

OCTOBER 2002 SESSION  
PRISONER REVIEW BOARD  
STATE OF ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Docket No. \
vs.	)	
	)	
LAWRENCE JACKSON,	)	Inmate No. N-10765
	)	
	)	

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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**

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**HEARING REQUESTED**

RICHARD A. DEVINE  
STATE'S ATTORNEY OF COOK COUNTY

By: LINDA WOLOSHIN  
JOHN MURPHY  
STEVEN ROSENBLUM

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**I**

**HISTORY OF THE CASE**

Petitioner, Lawrence Jackson, was indicted for the murders of four year old Dana Winder, her mother Vernita Winder, her mother's fiancé Mark Brown and her mother's friend Shirley Martin, for the attempt murder and aggravated battery of Dana's six year old sister Urica Winder, for the home invasions and armed robberies of each of the five victims and for residential burglary. A jury rendered verdicts of guilty of all offenses charged in the indictment, found petitioner eligible for a sentence of death and found no mitigating factors sufficient to preclude the sentence of death. Petitioner's convictions and sentences were affirmed by the Illinois Supreme Court in People v. Jackson, 145 Ill. 2d 43, 582 N.E.2d 125 (1991)

After the United States Supreme Court's decision in Morgan v. Illinois, 504 U.S. 719, 112 S.Ct. 2222, 119 L.Ed.2d 491 (1992), a new death penalty hearing was held. Jackson v. Illinois, 506 U.S. 802, 113 S.Ct. 21, 121 L.Ed.2d 5 (1992) A second jury found petitioner eligible for death and found no mitigating factors sufficient to preclude a sentence of death. The Illinois Supreme Court affirmed the finding of eligibility and death sentence in People v. Jackson, 182 Ill. 2d 30,

695 N.E. 2d 391 (1998)

Petitioner subsequently filed a petition for post-conviction relief which was denied by the Honorable Joseph Urso. The denial of that petition was affirmed in People v. Jackson, 2001 LEXIS 1783 (December 20, 2001)

## II

### FACTS OF THE CASE

#### (The Crime)

On the evening of September 24, 1986, O.C. Roland drove defendant and Bobbie Driskel to the Henry Horner Projects on West Washington in Chicago. (R. 1725-1726) Their plan was to kill Bobbie Driskel's cousin to get money, a video recorder and a television. (R. 1727) Defendant had two knives. (R. 1727) When they arrived at the Henry Horner Homes, they parked in the back and went up to the second floor. (R. 1728) At the door of the corner apartment, defendant handed Bobbie Driskel, also known as Disco, one of the knives. (R. 1726, 1728)

Bobbie Driskel knocked on the door and a lady answered. (R. 1729) Disco asked if Tiny was there and was told he was asleep. (R. 1729) Driskel asked if he could talk with Tiny and asked to use the bathroom. (R. 1729) After using the bathroom, Bobbie Driskel went to the couch where Tiny was sleeping. (R. 1730) He pulled his knife out and stabbed Tiny in the chest. (R. 1730) When Tiny jumped up, defendant grabbed him and began stabbing him with his own knife. (R. 1730-1731) That knife was between 12 and 15 inches long. (R. 1727-1728) Tiny died. (R. 1731)

The others in the apartment were in a room trying to keep the door closed by leaning on it. (R. 1731) Defendant forced the door open. (R. 1731) One of the women ran out and one remained in the room. (R. 1731) Defendant stabbed her. (R. 1731)

Bobbie Driskel called to defendant and asked for help with Tiny's girlfriend. (R. 1732) Defendant said, "Kill her too." (R. 1732) Both defendant and Driskel stabbed her. (R. 1733)

There were three children in the apartment. (R. 1733) The baby had been on the couch with Tiny and the other two children were in the bedroom. (R. 1733) One of the two ran out calling, "momma, momma" when defendant finished killing her mother. (R. 1733-1734) Bobbie Driskel grabbed the child and put his hand over the child's mouth. (R. 1734) When defendant turned back around, the child was on the floor dead. (R. 1734) When they left the apartment, there was a lot of blood all over and no one was moving. (R. 1734)

Defendant at that time was bleeding from his right hand and left forearm, having accidentally stabbed himself while he was stabbing his victims. (R. 1736-1737, 1738)

Defendant left the apartment with a television and video recorder. (R. 1734) He went down the stairs to O.C. Roland's car. (R. 1735, 1737) O.C. Roland got out of the car and was putting the television in the trunk when Bobbie Driskel told him to hurry. (R. 1735-1736)

They went to Washington and Laramie where Bobbie Driskel and O.C. Roland got the television and video recorder out of the car. (R. 1738) Defendant remained in the car because he was bleeding. (R. 1738) Bobbie Driskel and O.C. Roland went to the second floor of a building where they sold the television and video recorder. (R. 1738) They returned with \$70 and a check, and went to the "cane spot." (R. 1738) Defendant threw his knife away. (R. 1739) He did not know where. (R. 1739) That was defendant's confession to this crime.

Phillip Simms, Mark Brown's (Tiny's) employer and Bobbie Driskel's former employer, was living on the second floor at 168 North Leamington on September 25, 1986. (R. 1590-1592, 1606-1607) At approximately 1:00 a.m., he was awakened by a knock on the rear door. (R. 1591, 1609) He got up and asked who it was. (R. 1591) Bobbie Driskel identified himself. (R. 1591, 1609) Mr. Simms opened the door. (R. 1591)

Bobbie Driskel asked if Simms would be interested in a VCR and a television. (R. 1594-1595, 1610) He said the television belonged to his uncle O.C. who was from Joliet. (R. 1595) Simms told Driskel that he would like to see it. (R. 1595, 1610) Bobbie Driskel turned and went down the rear steps of the apartment to an automobile parked in the alley. (R. 1595, 1610-1611) Simms could see two more people down there. (R. 1595-1596, 1611)

Less than five minutes later, Bobbie Driskel returned, accompanied by a man he introduced as his uncle O.C. (R. 1596) Driskel was holding a VCR. (R. 1596) O.C. was carrying the television. (R. 1596) Simms and Driskel went back and forth over the price for the items and eventually agreed on an amount of \$120. (R. 1596-1597, 1612)

Simms told Bobbie Driskel that he'd like to make sure the television and VCR worked and checked them. (R. 1597) The VCR already had a tape in it. (R. 1597) After Simms was satisfied that the items were in working order, he explained to Bobbie Driskel that he did not have \$120 in cash at home. (R. 1599-1600) He said he would write him a check and give him the remainder in cash. (R. 1600)

