EXECUTIVE CLEMENCY

Creating & Sustaining the Climate for Clemency

The Official Process
Discovery, Experts, & Funding
Potential Challenges to the Clemency Process
&
Media and Public Outreach

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Overview of the Process
OVERVIEW
OF
THE OFFICIAL PROCESS

I. Execution Date Set
The Indiana Supreme Court sets an execution date, usually 60 days prior to execution. This date is generally set after the United States Supreme Court denies the client’s petition for certiorari appealing the denial of relief by the seventh circuit court of appeals.

II Schedule for Clemency Proceedings Set
Shortly after an execution date is set, the Indiana Parole Board sets a schedule for the following:
- filing of clemency petition;
- submission of supporting materials;
- client interview;
- public hearing;
- public announcement of Parole Board recommendation.

III Competency & Mental Health Evaluation
In every case, a psychiatric examination of the client is conducted by an Indiana Department of Corrections psychiatrist. A report is then submitted to the Indiana Parole Board & Governor. This report is not automatically provided to counsel, but will be disclosed upon request.

IV Community Report
This confidential report is prepared in each case by a designated Indiana Parole Officer, and submitted to the Indiana Parole Board & Governor. This report contains recommendations to the Governor regarding clemency by persons involved in the prosecution of the case including:
- law enforcement officers;
- judges (trial, post-conviction);
- victims family.

This report is not provided to counsel, even upon request. The refusal to disclose this information, which is relied upon by the parole board and governor in making their respective decisions, may be a constitutional violation, which should be litigated in appropriate cases.
V Client Interview
Every client is personally interview by the Parole Board at the Indiana State Prison. Counsel may be present to consult with the client during this interview. The interview generally lasts for one hour, and is usually held in the Hoosier Room.

Members of the press and the general public are permitted to attend this interview. Be prepared to handle questions from reporters after this hearing. Members of the victim's family may be present, as well as persons supporting the clients' request for clemency.

VI. Public Hearing
The public hearing usually takes place 2 or 3 days prior to the scheduled execution, and is held in the Indiana Government Center in Indianapolis.

The parties are not required to submit a witness list prior to the hearing. On the day of the hearing, witnesses are required to sign in with parole board officials. The parole board then allows counsel for the applicant to decide which of the registered witnesses they will call in support of the clemency petition.

Persons who cannot appear in person may provide video testimony. The parole board will facilitate interviews of persons in custody, at the applicants request.

Each side is given 90 minutes to present their case for or against clemency. Counsel for the applicant is first to present argument and witnesses, and may reserve time for rebuttal. Audio/visual equipment is available, including power point.

If the trial prosecutor or the current prosecutor from the county in which the conviction and death sentence was obtained elect not to appear, the Indiana Attorney General argues on behalf of the state. The attorney general usually does not present witnesses, aside from the victim's family.

The five members of the Indian Parole Board preside over this hearing, and frequently interrupt the presentation with questions.

After the public hearing, each board member issues a written recommendation to the governor. The board also holds a brief hearing in order to publicly announce its recommendation to the governor.
American Bar Association
Standards for the Appointment
&
Performance of Counsel in Capital
Clemency Proceedings
American Bar Association
Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases

Revised Edition
February 2003
Guideline 10.15.2  Duties of Clemency Counsel

A. Clemency counsel should be familiar with the procedures for and permissible substantive content of a request for clemency.

B. Clemency counsel should conduct an investigation in accordance with Guideline 10.7.

C. Clemency counsel should ensure that clemency is sought in as timely and persuasive a manner as possible, tailoring the presentation to the characteristics of the particular client, case and jurisdiction.

D. Clemency counsel should ensure that the process governing consideration of the client’s application is substantively and procedurally just, and, if it is not, should seek appropriate redress.

History of Guideline

This Guideline is based on Guideline 11.9.4 of the original edition. Subsection D of the Guideline was added to reflect the effect of the decision in Ohio Adult Parole Authority v. Woodard, 523 U.S. 272 (1998), on the duties of clemency counsel.

Related Standards

None.

Commentary

As discussed in the text accompanying notes 57-64 supra, a series of developments in law, public opinion, and forensic science suggests that clemency petitions in capital cases will in the future enjoy a greater success rate than they do now, which will place additional demands on clemency counsel.

As Subsection B emphasizes, further investigation is critical at this phase. Beyond that, the manner in which clemency is dispensed in the jurisdiction controls what clemency counsel needs to do.353

Counsel should be familiar with the clemency-dispenser, and with the factors the

353 The states utilize 50 different clemency processes, which can be categorized in the following manner: the Governor has sole authority over the clemency process; the Governor cannot grant clemency without a recommendation from a board or advisory group to do so; the Governor decides clemency after receiving a nonbinding recommendation from a board or advisory group; a board or advisory group makes the clemency determination; or, the Governor sits as a member of the board which makes the clemency determination. The Death Penalty Information Group details the process by state, available at http://www.deathpenaltyinfo.org/clemency.htm/#process. For federal death row inmates, the President alone has pardon power. See U.S. CONST. art. II, § 2, cl. 1.
Clemency-dispenser has historically found persuasive. As possible innocence is the most frequently cited reason for clemency, if there is a possibility that the client is innocent, counsel should mobilize an especially detailed investigation to determine whether confidence in the client’s guilt can be undermined. If doubts about the fairness of the judicial proceedings that produced the death sentence have led to clemency in other cases, counsel should consider whether particular instances of procedural unfairness can be set out as to the client’s case. If personal characteristics of the condemned, such as youth, mental illness, spousal abuse, or cultural barriers, have proven helpful in past clemency proceedings, then counsel should discover and demonstrate examples of the client’s similar characteristics to the extent possible.

In any event, the presentation should be as complete and persuasive as possible, utilizing all appropriate resources in support (e.g. relevant outside organizations, the trial judge, prominent citizens), and discussing explicitly why the clemency-dispenser should act favorably notwithstanding the repeated reaffirmation of the client’s conviction and sentence by the judicial system. For example, counsel may be in a position to argue that the underlying claims were powerful ones but procedural technicalities barred the courts from addressing their merits.

As discussed in the text accompanying notes 63-64 supra, due process protections apply to clemency proceedings, and counsel should be alert to the possibility of developing the nascent existing law in this area.

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354 The Death Penalty Information Center reports that since 1976, of the 35 death row inmates who have been granted clemency for reasons other than the personal convictions of the governor in opposition to the death penalty, the possible innocence of the condemned inmate was provided as the reason for granting clemency in 16 cases (46%). Available at http://www.deathpenaltyinfo.org/clemency.html.

355 For example, in 1999 the Governor of Arkansas commuted the death sentence of Bobby Ray Fretwell after receiving a letter from a juror at Fretwell’s trial stating that he had been the lone holdout against the death penalty, but had relented for fear that he would be an outcast in the small community where the killing had occurred. See Arkansas Governor Spares Killer’s Life After Juror’s Plea, L.A. Times, Feb. 6, 1999, at A19. In the case of Charlie Brooks, who was executed in Texas in 1982, counsel enlisted the trial prosecutor to argue before the Board of Pardons and Paroles that it would be unfair to execute the client when his co-defendant was serving a term of years and the state did not know who the triggerman had been. See Robert Reinhold, Groups Race to Prevent Texas Execution, N.Y. Times, Dec. 6, 1982, at A16.

Indiana Clemency Statute
Sec. 1. (a) Petitions of offenders sentenced under laws other than IC 35-50, except those with life sentences, may be considered after the offender has served sixty (60) months on the sentence.

(b) Petitions of offenders sentenced under IC 35-50, except those sentenced to life in prison and who have sentences in excess of ten (10) years, may be considered after the offender has served one-third (1/3) of the sentence. However, petitions of offenders sentenced under IC 35-50, except those sentenced to life in prison or to death, with a sentence exceeding sixty (60) years may be considered after the offender has served twenty (20) years on the sentence. An offender sentenced under IC 35-50 who has an executed sentence of ten (10) years or less is not eligible to petition for clemency while incarcerated.

(c) Petitions of offenders serving life sentences (whether or not the offender is also serving a determinate or indeterminate sentence) may be considered after the offender has served ten (10) years.

(d) An offender under sentence of death may not petition unless at the time of petition there is an execution date set that has not been stayed by a court. If an execution date is stayed by a court, investigation and consideration of any petition of that offender will be terminated until another execution date is set by a court and another petition for clemency is made.

(e) An offender who is not serving a sentence of life in prison (whether single or multiple and whether or not the offender is also serving a determinate or indeterminate sentence) and whose sentence is sixty (60) years or less may not petition for reconsideration of the denial of clemency until one (1) year has elapsed from the date of the governor's last decision denying clemency. An offender who is serving a single sentence of life in prison (whether or not the offender is also serving a determinate or indeterminate sentence) and who is eligible to petition for clemency may not petition for reconsideration of the denial of clemency until two (2) years have elapsed from the date of the governor's last decision denying clemency. An offender who is sentenced under IC 35-50 to a sentence of greater than sixty (60) years may not petition for reconsideration of the denial of clemency until two (2) years have elapsed from the date of the governor's last decision denying clemency. An offender who is serving more than one (1) sentence of life in prison for more than one (1) felony (whether or not the offender is also serving a determinate or indeterminate sentence) and who is eligible to petition for clemency may not petition for reconsideration of the denial of clemency until five (5) years have elapsed from the date of the last governor's decision denying clemency.

(f) For purposes of this rule (220 IAC 1.1-4), the sentence is the term of executed years of incarceration impose and is not diminished by reason of credit time or good time earned. For purposes of this rule (220 IAC 1.1-4), the
sentence of an offender sentenced under IC 35-50 to consecutive determinate sentences is the total number of years of the consecutive sentences or consecutive parts of sentences, corresponding to the maximum release date as determined by the department of correction. An offender sentenced to life in prison, either under IC 35-50 or another statute, has a sentence of life in prison for purposes of this rule (220 IAC 1.1-4) regardless of whether that offender also has been sentenced to a determinate or indeterminate term.

(g) For purposes of this rule (220 IAC 1.1-4), the amount of time that has been served on a sentence is determined without regard to credit time or good time that has been earned either prior to or following sentencing. Credit for time served prior to sentencing (jail time credit) shall be counted toward the amount of time served on a sentence to the extent that it reflects the actual number of days incarcerated prior to sentencing.

(h) Offenders sentenced under laws other than IC 35-50 and who have served their minimum sentences, may not petition for clemency.

(i) No petition will be considered if the offender does not have a clear institutional record for the year immediately preceding consideration. An offender does not have a clear institutional record if the record shows a major violation or two (2) or more minor violations.

(j) The board may declare an offender ineligible for clemency upon a review by the board of the offender's conduct record for the twelve (12) months preceding the offender's clemency eligibility date. The board may conduct this review at its offices, and the offender is not entitled to be present. An offender who is declared ineligible for clemency consideration is not entitled to meet with the board.

