

**OCTOBER 2002 SESSION  
PRISONER REVIEW BOARD  
STATE OF ILLINOIS**

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**PEOPLE OF THE STATE OF ILLINOIS)**

**vs.**

**WILLIAM RILEY**

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**DOCKET NO. \_\_\_\_\_**  
**INMATE NO. B03069**

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

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

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**HEARING REQUESTED**

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**RICHARD A. DEVINE  
STATE'S ATTORNEY OF COOK COUNTY**

**By: DOMENICA STEPHENSON  
JAMES PATRICK BYRNE, JR.  
ASSISTANT STATE'S ATTORNEYS**

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**I**

**HISTORY OF THE CASE**

On April 25, 2001, William Riley was convicted, following a bench trial, of the offenses of First Degree Murder, Home Invasion, Armed Robbery, Residential Burglary, and Aggravated Unlawful Restraint of Debbie Happ in the Circuit Court of Cook County under case number 97CR-18943. After waiving a jury for eligibility and sentencing, the defendant was sentenced on August 31, 2001 to death for the First Degree Murder conviction, thirty (30) years IDOC for the Home Invasion, thirty (30) years IDOC for the Armed Robbery and Residential Burglary to be served consecutively to the Home Invasion, and three (3) years IDOC for the Aggravated Unlawful Restraint concurrent with the Armed Robbery and Residential Burglary.

William Riley filed a Motion for New Trial prior to sentencing. A hearing was conducted and his Motion for New Trial was denied on March 5, 2002. On that same day, Judge Porter signed the Judgment and Execution Order. William Riley has filed a Notice of Appeal, however, no briefs have been filed.

**II**

**STATEMENT OF FACTS**

On June 11, 1997, 24 year old Debbie Happ lived at 7320 N. Sheridan Road, Chicago, Cook County, Illinois. She was a student at Loyola University and worked at The Nathalie Salmon House and Eve J. Alfille Ltd. Jewelry Store. (See attached photo) She was dating Joseph Steinert (Joe) who lived at 1454 W. Fargo, Chicago, Cook County, Illinois. Joe was doing construction work on his apartment and William Riley

(Riley) had performed demolition work for Joe. Joe paid Riley in full, however, Riley felt that he was still owed some money.

Sometime before June 11, 1997, Riley went to Joe's apartment on three separate occasions to try to collect the money. On one of those occasions, Joe was home, but Riley never knocked on the door or tried to speak to Joe about the money. Each time Riley went to Joe's apartment, Riley went to the back door entrance and wrote his name, "Wil" in the dirt on the back porch window. Riley then formulated a plan to break into Joe's apartment to steal a computer while Joe was at work instead of simply asking Joe for the money. Obviously, even Riley knew that he was not owed any money.

On June 10, 1997, Debbie Happ decided to spend the night with Joe in his apartment. It was not usual for Debbie to stay overnight in Joe's apartment. Little did she know that she would never live to see another day because of Riley's greed. On the morning of June 11, 1997, Joe left for work, as usual, at approximately 8:00 a.m. When he left, Debbie was still asleep on the bed in the back bedroom. Shortly after 8:00 a.m., Riley and his girlfriend, Sirena Smith, go to the back door of Joe's apartment. Riley came prepared for the break-in by bringing a crowbar and a duffle bag to the apartment. Sirena Smith's name was on the strap of the duffle bag. Riley tries to pry the back door open with the crowbar, but was unsuccessful. Riley then uses the crowbar to pry open the burglar bars that were covering the window portion of the back door. After prying a portion of the burglar bars away from the window, Riley uses the crowbar to break the window. Some of the glass and paint/glazing compound from the window fall into Riley's duffle bag. Riley reaches through the broken window and unlocks the door. Riley and Smith then enter the apartment. They go into the computer room and start to remove Joe's computer. Debbie hears the noise and gets out of bed to see what is going on. Debbie sees Riley and Smith in the computer room and asks them who they are. Riley gives a fictitious name to Debbie. Debbie asks Riley if Joe would like how they entered the apartment. Debbie then tells Riley and Smith to leave the apartment or else she will call the police.