Simms spoiled two checks attempting to spell Driskel's last name correctly. (R. 1600) He wrote check number 153 in the amount of \$50, indicating on the check that it was for a television and VCR. (R. 1600-1601) He gave the check to Bobbie Driskel, along with \$70 in cash. (R. 1601)

Simms asked for a receipt for the cash and Driskel wrote a receipt on the back of one of the spoiled checks. (R. 1601) Bobbie Driskel wrote, "Warren T.V., Panasonic VCR" and the amount of \$450, which was in error. (R. 1603) He signed his name. (R. 1603, 1605) When that was completed, Driskel and O.C. Roland left. (R. 1605-1606)

Simms took the television and VCR into the bedroom where he and his wife attempted to clean them up. (R. 1606) They found brown spots. (R. 1606) Simms hooked up the television in the bedroom and played the tape that was in the VCR. (R. 1606) There were cartoons on it. (R. 1606)

The next morning, Simms discovered that one of his employees had failed to show up for work. (R. 1606-1607) That was Mark Brown. (R. 1607) After Simms left work, he listened to the news and learned the fate of Mark Brown. (R. 1607-1608) Simms called the Chicago Police Department. (R. 1608) When officers arrived, Simms turned over the television, VCR and checks. (R. 1598, 1608) Simms then accompanied police to Area Four in a squad car in which O.C. Roland also rode. (R. 1608-1609)

On September 24, 1986, six year old Urica Winder was living in apartment 210 at 1850 West Washington with her mother, Tiny, Shirley and sisters, Dana and Nicki. (R. 1542-1543) Late in the evening, there was a knock on the door. (R. 1544) Urica asked who it was and a voice answered, "Bobbie." (R. 1544) Urica saw Bobbie and a man with him whom she had seen at a party at Bobbie's kids' house. (R. 1545) That man was defendant. (R. 1546)

Urica went to her bedroom. (R. 1546-1547) Her mother came into the room, woke her sister Dana and took them into her room. (R. 1547) Bobbie Driskel, defendant and Shirley Martin were in that room. (R. 1547-1548) Shirley was facing defendant, who had a knife in his hand approximately 12 inches long. (R. 1548-1549) Shirley said to defendant, "I love you." (R. 1550,

1572) Defendant answered, "I don't love you." (R. 1550, 1572) Defendant stabbed Shirley in the heart. (R. 1549, 1550) Shirley slid down the wall, leaving the wall covered with blood. (R. 1550-1551) Defendant left the room. (R. 1552)

Bobbie Driskel walked to the window next to Urica and told her he wasn't going to "mess" with her. (R. 1551) Driskel, who had a knife in his hand, then stabbed Urica in the stomach. (R. 1551-1552) Urica ran to the front room door, trying to get out. (R. 1552-1553)

In apartment 310, directly above, Denise Adams heard what sounded like running through the apartment, a door slam and a little girl crying, "let go of my mother before you kill her." (R. 1507)

Bobbie Driskel dragged Urica by her foot back into the room and began stabbing her again. (R. 1553) The six year old held her breath, closed her eyes and rolled them up, playing dead. (R. 1553-1554) Bobbie Driskel stopped stabbing her. (R. 1554)

Driskel went to the dresser and said, "damn, ain't no money." (R. 1554) Urica continued to play dead until defendant and Driskel left. (R. 1555) She then got up and saw Shirley on the floor with blood all over her. (R. 1556) She wasn't moving. (R. 1556) Urica went into the front room where she saw Dana, Tiny and her mother. (R. 1557) Dana had blood all over her body. (R. 1557) She wasn't moving. (R. 1557) Tiny was on the couch. (R. 1557) He had blood on his feet. (R. 1557) Half of his foot was chopped off and it was leaning in back. (R. 1557) Urica's mother was behind the kitchen table. (R. 1558) She had blood all over her body. (R. 1558) She wasn't moving. (R. 1558) Urica got a drink of water and went to sleep. (R. 1555, 1558)

Urica woke the next morning when she heard her cousin and her mother's friend calling from outside the window. (R. 1558-1559) Sometime later that morning, Urica's 12-year-old cousin

Tamico telephoned and asked to speak to Urica's mother. (R. 1510, 1511, 1512-1513, 1559) Urica kept calling out Tamico's name. (R. 1513) Tamico told her to stop playing and put her mother on the telephone. (R. 1513, 1560) Urica told her that she couldn't, that her mother was on the floor and that she couldn't wake her up. (R. 1513, 1560) Tamico, who lived on the fourth floor of the same building, came down to the apartment. (R. 1511, 1513, 1560)

When Tamico got to the door, she saw that Urica had a lot of stab marks on her stomach and arms, and blood all over her with some coming out. (R. 1514) Urica told Tamico that Tiny's cousin Bobbie did it. (R. 1514, 1560) Tamico told her that she was going back upstairs to get help. (R. 1517, 1560)

Tamico awakened her mother, Alice Winder, and told her to go to Vernita's house because there was blood all over the place. (R. 1484, 1485) Alice Winder found Urica covered with blood with her stomach hanging out. (R. 1486) She found Tiny straddled on the couch. (R. 1487) He appeared dead. (R. 1487) Dana and Vernita were also dead. (R. 1487, 1488)

Urica was taken to the hospital where police spoke with her. (R. 1561, 1562) She talked to an officer about what had happened that night and picked photos of defendant and Bobbie Driskel from a group of photographs the police showed her. (R. 1562-1564, 1570) She told police that defendant had gotten a little fatter. (R. 1565)

Dr. Robert Stein, Chief Medical Examiner, performed autopsies of each of the four victims. (R. 1665, 1671, 1675) The examination of Vernita Winder revealed 55 incise wounds, including wounds to the temple, neck, upper chest, arms, leg, hands, wrist, abdomen, breast and back. (R. 1681, 1684, 1687) Eleven were stab wounds and 14 were defense wounds. (R. 1687)

The cause of her death was multiple stab wounds of the neck and chest involving the carotid artery as well as the lung. (R. 1694)

Four-year-old Dana suffered 19 incise wounds, including wounds to the chest and abdomen, the latter causing her intestines to protrude through the abdomen. (R. 1686, 1687) Five of the wounds were stab wounds and seven were defense wounds. (R. 1687-1688) The cause of death was multiple stab wounds which involved the heart, lung and aorta. (R. 1694)

The examination of Mark Brown revealed 29 incise wounds, of which 26 were stab wounds and five were defense wounds. (R. 1693) They included a cluster of 10 wounds to the neck, wounds to the chest, shoulder, arms, forearm, hand and a gaping wound of the right foot which resulted when the Achilles tendon, blood vessels and muscles were cut through and through. (R. 1689-1690) The cause of death was multiple stab wounds with involvement of the aortum, as well as the lungs and heart. (R. 1694-1695)

