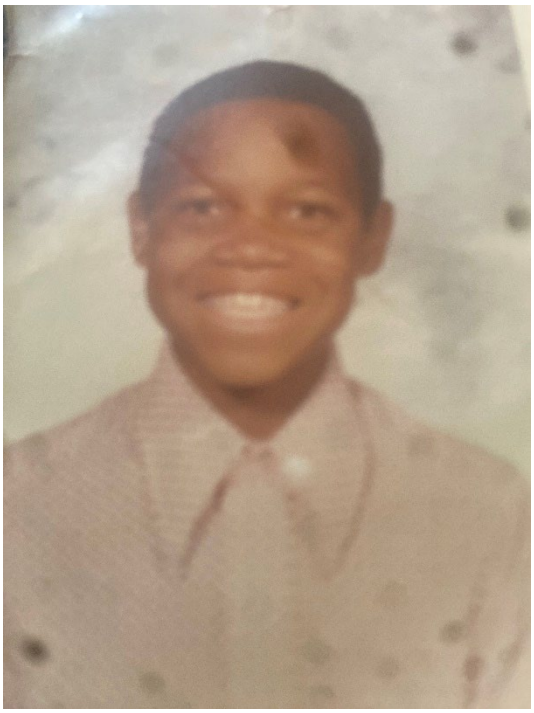

BEFORE THE OKLAHOMA PARDON AND PAROLE BOARD AND GOVERNOR J. KEVIN STITT

MANUEL LITTLEJOHN

A Case for Executive Clemency

Callie Heller
Brendan Van Winkle
Assistant Federal Public Defenders
Office of the Federal Defender
Capital Habeas Unit
Western District of Oklahoma

Caitlin Hoeberlein
Danielle Sivalingam
Perkins Coie LLP

Summary of Arguments for Clemency

The Supreme Court has long instructed that capital sentences should be particularly reliable: "Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two . . . there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case."[1] But Manuel's death sentence is the opposite of reliable. For the reasons we will present, we ask that this Board grant Manuel mercy and give him the chance to seek the same from Governor Stitt, allowing him to live the remainder of his life in prison, rather than be put to death.

In Manuel's case, the same prosecutor tried two men for the *same exact crime*. By the time of Manuel's trial in 1994, his co-defendant, Glenn Bethany, had already been tried for the murder of Kenneth Meers, and had been sentenced to life in prison. Nevertheless, prosecutors chose to try Manuel for the very same crime, using a nearly-identical theory—even though all evidence showed there was only one shooter and one bullet that tragically killed Mr. Meers. As Supreme Court Justice Souter stated when addressing another case involving inconsistent prosecutions, "[i]t has to be the case that one of those arguments, if accepted, would lead to a false result."[2] Our criminal justice system strives to avoid false results—particularly where the death penalty is involved.

It is not only the inconsistent prosecutions that bear the hallmarks of unreliability; Manuel's death sentence does as well. At the time of Manuel's trials, "life without the possibility of parole" was a relatively new sentence in Oklahoma. Jurors from both his 1994 sentencing trial and his 2000 resentencing trial were confused about the meaning of the sentence. They were unsure whether "life without the possibility of parole" meant the defendant could possibly be granted parole or

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[1] *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976).

[2] Ken Armstrong, *Can Prosecutors Put the Same Gun in the Hands of More Than One Shooter?*, Marshall Project (Nov. 6, 2017), https://www.themarshallproject.org/2017/11/06/can-prosecutors-put-the-same-gun-in-the-hands-of-more-than-one-shooter.

house arrest. But they never received clarity. In addition to a jury note in which they asked the judge for explanation—which they did not receive—jurors did not understand that *only a death sentence must be unanimous*. During the penalty phase of a trial, if even a single juror opposes death, a sentence of life without the possibility of parole must be issued instead.[3] In Manuel's case, jurors have now provided statements speaking to the pressure they felt to reach a unanimous death penalty verdict, their confusion about the differences between the sentence of "life without the possibility of parole" and the death penalty, and the non-death sentence they would have chosen without these factors.

The consistent and reliable administration of justice favors treating Manuel like others who committed crimes similar to his own—which would mean sentencing him to life without the possibility of parole rather than death. A robbery-gone-wrong, though resulting in an undeniably tragic death, does not amount to one of the "few" "worst of the worst" murders deserving of the death penalty under the Eighth Amendment.[4] Indeed, most crimes similar to Manuel's, where a murder is incidental to a robbery, do not involve the prosecutor seeking the death penalty—let alone the imposition of a death sentence. This is particularly so in recent times. In the last fifteen years, no one has been sentenced to death for a robbery-murder involving similar facts to this case. It is evident that had Manuel committed his crime in 2024 or even 2004, rather than 1994, the prosecutor would not have sought the death penalty. And the unreliability of Manuel's sentence is further heightened by racial factors, both those on display at his trial and those apparent in the racial statistics of death row inmates in Oklahoma and nationally. These factors made it more likely that Manuel, as a Black man, would be an outlier case on death row.

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[3] Okla. Stat. tit. 21, § 701.11.

[4] *Cheney v. State*, 1995 OK CR 72, ¶ 9 & n.7, 909 P.2d 74, 78 & n.7 ("Any homicide (the killing of one human being by another) is tragic. Any first degree murder is not only tragic, it is horrible, morally reprehensible and demands retribution. But not all first degree murderers can be sentenced to death.").

Manuel's death sentence was predicated on outdated, unreliable notions of adolescent brain development. The prosecutor told jurors they should absolutely not weigh Manuel's youth in determining the just and appropriate sentence. Both the prosecutor and the jurors incorrectly assumed that Manuel could not be rehabilitated. Manuel was only 20 years old at the time of the crime, and his co-defendant Mr. Bethany was six years his senior. Today, Manuel's crime and his prospects for rehabilitation would be viewed very differently. In 1994, courts and scientists were just beginning to understand the far-reaching implications of these factors on criminal behavior and rehabilitation, and without that understanding, Manuel was perceived to be someone who posed a continuing threat to his community. Unlike the jurors, who could only guess at how Manuel would mature with age, this Board can evaluate his sentence based on who he is today.

Manuel deeply regrets his actions on the date of Mr. Meers' untimely death and has great remorse for the role he played in the senseless crime. Manuel has consistently denied being the shooter, but he does not contest that he is responsible for the role he played in the death of Mr. Meers, and that he made a grave mistake accompanying his co-defendant in robbing the Root-N-Scoot.

Manuel's prison records over time reflect his personal growth. He is non-violent and has been so for over 20 years. He has also grown to be a pillar of support to his family, especially his mother, his daughter and his three grandchildren. Moreover, his own health has deteriorated over time. Medical records demonstrate a substantial loss of physical abilities resulting from a recent stroke and diagnosis of progressive white matter disease. Given the chance to live out his remaining years in prison, Manuel will continue to provide familial support, model good behavior, and live with remorse. At the same time, due to his personal growth, record of good behavior, and debilitating health issues, he poses no threat to the prison community.

When Oklahoma resumed executions in 2020 after a seven-year moratorium, Governor Stitt stated that "capital punishment is appropriate for [only] the most

heinous of crimes."[5] Manuel's case will stand out to you as one that never should have ended in a death sentence. In requesting clemency and a sentence of life without the possibility of parole, Manuel takes responsibility for his past actions and expresses remorse for the tragedy that he played a role in creating. He comes before this Board humbly, making no claim of entitlement to your mercy, but asking that you consider these factors in evaluating his request for clemency in the interest of equal justice in this state.

I. Background

Although Manuel acknowledges that his childhood trauma does not absolve him of responsibility for his crime, his past participation in violence is more readily understood in the context of the world he grew up in. Manuel's mother, Ceily Mason, was an addict. She gave birth at age 15 while so deeply dependent on drugs and alcohol that the day after her son's birth, she did not remember it.[6] Manuel was born shaking, a symptom typical of withdrawal, and Ceily believed he had been "ruined from the womb" because of her drug use during pregnancy.[7]

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[5] Graham Lee Brewer & Manny Fernandez, *Oklahoma Botched 2 Executions. It Says It's Ready to Try Again*, N.Y. Times (Feb. 13, 2020), https://www.nytimes.com/2020/02/13/us/oklahoma-executions.html; Nolan Clay, *Oklahoma to resume lethal injection executions*, Oklahoman (Feb. 14, 2020), https://www.oklahoman.com/article/5654893/oklahoma-officials-to-give-update-on-executions. The Supreme Court has also stated that "this most irrevocable of sanctions should be reserved for a small number of extreme cases." *Gregg v. Georgia*, 428 U.S. 153, 182 (1976).

