

STATEMENT OF THE GOVERNOR
PETITION FOR CLEMENCY OF GARY BURRIS

Gary Burris has petitioned for clemency from his capital sentence imposed by the Marion Superior Court for the murder of Kenneth Chambers in 1980. I have reviewed this petition carefully, examining the records of all the judicial proceedings -- trial and appellate, state and federal -- as well as the proceedings before the Parole Board. Of equal importance, I have probed my own moral consciousness, for the disposition of a clemency petition in a capital case is the most profound decision a governor can make.

Mr. Burris's petition presents for me the second occasion to review a clemency request in a capital case. The first occasion, involving Gregory Resnover, required me to develop a set of principles to guide my judgment on this most sober of subjects. Mr. Burris's petition, raising its own unique facts and issues, causes me to deepen my thinking, but not to alter the fundamental principles used in the Resnover matter. With those principles as my charter, I have considered Mr. Burris's request.

1. The Facts. Over fifteen years ago, Mr. Burris was convicted of a hideous, gratuitous, and premeditated crime, for which there is no serious question of his guilt: he murdered a cab driver by robbing him at gun point, forcing him nude outside his cab in sub-freezing weather, binding his hands behind his back, and shooting him in the head at point-blank range over his pleas for mercy -- and all for \$40 dollars.

This case began in January of 1980 in Indianapolis, when Burris decided he needed some quick cash. He was riding in a taxi cab with two friends, and noticed an envelope in the front seat

containing money. Although he eyed the money, Burris took no action at that point because he was unarmed. When the three arrived at a local lounge, the M&J Social Club, Burris told the others to telephone for a taxi for the purpose of robbing the driver. Having been incarcerated on two prior occasions for his involvement in armed robberies, Burris did not want to return to prison. For that reason, he emphasized that their victim should not survive to identify his attackers.

After his companions acceded to his plan, Burris went to his apartment above the lounge and armed himself with two .38 caliber pistols. He selected hollow-point bullets because he thought (incorrectly) they would explode on impact and leave no ballistic evidence. Burris returned to the lounge and asked the barmaid to call a taxi. The victim, Kenneth Chambers -- thirty-one year old african american, who was a husband, father of two young children and military veteran -- accepted the dispatch. When the cab arrived, Burris and his friends told Chambers they wanted to go to 21st and Alvord. But before they reached their destination, Burris and his companions drew their guns, ordered Chambers to radio the dispatcher and report falsely that the run had been completed, forced Chambers in the back seat and, ordered him to remove his clothing. The men then drove to a dark alley. There, in an act of gratuitous cruelty and torture, Burris tied Chambers's hands behind his back, forced him out of the taxi and made him lie face down on the freezing ground. As Chambers pleaded for his life, Burris placed his pistol against Chambers's temple and pulled the trigger.

Chambers's nude, lifeless body was found several hours later, face down and frozen to the pavement in a pool of his own blood.

Meanwhile, the three men returned to Burris's apartment. One witness at the apartment noticed Burris carrying a clipboard with a cab driver's run sheet, which Burris burned and flushed down the toilet. Burris tried to convince one of his accomplices to take the gun, but he refused. Burris then took the gun to his girlfriend's apartment and hid it inside a stereo speaker.

Later that same morning, police went to the girlfriend's apartment, where they found Burris and arrested him. They recovered the .38 caliber pistol from the speaker and located Chambers's cab in the parking lot adjacent to the apartment. Ballistics testing confirmed that the bullet which killed Chambers was fired from the gun recovered in the apartment and bloodstains found on the gun matched Chambers's blood-type. Following his arrest, Burris was incarcerated at the Marion County Jail, where he confessed to a cellmate that he had robbed and killed Chambers and provided a detailed description of the crime.

On December 4, 1980, a jury in Marion County convicted Burris of intentional murder in the course of a robbery. Over the next fifteen years, Burris's case has been the subject of extensive legal proceedings in state and federal court. Each of these decisions has affirmed Burris's guilt and that his crime makes him eligible for a capital sentence in Indiana. A summary of the legal proceedings is appended to this statement.

2. Clemency Hearing Before the Parole Board. The Parole Board also thoroughly reviewed Burris's petition for clemency. The Board's review was, in certain respects, even more searching than that of the many judges and jurors who previously had examined this case. The Board personally interviewed Mr. Burris and accepted public testimony, both oral and written. Among other things, the Board considered his past criminal record, the nature and circumstances of the crime, his degree of remorsefulness, his conduct in prison, and the best interests of society.