(k) An offender who is declared ineligible to petition for clemency may appeal the board's decision. Upon receipt by the board of the appeal, one (1) member of the board shall meet with the offender and discuss the reasons for the declaration of ineligibility. The member may request the board to reconsider its declaration of ineligibility.

(l) No petition will be considered unless otherwise authorized by the chairman if the offender is authorized for participation in the work release program and has been assigned a work release activation date that is less than six (6) months from the date of the clemency hearing. No petition will be considered unless the offender will have at least one (1) year remaining to be served between the date of an appearance before the board for a clemency hearing and that offender's projected release date as shown in department of correction records.

(m) Persons with fines of one thousand dollars ($1,000) or more may request remission of fines. Such petitions will be considered after minimum time (or completion of day sentence) has been served. Petitions for remission of fines cannot be considered unless the statutory requirement is met, that a majority of the county officers having charge of the school fund recommend remission.

(n) A person may petition for remission of judgment on bond forfeiture at any time after the judgment is entered.

Authority: IC 11-9-1-2

Affected: IC 11-9-2-2; IC 35-50
CROSSED REFERENCES

Cited in: 220 IAC 1.1-4-1.5.
220 IN ADC 1.1-4-1
END OF DOCUMENT
opportunity to review these documents before rendering a decision on the granting or denial of parole.

(h) Notwithstanding subsection (b) of this section, the board may consider whether or not to parole an eligible offender incarcerated in another jurisdiction based upon a record made by appropriate authorities of the jurisdiction in which the offender is incarcerated, pursuant to IC 11-13-3-3(k).

(i) Offenders who are denied release are eligible for reconsideration at a time established by the board. If reconsideration is denied, or if release upon parole is denied upon reconsideration, the offender will appear before the board at the offender's regularly scheduled meeting.

(j) In the event that release upon parole is denied at a regularly scheduled appearance, the offender shall be scheduled to appear before the board in one (1) year, unless his sentence expires in less than one (1) year.

(k) In making parole release determinations, the board shall consider:

(1) the nature and circumstances of the crime for which the offender is committed, and the offender's participation in that crime;

(2) the offender's prior criminal record;

(3) the offender's conduct and attitude during commitment;

(4) the offender's parole program;

(5) the attitudes and opinions of the victim of the crime, or of the relatives or friends of the victim;

(6) the offender's participation in educational, vocational or counseling programs during incarceration; and

(7) the best interests of society.

(l) In making parole release determinations, the board may consider:

(1) the offender's previous social history;

(2) the offender's employment during commitment;

(3) the offender's education and vocational training both before and during commitment;

(4) the offender's age at the time of committing [sic.] the offense and his age and level of maturity at the time of the parole release appearance;

(5) the offender's medical condition and history;

(6) the offender's psychological and psychiatric condition and history;

(7) the offender's employment history prior to commitment;

(8) the relationship between the offender and the victim of the crime;

(9) the offender's economic condition and history;

(10) the offender's previous parole or probation experiences;

(11) the offender's participation in substance abuse programs;

(12) the attitudes and opinions of the community in which the crime occurred, including those of law enforcement officials;

(13) the attitudes and opinions of the friends and relatives of the offender;

(14) any other matter reflecting upon the likelihood that the offender, if released upon parole, is able to and will fulfill the obligations of a law-abiding citizen.

(m) An offender may be released on parole only if the board determines that the offender is able and willing to fulfill the obligations of a law-abiding citizen. Release on parole shall be ordered only for the best interest of society.

(n) Within three (3) weeks of the end of a meeting at a facility, the facility shall forward to the chairman and the commissioner the minutes of that meeting, to include all actions taken by
Indiana Parole Board
Guide for Reprieves & Commutations in
Capital Cases
REPRIEVES AND COMMUTATIONS
CAPITAL CASES

I. Initiating the application

A. As soon as the Court sets an execution date that legal staff advises the Board is likely to be final, the Board will request that the Superintendent, of the institution at which the offender is housed, to inform him/her of the opportunity to apply for a commutation of the sentence or for a reprieve.

B. The attached form entitled “NOTICE OF CLEMENCY PROCESS” will be used, and will be provided to the offender by the person designated by the superintendent, who should be a non-uniformed employee at the level of Unit Team Manager or above.

C. The dates on the form will be those provided by the Board, which will base the dates on the execution date set by the Court and the time tables established under this procedure.

D. In the absence of a completed, timely application signed by the offender, clemency will not be considered.

E. To expedite procedures and ensure that all deadlines are met, the institution will send all application forms and other papers relating to executive clemency to the Board by facsimile transmission (“FAX”).

F. An offender who does not file an application or who states in writing that no application will be filed may be interviewed by the Parole Board (which may be one member or an agent designated by the Board who reports to the other members) to determine that the offender does not wish to file, whether the decision is an informed decision, and whether the offender is mentally competent to decide not to file an application for clemency. If it is determined that a decision not to file is the informed decision of a competent person, the Governor’s Office will be so notified and there will be no recommendation made as to clemency.

II. Documentation

A. At the time that the Board is advised that the clemency procedure should be started, it will gather the following documents:

1. Presentence investigation (including the offender’s past criminal record).

2. All psychological and psychiatric evaluations.
3. All appellate court decisions on the merits of the case (purely procedural decisions will not be gathered, except as necessary to understand the status of legal appeals or the decisions on the merits).

4. The offender's conduct record in the Department.

B. The Board shall ensure that the records gathered under A. of this section of this procedure reflect the facts of the crime(s) for which the death penalty was awarded.

C. The Board will gather the following additional documents, beginning as soon as the time for application begins.

1. A record of all post-conviction and appellate review.

2. The status of any co-defendant to the crime for which the death penalty was awarded.

3. The views and opinions of the family of the victim(s).

D. The following new documents will be requested from the Department of Correction.


2. Current psychological evaluation.

3. Current medical evaluation

III. **Interviews and Hearings**

A. At the time that the offender is notified that he or she may apply for clemency, the Board will schedule a personal interview with the offender to be held at least five business days prior to the date of execution.

B. At the same time, the Board will schedule a public hearing at least two business days prior to the date of the execution and give notice as required. The location of the public hearing will be determined by the Board, giving consideration to the location of the crime and to the locations of interested person.

C. At the personal interview and during the public hearing, the Board may limit the time allowed to address the Board and may take measures to limit or to reduce repetitious or irrelevant information.
IV. **Recommendation to the Governor**

A. The Board will make its recommendation to the Governor at least 12 hours in advance of the scheduled execution.

B. Each member of the Board must be available to the Governor to answer any question that might arise, and must be sure that the Governor’s staff is aware of his or her location at all times.

V. **Terminating an Application**

A. The offender may terminate the application process at any time by clearly expressing the desire to do so.

B. If an offender expresses the desire to terminate the application process, the Board will consider the offender under Section I.F., above; however, there need not be a personal interview if time does not allow, and the Board will make the determination based upon the best evidence available to it given the time before the scheduled execution.
Sample Parole Board Schedule
NOTICE OF CLEMENCY PROCESS

TO: Darnell Williams

DOC# 872037 DATE: June 7, 2004

You are hereby notified that the Indiana Parole Board will resume consideration of the Petition For Clemency you previously submitted to the Governor of Indiana for a commutation of your sentence or a reprieve. A commutation is a change from the sentence of death to a period of time; a reprieve is a temporary delay of the date of a scheduled execution.

The following deadlines have been established by the Indiana Parole Board concerning your request for a commutation or a reprieve, and failure to meet any of the deadlines will result in not being considered by the Governor:

All written material from family, friends or attorneys that is supplemental and non-duplicative must be received by the Board by Thursday, June 17, 2004.

The Board will meet with you at the Indiana State Prison on Monday, June 21, 2004 for a supplemental interview to receive non-duplicative information.

A public hearing will be conducted on Monday, June 28, 2004 starting at 11:00 a.m. at the Indiana Government Center South in Indianapolis, Indiana, to receive non-duplicative information.

You should immediately notify family and friends of the date of the public hearing and of the date by which letters or other documents must be received by the Board. Consideration of your application will not be delayed so that more letters can be obtained or so that someone additional may address the Board; the dates will not be changed unless the scheduled execution date is stayed or changes. It is your responsibility to notify them of the dates on this form. Before attending the public hearing, the time and place should be confirmed with the Parole Board by calling (317) 232-5737 the Friday before the hearing is scheduled.

By signing this notice, you are only agreeing that you have been offered a copy of it and you are not waiving any right or privilege that you have and you are not agreeing to anything except that you have received a copy.

Page 1 – Notice of Clemency Process
I have received a copy of this Notice.

Name ______________________

DOC# ______________________

Delivered by:

Name ______________________

Title ______________________

Date ______________________

Time ______________________

Location ___________________

Witness:

Name ______________________

Title ______________________
PUBLIC NOTICE

The Indiana Parole Board will conduct two proceedings on the Petition for Clemency for Commutation of Death Sentence(s) submitted by Darnell Williams, DOC #872037. All of the testimony, written statements and videotapes previously submitted as well as non-duplicative new material will be incorporated and made part of the clemency proceedings. The Board will conduct a supplemental interview of the applicant and conduct a second supplemental public hearing to consider any additional testimony regarding the clemency application. **The offender’s supplemental interview will be held at the Indiana State Prison, Michigan City, Indiana at 11:00 a.m., on Monday, June 21, 2004, at which time the non-duplicative testimony of the applicant will be taken.**

Due to space limitations in the hearing room and regulations in the maximum security institution, in addition to attorneys, only ten observers will be permitted at the hearing, five from the victim’s family and five from the offender’s family. Family members who wish to attend should apply to the Board on or before Thursday, June 17, 2004. Media access will be conducted on a pool basis. Media should contact Pam Pattison at 232-5780. Standard Indiana State Prison security measures will be strictly enforced.
On Monday, June 28, 2004 at 11:00 a.m. the Board will conduct a second supplemental hearing on this application in the Auditorium, Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana, at which time it will hear from other interested parties and persons. From 11:00 a.m. – 12:30 a.m., testimony will be taken from members of the offender’s family and members of the general public. All testimony favoring clemency will be coordinated by Darnell Williams’ attorneys. From 12:45 p.m. – 2:15 p.m., testimony will be taken from members of the victim’s family and members of the general public opposing clemency. From 2:30 pm until 2:50 pm, or at the conclusion of the above if sooner, each side will be allowed up to 10 minutes for rebuttal and summation. Written statements may be submitted in lieu of testimony, provided these are deposited with the Secretary of the Board in Room E-321 of the Indiana Government Center, 302 West Washington Street, Indianapolis, Indiana, on or before 4:30 p.m. on Thursday, June 17, 2004. Reservations for a time to speak may only be made by calling 232-5737 after 9:00 a.m. on Friday, June 25, 2004. Seating will be reserved for persons scheduled to speak. Other seating will be on a first come basis. Representatives of the news media may reserve credentials and seating by calling 232-5780 after 9:00 a.m. on Tuesday, June 22, 2004. All persons attending the hearing may be subject to screening by a metal detector or other security device. Darnell Williams will not be present at the hearings in Indianapolis.
On Tuesday, June 29, 2004 at 10:00 a.m., the Indiana Parole Board, after the Members have individually reviewed all material such as the videotapes, testimony, written statements, and other information, will meet in the Conference Center Room 1, Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana, to vote on its recommendation to the Governor of the State of Indiana on the application for clemency of Darnell Williams.
Clemency Petition
Requesting Reprieve
PETITION FOR CLEMENCY

<table>
<thead>
<tr>
<th>Name of petitioner</th>
<th>DOC number</th>
<th>Institution where confined</th>
<th>Jail time credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Darnell Williams</td>
<td>872037</td>
<td>State Prison</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of court where tried</th>
<th>County where tried</th>
<th>Date of sentencing</th>
<th>Length / term of sentencing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lake Superior Court</td>
<td>Lake</td>
<td>March 23, 1987</td>
<td>Death Sentence</td>
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</tbody>
</table>

**Conviction(s):**

FELONY MURDER (TWO COUNTS)

<table>
<thead>
<tr>
<th>Name of co-defendants (if any)</th>
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<tbody>
<tr>
<td>Gregory Rooster, Teresa Newsome, Edwin Taylor</td>
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</tbody>
</table>

**Circumstances of offense:**

See attached.

