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Title/Style of Cause: James Rexford Powell v. United States  
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Decided by: President: Clare K. Roberts;  
First Vice-President: Susana Villaran;  
Second Vice-President: Paulo Sergio Pinheiro;  
Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, Freddy Gutierrez, Florentin Melendez  
Dated: 22 February 2005  
Citation: Powell v. United States, Petition 3885/02, Inter-Am. C.H.R., Report No. 12/05, OEA/Ser.L/V/II.124, doc. 5 (2005)  
Represented by: APPLICANTS: Nicholas J. Trenticosta and Paula M. Montonye  
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## I. SUMMARY

1. On September 11, 2002, the Inter-American Commission on Human Rights (hereinafter “Commission” or “IACHR”) received a petition filed by Nicholas J. Trenticosta and Paula M. Montonye, Attorneys-at-law with the Center for Equal Justice (hereinafter “the Petitioners”) against the Government of the United States of America (hereinafter the “United States” or “State”). The petition was presented on behalf of James Rexford Powell (hereinafter “Mr. Powell” or “Powell”) a citizen of the United States of America who at the time of the petition was incarcerated on death row in the State of Texas and was scheduled to be executed on October 1, 2002. The petition indicated that Mr. Powell was convicted of capital murder on June 3, 1991 and sentenced to death on June 4, 1991. After the petition was lodged with the Commission, Mr. Powell was executed on October 1, 2002 despite precautionary measures adopted by the Commission on September 19, 2002 requesting that the State take the necessary measures to preserve his life and physical integrity pending the Commission’s investigation of the allegations of his petition.

2. The Petitioners allege that the State is responsible for violating Mr. Powell’s right to life, his right to a fair trial, his right to due process of law, and his right to petition under Articles I, XVIII, XXIV and XXVI of the American Declaration of the Rights and Duties of Man (hereinafter “American Declaration”), and corresponding customary international law, in connection with the criminal proceedings against him. In particular, the Petitioners claim that Mr. Powell was the victim of inadequate legal representation, that during the punishment phase of his proceedings the prosecution introduced evidence from a charge for which Mr. Powell was acquitted by a Louisiana jury, and that the State improperly executed Mr. Powell in contravention of precautionary measures granted in his favor by the Commission. The Petitioners

also claim that Mr. Powell has exhausted domestic remedies, or has been denied access to the remedies under domestic law or has been prevented from exhausting them, in respect of the allegations raised before the Commission, and therefore that his petition is admissible.

3. The State argues that it has complied with its international human rights obligations and that the Petitioners' complaint fails to characterize any violations of the American Declaration. The State therefore submits that the Commission should find the petition inadmissible on the basis that it fails to state facts that tend to establish violations of rights under the American Declaration of the Rights and Duties of Man. To the extent that the Petitioners take issue with conclusions reached by the Texas courts concerning the treatment of the evidence of the Louisiana crime, the State argues that if the Commission entertains these claims, it would be acting outside of its jurisdiction as a domestic court of fourth instance.

4. As set forth in this Report, having examined the contentions of the parties on the question of admissibility, and without prejudging the merits of the matter, the Commission decided to declare the petition admissible with respect to Articles I, XVIII, XXIV and XXVI of the American Declaration, to continue with the analysis of the merits of the case, to transmit the report to the parties, and to publish the report and include it in its Annual Report to the General Assembly of the Organization of American States.

## II. PROCESSING BEFORE THE COMMISSION

5. The Commission acknowledged receipt of the Petitioners' petition on September 11, 2002. By note of September 19, 2002, the Commission initiated the processing of the matter by transmitting the pertinent parts of the denunciation to the State, with a response requested within 60 days. In the same communication, the Commission granted precautionary measures in favor of Mr. Powell, who was then scheduled to be executed on October 1, 2002, by requesting that the state take the necessary measures to preserve his life and physical integrity pending the Commission's investigation of the allegations in his petition.

6. By note dated September 20, 2002, the State acknowledging receipt of the Commission's request for precautionary measures and indicated that the request had been submitted to the Attorney General and the Governor of the State of Texas, and by communication dated September 30, 2002, the Commission transmitted the State's response to the Petitioners.

