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November 16, 1999

The Honorable James S. Gilmore, III
Governor of the Commonwealth of Virginia
Office of the Governor
State Capitol, 3rd Floor
Richmond, VA 23219RE: Bobby Lee Ramdass – Petition for Clemency
IMMINENT EXECUTION SCHEDULED
NOVEMBER 23, 1999

Dear Governor Gilmore:

This petition is submitted on behalf of Bobby Lee Ramdass, who is scheduled to be executed on November 23, 1999. We ask you to prayerfully consider each of the factors discussed below and we request that, based upon those factors, you grant executive clemency to Bobby Lee Ramdass and commute his death sentence to a sentence of life without the possibility of parole.

You have received any number of these petitions since becoming the Governor of this Commonwealth. We know that each presents its own stark, depressing set of facts, sometimes bizarre, often bone-chilling. The tale of misery describing the background of the petitioner often parallels the misery that the petitioner's actions have caused his victim. No childhood, no matter how aberrant, no level of parental neglect, no addiction, no psychosis caused by an abusive

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upbringing can serve to excuse the wrong or ameliorate the penalty that a jury, provided all of the facts, has decided to impose on these petitioners.

As you will understand from reading this petition, the jury here *was not* provided all of the facts necessary to impose a fair sentence. In fact, it is clear that the jury in Bobby Ramdass' case did not want to sentence him to death, but felt compelled to do so in the face of inaccurate information given to them about his future in society. Even though there was no possibility that Ramdass would ever be called before a parole board for consideration of release, the jury was given an instruction from which they reasonably could have believed that he could have been someday released. This misunderstanding pervaded the jury's deliberations and had the effect of creating a false choice between sentencing petitioner to death and sentencing him to a limited period of incarceration. This tragic misperception was compounded by the prosecutor's argument to the jury that Bobby Ramdass would pose a future danger to society if he were not executed. This is not to suggest that the trial judge or the prosecutor did anything which was not legally and ethically correct at the time of the sentencing. But there can be no doubt that it resulted in a uninformed jury that then felt it had no choice but to impose the death sentence.

Ramdass is not innocent of the crime with which he was charged; he is, however, innocent of the death penalty. He can never be a future danger to society, the talisman for imposing the sentence, because he will never *be* in society. The jury should have known that fact — indeed, they asked specifically about it — but were given an incorrect and inaccurate response.

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After Ramdass' sentencing, the United State Supreme Court held, in a South Carolina case almost identical on its facts, that jurors in such situations must be given such information. In language which is directly relevant to the question of fundamental fairness in this case, the Court in *Simmons v. South Carolina*, 512 U.S. 154, 164 (1994), stated:

In assessing future dangerousness, the actual duration of the defendant's prison sentence is indisputably relevant. Holding all other factors constant, it is entirely reasonable for a sentencing jury to view a defendant who is eligible for parole as a greater threat to society than a defendant who is not. Indeed, there may be no greater assurance of a defendant's future nondangerousness to the public than the fact that he never will be released on parole.

As will be detailed below, United States District Judge Raymond A. Jackson, following the recommendation of the United States Magistrate Judge, held that the *Simmons* decision applied to Ramdass' case, granted the writ and ordered a new sentencing hearing with a fully informed jury. A panel of the United States Court of Appeals for the Fourth Circuit reversed, in a 2-1 split decision, holding that, for highly technical reasons having to do with a new federal law prohibiting review of certain cases, it was legally irrelevant that the unavailability of any parole options was kept from the jury.¹

Ramdass now has a Petition for Certiorari pending before the United States Supreme Court. We realize that you will not give final consideration to this petition for clemency until that Court rules. If, however, you do find yourself in that position, it will be because the Supreme Court has turned down the petition and, if that occurs, it will be because of the very hyper-technical reason given by the majority on the Fourth Circuit panel that reviewed the case.