Riley and Smith do not leave the apartment, so Debbie walks toward the phone in order to call the police. Riley then grabs Debbie by the back of her neck and drags her toward the back bedroom. Debbie tries to scream but Riley chokes her by the neck. Riley chokes Debbie so hard and so long that blood comes out of her nose. Riley tells Debbie to lie down on the bed. Debbie, fearing for her life, complies. Riley grabs some underwear that is in the bedroom and shoves it into Debbie's mouth. Riley ties a belt around Debbie's mouth, head, and neck, thus gagging her and preventing her from screaming. But for Riley, this isn't good enough to secure Debbie. Riley grabs a second belt and ties Debbie's hands behind her back and forces her to lie face down on the bed.

As Debbie lies helpless on the bed, Riley asks Smith to get a telephone cord so he can further bind Debbie's arms. After Smith hands the telephone cord to Riley, he not only ties Debbie's hands behind her back, he also ties the other end of the telephone cord to the radiator that is in the bedroom. As Debbie is lying bound and gagged on the bed, she is not a threat to anyone. Riley then asks her where the money is located. Debbie

makes a movement, as best she can, with her head, to indicate that some money is in the pants that are hanging on the door. Riley reaches into the pants and removes the change and the CTA tokens. Next, Riley grabs Debbie's purse and leaves the bedroom. Riley walks toward the front of the apartment, leaving Debbie still bound and gagged in the back bedroom. Perhaps Debbie thought that she was in the clear. Her life would be spared. Perhaps she had a glimmer of hope.

Instead of just taking the computer and facing only residential burglary charges, Riley shows everyone just how evil he is. Debbie is not a threat to anyone. She is bound and gagged in the back bedroom. She does not even know the names of Riley or Smith.

While Riley and Smith are in the front of the apartment, they talk about how they are going to kill Debbie. Smith gives a knife to Riley. Riley takes the knife and goes back into the bedroom with Debbie. What little glimmer of hope that Debbie may have had is about to disappear. Riley decides that he cannot kill Debbie by simply stabbing her, so he puts the knife on a box that is just outside of the bedroom. Riley decides that he would rather use the crowbar to bash Debbie's brains out. After Riley puts the knife down, he grabs the same crowbar that he used to break into the apartment and approaches Debbie. As Debbie lay helpless, bound and gagged on the bed, Riley looks at her and says "see what you made me do?" Riley lifts the crowbar over his head and with all of his force hits Debbie in the head several times. Riley uses such force that Debbie's skull cracks open. As a result, Debbie's brain oozes out of her head. Riley leaves Debbie still bound and gagged, on the bed, dying. (See attached photos)

Riley comes out of the bedroom and Smith takes the telephone receiver off of the phone and puts it into Debbie's purse. She wants to make sure that they don't leave any fingerprints behind. Riley and Smith go back into the computer room and take Joe's computer tower. Riley does not want to leave the murder weapon behind, so he puts the bloody crowbar into the duffle bag along with the computer tower. Riley and Smith then leave the apartment with the proceeds.

Joe tries calling Debbie at his apartment several times throughout the day to no avail. Suspecting that something is wrong, he goes to his apartment and finds Debbie lying motionless on the bed. He sees blood spatter all around. Blood spatter is on the bed, on the wall above Debbie's head, on the T.V., and on the blinds. He looks further and sees that Debbie is bound, gagged and lying face down on the bed. He sees blood on Debbie's head. Finally, he sees that Debbie's brain is oozing out of her skull. Joe immediately calls for help, but it is too late. Debbie has already died from the brutal beating inflicted by Riley. (See attached photos)

After Riley and Smith leave the apartment with the proceeds, they go to Robert Miller's apartment. Carlotta Pidwinski and Quentin Pruitt are at the apartment when Riley and Smith arrive. They observe Smith with Debbie's purse and Riley is carrying the duffle bag with the computer tower in it. Riley tries to sell the computer to Robert, but Robert says that the computer tower is not worth anything. After Robert Miller refuses to buy the computer tower, Riley and Smith stay in the apartment for a while.

Riley leaves for a short time to buy some things from the corner store. While he is out, he goes through the contents of Debbie's purse. He finds a micro-cassette tape recorder and some dental floss in her purse. Riley keeps these two items and then throws the purse and the rest of its contents into a dumpster behind Robert's apartment. During the day, Rodney Smith arrives at Robert's apartment. He also sees Riley, Smith, the duffle bag and the computer in Robert's apartment. In the late afternoon, Riley and Smith leave Robert's apartment. They leave the computer tower and the duffle bag with the bloody crowbar in Robert's apartment. Later that evening, Carlotta throws the computer tower into the dumpster behind Robert's apartment. At different points during the evening, Robert, Carlotta, Quentin, and Rodney all see the duffle bag with Sirena Smith's name on the strap still inside of Robert's apartment. They each look inside of the duffle bag and see the crowbar inside of the duffle bag.

