Moreover, the failure of the People to disclose the George Nance notes (or Item No. 5) constitutes a Brady and 412(c) violation because Petitioner has demonstrated that they probably contained the same information as the Capelli notes (and perhaps more) that reliably connected named individuals to the subject crimes and provided leads as to the location of the weapon used, and therefore constitute favorable proofs. [Recall Sgt. Nance's evidentiary hearing testimony that Marvin Simpson told he, Lt. Vanick and Inv. Capelli at the May 17th, 1978 hospital interview that "within a day or so" of the subject crimes he saw the Johnsons and their accomplices selling vests and cigarettes from the gas station, and yet the Capelli notes did not include this information. Tr. of Evidentiary Hr'g of 4/29/99, at 25, 26-27, 28; Memorandum "Evidentiary Hearing" George Nance Jr. at 57]. [See also People v. Klisnick, 73 Ill.App.3d 148, 158-59 (1st Dist. 1979), which stated that if the missing evidence [or the George Nance notes (Item No.5)] is exculpatory, the fact that it was lost rather than suppressed is immaterial for Brady analysis, and then ruling that:

where the evidence in question is unavailable, to require proof [by the defendant] that [it] would in fact have been exculpatory would constitute an absurd demand [but]...to require that the defense demonstrate how that evidence could have been exculpatory under the overall evidence in the case is reasonable [to prove Brady violation]].

Nor other than properly turning over his notes to the Ford Heights (or East Chicago Heights) Police Department, is George Nance, even assuming a brief assignment to the sheriff's police Lionberg/Schmal investigation, responsible for disclosure of these notes to Ms. Gray. [See Respondent's [Evidentiary Hr'g] Ex. #2 for May 24, 1978 correspondence from L.S. Murray, Chief of Police, East Chicago Heights Police Department, relieving George Nance of his East Chicago Heights "police functions...to assist [in] the [CCSP's Lionberg/Schmal] investigation" from "May 28, 1978" "until June 5, 1978"]. Rather, disclosure of the Nance notes to Petitioner is the prosecution's responsibility. Furthermore, Ms. Gray does not have to satisfy Youngblood or pre-Youngblood law regarding lost or destroyed evidence, because the Nance notes constitute a Brady violation according to Hobley. [Recall that in Hobley, the State argued that Youngblood, and not Brady, applied to the second or one-gallon gasoline can it suppressed at trial because the can had been destroyed. The Illinois Supreme Court rejected this argument by holding that:

Brady directly addresses the State's responsibility to turn over favorable, material evidence to the defense upon a pretrial request [citing Brady]. Defendant has alleged in his post-conviction petition new evidence showing that the State failed to fulfill this exact responsibility. Brady therefore applies. If by this argument the State is suggesting that it can somehow eliminate a Brady violation by destroying suppressed evidence

in its possession after the trial, we reject that assertion as a matter of principle.

Not unlike Hobley, Petitioner also made a general 1978 pretrial request for Brady information. Petitioner's foregoing showing of how the Nance notes, or Item No. 5, "could have been exculpatory under the overall evidence in the case" renders them favorable pursuant to Klisnick, and the Court's later finding in this paragraph as to their materiality make Brady, and not Youngblood, or pre-Youngblood law, "directly" applicable to this evidentiary item].

Nonetheless, though not required by Hobley, given the foregoing conduct of the CCSP, the loss and/or destruction of the Nance notes (Item No. 5) would clearly evidence that such action was done in bad faith by the police and/or prosecution in violation of Youngblood law on lost or destroyed evidence by the government. Also, relative to the other evidence of a 1987 trial, the Nance notes, as required by Youngblood, would have been equally as important as the Capelli notes to Petitioner's case in such a proceeding. See Hobley, 182 Ill.2d at 440-42, applying Younglood to the facts in its case. Furthermore, pursuant to pre-Youngblood law, or California v. Trombetta, 467 U.S. 479, 488 (1984), Petitioner has established that the Nance notes "possess an exculpatory value that was apparent before [this] evidence was [lost or] destroyed" and is "of such nature that [Ms. Gray] was unable to obtain comparable evidence [in view of the State's suppression of the Capelli notes] by other reasonably available means." People v. Jordan, 103 Ill.2d 192, 211, 212 (1984).

Item No. 3 (or Petitioner's initial statement of innocence to the CCSP) and Item No. 9 (or ASA DiBenedetto's felony review notes of May 15th, 1978 that Ms. Gray was a "reluctant witness"), now take on an entirely different outlook when viewed in the context of the Capelli notes (Item No. 4) and the foregoing circumstances. Again, had Petitioner been in possession of Item No. 3 (regarding her statement of innocence to the CCSP) and Item No. 9 (the prosecution's notation of her reluctance as a witness), along with Item No. 4, she would have had still more evidence to support her defense theory that the sheriff's police coerced and fabricated her inculpatory account and with which to institute a much stronger attack on the credibility of Investigators Houlihan and Pastirik, in conjunction with their failure to follow-up on the Capelli notes without reasonable cause other than to prevent discovery of the real perpetrators of the subject crimes.

Whereas Respondent has introduced ASA DiBenedetto's explanation in this matter (also contained in his Item No. 9 notes) that Paula Gray was a "reluctant""witness" because she knew the Ford Heights

Four, or purported perpetrators, and lived in the same area, when Mr. DiBenedetto's "reluctant" remark (of Item No. 9) is considered in conjunction with Ms. Gray's initial statement of innocence to the sheriff's police, as well as the timing of the Capelli notes vis-a-vis Ms. Gray's grand jury testimony, a court or jury in a 1987 trial could well conclude that her reluctance and fear (Inv. Houlihan testified that Ms. Gray appeared scared and fearful of Dennis Williams) was the result of police mistreatment. (Recall again that Petitioner charged Inv. Houlihan as being one of the policemen directly threatening her and concocting the CCSP story, and Inv. Pastirik with deception in the CSSP's coercive conduct, both of whom testified at Ms. Gray's 1978 trial). Moreover, Ms. Gray could have pointed to further support in a 1987 trial that Item Nos. 3, 4 and 9 evidenced her reluctance because of the CCSP's threats, based on her evidentiary hearing testimony and the First District's Gray opinion that Paula was living with the family of Dennis Williams between the time of her grand jury and preliminary hearing testimonies, which was hardly the best location to hide from a person, Dennis Williams, of which she was fearful. (See Gray, 89 Ill.App.3d at 150-51; Tr. of Evidentiary Hr'g of 4/30/99, at 107, 108; Memorandum "Evidentiary Hearing" Paula Gray at 106). Also, had Petitioner been in possession of this evidence (Item Nos. 3, 4 and 9), she could have called Marvin Simpson, as previously noted, as a witness at a prospective 1987 trial who would have lent still more weight to Petitioner's theory of CCSP coercion and fabrication, for he indicated at his September 11th, 1997 civil case deposition that he was certainly more fearful of the police for arresting the wrong black people and maybe even coming after him next, than he was of people he had just identified to the sheriff's police as being the real perpetrators of the Lionberg/Schmal crimes, one of whom, Dennis Johnson, had even threatened him. He also could have related how the CCSP told him not to talk about the information he disclosed to them contained in the Capelli (and Nance) notes, and how the sheriff's police never got back to him as promised. This would have constituted even more proof of a negligent or bad faith CCSP investigation. [Recall also the sheriff's police suppression of Mrs. McCraney's statement (Item No. 2) and also Willie King Watson's materially favorable information, which in conjunction with the CCSP's foregoing actions, evidenced a pattern of suppression of exculpatory evidence by the sheriff's police, which Petitioner could have established at a 1987 trial had these proofs been disclosed to her prior to her plea, or prior to, or even after, her 1978 trial].

Finally, had Ms. Gray been in possession of the Capelli notes and Item Nos. 3 and 9, she could have subjected ASA DiBenedetto's testimony to a much more damaging cross-examination at a 1987 trial regarding the negligence and bad faith of the prosecution's investigation. This is because the prosecution had personal knowledge of the existence of the Capelli notes by the time of Dennis Williams' and Willie Rainge's

1987 retrial, which was prior to Ms. Gray's 1987 perjury plea, as evidenced by their disclosure of these notes to Dennis Williams' for his 1987 trial. (See Memorandum at 7-8; Memorandum "Findings of Fact" para. 6.c., at 213; Respondent's [Evidentiary Hr'g] Ex. #10, paras. 10.-11. and 046274-046276). The People were also aware, based on public knowledge, of Rob Warden's July, 1982 Chicago Lawyer article, and Michael Walsh's June 7th, 1984 Star article, both indicating that persons other than the Ford Heights Four committed the Lionberg/Schmal crimes. (See Memorandum "Findings of Fact" para. 6.i., at 218-20). The Star article named Dennis Johnson as the source of its information. Thereafter, on March 4th, 1987, the People cross-examined Martin Carlson regarding still another independent source (the investigator hired by Dennis Williams' family) that Dennis Johnson and *unnamed* others were involved in these crimes. (See Respondent's [Evidentiary Hr'g] Ex. 8.; Respondent's Group Ex. 11 Item A; Memorandum "Evidentiary Hearing" Dennis Williams at 87-88; "Findings of Fact" para. 6.i., at 218, 220). Additionally, Mr. Carlson's testimony plainly paralleled the information contained in the Capelli notes regarding Dennis Johnson's involvement in the offenses, and the use of a .38 and a Buick Electra 225 in the crimes. Recall that the People were now in possession of three (3) independent sources of information corroborating the evidence of the Capelli notes, of which they had personal knowledge, which they still did not investigate, nor disclose to Petitioner prior to her 1987 plea. Recall also that unlike the independent corroborative sources, the Capelli notes *named all four of the perpetrators*. As such, had Petitioner been in possession of Item No. 4, she could have subjected Mr. DiBenedetto to the "attack" that was warranted to show that the prosecution's investigation was both negligent and in bad faith by presenting evidence that the prosecutor failed to follow-up on the thrice corroborated Capelli notes, of which it had personal knowledge. Also, had Item Nos. 3 and 9 been disclosed to Petitioner, along with Item No. 4, Ms. Gray would have had strong evidence with which to additionally cross-examine ASA DiBenedetto as to his explanation that Petitioner was a reluctant witness not because of threat from the accused, or Dennis Williams in particular, but because of police misconduct toward her (which was also consistent with her defense theory of CCSP coercion and fabrication). This evidence (Item Nos. 3, 4 and 9) would have carried even greater weight in discrediting Mr. DiBenedetto's explanation in view of his evidentiary hearing testimony (and probable 1987 trial testimony) showing that he was not present when Ms. Gray was initially questioned by the CCSP, so he could not personally attest to what they did or didn't do regarding Petitioner's inculpatory account to him.

Respondent's argument that it need not have disclosed Item No. 3, or the exculpatory interview notes of Ms. Gray by the CCSP, because she testified to the same information in the June, 1978 preliminary hearing, is

quite simply disingenuous. This is because Item No. 3 is obviously exculpatory in view of Petitioner's 1978 defense theory of CCSP coercion and fabrication, coupled with the failure of Investigators Houlihan and Pastirik, whom Petitioner has alleged were involved in coercing and concocting her incriminating grand jury testimony, to reference her Item No. 3 pretrial account of innocence to the CCSP consistent with her alibi, while they related to the jury the inculpatory account they claimed (or at least strongly intimated) Ms. Gray voluntarily gave them. Also, the People's foregoing argument is without merit because, as with Item Nos. 1 and 2, Petitioner was entitled, pursuant to Brady and Rule 412(c), to pretrial disclosure of materially favorable evidence in the possession or control of the State to assist in her defense preparation and to more effectively cross-examine Investigators Houlihan and Pastirik at trial. Nor again has the Respondent cited any case law in support of its argument for their failure to disclose Item No. 3.

Respondent's position that it did not fraudulently conceal Item Nos. 4 and 5 is also non-availing pursuant to Ostendorf. This materially favorable evidence was suppressed by the government in violation of Brady (based on the finding of this para. at 311), which in turn triggered a violation of discovery Rule 412(c). A discovery rule violation constitutes "fraudulent concealment" of the evidence required to be disclosed under our discovery rules for purposes of tolling the post-judgment statute of limitations, until "full and truthful" disclosure is effected. "Full and truthful disclosure" of Petitioner's ten items was not effected until January 28th, 1999. (See Memorandum "Analysis" para. 3.b., at 320). Hence, Item Nos. 4 and 5 were fraudulently concealed by Respondent during Petitioner's 1987 plea and also during her 1978 trial. [See also Memorandum "Analysis" para. 4., at 325-27, for the Court's ruling that the Capelli notes, or Item No. 4, were not available to Ms. Gray "with due diligence," as Respondent has argued, "well before a period of 2 years prior to filing of [her] Petition" on March 2, 1999].

ASA DiBenedetto testified at the evidentiary hearing as to the meaning of his Item No. 9 felony review notes regarding Petitioner, or that Ms. Gray was "reluctant because she lived in the area where the subjects resided and seemed hesitant to become involved in the matter" and also knew the Ford Heights Four. Contrary to Respondent's argument, this explanation does not relieve the People of their Brady and 412(c) obligation to disclose this materially favorable evidence for several of the same reasons discussed by the Court in its denial of an identical State argument regarding Item No. 1. Principally, as held by Kyles, such explanation addresses only the weight to be given the evidence of Item No. 9, and not its favorability for purposes of determining materiality. Also, were the Court to concur in such an argument, it would leave only the State's explanation for Petitioner's reluctance as a witness. Had

Petitioner been in possession of Item No. 9, a defense argument could just as persuasively been made which would have been supportive of her defense theory of CCSP coercion and fabrication, that she was a "reluctant" witness because of the threatening, abusive and deceptive conduct of Investigators Houlihan, Jackson and Pastirik to get her to tell their concoction which occurred *before* ASA DiBenedetto arrived at the CCSP facility. Moreover, as earlier emphasized, affirming such non-disclosure by the People would controvert our adversarial system of justice, and defeat the purpose of Brady of ensuring a fair criminal prosecution and trial. It would also defeat the purpose of Rule 412(c) requiring pretrial disclosure of all Brady and 412(c) information to ensure that the accused can adequately prepare for trial. Furthermore, Respondent has cited no case law in support of its position.

Item Nos. 6, 7 and 8 constitute still more favorable evidence suppressed by the People that would substantially support Petitioner's case and also would have greatly weakened that of the State in a prospective 1987 trial. Item No. 6 is information that the results of Michael Podlecki's pubic hair comparison tests between the "Negroid" pubic hairs found on Carol Schmal's green socks and the "Negroid" pubic hair standards of the Ford Heights Four was that the hairs did not match. Item No. 7 is Mr. Podlecki's 1978 trial testimony that notwithstanding his actual pubic hair comparison findings showing that the pubic hair standards of the Ford Heights Four were "dissimilar" to the pubic hairs found on Ms. Schmal's socks, he testified at trial that these pubic hair comparison test results were of "no evidential value" or "nev." [Mr. Podlecki's 1978 trial testimony actually reiterated his documented findings by stating "nothing of evidential value," which phraseology the Court will use]. Item No. 8 is information that the prosecution failed and/or refused to provide head hair standards of the Ford Heights Four for comparison with the "Negroid" head hairs also found on Ms. Schmal's green socks.

Before proceeding further, the Court must specifically consider Item No. 7. Petitioner has factually shown that Mr. Podlecki falsely testified at her 1978 trial that the results of his pubic hair comparison tests between the "Negroid" pubic hairs found on Carol Schmal's green socks and the pubic hair standards of the Ford Heights Four disclosed "nothing of evidential value." In fact, his results *were* of evidential value in that they indicated that the pubic hairs of the Ford Heights Four were dissimilar with those found on Ms. Schmal's socks. This factual finding by the Court was based on Michael Podlecki's testimony at the evidentiary hearing, as well as the transcript of his January 15th, 1999 deposition testimony in the civil actions of Ms. Gray and the Ford Heights Four, particularly regarding his deposition admission that his actual finding of dissimilarity between the pubic hairs *was* a matter of evidential value. [See Memorandum "Findings of Fact" para. 6.a., Item Nos. 6 and 7 at 207-08;

see also People v. Moore, 199 Ill.App.3d 747, 766 (1st Dist. 1990), holding that for testimony to constitute perjury, the witness must make a knowingly false statement under oath material to the issue or point in question, and Petitioner has made such a showing regarding the information of Item No. 7].

While "recantations are often deemed highly unreliable" (see Burrows, 172 Ill.2d at 188), the Court has found Mr. Podlecki's foregoing evidentiary hearing and deposition testimony regarding his recantation to be credible as an admission, or statement against penal interest, because as a forensic scientist with the Illinois State Police, he faces significant repercussions for his current admission to perjury at the 1978 trial. [See People v. Bland, 67 Ill.App.3d 716, 720 (1st Dist. 1978), in which the First District required the showing at an evidentiary hearing that a witness' affidavit recantation was *credible*; see also Burrows, 172 Ill.2d at 191, where in finding the recanting witness' testimony to be clear and convincing, the Supreme Court reasoned that this witness, who was alleged to have given perjured testimony at the defendant's earlier trial, "placed herself at risk for substantial criminal consequences" because of her post-judgment recantation in support of the accused's petition].

The Court therefore finds that Petitioner has established by clear and convincing evidence that Mr. Podlecki gave false testimony at Ms. Gray's 1978 trial, and also produced a false forensic report, both indicating that the results of his pubic hair comparison examination found "nothing of evidential value."

Moreover, as will be discussed later in this paragraph, Petitioner has established by clear and convincing evidence that the State knowingly used at her 1978 trial Michael Podlecki's perjured testimony as set forth in Item No. 7. Petitioner having met her burden, the State is required to show beyond a reasonable doubt that Mr. Podlecki's perjured testimony did not contribute to Ms. Gray's (1978) conviction. [See Veal, 58 Ill.App.3d at 964; Diaz, 297 Ill.App.3d at 827-28]. The State's argument that "Mr. Weston uses the 'No evidentiary value' terminology to [Ms. Gray's] benefit by neutralizing the pubic hair evidence" does not constitute such a showing. Hence, Ms. Gray has established a Brady violation by the State's knowing use of Mr. Podlecki's false pubic hair comparison testimony as set forth by Item No. 7 which could have affected a court or jury verdict in a prospective 1987 trial, particularly where the case against Petitioner is "closely balanced" or largely "circumstantial." See Diaz, 297 Ill.App.3d at 828, citing Bagley, 473 U.S. at 678-80, People v. Steidl, 177 Ill.2d 239, 261-62 (1997), and People v. Olinger, 176 Ill.2d 326, 345 (1997); see also Agurs, 427 U.S. at 103-04; Coleman, 183 Ill.2d at 391-92.

Had Ms. Gray been in possession of Item No. 7, and also Item Nos. 6 and 8, she could have subjected Mr. Podlecki to such a strong cross-examination that a 1987 trial might well have resulted in an acquittal. In any event, this evidence certainly would have enabled the defense to subject Mr. Podlecki to a more critical and effective cross-examination such that a 1987 court or jury could seriously question the reliability and truthfulness of Mr. Podlecki's testimony regarding his hair comparison test results, which in turn would have adversely affected the credibility of the entirety of his forensic testimony, including his blood analyses. Mr. Podlecki misrepresented or falsely stated critical hair comparison evidence (Item No. 7) to the 1978 jury, while in possession of pubic hair test results that actually showed no match (Item No. 6). Were a 1987 court or jury made aware of Item Nos. 6 and 7, it could reasonably conclude that if he's being untruthful in his pubic hair comparison test result testimony, might not the remainder of his forensic testimony be less than honest and forthcoming. Disclosure of Item No. 8, or the prosecution's failure to facilitate a head hair comparison test would have undercut the State's case even further.

Also, Item Nos. 6 and 7 provide strong scientific proof in support of Petitioner's defense theory of innocence. Additionally, as previously discussed and determined in Hobley, Item No. 6 constitutes *scientific* proofs which corroborate Ms. Gray's defense position that the CCSP coerced her to tell their fabricated account. Hobley, 182 Ill.2d at 436. [Recall in Hobley, the case involving the defendant's allegation that the police testified to a concocted confession he never made, that the court noted in its materiality analysis the importance of the suppressed negative fingerprint report as "scientific evidence" further supporting the "unreliability of [the accused's] alleged confession." Hobley, 182 Ill.2d at 436. The Supreme Court thereafter reasoned in support of its finding of constitutional materiality of the two items of favorable evidence (including the fingerprint report) suppressed by the People that:

[two unexplained] inconsistencies in the State's evidence presented against defendant at trial [and previously discussed by Hobley] are placed in an entirely different light once they are considered along with the suppressed fingerprint report and second [or one-gallon] gasoline can."

The same is true of the suppression of Item Nos. 1, 2, 3, 4, 5, 9 and Willie King Watson's exculpatory information. This favorable evidence, in conjunction with the scientific exculpatory evidence of Item No. 6., is placed in an entirely different light when considered along with the three (3) unexplained inconsistencies of the State's 1978 case against Petitioner consisting of:

(1) Charles McCraney's testimony that he saw no women in the group of 6 to 8 people entering 1528 as contrasted to Ms. Gray's grand jury testimony that she and Ms. Schmal entered the building together with Willie Rainge, Verneal Jimerson and Dennis Williams (Respondent's Joint Mot. Ex. C at 05-07);

(2) Charles McCraney's testimony that he saw no white people in the group entering 1528 as opposed to Ms. Gray's grand jury testimony that the two white victims entered in front of Dennis Williams (Respondent's Joint Mot. Ex. C at 05-07), and;

(3) Charles McCraney's testimony that he saw Kenneth Adams exit the beige Toyota in a group totalling four (4) people and run to join a group exiting the red Toyota for a total of 6 to 8 people entering 1528, as contrasted to Paula Gray's grand jury testimony that she, Dennis Williams, Verneal Jimerson, Willie Rainge and the two white victims entered 1528 as a single group totalling 6 people with no reference of being joined by any other group. (Respondent's Joint Mot. Ex. C at 05-07). (More specifically, the inconsistency is that Charles McCraney's testimony that no more than 8 people entered 1528 meant that Kenneth Adams' group of four, according to Mr. McCraney's account, could join a group of no more than four (4) additional people exiting the red Toyota, and yet according to Paula Gray's testimony *six (6)* people entered 1528 as a single group and no reference was made by her that four (4) additional people ran up to join her group of 6 as indicated by Mr. McCraney. Also, if four (4) more people from the beige Toyota *did* join Ms. Gray's group as Charles McCraney testified to, the total number of persons entering 1528 would have been ten (10), and not the 6 to 8 people Mr. McCraney indicated].

