

M E M O R A N D U M

TO: Hon. Lawrence Douglas Wilder

FROM: Bruce R. Genderson, Esq.
William K. Layman, Esq.
David S. Blatt, Esq.

DATE: July 11, 1990

RE: Commutation of Richard T. Boggs' Death Sentence to Life Imprisonment

Richard Thomas Boggs stands before you today asking that his death sentence be commuted to a sentence of life imprisonment. In this memorandum, we set forth the reasons for such clemency.^{1/}

We recognize that executive clemency, a power vested in you by the Virginia Constitution, is a matter of grace rather than right, mercy rather than legal entitlement. Therefore, this memorandum will not present the numerous legal issues raised by Ricky Boggs' case, issues already decided by the courts. Rather, we believe that Ricky is entitled to clemency for deeply important personal reasons, reasons ultimately more compelling than legal argument, and reasons which go to the heart of the man Ricky Boggs is today -- the man now scheduled to die in Virginia's electric chair on July 19, 1990.

This memorandum presents substantial and articulable reasons why Ricky's punishment should be life imprisonment rather than death by electrocution. Many inmates come forward seeking

^{1/} In a separately bound Appendix, we submit the documents, Exhibits 1 through 43, referred to in this memorandum.

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mercy, but Ricky's request is supported not only by the words and wishes of dozens of family and friends, represented by the many letters in the Appendix to this memorandum, but also by a story of dedication and self-improvement that makes the Ricky Boggs of 1990 a man who continues to contribute to his community and family. This memorandum attempts to tell this story, providing a factual and rational basis for your discretionary decision.

The issue, of course, is not whether Ricky will be punished for the murder he committed, but how he will be punished. We are concerned that the current environment -- in which the death penalty has become an annual election issue and a badge of political alignment -- may obscure the human facts of Ricky's story and distort the very real reasons for the commutation of his death sentence. The jury that heard the case against Ricky in 1984 believed that a sentence of death was appropriate and, with one significant exception, the courts have declined to change Ricky's fate. Those people, however, never considered the very different, personal issues set forth in this memorandum. Ricky's electrocution has not been finally ordained -- that is your decision. Thus, we think it critically important to state in detail and in writing the particular reasons why Ricky Boggs' case is an appropriate one for clemency.

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I. RICKY BOGGS -- 1990

We begin with what Ricky Boggs is like today, for if his death warrant is signed, the person executed will not be the young, confused Ricky Boggs who was involved with drugs, or even the Ricky Boggs who first entered the Mecklenburg Correctional Center in 1984. It will be the Ricky Boggs who lives today.

A. Overcoming Drug Addiction

The central fact of Ricky's life today is his successful battle against drug addiction and alcoholism. As Ricky's disciplinary records from Mecklenburg (Ex. 1) demonstrate, both drugs and alcohol are freely available on Virginia's death row. Ricky admits -- and his prison records show -- that he was continuing to satisfy his addictions in prison during 1984, 1985, and 1986. However, for the past three and one half years, Ricky has found the resolve and inner strength to stop destroying himself.

On Christmas Day 1986, Ricky Boggs ended his self-abuse by drugs and alcohol. He did so in a death row environment where addiction and abuse is common, and where many men would excuse themselves such weakness because they have so little hope. Ricky, however, decided to take the first crucial step in improving himself and keeping his hope alive. In his own words:

The men in my pod were planning to have a party and we had brewed a batch of homemade wine. I was not only drinking this

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concoction but eating a variety of foods as well, mostly crackers, sausage, and cheese. I became violently ill from this "party" I had drunk about three or four quarts of wine. I spent the next 24 hours feeling very sick and throwing up everything I had eaten. I almost died that first night from some type of poisoning. . . . At this point I finally told myself that I had had enough alcohol in my life. Since that day I have not had an alcoholic drink of any kind

I did not see a doctor nor complain about my troubles. I do not believe that anyone would have been able to help me. I had to deal with this problem myself and start dealing with the reality that my drinking was literally killing me.

Since I stopped drinking and taking medication, I have been able to face up to reality every day. I am trying my best to understand and cope with life on death row - - a life with very little to look forward to. I am dealing with myself, or at least trying, in the best way I can without trying to hide behind a bottle of booze or a shield of drugs.

I have had to face the fact that I do not have a very good education, something that I am ashamed to admit.

Boggs' "Autobiography," p. 5. (Ex. 2).

Proof of Ricky's struggle and triumph over his addictions is plain from his prison disciplinary records. Prior to December 1986, Ricky was found guilty of and punished for four disciplinary violations at Mecklenburg. On June 9, 1985, he failed to obey a direct order and was punished by 15 days restriction to his cell. On September 13, 1985, a sharpened weapon was found in his cell and he received ten days of cell

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restriction. On August 15, 1986, Ricky was cited for unauthorized use of the telephone and given five days of cell restriction.^{2/}

Finally, on October 10, 1986, Ricky attempted to commit suicide by "hoarding" drugs that had been prescribed to him by the Mecklenburg psychiatrists (primarily "Elavil," an antidepressant with sedative effects) and taking them all at once. As a result, Ricky spent several days under medical and psychological supervision at Community Memorial Hospital in South Hill, Virginia, and the "home brew," which Ricky had planned to take in conjunction with the pills, was discovered in a search of his cell. For this disciplinary violation, Ricky received a sentence of five days of cell restriction. (Ex. 1).

