

**PETITION FOR EXECUTIVE COMMUTATION
OF A SENTENCE OF DEATH**

Submitted to The Honorable L. Douglas Wilder,
Governor of the Commonwealth of Virginia,
On Behalf of Wilbert Lee Evans,
A Prisoner on Death Row

Counsel for Petitioner:

Jonathan Shapiro
Jonathan Shapiro & Assoc., P.C.
1013 Princess Street
Alexandria, Virginia 22314
(703) 684-1700

Arthur F. Mathews
Thomas F. Connell
Mark D. Cahn
Wilmer, Cutler and Pickering
2445 M Street, N.W.
Washington, D.C. 20037

(202) 663-6300

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**PETITION FOR EXECUTIVE COMMUTATION
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Pursuant to Article V, § 12 of the Constitution of Virginia, Wilbert Lee Evans, a prisoner awaiting execution in the Commonwealth of Virginia, hereby petitions the Honorable L. Douglas Wilder, Governor of the Commonwealth, to commute his death sentence to one of life imprisonment.

Mr. Evans was sentenced to death in March 1984, based upon a jury finding that he posed a threat of future danger to society. In May 1984 -- two months after Mr. Evans' capital sentence was handed down -- a series of extraordinary events occurred that cast serious doubt upon the validity of the jury's prediction of future dangerousness. On May 31, 1984, a massive prison break occurred at the Mecklenburg Correctional Center, in which fourteen prison employees were taken hostage by a group of six heavily armed escapees. Mr. Evans, who was housed at Mecklenburg death row at the time, not only refused to participate in the escape, but has been credited by guards and prison officials with saving and protecting the lives of the fourteen hostages taken during the ordeal, and with preventing the rape of two prison nurses. Because these events occurred after Mr. Evans had been sentenced to death, no court or jury considered them in determining whether he should live or die.

As set forth in greater detail herein, this petition raises several compelling grounds for granting executive clemency. The first focuses on the direct impact of Mr. Evans' actions during the 1984 escape, and his efforts to protect the lives and welfare of the hostages taken during the Mecklenburg break. As far as we know, Evans' clemency petition is entirely unprecedented, in that it includes sworn statements and letters from prison guards and officials -- including several guards who were taken hostage during the May 31, 1984 crisis -- who urge the Governor to reward Evans' selfless and courageous acts during the 1984 break by commuting his sentence to life imprisonment. As Toni V. Bair, the past warden of the Mecklenburg Correctional Center, concluded in a November 1989 letter, Evans "did in fact assist staff during that hostage situation to ensure that no one was physically hurt, to include that the female nurse was not sexually assaulted." Exhibit 3.

Second, this petition presents a compelling institutional basis for granting executive clemency. As Mr. Bair noted in his letter, a grant of clemency by the Governor in recognition of Mr. Evans' assistance to the guards and nurses may well have a "positive effect on future inmate behavior in the eventuality of a riot or serious hostage situation." Exhibit 3. Similarly, Bishop Walter F. Sullivan, the Bishop of Richmond, observes in a letter filed in support of this petition that commutation of Evans' death sentence would permit the Commonwealth to "continue

to punish the crime," while at the same time "send a clear message throughout the corrections system that efforts at rehabilitation and positive contributions to society are recognized and valued." Exhibit 4.

Finally, this petition demonstrates that Evans' conduct during the 1984 escape was not an aberration. As reflected in a letter from Mr. Evans that he submits with this clemency request, the petitioner has sought to spend his nine years at Mecklenburg in a peaceful and constructive manner, devoting himself to study and self-betterment. This fact is no better demonstrated than in the numerous affidavits from prison officials that accompany this petition. These prison employees -- who are and will be in daily contact with Evans -- each attest that the petitioner does not pose a danger to prison personnel, and that he could, in their opinion, serve a life sentence without incident.

PERTINENT HISTORICAL BACKGROUND

1. Evans' Conviction and Sentencings

Wilbert Evans was convicted of capital murder in April 1981 for the shooting death of William Truesdale, an Alexandria Deputy Sheriff. The shooting occurred as Evans was being returned to the city jail after a court appearance and as he struggled with the deputy in an attempt to escape. It was the Commonwealth's theory at trial that Evans had planned the escape and that he purposefully shot the deputy. Evans has always insisted that he never intended to shoot the deputy, but that the gun fired during the struggle as he attempted to position it to shoot the handcuffs off his wrist.

