

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

| | | |
|----------------------------------|---|-------------------|
| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| |) | Docket No. |
| vs. |) | |
| |) | |
| DREW TERRELL |) | Inmate No. N63220 |
| |) | |
| |) | |

SUBMITTED TO THE HONORABLE GEORGE RYAN, GOVERNOR
OF THE STATE OF ILLINOIS

**PEOPLE'S RESPONSE IN OPPOSITION TO PETITION
FOR EXECUTIVE CLEMENCY**

HEARING REQUESTED

RICHARD A. DEVINE
STATE'S ATTORNEY OF COOK COUNTY

By: JAMES P. McKAY, JR.,
JOHN G. MURPHY,
KATHLEEN WARNICK,
NANCY FAULLS,
Assistant State's Attorneys

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

| | | |
|----------------------------------|---|-------------------|
| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| |) | Docket No. |
| vs. |) | |
| |) | |
| DREW TERRELL |) | Inmate No. N63220 |
| |) | |
| |) | |

I.

HISTORY OF THE CASE

More than seventeen years ago, on August 27, 1985, defenseless, twenty-two pound, fifteen-month-old Laura Hampton was left home alone in the care of 5'10", 170 pound, eighteen year old Drew Terrell. When Laura would not stop crying, Terrell savagely sexually assaulted her and brutally beat her to death. Terrell gave a court-reported confession to these unthinkable crimes.

In 1986, following a bench trial, the Honorable Fred Suria found Terrell guilty of murder and aggravated criminal sexual assault and sentenced Terrell to death.

On October 25, 1989, the Illinois Supreme Court **affirmed** Terrell's convictions, specifically finding that Terrell's confession had been given voluntarily. However, Terrell's death sentence was vacated because the Supreme Court held that the trial judge improperly considered victim impact evidence. Terrell's case was remanded for a new sentencing hearing.

On May 26, 1995, following a second sentencing hearing before a jury, Terrell was again sentenced to death.

The Illinois Supreme Court reviewed the proceedings. On December 31, 1998, the Illinois Supreme Court **upheld** Terrell's death sentence.

On May 16, 1997, Terrell filed a pro-se petition for post-conviction relief. Terrell's post-conviction petition contains 24 claims which Terrell alleges entitle him "relief from his conviction and sentence of death." Amazingly, in light of his "theory" here, the petition makes no claim someone other than Terrell, including his mother, committed the ferocious attack and murder of Laura Hampton. His petition also included a motion for the appointment of counsel.

On September 9, 1997, attorney Alan M. Freedman entered his appearance for Terrell. On December 17, 1997, the People filed a motion to dismiss Terrell's petition. Subsequently, Freedman filed a "Motion to Hold the State's Motion to Dismiss in Abeyance to Allow Petitioner

the Opportunity to file his Amended Petition for Post-Conviction Relief and Set Status Conference.” Within the motion counsel advised the court that on January 5, 1998, he had spoken with the Assistant State’s Attorney assigned to the post-conviction case. Freedman advised the Assistant the he intended to file an amended petition for post-conviction relief and believed it would be filed by “early June of 1998.” To date, no such amended petition has been filed and the case is pending before the Honorable Fred Suria. The case will next be in court, for a status date, on November 24, 2002

Currently, Terrell has filed a petition for executive clemency. For the reasons that follow, the People of the State of Illinois respectfully request that Governor Ryan and this Board reject Terrell’s request for executive clemency.

II.
FACTS OF THE CASE

On August 27, 1985, Markeeter¹ Hampton, her 15 month old daughter, Laura, Elizabeth Terrell and Elizabeth's 18 year old son, Drew Terrell, lived together in a second floor apartment at 3316 W. 21st Street in Chicago. Elizabeth and Markeeter had known each other for approximately four years but had only shared this apartment for eleven days when Drew Terrell murdered Laura.

At approximately 8:20 a.m. on the morning of August 27, 1985, Markeeter left the apartment to go to work. A healthy Laura was sleeping in bed with Elizabeth while Terrell was asleep on the floor. Elizabeth was going to watch Laura while Markeeter was at work. However, Elizabeth left the apartment and went to the currency exchange. Laura was home alone with Terrell.

After Elizabeth left the apartment, Laura slept on her stomach for approximately ten minutes then woke up crying. When Laura would not stop crying, Terrell hit her hard on her back with an open hand. Laura continued to cry so Terrell changed her wet diaper. When she still did not stop crying, Terrell struck her again. He then picked her up, laid her on her back and proceeded to punch her repeatedly. After smelling what he believed to be a bowel movement, Terrell changed Laura's diaper again. However, this time before fastening the sides, Terrell brutally sexually assaulted Laura.

Terrell later told police he had inserted a Q-tip into the baby's vagina, "looking for a pain response." He also admitted that he had put his finger in Laura's vagina. Terrell further

¹ Without explanation, Ms. Hampton's first name is spelled differently throughout both records. For

admitted that he had put his “hand inside her and started handling her.” Terrell explained that it had been difficult to put his finger in Laura’s vagina but that he had inserted it “up to the bone” for “a minute or two.” Laura screamed during this torture but then stopped. Terrell’s vicious assault of Laura ended only when his mother returned to the apartment.

In an attempt to cover up his gruesome crimes, Terrell put a stereo on the floor at the base of the bed, between the dressers. Terrell initially claimed that Laura had been injured when, while he was out of the room, she pulled the stereo down on top of herself.

When Terrell heard a knock on the door to the apartment, he fastened Laura’s diaper. Terrell went to the door and let his mother into the apartment. Terrell told his mother that there had been an accident and claimed that the stereo had fallen on Laura and hurt her. Elizabeth saw that Laura had bruises on her face, that she was in a “daze” and that her eyes were “rolling.” Elizabeth wrapped Laura in a beach towel and “knew” she had to get Laura to the hospital. Laura was limp in Elizabeth’s arms. Elizabeth found a neighbor and the two took Laura to St. Anthony’s hospital.

