MEMORANDUM OPINION AND ORDER

Petitioner, Paula Gray, moves this Court, pursuant to 735 ILCS 5/2-1401 ("2-1401" or "post-judgment" petition) and the Court's supervisory powers, to vacate her 1978 jury trial convictions for murder, rape, and perjury, and the *nolle prosequi* orders entered in 1978 and 1987, on the grounds of "outcome-determinative" exculpatory evidence fraudulently concealed by the Respondent, the People of the State of Illinois, as well as newly discovered evidence of her innocence of all charges. (Mot. of Petitioner to Vacate Convictions on Grounds of Newly Discovered Evidence and Innocence, or "Petitioner's 2-1401 Mot." at 1; Petitioner's Post-Hearing Mem. at 4-7). [Note that Petitioner's Post-Hearing Memorandum at 7 alleges that Respondent fraudulently concealed evidence supporting Ms. Gray's innocence. In addition, Petitioner's Proposed Findings of Fact and Conclusions of Law at 13-14, and Petitioner's Post-Hearing Memorandum at 14-15, allege the additional grounds for 2-1401 vacatur of the 1987 *nolle prosequi* orders, of constitutional due process and speedy trial violations. Also, Petitioner's Post-Hearing Memorandum at 1, 11-14, 15, seeks not only the aforementioned vacatur of the orders of *nolle prosequi* entered in 1978, at the conclusion of the State's case in chief, regarding the ten felony counts dealing with the Clark gas station events, but also dismissal of the underlying charges. Additionally, Petitioner's Post-Hearing Memorandum at 1, 15, seeks dismissal of the murder and rape charges for which Petitioner was convicted in 1978, which conviction was voided by the 1983 Seventh Circuit Court of Appeals' writ of habeas corpus awarding Petitioner a new trial, People ex rel. Gray v. Director, 721 F.2d 586, 598 (7th Cir. 1983); and along with vacatur of the *nolle prosequi* orders entered April 23rd, 1987 on the same murder and rape counts (as previously requested by her 2-1401 petition), dismissal of the underlying charges. Petitioner's Additional Post-Hearing Memorandum at 1 further alleges that any failure by Ms. Gray to have previously asserted the rights and issues set forth by the herein petition are excusable on the grounds of Petitioner's mental disability and ineffective assistance of prior counsel].

Petitioner also moves to vacate her 1987 plea of guilty to perjury which was entered after issuance of the federal writ. (Petitioner's 2-1401 Mot. at 1, 16). Petitioner's Post-Hearing Memorandum at 1, 2-3, 15, additionally seeks vacatur of her 1987 perjury plea, along with dismissal of the underlying charge, on the further grounds that the 1978 perjury count is void. Ms. Gray's Post-Hearing Memorandum at 15 also (generally) moves for dismissal of the 1978 perjury charge. The grounds for Ms. Gray's vacatur of the 1987 perjury plea alleged by her petition is that the plea is void because:

(1) Ms. Gray's preliminary hearing testimony claiming innocence as to she and her four purported principals (or "Ford Heights Four"), and upon which her 1987 perjury plea is based, has since been shown to be truthful as a result of the conviction of three other men for the subject crimes, the vacatur of the Ford Heights Four convictions, as well as the Governor's pardon of her four principals based on their innocence (Petitioner's 2-1401 Mot. at 2, 14, 15). [In Petitioner's Post-Hearing Mem. at 1-2, 3-4, Ms. Gray changed the rationale of the foregoing grounds for vacatur of the 1987 perjury plea and dismissal of the underlying perjury charge of the 1984 information (see para. (3) below at 2) from the plea is rendered void because of Petitioner's

actual innocence, to “justice would only be served...” by vacatur of the plea and dismissal of the charge due to Ms. Gray’s innocence];

(2) Petitioner's two-year sentence of probation imposed pursuant to her 1987 perjury plea was entered after completion of Ms. Gray's 1979 sentence for the same offense. (Petitioner's 2-1401 Mot. at 1-2, 15);

(3) the perjury charge of the 1984 information to which Petitioner pleaded guilty in 1987, did not allege the false statement or its "specific nature," as required by case law (Petitioner's 2-1401 Mot. at 1-2, 15; see also Petitioner's Add'l Post-Hearing Mem. at 6, which changes the allegation in Petitioner's 2-1401 Mot. at 15 regarding the charging instrument for Ms. Gray's 1987 perjury plea, from the 1978 indictment to the 1984 information, and Respondent's Post-Hearing Brief at 3-5 indicating that Petitioner's 1987 plea was based on the 1984 information and not the 1978 indictment), and;

(4) the illegality of Petitioner's 1979 extended term sentence for perjury rendered her 1987 plea a nullity (Petitioner's 2-1401 Mot. at 1, 15-16).

Petitioner also alleges that her mental retardation rendered her incapable of appreciating the nature and consequences of the 1987 proceedings, including her plea of guilty to perjury. (Petitioner's 2-1401 Mot. at 9).

On October 20, 1978, Petitioner, Paula Gray, was found guilty, after a jury trial, pursuant to an indictment filed on August 31, 1978 or September 1, 1978 (Case No. 78 C 4865), of five counts of murder (Counts 1-4, 7), 1 count of rape (Count 8), and 1 count of perjury (Count 17), for her involvement as an "aider and abettor" in the foregoing crimes committed against Carol Schmal and Larry Lionberg, and because of her "false" testimony at the preliminary hearing on June 19th, 1978 in the matter of Kenneth Adams, Dennis Williams, Verneal Jimerson, and Willie Rainge. (Respondent's Joint Motion To Dismiss the Petition of Paula Gray to Vacate Convictions Pursuant to 735 ILCS 5/2-1401; Motion to Strike Portions of Petitioner's Petition and Affidavits; and Response to Petition of Paula Gray to Vacate Convictions, or "Respondent's Joint Mot." at 3; Petitioner's Post-Hearing Mem. at 2; Respondent's Post-Hearing Brief at 4-6; Petitioner's Reply at 3-4); People v. Jimerson, 127 Ill.2d 12, 23 (1989)("...the perjury count [of Petitioner's 1978 indictment] was based on her testimony at the preliminary hearing [on June 19th, 1978]"); People v. Gray, 87 Ill.App.3d 142, 147 (1st Dist. 1980); People ex rel. Gray, 721 F.2d at 587, 592 (the September 1st, 1978 indictment filed against Paula Gray included an allegation for "the perjury [she] committed on June 19, 1978, at the preliminary hearing"). The court adjudicated Ms. Gray guilty, pursuant to the jury verdicts, on October 20th, 1978. See Memorandum "Judicial Notice" para. 3.a., at 225 (judicial notice of half sheet for Petitioner's above-referenced trial, under Case No. 78 C 4865, indicating that on "10-20-78," Judge "Samuels" entered judgments on the verdicts). [Note that the correct spelling of Willie "Rainge" is "Raines," but because his 1978 case and subsequent 1983 and 1991 appeals are entitled "...Rainge," the latter spelling will be utilized throughout this Memorandum Opinion and Order or "Memorandum," except when referencing the Ford Heights Four and Paula Gray's 1997 and 1998 civil actions against Cook County, its officials, and various other parties emanating from the Lionberg/Schmal crimes].

Paula Gray's murder and rape convictions were based on her inculpatory statements to investigating police and an assistant State's Attorney ([Earnest] DiBenedetto), as well as transcript evidence of her May 16th, 1978 grand jury testimony, in which she stated that Dennis Williams made her hold a "Bic type" cigarette lighter inside the second floor bedroom of a dark abandoned building at 1528 Cannon Lane while he, Jimerson, Adams and Rainge had sexual intercourse with a white female. Gray, 87 Ill.App.3d at 144-45. [Note that "Cannon," as opposed to "Canon," is the correct spelling of this street's name according to the map of East Chicago Heights in "Respondent's Supplemental Exhibits in Opposition to Petitioner's Motion to Vacate Convictions Pursuant to 735 ILCS 5/2-1401" or "Respondent's Group Ex. 11" Item G at PD00057]. Ms. Gray's statements and grand jury testimony further indicated that she was forced by Mr. Williams to witness his multiple shooting of the white female in the head in the second floor bedroom, as well as the multiple shooting in the head and back of her white male companion by Williams and Rainge, outside along the creek. Gray, 87 Ill.App.3d at 145. Thereafter, she claimed to have witnessed Mr. Williams throw the murder weapon, or gun, into the creek, after which Ms. Gray indicated he threatened to kill she and her family if she told the police or anyone else. Gray, 87 Ill.App.3d at 145.

In that same 1978 trial, at the end of the State's case on October 16, 1978, the People moved for and were granted the following orders of *nolle prosequi* as to Paula Gray regarding the crimes committed against Ms. Schmal and Mr. Lionberg at a Clark Oil gas station ("gas station charges"): 2 counts of murder (Counts 5-6); 4 counts of kidnapping (Counts 9-12); and 4 counts of armed violence (Counts 13-16). (Petitioner's 2-1401 Mot. at 8; Plaintiff's [or Petitioner's Evidentiary Hr'g] Ex. 8-A, at 2-4; Petitioner's Add'l Post-Hearing Mem. Ex. A at 2-3). On February 22, 1979, Ms. Gray was sentenced to concurrent extended term sentences of 50 years for the murder convictions, 50 years for rape, and 10 years for perjury. Gray, 87 Ill.App.3d at 143; People ex rel. Gray, 721 F.2d at 587; see also Memorandum "Judicial Notice" para. 3.a., at 225 (judicial notice of the judicial half sheet for Ms. Gray's foregoing matter, or Case No. 78 C 4865, indicating that Petitioner was sentenced on "2-22-79" before Judge "McKay").

[Note that Ms. Gray's foregoing trial commenced on September 14th, 1978, continued into October, 1978, with October 20th, 1978 guilty verdicts. See Memorandum "Judicial Notice" para. 3.a., at 225 (judicial notice of the judicial half sheet for Case No. 78 C 4865, or "The People of the State of Illinois v. Paula Denise Gray," indicating that trial commenced on "9-14-78" before Judge "McKay," and continued until verdict on "10-20-78" before Judge "Samuels"). However, judgments on Petitioner's October 20th, 1978 convictions were not final until imposition of her sentence(s) on February 22nd, 1979. See People v. Partee, 125 Ill.2d 24, 32 (1988), ruling that "[t]he final judgment in a criminal case is the sentence"; see also People v. Medrano, 282 Ill.App.3d 887, 891 (1st Dist. 1996), holding that:

> [t]he final judgment in a criminal case is the imposition of sentence...[and that i]n the absence of a sentence, a judgment of conviction is not final...While imposition of a sentence completes the judgment and makes it final for purposes of an appeal, a judgment of conviction is rendered once the trial court adjudicates a defendant guilty.

Accord People v. Barbee, 315 Ill.App.3d 1049, 1052 (1st Dist. 2000).

Note also that the Illinois Supreme Court held in S.C. Vaughan Oil Co. v. Caldwell, 181 Ill.2d 489, 497 (1998), that:

> ...relief under section 2-1401 is available *only from final orders and judgments*. If an order [or judgment] is not final, section 2-1401 is inapplicable and cannot be the basis for vacating that order [or judgment]. (emphasis added).

Hence, notwithstanding Petitioner's incorrect reference to vacatur of Ms. Gray's *1978* conviction, which is not a final judgment (see Petitioner's Post-Hearing Mem. at 1), the Court will treat Ms. Gray's 2-1401 petition as seeking vacatur of her 1979 final judgments on her 1978 convictions, and hereinafter refer to Petitioner's foregoing trial or case as the "1978" or "September 1978" trial or case; its October 20th, 1978 verdicts and adjudication of guilt as the "1978 conviction"; and its February 22nd, 1979 final judgments as the "1979 judgment" or "final judgment of conviction"].

Co-defendants Dennis Williams and Willie Rainge were similarly found guilty of murder, rape, and aggravated kidnapping, as was Kenneth Adams of murder and rape, in the same trial as Paula Gray, by a separate jury. (Respondent's Joint Mot. at 3); People ex rel. Gray, 721 F.2d at 592; People v. Williams, 93 Ill.2d 309, 312-13 (1982); People v. Rainge, 112 Ill.App.3d 396, 398 (1st Dist. 1983). Dennis Williams was sentenced to death for the murder convictions, and concurrent extended terms of 60 years for the other offenses. Williams, 93 Ill.2d at 312. Willie Rainge was sentenced to concurrent terms of natural life imprisonment for each of the murders, 60 years for each of the aggravated kidnappings, and 60 years for rape. Kenneth Adams was sentenced to concurrent terms of 75 years for each of the murders and 60 years for rape. Rainge, 112 Ill.App.3d at 398. Verneal Jimerson was found guilty of the murder of Ms. Schmal and Mr. Lionberg at a later trial in 1985. Mr. Jimerson was sentenced to death for these convictions. Jimerson, 127 Ill.2d at 19.

On August 8, 1980, the First District Appellate Court of Illinois upheld Petitioner's convictions and sentences, including a finding that the trial court properly imposed an extended term sentence for perjury. Gray, 87 Ill.App.3d at 152-53. Petitioner's leave to appeal was denied by the Illinois Supreme Court on December 2, 1980. People ex rel. Gray, 721 F.2d at 594. Her writ of certiorari to the United States Supreme Court was also denied on March 30, 1981. People ex rel. Gray, 721 F.2d at 594.

On August 11, 1981, Ms. Gray filed a petition for writ of habeas corpus in the United States District Court, Northern District of Illinois, which was dismissed on October 18, 1982, for Petitioner's failure to exhaust state remedies under Illinois' "post-conviction relief procedure. Ill. Rev. Stat. ch. 38, §§ 122-1 and following." People ex rel. Gray, 721 F.2d at 597-98.

However, on November 16, 1983, after Petitioner had served over five years of her sentence, the United States Court of Appeals for the Seventh Circuit reversed the District Court's dismissal order and remanded the case to "that Court with directions to issue an order to respondent [Director, Department of Corrections, State of Illinois] to release Paula Gray unless the State

elects to retry her within such reasonable time as may be fixed by the District Court." People ex rel. Gray, 721 F.2d at 598, cert. denied, 446 U.S. 909 (1984); People v. Rainge, 211 Ill.App.3d 432, 438 (1st Dist. 1991). The Court of Appeals premised its ruling on violation of Ms. Gray's right to assistance of counsel that is conflict free, because her trial attorney, Archie Weston, simultaneously represented Petitioner and her co-defendants, Dennis Williams and William Rainge, at trial, and "an actual conflict of interest existed between [Petitioner] and...Dennis Williams." ("for simplicity [the Seventh Circuit limited their] discussion to Williams"). People ex rel. Gray, 721 F.2d at 592. The Court reasoned that Mr. Weston was not an independent, conflict-free, competent attorney for Ms. Gray in that he "could not, and did not adopt" the options of "continued cooperation with the State as a means of avoiding prosecution of her; or an immunity agreement with the State; or a plea bargain with the State; or in the event prosecution and trial were necessary, a strong defense of coercion by Williams; or, in the event of conviction, a strong plea for leniency based on minimum participation." People ex rel. Gray, 721 F.2d at 596.

The Seventh Circuit emphasized that because both Williams and Rainge were granted new trials by the Illinois Supreme Court ("in the interests of justice") and First District Appellate Court respectively, that it was "satisfied that Paula Gray, represented to her prejudice by the same Weston, should also be given a new trial." People ex rel. Gray, 721 F.2d at 597. Furthermore, notwithstanding the District Court's holding that Ms. Gray's petition "raised unexhausted claims," the Court of Appeals found that the grant of new trials for her "co-defendant[s']" by the "Illinois Courts," coupled with the circumstances of Petitioner's case, should not "require Paula to attempt to secure post-conviction relief in the Illinois courts." People ex rel. Gray, 721 F.2d at 596, 598.

On May 18, 1984, the Respondent filed an information against Petitioner (Case No. 84 C 5543) alleging the same charges for the same crimes as those set forth in Ms. Gray's 1978 indictment. (Respondent's Supplemental Post-Hearing Mem. at 1, 3-4; see also Petitioner's Add'l Post-Hearing Mem. at 2-4).

Prior to Petitioner's retrial on the subject charges pursuant to her successful writ, Ms. Gray recanted her claim of innocence and that of her four principals, and agreed to testify on the State's behalf against Verneal Jimerson. Jimerson, 127 Ill.2d at 21. In Mr. Jimerson's jury trial, which began in late October of 1985, Petitioner testified as "[t]he State's principal trial witness," inculpating Jimerson (as well as herself) in the subject crimes, which resulted in the conviction of Verneal Jimerson for the murder of two persons and a sentence of death. Jimerson, 127 Ill.2d at 19, 21, 22.

In 1987, Williams and Rainge were retried as co-defendants in the Circuit Court on charges of murder, rape, aggravated kidnapping, armed violence and armed robbery subsequent to their successful appeals to the Illinois Supreme Court and Illinois Appellate Court, respectively. (Respondent's Joint Mot. at 4); People v.Williams, 147 Ill.2d 173, 195 (1991); Rainge, 211 Ill.App.3d at 436. Gray testified for the State in this retrial. Williams 147 Ill.2d at 204-07 (1991); Rainge, 211 Ill.App.3d at 434, 439-41. Petitioner had been remanded to Cook County jail for three years before incriminating Williams and Rainge (as well as herself) in their 1987

trial. Rainge 211 Ill.App.3d at 438. Also, at the time she testified, Ms. Gray's new trial pursuant to the federal writ was still pending. Rainge, 211 Ill.App.3d at 438; Williams, 147 Ill.2d at 198. Williams and Rainge were again convicted of murder, rape and aggravated kidnapping, with Williams receiving the death penalty for murder and concurrent terms of 30 years for rape and aggravated kidnapping, while Rainge received concurrent terms of natural life imprisonment for murder and 30 years for each of the remaining convictions for rape and aggravating kidnapping. Their convictions and sentences (except a 15 year reduction of each of Rainge's 2 kidnapping charges) were upheld on appeal. (Memorandum "Judicial Notice" para. 5.a.-b., at 225 (judicial notice regarding the disposition of the 1987 retrial for Dennis Williams and Willie Rainge); Williams 147 Ill.2d at 195, 269; Rainge, 211 Ill.App.3d at 436, 456.

On April 23, 1987, Petitioner withdrew her plea of not guilty and pleaded guilty to the perjury charge of the 1984 information. The underlying facts stated by the People in support of the plea, which the trial court subsequently found to be sufficient, indicated that Ms. Gray's perjurious testimony either consisted of her "false statement," under oath, at a preliminary hearing on June 19th, 1978 in the matter of Kenneth Adams, Willie Rainge, Dennis Williams and Verneal Jimerson, that these four men "had not participated in the murder and rape of Carol Schmal or the murder of Larry Lionberg"; or Petitioner's "contradictory statements," under oath, in which her foregoing preliminary hearing testimony pertaining to the non-participation of the Ford Heights Four in the subject crimes, and her May 16th, 1978 grand jury testimony that the Ford Heights Four raped and murdered Carol Schmal, and murdered Larry Lionberg, constituted contradictory testimony material to the same matters in question. (Respondent's Joint Mot. at 3, Ex. A. at 12/158-13/159; Petitioner's Post-Hearing Mem. at 2; Respondent's Post-Hearing Brief at 4-6; Petitioner's Reply at 3-4). Pursuant to agreement with the People, Petitioner was sentenced to two years probation on the perjury plea, along with dismissal of "all other counts" upon grant of the People's motion for orders of *nolle prosequi*. (Respondent's Joint Mot. at 6, Ex. A. at 15/161).

On May 25, 1995, pursuant to Verneal Jimerson's petition for post-conviction relief, the Illinois Supreme Court, in People v. Jimerson, 166 Ill.2d 211 (1995), reversed his 1985 conviction and sentence and remanded for a new trial on the grounds that the State knowingly used the perjured testimony of Paula Gray to obtain Mr. Jimerson's conviction, in that:

(1) the People's response to discovery and written admissions in their earlier case against Dennis Williams and Willie Rainge stated that a deal existed with Gray to drop her murder charges in exchange for her testimony against Jimerson and other defendants [Williams and Rainge];

(2) the "ultimate disposition of Gray's [1984] case" resulted in the dropping of all charges, except perjury, "*following* her testimony against [Jimerson], Williams, and Rainge" (emphasis added), and;

(3) the Supreme Court's "commonsense view of this evidence lend[ed] substantial support to the conclusion that Gray's denials of a deal were false."

Jimerson, 166 Ill.2d at 223, 226-27 (1995).

The Court further stated that the People's conduct in arguing that the Supreme Court should disregard the State's "admissions of an agreement in its brief on [previous] direct appeal [of the Williams' and Rainge convictions]," because counsel for the People [in the subject Jimerson appeal] was not a party to this agreement, and thus not aware of "the alleged [deal between the State and Paula Gray]," while at least one of the People's attorney's previously appeared as their counsel in *both* the Williams' and Rainge, as well as Jimerson appeals, "render[ed the People's] purported disavowment [as to a deal with Gray] *particularly disingenuous*." (emphasis added). Jimerson, 166 Ill.2d at 228.

Additionally, commencing with Ms. Gray's preliminary hearing testimony on June 19, 1978 in the matter of Adams, Rainge, Williams and Jimerson, and continuing through her suppression of statement hearing in October, 1978, and trial and sentencing hearing testimony in October, 1978 and January, 1979, as well as sentencing hearing testimony on behalf of Mr. Williams and Mr. Rainge in their 1978 trial, Paula Gray claimed that she was not present during the commission of the crimes; that she knew nothing of the crimes; denied either her own involvement or knowledge of involvement of her four alleged principals; and indicated that her statements to the police, her mother and sister, the assistant State's Attorney, and the grand jury were police-coerced lies on threat that "they were all going to send her to jail." Gray, 87 Ill.App.3d at 145, 147; Jimerson, 127 Ill.2d at 58; Rainge, 211 Ill.App.3d at 438, 452 (1st Dist. 1991); Rainge 112 Ill.App.3d at 407 (though this opinion cites Ms. Gray's exculpatory sentencing hearing testimony on behalf of Williams and Rainge, it makes no reference to similar testimony on behalf of Kenneth Adams in a separate sentencing hearing); (Respondent's Joint Mot. Ex. D. at 37-38/73-74, 72/108). While incarcerated on her 1978 case, Petitioner persisted in her innocence and that of her four principals for over a seven year period, from June 19th, 1978 until "shortly before" Verneal Jimerson's trial in late October of 1985, when she decided to repeat her 1978 grand jury testimony inculpating she and the Ford Heights Four in the subject offenses at Mr. Jimerson's 1985 trial (and also at the 1987 retrial of Williams and Rainge). See Tr. of Evidentiary Hr'g of 5/4/99, at 35, 38, 46, 171; Memorandum "Evidentiary Hearing" James Reddy at 133-34, 134, 136; Memorandum "Evidentiary Hearing" George Michael Morrissey at 153; see also Gray, 87 Ill.App.3d at 145, 147; Jimerson, 127 Ill.2d at 58; Rainge, 211 Ill.App.3d at 438, 452 (1st Dist. 1991).

Ms. Gray did not recant her innocence until rendering incriminating trial testimony against Jimerson in 1985, and Williams and Rainge in 1987, after which she plead guilty to perjury in 1987. Williams, 147 Ill.2d at 173, 204-07; Rainge 211 Ill.App.3d at 432, 434, 438, 439-441; (Tr. of Evidentiary Hr'g of 5/4/99, at 37, 38-39, 42, 171; Memorandum "Evidentiary Hearing" James Reddy at 134,135; Memorandum "Evidentiary Hearing" George Michael Morrissey at 153; Respondent's Joint Mot. Ex. A. at 12-15/158-161). Respondent asserts that Ms. Gray's 1987 plea was in exchange for the People's recommendation of a 2 year sentence of probation (resulting in her immediate release from prison), as well as entry of orders of *nolle prosequi* dismissing all other charges against Petitioner, including murder. (Respondent's Joint Mot. at 6, Ex. A at 15/161; Tr. of Evidentiary Hr'g of 5/4/99, at 60, 167-68).

On May 29, 1996, pursuant to Dennis Williams' "Motion for Remand to the Trial Court or In the Alternative for Leave to Supplement His Post-Conviction Petition, and for Extension of Time," or "Motion for Remand to the Trial Court," filed on May 10th, 1996, the Illinois Supreme Court ordered that his motion be allowed in part by remanding the case to the Circuit Court of Cook County for additional consideration in light of the court's opinions in People v. Washington (April 18, 1996), No. 76651 [171 Ill.2d 475 (1996)], and People v. Burrows (April 18, 1996), no. 77950 [172 Ill.2d 169 (1996)]. (Respondent's [Evidentiary Hr'g] Ex. #10). Mr. Williams was on death row when filing the aforementioned motion, which was based on ineffective assistance of counsel, prosecutorial misconduct for failure to disclose Brady evidence (i.e. the Capelli notes or "street file" discussed below), newly discovered evidence of innocence based on potentially case-dispositive DNA test results, and the following three categories of "new evidence" which allegedly "prove[d] that Dennis Williams was in no way involved in the crimes for which he was convicted":

(1) affidavit evidence by, among others, Arthur "Red" Robinson and Ira Johnson, admitting to committing the Lionberg/Schmal crimes, while implicating two other persons (Dennis Johnson and Juan Rodriguez), and exonerating any involvement by either Paula Gray or the Ford Heights Four in these offenses. [Note also that in Juan Rodriguez's April 25, 1997 trial for the Lionberg/Schmal crimes (Case No. 96-19145), he testified on direct examination that from 1978 until 1996 he knew that Dennis Williams, Willie Rainge, Kenneth Adams, and Verneal Jimerson were innocent of the subject crimes, commencing with the day that he learned they were arrested. (Petitioner's Add'l Auth's and Mat'ls Ex. 12, at 274-75; see also Memorandum "Judicial Notice" para. 6.e., at. 226 (judicial notice that Juan Rodriguez was charged by Ind. No. 452, dated August 9, 1996, General No. 96 CR 19145(03), for the Lionberg/Schmal crimes))];

(2) the [Capelli] notes or "summary" document, or so-called "street file," which when coupled with the affidavits of Marvin Simpson and police officer George Nance, establish that on May 17, 1978, Mr. Simpson was interviewed by [Sgt. George] Nance, a former East Chicago Heights police officer, and [Inv.] Dave Capelli, of the Cook County Sheriff's Office, in which Mr. Simpson clearly implicates Dennis and Ira Johnson in the commission of the Lionberg/Schmal crimes [the notes or "street file" also name Arthur "Red" Robinson and Johnnie Rodriguez as "Suspects" (see Respondent's [Evidentiary Hr'g] Ex. #10, at 046274)], and;

(3) the results of DNA testing ordered on March 20, 1996 by Judge Sheila Murphy (Circuit Court of Cook County judge presiding over Verneal Jimerson's retrial) on a vaginal swab taken from Carol Schmal and preserved by the State. [The DNA test results subsequently established that neither Verneal Jimerson nor Dennis Williams, Willie Rainge or Kenneth Adams raped Ms. Schmal for which the People had charged and convicted them. (Tr. of [Jimerson's] Mot. To Dismiss Indictment of 6/24/96, at 5)].

(Respondent's [Evidentiary Hr'g] Ex. #10).

On June 24, 1996, subsequent to the Supreme Court's 1995 reversal of Verneal Jimerson's conviction and remand for a new trial, the trial court in his matter, pursuant to Jimerson's Motion to Dismiss, dismissed the indictment because:

(1) the People withheld evidence from the grand jury, including their failure to advise the grand jury, in response to a direct inquiry by a juror, that other than Paula Gray's testimony, there was no evidence placing Jimerson at the scene of the crime at the time of its commission;

(2) the People misled the grand jury by indicating that Paula Gray's testimony placing Jimerson at the scene of the crime was corroborated, when in fact it was not (the trial court noted that the Illinois Supreme Court previously held that Paula Gray's testimony was the only evidence linking the defendant to the crimes);

(3) the People failed to advise the grand jury of Paula Gray's "mental incapacity," as evidenced by the Supreme Court's opinion in Jimerson [166 Ill.2d at 218-219] indicating that petitioner was mentally retarded at age six and attended school for educably mentally handicapped (EMH), had a timid, insecure and dependent personality in 1974, was 17 at the time of the subject crimes and unable to read, write or tell time, and that 4 days after her incriminating grand jury testimony, was admitted to the hospital for a "schizophrenic reaction secondary to the questioning";

(4) Paula Gray's grand jury testimony as an accomplice was suspect as a matter of law, coupled with the fact that her first statement to the investigating police implicated Williams, Rainge and Adams, but not Jimerson;

(5) the totality of the circumstances before the trial court and grand jury constituted an "egregious denial of due process to [Jimerson]" by reason of Paula Gray's close to incompetent status, her having been held for one week, her youth (17), her contradictory testimonies, the fact that she had been convicted of murder, rape and perjury, which convictions were set aside, and;

(6) the fact that she testified untruthfully before a petit jury.

(Tr. of [Jimerson's] Mot. To Dismiss Indictment of 6/24/96, at 41, 42-43, 44-46)(Jimerson also introduced DNA evidence which established that neither Jimerson, nor Williams, Adams or Rainge, were responsible for the subject crimes. (Tr. of [Jimerson's] Mot. To Dismiss Indictment of 6/24/96, at 5)).

On July 2, 1996, the People consented to the post-conviction grant of a new trial for Williams, Rainge and Adams. The People then moved for and were granted dismissal of all indictments against these co-defendants. (Tr. of [Williams, Rainge and Adams'] Pet. For Post-Conviction Relief of 7/2/96, at 3-4).

On August 9, 1996, three other men [named in the above referenced Capelli notes or "street file"] were indicted by a Cook County Grand Jury (G.J. No. 452; General No. 96 CR-19145) for the Lionberg/Schmal murders [the statute of limitations having expired as to the other offenses]:

Ira Johnson, Red Robinson and Juan Rodriguez, the fourth person allegedly involved being Dennis Johnson, who had died several years earlier. (Petitioner's 2-1401 Mot. at 14; Memorandum "Judicial Notice" para. 6.e., at 226 (judicial notice that Ira Johnson (01), Arthur Robinson (02), and Juan Rodriquez (03) were charged by Ind. No. 452, dated August 9, 1996, General No. 96 CR 19145, for the Lionberg/Schmal crimes)).