Item No. 8, or the prosecution's failure and/or refusal to provide Mr. Podlecki with the head hair standards of the Ford Heights Four for comparative testing with head hairs found at the crime scene, indicates not only a failure to investigate additional information that could very well prove exculpatory, but the fact that the State's inaction was suppressed, coupled with the perjured testimony of Item No. 7 and the failure to disclose the exculpatory pubic hair comparison test results of Item No. 6, misled not only the 1978 jury (and court), but also Petitioner, as to the true nature of this evidence. Respondent did not effect disclosure of these items prior to Ms. Gray's 1987 plea to correct this earlier deception. Furthermore, had Ms. Gray been aware of Item Nos. 6, 7 and 8, she could have conducted her own head hair comparison tests for use at a 1987 trial.

Item Nos. 6, 7 and 8 would have been additionally significant to Ms. Gray at a 1987 trial to show that the State's Attorney not only violated its disclosure duty regarding this evidence, it engaged in prosecutorial

misconduct, "in that this evidence demonstrates that the prosecution's [1978] case include[d] perjured testimony and that the prosecution knew, or should have known, of the perjury." First, as the Court earlier ruled, it is convinced of the truthfulness of Mr. Podlecki's testimony in this proceeding, particularly with respect to his admission of his false 1978 pubic hair comparison testimony, or Item No. 7. Moreover, Mr. Podlecki has indicated that the reason he reported in 1978 that the pubic hair comparison results constituted "nothing of evidential value," contrary to his actual findings that the hairs were "dissimilar," is that that was "wording used at that time." He added that if the pubic hairs had matched, he would have reported "similar in color and characteristics." A showing that Mr. Podlecki and the forensic lab used the term "nothing of evidential value" as previously defined by him would have additionally weakened the State's scientific or forensic evidence.

Also, the prosecution's use of Mr. Podlecki's false testimony at trial was knowing even if the prosecutor did not personally have knowledge of Michael Podlecki's perjury. This is because Mr. Podlecki knowingly gave false testimony as a state agent, or employee of the Illinois State Police, and the prosecution is charged with the knowledge of its agents. See People v. Martin, 46 Ill.2d 565, 567-68 (1970); Diaz, 297 Ill.App.3d at 373; People v. Jones, 157 Ill.App.3d 1006, 1029 (1st Dist. 1987).

However, there is also substantial evidence in this matter that the trial prosecutor, Cliff Johnson, had personal knowledge of Mr. Podlecki's perjury. Mr. Johnson was the assistant State's Attorney with whom Mr. Podlecki did most of his talking regarding this case (along with evidence technician Dan Gente) and ASA Johnson and Michael Podlecki had been in continuous communication regarding not only the pubic hair comparison tests, but also the head hair standards of the accused for comparative tests. As such, Mr. Johnson certainly had to be aware of the "wording used at that time [1978]." If not, the prosecution and ASA Johnson certainly *should* have been aware of it. Furthermore, assuming arguendo, that the "nothing of evidential value" terminology was not normally used in the manner Mr. Podlecki indicated in 1978, the prosecution still knew or should have known that Mr. Podlecki's testimony regarding his pubic hair comparison test results was perjurious. Again, recall the continuous communication between Mr. Podlecki and ASA Johnson regarding the pubic and head hair comparison tests. Mr. Podlecki was certainly aware of the falsity of his 1978 pubic hair result testimony when he admitted at the January 15th, 1999 deposition of the civil actions that his finding of dissimilarity between the pubic hairs was a matter of evidential value. As Hobley observed, "it strains credulity" that given the foregoing circumstances, Cliff Johnson would not have been

aware of Mr. Podlecki's false 1978 pubic hair comparison testimony as well.

Further evidence that ASA Johnson was aware of the falsity of Mr. Podlecki's pubic hair result testimony at Petitioner's 1978 trial was both Mr. Johnson's objection to, and the reasons for his objection to, Michael Podlecki's explanation of the term "nothing of evidential value" regarding his pubic hair examination as indicated by the following colloquy at Ms. Gray's 1978 trial:

> Q. [MR. WESTON]: Now, when you're examining pubic hairs, sir, what were you seeking terms [sic] of evidential value?
>
> MR. JOHNSON: Objection.
>
> THE COURT: Why?
>
> MR. JOHNSON: *There's nothing of evidential value. It would be irrelevant and immaterial to go into it.*
>
> THE COURT: As to what he was seeking?
>
> MR. JOHNSON: Yes, Judge, yes. *Because in his answer that nothing of evidential value was found in it just about says it all, number one.*

The judge overruled Mr. Johnson's objection and Mr. Podlecki's explanation of "nothing of evidential value" was at best misleading and confusing, and at worst, perjurious, again which the prosecution did not correct or clarify, or have stricken from the record:

> MR. WESTON: What were you seeking?
>
> A. Basically other hairs to compare them to. Other hairs in the case
> that were found. (emphasis added).

(Petitioner's Add'l Auth's and Mat'ls Ex. 15, at 1918:02-1918:23).

Still more evidence that the prosecution was aware, or should have been aware, of Mr. Podlecki's perjurious testimony of Item No. 7 is the fact that Mr. Podlecki made a total of three requests to ASA Johnson for the head hair standards from the Ford Heights Four to conduct the head hair comparison tests, but Mr. Johnson either failed or refused to produce the head hairs of the accused. Respondent's countervailing argument that

the prosecution petitioned the court for an order seeking the head and pubic hair standards of the four defendants, which the court issued, is without merit, because it was obvious, at least to ASA Johnson, pursuant to the three direct requests of Mr. Podlecki, that he had not received the head hair standards of the accused to conduct such tests, and would need these standards to complete the rest of his examinations. As Jimerson held, the Court need not abandon its commonsense view of the evidence, and Mr. Johnson's failure to provide head hair standards for Mr. Podlecki after repeated direct requests is further evidence as to his knowledge of the exculpatory nature of the pubic hair comparison tests, in that it can be reasonably concluded that he did not want further scientific testing conducted that would more likely than not result in additional proofs favoring the defense.

Therefore, based on the foregoing evidence, the Court finds that the prosecution knowingly presented the perjured testimony of Michael Podlecki as set forth by Item No. 7, or that it should have known that such testimony was perjured.

As Agurs held, the State's knowing use of perjured testimony "not only violates constitutionally mandated disclosure obligations," but also involves "'prosecutorial misconduct' and...a 'corruption of the truth-seeking function of the trial process.'" Agurs, 427 U.S. at 104. Agurs further held that the knowing use of perjured testimony by the State constitutes a "deliberate deception of court and jury," a contrived conviction, and "is inconsistent with the rudimentary demands of justice." Agurs, 427 U.S. at 104. Such evidence, again, constitutes the strongest proofs, along with perhaps the prosecution's failure to investigate the information of the Capelli notes (combined with their public knowledge awareness of the 2 news articles and actual knowledge of Martin Carlson's testimony corroborating these notes), that the prosecution's case against Petitioner was in bad faith and contrived. This "contrived conviction" in 1978 by the use of perjured testimony also would have provided further support at a 1987 trial that the government was not above coercing and fabricating Petitioner's inculpatory grand jury testimony as Ms. Gray's defense theory professed.

It should also be noted that the prosecution (or ASA Johnson) exacerbated its knowing use of perjured pubic hair comparison testimony by intentionally introducing the odds, heavily favoring the prosecution, of a Canadian hair comparison study that had nothing to do with the kind of hair examination conducted by Mr. Podlecki and the Illinois Forensic Lab in 1978 for the Lionberg/Schmal case. [Recall the Court's factual finding that ASA Johnson introduced evidence at Petitioner's 1978 trial regarding the Gaudette or Canadian hair comparison study and its 4500 to one odds, which study and odds he knew, or should have known, were entirely

unrelated to the type hair comparison tests conducted by Mr. Podlecki in the subject case. Also, there were no studies evidencing the odds for the hair comparison tests performed by Mr. Podlecki. (See Memorandum "Findings of Fact" para. 7., at 221-23). This finding was based on the fact that Mr. Johnson evidenced his familiarity with the Canadian study and its odds by relating these same odds (albeit incorrectly) to the 1978 grand jurors apparently indicting Ms. Gray, and also because it was ASA Johnson, and not Mr. Podlecki, who made the initial 1978 pretrial inquiry regarding the Gaudette study and its 4500 to one odds. Recall also that the odds of the Canadian study were introduced by Mr. Johnson to offset Michael Podlecki's cross-examination testimony at Ms. Gray's 1978 trial that he could not say with certainty that three hairs found in Dennis Williams' vehicle in fact came from the victims, so that it improperly tended to support the People's case and undercut Petitioner's defense of innocence and CCSP coercion and fabrication. This factual finding by the Court, in view of the foregoing circumstances at trial, evidences ASA Johnson's knowing use of irrelevant, misleading and prejudicial hair comparison evidence against Ms. Gray at her 1978 trial]. The intentional or knowing use of this type evidence by Mr. Johnson at the 1978 trial provides still further proof of the bad faith conduct of the State in prosecuting Ms. Gray's case. It's use also affords more support for the Court's finding that the prosecution knowingly used the perjured scientific testimony of Michael Podlecki (or Item No. 7).

[The Court's analysis is supported by DeStephano, 30 Ill.App.3d at 939-43, a case cited by the First District as involving the bad faith action by the prosecution (see People v. Ruffalo, 69 Ill.App.3d 532, 536, 537 (1st Dist. 1979)), where the defendant was charged with murder and the prosecution failed to turn over a file, which it personally possessed at the time of the accused's pretrial Brady request, containing materially favorable information that the victim (Leo Foreman) may have been killed by others. Specifically, the file consisted of information compiled by a private attorney (Mr. George Leighton) representing Leo Foreman in a police brutality case and contained a sworn statement by Mr. Foreman that a policeman told him "I would love to have the pleasure of killing you"; photographs of Leo Foreman's bruises and lacerations allegedly inflicted by the police; notice of intent to sue filed on the City of Chicago; and other pertinent documents. DeStephano held that not only did the prosecution knowingly have in its possession this file at the time of the defendant's pretrial discovery request and suppress its materially favorable evidence, the People "*further aggravated [their failure of disclosure by]...reading into evidence [at trial] the autopsy report of Leo Foreman without informing defense counsel, the court or the jury that the bruises and lacerations on Foreman's body, observed and noted at the time of his autopsy, had been received 3 weeks prior to his death, as depicted in the photographs contained in the secreted file.*" (emphasis added). The court

also admonished the prosecution "for its conduct in attempting to conceal the identity of Justice Leighton as a witness," by only disclosing "George Leighton, address unknown," after personally interviewing Justice Leighton at a time that Mr. Leighton was a Justice of the Illinois Appellate Court, with chambers in the same building as the offices of the State's Attorney. DeStephano concluded that "[i]t is as much ...[the prosecutor's] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." Ruffalo thereafter cites the foregoing conclusion of DeStephano as "relat[ing] to the integrity of the criminal justice process in that the bad faith of the prosecution in deliberately depriving the defense of desired evidence taints the criminal justice system and therefore constitutes a denial of due process." Ruffalo, 69 Ill.App.3d at 536; see also Diaz, 297 Ill.App.3d at 372, 374, in which the First District reversed a conviction based on the State's knowing use of perjured testimony in violation of constitutional due process pursuant to Bagley, 473 U.S. at 678; Giglio v. United States, 405 U.S. 150 (1972); Napue, 360 U.S. at 265; Steidl, 177 Ill.2d at 261; Olinger, 176 Ill.2d at 326; and Jimerson, 166 Ill.2d at 223. Diaz noted that after knowingly presenting a witness' false testimony denying a deal with the People, instead of correcting the witness' testimony, "the State *compounded its error* by telling the jury during its closing argument that there was in fact no agreement between the State [and its witness]" (emphasis added). Diaz, 297 Ill.App.3d at 372].

Hence, Ms. Gray could have used Item Nos. 6, 7 and 8 to show the bad faith and even misconduct of the prosecution at a 1987 trial by knowingly suppressing the materially favorable hair comparison evidence of Item Nos. 6 and 8, knowingly using perjured pubic hair comparison forensic testimony as evidenced by Item No. 7, and by "further" aggravating or compounding its hair comparison disclosure failure and use of perjured pubic hair comparison evidence by introducing the irrelevant, misleading and prejudicial odds of the Canadian hair comparison study heavily favoring the State, and even commenting upon the Canadian study odds during closing argument. Petitioner could have additionally used Item Nos. 6, 7 and 8 to show the unreliability of Michael Podlecki's forensic testimony, particularly his pubic hair comparison test results. Furthermore, Mr. Podlecki's explanation for his use of the "nothing of evidential value" terminology would evidence the importance to the defense of the forensic report dated September 15th, 1978, contained in Item No. 10, because the report indicates that the results of the examination conducted on the 1970 Buick Electra 225 twice concluded that there was "nothing of evidential value." (Petitioner's Add'l Auth's and Mat'ls Ex. 10). Obviously, such a finding (and report) could have been used to further impeach Mr. Podlecki's forensic testimony, and also would have alerted the defense to the advisability of conducting their own forensic investigation of the vehicle.

Both the prospective head hair results of Item No. 8 and the affidavit, warrant and return of Item No. 10, though non-existent, constitute favorable evidence pursuant to the previously cited ruling of Klisnick, 73 Ill.App.3d at 158-59, which requires that "the defense demonstrate [how unavailable evidence] could have been exculpatory under the overall evidence in the case" to prove Brady violation.

Clearly, Petitioner has demonstrated that Item No. 8 could have been exculpatory, because when considered alongside the favorable pubic hair comparison test results of Item No. 6, the court or jury at a 1987 trial could reasonably conclude that a head hair comparison test would have had similar favorable results. Item No. 8 could also have been exculpatory, according to Ms. Gray's herein proofs, because the State's failure to conduct head hair comparison tests, when considered in conjunction with Mr. Podlecki's perjured testimony of Item No. 7 and exculpatory pubic hair comparison test results of Item No. 6., would be exceedingly strong evidence that the prosecution's case against Ms. Gray was being conducted both in bad faith and contrary to the rudimentary demands of justice.

Petitioner has also shown that the affidavit, warrant and return of Item No. 10 regarding the Buick Electra 225 could have been exculpatory because of the strong connection of this vehicle to the Capelli notes (i.e. almost identical to the automobile described by these notes as used in the subject crimes), so that the CCSP seizure of this car would have contradicted Inv. Capelli's deposition explanation, which he (or Inv. Houlihan or Inv. Pastirik) presumably would have related at a 1987 trial with disclosure of this evidence to Petitioner, that he did not do a follow-up report on his, or the Capelli notes, because "there was nothing significant in [the notes] that related to [the Lionberg/Schmal case]." Conversely, the affidavit, warrant and return of Item No. 10 could also be exculpatory, pursuant to Petitioner's proofs, because the examination of the vehicle, again showing a strong connection to the Capelli notes, without further follow-up of the information of these notes, would have evidenced a sloppy or negligent investigation by the CCSP. In addition, note that according to the Motor Vehicle Incident Case Report of Item No. 10 (see Petitioner's Add'l Auth's and Mat'ls Ex. 10), none of the principal CCSP investigators of the Lionberg/Schmal case, or Lt. Vanick, Inv. Houlihan, Inv. Pastirik and Inv. Capelli, recovered the Buick Electra 225 indicated by Item No. 10. Who is to say that a sheriff's police officer with no personal motive or interest in this case did not find this car based on information provided to the entire CCSPD by or emanating from the Capelli notes, only to have the affidavit, warrant and return connecting this vehicle to the Capelli notes disappear at the hands of other investigators fearful of public disclosure of these notes and the resultant arrest and conviction of the real perpetrators who were not the Ford

Heights Four, thus evidencing their coercion and concoction of Ms. Gray's testimony to sheriff's police, ASA's, and the May 16th, 1978 grand jury. In any event, at minimum, Petitioner could have argued at a 1987 trial, with the information of Item No. 10, that one or more members of the CCSP were investigating the evidence of the May 17th-18th, 1978 Capelli notes and the commission of the Lionberg/Schmal crimes by persons other than the Ford Heights Four, which would clearly have been favorable to Ms. Gray's defense of innocence.

Moreover, had Petitioner been on notice of the information of Item Nos. 6 and 7, and the manner in which Mr. Podlecki was utilizing the terminology "nothing of evidential value" regarding his forensic results that in actuality favored the accused, Ms. Gray may well have investigated the seized vehicle of Item No. 10, and certainly the results of Mr. Podlecki's forensic examination of this same vehicle indicating that there was "nothing of evidential value." [See Petitioner's Add'l Auth's and Mat'ls Ex. 10 for Michael Podlecki forensic report dated September 15th, 1978 indicating the results of the examination of the seized Buick Electra 225]. Indeed, any forensic finding in this matter, particularly by Mr. Podlecki, stating "nothing of evidential value," would have been suspect in light of the information of Item Nos. 6 and 7.

Furthermore, as earlier discussed, Petitioner made a general pretrial 1978 Brady request and also previously established that the warrant, affidavit and return of Item No. 10, though unavailable, are probably favorable to her case as required by Klisnick. The Court's later finding in this paragraph of the materiality of this affidavit, warrant and return therefore makes Brady law, according to Hobley, and not that of Youngblood or pre-Youngblood rulings, applicable to these evidentiary proofs. [See this para. at 293-94 for the same ruling by the Court regarding Item No. 5, or the George Nance notes, also an unavailable item of evidence; see also Hobley, 182 Ill.2d at 438-39]. Moreover, assuming *arguendo,* that Youngblood *is* applicable, Petitioner has established that the affidavit, warrant and return were lost or destroyed by the CCSP in bad faith, and that this evidence was "important relative to the evidence that was [and would have been presented] against [Ms. Gray] at [the 1978] trial [or prospective 1987 trial]." Hobley, 182 Ill.2d at 440-41, citing Youngblood, 488 U.S. at 58, as well as supporting Illinois case law. Along with Petitioner's foregoing showing of CCSP bad faith, she has also established, as required by Trombetta, or pre-Youngblood law, that the actions of the sheriff's police, or government, in losing or destroying the affidavit, warrant and return of Item No. 10 "were designed to defeat its duty of dislcosure under Brady" with respect to this favorable evidence requested by Petitioner. Jordan, 103 Ill.2d at 212, citing Trombetta. Specifically, when the affidavit, warrant and return for a vehicle virtually identical to the one identified by the Capelli notes reliably pointing to the commission of the crimes by others, and probably also identified in the

Nance notes, the affidavit, warrant and return "possess an exculpatory value that was apparent before the evidence was [lost or] destroyed [by the State]," and Ms. Gray would have been "unable to obtain comparable evidence by reasonably available means," again in view of the fact that the People suppressed the Capelli notes, and also lost or destroyed the Nance notes. Jordan, 103 Ill.2d at 211, citing Trombetta.

Respondent's argument that Item Nos. 6 and 7 were neutralized by Mr. Weston is without merit. First, even the most effective cross-examination would not justify the knowing use of perjured testimony by the prosecution, or failure to bring such perjury to the attention of the court, defense counsel, or jury at the time it was made. Nor would such cross-examination relieve the State of its obligation to disclose the obviously and significantly exculpatory information of Item No. 6. [Recall Agurs holding that the prosecution is required to disclose evidence "so clearly supportive of a claim of innocence that it gives the prosecution notice of a duty to produce...even if no request is made." Agurs, 427 U.S. at 107; accord People v. Harris, 129 Ill.2d 123, 152 (1989)]. Moreover, Mr. Weston could hardly have neutralized, or at least effectively neutralized, perjured testimony (Item No. 7) and exculpatory evidence (Item No. 6) of which he was not aware. Finally, assuming the Court were to accept Respondent's foregoing argument as true, as Kyles has held, it "is true, but not true enough," because with these evidentiary items (6 and 7) Mr. Weston would not have been limited to "chipping away [at Mr. Podlecki's testimony] on cross-examination but" instead could have instituted "the assault that was warranted." Kyles, 514 U. S. at 443. Additionally, Respondent has stated no case law support for its position.

Regarding Item No. 8, Respondent's argument that a prosecutor filed a petition in 1978 and even received a court order for the collection of the head hair standards of the Ford Heights Four (see Respondent's Group Ex. 11 Item K at PD00028) obviously does not constitute disclosure of the information of Item No. 8 to Petitioner. Nor does this argument (or Respondent's evidence in this matter) refute Mr. Podlecki's evidentiary hearing testimony that despite his repeated requests to ASA Johnson, among others involved in the investigation of the subject offenses, he never received the head hair standards for comparative testing with the head hairs found on Ms. Schmal's socks. Moreover, because Ms. Gray did not have the information of Item Nos. 6 and 7, even if the State *had* disclosed Item No. 8 to her, its probable significance to Petitioner's case would have been less than apparent, as it properly should have been, had the People effected timely disclosure of evidentiary items 6 and 7.

As to Item No. 10, Respondent's argument that this information "was in no way connected with the Simpson statement" is entirely without merit. Quite simply, as earlier noted, the similarity between the vehicle

seized pursuant to the affidavit, warrant and return of Item No. 10 and the one described by the Capelli notes makes them, as earlier noted, virtually identical automobiles: both cars are brown, 1970, Buick Electra 225's, with the "right front damage" on the vehicle in the Capelli notes comparable to the "bond repair with no primer" on the right side of the vehicle seized.

