

BEFORE THE

ILLINOIS PRISONER REVIEW BOARD

AUTUMN TERM, 2002

ADVISING THE HONORABLE GEORGE RYAN, GOVERNOR

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AMENDED PETITION FOR EXECUTIVE CLEMENCY  
BROUGHT BY THE MACARTHUR JUSTICE CENTER

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In the Interest of:

Harold Bean, Raymond Burgess, Luther Casteel, Roger Collins,  
Juan Cortez, Eric D. Daniels, Chris Davis, Daniel J. Edwards,  
Robert L. Evans, Jr., Tyrone Fuller, Evan Griffith, Anthony Hall,  
Ralph Harris, Ernest D. Jamison, Maurice King, Maurice McDonald,  
Edward A. Moore, Jr., Richard Morris, Sanantone Moss, Hector Nieves,  
Robert St. Pierre, Thomas Umphrey, and Elton Williams

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## I. INTRODUCTION

This Petition seeks commutation of death sentences for twenty-three Illinois prisoners who have declined to sign clemency petitions seeking commutation on their own. The prisoners are Harold Bean, Raymond Burgess, Luther Casteel, Roger Collins, Juan Cortez, Eric D. Daniels, Chris Davis, Daniel J. Edwards, Robert L. Evans, Jr., Tyrone Fuller, Evan Griffith, Anthony Hall, Ralph Harris, Ernest D. Jamison, Maurice King, Maurice McDonald, Edward A. Moore, Jr., Richard Morris, Sanantone Moss, Hector Nieves, Robert St. Pierre, Thomas Umphrey, and Elton Williams.<sup>1</sup>

This Petition is brought by the MacArthur Justice Center (hereinafter the “Petitioner”), a public interest law firm at the University of Chicago Law School that litigates cases of significance for the criminal justice system. Petitioner has represented defendants in all phases of the capital punishment process and has long been deeply concerned about the failures of the Illinois capital punishment system.

Petitioner believes that there is an important societal interest in having a criminal justice system that is — both in appearance and in fact — fair and accurate. It is an acknowledged fact that the Illinois death penalty system has not, over the past 25 years, met that standard. The State has come altogether too close to executing thirteen innocent persons — the singularly irremediable and unpardonable failing of any system.

As a result of Governor Ryan’s unwavering moral courage, Illinois has a moratorium on executions and has been engaged over the past two years in a process of examination that has identified many systemic failures and needed reforms. The Report of the Governor’s Commission on

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<sup>1</sup> A list of addresses of the prisoners is appended hereto.

Capital Punishment lists 85 recommended reforms to the capital punishment system. The Illinois Supreme Court has enacted prospective-only rules to create a Capital Litigation Trial Bar and to permit limited pre-trial discovery in capital cases, among other things. The Illinois General Assembly has also weighed in and has created a Capital Litigation Trust Fund to provide resources for the prosecution and defense of capital cases.

Going forward, the enacted and the proposed reforms will greatly improve our system. However, the individual prisoners in whose interest this Petition is filed did not have the benefit of these reforms. All of their cases are tainted because they did not receive the benefit of the following reform proposals from the Governor's Commission's Report:

- ⌘ The decision to seek the death penalty was made by the prosecutor in the absence of statewide standards that identify when capital punishment will be sought. Recommendation 29 of the Governor's Commission on Capital Punishment.
- ⌘ The decision to seek the death penalty was not subject to review by any statewide review committee having the responsibility to review and approve the prosecutor's decision after receiving information from defense counsel with respect to whether the death penalty is appropriate in the particular circumstances of the case. Recommendation 30.
- ⌘ The defendant did not have the right to make a statement in allocution at the conclusion of the sentencing phase of trial. Recommendation 62.
- ⌘ The Illinois Supreme Court did not, on direct appeal, consider: (a) whether the death sentence was imposed due to some arbitrary factor; (b) whether an independent weighing of the aggravating and mitigating circumstances indicated that death was the proper sentence; or (c) whether the sentence of death was excessive or disproportionate to the penalty imposed in similar cases. Recommendation 70.

Death sentences were imposed by juries on thirteen of the prisoners in whose interests this Petition is brought – Harold Bean, Raymond Burgess, Luther Casteel, Roger Collins, Daniel J. Edwards, Robert L. Evans, Jr., Maurice King, Maurice McDonald, Edward A. Moore, Jr., Sanantone

Moss, Hector Nieves, Thomas Umphrey, and Elton Williams. In each of those cases, the following additional proposed reforms were not available to the defendants:

- ⌘ The jurors making the determination of whether the defendant should be sentenced to prison or to death were given a confusing jury instruction, and not the instruction unanimously recommended by the Governor’s Commission. That instruction would make it clear that the jury should weigh the factors in the case and reach its own independent conclusion about whether death is the appropriate sentence. Recommendation 65.
- ⌘ The trial judge was not given the opportunity to decide whether he or she concurred in the result and, if not, to impose a sentence of natural life. Recommendation 66.

Furthermore, a number of the cases in this Petition implicate other crucial reforms. As more fully explained in Section II, in some cases police interviews of key witnesses were not recorded, purported confessions were not videotaped, and prosecutors and defense counsel seriously lacked the knowledge, skill, experience, and/or courtroom ethics that the Capital Litigation Trial Bar rules require. Similarly, the performance of trial judges in some cases reflected a lack of knowledge – a problem that periodic judicial seminars now mandated by the Supreme Court are designed to alleviate.

The integrity of the Illinois criminal justice system would be damaged if any of the persons named in this Petition were to be executed despite the fact that they have not had the benefit of these important reforms. The execution of a human being is a profoundly grave undertaking; death “is the most irremediable and unfathomable of penalties.” *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) (plurality opinion, per Marshall, J.). Death is “qualitative[ly] different[t] from all other punishments.” *California v. Ramos*, 463 U.S. 992, 998-99 (1983) (O’Connor, J.). It is perfectly clear that our death penalty system is broken. It is near universally acknowledged that the system must be overhauled. There can be no justifying the execution of a person whose death sentence was imposed under an undeniably inadequate process even as we contemplate how to go about correcting the system’s flaws.

These considerations transcend the individual wishes of the persons who are the subject of this Petition. For various reasons, these individuals apparently are prepared to face their own executions rather than seek clemency – despite the inadequacy of the system that sent them to death row. Petitioner respectfully believes that the prisoners’ preferences should not be honored. As former Illinois Supreme Court Justice Seymour Simon succinctly put it: “[A] prisoner’s desire to die [or to risk execution by declining to seek clemency] should never be elevated above society’s interest in ensuring that no Illinois citizen be improperly executed.” *People v. Walker*, No. 59212, unpublished order (January 19, 1988) (Simon, J., dissenting from order setting an execution date for Charles Walker).<sup>2</sup> Imposing the death sentence upon any of the persons named in this Petition would unquestionably be “improper.”

Petitioner recognizes that it is a grave step to request a commutation of death sentences on behalf of persons who do not desire such relief. Some death row prisoners do not want commutation of their sentences because they fear this would mean they could lose the legal representation they now receive through the Capital Litigation Division of the Office of the State Appellate Defender. Some fear that their claims of innocence or unjust conviction may be forgotten by the public and the news media if they are no longer on death row. Petitioner acknowledges that such concerns are not without weight.

Concerns about adequacy of representation carry particular significance. Unquestionably, the Illinois criminal justice system urgently needs to fund competent counsel to assist prisoners *not* on death row to present meritorious claims of actual innocence or of serious constitutional error in their convictions. The fact that the resources for this representation are not adequate – and that there is a risk that the quality of their representation might be dramatically reduced if they were taken off death row – does indeed place condemned prisoners in a desperate, inherently coercive circumstance as they

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<sup>2</sup> A copy of the unpublished order is appended hereto.

contemplate whether to seek a commutation of their sentences.<sup>3</sup> These considerations are outweighed by the larger societal interest in having a fair and reliable death penalty system.

The fact that the prisoners who are the subject of this Petition have not applied for clemency on their own does not impair the power of the Governor to commute their sentences. The Illinois Constitution grants the Governor broad plenary power to “grant reprieves, commutations and pardons, after conviction, for all offenses on such terms as he thinks proper. The manner of applying therefore may be regulated by law.” Constitution of the State of Illinois Article 5, section 12. Application of this provision clearly shows that the Governor has the power to commute sentences, even if a particular prisoner has not so requested.