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We suggest that such a circumstance is uniquely one wherein clemency is appropriate – where justice is unavailable from the judiciary because of procedural bars created by statute. It is then the executive's prerogative, and privilege, to render appropriate justice and fairness in the appropriate setting. We believe this to be the appropriate setting.

Clemency

The American concept of clemency is rooted in the historical English belief that the sovereign should have the power to grant mercy even to those who violate the law. Elkan Abramowitz & David Paget, *Executive Clemency in Capital Cases*, 39 N.Y.U. L. REV. 136, 140 (1964). Until approximately the Thirteenth century, clemency was considered an act of pure grace, with little concern for the circumstances of the crime itself. Thereafter, the concept focused on capital crimes and on the nature of the crime and the defendant. Fenton S. Bresler, *Reprieve: A Study of a System* 27 (London, George G. Harrap & Co. 1965). Sir William Blackstone commented that "one of the merits of the English system [is] the sovereign's power to extend mercy." William Blackstone, *Commentaries* *397-98.

After the Revolution, the English concept of clemency carried over to the United States and has remained an integral part of the legal landscape, especially in capital cases. Every one of the thirty-eight states that permit the death penalty has a procedure whereby clemency may be granted either by the governor or an advisory board. In each state, and in the federal system, clemency is solely a function of the executive branch. It is not subject to review by any court

¹ The relevant decisions from Ramdass' state and federal opinions are reprinted in the Appendix attached hereto, at tabs 2 through 10.

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and it requires no formal opinion or stated reasoning; it remains a unique check on the judiciary, to be exercised sparingly and to do justice where the judiciary cannot. Abramowitz & Paget, *id.* at 141-42.

It has been said in many contexts that the purposes of clemency are essentially two-fold: a "mercy-based" act, similar to the pre-Thirteenth century tradition, and, more modernly, as an *enhancement* to the judiciary system. This latter concept corrects wrongs which may have occurred in the judicial process of a particular case. As one of the foremost articles on the subject states, it is not a forum to seek change in the law or society, but to correct error based on individualized circumstances:

Factors that frequently play a part in an executive's decision to grant clemency include: 1) the nature of the crime; 2) doubt as to guilt; 3) fairness of the trial; 4) relative guilt and disparity of sentences; 5) rehabilitation; 6) dissents and inferences drawn from the courts; 7) recommendations of the prosecution and the trial judge; 8) political pressure and publicity; 9) the clemency authorities' view on capital punishment; and 10) the role of precedent.

Abramowitz & Paget, *id.* at 159-77.

As will be shown, we suggest that at least 5 of the above factors noted weigh in favor of clemency.

Ramdass' Case

Personal History

Ramdass' history is, expectedly, bleak. In a presentence report prepared in 1985 prior to his first felony conviction for purse snatching, Ramdass' family background was summarized by

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the probation officer. Ramdass was, at the time of that earlier offense, living with his mother, Peggy Ann Ramdass and his brother in a high crime section of Fairfax. Mrs. Ramdass is one of twenty-one children. A presentence report prepared by the Alexandria Probation Department, described Mrs. Ramdass' childhood as filled with "neglect, abuse, incest and runaways."²

Mrs. Ramdass married Chan Dradtha Ramdass in September, 1971. The marriage lasted five years. According to the Alexandria PSI report, Mr. Ramdass did not believe Ramdass was his child and was very physically abusive to Bobby and his brother Mark. When Ramdass was very young, he watched as Mrs. Ramdass shot her husband in an act of self-defense when her husband attempted to kill Bobby's infant brother.³ [Tr. Trans 4/2/93 at 8.]⁴ [Tab 12.]

At the capital trial, Mrs. Ramdass testified that at the time of Ramdass' birth she was working as a topless dancer and that she had twice lost custody of her children for neglect. [Tr. Trans. 1/29/93 at 219, 226-27.] [Tab 11.] She testified that Ramdass was physically abused by a boyfriend. [*Id.* at 219-20, 227-28.] [Tab 11.] After she and Mr. Ramdass parted ways, Mrs. Ramdass and her children lived for a period of time in a storage bin and stole food in order to survive. [*Id.* at 221-22.] [Tab 11.] Asked at trial how she felt about her son's conviction for capital murder, she responded: "I don't know. I don't think anything has hit me yet. When I think about it, then I try to brush it aside." [*Id.* at 236.] [Tab 11.]