Since Ricky stopped his drug and alcohol abuse at the end of 1986, his Mecklenburg disciplinary record has been sparse and slight. His first violation did not occur for 18 months; on July 4, 1988 he received a verbal reprimand for delaying in proceeding from the shower room to his cell for lock-up. No other penalty was assessed. On February 8, 1989, Ricky damaged a food tray and was required only to pay for the tray. Finally, Ricky was found to have disobeyed proper prisoner "count

^{2/} It should also be noted, however, that Ricky disputed his guilt and produced an affidavit of another inmate who confessed to this violation. (Ex. 1).

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procedures" on December 19, 1989 and was given a suspended sentence of 20 days without television. (Ex. 1).

Thus, Ricky has not committed any significant disciplinary violation worthy of cell restriction or other actual punishment since his cessation of drug and alcohol use. Instead, since December 1986 he has focussed on his own improvement, education, and relationships to other people, discussed in Section I, B of this Memorandum. This transition is particularly important to considering the proper sentence for Ricky because drug and alcohol abuse were such a potent and destructive part of both the offense that brought him to the electric chair and the many years of decline that preceded the murder.

Ricky's life prior to 1987 reveals a tragic story of the destructive power of drug and alcohol addiction. Before telling that story, however, it is important to note that Ricky does not present his addiction as an "excuse" for or "denial" of his murder of Mrs. Treeby Shaw. Indeed, Ricky is notable on Death Row as an inmate who has never denied his guilt for his crime. Ricky confessed within hours of his arrest and, since that time, has not pointed the finger at others or attempted to dodge his responsibility. We do not now mean to point the finger at drugs and alcohol. We do mean, however, to highlight Ricky's courage in stopping his abuse by demonstrating that such past abuse was deeply ingrained and related to every scrape with

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authority in Ricky's life, including the horrible murder which brought him to Death Row.

Ricky was born to Billy Lee and Sybil Hodges Boggs on September 13, 1962 in Portsmouth, Virginia, the youngest of three children. Aside from three years in the U.S. Army, Ricky lived his entire life in Portsmouth, with his parents. He attended grades one through four at James Hurst Elementary School and transferred to Brighton Elementary for grades five and six. According to Ricky,

[a]t Brighton I was introduced to tobacco, marijuana, and alcohol. I rapidly became a regular user of these substances and, with time, a full-blown addict. . . .

While at Brighton I was disciplined countless times for the behavior I displayed as a result of my substance abuse. I regularly smoked tobacco in the rest rooms and hallways of the school. Occasionally I smoked marijuana in the same places.

Boggs' "Autobiography" at 1 (Ex. 2). Ricky was only ten years old when he entered Brighton.

Although Ricky has been determined to have a slightly above average I.Q.^{3/}, it took him three years to complete the seventh and eighth grades at Alfred J. Mapp Junior High School. During those years, Ricky continued and extended his drug abuse

^{3/} Psychological testing done when Ricky entered the Virginia Correctional system in 1984 indicates that his I.Q. is 118. (Ex. 3). Testing done by the Portsmouth Public School System rated Ricky at 100. (Ex. 4).

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and was apprehended smoking marijuana just outside of the school, but received only a "warning." He was suspended seven times for a total of 21 days.^{4/} Ultimately, Ricky enrolled at Cradock High School, where his drinking and drug problems became obvious.

According to the Presentence Report of Probation Officer Ronny A. Grate:

The subject [Ricky Boggs] attended Tidewater public school system completing the 9th grade. However, he did attempt the 10th grade. From 1975 to 1979, the subject was suspended from school 9 times: two times in 1975, five times in 1976 and two times in 1978. On 12/20/78, he received a ten (10) days suspension for possessing marijuana: repeated tardiness, and truancy. Alternative school was recommended. He was enrolled in the Alternative school from January 1979 to June 1979. The subject re-enrolled in Cradock High School in August 1979. On 12/7/79, the subject was referred to night school. He was in math class under the influence of alcohol (breath reeked of alcohol). The subject withdrew from Cradock High School on 12/11/79.

(Ex. 5)^{5/}. In addition to these incidents, Ricky was twice arrested in Portsmouth for petty larceny and possession of marijuana in 1977 (both charges were dismissed) and admits that he was selling drugs to other kids in order to obtain money to

^{4/} Ricky's school records (Ex. 4) show that he was suspended from Mapp Junior High School once in 1974, twice in 1975 and four times in 1976.

^{5/} This discipline is also reflected in Ricky's Cradock High records. (Ex. 4).

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support his own habit.^{8/} The majority of Ricky's grades at Cradock were failing grades both at the time he withdrew and throughout. (Ex. 4).

Ricky's enrollment in the U.S. Army at the start of 1980, shortly after leaving school, did not solve his drug dependency. Within weeks of his deployment at Fort Bragg as a cannon specialist, Ricky's drug-related pattern appeared. He was disciplined for stealing cigarettes in June 1980 and tested positive for Butabarbital in July 1980. In September 1980, he was caught drunk, painting offensive graffiti on a sidewalk and vehicle and he was cited for missing formation in January 1981. Ricky was finally referred to an Army drug program, "Operation Awareness," when he was caught in the possession of marijuana on the base in May 1981. Ricky attended classes as part of this rehabilitation program but continued to abuse drugs, testing positive for marijuana in December 1981 and February 1982. See Military Records (Ex. 6).

While still in the Army, Ricky was arrested in Fayetteville, Virginia for possession of marijuana. As a result, he was dismissed from an Army "Basic Leadership Course," and entered a hospital at Fort Bragg from February 25 to March 31, 1982 for drug abuse treatment. (Ex. 6). Despite this treatment, Ricky had to be hospitalized again at Womack Army Hospital in

^{8/} Boggs' "Autobiography" at 2 (Ex. 2).