Nor based on the evidence presented in this matter does Respondent's contention make sense that the vehicle was seized because it may have belonged to Willie King Watson's father, apparently suggesting that Willie King Watson was a suspect in the crimes, because even assuming he was a suspect, there are no proofs other than the Capelli notes (and presumably the Nance notes) linking a brown, 1970, Buick Electra 225 to the subject offenses. Hence, other than via the Capelli (or Nance) notes, there would be no reason for the CCSP to seize and do a forensic search of such a vehicle, whether it belonged to Willie King Watson's father, or Willie King Watson himself. Also, the "Robert L. Watson" indicated on the "Motor Vehicle Incident Case Report" of Item No. 10 as the owner of the seized Buick Electra 225, was not known by Willie King Watson, and obviously was not his father. (See Petitioner's Add'l Auth's and Mat'ls Ex 10 (first page only); Respondent's Group Ex. 11 Item K at PD00037; Tr. of Evidentiary Hr'g of 4/29/99, at 245; Memorandum "Evidentiary Hearing" Willie King Watson at 75). In fact, Respondent's foregoing contention is more in the nature of an argument proffered *after the fact*, regarding the CCSP seizure and search of the Buick Electra 225, in order to negate the obvious connection of this vehicle to the Capelli notes (as well as notice to Ms. Gray regarding the existence of these notes). As Jimerson held, the Court need not suspend its commonsense in review of this issue and it therefore rejects Respondent's argument regarding its suppression of the information of Item No. 10, including the affidavit, warrant and return of the vehicle seized.

Also, notwithstanding Respondent's argument to the contrary, Petitioner has presented substantial evidence in this proceeding of the bad faith conduct of the CCSP in support of the Court's finding that the CCSP's loss or destruction of the affidavit, warrant and return of Item No. 10, was designed to defeat the government's disclosure duty under Brady, including:

- their coercion and fabrication of Ms. Gray's 1978 grand jury testimony;
- their failure to testify at the 1978 trial regarding Petitioner's initial claim of innocence to the CCSP, coupled with their suppression of their notes of this claim;
- their failure to conduct a follow-up investigation of the four "Suspects" named in the Capelli notes, which notes reliably pointed

to these "Suspects" as *other* perpetrators of the subject crimes, and also indicated the location of the weapon (.38) used in the crimes that matched the weapon reported in the State Police Department's forensic report;

- the timing of their failure to investigate the four "Suspects" of the Capelli notes, that originated, in relevant part, on May 17th, 1978, and Petitioner's incriminating grand jury testimony one day earlier that she claimed to be CCSP coerced and fabricated, and;

- their direction to Willie King Watson to effectively write a statement that did not reflect his thrice stated oral account to them of what he witnessed the night of the crimes, after the CCSP repeatedly told him he saw other than what he indicated to them he witnessed regarding Dennis Williams and his breaking of the street light.

Petitioner has not proven that Item No. 11, or information that Willie King Watson appeared in a line-up about a week after the bodies were found, though possibly favorable to the defense, would have been constitutionally material in a prospective 1987 trial. This determination is supported by Agurs that:

there is no 'constitutional requirement that the prosecution make a complete and detailed accounting to the defense of all police investigatory work on a case'...[and t]he mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense.

Agurs, 427 U.S. at 109-10; accord People v. Lewis, 105 Ill.2d 226, 235 (1984).

Accordingly, had a court or jury in a prospective 1987 trial been informed of the numerous foregoing items of suppressed evidence, or Item Nos. 1 through 10, it would have been entitled to find:

(1) that Charles McCraney, a crucial identification witness for the State's case, ingratiated himself with the CCSP and prosecution, and altered his testimony to favor the People, or testified untruthfully, in order to receive reward monies and also to receive monies from the State to relocate to a more desirable residence as well as to purchase a vehicle;

(2) that Charles McCraney, a crucial identification witness for the State's case, was coached by the prosecution since it was known by the prosecution prior to trial that "he saw no faces" and he also stated to the CCSP that he saw an unknown subject, whereas at the first or 1978 trial he claimed to have seen 4 of the 5 accused, by the 2nd or 1985 trial he claimed seeing all 5 of the accused before midnight the night of the crimes, and by the 3rd or 1987 trial claimed to have seen all five of the

accused just prior to entry into 1528. He also improved his testimony on behalf of the State regarding the time of entry of the accused into 1528, and the presence or absence of clock(s) in his home the night of the crimes, over the course of the three trials;

(3) that one witness (Willie King Watson), and perhaps a second witness (Mrs. Sherry McCraney), to the fact and time that one of the Ford Heights Four broke a street light the night of the crimes, would probably have contradicted the inculpatory account of Charles McCraney and offered an account tending to show the innocence of Ms. Gray and her four purported principals;

(4) that the CCSP and prosecutorial investigations were limited by their uncritical readiness to accept the inculpatory story of a crucial identification witness (or Charles McCraney), whose accounts regarding identification, time of entry by the accused into 1528, and presence or absence of clock(s) in his residence the night of the crimes, were inconsistent both pretrial, as well as during and over the course of the 1978, 1985 and 1987 trials;

(5) that the State's forensic expert gave false testimony that the results of his pubic hair comparison tests constituted "nothing of evidential value." Also, the State's knowing use of this testimony evidenced a bad faith prosecution;

(6) that the State's actual results of the pubic hair comparison tests between the pubic hair standards of the Ford Heights Four and the "Negroid" pubic hairs found on Ms. Schmal's socks (in a rape/murder case) were "dissimilar";

(7) that the State's forensic expert gave testimony as to the odds of a Canadian hair comparison study favoring the government and harmful to Ms. Gray's case, which odds and study were unrelated to his hair comparison tests for the Lionberg/Schmal offenses. Also, the State's knowing use of this testimony evidenced a bad faith prosecution;

(8) that had the State conducted head hair comparison tests between the "Negroid" head hairs found on Carol Schmal's socks and the head hair standards of the Ford Heights Four, the results would probably have been "dissimilar," in view of the State's "dissimilar" findings for the pubic hair comparison tests. Also, the State's failure and/or refusal to facilitate head hair comparison tests evidenced a bad faith prosecution;

(9) that the Capelli notes were produced within five to six days of the discovery of the victims' bodies and consisted of reliable and detailed information naming four "Suspects" or perpetrators of the

Lionberg/Schmal crimes other than the Ford Heights Four (or Dennis Johnson, Ira Johnson, Arthur Robinson, and Johnnie Rodriguez); the apparent residential address of at least one of these four men; the type weapon used in the crimes (.38) which matched the weapon identified by the State's forensic report for the subject offenses; the type vehicle used in the commission of the crimes and its owner (brown, 1970, Buick Electra 225/Johnnie Rodriguez); the location of the weapon used in the crimes as of May 17th, 1978; and a detailed account of the crimes;

(10) that the George Nance notes were produced at the same time as the Capelli notes (or within 5 to 6 days of the discovery of Ms. Schmal and Mr. Lionberg) and probably contained the same information, if not more exculpatory evidence, than the Capelli notes;

(11) that the CCSP's and prosecution's failure to follow-up on the four "Suspects" of the Capelli (and Nance) notes evidenced not only a sloppy or negligent investigation, but a bad faith one as well, because these notes strongly evidenced that Ms. Gray's inculpatory grand jury testimony one day earlier, on May 16th, 1978, in which she related details of the Lionberg/Schmal crimes, was fabricated and coerced by the CCSP. Also, the prosecution's direct knowledge of the Capelli notes and three (3) independent corroborative sources, coupled with their failure to investigate these notes and continued prosecution of Ms. Gray (and the Ford Heights Four), further evidenced their bad faith prosecution;

(12) that Ms. Gray initially gave the CCSP an account of her innocence consistent with her alibi, and that her reluctance as a witness was because she was fearful due to previous CCSP threat and deception to cause her to tell their incriminating account to the sheriff's police, assistant State's Attorneys, and the May 16th, 1978 grand jury;

(13) that the CCSP lost or destroyed the affidavit, warrant and return for a brown, 1970 Buick Electra 225 seized and searched by the sheriff's police almost identically matching the vehicle described in the Capelli notes in order to suppress any information identifying or connected to these notes, including the notes themselves, because these notes strongly evidenced CCSP coercion and fabrication of Ms. Gray's incriminating statement to the sheriff's police, various assistant State's Attorneys, as well as the May 16th, 1978 grand jury one day earlier, and;

(14) that the results of the forensic examination on the seized Buick Electra 225 finding "nothing of evidential value" were at best questionable, or perhaps even perjurious, in view of Mr. Podlecki's acknowledgment of his use of that terminology regarding Petitioner's and the Ford Heights Four case when his forensic findings were favorable to the accused.

As in Kyles, since all of the foregoing findings would have been precluded at a 1987 trial by the prosecution's failure to disclose the ten evidentiary items which would have supported them, Petitioner would not have received a fair trial. See Kyles, 514 U.S. at 454. Therefore, Petitioner has made a substantial showing of constitutional materiality regarding Item Nos. 1 through 10, because when these items are considered cumulatively, there is a reasonable probability that had this evidence been disclosed to Ms. Gray, the result of a prospective 1987 trial would have been different from her perjury plea, or not resulted in a conviction on all the charges of the 1984 information (including the count for perjury). Also, the government's suppression of this evidence undermines the Court's confidence in a conviction as to the 1984 charges at a prospective 1987 trial. Conversely, the ten evidentiary items put Petitioner's whole case in such a different light as to undermine the Court's confidence in a conviction on all of the 1984 charges in a 1987 trial, including that for perjury.

Petitioner's ten (10) items therefore constitute Brady evidence, or materially favorable evidence to her guilt (or innocence) in a prospective 1987 trial on the charges of the 1984 information (including the perjury count), which proofs were suppressed from Ms. Gray by the State from prior to or at the time of her 1978 trial until January 28th, 1999.

9. On February 22, 1979, pursuant to Petitioner's 1978 jury trial conviction, 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. Where sentences run concurrently, the satisfaction of one satisfies both. People v. Scott, 43 Ill.2d 135, 143 (1969), citing People v. Stingley, 414 Ill. 398, 405 (1953); People v. Baker, 114 Ill.App.2d 450, 454 (1st Dist. 1969). Also, Ms. Gray's ten year extended term sentence for perjury was the maximum such sentence she could receive under the law. [See Gray, 87 Ill.App.3d at 153, indicating that pursuant to Ill.Rev.Stat. 1979, ch. 38, par. 1005-8-2, the perjury for which Petitioner was convicted in 1978 was a class 3 felony. See also Ill.Rev.Stat.1979, ch. 38, par. 1005-8-2 (a)(5) providing for an extended term sentence for a Class 3 felony of "not less than 5 years and *not more than 10 years*." (emphasis added)].

As to the law on good conduct and meritorious service credit, the case of Baker v. The Dept. of Corrections, 106 Ill.2d 100, 103 (1985), explained that pursuant to statute:

an inmate is to receive one day of good-conduct credit for each day of confinement in prison for all felonies, other than where a sentence of

natural life has been imposed. Each day of good conduct reduces by one day the period of incarceration set by the court.

* * *

[Baker then cites other Illinois Supreme Court case law regarding an award for meritorious service holding that it cannot] exceed a total of 90 days.

Ms. Gray's "Sentence Calculation Worksheet" dated "7-26-83" from the Dwight Correctional Facility, indicates that Petitioner's initial custody, or incarceration, date was August 31st, 1978, and that as of "6-29-83," Petitioner had been awarded "40" days meritorious good time by the Director. (Petitioner's Add'l Auth's and Mat'ls Ex. 17). Upon deducting Paula Gray's 5 year day-for-day good time credit and 40 day meritorious service from her 10 year extended term perjury sentence, Petitioner need only have completed 4 years and 325 days from her initial custody date of "8-31-78", for a release date of July 24th, 1983 (1980 was a leap year).

As Ms. Gray was not released from prison until April 24th, 1987, or almost 4 years after her July 24th, 1983 "max out" date on her 1979 perjury sentence, her April 23, 1987 sentence of two years probation on the same perjury charge was void. [See In re T.E., 85 Ill.2d 326 (1981), holding that "[t]he established rule is that where a court having jurisdiction over both the person and the offense imposes a sentence in excess of what the statute permits, the legal and authorized portion of the sentence is not void, *but the excess portion of the sentence is void*," citing both 1951 and 1944 Illinois Supreme Court cases. (emphasis added); Dec v. Manning, 248 Ill App.3d 341, 347 (1st Dist. 1993), holding that "[a] void judgment, order, or decree may be attacked at any time or in any court either directly or *collaterally*, without any showing of diligence or meritorious defense." See also People v. Wilson, 181 Ill.2d 409 (1998), which expressly distinguishes the argument and supporting decision cited by Respondent of Evans, 174 Ill.2d at 327-328, holding that a defendant may not appeal a trial court's *sentencing* decision without first moving to withdraw their guilty plea. Wilson, 181 Ill.2d at 413, citing People v. Williams, 179 Ill.2d 331 (1997), held that where, as the defendant in Wilson argued, "the trial court imposed sentences which violated statutory requirements[,]...the [defendant's] claim of improper sentencing by the trial court [as opposed to the Evans claim of excessive sentences which conformed to statutory requirements] is not barred and can be considered regardless of whether Wilson complied with the requirements of Evans."]

Therefore, while Petitioner can properly institute her collateral attack on her probation sentence by reason of voidness, and the Court can find the 1987 two year probationary sentence void, it cannot, based on this invalid sentence, find the underlying perjury plea (and judgment) void as

requested by Ms. Gray's petition. The Court thus denies Petitioner post-judgment relief for vacatur of the 1987 perjury judgment on these grounds.

10. Petitioner's allegation that the 1987 perjury plea is void by reason of the imposition of an illegal extended term sentence for perjury in 1979 is similarly denied for the reasons discussed in Memorandum "Preliminary Findings of Law" para. 9., at 311-12, that if this sentence, or its excess portion, is void, only the sentence, or its excess portion, can be vacated, and not the underlying perjury plea and judgment. [See also Jordan, 103 Ill.2d at 215, which vacated defendant's improper extended term *sentence* for kidnapping and imposed a reduced *sentence*].

Additionally, Petitioner is barred, on *res judicata* grounds, from section 2-1401 relief due to the illegality of the 1979 extended term perjury sentence, because the question as to "whether the trial court properly gave [Petitioner] extended term sentences [including that for perjury]" was raised on direct appeal to the First District Appellate Court, which found these sentences appropriate, and affirmed both the sentences and the underlying convictions. Gray, 87 Ill.App.3d at 152-153. See also People v. Burrows, 172 Ill.2d at 187, holding that "[2-1401 c]laims that were raised on direct appeal, or that could have been made on direct appeal, are barred [from post-judgment review] under the principles of *res judicata* and collateral estoppel."

11. Petitioner also alleges that the 1984 information filed against her is defective, and thus grounds for vacatur of the 1987 perjury plea and sentence, because the People failed to afford Ms. Gray a preliminary hearing, citing to People v. Tellery, 87 Ill.App.3d 298 (1st Dist. 1990) and People v. Kelly, 299 Ill.App.3d 222 (3rd Dist. 1998). (Petitioner's Add'l Post-Hearing Mem. at 6-7). However, both of these cases are direct appeals, and not petition's for collateral relief, which places them in a critically different procedural stance. The rule of law for matters which can properly be raised in a 2-1401 petition, as previously noted by Burrows, 172 Ill.2d at 187, is that:

> [t]he purpose of post-judgment review is not to relitigate matters that were *or could have been raised on direct appeal*, but rather to resolve arguments that new or additional matters, if they had been known at the time of trial, could have prevented a finding that the defendant was guilty of the crimes charged. [citation omitted]. (emphasis added).

The failure to conduct a preliminary hearing could have been raised on appeal by Ms. Gray of her 1987 conviction and sentence. Therefore, it cannot properly be raised in this section 2-1401 proceeding.

Additionally, People v. Jones, 74 Ill.App.3d 243, 246 (3rd Dist. 1979), has specifically held that where "the defendant did not raise [the] issue [of failure to afford him a preliminary hearing on the charge against him] in the trial court and by entering a plea of guilty, he waived all nonjurisdictional defects, *including the failure to hold a preliminary hearing*." (emphasis added). Therefore, by Ms. Gray not having raised this issue in the trial court, and pleading guilty to perjury, she has waived the nonjurisdictional issue of failure to conduct a preliminary hearing on the perjury count of the 1984 information.

Based on each of the foregoing reasons, the Court denies Petitioner 2-1401 relief because of the People's failure to conduct a preliminary hearing on the 1984 perjury charge.

D. Analysis

1. Void 1987 Perjury Plea (and Judgment) on Due Process Grounds (Involuntary Because Wrongfully Induced or Coerced by Respondent)

The Court has determined that the 1984 perjury count against Ms. Gray is not void by reason of legal insufficiency, as alleged by Petitioner. (See Memorandum "Preliminary Findings of Law" para. 5., at 245-46). However, Ms. Gray's 1987 perjury plea is void and in violation of Petitioner's constitutional due process rights, because it was wrongfully induced or coerced by the prosecution's promise and threat to her, while simultaneously suppressing Brady and 412(c) evidence, that deprived the plea of its voluntary character. [See Boykin v. Alabama, 395 U.S. 238 (1969), holding that in order to satisfy due process, a guilty plea must be affirmatively shown to have been made voluntarily and intelligently; accord Evans, 174 Ill.2d at 326; Machibroda v. United States, 368 U.S. 487, 493 (1962), ruling that "[a] guilty plea, if *induced by* promises or *threats which deprive it of the character of a voluntary act*, is void. A conviction based upon such a plea is open to collateral attack" (emphasis added); accord People v. Bowman, 40 Ill.2d 116, 125 (1968); People v. Cangelosi, 68 Ill.App.3d 489, 498 (1st Dist. 1979); Brady v. United States, 397 U.S. 742, 750 (1970), the prevailing case for determining the voluntariness of a plea which emphasized that "the agents of the State may not produce a plea by actual or threatened physical harm or by *mental coercion overbearing the will of the defendant*" (emphasis added); Bowman, 40 Ill.2d at 125, holding that "[o]ne statement of the rule which has been promulgated [regarding the voluntariness of a negotiated plea] provides that: 'a plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel, must stand unless *induced by threats* (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or

perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (e.g. bribes)...The crux of the matter is that a defendant who has entered a plea of guilty after understandingly engaging in plea negotiations must be able to show that his *plea was coerced by threats* or promises *of illegitimate action* by law enforcement officials" (emphasis added); People v. Algee, 228 Ill.App.3d 401, 405 (5th Dist. 1992), which applies the foregoing rule to the *"State's attorney threatening any illegitimate action" to induce or coerce defendant's plea.* See also People v. Spicer, 47 Ill.2d 114, 119 (1970), stating that the rule regarding the voluntariness of a negotiated plea is one in which the defendant must "[act] with full understanding at every stage of the proceedings and ...not [be] misled, *coerced,* or *wrongfully induced to enter his guilty plea* by any unfulfilled promise or *otherwise*" (emphasis added); accord People v. Harris, 50 Ill.2d 31, 33 (1971); People v. Cox, 136 Ill.App.3d 623, 628 (1st Dist. 1985)].

Accordingly, the State's wrongful inducement or coercion consisted of Respondent's threat to Petitioner at Dwight in the summer of 1983, outside the presence of her counsel, with lifelong imprisonment if she did not incriminate the Ford Heights Four at trial and subsequently plead guilty to perjury. The prosecution also promised Ms. Gray, again outside the presence of counsel, her immediate release from prison in exchange for her inculpatory testimony and later perjury plea. Respondent simultaneously withheld or suppressed from Mrs. Gray and her 1983 to 1987 trial counsel ten (10) items of Brady and 412(c) evidence. (See Memorandum "Findings of Fact" para. 4., at 199; "Preliminary Findings of Law" para. 8., at 269-71, 311)).

Because the purpose, pursuant to Kyles and Hobley, of requiring prosecutorial disclosure of Brady evidence is to ensure that the defendant receives a fair trial, the prosecution's foregoing threat and suppression of this evidence essentially constituted the threat of an unfair prosecution, trial and conviction of Petitioner to effect her lifelong imprisonment, unless she gave incriminatory testimony against three of the Ford Heights Four at trial and pleaded guilty to perjury. Clear evidence in support of this finding is the 1979 judgment obtained by the prosecution against Petitioner and three of the Ford Heights Four on the same charges, while withholding the same Brady evidence. (Recall that although some of the ten Brady items became existent during Petitioner's 1978 trial, the government had a continuing duty to disclose these materially favorable proofs even during trial).

Also, the prosecution's failure to disclose the Brady and 412(c) proofs (including the knowing use of perjured forensic testimony, as well as irrelevant, misleading and prejudicial scientific evidence, during Petitioner's 1978 trial), caused Ms. Gray's 1983 to 1987 trial counsel,

based on the evidence at hand, to conclude that Ms. Gray's only available defense was that of "compulsion," or unwillingly participating in the subject crimes, and accordingly advise her from 1983 until 1985 to cooperate or testify on behalf of the People. (See Memorandum "Findings of Fact" para. 5., at 199-201). The State's suppression of Brady and 412(c) evidence also caused Mr. Morrissey to agree to her 1987 perjury plea, because he reasoned, again based on the evidence made available to Petitioner by the People, that "[he didn't] know how you [could] defend" against perjury by contradictory testimony, and that "he was not sure" that Ms. Gray had a "viable" defense to such a perjury charge. (Memorandum "Findings of Fact" para. 5.d., at 200).