[6] Declaration of Dr. Manuel Saint Martin, Appx. 1 at 1, Neuropsychological Evaluation of Dr. Drew Nagele, Appx. 2 at 6.

[7] 2000 Tr. Vol. VI at 37, 45, 141.

Growing up, he often lived with his paternal grandmother, Augustine, who ran a "good time house" of gambling, prostitution, and drug use out of the home to help make ends meet, and his father, who was chronically ill with polio.[8] The family relied entirely on monthly welfare checks which rarely lasted the month.[9] Manuel's father was volatile and exposed his son to violence early on, once drawing a gun on him when he was only a child.[10] In another instance, Manuel walked in on his father choking his mother and hid in the corner, screaming and crying for him to leave her alone.[11] Manuel and his sister Augustine (named after her grandmother) often had to fend for themselves.[12] He struggled emotionally and was frequently bullied by other kids for his shoddy clothes and for being enthusiastic about learning.[13]

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[8] 9/26/05 Psychiatric Report of Dr. Manuel Saint Martin, Appx. 1 at 1; 4/28/2002 Psychological Report of Dr. Daniel Murrie, Appx. 9 at 4; 9/8/2013 Neuropsychological Report of Dr. Drew Nagele, Appx. 2 at 6.
[9] 1994 Tr. Vol. VIII at 9–10.
[10] Appx. 9 at 32.
[11] 2000 Tr. Vol. VI at 42.
[12] 1994 Tr. Vol. VIII at 38–41.
[13] *Id.* at 42.

Despite his harsh upbringing, Manuel cared for his sister from an early age, and the two were close. When the family ran out of food, as they often did, he would make sure that Augustine ate and was kept clean.[14] Despite his strong connection with his sister, by the time he was a teenager Manuel had fallen under the influence of local drug dealers in his community and admits to acting recklessly out of his need for money.[15]

On June 19, 1992, motivated by fear of a local drug dealer to whom they owed money, Manuel, then 20 years old, and Glenn Bethany, a man six years his senior, robbed the Root-N-Scoot convenience store in Oklahoma City. A gun was brought to the robbery, but the men had no preconceived plans to kill anyone. And they did not know any of the individuals working at the Root-N-Scoot.

At the time of the robbery, three individuals were working in the store, one of whom was store owner Kenneth Meers. As Mr. Bethany and Manuel were leaving the store, a single shot was fired. The shot struck Mr. Meers, tragically ending his life. The evidence was conflicting concerning the source of the shot, and Manuel has always maintained that he did not fire it. Manuel nevertheless accepts, and deeply regrets, responsibility for his role in the crime and Mr. Meers' death.

In 1993, Glenn Bethany was tried and convicted of robbery with a firearm and murder in the first degree. The prosecutor had argued that Mr. Bethany was the sole

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[14] *Id.* at 43–44.
[15] Appx. 9 at 32.

triggerman who shot and killed Kenneth Meers. Mr. Bethany was found guilty and sentenced to life without the possibility of parole.

Then, in November 1994, Manuel was tried for the same crime as Mr. Bethany—robbery with a firearm and murder in the first degree. This time, the prosecutor argued that *Manuel*, not Mr. Bethany, was the sole triggerman who shot and killed Kenneth Meers.[16] At his trial, despite the open question of who fired the fatal shot, Manuel's counsel conceded guilt as early as voir dire,[17] and did not present a single guilt-phase witness aside from Manuel's mother.[18] The trial judge himself seemed surprised, stating after the defense rested, "I had no idea this trial would end right in the first stage here."[19]

At the penalty phase, the jury found three aggravating factors: (1) that Manuel had been previously convicted of violent felonies; (2) that he knowingly created a great risk of death to more than one person; and (3) that he posed a "continuing threat" to society. On appeal, the Oklahoma Court of Criminal Appeals ("OCCA") reversed the death sentence.[20]

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[16] Affidavit of Melody Brannon, Appx. 3 at 18.

[17] *See* 1994 Tr. Vol. I at 224 (Trial counsel Jim Rowan stating, "Judge, I understand this [prospective] juror's dilemma, when I get up there and admit my client's guilt on First Degree Murder in voir dire, and I think it would be hard for anybody to presume him innocent right now."); 1994 Tr. Vol. II at 10 (Prosecutor stating, "We could stipulate to guilt. I mean, Jim's already done that, basically.").

[18] Manuel's initial lead counsel had graduated from law school just three years before handling Manuel's preliminary hearing without co-counsel. Melody Brannon Affidavit, Appx. 3 at 18 ¶ 2. She left Manuel's team shortly before the trial, and the trial proceeded as scheduled without a continuance, despite the withdrawal of second-chair counsel upon Ms. Brannon's withdrawal and his assumption that the transition to new counsel "would take a tremendous amount of time." 7/27/1994 Rick Stout Letter to Jim Rowan, Appx. 8 at 28.

[19] 1994 Tr. Vol. V at 166.

[20] The OCCA threw out the continuing threat aggravator based on testimony from a jailhouse snitch on Manuel's involvement in unrelated crimes and found insufficient evidence that he created a "great risk of death" to more than one person, eliminating two of the three aggravating circumstances. *See Littlejohn v. State* (*Littlejohn I*), 1998 OK CR 75, ¶¶ 1–43, 989 P.2d 901, 903–11.

Manuel's resentencing trial began on October 30, 2000. He again received a death sentence, based this time on only two aggravating circumstances: (1) a previous conviction of a felony involving the use or threat of violence to the person and (2) the continuing-threat aggravator. Manuel appealed, and in addition to other claims raised the issue that the sentencing judge had improperly instructed the jury on the meaning of "life without the possibility of parole" as an alternative to the death penalty under Oklahoma law.

At resentencing, the jury had submitted a note to the trial court asking, "[I]s it possible to change the verdict of life *without* parole to *with* parole after our verdict and without another jury verdict?"[21] Their question implied concern that a sentence of life without parole would have allowed Manuel to be released from prison at some point in the future. It would not have. Rather than confirming this outcome could not occur, the trial court referred the jury back to the original instructions, which defined the three available sentencing options under Oklahoma law: "death, imprisonment for life without parole, or imprisonment for life."[22] Specifically, the court conveyed to the jury that it had "all the law and evidence necessary to reach a verdict."[23] The court rejected a request by defense counsel to elaborate on the actual meaning of the three sentencing alternatives. Before the jurors retired to deliberate, the trial court told them that the court would answer questions only "if it's appropriate to answer," and that if, in response, the jury received a "code back that says, you have all the law and evidence necessary to reach a verdict, what that means is the answer to [the] question is in the instructions, it was in the evidence, or you're asking me something that's inappropriate for me to answer."[24]

Context regarding the jury note is important: Oklahoma had only adopted life without parole as a sentencing option in 1987.[25] Following its introduction, OCCA

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[21] 2000 Tr. Vol. VII at 358 (emphasis added).
[22] Original R., Vol. X, at 1875 (Jury Instructions, given Nov. 7, 2000) (internal quotation marks omitted)).
[23] 2000 Tr. Vol. VII at 364 (internal quotation marks omitted).
[24] *Littlejohn v. State* (*Littlejohn II*), 2004 OK CR 6, ¶ 5, 85 P.3d 287, 291.
[25] *See* Okla. Stat. tit. 21, § 701.9(A) (Supp. 1988).

judges began observing almost immediately that there was a problem of mistrust or misunderstanding when juries sent out notes asking, in various forms, about the meaning of the sentence.[26] Manuel's case was a catalyst in the OCCA recognizing this confusion. In addressing Manuel's sentence and the jury note, the OCCA acknowledged that jurors in Oklahoma were routinely confused about life without parole sentences.[27] And though it did not apply to Manuel's trial, the OCCA suggested that in *future* cases where the jury asks during deliberation whether "an offender who is sentenced to life imprisonment without the possibility of parole is parole eligible" trial courts may also "advise the jury that the punishment options are to be understood in their plain and literal sense and that the defendant *will not* be eligible for parole if sentenced to life imprisonment without the possibility of parole."[28] But Manuel's jurors did not receive this revised instruction, and Manuel has remained on death row since his resentencing.

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Keeping in mind Manuel's family history and the history of his case, we ask that you please consider the following reasons why Manuel's death sentence is worthy of reconsideration by this Board and why a sentence of life without the possibility of parole is the appropriate punishment.

