

OCTOBER 2002 SESSION  
PRISONER REVIEW BOARD  
STATE OF ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Docket No.\
vs.	)	
	)	
EDWARD GRAHAM,	)	Inmate No. K68028
	)	
	)	

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

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**PEOPLE’S RESPONSE IN OPPOSITION TO PETITION  
FOR PARDON**

—————  
**HEARING REQUESTED**

RICHARD A. DEVINE  
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Assistant State’s Attorneys

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**I**

**HISTORY OF THE CASE**

Edward Graham spent his life dealing poison to men, women and children in the Chicago area. Although second in charge of one of Chicago's largest drug operations would satisfy even the greediest person, Edward Graham had his sights higher. Whatever it took for Graham to reach second in charge, we may never know, but we can certainly imagine his past by his actions in this case. In order to take that last step forward to the top of the drug operation, Graham viciously executed three people. Each victim was shot multiple times with execution style wounds. Graham left no chance of survival for any of his victims.

Johnny Jones, Sr. was the head of the drug operation; his elimination was essential to Graham's plans. On the other hand, Marshall Mason, age 72, and Erica Chotoosingh, age 19, had no connection at all to the drug world. Marshall Mason was a hand man and caretaker at the Jones residence and Erica Chotoosingh was a young lady who was a family friend. Marshall and Erica did have a few things in common though. Both were witnesses to the execution of Johnny Jones, Sr. Both were capable of testifying against Edward Graham, and both were unarmed. It seems

ironic that Edward Graham now seeks mercy from the governor, when he showed no mercy at all to these victims. Johnny Jones, Sr. suffered seven gunshot wounds to his body. Marshall Mason was shot three separate times. Erica Chotoosingh was shot five times, the last shot being a contact wound to her head as she tried to hide under a bed.

On June 3, 1998, Edward Graham received the jury trial he requested. He was convicted of first-degree murder for each of the victims. On September 11, 1998, after a sentencing hearing took place, Edward graham was sentenced to death. Before his direct appeal to the Illinois Supreme Court has even been decided, he filed this petition.

## II

### FACTS OF THE CASE

#### The Crime

On September 27, 1996, Edward Graham was second in command of a large drug operation in Chicago. He worked for Johnny Jones, Sr., delivering cocaine to street dealers, collecting the money and returning the proceeds to him. Graham was paid a large salary by Mr. Jones for his services. Mr. Jones lived at 614 East 101<sup>st</sup> Place. Marshall Mason also lived there and did work around the house for Mr. Jones. Erica Chotoosingh was a close friend of Mr. Jones and occasionally spent nights at his house.

At approximately 11:00 p.m. on September 27, Mr. Jones' son, Johnny Jones, Jr. and his friend, Cory Williams arrived at Mr. Jones' house. They went to Mr. Jones' room and talked to him

for awhile and then went downstairs to the basement to play cards. While they were playing cards, Johnny Jr. heard the doorbell ring and someone enter the house. Johnny Jr. did not know who that person was. Several hours later, Johnny Jr. and Cory finished playing cards and went upstairs to go to sleep. Johnny Jr. was asleep when he was awakened by a sharp thump that sounded like a hard noise hitting the floor. He then heard the sound of gunshots. He immediately got up, met Cory in the hallway and walked down the staircase to the main floor. When he got to the bottom of the staircase, Johnny Jr. looked around the corner from the staircase toward the back of the house and observed Edward Graham shooting a handgun in the kitchen area by his father's bedroom towards Marshall Mason's room. He saw petitioner fire 2 or 3 shots. Johnny Jr. and Cory ran upstairs to get a cell phone to call the police. As Johnny Jr. walked back down the stairs, he heard a girl scream and some more gunshots. When he got to the bottom of the staircase, he saw Graham inside his father's room with a handgun. Graham shot 2 or 3 more times into his father's bedroom and then bent down while firing the gun. Graham ran towards the left side of the bedroom and Johnny Jr. ran through the hall towards the kitchen to grab a sharp butter knife. Graham grabbed a white box and fled through the back door towards the garage. Erica Chotoosingh was found lying underneath Johnny Sr.'s bed, Johnny, Sr. was found lying on his stomach and Marshall Mason was found lying on his back beside the bed toward the closet.

