

## I. REQUEST FOR CLEMENCY

Perry Cobb was released from the custody of the Illinois Department of Corrections in January 1987 after serving over nine years in prison for the offenses of murder and armed robbery – crimes he did not commit.

Mr. Cobb was convicted along with Darby Tillis (who was tried under the name Darby Williams) on October 5, 1979 following a jury trial in the Circuit Court of Cook County of the murder and armed robbery of Melvin Kanter and Charles Guccion. People v. Perry Cobb, et al., No. 78 C 928. Mr. Cobb was sentenced to 30 to 60 years imprisonment on the armed robbery conviction, for the murder convictions he was given the death sentence. People v. Perry Cobb, et al., 97 Ill. 2d 465, 471, 455 N.E.2d 31, 32 (1983). These sentences were imposed on October 17, 1979.

Before the conviction, Mr. Cobb and Mr. Tillis had already been tried for the killings twice, with each trial ending in a hung jury. On October 4, 1983, the Illinois Supreme Court, in a unanimous opinion, reversed the 1979 conviction because several evidentiary and other rulings of the trial judge “deprived the defendants of a fair trial.” Cobb, 97 Ill. 2d at 481, 455 N.E.2d at 37. Following remand, a fourth trial in August, 1986 ended in yet another hung jury. On January 20, 1987, after the state had elected to proceed against Mr. Cobb and Mr. Tillis in an unprecedented fifth trial, Cook County Circuit Judge Thomas A. Hett found both men not guilty following a bench trial..

Mr. Cobb remained in custody throughout this entire process, from the date of his arrest on December 5, 1977 until January 21, 1987 – a total of nine years, one month, and 16 days. Mr. Cobb served almost half that time -- four years and 19 days -- on death row.

The State of Illinois can never give back to Mr. Cobb the more than nine years it has taken from his life. The Governor of the State of Illinois can, however, grant Mr.

Cobb an executive pardon, absolving him of the crimes of which he was erroneously convicted. On behalf of Mr. Cobb, we urgently and respectfully request Governor Ryan to pardon Mr. Cobb and, in the pardon, to state specifically that the pardon is issued on the ground that Mr. Cobb is innocent of the crimes for which he was imprisoned.

## **II. REQUIRED INFORMATION**

The following information regarding Mr. Cobb is provided in compliance with the Illinois Prisoner Review Board's Guidelines for Executive Clemency:

Mr. Cobb's current mailing address is:

Perry Cobb  
4504 S. Drexel, Apt. 107  
Chicago, Illinois 60653

Mr. Cobb was convicted of the offenses for which clemency is being sought under the name Perry Cobb. Mr. Cobb has never used an alias.

Mr. Cobb's social security number is 327-34-2444. While he was incarcerated, Mr. Cobb's state prisoner number was C-15747. Mr. Cobb has never previously asked for executive clemency for any conviction.

Mr. Cobb has been convicted of three offenses other than the offenses giving rise to this petition: (i) In 1970, Mr. Cobb was convicted in the Circuit Court of Cook County of the offense of battery, for which he received 6 months in the House of Corrections. Mr. Cobb was involved in a fight and punched another person in the eye.

(ii) In 1975, Mr. Cobb was convicted in the Circuit Court of Cook County of the offense of aggravated battery, for which he received a sentence of two to six years (he was released on parole in 1977). Mr. Cobb was assaulted by four attackers, one of whom brandished a weapon. In the course of an ensuing struggle, Mr. Cobb shot three of his attackers.

(iii) In 1992, Mr. Cobb was convicted following a jury trial in the Circuit Court of Cook County of the offense of attempted arson, for which he received a sentence of six years and served three years in the Illinois Department of Corrections. Mr. Cobb was accused of pouring propane into the furnace vent of his residence.

In addition to these convictions, Mr. Cobb recalls having been arrested on the following occasions: robbery in 1961; disorderly conduct in 1962, 1970, and 1972; and unlawful use of a weapon and failure to register the weapon in 1972. No convictions arose out of any of these arrests.

The required information regarding the conviction for which clemency is being sought is provided above in Section II of this Petition. The required statement of the facts of the offenses is set forth below in Section IV of this Petition. Mr. Cobb's personal life history is contained in Section III of the Petition. The reasons for seeking clemency and the type desired are set forth in Sections I, V and VI of the Petition.