² The 1985 presentence report does not appear in the Appendix, but is attached separately to this petition.

³ Apparently, Mr. Ramdass survived the shooting and Mrs. Ramdass was never charged criminally. [Tr. Trans. 4/2/93 at 8.]

⁴ The portions of the trial transcript or Joint Appendix (Fourth Circuit proceedings) cited herein are reprinted in the Appendix, and are referred to by tab number.

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A psychiatric examination by Dr. W. Draper in May of 1986 referred to Ramdass as having come from "an unbelievably dysfunctional family which has presented the worst possible role models to him." [Joint App. 475-76.] [Tab 13.] The report concluded with an "overall impression" that Ramdass was a "youth who is basically sound but who has, as a consequence of his noxious and pathological life experiences, never developed an adequate sense of morality or sufficient respect for social norms and expectations." [Id.] [Tab 13.]

Dr. Draper's conclusion serves as prologue to the next five years of Ramdass' life. After four years of incarceration, Ramdass was released in the early summer of 1992. Within three months of his release he and others were involved in a series of crimes, including the robbery of a Pizza Hut, a Domino's Pizza store, and a 7-Eleven. During the 7-Eleven robbery, Mohammed Z. Kayani, the clerk, was killed. On the date of the 7-Eleven shooting, September 2, 1992, Ramdass was 20 years old.

The Crime

The 7-Eleven robbery was perpetrated by five men, including Ramdass. The only person who allegedly saw the shooting was one of the robbers, Shane Singh. In return for an agreement that the Commonwealth drop charges pending against him for other robberies, he testified that the shooting was intentional. Ramdass testified at his sentencing that he did not intend to shoot Mr. Kayani but, in urging him to open the safe, waved the gun and accidentally shot him when another pistol, held by one of the other robbers, discharged.

The Trial

The 7-Eleven capital murder trial was one of a series of criminal proceedings occurring in

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late 1992 and early 1993. A jury found Ramdass guilty of robbing the Pizza Hut on December 15, 1992, and the trial court entered judgment on January 22, 1993. Another jury found him guilty of robbing a Domino's Pizza on January 7, 1993, and the trial court scheduled a sentencing hearing for February 18, 1993. A third jury then found him guilty of the 7-Eleven capital murder on January 28, 1993 and sentenced him to death on January 30, 1993. Thus, 19 days elapsed between the jury's consideration of the death sentence in the 7-Eleven case and the ministerial act of entering judgment on the Domino's Pizza conviction on February 18, 1993.

At the sentencing phase of the trial, the Commonwealth chose to rely solely on Ramdass' "future dangerousness" as the basis for requesting the death penalty. Although the Commonwealth fully informed the jury as to Bobby's criminal background during the 7-Eleven trial's sentencing phase, including crimes for which Bobby had not even been tried, the jury did not recommend death quickly. The jury began its deliberations at 4:20 p.m. on January 29, 1993. At 7:02 p.m. the jury sent out the question that is at the heart of this case:

If the Defendant is given life, is there a possibility of parole at some time before his natural death?

[Tr. Trans. 1/29/93 at 278.] [Tab 11.]

The jury obviously did not frame their question in legal terms. They did not ask whether Ramdass was or would ever be "eligible" for parole. They asked only whether there was "a possibility of parole at some time." After a brief discussion with counsel, the Court "answered" the jury's question, applying the law applicable at the time, as follows:

The answer is, ladies and gentlemen, that if you find the Defendant guilty, which you have in this case, you should impose such

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punishment as you feel is just under the evidence and within the instructions of the Court. You are not to concern yourselves with what may happen afterwards.

[Id. at 281] [emphasis added.]. [Tab 11.]

