

OCTOBER 2002 SESSION  
PRISONER REVIEW BOARD  
STATE OF ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Docket No. \
vs.	)	
	)	
ULECE MONTGOMERY,	)	Inmate No. A-91082
	)	
	)	

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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: MARIE QUINLIVAN CZECH,  
JOHN MAHONEY,  
Assistant State's Attorneys.

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**INTRODUCTION**

**PETITIONER CULMINATED A LIFETIME OF  
PREYING ON THE WEAK AND DEFENSELESS  
BY MURDERING AND RAPING TWO OLD  
LADIES WHO WERE TRYING TO HELP HIM.  
HE DOES NOT DESERVE MERCY.**

Petitioner spent his entire lifetime inflicting unspeakable pain on the most innocent of victims. He raped his 5 year old brother. He raped his sister, Renee, when she was 11. He raped and impregnated his sister, Jean, when she was 11. Again and again, he acted with cold indifference. He acted with absolute cruelty. He acted without reason. And then he reached his pinnacle. He strangled to death two old ladies, and raped them after they were dead.

Petitioner argues that he should be given mercy because he had a deprived childhood, because no one ever gave him a break, because no one ever reached out to try and help him. The ultimate irony, of course, is that Miss Briggs and Mrs. Tyson were trying to do exactly that – they were trying to help him. He needed a couch and they offered to give him one. 72 year old Miss Briggs went so far as to pick up an end of the couch to help Petitioner move it. But when she couldn't hold up her end, Petitioner killed her. Not the most obvious consequence to most of us.

But, to Petitioner, who spent his entire life using people, hurting them and then throwing them away, murder, followed by rape, was the natural thing to do.

68 year old Mrs. Tyson was not such an obvious mark. She hadn't dropped a couch or done anything that would tick Petitioner off. But he was angry and on a roll so she got it too. The strangulation murder. The post mortem rape.

Petitioner's acts speak for themselves. He is a sexual predator. He is a killer. He does not deserve mercy.

## I.

### FACTS OF THE CASE

On April 25, 1981, petitioner beat and strangled 72 year old Pearl Briggs to death. After beating Miss Briggs into unconsciousness and possibly after she was dead, petitioner raped her. Petitioner then strangled 68 year old Betty Tyson to death using her pantyhose which he wrapped around her neck five times. After Mrs. Tyson was unconscious or possibly dead, petitioner raped her. Petitioner confessed to the murders and rapes.

### PETITIONER'S CONFESSION

All of the details of the crime were provided by Petitioner's own admissions.

Petitioner and his girlfriend rented an apartment from Miss Briggs. Miss Briggs lived with her sister, Mrs. Tyson, in one of the apartments in the front house. Petitioner and his girlfriend rented one of the two apartments in the rear building. Miss Briggs offered to lend a couch to petitioner and his girlfriend. On the evening of April 25, 1981, petitioner went to Miss Briggs' second floor apartment to get the couch.

The couch was downstairs in the ground level apartment. Miss Briggs got the keys and a

flashlight and she and petitioner went downstairs. Miss Briggs let them in with the key. Although 72 year old Miss Briggs had trouble getting around, she tried to help petitioner move the couch. Petitioner said that he became angry when Miss Briggs dropped the end of the couch onto his foot.

Petitioner hit Miss Briggs in the upper part of her body. When she fell, petitioner dragged her from the front room to the kitchen. Petitioner heard her make "funny groaning noises." Miss Briggs was not conscious. Petitioner removed Miss Briggs' clothes and panties and raped her.

The cause of Miss Briggs' death was strangulation. When Miss Briggs' body was found, she was lying on her back with her arms extended over her head. Her dress was pulled up and her genitals were exposed. Petitioner's fingerprint was found on the lens of Miss Briggs' eyeglasses. Petitioner's jacket had blood spatters which were consistent with Miss Briggs' blood type but not his. A head hair found under Miss Briggs' fingernail was consistent with petitioner's hair.

Petitioner then retrieved the keys and flashlight. Petitioner went upstairs in order to give those things to Mrs. Tyson. Mrs. Tyson opened her door and petitioner gave her the items. Petitioner started to leave, but then turned and pushed Mrs. Tyson. Mrs. Tyson fell to the floor. Petitioner removed Mrs. Tyson's stockings and wrapped them around her neck. Mrs. Tyson was not conscious. Petitioner then lubricated his penis with baby oil and raped Mrs. Tyson.

