

BEFORE THE  
BOARD OF PARDONS AND PAROLES  
STATE OF GEORGIA

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**RENEWED APPLICATION OF WARREN LEE HILL, JR.,  
FOR A 90-DAY STAY OF EXECUTION AND  
FOR COMMUTATION OF HIS SENTENCE OF DEATH**

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**INTRODUCTION**

Warren Lee Hill, Jr., by his undersigned counsel, applies to the Georgia Board of Pardons and Paroles, pursuant to Article IV, § II, ¶ II(a) and (d) of the Georgia Constitution, O.C.G.A. 49-9-20, 42-9-42(a) and Chapters 475.2.01 (1) and 475.3.10 (2), (6) of the Rules of this Board: (i) for reconsideration of his application for commutation of his sentence of death, imposed by the Superior Court of Lee County on August 2, 1992; (ii) for a ninety (90) day stay of execution, presently scheduled for Tuesday, February 19, 2013, at 7:00 p.m., to permit consideration of his application; (iii) for a second hearing before the full Board, allowing him to present witnesses and to be heard through his counsel; and after that review, (iv) for the commutation of his sentence of death to life without possibility of parole.

Mr. Hill bases his request for reconsideration of his application for commutation of his death sentence on the following compelling reasons:

**A. The State Doctors Who Evaluated Mr. Hill in 2000 Have Acknowledged that Their Prior Findings were Inaccurate and That Mr. Hill is Mentally Retarded.**

In an extraordinary development which occurred after the Board had denied clemency on July 16, 2012, the three Central State Hospital doctors who evaluated Mr. Hill for the Attorney General in 2000 reconsidered their prior findings in this case and found that Mr. Hill meets the criteria for mental retardation. This only occurred because Dr. Thomas Sachy, one of the state doctors, reached out to undersigned counsel after clemency had been denied and after the Georgia Supreme Court had entered a stay in Mr. Hill's case on July 23, 2012.

In late 2000, shortly before the December 2000 evidentiary hearing in this Court in *Hill v. Head*, Butts Co. Superior Court Case No. 94-V-216, three mental health experts from Georgia's Central State Hospital in Milledgeville evaluated Mr. Hill for mental retardation at the request of Respondent. The evaluation team consisted of lead evaluator Dr. James Gary Carter, a psychiatrist, Dr. Donald Harris, a psychologist, and Dr. Thomas Sachy, also a psychiatrist.<sup>1</sup> After a rushed

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<sup>1</sup> See Appendix 18 (December 2000 Central State Hospital evaluation team report – Respondent's Exhibit 187 in *Hill v. Head*, Butts Co. Superior Court Case No. 94-V-216);

evaluation process, these experts testified in 2000 that although Mr. Hill could meet the IQ criterion for mental retardation, his adaptive skill deficits were such that a diagnosis of borderline intellectual functioning was more appropriate.<sup>2</sup>

However, after the Georgia Supreme Court issued a stay of execution in Mr. Hill's case in July 2012, Dr. Thomas Sachy, one of the Central State Hospital doctors, contacted undersigned counsel and expressed his concern that his 2000 diagnosis of Mr. Hill was in error given his lack of experience at the time. Dr. Sachy asked to review his findings, the Central State Hospital evaluation, his testimony and to revisit the case materials. Having completed that review, Dr. Sachy found that his prior conclusions had been in error and opined that Mr. Hill meets the criteria for mental retardation:

In 2000, my training had focused primarily on patients with brain injuries and seizure disorders. Most of these patients had Alzheimer's or other frontal lobe dementia. I had my fellowship in Forensic Psychiatry at Emory University in June 2000 and had taken a half-time position at Central State Hospital in Milledgeville, Georgia, as a forensic psychiatrist. I did not have experience evaluating patients for

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Appendix 19 (December 2000 Report of Dr. Thomas Sachy – Respondent's Exhibit 40 in *Hill v. Head*, Butts Co. Superior Court Case No. 94-V-216).

<sup>2</sup> *Id.*; see also Testimony of Drs. Sachy, Harris and Carter at evidentiary hearing of December 13-14, 2000 in Butts Co. Superior Court Case No. 1994-V-216.

mental retardation. I had almost no experience testifying in a forensic context.

In November 2000, I was asked to evaluate a death-sentenced prisoner named Warren Lee Hill, Jr., in connection with proceedings to determine whether he was mentally retarded. This was my first experience working on a capital case. I ultimately evaluated Hill on December 11, 2000, for approximately one hour and provided my findings to Dr. Gary Carter M.D. and Dr. Donald Harris Ph.D. at Central State Hospital. On December 11, 2000, Dr. Carter assembled a report which included my impressions gleaned from some records pertaining to Hill, and on December 12, 2000, I produced a separate written report after my evaluation of Mr. Hill the day previously. I testified at the habeas corpus hearing in Hill's case on or about December 13, 2000. The whole process, including my evaluation of Mr. Hill, was rushed due to this compressed timetable.

