William Saunders

PETITION FOR EXECUTIVE CLEMENCY

ON BEHALF OF

WILLIAM SAUNDERS

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April 23, 1997

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THE SENTENCE OF DEATH WAS WRONGLY IMPOSED AND SHOULD BE COMMUTED TO LIFE WITH PAROLE.

William Ira Saunders was sentenced to death on May 3, 1990, for the robbery and murder of Mervin Dale Guill as Guill was waiting to make a drug buy. The death sentence was imposed solely on the basis of future dangerousness. Saunders v. Commonwealth, 406 S.E.2d 39, 42 (Va. 1991). Ex. 1. The Danville Commonwealth's Attorney, William H. Fuller, III, who prosecuted Saunders, the judge, James F. Ingram, who tried and sentenced Saunders after a bench trial, and the Danville Chief of Police, T. Neal Morris, have concluded that the death sentence was wrongly imposed. Their letters supporting clemency in this case are attached as Exhibits 2, 3, and 4, respectively.

Based on the unique circumstances preceding the sentencing of Mr. Saunders and based on his record while incarcerated in the subsequent seven years, Mr. Fuller, Judge Ingram, and Chief Morris now believe that a sentence of life with parole, the sentence available at the time of sentencing, is the appropriate punishment in this case. Judge Ingram states in his letter (Ex. 3):

> As a result of the defendant's post conviction conduct while awaiting sentencing in jail, I imposed the death penalty upon Saunders because there was a probability that based upon that evidence, the defendant would commit criminal acts of violence that would constitute a continuing serious threat to society.
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> * * *
>
> I have had an opportunity to review William Ira Saunders' behavior while he has been an inmate on Death Row and I am satisfied that his conduct in the years following his sentencing have not borne out my belief of his future dangerousness which he demonstrated during his period of incarceration awaiting sentencing.
>
> I am of the opinion that the sentence which was imposed upon Saunders is not the correct sentence today and I believe it would

> not only be appropriate, but in the interest of justice that William Ira Saunders' sentence be reconsidered and that his death sentence be commuted to a life sentence.

The Danville Commonwealth's Attorney William H. Fuller agrees that Saunders' death sentence was based largely on his post-trial misconduct at the Danville Jail in the six month period between his conviction for capital murder and the imposition of sentence. Mr. Fuller states:

> In retrospect, despite Saunders' behavior from conviction to sentencing almost six months later, it concerns me that, had the sentencing hearing gone forward when originally scheduled, Saunders' conduct that caused him to receive the death penalty would not have occurred and would not have affected his sentence. Significantly, Saunders created no problem while incarcerated from July 20, 1989 to January 5, 1990, the date that his sentencing was originally scheduled. Thus, I am convinced that if Saunders had been sentenced on January 5, 1990, as originally scheduled, the judge would not have imposed the death penalty, based upon the evidence of future dangerousness introduced at the first penalty hearing on November 16th.

Ex. 2 at 2. * * *

> Since June of 1995, when I started reviewing this file after Saunders filed a federal habeas petition, I have felt that so long as Saunders has not been involved in violent conduct while incarcerated since receiving the death penalty, his sentence should be reconsidered. His prison record, which I have reviewed, indicates that he has not been involved in any violent conduct since he was sentenced to death on May 3, 1990.

Ex. 2 at 3.

Mr. Fuller's support for clemency in this case is based also on the substantial criminal records of the Commonwealth's witnesses in the years following Saunders' trial. Mr. Fuller writes:

> I believe there is an additional reason for re-examining Saunders' death sentence. I am concerned that several of the Commonwealth witnesses in this case have compiled the following criminal records since Saunders was convicted of capital murder.

[After reviewing the convictions of three primary witnesses, Mr. Fuller concludes as follows.]

I have no doubt that Saunders committed the capital murder and that the testimony of the Commonwealth witnesses was substantially true, but I also believe that Saunders' conduct during the long delay from conviction to the second sentencing hearing was the primary reason he received the death penalty. Moreover, in view of the criminal conduct of most of the Commonwealth witnesses since Saunders' conviction, I am not comfortable with Saunders' death sentence.

Ex. 2 at 2, 3.

As set forth herein, the credibility of the Commonwealth's primary witnesses has been eroded not only by their criminal convictions but by additional events since Saunders' capital trial which raise further doubts about their trial testimony and about the imposition of a death sentence in this case. Facts not available at the time of trial raise serious concerns about the death sentence imposed in this case.

With the consent of the Attorney General's Office, Saunders is petitioning for clemency prior to the conclusion of legal proceedings in federal court[121]. In an effort to conserve the resources of all involved and to avoid further litigation[122], the parties have agreed that Saunders should seek clemency at this time. Clemency is appropriate given the rare and unusual circumstances of Mr. Saunders' case.

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[121]Under Virginia law, no procedural mechanism permits Saunders to present this motion and the underlying facts to the Virginia state courts at this time. Clemency is the only form of state relief available. In order to permit Saunders to present this petition for clemency, the Attorney General's Office agreed to defer the federal district court hearing previously scheduled for April 24, 1997, and the District Court granted Saunders' motion for adjournment.

[122]If clemency is granted, Saunders will withdraw his federal habeas petition now pending in the U.S. District Court, Richmond Division, before the Hon. Robert R. Merhige, Jr.

INTRODUCTION

Mervin Dale Guill, a 41 year old white man, was shot on July 17, 1989, as he sat in his car, waiting to make a drug buy in Danville, Virginia. A prosecution witness, Lacy Johnson, testified that he along with William Saunders was in the car with Guill. Without warning, Saunders shot Guill and robbed him. Within two days, Johnson informed the police that Saunders had shot Guill. No physical evidence connected Saunders with the shooting of Guill. The murder weapon was never recovered. Saunders' fingerprints were not found on Guill's property or on his car. Johnson's prints were found on the victim's car. Johnson also led the police to Guill's discarded wallet and papers. All the trial testimony attributing the shooting to Saunders came either from witnesses who had been with Guill prior to the shooting and who had a motive to fabricate their testimony or from a jailhouse snitch. Two of the witnesses, Lacy Johnson and Katrina Wilson, were married within three weeks of the shooting. Under then existing Virginia law, they could not testify against one another. Va. Code § 19.2-271.2. Johnson and Wilson later divorced. A jail house informant, Bernard Smith, testified to a conversation between Smith and Saunders during which Saunders admitted shooting and robbing Guill.

Since the trial concluded, Johnson has claimed responsibility for Guill's murder on several occasions. He told to his current wife, Teresa Hill Johnson, that he had killed someone and identified that individual as "the insurance man on Memorial Drive, " i.e., Dale Guill. See Ex. 5. Johnson admitted his responsibility to Candace Bowman Battle on the very night of the murder and again as recently as August, 1995. See Ex. 6. Johnson told Battle that he had "set up" Saunders for the murder. Levi Poole, a trial witness, signed a sworn affidavit that Johnson had admitted killing someone. See Ex. 7. Poole also stated that he had given false testimony at Saunders' trial but later recanted that admission when interviewed by the Commonwealth. After the state court

proceedings concluded, Bernard Smith stated in a sworn affidavit that he had given false testimony at Saunders' trial. Ex. 8. Smith later recanted that recantation during an interview with the Commonwealth's Attorney. Ex. 8. Antonio Winbush submitted an affidavit stating that he had heard Johnson admit to killing someone and understood the victim to be Guill. He also stated that his wife, Katrina, formerly Johnson's wife, had admitted giving false testimony at Saunders trial. Winbush also recanted after an interview with the Commonwealth. Ex. 9. (Katrina Winbush and Lacy Johnson submitted affidavits denying these accusations.)

Saunders' death sentence was based solely on a finding of future dangerousness[123]. At the sentence phase in November, 1989, the prosecution's expert predicated his opinion on Saunders' future dangerousness on the credibility of the prosecution's witnesses. In contrast, a defense expert concluded that Saunders was not a future danger. The trial court adjourned the sentencing decision until January 5, 1990, pending review of the presentence report. On January 5, 1990, the trial court again adjourned the sentence to February 26, 1990. The court did not impose sentence until May 3, 1990--over five months after conviction.

From the time of his arrest in July 1989 until mid-February 1990, Saunders did not engage in any violent behavior. However, between February 20, 1990, and May 3, 1990, Saunders committed six acts of misconduct, including setting his bedsheet on fire, while he was in the Danville Jail awaiting sentence. These jail incidents were viewed by the court as evidence of Saunders' future dangerousness. The trial court imposed a death sentence based primarily on Saunders' post-conviction actions. See Ex. 3; Ex. 26 at 200-202 (5/3/90). The trial court rejected defense counsel's argument that the post-conviction bad acts were the direct result of the stress and

[123]The complete trial transcript is Ex. 26. References to the transcript appear as "Tr." followed by a page number.

uncertainty experienced by Saunders as he awaited the court's decision on his sentence. In affirming his death sentence, the Virginia Supreme Court relied heavily on Saunders' post-conviction offenses. Ex. 1.

This clemency petition is based in part on the circumstances that surrounded Saunders' capital sentencing proceeding and on his record since the imposition of his capital sentence. Saunders has been incarcerated for almost seven years on death row at the Mecklenburg Correction Center. In that period, there has been no reoccurrence of the violent behavior that he exhibited while awaiting sentence in the Danville jail. Ex. 24. His only violent act was a self-inflicted wound during an unsuccessful suicide attempt in April, 1995. Thus, the prediction that Saunders would constitute a future danger, even when incarcerated, has proved to be erroneous. Moreover, Saunders' record at Mecklenburg provides further reason to believe that Saunders' violent behavior at the Danville jail resulted from delay over his sentencing and the stress induced by a possible death sentence. Saunders' behavior in the intervening seven years supports his trial expert's opinion that he would not constitute a future danger. The petition is also based on post-trial events and disclosures that cast substantial doubt on the trial testimony of the Commonwealth's central witnesses.