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[26] *Littlejohn II*, 2004 OK CR 6, ¶ 5, 85 P.3d at 291. Juror mistrust of Oklahoma's life without parole sentence has been a longstanding problem. In a concurring opinion in *Johnson v. State*, 1996 OK CR 36, ¶ 1, 928 P.2d 309, 321, *overruled on other grounds by Williams v. State*, 2008 OK CR 19, 188 P.3d 208, Judge Chapel observed: "The reason jurors repeatedly ask this question is because they are confused. They want, need, and deserve an answer." Judges who did not see this problem indicated the instructions were clear enough to convey the concept by referring to the sentence as life without parole. The majority of the Oklahoma courts ultimately recognized that mistrust and misunderstanding exist as to the life without parole option.

[27] 2000 Tr. Vol. VII at 358; *Littlejohn II*, 2004 OK CR 6, ¶ 5, 85 P3d at 291.

[28] Vernon's Okla. Forms 2d, OUJI-CR 4-83A (citing *Littlejohn v. State*, 2004 OK CR 6, ¶ 11, 85 P.3d 287, 293–94).

II. Manuel's Death Sentence Is Unreliable.

Prosecutors Presented Inconsistent Theories at Manuel and his Co-Defendant's Trials.

The Supreme Court has not squarely ruled on the fairness and legitimacy of contradictory prosecution theories.[29] While courts have upheld Manuel's sentence notwithstanding the inconsistent prosecutions, the question before the Board is not whether it was legally permissible to try two men for the same crime. Rather, the question is whether doing so is in keeping with the desire for reliable, non-arbitrary, and fair outcomes in our criminal justice system. The answer is "no." This Board has the opportunity to correct this fundamentally unfair result through a recommendation of clemency.

Here, two men were tried for the same exact crime; a crime only one of them could have possibly committed. The State first argued that it was Mr. Bethany who had pulled the trigger, and not Manuel. In asking Mr. Bethany's jury to find Mr. Bethany guilty of malice aforethought murder, the prosecutor emphasized that "whoever it is who fired that shot is guilty of murder with malice aforethought."[30] She pointed to several factors in support of her theory that Mr. Bethany was the shooter: that the store cashier testified that both men were still inside the store when the shot was fired; that the neighbors across the street saw the taller[31] of the two men (Bethany) standing at the door, holding it with one arm, and pointing back into the store; and that the other store clerk was pushed back into the store by Mr. Bethany, who held one hand by his side because "common sense" dictated *he* was holding a

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[29] Armstrong, *Can Prosecutors Put the Same Gun in the Hands of More Than One Shooter?*, n.2, *supra*. The Supreme Court has noted that inconsistent theories of guilt can have a direct effect on sentencing, but for procedural reasons, Manuel was not able to use any Supreme Court law to help his inconsistent-theory arguments in federal court, so his arguments were rejected. *See Littlejohn v. Trammell*, 704 F.3d 817, 852–54 (10th Cir. 2013).

[30] *State v. Bethany*, CF-92-3633, Tr. Vol. IV at 743.

[31] There was testimony that Mr. Bethany was the taller of the two. *See, e.g.*, Bethany Tr. Vol. 1 at 69.

gun.[32] The prosecutor urged the jurors not to "take what may be the easy way out and compromise with a verdict of felony murder."[33] She also noted that Manuel was smaller and younger than Mr. Bethany, making it unlikely that Manuel was somehow the one in control.[34]

After Mr. Bethany's conviction, the same two prosecutors argued the same theory in Manuel's case, but in a reversal claimed that *Manuel* pulled the trigger. The jury was not informed that Mr. Bethany had already been tried for and convicted of the same crime they were being asked to consider in Manuel's trial. This meant the prosecution could, and did, use the same arguments and case theories as in Mr. Bethany's trial. Repeating nearly verbatim the argument from Mr. Bethany's trial, they told Manuel's jury it "cannot take the easy way out, you cannot compromise, you cannot say, yes, he's guilty of felony murder."[35] The prosecutor summed up much of the same evidence as presented at Mr. Bethany's trial, except this time, questioned whether Manuel's jury "believe him when he says it was Glenn Roy Bethany when nobody else says it was Glenn Roy Bethany?"[36] She urged, "Is there any doubt in your mind that based on all of the evidence…that [trigger]man was this man, Emmanuel Littlejohn?"[37] And in closing argument, the same prosecutor that had asserted at Mr. Bethany's trial that he must have held a gun in his lowered hand as he pushed one of the store clerks back into the store now argued that "the testimony of the people inside the store [was] the only person who ever had a gun that night was Emmanuel Antonio Littlejohn."[38]

The evidence regarding the identity of the shooter was so unsettled that the OCCA stated on direct appeal that the evidence "was less than conclusive as to the

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[32] Bethany Tr. Vol. IV at 745–46.
[33] *Id.* at 747.
[34] *Id.* at 791.
[35] 1994 Tr. Vol. VI at 26.
[36] *Id.* at 29.
[37] *Id.* at 31.
[38] *Id.* at 44.

identity of the shooter."[39] Thus, the reasonable, and more common, approach would have been to try one of the two men as the shooter, and the other as the accomplice.[40] But, when the argument is that a defendant pulled the trigger, it's understandably easier to ask a jury for a death sentence.[41] Indeed, that is precisely what the prosecution argued in guilt-stage closing at Manuel's first trial: "The man with the gun is guilty with [sic] malice aforethought murder and has earned the death penalty."[42]

That only one of the men convicted of the same crime received the death penalty further compounds the unreliable nature of Manuel's case. Mr. Bethany, the older of the two, received life without parole. Inconsistent prosecutions based on "less than conclusive" evidence do not equate to justice or work towards the goals that Oklahoma's elected leaders have set towards ensuring a justice system that works fairly and efficiently.[43] Those who administer the death penalty in Oklahoma know that "[p]ublic confidence in the death penalty requires the highest standard of reliability."[44] Executing only one of two men for committing the same crime is neither a reliable administration of the death penalty nor an example of a justice system that prioritizes fairness—especially when Oklahoma's courts acknowledge the evidence is inconclusive as to who pulled the trigger.

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[39] *Littlejohn I*, 1998 OK CR 75, ¶ 27, 989 P.2d at 909.
[40] Armstrong, *Can Prosecutors Put the Same Gun in the Hands of More Than One Shooter?*, n.2, *supra*.
[41] *Id*.
[42] 1994 Tr. Vol. VI at 29.
[43] *Governor Stitt Celebrates Launch of MODERN Justice Task Force*, Oklahoma.gov (July 11, 2023), https://oklahoma.gov/governor/newsroom/newsroom/2023/july2023/governor-stitt-celebrates-launch-of-modern-justice-task-force.html ("Today, we're taking concrete steps towards a safer, smarter, and more efficient justice system in Oklahoma," said Governor Stitt. "With all three branches of government working together, we're demonstrating to all four million Oklahomans the state's commitment to strengthening public safety while ensuring our justice system works fairly and efficiently.").
[44] https://oklahoma.gov/oag/news/newsroom/2024/january/drummond-remarks-on-u-s--supreme-court-decision-to-hear-glossip-.html.

Jurors Did Not Understand Their Sentencing Options; Now That They Do, at Least Two Jurors Would Not Have Voted for the Death Penalty.

When Oklahoma's prosecutors choose to seek the death penalty, the jury decides the sentence, and a death sentence must be unanimous.[45] A *single vote* from a juror against the death penalty will result in a life sentence instead. Yet as detailed below, jurors from Manuel's 1994 sentencing and 2000 resentencing have provided sworn affidavits stating that they do not now, and did not at the time, think that death is the appropriate sentence for Manuel.[46] They voted for the death penalty because they thought any other sentence—including life without the possibility of parole—meant Manuel might one day walk free. Their confusion was understandable, as reflected in Oklahoma courts changing their sentencing guidelines following Manuel's case. Since these jurors cannot get a do-over, this Board's recommendation of clemency is the only way to remedy the juror confusion such that Manuel may receive the appropriate, yet severe, sentence of life without the possibility of parole.

Given the considerable juror confusion regarding the meaning of "life without the possibility of parole" which prevailed during the late 1980s and 1990s, it is perhaps unsurprising that Manuel's jurors were among the confused. Indeed, jurors from Manuel's sentencing trials have come forward explaining that they were confused about the meaning of "life without the possibility of parole."