On November 18, 1996, the Governor of the State of Illinois granted pardons based on innocence of the Lionberg/Schmal crimes, along with orders permitting expungement, to Dennis Williams and Verneal Jimerson. On April 10, 1997, the Governor again granted pardons based on innocence of the subject offenses, as well as orders permitting expungement, to Kenneth Adams and Willie Rainge. (Petitioner's Add'l Auth's and Mat'ls Ex. 18)

On April 28th, 1997, following DNA testing, Juan Rodriguez was convicted of the murders of Carol Schmal and Larry Lionberg. (Petitioner's 2-1401 Mot. at 14; Memorandum "Judicial Notice" para. 6.h., at 227 (judicial notice that Juan Rodriguez was convicted of the subject crimes on April 28th, 1997)). Ira Johnson and Arthur Robinson pleaded guilty to these murders on June 16th, 1997 and June 23rd, 1997 respectively. (Petitioner's 2-1401 Mot. at 14; Memorandum "Judicial Notice" para. 6.g., i., at 226-27, 227 (judicial notice that Ira Johnson and Arthur Robinson were convicted of the subject offenses on June 16th, 1997 and June 23rd, 1997)).

On or about July 1, 1997, Petitioner instituted a civil action against Cook County and other parties emanating from the Lionberg/Schmal crimes, in federal district court, which was later dismissed and re-filed in the Circuit Court of Cook County on April 30, 1998, where it is still pending. (Petitioner's Second Add'l Authorities Ex. B para. 5; Memorandum "Judicial Notice" para. 7.a., at 227 (judicial notice of matters of foregoing statement)). Pursuant to this civil action, the People disclosed to Ms. Gray twelve (12) items of what Petitioner alleges constitute "outcome-determinative" exculpatory documentary and testimonial evidence concealed from Petitioner from 1978 until after July 1, 1997, including during Ms. Gray's 1978 trial and 1987 plea of guilty to perjury. (Petitioner's 2-1401 Mot., paras. 37., 40.a.,c., i., k., l., n.; Petitioner's Second Add'l Auth's Ex. B para. 5.; Petitioner's Post-Hearing Mem. at 4-7 & n.1). Petitioner additionally contends that had this evidence "been available to the 1978 jury, or had it not been concealed by the police, the case would have resulted in acquittal of all charges." (Petitioner's 2-1401 Mot. at 14-15). Ms. Gray also alleges that this evidence establishes her innocence of all charges. (Petitioner's 2-1401 Mot. at 15). Finally, Petitioner argues that but for the People's concealment of the foregoing exculpatory evidence, "she would have insisted on a trial" and "there would have been no conviction for perjury" in 1987. (Petitioner's Post-Hearing Mem. at 6-7).

Accordingly, on March 2, 1999, Ms. Gray filed the herein 2-1401 petition for post-judgment relief, on the grounds of fraudulent concealment of "outcome-determinative" exculpatory evidence by the People, and newly discovered evidence of Petitioner's innocence. (Petitioner's 2-1401 Mot. at 1, 14-15; Petitioner's Post-Hearing Mem. at 4-7).

Issues/Court's Determination of Issues

The issues presented in this matter by Ms. Gray's petition, the People's Joint Motion to Vacate, Strike and Respond, supporting memoranda of law, exhibits, affidavits, an evidentiary hearing, and written and oral argument, as well as the Court's determination of same, are as follows:

3. Whether Ms. Gray's 2-1401 petition is the proper legal remedy for the relief requested herein:

a. Yes - for vacatur of Petitioner's 1979 judgment on the grounds that it was rendered void by the Seventh Circuit's 1983 grant of Petitioner's writ of habeas corpus, and therefore the Court will construe Petitioner's 2-1401 motion as a collateral attack on a void judgment. The Court additionally vacates Petitioner's 1979 judgment for murder (Counts 1-4, 7) and rape (Count 8) on the *2-1401* grounds of equity because this judgment is unfair, unjust, or unconscionable, in that Ms. Gray's newly discovered evidence of the innocence of her four principals (or the Ford Heights Four) render her accessorial guilt a nullity as a matter of law, and hence her 1979 murder and rape convictions inequitable. (See para. 1.j. below for Court's newly discovered evidence determination; see also "Issues/Court's Determination of Issues" paras. 3. and 4., at 16-20, for Court's due diligence determination, and para. 4.b., at 19-20, for Petitioner's meritorious defenses to all charges of the 1984 information, including the perjury count);

b. No - for vacatur of Petitioner's 1978 orders of *nolle prosequi* regarding the gas station charges (Counts 5-6 and 9-16 of the 1978 indictment) because *nolle prosse* orders are non-final and non-appealable interlocutory orders, but the Court will construe Ms. Gray's 2-1401 petition as a motion to vacate non-final, non-appealable interlocutory orders. (See Memorandum "Issues/Court's Determination of Issues" para. 7., at 20-21);

c. No - for dismissal of the still pending charges of the 1978 indictment against Petitioner, as 2-1401 relief can only vacate a final judgment or order. (See, however, Memorandum "Issues/Court's Determination of Issues" para. 9., at 21-22);

d. No - for vacatur of Petitioner's 1987 perjury judgment and plea on the grounds of insufficiency of the 1984 perjury information by reason of failure to give Petitioner adequate constitutional and statutory notice of the charge against her. Because the 1984 perjury information failed to charge an offense (i.e. to allege the specific perjurious statement), it is voidable (and not void) on the foregoing grounds, and therefore not subject to collateral or 2-1401 attack;

e. No - for vacatur of Petitioner's 1987 perjury judgment and plea on voidness grounds by reason of entry of a plea and probationary sentence after completion of a 1979 sentence of imprisonment for the same offense, which (1987) sentence is in excess of what the perjury statute permits. This is because while the probation sentence is void on the foregoing grounds and open to collateral attack, this voidness of sentence does not render the underlying perjury plea and judgment void, and thus subject to post-judgment relief;

f. No - for vacatur of Petitioner's 1987 perjury judgment and plea on voidness grounds by reason of Ms. Gray's 1979 illegal extended term sentence for perjury. This is based on the

same grounds set forth in para.1.e. above. Also, the illegality of Petitioner's extended term sentence for perjury *was* raised by Ms. Gray and denied on appeal to the First District Appellate Court, People v. Gray, 87 Ill.App.3d 142, 152-53 (1st Dist. 1980), thereby barring its adjudication in this matter on *res judicata* grounds as well;

g. No - for vacatur of Petitioner's 1987 perjury judgment and plea on the grounds that the State did not conduct a preliminary hearing pursuant to the 1984 information, because this issue *could* have been raised on appeal of Ms. Gray's 1987 judgment and is therefore inappropriate for 2-1401 review. Also, Petitioner's 1987 plea waived all nonjurisdictional errors, and failure to conduct a preliminary hearing is a nonjurisdictional error;

h. Yes - for vacatur of Petitioner's 1987 perjury judgment and plea on voidness grounds, which the Court will recognize as a collateral attack on a void judgment, because ten (10) items of Petitioner's newly discovered evidence pursuant to Brady v. Maryland, 373 U.S. 83 (1963), and Rule 412(c) [Illinois Supreme Court Rule 412(c) codified the State's duty to disclose Brady evidence eff. Oct. 1, 1971], coupled with Petitioner's showing that Respondent suppressed this newly discovered evidence during Ms. Gray's 1987 plea (and 1978 trial) up to January 28th, 1999, establish that Respondent wrongfully induced or coerced Petitioner's plea by promise and threat that deprived the plea of its voluntary character. The People's wrongful inducement or coercion consisted of deluding or misleading Paula Gray as to what the facts and issues in the Lionberg/Schmal case really are, in that they suppressed (or withheld) before and during her plea ten (10) items of Brady and 412(c) evidence, contrary to their statutory and constitutional duty to disclose materially favorable evidence to Petitioner to assure an informed plea, as well as the truth-seeking function of the trial process and the rudimentary demands of justice, while promising Ms. Gray, outside the presence of counsel, her immediate release from prison in exchange for her incriminatory testimony against the Ford Heights Four and guilty plea to perjury. The Respondent also threatened Petitioner, outside the presence of counsel, with lifelong imprisonment if she did not cooperate with them and incriminate her alleged principals in the subject crimes, as well as plead guilty to perjury. This wrongful inducement or coercion by the People was unknowingly corroborated by Petitioner's 1983 to 1987 trial counsel because of the government's foregoing suppression of the ten (10) items of Brady and 412(c) evidence;

i. Yes - for vacatur of Petitioner's 1987 perjury judgment and plea on voidness grounds, which the Court will recognize as a collateral attack on a void judgment, because ten (10) items of Petitioner's newly discovered Brady and 412(c) evidence, coupled with Petitioner's showing that Respondent suppressed this newly discovered evidence during her 1987 and 1979 judgments, establish that Ms. Gray's plea was not an informed decision due to Respondent's suppression of the foregoing evidence, and was therefore involuntary;

j. Yes - for vacatur of Petitioner's 1987 perjury judgment and plea on the grounds that ten (10) items of Petitioner's newly discovered Brady and 412(c) evidence, coupled with newly discovered evidence of actual innocence, is so conclusive that it would probably change a 1987 judgment against Ms. Gray on perjury and all other charges of the 1984 information if a new trial is granted; is of such character that it could not have been discovered prior to a prospective 1987 trial; would be material to the issues of a prospective 1987 trial; and would be non-cumulative to

the evidence of a prospective 1987 trial. (See Memorandum "Issues/Court's Determination of Issues" paras. 3. and 4., at 16-20, for Court's "due diligence" determination; see also Memorandum "Issues/Court's Determination of Issues" para. 4.b., at 19-20, for Petitioner's meritorious defenses to all charges of the 1984 information, including the perjury count);

k. Yes - for vacatur of Petitioner's 1987 perjury judgment and plea on the grounds that ten (10) items of Petitioner's newly discovered Brady and 412(c) evidence suppressed by Respondent from 1978 until 1999, coupled with newly discovered evidence of actual innocence, establish by a preponderance of the evidence that Ms. Gray's June 19th, 1978 preliminary hearing testimony was based on the truthful, and not "false statement," under oath, that the Ford Heights Four did not commit the Lionberg/Schmal crimes, and her statement (or testimony) therefore did not constitute perjury (i.e. truth as a defense, or meritorious defense, to perjury). Alternatively, Petitioner's newly discovered evidence establishes that Ms. Gray has a "valid reason" for her "contradictory" May 16th, 1978 grand jury testimony inculpating the Ford Heights Four in the subject crimes based on her showing that investigating Cook County Sheriff's police coerced her to tell (or testify to) this police concocted falsehood. Had Judge Meekins been aware of Petitioner's foregoing new evidence at the time of her April 23rd, 1987 plea, he would not have accepted it, nor entered a judgment thereon. In fact, Judge Meekins would have been precluded from accepting Ms. Gray's perjury plea by Illinois Supreme Court Rule 402(c) which requires "a factual basis for the plea";

l. Yes - for vacatur of Petitioner's 1987 judgment and plea on the grounds that ten (10) items of Petitioner's newly discovered Brady and 412(c) evidence, which evidence was suppressed by the State during Petitioner's 1987 and 1979 judgments, establish by a preponderance of the evidence that Respondent induced Petitioner's plea by deluding and misleading Ms. Gray as to what the facts and issues really are in the Lionberg/Schmal case, as opposed to Petitioner demanding trial on the 1984 information with Respondent's full disclosure of the foregoing Brady and 412(c) evidence prior to her 1987 plea. Respondent effected its inducement by suppressing (or withholding) ten (10) items of Brady and 412(c) evidence prior to and during Ms. Gray's plea, in violation of its statutory and constitutional duty to disclose materially favorable evidence to Petitioner to assure an informed plea, and contrary to the truth-seeking function of the trial process and the rudimentary demands of justice, while promising Petitioner, outside the presence of her attorney, her immediate release from prison in exchange for her incriminatory testimony against the Ford Heights Four and plea of guilty to perjury. This inducement by the People was unknowingly corroborated by Petitioner's 1983 to 1987 trial counsel because of the government's foregoing suppression of the ten (10) items of Brady and 412(c) evidence;

m. Yes - for vacatur of Petitioner's 1987 perjury judgment and plea on the grounds that ten (10) items of Petitioner's newly discovered Brady and 412(c) evidence, coupled with newly discovered evidence of actual innocence, establish by a preponderance of the evidence that her judgment and plea constitute an unfair, unjust or unconscionable result, in violation of the equitable principles invoked by a 2-1401 petition, because her foregoing new proofs show that:

- the plea was based on Petitioner's truthful, and not "false statement," under oath, at the June 19th, 1978 preliminary hearing as to the innocence of the Ford Heights Four of the subject crimes. Alternatively, Ms. Gray's "contradictory" May 16th, 1978 grand jury testimony inculpating the Ford Heights Four was a CCSP (or Cook County Sheriff's police) fabricated lie which they coerced her to tell to the May 16th, 1978 grand jury, sheriff's police and assistant State's Attorneys, coupled with her showing of the truthfulness of her June 19th preliminary hearing testimony;

- the plea was induced by Respondent's suppression of ten (10) items of Brady and 412(c) evidence newly discovered by Petitioner, while offering Ms. Gray her immediate release from prison in exchange for her incriminating testimony against the Ford Heights Four and her perjury plea. The People's inducement was unknowingly corroborated by Ms. Gray's 1983 to 1987 trial counsel because of the government's suppression of the foregoing Brady/412(c) evidence;

- the plea was not voluntary by reason of Respondent's wrongful inducement or coercion as set forth in para.1.h. above, which wrongful inducement or coercion was unknowingly corroborated by Petitioner's 1983 to 1987 trial counsel due to the government's suppression of ten Brady/412(c) evidentiary items, and because it was not informed due to Respondent's misconduct as set forth in para.1.i. above, and;

- Petitioner is actually innocent of the Lionberg/Schmal crimes, which substantial showing Respondent has substantively neither contested, nor denied.

n. No - for vacatur of Petitioner's 1987 orders of *nolle prosequi* because *nolle prosse* orders are non-final and non-appealable interlocutory orders, but the Court will construe Ms. Gray's 2-1401 petition as a motion to vacate non-final, non-appealable interlocutory orders. (See Memorandum "Issues/Court's Determination of Issues" para. 7., at 20-21), and;

o. No - for dismissal of Petitioner's perjury charge of the 1984 information because 2-1401 relief is limited to vacatur of final judgments or orders. However, pursuant to the Court's inherent power to prevent enforcement of a charge which would effect a deprivation of due process, or result in a miscarriage of justice, it will *sua sponte* dismiss the perjury charge of the 1984 information, *with prejudice*, on the grounds of "egregious misconduct" by the CCSP and the prosecution in both the 1978 and 1987 matters which has shocked the conscience of the Court. This conduct includes flagrant disregard by the CCSP and prosecution of Petitioner's constitutional rights, and actions that have impugned the integrity of the court and trial process. (See Memorandum "Issues/Court's Determination of Issues" para. 11., at 23). As previously indicated, Petitioner was also subjected to conduct by her 1983 to 1987 trial counsel which unknowingly corroborated the prosecution's wrongful inducement or coercion of her 1987 plea, including the People having misled Ms. Gray (and her counsel) at the time of her plea, by withholding ten (10) items of Brady and 412(c) evidence from Petitioner when she pleaded guilty in 1987 (and dating back to her 1978/1979 trial and judgement), which deprived the plea of its voluntary character, and thus violated Ms. Gray's due process rights. The government's conduct is particularly egregious and unconscionable in light of Petitioner's substantial showing of actual innocence, which the Respondent has substantively neither contested, nor denied.

2. Whether Paula Gray's post-judgment petition is timely, which in turn requires a

determination of whether the 2-year post-judgment statute of limitations period was tolled by:

a. Petitioner's alleged "legal disability":

No - though slightly mentally retarded, Petitioner is capable of making and communicating decisions regarding her person and financial affairs, and is therefore not legally disabled;

b. the State's alleged fraudulent concealment of Brady [and Rule 412(c)] evidence from Petitioner:

Yes - with respect to the first ten (10) of the twelve (12) items alleged by Petitioner to be evidence pursuant to Brady v. Maryland [and Illinois Supreme Court Rule 412(c)], because violation of the discovery rules constitutes fraudulent concealment for purposes of tolling the 2-1401 two year limitations period. These evidentiary items are favorable to Petitioner, material to Ms. Gray's guilt (or innocence) in a prospective 1987 trial, were in the possession or control of the State at the time of Petitioner's 1978 trial and 1987 plea, and were suppressed by the State from prior to or at the time of Ms. Gray's 1978 trial until January 28th, 1999, including, of course, 1987. As such, Respondent's suppression of these ten items of evidence from Petitioner both at the time of her 1978 trial (and resulting judgment), as well as her 1987 perjury plea (and judgment thereon), constitute a Brady violation, or abrogation of Ms. Gray's due process rights to a fair trial and plea proceeding, and therefore a violation of the Illinois discovery rules, or more specifically, Rule 412(c). These ten items also constitute one of the grounds for relief alleged by Ms. Gray's petition, namely, newly discovered Brady evidence fraudulently concealed (or suppressed) by Respondent from Petitioner. As such, the 2-1401 two year limitations period regarding this evidence is tolled until January 28th, 1999, by which time Respondent had disclosed these ten items to Petitioner in response to a different discovery request, for a separate action instituted by Ms. Gray against Cook County and other party defendants accruing from the same matters as this petition. Paula Gray's petition having been filed on March 2, 1999, or within two (2) years of January 28th, 1999, it is therefore timely on the grounds of these ten (10) items of fraudulently concealed (or suppressed) Brady and Rule 412(c) evidence;

c. and the State's alleged fraudulent concealment of evidence of Petitioner's actual innocence:

Yes - because the government engaged in affirmative acts and representations designed to prevent the fruition or realization of Petitioner's newly discovered evidence in support of her "free-standing" claim of "actual innocence," commencing with Ms. Gray's May 12th, 1978 initial contact with the sheriff's police, until June 23rd, 1997 (or the date of conviction of Arthur Robinson, the last of the real perpetrators adjudged guilty of the Lionberg/Schmal crimes), which is the earliest date that all three of Petitioner's proofs supporting her actual innocence grounds became existent (or discoverable by due diligence). (See Memorandum "Issues/Court's

Determination of Issues" para. 4.a., at 18-19 for Petitioner's evidence of actual innocence). The aforementioned State conduct included, among other action(s) and inaction(s):

- suppression, loss or destruction of ten items of Brady and 412(c) evidence from prior to or at the time of Ms. Gray's 1978 trial until January 28th, 1999 (and during her 1987 perjury plea), particularly the Capelli notes, to prevent Petitioner or her counsel from investigating the commission of the Lionberg/Schmal crimes by others;
- failure to investigate in May of 1978 the Capelli notes reliably pointing to other perpetrators of the subject offenses, nor even to investigate these notes on or about January 15th, 1987 when the prosecution was in knowing possession of this evidence, and the information of these notes was corroborated by three independent sources known to the prosecution, and;
- failure to follow-up on the State's own scientific proofs, prior to Petitioner's 1978 trial, tending to show the innocence of the Ford Heights Four, and in fact presenting perjured and misleading scientific testimony at the 1978 trial, and not disclosing this evidence or conduct at the time of Ms. Gray's 1978 trial or 1987 plea.

An additional basis on which Petitioner's actual innocence claim is not time barred is that the Illinois Supreme Court has suggested a review on the merits of an "otherwise procedurally barred" collateral proceeding, such as by the applicable statute of limitations, where the petitioner has established, as in this matter, a free-standing claim of actual innocence. Respondent's failure to substantively either contest, or deny Ms. Gray's substantial proofs of actual innocence lends virtually conclusive weight to her showing.

The foregoing conduct by the State effectually constituted their fraudulent concealment of the newly discovered evidence of Petitioner's actual innocence until June 23rd, 1997. As Ms. Gray's petition was filed on March 2nd, 1999, or within two years of June 23rd, 1997, it is timely as to its actual innocence grounds.

3. Whether Petitioner's newly discovered Brady and Rule 412(c) evidence, as well as that of actual innocence, is of such character that Petitioner or her counsel could have discovered it prior to Ms. Gray's 1987 perjury plea by exercising due diligence?

No - as to the ten (10) items of Brady and 412(c) evidence, because where failure to discover this information was due to its suppression by Respondent in violation of its duty pursuant to Supreme Court Rule and case law, such failure is the Respondent's fault, and not the Petitioner's negligence. Nor was Petitioner or her counsel put on notice that the State was suppressing, losing or destroying these ten (10) Brady/412(c) proofs, and even if they had been put on such notice, a determination that due diligence required the defendant to depart from her chosen pretrial strategy to guard against such government misconduct, would distort the concept of equity. Also, Petitioner exercised ordinary diligence when her 1978 trial counsel made a discovery request on the People that the State and police provide him with all evidence tending to negate the guilt of Paula Gray.

Furthermore, Respondent's January, 1987 pretrial disclosure of the Capelli notes to Dennis Williams did not constitute disclosure to Ms. Gray, nor did such disclosure render the Capelli notes a public document. Additionally, the Court will not charge Petitioner with a failure of due diligence because the Capelli notes were later included in a public, or court document filed by Dennis Williams on or about May 10th, 1996. (See discussion regarding Dennis Williams' Motion for Remand to the Trial Court in Memorandum at 7-8; see also Respondent's [Evidentiary Hr'g] Ex. #10, at 046274-046276). Petitioner's due diligence, or alleged failure of due diligence, in discovering these notes by reason of their status as a public document is non-availing, because such public knowledge would at best constitute fractional disclosure by Respondent of the ten (10) items of Brady and 412(c) evidence, which violates the People's obligation under Illinois discovery rules of full and truthful disclosure. [Note that the other nine (9) items of Brady and Rule 412(c) evidence alleged by Ms. Gray's petition were still being withheld or suppressed from Petitioner by Respondent on the May 10th, 1996 date Dennis Williams' court documents were filed, and the State did not disclose all ten of the evidentiary items to Ms. Gray until almost three years later by January 28th, 1999]. Nor again does equity hold that due diligence requires Petitioner, even if put on public notice of the Capelli notes, to alter her pretrial strategy to guard against the kind of chicanery engaged in by the People, or the knowing suppression of the Capelli notes from Ms. Gray while disclosing them to another party. Finally, assuming *arguendo*, that Petitioner was not diligent in discovering the Capelli notes from May 10th, 1996, when they were included in Dennis Williams' public or court documents, until May 1st, 1997, when Mr. Thomas D. Decker became her counsel in this matter (see Memorandum "Findings of Fact" para. 6.e., at 214-15), the Court will relax the due diligence requirement on the following equitable grounds:

- Petitioner had no legal counsel for the herein matter on May 10th, 1996, until May 1st, 1997;
- Ms. Gray was slightly mentally retarded at that time (and still is), as well as inexperienced in life and court proceedings, and thus wholly unable to understand the legal complexities of this post-judgment matter, including any due diligence obligation, and;
- the equities cited by Memorandum "Issues/Court's Determination of Issues" para. 4.b., at 19-20 (included with the equities of para. 4.b. are Petitioner's meritorious defenses, because notwithstanding a relaxation of due diligence on equitable grounds, Petitioner must still prove a meritorious defense).

[Note also that the evidence establishes that the May 1st, 1997 date that Mr. Decker became Petitioner's post-judgment counsel was *before* John R. Berg began representing Paula Gray in this case. In fact, Mr. Berg did not become an attorney of record for Petitioner, including the earlier civil cases emanating from the Lionberg/Schmal matter, until the March 2nd, 1999 filing date of Ms. Gray's petition as co-counsel with Thomas Decker. Therefore, the Court will rely on the oral (of record) and affidavit representations of Mr. Decker on behalf of both post-judgment counsel in determining questions such as due diligence and the receipt or non-receipt from the government of the ten (10) items of alleged newly discovered Brady (and 412(c)) evidence].

The Court will again relax the due diligence requirement as to any failure of same by Petitioner's counsel (Mr. Decker) in discovering the Capelli notes from May 1st, 1997 until Respondent

effected "full and truthful" disclosure to Petitioner of the ten Brady/412(c) items on January 28th, 1999, for the same equitable reasons cited by Memorandum "Issues/Court's Determination of Issues" para. 4.b., at 19-20.

No - as to the Petitioner's evidence of actual innocence, because this information did not become completely existent until June 23rd, 1997, or over nine (9) years after Petitioner's April 23rd, 1987 plea, by reason of the government's misconduct as set forth in Memorandum "Issues/Court's Determination of Issues" para. 2.c., at 15-16.

4. Whether Petitioner's attorneys exercised "due diligence" in filing Paula Gray's
2-1401 petition, and if not, can "due diligence" be relaxed [Note that notwithstanding the Court's determination of this issue, that the post-judgment newly discovered evidence criteria applicable to this matter do not appear to require due diligence in filing]:

a.. Yes - Ms. Gray's counsel exercised due diligence in filing her petition on the grounds of fraudulently concealed Brady and 412(c) evidence. As previously indicated, Ms. Gray's counsel filed her 2-1401 petition on March 2nd, 1999. However, the last date Respondent disclosed the Brady and 412(c) evidence upon which Ms. Gray's petition is based was January 28th, 1999, *after* Petitioner instituted a civil lawsuit against Cook County and other parties emanating from the Lionberg/Schmal case. As such, Ms. Gray's attorneys' March 2nd, 1999 filing of her post-judgment action on the grounds of the ten (10) items of Brady and 412(c) evidence fraudulently concealed (or suppressed) from Petitioner, was thirty-three (33) days after January 28th, 1999, or the date of receipt of the last of these ten items. This delay was neither excessive nor unjustified in view of the legal and factual complexity of this case, numerous judicial proceedings and corresponding documents generated over a period of more than 21 years, and the necessary investigation, legal research and data collection required by this 2-1401 matter, so that there was no failure of due diligence in filing on these grounds.

No - Petitioner's counsel, however, were not diligent in filing her action on the grounds of actual innocence. Ms. Gray has asserted three elements of proof in support of her claim of actual innocence: (1) the vacatur of the judgments and dismissal of the charges for the Lionberg/Schmal crimes against her four principals, the Ford Heights Four, as of July 2nd, 1996, as well as gubernatorial pardon by reason of innocence of these four men, as of April 10th, 1997; (2) the arrest and conviction of three other perpetrators for the subject crimes as of June 23rd, 1997, and; (3) a March 5th, 1999 affidavit from Ira Johnson, one of three persons convicted for the Lionberg/Schmal offenses, stating that Paula Gray did not participate in nor was present at these crimes. Thus, the earliest date that all three of the foregoing proofs supporting Ms. Gray's actual innocence grounds became existent (or discoverable by due diligence), was June 23rd, 1997, or the conviction date for Arthur Robinson, the last of the three (3) real perpetrators of the Lionberg/Schmal crimes convicted for having committed these offenses (the fourth having previously died). [Note that the Court is computing due diligence by Ms. Gray's counsel in filing the herein petition based on actual innocence, from the June 23rd, 1997 date of Arthur Robinson's conviction, instead of the March 5th, 1999 date of Ira Johnson's affidavit filed by Petitioner in this matter, because Ira Johnson had previously submitted two similar

affidavits, one being dated "4-12-96" and filed in support of Dennis Williams' Motion for Remand to the Trial Court, and the other dated May 30th, 1996 and introduced by Respondent in this proceeding. (See Memorandum "Issues/Court's Determination of Issues" para. 3., at 16-18; Memorandum at 7-8; Petitioner's Add'l Auth's and Mat'ls Ex. 11; Respondent's [Evidentiary Hr'g] Ex. #'s 6, 10). The "4-12-96" and May 30th, 1996 dates of these affidavits were prior to Ira Johnson's August 9th, 1996 indictment for the subject crimes, as well as his June 16th, 1997 plea to these charges. (See Memorandum "Judicial Notice" para. 6.e.-g., at 226-27 (judicial notice of August 9th, 1996 indictment of Ira Johnson and his June 16th, 1997 plea to the Lionberg/Schmal murders)). As such, he was apparently ready, willing and able, without assertion of his Fifth Amendment or other constitutional or statutory rights in bar of his self-incriminatory sworn statement, to file his affidavit on behalf of Ms. Gray *before* March 5th, 1999, or as early as May 1st, 1997, when Mr. Decker became Petitioner's counsel for purposes of this 2-1401 petition, with the exercise of due diligence by Petitioner or her counsel to discover this information. Moreover, even assuming that Ira Johnson were to have declined executing an affidavit for Petitioner on the grounds that it would have violated his Fifth Amendment rights during the pendency of the Lionberg/Schmal charges against him from on or about August 9th, 1996 until the June 16th, 1997 date of his plea (see Memorandum "Judicial Notice" para. 6.g., at 226-27 (judicial notice that Lionberg/Schmal case was pending against Ira Johnson from August 9th, 1996 until June 16th, 1997)), his right against self-incrimination was certainly no bar to offering his sworn statement on behalf of Paula Gray *after* his June 16th, 1997 conviction for the subject offenses. It should additionally be noted that Arthur Robinson also filed an affidavit dated May 6th, 1996 in support of Dennis Williams' Motion for Remand to the Trial Court that attested to Paula Gray's non-involvement in the subject offenses. (Respondent's [Evidentiary Hr'g] Ex. #10, at 046248-046251)]. Therefore, Ms. Gray's attorney(s) delayed filing her petition on the grounds of actual innocence for a little more than 20 months, or from June 23rd, 1997 to March 2nd, 1999, and were not diligent in filing on these grounds;

b. Yes - due diligence can be relaxed (or not required) where failure to vacate a judgment renders an unjust, unfair or unconscionable result. Failure to vacate the 1987 perjury judgment would render an unjust, unfair or unconscionable result because:

- the underlying perjury plea has been shown to be based on a truthful, and not "false statement," under oath, at the June 19th, 1978 preliminary hearing as to the innocence of the Ford Heights Four regarding the subject offenses, or alternatively, that the CCSP coerced Petitioner to tell (and testify to) a police fabricated lie, inculpating her alleged principals, to the May 16th, 1978 grand jury, sheriff's police and ASA's, coupled with her showing of the truthfulness of her June 19th, 1978 preliminary hearing testimony;

- the plea was involuntary because it was the result of Respondent's wrongful inducement or coercion as set forth in Memorandum "Issues/Court's Determination of Issues" para. 1.h., at 12, which wrongful inducement or coercion was unknowingly corroborated by Petitioner's 1983 to 1987 trial counsel due to the government's suppression of ten Brady/412(c) evidentiary items, and because it was not informed by reason of Respondent's misconduct as set forth in Memorandum "Issues/Court's Determination of Issues" para. 1.i., at 12;

- numerous inequities, or egregious misconduct, have been shown to have been perpetrated on Petitioner by Respondent and the CCSP as set forth by Memorandum "Analysis" para. 7.(4)-(6), (10)-(11), (13), at 341-43, 345-47, 347-48, and;

- Ms. Gray has made a substantial showing of actual innocence of the Lionberg/Schmal crimes, including perjury, which Respondent has substantively neither contested, nor denied.