### **III. BIOGRAPHICAL INFORMATION**

Perry Cobb was born on February 3, 1942 in Alexandria, Louisiana to James Cobb and Charlie Mae Mason. Mr. Cobb has one older sister, Barbara Smith, who passed away in 1987 and an older half-sister, Delores Sisson. Mr. Cobb married Joyce Williams in the mid-1960's. The couple divorced while Mr. Cobb was in custody on the charges that give rise to this petition. Mr. Cobb has three grown daughters from his marriage to Joyce Williams: Beverley Cobb Washington, Barbara Jean Cobb, and Charisse Cobb Talley. He remains in touch with all of his daughters. Mr. Cobb has never remarried.

Mr. Cobb moved to Chicago as a baby and grew up at 5036 Washington Park Court. He attended Francis E. Willard grade school in Chicago and then spent two and

one-half years at Dunbar Vocational High School, also in Chicago, before leaving school in 1960. As a child, Mr. Cobb participated in a variety of sports, such as boxing, basketball, and football. At the age of eleven, Mr. Cobb discovered a passion for music, particularly vocal performance.

Throughout his adult life (until his December 1977 arrest), in addition to working in a variety of paying jobs, Mr. Cobb attempted -- with modest success -- to pursue a career in music as a singer and songwriter. Thus, his life history includes both "day jobs" for pay and work pursuing his passion for music.

After he first left school, Mr. Cobb worked at several day jobs: for about a year he was a food service worker at Western Memorial Hospital's Hampshire House. Next, he worked for several months making lamps at Sandell Lamp Company. And he did a six month stint as a dishwasher at Presbyterian St. Luke's Hospital. Mr. Cobb's employment at Presbyterian St. Luke's was interrupted as a result of an arrest in 1961 for robbery that landed Mr. Cobb in jail. After 30 days, the charges were dropped and Mr. Cobb was released.

Mr. Cobb then found a job at Methodist Publishing in Park Ridge, Illinois as a wrapper and typesetter in 1961. Sometime between 1961 to 1966, the company promoted Mr. Cobb to linotype supervisor.<sup>1</sup> When Methodist Publishing moved its plant to Nashville, Tennessee, Mr. Cobb remained in Chicago and looked for another job. He found work at U.S. Steel as a hooker, directing cranes on picking up and moving steel. Mr. Cobb worked at U.S. Steel from 1966 until sometime in 1970, to the best of

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<sup>1</sup> Mr. Cobb does not recall the exact years of his employment with Methodist. But he is certain that he worked at Methodist for five years total and that he received a promotion to linotype supervisor during that time.

his recollection. Mr. Cobb lost his job at U.S. Steel when the company decided to downsize.

The loss of the job at U.S. Steel was a substantial setback for Mr. Cobb and his family. Mr. Cobb looked for but was unable to find full time steady work. In the period between the loss of his job at U.S. Steel and his arrest in late 1977 on the charges that give rise to this petition, Mr. Cobb worked at a number of odd jobs. Ultimately, in the latter part of this period, he was able to find steady part time work with Reliable Messenger, where he was employed as a messenger. Two of Mr. Cobb's convictions also occurred in this time period (see Section II, above).

Throughout the years between his leaving high school and his December 1977 arrest, Mr. Cobb was also pursuing his passion for music. In 1960 or 1961, Mr. Cobb formed a singing group called "The Debtones," with Charles Lindsay, Louis Williams, James Bright, and George Madison. A few years later, The Debtones received a recording contract from Penny Record Company.<sup>2</sup> Mr. Cobb was The Debtones' lead singer. He co-wrote for the Debtones the songs, "Lady Luck" and "We're in Love," which became minor hits. Although still bound by the recording contract, the group changed its name in about 1965 to "The Creations" to avoid confusion with an unrelated California musical group also called The Debtones. Once their recording contract ended, the Debtones disbanded so that each member could pursue individual careers.