First, 1994 trial juror [redacted] has provided an affidavit stating that when it came time to sentence Manuel, she was "one of the holdouts" when deliberating what sentence to impose.[47] She believed at the time that the shooting

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[45] Okla. Stat. tit. 21, § 21-701.11 (2015).

[46] Juror affidavits were collected by Mark Jacobs, an investigator with the Federal Public Defender's Office. They were collected after outreach to jurors inviting them *if they would like to do so* to speak with Mr. Jacobs of their own free will and without coercion about their experience on Manuel's juries. Jurors who chose to speak with Mr. Jacobs referenced choosing to do so because the experience of being a juror on a death penalty trial had weighed on them over the years.

[47] Affidavit of [redacted], Appx. 4 at 20 ¶ 5.

was "just a chance thing" that happened as they were running out the door.[48] After spending time thinking about it, [redacted] changed her vote to death because she "felt the alternative was that he would get loose" and that "a life sentence even without parole could be changed and he might have a chance to get out of prison."[49] She also thought a unanimous death penalty verdict was needed so the jury could go home.[50] In other words, [redacted] did not understand the unanimity requirement or meaning of the life without the possibility of parole sentence—and that significantly impacted her decision to vote for the death penalty. [redacted] affidavit at the very least implies that had she understood the true meaning of "life without the possibility of parole," Manuel would have never been sentenced to death in the first place, and we would not be here today.

The circumstances of Manuel's resentencing trial raise even more questions regarding whether jurors would have imposed the death penalty had they understood the true meaning of "life without the possibility of parole." The note sent to the judge while Manuel's resentencing jury deliberated strongly suggests that at least one juror was considering a life without parole vote.[51] In response to the jury's note, defense counsel argued that the judge should instruct the jury that, under the Oklahoma Constitution, neither this Board nor the Governor would have the power to authorize parole for someone sentenced to life without parole.[52]

But the judge harbored his own doubts about whether life without parole truly meant what it said, telling defense counsel (incorrectly) that "everyone in this room right now knows that that's not true" and asserting that someone sentenced to life without parole could serve their time under house arrest.[53] Following a back-and-forth with defense counsel on how to answer and whether it would be truthful to tell

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[48] *Id* at ¶ 2.
[49] *Id.*
[50] *Id.* at ¶ 6.
[51] Though no time was recorded for when the resentencing jury went out, Manuel's initial jury debated punishment for over six hours. *See* 1994 Tr. Vol. VIII at 300.
[52] 2000 Tr. Vol. VII at 359.
[53] *Id.* at 359–60.

the jury that the sentence would be carried out as instructed,[54] the judge concluded, "You don't want me to tell them the truth. I'll tell them nothing."[55] As defense counsel predicted,[56] without assurance that life without parole meant what it said—and thus presented with a false choice between the defendant possibly being released back into the community, and death—the jury voted for death.[57] And as Manuel's resentencing attorney now recounts, the "note showed clearly at least one person on the jury was struggling and asking because they wanted more information."[58]

Two jurors from Manuel's resentencing trial have recently described in sworn affidavits the confusion the jury displayed regarding the meaning of life without the possibility of parole and the need for non-death sentence unanimity. And one of those jurors says she would not have voted for the death penalty with greater clarity.

Resentencing juror [redacted] was "initially against imposing a death sentence." At the time of sentencing, [redacted] "did not think that death was the answer" and instead "thought life in prison without parole was the better choice."[59] She also remembers that several other jurors felt the same way. There was extended back-and-forth on the jury about what sentence to impose on Manuel, with [redacted] swayed against voting for death by Manuel's background and functioning. And like [redacted] in 1994, [redacted] was confused about the sentencing options in front of her. She was "not sure what would have happened if [the jury] did not agree on a sentence of death" and thought that "[m]aybe it would have been a mistrial."[60] In fact, she remembers that "[t]here was uncertainty among the jurors as

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[54] *Id.* at 360–64.
[55] *Id.* at 364.
[56] *Id.* at 362.
[57] The federal appeals court found that the "false choice" between parole eligibility and death, denounced by the Supreme Court as a due process violation in *Simmons v. South Carolina*, 512 U.S. 154, 171 (1994), did not apply to Manuel's case because the judge did not tell the jury that parole was outside their proper consideration. *Littlejohn v. Trammell*, 704 F.3d 817, 831 (10th Cir. 2013). This Board, however, need not be constrained by such legal technicalities.
[58] Affidavit of Janet Davis, Appx. 5 at 22 ¶ 5.
[59] Affidavit of [redacted], Appx. 6 at 23 ¶ 5.
[60] Appx. 6 at 24.

to what life without parole meant" and that "some believe that he would eventually be released from prison even if [the jury] gave him life without parole."[61] She remembers the note that the jury sent out asking for clarification and the judge telling the jury despite their confusion "that [they] had what [they] needed to make a decision."[62] After the sentencing, upon learning what life without parole means, she acknowledged that clarification would have been helpful to her and to others on the jury. Though eventually she changed her mind and voted for death – *looking back on it now,* [redacted] *"would not vote for death" but instead "for life without the possibility of parole and stick with it."* She agrees that what Manuel did was wrong but believes that "putting him to death will not fix that wrong" and that at the time she simply "didn't have enough life experience to stick to what [she] believed [in]."[63]

Resentencing juror [redacted] statement similarly reflects widespread misunderstanding. The only Black person on the jury as she recalls, she was initially against the death penalty, as she thought the killing was a "mistake."[64] [redacted] felt pressured to change her initial non-death vote to death "so that everyone could go home."[65]

If, after reading these affidavits, there remains any doubt with this Board as to whether a fully informed and educated jury would have sentenced Manuel to death, then that doubt should be resolved in favor of sparing Manuel's life. "It is quite simply a hallmark of our legal system that juries be carefully and adequately guided in their deliberations."[66]

All Manuel needed in either 1994 or 2000 was a single juror to vote against the death penalty to receive a sentence of life without parole instead. [redacted] affidavits confirm that confusion – not confidence – was the defining reason he did not receive this life-saving vote at either trial. Life

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[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] Affidavit of [redacted], Appx. 7 at 26 ¶ 3.
[65] *Id.* at ¶ 6.
[66] *Gregg*, 428 U.S. at 193.

without parole is the same sentence that Manuel is now humbly requesting from this Board.

III. Manuel's Crime Is a Capital Punishment Outlier, and Racial Factors Made It More Likely that Manuel, as a Black Man, Would Be the Outlier Case.

Manuel's Case is an Outlier Among Those on Oklahoma's Death Row.

Oklahoma's courts, Oklahomans, and even Manuel's own jurors do not view death as the only appropriate punishment for Manuel's participation in a robbery that resulted in a murder. Instead, at the time of the crime, the Oklahoma County District Attorney was well-known for pursuing the death penalty in almost every murder case, especially those involving defendants of color, rather than narrowing and applying discretion.[67] Even still, as explained herein, being sentenced to death for a murder committed in the course of a robbery was rare in Oklahoma before Manuel's initial 1994 sentence and is exceedingly rare now. Again, the death penalty should be reserved for the worst of the worst crimes. This is why it is not usually given in robbery-murders, absent other serious aggravating factors that are not present in Manuel's case. The consistent and reliable administration of justice favors treating Manuel like others who committed crimes similar to his own—which would mean sentencing him to life without the possibility of parole rather than death.

Manuel's crime bears little similarity to those committed by other individuals on death row. For instance, in 1994, the year of Manuel's first sentencing trial, the twelve others given the death penalty included Jimmie Slaughter, who killed his mistress and their child, and Kenneth Charm, who raped and killed a 14-year-old girl. And even among others who were convicted of the same crime, Manuel's case is

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[67] Melody Brannon Affidavit, Appx. 3 at 18 ¶ 4; Janet Davis Declaration, Appx. 5 at 22 ¶ 4. *See also* Fair Punishment Project, *America's Deadliest Prosecutors: How Overzealous Personalities Drive the Death Penalty* at 8-10 (June 2016), *available at* https://dpic-cdn.org/production/documents/FairPunishmentProject-Top5Report_FINAL_2016_06.pdf.

an outlier. Since 1986, Oklahoma has sentenced 21 people to death for robbery-murders. Out of those 21, 11 cases had aggravating factors such as multiple victims, or additional charges including kidnapping, larceny, or rape.

Indeed, in the past 40 years, the death penalty has rarely been sought or given in cases similar to Manuel's. In Manuel's conviction year, 1994, Manuel was the *only person* sentenced to death for a robbery-murder, out of 25 robbery-murder convictions that year. From 2000 to 2020, Oklahoma convicted 442 people for murders associated with robberies. Only seven of those convictions—less than 1.6 percent—resulted in death sentences. And from 2009 to 2020, *none* of the death sentences handed down in Oklahoma were for murders associated with a robbery.