As the police conduct their investigation, they observe the name "Wil" written in the dirt on the back porch window three times. They also learn that Joe had seen Riley recently on his back porch. The police detectives locate Riley and question him. During the course of the investigation, the detectives also learn the name and location of Robert Miller and Carlotta Pidwinski and the fact that Riley was at their apartment on the day of the murder. The detectives go to Robert and Carlotta's apartment and learn that Riley had been at their apartment shortly after Debbie's murder on June 11, 1997. The detectives learn from Robert and Carlotta that Riley brought a black duffle bag with the name of Sirena Smith written on the strap and Riley had a computer tower inside of the duffle bag that he tried to sell to Robert. Robert and Carlotta also tell the detectives that Smith came to their apartment with Riley and she was carrying what was later determined to be Debbie's purse. Robert and Carlotta tell the police that the duffle bag is still in their apartment. The detectives recover the duffle bag and take it to the police station. The rear door of Joe's apartment is also recovered. All of the evidence is sent to the Illinois State Police crime lab for analysis.

During the course of the investigation, the detectives learn from Joe and Debbie's father that her purse, tape recorder, CTA tokens, a journal and other property are missing.

Riley signs a consent to search his apartment. The detectives find Debbie's tape recorder and CTA tokens inside of the Riley's apartment. In addition, they recover the clothing that Riley said he wore at the time of this murder. The detectives show the duffle bag, crowbar, tape recorder and CTA tokens to Riley. Riley positively identifies the duffle bag as the duffle bag he took to Joe's apartment and used to carry the computer and crowbar. Riley also positively identifies the crowbar as the one he used to break into the apartment and to bash Debbie's skull. Additionally, Riley positively identifies the proceeds as the proceeds he took from the apartment after he murders Debbie.

The contents of the duffle bag are removed at the Illinois State Police crime lab. The crow bar with blood on it, a hair, several pieces of broken glass with paint and glazing compound on the glass, and pieces of wood are all found inside of the duffle bag.

Experts at the Illinois State Police Crime lab examine all of these items. Blood was found on the crowbar that was in the defendant's duffle bag. DNA analysis was conducted and the victim's DNA was on the crowbar. The hair from the duffle bag was consistent with the victim's hair. Seven pieces of the glass with the paint and glazing compound were determined to have come from the rear door of the apartment. The defendant's fingerprint was on the outside of that same door. The pry marks on that door matched the crow bar that was found in the duffle bag.

Riley gave a court reported confession detailing how he and Smith went to Joe's apartment when he knew Joe would be at work. He told of how he broke into the apartment and planned to take the computer so that he could sell it. He told of how Debbie told him to leave or else she would call the police. He told of how he bound and gagged Debbie and discussed with Smith about how to kill Debbie before he took the crowbar and beat her in the head with it. He told of how he took Debbie and Joe's property and left the apartment. Finally, Riley identified photographs of the duffle bag and crowbar during the course of his court-reported statement. (See attached court-reported statement)

A post mortem examination was conducted on the body of Debbie Happ. It was the medical examiner's opinion that Debbie suffered multiple blunt trauma to the head, multiple fractures of the skull with flattened deformity, and brain contusions and lacerations. It was the medical examiner's opinion that the cause of death was craniocerebral injuries due to blunt trauma and the manner of death was homicide.

### III

#### **REASONS FOR DENYING CLEMENCY**

Riley seeks mercy from this Board and the Governor of the State of Illinois because: 1) the system is "broken" and "fundamentally flawed;" 2) he did not benefit from certain proposed reforms to the system; 3) one of his attorneys was temporarily suspended for a matter unrelated to his trial; and 4) his sentence is excessive and disproportionate.