Additional, even more troubling evidence in support of the Court's foregoing findings of this paragraph (or para. l. of "Analysis"), is the fact that as of January 15th, 1987 (or the date by which Respondent disclosed the Capelli notes to Dennis Williams), the People had *direct knowledge* as to the existence of and thus *knowingly* withheld from Ms. Gray the two most important items of exculpatory evidence to her case, to wit, the actual or exculpatory pubic hair comparison test results and the Capelli notes. When considered in conjunction with the prosecution's knowing use of perjured pubic hair comparison evidence, and its acknowledgment of the importance of Ms. Gray's testimony in their prosecution of her alleged principals (see Respondent's Group Ex. 11 Item K at PD00225; Memorandum "Findings of Fact" para. 4., at 197), the Court can reasonably conclude that the People suppressed these two items in particular not only to improperly secure Petitioner's inculpatory testimony against Verneal Jimerson, Dennis Williams and Willie Rainge at their 1985 and 1987 trials, but also to prevent her from contesting her 1984 charges at trial, and instead pleading guilty to perjury. [See Brady v. United States, 397 U.S. at 756, stating that "*[o]ften the decision to plead guilty is heavily influenced by the defendant's appraisal of the prosecution's case against him* and the apparent likelihood of securing leniency should a guilty plea be offered and accepted." (emphasis added). See also Committee Comments to Rule 412(c) requiring the State's pretrial disclosure of materially favorable evidence "if a conviction is to be valid," "so that the defense can make use of it," and additionally indicating that such disclosure "permits adequate preparation for...trial"; recall also the holdings of Aguilar, 218 Ill.App.3d at 10, regarding the full and fair opportunity to make or prepare a defense and to make tactical decisions with 412(c) evidence; Rios, 145 Ill.App.3d at 578-79, discussing the ability to prepare an effective defense strategy with Brady evidence; Dixon, 19 Ill.App.3d at 688, pertaining to the use of Brady proofs while the trial defense is being planned and prepared)].

As determined by the Court pursuant to its Brady analysis, the ten (10) items of newly discovered Brady and 412(c) evidence would have

corroborated Ms. Gray's persistent claims of innocence over a six year period, as well as her allegations of CCSP coercion and fabrication (made at the 1978 preliminary hearing, suppression hearing, and trial), and would have provided Ms. Gray with a tenable defense against perjury. Obviously, Ms. Gray's 1983 to 1987 trial counsel were misled by the prosecution's suppression of this Brady and 412(c) evidence and did not know where Petitioner stood, evidence wise, before pressuring her for more than two years (from the summer of 1983 to just before Jimerson's 1985 trial) to cooperate with the State, and before Mr. Morrissey agreed to her 1987 plea. As Petitioner has asserted, had she (or her counsel) been apprised of this evidence, she would have "insisted on a trial" with respect to all the charges of the 1984 information. (See Petitioner's Post-Hearing Mem. at 6-7). Also, as previously determined, these ten (10) items of evidence pursuant to Brady and 412(c) would have been material to Ms. Gray's guilt or innocence had a trial been conducted in 1987 on the charges of the 1984 information, including the perjury allegation, if, as Respondent has inferred in its motion papers, they would have prosecuted this entire information against Ms. Gray had she not pleaded guilty to perjury. (See Memorandum "Preliminary Findings of Law" para. 8., at 308-11; Respondent's Post-Hearing Brief at 13).

Clearly, the combination of Respondent's Dwight threat to Petitioner of lifelong imprisonment unless she pled guilty to perjury (and inculpated the Ford Heights Four at trial), which was both substantively and procedurally improper (the latter because outside the presence of her attorney), coupled with the over two year insistence of her 1983 to 1987 trial counsel to cooperate with the State (which determination, as previously found, was a direct result of the government's suppression of Brady and 412(c) evidence), eventually overbore the will of Ms. Gray. [See People v. Larkin, 2 Ill.App.3d 43, 44-45 (1st Dist. 1971), noting that in People v. Morreale, 412 Ill. 528 (1952), the Illinois Supreme Court reversed a denial of defendant's motion to withdraw his guilty plea on, among other grounds, the fact that *"the defendant's attorneys corroborated the pressure exerted by the prosecutor upon the defendant" to plead guilty* (emphasis added)]. By 1985, when Petitioner was confronted with either an immediate trial on all charges, or cooperation with the People (as earlier noted in this Memorandum "Findings of Fact" para. 5.h., at 201; "Preliminary Findings of Law" para. 3, at 236), the government's foregoing suppression of Brady and 412(c) evidence and Dwight threat and deal offer, had unfairly placed her in the untenable or no-win situation of either falsely testifying against three of the Ford Heights Four and pleading guilty to perjury in order to obtain her immediate release from prison, or of risking a trial and probable conviction and continued long term incarceration.

More specifically, Ms. Gray had already testified truthfully at her 1978 trial and received a fifty (50) year sentence, notwithstanding her testimonial claim of innocence and of CCSP coercion and fabrication of her inculpatory grand jury testimony introduced at trial. See Gray, 87 Ill.App.3d at 146. [Recall Dr. Levine's testimony that Ms. Gray's "sense of urgency and susceptibility to suggestion would probably have been heightened [in 1987]...from that which characterized her mental state in 1978" because of the many years of imprisonment, and the fact that she was again told, but this time by non-police personnel involved in the criminal justice system, that if she did not submit to the testimony that had been prepared for her, she would stay in jail and never see her family again. (Tr. of Evidentiary Hr'g of 4/28/99, at 97, 106; Memorandum "Evidentiary Hearing" Dr. David Scott Levin at 38, 39). He additionally noted that Ms. Gray's separation from her family had been her greatest fear in 1978, and that while incarcerated from 1978 until 1987 she had had very few visits from her family. (Tr. of Evidentiary Hr'g of 4/28/99, at 87, 97-98; Memorandum "Evidentiary Hearing" Dr. David Scott Levin at 37, 38)]. Also, as previously noted, Ms. Gray's own attorneys advised her against going to trial, believing that she was involved, though peripherally and by compulsion, in the Lionberg/Schmal offenses, and continuously pushed her to cooperate with the People, with Mr. Morrissey subsequently agreeing to her perjury plea, notwithstanding her persistent claims of innocence. (See Memorandum "Findings of Fact" para. 1., at 183, for discussion and ruling regarding Ms. Gray's consistent position over almost 7 years of imprisonment that she was innocent of the subject crimes, including the nearly 4½ year period of incarceration prior to the grant of her 1983 federal writ). In fact, Petitioner did all that she could realistically and practically do in light of her mental, educational, emotional, financial and incarcerated circumstances, by continuously insisting on her innocence to both her attorneys and the prosecution, including during the period before the grant of her 1983 writ, while serving her 50 year sentence with no prospect of early release. [Recall Mr. Reddy's testimony that Petitioner didn't want to cooperate with the State's Dwight deal offer in the summer of 1983 prior to the grant of her federal writ, stating "many times" that she wasn't present at the crimes, nor knew anything about these offenses (see Tr. of Evidentiary Hr'g of 5/4/99, at 44-46; Memorandum "Evidentiary Hearing" James Reddy at 135-36), and that when he and George Morrissey "talked all along" about Petitioner's cooperation with the State, he recalls her turning them down. (See Tr. of Evidentiary Hr'g of 5/4/99, at 38; Memorandum "Evidentiary Hearing" James Reddy at 134)]. Moreover, Paula Gray had been subjected to a particularly brutal seven year period of incarceration, including at least one instance of rape, due to her size, temperament and inability to defend herself. Her family, with whom she was very close, rarely visited her. (Tr. of Evidentiary Hr'g of 4/28/99, at 97-98; Memorandum "Evidentiary Hearing" Dr. David Scott Levin at 38). She was (and is) slightly mentally

retarded. [Dr. Levin noted that "Ms. Gray's judgment is not always well informed" and Dr. Wasyliw conceded that though Petitioner "consistently demonstrate[d] a capacity of attempting to defend herself," that whether or not she was doing it well "is a separate issue." (Tr. of Evidentiary Hr'g of 4/28/99, at 131; Tr. of Evidentiary Hr'g of 5/4/99, at 134; Memorandum "Evidentiary Hearing" Dr. David Scott Levin at 42; Dr. Orest Eugene Wasyliw at 147)]. And most significantly, Ms. Gray was facing a new trial, probable conviction (in light of no new evidence), and continued long term imprisonment, again by reason of the government's suppression of Brady and 412 (c) evidence. (See again findings and discussion regarding Petitioner's trial options and standing prior to her 1987 plea in Memorandum "Findings of Fact" para. 5., at 199-201; "Preliminary Findings of Law" para. 3., at 236). Recall also Petitioner's testimony that she agreed to the State's deal because "[she] was scared" of jail and wanted to get out. (Tr. of Evidentiary Hr'g of 4/30/99, at 124-25; Memorandum "Evidentiary Hearing" Paula Gray at 109-10). Clearly, these combined conditions overbore Ms. Gray's will causing her to plead guilty to perjury, as well as to cooperate with the State and give incriminatory testimony against three of the Ford Heights Four in the subject crimes, in exchange for her immediate release from prison. In short, Ms. Gray did not make the decision to "cooperate" and plead guilty to perjury, as well as testify on behalf of the prosecution, of her own free will.

Furthermore, case law has provided Petitioner with legal redress for vacatur of her 1987 judgment by permitting conversion of her 2-1401 motion into a collateral attack on a void judgment. See Reymar Clinic Pharmacy, 246 Ill.App.3d at 841, holding that "[i]f the movant mislabels his motion attacking the judgment, the courts should be liberal in recognizing the motion as a collateral attack upon a void judgment." Also, a void judgment can be attacked at *any time*, directly or collaterally, and Petitioner need not demonstrate due diligence and meritorious claim or defense if seeking relief from a void judgment. Ligon, 264 Ill.App.3d at 706. [Recall also 735 ILCS 5/2-1401(f)(1999) holding that "[n]othing contained in...Section [2-1401] affects any existing right to relief from a void order or judgment, or to employ any existing method to procure that relief"; Memorandum "Applicable Statutory Law and Supreme Court Rules" at 155-56].

Accordingly, based on the foregoing evidence and case law, Petitioner's 1987 perjury plea (and judgment) is void because it was wrongfully induced or coerced by Respondent, which wrongful inducement or coercion was unknowingly corroborated by Ms. Gray's 1983 to 1987 trial counsel due to government suppression of the ten Brady /412(c) evidentiary items, that rendered the plea involuntary and violative of her constitutional due process rights. The Court therefore recognizes Ms.

Gray's 2-1401 petition as a collateral attack on a void judgment, and vacates Petitioner's 1987 perjury judgment and plea on the foregoing (voidness) grounds, and grant's Ms. Gray a new trial on the perjury charge (Count 17) of the 1984 information.

2. Void 1987 Perjury Plea (and Judgment) on Due Process Grounds (Involuntary Because Not Informed in that Petitioner was Misled by Respondent)

A voluntary plea requires that Petitioner be informed, so that with the assistance of her counsel, she can intelligently and voluntarily choose to plead guilty. However, Respondent's suppression of the ten items of Brady and 412(c) evidence as set forth in Memorandum "Analysis" para. 1., at 313-18; para. 5.b, at 333-35, misled Petitioner and her 1983 to 1987 trial attorneys as to the true facts or evidence of Respondent's case against her, negating her ability to enter into an informed perjury plea on April 23rd, 1987. As such, Ms. Gray's perjury plea was rendered involuntary and in violation of her due process rights, and is therefore void. [See People v. Williams, 188 Ill.2d 365, 370 (1999), holding that "[i]f a defendant's guilty plea is not voluntary and knowing, it has been obtained in violation of due process and, therefore, is void"; People v. Ginder, 26 Ill.App.3d 295, 298 (5th Dist. 1975), ruling that "unless it can be said that defendant's decision to plead guilty was an informed decision, it cannot be said to be voluntary" (Ginder was favorably cited by the First District in People v. Norris, 46 Ill.App.3d 536, 539 (1st Dist. 1977), questioned on other grounds, People v. Denson, 243 Ill.App.3d 55, 61-62 n.2 (1st Dist. 1993)); People v. Griffin, 16 Ill.App.3d 351, 354 (4th Dist. 1973), holding that a defendant's plea was voluntarily and intelligently made where, coupled with other findings, the "[d]efendant was presented with all the facts by the State and his own counsel...[so that h]e knew where he stood and he intelligently and voluntarily chose to plead guilty." Recall also Spicer, 47 Ill.2d at 119, relating the rule for voluntariness of a negotiated plea that the defendant must "[act] with *full understanding at every stage of the proceedings and...not [be] misled, coerced, or wrongfully induced to enter his guilty plea* by any unfulfilled promise *or otherwise*" (emphasis added); accord Harris, 50 Ill.2d at 33; Cox, 136 Ill.App.3d at 628. In addition, recall Bowman's apparent requirement that a defendant must have "*understandingly* [engaged] in plea negotiations" before entering a plea of guilty. (emphasis added). Bowman, 40 Ill.2d at 125].

[Note that Respondent has cited Evans, 174 Ill.2d at 326-27 (1996), as authority for their argument that contrary to contract law, upon which they allege their negotiated 1987 plea with Petitioner is based, Ms. Gray is unilaterally changing her plea agreement by this post-judgment action. (Respondent's Post-Judgment Mem. at 8-9). This argument is both factually and legally without merit. While Evans noted that plea

agreements are "governed to some extent by contract law principles," it then emphasized that "[c]ourts must keep in mind that the defendant's 'underlying 'contract' right is *constitutionally based* and therefore reflects concerns that differ fundamentally from and run wider than those of commercial contract law.'"(emphasis added). Evans, 174 Ill.2d at 326. Recall also that Evans is in accord with Boykin's holding that a guilty plea, to satisfy due process, must be affirmatively shown to have been made voluntarily and intelligently. [See Evans, 174 Ill.2d at 326; Memorandum "Analysis" para. 1., at 313-14]. Evans thereafter cited, among other cases, Mabry v. Johnson, 467 U.S. 504, 509 (1984), for the proposition that "the application of contract law principles to plea agreements may require tempering in some instances." Evans, 174 Ill.2d at 326-27. Mabry, 467 U.S. at 508-09, in turn cites Brady v. United States, 397 U.S. at 747, 748 & n.5, (the case regarding the voluntariness of pleas; **not** Brady v. Maryland, regarding the suppression of materially favorable evidence), which cites Machibroda, 368 U.S. at 493, for the rule of law regarding voluntariness of a plea applied by Memorandum "Analysis" para. 1., at 313-14, that "[a] guilty plea, if induced by promises or threats which deprive it of the character of a voluntary act, is void." Evans thus incorporates the foregoing Machibroda finding regarding the due process requisites for a voluntary plea, whether negotiated or otherwise. Also, Respondent is not relieved of its Brady v. Maryland disclosure duty under Evans. Quite the contrary, because Evans foregoing admonition that the defendant's underlying rights in a negotiated plea are "*constitutionally*" based, it would accordingly require that the State's *constitutional*, or Brady prosecutorial duty to disclose, be applicable to plea negotiations (as well as trials). Evans, 174 Ill.2d at 326. Furthermore, case law permits the Court to convert Ms. Gray's 2-1401 petition into a collateral attack on a void judgment. See Memorandum "Preliminary Findings of Law" para. 2., at 229; "Analysis" para. 1., at 317-18; Reymar Clinic Pharmacy, 246 Ill.App.3d at 841; Ligon, 264 Ill.App.3d at 706. Finally, any gamesmanship in this matter, dating from 1978 to the present, has clearly *not* been engaged in by Petitioner].

As such, based on the foregoing evidence and case law, Petitioner's 1987 perjury plea (and judgment) is void because it was not an informed decision due to her having been misled by Respondent, which rendered it involuntary and in violation of Ms. Gray's constitutional due process rights. The Court therefore recognizes Ms. Gray 2-1401 petition as a collateral attack on a void judgment, and vacates Petitioner's 1987 perjury judgment and plea on the foregoing (voidness) grounds, and grants Ms. Gray a new trial on the perjury charge (Count 17) of the 1984 information.

3. Tolling of Section 2-1401 Statute of Limitations

A post-judgment petition must be filed within two years of the entry of the order or judgment complained of, "unless the running of the limitations period is tolled by the legal disability of the petitioner, by duress, or by fraudulent concealment of the ground for relief." Ostendorf, 89 Ill.2d at 279; 735 ILCS 5/2-1401(c)(1999); Memorandum "Applicable Statutory Law and Supreme Court Rules" at 155. Ms. Gray's perjury judgment was entered on April 23rd, 1987, and she filed the herein petition on March 2nd, 1999 seeking vacatur of this judgment, in conjunction with other requested relief, which is more than two years after her judgment for perjury. However, Petitioner has alleged legal disability and fraudulent concealment of ten (10) Brady items and also of her actual innocence, as grounds for tolling the section 2-1401 law.

a. Petitioner's Legal Disability

To establish legal disability for purposes of tolling the two year limitations period of the post-judgment statute, Ms. Gray must show, pursuant to Selvy, that she was "entirely without understanding or capacity to make or communicate decisions regarding [her] person *and* totally unable to manage [her] estate or financial affairs." (emphasis added) Selvy, 309 Ill.App.3d at 776. The evidence in this matter, however, clearly shows that from the April 24th, 1987 date of Ms. Gray's release from incarceration (or one day after her April 23rd perjury judgment), and during the period thereafter, she made knowing decisions regarding her person, including renting an apartment, living for a number of years by herself, arranging for caller ID, babysitting and cleaning other persons homes for cash payments, putting beads in her hair, and selecting the dress she wore to court for the evidentiary hearing in this matter. Petitioner also managed her financial affairs by paying rent, electric and telephone bills on her own. Finally, Ms. Gray's own expert, Dr. Levin, testified that during his diagnostic evaluation of her in December, 1998, and February, 1999, she was not entirely without understanding or capacity to make or communicate decisions regarding her person or financial affairs. Therefore, Petitioner has not shown legal disability for purposes of tolling the two year post-judgment limitations period.

b. Ten (10) Items of Newly Discovered Brady Evidence

As previously discussed, Ostendorf ruled that "failure to comply with the obligation of full and truthful disclosure imposed on litigants by [Illinois] discovery rules constitutes fraudulent concealment for purposes of tolling [the section 2-1401] statute of limitations." Ostendorf, 89 Ill.2d at 282. Illinois Supreme Court Rule 412(c) is, of course, the pretrial *discovery* rule which codified Brady v. Maryland, 373 U.S. 83, 87 (1963), on October 1st, 1971. Thus, the Court's finding that Petitioner's alleged ten items of newly discovered evidence, as well as that of government

misconduct, constitute Brady violations (see Memorandum "Preliminary Findings of Law" para. 8., at 311), would also violate Supreme Court Rule 412(c), and therefore toll the post-judgment two year limitations period until Respondent has effected "full and truthful" disclosure of all ten items to Ms. Gray. [Recall also Ostendorf's admonition that a party must not fail "to comply with the requirement of full and frank disclosure imposed by [Illinois] discovery rules" and that "'fractional disclosure' in discovery is not the disclosure contemplated by our discovery rules." Ostendorf, 89 Ill.2d at 282]. Moreover, although Ostendorf does not specifically require proof of a discovery rule violation by clear and convincing evidence, Petitioner has nonetheless sustained such burden by her foregoing showing of ten (10) items of Brady proofs suppressed by Respondent in violation of Rule 412(c). As previously determined by the Court, Respondent did not disclose all ten evidentiary items to Petitioner until January 28th, 1999. (See Memorandum "Issues/Court's Determination of Issues" para. 2.b., at 15; "Findings of Fact" para. 6.h., at 217-18).

Hence, the two year post-judgment limitations period for filing the herein petition on the grounds of these ten items of Brady and 412(c) evidence is tolled until January 28th, 1999. As Ms. Gray's petition was filed on March 2nd, 1999, which is within two years of January 28th, 1999, it is timely with respect to these ten newly discovered proofs.

c. Newly Discovered Evidence of Actual Innocence

Based on the evidence in this proceeding and findings of the Court, Respondent engaged in conduct calculated to prevent the fruition of Ms. Gray's actual innocence grounds alleged by her 2-1401 petition. In other words, Respondent, or the government, engaged in conduct calculated to prevent the legal redress of its wrongful arrest, prosecution and convictions of Petitioner. The government did so:

- by suppressing, losing or destroying ten (10) items of Brady and 412(c) evidence in its possession or control which tended to show the innocence of Ms. Gray (and that of the Ford Heights Four), not only at the time of her 1979 and 1987 judgments, but also for more than a two year period after these judgments became final in order to bar post-judgment relief;

- by engaging in the foregoing conduct during the period that Ms. Gray was imprisoned and under two year sentence of probation to bar her from post-conviction relief;

- by coercing her to tell a police fabricated account inculpating she and the Ford Heights Four in the Lionberg/Schmal crimes to numerous sheriff's police, assistant State's Attorneys, and the May 16th, 1978 grand jury;

- by suppressing their knowledge and information of their foregoing coercion and fabricated account, and by perjuring themselves at the 1978 trial that that was the only account Ms. Gray voluntarily gave them;

- by knowingly presenting perjured forensic results at trial contrary to the favorableness of the actual results, and also irrelevant, misleading and prejudicial scientific evidence favorable to the State, to establish guilt;

- by presenting the highly suspect and inconsistent inculpatory testimony of a witness they paid, and;

- by threatening and promising Ms. Gray, while in prison, outside the presence of counsel, and while withholding critical Brady and 412(c) proofs from her defense, to take a perjury plea in exchange for her incriminating and initially CCSP coerced and concocted testimony against three of the Ford Heights Four, so that she could secure her immediate release from prison for crimes she did not commit.

The State's actions, in short, were calculated to prevent the investigation of or eventual arrest and conviction of the persons who, based on heavily reliable information in their possession, were more likely than Paula Gray and the Ford Heights Four, at least, to be the real perpetrators of the crime. We, of course, now know that these other persons committed the subject offenses, but the Court is basing its conclusions on the evidence presented by this record in the possession or control of the government by October 12th, 1978, or during Ms. Gray's 1978 trial. [Recall that Item No. 7, or Michael Podlecki's perjured testimony that the results of his pubic hair comparison tests constituted "nothing of evidential value," did not become existent until October 12th, 1978, when he rendered this testimony during Petitioner's 1978 trial. Recall also that Michael Podlecki's report, contained in Item No. 10, regarding the results for the forensic examination of the Buick Electra 225 seized and searched pursuant to warrant, became existent on September 15th, 1978, also during Petitioner's 1978 trial . (See Petitioner's Add'l Auth's and Mat'ls Exs. 10, 15; Memorandum "Findings of Fact" para. 6.a., Item No. 7 at 208, Item No.10 at 209)].