In view of these facts, the Commonwealth's Attorney who prosecuted Saunders, the judge who tried and sentenced Saunders, the Danville Police Chief who investigated the case, and petitioner, William Saunders, join in seeking executive clemency. His sentence should be commuted from death to life with the possibility of parole.

THE EVIDENCE AT THE GUILT PHASE

Viewed in the light most favorable to the Commonwealth, the evidence at trial

demonstrated the following. Mervin Dale Guill, a 41 year old white man, was shot on July 17, 1989, in either the late afternoon or early evening in a parking lot in Danville, Virginia. Earlier that afternoon he had withdrawn $600 in cash, receiving five, $100 bills and five, $20 bills. Ex. 26 (Tr. 32, 11/15/89).

Between 5 and 8 p.m. on July 17th, James Eason saw a man, later identified at Guill, lying prone in a grey car in a parking lot near the Old Dutch Supermarket next to the shoe store on Memorial Drive. The car's gas cap was smoldering on the ground, and rags had been stuffed into the gas tank in an unsuccessful effort to ignite the car. (Tr. 177). As the man in the car appeared to be dead, Eason immediately called 911. The police arrived within five to ten minutes, photographed the car, and retrieved the burnt material from the gas tank. (Tr. 178). The burnt material was identified as a shirt or undergarment [Trial Ex 20A and 20B]. (Tr. 189-90).

Guill was killed by a gunshot wound to the back of the head. The bullet penetrated the brain stem causing instantaneous death. The muzzle of the gun had been in contact with the scalp when fired and powder residue was found around the entry wound. (Tr. 20). The bullet was recovered from the body and given to the forensic examiner, William Conrad. (Tr. 17). Conrad described the bullet as "a 22 caliber coated lead bullet that had been damaged. It had six lands and grooves impressed on the bullet with right hand twist." (Tr. 25). Due to damage and weight loss, Conrad could not determine if the bullet was a long rifle or a short round. (Tr. 26). The bullet was never identified by Conrad or admitted into evidence. As the gun that fired the bullet was never recovered, Conrad never compared the damaged bullet to the gun. On cross examination, Conrad admitted that thousands of guns in circulation could have fired a bullet of this type.

In the early morning hours of July 19th, more than a day after Guill's body was found, Lt. T. A. Brown received a phone call from Lacy Johnson asking Brown to meet him at 2

a.m. on Grove Street in Danville. When Brown arrived, Johnson was accompanied by a woman named Katrina, Johnson's girlfriend. Brown brought Johnson and Katrina to the police department where he took a written statement from Johnson. (Tr. 184). Johnson named Saunders as the shooter.

Based on Johnson's information, Lt. Brown, Det. Thomas Breedlove and Johnson went to a vacant house on High Street where they found a tri-fold, brown man's wallet lying in the weeds between two houses. (Tr. 185). It contained no identification. Based on Johnson's information, some of Guill's documents were also retrieved from the sewer located on the corner of Ridge and Grove Street. (Tr. 191-192). The lab recovered some fingerprints from the Guill's documents, but none of the prints taken from Guill's property matched the prints of William Saunders.

At trial Johnson stated that the day before the shooting, Saunders showed Johnson three guns: a .25, a .38, and a gold .22. The .22 was about 7 inches long. All the guns had "F.I.E." stamped on them. (Tr. 114).

The next day, July 17th, Guill arrived at Katrina's apartment on Grove Street around 4:30-5 p.m. and asked Johnson to help him buy a half ounce of cocaine.[124] A half ounce cost between $700-800. As they drove by Dooley's Store on Jefferson Avenue, Johnson spotted Katrina, Saunders, and Levi Poole. Guill stopped to pick up Katrina. While Guill was talking to Poole outside the car, Saunders told Johnson, "I should rob this white mother fucker but you know him." (Tr. 121). All four got into Guill's car to continue the search for drugs. Saunders was seated behind Guill, and Katrina was behind Johnson. (Tr. 120).

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[124]Guill was white while Johnson and the others were black.

Guill pulled in at Allen's Shoe Shop about 7:30 p.m. and waited to make a drug buy. (Tr. 124, 143). Katrina left the car and started to walk home. Within "a minute or so," the shooting occurred. (Tr. 143). As Johnson talked to Guill, Guill suddenly lunged forward in the car. Johnson looked back and saw Saunders holding a gold gun in Johnson's face. Saunders got out of the car, searched Guill, and removed Guill's chain and a big cluster ring. Saunders looked at the wound in Guill's head and then brushed Guill's hair over it. (Tr. 129-30).

Johnson stated that Saunders removed Saunders' white, tank top shirt. He stuffed it into the car's gas tank, and tried to light the shirt with matches. Two to three minutes after the shooting, Saunders and Johnson left the car and crossed Memorial Drive on foot. (Tr. 143). Saunders carried Guill's gold rope chain in his hand. When the two men reached Katrina, she remarked, "I heard a noise. It sound like a shot." According to Johnson, Saunders replied, "Don't worry about it . . . I just killed that man." Saunders added, "Naw, Lacy didn't do. I did it." Saunders threw the wallet into bushes near a house on High Street. (Tr. 133). On Grove Street, Saunders threw the papers from the wallet into the sewer. (Tr. 133). At that point, Saunders began counting the money.

Saunders, Johnson and Katrina returned to Katrina's apartment. Saunders, according to Johnson, washed the blood off his hands. Everyone left the apartment for a brief period. They stopped at Dooley's to buy beer and order a pizza which was delivered to Katrina's apartment. (Tr. 138). When they got inside the apartment, Saunders was drinking beer and sniffing cocaine. Levi Poole and Saunders' brother also came by the apartment that evening. (Tr. 140). Saunders remained in the apartment until four or five in the morning. (Tr. 139).

Johnson called the police around 2 a.m. on July 19, 1989. Lt. Brown picked up Johnson who gave his account of Guill's shooting. (Tr. 142). On cross, Johnson denied giving a

false police report to avoid criminal charges and denied that he delayed reporting until he could create a story to tell the police. However, Johnson admitted giving false information to the police in the past as well as false testimony when he was on trial. (Tr. 154-55). He had convictions for stealing a car, breaking and entering, grand larceny, assault and battery, and giving false information to the police. (Tr. 157). He acknowledged three felony convictions. (Tr. 165).

Johnson admitted that he had used illegal drugs and that he recognized the street signals employed to indicate drug availability. (Tr. 158). He denied telling Anthony Martin one month before Saunders' trial that he, Johnson, had spent Guill's money. He also denied bragging to Angie Johnson and Betty Brandon on the night of the shooting about robbing Guill. (Tr. 160).

Katrina Wilson Johnson corroborated much of Johnson's testimony.[125] Between 4 and 4:30 p.m., Guill arrived at her apartment and left with Johnson. (Tr. 43). As Katrina waited for their return, Saunders and James Levi Poole arrived. Saunders had a brown "leather like" bag with a finger strap. Poole took the bag, unzipped it and removed a long gold gun. (Tr. 46). Katrina had seen this gun, in the same leather bag, the day before when Saunders came to their apartment. The gun was six to seven inches long and gold in the front. (Tr. 46).

Katrina, Poole and Saunders walked to Dooley's Market on Jefferson between 5 and 5:30 p.m. Johnson and Guill arrived and parked the car. Between 5:30 and 6:00 p.m., the four got into the car and left Dooley's. Guill drove, Johnson was in the front passenger seat, Katrina sat behind Johnson, and Saunders sat behind Guill. (Tr. 48). Guill was to drive Katrina home. However, instead of driving Katrina home, Guill drove around looking for a half ounce of cocaine

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[125]On August 4, 1989, three weeks after the shooting, Katrina Wilson then 25 years old and Lacy Johnson then 20 were married. Under Va. Code § 19.2-271.2 neither could be called to testify against the other in a criminal proceeding. They are now divorced.

and ultimately pulled into the parking lot of the Old Dutch Supermarket next to the car wash. Guill parked the car and waited to make a drug buy.

Katrina left and began walking home. It was now between 7 and 7:30 p.m. As Katrina walked up High Street, she heard a noise "like a shot." (Tr. 53). Katrina then saw Saunders and Johnson walking up behind her "real fast." Four to five minutes had passed since she had left the car. (Tr. 53). When Katrina commented that she had heard a noise like a shot, Saunders grabbed her, hugged her, and admitted that he had just killed "the man," adding "Everything will be all right, just don't say nothing." (Tr. 54). As Katrina, Johnson and Saunders continued walking, Saunders repeated "a hundred, a hundred, a hundred, a hundred, a hundred." Katrina testified, "I guess he was counting the money that he had taken from Guill." (Tr. 54).

According to Katrina, all three returned to Lacy's apartment on Grove Street. That night they along with Levi Poole and Saunders' brother, Marvin, sat around drinking beer and eating pizza. Poole and Marvin Saunders left at an unspecified time. Saunders remained until 3:30 or 4 a.m., then went home. (Tr. 58).

On cross examination, Katrina stated that she married Johnson on August 4, 1989. However, she denied that they had married to gain the protection of the marital privilege and insisted that they had been engaged to marry since March, 1989. (Tr. 65-66).