On the basis of this review, the Board recommended that Burris's request for clemency be denied. The Board found particularly significant that Burris has not unconditionally accepted responsibility for his conduct. In his personal interview, Burris told the Board that, although he acknowledges some level of involvement in the crime, he now has no specific memory of the murder.

3. Governor's Deliberations. Let me begin by sharing a few of the core principles I use to guide my discretion when I consider requests for clemency. First, I approach all petitions for clemency -- capital and non-capital -- with the deepest respect for our judicial system. Established in our state and federal constitutions, that system is a pillar of our democratic society, ensuring that the rule of law governs, not the proclivities of a single individual. Our founders crafted this system to include democratically elected prosecutors and state court trial judges, jurors selected from the community, state appellate judges

appointed by the governor and life-tenured federal judges nominated by the President and confirmed by the Senate. I firmly believe that an independent judiciary and the principle of separation of powers among the coordinate branches of government preserves justice.

I therefore afford tremendous deference to the conclusions established by our judiciary. It is not my role to cast aside fifteen years of judicial proceedings and retry this case. Rather, I look to whether a petitioner has come forward with pivotal facts that were never presented to the judiciary and that would indicate he is innocent of the crime or wholly undeserving of the penalty. There can be no greater horror than an innocent man dying at the hands of the state. In addition, I focus on whether a petitioner has identified some fundamental defect in the judicial process that would cast serious doubt on the integrity and reliability of those proceedings. If my examination finds a fair process, my faith in our judicial system tells me that justice is assured.

The second core principle that guides my decision is the belief that capital punishment is appropriate in certain cases. The Indiana General Assembly has provided for capital punishment and has delineated the narrow circumstances under which it is warranted and the detailed procedures under which it is imposed. The state and federal courts time and again have scrutinized Indiana's scheme for administering capital punishment and have found it constitutional. Accordingly, a general opposition to the death penalty provides no basis for clemency.

A third principle on which I rely is that exceptional circumstances may call for granting an inmate clemency, even where that inmate's guilt is clear and the legal proceedings were fair. I would consider granting clemency, for example, if an inmate engaged in an act of unusual heroism or human kindness, such as saving the life of a prison guard.

It is with these principles that I have reviewed Burris's request for clemency.

4. Burris's Guilt is Beyond Question. Burris does not rest his request for clemency on a claim that he is innocent of the crime, and with good reason: the evidence establishing his guilt was overwhelming. Burris's only contention in this regard is that he now has no memory of the crime because he was under the influence of alcohol and drugs when he committed it. His alleged lack of memory, however, is inconsistent with the evidence presented at his trial that he confessed the entire crime to a cellmate. Moreover, an inability to recall the crime, even if true, does nothing to excuse his heinous actions.

5. The Legal Proceedings Were Fair. Burris asserts that the legal proceedings were flawed because the trial judge imposed the death penalty after the jury deadlocked on what penalty to recommend. The trial judge, however, simply followed the law, as enacted by the General Assembly. In Indiana, it is the trial judge, not the jury, that is vested with the responsibility of imposing the death penalty. The jury's role is to make a recommendation. Thus, the fact that the trial judge faithfully

complied with the law can not provide a basis for clemency.

Burris also contends that the proceedings were unfair because he was denied an opportunity to challenge the effectiveness of his trial and appellate counsel (who was the same individual) following his resentencing hearing. This claim falls short for two reasons. First, the Indiana Supreme Court reviewed this claim, concluding that his pleadings conclusively show that Burris is entitled to no relief. Second, Burris's challenge to the effectiveness of his counsel rests on the suggestion that his counsel failed to develop evidence that Burris suffers from diminished mental capacity due to brain dysfunction or a brain disorder. This contention, however, is disproved by both the Department of Corrections's psychiatric evaluations of Burris, which concluded that "Mr. Burris is free of any serious mental problems," as well as the Parole Board's personal interview with him. At his interview, Burris plainly was thoughtful, reflective, intelligent and rational.

6. No Exceptional Circumstances Exist. Burris has not demonstrated he has performed some exceptional act of heroism or human kindness, either before or after committing his crime, that would warrant clemency. Rather, Burris points to the unfortunate circumstances of his childhood and his subsequent good conduct in prison as exceptional circumstances that make clemency appropriate.