In late July 2012, I noticed media reports about a man whom courts had found to be mildly mentally retarded and who was nevertheless facing execution. I then realized that this man was Warren Lee Hill, and I remembered that I had evaluated him for the government many years ago. Not realizing that a stay of execution had already been entered in the case, I contacted Mr. Hill's counsel on July 27, 2012, and offered to discuss the case. I told counsel I felt that my previous conclusions about Mr. Hill's mental health status were unreliable because of my lack of experience at the time, and I wanted to revisit the case. Since that time, at my request, Mr. Hill's counsel has provided me with my original notes and reports in the case, as well as additional extensive materials from the court record (Butts Co. Superior Court Case No. 94-V-216), much of which I had not reviewed in 2000. These materials include: the entire transcript of the habeas corpus hearing in December 2000, affidavits of teachers, friends, family members, and Navy associates; school and Navy records; reports and affidavits of Drs. Grant, Dickinson, and Stonefeld; examples of letters purportedly written by Mr. Hill while in prison; and a 20 year old memo from social worker Carol Peddy to Mr. Hill's original trial attorneys. I have also reviewed the United

States Supreme Court's decision in *Atkins v. Virginia*, 536 U.S. 304 (2002).

Having reviewed my earlier evaluation results and the far more extensive materials from the record of this case, I believe that my judgment that Mr. Hill did not meet the criteria for mild mental retardation was in error. In my opinion today, within a reasonable degree of scientific certainty, Mr. Hill has significantly subaverage intellectual functioning with an IQ of approximately 70, associated with significant deficits in adaptive skills, with onset prior to age 18. I thus concur with the conclusions (rendered previously in Mr. Hill's case) of Dr. Daniel Grant, Dr. Jethro Toomer, Dr. Donald Stonefeld, and Dr. William Dickinson that Mr. Hill meets the criteria for mild mental retardation and the bases for those conclusions which they articulated.

During my evaluation of Mr. Hill in December 2000, some things in particular persuaded me at the time that, as I wrote in my report of December 12, 2000, he was "malingering a cognitive disorder" and that he did not meet the criteria for mild mental retardation but rather for borderline intellectual functioning. As I noted in my report of December 12, 2000 and in my testimony, Mr. Hill's repeated response of "I don't know" to my questions I interpreted as a sign of malingering. Mr. Hill also did not attempt even to guess at answers and often seemed uncooperative generally. He answered many questions correctly, but also missed or said "I don't know" to questions I would have thought he would have no trouble answering. I also gave great weight to Mr. Hill's somewhat poor attempt to copy a drawing of intersecting pentagons as a signal of malingering. I also saw letters Mr. Hill had purportedly written to his counsel which seemed to be more advanced for a mentally retarded person. Finally, I simply found it difficult to believe that someone with mental retardation could function even minimally in the United States Navy as a petty officer, although I have never served in the military.

Therefore, at the hearing in December 2000, I was unprepared to find that Mr. Hill met the criteria for mild mental retardation. However, since that time, I have had the opportunity to practice psychiatry for

an additional 12 years – almost my entire career as a psychiatrist – and I have treated an extremely wide variety of patients in that time, including many who were mentally retarded. The scientific understanding of mental retardation has also expanded, and the protocols for determining whether a patient is “malingering” or feigning a mental disorder have become more sophisticated, as have the scientific conclusions which can be drawn from such behavior. I have had far more experience with patients who may technically have “malingered” or feigned certain symptoms, but who nevertheless have real mental disorders. In other words, I have vastly greater experience as a psychiatrist than I did in 2000 and I have access to better science pertaining to the key questions in Mr. Hill’s case.

I do not believe now that Mr. Hill was deliberately feigning a cognitive disorder in 2000, and I believe that his responses to my questions were consistent with mild mental retardation. At the time of the 2000 Central State evaluation, I and the other state clinicians followed the DSM-IV in placing great weight on the medico-legal context of the evaluation as well as on the seeming lack of cooperation of the patient as signs of intentional feigning. In the psychiatric community, we now know that reliance on the DSM criteria has resulted in an extremely high rate of false findings of malingering. See e.g., R. Rogers, *Clinical Assessment of Malingering and Deception*, 2<sup>nd</sup> Ed. (1997); Drob, Meehan and Waxman, *Clinical and Conceptual Problems in the Attribution of Malingering in Forensic Evaluations*, *J Am Acad Psychiatry Law* 37:98-106 (2009). False positive findings of malingering have been found to be related to the training that young psychiatrists undergo which places heavy emphasis on ferreting out malingering, leading to its overdiagnosis. I had just emerged from this kind of training when I evaluated Mr. Hill. But, importantly, even where patients do feign (e.g., by being “uncooperative”), this in no way rules out a real underlying disorder. The feigning may even be part of the symptomology of the disorder. Id.

Based on my experience since then, as well as on science’s current understanding of behaviors once thought to be associated with malingering, it is my opinion that the kinds of behaviors that I

perceived during my evaluation – limited or inconsistent memory, lack of cooperation, poor test performance, etc. – were consistent with responses to the stress of the situation typical of someone with an intellectual disability and are even symptomatic of a defense mechanism related to past documented trauma in Mr. Hill’s background. See, e.g., Drob, Meehan and Waxman (2009). These behaviors must also be assessed in the context of the rushed time frame in which my evaluation occurred – literally the day before the December 2000 evidentiary hearing, which was undoubtedly a stressful moment in time for Mr. Hill. I also had only an hour to spend with Mr. Hill.