Any possible confusion on this issue stems from the General Assembly’s 1996 enactment of an amendment providing that “[p]etitions seeking pardon, commutation, or reprieve . . . shall be in writing and signed by the person under conviction . . .” 730 ILCS 5/3-3-13(a). Additionally, the statute was amended to state that “[a]pplication for executive clemency under this Section may not be commenced on behalf of a person who has been sentenced to death without the written consent of the defendant, unless the defendant, because of a mental or physical condition, is incapable of asserting his or her own claim.” 730 ILCS 5/3-3-13(c). These amendments were enacted in response to Governor Edgar’s commutation of Guinevere Garcia’s death sentence in the absence of a request for commutation from Ms. Garcia. At first glance, it might appear that this statute limits the Governor’s power, but such a

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<sup>3</sup> The MacArthur Justice Center will be morally committed to any prisoner named in this Petition who receives a commutation of his death sentence to assist that prisoner in finding competent counsel (either through the private bar or through the Justice Center’s own staff) to pursue any claims of actual innocence or of serious constitutional error that have genuine potential merit and that remain in the prisoner’s case following the commutation.

reading ignores the statutory language inserted by Governor Edgar in his amendatory veto of the legislation—language which was accepted by the legislature and is now part of the statute. That statutory language provides that “[n]othing in this Section shall be construed to limit the power of the Governor under the constitution to grant a reprieve, commutation of sentence, or pardon.” ILCS 5/3-3-13(e).

Thus, on its very face, the 1996 law did not purport to change the Governor’s ultimate power to grant clemencies regardless of whether a prisoner has applied. Just as Governor Edgar had the unquestioned power to commute Ms. Garcia’s sentence prior to enactment of the 1996 amendment, so, too, Governor Ryan has the power to commute any and all sentences because the 1996 amendment did not limit the power of the Governor under the constitution to grant a reprieve, commutation of sentence, or pardon. ILCS 5/3-3-13(e).<sup>4</sup>

By carefully avoiding any attempt to restrict the Governor’s ultimate authority in the area of clemency, the legislature steered clear of passing a statute that violated the Illinois Constitution. Had the legislature actually sought to restrict the Governor’s power, there is no question that it would have violated Article 5, Section 12. The Illinois courts have consistently held that although that provision of the State Constitution allows the legislature to regulate the manner in which applications for clemency are made, the legislature may not interfere with the Governor’s right to issue grants of clemency.

In *People ex rel. Smith v. Jenkins*, 325 Ill. 372, 373 (1927), the Governor of Illinois commuted a death sentence to life imprisonment. That commutation was challenged in court on the ground that it

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<sup>4</sup> The legislative history of the bill supports the conclusion that no interference was intended with the Governor’s power. Representative Durkin, who favored passage of the bill, indicated that “[t]his Bill does not restrict, define or limit the inalienable rights of the executive branch.” *Hearing on House Bill 2658*, Ill. H.R. 89th Gen. Assem. (Feb. 21, 1996).

violated a statutory provision relative to the manner of applying for commutations. The Illinois Supreme Court held “[i]f an act of the Governor, in the exercise of his constitutional authority to commute a sentence, is inconsistent with the Parole Act, then the Parole Act, so far as its enforcement would impose a limitation upon the Governor’s constitutional power, must give way to the Constitution.” *Id.* at 377. The Court further held that “[a]ll the Governor’s power is granted to him by the Constitution . . . [h]aving this power by the Constitution, his use of it cannot be controlled by either the courts or the Legislature.” *People ex rel. Smith v. Jenkins*, 325 Ill. 372, 374 (1927). *See generally People ex rel. Gregory v. Pate*, 31 Ill. 2d 592, 595 (1964) (“the power to grant reprieves, commutations and pardons is vested exclusively in the Governor, and cannot be usurped by the legislature or this court”); *People ex rel. Symonds v. Gualano*, 124 Ill. App. 2d 208, 219 (1st Dist. 1970) (“[w]e conclude that it was the intention of the drafters of the [Constitutional] provision to give the governor unlimited power to grant reprieves, commutations and pardons”).

If the legislature were allowed to define the class of people to whom the Governor could issue grants of clemency, then the legislature would obviously be trampling on the Governor’s broad constitutional power. If misread to mean that the Governor is prohibited from granting clemency to those who have not signed applications, the legislation would be defining the class of eligible persons — only those who have signed applications. The legislature cannot do that, and the legislature did not purport to do that.

Rather, the legislature’s constitutional power with regard to clemency is limited to regulating application procedures. Failure to obey those procedures is certainly a factor that a Governor is entitled to consider in evaluating whether to grant clemency. But the Governor is constitutionally entitled to grant clemency regardless of whether a particular prisoner has applied for such relief, and regardless of whether a particular prisoner has signed or consented to the filing

of such an application. Whether the sentences of the individuals that are the subject of the Petition ought to be commuted is a decision that the Governor can and must make. There is no legislative impediment that prevents the Governor from exercising his full discretionary authority in these cases.

## II. INDIVIDUAL PRISONERS

### 1. Harold Bean

Mr. Bean's current mailing address is Menard Correctional Center, P.O. Box 711, Menard, Illinois 62259. His prisoner number is N13955.

Mr. Bean was tried jointly with codefendant Robert Byron before a jury in the Circuit Court of Cook County. Mr. Bean and his co-defendant were convicted of the murder of Dorothy Polulach. Both were also convicted of armed robbery, home invasion and conspiracy, and Mr. Bean was also convicted of solicitation. The case number was 85C14715. At a sentencing hearing before the same jury both defendants were sentenced to death.

The Illinois Supreme Court, on Mr. Bean's direct appeal, reversed and remanded for a new trial because the circuit judge improperly refused to grant Mr. Bean's motion for severance and his repeated motions for a mistrial. *People v. Bean*, 109 Ill.2d 80, 485 N.E.2d 349, 92 Ill. Dec. 538 (1985). In a second trial, a jury convicted Mr. Bean of murder, solicitation and conspiracy, and armed robbery. The jury then found that two statutory aggravating factors existed and Mr. Bean was sentenced to death. He was also sentenced to a term of 30 years on the armed robbery conviction.

The Supreme Court affirmed the convictions and sentence on direct appeal. *People v. Bean*, 137 Ill.2d 65, 560 N.E.2d 258, 147 Ill. Dec. 891 (1990). Justice Clark dissented, stating that

Mr. Bean was deprived of his constitutional right to be present at his trial by his exclusion from the in-chambers *voir dire* of prospective jurors.

*Reasons why clemency should be granted:*

The discussion at pages 2-3 above applies to Mr. Bean and the other prisoners in whose interest this Petition is filed.

In addition to all those reasons, the Governor's Commission on Capital Punishment has made explicit recommendations that the eligibility factors for imposition of a sentence of death be limited to five. Recommendations 27 and 28. Under the reforms found necessary by the Governor's Commission, Mr. Bean would not have been sentenced to death because he committed no offense within the scope of the five factors.

As the Governor's Commission explains:

The death penalty should be applied only in cases where the defendant has murdered two or more persons or where the victim was either a police officer or a firefighter; or an officer or inmate of a correctional institution; or was murdered to obstruct the justice system; or was tortured in the course of a murder.

Preamble to the Report of the Governor's Commission on Capital Punishment, at part B.3.

**2. Raymond Burgess**

Mr. Burgess's current mailing address is Menard Correctional Center, P.O. Box 711, Menard, Illinois 62259. His prisoner number is B65086.

Mr. Burgess was convicted of first degree murder and aggravated battery of a child following a jury trial in the Circuit Court of Henry County. The case number was 94CF276. The jury then found that two statutory aggravating factors existed that made Mr. Burgess eligible for the death penalty, and Mr. Burgess was subsequently sentenced to death.

After Mr. Burgess submitted his direct appeal brief, the Illinois Supreme Court granted his motion to remand the case to the Circuit Court for a determination of whether he ingested psychotropic medication at the time of trial. The trial court then conducted a hearing and found that Mr. Burgess was medicated with such drugs at the time of trial and sentencing. The trial court submitted its findings to the Supreme Court. The parties submitted the remainder of their appellate briefs as well. The Supreme Court affirmed Mr. Burgess's conviction and sentence of death. *People v. Burgess*, 176 Ill.2d 289, 680 N.E.2d 357, 223 Ill. Dec. 624 (1997).