7. On October 2 and 7, 2002, the Petitioners submitted notes to the Commission indicating that Mr. Powell had been executed and up-dating the Commission on domestic proceedings pursued by Mr. Powell prior to his execution.

8. By note dated November 15, 2002 and received by the Commission on November 16, 2002, the State provided its substantive observations concerning the Petitioners' petition, which consisted of two briefs filed by the Attorney General of Texas before the U.S. Supreme Court. In a communication dated November 20, 2002, the Commission transmitted the pertinent parts of the State's response to the Petitioners with a response requested within 30 days.

9. On December 13, 2002 the Petitioners submitted a reply to the State's November 15, 2002 observations, and by note dated December 30, 2002 the Commission transmitted the pertinent parts of the Petitioners' reply to the State with a response requested within 30 days.

10. By letter dated January 9, 2003, the Petitioners requested a hearing before the Commission on Mr. Powell's petition during the Commission's next regular session. In a note dated January 27, 2003, the Commission informed the Petitioners that due to the large number of requests received, the Commission was not able to accommodate their request for a hearing during the Commission's 117th regular period of sessions. In a subsequent letter dated August 20, 2003, the Petitioners renewed their request for a hearing before the Commission, and by notes dated September 17, 2003, the Commission informed the parties that it had decided to convene a hearing on the admissibility and merits of the matter on October 20, 2003 during the Commission's 118th regular period of sessions.

11. In a note dated October 17, 2003, the State submitted additional observations on the petition to the Commission, which the Commission provide to the Petitioners during the October 20, 2003 hearing before the Commission and also subsequently transmitted to the Petitioners on November 3, 2003 with a response requested within two months. Further, on October 20, 2003, the hearing on the petition before the Commission proceeded scheduled with the representatives of the Petitioners and the State in attendance. During the hearing, the parties presented written and oral submissions to the Commission and responded to questions.

12. By letter dated December 29, 2003, the Petitioners requested an extension of time to February 3, 2004 within which to reply to the State's additional observations on the petition, which the Commission granted by note dated January 5, 2004. Subsequently, in a communication dated February 3, 2004 and received by the Commission on February 4, 2004, the Petitioners submitted their reply to the State's observations, the pertinent parts of which the Commission transmitted to the State on February 6, 2004 with a response requested within one month.

13. As of the date of this Report, the Commission had not received any further observations on the petition from the parties.

### III. POSITIONS OF THE PARTIES

#### A. The Petitioners

14. The Petitioners assert that Mr. Powell was indicted in the State of Texas on charges of rape, abduction and capital murder of Falyssa van Winkle. He was convicted on June 3, 1991 and subsequently sentenced to death on June 4, 1991. The Petitioners contend that the violations of Mr. Powell's human rights began during the punishment phase of his capital trial and continued through to his execution.

15. With regard to the admissibility of the petition, the Petitioners assert that Mr. Powell exhausted all available remedies before the courts in the United States and that no further domestic legal remedies are available to address the issues raised in his petition.

16. More particularly, the petition indicates that Mr. Powell pursued a direct appeal from his conviction and sentence to the Texas Court of Criminal Appeals, which dismissed his appeal in a four-to-three decision. The Supreme Court of the United States denied certiorari regarding that decision on November 27, 1995. The petition also indicates that Mr. Powell filed a petition for habeas corpus relief before the state courts but the trial court denied relief on September 15, 1997. On appeal the Texas Court of Criminal Appeals denied relief in an unpublished order on April 1, 1998. Mr. Powell then pursued habeas corpus relief before the Federal District Court for the Eastern District of Texas on May 12, 1998. The District Court granted a “certificate of appealability” but denied the request for habeas corpus relief on the grounds that his claims were unexhausted and procedurally barred. On appeal, the U.S. Court of Appeals for the Fifth Circuit affirmed the District Court’s decision on April 8, 2002. On October 1, 2002 the U.S. Supreme Court denied Mr. Powell’s final petition for a writ of certiorari.