Shirley Martin suffered 15 wounds to the breast, back and leg as well as a wound resulting in a gaping hole in the back of the ear. (R. 1691-1693) There were seven stab wounds and six defense wounds. (R. 1693) The cause of death was multiple stab wounds of the chest involving the aorta and lung. (R. 1695)

Dr. Demetra Soter was on her way to work when she received four stat pages indicating there was a life-threatening situation. (R. 1763) She proceeded to the trauma unit of Cook County Hospital where she saw Urica on the trauma cart. (R. 1763-1764) Urica was very pale and very cold, with a temperature of only 96.7 degrees. (R. 1764) She had two sucking chest wounds on both sides of her lungs, gaping holes which appeared to be stab wounds, and, as she gasped for air, air would enter through the holes. (R. 1764) The lung tissue was visible through the holes and

multiple stab wounds were visible over her entire right arm and right hand, left arm and left hand, neck and chest. (R. 1764-1765) Her belly appeared to have been filleted open. (R. 1765) She had a six to eight inch gash down the center of her abdomen and her bowel was hanging out past her skin. (R. 1765) She also had multiple stab wounds over her abdomen. (R. 1765) Her blood pressure was quite low and her pulse very high and unstable. (R. 1765) She was in shock but was conscious. (R. 1765, 1784-1785) She had an oxygen mask on her face and I.V.s were placed in all her extremities. (R. 1765-1766) She received chest tubes to both sides of her lungs to help re-expand them. (R. 1766) Because of the damage to her lungs, she was bleeding from both and both were collapsed. (R. 1766) Her ribs were spread to insert plastic tubing to drain the blood that was in her chest cavity. (R. 1766) She was in severe pain but no anesthesia was given to her because it would have slowed her drive to breathe and that was the only thing that was keeping her alive. (R. 1765, 1766)

After doctors worked on Urica in the emergency trauma unit for approximately an hour, she was taken to the operating room. (R. 1767) She received general anesthesia and within two minutes, she crashed. (R. 1767-1768) Her blood pressure dropped completely, her heart began beating very quickly and she went into shock. (R. 1768) Doctors pumped massive amounts of blood and fluids into her I.V.s, opened her abdomen, compressed her aorta and opened her chest from her belly button to the left armpit to expose her heart. (R. 1768-1769) They found that the sac around the heart was filled with blood. (R. 1769) There was a stab wound to the heart and each time the heart would pump, blood would squirt out from the hole. (R. 1769) One of the surgeons placed his finger on the hole, the blood was drained from around the heart and the heart and the hole were sewn up. (R. 1770)

The rest of her chest was examined, revealing four holes in her diaphragm resulting from very deep stab wounds and resulting in injuries to the lungs and abdomen. (R. 1770-1771) An area of the liver that was dead and bleeding was removed. (R. 1772) A through and through injury from the front wall of the duodenum, coming out the back of the child, was sewn up. (R. 1772) Surgery was done to repair the small intestine, cutting parts out and creating a hole to drain the remaining areas. (R. 1772) A through and through wound of the aorta was repaired and an appendectomy was performed because if she ever developed appendicitis, it would be almost impossible to reopen her abdomen in view of the tremendous amount of scarring. (R. 1772-1773)

Because of the multiple stab wounds, her entire intestine was twice taken out and examined for individual stab wounds. (R. 1773-1774) Doctors had to remove the part of the bowel that had been hanging out of the hole in her abdomen. (R. 1774) That part was all dead. (R. 1774) She would never have a normal bowel. (R. 1773) A total of 18 drains and I.V.s were placed into her body. (R. 1776) During the course of the eight hours of surgery, she received approximately seven liters of I.V. fluids, five times the amount of blood she has in her body. (R. 1776-1777) She also received four liters of blood. (R. 1777) She was in high critical condition for seven or eight days and the family was informed that the doctors did not think there was a very good chance she would survive the next few days. (R. 1777)

Five days after surgery, Urica was attempting to breathe on her own. (R. 1778) She was getting very tired and had to be paralyzed. (R. 1778) When doctors attempted to remove the respirator, she again crashed and had to be put back on the respirator for another four days. (R. 1779) Three times a day, old dressings had to be removed and new dressings placed into a gash of about eight inches into her abdomen. (R. 1779) Because her abdomen had been open for ten hours

at home and the chances of infection were very high, the abdomen had to remain open for three months, until it healed on its own. (R. 1779) Urica remained in the hospital for a month. (R. 1780) She continued to see the doctor every two months for medical care and was seen weekly for psychiatric care. (R. 1780) She has approximately 48 stab wounds throughout her entire body that will remain for the rest of her life. (R. 1780)

At 8:30 p.m., defendant turned himself in at the 11th District desk. (R. 1631-1632, 1651, 1656) Defendant had a large laceration on his right palm and some small cuts on his left hand. (R. 1632) Assistant State's Attorney Michael O'Donnell noted the cuts on defendant's hand and arm and asked him if he was in pain and if he needed medical attention. (R. 1707) Defendant said he was not in pain and did not need medical attention. (R. 1707)

Defendant related that he and Bobbie Driskel, whom he called Disco, had been smoking cocaine together in the basement of his apartment on the west side. (R. 1709-1710) They had run out of cocaine and had no more money and were attempting to get money to buy more cocaine. (R. 1710) They were unsuccessful. (R. 1710) They asked O.C. Roland to take them to the Henry Horner Projects where Bobbie Driskel said there was an old boy holding some merchandise for him. (R. 1710)

Defendant told the assistant state's attorney that while O.C. Roland drove them in his blue and white Cadillac, he and Bobbie Driskel planned what they were going to do once they got to that apartment, speaking in whispers so O.C. couldn't hear what they were planning. (R. 1710)

When they arrived at the Henry Horner Projects, O.C. Roland parked in the back by the stairwell. (R. 1710) Defendant and Bobbie Driskel went to the second floor apartment, first door on the left. (R. 1710) Bobbie Driskel knew the people living in that apartment and knocked on the

door and asked to speak to Tiny. (R. 1711) When he was told that Tiny was asleep, Driskel asked if he could use the washroom. (R. 1711) He was let in. (R. 1711)

According to defendant, when Bobbie Driskel came back out to the living room area, defendant asked, "What are you going to do?" (R. 1711) Bobbie Driskel walked up to Mark Brown, who was sleeping on the couch, and plunged a knife into his chest. (R. 1711) Mark Brown began to get up and they began to wrestle. (R. 1711) Defendant joined in the stabbing of Mark Brown. (R. 1711)

All of the other people in the apartment were in the back bedroom and defendant and Bobbie Driskel went there. (R. 1711) Defendant forced the door open. (R. 1711) They began to stab all of the other people who were in the apartment. (R. 1711)