James Levi Poole testified about events prior to and after the shooting. On July 17th, he and Saunders went to Katrina's apartment. Saunders had a leather pouch that contained a .22 gun with a long barrel. Poole took the gun out, looked at it, said "Naw, that's five years for me," and returned the gun to Saunders. (Tr. 76). Poole was on parole at the time. (Tr. 77). Poole, Saunders and Katrina went to Dooley's Store where they met Johnson and Guill. Poole described the gun as chrome, then corrected himself stating that it was gold. (Tr. 76). Johnson,

Katrina and Saunders left with Guill while Poole stayed behind. (Tr. 79). Later that night, around 7 or 7:30 p.m., Poole went to Katrina's apartment. He saw Johnson, Katrina, Saunders, and Saunders' brother. (Tr. 80). Poole talked for about 10 minutes, ate some pizza, and he left about 8 or 9 p.m. (Tr. 82).

On cross examination, Poole admitted telling defense counsel that he had never seen Saunders with a gun. Poole admitted telling defense counsel that Johnson had made some statements to Poole about the robbery of Guill. (Tr. 84-85). But at trial Poole denied that Johnson had made any statements about the robbery and claimed only that "[S]omebody told me he .. this .. this the way it happened." (Tr. 84, 86).

At trial, Shanta Chandler Thompson stated that she had been at the car wash on Union Street on July 17, 1989, between 7:30 and 8 p.m. Thompson never heard any gun shot. (Tr. 171). Thompson saw Katrina come from the side of Old Dutch and then cross the street proceed up High Street. (Tr. 168-69). About two minutes later, Thompson saw Johnson and an individual she identified at trial as Saunders cross the street in front of the carwash and proceed up High Street. (Tr. 169). Thompson stated that Saunders was wearing a black T-shirt and shorts. Thompson stated that she had no doubt about the individuals she saw that evening. (Tr. 171). Defense counsel had been provided with Thompson's pretrial sworn statement to the prosecutor (Tr. 174). However, defense counsel never cross-examined Thompson on her inability to identify Saunders when she first talked to the detective. In fact, Thompson had looked at photographs and "narrowed them down to two pictures." After viewing the photographs, she subsequently identified Saunders in a six person, line-up on August 29th. Defense counsel never filed any Wade motion challenging Thompson's identifications of Saunders and failed to challenge her identification on cross-examination.

The Commonwealth called Bernard Smith, then nineteen years old and held on charges in the Danville City jail. Smith saw Saunders with two guns in June or July. One was a .38 and the other was a gold .22 about nine to ten inches long. (Tr. 88). After Saunders was arrested on the capital murder charge, Saunders and Smith were held in the same jail. (Tr. 90-91). On an unspecified date, Saunders told Smith that Johnson had snitched on him and he wanted someone to knock him off. (Tr. 89). Later Saunders told Smith that he had shot Guill in the back of the head with a .22 by the car wash on Memorial Drive. (Tr. 91). Guill had been looking for one half ounce of cocaine. (Tr. 93). Saunders shot Guill because Guill would not give Saunders his money. Saunders took Guill's jewelry and money. Johnson and some girl had been with Guill and Saunders at the time. According to Smith, Saunders said Johnson had told Saunders not to shoot Guill because Lacy knew Guill. After these two conversations, Smith contacted the police. (Tr. 95). Smith talked to Det. Breedlove and then to the prosecutor, William Fuller. (Tr. 99). He was released from jail on August 31, 1989, and had no subsequent arrests. (Tr. 100).

Smith had prior convictions for shoplifting, assault, drunk in public, disorderly conduct and abusive language. (Tr. 98-99). Smith had been convicted of burglary in Pittsylvania County but had not yet been sentenced. He also admitted that in August, when he talked to Saunders, he had been convicted on the felony charge in Pittsylvania and that sentence was pending. Smith denied cooperating with the Danville police to help himself. (Tr. 103). While Smith was out on bond on the Chatham burglary, he had been charged with assault in Danville. His grandmother had signed the bond on the burglary case but refused to do so on the assault case. On August 28, 30 and September 1, 1989, Smith spoke to the police and prosecutor about Saunders' statements. (Tr. 103-04). He had been released on bond on August 31, 1989.

The defense presented several witnesses at the guilt phase of the trial. Betty

Brandon, 26 years old and then in jail on pending charges, lived at 808 Grove Street on the night of the shooting. Brandon saw Johnson, Saunders, Poole, and other people at her apartment as well as Katrina's on the night of the shooting. (Tr. 215). The very night of the shooting Johnson bragged that he, Poole and Saunders had robbed Guill. Johnson had received Guill's money, and he showed Brandon some money that night. Johnson was using cocaine when he talked to Brandon. He had a bread bag with cocaine in it and was offering cocaine to everyone present. (Tr. 216-17). Brandon saw Johnson and Katrina doing drugs. On the night of the robbery, Brandon bought two, $25 dollar bags from Johnson. (Tr. 221-22). Johnson told her that he had followed Guill on a bike that day. After Guill offered Johnson a ride, they picked up Saunders, Katrina and Poole. (Tr. 223). The group robbed Guill and left his car. Guill was later found dead at the Old Dutch. (Tr. 224). On cross examination, Brandon acknowledged prior convictions for writing bad checks.

Anthony Martin, a 19 year old high school student, had a conversation with Johnson about a month and a half before the trial. When Martin told Johnson, "I heard you shot this man," Johnson had responded, "Naw, I just spent the dead man's money." (Tr. 229). Johnson did not tell Martin who shot Guill. (Tr. 231).

Sandra Mease, 27 years old, stated that she had known Dale Guill for ten or eleven years and had dated him. She had also dated Saunders but not at the same time. (Tr. 233-34). On one occasion, Guill had asked her to sell him drugs, and she had refused. When asked if Johnson sold drugs, Mease said "yes." The Commonwealth objected and the objection was sustained. (Tr. 234). On cross-examination Mease, known as "Missy," stated that she and Guill were only friends and did not having a dating relationship. (Tr. 235, 240). Saunders did not know that she had been seeing Guill. (Tr. 239). Mease knew nothing about the shooting of Guill. (Tr. 241).

Margie Saunders, Saunders' mother, testified that he had been living with her off

and on at the time of the shooting. Ms. Saunders produced one of Saunders' shirts. (Def. Ex. 3). The shirt was not the same size as the shirt recovered from the gas tank. (Tr. 225-26).

At the guilt phase, the circumstances surrounding Saunders' arrest and his post-arrest statement were never presented to the court. Ex. 10. Saunders had been arrested on July 20, 1989, at his sister's apartment on 338 North Ridge Street in Danville, Virginia. Although the police searched the apartment, they did not recover any evidence connected to the robbery of Guill--no guns or bullets, no money, no jewelry, and no other possessions or papers.

After his arrest, Saunders gave a statement. Ex. 10. He had been with Katrina and Poole at Dooley's Market on Jefferson sometime after 2:30 p.m. on July 17, 1989, when Johnson and an unknown, white male pulled up. While the man talked to Poole, Johnson spoke to Saunders and Katrina and told them to get in the car. All four drove off (Guill and Johnson in the front, Saunders and Katrina in the back) looking for a half ounce of cocaine for Guill. They drove to Peyton Place, to the north side, and then across the bridge to the car wash on Memorial Drive. They parked at the car wash, and Johnson went into a building. Johnson came back and said he could not get anything. Guill stated that he would go to Greensboro for cocaine. Guill dropped everyone off at Katrina's apartment on Grove Street, and Saunders never saw him again. Saunders said they did not park at the lot beside Old Dutch and Allen's Shoe Shop while he was with them. In his statement, Saunders denied any knowledge of the shooting or of Guill's wallet or papers. He stated correctly that his fingerprints would not be found on those items.

At the conclusion of the guilt phase, defense counsel argued that the witnesses were not credible. Johnson and his then girlfriend Katrina Wilson had concocted a story exonerating Johnson and attributing all criminal acts to Saunders. As added protection, Johnson married Katrina several days after the shooting to prevent her testifying against him at any trial. Johnson and

Katrina persuaded their friend Thompson to back up their story about the time of these events. (Counsel failed to argue that Thompson said Saunders had been wearing a black shirt, when according to the other testimony Saunders had placed his white shirt in the car's gas tank.) Johnson had a prior conviction for giving false evidence to the police. (Tr. 256). Smith gave false testimony about Saunders' admissions to obtain favorable treatment on his pending charges. However, Smith's story conflicted with Johnson's. Smith stated that Saunders had demanded the money and Guill had refused. This directly contradicted Johnson's description of the shooting as sudden and unexpected. (Tr. 259). Poole gave inconsistent descriptions of the gun. (Tr. 259). Saunders' fingerprints were not found on any of Guill's possessions although, according to Johnson, Saunders was the last one to handle Guill's papers. No physical evidence connected Saunders to the shooting. (Tr. 260). Given the nature of the testimony and the lack of credibility of the witnesses, guilt had not been established beyond a reasonable doubt. (Tr. 260).

In rebuttal summation, the prosecutor argued that Johnson was completely credible. Johnson's account was confirmed by Katrina and Shanta Thompson. (Tr. 268). (The prosecutor, like defense counsel, failed to note that Thompson said Saunders had been wearing a black shirt. If the others were to be believed, Saunders did not have any shirt by the time Thompson saw him.) The prosecutor argued that Guill was shot for his money and because he was white. (Tr. 266). He admitted that without Johnson there would have been no case against Saunders. (Tr. 271). Smith was credible because his pending sentence on the Chatham burglary conviction was outside the control of the Danville prosecutor's office. "An offense that I have no control over. He has been made no promises." (Tr. 272). Since Smith had been in jail, he could have learned the details of the shooting only from Saunders. (Tr. 272).

Based on this testimony and evidence, the court found Saunders guilty of capital

murder in the commission of a robbery, of robbery, and of the use of a firearm in the commission of a felony. (Tr. 275).

