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June 15, 2000

The Honorable James S. Gilmore, III
Governor of the Commonwealth of Virginia
OFFICE OF THE GOVERNOR
State Capitol, 3rd Floor
Richmond, VA 23219

**Re: Russel William Burket
Petition for Clemency**

Dear Governor Gilmore:

We write on behalf of Russel William Burket, who is scheduled to be executed on Wednesday, June 21, 2000. For reasons discussed below, we request that you grant executive clemency to Rusty and commute the sentence of death to a sentence of life without the possibility of parole. I hesitate to state that Mr. Burket's case is any different than those that you find before you at other times because it seems that so many of the individuals who come before you and request clemency are mentally ill. However, the issue of Rusty's mental illness pervades from the time of his arrest through today as an underlying problem that Rusty has never overcome in any type of fight for his life.

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Should you not commute the sentence of death to life, we ask for more time to further scientifically test evidence.

I. INTRODUCTION

Russel Burket is mentally ill and has been mentally ill his entire life. He has been determined to be 100 percent mentally disabled and was receiving social security benefits for this total disability until he was sentenced to death. His disability is so profound that he can neither read nor write. He has had lifelong attempts at suicide (three times) and has been prescribed psychotropic medications. He has had involuntary hospitalizations in mental institutions (at least three times in his life) and secure insane asylums. Rusty has had to rely upon his father to handle his most minor affairs for a lifetime.

Rusty has never had a criminal record nor evidenced, at any time, violence to others nor sexually violent behavior. Rusty has never had any issues of sexual involvement of any type prior to this matter for which he received death.

In his early teens Rusty had been psychiatrically hospitalized and was basically removed from the world for approximately four to six weeks. His mental disability made him so dysfunctional it took six months of work with his teacher and his father before Rusty could understand and repeat answers to questions read to him in order to obtain a driver's license.

After the events of January of 1993, Rusty was incarcerated and his mental illness increased exponentially. In the course of his pre-trial incarceration he was on a twenty-four hour suicide watch.

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II. RUSSEL BURKET'S PRE-OFFENSE MENTAL HISTORY

As stated heretofore Rusty has had an extensive history of medication for psychosis and depression. He has been psychotic as a result of organic brain damage and at times was known to be a danger to himself and delusional. The following rendition of his psychiatric record is of profound importance to understanding Rusty as an individual:

12/6/74 - Dr. Michael H. Anthony, Joel T. Boone Clinic, Norfolk

On Ritalin 9-10 months. Short attention span, emotionally labile, can't keep toys together or watch T.V. for very long period of time.

8/8/75 - Progress Notes - Michael H. Anthony - Boone Clinic

Off medication. Color documentation problems. Low motor skills per psychological test.

9/30/75 - Joel T. Boone Clinic, Psychological Test results

WISC - R - lower half of dull normal for both scales. Weakest area - visual motor coordination and organization. His errors were similar to those made by brain damaged children. Family drawings on 4 year old level. Comparison with 1974 scores show he has not had education experience needed. No special help in Kindergarten last year. Borderline range intelligence.

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11/30/77 - Dr. Robert V. Rack

Age 9 10/12 - recurrent headaches and pain. Problems with hyperventilation.

(Also in Virginia Beach Jail records of November 20, 1993). Needs special help.

4/18/80 Psychological Evaluation. Dull normal range - language impaired child.

WISC - R: Slow in responding to questions. Retention - unable to retrieve or respond to examiner

Jastak Wide Range Achievement Test: Severe Educational Retardation.

Reading - 1.3 - less than 1%; Spelling - 1.2 - less than 1%; Arithmetic - 2.8 - 1%

Rusty has difficulty understanding what is expected of him.

Bender: Immature and distant. Poor self-concept. Insecurity. Appears to be doing as much as he possibly can - needs not to have too much expected of him.

Functioning within low average range of intelligence and ability. However, in verbal skills, functioning more like a youngster with language impairment who has great difficulty processing language, retrieving language. Recommendation - LD - qualifies for special education.

12/15/80 - Admission Note - CMHC - Eugene F. Maleski, Ph.D., Jerry Morowitz M.D. -

Attending Psychiatrist

Described as depressed loner with self-esteem approaching zero. Afraid to go to school and parents' efforts have made him hysterical. Termination of long-term

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friendship. Rather severe sleep disturbances - can't fall asleep until 5:00 a.m. and then can't get up in the morning.

