INNUENDO AND EXECUTION

PETITION FOR CLEMENCY BY COLEMAN WAYNE GRAY

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INNUENDO AND EXECUTION

A. INNUENDO, AMBUSH, AND TECHNICALITIES

Coleman Wayne Gray went on trial for his life on December 6, 1985. Jailhouse snitches playing for leniency and a finger-pointing accomplice with a life-saving deal with the prosecutor provided the only testimony that supported his capital murder conviction for the death of Richard McClelland. A fair sentencing trial was the only hope Gray had for a life sentence. An unfair trial marked by innuendo and ambush, and the resulting death sentence, was what Gray got instead.

Before trial, Commonwealth's Attorney C. Phillips Ferguson had promised Gray's attorneys that in offering evidence of other crimes Gray was supposed to have committed, Ferguson would introduce only statements that Gray was alleged to have made. Gray's attorneys had prepared for those statements, nothing more. They were, of course, surprised and unprepared when Ferguson ambushed them with testimony from a detective and a medical examiner detailing the horrible murders of Lisa and Shanta Sorrell. The Sorrell murders occurred some six months before the McClelland murder and were highly publicized in Tidewater. Ferguson embellished the ambush with graphic crime scene and autopsy photographs of the Sorrells to arouse the jury against Gray.

Had Gray in fact committed the Sorrell murders, Ferguson's ambush might be objectionable on merely legal grounds. But no satisfactory evidence against Gray existed. Gray had never even been charged with these crimes. No physical evidence or eyewitness testimony linked Gray to these crimes, nor did any evidence establish that he had any connection with the Sorrells, any motive for the murders, or even any means or opportunity to commit the crimes. But Ferguson's star witness, the accomplice with whom he had made a deal, claimed Gray had confessed to the Sorrell murders, and around that slight insinuation Ferguson built his case.

In contrast to the "case" against Gray, substantial evidence suggested that Lisa Sorrell's husband Timothy was the perpetrator. His motive was a $50,000 life insurance policy, and he had no alibi for the time of the murders. His performance on a polygraph had not satisfied the investigators, who were sufficiently certain of his guilt to ask for an indictment. Hearing this evidence, the jury might well have discounted the Sorrell murders in setting Gray's sentence. But the jury did not hear any of it. Ferguson and the detective who had uncovered it concealed all of this evidence from the jury. And because of Ferguson's broken promise, Gray's attorneys never had a chance to find it themselves. Gray got the death penalty.

Gray's attorneys at trial complained of the unfairness of Ferguson's tactics, and the legal attack on Gray's death sentence has pounded this point ever since. Gray's complaints were validated last year before Federal District Court Judge James Spencer. Judge Spencer spent the first part of his legal career as a prosecutor, and as a district court judge he has never stood between any man and his execution date if he determined the man's trial to be fair. But following an evidentiary hearing at which the state tried and miserably failed to prove Gray's involvement in the Sorrell murders, Judge Spencer decried the prosecution's ambush tactics and studied indifference to the evidence showing Gray's innocence of the Sorrell murders. He ordered that Gray receive a new sentencing trial.

The state appealed. Without addressing on the merits Judge Spencer's conclusion that Gray's trial was unfair, the Fourth Circuit Court of Appeals reversed, ruling that whether Gray was guilty of the Sorrell murders was irrelevant and that Judge Spencer lacked the authority to redress the unfairness of Ferguson's use of the Sorrell murders. Gray's death sentence was revived on a technicality.

Sold out at trial, ambushed on sentencing, and now facing a death sentence propped up by technicalities, Coleman Wayne Gray petitions the Governor to commute his death sentence to life imprisonment. Though he denies being the triggerman, Gray does not suggest by this petition that he does not deserve incarceration because of his part in McClelland's death. But no evidence worth even a second's consideration has ever existed to show that Gray had any involvement in the Sorrell murders which were used to secure his death sentence. Despite that absence of proof, and despite the conclusion of an experienced trial judge and former prosecutor that Gray's sentencing trial was unfair, he now faces execution. Technicalities preclude the legal system from redressing the unfairness of Gray's sentencing trial. Accordingly, Gray asks for the Governor's merciful intercession into the legal system's failure.

B. CASE HISTORY[1]

1. The Murder

On May 2, 1985, Melvin Tucker and Coleman Gray waited outside the Murphy's Mart in the city of Suffolk for manager Richard McClelland to emerge. In the days before, both Tucker and Gray had cased the Murphy's Mart inside and out, preparing to rob it. Gray's wife, who formerly had worked at the Murphy's Mart, took part in the plotting. On that night, discarding any previous plans, Tucker and Gray waited outside for McClelland. Neither had a mask or had taken any precautions to ensure that the manager could not identify them.

[1] Unless otherwise noted, facts in Section B, Case History, are drawn from the trial transcript and record, portions of which are included as Appendix I.

McClelland locked the store and drove to a nearby restaurant, followed by Tucker and Gray. From the restaurant, he drove toward Tidewater Community College. At Bennett Pasture Road, Gray pulled in front of McClelland's stopped car, and he and Tucker approached McClelland. They forced him at gunpoint into Gray's car. Gray then moved McClelland's car out of the road, during which time Tucker claims that McClelland remained in Gray's car even though Tucker did not cover McClelland with the gun. When Gray returned from parking McClelland's car, they returned to the Murphy's Mart.

At the Murphy's Mart, McClelland unlocked the store and disabled the security system. According to Tucker, Gray loaded three bags with currency, change, and jewelry into a shopping cart and returned with McClelland to the car.

Gray took the wheel and drove to a service station to buy gasoline. Tucker says that while Gray fueled the car and paid for the gas, McClelland remained in the backseat of the car, even though Tucker did not cover him with the gun or take any other step to control him. With the purchase completed, they drove to an isolated lane. Once there, one of them – Tucker testified it was Gray and Gray testified it was Tucker – ushered McClelland to the rear of the car, forced him to lie on the ground, and shot him repeatedly in the left side of the head. McClelland's body was found on what would have been Tucker's side of the car.

Tucker and Gray then drove back to where McClelland's car was parked. Using gas they had just purchased, they ignited McClelland's car to destroy any possible evidence. They then returned to Gray's house and divided the money. Tucker got half.

2. The Guilt Phase

Gray was arrested on May 10, 1985, and was charged on May 22, 1985, with the capital murder of Richard McClelland. Tucker also was arrested on May 22 as he tried to launder the money obtained in the robbery. Judge Godwin, the Suffolk Senior Circuit Court Judge, appointed James Moore and Ward Eason to represent Mr. Gray. In November 1985 trial counsel filed a pre-trial discovery motion, which the court granted, seeking the disclosure of all exculpatory evidence. Suffolk Commonwealth's Attorney C. Phillips Ferguson met with Gray's counsel in the police station, and allowed the defense attorneys to examine all of the physical evidence collected concerning the McClelland murder. Ferguson produced no other evidence in response to the court order. Exh. 1, Memorandum Opinion of August 25, 1994, p. 4.

Under Virginia law, only the triggerman may be convicted of capital murder and sentenced to death. Va. Code §18.2-18. Consequently, the most critical factual issue in the guilt phase of the trial was the identity of the triggerman. There was no physical evidence to prove whether Tucker or Gray shot and killed Mr. McClelland, and each man claimed the other had committed the murder. Eager to obtain his first death penalty and lacking any reliable evidence as to which of two perpetrators pulled the trigger, Ferguson made a deal

with Tucker for testimony that would stamp Coleman Gray as the triggerman in Richard McClelland's murder. Under the terms of this agreement, Ferguson agreed to try Tucker "on a charge of first degree murder rather than capital murder," and "to convey to the Court [trying him on first degree murder charges] the nature and extent of [his] cooperation at the time of his sentencing." App. I, pp. 348-49. Moreover, if Tucker pled guilty to the charge of first degree murder, he was guaranteed a sentence less than life imprisonment, making him eligible for parole within years, rather than decades. *Id.*

Gray's capital murder trial began on December 2, 1985. Tucker testified at trial on behalf of the Commonwealth pursuant to his plea agreement.

Tucker left much to be desired as a star witness. He had a previous conviction for armed robbery and he was a drug dealer. Moreover, Tucker had given multiple statements to the police concerning the crime. These statements were consistent chiefly in their tendency to deflect guilt away from Tucker towards Gray. At trial, Tucker testified that Gray led in the planning of the robbery of the Murphy's Mart and the subsequent abduction of McClelland, that he (Tucker) never touched the murder weapon, even when Gray was not in the car with Tucker and McClelland, and that Gray had control of the gun for the duration of the crime. Tucker testified further that Gray was the "triggerman," and that Gray had burned McClelland's vehicle afterward. Tucker also testified that, sometime after the murder, he took Gray to the Nansemond Treatment Plant, where Tucker was employed. According to Tucker, Gray threw the murder weapon into one of the contact tanks at the treatment plant.

In addition to Tucker's self-serving finger-pointing, Ferguson paraded three snitches before the jury. These felons had deals with Ferguson or were making a play for leniency. They all testified that Gray had admitted his guilt to them. Two of the convicts, Sylvester Joyner and Jeremiah Smallwood, claimed Gray told them facts that, though reported in the newspapers, had not occurred. The other convict, Larabee Ferrell, claimed to have overheard a confession that both Gray and the other inmate involved in the conversation denied took place. The Commonwealth presented no other evidence to prove that Gray was the "triggerman." It relied completely on the testimony of Tucker, Joyner, Smallwood, and Ferrell to prove this essential element.