Only the most callous individual would not find the environment in which Burris was raised to be reprehensible. According to testimony presented at his resentencing hearing, Burris knows neither his true age nor parentage because he was

abandoned in a garbage can at around age two. He was picked out of the garbage can by a man named Jewel Newland. Newland was the proprietor of the M&J Social Club, a bar, pool room, gambling parlor, drug den and house of prostitution. Beginning at around age eight, Burris worked at the M&J Social Club, knocking on the rooms of prostitutes to indicate that the patrons' time was up, cleaning the prostitutes' rooms before he was allowed to leave for school, and serving as a courier for drugs and alcohol. Burris was also sexually abused by the prostitutes and, at age ten, contracted venereal disease from one of them.

Burris's institutional record, by contrast, generally has been positive. While not perfect, Burris on the whole has been a cooperative and responsible inmate. His successful adjustment to institutional life caused prison officials to select Burris as the trustee for death row, a position that involves added responsibilities and privileges. Burris also made efforts to improve himself by spending considerable time reading and by earning a G.E.D. Moreover, Burris declined to participate in a hostage incident in 1986, where other death-row inmates threatened the life of a prison staffer.

Burris's childhood was abhorrent and his institutional record commendable. At Burris's resentencing hearing, however, Judge Gifford was presented with, and carefully considered, Burris's background and institutional conduct, concluding nevertheless that a capital sentence was warranted. Thus, these facts about Burris's life are not new evidence that would indicate the punishment is

undeserved.

In addition, Burris's unfortunate childhood does not excuse him from the moral responsibility of killing an innocent man, who was a son, husband and father. Nor does the fact that fifteen years have passed since the crime, during which Burris has conducted himself in an ordinary manner, make his actions at the time of the crime any less reprehensible or less worthy of punishment. In short, Burris's childhood and institutional conduct do not render incorrect the sentence imposed for his senseless act.

While not warranting clemency, Burris's unconscionable childhood, and the tragedy that has been its aftermath, shamefully expose the price exacted by a community's abandonment of its children. It is my deepest desire that our neighborhoods, churches, schools, law enforcement units, and the government will recommit themselves to assuring that other children do not end up like Gary Burris.

7. Burris's Crime Warrants a Capital Sentence. Burris also requests clemency on the grounds that the penalty is disproportionate to the crime he committed. Burris points out that neither of his accomplices received the death penalty and that several other individuals who murdered cab drivers in Indiana did not receive capital sentences. This contention ignores the role that prosecutorial discretion plays in our justice system. The General Assembly places in locally elected prosecutors the responsibility of deciding when to seek the death penalty.

Moreover, it is beyond doubt that under Indiana's sentencing scheme Burris's crime makes him eligible for the death penalty. Merely because some eligible individuals have escaped the death penalty does not mean that others, such as Burris, should be relieved of it. And stripping, binding and forcing his victim to beg for mercy make Burris's crime especially heinous.

8. The Role of Clemency. Let me offer some final thoughts on the role of clemency. As I explained in the Resnover matter, I have always tried to be mindful of the victims, their loved ones, their right to justice. Here, Kenneth Chambers begged Gary Burris for mercy, but Burris showed him none. It is now Burris who seeks mercy. But who showed mercy to Kenneth Chambers's now-deceased wife, who had to fight cancer without the comfort of her husband? Who will show mercy to Kenneth Chambers's children, who lost their father? Who will show mercy to the community, which seeks confidence that the guilty are punished and the innocent protected? June Chambers, Kenneth's mother, expressed her sense of loss and yearning for justice in particularly compelling terms:

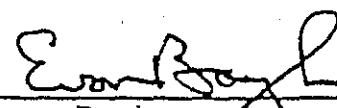
My son Kenneth Chambers' life was taken away from him at a very young age, January 29, 1980, leaving behind a very ill wife, and two small children.

Kenneth gave up his life to Gary Burris 15 years ago, now it is time for justice, to be served. Gary Burris is begging for his life. Kenneth begged for his life also, and Kenneth was not given a second chance. Kenneth did not get to ask for clemency. Kenneth's life was taken away in a cruel and unusual way. Gary wants to live, he does not want his life taken away. Kenneth did not want his life taken away, but there were no appeals for Kenneth, no second chances.

As governor of Indiana, I have attempted to the best of my

ability to faithfully uphold the Constitution and execute the laws of our State. At times, it is a responsibility for which there is no joy, but only closure and finality. But supported by the Constitution and our laws as interpreted by our jurors and courts and with His guidance, I reach my decision.

Burris's request for clemency is denied.