At age 7 began to show signs of emotional distress at Christmas time. Hyperventilating because not sure if Santa Claus existed and then if Santa Claus could get presents to his father on the ship.

Says he will not go to school anymore. Doesn't know why. Hasn't made suicide gestures but often says he'd be better off dead. Frequently breaks into tears.

Diagnosis - Depressive neurosis, severe. Admit to inpatient unit of Early Adolescent Program -demonstrating extreme emotional upset, severely impaired social functioning and isolation.

12/22/80 - Supplemental Psychological Evaluation

Personality Inventory of Children (PIC) - Parents defensive, under duress - accuracy may be less than desired. Mild to moderate range of disturbance. The parents tend to answer items which strongly suggested that the patient functions with a psychotic disturbance.

12/29/80, 1/5/81, 1/8/81 Psychological Evaluation - Joan McCrae, Ph.D. - Community Mental Health Center and Psychiatric Institute, Norfolk, VA

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Two head injuries as a child. At age 6, hit head on bookcase which required stitches. At age 7, fell off monkey bars, needed left ear reattached. At age 8, cut his eye.

Diagnosis - Depressive Neurosis of rather severe proportions. Functioning handicapped by depression and anxiety.

12/16/80, 1/15/81 - Testing - Catherine Kerlin, M.S. Ed., Anna Wortham, M.S. Ed. -

Plaza Junior High

Recommended to class for Emotionally Disturbed.

3/6/81 - Letter to Mrs. Mary Walker, Special Education Services, Virginia Beach from Anne Rollins, Community Service Coordinator and Eugene Maleski, Ph.D.

Inpatient at CMHC & PI since 12/18/80 due to exacerbation of long term symptomatology at home and in school.

4/17/81 - CMHC Discharge Summary - Dan Sandlin, LCSW; Leonard Lexier, MD

Shortly before Thanksgiving 1980 Rusty crying and screaming loudly when realized he might have to go to school. Dyslexia, sleep disturbances, high family mobility identified as most profound problems. School movement detrimental to learning.

5/7/81 - Letter from Mary B. Walker, Administrative Coordinator of Special Ed. Services, Virginia Beach Public Schools to the Burkets

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Special Education Eligibility Committee met regarding placement for Rusty as a severely emotionally disturbed student. Hospital diagnosed emotional disturbance as primary problem.

11/26/81 - Virginia Beach Due Process Notice

Recommendation: Assignment to class for emotionally handicapped.

8/12/84, 8/13/84 - Psychological Report - CMHC-PI, Eugene Maleski, Ph.D.

Rusty seemed within the low average to average range of academic potential according to WAIS-R. However, there was a significant degree of intersubtest scatter, ranging from scaled scores of 2-11, which suggests that his full scale IQ may not be an accurate indication of certain cognitive abilities, significantly low on subtest of general information. May be due to limited group of facts or symptomatic of emotional factors. Significantly high on verbal reasoning. Significantly low on visual associational learning. Significant deficiency in short term memory skills. Score of 7 years, 6 months on determinative tests of learning aptitude. Is in 1% of students in visual-motor integration. Woodcock below 1% in reading/written language. Poorest score was in the word identification subtest. Math - 6% - mid 5th grade. Rusty within borderline mentally deficient range.

8/21/87 - Virginia Beach General Hospital - Admission Note

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Urgent - 7:28 arrived. Seen at 7:40 for laceration to wrist by razor blade requiring six sutures.

8/21/87 - Admission Evaluation and Immediate Treatment Plan - Dr. Glen L. Bohlke, Dan Sandlin, TPI-Virginia Beach

Fighting with family for one month. Not wanting to go to work. Difficulties lifelong. Severe family dysfunction, dyslexia, defiance toward mother, father, brother. Serious conflict in school. Family repeatedly moving has been detrimental to treating his dyslexia. In 6th grade walked one mile with broken foot in cast to avoid being in school. Self paced school - Plaza Junior High. Outpatient treatment - Dan Sandlin, 3/9/79 - 11/8/83;

Inpatient treatment - CMHC, 12/15/80 - 4/17/81.