Mr. Cobb became a free-lance musician and often performed in a band with Sidney Barnes, Lou Barnes, and Minnie Ripperton. The group, naming itself "The Four of Us," performed live and recorded the advertising jingle for a local furniture store, Emerald Furniture. Having high aspirations for "The Four of Us," the Barnes brothers

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<sup>2</sup> Mr. Cobb does not remember the specific year.

moved to California and urged Ms. Ripperton and Mr. Cobb to rejoin them there. Mr. Cobb was unable to make the move to California because his arrest on the charges giving rise to this Petition intervened on December 5, 1997.

Mr. Cobb spent the following nine years – from December 1977 to January 1987 – in custody. Some of that time was spent in the Cook County Jail, awaiting trial and retrial, the balance was on Death Row at three Illinois Correctional Centers: Stateville, Menard, and Pontiac. During his time at the County Jail, Mr. Cobb was reassigned to Division I, Tier C-3, which was sometimes referred to as the "entertainers tier." The inmates on this tier sometimes entertained fellow inmates and sometimes traveled outside the jail to perform on special occasions. Mr. Cobb remembers performing for such notable visitors as Reverend Jesse Jackson, Mayor Harold Washington, Mother Consuela York, and Cardinal Joseph Bernadin. Mr. Cobb also participated in the production of entertainment videos in order to raise money for the inmates' trust fund.

Since his release from prison, Mr. Cobb has worked a series of odd jobs and done general maintenance work. He has been receiving SSI benefits for mental disability since 1990. He has also suffered an additional felony conviction as set forth in Section II, above. This year, Mr. Cobb helped form a not-for-profit group called Pursue Justice that will attempt to provide housing, legal aid, financial assistance, counseling, and other services to people released from death row. See Mark LeBien, "Cruz Unites Other Survivors of Death Row," Chicago Tribune (March 2, 1999) (attached as Exhibit A). Mr. Cobb, Mr. Tillis, Mr. Dennis Williams, and Mr. Rolando Cruz – who were all wrongfully convicted and sentenced to death in Illinois – are the co-founders of the organization, which is based in Cicero. Mr. Cobb is the organization's Vice President. Aside from his work in Pursue Justice, Mr. Cobb has testified before an Illinois House

legislative committee about his experiences on Death Row and called for a moratorium on executions while the state's death penalty cases are reviewed Id.

Mr. Cobb has never served in the military.

#### **IV. HISTORY OF THE CASE**

Melvin Kanter and Charles Guccion were murdered on November 13, 1977 in the course of an armed robbery at Mel's Red Hots, a fast food stand at 3927 N. Broadway in Chicago, Illinois that was owned by Kanter. Perry Cobb was arrested late in the evening of December 5, 1977, three weeks after the crime, and charged with the murders and armed robbery. At the time of his arrest Cobb was at his residence at The Wilmont Hotel on Chicago's north side. Several Chicago police officers burst in, guns drawn, where they found Mr. Cobb naked, having just gotten out of the shower. Cobb, 455 N.E. 2d at 38; Tr. of 1/29/79 at 1020.<sup>3</sup>

Following his arrest, Mr. Cobb together with Darby Tillis (a man Mr. Cobb only knew in passing) was placed on trial for the murders of Guccion and Kanter a total of five times – then a record for the number of consecutive murder retrials in the United States. A third defendant, Earl “Frenchie” Grant, alleged to have been the lookout during the robbery, successfully moved for a separate trial and entered a guilty plea to the lesser charge of armed robbery. Both Mr. Cobb and Mr. Tillis have consistently and steadfastly

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<sup>3</sup>There are transcripts of Mr. Cobb's first three trials. There is also a transcript of Judge Hett's acquittal of January 20, 1987. The transcripts are cited herein by reference to the date of the transcript, followed by the page number that appears on the transcript. The trial transcripts are not appended to this Petition; they are on file with Mr. Cobb's undersigned counsel and will be made available upon request. The transcript of Judge Hett's January 20, 1987 ruling is attached as Exhibit B.

denied any involvement in these crimes. Ultimately, after a Lake County Assistant State's Attorney named Michael Falconer came forward to testify on their behalf, Mr. Cobb and Mr. Tillis were acquitted on all charges.