Justice Harrison dissented, joined by Justice Freeman. The dissent declared that the majority's decision "makes no effort at all to distinguish" Mr. Burgess's case from the established precedent, *People v. Brandon*, 162 Ill.2d 450, 643 N.E.2d 712, 205 Ill. Dec. 421 (1994). The dissent explained that once the trial court determined on remand that Mr. Burgess had been medicated with psychotropic drugs, the "rule is clear and the remedy is automatic," meaning Mr. Burgess "is entitled to a new trial" because he was not given the required fitness hearing at the time of trial as required by *Brandon*. The dissent stated that on remand the trial court, in contravention of both the Supreme Court's remand instruction and *Brandon*, took fitness evidence from a retrospective viewpoint. The dissent added that "we have no *stare decisis* under the majority's opinion in this case" and that doctrine is thus "dead." "Illinois jurisprudence has seen brighter moments," the dissent concluded.

*Reasons why clemency should be granted:*

The discussion at pages 2-3 above applies to Mr. Burgess and the other prisoners in whose interest this Petition is filed. As noted above, the two dissenting justices stated that the majority's decision in the direct appeal reflected an arbitrary and unwarranted reversal of a rule that had protected defendants from being tried while under the influence of psychotropic medication.

Furthermore, the Governor's Commission has recommended that five eligibility factors be established for death sentence eligibility as opposed to the current list of 20. Under the reform proposals, Mr. Burgess could have been sentenced to life upon conviction but he could not have been subjected to the death penalty.

### **3. Luther Casteel**

Mr. Casteel's current mailing address is Pontiac Correctional Center, P.O. Box 99, Pontiac, Illinois 61764. His prisoner number is A70296.

Mr. Casteel was convicted in a jury trial in the Circuit Court of Kane County of first degree murder in the deaths of Richard Bartlett and Jeffrey Weides, and of 15 counts of attempted murder for shootings that occurred in JB's Pub in Elgin. He was sentenced to death in a jury proceeding and, in a bench sentencing, was sentenced to 15 life sentences for the convictions on attempted murder. He was also sentenced to 14 years in prison on convictions for two counts of aggravated discharge of a firearm and five years in prison on a conviction of aggravated battery. The case number was 01CF1079. Mr. Casteel's case is on direct appeal in the Illinois Supreme Court

#### *Reasons why clemency should be granted:*

The discussion at pages 2-3 above applies to Mr. Casteel and the other prisoners in whose interest this Petition is filed.

### **4. Roger Collins**

Mr. Collins's current mailing address is Pontiac Correctional Center, P.O. Box 99, Pontiac, Illinois 61764. His prisoner number is A02120.

Mr. Collins and his co-defendant William Bracey were convicted in the Circuit Court of Cook County of the offenses of murder, armed robbery and kidnaping. The case number was 81C1204. They were convicted by a jury, which then found the existence of aggravating factors and

concluded there were no mitigating factors sufficient to preclude imposition of the death penalty. As a result, Judge Thomas Maloney sentenced both defendants to death and imposed concurrent 60-year prison sentences for the armed robbery and aggravated kidnaping convictions.

The Illinois Supreme Court affirmed the judgment of the Circuit Court in all respects except that it held that the defendants' 60-year sentences for aggravated kidnaping were improper and reduced them to 30 years. *People v. Collins, et al.*, 106 Ill.2d 237, 478 N.E.2d 267, 87 Ill. Dec. 910 (1985). Mr. Collins and Mr. Bracey filed a joint petition under the Post-Conviction Hearing Act. The trial judge dismissed the petition. The Illinois Supreme Court affirmed the Circuit Court's order in *People v. Collins, et al.*, 153 Ill.2d 130, 606 N.E.2d 1137, 180 Ill. Dec. 60 (1992).

Mr. Collins and Mr. Bracey subsequently filed petitions for writ of habeas corpus in the U.S. District Court for the Northern District of Illinois. The petitioners asserted in part that their convictions were unfair as a result of bias on the part of the trial judge, Thomas Maloney, who was convicted in 1993 of accepting bribes to acquit certain defendants. The petitioners argued that they needed further discovery to obtain facts about this bias.

The United States Supreme Court subsequently vacated the judgment against Mr. Collins and remanded the case to the Seventh Circuit. *Collins v. Welborn*, 520 U.S. 1272, 117 S. Ct. 2450, 138 L. Ed. 2d 209 (1997). The Supreme Court remanded for consideration in light of *Bracy v. Gramley*, 520 U.S. 899, 138 L. Ed. 2d 97, 117 S. Ct. 1793 (1997).<sup>5</sup> In that case, the Supreme Court stated that Mr. Bracey's theory was that "Maloney's taking of bribes from some criminal defendants not only rendered him biased against the State in those cases, but also induced a sort of compensatory bias against defendants who did not bribe Maloney." It stated that inquiry might be

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<sup>5</sup> The federal court cases spell Mr. Bracey's name without an "e."

made on whether there was “compensatory, camouflaging bias” on Judge Maloney’s part in an individual petitioner’s case.

On remand, the U.S. District Court considered Mr. Collins’s and Mr. Bracey’s claims of bias in light of the Supreme Court’s decisions and vacated the death sentences. *Collins v. Welborn*, 79 F. Supp. 2d 898 (1999). The Seventh Circuit heard an appeal and affirmed the judgment, which had affirmed the convictions but vacated the death sentences and permitted the State to proceed, at its discretion, with a new penalty phase hearing. The Seventh Circuit granted the State’s motion to stay the mandate on April 11, 2002, so that a petition for writ of certiorari could be filed with the U.S. Supreme Court. On July 19, 2002, the State requested the Seventh Circuit to continue to stay the mandate until the Supreme Court decides whether to grant certiorari.

*Reasons for granting clemency:*

The discussion at pages 2-3 above applies to Mr. Collins and other prisoners in whose interest this Petition is filed.

In addition, the U.S. District Court and the Seventh Circuit Court of Appeals, acting on instructions as to the law from the United States Supreme Court, have ruled that Mr. Collins’s sentence of death must be vacated because of bias by Judge Thomas Maloney, who was convicted in 1992 of rampant corruption. As noted above, the State refuses to accept the judgment and seeks further review by the Supreme Court.

**5. Juan Cortez**

Mr. Cortez’s current mailing address is Pontiac Correctional Center, P.O. Box 99, Pontiac, Illinois 61764. His prisoner number is K68421.

Mr. Cortez was convicted in a jury trial in the Circuit Court of Cook County of four counts of first degree murder and two counts of armed robbery. The case number was 91CR0756801. In

a bench sentencing, Mr. Cortez was found eligible for the death penalty because he was convicted of murdering two or more individuals and because the victims were killed in the course of another felony. The trial court sentenced Mr. Cortez to death. The victims were Ayax Gama and Rafael Gama.

On direct appeal, the Illinois Supreme Court vacated the convictions for felony murder, affirmed the remaining convictions, and affirmed the death sentence. *People v. Cortes*, 181 Ill.2d 249, 692 N.E.2d 1129, 229 Ill. Dec. 918 (1998).<sup>6</sup>

*Reasons why clemency should be granted:*

The discussion at pages 2-3 above applies to Mr. Cortez and other prisoners in whose interest this Petition is filed.

Moreover, the evidence against Mr. Cortez included a statement he gave under police interrogation. Mr. Cortez did not, however, have the benefit of Recommendation 4 of the Governor's Commission on Capital Punishment that custodial interrogations in homicide cases be videotaped whenever practicable. A serious issue on appeal was the skill Mr. Cortez had with the English language. Had the statement been videotaped, the trial court and appellate court would have been informed, in the most direct manner, as to whether the statements ascribed to Mr. Cortez were accurate.

Mr. Cortez was also medicated with a psychotropic drug during the trial. In denying relief to Mr. Cortez, the Supreme Court relied on its new rule enunciated in the case of Raymond Burgess. The arbitrariness of the Supreme Court's change of view concerning the manner of addressing the issue of capital case defendants who have been medicated is discussed above in Mr. Burgess's case.

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<sup>6</sup> The case spells Mr. Cortez's name as "Cortes."

## **6. Eric D. Daniels**

Mr. Daniels's current mailing address is Menard Correctional Center, P.O. Box 711, Menard, Illinois 62259. His prisoner number is B57161.

Mr. Daniels was convicted of the offenses of first degree murder, armed robbery and aggravated criminal sexual assault in the Circuit Court of Champaign County in case number 93CF655. He was found guilty by a jury. At a bench sentencing, the trial court found Mr. Daniels eligible for the death penalty because the murder occurred in the course of aggravated criminal sexual assault and armed robbery. The trial court sentenced Mr. Daniels to death for the murder conviction and to concurrent terms of 60 years' imprisonment for the other convictions.