Later, Terrell called Markeeter, and told her that Laura had pulled a stereo onto herself and that Laura was in the hospital. Markeeter went to St. Anthony’s hospital where she found her unconscious daughter, on a respirator, clinging to life.

Personnel at St. Anthony’s hospital called police. Initially, Terrell told Police Officer Grantz that he had been babysitting for Laura and that he found her on the floor with a three piece stereo unit on top of her.

purposes of this response, the People will refer to her as “Markeeter.”

Detective Clemmons of Area 4 Violent Crimes also went to St. Anthony's Hospital. Detective Clemons saw bruises on the left side of Laura's face and long linear scratch-type marks on her cheek. There were also bruises on her chest. When Dr. Wilke opened up Laura's diaper there was trauma and lacerations to Laura's vagina and anus. Detective Clemons saw blood on her diaper and on the sheet that Laura was lying on. Laura's "vagina appeared to [have] be[en] ripped and torn; [with] very little connecting tissue between the vagina and the child's anus." Dr. Wilke told Detective Clemons that Laura's injuries were not consistent with a stereo falling on top of her. Laura was in extremely critical condition and was transferred to Cook County Hospital.

At Cook County Hospital Laura was treated in the pediatric intensive care unit by Dr. Demetra Soter, an expert in pediatric critical care. At approximately 1:30 p.m. on August 27, 1985, Laura was pale, unconscious and unresponsive. Laura had a bruise on her right forehead, a bruise on her left eye and linear bruises on the entire left side of her face. She had bruises on her swollen belly and multiple linear bruises criss-crossing her back in different directions. Dr. Soter could not hear any bowel sounds.

Laura had "fresh blood dripping from her vagina and rectum." Usually, in a fifteen month old baby, both the vagina and rectum are small orifices. However, the front and back of Laura's vagina were totally ripped open. The vaginal rip was about a one inch long. The rectum had a one and a half inch rip toward the vagina and another rip toward the back. "Essentially, it was like a hole that had been ripped forward and back in the rectum." Dr. Soter described the tears as "massive." One finger could not have torn Laura's vagina. Four or five fingers could have caused the injuries. Neither a finger nor a Q-tip could have caused the injuries to Laura's rectum.

Laura was in shock. Dr. Soter and her team attempted to save Laura's life. Laura was given drugs and blood in order to stabilize her condition so that she could be operated on. Laura was taken to surgery. There was extensive bleeding inside Laura's belly. Her liver "had essentially been broken in half." The mesentery had blood and tears in it. In Dr. Soter's expert opinion, it had taken a "tremendous" amount of force to cause the injuries that Laura had to her liver and mesentery and it was unlikely that such injuries could have been inflicted by a woman. The injuries could not have been caused by a radio falling from the distance of three feet. Dr. Soter had never seen anything like Laura's injuries - either before or after she treated her. Despite valiant efforts to save her life, Laura Hampton died at 4:45 p.m. on August 27, 1985. (See Exhibits A, B)

Laura's autopsy was originally performed by Chief Medical Examiner Dr. Robert Stein. Due to his death, Dr. Stein was unable to testify at the second sentencing hearing. Deputy Medical Examiner Dr. Nancy Jones testified at the second hearing after she reviewed records created by Dr. Stein as well as photographs taken of Laura.

Laura had purplish-blue bruising on her right forehead that measured two-by-two inches. She also had bruising on the upper lid of her left eye. There was also bruising to the left side of Laura's face. This bruising measured four-by-two inches and covered almost the entire left side of her face. Further, there were patterned, line-like areas of bruising that measured one-and-three quarters by one-and-three quarters inches lower down on the left side of Laura's face.

Additionally, there was an area of bruising on Laura's back that measured four-by-two inches. There was discoloration on the back of Laura's wrists. Some of the bruises were consistent with being hit with either a hand or a fist. The linear area of bruising was not consistent with being hit

by a hand or fist. However, it could have been caused by the back portion of the hairbrush that had been recovered from the bed in the apartment.

There was blood coming from Laura's vaginal and anal areas. There were very extensive tears and lacerations in the vaginal tissue with enlargement of the vaginal opening. These lacerations could have been caused by the insertion of several adult fingers with a degree of force, or a penis or a foreign object. The injuries to Laura's vaginal and anal areas were consistent with separate, multiple penetrations. Internally, there was hemorrhage into the fatty tissue just underneath the skin in the pubic area. There was also hemorrhage into the soft tissue inside the pelvic region known as the parametrium, which are the tissues that extend between the ovaries, the fallopian tubes and the uterus. Additionally, there was hemorrhage in the broad ligament that attaches the uterus to the side walls of the pelvis.

There were lacerations deeper in Laura's vagina. There was hemorrhage and lacerations in her rectum. There was approximately a half-liter of blood in Laura's abdominal cavity. There were tears or lacerations in the mesentery, which is the fatty apron that holds the intestinal tract in place. There were tears or lacerations in her liver. There was hemorrhage surrounding her kidneys and the retroperitoneal space, which is the space toward the back of the body where the kidneys are located. There were contusions or bruises on Laura's heart. There was hemorrhage on the undersurface of the membrane that is on the outer surface of the lung. There was also hemorrhage on pleural surface in the left chest cavity in the back - this is the membrane that covers the ribs in the area of the third, fourth and fifth rib.

Dr. Stein determined that Laura died as a result of "multiple internal and external injuries with lacerations of the vagina and rectum contributing to her death." Dr. Jones concurred

with Dr. Stein's findings. Laura's injuries occurred close to her time of death and within a short period of time to one another. The manner of Laura's death was determined to be homicide. Laura's injuries were not consistent with a stereo falling on top of her. **(See Exhibits C, D, E and F)**

During the police investigation, Terrell first told Detectives Gienko and Lahm that while he was in the washroom he heard a sound coming from the front bedroom that sounded like something falling over. Terrell claimed that when he had gone to the bedroom, he saw Laura on the floor with a piece of stereo equipment on her leg and another piece of stereo equipment just above her head. Terrell claimed that Laura was lying on her back at the foot of the bed and that he observed bruises on the left side of her face.