The jury returned with a sentence of death.

Subsequent appellate and habeas proceedings, as will be discussed below, focused on whether, legally, Bobby Lee Ramdass was eligible for parole *at the time* the jury asked its question. Again, the jury did not ask about parole eligibility; the jury asked only whether there was a "possibility" of parole. Given the events of the summer of 1992, the truthful, accurate answer was clearly "no."

Simmons v. South Carolina

In 1994, while Ramdass' case was on appeal to the Virginia Supreme Court, the United States Supreme Court handed down its decision in *Simmons v. South Carolina*, 512 U.S. 154 (1994). The factual similarity between the two cases is striking. Both Jonathan Simmons and Bobby Ramdass were practically and for all purposes ineligible for parole at the time of their sentencing hearing, although a ministerial act had not yet been performed which would have rendered each of them technically eligible. In Simmons' case, the parole board had not yet declared him ineligible, but they surely were going to do so; in Ramdass' case, the Domino's Pizza judge had not yet imposed the jury recommended sentence, but he surely was going to and, 19 days later, he did.

During the penalty phase of Simmons' murder trial, the prosecution repeatedly emphasized his potential future danger to society and culminated its argument with the plea that

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the jury impose the death penalty as "an act of self defense." *Simmons*, 512 U.S. at 157. The trial court refused defense counsel's motion for a jury instruction clarifying that life imprisonment did not carry with it the possibility of parole in *Simmons'* case. *Id.* at 158. As it did throughout the trial and the appeal process, South Carolina attacked the ineligibility instruction offered by Petitioner on the ground that *Simmons* could, technically, be released in the future as a result of furlough, escape or changes in the law, *Id.* at 166.

In its brief and in oral argument before the Supreme Court, South Carolina argued that *Simmons* was technically eligible for release at the time of the jury's sentencing deliberations because of the failure of the parole board to actually declare him so. "[A]t the time of trial, no state agency had ever determined that *Simmons* was going to be serving a sentence of life without the possibility of parole." *Id.* at *95. As in the present case, the possibility of future release, under any number of hypotheticals, was *central* to the state's position. Transcript of Oral Argument in *Simmons v. South Carolina*, 1994 WL 663636, *24, 35, 45-50 (January 18, 1994).

The Supreme Court rejected South Carolina's arguments virtually *in toto*. Justice Blackmun opened the Court's discussion of the issue in a manner which resonates in *Randass'* case:

The Due Process Clause does not allow the execution of a person "on the basis of information which he had no opportunity to deny or explain." . . . In this case, the jury reasonably may have believed that petitioner could be released on parole if he were not executed. To the extent this misunderstanding pervaded the jury's deliberations, *it had the effect of creating a false choice between sentencing petitioner to death and sentencing him to a limited period of incarceration.* This grievous misperception was encouraged by the trial court's refusal to provide the jury with

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accurate information regarding petitioner's parole ineligibility, and by the State's repeated suggestion that petitioner would pose a future danger to society if he were not executed.

Simmons, 512 U.S. at 161-62 (emphasis supplied). Aware that the Court had long since approved the jury's consideration of "future dangerousness" as a factor in urging the imposition of the death penalty, Justice Blackmun noted that:

... prosecutors in South Carolina, like those in other States that impose the death penalty, frequently emphasize a defendant's future dangerousness in their evidence and argument at the sentencing phase; they urge the jury to sentence the defendant to death so that he will not be a danger to the public if released from prison.

Id. at 163. The logical corollary to that argument followed:

In assessing future dangerousness, the actual duration of the defendant's prison sentence is indisputably relevant. Holding all other factors constant, it is entirely reasonable for a sentencing jury to view a defendant who is eligible for parole as a greater threat to society than a defendant who is not. *Indeed, there may be no greater assurance of a defendant's future nondangerousness to the public than the fact that he never will be released on parole.*

Id. at 164 (emphasis supplied). Finally, the Court concluded that, when a state argues to a jury that a defendant will be a future danger to society, but the defendant is prevented from telling the same jury that he will never be released into that society:

The State thus succeed[s] in securing a death sentence on the ground, at least in part, of petitioner's future dangerousness, while at the same time concealing from the sentencing jury the true meaning of its noncapital sentencing alternative, namely, that life imprisonment meant life without parole. We think it is clear that the State denied petitioner due process.