They got a television and a VCR which they walked down the steps. (R. 1711) They had difficulty getting the items into the trunk of the car and O.C. Roland helped them. (R. 1711-1712) They then drove to one or two locations where they attempted to sell the television and VCR and get money. (R. 1712) After they got the money, they went to buy more cocaine and then returned to defendant's apartment. (R. 1712)

The assistant state's attorney and Detective Keane entered the interview room with the court reporter. (R. 1713) A statement was taken and at 2:45 p.m., the assistant state's attorney returned to the interview room with the pages the court reporter had typed from the transcription. (R. 1714) The statement was read, corrected and signed. (R. 1715-1717)

Defendant told the detective and assistant state's attorney that he was wearing the same clothing he had worn the night before and the clothing was taken for evidentiary purposes. (R. 1719)

Serologist Rhonda Doyle examined defendant's clothing and found blood on his shirt, shorts and gym shoes, as well as on the scissors recovered from the kitchen. (R. 1813-1815)

Psychiatrist Marvin Ziporyn testified for the defense. In February of 1988, he interviewed defendant for approximately one hour at Cook County Jail. (R. 1828, 1830, 1852, 1853) During that interview, he conducted a physical examination, observed defendant's body language and speech patterns and had defendant relate the circumstances leading to his incarceration. (R. 1830, 1831-1832, 1853)

Dr. Ziporyn concluded that defendant was not suffering from brain damage of any kind. (R. 1854) He noted that defendant was lucid, coherent, cooperative and responsive. (R. 1832, 1874) There were no abnormalities. (R. 1832) Following a series of questions and answers, known as a Formal Mental Status Examination, and an open-ended dialogue, Dr. Ziporyn concluded that there were no marked or major mental issues. (R. 1833, 1834, 1853) He found that defendant had the most common of all personality disorders, referred to as a passive-aggressive personality, the same disorder from which Dr. Ziporyn believed Ghandi suffered, which was not relevant to the complaint for which defendant was jailed. (R. 1834, 1835, 1854, 1888)

Dr. Robert Reifman, director of the Psychiatric Institute of the Circuit Court of Cook County, testified in rebuttal. Dr. Reifman diagnosed defendant as mixed personality disorder, narcissistic and anti-social with drug abuse. (R. 2045, 2046, 2069) He confirmed that defendant did not suffer from any mental disease, mental defect or mental condition. (R. 2046, 2048)

The jury returned verdicts of guilty of the murders of Vernita Winder, Mark Brown, Dana Winder and Shirley Martin, the attempt murder and aggravated battery of the child Urica Winder,

the home invasions and armed robberies of each of the five victims and residential burglary. (R. 2275-2277) Judgment was entered on the verdicts. (R. 2281)

### **(Petitioner's Criminal History) 1**

On resentencing, the People commenced the second phase of the death penalty hearing with the testimony of Lawrence Beyer. Officer Beyer was working at 10:45 on the night of September 28, 1980 when he was waved down by a woman holding a child. (R. 1660) Her name was Geja Bibbs and her lips seemed to be swollen. (R. 1662, 1665) Ms. Bibbs had been approached from behind by defendant, who put a gun to her head and told her to keep quiet. (R. 1661, 1665, 1666) A second individual came to the front of her and punched her in the mouth. This second man directed defendant to search Ms. Bibbs. (R. 1665) Geja Bibbs gave the officer descriptions of her assailants and the direction of their flight. (R. 1661-1662)

Officer Beyer gave chase to a man who was running down an alley and who matched the description given. (R. 1662-1663) He found defendant laying in an empty lot of overgrown weeds. (R. 1663) After placing defendant under arrest, Officer Beyer returned him to the scene. (R. 1663-1664) Ms. Bibbs identified defendant as the man with the gun who had robbed her. (R. 1664, 1666) When he searched defendant, Officer Beyer recovered a gold chain and pendant taken from the victim as well as identification bearing her name. (R. 1664-1665) **[The petition for clemency omits that Ms. Bibbs was holding a baby, that petitioner held a gun to her head, that his co-offender punched her in the mouth and that petitioner searched her and was arrested in possession of Ms. Bibbs' property]**

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<sup>1</sup> The People will recount in bold any omissions or misrepresentations made in petitioner's petition for clemency.

As Officer Beyer gave defendant his rights and placed him in the squad car, defendant told the officer that after he got out, he was going to kill the officer and everyone. (R. 1666-1667) Defendant subsequently gave a statement admitting to the robbery and stating that the gun he wielded was a toy which he threw away while being chased by the police. (R. 1667) On February 5, 1981, defendant was convicted of robbery and sentenced to three years in the Illinois Department of Corrections. (R. 1685-1686)

On December 15, 1981, former Assistant State's Attorney William Gamboney was assigned to the felony trial division of the State's Attorney's Office. (R. 1705) On that date, the case of People v. Lawrence Jackson appeared on the call. (R. 1705-1706) Defendant, who had been serving a three-year term for robbery, was charged with failing to return after being signed out of a facility and given a six-hour furlough. (R. 1707) Defendant was arrested on a warrant approximately three months later. (R. 1716) He entered a plea of guilty and was sentenced to two years in the Illinois Department of Corrections to be served consecutively to the robbery term. (R. 1707-1708) On September 13, 1980, at approximately 10:10 p.m., Officer Joseph Pederson responded to a call of shots fired at Madison and Parkside. (R. 1718-1719) He received a description of a male Black wearing a red shirt and red pants. (R. 1719) He saw defendant, dressed in a red shirt and red pants, holding a long object which he dropped as the officer approached. (R. 1720) The officer recovered a Savage Stevens .410 gauge shotgun and arrested defendant, who had recently turned seventeen years old. (R. 1720-1721) When the officer went to court, defendant failed to appear and a bond forfeiture warrant was issued. (R. 1722) The officer subsequently learned that defendant had been arrested and was in Cook County Jail on the appointed court date. The case was dismissed by the State. (R. 1723)

At approximately 1:30 p.m. on October 24, 1985, Officer Francis Higgins was on patrol in

the vicinity of 1900 West Washington in the Henry Horner homes when he was approached by Vincent Rowe. (R. 1725-1726) Mr. Rowe told the officer that his apartment had been burglarized and that he learned who had taken the property from his apartment and where that person was. (R. 1726-1727) He named the offender as his cousin, Lawrence Jackson. Mr. Rowe told Officer Higgins that he spoke to a woman named Barbara Young who was also a resident of the building. She told Mr. Rowe that she had seen defendant carrying a television in the stairwell of the building at the time the burglary was committed. (R. 1727) Also taken were a stereo receiver and a turntable. (R. 1727-1728) Mr. Rowe told the officer that he saw defendant leaving the building at 1900 West Washington at the time of the burglary. (R. 1728)

