

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	Docket No. \
vs.)	
)	
ROBERT CLOUTIER,)	Inmate No. N-41047
)	
)	

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

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

HEARING REQUESTED

RICHARD A. DEVINE
STATE'S ATTORNEY OF COOK COUNTY

By: KEVIN BYRNE
MARGARET J. CAMPOS
Assistant State's Attorneys
Of Counsel

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	Docket No. \
vs.)	
)	
ROBERT CLOUTIER,)	Inmate No. N-41047
)	
)	

I

HISTORY OF THE CASE

Petitioner, Robert Cloutier, raped and strangled to death Alice Cogler and Cynthia Cooney. He later stated that Alice’s eyes had “bugged out” when he strangled her and “that police should have taken a stick and poked Alice to let the air out of her.” When asked why he killed Alice, he stated that “shit happens,” and that he “surprised” Alice. After raping and killing Alice, Cloutier kidnapped and attacked other women, forcing them to look at Alice’s naked, dead body on the backseat of her car while telling them that if they did not cooperate with him, they would “wind up” like Alice. Those women fortunate enough to escape Cloutier testified at his trial and resentencing hearing.

Cloutier has never claimed actual innocence. A jury found Cloutier guilty of the first degree murder and aggravated criminal sexual assault of Alice Cogler. He was sentenced to death for her murder and to 30 years in the Illinois Department of Corrections for the aggravated criminal sexual assault. People v. Cloutier, 156 Ill.2d 483, 622 N.E.2d 774 (1993). (See Attachment)

Cloutier then pled guilty to the first degree murder and aggravated criminal sexual assault of Cynthia Cooney, for which he received a sentence of natural life.

On an appeal from his convictions and sentences in Alice's case, the Illinois Supreme Court affirmed Cloutier's convictions but reversed and remanded the case for a new death penalty hearing since the trial court failed to pose "reverse-Witherspoon" questions to prospective jurors during voir dire as mandated by Morgan v. Illinois, 504 U.S.719, 112 S.Ct. 222 (1992). People v. Cloutier, 156 Ill.2d 483, 622 N.E.2d 774 (1993). (The Morgan case was decided by the Supreme Court after Cloutier's trial in Alice's case and guilty plea in Cynthia's case.) The United States Supreme Court denied Cloutier's petition for writ of certiorari. Cloutier v. Illinois, 510 U.S. 1200, 114 S.Ct. 1315 (1994).

Upon remand, a jury again found Cloutier eligible for the death penalty and could find no mitigating factors to preclude the imposition of death. On appeal, the Illinois Supreme Court affirmed that jury's decision in People v. Cloutier, 178 Ill.2d 141, 687 N.E.2d 930 (1997). The United States Supreme Court subsequently denied Cloutier's petition for writ of certiorari. Cloutier v. Illinois, 524 U.S.906, 118 S.Ct. 2064 (1998). (See Attachment)

Cloutier filed a post conviction petition which was dismissed by the trial court. On appeal from that ruling, the Illinois Supreme Court affirmed the judgment of the circuit court. People v. Cloutier, 191 Ill.2d 392, 732 N.E.2d 519 (2000). (See Attachment)

Cloutier then filed a petition for Writ of Habeas Corpus with the United States District Court. The matter has been fully briefed by the parties and is currently pending for the court's ruling.

II

FACTS OF THE CASE

TRIAL AND RESENTENCING

On February 1, 1990, Detective William Drish and his partner, Frank Connolly, of the Chicago Police Department went to the Oak Lawn Police Department to interview Cloutier regarding various crimes. Once there, Officer Tom Scott informed the detectives that after the Chicago Police Department issued special bulletins regarding Cloutier, Officer Scott observed Cloutier at approximately the 9900 south block of Pulaski Avenue. He placed Cloutier under arrest, transported him to the station, and contacted the Chicago Police Department. Prior to transporting Cloutier to Area 3, Violent Crimes, the detectives took possession of some of Cloutier's personal items recovered from his person including a pack of cigarettes and some keys along with a Miranda form signed by Cloutier.

Once at Area 3, the detectives and Cloutier had lunch while another detective was sent out with one of the recovered keys to the victim, Alice Cogler's, car. Cloutier told the detectives that the car was located behind a barbershop at approximately 6509 South Archer Avenue and that Alice's body was in the trunk.

Cloutier also gave the detectives details regarding his killing of Cynthia Cooney. He told them that she was in the Des Plaines River in Willow Springs, where he dumped her body. He also told them where her car was located. Pursuant to that information and following Cloutier's directions, several detectives, Cloutier, Lieutenant Jack Regan and Assistant State's Attorney Bill Merritt, a supervisor in the Cook County State's Attorneys Office Felony Review Unit, took three cars to the location where Cloutier said he got rid of Cynthia's body. Cloutier also directed them to where he

stopped the car in order to not be seen by passing traffic. Cloutier told the detectives that he murdered Cynthia approximately five miles away from where he dumped the body, in Summit off of Archer and Harlem Avenues.

Once at the location, the detectives observed Cynthia's Levi's and her tan-colored leggings on one of the girders of the bridge located over the river. Cloutier told them that he had thrown the clothes over the railing, thinking that they had gone into the river along with her body. The detectives proceeded down the embankment to the water's edge and found Cynthia's body in a shallow part of the water. Once the fire department recovered her body from the river, they observed that she was wearing a black, knit sweater with a portion of a camisole underneath and was naked from the waist down. There was an object protruding from her mouth which, upon closer inspection, they found to be a woman's brassiere that had been stuffed down her throat. (See Attachment)

When they left the area, they proceeded past the William's Chalet, where Cloutier stayed after he murdered and disposed of Cynthia. They continued to approximately 7650 Lincoln where Cloutier showed them the viaduct under which he had stopped in the car and murdered Cynthia at approximately 2:00 a.m. on January 30, 1990.

The key that was recovered from Cloutier was found to be the ignition key of the Alice's car. When the car was brought to the Area 3 garage, the trunk was forced open by evidence technicians since the trunk key was not recovered. They found Alice's dead body in the trunk, naked except for two white socks. She had a rubber fan belt wrapped and tied around her neck and she had some other abrasions on her upper body.

When the parties returned to Area 3, Cloutier gave court-reported confessions to Assistant State's Attorney Merritt regarding the murders of both Alice and Cynthia, which were later typed up

and presented to Cloutier for his signature. (See Attachment) Mr. Merritt introduced himself to Cloutier and informed Cloutier of his rights, which Cloutier acknowledged that he understood. Cloutier was very cool, calm, collected, alert and coherent, responding to all questions in great detail and willing to give a court-reported statement. Cloutier also indicated that he did not need anything and that he had been treated "fine." During his conversation with Mr. Merritt and in giving the court-reported statement, Cloutier never expressed any difficulty in recalling specific events for the dates from January 27, 1990 up to the day of his arrest. (See Attachment)

In his court-reported statements regarding his murdering Alice, Cloutier stated that on January 27, 1990 at about 8:00 p.m., he went to the Huggery tavern at Archer and Keeler. He stayed about an hour and then left with Alice. They went to the parking lot by the Miami Bowl down the block where they kissed and Alice performed oral sex on him and then they returned to the Huggery tavern. They stayed at the tavern until closing time.

Cloutier left the tavern with Alice and they drove to a little side road that goes into the Rose Meat Packing Company. They had vaginal and anal sex in the back seat. Afterwards, they were holding each other with Alice's hands on his back when Cloutier "just started hitting it, choking her" with his hands. Alice did not struggle. Her "[e]yes got big, she looked at [Cloutier], and that was it." Cloutier then put his ear on her and listened to her heart to see if she was still alive. Upon hearing her heartbeat, he picked up a fan belt from the floor of the car, "wrapped it around her throat and squeezed it." At that point, Cloutier was "pretty sure she was dead because her lips turned blue." He covered up her body with her clothes and his jacket and proceeded to a 5:00 o'clock bar called Mr. Charlie's.

Cloutier had some beers at that bar. When the bar closed, he left with a guy named Jeff and his girlfriend. They went to a liquor store to buy more beer. As they were getting into the car, Jeff's

girlfriend attempted to get into the backseat but Cloutier told her that his friend was sleeping back there and that they would all have to sit in the front.

After they bought beer at the liquor store around 63rd and Oak Park, they went to Jeff's mom's house around 53rd and Kedvale. Cloutier stayed at the house between 45 minutes to an hour and a half with Jeff, his girlfriend, his mom, his mom's boyfriend, some other people and "a broad named Sue."

When Cloutier left about 6:00 a.m., he took Sue with him. Cloutier stated that he pulled the car into an alley behind some apartments and he "started kissing on her and playing with her and after a few minutes of that, she freaked and ran out of the car, and [Cloutier] drove away" with Alice's body still covered up in the back seat.

Later that morning, Cloutier parked the car about a block and a half away from 50th and Oakley. He then went to a woman named Marie's house to have breakfast with her and her son. He then returned to the car and drove around for a while. He later put Alice's body in the trunk and parked the car behind a barber shop on Archer and Nashville. He then took a bus downtown and never returned to the car.