Finally, in the psychiatric community we now understand that access to an expansive fund of collateral information about the patient is essential in order to form an accurate diagnosis of mental functioning and to accurately contextualize a patient’s behaviors which may be superficially consistent with feigning or malingering. See, e.g., Drob, Meehan and Waxman (2009).

With this in mind, Mr. Hill’s “I don’t know” response cannot be seen as indicative of malingering in the context of the record in this case. For example, a memo by a defense social worker in approximately 1990-91 (part of Respondent’s Exhibit 53 in the record in Mr. Hill’s case) indicates that even with defense team members prior to his trial, Mr. Hill showed “poor verbal skills and [found] it difficult, almost impossible to express thoughts and feelings. Many questions were answered with ‘I don’t know.’” At the 2000 hearing also, Mr. Hill was described by his trial level attorneys as being extremely uncommunicative and withholding. I was not privy to this information at the time of my evaluation or testimony. I find the “I don’t know” response to be consistent with mild mental retardation in Mr. Hill and also with schizoid symptoms other clinicians identified. Finally, in light of my experience treating patients since 2000, I do not today see these kinds of responses as indicative of deliberate feigning.

With respect to Mr. Hill’s crude drawing of a clock face and somewhat distorted copying of two intersecting pentagons, these too cannot be considered emblematic of deliberate feigning, particularly



in light of the fact that Mr. Hill's hands were cuffed during his attempts to draw them. Furthermore, at the time, I had not reviewed the findings of Dr. Daniel Grant, who had conducted neuropsychological testing in 1997 (part of the court record) and found signs of organic impairment which could have contributed to the less than perfect rendering of the pentagons. (In my testimony in 2000, furthermore, I remarked that there should have been some indication of mental retardation in neuropsychological findings, but since I had not seen Dr. Grant's findings I did not know that, in fact, there had been findings consistent with mild mental retardation in his neuropsychological testing.) Finally, having treated many hundreds more patients since 2000, I do not find these drawings to be in any way indicative of intentional feigning.

With respect to the letters Mr. Hill purportedly wrote to his counsel (see Petitioner's Exhibit 106 and 110 from the court record), I have been provided with other written correspondence purportedly from Mr. Hill located in his prison file (part of Petitioner's Exhibit 85 at pp2709, 2712 of the court record) which in my view are clearly in another person's handwriting, as well as more recent letters purportedly from Mr. Hill which explicitly indicate that they have been written by another inmate. Therefore, I cannot say that the letters I originally examined were actually written by Mr. Hill without assistance from another inmate or counselor. In any event, they cannot provide a basis to rule out mild mental retardation.

At the time of the 2000 court hearing, I did not observe the testimony of any other witnesses. I was not privy to the testimony of Navy psychologist Dr. Jerry Brittain and Army psychiatrist Dr. Donald Stonefeld. I was also not privy to the testimony of William Erwin and Al Grieshaber, Mr. Hill's original trial attorneys. Mr. Grieshaber is a former military servicemember. I have now had the opportunity to review their testimony. What the testimony of these individuals helps me understand now is that a mildly mentally retarded individual like Mr. Hill could have functioned adequately at least for a time in the structured setting of the Navy at the rank of E5 or petty officer. As the testimony made clear, mild mental retardation would not have prevented Mr. Hill from carrying out his duties as an ordnance loader

given the many layers of supervision under which he functioned. As Dr. Brittain describes, Mr. Hill began to decompensate once he transferred from the Naval Air Station in Boston to NAS Atlanta, where he was given additional responsibilities which he did not have the coping skills to manage. Further, poor interpersonal and relationship skills caused him to be unable to manage stress in his relationship with Myra Wright, his girlfriend in Atlanta. There came a time when Mr. Hill decompensated and had to be brought home to live with relatives. Mr. Hill never lived alone.

The Navy records, which I had also not seen in 2000, further show that although Mr. Hill was recommended for advancement to the rank of E6, he was passed over for promotion. Thus, there appears to have been recognition, consistent with the affidavits of Mr. Hill's Navy associates, that Mr. Hill was not able to maintain a level of functioning past a certain point – which is consistent with mild mental retardation. The expanded information pertaining to Mr. Hill's Navy service persuades me that his service was not inconsistent with mild mental retardation and in fact the trajectory of his performance in the Navy is very consistent with that of a mildly mentally retarded person who encountered stresses with which he was unable to cope.

Finally, the totality of evidence shows that far from “malingering a cognitive disorder,” Mr. Hill has had a cognitive disorder with adaptive skill deficits since early childhood. He consistently tested in the 2-3 percentile in childhood achievement and intelligence testing, consistent with mild mental retardation. There was no dispute in 2000 among the clinicians who had evaluated Mr. Hill that he has an IQ of approximately 70. There is also evidence of significant deficits in such areas of his functioning as self-care, functional academics, interpersonal skills, and home living since prior to age 18. I concur with Drs. Grant, Stonefeld, Toomer, and Dickinson in this respect. With respect to Mr. Hill's ability to acquire a driver's license, drive vehicles, hold a job, or have relationships with women, these are not outside the scope of the abilities of people with mild mental retardation.