On direct appeal, the Illinois Supreme Court reversed the convictions and sentences and remanded the cause for a new trial. *People v. Daniels*, 172 Ill.2d 154, 665 N.E.2d 1221, 216 Ill. Dec. 664 (1996). The court agreed with Mr. Daniels's argument that the trial court improperly limited him to only seven peremptory challenges even though a Supreme Court rule specifically allows "14 peremptory challenges in a capital case." Mr. Harris also argued that the trial court compounded its error by refusing to excuse a prospective juror who knew the lead prosecutor from a prior criminal case in which the prosecutor had helped to obtain the conviction of a person who had sexually assaulted the prospective juror's children.

After remand, the jury in the second trial acquitted Mr. Daniels of armed robbery. The jury could not reach a verdict on the remaining counts and the trial judge declared a mistrial on those counts. When facing a third trial, Mr. Daniels moved to dismiss the felony-murder charges on double jeopardy grounds and moved to bar any death penalty sentencing hearing that depended on felony-murder as a statutory eligibility factor. The trial court denied the motions and Mr. Daniels filed an interlocutory appeal. The Illinois Supreme Court affirmed the order of the

Circuit Court and remanded the case for the third trial. *People v. Daniels*, 187 Ill.2d 301, 718 N.E.2d 149, 240 Ill. Dec. 668 (1999).

In the third trial, Mr. Daniels was found guilty and sentenced to death. His case is on direct appeal to the Illinois Supreme Court.

*Reasons why clemency should be granted:*

The discussion at pages 2-3 above applies to Mr. Daniels and other prisoners in whose interest this Petition is filed.

In addition, Mr. Daniels was sentenced to death based on the conviction for aggravated sexual assault, which is one of fifteen felonies listed as qualifying a defendant for the death penalty in the statute's "murder in the course of felony" provision. Under Recommendations 27 and 28 of the Governor's Commission, Mr. Daniels could have been sentenced to life in prison but would not have been subjected to death because the reforms recommend eliminating the "course of felony" provision. Chapter 4 of the Report of the Governor's Commission explains in detail why the majority of Commission members advocate eliminating this provision.

**7. Chris Davis**

Mr. Davis's current mailing address is Menard Correctional Center, P.O. Box 711, Menard, Illinois 62259. His prisoner number is N74262.

Mr. Davis was convicted in a jury trial in Cook County in May of 2000 of first degree murder and armed robbery in the shooting death of off-duty police officer Gregory Young. Mr. Davis survived after having been shot six times by Officer Young. The case number was 97CR2738101. After a bench sentencing hearing, Mr. Davis was sentenced to death in August of 2000. The case is on direct appeal to the Illinois Supreme Court.

*Reasons why clemency should be granted:*

The discussion at pages 2-3 above applies to Mr. Davis and other prisoners in whose interest this Petition is filed.

**8. Daniel J. Edwards**

Mr. Edwards' current mailing address is Pontiac Correctional Center, P.O. Box 99, Pontiac, Illinois 61764. His prisoner number is N82122.

Mr. Edwards was convicted of the offenses of first degree murder and aggravated kidnaping of Stephen Small in the Circuit Court of Kankakee County in case number 87CF320. He was found guilty by a jury, which then found there were no mitigating factors sufficient to preclude imposition of the death penalty. He was then sentenced to death. The Illinois Supreme Court affirmed the judgment of the Circuit Court on direct appeal. *People v. Edwards*, 144 Ill.2d 108, 579 N.E.2d 336, 161 Ill. Dec. 788 (1991).

*Reasons for granting clemency:*

The discussion at pages 2-3 above applies to Mr. Edwards and other prisoners in whose interest this Petition is filed.

In addition, Mr. Edwards was sentenced to death because he was convicted of murder in the course of one of fifteen death-eligible felonies, kidnaping. Under Recommendations 27 and 28 of the Governor's Commission, Mr. Edwards could have been sentenced to life in prison upon conviction of these offenses but would not have been subjected to capital punishment.

Furthermore, Mr. Edwards' conviction is tainted by the fact that he did not have the benefit of the Governor's Commission reform that would mandate, whenever practicable, the videotaping of all in-custody interrogations in homicide cases. One major issue in Mr. Edwards' appeal to the Illinois Supreme Court was the legality of admitting certain items of evidence. The County Sheriff obtained information about these items during in-custody discussions with Mr. Edwards after a

lawyer had been appointed for Edwards. In attempting to address the issue of whether Edwards' constitutional rights were violated, disputes arose about who initiated the discussions, whether or not the sheriff met with Edwards about certain items of evidence, and the number of times and the dates on which the sheriff talked to Edwards. These disputes, which implicated Mr. Edwards' basic constitutional rights, would mostly or entirely have been avoided had the discussions been videotaped, as called for by Recommendation 4 of the reform proposals. Recommendation 5 states that all statements by a homicide suspect which are not, for some reason, videotaped should be repeated to the suspect on tape, and his or her comments recorded.

#### **9. Robert L. Evans, Jr.**

Mr. Evans's current mailing address is Pontiac Correctional Center, P.O. Box 99, Pontiac, Illinois 61764. His prisoner number is K91033.

Mr. Evans was convicted of first degree murder in a jury trial in the Circuit Court of Macon County in the stabbing death of Jerry Watson while taking his car stereo. He was then sentenced to death in a jury proceeding. He was found eligible for a death sentence because he was convicted of murder in the course of two of the fifteen death-eligible felonies, robbery and burglary. His case number was 99CF639. Mr Evans's case is on direct appeal to the Illinois Supreme Court.

#### *Reasons why clemency should be granted:*

The discussion at pages 2-3 above applies to Mr. Evans and the other prisoners in whose interest this Petition is filed.

In addition, Mr. Evans was sentenced to death based on the robbery and burglary convictions. These are not aggravating factors that would qualify a defendant for a death sentence under the Governor's Commission's proposed reforms.

#### **10. Tyrone Fuller**

Mr. Fuller's current mailing address is Cook County Jail, 2600 S. California Avenue, Chicago, Illinois 60608. His Cook County Jail identification number is 20020031167.

Mr. Fuller pled guilty in the Circuit Court of Cook County to three counts of first degree murder, one count of attempted murder, and one count of armed robbery in the death of Marc Feldman. A jury found him death-eligible based on the aggravating factor that the murder was committed in the course of an armed robbery. The trial court sentenced him to death.

The Illinois Supreme Court vacated the death penalty and remanded for a new sentencing hearing because of an erroneous jury instruction. *People v. Fuller*, 2002 Ill. Lexis 287 (Ill. Sup. Ct., Feb. 22, 2002). The Supreme Court held that the trial court failed to instruct the jury on the mental states necessary for a finding of death eligibility based on the felony-murder aggravating factor. Mr. Fuller's position is that the gun went off accidentally.

On remand, Mr. Fuller is subject to a new death sentence, even though it would be as tainted as the one that has been overturned, as discussed below. The Illinois Constitution authorizes the Governor to grant clemency regardless of whether the sentence has been finalized. Specifically, the Constitution states that the Governor may "grant reprieves, commutations and pardons, *after conviction*, for all offenses on such terms as he thinks proper." Constitution of the State of Illinois, Article 5, section 12 (emphasis added).

*Reasons for granting clemency:*

The discussion at pages 2-3 above applies to Mr. Fuller and the other prisoners in whose interest this Petition is filed.

Mr. Fuller was sentenced to death based on murder in the course of an armed robbery. This is not an aggravating factor that would qualify a defendant for a death sentence under the Governor's Commission's proposed reforms.

There also is a serious question as to whether Mr. Fuller would have been convicted of murder if the jury had received the correct jury instruction as to the required mental state for this crime. As discussed above, the Illinois Supreme Court vacated Mr. Fuller's death sentence because the jury was not given an instruction as to the required mental state. Under the law, a defendant must have acted with the intent to kill the person or with the knowledge that his acts created a strong probability of death or great bodily harm. Mr. Fuller testified at the sentencing hearing that the gun accidentally went off and that he pled guilty to first degree murder because he felt responsibility that Mr. Feldman died at his hands.

#### **11. Evan Griffith**

Mr. Griffith's current mailing address is Menard Correctional Center, P.O. Box 711, Menard, Illinois 62259. His prisoner number is N62995.