Evan Bayh
November 27, 1995

APPENDIX

Judicial Proceedings in the Gary Burris Case

1. On December 4, 1980, Gary Burris was convicted by a jury in Marion Superior Court of murder in the course of a robbery. On December 5, 1980, the jury returned a sentence recommendation of death, and on February 20, 1981, the Honorable John W. Tranberg sentenced Burris to death.

2. On June 29, 1984, the Indiana Supreme Court affirmed Burris's conviction and death sentence on direct appeal and denied Burris's request for rehearing. On January 7, 1985, the United States Supreme Court denied certiorari. Burris v. State, 465 N.E.2d 171 (Ind. 1984), reh'g denied, cert. denied, 469 U.S. 1132 (1985). An execution date of February 15, 1985, was set.

3. On February 4, 1985, Burris filed a petition for post-conviction relief and request for stay of execution in the Marion Superior Court. On February 5, 1985, the court stayed Burris's execution date. Following a hearing, the petition for post-conviction relief was denied on May 30, 1986.

4. On August 24, 1990, the Indiana Supreme Court affirmed the denial of post-conviction relief with respect to Burris's conviction for murder, but reversed his sentence on the grounds that Burris had received ineffective assistance of counsel during the penalty phase of his trial. The Court remanded the case to the trial court for a new sentencing hearing. The Court also denied Burris's request for rehearing on the affirmance of his conviction. Burris v. State, 558 N.E.2d 1067 (Ind. 1990), reh'g denied.

5. On September 25, 1991, the trial court convened another

jury for the purpose of conducting a new sentencing hearing. On September 27, 1991, the jury advised the court that it was unable to reach a unanimous decision with regard to the death sentence. On November 22, 1991, the Honorable Patricia Gifford sentenced Burris to death.

6. On December 20, 1992, Burris filed a petition for writ of habeas corpus in the United States District Court, Northern District of Indiana. On September 7, 1993, the district court conducted a hearing on the merits of Burris's petition and on January 27, 1994, the district court denied Burris's request for habeas relief. Burris v. Farley, 845 F. Supp. 636 (N.D. Ind. 1994).

7. On November 4, 1994, the Indiana Supreme Court affirmed Burris's death sentence and denied Burris's request for rehearing. On October 10, 1995, the United States Supreme Court denied certiorari. Burris v. State, 642 N.E.2d 961 (Ind. 1994), reh'g denied, cert. denied, 116 S. Ct. 319 (1995).

8. On March 28, 1995, the United States Court of Appeals for the Seventh Circuit affirmed the district court's denial of habeas relief. Burris v. Farley, 51 F.3d 655 (7th Cir. 1995).

9. On June 14, 1995, the trial court set an execution date of July 19, 1995. On June 16, 1995, Burris filed a notice of intent to file another post-conviction petition. On June 30, 1995, the trial court stayed the execution, but found that Burris's petition would be a successive petition and, as such, would have to be filed in the Indiana Supreme Court.

10. On July 27, 1995, the Indiana Supreme Court affirmed the trial court's ruling that any petition filed by Burris would constitute a successive petition, but ruled that the trial court lacked jurisdiction to grant a stay of execution. The Court ordered the stay of execution vacated and directed the trial court to set a date for execution. On August 1, 1995, the trial court set an execution date of September 13, 1995.

11. On August 22, 1995, the Indiana Supreme Court vacated the execution date of September 13, 1995, and allowed Burris until September 30, 1995, to tender evidence showing that the filing of a successive petition for post-conviction relief is warranted.

12. On October 19, 1995, the Indiana Supreme Court declined to authorize Burris to file a successive petition for post-conviction relief, finding that his pleadings conclusively showed that he is entitled to no relief. The Court also ordered the trial court to set a new execution date.

13. On October 24, 1995, the trial court set an execution date of November 29, 1995.

14. On October 26, 1995, Burris filed with the Indiana Supreme Court a motion for a stay of execution pending the filing of a petition for habeas corpus relief in the United States District Court. On October 27, 1995, the Indiana Supreme Court denied Burris's request for a stay.

15. On November 13, 1995, Burris filed a second petition for habeas corpus relief and motion for stay of execution in the United States District Court, Northern District of Indiana. On November

20, 1995, the district court denied Burris's request for habeas relief and request for a stay.

16. On November 24, 1995, the United States Court of Appeals for the Seventh Circuit affirmed the district court's denial of a stay of execution.

17. On November 27, 1995, Burris filed a suggestion for rehearing en banc to the full Seventh Circuit.