#### **A. RILEY'S REQUEST FOR CLEMENCY IS PREMATURE BECAUSE HIS CASE HAS YET TO HAVE APPELLATE REVIEW**

Because the Illinois Supreme Court on direct appeal has not yet affirmed Riley's death sentence, his petition for executive clemency is premature. The Illinois Constitution of 1970 expressly provides that "Appeals from judgments of Circuit Courts imposing a sentence of death shall be directly to the Supreme Court as a matter of right." Article VI, section 4(b). Pursuant to this provision, the Supreme Court promulgated Supreme Court Rule 606(a) which states that "In cases in which a death sentence is

imposed, an appeal is automatically perfected without any action by the defendant or his counsel.” Therefore, it is clear that all convictions resulting in death sentences must be reviewed by the Court before the defendant may be executed.

Due to this constitutional restriction, it is clear that no convictions resulting in death sentences are final prior to the completion of the Illinois Supreme Court’s review on direct appeal. As the Court has long recognized, the completion of the direct appeal is a necessary element of criminal prosecutions. See People v. Mazzone, 74 Ill.2d 44, 46, 383 N.E.2d 947 (1978) (holding that a defendant’s death while his appeal is pending requires the convictions to be abated *ab initio*); O’Sullivan v. People, 144 Ill. 604, 610, 32 N.E. 192 (1892) (same); People v. Robinson, 187 Ill.2d 461, 463, 719 N.E.2d 662 (1999) (same). Thus, it cannot be disputed that in capital cases, the Court’s affirmance is an indispensable component of a “conviction.” Accordingly, because the Governor’s clemency power is expressly limited to situations “after conviction” (Article V, section 12) (and in fact the practice has always been to wait until the completion of the entire appellate and post-conviction process), neither this Board nor the Governor may consider a clemency petition from Riley until the finding of guilt and death sentence are affirmed by the Illinois Supreme Court.

#### **B. EVEN RILEY DOES NOT CLAIM INNOCENCE NOR OFFER A SINGLE INSTANCE OF ACTUAL PREJUDICE**

What is most telling about Riley’s Petition is that he does not claim innocence for the brutal murder of Debbie Happ. Given the mountain of evidence linking Riley to the crime, given his signed court-reported confession, and given the signed court-reported confession of his co-defendant Serena Smith which also implicates Riley, a claim of innocence would strain credulity beyond all limits. Riley’s guilt is simply not in question.

Equally telling are the vague claims made by Riley which do not describe a single concrete example of prejudice or error. The vague, unsupported claims of the Petitioner speak volumes. Riley does not allege any actual prejudice to his case because there is no prejudice to be found. This brutal murderer received an unquestionably fair trial from which even he cannot find or claim error. In the absence of actual prejudice or error, Riley offers this Board a smokescreen of vague allegations intended to obscure the Board’s vision of the viciousness of his crime and the just quality of his trial and sentence. While the People of the State of Illinois are confident that this Board cannot be so easily toyed with, we will respond briefly to the nonsensical claims of this Petitioner.

**C. RILEY HOPES TO INFLAME PASSION BY  
CLAIMING THE SYSTEM IS “BROKEN” AND  
“FUNDAMENTALLY FLAWED”**

Riley’s desperation and the lack of legitimacy of his Petition are never more apparent than in his woeful attempt to convince this Board that our criminal justice system is “broken” and “fundamentally flawed.” Unable to support this claim, Riley merely quotes the battle hymn of the State’s vocal minority whose sole objective is the elimination of the death penalty -- a penalty supported by the majority of citizens in this State and made law by the Illinois legislature. The Petitioner hopes to ride the current wave of propaganda and press clippings and turn this Board’s review into a referendum on the death penalty. This Board knows well that such a referendum is not within its mandate. Moreover, neither the Board nor the Governor of this State have the legal or moral authority to disregard the law. In Illinois, the death penalty is the law and when properly adjudged after a fair and just trial, it should not be disturbed. By suggesting otherwise, and in the complete absence of a legitimate basis for clemency, Riley is asking this Board and the Governor to break the law, abandon the Constitution, and defy the will of the People of the State of Illinois. This Board and the Governor should be shocked and offended at such a suggestion.