Id. at 162.

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Post-Conviction Proceedings

After the conviction and original appeals, the United States Supreme Court remanded Ramdass' case to the Virginia Supreme Court to reconsider the case in light of its decision in *Simmons*. On remand, the Virginia Supreme Court focused only on the narrow window of time during which the jury asked its question. *Ramdass v. Commonwealth*, 248 Va. 518, 520-21, 450 S.E.2d 360, 360-61 (1994) ("Ramdass II"). The Court ruled that *on that date, at that time*, Ramdass did not have, in the technical sense, a sufficient number of convictions to render him parole ineligible under Virginia's "three strikes" statute, Va. Code § 53.1-151(B1), because the Domino's Pizza conviction had not yet been reduced to a judgment, an event which was scheduled to occur 19 days after the murder sentencing.⁵ The Court held that it was not error to instruct the jury "not to concern [themselves] with what may happen afterwards" and ordered the execution process to proceed.

Ramdass then filed a habeas corpus petition with the Virginia Supreme Court, asserting four major grounds of relief containing a total of forty-seven discrete claims of error, including the *Simmons* claim. The Virginia Supreme Court denied habeas relief in an unpublished order that was three sentences long. *Ramdass v. Director, Virginia Dept. of Corrections*, No. 951594 (Va. Mar. 18, 1996).

Thereafter a federal habeas petition was filed in the United States District Court for the Eastern District of Virginia at Norfolk. The petition was first considered by U.S. Magistrate Judge James E. Bradberry, who recommended that the writ be granted because, as a matter of

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constitutional due process, the jury must be informed that Ramdass would never be eligible for parole before his natural death. United States District Judge Raymond Jackson, considering the matter *de novo*, agreed with the magistrate judge and, citing the *Simmons* decision, granted the petition for habeas corpus and ordered a new sentencing hearing. *Ramdass v. Angelone*, 28 F. Supp. 2d 343, 363-68 (E.D. Va. 1998).

Initially Judge Jackson observed that the Virginia Supreme Court's decision in *Ramdass II* was an illogical application of the Virginia "three strikes" statute, Va. Code § 53.1-151(B1), as it inconsistently defined "conviction" within the same statute. *Ramdass*, 28 F. Supp. 2d at 365-67.⁶ Additionally, and more importantly, Judge Jackson rebuffed arguments that *Simmons* must be limited to its facts and that parole ineligibility must be viewed from a purely technical and legal perspective. That was clearly the view of the Virginia Supreme Court in *Ramdass II*. Judge Jackson observed, however, that reality should be the guiding principle in the context of this case:

Even assuming the definition of "conviction" was properly determined by the Virginia Supreme Court, the trial court, prosecution, and defense must have clearly understood that Petitioner was subject to life without parole. That is, everyone was aware that, at the time of the capital sentencing phase, Petitioner had either plead guilty or been found guilty by a jury of at least

⁵ Ramdass' conviction and sentencing occurred before the General Assembly abolished parole for felony convictions effective January 1, 1995. Va. Code § 53.1-165.1.

⁶ As explained in Ramdass' briefs filed during the federal habeas proceedings, the Domino's Pizza conviction and sentence, which was disregarded as one of the three "strikes" by the Virginia Supreme Court, was functionally identical to the other two convictions which the Virginia Supreme Court counted as "strikes." The Pizza Hut, Domino's Pizza, and 7-Eleven convictions were all in the same procedural posture, and thus should have been counted as the three predicate offenses rendering Ramdass ineligible for parole under Va. Code § 53.1-151(B1). The trial court's ministerial act of signing the Domino's Pizza judgment, which occurred nineteen days after the capital sentencing proceeding, was the sole basis for the Virginia Supreme Court's refusal to include it as one of the three "strikes."