Attempt suicide - 8/21/87 - 1:00 a.m. Diagnostic Impression - Dysthymic Disorder. 15-minute checks needed.

8/21/87 - 9/18/87 - Trial of psychotropic medication

8/23/87 - Doctor's Orders - Halcion .5 mg. q.h.s.

8/25/87 - Elavil - 50 mg. q.h.s.

8/26/87 - Still suicidal. Doesn't want to live with parents. Sleeping better with medication.

8/27/87 - Elavil raised to 75 mg. q.h.s.

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8/28/87 - Elavil raised to 100 mg. q.h.s.

8/29/87 - Elavil raised to 125 mg. q.h.s.

8/29/87 - Says, "if he commits suicide again he won't screw up." After parents came for visit feeling suicidal again. Angry at their limit setting. Talks about parents keeping him "a little baby."

8/31/87 - Elavil raised to 150 mg. q.h.s.

9/7/87 - Suicide alert - 50 mg. Thorazine IM.

Seclusion.

9/10/87 - Thorazine, 50 mg.

9/2/87 - Lab tests - amitriptyline levels. (Clinical response to antidepressants).

9/6/87 - Upset regarding family meeting. Banging head on wall while rocking back and forth on chair. Loud bang from room. Wouldn't say what it was. Wouldn't go to time out room. Restrained. Banging head. Talking about guns. 11:00 p.m. - Still banging head and hands on wall. Suicidal. Secluded.

9/8/87 - Rusty said that the family meeting felt the same way he did when he slit his wrists. Engaged in struggle with staff. Swinging at them. Restrained, secluded. Restrained to bed in seclusion room. Quiet throughout procedure. Got out of the restraints. Given a shot. Placed in paper gown in seclusion room.

50 mg. Thorazine.

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9/11/87 - Family Therapy. Unresponsive to parents, who tend to lecture and give advice.

Still suicidal.

9/15/87 - Recurrent dreams of cutting wrists. Wakes up with a numb hand. Is concerned about hurting someone because he's going over the edge. "I'm going to explode."

9/18/87 - Discharge Summary

Diagnosis - Dysthymic Disorder.

Condition on discharge - fair. Prognosis - guarded.

Medication - Elavil, 150 mg.

10/4/87 - 10/6/87 - Virginia Beach Hospital Notes Medication Overdose

10/4/87 - Dr. Bruce E. Johnson - Last seen awake at 10:30 p.m. Sibling noted he had vomited. Found in bed the next morning not responsive. Emergency room called.

10/4/87 - 17 year old who has been doing poorly for the past six months. Slashed his wrists six weeks ago and was admitted to TPI for four weeks. Was home two weeks when he took an overdose of Tylenol, pseudoephedrine, amitriptyline, and cold tablets.

10/6/87 - 10/9/87 - Tidewater Psychiatric Institute -VA Beach

10/6/87 - 11:00 p.m. - Ativan 1 mg. 11:35 p.m. Admit to Intensive Treatment Unit - doesn't remember what happened to him prior to overdose and since overdose.

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10/6/87 - Consult Report - Dr. Johnson to Dr. Bohlke - Hostile, threatening. Suicidal.

Diagnosis: Axis I - Major Depression, Axis II - Atypical; Paranoia

10/7/87 - Dr. Glen L. Bohlke, Dan Sandlin, LCSW - Admission Evaluation and

Immediate Treatment Plan

19 years old. Third hospitalization. CMHC when 13. TPI, VA Beach for attempted suicide - cut wrists longitudinally requiring 6 sutures. Fighting with parents for past one month. Fight with Dad became physical. Cut wrists after that fight. Reported thinking about suicide one month before last hospitalization. "If I got into another fight with my father, I might try to kill myself again." TPI

8/21/87 - 9/18/87. Second admission - 10/6/87 - overdose on medication, 120 pills over 8 hour period - 40 muscle relaxers, 15 antidepressants (Elavil) and 20 sinus pills. Parents feel helpless and discouraged. Rusty is withdrawn from family.

Psychomotor functioning retarded.

10/8/87 - Progress Notes - 7:00 a.m. - 11:15 a.m. in and out of four point restraints. 12:00 p.m. - Court hearing held in seclusion room. Discharged to TPI, Norfolk in custody of Sheriff's Department.

10/9/87 - Transfer Note - Discharged to TPI, Norfolk.