Petitioner has also alleged and proved a number of meritorious defenses to perjury and/or all counts of the 1984 information which include:

- newly discovered evidence tending to show her innocence (and that of the Ford Heights Four, her alleged principals), as well as the guilt of other perpetrators, of the subject crimes (which evidence was suppressed, lost or destroyed by the State at the time of Petitioner's 1979 and 1987 judgments),

- newly discovered evidence of her "actual innocence," as well as the guilt of other perpetrators, of the subject crimes;

- newly discovered evidence regarding her 1987 perjury plea and judgment that her statement, under oath, at the June 19th, 1978 preliminary hearing as to the innocence of the Ford Heights Four was truthful, and not "false," or alternatively, substantial new evidence that the CCSP coerced Ms. Gray to tell (and testify to) a police fabricated lie, inculpating her four alleged principals in the subject offenses, to various sheriff's police, assistant State's Attorneys, and the May 16th, 1978 grand jury, coupled with her showing that her June 19th, 1978 preliminary hearing testimony was truthful, and;

- newly discovered evidence that the CCSP coerced Ms. Gray to tell their fabricated story inculpating Petitioner in the Lionberg/Schmal crimes to various sheriff's police, assistant State's Attorney's, and the May 16th, 1978 grand jury (recall that the People introduced the transcript of Petitioner's May 16th, 1978 grand jury testimony at her 1978 trial).

5. Whether the Court should vacate Petitioner's 1979 judgment for murder, rape and perjury, pursuant to Ms. Gray's 2-1401 petition:

Yes - see Memorandum "Issues/Court's Determination of Issues" para. 1.a., at 11, regarding vacatur of the 1979 judgment.

6. Whether the Court should vacate Ms. Gray's 1987 perjury judgment and plea pursuant to her 2-1401 petition:

Yes - on the basis of each of the grounds discussed by Memorandum "Issues/Court's Determination of Issues" para. 1.h.- m., at 12-14.

7. Whether the Court should vacate the 1978 and 1987 orders of *nolle prosequi* pursuant to Paula Gray's 2-1401 petition:

No - post-judgment relief pursuant to 735 ILCS 5/2-1401 is applicable only to final orders, not interlocutory orders. An order of *nolle prosequi* is a non-final, non-appealable interlocutory order. However, the Court has inherent power to vacate, at any time before entry of final judgment or order, an interlocutory order entered by another judge which it considers erroneous, and a duty to vacate such order upon a showing, as in this matter, of changed circumstances that render the order unjust. The Court also has inherent power to correct its own records. The 1978 orders of *nolle prosequi* were entered on the gas station charges (Counts 5-6 and 9-16 of the 1978 indictment) at the end of the People's case after the jury was impaneled and sworn. As such, jeopardy had attached to these charges with the same effect as an acquittal. Because the Court previously vacated the 1978 indictment, and the 1978 *nolle prosse* orders are in error and unjust by reason of changed circumstances (i.e. the underlying charges can no longer be legally prosecuted because barred on acquittal and double jeopardy grounds), the Court will, *sua sponte*, construe Petitioner's 2-1401 motion to vacate the 1978 *nolle prosequi* orders as a motion to vacate non-final, non-appealable interlocutory orders, and order the vacatur of these orders on the foregoing grounds.

The gas station charges of the 1984 information are identical in number and content to the gas station charges of the 1978 indictment. As such, the Court can utilize the same procedure, rationale and grounds as that of the foregoing paragraph which vacated the 1978 *nolle prosse* orders for the gas station charges, to *sua sponte* vacate, subsequent to its vacatur of the 1987 perjury judgment, the orders of *nolle prosequi* for the gas station charges of the 1984 information (Counts 5-6 and 9-16). The Court will additionally *sua sponte* construe Petitioner's 2-1401 motion to vacate the remaining 1987 *nolle prosse* orders for murder (Counts 1-4, 7) and rape (Count 8) as a motion to vacate non-final, non-appealable interlocutory orders and vacate them on the grounds that changed circumstances have rendered these orders unjust, namely, Petitioner's newly discovered evidence showing her actual innocence of these charges, coupled with failure by the Respondent to substantively contest or allege denial, as well as evidence tending to show Petitioner's (or the Ford Heights Four) innocence of the Lionberg/Schmal crimes, and the guilt of other perpetrators of these offenses, who were ultimately arrested and convicted of the subject crimes.

8. Whether pursuant to Ms. Gray's 2-1401 petition the Court should dismiss, upon vacating the 1978 orders of *nolle prosequi*, the reinstated gas station charges (Counts 5-6 and 9-16) of the 1978 indictment?

No - post-judgment relief is limited to vacatur of final judgments or orders, and is an improper legal vehicle for dismissal of charges. However, in view of Petitioner's acquittal of these charges as discussed in Memorandum "Issues/Court's Determination of Issues" para. 7., at 20-21, the Court will *sua sponte* dismiss, with prejudice, the reinstated gas station charges for which Petitioner has been legally acquitted on the grounds that failure to do so would violate her due process rights and result in a miscarriage of justice. [Note also that the State cannot properly reprosecute the 1978 gas station charges against Petitioner by reason of double jeopardy and improper termination of a prosecution after a jury has been impaneled and sworn].

9. Whether the Court should dismiss the charges of Petitioner's 1978 indictment

pursuant to Ms. Gray's 2-1401 petition:

No - because 2-1401 relief can only vacate a final judgment or order. However, Respondent elected to proceed against Petitioner under the 1984 information in lieu of the 1978 indictment, both of which contain identical charges for the same crimes. [Note though that the 1984 information, as a subsequent charging instrument, did not automatically quash the 1978 indictment]. In 1987, the Respondent was granted orders of *nolle prosequi* for the murder and rape counts of the 1984 information. These offenses must therefore be recharged before their future prosecution against Petitioner. Nonetheless, technically, these same murder and rape charges remain pending pursuant to the 1978 indictment, as Petitioner's 1983 federal writ rendered the 1979 judgment void, not its underlying 1978 indictment. As it would be fundamentally unfair to permit the People to reprosecute Petitioner on the murder and rape counts without being required to refile these charges, and because it would also defeat the purpose of an order of *nolle prosequi* (i.e. dismissal of the charge), the Court will *sua sponte* dismiss, with prejudice, the murder (Counts 1-4, 7) and rape (Count 8) charges of the 1978 indictment, because failure to do so would effect a miscarriage of justice and result in a deprivation of Ms. Gray's due process rights. [Note that Petitioner gave Respondent at least general notice that she was seeking dismissal of the 1978 murder and rape charges, with which the People had opportunity to respond or contest. Also, the Court's due process dismissal of these charges is *sua sponte* or pursuant to its own authority, and not Ms. Gray's 2-1401 petition. Additionally, Respondent has effectively concurred in the basis for the Court's dismissal of these counts by asserting that an order of *nolle prosequi* "reverts the matter to the same condition which existed before commencement of the prosecution" so that "no criminal charges remain pending against the defendant" and *"the State must file a new charging instrument to reinstate its prosecution."* (emphasis added)].

Regarding the perjury count (17) of the 1978 indictment, Petitioner pleaded guilty in 1987 to the same charge, based upon the same facts, under the 1984 information. As such, the reprosecution of Petitioner for an offense she has previously pleaded guilty to would constitute a miscarriage of justice and violation of Ms. Gray's due process rights. [Note also that the State is barred from properly reprosecuting the 1978 perjury charge against Petitioner after her 1987 plea, on the grounds of double jeopardy and a former prosecution resulting in a conviction for the same offense, on the same facts]. Therefore, the Court will additionally *sua sponte* dismiss, with prejudice, the perjury charge (Count 17) of the 1978 indictment, because Ms. Gray would suffer a miscarriage of justice and violation of her due process rights were the Court to fail to so act. [Again, Petitioner gave Respondent general notice that she was seeking dismissal of the 1978 perjury count, as to which the State had opportunity to respond or contest. The Court's due process dismissal of this charge is also pursuant to its own authority and not Ms. Gray's post-judgment petition. Furthermore, any failure of notice to the State that Ms. Gray was seeking dismissal of the 1978 perjury charge was waived by the People by reason of their conduct in Petitioner's 1984 case nullifying (or a least conceding to the nullity of) the 1978 perjury count. This conduct consisted of the People having filed, subsequent to the grant of Petitioner's 1983 federal writ, a successive 1984 charging instrument, or the 1984 information, alleging the same

perjury count, on the same facts, as that of the 1978 indictment, and thereafter securing Ms. Gray's 1987 perjury plea pursuant to the 1984 information].

10. Whether pursuant to Ms. Gray's 2-1401 petition the Court should dismiss, upon vacating the 1987 orders of *nolle prosequi*, the reinstated gas station (Counts 5-6 and 9-16), murder (Counts 1-4 and 7), and rape (Count 8) charges of the 1984 information?

No - As previously noted, 2-1401 relief can only vacate a final judgment or order, not a charging instrument. However, the Court has inherent power to *sua sponte* dismiss, with prejudice, the reinstated gas station charges (Counts 5-6 and 9-16) of the 1984 information, because failure to dismiss charges for which Ms. Gray has been legally acquitted would constitute a violation of her due process rights and result in a miscarriage of justice. (See Memorandum "Issues/Court's Determination of Issues" para. 7., at 20-21). [Note also that the State is barred from properly reprosecuting the 1984 gas station charges against Petitioner on the grounds of double jeopardy and improper termination of a prosecution after a jury has been impaneled and sworn]. The Court will additionally order *sua sponte* dismissal, with prejudice, of the reinstated murder (Counts 1-4 and 7) and rape (Count 8) charges of the 1984 information on due process grounds. This dismissal is based on the "egregious misconduct" by the CCSP and prosecution in both the 1978 and 1987 matters which has shocked the conscience of the Court. This conduct by the government, which is referenced in Memorandum "Issues/Court's Determination of Issues" para. 11., at 23, constituted a flagrant disregard of the Petitioner's constitutional rights and also impugned or impaired the adjudicatory process. [Note also that the Court cannot vacate the orders of *nolle prosequi* and dismiss the reinstated charges by reason of pre-indictment delay in violation of Petitioner's constitutional due process and speedy trial rights, because pursuant to case law regarding pre-indictment delay, and assuming *arguendo* a showing by Ms. Gray of actual and substantial prejudice by reason of Respondent's (purported) delay in refiling its charges of almost 13 years from the April 23rd, 1987 date of plea and entry of *nolle prosse* orders, until the March 2nd, 1999 date of filing of Ms. Gray petition, no inquiry was conducted by the herein proceeding as to the reasons for the People's pre-indictment delay].

11. Whether the Court should dismiss Ms. Gray's 1984 perjury charge pursuant to her 2-1401 petition:

No - 2-1401 relief is limited to vacatur of final judgments or orders. However, the Court has inherent power to *sua sponte* dismiss, with prejudice, the perjury charge (Count 17) of the 1984 information on due process grounds, in that the CCSP and prosecution engaged in "egregious misconduct" in both the 1978 and 1987 matters which has shocked the conscience of the Court. The government's conduct involved its flagrant disregard of Petitioner's constitutional rights, as well as actions that impugned or impaired the adjudicatory process. (See Memorandum "Analysis" para. 7., at 341-48, for specifications of "egregious" government misconduct).

Background

On May 11, 1978, Carol Schmal was visiting her fiancé, Larry Lionberg, at the Clark Oil gas station in Homewood, Illinois, where Mr. Lionberg was working the after-midnight shift. Gray, 87 Ill.App.3d at 143; (Respondent's Joint Mot. at 1). At about 1:45 a.m., Ms. Schmal and Mr. Lionberg were visited by two friends, Sharon Maccaro (or Macciaro) and Pete Wonder, for about 25 or 30 minutes. Williams, 147 Ill.2d at 195; Rainge, 211 Ill.App.3d at 437; see also Gray, 87 Ill.App.3d at 143. According to Maccaro (or Macciaro), she and Wonder left the station about 2:15 a.m. on May 11, 1978 , although Mr. Lionberg apparently made a call to a former employer from the station about 2:30 a.m. Williams, 147 Ill.2d at 195; Williams, 93 Ill.2d at 315-16; Rainge, 211 Ill.App.3d at 437. At about 6:30 a.m., Clemente Morales or Moreles, the station owner (or manager), came to the station and found it unattended, opened and ransacked. Williams, 93 Ill.2d at 316; Rainge, 211 Ill.App.3d at 437; Gray, 87 Ill.App.3d at 143. Some money and merchandise valued at $300 were missing. Williams, 93 Ill.2d at 316.

Police were called and Ms. Schmal's car was found at the station; her purse was on the front seat. Williams, 93 Ill.2d at 316. Later that same morning, a police officer determined that there had been an abduction and armed robbery. Gray, 87 Ill.App.3d at 143.

On May 12, 1978, at approximately 10:30 a.m., the victims' bodies were found in East Chicago Heights (later known as Ford Heights), where Cannon Lane dead ends near a creek. Williams, 93 Ill.2d at 316. The body of Mr. Lionberg was found in a field next to Cannon Lane near the creek, and the body of Ms. Schmal was found nude from the waist down (except for knee socks) in an upstairs room in a nearby abandoned building at 1528 Cannon Lane. Gray, 87 Ill.App.3d at 143-44. An autopsy revealed that two bullets had entered the back of Mr. Lionberg's head and one had entered his back, and that two bullets had entered the head of Ms. Schmal at short range. Williams, 93 Ill.2d at 317; Gray, 87 Ill.App.3d at 144. Ms. Schmal had been raped. Jimerson, 166 Ill.2d at 213; (Respondent's Joint Mot. at 2). Neither Ms. Schmal's boots nor the murder weapon were recovered, though evidence indicated that the bullet fragments recovered from the two victims were fired from the same gun. Williams, 93 Ill.2d at 316.

Petitioner's Account

Petitioner's 2-1401 motion alleges that Paula Gray was a "helpless individual" who was the victim of both "racist abuse" in the criminal justice system, as well as "gross misuse." (Petitioner's 2-1401 Mot. at 2). Petitioner and her four alleged principals are African Americans. (Petitioner's 2-1401 Mot. at 2). Carol Schmal and Larry Lionberg are Caucasians. (Petitioner's 2-1401 Mot. at 3).

Petitioner's IQ from early childhood to the present has measured between 55 and 71, which falls within the category of mentally retarded persons. (Petitioner's 2-1401 Mot. at 3). These IQ results were determined by tests administered by school, government agencies, and private psychologists (within the last year). (Petitioner's 2-1401 Mot. at 3).

In May, 1978, Ms. Gray was a shy, withdrawn, slightly built (105 pounds), school dropout, after having attended classes for a little over eight years, primarily with other mentally handicapped children. (Petitioner's 2-1401 Mot. at 2). Her only work was cleaning and babysitting her

youngest brother in her Ford Heights family home, while her mother worked. (Petitioner's 2-1401 Mot. at 2). She had no father-figure, citing to Dr. David Levin's affidavit, a psychologist. (Petitioner's 2-1401 Mot. at 2, Ex. A para. 4.)

Ford Heights was an impoverished community, and the Gray household owned neither a telephone nor car. (Petitioner's 2-1401 Mot. at 2). Paula Gray had never been to Lake Michigan or downtown Chicago, nor had she ever seen a play or movie, or read a magazine or book, other than in her schoolwork. (Petitioner's 2-1401 Mot. at 2).

Petitioner's intellectual capacity, youth, inexperience and life history made her highly malleable and susceptible to suggestion from authority figures, citing to Dr. Levin's affidavit. (Petitioner's 2-1401 Mot. at 3, Ex. A para. 5). Petitioner's cognition was such that her "expectable reaction" to the application of pressure by authority figures would be "to acquiesce," even to improper demands. (Petitioner's 2-1401 Mot. at 3). Ms. Gray was unable to assess "varying options" available to her as would most people, or to appreciate the long-term consequences both to herself and others of "acquiescenc[ing]." (Petitioner's 2-1401 Mot. at 3, Ex. A para. 5). Additionally, Petitioner was and is ignorant of "Court processes" and is unable to understand the impact to herself and others of acceding to officials' demands. (Petitioner's 2-1401 Mot. at 3, Ex. A paras. 5, 9)

Prior to May, 1978, Ms. Gray had never been arrested before, previously convicted, nor faced intense pressure from authority figures. (Petitioner's 2-1401 Mot. at 3, 5). Also, Petitioner had no prior history of violent conduct. (Petitioner's 2-1401 Mot. at 5).

During the day and evening of May 12, 1978, subsequent to discovery of the bodies of Carol Schmal and Larry Lionberg, Petitioner was questioned by the police for several hours at her home and the Sheriff's police station. (Petitioner's 2-1401 Mot. at 3). At the police station, Ms. Gray was shown graphic pictures of the deceased bodies, told she was involved in the crimes, and "otherwise threatened and intimidated" by the police. (Petitioner's 2-1401 Mot. at 4). Upon returning home at 1:00 a.m. on May 13th, Ms. Gray sat upright in her bed, unable to eat or sleep, fearful that the "police might return to take her away for further harassment." (Petitioner's 2-1401 Mot. at 4).

During the afternoon of that same day, May 13th, Petitioner was again questioned by the police and then later interrogated at the police station until 7:00 a.m. the next day. (Petitioner's 2-1401 Mot. at 4). No Youth Officer or female official participated in Petitioner's interrogation. (Petitioner's 2-1401 Mot. at 4).

On the evening of May 13th, Ms. Gray acquiesced to a "bizarrely false story created by officials of the Office of the Sheriff of Cook County, Illinois." (Petitioner's 2-1401 Mot. at 4). She acquiesced because the interrogating Sheriff's officials warned her that if she did not repeat their account of what transpired, she would go to jail for life and never see her family again. (Petitioner's 2-1401 Mot. at 5). Also, one of the threats by her interrogators included being put in a cell with a lesbian where she would be sexually attacked if she did not cooperate. (Petitioner's 2-1401 Mot. at 5).

The false story Petitioner was forced to tell inculpated herself and the following four persons (later known in the media as the "Ford Heights Four"), three of whom were her neighbors: Kenneth Adams, her boyfriend, Dennis Williams, a friend, Verneal Jimerson, an acquaintance, and Willie Raines (formerly "Rainge"), also an acquaintance. (Petitioner's 2-1401 Mot. at 4, 5). None of these men, nor Petitioner, had "prior histories of violent conduct", and only one of the men had prior felony convictions, which did not involve violence. (Petitioner's 2-1401 Mot. at 5). Each of the four men, and Ms. Gray, were questioned separately on May 12th and afterward, and provided alibi's as to their whereabouts on the night of the murders. (Petitioner's 2-1401 Mot. at 5). The accounts of all five individuals were consistent with each other, with the four men maintaining their innocence then as well as now. (Petitioner's 2-1401 Mot. at 5).

The false story or confession "concocted by the police," which Ms. Gray was forced to tell during the evening of May 13th, involved the four above-named men compelling Ms. Gray to enter an abandoned house for the sole purposes of holding up a lighter, watching them commit multiple rapes of Carol Schmal, and then watching them murder Ms. Schmal and Mr. Lionberg. (Petitioner's 2-1401 Mot. at 4).

Petitioner repeated the police-concocted story several more times during the early morning hours of May 14th, as well as May 15th. (Petitioner's 2-1401 Mot. at 5). No notes or reports were alleged to have been made or were ever produced of the May 13th or later questioning of Petitioner or her alleged admissions. (Petitioner's 2-1401 Mot. at 5). Ms. Gray was subsequently housed in a motel for her ostensible protection from the Ford Heights Four, or their friends or relatives. (Petitioner's 2-1401 Mot. at 5).

On May 14, 1978, the Ford Heights Four were charged in complaints assigned to the Markham branch of the Circuit Court of Cook County with aggravated kidnapping, armed robbery, armed violence, rape and murder. (Petitioner's 2-1401 Mot. at 5-6).

Petitioner repeated her "confession" to the grand jury on May 16, 1978. She was thereafter taken to a motel and "terrorized throughout the night by Sheriff's officials" ostensibly present for her protection. (Petitioner's 2-1401 Mot. at 6). No female Sheriff's official was present. (Petitioner's 2-1401 Mot. at 6). On May 17, 1978, at Ms. Gray's request to go home, she was released from "protection." (Petitioner's 2-1401 Mot. at 6). Petitioner was later admitted to a hospital for a psychiatric disturbance, which a doctor attributed to police questioning. (Petitioner's 2-1401 Mot. at 6).

A month later, Petitioner testified repeatedly at the preliminary hearing in the four men's case as a State witness that "she had not witnessed the rapes and murders and that her grand jury testimony was a 'lie' forced on her by authorities." (Petitioner's 2-1401 Mot. at 6).

Petitioner had not been charged with a crime and moved openly about Ford Heights for another two months. (Petitioner's 2-1401 Mot. at 6). However, on August 31, 1978, she was indicted on 15 counts for the same Schmal-Lionberg crimes for which the Ford Heights Four had been

charged, in addition to perjury for her preliminary hearing recantation of her grand jury testimony. (Petitioner's 2-1401 Mot. at 6).

Included in those 15 counts against Petitioner, were robbery and kidnapping charges emanating from the gas station offenses. (Petitioner's 2-1401 Mot. at 6, 7). Citing to the grand jury record, the only evidence presented to the grand jury against Ms. Gray consisted of the testimony of the lead investigator, a Sheriff's detective, who said nothing about Ms. Gray's involvement in the gas station crimes, and the testimony of a prosecutor reading Petitioner's conflicting grand jury and preliminary hearing testimony to support the charge of perjury. (Petitioner's 2-1401 Mot. at 6-7, Ex. E). The implication of the investigator's testimony is that Petitioner was not involved in the gas station crimes. (Petitioner's 2-1401 Mot. at 7). The Petitioner was not at the gas station, and the evidence showed that she was ignorant of the circumstances there. (Petitioner's 2-1401 Mot. at 7).

Nonetheless, the assistant State's Attorney, who had been involved in Petitioner's case from the outset, including the preliminary hearing, gave "blatant misadvice" to the grand jury as to the Illinois law on accountability, which resulted in Ms. Gray's indictment on these charges. (Petitioner's 2-1401 Mot. at 7). The prosecutor's statement regarding accountability law was a "falsehood designed to procure charges for which there was no support whatsoever in Illinois law." (Petitioner's 2-1401 Mot. at 7).

Ms. Gray was arrested and denied bail. Sheriff's officials thereafter carried out their threat against Petitioner, from their May, 1978 interrogation, by causing her to be assigned to Tier 3 at the women's building of Cook County Jail, reserved for violent lesbians, or female inmates who demonstrated exaggerated masculine, sexually aggressive traits toward other women, citing to a former inmate's affidavit. (Petitioner's 2-1401 Mot. at 7, Ex. C). Petitioner was subsequently the victim of a brutal rape by other inmates, resulting in vaginal trauma and emotional stress. (Petitioner's 2-1401 Mot. at 7).

Petitioner thereupon ceased to speak for a one year period while in Cook County Jail, communicating solely by written notes, while continuing to be subjected to assaults, innuendoes and intimidation. (Petitioner's 2-1401 Mot. at 8).

In or about March, 1979, after Ms. Gray's October 1978 conviction and subsequent concurrent extended sentences of 10 years imprisonment for perjury and 50 years for rape and murder, Petitioner was transferred to the Dwight Correctional Center, where she was again threatened and sexually assaulted. (Petitioner's 2-1401 Mot. at 8).

In 1984, after the Seventh Circuit's 1983 grant of a new trial, the Respondent offered to help Petitioner obtain release from prison in exchange for testifying as to her original story inculpating herself and the Ford Heights Four. (Petitioner's 2-1401 Mot. at 8).

Petitioner agreed to the prosecutors' proposal because of the "terror, depression, and anger" she experienced as a result of her "wrongful conviction," and by reason of the "intolerable conditions of her incarceration." (Petitioner's 2-1401 Mot. at 9).

Thereafter, Ms. Gray testified for the People against three of the Ford Heights Four; one in 1985, who was tried for the first time for the Schmal-Lionberg crimes, and two in 1987, who were being re-tried for these offenses. (Petitioner's 2-1401 Mot. at 9).

In April of 1987, two weeks after testifying at the last of the foregoing trials, Petitioner pleaded guilty to perjury, and received a probationary sentence. All other charges against her were *nolle prossed*. (Petitioner's 2-1401 Mot. at 9).

Respondent's Account

Respondent moves that certain statements and allegations in Petitioner's 2-1401 Motion be stricken on the grounds that they are "either, irrelevant, unfairly prejudicial, groundless, inflammatory or represent pure surplusage," citing to Illinois case law. (Respondent's Joint Mot. at 25). These allegations include: "shameful, racist abuse yet uncovered in our criminal justice system"; "gross misuse of this helpless individual"; as well as statements concerning Ms. Gray's "nature, lifestyle, education, work history, lack of father figure, economic status, travel opportunities, lack of exposure to plays and movies and literature, lack of a telephone, exposure to pressure from authority figures, inexperience and life history." (Respondent's Joint Mot. at 25).

Respondent also challenges allegations in Ms. Gray's 2-1401 petition pertaining to "matters concerning [Petitioner's] interviews with investigators"; "matters relating to harassment"; "characterization of 'interrogation'"; "matters related to the creation of a false story by officials"; "matters related to a false story concocted by police"; "matters concerning Williams' prior arrest [regarding physical abuse during police interrogation]; as well as those concerning "a concocted story and the existence and production of reports"; "Paula's terrorization by numerous officials and events and cause of psychiatric episode"; and "the basis for the Grand Jury's conduct." (Respondent's Joint Mot. at 25, 26). Respondent raises additional legal arguments [which will be discussed later in this Memorandum], including the sufficiency and admissibility of the affidavits submitted in support of Petitioner's 2-1401 motion, as well as "the inflammatory nature, foundation, relevance and accuracy" of other Petitioner allegations. (Respondent's Joint Mot. at 25, 26)

After briefly recounting the background of the Lionberg/Schmal crimes, Respondent states that on March [sic] 13, 1978, Paula Gray and her twin sister, Paulette, were questioned by investigators of the Cook County Sheriff's Police Department. (Respondent's Joint Mot. at 2). Paulette told the investigators that on Thursday, May 11, 1978, a day before the victims' bodies were found, that Paula told her that she (Petitioner) was present when Ms. Schmal was raped and when Mr. Lionberg and Ms. Schmal were murdered. (Respondent's Joint Mot. at 2). Paulette additionally advised the investigators that Paula identified the assailants as Dennis Williams, Kenneth Adams, Willie Rainge and Verneal Jimerson. (Respondent's Joint Mot. at 2). Paulette later recounted what Paula told her to Assistant State's Attorney Ernest DiBenedetto. (Respondent's Joint Mot. at 2)

At the urging of her mother, Paula told investigators of the involvement of Dennis Williams, Kenneth Adams, Willie Rainge (n/k/a "Raines") and Verneal Jimerson in the Lionberg/Schmal crimes. (Respondent's Joint Mot. at 2).

On May 13, 1978, and May 14, 1978, Paula repeated the foregoing story several times to Mrs. Gray, police investigators and Assistant State's Attorney DiBenedetto. (Respondent's Joint Mot. at 2). On May 15, 1978, Paula reiterated her story to other members of the State's Attorney's Office, repeating her description of how the crimes were committed and who committed them. (Respondent's Joint Mot. at 2).

On May 16, 1978, Ms. Gray appeared and testified before the Grand Jury of Cook County, that she was present during the Lionberg/Schmal crimes, while giving details that implicated Williams, Rainge, Jimerson and Adams, citing to Grand Jury proceedings. (Respondent's Joint Mot. at 3). On May 14, 1978, Williams, Jimerson, Rainge and Adams were each charged with the Lionberg/Schmal crimes. (Respondent's Joint Mot. at 3).

On June 19, 1978, Petitioner appeared and testified before a Preliminary Hearing for Williams, Rainge, Jimerson and Adams, and contradicted her statements to the police investigators and assistant State's Attorneys on May 13, 14, and 15, 1978, as well as her May 16th testimony before the grand jury. (Respondent's Joint Mot. at 3).

On September 1, 1978, Ms. Gray was indicted for her alleged participation in the Lionberg/Schmal crimes and for perjury by reason of her contradictory statements made by her, under oath, before the grand jury on May 16, 1978, and at the Preliminary Hearing, under oath, on June 19, 1978. (Respondent's Joint Mot. at 3).

Respondent thereupon recounts the trial history of Gray, Williams, Rainge, Adams and Jimerson from 1978 to 1987 [as set forth in Memorandum at 2-6], specifically noting that Petitioner's 1978 trial attorney was Archie Weston and that her 1983 Seventh Circuit Court of Appeals attorney was Assistant Public Defender James H. Reddy. (Respondent's Joint Mot. at 4). Respondent also noted that Jimerson's 1985 conviction was "based largely on the testimony of Gray" and that Gray "testified as a State's witness and implicated Jimerson in the double homicides," while "awaiting retrial following her successful appeal to the Seventh Circuit." (Respondent's Joint Mot. at 4). Respondent further indicated that "Gray [additionally] testified for the State in the 1987 retrial [of Williams and Rainge]." (Respondent's Joint Mot. at 4).

