

STATEMENT OF THE GOVERNOR:

PETITION FOR CLEMENCY OF GREGORY RESNOVER

The disposition of a request for clemency in a capital case is the most profound decision a governor can make. Accordingly, my judgment is based upon the record of all legal proceedings concerning the petitioner including proceedings before the United States Supreme Court, the United States Court of Appeals for the Seventh Circuit, and the United States District Court for the Northern District of Indiana; also, proceedings before the Indiana Supreme Court and the Superior Court of Marion County; also, proceedings before the Indiana Parole Board and a Conduct Summary from the Indiana Department of Corrections on the record of the petitioner while incarcerated.

All facts relevant to petitioner's conviction have been established beyond a reasonable doubt by the courts of the United States and the State of Indiana. They are as follows.

THE FACTS

On August 4, 1980, at the K-Mart store at 4150 North Keystone Avenue, Indianapolis, Gregory Resnover robbed a Brink's guard, William Sieg. This crime followed much premeditation and planning. Eyewitnesses testified that during the course of this robbery, Resnover pulled a gun and shot Sieg to death. There is no confusion about these facts. Gregory Resnover without doubt fired the shots which killed William Sieg. He then fled with bags of money carried by the victim. (On October 22, 1981, Resnover was convicted of murder for the death of William Sieg.)

Shortly before dawn on December 11, 1980, a team of police officers approached a house at 3544 North Oxford, Indianapolis, seeking to serve warrants for murder, robbery and a conspiracy arising out of the robbery and killing of Brink's guard Sieg. The team was headed by Detective Sergeant Jack Ohrberg.

After several knocks with both fists and his police radio, announcing that he was a police officer and stating his intention to open the door by force, Officer Ohrberg began kicking the door open. At this point a neighbor heard activity inside the house and a male voice shout, "It's the ----- police." There is additional testimony, and the jury and courts have unanimously found, that Resnover knew that it was the police who were on the porch.

Ohrberg had to force open the front door with his shoulder because it had been barricaded with a piece of furniture. During the next several minutes, both Resnover and Tommy Smith fired at the police. Ohrberg collapsed on the porch. One of three shots that struck him was later traced to the gun found next to the wounded and unconscious Smith. The other police officers scrambled for cover while gunfire was directed at them out the front door and through the windows. At least 16 rounds were fired at the police from at least two different semi-automatic military assault rifles. At least one of the two weapons was reloaded during the shootout and ensuing standoff.

Resnover eventually surrendered. As he was being taken to jail, Resnover was overheard saying, "Beautiful shot --- blew him away." He then laughed.

The foregoing facts have been the subject of numerous and lengthy judicial proceedings in both the state and federal courts. The courts' decisions have without exception upheld petitioner's guilt, the adequacy of his representation at both trial and on appeal, and the legality of his sentence, even for someone who did not fire the fatal shot. A brief summary of the judicial proceedings is appended.

CLEMENCY HEARING BEFORE THE INDIANA PAROLE BOARD

Petitioner's request for clemency has also been reviewed by the Indiana Parole Board. In so doing the Board considered, among other things, the nature and circumstances of the crime, the offender's prior criminal record, the offender's conduct during confinement and the best interests of society.

The Parole Board unanimously recommended against clemency. In so doing they stated: "He is a cancer to other human beings and he should never be allowed to have contact with any one beyond the confines of death row."

GOVERNOR'S DELIBERATIONS

With the knowledge of the foregoing, I consider the request for clemency.

In so doing it is not my role to reevaluate the facts as unanimously established by jury, judge, and numerous appellate courts. The independence of our judicial branch and the

separation of its powers from the executive and legislative branches ensure justice. It is my responsibility as Chief Executive to carry out that justice. It is the rule of law, reinforced by the multitude of protections within our judicial system, which must ultimately govern, not the opinion of a single man.