**Reason clemency is requested:**

See attached.

**List below any persons who may wish to testify before the Parole Board in your case (optional): (LIMIT THREE)**

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS (street or R.R. No., city, state, ZIP code)</th>
<th>RELATIONSHIP</th>
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See attached.

I, the above named petitioner, do respectfully request that the Honorable Governor of Indiana, grant this petition of clemency.

I affirm that the statements contained above are true and correct to the best of my knowledge.

[Signature of petitioner]
**Circumstances of Offense**

Darnell Williams was convicted for the murder of John and Henrietta Rease on August 12, 1986 in their Gary, Indiana home. The Reases, who were the foster parents of co-offenders Gregory Rouster and Edwin Taylor, were killed by gunshot wounds inflicted during a robbery.

Gregory Rouster was convicted of the murders after a joint trial with Williams, and was sentenced to death. On June 16, 2003, Rouster was found to be mentally retarded by the Lake Superior Court, and, thus ineligible for the death penalty pursuant to *Atkins v. Virginia*.

Teresa Newsome was acquitted by the jury after a joint trial with Williams and Rouster.

Edwin Taylor was originally charged with the murders, but all charges against him were dismissed after he testified as a state witness at the penalty phase of Williams' capital murder trial.

**Reason a Reprieve is Requested**

1. Williams requests a reprieve to permit DNA testing of biological material. The trial prosecutor supports this request, and states “blood found on Darnell Williams' shorts was material evidence in support of the State's case...DNA testing should be utilized to determine the truth about the scientific evidence that played a key role in this capital case...if DNA testing shows that the blood on Williams' shorts is not that of the victims, the issues of the degree of Mr. Williams' participation in the murders and his culpability for capital murder should be reassessed.”

**Reason Clemency is Requested**

1. New evidence shows Williams is ineligible for, and unworthy of, the death penalty.
2. No court has considered compelling evidence that Williams is ineligible for, and unworthy of, the death penalty.
3. Williams' death sentence is disproportionate compared to the sentence received by his co-offenders.
4. Williams' had no juvenile or felony criminal record before the commission of this offense.
5. Williams has saved a life, and performed other extraordinary acts of kindness.
6. Williams' death sentence is disproportionate when the nature and circumstances of this crime and Williams' background are compared to the nature and circumstances of similar crimes and offenses.
7. Evolving community standards are such that Williams' crime likely would not even be prosecuted as a capital offense if it were first tried today. The trial prosecutor recently stated in a sworn affidavit that "I believe it unlikely that the death penalty would be sought against Mr. Williams if this case were first prosecuted today."
List of Witnesses

A list of witnesses will be timely provided to the Board by counsel.
MATERIALS IN SUPPORT OF DARNELL WILLIAMS’ APPLICATION FOR REPRIEVE & COMMUTATION OF HIS DEATH SENTENCE

Williams Requests a Reprieve to Permit DNA Testing
- Affidavit of Jack Crawford, elected Lake County Prosecutor in 1987
- Affidavit of Thomas Vanes, trial prosecutor
- July 16, 2003 letter of Jury Foreman Jack Augustine
- July 17, 2003 letter of Juror John Gnajek
- Affidavit of Juror Rodney Hill
- Amicus Curiae Brief of a Group of Concerned Attorneys and Law Professors in Support of Motion for Forensic Testing
- July 24, 2003 New York Times Article “Indiana Death Row Inmate Gets Support for DNA Test from Unlikely Source: His Prosecutor”

New Evidence Shows Williams is Ineligible for, and Unworthy of, the Death Penalty
- Elliot Streeter
- Lake County Department of Public Welfare Records of Derrick Bryant

Williams Death Sentence is Disproportionate to the Sentences of his Co-Offenders
- State’s Motion to Dismiss all Charges Against co-offender Edwin Taylor
- Findings of Fact and Conclusions of Law issued June 16, 2003 Regarding co-offender Gregory Rouster aka Gamba Rastafari
- Summary of Sentences Commuted on Ground that Death Disproportionate to Sentence Received by Accomplice/Co-Defendant

Williams has Saved a Life, and Performed Other Extraordinary Acts of Kindness
- Affidavit of Herman Vanderberg
- Affidavit of Kevin Johnson
- Affidavit of Sylvester “Chris” Chrisler
- Thursday, August 8, 1985 Gary Post-Tribune Article “Two Gary 18-year-olds injured when South Shore train hits car”
- St. Mary Medical Center Records of Darnell Williams
Williams Death Sentence is Disproportionate When the Nature and Circumstances of this Crime and Williams' Background are Compared to the Nature and Circumstances of Similar Crimes and Offenses

- Social Security Earnings records of Darnell Williams
- Employment Records of Darnell Williams from the Lake County Convalescent Home
- Report of Jean Thompson, Registered Nurse
- Birth Records (excerpts)
- Report of LaVerne Osman, Psychologist regarding November 9, 1976 psychological evaluation
- Report of John Lacny, Psychometrist, regarding January 10, 19809 psychological evaluation
- March 2, 1983 Social History report of June Gibbs, West Side High School Social Worker
- April 16, 1977 Special Education Department Annual Case Review
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- May 15, 1978 Special Education Department Annual Case Review Report
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- Affidavit of James Walton
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Evolving Community Standards are Such that Williams' Crime Likely Would Not Even be Prosecuted as a Capital Offense if it Were First Tried Today

- Affidavit of Thomas Vanes
- Pronouncement of Sentence Form
Clemency Petition Requesting Commutation
Docket No. __________

Before the

INDIANA PRISONER REVIEW BOARD

June, 2004

ADVISING THE HONORABLE JOSEPH E. KERNAN, GOVERNOR

________________________

In the Matter of

DARNELL WILLIAMS

________________________

PETITION FOR EXECUTIVE CLEMENCY IN A CAPITAL CASE
(SUPPLEMENT)

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INTRODUCTION

Seventeen years ago, a jury recommended that Darnell Williams be sentenced to death for his role in the 1986 murder and robbery of John and Henrietta Rease. Over the past year, new developments have obfuscated the exact nature and extent of Williams' role in the crime. Now, the very people who put Darnell Williams on death row – the prosecutor at trial, law enforcement, the judge who denied post-conviction relief, and at least three members of the jury – are urging the Governor to stop his execution. With much of the evidence in doubt and Williams' more culpable co-defendant's death sentence vacated, trial prosecutor Thomas Vanes now says it would be an injustice to allow Darnell Williams' execution to proceed. T. Edward Page, the post-conviction judge who upheld Williams' sentence, and Ronald Lach, the officer who processed evidence from the crime scene, agree that the death penalty is no longer appropriate for Williams. Indeed, if the trial were held today, with so little reliable evidence that Williams played a major role in the shootings, at least three jurors now say they would not have sentenced Williams to death. One juror would have voted to acquit.

New DNA testing ordered by the late Governor Frank O'Bannon just three days before Williams' last scheduled execution failed to prove a link between blood spots on Williams' clothes and either victim. The tests excluded Henrietta Rease as the source of both testable spots, undermining a central part of the prosecution's theory that Williams shot her. John Rease was excluded as the source of one of the two testable spots, and tests on whether he was the source of the second spot were inconclusive because of the nature of the sample and limitations on current DNA technology.
After the Governor's reprieve to allow for DNA testing, crucial new evidence was uncovered in which the state's star witness, Derrick Bryant, made statements to staff at a psychiatric hospital that contradicted his testimony at trial, which led directly to Williams' death sentence. Bryant was the only witness who claimed Williams threatened the victims and participated in the murders.

Another key witness, Edwin Taylor, has recanted his testimony. At sentencing, Taylor claimed that Williams pointed a gun at his chest and threatened him. Taylor's testimony had Williams actively participating in the plan to rob the Reases, and placed a gun in Williams' hand at the scene just before the shootings. Taylor now says that, to his knowledge, while at the Reases' Williams never moved from the chair where he sat, silent and extremely drunk. According to Taylor, Williams never threatened anyone and never held a gun.

Williams was originally charged with three co-defendants. Teresa Newsome was acquitted. All charges against Edwin Taylor were dropped after he testified against Williams, despite the fact that he admitted participating in the robbery. Finally, Gregory Rouster was sentenced to death along with Williams, but was recently deemed ineligible for the death penalty because of mental retardation. Prosecutors and jurors consistently believed that Rouster was the ringleader in the crime, and clearly bore the most culpability for the murders.

In just a few weeks, the State of Indiana is scheduled to execute a man who, according to the prosecuting attorney, the judge who denied post-conviction relief, and jurors who convicted him, does not deserve to die. With their support, as well as the support of many others in the legal and lay communities, Darnell Williams now seeks a grant of executive clemency and requests that his sentence of death be commuted to that of natural life without the possibility of parole.
I. PROCEDURAL HISTORY OF THE CASE


Williams next filed a successive post-conviction petition requesting DNA testing on certain blood evidence which was denied by the Indiana Supreme Court in *Williams v. State*, 791 N.E.2d 193 (Ind. 2003). An execution date was set for August 1, 2003.