In 2000, my erroneous judgment that Mr. Hill was deliberately feigning a disorder, as well as the narrow scope of information I reviewed, resulted in my error in finding that Mr. Hill was not mentally retarded. However, having learned about and revisited the issues of malingering and mental retardation and having reviewed extensive additional materials from the court record in Mr. Hill's case, my conclusion now, to a reasonable degree of scientific certainty, is that Mr. Hill meets the criteria for mild mental retardation as set out in the DSM-IV-TR and as delineated by the American Association on Intellectual and Developmental Disabilities (AAIDD). That is: Mr. Hill has significantly subaverage general intellectual functioning associated with significant deficits in adaptive functioning, with onset before the age of 18.

Exhibit 1.

Similarly, Dr. Donald Harris, a psychologist, and Dr. James Gary Carter, the lead Central State Hospital forensic psychiatrist, after reviewing Dr. Sachy's affidavit and revisiting the case materials, opined that Mr. Hill met the criteria for mild mental retardation. Dr. Harris testifies as follows:

In December 2000, I was part of a team at Central State Hospital, including Dr. James Gary Carter and Dr. Thomas Sachy, which was asked by the Georgia Attorney General's Office to conduct an evaluation of Warren Lee Hill, Jr., a death sentenced prisoner, to determine whether Mr. Hill met the criteria for mental retardation. On December 6, 2000, I accompanied Dr. Carter to the Georgia Diagnostic Prison and conducted a 2 hour evaluation of Mr. Hill. Dr. Sachy did a follow up evaluation several days later. I provided my written findings to Dr. Carter, who incorporated them *in toto* in his report dated December 11, 2000. I testified at an evidentiary hearing in the case of *Hill v. Head*, Butts Co. Superior Court Case No. 94-V-216, on December 14, 2000.

In the days leading up to my evaluation of Mr. Hill and even as late as just before my court testimony, I was receiving records and case materials and reviewing them as best I could. I relied on Dr. Carter to identify materials he thought most relevant. I did not have time or opportunity at that time to review absolutely everything.

At the time of my testimony in December 2000, I opined that I did not believe Mr. Hill met the criteria for mental retardation and found instead that he met the criteria for borderline intellectual functioning, which is a diagnosis for patients who may meet the IQ criteria for mental retardation but whose adaptive skill deficits are not quite significant enough to qualify for mental retardation.

In February 2013, I was contacted by counsel for Mr. Hill, who informed me that Dr. Thomas Sachy had reconsidered his findings in Mr. Hill's case and had found that Mr. Hill had not been malingering at the time of Dr. Sachy's evaluation and that, having reviewed the record of the case recently, the balance of the evidence persuaded Dr. Sachy that Mr. Hill could meet the criteria for mild mental retardation.

I have reviewed the February 8, 2013, affidavit of Dr. Sachy in which he makes these conclusions. Dr. Sachy's testimony is critical because his findings were given consideration in making my own conclusions. For example, like Dr. Sachy, I found Mr. Hill to be minimally cooperative and likely exaggerating his cognitive limitations. In 2000, Dr. Sachy felt that these behaviors indicated that Mr. Hill was deliberately feigning a cognitive disorder.

At Mr. Hill's counsel's request, I have reviewed Mr. Hill's case materials again, including some materials which I had not seen or had missed during my initial review in the run-up to Mr. Hill's 2000 hearing. I also concur with Dr. Sachy that the science pertaining to determinations of both "malingering" and to mental retardation has advanced significantly since 2000, and therefore I have taken these advances into consideration as I re-reviewed the materials in this case.

In addition to many of the materials I remember at least seeing in the packets sent to me in 2000, I have reviewed the transcripts of the 2000 evidentiary hearing, including the testimony of Dr. Donald Stonefeld and Dr. Jerry Brittain, as well as that of Mr. Hill's original trial attorneys. I did not have access to this testimony in 2000 because I was a witness at the hearing and did not observe the testimony of the other witnesses. I have also been presented with prison records from the late 1980s/early 1990s which I did not see previously.

In light of Dr. Sachy's recent conclusions and after thoroughly reviewing the materials in this case, I now find that the balance of the evidence is persuasive that Mr. Hill meets the criteria for mild mental retardation: that he has significantly subaverage intellectual functioning, associated with significant deficits in adaptive functioning, with onset before the age of 18.

As I testified in 2000, I had had no experience evaluating mental disorders among military personnel. I did not serve in the military. Given my lack of experience with the military, I was skeptical that an individual with mild mental retardation could function adequately, even for a time, in the lower enlisted ranks of the Navy. This was influential in my thinking as I evaluated Mr. Hill.

However, I have now had the opportunity to review the testimony of Dr. Donald Stonefeld and Dr. Jerry Brittain, and to scrutinize more carefully some of the Navy records of Mr. Hill as well as to review the testimony of Mr. Hill's former Navy supervisor, David Hartsough, which I had not seen previously. I concur with Dr. Sachy that the testimony of Dr. Stonefeld and Dr. Brittain, both military clinicians, helps me understand how Mr. Hill could have functioned at the rank of petty officer, or E5, in the structured environment of the Navy, even though he was mildly mentally retarded.

Further, the testimony of Mr. Hartsough that Mr. Hill's positive recommendations for advancement were overstatements of his abilities is confirmed by the Navy records, which show that despite the recommendations for advancement, Mr. Hill was not permitted to advance to the next rank in the Navy. Indeed, as more responsibilities

were given to him, he began to decompensate in his performance significantly. In short, Mr. Hill's performance in the Navy was not inconsistent with mental retardation but is consistent with mild mental retardation.