Officer Higgins went to the location where Mr. Rowe said defendant could be found. (R. 1728) Some officers went to the front door and Officer Higgins went to the rear. As Officer Higgins stood at the rear door, it opened and defendant took one step out. Officer Higgins had not knocked at the door. (R. 1729) Defendant was arrested and searched. A kitchen knife was recovered. (R. 1730) Defendant was returned to the building at 1900 West Washington where he was identified by Barbara Young. (R. 1730-1731) Vincent Rowe declined to prosecute and the witness, who was on a breathing apparatus, was unable to leave her apartment. (R. 1734) **[Petitioner's petition omits the reason the charges were dropped.]**

Adult Probation Officer Lynda Hynek was asked to complete a pretrial investigation of defendant in 1987 in connection with the murders of these four victims. (R. 1736, 1738) Ms. Hynek interviewed defendant in October of 1987 and inquired about his educational background. (R. 1739) Defendant told her he went to Michelle Clark Elementary School until 8th grade and was then sent to Tennison Elementary School because of behavioral and absenteeism problems. He graduated from

Tennison in 1978 and enrolled at Austin High School. Defendant said he stayed there a few days and then dropped out because he wasn't interested. [**The petition for clemency omits the reason petitioner did not continue past elementary school.**] According to defendant, while in the penitentiary he received his GED. (R. 1740)

Defendant added that he had never worked and had supported himself by selling drugs. (R. 1742) [**Petitioner's petition for clemency merely states "Mr. Jackson's employment history is very limited."**]

Cook County Sheriff's Department Correctional Officer Kelly Byrne was assigned to Cook County Jail in January of 1986. (R. 1755) On January 21st of that year, she was working from midnight to 8:00 a.m. After midnight, inmates were required to stay in their bunks unless they had to use the washroom. (R. 1757) Officer Byrne entered the dorm and noticed that several inmates, including defendant, were out of their beds. (R. 1757-1758) She instructed the inmates to go back to their beds. Defendant returned to his bed, the first one next to the door, five to ten feet from where Officer Byrne stood. Defendant laid down on his bed and while looking at Officer Byrne, reached into his underwear, took out his penis and started to masturbate. (R. 1758) Officer Byrne prepared a disciplinary report and defendant was escorted to segregation. (R. 1758-1759) When defendant returned from segregation, two or three days later, he continued to expose himself to Officer Byrne often, if not every night. (R. 1759)

In June of 1986, close in time to defendant's release date, Officer Byrne was standing in the stairwell as defendant was going up the stairs. (R. 1760) He told her "I will get you. I will find you, and I will get you." (R. 1761) A few weeks before his release, defendant came up behind the officer, who was the mother of an eighteen-month-old daughter, leaned in close and asked how her little girl

was doing. (R. 1971-1762) His tone was very threatening. (R. 1762) Officer Byrne learned defendant's release date and began to carry an off-duty weapon. She changed her route home from work every day and instructed her babysitter on the location and use of her off duty weapon. (R. 1764)

Sergeant Knowles of the Cook County Sheriff's Police Department was in charge of the inmate disciplinary hearing board and keeper of records for the Cook County Department of Corrections. (R. 1775) As a sergeant of the maximum security section of the jail, he also had personal contact with defendant. (R. 1776) Ten disciplinary reports were filed against defendant for the five and a half month period from November 16, 1985 through April 29, 1986. (R. 1778) On November 16, 1986, defendant was charged with fighting after the reporting officer observed him throw a chair in the day room at another inmate. (R. 1778-1779) After a hearing, defendant was found guilty and given the maximum of 29 days in segregation. (R. 1779) On December 26, 1985, defendant was transferred to another division after he was seen fighting in the dorm with another inmate. (R. 1779-1780) Four days later, defendant approached another inmate and struck him several times in the face and chest. (R. 1780) He received 10 days on lock-up. (R. 1780-1781) Three weeks later, on January 21, 1986, defendant was charged with intentional indecent exposure in the incident involving Officer Byrne. (R. 1781) Defendant received seven days for fighting on February 4, 1986. (R. 1782) There were an additional three offenses for which defendant was sentenced to segregation. (R. 1782-1783)

An additional ten disciplinary reports were filed for the time period covering November 5, 1986 through November 8, 1987. (R. 1783) On February 13, 1987, defendant was charged with fighting and gambling and received eight days. On July 8, 1987, defendant was again disciplined for fighting. (R. 1784) Three weeks later, defendant was charged with possession of a weapon after an officer found a shank, a metal piece of vent cover sharpened and wrapped with a piece of ace bandage,

under defendant's mattress. (R. 1784-1785) Defendant received five days for that offense. On August 6, 1987, petitioner received 29 days for fighting a correctional officer. (R. 1788-1789) On April 25, 1988, defendant was in possession of two sharpened metal objects. He was told to turn around so he could be searched. Defendant refused and said that he and his people "will kick r/os ass and any other officers who came into the Wing 2-J." (R. 1789-1790) Defendant called to other inmates to assault the officer. (R. 1790) The officer called for several more officers and, after searching defendant, found a sharpened metal object. (R. 1790) Defendant was charged with refusing an order, threats by words and possession of a weapon and was transferred to maximum security. (R. 1789, 1790) On the day of that incident, Superintendent English requested that Director Glotz transfer defendant to increased maximum security in Division One. (R. 1790-1791) He wrote "This individual has been housed in segregation wing six times in the last eight months, and on the 25th of April attempted to incite a riot among the Vice Lords on Wing 2-J -- in Division 6." (R. 1791) In response to that request, defendant was transferred. (R. 1792) There were an additional five disciplinary reports for this time period. (R. 1792)

For the time period of March 4, 1993 through September 12, 1994, while defendant was awaiting this death penalty hearing, sixteen disciplinary reports were filed. (R. 1793) On April 26, 1993, when a woman officer asked defendant to lock up, he twice refused. He then told her, "fuck you, bitch, I will fuck your cunt up." Defendant approached the bars, reached through and attempted to grab the officer. (R. 1794) After a finding of guilty, defendant received five days in the lockup. (R. 1794-1795)

