.*

IT IS FURTHER ORDERED that Misty Shannon Antoon's Motion for Court to Allow *Amicus* to File Exhibit Which the Court May Not Otherwise Have Access is hereby [GRANTED / DENIED].

THUS DONE AND SIGNED this _____ day of January, 2017, in New Orleans, Louisiana.

_____
JUSTICE, LOUISIANA SUPREME COURT

No. _____

IN THE

Supreme Court of Louisiana

STATE EX REL.
DARRELL J. ROBINSON,
applicant

v.

DARRELL VANOY, WARDEN,
LOUISIANA STATE PENITENTIARY,
ANGOLA, LOUISIANA

Brief of *AMICUS CURIAE*

ON WRIT APPLICATION FROM THE DISTRICT COURT
PARISH OF RAPIDES, NO. 243-584
HONORABLE PATRICIA KOCH, PRESIDING

DEATH PENALTY CASE

Respectfully Submitted:

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I. FACTS

This case involves one of the most notorious crimes in Rapides Parish history which occurred on May 28, 1996. Specifically, Darrell James Robinson was indicted for the brutal first degree murders of four members of a family, including a 10-month-old baby, shot "execution-style."[1] Darrell James Robinson had a well-versed and well-known criminal defense attorney, J. Michael "Mike" Small. Prior to the trial, Mr. Small successfully argued the exclusion of some damning evidence, which included, but was not limited to, Robinson's "sociopathic homicidal fantasies." State v. Robinson, 99-1292 (La. 7/2/99), 743 So. 2d 194. However, even without the jury hearing that incriminating evidence, based on the remaining evidence the jury found Robinson guilty beyond a reasonable doubt and sentenced him to death. This High Court in an unanimous decision affirmed the jury's decision *holding* "the State presented **ample** evidence of defendant's guilt." State v. Robinson, 2002-1869 (La. 4/14/04), 874 So. 2d 66, 78, *cert. denied,* 125 S. Ct. 658, 543 US 1023 (2004). (Emphasis added).

Interestingly, as the most-recent DA's counsel noted at one hearing: "post-conviction [proceedings by Robinson] that [were] started in 2005, *lagged for many years, and then started picking up speed again.*"[2] In fact, even the trial court admitted the case has been "*heating up over the last year*" and things "*have been bubbling in the last year.*"[3] (Emphasis added).

Initially, the newly-elected DA, J. Phillip Terrell, first hired Gregory N. Wampler to take the reins on this post-conviction proceedings of this quadruple murderer on behalf of the State in the public's interest. On June 17, 2015, ADA Wampler enrolled as counsel for the State in the post-conviction proceedings of this quadruple murderer.

After ADA Wampler started shepherding the Robinson proceedings on behalf of the State, many "highly unusual"[4] things occurred. Indeed, the case suddenly seemed to morph into a one-sided or unilateral litigation. Robinson's original criminal defense attorney, J. Michael Small, met with Robinson's current post-conviction counsel, Edward Cassidy and Matilde Carbia, on October 12, 2015 and December 10, 2015.[5] A multitude of *ex parte* Motions were being filed *under seal* by Robinson's post-conviction attorney, Matilde J. Carbia, one of which was filed the day after one of the meetings and

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[1] State v. Robinson, 2002-1869 (La. 4/14/04), 874 So. 2d 66, 86, *cert. denied,* 125 S. Ct. 658 (2004).
[2] July 26, 2016 transcript at p. 8 at ln. 8-9.
[3] September 27, 2016 transcript at p. 87 at ln. 5-8.
[4] September 27, 2016 hearing transcript at p. 7 at ln. 11-12.
[5] Affidavit of J. Michael Small at ¶ 2. Curiously, it does not appear that this affidavit was ever filed into the court record.

another one filed the day of a meeting.[6] The undersigned is unaware of ADA Wampler ever objecting to this unusual practice by the defense of filing *ex parte* Motions or having *records sealed from the public's view* on this capital case. Ultimately, after media scrutiny, the Rapides Parish DA's office hired outside new counsel, Carla Sigler and Hugo Holland, who replaced ADA Wampler and were given the unenviable task of attempting to "undo" what had been done while DA Terrell and ADA Wampler had the case.

At a much later date, Mr. Holland spoke to the court at a June 2, 2016, hearing about Robinson's attorneys' *ex parte* conduct.[7] In fact, later Mr. Holland had to file a formal written Motion to Prohibit Further Ex Parte Contact between the defendant's attorneys and the trial judge on July 5, 2016, stating in a pleading:

> "The undersigned has repeatedly requested that the defendant and the court discontinue the apparently formerly wide-spread and improper submission of ex parte material to the court, and the court's grant of same. While Exhibit A was filed, granted and sealed prior to the undersigned's involvement in the case, it is nevertheless improper."

(*See* July 5, 2016 Motion to Prohibit Further Ex Parte Contact, to Rescind Previously Issued Ex Parte Subpoena Duces Tecum and to Unseal Improperly Sealed Records).

As the United States Supreme Court has held:

> "What transpires in the court room is public property. If a transcript of the court proceedings had been published, we suppose none would claim that the judge could punish the publisher for contempt. And we can see no difference though the conduct of the attorneys, of the jury, or even of the judge himself, may have reflected on the court. Those who see and hear what transpired can report it with impunity. There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it."