Temporary Detention Order obtained.

10/9/87 - 10/21/87 - TPI, Norfolk

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Medication orders - Dr. Raymond Iglecia -

10/9/87 - Cleocin, 300 mg., Thorazine IM 50 mg., Norpralnine 25 mg.

10/12/87 - Dalmane, 30 mg. Restoril, 30 mg.

10/13/87 - Dalmane, 60 mg. Discontinue Dalmane. Halcion, .5 mg. Transition to open unit.

10/14/87 - History and Physical, Mark R. Winters MD. Prior fracture of left foot, 1978; right foot, 1982; right wrist, 1982. No history of seizures or neurological problems. Currently stable but lightheaded with gastric disturbance due to Cleocin. Blood pressure slightly elevated. Try low sodium diet. Currently on Cleocin, 300 mg. and antidepressants.

10/9/87 - Chest pains. Found on floor after falling. Nonresponsive to name being called.

Doctor's Orders - Ativan, Cleocin. Placed in seclusion.

Banging on door to seclusion room. Unable to calm. Placed in 4 point restraints.

2:00 p.m. - Taken out of four point restraints. New medication. Refused to be medicated. Thorazine - 50 mgs. at 2:00 p.m.

10/11/87 - "I've never been happy." Dreamed of dying and "everything was perfect."

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10/12/87 - Says he's tried to kill himself two times that no one knows about. Tried to overdose but woke up the next day. Tried to shoot himself but the gun didn't go off. Went outside and shot a squirrel. "You're looking at a person who has never been happy." High suicide risk - four previous attempts. Happy when in the mountains. Looking forward to going hunting again. Really enjoys hunting.

10/13/87 - Haven't slept in five days. Feel terrible. Given Halcion. It didn't work.

10/14/87 - No suicidal thoughts. Transferred to open unit.

10/15/87 - Hopeful that Doctor Iglecia will help with dyslexia after he is discharged.

Can't sleep. Therapy going well. Angry because parents said they will have to sell his truck due to financial problems.

10/16/87 - Patched things up with Dad. Is going on weekend pass with Dad.

10/17/87 - Returned from weekend pass - got black eye from working with a crowbar and scratches from clearing briar bushes at campsite. Says it happens all the time.

Came back early because he argued with Mother about wearing shorts.

10/18/87 - Refused one on one therapy. Looks angry. Says he is "o.k."

10/19/87 - Doesn't want to talk.

10/20/87 - Leaving tomorrow - "I'm fine." Visit by Dad strained. They have little in common. Dad rigid, still, standing with hands in pockets.

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10/21/87 - Discharge Summary - Admitted due to feeling depressed and lonely. He's made suicide attempts in past. Insight and judgment poor. Oriented x 3. Obese. High suicide risk. Medication administered. Less anxious. Mixed feelings about leaving - wants to go but not looking forward to inevitable fights with mother. Discharge diagnosis - Dysthymic Disorder.

10/21/87 - Adjunct Therapies Progress Note, J.S. Crumrine - continues to be depressed; will need a great deal of support from professionals, and family will need support and therapy.

5/4/88 - 7:03 a.m. - Case number 138394 - General District Court - Signed by Magistrate D.W. Phillips

Temporary Detaining Order - mentally ill, suicidal, homicidal.

5/4/88 - Initial Consultation Sheet - Scott Carter, Crisis liaison, Virginia Beach General Hospital

Brought to emergency room after ingesting 20 Halcion pills. Resistant to treatment, required 4 point restraints. Suicidal - expressed intention of "going home and blowing my head off with a shotgun."

5/4/88 - TPI, VA Beach - Howard Weiss, M.D., Attending Physician

Brought in on temporary detaining order due to danger to self. This is third hospitalization. Says first hospitalization was age 8. 2nd one last year. This time

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following serious suicide attempt. Discovered in obtunded state after taking all the pills filled in a prescription for Halcion last Saturday.

Wants to die. "I could get a gun, I would blow my head off now, I just want to die, leave me alone." "It's all my mother's fault and I can't stand my parents, I just don't want to see them anymore, leave me alone, I just want to die." Denies psychotic symptoms. **"He is totally an unreliable historian. He is confused and suffering organic brain syndrome."** Slurred speech, confusion, poor memory. Abstract ability impaired. Insight and judgment extremely poor.