**The State's Evidence Could Not Sustain A Conviction  
Until After A Tainted Third Trial**

The State's evidence against Mr. Cobb in the first three trials consisted of the following:

(i) Phyllis Santini, the prosecution's key witness, testified that she had driven the getaway car for Mr. Cobb and Mr. Tillis after they had committed the armed robbery and murders. Santini was never charged as an accomplice in the crimes – though her testimony contained a clear admission she was an accomplice. Tr. of 1/24/79 at 592-93. Her story was substantially undercut by her admission that on the night of the crimes she was in the midst of an intimate relationship with another man, Johnny Brown. Santini conceded on cross examination that Brown had been driving around with her on the night of the crimes, but according to Santini's account, Brown conveniently exited the picture shortly before the crimes were committed. Tr. of 1/24/79 at 600, 634; Tr. of 3/5/79 at 867. Santini admitted that she would do anything to protect Brown. Tr. of 3/5/79 at 879.

(ii) Arthur Shields was offered by the prosecution as an eyewitness. He worked as a bartender at Terminal Liquors, across the street from Mel's Red Hots, and testified that just before the murders he saw two black men inside Mel's, one tall and one short. According to Shields, the taller of the two men was wearing an orange stocking cap. Tr. of 1/25/79 at 705-709. Shields made his observations from a distance of 75 feet, through two windows. *Id.* at 709. He told police on the night of the murders that he "didn't see the [offenders'] faces too well" and that he had not seen either offender well

enough to “walk up and say he’s the man.” Id. at 737.<sup>4</sup> The defense also demonstrated that, unlike the duo Shields saw, between whom “there was a big height difference” (Tr. of 1/30/79 at 725), Mr. Cobb and Mr. Tillis are approximately the same height. Tr. of 1/30/79 at 1153.

(iii) Finally, the State offered evidence that Charles Guccion’s watch was found in Mr. Cobb’s possession. Initially, Mr. Cobb told the police officers shortly after his arrest that he had received this watch from a friend in a trade. Tr. of 1/29/79 at 1019. At trial, Mr. Cobb admitted Johnny Brown had pawned the watch to him in late November 1977 – nearly two weeks after the crime -- outside the hotel where Mr. Cobb was residing. Id. at 1018. Brown had offered to pawn the watch to Mr. Cobb for \$10 or \$15 because he needed a drug fix and Mr. Cobb agreed to hold it for him. Id. Cobb explained that his reluctance to admit the true source of the watch to the police because he did not want to be a “stool pigeon.” Id. at 1019.

No physical evidence ever connected either Perry Cobb or Darby Tillis to the scene of the crime. The Chicago police searched and found fingerprints at the crime scene, but they did not match either Mr. Cobb or Mr. Tillis. Tr. of 3/7/79 at 1255, 1256. Although there was a large amount of blood at the scene, no blood or trace evidence was found on Mr. Cobb or Mr. Tillis. Id.

**Conviction Before Judge Maloney And Subsequent Reversal**  
**by the Illinois Supreme Court Reversal**

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<sup>4</sup>Shields testified at Mr. Cobb’s first trial only that Cobb and Mr. Tillis could “possibly be” the black men he saw enter Mel’s Red Hots. Tr. of 1/25/79 at 709. At the second trial, Shields claimed that Cobb and Tillis were in fact the men he had seen. Tr. of 3/6/79 at 1023. And by the time of the third trial, Shields remarkably said he “knew” that he

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had seen Cobb's and Tillis's faces inside Mel's. Tr. of 10/1/79 at 703.

After hearing this evidence, the juries in the first two trials were unable to reach a verdict. The third trial, also a jury trial, was presided over by former Cook County Circuit Judge Thomas J. Maloney, who was later convicted of federal charges that he “fixed” murder cases in exchange for bribes while serving as a Cook County judge.<sup>5</sup>

At the third trial, the defense moved to introduce testimony of two new witnesses, Carol Griffin and Patricia Usmani, to impeach Santini. Tr. of 10/2/79 at 926; Tr. of 10/4/79 at 1282; Cobb, 455 N.E.2d at 37. Each was prepared to testify to admissions Phyllis Santini had made that further undercut her testimony. Griffin, a truant officer, had been in contact with Santini from 1976 to 1979 about her children’s school attendance. Tr. of 10/2/79 at 935, 945. Griffin was prepared to say that, during a conversation about Santini’s children’s poor school attendance, Santini had said that she and her children might be moving from the school district due to the homicide trial and that she expected to receive a reward for testifying against Mr. Cobb and Mr. Tillis. Tr. of 10/2/79 at 926, 948; Cobb, 455 N.E. 2d at 34.