Shortly after the murders, Graham left town. He went to a small airport outside Chicago, flew to Indianapolis and then to Las Vegas using the name Don Williams. Graham fled the jurisdiction to escape responsibility for these horrendous acts. In Vegas, he met up with his son and his son's mother, Yolanda Harris who lived there. Graham gave Ms. Harris close to \$50,000

cash. Graham also brought another \$200,000 to Las Vegas that he put in a storage locker that had been rented under the name Kimberly Polk, who was Yolanda Harris' sister.

Approximately 6 weeks later, FBI agents learned that Graham was living in a motel room that was registered under the name Kimberly Polk. Since there had been an arrest warrant issued for Graham in Chicago, agents decided to arrest him. The agents and police officers went to the room, knocked on the door, announced that they were police officers and requested that defendant open the door. When there was no response, they used the pass key and entered the room. When they entered the room, a door alarm went off. They announced themselves again and told petitioner to come out with his hands up. Graham came from the bedroom with his hands in the air and was taken into custody. The motel room was filled with new appliances and there was a small amount of cocaine. The officers and FBI agents recovered \$851 from Graham's person and found \$103,806 in drug proceeds hidden in a dresser drawer, packaged in stacks wrapped with rubberbands. The officers found another stack of bills totaling approximately \$10,000 underneath the bottom drawer of another dresser. Graham was transported to the Clark County Detention Facility awaiting extradition to Illinois. While in custody in Las Vegas, he befriended a man named Carl Torrence who was housed in the facility on drug charges.

Mr. Torrence asked Graham what he was in for and Graham told him that he was involved in a murder in Chicago. Graham admitted that he had been stealing drug money from Johnny Jones, Sr. During later conversations, Graham admitted to Mr. Torrence "Well, I did it." Graham told Mr. Torrence that he drove to Mr. Jones' house at 2:30 in the morning with a 9 millimeter gun in the box. He was supposed to be delivering \$750,000 in some boxes to Mr. Jones but did not have the money. As Graham walked in the door, he took the 9 millimeter from the box, saw an

unarmed Mr. Jones at the bedroom door and shot Mr. Jones twice. Graham then went to another room and shot an unarmed Mr. Mason twice. Mr. Jones said "baby get the gun" so Graham went in to the bedroom to look for the lady that was in the house. Graham raised the mattress, found Erica hiding under the bed and shot her two times. Graham then walked by Mr. Jones and heard a sigh coming from him as if he were dead. Graham then checked on Mr. Mason to make sure that he was dead. Petitioner was not sure whether the "chick" was dead so he went back to the room, lifted up the mattress and shot her 3 more times in the head. As Graham fled he picked up some of the casings from the floor and drove away in his car. He disposed of his weapon in a garbage dumpster during his flight.

Graham told Mr. Torrence that he stashed the car and then went back home. When asked what he did with the \$750,000 that he was supposed to give Mr. Jones, Graham told him that he had \$100,000 with him when he went to the hotel in Las Vegas, that he had \$200,000 in storage somewhere in Las Vegas and that he had another \$300,000 somewhere else. Graham told Mr. Torrence that he put the \$200,000 in a storage locker in Las Vegas that had been rented in the name of Kimberly Polk, and that Yolanda Harris had a ticket to the locker. Police later located that locker, which had in fact been registered to Kimberly Polk shortly after Graham's arrival in Las Vegas. The locker contained a safe, which had been emptied, except for the same type of rubberhands that had been found around the money recovered from his motel room.

Forensic investigator John Butler arrived at the murder scene at 4:30 a.m. Mr. Butler processed the crime scene and recovered four automatic cartridge cases and 2 fired bullets next to Erica Chotoosingh's body underneath the bed. He also recovered the following evidence: a fired

bullet from the first floor next to Marshall Mason and Johnny Jones Sr. in the front bedroom; a fired bullet from the carpet in the rear hallway floor; a fired bullet from the kitchen wall next to the rear kitchen door; a fired bullet from the kitchen floor underneath the kitchen table; and a metal jacket from a bullet which was found on a black chair in the rear bedroom where Erica's body was discovered. Mr. Butler testified that he did not observe any signs of forced entry into the house.

