

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
vs.)	Docket No. _____
)	
GRAYLAND JOHNSON)	Inmate No. A-08109
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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 EXECUTIVE CLEMENCY**

—————
HEARING REQUESTED

PATRICK T. DRISCOLL, JR.
ACTING STATE’S ATTORNEY OF COOK COUNTY

By: BRIAN SEXTON
WILLIAM D. CARROLL

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I.

PROCEDURAL HISTORY

It is important to note that this murder case is not the first time that petitioner Grayland Johnson has committed murder. During petitioner's two sentencing hearings for the present murder of Douglas Coleman on April 3, 1988, it was established that on August 2, 1974, petitioner was convicted of the September 12, 1973 murder of Douglas Malizia. Petitioner Grayland Johnson was charged by indictment number 88 Cr 7047 with the first degree murder of Douglas Coleman. In November of 1990, he was tried, convicted, and sentenced to death in the court of the Honorable Vincent Bentivenga. His conviction was affirmed on direct appeal, but his sentence of death was vacated. People v. Johnson, 159 Ill. 2d 97 (1994). Petitioner was resentenced to death by a jury in the court of the Honorable William Maki. Petitioner is currently appealing his death sentence to the Illinois Supreme Court.

II.

STATEMENT OF FACTS

Pretrial Matters:

Motion to Quash Arrest and Suppress Statements:

Petitioner sought to quash his arrest on the basis that the police lacked probable cause for his arrest. He further sought to suppress his oral confessions and his handwritten confession on the basis that they were the result of physical and mental coercion. The motions were combined for purposes of the hearing.

On April 3, 1988, Douglas Coleman was shot numerous times in a gangway in Chicago, Illinois. He died as a result. As part of the investigation of this homicide, Chicago police detective Craig Cegielski went to Ford Heights, Illinois, on April 17, 1988, to interview petitioner. The victim's family had told the officer that the victim had been with petitioner at the time of the murder. (R. 59-61) The officer asked petitioner to return with them to the police station to help them with the murder investigation. Petitioner replied that he would be "glad to" as the victim was his friend. (R. 61) Petitioner had also gone to the police station on his own accord on a previous occasion to discuss this. Petitioner was not cuffed, or arrested at this time. (R. 95-6) They arrived at the police station at around 8:00 a.m. Det. Cegielski gave petitioner his rights under Miranda, petitioner waived those rights, and spoke to the officer for 15-20 minutes. (R. 62) The officer then spoke to others who also were in the police station, including co-petitioner Jerome Sumlin who implicated himself and petitioner in the murder. (R. 82, 65) Sumlin also gave a court-reported statement to the same effect. He returned to petitioner at about noon and advised him that he was under arrest for murder. (R. 64) About 10-15 minutes later, while the officer was sitting in a large desk area outside the petitioner's interview room, petitioner called out to him and stated that he wanted to speak to an Assistant State's Attorney. (R. 64-5) ASA Charles Burns arrived at about 12:15 p.m., and after advising petitioner of his Miranda rights, spoke to petitioner for 45 minutes. (R. 69) Burns then brought lunch to petitioner. No one exercised any type of force or coercion against petitioner in the officer's presence. (R. 70-72)

Chicago police Sergeant James Eldridge testified that he interviewed Abra Holden in the Cook County Jail on April 16, 1988. (R. 98) Holden told him that he had been with a group of men, including petitioner, who left Ford Heights on the night of the murder to go to Englewood to "do drugs". Petitioner and co-petitioner Sumlin left in a separate car, and came back late. "Mr. Big"

became upset at Sumlin, and Sumlin told him that they were late because petitioner had killed a man who owed them \$600.00. They all then drove to the Little Calumet River where petitioner threw the gun into the river. (R. 99-100) Holden told the officer that petitioner also admitted to him that he killed Coleman. Petitioner explained why and where he killed Coleman. (R. 111) Eldridge also testified that he was present at petitioner's April 17th confessions, and that neither he nor any one in his presence abused petitioner mentally or physically. (R. 107)

Detective Nick Crescenzo of the Chicago police testified that he arrested petitioner around noon on April 17 at the police station. He further stated that he spoke to petitioner that morning around 8:00 a.m. for about 10 to 15 minutes. From that time to petitioner's arrest about 4 hours later, he spoke to other witnesses about the murder. (R. 127) Both Jerome Sumlin and Bertha Coleman told the officer that they saw petitioner kill the victim. (R. 127-8) The officer further testified that he was present for petitioner's confession, and that neither he nor anyone in his presence abused petitioner in any manner. (R. 140-2)

Assistant State's Attorney Charles Burns testified that he spoke with petitioner on April 17th. Petitioner had no complaints about his treatment at the police station. (R. 150) No one abused petitioner in Burns' presence. Burns spoke to petitioner after he had spoken to Sumlin and Coleman. (R. 157)

Carolyn Mabry testified in petitioner's behalf. She stated that petitioner called her on April 18, 1988, and told her that he had been arrested and beaten by officers at the station. (R. 180-3)

Nona Cameron also testified for petitioner. She was a Correctional officer in petitioner's tier. She stated that he told her, on April 18, that he had a headache, was dizzy and had been beaten by the police. (R. 193) At his request, she called for paramedics. (R. 195) No injuries to petitioner

were visible to her. (R. 198) The paramedics came and saw petitioner; they gave him some medical treatment but did not take him from the tier to Cermak Hospital. (R. 193, 196-97)

Petitioner testified in his own behalf. He admitted that he went to the police station "freely and voluntarily". (R. 211) He told the court that he was treated for syphilis or gonorrhea by the paramedics. (R. 243) He outlined various allegations of abuse by police officers while he was at the station. He further apprised the court that he was suing the officers in federal court. (R. 269)

Following arguments, the court found that petitioner's allegations of abuse were incredible. (R. 324) The court stated that it had weighed the credibility of the officers and of Ms. Cameron against petitioner and denied petitioner's Motion to Suppress both his oral and written statements. (R. 326) As to petitioner's Motion to Quash his Arrest, the court ruled that the police officers had sufficient evidence and information to "cause the petitioner to be taken into custody at that period of time". (R. 328) While the court did not rule as to the time of petitioner's arrest, he found there was probable cause for petitioner's arrest. (R. 326-8)

Motion for Appointment of Other Counsel:

Following this ruling, petitioner asked the court to appoint new counsel, alleging that his counsel did not present sufficient evidence to support the Motion to Suppress. (R. 336) Petitioner argued to the court that his counsel should have presented Mr. Bennett and "a witness" from the jail. (R. 35-39) The court stated that it was "a long motion, much was heard." He told petitioner he could hire any attorney he wanted. (R. 37) Petitioner also filed a motion alleging misconduct on the part of his attorney. The attorney asked petitioner to waive the attorney/client privilege so he could respond to petitioner's allegations against him. Petitioner refused. (R. 339-40) The court allowed the attorney to withdraw. (R. 342) Counsel then asked that the allegations against him be withdrawn. Petitioner refused. (R. 343) New counsel was appointed.