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three qualifying felony offenses under Virginia Code Section 53.1-151(B). Indeed, these offenses were relied upon to establish Petitioner's future dangerousness. The jury could have been informed, with all confidence, that Petitioner would never be released from prison, thereby rebutting the notion that he presented a future danger to society.

Ramdass, 28 F. Supp. 2d. at 367.

The Commonwealth appealed to the U. S. Court of Appeals for the Fourth Circuit which, in a split decision, reversed Judge Jackson's grant of relief. *Ramdass v. Angelone*, 187 F.3d 396 (4th Cir. 1999). The court stated: "Accepting the Virginia Supreme Court's state law determination that Ramdass was not, at the time of his sentencing proceedings, legally ineligible for parole, we conclude that *Simmons* was not applicable." *Id.* at 399. Elaborating on its ruling, the majority relied expressly on a strict interpretation of *Simmons*, stating that its rule only applies when state law has established absolute, technical parole ineligibility. *Id.* at 403-06. Given that view, the Court was constrained by the recently passed Anti-Terrorism and Effective Death Penalty Act (AEDPA), 28 U.S.C. § 2254(d)(1), which prevents federal courts from reviewing state court legal determinations unless the ruling requested is "clearly established" by United States Supreme Court law. Holding that it was not, the panel majority reversed.

Judge Murnaghan, in his dissent, explained the constitutional foundation for the requirement that a jury be fully informed.

The majority rejects a "pragmatic, functional, nonlegalistic concept" of the *Simmons* right. I think the majority has overlooked the genesis of *Simmons*. *Simmons* was merely an extension of the rule . . . that "elemental due process require[s] that a defendant not be sentenced to death 'on the basis of information which he had no opportunity to deny or explain.'"

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Ramdass, 187 F.3d at 413-14 (citations omitted). This is the very foundation of our system of justice; the right to present evidence in one's own behalf.

Moreover Judge Murnaghan's focus correctly was on the jury or, as he referred to it, "the audience." *Id.* at 414. "Juries are not concerned about legal technicalities or remote and theoretical possibilities. They are concerned about practical realities." *Id.* Judge Murnaghan concluded:

Splitting hairs when a man's life is at stake is not becoming to a judiciary or a legal system. I do not believe that due process requires or allows such arbitrary results. I would hold that, regardless of the technical, legalistic definition of "conviction" used by the Virginia Supreme Court, *Ramdass* had a constitutional due process right to inform the jury of the wholly accurate information that by the time the sentence they were deliberating was officially entered by the judge, he would be ineligible under state law for parole.

Id. at 415.

Please recall that Judge Murnaghan was not the only jurist who concluded that Bobby Lee *Ramdass*' jury deserved to be fully equipped to decide his fate. A federal magistrate judge and federal district court judge also ruled that the jury should have been told that there was no "possibility of parole" before *Ramdass*' natural death. Thus, a total of three federal judges independently agreed that Bobby *Ramdass*' constitutional rights were violated, while only two judges found otherwise.

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Reasons For Granting the Petition

With a full appreciation of the depths from which Bobby Lee Ramdass must rise to present a case deserving clemency, we ask you to consider the following

At the trial, the Ramdass jury heard the prosecutor put on evidence of Ramdass' past criminal behavior, his problems at school and his parole violations. The prosecutor concluded with the following argument:

We submit to you members of the Jury, he is the epitome of dangerousness. He is a proven serious threat to society. The best indicator of future behavior is past behavior and he does it in spades.

(TR 1/29/93 at pp. 261-62).⁷ It was a powerful argument, one intended to frighten the jury, to convince them that, absent the death penalty, Ramdass might again be put on the streets to menace perhaps their son or daughter working in a 7-Eleven. How was anybody to rebut that type of argument? The best, and perhaps only way, was to point out graphically and unequivocally that he would never be out of prison to menace anyone again. As the Supreme Court said much more eloquently:

Indeed, there may be no greater assurance of a defendant's future nondangerousness to the public than the fact that he never will be released on parole.