Mr. Hill's prison records from the 1980s and early 1990s (from Petitioner's Exhibit 85 in the court record) -- long before the proceeding in 2000 -- also reveal that he consistently exhibited adaptive deficits in areas such as interpersonal skills, communication skills, decision making, and leisure skills. These deficits were explicitly noted by prison staff. With respect to communication skills, prison staff noted that Mr. Hill had extreme difficulty communicating his feelings and needed to "break through his barrier." These deficits are consistent with mild mental retardation and with my prediction in my 2000 testimony that such deficits ought to have been observable in Mr. Hill while in prison, despite the structured setting.

In particular, Mr. Hill's communication difficulties are consistent with behaviors Dr. Sachy and I observed in 2000 which we interpreted as lack of cooperation. Along these lines, the testimony of Mr. Hill's trial attorneys and a memo by social worker Carol Peddy to the trial attorneys circa 1990-91 further establish that the strained communication and seeming uncooperativeness I believed Mr. Hill to be exhibiting in 2000 were behaviors with which even his original defense team had to contend. These behaviors I now see as consistent not with any deliberate effort to feign mental retardation but with a long-standing adaptive skill deficit which is a hallmark of mild mental retardation.

In 2000, I felt that letters Mr. Hill had sent to his attorneys indicated a level of ability greater than for a mentally retarded person (Petitioner's Exhibits 106 and 110 from the court record). However, I have now reviewed other letters from Mr. Hill's prison file (part of Petitioner's Exhibit 85 at pp 2709, 2712 of the court record). These letters, from 1992 and 1993, are in my opinion clearly in a different handwriting from those in the letters to his counsel. Additionally, I have reviewed more recent correspondence from Mr. Hill to his current counsel which bear explicit notations that they were written by

another inmate for Mr. Hill. In light of these new materials, the letters I referenced in my 2000 testimony are not a reliable indicator that Mr. Hill has any meaningful facility for writing and communicating. It is clearly more than likely that he had help, consistent with mild mental retardation.

I have also re-reviewed other materials in this case in light of Dr. Sachy's and my current opinions about Mr. Hill's performance in our evaluations and about Mr. Hill's performance in the Navy. For example, I now feel comfortable giving more weight to the testimony of Mr. Hill's teachers, friends and family members which was submitted to the court in 2000. One of the things I noted in my testimony in 2000 was that Mr. Hill's high school records did not on their face indicate that his grades had been inflated by his teachers. However, I did note during my testimony that Mr. Hill's middle school records (attached to an affidavit by teacher Mamie Hill) were consistent with grade inflation and social promotion. The discrepancy with the high school records can be explained by the testimony of Mr. Hill's sisters, Peggy Williams and Robbie Scott, who routinely helped Mr. Hill with his homework. In addition, a more careful review of Mr. Hill's early life school records indicates that he failed almost every class in the first grade, consistent with teacher Thurley Hicks's testimony.

My more careful review of the school records, moreover, shows that in middle school, academic achievement testing showed that Mr. Hill was functioning in the 3<sup>rd</sup> percentile nationally. As I noted in my testimony in 2000, early testing results are a reliable indicator of true functioning, and the middle school Iowa test results are a good indicator that Mr. Hill has had a life-long cognitive disorder. The American Association on Intellectual and Developmental Disabilities (AAIDD) (formerly the American Association on Mental Retardation) notes that this level of functioning in early life is consistent with mental retardation. It is also consistent, again, with the middle school records and the testimony of Mr. Hill's teachers.

In 2000, the Central State evaluation team did not have any significant quarrel with testing which showed that Mr. Hill had an IQ of

approximately 70. I note that prison administration of the Wide Range Achievement Test (WRAT) in the 1980s and 1990s, the results of which I did not see in 2000, show that Mr. Hill has consistently functioned at the approximately 6th grade level. Again, the DSM notes that this is consistent with mild mental retardation. The consistency of these results also corroborates the testing results obtained by Dr. Grant and Dr. Toomer in 1997 and 2000. My more careful review of the record today establishes that Mr. Hill has consistently, from childhood, demonstrated significantly subaverage intellectual functioning.

Again, in light of his documented level of functioning over time, and in light of advances in the understanding of mental retardation, especially in the mild category, I am willing to give more credence than I did in 2000 to the testimony of Mr. Hill's family members, friends, teachers and Navy associates. We in the clinical community now understand better that persons with mild mental retardation are capable of such things as holding a job, working under close supervision, buying and driving a car, and so forth. It is precisely because significant deficits in cognition, judgment, and impulse control can be masked by superficial functionality in cases of mild mental retardation that such persons may sometimes not be identified in court proceedings as being intellectually disabled. I believe this has happened in Mr. Hill's case.

I now believe, to a reasonable degree of scientific certainty, that Mr. Hill does meet the criteria for mild mental retardation in that he has significantly subaverage intellectual functioning, associated with significant deficits in adaptive functioning, with onset before age 18. I therefore concur in the findings of Drs. Grant, Toomer, Stonefeld, Dickinson and Sachy in this case.

Exhibit 2.