Though Evans' case was tried to the jury on both prongs of Virginia's death penalty statute -- that is, that the crime was wanton and vile, and that Evans presented a threat of future danger -- the jury that imposed the death sentence specifically rejected the wanton and vileness grounds. Evans received the death sentence solely because of the jurors' belief that he posed a threat of danger in the future.

In April 1982, shortly before his scheduled execution, Evans obtained new counsel, who discovered that serious constitutional error had been committed at the sentencing

hearing. Most of the prior "convictions" that the Commonwealth had introduced at Evans' April 1981 capital sentencing, in order to establish his future dangerousness, either were not convictions at all, or could not lawfully have been placed before the jury.

Virginia law, at that time, prohibited capital resentencing if a capital defendant's sentence was later set aside. However, while Evans was pursuing his claims of constitutional error, the Virginia legislature amended the Commonwealth's capital sentencing statute to permit, for the first time, capital resentencing. Two weeks after the new sentencing amendment was adopted, the Commonwealth confessed error in Evans' case, admitting that the evidence introduced at Evans' April 1981 sentencing hearing was "'seriously misleading' or 'otherwise defective.'"^{1/}

Because this confession of error came after the new sentencing amendment had been enacted, Evans did not receive the automatic sentence of life imprisonment that would have been available under the earlier law. Instead, the court vacated Evans' 1981 death sentence, but ordered a resentencing under the new law. On March 4, 1984, Evans was resentedenced to death.

^{1/} These errors are discussed at greater length in an opinion of the Virginia Supreme Court. See Evans v. Commonwealth, 323 S.E.2d 114, 117 (Va. 1984).

For six years, Evans has challenged the constitutionality of his resentencing under the revised statute, arguing that the due process, equal protection and ex post facto clauses of the United States Constitution required that his case be governed by the earlier sentencing statute. The Virginia Supreme Court admonished the Commonwealth for the "indifferent, careless manner" in which false evidence was introduced at Evans' initial sentencing;^{2/} the Fourth Circuit Court of Appeals acknowledged that, under the law in place at the time of Evans' initial sentencing, "if the Commonwealth failed to secure a valid death sentence due to errors in the sentencing process it was foreclosed from seeking capital resentencing and the defendant received an automatic sentence of life imprisonment;"^{3/} and two Justices of the United States Supreme Court agreed with Evans that the resentencing was unconstitutional.^{4/} See Exhibit 1. However, in the final analysis, the courts have upheld the constitutionality of sentencing Evans under the new statute.

Despite this careful judicial review, one aspect of the 1984 resentencing -- the jury's prediction that Evans posed a

^{2/} Evans v. Commonwealth, 323 S.E.2d 114, 120 (1984).

^{3/} Evans v. Thompson, 881 F.2d 117, 119 (4th Cir. 1989).

^{4/} See Evans v. Virginia, 471 U.S. 1025, 1025-29 (1985) (Opinion of Marshall, J., dissenting).

threat of future danger -- has escaped judicial scrutiny.^{5/} No court or other authority has had the opportunity to review the propriety of Evans' death sentence in light of the events that occurred after his sentence was imposed. It remains for the Governor, under the mandate of Virginia's Constitution, to determine whether the extraordinary events post-dating Evans' death sentence -- events that Evans' sentencing jury obviously could neither predict nor consider -- dispel its finding of future dangerousness. It remains for the Governor to determine whether justice demands that this man be put to death by the Commonwealth.