Williams then filed a petition for consideration of new evidence pursuant to Indiana Code 35-50-2-9(k). That was denied by the Indiana Supreme Court in *Williams v. State*, 793 N.E.2d 1019 (Ind. 2003). While rehearing was pending, Williams was granted a reprieve from then-Governor Frank O’Bannon, which was later extended by Governor Joseph E. Kernan, to conduct DNA testing on the blood evidence. After DNA testing was completed, the Indiana Supreme Court denied rehearing. (*Williams v. State*, 2004 Ind. LEXIS 467 (Ind., May 21, 2004), Ex. 38). A new execution date has been set for July 9, 2004.
II. SYNOPSIS OF THE EVIDENCE ADDUCED AT TRIAL

In November 1985, Darnell Williams was living with his parents and three siblings in Gary, Indiana. T.R. 3002-03. Williams had no serious criminal record. In fact, he was gainfully employed at a convalescent home where he was well liked by his supervisors and the home’s elderly residents. T.R. 2979-80, 3010. At that same time, John and Henrietta Rease welcomed Gregory Rouster into their home as a foster child, despite the fact that Rouster had been previously determined to be incorrigible and expelled from several boys’ homes. They cared for and housed Rouster until his eighteenth birthday on February 7, 1986. T.R 811.

A. THE DEATHS OF JOHN AND HENRIETTA REASE.

On August 12, 1986, Rouster was in a drug store when he ran into Jack Baumer, a Lake County welfare department caseworker with whom Rouster was familiar. T.R. 811-12. Rouster asked Baumer if the Reases received a clothing allowance on his behalf, and Baumer informed him that they did. At this point Rouster stated that the Reases owed him the money and that he would get it. T.R. 818-20.

Around 9 p.m. of the same day, Rouster, Williams and their girlfriends, Teresa Newsome and Kim Toney, took a city bus to the Reases’ neighborhood. T.R. 2176. All four proceeded to the Rease residence and entered the house. T.R. 2181. Neighbors alerted the police after hearing gunfire at the Rease residence. T.R. 1460, 1794-95. Several neighbors testified that after hearing two series of gunshots coming from the Rease residence, they saw Rouster and Newsome exit the house, and heard Rouster exclaim, “I killed the motherf***ers.” T.R. 891-92, 1557-58. These same
neighbors then heard one more shot while Rouster and Newsome were outside.\footnote{Although no one testified that Williams was still inside the house when this third series of shots was fired, no one testified that they saw him leave the house either.} T.R. 893-94, 1559-61, 1832-33.

The police responded to the call but Rouster and Newsome diverted them away from the house. T.R. 893, 968, 969. The police eventually returned to the home and found John and Henrietta Rease shot to death. T.R. 975, 1462. Police found a .32 caliber handgun in the backyard and a .22 caliber handgun in the house, as well as several rounds of .30 caliber ammunition on the floor. T.R. 1292, 1330, 1354-55. Ballistics tests determined that a .32 was used to kill John Rease. T.R. 1689. The same gun was used to fire a non-fatal shot into Henrietta’s back. T.R 1688. Henrietta was fatally shot twice in the head at point blank range with a .22. T.R. 1690. Several rooms had also been ransacked. T.R. 1291.

B. THE APPREHENSION OF ROUSTER AND WILLIAMS.

Rouster and Williams were each apprehended later that evening; Rouster on a Gary city bus and Williams in a foot chase with the police. T.R. 1083-84, 1493-95. Williams was found with $232 in cash and a .30 caliber live round of ammunition, the same brand that spilled at the scene. T.R. 1504. Crime scene technicians and Gary homicide detectives examined Williams’ clothing for blood, brain matter and gunpowder residue and found none. P.C.R. 2716, 3456-57, 2281-82, 2712, 2715, 4668-69.

Williams was placed in a holding cell at which time he wore the same clothing in which he had been arrested. Two days later, Williams’ clothing was confiscated and placed in a basket. T.R. 1847, 1850. A week after that, his clothes were placed in a plastic bag and delivered to the prosecutor’s office. Forty-three days after the initial inspection, Williams’ clothing was delivered
to the crime lab where serologist Kimberly Epperson found three small spots of blood on Williams' shorts—two on the inside left leg and one near the inside seam of the right leg. Epperson testified that the blood was consistent with that of John and Henrietta Rease but not that of Williams. T.R. 1966-67. She further explained that the blood found on Williams' shorts was consistent with the blood type of 45% of the population. T.R. 39A.

C THE TRIAL.

Derrick Bryant, a 16-year-old foster child of the Reases who was hiding in the house at the time of the murders, was the prosecution’s star witness at trial. According to Bryant, after the four youths entered the house, Rouster went into the back room with Henrietta Rease and argued with her about whether the Reases owed Rouster money. T.R. 2021-2023. After an angry exchange with Williams, Bryant left the living room and went to the back of the house. T.R. 2024-25. From there, Bryant could hear Henrietta Rease ask everyone to leave. T.R. 2023-26. Once outside, the group continued to argue and Bryant said he heard Williams say, “I won’t let her, she’s doing nothing but gypping [Rouster] out of the money.” T.R. 2026.

Bryant then heard a series of gunshots and went upstairs into the attic to hide. While in the attic, Bryant said he overheard a conversation that took place outside between Williams, Rouster and Edwin Taylor, another foster child who was living with the Reases. T.R. 2029-30. Taylor said, “I’ll shoot his head,” and then “you all have guns...go take the money.” Rouster responded, “Where is the money at?” and Taylor answered, “It’s on the dresser.” T.R. 2029-30. Bryant testified that Rouster said, “Let’s go rob them.” T.R. 2035.

Bryant said he tried to warn the Reases, but before he could do so, he saw Rouster re-enter the house, so he hid behind a stairway in the back of the house. T.R. 2036-37. Bryant testified that he then heard Williams order Henrietta Rease to get down on the floor. T.R. 2037-38. Rouster
demanded to be told where the money was and ordered Williams to “bring both of them back here.” T.R. 2038, 2040. Bryant stated that he heard Williams say, “it’s your time” and heard Rouster say something like “waste them.” T.R. 2040, 2130, 2133-34. Bryant testified that he heard a second series of gunshots coming from the bedroom, at which time he ran out of the house. T.R. 2045.

On cross-examination, Bryant admitted that he had animosity toward Williams because Williams had come between his friendship with Rouster. T.R. 2085-86.

At the conclusion of the trial, the jury found Rouster and Williams guilty of two counts of felony murder. Newsome was acquitted. The charges were dropped against Taylor after he testified for the prosecution at the death penalty hearing for Rouster and Williams. (Dismissal Order and other information pertaining to State v. Taylor, no. 2CR-133-886-531, Ex. 1).

D. DEATH PENALTY HEARING.

At a joint sentencing hearing, the prosecution sought the death penalty against both Rouster and Williams. In addition to relying on the evidence presented at trial, the prosecution presented the testimony of Edwin Taylor. T.R. 2726-65. Taylor testified that he was inside the house at the time Rouster and the others entered and demanded the money that was purportedly owed Rouster. T.R. 2730. According to Taylor, after Henrietta Rease asked everyone to leave and they were all standing outside, Williams then pointed a gun at Taylor and asked him where the Reases kept their money. T.R. 2736. Taylor said that the Reases kept their money on the bedroom dresser, to which Williams replied, “you better not be lying.” T.R. 2736. Taylor then ran to his friend’s house to call the police and heard several gunshots coming from the Reases’ house. According to Taylor’s testimony, Williams was the last person he saw with a gun.

Following a jury recommendation that Rouster and Williams should receive the death penalty, the trial judge imposed a sentence of death. T.R. 3073, 3326.
III. REASONS CLEMENCY SHOULD BE GRANTED.

A. NEWLY-DISCOVERED EVIDENCE UNRAVELS THE CASE FOR DEATH.

1. The State’s star witness, Derrick Bryant, is now known to be unreliable.

   The testimony of the Reases’ 17-year old foster child, Derrick Bryant, now deceased, laid the foundation for the prosecution’s argument that Darnell Williams and his co-defendant Gregory Rouster intended to murder John and Henrietta Rease. As the prosecution told the jury during closing arguments at sentencing, “[t]he intention to kill can most vividly be drawn from the testimony of Derrick Bryant.” T.R. 3253. However, forthcoming evidence now shows Bryant to be an unreliable witness.

   At trial, Bryant testified that shortly after Williams, Rouster, and their girlfriends arrived at the Reases’ home, he heard Williams egging on Rouster to confront the Reases, saying they had “gypped” Rouster out of his clothing check. T.R. 2026. Later, while hiding beneath a stairway to the attic, Bryant said he overheard Williams tell Mrs. Rease “it’s your time” shortly before gunshots were fired. T.R. 2130.

   It is critical to note that Derrick Bryant and Darnell Williams were never friends and did not get along. T.R. 2085. They had only known each other for a few months when the Reases were killed (Derrick Bryant, a/k/a Darrick O’Brian, August 13, 1986 statement to Gary Police Department at 3, Ex. 2). Bryant admitted he had been jealous of Williams’ new friendship with Rouster. T.R. 2086. Despite Bryant’s bias, the prosecution characterized his testimony as crucial to establishing that Williams deserved to die, arguing, “I don’t know if any stronger evidence of the fact that their intention was, in fact, to kill at that point in time. It was clearly contemplated by both of them, Gregory Rouster and Darnell Williams.” T.R. 3254.
Although other witnesses saw Williams at the Reases' house on the night of the crime, Bryant – a boy who admitted to being angry with and jealous of both Rouster and Williams at the time – was the only witness who claimed to overhear what happened inside the house. The following new evidence proving Bryant’s dishonesty was not available at Williams’ trial.

a. **Bryant gave conflicting statements as to the actual killer of the Reases.**

The day after giving a statement to the police implicating Williams in the murder of the Reases, Bryant was admitted to Hartgrove Hospital for his own protection. (Hartgrove Hospital History Form D-223 at handwritten note, Ex. 3). Bryant’s chief complaint was, “I saw my friend kill my foster parents.” (Hartgrove Psychiatric Admission Summary, August 13, 1986 at ¶ 2, Ex. 4; Affidavit of Dr. Judith Stoewe at ¶ 4, Ex. 5). Williams was not Bryant’s friend; rather, Bryant disliked Williams for disturbing Bryant’s friendship with Rouster. (Ex. 4 at ¶ 3; Ex. 5 at ¶ 4). Bryant also told Dr. Judith Stoewe that “Ed [Taylor] and his friends performed the crime.” (Ex. 4 at ¶ 4; Ex. 5 at ¶ 4). Bryant’s implication of Taylor is puzzling, as his prior statement to the police omitted reference to Taylor’s involvement. Moreover, hospital records from eleven days later indicate that “[Bryant] knows who killed the parents but can’t tell the authorities.” (Ex. 3; Ex. 4 at ¶ 5). Cumulatively, these statements strongly suggest that Bryant never revealed the whole truth about what, and who, he saw or heard on the night of the crime.

None of Bryant’s records from Hartgrove Hospital or any of the statements they contain were available to the jury charged with evaluating the truthfulness of his testimony. Indeed, these records emerged only months ago, following the late Governor O’Bannon’s reprieve last summer.
b. Derrick Bryant’s family members now admit that Bryant lied habitually and should not have been considered a credible witness at trial.