The cause of Mrs. Tyson's death was ligature strangulation. When Mrs. Tyson's body was found, her genitals were exposed. There was a bottle of baby oil on the floor next to her. Petitioner's palm print was found on a camera case which was on a couch next to Mrs. Tyson's head. Petitioner's shirt had blood spatters which were consistent with Mrs. Tyson's blood type but not his. A head hair found on petitioner's tee shirt was consistent with Mrs. Tyson's hair.

#### PRETRIAL AND TRIAL

Petitioner was charged with the murders of Miss Briggs and Mrs. Tyson. Petitioner's three pretrial motions to quash arrest and suppress his statement were all denied. People v. Montgomery, 112 Ill.2d 517, 494 N.E.2d 475, 477 (1986).

On March 15, 1983, petitioner's counsel, John McNamara said that petitioner had instructed him to ask to conference the case. The People refused to participate. Judge Samuels ruled that there could be no conference without the participation of both parties.

That same day, the parties began selecting a jury. One panel was sworn. Petitioner overheard one venire member say that he could convict petitioner just by looking at him. That night, petitioner attempted suicide.

Petitioner was unable to come to court on March 16, 1983. On March 17, 1983, petitioner was still unable to come to court, and Judge Samuels declared a mistrial.

Three months later, on June 14, 1983, petitioner waived his right to a jury and stipulated to the People's evidence. The Honorable Judge Richard Samuels found petitioner guilty of the murders of Miss Briggs and Mrs. Tyson.

#### ELIGIBILITY

Petitioner then waived his right to a jury for the capital sentencing hearing. Judge Samuels found the existence of two statutory aggravating factors: the murder of more than one individual and intentional murder during the course of a felony, rape.

#### AGGRAVATING EVIDENCE

The People presented evidence of petitioner's destructive activity which had been escalating over a period of 15 years.

In 1966, when petitioner was 9 years old, he stuck a coke bottle onto the penis of his 3 year

old brother Darryl. The bottle got stuck and could only be removed by medical personnel.

In 1969, when petitioner was 12 years old, he attempted to rape his 11 year old sister, Rene. The evidence of this attempt rape came from petitioner's mother's interview with a psychiatric social worker. This interview took place in 1976 when petitioner was in custody and charged with the rape of another sister, Jean.

At the sentencing hearing, Rene testified that petitioner never attempted to rape her. Petitioner's mother also testified that there was no attempt rape of Rene. Petitioner's mother testified that she previously said there was an attempt rape just because she wanted to get help for petitioner.

In 1970, when petitioner was 13 years old, petitioner raped his 5 year old brother, Eugene. The evidence of this rape also came from petitioner's mother's statement in 1976. At the sentencing hearing, Eugene testified that petitioner had not raped him. Petitioner's mother testified that she previously said there was a rape so that the prison doctors would check petitioner out.

In 1976, when petitioner was 19 years old, he raped his 11 year old sister, Jean. Jean complained of two rapes on two separate nights. Petitioner made Jean pregnant. Jean underwent an abortion. Petitioner's mother and Jean pressed charges. On November 16, 1976, petitioner pled guilty and was convicted of contributing to the sexual delinquency of a minor. Petitioner was sentenced to two years probation with the first six months to be served in the Cook County Department of Corrections.

At the sentencing hearing, petitioner's mother said she didn't know if petitioner had really made Jean pregnant. Rather, the hospital might have done a D and C on 11 year old Jean "just in case." Jean also testified at the sentencing hearing that petitioner "made love" to her when she was 11 years old, but that she was angry and afraid of him for only "just a little while." Petitioner's

mother also told the social worker that, by the time petitioner was 19 years old, he carried guns and a butcher knife on his person. She also said that he had once stabbed someone five or six times but "got away with it."

On October 12, 1978, when petitioner was 21 years old, he pled guilty to possession of a stolen motor vehicle. Petitioner was sentenced to two years felony probation.

On April 11, 1979, when petitioner was 21 years old, he pled guilty to a second charge of possession of a stolen motor vehicle. He was sentenced to one year in the Department of Corrections.