"Life Qualifying" Instruction:

Petitioner asked the Court to "life-qualify" the prospective jurors, and tendered to the court the following: "Would you believe as a juror you must absolutely oppose the death penalty when requested by the State?" (R. 390) The court told counsel that the proposed voir dire question was too vague. Counsel did not attempt to reword it. (R. 390-1)

The Trial:

Lucille McNeal testified that she last saw the victim on Easter Sunday, April 3, 1988, between 9 and 9:30 p.m. The victim left her home, by car, with petitioner and two others. (R. 543) The victim and petitioner were friends. Both were members of the Black Gangster Disciples. (R. 546)

Before they left, petitioner asked Lucille to come with them as they "needed a woman for a sting". She told him no. They argued, and she told him if she went with them the victim, her boyfriend, would get mad at her and "pump" her. Petitioner and the other "guy" in the car showed her their guns, and said they would kill petitioner if he tried to hurt her. (R. 546-9) Petitioner said he was going to rob his nephew of \$6,000.00. (R. 559) She did not go with them, and she tried, unsuccessfully, to talk the victim out of going. (R. 565)

Bertha Jackson, co-defendant Sumlin's former girlfriend, testified that she, petitioner, Sumlin and several others met at petitioner's house on Easter Sunday afternoon. (R. 573-4) Petitioner took two guns from his home and they all left at about 7:00 p.m. (R. 575-6) They picked up the victim at his home, and then they went to the victim's girlfriend's home, and waited while the victim spoke to her. (R. 575-8) They then drove the victim to a gangway, and told the victim to walk into it. The victim refused. (R. 578) Petitioner then shot the victim in the head, in his left temple. (R. 578, 586) Sumlin next shot the victim; and then petitioner shot the victim "some more." (R. 579) The victim was lying on the ground when Sumlin shot him and when petitioner shot him again. (R. 586) They left the area and later painted the car they had been driving to disguise it. (R. 580)

She further testified that both petitioner and Sumlin were Black Gangster Disciples. (R. 580-1) She also explained that when they were driving to the gangway, Sumlin drove, and the victim

was in the passenger front seat. Petitioner sat behind the victim, aiming a gun at the victim's head. (R. 587) After the shooting, petitioner told her that his "life was in her hands." (R. 590)

Assistant Medical Examiner Yuksel Konacki testified that the victim sustained 15 gunshot wounds and died as a result of these wounds. (R. 635-666) He explained that the wounds to his face had "tattooing" which indicated that the bullets had been shot at close range. (R. 641-2)

The firearms examiner testified that the bullets recovered from the victim were fired from both .22 and .32 caliber guns, but that there had been no recovered firearm to determine whether the bullets had been fired from a particular gun. (R. 682, 689)

Chicago police detective Craig Cegielski testified that, on April 17, 1988, he and his partner, Nick Cresenzo, went to Ford Heights, Illinois at 7:00 a.m. to talk to petitioner. (R. 709-717) They brought petitioner back to the station. He was not under arrest. Petitioner denied any involvement in the murder, and told the officers he would help them as the victim was his friend. (R. 753-4)

They then spoke to Sumlin, who was also at the station, at about 9-9:30 a.m. At 10:00 a.m., the detective, his partner, Sumlin and Assistant State's Attorney Charles Burns went to 1433 W. 12th Street in Chicago to talk to Sumlin's girlfriend, Bertha Jackson. (R. 720)

Bertha returned to the station with the officers, and then spoke to Sumlin. (R. 722-3) Next, the officers spoke to her, then to Sumlin and then to petitioner. (R. 724) They told petitioner that they had spoken to witnesses to Coleman's murder, and then placed petitioner under arrest for his murder. (R. 725) They left petitioner, and went to a large office area outside of the interview room. Petitioner called out to them minutes later, and said he wanted to talk to them. (R. 725) After waiving his rights under Miranda, petitioner told them that, on Easter, he met Sumlin and several others for a Black Gangster Disciple meeting in Ford Heights. Sumlin told him that as he was the

victim's friend, he was "to get" the victim to leave his home so they could "hit him". (R. 728) The "hit" was ordered as the victim was "sticking up" Black Gangster Disciple dope dealers and drug houses.(R. 728) Petitioner further stated that Sumlin gave him a .32 caliber gun, and that Sumlin had a .22 caliber gun for himself. (R. 728-9) They drove with Bertha to 5407 S. Aberdeen. They told the victim to go into the gangway; but the victim got suspicious and refused to go. (R. 729) Sumlin produced the .22 and shot the victim in the head. Petitioner said that he then shot the victim, "emptying" his gun. (R. 730)

Assistant State's Attorney Charles Burns testified that he spoke with Abra Holden in the Cook County Jail on April 16, 1988. (R. 775, 778) On April 17th, he first spoke to Sumlin and then to Bertha Jackson at the police station. He later spoke to petitioner when petitioner called out of the lockup to speak to him. (R. 781) He read petitioner his Miranda rights. Petitioner acknowledged and waived those rights. Petitioner gave a written statement admitting his murder of the victim which was read to the jury. (R. 789-94) Petitioner never said he was mistreated in any manner. There was no need for medical treatment for petitioner. (R. 813, 820)

Petitioner's Motion for Directed Verdict was denied. (R. 822)

Leonard Patyk testified that he lived at 5415 S. Aberdeen, and, on April 3rd, he heard a volley of shots fired around 10-10:15 p.m. (R. 822-4) He looked out the window and saw a black car going backwards down the alley. (R. 824) He did not see anyone shoot from that car. (R. 827)

Petitioner sought to have Mr. Walter Jackson and Mr. Yates testify in his behalf. Mr. Jackson's attorney apprised the parties that his client would assert his fifth amendment rights if called. Mr. Yates refused to testify. (R. 839-40)

Petitioner's "play sister", Toni Erwin, testified that she met petitioner in the Shannon's Bar parking lot at about 9-9:30 p.m. on April 3rd. Petitioner gave her \$250.00. (R. 845, 865) She

testified that she convinced petitioner to return to her home, and they then sat talking to midnight or 1:00a.m. (R. 868)

Toni Erwin's boyfriend testified that he also saw petitioner in the parking lot on that day, however, he did not tell anyone about this until one week before the trial. (R. 893-5)

Thomas Bennett testified that petitioner called him after he was arrested and he told petitioner not to say anything. (R. 939)

Petitioner testified in his own behalf. He stated that he was 36 years old, and that Antoinette Jackson "took" him in after his parents died in 1973. He was in the service at that time. (R. 943-8) That same year, he got "involved" in a murder and spent 13 years in prison. He was released in July, 1987. (R. 948-50) He met the victim in prison. He said the victim was a drug addict, and that he beat his girlfriend. (R. 952-4) He said he left the victim at 7:00 p.m. on April 3rd, and then went to Shannon's driving a green/gray Plymouth "loaner". (R. 956-7) He denied ever driving in the car identified by Bertha Jackson and Lucille McNeal as the car they saw petitioner in on the night of the murder. (R. 957) He heard the police were looking for him, and he went to see them on April 8th. (R. 965-6) He then stated that he made a second trip to the station on April 17th. He said that the officers came to his home, and he agreed to come with them. When he went to get his things, he also took a mixture of heroin and cocaine. (R. 1063) He told the jury about a series of abusive conduct by police officers at the time of his arrest. (R. 1064-1078) He said that he told ASA Burns all about this. (R. 1078)

Prior to further testimony, the trial court ruled that the petitioner could be cross-examined as to gang affiliations. The court ruled: " I think the aspect of gang affiliation by both sides of the case has become a very important issue." (R. 1031)

Petitioner also testified as to his prior convictions, omitting an armed robbery conviction. This 1974 armed robbery conviction was "part of a package" plea with his first murder conviction. (R. 1038-9) The court allowed the People to present a certified copy of the conviction at the close of the trial to impeach petitioner. (R. 1040)

Petitioner admitted that despite his claims of physical abuse by police, he had no marks from the beatings, and he was treated at Cermak only for gonorrhea, and not for any injury. (R. 1088)

Edward Carlson, a physician's assistant at Cermak, testified that he saw petitioner on April 18, 1988. (R. 1129) Petitioner came to see him as a "follow-up" regarding his gonorrhea medication (R. 1131), and for no other reason. (R. 1138) There was no other trauma to petitioner. The only treatment required for petitioner was an increase in his gonorrhea medication. (R. 1132)

Dr. Klamy saw petitioner at Cermak Hospital on April 21, 1988. (R. 1440) She examined petitioner for trauma, and found no signs of injury. (R. 1141-1156)

Thomas McNichols , a Cook County detention aid, testified that he booked petitioner on April 17, 1988. (R. 1156) He noticed nothing unusual about petitioner. Petitioner did not complain about any injury, other than to say that his "dick was dripping". Petitioner never said he was beaten. (R. 1159-60)

Officer Thomas Zalewski transported petitioner to Cermak Hospital after he was booked on April 17th, and stayed with him while petitioner was treated for gonorrhea. (R. 1168, 1174) Petitioner never said he had been beaten, and was not bruised. (R. 1171, 1174)

Detective James Eldridge testified that petitioner came to the police station on April 8, 1988, spoke with officers for one hour, and then was returned home. (R. 1180) He also identified a

Polaroid photo which was taken at the time petitioner gave his confession on April 17, 1988. (R. 1185) Petitioner did not appear injured in the photo. (R. 1088)

Petitioner asked that the People stipulate to statements that they attributed to Charles Simmons, which included a statement that Mr. Simmons asked the investigating officers to look for a black car, maroon top. The People refused to make that stipulation and presented evidence to the contrary. (R. 1195-7)

Chicago police officer Nick Crescenzo testified that during the investigation of this murder, they were not asked to look for a black car with a maroon top. (R. 1214) He further testified that petitioner voluntarily came with them to the police station on April 17, 1988. Petitioner told the officers that he wanted to help the case. (R. 1201)

Certified copies of petitioner's 1974 convictions for two armed robberies and murder, as well as his 1987 convictions for armed violence, UUW(felon), and possession of a controlled substance were received into evidence as impeachment. (R. 1214)

The parties rested. The jury returned a verdict of guilty of murder after 2 hours of deliberations. (R. 1321, 1324, 1326) Petitioner was subsequently sentenced to death.