In his court-reported statement regarding his murdering Cynthia Cooney, Cloutier stated that on January 29, 1990, he went to Panama Sid's tavern located at Archer and Sacramento at approximately 6:00 or 7:00. There, for the first time, he met Cynthia some time between 8:00 and 9:00.

About 12:30 or 1:00, Cloutier and Cynthia left the bar and drove her car to Summit. They stopped on a street, the name of which Cloutier did not recall, underneath a viaduct in a dark and unincorporated area. Cloutier stated that they had oral and vaginal sex both in the back and the front

seats of the car while both of them had all their clothes off. When they were completely finished with the sex acts, they were both in the back seat. They held each other for a little bit and then Cloutier started choking Cynthia with his hands.

Once Cloutier thought she was dead, he drove to an area off of Willow Springs Road, "to this little spot on the river [that he knew of]" and parked on the left-hand side of the bridge so that no one driving on the Willow Springs bridge would be able to see him. Cloutier then "picked [Cynthia] up out of the car, and dropped her in the river." He thought he threw Cynthia's clothes into the river but some of them ended up on the bridge. Afterwards, he stayed at the William Chateau on Archer Avenue. He then proceeded to drive Cynthia's car around for a few days.

At Cloutier's resentencing hearing, Dwayne Sundberg, a clerk in Judge Karnezis' courtroom on May 6, 1991, testified that a jury returned a guilty verdict against Cloutier for the murder and aggravated criminal sexual assault of Alice Cogler. On July 26, 1991, Mr. Sundberg also witnessed Cloutier plead guilty for the murder and aggravated criminal sexual assault of Cynthia Cooney.

AGGRAVATION AND MITIGATION

In January of 1990, Mary Laughlin's 95-pound daughter, Alice Cogler lived with her. (See Attachment) Alice had one daughter, Mary Kathleen McGee, who lived with her father. Alice worked as a bartender at the Huggery, a neighborhood tavern at Archer and Kostner, and had known her fiance, Jack Lapice, for a little over two years.

On Friday, January 26, 1990, Mary called Alice to come and pick her up from work. Alice arrived about ten minutes to ten and went to the bar to wait for her mother. After Mary finished her work, she and Alice had a few drinks in the bar and then went home.

The next morning, Mary did not see Alice but heard her say, "I'll see you later, mom," as she was leaving for work. Mary went into Alice's room and noticed that Alice left her purse. Alice would carry her license in her back pocket unless she planned on going out after work at which time she would take her purse with her. Later that night, Alice spoke to Jack and told him she would not be coming over because she did not feel well. That was the last time Jack spoke to Alice; she did not come home that night or the next morning.

At the time, Alice had been driving Jack's brown car to and from work for about six months. While driving it, she sat on a pillow because she was too small and could not see over the steering wheel.

On the Friday before Alice disappeared, there was a broken fan belt that Jack had replaced, on the back floor of the car. At that time, Jack observed that the interior of the car was clean and there was no damage in the area of the front sun visor or to the roof of the car.

On Sunday, January 28th, Jack called Alice's mother to see if she was at home but Mary had not heard from her. He spoke to her mother again on Monday morning. Mary wanted to know if Alice was with him because Alice had not come home and had not called. Mary then went out to look for Alice. She spoke to the owner of the Huggery who told her that Alice did not show up for work on Sunday.

After speaking with Mary, Jack went to the Huggery Lounge to look at a car that was mistaken for the one Alice had been driving. He and his friends then continued their search for Alice over the course of the next several days. Mary and other family members began searching for the victim and filled out a missing person report.

Chicago Police Officer Thomas Bachelder was working as an evidence technician in the crime lab mobile unit on February 1, 1990. During the afternoon hours, he went to 6509 Archer Avenue with his partner. He observed numerous police officers and detectives as well as an older model Oldsmobile two door sedan with a light colored top and a dark brown bottom. Officer Bachelder spoke to Detective Drish who informed him that the trunk possibly contained a body but that they did not have keys to the trunk itself. Officer Bachelder then drove the car to the private garage at Area 3 Police Headquarters.

At Area 3, the officer forced open the trunk and found Alice's body with her arms and legs spread apart. She was naked but for a pair of white socks, a watch and a fan belt wrapped around her neck. Alice had bruises on her face and ligature wounds around her neck. She had a large amount of blood and fecal matter around her vaginal area. When the officer removed her body from the trunk, he observed that she had a deep redness on her back, and blood and fecal matter in the anal area. (See Attachments)

That day, Mary received word that her daughter had been found. She subsequently identified Alice's remains at the morgue. At Cloutier's trial, Mary read her victim impact statement to the jury as part of the aggravation presented against Cloutier. (See Attachment)

In January of 1990, Cynthia Cooney was thirty-four years old. (See Attachment) She had been a pharmacy apprentice for Walgreen's Pharmacy for ten years and she was her sister Albina Lavery's best friend.

On January 29, 1990 between 7:00 and 8:00 p.m., Cynthia's friend, Pamela Shanks, met her at a bar called Panama Sids located at Archer and Sacramento. The two left to go to a friend's house

and when they returned some time between 10:00 and 11:00 later that evening, Cloutier was present in the bar.

A lot of people were there playing darts, including Cloutier. He did not have any difficulty in keeping score or in playing the game. He won quite a few games and since they were playing for money, he would buy drinks for everyone. During the couple of hours that they played the game, Cloutier appeared to be friendly and nice. He did not do anything to cause anyone to be alarmed about him. During the course of the evening, Ms. Shanks observed Cloutier drink approximately four beers. He did not behave as though he had had too much to drink. Cindy, however, did not drink at all.

Sometime during the course of the evening, Cloutier made a telephone call. When he returned, he asked Ms. Shanks if she could give him a ride to pick up his car and she said, "no." Cloutier asked another woman for a ride and then he asked Cindy. Cindy asked Ms. Shanks if she thought Cindy should give him a ride. Ms. Shanks responded that he asked her for a ride but since she wanted to stay at the bar she said, "no," and that it was up to Cindy.

When Cindy decided to give Cloutier a ride, she told Ms. Shanks who agreed to wait for her at the bar. The bar closed at 2:00 a.m. but Ms. Shanks never saw Cindy again. The last person she saw Cindy with was Cloutier.

On Tuesday, January 30th, Cynthia's sister, Albina, received a call from Jack McDonald, Cynthia's boss. He asked Albina if she knew where Cynthia was because she did not come in to work nor did she call which was unusual for her. By the following day, Wednesday, numerous people began looking for Cynthia. On Thursday, February 1, 1990, Albina was told that Cynthia had been found and Albina remained at the police station most of the day. At approximately 4:00 or 5:00, the sergeant told

Albina that Cynthia was dead and that her body was going to be removed from the river. Her father subsequently identified Cynthia's remains in the morgue.

Chicago Police Officer Thomas J. Ginnelly was able to remove a footprint from the windshield inside of Cynthia's car. That footprint was sent to the crime identification lab to be compared to a footprint obtained from Cynthia at the Cook County Morgue. The footprint removed from Cynthia's car windshield was subsequently determined to be Cynthia's.

Dr. Barry Lipschultz, a deputy medical director with the Cook County Medical Examiner's Office, performed the post-mortem examinations on Alice and on Cynthia. Alice measured four feet, eight inches and weighed 95 pounds. Cynthia measured five feet, two and a half inches and weighed 116 pounds. Both Alice and Cynthia had blood which had pooled in the white part of their eyes, had bones broken in their neck and lower throat area and had bitten through their tongues. Additionally, after reviewing all the numerous and extensive internal and external injuries sustained by both women including the fan belt that Cloutier wrapped around Alice's neck and the bra that Cloutier had shoved deep down into Cynthia's throat (See Attachment), Dr. Lipschultz concluded that the cause of death for both women was strangulation. Cloutier cut off their oxygen supply by continuously compressing or squeezing their necks for approximately five minutes before Alice and Cynthia died.

In the early morning hours on January 28, 1990, Susan Bradford Musso and Jeff Cesak were with some friends at a bar called Mr. Charlie's located at 63rd and Parkside in Chicago. Jeff introduced her to Cloutier since she had never met him before and Cloutier indicated that he wanted to meet her. Later that night, Jeff invited Cloutier, along with some of Jeff's other friends, to his house.

When they left the bar, Cloutier offered to give Jeff and his girlfriend, Andrea, a ride in Cloutier's car. As Jeff tried to lift the seat up to get into the back seat of Cloutier's car, Cloutier pushed it back and said that his friend was sleeping in the back seat and to just sit in the front. Jeff looked in the back seat and saw a covered up body with the top of the head and hair showing. He was unable to tell whether the body was alive, dead or asleep, male or female. Jeff also observed that the sun visor and the roof portion of the interior of Cloutier's car was torn up.

Cloutier, Jeff, and his girlfriend Andrea followed Susan and Gary Somolis to a liquor store. Cloutier did not have any trouble driving and he followed all the traffic signals and the posted speed limit.

At the store, Susan bought two cases of beer which she went to put in the back seat of Cloutier's car when defendant slammed the seat back. He told her that he did not have a license and asked if she could put the beer in her car so Susan placed the beer in Gary's car.