Later, Terrell gave an inculpatory oral statement to Detectives McManamon and Nuccio. Terrell admitted that he was home alone with Laura. He admitted that when she woke up crying he told her to quiet down and he slapped her on the back with an open hand. She did not stop crying. After determining that Laura needed a diaper change, Terrell changed her diaper. Laura continued to cry. Using his open hand, Terrell "slammed" Laura in the face. Laura continued to cry. Terrell admitted that, with a closed fist, he punched Laura "three or four or -- four or five times in the stomach and chest area." After punching Laura, Terrell noticed a foul odor - Laura had had a bowel movement. Terrell claimed that he cleaned her up and changed her diaper. However, he did not "close" the diaper. Terrell told the detectives that he realized that Laura was seriously injured.

Terrell also orally confessed to Assistant State's Attorney James Sullivan. Subsequently, a court reporter arrived at Area 4 and Terrell gave an inculpatory court-reported confession. **(See Exhibit G)** Terrell admitted that after Markeeter went to work and Elizabeth went to the currency

exchange, he was in the apartment, alone, babysitting Laura. He admitted that he brought Laura into bed next to him. Terrell stated that Laura initially fell asleep and then woke up crying. Terrell claimed he “asked” 15 month old Laura to be quiet. When Laura did not stop crying, Terrell admitted that he struck her hard in the back with an open hand.

Laura continued to cry. After determining that Laura was wet, Terrell changed her diaper. When she still continued to cry, Terrell picked her up and placed her on her back on top of a pillow. Terrell admitted that, with his closed fist, he hit Laura hard, “approximately four maybe five times” in the stomach. Terrell smelled that Laura had had a bowel movement, so he changed her diaper again. However, Terrell did not “close” the diaper. He admitted that he put a Q-tip inside Laura’s vagina. He claimed he “was looking for a pain response.” Terrell stated he put his “hand inside her and started handling her.” He explained that it had been hard to get his finger into Laura’s vagina but that he had put his finger inside Laura “up to the bone” for “a minute or two.” Laura “hollered for a few minutes and then stopped hollering.”

Terrell then heard a knock at the door, so he quickly put Laura’s pampers on. When Terrell answered the door, it was his mother. Terrell told Elizabeth that Laura had accidentally pulled the stereo equipment down on top of herself. Terrell admitted that he’d told his mother this story to cover up his actions.

Within his court-reported confession, Terrell stated that he’d been treated well by the police and Assistant State’s Attorney. He also specifically stated that he had not been threatened in any way. Terrell’s pre-trial motion to suppress his statement was denied. Judge Suria specifically found that Terrell’s statement had been given voluntarily. The Illinois Supreme court affirmed this ruling. (**See Exhibits H; People v. Terrell, 132 Ill.2d 178, 201 (1989)**).

At his bench trial, Terrell claimed he had left Laura in the apartment alone and that when he came back he found that she had been injured. He conceded that he did not call the police or an ambulance when he “discovered” that Laura had been injured. He admitted that he never told the police that Laura had been injured while he was out. Terrell claimed while he was away from the apartment, he had been out “here, there, everywhere, where ever.” He testified that he had talked to a number of “associates” while out of the apartment. However, Terrell was unable to name any of these alleged associates. He also admitted, contrary to his claim that he had been outside while Laura was injured, that he had been in the apartment when the stereo fell. On cross-examination, Terrell conceded that the words in the court-reported statement were his own. However, on re-direct examination he testified that he had done nothing to harm Laura. Judge Suria rejected Terrell’s story, finding him guilty and subsequently sentencing him to death.

The first time the case was reviewed by the Illinois Supreme Court, the court affirmed Judge Suria’s ruling denying Terrell’s motion to suppress his statement and Terrell’s convictions. The Court held that there was no evidence to support a claim that Terrell’s statement had been given because a police officer threatened or coerced him. (See **Exhibit H**; People v. Terrell, 132 Ill.2d 178, 201 (1989)) The Court specifically found that there was “no indication that [Terrell’s] will was overborne and that any inculpatory statements were involuntary. The totality of the circumstances shows that [Terrell’s] statements were voluntary.” Additionally, although the Court affirmed Terrell’s convictions his case was remanded for a new sentencing hearing.

After the eligibility phase of the new sentencing hearing, the jury found Terrell eligible for the death penalty. In aggravation, the jury learned of Terrell’s prior criminal background. On September 7, 1984, Terrell and another man attacked and robbed Anulfo Flores. Mr. Flores had been

grabbed, struck about the face and body and robbed of thirty-five dollars. Mr. Flores had bruises and lacerations to his face. Terrell had been the first to hit him. Mr. Flores had been hit on his head and knocked to the ground. Subsequently, Terrell pleaded guilty to the robbery and was sentenced to two years probation and six months incarceration in the Cook County Department of Corrections.

On February 18, 1985, at approximately 8:00 p.m., Rigoberto Gaytan was boarding a bus. Elizabeth was talking or arguing with the bus driver and asked Mr. Gaytan for fifty cents. When Mr. Gaytan took out his wallet to give Elizabeth a dollar bill, Terrell got up from one of the first seats in the bus and grabbed Mr. Gaytan's wallet containing eighteen dollars and two identification cards. Terrell tried to push Mr. Gaytan off the bus. Another male pulled Mr. Gaytan off the bus. Terrell kicked Mr. Gaytan in the ribs and stomach. Before running away, Terrell and the other man kicked Mr. Gaytan for approximately a minute.

Subsequently, Terrell pleaded guilty to the offense of robbery. He was sentenced to two years probation and six months incarceration in the Cook County Department of Corrections. The sentence for the Gaytan robbery ran concurrent with the sentence for the Flores robbery.