The Second Death Penalty Hearing:

Following remand from the Illinois Supreme Court for a new death penalty hearing, petitioner chose to have a jury determine whether he should be sentenced to death. The People sought the death penalty on the basis that petitioner had murdered 2 individuals. Sharon Borys testified that she was 51 years of age (R. 1612) On September 11, 1973, she was married to Douglas Malizia. Douglas was the manager of the Center Liquor Store, which was located at 16th and Center, in East Chicago Heights, Illinois. (R. 1613-1614) The store was a grocery and liquor store with a bar in the back. In the early morning hours of September 12, 1973, she received a telephone call

from her husband's aunt. (R. R-1615) Later she learned that several individuals had been arrested and charged with the murder and armed robbery of Douglas Malizia. (R. 1616)

Ms. Borys went to court on July 1, 1974. On that day she witnessed petitioner plead guilty to the armed robbery and murder of her husband. (R. 1616-1617) She was present also on August 2, 1974, when petitioner was sentenced to a term of 14 to 50 years in the Illinois Department of Corrections. ((R. 1626-1627)

The People introduced a certified copy of petitioner's birth certificate showing that he had been born on January 28, 1954. The People also introduced evidence that petitioner, along with Danny Salter, Ernest Drakes, Dennis Johnson and David Sampson, was indicted for the armed robbery and murder of Douglas Malizia. Finally, the People introduced a certified statement of conviction from the Clerk of the Circuit Court of Cook County that in case number 73 3813 petitioner pled guilty to one county of murder and armed robbery on July 1, 1974. The People introduced evidence that petitioner was sentenced by Judge Garippo to a term of from 14 to 50 years in prison. (R. 1645 -1649)

Finally, the People presented evidence through the testimony of former assistant state's attorney Neil Linehan that petitioner had been charged under indictment number 88 Cr 7047 with the murder of Douglas Coleman, and that the jury found him guilty of that charge on November 20, 1990. A certified statement of conviction was entered into evidence as well. (R. 1650-1662)

Petitioner himself testified at the eligibility hearing. He stated that he did not shoot Douglas Coleman. He testified further that that the police took him into custody, and from the police station he was taken to Cook County Hospital, where he was treated for injuries. (1669-1670)

After the arguments of counsel and instruction on the law from the judge the jury found petitioner eligible for the death sentence. (R. 1776)

At the hearing in aggravation and mitigation the People's first witness was Howard Schaffner, a former assistant state's attorney. (R. 1818-1819) Mr. Schaffner testified that in July of 1974 he was a felony assistant in the courtroom of Judge Louis Garippo, and that he had been assigned the case in which petitioner had been charged with the murder of Douglas Malizia. (R. 1819-1820) On July 1, during a pretrial conference on the case the judge's bailiff came into the chambers and told them that petitioner and his two co-defendants had attempted to sexually assault a white prisoner who was in the lockup. He told them further that two of them had tried to pull off the prisoner's pants and the third prisoner was standing behind. ASA Schaffner stated that to his knowledge no one was charged in the incident, and petitioner pled guilty to the murder and armed robbery later that same day. The People's recommendation on the sentence was not less than 50 years nor more than 150 years in prison. (R. 1819-1823)

Mr. Willie Jones stated that in 1973 he was an apprentice millwright, and that he worked part-time at Center Liquors. (R. 1842-1843) Douglas Malizia was the manager in September 1973. Mr. Jones stated that in the front of the store they sold package goods, and in the back there was a lounge and bar. (R. 1843). Doug Malizia was not scheduled to work that night of September 11, 1973, but he came to the store anyway and began to put stock on to the shelves. (R. 1844)

Just before midnight two individuals entered the store and approached Mr. Jones at the cash register. One of them, Ernest Drakes, pointed a shotgun at him. (R. 1845-1846) The other individual was petitioner, and he came behind the counter to where Doug was stocking the shelves. He carried a long-barrel .38. (R. 1846-1847) Earnest Drakes told Jones not to move, to put his hands on the counter, to give the money. He wouldn't get hurt, they had come in there to "get the honky." (R. 1847) Jones assumed that he was referring to Doug. (R. 1848) Mr. Jones gave Drakes the all the money from the cash register and from another drawer. (R. 1848) Then he saw petitioner

hit Doug Malizia in the head a couple of times with the pistol. (R. 1848-1849) Petitioner then went through Doug's pockets. He then went back over the counter, pulling Doug over the counter with him. He made Doug lie on the floor. (R. 1849)

While petitioner had Doug on the floor, Drakes and two others went into the bar area in the rear of the store. After they got the money from the bar they came back to the front, and Ernest Drakes asked petitioner, "Did you hurt the honky?" (R. 1851) Petitioner responded "Yes, I took care of him." (R. 1851) Petitioner and his accomplices turned to leave the store, petitioner going last. (R.1851) Before leaving, however, petitioner stopped, turned around, and took a couple of steps toward Doug, who was still on the floor. Petitioner shot him twice in the back. (R. 1852) Petitioner then left the store. (R. 1853)

Mr. Frank Ronnie Burgess, a former Chicago Heights police officer, testified that in November 1971 he was a detective, and in that capacity he investigated an incident at Bloom High School in which a 15 year-old female student was stabbed in the back while attending a football game. Another student, 15 year-old Richard Burkey, was also shoved to the ground causing him to strike his head and fracturing his skull. (R. 1911) Grayland Johnson was eventually convicted of the stabbing and sentenced to six months in the house of corrections. (R. 1913)

Sergeant Sam Pavesich of the Chicago Heights Police Department testified that he was the Director of Records. (R. 1923) He stated that petitioner's criminal history dated to May 29, 1968, when he was first arrested for auto theft. He was arrested again on June 6, 1968, for larceny to residence. On October 16, 1968, petitioner was committed to the Illinois Youth Commission. On November 5, 1969, he was arrested for auto theft and taken to the Audy Home. On April 29, 1971, he was arrested for criminal trespass to a motor vehicle and sentenced to a year of adult probation. Petitioner was arrested on July 28, 1971, for being absent without leave from the military and turned

over to the military police. He was arrested again on November 9, 1971, for aggravated battery with a knife was sentenced to six months in the house of corrections. (R. 1923-1928)

The People offered into evidence a number of certified documents. The first was a certified record from the Illinois Department of Corrections, Illinois Youth commission, a Department of Corrections Juvenile Division, which stated that petitioner had been committed to the Department of Corrections on October 17, 1968, after a finding of delinquency for the charge of arson, and paroled on August 30, 1969. He returned as a parole violator for criminal trespass to vehicle on November 7, 1969, and remained until a second parole on August 21, 1970. (R. 1981-1985, 1988)

Certified documentation from the United States Army showed that petitioner enlisted for a two-year commitment on March 5, 1971. The report showed, however, that petitioner went repeatedly AWOL, and that during one such period of absence was arrested and convicted in Illinois of armed robbery, murder, and a separate incident of armed robbery. He was discharged under other than honorable conditions in August of 1980. (R. 1989-1994)