#### MITIGATING EVIDENCE PRESENTED AT SENTENCING

In mitigation, Petitioner's mother and sister testified that he was drunk immediately after the murders. Petitioner's family members also testified about the deprived conditions in their home during Petitioner's childhood.

Dr. Stephen Porter testified that petitioner was acting under extreme emotional disturbance at the time of the murders because of the amount of alcohol he had consumed that day.

#### SENTENCING BY THE COURT

Judge Samuels found that petitioner had not been acting under extreme emotional disturbance at the time he murdered Miss Briggs and Mrs. Tyson. The judge pointed out that petitioner's intoxication had been entirely voluntary. Judge Samuels said that petitioner preyed on the weak, the elderly, and his little brother who couldn't take care of himself. Judge Samuels "regretfully" found that there were no mitigating factors sufficient to preclude the imposition of the sentence of death.

## II.

### HISTORY OF THE CASE

On June 14, 1983, Petitioner entered into a stipulated bench trial in the Circuit Court of Cook County before the Honorable Richard L. Samuels. Judge Samuels found petitioner guilty of the rapes and murders of 72 year old Miss Briggs and 68 year old Mrs. Tyson. Petitioner waived his right to a sentencing jury and the hearing was held on June 17, 1983. On June 23, 1983, Judge Samuels sentenced Petitioner to death.

On April 4, 1986, the Illinois Supreme Court affirmed Petitioner's convictions and sentences. People v. Montgomery, 112 Ill.2d 517, 494 N.E.2d 475 (1986) (Montgomery I) Certiorari was denied on February 23, 1987. Montgomery v. Illinois, 479 U.S. 1101 (1987).

On December 14, 1987, Petitioner filed a Post Conviction Petition in the Circuit Court of Cook County. In this petition, Petitioner raised the claim of judicial bias for the first time. The petition was assigned to Judge Samuels, who had heard Petitioner's trial. Judge Samuels immediately recused himself and the case was assigned to the Honorable Judge Cornelius Houtsma. Judge Houtsma, like Judge Samuels had worked in the Markham courthouse for many years. This caused Petitioner to move for a change of venue, but the motion was denied and the Illinois Supreme Court refused to review the order. Judge Houtsma held a hearing on the judicial impropriety claim and then denied the entire petition on January 14, 1991.

Petitioner appealed to the Illinois Supreme Court, arguing, among other things, that he had not had a full and fair opportunity to cross-examine Judge Samuels. The court remanded the case with directions to reopen the hearing to allow petitioner to fully cross-examine all of the witnesses. People v. Montgomery, 162 Ill.2d 109, 642 N.E.2d 1260 (1994) (Montgomery II)

On remand, Acting Cook County Chief Judge Donald P. O'Connell assigned the case to Judge Michael Weber, the Chief Judge of the Fourth Judicial District in Jasper County, Illinois. Judge O'Connell stated: "this action will serve to eliminate even the slightest possible hint of suspicion by a skeptical observer regarding the impartiality of the judge who presides over Petitioner's post-conviction hearing." (CL. 694)

Judge Weber held an entirely new hearing on Petitioner's claims of judicial misconduct and ineffective assistance counsel. At the conclusion of the hearing, Judge Weber denied Petitioner's claims.

On June 15, 2000, the Illinois Supreme Court affirmed Judge Weber's ruling. People v. Montgomery, 192 Ill.2d 642, 736 N.E.2d 1025 (2000).

Petitioner then filed a petition for writ of habeas corpus in the United States District court for the Northern District of Illinois. The case is currently pending before the Honorable Judge Amy St. Eve under docket number 01 C 7486.<sup>1</sup>

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<sup>1</sup> Petitioner asserts that the case is pending before the Honorable Judge Charles Norgle. However, on September 4, 2002, after Petitioner filed his petition, the case was reassigned to Judge St. Eve.

### III

#### REASONS FOR DENYING THE PETITION

##### A.

**PETITIONER'S TRIAL COUNSEL CREATED A CLAIM OUT OF WHOLE CLOTH, STATED IT AS IF IT WERE FACT, AND TIED THE COURTS UP WITH IT FOR YEARS. EVERY COURT IN ILLINOIS HAS REJECTED PETITIONER'S CLAIM OF JUDICIAL IMPROPRIETY AND HAS HELD THAT PETITIONER'S COUNSEL WERE LYING WHEN THEY TESTIFIED ABOUT ITS EXISTENCE.**

Petitioner asserts, as if it were a matter of fact, that his trial judge engaged in inappropriate *ex parte* conversations and was pre-disposed about the outcome of the trial.