On December 5, 1985, Gray's jury retired to deliberate. That same day, the jury returned verdicts of guilty against Gray on all counts. Gray's punishments on the robbery charge and the abduction charge were set at life imprisonment. His punishment on the arson charge was ten years, and he was given four years on each of the firearm charges. They jury still had to choose between life imprisonment and death on the capital murder conviction.

3. The Penalty Phase

Before the guilt phase had begun, one of Gray's attorneys asked the trial court to order Ferguson to reveal the evidence he would introduce at the penalty phase if Gray was found guilty. Counsel based this request on a Virginia Supreme Court case which established that the fair and preferred practice in capital murder trials is for the prosecution to reveal before trial the evidence to be presented at the penalty phase. *See Peterson v. Commonwealth*, 225 Va. 289, 297, *cert. denied*, 464 U.S. 865 (1983).

Ferguson represented to the court and to defense counsel that he intended to introduce into evidence only statements Gray allegedly had made to other convicts about other crimes he had committed:

> Mr. Moore: Your honor, this is my concern. We will probably at the very best stop in the middle of the day or late in the afternoon and start the penalty trial the next day. That's at the very best. We have a suspicion, and we have good reason to believe that Mr. Ferguson is going to call people to introduce a statement that our client supposedly made to another inmate that he murdered other people which were very violent and well-known crimes throughout this entire area. If that comes in we are going to want to know it in advance so we can be prepared on our argument ... If he's going to come in, which we think he is, and have an inmate in a penal institution say that our client murdered these Sorrell people over here, the woman and the child, which we believe he is, we would like to know in advance to number one, for argument purposes, and secondly for rebuttal purposes. It's absolute dynamite.
>
> Mr. Ferguson: I just told you, we intend to introduce evidence, we will show that the defendant killed, was involved in the Sorrell murders and he was also involved in other criminal activity or crimes, including at least one other murder for which he has not been convicted or charged. And I'm stating that for the record ... *The evidence is going to be that he made those statements. But, I mean, you know, I'm giving you the evidence.*
>
> The Court: Who is the other murder that we're talking about?
>
> Mr. Ferguson: A murder in California.
>
> The Court: Any name?
>
> Mr. Ferguson: Don't have a name, but a statement that the defendant made that he had committed that murder ... The evidence is that we are going to introduce evidence to show that your client has been involved in other murders, including the Sorrell murders and including a murder in California as well as potentially other crimes.

Mr. Moore: *Is it going to be evidence or just his statement?*

Mr. Ferguson: *Statements that your client made.*

Mr. Moore: *Nothing other than statements?*

Mr. Ferguson: *To other people, that's correct. Statements made by your client that he did these things.*

App. I, pp. 9-11. Ferguson did not disclose the context of the statements or to whom Gray allegedly had made these statements.

The Sorrell murders to which Ferguson referred were one of the most highly publicized crimes in the history of the Tidewater area. In December 1984 Lisa Sorrell and her three-year-old daughter Shanta were abducted from Greenbrier Mall in Chesapeake, Virginia. Five days later, after an intensive, well-publicized search, their abandoned bodies were found. Lisa Sorrell was found slumped in the passenger seat of her partially burned automobile. She had been shot in the head six times by a .32 caliber gun. Shanta's body was found in the trunk of her mother's car. She apparently had died of carbon monoxide inhalation.

Just before the sentencing trial began the attorneys met in the trial judge's chambers. Gray's counsel told the court that the previous evening they had learned for the first time that Ferguson would not honor his promise and instead intended to introduce not only statements Gray allegedly had made about the Sorrell murders, but also graphic evidence about the crimes. Ferguson had arranged, even before he made his promise[2], to present the following additional evidence at the penalty phase: 1) testimony of Detective Michael I. Slezak, the Chesapeake police officer who investigated the Sorrell murders; 2) all of the evidence collected at the Sorrell murder scene, including graphic photographs of the murder victims; and 3) testimony of the medical examiner who investigated the cause of death and the nature and extent of the Sorrells' injuries.

Gray's trial counsel told the court that they were not prepared to defend their client for the Sorrell murders, aside from their ability to rebut the statements allegedly made by Gray to fellow inmates. Despite counsel's plea for additional time to prepare, the trial court permitted Ferguson to introduce extensive evidence about the Sorrell murders. Tucker testified that in May 1985, while he and Gray were looking for newspaper articles about the McClelland murder, Gray allegedly pointed to an article with a picture of Lisa Sorrell. Gray then allegedly admitted that he had "knocked off" Lisa Sorrell.

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[2]Officer Slezak testified at the federal evidentiary hearing that he knew for an appreciable length of time, perhaps a month or more, that he would be called to testify in the Gray murder trial. App. II, p. 120.

Based solely on Tucker's testimony, the trial court allowed Commonwealth's Attorney Ferguson to introduce evidence gathered by the Chesapeake Police Department regarding the Sorrell murders. Ferguson called Slezak to the stand, ostensibly to demonstrate that the Sorrell murders actually had occurred, and he did this by identifying various graphic photographs of the burned automobile and the murder victims. These photographs were admitted into evidence and displayed to the jury.

Next, Dr. Faruk Presswalla, the state medical examiner who performed the Sorrell autopsies, testified concerning the victims' causes of death. Presswalla displayed the autopsy photos of Lisa and Shanta Sorrell to the jury, and he described the violent causes of their deaths.

As they had predicted to the trial court, Gray's trial attorneys were unable to effectively cross-examine these witnesses. Trial counsel were prepared only to challenge the evidence Ferguson indicated he would introduce at the outset of the trial: Melvin Tucker's statement that Gray allegedly had confessed to the Sorrell murders.

After the Commonwealth rested, Gray took the stand and admitted that he had played a part in the McClelland murder. Gray denied being the triggerman, and he blamed the killing on Tucker. He also denied any involvement in the Sorrell murders. Aside from Gray's testimony, seven witnesses provided mitigating testimony in Gray's behalf.

During penalty phase closing arguments, Ferguson used the Sorrell evidence extensively in his efforts to convince the jury to sentence Gray to death as a future danger to society. He told the jury:

> You have also heard testimony in this particular case from Melvin Tucker relative to his statement that the defendant made to him relative to the Sorrell murders. And the defendant, Coleman Gray, told Tucker as they were going up the steps one day--it was some girl that had been saying things or the rumors were going through the neighborhood about his involvement in the Murphy's Mart case--and Coleman Gray, in very graphic language indicated that he could take her off just like he had taken some other girl off.
>
> And then when he went upstairs when he was talking about that other girl, he showed Melvin Tucker who he was talking about in the newspaper and pointed to a picture of Lisa Sorrell.
>
> Now, you have heard testimony from Detective Slezak in this case, who went to the scene and discovered the automobile where the body of Lisa Sorrell, the mother, and a young child were found in the trunk, and the testimony and the evidence has shown that that car was set on fire just like the one in the Richard McClelland case. And not only that, but that the method of death, the method of execution for Lisa Sorrell was by .32 caliber weapon, same caliber

weapon as we have in this case, six shots to the back of the head--identical to the Richard McClelland case. She was stuffed in the car, matches found on the seat, tried to burn the car up; obviously the fire went out.

But it didn't go out in time enough for Shanta Sorrell, for Shanta Sorrell was put in the trunk of that car. That child had no way to get out, and she lay there and died of carbon monoxide poison with soot backed up all in her throat, and Dr. Presswalla indicated that was from the fire, not from any gasoline or car running. When you find soot in the throat that's from the car being burnt up.

Now, members of the jury, if that pattern of criminal conduct does not indicate a person who would have a probability of continuing to commit criminal acts of violence or criminal acts in the future, then there is no such record that can, for the crimes that you have heard about that this defendant has committed and been convicted of, or alternatively admitted doing, are simply atrocious. They're murder, robberies, brutal systematic execution-style crimes; and those cases are the same kinds of crimes that you had before you when you heard the facts on the Murphy's Mart case.

. . .

He's committed murder after murder, many in the same style, and he's done it to Richard McClelland, he's done it to a man in California[3], he did it to Lisa Sorrell, and he even did it to Shanta Sorrell, the little daughter ...

. . .

I think what it boils down to is there are simply certain crimes in which a defendant demonstrates that he is no longer capable of living in the human society, and Coleman Wayne Gray has demonstrated that in this case. He's demonstrated it in the Whitte case. He's demonstrated it in the killing of the man in California, and he's demonstrated it in the brutal manner in which Lisa and Shanta Sorrell were murdered.

This man has forfeited his right to live with other human beings, not because of anything anybody's done to him, but by his own acts.

App. I, pp. 881-97.

During rebuttal argument, Ferguson asked the jury:

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[3]At this point Ferguson is referring to a charge for which Gray was acquitted. Exh. 2, pp. 47-48.

> [D]id he sit in judgment of Lisa and Shanta Sorrell without charges, without trial, without due process, without anything, other than a gun?
>
> Nobody put the gun in his hand but himself. He chose to use it in each of these cases, and when he does, then he must pay the penalty for it.

App. I, p. 908.

After deliberating for one hour and ten minutes, the jury unanimously fixed Gray's punishment at death. The jury found both that Gray posed a future danger to society and that his conduct in committing the offense was vile.

C. No Evidence Proves That Gray Had Anything To Do With The Sorrell Murders, And A Death Penalty That Rests On Speculation And Innuendo About Gray's Involvement In Those Murders Is Unfair And Indefensible

Hanging his case on the thin thread of Melvin Tucker's testimony, prosecutor C. Phillips Ferguson blindsided Gray's lawyers with graphic testimony and horrifying pictures of the murder of the Sorrells and invited the jury to avenge those crimes on Coleman Gray. What harm could there be, how could Gray complain, if good, reliable, trustworthy evidence existed that he was involved in those murders? But if there was no such evidence, and if Gray was not involved, then Ferguson's vengeful zealotry and studied indifference to the evidence cannot go uncorrected.