Patricia Usmani, the second new witness, was a former acquaintance of Santini's who was prepared to testify to conversation in Santini's car in June 1978 in which Santini admitted that she and Johnny Brown had committed the robbery and the murders and that Johnny Brown had later sold Guccion's watch to Cobb. Tr. of 10/4/79 at 1287, 1305.

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<sup>5</sup> The Court of Appeals for the Seventh Circuit affirmed Maloney's conviction for corrupt judicial practices during his tenure on the bench from 1977 to 1990. See United States v. Maloney, 71 F.3d 645, 649 (7<sup>th</sup> Cir. 1995). See also Bracy v. Gramley, 117 S. Ct 1793, 1796 (1997) (noting that Maloney “has the dubious distinction of being the only Illinois judge ever convicted of fixing a murder case”).

Judge Maloney refused to allow either Griffin or Usmani to testify. Judge Maloney also refused to give the standard jury instruction cautioning the jury that, because Santini – by her own admission the driver of the getaway car – was an accomplice to the crime, her testimony should be viewed with particular caution. On October 5, 1979, the all white jury before whom the case was tried found Mr. Cobb and Mr. Tillis guilty of the homicides. Tr. of 10/5/79, at 1471. Both were sentenced to death. See Cobb, 455 N.E.2d at 32.

On October 4, 1983, the Illinois Supreme Court unanimously reversed the conviction. The Court emphasized that the prosecution's case rested on the unreliable testimony of an admitted accomplice, Santini. Thus, the court reasoned that "the defendants should have been given every opportunity [to] legitimately cast doubt on the veracity of [Santini's] testimony." The Court held that then Judge Maloney's failure to allow Griffin and Usmani to testify and his refusal to give the accomplice instruction were reversible error. In remanding the case for another trial, the Supreme Court stated that Judge Maloney's rulings "deprived the defendants of a fair trial and require the reversal of the defendants' convictions." Id. at 37 (emphasis added).

**Michael Falconer's New Evidence**  
**And Judge Hett's Acquittal of Cobb and Tillis**

At the fourth trial, following the Supreme Court's reversal, there was a new witness, Michael Falconer, an attorney and a prosecutor in the Lake County State's Attorney's Office, who had learned of the prosecution and came forward to testify on behalf of Mr. Cobb and Mr. Tillis.

Before attending law school, Falconer had worked with Santini on the assembly line of Automatic Electronic Factory in North Lake, Illinois, from 1976 to 1979. See

Norman Alexandroff, “Thank God for Mike Falconer.” Chicago Lawyer 9, 11 (February 1987) (hereinafter cited as “Alexandroff” and attached as Exhibit C).<sup>6</sup> One day at work, Santini told Falconer that “she and her boyfriend had planned to rob a restaurant and . . . that they unexpectedly shot someone [but] she was trying to cut a deal with the state.” Alexandroff at 11. At the time, Falconer had not taken Santini seriously. Id. at 10.

Approximately four years later, Falconer, then an attorney at a Chicago law firm, read about Santini's testimony in a Chicago Lawyer article about Tillis and Cobb. See Flora Johnson Skelly, “Death Derailed,” Chicago Lawyer 5 (November 1983) (attached as Exhibit D). See also Alexandroff at 10. Falconer immediately remembered the conversation in which Santini had incriminated herself and Johnny Brown as the perpetrators of a robbery-homicide. Falconer next contacted the defense and agreed to testify.

When the jury was unable to reach a verdict following the fourth trial, Mr. Cobb and Mr. Tillis elected to present their case directly to Judge Thomas A. Hett, in a bench trial. After hearing all of the evidence, – including, for the first time, testimony from Johnny Brown, claiming not to have committed the crime, and from Earl “Frenchie” Grant, the supposed lookout for Mr. Cobb and Mr. Tillis – Judge Hett formally exonerated Mr. Cobb and Mr. Tillis on all charges on January 20, 1987, more than nine years following Mr. Cobb’s arrest. Judge Hett’s ruling is attached as Ex. B.