2. The Mecklenburg Escape

After his original sentence of death was imposed in 1981, Evans maintained a strong prison record. At his 1984 resentencing, numerous guards and other prison officials testified to the fact that Evans was well-behaved, hard working and cooperative, that he always did what he was told, got good

^{5/} On June 26, 1990, Evans filed a series of petitions with the Circuit Court for the City of Alexandria seeking, inter alia, to have the appropriateness of his capital sentence reviewed in light of his conduct during the Mecklenburg uprising in May 1984. The Commonwealth has responded by asserting that Evans' claims are not judicially cognizable, and that the facts regarding Evans' conduct during the Mecklenburg break are "clearly the subject matter only for a clemency petition." Commonwealth's Brief at 8.

performance ratings, and caused no trouble.^{6/} According to Sergeant C.O. Gibbs, Evans was "extremely cooperative." Supervisor Booker T. Simmons similarly testified that Evans'

attendance [at work] was wonderful . . . He'd get the job done and he ma[de] good decisions, and he had a very, very good attitude. And he kept the place clean and we didn't have [any] problem. If you asked him to do something, he would do it all the time.

Similarly, numerous affidavits were prepared by friends and character witnesses on Mr. Evans' behalf. See Exhibit 2. Despite this testimony, the jury found that Evans posed a threat of future dangerousness, and the court imposed a sentence of death.

Unfortunately, the 1984 resentencing jury was presented with an incomplete portrait of the defendant. Events occurring after the sentencing hearing, and thus never put before the jury, dramatically call into question its finding that Evans should be put to death because he constitutes a danger to others if he remains incarcerated.

On May 31, 1984, a group of six inmates, armed with homemade knives, orchestrated an escape from death row at the

^{6/} These included Sergeant C.O. Gibbs, Officer Clyde E. Hubbard, Supervisor Carlyle Dabney, Food Services Supervisor Booker T. Simmons, Sergeant Claude P. Williams, Officer Harry Azell, Sergeant Raney, and Capt. Howard Coles. The testimony given by these men is attached as Exhibits 21-28.

Mecklenburg Correctional Center. During the course of the break, twelve prison guards and two female nurses were seized and taken hostage. The guards were stripped of their weapons and clothes, bound and blindfolded; one nurse was stripped of her clothes as well, and bound to an inmate's bed. The rioting prisoners threatened to injure or kill the captured guards, and threatened to rape the two nurses.

Evans, who was in custody at the Mecklenburg facility at the time, was not a participant in the escape, nor was he in any way connected with the escapees. Faced with the sudden, violent and explosive events of the break, Evans did not merely resist the temptation to assist -- or even join -- the escapees. To the contrary, though unarmed himself, Evans placed himself between the heavily armed escapees and the hostages, urged the escapees to remain calm and non-violent, and convinced the escapees to spare the lives of the hostages.

It has taken counsel literally years to piece together the information we now present concerning Evans' conduct during the May 1984 prison break. In fact, it was only through the recent cooperation of the Department of Corrections that counsel finally was able to interview several of the few hostages who still work at Mecklenburg.¹⁷ These interviews, many of which

¹⁷ Others are nowhere to be found; still others are unwilling to recount the traumatic experience of being held hostage on death row. See Exhibit 16.

have been reduced to affidavits attached hereto as Exhibits 5 - 12, establish, above all else, that the hostages credit Evans with saving their lives and preventing the rape of the nurses. The interviews further establish that those individuals who have daily contact with Evans -- ranging from counselors and correctional officers, to senior Sergeants and Lieutenants in the prison -- consider him unique among the inmates on Virginia's death row, an individual who has consistently helped to prevent harm from coming to the guards, who treats them all with a high degree of respect, and who (unlike other inmates on death row) could, in their opinion, serve a life sentence without incident. Universally, these declarations support the conclusion that Evans' selfless and extraordinary acts of May 1984 belie the finding that Evans poses a threat of future danger:

1. Officer Harold Crutchfield, a correctional officer, was taken hostage during the escape on May 31, 1984. Officer Crutchfield stated, in unequivocal terms, that Evans was instrumental in aiding and assisting the nurses and officers. For instance, Officer Crutchfield overheard Evans assisting Nurse Boyd, who had been taken hostage, and imploring the escapees not to hurt any of the hostages. As Officer Crutchfield stated in his sworn declaration, "[i]t is . . . my firm belief that if Evans had not been present during the escape, things may have blown up and people may have been harmed." Crutchfield Decl. at ¶ 7. Moreover, Officer Crutchfield affirmed that Evans was not

in any way associated with the escapees, asserting that "[i]t is my firm belief; based on my knowledge of Evans and on what I observed on the day of the break-out, that Evans was not part of the escape and, to the contrary, was doing what he could to aid the hostages." Crutchfield Decl. at ¶ 6. Officer Crutchfield further attested that, in his opinion, Evans "poses no risk of harm to any correctional officer . . . [unlike] some inmates who are a clear danger to the officers." Crutchfield Decl. at ¶ 10.