Craig v. Harney, 331 U.S. 367, 374, 67 S. Ct. 1249, 1254, 91 L. Ed. 1546 (1947)

Despite Louisiana's public records laws, when ADA Wampler had overseen the matter, a highly unusual "confidential" position paper was apparently sent to the trial judge by Robinson's Post-Conviction attorneys, Matilde Carbia and Edward Cassidy, on February 29, 2016,[8] and was never filed into the clerk of court's records. *But see* La. C.C.P. art. 251 and 253; La. R.S. 44:31.[9] Nonetheless, as noted by the United States Supreme Court, there is a "presumption—however gauged—in favor of public access to judicial records." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 602, 98 S. Ct. 1306,

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[6] *See* Rapides Parish Clerk of Court records 7/31/15, 10/13/15, 10/16/15, 11/23/15, 12/8/15, 12/10/15, and 12/22/15.

[7] June 2, 2016 hearing transcript at p. 7-8.

[8] *See* attached.

[9] Importantly, post-conviction relief proceedings "are hybrid, unique and have both civil and criminal legal characteristics." *State ex rel. Tassin v. Whitley*, 602 So. 2d 721, 722 (La. 1992).

1314 (1978). Indeed, the Louisiana Supreme Court has held "court records" fall within the definition of "public records" under the Public Records Act. Title Research Corporation v. Rausch, 450 So.2d 933, 937(La.1984). Even more troubling, amicus counsel is unaware of ADA Wampler filing any opposition on behalf of the State to the position paper of this quadruple murderer.

This lack of diligence by the DA's office was not lost on the press who reported a story entitled, "*Attorneys for Darrell James Robinson claims DA's office has failed to respond to court orders for months.*"[10]

The initial claims that the original criminal defense attorney, Mike Small, was "ineffective" which were vigorously pursued by Robinson's post-conviction attorneys as late as March 18, 2014,[11] were suddenly "withdrawn" by Robinson's post-conviction attorneys, after ADA Wampler was assigned the case by DA Terrell.[12] Despite this dusty old case lagging for years, the original criminal defense attorney, J. Michael Small, signed an affidavit dated February 8, 2016, alleging information had been withheld.

Given the totality of the irregularities in this case which culminated in the signing of joint stipulations which were incorrect and devastating to the State, acting on deep reservations of how ADA Wampler was overseeing the matter, undersigned inquired with the federal court who was ADA Wampler's attorney of record for a very serious matter. Undersigned discovered ADA Wampler's criminal defense attorney was the same criminal defense attorney for Darrell James Robinson -- J. Michael Small.[13]

The record does not contain any evidence that ADA Wampler ever disclosed the fact that Mike Small (Robinson's criminal trial defense attorney) had also been ADA Wampler's criminal defense attorney to the trial court, the four murdered victims' families or the public. Moreover, it certainly was not disclosed to either undersigned counsel or Michael W. Shannon (the original prosecutor), who is entitled to the same due process Darrell James Robinson is entitled.

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[10] http://www.kalb.com/content/news/Attorneys-for-Darrell-James-Robinson-claim-DAs-office-has-failed-to-respond-to-court-orders-for-months-388143282.html

[11] *See* Robinson's Reply to Respondent's Answer to Petitioner's Original *Pro Se* Petition for Post-Conviction Relief and any/all Supplemental Filings dated March 18, 2014 (wherein Robinson argued that esteemed attorney, J. Michael Small "should have investigated and presented available lay and expert testimony that would have explained Petitioner's psychological predisposition to flee," etc.).

[12] Affidavit dated February 8, 2016 at fn. 2 signed by J. Michael Small.

[13] United States v. Gregory N. Wampler, U.S. District Court, Western District of Louisiana, 1:92-cr-10004-FAL-1, noting "Gregory N. Wampler represented by J Michael Small." *See also* In re Wampler, 94-0491 (La. 4/7/94), 637 So. 2d 92. *But see* In re Wampler, 2002-2851 (La. 2/7/03), 841 So. 2d 727.

This begs the question: Did ADA Wampler have competing loyalties between his criminal defense attorney and his client (the people of the State of Louisiana)? This information "gives rise to … legitimate concerns" about ADA Wampler's "ability to vigorously" have represented the interest of the State and its citizens, since he may have felt beholden to his criminal defense attorney. *Cf.* Harris v. Superior Court, 225 Cal. App. 4th 1129, 1139 (2014). As former esteemed Justice Tate stated, "even the appearance of conflict should be avoided." Brasseaux v. Girouard, 214 So. 2d 401, 406 (La. Ct. App.), *writ refused*, 253 La. 60, 216 So. 2d 307 (1968).

Within the days prior to Terrell, Wampler, Cassidy and Carbia signing stipulations designed to admit to Brady violations by Shannon, a series of communications were sent to Wampler, *inter alia*, by Mr. Shannon noting he felt like he was in the "Twilight Zone" and emphasizing he did not commit Brady violations, and stating emphatically Robinson received a fair trial.[14] Mr. Shannon even alluded that it seemed Wampler was intentionally manipulating stipulations trying to make it seem Mr. Shannon had intentionally withheld evidence, when he had not.[15]

Courts have noted, "the [assistant] district attorney is expected to exercise his or her discretionary functions in the interests of the People at large, and not under the influence or control of an interested individual." People v. Eubanks, 14 Cal. 4th 580 (1996). Courts have expressed concerns when prosecutors exercise their discretionary functions and there is *any* "'appearance of impropriety' that might adversely affect 'public … confidence in the integrity and impartiality of our system of criminal justice.'" *Id.* at 591.