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November after he was caught smoking marijuana and was found to be high on PCP as well. This incident resulted in the Army declaring Ricky a rehabilitative failure:

Service member's potential for fully effective service is substantially reduced by drug and alcohol abuse and all required rehabilitation efforts have been made.

(Ex. 6). Thus, Ricky received an honorable discharge in early 1983 and returned to civilian life.

Once out of the Army, Ricky returned to his parents' home to live in Portsmouth. He held jobs at J & P Masonry, Chesapeake, as a bricklayer, and General Foam Corporation in Norfolk making swimming pool liners, and completed 11 credit hours at Tidewater Community College from March 1983 to March 1984. Although Ricky was successful in staying away from alcohol much of the time, his use of marijuana and other illegal drugs continued. His grades at Tidewater were quite good but his average (1.45) suffered because of frequent absences. (Ex. 5).

Thus, on the day that Ricky murdered Treeby Shaw -- committing the first violent crime of his life -- it is not surprising that he was high on marijuana and seeking money to buy more drugs, specifically cocaine. His presentence report on the capital murder charge explains: "He [Boggs] stated that he was under the influence of drugs the day of this offense. He stated that he began smoking three marijuana cigarettes at 3:00 P.M. and he smoked one after the other." Additionally, "he had used a

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half gram of cocaine a week before this offense occurred." Furthermore, it is not surprising that he was high on both drugs and alcohol (Ricky was tested to have a blood alcohol level of 0.22) at the time he was arrested on a hit-and-run charge and ultimately charged with murder. On the night of his arrest, according to his presentence report, Ricky had consumed one third of a fifth of bourbon, a six-pack of beer, three marijuana cigarettes, and two "hits" of speed. (Ex. 5).

Generally, the presentence reports for Ricky's offenses and nearly all other documents related to his academic career, military career, sentencing, incarceration and treatment have noted the degree to which drugs and alcohol have dominated and distorted his life and behavior. It is acknowledged that Ricky "began smoking marijuana at age 13, and began drinking beer at age 10" (Ex. 5), and that his experience with drugs ranged over "amphetamines; depressants; acid; marijuana" (Ex. 3), as well as alcohol. Even the psychiatrist who examined Ricky pursuant to court order after his 1984 arrest elaborately noted his history of drug abuse and rehabilitative failure, his history of car accidents apparently stemming from impairment, and his substitution of drug use for "normal" social acceptability. Dr. Ryans wrote to Ricky's trial lawyer:

He [Boggs] relates that he started drinking at the age of 10 because he was not getting the grades his brother and his sister were getting and this made him unhappy,

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consequently he started drinking. He continued on alcohol excessively and subsequently street drugs such as marijuana, LSD, amphetamines and barbiturates because "in comparison to other people, I felt physically smaller and not like the rest of the people. I wanted to be accepted by somebody and the drug users accepted me. I never had a girl friend and I didn't feel worthy of women. Alcohol took the place of people."

* * *

Mr. Boggs appears to be an individual who has very low self-esteem and self-worth throughout his lifetime. He compensated for this by using drugs and alcohol to excess . . .

June 15, 1984 Letter of Dr. Miller M. Ryans (Ex. 7).

Thus, Ricky's decision finally to stop consuming alcohol and drugs was nothing short of a personal revolution. As his prison disciplinary and medical record demonstrates, this decision -- made and maintained since the Christmas of 1986 -- has created a new Ricky Boggs. Ricky now lives with a clearer vision of each day and a sharper understanding of his actions, their consequences, and his chance to contribute to the life of his community and family. The new, drug-free Ricky Boggs does not ask to be "excused" for the horrible murder committed more than six years ago. He does ask, however, that his actions and self-improvement during that time be considered in the determination of what his punishment should be.

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B. Ricky Boggs As A Drug-Free Inmate

Since Ricky's transformation at the end of 1986, he has worked toward self-improvement and integration with his community. He earned a Virginia General Educational Development ("GED") Certificate on October 3, 1989, a diploma equivalent to the high school diploma Ricky never achieved because of drugs and alcohol.^{1/} Less than a month ago, he received the following memorandum from Warden Thompson of the Mecklenburg Correctional Center:

June 11, 1990
Warden's Office

Memorandum

TO: Richard Boggs, #139430
FROM: C. E. Thompson, Warden
SUBJECT: Congratulations

I would like to take this opportunity to commend you for attaining your GED while here at Mecklenburg Correctional Center. It is my opinion that anyone that achieves a certificate of any type while incarcerated should be commended for doing something positive under these conditions.

You are encouraged to continue positive strides towards whatever goals you have set for yourself. Again, you are to be commended for such an achievement.

Original letter attached as Ex. 9.

^{1/} A copy of the Certificate is attached as Ex. 8. Ricky's records note that he previously achieved his GED after entering the military in 1980. (Ex. 6).

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Perhaps more impressive are the strides Ricky has made in expressing himself in written English and maintaining significant intellectual and emotional relationships through the mail with many family and friends. Although Ricky was failing English when he was ejected from Cradock High School, since 1986 he has purchased a typewriter and become a prolific and articulate correspondent. For example, about a year ago Ricky began exchanging letters on almost a weekly basis with Anne Marie Taylor, a graduate student at the Reformed Theological Seminary in Jackson, Mississippi. On June 21, 1989, Ricky wrote to Anne:

When I was using and drinking I was always wanting my so called friends to like my [sic]. Be accepted. Now that I have started coming out of my 24 year old closet, I have become less concerned with what others think about me. . . . I have been working on myself, and trying to make myself happy or pleased with myself. I might sound a little self centered, and I admit, I am, but that is not the point. Accepting myself as a person that is not perfect, and trying to be a better person is what I have been dealing with most recently.