Finally, Dr. Carter now testifies as follows:



In December 2000, pursuant to a request from the Georgia Attorney General's Office, I conducted an evaluation of a Georgia prisoner named Warren lee Hill, Jr. Dr. Donald Harris, a psychologist, and Dr. Thomas Sachy, a psychiatrist, both with Central State Hospital at the time, also participated in the evaluation. We were asked to assess whether Mr. Hill met the criteria for mental retardation. I personally evaluated Mr. Hill at the Georgia Diagnostic Prison in Jackson, Georgia, on or about December 6, 2000. Dr. Harris accompanied me and conducted testing on Mr. Hill. The evaluation was held in a small locked room just off the visitation area of the prison. We advised Mr. Hill of his rights prior to commencing our evaluation. Mr. Hill was required to remain handcuffed during the evaluation. We were with Mr. Hill for about two hours. Dr. Sachy then provided a follow up clinical assessment of Mr. Hill on or about December 12, 2000.

The timetable for our evaluation of Mr. Hill was extremely and unusually rushed. We were receiving background materials during the time of our evaluation and in the days immediately prior to our testimony in court in the case of Hill v. Head, Butts Co. Superior Court Case No. 94-V-216, on December 13-14, 2000. Due to the rushed timetable, I relied heavily on the reports of Dr. Harris and Dr. Sachy that I incorporated verbatim into my full Central State Hospital evaluation report dated December 11, 2000.

In February of 2013, I was contacted by current counsel for Mr. Hill and asked to review recent affidavits by Dr. Sachy and Dr. Harris, as well as to re-review background records in Mr. Hill's case, including materials which I either missed because of the rushed nature of the 2000 evaluation or did not have access to.

In their February 2013 affidavits, Drs. Sachy and Harris testified that based on their more thorough review of the case, including materials to which they did not have access in 2000, and in light of advancement in the past 12 years in the understanding of how malingering and mental retardation are assessed, the evidence persuades them that Mr. Hill's performance in the 2000 evaluation was not indicative of malingering and that he meets the criteria for mild mental retardation. I relied on the findings of Dr. Harris and Dr.

Sachy in 2000 in making my conclusion at that time that Mr. Hill's profile did not fit mild mental retardation but rather borderline intellectual functioning. Similarly, I give credence to their opinions today in reassessing the case materials.

In 2000, Mr. Hill's IQ score of approximately 70 and the lifelong nature of his cognitive deficit was not particularly in question, but the severity of his adaptive skill deficits was the point in dispute. We did not find that he did not have a cognitive disability, but instead that his disability could not be characterized as mental retardation. It was a close case then. I have now reviewed the affidavits of Drs. Sachy and Harris and more carefully reviewed the record in this case, including materials to which I did not have access in 2000, such as the testimony of the other witnesses at the 2000 evidentiary hearing and other materials described by Drs. Sachy and Harris. I now concur with the recent opinions of Drs. Sachy and Harris and find that the totality of the evidence establishes that Mr. Hill meets the criteria for mild mental retardation.

In my 2000 testimony, I stated that Mr. Hill's seeming lack of cooperation was the "overriding thing" which led me to believe that Mr. Hill might be deliberately feigning. Now, I agree with Dr. Sachy that the psychiatric community currently recognizes that lack of cooperation and inconsistent answers to questions, etc., during an evaluation do not necessarily warrant an inference of malingering or deliberate feigning and, in any event, do not warrant the conclusion that an underlying disorder is not present.

Further, the evidence shows that Mr. Hill consistently exhibited extreme uncommunicativeness, routinely responding to questions with "I don't know" to prison staff, even prior to the crime in this case, and to his original defense team, long before the 2000 proceeding. In light of the totality of the information in this case, and considering how clinicians now interpret the kinds of behaviors we saw in Mr. Hill, I now see his lack of cooperation as symptomatic of a communication deficit consistent with mild mental retardation. Mr. Hill's behavior during our evaluation does not rule out a finding of mild mental retardation in light of the totality of the data.

The recent affidavits of Drs. Sachy and Harris and my careful review of the case have convinced me to lend greater weight to the testimony of Mr. Hill's family, friends and especially to the teachers, which indicate that he exhibited symptoms of mental retardation during his early school years. My recent scrutiny of his school records left me with the opinion that our conclusion in 2000 was in need of revision. In 2000, I stated that Mr. Hill's school records reflected average performance. I now realize that, somehow, I either overlooked or did not have possession of his grammar school records that show he failed all subjects but Behavior. I also note, as did Dr. Harris, that some of his school records from elementary and middle school reflect grade inflation consistent with social promotion. The teachers testified to this issue in their affidavits. Additionally, during his high school years, it appears that his siblings were old enough to help him with homework regularly.

I also note, as did Dr. Harris in his recent affidavit, that Mr. Hill's academic achievement testing in middle school placed him in the 3rd percentile nationally, which is consistent with mental retardation according to the American Association on Mental Retardation (now the American Association on Intellectual and Developmental Disorders-- AAIDD). This along with the school records document the long-standing nature of Mr. Hill's cognitive deficit and corroborate the testimony of Mr. Hill's teachers, family and friends that Mr. Hill showed signs consistent with mental retardation.