This Court should determine whether ADA Wampler should have self-recused himself or disclosed the conflict before signing stipulations that were devastating to the State of Louisiana and the original prosecutor. If he should have disclosed the conflict, then the undersigned respectfully requests that this court revoke the stipulations.

Additionally, ADA Wampler told Mr. Shannon, the original prosecutor, that if he did not sign stipulations stating Mr. Shannon withheld evidence, Robinson's post-conviction attorneys were threatening to file a disciplinary complaint against Mr. Shannon.

In a highly irregular move, Mr. Shannon was called into DA Terrell's office wherein curiously Mr. Small was already present — and Terrell and Small tried to convince Mr. Shannon to agree he had

[14] The undersigned can provide this documentation to the court.
[15] *See* Exhibits.

committed *Brady* violations. Mr. Shannon was deeply disappointed and left the meeting abruptly.

Mr. Shannon has asserted he committed no *Brady* violations. Mr. Shannon served with honor and distinction under two other DA administrations (James Downs and Charlie Wagner) and would never engage in withholding *Brady* material from a criminal defendant. Mr. Shannon has always taken his ethical obligations as a prosecutor seriously. While he was committed to obtaining justice for victims of violent crimes, he was also committed to ensuring that criminal defendants had a fair trial and access to all evidence they were entitled to under the law.

Because amicus counsel concluded (after painstakingly reviewing the record and conducting extensive legal research regarding *Brady* and its progeny) the District Attorney's Office was failing to handle this matter regarding a convicted quadruple murderer appropriately and allowing Mr. Shannon's reputation to be tarnished by *Brady* accusations, on April 26, 2016, amicus counsel sent a letter via facsimile to both DA Terrell and ADA Wampler offering undersigned counsel's legal services free of charge to the State noting:

> **I graduated Order of the Coif and was Senior Editor of the Louisiana Law Review at LSU law school. Notably, I was #1 in Prof. Lee Hargrave's Criminal Law class. Furthermore, I was #1 in the Administration of Criminal Justice II at LSU Law School. I also received CALI Excellence for the Future Awards at LSU Law School associated with Criminal Law. Additionally, I received the Corpus Juris Secundum Award for Scholastic Excellence in Criminal Law at LSU Law School. I am a published author on criminal law issues and have been cited by Wayne R. Lafave, 1 Substantive Criminal Law § 5.1 (2d ed).**

The undersigned has saved the fax transmission sheets which show the Rapides Parish DA's office received the letter. Oddly, undersigned counsel *never* received a response from the DA's office relative to the offer to do *pro bono* work on behalf of the State.

On May 9, 2016, a hearing was set by the court for several post-conviction Motions. Curiously, neither the press nor the family members of the four (4) murdered victims were even told of the hearing, the stipulations, or Robinson's attorneys' plan to file a Motion to Vacate Conviction and Sentence.[16] This failure to notify the victims' family, including one witness, is arguably inconsistent with Louisiana Constitution Art. 1, § 25 which requires victims "the right to reasonable notice and to be present and heard during all critical stages of preconviction and postconviction proceedings," as well as laws designed to protect the Rights of Crime Victims and Witnesses. *See* La. R.S. 46:1841, *et seq.*

As noted by an Arizona court with a similar constitutional provision and laws to Louisiana:

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[16] http://www.kalb.com/content/news/Convicted-murderer-Darrell-James-Robinson-could-have-death-penalty-sentence-vacated-378872561.html

> "[T]he victim had a constitutional right to be informed that she was entitled to request notice of, and to participate in, any post-conviction relief proceeding. The state cannot now use the victim's failure to request notice as a defense against the victim's right to appear at the release proceeding because the state failed to first fulfill its constitutional obligation to inform her of that right. The constitutional mandate is clear: victims must be informed of their rights. Armed with this knowledge, victims may choose to exercise these rights. Conversely, an uninformed victim may not exercise her rights because she is unaware of them, or unaware that the right to notice of a release hearing requires that she first file a request for such a notice.... This victim was never informed of her constitutional right to request notice of and to participate in post-conviction release proceedings. It is this omission that violated her rights and rendered the release proceedings [of the defendant] defective."

State ex rel. Hance v. Arizona Bd. of Pardons & Paroles, 178 Ariz. 591, 597, 875 P.2d 824, 830 (Ct. App. 1993).