17. In the context of this procedural history, the Petitioners argue that Mr. Powell has satisfied the admissibility requirements before the Commission, as he adjudicated his conviction and sentence as far as possible with the U.S. judicial system. With respect to one of the issues raised before the Commission, namely the introduction during the punishment phase of his trial of testimony concerning a crime for which Mr. Powell was acquitted in the state of Louisiana, the Petitioners indicate that during his trial Mr. Powell’s attorney objected to this testimony on the grounds that, as a Louisiana jury found Mr. Powell ‘not guilty’ of that offence, double jeopardy therefore barred the testimony’s admission at the capital murder trial. According to the Petitioners, the trial court overruled that objection, and the Texas Court of Criminal Appeals rejected Powell’s argument of double jeopardy.

18. The Petitioners further indicate that Mr. Powell was precluded from raising the issue of the Louisiana acquittal during his post-conviction habeas corpus applications before the state and federal courts due to the failure of his legal representatives to raise the issue at the early stages of these proceedings, which rendered him procedurally barred from raising them later. Specifically, the Petitioners argue that during Mr. Powell’s habeas corpus petition before the courts in Texas, his state-appointed counsel abrogated his responsibility to the victim by failing to raise this and other important issues. The victim filed a pro se pleading to the court, but the Texas court refused to review the issue raised by Mr. Powell in his own pleadings for the reason that since he had appointed counsel he was not entitled to ‘hybrid’ representation. The Petitioners argue that as a consequence, the government’s conduct was insulated from review by the state and federal courts due to the rule of ‘procedural default’.

19. The Petitioners explain in this regard that in federal habeas proceedings, if an issue has been procedurally defaulted in state collateral proceedings and the petitioner cannot establish cause and prejudice relative to the default, the issue is precluded from federal review. According to the Petitioners, this procedural default rule was applied in Mr. Powell’s federal habeas proceedings to prevent him from raising a challenge to the evidence of his Louisiana acquittal and that this resulted from inadequate representation on the part of his legal representatives.

20. In connection with their allegations concerning Mr. Powell’s inadequate legal representation, the Petitioners indicate that the State of Texas provides for the appointment of

state habeas counsel for capital-sentenced prisoners and that the Code of Criminal Procedure indicates that the court shall appoint “competent counsel” but does not provide a definition of what constitutes “competent counsel”. Moreover, the petitioners argue that there is extensive evidence indicating serious inadequacies in the appointment and performance of habeas counsel for death sentenced prisoners in the state of Texas, and that these inadequacies had the effect of depriving Mr. Powell of due process in the course of his post-conviction proceedings.

21. Based upon the foregoing, the Petitioners argue that the State’s domestic legislation has not afforded due process of law for the protection of the rights that Mr. Powell alleges before the Commission have been violated, or that Mr. Powell has been denied access to remedies under domestic law or has been prevented from exhausting them, and therefore that the claims in their petition should not be barred by the exhaustion of domestic remedies requirement for admissibility.

22. The Petitioners also indicate that their petition does not essentially duplicate a petition pending or already examined and settled by the Commission or by another international governmental organization of which the State concerned is a member.

23. Finally, the Petitioners assert that their petition tends to establish violations of the American Declaration and is not manifestly groundless or out of order. In this regard, the Petitioners argue on the merits of the petition that the State is responsible for violations of Mr. Powell’s rights under Articles I, XVIII, XXIV and XXVI of the American Declaration of the Rights and Duties of Man, based upon the reliance by the State of Texas on conduct for which Mr. Powell had been acquitted to establish the aggravating circumstance of “future dangerousness,” the inadequate legal representation provided to Mr. Powell, the failure of the courts to address Mr. Powell’s arguments based upon a rule of procedural default, and Mr. Powell’s execution on October 1, 2002 notwithstanding precautionary measures granted in his favor by this Commission.

24. More particularly, according to the Petitioners, during the punishment phase of Mr. Powell’s trial, the court allowed testimony from an elderly woman named Lucille Jackson who claimed that Powell attempted to murder her in 1984, where Mr. Powell had already been tried and acquitted of that crime in a previous jury trial in Louisiana. In the Louisiana trial, the identity of the perpetrator was the central issue and numerous inconsistencies and other weaknesses in Ms. Jackson’s identification evidence caused the Louisiana jury to doubt that Mr. Powell perpetrated the crime, and as a consequence he was acquitted. The Petitioners also state that the weaknesses in the identification evidence were never put to the Texas jury. Rather, only the charges and the evidence of the victim in the Louisiana trial were admitted against Mr. Powell in order to substantiate his future dangerousness to society and thereby justify a death sentence.