THE EVIDENCE AT THE SENTENCE PHASE

The sentencing phase of the trial began on November 16, 1989, and was ultimately continued to May, 1990. Viewed in the light most favorable to the Commonwealth, the evidence demonstrated the following.

A. Evidence Presented On November 16, 1989

Bernard Smith, James Jones, and Saunders went to Chatham, Virginia, on the night of June 1, 1989, and broke into a Western Auto store using a crowbar. Saunders handed Smith six guns from the store, and Saunders took three guns, a .22, a .25, and a 9 mm.[126] The .22 was gold color and had long barrel. Ex. 26 (Tr. 11). The police recovered the six guns from Smith's house. Smith pled guilty to this offense and was awaiting sentence. (Tr. 12). Smith saw Saunders with the .22 and the .25 after the break-in. (Saunders was charged and later convicted of burglary and grand larceny based on these facts.) While in jail, Saunders told Smith about shooting Guill. Saunders also claimed that he had shot a man in Washington, D.C. over some money and drugs. (Tr. 14).

Elton Pruitt, the owner of the Western Auto Store, confirmed that on June 1, 1989, nine guns were taken along with a pair of binoculars. (Tr. 6). One gun was an FIE brand .22 with two cylinders for a .22 magnum and for a .22 long rifle. The .22 long rifle cylinder was in the firearm when it was stolen. The barrel was about 5-3/4" and the gun was brass plated. (Tr. 7).

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[126]Defense counsel failed to establish that Saunders had been arrested at the scene of the Chatham robbery and that no guns were recovered from him at that time. Counsel made no effort to introduce evidence concerning the facts of Saunders' arrest in Chatham. Ex. 14, 15, 16.

Both Katrina Wilson and Lacy Johnson testified at the sentencing phase. Katrina had overheard Saunders admit that he had stolen the guns from a shop in Chatham. On the day Guill has shot, Katrina asked Saunders if he had ever done anything like that before, and he responded, "Plenty of times." With prompting, Katrina stated that Saunders said that he had shot a man in Washington, D.C. and had taken his "reefer" the weekend before Guill was shot. (Tr. 22-24).

Johnson repeated his prior testimony that Saunders had three guns the day before the shooting. Saunders reported that he and Smith had stolen the guns from Chatham. (Tr. 29). Johnson was with Katrina when Saunders said he had shot someone "plenty of times." Saunders also said that he shot a drug dealer in D.C. the weekend before Guill's murder and took the dealer's drugs and money. (Tr. 29). According to Johnson, Saunders shot Guill because he was white and Saunders hated white people. (Tr. 30). Saunders had tried to get Johnson involved in devil worship using the bones of a black cat to get "powers." (Tr. 30).

On cross examination, Johnson admitted giving false information to the police and acknowledged his prior felony conviction. (Tr. 33). On redirect, Johnson explained the false information charge. He had initially denied any involvement with a stolen car. However, when the other participants blamed him, Johnson gave a statement to the police and testified against them. (Tr. 34).

The Commonwealth introduced Saunders' prior record: two statutory burglary convictions in 1987; petit larceny on November 26, 1988, recorded in the General District Court; receiving stolen merchandise on October 27, 1988, recorded in the General District Court; disorderly conduct and resisting arrest on March 11, 1989, in the General District Court; disorderly conduct in front of a school and misdemeanor assault and battery on a police officer on March 19, 1988, in General District Court. (Copies of these records appear at Ex. 11). The pre-

sentence report was also admitted. This concluded the Commonwealth's evidence of future dangerousness.

An examination of the underlying facts of these prior offenses demonstrates that Saunders' record consisted largely of property crimes and not violent offenses. The 1987 statutory burglary convictions were transferred from the Danville Juvenile and Domestic Relations Court to the Circuit Court. Both convictions were for breaking into the Sunrise Mart at night with the intent to commit larceny. Saunders with another stole a case of beer valued at $57.44 on one occasion and a case of beer valued at $96.00 on the other occasion. He received a five year suspended sentence with 12 months on the Danville City Farm to be followed by 12 months probation.

Saunders' Danville General District Court records include a misdemeanor conviction for stealing a sweat shirt and some T-shirts with a total value of $30.45. (Nov. 26, 1988). He had misdemeanor conviction for buying a stolen bicycle (Oct. 27, 1988). He was convicted of disorderly conduct in front of a junior high school and resisting arrest (March 11, 1989). He had a misdemeanor charge of disorderly conduct and misdemeanor assault and battery on a police officer (March 19, 1989). The records also revealed that Saunders was without an attorney on each of the charges in the Danville General District Court. On several of the charges, including the misdemeanor assault charge, no prosecutor appeared in Court on the charges, indicating their minimal nature.

At the initial sentencing phase in November, 1989, Saunders presented several witnesses in mitigation. Friends and family members described Saunders as quite, polite, and respectful. He had not exhibited violent behavior, animosity to white people, or belief in witchcraft and magic powers. (Tr. 89-104, 113, 123-125).

One witness was Robert E. Turner, IV, who met Saunders when Turner worked at

the W.W. Moore, Jr., Detention Home in Danville. Saunders had been sent to the facility at age 17 after convictions for breaking and entering and petit larceny. In a report dated April 22, 1987, Turner, stated that Saunders was not a behavioral problem, was "very well behaved," and had adjusted to the "secure setting" of the detention home. Although Saunders had appeared to be depressed on several occasions, Turner had several conferences with him and Saunders "appeared to get much better." (Tr. 49).

Dr. Paul Mansheim, a psychiatric expert appointed by the Court to assist defense counsel, was unable to predict that Saunders would commit dangerous acts in the future. Mansheim had reviewed Johnson's statements, Johnson's claim that Saunders shot someone in D.C., Johnson's charge that Saunders hated white people and was involved in devil worship, and Johnson's prior criminal record before reaching this conclusions. Mansheim concluded that Johnson's testimony was suspect given his prior record of giving false testimony to the police. (Tr. 54). Mansheim also viewed Johnson's and Wilson's sudden marriage with suspicion in view of Virginia's law on marital privilege. The fact that their testimony reported the same inculpatory statements by Saunders provided an additional basis to believe their testimony was contrived. (Tr. 55). Mansheim had reviewed the testimony of Bernard Smith concerning Saunders' alleged admissions and had reviewed Smith's prior record. Smith's testimony was also suspect given his upcoming sentencing and large number of prior charges. Smith had a significant incentive to help the prosecution. (Tr. 57).

Mansheim had reviewed Turner's report which indicated that Saunders was well behaved, socialized with others, responded well to female authority figures, presented no behavior problems, and could benefit from counseling. (Tr. 59).

Mansheim confronted Saunders with his alleged admissions concerning devil

worship and the killing in Washington. Saunders denied making such statements. (Tr. 53, 56). He also denied any prejudice against white people. (Tr. 57). Mansheim's interview with Saunders revealed that Saunders had responded well when he lived with his uncle between February 1984 and August 1986. Saunders had no juvenile record during that period. (Tr. 60).

Mansheim concluded that Saunders would function well under circumstances where he had few choices and others were providing him with direction. (Tr. 61). His criminal record indicated that he accepted responsibility for his actions and pled guilty. Based on his criminal record, Mansheim could not predict that Saunders would commit a dangerous act. (Tr. 61). His only prior allegedly violent crime had been assaulting a police officer. On that offense, Saunders had received a short sentence (60 days, 45 suspended, 15 to run concurrently with disorderly conduct), which indicated that the offense was not serious. (Tr. 62-63). A penitentiary would provide the necessary structured environment. (Tr. 65-66). Mansheim could not predict future dangerousness or violent acts by Saunders. (Tr. 93). The offense of conviction demonstrated only that Saunders had been dangerous on one occasion and did not mean he would be so again. (Tr. 96).

William Saunders, then 20 years old, testified at the sentencing phase. Saunders denied any animosity to white people, denied that he would ever kill anyone or kill on the basis of race, denied any devil worship involving cats, and denied making statements about devil worship to anyone. (Tr. 130-31, 134). Saunders denied killing anyone in D.C. or telling anyone that he had done so. (Tr. 133). He specifically denied any conversation with Bernard Smith in which he told Smith about killing someone. (Tr. 134). Katrina, Johnson and Smith had not told the truth. (Tr. 135). Saunders stated that he had been well-behaved in school and while in the W.W. Moore Detention Home. He acknowledged periods of depression while at the facility. (Tr. 131). While

at his uncle's house, he lived under strict rules and believed that he could do so again. He had been well-behaved while confined in the Danville City Jail on these charges. While at the City Farm, Saunders had studied the Bible and had received eight certificates for Bible study while in jail. (Tr. 136). Saunders believed he could improve in a penitentiary setting. (Tr. 133). Saunders acknowledged his prior convictions but stated that he believed he could straighten himself out. (Tr. 149) Saunders saw no point in "straightening out" if he got the death penalty. (Tr. 150).