Accordingly we examine the evidence for and against Gray on the Sorrell murders, to answer the question whether Ferguson played fair. We begin by reviewing the investigation into the murders of Lisa and Shanta Sorrell, which from the beginning focused on husband and father Timothy Sorrell.

1. The Investigation Of The Sorrell Murders And The Evidence Against Another Suspect[4]

Lisa and Shanta Sorrell disappeared on December 5, 1984. Lisa's parents filed a missing persons report, and four days later Detective Michael I. Slezak was assigned to the case. Their bodies were discovered the next day, abandoned in a pine thicket at the end of Cooke's Mill Lane in Deep Creek, Chesapeake, Virginia. After being notified by a citizen who discovered Lisa Sorrell's maroon Honda parked in the pine thicket, police arrived at the scene. They found Lisa Sorrell slumped on the car's floor, shot six times in the head. Her body was on the passenger side of the front seat. Her car's interior had been burned, and

[4] The following facts are derived from newspaper articles and transcripts of the testimony given at the federal evidentiary hearing. The hearing transcript is included as Appendix II to this petition. The newspaper articles are Exhibit 3.

part of its exterior had been spray-painted black, apparently to cover fingerprints. After examining the car's interior, the police opened the car's trunk and found Shanta's body, her face covered with soot.

Among the first detectives to arrive at the scene was Detective Slezak. Slezak and his partner, William L. Harrison, began working on the case full time. Five or six other members of the Chesapeake Police Department had substantial involvement in the case.

Detective Slezak's investigation immediately focused on Lisa Sorrell's husband Timothy as the prime suspect in the slayings. After the police had positively identified the bodies, Slezak and Harrison visited the Sorrell home. As soon as they arrived, Timothy's mother told him that he did not have to tell the police anything. App. II, p. 100. Slezak asked Timothy whether he had any questions for the police. Timothy paused to think; his first question was whether or not the police had a helicopter up looking for Lisa's car. Slezak told him that they did not. Timothy then asked why the police were so late in notifying him that his wife and child had been found. Slezak said that the police first wanted to make certain that the bodies were positively identified. Timothy had no other questions. Timothy's strange comments and defensive demeanor at the initial interview and in subsequent interviews made Slezak suspicious, and he therefore placed Timothy under surveillance. *Id.*, pp. 100-102.

Slezak at first was led to believe that Timothy had been attending classes at the Chesapeake Technical School from 7:30 p.m. until 10:00 p.m. on the night of the murders. *Id.*, pp. 102-103. Later Timothy came up with a different alibi, and said that he had been not at school, but at the home of a woman friend. That partial alibi was confirmed. *Id.*, pp. 102, 395-399. To this day, however, the police do not know where Timothy was between 4:30 p.m. and 5:30 p.m., when the police say the murders were committed. *Id.*, p. 410. Timothy had no real alibi.

Despite his mother's warnings, Timothy cooperated at the beginning of the investigation. He submitted to frequent questioning, though his answers were not always consistent, and he took a polygraph test. *Id.*, p. 301; Exh. 3, article dated 12/15/85, p. 2. The polygraph test must have been either incriminating or inconclusive, because it did not throw the police off Timothy's trail. They continued to focus on him as a suspect, accusing him of withholding information. At this point, Timothy retained a prominent legislator as his attorney. The attorney advised him to make no further statements to the Chesapeake police, and thereafter Timothy refused to assist the police in their efforts to find the murderer of his wife and child. Exh. 3, article dated 12/15/85.

One element of the case against Timothy – motive – fell into place easily. The police established almost immediately that Timothy Sorrell had a strong motive to kill his wife and daughter. Just weeks before the killings, a life insurance policy in excess of $50,000 was taken out on Lisa Sorrell's life, naming Timothy and Shanta as beneficiaries. App. II, pp. 103, 301-02, 309. Although Lisa's parents attempted in court to block

Timothy's receipt of the insurance proceeds because of his apparent involvement in the homicides, he eventually did receive the proceeds after the Gray trial. *Id.*, pp. 114, 318-320; Exh. 3, article dated 1/7/86, p. 1.

The police also investigated whether Lisa's involvement with Timothy in a theft ring might have been his motive for the killings. The police found among Lisa's effects some checks that were written to her by area residents. The police went to these people and found that she was selling cameras, tape recorders, radios, and other items to them. These items were similar to items sold at the Naval Supply Center, Timothy's place of employment. App. II, pp. 187-91.

Confident in their case against Timothy, on January 9, 1985, the Chesapeake Police announced at a news conference that they expected to make an arrest shortly in the Sorrell killings. Although the police did not identify their suspect, they did say they expected to arrest him on a stolen-property charge, and that the suspect was believed to be a part of a theft ring involving at least $3,000 in merchandise stolen from the Naval Exchange Warehouse. According to Lt. Donald S. Zeagler of the Chesapeake Police, the police did not believe that robbery was the motive that led to the murders of Lisa and Shanta. Exh. 3, article dated 1/10/85. All of these facts pointed at Timothy, and subsequent news accounts confirmed that Timothy Sorrell was the suspect. Exh. 3, article dated 12/15/85.

Detective Slezak approached the Chesapeake Commonwealth's Attorney seeking an indictment against Timothy Sorrell. App. II, p. 117. The Commonwealth's Attorney refused to indict Sorrell. A newspaper account indicates that some of the Chesapeake detectives were annoyed by the Commonwealth's Attorney's refusal to indict Sorrell. Exh. 2, article dated 12/15/85. Throughout the spring of 1985, Detectives Slezak and Harrison were frustrated at their inability to bring the case to a satisfactory conclusion. Their case against Timothy Sorrell included the important elements of motive – the insurance money – and means and opportunity – Timothy had no alibi for the time when the murders were committed. Moreover, the Chesapeake police evidently had requested FBI assistance in solving the crime, which resulted in an FBI analysis of the crime scene evidence. That analysis indicated that the murderer was known to and trusted by Lisa Sorrell, a description that obviously fit Timothy Sorrell. Exh. 4, memo to file by Suellen Keever, dated 1/9/86. For all that, the months went by and no arrest was made.

Then Richard McClelland was murdered on May 3, 1985. Soon after McClelland's body was found, a Suffolk Police Officer phoned Detective Harrison and pointed out some similarities between the two cases. Harrison and Slezak began to examine the evidence in the McClelland case. Exh. 3, article dated 12/15/85.

Coleman Gray was arrested in late May for the McClelland murder. Not long after Gray's arrest, a fellow inmate in the Suffolk City Jail, Keith Godwin, approached police and told them that Gray had admitted to him that he murdered McClelland and the Sorrells. In a transcribed interview with Godwin dated June 8, 1985, Godwin told Detective Bunker that he

would be unwilling to testify against Gray unless all of his time was suspended in exchange. Detective Bunker told Godwin that he could not promise that, but that the Commonwealth surely would reach an agreement of some kind with Godwin. Godwin then related a version of the McClelland murder that contained numerous gross inaccuracies, discussed in more detail at page 14. Godwin also said that Gray told him that he and his wife had observed Lisa Sorrell in the Greenbrier Mall when she pulled out a large amount of money. They then allegedly followed her around Greenbrier Mall until she left, at which point Gray approached her with a gun and forced her into her car. He then told his wife to follow Lisa Sorrell's car while he took them somewhere. Gray's wife then allegedly followed the Sorrell car to Cooke's Mill Lane, where Gray allegedly killed Lisa and Shanta Sorrell. Exh. 5, statement of Keith Godwin dated 6/8/85.

In spite of the facts that Godwin's testimony obviously was for sale, that the version of the McClelland murder he claimed Gray gave him is at odds with the facts, and that, as Judge Spencer found, Gray could not have committed the Sorrell murders in the manner related by Godwin, the police chose to accept Godwin's statement at face value. Indeed, Slezak testified at the federal evidentiary hearing that after he saw the photographs of the McClelland murder, there was not a time when he felt that Timothy Sorrell was responsible for the murders of Lisa and Shanta. App. II, p. 130. Yet after Gray was convicted and sentenced to death, Slezak told Lisa's parents attorney that he still considered Timothy a suspect. Exh. 5, Keever memo dated 1/3/86.

At any rate, based on Godwin's statement, Slezak theorized that Gray and his wife abducted and killed Lisa and Shanta Sorrell during Mrs. Gray's dinner break from her job at the Murphy's Mart. Melinda Gray's time card showed that she took her dinner break at 4:30 p.m. and that she returned fifty-nine minutes later at 5:29 p.m. Exh. 6, timecard of Melinda Gray. To determine whether Gray and his wife would have had sufficient time on her dinner break to commit the murders, Slezak set out to drive the route from Murphy's Mart to the Greenbrier Mall. He did not do this during rush hour, which is when the murders apparently were committed. Instead, he drove the route between Murphy's Mart and the Greenbrier Mall at 3:00 pm. According to Slezak, it took him twenty-three minutes to drive this route. For some reason, however, Slezak chose not to complete the circuit and did not drive from Greenbrier Mall to Cooke's Mill Lane, and then from Cooke's Mill Lane back to the Murphy's Mart. App. II, pp. 403-12. At rush hour, it takes about an hour and twenty-three minutes to complete this entire route, without adding time for stalking the victims through Greenbrier Mall, abducting and transporting them, murdering them, and painting over the evidence and igniting the car. *Id.*, pp. 413-18.