In rebutting Bryant’s testimony, Williams’ lawyers suggested to the jury that Derrick Bryant lied, but possessed little evidence with which to impeach his credibility other than a few contradictions in his statements at trial. T.R. 2598. For instance, the jury did not hear Bryant’s own grandmother describe her grandson, who lived with her into his teens, as “a very troubled young man who stole from me, lied to me, and was once overheard by my daughter plotting the death of my son.” (Affidavit of Bertha King at ¶ 1, Ex. 6). “I do not know what Derrick did when he was away from me, but he lied to me and stole so frequently that I could not let him live in my house.” (Id. at ¶ 3).

Bryant also lived with his aunt, Anita Kelly, for a time. Kelly describes her experience with Bryant in similar terms. “Derrick stole money from me and lied about it. He also broke into my mother’s house and stole from her. Derrick could look you in the eye and make you believe he was telling the truth while telling outrageous lies. Derrick would lie if he would get personal gain for it, or even out of spite,” she said, adding, “I am surprised that Derrick’s word was good for anything in court.” (Affidavit of Anita Kelly at ¶ 1-3, Ex. 7).

Edwin Taylor echoes Bryant’s family’s remarks that Bryant was habitually dishonest. Taylor was Bryant’s foster brother at the Reases’ house at the time of the shootings. Taylor testified against Williams at sentencing. He has since recanted his testimony, revealing that he never saw Williams with a gun, and that, rather than threatening anyone, Williams sat slumped in a chair in a drunken stupor, saying nothing. (Affidavit of Edwin Taylor, June 2, 2004 at ¶ 1, Ex. 8). Of Bryant, Taylor recalls, “[Derrick] was not an honest person. He stole my bike and
then lied about it. He lied all the time. When I heard he had testified regarding this case, I wondered how anyone could believe Derrick.” (Id. at ¶ 6).

Bryant’s medical records from the period of his wardship explicitly confirm that he had a difficult time perceiving the truth. A psychological evaluation completed in 1985, just a year before Bryant became a witness in Williams’ trial, states, “Derrick’s ability to perceive reality accurately is quite limited. Though Derrick attempts to hide his reactions to stimuli around him and to control his responses, the extent to which he misinterprets what is going on around him is evident.” (Report of Gretchen Schmutz and Cheryl Morgayan, Southlake Center for Mental Health, July 9, 1985 at ¶ 6, Ex. 11).

The jury at Williams’ trial never heard testimony from Bryant’s family regarding his notorious reputation and did not have access to Bryant’s extensive psychological records.

c. The testimony of Elliott Streeter, directly contradicting Derrick Bryant’s account, places Darnell Williams outside of the Reases’ house when the fatal series of shots was fired.

Further casting doubt upon Derrick Bryant’s testimony is the statement of eyewitness Elliott Streeter, given to the prosecution two days after the Reases’ murders. Though this information was gathered long before trial and Streeter appeared to be an unbiased witness, his statement was never presented to the jury for consideration.

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2 Over the years that Bryant remained a ward of the state, psychological evaluations describe him variously as “hostile,” “aggressive,” “disruptive,” “distrustful,” “calculating,” “defiant,” “uncooperative,” and “belligerent.” (Psychological Records of Derrick Bryant, Ex. 9). As of December 1986, he had been in 15 placements, had six runaway incidents, and was detained at the Lake County Juvenile Center on five occasions. (Report of Jack Baumer, Lake County Child Protection Services Caseworker, Ex. 10).

3 In his statement, Streeter claimed to be an acquaintance of Rouster while claiming he barely knew Williams. This can be contrasted with the hostile relationship between Bryant and Williams.
While Bryant claimed Williams was inside the Reases' house when the Reases were shot, Streeter clearly stated that Williams was in front of the house when the fatal series of shots was fired. (August 14, 1986 Statement of Elliot Streeter to Deputy Prosecuting Attorney Thomas Vanes at 24-25, 41-42, Ex. 12). Besides rebutting the prosecution's assumption that Williams was in the room when the Reases were shot, Streeter's statement also indicates that co-defendant Rouster instigated the crime. Streeter stated that Rouster walked up to the house with a gun, while Darnell lagged behind. (Id. at 7, 27). Streeter stated that initially, Rouster entered the house while Darnell remained outside.4 (Id. at 9). Streeter later saw Rouster exit the house last, announcing to anyone in earshot, "I killed the motherf**kers." (Id. at 34).

Justice Boehm’s dissenting opinion from the Indiana Supreme Court’s denial of reconsideration of new evidence in Williams’ case best states the impact of the jury not hearing Streeter’s statement:

The most important evidence placing Williams at the scene of the killings was the testimony of Derrick Bryant, who testified that he hid in the house and heard Williams tell Mrs. Rease "It's your time" immediately before gunshots were fired. [When] Streeter's account is matched up with admitted animosity between Williams and Bryant, I believe it underscores and bolsters Williams's claim that there is a genuine issue as to Williams's direct participation as an executioner of this couple.

Williams v. State, 793 N.E.2d 1019, 1031 (Ind., 2003) (emphasis added). Indeed, due to recent evidence suggesting that Bryant was a habitual liar and Elliott Streeter's 1986 statement, the veracity of Bryant's testimony – which served as the bedrock of the prosecution's case for Williams' execution – is now too questionable to warrant Williams' death sentence.

4 While Streeter clearly identified Rouster as the instigator, he did not suggest Williams was innocent of any wrongdoing. To the contrary, Streeter stated that Williams fired shots into a cabinet. (Ex. 12 at 17, 20, 21).
2. The blood evidence, presented to the jury as compelling evidence of Williams' guilt, is not conclusive of anything.

Following Governor O'Bannon's reprieve to allow for forensic DNA analysis, mitochondrial typing of two blood spots on Darnell's shorts was performed by Dr. Terry Melton. Mrs. Rease was excluded as the source of both blood spots, Mr. Rease was excluded as to one of the spots, and the data was insufficient to conclude whether Mr. Rease could be excluded as a source of the second spot. (Ex. 38 at 5-6). Standing alone, such findings cast doubt on Williams' direct participation in this crime.  

In the words of juror John Gnajek, “The blood was the key evidence that convinced me that Williams was a shooter [and] was the only evidence presented by the state that actually placed Williams in the room at the time of the murders.” (Letter from John M. Gnajek to Governor O'Bannon at 2, Ex. 13). Juror Rodney Hill has also stated that he “relied on [state blood evidence] in making a decision in this case.” (Affidavit of Rodney Hill, Ex. 14). These views are not surprising since, at trial, the prosecutor told the jury that Williams had the victims' blood “literally on his pants...” T.R. 2658 (emphasis added). Several similar references to the blood of the Reases were made by the State throughout the course of the trial. See e.g., T.R. 2653-54. This argument was based on what can now only be characterized as crude and generalized serological “blood profile” testimony that the blood on Williams' shorts could have come from nearly half the general population. T.R. 39A.

Quite apart from science, ordinary human experience is a useful guide in assessing what is plausible here. A blood stain on shorts is found not to be that of either victim killed in the same incident in the same room. Is there not a high degree of probability that the second stain, located within inches on the same leg of the same garment, came from the same source? If one accepts that, and common sense most certainly supports such a scenario, then these results substantially advance the proposition that Darnell Williams was not in proximity to the victims when they died.
Officer Ronald Lach was the lead crime scene analyst who inspected the clothing of Williams in the days following this crime. Officer Lach, who has followed the developments in Williams’ case, now shares Thomas Vanes’ view that Williams’ execution should not proceed. (Affidavit of Ronald Lach at ¶ 8, Ex. 16).

Blood spots on Williams’ shorts were a key building block of the State’s successful effort to send him to death row. DNA technology has since established that this blood evidence does not show a link to Mrs. Rease. The test excluded Mr. Rease on one drop of blood and was inconclusive with regard to Mr. Rease on the other. Many of those responsible for collecting, arguing, and passing judgment on that evidence now request that this death sentence be commuted. We urge this Board to take those views seriously.

3. Edwin Taylor, a key witness at Williams’ sentencing, has since recanted his testimony.

The testimony of Edwin Taylor was a central part of the prosecution’s penalty phase case against Williams, and was important in securing Williams’ death sentence. Taylor’s testimony was the only new evidence the prosecution offered at the penalty phase regarding the crime. The prosecution portrayed Taylor as having knowledge of Williams’ direct role in the offense, claiming Taylor could shed light on “who dealt the fatal blows, and in whose hands were the guns that killed both Mr. and Mrs. Rease.” T.R. 2705-07. However, Taylor’s recent recantation indicates that his testimony was unreliable, and his past statement cannot be the basis for an execution.

Taylor testified that on the night of the murders, he encountered Williams and Rouster in the back yard of the Reases’ home. T.R 2736. There, Taylor claimed that Williams took Rouster’s .22 caliber gun and pointed it at Taylor, demanding to know where the victims kept
their money. T.R. 2736. After Taylor told Williams where the money was located, Williams said, “you better not be lying.” *Id.* Taylor further testified that Williams was the last person he saw in possession of the gun. T.R. 2737-38. The prosecution relied on Taylor’s testimony to advance its theory that Williams was a triggerman in the crimes, and that Williams took possession of Rouster’s .22 caliber gun after leaving the house, later returning to the Rease home and shooting Mrs. Rease in the head. T.R. 3314-18, 3320.

On June 2, 2004, Edwin Taylor recanted his testimony that Williams threatened him with a gun shortly before the Reases were shot. (Affidavit of Edwin Taylor, June 2, 2004, Ex. 8). Taylor now states that it was Rouster who pointed a gun at him and threatened to kill him if he did not tell him where the money was hidden. (*Id.* at ¶1). Taylor also remembers that “[Williams] was very, very drunk. Mostly he was just sitting there.” (*Id.* at ¶3). Taylor further states in his recantation, “It was clear to me that [Rouster] was running the show that night,” while “Darnell was a more peaceful person.” (*Id.* at ¶4, 5). Taylor explains that back when all this happened, he was “scared and confused” and “might have said things that were not accurate.” (*Id.* at ¶7). He also notes that when he spoke to the police he was worried that the murders would be blamed on him. (*Id.*).

The trial court named Taylor a “central witness” against Williams,6 and both the trial court and a reviewing court placed great weight on his testimony in finding Williams played a direct role in killing the victims. T.R. 184A. In its closing statement at the sentencing hearing, the prosecution referred to Edwin Taylor no less than eight times, noting that “Taylor told you

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6 While several court opinions have stated that Taylor testified as part of a plea bargain, he never pled guilty to any crime in conjunction with the events of August 12, 1986. (See Ex. 1). However, Taylor was involved in a burglary of the Reases’ home weeks before the murders, and this may have encouraged his cooperation with police. T.R. 2758.
[the jury] that the last person he saw with the gun was Darnell Williams," and relying on Taylor’s testimony that “Darnell Williams muttered to both Ms. Reese (sic) and Mr. Reese (sic) that [they] better give Greg his f***ing money.” to establish that Williams was as culpable as Rouster. T.R. 3028-3038. In affirming the denial of Williams’ habeas petition, the Seventh Circuit claimed Taylor’s testimony was so persuasive that the blood evidence was not needed to uphold Williams’ death sentence. See Williams v. Davis, 301 F.3d 625, 633 (7th Cir. 2002).