Jim Utley, the Record Office Supervisor at the Dixon Correctional Center, testified regarding the thirteen disciplinary reports contained in Terrell's Illinois Department of Corrections master file at that time. The reports detailed a number of different rule violations for which Terrell had been disciplined. For example, Terrell was also disciplined for an incident which occurred on August 6, 1987, in which he reached through his cell bars and grabbed an officer's key ring. Terrell pled guilty and was demoted to C grade² for sixty days.

²Punishment involving C grade means that an inmate has commissary restrictions, telephone restrictions, and loss of the privilege of participating in various programs offered within the institution.

On December 1, 1987, Terrell got angry with an officer and threatened to "fix" the officer. Terrell used a "stinger"³ and began to heat some water. The officer viewed Terrell's behavior as a threat - the officer felt that Terrell was going to throw the hot water on him. Terrell also called the officer a "stupid motherfucker." Terrell was found guilty, placed in segregation for ninety days and thirty days of Terrell's good conduct credit were revoked.

On January 8, 1988, Terrell was involved in an incident where he and four other inmates refused to be handcuffed and come in from the yard. Three of the inmates broke a concrete table. Pieces of concrete were thrown and twenty-six windows were broken. The inmates did not stop when a warning shot was fired from a shotgun. Terrell was ordered again to "come off the yard." Again Terrell refused. The Warden, the Assistant Warden and a Lieutenant arrived at the scene. After again refusing to come inside, the inmates were sprayed with fire hoses. After twenty-five minutes, the hoses were turned off and the inmates continued their refusal. Two tear gas grenades were thrown in the yard. The inmates came in and were cuffed. However, they resisted being searched so force was used to hold them to the floor so the search could be conducted. Terrell received two separate disciplinary reports relating to this incident. He was found guilty of the violations. The total punishment was thirty days C grade and thirty days restriction of yard and recreation privileges.

Terrell was disciplined for an incident which occurred on October 16, 1989, in which he threw a full lunch tray of food down into the lunch gallery - spilling food on the floor and the wall. Terrell was found guilty and his punishment was one month of commissary restriction. Terrell was also disciplined for an incident which occurred on February 19, 1990, in which an officer discovered and disposed of two gallons of fruit and fruit juices fermenting into "hootch" - homemade alcohol.

³ A "stinger" is a three to four inch metal coil that is plugged in and allows the inmates to heat their

Terrell questioned the officer as to why he disposed of the hootch. The officer told Terrell that he had been ordered to by his superiors. Terrell asked the officer if his superiors said "bend over because we're going to fuck you in your ass, would you?" Terrell was found guilty and was placed in segregation for six months and was demoted to C grade for six months.

On November 18, 1992, Terrell was being housed at the Cook County Department of Corrections while awaiting his new sentencing hearing. Perry Bentley was working as a correctional officer at the Cook County Department of Corrections. Terrell was housed in the ABO Unit of Division 1. This unit was maximum security - "the maximum of the maximum." During a shakedown, Officer Bentley searched Terrell's cell and discovered a "shank". It was made of a very heavy metal and was between twelve and fifteen inches in length. One end was very highly sharpened and the other was wrapped in tape.

Terrell presented the testimony of his father, his step-mother, his aunt, and three of his cousins. The testimony established that Elizabeth and Terrell often lived with Elizabeth's mother and father. Terrell's grandmother was a good woman, "a very Christian lady, very Christian." Terrell's grandfather was a minister. They taught him the difference between right and wrong. They showed him the right paths to lead in life. Terrell attended church while living with them. His aunt thought he was "a pretty good kid." He also went to church while living with his father and stepmother. His father and stepmother also taught Terrell the difference between right and wrong. Terrell's father testified that Terrell was "a bright, intelligent guy" when he applied himself.

After hearing arguments of counsel and instructions from the court, the jury unanimously found that there were no mitigating factors sufficient to preclude the imposition of a death sentence.

Terrell's post-sentencing motion was denied and Judge Christy S. Berkos issued an execution order. The Illinois Supreme Court affirmed the jury's decision.

Even after more than ten years in custody, Terrell continued to receive disciplinary reports while back on death row for the second time. For example, upon his return from the Cook County Department of Corrections, and on his way back to death row at the Pontiac Correctional Center, Terrell was searched at the Joliet Correctional Center on June 2, 1995. The search revealed that Terrell had a black pen with a one inch sharpened piece of metal sticking out from one end. Terrell received three months in segregation and a demotion to C-grade for three months. **(See Exhibit I)** On September 28, 1996, Terrell requested and received marijuana from another prisoner. Terrell was placed in segregation and demoted to C-grade for three months. **(See Exhibit J)** On July 23, 1998, Terrell refused to submit to a drug test. He lost his audio/visual privileges for two months and was placed in segregation and demoted to C-grade for three months. **(See Exhibit K)**

III.

REASONS FOR DENYING THE PETITION

1. Terrell's Claim of Innocence

Terrell argues that his death sentence should be commuted because he is “probably” innocent of the murder and sexual assault of 15-month-old Laura Hampton. Terrell attempts to support his position by false innuendos, a biased “expert” opinion and hearsay affidavits, but no actual proof of Terrell’s innocence. However, when Terrell’s petition is carefully examined in juxtaposition to the evidence accrued and presented to support his guilt, the history of his case and simple common sense, it becomes glaringly obvious that defendant’s claim of innocence is a sham founded upon an attempt to escape his sentence of death.

Terrell is asking the Board and the Governor to commute his sentence because there is a “substantial probability” he is innocent. (See Terrell’s Petition page 12) In order to “buy” Terrell’s argument one must accept all of these three things: 1) his confession was false, 2) he is innocent and 3) he was covering up for his mother, who is the real murderer. The People will systematically dismantle each prong of Terrell’s argument resulting in the inescapable conclusion that Terrell’s current claim of innocence is a ruse to get him off of Death Row.

A. Terrell's True Confession Was Voluntarily Given

In an effort to assert his alleged innocence, Terrell first attacks the evidence upon which he was convicted. Accordingly, Terrell says his confession was false and that he was coerced into

giving it. Terrell's confession was clearly voluntary. There is absolutely no evidence that it was coerced and the inherent reliability of Terrell's statements can be determined from their content.