On rebuttal, the Commonwealth called Levi Poole and Dr. Arthur Centor. On one occasion, Saunders had been cutting Poole's hair and as he did so told Poole that he would shoot him if he were white. Saunders then said he was just kidding. (Tr. 152). Poole also stated Saunders had suggested killing a black cat, throwing its bones in the river, in order to get "powers." On cross, Poole admitted that Saunders may have been joking. (Tr. 154)

Dr. Arthur Centor, a forensic clinical psychologist, provided rebuttal testimony for the Commonwealth.[127] Defense counsel failed to object to Centor's testimony as the Commonwealth's expert. Centor had reviewed the statements of Johnson, Katrina and Smith; the statements of Poole were "mentioned" to him. (Tr. 161). Based on material provided by the

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[127]In August, 1989, shortly after Saunders was charged, defense counsel moved for a competency examination pursuant to Va. Code Ann. §§ 19.2-169.1 and 19.2-169.5. In response, the court granted the motion for a competency examination and sua sponte without motion by defense counsel, also appointed Centor pursuant to Va. Code § 19.2-264.3:1 to examine Saunders on "the issue of mitigation or aggravation of the offenses." Centor thus became the expert assigned to assist Saunders in the examination of evidence in mitigation of the offense in the event of a conviction. Centor's subsequent behavior when reporting his results reflected his belief that this was his role. As required by statute, he sent his report finding Saunders competent to stand trial to the Court, the prosecutor, and defense counsel. A full report stating his findings on mitigating and aggravating circumstances was sent only to defense counsel and in doing so Centor cited the requirements of Va. Code §§ 19.2-169.5 and 19.2-264.3:1(D).

prosecutor and the defense and based on his examinations of Saunders, Centor testified that Saunders had a high probability of future dangerousness provided the witnesses' statements were credible. (Tr. 160). Given those statements, Centor had changed his initial opinion, provided to defense counsel, that Saunders would not be a future danger. Thus, Centor reported to defense counsel by letter on November 9, 1989, that Saunders did show a high probability for future acts of violence.

On cross-examination, Centor said that when he first interviewed Saunders in August 25, 1989, he had a complete copy of Saunders' criminal record, unidentified statements of some prosecution witnesses, and the police offense report. Based on these materials, he sent a letter report to the trial judge on August 28, 1989, indicating that Saunders was competent to stand trial. On that same date, Centor had sent a complete report to defense counsel and listed various mitigating factors: no history of prior violent criminal acts, no indication of a disruptive or abusive family life, a potential for average intellectual functioning, and denial of drug and alcohol abuse. When balanced against the aggravating factors of the offense and his prior criminal record, Centor had concluded that Saunders did "not show a high probability of future dangerousness." (Tr. 167).

Centor's opinion at trial, predicting future dangerousness, was contingent on a finding that the witnesses were credible. However, Centor admitted that he had never reviewed Johnson's criminal record and was unaware that Johnson had a conviction for giving false information to the police. Centor conceded that this fact would effect his opinion of the witness's credibility. (Tr. 171). As to Smith, Centor had been told about Smith's then pending charge but not about any prior offenses. (Tr. 171).

On redirect, Centor stated that three factors had caused him to change in his opinion to a prediction of future dangerousness: i) the nature of the offense here combined with statements

about a prior murder in Washington, D.C., (ii) Saunders' reported belief in invulnerability through the practice of witchcraft, and (iii) Saunders' alleged statements showing racial prejudice. (Tr. 176-78). Defense counsel made no objection to this testimony.

The November sentencing phase concluded with these witnesses. The court ordered the preparation of the pre-sentence report, and the sentence date was set for January 5, 1990.

B. Postponement Of The Capital Sentencing

On January 5, 1990, the trial court advised counsel and Saunders that the court required additional time before imposing sentence. The sentence was adjourned to February 26, 1990. Ex. 26 (Tr. 5, 5/3/90). Throughout this six month period, Saunders was held in the Danville City Jail as he had been since his arrest in July, 1989. He had only one disciplinary offense for "using vulgar or back talk toward and [sic] officer or non-inmate" on September 7, 1989. Ex. 12.

On February 20, 1990, Saunders set his bedsheet on fire to protest a search of his cell. He was charged with arson. Sentencing on the murder conviction was deferred until the arson charge was resolved. Saunders entered a guilty plea to the arson offense on March 22, 1990. (Tr. 3/22/90). Sentencing on the capital murder conviction was adjourned to May 3, 1990.

C. Evidence Presented On May 3, 1990

At the May 3rd sentencing proceeding, the Commonwealth presented evidence of six instances of misconduct by Saunders during the nearly six month period that he was held pending sentence in the Danville City Jail. Ex. 26 (5/3/90, Tr. 5-6).

Eight members of the Danville Sheriff's Department testified about the February 20, 1990, incident when Saunders attempted to burn his bedsheet. The officers were searching each

cell for a missing spoon, and Saunders objected to the way the search of his cell was conducted. (Tr. 17, 34) Saunders threatened to burn his bedsheet after the officers left and, in fact, tried to light it as Deputy Bryant Booth was leaving. Booth stomped it out. Booth then found a second sheet burning on the concrete catwalk outside the cell. Saunders took responsibility. (Tr. 18). Saunders then refused to leave his cell to be placed in isolation. Seven or eight officers in riot gear and nightsticks entered Saunders' cell. As Saunders struggled, his hands and legs were tied and he was taken to isolation. (Tr. 25). Saunders stated he had set the fire to protest against the manner in which the officers had treated his cell during the search. He had been angry but did not intend to hurt anyone. (Tr. 44-45).

Three separate incidents occurred during weekend in April. On April 28, 1990, inmate Kent Douglas Wells accused Saunders of removing a jar of skin cream from Wells' cell. Saunders' refused to return the cream and, without provocation according to Wells, hit Wells in the face. (Tr. 68) Wells stated that three other inmates started to beat Wells until Officer Booth responded. (Tr. 70-71). The same day, April 28, 1990, Saunders' cell was searched pursuant to a routine search for contraband. The head of a razor with the blade intact and covered with tape was found in the rim of the commode. (Tr. 80). A TV antenna was discovered in the drain opening of the sink. (Tr. 84).

The next day, April 29, 1990, inmate Bobby Dale Jackson, who was in the same cellblock as Saunders, was attacked by inmate Dobbins. Saunders joined in and hit Jackson with a mop handle. Dobbins and Saunders threatened to kill Jackson if he told the guards. Jackson immediately reported the incident. (Tr. 91). Jackson acknowledged that the jail was overcrowded in April. (Tr. 92).

On April 30, 1990, in response to Saunders' participation in the April 28th and 29th

incidents over the weekend, the officers decided to move him to isolation. Saunders initially agreed to cooperate and then changed his mind. (Tr. 95). He had been held in isolation from February to mid-April 1990. (Tr. 97, 117). After some discussion, Saunders went voluntarily to the isolation unit. (Tr. 100). However, when he entered the cell with Deputy Stokes, he jumped on the commode and tried to pull the light fixture down. Stokes grabbed Saunders around the waist, and they both fell. (Tr. 101-102).

Other officers then entered the cell since it was not clear what was happening. One of them, Michaels, hit Saunders on his leg with a nightstick. They left Saunders in the cell. Saunders removed the plastic covering from the fluorescent fixture and took out one of the bulbs. He broke the light bulb and broke the plastic cover into two sharp pieces about 12" and 16" long. Saunders pulled down the rest of the lights and refused to relinquish the plastic pieces. (Tr. 108, 112).

Frank B. Fuller, Jr., who had spoken with Saunders on several occasions and had prepared the pre-sentence report in his capital case, met with Saunders in his isolation cell. After a lengthy discussion with Fuller, Saunders handed over the broken light bulb and broken plastic. Saunders told Fuller that he had been moved to isolation for no reason, that he had gone voluntarily, and once there he had been jumped by Booth, Michaels and Hopkins who then beat his legs with a blackjack. (Tr. 140-41). Saunders had grabbed the plastic pieces and threatened to kill the three officers in retaliation. (Tr. 140, 150). Saunders surrendered the plastic pieces to Fuller.

Frank Fuller confirmed that the Danville City Jail had no windows, no natural light, no outside ventilation, and no outdoor recreation yard. Saunders had been held there for over nine months, believed he was not getting fair treatment at the jail, and wished to be moved. (Tr. 147).

On May 2, 1990, Deputy Mark L. Harraway smelled smoke and observed burned

paper in Saunders' commode. Saunders admitted setting the paper on fire and had stated "he wanted to take and burn up all the paper, so he could flush the commode." (Tr. 153).

The defense presented no witnesses, and Saunders did not testify. (Tr. 156).

The prosecutor argued that based on the evidence at trial, the presentence report, his prior criminal record, and these recent post-conviction jail incidents Saunders would be a future danger even if incarcerated and the death sentence should be imposed. (Tr. 159-169).

Defense counsel maintained that the post-conviction jail incidents were the direct result of six months incarceration while the court determined whether a death sentence or a life sentence would be imposed. This had been a very stressful period for Saunders. All the jail incidents had occurred after the original January sentencing date. Setting aside Guill's murder, Saunders had no history of serious violent behavior. Given his young age, 19 at the time of the offense, he could be expected to benefit from a life sentence. Counsel emphasized that the Commonwealth's primary witness had significant credibility problems. Moreover, the defense psychiatrist had not found a probability of future dangerousness. (Tr. 169-181).

The court imposed a sentence of death based solely on future dangerousness. (Tr. 204). The court credited the testimony of Dr. Centor but specifically excluded any reliance on alleged admissions by Saunders to unadjudicated crimes, i.e., killing in Washington, D.C. (Tr. 197). The court relied on Saunders' prior convictions, on testimony that Saunders had stolen the gun used in the murder, and on his apparent lack of remorse for Guill's murder. (Tr. 199). The post-trial jail incidents were determined by the court to be strong evidence of future dangerousness. (Tr. 202-203).

Before imposing the death sentence, the Court stated:

I think that your conduct since trial, however, borders on near

> incredible and unbelievable. I think that I must tell you, in all sincerity, Mr. Saunders, I have yet to comprehend, after hearing the evidence today, of some of the things that you've done, while awaiting sentencing on a capital murder, defy any conclusion, except to convince anyone who may have heard some of those things, that not only is there a probability of continuing criminal acts of violence in the future, but you've continued to commit acts of violence, while awaiting sentencing. Certainly, the mitigating factors and things that the Court has attempted to balance, in determining the appropriate sentence here, are so out-weighed by the actions and whatever motivated you to do them, since then, as to give the appearance of a very angry and hostile person, who really has . . . well, I think it can only be said, in the form that you just simply don't have any regard for life, or other peoples' property, and this is alarming.