Given what we now know, it would be unjust to execute Williams considering the major role Taylor’s unreliable testimony played at sentencing. Taylor’s recantation is yet one more piece of evidence shedding doubt on the State’s case for the death penalty.

B. IT IS FUNDAMENTALLY UNJUST FOR WILLIAMS TO BE EXECUTED WHILE HIS MORE CULPABLE CO-DEFENDANT WILL SERVE A PRISON TERM FOR THE SAME CRIME.

Darnell Williams has been sentenced to die, while his more culpable co-defendant, Gregory Rouster, will serve a life term in prison. Historically, disparity in sentencing between co-defendants is a principal reason that U.S. presidents, parole boards, and governors have granted clemency in capital cases. Commuting Williams’ sentence would be consistent with this tradition of correcting disparate sentences among co-defendants. Moreover, the fact that Williams is less culpable than Rouster, who will not be put to death for the same crime, compounds the injustice of Williams’ impending execution.

Grants of clemency due to disparate sentences among co-defendants have a long history in the U.S. In 1857, President James Buchanan commuted the death sentence of John Smith, alias Francisco Soares, because Soares was the only one of four co-defendants sentenced to death in a murder case. In his pardon proclamation, President Buchanan stated that the disparity in sentences was “calculated to impair and diminish that absolute confidence which ought to be
reposed in a verdict in which the life of a human being is to be taken away.” Likewise, in 1948, Ohio Governor Thomas Herbert commuted the death sentence of Charles Ames because Ames’ co-defendant, the actual murderer, had received a sentence of life imprisonment. Herbert reasoned, “In America we pride ourselves on doing comparative justice... I am impelled to commute the sentence of Ames to the same penalty [of life imprisonment] not for any sympathy for Ames, but in order that it may not be said that Ohio failed in comparative justice.” In the 1960’s, Governors Michael DiSalle of Ohio, Robert Meyner of New Jersey, and Pat Brown of California also commuted death sentences due to disparate sentences among co-defendants, each citing that it would be unfair for one defendant to be executed while the others, though equally or more culpable, would be spared.

This tradition of granting clemency because of sentencing disparity continues in the modern era. Since Gregg v. Georgia reinstated the death penalty in 1976, 40 death sentences have been commuted nationwide, excluding blanket commutations in New Mexico, Ohio, and Illinois. Nine of those 40 commutations – nearly a quarter of all post-Furman clemency commutations – have been due to disparate sentences among co-defendants:

- **Charles Harris Hill:** His death sentence was commuted in 1977. Hill had been sentenced to die for a 1975 killing that occurred during a robbery. The Georgia State Board of Pardons and Paroles commuted Hill’s death sentence because a co-defendant who had admitted to actually stabbing the victim did not receive the death penalty.

- **Darrel Edwin Hoy,** a man convicted of participating in a rape and double murder, had his capital sentence commuted in 1980. Hoy’s accomplice Jesse Hall was the

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7 Pardon of James Smith, 6 General Pardon Records, Pardons, and Remissions Entry 897 (Sept. 8, 1857).


actual murderer; nevertheless Hall was granted a retrial and sentenced to life imprisonment. The governor of Florida cited Hall’s life sentence as a primary reason for Hoy’s commutation.

- **Richard Henry Gibson** had been sentenced to death in Florida for the murder of two Brazilian seamen. Gibson’s sentence was commuted because his accomplice was sentenced to life in prison and two women involved in the crime were never imprisoned.

- In 1981, the Governor of Florida commuted the death sentence of **Michael Salvatore** in part because his two companions in the murder of a Miami businessman were sentenced to life in prison.10

- In 1988, the Georgia Board of Pardons and Paroles commuted the death sentence of **Freddie Davis**. Along with Eddie Spraggins, Davis was convicted for breaking into a home and raping and killing the homeowner. Both Spraggins and Davis were sentenced to death, but Spraggins eventually won a new trial, took full responsibility for the crime, and subsequently received a new sentence of life imprisonment. Davis’ death sentence was commuted the next day – 48 hours before his scheduled execution.

- In Indiana’s neighboring state of Ohio, the death sentence of **Beatrice Lampkin** was commuted to life in 1991. Lampkin was convicted and sentenced to death for hiring a man to kill her husband. The fact that the gunman had merely received a life sentence was the primary justification for Lampkin’s commutation.11

- In 1991, the Georgia Board of Pardons and Paroles commuted **Harold Glenn Williams’** death sentence. For the same crime, Williams’ half-brother Dennis received 10 years for voluntary manslaughter. The Board cited this disparity as the foremost reason for granting the commutation, considering that “there was ample evidence that the co-defendant, Dennis Williams, was the ringleader in the murder.”12

- In 1999, North Carolina Governor Jim Hunt commuted the sentence of **Wendell Flowers**. Flowers was convicted and sentenced to death for the stabbing of a fellow


The fact that two other inmates who were involved in the murder merely received life sentences was a primary reason for the commutation.\(^{13}\)

- **Robert Bacon Jr.'s** death sentence was commuted in 2001. Bacon had been convicted and sentenced to death for conspiring to murder in order to collect on a life insurance policy. North Carolina Governor Michael Easley, a former prosecutor, commuted Bacon's sentence because Bacon's accomplice only received a life sentence.\(^{14}\)

In each of these cases, clemency was granted to correct the injustice of sentencing disparities among co-defendants for the same crime. Such disparity is even more grossly unjust when a defendant is scheduled to die while his more culpable co-defendant is given a prison term.\(^{15}\)

In the case at hand, Williams is significantly less culpable than Rouster for the deaths of the Reases. Evidence showing that Rouster is the more culpable co-defendant includes the following:

- Prior to the robbery, Rouster learned that the Reases had received a clothing allowance on his behalf. Rouster then stated that he would get the money that the Reases owed him. T.R. 818-20.

- Eyewitness Elliot Streeter stated that Williams was outside the house in the yard when the fatal series of shots was fired within. (August 14, 1986 Statement of Elliot Streeter to Deputy Prosecuting Attorney Tom Vanes at 24-25, Ex. 12).

- Several neighbors testified that immediately following the shooting, Rouster shouted in the front yard, “I killed the motherf**kers!” T.R. 891-92, 2560.

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\(^{13}\) The governor finds a reason to stop murderer’s execution, http://www.hpe.com/1999/12/17/opinion/1217editorial2.html.


\(^{15}\) When Congress reinstated the federal death penalty in 1988 after decades of no federal capital prosecution, the legislation included only a handful of “statutory mitigating factors,” i.e., reasons for not imposing a death sentence which a jury must by statute consider in making a sentencing determination. One of those, still the law, is “[a]nother defendant or defendants, equally culpable in the crime, will not be punished by death.” 21 U.S.C. Sec. 848 (m)(8). The issue of disparity in capital sentencing was of concern to Congress then and now.
Edwin Taylor, who at Williams' original trial testified that Williams had threatened him with a gun, has now recanted his previous testimony. Taylor has since stated that Rouster, and not Williams, threatened his life at gunpoint during the robbery. (June 7, 2004 Affidavit of Edwin Taylor at ¶ 3, Ex. 17).

Taylor has also stated that at the time of the crime, Williams was “very, very drunk,” “didn’t say anything,” and that “mostly, [Williams] was just sitting there.” (June 2, 2004 Affidavit of Edwin Taylor at ¶ 1, 3, Ex. 8).

Rouster not only initiated the crime by betraying his foster parents, but also he announced afterwards that he had killed them. According to Prosecutor Thomas Vanes, “I feel confident saying that without Gregory Rouster, the murders of John and Henrietta would not have occurred. I’m not sure the same can be said of Darnell Williams.”

Though Rouster is clearly the more culpable co-defendant, it is Williams who has been sentenced to execution. Given that Rouster will serve a prison term, Williams’ execution sentence is disproportionate to his culpability. To preserve Indiana’s fundamental interest in preserving justice, Darnell Williams’ death sentence should be commuted.

C. DARNELL’S LIFE HISTORY MILITATES AGAINST DEATH.

1. Overview

Darnell Williams’ life is replete with mitigating circumstances, many of which were not known to the jury. In Wiggins v. Smith, 124 S.Ct. 2527 (2003), the U.S. Supreme Court recently reaffirmed the importance of considering mitigating circumstances when sentencing a defendant:

Evidence about the defendant’s background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background, [or to emotional and mental problems,] may be less culpable than defendants who have no such excuse.
Penry v. Lynaugh, 492 U.S. 302, 319 (1989) (quoted in Wiggins, 123 S. Ct. at 2542). Much of the mitigating evidence in the following section was discovered recently and therefore not presented to the jury at sentencing. Although the jury was unable to consider this evidence, this Board has the opportunity to do so and give effect to the mitigating evidence by commuting Darnell's sentence to life in prison without possibility of parole.

Darnell grew up poor, even by the standards of his impoverished neighborhood. (Jill Miller's Social History Investigation at 13, Ex. 18). He was often hungry. (Id. at 26, 30). His only places to play were the heaps of scrap in the auto junkyard and a swimming hole of blackened water that had accumulated at the Gary dump, which abutted the housing project where his family lived. (Id. at 15-16).

Darnell's father was drunk, high or strung out on heroin most of the time. (Id. at 12, 14, 22, 25, 36). He floated in and out of Darnell's life. (Id. at 11, 15, 21). He beat Darnell and his siblings with switches and extensions cords. (Id. at 17, 18, 22, 26, 31). For his thirteenth birthday, Darnell's father took him to see a prostitute, providing him with his first sexual experience. (Id. at 26). On the day Darnell graduated from high school, his father gave him a black eye. (Id. at 31).

Darnell’s mother was overwhelmed by the task of supporting Darnell’s father, Darnell and his three siblings. She did so for a few years on welfare, then later at minimum-wage jobs. (Id. at 21, 24, 27). Even as a young boy, Darnell assumed the role of family caretaker: readying his siblings for school each morning, braiding his sister Tina’s hair, cooking, cleaning, doing laundry, mending clothes and then later making clothes to replace the ones his family could not afford. (Id. at 21, 24, 28). He took odd jobs around the neighborhood and had a paper route to make extra money for himself and his family. (Id. at 24, 27, 31, 36).
Despite the challenges Darnell faced growing up in abject poverty, Darnell’s family, friends, teachers and employers have consistently described him as a caring and compassionate individual. The death penalty is the ultimate punishment in this country, reserved for the most heinous of criminals. Darnell is not among them: he saved a man’s life just one year before the crime; he is a mentally handicapped person, who was well-liked by his special education teachers; he was regularly employed and described as a responsible, hard-working employee by his employers; he has no significant prior criminal record; and he selflessly aided his family members in their time of need.