The evidence at Terrell's trial established that in the middle of his brutal assault upon Laura Hampton, Terrell took stereo components and placed them on the floor in preparation of his claim that Laura's injuries were caused by the stereo falling on her. Police spoke to defendant twice at the hospital. Each time defendant claimed the stereo caused Laura's injuries. Knowing at the time of his second exculpatory statement that Laura's injuries were not consistent with this explanation, police took Terrell to the police station. Terrell was interviewed after being advised of his constitutional rights at 3:00 p.m. Terrell again gave an exculpatory statement. Terrell was again advised of his constitutional rights and interviewed by Area 4 Violent Crimes Detectives McManamon and Nuccio at approximately 5:00 p.m. After that statement the Felony Review Unit was contacted. Assistant State's Attorney James Sullivan again advised Terrell of his constitutional rights. Following Terrell's second confession a court reporter was contacted. Prior to taking Terrell's court reported confession, Assistant State's Attorney Sullivan went into the interview room by himself. During that conversation, Terrell told Assistant States Attorney Sullivan that he had been treated fine. A court reporter then arrived and transcribed Terrell's confession. Afterward he was given an opportunity to read it over and make any necessary corrections. He then signed the document and initialed each page.

Contrary to Terrell's argument, the fact that he made two initial exculpatory statements prior to his confession does not support his claim of "probable" innocence. Instead, the fact that Terrell interrupted his assault upon Laura with the presence of mind to cover up his heinous acts by placing the stereo components on the floor, and then returned to his destruction of her body, clearly

shows his evil intent. That he persisted in this false explanation is evidence of his utter disregard for her survival and of his conscious decision to lie rather than take responsibility for his actions.

Further, there is not one scintilla of evidence that the police in this case coerced his confession or of that the words Terrell used in his court-reported statement were anyone else's but his own. Terrell was repeatedly advised of his rights. Terrell was at the police station only a few hours before he confessed. After confessing to police, a court reporter was called to transcribe his statement. A review of that statement shows that the questions asked of Terrell were open-ended and not suggestive of the answers given. **(Exhibit G)** Moreover, Terrell said in his court-reported statement that he had been treated well by the police and had not been threatened.

Another reason one can determine that the words in Terrell's statement were his own and were not "supplied" by police is because the words he used in his confession involved acts and motivations only known to the actual killer. When police took Terrell to the police station they knew that Laura Hampton was lacerated from her vagina to her anus. However, there was no way they could have known the depth of her internal injuries at that time. Terrell told police it was difficult to insert his finger in "there" and that he inserted it a couple of inches, "up to the bone, somewhere around the bone". **(See Exhibit G, pages 7-8)** Terrell told police he started "handling her" and that he was looking for a "pain response". **(See Exhibit G, page 7)** An autopsy performed the following day revealed massive internal injuries resulting from this sexual abuse. **(See Exhibit L)** The horror of Terrell's acts was captured in his own words and the nature and content of his statement conclusively revealed his guilt. The choice of words used in Terrell's confession had to be his and could not have been supplied by police because the police didn't know what Terrell knew at that time. They were not words of a person trying to cover up a crime for his mother, for if

Elizabeth had committed this crime, Terrell would not have known the nature and extent of her injuries. Instead, the choice of words used in that confession, standing alone conclusively establish Terrell's guilt because no one, but the person who committed these despicable acts, could have so described them.

More conclusive proof of the accuracy and truthfulness of Terrell's confession come from Terrell's testimony at trial. He acknowledged giving his entire statement to Assistant State's Attorney Sullivan and conceded that the words in the statement were his own. Terrell has never said someone told him what to say.

Not only is it obvious on its face that Terrell's statement is true and accurate, but, in addition, Terrell's challenge to the voluntariness of his statement was fully litigated and reviewed. Terrell made a motion to suppress his confession prior to his trial. After a full hearing, the Honorable Fred Suria found that Terrell's confession was voluntary and denied his motion.

The Illinois Supreme Court solidly rejected Terrell's claim on appeal. The Court held that there was no indication Terrell's will was overborne or that any of his inculpatory statements were involuntary. The court also stated that there was no evidence to support Terrell's testimony that he made the inculpatory statements because a police officer threatened and coerced him. In reaching this conclusion the Court noted: "The evidence presented at the suppression hearing showed that the defendant was 18 years old, literate, and at the time had completed three years of high school. He had had previous experience with the criminal justice system and thus, was aware of the consequences of confessing." [See **Exhibit H**, People v. Terrell, 132 Ill.2d 178 at 198, (1989)]

It should also be noted that Terrell's current claim that he confessed to this crime in order to cover for his mother, the "real" murderer, is inconsistent with his claim he was coerced by police into giving his confession. Assuming for one moment that Terrell walked into the police station with a pre-conceived desire to confess to this crime so that his mother would not be incriminated, it is absolutely ridiculous to at the same time argue that police coerced him into giving this statement. They are absolutely inconsistent arguments, which further illustrate the absurdity of Terrell's petition.

Terrell attempts to support his petition with a report of biased, defense-retained and ill-informed Dr. I. Bruce Frumkin who was hired to conduct a psychological evaluation of Terrell seventeen years after the fact. Petitioner has not seen fit to attach Dr. Frumkin's qualifications or a copy of his resume to his petition. However, an examination of what he did and did not consider, goes a long way in explaining his ultimate conclusion.