PETITIONER'S GUILT

The jury, judge and appellate courts have determined that the petitioner is guilty beyond a reasonable doubt of murder. The verdict of the jury was unanimous. So, too, was the final decision of the Indiana Supreme Court. The petitioner admitted under oath and on two other occasions that he fired at the officers on the porch. Jack Ohrberg was one. He has never claimed under oath that he did not. Based upon the record, there can be no doubt that he did.

In Indiana it is not necessary to fire the fatal shot to be guilty of murder. If two individuals fire assault weapons upon police officers they may be found equally culpable. Such is this case.

CAPITAL PUNISHMENT MAY BE IMPOSED FOR MURDER EVEN IF THE DEFENDANT DID NOT FIRE THE FATAL SHOT

Objections have been raised to the sentence recommended by the jury, imposed by the judge and sustained on appeal. Some argue that it is fundamentally unjust for someone convicted of murder who did not fire the fatal shot to receive capital punishment. Indiana law, however, as enacted by our duly elected

representatives, permits this result. There are circumstances in which this would be undeniably just. For example, someone who hired an assassin to commit murder would be as culpable as the trigger man.

In this case the petitioner fired multiple shots at the officers. There is sworn testimony that the defendants knew they were firing at the police. And petitioner both bragged and laughed about the killing after the fact. Under such circumstances, it is well within the province of jury and judge to consider the full range of penalties provided by law.

RESNOVER FIRED THE SHOT THAT KILLED WILLIAM SIEG

It must also be remembered that Resnover without doubt fired the shot that killed William Sieg, the incident that led to all subsequent events.

CAPITAL PUNISHMENT IS CONSTITUTIONAL AND APPROPRIATE IN SOME

CASES

Some also argue that capital punishment is inherently abhorrent and should be prohibited. The Supreme Courts of both the United States and the State of Indiana have considered this contention and reject it. It is unquestionably constitutional. There are times when it is also appropriate. I believe that the death penalty should be reserved for only those cases which are outrageous and unconscionable, instances where only the ultimate punishment can truly fit the crime. Participating in the murder of a law enforcement officer performing his duty is such a case.

EXCEPTIONAL CIRCUMSTANCES MIGHT IN SOME CASES WARRANT CLEMENCY

It is possible that someone found guilty of murder and sentenced to die might still receive clemency. This could be justified by an act of extraordinary courage or kindness either before or after the commission of the crime. A review of petitioner's record, however, does not reveal such exceptional circumstances. On the contrary, he had a lengthy record of criminal misconduct before he murdered both William Sieg and Officer Ohrberg, and he has had numerous infractions while incarcerated.

RESNOVER WAS NOT CONVICTED AND SENTENCED BECAUSE OF HIS RACE

Some have recently begun to assert that the only reason Resnover faces execution is because he is African-American. This ignores the fact that Indiana's Attorney General, the official who represents the state and has concluded that carrying out the sentence is legal, is African-American. It also ignores the fact that the Chairman of the Indiana Parole Board voted to deny clemency and characterized Resnover as "a cancer to other human beings." He, too, is African-American. I do not believe that these individuals would have acted as they have if Resnover's race were responsible for his plight.

In addition, the issue of the adequacy of Resnover's representation at trial has been reviewed by the courts, both state and federal, on numerous occasions. They have found, without exception, that his representation satisfied all constitutional standards. I do not believe that the United States Supreme Court, the Indiana Supreme Court and all lower

federal and state courts that have heard petitioner's claims are either indifferent to them or involved in overt bigotry.

I am sadly aware of the existence of racial prejudice in our society, will be ever vigilant against it, and do all in my power to stamp it out. But it is not racial prejudice that has created Resnover's situation. His own actions have. Resnover shot and killed William Sieg in cold blood and used deadly force to resist arrest by Officer Ohrberg. These acts, not his race, are responsible for the current state of affairs.

THE ROLE OF CLEMENCY

This, then, leaves the issue of mercy for mercy's sake. Some have commented on my record concerning clemency. Without going into greater detail than needed or listing facts relevant to most clemency requests but not applicable here, let me give some insight into my thinking.