2. Darnell saved the life of Herman Vanderburg just one year before the crime.

On August 2, 1985, Darnell demonstrated quick-thinking and bravery when he and four friends were involved in an accident. While driving home from the beach, their car stalled on the railroad tracks as an oncoming train approached. (Ex. 18 at 33). Darnell and two of his friends managed to escape before the train struck the car, but the driver, Sylvester Crisler, and another friend, Herman Vanderburg, could not get out in time. (Id.).

Directly after the train hit, Darnell ran to the car and found Crisler crumpled in the front seat with glass in his eye. (Clemency Testimony of Kevin Johnson, Ex. 19). Darnell pulled Crisler out of the wreckage, removed the glass and immediately went to look for Vanderburg. (Ex. 18 at 33).

The train was traveling at 45 miles per hour when it struck; Vanderburg was thrown from the car. (Two Gary 18-year-olds injured when South Shore train hits car, THE POST-TRIBUNE, August 8, 1985, at A1, Ex. 20; see also Clemency Testimony of Herman Vanderburg, Ex. 21). Vanderburg was not breathing, so Darnell cleared the blood out of his mouth and performed
CPR until the paramedics arrived. *Id.* According to the paramedics, Vanderburg would not have survived the accident had it not been for Darnell. *Id.*

Previous governors of Indiana, most recently Governor O’ Bannon, have stated that they would grant clemency if there are “exceptional circumstances, such as an act of heroism or extraordinary compassion, that may support granting an inmate clemency even where guilt is clear and the legal proceedings were fair.” (Governor O’Bannon, *Statement of the Governor on the Petition for Clemency of Joseph Trueblood*, June 11, 2003, Ex. 22).

Darnell saved the life of his friend, Herman Vanderburg, just one year prior to the crime, a fact that the jury was not told. In Vanderburg’s testimony at last year’s clemency hearing, he stated: “I don’t understand how someone could save somebody’s life and then get accused of this heinous crime and then get put to death for this crime.” (Ex. 21).

3. **Darnell is mentally handicapped.**

At 10 years of age, Darnell was found to have a full scale IQ of 78. At age 14, his full scale IQ was found to be 81. (Ex. 18 at 19). As a result of these low IQ scores, Darnell was diagnosed as mentally retarded by the public schools and placed in special education classes from elementary school until he graduated from high school. (*Id.* at 8-9, 26, 27, 28; see also Clemency Testimony of Irma Glover, Ex. 23). Each year, Darnell was evaluated to determine whether he should remain in special education classes or be transferred to regular classes and, each year, his teachers recommended that he remain in the program for the educable mentally handicapped. (Ex. 18 at 19, 20, 26, 27, 28, 29; Ex. 23 at 2).

Darnell was well-liked by his special education teachers. Irma Glover, Darnell’s special education teacher in elementary school, found Darnell to be extremely likeable and stated that he was not a discipline or behavioral problem. (Ex. 23 at 1). Glover noted that Darnell was honest,
reliable, cooperative and respectful of authority; he also got along well with others. (Ex. 18 at 20). While in junior high, Darnell was chosen to be a member of the student council, an honor that was only given to those deserving students whom the teachers found to be most reliable and responsible. (Affidavit of Thelma Rainge at ¶ 3, Ex. 24). Tony Saunders, Darnell’s special education teacher in high school, describes Darnell as a beautiful person in terms of conduct and behavior. (Affidavit of Tony Saunders at ¶ 6, Ex. 25). While in high school, Darnell was a member of the track team, despite his father’s objections. (Ex. 18 at 27).

Darnell’s diminished mental capabilities made it difficult, if not impossible, for him to live as a normal adult. For example, he never learned to drive a car. He never lived alone but rather consistently lived with family members. (Id. at 32, 33). In addition, Darnell was unable to secure work for himself; every job he had was obtained for him by a family member. (Id. at 32).

It has been suggested that Darnell’s mental disabilities could be the result of a brain injury that he suffered at a birth. Darnell was born after a prolonged labor and a difficult delivery, involving excessive amounts of analgesics and the use of forceps. (Ex. 18 at 8). A review of the medical records indicates that Darnell was born with injury to areas of the right cerebral hemisphere of the brain, which is the part of the brain dealing with the processing of non-verbal stimuli. (Jan. 9, 1994 Report of Registered Nurse Jean Thompson interpreting Darnell Williams’ Birth Records at 3, Ex. 26). Although the brain usually compensates for damage over time, the degree to which this is possible depends upon genetic capability (intelligence), environmental stimulation, overall health, and minimal psychological stressors. (Ex. 18 at 8). Based on the cumulative birth complications, Darnell was at “increased risk for long-term problems involving the brain.” (Ex. 26 at 3).
Ironically, Gregory Rouster – the ringleader and instigator of the crime – is no longer eligible for the death penalty in light of his low IQ evidencing mental retardation. See *Atkins v. Virginia*, 536 U.S. 304 (2002).16 The disparity between Darnell’s and Rouster’s punishments seems particularly arbitrary, considering that Darnell’s IQ is only a few points higher than Rouster’s.

4. **Darnell was a responsible, hard-working employee.**

   By all accounts, Darnell was an excellent employee. Indeed, on direct appeal, Indiana Supreme Court Justice DeBruler argued in a separate opinion that Darnell was “entitled to additional mitigating value for his regular employment,” and consequently should not have been sentenced to death. *Rouster v. State*, 600 N.E.2d 1342, 1351-52 (Ind. 1992) (DeBruler, J., concurring and dissenting).

   During the summers of high school, Darnell worked for Gary Manpower in publicly paid jobs throughout the city, involving cleaning vacant lots and doing yard work on school grounds and public property. (Ex. 18 at 27). Darnell’s supervisor, Frank Pittman, said, “Darnell Williams was one of my most conscientious workers. If I gave him a task, he would always do it to completion. I was very satisfied with the quality of his work.” (Affidavit of Frank Pittman at ¶ 7, Ex. 28). Pittman also commented on Darnell’s personality, stating that he “had a very pleasant disposition” and “a very positive personality.” (Id. at ¶ 8, 9). According to Pittman, if Darnell was working with a couple of boys who were troublemakers or lazy, he would be able to push the group to get the work done. (Id. at ¶ 8).

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16 In the six different times that Rouster’s intellectual functioning was tested, his IQ ranged from 59 through 89. (See *Rastafari v. State*, Lake County Superior Court No. 45G02-8600-CR-00133 (June 16, 2003 order of the post-conviction court), Ex. 27 at 7).
After graduating from high school, Darnell moved to Kenosha, Wisconsin and worked for Monarch Plastics for almost six months. (Ex. 18 at 32). Lamont Williams, Darnell’s cousin, also worked at Monarch and described Darnell as “an excellent worker.” (Affidavit of Lamont Williams at ¶ 15, Ex. 29). At Monarch, Darnell worked very hard and would work overtime whenever he could. (Id.).

When Darnell moved back to Gary from Kenosha, he got a job as a janitor at the Lake County Convalescent Home. (Ex. 18 at 33). Estelle Bartolomea, Darnell’s supervisor at the convalescent home, testified that he was a good employee who worked hard and was pleasant. (Id.). Darnell followed orders and was not insubordinate. T.R. 3273. Bartolomea also testified at the sentencing hearing that Darnell got along very well with the elderly residents at the home. Id. According to Arlene Toney, Darnell’s girlfriend Kim’s mother, Darnell would often talk about the residents at the convalescent home. She stated, “I thought that he was concerned about the patients as he always talked about them in a caring manner.” (Affidavit of Arlene Toney at ¶ 16, Ex. 30).

5. Darnell has no significant history of prior criminal conduct.

At the death penalty hearing, Judge Letsinger granted weight to only one mitigating circumstance, that Darnell had no significant history of prior criminal conduct. T.R. 3330; see also Rouster v. State, 600 N.E.2d 1342, 1352 (Ind. 1992). The judge explained that Darnell had no juvenile record and his brushes with the law as an adult were not significant. Id. The extent of his criminal record was as follows: In July 1985, a jury acquitted Darnell of the crime of attempted murder in connection with the shooting of a man in Kenosha County, Wisconsin. Id. A few months later, Darnell was arrested and charged with having a gun without a permit. He pled guilty, but stated that he had no intention of using the gun for criminal purposes, but rather he had purchased the gun to sell it for more money. (Ex. 18 at 33). Although at sentencing the
prosecution presented evidence that Darnell had been involved in an uncharged robbery, Judge Letsinger did not place much weight on this as he made a finding that Darnell had no significant prior criminal conduct. See T.R. 3330-31.

6. **Darnell helped his family survive difficult circumstances.**

Justice DeBruler also argued in his dissent that Darnell was entitled to additional mitigating value for “the aid and acts of kindness which he consistently gave to members of his family.” *Rouster v. State*, 600 N.E.2d at 1352. Life was not easy for Darnell growing up. His family was extremely poor; they lived in shoddy housing projects where violence was a regular occurrence. His father abused alcohol and drugs to such an extent that he was unable to provide for the family. (Ex. 18 at 12, 14, 22, 25, 36). From a very young age, Darnell assumed a great deal of responsibility. (Id. at 21).

Friends commented that roles were reversed between father and son. “It was like Darnell was Hilard’s father and Hilard was Darnell’s son. Hilard would ask Darnell for liquor money.” (Affidavit of Brian Russell Powell at ¶ 9, Ex. 31). Growing up, Darnell took on odd jobs in the neighborhood in order to bring additional money into the household. (Ex. 18 at 27). He cared for his brothers and sisters, serving as a surrogate parent when their mother was working long hours and their father was absent. (Id. at 21, 24, 28). In addition, Darnell felt that it was his duty to protect his mother and his siblings from their father’s abuse, so he often suffered harsh physical punishment. (Id. at 17, 21). Shirley Williams described Darnell “as being a compassionate person, very compassionate. He always put everybody before himself. He thought that everybody’s problem was his problem.” (Affidavit of Shirley Williams-Greer at ¶ 106, Ex. 32). His younger siblings remember the many times that Darnell would go hungry so that they might eat, providing for them as a caring figure in their lives. (Ex. 18 at 12).

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Juror Rodney Hill also believes that Williams should not be executed. Hill stated:

Over the course of the last year, I have learned of evidence that was not presented to the jury at trial, and I would not have voted to sentence Darnell Williams to death if I had known of this evidence at the time. I have learned that Gregory Rouster’s death sentence has been vacated. As Gregory Rouster was the more culpable of the two defendants, I believe that it would be an injustice for Darnell Williams to be executed when Gregory Rouster will not.

