

OCTOBER 2002 SESSION  
PRISONER REVIEW BOARD  
STATE OF ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Docket No. \
vs.	)	
	)	
PATRICK PAGE,	)	Inmate No. N-21564
	)	
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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**

RICHARD A. DEVINE  
STATE’S ATTORNEY OF COOK COUNTY

By: LINDA WOLOSHIN  
RICHARD STAKE

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**I**

**HISTORY OF THE CASE**

Petitioner was indicted for two counts of murder, two counts of armed violence and one count of armed robbery. The armed violence counts were dismissed prior to trial. A jury found petitioner guilty of the murder and armed robbery of 19-year-old Chuck Howell. The same jury found petition eligible for the death penalty and that there were insufficient mitigating factors to preclude imposition of the death penalty. Petitioner was sentenced to an extended term of sixty years incarceration on the armed robbery conviction.

Petitioner appealed his convictions and sentences to the Illinois Supreme Court. On June 17, 1993, the Illinois Supreme Court affirmed the convictions and sentences. People v. Page, 156 Ill. 2d 258, 620 N.E.2d 339 (1993). Petitioner's petition for rehearing was denied on October 4, 1993. On June 30, 1994, the United States Supreme Court denied petitioner's petition for writ of certiorari. Page v. Illinois, 512 U.S. 1253, 129 L.Ed.2d 892, 114 S. Ct. 2781 (1994).

On May 16, 1994, petitioner filed a petition for post-conviction relief. On December 20, 1996, petitioner filed a supplemental petition. On June 27, 1997, petitioner filed a consolidated first

amended petition for post-conviction relief which superseded and replaced all prior post-conviction petitions. On August 8, 1997, the trial judge denied petitioner's petition for post-conviction relief without an evidentiary hearing.

On September 4, 1997, petitioner appealed the denial of his post-conviction petition to the Illinois Supreme Court. On August 10, 2000, the Illinois Supreme Court affirmed the trial court's denial of the petition for post-conviction relief. People v. Page, 193 Ill. 2ds 120, 737 N.E.2d 264 (2000) On October 2, 2000, the Illinois Supreme Court denied petitioner's petition for rehearing.

On June 4, 2001, the United States Supreme Court denied petitioner's petition for a writ of certiorari. Page v. Schomig, 150 L.Ed. 2d 213, 121 S.Ct. 2221 (2001) On October 2, 2001, petitioner filed a petition for a writ of habeas corpus in the United States District Court for the Northern District of Illinois, Eastern Division. On September 3, 2002, the People of the State of Illinois filed their response. That case is currently pending.

## II

### FACTS OF THE CASE

#### (The Crime)

Defendant and Jerry Feinberg killed Chuck Howell. (R. 637-638) It had been their intention to do so, and to that end, defendant and Feinberg planned the crime out. (R. 638) Defendant and Feinberg planned how to lure Howell to the murder site, they drew a map of the area where they were going to kill him and bury him and then went to the location in advance to dig a hole. (R. 638)

Defendant took a shovel from a neighbor's home in order to dig the hole. (R. 638) Defendant and Feinberg lured Howell to his grave by telling him they were going to party and sell some drugs to teenagers. (R. 639) Once there defendant stabbed Howell while Feinberg hit the victim with a piece of wood. (R. 639) According to the defendant, they killed Howell in order to cover up their murder of Andy Devine. (R. 639) Howell and Devine had been roommates and he was afraid that Devine's disappearance would raise questions in Howell's mind. To prevent that, he and Gerald Feinberg decided to kill Howell. (R. 640)

As part of their plan to murder Howell, he and Feinberg drew a map of the Park Forest woods on defendant's basement floor in order to detail where they would bury Howell. According to their map they were going to bury him 100 feet from the bike path by the black bridge in the woods. (R. 651) The same day that they drew the map defendant and Feinberg went to the woods to dig the hole where they ultimately buried Howell. (R. 653)

On October 3, 1985 defendant and Feinberg lured Howell to the woods using the ruse of a party. (R. 652) Defendant admitted stabbing Howell once in the chest. (R. 653) Howell tried to run and asked defendant why he was doing this. Defendant told him because he was an "asshole."