The State's response is that Ms. Gray cannot raise the grounds in this matter substantially evidencing her actual innocence, *which have not been substantively denied or contested by the People*, because this evidence was not fraudulently concealed by Respondent, and in fact did not become completely existent until more than 2 years after Petitioner's April 23rd, 1987 plea, [on the June 23rd, 1997 date of conviction of Arthur Robinson, the last of the three perpetrators to be adjudged guilty of the subject offenses, the fourth being deceased. See Memorandum "Issues/Court's Determination of Issues" para. 4.a., at 18-19, for Court's determination that June 23rd, 1997 was earliest date that all of Petitioner's proofs in support of her actual innocence grounds became existent, or could have

been discovered with the exercise of due diligence by Ms. Gray or her counsel]. The actual innocence grounds include, as earlier indicated, the vacatur of the judgments and dismissal of the Lionberg/Schmal charges against the Ford Heights Four, as well as the gubernatorial pardons based on their innocence (all four pardons were issued as of April 10th, 1997); the arrest and conviction of the real perpetrators (all three offenders were convicted as of June 23rd, 1997); and affidavits from two of the real offenders attesting to the fact that Ms. Gray's (and the Ford Heights Four) were not in any way involved in the Lionberg/Schmal offenses (dated March 5th, 1999 and April 12th, 1996 from Ira Johnson, and May 8th, 1996 from Arthur J. Robinson). Such argument, in view of the government's very unclean hands in this case, would subvert the purpose of a section 2-1401 petition to do substantial justice. Were the Court to accept the Respondent's argument, it would be giving legal imprimatur to the People's defeat, on limitations grounds, of a post-judgment petition alleging substantial actual innocence grounds, by simply suppressing, losing or destroying evidence tending to show the innocence of Petitioner, or the guilt of others, coupled with their non-investigation of the others, for more than a two year period after final judgment, or while petitioner is under sentence of the judgment sought to be vacated via post-conviction relief, and then claim that *other* evidence newly discovered or coming to fruition which substantially establishes the accused's innocence cannot be presented in a 2-1401 petition because the State did not fraudulently conceal these *exact* proofs. This argument, of course, ignores the fraudulent concealment of evidence that in turn delays the culmination of or coming into existence of the actual innocence proofs, or most of them, Petitioner presently alleges. It also ignores and disregards the equitable nature and purpose of a post-judgment proceeding to do substantial justice, with which the Court has previously indicated it will be guided. Conversely, an equitably based remedy surely is not intended to affirm such suppression and misconduct by the government.

Hence, the People's foregoing actions are tantamount to their fraudulent concealment of Ms. Gray's actual innocence grounds upon which her petition, in part, is based. *Stated in another manner, Petitioner's newly discovered evidence in support of her actual innocence grounds is based upon or emanates from factors, or conduct of the government, occurring prior to and at the time of Ms. Gray's 1987 perjury judgment*. Case law, or certainly the equitable intent of post-judgment case law, would support the Court's finding. [See Crowell v. Bilandic, 81 Ill.2d 422, 429 (1980), stating that the reason for strict adherence to the 2-year limitation mandated by the post-judgment statute in the absence of a clear showing by the petitioner of their "legal disability or duress or the grounds for relief is fraudulently concealed," is "to establish necessary stability and finality in judicial proceedings." It then explains that:

[i]t is well established that fraudulent concealment sufficient to toll a statute of limitations requires *affirmative acts or representations designed to prevent discovery of the cause of action or ground for relief.* (emphasis added).

Clearly, the State's previously cited misconduct in this matter constitutes affirmative acts designed to prevent, if not the discovery, then the fruition of, the evidence forming the basis of Ms. Gray's 2-1401 actual innocence allegation. Moreover, Petitioner has sustained her burden by clear and convincing evidence. Again, this finding is consistent with and effectuates the purpose of post-judgment law to do substantial justice. Conversely, to affirm the State's position would effectually affirm a 1987 judgment obtained by the unfair, unjust or unconscionable behavior of Respondent. [Recall MacKay's admonition that 2-1401 vacatur of a court order "[was] intended to achieve a fair and just result and to avoid unjust, unfair or unconscionable circumstances." Mackay, 262 Ill.App.3d at 392; recall also Brewer's holding that "[a]mong the circumstances to be examined in adjudging a section 72 petition is whether 'a party has procured an unconscionable advantage through the extraordinary use of court processes.'" Brewer, 121 Ill.App.3d at 428].

Further support for the Court's finding is the case of People v. Pecoraro, 175 Ill.2d 294, 333-34 (1997), which suggests 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 proceeding, a free standing claim of actual innocence. Pecoraro cites to Schlup v. Delo, 513 U.S. 298, 306, 329 (1995), which:

essentially held that a petitioner in a federal habeas corpus action is entitled to consideration of the merits of otherwise procedurally barred constitutional claims if the petitioner is able to show, based on newly discovered evidence of innocence, that it is more likely than not that no reasonable juror would have convicted the petitioner.

Pecoraro, 175 Ill.2d at 334.

Plainly, based on Petitioner's newly discovered evidence of actual innocence, it is more likely than not that no reasonable juror would have convicted her of the charges of the 1984 information, including the perjury allegation. [Note that the foregoing Schlup standard for establishing innocence was changed by statute, or "28 U.S.C. § 2255 (final paragraph)(as amended Apr. 24, 1996), to "newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense." Antonelli v. U.S., 1997 U.S. App. Lexis 384 (7th Cir. 1997). However, Petitioner's

newly discovered evidence as to her actual innocence also satisfies this new (federal) statutory standard for proving innocence].

Pecoraro thereafter observed that the Illinois Supreme Court has recognized the viability of a "free-standing" post-conviction claim of "actual innocence" based on new evidence of actual innocence, citing People v. Washington, 171 Ill.2d 475 (1996). Washington, it noted, required that "[t]o be entitled to such relief, the supporting evidence must be new, material, noncumulative and of such conclusive character as would probably change the result on retrial." Pecoraro, 175 Ill.2d at 334, citing Washington, 171 Ill.2d at 489. This newly discovered evidence standard is the same as that set forth by Burrows and Hallom. Also, as will be later held by this Court, evidence presented by Petitioner in support of her actual innocence grounds satisfies the Washington and Pecoraro criteria. (See Memorandum "Analysis" para. 4., at 324-30).

Therefore, based on the foregoing case law and evidence in this proceeding, as well as Petitioner's showing of her "free-standing" claim of "actual innocence" by reason of newly discovered proofs, the Court finds that Respondent's conduct in this case, in effect, constituted the fraudulent concealment of Ms. Gray's actual innocence, and consequently tolled the post-judgment statute until June 23rd, 1997. Again, Ms. Gray's petition having been filed on March 2, 1999, or within 2 years of June 23, 1997, its actual innocence grounds are timely under the limitations section of 2-1401 (735 ILCS 5/2-1401(c)).

4. Purpose of Section 2-1401 and Criteria for Post-Judgment Petition Based on Newly Discovered Evidence

Section 2-1401 provides a comprehensive statutory procedure by which final orders, judgments, and decrees may be vacated "after 30 days from the entry thereof." Airoom, 114 Ill.2d at 220. The purpose of a 2-1401 petition is to bring before the trial court facts not appearing in the record that, if known to the court at the time judgment was entered, would have prevented its rendition. MacKay, 262 Ill.App.3d at 392. [See also Burrows, 172 Ill.2d at 187, holding that post-judgment relief is limited to matters relating to evidence that did not appear in the record of the trial court's original proceedings and that was discovered after trial was completed]. Furthermore, a post-judgment matter is a civil proceeding which also extends to criminal cases. Baskin, 213 Ill.App.3d at 483. It is not a continuation of the original action, but a separate and independent cause. Gas Power, 249 Ill.App.3d at 258.

Petitioner seeks post-judgment relief on the two newly discovered evidence grounds of ten (10) items of Brady and 412(c) evidence, as well as that of actual innocence.

As earlier indicated, to be entitled to post-judgment relief on the grounds of newly discovered evidence, such proofs must be (1) so conclusive that they would probably change the result if a new trial is granted; (2) discovered after trial; (3) of such character that they could not have been discovered prior to trial in the exercise of due diligence; (4) material to the issues; and (5) not merely cumulative to the trial evidence. Hallom, 265 Ill.App.3d at 906; see also Burrows, 172 Ill.2d at 180, which notes, in effect, while relating the foregoing requirements for a "new trial based on newly discovered evidence," that the materiality requirement, or element number (4) above, is contained in element number (1), requiring a conclusive showing that would probably change the result upon the grant of a new trial. Specifically, after requiring a showing of due diligence as set forth in element numbers (2) and (3) above, Burrows stated that:

[i]n addition, the [newly discovered] evidence offered by the [petitioner] must be of such convincing character that it would likely change the outcome of the trial.

Burrows, 172 Ill.2d at 180.

Along with its holding in Washington that a free-standing claim of innocence is cognizable on state constitutional due process grounds as a *post-conviction* remedy, the Illinois Supreme Court underscored that such a claim can be pursued as a *post-judgment* remedy as well. Specifically, the Supreme Court stated that "[p]ost-conviction relief is Washington's remaining hope for a judicial remedy, the time limitations for *other avenues offering relief for such a claim* having lapsed," thereafter citing "*735 ILCS 5/2-1401(c)* (West 1992)" as one of the "other avenues offering relief" for an actual innocence claim. Washington, 171 Ill.2d at 479-80. Washington also determined that collateral relief based on a free-standing claim of innocence must meet the same newly discovered evidence standard as that set forth by Burrows and Hallom, or "the supporting evidence [of actual innocence must] be new, material, noncumulative and 'of such conclusive character' as would 'probably change the result on retrial.'" Washington, 171 Ill.2d at 489.

All of Petitioner's newly discovered evidence, or that of ten (10) Brady/412(c) items and actual innocence, should be considered cumulatively when applying the Burrows and Hallom materiality criteria (i.e. whether the combined or cumulative effect of Petitioner's newly discovered proofs of ten Brady/412(c) items and evidence of actual innocence is so conclusive that they would probably change the result if a new trial is granted). See Burrows, 172 Ill.2d at 181. [Note that Burrows considered cumulatively the actual innocence evidence alleged by the accused's post-conviction petition, along with the newly discovered

perjured testimony evidence alleged by the same defendant's post-judgment petition, to conclude that these proofs "bring into serious doubt the soundness of the jury's determination that defendant was guilty of the crimes for which he was tried and charged." Burrows, 172 Ill.2d at 181]. As required by Airoom and Malkin, Petitioner has proven by a preponderance of the evidence the facts in support of her allegations of newly discovered ten (10) items of Brady/412(c) evidence and that of her actual innocence. (See Memorandum "Findings of Fact" introductory para. at 180-81, and paras. 6.-8., at 201-24).

Applying the foregoing decisional law, findings of fact, as well as findings of law, Petitioner has established by a preponderance that she did not discover the evidence supporting her two newly-discovered evidence grounds until after the 1987 date of a prospective trial on all the charges of the 1984 information. Also, Ms. Gray has proven by a preponderance that the government suppressed, lost or destroyed the ten Brady/412(c) items until January 28th, 1999, when they effected "full and truthful" disclosure to Petitioner as required by Ostendorf; and that the State suppressed, lost or destroyed materially favorable evidence that prevented fruition of Petitioner's actual innocence proofs until June 23rd, 1997. (See Memorandum "Analysis" para. 3., at 319, 3.b.-c., at 320-24).

In addition, Ms. Gray has established by a preponderance that her two post-judgment grounds are of "such character that [they] could not have been discovered prior to [a prospective 1987] trial [with] the exercise of due diligence." Case law holds that where a petitioner's failure to discover evidence is due to its suppression by the opposing party in violation of their duty to disclose pursuant to Supreme Court Rule (412(c)) and case law (Brady and its progeny), such failure is the respondent's fault, and not the petitioner's negligence. Ostendorf, 89 Ill.2d at 284-85; accord MacKay, 262 Ill.App.3d at 387. See also People v. Banks, 121 Ill.App.3d 279, 288 (1st Dist. 1984), ruling that petitioner's counsel did not lack due diligence in failing to discover information in the possession or control of the sheriff's police, reasoning that:

[i]n view of the fact that defense counsel was not privy to the operation of the internal affairs division of the Cook County Sheriff's department and had no way of knowing [a particular named officer existed who] possessed knowledge pertinent to this case, there is assuredly no reason to believe that even the most diligent defense counsel could have unilaterally uncovered this information prior to trial.

Additionally, in Lubbers, a case involving the intentional undermining of the discovery process by (among other conduct) submitting false interrogatory responses, introducing perjured testimony and falsified documentary evidence at trial, and even silencing a potential witness by

threat, the court observed, in answering the respondent's allegation that the petitioner did not exercise due diligence in obtaining the foregoing information, that the petitioner was never put on notice that "anyone was engaging in deception," and even if petitioner were put on notice by, for instance, pretrial deposition evidence, "it would distort the concept of equity to hold that diligence required [petitioner] to depart from his chosen pretrial strategy to anticipate or guard against the kind of chicanery alleged here." Lubbers, 105 Ill.2d at 211.

Not only were Archie Weston, James Reddy, George Morrissey, and Thomas Decker not privy to the internal operations of the sheriff's police, prosecutor's office, or the Illinois Forensic Laboratory (Illinois Department of Law Enforcement's Bureau of Scientific Services) in the Lionberg/Schmal investigation, but *both* the CCSP and prosecution suppressed, lost, and/or destroyed the ten (10) Brady and 412(c) proofs, as well as evidence precluding the fruition or realization of Petitioner's actual innocence evidence. Nor were Petitioner's defense counsel put on notice that the government was engaging in such conduct, and even assuming, *arguendo*, that they had been put on such notice, due diligence would still not require that Ms. Gray's attorneys depart from their "chosen pretrial strategy to anticipate or guard against the kind of chicanery" committed by the CCSP and prosecution in this matter.

Hence, Ms. Gray did not lack due diligence in failing to discover the evidence supporting the two grounds for her post-judgment action, because such failure was the Respondent's fault and not the Petitioner's negligence.

Furthermore, as previously determined, disclosure of the Capelli notes (Item No. 4) to Dennis Williams prior to his January 15th, 1987 retrial did not constitute disclosure of these notes to Ms. Gray, nor did such disclosure constitute a matter of public record. (See Memorandum "Preliminary Findings of Law" para. 8., at 269-71). Also, the information of these notes, or more specifically the names of the four persons other than Petitioner and the Ford Heights Four asserted to have committed the Lionberg/Schmal crimes, was not contained in Rob Warden's July, 1982 or Michael Walsh's June 7th, 1984 news accounts, nor Martin Carlson's March 4th, 1987 mitigation testimony on behalf of Dennis Williams. (See Memorandum "Findings of Fact" para. 6.i., at 220-21, "Preliminary Findings of Law" para. 8., at 271).

In addition, although Dennis Williams' filing on or about May 10th, 1996 of his Motion for Remand to the Trial Court (that included a copy of the Capelli notes) was a public record, such public knowledge awareness of these notes by Petitioner constituted, at best, disclosure of only one of the ten items, and was therefore "fractional disclosure" of the ten

Brady/412(c) items in contravention of Ostendorf's requirement of "full and truthful"disclosure. See Ostendorf, 89 Ill.2d at 282; Memorandum "Findings of Fact" para. 6.c., at 213; "Analysis" para. 3.b., at 320. (Recall also that the People did not commence disclosure to Petitioner of these ten items until *after* Ms. Gray filed her July 1st, 1997 civil action, and did not complete disclosure to her of all these proofs until January 28th, 1999. See Memorandum "Findings of Fact" para. 6.a.-b., at 201-13, 6.d., at 213-14, 6.f.-h., at 215-18).

Ostendorf made clear in requiring "full and truthful" disclosure that petitioner (or Ostendorf) had exercised due diligence in filing a discovery request "reasonably calculated to elicit the information important to his case," including certain company reports, and that the respondent, International Harvester, fraudulently concealed this requested information. Ostendorf, 89 Ill.2d at 282, 284. It noted that International Harvester had knowledge of the existence of these reports, that they gave an interrogatory response "'Not to our knowledge'" regarding the existence and their possession of this information, and that they nonetheless failed to produce these reports. Ostendorf, 89 Ill.2d at 281-82. Ostendorf then determined that "[i]n the context of discovery, which is supposed to be conducted in good faith and a spirit of cooperation for the purpose of ascertaining the truth, such half-truths are equivalent to outright lies." Ostendorf, 89 Ill.2d at 282.

Respondent in this matter did not even afford Ms. Gray a half-truth. Rather, the People, after Petitioner (or Mr. Weston) had requested from them all Brady evidence, or materially favorable information to her innocence or guilt, were in knowing possession of the Capelli notes by on or about January 15th, 1987 and yet did not disclose this material directly to Petitioner, their own trial witness, until at least nine and a half years later (or July 1st, 1997) in a separate civil action. This conduct, per Ostendorf, was clearly equivalent to "outright lies" regarding not only the Capelli notes, but also the other nine items of Brady and 412(c) evidence.

Also, as earlier noted, it would "distort the concept of equity" to hold that due diligence requires Petitioner, even if put on public knowledge notice of the Capelli notes, to depart from her chosen pretrial strategy in order to anticipate or guard against the kind of chicanery engaged in by the People, or the suppression of these notes from Ms.Gray while disclosing them to another party. Lubbers, 105 Ill.2d at 211.

Moreover, assuming *arguendo* a failure of due diligence by Petitioner in discovering the Capelli notes when she was without counsel in this matter from May 10th, 1996 until May 1st, 1997 when Mr. Decker became her attorney for this petition (see Memorandum "Findings of Fact" para. 6.e., at 214-15), or such failure by Mr. Decker subsequent to May 1st, 1997,

case law permits a court, pursuant to the equitable powers invoked by a 2-1401 petition, to relax the due diligence requirement: where there is fraud or unfair conduct by the party securing the judgment, In re Palacios, 275 Ill.App.3d 561, 566 (1st Dist. 1995); to prevent enforcement of a judgment when it would be unfair, unjust, or unconscionable, Browning, 256 Ill.App.3d at 303; where actual fraud or unconscionable conduct played a part in the judgment, Ruiz v. Wolf, 250 Ill.App.3d 121, 126 (1st Dist. 1993); in the interest of substantial justice based on the "ample authority" of "First District jurisprudence" to relax the due diligence requirement on such grounds, Cohen v. Wood Bros. Steel Stamping Co., 227 Ill.App.3d 354, 358-60 (1st Dist. 1991); when justice and fairness require, In re Marriage of Hoppe, 220 Ill.App.3d 271, 283 (1st Dist. 1991); to prevent enforcement of a judgment attended by unfair, unjust or unconscionable circumstances, Verni v. Imperial Manor of Oak Park Condo., 99 Ill.App.3d 1062, 1068 (1st Dist. 1981); and where a party has procured an unconscionable advantage, or judgment, through the extraordinary use of a court process, Hiram Walker, 99 Ill.App.3d at 881.

The government clearly engaged in unfair, unjust or unconscionable conduct in this matter, and procured an unconscionable advantage, by securing the 1987 judgment against Ms. Gray through the extraordinary use of court process in that they suppressed, lost and/or destroyed ten critical Brady/412(c) items in violation of Brady and Illinois' discovery Rule 412(c) at the time of her 1987 plea, and for over 10 years thereafter; by rendering her plea involuntary in wrongfully inducing or coercing it; and also by misleading Petitioner as to the true facts of her case, thereby causing her to take a plea that was not informed. Furthermore, Petitioner's June 19th, 1978 preliminary hearing testimony as to the innocence of the Ford Heights Four and forming the basis of Ms. Gray's perjury plea, has been shown to be truthful and not false, or alternatively, her May 16th, 1978 grand jury testimony has been shown to be CCSP coerced and fabricated, coupled with her showing of the truthfulness of her June 19th, 1978 testimony. Petitioner has also made a substantial showing of her actual innocence of the subject offenses. Other inequities shown by Petitioner in this case include Petitioner's slight mental retardation and inability to understand the legal complexities of this post-judgment matter, including any due diligence obligation when she was without post-judgment counsel, as well as the inequities, or egregious misconduct of the government as set forth in Memorandum "Analysis" para. 7.(4)-(6), (10)-(11), (13), at 341-43, 345-47, 347-48. The enforcement of such a judgment would accordingly be unfair, unjust, or unconscionable.

Therefore, in the interest of substantial justice, and to prevent enforcement of an unfair, unjust or unconscionable perjury judgment and one attended by like circumstances, the Court relaxes any requirement of due diligence in discovering the Capelli notes prior to the January 28th, 1999 date that

Respondent effected "full and truthful" disclosure to Petitioner of the ten Brady/412 (c) items, including, of course, the Capelli notes..

Ostendorf has defined "cumulative" in the context of a section 2-1401 petition in the following manner:

To say that new evidence is 'cumulative' of evidence previously presented is simply to state the conclusion that, had the new evidence been introduced at trial, it would not have changed the result, because it added nothing to what was already before the jury.

Ostendorf, 89 Ill.2d at 284.

Ms. Gray's newly discovered ten Brady/412(c) items and evidence of actual innocence would have added critical and substantial proofs to what the jury heard at her 1978 trial, and therefore to what a court or jury would probably have heard in a 1987 trial. This is because the same evidence presented at the 1978 trial would likely have been introduced at a 1987 trial due to identical parties and charges in both proceedings, and the government's suppression of the same newly discovered Brady/412(c) items, as well as evidence culminating in Petitioner's showing of actual innocence. Therefore, Ms. Gray's newly discovered proofs would be non-cumulative to the evidence of a prospective 1987 trial.