. . . I think that the world is, and the people living in and on the eater [sic] are living self destructive lives. We are destroying this planet and there is no simple solution in saving it. What has helped me get over my self destructive thoughts is also my parents. I have put them through so much, and they have continued to stand by and love and support me. . . . The only way I could possibly make an attempt at restitution with my family is to be honest and try to help others sharing my experience about the evils of Drugs and Alcohol.

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* * *

If I am finally given the Death Penalty, I will be satisfied knowing that I have changed.

Ex. 10 at 3 and 5 (errors left intact).

This writing demonstrates two things. First, despite occasional spelling and punctuation errors, it is lucid and sophisticated writing for a high school drop-out and educational failure. Ricky's level of achievement in written expression is itself a testament to his freedom from drugs and to his dedication to improvement. Additionally, the content of his letters is serious, thoughtful, and feeling. He expresses not only remorse for those he has harmed, but also recognition that his "former self" was a destructive person who needs to be left behind.

On July 9, 1989, Ricky wrote to Anne:

Another thing. The reason I got on the A.A. topic in the last letter is because that same night the men in the Pod were drinking home made wine. They were offering it to me, and the temptation was there. I figured the best thing for me to do was to come in my cell a little early and get on with reading my mail and answering it. The best thing that I could do, was to write about my Alcoholic problem/Disease. It helped me a great deal, and I thank you for not being offended. . . . After I finished writing you the last letter, I did some reading in the A.A. Big Book. I hope you have one.

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Ex. 11 at 1. In addition to his writing and reading, Ricky explained to Anne that he keeps himself occupied by cleaning the prison:

You have to realize that in Prison, on DR [Death Row] there is no job or school to attend. I create my own Job and School. I work cleaning up most days. I can clean the inside of the Pod and most everyones [sic] cell that let me in 30 minutes more of [sic] less. That includes sweeping and mopping Cleaning out the mop and making fresh water for the next day. I have done it so often, I have it down to an art form

Ex. 11 at 6.

Ricky has explained to Anne, however, that his work in cleaning the Pod and educating himself is not just "busy work" but the result of an affirmative decision to improve himself:

I am seriously considering taking some College classes when I complete the GED. I found out today that I will not be able to finish the test until next week. The teacher is going to be busy testing other men and in classes herself this week. Yes, I did read an article in the paper about this prison having High School and College Graduates about two or more months ago. I want to be among those that choose to do something positive with their lives in Prison, even on DR.

August 21, 1989 Letter to Anne Taylor (Ex. 12) at 5.

I did need a GED to get in to College and I had one from January 1983, when I completed my testing at the Army Education Center. I took it again for my own peace of mind. I just barely passed the tests then, because I was still on Drugs. . . . That has always bothered me.

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September 10, 1989 Letter to Anne Taylor (Ex. 13) at 4.

In addition to formal education and reading, Ricky has explained to Anne his broadened interest in culture and media:

I us[ed] to get Christian tapes and record over them with rock & roll. Most recently and over the past year I have been doing just the opposite. That is, recording over the Rock & Roll music with Christian Bible teaching Programs. I can't even listen to a whole song on my old favorite station. I could, but it just does not appeal to me any longer. I would rather listen to the National Public Radio station, because they play a variety. Classical mostly, that is great to sleep by. I try and focus on being the person playing the music. One pointed mind. The same station has the 'American Jazz Radio', on Sunday morning from midnight until 0200. There is also Blues and some other interesting music.

When I think about how my taste in music has been changing I think about how my mind has slowly been, and still is, being renewed.

March 11, 1990 Letter to Anne Taylor (Ex. 14) at 3.

Obviously, Anne Taylor, as a graduate student at a Theological Seminary, was also corresponding with Ricky about religion and faith in God. Ricky's letters to Anne, enclosed in the appendix, are full of his discussions, feelings and search for an understanding of God and religion in the face of his own crime and impending death. We feel it is important to stress that Ricky does not claim to have suddenly discovered God in prison, and we do not put forward his faith as a primary reason for clemency. However, an honest debate about religion and a

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sincere place for God in Ricky's life have been a significant aspect of recovery from drug and alcohol abuse.

I have had the most peaceful days and times alone over the past year. You would not believe. Like, I have become [sic] to know myself better, and in the process I have become [sic] to know God better through Jesus. It has been my own journey but it could not have happened any other way. I have tried many other ways of searching for peace of mind through Drugs and Alcohol that have all failed. All of my other ways of searching for peace through what ever means, have all falen [sic] short of the peace of mind I have now.

March 8, 1990 Letter to Anne Taylor (Ex. 15) at 6.

In light of her relationship to and knowledge of Ricky, we ask you to consider Ms. Anne Marie Taylor's request that Ricky's sentence be commuted to life imprisonment, contained in her letter to you, attached as Exhibit 16:

One of the main reasons I am asking you to consider clemency in this case is that I believe Ricky has truly changed during his time in prison. One often hears that prisons today rarely serve as rehabilitation centers for the inmates, but Ricky is one individual who has used his time in prison to read, to study and to better himself. He is now at the point where he wants to reach out, using his experience and knowledge to help others.

. . .

In the time that I have known Ricky, he has always been very open to learning new things. He has a great desire for knowledge and how he can best use his learning to help himself and others. He regularly sends me what he's read with comments on the material so that I can better understand who he is and what his ideas about different things are.

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* * *

I have grown in many areas of my life because of my correspondence with Ricky.

* * *

I cannot help but to believe that Ricky has also been an encouragement to other prisoners that he has lived with. He has never given up or taken a selfish attitude in prison as many inmates do. Having a love for life and for learning as he never had before prison, Ricky is definitely one person who has used his punishment to improve his life rather than to let it deteriorate.