Prior to the hearing on May 9, 2016, Mr. Shannon and amicus counsel learned that DA Terrell, ADA Wampler, and Robinson's attorneys, Cassidy and Carbia, and Judge Koch were meeting in an empty courtroom. Mr. Shannon and amicus counsel both showed up at the meeting accompanied by amicus counsel's paralegal. Despite the fact that there were 53 joint stipulations contained in nine (9) legal size pages, Mr. Shannon was literally only given a few "minutes" to look at the final stipulations, as noted in court wherein he stated "I didn't have a whole lot of time to read them."[17]

Mr. Shannon and amicus counsel had pleaded with ADA Wampler and DA Terrell not to sign the stipulations, as they were misleading. Robinson's attorney, Cassidy, called Mr. Shannon a derogatory curse word. The trial judge ordered Mr. Shannon to leave the room because he was a "witness," even though no testimony was being taken, and there was no need for the rule of sequestration. Then, the trial judge also ordered both undersigned counsel and undersigned counsel's paralegal to leave the empty courtroom as well. However, as one Justice has noted, "The purpose of LSA-Const. Art. XII § 3 is to ensure the public's right of access to deliberations of public bodies and to protect the public from secret decisions made without the opportunity for public input." *Copeland v. Copeland*, 2007-0177 (La. 10/16/07), 966 So. 2d 1040, 1049 (Johnson, J., concurring).

Later, once ADA Wampler and DA Terrell walked out of the empty courtroom, undersigned counsel asked ADA Wampler what case he had read related to *Brady* that justified the stipulations. He could only cite to one disciplinary case with an erroneous name, and admitted that he had not conducted a scintilla of legal research on *Brady* and its progeny. At that time, ADA Wampler looked at DA Terrell and asked, "Boss, was I supposed to do any legal research on this?" DA Terrell responded flatly, "No."

Unbeknownst to undersigned counsel or the original prosecutor, Mr. Shannon --- ADA

[17] May 9, 2016 hearing at p. 5, lines 26-27.

Wampler and DA Terrell signed the stipulations with the judge and Robinson's attorneys "present"[18] in that empty courtroom after the trial judge ordered Mr. Shannon and the undersigned to leave. Indeed, it seems the stipulations had been a forgone conclusion by the parties since Robinson's attorneys filed in open court on that very same date, May 9, 2016, a written Motion to Vacate Conviction and Sentence which referenced the "*Joint Stipulations of Facts.*"

The hearing started at *a different time than noticed* on May 9, 2016. Oddly, undersigned counsel had to make a special request for the court to wait for Mr. Shannon since the hearing was started without him: "I would just ask the court if they could wait a minute so [Mr. Shannon] could be here."[19]

This is not the only hearing in the Robinson post-conviction proceedings which had a last-minute time change which deprived interested individuals from attending. As reported by the press, a status hearing on July 26, 2016 was also suddenly changed, and the press was not even able to attend. *See* KALB articles, "***Public hearing for death row inmate not so public***"[20] and "*New details about public hearing that was moved without notification.*"[21]

The United States Supreme Court has held:

> "People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.... The educative effect of public attendance is a material advantage. Not only is respect for the law increased and intelligent acquaintance acquired with the methods of government, but a strong confidence in judicial remedies is secured which could never be inspired by a system of secrecy."

Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 572, 100 S. Ct. 2814, 2825, 65 L. Ed. 2d 973 (1980). (Emphasis added).

Indeed, the movement of court times, without notification to the public or the individuals affected by the process, seems to be in direct contravention to Louisiana's Constitutional article requiring open access to courts. *See* Louisiana Constitutional article 1 § 22.

"The right of access to the courts is basic to our system of government, and it is well established today that it is one of the fundamental rights protected by the Constitution." *Ryland v. Shapiro*, 708 F.2d 967, 971 (5th Cir. 1983). As the court noted, "A mere formal right of access to the courts does not pass constitutional muster." *Id.* at 972. Courts have required that the access be "adequate, effective, and

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[18] September 27, 2016 hearing transcript at p. 25 at ln. 18-21 (wherein the judge stated, "I was present. No, it was not signed [by Mr. Shannon]. It's signed by Mr. Terrell").
[19] May 9, 2016 hearing transcript at p. 3, lines 24-26.
[20] http://www.kalb.com/content/news/Public-hearing-set-for-death-row-inmate-not-so-public-388301522.html
[21] http://www.kalb.com/content/news/New-details-about-public-hearing-that-was-moved-without-notification-388479432.html

meaningful." *Bounds v. Smith*, 430 U.S. 817, 822, 97 S. Ct. 1491, 1495 (U.S. 1977).

Unfortunately, at one of the hearings that the press was able to attend, Robinson's attorney, Edward Cassidy, misrepresented on the record that "Mr. Shannon signed "[22] the joint stipulations. This is categorically false and has regrettably been repeated by the press which has further sullied Mr. Shannon's name.[23] Arguably, Mr. Cassidy was well-aware that Mr. Shannon did not sign the stipulations, given Cassidy was present during "heated discussions"[24] when Mr. Shannon was ordered by the trial court to leave the empty courtroom. Once Mr. Shannon and the undersigned were ordered out of the empty courtroom, all counsel in the presence of the trial court signed the stipulations. Mr. Shannon and the undersigned should have been told that the stipulations were signed and that the hearing was going to commence at a different time than noticed. Nevertheless, this professional courtesy was not extended to either Mr. Shannon or the undersigned.

Mr. Shannon, having been threatened with disciplinary action if he did not go along with the stipulations, and the fact that he could be terminated for insubordination by DA Terrell, appeared late in court due to the undisclosed time change and was under extreme duress. Mr. Shannon has described to undersigned counsel how he felt trapped in a "Catch 22" or "No Win" situation, since his new boss, DA Terrell, signed the stipulations, and he only learned that the stipulations had been signed during open court at the May 9th hearing which time had not been disclosed to Mr. Shannon. Mr. Shannon pleaded with the court to be able to file a brief since the stipulations "can be explained by the [original trial] transcript alone."[25] The stipulations were littered with errors of fact which could be easily shown by reference to the trial transcript.