Very few requests for clemency from non-violent offenders reach my desk. On the contrary, the vast majority of requests are from those who have committed the most violent crimes: rape, murder, drug trafficking. I consider these crimes to be different in character than crimes against property. Stealing money is reprehensible. But there is a special opprobrium attached to threats to another's life or safety.

Likewise, I am always mindful of the victims, their loved ones, their right to justice. Here, the victims' loved ones testified forcefully against granting clemency. William Sieg and Jack Ohrberg have been gone for fourteen years. What of them?

What courts will hear their case? What lawyers will argue on their behalf? To whom will they appeal for clemency? There is an awful finality for all parties to this proceeding.

When I took the oath as governor, I swore to uphold the laws and constitutions of the United States of America and the State of Indiana to the best of my skill and ability, so help me God. It was not limited to those cases that are pleasant or easy but encompassed equally those that are haunting and hard. And so it is to the Constitution and the laws as interpreted by our juries and courts that I must turn, with a prayer for His guidance in reaching a final decision.

Petitioner's request for clemency is denied.

Evan Bayh

Governor

December 5, 1994

APPENDIX

The History of Judicial Review in the Resnover Case

TRIAL

1. On June 29, 1981, a jury unanimously convicted petitioner of Murder and Conspiracy to Commit Murder.
2. On June 30, 1981, the jury recommended the death sentence against both petitioner and his Co-Defendant. Petitioner boycotted the penalty phase of his trial.
3. On July 23, 1981, the trial judge found that the evidence at trial supported the imposition of the death sentence even though petitioner did not fire the fatal shot. The trial judge imposed the death sentence on the murder charge.

DIRECT APPEAL

1. On March 19, 1984, the Indiana Supreme Court unanimously affirmed petitioner's conviction and sentence, deciding, among other things, that the Indiana Death Penalty Statute was constitutional, that witnesses' testimony relating petitioner's admissions that he fired shots during the incident in question was properly admitted, and that petitioner's participation in the incident in question was sufficient to warrant the imposition of the death penalty, even if petitioner did not actually fire the fatal shot.

2. On April 27, 1984, the Indiana Supreme Court denied petitioner's request for rehearing.
3. On October 1, 1984, the United States Supreme Court denied petitioner's Petition for Writ of Certiorari.

FIRST POST-CONVICTION PETITION

1. On October 10, 1984, petitioner filed his first Petition for Post-Conviction Relief, raising numerous claims, including but not limited to, a claim that his counsel were ineffective both at trial and on direct appeal, a claim that the prosecutor engaged in misconduct in closing argument, and a claim that certain jury instructions were improper.
2. On July 19, 1985, the trial court (through a different judge than the one who sentenced petitioner), denied the first post-conviction petition, finding that effective assistance of counsel was rendered at both the trial and on direct appeal, that the prosecutor's conduct was not improper, and that the jury was adequately instructed that the State was required to prove that the defendants knew the victim was a police officer acting in the course of his duty before the death penalty could be imposed.
3. On May 27, 1987, the Indiana Supreme Court unanimously affirmed the trial court's decision, agreeing that trial counsel and direct appeal counsel were not ineffective, and also noting that petitioner's guilt "rests not so much on an inference that he actually fired the fatal shot or shots, but rather on the clearly established fact that he used deadly

force to resist arrest." The court also noted that its own review of the record in the case cured any misstatements of fact in its earlier opinion.

4. On August 26, 1987 the Indiana Supreme Court denied petitioner's request for rehearing.

5. On January 19, 1988, the United States Supreme Court denied petitioner's Petition for Writ of Certiorari.

SECOND POST-CONVICTION PETITION

1. On March 2, 1988, petitioner filed his second Petition for Post-Conviction Relief, again asserting, among other things, that counsel were ineffective at trial and on direct appeal, and adding a new claim that his counsel was ineffective in presenting his first post-conviction petition.