On August 15, 1993, Sergeant Knowles was present when defendant participated in a riot. At approximately 9:30 a.m., the canine unit was called for a search of F-1 and ABO tiers. After

making a search, Sergeant Knowles and a lieutenant told inmates to go to their cells and lock up. They refused. (R. 1795) They began to break up tables and arm themselves with steel table legs. (R. 1795-1796) They put soap and water on the floor. (R. 1796) Defendant armed himself with a three foot long steel rod. All divisions and the canine unit responded to a call for additional officers. (R. 1797) Director Furman came to the tier and ordered the inmates to drop their weapons and go to their cells. They did not. The director then ordered the officers to go in and disarm the inmates. Defendant fought with the officers as they came in. (R. 1798) He was subdued by three or four officers and a member of the canine unit, which bit him when he swung at the dog handler. The scene after the riot was bloody. There were injured officers and injured inmates. (R. 1799) Defendant was given the maximum 29 days. (R. 1800)

On December 5, 1993, defendant was charged with arson and given ten days in segregation after officers discovered a fire outside his cell. (R. 1800) The next day, he was charged with possession of a weapon and given 15 days after five shanks were found in his cell. (R. 1801) On August 15, 1994, defendant was charged with assaulting a staff and received 29 days after a sergeant opened defendant's cell and defendant came out swinging his fists, repeatedly striking the sergeant in the mouth and lips. (R. 1802) There were eleven additional charges. None of defendant's disciplinary violations involved the possession of drugs. (R. 1803)

In his 27 years as a correctional officer with the Department of Corrections, Sergeant Knowles had come into contact with about 1000 inmates. (R. 1803) In terms of dangerousness, he rated defendant fourth. (R. 1804)

Jim Utley, keeper of records for the Illinois Department of Corrections, testified to defendant's disciplinary violations during his two terms in the penitentiary. (R. 1831, 1840) Between

1981 and 1983, defendant was found in violation of various rules 58 times. (R. 1843) When he was returned to the penitentiary for failure to return, 180 days of good conduct credit was revoked. (R. 1844, 1846) On January 8, 1982, defendant yelled across the dining room, after having been warned that this was an infraction. Defendant responded "fuck that shit" and continued with his disturbance, adding that he didn't give a damn about going to segregation. (R. 1848) He received five days. (R. 1849) On both May 22 and May 23, 1982, defendant placed a pencil in the lock of his cell door to prevent it from closing. (R. 1851-1852)

On August 3, 1982, an eight-inch long, flat metal, sharpened shank was found in defendant's table leg. (R. 1852) On February 3, 1983, defendant approached the desk of the science teacher, told him he was going to kill him if he saw him on the streets, began waving his hand with his forefinger pointed in the teacher's face and stated "you motherfucker." When told to leave the room, defendant continued to stand in front of the desk using the word "motherfucker" while speaking to the teacher. It was recommended that defendant be removed from the school program. (R. 1854)

On July 28, 1983, when an officer opened defendant's cell to remove the jam so the door would lock, defendant told the officer to get away and poked him in the forehead. (R. 1855-1856) On March 29, 1983, defendant refused to lock up on his gallery. There were an additional 48 violations. (R. 1857)

During defendant's second confinement, between September 9, 1988 and January 5, 1993 when he was returned to Cook County Jail, there were 38 disciplinary reports. (R. 1859, 1861) On October 2, 1989, a correctional officer was taking defendant from the shower to his cell. (R. 1861-1862) Defendant began walking as the officer tried to hook the lead chain to his cuff. Ignoring the officer's request to "hold up", defendant kept walking past his cell. Defendant told the officer that

when he put defendant in his cell and took the cuffs off, he was going to "hit you and fuck you up." The officer placed defendant into his cell and removed the cuff from his left hand. Defendant turned around and hit the officer in the right eye. He received one year segregation. (R. 1862)

On October 16, 1989, defendant began throwing human feces, as well as trash and shoes, on a correctional officer and a TAC unit who were transporting another inmate. Defendant called them a "bunch of pussy motherfuckers and bitches and coward motherfuckers" and other names. (R. 1863) Defendant was punished with six months segregation. (R. 1863-1864) Two weeks later, an officer asked defendant to move his tray so milk could be placed on his slot door. As the officer turned to walk off, defendant threw his tray at him. He then threw his mirror. When the officer turned around, defendant said "do you have a problem; you are going to have." Defendant received one month without commissary. (R. 1864)

On March 18, 1990, as a correctional officer was transporting another inmate to the library, defendant told him he was also supposed to be in the library. When the officer told defendant he would come back for him, defendant replied, "you better not come and get me you pussy motherfucker, and I will hit your ass." The officer returned for defendant. When he uncuffed defendant's first handcuff and started to uncuff the second, defendant took his free hand and made two half swings at the officer, stating, "see motherfucker, if I wanted to hit you, I could." (R. 1865)

On April 27, 1990, defendant was asked when he wished to use the telephone. (R. 1866) When defendant asked for 2:30 p.m., he was told that spot was already taken but the rest of the day was open. (R. 1866-1867) Defendant kept repeating that he wanted 2:30. The correctional officer walked away. Later in the day, when the officer walked by defendant's cell, defendant threw two boxes of cereal and his mirror at him. The mirror hit the officer in the back of the leg. Defendant received an

additional year of segregation. (R. 1867)

On August 22, 1990, defendant wanted his laundry bag. He started banging on the cell door with a metal stool and broke the window in the cell door. (R. 1868) On April 3, 1991, an officer found a 9 1/4" long piece of metal, sharpened to a point with tape wrapped around it for a handle in defendant's cell. (R. 1869-1870) Two weeks later, as a female correctional officer walked past defendant's cell, defendant stood at the hatch masturbating with his penis almost out of the hatch. (R. 1870-1871)

Three days after that incident, defendant was returned to his cell from the showers and told to lock up. (R. 1871-1872) Defendant told the officer that he was going to go down to the gallery. The officer informed defendant that he did not have time because he had to shower other residents. Defendant pulled the officer down to the gallery. When the officer pulled on the chain to stop defendant and again ordered him to lock up, defendant turned around and pushed the officer against the cell and hit him in the head with his head. (R. 1872) Once the correctional officer, a lieutenant and another correctional officer were able to lock defendant up, defendant refused to give up his cuffs. Defendant received another year of segregation. (R. 1873)

As a result of that incident, Lieutenant Josh Shettleworth wrote a memo to Louis O. Lowery, expressing his concern that, despite defendant's being behind steel doors, "he still threatens to hit or harm other staff." (R. 1873, 1875-1876) He wrote, "There are only a few staff that can move him without any trouble. It now takes a lieutenant to shake him down because he won't [sic] other officers to, also this resident weighs well over 300 pounds and just drags my officers down the gallery with him. He is very argumentative in any matter and agitates not only staff, but the residents, also. Sir I am requesting to see if you will take into consideration on shipping this resident to Menard." (R.