The fact that Gray had neither motive nor means and opportunity to commit the crime, while Timothy had both, did not put Slezak off the scent. In July 1985, Slezak set up an interview with Gray. Slezak lied to Gray, and told him that Timothy Sorrell was going to be tried for the murder of his wife and daughter and that Slezak needed Gray's assistance in the Sorrell prosecution. He told Gray that there was evidence tending to implicate Gray in the Sorrell killings, and that he needed Gray's cooperation in clearing these matters up to

clear the way for Timothy Sorrell's prosecution. Gray steadfastly denied any involvement in the Sorrell murders. App. II, pp. 149-53.

Slezak then told Gray that fingerprints were recovered at the Sorrell crime scene and that he would like Gray to submit fingerprints for comparison. In fact, no prints were recovered from the crime scene. Gray readily agreed and submitted the prints. Slezak then told another officer, as part of an elaborate charade, to come to the interrogation room in twenty or thirty minutes to tell Slezak that the ID technician wanted to see him. When the officer arrived, Slezak bawled him out for interrupting him, apologized to Gray, and left the room for fifteen minutes. When he returned, Slezak told Gray that of the eighteen prints found at the scene, one matched Gray's prints. This was a lie. *Id.*

Slezak asked Gray if he could think of an innocent explanation for his print being found in the Sorrell car, such as having worked at a Honda dealership or at an assembly plant. Gray simply denied the possibility that his print could be in the car. In a last gasp effort, Slezak then told Gray that he had no other questions for Gray, except whether he put Shanta in the trunk to kill or to spare her life. Gray told Slezak "You know, I didn't do it." *Id.*

Slezak shared his Sorrell investigative file with Phil Ferguson, the Suffolk Commonwealth's Attorney, and he discussed the Sorrell case with Ferguson. *Id.*, pp. 120-21. This was Ferguson's first capital murder trial, *id.*, p. 195, and he wanted a death sentence. He decided to use the Sorrell murders at Gray's sentencing trial.

There was one difficulty. Negotiations with Godwin for his testimony, ongoing since June, were not going well. Ultimately the prosecution would not meet Godwin's price and he would not testify. But in November, with Gray's trial due to begin in December, Melvin Tucker again provided what Ferguson wanted: Tucker claimed that Gray confessed his guilt of the Sorrell murders to Tucker. Tucker provided this information in response to a specific inquiry from Ferguson, an inquiry prompted by Slezak. App. II, pp. 124-25. Ferguson pressed on with his plans to blame Gray for the Sorrell murders. Exh. 7, statement of Melvin Tucker dated 11/20/85.

2. The "Case" Against Gray

Ferguson rested his conclusion that Gray committed the Sorrell murders on four primary facts. First, Ferguson had Tucker's late-breaking testimony that Gray had admitted his involvement in the crimes. According to Melvin Tucker, Gray "confessed" to the Sorrell murders to Tucker when he saw a picture of Lisa Sorrell in the newspaper. Tucker and Gray were scanning the newspapers for news of the McClelland murder when Gray saw the picture of Sorrell:

> A [Tucker] And we got out the car and went up to his apartment. We were searching through the newspaper for some information on the Murphy's Mart

and when he got through the paper, when he got through the paper he told me – that's when he was talking about the girl he told me he had knocked off outside.

Q [Ferguson] All right. Did he tell you he had knocked off some other girl outside?

A Yes, sir.

Q And the newspaper that he had, did it have any photograph on it?

A Yes, sir.

Q Whose picture was it?

A Sorrell girl.

App. I, pp. 774-75. We have examined every Tidewater area newspaper from the date of the McClelland murder through the date of Gray's arrest, and no picture of Lisa Sorrell was published during that period, nor was any story about her unsolved murder published. We also have reviewed the inventory of items seized from Gray's apartment when it was searched, and no newspapers are listed. Exh. 8, inventory of items seized from Gray's apartment. Certainly the prosecution never introduced any newspapers traceable to Gray to bolster Tucker's testimony and suggest guilty knowledge by Gray. There is, in short, no independent evidence to corroborate Tucker's testimony. The strength of Tucker's testimony depends on his credibility, a very infirm foundation.

Ferguson also had a statement from the snitch Keith Godwin. Godwin had been incarcerated with Gray as Gray awaited trial when he suggested to Detective Bunker that he could help the prosecution win a death sentence against Gray. Godwin claimed that Gray had admitted to Godwin his guilt of both the McClelland and the Sorrell murders. Exh. 5, pp. 2-3.

Godwin's tale suffers many infirmities, one of which is that the version of the McClelland murder Godwin relates bears no resemblance to the facts, or even to Tucker's version of events. For example, Godwin claimed that Gray told him that his wife Melinda was involved in the abduction of McClelland, and that Gray had carried a .32 caliber gun, Tucker had carried a .25 caliber gun, and Melinda was armed with a knife. *Id.*, pp. 4-5. It is uncontested that Melvin Tucker did not have another gun, and that Melinda Gray was not even involved in the actual abduction and murder of McClelland. Godwin also claimed that Gray had sought his assistance in contacting Gray's mother to tell Melvin Tucker not to make statements to the police, and that Gray had given Godwin a piece of paper containing his wife's address, his mother's address, Melvin Tucker's address, and all of their phone numbers. *Id.*, p. 3. When Detective Bunker asked Godwin for this piece of paper,

however, he was unable to produce it. App. II, pp. 356-57. Independent corroboration for Godwin's statement was, in a word, lacking.

But even without these weaknesses, Godwin's statement would still be unworthy of belief. When Godwin offered his testimony to the prosecution, he had been convicted of his third violent felony and was facing twenty-two years imprisonment without parole. From his first contact with Detective Bunker in 1985 to his latest contact with Assistant Attorney General John McLees during the federal evidentiary hearing earlier this year, Godwin has always insisted that the price of his testimony was the elimination of his prison time or of his parole ineligibility. App. II, p. 1; Exh. 9, correspondence between Keith Godwin and John McLees. The prosecution has never met Godwin's price and Godwin has never risked the testimonial oath. No one has bought his story yet, and no one should buy it now.

Not even Godwin is buying his story anymore. Just last week Godwin told Gray's investigators Alfred Brown and Rey Cheatham that he does not remember what Gray told him, if anything. He also admitted that his account of his conversations with Gray "might have been a lie." Exh. 10, affidavit of Rey Cheatham. The same could be said for any word that comes from Godwin's mouth.

Except for the word of two snitches, only two circumstances "supported" the case against Gray. Both Lisa Sorrell and McClelland were killed by multiple shots to the head, and both Sorrell's and McClelland's cars were set afire in an attempt to destroy evidence. Ferguson and Slezak made much of the supposed similarity between the McClelland murder and Lisa Sorrell's murder, calling them signature crimes. App. II, pp. 130, 209. In fact, the crimes are not similar. Different guns were used in the two crimes, and the crimes were committed for different motives. One victim was shot in the right side of the head, the other in the left. In the Sorrell case, the car was ignited without the use of an accelerant, whereas in the McClelland case, Gray and Tucker stopped for an accelerant in the middle of the crime. Additionally, the perpetrator of the Sorrell murders had thought ahead to bring paint to cover up any fingerprints, unlike either Gray or Tucker. The perpetrator of the Sorrell murders left his victims in the car before igniting it; Gray and Tucker left their victim miles away, returning to the car after the murder to destroy the evidence.

Beyond the real dissimilarity in the crimes is the plain fact that car-burnings and gangland style murders are not uncommon in Tidewater. In the years 1984-85, 707 arsons of motor vehicles – nearly one every day – were reported in Virginia. Exh. 11, excerpts from 1985 Uniform Crime Reports, "Crime in Virginia." Not even Ferguson goes to the absurd length of attributing all of these arsons to Gray. Murders by gunshot wounds to the head also are unfortunately common in the Tidewater area, too common to serve as the foundation for an entire prosecution. For the four-year period from 1992-95[5], the *Virginian-Pilot* reported on more than 60 gangland-style or execution-style shootings in the Tidewater

[5]*The Virginian-Pilot* is online through the Westlaw service beginning in 1992.

area. Exh. 12, chart of execution-style killings in Tidewater area, 1992-95. In all of these cases, the victim was shot in the head, often repeatedly, and often during a robbery. In some of these cases, the shooter sought to cover up the crime by arson. In sum, neither arsons of motor vehicles nor execution-style shootings are sufficiently uncommon to establish a signature similarity. And in the absence of any evidence linking Gray to the Sorrells, to the crime scene, or to the murders, the superficial similarity between two unrelated crimes cannot overcome the real doubts about Gray's involvement in the Sorrell murders.

Indeed, if crime scene analysis was going to form the basis for an accusation, as it did for Ferguson and Slezak, they could not fairly ignore, or keep from the jury, the Federal Bureau of Investigation's analysis of the Sorrell crime scene. Detective Slezak informed Lisa Sorrell's mother that a Washington source prepared a profile of the perpetrator of the Sorrell murders and concluded that "the murderer was someone who knew Lisa and someone whom she trusted." Exh. 4, Keever memo dated 1/9/86, p. 2.[6] There is, of course, a complete dearth of evidence showing that Lisa Sorrell knew Gray, much less that she trusted him. The same could not be said of Lisa's husband. But Ferguson and Slezak left that important point unsaid at Gray's sentencing trial.