On April 23, 1987, while represented by Assistant Public Defender George Morrissey, Ms. Gray appeared before Judge Frank Meekins of the Circuit Court of Cook County, for leave to change her previously entered not guilty plea to perjury in 84 C6 [sic] 5543, to a plea of guilty. (Respondent's Joint Mot. at 5). Citing to the transcript of Paula Gray's perjury plea of April 23, 1987, Respondent noted that Judge Meekins accepted petitioner's jury waiver to the perjury charge, and stated that it "... is familiar with Paula Gray, and Paula ha[d] testified in a case in which the Court presided over a jury trial. And so there is certainly no question in the Court's mind as to Paula's competency and ability to truly tender a knowing, intelligent, and voluntary jury waiver." (Respondent's Joint Mot. at 5, Ex. A at 148/2)

Judge Meekins admonished Ms. Gray of her rights as required by Supreme Court Rule 402. (Respondent's Joint Mot. at 5). Respondent again cites to the transcript of Petitioner's 1987 perjury plea to reiterate the State's factual basis for this plea:

> By: ASA Richard Burke"Judge, the evidence at trial through various witnesses would establish that in 1978, during the May term of the Cook County Grand Jury, Grand Jury Number 235, the person who would be identified in open court as Paula Gray, the evidence would show testified in front of the Grand Jury under oath and pursuant to a requirement that her testimony be under oath; and upon being asked questions concerning the murder and rape of Carol Schmal and the murder of Larry Lionberg, the evidence would show that Paula Gray testified that Willie Rainge, Dennis Williams, Kenneth Adams, and Verneal Jimerson has [sic] been present for, witnessed, and participated in the rape and murder of Carol Schmal, and also participated in the murder of Larry Lionberg.
>
> The evidence would further show that subsequently on June 19, 1978, a person who would again be identified as Defendant Paula Gray testified under oath pursuant to a requirement that such testimony be under oath in a preliminary hearing for the case of the People of the State of Illinois versus Kenneth Adams, Willie Rainge, Dennis Williams, and Verneal Jimerson, [...] at the time the case was pending in the Circuit Court of Cook County, Illinois, in the Sixth District, the evidence would show that during her testimony in that preliminary hearing, Paula Gray made statements which were material and relevant to the issue in point, again relating to the presence and participation of Kenneth Adams, Willie Rainge, Dennis Williams and Verneal Jimerson, and did in fact at that time state that Kenneth Adams, Willie Rainge, Dennis Williams and Verneal Jimerson had not participated in the murder and rape of Carol Schmal or the murder of Larry Lionberg; all of that having occurred in the County of Cook; and witnesses would identify Paula Gray in open Court. So stipulated?"
>
> By:Mr. Morrissey"We stipulate, Your Honor, that would be the testimony offered by the State."

(Respondent's Joint Mot. at 5-6, Ex. A at 157/11-159/13).

The State did not, nor was it required by statute, to establish "which statement under oath was false to support the charge of perjury." (Respondent's Joint Mot. at 6). Also, Petitioner acknowledged the truth of the facts declared by the State, citing to Ms. Gray's plea transcript. (Respondent's Joint Mot. at 6, Ex. A at 159/13).

In accepting Ms. Gray's plea, Judge Meekins ruled that:

> "the defendant understands the nature of the charge against her, the consequences thereof, and the possible penalties provided and including the minimum and maximum sentences

prescribed by law. She's been advised of her rights and the consequences of a plea of guilty. The plea of guilty is a voluntary plea, and there is sufficient factual basis to support that plea."

(Respondent's Joint Mot. at 6, Ex. A at 159/13-160/14).

Pursuant to an "agreement between the State and Paula for a recommendation of a period of 2 years probation on the perjury count and the entry of an order of *nolle prosequi* as to each of the remaining charges of murder and rape," the Court sentenced Ms. Gray to 2 years probation on her plea of guilty to perjury. (Respondent's Joint Mot. at 6, Ex. A at 156/10-157/11).

Evidentiary Hearing

On April 13th, 1999, the Court denied Respondent's Motion to Dismiss Ms. Gray's 2-1401 petition. (Tr. of Evidentiary Hr'g of 4/13/99, at 28). An evidentiary hearing was granted because the parties' pleadings, exhibits and supporting affidavits presented disputed and material issues of fact as to whether post-judgment relief should be granted. See Browning, Ektelon Division v. Williams, 256 Ill. App.3d 299, 303 (1st Dist. 1993), holding that "[i]n light of the pleadings, 'if a disputed factual issue exists material to whether [2-1401] relief is justified, an evidentiary hearing is required.'" The Court also determined that it wanted "to hear some evidence on every one of the allegations" contained in both Paula Gray's Petition and Respondent's Motion to Dismiss, as well as the responsive pleadings, in determining the question of 2-1401 relief. (Tr. of Evidentiary Hr'g of 4/13/99, at 28). The material fact issues presented by the parties' written arguments and supporting documents consist of:

1. those regarding Petitioner's alleged legal disability, as defined by 735 ILCS 5/2-1401(c), as well as the relevant period of time;

2. the facts regarding the alleged coercion of Paula Gray by the Cook County Sheriff's police to tell a police fabricated story to various sheriff's police, assistant State's Attorneys and the May 16th, 1978 grand jury proceeding incriminating she and the Ford Heights Four in the Lionberg/Schmal crimes. [Note that this fact issue, or that relating to CCSP coercion and fabrication, is relevant to the question of whether pursuant to Respondent's allegation that the perjury plea and charge is based on Petitioner's "contradictory" testimony, Ms. Gray has a "valid reason" for having rendered her grand jury testimony inculpating she and the Ford Heights Four in the subject crimes, which statement was later contradicted by her exculpatory preliminary hearing testimony that Petitioner currently alleges she has shown to be truthful. CCSP coercion and fabrication is also important in determining whether Petitioner's 1987 perjury judgment constituted an unjust result in violation of the equitable principles

invoked by Ms. Gray's post-judgment petition];

3. the facts regarding the alleged CCSP threat of Paula Gray with placement on Tier A-3 at the women's facility of the Cook County Jail reserved for lesbian and high-bond aggressive inmates, and also with being sexually attacked, in reprisal for her failure to cooperate with the police because she rendered exculpatory preliminary hearing testimony on behalf of herself and the Ford Heights Four;

4. the facts regarding Respondent's alleged deal or agreement with Petitioner, and the terms, if any, of such deal or agreement;

5. the facts regarding the timeliness of Ms. Gray's 2-1401 petition on the alleged newly discovered evidence grounds that Respondent fraudulently concealed Brady and 412(c) evidence from Petitioner. This fact issue centers on twelve (12) items of "outcome-determinative" exculpatory evidence listed in Petitioner's Post-Hearing Memorandum at 5-6, headnote 1, and involves a determination of whether these proofs constitute Brady evidence. [Note that if these items are shown to be Brady evidence, or proofs which are material and favorable to Petitioner's guilt or punishment, and to have been suppressed by Respondent, the People will have violated their obligations under Brady, which would in turn trigger a violation of discovery Rule 412(c), that codifies Brady. Respondent's violation of a discovery rule would constitute fraudulent concealment for purposes of tolling the two-year post-judgment statute of limitations];

6. the facts regarding the timeliness of Ms. Gray's 2-1401 petition on the alleged newly discovered evidence grounds of Petitioner's actual innocence;

7. the facts regarding whether the alleged newly discovered evidence grounds of fraudulently concealed Brady and 412(c) evidence and Petitioner's actual innocence, could have been discovered, with due diligence, before Ms. Gray's April 23rd, 1987 perjury plea, and;

8. the facts regarding whether Ms. Gray's counsel exercised due diligence in filing her 2-1401 petition on the alleged newly discovered evidence grounds of fraudulently concealed Brady and 412(c) evidence and Petitioner's actual innocence. [Note again that the 2-1401 newly discovered evidence criteria do not appear to require due diligence in filing a post-judgment petition].

Petitioner's Witnesses

Dr. David Scott Levin

Dr. David Scott Levin is a clinical psychologist involved principally in the diagnosis and treatment of mental disorders with children, adolescents and adults. (Tr. of Evidentiary Hr'g of 4/28/99, at 42, 44). He has engaged in the foregoing work in private practice for over fifteen

years. (Tr. of Evidentiary Hr'g of 4/28/99, at 43-44). Dr. Levin identified Exhibit A [to Petitioner's 2-1401 Motion] as the affidavit he prepared and signed, and indicated that his curriculum vitae is attached to the affidavit. (Tr. of Evidentiary Hr'g of 4/28/99, at 42).

Dr. Levin received his Doctor of Psychology degree in 1983 from the Chicago School of Professional Psychology, and did both his pre-doctoral externship and post-doctoral internship training at the University of Chicago. (Tr. of Evidentiary Hr'g of 4/28/99, at 42, 43). He's also taught psychology at both of the above named schools. (Tr. of Evidentiary Hr'g of 4/28/99, at 43).

Dr. Levin first met Paula Gray in February of 1997 in connection with a Juvenile Court matter. (Tr. of Evidentiary Hr'g of 4/28/99, at 44). He was asked to determine Ms. Gray's parental competency and the extent with which she was capable of caring for her children. (Tr. of Evidentiary Hr'g of 4/28/99, at 44-45).

His evaluation of Petitioner was based on a "semi-structured diagnostic interview" for assessing parental competency or parenting skills. (Tr. of Evidentiary Hr'g of 4/28/99, at 45). [Upon voir dire examination of Dr. Levin by the Respondent, it was established that the doctor did not evaluate Ms. Gray as to her competency to enter a criminal plea, nor had he ever evaluated an individual on their competency to stand trial or enter a plea in a criminal matter. (Tr. of Evidentiary Hr'g of 4/28/99, at 46-47). Over Respondent's objection, Petitioner's attorney was permitted to introduce testimony by Dr. Levin regarding "[Ms. Gray's] level of competency from a civil point of view" in determining the question of Petitioner's legal disability pursuant to the allegations of her petition, including her inability to "understand legal matters...[in addition to]...the [1987 perjury] charge...[to] which she...[pleaded] guilty." (Tr. of Evidentiary Hr'g of 4/28/99, at 49, 51, 52). However, pursuant to representations by Petitioner's counsel, the Court determined that it would apply only the civil standard of legal disability, and not the criminal standard of incompetency, to Dr. Levin's testimony, including Ms. Gray's inability to understand legal matters, as well as her perjury charge. (Tr. of Evidentiary Hr'g of 4/28/99, at 47, 48, 50-52)].

On further direct examination by Petitioner's counsel, Dr. Levin stated that subsequent to his February, 1997 Juvenile Court evaluation of Ms. Gray when he first met Petitioner, he conducted a diagnostic evaluation of Petitioner in December, 1998, and February, 1999, to determine whether she suffered from a a mental disorder. (Tr. of Evidentiary Hr'g of 4/28/99, at 44, 52, 59). The materials he relied upon for his evaluation included psychological testing done by Doctors Cavanaugh and Wasyliw, as well as depositions germane to his assessment of Petitioner. (Tr. of Evidentiary Hr'g of 4/28/99, at 59-60). [Note that "Wasyliw" is the correct spelling of this psychologist's name according to Dr. Wasyliw's curriculum vitae, or Respondent's Exhibit No. Nine, as opposed to Dr. "Wasalyu" reflected by the transcript of Dr. Levin's testimony]. In total, Dr. Levin had eight past assessments that "purported" to evaluate the intelligence of Ms. Gray. (Tr. of Evidentiary Hr'g of 4/28/99, at 60). Each of the eight assessments indicated that Petitioner was in "the mild range of mental retardation." (Tr. of Evidentiary Hr'g of 4/28/99, at 60).

Dr. Levin explained that although generally, people who are mildly mentally retarded do not evidence this condition by their appearance or language, a situation in which a mildly mentally retarded people would demonstrate his or her limitations in conversations with others includes:

> where [such a person] was asked to think about something in the abstract, to speak about something that was not concrete and actually available to them. To present one with an idea, with a theory, with a general principal, this is something that they would struggle with. They would have a very difficult time going, for example, from a specific situation they were involved in and generalizing to other situations that might be similar. They would have a hard time adapting knowledge that they have gained in one situation and applying that flexibly in a different situation. They would have a difficult time projecting themselves into the future and imagining or reasoning how something that they learned here and now would apply to a situation down the road.

(Tr. of Evidentiary Hr'g of 4/28/99, at 57).

Dr. Levin further explained how people with mild retardation are able to care for themselves in the manner of people with higher intelligence:

> ...[M]ost persons who are mildly mentally retarded are able to live independent lives, although unlike people who are of higher intelligence, they do in some instances require...various support services. They are capable certainly of independent living.

(Tr. or Evidentiary Hr'g of 4/28/99, at 57-58).

Regarding the capability of mildly retarded people of engaging in financial transactions, Dr. Levin testified that they could, "to a limited extent," adding that he doesn't think that "they...are capable of making complex decisions involving investments or involving contracts, but [that these persons are] certainly [capable of] the basic mechanics of day-to-day commerce..." (Tr. of Evidentiary Hr'g of 4/28/99, at 58).

The doctor additionally stated that mildly retarded people reach "typically a[n educational] level somewhere up to about a 6th grade intellectual competency...[and though] there may be an expansion in their knowledge...cognitive performance remains at about a 6th grade level. (Tr. of Evidentiary Hr'g of 4/28/99, at 58-59). Generally, Dr. Levin related, "IQ is very stable [apparently regarding all people] over time," or does not change, including that of a mildly mentally retarded person. (Tr. of Evidentiary Hr'g of 4/28/99, at 82-83).

Dr. Levin's personal evaluation of Ms. Gray entailed a description by Petitioner of her current emotional state, commencing with her childhood and including her legal experiences in 1978 through her experiences in prison. (Tr. of Evidentiary Hr'g of 4/28/99, at 61). Reliability as to the accuracy and truthfulness of this information was based on his own impressions, coupled

with a comparison of the data collected over time, as well as a measure of reliability provided by the tests themselves. (Tr. of Evidentiary Hr'g of 4/28/99, at 62).

Dr. Levin stated that the written tests are regarded by those of his profession as objective. These objective tests are "empirically standardized," with built-in checks on veracity. (Tr. of Evidentiary Hr'g of 4/28/99, at 63). Ten to twelve of these written tests were administered to Ms. Gray. (Tr. of Evidentiary Hr'g of 4/28/99, at 63).

Ms. Gray advised Dr. Levin that in 1978 she was charged with and convicted of murder and rape, and she made no reference to her robbery and kidnapping charges. (Tr. of Evidentiary Hr'g of 4/28/99, at 64). Nor did she mention her perjury charge. (Tr. of Evidentiary Hr'g of 4/28/99, at 64).

Petitioner also indicated to Dr. Levin that she was told that if she entered a guilty plea to rape and murder in 1987, she would be released from prison. (Tr. of Evidentiary Hr'g of 4/28/99, at 66-67). She thereafter pled guilty and was released from prison. (Tr. of Evidentiary Hr'g of 4/28/99, at 67). When he asked her about the perjury charge,

> [t]he most she could really respond to [him] was to [say] that she had always meant to tell the truth; that...in 1987...she was telling the Court what she was told to say.
>
> She was told what she had to say and in her mind this was the truth. This was telling what she was told to say. This...was being consistent with her instructions...

(Tr. of Evidentiary Hr'g of 4/28/99, at 68).

Dr. Levin reviewed and confirmed that he has not changed his views from those of his affidavit in this matter, identified as [Petitioner's 2-1401 Mot.] Exhibit A, nor has he had any contacts with Ms. Gray since executing his affidavit on March 1st, 1999. (Tr. of Evidentiary Hr'g of 4/28/99, at 69).

Dr. Levin explained Petitioner's "intellectually unfortifying environment" as set forth in his affidavit as follows:

> Paula Gray grew up...under very harsh and deprived conditions. She had remained in school only through the 8th grade and part of 9th grade. She had grown up in a family that was not intellectually active. She had never been very far from her own home. She had never had opportunities for intellectual enrichment of the kind that most children in our city and state have available to them.
>
> She had not been to movies. She had never been, as [he] recall[s], to the Chicago public beach, the library and for any person, but maybe particularly for a person

> who is mentally retarded, the quality of their development intellectually is going to have a lot to do with the quality and quantity of the intellectual enrichment that they are able to experience during their development. This is going to determine their potential and Paula had very [few] of these experiences...

(Tr. of Evidentiary Hr'g of 4/28/99, at 70-71).

There was no father figure in Paula Gray's home when she was growing up. (Tr. of Evidentiary Hr'g of 4/28/99, at 71). Also, based on Dr. Levin's assessment of Ms. Gray, he concluded that it would be "very difficult" for Paula Gray to complete her GED courses. (Tr. of Evidentiary Hr'g of 4/28/99, at 71).

Dr. Levin further testified that a mildly mentally retarded person was more malleable and susceptible to suggestibility than a normal person, or "would be likely to obey the authority that is imposed upon them by another person." (Tr. of Evidentiary Hr'g of 4/28/99, at 75). He further explained that:

> [t]he reason for this is, going to back to what [he] said a bit earlier about persons who are mildly retarded not being able to consider in the abstract their options, not being able to assess accurately the nature of the relationship that they are in at the moment and not being able to predict the results of their actions in the future. All of which...causes a person who is mentally retarded to be more susceptible to suggestion.
>
> These are also persons who throughout their life may have experienced themselves as having been dependent on people who seem to them to know more than they do or to have more power than they do, therefore [sic], are more likely to accept authority or to be obedient to suggestions that are made by other people.

(Tr. of Evidentiary Hr'g of 4/28/99, at 75-76).

Generally speaking, Dr. Levin indicated, it is difficult for mentally retarded persons to reason about their options because:

> [i]n order to contemplate, to think about your options, ones recourse, ones alternatives, it's necessary to be able to go from the situation I am in at the moment and be able to pose the problem well, this is what is happening right now, but do I have other alternatives. Do I have other options for how I can respond in this situation. Do I have the right to respond differently or am I thoroughly bound by the authority of the person who is making this suggestion to me. It involves abstract thinking.
>
> A suggestion is a relationship of authority which one person is telling another person to think or do or to act, to think in a certain way or act in a certain way. In order for a person to be able to critically evaluate that suggestion they have to be

> able to take themselves beyond the information they have right at the moment and take into account other information, other possibilities, other alternative ways of looking at the position they are in and making a critical judgment as to whether or not they really want to adopt this behavior or this opinion. A person who is mentally retarded really can't do this effectively...They are kind of stuck with the situation they are in at the moment, the information they have at the moment, what they are being told at the moment and it's very difficult for such a person to go beyond that.

(Tr. of Evidentiary Hr'g of 4/28/99, at 77-78).

Petitioner apprised Dr. Levin that in [May of] 1978:

> she had been subject to a prolonged interrogation by the police that was both traumatic and abusive to her during which time she was accused of being involved in the murder and rape of Mr. [Lionberg and] Miss Schmal. That she was told that she must adopt a version of events that had been construed by the police officers, that while she knew what the truth had been, that she had been innocent, that she was told she would spend her life in prison and never see her family again if she did not adopt the story that was proposed to her.
>
> During this process, she indicated that she had been subjected to verbal abuse, that she had not been given any indication of what her rights were, that she had been treated in a generally hostile manner, that she had been asked to take medication at one point and that this had been thoroughly and pervasively traumatic to her.

(Tr. of Evidentiary Hr'g of 4/28/99, at 86-87).

Dr. Levin indicated that the repercussion which left the greatest impact on Ms. Gray if she didn't adopt the police story, was she would never see her family again. (Tr. of Evidentiary Hr'g of 4/28/99, at 87). She was also told that it would have been preferable that she had died, rather than the woman who had been murdered. (Tr. of Evidentiary Hr'g of 4/28/99, at 87-88). Ms. Gray additionally told Dr. Levin that she had had a gun put to her head to induce her to comply, and was threatened with permanent imprisonment. (Tr. of Evidentiary Hr'g of 4/28/99, at 88). Petitioner further indicated that the police told her that what happened to Ms. Schmal would happen to her if she didn't tell their story. (Tr. of Evidentiary Hr'g of 4/28/99, at 89). Paula Gray also related that at County Jail, in what Dr. Levin believes was September of 1978, "[Petitioner] had been subject[ed] to numerous sexual assaults and sexual abuse." (Tr. of Evidentiary Hr'g of 4/28/99, at 88).

Dr. Levin indicated that it was his understanding that Paula Gray adopted the testimony the police prepared, and that this testimony or story was false. (Tr. of Evidentiary Hr'g of 4/28/99, at 90, 91). He confirmed that he had reviewed Petitioner's May 16th, 1978 grand jury testimony

identified as Respondent's [Joint Mot.] Exhibit C, and that she essentially inculpated herself and Williams, Rainge, Jimerson and Adams. (Tr. of Evidentiary Hr'g of 4/28/99, at 91).

Confirming that he had seen Ms. Gray's preliminary hearing testimony, identified as Exhibit G to Respondent's Motion to Dismiss [or Joint Mot.], in which Petitioner stated her grand jury testimony was false and that she had not in any way been involved in the [Lionberg/Schmal] murders and rape, Dr. Levin further explained that:

> [w]hat he learned from Miss Gray was that she had known all along what the truth was, had in the first instance of May of 1978 delivered a fabrication, a lie that she had felt she had no option but to deliver to the grand jury. She had wanted to tell the truth, went to court for the preliminary hearing in June of '78 and felt that this was her opportunity to tell the truth in the hope that the conditions that had [led] to her coercion were past and that she would now be safe – would now be safe for her to reveal the true state of affairs to the court.
>
> So her sense of this proceeding was I told the truth. First I told what I was forced to say, what I had no choice but to say, then I told the truth which is what in my heart I really felt I should have said in the first place and then I went to jail. That was really her understanding of it. She had no choice in the first instance, that she was telling the truth in the second instance when she felt safer and that she went to jail [anyway].

(Tr. of Evidentiary Hr'g of 4/28/99, at 94-95).

Dr. Levin's psychological opinion as to the reason a person of Paul Gray's background and mental limitations could have knowingly testified falsely in a proceeding against someone else is that:

> given the conditions of coercion that we have discussed, the threats that had been made to her and her degree of suggestibility, that in 1987 as in 1978 she was again [led] to believe that if she did not submit to the testimony that had been prepared for her that she was told that she must testify, that she would stay in jail and would never see her family again. Essentially the same request as [he understood] was made of her in 1987 as was made of her in '78 and the same threat was posed if she disobeyed that. So...having been through many years of imprisonment at that point, [he thinks] her sense of urgency and susceptibility to suggestion would probably have been heightened even from that which characterized her mental state in 1978.

(Tr. of Evidentiary Hr'g of 4/28/99, at 96-97).

Dr. Levin additionally testified that Paula Gray had seven siblings and had lived with her mother, with the father not being part of the family, but that with the exception of perhaps a single prison visit from her mother and twin sister Paulette, she had very few visits from her

family while incarcerated from 1978 until 1987. (Tr. of Evidentiary Hr'g of 4/28/99, at 97-98). Dr. Levin also reiterated his opinion, based on a reasonable degree of psychological certainty, that Petitioner's mental condition was chronic and likely to continue indefinitely; and that this condition creates an impairment in her living condition, requiring "future services in order to live a successful life." (Tr. of Evidentiary Hr'g of 4/28/99, at 99, 100). Dr. Levin also concluded that Ms. Gray's IQ was under 70, or 2 standards below the mean or basic standard of mental classification for the general population of 100. (Tr. of Evidentiary Hr'g of 4/28/99, at 100-01).

On cross-examination, Dr. Levin testified that the best way of determining whether a person can function in society is to observe how they function in society. (Tr. of Evidentiary Hr'g of 4/28/99, at 101). He also indicated that his clinical psychology experience with mentally retarded persons and authoritative texts included the legal definition for disability, but his foregoing psychology experience did not include legal treatises or cases. (Tr. of Evidentiary Hr'g of 4/28/99, at 102-03). Mr. Decker is the only attorney he has spoken to regarding the application of a legal standard to his opinions in this case. (Tr. of Evidentiary Hr'g of 4/28/99, at 103).

Reiterating that Paula Gray told him she was coerced in 1978, Dr. Levin stated that coercion and suggestibility are related, but not the same. (Tr. of Evidentiary Hr'g of 4/28/99, at 103-04). He explained the relationship between a person who was suggestible and coerced to testify, coupled with the person's belief whether they were testifying to the truth or to a lie, in the following manner:

> ...[T]he suggestion that is important in this case is that if you don't testify in a certain [sic] – Paula Gray was not asked to accept this story as the truth, she was simply asked to testify to it. She knew it was not true. The suggestibility, [he] think[s], is most potent when we think of it in terms of if you don't testify as we are telling you you must, you are going to spend your life in prison. That, [he] think[s], is the most potent suggestion. That is the suggestion that she obeyed believing that she had no alternative or recourse.

(Tr. of Evidentiary Hr'g of 4/28/99, at 104).

Dr. Levin added that his explanation related to questions in 1978 posed to Petitioner and coercion by the police at that time. (Tr. of Evidentiary Hr'g of 4/28/99, at 104-05). He agreed that his opinions are solely related on what Ms. Gray described to him regarding what occurred in 1978, specifically the police interrogation of her in 1978. (Tr. of Evidentiary Hr'g of 4/28/99, at 105).

Dr. Levin stated that it was his understanding that when Paula Gray testified before the grand jury on May 16th, 1978, she was telling something she believed to be untruthful and that a month later she testified to something she believed to be correct. (Tr. of Evidentiary Hr'g of 4/28/99, at 105-06). He indicated that in 1987, Petitioner was interrogated "by personnel involved in the criminal justice system, but not police officers." (Tr. of Evidentiary Hr'g of 4/28/99, at 106).

Dr. Levin testified that he was aware that in 1985 and 1987, Petitioner had testified under oath that she was present for and witnessed the subject homicides. (Tr. of Evidentiary Hr'g of 4/28/99, at 106)

In response to the People's inquiry as to whether Paula Gray told him she was represented by counsel in 1985 and 1987, Dr. Levin indicated that Petitioner mentioned that attorneys were involved, but she didn't clearly understand their relationship to she and her case. (Tr. of Evidentiary Hr'g of 4/28/99, at 106-07). She named George Morrissey, Dr. Levin recalls, but doesn't believe she mentioned James [Reddy](Tr. of Evidentiary Hr'g of 4/28/99, at 107). Ms. Gray didn't identify for Dr. Levin the persons who coerced her in 1985 and 1987 by name or by the way they looked. (Tr. of Evidentiary Hr'g of 4/28/99, at 107-08).

Dr. Levin further testified that he does not indicate in his notes for his February, 1997, December, 1998, and February, 1999 interviews of Ms. Gray that he asked Ms. Gray direct questions about her comprehension of legal proceedings; or about whether or not she could assist in her criminal defense; or about the definition of a plea. (Tr. of Evidentiary Hr'g of 4/28/99, at 110-11). He stated he asked Petitioner her understanding of her case in the broadest sense, because as a rule, clinical inquiry goes from general to specific. (Tr. of Evidentiary Hr'g of 4/28/99, at 111).

Dr. Levin testified that he asked Ms. Gray if she knew what the word perjury meant, and she did not. (Tr. of Evidentiary Hr'g of 4/28/99, at 111). He further indicated that his opinion is based in part on Ms. Gray's inability to understand legal terms. (Tr. of Evidentiary Hr'g of 4/28/99, at 111). Dr. Levin confirmed that his notes indicated a discussion of several terms with Petitioner such as "'I got arrested"'; "'Dwight, [c]ause I got sentenced to 50 years,'" with sentencing being the legal term, and; "'I went through an appeal before I got out.'" (Tr. of Evidentiary Hr'g of 4/28/99, at 111-12). Dr. Levin also confirmed that his notes do not indicate any discussion with Ms. Gray about perjury. (Tr. of Evidentiary Hr'g of 4/28/99, at 112). Nor has he read anywhere that Ms. Gray defined the term "'parole.'" (Tr. of Evidentiary Hr'g of 4/28/99, at 112). While relating that he "wouldn't necessarily" be surprised if Paula Gray used the term "'search warrant'" in connection with her description of police officers coming to her house in 1978, Dr. Levin emphasized that most of the terms mentioned by Respondent's counsel are familiar to anybody watching detective show[s] on television, and that these terms are "part of the general parlance." (Tr. of Evidentiary Hr'g of 4/28/99, at 113). Also, while initially "not necessarily" agreeing that the use of the term search warrant would indicate to him some capacity of that individual for curiosity, wonder, thoughtful communication, and a mechanical procedure and thoughtful speculation on how [this term] should be used, Dr. Levin admitted that that had been his March 19th, 1999 deposition testimony in the civil case [involving this matter] upon being shown this transcript testimony. (Tr. of Evidentiary Hr'g of 4/28/99, at 113-15).

He indicated that Paula Gray is today capable of understanding she is represented by an attorney, but that what she understood in 1987 may have been different. (Tr. of Evidentiary Hr'g of 4/28/99, at 115). Dr. Levin testified that though he didn't know first hand what Petitioner's state of mind was in 1990, that in certain respects he has an opinion as to her state of mind. (Tr. of Evidentiary Hr'g of 4/28/99, at 115-16). He thereafter confirmed his civil case deposition

testimony that he didn't know Paula Gray's state of mind at the time of her psychological evaluation in 1990, and that it was possible that her psychological state was more competent or less competent at that time. (Tr. of Evidentiary Hr'g of 4/28/99, at 115-17).

Dr. Levin stated that Ms. Gray indicated to him that she wasn't advised of her rights, though she didn't use the term Miranda, which he considered in formulating his opinions. (Tr. of Evidentiary Hr'g of 4/28/99, at 117). Dr. Levin also based his testimonial opinion on the depositions of Dr. Cavanaugh, a psychiatrist, and Dr. [Wasyliw], a psychologist, who conducted testing on Ms. Gray in connection with the civil case. (Tr. of Evidentiary Hr'g of 4/28/99, at 118). Also, in the past few weeks, he has reviewed Petitioner's 1978 grand jury and preliminary hearing testimony and the 1987 transcript of her perjury plea. (Tr. of Evidentiary Hr'g of 4/28/99, at 117, 118). He has not, however, reviewed the record of Ms. Gray's 1985 and 1987 trial testimony against Mr. Jimerson, and Mr. Williams and Mr. Rainge respectively. (Tr. of Evidentiary Hr'g of 4/28/99, at 118-19). Dr. Levin's review of the foregoing transcripts [of Petitioner's 1978 grand jury testimony and 1987 perjury plea] has not changed his opinion. (Tr. of Evidentiary Hr'g of 4/28/99, at 118). He read these materials as additional information, and neither to confirm or dispute his earlier opinions. (Tr. of Evidentiary Hr'g of 4/28/99, at 119-20). Nor has his opinion changed since March 1st, 1999 as set forth in his affidavit. (Tr. of Evidentiary Hr'g of 4/28/99, at 119).