Mr. Griffith was convicted in a jury trial in the Circuit Court of Livingston County of the offenses of the first degree murder of James Jones and the unlawful possession of a weapon by a person in the custody of the Illinois Department of Corrections. At a bench sentencing, the trial judge concluded that Mr. Griffith was eligible for the death penalty because the victim was a prison inmate. The trial judge then found that there were no mitigating factors sufficient to preclude the imposition of the death penalty. Mr. Griffith was then sentenced to death on the murder conviction and to a consecutive 30-year prison term on the inmate weapon possession conviction. The case number was 91CF15.

On direct appeal, the Illinois Supreme Court affirmed the conviction and sentence. *People of the State of Illinois v. Griffith*, 158 Ill.2d 476, 634 N.E.2d 1069, 199 Ill. Dec. 715 (1994). Justice Freeman, joined by Justices Harrison and Nickels, dissented on grounds that Mr. Griffith received ineffective assistance of counsel. Mr. Griffith's defense at trial was self-defense. The jury instruction conference included Mr. Griffith as well as the defense attorney and prosecutor. The trial judge told

Mr. Griffith that the decision whether to ask for a second degree murder instruction (to be submitted with the first degree murder and self-defense instructions) was a decision that only Mr. Griffith and not his lawyer could make. This was an incorrect statement of the law. Mr. Griffith made a decision himself in accord with the judge's direction, electing not to have a second degree murder instruction given even though, according to the dissent, the evidence could have resulted in a second degree murder conviction arising out of the self-defense evidence. A conviction for that offense would have resulted in additional time in prison of between about four and 30 years, and not a sentence of death. The dissenting opinion concluded that the trial judge "denied defendant counsel at a critical stage of the trial" by stating that only Mr. Griffith could decide on the jury instruction. The dissent also concluded that defense counsel provided ineffective assistance because he "stood mute while the trial judge forced defendant to make a decision that was defense counsel's to make." In short, Mr. Griffith "did not receive a fair trial," according to the three dissenting justices.

*Reasons why clemency should be granted:*

The discussion at pages 2-3 above applies to Mr. Griffith and other prisoners in whose interest this Petition is filed.

In addition, three justices on the Illinois Supreme Court filed a dissenting opinion and concluded "there is a reasonable probability that the result [of the trial] would have been different" if the jury had been instructed on second degree murder. Thus, it is the view of three justices that had Mr. Griffith received a fair trial there is substantial doubt that he would have been found guilty of first degree murder. His sentence of death therefore hangs under a cloud of moral uncertainty.

This case is another example of the necessity of incorporating the reforms of the Governor's Commission and the Capital Litigation Trial Bar into trials before carrying out sentences of death. In Mr. Griffith's case, a wrong understanding of the law may well have led to the

death sentence, in the view of three Supreme Court justices. It was the trial judge who gave the wrong explanation of the law, but both the prosecutor and the defense lawyer were present and neither one raised any objection. Implementation of the Capital Litigation Trial Bar's requirements will reduce, although not eliminate, the risk of mistakes of the type that helped place Mr. Griffith on death row.

## **12. Anthony Hall**

Mr. Hall's current mailing address is Menard Correctional Center, P.O. Box 711, Menard, Illinois 62259. His prisoner number is A72086.

Mr. Hall was convicted of the offense of the murder of Frieda King in 1983 at a bench trial in the Circuit Court of McLean County. The case number was 83CF182. The trial court sentenced Mr. Hall to death after finding that the victim was an employee of the Department of Corrections.

The Illinois Supreme Court affirmed the judgment on direct appeal. *People v. Hall*, 114 Ill.2d 376, 499 N.E.2d 1335, 102 Ill. Dec. 322 (1986). Justice Simon, in dissent, provided two independent grounds for vacating the death sentence. First, the trial judge believed that he was precluded from considering mercy and the decision would have been different had he considered mercy. Second, Mr. Hall was not admonished prior to waiving a jury for sentencing that a jury would have to be unanimous before it could impose the death penalty.

The Circuit Court's denial of post-conviction relief was affirmed by the Supreme Court in *People v. Hall*, 157 Ill.2d 324, 626 N.E.2d 131, 193 Ill. Dec. 98 (1993). Mr. Hall's federal petition for writ of habeas corpus was denied in *Hall v. Washington*, 916 F. Supp. 1411 (C.D. Ill. 1996).

The Seventh Circuit Court of Appeals reversed the U.S. District Court's judgment and remanded the case for issuance of a writ of habeas corpus requiring a new sentencing hearing because Mr. Hall received ineffective assistance of counsel. *Hall v. Washington*, 106 F.3d 742 (7<sup>th</sup> Cir. 1997). The Circuit Court then conducted a new sentencing hearing and Mr. Hall was again

sentenced to death. The Illinois Supreme Court affirmed the judgment of the Circuit Court in *People v. Hall*, 195 Ill.2d 1, 743 N.E.2d 126, 252 Ill. Dec. 552 (2000). Chief Justice Harrison dissented, stating that the Illinois death penalty law violates the United States and Illinois constitutions.

*Reasons why clemency should be granted:*

The discussion at pages 2-3 above applies to Mr. Hall and the other prisoners in whose interest this Petition is filed. That discussion describes a number of crucial assurances for the fair, accurate and just application of the criminal justice system that were not afforded to Mr. Hall and the other persons encompassed in this Petition.

**13. Ralph Harris**

Mr. Harris's current mailing address is Pontiac Correctional Center, P. O. Box 99, Pontiac, Illinois 61764. His prisoner number is B35933.

Mr. Harris was convicted of the murder and attempted armed robbery of William Patterson, and the attempted murder of James Patterson, in the Circuit Court of Cook County. The case number was 95CR27598. He was found guilty by a jury, and was sentenced to death on March 24, 1999 after a bench sentencing.

Mr. Harris was also convicted of murder and attempted armed robbery in the Circuit Court of Cook County in a case involving the death of David Ford. That death occurred on the same day as that of Mr. Patterson. The case number was 95CR27596. Mr. Harris was found guilty in a bench trial and sentenced to death on October 25, 1999 after a bench sentencing.

The direct appeals in both of these cases are pending before the Illinois Supreme Court. Mr. Harris has filed a pro se post-conviction petition in both of these cases in Cook County and they are pending. Counsel has recently been appointed for him in these matters.

*Reasons why clemency should be granted:*

The discussion at pages 2-3 above applies to Mr. Harris and other prisoners in whose interest this Petition is filed.

In addition, among the evidence against Mr. Harris in the Patterson death was testimony of eyewitnesses who identified Mr. Harris after being exposed to lineups conducted three years after the offense. The lineups were not conducted in compliance with the recommendations of the Governor's Commission. These recommendations attempt to redress the persistent problem in the criminal justice system with incorrect eyewitness identifications. The recommendations call for a number of necessary reforms, including explicitly telling witnesses that "the suspected perpetrator might not be in the lineup . . . and therefore they should not feel that they must make an identification," and that when practicable the person conducting the lineup should not be aware which member of the lineup is the suspect. The reforms also provide that when practicable the police should videotape lineup procedures, including a witness's "confidence statement." Recommendations 10-15 describe the procedures. They were not used in the witnesses' identification of Mr. Harris three years after the events took place.

Moreover, in the case involving the death of Mr. Ford, a confession that did not comport with the reforms was used. Specifically, the reforms call for the videotaping of custodial interrogations occurring at a police facility and the videotaping should include not "merely the statement made by the suspect after interrogation, but the entire interrogation process." Recommendation 4.

**14. Ernest D. Jamison**

Mr. Jamison's current mailing address is Menard Correctional Center, P.O. Box 711, Menard, Illinois 62259. His prisoner number is B73894.

Mr. Jamison was convicted of the offenses of first degree murder and armed robbery of Susan Gilmore in the Circuit Court of McLean County in case number 95CF609. The conviction was based on a guilty plea (a plea that he later contested). The trial judge found Mr. Jamison eligible for the death penalty based on the statutory aggravating factor of the felony of armed robbery and sentenced him to death on February 21, 1996 for murder and to a consecutive term of 30 years' imprisonment for armed robbery.

Mr. Jamison appealed the trial court's failure to admonish him of the need to file a motion to withdraw his guilty plea. The Supreme Court of Illinois held that remand for the required admonition was necessary. *People of the State of Illinois v. Jamison*, 181 Ill.2d 24, 690 N.E.2d 995, 228 Ill. Dec. 920 (1998).