Diagnosis - Major Depression, recurrent.

This is a clear cut and unequivocal case whereby the patient is mentally ill and dangerous to himself....**His judgment is impaired due to mental illness.**

5/5/88 - Discussed stressors, conflicts with parents. Mentioned getting into fights, expressed fear because he doesn't remember events when angry and fighting.

5/6/88 - Court Order - transfer to TPI, Norfolk

5/6/88 - TPI, Norfolk - Dr. Joginder Pal

Admitted to emergency room at Virginia Beach General Hospital. Increasingly progressive depression attributed to inability to hold down a job. Was previously hospitalized in 1986 and 1987 for suicide attempts. Rusty discovered by family member after an overdose of (20) twenty .05 mg pills of Halcion. Was severely

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depressed at initial interview. Records available for review indicate longstanding history of behavioral and emotional problems dating back to age 8.

5/7/88 - Says less depressed. Wants to be on open unit.

5/9/88 - Master Treatment Plan - Dr. Raymond Iglecia - Diagnosis - Axis I - Major Depressive Disorder; Recurrent with melancholia, Dysthymic Disorder. Master Treatment Plans - 5/17/88 and 5/24/88 - main issue - unable to problem solve.

5/13/88 - Social History - Says he has no relationship with parents and brother.

5/27/88 - Discharge Summary - Dr. Raymond Iglecia - Admitted 5/6/88. Discharged 5/27/88. 20-year-old with increasingly progressive depression. Overdose of Halcion. ITA and 15 minute checks ordered. Medicated.

11/15/88 - Vocational Evaluation Report - Referred by Jesse Sandlin

WRAT (Wide Range Achievement Test) - less than 3rd grade reading level. Out of 89 words, could only correctly pronounce 3. Comprehension test could not be administered because he couldn't read it.

2/18/89 - Psychiatric Evaluation - Dr. Jerome Blackman, MD FAPA, Dominion Psychiatric Associates, VA Beach

Axis I -(A) Organic Brain Syndrome, etiology undetermined

(B) Atypical Psychosis

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"This is a young man with apparent organic damage.... I feel there may also be an element of retardation present." Severe amount of grandiosity present coupled with severe negativism, poor frustration tolerance, poor affect. Idealistic view of his entire life. "The disorder in his thought process makes it difficult for him to maintain any logical planned goal for himself. ..Much of his negativity and oppositionality no doubt has to do with the lengthy history of rigid upbringing that he experienced, although the complications of the family situation are no doubt much more serious than simple rigidity."

Moderately paranoid view also applies to any type of psychotherapy.

Resistant to medication. Willing to see me again but wanted to think about it. Serious defect in intellectual capacities and signs of serious mental illness.

III. THE CRIME

Rusty was accused of breaking into the home of Katherine Tafelski and her children on or about January 13, 1993. Ms. Tafelski was found on January 14th covered in blood and lying on her bed. She was partially nude and had been sexually assaulted by an object. Her daughter Ashley's body was found lying in her bed. It appeared that she had been struck several times and died from the blunt trauma. Her son Andrew was found lying in his bedroom with facial

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injuries. Chelsea Brothers, Katherine Tafelski's niece, was found alive in the home with facial injuries.

A blue washcloth was found at the murder scene. This washcloth was at one time said to have been found near the body of Katherine Tafelski and another time it was said to have been found outside the home. The washcloth was found to have spermatozoa stains which were consistent with approximately 7.8 % of the Caucasian population.

The police, after one week of investigation, began to focus their investigation on Rusty and his older brother Lester who lived next door to the Tafelski's. As previously mentioned, Rusty had no criminal record; however, his brother Lester Burket did. Animal hair and pubic hair were found at the scene. None of it was linked to Rusty. Further, Chelsea Brothers first told the police that the assailant was a black man.

In 1991 Lester Burket, Rusty's brother, was charged with and ultimately plead guilty to anal sodomy of a child who he knew and whose parents were living with Lester Burket at the time. Lester was also accused, but not charged, of molesting another female juvenile by attempting to pull her pants down to sexually assault her.