They arrived at Jeff's house around 5:30. Since it was cold out, Jeff went to lift the seat up to wake Cloutier's friend in the back stating that the friend could come in the house and sleep it off. Cloutier pushed the seat back and said, "no, just leave him alone." Inside the house, they sat around and talked. Beer was the only alcoholic beverage being consumed and there was no other drug activity. Susan and Cloutier talked about various subjects. Cloutier never acted in an erratic or bizarre fashion. He did not raise his voice or swear. He appeared to be very polite, nice, and normal. Susan did not see Cloutier using any drugs that night nor did she observe him act as though he had been using cocaine or any other drug that evening.

When Susan announced that she was leaving the party, Cloutier offered to give her a ride which she eventually accepted. As Cloutier was leaving, he thanked Jeff's mother, kissed her on the

cheek, and told her that he enjoyed himself and had a nice time. He and Susan then left the party in the car that she had seen Cloutier driving.

As they drove off, it was getting light outside. Approximately half a block later, Cloutier told Susan that he had to go to the bathroom. He turned into an alley and parked behind some apartment buildings. Cloutier reached over, locked Susan's door, and covered her mouth. She told him that she had a baby at home and not to hurt her. Cloutier told her that he did not want to hurt her and to do as he said. He jerked her head around by pulling her hair. With his other hand, he reached into the backseat and took a blanket off a naked, dead girl lying on her back.

Susan began taking off her clothes because she believed that Cloutier would either rape or kill her. He fondled her breasts and kissed her. Susan took off her shirt and boots and then told him that her necklace got caught on one of her buttons. Cloutier told her that he did not want her to break her necklace. As Susan took off her shirt she reached over for the door and was able to get her legs out of the car. Cloutier grabbed her by the back of her hair to try to pull her back in the car but she got out only wearing her pants and bra.

As Susan tried to run, Cloutier kicked her feet out from underneath her and she fell to the ground. He then used his fists and feet to hit her in the face, back and front between 25 to 35 times while she lying in a fetal position. Susan rolled out into the middle of the alley and Cloutier was again approaching her when he suddenly stopped, apparently frightened by something. He kicked her once more and told her that he was going to find her and kill her. He then got into the car and gunned the car in reverse, missing Susan by a foot after she had rolled off onto the grass. Badly bruised and beaten, Susan subsequently started running down the railroad tracks looking for Jeff Cesak's house but

instead went to someone else's house. This attack occurred approximately two and a half hours after Cloutier killed Alice.

In September of 1989, Maria Goodman worked at The Huggery Lounge and Twilliger's, where she met Cloutier. On January 20, 1990, Cloutier was at the bar with someone Maria knew as John or Hoss. Cloutier was not acting in an unusual or bizarre fashion at that time. Maria left that bar and went to another bar called Davern's Tavern. Cloutier arrived there after Maria and she had a conversation with him later that evening. He was very nice and polite to her and she did not feel threatened by him.

As Maria was leaving the bar, she invited some people to her home and although she did not invite Cloutier, he nevertheless arrived at her home with John. Cloutier returned to Maria's home in the same uninvited manner every day from the 21st through the 26th. He continuously asked her out but she would refuse, telling him that she had a boyfriend. Cloutier never appeared intoxicated or under the influence of any drugs. He did not misbehave or cause her to feel uncomfortable with him in any way.

On January 28th at approximately 7:00 or 7:15 a.m., Cloutier showed up uninvited at Maria's home. Maria asked him "what the hell he was doing [at her home] that early." Cloutier told her that he had been out drinking and that he wanted to take them out for breakfast. Cloutier had scratches on his chin, neck, and on the inner portion of his right wrist. He told her that he had gotten into a fight with a bouncer. Cloutier then left stating that he had to return his mother's car.

At approximately 10:30 later that same morning, Cloutier returned again, apologizing for coming over so early and waking them. He asked Maria if he could make it up to her by taking her out

to breakfast while her girlfriend watched Maria's son. Maria told him that she was not going to leave her son with anyone and that if she was to go anywhere, she was bringing her son with her.

Cloutier asked Maria about the restaurants in the area because he stated that he no longer had a car. She suggested Ray's Restaurant on 45th and Western and the three of them went there for breakfast. Cloutier did not appear to be under the influence of any drugs or cocaine nor did he ever use any drugs in Maria's presence. Approximately an hour later, after breakfast, they began walking home. They were walking across Western Avenue when they noticed two police cars. Cloutier stated that he "did not like cops." He put his hair in the back of his jacket, put Maria's son on his shoulders, grabbed her hand and ran across the street.

When they arrived at Maria's home, her son went to play with a neighbor and Cloutier went to use the bathroom. Maria stayed in the hallway.

When Cloutier came out of the bathroom, Maria felt a pair of hands on the back of her neck. Cloutier pulled her backwards to where there was a mattress on the floor and then he pulled her down. He stuck his thumb on the base of her neck so that Maria could barely breath. He repeatedly stated that "all it takes is a touch," while he proceeded to touch her. Cloutier's pants were undone and his penis was coming up over his pants. He took her hand and placed it on his penis. He then ripped open her shirt, exposing her breasts. At that point, Maria's son walked in and told Cloutier to please leave his mommy alone and not hurt her. Cloutier then left the apartment.

On January 28, 1990, Elizabeth Halili was working at the Clark Gas Station at 5458 South California as a cashier. Some time around 7:00 a.m. that day, she was outside checking the gas tank levels when Cloutier approached her and asked her if she was open. She said yes and Cloutier picked

up the cleanser that she was using on the gas stick and went inside the gas station. Elizabeth followed him inside and went behind the counter.

Cloutier got a soda and as Elizabeth was ringing it up and the cash register opened, Cloutier came around the counter and grabbed her mouth. He told her not to scream and that he would not hurt her. Elizabeth felt a weapon at her back but did not know what it was. Cloutier took the money out of the register and asked if that was all the money there was. Elizabeth told him that it was because she just opened the station.

Cloutier pulled Elizabeth out from behind the counter and when she asked, he told her that he was "taking [her] out into the country where they won't find you because [Cloutier did not] want [Elizabeth] to be a witness." When she told him that she would not say anything, Cloutier told her that he could not leave her because she could identify him.

Cloutier dragged Elizabeth into the alley behind the gas station where he parked his car. He told her to take off her coat which she eventually did and Cloutier pushed her inside the driver's side of the car.

Cloutier began driving cautiously. He told her that his name was Jeff and Elizabeth told him her name was Lisa. Elizabeth asked him to not rape her and he told her that he was not going to rape her. She asked him why he had to do this and Cloutier said, "[B]ecause I have a wife and kids to support. You don't understand." Elizabeth said that he needed to look for help and Cloutier repeated, "[Y]ou don't understand. You don't understand. I have kids to support."

As they were driving, Cloutier told Elizabeth to put her head in his lap and she refused stating that, "[he] might kill [her] or something." He told her to at least "duck down a little," which Elizabeth did.

Cloutier pulled into an alley and told Elizabeth to take off her clothes. Elizabeth told him "no," and attempted to get out of the car but was unable to do so because the door was locked and the lock knob was unscrewed.

Cloutier grabbed her chin and turned her head to the back seat saying, "[I]f you don't take off your clothes and do what I say, you are going to end up like her." Cloutier moved some blankets and showed her a dead woman's body. He then ripped open her blouse which had been buttoned up, causing some of the buttons to fall off. Cloutier tried to rip off some more of Elizabeth's clothes when she went to hit him. He said, "[I]f you are going to fight me...this is what's going to happen to you," and he hit her in the jaw with his fist. Elizabeth began taking off her pants, shoes, and pantyhose when he ripped her underwear, causing it to eventually come off. Elizabeth hit Cloutier in the groin. He said, "[Y]ou are going to fight me," and he started hitting her. They began struggling and although she, at times, was facing away from him, she continued to reach over to grab his face, neck, or whatever she could. She scratched him and when she turned facing him, Cloutier continuously hit her in the face with his fist.

Between blows, Elizabeth saw that Cloutier's door was unlocked so she grabbed for the door lever and managed to open his door. He tried to hit her again, and he grabbed her but she lunged forward. She was able to get out and she started to run dressed only in her blouse and tank top. Cloutier followed her for a few steps but then returned to the car, closing his door while driving away

On November 23, 1983 at approximately 10:00 p.m., Richard Sparks was at the Foremost Liquor Store located at 35th and Damen to pick up a 12-pack of beer. Mr. Sparks picked out his beer, walked up to the checkout counter and pulled money out from his pocket when Cloutier approached him from behind, pulled out a gun and told him to put his money on the counter because Cloutier was

sticking him up. Mr. Sparks observed Cloutier had entered the store with another individual who was, at the time of the stick up, standing by the door. While holding the gun about a foot away from Mr. Sparks' chest, Cloutier also told the store manager behind the counter to give him all the money from the cash register. During the armed robbery, Cloutier remained very calm. As Cloutier and his accomplice were leaving the scene, Cloutier told the manager not to follow them outside for at least five minutes or they would start shooting.