Despite Riley’s vacuous claim, our system is neither “broken” nor “fundamentally flawed.” Nevertheless, Riley first points to the new Supreme Court Rules for capital cases and suggests that his trial was somehow unfair because he did not benefit from these rules and, therefore, was sentenced to death under a broken system. Riley’s logic, or lack thereof, suggests that all capital trials held prior to the enactment of the new Supreme Court Rules were fundamentally unfair. Such a claim is unsupported and absurd. What Riley refuses to acknowledge is that the new rules for capital cases were not enacted to fix a “broken” system. Rather, they were enacted to improve the system by providing even more due process protection for capital defendants. In enacting the new rules, the Supreme Court did not state or imply that all capital trials held prior to the new rules were, per se, fundamentally unfair. In fact, the Supreme Court has addressed this very claim and soundly rejected it. People v. Hickey, \_\_\_\_\_ Ill.2d \_\_\_\_\_, 2001 Ill. LEXIS 1080 at 57 (No. 87286 September 27, 2001). Moreover, in Riley’s case, the Supreme Court Rules to which he alludes were not applicable. The new rules apply to capital cases arraigned after March 01, 2001 and are not retroactively applicable. Hickey, 2001 Ill. LEXIS 1080 at 65. Riley’s case was arraigned on July 29, 1997.

Riley also points to the suggested reforms of the Governor’s Commission on Capital Punishment and alleges that he was denied a fair trial because he did not benefit from these suggested reforms. Riley conveniently ignores the fact that these suggested reforms are not the law. Riley cannot possibly have been denied benefits of reforms that do not exist other than as mere suggestion.

Notably, whether referring to the Commission’s suggested reforms or the new Supreme Court Rules, Riley fails to articulate how, exactly, he was denied a fair trial or how the new rules or suggested reforms would have affected the outcome of his trial.

Despite Riley's inability to illustrate a single instance of prejudice or error, he has the audacity to cry "unfair" and beg for mercy -- the same mercy he begrudged Debbie Happ.

#### **D. RILEY FAILS TO MAKE A CASE EVEN WHEN CONSIDERING THE COMMISSION'S SUGGESTED REFORMS**

With regard to the Governor's Commission's suggested reforms, Riley first argues that his trial was unfair because he did not benefit from reforms which suggest that the defendant's inculpatory statement be videotaped and witness interviews be electronically recorded. As for Riley's inculpatory statement, Riley fails to mention that his confession was not an unsupported oral statement or even a handwritten statement. Riley's confession was memorialized by a certified court reporter, licensed by the State of Illinois. Each and every page of his confession bears both his signature and the signatures of the detective and the Assistant State's Attorney attesting to its authenticity and accuracy. Riley also neglects to mention that he reviewed his entire court-reported statement to confirm its accuracy and that he made and initialed numerous changes and corrections. Riley's confession, therefore, while not videotaped, was taken word for word as he spoke and was authenticated by Riley with over twenty-five of his own signatures and initials. That Riley himself knows that his confession is valid, complete, and accurate is evident from the fact that he did not contest the admissibility of his confession with a pre-trial Motion to Suppress Statement. Oddly, Riley now asks this Board to question his confession when he did not.

While Riley now says that he "disputes the statement," he offers no basis for his "dispute." Riley merely implies that because his statement was not videotaped, its introduction was unfair. Riley leaves it to the Board to imagine why or how the use of his confession was unfair. Apparently, Riley also hopes the Board is unaware that neither the Commission nor the Governor call for the suppression of a statement simply because it was not videotaped. Rather, even under the Governor's proposed legislation (HB3717 and HB2058), such statements would still be admissible if the trial court finds that the statement was voluntarily made after considering the totality of the circumstances. Here, where Riley himself did not contest the voluntariness, authenticity, or accuracy of his own confession in a pre-trial motion, and where the judge did have the opportunity to consider the totality of the circumstances surrounding the confession before considering it as evidence, there can be no reasonable "dispute" as to the validity of the confession.

Similarly, Riley claims, without basis, that it was unfair to admit witness statements that were not previously electronically recorded. Neither the Commission nor the Governor has called for the suppression of such statements. Witness statements, like the defendant's confession, can be tested both with pre-trial motions and through cross-examination at trial. Riley did not contest any witness statement prior to trial. At trial the witnesses were tested through the excellent cross-examination of his experienced defense team. The witnesses and their statements withstood all scrutiny. As with Riley's claim regarding his own statement, Riley fails to articulate how the form of the witnesses' statements affected the outcome of his trial. Instead, Riley continues to rely

on the Board's imagination and on the hope that the Board will not closely examine his confession or the witness statements. However, even a cursory examination of the taking and use of Riley's confession and the witness statements will reveal no prejudice to this Petitioner.