Mr. Jim Utley testified that he was the Keeper of records for the Illinois Department of Corrections, and that in that capacity he had reviewed petitioner's records. During the first period of petitioner's imprisonment, from 1974 to 1987, he received approximately 104 disciplinary reports, of which 36 were considered to have been serious violations. (R. 1994-1998) One report, dated October 1, 1974, was for "being off his assignment," as well as giving a wrong name and number. (R. 2000-2003) He was transferred to the segregation unit. (R. 2003) On October 10, 1974, he was cited for ignoring an order to stop "using towels for clothesline." On November 24, 1974, he was cited for disobeying a direct order from an officer and acting in a manner that could have caused a riot and general disturbance. (R. 2004-2005) On December 15, 1974, while in the segregation unit

petitioner was cited for throwing his bread at an officer, and then refusing to give his name and number. It was noted that petitioner was “extremely violent in his language and gestures.” (R. 2011)

On December 17, 1974, he was cited for being disrespectful toward an officer. (R. 2013) On March 10, 1975, while still in the segregation unit, petitioner was cited for starting a fire in his cell, damaging State clothing and causing a general disturbance. (R. 2014-2015)

Mr. Utley testified that on June 29, 1975, petitioner was cited for unauthorized movement, which is considered to be a serious violation. (R. 2016-2017) He stated further that approximately half of petitioner’s violations were for unauthorized movement. (R. 2017-2018) On April 26, 1976, he was cited for wearing a contraband shirt. When ordered to take it off, petitioner refused. (R. 2019) Later on the same day he was given another ticket for refusing a direct order. (R. 2019-2020) On May 17, 1976, he was ticketed for unauthorized movement. On July 29, 1976, he was cited for destroying State property. (R. 2022-2023) On October 9, 1976, he was cited for unauthorized movement. (R. 2024) On April 28, 1977, he received a ticket for misuse of hospital privileges and giving false information. (R. 2024) On May 11, 1977, he was cited for disregarding orders, failing to report to an appointed place without permission, and giving false information. On June 6, 1977, he was cited for disobeying orders and giving false information. (R. 2026) On January 12, 1978, he was charged with possession of a controlled medication. (R. 2026)

Mr. Utley testified further that on March 23, 1978, petitioner was cited for forging institutional forms by signing another inmate’s name to a commissary form. (R. 2027) On April 13, 1978, he received four tickets: disregarding orders, giving false information, failing to report to an appointed place without permission, and stealing. (R. 2028-2029) On April 25, 1978, he was cited for assaulting an officer. (R. 2030-2031) On April 26, 1978, at 4:20 p.m. he was cited for an assault on an employee, and at 4:30 that same day he was cited for assaulting a different staff member.

Both assaults involved throwing liquids on the officers. He was also ticketed at the same time for destruction of State property by burning it. (R. 2032-2033)

On May 9, 1978, petitioner was ticketed for fighting with another inmate and disregarding orders. (R. 2034-2035) On May 11, 1978, petitioner received tickets for incidents which occurred at 7:30 p.m. and at 11:30 p.m. The first was a minor infraction of possession of a contraband mirror, but the second was for threatening an officer and refusing to obey an order to turn over the mirror. (R. 1036-2037) On May 13, 1978, petitioner received tickets for several separate incidents. The first was for assaulting an officer by throwing a liquid substance on him. The second was for disobeying an order to leave the adjustment committee room, resulting in his having to be carried out by two officers. Then at 4:10 he was cited for disobeying orders. At 6:50 he was cited for assaulting an officer, again by throwing liquid on him. At 7:05 he was cited for use of a threatening language. At 11:40 p.m. he against threw water on an officer. (R. 2038-2043)

On October 2, 1978, petitioner was cited for starting a fire in a garbage can, and then striking a guard with a stick when he tried to put it out. (R. 2044) On October 13, 1978, petitioner again assaulted an officer by throwing a stick at him. (R. 2045) Later that same day he was cited for fighting with another inmate. (R. 2046) On September 1, 1980, petitioner was cited for having homemade alcohol. (R. 1060-2961)

On April 28, 1981, petitioner was cited for forging an officer's signature on a pass to the gym. (R. 2047) On January 24, 1982, he was cited for giving false information to an officer and unauthorized movement. (R. 2048) On June 4, 1987, petitioner was cited for damage, misuse of property, intimidation threats, and insolence. (R. 2049-2050) Petitioner was paroled on June 4, 1987. (R. 2050-2051)

Mr. Utley testified that petitioner's master file indicated in a 1974 report that petitioner was in good overall health, although he had a bullet in his left leg that he received in a gang fight in 1971. The report indicated that it caused petitioner no problems. (R. 2063) The report also stated that petitioner described himself as a factory worker, but that his longest period of employment was two months in 1973 in a factory. He had had over a hundred hours of training in electronics from the St. Charles Boys School, but he had never been able to utilize that skill in the free community. (R. 2063-2064) The file continued to state that petitioner was the third of four children. His mother passed away in 1972 because of a stroke, and his father died of unknown causes in 1973. Petitioner was single, with three children whom he did not support when in the free community. (R. 2064) In 1968 and 1969 petitioner was a member of the Eastside Gangsters, but in 1976 he also claimed to have been a member of the Black P Stone Nation. (R. 2065) In 1976 he was judged to be a chronic disciplinary problem. (R. 2066)

In 1977 petitioner was transferred to Menard Psychiatric. Doctor Javier Pichardo evaluated him, and he determined that petitioner was faking depressive symptoms. Doctor Pichardo found no evidence of psychosis or other acute disturbance. (R. 2069-2070)

Petitioner's original custody date was September 18, 1973, and by April 18, 1978, he had accrued 56 disciplinary citations. (R. 2070-2071)

A report dated April 24, 1986, stated that petitioner had a history of membership in the Black Gangster Disciples, although petitioner denied this. He claimed that he had refused to join that gang and had been stabbed as a result. At one time petitioner requested a transfer from one institution to another because he a "hit" had been put out on him, and that another inmate had attacked him with a knife, stabbing him in the chest. The report indicated that the gang believed that

petitioner had been involved in the stabbing of a member of the Black Gangster Disciples. (R. 2073-2076)

Mr. Utley testified that if petitioner were sentenced to death he would be housed at either of two maximum security prisons. He would be segregated from other inmates and would be locked in his cell 23 hours a day. He would be allowed out for one hour yard and recreation. If petitioner were to be sentenced to life instead of death he would be allowed gym, yard, educational programs, and any other institutional programs available to inmates. He would be in the general population, and could be housed in either a maximum or medium security facility. (R. 2077-2079)

Since he was incarcerated for his latest offense he had received one disciplinary citation. (R. 2085)

Carl Riggenbach testified that he was a sergeant in the Chicago Police Department. In February of 1988 he was working the in Seventh district, which was the Englewood neighborhood. (R. 2181) On February 19, 1988, at about 11:50 p.m. he was working as a uniformed patrol officer. He and his partner were driving east on 61st Street when they received a call of an armed robbery that had just occurred at 62nd and Western. As they approached the scene they saw a vehicle sitting in the middle of the street obstructing traffic. There was one person inside the car, and he matched the description of the armed robber. This individual was petitioner. After having petitioner get out of the car Officer Riggenbach found a loaded nine-millimeter pistol and several packets containing a total of four point three grams of cocaine. Officer Riggenbach learned that petitioner was on parole for murder at that time. At the time of his arrest petitioner was wearing a six-point star around his neck, which is a sign of the Gangster Disciples street gang. Petitioner was subsequently convicted of possession of a controlled substance, armed violence and unlawful use of a weapon by a felon, although the appellate court reversed part of that conviction. He was not charged with the armed

robbery when it was determined during the investigation of that crime that he had not been involved.
(R. 2181-2192)

The sentencing jury then heard the facts of the murder through the testimony of Bertha Jackson and Charles Burns (as fully set forth above from the trial). (R. 2199-2220, 2337-84)