The medical examiner who conducted the autopsies of the victims' determined that all three victims died of multiple gunshot wounds. Mr. Jones suffered a total of seven gunshot wounds to the body, including entrance wounds on the right upper back, the right lower arm, the abdomen and the front of the right leg. One of the bullet wounds had an unusual abrasion pattern shaped like a V which indicated that, at the time that the gunshot wound was inflicted, Mr. Jones had been lying face down on the floor when the bullet went through his body. This was clearly an execution style wound inflicted when the victim was already down.

Erica Chotoosingh suffered five gunshot wounds to her body. One of the wounds was on the right side of her head that had peripheral tears and soot staining which indicated to the medical examiner that the barrel of the gun had been pressed against the side of her head. Clearly, another execution wound inflicted by Graham. There were also gunshot wounds to her chest.

Marshall Mason suffered three gunshot wounds. The first gunshot wound went in the right upper arm, the second gunshot wound entered high on the right shoulder and the third gunshot wound entered the right side of his chest. The medical examiner testified that the wounds on each of the three victims demonstrated the intent to kill by the shooter.

Based on the foregoing evidence, the jury found Graham guilty of the first degree murder of Johnny Jones, Sr., Marshall Mason and Erica Chotoosingh.

### Sentencing

Judge Mary Maxwell Thomas presided over the sentencing hearing for Edward Graham. Although petitioner did not give this Board any information about Judge Thomas because of their attack on her, it is important to know a little about her. Judge Thomas had been a criminal trial judge for many years. She had presided over both murder trials and capital cases on numerous occasions in the past. She had never before sentenced a defendant to death. In fact, it was well known that Judge Thomas was an opponent of the death penalty. Not surprisingly, Edward Graham waived a jury for the death eligibility and penalty phases of trial. The three signed jury verdict forms finding petitioner guilty of the three separate murders were entered into evidence. The parties had previously stipulated that Graham was forty-one years old when he committed the murders. Judge Thomas found Graham eligible for the death penalty.

Victim impact statements were made by Marshall Mason's niece, Sister Catherine Culp, Johnny Jones Sr.'s sisters, Lynette Nash and Terry A. Scott Jones, Johnny Jones, Jr., Erica Chotoosingh's mother, Gloria and Erica's sister Tish Chotoosingh. Sister Catherine Culp wrote that the death of her uncle, Marshall Mason, "caused great sadness" in their family. She also wrote about the missed opportunity his death caused in that they would not be able to share their life experiences.

Lynette Nash felt like she was having a heart attack at almost the exact time that her brother was being murdered by petitioner. Lynette wrote that after Johnny Jones Sr.'s murder, she began to

question God, but then realized that He would deal with the murder. She wrote about her close bond with her brother and that she was his best woman at his wedding. Lynette explained that her brother had started to attend church with her. She asked that justice be done.

Johnny Jones Jr. stated that his father was a loving and caring man. He was not only his father, but his best friend. Johnny Jones Jr. wrote that his father was also willing to assist others in need. Johnny Jones Jr. also wrote about all of the things that he will miss doing with his father including getting their haircuts together, watching sporting events together and missing his father's voice.

Terry A. Scott Jones loved her brother very much. She wrote that he was committed to his family and friends. She wrote to the court that, before he died, Johnny Jones Sr. gave his life to Christ.

Gloria Chotoosingh described her daughter as "a very special human being, almost perfect daughter, sister, aunt and cousin. She was a gift to us, a special gift and was dearly loved." She explained that the pain "in my heart is unbearable." Although Erica was legally blind, she was able to excel in school and her behavior was impeccable. Ms. Chotoosingh further wrote "sometimes when the pain becomes unbearable I want to literally tear my chest open, rip my heart out and throw it away just to make the pain go away. I have never felt such agony."

Tish Chotoosingh wrote that Erica's nieces and nephews have been forced to give up "part of their youth in the face of experiencing such violence through Erica's murder." Tish explained that she does not have "the strength to get angry because the pain is so great." She wrote their family has been forced to endure this tragedy as a result of the greed and abhorrent disregard for life that petitioner inflicted. Tish stated that she chooses to remember her sister as a tender,

compassionate and beautiful soul instead of the gruesome way she was murdered by Graham. She thanked the judge for allowing her the opportunity to make their feelings and profound loss known.

The defense presented mitigation evidence, which included several live witnesses. These witnesses testified that they had never known Graham to be a violent individual.