As ADA Shannon begged to be able to write a brief, curiously, ADA Wampler actually sat behind ADA Shannon as ADA Shannon pleaded with the trial court, and ADA Wampler vigorously shook his head side-to-side, as to strongly suggest "NO" to the trial court. Once Wampler was confronted, the following colloquy took place:

BY MR. WAMPLER: I'm not disagreeing, I'm sorry, I got a crick in my neck.

BY THE COURT: I was about to say, you stretching like crazy over there.

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[22] September 27, 2016 hearing transcript at p. 22, line 19.
[23] http://www.thetowntalk.com/story/news/local/2016/09/27/no-deposition-former-darrell-robinson-prosecutor-court-rules/91142810/
[24] September 27, 2016 hearing transcript at p. 86 at lines 5-9.
[25] May 9, 2016 hearing transcript at p. 7-8.

BY MR. SHANNON: I thought you were choking on something.[26]

Mr. Shannon told the Court:

> "The stipulations, some - in my mind some of these stipulations can be explained by the transcript alone. I am merely asking that the court give us a short period of time to brief the law as it applies to these issues and to point out any explanation in the record that affects some of these stipulations. There are explanations in the record and I just want to point them out. It's – I'm not going beyond the trial record."[27]
>
> * * *
>
> "All I'm asking – I'm not asking for a lot, all I'm asking is there might be a reference to sworn trial testimony that might explain a stipulation, as [Robinson's attorneys] have done themselves in their position paper, and you're saying I can't do it. **That's not fair.**"[28]

The Judge hinted that she knew there was a disagreement between DA Terrell, ADA Wampler and Mr. Shannon noting, "y'all have got to get on the same page. There seems - or the [sic] obvious there's some conflict or disagreement about what facts can be agreed to and what facts cannot be agreed to, or with explanation."[29] Indeed, at another hearing, she alluded to the May 9, 2016, hearing as a "heated hearing" and "there were lots of heated discussions."[30]

Ironically, the attorneys involved seem remiss to the fact that Mr. Shannon has now become the accused by this quadruple murderer and his defense attorneys, and he also is entitled to basic due process rights, just like Darrell James Robinson.

As aptly noted by another court, this type of action as to the original prosecutor, Mr. Shannon, was conduct tantamount to public censure and denied Mr. Shannon, the original prosecutor, his basic rights of due process. *Peninger v. State*, 811 P.2d 609, 613 at fn. 1.

In fact, while Robinson's attorneys were claiming Mr. Shannon violated Robinson's due process through a *Brady* violation, they, along with DA Terrell and ADA Wampler, were violating Mr. Shannon's due process rights. For instance, while the judge reluctantly agreed to allow Mr. Shannon to file a brief, and Mr. Shannon sent Wampler, *inter alia,* e-mails on May 10, 2016, and May 11, 2016, that he and undersigned counsel were working on that brief to be filed with the court — the District Attorney's Office, with full knowledge of the right to brief granted by the court, filed a "Motion to Waive Briefs" on May 13, 2016 signed by DA Phillip Terrell which included a statement, "Counsel for Respondent, Darrell J. Robinson, has consented to this waiver of briefing."

This created, at a minimum, an appearance of collusion by the parties to systematically prevent

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[26] May 9, 2016 hearing transcript at p. 8 at lines 25-32.
[27] May 9, 2016 hearing transcript at p. 7-8.
[28] May 9, 2016 hearing transcript at p. 20 at ln. 21-26.
[29] May 9, 2016 hearing transcript at p. 8 at lines 10-13.
[30] September 27, 2016 hearing transcript at p. 86 at lines 5-9.

Mr. Shannon from having an opportunity to respond to the allegations made against him and further smear his reputation. An Order was signed by the trial judge *on that very same date* vacating and recalling the "briefing order." Of course, this deprived Mr. Shannon of his own due process right – an opportunity to respond to the allegations made against him.

Then, curiously, on May 17, 2016, Robinson's counsel filed a "Motion to Strike Statements in State's Pleading" wherein Robinson's attorneys stated the following:

> "The State's Motion … states:
> - 'Respondent likewise waives his right to file a response brief.' (State's Motion at ¶2.)
> - 'Counsel for the Respondent, Darrell J. Robinson, has consented to this waiver of briefing.' (State's Motion at ¶3.)
>
> **These statements are not accurate. Petitioner Darrell Robinson has not waived his right to submit briefing on his Motion to Vacate Conviction and Sentence, nor have his post-conviction counsel done so.** On May 12, 2016, post-conviction counsel notified the State that if the State filed documents waiving briefing and moving the Court to proceed with the evidentiary hearing previously scheduled for July 19-21, 2016, Mr. Robinson would, through counsel, file brief(s) in opposition to the State's motions and in support of his Motion to Vacate, *regardless of whether the state filed a brief on that issue."*

Thus, Robinson's attorneys have been allowed to consistently out-maneuver the State while the Rapides Parish DA's office was operating under a possible conflict of interest. This type of gamesmanship is certainly not conducive to notions of fair play in an American court. Even more troubling is the failure of these state actors to give the original prosecutor, accused of *Brady* violations, even the barest of due process. As the United States Supreme Court has held:

> "A fundamental requirement of due process is 'the opportunity to be heard.' Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 783. It is an opportunity which must be granted at a meaningful time and in a meaningful manner. The trial court could have fully accorded this right to the petitioner only by granting his motion to set aside the decree and consider the case anew. Only that would have wiped the slate clean. Only that would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place."