On remand, the trial judge gave the admonition and Mr. Jamison was then permitted to file a motion to withdraw his guilty plea. The court then denied his motion to withdraw his plea. The Supreme Court considered the case again and affirmed the decision of the circuit court. *People of the State of Illinois v. Jamison*, 197 Ill.2d 135, 756 N.E.2d 788, 258 Ill. Dec. 514 (2001).

*Reasons why clemency should be granted:*

The discussion at pages 2-3 above applies to Mr. Jamison and the other prisoners in whose interest this Petition is filed.

Mr. Jamison's case also illustrates the arbitrary way in which capital punishment has been applied in this State. He was charged with two crimes: first degree murder in the shooting death of Ms. Gilmore, and aggravated vehicular hijacking for driving away in Ms. Gilmore's automobile. The hijacking statute was enacted in 1993 and this act was not a death penalty eligibility factor at the time Mr. Jamison was charged. Therefore, Mr. Jamison, as charged, was not eligible for the death penalty.

As the Supreme Court’s 2001 opinion in Mr. Jamison’s case points out, the State “[a]t some point . . . became aware that . . . aggravated vehicular hijacking was not a predicate offense for the imposition of the death penalty . . . [and added] a charge of armed robbery . . . alleging that defendant . . . took the contents of the automobile” as well as the car itself. The statute governing armed robbery, which was a felony making a murder defendant death-eligible, specifically excluded the taking of a motor vehicle. Thus, because Mr. Jamison was now charged with the armed robbery of the car’s *contents*—plants, clothing, and audiocassette tapes—he was eligible to be sentenced to death.

The State of Illinois thus prevailed on a novel theory that robbing plants, clothes, and cassettes called for a death sentence whereas if the car had lacked these items there would have been no legally permissible reason for a death sentence. The reported court opinions do not indicate that the prosecution introduced an iota of evidence that Mr. Jamison had any intent to use, sell, or otherwise benefit from these items of personal property that happened to be in the automobile.

As the Governor’s Commission has stated, “In capital cases the Illinois Supreme Court should consider on direct appeal (1) whether the sentence was imposed due to some arbitrary factor . . . .” Recommendation 70.

### **15. Maurice King**

Mr. King’s current mailing address is Pontiac Correctional Center, P.O. Box 99, Pontiac, Illinois 61764. His prisoner number is A90770.

Mr. King was convicted of two counts of first degree murder in the Circuit Court of Kane County in case number 98CF858. He was found guilty and sentenced to death in a jury trial. Mr. King was a former co-worker and close friend of Lola Gooch. Lola Gooch and her daughter, Alisha, were fatally stabbed in April of 1998. The State’s case rested largely on a confession Mr.

King made to Carpentersville police. The confession also implicated another man. Mr. King's case is on direct appeal to the Illinois Supreme Court.

*Reasons why clemency should be granted:*

The discussion at pages 2-3 above applies to Mr. King and the other prisoners in whose interest this Petition is filed.

In addition, as noted above, Mr. King's conviction rested in part on a confession. As the Governor's Commission has explained in its Recommendation 4, the videotaping of confessions--as well as the preceding interrogations--is essential in helping to assure that the State's capital punishment system renders decisions in a fair, accurate and just manner.

**16. Maurice McDonald**

Mr. McDonald's current mailing address is Pontiac Correctional Center, P.O. Box 99, Pontiac, Illinois 61764. His prisoner number is B42547.

Mr. McDonald was convicted of two counts of murder and one count of armed robbery in the Circuit Court of Cook County in case number 92CR2151. He represented himself. He was found guilty in a bench trial. A jury found him eligible for the death penalty based on the statutory aggravating factor of murder of two or more persons, and found there were no mitigating factors sufficient to preclude imposition of the death sentence. The trial judge then sentenced Mr. McDonald to death on the counts of murder and to 60 years' imprisonment on the count of armed robbery. The Illinois Supreme Court affirmed the judgment of the Circuit Court on direct appeal. *People v. McDonald*, 168 Ill.2d 420, 660 N.E.2d 832, 214 Ill. Dec. 125 (1995).

*Reasons for granting clemency:*

The discussion at pages 2-3 above applies to Mr. McDonald and other prisoners in whose interest this Petition is filed.

As the preamble to the report of the Governor's Commission on Capital Punishment points out, its mission was to ensure the "justice, fairness and accuracy" of the capital punishment system in Illinois. In Mr. McDonald's case, it is clear that the question of doubt whether Mr. McDonald was guilty of the offenses charged did arise before the death sentence was pronounced. After a finding of guilt at a bench trial, a jury was impaneled to determine the sentence. That jury sent a message to the judge asking whether "questioning [McDonald's] guilt [is] a mitigating factor." The jury also said it was unclear on the meaning of the jury instruction which provided that mitigating factors included "any other reasons" why the defendant should not be sentenced to death.

Even though Mr. McDonald was representing himself, he was not invited to the courtroom when the judge, the prosecutor and Mr. McDonald's "standby counsel" discussed the jury's note on confusion. The judge wrote a response to the jury as follows: "You have the instructions! Continue to deliberate." When Mr. McDonald was later informed of the jury's note, he objected to what had occurred. One month after trial, two jurors signed affidavits stating they did not think they could consider reasonable doubts about the defendant's guilt as a mitigating factor and therefore voted in favor of the death sentence. One of those jurors had, in fact, not responded affirmatively to the judge's question at polling as to whether the death sentence was the verdict. When the judge repeated the question to the juror, he answered, "Reluctantly, yes your honor." 168 Ill.2d at 461, 660 N.E.2d at 850, 214 Ill. Dec. at 143.

On appeal, the Illinois Supreme Court held that the trial judge's communication with the jury about its confusion on the jury instructions was improper and violated Mr. McDonald's constitutional right to be present at and to participate in a critical stage of trial. The court held, however, that the jury instruction on mitigation was "readily understandable and sufficiently explains the law" and thus Mr. McDonald suffered no harm. The court also held that the jurors' post-trial affidavits could not, under the law, be considered.

Thus, the public's need to have a capital punishment system that assures the "fairness, justice and accuracy" of death sentences can be thwarted in any one of many ways. In Mr. McDonald's case, the rules of law that were applied transformed what would have been a sentence of imprisonment into a death sentence.

**17. Edward A. Moore, Jr.**

Mr. Moore's current mailing address is Pontiac Correctional Center, P.O. Box 99, Pontiac, Illinois 61764. His prisoner number is A70777.

Mr. Moore was convicted of seven counts of first degree murder concerning the death of Judy Zeman, and one count each of home invasion, residential burglary, aggravated criminal sexual assault, robbery and arson. The trial was before a jury in the Circuit Court of Grundy County, case number 91CF54. The jury then determined that he was eligible for the death penalty on the basis of a murder committed in the course of a felony and that there were no mitigating factors sufficient to preclude the imposition of the death penalty. The Circuit Court then sentenced Mr. Moore to death. On direct appeal, the Illinois Supreme Court affirmed the convictions and sentence. *People v. Moore*, 171 Ill.2d 74, 662 N.E.2d 1215, 215 Ill. Dec. 75 (1996).

Mr. Moore subsequently filed a petition for post-conviction relief. The Circuit Court dismissed the petition without an evidentiary hearing. On appeal, the Supreme Court affirmed the dismissal of the petition. Chief Justice Harrison and Justices Freeman and McMorrow dissented. *People v. Moore*, 189 Ill.2d 521, 727 N.E.2d 348, 245 Ill. Dec. 95 (2000).

*Reasons for granting clemency:*

The discussion at pages 2-3 above applies to Mr. Moore and other prisoners in whose interest this Petition is filed.

In addition, Chief Justice Harrison points out in his dissent that Mr. Moore's assertion that his conviction was based on false testimony of prisoner-informants "bears directly on his claim that

he did not, in fact, break into Judy Zeman's home and then rape and kill her." Chief Justice Harrison stated that under the law the dismissal of the post-conviction petition without an evidentiary hearing was improper. Justice Freeman, joined by Justice McMorrow, also dissented, stating it was improper to deny relief in light of evidence that Mr. Moore was ingesting psychotropic drugs near the time of trial and had not been given any fitness hearing.

Moreover, the post-conviction pleadings demonstrate that Mr. Moore has assembled substantial evidence supporting his claims for relief, some of which bear directly on his claim of innocence. Mr. Moore has alleged that the prosecution knew, but never disclosed to the defense, that the self-styled "state's star witness from Florida" was permitted to introduce himself to the jurors dining during their sequestration, thus contaminating the jury. This star witness boasted to the jurors that he would link Ed Moore to the murder.