Simmons, 512 U.S. at 164.

This jury was plainly troubled by the whole situation. The crime, while dreadful in its consequences, was clearly a convenience store robbery gone very bad; an innocent working man

⁷ This portion of the trial transcript does not appear in the Appendix, but is attached separately.

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was dead for no reason. Bobby Ramdass, on the other hand, was all of 20, a product of the Washington D.C. ghetto, whose mother was a topless dancer and whose father who refused to recognize Ramdass to be his child; the subject of abuse and neglect and a home life described as "noxious and pathological"; the classic environmental disaster on a personal level. Ramdass said he didn't mean to shoot Mr. Kayani, that the gun went off by accident when another one of the group fired into the wall, and the only person to testify that it was intentional was a co-defendant who had a deal with the prosecution. But the plain fact was that he had the gun to Mr. Kayani's head. Accident or no, this jury, you, me, society, did not want him back on the street; not back in a 7-Eleven. But to execute him?

In order to answer that dilemma, Ramdass' jury asked the trial judge, in a note, a simple question: "If the Defendant is given life, is there a possibility of parole at some time before his natural death?" The answer to this question was "no." There has never been disagreement as to the practical reality of Ramdass' situation at this point: If he was sentenced to life imprisonment, he was never going to have the opportunity to be considered for release on parole. No state or federal court judge has questioned that immutable fact. Nonetheless, the trial judge, following the law applicable to noncapital cases at the time, not only failed to answer the question, he also inadvertently implied that perhaps Ramdass would be eligible for parole when he instructed the jury "not to concern [themselves] with what may happen afterwards."

The jury was left to speculate about petitioner's parole eligibility when evaluating petitioner's future dangerousness, and was denied a straight answer about petitioner's parole eligibility even when it was requested.

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Simmons, 512 U.S. at 166.

The thrust of this petition for clemency concerns the fundamental fairness of allowing an uninformed jury to decide whether a man will live or die. This plea for mercy on behalf of Bobby Lee Ramdass is also a plea made on behalf of Virginia's jurors. No man or woman should be asked to decide whether another person should lose his life without the benefit of all relevant knowledge bearing on that decision. A citizen of the Commonwealth charged with such an awesome burden must be equipped with all the tools necessary to render a decision – for or against the accused – that is grounded in fairness and enlightened reasoning. Where the jury is asked to decide a man's fate on the grounds of future dangerousness, they are told the details of his past, the details of his crimes, and repetitive patterns of a criminal behavior. Simple fairness and the Constitution dictate that, where there is no possibility of parole before the defendant's natural death, the jury must be told that fact.

Statistical evidence reinforces the common sense notion that jurors are less likely to sentence a person to death if they are assured that a life sentence actually means life in prison. *See Brown v. Texas*, 118 S. Ct. 355, 356 n.2 (1997) (Stevens, Souter, Ginsburg, and Breyer, JJ., dissenting from denial of certiorari). The unfortunate fact is that most jurors, especially at the time of Bobby's trial before parole was abolished in Virginia, believe that a "life" sentence means that the criminal will be released from prison in five, ten, or fifteen years. [Tr. Trans. 4/2/93 at 64-66.] [Tab 12.] In fact, poll data from Virginia shows that while 64% of respondents supported the death penalty in the abstract, support dropped to 45% when the respondents were told that a life-sentenced defendant would be ineligible for parole for twenty-five years. *Brown*,

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118 S. Ct. at 356 n.2 (citing Bowers, Vandiver & Dugan, *A New Look at Public Opinion on Capital Punishment: What Citizens and Legislators Prefer*, 22 Am. J. Crim. L. 77, 89-90 (1994)). Not surprisingly, support for a death sentence decreases as the length of parole ineligibility increases. *Id.* If Virginia jurors are almost 20% less likely to vote for the death penalty based on a mere twenty-five year ineligibility period, imagine how much less likely their death vote would be based on permanent ineligibility.