After arguments by counsel, trial court imposed a sentence of death. In imposing sentence, Judge Thomas stated,

It's really uncontroverted the defendant was statutorily eligible because the jury found him guilty of murdering 3 individuals... what occurred here was something really senseless. In looking at the factors in mitigation that we may consider, certainly in looking at the pre-sentence report, the defendant has no official record but there is something, there is something that I often say to people that appear before me because we're making our record every day that we live....Mr. Graham has been forging chains and he told us about those chains, he told us about his dealings in a very, very great way with Johnny Jones in drugs and the drug traffic. Millions of dollars that were involved, hundreds of kilos of controlled substances to which he had access and which he was involved in distributing so that they were made available to people on our streets....We have looked in vain to find factors that would preclude the death penalty in this case.

This Court is thoroughly convinced that this defendant was responsible for these murders and for particularly the brutal way that they were carried out. And so, this Court really feels that we have no other recourse than to determine the fact there are no mitigating factors sufficient to preclude the imposition of the death penalty. And therefore, the sentence that this Court will impose is a sentence of death. (R. 1671-1677)

It is apparent from the language that Judge Thomas used that she was grappling with her own belief against the death penalty and her duty to follow the law that she swore to uphold as a judge. She searched, as she worded it, "in vain," to find mitigation sufficient to preclude imposition of the

death penalty. Yet, even with these convictions, this case left her with no other choice but to sentence Graham to death. The Illinois Supreme Court has not yet considered the propriety of petitioner's convictions and sentence.

### III

#### REASONS FOR DENYING THE PETITION

##### Introduction

Although petitioner has captioned his petition as a Petition for Executive Clemency, petitioner, in reality, is seeking a full pardon. Petitioner seeks to have his convictions vacated. Petitioner's convictions should not be vacated because his case is currently pending before the Illinois Supreme Court.

As a general matter, the recommendations of the Governor's Commission on Capital Punishment provide no greater justification for granting a pardon or executive clemency than the new Supreme Court Rules, where, at present, they are just that – recommendations, and where, as is true with respect to the new Rules, wholesale retroactive application would result in a true injustice. Petitioner asserts that he is entitled to a full pardon because he did not receive the benefit of the changes to the Illinois capital sentencing system that have recently been adopted, proposed or enacted. By relying upon a laundry list of new Supreme Court Rules, statutes and proposals from the Governor's Commission on Capital Punishment which were not available at the time of his trial, petitioner claims that his trial (as well as that of every other capital defendant in Illinois) was by definition fundamentally unfair. 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 proceedings themselves. It is our position that the only fundamentally fair way to evaluate each case is to review each case on a case by case basis.

Petitioner specifically claims that he was not represented by a qualified attorney and that he was sentenced to death without the benefit of any of the reforms outlined in the April 2002 Report of the Governor’s Commission on Capital Punishment. It must be remembered that petitioner’s direct appeal is still pending before the Illinois Supreme Court. The Illinois Supreme Court is in the best position to determine whether petitioner was adequately represented at trial and whether the gruesome facts of this case warranted the death penalty because the Court has the benefit of reviewing the entire trial record and considering the arguments made by both parties. Indeed, there are many safeguards in place through which petitioner may present his claims. In addition to review by the Illinois Supreme Court, petitioner has recourse before the United States Supreme Court, the Seventh Circuit Court of Appeals and the Northern District of Illinois.

#### Supreme Court Rules

Petitioner asserts that he is entitled to a full pardon 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.

Minimum Qualifications for Attorneys Representing Capital Defendants

Again, this Rule is not retroactively applicable. Hickey, 2001 Ill. LEXIS 1080 at \*65. Additionally, petitioner's claim that his privately retained, experienced trial attorney was unqualified is disingenuous where petitioner has failed to allege specific examples of incompetence. Rather than offering even one specific example of how Mr. Howard lacked the knowledge, experience or ability to represent a capital defendant, petitioner relies on his previously alleged claim of ineffective assistance of counsel that is currently under review before the Illinois Supreme Court. In point of fact, George Howard, whose training and expertise in criminal defense would have more than qualified him for membership in the Capital Trial Bar, ably represented petitioner. Indeed, Mr. Howard has over 30 years experience as a criminal trial attorney. He has tried criminal cases in more than 30 states. He has represented clients in more than 25 capital cases and has handled hundreds of murder, attempt murder, kidnapping and rape cases.