Another close friend and frequent correspondent of Ricky's, Ernest Lees, sketches a similar tale in his letter to you (Ex. 17):

It is [the] issue of self-control or its lack that has been central in [Ricky's] life. Before his incarceration, Ricky's life was simply out of control and, from what he has told me, it had been so since his early teens. Whatever maturation and self-control he might normally have gained during his teens was simply lost to alcohol and drugs. . . . In [the] murder and its aftermath what minimal control [Ricky] had to stop his own suicidal course was fast disappearing. In truth he was stopped from destroying himself only by his arrest, conviction and incarceration. Ricky himself has admitted as much to me.

However, the events of that winter were also a catharsis. Since that time and during his incarceration Ricky has gradually been able to regain control and with that the desire to live.

To give two small examples. On death row in Mecklenburg many of the men brew wine.

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While at first Ricky drank along with the others, since December of 1986 he has not. God knows, he has ample reason to drink, still he has not because he has come to face up to his alcoholism and deal with it.

When Ricky was on the streets he simply did not give a damn. His interests in life were booze, drugs, sex, and his VW in that order. Now he watches PBS regularly. He is interested in a wide range of subjects. Commonly I send him xeroxes from books on history, philosophy, religion, nutrition, bodybuilding and so on. Many of these he has in turn shared with the other men on death row.

More important than Ricky's relationships with Mr. Lees and Ms. Taylor have been Ricky's continued warm connections to his family. Despite his incarceration for a horrible crime, Ricky remains a vital part of his family, receiving regular visits from his parents, Sybil and Billy Boggs, his brother Michael and sister Julia, his grandmothers Maude Boggs and Ethel Neal, and a variety of aunts and uncles. Their letters to you asking for clemency are part of the appendix and, here, we merely quote from those of his closest family:

It's terribly painful to have to accept the fact that your child will never be able to fulfill his purpose. No one will ever convince me that Ricky is a completely worthless human being, despite the fact that he committed a despicable act. He has grieved over it and apologized to us countless times for the pain and humiliation he has caused his family. We try to take pride in the fact that he has taught himself to type and although he already passed his GED in North Carolina, passed it again in Virginia for his own satisfaction. So at

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least we know there is one person who has not wasted all his time up there. Ricky feels that he has made his peace with his God.

Letter of Sybil H. Boggs (Ex. 18).

We visit Ricky in prison regularly and have both seen a great change in him.

Ricky has explained to me and his mother about the many things he does to keep active in prison. . . . He washes and scrubs the floors, walks, doors and windows. He asked permission from the prison administration to do these things, no one told him to do it. He is not a lazy person, he shows initiative and a willingness to work, interest in his surroundings and the people around him.

* * *

Ricky has accomplished some notable things while in prison. Ricky taught himself to type, and he has completed and passed his G.E.D. in Virginia. He has improved his reading and writing skills dramatically. Ricky has actually grown in prison to realize that he needs much more education. Ricky talks about needing to study more and learn of the many things he did not study in school.

* * *

Ricky is worth saving; I know he will be an asset to this world.

Letter of Billy Lee Boggs (Ex. 19).

[O]ne thing I always admired about Ricky was his ability to earn and save money. He worked hard from the time he was allowed to cut grass at about the age of eleven. Once he had enough customers and had earned enough money, he even bought a spare lawnmower so that he was never without one in operation. He continually worked on them to keep them in tip-top condition. He was very industrious

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and was good at taking mechanical things apart, repairing them and putting them back together. I think he acquired that ability from all the time he spent watching and helping my father work on things.

* * *

Maybe, in some way, if [Ricky] could make a contribution to society if he were allowed to tell his story and make young people think about what they might be doing to themselves and to their family by abusing drugs and alcohol. I believe that someone like Ricky may be able to teach others from his experience and maybe save many people from the heartache that our family and those of his victims have had to endure.

Letter of Julia M. (Boggs) Hardee (Ex. 20).

Please see the wisdom in granting a stay of execution for Ricky. Killing him in the electric chair is wrong. His crimes were also very wrong. Two wrongs will not avenge the deceased's families. . . . If it will make things right, I am willing to be executed in his place. If you would commute his death sentence to life imprisonment I will submit to this. Ricky has enough good in him for me to make this sacrifice for him.

Letter of Michael W. Boggs (Ex. 21).

Richard Boggs is my grandson. He has always been one of my best grandchildren. . . .

* * *

It is hard to put into words what a good boy Ricky has been. It is hard for me to believe that he did something so terrible to someone. He always helped his father work on his cars and learn how to change the oil and keep them up, or he would help him work in his workshop. He, Ricky, always wanted to be busy learning everything that was going on and be a part of it.

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I just wish they would let Ricky live because he learned how wrong he was to do such a terrible thing. . . . Ricky could try to influence other young boys to stay away from drugs and alcohol.

Letter of Maude Boggs (Ex. 22).

Ricky, if allowed more time on Earth, can contribute much to helping others. He is a caring, generous person, both with his family and outsiders.

We have been in constant touch, both before and after his incarceration. He calls monthly (when allowed) and we correspond every week. . . . He sends greeting cards on every event -- books on birthdays, when he can order them.

* * *

He is guilty of a terrible crime which he committed when not himself. Drugs were his undoing and he is remorseful. To quote from a letter to me -- 5/21/90 -- "I am concerned that my friends and relatives are going to suffer more because they in turn will be the victims of my crime."

Letter of Ethel H. Neal (Grandmother) (Ex. 23).