First and foremost, Dr. Frumkin of South Miami, Florida acknowledges on the first page of his report that he was hired by defense counsel regarding "a possible false confession." Thus, before even beginning his examination he knew what conclusion his clients wanted him to reach. Dr. Frumkin relied upon was totally biased information: an "abstract" of the original trial and second sentencing hearing, and "draft, notes, outlines and other material" from Terrell's legal counsel. It is alarming to note that Dr. Frumkin reached his conclusion without the benefit of the **actual** trial transcript (including the testimony of Terrell), police reports, any prior hospital or psychiatric reports of Terrell (including but not limited to reports by Dr. Stipes), or the autopsy report regarding Laura Hampton. Dr. Frumkin conducted no interviews other than with Terrell and his attorneys. Dr. Frumkin's report indicates Terrell said police ripped up three "versions" of what

happened prior to his “final” statement. Dr. Frumkin was obviously unaware or ignored the fact that nowhere during the 17 years since the murder of Laura Hampton has there been one scintilla of evidence, including the testimony of Terrell at his motion to suppress and trial, or any prior allegations by defendant, that he gave more than one written statement.

Thus, Dr. Frumkin reached his conclusion only in consideration of biased information for which there was no underlying truth and his defense oriented opinion, should come as no surprise. As such, Dr. Frumkin’s report cannot be accorded any credibility. Moreover, Terrell’s intelligence quotient even as tested by Dr. Frumkin was well within the average range.

In addition, Dr. Frumkin’s report contradicts the reports of Dr. Stipes, an independent expert employed by the Psychiatric Institute. Dr. Stipes examined Terrell much closer to the time of this crime and concluded that Terrell was in contact with reality and showed no evidence of psychosis, affective disorder, nor any significant intellectual deficit. In 1994 after an order by the Honorable Christy Berkos to evaluate Terrell, the Psychiatric Institute indicated it could not comply with the judge’s order because a scheduled “psycosocial history” with Terrell’s family had not yet taken place. However, the following month, Dr. Stipes made the same conclusions about Terrell that he had made prior to his trial. (**See Group Exhibit M**)

Thus, there is **NO** evidence to support Terrell’s present claim that his confession was false and coerced.

B. Drew Terrell Murdered and Sexually Assaulted Laura Hampton

The next prong of defendant’s claim of “probable” innocence is that he didn’t commit the murder of Laura Hampton. Terrell’s claim of innocence goes against everything known about the murder of Laura Hampton.

Although Terrell tried to go back to his “stereo story” at trial, he conceded that he was home alone with Laura when her injuries occurred. Accordingly, in sentencing Terrell to death, Judge Suria stated:

Drew Terrell, in your own uncontradicted testimony, which is not an issue, you admitted, for a period of time, on the morning of August 27, 1985, you had sole care, custody and control of Laura Hampton; that it was during that period of time that those injuries were inflicted, which ultimately caused her death.

As against the entire world, you were the sole party responsible for her well-being. A child, aged 15 months, cannot protect himself or herself, nor could Laura Hampton. The facts, as I have found them, presented, indicated upon all the testimony, including your own statement, indicates unequivocally, that you breached that responsibility in a most despicable, heinous, wanton manner. (See **Exhibit N** - Sentencing Hearing of Drew Terrell, August 28, 1986)

Terrell did not deny that he killed Laura Hampton in his first appeal; he instead challenged his intent. He never claimed that he was not the person responsible for inflicting Laura’s injuries.

Despite this, at his second sentencing hearing Terrell improperly attempted to relitigate his guilt by claiming that someone else, specifically his mother, had the opportunity to commit this crime. On review the Illinois Supreme Court stated:

Defendant has never before offered the theory that his mother committed these crimes. Rather, defendant admitted that it was his actions which caused Laura’s injuries. In addition, on direct appeal, defendant did not contend that he did not injure Laura, rather he claimed that he did not act with the requisite intent. Therefore, we find the trial court properly found defendant’s evidence too remote and speculative. (See **Exhibit O**, People v. Terrell, 185 Ill.2d at 500.

Terrell also claims he is innocent because the testimony of the medical examiner at the second sentencing hearing was inconsistent with the first. Terrell's claim misconstrues the facts. Dr. Stein performed the autopsy of Laura Hampton and testified at the first trial. Between the first trial and the second sentencing hearing Dr. Stein passed away. Dr. Nancy Jones testified at the second hearing. The fact that Dr. Jones may have described Laura's injuries differently does not make her testimony inconsistent with that of Dr. Stein.

Terrell's pro-se post conviction petition has been pending in the circuit court since May of 1997. In his 24 allegations of error Terrell neither asserts his actual innocence, nor does he claim that his mother committed this crime. (**See Exhibit P**) The People moved to dismiss Terrell's post-conviction petition. (**See Exhibit Q**) Mr. Allen Freedman, of the Midwest Center for Justice, then filed a "Motion to Hold the State's Motion to Dismiss in Abeyance to Allow Petitioner the Opportunity to File his Amended Petition for Post-Conviction Relief and Set Status Conference". In that motion, Mr. Freedman represented that the "research and investigation necessary to prepare his amended petition will be completed by early June of 1998". (**See Exhibit R**) Terrell's post conviction petition is still pending, and no amended post-conviction petition has been filed to date, although over 4 years have passed since counsel's representation.

Laura Hampton was murdered on August 27, 1985. Today, more than 17 years after her tragic death, there is still absolutely no doubt that Terrell and Terrell alone, committed these brutal acts.

C. Elizabeth Terrell Did Not Murder Laura Hampton

The final prong of Terrell's assertion of "probable" innocence rests upon the notion that his mother, Elizabeth Terrell, committed the murder. There is absolutely no evidence to support this theory. In fact, the evidence directly refutes it.

In his statement to Assistant State's Attorney Sullivan, Terrell said that Markeeter Hampton, Laura's mother, left first for work and that after that, his mother, Elizabeth Terrell, left for the currency exchange, leaving him home alone with the victim. After his mother left, Terrell killed Laura Hampton.

Terrell testified at trial that while his mother went to the currency exchange, he was in the house by himself with Laura. He stated he was present in the apartment when he heard the stereo fall on her. He further stated that Laura was injured before his mother got home.