Specifically, Petitioner asserts that Judge Samuels made an *ex parte* promise that he would not sentence Petitioner to death if Petitioner took a bench trial and bench sentencing hearing. However, there is no basis in fact to support Petitioner's allegations. Every court in Illinois has found that any meetings between Judge Samuels and defense counsel involved scheduling only and so were perfectly appropriate.

#### Factual Background

There was an extensive hearing on this issue, presided over by Judge Michael Weber, a judge from outside Cook County. The testimony of Judge Samuels was the polar opposite of Petitioner's trial lawyers. Judge Samuels said he discussed scheduling only and defense counsel testified that they discussed the outcome of the case. Thus, Judge Weber was called upon to determine who was telling the truth and who was lying.

### Defense Counsel's Unsubstantiated Testimony

Petitioner's counsel alleged that they had three *ex parte* meetings with Judge Samuels during which the judge agreed to sentence Petitioner to natural life rather than to death.

In the first meeting, the judge and Petitioner's counsel, McNamara, were allegedly discussing whether counsel would plead Petitioner guilty. Judge Samuels, who had never sentenced anyone to death before this, allegedly told McNamara to "look to his record." McNamara took this to mean that the judge would not sentence Petitioner to death.

At the second meeting, Petitioner's other counsel, Morrissey, testified that in the latter part of April 1983, he also spoke with Judge Samuels *ex parte*. Morrissey testified that when he said that petitioner would be taking a jury, Judge Samuels suggested that petitioner should plead guilty and that he would give petitioner a life sentence. Then the judge allegedly said: "Oops. The cat's out of the bag."

At the third meeting, both McNamara and Morrissey were present. They were discussing scheduling when an Assistant State's Attorney came upon them and disrupted the meeting. There was no discussion of any agreement about sentencing before they were interrupted. The Assistant accused them of "back-dooring" him and stormed out. The meeting was concluded without further discussion.

### The Record Supported Judge Samuels' Testimony

The record of the trial did not contain even one word to support counsels' allegations. In fact, the record supported Judge Samuels' testimony.

At the time of trial, on the record, Judge Samuels affirmatively refused to hold an ex parte conference with defense counsel. This ruling came after defense counsel asked to conference the case and the State refused. Judge Samuels said that Illinois Supreme Court Rule 402 prohibited him from holding a plea conference without the State.

Three months later, when accepting Petitioner's jury waivers, Judge Samuels repeatedly admonished Petitioner that death was a possible sentence.

The record from the 1983 trial does not show one shred of evidence contradicting Judge Samuels' refusal to hold an *ex parte* conference. This is the result of a purposeful decision by defense counsel. McNamara, Morrissey and Bob Isaacson (Petitioner's appellate counsel) all testified that they discussed whether to raise the ex parte issue at trial, and that they decided not to. It comes as no surprise that the Illinois courts found defense counsel incredible since they made a conscious decision to not make a record. Defense counsel buried their credibility when they chose to bury the *ex parte* issue.

Although defense counsel assert that they attempted to make a record by including the issue in a camouflaged form in the motion for a new trial, the record belies this claim. Isaacson, McNamara and Morrissey all testified that they worded paragraphs 12 through 15 in the motion for new trial in such a way so as to tip off Judge Samuels about his unkept promise. These paragraphs read as follows.

12. The Defendant did not knowingly, voluntarily or intelligently waive his right to trial by jury.

13. The Defendant by taking a stipulated bench trial in effect waived his right to a trial. This was not done knowingly, intelligently or voluntarily.

It amounted also to a waiver of his right to counsel and this was not done knowingly, intelligently or voluntarily.

14. Admonishments given by the Court were inadequate to protect the Defendant's right to counsel, his right to a jury and his right to a trial in this case.

15. Counsel was inadequate to protect defendant's right to a trial by jury.

McNamara presented no argument whatsoever on the motion. On the face of this motion, there isn't the slightest inkling that there was some kind of offer that was reneged. Thus, this motion for new trial is completely worthless as a memorial of any *ex parte* offer.