Doctor Darinka Mileusnic testified that she was a Deputy Cook County Medical Examiner. She stated that a post-mortem examination of Douglas Coleman showed 14 entrance gunshot wounds, two exit wounds, and one graze wound. 12 bullets were recovered, six of mid-size caliber, six small caliber. Six of the gunshot wounds were to his head, fired at a range of about 12 to 16 inches. Four thirty-two caliber bullets and one twenty-two caliber bullet were found in his brain. Another thirty-two caliber bullet was found in his cheek, having exited the skull. The rest of the gunshot wounds were to Coleman's neck, torso, and limbs. (R. 2306-2327)

Maehalia Carter testified that she was a Cook County Sheriff's Correctional Officer, and an officer on the hearing board. (R. 2398-2399) She stated that on April 21, 1989, at about 11:15 a.m., petitioner was observed sitting in the day room eating lunch. Another inmate, White Edwards, was standing nearby. A nearby officer heard petitioner ask Edwards about an orange, but did not hear the reply. Petitioner then got up and walked towards White Edwards and hit him. Both men engaged in a fist fight until they were pulled apart. Petitioner served ten days in segregation as a result. (R. 2402-2403)

Officer Morris testified that he was a Cook County Correctional Officer at the Cook County Jail. (R. 2412) On June 13, 1997, he was assigned to Division 9, which was maximum security. On that day petitioner was an inmate of that division. At about 7:30 a.m. Officer Morris informed the inmates that he had received a pass for them to attend the law library. At about 8 o'clock he notified them again that it was time to go to the law library. There were to be three going, but only two were

present and ready. Officer Morris escorted these two to the library and then returned to the tier. When he returned, he began banging on the door, saying he was ready to go. Morris told him that he would have to wait for an escort because Morris could not leave. When Officer Morris told him to stop banging on the glass he told her, "If you get your ass up and come to the door, I won't have to bang on it." Then he asked to see one of her supervisors. When another inmate told him to "cool out, man," petitioner said, "fuck her." Petitioner was given three days in isolation for verbal abuse. (R. 2412-2418)

Tom Johnson testified that he was a correctional officer in Division 9 of the Cook County Jail. On December 29, 19896, at about 5 p.m., Officer Johnson was distributing the dinner trays to the inmates on the tier. When petitioner came to get his tray he looked at it and said that he was not going to eat it. When Johnson told him that it was his tray petitioner refused to take it and said that he was not locking up later. At about 9:30, the lock-up time, all of the inmates had to be locked into their cells for the shift change. Petitioner refused to get into his cell. Officer Johnson finished locking all of the other prisoners into their cells and returned to petitioner. Again he refused. John called his sergeant, who came with other officers. Petitioner then got into his cell. He was given five days disciplinary segregation. (R. 2422-2427)

Officer Solecki, of the Cook County Sheriff's Department testified that he was a correctional officer at the county jail. He testified that on April 12, 1998, he was unlocking the cell doors to let the prisoners out. When he inserted the key into the lock of petitioner's door it would not turn. He also saw a sign on petitioner's door that said, "Please knock before entering or looking in." When Officer Solecki asked petitioner what was wrong with the door he responded, "Nothing wrong with it, I ain't coming out." Solecki eventually found that petitioner had jammed a toothbrush into the door jamb to jam the lock. Petitioner received 5 days in the segregation unit. (R. 2432-2436)

Edward Hardaway testified that he was a Correctional Officer with the Cook County Department of Corrections. On May 20, 1998, Officer Hardaway was working in Division 9. At about 11:40 a.m. he saw petitioner strike another inmate in the face. Hardaway did not see any provocation. Although petitioner later claimed that the other inmate had pulled a knife, Officer Hardaway, who saw the entire incident through a large glass window, did not see a knife. Petitioner was given 10 days in segregation. (R. 2439-2443)

Officer Hardaway stated also that on June 30, 1998, at about 10 a.m. he witnessed petitioner tell Superintendent Edwards that he was not going to be locked up in his cell. For this he was given 14 days in the segregation unit. (R. 2444-2445)

Officer Hardaway also testified that petitioner was verbally abusive to him on a daily basis, saying such things as “I’m tired of you motherfucking officer treating me like this, because I wasn’t treated like this in penitentiary.” He also witnessed petitioner flashing gang signs on numerous occasions. He also saw petitioner participate in gang meetings. (R. 2446-2448)

Officer Thomas Iacovetti testified that he was a Correctional Officer assigned to the Special Operation Response Team, which handles situations such as escapes, AWOLs and volatile situations. They work both in the jail and on the street. (R. 2465-2466) He testified that on April 4, 1995, at about 3 p.m. he was in Division one, on the Abnormal behavior observation tier doing cell and body search. Petitioner was being housed in that tier at that time, and when the officers searched his cell they found a “shank,” which is a home-made knife. Petitioner received 15 days in segregation for this violation. (R. 2467-2472)

Officer Iacovetti also testified that he saw several tattoos on petitioner’s body. They depicted pitchforks, six-point stars, and the phrase “East Side GL Gangster Love.” Officer Iacovetti

stated that based on his training and his experience he knew these to be symbols of the Gangster Disciples gang. (R. 2472-2474)

Daniel Pierce testified that he was an attorney, and that in July of 1974 he had been an assistant state's attorney for Cook County. (R. 2055-2056) On July 25, 1974, Mr. Pierce was assigned the case number 72-2662, under which petitioner was charged with armed robbery. (R. 2056) On that day petitioner pled guilty. The facts to which he admitted were that on August 18, 1972, petitioner, along with two other individuals, robbed a cab driver of fifty dollars, his ring and a watch. Petitioner had been armed with a sawed-off shotgun. He was sentenced to a term of four years to four years and a day, to be served concurrent to the sentence Judge Garippo imposed on the murder conviction. (R. 2057-2058)

Testifying in petitioner's case in mitigation, James Edwards stated that he was Superintendent of Division 9 of the Cook County House of Corrections. Division 9 was a maximum security division. (R. 1930) There were about 1100 inmates housed in division 9, including petitioner. He first met petitioner about a decade before, when petitioner had come into Division 1, where Mr. Edwards was then working. (R. 1932) He stated that he had had contact with petitioner on and off during that period. (R. 1933) He stated further that he has no knowledge of petitioner being involved in a gang. (R. 1934) Mr. Edwards testified further that petitioner was not a "troublemaker" and did not otherwise stand out. He did not think petitioner was a threat to the jail personnel or to other inmates. (R. 1935) Superintendent Edwards testified that petitioner had received some disciplinary tickets during his current three-year incarceration in Division 9. (R. 1937) It included refusal to obey an order to wear regulation DOC clothing, for which he was given a verbal reprimand. (R. 1940) Another involved refusal to eat the food served to him, for which he was given four days in isolation. (R. 1941) Another ticket listed two infractions: using disrespectful

language and refusing an order. He was give three days in isolation. (R. 1942) He was also given a ticket for having a homemade weapon, and he was punished with 15 days in isolation. (R. 1942) Mr. Edwards stated that it was not unusual to recover such a “shank” in the jail, and that petitioner had never stabbed a guard or inmate. (R. 1943) He was also given a 14-day sentence of isolation for refusing a direct order from Mr. Edwards to move into a cell. (R. 1950)

Stephanie Aldridge testified that she was a sergeant in the Cook County Sheriff’s Department. She testified further that she had known petitioner for a total of about 12 or 13 years from contact with him in the jail. She testified further that she had never had any trouble with him, that he kept mostly to himself, and that she had never seen him involved in gang activity. He never disobeyed her orders or showed her disrespect. He was not a problem inmate. He functioned well in the Cook County Department of Corrections. (R. 2494-2501)

Nina Gill testified that she was 27 years old and worked in “mental health.” She was petitioner’s daughter. She became aware of this fact when she was in high school. She stated that she has had contact with her father during the last ten years, during which time he had been incarcerated. She has visited him in the correctional facilities, talked to him on the phone, and received cards from him, and he has given her positive encouragement. Ms. Gill has one natural child, a daughter named Diamond.