Other evidence assembled includes affidavits from jailhouse snitches admitting giving false testimony at trial. These snitches also explain how an out-of-state detective orchestrated the false testimony and they acknowledge that they were bought and paid for witnesses. The evidence assembled by Mr. Moore includes other affidavits, and newly-discovered documents never disclosed to the defense, that repudiate key points of the prosecution's case. For example, Mr. Moore explains that laboratory notes of the State's forensic expert, which were not furnished to the defense, repudiate that expert's trial testimony that hair found in Mr. Moore's car was consistent with Ms. Zeman's hair. Similarly, Mr. Moore explains how newly-discovered police notes prove that the police learned before Ms. Zeman died that she did not know the person who attacked her. Ms. Zeman was, however, well-acquainted with Mr. Moore. Mr. Moore also argues that the State failed to disclose that seminal fluid stains were recovered, as well as hair and fiber. Mr. Moore has requested DNA testing of this newly-discovered evidence.

## **18. Richard Morris**

Mr. Morris's current mailing address is Pontiac Correctional Center, P.O. Box 99, Pontiac, Illinois 61764. His prisoner number is B65709.

Mr. Morris was convicted of first degree murder, aggravated kidnaping and vehicular hijacking in the Circuit Court of Cook County in case number 96CR0012301. He was found guilty by a jury and sentenced to death on December 9, 1998. The victim was Ervin Shorter. Another man, Tywon Night, was convicted of the offense by a separate jury and sentenced to a 145-year prison term. Mr. Morris's case is presently on direct appeal to the Illinois Supreme Court.

*Reasons why clemency should be granted:*

The discussion at pages 2-3 above applies to Mr. Morris and the other prisoners in whose interest this Petition is filed.

In addition, Mr. Morris would not have been sentenced to death under the reforms recommended by the Governor's Commission because his eligibility hinged on the "murder in the course of felony" statutory provision that would be eliminated by the reforms. That provision lists fifteen aggravating felonies, including the two applied in Mr. Morris's case, aggravated kidnaping and vehicular hijacking.

**19. Sanantone Moss**

Mr. Moss's current mailing address is Pontiac Correctional Center, P.O. Box 99, Pontiac, Illinois 61764. His prisoner number is N82608.

Mr. Moss was convicted of two counts of first degree murder in the Circuit Court of Cook County in case number 94CR2445901. He was found guilty by a jury, which then found him eligible for the death penalty and found no mitigating factors sufficient to preclude its imposition. The Illinois Supreme Court affirmed the judgment of the Circuit Court on direct appeal. *People v. Moss*, 2001 Ill. Lexis 1427 (Ill. Sup. Ct., Oct.18, 2000).

The opinion reports that Dr. Daniel Hardy, a psychiatrist, testified for the defense that he had diagnosed Mr. Moss with schizo-affective disorder of the bipolar type that is aggravated or caused by a history of brain injury. Tests showed that Mr. Moss had frontal and temporal lobe abnormalities in his brain. Those lobes govern judgment and impulse control. Dr. Hardy testified that it was his opinion that Mr. Moss had suffered for many years from a significant condition that resulted in extreme emotional and mental disturbance.

Dr. Jonathan Pincus, an expert in neurology, testified that Mr. Moss was psychotic and exhibited signs of paranoia and delusional behavior, and that he had frontal lobe abnormalities. He stated that his diagnosis was confirmed by Dr. Hier, the chairman of the Department of Neurology at the University of Illinois, who concluded that “cerebral organicity could be a contributing factor in either excessively aggressive behavior or failure to inhibit anti-social or aggressive behavior.” The State did not introduce any evidence from medical professionals or others that disputed the testimony of Drs. Hardy and Pincus.

*Reasons why clemency should be granted:*

The discussion at pages 2-3 above applies to Mr. Moss and the other prisoners in whose interest this Petition is filed.

In addition, the trial of Mr. Moss demonstrates how the capital punishment system is broken in one important way — repeated prosecutorial misbehavior in arguments to the jury and in questioning witnesses. The prosecution in Mr. Moss’s case introduced no evidence at all to dispute the defense’s medical testimony that Mr. Moss had a schizo-affective disorder, was psychotic, had brain lobe abnormalities, and that his condition resulted in extreme emotional and mental disturbance, paranoia, and delusional behavior. Instead, the prosecutor engaged in conduct, at both the guilt-innocence and sentencing phases of the trial, that has been repeatedly condemned by Illinois Supreme Court.

The prosecutor ridiculed Dr. Hardy for having to take time to “search through” his records for an answer because he did not know the answer “off the top of his head.” The prosecutor then questioned the doctor on the issue of whether “the longer it takes you to look through your records the more money you’re going to make here today?” The prosecutor then belittled Mr. Moss’s medical condition and the doctor’s opinion by saying, “Are you actually telling us that [defendant’s] criminality is caused by some boo-boo to the head?” Even though the trial judge ordered the prosecutor to “stop that,” the prosecutor urged the jury in closing arguments at the sentencing phase to weigh the evidence in aggravation against a “boo-boo to the brain.” “We’ve heard about [defendant’s] problems, . . . we’ve heard about his brain ad nauseum from psycho-babble that went on and on. . . . When you consider all [the evidence in aggravation] and you weigh it against those [two] cash for trash doctors . . . , you’ll see that there are no mitigating factors sufficient to preclude imposition of the death penalty.”

The prosecutor continued to ridicule the doctors and their testimony: “[T]hey’re trying to excuse his responsibility . . . . Doctor Hardy. Doctor, ‘I can’t answer a question straight if my life depends on it,’ Hardy. Doctor ‘I can’t give a one word answer when 50 words will make me more money.’ . . . He’s a bought and paid for witness.”

In rebuttal argument, another prosecutor argued that “giving [defendant] natural life [in prison] is an American Express Gold Card for this defendant to assault correctional officers, prison staff, cafeteria workers, possessing shanks, sharpened to a point to stab anybody who makes him angry.”

The Illinois Supreme Court majority affirmed the conviction and sentence but nonetheless declared that some of the comments were “completely unacceptable” and “must be strongly condemned.” The court stated that “improper prosecutorial remarks... have become all too frequent in criminal trials.” The court implicitly also found the defense lawyer’s work unacceptable

because it held that there was a waiver of review of this issue due to failure to object to most of the comments at trial and a failure to raise the issue in the post-trial motion.

The majority also held that the appellate brief did not ask the court to review the prejudicial prosecutorial behavior issue under another avenue that might provide relief, the “plain error” rule. The majority ruled that Mr. Moss thus waived his right to have the Supreme Court decide the issue.

In dissent, Justice Freeman, joined by Justices Harrison and Kilbride, writes that Mr. Moss’s appellate brief did present the “plain error” issue to the court. Justice Freeman reviewed the case under the plain error rule and found that the prosecutor’s cross-examination and argument “was intended to degrade and insult the defense witnesses in an attempt to weaken the impact their testimony might have had on the jury and to inflame the passions of the jury against defendant’s case in mitigation.” Justice Freeman stated that a review of the case under the plain error rule required the sentence of death to be set aside.

Recommendation 42 of the Governor’s Commission states: “The Commission supports new Illinois Supreme Court Rule 714 which imposes requirements on the qualifications of attorneys handling capital cases.” Recommendation 40 gives the same support for new Rule 416(d) regarding qualifications for counsel in capital cases. The introductory statement to this Chapter 7 of the reform proposals states in part: “The Commission unanimously supports the suggested [Supreme Court] rule changes, as well as supporting improved training and funding of counsel trying capital cases.”

Thus, the goal of the Governor’s Commission reforms and the Supreme Court rules is, in part, to assure that both the State and capital defendants are represented by trained and competent counsel.

## **20. Hector Nieves**

Mr. Nieves's current mailing address is Pontiac Correctional Center, P.O. Box 99, Pontiac, Illinois 61764. His prisoner number is A72531.

Mr. Nieves was convicted by a jury of the first degree murder of Rafael Cuevas in the Circuit Court of Cook County in case number 96CR2726. The jury then found that Mr. Nieves was eligible for the death penalty and that there were no mitigating factors sufficient to preclude the death penalty. He was then sentenced to death. The Illinois Supreme Court affirmed the trial court judgment on direct appeal. *People v. Nieves*, 192 Ill.2d 487, 737 N.E.2d 150, 249 Ill. Dec. 760 (2000).