Tr. 200 (5/3/90).

* * *

> I'm afraid that this evidence that the Court has heard today, absolutely reeks of aggression, hostility, rage, uncontrollable conduct, at best . . . but I don't think that it can be denied that it loudly exclaims dangerousness, not only from your own mouth, but from the things that you have done. . . . . [Y]ou do constitute a danger to all around you . . . be it friend, cellmate, guard or any other person in authority.

Tr. 201-202 (5/3/90).

The court imposed the death sentence for capital murder, a term of life imprisonment for the robbery, two years for use of a firearm, and one year for the arson conviction. (Tr. 206).

The Virginia Supreme Court relied heavily on evidence of Saunders' post-conviction, pre-sentence offenses when affirming the death sentence. The Court related each of the six incidents at length and concluded that "this evidence was uniquely probative of future dangerousness." Saunders v. Commonwealth, 406 S.E.2d 39, 45-46 (1991).

NEW AND UNDISCLOSED EVIDENCE IMPEACHING THE CREDIBILITY OF THE COMMONWEALTH'S WITNESSES

Since the time of Saunders' capital murder trial, the credibility of the

Commonwealth's witnesses has been seriously undermined by the release of previously undisclosed statements made to the Commonwealth's agents and by the discovery of statements by Johnson admitting his part in the robbery and murder of Dale Guill. In addition, Smith and Johnson--the principal witnesses against Saunders--have compiled significant criminal records since his trial providing further reason to view their testimony with caution. Ex. 2. These are persuasive reasons to reevaluate the appropriateness of a death sentence in this case.

A. Bernard Smith

As set forth above, Bernard Smith testified at Saunders' capital murder trial that Saunders had made a jailhouse confession to Smith in August, 1989. Smith's two, typed pretrial statements dated August 28, 1989, had been provided to Saunders' defense counsel before trial. (Ex. 13). During his federal habeas investigation, Saunders obtained Smith's sworn affidavit that his pretrial and trial statements had been fabricated.[128] Ex. 8. Smith's trial allegations that Saunders admitted shooting Guill with a gold .22 gun taken when Smith and Saunders robbed a Western Auto store in Chatham, Virginia, on June 1, 1989, were inconsistent with Smith's statement to the police made on June 2, 1989. (Ex. 14). In that June, 1989, statement, Smith said he--not Saunders--had broken the store window, taken the guns, and made off with the guns before the police arrived. (Ex.14). Further support for claims that Smith fabricated his testimony can also be found in the post-sentence investigative report dealing with the Western Auto burglary. That report stated that Saunders had been apprehended by Officer James Austin in a nearby car moments after the burglar alarm sounded. (Ex. 15 at 2A). The arrest warrant shows that Saunders was

[128]The Attorney General's Office later submitted Smith's sworn statement dated March 28, 1996, recanting the allegations and statements contained in his 1995 affidavit given to current counsel. Ex. 8.

arrested at June 1, 1989 at 5:35 a.m. (Ex. 16). None of the warrants or reports indicate that any guns were found on or seized from Saunders at the time of his arrest. These documents refuted Smith's claim that Saunders escaped that evening with three guns, one of which was later used to murder Guill.

On March 27, 1997, Saunders obtained for the first time transcripts of taped interviews of Bernard Smith conducted by the Commonwealth's Attorney and others on August 28, 1989, August 30, 1989, and August 31, 1989. See Ex. 17. None of these pretrial statements had been provided to Saunders' defense counsel. See Ex. 18.

Smith's August 28th statement contains the following statements that are either inconsistent with or directly contradicted his trial testimony. Smith stated, as he later did at trial, that Saunders said he shot Guill because Guill would not give him the money (Ex. 17, 8/28/89 at 9) and that he used one of the guns from the Western Auto burglary, i.e., Chatham (at 9). Contradicting Smith's later trial testimony, Saunders did not say what gun was used, only that he had a .38 (at 23). At trial, Smith testified that Saunders said he had shot Guill with a long, gold .22. According to Smith's pretrial statements, Saunders did not say how many times he shot Guill. After he shot Guill, Saunders said he left, but Saunders did not say where he went (at 10). Moreover, Smith stated that Saunders did not say anything about taking Guill's money. Saunders did not describe what he did after he shot Guill, and Saunders gave Smith no other details of the shooting (at 16, 17). When Guill was shot, Lacy and a girl were with Saunders. Saunders did not say who the girl was or if she was anybody's girlfriend (at 12). Smith reported that Saunders never said he planned to shoot Guill (at 16). Smith was asked about any other details of the shooting and said he had told everything Saunders said (at 24). This conversation with Saunders had occurred about two weeks prior to Smith's August 28th interview with the Commonwealth's Attorney. (at

18).

Two days later, on August 30, 1989, Smith gave a second taped interview. Smith stated, in part, that Saunders had offered him a .22 gun if Smith were released. Saunders was mad at Johnson because Johnson had "snitched" to the police. Saunders would tell his brother where to find the .22, and the brother would then give it to Smith (Ex. 17, 8/30/89 at 1). The .22 was described as a long, gold gun taken during the Chatham robbery (at 2). Saunders never said how he had used the gun, only that it was accurate (at 2). Smith should use the gun to shoot Johnson and throw the gun in the Dan River when he was finished (at 2). Saunders never told Smith where the gun was. Upon Smith's release, Saunders would direct his brother to give the gun to Smith or Saunders would tell Smith where to find it (at 3). When asked why Saunders wanted the gun thrown in the river, Smith responded: "So they wouldn't find the evidence, the gun, I guess it was the gun that killed the man with [sic]. Dale." (8/30/89 at 3)(emphasis added). Saunders never told Smith that he shot Guill with the gold .22. Yet Smith testified to that fact and more at trial.

The next day, August 31, 1989, Smith was interviewed again and reported that the day before Saunders had offered him $25,000 to shoot Johnson. Smith was to receive the gold .22 gun from Saunders' brother to carry out the deed.

The Commonwealth's Attorney stated that on August 30, 1989, he informed Smith's attorney of Smith's cooperation in the murder investigation and of Smith's willingness to locate the .22 gun. Ex. 19. The Pittsylvania prosecutor was notified and on the prosecutor's recommendation the judge released Smith on a $1,000 recognizance bond on August 31. After Smith's release, Fuller discussed Smith's efforts to locate what Fuller described as "the murder weapon" "on several occasions." Ex. 19 at 2-3. (As set forth at trial and in prior pleadings, the weapon was never recovered.) These facts were not known to defense counsel, and they provided a basis for

impeaching Smith's trial testimony.

Smith's trial testimony directly contradicted his pretrial statements. Smith testified that during their joint incarceration Saunders told Smith that he had shot Guill in the back of the head with the .22 "that came from the store" because Guill "wouldn't give him the money, or something, so he shot him." Ex. 26, Tr. at 91. Smith stated that "after [Saunders] shot him, he got his jewelry and his money, and left." Tr. at 92. To get the jewelry and money, "he went in his pocket." Ibid. After Saunders shot Guill, "he was talking to him." "Move mother fucker, some shit like that . . . something." Ibid. Saunders told Smith that he took "some jewelry and money." Ibid. Smith added "Lacy told him not to do it 'cause he [Lacy] know [Guill]." Ibid. After several leading questions by the prosecutor, Smith stated that Saunders shot Guill because "he was white." Tr. at 96.

On cross examination, Smith stated that all his conversations with Saunders had occurred before he contacted the police. Tr. 99-100, 104. Smith denied that he had acted to "get in the good graces of the police" or that he had any selfish interest. Tr. 102-103. Smith maintained that no one had made any promises and that "I didn't ask them for no help." Tr. 103.

A review of defense counsel's cross examination of Smith confirms that counsel had not been provided with Smith's pretrial interviews. Smith was never questioned about his prior inconsistent and contradictory statements. Smith never acknowledged that he had been acting as an agent for the Commonwealth. All of these facts, unknown at the time of trial, provided further bases to attack Smith's credibility.

Comparing Smith's pretrial statements to his trial testimony leads to only one conclusion. Smith gave false testimony at Saunders' trial. Smith's testimony was critical to Saunders conviction since his testimony appeared to provide independent confirmation of the facts

and details of the murder from Saunders himself.

Since Saunders' trial in 1989, Smith has been convicted of eleven misdemeanor offenses. He has five felony convictions in Danville, Martinsville, and Chesterfield County. Ex. 2 at 2-3.

B. Lacy Johnson

Johnson's testimony has been suspect from the beginning. Facts and witnesses revealed to Saunders after the conclusion of his state proceedings demonstrate that Johnson certainly lied about his role in the robbery/murder of Guill. He was not an innocent and unsuspecting eyewitness to a murder. At a minimum Johnson was an accomplice and could have been the triggerman.

On February 6, 1996, the Commonwealth provided Saunders with a copy of Det. Breedlove's handwritten notes on the case. Ex. 20. The notes revealed two facts previously unknown. First, Johnson had taken two polygraph examinations and "passed" only part of the examination concerning whether he shot Guill. Second, a previously unidentified witness, Kevin McMoore, had told the police that Johnson admitted to McMoore on the day after the robbery that he and Saunders had planned to rob Guill. However, according to McMoore's statement, Johnson did not know that Guill would be shot.