Finally, considered cumulatively, Petitioner's newly discovered ten Brady/412(c) items and evidence of actual innocence are so conclusive that they would probably change the result of the 1987 perjury plea and judgment if a new trial is granted. Specifically, Petitioner has established by a preponderance that her new evidence of the gubernatorial pardons of the Ford Heights Four on the grounds of their innocence of the Lionberg/Schmal crimes (coupled with prior judicial vacatur of their judgments and dismissal of the charges for these offenses); the arrest and conviction of three other individuals for these crimes; and the affidavits from two of the real perpetrators that the Ford Heights Four were not involved in the Lionberg/Schmal offenses, is so conclusive that a court or jury would probably not find Ms. Gray guilty of the crime of falsely testifying at the June 19th, 1978 preliminary hearing that the Ford Heights Four did not commit the subject offenses if a new trial is granted. Moreover, assuming *arguendo*, that Petitioner's 1987 perjury plea and judgment are based on her contradictory testimony at the May 16th, 1978 grand jury inculpating the Ford Heights Four in the subject offenses, and at the June 19th, 1978 preliminary hearing exculpating these men, the cumulative effect of Ms. Gray's new evidence showing that her June 19th testimony was truthful and that her May 16th testimony was CCSP coerced and fabricated, is so conclusive that it would probably change the result of the 1987 plea and judgment if a new trial is granted.

In addition, a cumulative consideration of Petitioner's newly discovered proofs (Brady/412(c) and actual innocence) is so conclusive that it would probably change a 1987 judgment against Petitioner on *all* of the Lionberg/Schmal charges of the 1984 information. As the Court has extensively discussed and determined, Petitioner's ten Brady and 412(c) proofs would have severely weakened the People's case, or theory of prosecution, and also greatly strengthened the Petitioner's case, or theories of defense, in a prospective 1987 trial. When these new evidentiary items are coupled with Petitioner's substantial new evidence showing her innocence, and that of the Ford Heights Four, Ms. Gray's newly discovered proofs are clearly so conclusive that they would probably change a 1987 judgment of guilt for the offenses charged by the 1984 information, including that for perjury, if a new trial is granted.

Furthermore, although each of Petitioner's two grounds for post-judgment relief, or her ten items of Brady/412(c) evidence and that of actual innocence, would individually satisfy the foregoing Burrows/Hallom 2-1401 newly discovered evidence criteria, such separate or individual analysis would controvert the cumulative consideration of these proofs required by Burrrows.

Based on the foregoing argument and case law, the Court vacates Petitioner's 1987 perjury judgment and plea, and grants Ms. Gray a new trial on the perjury charge (Count 17) of the 1984 information, on the grounds of newly discovered evidence of ten Brady/412(c) items and that of actual innocence.

[Note that Airoom, the principal case on modern post-judgment law, which although setting forth somewhat different elements for post-judgment relief that the Burrows and Hallom 2-1401 newly discovered evidence criteria appear to replace, suggests an analytical approach similar to the foregoing analysis of the Court. Airoom indicates, in effect, that the foregoing newly discovered evidence criteria should be applied to Peititioner's "original action," or *all charges of the 1984 information*, and not simply the perjury count, in ruling that:

[t]o be entitled to relief under section 2-1401, the petitioner must affirmatively set forth specific factual allegations supporting each of the following elements: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this *defense* or claim to the circuit court *in the original action*; and (3) due diligence in filing the section 2-1401 petition for relief (emphasis added).

Accord MacKay, 262 Ill.App.3d at 394. See also Krol v. Wincek, 258 Ill.App.3d 706, 708 (1st Dist. 194), reiterating the Airoom ruling, by

holding, in relevant part, that "...to prevail under section 2-1401, a petitioner must set forth a *meritorious defense...to the original action...*; Ptaszek v. Michalik, 238 Ill.App.3d 72, 76 (1st Dist. 1992), finding, among other criteria, that to reopen a final judgment after 30 days via a 2-1401 petition, "a litigant must establish that he has a *meritorious...defense to the original action...*"; People v. Smith, 188 Ill.App.3d 387, 392 (2nd Dist. 1989), in which the accused, without counsel, pleaded guilty to three of four driving related charges (including a criminal damage to government property after arrest), with the fourth charge *nolle prossed* by the State. The defendant subsequently moved for section 2-1401 vacatur of his DUI conviction for insufficient admonitions regarding the consequences of his guilty plea, which the trial court granted. In reversing this ruling, the Second District stated, while addressing *only the DUI as to which the accused pled guilty and was granted 2-1401 vacatur*, that:

[a] trial court's failure to provide the proper admonishments is not in the nature of a *valid defense to the underlying action* omitted due to duress, fraud, or excusable mistake which, if known to the defendant or the court at the time of trial, would have precluded judgment. (emphasis added).

Further support that the Burrows/Hallom newly discovered evidence criteria should be applied to *all* charges of the 1984 information and not simply the perjury count is provided by Petitioner's allegation that had she known of the newly discovered evidence asserted by her petition, she would not have pled guilty to perjury in 1987 and instead would have demanded trial. As Respondent has alleged that they would not have *nolle prossed* the remaining charges of the 1984 information had Petitioner declined to plead guilty to perjury, her refusal to plea guilty would have left her confronted with a trial on all the charges of that information].

The Burrows and Hallom 2-1401 newly discovered evidence criteria apparently do not require a showing by Ms. Gray that she was diligent in filing her post-judgment petition as prescribed by Airoom, and other post-judgment cases. However, even if this element were required in this matter, Paula Gray and her counsel were diligent in filing on the grounds of her suppressed Brady/412(c) evidence, because these ten items were not "fully and truthfully" disclosed by Respondent until January 28th, 1999, and with the petition having been filed on March 2, 1999, the resultant delay of 33 days was neither excessive or unjustified in view of the factual and legal complexity of the herein matter. (See additional discussion in Memorandum "Issues/Court's Determination of Issues" para. 4.a., at 18). Petitioner or her counsel, however, were not diligent in filing with respect to her actual innocence grounds, which came to fruition on June 23rd, 1997, rendering her March 2nd, 1999 post-judgment filing on these grounds a little over 20 months delayed. (See Memorandum "Issues/Court's Determination of Issues" para. 4.a., at 18-19).

The Court, however, reiterates its previous determination relaxing the Petitioner's due diligence requirement on equitable grounds, including Ms. Gray's due diligence in filing her 2-1401 petition on the grounds of actual innocence. (See this para. at 327-28). Substantial justice and prevention of the enforcement of an unfair, unjust or unconscionable 1987 perjury judgment constitutes the basis for the Court's ruling. Also, the Verni holding, not unlike the Court's determination in this matter, relaxed due diligence in filing for almost a 20 month delay to effect an equitable result. Verni, 99 Ill.App.3d at 1067.

One further matter is important to note. Browning, 256 Ill.App.3d at 304, specifically ruled that "the supreme court has never held that equity can excuse a section 2-1401 petitioner from alleging and proving a meritorious defense...[because] obviously if a litigant cannot win, there is no point in vacating a prior judgment." Pirman v. A&M Cartage, Inc., 285 Ill.App.3d 993, 1002 (1st Dist. 1996), has defined a "meritorious defense" as follows:

Whether a meritorious defense has been established does not depend upon whether a defense would ultimately prevail at trial, [citations omitted], but, rather, is determined by an examination of the section 2-1401 petition to ascertain whether, if believed by the trier of fact, the defense would defeat the plaintiff's claim.

Petitioner, of course, has proven by a preponderance, based on newly discovered evidence, a number of defenses to not only the perjury count, but the other counts of the 1984 information, that if believed by the trier of fact, would defeat the prosecution's charges. (See also Memorandum "Issues/Court's Determination of Issues" para. 4.b., at 20). These meritorious defenses include:

1. Ms. Gray's likely innocence (and that of the Ford Heights Four, her alleged principals), as well as the likely guilt of other perpetrators, of the subject crimes based on new evidence that was suppressed, lost or destroyed by the State at the time of Petitioner's 1979 and 1987 judgments;

2. Ms. Gray's "actual innocence" of the subject offenses;

3. the arrest and conviction of three perpetrators other than the Ford Heights Four (the fourth being deceased) for commission of the Lionberg/Schmal crimes;

4. the truthfulness, and not falsity, of Petitioner's June 19th, 1978 preliminary hearing testimony upon which her 1987 perjury plea and judgment are based, when Ms. Gray asserted the innocence of the Ford

Heights Four of the subject offenses, or, in the alternative, coercion by the CCSP to compel Ms. Gray to tell their fabricated account incriminating the Ford Heights Four in the subject crimes, to various sheriff's police, assistant State's Attorneys, and the May 16th, 1978 grand jury, coupled with her showing of the truthfulness of her June 19th, 1978 preliminary hearing testimony. [Recall previously cited case law requiring a showing of a *false* statement or affirmation under oath to prove perjury, and truth as a defense to perjury. See Memorandum "Preliminary Findings of Law" para. 5., at 251. Recall also earlier cited case law that the accused can rebut the presumption of perjury based on contradictory statements under oath by presenting evidence establishing a "valid reason" for the contradictory testimony. See Memorandum "Preliminary Findings of Law" para. 6., at 252-53], and;

5. Ms. Gray was coerced by the CCSP to tell their fabricated story inculpating her in the Lionberg/Schmal crimes, to various sheriff's police, assistant State's Attorney's, and the May 16th, 1978 grand jury (recall again that the People introduced the transcript of Petitioner's May 16th, 1978 grand jury testimony at her 1978 trial. See Gray, 87 Ill.App.3d at 146).

5. Additional Grounds/Rationales for Section 2-1401 Vacatur of Petitioner's 1987 Perjury Judgment and Plea and Grant of a New Trial

a. No Factual Basis for Plea

People v. Hill, 308 Ill.App.3d 691, 698 (2nd Dist. 1999), has held that a claim cognizable under section 2-1401 either "presents a meritorious defense" (see Memorandum "Analysis" para. 4., at 331-32), or "*challenges the evidentiary basis of the judgment*" (emphasis added). [Recall also MacKay's holding that the purpose of a 2-1401 petition is to bring facts before the trial court not appearing in the record which, if known to the court at the time of judgment, would have prevented its entry or rendition. MacKay, 262 Ill.App.3d at 392].

Petitioner's newly discovered proofs of ten Brady/412(c) items and that of actual innocence have challenged the evidentiary basis of her 1987 perjury plea and judgment, and established by a preponderance of the evidence that the facts no longer support her plea and judgment. Specifically, Petitioner has shown that she testified truthfully, and not falsely, at the June 19th, 1978 preliminary hearing of the Ford Heights Four where she stated that these men were innocent of the Lionberg/Schmal crimes.

Alternatively, Ms. Gray has established by a preponderance a valid reason for her contradictory testimony, or that her May 16th 1978 grand jury

testimony was CCSP coerced and fabricated and that her June 19th, 1978 preliminary hearing testimony was truthful.

Had Judge Meekins been aware of Ms. Gray's new evidence at the time of her April 23rd, 1987 plea, he would not have accepted her plea of guilty to perjury, nor entered a judgment thereon. Indeed, Judge Meekins would have been precluded from accepting the plea by Illinois Supreme Court Rule 402(c) which requires "a factual basis for the plea."

People v. Andretich, 244 Ill.App.3d 558, 562 (3rd Dist. 1993), provides case law support for the Court's ruling. Andretich was a post-conviction proceeding which vacated a guilty plea *"for which a factual basis was lacking" in violation of Supreme Court Rule 402* (and constitutional due process), pursuant to the petitioner's affidavits introducing new evidence that he "committed no criminal act" regarding the substance of his plea, notwithstanding the fact that petitioner's affidavits "*did not demonstrate any error in [the judge's] acceptance of his plea based on the State's original presentation of a factual basis.*" (emphasis added).

[Note also that the Illinois rule of *stare decisis* requires that in the absence of a Supreme Court decision directly on point, the circuit court must follow the precedent of the appellate court of its district. Hinojosa v. Joslyn Corp., 262 Ill.App.3d 673, 675 (1st Dist. 1994). The Illinois Supreme Court has further held that "in the absence of controlling [appellate] authority from the [trial court's] home district," and where there are no "conflicting decisions from various [other] appellate districts," "[a] decision of [any] appellate court, though not binding on other appellate districts, *is binding on the circuit courts throughout the state."* (emphasis added). State Farm Fire and Cas. Co. v. Yapejian, 152 Ill.2d 533, 539, 540 (1992). See also In re Estate of Hammond, 141 Ill.App.3d 963, 965 (1st Dist. 1986), in which the First District determined that where "only the second district had ruled on [an] issue, all circuit courts within the State were bound by its decision," because "...rulings of an appellate court of any district are binding precedent on all the circuit courts if there are no contrary rulings of another district on the same issue." As there is no decision by the Illinois Supreme Court, First District Appellate Court, or any other appellate district directly on point regarding the collateral vacatur of a plea because new evidence negates its factual basis, the Andretich decision is "binding on the circuit courts throughout the state," including, of course, the Circuit Court of Cook County].

Based on the foregoing argument and case law, the Court vacates Petitioner's 1987 perjury judgment and plea, and grants Ms. Gray a new trial on the perjury charge (Count 17) of the 1984 information.

b. Respondent's Inducement of Petitioner's 1987 Perjury Plea

In People v. Nischt, 23 Ill.2d 284, 289 (1961), the Illinois Supreme Court recognized a collateral action based on the question of "whether the State was guilty of suppressing evidence favorable to the defendant, which suppression served to induce the defendant's plea of guilty."

Further support for such an action has been provided in the previously discussed case of Lubbers v. Norfolk and Western R.R. Co., 105 Ill.2d at 213, a post-judgment proceeding in which the Illinois Supreme Court emphasized the importance of full, honest and complete discovery "to enable counsel to decide in advance of trial not only what the evidence is likely to be but what legal issues can credibly be argued." In Lubbers, the defendant, Norfolk and Western R.R. Co., obtained a judgment against petitioner (Lubbers), after having filed false discovery responses, introduced false testimony and documentation at trial, suppressed the names of two witnesses with materially favorable information, and attempted to silence one of the witnesses by threat. Lubbers emphasized that Norfolk's conduct "frustrate[d] the discovery process and impeded [petitioner] in his attempts to formulate a theory of the case and a strategy for trial." The Supreme Court vacated the jury trial judgment upon its finding, again as previously cited, that:

[p]arties should not be permitted to avail themselves of a verdict obtained by deluding an opponent as to what the facts or issues in a case really are. We believe that the 'outcome-determinative' requirement of section 2 – 1401 is met if it reasonably appears that the undiscovered evidence which was wrongfully withheld or falsified in discovery would have prevented the entry of a judgment against petitioner.

Lubbers, 105 Ill.2d at 213.

Pursuant to the discussion, case law and ruling set forth in the Memorandum's "Analysis" para. 1., at 313-18, Petitioner has established by a preponderance of the evidence that the State's wrongful withholding or suppression of the ten Brady/412(c) items deluded her 1983 to 1987 trial counsel "as to what the facts and issues in [Ms. Gray's] case really [were]" during the period of their representation of Ms. Gray, which caused them to recommend that she agree to a guilty plea. As such, the People's suppression of this materially favorable evidence, coupled with their promise of immediate release to Ms. Gray in exchange for her incriminating testimony against the Ford Heights Four and guilty plea, as well as the unknowing corroboration of her defense counsel urging a plea (caused by Respondent's suppression of materially favorable evidence), "served to induce [Petitioner's April 23rd, 1987] plea of guilty [to perjury]." Moreover, the ten items of Brady/412(c) evidence wrongfully

withheld by the People, some of which constituted falsified and misleading proofs at Ms. Gray's 1978 trial, would have prevented entry of the 1987 perjury judgment, either because had Petitioner been knowledgeable of these proofs she would have insisted on a trial as to all the charges of the 1984 information, or because the outcome of a prospective 1987 trial on these charges would have been different from her plea with her use of this evidence. [Note also that Petitioner has actually proven *more* than Nischt and Lubbers require, in that she has shown not only the inducement of her plea by Respondent's suppression from she and her counsel of the ten Brady/412(c) items prior to and at the time of her 1987 plea, while promising Ms. Gray her immediate release for her perjury plea and incriminating testimony, but also *wrongful* inducement (or coercion) by reason of Respondent's conduct as determined in Memorandum "Analysis" para. 1., at 318].

Based on the foregoing argument and case law, the Court vacates Petitioner's 1987 perjury judgment and plea, and grants Ms. Gray a new trial on the perjury charge (Count 17) of the 1984 information.

c. Vacatur of Petitioner's 1987 Perjury Judgment and Plea on Equitable Grounds

This Memorandum has earlier noted, along with substantial case law support, that a section 2-1401 petition invokes the equitable powers of the Court to "prevent enforcement of a judgment when it would be unfair, unjust, or unconscionable." Ostendorf, 89 Ill.2d at 285; see also Memorandum "Preliminary Findings of Law" para. 3, at 237-38, para. 8., at 256. Petitioner's 1987 perjury plea and judgment are unfair, unjust or unconscionable because Ms. Gray has established by a preponderance of the evidence that:

- the plea was not voluntary by reason of Respondent's wrongful inducement or coercion as set forth in this Memorandum "Analysis" para. 1., at 313-18, and because it was not informed due to Respondent having misled Petitioner as set forth in Memorandum "Analysis" para. 2., at 318-19;

- the plea has been shown by new proofs to be 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 offenses. Alternatively, Ms. Gray's "contradictory" May 16th, 1978 grand jury testimony has been shown by new evidence to constitute a CCSP fabrication which they coerced her to tell to the grand jury and various sheriff's police and assistant State's Attorneys, coupled with her showing of the truthfulness of her June 19th, 1978 preliminary hearing testimony;

- the plea was induced by Respondent's suppression, loss or destruction of ten items of Brady and 412(c) evidence newly discovered by Petitioner, while offering Ms. Gray, outside the presence of counsel, her immediate release from prison in exchange for her incriminating testimony against three of 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) evidentiary items, and;

- Petitioner has proven by a preponderance that she is actually innocent of the Lionberg/Schmal crimes, which substantial showing Respondent has substantively neither contested, nor denied.

Based on the foregoing argument and case law, the Court vacates Petitioner's 1987 perjury judgment and plea, and grants Ms. Gray a new trial on the perjury charge (Count 17) of the 1984 information.

6. Vacatur of 1987 Orders of *Nolle Prosequi*

Initially, the Court will address Petitioner's argument that People v. Hryciuk, 36 Ill.2d 500 (1967), provides authority for vacatur and dismissal of the murder and rape charges as to which orders of *nolle prosequi* were entered on April 23rd, 1987 pursuant to the People's motion. (See Petitioner's Post-Hearing Mem. at 15; Memorandum "Parties' Legal Arguments" at 165).

Hryciuk was one of the early cases involving "pre-indictment delay." Hryciuk, 36 Ill.2d at 501-02. Subsequent to Hryciuk, the Illinois Supreme Court in People v. Lawson, 67 Ill.2d 449, 459 (1977), established a two-step process in determining whether pre-indictment delay violates constitutional due process.

The Lawson standard, which is current law, requires an evidentiary hearing in which the accused must initially make "a clear showing of actual and substantial prejudice" due to pre-indictment delay. Lawson, 67 Ill.2d at 459. Upon such showing, the burden "shifts to the State to show the reasonableness, if not necessity, of the delay." Lawson, 67 Ill.2d at 459. If both burdens are met, "then the court must make a determination based upon a balancing of the interests of the defendant and the public." Lawson, 67 Ill.2d at 459.

Applying the Lawson standard, case law would arguably support a finding that Petitioner has shown "substantial prejudice" because the pre-indictment delay of almost 13 years is sufficiently long, or the period dating from the April 23rd, 1987 plea and *nolle prosse* dismissal, until the March 2nd, 1999 filing of Ms. Gray's petition. See People v. A.L., 169

Ill.App.3d 581, 585-86 (1st Dist. 1988). However, "an inquiry into the reasons for the delay" is additionally required by not only the initial Lawson ruling (67 Ill.2d at 459), but also the Supplemental Opinion to the Lawson decision. See Lawson, 67 Ill.2d 449 at 460. Such inquiry was not conducted in this matter, so Petitioner's argument seeking vacatur and dismissal of the 1987 *nolle prossed* murder and rape charges on the grounds of pre-indictment delay in violation of Petitioner's constitutional due process (and speedy trial) rights is denied.

However, not unlike the Court's vacatur of the October 16th, 1978 orders of *nolle prosequi* (see Memorandum "Preliminary Findings of Law" para. 2., at 230-32), because the Court has vacated Petitioner's 1987 judgment and plea, it now has before it the entire 1984 controversy, record and parties. It also has case law authority to vacate or modify, prior to final order or judgment, an interlocutory order it considers erroneous, and the obligation to vacate such order where changed circumstances render it unjust. (See Memorandum "Preliminary Findings of Law" para. 2., at 230). The Court also has the inherent power to correct its own records. In re Hirsch, 135 Ill.App.3d at 955. Therefore, the Court has jurisdiction of the April 23rd, 1987 orders of *nolle prosequi* as non-appealable, interlocutory orders, until the entry of final orders or judgment. (See Memorandum "Preliminary Findings of Law" para. 2., at 230-31).

Petitioner was previously acquitted of the 1987 *nolle prossed* gas station charges because these offenses were *nolle prossed* on October 16th, 1978 *after the jury for her 1978 trial had been impaneled and sworn.* (See Memorandum "Preliminary Findings of Law" para. 2., at 231). As such, acquittal, double jeopardy, and statutory law (720 ILCS 5/3-4(a)(3) or improper termination of a prosecution) would bar the proper institution of a new prosecution of these charges. (See Memorandum "Preliminary Findings of Law" para. 2, at 231). Accordingly, pursuant to the Court's inherent power and duty to vacate interlocutory orders which are both in error and unjust because of changed circumstances, as well as its inherent power to correct its own records, the Court *sua sponte* construes Ms. Gray's 2-1401 petition to vacate the 1987 *nolle prossed* gas station charges as a motion to vacate non-final, non-appealable interlocutory orders, and vacates the April 23rd, 1987 orders of *nolle prosequi* regarding the gas station charges (or Counts 5-6 for murder, 9-12 for kidnapping, and 13-16 for armed violence) of the 1984 information.