2. Ricardo Holmes, a correctional officer at Mecklenburg for five years, was also taken hostage during the prison break. Mr. Holmes similarly attested to the fact that Evans' actions in May 1984 saved his life. "Based on what I saw and heard, it is my firm opinion that if any of the escaping inmates had tried to harm us, Evans would have come to our aid." Holmes Decl. at ¶ 4. Moreover, Mr. Holmes added: "It is my belief that had it not been for Evans, I might not be here today." Holmes Decl. at ¶ 4.

3. Officer Prince Thomas, an eleven-year veteran at Mecklenburg, was also taken hostage during the prison break. Officer Thomas confirmed that Nurse Ethel Barksdale, one of the two nurses taken hostage, credited Evans with intervening on her behalf after one of the escapees had threatened her, and with preventing her rape. Officer Thomas further confirmed that Evans' conduct during the escape was "consistent with his overall conduct while he has been at Mecklenburg. . . . From my

experience as a correctional officer of 10 years experience, I would call Evans a model prisoner." Thomas Decl. at ¶ 4.

4. Officer Leon Pettus, a 10 year veteran at Mecklenburg, has known Evans since he was first placed on death row in 1981. Although not a hostage during the crisis, Officer Pettus has worked with many of the officers who were taken hostage during the escape. According to Officer Pettus,

While I was not taken hostage during the break-out from death row in 1984, I have spoken to three of those who were. All three stated unequivocally that had Evans not been present, things would have been much worse than they were. . . . It is my opinion, based upon my experience with Evans, that he is the kind of man who would act to prevent harm to a correctional officer. Evans is one of the best inmates I've ever worked with. He is one of the few who I feel strongly enough about to put my thoughts in an affidavit on his behalf.

Pettus Decl. at ¶¶ 4-5. Officer Pettus further attested that it was his "belief that if [Evans] were given a life sentence, he would serve it without incident." Pettus Decl. at ¶ 3.

5. Sergeant James Lindsey, a thirteen-year employee at Mecklenburg, attested to the fact that he had spoken with several of the guards taken hostage in May 1984, and that "[t]hese officers have told me that Evans helped keep things calm during the break and that Evans helped the officers and nurses who were

being held hostage." Lindsey Decl. at ¶ 4. Sergeant Lindsey further attested to Evans' exemplary behavior at Mecklenburg. Lindsey Decl. at ¶ 2. Indeed, according to Sergeant Lindsey, in his 13 years at Mecklenburg, Evans was one of only a few inmates on death row who, in his opinion, "would not pose a threat to officers or other inmates were he to serve a life sentence." Lindsey Decl. at ¶ 5.

6. Lieutenant Marvin Rainey, an eleven-year veteran at Mecklenburg, similarly attested to the fact that according to the officers taken hostage in May 1984, "Evans was a calming influence throughout the night, and was looking out for the welfare, safety and comfort of the hostages. . . . One hostage informed me that it was his opinion that one of the nurses who was taken hostage would have been raped had it not been for Wilbert Evans and his actions that evening." Rainey Decl. at ¶ 3. Based on his experiences and observations over the past eleven years, Lieutenant Rainey declared that, in his opinion, "if Evans' sentence were commuted to life imprisonment, he would adjust well, and would not pose a threat to officers or other inmates." Rainey Decl. at ¶ 4.

7. Edgar Brummell, an employee at Mecklenburg Correctional Center between 1982 and 1984, spoke directly to several of the hostages immediately after their release. According to Mr. Brummell, "the consensus of the group was that

had it not been for Mr. Evans, they probably would have been killed." Brummell Decl. at ¶ 3. Additionally, Mr. Brummell recalled that he was "told that not only had Mr. Evans saved the lives of these gentlemen, he also was a key element in keeping another hostage, a nurse, from being raped." Brummell Decl. at ¶ 3.