That, then, is the "evidence" against Gray. It is instructive to note what the case against Gray lacks. First and foremost the case lacks a motive. Gray doesn't have one for the Sorrell murders. Neither Ferguson nor Slezak has ever suggested a credible motive for Gray in the Sorrell murders, particularly when the police eliminated robbery as a motive long before Gray was ever a suspect. Yet when Ferguson explained why he believed Gray was the triggerman in the McClelland murder, he listed as his most important reason that Gray had a motive to kill McClelland. App. II, p. 244. He did not explain how motive could matter so much in one instance and so little in another.

Next, the case against Gray cannot establish that Gray had the means or opportunity to kill the Sorrells. The prosecution theory is that:

1. Gray picked up his fiancée at the Murphy's Mart at 4:30 for her dinner hour,
2. stalked the Sorrells through Greenbrier Mall and abducted them in the parking lot,
3. transported them in Lisa Sorrell's car through rush hour traffic to Cooke's Mill Lane,
4. murdered Lisa and put Shanta in the trunk as his fiancée stood by,
5. retrieved paint from his car and applied some of it to Lisa Sorrell's car, inside and out,
6. set the car on fire without using an accelerant, and

[6]The FBI profile was never provided to Gray's counsel.

7. dropped his fiancée back at the Murphy's Mart in time for her to clock in at 5:29.

App. II, *passim*. Fast work, especially in and around Military Highway during rush hour in the Christmas season. As Gray demonstrated during the federal evidentiary hearing, Gray could not even have driven from the Murphy's Mart to Greenbrier Mall to Cooke's Mill Lane back to the Murphy's Mart in one hour, much less fitted in an abduction, murder, and arson. Investigator Alfred Brown drove the route suggested by the prosecution's theory at the same time as the prosecution claimed Gray committed the crimes. He did not get out of the car or stop during the ride, yet Brown needed one hour and twenty-three minutes to complete the course. App. II, pp. 413-18.

Compare Brown's re-creation of the ride to the half-hearted effort that Slezak made to ascertain that Gray would have had time to drive this route and commit the crime. Slezak drove his car from the Murphy's Mart to Greenbrier Mall. He did not drive the other two legs and he did not drive his lone leg during rush hour. This first of the three legs of the trip took Slezak 23 minutes, *at which point he stopped.* Had he continued, of course, he would have succeeded in proving that Gray could not have committed the crime, which evidently he did not want to do. He quit instead, and years later during the federal evidentiary hearing he even offered this ineffective effort as evidence *against* Gray. App. II, pp. 403-12. Judge Spencer thought otherwise, pointing out in his opinion that Slezak's demonstration exonerated Gray. Exh. 1, p. 10 n. 5.

As yet, we have not focused on those activities of Lisa and Shanta that make the prosecution's theory implausible. Lisa's mother Brenda Nixon saw Lisa last between 4:30 and 4:45 p.m. on December 5, as she left Mrs. Nixon's house to go to Greenbrier Mall. App. II, p. 295. From the autopsy report we know that Lisa stopped to eat; her stomach contents included potato, suggesting the Wendy's Restaurant near Greenbrier Mall. *Id.*, pp. 278-80. Slezak was quoted in newspaper reports as saying that Lisa in fact had Shanta's picture taken with Santa Claus at the mall. Exh. 3, article dated 12/19/84. The police found packages in the car when they discovered Lisa's bodies, pacakages she must have bought while at the mall. Also in the car then was a money order, that police believed Lisa had bought that day. App. II, p. 278. Given the requirement, under the prosecution theory, that Gray have completed the murder by 5:15 so that he could be back at Murphy's Mart by 5:29, then Lisa must have completed all of her errands in enough time – likely before 5:00 – for Gray to abduct her from the mall and transport her to Cooke's Mill Lane. The prosecution has never suggested how Lisa, burdened with a three-year-old, and stopping to visit with Santa Claus, could have done so.

Lacking either motive or means, the case against Gray might still find some foundation in physical evidence or eyewitness testimony. But not a shred of such evidence exists. There are no fingerprints, no body hairs, no blood traces, no ballistics, nothing to establish that Gray was ever in the Sorrells' car. No one saw Gray with the Sorrells. Indeed, there was not then and there is not now any evidence to show that any link ever

existed between Gray and the Sorrells. In sum, there is no reliable evidence to support even an accusation against Gray.

At the federal evidentiary hearing, Ferguson testified that his duty as a prosecutor is to see that justice is done, and that in a capital case in particular, the last thing he would want to do would be to accuse the defendant unjustly of anything in that case. App. II, p. 225. A trial judge and former prosecutor found that to be exactly what Ferguson did. Exh. 1.

3. Finally Tried Before A Federal Judge, The Sorrell Case Falls Apart

Just as they had before the sentencing trial, Gray's lawyers have attacked in every subsequent proceeding Ferguson's use of the Sorrell murders. On April 21, 1994, the United States District Court for the Eastern District of Virginia, Richmond Division, convened an evidentiary hearing in connection with Gray's claim asserting that the Commonwealth's use of the Sorrell evidence made his sentencing trial unfair and unreliable. The stated purpose of the evidentiary hearing was to determine whether Gray's attorneys were given ample notice of the evidence to be presented against him concerning the Sorrell murders, whether he was given a fair opportunity for cross-examination concerning the Sorrell murder issues, and whether the prosecution failed to turn over exculpatory information tending to prove that another person killed Lisa and Shanta Sorrell. App. II, pp. 3-5.

The Attorney General announced that for its part, the state would prove that Gray murdered the Sorrells. *Id.*, pp. 6, 17. At the election of the state, then, Judge Spencer became the first factfinder to hear *all* the evidence that Gray was involved in the Sorrell murders.

Reviewing the district court's findings of fact, it is safe to say that the prosecution's effort to prove Gray's involvement in the Sorrell murders was a miserable failure. When all the evidence was in, the district court concluded that the "[t]he Sorrell murder evidence which linked Coleman Gray to the crime was very questionable." Exh. 1, p. 16. The Court also judged "the evidence collected by Chesapeake's police department" as strongly suggestive "that Timothy Sorrell actually committed the notorious murders." *Id.*, p. 15. The Court also concluded without hesitation that Gray's sentencing trial was manifestly unfair. *Id.*, pp. 17-18. The federal district court's conclusions were supported by the following findings of fact:

1. Ferguson, despite an unequivocal pledge to introduce only statements made by Gray, had arranged in advance of trial to present graphic photographs and medical evidence about the Sorrell murders. *Id.*, p. 7;

2. Ferguson never disclosed to defense counsel any of the evidence that suggested that Gray was not involved in the Sorrell murders. *Id.*, p. 10;
3. Ferguson testified that to his knowledge, "there [i]s no evidence that anybody else did commit this crime except Coleman Gray." This "assertion is patently absurd." *Id.*;
4. Detective Slezak failed to tell the jury that Timothy Sorrell, the victim's husband, was the primary and only suspect in the case for a long period of time. Slezak knew that Timothy Sorrell admitted being at the Greenbrier Mall on the evening of the murders, that he ignored Lisa Sorrell's parents when they saw him at the mall, that he made suspicious comments after he was notified that his wife and child had been found, that he changed his alibi throughout the murder investigation, and that he had a motive to commit the murders. *Id.*, pp. 8-9;
5. At all times, the police designated Timothy Sorrell as their sole suspect on the evidence they sent to labs to be analyzed. *Id.*, p. 9;
6. Timothy Sorrell visited a friend on the night his wife and children disappeared. That evening, five days before Lisa and Shanta were found, Sorrell allegedly told his friends that his wife and baby were dead. *Id.*;
7. Slezak knew that six days before Coleman Gray's trial began, Lisa Sorrell's parents, the Nixons, had filed a pleading in the United States District Court for the Eastern District of Virginia, Norfolk Division, to prohibit Timothy Sorrell from getting the proceeds of that life insurance policy because of his complicity in the murder of Lisa Sorrell. *Id.*;
8. The Nixons told Alfred Brown, an investigator for Gray, that one week before their daughter Lisa's death, a man possessing stolen merchandise came to the Sorrells' home. The Nixons and Detective Slezak suspected that Lisa was very upset about her husband's apparent involvement in a major criminal theft ring at the naval exchange where he was employed. *Id.*, pp. 9-10;
9. Based on all this information, Detective Slezak consulted Robert Kowalsky, the Chesapeake Commonwealth's Attorney, and asked him to determine whether Timothy Sorrell should be prosecuted for the murders of his wife and child. *Id.*, p. 10;
10. Slezak repeatedly lied to Gray in an effort to obtain a confession; Gray steadfastly denied involvement in the Sorrell murders. *Id.*, p. 11 n. 6;
11. On the day of the Sorrell murders, Gray's wife had a dinner break from her job at Murphy's Mart from 4:30 to 5:29 p.m. To investigate whether Gray could pick up his wife, drive to the

Greenbrier Mall, abduct and kill the Sorrells, and return to Murphy's Mart within an hour, Detective Slezak drove the shortest route between the mall and Murphy's Mart. At 3:00 p.m., it took him about twenty-three minutes to travel one way between the locations. Detective Slezak did not drive the routes between the mall and scene of the crime or between the scene of the crime and Murphy's Mart. *Id.*, p. 10 n. 5. Investigator Brown drove the same route driven by Detective Slezak, but he did it between the rush hours of 4:00 p.m. and 6:00 p.m., approximating the time the murders were committed. It took Brown over forty-three minutes to drive this leg. It took him another twenty-five minutes to drive from Greenbrier Mall to the place where the bodies were discovered, and another fifteen minutes to drive from that scene to Murphy's Mart. His round trip took one hour and twenty-three minutes. "Therefore it appears that Coleman Gray could not have performed the Sorrell murders on his wife's dinner hour, as the prosecutor speculated." *Id.*;