Referring to another Commission suggestion, Riley complains that an independent laboratory was not used to examine the forensic evidence. Riley hides from the Board the fact that the evidence was made available to the defense for that very purpose. Riley elected not to seek independent testing.

Referring to Commission suggestions numbers twenty-nine and thirty, Riley alleges that the States Attorney's decision to seek death was made without the benefit of uniform protocols and without a mandatory review by a statewide committee. The Illinois Supreme Court has previously dispensed with this complaint. In People v. Jamison, 197 Ill.2d 135, 756 N.E.2d 788 (2001), the Illinois Supreme Court noted that it "has long been recognized by this court 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." Jamison, 788 N.E.2d at 802. Furthermore, Riley does not claim that the State's Attorney's decision to seek death was an abuse of discretion. Apparently, even Riley knows that the decision to seek death for this home invasion and murder is well supported by the facts of the case.

Riley further complains that he did not benefit from an expanded list of statutory mitigating factors as recommended by the Commission. Riley states that there was evidence that he suffered from a history of extreme emotional and physical abuse and that he suffered from a reduced mental capacity. Because these factors are not specifically listed as mitigating factors in the statute, Riley believes his sentencing was unfair. The implication by the Petitioner is that his evidence in mitigation was not considered by the judge because it was not statutorily listed. What Riley fails to understand, but what the judge did understand, is that the statutory list of mitigating factors is not exclusive. It would be impossible to list all mitigating factors in the statute and the statute recognizes this by indicating that the list is not exclusive. Creating an exclusive list, as apparently suggested by Riley, would only serve to limit capital defendants to mitigating factors statutorily listed. Currently, and as was the case with Riley, any and all mitigation may be presented and must be considered by the jury or the judge presiding over the sentencing phase of the trial. In Riley's case, the judge did just that. In sentencing Riley to death, the judge specifically stated that he had considered all the evidence in mitigation and that he did not find that it was sufficient to preclude the imposition of death. In short, the judge considered Riley's alleged "reduced mental capacity" and his alleged "extreme emotional and physical abuse" and then properly sentenced this murderer to death. Whether Riley's mitigation was statutorily listed or not, Riley would still have been sentenced to death.

Riley's next complaint, referring to Commission suggestion number twenty-seven and twenty-eight, is that he was sentenced to death based upon the aggravating factor of

felony-murder which is not included in the Commission's short list limiting capital qualifying aggravating factors to five. In arriving at their arbitrary list of five aggravating factors, the Commission reasoned that the current list of twenty factors was overly expansive and therefore unconstitutional. The Commission was wrong and Riley is wrong in pointing to this Commission suggestion. The Illinois Supreme Court has expressly rejected the Commission's reasoning and has held that the Illinois death penalty statute "genuinely narrows the class of individuals eligible for the death penalty and reasonably justifies the 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)). The Ballard court explained that "there are innumerable examples of first degree murders that do not fit within any of the statute's eligibility factors" and each provision "is narrowly tailored to fit a specific set of facts and circumstances." Ballard, 2002 Ill. LEXIS 376 at 74. Obviously, Riley's reliance on this Commission suggestion is ill-conceived.

Riley next points to Commission suggestion number sixty-two and claims that his sentencing hearing was unfair because he was not given the right of allocution. Apparently, Riley is suggesting that this Board ignore long-standing Supreme Court decisions that have addressed and rejected the claim Riley now propounds. It is well settled law that the defendant, in a capital case, has no right of allocution. The Illinois Supreme Court, in People v. Gaines, 88 Ill.2d 342, 430 N.E.2d 1046 (1981), held that a defendant in a capital case has no constitutional or statutory right to give an unsworn statement in allocution. All defendants in capital cases have the right and the opportunity to testify under oath during the sentencing hearing. Riley chose not to testify and instead elected to rely on his witnesses in mitigation and his attorney's closing argument. Riley was given every opportunity to be heard before being sentenced and to claim otherwise now is disingenuous.

Finally, Riley points out that the Illinois Supreme Court has not had the opportunity to consider whether his sentence is disproportionate or the result of an arbitrary factor. Further, Riley notes that the Supreme Court has not had an opportunity to independently consider the aggravation and mitigation. Of course not. Riley's case has yet to reach the Supreme Court where these issues will be addressed if raised by Riley. If nothing more, this claim serves as fair example of the patently ridiculous content of Riley's entire Petition.