25. The Petitioners therefore argue that by allowing Ms. Jackson’s testimony during Mr. Powell’s capital sentencing hearing in Texas, the State violated Mr. Powell’s right to life and his right to due process under Articles I, XVIII and XXVI of the American Declaration, because the use of the acquitted charges for the imposition of the death penalty to the victim constituted an impermissible extension of the use of the death penalty, contravened the presumption of innocence and the right not to be subjected to subsequent prosecution upon acquittal, and

deprived Mr. Powell of an impartial hearing by permitting the use of the acquitted conduct by the State of Texas without any attendant standard of proof requirement in allowing the jury to find future dangerousness beyond a reasonable doubt.

26. Further, the Petitioners argue that the State is responsible for violating Mr. Powell's right to petition for a remedy under Article XXIV of the American Declaration based upon the federal district court's implementation of the rule of procedural default, which precluded Mr. Powell from raising his claims before the federal courts.

27. The Petitioners also argue that Mr. Powell was denied competent legal representation by the State, in violation of his right to a fair trial and to due process under Article XVIII and XXVI of the American Declaration. In particular, the Petitioners maintain that state habeas corpus counsel abrogated his responsibility to Mr. Powell by failing to raise the issue of the acquitted charge and other important issues and that Mr. Powell's attempt to protect his own life was denied when his pro se application was barred as an attempt at "hybrid representation".

28. Finally the Petitioners argue that the State violated Mr. Powell's right to petition and, ultimately, his right to life, in the international arena by failing to respond to the Commission's request for precautionary measures and ultimately executing Mr. Powell in contravention of those measures.

#### B. The State

29. In its response to the Petitioners petition, the State argues that Mr. Powell was properly convicted and sentenced to death in 1991 and that his criminal proceedings were conducted in complete compliance with applicable law and consistent with international law. Accordingly, the State maintains that the Commission should find the petition inadmissible on the basis that it fails to state facts that tend to establish violations of rights under the American Declaration of the Rights and Duties of Man. To the extent that the Petitioners take issue with conclusions reached by the Texas courts concerning the treatment of the evidence of the Louisiana crime, the State argues that if the Commission entertains these claims, it would be acting outside of its jurisdiction as a domestic court of fourth instance.

30. In asserting that the Petitioners' claims fail to disclose possible violations of the American Declaration, the State maintains that the death penalty is not prohibited in the inter-American system and that the facts of Mr. Powell's case merited a sentence of death. The State also argues that the domestic laws of the United States accord strict procedural safeguards in the application of the death penalty so as to ensure compliance with its international obligations, and that those procedural safeguards were applied in the present case, which included review by state and federal courts including the U.S. Supreme Court.

31. Specifically regarding the Petitioners' allegations concerning the use, during Mr. Powell's sentencing hearing, of the testimony of Lucille Jackson, the State argues that the use of Ms. Jackson's testimony in this manner is not equivalent to the subsequent prosecution for an extraneous offense prohibited by the double jeopardy rule, because the testimony was not used to determine whether or not Mr. Powell was guilty of the Louisiana crime. Rather, it was only used

as one of several elements considered by the jury in determining whether Mr. Powell presented a risk of “future dangerousness,” which in turn constituted an aggravating factor in the individualized sentencing process to determine the appropriate punishment for Mr. Powell’s crime. The State also contends that even in Ms. Jackson’s testimony was excluded during Mr. Powell’s sentencing, there was sufficient evidence of future dangerousness, including in particular the grave circumstances of Mr. Powell’s crime, to have resulted in a death sentence, and indeed that the domestic courts reached this conclusion when Mr. Powell raised the issue in his appeals. Further, the State distinguishes Mr. Powell’s case from the considered by the Commission in the case of Juan Raul Garza[FN1] on the basis, inter alia, that the Louisiana crime was in fact adjudicated, not unadjudicated, and because, unlike the Garza case, the domestic courts explicitly considered and rejected Mr. Powell’s claims regarding the use of Ms. Jackson’s testimony.