8. Officer Michael Hawkins, a five-year veteran, similarly stated that Evans was an "exemplary" inmate, "the kind of inmate who would help an officer in need." Hawkins Decl. at ¶ 2. Indeed, Officer Hawkins observed that "Evans is resented by many of the inmates for the way he treats and respects the officers at the prison." Hawkins Decl. at ¶ 2.

These sworn statements from the prison guards, officials and employees are entirely consistent with the contemporaneous news accounts of the prison break -- all of which credit Evans with helping prevent the rape of the nurses and injury to the guards. A report published in the Richmond News Leader on June 4, 1984 quotes extensively from one of the freed hostages, whose identity was withheld from publication:

"Evans and [Willie Lloyd Turner] kept yelling down to where they (the escaping inmates) had the nurses, saying, 'Ma'am, are you alright? Nurse...are you alright?' They pleaded with the escapees to leave them alone."

The guard said, "If I am ever allowed to go back on death row I intend to thank those men. It was the funniest thing I have ever seen in a way. What I mean is, I don't understand why all of them didn't run."

"I do know I owe my life, as do all the others, to Evans and Turner. If I had the money, I would hire an attorney for them and see if they couldn't be set free. Maybe they have changed. They (the escaping inmates) would have killed every damned one of us."

Exhibit 13. A similar report was published in the July 4, 1984 Washington Post, in which Nurse Ethel Barksdale was interviewed. Nurse Barksdale said she had been ordered to strip by one of the inmates. According to the Post, "She said she got help from inmate Wilbert Lee Evans, a death row convict who did not escape and whom prison officials have credited with saving the lives of the hostages." Exhibit 14. See also Exhibit 15.

In sum, it was the unanimous view of all the employees interviewed that Evans acted to prevent violence to the hostages, and that he could serve a life sentence in prison without incident. In the words of Edgar Brummell, a former Mecklenburg employee:

I believe in the death penalty. I have known all the prisoners executed at Mecklenburg since Frank Cappola. In my view, Mr. Evans is not that type of person. Mr. Evans put his life on the line in May 1984 when he stuck his neck out for the hostages. It is my view that he deserves some consideration.

Brummell Aff. at ¶ 5.

- REASONS FOR GRANTING THIS PETITION

There are strong humanitarian and policy reasons for recognizing Evans' selfless acts with the grace of executive commutation.

First, notwithstanding what brought Evans to death row, the fact that, while there, he prevented the rape or assault of two nurses as well as grievous injury or death to several prison guards is worthy of recognition. This petition requests that this conduct be given consideration in assessing the appropriateness of Mr. Evans' capital sentence.

Second, in light of Mr. Evans' conduct during the 1984 escape, there is a compelling basis for reconsidering the propriety of a death sentence based upon a finding that he poses a "risk of future danger" to society. Far from acting in a dangerous manner, Evans acted to prevent violence and protect the vulnerable during an explosive prison crisis. It may be that Evans' fate was properly determined by the jury based upon the information it had at the time. However, it must be seriously questioned whether the jurors would have imposed the same sentence had they known that Mr. Evans, during an uprising on death row, would act to save the lives of fourteen human beings and to prevent a rape.

Third, apart from the acts surrounding the escape, the affidavits included in this petition reflect the belief that Evans does not pose a risk of future danger, and that he is a model inmate who could serve a sentence of life imprisonment without incident.^{8/} This confidence in Mr. Evans is a reflection not only of his conduct during the escape, but also of his unique and exemplary adjustment to the prison environment at Mecklenburg. The petitioner grew up in an environment of great poverty and deprivation; his mother, with whom he was extremely close, died suddenly when he was six years old, and his father, soon after Mrs. Evans' death, became a heavy drinker. One result of these traumas was that Mr. Evans attended school only until the age of ten.

During his nine years at Mecklenburg, Mr. Evans has devoted himself to the studies and pursuits that eluded him as a

^{8/} This adjustment is reflected not only in the affidavits of prison guards, but also in a statement submitted by Mr. Evans' counselor at Mecklenburg, Patricia O'Halloran, who has worked with him on a close basis since 1988. During this period, she has observed these unique qualities in Evans:

As opposed to many other inmates, Evans has always been polite and courteous with me, and never impatient as I attempt to help him I have never felt threatened by him nor uncomfortable in his presence. I have every reason to believe that Evans could continue to serve time here without any threat to me.