Feinberg told Howell "You deserve it, you deserve it." (R. 653-654)

Defendant and Feinberg buried Howell in the hole which they had previously dug. (R. 654) After completely covering him with dirt, the two of them put branches on top and started a fire with lighter fluid which they stole from a neighbor of the defendant's. (R. 654-655)

Prior to burying Chuck Howell, Feinberg took Howell's car keys from the right pocket of Howell's jeans. (R. 657) As they were leaving the woods, Feinberg gave the car keys to defendant. (R. 658)

Defendant and Feinberg then went back to Page's house where they smoked pot. They then "cruised" in Howell's car. Afterwards defendant went home and changed his clothes because they were dirty. (R. 655) Defendant described in detail the clothes Howell was wearing the night they murdered him. (R. 656) His description included the "punk rocker wrist band" which Howell wore. (R. 656-657)

Defendant and Feinberg ultimately sold Howell's car to Paragorus, a junkyard in Chicago Heights for \$50.00. (R. 658) The two of them spent the money on beer. (R. 659) That was defendant's court-reported statement concerning the murder of Chuck Howell.

During the early evening hours of October 3, 1985 the victim, Chuck Howell, then 19 years old, was at home in Park Forest with his mother, Joan Howell. (R. 509-510) Although Chuck had originally told his mother that he intended to stay home that night, at approximately 7:30 p.m. he received a telephone call and he decided to go out. (R. 509-510, 514) Although Chuck did not tell his mother who had called, he did tell her that he had a chance to make \$25.00 and so he was going out. (R. 510)

When Chuck left that evening he was wearing blue jeans, a charcoal gray shirt with snaps, a

blue jean jacket and a vest. (R. 510) He also had on a black leather band, which he frequently wore. (R. 510) Chuck left home in a brown Camaro which Mrs. Howell thought belonged to her son. (R. 515) On a later date, Mrs. Howell found out that the car actually belonged to Andy Devine's mother. (R. 515) Andy Devine was a friend of Chuck's who had stayed at the Howell residence for approximately four months during the summer of 1985 until Mrs. Howell asked him to leave because of his arrest for possession of drugs. (R. 516-518) Mrs. Howell last saw Andy Devine in September, 1986. (R. 518)

After Chuck Howell left home on the evening of October 3, 1985, Mrs. Howell never again saw him. (R. 510-511) Despite continually contacting the Park Forest police she never received any information until July, 1987 when they contacted her to inform her that her son's body had been found buried in the Woods in Park Forest. (R. 510-511, 518-519)

On the night of October 3, 1985, Michelle Kury, who had been defendant's girlfriend since the summer of 1985, was at defendant's home. Present were the defendant, defendant's mother, Jerry Feinberg, and the victim, Chuck Howell. (R. 540-541) Chuck Howell had been the last one to arrive that night. (R. 542-543) While defendant's mother was upstairs, Michelle and the three boys sat in the basement drinking. (R. 541) Defendant kept running up and down the stairs making phone calls. (R. 541) He told the group that the telephone calls were to arrange a meeting with some teenagers to whom they were going to sell some marijuana. (R. 542)

At approximately 9:00 p.m. defendant, Jerry Feinberg and Chuck Howell left. (R. 542) They said they were going to meet the teenagers in the forest preserve, behind Dogwood School, a local hangout. (R. 542-543, 546)

The following morning between 2:00 to 3:00 a.m. defendant and Jerry Feinberg came back to

the Page residence. (R. 544-545) When Michelle questioned defendant as to where Chuck Howell was, defendant said that Howell had hooked up with some other friends and had gone to stay with them for a couple of days. (R. 544) Defendant said Howell left his car with him to look after. (R. 545) According to Michelle, the defendant looked "scuffed up" when he returned home, but she didn't see any blood on him. (R. 556)