The Most the Defense Ever had was a "Wink and a Nod."

McNamara and Morrissey testified that they chose not to make a record because they feared that, if given the opportunity on the record, Judge Samuels would deny that he made any *ex parte* offers. This strategy reveals that even they realized that their alleged arrangement with Judge Samuels was not much more than a "wink and a nod". It is a case of lawyers trying to find something when nothing was really there. The policy of the Cook County Public Defender's office, as described at the hearing, shows a pattern of defense lawyers trying to intuit a deal from thin air.

McNamara, Morrissey, and Isaacson (appellate counsel) all testified that, in potentially capital cases, it was their policy and the Public Defender's policy to never waive jury for sentencing without an "indication" from the trial judge that he would not sentence the defendant to death. This policy is followed 99.9 percent of the time. However, Isaacson admitted to knowing about 22 cases in which the petitioners were sentenced to death when the Public Defender's office waived a jury for sentencing. Thus, there were either 22 other reneged deals or the members of the Public Defenders office tended to read something into the judges' words or actions that was not intended.

The Defense Waited 4 ½ Years to Raise the Issue and 7 ½ Years to Produce Memoranda Allegedly Made at the Time of the Offer.

Nor did defense counsel ever raise the ex parte issue on direct appeal. Instead, counsel said nothing for 4 ½ years, raising the issue for the first time in the post-conviction petition. Although there are memoranda purportedly made contemporaneously with trial that “memorialize” defense counsel’s assertions, these memoranda lack even one indicia of reliability. The memoranda did not surface until 7 ½ years after the purported conversations and 3 years after the filing of the post conviction petition. McNamara’s memorandum was undated and unsigned. Morrissey’s memorandum was also undated and unsigned, but it was accompanied by a letter dated August 10, 1984, 16 months after the alleged *ex parte* conversations.

Morrissey Did Not Even Tell His Trial Partner About The Offer.

Furthermore, Morrissey did not even tell McNamara, his trial partner, about the offer Judge Samuels allegedly gave him until McNamara brought up his conversation with Judge Samuels. The post-conviction court found it unbelievable that Morrissey had an offer that he did not immediately relay to his trial partner.

There are No Credible Contemporaneous Witnesses.

McNamara’s attempt to provide contemporaneous witnesses completely failed. McNamara said that, immediately after speaking with Judge Samuels, he was approached by the judge’s clerk, Moses Cole. McNamara thought that Judge Samuels had sent Cole to him. Cole allegedly told McNamara to take a bench sentence because he didn’t think Judge Samuels would sentence anyone to death. Cole, however, died in 1983, and so was unable to substantiate McNamara’s testimony. Moreover, McNamara’s memorandum said that he met with Judge Samuels and Cole on April 19, 1983. However, the court sheets showed that Cole was not at work that day. At the hearing, McNamara said that he was apparently wrong about the date.

Judge Samuels said he never sent Cole to McNamara.

McNamara also said he was approached by Judge Samuels' court reporter, Shirley Thompson. Ms. Thompson allegedly told McNamara that Judge Samuels would not sentence anyone to death.

Ms. Thompson testified that Judge Samuels never discussed petitioner's sentence with her. Nor did she ever say anything to McNamara concerning what sentence Judge Samuels would impose.

Judge Samuels said he never sent Shirley Thompson to McNamara.

McNamara said he also told Paul Foxgrover about Judge Samuels' ex parte offer. In 1983, Foxgrover was an assistant public defender, who had been in Judge Samuels' courtroom and had tried a death case before him. In 1990, at the time of the first post-conviction hearing, Foxgrover was a Cook County judge and he testified that McNamara told him about the first ex parte conference. In 1994, at the time of the hearing at issue now, Foxgrover had been indicted for felony theft, had pled guilty, and had been sentenced to six years imprisonment. Petitioner did not offer Foxgrover as a witness to substantiate McNamara's testimony.

The last witness offered to bolster Morrissey's testimony was Andrea Lyon. Ms. Lyon, a former assistant public defender, testified that Morrissey told her that he had an unsolicited offer of a life sentence from Judge Samuels. However, Ms. Lyon also admitted that she strongly opposed the death penalty and that, if she could not win a case, her primary goal was to save her client's life. Thus, Ms. Lyon, like McNamara and Morrissey, was an anti-death penalty ideologue and the post conviction court was justified in finding her testimony incredible.