Both Lester and Rusty were taken by the police for questioning. Lester had been represented by Bill McGraw, an attorney that was familiar with Lester's previous case on the serious sex felony for which he had been arrested and charged in July of 1991. Lester, when taken into custody by Virginia Beach police, called his mother and instructed her to retain Bill

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McGraw for him on the murder cases. Mrs. Burket contacted McGraw and retained him to represent Lester and not Rusty. McGraw went to the police station in his capacity as Lester's attorney.

When McGraw arrived at the police station he was refused access to Lester but when Lester's interrogation ceased at approximately 6:00 p.m. McGraw held a press conference, as Lester's attorney, announcing that no charges would be brought against him. McGraw spent the following hours with Lester and his parents. When Rusty allegedly gave a statement to some of the events, McGraw was retained to represent Rusty by his father. McGraw, when retained to represent Rusty, never terminated his attorney/client relationship with the prime suspect, Lester. In the alternative he simultaneously represented both suspects in the murders. According to the law and the rules of ethical conduct this was an absolute conflict of interest.

IV. THE INTERROGATION

Because the only physical evidence linked to Rusty (and 8% of all Caucasian males) was the washcloth, the interrogation became the most important aspect of the Commonwealth's case. It was the interrogation that was ultimately appealed, preserved for appeal, and was found to be satisfactory by the Virginia Supreme Court.

When the police began their interrogation on January 20, 1993 at approximately 2:00 p.m. they knew that Rusty was mentally ill. He was taken to police headquarters and interrogated by Detectives Hoffman and Sager. He was told that he was not under arrest and that

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he was free to leave at any time. Hoffman and Sager placed a chair in the corner and the two of them sat between Rusty and the only door out of the small interrogation room which was equipped to record both by video and audio. The interrogation started without Rusty's Miranda rights being read to him. After general questioning Rusty gave his whereabouts as being with his mother watching a film on television, smoking a cigarette outside, letting his dogs in, and then going to bed. Rusty was then lied to by the police who stated that the children that had survived the attack had seen Rusty in the house and that they had hair matching Rusty's in the home. Rusty stated "I'm gonna need a lawyer." Hoffman continued to examine Rusty. He remained silent. At one point Rusty used the word "accident" but at that time he was no longer free to go. Hoffman continued the interrogation and again did not provide Rusty his Miranda rights. Rusty again stated "I think I need a lawyer." The detectives frisked him and locked him in the room and left. It was then that his Miranda rights were ultimately read to him by Sager and again re-read to him by Hoffman.

Hoffman informed Rusty that Lester was still being interrogated and that one of the shoe prints was identical to Lester's. Rusty said that he did not remember doing the murder and he replied that "his brain was not right." He said "I flipped out and didn't know what I was doing," and said "I can see things but I don't remember going and doing it." Rusty again remained silent for a period of time and was pressed by the detectives to "cut the crap." Rusty told Hoffman that he had used a rusty, old crowbar to break in and gave other details about the inside of the

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Tafelski home. (Rusty had been in the home prior to January 1993). He ended by stating that he was "out of my head" and "couldn't feel myself being there." Hoffman accused Rusty of having sex with Katherine Tafelski and that he masturbated in the room. Rusty denied both. When Rusty's interrogation ended Rusty was asked why he used the blue towel and he told Hoffman he used it to carry the gun so that it would have no prints on it. (An antique gun was found in the woods behind the Tafelski home). Hoffman repeatedly entered and left the room with Rusty still telling him that he was not sure that he did the crime. The interrogation ultimately ended sometime around 6:45 p.m. when he was told that he was being charged.

V. PRE-TRIAL MENTAL CONDITION NO COMPETENCY EVALUATION

Despite Rusty's lifelong history of mental illness, and his attorney's awareness that Rusty was suffering from constant hallucinations in jail for which he was receiving anti-psychotic medication, McGraw never asked the court to address the issue of Rusty's competency to stand trial or his sanity at the time of the offense. McGraw never moved for a competency hearing at any stage in the proceedings despite his awareness of Rusty's fragile and deteriorating mental health.

Examples of Rusty's deteriorating mental health while awaiting trial are found in the jail records and are summarized as follows:

1/21/93 Social worker: Rusty reports severe headaches in recent months. Denies ever being on medication.