In March, 1997, Saunders received the four page polygraph report from the July 26, 1989, and August 10, 1989 examinations of Johnson. Ex. 21. On both dates, the Commonwealth's own polygraph examiner recorded deceptive responses by Johnson. On July 26, Johnson was asked "Did you know in advance Saunders was going to shoot Dale [Guill]?," and his response was deemed deceptive in two separate examinations on that date. Johnson offered an explanation which the examiner concluded "could have caused the deceptive responses." The explanation was that

while at Dooley's Market, Saunders had stated that he ought to rob Guill. However, on August 10, 1989, the examiner conducted an additional "continued" examination. Johnson's negative responses to the following three questions were judged deceptive:

5. Other than what you told me, was anything said about taking Dale's money?

7. Did you plan with Saunders to take Dale's money?

10. Are you hoping an error will be made on this test?

Unlike the prior examination, the examiner did not conclude that Johnson's explanations could account for the repeated deceptive responses. Ex. 21.

The polygraph results alone demonstrate that Johnson was lying about his role in the robbery of Guill. The police department's own polygraph examiner had concluded on three separate examinations that Johnson gave deceptive responses when asked about his knowledge of a plan to rob Guill and his part in a plan to rob Guill. Furthermore, he was deemed to be deceptive on question 10, "Are you hoping an error will be made on this test?". The only possible conclusion was that Johnson was lying about his role in the robbery of Guill. Nevertheless, at trial Johnson presented himself as an unsuspecting eyewitness to Guill's murder. In fact, Johnson was at a minimum an accomplice in the robbery/murder and perhaps the shooter.

In the years since Saunders' conviction, Johnson on several occasions has admitted that he -- not Saunders -- shot Dale Guill. The most recent admission was reported to current counsel by the Attorney General's Office in a letter dated February 6, 1996. Ex. 5. That letter recounts a relatively recent claim by Johnson that he shot Dale Guill:

> On January 11, 1996, another statement was taken from Teresa Johnson [Lacy Johnson's wife]. In this statement she admitted lying in her first [December 27, 1995] statement to the police because she said Lacy had assaulted her and she was afraid of him. She also orally stated that four or five months ago Lacy Johnson said he shot

the insurance man on Memorial Drive.

A second individual, Candace Bowman Battle, stated in a sworn affidavit that Johnson came to her on the very night of Guill's murder in 1989. Johnson told Bowman that he had just killed a man and thrown the gun in the Dan River. In 1994, Johnson told Battle that he had married Katrina to avoid going to jail. And in August, 1995, Johnson admitted to that he had "set the whole thing up, he set [Saunders] up, and he was not going to jail for nobody." Ex. 6. Johnson later denied Battle's allegations in an affidavit submitted by the Commonwealth in the federal court proceedings.

A third individual, a prosecution witness, Levi Poole, stated in a sworn affidavit that he heard Johnson admit to his then wife, Katrina, that he had killed someone. Ex. 7. In that same affidavit, Poole also admitted giving false testimony at Saunders' trial when he said Saunders had a long, gold .22 gun. According to Poole, Johnson had the gold gun about a week before the murder. Under questioning by the Commonwealth, Poole later recanted this admission concerning his trial testimony but not the statement attributed to Johnson. Ex. 7.

A fourth individual, Antonio Winbush, who married Katrina after she divorced Johnson, stated in a sworn affidavit that he had heard Johnson on several occasions admit that he had killed someone. Ex. 9. In the context of that conversation, Winbush understood Johnson to be referring to Dale Guill. Winbush also stated that Katrina had admitted giving false testimony at Saunders' trial. Winbush later recanted these statements. Ex. 9. The Commonwealth also submitted affidavits from Johnson and Katrina refuting these allegations.

Finally, in the years since Saunders' trial, Johnson has compiled a significant criminal record. According to Commonwealth's Attorney Fuller, Johnson has more than 30 felony convictions, mainly for burglary and larceny, along with six misdemeanor convictions. Ex. 2.

A death sentence cannot be based on the testimony of Lacy Johnson.

C. Levi Poole

As noted above, Poole submitted an affidavit recanting portions of his trial testimony (Ex. 7), but later recanted the recantation after an interview by the Commonwealth. Poole has also compiled a significant criminal record since Saunders' trial. He has been convicted of 26 misdemeanors in Danville, three felonies in other jurisdictions, and nine misdemeanors in the Danville Juvenile and Domestic Relations District Court. Ex. 2.

In light of the record of criminal convictions held by Bernard Smith, Lacy Johnson, and Levi Poole, Commonwealth's Attorney Fuller has serious reservations about Saunders' death sentence:

> I believe there is an additional reason for re-examining Saunders' death sentence. I am concerned that several of the Commonwealth's witnesses in this case have compiled the . . . criminal records [above] since Saunders was convicted of capital murder.

Ex. 2 at 2.

Commonwealth's Attorney Fuller has concluded that:

> [I]n view of the criminal conduct of most of the Commonwealth witnesses since Saunders' conviction, I am not comfortable with Saunders' death sentence.

Id. at 3.

> Therefore, I believe that justice would best be served by commuting Saunders' death penalty to a life sentence to be served consecutively with the life sentence he receive for robbery.

Id. at 3-4.

D. Statements Of Other Witnesses

Evidence from other witnesses supports a conclusion that Johnson had a role in the

robbery/murder. Statements given to Det. Breedlove by Betty Brandon on August 3, 1989, and Angie Johnson on July 24, 1989, report Johnson's admission that he robbed Guill with Saunders. See Ex. 22, 23. The names of these witnesses, but not their complete statements, had been provided pretrial on November 7, 1989, by the Commonwealth's Attorney. The pretrial disclosure indicated that Johnson had talked about robbing a guy with Sanders. The complete statements were provided to Saunders on March 27, 1997. Their statements support the conclusion that Johnson lied about his role in the offense.

Angie Johnson stated that Lacy Johnson offered her cocaine of the night of the shooting if she would bring him drug customers. She observed Lacy using cocaine and saw "a lot of cocaine" on the table in Katrina's apartment, some of it bagged up and some in an open bag. Lacy told her how he and Saunders robbed Guill of $700. Angie saw Levi Poole, Katrina, and Eric McMoore in the apartment. Ex. 23.

Brandon stated that she received cocaine from Johnson on the night of the shooting. Later that evening Johnson came by with a bread bag containing cocaine. Johnson said he had stolen $700 from a man and used it to buy the cocaine. Johnson knew the man because Katrina had been selling the man sex for money.[129] Ex. 22. Brandon testified for the defense and stated that on the night of the shooting, Johnson bragged that he had robbed Guill along with Poole and Saunders. Johnson said he took Guill's money. Johnson had a large quantity of cocaine that evening. He sold some to Brandon, who observed Johnson and Katrina doing drugs. Ex. 26, Tr. 215-224.

At trial, Saunders also presented the testimony of Anthony Martin who reported that

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[129]This allegation did not come out at trial. If true, it provided a motive for Johnson to shoot Guill. Johnson testified that he and Katrina had been engaged to be married since March, 1989, and were married at the time of Saunders' trial.

a month and a half before trial, Johnson admitted spending Guill's money. At trial, Johnson denied that he had planned to rob Guill, denied that he had told anyone that he had spent Guill's money, and denied that he used cocaine at Katrina's apartment on the night of the shooting. Ex. 26, Tr. at 125-27, 138-40, 154, 159, 164.

D. A Review Of All The Evidence Demonstrates That Johnson Took Part In The Robbery And May Have Shot Guill

A review of the evidence presented at trial in conjunction with all the facts and statements revealed or discovered since the trial demonstrates that Johnson, not Saunders, probably shot Guill and then named Saunders as the shooter. No physical evidence connected Saunders to Guill's murder. No money, jewelry or papers belonging to Guill were ever recovered from Saunders. Johnson led the police to what little physical evidence was found. Saunders' fingerprints were not on any of Guill's property, but Johnson's fingerprints were found on Guill's car. The "long, gold .22" was never recovered by the police. There is no proof that the gun stolen from the Western Auto store even killed Guill. Moreover, several witnesses placed a significant quantity of cocaine as well as money in Johnson's possession on the night of Guill's murder. It is reasonable to assume that the shooter got the bulk of Guill's money and property. Moreover, Johnson has repeatedly claimed responsibility for the shooting in the years since the murder. An unbiased assessment of the facts demonstrates that Johnson was the probable shooter in the robbery homicide. Under Virginia law, only the "triggerman" may be sentenced to death.

The evidence conclusively demonstrates that Johnson was at least an accomplice in the robbery/murder and lied at trial. Johnson acknowledged his participation to various witnesses at the time of the murder. The police department's own polygraph tests confirmed what he told those witnesses and confirmed that his denials of involvement were false. Johnson was seen with the

proceeds of the robbery on the night of the shooting. Furthermore, Katrina Wilson Johnson cannot be viewed as a reliable witness given her sudden marriage to Johnson after the shooting and her own involvement in these events. Her apparent confirmation of Johnson's account must be dismissed or viewed with considerable suspicion.

The independent confirmation of Johnson's testimony provided by Bernard Smith at trial was a fiction. Smith's initial statement to the police reported that Saunders shot Guill with a .38. In that first interview, Smith could provide none of the details he later gave at Saunders' trial. Moreover, Smith's initial police interviews provide reason to believe that Smith was truthful when he later admitted that he lied at Saunders' trial. One need only compare Smith's August 1989 interviews to his November 1989 trial testimony to confirm that he gave false testimony.

And as stated by Commonwealth's Attorney Fuller, the extensive record of convictions compiled by Smith, Johnson, and Poole since Saunders' trial provides yet another reason to reconsider the sentence in Saunders' case. A man should not be convicted, much less put to death, based on the testimony of these witnesses. Clemency should be granted in this case.