12. To date, no one has been charged with or tried for the Sorrell murders. *Id.*, p. 12.

On August 25, 1994, the Court filed an opinion and order issuing its writ of habeas corpus and vacating Gray's death sentence. The Court explained its decision to take the extraordinary step of ordering a new sentencing trial in these conclusions, which we quote at length:

1. Prosecutor Ferguson's decision to withhold this information [that evidence about the Sorrell murders would be introduced at sentencing trial] and to surprise Mr. Gray's attorneys prevented the defense from effectively cross-examining the Sorrell murder evidence. This also led to the jury's finding, premised at least in part upon unreliable evidence, that the petitioner posed a future danger to society and therefore deserved the death penalty. *Id.*, p. 13;
2. The constitutional defect in Gray's penalty phase hearing – that the Petitioner was confronted and surprised by the testimony of Officer Slezak and Dr. Presswalla – violated Gray's right to fair notice and rendered the hearing clearly unreliable. ... When a defendant is deprived of fair notice, the entire judicial process becomes a hollow and meaningless procedure. *Id.*, p. 14;
3. The consequences of this surprise could not have been more devastating. The prosecutor's tactics prevented Gray's attorneys from preparing questions for these witnesses prior to the

> sentencing, and from uncovering bias or from investigating the validity of the witnesses' planned testimony in order to gather information which could be used to impeach. ... Mr. Moore and Mr. Eason also could not review the evidence collected by Chesapeake's police department which strongly suggested that Timothy Sorrell actually committed the notorious murders. *Id.*, p. 15;
>
> 4. The Sorrell murder evidence which linked Coleman Gray to the crime was very questionable. ... Aside from Tucker's statement [which the Court said it viewed "with caution"], most of the evidence equally supports the Commonwealth's original theory: Timothy Sorrell committed the Sorrell murders. *Id.*, p. 16;
>
> 5. [T]he Comonwealth has insisted that it had no duty to give any notice to Coleman Gray that evidence he committed the Sorrell murders was to be introduced. For the reasons stated above, the Court disagrees, and finds that the Commonwealth's Attorney Ferguson's tactics violated the moral standards of fair play embodied in the Due Process Clause. . . . *Id.*, p. 17.

The District Court found that Gray was ambushed at his sentencing trial, that Ferguson's tactics deprived Gray and his attorneys of the fair notice required by the Due Process Clause, that Gray was sentenced to death on the basis of information he had no opportunity to rebut or deny, and that the evidence admitted during the penalty phase "carries no assurance of reliability whatsoever, and the Court finds there was a gross abuse of sentencing process." *Id.*, pp. 15-16. Accordingly the district court ordered that Gray receive a new sentencing trial.

4. Only Legal Technicalities Have Prevented The Courts From Redressing The Unfairness Of Gray's Sentencing Trial

Despite the district court's powerful condemnation of Ferguson's win-at-all-costs tactics, the state appealed the grant of a new sentencing trial. The Fourth Circuit did not dispute Judge Spencer's fact-finding. Nowhere in its opinion did the Fourth Circuit dispute that Ferguson lied to the defense when he promised to introduce only statements as evidence of other crimes committed by Gray; that Ferguson ambushed the defense with his additional Sorrell evidence; that Ferguson and Slezak concealed from the jury substantial and significant evidence against Timothy Sorrell; that Slezak concealed from the jury the fact that he asked the Commonwealth's Attorney for an indictment of Timothy Sorrell; or that Ferguson's tactics violated the moral standards of fair play embodied in the Due Process Clause. The Fourth Circuit did not question the district court's findings that the case against Gray was "very questionable" and the case against Timothy "strongly suggested that Timothy Sorrell actually committed the notorious murders." Indeed, the Fourth Circuit stated unequivocally that it would not "be dragged into a mini-trial on the respective strengths of the cases against Sorrell and petitioner," and openly declared that *whether Gray was guilty of the Sorrell*

murders was irrelevant to its decision. Exh. 13, *Gray v. Thompson*, 58 F.3d 59, 66 n. 3 (4th Cir. 1995). In short, never in its opinion did the Fourth Circuit establish or demonstrate that Gray's trial was fair or that the district court was wrong to conclude Gray's trial was unfair.

Instead of addressing the important issue of the fairness of Gray's trial, the Fourth Circuit critiqued the procedural posture of his case and parsed arcane matters of retroactivity theory. Ignoring, unlike Judge Spencer, the nuts and bolts of Gray's trial, the Fourth Circuit examined Gray's case based on concerns about comity between state and federal courts and on a desire, laudable in the abstract, to show deference to state practices of criminal procedure. *Id.*, p. 66. In the concrete, Gray got an unfair trial, and the Fourth Circuit let the result of the trial stand because of a technicality. Judge Spencer's conclusion that Gray got an unfair trial stood unchallenged, but his remedy for the unfairness was undone.

5. The California Acquittal

In addition to attributing the grisly Sorrell murders to Gray, Ferguson asked the jury to sentence Gray to death based on a crime of which he had been acquitted. This crime was a California charge of murder, for which Gray stood trial and won acquittal. The prosecutor's burden in a capital sentencing trial is to convince the jury beyond a reasonable doubt that the defendant ought to be executed. How can a crime of which the defendant has been acquitted possibly contribute to meeting that burden? That logical conundrum did not bother Ferguson:

> Your Honor, we would offer a copy of this [the record of Gray's acquittal] into evidence. Of course, he was acquitted of the case so *I'm not sure whether it makes a whole lot of difference one way or the other*. But we would offer a copy of this into evidence in these proceedings, of this particular document.

Exh. 2, pp. 47-48. A prosecutor who believes that acquittals are as good as convictions for increasing the severity of sentencing, notwithstanding the burden of overcoming reasonable doubt, has earned the nickname "Overkill Phil," by which he is often known around Suffolk.

D. THE WORD OF SNITCHES AND ACCOMPLICES IS NO BASIS FOR AN EXECUTION

Under Virginia law, only the triggerman can be put to death for murder. This requirement ensures that the most culpable perpetrator receives the most severe punishment. The best evidence, of course, is physical or forensic evidence, non-accomplice eyewitness testimony, or a confession. But in the case of McClelland's murder, there was no such evidence. There were no fingerprints on the gun, nor any other physical indications that Gray had fired the shots. There were no eyewitnesses, except for Tucker and Gray. And both participants steadfastly denied pulling the trigger. To put Gray to death, Ferguson

needed evidence that Gray pulled the trigger. His only possible sources were Tucker and the multitude of inmates willing to snitch in exchange for prosecutorial largesse. To get the cooperation of one of these sources, Ferguson either had to make a deal – that is, buy some evidence – or relinquish his hopes for the death penalty. Ferguson made some deals, and he got the testimony he wanted. The worth and value of that testimony is another matter entirely.

1. Melvin Tucker's Self-Serving Finger-Pointing Is Not Credible

a. The deal between Ferguson and Tucker

The primary beneficiary of Ferguson's bargains was Melvin Tucker. Under the terms of his agreement with Tucker, Ferguson agreed to try Tucker "on a charge of first degree murder rather than capital murder," and "to convey to the Court [trying him on first degree murder charges] the nature and extent of [his] cooperation at the time of his sentencing." App. I, pp. 348-49. Moreover, if Tucker pled guilty to the charge of first degree murder, he was guaranteed a sentence less than life imprisonment and would be eligible for parole within years, rather than decades. To escalate Gray's punishment from life imprisonment to death, then, Ferguson offered Tucker both life and freedom, despite Tucker's admissions that he had willingly taken part in the robbery of McClelland and that he had threatened both McClelland and his family in the course of the crime. *Id.*, pp. 366, 369.

b. Tucker's lies and inconsistencies

Tucker's account of this crime was a fabric of falsehoods, consistent only in its variability from one telling to the next. To minimize his own guilt and to maximize Gray's, Tucker, a convicted armed robber (*id.*, pp. 350-51), made some claims that merely are incredible and made a few claims that quite simply are whoppers:

1) Tucker testified unequivocally that he never touched the murder weapon, though Gray did all the driving and left the car, with McClelland and Tucker in it, at various times. *Id.*, p. 414.

2) Without the gun, Tucker claimed to have kept the considerably larger McClelland at bay in Gray's car while Gray, *with the gun*, moved McClelland's car 120 feet down the road. *Id.*, pp. 417-18; Exh. 14, 11/20/85 statement of Melvin Tucker, p. 15.

3) According to Tucker, he sat in the front passenger seat while Gray drove. He didn't hold the gun, but it just sat on the center console between the

front seats or somewhere else in the car. App. I, pp. 419, 421.

4) Without the gun, Tucker claims to have kept McClelland at bay while Gray fueled the car and filled a gas can at an attended, well-lit gas station. The gun supposedly remained in the car at this time; Tucker never touched it. *Id.*, pp. 426-29.

5) The gun was found at Tucker's place of employment, but Tucker claimed that Gray discarded it there. *Id.*, p. 393.

6) At trial, Tucker contradicted earlier statements that he never touched anything, including McClelland's wallet and money, by admitting that he, not Gray, took the wallet and money from McClelland. *Id.*, pp. 367-68.

7) Tucker asked the jury to believe that McClelland never got a look at him during this entire ordeal, but only "glimpses." *Id.*, p. 430-31.