The following morning Michelle saw Chuck Howell's car parked in the street area near defendant's home. (R. 545) Defendant kept Howell's car for a couple of days and then tried to sell it to Beth Royer, a friend of Michelle's. (R. 548) After getting the car back from Beth, defendant then sold the car to a junkyard in South Chicago Heights. (R. 549)

In the days following Howell's disappearance defendant told Michelle that Chuck Howell might have gone with some friends from Calumet City. Defendant then changed the story and said that Chuck went to look for Andy Devine. (R. 559)

Michelle admitted seeing some kind of drawings which had been on the floor in the basement of defendant's apartment. (R. 558)

On May 16, 1987, Sergeant James Keith of the Olympia Fields Police Department arrested defendant as part of an investigation in which he was involved. (R. 561-562) Gerald Feinberg was arrested on May 17, 1987. (R. 563)

At approximately 9:30 a.m. on May 19th, 1987, while at the Olympia Fields Police Department, Sergeant Keith and Assistant State's Attorney David Sterba spoke with defendant about Chuck Howell's disappearance. (R. 564-565) After being advised of his rights per Miranda, the defendant told them that he and Feinberg had taken Howell to a forest preserve where they stabbed him and then buried him. (R. 566) Defendant was able to provide them with a fairly detailed

description of the exact location. (R. 566)

Defendant voluntarily went with Sergeants Keith and Marsala to Thorn Creek Woods to search for the exact location of Howell's murder and burial. (R. 566-567) When they went to the forest preserve they were unable to find the exact location because of overgrowth and standing water. (R. 567-568) Sergeant Keith was involved in about three or four other futile attempts to find Chuck Howell's grave. (R. 569)

Finally, on July 1, 1987, in a clearing area where defendant and Feinberg had previously directed the police, they were able to locate the skeletal remains of Chuck Howell. (R. 571-572) Technicians removed skeletal remains, clothing items, shoes, and a wrist bracelet from the ground. (R. 577-578, Supp. R. 2, People's Exh. 16, 18)

Sergeant Keith also identified a needle skin tracing which Captain Maeyama of the Park Forest Police Department did at the defendant's residence. The tracing was of a map drawn on the basement floor in defendant's house. (R. 579-582)

The autopsy of the victim was performed by Dr. Robert Stein. (R. 525) The victim's body was severely decomposed and had to be identified based on his dental records. (R. 525, 528) The victim's clothes revealed ten stab wounds. (R. 530) The cause of death was multiple stab wounds. (R. 531)

The skull showed no evidence of any head injuries. (R. 535) Because the flesh was gone from the skull area, Dr. Stein was unable to determine if the victim had sustained blows to the head. (R. 536)

The jury deliberated for approximately 29 minutes before returning a verdict of guilty on both murder and armed robbery. (R. 751-753)

### **(Sentencing)**

On the afternoon of May 6, 1987, defendant and Jerry Feinberg made plans to rob and kill John Goodman, against whom defendant had a previous grudge. (R. 806-807) Defendant and Feinberg discussed whether they were going to hit him over the head or stab him to death. (R. 807) They also discussed burying Goodman after they killed him, and Jerry Feinberg suggested burning the body. (R. 807-808)

On May 7, 1987, defendant and Feinberg went to John Goodman's home. The victim was entertaining someone. (R. 809) After the visitor left, and Goodman was out of the room, defendant and Feinberg continued to talk about which of them would kill Goodman. (R. 809-810)

Defendant took a knife from his waistband, went to the back of the victim's home near the washroom, and began questioning Goodman about some pictures that he had taken of defendant. (R. 810-811) Mr. Goodman started laughing and the defendant stabbed him in the chest four times. (R. 811) Defendant and Feinberg then put the victim in the bathtub while they proceeded to wipe the house clean of their fingerprints. (R. 812) Defendant took the victim's wallet which had approximately \$100.00 and credit cards in it. (R. 813)

Defendant and Feinberg together wrapped John Goodman in some sheets and a rug and put him in the trunk of his own car. Later that day defendant and Feinberg then drove to Wisconsin in Goodman's car, with the body in the trunk. (R. 813)