Petitioner claims that Mr. Howard was not a qualified capital litigator because he has been periodically suspended from the practice of law. What petitioner conveniently neglects to advise this Board is the fact that Mr. Howard was NEVER SUSPENDED based upon his ability to try criminal cases or his expertise as a trial attorney. There simply is no evidence that Mr. Howard was anything other than a forceful advocate for petitioner. Moreover, petitioner has failed to provide this Board with any information as to the status of the ARDC investigation at the time of his trial or at the time of his sentencing hearing. Petitioner's bare and unsupported accusations cannot serve as a basis for this Board to make a determination as to whether or not defense counsel

was ineffective or incapable of representing him.

Furthermore, the entire record from this case reveals the work of nothing less than a zealous advocate. Initially, petitioner is wrong when he states that Mr. Howard was his only attorney. Two attorneys represented petitioner during most of the trial. Additionally, petitioner cannot demonstrate that the ARDC proceedings distracted Mr. Howard in his representation of petitioner in anyway. Prior to trial, petitioner was aware that Mr. Howard had an unrelated ARDC matter pending. Petitioner reassured the trial judge that he was aware of the matter and that he still wished for Mr. Howard to represent him on this case. Furthermore, there is absolutely no evidence that the ARDC matter impeded Mr. Howard's ability to represent petitioner. In fact, a review of the record clearly demonstrates that Mr. Howard skillfully represented petitioner at trial. To prevail on a claim of ineffective assistance of counsel, a petitioner must show that his counsel's representation "fell below an objective standard of reasonableness" (Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984)) and that counsel's shortcomings were so serious as to "deprive the defendant of a fair trial, a trial whose result is reliable." People v. Albanese, 104 Ill.2d 504, 473 N.E.2d 1246 (1984). Petitioner can not meet this standard.

A review of the trial record overwhelmingly shows that Mr. Howard was an excellent advocate on behalf of petitioner. Mr. Howard made a forceful opening statement, vigorously cross-examined the People's witnesses, including, most notably Carl Torrence. He presented petitioner's strategy establishing alternative motives for different suspects in the case, including testimony that two of the victims had been involved in a shooting several months prior to the murder. During the course of the trial, Mr. Howard also made numerous objections, many of which were sustained by the trial judge. Mr. Howard also objected to several of the jury

instructions that were given. Finally, Mr. Howard made a forceful and compelling closing argument.

Based upon the trial record in this case, it is obvious that Mr. Howard was thoroughly prepared and more than capable of handling petitioner's capital case.

#### Claim of Actual Innocence

Petitioner has never claimed in his appeal that he was innocent of the brutal and pre-meditated triple murder for which he was convicted. He has raised this issue for the first time now that he realizes that he has one chance to persuade this Board and the Governor for a pardon. Petitioner had a number of opportunities to allege that he did not commit the crimes. Following the murders, he never went to police to tell them what he allegedly saw when he walked into Mr. Jones' house the night of the murders or that he did not commit the murders. Rather, he fled from the State. Additionally, in an attempt to prevent the authorities from finding him, he used an assumed name and took several different planes to reach his destination of Las Vegas. There are many direct flights from Chicago to Las Vegas that petitioner could have easily taken had he not wanted to hide from the police. Clearly, this was not a previously planned trip to visit his son and his sons' mother. Indeed, when he arrived in Las Vegas, he was in possession of hundreds of thousands of dollars that he had stolen from Johnny Jones, Sr. Petitioner remained secluded in a motel room in Las Vegas for several months before law enforcement officials finally arrested him. Petitioner's actions following the triple murder were not those of an innocent man.

In his direct appeal to the Illinois Supreme Court, petitioner did not raise the issue that he was innocent of the murders. Instead, he placed blame on his experienced trial attorney and claimed that it was his fault that he was found guilty. Petitioner claimed that he walked into

Johnny Jones, Sr.'s house after the murders had been committed. Yet, he never stated where he was or with whom before that time. The eyewitness testimony overwhelmingly established the petitioner was the person who shot into the bedrooms where the victims were found. Moreover, the forensic evidence that was found at the scene corroborated the number of gunshots that were heard by the witness. Additionally, petitioner's convictions were supported by the testimony of Carl Torrence who was able to testify to facts that only the actual killer would have known. This was amazing since Carl Torrence had never been in Illinois nor would he have known anything about the murders in Chicago while he was in Las Vegas. Carl Torrence knew names, places and information about physical evidence in the case that made it obvious that Edward Graham provided him with this information.