Elizabeth Terrell testified before the Grand Jury on August 30, 1985. Elizabeth told the Grand Jury that she had gone to the currency exchange several times and when she returned home she found Laura Hampton on the bed, injured. Terrell told Elizabeth that the stereo had fallen on Laura. Elizabeth told the Grand Jury that "[t]he baby had bruises, and she was in a daze. And he (Terrell) says, 'Momma, the baby is going to be all right.' And I says, 'This baby don't look like it's going to be all right.'" Elizabeth stated that the nature of Laura's injuries did not appear to be consistent with a stereo falling on the baby. Elizabeth picked up little Laura and took her to the hospital. Elizabeth told the Grand Jury that when she arrived at the hospital with Laura:

I gave the baby to the nurse. And I said, 'The baby – I don't know what is wrong with the baby.' I had broke down by then because on the way to the hospital in the car, the baby was, 'Uh, uh, uh.' (Indicating) All I knew – all I knew, it was more serious. I didn't know what to do. All I know is that he said the record player fell on her. That's

all I knew. And she had bruises like this. (Indicating)

And I couldn't picture how she could have there little marks from the record player falling, you know. It would have been like one huge of a bruise; it wouldn't have been like a – like that. And I said, 'it looks like this baby is not going to be all right.' But I didn't hesitate to get that baby to the hospital. (Grand Jury Testimony of Elizabeth Terrell, August 30, 1985, attached as **Exhibit S**)

The fact that Elizabeth had gone to the currency exchange after Markeeter went to work, leaving Terrell home alone with Laura was further corroborated. In their investigation the police interviewed the manager of the currency exchange and he verified Elizabeth's activities. (See **Exhibit H**; People v. Terrell, 185 Ill.2d at 492)

The contrasting actions, or inactions of Terrell and his mother shed additional light on the issue of guilt or innocence. At no time did Terrell seek any type of medical help for Laura. He did not call for an ambulance; he did not get the help of a neighbor. He did not take Laura outside to try and find anyone to help. It was Elizabeth who immediately picked up the limp and battered baby, and got Laura help. Elizabeth wrapped Laura in a towel. Elizabeth found a neighbor to help. Elizabeth got Laura to the hospital. Elizabeth answered questions asked by the hospital staff. Elizabeth helped Laura. Terrell stayed home.

The nature of Laura's injuries would also suggest they were not inflicted by a woman. Dr. Soter testified that it would have taken a tremendous amount of force to cause Laura Hampton's injuries and stated it would be unlikely that such injuries would have been inflicted by a woman.

Terrell's only "support" for his allegation his mother committed the murder of Laura Hampton, comes from hearsay affidavits attached to his petition. These "affidavits" however, are nothing more than unverified, biased pieces of paper that should be afforded no credibility.

Initially, many of these purported “affidavits” are not witnessed or notarized. They also contain errors. For example, the affidavit of Madeline Terrell is dated 5-6-00 but is “notarized” on 4-6-00. There is no information regarding the circumstances surrounding the taking of the affidavits. The handwriting on some affidavits appears identical. Those affidavits that contain allegations that Terrell’s mother committed the murder are highly suspicious. They are all rank hearsay and/or personal opinions. Lottie Banks and Eloise Chambers testified at Terrell’s first and second sentencing hearings, respectively. Napoleon Wells gave three affidavits, but didn’t allege until his second affidavit that he had been told by Elizabeth six months after the crime, that Elizabeth told her son to confess to cover for her. If any of these people truly believed Terrell was innocent of this crime, wouldn’t they have raised his innocence prior to their affidavits?

It is abundantly clear that there is absolutely no merit to Terrell’s request for clemency on the basis that he is “probably” innocent. There is absolutely no possibility that his mother committed this crime. The fact that Terrell had a negative relationship with his mother is not a reason to grant him clemency. Terrell’s upbringing, including his relationship with his mother was clearly considered when Judge Suria imposed the first death sentence on Terrell. Terrell again offered evidence regarding his upbringing at his second sentencing hearing. In his second appeal Terrell contended that due to his young age at the time of the offense and his abusive and unstable upbringing by his drug-addicted mother, his sentence of death was excessive. The Illinois Supreme Court rejected Terrell’s contention noting that, in fact, evidence of an upbringing which causes a defendant to become violent and aggressive can actually be considered aggravating rather than mitigating. (See **Exhibit O**, People v. Terrell, 185 Ill.2d at 520.)

Drew Terrell and Drew Terrell alone put himself in the position he now finds himself. He brutally beat Laura Hampton. He cruelly and violently sexually abused her little body. His heart was so cold that he said as he was molesting her, he was looking for a “pain response” from this little 15-month-old baby. He showed no mercy as he literally destroyed her body. No mercy should be shown to him now. The death penalty is the only appropriate penalty for Drew Terrell, and it would be a travesty of justice to reduce that penalty now.

2. Response to Terrell’s Arguments 2,3,4.

Petitioner asserts that he is entitled to clemency because he did not receive the benefit of the changes to the Illinois capital sentencing system recently adopted, proposed or enacted. He relies on new Supreme Court Rules, statutes and proposals from the Governor’s Commission on Capital Punishment that were not available at the time of his trial or resentencing hearing. Petitioner claims it would be unjust to carry out his death sentence, or the death sentence of any other capital defendant in Illinois, because the death sentence was imposed under “the prior flawed regime.”

However, the Illinois Supreme Court has expressly rejected the claim “that every capital trial has been unreliable and that all appellate review has been haphazard” (People v. Hickey, ___ Ill. 2d ___, 2001 Ill. LEXIS 1080 at *57 (No. 87286 September 27, 2001)). Rather, the Court held that the additional safeguards included in its rules governing capital cases are not retroactively applicable because they “function solely as devices to further protect those rights given to defendants by the federal and state constitutions” and that “[a] violation of procedures designed to

secure constitutional rights should not be equated with a denial of those constitutional rights.” Id. at *63, 64.

Thus, the fact that the Court, the General Assembly and the Governor’s Commission have endeavored to improve the process does not mean that an injustice would result simply because the recent changes were not applied retroactively to petitioner’s case. Instead, a true injustice would only result if it were reflexively determined that petitioner’s trial was fundamentally unfair without any examination of the actual proceedings themselves. It is telling that petitioner has not even attempted to demonstrate *how* the recent changes would have specifically affected the outcome of his case.