Ms. Gill stated that petitioner has tried to keep in touch with her over the past 10 years, and she wanted to continue to have a relationship with him and would continue to visit and talk to him. (R. 2506-2511)

Samuel Clemons testified that he was a sergeant in the Cook County Department of Corrections. Sergeant Clemons testified that he has known petitioner for about three years. Petitioner has never given Clemons any trouble or ever disobeyed an order from him. He has never

shown Clemons any disrespect. Clemons has never witnessed petitioner engage in any gang activity. He was quiet and kept to himself. (R. 2534-2538)

Richard Mason testified that he was a Correctional Officer in Division 9 of the County Jail, and he stated that he had known petitioner for about three years. Petitioner has never been a problem to Officer Mason, and has never disrespected him. He would sometimes volunteer to clean the day room. (R. 2542-2545)

Officer Velma Lee testified that she was a Correctional Officer in Division 9 at the County Jail. She knew petitioner from working there. She never had any problems with petitioner, and he never disrespected her. She did not know if he belonged to a gang. He would sometimes volunteer to clean the day room. (R. 2549-2552)

Officer Lee testified also that she was present when petitioner was verbally abusive toward Officer Angela Morris. (R. 2555-2556)

Sylvia Taylor testified that she worked for Cermak Health Services at the County Jail. She was a health educator in Division 9. In that capacity she has known petitioner for about four years. During the classes he has helped her by quieting down the younger inmates, telling them that it was possible to make an honest living, and that it was not necessary to sell drugs. He reminded them that she was woman when they used profanity. He was always respectful toward her and other guards. (R. 2578-2581)

Toni Ervin testified that she had known petitioner since he was 15 or 16 years old. He was a friend of her little brother Gordon. At that time she and her family lived in neighboring apartments in Wentworth Gardens in Chicago Heights. Petitioner began to spend time at their apartments with her brother, and after her Gordon died in an accident at age 14 petitioner moved in

with her mother. Petitioner was 16 or 17 at that time. He stayed for several months. (R. 2587-2590)

Petitioner's family lived in East Chicago Heights at that time. Ms. Ervin had seen his home from the outside, and in court she described it as looking like "a Shack." She heard other kids tease him about his home. She never met his parents. Petitioner did not have many clothes, and they weren't new, but he was always neat and clean. (R. 2590-2593)

Ms. Ervin's mother ran her house with strict rules, such as having to be in on time at night. Petitioner had no trouble adjusting to the rules. He did everything her mother requested of him. He sometimes would get up early enough to fix her coffee or breakfast in the morning. He made sure nothing was out of order. He always showed the utmost respect for her mother and abided by the rules of the house. Eventually petitioner moved out of the house. (R. 2593-2596)

Ms. Ervin kept in contact with petitioner during the next 25 years. She views him as her little brother. She went to visit him in the penitentiary. When he got out after his first incarceration in 1987 he came and stayed with her. He worked at Bally's health club. She had three children of her own living with her then, two grown. She testified that petitioner was like their uncle. Her son, who was 21 and just out of the Marines, sometimes shared his room with petitioner. (R. 2596-2598) She stated that when petitioner was released from prison at age 34 he was "very responsible and very mature." (R. 2599) Since petitioner has gone back to prison Ms. Ervin has kept in contact with him. He sends cards and letters and they talk on the telephone. She planned to continue remaining in contact with petitioner. (R. 2598, 2600-2601)

Antoinette Watts testified that she was a care giver for the elderly, and had worked for the Illinois Department of Public Aid as a case worker for 23 years. She stated that she had met petitioner when her son Gordon had brought him home. Gordon was 13 or 14 at the time. They

were living in Wentworth Gardens. She had seven children, but most of them were grown and gone. Other children would come and stay in her house. If petitioner was there after 10 p.m. she would insist that he spend the night because the only way back to East Chicago Heights was either to walk or hitchhike. (R. 2618-2621)

Eventually, in 1970, he moved in and lived in her home full time. Her son Gordon had just died, and right after that petitioner mother died. Ms. Watts never met petitioner's mother or father. She had seen his house, but had never been inside. She described it as a "shack." She had heard that it did not have running water. (R. 2622-2623)

Ms. Watts testified that the rules of her house were very strict, and that he adapted to them very well. He kept the house very neat and clean. He never took anything. He was very respectful towards her. During the time that petitioner lived with Ms. Watts his family never came looking for him. (R. 22624-2626)

After petitioner went to the penitentiary Ms. Watts remained in contact with him. When she visited him he addressed her and introduced her as "momma." He sent cards from prison, as well as drawings and paintings. After he got out in 1987 he came back to live with her until he went back in 1988. He still wrote and called her from prison. (R. 2626-2628)

Pearl Funches testified that she lived in Peoria, Illinois, and that she met petitioner at the prison in Pontiac while visiting another inmate. Ms. Funches was a minister and she visited a number of the prisoners. She remained in contact with him since. He gave her some of his art work. (R. 2650-2655)

Monte Pritchett testified that he was a Correctional Officer for Cook County, and he worked in division 9 of the Jail from 1995 to 1998. Petitioner never gave him any trouble, never

disrespected him, never disobeyed an order. Officer Pritchett never saw him involved in gang activity and did not know if he was a gangmember. (R. 262661-1665)

Following arguments of counsel and instructions on the law from the judge the jury returned a verdict of death.

II.

REASONS TO DENY CLEMENCY

INTRODUCTION

Petitioner Grayland Johnson asserts that he is entitled to clemency because he did not receive the benefit of the changes to the Illinois capital sentencing system which 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 petitioner 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 petitioners 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 telling, however, that petitioner has not even attempted to demonstrate how the recent changes would have affected the outcome of the proceedings. Moreover, petitioner ignores the fact that the Illinois Supreme Court, which carefully examined the proceedings in petitioner's case, with one exception, determined that they were fundamentally fair and that he was not unduly prejudiced in any manner. As to that exception, that he was denied his right to due process where the trial court refused to ask prospective jurors whether they would automatically impose the death penalty if petitioner was convicted, the Court ordered an a new death penalty sentencing hearing, demonstrating the great scrutiny to which the Court has subjected this case, and the lengths the Court will go to ensure the fairness of a death sentence.

The following are reasons to deny Petitioner's request for executive clemency.

Supreme Court Rules 412(c), 416, 701 and 714

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.

Further, in regard to the "incorrect medical treatment records," it is interesting to note that in his first appeal petitioner never raised this claim, or any other claim that he was brutally beaten by the police into confessing. Additionally, petitioner's Cermak Hospital intake and medical records (See Appendix), that were subpoenaed by the People and tendered in discovery to petitioner, establish that petitioner showed no sign of injury or complained of the same when he was transferred to the county jail hospital following his arrest and confession. Those same medical records also show that on April 21, 1988, **THREE DAYS AFTER HE ARRIVED AT THE COUNTY JAIL,**

he was diagnosed with “post concussive syndrome.” However, the records of that date also state that there was “no evidence of intracranial hemorrhage or trauma,” and that petitioner was given Tylenol for medication. Two other points: (1) the April 21, 1988 records only show that he was beaten after he left the custody of the police; and (2) contrary to footnote 3 of his Petition for Clemency, Petitioner **did have in his possession** the Cermak medical records indicating the above post concussive diagnosis.