Before reaching Wisconsin, defendant and Feinberg stopped three times. The first time was to get gas, the second time was at Wendy's to eat and finally at a bar in Wisconsin where the two of them drank, ate and shot pool. (R. 814-815) Defendant drove two to three hours into Wisconsin until

they located a wooded field with an open pit area where they dug a hole in which they buried John Goodman. (R. 815) Defendant and Feinberg then burned the sheet and rugs over the grave before returning home in the victim's car. (R. 816)

Defendant drove around in the victim's car over the next several days. (R. 816-818) The following Saturday, May 9, 1987, defendant took a friend, Mike Naszkiewicz, over to Goodman's house and together they stole everything electrical out of his house. The two of them took the property to defendant's father's garage where they stored it. (R. 818)

Defendant and his friends also used the victim's credit cards that weekend. (R. 819) Defendant, Michelle Kury, and Feinberg used the victim's credit card at the Holiday Inn. (R. 819) They also used the victim's credit card at Malls to buy diamond rings, clothes, and some radios. At least one radio was subsequently sold to enable them to buy a gram of coke which defendant and three of his friends used. (R. 821) Defendant, Feinberg and Naszkiewicz ultimately left the victim's car at the Richton Park Train Station. (R. 822)

The People presented evidence of petitioner's first murder. In the fall of 1985 there was a drug transaction between the victim, Andrew Devine, and an individual named Ken Chaney. Allegedly Andy Devine "ripped off" Chaney. (R. 831) During this time period Andy Devine was living with the defendant. One day that fall defendant called both Feinberg and Chaney to let them know that Andy was at his house. Both of them came to defendant's house and Chaney brought with him a hypodermic needle and barbiturates. (R. 833)

Before Chaney's arrival, defendant and Feinberg tied up Andy Devine with an extension cord. When Chaney arrived, Chaney shot up Devine with a barbiturate. He told Devine he was going to pay for ripping him off, even though Devine offered to give him his money back. (R. 834-835)

Defendant, Feinberg and Chaney then put Devine in defendant's brother's car and together they all drove to Coal City in the Wilmington area. (R. 835) There they took Devine out of the car and Chaney asked Andy how he wanted to die, either by being stabbed or shot with a needle. Andy opted for the needle. (R. 835)

Chaney first shot Devine in the arm with some air about five to six times and then, when Andy didn't die right away, he slit his throat with a knife. (R. 836) Chaney allegedly instructed defendant and Feinberg to each stab Devine once, which they both did. Each of them stabbed him in the chest. During the time he was being stabbed, the victim was begging Chaney not to do it and telling him he would give him his money back. (R. 837)

Defendant had taken money from the victim's pocket after they had tied him up at the house. (R. 839)

Two days after the murder defendant and Chaney went back to the scene of the murder and Chaney poured gasoline on the victim's body and set him on fire. (R. 840)

There was stipulated evidence entered with respect to defendant's past criminal convictions. (R. 959) In total there were seven convictions for burglary. (R. 959-960) Relating to the Goodman murder there were also convictions for armed robbery and home invasion. (R. 960)

Robert Maeyama, Chief of the Park Forest Police, testified that he had been employed by the Department since the early 1970's at which time he was assigned as a Detective to the Juvenile Division. (R. 963) His first contact with defendant was in 1974 while Chief Maeyama was assigned to the juvenile division. (R. 963) At that time the defendant was approximately 12 years of age. The incident was very minor in nature. (R. 964-965) Over the following years defendant's criminal problems escalated in nature. (R. 966) During that time period Chief Maeyama tried several times to

counsel the defendant or offer additional help. (R. 965-966)

As to the more serious matters with which defendant was involved, in June of 1977 defendant was involved in the burglary of the Sears Store in Park Forest. (R. 967) Defendant was sent to Juvenile Court as a result of this crime. (R. 968)