Judge Hett analyzed the evidence in a lengthy ruling from the bench and found it woefully insufficient to sustain a conviction:

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<sup>6</sup>Despite a diligent search, we have been unable to locate the transcript of the fourth trial. The article by Norman Alexandroff, however, provides a thorough and helpful account.

First, Judge Hett questioned the credibility of Santini, Brown, and Grant. The Judge found particularly troubling several inconsistent statements Santini had made in the course of her testimony at the first four trials.<sup>7</sup> Tr. of 1/20/87 at 7-9. The court opined that Santini was “obviously manipulative and evasive, angry and conniving. She is at least an accomplice per the Supreme Court of Illinois [and] ... any fact finder ... must be very wary and suspicious about her story.” Tr. of 1/20/87 at 8. The court opined that Santini’s story “but for a few pointed deletions and adroit additions” supported the defense’s theory that Santini lied in order to protect herself and her boyfriend from being prosecuted. Id. For example, the court cited Santini’s three week delay in contacting police with her story, her initial claim and subsequent denial that her boyfriend Brown wore an orange hat or had a Van Dyke beard (which would have fit Shield’s eyewitness account of the suspects), and her admission that “she would do anything to help Brown if he was in trouble.” Tr. of 1/20/87 at 7-8.

Judge Hett also noted that Santini had lied about receiving any money from the State in exchange for her testimony, when in fact she had received more than \$1,200. Id. at 8. Referring to Santini’s pattern of inconsistencies throughout her testimony at the four previous trials, the court rhetorically asked, “Did [Santini] lie because she habitually lies?” Id. The court concluded that it could “not put any degree of credibility in Phyllis Santini ... and without her testimony, the State’s case crumbles.” Tr. of 1/20/87 at 11.

Judge Hett also rejected the testimony of Johnny Brown and Earl Grant. The court found Brown and Grant “so devoid of believability as to almost be an insult to

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<sup>7</sup> Santini did not testify in the fifth trial. Instead, the State had stipulated that Santini’s testimony from the fourth trial would be the same if she had testified in the fifth trial. Alexandroff at 12.

humanity.” Tr. of 1/20/87 at 5. Observing both Brown and Grant as they testified, the court found that their “demeanor on the witness stand exuded sharpness, double dealing, and dishonesty.” Id. The court particularly viewed Brown with suspicion for three reasons. First, the court questioned why the State had chosen not to present Brown until the fifth trial. Tr. of 1/20/87 at 4. Second, the court questioned Brown’s character, noting that he is “an admitted pimp, hustler, dope dealer, . . . and several time convicted felon.” Id. Third, the court noted that Brown had a compelling motive to falsely testify against Cobb and Tillis. Id. at 5. The court observed that Brown “must dispell [sic] the defense theory that he was one of the armed robbers and that he pulled the trigger. [I]f Phyllis Santini is lying, then Johnny Brown becomes a prime suspect and [therefore] he has a lot at stake.” Id.

The court found that Michael Falconer and Patricia Usmani impeached Santini's statements with her admissions to them. Tr. of 1/20/87 at 10. In particular, the court found Michael Falconer credible and trustworthy. Tr. of 1/20/87 at 11. The court gave significant weight to Falconer’s testimony for two main reasons. First, the State made several attempts to impeach Falconer, but it “could not break [Falconer’s] story. . . ., [a] story so devastating to the State's theory of this case.” Tr. of 1/20/87 at 11. Second, the court noted Falconer’s credentials and lack of personal motive, praising him for “exhibiting . . . in the very best fashion, the true job of a prosecutor to do justice as he sees fit without fear or favor.” Id. The court found that Usmani's testimony also took on significance in impeaching Santini's trial testimony. Id. at 10. The court found particularly compelling the fact that Falconer and Usmani reported that Santini had made "virtually the same admission" separately to each of them. Id. at 10.