*Reasons why clemency should be granted:*

The discussion at pages 2-3 above applies to Mr. Nieves and the other prisoners in whose interest this Petition is filed.

In addition, the Governor's Commission has expressly recommended that a defendant should have "the right to make a statement [in allocution] on his own behalf during the aggravation/mitigation phase" of capital trials. Recommendation 62. Mr. Nieves specifically requested that he be permitted to make such a statement to the jurors who were determining his sentence, but the trial court denied him this opportunity.

**21. Robert St. Pierre**

Mr. St. Pierre's current mailing address is Menard Correctional Center, P.O. Box 711, Menard, Illinois 62259. His prisoner number is N10989.

Mr. St. Pierre and two co-defendants were convicted in a jury trial in Cook County of first degree murder in the deaths of Benjamin and Sybil Gibbons, and of two counts each of conspiracy to commit murder, armed robbery, and concealing a homicidal death. During trial, the judge denied a defense motion to suppress a statement taken by a court reporter that Mr. St. Pierre, then 19 years old, gave at the police station to police and an Assistant State's Attorney.

After the State announced its decision to seek the death penalty, Mr. St. Pierre's sentencing hearing was severed from that of the co-defendants because they waived a jury hearing on sentencing. After the jury hearing for Mr. St. Pierre, the trial court sentenced him to death and to prison terms on the other convictions. His case number was 82C7149.

On direct appeal, the Illinois Supreme Court reversed and remanded the case for a new trial, holding that Mr. St. Pierre "clearly invoked his right to counsel while being held in custody . . . following his arrest" and the admission of his statement at trial violated his constitutional rights. *People of the State of Illinois v. St. Pierre*, 122 Ill. 2d 95, 522 N.E.2d 61, 118 Ill. Dec. 606 (1988). The Supreme Court said it need not consider Mr. St. Pierre's ineffective assistance of counsel claim due to its disposition of the other claim but added: "We are confident that upon retrial, . . . *proper care will be taken to insure that the defendant will have the unimpaired benefit of effective assistance of counsel.*" (Emphasis added).

On retrial, the trial court appointed as Mr. St. Pierre's counsel an attorney who had never before tried a murder case, let alone a capital case. Mr. St. Pierre then pled guilty to the charge of murder of the two persons. At a bench sentencing, the trial court sentenced him to death and certain prison terms for other charges to which had pled guilty. On direct appeal, the Supreme Court affirmed the judgment of the trial court except for a reversal of the conviction and prison sentence for conspiracy to commit murder. *People v. St. Pierre*, 146 Ill.2d 494, 588 N.E.2d 1159, 167 Ill. Dec. 1029 (1992).

Mr. St. Pierre's post-conviction litigation in the Illinois courts was unsuccessful. The federal judiciary, however, viewed this case in a different light. The District Court, on remand from the Seventh Circuit Court of Appeals, found that Mr. St. Pierre received prejudicially ineffective assistance of his court-appointed lawyer in his second trial. The court ordered a re-sentencing that

complies with the U.S. Constitution's guarantee of effective assistance of counsel. *St. Pierre v. Cowan*, 2001 U.S. Dist. Lexis 13026 (N.D. Ill., Aug. 27, 2001).

Mr. St. Pierre appealed the District Court's denial of his claim that he was entitled to a new trial. The State did not appeal the ruling requiring a new sentencing determination. By a 2-1 vote, the Seventh Circuit Court of Appeals affirmed the District Court's decision. Thus, Mr. Pierre's case is now subject to a new death sentence-life sentence hearing. *St. Pierre v. Walls*, 2002 U.S. App. Lexis 14734 (7<sup>th</sup> Cir. July 23, 2002).

In the Seventh Circuit, Judge Diane P. Wood dissented, stating that Mr. St. Pierre proved he was entitled to a full new trial. Judge Wood was critical of the majority's conclusion that the performance of Mr. St. Pierre's lawyer at the guilt-innocence phase of trial fell within the range of acceptable professional competence. Judge Wood pointed out:

It is telling . . . that the Report of the Governor's Commission on Capital Punishment, April 2002, includes among its recommendations several pertaining to the qualifications for counsel in capital cases, including an endorsement of new rules from the Illinois Supreme Court that creates a specialized Capital Litigation Trial Bar (membership in which requires prior experience as lead or co-counsel in at least two murder prosecutions) and further requires that lead counsel in all capital cases be a member of that bar. *Id.* at 55.

Judge Wood acknowledged that the Supreme Court rules do not make these requirements retroactive, but observed:

[T]houghtful people throughout the State of Illinois, including members of the state Supreme Court and the members of the Governor's Commission, have recognized the importance of prior experience for defense counsel in capital cases. Someone like [Mr. St. Pierre's counsel] who lacks such experience is thus a novice to the capital area, no matter how much he has done elsewhere. *Id.*

As noted above, Mr. St. Pierre is subject to another possible death sentence. However, it would be as tainted as the one that has been overturned. The Illinois Constitution authorizes the Governor to grant clemency regardless of whether the sentence has been finalized. Specifically, the

Constitution states that the Governor may “grant reprieves, commutations and pardons, *after conviction*, for all offenses on such terms as he thinks proper.” Constitution of the State of Illinois, Article 5, section 12 (emphasis added).

*Reasons why clemency should be granted:*

The discussion at pages 2-3 above applies to Mr. St. Pierre and the other prisoners in whose interest this Petition is filed.

In addition, the U.S. District Court found that Mr. St. Pierre’s trial counsel at his second trial failed to pursue many “obvious avenues” into his client’s mental health, some which could have been pursued with “garden-variety subpoenas.” The attorney simply failed to introduce “competent mitigating evidence” at the sentencing phase of trial, said the court. Although the attorney “had once been a public defender, [he] had never before tried a murder case, much less a capital case,” the District Court pointed out. In a case of mistaken trust, the Illinois Supreme Court had stated in its opinion ordering the second trial that it was confident proper care would be taken “to insure that the defendant will have the unimpaired benefit of effective assistance of counsel.”

The point proved is that capital case litigation demands highly trained and experienced attorneys who have adequate resources. Despite the intentions of many – even the Illinois Supreme Court in Mr. St. Pierre’s case – capital defendants on this State’s death row have been sentenced to death after receiving demonstrably deficient legal assistance.

**22. Thomas Umphrey**

Mr. Umphrey’s current mailing address is Pontiac Correctional Center, P.O. Box 99, Pontiac, Illinois 61764. His prisoner number is K91396.

Mr. Umphrey was convicted by a jury in the Circuit Court of Sangamon County on June 9, 2000, of first degree murder, aggravated kidnaping, aggravated vehicular hijacking, and possession of a stolen motor vehicle. After a sentencing hearing before the jury, he was sentenced to death on

June 15, 2000. The case number was 98CF1043. Mr. Umphrey's case is on direct appeal to the Supreme Court.

*Reasons why clemency should be granted:*

The discussion at pages 2-3 above applies to Mr. Umphrey and the other prisoners in whose interest this Petition is filed.

In addition, the Governor's Commission has made explicit recommendations that the eligibility factors for imposition of a sentence of death be limited to five. Under the reforms found necessary by the Governor's Commission, Mr. Umphrey would not have been sentenced to death.

**23. Elton Williams**

Mr. Williams's current mailing address is Pontiac Correctional Center, P.O. Box 99, Pontiac, Illinois 61764. His prisoner number is B13199.

Mr. Williams was convicted in the Circuit Court of Will County of first degree (knowing) murder, first degree (intentional) murder, felony murder and armed robbery. He was found guilty by a jury, which then found him eligible for the death penalty based on two aggravating factors: (1) felony murder and (2) murdering a police officer. Mr. Williams was sentenced to death on December 29, 1995. The case number was 94CF5039.

The jury instruction for the felony murder aggravating factor did not include the required culpable mental state. The Illinois Supreme Court ruled on direct appeal, however, that Mr. Williams was eligible for the death penalty because of the second aggravating factor even if the felony murder aggravating factor was invalid. It affirmed the judgment of the Circuit Court. *People v. Williams*, 181 Ill.2d 297, 692 N.E.2d 1109, 229 Ill. Dec. 898 (1998).

*Reasons why clemency should be granted:*

The discussion at pages 2-3 above applies to Mr. Williams and the other prisoners in whose interest this Petition is filed.

### III. RECOMMENDATION

The MacArthur Justice Center respectfully requests that the Governor commute the death sentences to appropriate terms of years in the cases of the prisoners in whose interest this Petition is brought.

Respectfully submitted,

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