At approximately 11:45 p.m. on January 6, 1990, Barbara King was working as a cashier at an Amoco food shop and gas station located at 6751 West Archer. She was busy with two or three people in line. Cloutier got a bottle of Gatorade and waited until everyone in line was through. He then came up to the counter and asked for a pack of Marlboro cigarettes. When Ms. King rang up the sale, Cloutier put down a revolver on the counter and told her to give him the money. At the time, there was another man standing at the counter and Cloutier told him not to move and to put his hands on the counter where Cloutier could see them. Ms. King opened the cash register and began giving him the money. Cloutier told her to hurry up and give him the money. She asked him whether he wanted the coins, too and he responded that he only wanted the paper money. He was very cool and calm at the time. After he left out the side door, Ms. King called the police.

On December 7, 1983 at approximately 9:30 p.m., Michael Szot was working as a cashier at a Keane Gas Station located on West 55th Street and Linder. At that time, Cloutier entered the gas station with another individual. Cloutier approached Mr. Szot and asked him for money while his accomplice stood by the door. Cloutier appeared calm during this robbery.

On January 12, 1990 at approximately 10:40 p.m., Jeanette Jerozal was working at a McDonald's located at 5733 South Kedzie. She was cleaning up and getting ready to close when

Cloutier walked in and ordered a large Coke. In return for the Coke, he gave her some change but it was not enough. Cloutier then told her to give him all the money in the register and Ms. Jerozal observed what appeared to be a gun protruding from underneath his flannel shirt. She gave him money from the register and he told her that if she did not give him the rest of the money, he would kill her, so she retrieved for him the money under the register tray. He told her to give him the money from the other register but Ms. Jerozal informed him that she did not have the key to those registers. By that time, sensing that something was wrong, the manager approached her and Cloutier. Cloutier again demanded the money from the other registers and the manager told him that she did not have the key. Cloutier then ran out the side door.

At approximately 5:30 a.m. on January 29, 1990, Ruth Wagner was working at the White Hen Pantry at 3700 West 55th Street with a co-worker. Cloutier came into the store. He said good morning to Ms. Wagner and told her that he had a "rough night." He then selected a juice and came up to the register. When she rang up his sale, he put his hand in the register and took between \$50 and \$100 while keeping his other hand in the jacket pocket. As Cloutier was leaving the store, he told her not to "do anything funny." During the course of the robbery, Cloutier acted "like a normal person."

At approximately 6:00 p.m. on January 31, 1990, April Haynes was working as a cashier at the Keane Gas Station located at 5458 West 55th Street. Cloutier walked into the station, asked her how she was and went to get a soda. As Ms. Haynes started to ring up the soda, Cloutier came up behind her and pushed her, telling her to get out of the way. (R. 679-80) He then took money out of the already opened register and ran. During the robbery he acted "like normal...nothing out of the ordinary."

On November 17, 1983, Linda Healy was working as a cashier at a White Hen Pantry at 2600 West 51st Street. At approximately 7:35 p.m., Cloutier walked into the store and went to the last aisle. After Ms. Healy waited on some customers, Cloutier came up to the register and pulled a gun on her. He pointed the gun at her head and had her open the register and give him money. Cloutier also took the money from the other cashier's register and told them not to call the police or he would come back and kill them.

On January 28, 1990, Elsie Baker and Joel Sanchez were working as cashiers at the Airport Food and Liquor on 63rd Street in Cicero. At approximately 9:45 p.m., Cloutier came into the store and took a pop out of the cooler. He approached the register and when Mr. Sanchez opened the register to give him change from Cloutier's \$10, Cloutier reached over the register and started taking money out. Ms. Baker observed this from the deli department and ran up to the register asking what was going on. Neither person said anything and she attempted to grab the money back from Cloutier's hand. Cloutier turned around and left the store. She followed him out and saw him get into a car that was parked in the alley behind the store.

On January 20, 1990, Dorothy Niewiadomski was a cashier at a Jewel Food Store located at 5320 South Pulaski. At approximately 6:25 p.m., Cloutier walked up behind her, pressed his body against her, put his hands on the register drawer that was open and told her to give him the money because he had a gun and he would kill her. As she was reaching for the singles in the drawer, Cloutier told her, "no, not those," and Ms. Niewiadomski gave him approximately \$1,000. worth of larger bills. When Cloutier left the store, she called security over the intercom system.

On October 7, 1983 at approximately 12:50 p.m., Chicago Police Officer Kenneth L. Abels was patrolling the area of 47th and Archer with his partner. They were waiting at a red light facing

eastbound on 47th Street behind a 1979 Ford LTD that Cloutier was driving. When the light turned green, Cloutier accelerated and his tires squealed as he proceeded northbound on Archer. The officers activated their emergency equipment to pull Cloutier over but Cloutier continued to accelerate and a chase ensued during which time Cloutier drove up to 70 miles per hour. Another set of officers set up a roadblock with their squad car across Pulaski Avenue between 43rd and 45th. Cloutier attempted to go around it and lost control of the car, sliding and smashing into the squad car with the two police officers in it. Cloutier was arrested and the dispatcher subsequently informed the officers that the car Cloutier was driving had been stolen three days earlier.

On January 29, 1990 at 2:10 a.m., Mary Finn was working at a 7-11 store. She was standing at the end of the counter reading a newspaper when Cloutier walked in. He had a brief conversation with her and then asked for a pack of Camel filters. Then, with one hand in his pocket and the other on the counter, Cloutier told her that he had a gun and to open the register and give him all the money.

On January 30, 1990 at approximately 5:45 p.m., Tina Callichio was working at a White Hen Pantry at 79th and Oak Park in Burbank. When she rang up Cloutier's purchases, Cloutier placed some money on the counter and once the register was open, he reached over and started to grab money out of the cash drawer. Ms. Callichio grabbed his arm and Cloutier said, "[W]atch it, I have a gun," keeping his one hand behind his back. Cloutier then threw the cash drawer on the ground, took the money on the bottom of the register, and ran out of the store. Ms. Callichio subsequently identified Cloutier in a lineup conducted on February 1, 1990. A fingerprint recovered from the juice bottle Cloutier carried to the register was submitted for fingerprint analysis and was determined to be that of Cloutier.

On February 1, 1990 at approximately 11:27 a.m., Oak Lawn Police Officer Thomas Scott was in the vicinity of 99th and Pulaski when he observed Cloutier walking southbound on Pulaski. He recognized Cloutier from a special bulletin issued by the Chicago Police Department which concerned two missing females. Shortly thereafter, Officer Scott stopped Cloutier and advised him to place his hands on the hood of the car. When asked, Cloutier told the officer that his name was Michael Bitney and that he was looking for work, but Cloutier was unable to spell the name Michael. Officer Scott asked Cloutier if he had any tattoos and Cloutier turned to face the officer and said, "[Y]ou have got me. Just don't beat me." The officer asked him who he was and Cloutier stated that he was Robert Wilson but acknowledged that he was also know as Robert Cloutier. Cloutier did not appear to be under the influence of alcohol or cocaine. His gait, speech, and responses were fine. He was sober and coherent.

The officer advised Cloutier of his constitutional rights at the time of arrest and later at the station. At first, Cloutier told the officer that he did not have to continue because Cloutier was already aware of his rights. Later, there were numerous television, radio, and newspaper personnel at the police station and as Cloutier was being turned over to the Chicago police officers, Cloutier told Officer Scott that he was going to make the officer "a star."

On February 1, 1990, Cook County Assistant State's Attorney Jeanne Bischoff was a supervisor on a felony review team. She participated in interviewing Cloutier at Area 3. After introducing herself to Cloutier and advising him of his Miranda rights, she discussed with him his attacks on Elizabeth Halili, Susan Bradford, and the other various robberies. All of Cloutier's responses were appropriate and he was coherent, alert, cooperative and polite. He never mentioned

that cocaine played a part in any of these crimes nor did he appear to be under the influence of cocaine or any other drugs at the time of the interview.

One of the robberies that Cloutier discussed with ASA Bischoff occurred on January 26, 1990 at 6:50 p.m. at a Cupboard Liquors store located at 4101 West 47th Street in Chicago. Cloutier was purchasing some candy and when the register opened, he reached into the register to grab the money but the woman slammed the cash register drawer on his hand. When he freed his hand, he walked out of the store.

Timothy Raymond Pruett was employed as a correctional officer at the Pontiac Correctional Center in Pontiac, Illinois on July 17, 1994. At about 6:30 a.m., he was on duty in the area of Cloutier's cell located on the ground level. As Mr. Pruett was walking approximately three feet away from Cloutier's cell, Cloutier threw a half gallon pitcher of scalding water on him. Initially, he had been facing Cloutier and saw Cloutier look right at him. When Mr. Pruett saw what Cloutier was about to do, he turned and attempted to get out of the way but the water hit him in the back and neck. Cloutier kept saying, "[Y]eah, that was me; I threw it. Yeah, that was me." The water was hotter than the tap water in the cell's sink and caused a burning sensation on Mr. Pruett's back and neck. Inmates at Pontiac would light fires to boil something or use a "stinger" which is an electrical rod placed in something to bring the item to a boil.

At Cloutier's resentencing hearing, the parties then stipulated that if called, Faith Howard would testify that on November 21, 1983 at 7:00 p.m., she was working at the 7-11 store at 5325 South Kedzie. At that time, Cloutier displayed a gun, demanded and took money from the register. Cloutier was subsequently convicted for this offense.