Judge Hett also found substantial inconsistencies in Shield's "eye witness" testimony that undermined the veracity of his statements. Tr. of 1/20/87 at 6-7. First, Judge Hett "place[d] great weight" on Shield's testimony from the first trial that "he only saw the men for five seconds, had not seen the faces very well and that he did not pay careful attention to the faces of the two men." Tr. of 1/20/87 at 7. In his testimony at the second trial, Shields once again admitted that Cobb and Tillis only resembled the men he saw and that he could not make a positive identification of Cobb and Tillis. Tr. of 1/20/87 at 6. Yet Judge Hett noted that at the third trial, Shields made a positive identification of the defendants. "When confronted with these inconsistencies, Shields . . . admitted he previously stated that he had not seen the faces very well and thought all blacks looked alike in pictures." Tr. of 1/20/87 at 6, quoting Cobb, 455 N.E.2d at 34.

Judge Hett also observed that Shields' description of the height difference between the offenders he saw did not match Mr. Cobb and Mr. Tillis. See Tr. of 1/20/87 at 7. In earlier trials, Shields had testified that "there was a big difference in height," with one man at 5'10" or 5'11" and the other man at 5'7" or 5'8". Tr. of 1/20/87 at 7. According to Shields, Mr. Cobb was the taller of the two men. Tr. of 1/20/87 at 7. Yet Judge Hett noted that when Cobb and Tillis stood back-to-back in the fifth trial, they were almost the same height. Id.

As to the seizure of Mr. Guccion's watch from Mr. Cobb, Judge Hett found that evidence coupled with Mr. Cobb's inconsistent statements insufficient to prove Mr. Cobb guilty beyond a reasonable doubt. Tr. of 1/20/87 at 4. Judge Hett acknowledged that Mr. Cobb's explanation of his possession of Guccion's watch was supported by the testimony of Usmani in the fourth and fifth trials that Santini had told her that she and

Brown had committed the murders along with two other people, and that Brown had sold Guccion's watch to Mr. Cobb. Tr. of 1/20/87 at 10; Tr. of 10/4/79 at 1287, 1305; Cobb, 455 N.E.2d at 36.

Judge Hett also acknowledged the State's evidence in the fifth trial that Mr. Tillis had allegedly said at one point that he had been with Santini, Cobb, Brown and Grant earlier that night. Tr. of 1/20/87 at 3. He similarly noted the State's evidence that Mr. Tillis had given ambiguous statements to a Detective Zuley that he was seeking to make a deal. Id. Judge Hett concluded, however, "I don't think there is any partisan prosecutor who would say that these facts standing alone, without corroboration, would be enough to convict either of these two Defendants." Id. at 4. He found no such corroboration given the absolute lack of credibility of the State's witnesses.

Judge Hett concluded that the evidence entitled Mr. Cobb and Mr. Tillis to be acquitted of all charges.V. **REASONS FOR GRANTING CLEMENCY**

Mr. Cobb is entitled to have his name cleared for a simple reason: he is innocent of the crime for which he was incarcerated. After a full and fair trial at which a judge heard all of the relevant evidence – including critical newly discovered evidence that was not available to the jury that convicted Mr. Cobb – a judge acquitted Mr. Cobb. This ruling, which was based entirely on the merits of the case, established conclusively that Mr. Cobb never should have been convicted and never should have been sentenced to death. It established that he should never have spent more than nine years behind bars. As in any other case in which newly discovered evidence reveals that a person was wrongly incarcerated, Mr. Cobb should be granted a pardon based on innocence so that he pursue his entitlement to compensation under the Illinois Court of Claims Act.

The Illinois Court of Claims Act provides the means by which the wrongly imprisoned can receive some redress for the incredible injustice inflicted upon them. The Act provides compensation “for time unjustly served in prison.” See 705 ILCS 505/8 (c). Before wrongly imprisoned persons may recover under the Act, however, they must first receive a pardon from the Governor “on the ground of innocence of the crime for which they were imprisoned.” Id.

The Illinois legislature did not define the standard the Governor should follow in issuing pardons under the Act on the “ground of innocence.” Id.; see also Candace Gorman, “Compensating the Wrongly Imprisoned,” 73 Ill. B.J. 227, 228 (1984). It is not sensible to conclude, however, that the legislature would have wanted this Board to re-litigate cases in which a court has already thoroughly reviewed all of the relevant facts of a case and has acquitted the defendant. To be sure, if a defendant is freed on some “technical” ground, such as under the speedy trial act or because of the exclusion of evidence seized in violation of the Fourth Amendment, then the judicial decision releasing the defendant does not, of its own force, establish that the defendant has been found innocent. But if the defendant is released because a judge, jury or reviewing court finds the evidence utterly insufficient to establish guilt, then that determination should be treated as conclusive. A trier of fact has found that the witnesses who testified against Mr. Cobb were entirely unworthy of belief. In other words, there was simply no credible evidence tying him to the crime. Given this finding, Mr. Cobb’s right to a pardon is clear. In the typical clemency case coming before this Board a defendant whose conviction has been upheld by the courts asks the Board to determine that the courts erred and that he is entitled to release. In such cases this Board tends to recognize its institutional limitations (as compared to the resources of the courts) and is