Changed circumstances have also rendered unjust the 1987 orders of *nolle prosequi* for the charges of murder (Counts 1-4, 7) and rape (Count 8) of the 1984 information. Petitioner has not only introduced newly discovered Brady/412(c) evidence tending to show her innocence of these charges and the guilt of others, she has also substantially established her

innocence of these charges (and the remaining counts of the 1984 information). Also, the State has substantively neither contested nor denied Ms. Gray's showing of her actual innocence of *all* the charges of the 1984 information, including those for murder and rape.

Therefore, the Court *sua sponte* construes Ms. Gray's 2-1401 petition to vacate the 1987 *nolle prossed* murder and rape charges as a motion to vacate non-final, non-appealable interlocutory orders, and vacates the April 23rd, 1987 orders of *nolle prosequi* for the charges of murder (Counts 1-4, 7) and rape (Count 8) of the 1984 information.

7. Dismissal of Charges of the 1984 Information

The Court's foregoing vacatur of the 1987 orders of *nolle prosequi* results in reinstatement of those charges (or Counts 1-16 of the 1984 information). (See Memorandum "Preliminary Findings of Law" para. 2., at 232). Also pending before the Court is the perjury charge (Count 17) of the 1984 information as a result of the Court's vacatur of the 1987 perjury judgment and plea, and grant of a new trial on this count.

As previously discussed, case law authorizes the Court to dismiss an indictment "when failure to do so will effect a deprivation of due process or result in a miscarriage of justice." Newberry, 166 Ill.2d at 313; accord Dasaky, 303 Ill.App.3d at 992; see also Memorandum "Preliminary Findings of Law" para. 2., at 232. The same rules or principles of law "applicable to criminal proceedings instituted by indictment also apply to criminal proceedings instituted by information." People v. Meccia, 275 Ill.App.3d 123, 126 (1st Dist. 1995); People v. Wright, 25 Ill.App.2d 474, 476 (1st Dist. 1960), rev'd on other grounds, 21 Ill.2d 547 (1961).

The gas station charges of both the 1978 indictment and 1984 information are identical, so that the rationale and case law authority in support of the Court's dismissal of the 1978 gas station counts are equally applicable to the gas station charges of the 1984 information. (See Memorandum "Preliminary Findings of Law" para. 2., at 228). Also, Respondent was afforded due process notice by Ms. Gray's 2-1401 petition that she was moving for dismissal of the gas station charges of the 1984 information; and also afforded the opportunity to present opposing briefs, argument, and counter-affidavits, as well as countervailing documentary and testimonial proofs at an evidentiary hearing.

As such, not unlike the Court's dismissal of the gas station charges of the 1978 indictment, the Court finds that its failure to dismiss the gas station counts of the 1984 information for which Petitioner has been legally acquitted would violate Ms. Gray's due process rights and also result in a miscarriage of justice. [Recall also that the People cannot properly re-

prosecute the gas station charges against Ms. Gray by reason of double jeopardy and improper termination of a prosecution. See Daniels, 187 Ill.2d at 312; Blake, 287 Ill.App.3d at 491; Foley, 162 Ill.App.3d at 287; 720 ILCS 5/3-4(a)(3) (1999) and Committee Comments to section 3-4; Memorandum "Preliminary Findings of Law" para. 2., at 231]. Therefore, based on Ms. Gray's 1978 acquittal of the gas station counts of the 1984 charging instrument and the Court's case law authority to dismiss charges on its own motion for due process violation, the Court *sua sponte* dismisses, with prejudice, the gas station charges (or Counts 5-6 and 9-16) of the 1984 information.

A second ground for dismissal of the gas station charges of the 1984 information is that the State's refiling of these charges in 1984 constituted harassment of Petitioner in violation of her due process rights. This is because the People initially secured their 1978 indictment against Ms. Gray on the gas station charges without *any evidence* regarding her accessorial involvement in these offenses, as Ms. Gray alleged in her petition. (See Petitioner's 2-1401 Mot. at 1, n.1; see also Petitioner's Post-Hearing Mem. at 11-12) [See People v. Rodgers, 92 Ill.2d 283, 290 (1982), requiring that "there be *some* evidence [presented to the grand jury returning the indictment] relative to the charge." (emphasis added)]. More specifically, Ms. Gray's May 16th, 1978 grand jury testimony, upon which the People premised their 1978 indictment for the gas station charges lodged against Petitioner (see Respondent's Group Ex. 11 Item K at PD00212, PD00214), made no reference whatsoever that *before or during* the commission of the gas station offenses, she either solicited, aided, abetted, agreed or attempted to aid any person or persons in the planning and commission of these crimes as required by the accountability law read by the People to the August, 1978 grand jury apparently indicting Ms. Gray. (See Respondent's Group Ex. 11 Item K at PD00220-00223). Nor did Petitioner's grand jury testimony show that she was either present at, or in any manner assented or lent her approval to the commission of the gas station offenses. [See People v. Washington, 63 Ill.App.3d 1037, 1038 (1st Dist. 1978), which held that "one may aid and abet without actively participating in the overt act," and thereafter requiring a showing that to be accountable for the acts of the principal, such person must have "assented to the commission of the crime, lent his approval, and was thereby aiding and abetting the crime"]. [Note that although the People's oral explanation to the grand jury of what constituted legal accountability was perhaps unclear or misleading (see Respondent's Group Ex. 11 Item K at PD000213-14), the accountability law subsequently read to the grand jury by the State was correct, and had in fact been reiterated (and affirmed) by 1974 to 1977 Illinois Supreme Court opinion. (See Respondent's Group Ex. 11 Item K at PD00220-PD00223); People v. Morgan, 67 Ill.2d 1, 8 (1977) regarding section 5-2(c) of the Criminal

Code of 1961; accord People v. Tate, 63 Ill.2d 105, 107 (1976); People v. Kessler, 57 Ill.2d 493, 496 (1974).

Subsequent to Ms. Gray's indictment on the gas station charges, the State presented no evidence at Petitioner's 1978 trial connecting her to the gas station offenses and in fact caused Ms. Gray to be acquitted of these charges on October 16th, 1978 upon moving for and being granted their *nolle prosse* dismissal after the jury had been impaneled and sworn. Nonetheless, 5½ years later the People *again filed these same charges* against Ms. Gray in its May 18th, 1984 information. This course of conduct by the State regarding its gas station allegations against Ms. Gray, commencing with the improper 1978 indictment, failure of proofs at trial, and refiling of the gas station charges after having knowingly effected Ms. Gray's acquittal of these offenses in 1978, constituted harassment in violation of Petitioner's due process rights. Also, the State's refiling of these allegations against Petitioner was "capriciously and vexatiously repetitious" in view of the foregoing circumstances. [See People v. Overstreet, 64 Ill.App.3d 287, 289 (4th Dist. 1978), holding that "[a] subsequent proceeding either by indictment or information is barred...if it reaches the point of harassment, thereby violating due process." Overstreet has been cited favorably by People v. DiVincenzo, 183 Ill.2d 239, 258 (1998), as well as In Interest of Gomez, 100 Ill.App.3d 299, 301 (1st Dist. 1981), regarding the successive filing of the same information after a finding of no probable cause at the initial preliminary hearing; accord People v. Valenzuela, 180 Ill.App.3d 671, 676 (2nd Dist. 1989), holding that "intentional harassment of defendant or prejudice to defendant...[is a denial of the] defendant['s] due process [rights]"; see also People v. Freedman, 155 Ill.App.3d 469, 474 (1st Dist. 1987), which while addressing the question of prosecutorial vindictiveness upon reindictment of an accused, noted that the prosecution abuses its power when its "reindictment after a *nolle prosequi* is capriciously or vexatiously repetitious or causes substantial prejudice to the defendant"].

Based on the foregoing additional due process grounds and the Court's case law authority to dismiss charges on its own motion for due process violation, the Court *sua sponte* dismisses, with prejudice, the gas station charges (or Counts 5-6 and 9-16) of the 1984 information.

Finally, the previously cited First District case of People v. Meccia, 275 Ill.App.3d 123 (1st Dist. 1995), provides case law support for dismissal of *all* charges of the 1984 information on due process grounds. The trial court dismissed the information in Meccia because of what it termed "'a very serious, outlandish example of overreaching by the State and the Chicago Police Department and the State's Attorney's Office.'" Meccia, 275 Ill.App.3d at 127. The government conduct in Meccia involved the fact, *undisputed by the State*, that:

[the] defendant was ushered from the courtroom by the police and taken into custody based on an incident for which defendant had already been arrested and was released on bond. This occurred despite the fact that the trial court had appointed the public defender to represent defendant and ordered defendant to remain in the courtroom to speak with counsel. The transcript shows that the assistant state's attorney was present when the trial court took these actions. Nevertheless, defendant was taken to the police station and interrogated by the police and an assistant state's attorney. The transcript indicates that defendant was so held for several hours. When the case was recalled, an assistant state's attorney sought a continuance, rather than immediately informing the court of the situation and seeking a nol-pros. After the trial court discovered what the government had done and ordered that defendant be brought back before the court and that the assistant state's attorney nol-pros the misdemeanor charges against defendant, the transcript shows that the police had every intention of immediately returning defendant to the police station without affording defendant the opportunity to consult with counsel. Again, the intervention of the trial court was required.

Meccia, 275 Ill.App.3d at 127-28.

The State argued on appeal that the defendant failed to show prejudice to sustain a dismissal of charges based on a violation of his due process rights to a fair trial. Meccia, 275 Ill.App.3d at 126. The First District augmented the People's argument by citing case law that even where the defendant *can* show prejudice, the "appropriate remedy (if any) is to suppress any improperly obtained evidence." Meccia, 275 Ill.App.3d at 126.

However, referencing the trial court's foregoing grounds for dismissal and the fact that the transcripts "contain numerous references to the fact that much of this misconduct occurred in the courtroom," the First District indicated that the issue presented by this matter was "whether the government [had] undermined the judicial process to the extent that dismissal of the information was warranted." Meccia, 275 Ill.App.3d at 127.

The Appellate Court found that "a trial court has the authority to dismiss a criminal case due to egregious misconduct under the due process clause of the United States Constitution," citing Rochin v. California, 342 U.S. 165, 168 (1952). Meccia, 275 Ill.App.3d at 127. It then cited Morrow v. Superior Court, 30 Cal.App.4th 1252, 1260-61 (1994), for its holding that "[w]here multiple violations of a defendant's federal and state constitutional rights are occasioned by the police and prosecutors, and originate 'within the hallowed confines of the courtroom where the rule of

law and fairness should be revered,' the court's conscience is shocked and dismissal of the case is an appropriate remedy." Meccia, 275 Ill.App.3d at 127. The court added that People v. J.H., 136 Ill.2d 1, 11 (1990), "held open the possibility that a case may be dismissed due to egregious misconduct." Meccia, 275 Ill.App.3d at 127.

In affirming the trial court's dismissal of the information, Meccia held that "the government acted with flagrant disregard of the defendant's constitutional rights...[and that it also] acted and sought to act in direct contravention of the trial court's efforts in the courtroom to assure that the defendant's constitutional rights were secured." Meccia, 275 Ill.App.3d at 128. The Appellate Court concluded that "*despite the presentation of untainted evidence at the preliminary hearing*, the government's acts in this case undermined the integrity of the judicial process...[and] constitute[d] egregious misconduct...[and also] shock[ed] the conscience of the court." (emphasis added). Meccia, 275 Ill.App.3d at 128.

The government in the herein matter, of course, *did* present tainted or perjured evidence at Petitioner's 1978 trial in contravention of the truth-seeking function of the trial process that in turn "undermined the judicial process." In fact, the government's numerous and significant Brady and Rule 412(c) violations, which include the prosecution's knowing use of false testimony, sufficiently constitute "egregious misconduct under the due process clause" of the United States and Illinois Constitutions to alone sustain dismissal of the charges of the 1984 information. And yet Petitioner's new proofs show even *more* than Brady and 412(c) due process violation, for the totality of the evidence in this matter establishes that the government engaged in a course of conduct from May 12th, 1978 until well after Ms. Gray's April 23rd, 1987 plea, that clearly constitutes numerous *additional* violations in "flagrant disregard of [Ms. Gray's] constitutional rights." Also, as previously determined by this Memorandum, the foregoing government actions both before, during and after Ms. Gray's 1978 trial directly and indirectly related to and impacted upon her 1987 plea. (See "Findings of Fact" paras. 4.-7., at 195-223; "Preliminary Findings of Law" para. 2., at 229-30, paras. 3.-6., at 234-53, para. 8., at 253-311; "Analysis" paras. 1.-2., at 313-19, para. 3.b.-c., at 320-24, para. 5.a.-c., at 332-35). The ensuing specifications of the government's misconduct, including the ten Brady/412(c) violations, is both extensive and unconscionable:

(1) The Cook County Sheriff's police coerced Petitioner, notwithstanding her assertions of innocence, to make their false and concocted statement to various sheriff's police, assistant State's Attorneys, as well as the May 16th, 1978 grand jury inculpating she and four other innocent individuals in the Lionberg/Schmal crimes; which grand jury testimony constitutes the basis for Ms. Gray's 1987 perjury conviction

based on a false statement under oath, or alternatively, on her contradictory statements under oath at the May 16th, 1978 grand jury and June 19th, 1978 preliminary hearing, the latter involving Petitioner's truthful assertions of her innocence and that of the Ford Heights Four to the subject offenses. (See Memorandum "Findings of Fact" para. 1., at 181-91, para. 8., at 223-24; "Preliminary Findings of Law" para. 4., at 238-45, para. 6., at 252-53, para. 7. at 253).

[People v. Hunter, 298 Ill.App.3d 126, 131-32 (2nd Dist. 1998), addressed the duties of law enforcement officers and the prosecution upon affirming the dismissal of charges on due process grounds because of false police testimony to the grand jury indicting the defendants. Hunter held that:

[i]n addition to the public policy of protecting the public against the overreaching and oppression of the State, our determination provides the State with a strong deterrent against future uses of perjured testimony. *Honesty and integrity are essential to the performance of the functions of the police and prosecutor in our criminal justice system and the maintenance of our freedoms. 'As the guardians of our laws, police officers are expected to act with integrity, honesty and trustworthiness.'* [citation omitted]. *This admonition applies with equal force to the prosecution.* (emphasis added).
The foregoing pronouncement would, of course, be equally applicable to each of the succeeding specifications];

(2) The Cook County Sheriff's police fraudulently concealed or suppressed materially favorable evidence of a written statement indicating Ms. Gray's innocence (Item No. 3), and their knowledge of Petitioner's oral assertions of her innocence to them, as well as their having coerced Paula Gray, notwithstanding her claims of innocence, to tell a police concocted falsehood to various sheriff's police, assistant State's Attorneys, and the May 16th, 1978 grand jury inculpating she and the Ford Heights Four in the Lionberg/Schmal crimes, which information to date, they have failed and/or refused to disclose. (See Memorandum "Findings of Fact" para. 1., at 181-91, para. 6.a., at 205-06, 6.b., at 212, 6.d., at 213-14, 6.h., at 216, 217, 6.i., at 218-21; "Preliminary Findings of Law" para. 4., at 238-45, para. 8. at 291, 295-97, 300, 311);

(3) The Cook County Sheriff's police fraudulently concealed or suppressed materially favorable evidence from Petitioner until after her 1979 and 1987 judgments (Item No. 4), and lost and/or destroyed materially favorable evidence (Item No. 5), which would have established, or tended to establish, CCSP coercion of Petitioner to tell a police fabricated lie to various sheriff's police, assistant State's Attorneys and the May 16th, 1978 grand jury inculpating Ms. Gray and the Ford Heights Four in the Lionberg/Schmal crimes, and/or which evidence tended to

show the innocence of Paula Gray and the Ford Heights Four, as well as guilt of four other perpetrators, of the subject crimes, who were later arrested and convicted for these offenses. (Item Nos. 2, 4, 5, and 10). (See Memorandum "Findings of Fact" para. 6.a., at 202-05, 206-07, 209-10, 6.b., at 211-12, 6.c.-d., at 213-14, 6.h.-i., at 216-21; "Preliminary Findings of Law" para. 8., at 311 and Item No. 2 at 281, 282, 284-86, 290-91, 296, 300, Item No. 4 at 270-71, 286, 291-93, 295-96, 296-97, 297, 300, Item No. 5 at 286, 291, 292, 293-95, 297, 300, Item No. 10 at 305-06, 306, 308);

(4) The Cook County Sheriff's police failed and/or refused to investigate substantial and reliable leads or evidence, particularly the four "Suspects" of the Capelli notes and its claim of their involvement in the subject offenses (Item No. 4), which evidence or leads would have established, or tended to establish, CCSP coercion of Petitioner to tell a police fabricated lie to various sheriff's police, assistant State's Attorneys and the May 16th, 1978 grand jury inculpating Petitioner and the Ford Heights Four in the Lionberg/Schmal crimes, and which evidence or leads also tended to show the innocence of Paula Gray and her four alleged principals, as well as guilt of other perpetrators, of the subject crimes, who were later arrested and convicted for these offenses. (See Memorandum "Findings of Fact" para. 6.a., at 206; "Preliminary Findings of Law" para. 8., at 291-93).

[Recall Hawthorn's finding that the record in its case "contains evidence that the police possessed information which could lead a reasonable police officer to view [the defendant] as a suspect." Hawthorn, 244 Ill.App.3d at 694; Memorandum "Preliminary Findings of Law" para. 8., at 292. Clearly, among other instances of CCSP failure to adequately investigate, the record of the herein matter contained evidence that the sheriff's police involved in the Lionberg/Schmal case possessed information which would lead a reasonable police investigator to view and treat the four persons named in the Capelli notes as suspects].

(5) Certain investigating Cook County Sheriff's police gave perjured testimony at Petitioner's 1978 trial regarding Ms. Gray's claims of innocence and CCSP coercion to tell a police fabricated lie to various sheriff's police, assistant State's Attorneys and the May 16th, 1978 grand jury, which trial resulted in Ms. Gray's conviction, substantial sentence, and eight plus years of incarceration in the state penitentiary (as well as the convictions and substantial period of imprisonment of her four alleged principals, including death row for two of them, also innocent of the subject crimes, by other juries for the same offenses). (See Memorandum "Preliminary Findings of Law" para. 4., at 245).

[Hunter specifically referenced in affirming the trial court's dismissal of the indictment based on perjured grand jury police testimony that:

[i]f the police and prosecution know that perjured testimony will lead to the dismissal with prejudice of their cases, they will be careful to use only truthful testimony. Additionally, [the court] recognize[d] the ramifications of [its] holding and emphasize[d] that [its] case involves *wilful perjury discovered and brought before the court by defendants.* (emphasis added).

Hunter, 298 Ill.App.3d at 131-32];

(6) The Respondent's prosecution of the gas station charges against Ms. Gray in 1984 constituted the harassment of Petitioner, as evidenced by the People in securing an indictment against Ms. Gray that included the gas station charges, while presenting no evidence of Paula Gray's involvement in these offenses to the grand jury; *nolle prosse* dismissal of the gas station charges at the end of their case against Petitioner in 1978, after failing to present any evidence of her involvement in the gas station offenses at trial; and notwithstanding Respondent's knowledge of Ms. Gray's 1978 acquittal of these offenses, *recharging* Ms. Gray with the same gas station offenses in its 1984 information (see this para. at 338-39);

(7) The Respondent obtained the 1979 trial judgment against Petitioner while simultaneously suppressing from Ms. Gray ten (10) critical items of Brady and Rule 412(c) evidence (including their *direct knowledge* suppression of the exculpatory pubic hair comparison test results or Item No. 6), in violation of Brady v. Maryland and its progeny, statutory discovery rules (or Rule 412(c)), and the Respondent's legal duty as prosecutor to ensure that "justice will be done" and that the "guilt shall not escape or innocence suffer." (See Memorandum "Findings of Fact" para. 6.a.-d., at 201-14, 6.h.-i., at 216-21; "Preliminary Findings of Law" para. 8., at 253-311).

[Recall Bagley's admonition that the prosecution's Brady disclosure obligation "to assist the defense in making its case" is a recognition "that the prosecutor's role transcends that of an adversary," and that as "the representative of the sovereignty," its interest in a criminal prosecution must *not* be "that it shall win a case, but that justice shall be done," citing Berger, 295 U.S. at 88 and Brady, 373 U.S. at 87-88. Bagley, 473 U.S. at 676. Accord Kyles, 514 U.S. at 439-40; see also Memorandum "Preliminary Findings of Law" para. 8., at 263, 264. Berger additionally held, which is of especial import to this case, that in view of the prosecutor's foregoing obligation of ensuring that justice is done in its criminal prosecution:

...he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that *guilt shall not escape or innocence suffer*. He

may prosecute with earnestness and vigor – indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his *duty to refrain from improper methods calculated to produce a wrongful conviction* as it is to use every legitimate means to bring about a just one. (emphasis added).

Berger, 295 U.S. at 88.

Clearly, the prosecution's suppression of the ten items of Brady and 412(c) evidence during the period of Ms. Gray's 1978 trial (including the knowing use of perjured, irrelevant, misleading and prejudicial hair comparison testimony) while obtaining a judgment thereto, and continued suppression for over a nineteen year period thereafter, constituted "foul" blows and "improper methods calculated to produce a wrongful [1978] conviction" of Petitioner, in which "guilt" or the guilty did in fact escape prosecution and the innocent, or Paula Gray, suffered];

(8) The Respondent obtained the 1987 perjury judgment against Petitioner while simultaneously suppressing from Ms. Gray ten (10) significant items of Brady and Rule 412(c) evidence (including their *direct knowledge* suppression of the Capelli notes and exculpatory pubic hair comparison test results or Item Nos. 4 and 6), in violation of Brady v. Maryland and its progeny, statutory discovery rules (or Rule 412(c)), and the Respondent's legal duty as prosecutor to ensure that "justice will be done" and that the "guilty shall not escape or innocence suffer." (See Memorandum "Findings of Fact" para. 6.a.-d., at 201-14, 6.h.-i., at 216-21; "Preliminary Findings of Law" para. 8., at 253-311).

[The case law, discussion and admonitions of the comments to para. 7. above apply with equal validity to this paragraph].