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- 1/29/93 Nurse: Code 99; Rusty found lying on his side on the floor with a blanket wrapped around his head and shoulders "like a hooded cape." Claims he fell and hit his head on the door or wall. Minor abrasions to head. Complains of vertigo, feeling lightheaded. Was seen pacing his cell prior to the incident; deputy said Rusty leaned his head against the door and "slid down the door."
- 2/1/93 Social worker: Nursing staff reported Rusty passed out over the weekend and was unresponsive. He stated he couldn't recall what happened - he remembered walking to the door but nothing else.
- 2/5/93 Nurse: Deputy stated Burket passed out. Possible high blood pressure with lethargy.
- 2/11/93 Doctor: Rusty denies being on medication in the past, doesn't want to take antidepressants.
- 2/23/93 Nurse: Rusty stated "I don't know why I was moved over here, I need to go back to the other cell. Why do they keep doing this to me? They spit on my food, they threaten me. Look at that window, you know who is after me. They are going to get me. I can't lay down, I'm not going to be able to sleep or rest. They will get me, the SEAL's. You know my next-door neighbor is a SEAL. Why did they move me? I have to go back." Observed sitting in corner of his bunk with crossed

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legs, rocking back and forth hugging his pillow, crying heavily at times. Voiced concerns about being in a cell with a big window.

2/23/93 Nurse: Rusty observed hunched up, cowered in corner, crying, fearful that the SEALS will come through the window. "Impending psychotic breakdown?"

4/13/93 No reasoning ability

JUNE 1993 PRELIMINARY HEARING

VIRGINIA BEACH GENERAL DISTRICT COURT

6/25/93 Doctor: "Been having hallucinations for past two months - sees, hears, and smells old hunting dogs he used to have that are now dead." Complains of loss of appetite, feelings of hopelessness, apathetic. Threatened suicide but denies current intent. Expects one of the SEALS to shoot him if he's released. Tearful.

6/25/93 Placed on Sinequan, 50 mg., increased to 150 mg. on 7/1/93

8/6/93 Doctor: Rusty complaining meds not helping. Remains depressed and hopeless; complains of nightmares every night.

9/27/93 Social worker: Rusty stated when he goes to court he will testify against himself to be sure they kill him.

10/1/93 Doctor: Increased depression and irritability. Thinking somewhat paranoid.

11/17-18 Defense Psychological Evaluation for mitigation purpose performed.

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11/20/93 Nurse: Rusty sitting on bunk, curled up, sobbing, stating "They're going to kill my mom and dad. They burned my dog." Says "they" are monsters - **"the monsters said they're going to kill my mom and dad. But what do you all care? I should be dead! Why should I tell you anything, all you do is testify against me. Every word I say you tell them!"** Covered camera, hyperventilating, sitting on edge of bed. Repeated "I need a phone call. I've got to call my mom and dad. They're going to kill them." Nurse instructed to give Rusty Benadryl, 100 mg bid for anxiety until stable.

11/22/93 Social worker: Referred by nursing staff, complaining of seeing and hearing demons - **"shadows of people in my room talking to me."** The demons said if Rusty talked to anybody about anything, they would kill his parents. **Reports history of auditory/visual hallucinations in early childhood similar to hallucinations described now;** parents told him they were dreams. These visions occur mostly at night when Rusty is awake. Appears paranoid, agitated. States he hasn't talked to parents or attorney in 2 weeks. Discussed referral to Dr. Bohlke to evaluate need to change meds in light of new symptoms.

11/26/93 Nurse: Rusty stated "I need to talk to someone about these hallucinations. They are not getting any better and you people aren't helping them. They're dead, I know they're dead, I haven't been able to talk to them." Stated there was no

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answer at his parents' house, he knows they're dead. Seems distraught. Allowed to call, spent 45 minutes on phone.

11/26/93 Doctor: **Rusty complaining of increased hallucinations** "which he believes are demons." Exhibiting increased delusional thinking and paranoia, increasing decompensation. Prescribed Trilafon, Cogentin.

11/29/93 Social worker: Doing better with new medication. **Still hears voices, but no longer experiences visual hallucinations;** paranoia also decreased.

12/2/93 Social worker: Reports feeling more calm with new medication, but experiencing some hand tremors when trying to write. Rusty talked to watch commander about cracks in wall -doesn't want to be blamed for cracks.