Also in the appendix you will find letters from Ricky's lifelong neighbors in Portsmouth. Their sentiments are particularly notable because they were also the neighbors of Ricky's victim, Treeby Shaw. Nonetheless, Helen Wood writes:

We exchanged letter [sic] a few times. [H]e always thought of me at Christmas time. [H]e told me in his letters he was sorry for what he did to Mrs. Shaw. She also was my

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neighbor. . . . I am so sorry for Ricky.
May God be with him.

(Ex. 24). Thomas Smith recalls:

Ricky was gentle, well-mannered and helpful to everyone in the neighborhood because he was brought up that way. Daily I would talk to Ricky He would like me to tell him about what I done that day at work.

* * *

I believe had it been fifteen or twenty years earlier Ricky would have been a gentleman, his age, the times and condition of our world trapped him.

(Ex. 25). Additionally, a neighbor of his grandmother, Lillie Durham, writes:

I have kept in touch with him since 1984 and he is so sorry for the crime. His mother and father visit him every other week since he has been in prison and he told me in his last letter that they had really stood by him and he was so sorry he put them through this ordeal. I do wish you could find it in your heart to commute his sentence to life in prison.

(Ex. 26).

The Ricky Boggs of 1990, in the eyes of these friends and family, has much to give. Even in his present state of imminent death, he has demonstrated a spirit of remorse, learning and warmth that has infinite value, even within the limit of life imprisonment. With drug and alcohol use in his past, Ricky has given himself another chance. Guilty of a horrible crime, Ricky

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still deserves a punishment that recognizes this chance for contribution to his limited world.

II. RICKY'S CRIME WAS AN ISOLATED EPISODE OF VIOLENCE

Ricky Boggs' guilt is unequivocal. He has never denied that he murdered Treeby Shaw on January 25, 1984. As he stated in his confession to police,^{8/} Ricky struck Mrs. Shaw -- an elderly neighbor he had known for his entire life -- with a piece of metal on the back of the head. While looking for valuables in her home, he heard her struggling to breathe and stabbed her in the side to put her out of misery. Like all murders, this act is shocking and impossible to justify or fully comprehend.

This crime and the circumstances leading to Ricky's arrest -- a hit-and-run on February 17, 1984 -- were, however, the only acts of violence in the life of Ricky Boggs. Prior to 1984, Ricky had never been in jail. His "criminal record" was minimal^{9/}: In May 1978, at the age of 15, he was arrested for shoplifting and had the charges dismissed; and, while in the Army in January 1982, he was convicted of "possession of drug paraphernalia and fined \$50. Otherwise, he committed three traffic offenses between 1981 and 1983 (operation of an

^{8/} Ricky's confession is attached as Ex. 27.

^{9/} Ricky's criminal record is summarized on the last page of his Presentence Report (Ex. 5).

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uninspected vehicle and two instances of failure to obey a traffic signal).

In short, Ricky had no "history" of criminal behavior. Absolutely nothing in his background suggests a streak of violence or aggression. The acts of early 1984 which put him in jail and on death row were gross aberrations from his past behavior. Although this does nothing to excuse the behavior, it emphasizes the degree to which these acts were singular, were the result of extreme and particular circumstances, and were not a reflection of Ricky's character and innate nature as much as a reflection of his addictions and the perverse distortions of drugs and alcohol.

This absence of aggressive behavior is consistent with Ricky's disciplinary record in school, the military and in prison. He has frequently been cited for substance abuse and various types of "disorderly conduct," but his record is virtually without reference to anger, physical threats, or episodes of assault. Although his medical records from prison, primarily including contact with nurses and psychiatrists, demonstrate Ricky to be guarded, suspicious and sometimes moody, the overall impression is that of a polite and cooperative inmate.^{10/} Similarly, his medical records from the military

^{10/} His medical records from prison are included at Ex. 28.

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demonstrate a young man hungry for human contact and attention, not a violent or angry man.^{11/}

With the exception of his inexcusable acts early in 1984, Ricky's problems have exposed themselves mainly in self-destructive ways -- excessive drinking, drug use, failure in school and inability to promote himself in the military. As diagnosed by psychiatrists hired by both his family and the prosecution, Ricky's problems are linked to devastating low self-esteem and not hatred for others. Dr. E. Daniel Kay, Jr., a psychiatrist who interviewed Ricky prior to his trial, stated:

The most interesting feature about Mr. Boggs . . . is the fact that Mr. Boggs' history has been one of low self-esteem, reduced ability to relate effectively and appropriately to his age group, and the need to "prove" himself. In spite of his involvement in several self-destructive and self-endangering activities, or when it would appear that he had an utter disregard for others, there is also an underlying concern for this actions which is somewhat atypical. One can best reconcile the young man's affective feelings in his behavior utilizing explanation where he is not a young man without feeling for others, nor a hardened and unconcerned perpetrator of repetitive criminal acts, but appears to be a man driven by his need to prove himself and to please others at any cost due to severely disturbed self-esteem, a sense of inadequacy and insecurity, and a great deal of underlying anger at the world in which he is able to justify his acting out. The importance of this is that Mr. Boggs appeared to me, upon first

^{11/} Ricky's medical records from the military are included at Ex. 29.

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investigation and evaluation, to be a man who might be rehabilitatable given appropriate therapy for a long enough period of time.

* * *

. . . [t]he possibility that he could be rehabilitated successfully is certainly somewhat above average.

May 29, 1984 Letter of Dr. Kay to defense counsel (Ex. 30)
(emphasis added).