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[FN1] Case 12.243, Report 52/01, Juan Raul Garza v. United States, Annual Report of the IACHR 2000.

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32. State also contests the Petitioners’ argument that the “procedural default” rule in the U.S. system contravenes the right to petition under the American Declaration, because the procedural protections and the opportunities for review within the US criminal justice system are among the strongest and most expansive in the world and, if not respected, can be remedied through appeals or other judicial remedies. The State also argues that an individual can overcome the procedural default rule by showing either cause for failing to raise the claim previously, or that failure to consider the claim will result in a miscarriage of justice.

33. Finally, the State asserts that there has been no violation of the customary international legal norm prohibiting the arbitrary deprivation of life in Mr. Powell’s case, because Mr. Powell was afforded opportunities to challenge his conviction and sentence and his crime was sufficiently heinous to warrant the application of the death penalty, even absent the introduction of Ms. Jackson’s testimony during his sentencing hearing.

34. The State therefore contends that the Commission should find the Petitioners’ petition to be inadmissible for failing to contain facts that tend to establish a violation of the American Declaration and as manifestly groundless and out of order.

#### IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*.

35. Upon considering the record before it, the Commission considers that it has the competence *ratione personae* to entertain the claims in the present petition. In accordance with the terms of Article 23 of the Commission’s Rules of Procedure, the Petitioners are authorized to file complaints alleging violations of rights protected under the American Declaration of the Rights and Duties of Man. Mr. Powell is a person whose rights are protected under the American

Declaration, the provisions of which the State is bound to respect in conformity with the OAS Charter, Article 20 of the Commissions Statute and Article 49 of the Commissions Rules of Procedure. The United States of America has been subject to the jurisdiction of the Commission since the Commission's creation, as a Member State of the OAS that deposited its instrument of ratification of the OAS Charter on June 19, 1951.[FN2]

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[FN2] Article 20 of the Statute of the IACHR provides that, in respect of those OAS member states that are not parties to the American Convention on Human Rights, the Commission may examine communications submitted to it and any other available information, to address the government of such states for information deemed pertinent by the Commission, and to make recommendations to such states, when it finds this appropriate in order to bring about more effective observance of fundamental human rights. See also Charter of the Organization of American States, Arts. 3, 16, 51, 112, 150; Regulations of the Inter-American Commission on Human Rights, Arts. 26, 51-54; I/A. Court H.R., Advisory Opinion OC-10/8 "Interpretation of the Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights," July 14, 1989, Ser. A N° 10 (1989), paras. 35-35; I/A Comm. H. R., James Terry Roach and Jay Pinkerton v. United States, Case 9647, Res. 3/87, 22 September 1987, Annual Report 1986-87 paras. 46-49.

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36. Given that the petition alleges violations of rights protected under the American Declaration of the Rights and Duties of Man that have taken place in the territory of a State Party, the Commission concludes that it has the competence *ratione loci* to take cognizance of it.

37. Further, the Commission has the competence *ratione temporis* to examine this matter. The petition is based on facts alleged to have occurred beginning in 1991, at which time the obligations undertaken by the State under the American Declaration were in effect.

38. Finally, inasmuch as the Petitioners have filed complaints alleging violations of Articles I, XVIII, XXIV and XXVI of the American Declaration the Commission is competent *ratione materiae* to examine the substance of the complaints.

#### B. Duplication of proceedings and *res judicata*

39. The Petitioners have indicated that their petition does not essentially duplicate a petition pending or already examined and settled by the Commission or by another international governmental organization of which the State concerned is a member. The State has not contested the issue of duplication of procedures. The Commission therefore finds no bar to the admissibility of the Petitioner's claims under Article 33 of the Commissions Rules of Procedure.

#### C. Exhaustion of domestic remedies

40. Article 31(1) of the Commission's Rules of Procedure specifies that in order to decide on the admissibility of a matter, the Commission must verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with generally recognized

principles of international law. Article 31(2) of the Commission's Rules of Procedure, however, specifies that this requirement does not apply if the domestic legislation of the state concerned does not afford due process of law for protection of the right allegedly violated, if the party alleging the violation has been denied access to domestic remedies or prevented from exhausting them, or if there has been an unwarranted delay in reaching a final judgment under the domestic remedies.