#### Governor's Commission on Capital Punishment 8

Petitioner also seeks a pardon because an alleged "interrogation" of Johnny Jones, Jr.'s was not videotaped. Petitioner claims that under the Governor's Commission's proposals both statements and the interrogations leading up to them should be videotaped. First, there is no evidence that Johnny Jones, Jr. was questioned by the police about the murders or that he made any type of inculpatory statement. In fact, Johnny Jones, Jr. was never considered a suspect. Moreover, Johnny Jones, Jr.'s testimony was consistent with police. Second, what petitioner fails to recognize is 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.

#### Informant testimony

Petitioner alleges that his convictions should be reversed because a jailhouse informant testified at his trial even though there was no pre-trial hearing to determine the reliability of such a witness. However, such a claim ignores the fact that the trial court determined that the evidence was relevant and probative before admitting the testimony into evidence. Petitioner also ignores the fact that the trier of fact heard the evidence, and after considering the credibility of the witness and all the attendant circumstances deemed the testimony reliable.

Carl Torrence testified that petitioner admitted to him that he committed the murders. Mr. Torrence was able to testify to specific facts, times and locations that only the murderer would have known. He testified that petitioner told him that he went to Johnny Jones Sr.'s house between 2:30 and 3:00a.m. armed with a 9 millimeter gun in a box. Petitioner shot Johnny Jones, Sr. and Marshall Mason. Petitioner then went into a bedroom to look for "the lady that was in the house." Petitioner raised the mattress and found her hiding under the bed and shot her twice. Petitioner went to make sure that Johnny Jones, Sr. and Marshall Mason was dead and then returned to the bedroom and shot Erica 3 more times. As he was leaving the house, petitioner told Mr. Torrence that he saw Johnny Jones, Jr. by the stairs. Petitioner bent over to pick up some casings that were on the floor and fled the scene. Mr. Torrence's testimony was supported by the testimony of the forensic investigator who found Erica's body underneath the bed with 5 gunshot wounds as well as the bodies of Johnny Jones, Sr. and Marshall Mason. It should also be noted that casings were missing from the scene. His testimony was corroborated by the evidence recovered in Las Vegas including the rubberbands found in the safe and the name under which the safe was registered. Moreover, Mr. Torrence's testimony corroborated Johnny Jr.'s testimony that he saw petitioner shooting in the bedrooms on the first floor and then bend down to recover the evidence of the spent

casings. Certainly, this testimony was admissible and a pretrial hearing would not have changed its admissibility.

Governor's Commission on Capital Punishment 50

Petitioner contends that Carl Torrence's deal with law enforcement authorities should have been made in writing, referring to Commission Recommendation 50. The comments to Commission Recommendation 50 reflects a concern in those situations where the informer is promised specific benefits not disclosed to the defense. This is not the situation in the instant case.

Any deal that was made with Mr. Torrence was properly disclosed to the defense. Carl Torrence received very little benefit in this case. The only thing that he was promised was a letter to the court in Michigan, where Mr. Torrence had a case pending, advising them that he had testified on behalf of the State. This agreement was provided to the defense attorney prior to trial and memorialized on the record. Their complain that it was not in writing is disingenuous.

Governor's Commission on Capital Punishment 51

Petitioner claims that he should be granted a pardon because full disclosure was not made of Mr. Torrence's prior testimony in other cases or his history as an informer. The fact of the matter is that this information was tendered to petitioner throughout the discovery process up until the time of trial. It must be noted that Recommendation 51 seeks full disclosure to enable proper cross-examination. A review of the record clearly demonstrates that defense counsel thoroughly and exhaustively cross-examined Mr. Torrence not only on his lengthy criminal background but concerning the terms of any agreement or promises made to him in exchange for his testimony. As such, this claim must be rejected.

