

No. _____

IN THE SUPREME COURT OF ALABAMA

JIMMY DAVIS, JR.,)	DEATH PENALTY CASE
Petitioner,)	
)	Court of Criminal Appeals
v.)	CR-03-2086
)	
STATE OF ALABAMA,)	On appeal from the Calhoun
Respondent.)	County Circuit Court
)	CC-93-534.60
)	

Review of Court of Criminal Appeals
Decision Dated April 4, 2008
Application for Rehearing Denied June 13, 2008

MOTION OF NATIONAL ASSOCIATION OF SOCIAL WORKERS
AND NATIONAL ASSOCIATION OF SOCIAL WORKERS,
ALABAMA CHAPTER,
TO SUBMIT BRIEF AMICUS CURIAE ON BEHALF OF PETITIONER

Lisa W. Borden
Baker, Donelson, Bearman,
Caldwell & Berkowitz, PC
Wachovia Tower
420 Twentieth Street North
Suite 1600
Birmingham, Alabama 35203
Phone: (205) 328-0480
Fax: (205) 322-8007

The National Association of Social Workers, and National Association of Social Workers, Alabama Chapter (collectively, "NASW"), move the Court for leave to file the attached brief as *Amicus Curiae* in the above styled appeal. NASW submits the following in support of its motion:

1. Petitioner Jimmy Davis, Jr. was convicted of capital murder and sentenced to death in the Circuit Court of Calhoun County, Alabama. Davis subsequently filed a Rule 32 petition, alleging, among other things, that his trial counsel had been ineffective in failing to investigate, gather, and present mitigating evidence concerning his life history and upbringing.

2. At the Rule 32 evidentiary hearing, Davis presented evidence concerning the childhood abuse suffered by Davis. That evidence included the testimony of a clinical social worker, Jan Vogelsang, who was qualified by the Circuit Court as an expert witness. Vogelsang testified concerning her preparation of a detailed social history on Davis, and

the conclusions she drew from his history. Vogelsang testified, for example, that she found that Davis had suffered deprivation and abuse during his childhood. Davis argued that this evidence should have been presented during his original trial, and that it established a reasonable probability that, had such evidence been presented, a different sentence would have resulted.

3. The trial court rejected Davis' claims of ineffective assistance of counsel in this regard, finding that (a) trial counsel's failure to discover the mitigation evidence was the fault of Davis and his family members; (b) trial counsel did not fail to conduct an adequate investigation of Davis' background; (c) standards for effective representation of a capital defendant at the time of trial did not establish that trial counsel should have engaged a social worker or other mitigation specialist to develop background evidence concerning Davis; and (d) the evidence of Davis' childhood abuse was insufficiently severe, and

too remote in time from the offense, to support a finding that he was prejudiced by trial counsel's failure to present it. The trial court also stated that it assigned lessened weight to the testimony of the social worker.

4. NASW has a direct and important interest in this matter. Established in 1955, the National Association of Social Workers is the largest association of professional social workers in the world, with approximately 145,000 members and chapters throughout the United States, in Puerto Rico, Guam, the Virgin Islands, and an International Chapter in Europe. The Alabama Chapter of NASW, based in Montgomery, has more than 1,100 members. With the purpose of developing and disseminating standards of social work practice while strengthening and unifying the social work profession as a whole, NASW provides continuing education, enforces the *NASW Code of Ethics*, conducts research, publishes books and studies, promulgates

professional criteria, and develops policy statements on issues of importance to the social work profession.

Social workers, including NASW members, act as expert witnesses in a wide range of civil and criminal proceedings, such as child abuse and neglect, child welfare, rape trauma, post-traumatic stress disorder, sexual harassment and a variety of other civil and criminal cases, including the penalty stage of capital murder cases. NASW members often serve as expert witnesses in such cases.

5. This Motion is accompanied by the proposed Brief of *Amicus Curiae*. The Brief is a concise statement of the points which NASW believes should be highlighted for the Court's review and consideration. The submission of this Brief of *Amicus Curiae* will not delay or otherwise impede the appeal process.

Based upon the foregoing, NASW moves the Court for leave to file the attached Brief as *Amicus Curiae*.



LISA W. BORDEN WRI-027

Attorney for *Amicus Curiae*
National Association of Social
Workers

OF COUNSEL:

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.
420 North 20th Street, Suite 1600
SouthTrust Tower
Birmingham, Alabama 35203-5202
(205) 328-0480

Certificate of Service

I certify that I have this day served the foregoing motion on the following counsel of record by depositing a copy in the United States Mail, properly addressed and postage prepaid:

Ethan Tidmore
Bradley Arant Rose & White LLP
One Federal Place
1819 5th Avenue North
Birmingham, Alabama 35203

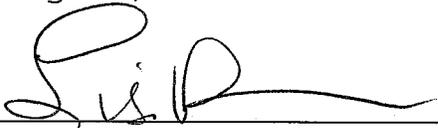
Jack L. Lahr
Foley & Lardner, LLP
3000 K Street, N.W., Suite 500
Washington, D.C. 20007-5143

William F. Abrams
Nicole M. Townsend
Pillsbury Winthrop LLP
2475 Hanover Street
Palo Alto California 94304-1115

Joy L. Langford
Chadbourne & Parke LLP
1200 New Hampshire Avenue N.W.
Suite 300
Washington, D.C. 20036

James R. Houts
Office of the Attorney General
Capital Litigation Division
Alabama State House
11 South Union Street
Montgomery, Alabama 36130

Dated this 24th day of August, 2008.



Of Counsel