Like Gnajek, Hill believes the Governor should act to prevent an irreversible mistake. “In light of the new developments, I believe that the state would be carrying it too far if Darnell would be executed and that this would be an affront to our cherished ideas of democracy.” (Affidavit of Rodney Hill #1 at ¶ 2-5, Ex.14). “If I were to sit on his jury today knowing everything I know now, I would not have sentenced Darnell to death,” Hill continued in a recent second affidavit. (Affidavit of Rodney Hill #2 at ¶ 10, Ex. 15). Hill believes the governor’s power to grant clemency in cases like Williams’ provides a necessary safeguard in our legal system:

I believe that our American system of justice is the best in the world. One of the best things about our legal system is that it is built to prevent cases like this from slipping through the cracks. I hope [Governor Kernan] will act before July 9 to prevent Darnell Williams’ case from slipping through the cracks. While I still believe that Darnell Williams is guilty of some role in the robbery of the Reases, I no longer believe the evidence shows he was even in the room when they were killed. He does not deserve the punishment of death. I urge [the governor] to commute his sentence to life imprisonment.

(Letter from Rodney Hill to Governor Joseph Kernan at ¶ 3, Ex. 34).

Juror Thelma Edmonds also feels that, while the jury made the best decision it could with the information presented at trial, today her decision would be different. Of the inconclusive results of DNA testing, the undermined credibility of Derrick Bryant, and the undisclosed testimony of Elliott Streeter, Edmonds said, “Had I known of these facts at the time of the trial, I
would not have voted to impose a death sentence on Darnell Williams. I hope [Governor Kernan] will take to heart my thoughts on this case, and that [he] will act to prevent an unfair execution.” (Letter from Thelma Edmonds to Governor Joseph Kernan, June 15, 2004 at ¶ 4, Ex. 35).

The three jurors who have so far come forward in support of clemency are alarmed and troubled by the evidence to which they never had access at trial. Each has asked Governor Kernan to prevent injustice by commuting Williams’ sentence to life imprisonment.

2. The judge who denied Williams’ post-conviction petition believes executing Williams would contravene fundamental principles of criminal law.

T. Edward Page, the judge who heard the post-conviction petitions of both Williams and Rouster, believes that, even with only the evidence presented at trial, Williams’ level of culpability does not warrant execution if Rouster will be spared. Judge Page has sentenced hundreds of defendants and upheld the death sentence in nearly a dozen post-conviction cases. Of Williams’ sentence, Page writes:

To me, one of the most important principles of criminal justice is that a sentence must be proportionate to the crime committed. Equally important is the principle that defendants who join together in committing an offense should be treated similarly. It would be an injustice for the death sentence to be lifted, for whatever reason, on one of these two defendants and yet be imposed on the other. This is especially true when the person who may ultimately be executed is not as culpable as the one whose death sentence has been vacated.


3. The senior law enforcement official who investigated the crime scene and Williams’ clothing supports commutation.

At the time of the shootings, Ronald L. Lach was a crime scene technician and senior officer for the Lake County Sheriff’s Laboratory. (Affidavit of Ronald Lach at ¶ 2, Ex. 16). Lach was an experienced crime scene analyst who had processed hundreds of crime scenes over twelve
years on the job. *(Id. at ¶ 2).* Lach and Officer Mike Reilly inspected the clothing of suspects related to the Reases’ murders approximately five hours after the shootings and found no blood on Williams’ clothing. *(Id. at ¶ 3, 6-7).* Lach joins Vanes in believing that Williams’ execution should not go forward. *(Id. at ¶ 8).*

4. **The prosecutor who argued for the death penalty at trial now believes Williams’ execution would be a mistake**

Thomas Vanes, who prosecuted Williams’ and Rouster’s cases, now believes that Williams should not be executed. If he had known seventeen years ago that Rouster would not receive the death penalty, he would never have asked the jury to sentence Williams to death. Regarding this disparity, Vanes has recently said the following:

> At the trial, we asked for equal punishment for Rouster and Williams, and the jury and Judge Letsinger agreed by recommending the death penalty for both. If we, the prosecutors, had been told back then that equal sentences for Rouster and Williams were not possible, if someone had said that execution was an option for only one of the two, we certainly would have chosen Rouster over Williams as the one most deserving of the maximum punishment. It was he who betrayed Mr. and Mrs. Rease. It was he who initiated the crime. And it was he who loudly announced to the neighborhood that he “killed the motherf***ers.”

> I feel confident saying that without Gregory Rouster, the murders of John and Henrietta would not have occurred. I’m not sure the same can be said of Darnell Williams. Yet it now appears that only one of the two will be executed, and it won’t be Rouster. I remain convinced that both Rouster and Williams are guilty, and that each deserves to spend the rest of his life in prison. But I do deeply believe that the principles of fairness, justice, and equal treatment should now mean equal sentences of life for both.

It is extremely rare for a prosecutor to come forward and advocate for commutation of a death sentence for which he himself argued before the jury. Thomas Vanes believes strongly in the principles of proportionality that underlie our criminal law. Those principles dictate that the
5. **Opposition to Williams’ execution and interest in his fate extend beyond those immediately involved in his case.**

Since the first clemency hearing in 2003, stories about Williams’ case have appeared in local and national media including The New York Times, The Los Angeles Times, The Chicago Tribune, The Indianapolis Star, The Northwest Indiana Times, The Wausau Daily Herald, The Fort Wayne Journal Gazette, and The South Bend Tribune. Both before and after the results of DNA testing were returned, each of the Indiana papers have consistently published editorials and commentaries urging the governor to commute Williams’ sentence.\(^\text{17}\) (Darnell Williams Case Select Media Coverage of Recent Developments, Ex. 37).

The Indianapolis Star and Fort Wayne Journal Gazette have cited the Williams case as a textbook case for reforming the death penalty in Indiana. The Indianapolis Star, in urging Indiana to adopt the findings of a Massachusetts commission that has issued 10 recommendations designed to make it less likely that an innocent person would be executed, cited Williams’ case as one that should never have qualified for the death penalty:

> The Darnell Williams death penalty case is the sort the legislature had hoped Indiana would avoid when lawmakers added more review to the capital punishment process last year. Only the most egregious cases should earn the death penalty, and there must be no doubt about the guilt of the condemned.

(\textit{Id. at 29}).

\(^{17}\) We cannot locate a single publication urging this execution to proceed.
The Journal Gazette echoed the Star, pointing out that there is much to be learned from Williams' case:

To proceed with the execution seems to contradict the intentions of the Indiana General Assembly when it last year expanded access to DNA testing and gave defendants more opportunities for review of new evidence. With all of the twists and unanswered questions that have arisen since Williams' trial, his conviction becomes a textbook case for questioning how the death penalty is administered in Indiana. In commuting the death sentence to life in prison, the governor could begin that discussion.

(Id. at 31).

The South Bend Tribune, among other papers, has also identified Darnell Williams' case as endemic to a system that prejudices the poor and disenfranchised:

In considering the case of Darnell Williams, we as residents of Indiana must decide if narrow technicalities take precedence over fairness, if the flaws in this case point to bigger questions about who lives and who dies, and how poverty and incompetent legal defense lead someone to death when others who can afford better lawyers get lesser sentences.

(Id. at 4).

But at the heart of public commentary about Williams' case lies the same reasoning that motivates the trial prosecutor, the jurors, law enforcement officials, and the post-conviction judge in urging commutation — a sense that it would simply be a mistake to take Williams' life:

I don't know if Darnell Williams did it or not. I have my doubts, however. There's mounting proof that Williams isn't guilty of the colossal crime for which he was sentenced to death. Had he been executed [in 2003], the new evidence that could clear Williams would be of no consequence.

(Id. at 25).

The Northwest Indiana Times, reviewing only the new evidence discovered before May 9, which did not include the recantation of Edwin Taylor, concluded that not only should
Williams’ life be spared, but that he should be granted a new trial. The editorial observed, “There are too many doubts now to execute him before re-examining the evidence.” (Id. at 28).

Also citing emerging evidence and the fact that Williams’ culpability was far less than his co-defendant’s, The Indianapolis Star wrote in an editorial, “There are times when granting clemency may be the only way to prevent a miscarriage of justice. Rather than risk making a mistake, Indiana should spare the life of Darnell Williams.” (Id. at 8).

It is clear that support for clemency in Williams’ case is widespread and growing with each development in his case. These strong public voices, voices of those who have considered this case as it has evolved, urge the Governor to commute Williams’ sentence.
RECOMMENDATION AND CONCLUSION

According to the U.S. Supreme Court, executive clemency has been the “fail safe” of the criminal justice system. *Herrera v. Collins*, 506 U.S. 390, 415 (1993). The judicial process in our country is not infallible. Throughout our country’s history, clemency has been invoked to spare defendants undue punishment. *Id.* As the Court has affirmed, “Clemency is deeply rooted in the Anglo-American tradition of law, and is the historical remedy for preventing the miscarriage of justice where the judicial process has been exhausted.” *Id.* at 411-12.

In recent years, the Court has relied increasingly on executive clemency to correct the failures of the criminal justice system. Over the same period, additional judicial and legislative barriers have been placed on prisoners seeking post-conviction relief.\(^{18}\) In 1993’s *Herrera* decision, the Court rejected a defendant’s habeas claim based on newly-discovered evidence, stating that such a claim does not merit federal habeas review. 506 U.S. at 416-17. The Court went on to point out that this ruling did not leave the petitioner “without a forum” to raise his claim – he could still request clemency from the Texas governor. *Id.* at 411. *Herrera*’s significance was twofold: the Court “closed off an entire avenue of habeas review,” and at the same time replaced it with executive clemency as the “main procedural safeguard” against judicial fallibility.\(^{19}\)

The Court’s reliance on clemency as a corrector of injustice inherently increased its level of importance. Because a defendant now had fewer means of achieving post-conviction relief


from the courts, regardless of the merits of his claims, *Herrera* “elevated clemency to the level of a critical component in the death penalty system.” Executive clemency remains the primary safeguard against the failures of our formal judicial process.

Supreme Court Justice Anthony Kennedy has publicly expressed concern that the judicial system may produce errors that can only be corrected by grants of clemency. In his address to the American Bar Association in August 2003, Justice Kennedy urged his audience to “reinvigorate the pardon and the clemency process.” Justice Kennedy lamented that grants of clemency had become infrequent because politicians may be targeted as being soft on crime. “A country which is secure in its institutions and confident in its laws should not be ashamed of the concept of mercy,” he announced.

The U.S. Supreme Court believes that clemency is the premier fail-safe against injustice in the judicial process. Darnell Williams’ death sentence is such an injustice, and should ultimately be commuted by the governor of Indiana.

Respectfully submitted,

[Signature]

Juliet Yackel, on behalf of Darnell Williams

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22 *Id.*

23 *Id.*