A. Supreme Court Rules

Petitioner asserts that he is entitled to clemency because the new Supreme Court Rules governing capital cases were not applicable to his proceedings. However, the Illinois Supreme Court has clearly held that the amendments to its rules are not retroactively applicable. Hickey, 2001 Ill. LEXIS 1080 at *65. Moreover, Terrell utterly fails to explain how the outcome of his case would be any different had the new Supreme Court Rules been applied to him.

B. Questioning Not Recorded

Petitioner also seeks clemency because his interrogation was neither videotaped nor audiotaped. Petitioner states that under the Governor’s Commission’s proposals both statements and the interrogations leading up to them should be videotaped, or audiotaped when videotaping is impractical. Recommendation 6 actually proposes that when videotaping is impractical “there should be some procedure established which requires a uniform approach to recording such

interrogations by means that are reliable.” The Commission then states that the use of a tape recorder is one such *example*. Petitioner fails to mention that his confession was, in fact, recorded in a reliable manner. A certified official court reporter came to the police station and recorded petitioner’s entire confession.

Moreover, petitioner also fails to mention that neither the Commission nor the governor himself call for the suppression of a statement simply because it was not videotaped. Rather, even under the Governor’s proposed legislation (HB3717 & HB2058), such statements will still be admissible if the trial court finds that it was voluntarily made after considering the totality of the circumstances. The trial judge here expressly found that, based on the totality of the circumstances, that petitioner’s statement was voluntarily made when he denied petitioner’s motion to suppress statements. The Illinois Supreme Court also specifically held that, based on a totality of the circumstances, petitioner’s will had not been overborne and his confession had been voluntarily given.

Simply claiming that because his interrogation was not recorded, he is entitled to clemency defies logic. At petitioner’s motion to suppress the trial court judge heard testimony from three Chicago Police Detectives and an Assistant State’s Attorney regarding the questioning that occurred prior to petitioner’s court-reported confession. The evidence clearly established that petitioner was in no way coerced or tricked into confessing to the brutal attack and murder of Laura Hampton. In fact, the Illinois Supreme Court specifically found that there was “no indication that Terrell’s will was overborne and that any of the inculpatory statements were involuntary.” Petitioner here has failed to specifically allege, much less establish, that had his questioning been recorded, such recording would have contained any specific evidence that would

have led to a different outcome at his motion to suppress. In fact, during his trial, Terrell specifically denied that anyone told him what to say in his statement. His current argument is without merit.

C. Decision to Seek Death

Petitioner claims he should be granted clemency because the State's Attorney's decision to seek death was made without uniform protocols to guide his discretion and was not approved by a state-wide review committee. However, the Illinois Supreme Court has long recognized "that the State's Attorney is endowed with the exclusive discretion to decide which of several charges shall be brought, or whether to prosecute at all." People v. Jamison, 197 Ill. 2d 135, 161-62, 756 N.E.2d 788 (2001). Moreover, the Supreme Court in Jamison reiterated that "a prosecutor's discretion extends to decisions about whether or not the death penalty should be sought." Therefore, any attempt to mandate such a review would constitute an impermissible restriction on the independence of the various State's Attorneys under the Illinois Constitution. Further, petitioner does not even allege, much less argue, that the decision to seek death in his case was the result of an abuse of discretion. Accordingly, his current claim must be rejected.

D. Supreme Court Review

Petitioner also argues that he is entitled to clemency because the Illinois Supreme Court failed to consider whether his death sentence was disproportionate, or otherwise inappropriate. The Illinois Supreme Court has demonstrated that it will address comparative sentencing arguments whenever they are raised by defendants in capital cases, (see People v. Emerson, 189 Ill.

2d 436, 727 N.E.2d 302 (2000); People v. Palmer, 162 Ill. 2d 465, 491, 643 N.E.2d 797 (1994)) and will vacate a death sentence if it determines that it is excessive in light of the facts of the case and the defendant's background.(see People v. Smith, 177 Ill. 2d 53, 685 N.E.2d 880 (1997); People v. Blackwell, 171 Ill. 2d 338, 665 N.E.2d 782 (1996).

Petitioner's current, near verbatim, recitation of Commission Recommendation #70, as well as a portion of the Commission's reasoning behind the recommendation, in no way establishes that petitioner is entitled to clemency. Petitioner merely claims that because a proportionality review did not occur "it is not possible to say that the proceedings in this case produced a fair and reliable determination that the death sentence was appropriate in this case." However, petitioner fails to allege, much less establish, **how**, his sentence was inappropriate. Moreover, petitioner completely disregards that on direct appeal of his case, the Illinois Supreme Court specifically held that petitioner's sentence was not excessive or inappropriate. Petitioner in no way has established that he should be granted clemency.

CONCLUSION

Petitioner's claims completely fail to establish that he should be granted clemency. Instead, the record clearly establishes that petitioner, a twice convicted felon, should be executed for the incomprehensible sexual assault and malicious murder of innocent fifteen month old Laura Hampton.

The death penalty is the only appropriate sentence in this case. Drew Terrell pummeled and brutally sexually assaulted 15-month-old Laura Hampton. Detective Clemmons testified that he had never before seen injuries such as those suffered by the victim. Dr. Demetra Soter who had treated thousands of children and testified as an expert approximately 100-200 times, testified Laura's injuries were the worst she had ever encountered in the course of her medical practice. The pictures of what Drew Terrell did to this child speak for themselves.

For all these reasons, the People of the State of Illinois respectfully request that this Board and Governor Ryan deny executive clemency to Drew Terrell.

Respectfully submitted,

RICHARD A DEVINE
State's Attorney of Cook County

JAMES P. MCKAY, JR.,

JOHN G. MURPHY,

KATHLEEN WARNICK,

NANCY FAULLS,

ASSISTANT STATE'S ATTORNEYS