SAUNDERS' RECORD WHILE ON DEATH ROW

Even if despite all the facts, one concludes that no doubt has been raised concerning Saunders' conviction for capital murder, clemency should be granted as to his sentence. The prediction that Saunders would be a danger even if incarcerated was incorrect.

Judge Ingram has stated that Saunders' post-conviction behavior was the reason the death sentence was imposed. After reviewing Saunders' disciplinary record at Mecklenburg, Judge Ingram has concluded that the death sentence is not warranted in this case:

> As a result of the defendant's post conviction conduct while

> awaiting sentencing in jail, I imposed the death penalty upon Saunders because there was a probability that based upon that evidence, the defendant would commit criminal acts of violence that would constitute a continuing serious threat to society.
>
> Had Saunders not behaved as he did from the time of his conviction until the time of his sentencing, I would not have imposed the death penalty on January 5, 1990, as originally scheduled, or thereafter.
>
> I have had an opportunity to review William Ira Saunders' behavior while he has been an inmate on Death Row and I am satisfied that his conduct in the years following his sentencing have not borne out my belief of his future dangerousness which he demon- strated during his period of incarceration awaiting sentencing.
>
> I am writing this letter because I believe that the judicial system which imposed this sentence upon Saunders cannot rectify this situation at this time, but that executive clemency is the only alternative which can ensure justice in this case.

Ex. 3.

Commonwealth's Attorney Fuller reached the same conclusion after reviewing the circumstances which led to the imposition of a death sentence and after reviewing Saunders' record since he has been at Mecklenburg.

> In retrospect, despite Saunders' behavior from conviction to sentencing almost six months later, it concerns me that, had the sentencing hearing gone forward when originally scheduled, Saunders' conduct that caused him to receive the death penalty would not have occurred and would not have affected his sentence. Significantly, Saunders created no problem while incarcerated from July 20, 1989 to January 5, 1990, the date that his sentencing was originally scheduled. Thus, I am convinced that if Sanders had been sentenced on January 5, 1990, as originally scheduled, the judge would not have imposed the death penalty, based upon the evidence of future dangerousness introduced at the first penalty hearing on November 16th.

Ex. 2 at 2.

* * *

Since June of 1995, when I started reviewing this file after Saunders

> filed a federal habeas petition, I have felt that so long as Saunders has not been involved in violent conduct while incarcerated since receiving the death penalty, his sentence should be reconsidered. His prison record, which I have reviewed, indicates that he has not been involved in any violent conduct since he was sentenced to death on May 3, 1990.

Therefore, I believe that justice would best be served by commuting Saunders' death penalty to a life sentence . . .

Ex. 2 at 3.

In the nearly seven years that Saunders has been held on death row, he has not repeated the violent behavior that occurred prior to his sentencing. His infractions have been generally minor violations of prison rules. Contrary to Judge Ingram's fears at the time of sentencing, there have been no injuries to prison staff or to other inmates.

The following summary of Saunders' disciplinary record is based on reports provided to Saunders current counsel by Mecklenburg Correctional Center. Ex. 24 (Offense reports in chronological order).

- On May 21, 1992, Saunders was charged with disobeying a direct order and received a verbal reprimand. The offense was covering his cell window.

- On June 20, 1993, Saunders was charged with using vulgar or insolent language toward an employee and received 15 days cell restriction. The offense was prompted when he stood in the doorway of another's cell and was ordered to move.

- On June 24, 1993, Saunders was charged with failing to follow institutional count procedures and received general detention. The offense consisted of failing to stand for count.

- On July 4, 1993, Saunders was charged with "aiding and abetting another to be in an unauthorized area" and received 30 days loss of radio, suspended for 90 days of good

behavior. The offense was permitting another inmate to enter his cell.

- On July 23, 1993, Saunders was charged with disobeying a direct order and received a verbal reprimand. The offense was covering his cell window.

- On July 23, 1993, Saunders was charged with failing to follow institutional count procedures and received fifteen days cell restriction. The offense was failing to stand for count.

- On July 28, 1993, Saunders was charged with "gathering around or approaching any person in a threatening or intimidating manner" and received 30 days loss of commissary. The offense consisted of using loud, vulgar language, making threatening statements, and pointing a finger at a guard while the guard supervised a cell shakedown.

- On July 29, 1993, Saunders was charged with delaying, hindering or interfering with an employee in the performance of his duties and received 15 days cell restriction. The offense was throwing food into the pod area.

- On August 27, 1993, Saunders was charged with failing to follow institutional count procedures and received 15 day cell restriction. The offense was failing to stand for count.

- On September 25, 1993, Saunders was charged with delaying, hindering or interfering with an employee in the performance of his duties and received 15 days cell restriction. The offense was throwing paper from the cell food slot.

- On November 2, 1993, Saunders was charged with failing to follow institutional count procedures and received 15 days loss of recreation. The offense was failing to stand for count.

- On November 13, 1993, Saunders was charged with behavior that presents a

threat to self and the institution and received prehearing detention and 30 days loss of TV. The offense was possession of intoxicants.

- On January 12, 1994, Saunders was charged with delaying, hindering, or interfering with an employee in the performance of his duties and received 10 days loss of recreation. The offense was failing to enter his cell promptly.

- On April 17, 1995, Saunders was charged with two offenses of delaying, hindering, or interfering with an employee in the performance of his duties. The first offense occurred when Saunders threw pieces of paper and carton of milk into the pod area. The second offense occurred three hours later when Saunders meal tray was found in the pod hallway. The punishment was 20 days loss of recreation on each offense.

- On June 22, 1995, Saunders was charged with disobeying a direct order and received 20 days loss of recreation. The offense was refusing to be cuffed to order to be moved to another pod.

- On June 23, 1995, Saunders was charged with a disobeying direct order and received 30 days loss of recreation. The offense was refusing to uncover his cell window.

- On July 21, 1995, Saunders was charged with "threatening bodily harm" and received prehearing detention. The offense was cursing a guard after the guard allegedly cursed at Saunders. He received 30 days loss of recreation.

- On September 19, 1995, Saunders was charged with threatening bodily harm based on his remark to a guard that he would throw his food tray at him. The punishment was 30 days loss of recreation.

- On January 8, 1996, Saunders was charged with two offenses for disobeying a direct order and received prehearing detention. The first offense was based on Saunders' refusing

to return a magazine to another inmate. The second offense was refusing to be cuffed for a cell search twenty five minutes after the first offense. The resolution of the charges was not noted.

- On April 13, 1996, Saunders was charged with delaying, hindering, or interfering with an employee in the performance of his duties and received 20 days loss of commissary. The offense was throwing his food tray into the pod hallway.

- On January 17, 1997, Saunders was charged with disobeying a direct order and received 30 days loss of recreation. The offense was covering his cell window.

Saunders has inflicted injury only on himself while at Mecklenburg. On November 13, 1994, containers of blood were found in his cell, and he was placed on 30 minute security checks. (This was not a disciplinary offense.) On April 5, 1995, Saunders was found in a pool of blood and sent to South Hill Hospital. He was seriously injured from self-inflicted wounds in a suicide attempt. (This was not a disciplinary offense).

Based on a seven year record, Judge Ingram, Commonwealth's Attorney Fuller, and Chief of Police Morris have concluded that the reasons that supported a death sentence in Saunders' case have proved to be incorrect. Saunders' expert at the trial had stated that Saunders did not demonstrate a probability of future dangerousness. The Commonwealth's expert at the trial had found a probability of future dangerousness only if the Commonwealth's witnesses were credible. As has been argued and demonstrated above, the Commonwealth's central witnesses against Saunders were not credible and their subsequent criminal records only serve to highlight doubts about their trial testimony. Saunders' post-conviction offenses prior to his capital sentencing were certainly due to the stress and uncertainty as he awaited the Court's decision. He has not repeated that behavior. Saunders' death sentence should be commuted.

CLEMENCY IS APPROPRIATE IN THIS CASE

Executive clemency is the appropriate avenue for relief where the state provides no procedural mechanism within the judicial system for the review of a conviction or sentence based on new facts or changed circumstances. Virginia Governors have provided this "fail safe" mechanism over the years.

Doubts about a defendant's guilt and a justified skepticism about accomplice testimony have provided a basis for commuting a death sentence. In 1992, Governor L. Douglas Wilder commuted the death sentence of Herbert Russell Bassette where Bassette's conviction was based solely on the testimony of three alleged accomplices. Governor Wilder commuted the death sentences of Joseph M. Giarratano and Earl Washington based on evidence demonstrating the likelihood of their innocence.

In November, 1996, Governor George F. Allen commuted the death sentence of Joseph Patrick Payne based on the unreliability of the sole eyewitness to the murder and substantial evidence indicating Payne's innocence.

William Saunders' case presents equally serious questions about the credibility of the witnesses against him. In addition, he was subjected to the unusual stress of waiting nearly six months to learn what sentence would be imposed. As demonstrated, he has not repeated the violent behavior that led to the death sentence. Moreover, the Commonwealth's Attorney who prosecuted him, the judge who tried him and sentenced him to death, and the Chief of Police whose office investigated the case have all concluded that a death sentence is not appropriate in this case. Saunders' case is certainly unique in generating support for clemency from the very individuals who originally sought his conviction and imposed the death sentence. The case is also unusual as application of clemency is being made with the consent to the Attorney General's Office prior to the

conclusion of the court proceedings.

CONCLUSION

For all these reasons, we urge you to commute William Saunders' death sentence and to impose a sentence of life with the possibility of parole, the sentence available when he was sentenced in May, 1989.

Respectfully submitted,

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April 23, 1997