Armstrong v. Manzo, 380 U.S. 545, 552, 85 S. Ct. 1187, 1191, 14 L. Ed. 2d 62 (1965).

Notably, in Commonwealth v. Fiorini, in reviewing a similar decisions by a trial court the court held:

> "The Commonwealth in this case was never given an opportunity 'to be heard according to law.' There can be no question that such a procedure applied to a defendant in a summary proceeding would be set aside as a nullity. **To deny the same right to the** Commonwealth and **the prosecutor would be to make a mockery of the entire criminal justice system. Not only is defendant entitled to notice and an opportunity to be heard, but the** Commonwealth and **prosecutor are entitled to the same elements of due process and fair play**; nor is the law helpless to correct a situation where such elements are lacking…. We believe that this is an appropriate case for the exercise of that supervision and control to correct what is **a glaring miscarriage of justice**. Whether or not defendant is guilty is not the issue at this time. **The issue presently before us is** whether the Commonwealth and **the prosecutor may be deprived, for whatever reason, of the opportunity to appear and be heard according to law. We hold that they may not be so deprived and that this court has the power to require that that opportunity be made available to them.**"

75 Pa. D. & C.2d 9, 12–13 (Pa. Com. Pl. 1975). (Emphasis added).

Undersigned counsel wrote several e-mails to the First Assistant District Attorney under DA Terrell, whom she has known for over twenty (20) years and has a familial relationship by marriage. These e-mails were sent to his private e-mail address, since it was the only e-mail address undersigned counsel had for him. If the tone in these e-mails was harsh, it was the result of frustration with undersigned counsel's perceived actions of ADA Wampler as unjustly steamrolling Mr. Shannon and potentially unleashing a threat, a quadruple murderer, into society.

Curiously, the existence of these private e-mails to the First Assistant DA were undoubtedly leaked to Robinson's defense counsel. Indeed, Mr. Cassidy, Robinson's attorney, stated during the last hearing, "we *know* there are a bunch of e-mails,"[31] and "[w]e *know* there are some with Ms. Antoon."[32] How would this quadruple murderer's defense attorneys "*know*" about undersigned counsel's e-mails unless someone within the DA's office told them about it?

Once under media scrutiny, DA Terrell hired current outside counsel who was very experienced in post-conviction proceedings. A Notice of Withdrawal of Stipulated Facts was filed on August 25, 2016 by new counsel for the State. Carla Sigler adequately stated in open court:

> "Mr. Holland and I[33] have reviewed the record evidence in this case. We have reviewed it both separately and jointly and we looked over the stipulations and we do not feel that the ones we withdrew were appropriate so we filed this motion, this notice.[34]
>
> * * *
>
> "We have re-evaluated everything, we do not believe that there was a Brady violation. We do not believe there's been a constitutional violation of any kind.... We went back through, looked and saw what has been done and we do not agree with the stipulated facts that we withdrew. We did so –we make a professional judgment. We reviewed every single one of them, compared to the evidence we had.... The stipulated facts that were entered into were not appropriate after Mr. Holland and I reviewed all of the evidence and that's why we filed the withdrawal."[35]

The trial judge asked on the record "what's the problem with the [stipulations] we had,"[36] despite her being present with Mr. Shannon during those "heated discussions"[37] regarding these very stipulations.

Likewise, Mr. Cassidy also said "well, what do you mean you withdraw [the stipulations],"[38]

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[31] September 27, 2016 hearing transcript at p. 84 at ln.12-13.
[32] September 27, 2016 hearing transcript at p. 85 at ln. 9-10.
[33] The undersigned believes Mr. Holland and Mr. Sigler have afforded the State stellar representation upon their late entrance, but the erroneous stipulations entered into by DA Terrell and ADA Wampler are being forced down the gullets of the State, by Robinson's post-conviction attorneys and the court.
[34] September 27, 2016 hearing transcript at p. 17, lines 25-29.
[35] September 27, 2016 hearing transcript at p. 23-24.
[36] September 27, 2016 hearing transcript at p. 21, lines 27-30.
[37] September 27, 2016 hearing transcript at p. 86, line 9.
[38] September 27, 2016 hearing transcript at p. 22, lines 22-29 and p. 23 at ln. 9-19.

when he was also present in that empty courtroom when Judge Koch ordered Mr. Shannon and undersigned counsel out of the room prior to them signing the stipulations. Mr. Cassidy stated the following:

> "The undisputed facts as set forth in that joint stipulation that *Mr. Wampler and I worked on for about three months* says simply enough the state had this, Mr. Small didn't get that. No question about motivation, we didn't raise that."

(September 27, 2016 hearing transcript at p. 20). (Emphasis added).