The jurors who decided Bobby Ramdass' fate did not want to impose the death penalty. According to Bobby's trial counsel, at least three jurors stated that they would have voted *against* a sentence of death had they known that there was no possibility of parole. [Tr. Trans. 4/2/93 at 63-65.] [Tab 12.] In fact, two of those jurors believed that the entire jury would have voted against death if they had been provided full information. [*Id.*] [Tab 12.]

The jurors' concern, which is plainly evident from their question to the judge concerning the "possibility of parole at some time before [Ramdass's] natural death," was that they did not want Bobby Ramdass roaming the streets at any time in the near future. They wanted him in prison for the rest of his natural life. When the trial court told the jury "not to concern [themselves] with what may happen afterwards," the jury had no choice but to sentence Ramdass to death. As things stood on January 29, 1993, there was no chance - zero - that Bobby Lee Ramdass would ever be paroled. Had the Fairfax Circuit Court's calendar played out differently and the sentencing proceeding occurred a mere nineteen days later, even the hyper-technical analysis of the Fourth Circuit would require that Bobby's death sentence be reversed.

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Noted earlier was a list of the factors that have been historically utilized in considering clemency:

Factors that frequently play a part in an executive's decision to grant clemency include: 1) the nature of the crime; 2) doubt as to guilt; 3) fairness of the trial; 4) relative guilt and disparity of sentences; 5) rehabilitation; 6) dissents and inferences drawn from the courts; 7) recommendations of the prosecution and the trial judge; 8) political pressure and publicity; 9) the clemency authorities' view on capital punishment; and 10) the role of precedent.

Abramowitz & Paget, *id.* at 159-77. It is suggested that 1) while the crime was certainly serious and beyond excuse, it was not "vile" in nature, and the prosecution put on no evidence in that regard; 2) Ramdass has admitted his guilt but maintains his innocence of the death penalty; 3) the trial was manifestly unfair given the misinformation given the jury about the parole options; 6) three federal judges have held that the sentencing process violated Ramdass' due process rights and, 10) the Supreme Court's decision in *Simmons* would be dispositive of this case were it not for the procedural bar of the AEDPA.

In addition, if this Petition reaches the stage where you are considering its merits, it will be solely because the passage of the AEDPA will have prevented the United States Supreme Court from considering what is clearly an erroneous and unfair ruling. It is precisely this type of legal predicament for which the privilege of clemency was created. If there is legal error here, and there most assuredly is, the court's will have proven unable to address it because of procedural bars whose legitimate interest is speed and finality, not justice and fairness. If the system is to work, this is the phase where all technicalities and legalities fall by the wayside.

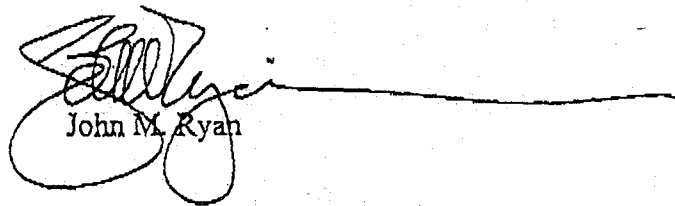
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Bobby Ramdass, guilty of the crime, is innocent of the death penalty; to impose it in the face of overwhelming evidence of a misinformed jury would be, we suggest, a dreadful and, certainly, fatal mistake of fairness. That the courts are unable to rectify the mistake because of the technicalities is exactly why clemency has been described as an *enhancement* to the judiciary. In the words of Judge Murnaghan, "splitting hairs when a man's life is at stake is not becoming to a judiciary or a legal system."

On behalf of Bobby Lee Ramdass, and on behalf of the jurors who did not want to sentence him to die, we respectfully request that you commute his death sentence to life without the possibility of parole.

Very truly yours,

VANDEVENTER BLACK LLP



John M. Ryan