At approximately 7:50 a.m. on October 28, 1989, Springfield Police Officer Robert Crouch was on his way home after getting off duty. While driving through a residential neighborhood, he observed a woman lying on the ground screaming for help with Cloutier standing over her, holding her collar and hitting her in the face and head with a large chain. The woman was screaming, "[S]top him, he's going to kill me." The officer stopped the squad car, took away Cloutier's chain, and handcuffed him. He then called an ambulance for the victim who he later learned to be Loretta Lynn Kinnoy.

She told the officers that she and Cloutier, her boyfriend at the time, went to a party. When they left the party, he became angry at her, grabbed a chain, put it around her neck and dragged her down the street. When they got to the spot where Officer Crouch found them, Cloutier started beating Ms. Kinnoy with the chain. The victim had numerous abrasions about her head and face. Her eyes were swollen shut so that she could not see. Her clothes were all dirty from being dragged on the ground. She also had ligature marks around her neck consistent with the chain having been around her neck.

At the resentencing hearing, the parties stipulated to the following: that Cloutier entered the Illinois Department of Corrections on March 30, 1983 where he was serving four 12 year sentences for armed robbery and a three year sentence for theft, concurrently; that he was paroled on September 7, 1989; that he returned to the Illinois Department of Corrections on October 28, 1989 for a violation of his parole terms; that he was released on December 22, 1989; that while he was an inmate from March 30, 1983 to September 7, 1989 and from October 28, 1989 to December 22, 1989, he received a total of 52 disciplinary tickets from correctional personnel [which were enumerated to the jury]; that defendant was received from the Cook County Jail on August 9, 1991 and remained in the custody of the Illinois Department of Corrections until January 9, 1995 when he was transferred to the Cook

County Jail for purposes of the instant sentencing hearing; that while an inmate of the Illinois Department of Corrections from August 9, 1991 to January 9, 1995, defendant received a total of five disciplinary tickets from correctional personnel [which were enumerated to the jury]; that disciplinary tickets were written for each of these incidents and each one was sent to either a prom committee or adjustment committee and disciplinary action ranging from verbal reprimand, denial of commissary privilege, segregation and/or loss of good time was imposed; that defendant received his G.E.D. degree on December 14, 1984 and had earned 12 hours of college credits as of his release on December 22, 1989.

Doctor Lawrence Heinrich, a licensed clinical psychologist, testified on Cloutier's behalf. He concluded that Cloutier suffered from the antisocial personality disorder and that he showed many features of a narcissistic particular personality.

Alvin Hill, a coordinator of the sentencing advocacy program with the Cook County Public Defender's Office, testified on Cloutier's behalf. He testified to a story that Cloutier's mother wrote about Cloutier's drug habits as a youth. He also testified as to his conversation with Cloutier regarding his drug use and his family and how he wanted to help younger inmates.

After hearing closing arguments, the jury deliberated for less than three hours and unanimously found that there were no mitigating circumstances sufficient to preclude imposition of a death sentence.

III

REASONS FOR DENYING THE PETITION

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. People v. Cloutier, 156 Ill.2d 483, 622 N.E.2d 774 (1993)(Case remanded for resentencing pursuant to the Supreme Court’s subsequent decision in Morgan v. Illinois, 504 U.S.719, 112 S.Ct. 222 (1992), requiring a capital jury to be “reverse-Witherspooned” during *voir dire*.); People v. Cloutier, 178 Ill.2d 141 687 N.E.2d 930 (1997); People v. Cloutier, 191 Ill.2d 392, 732 N.E.2d 519 (2000).

1. The Illinois Supreme Court Found Brenda Grubisch’s Thoroughly Contradicted Statement To Be “Merely Cumulative” And Not Exculpatory In Any Way. Additionally, Petitioner Has Continuously Refused To Address The Fact That None Of His Trial Attorneys Have Ever Claimed That They Were Not Fully Aware Of Grubisch’s Complete Statement. Grubisch’s Statement In Her Affidavit Also Contradicted Petitioner’s Defense.

Petitioner claims that had the Commission Recommendations Nos. 49, 71, 48, 8, 46, 60 and Illinois Supreme Court Rule 416(e) been available to him, petitioner would have had Brenda Grubisch’s complete statement which, perhaps, may have altered the outcome of his trial. When petitioner raised the issue of the relevance of Grubisch’s statement before the post-conviction court and the Illinois Supreme Court, both courts dismissed the argument. Specifically, the Illinois Supreme Court said that, even assuming as true petitioner’s allegation that the prosecution failed to disclose Grubisch’s statement, her statement “is merely cumulative of that already presented at trial” which would not have changed the outcome of petitioner’s trial. Interestingly, throughout his appeal and in his clemency petition, petitioner refuses to address the fact that Grubisch’s statement in her affidavit, filed eight years after Alice’s murder, is wholly contradicted by Grubisch’s own

statements to police, given approximately two weeks after Alice's murder and Grubisch's own testimony at petitioner's trial, given approximately 15 months after Alice's murder. Additionally, petitioner refuses to address the fact that none of his trial attorneys have stated that the assistant state's attorney's failed to provide Grubisch's complete statement to them.

Brenda Grubisch testified for the People at petitioner's trial that in January of 1990, she was a bartender and manager of the Huggery Lounge. On Saturday, January 27, 1990, Grubisch was scheduled to relieve Alice Cogler and work from 6:00 p.m. to 3:00 a.m. After Alice finished her shift, she stayed at the bar, drinking and talking to people. At closing time at 3:00 on the morning of January 28th, with only Grubisch, her husband, petitioner and Alice left in the bar, Grubisch told petitioner that they had to leave and she let him out the front door. Alice then talked to Grubisch and told her that she was going to give petitioner a ride home. Grubisch then let her out of the door of the bar and watched Alice and petitioner walk around the corner to the back where Alice's car was parked.

In his post-conviction petition and before the Illinois Supreme Court, petitioner contended that Grubisch told assistant state's attorneys that petitioner and Alice "were together" at the Huggery on the evening of January 27, 1990, and that she "wouldn't call them 'a couple' but 'a couple for the night.'" Petitioner also contended that Grubisch told the assistant state's attorneys that she recalled that "[petitioner] and Alice left together from the Huggary [sic] for about an hour, but had returned together before closing time," and that the People failed to tender this information to the defense. Petitioner submitted an affidavit from Grubisch stating the same. Both the post-conviction court and the Illinois Supreme Court rejected petitioner's argument.

None of petitioner's trial attorneys ever stated in the record or in an affidavit that the assistant state's attorneys failed to inform them of Grubisch's above statement. **None** of petitioner's trial attorneys ever stated in the record or in an affidavit that they were not aware of Grubisch's above statement.

Petitioner's argument is meritless for other reasons as well. Petitioner also ignores, in part, the fact that not only did Grubisch's affidavit contradict her trial testimony, it contradicted her and her husband's statements to the police. Grubisch's affidavit, dated nearly eight years after petitioner raped and murdered Alice, was wholly unreliable because it was directly contradicted by her cross-examination testimony at petitioner's trial, given approximately 15 months after these offenses. At that time, Grubisch testified to the following:

[DEFENSE COUNSEL:] Now, you relieved Alice Cogler, correct?

[GRUBISCH:] Yes.

Q: Then you relieved her at 6:00 o'clock, correct?

A: Yes.

Q: And when you say you relieved her at 6:00 o'clock, **Alice didn't leave the bar, did she?**

A: **No.**

Q: And that was Saturday, the 27th, correct?

A: Yes.

Q: **And she stayed at the bar, correct?**

A: **Yes.**

Q: And you were the bartender that night, correct?

A: Yes.

Q: And as a matter of fact, Alice stayed at the bar drinking, correct?

A: Yes.

Q: And she stayed at the bar talking to the people there, correct?

A: Yes. [emphasis added]

Grubisch's sworn trial testimony clearly indicated that Alice never left the bar between ending her shift and closing time. She never indicated that petitioner even left the bar during the course of that evening. Furthermore, a summary of her and her husband's statements made to the police a little over two weeks after Alice's rape and murder are also consistent with her trial testimony and contradict her affidavit. A summary of her statement to the police includes the following:

GRUBISCH, Brenda L. stated that she began work as a bartender at the HUGGERY tavern on 27 Jan 90 at 1800 hours. GRUBISCH, Brenda L. relieved [Alice] from the day shift. [Alice] remained in the tavern after being relieved. [Petitioner] arrived at the HUGGERY shortly after GRUBISCH, Brenda L. began her shift... On Saturday, 27 Jan 90, [petitioner] was drinking a couple of beers and shooting pool. [Petitioner] borrowed \$2.00 from GRUBISCH, Brenda L. to buy a beer and took out the tavern's garbage. [Petitioner] earned one or two beers for taking out the garbage. [Petitioner] left at closing. A couple of minutes after [petitioner] left, [Alice], who was with [petitioner], hugged and kissed GRUBISCH, Brenda L. and said goodbye. [Alice] said, "I'll see you tomorrow!". [sic] She also said, "I'm going to give [petitioner] a ride home.". [sic] GRUBISCH, Brenda L. related that she opened the door and let [Alice] out and that [Alice] went to [petitioner] who was standing in front waiting for [Alice].