This begs the question – if the joint stipulations were being discussed for three months, then why weren't the four murdered victims' families ever notified by the DA's office?[39]

Further, Cassidy stated during court:

> "I think it laps up on the bizarre to simply say, well, we withdraw it. *I'm not sure* where that authority comes from but if that's what – if it is in fact, ultimately withdrawn then why wouldn't we be able to take the depositions of Mr. Wampler and Mr. Terrell, why did you agree to it in the first place. What has changed?"[40]

Judge Koch, referring to DA Terrell and ADA Wampler stated, "the state was well represented by many attorneys along the way and I'm familiar with some of them who has had a history with it. So **I'm not going to allow that there to be [sic] a reset.**"[41] (Emphasis added). Judge Koch stated in the hearing, "it was **hotly contested** and it was submitted by many people and signed off on with hours of discussion before it ever got submitted to the court, with me asking multiple times is this what y'all want to do and Mr. Terrell signing off on it."[42]

Nonetheless, Judge Koch acknowledged, "**There are suspicions everywhere about every single one of the lawyers that are in this room**"[43] and "**it appears that there is something more to this than it is *and I'm kind of tired of that game*.**"[44] (Emphasis added). The judge further asked what was inappropriate and inaccurate in the stipulations and said the State did *not* have to answer in this "open courtroom."[45] However, as the United States Supreme Court has held, "The crucial prophylactic aspects of the administration of justice cannot function in the dark; no community catharsis can occur if justice is 'done in a corner [or] in any covert manner.'" *Richmond Newspapers, Inc.*, 448 U.S. 555, 571, 100 S. Ct. 2814, 2824, 65 L. Ed. 2d 973 (1980).

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[39] http://www.kalb.com/content/news/Convicted-murderer-Darrell-James-Robinson-could-have-death-penalty-sentence-vacated-378872561.html
[40] September 27, 2016 hearing transcript at p. 23 at lines 9-15.
[41] September 27, 2016 hearing transcript at p. 14, lines 9-13.
[42] September 27, 2016 hearing transcript at pp. 24-25.
[43] September 27, 2016 hearing transcript at p. 27 at ln. 3-5.
[44] September 27, 2016 hearing transcript at p. 27 at ln. 9-11.
[45] September 27, 2016 hearing transcript at p. 27 at ln. 29-30.

"The judge also stated at a hearing on June 2, 2016, *"as Mr. Terrell mentioned in the back, I'm not – we're not crossing boundaries of the expectations of what the state has or their role as attorneys* or any of those things."[46] (Emphasis added).

Even Robinson's attorneys admitted in one court filing that one of the joint stipulations were wrong. *See* May 13, 2016 Withdrawal of Stipulated Fact which requests the Court withdraw Paragraph 5(v).

Counsel for Robinson, however, claims this was contained in the District Attorney's file just four (4) days after signing the joint stipulation. The undersigned is curious as to why this error was not uncovered prior to the stipulations being signed. An affidavit of one of Robinson's attorneys, Mr. Kevin C. Reich, signed on May 12, 2016 seemed to show how Robinson's attorneys discovered the error:

> "On May 11, 2016, **in following up on certain claims made by Mike Shannon** ***prior to and during the May 9, 2016 hearing,*** I conducted additional review of the documents provided to CPCPL by the Rapides Parish District Attorneys office in 2008."

Notably, some of the documents the defense claimed were withheld had been discussed extensively at Robinson's actual trial, and Robinson's original trial counsel never made any contemporaneous objection that he had not received these documents.

By August 2016, Mr. Shannon could no longer bare the DA's office. He and another veteran prosecutor, the First Assistant District Attorney under DA James Downs, retired *early* on the same day.[47]

Even more strange is that there may be one document that could exculpate Mr. Shannon from some of the *Brady* allegations, and it is apparently missing from the record. Interestingly, and ironically, as noted by new counsel for the DA during the July 26, 2016 hearing, "Your Honor, there are issues with the clerk's file through - not necessarily any fault of anybody's but it looks like maybe there are some things that are out of order and there are some things that could be missing."[48] Even the court at June 2, 2016 hearing stated, "it's like, wait a minute, that file has floated many places, parts of that file, so that I hope the file is intact, I want to make a record of that too because that was something we had a conversation on the phone…."[49]

Mr. Cassidy, a Minnesota lawyer, has referred with a denigrating tone in court to "the great state

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[46] June 2, 2016 hearing transcript at p. 23, ln. 28-30.
[47] http://www.kalb.com/content/news/Two-veteran-prosecutors-retire-from-the-Rapides-Parish-DAs-Office-391900781.html
[48] July 26, 2016 hearing transcript at p. 33, ln.10-14.
[49] June 2, 2016 hearing transcript at p. 19, ln. 27-31.

of Louisiana,"[50] and mischaracterized Louisiana as the poster-child for *Brady* violations.[51] However, the totality of the evidence, shows that the irregularities in this case since ADA Wampler and DA Terrell had the case for the State are anomalous and appear to go beyond mere coincidence. Further, ADA Wampler's failure to disclose an arguably significant conflict of interest has potentially compromised the safety of the public at large.