8) In Tucker's first statement to the police, he claimed that Gray let him out of the car two-tenths of a mile from the murder scene before driving off with McClelland to kill him. In his second statement to the police he claimed that he drove the entire way with Gray and McClelland, but never left the car. At trial, he admitted that he got out of the car. Exh. 15, 5/22/85 statement of Melvin Tucker, 0140 hours; Exh. 17, 5/22/85 statement of Melvin Tucker, 1400 hours; App. I, pp. 374-79.

From the time of his arrest to the time of his testimony against Gray, Tucker changed nearly every significant detail of his story, some more than once. He lied about his involvement in planning the crime. Exh. 15, p. 1; Exh. 17, p. 1; Exh. 14, pp. 1-2. He lied about taking McClelland's wallet, later admitting that he, not Gray, took it. Exh. 16, 5/22/85 statement of Melvin Tucker, 0700 hours, p. 1; Exh. 14, p. 16; App. I, pp. 367-68. He lied about when he knew McClelland was dead, first stating that he was not present when McClelland was shot, later acknowledging that he was present but had stayed in the car, and finally acknowledging that he got out of the car. Exh. 15, p. 2; Exh. 16, p. 1; Exh. 14, p. 30. He lied about whether he had a motive to kill McClelland, stating that throughout the

duration of the crime, McClelland never got more than a glimpse of him. He lied about knowing why Gray stopped to buy gasoline, first stating that Gray told him exactly why he bought it, but later insisting that they never discussed it and he never wondered what Gray planned to do with it. Exh. 15, p. 3; App. I, pp. 427, 430. He lied about who threw McClelland's wallet into the car to be burned, eventually admitting that he, not Gray, had done it. App. I, pp. 430-31. He gave three different accounts of how much money they stole, and four different accounts of how much of the stolen proceeds he got. Exh. 15, p. 2; Exh. 16, p. 1; Exh. 14, pp. 39-40; App. I, pp. 384-86, 443. Despite its implausibility, Tucker's testimony became the linchpin of Ferguson's case that Gray was the guilty one and Gray should die.

c. Tucker's motive

The case that Gray was the triggerman in the McClelland murder depended in part on the notion that Gray had a motive while Tucker did not. App. II, p. 244. This notion is false. It is true that McClelland may have been acquainted with Gray through Gray's wife. But Tucker had gone with the Grays to case the Murphy's Mart, where McClelland might have seen him, and Tucker knew that the Grays were acquainted with McClelland. Exh. 16; Exh. 14, pp. 3-5; App. I, pp. 395-96. Tucker hardly could have ignored the fact that if McClelland identified Gray, then Gray might identify Tucker.

Moreover, Tucker repeatedly admitted during his testimony that McClelland had many opportunities to "glimpse" him in the long duration of this crime. Tucker sought to downplay the extent to which his face must have become familiar to McClelland. But considering that:

1. McClelland had an opportunity to see Tucker's face when Tucker accosted him at Bennett Pasture Road;
2. McClelland had an opportunity to see Tucker's face as they waited for Gray to move McClelland's car;
3. McClelland had an opportunity to see Tucker's face as they drove back to the Murphy's Mart;
4. McClelland had an opportunity to see Tucker's face as he returned to the car after the robbery of the Murphy's Mart;
5. McClelland had an opportunity to see Tucker's face as they drove to the service station;
6. McClelland had an opportunity to see Tucker's face when Tucker was covering him (allegedly without the gun) as Gray fueled up the car in the well-lit station; and
7. McClelland had an opportunity to see Tucker's face as they drove towards Tidewater Community College;

there can be no doubt but that McClelland, had he survived, could have identified Tucker as readily as Gray. In short, Tucker had a motive for the murder every bit as damning as Gray's.

If Ferguson had preferred Tucker as the triggerman, he would not have thought his case lacking in this important element. Tucker's motive – to eliminate the witness – has never been thought inadequate to support a death sentence. The prosecution has offered this motive as part of its proof of guilt in the cases of at least six men who have been executed by the Commonwealth in the post-*Furman* era. Michael Marnell Smith was executed for murder after he "freely admitted that his reason for killing the woman he had raped was to silence his accuser in order to avoid the consequences of his crime." *Smith v. Commonwealth*, 219 Va. 455, 471 (1978). Syvasky Poyner received five death sentences for murders committed "for no reason other than to eliminate a witness." *Poyner v. Commonwealth*, 229 Va. 401, 422, 426, 427 (1985). The same motive was offered by the prosecution as part of its evidence in the cases of Albert Clozza, *Clozza v. Commonwealth*, 228 Va. 124, 138 (1984), Timothy Bunch, *Bunch v. Commonwealth*, 225 Va. 423, 443 (1983), Charles Stamper, *Stamper v. Commonwealth*, 220 Va. 260, 272 (1979), and Herman Barnes, *Barnes v. Commonwealth*, 234 Va. 130, 136 (1987). There is no way of knowing how many murderers are imprisoned in Virginia who killed for this reason. This much, however, is certain: nothing about Tucker's motive could have made any reasonable prosecutor absolve Tucker of McClelland's murder, unless that prosecutor had reliable and independent evidence of Tucker's innocence.

2. Three Snitches Don't Make A Good Case

In addition to Tucker's story, Ferguson offered the testimony of three snitches to support the case that Gray was the triggerman. Sylvester Joyner, Jeremiah Smallwood, and Larabee Ferrell testified that Gray confessed his guilt of the McClelland murder to them. It is patently absurd to think that, while Gray was consistently claiming that the police had no evidence against him, Gray would confess to every new felon he met, but that is the scenario presented by Ferguson's trio of jailhouse informers. If you assume that Gray could be so stupid, there are yet many reasons to discredit the testimony of these particular felons.

a. Jeremiah Smallwood

Of Ferguson's three snitches, Jeremiah Smallwood was the most important and most damaging. In a letter he wrote to Smallwood, dated January 2, 1986, Ferguson said that Smallwood's testimony "was extremely important in helping the Commonwealth prove its case [against Coleman Gray]. Without [Smallwood's] cooperation and willingness to testify, it would have been much more difficult to obtain conviction in these cases." Exh. 18, letter from Ferguson to Smallwood dated 1/2/86. Certainly Ferguson relied heavily on Smallwood's testimony at the penalty phase to seek a death sentence against Gray. In his closing argument in the penalty phase, Ferguson told the jury that:

> [T]he real key that really exemplifies what this case is all about was the statement that was made by Jeremiah Smallwood, a man who came here today and testified, he's got absolutely nothing to gain. He's got to go to the penitentiary. And he told you that, I wouldn't even have said anything except for one fact, the man talked about killing Mr. McClelland and he laughed and thought it was funny.
>
> Well, members of the jury, if that was funny then he must have been looking at different pictures than I would say that you-all looked at as it regarded Richard McClelland, because there was nothing funny about those pictures. In fact, they were brutal, they were atrocious, they were vile, they were horrible, and as inhumane as one person can be to another.

App. I, p. 895. Ferguson also thanked Smallwood for helping him secure a death sentence through his testimony "... show[ing] what a total lack of remorse Gray had for the brutal murder which he perpetrated." Exh. 18. But if Smallwood was the most important of Ferguson's snitches, he also was the least credible, though Ferguson withheld the critical facts about Smallwood's lack of credibility from the jury and from Gray's attorneys.

When Smallwood testified at trial, Ferguson gave defense counsel criminal record information extracted from Smallwood's September 20, 1985, Presentence Report prepared on the Department of Corrections Standard Form PPB38, which showed that armed robbery and larceny charges were pending against him in Newport News. Unknown to Gray's defense counsel, other portions of this Presentence Report, not given to them, revealed that Smallwood had substantial psychiatric, psychological, medical, and memory problems, and that he was "highly manipulative with a tendency to draw others into legal power struggles." Exh. 19, Smallwood presentence report, p. 8B. According to the full Presentence Report, Smallwood required mental health counseling, had overdosed on drugs and alcohol, had numerous problems resulting from mixing phenobarbitol and dilantin with alcohol, suffered from epileptic attacks and grand mal seizures, had suffered a number of serious head injuries, and had an I.Q. of 77 or 81, in the borderline range of intellect. Exh. 19, throughout.

In addition, the Presentence Report discussed Smallwood's forensic psychological evaluation on August 5, 1985, at the Hampton Mental Health Center. This evaluation revealed generally "an extensive history of psychiatric involvement both at the Riverside Hospital Community Health Center as well as within the correction facility structure." It revealed specifically a personality disorder, general paranoia (described people as "shunning me" and feelings of "being watched"), auditory hallucinations ("I hear voices sometimes. I've heard them since I've been in jail. They just call my name"), depression, crying spells, sleep disturbance and eating disturbance (loss of 33 pounds). Exh. 19, pp. 8B, 8C. The Riverside Hospital report revealed further that Smallwood had overdosed on drugs and attempted suicide on numerous occasions.

Importantly, the Riverside Report showed that Smallwood "exhibit[ed] an inconsistent pattern when testing his long- and short-term memory. That is to say he seem[ed] to be rather selective in what material he forgets." He also "showed marked impairment in memory of certain events. For example, he could not recall dates or times of hospitalizations or incarcerations. He also had difficulty remembering how long he was in jail." *Id.* Ferguson withheld all of this information from the jury.

While the origin of Smallwood's memory problems in drug abuse and mental illness was concealed from the jury, the existence of those problems was demonstrated at trial. Explaining how he was able to receive Gray's "confession," Smallwood claimed that he had met with Gray five or six times while they were in the Newport News jail together. App. I, p. 586. Newport News Deputy Sheriff Walton Maxwell, however, testified that Gray and Smallwood would have been together only twice during recreation. *Id.*, p. 598. Moreover, Smallwood testified that McClelland was tied up before he was shot. *Id.*, p. 588. This "fact" was reported in the newspapers. Presumably both Tucker and Gray knew better, suggesting that Smallwood got his information from the press.