Having reviewed a series of letters purporting to have been written by Mr. Hill, the same referenced in the affidavits of Drs. Sachy and Harris, I concur with them that the letters I reviewed during the 2000 evaluation cannot rule out a communication or functional academics deficit. It appears that Mr. Hill has long received help in drafting written communications. This is consistent with mild mental retardation.

In my 2000 testimony, I acknowledged that I had never served in the military but found it difficult to reconcile the reported naval service records of Mr. Hill with mental retardation. Having now reviewed the testimony of some of the other witnesses at the 2000 hearing,

including Dr. Donald Stonefeld and Dr. Jerry Brittain, who have served as clinicians in the military (Dr. Brittain in the Navy), I can now understand how Mr. Hill was able to function in the Navy even with mild mental retardation. The structure of the military helped compensate for Mr. Hill's deficits until the burdens placed on him became too heavy. I also note that, upon more careful review of his Navy records, he was denied promotion to the rank above petty officer despite seemingly positive reviews, and this pattern is consistent with the downward trajectory of Mr. Hill's performance. In my opinion, Mr. Hill's performance in the Navy is consistent with the profile of someone with mild mental retardation who ultimately decompensated under stressful circumstances he could not manage.

Twelve years after Mr. Hill's hearing, we in the psychiatric community know much more about developmental disabilities such as mental retardation. As the Supreme Court warned in its 2002 decision in *Atkins v. Virginia*, which banned the execution of mentally retarded persons, defendants who have mild mental retardation are at special risk of being under-identified in the criminal justice system because their superficial functionality (e.g., the ability to have relationships, drive a car, write a letter) can camouflage underlying deficits in cognition and judgment consistent with mental retardation.

Similarly, in Mr. Hill's case, the evidence shows that Mr. Hill can function adequately in the community given adequate supports, even though he has mild mental retardation. He may be able to buy and drive a car and get a driver's license. Such performance does not mean that he is not mentally retarded. Clinicians, attorneys and courts may not immediately recognize the underlying deficits of individuals like Mr. Hill and others like him. Our rushed evaluation in 2000 was simply not conducive to an accurate assessment of Mr. Hill's condition under the circumstances.

After careful review and with the acuity only hindsight affords, it is now my opinion, to a reasonable degree of scientific certainty, that Mr. Hill's correct diagnosis is mental retardation. In other words, he has significant sub average intellectual functioning, associated with significant deficits in adaptive skills, with onset before the age of 18.

Exhibit 3.

It is now uncontroverted among the experts who have evaluated Mr. Hill's mental health profile over the years – Drs. Dickinson, Grant, Toomer, Stonefeld, Brittain, Hyde, Duckworth and now the former state experts Drs. Sachy, Harris, and Carter – that Mr. Hill is mildly mentally retarded. In light of the now *total consensus* among the experts, Mr. Hill asks that the Board reconsider its denial of clemency and commute Mr. Hill's sentence to life without possibility of parole. To do otherwise would be to permit a terrible miscarriage of justice.

**B. Special Education Officials From Mr. Hill's Former Schools Call For Mercy.**

Since the last hearing in this case, special education officials from the school systems which Mr. Hill attended as a child have called for merciful intervention to commute Mr. Hill's death sentence. These officials claim Mr. Hill as their former student and point out that had he had access to the rich array of special services that exist today, his life might have taken a different and far more productive course. Only through the accident of the timing of his birth did he not receive any special educational assistance which could have made a crucial difference, as it has in so many young lives in recent time.

Deborah Moore, Director of Special Education Services in Elbert County,

states as follows:

I am the Director for Special Education services for Elbert County Schools. It is my job to ensure that the educational needs of Elbert County students with intellectual and developmental disabilities are adequately met.

On behalf of the Elbert County School System I respectfully ask the Board to grant mercy for Warren Lee Hill, Jr., our former student who has an intellectual disability-what we used to call mental retardation - and who now faces execution.

I have reviewed Warren's school records, affidavits of Warren's elementary, middle and high school teachers, and other materials relating to his background and his case. Warren's profile is very typical of a child with an intellectual disability (what we used to call mental retardation). He grew up in a home environment where he was exposed to poverty and domestic turmoil, and which was lacking in adequate intellectual stimulation. Warren's teachers identified his intellectual disability and did what they could to give him a normal social experience even though he could not keep up with the academics. At the time Warren was in school, however, our system (like all rural Georgia school systems) lacked the far more comprehensive resources which now exist to help students like Warren obtain a meaningful education.

If Warren as a child came to school today his educational experience would be vastly different compared to what it was more than forty years ago. Today, children with special needs are quickly identified within the school system and intervention plans involving many different kinds of school personnel (teachers, social workers, school psychologists) are developed. Special needs students like Warren are monitored closely and continuously. Problems in the home as well as in school are addressed as rigorously as possible. The goal of such intervention is to make sure that special needs students obtain a

quality education and learn the self-confidence and basic coping skills which can help them live a productive life later on. I passionately believe in and have seen the difference modern special education services can make in a child's educational experience.

I believe that if Warren had gotten the benefit of the kinds of services that exist today, he would have learned how to cope with life's challenges in a productive way and would not be in the situation he is in. For all of these reasons, I respectfully ask for mercy for our former student, Warren Lee Hill, Jr.

Exhibit 4.