41. Additionally, the Inter American Court of Human Rights has observed that domestic remedies, in order to accord with generally recognized principles of international law, must be both adequate, in the sense that they must be suitable to address an infringement of a legal right and effective, in that they must be capable of producing the result for which they are designed.[FN3]

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[FN3] I/A Court H.R., Velásquez Rodríguez Case, Merits, Judgment of July 29, 1988, Ser. C. No 4, (1988), paras. 64-66.

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42. Further, when the petitioner alleges that he or she is unable to prove exhaustion, Article 31(3) of the Commission's Rules of Procedure provides that the burden then shifts to the State to demonstrate that the remedies under domestic law have not previously been exhausted, unless it is clearly evident from the record.[FN4]

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[FN4] See also I/A Court H.R., Velasquez Rodriguez Case, Merits, Judgment of July 29, 1988, Ser. C N° 4, para. 59.

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43. The jurisprudence of the inter American system also makes clear that the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, because the rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had an opportunity to remedy them by internal means. According to the Inter-American Court of Human Rights, the requirement is thus considered a means of defense and, as such, waivable, even tacitly. Further, a waiver, once effected, is irrevocable.[FN5] In the face of such a waiver, the Commission is not obliged to consider any potential bars to the admissibility of a petitioner's claims that might properly be raised by a state relating to the exhaustion of domestic remedies.

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[FN5] I/A Court H.R., Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, Series C No 25, para. 40.

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44. In the present case, the Petitioners have argued that Mr. Powell has pursued all domestic remedies available to him in the United States, including direct appeal proceedings before the state courts, and habeas corpus relief before the state and federal courts. In addition, the extent

that the claims raised in the petition were not addressed through habeas corpus proceedings before the domestic courts, the Petitioners argue that the Mr. Powell has been precluded from raising those issues by reason of the inadequacy of his state-provided legal representation as well as by a rule of “procedural default” applied by the courts in the United States.

45. The State has not opposed Mr. Powell’s petition on the ground of non-exhaustion of domestic remedies. To the contrary, the State has argued that Mr. Powell has received all proper due process in the criminal proceedings against him, which included review by state and federal courts, including the U.S. Supreme Court.

46. In this regard, the parties’ observations confirm that Mr. Powell pursued domestic remedies up to and including the U.S. Supreme Court on two occasions, with the Supreme Court having denied his first petition for a writ of certiorari November 27, 1995 and his second petition on October 1, 2002. Moreover, in the course of the appeal proceedings that led to the U.S. Supreme Court’s November 27, 1995 decision, Mr. Powell’s attorneys claimed error through the abuse of discretion by the trial court on the illegal admission and use of the Louisiana acquittal. Rather than reverse Mr. Powell’s death sentence based upon the violation of Mr. Powell’s right against double jeopardy, the Court of Criminal Appeals issued a 4 to 3 decision in which it found that there was no error.[FN6] Further, in denying Mr. Powell’s petition for certiorari on this decision, the U.S. Supreme Court declined to review this or any other issues raised on Mr. Powell’s behalf.[FN7] In these circumstances the Commission finds that Mr. Powell exhausted the domestic remedies that were available to him, and consequently that his petition is admissible under Article 31 of the Commission’s Rules of Procedure.

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[FN6] Powell v. Texas, 898 S.W. 2d 821 (Tex. Crim. App., 1994).

[FN7] Powell v. Texas, 116 S.Ct. 524 (1995).

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#### D. Time period for submission of the petition

47. Pursuant to Article 32(1) of the Commission’s Rules of Procedure, the Commission must refrain from taking up petitions that are lodged after the six month period following the date on which the continuing party has been notified of the final ruling, in cases where the complaining party has been notified of the final ruling, in cases where the remedies under domestic law have been exhausted.

48. In the instant case, the petition was lodged with the Commission on September 11, 2002 and the U.S. Supreme Court rendered its decision on Mr. Powell’s final petition for a writ of certiorari on October 2, 2002. Consequently, the Commission concludes that the Petitioner’s petition was not lodged beyond the time period provide for under Article 32 of the Commission’s Rules of Procedure.