Prior to rendering his opinions in his March 1st affidavit, Dr. Levin had not reviewed Tammie Gray's deposition testimony, nor that of Paulette or Louise Gray, or Kenny Adams' and Dennis Williams', or the police officers' depositions in the related case. (Tr. of Evidentiary Hr'g of 4/28/99, at 120-21). Dr. Levin read a portion of Zulina Mason's deposition transcript provided by Mr. Decker. (Tr. of Evidentiary Hr'g of 4/28/99, at 121). Also, prior to preparing his March 1st affidavit, he never reviewed the Saint James Hospital records, Ms. Gray's school or prison records, nor any of Petitioner's correspondence while in the custody of the Illinois Department of Corrections. (Tr. of Evidentiary Hr'g of 4/28/99, at 121-22). His opinion was based primarily on information provided by Ms. Gray and testing done with her. (Tr. of Evidentiary Hr'g of 4/28/99, at 122). Dr. Levin also relied on some of Dr. Kulb's raw data. (Tr. of Evidentiary Hr'g of 4/28/99, at 123).

Dr. Kulb's testing was not designed to determine competency. (Tr. of Evidentiary Hr'g of 4/28/99, at 123). Dr. Levin didn't conduct any of these tests himself. (Tr. of Evidentiary Hr'g of 4/28/99, at 123). He reiterated that he has never conducted an evaluation or formally tested a person as to whether they are fit to stand trial or to enter a plea, though he is familiar with the standard for being found unfit to stand trial. (Tr. of Evidentiary Hr'g of 4/28/99, at 123).

To the inquiry of whether his current opinion in court was based on methodology which was essentially his own, Dr. Levin responded in the negative. (Tr. of Evidentiary Hr'g of 4/28/99, at 124). The Respondent thereupon introduced Dr. Levin's deposition testimony that he used his own methodology to analyze Paula Gray's ability to understand legal processes or rights, to which Dr. Levin countered that the deposition transcript posed a "different question" and that he could clarify his response. (Tr. of Evidentiary Hr'g of 4/28/99, at 124-26).

Dr. Levin indicated that Petitioner was more forthcoming in interviews with him subsequent to 1997 because she knew him by that time. (Tr. of Evidentiary Hr'g of 4/28/99, at 126-27). He indicated that Paula Gray had told him that part of the reason she didn't trust Dr. Wasyliw was because she understood he was on the other side of the legal proceeding. (Tr. of Evidentiary Hr'g of 4/28/99, at 127). Dr. Levin recalls reading reports that Ms. Gray was quick to anger. (Tr. of Evidentiary Hr'g of 4/28/99, at 127).

Dr. Levin's opinion is that Petitioner understands the truth from a lie and can give markedly different representations of her mental state at different times. (Tr. of Evidentiary Hr'g of 4/28/99, at 127-28). She also, he believes, has a strong sense of right and wrong. (Tr. of Evidentiary Hr'g of 4/28/99, at 128). Petitioner sometimes knows what's good for her and what's not according to Dr. Levin. (Tr. of Evidentiary Hr'g of 4/28/99, at 128). He related recalling that Paula Gray obtained caller ID and indicating that she doesn't use drugs or alcohol because they could be dangerous for her. (Tr. of Evidentiary Hr'g of 4/28/99, at 128-29). Dr. Levin also agrees that Petitioner can be forceful when she believes in something, or something is good for her, as for example, Ms. Gray's refusal to physicians wanting her to undergo a hysterectomy. (Tr. of Evidentiary Hr'g of 4/28/99, at 129). Dr. Levin considered this in formulating his opinions. (Tr. of Evidentiary Hr'g of 4/28/99, at 129). He also believes that Ms. Gray is capable of knowing what is right and wrong for her children. (Tr. of Evidentiary Hr'g of 4/28/99, at 130).

Dr. Levin further agreed with his deposition testimony that "'having been abused by the police and forced to tell [an untruth, though the transcript reflects the phrase "in truth"]...his opinion was...[that Petitioner] would do nearly anything that was suggested or demanded of her in order to avoid being jailed for her lifetime.'" (Tr. of Evidentiary Hr'g of 4/28/99, at 130-31).

Dr. Levin does not believe Ms. Gray's judgment is always well informed. (Tr. of Evidentiary Hr'g of 4/28/99, at 131). He does believe, however, that she has always tried to act in a way she thought was consistent with her best interests. (Tr. of Evidentiary Hr'g of 4/28/99, at 131).

He further believes that Petitioner is capable of self promotion and of attempting to protect her interests "as best as she is able." (Tr. of Evidentiary Hr'g of 4/28/99, at 132). In response to the Respondent's question that Petitioner is capable of putting herself in the best possible light depending on her perceived goals, Dr. Levin responded that:

> [g]iven what she perceives to be what is necessary for herself in the best possible light which [he] think[s] — can't be assessed without taking into account the fact that she is mentally retarded. She may think she is putting herself in the best possible light or promoting herself, but that doesn't necessarily mean she is capable of doing that.

(Tr. of Evidentiary Hr'g of 4/28/99, at 132-133).

Dr. Levin believes that people with mild retardation are incapable of understanding legal processes beyond a certain level of abstraction. (Tr. of Evidentiary Hr'g of 4/28/99, at 133). Dr.

Levin does not believe that Ms. Gray is entirely without understanding or capacity to make or communicate decisions regarding her person. (Tr. of Evidentiary Hr'g of 4/28/99, at 133-34). Nor does he believe Petitioner is entirely without understanding or capacity to make or communicate decisions regarding her financial affairs. (Tr. of Evidentiary Hr'g of 4/28/99, at 134). He found, in essence, that Petitioner could manage parenting of certain of her children with outside support such as a counselor, social worker, and home-maker. (Tr. of Evidentiary Hr'g of 4/28/99, at 136). Dr. Levin believes that Ms. Gray presently has seven children, but he indicated that she had six in February, 1997. (Tr. of Evidentiary Hr'g of 4/28/99, at 138). He testified that Petitioner was a competent parent and re-emphasized that she would need the supportive services previously testified to to completely care for her children, but that some of her children exceeded her capacity to properly parent. (Tr. of Evidentiary Hr'g of 4/28/99, at 141). The process would be gradual, according to Dr. Levin, and the return of her children would be conditional [apparently on the presence of the aforementioned outside support]. (Tr. of Evidentiary Hr'g of 4/28/99, at 141). He also concurred that it was his ethical obligation to bring to someone's attention that if after interviewing Ms. Gray, he found that she was not competent to raise children. (Tr. of Evidentiary Hr'g of 4/28/99, at 141)

Dr. Levin indicated that he reviewed Petitioner's entire deposition transcript which Mr. Decker gave him. (Tr. of Evidentiary Hr'g of 4/28/99, at 142-43). He also testified that in his discussions with Paula Gray, she did not distinguish between 1985 and 1987 when relating her belief she was coerced; her comments were "more global" regarding that period. (Tr. of Evidentiary Hr'g of 4/28/99, at 143-44).

Dr. Levin reiterated that Petitioner didn't identify what the people looked like who coerced her in 1985, but he recalled Ms. Gray relating that she was told "you help us, we'll help you." (Tr. of Evidentiary Hr'g of 4/28/99, at 144). This statement, indicated Dr. Levin, was Ms. Gray "sort of summarizing what obviously are events over time." (Tr. of Evidentiary Hr'g of 4/28/99, at 144). Her understanding, stated Dr. Levin, was that she would be released if she entered a plea. (Tr. of Evidentiary Hr'g of 4/28/99, at 144-45). Also, Dr. Levin testified that Ms. Gray did not say exactly when this occurred, nor whether it was before or after the 1985 [Jimerson] trial. (Tr. of Evidentiary Hr'g of 4/28/99, at 145). Dr. Levin stated that she related this information to him in the context of her 1987 release. (Tr. of Evidentiary Hr'g of 4/28/99, at 145).

Dr. Levin testified that Petitioner did not indicate who else was present when the person told her "if you help us, I will help you [Respondent's words]." (Tr. of Evidentiary Hr'g of 4/28/99, at 146). He assumed that Paula Gray was represented by counsel in the 1985, 1987 period. (Tr. of Evidentiary Hr'g of 4/28/99, at 146). Dr. Levin concurred that Ms. Gray told him that she became agitated, surprised and upset by the way the police were treating her. (Tr. of Evidentiary Hr'g of 4/28/99, at 147).

On re-direct, Dr. Levin testified that he had done numerous clinical assessments while at the University of Chicago of persons "of similar background to Paula Gray's." (Tr. of Evidentiary Hr'g of 4/28/99, at 149). Many were classified as mildly mentally retarded, stated Dr. Levin, and legal problems were not "infrequently a factor in their living condition and had to be taken into account in [the] assessment and establishment of effective treatment procedures." (Tr. of

Evidentiary Hr'g of 4/28/99, at 149). His University of Chicago assessments were connected to the legal process in that they concerned issues of competency in treating problems between parents and young children. (Tr. of Evidentiary Hr'g of 4/28/99, at 149-50). He also engaged in a number of assessments involving the legal process after leaving the University of Chicago, concerning child abuse and custody issues. (Tr. of Evidentiary Hr'g of 4/28/99, at 149, 150). He has testified in court about these evaluations on several instances. (Tr. of Evidentiary Hr'g of 4/28/99, at 150).

Dr. Levin explained that the reason he didn't directly ask Ms. Gray about her understanding of what perjury was was his concern in leading the inquiry in the direction toward what he was trying to understand, which is also why, as he previously explained, he goes from general to specific questioning. (Tr. of Evidentiary Hr'g of 4/28/99, at 150). Clinical questioning, he stated, is never as detailed as legal examination, in order to avoid contaminating the evaluation process. (Tr. of Evidentiary Hr'g of 4/28/99, at 150-51).

Dr. Levin additionally testified that people from the 6th grade are familiar with basic legal terms such as search warrant, arrest and sentence. (Tr. of Evidentiary Hr'g of 4/28/99, at 151).

Dr. Levin stated that he relied on and gave equal weight to the testing, deposition testimony and assessments of Dr. Cavanaugh and Dr. Wasyliw regarding Ms. Gray's emotional, intellectual and psychological state, as he gave to his other data involving these same matters concerning Petitioner. (Tr. of Evidentiary Hr'g of 4/28/99, at 151-52). Dr. Levin also testified that it was his understanding that these doctors worked together and were representatives of the police. (Tr. of Evidentiary Hr'g of 4/28/99, at 152, 153). Dr. Levin indicated that he specifically relied on Dr. Cavanaugh's and Dr. Wasyliw's conclusion that Paula Gray was mildly mentally retarded and suffered from dysthymia, or depression, and that she had an anxiety disorder coupled with what a great deal of the data indicated was a diagnosis of post-traumatic stress disorder. (Tr. of Evidentiary Hr'g of 4/28/99, at 153).

Dr. Levin explained that Ms. Gray distrusted Dr. Wasyliw not only because he was on the other side, but also because his clipboard containing her responses was "below view," and she was concerned that her test answers weren't being accurately represented upon observing Dr. Wasyliw writing things down she hadn't said, and changing some of his initially documented responses by her. (Tr. of Evidentiary Hr'g of 4/28/99, at 153-54).

Dr. Levin additionally concurred that Dr. Wasyliw read the questions to Ms. Gray, as opposed to allowing her to read them. (Tr. of Evidentiary Hr'g of 4/28/99, at 154).

On re-cross, Dr. Levin stated that he personally did not perform any testing on Petitioner concerning suggestibility, though his colleague Dr. Kulb did, and he believes some of Dr. Wasyliw's testing provided a measure regarding suggestibility. (Tr. of Evidentiary Hr'g of 4/28/99, at 155). Dr. Levin admitted that a good way to find out what Paula Gray knew or understood about perjury would have been by asking her what perjury means to her. (Tr. of Evidentiary Hr'g of 4/28/99, at 157). Dr. Levin believed he asked Petitioner that question and

she did not know, but that information he concedes is not contained in his notes. (Tr. of Evidentiary Hr'g of 4/28/99, at 157).

On further direct examination, Dr. Levin testified that in order to avoid the risk of finding what a clinician is looking for, or of matching hypotheses with test information, it's more reliable and preferable to divide up the testing and interview functions. (Tr. of Evidentiary Hr'g of 4/28/99, at 158). Therefore, he did the interviews of Paula Gray and someone else did the testing. (Tr. of Evidentiary Hr'g of 4/28/99, at 158-59).

Zulina Mason

Zulina Mason is an outreach worker with the University of Chicago. (Tr. of Evidentiary Hr'g of 4/28/99, at 160). She acknowledged that she is the "Jane Doe" who signed the affidavit identified as Exhibit C [of Petitioner's 2-1401 Mot.], using the name "Jane Doe" out of concern for her safety as a state witness in a multiple defendant murder case [which was apparently not the Lionberg/Schmal matter]. (Tr. of Evidentiary Hr'g of 4/28/99, at 160-61).

Based on Ms. Mason's year plus experience at the Cook County Jail and transfer to each of its six tiers of the woman's facility for fighting, [Tier B-3 was the tier of assignment for inmates awaiting trial on very serious charges, according to Ms. Mason's affidavit,] and Tier A-3 was specifically for lesbian oriented females of the most aggressive nature, where they wore men's clothing, and walked, talked and presented themselves as men instead of females. (Tr. of Evidentiary Hr'g of 4/28/99, at 162, 164). [According to Zulina Mason's March 1, 1999 affidavit, or Petitioner's 2-1401 Mot. Ex. C para. 2., she was "confined in the women's section of the Cook County Jail awaiting trial on felony charges" "from 1977 to late December of 1998].

Ms. Mason was an inmate in both the Cook County Jail and Dwight Correctional facility at the same time as Petitioner's incarceration in those facilities. (Tr. of Evidentiary Hr'g of 4/28/99, at 167, 168). She first met Ms. Gray in mid October, 1978 upon Petitioner's transfer to Tier B-3, from Tier A-3, at the County jail. (Tr. of Evidentiary Hr'g of 4/28/99, at 167-68). [According to Ms. Mason's affidavit, she was with Paula Gray for a month and a half at the County Jail] where she saw Ms. Gray on a daily basis, and she knew Petitioner for a nine year period at Dwight, where they resided in the same cottage "over a period of years. (Tr. of Evidentiary Hr'g of 4/28/99, at 168, 173-74, 174-75).

Zulina Mason testified that for "better than a couple months," when she first met Paula Gray, "[Paula] wouldn't say a word. I thought she was deaf, couldn't speak." (Tr. of Evidentiary Hr'g of 4/28/99, at 169). [Zulina Mason's affidavit adds that "[d]uring the month and a half I was at the CCJ after Ms. Gray's arrival, I did not hear her talk. Inmates, staff, and I thought she was mute; she communicated by notes. Staff persons occasionally wanted something from Ms. Gray and asked me to get a note from her as to her position, for example, whether she wanted to visit the doctor on a certain day." (Petitioner's 2-1401 Mot. Ex. C para. 6). Ms. Mason also states in her affidavit that "[Paula Gray] did not talk [at Dwight] for more than a year after her arrival...[and] was generally sad [at both CCJ and Dwight], although after several years she learned to enjoy some recreational activities." (Petitioner's 2-1401 Mot. Ex. C paras. 8, 9)].

On cross-examination, Zulina Mason conceded that her civil case deposition testimony indicated her stating that she couldn't honestly say what tier Ms. Gray came from before being assigned as her [Zulina Mason's] cellmate in Tier B-3. (Tr. of Evidentiary Hr'g of 4/28/99, at 170-72). Ms. Mason also indicated that she and Paula Gray became close friends, didn't see one another for a number of years after Petitioner left prison, and have recently rekindled their friendship. (Tr. of Evidentiary Hr's of 4/28/99, at 172). Zulina Mason also testified that the persons making the assignments at County Jail were part of the Administration, and that her information as to inmates assigned to the various tiers at the jail was based on what she observed when she was on those tiers. (Tr. of Evidentiary Hr'g of 4/28/99, at 183).

At Dwight, Ms. Mason saw Petitioner regularly in about 1984 for approximately a one year period, after referring Ms. Gray for a job assignment that Zulina Mason was also working on at the garment factory. (Tr. of Evidentiary Hr'g of 4/28/99, at 176).

On re-direct, Zulina Mason agreed to amend her affidavit [or Petitioner's 2-1401 Mot. Ex. C] to reflect that she authored it. (Tr. of Evidentiary Hr'g of 4/28/99, at 183-84). [Also, pursuant to the People's objection, the Court struck the first sentence of paragraph seven of Ex. C of Petitioner's 2-1401 Motion on the grounds that it isn't based on the personal knowledge of the affiant, or Zulina Mason. (Tr. of Evidentiary Hr'g of 4/28/99, at 183-84)]. Ms. Mason testified that she never saw Paula Gray in a fist fight at Cook County Jail or the Dwight Correctional Facility. (Tr. of Evidentiary Hr'g of 4/28/99, at 186).

Ms. Mason testified that during the time when she was at CCJ, a "blanket party" at the jail was where material in the form of a blanket, sheet or large towel was forcefully placed over an inmate's head while several other inmates would abuse or beat or violate the inmate. (Tr. of Evidentiary Hr'g of 4/28/99, at 185). She stated that "this [or blanket parties were] happening [at the County Jail's women's section] from the time that [she] was there until the time [she] left." (Tr. of Evidentiary Hr'g of 4/28/99, at 185). Ms. Mason also testified that Ms. Gray told her that she verbally abused the Dwight guards in order to be sent to segregation, "because [Petitioner] was being harassed by particular inmates at the time and she didn't really know how to defend herself or that she was quite uncomfortable with the way she was being responded to." (Tr. of Evidentiary Hr'g of 4/28/99, at 185-86).

Archie B. Weston, Sr.

Archie B. Weston, Sr., represented Paula Gray at the time of her [June 19th, 1978] preliminary hearing testimony [regarding the Ford Heights Four] and subsequent [September] 1978 trial for the Lionberg/Schmal crimes. (Tr. of Evidentiary Hr'g of 4/28/99, at 188, 192-93). He also represented Dennis Williams, Willie Rainge and Verneal Jimerson. (Tr. of Evidentiary Hr'g of 4/28/99, at 192). One member of the Ford Heights Four he didn't represent, and he believes that was Kenny Adams. (Tr. of Evidentiary Hr'g of 4/28/99, at 192). [Note that various court opinions confirm that Mr. Weston represented Dennis Williams and Willie Rainge during their September, 1978 trial, in conjunction with Petitioner, before a different jury, for the subject crimes. Kenny Adams was represented by a different attorney at the same 1978 trial. Williams,

93 Ill.2d at 312-13; People ex rel. Gray, 721 F.2d at 592. Mr. Weston also represented Verneal Jimerson in 1978, but Mr. Jimerson did not stand trial until 1985. People ex rel. Gray, 721 F.2d at 590; Jimerson, 127 Ill.2d at 21].

Mr. Weston graduated from law school in 1958, and was primarily a general practitioner after graduation, with a great deal of criminal work, including numerous criminal cases in the Markham courthouse since the date of its construction. (Tr. of Evidentiary Hr'g of 4/28/99, at 189).

Mr. Weston had handled anywhere from 5 to 10 murder cases, and perhaps more, prior to the Ford Heights Four case, plus "innumerable felonies." (Tr. of Evidentiary Hr'g of 4/28/99, at 190). A number of these cases were investigated by the Cook County Sheriff's Police, and Mr. Weston, as an attorney, became knowledgeable in how they conducted investigations. (Tr. of Evidentiary Hr'g of 4/28/99, at 190). He indicated that the practice of Sheriff's investigations regarding witnesses was that witness interviews were included in police reports; these reports included all witnesses who described matters relevant to the case; each detective would create a report regarding his interview; and normally, the detective would complete his report the same date as the interview occurred. (Tr. of Evidentiary Hr'g of 4/28/99, at 191-92).

At the time of his initial representation of Paula Gray when she testified at the [June 19th, 1978] preliminary hearing, Petitioner was sworn in and told to "'give her version of the statement she had submitted,'" but she instead testified: "'It is all a lie. They made me say it.'" (Tr. of Evidentiary Hr'g of 4/28/99, at 192-93). Mr. Weston assumed Ms. Gray had previously testified in the grand jury, but did not receive a copy of the grand jury transcript, nor did he have any knowledge of what she testified to. (Tr. of Evidentiary Hr'g of 4/28/99, at 193).

Mr. Weston stated that in Paula Gray's case, he received a "page or two" of discovery from investigators of the Cook County Sheriff's Department, which discovery or "report" he identified as Plaintiff's [or Petitioner's Evidentiary Hr'g] Ex.1-A. (Tr. of Evidentiary Hr'g of 4/28/99, at 194, 195). He didn't receive any reports from evidence technicians. (Tr. of Evidentiary Hr'g of 4/28/99, at 194-95). Mr. Weston further indicated that what is unusual about Plaintiff's [or Petitioner's Evidentiary Hr'g] Ex.1-A from other reports he had received in Cook County Sheriff's cases involving serious felonies, is that the dates and times indicate it was typed on June 6th, 1978, which was subsequent to not only the investigation, but also the arrest of his clients sometime in May, 1978. (Tr. of Evidentiary Hr'g of 4/28/99, at 195-96). The report indicates, stated Mr. Weston, that the "time of the occurrence" was May 12th [1978]. (Tr. of Evidentiary Hr'g of 4/28/99, at 196).

Another behavioral difference in the Sheriff's Department noticed by Mr. Weston in this case was the fact that he had to complain to the Presiding Judge, whom he believes was Judge Wright, because he was threatened in the hallway of the Markham Courthouse by detectives working on the Ford Heights Four matter. (Tr. of Evidentiary Hr'g of 4/28/99, at 197, 200). He indicated that due to his advanced age, he couldn't recall the "specific names" of the two detectives who threatened him, though he may remember them if he saw them and they told him their names,

but these detectives came to court every day. (Tr. of Evidentiary Hr'g of 4/28/99, at 198, 199-200).

Mr. Weston additionally testified that he had had pretrial dealings with assistant State's Attorneys in the Ford Heights Four case, but he doesn't recall having had dealings with Assistant State's Attorneys Scott Arthur and Cliff Johnson prior to the Lionberg/Schmal matter. (Tr. of Evidentiary Hr'g of 4/28/99, at 201-02).

Mr. Weston testified that he was never tendered the following documents, nor a summary of these documents:

1. Exhibit G to Petitioner's 2-1401 Motion [or the Capelli notes]. (Tr. of Evidentiary Hr'g of 4/28/99, at 204). Mr. Weston also indicated that he was never told that Sheriff's Detectives Vanick and Capelli had interviewed Marvin Simpson on May 17th, 1978, or told in any way that Mr. Simpson had indicated that the Ford Heights Four and Paula Gray had not in fact murdered Carol Schmal and Larry Lionberg. (Tr. of Evidentiary Hr'g of 4/28/99, at 204). Additionally, Mr. Weston stated that he was never informed that Ford Heights Officer George Nance, and Lt. Vanick and Officer Capelli were told that the actual killers were Dennis Johnson, Ira Johnson, Arthur Robinson, and [Johnnie] Rodriguez. (Tr. of Evidentiary Hr'g of 4/28/99, at 205). [Note that the Capelli notes spell Mr. Rodriguez's first name as "Johnnie," as opposed to "Johnny." See Petitioner's 2-1401 Mot. Ex. G. and Respondent's [Evidentiary Hr'g] Ex. #10, at 046274, for names of four perpetrators identified by the Capelli notes, including *Johnnie* Rodriguez. Additionally, "Juan" is the Spanish name for John, as to which the Court takes judicial notice].

2. Exhibit H to Petitioner's 2-1401 Motion which [purportedly constitutes] the note[s] of a Sheriff's policeman interview of [Sherry] McCraney. (Tr. of Evidentiary Hr'g of 4/28/99, at 205, 210). Mr. Weston also testified that he did not receive a summary of the information contained in the [foregoing] note[s]. (Tr. of Evidentiary Hr'g of 4/28/99, at 205). He indicated that he is presently aware that [Sherry] McCraney is the wife of the Charles McCraney, "who testified [in the 1978, 1985 and 1987 trials of Paula Gray and the Ford Heights Four]." (Tr. of Evidentiary Hr'g of 4/28/99, at 205). In 1978, when Mr. Weston was defending Paula Gray and the Ford Heights Four, he testified that he was not aware [Sherry] McCraney was a witness to this event. (Tr. of Evidentiary Hr'g of 4/28/99, at 206).

Mr. Weston identified Exhibit K to Petitioner's 2-1401 Motion as the perjury indictment of Paula Gray. (Tr. of Evidentiary Hr'g of 4/28/99, at 213-14). He stated that upon observing the demeanor of Petitioner and explaining the perjury charge that was being brought against her, it was his opinion that she was not "mentally able" or capable of understanding this perjury charge. (Tr. of Evidentiary Hr'g of 4/28/99, at 214). Mr. Weston further indicated that Paula Gray's defense at trial was that she was innocent of the Lionberg/Schmal crimes, by reason of her assertion that she "knew nothing about" their murders and was never involved in any way. (Tr. of Evidentiary Hr'g of 4/28/99, at 215). Ms. Gray also indicated to Mr. Weston that "she thought [Dennis Williams, Verneal Jimerson, Kenny Adams, and Willie Rainge] were not involved" in the subject crimes. (Tr. of Evidentiary Hr'g of 4/28/99, at 215). Petitioner additionally told Mr. Weston that she gave a statement that these men were involved because

"she was forced to make [this] statement by the officers who arrested her," though she didn't tell him specifically how the police forced her. (Tr. of Evidentiary Hr'g of 4/28/99, at 215, 217). Mr. Weston also affirmed that he represented Dennis Williams, Verneal Jimerson and Willie Rainge, and that these men maintained their innocence throughout the course of their trial. (Tr. of Evidentiary Hr'g of 4/28/99, at 217). [Again, it should be noted that Mr. Weston represented Dennis Williams and Willie Rainge, along with Paula Gray, at their joint 1978 trial. Williams, 93 Ill.2d at 312-13; People ex rel. Gray, 721 F.2d at 592. Verneal Jimerson, also represented by Mr. Weston in 1978, was not tried until 1985. Jimerson, 127 Ill.2d at 21].

Mr. Weston confirmed that he previously reviewed a deposition of Marvin Simpson dated September 11, 1997 [Petitioner's Add'l Auth's and Mat'ls Exhibit 6]. (Tr. of Evidentiary Hr'g of 4/28/99, at 217). He testified that at the time of his [1978] defense of Paula Gray and the other defendants, that he was not aware that Marvin Simpson had told Detectives Capelli and Vanick of the Cook County Sheriff's Department, and George Nance of the Ford Heights police, that he [Simpson] in fact knew who the real murderers were. (Tr. of Evidentiary Hr'g of 4/28/99, at 217). Mr. Weston also stated that he did not know that Mr. Simpson had identified the Johnson brothers, Mr. Rodriguez and Mr. [Robinson] as the real killers. (Tr. of Evidentiary Hr'g of 4/28/99, at 218). Mr. Weston testified that that information "would have changed the entire defense of the defendants." (Tr. of Evidentiary Hr'g of 4/28/99, at 218). Nor was Mr. Weston aware that Mr. Simpson had stated to Sheriff's detectives that he knew that the proceeds of the gas station robbery in the Carol Schmal murder were being sold by Dennis Johnson, Ira Johnson, Arthur Robinson, and [Johnnie] Rodriguez, or that Marvin Simpson told Detectives Capelli and Vanick that [Johnnie] Rodriguez's Buick 225 was the vehicle used in the abduction, rape and murder of Carol Schmal and Larry Lionberg. (Tr. of Evidentiary Hr'g of 4/28/99, at 218-19). In addition, Mr. Weston indicated that he was not aware that Investigators Capelli and Vanick both admitted to being present at the Marvin Simpson interview, or that back in 1978, Ira Johnson was going to be prosecuted and put in jail for the murder of Carol Schmal and Larry Lionberg [apparently in 1996]. (Tr. of Evidentiary Hr'g of 4/28/99, at 223). Mr. Weston further indicated that in 1978 a writ of coram nobis could have been filed asserting the foregoing information, and thereby prevented "...wasting a lot of time now..." (Tr. of Evidentiary Hr'g of 4/28/99, at 224).

3. Mr. Weston reviewed and confirmed that during the course of his case with Paula Gray, he was never tendered the information contained in [Exhibit] Number Ten of Petitioner's Additional Authorities and Materials concerning the search of a Buick [225], nor was he aware that Lieutenant Vanick requested that evidence technicians process this Buick 225. (Tr. of Evidentiary Hr'g of 4/28/99, at 225). Moreover, Mr. Weston was not informed that evidence gathered from the aforementioned 225 was sent to Michael Podlecki of the Cook County Sheriff's Police Department Criminalistics Section. (Tr. of Evidentiary Hr'g of 4/28/99, at 225).

4. Mr. Weston indicated that he never received a felony screening file which was created around May 14th [1978] while he was defending this case. (Tr. of Evidentiary Hr'g of 4/28/99, at 227). He also testified that he was not aware in 1978, while representing Paula Gray, that such a file was created by Assistant State's Attorney [Earnest] DiBenedetto, or that Mr. DiBenedetto made the entry in that file for Charles McCraney, under notes, that "circumstantial witness puts offenders['] cars on scene, saw no faces." (Tr. of Evidentiary Hr'g of 4/28/99, at 230). Mr.

Weston additionally indicated that he did not know that in the same file, under Paula Gray, Mr. DiBenedetto wrote that this witness is "reluctant." (Tr. of Evidentiary Hr'g of 4/28/99, at 230).