Similarly, Tammy Foster, Director of Special Education Services for Franklin County, states her support for clemency:

On behalf of the Franklin County School System I respectfully ask the Board to grant mercy for Warren Lee Hill, Jr., our former student who has an intellectual disability-- what we used to call mental retardation - and who now faces execution.

I have reviewed Warren's school records, affidavits of Warren's elementary, middle and high school teachers, and other materials relating to his background and his case. Based on these records, it has been established that Warren, indeed, has an intellectual disability. Today, our schools are able to offer extensive services and supports to individuals with intellectual disabilities. Currently, intervention plans are developed to address the individual needs of students with disabilities. These plans include classroom support, specialized instruction, and related services like occupational therapy and assistive technology. With these services and supports, many students are able to have a successful school career and transition to positive and productive adult lives. Unfortunately, Warren Hill did not have the benefit of these types of special education services when he was a student.

These types of supports and services were not commonly found in Georgia schools at the time Warren attended school.

If Warren had received special education services like we have in place today, I believe that he would have been better prepared to deal with life's challenges in a more appropriate way. Based on this, I respectfully ask for mercy for our former student, Warren Lee Hill, Jr.

Exhibit 4.

Finally, Rudine Phelps, Mr. Hill's former guidance counselor at Elbert Junior High School, calls for mercy:

I was the Guidance Counselor when Warren Hill, Jr attended Blackwell Junior High School in Elberton, Georgia during his eighth and ninth school years 1973-74 and 1974-75. He transferred from Hart County Elementary School in Hartwell, Georgia.

After reviewing Warren's academic and anecdotal record, it was established that Warren at that time could be educably mentally retarded. During Warren's years at Blackwell Jr. High School, in my opinion, services were severely lacking in providing quality specialized instruction as it relates to educational development, assistive technology and occupational therapy.

Warren appears to be deprived in intellectual stimulation as well as a positive stable home environment which lacked appropriate love and social interaction. Our school system during that era seem to lack the resources that exist today to prepare students like Warren for meaningful coping life experiences.

Therefore, I am respectfully requesting that you grant mercy in making your decision due to Warren's unique situation.

Exhibit 4.



Mr. Hill begs this Board to reconsider its decision to deny clemency in light of the strong support for mercy shown by officials and former educators in Mr. Hill's former school systems.

**C. An Outpouring of Support for Clemency from Mr. Hill's Family, Friends, Former Classmates, and Church Groups.**

During the hearing before this Board in July 2012, Board members asked what the attitude of the larger community surrounding Mr. Hill's family was toward Mr. Hill. Mr. Hill can now show that his large family, his friends, former classmates and church groups connected to Mr. Hill's family members all love Mr. Hill, support him, have active relationships with him, and want him to live.

Hundreds of parishioners from churches in the communities where Mr. Hill and his family live and have lived – Cobb, Butts, Hart, Elbert, and Franklin Counties in Georgia and Anderson County, South Carolina -- have signed petitions asking this Board for mercy. These churches include God's Church of Deliverance in Cedartown, the Great Faith Tabernacle in Marietta, the Oasis Family Life Church in Dallas, Joshua's Place in Jackson, Redemption Outreach Church in Greenville (SC), and the First Assembly Baptist and Evergreen Baptist Churches in Anderson (SC). *See Exhibit 5.*

Family members, friends and former classmates from all of the aforementioned geographic locales have also written a vast number of letters in support of this Board's merciful intervention. Should this Board permit, hundreds of people who know and love Mr. Hill will gladly appear in Atlanta to show their support for Mr. Hill. *See Exhibits 6-8.*

### **Conclusion**

If during the previous hearing in this case the Board could not adequately perceive the deep reservoirs of love for Mr. Hill that exist among his large family and community of support, undersigned counsel urges that it not be held against Mr. Hill. The failure to present this Board with the evidence of that support is undersigned's and undersigned's alone. There is vast support for clemency and mercy in this case, not least that coming from the family of the victim, Joseph Handspike, in this case.

Similarly, there was no way for counsel to know that the State doctors who previously evaluated Mr. Hill were skeptical of their original conclusions in this case that Mr. Hill was not mentally retarded. Now, they have acknowledged that their prior evaluation was not suited to a careful and thoughtful review of the evidence, and their conclusions were uninformed by critical evidence to which they could not have been privy at the time. They now conclude that Mr. Hill is

indeed mentally retarded, and there is now no disagreement among *any of the experts who have evaluated Mr. Hill* on this point. In the past, this Board has commuted the death sentences of inmates like Keith Patillo and Ely Beck where there was evidence of mental retardation, because Georgia's policy is to protect the mentally retarded from wrongful execution. Now, the uniform position of all experts in this case is that Mr. Hill is mentally retarded. This Board's merciful intervention is warranted in order to avoid the wrongful execution of an intellectually handicapped man.

For these reasons, Mr. Hill begs this Board to reconsider its denial of clemency and commute his sentence to life without parole.

**PRAYER FOR MERCIFUL INTERVENTION**

On behalf of Warren Lee Hill, his counsel respectfully request that the Board order commutation of his death sentence. Mr. Hill presents a compelling case for commutation of his death sentence. We respectfully request that this Board grant Warren Lee Hill's plea for mercy.

Respectfully submitted,



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