(9) The Respondent knowingly used the perjured testimony of Michael Podlecki in Petitioner's 1978 trial to obtain her conviction for the Lionberg/Schmal crimes, where Mr. Podlecki stated that his pubic hair comparison tests found "nothing of evidential value," when in fact these results tended to show the innocence of the Ford Heights Four (Item Nos. 6 and 7); Mr. Podlecki did not disclose or explain that his use of the phrase "nothing of evidential value" at Petitioner's 1978 trial was the terminology used at that time when the results of hair comparison tests were dissimilar, or favorable to the accused; and Mr. Podlecki misdefined the term "nothing of evidential value" at the same 1978 trial. Also, this wilful perjury was brought before the Court by Petitioner and not the People. (See Petitioner's 2-1401 Mot. para. 40.m., o.; Petitioner's Post-Hearing Mem. at 5. n.1 (6), (7); Petitioner's Add'l Auth's and Mat'ls Exs.15, 16; Memorandum "Findings of Fact" para. 6.a., at 207-08, 6.b., at 211-12,

212, 6.d., at 213-14, 6.h., at 216, 217-18, 6.i., at 220-21; "Preliminary Findings of Law" para. 8., at 298-300, 300-03, 303, 304-05, 307-07, 307). [Recall Hunter's dismissal of the indictment based on the defendant, and not the State, having brought the wilful perjury to the attention of the court. Hunter, 298 Ill.App.3d at 131-32; this para. at 343.

Recall also Agurs' holding that perjury "corrupts the truth-seeking function of the trial process." Agurs, 427 U.S. 103; accord Coleman, 183 Ill.2d at 391-92. As such, the foregoing perjury knowingly introduced by the prosecution tainted not only the pubic hair comparison evidence for the defense (or Petitioner), but also for the court and jury in 1978. It additionally corrupted and tainted the pubic hair comparison evidence upon which the Illinois Appellate and Supreme Courts rendered their respective decisions, which in this matter, at least as to two of Petitioner's principals, were literally life or death determinations. Moreover, based on the rationale of Lubbers, neither the defense decisions of Petitioner, nor the determinations of the Court, jury and First District Appellate Court on review regarding her 1978 case should have been required to "anticipate or guard against the kind of chicanery" perpetrated by the government in this matter, including the People's knowing use of perjured pubic hair comparison testimony];

(10) The Respondent, at Petitioner's 1978 trial, knowingly introduced in this proceeding and commented upon in closing argument, statistical evidence emanating from a Canadian hair comparison study which was irrelevant to the type of examination conducted by the State in the Lionberg/Schmal matter, as well as misleading to the jury, and prejudicial to Ms. Gray. (See Memorandum "Findings of Fact" para. 7., at 221-23; "Preliminary Findings of Law" para. 8., at 303-05).

[This conduct by the prosecution is perhaps the clearest example of the Illinois Supreme Court unknowingly rendering a decision on the basis of evidence known by the prosecution to be irrelevant to the kind of hair comparison tests conducted by Mr. Podlecki in the Lionberg/Schmal case (not unlike the People's tainted perjurious evidence of para. 10 above). The prosecution used the odds of this study, which heavily favored their case, to severely undermine, if not rebut, the defense's showing at the 1978 trial that Mr. Podlecki "could not say with certainty that the hairs [found in Dennis Williams's car] in fact came from the victims." Williams, 93 Ill.2d at 321. The People thereafter commented on the Canadian studies' odds in their rebuttal (closing) argument. Rainge, 112 Ill.App.3d at 419-20, citing People v. Williams (Apr. 16, 1982), No. 51870, slip op. at 12-13.

In rejecting Dennis Williams' argument against the admission into evidence at the 1978 trial of the Canadian study's odds and closing

argument comment by the People, the Illinois Supreme Court found that "the study evidence was *legitimately in the record* and could be commented upon." Rainge, 112 Ill.App.3d at 420, citing People v. Williams (Apr. 16, 1982), No. 51870, slip op. at 12-13.

However, neither the Supreme Court in Williams, nor the First District Appellate Court in Rainge, were aware of the "substantial new evidence" suppressed by the People and presented by Petitioner in this proceeding that the prosecution introduced at the 1978 trial the odds of a Canadian study that it knew, or should have known, had no relationship to the type of hair comparison tests conducted by Mr. Podlecki in the Lionberg/Schmal case, nor was there any study indicating statistical evidence or odds for Mr. Podlecki's hair comparison examinations that he testified to in the 1978 trial. Had these courts been aware of these new proofs (along with the ten items of Brady/412(c) evidence suppressed, lost or destroyed by the government), their respective decisions affirming the admission into evidence of the Canadian study odds, as well as State comment referencing this statistical evidence during closing argument, could very likely have been different. In any event, the State knowingly presented irrelevant hair comparison evidence at Petitioner's 1978 trial, which was misleading to the jury and *substantially* prejudicial to Ms. Gray's case when considered in conjunction with the People's perjured pubic hair comparison evidence. (Recall that Ms. Gray was Williams' and Rainge's co-defendant at their joint 1978 trial before separate juries, and that Mr. Podlecki testified before both juries at this trial. See Memorandum at 4; Memorandum "Findings of Fact" para. 7., at 222; "Preliminary Findings of Law" para. 8., at 274; Petitioner's Add'l Auth's and Mat'ls Ex. 15; Williams, 93 Ill.2d at 320-21)];

(11) The Respondent failed and/or refused to investigate, pursuant to its legal duty as prosecutor, substantial leads or evidence, particularly the Capelli notes, of which it was in knowing possession prior to Dennis Willliams' January, 1987 trial, along with their public knowledge of the information further corroborating the Capelli notes contained in Rob Warden's July, 1982 and Michael Walsh's June, 1984 news articles, coupled with their direct knowledge of Martin Carlson's March, 1987 mitigation testimony at Dennis Williams' sentencing proceeding, which evidence and information tended to show the innocence of Paula Gray and the Ford Heights Four, as well as guilt of other perpetrators, of the Lionberg/Schmal crimes, who were later arrested and convicted for these offenses; while Respondent simultaneously suppressed (or withheld) ten (10) significant items of Brady and Rule 412(c) evidence from Petitioner, again contrary to its legal duty as prosecutor, from prior to or during Ms. Gray's 1978 trial until January 28th, 1999, including the period that Respondent obtained its 1979 and 1987 judgments against Petitioner. (See Respondent's [Evidentiary Hr'g] Ex. #10, at paras. 5, 10-

11; Memorandum "Findings of Fact" para.6.a.-d., at 201-14, 6.h.-i., at 216-21; "Preliminary Findings of Law" para. para. 8., at 270-71, 286, 291-92, 296-97, 297).

[Not unlike the Court's above finding referencing Hawthorn regarding the unreasonableness of the CCSP's failure to investigate the four "Suspects"of the Capelli notes, the record is replete with evidence that the prosecution also possessed information which could lead a reasonable prosecutor to view the four persons named in the Capelli notes as suspects, *including* their knowledge of the Capelli notes, as well as the three previously cited independent sources corroborating these notes of which they were aware, and the *actual exculpatory* results of Mr. Podlecki's pubic hair comparison tests as to which they had direct knowledge. (See this para. at 342 (or (4)). Further support for this ruling is provided by the rationale of Cartwright, 279 Ill.App.3d at 884, a 2-1401 proceeding also involving the use of false evidence to obtain a judgment, in which the court observed that the plaintiff, who had secured the judgment, had an opportunity to investigate the false information (newly discovered by petitioner) of which the plaintiff was "aware" and "had access to," but apparently "no attempt was made [by the plaintiff] to verify or authenticate [this information which it introduced at trial]." The same is true of the prosecution in this case, particularly with respect to the Capelli notes and the exculpatory pubic hair comparison results (and even probable exculpatory head hair comparison test results), of which the People were both aware and had access to, along with the other items of newly discovered Brady/412(c) proofs. However, *unlike* the Cartwright case, the People never introduced this evidence at Petitioner's 1978 trial or disclosed it to Ms. Gray prior to her April, 1987 plea, and of course did not investigate these proofs.

Case law further holds that "[t]he State's Attorney has always enjoyed wide discretion in both the *initiation* and the management of criminal litigation..[and that t]hat discretion includes the *decision whether to initiate any prosecution at all*, as well as to choose which of several charges shall be brought." (emphasis added). People v. Gossage, 128 Ill.App.3d 188, 191 (1st Dist. 1984). Ware v. Carey, 75 Ill.App.3d 906, 913-14 (1st Dist. 1979), adds that the State's attorney has "the duty to keep informed as to violations of the criminal laws...and *to investigate facts* and determine whether an offense has been committed...[as well as the] responsibility of *evaluating evidence and other pertinent facts"* to determine, as required by Gossage,*"what, if any, offense may be charged."* (emphasis added). Ware concluded that it interpreted "these principals as
charging the State's Attorney with responsibilities in criminal matters *prior to any formal charging that may take place*." (emphasis added). Additionally, in both 1978 and 1987, the People as a practical matter had

the authority to investigate the involvement in the subject offenses of the four men named in the Capelli notes via a grand jury investigation, with the grand jury's concomitant subpoena power. People v. Sears, 49 Ill.2d 14, 30-31 (1971); accord People ex rel. Fisher v. Carey, 77 Ill.2d 259, 267 (1979). A specific charge need not have been pending as a condition of the grand jury's right to issue subpoenas. See In re May 1991 Will County Grand Jury, 152 Ill.2d 381, 392 (1992), citing People v. Allen, 410 Ill. 508, 517 (1951). Furthermore, as previously noted, the prosecution had the authority to grant immunity as early as 1975 pursuant to state law. See Memorandum "Findings of Fact" para. 6.i., at 221; Frascella, 81 Ill.App.3d at 798, citing People v. DeFord, 59 Ill.App.3d 942, 945 (3rd Dist. 1978).

Obviously, the People in the herein matter had the investigatorial authority and grand jury subpoena power with which to follow-up on the information contained in the Capelli notes, of which they had knowing possession as of January 15th, 1987, along with three independent sources of corroboration, and even exculpatory pubic hair comparison results; and also the authority and grand jury subpoena power to investigate the four persons named in the notes, or to subpoena Dennis Johnson who was publicly known to them. They additionally had the authority to grant Dennis Johnson prosecutorial immunity. Instead, the People failed in both their investigatorial and prosecutorial responsibility by not pursuing either the Capelli notes, the suspects named in these notes, or Dennis Johnson, while continuing to prosecute Ms. Gray and her alleged principals. Furthermore, the prosecution failed and/or refused to charge the men named in the Capelli notes with the subject offenses until August 9th, 1996, or *over nine years* after the People's knowledge and possession of these notes, and *sixteen years* after their knowing possession of the pubic hair comparison test results exculpating Ms. Gray and the Ford Heights Four];

(12) The Respondent's conduct rendered Ms. Gray's 1987 perjury plea involuntary because the People wrongfully induced or coerced it by promise and threat while suppressing ten Brady/412(c) evidentiary items as set forth in Memorandum "Analysis" para. 1., at 313-18, which wrongful inducement or coercion was unknowingly corroborated by Petitioner's 1983 to 1987 trial counsel due to the government's foregoing suppression, and because the plea was not informed by reason of Respondent's misconduct as set forth in Memorandum "Analysis" para. 2., at 318-19, and;

(13) The Respondent's conduct toward Ms. Gray is fundamentally unfair relative to their treatment of at least three of her four previously alleged and convicted principals, in that the People presently contest Ms. Gray's 2-1401 petition on *procedural, not substantive*

grounds, while having previously moved for and been granted dismissal of all charges against three of the Ford Heights Four regarding the same crimes and charges on which Respondent premised its 1987 perjury conviction of Petitioner. Moreover, the State prosecuted Ms. Gray as the least culpable participant for the subject crimes. The prosecution additionally subjected Petitioner to unfair treatment in 1996 by threatening her with never seeing her children again (who had apparently been taken by DCFS) if she did not repeat her inculpatory grand jury testimony (again without effecting full disclosure to her of the ten Brady/412(c) items of this proceeding). [Recall that the Illinois Supreme Court, on May 25, 1995, had reversed Verneal Jimerson's 1985 conviction and remanded his case for a new trial, and that on May 29th, 1996, had remanded Dennis Williams' case to the trial court for further consideration in view of its then recent decisions of Washington, 171 Ill.2d 475 (1996), and Burrows, 171 Ill.2d 169 (1996). (See Memorandum at 6-7, 7-8)]. [See Respondent's Joint Mot. Ex. G at 041101; Memorandum "Evidentiary Hearing" Paula Gray at 104-05, 110, 111; see also Memorandum "Findings of Fact" para. 1., at 185-86; "Preliminary Findings of Law" para. 4., at 240, for Court's factual and legal rulings that Inv. Kelly's June 25th, 1996 report of Ms. Gray's June 18th, 1996 statement regarding the foregoing unfair prosecutorial conduct with respect to the non-return of her children, is credible evidence which is admissible because it is in the nature of a deposition under oath]. Furthermore, Respondent has prosecuted and convicted three other individuals for these crimes, and has been in receipt of two sworn affidavits since on or about May 10th, 1996 from two of the real killers asserting Petitioner's non-involvement in these 1978 offenses, which the People have not denied or contested in this matter. (See Dennis Williams' Motion for Remand to the Trial Court, or Respondent's [Evidentiary Hr'g] Ex. #10 at 046248-046255, 046281-046282, for affidavits of Arthur 'Red' Robinson and Ira Johnson dated May 8th, 1996 and April 12th, 1996 respectively, which motion certifies it was mailed to Respondent on May 10th, 1996).

Petitioner's substantial showing in this proceeding of her actual innocence of the Lionberg/Schmal crimes, which again the Respondent has substantively neither denied, nor contested, lends still further weight to the degree and scope of the government's above cited misconduct.

In People v. Dugan, 401 Ill. 442 (1948), the Illinois Supreme Court made clear in a collateral matter that the procedural law argued by Respondent was not and is not intended to protect criminal judgments secured by egregious government misconduct in violation of a petitioner's due process rights as evidenced by this matter. Dugan granted an evidentiary hearing on a guilty plea allegedly procured by the "fraud, duress and coercion" of a "law enforcing officer." Dugan, 401 Ill. at 447. It

emphasized in its ruling, premised in part on Mooney v. Holohan, on which Agurs based a significant portion of its Brady decision, that:

[w]e are not unmindful that the plaintiff in error knew all the facts recited in his motion at the time he pleaded guilty; that the common-law record shows all proper procedural requirements prior to the acceptance of the plea of guilty, and that all matters set forth in the petition are dehors the record. However, [citing to then recent Unites States Supreme Court cases, Dugan stated that] *'[t]he solicitude for securing justice thus embodied in the Due Process Clause is not satisfied by formal compliance or merely procedural regularity.* It is not conclusive that the proceedings resulting in incarceration are unassailable on the face of the record. A State must give one whom it deprives of his freedom the opportunity to open an inquiry into the intrinsic fairness of a criminal process even though it appears proper on the surface. *Mooney v. Holohan*, 294 U.S. 103. (emphasis added).

Dugan, 401 Ill. at 446.

Though Dugan is an early case, its above cited principle is notably still current and of particular relevance to the matter before this Court. [Recall also the comparable holdings of the Illinois Supreme Court in collateral proceedings rejecting the mechanical application of *res judicata* and relaxing this doctrine's bar based on the *fundamental fairness* invoked by newly discovered evidence. King, 192 Ill.2d at 193, 198 (2000); Patterson, 192 Ill.2d at 139 (2000); Wakat, 415 Ill. at 709 (1953); Memorandum "Findings of Fact" para. 1., at 181-82].

Accordingly, the Court finds that the foregoing government conduct undermined the judicial process and constituted egregious misconduct in flagrant disregard for and violation of Ms. Gray's due process rights as guaranteed by the Constitutions of the United States and the State of Illinois. This conduct shocks the conscience of the Court. Based on the above referenced due process grounds and the Court's case law authority to dismiss charges on its own motion for due process violation, the Court *sua sponte* dismisses, with prejudice, all charges (or Counts 1-17) of the 1984 information.

Conclusion

The CCSP, or certain sheriff's policemen, disdained and abrogated their duties as law enforcement officers to protect the innocent in this matter and to determine, through lawful investigation, those who committed the Lionberg/Schmal crimes. Their conduct, particularly the coercion of Ms.

Gray to tell their concocted inculpatory story and subsequent suppression of reliable evidence pointing to the guilt of others, was both abhorrent and illegal.

The People, or certain prosecutor(s), violated their duty to conduct an honest and fair prosecution in this case. They corrupted the truth-seeking function of the trial process and denied Petitioner a fair trial by knowingly presenting perjured testimony, as well as suppressing multiple items of materially favorable evidence, and also closed their eyes to and blindly prosecuted a wrongful investigation and arrest of innocent persons by the Cook County Sheriff's police. And the State continues to ignore its duty to do justice to Petitioner by defending against her post-judgment action on strictly procedural grounds, which is their right, except when, as in this matter, they do so while ignoring their mission as prosecutors "that justice shall be done" in a criminal prosecution and effectually protecting the overwhelming misconduct set forth in this Memorandum both by members of their own office, as well as the CCSP, with respect to Paula Gray and the Ford Heights Four. This sort of activity, past and present, besmirches the good and honest work of fellow prosecutors and police—and be there no mistake, there *is* such work being conducted which merits our full and complete support. But what transpired in this case *almost* resulted in the execution of two innocent men; and *did* result in the loss of many years of liberty for five innocent people, and as well as the prolonged failure to arrest and prosecute the real perpetrators of the subject offenses, based on evidence in the possession and control of the CCSP or prosecution since 1978, during which time one of these perpetrators killed once again. (Recall that Ira Johnson killed a Matteson woman in October, 1991; was arrested on or about October 31, 1991; and pled guilty to this crime on March 21, 1995. See Memorandum "Judicial Notice" para. 6.d., at 226). Our citizens, including Paula Gray and the Ford Heights Four, as well as the victims of crime, their relatives and loved ones, deserve and are entitled to a great deal more.

Wrong is wrong, be it the illegal actions of a street thug, or the conduct, as in this matter, by officers of the law and of the court effectually perpetrating a legal lynching. In fact, it is worse, much worse, when the wrong is committed by those cloaked with the authority and responsibility of upholding our laws and system of justice. We expect more of them, and we should, because they constitute an irreplaceable role in what stands between the ordinary citizenry and anarchy, not only from street crime, but from destroying our trust that we, all people, whether rich or poor, black or white, male or female, or *any person of our society*, will be treated fairly by our police authorities and receive equal, fair and just treatment in our courts of law. When that trust is lost, which is a gradual process, when people turn to persons and forums other than our police and court system, we are faced with anarchy. The good police and prosecutors

deserve and must receive our support, and the bad ones, or those engaging in conduct evidenced by this case, our severest of condemnation.

Based on the foregoing evidence, case law, and findings of fact and law of this Memorandum and proceeding, the Court grants section 2-1401 vacatur of Petitioner's February 22nd, 1979 judgments of conviction for murder, rape, and perjury ((Counts 1-4, 7-8, 17 of Case No. 78 C 4865). The Court additionally grants section 2-1401 vacatur of Petitioner's April 23rd, 1987 judgment of conviction for perjury (Count 17 of Case No. 84 C 5543), as well as a new trial on the perjury charge of the 1984 information (or Count 17 of Case No. 84 C 5543). It also, *sua sponte*, vacates the October 16th, 1978 orders of *nolle prosequi* of the 1978 indictment (Counts 5-6 and 9-16 of Case No. 78 C 4865) and April 23rd, 1987 orders of *nolle prosequi* of the 1984 information (Counts 1-16 of Case No. 84 C 5543), and dismisses, with prejudice, the reinstated charges. Finally, the Court, again *sua sponte*, dismisses, with prejudice, the remaining charges of the 1978 indictment (Counts 1-4, 7-8 and 17 of Case No. 78 C4865), as well as the perjury count of the 1984 information (Count 17 of Case No. 84 C 5543).

Therefore, IT IS HEREBY ORDERED as follows:

1. That the final judgment(s) of conviction heretofore entered as against PAULA GRAY on February 22, 1979 (Counts 1-4, 7-8 and 17 of Case No. 78 C 4865), be and the same are hereby vacated and held for naught.

2. That the final judgment(s) of conviction heretofore entered as against PAULA GRAY on April 23, 1987 (Count 17 of Case No. 84 C 5543), be and the same are hereby vacated and held for nought; and that PAULA GRAY is granted a new trial on the aforesaid perjury charge (Count 17 of Case No. 84 C 5543).

3. That the order(s) of October 16, 1978, which order(s) did then *nolle prosequi* certain portions of the then pending 1978 indictment against PAULA GRAY (Counts 5-6 and 9-16 of Case Number 78 C 4865) be and the same are hereby vacated and held for naught.

4. That all of the charges of the aforesaid 1978 indictment as against PAULA GRAY reinstated by the aforesaid vacature of the order(s) of *nolle prosequi*, of October 16, 1978 (Counts 5-6 and 9-16 of Case number 78 C 4865), be and the same are hereby dismissed, with prejudice.
5. That the order(s) of April 23, 1987, which order(s) did then *nolle prosequi* certain portions of the then pending 1984 information against PAULA GRAY (Counts 1-16 of Case Number 84 C 5543) be and the same are hereby vacated and held for naught.

6. That all of the charges of the aforesaid 1984 information as against PAULA GRAY reinstated by the aforesaid vacature of the order(s) of *nolle prosequi*, of April 23, 1987 (Counts 1-16 of Case Number 84 C 5543), be and the same are hereby dismissed, with prejudice.

7. That all of the remaining charges of the 1978 indictment as against PAULA GRAY (Counts 1-4, 7-8 and 17 of Case Number 78 C 4865) be and the same are hereby dismissed, with prejudice.

8. That all of the remaining charge(s) of the 1984 information as against PAULA GRAY
(Count 17 of Case Number 84 C 5543) be and the same are hereby dismissed, with prejudice.

DATED:_____

ENTER:

_____
Judge