Mr. Weston stated that he thinks he was aware of the forensic scientist Michael Podlecki in 1978. (Tr. of Evidentiary Hr'g of 4/28/99, at 231). He confirmed having reviewed, prior to testifying, Michael Podlecki's "deposition," which was identified as "Number 15 in Petitioner's Additional Authorities and Materials." (Tr. of Evidentiary Hr'g of 4/28/99, at 231). [Note, however, that Michael Podlecki's January 15th, 1999 "deposition" testimony previously referred to is actually Exhibit Number *16* and not *15* in Petitioner's Additional Authorities and Materials. Exhibit Number 15 is an excerpt of Michael Podlecki's October 12th, 1978 "trial" testimony in Paula Gray's 1978 case. See Petitioner's Add'l Auth's and Mat'ls Ex's 15, 16]. Mr. Weston testified that while defending Paula Gray and the other defendants [in 1978] he was not aware that Michael Podlecki had done testing on pubic hairs from the Ford Heights Four comparing them to pubic hairs found on the victim['s] socks that excluded the defendants. (Tr. of Evidentiary Hr'g of 4/28/99, at 231-32). Also, Mr. Weston was never told that Mr. Podlecki had conducted scientific testing excluding the Ford Heights Four as possible donors of the pubic hairs found on the victim. (Tr. of Evidentiary Hr'g of 4/28/99, at 232).

Mr. Weston stated that during the course of Petitioner's trial, her demeanor and attitude changed, and she became reluctant to speak. (Tr. of Evidentiary Hr'g of 4/28/99, at 232-33). More specifically, he testified that there was a "declining manner of communication [by Ms. Gray]" as the trial proceeded. (Tr. of Evidentiary Hr'g of 4/28/99, at 234). Mr. Weston indicated that he was not aware at the time what the police had done with Petitioner from when they questioned her, up to the time she testified in the grand jury. (Tr. of Evidentiary Hr'g of 4/28/99, at 234).

Mr. Weston added that he did not receive any information regarding a photo line-up or show-up by the Sheriff's Department involving Mr. Willie Watson, and was never aware of a photo display that was shown to Mr. McCraney to identify witnesses. (Tr. of Evidentiary Hr'g of 4/28/99, at 234-35).

Mr. Weston indicated that the trial lasted anywhere from two to three weeks, and perhaps longer, and that there were always representatives from the Cook County Sheriff's Department present at the trial observing. (Tr. of Evidentiary Hr'g of 4/28/99, at 235). Mr. Weston was unsure of the number of such representatives, and could not confirm whether the aforementioned presence of the Cook County Sheriff's Police was typical in cases previously done by him with this Department. (Tr. of Evidentiary Hr'g of 4/28/99, at 235-36).

On cross-examination, Mr. Weston concurred that in 1978, he knew that ordinarily bodies in homicide cases were examined by the Coroner's Office and that that office issued a report. (Tr. of Evidentiary Hr'g of 4/28/99, at 239). Therefore, he indicated that he was aware that there should have been a report for Mr. Lionberg and a report for Ms. Schmal. (Tr. of Evidentiary Hr'g of 4/28/99, at 240).

Mr. Weston also stated that he knew that Paula Gray had testified in the Cook County grand jury, but that pursuant to the usual practice at that time, he was not given a copy of her grand jury

testimony. (Tr. of Evidentiary Hr'g of 4/28/99, at 240). [After some confusion regarding the proceeding as to which Respondent was directing its inquiries,] Mr. Weston testified that he began representing Paula Gray after her testimony at the preliminary hearing. (Tr. of Evidentiary Hr'g of 4/28/99, at 243). He defended Petitioner pro-bono. (Tr. of Evidentiary Hr'g of 4/28/99, at 244). Mr. Weston reiterated that he filed discovery on behalf of Paula Gray, but he didn't request her grand jury testimony. (Tr. of Evidentiary Hr'g of 4/28/99, at 243-44). He doesn't recall whether he specifically asked for any statements by Petitioner, but whatever he asked for is a matter of record. (Tr. of Evidentiary Hr'g of 4/28/99, at 244). Mr. Weston concurred that at some point, Paula Gray went to trial before a jury, with Judge McKay presiding. (Tr. of Evidentiary Hr'g of 4/28/99, at 245). He does not recall how the People proved their perjury case against Petitioner. (Tr. of Evidentiary Hr'g of 4/28/99, at 246). Mr. Weston also doesn't recall whether he moved for a directed verdict on that issue at the end of the People's case. (Tr. of Evidentiary Hr'g of 4/28/99, at 246).

Mr. Weston stated that at the time he represented Paula Gray in 1978, he had been practicing law for twenty years and that a substantial part of his practice was criminal work. (Tr. of Evidentiary Hr'g of 4/28/99, at 246-47). Many of his clients were poor and without a great deal of education, and some had diminished intelligence. (Tr. of Evidentiary Hr'g of 4/28/99, at 247-48).

Mr. Weston testified that in 1978 he understood that insanity and incompetency were defenses available to his clients. (Tr. of Evidentiary Hr'g of 4/28/99, at 248). He concurred that competency meant that his client was capable of understanding the nature of the charge against him [or her] and was also capable of cooperating in an effective way with him [as counsel]. (Tr. of Evidentiary Hr'g of 4/28/99, at 249). He felt in 1978 that if his client couldn't fulfill one of the two foregoing criteria, he was obligated to bring that to the court's attention. (Tr. of Evidentiary Hr'g of 4/28/99, at 249). Mr. Weston indicated that he had that responsibility at the time he represented Paula Gray, but he never brought to the court's attention that Paula Gray was not competent, or made such a motion. (Tr. of Evidentiary Hr'g of 4/28/99, at 251).

Mr. Weston did not bring to the judge's attention that he hadn't received the reports from the [Coroner's] Office or any grand jury testimony, because "at the time [he] didn't know that the parties were withholding evidence from [him] in the trial." (Tr. of Evidentiary Hr'g of 4/28/99, at 251-52). Mr. Weston conceded that he was defending Paula Gray and three young men facing the death penalty, but he went to trial with two police reports. (Tr. of Evidentiary Hr'g of 4/28/99, at 252). He also did not make a motion to suppress Paula Gray's grand jury testimony, though he understood that the grand jury testimony was part of the State's perjury case against Petitioner and that a successful challenge suppressing her grand jury testimony would have negated their perjury case against Ms. Gray. (Tr. of Evidentiary Hr'g of 4/28/99, at 253). This was because the concept of suppressing grand jury testimony was not too prevalent in 1978, or "no one used it because it was useless." (Tr. of Evidentiary Hr'g of 4/28/99, at 253).

Mr. Weston reviewed Exhibit K [of Petitioner's 2-1401 Motion], or the perjury indictment against Paula Gray. (Tr. of Evidentiary Hr'g of 4/28/99, at 254). He stated that he read a copy of this indictment to Petitioner in 1978, if that indictment is in fact what was tendered to him on

June 19th, 1978. (Tr. of Evidentiary Hr'g of 4/28/99, at 256). Mr. Weston testified that he understood what Ms. Gray was charged with in Exhibit K. (Tr. of Evidentiary Hr'g of 4/28/99, at 257). He confirmed that he spoke with Petitioner prior to her 1978 trial about the charges against her to make sure "she knew what she was up against." (Tr. of Evidentiary Hr'g of 4/28/99, at 258). Mr. Weston reiterated that when he spoke with Ms. Gray about perjury, the word "perjury" was a term she couldn't understand. (Tr. of Evidentiary Hr'g of 4/28/99, at 258). However, he concluded that "[Petitioner] knew what she had said...[and s]he knew what she was charged with." (Tr. of Evidentiary Hr'g of 4/28/99, at 258). Mr. Weston testified that he was able to make sure that she knew:

> [b]ecause of her own statement. She said it's a lie. They all made me say it. That's what they charged me with, the lie.

(Tr. of Evidentiary Hr'g of 4/28/99, at 259).

Mr. Weston told of the perceived threats [Respondent's terminology] made by the two Sheriff's officers which he reported in open court, before both the judge and Mr. Johnson and Mr Arthur, the assistant State's Attorneys prosecuting the case. (Tr. of Evidentiary Hr'g of 4/28/99, at 259). Mr. Weston confirmed that the report identified as Exhibit Number Ten [of Petitioner's Add'l Auth's and Mat'ls] listed the name "Robert L. Watson" in the box entitled "Name of Vehicle Owner." (Tr. of Evidentiary Hr'g of 4/28/99, at 260). Mr. Weston also stated that when Ms. Gray's demeanor changed during trial, that he still thought throughout the trial that she could cooperate with him and understood what she was charged with. (Tr. of Evidentiary Hr'g of 4/28/99, at 260-61).

Mr. Weston thinks he recalls Charles McCraney testifying at the 1978 trial when Respondent described him as:

> [the] man that said he was in his bedroom near the scene where the bodies were found early in the morning and he looked out his window and saw a [sic] certain cars out there that attracted his attention, it might be something going on and he later identified all of [Mr. Weston's] clients as people that he saw going into the building where the bodies were found.

(Tr. of Evidentiary Hr'g of 4/28/99, at 262).

Upon Respondent noting that Mr. Weston had previously testified that he didn't recall ever being told that Mr. McCraney saw a photo array, Mr. Weston conceded that if he had cross-examined Mr. McCraney about this photo array, it would have been something Mr. Weston knew about. (Tr. of Evidentiary Hr'g of 4/28/99, at 262-63). Mr. Weston stated that his following cross-examination of and responses by Mr. McCraney, as related by Respondent, "sound[ed] familiar," where:

> [Mr. Weston] asked [Mr. McCraney] when was the first time he ever identified [Mr. Weston's] clients and [Mr. McCraney] told him it was only

> a couple months before trial...[and Mr. McCraney further responded] that [he] told the police [he] wasn't going to identify anybody until they moved [him] and [his] family to protect [them] and when they did that [he] sat down and looked at photographs and identified [Mr. Weston's] clients.

(Tr. of Evidentiary Hr'g of 4/28/99, at 263).

On re-direct, Mr. Weston restated that he represented four persons facing a possible death sentence and that he made a discovery request. (Tr. of Evidentiary Hr'g of 4/28/99, at 264). Mr. Weston indicated that he made a discovery request and that pursuant to that request the State and police had to provide him with all evidence that would tend to negate his client's [or arguably clients'] guilt. (Tr. of Evidentiary Hr'g of 4/28/99, at 264). He also repeated that in his opinion, Ms. Gray understood that she had not committed the crimes of murder and armed robbery. (Tr. of Evidentiary Hr'g of 4/28/99, at 264). Mr. Weston further testified that Ms. Gray understood and in fact stated that the police forced her to tell a story in front of the grand jury. (Tr. of Evidentiary Hr'g of 4/28/99, at 264-65). Also, at the time Mr. Weston started this trial, he indicated that he was asking for a continuance to continue his discovery. (Tr. of Evidentiary Hr'g of 4/28/99, at 265).

On re-cross, Mr. Weston agreed that he demanded trial every time the case came up. (Tr. of Evidentiary Hr'g of 4/28/99, at 265). He also concurred that the case went to trial on his schedule. (Tr. of Evidentiary Hr'g of 4/28/99, at 265-66). Finally, Mr. Weston conceded that the State had to get his clients to trial within a certain amount of time unless he agreed to a continuance, and he never agreed to continue the trial. (Tr. of Evidentiary Hr'g of 4/28/99, at 266).

On re-direct, Mr. Weston indicated that Paula Gray was arrested months after "the guys." [Petitioner's words]. (Tr. of Evidentiary Hr'g of 4/28/99, at 267).

George Nance, Jr.

[Sgt.] George Nance, Jr., has been in law enforcement for 30 years, and with the Ford Heights Police Department (previously the East Chicago Heights Police Department) for 20 years. (Tr. of Evidentiary Hr'g of 4/29/99, at 6). On May 12, 1978, [Sgt.] Nance, as an East Chicago Heights police officer, and a police officer since 1970, along with Robert Sally, a janitor, discovered the bodies of Carol Schmal and Larry Lionberg. (Tr. of Evidentiary Hr'g of 4/29/99, at 5, 9-10, 12). [Sgt.] Nance marked map(s) showing an area of East Chicago Heights (identified as "Petitioner's Group Exhibit No. 1") with an "S" for the location of the apartments approximately where Ms. Schmal's body was found, and an "L" approximately where Mr. Lionberg's body was found "on Deer Creek." (Tr. of Evidentiary Hr'g of 4/29/99, at 8-10, 11-12).

Subsequently, Lt. [Howard] Vanick and [Inv. Dave] Capelli arrived at the scene from the Sheriff's Police Department. (Tr. of Evidentiary Hr'g of 4/29/99, at 12-13). Lt. Vanick said

loud enough to be overheard by the Ford Heights people gathered at the scene that "I want them to get the fuck out of here." (Tr. of Evidentiary Hr'g of 4/29/99, at 13-14).

Mr. Nance interviewed, among others, Charles McCraney, who said he didn't see anything. (Tr. of Evidentiary Hr'g of 4/29/99, at 14)

[Note that at the 1978 trial of Paula Gray, Dennis Williams, Willie Rainge and Kenneth Adams, Charles McCraney testified on September 29th that he did not identify these defendants as those persons he viewed outside his window on the date, time and vicinity of the subject crimes until "[he] was going to be relocated" by the State's Attorney, because "[he] wasn't going to testify against [the defendants] and live [near where the defendants associated] since everybody around there is kin...relatives and girlfriends..." (Respondent's Group Ex. 11 Item G at 1166-67, 1169). He also stated that on the evening of May 10th-11th, 1978, he had been residing at 1533 Hammond Lane for two weeks, which was located diagonally across from the "abandoned building" at 1528 Cannon Lane where [Carol Schmal's] body was recovered, as well as four doors away from Paula Gray's house. (Respondent's Group Ex. 11 Item G at 1182, 1185, 1187, 1190-91); Williams, 93 Ill.2d at 318. Mr. McCraney stated that his complex was a "rat [sic] nest," and that he "wanted to relocate...[because he] had kids." (Respondent's Group Ex. 11 Item G at 1179-80, 1213). He also indicated he lost two cars while [apparently] living at 1533 Hammond. (Respondent's Group Ex. 11 Item G at 1165). Charles McCraney confirmed that [at the time of his trial testimony on September 29th, 1978 identifying Paula Gray and her three co-defendants,] that he was being relocated by the State's Attorney. (Respondent's Group Ex.11 Item G at 1166-67).

Charles McCraney further testified on September 29th that he initially told P.J. Pastirik, the first police officer he spoke to on Friday, May 12th, 1978, at 1 p.m., that he saw an unknown subject. (Respondent's Group Ex. 11 Item G at 1167, 1168). He explained that immediately after he called the police in Homewood on May 12th [1978], they agreed to relocate him but didn't do so. (Respondent's Group Ex. 11 Item G at 1217). Therefore, he didn't tell the police what he knew until "seeing what they were going to do." (Respondent's Group Ex. 11 Item G at 1217). He testified that for "more than a month," he didn't give the police any identifying information because they were dragging their feet and "just interested in solving the case and chips fall where they may [sic]." (Respondent's Group Ex. 11 Item G at 1218). Though the police had previously agreed to relocate him, Mr. McCraney felt that their words of agreement "were just lies." (Respondent's Group Ex. 11 Item G at 1218-19).

Charles McCraney additionally indicated in his September 29th, 1978 testimony that he knew Paula Gray, and her three co-defendants by their faces, but not their names, having seen them smoking marijuana and having sex in front of his house every night, though they were only smoking marijuana the evening [of the subject crimes]. (Respondent's Group Ex. 11 Item G at 1169-70). He also stated that he identified them for the first time by their photos shown to him by the police, and a short while later by the State's Attorney, about one month [before his September 29th, 1978 trial testimony]. (Respondent's Group Ex. 11 Item G at 1188, 1189). Mr. McCraney confirmed that at no time prior to his photo identification of the four defendants [one

month prior to September 29th, 1978] did he give or identify any people to the police or State's Attorney. (Respondent's Group Ex. 11 Item G at 1189)].

[Sgt.] Nance testified at the evidentiary hearing that he submitted reports regarding his interview of Mr. McCraney. (Tr. of Evidentiary Hr'g of 4/29/99, at 14). He was later told that the Cook County Sheriff would be handling the investigation. (Tr. of Evidentiary Hr'g of 4/29/99, at 15). In fact, the Cook County Sheriff's Police assumed control of the scene while he was present, and Lt. Vanick ordered him to get people in line and away from the area. (Tr. of Evidentiary Hr'g of 4/29/99, at 15-16).

[Sgt.] Nance learned perhaps a day or two afterwards that Verneal Jimerson, Dennis Williams, [Kenneth] Adams and Willie Rainge were arrested for this murder [sic]. (Tr. of Evidentiary Hr'g of 4/29/99, at 16). He thereupon told both Howard Vanick and Dave Capelli at the East Chicago Heights police station that "there is no way that I believe that [these four men] would do a crime like that." (Tr. of Evidentiary Hr'g of 4/29/99, at 16-17). [Sgt.] Nance's belief was based on the fact that "he didn't have arrests on them," had seen them grow up, and had known both them and their families. (Tr. of Evidentiary Hr'g of 4/29/99, at 17-18). George Nance also told Lt. Vanick and [Inv.] Capelli in response to their inquiry about Paula Gray that "she [was] mentally ill," that he knew the sisters and family, and that Petitioner had mental problems, and did not appear to be as intelligent and mature as your average person of her age. (Tr. of Evidentiary Hr'g of 4/29/99, at 18-19).

[Sgt.] Nance testified that he received a call from Marvin Simpson, an informant of his whose past information had been reliable. (Tr. of Evidentiary Hr'g of 4/29/99, at 19-20). Marvin Simpson told Mr. Nance that he wanted to tell him about some people he thought were responsible for the Clark station killings. (Tr. of Evidentiary Hr'g of 4/29/99, at 20). [In Marvin Simpson's September 11th, 1997 deposition testimony in the case of Williams v. Cook County, et al., Mr. Simpson stated that when he saw on television while in the hospital, "four guys getting arrested for something [which]...at least in [his] mind [they didn't do]," that that made him call George Nance. (Petitioner's Add'l Auth's and Mat'ls Ex. 6, at 179). During that call, he told Sgt. Nance that he thought "Dennis Johnson, Ira Johnson, Arthur Robinson, and Johnnie Rodriguez" had killed [Carol Schmal and Larry Lionberg]." (Petitioner's Add'l Auth's and Mat'ls Ex. 6, at 182-83)]. After convincing Mr. Simpson, who was in the hospital, that he should also relate this information to some "white" policemen from the Cook County Sheriff's Department who were in charge of the case, [Sgt.] George Nance, Lt. Howard Vanick, and [Inv.] Dave Capelli went to the hospital to interview Marvin Simpson. (Tr. of Evidentiary Hr'g of 4/29/99, at 19, 20-21). All three of the police officers were present for the entire interview. (Tr. of Evidentiary Hr'g of 4/29/99, at 21).

Marvin Simpson stated that Dennis Johnson told him that he [Dennis] and Ira [Johnson] were talking about doing a score or stick-up. (Tr. of Evidentiary Hr'g of 4/29/99, at 21). Mr. Simpson indicated that "[t]hey are known for sticking up places and everything like that." (Tr. of Evidentiary Hr'g of 4/29/99, at 21-22). They wanted Marvin Simpson, or somebody, to give them a ride. (Tr. of Evidentiary Hr'g of 4/29/99, at 22). Mr. Simpson advised Nance, Vanick and Capelli that "[t]he vehicle, a duce and a quarter, belongs to [Johnnie] Rodriguez..." (Tr. of Evidentiary Hr'g of 4/29/99, at 22). He [Simpson] thereupon told the Johnsons that he couldn't

go with them. (Tr. of Evidentiary Hr'g of 4/29/99, at 22). The next day, Mr. Simpson heard a crime had been committed and he even talked to the Johnsons [apparently] about [the subject crimes]. (Tr. of Evidentiary Hr'g of 4/29/99, at 22). Marvin Simpson said that Ira Johnson threatened him and mentioned that a .38 revolver was involved. (Tr. of Evidentiary Hr'g of 4/29/99, at 22-23, 28). Mr. Simpson also told [Sgt.] Nance, Lt. Vanick and [Inv.] Capelli that before the crimes, in the early morning hours of Thursday, May 11th, 1978, he and his girlfriend were "having" sexual intercourse, when he heard four or five shots and saw Ira Johnson coming from the area of Cannon Lane "with some car lights [sic]." (Tr. of Evidentiary Hr'g of 4/29/99, at 23). This area of Cannon Lane, according to [Sgt.] Nance, was the same location where he had discovered Carol Schmal's body and where he had previously marked an "S" on the East Chicago Heights map(s) [at the evidentiary hearing]. (Tr. of Evidentiary Hr'g of 4/29/99, at 23-24). Mr. Simpson also told the three officers that when Carol Schmal's body was found the next day, Ira was very nervous and wouldn't go around there, and that's why he [Simpson] called [Sgt.] Nance. (Tr. of Evidentiary Hr'g of 4/29/99, at 24). Marvin Simpson's statement, according to George Nance, corresponded to the date and time of the Lionberg/Schmal murder [sic]. (Tr. of Evidentiary Hr'g of 4/29/99, at 25).

[In Mr. Simpson's September 11th, 1997 deposition, he indicated that "the older""white" [Cook County Sheriff's police officer, or apparently Lt. Vanick,] asked him questions, while the "young""white" [Cook County Sheriff's police officer, or apparently Inv. Capelli] was "writing everything down." (Petitioner's Add'l Auth's and Mat'ls Ex. 6, at 185-86). Sgt. Nance, he indicated, didn't ask him any questions. (Petitioner's Add'l Auth's and Mat'ls Ex. 6, at 185).

Marvin Simpson stated that he told them [Sgt. Nance, Lt. Vanick and Inv. Capelli] "you all got the wrong people in jail" and when asked how he knew, he indicated that because he saw "Arthur Robinson, Ira Johnson, Dennis Johnson and Johnnie Rodriguez" "around [where Carol Schmal and Larry Lionberg were] killed," and that these four men had "killed them people." (Petitioner's Add'l Auth's and Mat'ls Ex. 6, at 188, 190, 192). He also told them what kind of car Johnnie Rodriguez had, and might have told the police that "the fender [of Johnnie Rodriguez's car] was bent," and that Roger Wilson gave these men the gun, which Mr. Wilson had "stole [sic] from his daddy." (Petitioner's Add'l Auth's and Mat'ls Ex. 6, at 193). One of the police officers told Mr. Simpson not to tell anybody anything, which he didn't; and that they would get back to him, which they didn't. (Petitioner's Add'l Auth's and Mat'ls Ex. 6, at 189, 191, 195). After writing everything down, the police queried him as to whether he had a criminal record to which Marvin Simpson responded:

> 'No, I ain't got no criminal record. I ain't no criminal, man. What's wrong with you all...I'm telling you all something for a reason because if them is the right guy [sic], the right names that I'm given [sic] you all, why don't you all get them off the street before they hurt somebody else...They are going to hurt somebody else. Ain't no doubt about it. If those are the same four guys I gave you all, somebody else is going to get hurt.'"Boom, look what happened." [Mr. Simpson was apparently referring to the fact that between the time of his above referenced May 17th, 1978 disclosure to police officers Vanick, Capelli and Nance of the identity of the four perpetrators of the Lionberg/Schmal crimes, including Ira Johnson,

> and Mr. Johnson's arrest on or about October 31, 1991, Ira Johnson murdered still another female victim for which he was subsequently convicted and sentenced.

(Petitioner's Add'l Auth's and Mat'ls Ex. 6, at 188-189; see also Memorandum "Judicial Notice" par. 6.d., at 226 (judicial notice that the same Ira Johnson identified by the Capelli notes on May 17th, 1978, who pled guilty to the Lionberg/Schmal murders on June 16th, 1997, was also convicted in Cook County of killing another woman in October, 1991)).

Marvin Simpson added in his September 11th, 1997 testimony that he didn't tell the three police officers in the hospital interview that on the night of the crimes, he was alone on the porch of Connie Moses, a friend who was in the process of moving and was not immediately at home, and who lived in one of the residences "back where they killed them people." (Petitioner's Second Add'l Auth's Ex. C at 118, 121, 122-23). While sitting there, he heard some shots he thought were firecrackers and subsequently saw Arthur Robinson running from between two of the buildings, out of the courtyard, crossing the street, and going towards the creek. (Petitioner's Second Add'l Auth's Ex. C at 124, 125, 127, 128, 129). Mr. Simpson indicated that he couldn't be seen because there were some "big hedges" like "bundles" "up against [those] houses" and "big""pine trees" behind "the building." (Petitioner's Second Add'l Auth's Ex. C at 129, 130-31). He also did not indicate to the police on May 17th, 1978 that he next saw Ira Johnson "walking real fast" past him carrying a pistol and go between the buildings. (Petitioner's Second Add'l Auth's Ex. C at 129, 133, 134, 135). Marvin Simpson testified on September 11th, 1997 that he was used to looking at [Ira Johnson] with a pistol [and that h]e played with a lot of them." (Petitioner's Second Add'l Auth's Ex. C at 134).

The reason Mr. Simpson did not give the police the above information on May 17th was because he was scared "back then," adding that:

> [f]our guys [or the Ford Heights Four were] in jail for something they didn't do. [He] didn't want to be the fifth one locked up. That's why [he] didn't really want to tell nobody nothing.

(Petitioner's Add'l Auth's and Mat'ls Ex. 6, at 187).

Mr. Simpson added that after the police left [his hospital room on May 17th, 1978,] he:

> was scared...but he wasn't scared of the Johnsons or Red [Arthur Robinson] or nobody...[including] Dennis Williams...[but] was scared of the police. He knew 'they locked up four guys for nothing...[and also knew that] if [the Ford Heights Four] can go down there for nothing, they lock [sic] my black butt up too, for nothing."

(Petitioner's Add'l Auth's and Mat'ls Ex. 6, at 192-93).

Marvin Simpson even referred to Red Robinson as his half brother because Mr. Robinson's mother had raised Mr. Simpson. (Petitioner's Add'l Auth's and Mat'ls Ex. 6, at 180)].

[Sgt.] Nance also testified at the evidentiary hearing that Marvin Simpson told the three officers that within a day or so of the Schmal and Lionberg murders, he saw the Johnsons and the people he identified as their accomplices in Ford Heights selling vests and cigarettes taken from the Clark Service Station. (Tr. of Evidentiary Hr'g of 4/29/99, at 25, 26-27, 28). George Nance knew, pursuant to his investigation, that these items matched those taken from the gas station, and that Carol Schmal and Larry Lionberg were abducted from the same service station pursuant to a robbery. (Tr. of Evidentiary Hr'g of 4/29/99, at 26-27, 28). Mr. Simpson also indicated that he thought these men might still have some part of the stolen money. (Tr. of Evidentiary Hr'g of 4/29/99, at 25). Finally, Marvin Simpson advised them that when Ira Johnson told him about the Schmal crimes, Johnson threatened him should word get out, or should Simpson say anything. (Tr. of Evidentiary Hr'g of 4/29/99, at 28, 29-30). The interview lasted for about an hour or more. (Tr. of Evidentiary Hr'g of 4/29/99, at 32).

After the interview, [Sgt.] Nance advised Lt. Vanick and [Inv.] Capelli that Marvin Simpson is his informant, that he has never doubted Marvin Simpson, as he had always given him very good and accurate information; that he believed in him, had no reason not to, and that he was telling the truth. (Tr. of Evidentiary Hr'g of 4/29/99, at 30). Lt. Vanick and [Inv.] Capelli promised to look into it. (Tr. of Evidentiary Hr'g of 4/29/99, at 30).

Also, George Nance knew Ira Johnson, Dennis Johnson, Arthur "Red" Robinson and Juan Rodriguez to be the type of people who would commit the Lionberg/Schmal crimes, because he had previously locked Ira up for burglary, and knew Ira as a violent person who beat up women, and that Ira and Robinson would fight. (Tr. of Evidentiary Hr'g of 4/29/99, at 31). [Sgt.] Nance related this information to Howard Vanick and Dave Capelli, as well as his immediate supervisor, Jack Davis. (Tr. of Evidentiary Hr'g of 4/29/99, at 32). George Nance also testified that he submitted reports regarding the Simpson interview, and that Dave Capelli had taken notes on a legal pad of this same hospital interview with Mr. Simpson. (Tr. of Evidentiary Hr'g of 4/29/99, at 32). [Sgt.] Nance additionally identified Exhibit G to Petitioner's 2-1401 Motion as a rough draft of a police report regarding the Marvin Simpson hospital interview which to the best of his knowledge contained all the information related by Mr. Simpson. (Tr. of Evidentiary Hr'g of 4/29/99, at 32-34, 36). [The Petitioner's [2-1401 Mot.] Exhibit G draft report was previously identified by [Inv.] Dave Capelli in his January 9th, 1998 deposition as his notes of the Marvin Simpson interview. (Petitioner's Add'l Auth's and Mat'ls Ex. 8, at 56-61)].

After the Ford Heights Four and Paula Gray were indicted and before, he believes, the trial of the Ford Heights Four, [Sgt.] Nance advised Assistant State's Attorney Scott Arthur in the Markham Courthouse that he didn't believe the Ford Heights Four committed the crimes for which they were charged, because he knew these boys and they didn't "fit that type of crime." (Tr. of Evidentiary Hr'g of 4/29/99, at 38-39). He also advised Mr. Arthur he had an informant, but didn't mention the Marvin Simpson notes because he assumed "Vanick and them" had given Mr. Arthur the information. (Tr. of Evidentiary Hr'g of 4/29/99, at 39-40). ASA Arthur responded that everything points to what Paula said. (Tr. of Evidentiary Hr'g of 4/29/99, at 39). [Sgt.] Nance repeated this information to ASA Cliff Johnson in a separate discussion. (Tr. of Evidentiary Hr'g of 4/29/99, at 40).