The prosecution's psychiatrist, Dr. Miller Ryans, essentially concurred:

Mr. Boggs appears to be an individual who has very low self-esteem and self-worth throughout his lifetime. He compensated for this by using drugs and alcohol to excess; which, in all probability, resulted in this present hit and run allegation. . . . He obviously has a serious drug and alcohol problem which should be dealt with either inside the penal system, or if released, in the Veterans Administration system

June 15, 1984 Letter of Dr. Ryans to defense counsel (Ex. 7).
Similarly, upon being brought into the Virginia Penal System in 1984, Ricky's self-esteem problem was again noticed:

The results of the HTP test indicate that Mr. Boggs is a highly dependant individual who experiences many feelings of inadequacy and inferiority. . . . In summary, it is felt that Mr. Boggs does suffer from some underlying psychological disturbances and obviously has substance abuse problems. These problems are not of a sufficient magnitude to excuse him from the crimes that he has committed. . . . With close supervision he should not pose any major institutional problems.

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Virginia Corrections Psychological Summary, page 4 (Ex. 3). The "General Impressions" section of the same Virginia Corrections report contains a typical summary Ricky's attitude and affect:

Subject has a very good attitude, considering he may be facing a death sentence. He admits to being alcoholic, but states he had not drank for two years until the night of his offense. He also admits to a heavy use of marijuana and other drugs. Jail reports state that subject threatened suicide when he was first admitted. Although he appears nervous at times, and in a daze at other times, he seems to be handling himself in a stable manner at present.

Virginia Corrections "Social History," page 1 (Ex. 3).

The aberrant nature of Ricky's murder stands out in even greater relief against the picture painted by his friends and family. The people closest to Ricky uniformly describe him as a good child and hard-working young man. They express shock at the idea that Ricky, of all people, could have committed such a heinous crime. They ask for your mercy and that you consider those aspects of Ricky that no judge or jury has seen.^{12/} More

^{12/} See Letters of Sybil H. Boggs (Ex. 18), Billy L. Boggs (Ex. 19), Julia M. (Boggs) Hardee (Ex. 20), Michael W. Boggs (Ex. 21), Maude Boggs (Ex. 22), Ethel H. Neal (Ex. 23), Helen Wood (Ex. 24), Thomas Smith (Ex. 25), Lillie Durham (Ex. 26), Anne Taylor (Ex. 16), Ernest Lees (Ex. 17), Rev. James C. Griffin (Ex. 31), James L. Hokanson (Ex. 32), Chaplain Ed Martin (Ex. 33), Mr. and Mrs. Vernon Johnson (Ex. 34), Mary B. Wilson (Ex. 35), Ethel F. Smith (Ex. 36), Louis B. Smith (Ex. 37), Mr. and Mrs. C.J. Fortune (Ex. 38), Arlene C. Reynolds (Ex. 39), Sr. Mary Eileen Heaps, O.S.B. (Ex. 40) and Garry Sims (Ex. 41).

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particularly, he is unfailingly described as deeply remorseful for the crime he committed:

In the years I have known Ricky, he has consistently admitted his guilt, has always expressed remorse for his crime, and tried to better himself as a human being having made a grave and deadly mistake.

(Letter of Rev. James C. Griffin, Ex. 31)

On June 3, 1990 I visited Rick at Boydton where we talked of his physical and mental condition. . . . Due to his physical condition and what I receive [sic] as a sincere desire to atone for his blameworthy deed, Rick expressed a desire to be an organ donor.

(Letter of James L. Hokanson, Ex. 32)

Ricky is very receptive to my ministry -- he just has so much to give. Ricky has impressed me with a genuine remorse and repentance for what he did wrong.

(Letter of Chaplain Ed Martin, Ex. 33)

For a year now, Ricky and I have been writing to each other regularly. He has told me most everything about his life, including incidents that led to his death sentence. He has told me his feelings about what happened, why it happened, and his search for ways to make up for all he has done. Some of his letters describe the guilt he feels because of all the pain he has caused

(Letter of Anne Taylor, Ex. 34)

Ricky Boggs is not and never has been a serial-killer or depraved man of violence and aggression. The sum of information about his life -- both the good and bad considered

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together -- shows his inexcusable act of murder to have been an aberration, a single episode of violence in a lifetime of self-destruction and confusion. Ricky tried to save himself -- participating in Alcoholics Anonymous, Narcotics Anonymous, and several other rehabilitative programs -- but failed. He tried to educate himself -- getting his GED in the Army and attending community college -- but failed. He has a long history of hard work, but never got himself on track. He was quite the opposite of a "black sheep" in his family, yet has ended up hurting them more than he can stand.

In the end, Ricky could not start to find the necessary grounding and direction in his life until he had hit rock bottom -- prison and death row. It is, however, unquestioned that he committed his two violent crimes under the haze of booze and drugs. And it is unquestioned that every other failure and disciplinary violation he has faced in life was linked to his addiction to and abuse of intoxicants. Today, Ricky presents himself with his substance abuse more than three years behind him and, despite his incarceration, with a hard-won sense of his own worth and chance for self-improvement. We sincerely believe that clemency is appropriate and that life imprisonment is a proper punishment that may allow Ricky Boggs to fulfill a remaining promise that has just begun to surface.

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III. RICKY'S SENTENCING PROCEEDING WAS SIGNIFICANTLY AND
UNIQUELY TAINTED BY RACIAL PREJUDICE

As we have already stated, we do not seek to relitigate Ricky Boggs' case before you. To date, his death sentence has been upheld under Virginia's death penalty statute and the Virginia and United States Constitutions. Your decision whether or not ultimately to send Ricky to his death, however, need not be limited by minimal legal protections, and is properly based on higher tenets of justice and equity. In that context, we think it vital that you consider the ruling of Federal District Judge Richard L. Williams of the Eastern District of Virginia in Boggs v. Bair, 695 F. Supp. 864 (E.D. Va. 1988), attached as Ex. 42.