In 2021, for the first time in 14 years, Oklahoma imposed the death penalty for a murder that involved a robbery. However, that case was not representative of, nor similar to, the many other robbery-murder cases in Oklahoma over the past two decades. And it stands in stark contrast to Manuel's case. In the case of Joseph Fidel Alliniece, the robbery (taking a roommate's cellphone) was *collateral* to the murder, and the murder itself was particularly brutal. It involved Mr. Alliniece stomping Brittani Young to death, then kidnapping her roommate and her roommate's young daughter. It is a case in which the general public could easily expect the death penalty to be on the table, and in fact, in trying the case, Cleveland County District Attorney Greg Mashburn stated to the jury: "the death penalty should be reserved for the worst of the worst, absolutely. And there he sits," arguing that this was an *extreme* case in which the death penalty should apply.[68] Cases in which the opposite is true—where the murder is collateral to the robbery—are *not* such extreme cases. These cases are "robberies gone wrong," where the primary crime of robbery resulted in a murder. Manuel's case falls into this category.

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[68] Nolan Clay, *Jury Agrees on Death Penalty in 2018 Norman Murder Case of Brittani Young*, Oklahoman (May 2, 2021), https://www.oklahoman.com/story/news/2021/05/02/brittani-young-norman-ok-murder-death-penalty-joseph-fidel-alliniece/4894068001/.

Even in some highly aggravated cases, Oklahoma prosecutors have not pursued the death penalty. In 2014, a Norman jury recommended life without parole for Eddie Thompson, who was convicted of first-degree murder, two counts of kidnapping, and one count of first-degree burglary.[69] In this case, Eddie Thompson was convicted of stabbing Arthur Strozewski more than 35 times while his two children were in the home. Previously, Mr. Thompson had felony convictions that included second-degree burglary, possession of a firearm, auto burglary and escape from a penitentiary. In 2019, an Oklahoma City jury found Humberto Diaz guilty of first-degree murder for the killing of his wife, whom the prosecution stated was killed execution-style, after years of domestic abuse.[70] That jury also recommended life without parole. The State did not seek the death penalty for either Mr. Thompson or Mr. Diaz, despite the aggravated crimes. And in 2022, a Tulsa jury recommended life without parole for Keenan Burkhalter on three murder counts and 35 years for arson for the murders of three people and for setting the house they were in on fire.[71] One of the victims was a 7-year-old girl, and medical examiner evidence suggested that two of the victims were alive when Mr. Burkhalter set the house on fire.[72] Though the State initially sought death, prosecutors withdrew the Bill of Particulars.[73]

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[69]Jane Glenn Cannon, *Norman Jury Recommends Life Without Parole for Oklahoma City Man*, Oklahoman (June 12, 2014), https://www.oklahoman.com/story/news/crime/2014/06/12/norman-jury-recommends-life-without-parole-for-oklahoma-city-man/60819225007/.

[70] Jury Finds OKC Man Guilty in the Murder of His Wife, Recommends Life Without Parole, News on 6.com (October 30, 2019), https://www.newson6.com/story/5e346e2a527dcf49dad6df7d/jury-finds-okc-man-guilty-in-the-murder-of-his-wife-recommends-life-without-parole.

[71]*Tulsa Man Found Guilty of Triple Murder, Jury Recommends Life Without Parole*, News On 6.com (May 20, 2022), https://www.newson6.com/story/6287faa5fba3cf0720ac9561/tulsa-man-found-guilty-of-triple-murder-jury-recommends-life-without-parole.

[72] Daniela Ibarra, *Jury Finds Tulsa Man Guilty of Triple Homicide, Arson*, KTUL (May 20, 2022), https://ktul.com/news/local/jury-finds-tulsa-man-guilty-of-triple-homicide-arson.

[73] Dana Nickel, *Jury Selection Continues for One of Two Men Accused of Killing Three People in 2018*, K95.5 Tulsa (May 16, 2022), https://www.k95tulsa.com/news/jury-

Considering the data, it is clear that the State today would not seek the death penalty for a murder-robbery case in which there was one victim, and the murder was collateral to the robbery. Oklahoma jurors have not imposed the death penalty for such a case since 2008, and in recent cases, under much more extreme circumstances, have not been presented with the death penalty option. This is underscored by current Oklahoma County District Attorney Vicki Behenna, who, after taking office in January 2023 established a Capital Case Review Committee and implemented procedures and guidelines for when the death penalty should be considered an appropriate punishment in a homicide case.[74] She has explained that the death penalty should be reserved for the most egregious cases—those that involve mass casualties, or cases where the defendant poses a threat to people and society, even while incarcerated.[75] Soon after, her office filed a motion to dismiss the Bill of Particulars in the case of Ramon Pugh, no longer seeking the death penalty for the triple homicide, committed while Mr. Pugh's girlfriend and her 10-year-old daughter were in the home.[76] The jury that found Mr. Pugh guilty went on to recommend life in prison for each murder.[77]

While Manuel's prosecutor did indeed seek the death penalty, the Board has the opportunity now to rectify that decision. The Board's recommendation of clemency would place Manuel's sentence in line with current standards, such that Manuel is treated like others who commit robbery-murders, and not like those who have committed the most heinous, worst-of-the-worst crimes.

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selection-continues-one-two-men-accused-killing-three-people-2018/HVLBBEVDK5FETNY7S5SK7BKNA4/.

[74] Elizabeth Caldwell, *Attorney General Says Oklahoma County is Changing Death Penalty Criteria*, Pub. Radio Tulsa (Apr. 26, 2023), https://www.publicradiotulsa.org/local-regional/2023-04-26/attorney-general-says-oklahoma-county-is-changing-death-penalty-criteria.

[75] *Id.*

[76] Josh Dulaney, *Oklahoma Man Guilty of Killing Three in Oklahoma City in 2017*, Oklahoman (Oct. 3, 2023), https://www.oklahoman.com/story/news/crime/2023/10/03/ramon-pugh-guilty-killing-three-2017-oklahoma-city/71033038007/.

[77] *Id.*

Manuel's Race Made it More Likely That He Would Be Among the Very Few Sentenced to Death for Similar Robbery-Murders.

Manuel's death sentence cannot be divorced from the racial realities of his proceedings—another way it does not meet the reliability society demands before we execute someone. As a young Black defendant on trial for killing a White store owner, it was statistically likely he, rather than a White defendant, would be sentenced to death, and that he, rather than a White defendant, would be among the few robbery-murder cases on death row. This is especially true in Oklahoma: there are more Black than White inmates on death row,[78] even though Black people make up only 7.9% of Oklahoma's population.[79] Nationally, the statistics are similar. Through January 1, 2022, Black people make up 40% of America's death rows but only 13.7% of America's population.[80]

Statisticians have also emphasized the significant disparities that exist depending upon the race of the murder victim. In 2017, the Oklahoma Death Penalty Review Commission—a bipartisan group of eleven prominent Oklahomans from varied backgrounds—released a report identifying "volum[inous]" and "serious[]" flaws in Oklahoma's system of capital punishment.[81] Appended to the report was an in-depth study of the way in which race plays a role. The study illustrates that, in

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[78] *See Oklahoma Corrections*, Oklahoma.gov, https://oklahoma.gov/doc/offender-info.html (last visited July 7, 2024) and *Death Penalty Census Database*, Death Penalty Info. Ctr., https://deathpenaltyinfo.org/database/sentences?jurisdiction=Oklahoma&case-status=Active+Death+Sentence (last visited July 7, 2024). Note: Death Penalty Information Center (DPIC) data is only current through January 1, 2022.

[79] *See QuickFacts Oklahoma*, U.S. Census Bureau, https://www.census.gov/quickfacts/OK (last visited July 7, 2024).

[80] *See Death Penalty Census Database*, Death Penalty Info. Ctr., https://deathpenaltyinfo.org/database/sentences (last visited July 7, 2024) and *QuickFacts Oklahoma*, U.S. Census Bureau, https://www.census.gov/quickfacts/ (last visited July 7, 2024).

[81] Report of the Oklahoma Death Penalty Review Commission at vii (March 2017), *available at* https://www.courthousenews.com/wp-content/uploads/2017/04/OklaDeathPenalty.pdf.