Nonetheless, the trial court has stated to the State's new counsel:

> "So I think what I'm hearing is that y'all may not be satisfied with perhaps what the state [DA Terrell and ADA Wampler] did before you entered into it.... [W]e have been so deep into this in the last few months that it's not blindly answering some of the things. So my thoughts are that simply because there is new attorneys is not going to trigger the ability to rehash things."[52]

Nevertheless, presumably, the trial court was never aware of ADA Wampler's conflict of interest. Furthermore, this case was not randomly allotted, as required. Indeed, during these post-conviction proceedings, the trial judge (Division E) rotated from the Ninth Judicial District's criminal docket to the civil docket. An Order was signed requiring "all criminal matters previously allotted from January 1, 2016 to March 31, 2016 to Division "E" shall be re-allotted to Division A."[53] Similarly, an Order was signed the year prior which ordered, "effective January 1, 2015, the Clerk of Court shall re-allot all criminal matters previously allotted to Division E to Division C."[54] Nevertheless, the trial judge, now on the civil bench, held on to this criminal case. In one hearing it seems that the judge made the decision stating, "I said, let me keep it because –or everybody said since I had read the transcript...."[55] This High Court has held:

> "Just as a litigant may not choose a courtroom or a judge, a judge may not select his caseload or his litigants. This statute was enacted to facilitate meaningful random assignment. We hold transfers that permit judges to circumvent the random allotment process to funnel particular types of cases to one judge violate the spirit and purpose of La.Code Civ. Proc. art. 253.1."

State v. Sprint Commc'ns Co., L.P., 96-3094 (La. 9/9/97), 699 So. 2d 1058, 1062. *See also* Louisiana District Court Rule 14.0. *Cf. State v. Simpson,* 551 So. 2d 1303, 1304 (La. 1989).

Importantly, the United States Supreme Court has stated:

> "If the statute made [the judge] incompetent to sit at the hearing, the decree in which [the judge] took part was unlawful, and perhaps absolutely void, and should certainly be set aside or quashed by any court having authority to review it by appeal, error, or certiorari."

Am. Const. Co. v. Jacksonville, T. & K.W. Ry. Co., 148 U.S. 372, 387, 13 S. Ct. 758, 764, 37 L. Ed. 486 (1893).

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[50] May 9, 2016 hearing transcript at p. 14, ln. 30.
[51] September 27, 2016 hearing transcript at p. 21, ln. 11-17
[52] September 27, 2016 hearing transcript at p. 14, ln.2-4, and ln. 25-27.
[53] *See* In re 2016 Bench Rotation Amended Order signed on March 9, 2016.
[54] *See* In re 2015 Bench Rotation signed on December 1, 2015.
[55] June 2, 2016 at p. 14, ln. 25-29.

III. PRAYER FOR RELIEF

Open courts, public proceedings and public records are hallmarks of the American justice system. As a friend of the court, the undersigned felt compelled both morally and as an officer of the court to report the facts to which this High Court otherwise would not know.

The murdered victims' family were not informed of the post-conviction proceedings in contravention of the law.[56] Similarly, Mr. Shannon, who is subject to possible disciplinary action, a potential § 1983 civil action and even a criminal investigation based on ADA Wampler and DA Terrell signing stipulations as to Mr. Shannon's conduct, has been continually denied due process because he has not been given either proper notice or a meaningful opportunity to respond. Essentially, in the case *sub* judice, *Brady* has been turned on its head. Records have been sealed which should not have been sealed. Documents that should have been public record were sent to the trial court without filing the same with the clerk of court. This is a case involving a quadruple murderer – secrecy in this type of proceeding is anathema to our laws and should be prohibited. Accordingly, this High Court should press the "restart" button.

Indeed, there is one thing everyone seems to agree on in this case – **something abnormal happened here.** Robinson's attorney referred to it as "monkey business,"[57] new DA's counsel has referred to it as possible "shenanigans and tomfoolery"[58] and the trial court has stated, "I'm kind of tired of [this] game."[59] When all parties involved are describing court proceedings in this manner concerning a convicted quadruple murderer, it is time for this High Court to intervene and compel random allotment or appoint a detached *ad hoc* trial judge, and mitigate or limit the toll taken on the state for DA Terrell and ADA Wampler failing to disclose a conflict of interest, including modifying stipulations which are erroneous.[60] The undersigned also respectfully requests that the Rapides Parish District Attorney's office pay for completely independent counsel to represent Mr. Shannon's interest and allow Mr. Shannon to intervene so he may be afforded basic due process.

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[56] http://www.kalb.com/content/news/Convicted-murderer-Darrell-James-Robinson-could-have-death-penalty-sentence-vacated-378872561.html

[57] September 27, 2016 hearing transcript at p. 28 at line 13.
[58] July 26, 2016 hearing transcript at p. 28 at lines 3-4.
[59] September 27, 2016 hearing transcript at p. 27 at ln. 9-11.
[60] "Courts have a large role in agreements between parties in 'any suits affecting the public interest:' in the public interest or to reflect changed circumstances, the courts may modify secrecy or other stipulations of the parties." N.A.A.C.P. v. Acusport Corp., 210 F.R.D. 268, 270 (E.D.N.Y. 2002).

Respectfully submitted,

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VERIFICATION

I certify that all information contained in this *Amicus Curiae brief* is true and correct to the best of my knowledge.

I further certify that on this date, January 3, 2017, a copy of this *Amicus Curiae brief* has been electronically mailed to the respondent judge, and to all other counsel, as listed below:

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