On cross-examination, George Nance confirmed that during the course of his work with the East Chicago Heights, or Ford Heights, Police Department from 1970 to 1990, he worked on many cases with the Cook County Sheriff's Police. (Tr. of Evidentiary Hr'g of 4/29/99, at 42). [Sgt.] Nance also indicated that the Ford Heights Police Department depended upon the Cook County Sheriff's Office for assistance in many types of cases, including homicide and sex-related matters, due to its superior resources with respect to evidence technicians, collection of evidence, and things of that nature. (Tr. of Evidentiary Hr'g of 4/29/99, at 42-43). Mr. Nance additionally confirmed that Lt. Vanick might have been a little upset upon arriving at the scene of the crimes, because people were "all over the area" and possibly contaminating a homicide site. (Tr. of Evidentiary Hr'g of 4/29/99, at 44-45). George Nance confirmed that the notes [identified as Petitioner's [2-1401 Mot.] Exhibit G or the Capelli notes] were 3 pages long and that he believes they contain everything Marvin Simpson told them during the interview in May of 1978. (Tr. of Evidentiary Hr'g of 4/29/99, at 46, 47). However, [Sgt.] Nance testified he didn't read all of these notes because he was observing [Inv.] Capelli writing them and was also writing notes of his own. (Tr. of Evidentiary Hr'g of 4/29/99, at 47, 48).

George Nance indicated that he believed 50 or 60 people were at the scene when the bodies were recovered. (Tr. of Evidentiary Hr'g of 4/29/99, at 49). He also reiterated that he spoke to Mr. McCraney at the scene and that Mr. McCraney told him "he did not see anything." (Tr. of Evidentiary Hr'g of 4/29/99, at 49). Mr. Nance took notes of that conversation and prepared a police report. (Tr. of Evidentiary Hr'g of 4/29/99, at 49). He spoke to several other people at the scene that day who additionally said they didn't see anything, and he neither took notes nor prepared police reports in connection with those conversations. (Tr. of Evidentiary Hr'g of 4/29/99, at 49-50). The only notes and police report Office Nance recalls preparing were the ones regarding Mr. McCraney. (Tr. of Evidentiary Hr'g of 4/29/99, at 50-51). George Nance submitted his notes and reports on this matter to the Ford Heights Police Department and did not destroy these documents. (Tr. of Evidentiary Hr'g of 4/29/99, at 51).

He testified that he heard on the day the bodies were recovered that Mr. McCraney had contacted the authorities, via an anonymous phone call, to indicate he had information about the Lionberg/Schmal crimes. (Tr. of Evidentiary Hr'g of 4/29/99, at 51-52). However, [Sgt.] Nance was not aware that Charles McCraney had called the authorities anonymously by reason of feeling fear for his personal safety from other members of the community. (Tr. of Evidentiary Hr'g of 4/29/99, at 52). George Nance testified that Mr. McCraney advised him in a face-to-face interview that he had not seen anything. (Tr. of Evidentiary Hr'g of 4/29/99, at 53). [Sgt.] Nance confirmed that he knew Charles McCraney and also where he resided, so Mr. McCraney could not have claimed to be anonymous during their face-to-face conversation. (Tr. of Evidentiary Hr'g of 4/29/99, at 53). [Sgt.] Nance, however, believed that the best way to provide information to the authorities anonymously was to relate that information to him, because he was trustworthy and knew everybody in town, notwithstanding that Mr. McCraney's name would be in any report he filed, and therefore public knowledge. (Tr. of Evidentiary Hr'g of 4/29/99, at 53-54). Mr. Nance explained why Mr. McCraney, despite being in fear for his life and wanting anonymity, should have given the information to him:

I was – first of all, I was trusted.

> It looked like he would be more fearful of giving it to County, who he doesn't know anything about, or another agency coming in like that rather than give it to me, and he knew me, everybody knew me in the whole town there.
>
> Everybody knew me, and I really had nobody to fear me because I solved more cases there in Ford Heights than any of the rest of them.

(Tr. of Evidentiary Hr'g of 4/29/99, at 54-55).

[In Marvin Simpson's September 11th, 1997 deposition testimony, he testified that he contacted George Nance, after having left messages at the Ford Heights Police Department four times, because "...he was a good friend of the family...was a good police officer...wasn't the type of police officer...[who] harass[ed] you...[and] was [also] good to people." (Petitioner's Add'l Auth's and Mat'ls Ex. 6, at 182). He further stated he never asked Sgt. Nance or anybody else for a reward, nor did Mr. Nance or anyone else ever offer him an award for the information he related on May 17th, 1978. (Petitioner's Add'l Auth's and Mat'ls Ex. 6, at 190)].

[Sgt.] Nance repeated that he knew Verneal Jimerson, Dennis Williams, Kenny Adams, Willie Rainge, Paula Gray, and their families, because East Chicago Heights was a close knit community and he was close "[t]o the whole town." (Tr. of Evidentiary Hr'g of 4/29/99, at 55-56). He indicated that several days after the bodies were found, he visited the Jimerson family and spoke with Verneal Jimerson, who said he did not take part in the crime. (Tr. of Evidentiary Hr'g of 4/29/99, at 56). George Nance prepared a report in connection with this visit and included Mr. Jimerson's statement in that report. (Tr. of Evidentiary Hr'g of 4/29/99, at 56, 57). Mr. Nance reiterated that he took notes of the Marvin Simpson interview at the hospital, prepared a report from those notes, and turned both his notes and report in to the Ford Heights Police Department. (Tr. of Evidentiary Hr'g of 4/29/99, at 57, 59). He stated that he didn't have the authority to destroy, nor did he destroy, his notes of the Simpson interview. (Tr. of Evidentiary Hr'g of 4/29/99, at 57). [Sgt.] Nance took down "most" of what Mr. Simpson stated at the hospital. (Tr. of Evidentiary Hr'g of 4/29/99, at 58). He confirmed that all of the important information which he has presently testified to was included in his notes. (Tr. of Evidentiary Hr'g of 4/29/99, at 58). Mr. Nance further indicated that his notes taken the day the bodies were discovered regarding his conversations with the Jimerson family and from the hospital interview of Marvin Simpson, were all "turned in [by him] to the [Ford Heights] police station" and that he did not have a copy of these notes or reports. (Tr. of Evidentiary Hr'g of 4/29/99, at 59).

George Nance confirmed that he never attempted to locate his notes and reports of the Simpson interview and Jimerson family conversations because Jack Davis, his immediate boss, told him that "County" [or the Cook County Sheriff's Police Department] was in charge and was handling everything. (Tr. of Evidentiary Hr'g of 4/29/99, at 59-60, 66).

[Sgt.] Nance indicated he had been "friends" with Dennis Williams and his family for 27 years to the extent that he gave them "legal advice and things like that," and minor infractions Mr. Williams became involved in, "that type of association." (Tr. of Evidentiary Hr'g of 4/29/99, at 61). In short, he indicated that Dennis Williams "[was] not an enemy...[nor ever] was an enemy." (Tr. of Evidentiary Hr'g of 4/29/99, at 62). George Nance also testified that he believed he had known Willie Rainge for the same amount of time, and that he knew Kenny Adams and his family. (Tr. of Evidentiary Hr'g of 4/29/99, at 67). In his opinion, the Adams' were a "very nice religious family." (Tr. of Evidentiary Hr'g of 4/29/99, at 62-63). He also knew Paula Gray, her twin sister, Paulette, and their mother, Louise Gray. (Tr. of Evidentiary Hr'g of 4/29/99, at 63).

[Sgt.] Nance stated that when Marvin Simpson told him at the hospital about Ira Johnson, Red Robinson and Rodriguez [or] "those guys," he [Mr. Nance] had no doubt that they were "the ones who did it" based on his relationship with the Johnson brothers, Robinson and Rodriguez. (Tr. of Evidentiary Hr'g of 4/29/99, at 63-64). In fact, he believed beyond a reasonable doubt that they were guilty of the crimes, though in light of the 20 or 30 year interval he doesn't remember if he put that information in his notes. (Tr. of Evidentiary Hr'g of 4/29/99, at 64). He indicated that he "could have." (Tr. of Evidentiary Hr'g of 4/29/99, at 64). His opinion that the men identified by Marvin Simpson committed the crimes was based upon his [George Nance's] belief that "they [were the] ones [who would commit] such a crime." (Tr. of Evidentiary Hr'g of 4/29/99, at 65).

Mr. Nance testified that in 1978, Lester Murray was the Chief of Police in East Chicago Heights. (Tr. of Evidentiary Hr'g of 4/29/99, at 65). At that time the department was small, with anywhere from 12 to 19 personnel. (Tr.of Evidentiary Hr'g of 4/29/99, at 65-66). [Sgt.] Nance told Jack Davis his opinion about the Ford Heights Four not being involved in the crimes. (Tr. of Evidentiary Hr'g of 4/29/99, at 66). Mr. Nance also indicated he discussed "some things...about [the Ford Heights Four not committing the Lionberg/Schmal crimes] with Chief Murray, because "[the Chief] talked with Jack Davis, relaying messages to him and the three of [them] would happen to be together," but he [Sgt. Nance] didn't convey this information to Chief Murray as a formal, written complaint. (Tr. of Evidentiary Hr'g of 4/29/99, at 66-67).

Mr. Nance stated he spoke to Jack Davis concerning his belief as to who actually committed the Lionberg/Schmal crimes, namely Ira and Dennis Johnson, [Arthur "Red'] Robinson and [Juan] Rodriguez. (Tr. of Evidentiary Hr'g of 4/29/99, at 68, 71). He doesn't recall if he told Chief Murray, in light of this having occurred 20, 25 or 30 years ago. (Tr. of Evidentiary Hr'g of 4/29/99, at 71-72).

[Sgt.] Nance testified that as a Ford Heights police officer and a part-time officer with the Phoenix Police Department, he periodically came in contact with various assistant State's Attorneys at preliminary hearings, bonds and felony review, and sometimes at the Markham Courthouse. (Tr. of Evidentiary Hr'g of 4/29/99, at 73). He was also acquainted with [ASA's] Scott Arthur and Cliff Johnson. (Tr. of Evidentiary Hr'g of 4/29/99, at 73). [Sgt.] Nance reiterated that he told ASA Arthur that he didn't believe the Ford Heights Four were involved in the homicide and that he [Mr. Nance] had an informant. (Tr. of Evidentiary Hr'g of 4/29/99, at

75). [Sgt.] Nance didn't mention Simpson because he presumed "Vanick and them" would have told Mr. Arthur or Mr. Johnson who the informant was. (Tr. of Evidentiary Hr'g of 4/29/99, at 75). George Nance never went to any of the criminal proceedings or trials involving the Lionberg/Schmal homicide, including the 1978, 1985 and 1987 trials involving the Ford Heights Four and Ms. Gray. (Tr. of Evidentiary Hr'g of 4/29/99, at 75-76). Mr. Nance repeated that he had known these individuals for 10 or 20 years, and though possessing potentially exculpatory information in his capacity as a police officer, he never went to court or made any effort to testify on their behalf. (Tr. of Evidentiary Hr'g of 4/29/99, at 76-77).

Additionally, [Sgt.] Nance received a letter from Dennis Williams stating his innocence and requesting that Mr. Nance contact his [Dennis Williams'] attorney. (Tr. of Evidentiary Hr'g of 4/29/99, at 77-78). George Nance stated that pursuant to Mr. Williams' request, he went to Jack Davis, "who also had a letter [apparently from Mr. Williams], and [stated to him that]...Dennis has asked these questions of us and [Jack Davis informed Sgt. Nance that] County [was] handling everything." (Tr. of Evidentiary Hr'g of 4/29/99, at 78). Mr. Nance tried unsuccessfully to contact Mr. Williams' attorney, but "nobody knew anything" and "[he] was informed by [his] superior once again...[to] let County handle the case." (Tr. of Evidentiary Hr'g of 4/29/99, at 78-79).

[Sgt.] Nance was also contacted by the families of the Ford Heights Four for his assistance, but responded he never went to the Ford Heights police files to attempt to obtain the reports he indicated were critical to their case by explaining:

> Oh, Counsel, how could I go back. I was already told, sergeant, you have nothing to do with this case. County has this case and I [presumably Sgt. Nance's superior] don't want you tampering or anything like that.
> I [George Nance] had no power. I had nothing. I couldn't do it [or retrieve his Lionberg/Schmal notes and reports from the Ford Heights police files] because County [was] handling everything.

(Tr. of Evidentiary Hr'g of 4/29/99, at 79-80).

Sgt. Nance confirmed that Lester Murray would "absolutely" convey assignments to him in writing, but verbally as well. (Tr. of Evidentiary Hr'g of 4/29/99, at 81). Mr. Nance was shown a letter from Lester Murray, as Chief of Police of the East Chicago Heights Police Department, addressed to "George Nance," and identified as Respondent's Exhibit 2 for identification. (Tr. of Evidentiary Hr'g of 4/29/99, at 80, 84). [See Respondent's [Evidentiary Hr'g] Ex. #2 for a copy of this letter]. In response to the People's inquiry as to whether Chief Murray was "a good man" and "a nice guy," George Nance stated "[h]e was all right." (Tr. of Evidentiary Hr'g of 4/29/99, at 80-81). Further inquiry on whether he trusted Chief Murray elicited Mr. Nance's answer that he "guesses" he trusted him. (Tr. of Evidentiary Hr'g of 4/29/99, at 81). Sgt. Nance couldn't remember seeing the May 24th letter. (Tr. of Evidentiary Hr'g of 4/29/99, at 83). He confirmed, upon reviewing the letter, that it relieved him of all of his East Chicago Heights police duties and assigned him to assist in the investigation "now being held by the Cook County Sheriff's

Department of the murder that took place [in their] village." (Tr. of Evidentiary Hr'g of 4/29/99, at 83-84).

George Nance confirmed that he once testified, as a private citizen, in the mitigation stage of a murder trial on behalf of another member of the Ford Heights community whom he knew, and that he "could have" identified himself on the witness stand as a Ford Heights police officer. (Tr. of Evidentiary Hr'g of 4/29/99, at 85, 86, 88-89). [Respondent's counsel indicated that this matter was reported on appeal to the Illinois Supreme Court as People v. Strickland, 154 Ill.2d 489 (1992) (Tr. of Evidentiary Hr'g of 4/29/99, at 88)].

Between 1978 when the murders occurred and 1990, when Sgt. Nance left the Ford Heights Police Department, he confirmed that he never told any assistant State's Attorney that Ira and Dennis Johnson were involved in the Lionberg/Schmal crimes, nor his belief that Mr. Rodriguez or Mr. Robinson were involved in these offenses. (Tr. of Evidentiary Hr'g of 4/29/99, at 89-90).

In addition, Sgt. Nance stated that he didn't recall visiting Mr. Rainge at the Cook County Department of Corrections shortly after the Lionberg/Schmal crimes, nor was Respondent's counsel able to refresh his recollection. (Tr. of Evidentiary Hr'g of 4/29/99, at 90-91). Mr. Nance denied ever telling or suggesting to Mr. Rainge, at any time, that he [Willie Rainge] cooperate with the State by implicating his co-defendants in the Lionberg/Schmal crimes. (Tr. of Evidentiary Hr'g of 4/29/99, at 91). [Note that in Willie Raines' September 18th, 1998 deposition testimony in the 1997 and 1998 civil actions instituted by the Ford Heights Four and Paula Gray against Cook County and other parties, he indicated that shortly after his Monday [May 14th, 1978] arrest, Sgt. Nance approached him in jail and told him if he "...cooperate[d] with the State...[and]...[said] the other guys did something," "[he] could be out in twenty years." (Respondent's Group Ex. 11 Item F at 298-300; see also Petitioner's Add'l Auth's and Mat'ls Ex. 14, at 047486 for felony review folder confirming May 14th, 1978 date of arrest of Willie Rainge for the subject offenses)].

George Nance confirmed that Mr. Simpson thought he heard "something [that] sounded like firecrackers." (Tr. of Evidentiary Hr'g of 4/29/99, at 91). Also, Mr. Nance couldn't remember if Johnny Juan Rodriguez was interviewed by members of the Ford Heights Police Department shortly after the Lionberg/Schmal killings. (Tr. of Evidentiary Hr'g of 4/29/99, at 93). [Note that at Juan Rodriguez's April 25, 1997 trial for the Lionberg/Schmal crimes (Case No. 96-19145), he testified on direct examination that three days after this incident, he was picked up and questioned about the case by Jack Davis of the "Chicago Heights" police. (Petitioner's Add'l Auth's and Mat'ls Ex. 12, at 276; see also Memorandum "Judicial Notice" para. 6.e., at 226 (judicial notice that Juan Rodriguez was charged by Ind. No. 452, dated August 9, 1996, General No. 96 CR 19145(03), for the Lionberg/Schmal crimes)].

Mr. Nance concluded, in response to the Respondent's inquiry, that "the public had nothing to do with" the indictments that followed the Lionberg/Schmal crimes. (Tr. of Evidentiary Hr'g of 4/29/99, at 94-95).

On re-direct, Sgt. Nance indicated that Marvin Simpson stated that the incident which he was referring to directly involved the Carol Schmal/Larry Lionberg murders. (Tr. of Evidentiary Hr'g at 4/29/99, at 95). George Nance also confirmed that Mr. Simpson made this statement in the presence of Lt. Vanick and [Inv.] Capelli. (Tr. of Evidentiary Hr'g of 4/29/99, at 95). Mr. Nance additionally stated that he found Carol Schmal's body at about the same time Howard Vanick arrived on the scene, but that Lt. Vanick was not in charge of the case at that time. (Tr. of Evidentiary Hr'g of 4/29/99, at 95-96). Mr. Vanick was, however, ordering Sgt. Nance about. (Tr. of Evidentiary Hr'g of 4/29/99, at 96). George Nance further indicated that Marvin Simpson specifically told him that he saw the real killers, or the Johnson brothers, Red Robinson and [Johnnie] Rodriguez, selling cigarettes and vests. (Tr. of Evidentiary Hr'g of 4/29/99, at 97-98). Sgt. Nance confirmed that he was not aware of everything that was in the [Capelli notes] because he hadn't read them all. (Tr. of Evidentiary Hr'g of 4/29/99, at 98). He also testified that though he was friends with the Ford Heights Four and their families, he did not socialize or associate with them, including after their incarceration. (Tr. of Evidentiary Hr'g of 4/29/99, at 99). He repeated, however, that they were "not...enemies." (Tr. of Evidentiary Hr'g of 4/29/99, at 99). Sgt. Nance stated that he knew the Ford Heights Four and their families, as well as the Johnsons and their families, and Red Robinson and [Johnnie] Rodriguez before the subject crimes were committed, because "within the village...[he] knew them all." (Tr. of Evidentiary Hr'g of 4/29/99, at 99-100). However, Mr. Nance indicated that the relationship in some ways was different as between the Ford Heights Four and the other group [in that]:

> ...with the Dennis side...it was more trustworthy, with the other side is [sic] a little bit more criminal background with them.

(Tr. of Evidentiary Hr'g of 4/29/99, at 100).

George Nance stated that he couldn't remember being assigned to the Cook County Sheriff's Department to assist in the Lionberg/Schmal investigation. (Tr. of Evidentiary Hr'g of 4/29/99, at 100). However, he indicated that Chief Murray reassigned him shortly after the murders, but that he never did any work regarding [apparently] this [new assignment] subsequent to the murders. (Tr. of Evidentiary Hr'g of 4/29/99, at 101).

On re-cross, George Nance testified that he told "Vanick" and "Capelli to assess [sic] [him] to speak with Simpson." (Tr. of Evidentiary Hr'g 4/29/99, at 102). He further testified that after speaking with Mr. Simpson, he "[didn't] think" he did anything regarding the Lionberg/Schmal case. (Tr. of Evidentiary Hr'g of 4/29/99, at 102). Sgt. Nance also stated that though Lt. Vanick was correct in clearing the murder scene, he [Mr. Nance] would have done so in a different manner. (Tr. of Evidentiary Hr'g of 4/29/99, at 102).

Upon the Court's inquiry, Sgt. Nance confirmed that he was in charge upon his arrival at the scene, but that when Lt. Vanick arrived the lieutenant assumed control by his actions. (Tr. of Evidentiary Hr'g of 4/29/99, at 103). Mr. Nance did not learn until several days later that Lt. Vanick was officially in charge of the Lionberg/Schmal case, so for a while, both he and Lt. Vanick were in control. (Tr. of Evidentiary Hr'g of 4/29/99, at 103, 104).

Dr. Robert Clinton Watkins, Jr.

On May 22, 1978, Dr. Robert Clinton Watkins, Jr. was a medical doctor working in East Chicago Heights, currently known as Ford Heights. (Tr. of Evidentiary Hr'g of 4/29/99, at 109). He has been in private practice as a civil practitioner for 26 years. (Tr. of Evidentiary Hr'g of 4/29/99, at 109). On the foregoing date, Paula Gray's mother brought her in to see Dr. Watkins because "[Petitioner] hadn't slept in a day or two and she was nervous, she was not talking, wasn't sleeping, acting strange." (Tr. of Evidentiary Hr'g of 4/29/99, at 107).

When Paula Gray came to see Dr. Watkins, she still wasn't speaking. (Tr. of Evidentiary Hr'g of 4/29/99, at 110). Dr. Watkins saw Ms. Gray on two occasions, and after the second visit, admitted Petitioner to the hospital with a diagnosis of catatonic schizophrenia. (Tr. of Evidentiary Hr'g of 4/29/99, at 111). [Note that Dr. Watkins had Petitioner admitted into St. James Hospital according to the evidentiary hearing testimony of Dr. Orest Eugene Wasyliw, Respondent's psychology expert. (See Tr. of Evidentiary Hr'g of 5/4/99, at 74, 114; Memorandum "Evidentiary Hearing" Dr. Orest Eugene Wasyliw at 139, 144; see also Respondent's Joint Mot. Ex. G at 041100 in which Petitioner states in a June 25th, 1996 report of her June 18th, 1996 interview by Inv. Jack Kelly, from the Cook County State's Attorney's Office, that "after testifying [on May 16th, 1978] at the Grand Jury, she saw Dr. Watkins and was put in St. James Hospital in Chicago Heights, Illinois")]. At the hospital, Dr. Watkins consulted with Dr. LaPlaca, a psychiatrist, as to Ms. Gray's diagnosis and treatment. (Tr. of Evidentiary Hr'g of 4/29/99, at 110-12). As Paula Gray was "in such a psychological condition that she didn't talk," both Dr. Watkins and Dr. LaPlaca had to interview her mother, and perhaps Petitioner's brother, to learn that at or about the time that Paula's mother began noticing Paula having the above described problems, she had been interviewed by the police in connection with a murder they thought had been committed by Paula's boyfriend. (Tr. of Evidentiary Hr'g of 4/29/99, at 117-18). Dr. Watkins had never seen a case of catatonic schizophrenia since he was at Cook County. (Tr. of Evidentiary Hr'g of 4/29/99, at 114). He explained Ms. Gray's catatonic schizophrenia and his medical opinion as to its cause in the following manner:

> [W]hat happens is that [Paula Gray] either became so frightened, or a traumatic experience, that people just block out everything.
>
> I mean she was not talking, she was looking off into space. I tried to talk to her and she was sitting, she was chewing like she had gum in her mouth and she was not responding to anything.
>
> THE COURT: And this occurs after a person has been frightened, is that what you're saying?
>
> THE WITNESS: Well, frightened, trauma, things like that.
>
> *

THE COURT: Trauma, that means physical?

THE WITNESS: Mental, also.

* * *

MR. BERG: Just to clarify, was it your opinion and still is that it was brought on by police questioning?

THE WITNESS: Yes.

(Tr. of Evidentiary Hr'g of 4/29/99, at 114-115; see also Tr. of Evidentiary Hr'g of 4/29/99, at 108, for additional testimony by Dr. Watkins at the evidentiary hearing that police questioning caused Ms. Gray's catatonic schizophrenia, and Tr. of Evidentiary Hr'g of 4/29/99, at 111, 117-18, for Dr. Watkins' testimony as to his and Dr. LaPlaca's joint conclusion at the hospital as to this same causative factor).

While hospitalized, Dr. LaPlaca prescribed thorazine, intramuscularly, and oral thorazine, three times daily, which is a psychotropic medication that is usually used in people who have psychotic reactions. (Tr. of Evidentiary Hr'g of 4/29/99, at 113). Sometimes the thorazine brings the patient out of the condition in a short period of time, and sometimes it takes longer. Dr. Watkins doesn't know how long Ms. Gray was on thorazine because after a two day hospitalization, he and Dr. LaPlaca discharged Petitioner as they felt she could be treated on an out-patient basis on thorazine. (Tr. of Evidentiary Hr'g of 4/29/99, at 112). Petitioner was also referred for psychotherapy after she left the hospital. (Tr. of Evidentiary Hr'g of 4/29/99, at 116). Dr. Watkins did not see Ms. Gray again for almost a decade. (Tr. of Evidentiary Hr'g of 4/29/99, at 112).

Michael Podlecki

Michael Podlecki has been employed as a forensic scientist with the Illinois State Police since July, 1973. (Tr. of Evidentiary Hr'g of 4/29/99, at 120). In the spring of 1978 he was assigned to the [Illinois] State Forensic Lab at the Maywood Laboratory in Maywood, Illinois. (Tr. of Evidentiary Hr'g of 4/29/99, at 120). This laboratory shared space in the same building with the [Cook County] Sheriff's Police. (Tr. of Evidentiary Hr'g of 4/29/99, at 121). Mr. Podlecki was assigned to do the forensic work in the Lionberg/Schmal murder case in May of 1978 and did the majority of the forensic work in this case. (Tr. of Evidentiary Hr'g of 4/29/99, at 122). The evidence technicians with whom he worked most frequently were Charles Pearson, Al Koulovitz, and Dan Gente. (Tr. of Evidentiary Hr'g of 4/29/99, at 121-22).

Upon reviewing his laboratory work sheet in this murder/rape case, Mr. Podlecki testified that he had determined that the hairs found on the green socks in the case were Negroid head and pubic hairs. (Tr. of Evidentiary Hr'g of 4/29/99, at 137-38, 150-52). [In Mr. Podlecki's January 15, 1999 deposition in the 1997 and 1998 civil actions instituted by the Ford Heights Four and Paula

Gray against Cook County and other parties, he testified that he told the police that he found Negroid hairs *on the clothing of the victim.* (emphasis added). (Petitioner's Add'l Auth's and Mat'ls Ex. 16, at 51)].

Thereafter, in the first week of June, 1978, Mr. Podlecki called Cliff Johnson, one of the assistant State's Attorneys assigned to the Lionberg/Schmal case, and advised him that he had found Negroid head and pubic hairs on the items in the case, and told Mr. Johnson that he would need head and pubic hair standards from Mr. Rainge, Mr. Adams, Mr. Williams and Mr. Jimerson. (Tr. of Evidentiary Hr'g of 4/29/99, at 152-54, 155). Mr. Podlecki also requested the defendants' head and pubic hair standards from the evidence technicians, who customarily brought him evidence from the scene of a crime. (Tr. of Evidentiary Hr'g of 4/29/99, at 126, 155).

Mr. Podlecki, however, only received the [four] defendants' pubic hair standards. (Tr. of Evidentiary Hr'g of 4/29/99, at 153, 154). By using a comparison microscope, which is a more precise measuring instrument than the stereo microscope used to differentiate between head, body and pubic hair, he determined that the Negroid pubic hairs found on the socks were not similar to the pubic hairs of the four defendants. (Tr. of Evidentiary Hr'g of 4/29/99, at 137-39, 150-53; Plaintiff's [or Petitioner's Evidentiary Hr'g] Ex. #2-A at 00055, 00058-00059). Mr. Podlecki had previously testified that when using a comparison microscope, he compared "three class characteristics...[consisting of the m]edulla, the cortex and the cuticle...[and that i]n some instances, hairs don't have [a] medulla." (Tr. of Evidentiary Hr'g of 4/29/99, at 139-40).

After testing the pubic hair evidence in the case, Mr. Podlecki called Cliff Johnson, advised him that he had not received the head hair standards from the defendants, and again requested these standards in order "to complete the examinations, otherwise [he'd] have to issue the report." (Tr. of Evidentiary Hr'g of 4/29/99, at 155, 156). Mr. Johnson responded "we'll take care ever [sic] it." (Tr. of Evidentiary Hr'g of 4/29/99, at 157). [At his January 15th, 1999 deposition, Mr. Podlecki testified that Mr. Johnson either "didn't tell [him] anything" or responded "Okay." (Petitioner's Add'l Auth's and Mat'ls Ex. 16, at 58)]. Subsequently, Mr. Podlecki once again contacted Assistant State's Attorney Johnson and the evidence technicians about the failure to give him the defendants' head hair standards, advising them that "[he] would need to receive those standards to conduct the rest of the examinations." (Tr. of Evidentiary Hr'g of 4/29/99, at 157-59). Mr. Podlecki also stated that "most of the talking [that he] did [in this case] was with the State's Attorney, Cliff Johnson and Dan Gente [the evidence technician]." (Tr. of Evidentiary Hr'g of 4/29/99, at 159). Mr. Podlecki additionally mentioned to an evidence technician that he had not received the defendants' head hair standards. (Tr. of Evidentiary Hr'g of 4/29/99, at 159). Nonetheless, "[he] didn't receive them." (Tr. of Evidentiary Hr'g of 4/29/99, at 160). [In Mr. Podlecki's January 15th, 1999 deposition, he testified that "[t]hey never sent me any head hair standards of the defendants, just pubic hairs." (Petitioner's Add'l Auth's and Mat'ls Ex. 16, at 55)].

Mr. Podlecki further testified that the report he prepared on or about May 31, 1978 reflects the results of his (forensic) testing (in the Lionberg/Schmal case) up until that date. (Tr. of Evidentiary Hr'g of 4/29/99, at 160-61; Plaintiff's [or Petitioner's Evidentiary Hr'g] Ex. #2-A at

00036-00038). Mr. Podlecki confirmed that Item 21 of the May 31st report refers to the Negroid pubic and head hairs that he previously testified to [as having been found on the green socks of the victim]. (Tr. of Evidentiary Hr'g of 4/29/99, at 161). Mr. Podlecki also testified that Item 21 states "'[o]ne pair of green socks and plastic bag with hair fibers,' findings, 'nothing of evidential value.'" (Tr. of Evidentiary Hr'g of 4/29/99, at 161; Plaintiff's [or Petitioner's Evidentiary Hr'g] Ex. #2-A, at 00037). Mr. Podlecki explained that the Negroid pubic and head hairs "must have been submitted in a plastic box," and that he utilized the term "hair fibers" in place of the term "hairs," as previously used by him to describe these Negroid pubic and head hairs throughout his [May 31st] report, because "[hair fibers] is what the police would have written down and we use their terminology on what they submitted." (Tr. of Evidentiary Hr'g of 4/29/99, at 161-62).

