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**TO THE
HONORABLE JAMES S. GILMORE, III
GOVERNOR OF THE COMMONWEALTH OF VIRGINIA**

**A PETITION
FOR
EXECUTIVE CLEMENCY
FOR
ANDRE L. GRAHAM**

Scheduled to be executed
on Thursday, December 9, 1999

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PETITION FOR EXECUTIVE CLEMENCY

FOR

ANDRE L. GRAHAM

Andre L. Graham is innocent of capital murder. Mark Sheppard fired the gun shots which killed Sheryl Stack and wounded Edward Martin. Although Graham was present at the scene of the shooting and participated in the robbery of the victims, he did not shoot either person. Thus, under the law of the Commonwealth of Virginia, Andre Graham should not have been convicted of capital murder, and he is ineligible for the death penalty.

Because he has been denied an evidentiary hearing in his federal habeas proceedings, he has been unable to establish his innocence, and he pleads for an opportunity to do so now. He has attempted to tell the Governor the facts of his case in the attached hand-written letter (Attachment 1). Counsel for Graham respectfully requests that the Governor consider his pleas and grant him executive clemency.

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FACTS OF THE CASE

A. EDWARD MARTIN, THE SURVIVING VICTIM, DID NOT SEE WHO FIRED THE SHOT THAT KILLED SHERYL STACK.

The evidence connecting Andre L. Graham to the murder of Sheryl Stack was entirely circumstantial. Edward Martin recalled seeing a gun in Graham's hand before he and Stack were ordered to lie down and close their eyes. At some point thereafter (Martin was uncertain of the time lapse) he and Stack were shot. According to the testimony of James Jones, a witness who heard the shooting, the gunshots might have been as much as 10 seconds apart. Although the state and federal courts found this fact to be insignificant, because Martin had last seen Graham with the gun before the shooting, their reasoning totally ignores the fact that Mark Sheppard was in close proximity to Graham and the victims before the shooting. Therefore, it is not inconceivable that Sheppard took the gun from Graham and fired one or both of the shots. Furthermore, Edward Martin's inability to identify Mark Sheppard as one of his assailants calls into question the credibility of his identification of Graham. Considering the extensive brain damage that Martin suffered, it should not surprise anyone that his recollection of the events of that fateful night might be less than accurate.

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In the Commonwealth of Virginia, there is a long standing principle of law that circumstantial evidence of one's guilt must exclude all reasonable possibility of one's innocence. The facts of this case do not exclude the substantial possibility that Mark Sheppard fired the shot which killed Sheryl Stack. That possibility alone is the most persuasive reason why Andre Graham's life should be spared.

B. MARK SHEPPARD MURDERED SHERYL STACK

On August 14, 1997, Andre Graham executed a sworn affidavit (Attachment 2) concerning his receipt of written correspondence from Mark Sheppard while both were incarcerated at the Mecklenburg Correctional Institution. Sheppard, in his letters (Attachment 3), acknowledged Graham's innocence of the murder of Stack. In one of his letters, Sheppard stated:

Who in the hell would've thought dude was gonna say that you was the one that shot him?? You caught a bad break kid!

In a subsequent letter, Sheppard said:

Hell No! You didn't smoke those people, and I tell everybody that, even my lawyers.

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Apparently Sheppard made good on his boast, because he repeatedly told fellow inmates and correctional staff at the Mecklenburg Correctional Institution that Graham was innocent of the murder of Stack. One of the inmates who spoke with Sheppard about Graham's innocence is James Roane whose handwritten letter to Jenny Givens of the Virginia Capital Representation Resource Center is appended as Attachment 4. Roane stated:

Through our many conversations at Mecklenburg and Sussex, Mark would say "Panama (Graham's nickname) is the only guy on death row who really didn't do anything to be on death row. Other than being at the wrong place at the wrong time, so I asked him what did he mean by that! And he, Mark, went on to tell me what happen with both the murders in Richmond and in Chesterfield. So I will start with the Richmond murder first. Mark stated to me a few times that, he, Mark, and Panama and this friend that use to hang out with was supposed to be going out to eat this day. Because they, Mark, Panama and Abe were selling drugs for the same people. So all three of them kind of hung out together everything. So Panama had picked up Mark and Abe to go out to eat. So while they were driving in the car to go eat, Abe and Panama started teasing Mark about him not having any money from the cocaine he, Mark, had got from the guy they was working for. So Mark, got mad by them teasing him and stated I don't need you'll. At that point Mark jumped out of the car with the gun Panama had loaned him the night before. So Mark said the first white people he saw he just robbed them and as he was robbing these people the white man bucked on him and didn't want to give up the money. So he, Mark, stated to me that he shot the white guy and the girl...

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Sheppard also made similar statements exonerating Graham of Stacks' murder to Mecklenburg Correctional Staff Officer Lutz and Judy Bigger. Counsel for Graham has been unsuccessful in obtaining an affidavit from either state employee concerning Sheppard's statements. However, appended hereto as Attachment 5 is a letter from Private Investigator Alfred Brown concerning his interview of Lutz. Graham's statement that a third person, Avery Woodson, AKA Avery Wright, witnessed the shooting is corroborated by Roane's letter as well as Woodson's oral statement to Graham's counsel at the Buckingham Correctional Institution on July 7, 1997 (Shelton Affidavit, Attachment 6). Without admitting his presence at the scene of the shooting, because of potential criminal liability, Woodson emphatically stated that Graham did not shoot anyone on the night in question.

The testimony of Woodson, Biggers, Lutz and Roane could have been compelled at an evidentiary hearing which was denied by the federal district court. At such a hearing, expert handwriting testimony could have been elicited concerning the authenticity of the Sheppard letters. Furthermore, a reluctant Woodson could have been granted immunity for his truthful testimony concerning his knowledge of the Stack shooting.

Andre Graham pleads for an opportunity to establish his innocence of capital murder. To that end, he respectfully requests that he be permitted to take a polygraph

examination. Furthermore, he requests the Governor to compel State employees Lutz and Biggers to give sworn testimony concerning their knowledge of Sheppard's statements exonerating Graham.

CONCLUSION

Andre Graham respectfully asks that the Governor commute his death sentence and grant such other relief as would allow him the fair opportunity to prove his innocence of capital murder. Graham also requests an opportunity for his representatives to meet with the Governor in his behalf.

Respectfully submitted

ANDRE L. GRAHAM

By _____
Of Counsel