In each of the above instances, Riley attempts to establish the unfair nature of his trial by pointing to the Governor's Commission. In each instance, he fails to make his case. Aside from the obvious fact that the Commission's suggestions are not law and have no bearing on this case, Riley does not, because he cannot, establish how the outcome of his trial and sentencing would have been different if he were given the benefit of the Commission's suggestions. In fact, Riley does not even allege that the outcome would be different. Nevertheless, despite the fact that the outcome of this trial and sentencing would be unchanged, Riley believes he merits clemency. Merely desiring clemency, without more, is not a legitimate basis for granting clemency.

### **E. RILEY'S ATTEMPT TO SHIFT BLAME TO HIS ATTORNEY IS UNDERSTANDABLY HALF-HEARTED**

Riley also believes he deserves clemency because one of his attorneys was suspended for a short time during the life of his case. Riley was arrested in June of 1997 and on March 05, 2002, the judge signed the Judgment and Execution Order. Sometime during that nearly five year period, one of his attorney's, Jacqueline Ross, was briefly suspended for a matter not only unrelated to this case, but also unrelated to any of her trial work on any case. Her suspension was known to all parties. Riley himself points out that "nothing substantively occurred in court" during her suspension. The obvious question is how did Ms. Ross' unrelated suspension affect Riley's case? The answer, while not provided by Riley, is simple. Ms. Ross' suspension had no effect on this case and Riley suffered no prejudice as a result. Notably, Riley doesn't claim that Ms. Ross or the lead defense attorney, Edward Flanagan, were in any way ineffective. In fact, Riley could not justify such a claim. Together, Mr. Flanagan and Ms. Ross have over 30 years of experience as public defenders and are among the most able and experienced public defenders in Cook County. In light of such a qualified defense team, and in light of the fact that Ms. Ross' suspension had no effect on this case, it is no wonder that this frivolous claim is half-hearted at best.

### **F. RILEY'S CLAIM OF AN EXCESSIVE AND DISPROPORTIONATE SENTENCE BELIES THE FACTS**

Riley believes his death sentence is excessive in light of "significant mitigation" and is disproportionate to his co-defendant's sentence and other sentences for similar offenses. Again, Riley is hoping this Board will not take a close look at this case or his criminal record which reveal that the sentence of death is certainly appropriate and hardly disproportionate.

The "significant mitigation" to which Riley refers essentially consisted of a clinical psychologist, friends, and family members. The clinical psychologist, using Riley's alleged traumatic childhood, created several vague, unsupported diagnoses that, according to the psychologist, "contributed to Mr. Riley's involvement in the instant offense." Riley's friends and family offered inconsistent testimony. These witnesses couldn't seem to decide whether Riley suffered a horrible childhood or whether he was surrounded by people who loved and nurtured him. Under cross-examination, Riley's mitigation withered. It was clear that Riley was just another murderer attempting to avoid responsibility by blaming his childhood. The judge was unconvinced. After weighing all of Riley's mitigation, the judge found no mitigation sufficient to preclude the death penalty.

Riley's claim that his death sentence is disproportionate is as anemic as his mitigation. Because his co-defendant, Sirena Smith, was sentenced to 48 years in the Illinois Department of Corrections, Riley believes he was unfairly sentenced to death. However, Sirena Smith, who was not eligible for the death penalty, pled guilty to the

murder of Debbie Happ. Her plea not only indicated that she recognized her guilt but it also made a public trial unnecessary. Moreover, Sirena Smith did not plan this crime, Riley did. Sirena Smith did not repeatedly smash Debbie Happ's skull with a crowbar, Riley did. Sirena Smith, having only one previous arrest, does not have the long criminal career that Riley does. Sirena Smith accepted responsibility for her role in this murder, Riley never has. Additionally, to this day, Riley has never expressed a word of remorse for obliterating the life of an innocent 24 year old woman. No remorse at trial. No remorse at sentencing. No remorse before this Board. Riley is a cold-hearted, calculating murderer who was sentenced to death because he earned a death sentence.