Governor's Commission on Capital Punishment 57

Petitioner claims that the jury was never instructed that it ought to weigh Mr. Torrence's testimony with "special caution" or care. (Pet. 8-9) In addition to the standard jury instructions that were given to the jury, the jury was also advised that in considering the testimony of any witness they must take into account any interest or bias the witness may have, that the witness made a statement relating to the offense and that they must determine the weight to be given to the statement and the circumstances under which the statement was made and that evidence that a witness has been convicted of an offense may be considered by you as it may affect the believability of the witness. Moreover, comments to Recommendation 57 reflect a concern by the committee with those cases where incarcerated individuals were offered some benefit in return for their testimony. This concern is not present in the instant case where Mr. Torrence was only promised a letter to a judge indicating his cooperation in this case. Indeed, the instructions that the jury received, in conjunction with the vigorous cross-examination of Mr. Torrence, were more than sufficient to protect the rights of petitioner.

Governor's Commission on Capital Punishment 32-39

Petitioner claims that recommendations 32-39 further support the granting of a pardon. He claims that the trial judge's actions during the trial contributed to his conviction and sentence. He fails to note, however, that these Recommendations speak to the funding that is needed to educate trial judges and recognizes that the Illinois Supreme Court has already undertaken to train all judges in the area of capital litigation. Moreover, the trial judge in this case, Mary Maxwell Thomas, is one of the most experienced trial judges in the county. She has presided over hundreds of cases involving murder, attempt murder, kidnapping, aggravated battery, armed robbery and

rape. She has also overseen trials that have involved the death penalty. Moreover, her respect for George Howard never impeded her ability to conduct a fair and impartial trial. In fact, in this case, her comments concerning Mr. Howard's ability to represent petitioner were always made on the record. Prior to trial, she thoroughly explained to petitioner that he had a right to choose his own attorney and she made sure that petitioner understood his rights and that he felt comfortable with Mr. Howard's continued representation. The record firmly supports Judge Thomas' conduct and impartiality during the trial.

Finally, these recommendations acknowledge that trial judges have been well trained in the area of capital litigation. Petitioner has failed to offer a single example as to how additional funding for the training of trial judges would have changed the outcome of his case. There is simply no evidence that Judge Thomas was not qualified to handle this capital case.

Governor's Commission on Capital Punishment 65

Petitioner asserts that a pardon is warranted because there was no meaningful mitigation presented and that the trial judge was forced to impose the death penalty. (Pet. 9) Petitioner's reliance on Recommendation 65 is mystifying where, in this case, it was the judge who determined petitioner's sentence, not a jury. Recommendation 65 seeks to amend the method by which a jury arrives at a sentence to make it clear that the jury should weigh the factors in the case and reach its own independent conclusion about whether the death penalty should be imposed. Therefore, this recommendation is irrelevant and should not be relied upon by the Board.

Moreover, there was sufficient mitigation presented on behalf of petitioner. The record clearly demonstrates that defense counsel presented live witnesses who testified to petitioner's lack of violent behavior. Additionally, defense counsel argued extensively about petitioner's non-

existent criminal background. However, the facts of the case demanded that petitioner be sentenced to death. Judge Thomas knew what the law was and considered petitioner's criminal free background. She recognized that although petitioner had no official record, he was the second in command of a major drug ring and responsible for the distribution of hundreds of kilos of controlled substances to the people on the streets of Chicago. Indeed, petitioner's lack of criminal background demonstrated that he was capable of understanding appropriate behavior but chose to act in a different manner when he committed the murders. Therefore, Judge Thomas had a duty to impose the death penalty based upon petitioner's criminal actions in the distribution of drugs and based upon the horrific facts of this case where petitioner shot and killed three innocent people.

Governor's Commission on Capital Punishment 29 & 30

Petitioner claims that his sentence should be reduced and his convictions vacated 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 committee. However, it has long been recognized by the Illinois Supreme Court that the State's Attorney is endowed with the exclusive discretion to decide which of several charges shall be brought, or whether to prosecute all. A prosecutor's discretion extends to decisions about whether or not the death penalty should be sought. People v. Jamison, 197 Ill. 2d 135, 161-62, 756 N.E.2d 788 (2001). Therefore, any attempt to mandate such a review would constitute an impermissible restriction of the independence of the various State's Attorneys under the Illinois Constitution. Moreover, petitioner does not even allege much less argue that the decision to seek death in this case was the result of an abuse of discretion. The facts in the case demanded the death penalty where petitioner entered the victim's home and shot three unarmed individuals at point blank range. There was no punishment, other than the

death penalty, that would have been appropriate under the facts of this case.