understandably reluctant to retry a defendant under procedures that are neither designed nor well-suited for that task. Here, too, this principle should apply. When the court system has freed a defendant based on the evidence, this Board should defer to that finding and the pardon should issue.

The principle that the element of “innocence” is established through the fact of an acquittal is well-established in the context of the law relating to malicious prosecution claims. Although a malicious prosecution claim differs in many ways from a claim for compensation under the Court of Claims Act, they both require that the defendant establish an “innocence” element. In Washington v. Summerville, 127 F.3d 552, 554, 556-58 (7<sup>th</sup> Cir. 1997), the court explained that the mere fact that charges against a defendant were dropped and that the defendant was released does not satisfy the “innocence” element of a malicious prosecution. The court recognized that charges are often dropped because of “an agreement or compromise with the accused; misconduct on the part of the accused in order to prevent trial; or the impossibility or impracticality of having the accused tried.” 127 F.3d at 557.

By contrast, when a case has been tried to judge or jury, and the defendant has been acquitted based on the evidence presented, the “innocence” element is plainly satisfied. See Russell v. Smith, 68 F.3d 33, 36 (2nd Cir.1995) (“An acquittal is the most obvious example of a favorable termination” of proceedings); see also Salley v. Schmitz, No. 94 C 3448, 1995 WL 143554 (N.D. Ill. Mar. 31, 1995) (holding that plaintiff alleged sufficient facts to support a claim that the defendants maliciously and falsely charged him with attempted first degree murder where he was ultimately found not guilty of that charge). Unlike an acquittal, “[i]n many instances . . . criminal proceedings are terminated in a manner that does not establish either guilt or innocence.” See Russell, 68

F.3d at 36. Thus, in the absence of an acquittal or a decision on the merits, “the plaintiff must show that the final disposition is indicative of innocence.” *Id.*

Here, Mr. Cobb’s case has already been exhaustively adjudicated on the merits. Mr. Cobb was acquitted after the Illinois Supreme Court *unanimously* reversed his conviction as unfair, and after a trial judge *heard, reviewed and considered* all of the State’s evidence. His acquittal was not granted because evidence was suppressed or because a witness was unavailable. He was acquitted because the evidence, especially in light of the compelling newly discovered evidence of Michael Falconer, showed that there was no case against him. This is precisely the kind of case for which the compensation statute was designed.

Despite the procedural and other safeguards in our criminal justice system, the record in Illinois makes clear that our system is not infallible. It has been demonstrated that innocent men have been, are and will continue to be incarcerated and even sentenced to death in Illinois. Although our legal system is not perfect, a pardon here for Mr. Cobb can, in some small measure, begin to redress the enormous and unjustified suffering that Mr. Cobb and his family endured as a result of his erroneous conviction and the near decade he spent in prison. Moreover, a pardon here will reaffirm that the State of Illinois is committed to punishing the truly guilty, while protecting the innocent and vindicating the unfortunate victims of our system, like Mr. Cobb.

**VI. RECOMMENDATION**

For the foregoing reasons, we respectfully and urgently request Governor Ryan to issue a full and complete pardon to Mr. Perry Cobb for each and every one of the offenses of which Mr. Cobb was convicted on October 5, 1979 in the case of People v. Cobb, No. 78 C 928 (Circuit Court of Cook County). We further request Governor Ryan to state in the pardon that the pardon is being issued on the ground that Mr. Cobb is innocent of the crimes for which he was imprisoned.

Furthermore, we request that the Prisoner Review Board set a hearing date on either July 7 or 8, 1999, because of scheduling conflicts on July 6.

Respectfully submitted,

PERRY COBB

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