Oklahoma, criminal defendants like Manuel who are accused and convicted of killing White victims are nearly two times more likely to receive a sentence of death than if the victim is nonwhite, and for homicides involving only male victims, a death sentence is approximately three times more likely in cases involving male victims when that victim is White.

Nationally, a bias towards White-victim cases has been found in the sophisticated studies exploring this area over many years. These studies typically control for other variables in the cases studied, such as the number of victims or the brutality of the crime, and still found that defendants were more likely to be sentenced to death if they killed a White person. Earlier in the twentieth century when it was applied for the crime of rape, 89% of American executions involved Black defendants, most for the rape of White women. In the modern era, when executions have been carried out exclusively for murder, 75% of the cases involve the murder of White victims, even though about half of all homicide victims in America are Black. Issues of race permeate the death penalty, in Oklahoma no less than elsewhere.

This reality was exacerbated by the justice system's failure to ensure Manuel was tried by a jury of his peers. His first jury was all-White; his resentencing jury nearly was.[82] The first, all-White jury sentenced Manuel to death after hearing the White prosecutor use the n-word while cross-examining Manuel.[83] The jury also

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[82] *See* 1994 Tr. Vol. III at 7 (defense counsel making record, after Black prospective juror excused, "we now have an all white jury with only two prospects," one of whom was just a spectator). Counsel's information on the race of jurors is further informed by their own juror interviews as well as notes from the District Attorney and trial counsel's files. These notes are not included in the Appendix as they contain identifying information about jurors, but will gladly be provided to members of the Board on request.

[83] 1994 Tr. Vol. VIII at 138, 139. Though the prosecutor used the slur while quoting Manuel, this does not remove the implications of a white person using this word. A prosecutor in conservative Orange County, California, recently came under fire for using the n-word in a far less consequential setting. *See* Hannah Fry, Richard Winton, *O.C. Dist. Atty. Todd Spitzer defends repeating N-word when quoting hate speech*, L.A. Times (Feb. 23, 2022), *available at* https://www.latimes.com/california/story/2022-02-23/spitzer-video-comments.

heard from a jail guard who, behind the scenes, was dehumanizing Manuel with the same racial slur.[84] And the Black juror, [redacted], who would have been a hold-out on his resentencing jury, has described the pressure she felt from non-minority jurors.[85]

Issues of race certainly do not excuse Manuel's actions, take away from the severity of his crime, or diminish the tragedy of Mr. Meers' death. But they do provide important context, and are an additional factor why it was more likely that Manuel would be sentenced to death rather than a White individual committing the same crime.

IV. Manuel's Youth Should Have Been a Substantial Factor in Sentencing, But Was Not Considered Due to Undeveloped and Unreliable Brain Science Information.

Manuel was 20 years old when he and 26-year-old Glenn Bethany robbed the Root-N-Scoot convenience store. At the time, the impact of age on decision making was not yet understood. In fact, the prosecutor in Manuel's 1994 trial specifically told jurors that age "should have absolutely no bearing on what verdict you reach in this case."[86] Had the judicial system understood the science behind childhood brain development as we understand it today, Manuel's age would have been heavily weighted in the jury's analysis of both aggravating factors: (1) his previous conviction for a violent felony, and (2) the assessment that he posed a continuing threat to society.

Regarding the first factor, Manuel's previous felony convictions were for crimes he committed as a teenager, when his brain was even less well-developed than it was in 1994. As for the second factor, both courts and the scientific community now understand that determining whether a juvenile will forever pose a "continuing threat to society" is a difficult, if not impossible, task and it is only "the rarest of

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[84] Affidavit of [redacted] Appx. 12 at 72-73 ¶ 6.
[85] Affidavit of [redacted], Appx. 7 at 26 ¶ 6.
[86] 1994 Tr. Vol. V1 at 144.

children [ ] . . . whose crimes reflect irreparable corruption."[87] Manuel's prison records, medical evaluations, and familial relationships demonstrate that he does not pose a continuing threat to society and the jury's determination that he was likely forever corrupted did not prove true.

Since the time of Manuel's conviction, the U.S. Supreme Court has held that children differ from adults in material ways that impact the appropriateness of sentencing. We understand that these rulings do not, on their own, provide an avenue for legal redress for Manuel, as he was 20 at the time of this crime. However, they do point to the fact that more modern and sophisticated understandings in brain science and development make space for immaturity and the potential for change and reform, and brain science has affirmed that development does not render all maturity and brain development suddenly fully acquired by a person's 18th birthday.

In *Miller v. Alabama*, the Supreme Court held that, under the Eighth Amendment's ban on cruel and unusual punishment, sentencing judges must consider "how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."[88] The Court further held that there are "distinctive attributes" that separate children from adults "diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes."[89] Juveniles differ from adults in three major ways: their "'lack of maturity and [ ] underdeveloped sense of responsibility' lead [ ] to recklessness, impulsivity, and heedless risk-taking," they are more vulnerable to negative peer pressure and "brutal or dysfunctional" family situations, and their personality traits "are 'less fixed.'"[90] As a result, the actions of juvenile offenders are "less likely to be 'evidence of irretrievabl[e] deprav[ity].'"[91] Since *Miller*, courts have been required to take those differences into account when sentencing juvenile

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[87] *Montgomery v. Louisiana*, 136 S. Ct. 718, 726 (2016), *as revised* (Jan. 27, 2016).
[88] 567 U.S. 460, 480 (2012).
[89] *Id.* at 472.
[90] *Id.* at 477–78 (quoting *Roper v. Simmons*, 543 U.S. 551, 569–70 (2005)).
[91] *Id.* (alterations in original) (quoting *Roper*, 543 U.S. at 570).

offenders,[92] "even when terribly serious and depraved crimes are at issue."[93] Harsh sentences for juvenile offenders should therefore be "uncommon" because nearly all juveniles' crimes "reflect[ ] unfortunate yet transient immaturity."[94] [95]

Juveniles' transient immaturity is not fully resolved when an individual turns 18. To the contrary, progress that has been made over the last 25 years in understanding the brain's functions during adolescence explains that brain development extends for years beyond one's 18th birthday.[96] Although *Miller* and

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[92] *Miller*, 567 U.S. at 479.

[93] *United States v. Briones*, No. 16-10150, 2019 WL 2943490, at *4 (9th Cir. July 9, 2019) (en banc), *cert. granted, judgment vacated on other grounds*, 141 S. Ct. 2589 (2021).

[94] *Miller*, 567 U.S. at 479–80.

[95] Scientific research supports the Supreme Court's understanding. "The scientific research on adolescent development shows heightened sensitivity to rewards, threats, and social influences, which potentially renders adolescents more vulnerable to making poor decisions in these situations." Alexandra O. Cohen et al., *When Does a Juvenile Become an Adult? Implications for Law and Policy*, 88 TEMPLE L REV 769, 786–87 (2016) (citing Jessica R. Cohen et al., *A Unique Adolescent Response to Reward Prediction Errors*, 13 NATURE NEUROSCIENCE 669, 670 (2010); Adriana Galván et al., *Earlier Development of the Accumbens Relative to Orbitofrontal Cortex Might Underlie Risk-Taking Behavior in Adolescents*, 26 J. NEUROSCIENCE 6885, 6889–91 (2006); C.F. Geier et al., *Immaturities in Reward Processing and Its Influence on Inhibitory Control in Adolescence*, 20 CEREBRAL CORTEX 1613, 1626 (2010); Linda Van Leijenhorst et al., *What Motivates the Adolescent? Brain Regions Mediating Reward Sensitivity Across Adolescence*, 20 CEREBRAL CORTEX 61, 66–67 (2010); Michael Dreyfuss et al., *Teens Impulsively React Rather than Retreat from Threat*, 36 DEVELOPMENTAL NEUROSCIENCE 220, 225–26 (2014); Jason Chein et al., *Peers Increase Adolescent Risk Taking by Enhancing Activity in the Brain's Reward Circuitry*, 14 DEVELOPMENTAL SCI. F1, F7 (2011); Leah H. Somerville et al., Fro*ntostriatal Maturation Predicts Cognitive Control Failure to Appetitive Cues in Adolescents*, 23 J. COGNITIVE NEUROSCIENCE 2123, 2131–32 (2011).