Governor's Commission on Capital Punishment 31

Petitioner claims that he should be granted a pardon because prosecutors were not required to give him written advance notice of their intent to seek the death penalty. This argument must be rejected where the facts of this case necessitated the imposition of the death penalty and where petitioner was aware for years prior to trial that this was a death penalty case. Petitioner was convicted of three counts of first degree murder. The brutal way that he committed these crimes, his immediate flight from the State and the fact that he was arrested with hundreds of thousands of dollars from drug proceeds left the State's Attorney's with no choice other than to seek the death penalty. Moreover, throughout the record, and in the presence of petitioner, this case was referred to as a "Death Penalty" case. The judge was aware that this case was a death penalty case as was defense counsel and petitioner. In fact, the judge admonished petitioner that if he were found guilty of the murders, he would be eligible for the death penalty. There was no surprise that this was a death penalty case where the assistant state's attorneys and defense counsel spoke often about petitioner's eligibility for the death penalty. Petitioner has failed to aver how written advance notice would have changed the way he proceeded on the case. There is no allegation that he would have changed his trial strategy or that he was prejudiced by the State's Attorney's failure to provide him with written advance notice of their intent to seek the death penalty. As such, this argument should be rejected.

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Petitioner alleges that law enforcement officials questioned him without a qualified attorney being present, even after he had requested counsel. This is a misstatement. Petitioner never asked or requested counsel. Every credible witness who testified in this case denied that

petitioner made that request. This issue is currently pending before the Illinois Supreme Court and should not be addressed by this Board until a decision has been rendered by the Court. However, petitioner's constitutional rights were not violated where he did not make an incriminating statement during the brief questioning by the assistant state's attorney and where the questioning was immediately stopped when petitioner expressed his desire to cease the interview.

The accusations contained in petitioner's petition are unsupported by the trial record. (Pet. P.10) The assistant state's attorney did not testify that he ceased questioning petitioner after he requested an attorney or that petitioner would not talk to the prosecutor without an attorney being present. Petitioner simply never requested an attorney prior to being interviewed by the assistant state's attorney. Furthermore, this entire argument is disingenuous since petitioner never gave an inculpatory statement that was used against him at trial. As such, petitioner's argument must be dismissed.

#### Governor's Commission on Capital Punishment Recommendations 4-6

Petitioner's reliance on these Recommendations should be rejected outright where Petitioner fails to provide this Board with any inkling of how such recommendations would have had any actual impact on his trial, sentencing hearing, or its ultimate outcome. Essentially, Petitioner asks this Board to engage in wholesale speculation as to what might have been in the absence of a scintilla of evidence to support his claim.

In a series of interrelated claims, petitioner seeks a pardon because various evidence against him was not electronically recorded or videotaped. In addition to the foregoing argument, it must be recognized that under the Governor's Commission's proposals 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. Because the interrogation of petitioner was brief and did not result in the making of any inculpatory statements, it is clear that the failure to videotape his statement had absolutely no effect on the fairness of his proceedings. Again, this issue is currently pending before the Illinois Supreme Court.

Petitioner was afforded a fair trial and availed himself of the opportunity to conduct extensive cross-examination of the assistant state's attorney who interviewed petitioner. There is no basis for petitioner to now contend that he should be granted a pardon simply because these recommendations were not in effect at the time of his trial.

## CONCLUSION

Edward Graham does not deserve to have his convictions vacated. In cold blood, he shot three innocent and unarmed people numerous times. He wanted to make sure that they were dead. Graham then fled Illinois with hundred of thousands of dollars that he had earned from dealing drugs on the streets of Chicago. Despite the fact that Graham's "official" criminal background was relatively clean, Graham's actions as the second in command of one of Chicago's largest drug operations and the brutal and vicious way that he executed his victims, demonstrate that the imposition of the death penalty was appropriate.

For all these reasons, the People of the State of Illinois respectfully request that this Board and Governor Ryan deny a pardon and/or executive clemency for Edward Graham.

Respectfully submitted,

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