2. On October 31, 1988, the trial court dismissed many of the claims raised by petitioner by finding that they should have been raised in earlier proceedings. As to the claim that post-conviction counsel was ineffective, the trial court found that there was no issue of material fact and such claims should also be dismissed.

3. On December 11, 1989, the Indiana Supreme Court affirmed the trial court's dismissal.

4. On October 1, 1990, the United States Supreme Court denied petitioner's Petition for Writ of Certiorari.

FIRST HABEAS CORPUS PETITION

1. On March 10, 1988, and while his second post-conviction petition was pending, petitioner filed his first Petition for

Writ of Habeas Corpus in the federal district court. The court withheld its judgment on the case until the second post-conviction proceeding was completed in state court. The habeas petition again challenged the effectiveness of counsel, the legality of imposing the death penalty where petitioner did not fire the fatal shot, and the propriety of the prosecutor's conduct.

2. On January 14, 1991, in a reported opinion of more than 17 pages, the federal district court denied petitioner relief. The court, while noting that it was not its role to second guess the state courts' decisions, decided on the merits that petitioner was not denied effective assistance of counsel, that the death penalty could be properly imposed even if petitioner did not fire the fatal shot, and that the jury was properly instructed.

3. On June 25, 1992, the Seventh Circuit Court of Appeals, affirmed the denial of the habeas petition on the same bases as the district court.

4. On September 29, 1992, the Seventh Circuit Court of Appeals denied the petitioner's request for rehearing.

5. On June 7, 1993, United States Supreme Court denied petitioner's Petition for Writ of Certiorari.

6. On August 9, 1993, the United States Supreme Court denied petitioner's request for rehearing.

RULE 60(b) MOTION/SECOND PETITION FOR HABEAS CORPUS

1. On August 10, 1992, petitioner filed a motion to re-open his first habeas corpus proceeding, asking the district court to hear new evidence which allegedly attacked the credibility of a witness who had testified against him, and who was given favorable treatment by the prosecutor in an unrelated criminal case in exchange for his testimony; and which would have allegedly substantiated some mitigating circumstances about petitioner and his childhood that might have resulted in the jury recommending against the death penalty.
2. On November 30, 1992, the district court, after hearing argument on the matter, denied petitioner further relief, noting in one order that the mitigation evidence sought to be introduced 10 years after the trial was known to petitioner all along, and that even if admitted, "it wouldn't help him." In a second order entered the same day, the court stated that "this petitioner has not now, and is not here, asserting actual innocence as opposed to legal innocence."
3. On October 22, 1993, the Seventh Circuit Court of Appeals affirmed the district court's denial of both the rule 60(b) motion and the second request for habeas relief, holding that petitioner had presented no grounds for relief.
4. On June 27, 1994, the United States Supreme Court denied petitioner's Petition for Writ of Certiorari.
5. On August 27, 1994, the United States Supreme Court denied petitioner's request for rehearing.

THIRD POST-CONVICTION PETITION

1. On November 28, 1994, petitioner sought leave of the Indiana Supreme Court to file a third request for post-conviction relief. Petitioner's claims included a challenge to the effectiveness of trial and appellate counsel, a challenge to the certain jury instructions, a challenge to the firmness of all appellate proceedings due to evidentiary or factual inaccuracies, and a challenge to the fairness of the death penalty because petitioner did not fire the fatal shot and because mitigating evidence that was not introduced at trial would have resulted in different sentence.

2. On December 2, 1994, the Indiana Supreme Court denied petitioner's request to file a third post-conviction petition holding that all issues sought to be raised either had been or could have been previously litigated. The court noted that it paid particular attention to the argument challenging the proportionality of the death penalty as applied to petitioner because he did not fire the fatal shot, and concluded that a previous opinion had already determined that the evidence at trial supported the sentence. Finally, the court acknowledged the challenged factual misstatements contained in its earlier decisions, and held that correction of such inaccuracies "would not change the legal determinations made in these opinions."

3. On December 5, 1994, the Indiana Supreme Court denied petitioner's request for rehearing.