[96] Arain M, Haque M, Johal L, Mathur P, Nel W, Rais A, Sandhu R, Sharma S. *Maturation of the adolescent brain.* Neuropsychiatry Dis Treat. 2013; 9:449-61. "Brain maturation during adolescence (ages 10–24 years) could be governed by several factors. It may be influenced by heredity and environment, prenatal and postnatal insult, nutritional status, sleep patterns, pharmacotherapy, and surgical interventions during early childhood. Furthermore, physical, mental, economical, and psychological stress; drug abuse (caffeine, nicotine, and alcohol); and sex hormones including estrogen, progesterone, and testosterone can influence the development and maturation of the adolescent brain."

much of the subsequent case law has focused on juvenile offenders under age 18,[97] a growing body of evidence based on research in criminology, neurology, and psychology indicates that the brain continues to mature and evolve past age 18.[98] In April 2022, Dr. Daniel Murrie, a clinician who performs forensic evaluations and a professor in the University of Virginia Department of Psychiatry and Neurobehavioral Sciences, met with Manuel in person for several hours after reviewing his full case history and prior clinical assessments. As Dr. Murrie summarizes in his report, "there are multiple structures and systems in the brain that are not fully developed during adolescence *or even early adulthood*," including the prefrontal cortex, which is responsible for "tasks such as planning, reasoning, problem-solving, and inhibiting impulsive behavior."[99] As a result, researchers have drawn the line for "young adulthood" at 21 for purposes of cognitive capacity and the ability for "overriding emotionally triggered actions," and have found that 21 is the "appropriate age cutoff [] relevant to policy judgments relating to risk-taking, accountability, and punishment."[100] [101]

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[97] The Supreme Court has also recognized that "[d]rawing the line at 18 years of age is subject. . . to the objections always raised against categorical rules" and that "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18." *Roper*, 543 U.S. at 574.

[98] *See* Christian Beaulieu & Catherine Lebel, *Longitudinal Development of Human Brain Wiring Continues from Childhood into Adulthood*, 27 J NEUROSCIENCE 31 (2011); Adolf Pfefferbaum et al., *Variation in Longitudinal Trajectories of Regional Brain Volumes of Healthy Men and Women (Ages 0 to 85 Years) Measures with Atlas-Based Parcellation of MRI*, 65 NEUROIMAGE 176, 176–93 (2013).

[99] Report of Dr. Daniel Murrie, Appx. 9 at 37.

[100] Alexandra O. Cohen et al., *When Does a Juvenile Become an Adult? Implications for Law and Policy*, 88 TEMPLE L REV 769, 786–87 (2016).

[101] *See also* Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28, 35 (2009) (finding that 18–21-year-olds scored lower than older adults on a test that measured anticipation of future consequences); Elizabeth Cauffman et al., *Age Differences in Affective Decision Making as Indexed by Performance on the Iowa Gambling Task*, 46 DEVELOPMENTAL PSYCHOL. 193 (2010) (finding that adults 22–30 years old were more likely to engage in risk-averse behaviors and were more sensitive to negative consequences than those 21 and younger); Scott et al., *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 FORDHAM L REV 641, 642 (2016) ("Over the

Recent scientific research shows that 18- to 20-year-olds are "psychologically predisposed to reckless behavior and . . . susceptible to negative peer influences."[102] One study found that 18- to 21-year-olds scored lower than older adults on a test that measured anticipation of future consequences and that adults between 22 and 30 years of age are more likely to engage in risk-averse behaviors and were more sensitive to negative consequences than those 21 and younger.[103]

The impact of peer pressure—which is particularly applicable in Manuel's case where Mr. Bethany was 6 years older at the time of the crime—is also heightened for young adults.[104] In May 2021, the American Academy of Pediatric Neuropsychology

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past decade, developmental psychologists and neuroscientists have found that biological and psychological development continues into the early twenties, well beyond the age of majority."); National Academies of Sciences, *The Promise of Adolescence: Realizing Opportunity for All Youth* 22 (2019) (noting that "the unique period of brain development and heightened brain plasticity … continues into the mid-20s," and that "most 18–25 year-olds experience a prolonged period of transition to independent adulthood, a worldwide trend that blurs the boundary between adolescence and 'young adulthood,' developmentally speaking").

[102] Andrew Michaels, *A Decent Proposal: Exempting Eighteen-to Twenty-Year-Olds From the Death Penalty*, 40 NYU REV L & SOC CHANGE 139, 142 (2016) (citing Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEVELOPMENTAL REVIEW 339, 343 (1992); Kathryn L. Modecki, *Addressing Gaps in the Maturity of Judgment Literature: Age Differences and Delinquency*, 32 LAW & HUM. BEHAV. 78, 79 (2008); Graham Bradley & Karen Wildman, *Psychosocial Predictors of Emerging Adults' Risk and Reckless Behaviors*, 31 J. YOUTH & ADOLESCENCE 253, 253–54, 263 (2002); Melissa S. Caulum, *Postadolescent Brain Development: A Disconnect Between Neuroscience, Emerging Adults, and the Corrections System*, 2007 WIS. L. REV. 729, 731 (2007); Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 DEV. PSYCHOL. 625, 626, 632, 634 (2005); Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 DEVELOPMENTAL REV. 78, 91 (2008)).

[103] Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28, 35 (2009).

[104] *See* Graham Bradley & Karen Wildman, *Psychosocial Predictors of Emerging Adults' Risk and Reckless Behaviors*, 31 J. YOUTH & ADOLESCENCE 253, 253–54, 263 (2002) (finding that, for ages 18-25, "antisocial peer pressure was a highly significant … predictor of reckless substance use and total recklessness."); Gardner & Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision*

published a resolution stating that "research on brain development indicates ongoing maturation of the brain through at least age 20. Thus…the same prohibitions applied to the application of the death penalty to persons aged 17 should apply to persons ages 18 through 20 years and for the same scientific reasons."[105]

At the time of the robbery of the Root-N-Scoot, Manuel's 20-year-old brain was still developing in crucial areas and, given his disadvantaged childhood including frequent exposure to violence and drugs, his brain was already vulnerable and less developed than the typical 20-year-old's.[106] When he was paired with the older and more mature Mr. Bethany, the robbery resulted in a panicked, single shot being fired, and Mr. Meers being killed.

Indeed, as Dr. Murrie describes in his report, Manuel's "thinking and behavior" in relation to his crime "were far more characteristic of adolescent, as opposed to adult, functioning."[107] In particular, Dr. Murrie points out that (1) Manuel committed the capital offense with an older defendant and (2) the robbery was "ill-conceived and impulsive[,]" both characteristics typical of adolescents and young adults, as discussed above.[108] The negative effects of Manuel's "limited understanding" and the impulsivity of his young age and underdeveloped brain continued at his capital proceedings, where he waved at a witness struggling to identify him in an in-court line-up[109] and made the additional "ill-conceived" choice to speak disrespectfully to

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Making in Adolescence and Adulthood: An Experimental Study, 41 DEV PSYCHOL 625, 632, 634 (2005) ("[T]he presence of peers makes . . . youth[s] [aged 18–22], but not adults, more likely to take risks and more likely to make risky decisions.").

[105] American Academy of Pediatric Neuropsychology, *Resolution of the American Academy of Pediatric Neuropsychology relating to the imposition of death as a penalty for persons ages 18 through 20 years*, 7 J. of Pediatric Neuropsychology 88 (May 25, 2021).

[106] The neuropsychological expert retained by federal habeas counsel in 2005 confirmed that "Mr. Littlejohn's history and behavioral symptomatology presented indications of neuro-developmental deficits." *See* Dr. Manuel Saint Martin Report, Appx. 1 at 1 ¶ 4.

[107] Appx. 9 at 37-38.

[108] *Id*. at 38.

[109] Appx. 3 at 18 ¶ 3.

Mr. Meers' brother, a choice that Manuel would pay dearly for at his resentencing trial.[110]

While courts at the time of Manuel's sentencing did not have access to the wealth of brain science on young adults that they do today, Manuel's young age at the time of the crime weighs strongly in favor of recommending clemency given what we now know. The vast gulf between a 20-year-old predicted to be a future threat, and a 53-year-old whose brain has long since developed past the violent, impulsive behavior of his youth, is yet another factor rendering Manuel's death sentence unreliable.

V. Who Is Manuel? He Expresses Remorse, Has a Long Record of Good Prison Behavior, and Provides Support to His Loved Ones.

Thirty-two years of incarceration is a long time. In Manuel's own words, the most important change that has taken place in his life over that time did not occur instantaneously or come to him in an epiphany. Plainly stated, he simply "grew up." During the last three decades, he has demonstrated his remorse, shown a record of good behavior in prison, and provided ongoing support to his family and his prison community.