Judge Weber Found That Judge Samuels Was Telling The Truth.

Judge Weber found that Judge Samuel's testimony was credible. The court found that there were inconsistencies in the testimony of McNamara and Morrissey. The court noted that, when Morrissey spoke about Judge Samuels, his demeanor was vindictive. The court said vindictiveness should be totally out of character for someone in Morrissey's position.

The court also found that, if Morrissey's testimony is taken as true, then Judge Samuels made a gratuitous offer without regard for any of the evidence. This would have been out of character for a judge who refused a 402 conference because the State would not participate.

The court found it unbelievable that Morrissey did not immediately relay the promise from Judge Samuels to McNamara, the lead counsel on the case. McNamara's testimony, that he immediately told Morrissey of the offer, was more credible.

The court found the inconsistencies in McNamara's and Morrissey's testimony strained its ability to believe their testimony. Thus, the court denied the post conviction petition.

#### The Illinois Supreme Court Agreed That Judge Samuels Was Telling The Truth

The Illinois Supreme Court went through a painstaking analysis of all of the evidence just discussed and concluded that Judge Samuels was telling the truth. The court affirmed Judge Weber's ruling dismissing Petitioner's claims. People v. Montgomery, 192 Ill.2d 642, 736 N.E.2d 1025, 1032-39 (2000).

#### Petitioner's Assertions To The Board And Governor Are Nothing Short of Misleading.

Every court in Illinois determined that there were never any inappropriate *ex parte* discussions. Rather, the only thing discussed *ex parte* was scheduling. Thus, Petitioner is purposely misleading this Board and the Governor when he says as if it were a matter of fact, that Judge

Samuels engaged in inappropriate *ex parte* discussions. It has been proven, as fact, that the only thing discussed *ex parte* was scheduling. Under the law, this was perfectly appropriate.

**B.**

**PETITIONER WAS CONVICTED AND SENTENCED TO DEATH BECAUSE, AS A MULTIPLE MURDERER AND SEXUAL PREDATOR, THAT IS WHAT HE DESERVED. HE WAS NOT SENTENCED TO DEATH BECAUSE OF POOR REPRESENTATION. CONSIDERING THE FACTS OF PETITIONER'S CASE, COUNSEL WOULD HAVE NEEDED DIVINE POWERS TO GET HIM OFF.**

Petitioner argues that he should be granted clemency because his counsel afforded him poor representation. Petitioner complains that counsel failed to investigate and present significant amounts of information about the deprived conditions of Petitioner's childhood. Petitioner argues that, had Judge Samuels known about this, then he would not have sentenced Petitioner to death.

This issue was also covered in the hearing before Judge Weber. Petitioner's post conviction counsel presented mountains of documents and hours of testimony about the conditions under which Petitioner grew up. At the end of it all, Judge Weber found that virtually all of the evidence presented to him was cumulative to the evidence presented at the sentencing hearing. The Illinois Supreme Court agreed. People v. Montgomery, 192 Ill.2d 642, 672, 736 N.E.2d 1025 (2000). Thus, Petitioner's trial counsel provided constitutionally adequate representation at Petitioner's sentencing hearing.

Petitioner's post conviction counsel also argued extensively that Petitioner's alcohol and substance abuse somehow excused the murders of Miss Briggs and Mrs. Tyson and his life as a sexual predator before that. However, as the Illinois Supreme Court pointed out, alcohol and

substance abuse are not particularly mitigating. Especially not in this case since Petitioner voluntarily got drunk before the rapes and murders. Montgomery, id at 673.

The bottom line is that Petitioner was convicted and sentenced to death because he murdered and then raped two defenceless old ladies who were trying to help him. These crimes culminated a lifetime of being a sexual predator. Thus, Petitioner simply deserved the death penalty.

C.

**THE NEW ILLINOIS SUPREME COURT  
RULES ARE NOT TO BE APPLIED  
RETROACTIVELY. FURTHER, THE  
COMMISSION RECOMMENDATIONS ARE NOT  
LAW AND MAY NEVER BECOME LAW.**

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.

Petitioner also 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.