Judge Williams ruled that Ricky, while admittedly guilty of killing Treeby Shaw, was entitled to a new sentencing hearing. Judge Williams reached this conclusion for essentially equitable reasons fully applicable to the clemency decision. Ricky, a white man, was guilty of killing Mrs. Shaw, another white. However, the judge at Ricky's trial allowed the sentencing jury to hear -- and allowed the prosecutor to repeatedly emphasize -- a plainly racist statement made by Ricky during his confession:

I want to kill the enemy on the other side, which is me, the white all over the world. I want to kill niggers.

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Judge Williams correctly identified the grossly offensive and prejudicial nature of these words:

The fact that Boggs showed himself to be a racist is no more relevant to the question of whether he committed murder than if he had declared himself a communist, a homosexual, or an adulterer -- all characteristics that might well affect the jury's evaluation of Boggs' character, but which could not be at all helpful in determining his guilt.

The statement was equally irrelevant in the sentencing phase. . . . The jury was only instructed to determine whether Boggs' physical act of murder warranted a moral judgment that he should receive the death penalty. Boggs' racial views have no bearing on the culpability of this particular act. The [state] insists that the statement demonstrates the "vileness" of Boggs' character more broadly, but general evidence of Boggs' character simply does not come within the narrow confines of the jury's instruction. Their only decision was whether the circumstances of the physical attack warranted a finding that the murder was vile, not whether Boggs should receive the death penalty because he was a racist.

* * *

To permit juries to impose death sentences based on a defendant's opinions, be they racist, anti-Semitic, or otherwise offensive, contradicts the rationale that underlies sixteen years of Supreme Court jurisprudence.

* * *

The confession was available in the jury room during both guilt and sentencing deliberations, and though the [state] hastens to point out that the victim was white, several jurors were black. More importantly, the prosecutor must not have considered the two sentences "harmless," for he emphasized

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them in both phases. During the guilt trial, the prosecutor argued that those two sentences, which the [state] now dismisses, warranted a verdict of capital murder instead of first degree:

"we are going to decide that this defendant . . . is guilty of capital murder, because when you look at this statement, . . . you ask yourselves, 'What type of individual would say words like this?' . . . It's in there, [he] calls them a name; it's in here, and you know what the name is, and he tells you to give him first degree murder, so you won't have to come back [for a sentencing phase]."

In the sentencing phase, the prosecutor returned to this theme, urging that anyone with such racist views deserved to die: "he said, 'I want to kill the enemy on the other side'; yet, they will tell you to spare his life. . . . He goes on to say, 'I want to kill niggers'; and he said today it's true; so he's not going to confine himself to any particular people" Refusal to redact these statements could only have been prejudicial

Boggs v. Bair, 695 F. Supp. at 869-71 (Ex. 42).

We do not seek to defend Ricky's abhorrent statement. We believe it is relevant, however, again that it was made in the wake of his stunning consumption of whiskey, beer, marijuana and speed, and under the unique pressure of his murder confession. More importantly, this unadulterated statement of racism was put before an interracial jury for a crime having nothing to do with racial issues. We believe Judge Williams correctly perceived

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this as an error that may well have made the difference between a sentence of life imprisonment and a sentence of electrocution.

We have also attached, as Ex. 43, the opinion of the Fourth Circuit Court of Appeals which overruled Judge Williams, Boggs v. Bair, Nos. 88-4010 and 88-4012 (4th Cir., Dec. 12, 1989). We believe this opinion deserves special scrutiny because of the basis on which it overruled Judge Williams' careful and common-sensical opinion. The linchpin of the Fourth Circuit's reversal is its bizarre holding that Ricky's statement was, in fact, racially even-handed and that the prosecutors "defused the racial character of Boggs' language." Ex. 43 at 26-27. The Fourth Circuit found the statement to be "consecutive threats towards blacks and whites," id. at 25, and merely a "possible reflection of racial animus," id. at 24 (emphasis added), "arguably hav[ing] racist overtones," id. at 23 (emphasis added). Incredibly, the Fourth Circuit referred to the racial bigotry reflected in the statement as "latent." Id. at 27.

We contend that this statement -- including the sentence "I want to kill niggers" -- was not ambiguous, even-handed or "arguable." It was entirely irrelevant to Ricky's white-on-white crime. Regardless of Ricky's intent in making the statement, the jury can have perceived it only one way. We believe the statement to be so offensive and insulting that the trial judge should have ruled it redacted from Ricky's confession

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-- an opinion shared by Judge Williams of the Eastern District. And, although we cannot point to this aspect of Ricky as one deserving your sympathy, we believe it may explain why Ricky faces the most extreme and irreversible punishment possible under our system of justice.

It is true that the court system has declined to fashion a remedy for Ricky because of the trial judge's admission of his statement of racism before the sentencing jury. This issue, however, is not a legal "technicality," but an essential question of equity and simple justice. We believe the system was tainted by the uniquely potent specter of racism in Ricky's case. Again, that fact does not excuse Ricky, but is another aspect of why he stands before you today as one of the very few murderers considered vile enough to be exterminated. We believe this uncomfortable taint must be considered in the decision whether to commute Ricky's sentence to life imprisonment.

IV. CONCLUSION

For these reasons, we respectfully submit that the most appropriate sentence to be imposed upon Richard T. Boggs is life imprisonment. We respectfully ask that you consider commuting Ricky's present sentence of death by electrocution, now scheduled to be carried out on July 19, 1990, to a sentence of life imprisonment.

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Respectfully submitted,

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