Smallwood's testimony was not at all credible, and he has not stood by it since he gave it. On February 1, 1988, Smallwood executed an affidavit concerning the testimony he gave in the Gray trial. According to his affidavit:

> My testimony to the effect that Coleman Wayne Gray admitted killing the Murphy's Mart manager was false and was given by me as a result of coercion and threats by the Commonwealth's Attorney for the City of Suffolk; [ ] it is my desire to recant my prior testimony and to testify truthfully ... Coleman Wayne Gray has never admitted to me that he killed the Murphy's Mart manager.

Exh. 20, affidavit of Jeremiah Smallwood dated 2/1/88. Since this recantation, Smallwood has given a deposition in which he reverted to the claim that his trial testimony was true, and after that he provided a hand-written affidavit once again recanting his trial testimony. Exh. 21, handwritten affidavit of Jeremiah Smallwood dated 7/1/94. The point, however, is clear; Smallwood is a liar. Whether Smallwood is a liar for the prosecution or a liar for the defense, he is still a liar, and no liar or band of liars should be enough to send a man to his execution.

b. Sylvester Joyner

Suffolk City Jail inmate and three-time felon (App. I, p. 432), Sylvester "Jake" Joyner, who had served as a police informant during the McClelland investigation, testified that while he was incarcerated in the Suffolk City Jail around May 10, 1985, Gray admitted to being the "triggerman" in McClelland's murder. *Id.*, pp. 453-55. Joyner, a convicted felon, served as an informant because he sought favorable treatment from the Commonwealth on a pending drug charge. *Id.*, pp. 460-62. At the time of his testimony, Joyner had been

awaiting sentencing for more than six months on a drug conviction. *Id.*, p. 462. Joyner also testified that Gray admitted binding and gagging McClelland. *Id.*, pp. 467-68. Here again, McClelland had not been bound or gagged, as both Tucker and Gray knew. But newspaper and television accounts reported that McClelland was bound and gagged, suggesting the real source of Joyner's testimony. *Id.*

c. Larabee Ferrell

Gray also was incarcerated in the Chesapeake City Jail for a time. Larabee Ferrell, another inmate at Chesapeake City Jail, testified that he overheard Gray admit to inmate Carl Bond that he was the "triggerman" in the McClelland murder. *Id.*, pp. 569-70. Bond testified at trial that he had the cell next to Gray's in the Chesapeake City Jail, and that he had several conversations with Gray, but that Gray always maintained that Tucker was the "triggerman" in the McClelland murder. *Id.*, p. 627-28. Bond, a former deputy sheriff, had agreed to supply information to the Chesapeake Police if Gray said anything to him about the McClelland murder. *Id.*, p. 636. But, Bond testified, Gray never incriminated himself, so Bond never had any occasion to come forward. *Id.*, p. 628. Although the Commonwealth was aware that Bond's testimony contradicted Ferrell, it never informed Gray's counsel of this exculpatory evidence. *Id.*, p. 637.

Obviously recognizing the dubious credibility of his snitches, Ferguson tried to bolster their testimony by increasing the number of them. No matter how many liars Ferguson corralled, however, their testimony remained contradictory of the facts and limped into evidence without any independent corroboration. Drawn from the dregs of society, Smallwood, Joyner, and Ferrell provide a precarious foundation for a man's execution.

E. GRAY COULD HAVE WON A LIFE SENTENCE IN A FAIR TRIAL

The Attorney General has suggested that the evidence of the Sorrell murders may have had little or no impact on Gray's jury. Exh. 22, transcript of discovery hearing held 12/7/92, p. 17. This suggestion is absurd. Judge Spencer found that the impact of the Sorrell evidence could not be denied. *Id.*, p. 33. The enormous qualitative difference between a defendant who has killed once and a defendant who has killed three times, one of the victims a small child, obviously was not lost on Coleman Gray's jury. Certainly the potential impact of the Sorrell murders was not lost on Ferguson, who even lied to Gray's lawyers in order to ambush them with the evidence. The evidence of the Sorrell murders was pivotal in a sentencing trial that Gray's attorneys otherwise would have found quite winnable.

Craig Cooley cut his teeth as a capital defender as attorney for Linwood Briley, who was not sentenced to death in any of the three trials in which Mr. Cooley represented him. Since those three trials, Mr. Cooley has represented numerous capital defendants, including convicted triple murderer Stevan Rea and James Roane of the Newtowne gang. He has won

many, lost few, and established himself as one of the foremost experts on capital defense in Virginia. Gray asked Mr. Cooley to examine his sentencing trial.

Mr. Cooley has reviewed the facts of the McClelland murder and the sentencing trial and he has concluded that the sentencing case presented by Gray's attorneys was probably sufficient to win Gray a life sentence in a trial where the Sorrell evidence was excluded:

> The following comments are based upon my review of the *Gray* case and my experiences in the trial of other capital murder cases:
>
> A. While any act of murder is a tragedy, murders differ in their degrees of brutality, abusiveness, sympathy - engendering, and overall egregiousness.
>
> B. The factual environment of the Sorrell murders was extraordinarily more egregious than the McClelland murder for which Gray was on trial.
>
> C. The introduction of the graphic details of the Sorrell murders allowed the prosecution to paint a picture of Gray as a despicable child-killing (child burning), multiple victim executioner. That, of course, greatly enhanced the potential that a jury would find "future dangerousness" and justify the imposition of a sentence of death.
>
> D. The prosecutor, after the introduction of the Sorrell details, appears to have made those details the dominant theme of his penalty phase argument.
>
> E. The factual setting of the McClelland murder, background of the defendant, aggravating factors, etc. *In the absence of the Sorrell details*, were not so overwhelming, when measured against mitigation, to compel a death sentence or lead inescapably to a death sentence.
>
> F. The factual setting of the McClelland murder, etc. *enhanced by the Sorrell details* created an overwhelming likelihood of a sentence of death in my opinion.
>
> G. While neither I nor any other trial attorney to my knowledge can predict with certainty (or even semi-certainty) what any given jury would decide, I believe any trial attorney would agree that the introduction of the *Sorrell* details was extremely prejudicial and greatly increased the odds of a death penalty in favor of the Commonwealth.

H. In the absence of the Sorrell evidence, I believe there was a better than average chance of a penalty of life being imposed by the jury. I found the Sorrell evidence and the prosecutor's penalty phase closing argument (emphasizing the Sorrell losses) to be very compelling.

Exh. 23, affidavit of Craig Cooley dated 12/11/95.

F. GRAY POSES NO FUTURE THREAT IN PRISON

Gray has made a good adjustment at Mecklenburg Correctional Center, providing assurance that he would not pose a danger to correctional officers and other inmates if his sentence were commuted. During his decade on death row, only one of Gray's disciplinary infractions qualifies as significant. On March 17, 1987, not long after he arrived on the row, Gray turned himself in to Lieutenant O. V. Jones for fighting with Dana Ray Edmonds and cutting him. Exh. 24, excerpt from prison disciplinary record of Coleman Gray. Edmonds was a big man, over six feet tall, and known to prison officials as a troublemaker. Gray is only seven inches over five feet, and stays out of trouble. These facts explain why Gray's punishment for the offense was so mild: 25 days loss of recreation. *Id.* Gray's other disciplinary infractions are largely in the nature of failing to stand for count, failing to obey a direct order, or hindering and delaying. None of them suggest that he has exhibited any dangerousness, and when he has been punished for them, the punishments have always been mild.

G. CONCLUSION

Three principles of justice founded on common sense and conservatism form the basis for this clemency petition:

1. If the state wishes to execute a man, it should do so on the basis of reliable evidence;
2. If the state wishes to execute a man, it should do so on the basis of a fair trial;
3. If the state obtains a death sentence in the absence of reliable evidence and without providing a fair trial, the state should not hide behind a technicality to carry out the death sentence.

Coleman Gray's death sentence was obtained without compliance with the first two principles and is to be carried out on December 14, 1995, in violation of the third principle. The only court that ever heard evidence to determine whether Gray got a fair trial concluded that he did not, but technicalities preclude a judicial remedy to the unfairness of Gray's trial.

As Coleman Gray faces a death sentence based on the murders of Lisa and Shanta Sorrell, their murderer walks free among us. As Gray waits for death based on the

untrustworthy testimony of accomplices and snitches that he pulled the trigger, Melvin Tucker waits for that day soon when he will be eligible for parole. Gray deserves the severe punishment of life imprisonment without parole for his part in the McClelland murder. For over a decade he has not said otherwise. Instead Gray contends that the quality and quantity of evidence and the deficient and unreliable process by which the prosecution elevated his punishment from life imprisonment to death is insufficient and inadequate to support that increased severity.

In his closing argument, contending passionately and eloquently for the death penalty, Commonwealth's Attorney Ferguson asked the jurors a question about Coleman Gray that rings now with irony:

> [D]id he sit in judgment of Lisa and Shanta Sorrell without charges, without trial, without due process, without anything, other than a gun?

App. I, p. 908.

The answer to Ferguson's question was no then, and the answer is no now. There is no trustworthy evidence that Gray ever sat in judgment of the Sorrells. But as to Ferguson, the evidence points to one conclusion: Ferguson judged Gray without charges, without trial, without due process, without any of our criminal justice system's elemental safeguards of fairness and justice. Accordingly Coleman Gray petitions the Governor to commute his sentence from death to life imprisonment.

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