1876)

On July 10, 1991, defendant was cuffed and removed from his segregation cell. (R. 1876) When the correctional officer attempted to search defendant, he would not stop walking. (R. 1876-1877) He spun around, jerked the lead chain from the officer's hand, jumped in his face and said, "Look, Boy, don't you ever pull on my motherfucken [sic] chain. You must think you are a bad motherfucker. I don't stop for any motherfucker." Defendant continued to walk down the gallery. After he was uncuffed in the holding cage, defendant put his hand up and said to the lieutenant, "Come on you big fat ass old pussy motherfucker, come on in here, I will kick your motherfucken [sic] ass." Defendant then shoved the gate causing it to come into contact with the lieutenant. (R. 1877)

Five days later, defendant argued with a correctional officer about the way he was shaken down. After his cuffs were taken off, he was asked to step through a second gate because he was holding up the yard line. He replied, "who the fuck do you think you are. You do not know who you are talking to." Defendant folded his arms, said "fuck you" and just stood there. Again he was told to step inside. He did not. Other residents were coming out. (R. 1878) When defendant saw them he grabbed the gate and jerked it hard enough to come out of the officer's hand, slam wide open and hit his arm. (R. 1878-1879) Defendant received an additional three months segregation. (R. 1879)

On November 19, 1991, defendant deliberately masturbated through the hatch as a female correctional officer walked down the gallery. (R. 1879) On January 5, 1992, defendant became angry because a correctional officer looked at his food tray. Defendant threw a container of apple juice, striking the officer on his leg and screamed, "I will fuck you up the next time I see you." He received six months segregation. (R. 1880) Fifteen minutes later, defendant threw a juice container at a lieutenant, hitting him on the leg and arm and received another nine months in segregation. (R. 1881)

On June 5, 1992, a correctional officer recovered a homemade weapon made of flat steel, approximately 7" long and 1/2" wide, with a sharpened point and a taped handle. (R. 1882) Again defendant received six months segregation. (R. 1883) On that same day, defendant threw a toilet brush handle at a correctional officer who was escorting another prisoner. (R. 1884) Again, on the same day, defendant refused to comply with an order to allow the hatch of his cell to be closed. Chemical agents had to be used to compel compliance, which enraged other inmates in the unit. Defendant threatened to kill the staff while holding a solid metal tool in his hand. For the latter incident, defendant received an additional six months segregation. (R. 1884, 1885)

On July 8, 1992, a correctional officer was escorting defendant from the library to his cell and was uncuffing him through the steel door when defendant spun on the officer catching the small finger of his right hand in the cuffs and twisting it. (R. 1885) On August 24, 1992, defendant tried to punch a correctional officer, who ducked out of the way. (R. 1885-1886) Defendant told him "I told you I'm going to get you you motherfucker." On September 4, 1992, defendant stuck his hand out of the steel door and threw a mirror at the officer hitting him in the chin, resulting in two stitches. (R. 1886) He received one more year in segregation. (R. 1887)

Defendant received another six months in segregation for a November 17, 1992 incident in which he threw hot liquid on another inmate, resulting in minor burns to the inmate's upper right arm and face. (R. 1887)

During defendant's two penitentiary incarcerations, there were a total of 96 incidents that resulted in findings of guilty. None of the disciplinary reports indicated that defendant appeared to be under the influence of drugs or any other substance nor did defendant ever make that claim when appearing before the disciplinary committee. (R. 1889-1890)

Defendant's behavior changed between his first incarceration and his second. During his second incarceration, defendant received more disciplinary reports for aggressive behavior. (R. 1892) Defendant was placed in the highest security possible in the Illinois Department of Corrections. Whenever he left his cell, he was shackled. (R. 1933) Whenever he left his cell, he was transported or accompanied by a guard. (R. 1934)

During cross-examination, defendant elicited testimony that reports made on March 4, 1981, for the year 1989, on September 11, 1990 and on September 10, 1991 reflected that defendant denied gang affiliation. (R. 1914, 1916, 1917, 1918) It was then stipulated that if recalled to the stand, Lynda Hynek would testify that when she interviewed defendant in October of 1987, he told her that he was a member of the Vice Lords Street gang. (R. 1964) Sergeant Knowles was recalled and testified that when he read the December 6, 1993 report charging defendant with possession of a weapon, he omitted the fact that defendant was also charged with gang activity. (R. 1966) In the course of recovering five shanks, officers also recovered gang literature from defendant's cell. (R. 1966-1967) On July 8, 1978, defendant was charged with gang activity. (R. 1967) Retrieved from his cell was the prayer of the Conservative Vice Lords, a Chicago street gang. (R. 1970)

The People rested in aggravation before the Court. After the lunch recess, the People asked and were allowed to reopen aggravation. At that time, Cook County Deputy Sheriff Joseph Bennett, who was assigned to the courtroom of Judge Urso, testified that while in the courtroom he was seated directly to the left of defendant. (R. 2060-2061) After the jury was sent to lunch and the lawyers were addressing the judge, he observed that defendant had a paperclip in his hands which he was manipulating, opening and playing with. (R. 2062) Deputy Bennett informed Deputy Nomellini of what he had seen. Deputy Nomellini suggested that they continue to observe defendant to see if he

attempted to take the paperclip back with him. When the case was passed, they began to escort defendant into the lockup. Deputy Bennett could see that defendant had the paperclip hidden in his hand. Defendant placed his hands in his pockets. (R. 2063) When defendant removed his hands from his pockets, Deputy Bennett could no longer see the paperclip . (R. 2063-2064)

After they proceeded past the door to the lockup, Deputy Nomellini asked defendant to stop and stand against the wall. Defendant raised his hands, fists clenched and asked "What the fuck for." Before they could answer, defendant said, "Get off me, Bitch" and shoved Deputy Bennett against the wall. As both deputies attempted to restrain defendant, a struggle began which proceeded fifteen feet down the hallway of the lockup. Deputy Bennett tried to get defendant into a headlock. Defendant's hand came free and he scratched the side of Deputy Bennett's face. He suffered a laceration on the side of his cheek and a minor injury near the corner of his mouth. (R. 2064) The paperclip was recovered from the floor where the struggle occurred. (R. 2068)

Other deputies answered the call for assistance put over the radio. (R. 2066) It took more than five of them to get defendant on the ground with his face towards the floor in an attempt to handcuff him. (R. 2067) After he was cuffed and rolled over in a sitting position on the floor, defendant looked at Deputy Nomellini and told him he was going to be back all week and he was going to get him. (R. 2068) The jury returned a verdict for death.

Since this second death sentence, defendant has continued as a disciplinary problem in the penitentiary. His most recent disciplinary summary, as of May of 2002, is attached as an exhibit.