Grubisch never told police that petitioner had left the tavern during the course of the evening to do anything else but throw out the tavern's garbage for her. She never indicated that petitioner went with anyone to throw out the garbage. She never stated that Alice left the bar during the course of the evening and prior to closing time either with or without petitioner or anyone else. Grubisch never told police that Alice and petitioner were "acting like a couple for the night." She told police that Alice was with petitioner when they were leaving the tavern at closing time because Alice was going to give petitioner a ride home. In her statement to the police, that is the first time that Grubisch places petitioner anywhere near Alice during the course of the night.

Grubisch's husband's statement to the police also corroborated her statement to the police and her trial testimony:

On 27 Jan 90, a Saturday night, [petitioner] arrived at the HUGGERY about 1800 hours. [Petitioner] left the tavern about 2000 hours and returned a short while later. GRUBISCH, John P. did not see [petitioner] leave again until closing time. During his stay at the tavern, [petitioner] was playing pool; drinking; and acting normally. [Petitioner] was in a good mood and did not appear to have been drinking too much. GRUBISCH, John P. said that [petitioner] was taking out the tavern garbage for his wife, Brenda. In return for [petitioner's] help, Brenda would give [petitioner] a beer as payment. At about 0300 hours on 28 Jan 90, [petitioner] and [Alice] were together in the tavern. [Alice] came over and spoke to GRUBISCH, Brenda L. as [petitioner] left the tavern and stood outside of the front door. [Alice] then joined up with [petitioner] and both walked toward the south (rear) of the tavern.

John Grubisch's statement to the police is consistent with Brenda Grubisch's statement to the police that petitioner would take out the tavern garbage for her in exchange for beers. He stated that he saw petitioner leave the bar at approximately 2000 hours and then return "a short

while later," not an hour later as petitioner told police in his statement. Even assuming that John Grubisch saw petitioner leaving the bar at 2000 hours for something other than to throw out the tavern's garbage, Grubisch never saw anyone, including Alice, leaving the bar with him or returning to the bar with him prior to closing time. Furthermore, John Grubisch never told police that he saw Alice and petitioner "acting like a couple for the night." Indeed, while he told police that "[petitioner] was playing pool; drinking; and acting normally," the first time he saw petitioner and Alice together during the course of the evening is when Alice was leaving the bar at closing time with petitioner and was planning on giving him a ride home. This is consistent with Brenda Grubisch's statement to police as well as her trial testimony but in direct contradiction to her affidavit.

Additionally, as stated by the Illinois Supreme Court, Grubisch's statement would not have changed the outcome of petitioner's case. Assuming that Brenda Grubisch, in fact, told the assistant state's attorneys that Alice and petitioner left the bar together and then returned together prior to closing time and that they acted "like a couple for the night," this did not amount to exculpatory material because it was contradicted by additional evidence other than Grubisch's testimony and was inconsistent with petitioner's defense.

The Illinois Supreme Court ruled that the evidence established beyond a reasonable doubt that petitioner was guilty of committing aggravated criminal sexual assault against Alice. People v. Cloutier, 156 Ill.2d 483, 622 N.E.2d 774, 780 (1993); People v. Cloutier, 191 Ill.2d 392, 732 N.E.2d 519, 523 (2000). Except for her socks and watch, Alice had been completely naked in her car on the last night of her life in January of 1990. Although it is unclear what the weather

conditions were that night, it is unlikely that a woman having consensual sexual intercourse would take off all of her clothes except her socks in her car during the month of January in Chicago.

Petitioner stated to the police that he and Alice removed their clothes and Alice removed her tampon from her vagina in the front seat where they thereafter had consensual vaginal and anal intercourse. That portion of petitioner's statement is unbelievable for two reasons. First, it is inconceivable that Alice, who kept the interior of her car spotless, would have thrown her soiled tampon on the floor of her car as opposed to disposing of it outside of the car or in a restroom if she had anticipated having consensual sexual intercourse with petitioner. Second, her soiled tampon was found on the back seat floor instead of in the front where petitioner said she removed it. Again, it is highly unlikely that Alice would have flung her used tampon into the back of her car.

Next, Alice's injuries were inconsistent with petitioner's statement that all he did was strangle her **after** they had consensual intercourse. Clearly, her injuries indicated that a struggle took place even though petitioner stated that Alice "didn't fight much," with him when he strangled her. When Officer Bachelder removed Alice's body from the trunk of her car, he observed what appeared to be bruises on her forehead, in addition to bruises and ligature marks around her neck which presumably were caused by the strangulation. Doctor Lifschutz observed that in addition to her neck and head injuries, Alice had abrasions on the back of her right elbow, the front of both of her knees, and the front of her right thigh.

Petitioner told police that he had consensual vaginal and anal intercourse with Alice in the front seat of the car and then they moved to the back seat of the car where they again had consensual vaginal intercourse. It was at that point that, "[a]s [petitioner] lay on top of the victim

in the back seat with her arms around him, a thought told him to kill her, and he strangled her with his hands." However, had petitioner simply strangled her after consensual intercourse while lying on her slight four foot, eight inch, 86 pound body, the size and weight of petitioner's body would have prevented any possible movement by Alice which would account for bruises and abrasions to her forehead, elbow, both knees, and the front of her right thigh. Therefore, Alice's struggle with petitioner clearly took place before he murdered her: while he was raping her.

The evidence also established that a struggle or struggles had taken place in the front seat of Alice's car between the last time her fiance saw her alive and the time her car was impounded, subsequent to her murder. The driver's side visor and the headliner were torn and ripped up. Although Elizabeth Halili and Susan Bradford testified that they fought petitioner, their testimony did not preclude the possibility that some of the damage done to the interior of the car could have been caused during a struggle between defendant and Alice. Had petitioner strangled her in the back seat, Alice would not have been able to damage any part of the front of the car.

Furthermore, the evidence regarding petitioner's murder of Cynthia Cooney, his aggravated criminal sexual assaults against Susan Bradford and Elizabeth Halili, and his attempted aggravated criminal sexual assault against Marie Goodman clearly establish a common scheme or design among all of these attacks. Petitioner would get a young woman into a car, either voluntarily or involuntarily, and proceed to a deserted location where he intended to rape and then murder them. But for their escape, Susan Bradford, Elizabeth Halili and Marie Goodman would have been petitioner's rape and murder victims as well. In light of all the evidence establishing petitioner's guilt beyond a reasonable doubt of his aggravated criminal sexual assault of Alice, Grubisch's statement in her affidavit did not amount to exculpatory material evidence.

Grubisch's alleged statement to the assistant state's attorneys also did not amount to exculpatory material evidence because it contradicted petitioner's theory of defense at his trial. Grubisch stated in her affidavit that Alice and petitioner left the tavern for about an hour and then returned before closing time. This, petitioner contended before the Illinois Supreme Court, supported his theory that he and Alice left during the course of the evening and drove to a secluded area where Alice performed fellatio on petitioner. However, in support of his consent defense to his charge of aggravated criminal sexual assault of Alice, petitioner had Doctor Marvin Schwarz testify on his behalf that petitioner only killed women who had consensual sex with him, not those women that resisted him. (Clearly the jury did not find Doctor Schwarz's expert opinion to be persuasive.) Therefore, according to his defense, had Alice left with petitioner during the course of the evening and before closing time to voluntarily perform fellatio on him, she would never have returned back to the Huggery because petitioner would have killed her at that time.

Petitioner has failed to demonstrate how the outcome of his trial, resentencing hearing and post-convictions proceedings would have been different had the Commission Recommendations Nos. 49, 71, 48, 8, 46, 60 and Illinois Supreme Court Rule 416(e) been available to him. Not only is Grubisch's statement in her affidavit thoroughly contradicted by her and her husband's previous statements to police and her testimony during petitioner's trial, the Illinois Supreme Court specifically found that it would not have changed the outcome of petitioner's trial or resentencing hearing. Additionally, none of petitioner's trial or resentencing attorneys ever stated that they were not, in fact, aware of Grubisch's statement. None of them ever stated that the assistant state's attorneys failed to inform them of the same. Finally, petitioner has

continuously refused to address the fact that his trial counsels have never stated that they were not fully aware of Grubisch's statement. Therefore, petitioner's claim must be rejected.

2. Petitioner Was Eligible For The Death Penalty Based On The Multiple Murders He Committed And Felony Murder.

Petitioner asserts that he is entitled to clemency because one of the bases for his death penalty eligibility was upon an aggravating factor other than those factors which the Governor's Commission has recommended be retained. Specifically, the Commission concluded that the current list of 20 factors is overly expansive and therefore unconstitutional. Accordingly, it was suggested that the list be reduced to just five factors: (1) murder of a peace officer or fireman; (2) murder of any person in any correctional facility; (3) multiple murder; (4) murder accompanied by the intentional infliction of torture; and (5) murder of a witness, prosecutor, defense attorney, juror, judge or investigator.