Finally, the evidence from the suppression hearing and the trial shows beyond any doubt that petitioner was not tortured by the detectives at Area Three. Det. Cegielski asked petitioner to return with them to the police station to help them with the murder investigation. Petitioner replied that he would be "glad to" as the victim was his friend. (R. 61) Petitioner had also gone to the police station on his own accord on a previous occasion to discuss this. Petitioner was not cuffed, or arrested at this time. (R. 95-6) They arrived at the police station at around 8:00 a.m. Det. Cegielski gave petitioner his rights under Miranda, petitioner waived those rights, and spoke to the officer for 15-20 minutes. ASA Charles Burns arrived at about 12:15 p.m., and after advising petitioner of his Miranda rights, spoke to petitioner for 45 minutes. (R. 69) Burns then brought lunch to petitioner. No one exercised any type of force or coercion against petitioner in the officer's presence. (R. 70-72)

Chicago police Sergeant James Eldridge testified that he was present at petitioner's April 17th confessions, and that neither he nor any one in his presence abused petitioner mentally or physically. (R. 107) Detective Nick Crescenzo of the Chicago police testified that he arrested petitioner around noon on April 17th at the police station, that he was present for petitioner's confession, and that neither he nor anyone in his presence abused petitioner in any manner. (R. 127, 140-2) Assistant State's Attorney Charles Burns testified that he spoke with petitioner on April 17th. Petitioner had no complaints about his treatment at the police station. (R. 150) No one abused

petitioner in Burns' presence. (R. 157) A Polaroid of petitioner, taken after he read and signed the statement, showed absolutely no injury to petitioner. (Appendix)

Nona Cameron, who testified for petitioner, was a Correctional officer in petitioner's tier. She stated that he told her, on April 18, that he had a headache, was dizzy and had been beaten by the police. (R. 193) At his request, she called for paramedics. (R. 195) No injuries to petitioner were visible to her. (R. 198) The paramedics came and saw petitioner; they gave him some medical treatment but did not take him from the tier to Cermak Hospital. (R. 193, 196-97)

At trial, Assistant State's Attorney Charles Burns testified Petitioner never said he was mistreated in any manner. There was no need for medical treatment for petitioner. (R. 813, 820)

Petitioner admitted that despite his claims of physical abuse by police, he had no marks from the beatings, and he was treated at Cermak only for gonorrhea, and not for any injury. (R. 1088)

Edward Carlson, a physician's assistant at Cermak, testified that he saw petitioner on April 18, 1988. (R. 1129) Petitioner came to see him as a "follow-up" regarding his gonorrhea medication (R. 1131), and for no other reason. (R. 1138) There was no other trauma to petitioner. The only treatment required for petitioner was an increase in his gonorrhea medication. (R. 1132) Dr. Klamy saw petitioner at Cermak Hospital on April 21, 1988. (R. 1440) She examined petitioner for trauma, and found no signs of injury. (R. 1141-1156)

Thomas McNichols , a Cook County detention aid, testified that he booked petitioner on April 17, 1988. (R. 1156) He noticed nothing unusual about petitioner. Petitioner did not complain about any injury, other than to say that his "dick was dripping". Petitioner never said he was beaten. (R. 1159-60)

Officer Thomas Zalewski transported petitioner to Cermak Hospital after he was booked on April 17th, and stayed with him while petitioner was treated for gonorrhea. (R. 1168, 1174) Petitioner never said he had been beaten, and was not bruised. (R. 1171, 1174) Detective James Eldridge identified a Polaroid photo which was taken at the time petitioner gave his confession on April 17, 1988. (R. 1185) Petitioner did not appear injured in the photo. (R. 1088)

Therefore, it is abundantly clear that the new Supreme Court Rules would have been of no benefit to petitioner. His request for clemency should be denied.

The Police Pursued All Possible Lines of Investigation in this Case. All Lines of Investigation Led to Petitioner as the Murderer

Petitioner asks for clemency because the police did not pursue all other lines of inquiry as to who killed the victim, but simply focused on petitioner because he had previously committed murder and would be eligible for death. However, petitioner's argument ignores the evidence.

Lucille McNeal, the victim's girlfriend, testified that she last saw the victim on Easter Sunday, April 3, 1988 (the date of the murder). The victim left her home, by car, with petitioner and two others. (R. 543) The victim and petitioner were friends and members of the Black Gangster Disciples. (R. 546) Bertha Jackson, Sumlin's former girlfriend, testified that she, petitioner, Sumlin and several others met at petitioner's house on Easter Sunday afternoon. (R. 573-4) Petitioner took two guns from his home and they all left at about 7:00 p.m. (R. 575-6) They picked up the victim at his home, then drove the victim to a gangway, and told the victim to walk into it. The victim refused. (R. 575-78) Petitioner then shot the victim in the head, in his left temple. (R. 578, 586) Sumlin next shot the victim; and then petitioner shot the victim "some more." (R. 579) Sumlin also implicated petitioner in the murder, through his own court-reported confession. Assistant State's Attorney Charles Burns testified that he read petitioner his Miranda rights. Petitioner acknowledged and

waived those rights. And then Petitioner gave a written statement admitting his murder of the victim. (R. 789-94) It could not be more clear that there were no other leads to investigate.

Petitioner also mischaracterizes the evidence. Bertha Jackson is in no way a jailhouse snitch; she was not charged with this crime nor had she been in jail for any other crime when she talked to the police. In fact, Jackson testified that while at Area 3 then police never told her that she could be charged with the murder of the victim. (R. 620) As discussed previously, there was no evidence that petitioner was in any manner physically abused. And petitioner's suggestion that the police should not have investigated him because he had previously murdered someone is absurd; perhaps the police in any murder investigation should not be permitted to ever suspect and/or investigate convicted murderers. Simply put, all of the evidence shows that petitioner is a professional murderer and assassin.

Public Defender at the Police Station

Petitioner claims that he is entitled to clemency because he requested a lawyer while he was being interrogated but was not appointed an attorney until he appeared in court. He points out that under the Governor's Commission proposals, the public defender would be allowed to represent any suspect in a potentially capital case who requests to speak to a lawyer during an interrogation. However, petitioner fails to mention that the trial court expressly found that he did not unequivocally request an attorney during his interrogation. Therefore, even if this proposal had been in effect at the time of petitioner's arrest, it would not have applied to him.

Videotaping of Suspects

Petitioner also seeks clemency because his statement where he inculpated himself was admitted into evidence even though it was not videotaped, and points out that under the Governor's Commission's proposals both statements and the interrogations leading up to them should be

videotaped. 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. Because the trial judge expressly found that petitioner's statement was voluntarily made when it denied his motion to suppress statements, it is clear that the failure to videotape his statement had absolutely no effect on the fairness of his proceedings. Moreover, because the jury was instructed pursuant to Illinois Pattern Instruction 3.06-3.07 to consider all the evidence when determining whether or not petitioner made the statement and how much weight it should be given, petitioner cannot complain that he was prevented from asserting at trial that his statement was unreliable and should not be considered.

Videotaping Interviews of Significant Witnesses

As grounds for clemency, petitioner urges that that the police should have taped their interviews with Jackson and Sumner, so as to have allowed defense counsel to show that the two witnesses discussed their statements before talking to the police. First, not even Governor Ryan appears to have taken this recommendation seriously; the governor has not included this recommendation in his recently proposed legislation on the death penalty. Second, there is no evidence that the police allowed Jackson and Sumlin time alone to talk before she spoke to the police. On the contrary, they were either kept separate on the way to the station or at the station, or the one time they were together in the same room also present were the police and an Assistant State's Attorney. (R. 721-24) Third, petitioner had every opportunity to interview the witnesses, and subject them to cross-examination on this subject. In short, petitioner has failed to show in this respect how his trial was unfair.

Eligibility Factors

Astonishingly, Petitioner asserts that he is entitled to clemency because he was found eligible for the death penalty based upon an aggravating factor other than those factors which the Governor's Commission has recommended (Recommendation 28) be retained. Specifically, the Commission concluded that the current list of 20 factors is overly expansive and therefore unconstitutional. Accordingly, it was suggested that the list be reduced to just five factors: (1) murder of a peace officer or fireman; (2) murder of any person in any correctional facility; (3) murder of two or more persons; (4) murder accompanied by the intentional infliction of torture; and (5) murder of a witness, prosecutor, defense attorney, juror, judge or investigator. According to petitioner, he would not be eligible for death because the victim was not an officer, fireman or prison guard, the victim was not tortured, and the victim was not a court participant. Petitioner evidently has not read the entire recommendation, ***BECAUSE HE WOULD REMAIN ELIGIBLE FOR THE DEATH PENALTY EVEN UNDER THE NEW PROPOSED SET OF ELIGIBILITY FACTORS FOR HAVING MURDERED TWO PEOPLE.***

Decision to Seek Death

Petitioner claims his sentence should be reduced 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, "[i]t has long been recognized by th[e Illinois Supreme C]ourt 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. 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 on 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 his case was the result of an abuse of discretion. Accordingly, it must be rejected.