#### E. Characterization of the facts alleged

49. Article 27 of the Commission's Rules of Procedure mandates that petitions state facts "regarding alleged violations enshrined in the American Convention on Human Rights and other applicable instruments." In addition Article 34(a) of the Commission's Rules of Procedures requires the Commission to declare a petition inadmissible when it does not state facts that tend to establish a violation of the rights referred to in Article 27 of the Rules.

50. The Petitioners allege that the State is responsible for violations of Articles I, XVIII, XXIV and XXVI of the American Declaration of the Rights and Duties of Man in connection with the criminal proceedings against Mr. Powell. The Commission has summarized in Part III of this report the substantive allegations of the Petitioners. The State has argued that there is no credible evidence to substantiate the claims raised by the Petitioners or that their claims are otherwise without merit. In particular the State maintains that Mr. Powell's criminal proceedings were conducted in complete compliance with applicable law and consistent with international law and that the domestic courts rejected Mr. Powell's arguments regarding the use of evidence of an acquitted crime the sentencing phase of his trial, as well as his assertions that he received ineffective assistance of counsel due to his attorney's failure to object to the reliability and sufficiency of the evidence submitted to the jury in determining his guilt or future dangerousness.

51. After carefully reviewing the information and arguments provided by the Petitioners and the State in light of the heightened scrutiny test applied by the Commission in capital punishment cases,[FN8] and without prejudicing the merits of the matter, the Commission considers that the petition states facts that tend to establish violations of Articles I, XVIII, XXIV and XXVI of the American Declaration of the Rights and Duties of Man. While the Commission will not undertake a fourth instance review of domestic court acting within their competence and with due judicial guarantees,[FN9] the Commission is empowered to undertake its own evaluation of the evidence presented in the proceeding before it, in light of the principles and jurisprudence of the inter-American human rights system, in order to determine whether a violation of a state's international commitments may be involved.[FN10] In light of the allegations and information submitted by the Petitioners in this matter and existing Commission jurisprudence relating to the issues raised by the Petitioners, the Commission considers that the petition raises colorable claims of violations of the American Declaration that should be evaluated on the merits of this case. In the Commission's view, these claims include the implications within the framework of the States obligations to the inter-American human rights system, of the States failure to comply with the Commission's request for precautionary measures in this matter and Mr. Powell's consequent execution.

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[FN8] The Commission will review and decide cases with a heightened level of scrutiny to ensure that any deprivation of life that an OAS member state proposes to effect through the death penalty complies with the requirements of the applicable inter-American human rights instruments. See Report N° 57/96 (Andrews v. United States), Annual Report of the IACHR 1997, paras. 170-171; Report N° 38/00 (Baptiste v. Grenada), Annual Report of the IACHR 1999, paras. 64-66; Report N° 41/00 (McKenzie et. Al v. Jamaica), Annual Report of the IACHR 1999, paras. 169-171.

[FN9] See case 11.673, Report N° 39/96 Santiago Marzióni v. Argentina, Annual Report of the IACHR 1996, paras. 48-52.

[FN10] See similarly Petition 790/01, Report 74/03, Chief Grand Michael Mitchell v. Canada (Admissibility), October 22, 2003, para. 37.

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52. Accordingly, the Commission concludes that the Petitioner's petition should not be declared inadmissible under Article 34 of the Commission's Rules of Procedure.

## V. CONCLUSIONS

53. The Commission concludes that it is competent to take cognizance of the instant case and that the petition is admissible, pursuant to Articles 31 to 34 of the Commission's Rules of Procedure.

54. Based on the factual and legal arguments set forth above, and without prejudging the merits of the case,

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, DECIDES:

1. To declare the present case admissible with respect to the alleged violation of the rights recognized in Articles I, XVIII, XXIV and XXVI of the American Declaration on the Rights and Duties of Man.
2. To notify the parties of this decision.
3. To continue with the analysis of the merits of the case.
4. To make this report public, and publish it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 25th day of the month of February, 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Evelio Fernández Arévalos, Jose Zalaquett, Freddy Gutiérrez and Florentín Meléndez, Commissioners.