However, the Illinois Supreme Court has expressly rejected the Commission's logic and held that Illinois' death penalty statute satisfies the constitutional mandate because it "genuinely narrows the class of individuals eligible for the death penalty and reasonably justifies imposition of a more severe sentence on those defendants compared to others found guilty of first degree murder." People v. Ballard, ___ Ill. 2d ___, 2002 Ill. LEXIS 376 at *73 (No. 88885 August 29, 2002) (citing Zant v. Stephens, 462 U.S. 862, 877, 103 S. Ct. 2733, 2742 (1983)). As the Ballard court explained, "there are innumerable examples of first degree murders that do not fit within any of the statute's eligibility factors" and "[e]ach provision is narrowly tailored to fit a specific set of facts and circumstances." Ballard, 2002 Ill. LEXIS 376 at *74.

Moreover, each of the aggravating factors represents a determination by the General Assembly that certain types of murders are so deplorable that the death sentence may be imposed.

Each one is intended to ensure that the most helpless members of our society (such as children, the elderly or disabled) are protected against violence or to provide a strong disincentive for the offender to kill the victim. For example, cold, calculated and premeditated murders are properly death-eligible because they are limited to situations where the defendant has carefully planned the murder over an extended period of time, and the availability of the death penalty may be the only thing which prevents these defendants from deciding to actually kill their victims. As the Illinois Supreme Court stated “a defendant who contemplates a murder for a substantial period of time, yet still commits it, is set apart from other murder defendants in a meaningful way.” People v. Williams, 193 Ill. 2d 1, 36, 737 N.E.2d 230 (2000). Similarly, murders in the course of another felony such as rape or home invasion are properly death eligible to help deter the defendant from killing the victim. Given these important policy considerations and the fact that petitioner was also found death penalty eligible based on the multiple murders he committed, his request must be rejected.

3. Pursuant To Well-Established Illinois Supreme Court’s, United States District Court’s and United States Supreme Court’s Law, Petitioner Had Timely Notice Of The People’s Intent To Seek The Death Penalty For Alice’s Murder.

Petitioner claims that he is entitled to clemency because, had Illinois Supreme Court 416(c) and Commission Recommendation No. 31 been in effect, the People would have given him timely notice of their intent to seek the death penalty. Specifically, he states that when he pled guilty to the first degree murder and aggravated criminal sexual assault of Cynthia, he did not

realize those convictions could be used against him as a death penalty eligibility basis in this case, petitioner's first degree murder and aggravated criminal sexual assault of Alice. However, had the supreme court rule and the Commission's recommendation been in place, petitioner still would not have gotten notice any earlier based on the history of this case.

Petitioner was first tried and sentenced to death for his first degree murder and aggravated criminal sexual assault of Alice. He subsequently pled guilty to Cynthia's first degree murder and aggravated criminal sexual assault and was sentenced to life imprisonment. The Illinois Supreme Court's sole reason for reversing petitioner's original death sentence and remanding for a new sentencing hearing was based on the United States Supreme Court's ruling in Morgan v. Illinois, 504 U.S. 719, 112 S.Ct. 222 (1992), which allowed defendants, for the first time, to "reverse-Witherspoon" a jury. However, at the time that petitioner's counsel advised him to plead guilty to the charges in Cynthia's case on July 26, 1991, not only had Morgan not been decided, the Petition for Writ of Certiorari in the case had not even been filed.¹ Petitioner would have the assistant state's attorneys look into their proverbial crystal ball to anticipate that three months after his guilty plea, the highest court in the land would accept a case in which it would subsequently rule in his favor thereby causing the Illinois Supreme Court to reverse his death sentence and remand for a new sentencing hearing.

During his appeals, petitioner couched this argument in terms of his counsel being ineffective for failing to anticipate the above sequence of events when they advised him to plead guilty in Cynthia's case. In reviewing this argument, the Illinois Supreme Court ruled that

¹ The Petition for Writ of Certiorari was filed on October 15, 1991, almost three months after petitioner pled guilty in Cynthia's case. The case was argued before the United States Supreme Court on January 21, 1992 and was decided on June 15, 1992.

petitioner could not challenge his attorneys' conduct in Cynthia's case during the appeal in Alice's case because it is a "wholly separate proceeding," and the court's review was limited to the proceedings which resulted in petitioner's convictions for the crimes he committed against Alice.

Additionally, this Board should be aware of the fact that the Illinois Supreme Court, and the United States District Court, consistent with the United State's Supreme Court caselaw, have determined that, as in this case, the applicable provisions of the Illinois Death Penalty Act placed petitioner on "fair notice" that, when he went through with Alice's murder, he would be eligible for the death penalty if he was ever brought to trial for her murder and had any other murder conviction on his record. People v. Albanese, 104 Ill.2d 504, 473 N.E.2d 1246 (1984); People ex. rel. Daley v. Strayhorn, 121 Ill.2d 470, 521 N.E.2d 864 (1988); People v. Johnson, 182 Ill.2d 96, 695 N.E.2d 435 (1998)(defendant eligible for death penalty for 1984 murder under (b)(3) even though the other conviction was for a murder that occurred in 1985); People v. Guest, 115 Ill.2d 72, 503 N.E.2d 255 (1986)(defendant properly found death-eligible under (b)(3) even though the conviction triggering eligibility was imposed for a California murder committed after the Illinois murder); Coleman v. Ryan, 1999 U.S. App. Lexis 29491 (7th Cir. 1999). This is so because there were no unanticipated consequences attached to petitioner's conduct. The law was "sufficiently explicit" to notify petitioner what conduct on his part would make him "liable to his penalties." Bouie v. City of Columbia, 378 U.S. 347, 53 S.Ct. 1246 (1964). In sum, the (b)(3) eligibility factor of Ill.Rev.Stat 1985. ch 38, para. 9-1 adequately warned petitioner of the circumstances under which it attaches: if a person commits a murder in Illinois and is convicted, and, at the eligibility phase, the sentencer finds that petitioner has another murder conviction on his record, he is eligible for the death penalty. Petitioner's contention that he would not have pleaded guilty for

Cynthia's first degree murder and aggravated criminal sexual assault had he known that the People would subsequently use those convictions as another basis for his death penalty eligibility in Alice's case is meritless as well. By pleading guilty in Cynthia's case, petitioner successfully avoided being sentenced to death in that case. Petitioner "has failed to show that the decision to go to trial would have carried with it anything more than a remote chance of gaining an acquittal."

Petitioner has never claimed actual innocence. He gave a detailed, court-reported statement to the police and assistant state's attorney about how he strangled Cynthia. The evidence established that, while in her car, he tore at her raped her, choked her, and shoved her entire bra deep into her throat. Once he thought she was dead, he drove her "to this little spot on the river [that he knew of]" and parked at a spot where no one would be able to see him. He then "picked [Cynthia] up out of the car, and dropped her into the river." He thought he threw her clothes into the river but some of them ended up on the bridge from where the police later recovered them.

Based on a summary of the evidence regarding Cynthia's murder and rape, petitioner would have undoubtedly been found guilty of her aggravated criminal sexual assault and first degree murder had he proceeded to trial. He also would have exposed himself to another death sentence based on felony murder and multiple murders. Now, as before the trial court and the Illinois Supreme Court, he has failed to repudiate his admission of guilt in Cynthia's case. Additionally as important for this Board, petitioner has failed to demonstrate that had Illinois Supreme Court Rule 416(c) and Recommendation No. 31 been previously in effect, the outcome of this case and, indeed, in Cynthia's case, would have been different. For these reasons, petitioner's claim must be rejected.

4. Petitioner Has Effectively Conceded That Police Procedures Were Fair And Reliable And That He Knowingly And Voluntarily Made

His Horrific Statements Detailing How He Strangled To Death, And Later Disposed Of, Alice's and Cynthia's Bodies.

Petitioner claims that he is entitled to clemency because even though he never requested a lawyer while he was being interrogated, the police never arranged for a public defender to be present during his questioning. 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. Specifically, after hearing extensive testimony during the hearing on petitioner's motion to suppress statements, the trial court stated the following:

Court has heard the evidence. Court will make the following statements regarding the facts that I've heard. And I will relate them, if I might. I will more or less go down the petition the motion filed by Mr. Cloutier.

Mr. Cloutier has urged that he was not advised of his constitutional rights. The Court finds specifically, that he was advised of his constitutional rights on many, many occasions. And in fact, signed a written advisement of right by – that I think—I believe was presented to him or read to him or shown to him by the Oak Lawn Police Department. He later signed over documents indicating his constitutional rights.

The next point raised by Mr. Cloutier is that he was unable to understand those rights. There is absolutely not one scintilla of evidence to support this position.

The next point raised by Mr. Cloutier is that the interrogation or conversations continued after he had elected to remain silent and /or elected to consult with an attorney. There is no evidence as to this point or as to this contention.

The next point raised is that the interrogation occurred

outside the presence of counsel after an appearance had been entered. There's not one scintilla of evidence to support this position.

The next point raised is there was physical, psychological and mental coercion. There is absolutely no evidence to support this position.

The next point raised is that the defendant was confronted with evidence obtained in violation of his 4th Amendment rights. There is no indication or no testimony or evidence indicating there was any evidence obtained in violation of his 4th Amendment rights.