12/9/93 Social worker: Rusty received upsetting news from attorney today and subsequently fired him. Admits to being "upset" and "on the edge." Continues to report some mood swings.

12/9/93 Nurse: Rusty banging his head on the wall. Wants to call his father to see if he'll find him a new lawyer "because I fired mine today." Inside of wrist red - states "I bit myself."

12/10/93 Doctor: Rusty upset with lawyer, feels he was lying to him and he can't trust him. Given Cogentin.

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1/4/94 Social worker: Rusty complaining hallucinations are back where they were last year, "trying to make deals with me." **Complains of seeing demons and shadows, is having a hard time determining what's real and what isn't.** Displays some agitation and paranoia.

1/5/94 Doctor: Double the dose of Trilafon and Cogentin

1/14/94 Doctor: **Rusty states he is doing better, hallucinations aren't as severe, he's trying to ignore them.** "Patient reports he's never known a calm like this. Resolved differences with his lawyer."

JANUARY 19, 1994 VIRGINIA BEACH CIRCUIT COURT

RUSTY PLEADS GUILTY

2/15/94 Nurse: Rusty states "I don't know if I need this medicine anymore. I'm going to ask to go in the electric chair when I get sentenced. What's the point?"

2/23/94 Social worker: **"Appears relieved that he is not getting death penalty as indicated by his attorney."**

3/8/94 Rusty is receiving 200 mg Elavil at bedtime, 8 mg Trilafon twice a day, 2 mg Cogentin twice a day.

MARCH 24, 1994 VIRGINIA BEACH CIRCUIT COURT

RUSTY IS SENTENCED TO DEATH

Defense counsel retained the services of Psychologist Gary Hawk and Neuropsychologist Dr. Thomas Ryan. Dr.'s Hawk and Ryan did not have an opportunity to review all available

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records on Rusty which included school, medical and psychological records. Hawk did not see Rusty until after the preliminary hearing, over a two-day period, in November of 1993 along with Dr. Ryan. Their final reports were filed in December 1993. They also failed to be provided Virginia Beach City Jail records which contained references to Rusty's psychotic condition and psychotic medications which were prescribed to address his hallucinations and schizophrenia. McGraw failed to have Rusty's competency addressed at any time during the proceedings of the case whether to assist counsel or to address sanity at the time of the offense.

V. THE DNA

As previously mentioned, the washcloth was found with seminal fluid which was revealed to be consistent with 7.8 percent of the Caucasian population. The testing at the time did not rule out Lester Burket or Rusty. Lester was a suspect who was interrogated. At this time further testing should be done on this cloth that would hopefully narrow the scientific probabilities between Rusty and Lester.

VI. MENTAL INCOMPETENCE REQUIRED FOR REVIEW

Even though Rusty's various medical records at the time of incarceration in the Virginia Beach City Jail have been brought before State and Federal Habeas Petitions each Court has declined review on various procedural grounds.

We ask you to consider the extensive medical records that have been provided to you and were not available at the time that Rusty entered his plea and was sentenced. We ask you to temper retribution with mercy. Rusty's ability to understand and voluntarily enter into a plea,

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knowingly and intelligently, at the same time that he is hallucinating and talking to monsters coupled with the fact that he never is examined for competency to stand trial or assist counsel is an absolute injustice and could only be overcome by your clemency. Rusty's representation at the trial level amounted to nothing.

VII. CONCLUSION

It is asked that clemency be granted on a multi-faceted level. It is requested because further DNA testing of the washcloth, at this time, may be able to discern whether or not Lester Burket is the true perpetrator of the crimes that occurred.

Whether the "black man" seen by one of the child witnesses as the assailant is in reality true.

Whether admissions during the interrogation were really admissions or suggestions of the police that Rusty adopted then quickly would say "he was out of his mind."

Whether a mentally ill individual, never evaluated for competency to stand trial can be put to death. The minimum required of any counsel in the Commonwealth of Virginia for the most minor of cases is a request for a mental evaluation for competency. This never occurred.

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The only alternative is life, without parole, so that Rusty does not become a victim of the system.

Respectfully submitted,
RUSSEL WILLIAM BURKET

By: 

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Mark Olive, Esquire

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FAX TRANSMISSION COVER SHEET

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Re: Russel Burket
Sender: Danielle Sheets, Secretary for Andrew A. Protopgyrou

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