Qualification and Training of Trial Judges

Petitioner contends that he should receive clemency because the Governor's Commission Recommendations 32-39, concerning qualification and training of trial judges for capital trial litigation, were not effect when petitioner was prosecuted. It must be noted that Illinois Supreme Court Rule 43 (effective March 1, 2001) now requires that trial judges undergo capital litigation training. As previously stated, the Illinois Supreme Court has clearly held that the amendments to its rules are not retroactively applicable. Hickey, 2001 Ill. LEXIS 1080 at *65. Finally, petitioner fails to explain how the trial judges in his case, the Honorable Vincent Bentivenga and the Honorable William Maki (both highly capable, experienced and respected lawyers and jurists), was somehow wanting for their lack of "formal training" in capital litigation.

Qualifications of Trial Defense Attorneys

Petitioner argues that he should be entitled to clemency because the Governor's Commission Recommendations 40-45, concerning qualification of trial defense attorneys for capital trial litigation, were not effect when petitioner was prosecuted. It must be noted that Illinois Supreme Court Rules 416, 701(b) and 714 (effective March 1, 2001) now requires that trial defense attorneys undergo capital litigation training and be admitted to the Capital Litigation Bar. As previously stated, 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. In any event, petitioner's trial attorneys, Kevin Smith and Claire Hillyard, were highly experienced. Mr. Smith is a Supervisor of the Multiple Defendant Unit of the Public Defender's Office, and member of the Capital Litigation Bar. Ms. Hillyard at the time was a senior member of the Murder Task Force of the Public

Defender's Office.

“Exculpatory Evidence”

Petitioner requests clemency on the grounds that the People failed to tender the aforementioned Cermak medical records, and in fact tendered the wrong records. However, as fully and thoroughly discussed earlier, the People not only handed over petitioner's medical records, they turned over the **CORRECT** Cermak records regarding petitioner.

Benefits to Witnesses and Their Prior Records

Petitioner requests clemency on the grounds that there was no mechanism in place to require disclosure of benefits that Sumlin and Jackson received, as well as their prior records. This, claims petitioner, would have prevented the police and the prosecution from “influencing” the pair, and would have documented the “additional benefits” Jackson had received over the years concerning her later convictions. However, petitioner neglects to mention that Supreme Court Rule 412 mandates the disclosure of any benefits conferred to witnesses and their criminal history. Further, Recommendations 50 and 51, on which petitioner relies, relate to testifying witnesses; Sumlin never testified at petitioner's trial. Finally, the record reveals that Jackson did not have a criminal history at the time of trial in 1990. Johnson, 159 Ill. 2d at 128. At the second sentencing hearing several years later, Jackson did disclose the criminal history she had acquired starting in 1992. (R. 2199-2201)

Jury Instruction Regarding the Testimony of Co-Defendants

Petitioner claims that because he was convicted solely on the basis of the testimony of his co-defendants, and because the jury was not instructed that their testimony should be viewed with caution, he should receive clemency. However, the co-defendant Sumlin did not testify, and Jackson was not a co-defendant. Petitioner could have asked for an accomplice witness instruction as to

Jackson but did not; in any event, Jackson was not an accomplice. And petitioner was also convicted because of his confession to the murder.

Jury Instruction Regarding Unrecorded Interrogations

Relying on Recommendation 58, Petitioner claims that because the interrogations of himself, Sumlin and Jackson were not recorded, and because the jury was not instructed that those interrogations should be viewed with caution, he should receive clemency. One problem with petitioner's position is that the proposed instruction under Recommendation 58 only refers to confessions by defendants, and not interviews of witnesses such as Jackson (Sumlin was not a witness). Another problem is that the recommendation refers to non-recorded statements by defendants. The proposed instruction advises that electronically recorded or written statements are "more reliable" than non-recorded summaries. Petitioner does not explain how this instruction would have made his trial more fair, given that he gave a handwritten confession.

Discovery at Sentencing

Petitioner asserts that he should be entitled to relief because there were no provisions for discovery at sentencing, and that as a result he was not given the correct Cermak medical records which would have shown he was tortured by the police. However, as discussed previously, petitioner did in fact receive the very discovery, **PRIOR TO TRIAL**, that he claims was withheld from him.

Sufficient to Preclude

Petitioner asserts that clemency is warranted because the statutory language and corresponding jury instruction that after considering all of the evidence that "there is no mitigating factor sufficient to preclude the imposition of a death sentence" led the jury to mistakenly believe that the death penalty is mandatory. However, both the Illinois Supreme Court and the federal courts

have consistently rejected any claim that the statute is confusing and might lead a jury to believe that the death penalty is mandatory. See People v. Mitchell, 152 Ill. 2d 274, 346, 604 N.E.2d 877 (1992); Silagy v. Peters, 905 F.2d 986, 998-99 (7th Cir. 1990). Moreover, because both the prosecution and the defense argued to the jury about the appropriateness of the death sentence in petitioner's case, any confusion in the language of the instruction was negated by the closing argument.

Judicial Override

Petitioner asserts that his sentence should be commuted because the judge was not given the opportunity to override the jury's decision to impose the death penalty. Petitioner is wrong, however, because Illinois judges have long had the inherent authority to grant a new trial or sentencing hearing (or even enter a judgment notwithstanding the verdict). Because the trial judge at petitioner's trial denied his post-trial motions, it is clear that the judge would not have overridden the jury's verdict.

Single Eyewitness Testimony

Petitioner alleges that clemency should be granted because his conviction was based on the testimony of a single eyewitness, Bertha Jackson. However, the credibility and reliability of Jackson's testimony has been thoroughly scrutinized since 1988 (the date of indictment) by two juries, and by the Illinois Supreme Court. Additionally, petitioner was convicted based on his confession to the murder. Finally, petitioner did not argue in his appeal to the Illinois Supreme Court that the evidence at trial was insufficient to prove him guilty beyond a reasonable doubt.

Supreme Court Review

Petitioner also claims that he is entitled to clemency because the Illinois Supreme Court failed to consider whether his death sentence was disproportionate, excessive or otherwise inappropriate. However, because 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)), it is clear that the only reason the Illinois Supreme Court did not review petitioner's sentence in such a manner is because he did not ask the Court to do so. It should be noted, however, that although co-defendant Sumlin received 28 years for his part in the murder, he pled guilty to the crime. Also, Sumlin had only a minor criminal background, unlike petitioner who was on parole for his first murder for only a few months when he committed this murder and whose criminal activities went almost without pause from the time of his first offense at the age of 14.

The Prosecution's Continuing Duty to Disclose Exculpatory Evidence Following Conviction

Petitioner desires clemency arguing that Recommendation 70 would have required the prosecution in this case to disclose petitioner's correct medical records to support his claim that the police beat his confession out of him. However, as discussed above, the prosecution here had tendered both before trial and the second sentencing hearing these medical records, which did not corroborate his claim of abuse anyhow.

Adequate Funding

Petitioner asserts that he is entitled to clemency because he was denied adequate funding to investigate the case and/or to retain the necessary expert witnesses. However, despite the creation of the Capital Litigation Trust Fund, there is no indication that any capital defendant in Illinois, particularly those prosecuted in Cook County has ever been deprived of the necessary funds to investigate or retain appropriate experts. Rather, courts have denied various requests which are

deemed unreasonable or unnecessary, the same standard which applies for funds under the Capital Litigation Trust Fund. 725 ILCS 124/15(c). Also, the Cook County Public Defender has significant resources available for capital litigation. Therefore, the mere fact that the Capital Litigation Trust Fund was not created until 2000 is irrelevant.

III.

RECOMMENDATION

The People of the State of Illinois respectfully request that the Prisoner Review Board recommend to the Governor that Petitioner's petition for executive clemency be rejected.

Respectfully submitted,

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ACTING STATE'S ATTORNEY OF COOK COUNTY

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