The next point raised was that there had been material representations. There is absolutely no evidence indicating that there was any material misrepresentations. And I believe, lastly, there is – the point is raised that Mr. Cloutier's will was overwhelmed by the use of drugs or in the alternative he was under the influence of drugs and/or liquor or alcohol or some substance. There is not one scintilla of evidence to support this allegation. In short, there is not one indication to – not one bit of evidence to indicate that these statements were otherwise than freely and voluntarily given after Mr. Cloutier had been advised of his constitutional rights.

Motion to suppress statements will be respectfully denied.
[emphasis added]

Petitioner never appealed the trial court's ruling, nor has he ever alleged that his appellate counsel was ineffective for failing to make such an argument before the Illinois Supreme Court. In effect, petitioner has, therefore, conceded this argument. Therefore, even if this proposal by the Governor's Commission had been in effect at the time of petitioner's arrest, it would not have applied to him.

Additionally, petitioner also seeks clemency because his statements where he inculpated himself were admitted into evidence even though they were 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, as demonstrated above, the trial court expressly found that petitioner's statements were 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 statements and how much weight it should be given, petitioner cannot complain that he was prevented from asserting at trial or his resentencing hearing that his statements were unreliable and should not be considered.

5. Petitioner Has Failed To Demonstrate That The People's Decision To Seek The Death Penalty Based On The Multiple Murders He Committed And Felony Murder Was Arbitrary And Has Failed To Demonstrate That The Outcome Would Have Been Different Had The Commission's Recommendations Been In Effect. Petitioner Has Also Conceded That His Trial Judge Was Wholly Qualified To Preside Over This Case.

Petitioner claims his sentenced 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.

Additionally, petitioner claims that the lack of requirements at the time for qualified judges or lawyers in death penalty cases is an additional reason why his case should be commuted. Petitioner, however, does not now nor has he ever alleged that Judge Themis Karnezis, the trial judge during his trial, resentencing hearing and post-conviction proceedings, was not qualified to preside over petitioner’s case. Furthermore, while petitioner has made several allegations of ineffective assistance of counsel, upon review, both the trial court and the Illinois Supreme Court have found that petitioner’s arguments were meritless and that he had the benefit of effective representation throughout the course of his case. This argument should also be rejected outright since petitioner fails to provide this Board with any inkling of how such a recommendation would have had any actual impact on his trial, resentencing hearing, post-conviction proceedings or ultimate outcome.

- 6. Not Only Was Petitioner’s Jury Properly Instructed As To Mitigation Factors, Petitioner Specifically Acknowledged That He Was Not Mentally or Emotionally Abused By His Family When He Told His Mother That She Had Been A “Real Help” To Him And That He Was Wholly Incapable Of Being Rehabilitated Because “You Really Can’t Help [Someone] Who Doesn’t Want” To Be Rehabilitated. Additionally, Petitioner’s Claim That His Jury Was Not Advised That The Alternative To A Death Sentence Was Mandatory Natural Life Imprisonment Is a Blatant Lie To This Board.**

Petitioner complains that the list of statutory mitigating factors did not contain any exceptions to the death penalty in cases where defendants had a history of extreme mental or emotional abuse. Petitioner's jury, however, was expressly instructed that "Where there is evidence of a mitigating factor, the fact that such mitigating factor is not a factor specifically listed in these instructions does not preclude your consideration of the evidence." Additionally, the jury was instructed, in part:

Mitigating factors include:

First, the following if supported by the evidence: The murder was committed while the defendant was under the influence of an extreme mental or emotional disturbance, although not such as to constitute a defense to the prosecution....

These instructions render petitioner's claim wholly meritless. More importantly, however, this Board should be aware that there was absolutely no evidence that petitioner was mentally or emotionally abuse by his family.

Petitioner has repeatedly admitted that he did not want his family's support. The first time petitioner was incarcerated, he wrote to his mother, "You know you couldn't stop me from what I wanted to do, no you couldn't have done anymore [sic] either. I think you put up with my shit more than anyone else would." "I want you to know you've been a real help to me while I'm down." Petitioner also stated, "I wasn't rehabilitated but then you really can't help no one [sic] who doesn't want it."

It comes as no surprise that not only does petitioner not take responsibility for the rapes, murders and multitude of other crimes he's committed, he now wants this Board to believe that he suffered mental or emotional abuse from his family which would justify his horrific and definitive crimes. In addition to petitioner's own words, the record clearly reflects, however, that petitioner's

mother desperately tried to get petitioner to change the decisions he had made to take the wrong path in life. When petitioner failed to attend school, it was his mother who repeatedly went to the disciplinary office to meet with the administrator and discuss petitioner's truancy problems and suspensions. The administrator felt that she was "handling [her] responsibilities [as a parent] properly." During the two year period that petitioner would not go to school regularly, his mother had the school contact her so that she could inform the truancy officer of each instance where he failed to attend.²

When petitioner stole a little over \$2,000. from his mother, she went to the police to see what could be done. A juvenile officer suggested that she bring in petitioner so "that he would put the fear of God into him." The officer, however, was unsuccessful. The youth officer suggested that she could request a police report to be made regarding petitioner stealing the money and the police would arrest him and have him placed in juvenile detention for several weeks but petitioner's mother found that course of action to be outrageous.

Later, petitioner's mother sought assistance from juvenile authorities. She filed a minor in need of supervision petition and petitioner spent some time in the Audy Home. Subsequently, once he returned home, petitioner and his mother attended counseling together. "During the counseling session [petitioner] would respond warmly and courteously," but would not speak to anyone between the sessions. She told Hill,

I tried to get him to understand that he was putting them on, that he was not making any progress and if anything getting worse.

² It was about this time that petitioner's mother had him tested by some child psychiatrists. He intentionally did poorly on his first IQ test and scored 135 on his second IQ test.

His time spent away from home began to increase. There were weeks when I didn't see him. Finally, I reinstated the MINS petition...And we went to see an adjudicator.

The adjudicator and other counselors agreed with her that petitioner was in need of assistance and that they needed to do something. A hearing date was set for three weeks later but petitioner ran away that evening. The police picked him up one and a half weeks later and brought him home. Though, his mother took him in, petitioner ran away again, this time for over two and a half months. At that time, petitioner's family moved without leaving a forwarding address.

Shortly thereafter, petitioner reunited with his mother when he found out that his grandmother had died. Once again, his mother took him in. According to his mother, "Same old rules applied, no drugs, no drinking, no unsavory friends and [be] respectful to the other children."

A short time later, when he turned 16, however, petitioner ran away again and this time was gone for a significant period of time. He called his mother before Thanksgiving and she asked him to come home but he told her that he could not.

Two weeks later, a policeman found him after petitioner had ingested a large amount of PCP and acid. After his blood and urine analysis at the county hospital, the police took him to the Audy Home. Once in court with petitioner, his mother informed the GAL that she did not want him to be released into her custody because she feared for her four daughters. She visited him during the six weeks that he was in the Audy Home. Once he was placed on probation and released, she again accepted him back home.

At one point, based on petitioner's experience with Audy Home officials and the truancy officials from his school, he was placed in a facility called the Guardian Angel to help him with his education, his behavior and substance abuse problems. His mother believed that he was drug-free

during that time. When he returned home "[he] did fine for a while...[and then] he started going back to his old habits."

The next time petitioner was placed in the Audy Home, his family moved again, leaving no forwarding address. His mother told Hill,

[Petitioner] went out one Friday night and came home Saturday afternoon flying on speed and dust. We needed to lock him up in the bedroom until he became coherent and manageable. That was the last night he spent with us. We moved again.

At the time of his resentencing in this case, however, his mother kept in contact with him and visited him in prison.

The record directly contradicts petitioner's insinuations that his family environment and his mother are to blame for his committing a slew of felonies and being sentenced to death. His mother made many attempts to guide petitioner. She sought assistance for him and attended counseling with him but petitioner repeatedly refused to switch his path in life. So while petitioner's jury was properly instructed, the record is completely void of any evidence that petitioner experienced any mental or emotional abuse from his family.

Additionally, in reliance on the fact that this Board does not have the benefit of the court proceedings in this case, petitioner claims that his death sentence should be commuted because the jury was not instructed as to the possible alternative sentence of natural life imprisonment as now being recommended by the Governor's Commission. Petitioner's claim is a blatant lie to this Board. The jury was specifically instructed by the court and through defense counsels' arguments that, if not sentenced to death, petitioner would be sentenced to natural life imprisonment without parole or release except through an order by the governor for executive clemency. Petitioner's

lying to this Board is not only insulting to this Board and to the memories of Alice and Cynthia, it evidences his willingness to stoop to any level in his attempt to have his sentence commuted.

CONCLUSION

Petitioner has never claimed actual innocence. His trial, resentencing hearing and post-conviction proceedings were fair and petitioner would have been sentenced to death even if the new Illinois Supreme Court Rules and the Governor's Commission's recommendations had been in place. The savage way petitioner raped and murdered Alice and Cynthia and the complete lack of any mitigation whatsoever demands that petitioner's cowardly and unjustified plea for clemency be rejected. For all these reasons, the People of the State of Illinois respectfully request that this Board and Governor Ryan deny executive clemency to Robert Cloutier.

Respectfully submitted,

RICHARD A DEVINE
State's attorney of Cook County

KEVIN BYRNE
MARGARET J. CAMPOS
Assistant State's Attorney
Of Counsel