Mr. Podlecki went on to explain that what he meant by "nothing of evidential value" with respect to the green socks and the hair fibers in Item 21 was:

> [t]hat when I did the comparison on the pubic hairs that were found [on the green socks of the victim], they did not match. And at that time, we used the word nothing of evidential value if something was dissimilar.

(Tr. of Evidentiary Hr'g of 4/29/99, at 162).

The following additional question and answer explanation ensued:

Q. Well, the testing that you did disclosed that there was evidence there that the defendants who were charged, had not contributed the pubic hairs found on the socks, correct?

A. That's correct.

Q. Well, that certainly had evidentiary value, did it not?

A. I stated what we used as wording at the time.

Q. Well, at the time, if something was valuable to a defendant, is that the way that you expressed it, nothing of evidential value?

A. At that time.

Q. What?

A. At that time, the way the wording was. Later on, it was changed.

THE COURT: What was it changed to?

THE WITNESS: They changed the wording and it would say like dissimilar to, or consistent with. There was [sic] a variety of

terms that we used later on as the timing of wording progressed with hairs.

MR. DECKER: Q. If the pubic hairs on the socks had been similar to the pubic hairs on the defendants, you would have noted that would you not, sir?

A. Yes, I would have.

Q. As having evidentiary significance?

A. The term would have been used similar in color and characteristics.

(Tr. of Evidentiary Hr'g of 4/29/99, at 162-64).

[In Mr. Podlecki's January 15th, 1999 deposition testimony, he agreed that his finding of dissimilarity between the pubic hairs found on the victim's socks and that of the defendants is a matter of evidential value. (Petitioner's Add'l Auth's and Mat'ls Ex. 16, at 58-59). Note also that Mr. Podlecki's January 15th deposition testimony, when read in conjunction with his evidentiary hearing testimony, clarifies that the above cited excerpt from his evidentiary hearing testimony regarding his written finding(s) and definition of the phrase "nothing of evidential value" (Tr. of Evidentiary Hr'g of 4/29/99, at 162-64), references, or includes, not only Mr. Podlecki's pubic hair test results comparing the pubic hairs found on the green socks of the victim (see item "21" of Plaintiff's [or Petitioner's Evidentiary Hr'g] Ex. #2-A, at 00028, 00037), but also his pubic hair test results comparing the "Negroid" pubic hairs found on the victim's green socks and the pubic hair standards of the Ford Heights Four. (See Plaintiff's [or Petitioner's Evidentiary Hr'g] Ex. #2-A, at 00055, 00058-00059). Mr. Podlecki's first pubic hair test (or tests) compared the "Negroid" pubic hairs found on the green socks of the victim and was reported by him as Item 21, in a document he authored to the CCSP "Criminalistics Section," dated May 31, 1978, stating that the "Results of [his] Examination" were "nothing of evidential value." (Tr. of Evidentiary Hr'g of 4/29/99, at 150-51, 153, 160-62; Plaintiff's [or Petitioner's Evidentiary Hr'g] Ex. #2-A, at 00036-00038). This report also indicates that the pubic hairs and green socks (among other crime scene items) were received on May 15th, 1978. (Plaintiff's [or Petitioner's Evidentiary Hr'g] Ex. #2-A, at 00036). Mr. Podlecki's second pubic hair test (or tests) compared the (mounted and saved) "Negroid" pubic hairs of Item 21 found on the victim's green socks, with the pubic hair standards of the Ford Heights Four, and was reported by him as Item Nos. 53, 54, 55 and 56, in an "Illinois Department of Law Enforcement['s]" "Bureau of Scientific Services" document he authored to the CCSP "Criminalistics Section," dated July 17th, 1978, stating that the "Results of [his pubic hair] Examination[s for each of the Ford Heights Four]" were "nothing of evidential value." (Tr. of Evidentiary Hr'g of 4/29/99, at 137-39, 150-53, 161,162-64; Plaintiff's [or Petitioner's Evidentiary Hr'g] Ex. #2-A, at 00055, 00058-00059; Petitioner's Add'l Auth's and Mat'ls Ex. 16, at 50-51, 55-56, 58-59). Also, the July 17th, 1978 report and Mr. Podlecki's deposition testimony of January 15th, 1999 indicate that he received the Ford Heights Four pubic hair standards for the second pubic hair comparison test(s) on June 7th, 1978. (Plaintiff's [or Petitioner's Evidentiary Hr'g] Ex. #2-A, at 00058; Petitioner's Add'l Auth's and Mat'ls Ex. 16, at 54-56). Finally, Mr. Podlecki reiterates in his January 15th, 1999 deposition testimony that his second pubic hair comparison test in fact found that the pubic hairs on the victim's green socks and the pubic hair standards of the Ford Heights Four were "dissimilar," and that his finding of dissimilarity between the pubic hairs is a matter of evidential value. (Petitioner's Add'l Auth's and Matl's Ex. 16, at 58-59)].

Mr. Podlecki indicated that Plaintiff's [or Petitioner's Evidentiary Hr'g] Ex. #2-A is a group exhibit which reflects the testing that he did on evidence in the Lionberg/Schmal case, and that page 63, dated September 15th, 1978, is the last page of that exhibit. (Tr. of Evidentiary Hr'g of 4/29/99, at 122-26, 164). By September 15th, 1978, Mr. Podlecki had given up on securing head hair standards of the defendants and had no further conversations with Cliff Johnson about these standards until the day of his trial testimony. (Tr. of Evidentiary Hr'g of 4/29/99, at 164).

Mr. Podlecki subsequently testified at the trial [sic] of the four defendants and told the jury [sic] that the hair like fibers on the green socks did not have any evidential value. (Tr. of Evidentiary Hr'g of 4/29/99, at 164-65). [See also the October 12th, 1978 transcript for the same trial involving Paula Gray where Mr. Podlecki stated that he examined the pubic hairs of Willie Rainge, Dennis Williams, Kenneth Adams and Verneal Jimerson and found nothing of evidential value, as to which he submitted a written report reflecting the same results. (Petitioner's Add'l Auth's and Mat'ls Ex. 15, at 1917:10-1918:01). When questioned as to what he was "seeking [sic] terms of evidential value" when examining the four defendants' pubic hairs, Mr. Podlecki responded "[b]asically other hairs to compare them to. Other hairs in the case that were found." (Petitioner's Add'l Auth's and Mat'ls Ex 15, at 1918:02-1918.23). Mr. Podlecki additionally stated under oath that he tested one pair of green socks and a plastic box of fiber hairs as indicated by "Number 21" and that the test disclosed nothing of evidential value. (Petitioner's Add'l Auth's and Mat'ls Ex. 15, at 1932:19-1933:21)].

In response to ASA Cliff Johnson's questions, Mr. Podlecki additionally testified at Paula Gray's 1978 trial and 1979 sentencing (though Mr. Podlecki was unaware of the nature of the 1979 proceeding) that a Royal Canadian Mounted Police study of hair comparisons showed that if there are two hairs that appear to be similar, the odds are 4500 to 1 against those hairs coming from different people. (Tr. of Evidentiary Hr'g of 4/29/99, at 165, 166-67, 168-69, 170, 172; recall also that the verdict in Petitioner's 1978 trial was rendered on October 20, 1978 and sentencing on February 22, 1979. See Memorandum at 2, 3; Memorandum "Judicial Notice" par. 3.a., at 225 (judicial notice of matters of foregoing statement)). [According to the 1982 Illinois Supreme Court opinion summarizing the evidence of Dennis Williams' 1978 trial, in which he was tried jointly with Petitioner by two separate juries, the "expert['s]"[or Mr. Podlecki's] foregoing Royal Canadian study testimony related to his previous testimony on direct examination that "[t]here were no dissimilarities" between three hairs found in Mr. Williams' vehicle with that of the victims. When [Mr. Podlecki] could not say with certainty on cross-examination that these hairs in fact came from the victims, he testified on re-direct examination that "in [the foregoing Royal Canadian Mounted Police hair comparison] study of relatives, it was found that there was a 1 in 4,500 chance that similar hairs, that is, hairs matching in 99.9 % of their characteristics, came from different heads." (emphasis added). The Supreme Court opinion additionally noted that [Mr. Podlecki] stated "it would be less likely that matching hairs would come from different heads among the general population, but he refused to speculate about the odds when three similar hairs were found." Williams, 93 Ill.2d at 321].

Mr. Podlecki presently testifies at Ms. Gray's 2-1401 evidentiary hearing that the Canadian study had nothing to do with the kind of [hair] examination conducted by he and the Illinois Forensic lab in 1978; that the 4500 to 1 odds related to the Canadian study and not to the [Lionberg/Schmal] case; and that no comparison could be made between the Canadian study and the Illinois Forensic Lab's examination. (Tr. of Evidentiary Hr'g of 4/29/99, at 169, 170-171). Mr. Podlecki also currently testifies that the Canadian study compared more than 20 points on hairs, while he and the Illinois Forensic Lab took three basic characteristics. (Tr. of Evidentiary Hr'g of 4/29/99, at 169, 173). Mr. Podlecki has additionally testified that in 1978 there were no studies about the odds of two similar-looking hairs coming from different people when the examiner had looked at two or three points of comparison. (Tr. of Evidentiary Hr'g of 4/29/99, at 192).

Prior to Mr. Podlecki's [1978] trial testimony about the Royal Canadian study, ASA Johnson asked if him if he was familiar with the study, to which Mr. Podlecki responded that "[he] read it." (Tr. of Evidentiary Hr'g of 4/29/99, at 168). Mr. Johnson then asked Mr. Podlecki if he was familiar with its probability of one in 4500, to which Mr. Podlecki responded that he was. (Tr. of Evidentiary Hr'g of 4/29/99, at 170). Mr. Podlecki cannot presently recall whether ASA Johnson advised him that he would be inquiring about the Canadian study at trial. (Tr. of Evidentiary Hr'g of 4/29/99, at 168).

Rob Warden

Rob Warden is a freelance journalist. (Tr. of Evidentiary Hr'g of 4/29/99, at 204). In 1982, while engaged as a journalist investigating the circumstances surrounding the conviction of Paula Gray and the Ford Heights Four, he interviewed Mr. Charles McCraney, a witness in the case of these defendants. (Tr. of Evidentiary Hr'g of 4/29/99, at 204, 207). Mr. Walter Sally accompanied him at this interview and introduced him to Mr. McCraney, whom Mr. Sally knew. (Tr. of Evidentiary Hr'g of 4/29/99, at 205).

After Mr. Warden offered a summary of his understanding of Mr. McCraney's [1978] testimony based on his reading of the trial transcript, Mr. McCraney told him that he heard a commotion outside his window on the night of the murder of Carol Schmal and Larry Lionberg of Wednesday, May 10th, Thursday morning, May 11th. (Tr. of Evidentiary Hr'g of 4/29/99, at 207, 208). He saw cars he later identified as those of the defendants, and he fixed the time that this occurred based on the showing of the Kojak television show. (Tr. of Evidentiary Hr'g of 4/29/99, at 208). Mr. McCraney told him that he did not have a clock, but that as soon as the Kojak program was over, he played a guitar composition written by him which he knew to be "exactly 45 minutes long," and than he started the composition a second time when he heard the commotion and looked out and saw the cars. (Tr. of Evidentiary Hr'g of 4/29/99, at 208). He told Mr. Warden that that was his recollection of what he previously told the police and testified to. (Tr. of Evidentiary Hr'g of 4/29/99, at 209).

Mr. Warden advised Mr. McCraney that he had a few concerns, because his review of the CBS logs indicated that Kojak had ended at 12:50 a.m. (Tr. of Evidentiary Hr'g of

4/29/99, at 209). Mr. McCraney then advised Mr. Warden, in response to his inquiry, that the guitar serenade lasted an hour. (Tr. of Evidentiary Hr'g of 4/29/99, at 209). He extended it to maybe an hour and fifteen minutes when questioned as to whether it could have been more than an hour. (Tr. of Evidentiary Hr'g of 4/29/99, at 209). Mr. Warden thereupon advised Mr. McCraney that that would put the time a little bit after 2:00 a.m. and that other witnesses at the trial, including the gas station owner, confirmed that they had either seen or spoken to the victims as late as 2:30 a.m., so that they were alive and well in Homewood 20 miles away from the murder scene after [sic] 2:30 a.m. (Tr. of Evidentiary Hr'g of 4/29/99, at 210). Accordingly, he advised Charles McCraney, that whatever he saw could not have been related to the murders, because the victims could not have been there at that time; to which Mr. McCraney responded "well, then maybe those folks is innocent." (Tr. of Evidentiary Hr'g of 4/29/99, at 210-11)

[At the 1978 trial of Paula Gray, Dennis Williams, Willie Rainge and Kenneth Adams, Mr. McCraney testified that Dennis Williams was the only one of six to eight people he positively recognized running into 1528 Cannon Lane where the body was found at about 2:30 or 2:15 a.m. [on May 11th, 1978], though he saw Kenneth Adams running in the direction of this building. (Respondent's Group Ex. 11 Item G at 1174, 1175, 1184); Rainge, 112 Ill.App.3d at 401. The Illinois Supreme Court opinion regarding Verneal Jimerson's 1985 trial states that Mr. McCraney testified that after observing Dennis Williams' car being freed from the mud sometime after "3 or 3:15 a.m.," he saw "six to eight persons...[rush] into [the townhouse at 1528 Cannon Lane]." Jimerson, 127 Ill.2d at 25. By the 1987 retrial of Dennis Williams and Willie Rainge, Charles McCraney testified he saw the group of six to eight individuals "[rush] into the [abandoned] building" anywhere from 3:26 a.m. to 3:33 a.m. [which period did not include the time he observed them free Mr. Williams' vehicle from the mud]. Williams, 147 Ill.2d at 199-201. On cross-examination, the opinion indicates that Mr. McCraney was impeached by his testimony at Mr. Williams' [1978] trial that he saw Dennis Williams and Willie Rainge among a group of persons on the courtyard side of his apartment at "'roughly' 2:47 to 2:48 a.m." Williams, 147 Ill.2d at 202. Also, two prior inconsistent statements of Mr. McCraney were introduced that the group of persons entered the abandoned building "both at 2:15 to 2:30 a.m. and at 2:30 to 2:45 a.m." Williams, 147 Ill.2d at 203.

The Illinois Supreme Court opinion for Dennis Williams' 1987 trial also states that Charles McCraney changed his original testimony at Mr. Williams's 1978 trail of having "no clock" in his home at the time he viewed the foregoing events; to "two clocks" at Verneal Jimerson's 1985 trial; to one clock at Mr. Williams' 1987 retrial. Williams, 147 Ill.2d at 203.

Finally, in the 1978 trial of Paula Gray, Dennis Williams, Willie Rainge and Kenneth Adams, Mr. McCraney made no reference to Verneal Jimerson as being present at the scene and time of the subject crimes. Williams, 93 Ill.2d at 319; Rainge, 112 Ill.App.3d at 401; Gray, 87 Ill.App.3d at 146. By the time of Verneal Jimerson's 1985 trial, Mr. McCraney testified that he had seen Verneal Jimerson "in the neighborhood earlier [the] night [of May 11th, 1978], between 10 p.m. and midnight." Jimerson, 127 Ill.2d at 26. Indeed, the same Illinois Supreme Court opinion denied Mr. Jimerson's direct appeal on,

among other grounds, ineffective assistance of counsel for failure to impeach Mr. McCraney on his 1978 trial testimony failing to identify Mr. Jimerson "at anytime on the night of May 10-11," or to name Mr. Jimerson as one of the persons entering the building at 1528 Cannon Lane. Jimerson, 127 Ill.2d at 35-36. Among the grounds for denial was the fact that Mr. McCraney had testified at Mr. Jimerson's 1985 trial that "[Verneal Jimerson] was in the neighborhood with Rainge and several other persons on May 10, before midnight," and also because he was not asked at the 1978 trial to identify any persons other those then standing trial [namely, Williams, Rainge and Adams]. Jimerson, 127 Ill.2d at 36-37. Subsequently, when Charles McCraney testified at the 1987 Williams' and Rainge retrial, he stated that he "saw" Verneal Jimerson at about 3 a.m., on May 11th, at the location of these offenses. Williams, 147 Ill.2d at 199; see also Rainge, 211 Ill.App.3d at 442. Moreover, as will be later noted, the Williams' Supreme Court ruling stated that from 1978 to "prior to testifying at [Dennis Williams'] second trial [in 1987]," Mr. McCraney was paid a total of $3,600 by the State's Attorney's office for "relocation" expenses, including the purchase of a car, based on his allegation of being "threatened." This allegation, ruled the Supreme Court, was never linked to Mr. Williams. Williams, 147 Ill.2d at 203, 224].

Mr. McCraney did not wish to discuss with Mr. Warden any money that he received from Clark Oil Company and the Cook County State's Attorney's Office. (Tr. of Evidentiary Hr'g of 4/29/99, at 211)

[At Dennis Williams' second trial in 1987, who was tried with co-defendant Willie Rainge, Charles McCraney acknowledged that in late 1978, the State's Attorney's office gave him $1,000 to relocate, and in 1984, the People gave him an additional $1,400 to purchase a car to relocate his family out of state "when he was again called to testify and was being threatened," but Mr. McCraney's testimony "did not link the threats to the defendant." Also, prior to testifying at Dennis Williams' second trial, Mr. McCraney was given $1,200 to once again relocate his family. Williams, 147 Ill.2d at 203, 224. However, in Mr. McCraney's February 2, 1999 deposition testimony in the civil actions of Paula Gray and the Ford Heights Four against the County and other parties, he testified that other than getting some "reward money" (the amount he didn't remember), he didn't receive any additional monies, including a $1,400 payment. When further queried on having received no money whatsoever other than the reward money, even from the State's Attorney, he responded "I don't remember." (Petitioner's Add'l Auth's and Mat'ls Ex. 13, at 126)].

Mr. Warden had a telephone conversation with Mr. McCraney a few days later when he advised Rob Warden that he had a tape recorder on while playing his song, and that the tape recorder would have the sound of the gunshots that he heard and would establish the time absolutely. (Tr. of Evidentiary Hr'g of 4/29/99, at 213). Though Rob Warden offered him free transportation to retrieve the tape of this session which was located out-of-state, Mr. McCraney never got the tape for Mr. Warden. (Tr. of Evidentiary Hr'g of 4/29/99, at 221-22).

By 1982, Mr. Warden had come to the conclusion that the Ford Heights Four might be innocent and were wrongfully convicted in 1978. (Tr. of Evidentiary Hr'g of 4/29/99, at 214).

He published this information in the Chicago Lawyer in July of 1982, including his first conversation with Mr. McCraney, but not their second talk. (Tr. of Evidentiary Hr'g of 4/29/99, at 215-16, 217, 218). Rob Warden published more than one article about this case in 1982, but his first piece about the case was the July, 1982 article. (Tr. of Evidentiary Hr'g of 4/29/99, at 218). Mr. Warden believes that none of the articles named Dennis Johnson, but instead contained references to Dennis Johnson without his name. (Tr. of Evidentiary Hr'g of 4/29/99, at 218-19). [Both counsel at the 2-1401 evidentiary proceeding stipulated that the Kojak CBS log information was available to anybody with a subpoena, including prosecutors and defense lawyers. (Tr. of Evidentiary Hr'g of 4/29/99, at 220)].

Mr. Warden cannot recall whether he verbally provided the foregoing information to Skip Gant, Dennis Williams' attorney, or Maurice Scott, counsel for Willie Rainge. (Tr. of Evidentiary Hr'g of 4/29/99, at 216). However, Skip Gant told Rob Warden that an article of his had persuaded Mr. Gant to take the case, so Mr. Warden assumes that Skip Gant was on notice as to his July, 1982 Chicago Lawyer article. (Tr. of Evidentiary Hr'g of 4/29/99, at 216-17). Mr. Warden doesn't recall whether he told Mr. Gant about his initial conversation with Mr. McCraney. (Tr. of Evidentiary Hr'g of 4/29/99, at 217).

Mr. Warden learned from Dennis Williams about the Clark Oil award that Charles McCraney may have collected. (Tr. of Evidentiary Hr'g of 4/29/99, at 223). Rob Warden may have learned from the trial record about the money given to Mr. McCraney by the State's Attorney's Office for relocation of he and his family. (Tr. of Evidentiary Hr'g of 4/29/99, at 224). Mr. Warden first learned in 1996 from David Protess [of the Northwestern University School of Journalism], as to the existence of the Capelli notes, or street file, or notes purportedly prepared by Investigator Capelli of the hospital conversation with a Mr. Simpson. (Tr. of Evidentiary Hr'g of 4/29/99, at 226, 229). This was after Northwestern students had found the notes in 1996. (Tr. of Evidentiary Hr'g of 4/29/99, at 226). Within a few days, he actually saw a copy of these notes when Mr. Byman, of Jenner and Block, filed a petition on behalf of Dennis Williams. (Tr. of Evidentiary Hr'g of 4/29/99, at 226-27, 228). Rob Warden additionally testified that it is his impression that the Dennis Johnson referred to in the Capelli notes is the same Dennis Johnson that he received information about in 1982. (Tr. of Evidentiary Hr'g of 4/29/99, at 229-30).

Mr. Warden discussed the Capelli notes in 1996 with [State's Attorney] Jack O'Malley, and [Assistant State's Attorneys] Andrea Zopp, John Ennis and Scott Nelson, and doesn't recall discussing the notes with any other individuals, though it's possible. (Tr. of Evidentiary Hr'g of 4/29/99, at 228-29).

Willie King Watson

In 1978, Willie King Watson, who is presently 41, lived four blocks from Cannon Lane in Ford Heights. (Tr. of Evidentiary Hr'g of 4/29/99, at 232). He knew Petitioner, her sister, Paulette, and other members of Paula Gray's family. (Tr. of Evidentiary Hr'g of 4/29/99, at 232-33). Mr. Watson also knew and occasionally saw Dennis Williams and Kenny Adams at Ms. Gray's home, and less often, Verneal Jimerson and Willie Rainge at Petitioner's residence. (Tr. of Evidentiary Hr'g of 4/29/99, at 233).

On Friday evening, the day the victims' bodies were found and after he got off work, Willie King Watson was picked up and brought to the police station, along with Paul Jimerson, Michael Franklin, Tammy, and James Kerney (phonetic), all of whom Mr. Watson knew. (Tr. of Evidentiary Hr'g of 4/29/99, at 233-34, 256-57).
Willie King Watson was questioned alone by unknown uniformed police. (Tr. of Evidentiary Hr'g of 4/29/99, at 235). The police "kept asking [him] about" the "street light that was busted out" and "the car tracks." (Tr. of Evidentiary Hr'g of 4/29/99, at 235-36). Mr. Watson responded that he had not broken out the light and that Dennis Williams had broken it. (Tr. of Evidentiary Hr'g of 4/29/99, at 236). He told the police that Mr. Williams had broken the light "on Wednesday or something, three or four days...before they found the bodies." (Tr. of Evidentiary Hr'g of 4/29/99, at 236-37).

As to the tire tracks, Mr. Watson told the police that he observed Dennis drive his car on the grass around the side of Petitioner's house, about a week or two before [what Mr. Watson appears to infer as the day they found the bodies]. (Tr. of Evidentiary Hr'g of 4/29/99, at 237-38). According to Willie King Watson, Dennis just got in his car and rolled around the yard on the grass and came back onto the street. (Tr. of Evidentiary Hr'g of 4/29/99, at 243). Dennis never got stuck and nobody pushed his car. (Tr. of Evidentiary Hr'g of 4/29/99, at 243).

Mr. Watson also advised the police, in response to their questions, that he thought he saw Dennis Williams and Verneal Jimerson on the morning of the day after the murders on his way to work. (Tr. of Evidentiary Hr'g of 4/29/99, at 238-39). The police told Willie King Watson to write "what happened that [Friday] morning when [he] got up," but the police didn't tell him to write anything about the street light or tire tracks. (Tr. of Evidentiary Hr'g of 4/29/99, at 239). [Respondent's Group Ex. 11 Item K at PD00289 is a written statement by "Willie K. Watson" which indicates in a typewritten heading that it was given on May 13, [19]7[8] at 10:45 p.m. in the Cook County Sheriff's police station in Homewood, Illinois, wherein Mr. Watson states his observations of Dennis [Williams] *only* on Thursday, May 11th, 1978, at about 8:15 a.m., driving his "red Toyota" car southbound on Woodlawn with Lurch [Verneal Jimerson] as a passenger. (emphasis added)]. Mr. Watson was never arrested in this case. (Tr. of Evidentiary Hr'g of 4/29/99, at 242).

Also, while at the station that Friday evening, Mr. Watson saw the Ford Heights Four brought in at about 6 or 7 p.m. (Tr. of Evidentiary Hr'g of 4/29/99, at 239-240). He observed Dennis Williams and Kenny Adams taken downstairs at the station and subsequently heard a "lot of scuffling and hollering, Dennis was hollering." (Tr. of Evidentiary Hr'g of 4/29/99, at 241). Mr. Watson also heard chairs moving and being

pushed around, which lasted for about 10 or 15 minutes. (Tr. of Evidentiary Hr'g of 4/29/99, at 242). Willie King Watson didn't see Paula Gray at the police station "because she was picked up later." (Tr. of Evidentiary Hr'g of 4/29/99, at 243). However, Petitioner's mother, Mrs. Louise Gray, was at the station while Willie King Watson was there. (Tr. of Evidentiary Hr'g of 4/29/99, at 244).

When Mr. Watson and Mrs. Louise Gray got back to the house, "they [apparently the Cook County Sheriff's Police] had picked Paula up again," so they returned to the station about "12 something." (Tr. of Evidentiary Hr'g of 4/29/99, at 244). While at the station house, Mr. Watson heard Mrs. Louise Gray ask the police for food for the people there, as they were young kids at the time and she looked after them like a mom and they called her mom. (Tr. of Evidentiary Hr'g of 4/29/99, at 244-45). The police complied and brought in some food. (Tr. of Evidentiary Hr'g of 4/29/99, at 245).
Mr. Watson indicated that he did not know anyone by the name of Robert L. Watson. (Tr. of Evidentiary Hr'g of 4/29/99, at 245).

Willie King Watson was questioned twice more at the Homewood police station. (Tr. of Evidentiary Hr'g of 4/29/99, at 245-46, 246-47). Once was at 10 a.m. Saturday morning when the police asked him primarily about the street light, telling him that Dennis had broke [sic]...the street light to set it up for the murder." (Tr. of Evidentiary Hr'g of 4/29/99, at 245, 246). [Note that the evidentiary hearing transcript states Mr. Watson testified to staying at the sheriff's police station "about one or two [sic]," but is unclear as to whether he meant "one or two hours" more, or until 1 or 2 a.m., or 1 or 2 p.m. (Tr. of Evidentiary Hr'g of 4/29/99, at 245)]. The next occasion Mr. Watson was questioned by the police was at the CCSP station 3 or 4 days later, after having been placed in a line-up at the police station. (Tr. of Evidentiary Hr'g of 4/29/99, at 247-48). The questions were the same as those at the previous session about Dennis breaking "the light out to set that up for the murder." (Tr. of Evidentiary Hr'g of 4/29/99, at 248).

The week following his Friday and Saturday police questioning, Willie King Watson saw Paula Gray dropped off by plainclothes Sheriff's police on two different days. (Tr. of Evidentiary Hr'g of 4/29/99, at 249-50). On one of those occasions, two policemen dropped off Petitioner and when she exited the vehicle, she "looked like she had been raped and tortured"; her clothes were hanging down on her, and her hair was all messed up. (Tr. of Evidentiary Hr'g of 4/29/99, at 250). Mr. Watson testified that Paula Gray "[j]ust...looked bad." (Tr. of Evidentiary Hr'g of 4/29/99, at 250). Mr. Watson also testified that Paula Gray's mother, Mrs. Louise Gray, had to slap her to bring her back, because she looked like she was going into a depression. (Tr. of Evidentiary Hr'g of 4/29/99, at 250).

All of the policemen Mr. Watson referred to "several days after the murder" were Sheriff's police and none were Ford Heights [or East Chicago Heights] police officers. (Tr. of Evidentiary Hr'g of 4/29/99, at 251).

On cross-examination, Willie King Watson confirmed that in 1978 his father drove either a 1972 Marquis or a 1974 Buick Electra 225. (Tr. of Evidentiary Hr'g of 4/29/99, at 253-

55). He reiterated that he was at the police station "about three [different] times," regarding the light that had been broken, and that he had witnessed Dennis Williams breaking it. (Tr. of Evidentiary Hr'g of 4/29/99, at 255-56). Mr. Watson also testified that Dennis Williams broke out the light on Wednesday of the same week that the body was found and that he first went to the police station. (Tr. of Evidentiary Hr'g or 4/29/99, at 255-56). Willie King Watson confirmed that while at the police station, he was never subjected to any physical or verbal abuse, and that he was never informed as to what the line-up was related to. (Tr. of Evidentiary Hr'g of 4/29/99, at 257-58).

On re-direct, Mr. Watson explained that he, Dennis Williams and he believes Mike, were standing and playing around, and "Dennis was just throwing rocks and stuff" when he broke the street light. (Tr. of Evidentiary Hr'g of 4/29/99, at 258-59). He stated that this happened at "dusk," or when "it was getting dark," on Wednesday of the same week that the "body" [sic] was found. (Tr. of Evidentiary Hr'g of 4/29/99, at 256-57, 259). Mr. Watson testified that neither Verneal Jimerson, Kenny Adams, nor Willie Rainge were present when Dennis Williams broke the light. (Tr. of Evidentiary Hr'g of 4/29/99, at 259).