Remorse

Through years of growth, Manuel has matured from an impulsive and reckless young man into someone who recognizes and deeply regrets the mistakes of his past. He would like the Board, and the Meers family, to know that he has sorrow and remorse for his actions that led to the death of Mr. Meers, and that there has not been a time that he has not had Kenneth Meers' death on his soul and spirit—and there has not been a time that he has not lifted Mr. Meers and his loved ones up and prayed for their healing. At the hearing, Manuel plans to express to the Board in his own words his remorse and regret for the actions he took as a 20-year-old.

[110] *See* 1994 Tr. Vol. VIII at 308; 2000 Tr. Vol. VI at 20–27.

Good Behavior

Understandably, Manuel's juries were limited to the evidence available at the time. Their belief that Manuel could pose a continuing threat to society was a key aggravating factor in both sentencings. The evidence then painted a picture of someone who *could* have committed violent acts while in prison, as during Manuel's childhood he was surrounded by and participated in violence. The juries could not see the future.

In contrast, this Board can rely on thirty-two years of prison records, medical records, clinical evaluations, and the testimony of those who know Manuel closely to feel confident that if he is given the opportunity to do so he will live out his final years posing no threat to those around him. Critically, his last incident of violence-based misconduct was *over twenty years ago*. His behavioral record, current age and health all weigh in favor of recommending clemency, and Manuel has proven that he does not pose a risk to his prison community.

In connection with Dr. Murrie's clinical assessment of Manuel, Dr. Murrie analyzed whether Manuel poses any threat of violence, taking in the complete picture of his past behavior, including the fact that Manuel had additional disciplinaries for fights *before* his capital offense, and that his last instance of violence was over twenty years ago in 2003. In his clinical assessment, Dr. Murrie found no reason to anticipate Manuel would present a violent risk to those around him.[111] He is not a suspected or confirmed member of any disruptive security group (e.g., a prison gang), and his records show he does not display predatory behavior and has not been involved in any sexual assaults. His recent "Adjustment Review" documents give him a rating of "Outstanding" on every category, including his interactions with staff and with other offenders.

In 2023, Manuel suffered a stroke that left lasting impacts on his physical abilities and mobility, and he has been diagnosed with white matter disease, a progressive neurological disease that will continue to degrade his physical ability and

[111] Appx. 9 at 48-49.

mobility.[112] Manuel now relies on a wheelchair to travel any distance longer than a hallway or two and lives peacefully with a cellmate. As confirmed by Dr. Murrie in 2022 and again in 2024, Manuel poses no threat to those around him, and his recent medical diagnoses as well as the continued passage of time suggest an even decreased risk of violence. Given his diagnoses of serious neurological conditions and the resulting strong potential for permanent disability, Manuel is physically unable to act in any way that poses a risk to anyone.[113] In short, Manuel poses no threat at all.

Family and Community Support[114]

Even when barely out of his teenage years, Manuel is remembered as someone who "care[d] for and tried to help" his fellow inmates in Oklahoma County Jail. [redacted], a former fellow inmate who knew Manuel in the early 1990s, affirmatively reached out thirty years later, wanting to be sure he shared his recollections of his time with Manuel in county jail—a rarity to occur at this stage in legal proceedings, if ever.[115] [redacted] remembered Manuel as an inmate who "care[d] for others and tried to help them."[116]

Today, Manuel is 53 years old. He is a loving father, grandfather, and son. Despite limited opportunities to engage with the world, he connects with his family through phone calls, letters, drawings, and in-person visits. He has taken every chance to support and build up relationships within his community, serving as a mentor and advocate for his loved ones. The impact of Manuel's actions rippled through his family over time. There were immediate changes, such as his mother's sobriety following his first death sentence, as well as sustained growth in the decades that followed.

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[112] Report of Dr. Erin D. Bigler, Appx. 11 at 66, 69, 71.
[113] Addendum Report of Dr. Murrie, Appx. 10 at 60.
[114] In addition to those friends and family members mentioned in this packet, Manuel has other friends and supporters who care deeply about him and may provide video submissions for his clemency hearing.
[115] Affidavit of [redacted] [redacted] Appx. 12 at 72-74 ¶ 9.
[116] *Id.* ¶ 4.

Ceily Mason was a drug addict and alcoholic during Manuel's childhood. She barely knew her son by the time he walked into the Root-N-Scoot in 1992. Now, when Ceily speaks about her son, her words illustrate how his mistakes and subsequent growth have helped turn her life around. After her son's sentencing, Ceily recognized her own role in Manuel's actions and the resulting heartache and made the decision to pursue sobriety. She has been sober since his first trial. Now, Ceily and Manuel talk on the phone frequently, and Ceily describes her son as a loving man who has grown significantly over the past 30 years. To Ceily, Manuel is a sounding board who never judges her and someone who gives more than he takes. Over the last 30 years, she has been able to spend more time with him than she ever did during his childhood. Despite the mistakes that led him to prison, the value of his life even behind bars has helped change the course of hers.

Though she knows he made mistakes in the past, Augustine (Manuel's sister) no longer sees the impulsive boy who tried to protect her as a child. Manuel has become an example of how to mature for her and her children. She mentions Manuel with love, and he reaches out often with emotional support and a listening ear. He was especially present and supportive during the loss of Augustine's own son, and Augustine's daughter listens to Manuel's stories of how his own mistakes impacted his life and the life of others, embodying his advice to avoid bad choices in her own life.[117]

Manuel's impact on the next generation extends to his daughter, Mykela (Kela), as well. Although he could not be physically present in her life, Kela describes her dad as someone who always reminds her and her three children of their self-worth and innate value. He sends letters, cards, and drawings to his three grandchildren, [redacted]. He plays an especially strong role in the life of [redacted] Kela's oldest son, speaking to him about how to respond to bullies without violence and sharing his own experiences to advise against the same pressures that weighed

[117] Letter of support from Augustine Littlejohn, Appx. 13 at 75.

on Manuel as a child. As a grandfather, he remembers being able to hold Santino when he was an infant as one of the best moments of his life.

Manuel's cousin, Brian Littlejohn, urges this Board that "people can change." He knows from experience the positive impact that his cousin could continue to have on his community if he receives a life sentence. Brian's own life trajectory was changed forever when, at a similarly young age, he was involved in a burglary that ended in a first-degree murder conviction. Brian was incarcerated for nearly two decades, during which time he matured in ways he recognizes in Manuel as well. Now out of prison for over two decades, Brian owns a business with two employees, serves as a motivational speaker and contributor to the juvenile prison community influencing reform, and has never reoffended. He has visited Manuel in person since his own release, and they speak on the phone. Brian believes that Manuel is a changed man and deserves a second chance based on the man he has become. He understands and empathizes when Manuel says he deeply wishes he could go back and make different decisions, and that, although he cannot change the past, he has and will continue to make decisions now that reflect his growth and maturity. Brian knows firsthand that Manuel, like himself, still has much to contribute to this world.[118]

If he is given the opportunity to serve a sentence of life without the possibility of parole, Manuel will continue to live a life that reflects his growth, remorse, strong record of good behavior, and support to his family and his community.

VI. Conclusion

Manuel acknowledges and accepts that he deserves to be gravely punished for his crime. He has been punished, and, should this Board recommend clemency, Manuel will continue to be seriously punished for the role he played in Mr. Meers' death. Manuel will never live outside the prison's walls. He will spend the rest of his life struggling with his deteriorating health and waking each day full of regret and remorse for his past actions. Clemency will not change that. However, clemency will

[118] Letter of support from Brian Littlejohn, Appx. 15 at 81.

allow Manuel the chance to grow and mature, as he has for the past thirty years, and continue to be a positive influence on those around him and to caution them against following in his footsteps. Manuel is loved by his family, and he participates in his limited capacity from behind bars as a loving son, a supportive brother, and a cautionary tale and role model for his grandchildren and younger relatives.

Death is not a just punishment for Manuel. To the contrary, the inconclusive evidence as to the shooter; the inconsistent prosecutions; the evidence of juror confusion regarding sentencing that led to Manuel being sentenced to death rather than life without parole; the fact that Manuel's sentence is an outlier among similarly-situated defendants, and looks starkly different than crimes committed by most death row inmates; Manuel's sincere remorse and growth over time; his deteriorating health; and his jurors' admissions that they do not believe death is the appropriate outcome together render the death penalty an unacceptably unreliable outcome. Our criminal justice system and our society ask for more before we put someone to death. Manuel humbly asks that you consider his case for clemency and issue a recommendation to Governor Stitt of a sentence of life without the possibility of parole.