In February, 1978 defendant was accused of the battery of a younger boy who refused to buy marijuana from defendant. That case resulted in a station adjustment. (R. 938-939)

In August of 1978 defendant again committed burglary. This time the location was Marshall Field's in Park Forest and defendant took several television sets from the store. (R. 972)

In that same month defendant was also charged with aggravated battery. (R. 973) This charge resulted from defendant's action in throwing a youth off his bicycle, allegedly as retaliation for something that happened to one of defendant's friends. The victim of the battery was hospitalized as a result of his injuries. (R. 973)

Then in September of 1978 defendant was again charged with multiple batteries because he attacked several teachers at his school. (R. 974)

Chief Maeyama denied having any knowledge that in either 1974 or 1978 defendant was a drug or alcohol abuser. (R. 976-977) He testified on cross-examination that defendant was adjudicated a delinquent at one point as a result of the various referrals to juvenile court, but he had no knowledge of defendant being sent to the Department of Corrections. (R. 977-978)

Chief Maeyama referred defendant to an agency known as Aunt Martha's, which group provides services to those children who cannot be controlled or who have behavioral disorders. (R. 978) In addition, Chief Maeyama counseled the Page family. He denied that there was any evidence of any physical abuse to Mrs. Page. (R. 981)

The witness also denied having any knowledge that defendant suffered from organic brain syndrome. Neither did Chief Maeyama notice that defendant had a wandering eye or a learning disability. (R. 982)

Thomas Cosgrove, a caseworker supervisor with Logan Correctional Center, testified that during the time period between September, 1982 and May, 1983 the defendant received thirteen disciplinary reports while at Logan. (R. 991) Defendant was at Logan as a result of his convictions on seven counts of burglary. (R. 1000) As a result of these disciplinary violations, on at least three occasions defendant lost his A grade status, which results in a loss of privileges. (R. 993-995) Defendant was in B status for six of the initial ten months he was at Logan. (R. 996) The reason for defendant's change in status ranged from taking another inmate's radio to assaulting another inmate. (R. 997-998)

In May of 1983 defendant was transferred to the Salvation Army Work Release Center in Chicago. (R. 999) Under this program a defendant is still considered to be "doing time." (R. 999) During the time period defendant was on work release the prison records indicate that defendant received nine major disciplinary reports and one minor one. (R. 1001)

On December 5, 1983 defendant was charged with escape due to his failure to return to the work release center. Defendant did not return until January 2, 1984. Defendant was found guilty of escape and was returned to the prison system to complete his time. (R. 1001)

Defendant returned to Logan Correctional Center on February 15, 1984 and from then until his release in April, 1984 defendant received 10 disciplinary violations. (R. 1102) Most of these violations dealt with his failure to attend school, which he had been given the opportunity to do. (R. 1003)

The jury deliberated forty-five minutes before rendering their verdict that there were no factors sufficient to preclude the imposition of the death penalty and defendant was sentenced in accord with the jury's verdict. (R. 1275-1276, 1301)

## **REASONS FOR DENYING THE PETITION**

Petitioner is a serial killer. He murdered his first victim as a favor to a friend. After committing that murder, petitioner sat around with his friends and partied with marijuana and beer.

Petitioner murdered his second victim because he was afraid that victim would find out about his first murder. After committing that murder, petitioner and his co-defendant sat around petitioner's house and smoked some pot before cruising around in the victim's car.

Petitioner murdered his third victim because he had money that petitioner wanted. After placing this victim in the trunk of his car, petitioner drove to Wisconsin. Along the way, with the victim's body in his car, he stopped at a bar, had a couple of drinks, ate a pizza and shot a couple of games of pool.

Petitioner has never denied these crimes nor has he ever defended against them on the grounds that he did not murder these three people.

Prior to his arrest, petitioner was the leader of a satanic cult engaged in devil worship. Petitioner's history of violence includes beating up a young man who wanted nothing to do with the marijuana petitioner was trying to sell him. It includes attacking teachers, striking one in the face with his fist, pulling the hair and injuring the eye of another and kicking a third in the groin.