## REASONS FOR DENYING THE PETITION

One hundred and sixty-six stab wounds were inflicted on five people -- two little girls, two women and a man asleep with a baby on a couch. Those wounds were inflicted with such viciousness that blood was found on the light bulbs in the ceiling fixtures. Remorseless, the night of his arrest petitioner telephoned his uncle and complained bitterly that the six year old had not died.

It is difficult to know where to begin in listing the reasons clemency should be denied. There are so many. Early on petitioner decided that his only goal in life would be to achieve the rank of street gang leader. The only job he ever held was drug dealer.

Before this crime, petitioner and a co-offender robbed and punched a woman at gunpoint as she held a baby in her arms. During an incarceration for burglary, among many other disciplinary violations, petitioner masturbated on a daily basis in front of a woman correctional officer and, as he neared his date of release, threatened her infant daughter. He struck and injured officers, he possessed shanks and he attempted to incite a riot.

After petitioner's conviction for these murders, while in the Illinois Department of Corrections, he threw his feces on an officer, struck officers (one required stitches after petitioner hit him on the chin with a mirror) and, while in segregation, masturbated with his penis almost out of the hatch when female correctional officers passed by. An inmate was burned when petitioner threw hot liquid on him. Memos were written that, even behind bars, petitioner remained a threat.

While awaiting his second sentencing hearing, petitioner committed arson. On another occasion, he armed himself with a three foot long steel rod while participating in a riot. Sergeant Knowles, a 27-year veteran of the Cook County Department of Corrections, who had come into

contact with approximately 1000 inmates, rated petitioner fourth in terms of dangerousness.

Astonishingly, during his second sentencing hearing, after the People rested in aggravation, petitioner attacked the Cook County Sheriff who was escorting him to the lockup. Petitioner unfolded a paperclip he had picked up from the floor and slashed the sheriff across the face, lacerating the side of his cheek and injuring the corner of his mouth.

Put bluntly, petitioner is completely immoral. Upon leaving the scene of this quadruple homicide, when questioned by his uncle as to whether he had committed a burglary, petitioner snickered. In his worldview, the rules that govern society do not apply to him. He is law unto himself. Clemency should never be a consideration.

### **(Petitioner's Claims)**

#### Introduction

Petitioner 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 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 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 every court which has examined the proceedings in his case determined that they were fundamentally fair and that he was not unduly prejudiced in any manner.

### Supreme Court Rules

Petitioner asserts that he is entitled to clemency because the new Supreme Court Rules governing capital cases were not applicable to his proceedings. However, the Illinois Supreme Court has clearly held that the amendments to its rules are not retroactively applicable. Hickey, 2001 Ill. LEXIS 1080 at \*65.

### Videotaping

Petitioner also seeks clemency because his court-reported 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), a court-reported statement 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.

### Statutory Mitigating Factors

Petitioner complains that his jury was not instructed to consider as statutory mitigating factors the fact that he had a history of extreme emotional or physical abuse and/or that he suffers from reduced mental capacity. However, although the jury was not expressly instructed to consider these factors, it was instructed that mitigating factors include "any reason why the defendant should not be sentenced to death" and that it should consider all mitigating evidence

even if it does not pertain to one of the enumerated factors. Illinois Pattern Jury Instruction 7C.06.

In any event, the evidence of extreme emotional or physical abuse was seriously impeached by petitioner's sister's testimony at his first sentencing hearing that their childhood was a regular childhood, by her testimony that she refused to corroborate that they were abused from Memorial Day to mid-January (two weeks before the resentencing hearing) despite the assistant public defender's continual efforts to compel her to do so, and by petitioner's mother's testimony that the only people who ever disciplined petitioner were members of the criminal justice system.

The evidence of reduced mental capacity is contradicted by his own psychiatrist's testimony at trial that petitioner did not suffer from brain damage of any kind and that he found no abnormalities and that following a physical examination, observation of petitioner, a formal Mental Status Examination and an open-ended dialogue, he concluded that there were no marked or major mental issues. That testimony was confirmation of the testimony of Dr. Robert Reifman, then director of the Psychiatric Institute of the Circuit Court of Cook County, that petitioner did not suffer from any mental disease, mental defect or mental condition.

Petitioner's expert at resentencing, Dr. Michael Gelbort, testified on cross-examination that each time he has testified concerning fitness to stand trial he has, in fact, found the defendant unfit to stand trial and each time he has testified concerning sanity, he has found the defendant to be insane. More critically, Dr. Gelbort admitted that, at the suggestion of the assistant public defender, he changed a report to read the opposite of the way he had originally written it.

### Allocution

Petitioner also claims that clemency is appropriate because he was denied the

opportunity to make a statement in allocution at his sentencing hearing. However, as the Illinois Supreme Court stated long ago, “an unsworn statement to the sentencing jury [to be] consider[ed] along with testimony given under oath and the arguments of counsel would at the least confuse the jurors, and might also impair their ability to weigh the aggravating and mitigating factors.” People v. Gaines, 988 Ill. 2d 342, 380, 430 N.E.2d 1046 (1981). Moreover, petitioner was free to testify under oath at his sentencing hearing to explain why he should not be sentenced to death, but chose instead to rely upon his witnesses in mitigation and his attorney’s closing argument. Therefore, he was given every opportunity to present himself to the trier of fact before he was sentenced.

#### Instruction on Alternative Sentences

Petitioner believes that his death sentence should be commuted because the jury was not instructed as to all the possible alternative sentences. [**The jury was instructed on the possible alternative sentence**] Because this case involved multiple murders, the jury was instructed, in accordance with People v. Gacho, 122 Ill. 2d 221, 522 N.E.2d 1146 (1988), that if petitioner was not sentenced to the death penalty, he would be sentenced to natural life imprisonment.

#### 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 arguments.

### 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.

### 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. **[To the contrary, the Illinois Supreme Court considered the proportionality of petitioner's sentence to that of his co-defendant in both of his direct appeals and in his post-conviction appeal- See attached opinions]** Petitioner's footnoted complaint that his co-defendant received natural life omits that the co-defendant's defense was compulsion and that the compulsion

was from petitioner who, approximately one month before these crimes, stabbed his co-defendant. At the sentencing hearing, the co-defendant presented evidence that he had saved the life of Shanita Winder by putting her in another room where she was found the next morning. Furthermore, it was petitioner who carried two knives to the murder scene for both himself and his co-defendant. It was petitioner who used his 340 pounds to force open the door behind which four victims hid. It was petitioner who walked out of the scene where the victims were stabbed with such viciousness that there was blood on the ceiling fixture light bulbs and who “snickered” when his uncle asked if he had burglarized an apartment. The facts presented in the “sentencing hearing” portion of this response to the petition for clemency bespeak a person with an evil heart. His petition for clemency should be denied.

## CONCLUSION

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

Respectfully submitted,

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