Public Defender at the Police Station

Petitioner claims that he is entitled to clemency because had this recommendation been

in effect, there would be no uncertainty regarding the voluntariness of his confession. However, petitioner fails to mention that he did not request an attorney and indicated, in signing his confession, that he understood he had the right to an attorney, but wished to give a statement without an attorney being present. Therefore, even if this proposal had been in effect at the time of petitioner's arrest, it would not have applied to him.

#### 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.

#### Qualifications of Defense Counsel

As previously stated, petitioner was represented at trial by Assistant Public Defenders

Michael Morrissey and Robert McNamara, two of the more experienced trial attorneys employed by the Cook County Public Defender's Office. Without any explanation, petitioner asserts that he should have been represented by counsel with special training. However, if training seminars were being held, McNamara and Morrissey would be giving the training, not receiving it. Given that petitioner killed and then raped two defenseless old ladies who were trying to help him, it is hard to imagine that any defense counsel, even one officially trained under the Governor's Recommendations, could have saved petitioner from a death sentence.

#### DNA Testing

Petitioner seeks clemency because there was no DNA testing. Recommendation 25 suggests that DNA testing, pursuant to 725 ILCS 5/116(3), be permitted where it has the scientific potential to produce new, noncumulative evidence relevant to the defendant's assertion of actual innocence, even though the results may not completely exonerate the defendant. However, this Recommendation comports with the statute which has been in effect for the past 4 years. However, Petitioner has never before requested DNA testing. Petitioner confessed to the murders and rapes of Miss Briggs and Mrs. Tyson. Petitioner has never presented a claim of actual innocence before any reviewing court.

#### Decision to Seek Death

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, [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.

### Judicial Training

Petitioner seeks clemency on the grounds that Recommendations governing judicial training were not in effect at the time of his trial and sentencing hearing. Petitioner has not pointed to one single specific area in which he believes Judge Samuels’ training and experience resulted in a denial of his right to a fair trial or fair sentencing hearing. Judge Samuels was one of the most experienced trial judges to ever sit in the Criminal Division of the Circuit Court of Cook County.

### Prosecutorial Training

The lead prosecutor in Petitioner’s case was Scott Arthur, a supervising attorney in the State’s Attorney’s office. Had training been offered to the assistant state’s attorneys at the time of Petitioner’s trial, Mr. Arthur would have given it.

### Pre-trial Procedures

Petitioner says he would have benefited from the Commission recommendations about pre-trial procedures. Specifically, Petitioner points to Recommendations 46-49 and 52-53. Recommendations 46-49 deal with the discovery of evidence. In Petitioner’s case, his confession was the lynchpin of the case. The rest of the testimony consisted of lab reports and life and death

witnesses. Thus, these procedures would be of very little help to his case. Recommendation 52 deals with informant witnesses. Since there was no informant in this case, Recommendation 52 is irrelevant. Recommendation 53 says that the courts should scrutinize any information showing that the strength of the evidence against a suspect was misrepresented. Again, any evidence concerning this would have come out at the pre-trial hearing on the motion to suppress Petitioner's confession.

#### Statutory Mitigating Factors

Petitioner complains that his jury was not instructed to consider as statutory mitigating factors the fact that he had a history of extreme emotional or physical abuse and/or that he suffers from reduced mental capacity. However, the law already mandated Judge Samuels to consider "any reason why the defendant should not be sentenced to death" and any mitigating evidence even if it did not pertain to one of the enumerated factors. Ill.Rev.Stat. 1981, Ch. 38, par. 9-1(c).

#### Post Conviction Reforms

Recommendation 70 provides that the Illinois Supreme Court should consider on review whether the death sentence was arbitrary or disproportionate or whether the aggravation and mitigation evidence was properly weighed. That is already the function of the Illinois Supreme Court. Furthermore, it's not as if Petitioner's case was a close case. He confessed to a horrific crime and this horrific crime was preceded by a lifetime of crime. Recommendation 71 provides that, after trial, the defense should be provided with any information tending to negate the evidence of Petitioner's guilt. The People assure this Board and the governor that there is no such evidence in Petitioner's case.

CONCLUSION

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

Respectfully submitted,

RICHARD A DEVINE  
State's attorney of Cook County

MARIE QUINLIVAN CZECH,  
JOHN MAHONEY,  
Assistant State's Attorneys