O'Halloran Decl. at ¶ 3-4 (Exhibit 17). See also Exhibit 18.

youth. The petitioner has spent his free time reading, and writing poetry and songs. As Mr. Evans reflects in his letter that accompanies this petition, his writings have provided him with both an outlet of expression, as well as an opportunity to set goals and aspirations for himself. See Exhibit 17. Mr. Evans attaches to this petition copies of some of his works, as well as a selection of awards, recognition and correspondence he has received for the poetry and songs he has written while on death row. Exhibit 18-19.

Finally, a grant of clemency in Evans' case would send a clear message to all of Virginia's prisoners. Rewarding behavior of this kind is an incentive to others to keep the peace, and to continue to obey the rules despite an interminably long sentence or a sentence of death. It is an incentive to prisoners to resist upheavals and escapes, and to come to the aid of guards endangered by violence. Thus, granting Evans a life sentence would at once be both an act of compassion and an opportunity to foster order in the prisons. Not only Evans benefits from such an act. So do the wardens and correctional officers who risk their lives working in the sometimes dangerous environment of the correctional system. On the other hand, failing to grant commutation where it is richly deserved may also send out a message, one which should not be sent. The message is that once a sentence of death has been handed down, there is no incentive to follow the rules or to aid guards in trouble. If there is

nothing to look forward to but despair and death, there is nothing to lose by prison violence.

These policy reasons find support from noted experts in the field of corrections, including Toni Bair, the past warden of the Mecklenburg Correctional Center and now Regional Administrator for the Central Region of the Virginia Department of Corrections. According to Mr. Bair, if Evans' sentence were commuted:

there could be a possible positive effect on future inmate behavior in the eventuality of a riot or serious hostage situation. . . . If inmates were aware of Mr. Evans' commutation based on his involvement with assisting staff during the Death Row escape on May 31, 1984, I believe that they could generalize from this incident to future situations and might possibly assist staff for their own purposes during a similar or like situation.

Exhibit 3.

These compelling grounds for granting clemency were eloquently summed up by Bishop Sullivan in his letter urging the Governor to commute Evans' sentence. As the Bishop observed, by granting Mr. Evans executive commutation, " Virginia will be able to reward his constructive (even exemplary) actions while continuing to punish the crime for which he was originally sentenced. You will send a clear message throughout the

corrections system that efforts at rehabilitation and positive contributions to society are recognized and valued." Exhibit 4.

Mr. Evans' petition for clemency is not in any way an attempt to minimize the suffering caused by the crime which brought him to death row. Mr. Evans speaks of his great remorse for the family of Officer Truesdale in his letter that accompanies this petition, in which he writes: "Even though my mother pass when I was six years old, and a brother of high blood pressure when I was 22, and my step mother, also my Father have pass since I been here on Death Row, my Father as recently as March of this year, I'm still not able to say that I know the depth of hardship and hurt that the Truesdale family been through." Exhibit 17.

The jury that imposed Mr. Evans' death sentence in 1984 predicted, based on the evidence then available, that he would pose a threat of future danger if he were to remain incarcerated. The events of the Mecklenburg break -- documented in the affidavits attached to this petition -- cast considerable doubt upon the validity of that finding, and the on the continued propriety of Evans' capital sentence. The petitioner asks only that, in passing on his clemency request, consideration be given to his conduct during the Mecklenburg escape, and to his efforts to lead a productive and peaceful life while on death row.

Mr. Evans respectfully requests that the Governor grant this request for executive commutation and that, before acting on this request, the Governor grant counsel an opportunity to appear and be heard.

Respectfully Submitted,

WILBERT LEE EVANS,

By Counsel

Counsel for Petitioner:

Jonathan Shapiro
Jonathan Shapiro & Assoc., P.C.
1013 Princess Street
Alexandria, Virginia 22314
(703) 684-1700

Arthur F. Mathews
Thomas F. Connell
Mark D. Cahn
Wilmer, Cutler and Pickering
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6300