Between September of 1982 and May of 1983, while in the penitentiary after pleading guilty to seven burglaries, and between February of 1984, when he was returned to the penitentiary for escaping from work release, and his parole in April of 1984, petitioner received 27 disciplinary tickets, a number well above average. (R. 1978, 1983, 1995) Six were for either physical or verbal altercations with other inmates, a few were for insulting behavior toward the staff and possession of contraband. While defendant was a disciplinary problem throughout his incarceration, his behavior

the last two months resulted in nine or ten of the reports against him, including two of the Grade B or more serious tickets. (R. 1980, 1994)

Petitioner is a remorseless killer. He snuffs out lives as carelessly as if he were squashing an annoying bug. The families of his victims went months and even years not knowing if their loved one was dead or alive – not having at least the closure of a burial until their children’s decomposed remains were finally uncovered. Clemency should not 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.

#### Depositions

Petitioner asserts that he did not receive pre-trial discovery in the form of depositions for which there would have been good cause. Illinois Supreme Court Rule 416 provides that depositions are permitted only upon leave of court. The Supreme Court grants to the trial judge the discretion to balance the interests of the parties to “insure that depositions are not being interposed for

any improper purpose”. Petitioner here does not name the persons he would have deposed or what the good cause would have been for deposing them.

### 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). Furthermore, petitioner presented at trial the testimony of Dr. Gerard Girdaukas, a clinical psychologist, who was hired by the Office of the Public Defender. He presented his finding, that petitioner had impairment in his left brain function, to the jury which found it insufficient mitigation to preclude the imposition of the death penalty. Certainly, the jury’s decision could have been aided by Dr. Girdaukas’ opinion that petitioner’s preplanned murders were impulsive because, according to Dr. Girdaukas, the most impulsive crimes are those that are preplanned. The jury’s decision could also have been aided by the testimony of petitioner’s father, presented in mitigation, that contrary to Dr. Girdaukas’ finding, petitioner never had a learning disability.

### Videotaping

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.

#### 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.

#### Electronic Recording of Witness Interviews

Petitioner asserts that he challenged the testimony of one or more significant prosecution witnesses whose police interview had not been recorded. Again, petitioner does not name these significant prosecution witnesses. In fact, petitioner never denied the crimes, claiming only that, on the Goodman murder, his confession established that he acted in the heat of passion and claiming only that, in the Howell murder, the contents of his confession were unreliable. In fact, as to his confessions, he not only had earlier recording of witness interviews by a court reporter, he was able to cross-examine them as well. Indeed, every witness to his confessions testified when the court litigated petitioner's motion to suppress statements.

#### Organic Brain Damage

Petitioner takes a recommendation dealing with mental retardation and employs it in his claim that he has organic brain damage. The Court in Atkins noted that mental retardation is characterized as having a significantly subaverage general intellectual functioning and significant limitations in adaptive functioning in at least two skill areas with the onset prior to age 18 (122 S.Ct. at 2245 n.3). Because petitioner is not mentally retarded and has never, even at this point, claimed he was, and because his claim of organic brain damage was justifiably rejected by the jury, petitioner's claim is inapplicable. Furthermore, petitioner confessed to murders of which the police were unaware. He could hardly have been led into those confessions.

### 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, A[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.

### 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 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.

### 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.

#### 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. That is untrue. In People v. Page, 193 Ill. 2d 120, 737 N.E.2d 264 (2000), the Illinois Supreme Court discussed in detail why petitioner was deserving of the death penalty when his co-defendant was not. Specifically, the Court pointed out that in the Goodman case, it was petitioner who originated the plan to rob and kill him, it was petitioner who stabbed Goodman in the chest four times while co-defendant Feinberg inflicted no injuries whatsoever, that petitioner had a substantial criminal history and Feinberg had no criminal convictions. Id. at 155-156. Omitted from the Illinois Supreme Court's discussion is the fact that co-defendant Feinberg also had a previous history of mental illness.

## CONCLUSION

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

Respectfully submitted,

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