The murder of Debbie Happ was not the start of Riley's criminal career but, rather, its high point to date. Prior to the murder of Debbie Happ, Riley had been arrested 18 times between 1987 and 1997. (The Petition misleads the Board by combining Riley's arrests into 14 lines.) Of those 18 arrests, Riley was convicted of 3 felonies and a misdemeanor. In February 1987, Riley was convicted of Burglary and sentenced to probation. Only ten months later, while on probation, Riley was arrested and convicted for the Unlawful Use of a Weapon by a Felon. Riley again received probation and six months in jail. While on that probation, Riley was arrested several more times and once convicted for misdemeanor Criminal Damage to Property. In February 1992, Riley was arrested and, in July 1992, convicted of Armed Violence for which he received 8 years in prison. Riley was paroled in August of 1995 and began getting arrested again one month later. One year and ten months after he was paroled, Riley murdered Debbie Happ in order to get away with stealing a computer.

Riley's record not only shows that he is a violent career criminal on the street, but it also reflects an individual who is incapable of conforming to the strict requirements of prison life. Riley's penitentiary records show numerous violations including unauthorized gang activity, possession of contraband, abuse of privileges, failure to follow instructions, and hiding a shank in his cell.

Finally, when looking at the appropriateness of the death sentence in this case, look closely at the facts of the case itself. This murder was barbaric and senseless. Debbie Happ had done nothing to Riley other than ask Riley to leave. Riley wasn't going to leave without the computer. Riley chokes and drags Debbie into the bedroom, gags her, and binds her with cords. Debbie is clearly helpless and no threat to Riley. Riley could have left the apartment with the computer -- but he didn't. Rather than risk getting caught for stealing a computer, Riley decides to beat Debbie to death with a crowbar. As Debbie's brains ooze out of her head and her life slips away, Riley takes his computer and Debbie's purse and leaves. He spends the rest of the day partying with his friends while trying to sell his new computer. To Riley, a computer is worth the price of a 24 year old woman's life.

It is a wonder, given the facts of this case, and Riley's criminal record, that he seriously contends that his sentence is disproportionate. Riley claims that other cases with similar offenses resulted in less punishment but fails to offer a single case to support his claim. Nevertheless, regardless of what occurred in any other case, this case, when scrutinized on its own merits, was properly decided. This Petitioner has earned, and deserves, no less than death.

## IV

### CONCLUSION

#### **“TO SPARE THE GUILTY IS TO INJURE THE INNOCENT.”**

**Publius Syrus (85-43 BC)**

The Board is charged with an awesome responsibility. As guardians of our criminal justice system, the sanctity of the verdicts and sentences adjudged by jurors and judges throughout this State are in your hands and in the hands of the Governor. Yours is a fiduciary duty to zealously protect these judgments when they are justly rendered. This Board's task has become even more difficult of late as the Governor has apparently abandoned his fiduciary duty to the People of the State of Illinois in favor of personal and political whim. The Governor appears to be more interested in personal and political agendas than in guarding the sanctity of our criminal justice system. Governor Ryan's suggestion of a blanket or mass commutation reflects that he is no longer interested in the inherent justice of any individual case. The idea of a mass commutation is incompatible with the need to evaluate each case on its merits. Governor Ryan's recent suggestion that a blanket commutation may depend on the legislature acting on the Governor's proposed reforms is an abomination. Debbie Happ's murder and the just trial and sentence of her murderer are not political bargaining chips. Debbie Happ, her family, and the People of the State of Illinois deserve better. They deserve to have this case considered individually, on its own merits, and free from personal or political agendas.

The murder of Debbie Happ was unquestionably senseless and brutal. The murderer now seeks mercy. More to the point, Riley asks to be relieved of the consequences of his actions. Riley has offered nothing to justify such relief. The judge, in sentencing Riley to death stated: "I wish I could say my decision was otherwise, Mr. Riley, I really do... [b]ut I have to follow the law. And in my mind, I do not feel that there are any mitigating factors that are sufficient, taken individually or in total, to preclude the imposition of the death penalty in this case." (See attached transcript) Riley has provided no reason to justify disturbing the judge's well-considered sentence. In the absence of any legitimate basis for clemency, the sanctity of the court's judgment should not be disturbed. Clemency for this murderer would undermine our criminal justice system and do injury to the People of this State who depend on our justice system to protect the innocent and punish the guilty.

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

Respectfully submitted,

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